

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**October 12, 2012**

<b>IN RE:</b>	)	<b>DOCKET NO. 11-00181</b>
	)	
<b>APPLICATION OF TELMATE, LLC FOR</b>	)	
<b>A CERTIFICATE OF AUTHORITY TO</b>	)	
<b>PROVIDE OPERATOR SERVICES</b>	)	
<b>AND/OR RESELL</b>	)	
<b>TELECOMMUNICATIONS</b>	)	
<b>SERVICES IN TENNESSEE</b>	)	
	)	
<b>IN RE:</b>	)	<b>DOCKET NO. 11-00182</b>
	)	
<b>PETITION OF TELMATE, LLC FOR</b>	)	
<b>AUTHORITY TO</b>	)	
<b>PROVIDE COCOT SERVICES</b>	)	
<b>IN TENNESSEE</b>	)	

**PETITION FOR APPEAL OF INITIAL ORDER**

Pursuant to T.C.A. § 4-5-315, and TRA Rules 1220-1-2-.18(1) and (2), Pay-Tel Communications, Inc. ("Pay-Tel") submits this petition for appeal of the decision of the Hearing Officer denying Pay-Tel's "Motion to Remove Confidential Designation" issued October 12, 2012 in the above-captioned proceeding.<sup>1</sup>

Telmate has applied for a "Reseller" license and, in response to a Staff Data Request, said that while Telmate would be the service provider, local telephone calls made by Telmate customers would be "branded and handled by [Telmate's] regulatory partner Airespring." Response to Staff Data Request filed December 16, 2011.

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<sup>1</sup> The Hearing Officer has released an email announcing her decision but has not yet issued a written decision. A copy of the email is attached.

On September 17, 2012, Pay-Tel filed discovery asking, among other things, that Telmate "provide a copy of any agreement between Telmate and Airespring concerning the provision of telephone service in Tennessee." The purpose of the question, as explained at the time, was to allow the TRA to "verify that Telmate's 'partner' will provide the proposed service" of handling and branding local calls. Petition of Pay-Tel to Submit Discovery," at 3.

When Telmate filed its response to that question on October 8, 2012, Telmate filed not one, but two contracts. One is a contract between Telmate and Airespring concerning the provision of "underlying wholesale" services. That contract, as Telmate now acknowledges, does not say anything about the branding and billing of calls. Instead, those functions will be "provided by Legacy Long Distance International, Inc., a registered provider in Tennessee." Response of Telmate to Discovery Request, at 9. Telmate also provided a copy of its contract with Legacy. Telmate labeled both the Airespring and Legacy contracts as "confidential" documents. Pay-Tel asked to have the "confidential" designation removed, but Telmate filed a Response opposing the request. The Hearing Officer denied the request for the reasons "set forth in the Response" of Telmate.

As a result of the Hearing Officer's decision, the terms under which Telmate and Legacy propose to brand and bill local telephone calls in Tennessee remain secret and cannot be discussed in a public hearing or even with employees at Pay-Tel itself.

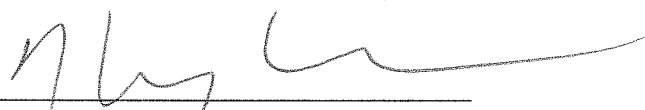
How telephone calls are branded and billed is not a "trade secret." It is, in fact, the subject of several pages of TRA rules (1220-4-2-.58). The only item in the Legacy contract that is arguably confidential is how much Telmate is paying Legacy. That figure can be easily redacted and the rest of the contract made a public document.

The TRA's public files are full of similar contracts describing the billing and branding of calls. It is one of the core areas over which the TRA has regulatory responsibility. It is a matter to be handled in a public debate, not in secret.<sup>2</sup>

In sum, there is no legal or policy justification for keeping confidential a contract for the billing and branding of local telephone calls. Pay-Tel therefore asks that the Authority reverse the holding of the Hearing Officer and, except for the payment amount, declare both the Legacy and Airespring contracts to be public documents.

Respectfully submitted,

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<sup>2</sup> Telmate may not want to be publicly associated with Legacy which has been the subject of numerous investigations by state regulatory commissions. Telmate, however, has now filed two public documents stating that Legacy will brand and bill Telmate's local traffic.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of October, 2012, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

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HENRY WALKER

## Walker, Henry

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**From:** Kelly Grams [Kelly.Grams@tn.gov]  
**Sent:** Friday, October 12, 2012 12:15 PM  
**To:** Walker, Henry; Misty Smith Kelley (mkelley@bakerdonelson.com)  
**Cc:** Monica Smith-Ashford; Sharla Dillon  
**Subject:** RULING in Telmate Docket Nos. 11-00181 & 11-00182

**Importance:** High

Counsel,

Upon review and consideration of Pay-Tel's *Motion to Remove Confidential Designation*, filed on October 9, 2012, and Telmate's *Response* thereto, filed on October 11, 2012, the Hearing Officer concurs with and adopts the reasoning set forth in the *Response*. Therefore, for these reasons, the *Motion to Remove Confidential Designation* is hereby DENIED. As the parties were informed in my email of October 9, 2012, a formal Order containing findings and conclusions consistent with this ruling will be entered in the docket file on a later date.

Kelly Cashman-Grams  
Hearing Officer

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