

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petitions for waiver of Rules 25-24.515(9), 25-24.515(7), and 25-24.620(2)(c) and (d), F.A.C., regarding the number of access lines per pay telephone and 0+ local and 0+ intraLATA traffic in confinement facilities, by Pay Tel Communications, Inc. d/b/a Pay Tel Communications, Inc. of the Southeast.

DOCKET NO. 970975-TC
ORDER NO. PSC-97-1302-FOF-TC
ISSUED: October 20, 1997

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
DIANE K. KIESLING
JOE GARCIA

NOTICE OF PROPOSED AGENCY ACTION ORDER
GRANTING PETITION FOR WAIVER OF RULES AND POLICIES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Case Background

Pay Tel Communications, Inc., d/b/a Pay Tel Communications, Inc. of the Southeast (Pay Tel) filed two Petitions for Waiver of Rules 25-24.515(7), 25-24.515(9) and 25-24.620(2)(C)&(D), Florida Administrative Code on July 25, 1997. Pay Tel also requested an

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exemption, for its pay phones located in confinement facilities, from Commission policy that currently prohibits the installation of line concentration devices that allow up to three instruments per access line, and the provision of 0+ local and 0+ intraLATA via store-and-forward technology.

The Notice of Requests for Exemption was submitted to the Secretary of State on August 6, 1997, for publication in the Florida Administrative Weekly pursuant to Section 120.542, Florida Statutes. No comments were submitted during the comment period, which ended August 29, 1997.

Pay Tel holds pay telephone certificate no. 4935, with an effective regulation date of September 26, 1996. Pay Tel does not currently provide pay telephone service to confinement facilities in Florida, but stated that it plans to do so in the very near future. We find the exemptions to be in the public interest. Our reasons are set forth below.

Analysis

The requirement of one pay telephone instrument per coin access line was established in Commission Order No. 14529, issued July 1, 1985, to avoid the possibility of a pay phone customer receiving a busy signal while attempting to use a pay phone in an emergency situation. Rule 25-24.515(9), Florida Administrative Code, requires that each telephone station must be connected as provided in the pay telephone access tariff offered by the local exchange company. In compliance with Commission policy, Pay-Tel's tariff provides that each pay telephone station shall be connected to a single coin access line. The probability of getting a busy signal increases when a line is shared by several pay telephone instruments, thus creating a potentially hazardous situation during emergencies.

Pay Tel asserts that it will suffer substantial hardship if the line concentration prohibitions are not waived. Absent a waiver, Pay Tel states that it will be forced to purchase more pay telephone access lines and associated equipment than is necessary. These additional purchases would reduce profits and could potentially cause losses.

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Since the issuance of Commission Order No. 14529, the Commission recognized that the one-to-one ratio of telephone instruments to access lines does not apply to confinement facilities. As we stated in PSC-96-1157-FOF-TC, Docket No. 960805-TC, issued September 17, 1996:

Confinement facilities have their own emergency response systems in place and Rule 25-24.515(15) Florida Administrative Code, exempts pay phones located in confinement facilities from the requirement to provide access to 911. For these reasons, the concern with inmates getting a busy signal when they try to reach emergency service is moot.

Pay Tel also seeks exemption from Rule 25-24.620 (2)(c) and (D), Florida Administrative Code, in order to implement a store and forward call billing system that allows the completion and billing of 0+ local and 0+ intraLATA calls without the need for routing the call to the local exchange carrier (LEC) or the assistance of live operators. We do not approve Pay Tel's request for exemption from Rule 25-24.620(D), as that section only applies to operator service providers, and is not applicable to Pay Tel.

Rule 25-24.620 2 (C) provides:

(2) In its tariffs for and contracts with billing and collection agents and other companies providing operator services, every company providing operator services shall require the other party to:

(C) Route all end user dialed 0 + local and all 0- calls to the provider of local exchange telecommunications services unless the end user dials the appropriate access code for his carrier of choice, such as 950, 800, 888, or 10XXX;

Pay Tel asserts that absent a waiver, it will suffer substantial hardship and be forced to forego substantial amounts of revenue if it is forced to route 0+local and 0+ intraLATA calls to the LEC. Pay Tel also alleges that it will suffer undue hardship

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through the fraudulent use of its pay telephone services if it is not allowed to implement its store and forward system. Additionally, Pay Tel maintains the requirement that all calls be completed by a live operator results in substantial and undue hardship to operators caused by harassing calls from inmates.

To date, the Commission has granted exemptions to six other pay telephone providers allowing them to handle 0+ local and 0+ intraLATA calls. In Order No. PSC-96-1413-FOF-TC, Docket No. 960829-TC issued November 20, 1996, we stated in pertinent part:

There seems to be no compelling reason to continue to the prohibition against pay telephone providers in confinement facilities handling intraLATA and local calls on a collect basis since Florida Statutes have been amended to permit competition for local telephone service and we have been instructed to encourage such competition . . .

Upon consideration, it is appropriate to grant Pay Tel's petition with the exception of its request for exemption from 25-24.620(D), Florida Administrative Code. Pay Tel has demonstrated that the waivers are in the public interest under Sections 364.01 and 364.3375, Florida Statutes, in an effort to prevent fraud. Further, Pay-Tel has demonstrated that the prohibition against line concentration devices and the requirement that all 0+ local and 0+ intraLATA calls be routed through the LEC with the assistance of a live operator would result in substantial hardship as the requirement would result in lost revenues and force Pay-Tel to purchase additional telephone access lines and related equipment. Pay Tel has also demonstrated that granting these exemptions will not impede the continued provision of pay telephone services to confinement facilities, as intended by the underlying statute, Chapter 364.345, Florida Statutes.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Pay Tel Communications, Inc., d/b/a Pay Tel Communications Inc. of the Southeast's request for exemption from Rule 25-24.515(7)and(9), Florida Administrative Code, so that it may install up to three pay telephone instruments per telephone access line in confinement facilities, is hereby approved. It is further

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ORDERED that Pay Tel Communications, Inc., d/b/a Pay Tel Communications, Inc. of the Southeast request for exemption from Rule 25-24.620(C), Florida Administrative Code, so that it may utilize a store and forward system for the completion and billing of 0+ local and 0+ intraLATA calls in confinement facilities, without the requirement that the calls be completed with the assistance of a live operator or that they be routed through the local exchange company is hereby approved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, these Dockets shall be closed.

By ORDER of the Florida Public Service Commission, this 20th day of October, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

JRB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 10, 1997.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this order becomes final and effective on the date described above, any party substantially affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court.

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This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.