

**Ruth Nettles**

060476-TL

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**Sent:** Monday, August 31, 2009 4:20 PM  
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**Subject:** Docket No. 060476-TL  
**Attachments:** Pay Tel FPSC Comments 08-31-09 As Filed.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

a. The name, address, telephone number and email for the person responsible for the filing is:

Vincent Townsend  
 Pay Tel Communications, Inc. of the Southeast  
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b. This filing is made in Docket No. 060467-TL, In re: Petition by BellSouth Telecommunications, Inc., to Initiate Rulemaking to Amend Rules 25-24.630(1) and 25-24.516(1), Florida Administrative Code.

c. This document is filed on behalf of Pay Tel Communications, Inc. of the Southeast.

d. There is a total of 14 pages in the document.

e. The attached document is Comments of Pay Tel Communications, Inc. of the Southeast.

Vincent Townsend

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DOCUMENT NUMBER-DATE

09052 AUG 31 8

FPSC-COMMISSION CLERK

8/31/2009



August 31, 2009

**FILED ELECTRONICALLY**

Ms. Ann Cole, Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 060476-TL, In re: Petition by BellSouth Telecommunications, Inc., to Initiate Rulemaking to Amend Rules 25-24.630(1) and 25-24.516(1), Florida Administrative Code

Dear Ms. Cole:

Enclosed is Pay Tel Communications, Inc. of the Southeast Comments for filing in the above referenced docket.

Copies are being served on the parties shown on the attached Certificate of Service.

Any questions concerning this electronic filing should be directed to me, Vincent Townsend, at the contact information shown below.

Thank you for your assistance in this matter.

Sincerely,

Vincent Townsend  
President

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VT/bp

Enclosures

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition by BellSouth Telecommunications, )  
Inc. to Initiate Rulemaking to Amend Rules )  
25-24-630(1) and 25-24.516(1), Florida )  
Administrative Code )  
\_\_\_\_\_ )

Docket No. 060476-TL

Filed: August 31, 2009

**COMMENTS OF PAY TEL COMMUNICATIONS, INC. OF THE SOUTHEAST**

Pursuant to the Florida Public Service Commission ("PSC" or the "Commission") Staff Memorandum dated August 6, 2009, in the above referenced Docket, PayTel Communications, Inc. of the Southeast ("Pay Tel") hereby respectfully submits its comments regarding the Commission's continuing jurisdiction to regulate intrastate rates for inmate telecommunications services ("ITS") in Florida, following the adoption of amendments to Section 364.3376, Florida Statutes during the 2009 Florida Legislative Session.<sup>1</sup>

Pay Tel is certificated by the Commission to provide pay telephone service within confinement facilities in Florida. Pay Tel's authority was granted in Docket No. 960836-TC on September 4, 1996 and Pay Tel was issued certificate No. 4935. The name and address of Pay Tel is as follows:

Pay Tel Communications, Inc. of the Southeast  
P.O. Box 8179  
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<sup>1</sup> SB 2626, as enacted by the Florida Legislature during the 2009 Session and signed into law by Governor Crist with an effective date of July 1, 2009.

DOCUMENT NUMBER-DATE  
09052 AUG 31 8  
FPSC-COMMISSION CLERK

Pay Tel, founded in 1986, is one of the leading ITS providers in the southeast, serving numerous county confinement facilities in North Carolina, Georgia, Virginia, South Carolina, Tennessee, Florida and Alabama. Pay Tel currently serves thirteen (13) county confinement facilities in Florida. As such, Pay Tel's substantial interests will be materially affected by any action taken by the Commission in this proceeding. Pay Tel was the first ITS provider, beginning in 1991, to offer customer service dedicated solely to serving inmates' families and was the first ITS provider, also beginning in 1991, to offer in-house billing and prepaid calling plans with discounts for consumers on every call. Pay Tel's founder and president, Vincent Townsend, is a recognized expert on fraud prevention in the public communications sector, and has served for many years as the public communications industry's representative on the Telecommunications Fraud Prevention Committee of the Alliance for Telecommunications Industry Solutions.

Based upon Pay Tel's review and analysis surrounding this issue, and as expressed in the following comments, this Commission does have both the continuing authority and a statutory mandate to regulate the intrastate rates charged for ITS provided by certificated entities in Florida. Accordingly, the Commission should continue to exercise such jurisdiction, consistent with the public interest.

1. **ITS Is Not Operator Services and Was Not Expressly Addressed by the Changes Made to Section 364.3376, Florida Statutes, During the 2009 Legislative Session**

Phone services provided to enable calls between inmates and their families or loved ones are unique in nature and unlike any other telecommunications service, including competitive

operator services. Competitive operator services are provided in a variety of different contexts, all of which involve a free selection by the caller or the billed party as to which operator services provider they will utilize for any given call. Moreover, operator services involve calls that can be made to virtually any number, with no duration limits, and which are paid for through a wide variety of different payment methods. Further, a selection of traditional operator services is made available under federal and state laws to callers, independent of the pre-selected carrier decision of the owner of the phone equipment on which the calls are originated.<sup>2</sup> In contrast, ITS is a service that is inextricably intertwined with the phone equipment from which the call is placed, is provided by the owner/operator of such equipment, and is a telecommunications service that has been selected by the correctional institution, not the caller or the billed party. There is simply no free carrier service selection involved on the part of the parties to the call. Calls constituting ITS always originate from a correctional facility, are strictly limited in scope and duration, are monitored by the facility, and typically can only be paid for by means of accepting a collect call or by a pre-screened recipient who has set up an account with the provider or has been previously verified as willing and able to accept and pay for the calls.

Given these very basic and distinct differences in the nature of ITS versus traditional operator services, it is a significant leap of interpretation to suggest that the Florida Legislature intended to sweep ITS into its elimination of Commission authority to establish rate caps for competitive operator services. In this same regard and to Pay Tel's best knowledge, ITS was never once expressly discussed or even mentioned by the Florida Legislature during its entire

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<sup>2</sup> See applicable provisions of the Telephone Operator Consumer Services Improvement Act (TOCSIA), 47 USC 226 (c) (1) (A) (ii); and FCC Rule 47 C.F.R. 64.703 (b) (2). Also see PSC Rule FAC 25-24.515 (22).

detailed and lengthy consideration and passage of the deregulatory telecommunications legislation adopted during the 2009 Legislative Session. When eliminating the Commission's authority to establish rate caps for competitive operator services under Section 364.3376, Florida Statutes, ITS was nowhere in the minds of the Legislature.

**2. ITS is a Location Based Monopoly that allows no Choice of Provider on the Part of the Caller or the Billed Party**

In looking at what the Legislature did when eliminating rate cap authority for competitive operator services rates, it is not difficult to understand why ITS was not a topic of discussion or consideration, since ITS is so fundamentally different from competitive operator services. Beyond the significant technical differences between the two services, there is a key legal and economic difference that sets ITS apart and supports the interpretation that the Legislature never intended to reach or restrict Commission oversight of this unique telecommunications sector.

This overriding difference arises from the fact that ITS, unlike traditional competitive operator services, is a location based monopoly service. With traditional operator services, consumers have the ability to use their operator services provider of choice, whether it be for calls from a public pay telephone, their home phone, a hotel phone, or a business phone. To exercise this right, all the consumer needs to do is dial the carrier access code or toll free number associated with their preferred carrier and that carrier will handle the call. Things don't work this way at all in the context of ITS.

While competition certainly exists among ITS providers for the right to provide service at a given correctional facility, once the facility has made its selection then all callers must use that

carrier and end user choice has been completely eliminated. Neither the inmates nor their outside relations have any option or ability to use an alternate telecommunications provider for these communications. As such, from a consumer perspective, ITS are monopoly telephone services "in fact" and in the truest sense of that term.

It is this fundamental distinction that separates ITS from traditional operator services, and this is the reason that the Legislature could not have intended to include ITS when it moved to extinguish Commission rate cap authority for competitive operator services. The Florida Legislature has certainly acted in recent years to streamline or eliminate PSC regulation over competitive services, however, neither the Legislature nor the Governor has acted to eliminate Commission oversight in those cases where no effective competition was present and consumers would be placed at risk without PSC oversight. The ITS sector is plainly one of those instances where no effective competition exists from a consumer standpoint, and the Legislature would not have acted to preclude the exercise of Commission authority to assure that the public interest continues to be protected.

3. **Section 364.3376, Florida Statutes is neither all Encompassing in Scope nor the Sole Statutory Basis for Commission Jurisdiction over ITS Rates**

Lest the Commission believe that Section 364.3376, Florida Statutes should be read expansively to encompass any and all forms of operator services, one need go no further than the plain wording of that section itself to see that the statute does not occupy the entire scope of operator services. In this regard, Section 364.3376(1) (b) provides:

(b) This section does not apply to operator services provided by a local exchange telecommunications company or by an intrastate interexchange telecommunications company, except as required by the commission in the public interest.

It is notable that ITS providers today are not certificated as operator service providers, but rather are certificated as local exchange providers, interexchange telecommunications providers or pay telephone providers. ITS providers are in fact classified as payphone providers and not operator services providers under federal law, (which law includes a provision expressly preempting inconsistent state laws).<sup>3</sup> To the extent ITS providers are classified as pay telephone providers, it is significant that the 2009 legislation that eliminated commission authority to impose rate caps on competitive operator services under Section 364.3376, Florida Statutes, made absolutely no modifications whatsoever to Florida's pay telephone regulatory statute, Section 364.3375, Florida Statutes. This further supports the Legislative intent not to reach ITS by what was done with respect to competitive operator services during this past Session.

Consistent with this, in its exercise of jurisdiction under Section 364.3375, Florida Statutes, the Commission itself has distinguished ITS from competitive public pay telephone services, recognizing the unique nature of ITS even within this general sector. Accordingly, while Section 364.3375(5), Florida Statutes requires competitive payphone providers to provide "open access" by consumers to reach all locally available carriers and to only utilize the services of operator services providers who are certificated by the Commission, these requirements have

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<sup>3</sup> Section 276 of the Telecommunications Act of 1996; Pub. L. No. 104-104, 110 Stat. 56 (1996): 47 U.S.C. 276 (c), (d).



no applicability to ITS providers who are permitted by Commission rule to block access and who provide all aspects of the ITS on a fully integrated basis.<sup>4</sup>

Moreover, rather than being limited solely to either Section 364.3376 or 364.3375, Florida Statutes, for its source of regulatory authority over ITS, the Commission has wholly independent bases upon which to rely in the exercise of jurisdiction to regulate the rates charged by ITS providers, consistent with the public interest.

The fundamental basis for the exercise of PSC jurisdiction over ITS arises from Section 364.01, Florida Statutes, which reads in pertinent part:

**364.01 Powers of commission, legislative intent.--**

4) The commission shall exercise its exclusive jurisdiction in order to:

(c) Protect the public health, safety, and welfare by ensuring that monopoly services provided by telecommunications companies continue to be subject to effective price, rate, and service regulation.

Monopoly service is then defined under Section 364.02, as follows:

**364.02 Definitions.--**As used in this chapter, the term:

(9) "Monopoly service" means a telecommunications service for which there is no effective competition, either in fact or by operation of law.

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<sup>4</sup> Rule FAC 25-24.515 (22).

ITS are clearly “monopoly services” “in fact” from the standpoint of the consumers who are using the service. To communicate with inmates in Florida, families and loved ones must exclusively utilize the ITS of the provider pre selected by the correctional facility. No other choice of carrier is available. As such, the legislative intent is clearly applicable and plainly stated that the Commission can and in fact must act to protect the public interest by exerting jurisdiction over the rates charged to consumers for ITS.<sup>5</sup> Of great relevance here, the legislation that eliminated the Commission’s rate cap authority over competitive operator services and made numerous other changes to the provisions of Chapter 364, Florida Statutes did nothing to alter either Section 364.01(4) (c) or 364.02(9), Florida Statutes. This treatment was once again completely logical and consistent, since the Legislature was acting to streamline PSC jurisdiction over competitive and not monopoly services.

Once the determination is made that ITS is a monopoly service in fact, then the full panoply of provisions setting forth the Commission’s rate setting authority under Chapter 364, Florida Statutes come into play and are applicable. Primary among these, are Sections 364.03 and 364.035, Florida Statutes, neither of which were altered in any way by the Legislature during the revisionary process undertaken during the 2009 Session.

These statutes provide in pertinent part:

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<sup>5</sup> When the language of a statute is clear and definite, there is no need to resort to rules of statutory construction or interpretation and instead the statute is to be given its plain and obvious meaning and effect. *A.R. Douglass, Inc. v. McRainey*, 102 Fla. 1141, 137 So. 157,159 (1931); Also see: *GTC, Inc. v. Edgar* 967 So.2d 781 (Fla. 2007)

**364.03 Rates to be reasonable; performance of service; maintenance of telecommunications facilities.--**

(1) All rates, tolls, contracts, and charges of, and all rules and regulations of, telecommunications companies for messages, conversations, services rendered, and equipment and facilities supplied, whether such message, conversation, or service is to be performed over one company or line or over or by two or more companies or lines, shall be fair, just, reasonable, and sufficient, and the service rendered to any person by any telecommunications company shall be rendered and performed in a prompt, expeditious, and efficient manner. *Emphasis Supplied*

**364.035 Rate fixing; criteria service complaints.--**

(1) In fixing the just, reasonable, and compensatory rates, charges, fares, tolls, or rentals to be observed and charged for service within the state by any and all telecommunications companies under its jurisdiction, the commission is authorized to give consideration, among other things, to the efficiency, sufficiency, and adequacy of the telecommunications facilities provided and the services rendered, including energy conservation and the efficient use of alternative energy resources; the value of such service to the public; and the ability of the telecommunications company to improve such service and facilities.

2) The power and authority herein conferred upon the commission shall not cancel or amend any existing punitive powers of the commission but shall be supplementary thereto and shall be construed liberally to further the legislative intent that adequate service be rendered by telecommunications companies in the state in consideration for the rates, charges, fares, tolls, and rentals fixed by the commission and observed by the telecommunications companies under its jurisdiction. *Emphasis Supplied*

These provisions of Florida law retain their independent vitality and applicability to ITS (as well they should given the “monopoly in fact” nature of the service), notwithstanding the elimination of Commission jurisdiction to set rate caps for competitive operator services. The 2009 legislative revisions did nothing to alter or limit the Commission’s authority under these

statutory provisions to continue protecting consumers by ensuring reasonable rates for monopoly services consistent with the public interest.<sup>6</sup>

4. **Continuing to Regulate Intrastate ITS Rates is Not Thwarting the Legislative Intent that Eliminated Rate Cap Authority With Respect to Competitive Operator Services, but is Instead Consistent with the Ongoing Legislative Mandate to Ensure Fair, Just and Reasonable Rates for Monopoly Services Provided to Consumers**

Some may suggest that any action by the Commission to continue regulating the rates of ITS in Florida would be seen as an attempt to frustrate the Legislative intent behind eliminating PSC authority to establish rate caps for operator services. As demonstrated above, nothing could be further from the truth. There was no consideration given by the Legislature to ITS during the process that resulted in the revisions to Section 364.3376, Florida Statutes. Neither was any action taken by the Legislature to restrict the Commission's ongoing authority to regulate the rates of services that are monopoly by nature. Instead, the Florida Legislature left intact and untouched those statutes that authorize PSC oversight for rates charged to consumers on services that are a monopoly in fact. ITS are just such services, and the Commission has the ongoing jurisdiction and a legislative mandate to exercise such authority to ensure that rates for ITS are consistent with the public interest.<sup>7</sup>

ITS are important telecommunications services. The communications enabled by ITS are vital to maintaining a link between inmates, and their families and loved ones. These

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<sup>6</sup> Rates charged by Florida utilities must be just and reasonable. *Pinellas County v. Mayo*, 218 So.2d 749 (Fla. 1969); Also see: *Tampa Electr. Co. v. Cooper*, 153 Fla. 81, 14 So.2d 388 (1943).

<sup>7</sup> The public interest is the ultimate measuring stick to guide the Commission in its decisions. *Gulf Coast Elec. Co-op., Inc. v. Johnson* 727 So.2d 259 (Fla. 1999)

communications have been shown to make a real difference in helping to break the cycle of repeat criminal behavior and incarcerations. It is vital that the Commission act to ensure that the rates for these services remain reasonable or this communications link will be hampered and in some cases broken. The public interest will surely suffer as a result. The Commission has a critical role to play in this arena and it should not allow itself to be intimidated or emasculated by narrow readings and interpretations of PSC jurisdiction when it comes to ITS.

The Commission continues to possess broad authority over intrastate telecommunications in Florida and that authority still reaches ITS as a monopoly service in fact. Moreover, the Commission's interpretation of its enabling statutes will be given great deference by the courts in a case such as this.<sup>8</sup> The exercise of PSC jurisdiction over ITS will almost certainly be upheld if challenged by those that seek the unfettered power to charge whatever rates they choose for intrastate calls placed using ITS.<sup>9</sup> Sound public policy supports continued Commission authority to regulate the rates for ITS in Florida and this is the path that the Commission should embrace when interpreting its authority under recent changes to its enabling statutes.<sup>10</sup>

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<sup>8</sup> "The PSC's interpretation of a statute that it is charged with enforcing is entitled to great deference and will be approved by the Florida Supreme Court unless it is clearly erroneous." *Id.*; Also see: *BellSouth Telecommunications, Inc. v. Johnson* 708 So.2d 594, 596 (Fla. 1998).

<sup>9</sup> The Commission has authority to interpret the statutes that empower it, including jurisdictional statutes, and to make rules and issue orders accordingly. *Fl. PSC v. Bryson*, 569 So.2d 1253 (Fla 1990). PSC orders are presumptively valid and there is a presumption of correctness for statutory interpretation by the Commission of its enabling statutes. *Verizon Florida, Inc. v. Jaber*, 885 So.2d 286 (Fla. 2004); *Sprint-Fla, Inc. v. Jaber* 885 So2d 286 (Fla. 2004); Also see: *Panda-Kathleen, L.P./Panda Energy Corp. v. Clark* 701 So2d 322 (Fla. 1997).

<sup>10</sup> PSC regulation is for the protection of the public welfare and is to be liberally construed. *Level 3 Communications, LLC v. Jacobs*, 841So.2d 447, 450 (Fla. 2003).

WHEREFORE, Pay Tel respectfully requests the Commission to find that it has ample authority to continue regulating intrastate rates for ITS in Florida, notwithstanding the elimination of PSC authority to impose rate caps on competitive operator services in the State.

Respectfully submitted this 31<sup>st</sup> day of August, 2009.

**PAY TEL COMMUNICATIONS, INC. OF THE SOUTHEAST**

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**CERTIFICATE OF SERVICE**  
**Docket No. 060476-TL**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Comments of Pay Tel Communications, Inc. of the Southeast was served via Electronic Mail and U.S. Mail this 31<sup>st</sup> day of August, 2009 upon the following:

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**s/Vincent Townsend**