

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: September 24, 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: 10/06/09 – 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

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.

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.

On February 19, 2009, staff filed a recommendation which proposed amendments to Rules 25-24.516 and 25-24.630, F.A.C. Staff recommended an increase to non-inmate operator services rate caps, and proposed that inmate rates caps be severed from non-inmate rates caps and remain the same as currently defined in the existing rules. At the March 3, 2009, Agenda Conference, the Commission directed staff to conduct additional data gathering to seek further evidence for the need of raising non-inmate operator services rate caps.

During the interim, the Legislature made changes to Section 364.3376, Florida Statutes (F.S.). The Legislature's actions and impacts of those actions are discussed below.

Recent Changes to the Statutory Requirement for Establishing Rates for Operator Services

Section 364.3376, F.S., Operator Services, required the Commission to establish maximum rates and charges for all providers of operator services within the state. To this end, operator services rate caps were defined in Rules 25-24.516 and 25-24.630, F.A.C.

On June 24, 2009, the Governor signed into law Senate Bill 2626, entitled the Consumer Choice and Protection Act (Act). The Act amended Section 364.3376(3), F.S., eliminating the Commission's authority to establish maximum rates and charges for all providers of operator services within the state. The Act further deleted all references to tariffs in Section 364.3376, F.S., and replaced the references to tariffs with "schedules or published schedules." The amended statute requires rates charged and billed by operator services providers to comport with the rates set forth within their published schedules. The amendments to Section 364.3376, F.S., became effective on July 1, 2009.

The amendment of Section 364.3376, Florida Statutes, clearly affected proposed rules for which written comments were previously submitted in this docket. However, staff believed it was less clear how the statutory changes might affect the applicability of rate caps to telephone calls placed by inmates from within confinement facilities. Therefore, in a memorandum dated August 6, 2009, staff invited interested persons to file supplemental comments to address the subject of the applicability or non-applicability of rate caps to calls made by inmates from confinement facilities.

Eight respondents, AT&T Florida, Embarq Florida, Inc., Evercom Systems, Inc., T-Netix Telecommunications Services, Inc., Global Tel*Link Corporation, Network Communications International Corp., ITI Inmate Telephone Services, Inc., and Public Communications Services, Inc., argued that by striking Section 364.3376(3), F.S., the Legislature eliminated the Commission's jurisdiction for establishing maximum rates and charges for all providers of operator services within the state.

Two respondents, Florida Citizens for the Rehabilitation of Errants (FL-CURE) and Pay Tel Communications, Inc., argue that inmate telephone services are not operator services and from a consumer perspective are monopolistic. They believe that the Commission has authority to maintain rate caps on inmate calls. They argue that it is in the public interest for the Commission to maintain rate caps for calls made by inmates from confinement facilities. In addition, seven private citizens responded with concern about the removal of the rate caps. They are fearful that the cost of inmate calls will be burdensome for inmates' families if the rate caps are eliminated.

This recommendation addresses whether the Commission should propose amendments to Rules 25-24.516 and 25-24.630, F.A.C., to eliminate rate caps and replace all tariff references with "schedule" or "published schedule." The Commission has jurisdiction under Sections 120.54, 364.01, 364.3375, and 364.3376, F.S.

Discussion of Issues

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

Recommendation: Yes, the Commission should amend Rule 25-24.630, F.A.C., and Rule 25-24.516, F.A.C., as set forth in Attachment A . (Bellak, Kennedy, Hewitt)

Staff Analysis: As described in the Case Background, the Governor signed into law Senate Bill 2626, entitled the Consumer Choice and Protection Act. The Act eliminated the requirement and authority for the Commission to establish maximum rates and charges for all providers of operator services within the state. By proposing the amendment of Rules 25-24.630 and 25-24.516 as set forth in Attachment A, the Commission will implement the changes to Section 364.3376, F.S., by removing the rate caps from the rules.

Further, the Act deleted all references to tariffs in Section 364.3376, F.S., and replaced the references to tariffs with “schedules or published schedules.” The amended statute requires rates charged and billed by operator services providers to comport with the rates set forth within their published schedules. All of the amendments to Section 364.3376, F.S., became effective on July 1, 2009. Staff is recommending that the rules be amended to replace all references to tariffs with “schedules” or “published schedules” in conformance with the statute.

On August 6, 2009, a memorandum was issued to interested parties in the docket advising that the legislative change would impact the rulemaking. The memorandum also invited additional comments concerning the impact of the legislation on the applicability of rate caps to telephone calls placed by inmates from within confinement facilities.

Although two commenters, FL-CURE and Pay Tel Communications, Inc., argued that continued regulation of inmate telephone service (ITS) would be in the public interest because, from the caller’s perspective, the service is a “monopoly in fact,” the remaining commenters argued to the contrary. They maintained that the bid process utilized by prisons to select providers of the service is highly competitive. They concluded that the Legislature intended to deregulate operator services and made no exception for providers of ITS.

Staff agrees with the conclusion that deregulation of operator services, including ITS, was intended by the Legislature. Section 364.02 defines “operator service” as follows:

Operator service includes, but is not limited to, billing or completion of third-party, person-to-person, collect, or calling card or credit cards calls through the use of a live operator or automated equipment.

Since this broad definition includes the services provided by ITS, the Legislative intent to deregulate rates for operator service by removing the rate caps previously applicable would apply to ITS as well, as consistent with Attachment A.¹

Staff has included a minor change to Rule 25-24.516, Line 12, to clarify that providers of operator services must either be registered with or have a certificate of public convenience and necessity with the Commission. Interexchange carriers are not required to obtain a certificate of public convenience and necessity. They are only required to register with the Commission.

Statement of Estimated Regulatory Cost (SERC)

The SERC, which is appended as Attachment B, states that there should not be any net incremental costs for the Commission. There may be increased complaints to the Commission of higher prices, but staff time verifying price schedules may decrease.

Customers would be adversely affected if their present operator service provider raises its rates and the customers do not shop around for more competitively priced operator service rates.

Small businesses that are operator service providers would have greater pricing flexibility. Small cities and small counties are not expected to be affected by the rule amendments.

Review of Tariff Amendments

Since July 1, 2009, staff has identified ten tariff amendments that were filed to change operator service rates or to add per-call surcharges. The per-minute rates range from a low of \$0.30 to a high of \$1.99. The operator charge ranges from a low of \$1.75 to a high of \$13.40. In addition, there are some new surcharges that range from \$0.99 to \$6.00. A few examples of the surcharges are property imposed fee, non-subscriber fee, billing statement fee, and tax recovery surcharge.

Based on the above, staff recommends that the Commission propose amendments to Rule 25-24.630, F.A.C., Rate and Billing Requirements, and Rule 25-24.516, F.A.C., Pay Telephone Rate Caps, as set forth in Attachment A.

¹ Staff has not resolved the issue of whether ITS is competitive or monopoly service. Since the issue is contingent on whether the Legislature reconfers jurisdiction on the Commission to regulate the rates of that service, the issue is not ripe for decision at this time.

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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. (Bellak)

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.