



# Public Service Commission

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RECORDS AND REPORTING

**DATE:** NOVEMBER 19, 1998

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

**FROM:** DIVISION OF COMMUNICATIONS (KENNEDY) *REK*  
DIVISION OF LEGAL SERVICES (MCKINNEY) *Jmmcb*

**RE:** DOCKET NO. 981269-TC - REQUEST FOR EXEMPTION FROM RULE 25-24.515(11), F.A.C., WHICH REQUIRES DIRECTORIES TO BE MAINTAINED AT PAY TELEPHONE STATIONS, BY MARK WEBB D/B/A A&M COMMUNICATIONS & PAYPHONES.

**AGENDA:** 12/01/98 - REGULAR AGENDA - PROPOSED AGENCY ACTION - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** JANUARY 5, 1998 - STATUTORY DEADLINE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\CMU\WP\981269.RCM

### CASE BACKGROUND

On October 5, 1998, this Commission received a petition seeking an exemption from Rule 25-24.515(11), Florida Administrative Code, by Mark Webb d/b/a A&M Communications and Payphones (A&M). The rule requires that a directory for the entire calling area be maintained at each station where there are fewer than three telephones located in a group, at every other station where there are three or more telephones located in a group, and at each station where telephone stations are fully enclosed.

In lieu of operating in accordance with the aforementioned criteria of Rule 25-24.515(11), Florida Administrative Code, A&M is seeking Commission approval to begin operating in accordance with proposed amendments to Rule 25-24.515, Florida Administrative Code, as provided in Docket No. 951560-TP. Proposed Rule 25-24.515(16)(b), Florida Administrative Code, when adopted, will allow payphone service providers who provide free local directory

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assistance an exemption from the requirement to provide current white and yellow page directories at the pay telephone stations that provide local directory assistance at no charge. Proposed Rule 25-24.515(16)(b), Florida Administrative Code, will also require pay telephone service providers to place a notice that local directory assistance is provided at no cost on a placard located on the pay telephone station.

A&M's Petition for Exemption was filed on October 5, 1998. The Notice of Petition for Exemption of Rule 25-24.515(11), Florida Administrative Code, was submitted on October 14 to the Secretary of State for publication in the Florida Administrative Weekly. The Notice was published in Volume 24, Number 43 of the Florida Administrative Weekly on October 23, 1998. The comment period ended on November 6, 1998 and no comments were submitted. The Statutory Deadline for the Commission's decision regarding this petition is January 5, 1998.

On September 11, 1998, the Commission issued Order No. PSC-98-1210-NOR-TP, Notice of Rulemaking, relating to the regulation of pay telephone service providers (Docket No. 951560-TP). The Notice of Rulemaking was published in the September 18, 1998 edition of the Florida Administrative Weekly. Rulemaking was initiated to repeal Rule 25-4.076 and amend Rules 25-4.0345, 25-24.475, 25-24.505, 25-24.511, 25-24.515, 25-24.516 and 25-24.520, Florida Administrative Code. As part of A&M's request for exemption from Rule 25-24.515(11), Florida Administrative Code, it agrees to operate in accordance with the proposed amendments to Rule 25-24.515(16)(b), Florida Administrative Code.

As explained below, staff recommends that A&M be granted the exemption from Rule 25-24.515(11), Florida Administrative Code.

#### **DISCUSSION OF ISSUES**

**ISSUE 1:** Should the Commission grant A&M an exemption of Rule 25-24.515(11), Florida Administrative Code?

**RECOMMENDATION:** Yes. Because A&M has offered to abide by the conditions outlined in proposed Rule 25-24.515(16)(b), Florida Administrative Code, and the proposed rule appears to be non-controversial, with adoption expected on December 1, 1998, the

request for exemption should be granted. The Commission's Proposed Agency Action Order should specify that A&M will provide free local directory assistance, clearly stated on the pay telephone placard, for those pay stations it elects not to provide directories. The order should further state that this exemption will expire upon adoption of the proposed amendments to Rule 25-24.515, in Docket No. 951560-TC. **(Kennedy)**

**STAFF ANALYSIS:** Mark Webb d/b/a A&M Communications and Payphones is seeking Commission approval to begin operating under proposed amendments to Rule 25-24.515(16)(b), Florida Administrative Code, prior to the rule's final adoption. Currently, Rule 25-24.515(11), Florida Administrative Code, requires that payphone service providers supply directories for pay telephone stations. Proposed amendments to this rule will allow payphone service providers an exemption from supplying directories at pay telephone stations offering free local directory assistance.

Current Rule 25-24.515(4), Florida Administrative Code, states the following:

**Each telephone station shall, without charge, permit access to local directory assistance** and the telephone number of any person responsible for repairs or refunds but may provide access by coin return. Any long distance directory assistance charges applied to the pay telephone service company may be passed on to the customer.  
[emphasis added]

Contrary to the Florida rule's text many payphone service providers currently charge for local directory assistance under federal authority. Section 276 of the Telecommunications Act of 1996 and Report and Order FCC 96-388 establish that payphone service providers may charge a market-based rate for local directory assistance. Section 276 also provides that to the extent any state's requirements are inconsistent with the FCC's regulations, the FCC's regulations shall preempt state requirements. Thus, for the purposes of this recommendation, staff has assumed that payphone service providers may charge for local directory assistance, even though current Commission rules state otherwise.

With regard to directories, Rule 25-24.515(11), Florida Administrative Code, provides:

Where there are fewer than three telephones located in a group, a directory for the entire local calling area shall be maintained at each station. Where there are three or more telephones located in a group, a directory for the entire local calling area shall be maintained at every other station. However, where telephone stations are fully enclosed, a directory shall be maintained at each station.

In Docket No. 951560-TP, proposed Rule 25-24.515(16)(b), Florida Administrative Code provides:

Pay telephone stations that provide local directory assistance at no charge are exempt from the provisions in (16)(a). A notice must appear on the placard if local directory assistance at no charge is being provided.

Proposed Rule 25-24.515(16)(a), Florida Administrative Code provides:

Where there is a single pay telephone station, a directory shall be maintained at each station. Where there are two or more pay telephone stations located in a group, a directory for the entire local calling area shall be maintained at every other station. However, where telephone pay stations are fully enclosed, a directory shall be maintained at each pay telephone station. For purposes of this rule, the term "directory" shall mean both a current white page directory for the local calling area and a reasonably current yellow page directory that is appropriate for the calling area of the pay telephone station. Companies must comply with this subsection by June 30, 1999, or six months after the effective date of this rule, whichever is longer.

Staff believes that A&M's exemption request is reasonable in that it offers to meet the guidelines outlined in the proposed amendments to Rule 25-24.515(16)(b), Florida Administrative Code.

Staff recommends that the exemption requested in this docket should be granted. The exemption is being requested in accordance with the requirements of Chapter 120.542(2), Florida Statutes. By offering to operate in accordance with proposed amendments to a Commission rule, the petitioner has demonstrated that granting this exemption will not impede the continued provision of pay telephone

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service to the using public as intended by the underlying statute, Chapter 364.345, Florida Statutes.

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

**RECOMMENDATION:** Yes. If no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order, the Order will become final and this docket may be closed. (McKinney)

**STAFF ANALYSIS:** If no person whose substantial interests are affected files a protest within 21 days of the issuance date of the Order, the Order will become final and this docket may be closed.