

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center, 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

MEMORANDUM

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TO : DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM : DIVISION OF COMMUNICATIONS (MONTEIRO) *MMW*
DIVISION OF LEGAL SERVICES (BOWMAN) *MS* *MCB*

RE : DOCKET NO. 970975-TC - PAY TEL COMMUNICATIONS, INC.,
D/B/A PAY TEL COMMUNICATIONS, INC. OF THE SOUTHEAST -
REQUEST FOR WAIVER FROM REQUIREMENT OF RULES 25-
24.515(7), 25-24.515(9), AND 25-24.620(2)(C) AND (D),
FLORIDA ADMINISTRATIVE CODE, TO PERMIT PROVISION OF 0+
LOCAL AND 0+ INTRALATA CALLS FROM PAY TELEPHONES LOCATED
IN CONFINEMENT FACILITIES AND TO ALLOW CONCENTRATION OF
ACCESS LINES THAT SERVE CONFINEMENT FACILITIES

AGENDA: 09/23/97 - REGULAR AGENDA - PROPOSED AGENCY ACTION -
INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\970975.RCM

CASE BACKGROUND

Pay Tel Communications, Inc., d/b/a Pay Tel Communications of the Southeast (Pay Tel), holds pay telephone certificate no. 4935, with an effective regulation date of September 26, 1996. Pay Tel does not currently provide pay telephone service to confinement facilities in Florida, but stated that it plans to do so in the very near future.

On July 25, 1997, Pay Tel filed two Petitions for Waiver of those rules and policies currently prohibiting Pay Tel from 1) installing concentrators to allow up to three instruments per access line for its pay phones located in confinement facilities (Attachment A); and 2) providing 0+ local and 0+ intraLATA from store-and-forward pay telephones located in confinement facilities (Attachment B).

By Order No. 14529, issued July 1, 1985, the Commission required that only one pay telephone instrument be installed per access line. Local exchange companies' (LECs') tariffs generally

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reflect this requirement and contain language requiring pay telephone providers to order a separate public telephone access line for each telephone instrument installed. In addition, the provisions of Rule 25-24.515(9), Florida Administrative Code, require each telephone instrument to be connected as provided by the LEC's access tariff.

Staff notes that the Commission has granted similar petitions in the past. See, for example, Order PSC-96-1157-FOF-TC, issued September 17, 1996, in which the Commission granted ATN's petition for an exemption from the provisions of Rule 25-24.515(9), Florida Administrative Code, and Order No. 14529. See also, Order No. PSC-96-1413-FOF-TC, issued November 20, 1996, in which the Commission granted NAI's petition to handle local and intraLATA 0+ calls from confinement facilities.

Staff believes the following recommendations are appropriate.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Pay Tel's Petition for an exemption from the provisions of Rule 25-24.515(9), Florida Administrative Code, and Order No. 14529 which prohibit Pay Tel from installing up to three pay telephone instruments per access line in confinement facilities?

RECOMMENDATION: Yes, the exemption should be granted for Pay Tel's pay telephones located in confinement facilities only, and provided there is a concentration of no more than three pay telephone instruments per access line. (Monteiro)

STAFF ANALYSIS: The policy of a one to one ratio of pay phone instruments to access lines was established in Order No. 14529, issued July 1, 1985, which states:

"We find that it is also in the public interest that we require one PATS instrument per coin access line. We reach this conclusion in the effort to avoid a pay phone customer getting a busy signal when he attempts to use the pay phone when an emergency arises. The probability of getting a busy signal increases when a line is shared by several PATS instruments."

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LEC tariffs contain language requiring pay telephone providers to order a separate public telephone access line for each telephone instrument installed. In addition, Rule 25-24.515(9), Florida Administrative Code, states "Each telephone station must be connected as provided in the pay telephone access tariff offered by the local exchange company."

By Order PSC-96-1157-FOF-TC, the Commission recognized that the underlying rationale of Rule 25-24.515(9), Florida Administrative Code, was not applicable in confinement facilities. In that Order, the Commission stated:

"Confinement facilities have their own emergency response systems in place and Rule 25-24.515(15), Florida Administrative Code, exempts pay phones located in confinement facilities from the requirement to provide access to 911. For these reasons, the concern with inmates getting a busy signal when they try to reach emergency service is moot.

We believe that a three to one ratio of payphones to access lines will allow adequate access to telephone service by the inmate population. However, if the administrators of a correctional facility were not satisfied with the level of access, we believe that ATN would be responsive to the facility as failure to do so might jeopardize its contract for pay telephone service."

Pay Tel states that it will suffer a substantial hardship if the line concentration prohibitions are not waived. Absent a waiver, Pay Tel says that it will be forced to purchase more pay telephone access lines and associated equipment than is necessary to provide inmate calling for a particular facility. Pay Tel states the unnecessary expenditures would result in lower profit margins, and possibly losses, for Pay Tel, and will unnecessarily increase Pay Tel's cost of providing service to the facility.

Staff recommends that the exemption of Rule 25-24.515(9), Florida Administrative Code should be granted as it is applicable to Pay Tel as a pay telephone provider for a confinement facility.

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ISSUE 2: Should the Commission grant Pay Tel's Petition for an exemption from the provisions of Rule 25-24.515(7), and Rule 25-24.620(2)(c) and (d), Florida Administrative Code, and the policies contained in Orders 95-0918, 95-0203, and 24101 to permit it to handle and bill 0+ local and 0+ intraLATA calls from pay telephones located in confinement facilities at no more than the rates charged by the serving local exchange for the same call?

RECOMMENDATION: The Commission should grant the request for exemptions from Rule 25-24.515(7) and Rule 25-24.620(2)(c), Florida Administrative Code. The Commission should deny the request for exemption from Rule 25-24.620(2)(d), Florida Administrative Code. (Monteiro)

STAFF ANALYSIS: The facilities that Pay Tel will provide to the confinement facilities contain store-and-forward technology which enable Pay Tel to provide and bill for 0+ local and 0+ intraLATA calls placed by end-users without the assistance of a live operator.

The Commission has already granted exemptions to allow six other pay telephone providers to handle 0+local and intraLATA traffic in confinement facilities (951198-TC, 951546-TP, 960407-TC, 960570-TC, 960603-TC, and 960829-TC). In Order No. PSC-96-1413-FOF-TC, the Commission stated:

"There seems to be no compelling reason to continue the prohibition against pay telephone providers in confinement facilities handling local and intraLATA calls on a collect basis since Florida Statutes have been amended to permit competition for local telephone service and we have been instructed to encourage such competition. Section 364.01(4)(e), Florida Statutes, instructs us to "Encourage all providers of telecommunications services to introduce new or experimental telecommunications services free of unnecessary regulatory restraints." Section 364.01(4)(f), Florida Statutes, instructs us to "Eliminate any rules and/or regulations which will delay or impair the transition to competition."

Allowing NAI to handle local and intraLATA 0+ calls from confinement facilities will facilitate competition as the company will be

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able to more effectively compete for those sites where the traffic is predominately local and intraLATA."

Pay Tel alleges that it will suffer a substantial hardship due to a significant loss of fraud control if Pay Tel is forced to route 0+ local and 0+ intraLATA calls to the LEC. Pay Tel states that its store-and-forward technology is well suited to the provision of inmate service because it provides a number of controls and restrictions that serve to reduce or eliminate fraudulent use of pay telephone services. Pay Tel argues that prior to the time that charges for the call must be accepted, the person who receives the call will hear an announcement that the call is from a confinement facility, thereby assisting the person in making an informed choice about whether to accept the call. Pay Tel also notes that the technology eliminates the opportunity for an inmate to harass a live operator.

Pay Tel further argues that it will suffer a substantial hardship and be forced to forgo substantial amounts of revenue if it is forced to route 0+ local and 0+ intraLATA calls to the LEC.

The petitioner has demonstrated that granting these waivers will not impede the continued provision of pay telephone service to the confinement facilities, as intended by the underlying statute, Chapter 364.345, Florida Statutes. In addition, the petitioner has demonstrated above that granting these waivers will lift the "substantial hardship" that the rule imposes on live operators, the person receiving the call, and Pay Tel.

Staff recommends that the exemptions from Rule 25-24.515(7) and Rule 25-24.620(2)(c), Florida Administrative Code, should be granted.

Rule 25-24.620(2)(d) requires operator service providers, not pay telephone providers, to route all end-user dialed 0- calls to the LEC at no charge to the end user when no additional digits are dialed after five (5) seconds. Rule 25-24.515(15), Florida Administrative Code, excludes pay telephone providers from the requirement of routing 0- calls from a confinement facility to the LEC. Therefore, the Commission does not need to grant Pay Tel an exemption from Rule 25-24.620(2)(d).

Staff recommends that the exemption from Rule 25-24.620(2)(d), Florida Administrative Code, should not be granted as it is not applicable to Pay Tel as a pay telephone provider for a confinement facility.

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ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes, this docket should be closed unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action. (Bowman)

STAFF ANALYSIS: Whether staff's recommendations on Issue 1 and 2 are approved or denied, the result will be a proposed agency action order. If no timely protest to the proposed agency action is filed within 21 days of the date of issuance of the Order, this docket should be closed.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Pay Tel
Communications, Inc., d/b/a
Pay Tel Communications, Inc.
of the Southeast for waiver of
orders, rules and regulations
which prohibit concentration
of line services for pay
telephone facilities that serve
confinement institutions.

Docket No. _____

Filed: July 25, 1997

PETITION FOR WAIVER OF RULE 25-24.515(9)

Pay Tel Communications, Inc., d/b/a Pay Tel Communications, Inc. of the Southeast ("Pay Tel"), pursuant to Rule 28-104.002, Florida Administrative Code, and Section 120.542(5), Florida Statutes, herewith petitions the Florida Public Service Commission (the "Commission") for a waiver of Rule 25-24.515(9), Florida Administrative Code, and any other rules, orders or regulations that prohibit Pay Tel from utilizing line concentration in the provision of pay telephone service to inmates of confinement institutions within Florida, and in support thereof states as follows:

1. Petitioners name and address are:

Pay Tel Communications, Inc.
P. O. Box 8179
9A Oak Branch Drive
Greensboro, NC 27407
1-800-729-8355 (telephone)
1-800-776-8423 (facsimile)

2. All notices, orders and documents regarding this Petition should be directed to:

Kenneth A. Hoffman, Esq.
William B. Willingham, Esq.
RUTLEDGE, ECENIA, UNDERWOOD, PURNELL
& HOFFMAN, P.A.
P. O. Box 551
Tallahassee, Florida 32302-0551
(850) 681-6788 (telephone)
(850) 681-6515 (facsimile)

3. Pay Tel is certificated to provide pay telephone services in Florida.¹ Pay Tel currently does not provide pay telephone service to correctional institutions in Florida, but plans to do so in the very near future.

4. Where traffic permits, Pay Tel desires to install its call processing systems for correctional institutions with fewer access lines than instruments. To that end Pay Tel seeks a permanent waiver of (1) Rule 25-24.515(9), (2) any other rules, orders, and regulations of the Commission, and (3) any pay telephone tariffs of a local exchange company ("LEC") that prohibit Pay Tel from concentrating access lines connected to Pay Tel's equipment and instruments that serve correctional institutions. The waiver requested by Pay Tel is similar to waivers already granted by the Commission to other carriers.

¹ Certificate No. 4935; Order PSC-96-1115-FOF-TC.

² See, e.g., In Re: Petition for waiver of rules and orders which currently prohibit concentration of line services for calls made from store-and-forward coinless pay telephones located in confinement facilities, and for such other relief as may be

5. Rule 25-24.515(9), Florida Administrative Code, requires that each telephone station must be connected as provided in the pay telephone access tariff offered by the LEC. LEC tariffs generally contain language that requires one access line for each instrument, thereby prohibiting Pay Tel from concentrating access lines.

6. Rules regarding line concentration for pay telephones were first adopted by the Commission in Order No. 14529, issued July 1, 1985. Order No. 14529 requires one access line per pay telephone instrument, primarily for the purpose of preventing a busy signal when a customer or user attempts to use the pay telephone during an emergency situation. Rule 25-24.515(9) codifies the underlying rationale of Order No. 14529.

7. The underlying rationale of Rule 25-24.515(9) is not applicable in the inmate calling environment where there is no requirement that the pay telephone be available for emergency situations. The Commission has previously recognized that pay telephones located in confinement facilities need not be available for emergency situations because the institution has its own emergency response systems.¹ In addition, pay telephones in the

appropriate, by ATN, Inc., Docket No. 960805-TC, Order No. RSC-96-1157-FOF-TC, Issued September 17, 1996.

¹ Id.; Rule 25-24.515(15), Florida Administrative Code, exempts pay telephones located in confinement facilities from the requirement to access "911".

inmate telecommunications setting do not have to be active all of the time and it is very unlikely that a majority of the pay telephones would be active at any one time. In any event, Pay Tel will design and engineer its systems so that the number of access lines installed is sufficient to support all of the inmate call traffic during the busiest hour of the day.

8. The Commission should grant a waiver of the above-stated rules in order to avoid violating the principles of fairness and equal protection to which Pay Tel is entitled. The Commission has previously granted identical waivers to other similarly situated pay telephone providers, including independent pay telephone providers.⁴ Should the waiver requested herein be granted, Pay Tel agrees to use no more than three telephone instruments per LEC access line in each confinement institution that it serves, which concentration has previously been approved by the Commission.⁵

9. Pay Tel will suffer a substantial hardship if the line concentration prohibitions are not waived. Absent a waiver, Pay Tel will be forced to purchase more pay telephone access lines and associated equipment than is necessary to provide inmate calling

⁴ See, e.g., In Re: Petition for waiver of rules and orders which currently prohibit concentration of line services for calls made from store-and-forward coinless pay telephones located in confinement facilities, and for such other relief as may be appropriate, by ATN, Inc. Docket No. 960805-TC, Order No. PSC-96-1157-FOF-TC, Issued September 17, 1996.

⁵ Id.

for a particular institution. These unnecessary expenditures would result in lower profit margins, and possibly losses, for Pay Tel and will unnecessarily increase Pay Tel's cost of providing service to the institution.

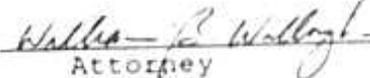
WHEREFORE, Pay Tel respectfully requests that it be granted a waiver of the applicable rules, orders and regulations that currently prohibit Pay Tel from concentrating access lines connected to Pay Tel's equipment and instruments that serve correctional institutions.

Respectfully submitted,


KENNETH A. HOFFMAN, ESQ.
WILLIAM B. WILLINGHAM, ESQ.
RUTLEDGE, ECENIA, UNDERWOOD,
PURNELL & HOFFMAN, P.A.
P. O. Box 551
Tallahassee, Florida 32302-0551
(850) 681-6788 (telephone)
(850) 681-6515 (facsimile)

CERTIFICATE OF SERVICE

I HEREBY certify that a copy of the foregoing was furnished to the Administrative Procedures Committee, Holland Building, Room 120, Tallahassee, Florida 32308 by **Hand Delivery** this 25th day of July, 1997.


Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Pay Tel
Communications, Inc., d/b/a
Pay Tel Communications, Inc.
of the Southeast for a waiver
of orders, rules and regula-
tions prohibiting provision
of 0+ local and 0+ intraLATA
calls from store-and-forward
pay telephones located in
confinement institutions.

Docket No. _____

Filed: July 25, 1997

**PETITION FOR WAIVER OF RULES
25-24.515(7) AND 25-24.620(2)(c) AND (d)**

Pay Tel Communications, Inc., d/b/a Pay Tel Communications, Inc. of the Southeast ("Pay Tel"), pursuant to Rule 26-104.002, Florida Administrative Code, and Section 120.542(5), Florida Statutes, herewith petitions the Florida Public Service Commission (the "Commission") for a waiver of Rules 25-24.515(7) and 25-24.620(2)(c) and (d) and any other rules, orders or regulations that prohibit Pay Tel from providing and billing 0+ local and 0+ intraLATA calls placed by inmates of confinement institutions through Pay Tel's pay telephone facilities that use store-and-forward technology and in support thereof states as follows:

1. Petitioners name and address are:

Pay Tel Communications, Inc.
P. O. Box 8179
9A Oak Branch Drive
Greensboro, NC 27407
1-800-729-8355 (telephone)
1-800-776-8423 (facsimile)

2. All notices, orders and documents regarding this Petition should be directed to:

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3. Pay Tel is certificated to provide pay telephone services in Florida. Pay Tel currently does not provide pay telephone service to correctional institutions in Florida, but plans to do so in the very near future.

4. The facilities that Pay-Tel will provide to the correctional institutions contain store-and-forward technology. Store-and-forward technology enables Pay Tel to provide and bill for 0+ local and 0+ intraLATA calls placed by end-users without the assistance of a live operator. Store-and-forward technology is particularly well suited to the provision of inmate service because it provides a number of controls and restrictions that serve to reduce or eliminate fraudulent use of pay telephone services. For example, prior to the time that charges for the call must be accepted, the person who receives the call will hear an announcement that the call is from a confinement facility, thereby assisting the person in making an informed choice about whether to

²Certificate No. 4935; Order PSC-96-1115-FOF-TC.

accept the call. The technology also eliminates the opportunity for the caller to harass a live operator.

5. Pay Tel requests a permanent waiver of the Commission's rules, orders and regulations that prohibit Pay Tel from providing and billing for 0+ local and 0+ intraLATA calls placed by inmates from confinement institutions, which prohibitions are set forth in Rules 25-24.515(7) and 25-24.620(2)(c) and (d). Rule 25-24.515(7) requires pay telephone providers to route all intraLATA calls, including operator service calls, to the local exchange company ("LEC") unless the end-user dials an access code for its carrier of choice. Rule 25-24.620(2)(c) requires pay telephone providers to route all end-user dialed 0+ and 0- intraLATA local and toll calls to the LEC unless the end-user dials the appropriate access code for its carrier of choice. Rule 25-24.620(2)(d) requires pay telephone providers to route all end-user dialed 0- calls to the LEC operator at no charge to the end-user when no additional digits are dialed after five (5) seconds. These rules were implemented pursuant to Sections 364.337 and 364.3376, Florida Statutes.

6. Pursuant to the above-stated rules 0+ local and 0+ intraLATA toll calls are to be routed to the LEC. Absent a waiver, these rules prohibit pay telephone providers from providing and billing for 0+ local and 0+ intraLATA calls placed by inmates from confinement institutions. Pay Tel believes that the benefits afforded to confinement institutions and the general public, such

as call screening and blocking, will be enhanced if the above-stated rules are waived allowing Pay Tel to provide and bill 0+ local and 0+ intraLATA calls that originate from confinement institutions.

7. Pay Tel will suffer a substantial hardship if these prohibitions are not waived. Pay Tel will be forced to forgo substantial amounts of revenue if it is forced to route 0+ local and 0+ intraLATA calls to the LEC. Furthermore, there will be a significant loss of fraud control if Pay Tel is forced to route 0+ local and 0+ intraLATA calls to the LEC.

8. The Commission should grant a waiver of the above-stated rules in order to avoid violating the principles of fairness and equal protection to which Pay Tel is entitled. The Commission has previously granted identical waivers to other similarly situated pay telephone providers, including independent pay telephone providers.² In addition, the Commission has determined that non-LEC pay telephone providers may route 0+ intraLATA calls to the intraLATA carrier of their choice and a waiver for 0+ intraLATA calls should not even be required.³

9. The requested waiver serves the purposes of Chapter 364 by generally promoting the competitive provision of telecommunications service pursuant to Section 364.01(3), Florida

² See, e.g., Order No. PSC-96-1413-FOF-TC.

³ Order No. PSC-96-0884-FOF-TP.

Statutes, and by specifically encouraging the introduction of "new experimental telecommunications services free of unnecessary regulatory restraints" pursuant to Section 364.014, Florida Statutes. The Commission has previously determined that allowing non-LEC pay telephone providers to provide and bill 0+ local and 0+ intraLATA calls is a step forward to a more competitive environment.¹

WHEREFORE, Pay Tel respectfully requests that it be granted a waiver of the applicable rules, orders and regulations that currently prohibit it from providing and billing 0+ local and 0+ intraLATA calls placed by inmates of confinement institutions through Pay Tel's pay telephone facilities that use store-and-forward technology.

Respectfully submitted,


KENNETH A. HOFFMAN, ESQ.
WILLIAM B. WILLINGHAM, ESQ.
RUTLEDGE, ECENIA, UNDERWOOD,
PURNELL & HOFFMAN, P.A.
P. O. Box 551
Tallahassee, Florida 32302-0551
(850) 681-6788 (telephone)
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¹See, e.g., Order No. PSC-96-1413-FOF-TC

ATTACHMENT B
DOCKET NO. 970975-TC
DATE: September 11, 1997

CERTIFICATE OF SERVICE

I HEREBY certify that a copy of the foregoing was furnished to the Administrative Procedures Committee, Holland Building, Room 120, Tallahassee, Florida 32308 by **Hand Delivery** this 25th day of July, 1997.

William J. Williams
Attorney

ALL RIGHTS RESERVED