

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.

DOCKET NO. 991821-TC
ORDER NO. PSC-00-1243-PAA-TC
ISSUED: July 10, 2000

The following Commissioners participated in the disposition of
this matter:

JOE GARCIA, Chairman
J. TERRY DEASON
SUSAN F. CLARK
E. LEON JACOBS, JR.
LILA A. JABER

NOTICE OF PROPOSED AGENCY ACTION
ORDER GRANTING REQUEST FOR WAIVER OF
RULES 25-24.515(6), (10), AND (14), FLORIDA
ADMINISTRATIVE CODE AND GRANTING PAY
TELEPHONE CERTIFICATE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service
Commission that the action discussed herein is preliminary in
nature and will become final unless a person whose interests are
substantially affected files a petition for a formal proceeding,
pursuant to Rule 25-22.029, Florida Administrative Code.

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 further explained
that all of its equipment is cellular equipment operating in the
800 or PCS bands. In addition, the company contended that

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

Our staff requested additional information from the RCC 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 RCC'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.

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 explained 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 where it is 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 on to the end user only for the cellular air time used in the call. RCC adds that several safety groups have welcomed its cellular pay telephone 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, the provision of RCC's service is dependent upon origination and interconnection agreements between other carriers. For these reasons, it is 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.

Because RCC uses only wireless (cellular) public pay telephones, there are 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.

In addition, 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, we have previously determined that Section 364.02(12)(c), Florida Statutes, does not remove cellular payphones from this 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

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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. Also, 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.

RCC has requested this waiver in accordance with the requirements of Chapter 120.542(2), Florida Statutes. We find that the petitioner has demonstrated that granting the waiver will not impair the continued provision of pay telephone service to the using public as intended by Section 364.3375, Florida Statutes; thus, the purpose of the underlying statute is being met. We also find 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, upon consideration of the application and the petition for waiver, it appears to be in the public interest to grant to Radio Communications Corporation Pay Telephone Certificate No. 7416 and to waive, in this instance, the provisions of Rules 25-24.515(6), 25-24.515(10), and 25-24.515(14), Florida Administrative Code.

If this Order becomes final and effective, it shall serve as RCC's certificate. It should, therefore, be retained by RCC as proof of certification.

We emphasize that non-local exchange company Pay Telephone service providers are subject to Chapter 25-24, Florida Administrative Code, Part XI, Rules Governing Pay Telephone Service Provided by Other Than Local Exchange Telephone Companies. They are also required to comply with all applicable provisions of Chapter 364, Florida Statutes, and Chapter 25-4, Florida Administrative Code.

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In addition, under Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee of \$50 if the certificate was active during any portion of the calendar year. A RAFs Return notice for the year 2000 will be mailed to RCC. Neither the cancellation of its certificate nor the failure to receive a RAFs Return notice for the year 2000 shall relieve RCC from its obligation to pay RAFs for the year 2000.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that we hereby grant Radio Communications Corporation Certificate No. 7416 to provide Pay Telephone service, subject to the terms and conditions specified in the body of this Order. It is further

ORDERED that this Order shall serve as Radio Communications Corporation's certificate and Radio Communications Corporation should retain this Order as proof of certification. It is further

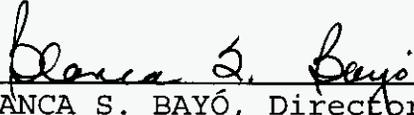
ORDERED that Radio Communications Corporation's request for waiver of Rules 25-24.515(6), 25-24.515(10), and 25-24.515(14), Florida Administrative Code is hereby approved. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

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By ORDER of the Florida Public Service Commission this 10th
day of July, 2000.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

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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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 31, 2000.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.