



Public Service Commission

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RECORDS AND REPORTING

DATE: JUNE 8, 2000

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF REGULATORY OVERSIGHT (WILLIAMS)
DIVISION OF LEGAL SERVICES (PENA/KEATING)

Handwritten initials and signatures:
JEW
VMP
P
Dmd

RE: DOCKET NO. 991821-TC - APPLICATION FOR CERTIFICATE TO PROVIDE PAY TELEPHONE SERVICE BY RADIO COMMUNICATIONS CORPORATION AND REQUEST FOR WAIVER OF RULE 25-24.515(6), (10), AND (14), F.A.C.

AGENDA: 06/20/00 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 07/10/00 - DECISION REQUIRED, PURSUANT TO SECTION 120.542, FLORIDA STATUTES

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\RGO\WP\991821.RCM

CASE BACKGROUND

On December 06, 1999, this Commission received an application from Radio Communications Corporation (RCC) seeking a pay telephone provider certificate. In reviewing the application, question 19 of the application asks whether each of the installed pay telephones will provide access to all locally available long distance carriers via 10XXX+0, 10XXXX+0, 101XXXX+0, 950 and toll free (e.g. 800, 877, and 888)? RCC's answer was "no," and the company explained that all of its equipment is cellular operating in the 800 or PCS bands. Further, cellular/PCS air time providers may or may not have equal access capabilities. Even though RCC's cellular phones are fully capable of sending all Equal Access traffic to all carriers, RCC must rely upon the ability or willingness of the local cellular air time provider to provide that access. Therefore, in a letter dated December 17, 1999, RCC inquired as to whether the requirement for

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equal access to all carriers as described in Rule 25-24.515(10), Florida Administrative Code, could be waived.

Staff requested additional information from the Company due to the nature of its request and the type of pay telephone service that it was providing. As such, on April 10, 2000, RCC filed a more complete Request for Waiver of the requirement for equal access to all carriers as described in Rules 25-24.515(6), 25-24.515(10), and 25-24.515(14), Florida Administrative Code.

A notice of PCC's Petition for Waiver was submitted to the Secretary of State for publication in the Florida Administrative Weekly on April 12, 2000. The comment period ended on May 5, 2000, and no comments were submitted. Pursuant to Section 120.542, Florida Statutes, a decision must be rendered by July 10, 2000.

Upon review, staff is recommending approval of Radio Communications Corporation's application to provide pay telephone service within the State of Florida, and to grant the Petition for Waiver to require Radio Communications Corporation to provide access to all locally available long distance carriers as described in Rules 25-24.515(6), 25-24.515(10), and 25-24.515(14), Florida Administrative Code.

DISCUSSION OF ISSUES

ISSUE 1: Should Radio Communications Corporation (RCC) be granted a Certificate of Public Convenience and Necessity to provide Pay Telephone Service in Florida and be granted a waiver of Rules 25-24.515(6), 25-24.515(10), and 25-24.515(14), Florida Administrative Code?

RECOMMENDATION: Yes. Radio Communications Corporation (RCC) should be granted Pay Telephone Certificate No. 7416. Certification should be conditioned on RCC providing access to long distance carriers through toll-free numbers and live operator service. Further, the Petition for Waiver should be granted, and, as such, RCC should not be required to provide access to all locally available long distance carriers as prescribed in Rules 25-24.515(6), 25-24.515(10), and 25-24.515(14), Florida Administrative Code, Pay Telephone Service. (Williams)

STAFF ANALYSIS: Rule 25-24.515(6), Florida Administrative Code, Pay Telephone Service, states as follows:

Each Pay telephone station shall permit direct free access to toll free numbers (e.g. 800, 877, 888).

RCC explains that it will use only wireless (cellular) public pay telephones and personal communication service (PCS) radios to provide the connection to the public switched network. This equipment is custom made and is to be used to provide public access communications at public events such as fairs, sporting events, and large gatherings where land line equipment is not readily available, or too expensive to bring in. Also, service will be provided for locations that are remote and not economically feasible for the public telephone system to support at locations such as barrier islands, beaches, boat ramps and other areas unavailable to both land line telephone service and electricity for lighting. Since cellular services do not recognize toll numbers as free, RCC, will be required to make a payment to the air time providers for all of these connections on a per minute basis regardless of the destination digits. Further, no wireless reseller or cellular provider is entitled to or receives dial around compensation for allowing the free usage of the land line toll free numbers. Therefore, RCC can and will connect the end user to the land line toll free numbers but will pass the cost for only the cellular air time used in the call to the end user. According to RCC, several safety groups have welcomed the units just as a means of providing "911" service to these locations.

Rule 25-24.515(10), Florida Administrative Code, Pay Telephone Service, states as follows:

Each pay telephone station which provides access to any interexchange company shall provide coin free access, except for Feature Group A access, to all locally available interexchange companies. The pay telephone station shall provide such access through the forms of access purchased by locally available long distance carriers such as 10XXX+0, 10XXXX+0, 101XXXX+0, 950 and toll free (e.g. 800, 877, and 888).

RCC, however, is using special public telephones that are strictly wireless, which makes RCC dependent on cellular and public communication service (PCS) providers for all of their origination and termination of traffic. Calls from RCC phones will be prepaid, using either a bank or travel card, a telephone company calling card, or operator services such as "collect" or "third party

billing". RCC can and will connect the end customer to the land line interexchange carrier of choice by calling an operator service center, which has access to land line interexchange carriers via the public land line switched network. Also, RCC must rely upon origination and interconnection agreements by others and, is therefore, unable to meet all the requirements of Rule 25-24.515 (10), Florida Administrative Code.

Further, as stated in the Communications Act of 1934, as amended by The Telecommunications Act of 1996, Title III, Sec. 332, Mobile Services, Paragraph (8) Mobile Services Access states:

A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If the Commission determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers' choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of telephone toll services of the subscriber's choice through the use of a carrier identification code as signed to such provider or other mechanism. The requirements for unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest to apply such requirements to such services.

Rule 25-24.515(14), Florida Administrative Code, Pay Telephone Service, states as follows:

Each pay telephone must be connected to an individual access line.

RCC is using wireless (cellular) public pay telephones and, therefore, has no demarcation points nor has RCC any circuit or channel to a class 5 central serving office as described in Section 25-4.003, Definitions, Florida Administrative Code, "Access Line/Subscriber Line". RCC cellular networks will use a Mobile Telephone Switching Office. Therefore, it appears that RCC can not meet the requirement of Rule 25-24.515(14), Florida Administrative Code.

Further, RCC will rely on Commercial Mobile Radio Service (CMRS) providers to provide service, which in accordance with Section 364.02(12)(c), Florida Statutes, are not regulated by this Commission. However, staff emphasizes that the Commission has previously determined that Section 364.02(12)(c), Florida Statutes, does not remove cellular payphones from the Commission's jurisdiction over pay telephones, as set forth in Section 364.3375, Florida Statutes. See Order Nos. 25264 and 25799, issued in Docket No. 910470-TP.

RCC has represented that users will be able to access long distance carriers, will have provisions for live operator service, toll numbers and 911 service. However, RCC will be required to make a payment to the air time providers for all of these connections on a per minute basis regardless of the destination digits. RCC has also indicated that it will pass the cost for only the cellular air time used in the call to the end user.

As stated earlier, RCC's cellular pay phones will be used to provide public access communications at public events such as fairs, sporting events, and large gatherings where land line equipment is not readily available, or too expensive to bring in. Also, service will be provided for locations that are remote and not economically feasible for the public telephone system to support at locations such as barrier islands, beaches, boat ramps and other areas unavailable to both land line telephone service and electricity for lighting. Further, as previously noted herein, several safety groups have welcomed the cellular pay telephone units just as a means of providing "911" service to these locations.

Staff recommends that the waiver requested in this docket should be granted. The waiver is being requested in accordance with the requirements of Chapter 120.542(2), Florida Statutes. The petitioner has demonstrated that granting the waiver will not impede the continued provision of pay telephone service to the using public as intended by Section 364.3375, Florida Statutes, and that application of the rules will create a substantial hardship for RCC, as a cellular pay telephone provider, because it relies upon CMRS providers, which are not subject to Commission rules, in the provision of its service.

Accordingly, staff recommends that Radio Communications Corporation be granted Pay Telephone Certificate No. 7416 and that the provisions of Rules 25-24.515(6), 25-24.515(10), and 25-24.515(14), Florida Administrative Code, in this instance, be waived.

Docket No. 991821-1C
Date: June 8, 2000

ISSUE 2: Should this docket be closed?

RECOMMENDATION: If no person, whose substantial interests are affected by the Commission's Proposed Agency Action, files a protest within 21 days of the issuance date of the order, this docket should be closed upon the issuance of a consummating order.
(Pena/Keating)

STAFF ANALYSIS: This docket should be closed upon issuance of a consummating order, if no person whose substantial interests are affected by the Commission's Proposed Agency Action, files a protest within 21 days of the issuance date of the order.