

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: January 26, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (Cibula)
Division of Competitive Markets & Enforcement (Curry, C. Lewis)

RE: Docket No. 050892-TP – Petition for declaratory statement regarding applicability of Rule 25-24.515(22), F.A.C., or, in the alternative, petition for waiver of rule, by Global Tel*Link Corporation.

AGENDA: 02/07/06 – Regular Agenda – Issue 1 - Decision on Declaratory Statement – Parties May Participate at Commission's Discretion; Issue 2 – Proposed Agency Action – Interested Persons May Participate.

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Arriaga

CRITICAL DATES: 02/20/06 (By Statute, Order Must Be Issued By This Date)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\050892.RCM.DOC

Case Background

Pursuant to section 120.565, Florida Statutes, and Rule 28-105.022, Florida Administrative Code, Global Tel*Link Corporation (Global or company) filed a Petition for Declaratory Statement on November 22, 2005. By its petition, Global seeks a determination from the Commission as to whether the minimum ten minute call connection time required by Rule 25-24.515(22), Florida Administrative Code, is applicable when a confinement facility requests the company to terminate a call that is not authorized by the confinement facility.

In the alternative, Global filed a Petition for Waiver of Rule pursuant to sections 120.542, 364.337(4), and 364.3375, Florida Statutes, and Rule 28-104.002, Florida Administrative Code. By its alternative petition, Global requests a waiver of Rule 25-24.515(22) to the extent that Global may disconnect calls prior to an elapsed time of ten minutes when a called party attempts to connect to a third party, in violation of the practices and procedures of the confinement facility.

Notices were published in the December 23, 2005, Florida Administrative Weekly, informing interested persons of the petitions. No comments were received in response to the notices.

Pursuant to section 120.565, an agency must issue a declaratory statement or deny the petition within 90 days after the filing of the petition. Moreover, pursuant to section 120.542, an agency must grant or deny a petition for waiver or variance within 90 days after receipt of the original petition, and if the petition is not granted or denied within 90 days it is deemed approved. Thus, the Commission must issue an order on Global's petition for declaratory statement or its alternative petition for rule waiver by February 20, 2006.

The Commission has jurisdiction pursuant to sections 120.565 and 120.542, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission grant Global's Petition for Declaratory Statement?

Recommendation: Yes, the Commission should grant Global's petition and declare that, based on the facts set forth in Global's petition, Rule 25-24.515(22), Florida Administrative Code, does not require Global to connect outgoing local and long distance calls for a minimum elapsed time of ten minutes when a confinement facility requests the company to terminate a call not authorized by the confinement facility. (Cibula, Curry, Lewis)

Staff Analysis: As stated in the case background, Global filed a Petition for Declaratory Statement. Pursuant to Rule 28-105.003, an agency may rely on the statement of facts contained in the petition for declaratory statement without taking a position on the validity of the facts when making a determination on the petition.

Summary of Facts As Set Forth in Global's Petition for Declaratory Statement

Global is a certificated pay telephone service provider. Global provides pay telephone service to confinement facilities within Florida. Pursuant to its contracts with these confinement facilities, inmates may place only outbound, collect calls from the confinement facilities.

Each of the facilities with which Global contracts for pay telephone service has policies and procedures to control the use of the telephones by their inmate populations. The chief correctional officers of the confinement facilities have the authority to enforce the policies and procedures of the confinement facilities pursuant to Chapter 951, Florida Statutes. Global is contractually obligated to abide by and cooperate in the implementation of the policies and procedures of the confinement facilities.

The policies and procedures of the confinement facilities require the blocking of certain telephone numbers to prevent inmates from contacting their victims or continuing criminal activities through outside contacts. Global is required to ensure that its pay telephones cannot be used by inmates to call numbers that have been blocked.

Correctional officers have found that third party calls (i.e. three-way calls) are being made to otherwise blocked numbers or for some other potentially improper or illegal purpose. Consequently, some confinement facilities served by Global do not allow third party calls. Third party calls have been blocked by Global in these facilities.

According to correctional officers, inmates have circumvented the prohibition on third party calling. Inmates accomplish this by calling a number that is not blocked, and the recipient of the call connects the call to a blocked third party number or some other third party.

The chief correctional officers at certain facilities served by Global have requested that Global terminate calls whenever a third party call is attempted. Third party calls must be terminated because it is not possible for the facility to know the third party dialed. Global's equipment is capable of terminating these calls. Global does not believe it can refuse this lawful request from the confinement facility.

Analysis and Recommendation

Section 120.565, Florida Statutes, governs the issuance of a declaratory statement by an agency. In pertinent part, it provides:

(1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

(2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

The subject of Global's request for declaratory statement are subsections (21) and (22) of Rule 25-24.515. Rule 25-24.515(21) states that "[p]roviders serving confinement facilities shall provide for completion of all inmate calls allowed by the confinement facility." Rule 25-24.515(22) states, in pertinent part, that

[p]ay telephone stations in confinement facilities. . . shall also be exempt from the requirements of subsection (9), except that outgoing local and long distance calls may not be terminated until after a minimum elapsed time of ten minutes. . . .¹

Global asserts that it is "substantially affected by a construction of Rule 25-24.515(22), Florida Administrative Code, that may conflict with the requirement of Rule 25-24.515(21), Florida Administrative Code, which provides for calls only to the extent allowed by the facility." Global requests that the Commission declare that Rule 25-24.515(22) does not require Global to connect outgoing local and long distance inmate calls for a minimum elapsed time of ten minutes when doing so would violate the practices and procedures of a confinement facility and would allow inmates to complete calls that are not allowed by the confinement facility.

Global is requesting the Commission interpret subsection (21) of Rule 25-24.515 in relation to subsection (22) of the same rule. The first polestar of statutory construction, which can also aid in the interpretation of rules, is reviewing the plain meaning of the statute. See Acosta v. Richter, 671 So. 2d 149, 153 (Fla. 1996). To determine the plain meaning of a statute, or in this case a rule, each relevant phrase should be considered and "should be interpreted to give effect to every clause in it, and to accord meaning and harmony to all of its parts." Id. at 153-154. Furthermore, "phrases are not to be read in isolation, but rather within the context of the entire section." Id. at 154.

Subsection (21) of Rule 25-24.515 specifically states that pay telephone service providers serving confinement facilities are only responsible for completing those inmate calls *allowed* by the confinement facility. Global indicates that some of the confinement facilities which it serves

¹ Rule 25-24.515(9) applies to pay telephone service in general. It sets forth the information that must appear on the pay telephone station and states that "[f]or pay telephone stations that will terminate conversation after a minimum elapsed time, notice shall be included on the sign card as well as an audible announcement 30 seconds prior to termination of the phone call."

do not allow third party calls, so under Rule 25-24.515(21), Global is not required to complete third party calls in these facilities. If Global is not required to complete third party calls pursuant to Rule 25-24.515(21), as such calls are unauthorized, it would follow that the company is not required to meet the minimum ten minute connection time requirement set forth in subsection (22) of the rule for these unauthorized calls.

Interpreting subsection (22) of Rule 25-24.515 to prohibit a pay telephone provider from disconnecting unauthorized calls before ten minutes has elapsed would nullify the portion of subsection (21) of that same rule requiring pay telephone service providers serving confinement facilities to complete only those inmate calls *allowed* by the confinement facility. However, both subsections (21) and (22) of Rule 25-24.515 can be read in harmony if the rule is interpreted so that the minimum ten minute connection time required by the rule applies only to those calls allowed by the confinement facility. See Acosta, 671 So. 2d at 153. Staff recommends that the Commission grant Global's petition and declare that, based on the facts set forth in Global's petition, Rule 25-24.515(22) does not require Global to connect outgoing local and long distance calls for a minimum elapsed time of ten minutes when a confinement facility requests the company to terminate a call not authorized by the confinement facility.

Staff notes that, in the past, there was a complaint filed with the Commission against the predecessor of this company wherein it was found that calls were being disconnected due to technical glitches in the predecessor company's equipment. This declaratory statement should not be construed to release Global from responsibility under Rule 25-24.515(22) for prematurely disconnecting, due to technical glitches or other reasons, those calls allowed by the confinement facility.

Issue 2: Should the Commission grant Global's Alternative Petition for Waiver of Rule?

Recommendation: If the Commission approves staff's recommendation in Issue 1, Global's Alternative Petition for Waiver of Rule will be rendered moot, and the Commission need not consider the alternative petition. If, however, the Commission rejects staff's recommendation in Issue 1, staff recommends that the Commission grant Global's Alternative Petition for Waiver of Rule and waive Rule 25-24.515(22) to the extent that the company may disconnect calls prior to an elapsed time of ten minutes when a called party attempts to connect to a third party, in violation of the practices and procedures of the confinement facility. (Cibula, Curry, Lewis)

Staff Analysis: As previously stated, if the Commission grants Global's Petition for Declaratory Statement, as staff is recommending in Issue 1, Global's Alternative Petition for Waiver of Rule would be rendered moot, and thus, would not need to be considered by the Commission. Staff, however, is including its analysis of the rule waiver petition for the Commission's consideration if the Commission votes to reject staff's recommendation on Global's Petition for Declaratory Statement.

Global relies on the same facts set forth in its Petition for Declaratory Statement (summarized on page 3 of this recommendation) for the Alternative Petition for Waiver of Rule. Global seeks a waiver of Rule 25-24.515(22), Florida Administrative Code. Rule 25-24.515(22) provides in pertinent part, that

[p]ay telephone stations located in confinement facilities. . . shall also be exempt from the requirements of subsection (9), except that outgoing local and long distance calls may not be terminated until after a minimum elapsed time of ten minutes. . . .²

Global is not seeking a complete waiver of the rule. Global states that it seeks a waiver of the rule to the extent that unlawful access to third party numbers would be prevented. Global states that the waiver should allow for the termination of a call from a confinement facility at any time during the call that a third party connection is attempted by the called party. The company further states that "[i]f the policies of the confinement facilities change, or if advances in technology allow for the detection and blocking of telephone numbers when access is attempted through third party calling, Global will notify the Commission and seek a less restrictive waiver of Rule 25-24.515(22) at that time."

Section 120.542(2) states that "[v]ariations and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of the rule would create a substantial hardship or would violate principles of fairness." "Substantial hardship" is defined by section 120.542(2) as "a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver."

² As noted in Issue 1, Rule 25-24.515(9) applies to pay telephone service in general. It sets forth the information that must appear on the pay telephone station and states that "[f]or pay telephone stations that will terminate conversation after a minimum elapsed time, notice shall be included on the sign card as well as an audible announcement 30 seconds prior to termination of the phone call."

Global states that the purpose of the underlying statute, section 364.3375, is to “allow inmates of confinement facilities to speak with friends, family, and counsel for a meaningful period of time.” The company asserts that the underlying purpose of Rule 25-24.515(22) and section 364.3375 will still be achieved as the rule waiver does not interfere with the minimum time requirement for standard two-way calls. Moreover, Global states that “a strict application of the rule, without some means of restricting inmate contact with blocked numbers or other unknown numbers through third party connections, demonstrates substantial hardship.”

Global has shown that the underlying purpose of section 364.3375 will be met as inmates will still have access to pay telephone service and the ten minute time connection requirement will still pertain to all other calls allowed by the confinement facility. Furthermore, the confinement facilities’ directive to Global to block third party calls is permissible under the law, and the legal obligation of Global to comply with the confinement facilities’ directive is the type of substantial hardship contemplated by section 120.542(2). Thus, staff recommends that, if the Commission rejects staff’s recommendation on the Petition for Declaratory Statement set forth Issue 1, it grant Global’s Alternative Petition for Waiver of Rule and waive Rule 25-24.515(22) to the extent that the company may disconnect calls prior to an elapsed time of ten minutes when a called party attempts to connect to a third party, in violation of the practices and procedures of the confinement facility.

Issue 3: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation on the Petition for Declaratory Statement in Issue 1, the order issued by the Commission will be final and the docket may be closed. If the Commission chooses to reject staff's recommendation on the Petition for Declaratory Statement and instead grants the Alternative Petition for Waiver of Rule, as set forth in Issue 2, this docket should be closed upon the issuance of a consummating order if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of issuance of the order. (Cibula)

Staff Analysis: If the Commission approves staff's recommendation on the Petition for Declaratory Statement in Issue 1, the order issued by the Commission will be final and the docket may be closed. If the Commission chooses to reject staff's recommendation on the Petition for Declaratory Statement and instead grants the Alternative Petition for Waiver of Rule, as set forth in Issue 2, this docket should be closed upon the issuance of a consummating order if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of issuance of the order.