

State of Florida



## Public Service Commission

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

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**DATE:** February 19, 2009

**TO:** Office of Commission Clerk (Cole)

**FROM:** Office of the General Counsel (Bellak)  
Division of Regulatory Compliance (Kennedy)  
Division of Economic Regulation (Hewitt)  
Division of Service, Safety & Consumer Assistance (Moses)

**RE:** Docket No. 060476-TL – Petition to initiate rulemaking to amend Rules 25-24.630(1) and 25-24.516(1), F.A.C., by BellSouth Telecommunications, Inc.

**AGENDA:** 03/03/09 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** McMurrian

**RULE STATUS:** Proposal May Be Deferred

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\WP\060476.RCM.DOC

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### Case Background

On June 26, 2006, BellSouth Telecommunications, Inc. d/b/a AT&T Florida d/b/a AT&T Southeast (AT&T) filed a Petition to initiate rulemaking to amend Rule 25-24.630, F.A.C., Rate and Billing Requirements, and Rule 25-24.516, F.A.C., Pay Telephone Rate Caps. AT&T notes that the rate caps (maximum rates) that operator services providers can charge have been in place since February 1, 1999. AT&T further notes that the telecommunications industry, the technology, and the competition in Florida have changed dramatically since the allowable level of charges was established. AT&T claims that the rate cap levels should be set commensurate with a competitive market or that the rate caps should be eliminated entirely.

AT&T also asserts that Rule 25-24.630, F.A.C., should not apply to services charged and billed to an end user by an operator services provider for an intrastate 0+ or 0- call made in a call aggregator context. AT&T believes that end users who stay in hotels, resort condominiums, rooming houses, etc. as outlined in Rule 25-24.610(1)(a)(1) – (13), F.A.C., have numerous available alternatives to the presubscribed provider.

The Commission's rate caps, as codified in Rule 25-24.516, F.A.C., and Rule 25-24.630, F.A.C., apply to 0+ and 0- intrastate calls made from public pay telephones and call aggregator locations, and calls (collect or prepaid) placed by inmates from confinement facilities. Call aggregator locations are defined in Rule 25-24.610, F.A.C., and some examples are hotels, motels, resort condominiums, transient apartments, hospitals, and school dormitories.

For a 0+ call, an end user dials 0, immediately followed by dialing the desired phone number. For a 0- call, an end user dials 0 and waits for an operator to respond. The Commission's rules define the charges for these types of calls as consisting of two distinct elements: an operator service charge and a usage charge (local call fee or per-minute usage fee). An operator services provider is precluded from billing or collecting a surcharge levied by any entity, either directly or through its billing agent, except Commission-approved charges for pay telephone providers.

#### Statutory Requirement for Establishing Rates for Operator Services

Section 364.3376, F.S., Operator Services, requires the Commission to establish maximum rates and charges for all providers of operator services within the state. This section does not apply to operator services provided by a local exchange telecommunications company or by an intrastate interexchange telecommunications company, except as required by the Commission in the public interest. Currently, the operator services rate caps in Rules 25-24.516 and 25-24.630, F.A.C., apply to local exchange and interexchange companies.

#### Brief History of Operator Services Rate Caps

The caps for operator service rates and usage rates were established for those customers that use the presubscribed carrier at a pay telephone, at an inmate phone, or at a call aggregator location. Prior to February 1, 1999, the Commission's rate caps were interpreted as being the comparable AT&T (the long distance company, prior to merger with BellSouth) tariff rates for interexchange carriers in accordance with Order No. 20489 issued on December 21, 1988. At that time, there was no specific ceiling for rates in the pay telephone or operator services rules. AT&T's rates were regulated by the Commission when it was the dominant carrier, and the Commission ordered that the non-dominant carriers could not charge any more than the dominant carrier. Therefore, AT&T's rates were recognized as the caps.

Subsequently, the Commission determined that AT&T was no longer the dominant carrier. In Order No. PSC-99-0087-FOF-TP, issued January 14, 1999, the Commission set a ceiling on operator rates of \$1.75 for non-person-to-person calls and \$3.25 for person-to-person calls. The usage rate for a local call was not capped, and the usage rate for a toll call was capped at \$0.30 per minute. The Federal Communications Commission (FCC) preempted states from

setting a usage rate for any local call, but did not preempt states from capping operator rates (for local and toll) or toll usage rates. The current rates have been in place since February 1, 1999.

On August 9, 2006, the Commission issued Order No. PSC-06-0688-PCO-TL granting in part AT&T's Petition to Initiate Rulemaking by requiring a workshop to collect information from AT&T, other industry participants, and the public that was needed to evaluate the proposed changes. AT&T did not propose new allowable limitations on the rates charged for operator services in the specified circumstances addressed by Rules 25-24.630, F.A.C., and 25-24.516, F.A.C., only that the limitations should reflect the current technological and competitive conditions of the telecommunications industry in Florida or be eliminated entirely.

A Notice of Proposed Rule Development, announcing a workshop for September 1, 2006, was advertised in the Florida Administrative Weekly on August 11, 2006. During the workshop, some concern was expressed that the cost of providing operator services exceeds the maximum rates allowed in Florida. There were also claims that call volumes for 0+ and 0- calls were decreasing, thus causing an increase in the per call average cost of completing such calls. The workshop attendees contended that consumers have options other than 0+ and 0- phone calls, such as calling cards, cell phones and dial-around access to their carrier of choice. End users placing 0+ and 0- calls have a plethora of service providers from which to choose. In nearly a unanimous voice, industry representatives stated that the competitive market should determine the charges to end users for the types of calls currently subject to the Commission's rate cap rules, other than inmate calls.

To obtain information needed for establishing new rate caps, staff requested that the workshop participants submit written comments with their suggestions. Post-workshop comments were submitted by AT&T, Verizon Florida Inc. (Verizon), Qwest Communications Corporation (Qwest), Embarq Florida, Inc. (Embarq), and the Florida Public Telecommunications Association, Inc. (FPTA).

Based on concerns about the cost of providing operator services exceeding the Commission's rate caps, on March 19, 2007, staff issued a data request seeking cost information from the companies that participated in the workshop. AT&T, Verizon, Qwest, and Embarq filed comments, all of which were confidential. On May 11, 2007, staff sent a second data request to the original workshop attendees and to several telecommunications companies which had not participated in the workshop. The questions in the second data request centered around issues such as the need for rate caps, what the rate caps should be if they were to be retained, how the rate caps should be developed, etc. More than ten companies responded to this request.

In addition to the workshop and data requests, staff determined the operator service rate caps other states had implemented and the levels of these caps. Also, staff analyzed the current operator services rates using various price indices, e.g., Consumer Price Index, Producer Price Index, and Gross Domestic Product, to determine how the rates might be affected by economic conditions existing between 1999 and the present based on the latest available information.

In the recommendations that follow, staff presents the positions of the telecommunications companies that have provided input, results of the analysis of rates using various indices, and findings from other states that have operator services rate caps. Staff also

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provides what it believes is useful information obtained from customers' inquiries, field inspections, and internet research. Staff's recommended rule revisions include rates that are different for inmate and non-inmate operator services. This is a departure from current practice where the same rate caps apply to inmate and non-inmate operator services.

The Commission has jurisdiction under Sections 120.54, 364.01, 364.3375, and 364.3376, Florida Statutes (F.S.).

### **Discussion of Issues**

**Issue 1:** Should the Commission propose amendments to Rule 25-24.516, F.A.C., Pay Telephone Rate Caps, and Rule 25-24.630, F.A.C., Rate and Billing Requirements?

**Recommendation:** Yes, the Commission should propose the amendments to Rule 25-24.516, F.A.C., and Rule 25-24.630, F.A.C., as set forth in Attachment A.

**Staff Analysis:** The Commission's rate cap rules only apply to operator services that an end user accesses by using specific dialing patterns made at specific locations. The specific dialing patterns are twofold: (1) an end user dials 0 plus the telephone number (no interruptions), or (2) an end user dials 0 and waits for a live operator. The specific locations are limited to the following: (1) a public pay telephone station, (2) a call aggregator location (a transient environment, e.g., hotel, motel, hospital, etc.), and (3) an inmate facility.

Telecommunications companies provide operator services to which the Commission's rate caps do not apply. The Commission's rate cap rules do not apply to the following circumstances:

1. Operator service calls placed by accessing a toll-free number;
2. Operator service calls placed by dialing access codes (ex: 10-10-XXX or other prefixes) from anywhere;
3. Operator service calls placed by dialing 0 plus the number from anywhere except the three specific locations identified in the previous paragraph; and
4. Operator service calls placed by dialing 0 for a live operator from anywhere except the three specific locations identified in the previous paragraph.

The methods of payment for the types of operator services described above are generally the same. The methods of payment include, but are not limited to, the following: (1) credit card, (2) third-party billing (charged to the caller's home or business phone number), (3) called party billing (a collect call), (4) calling card (issued by a telecommunications company), and (5) prepay (allowed at some inmate facilities).

For consistency in the discussions that follow, staff refers to operator service calls to which rate caps apply as 0+ calls and to operator service calls to which rate caps do not apply as dial-around calls. Furthermore, staff notes that the views expressed in comments submitted by workshop participants and others typically focus on the locations from which the calls were made, e.g., a pay telephone, a call aggregator location, and an inmate facility.

Overview of Current and Proposed Rate Caps

The table that follows identifies the Commission’s current rates and staff’s recommended rates for operator services.

Location	Call Type	Current Caps		Proposed Caps	
		Use Charge	Operator Charge	Use Charge	Operator Charge
Pay Telephone & Call Aggregator	0± Local N-P-P*	Local Rate	\$1.75	Local Rate	\$2.50
	0± Local P-P**	Local Rate	\$3.25	Local Rate	\$5.00
	0± Toll N-P-P	\$0.30/minute	\$1.75	\$0.30/minute	\$2.50
	0± Toll P-P	\$0.30/minute	\$3.25	\$0.30/minute	\$5.00
Inmate Facility	0+ Local N-P-P	Local Rate	\$1.75	Local Rate	\$1.75
	0+ Local P-P	Local Rate	\$3.25	Local Rate	\$3.25
	0+ Toll N-P-P	\$0.30/minute	\$1.75	\$0.30/minute	\$1.75
	0+ Toll P-P	\$0.30/minute	\$3.25	\$0.30/minute	\$3.25

\*N-P-P: Non-Person-to-Person      \*\*P-P: Person-to-Person

As the table depicts, staff recommends increasing the operator charges only for calls placed from pay telephones and call aggregator locations. For inmate facilities, staff recommends no change to the current rate caps. The Federal Communications Commission preempted states from setting caps on “Local Rates” identified in the table above. Operator service providers define the local rates that they will charge.

AT&T’s Petition

The salient points in AT&T’s Petition are as follows:

- The telecommunications industry, technology, and competition in Florida have changed dramatically since the allowable level of charges was established.
- The allowable level of charges specified in the Commission’s rules is unreasonable as operator service is a competitive market.
- The Commission recognizes that operator services are “some of the most competitive” of services.<sup>1</sup>
- The Commission acknowledges that operator services “face competitive pressures” and that there are a “plethora of alternatives” in the marketplace.<sup>2</sup>

<sup>1</sup> Order No. PSC-05-0602-PAA-TL, Docket No. 050294-TL, In re: Petition for waiver of Order PSC-96-0012-FOF-TL to consolidate number of non-basic service categories by Verizon Florida Inc., at p.3.

<sup>2</sup> Order No. PSC-05-0185-PAA-TL, Docket No. 041213-TL, In re: Petition for waiver of Order PSC-96-0012-FOF-TL and request to establish modified price regulation categories by BellSouth Telecommunications, Inc., at p.3.

- Rate caps should not apply to call aggregator locations because end users have numerous available alternatives.
- The Commission can and should make a determination that the statutory mandate (Section 364.3376, F.S., Operator Services) that the Commission establish “maximum rate and charges” means the rate which the competitive market will allow in Florida.

In brief, AT&T asks the Commission to eliminate rate caps for operator services because the services are competitive, end users have alternatives, and the level of charges currently allowed (rate caps) are unreasonable. If the Commission is inclined to continue rate caps, AT&T suggests that the rates should be increased to reflect the market and that rate caps should not apply to call aggregator locations.

#### Post-Workshop Comments and Comments to Staff’s Data Requests

Generally, stakeholders echoed the same or similar reasons given in AT&T’s Petition for eliminating operator services rate caps or, in the alternative, adjusting the rate caps to a level that is more representative of the competitive market. Even though their remarks were similar to AT&T’s, views varied based on the location (inmate facilities, pay telephones, and call aggregator locations) from which a 0+ or 0- call originates. The following discussions are organized to succinctly address the stakeholder’s views, concerns, and suggestions regarding operator services as a function of where the services are provided.

#### **1. Operator Services – Inmate Facilities**

Many stakeholders favor, do not object, or take no position on rate caps for inmate operator services. Specific comments regarding the applicability of rate caps follow:

- Verizon stated that rate caps should be kept for inmate pay telephone services.
- The FPTA commented that rate caps should be retained at their present levels for inmate services (absent a showing by inmate telephone service providers for rate updating).
- Qwest agreed that inmate rates should be managed by the Commission.
- Embarq believes the rate caps for inmate operator services should be eliminated (response to a staff inquiry). Staff notes that in a post-workshop comment, however, Embarq stated that it takes no position on rate caps for inmate operator services.
- AT&T has no objection to a provision in the amended rules where confinement facilities are carved out and the appropriate rate cap applied.

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Staff notes that, taken in context, a “plethora of alternatives” regarding operator services carries with it the meaning that there are numerous operator service providers serving the Florida market.

- Intellicall Operator Services, Inc. (Intellicall) believes that inmate pay telephone services should be set to a cap.
- Custom Teleconnect, Inc. (CTI) does not desire to have rate caps eliminated, just increased.
- Network Operator Services (NOS) believes that rate caps should remain in effect for inmate facilities since there is no choice of provider by the end user.
- Network Communications International Corp. (NCIC) stated that inmate rates need to continue to have a cap in order to help maintain fair rates for inmates' families.

In contrast to the comments above, some companies support the elimination of inmate operator services rate caps. Specific comments follow:

- Evercom Systems, Inc. (Evercom) supports total elimination of the inmate operator services rate caps. Evercom's rationale is that inmate service providers are subject to greater costs and a more highly competitive market than standard pay telephone operator service providers. Evercom claims that public pay telephones have no requirements to provide all the safety and security features required at virtually all inmate pay telephone locations. The safety and security features are call monitoring, custom calling feature detection, allowed call number lists, positive acceptance on all calls, and inmate identification numbers. Evercom believes that the costs to provide inmate telephone systems are greater than the costs to provide public pay telephone systems.
- DeltaCom, Inc. and Business Telecom Inc. (in a consolidated response) support the removal of rate caps for inmate operator services in their entirety, and believe that the Commission should allow market forces to determine the prevailing rates.

#### Staff Analysis of Operator Services at Inmate Facilities

A majority of the stakeholders favor retention of rate caps for inmate operator services. Most stakeholders indicate a desire to increase the rates, set appropriate rates, or establish fair rates.

Staff recommends that the rate caps for operator services and usage charges remain at the levels currently set by the Commission. See Attachment A, proposed Rule 25-24.516(2), F.A.C., and Rule 25-24.630(2), F.A.C. The current and recommended rates are:

- 0+ toll non-person-to-person – a maximum rate of \$0.30 per minute, plus a \$1.75 charge;
- 0+ toll person-to-person – a maximum rate of \$0.30 per minute, plus a \$3.25 charge;
- 0+ non-person-to-person local, EAS, ECS – a rate equivalent to the local rate, plus a \$1.75 charge; and



- 0+ person-to-person local, EAS, ECS – a rate equivalent to the local rate, plus a \$3.25 charge.

In arguing that rate caps should be totally eliminated at inmate facilities, Evercom described a recent competitive bid conducted by the Florida Department of Corrections. Evercom claimed there were six major companies competing for the contract, and the winning bid offered rates that were a fraction of the Commission's current rate caps. Staff has confirmed that the rates for services obtained by the Florida Department of Corrections are less than the current rate caps.

In researching public records, staff found 2007 and 2008 inmate telephone service contracts in which the operator services provider pays commissions to the correctional facility ranging between 40% and 45% of gross billed revenue. In years prior to 2007, staff found agreements in which the commissions exceeded 50%. These percentages were paid on revenues for all billable calls, both intrastate and interstate. Based on recent experience, staff believes that the majority of inmate calls from county and municipal correctional facilities are local calls. The Commission's rules do not set the monetary amount for the usage rate component for local, EAS, and ECS calls.<sup>3</sup> The operator services provider sets the local usage rate. Interstate calls are not subject to rate caps. Nevertheless, staff has found in reviewing several contracts between operator services providers and correctional facilities that rates charged for inmate calls are defined and the operator services provider must adhere to those rates.

Inmates do not have a choice for their telecommunications services. Through a competitive bid process, the correctional facility contracts for the inmate telephone services. Most inmate telephone calls are placed on a collect basis, and the called party bears responsibility of payment for the call. The inmate and the called party have no choice of other telecommunications services. A majority of the stakeholders recognize this and favor inmate operator services rate caps. Because operator service providers have the flexibility to adjust the usage rate for local calls and are able to pay commissions in the 40% range, staff believes the Commission's current rates are fair and reasonable.

## **2. Operator Services – Public Pay Telephones and Call Aggregator Locations**

Unlike the support expressed for a rate cap for inmate operator services, the majority of stakeholders do not support rate caps on 0+ operator services accessed from pay telephones and at call aggregator locations. The FPTA, Intellicall, and CTI support rate caps but insist the rate caps need to be increased.

The stakeholders raised a number of arguments for eliminating the rate caps: the competitive market, the adverse effects of the Commission's rate caps, etc. Each of these arguments are summarized below.

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<sup>3</sup> The Federal Communications Commission has preempted states from placing caps on usage rates on local calls from a pay telephone.

### Competitive Market

AT&T believes that requiring local exchange companies and intrastate interexchange companies to comply with Section 364.3376, F.S., is no longer in the public interest. AT&T asks the Commission to make a determination that the statutory mandate that the Commission establish “maximum rates and charges” means the rate which the competitive market will allow in Florida. AT&T states that operator services are competitive on both the wholesale and retail levels. For example, pay telephone providers and call aggregators have access to many wholesale operator service providers.

Likewise, AT&T argues that end users have access to many competitive alternatives. AT&T claims there are multiple service providers plus numerous substitutes and alternatives that do away with the need for an operator to place a call. Examples include dial-around services, prepaid calling cards, Voice over Internet Protocol (VoIP), wireless services, prepaid cell phones, interactive paging, instant messaging, and internet mail. AT&T’s experience in Florida demonstrates that consumers are using these competitive alternatives.

Most stakeholders submitted comments similar to AT&T’s regarding end users’ access to alternative and substitute services. They argue that the telecommunications industry, technology, and competition in Florida have changed dramatically since the allowable level of charges was established by the Commission. As did AT&T, other stakeholders emphasized that the Commission recognizes and has acknowledged that operator services are some of the most competitive of services and that there are a plethora of alternatives in the marketplace.

### Adverse Effects of the Commission’s Rate Caps

Several stakeholders expressed concern about the detrimental effect of the current rate caps on the survivability of the pay telephone providers. Stakeholders claim that landline operator services call volumes are down and continue to fall because consumers are using alternative services. The FPTA’s membership of pay telephone companies report that, on average, one operator services call per month is completed from a pay telephone station. AT&T, Verizon, and Embarq collectively processed more than two million calls that are subject to the Commission’s rate caps (the number of calls from pay telephones was not specified). Stakeholders believe that the rate caps interfere with the pay telephone providers’ overall business strategy and survival, and every dollar counts. Rate caps restrict pay telephone service providers’ revenue, potentially leading to increases in local coin-call rates and undesirable pricing distortions. Insufficient revenues will cause the decline in pay telephones to continue, causing negative effects on Florida consumers who depend on pay telephones for casual calls and in times of emergencies.

### Unrealistic Rates

Verizon commented that the “one-price fits all” approach of rate caps impedes product development and hinders operator service providers’ ability to compete with the alternative providers. In some instances, Verizon claims that the fair market price for premium services may be higher than the rate allowed to be charged. In this instance, staff believes Verizon was referring to person-to-person collect calls.

### Consumer Protection

Generally, the stakeholders believe that enough protections exist such that consumers can make informed decisions when selecting which operator services provider to use. For example, consumers can make informed decisions about the rates they pay because the Commission's rules require operator services providers to disclose rates upon request. They suggest that the Commission could implement more safeguards if eliminating the rate caps causes concern for the welfare of the consumers.

### Florida's Intrastate Rates Compared to Other States' Rates and Interstate Rates

The stakeholders believe that Florida's rate caps, as compared to other states, are unreasonable. For instance, 22 states do not have rate caps. Twenty-eight states have rate caps, and the rate cap or control rates are the tariff rates of the dominant local exchange company or interexchange company, not rates mandated by a utility commission. There are nine states with commission-imposed rate caps. Eight have higher operator service charges and per-minute usage charges than Florida's. Operator services are deregulated in the interstate arena.

### Uneven Competitive Environment

Qwest expressed concerns about alternative operator services providers that advertise 8XX and \*XX type dialing and are not subject to the Commission's rate caps. Operator services providers that provide 0+ and 0- services at pay telephones and call aggregator locations are subject to the rate caps. Qwest claims that this scenario creates an uneven competitive environment between providers subject to caps and providers not subject to caps, both of which compete for the same operator services premises business. Based upon feedback from a pay telephone provider, alternative operator services providers do share revenue with the premises business.

### Alternative Rates if Rate Caps are not Eliminated by the Commission

Stakeholders have provided alternatives to the current rate caps if the Commission decides not to eliminate the caps. The majority of stakeholders suggest that the Commission should significantly increase the rates above those proposed in Attachment A.

The FPTA suggested an increase in rates for pay telephones and call aggregators in a two-step approach with Step One rates for toll usage of \$0.60 per-minute, an automated operator rate of \$3.99, and a live operator rate of \$5.99. In Step Two, two years later, the rates for toll usage would become \$0.99 per-minute, an automated operator rate would become \$4.99, and a live operator rate would become \$7.99. In addition, at the onset of Step One, the plan allows a \$1.00 set-use fee for each call from a pay telephone. The set-use fee would be paid directly to the pay telephone provider. The set-use fee would not apply to call aggregator locations like hotels and motels. If the Commission is unable to embrace this approach, the FPTA would support elimination of the rate caps.

Even though AT&T did not recommend specific rates, AT&T stated that market rates across the country for operator services for non-person-to-person calls range from \$6.50 to

\$10.00. Operator services rates for person-to-person calls range from \$6.50 to \$12.50. Across the former BellSouth region (excluding Florida), AT&T's operator services rate for non-person-to-person is \$2.50 and for person-to-person it is \$5.00 (note: AT&T is not recommending these rates). AT&T made no mention of per-minute usage rates.

DeltaCom, Inc. & Business Telecom, Inc. did not identify specific dollar amounts. Instead, they suggest that the rate caps should be the operator services provider's lawful interstate charges. Staff believes this approach is effectively the same as eliminating the rate caps since there is no interstate cap.

CTI recommends that AT&T's interstate tariff rates serve as the rate caps, plus a \$1.00 set-use fee. If the Commission retains rate caps, Verizon believes the caps should be defined as the rates that the major operator services providers and carriers maintain for interstate operator services calls as floating rate caps for Florida intrastate operator services calls.

Qwest suggests a per-minute usage rate of \$0.90 and an operator services rate of \$6.50. Qwest did not distinguish whether the operator services rate was for a non-person-to-person call or a person-to-person call. Evercom supports the rates proposed by Qwest if the Commission retains rate caps.

NCIC believes the per-minute usage rate of \$0.30 is a fair rate. NCIC suggests that the operator services charge should be increased to \$3.25 for an automated collect call, \$4.00 for a live operator call, and \$5.50 for a person-to-person call. If rate caps are eliminated by the Commission, NCIC states that it would probably charge \$0.89 per-minute, \$5.99 for automated operator services, and \$7.50 for live operator services. NCIC would do this to be competitive with AT&T, e.g., to be able to compete with AT&T for the amount of revenue shared with the pay telephone or call aggregator location owner.

Intellicall recommends a per-minute usage rate of \$1.15. For operator services, Intellicall recommends \$5.99 for Bong (prompt for a calling card call), \$6.50 for automatic operator handling, \$7.50 for a live operator, a \$1.00 operator dialed surcharge, and \$12.50 for person-to-person calls.

If rate caps are to be maintained, Embarq recommends not less than \$0.50 per-minute usage rate, an operator services rate of \$3.95 for non-person-to-person calls, and \$6.50 for person-to-person calls.

#### Staff Analysis of Operator Services at Public Pay Telephones and Call Aggregator Locations

Most of the stakeholders state that operator services is a competitive market. Section 364.3376, F.S., however, does not set forth the "competitive market" as the factor the Commission must consider when determining whether rate caps should be applied to operator services. Section 364.3376(1)(b), F.S., provides:

This section does not apply to operator services provided by a local exchange telecommunications company or by an intrastate interexchange

telecommunications company, except as required by the commission in the public interest.

Section 364.3376(3), F.S., states:

For operator services, the commission shall establish maximum rates and charges for all providers of such services within the state.

As shown above, Section 364.3376, F.S., requires the Commission to establish maximum rates and charges for all providers of operator services within the state. The statute, however, states that it does not apply to operator services provided by a local exchange telecommunications company or by an intrastate interexchange telecommunications company, except as required by the Commission in the public interest. Thus, the Commission should consider whether the public interest requires continued application of the rate caps to local exchange companies and intrastate interexchange telecommunications companies.

When the Commission first codified the dollar limits for operator services rates in Rule 25-24.516, F.A.C., and Rule 25-24.630, F.A.C., in 1999, Section 364.3376, F.S., read the same as it does now, with one exception. The exception is that the Legislature added to Paragraph (1)(b), “an intrastate interexchange telecommunications company,” clarifying that the section does not apply to these providers except as required by the Commission in the public interest. Even in 1999, an argument could have been made, and may have been made, that operator services is a competitive market. At that time, the number of pay telephone providers exceeded 1,100, and today there are less than 200. There were more than 700 interexchange companies, many of which provided operator services at pay telephone stations and call aggregator locations. Dial-around and pre-paid calling cards were prevalent. Wireless communications were already widely available. While there are more technology-enhanced options available today, in 1999 consumers also had what could be described as a plethora of choices.

Staff surmises that what has changed is that the number of people that have a need for operator services through the use of pay telephones or in call aggregator settings has decreased dramatically. Although fewer people may have a need for these services now, staff believes that the “public interest” concern that guided the Commission’s decision in 1999 still applies. The primary reason for the rate caps was to prevent a party who accepted a collect call from being charged astronomical rates. Even with all the alternatives available today, staff believes there are people who may not be able to take advantage of those alternatives. For whatever reason, they have a need to make collect calls for which someone else is paying. Though the number of operator services collect calls have diminished over the years, a review of the stakeholders’ comments in this proceeding leads staff to believe that there are a sufficient number of operator services collect calls to warrant rate caps for the sake of the public interest.

Staff believes that the “public interest” criterion still exists as it did in 1999. Several stakeholders appear to agree as well. The FPTA supports rate caps, but not at the level staff recommends in Attachment A. CTI does not desire to have rate caps eliminated. CTI believes the rate caps are in dire need of an update, but that the total elimination of rate caps would do

more harm than good. CTI's concern is that without a cap, rate abuse by a few bad apples would harm consumers and "foul the well" for all providers in Florida.

Staff considered recommending rates based on a review of several economic indicators. Staff analyzed the Consumer Price Index (CPI), the Producer Price Index (PPI), and the Gross Domestic Product-Price Index. Various sub-indices were evaluated for the CPI and PPI. A review of the sub-indices that appear to be related to telecommunications toll services indicates that toll rates have decreased across several years, not increased. Staff first selected the Gross Domestic Product – Price Index for price cap regulated companies, as the most likely index to use in determining new rates. Staff abandoned this approach because the indices appeared to be more relevant to toll calls placed from a home or business rather than a pay telephone or call aggregator location. Using the indices, staff found that the non-person-to-person operator rate would be under \$2.00, and the person-to-person operator rate would be approximately \$3.60.

Staff inquired of the stakeholders about using cost studies and developing rates based on these studies. In general, the stakeholders believe that providing cost data would be burdensome, unnecessarily time consuming, and could lead to different rates by carrier, rather than a rate cap defined by the Commission. Stakeholders claim that the cost of a call is greatly influenced by the location of origination and delivery of a call. In other words, local exchange company charges vary widely for transmission and billing. Plus, smaller companies may have significantly higher per call expenses due to much smaller call volumes versus larger companies with greater call volumes. Operator services providers are significantly different in size (large versus small company), and do operate in varying scenarios, e.g., pay telephone versus call aggregator. Also, conducting cost studies to develop rates was perceived by the industry as an effort to return to rate base/rate-of-return regulation.

Staff considered recommending rates equivalent to the average rates of all states that impose operator services rate caps. Based on the information staff obtained, the operator fee for non-inmate collect calls range from \$0.50 to \$5.99 (average \$4.18). For third party billing, charges for operator fees ranged from \$0.50 to \$6.99 (average \$4.74), and for person-to-person calls, the range was \$0.50 to \$12.50 (average \$8.53). The average per-minute use fee for an operator services toll call was \$0.78. Even though the Commission's current rates have been in place for nine years, to more than double the rates does not seem prudent.

For 0+ and 0- calls, staff recommends that the operator charges and usage charges at pay telephones and call aggregator locations be changed as shown in Attachment A (pages 18 and 20). The recommended rates are as follows:

- Toll non-person-to-person – a maximum rate of \$0.30 (no change) per minute, plus a \$2.50 charge (\$0.75 increase);
- Toll person-to-person – a maximum rate of \$0.30 (no change) per minute, plus a \$5.00 charge (\$1.75 increase);
- Non-person-to-person local, EAS, ECS – a rate equivalent to the local rate, plus a \$2.50 charge (\$0.75 increase); and

- Person-to-person local, EAS, ECS – a rate equivalent to the local rate, plus a \$5.00 charge (\$1.75 increase).

The \$2.50 operator charge staff recommends for a non person-to-person call and the \$5.00 charge for a person-to-person call coincide with AT&T's ILEC operator service market rates that are currently charged across the former BellSouth region (excluding Florida). Staff's approach in recommending these rates is similar to how the rates were originally set in 1999.

Staff recommends no change to the per-minute rate of \$0.30. Ten stakeholders discussed rates that they believe the Commission should set if the rate caps are not eliminated. Staff's recommended operator service rates are lower than any of the rates suggested by the stakeholders. One company believes that the per-minute usage rate of \$0.30 per-minute is a fair rate.

The amendments as set forth in Attachment A would enable operator service providers to earn more revenue per call and benefit ratepayers by providing more choices of operator service providers should new companies enter the Florida market. Without these amendments, operator service providers may not provide presubscribed service to call aggregator locations and pay telephone providers if they cannot earn a profit.

#### Other Fees and Charges for Inmate, Pay Telephone and Call Aggregator Operator Services

Staff recommends language in both Rule 25-24.516, F.A.C., (page 18, line 24) and Rule 25-24.630, F.A.C., (page 21, line 19) that precludes a pay telephone provider and an operator services provider from billing or collecting, either directly or through its billing agent, any charges, including but not limited to a set-use fee, property-imposed fee, or billing surcharge other than the specific operator service and usage rates identified in the proposed rule, plus applicable authorized taxes. Staff believes that the "rate cap" literally means the extent to which charges are allowed. If providers add other pay telephone or operator charges, either on a per-bill or per-call basis, the rate caps would be rendered ineffective and meaningless.

In further support of limiting charges to those identified in the proposed rule amendments, staff provides excerpts from an active contract between the Florida Department of Corrections and the inmate telecommunications services provider. The Contract Number is C2372, for the provisioning of statewide inmate telephone services. The excerpts follow:

There shall be no additional fees, surcharges, or other types of costs associated with collect or prepaid calls or for establishing prepaid accounts billed to either the Department or families and friends of inmates establishing prepaid accounts.

In addition, the Contractor shall not charge, pass on, or pass through to the customer paying for collect or prepaid calls any charges referred to as Local Exchange Carrier's (LEC's) or Competitive Local Exchange Carrier's (CLEC's) billing costs, or any bill rendering fee or billing recovery fee. The Contractor shall ensure that LEC's and CLEC's do not charge or pass on to the customer any

additional fee or surcharges for billing. The Contractor shall be responsible for any such LEC or CLEC surcharges incurred if billing through the LEC or CLEC.

Staff believes that the Florida Department of Corrections' contract reflects the intent of the Commission's rate cap rules, both current and proposed.

#### Statement of Estimated Regulatory Costs (SERC)

The SERC (Attachment B) notes that the proposed amendments would allow pay telephone and operator services rates for 0+ and 0- calls to increase by raising the allowed operator charges. Rates would remain unchanged for calls originating from prison and/or penal institutions. The SERC also notes that there is no direct benefit to the Commission resulting from the implementation of the proposed rule amendments. Costs for customers using pay telephone or call aggregator operator services would likely increase. The increased rates may attract new entrants, providing Florida ratepayers expanded choice and competing new services.

For telecommunications service providers, the rule amendments would likely cause nominal transactional costs associated with programming new rate tables in billing systems and revising tariffs to reflect the new rates. The amendments should increase providers' revenues and cause the revenues for providing operator services to be more in line with the cost of service.

#### Conclusion

Based on the above, staff recommends that the Commission should propose the amendments to Rule 25-24.516, F.A.C., and Rule 25-24.630, F.A.C., as set forth in Attachment A.



Docket No. 060476-TL  
Date: February 19, 2009

**Issue 2**: Should this docket be closed?

**Recommendation**: Yes, if no requests for hearing or comments are filed, the rule amendments as proposed in Issue 1 should be filed for adoption with the Secretary of State and the docket should be closed.

**Staff Analysis**: Unless comments or requests for hearing are filed, the rules as proposed in Issue 1 may be filed with the Secretary of State without further Commission action. The docket may then be closed.

1 **25-24.516 Pay Telephone Rate Caps.**

2 (1) Rates charged any end user by a pay telephone provider, excluding confinement facilities,  
3 providing operator service within the pay telephone premises' equipment, shall not exceed the  
4 following:

5 (a) Local coin calls – the rate posted at the pay telephone station.

6 (b) Extended area service (EAS) coin calls – a rate equivalent to the local coin call rate.

7 (c) Extended calling scope (ECS) coin calls – the rate equivalent to the local coin rate.

8 (d) 0+ toll non-person-to-person – a maximum rate of \$0.30 per minute, plus a \$2.50 ~~\$1.75~~  
9 charge.

10 (e) 0+ toll person-to-person – a maximum rate of \$0.30 ~~\$.30~~ per minute, plus a \$5.00 ~~\$3.25~~  
11 charge.

12 (f) 0+ non-person-to-person local – a rate equivalent to the local coin rate, plus a \$2.50 ~~\$1.75~~  
13 charge.

14 (g) 0+ person-to-person local – a rate equivalent to the local coin rate, plus a \$5.00 ~~\$3.25~~  
15 charge.

16 (2) Rates charged any end user by a pay telephone provider for intrastate calls made from a  
17 confinement facility shall not exceed the following:

18 (a) 0+ toll non-person-to-person – a maximum rate of \$0.30 per minute, plus a \$1.75 charge.

19 (b) 0+ toll person-to-person – a maximum rate of \$0.30 per minute, plus a \$3.25 charge.

20 (c) 0+ non-person-to-person local, EAS, ECS – a rate equivalent to the local rate, plus a \$1.75  
21 charge.

22 (d) 0+ person-to-person local, EAS, ECS – a rate equivalent to the local rate, plus a \$3.25  
23 charge.

24 (3) A pay telephone provider, providing operator service within the pay telephone premises'

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CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

1 equipment, shall not bill or collect either directly or through its billing agent any charges,  
2 including but not limited to a set-use fee, property imposed fee, or billing surcharge, other  
3 than those listed in sections (1) and (2).

4 ~~(4) (2)~~ A pay telephone provider shall not obtain services from an interexchange carrier or an  
5 operator service provider unless such carrier or provider has registered with or has obtained a  
6 certificate of public convenience and necessity from the Commission.

7 Specific Authority 350.127(2) FS. Law Implemented 364.03, 364.3375(4), (5) FS. History—  
8 New 9-5-95, Amended 2-1-99, 9-7-04.

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1 **25-24.630 Rate and Billing Requirements.**

2 (1) Rates Services charged and billed to any end user by an operator services provider,  
3 excluding confinement facilities, for an intrastate 0+ or 0- call made from a pay telephone or  
4 in a call aggregator context shall not exceed the following a rate of \$0.30 per minute plus the  
5 applicable charges for the following types of telephone calls:

6 (a) Toll A person-to-person call – a maximum rate of \$0.30 per minute, plus a charge of \$5.00  
7 \$3.25;

8 (b) Toll A call that is not a non-person-to-person call – a maximum rate of \$0.30 per minute,  
9 plus a charge of \$2.50; \$1.75.

10 (c) Local, extended area service, and extended calling scope person-to-person – the posted  
11 local rate plus a charge of \$5.00;

12 (d) Local, extended area service, and extended calling scope non-person-to-person – the  
13 posted local rate plus a charge of \$2.50.

14 (2) Rates charged and billed to any end user by an operator services provider for an intrastate  
15 0+ or 0- call made from a confinement facility shall not exceed the following:

16 (a) Toll person-to-person – a maximum rate of \$0.30 per minute plus a \$3.25 charge;

17 (b) Toll non-person-to-person – a maximum rate of \$0.30 per minute plus a \$1.75 charge;

18 (c) Local, extended area service, and extended calling scope person-to-person – a rate  
19 equivalent to the local rate plus a \$3.25 charge;

20 (d) Local, extended area service, and extended calling scope non-person-to-person – a rate  
21 equivalent to the local rate plus a \$1.75 charge.

22 (3) ~~(2)~~ An operator services provider shall have current rate information readily available and  
23 provide this information orally to end users upon request prior to connection.

24 (4) ~~(3)~~ An operator services provider shall require that its certificated or registered name

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- 1 appear on any telecommunications company's bill for regulated charges.
- 2 (5) ~~(4)~~ An operator services provider shall require all calls to be individually identified on
- 3 each bill from a telecommunications company on an end user's bill, including the date and
- 4 start time of the call, call duration, origin and destination (by city or exchange name and
- 5 telephone number), and type of call.
- 6 (6) ~~(5)~~ An operator services provider shall provide a toll-free number for customer inquiries
- 7 on the bill and maintain procedures adequate to allow the company to promptly receive and
- 8 respond to such inquiries.
- 9 (7) ~~(6)~~ An operator services provider shall charge only for conversation time as rounded
- 10 according to company tariffs.
- 11 (8) ~~(7)~~ An operator services provider shall not:
- 12 (a) Bill or charge for uncompleted calls in areas where answer supervision is available or
- 13 knowingly bill or charge for uncompleted calls in areas where answer supervision is not
- 14 available.
- 15 (b) Bill for any collect call that has not been affirmatively accepted by a person receiving the
- 16 call regardless of whether the call was processed by a live or automated operator.
- 17 (c) Bill for calls in increments greater than one minute except for coin calls that may be in
- 18 increments no greater than three minutes.
- 19 (d) Bill or collect either directly or through its billing agent any charges, including but not
- 20 limited to a set-use fee, property imposed fee, or billing surcharge, other than those listed in
- 21 sections (1) and (2). ~~Bill or collect a surcharge levied by any entity, either directly or through~~
- 22 ~~its billing agent, except Commission-approved charges for pay telephone providers.~~
- 23 Specific Authority 350.127(2) FS. Law Implemented 364.01, 364.3376 FS. History--New 9-6-
- 24 93, Amended 2-1-9, 9-7-04.

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