

BEFORE THE PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 050892-TP
ORDER NO. PSC-06-0116-FOF-TP
ISSUED: February 14, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
J. TERRY DEASON
ISILIO ARRIAGA
MATTHEW M. CARTER II
KATRINA J. TEW

ORDER GRANTING PETITION FOR DECLARATORY STATEMENT

BY THE COMMISSION:

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 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.

We have jurisdiction pursuant to sections 120.565 and 120.542, Florida Statutes.

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Global's Petition for Declaratory Statement

I. Summary of Facts As Set Forth in Global's 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. The following is a summary of the facts as set forth in Global's Petition.

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.

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 these policies and procedures 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.

II. Findings and Conclusion

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 is 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 we 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 that we 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 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.

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."

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.

Global's petition is hereby granted. We 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.

We note 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.

Global's Alternative Petition for Waiver of Rule

As discussed above, Global filed, in the alternative, a Petition for Waiver of Rule. As we have granted Global's Petition for Declaratory Statement, Global's Alternative Petition for Waiver of Rule is moot.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Petition for Declaratory Statement filed by Global Tel*Link Corporation is hereby granted. It is further

ORDERED that the substance of the Declaratory Statement is as set forth in the body of this order. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 14th day of February, 2006.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

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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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance 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.