

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**October 8, 2012**

**IN RE:  
PETITION OF TELMATE, LLC FOR  
CERTIFICATE OF AUTHORITY TO  
RESELL TELECOMMUNICATIONS  
SERVICES IN TENNESSEE**

**Docket No. 11-00181**

**IN RE:  
PETITION OF TELMATE, LLC FOR  
AUTHORITY TO PROVIDE COCOT IN  
TENNESSEE**

**Docket No. 11-00182**

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**RESPONSE OF TELMATE, LLC TO DISCOVERY REQUEST OF  
PAY-TEL COMMUNICATIONS, INC.**

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Pursuant to the Hearing Officer's September 27, 2012 Order in this docket, Telmate, LLC hereby responds to the discovery requests of Pay-Tel Communications, Inc.

**I. OBJECTIONS.**

The issue for TRA determination in this consolidated docket is Telmate's Application for Authority to Resell Telecommunications and Application to Provide COCOT<sup>1</sup> Services in Tennessee. These applications have now been pending for nearly a year, more than 4 times the average length of time for the TRA to rule on such applications,<sup>2</sup> and more than 5 times as long

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<sup>1</sup> Customer-Owned Coin (or Coinless) Operated Telephone service.

<sup>2</sup> See Docket No. 04-00014 (COCOT application granted 12 days after filing); Docket No. 04-00036 (COCOT application granted 27 days after filing); Docket No. 06-00070 (COCOT application granted 19 days after filing); Docket No. 08-00104 (COCOT application granted 24 days after filing); Docket No. 10-00052 (Reseller application granted 2 months after filing); Docket No. 06-00129 (Reseller application granted 3 months after filing); Docket No. 09-00049 (Reseller application granted 4 months after filing); Docket No. 01-00733 (Reseller application granted 3 months after filing); Docket No. 04-00406 (Reseller application granted 2 months after filing).

as the statutorily-mandated 60-day time period for rulings on competing telecommunications provider applications to enter the marketplace.<sup>3</sup>

The sole relief Telmate is requesting by these applications is authority to compete in the inmate telecommunications market in Tennessee by participating in public bidding for state and local corrections department contracts, as Telmate currently does in upwards of 24 other U.S. states and Canada. Telmate does not provide services to the public at large and is not a traditional telecommunications provider; Telmate provides services exclusively to inmate facilities through interconnected VoIP circuits.

In order to begin participating in public bidding for correction facility inmate services contracts in Tennessee, Telmate representatives contacted TRA Staff in the fall of 2011 to inquire as to what applications, if any, would be required. TRA Staff directed Telmate to file reseller and COCOT applications, the same two certifications the TRA has required of all inmate services providers for more than a decade.

Telmate filed its 58-page application packet on October 28, 2011, which included a sworn application describing the company and its services, signed by company executives; detailed biographical information on the company's key personnel; 3 years of company financial statements; a \$20,000 surety bond; a small and minority-owned telecommunications business participation plan; and a proposed tariff for the company's inmate calling services in Tennessee. Subsequent to the application, Telmate responded to four rounds of data requests from TRA Staff with additional detailed information on the company's certifications and operations in other

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<sup>3</sup> See Tenn. Code Ann. § 65-4-201 ("An authority order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a competing telecommunications service provider shall be entered no more than sixty (60) days from the filing of the application.")

states; any customer or competitor complaints against the company; the corporate history of the company and its vendor relationships; and the company's relationship with its regulated carrier partners.

Telmate has provided all information requested of the company, and has done everything the TRA has directed it to do. No one has raised, nor could anyone raise, a serious question as to whether Telmate, one of the leading inmate services providers in North America, has the technical, managerial, and financial ability to enter the marketplace in Tennessee. Nonetheless, Telmate's applications have been delayed for months on end, due in large part to the very clearly anti-competitive efforts of one of Telmate's chief competitors, Pay-Tel Communications.

The TRA has specifically found that Pay-Tel has no legal interest in this proceeding, and does not meet the statutory standard for intervention in this docket. In August 2012, the Hearing Officer rejected Pay-Tel's argument that its status as a competitor of Telmate gave it the right to intervene in this docket. Noting that by statute, the clear policy of the state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications through market competition, the Hearing Officer recognized that the sole purpose of the 1995 and 2009 acts deregulating telecommunications in Tennessee was "to ease the traditional regulatory constraints on local telephone companies and permit greater competition," by "narrowing the TRA's regulatory involvement" in the field.<sup>4</sup>

Despite finding that Pay-Tel had no legal right to intervene, the Hearing Officer ruled that the TRA should exercise its discretionary authority to nevertheless allow Pay-Tel a limited intervention because Pay-Tel had raised an "interesting question" about whether TRA Staff

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<sup>4</sup> August 9, 2012 Initial Order, pp. 14-15.

should have directed Telmate to file a CLEC application, instead of the reseller and COCOT applications TRA Staff directed Telmate to submit, in keeping with the agency's standard practice for inmate services providers for the last decade.<sup>5</sup>

Pay-Tel's "interesting question" is based on a novel legal theory, namely, the argument that the TRA should have recognized years ago that the same 1995 legislation intended to ease regulatory constraints and foster competition in the telecommunications market actually impliedly superseded the TRA's reseller and COCOT rules, and therefore approximately 15 years ago, the TRA should have repealed the reseller and COCOT rules and begun requiring all inmate service providers to file CLEC applications. Pay-Tel makes this argument even though, as an inmate services provider, Pay-Tel applied for and was granted reseller and COCOT applications in 1997, 2 years after the 1995 deregulation act that Pay-Tel claims rendered the reseller and COCOT rules obsolete.

The Hearing Officer specifically found that even though Pay-Tel had no legal right to intervene, Pay-Tel's limited intervention on this CLEC theory should be granted because it would not "impair the orderly and prompt conduct of these proceedings."<sup>6</sup> Nevertheless, because of this decision, Telmate has so far been required to submit a brief on the CLEC issue, present oral argument on the CLEC issue at 1 hearing officer proceeding and 2 separate agenda conferences, and, submit discovery responses on the CLEC issue detailing the aspects of its vendor contractual relationships to Pay-Tel, its chief competitor. Meanwhile, the discretionary intervention of Pay-Tel has resulted in an additional 2-3 months of delay in Telmate's

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<sup>5</sup> August 9, 2012 Initial Order, p. 19.

<sup>6</sup> August 9, 2012 Initial Order, p. 18.

applications thus far, with no end in sight. Pay-Tel has also argued that if a CLEC is required, Pay-Tel is entitled to file a new petition to intervene, which Pay-Tel contends the TRA will be required to grant, further delaying the resolution of this docket. This delay continues, despite the fact Telmate clearly meets the requirements of Tennessee law to participate in the inmate services market by bidding on facility contracts. All of this delay and additional procedure, time, and expense has been required of Telmate despite the fact that, as the Hearing Officer noted, ultimately it makes no difference: the information required and the standards for the granting of CLEC and reseller/COCOT applications are substantially the same.<sup>7</sup>

For these reasons, Telmate objects to the discovery requests propounded by Pay-Tel. Telmate further objects to these requests as wholly unrelated to the one exclusively legal issue Pay-Tel has been granted limited intervention on in this docket, *i.e.*, whether the TRA should have repealed the reseller and COCOT rules 15 years ago and directed Telmate to file a CLEC application instead. As Pay-Tel counsel expressly conceded in a telephone conference with the Hearing Officer on August 15, 2012, the CLEC question is purely a legal issue for which discovery and fact finding is not required.

Without waiving these objections, Telmate is providing full responses to Pay-Tel's discovery requests. Despite having far exceeded the time, effort and expense that would justify a business case for continuing to pursue authority to bid on contracts in Tennessee, Telmate is submitting these responses in good faith, in the hopes that the TRA will recognize that Telmate

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<sup>7</sup> Compare Tenn. Code Ann. § 65-4-201(c) (CLEC certificate shall be granted if the application possesses sufficient "managerial, financial, and technical abilities to provide the applied for services") with Tenn. R. and Regs. 1220-4-2-.57 ("The Authority may also consider the applicant's financial ability character and proposed rates, as well as such other matters as the Authority finds relevant.") Pay-Tel has focused on the fact that the CLEC rules call for sworn testimony describing the services, whereas the reseller rules call for a sworn application describing the services. This is quite obviously a distinction without a difference.

has done everything asked of it, and that the equities of the situation demand that Telmate's applications be granted at the October 15 agenda conference.

## **II. RESPONSES.**

**REQUEST NO. 1: Provide pre-filed testimony of any witness Telmate expects to present at the company's application hearing.**

**TELMATE RESPONSE:** Testimony is attached.

**REQUEST NO. 2: Provide a sample bill for each of the following calls:**

- (a) A ten-minute local call within the Nashville local calling area;**
- (b) A ten-minute toll call from Nashville to Memphis; and**
- (c) A ten-minute toll call from Nashville to Atlanta.**

**Include in the sample bill all charges and surcharges identified in the company's tariff and on the company's website including, but not limited to, "regulatory fees" and/or "local, county, state and federal surcharges and assessments."**

**TELMATE RESPONSE:** Because Telmate is exclusively an inmate services company providing inmate call services pursuant to contracts with federal, state, and local correctional facilities, both the amount of the charges and the type of billing provided is determined by the specific terms of the facility contract. Telmate accepts prepayment for calls made by inmates via credit card, cash, money order or money gram, as well as via a facility commissary account or call center where accounts are funded by the inmate's friends and family. Payments may be deposited into an inmate's account through a number of different methods, including on-site touch-screen kiosks, online via a secure website, through a live 24/7 customer service 1 800 number staffed by Telmate representatives, or through over 135,000 retail

locations (K-Mart, Wal-Mart, Best Buy, etc.). Friends and family also have the ability to specify that the money may only be used to call a specific number.

Inmates have access to account balance and applicable rate and charge information each time they pick up a phone, and inmates are also instantly and automatically notified with a voicemail each time a deposit is made to their calling account, or when their prepaid account balance dips below a predefined threshold (usually \$25). Telmate also provides copies of phone system rules, instructional PIN cards, and signage in multiple languages upon facility approval. Numerous additional billing and reporting options are available at the facility's discretion.

Telmate's web-based technology allows for fully transparent, real-time accounting and reporting. Because Telmate's application is 100% web browser-based, it can be accessed from any computer with a web browser and Internet access, and there is no software to install. A comprehensive range of security settings are available to restrict access for individuals or groups of individuals. Facility staff or any authorized user can access numerous reports and processes through the Telmate application, including cash receipts, daily posted financial transactions, reconciliation, and detailed call records. Everything that the user sees onscreen while using Telmate's application can be exported, printed, or downloaded as a report with just a few clicks, including real-time call data, and even calls in progress. Telmate also provides complete monthly or other regular reporting according to facility specifications.

Below are mock-up bills, for both prepaid and collect calls, created to show all fees and charges for the requested calls described in the discovery request, assuming the facility contract specifies the maximum rates provided in the tariff are applicable:

| Sample - Prepaid Institutional Calls   |  |  |  |  |  |  |  |  |  |  |  |  |  |    |  |  |
|--|--|--|--|--|--|--|--|--|--|--|--|--|--|----|--|--|
| Nashville to Nashville: \$3.00 Connection Fee plus \$.060 per minute, \$3.60; this rate excludes applicable taxes and billing fees.                |  |  |  |  |  |  |  |  |  |  |  |  |  |    |  |  |
| Nashville to Memphis: \$5.00 connection plus \$.59 per minute, \$10.90; this rate excludes applicable taxes and billing fees                       |  |  |  |  |  |  |  |  |  |  |  |  |  |    |  |  |
| Nashville to Atlanta; \$4.00 connection plus \$.52 per minute, \$9.20; this rate excludes applicable taxes (FUSF) and billing fees for first call. |  |  |  |  |  |  |  |  |  |  |  |  |  |    |  |  |
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Inmate collect calls are directly billed to those customers who accept the charges through Legacy Long Distance International, Inc., a registered provider in Tennessee that brands and handles the billing for the call. Attached are sample collect call bills from Legacy Long Distance International, Inc.

**REQUEST NO. 3: Provide a copy of any agreement between Telmate and Airespring concerning the provision of telephone service in Tennessee.**

**TELMATE RESPONSE:** Airespring is Telmate's underlying wholesale carrier. Airespring provides call termination services to Telmate; Airespring does not have any



relationship with the correctional facilities, the inmates, or end users for any prepaid or collect calls from correctional facilities under contract with Telmate. Branding and billing of collect calls from inmates is provided by Legacy Long Distance International, Inc., a registered provider in Tennessee. Copies of Telmate's current contracts with both Airespring and Legacy Long Distance International are being produced pursuant to the terms of the Protective Order in this docket.<sup>8</sup>

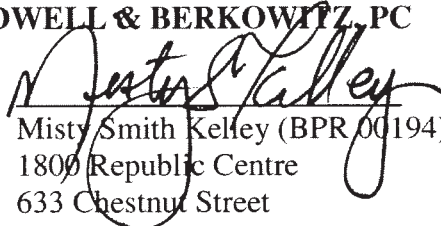
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<sup>8</sup> Due to the short time period for these discovery responses, Telmate was not able to obtain a fully executed copy of the Airespring contract, but Telmate has verified that the copy being produced is identical to the fully executed version of the contract.

Respectfully submitted,

**BAKER, DONELSON, BEARMAN,  
CALDWELL & BERKOWITZ, PC**

By:



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Attorney for Telmate, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was served via email and U.S. Mail upon the following on the 8th day of October, 2012:

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*Attorney for Pay-Tel Communications*

**BAKER, DONELSON, BEARMAN  
CALDWELL & BERKOWITZ, PC**

By:

