

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 4, 2013

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

ORDER ACCEPTING INITIAL ORDER OF THE HEARING OFFICER

This matter came before Chairman Kenneth C. Hill, Director James M. Allison, and Director Sara Kyle of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on September 10, 2012 for consideration of Pay-Tel Communications, Inc.’s (“Pay-Tel”) *Petition for Appeal of Initial Order* filed on August 17, 2012. Pay-Tel requests that the Authority review the *Initial Order of the Hearing Officer Granting Limited Intervention to Pay-Tel Communications, Inc.* filed on August 9, 2012.

Relevant Background

On October 28, 2011, pursuant to TRA Rules 1220-4-2-.43 and 1220-4-2-.57, Telmate, LLC (“Telmate”) filed applications requesting certification to resell interexchange and intrastate long distance telecommunication services (“Reseller Application”), and authority to provide Customer Owned Coined (or Coinless) Operated Telephone (“COCOT”) service (“COCOT

Application”) in Docket Nos. 11-00181 and 11-00182, respectively.¹

On April 19, 2012, Pay-Tel filed a *Petition to Intervene* in Docket No. 11-00181, which asserts that, as a competitor of Telmate in the inmate telephone business, its legal rights, duties, privileges, immunities or other legal interests may be determined in the certification proceedings of its competitor.

On May 3, 2012, Telmate objected to Pay-Tel’s request for intervention and asked that the Authority decline to convene a contested case proceeding in the docket. On June 26, 2012, the Hearing Officer held a Status Conference and heard the oral arguments of the parties on Pay-Tel’s *Petition to Intervene*.² On August 9, 2012, the Hearing Officer issued an order granting Pay-Tel limited intervention in the docket. The Hearing Officer limited Pay-Tel’s intervention to the discrete issue raised by Pay-Tel in its *Supplemental Petition to Intervene*: whether Telmate should be required to obtain a Competing Local Exchange Carrier (“CLEC”) Certificate, instead of a Reseller Certificate.³

On August 17, 2012, Pay-Tel filed a *Petition for Appeal of Initial Order* requesting that the Authority review issues related to Telmate’s application.⁴ Pay-Tel stated that the Hearing Officer’s ruling has denied Pay-Tel the opportunity to participate as a party to this proceeding to

¹ On June 7, 2012, finding that because the dockets have interrelated issues and hearing them together would promote efficiency, the voting panel of Directors voted unanimously to consolidate Docket Nos. 11-00181 and 11-00182. The panel also reaffirmed the charge and authority that it previously delegated to the Hearing Officer in Docket No. 11-00181.

² On June 21, 2012, Pay-Tel filed another *Petition to Intervene* (“*Supplemental Petition to Intervene*”) in Docket No. 11-00182. In its *Supplemental Petition to Intervene*, Pay-Tel adopted and incorporated by reference the substance of its *Petition to Intervene* filed in Docket No. 11-00181, and further asserted that it should be permitted to intervene in the now-consolidated dockets to “raise the issue of whether Telmate must obtain a CLEC certificate, pursuant to T.C.A. § 65-4-201(b) and TRA Rule 1220-4-8-.03, in order to provide the services it seeks to offer.”

³ See *Initial Order of Hearing Officer Granting Limited Intervention to Pay-Tel Communications, Inc.* (“*Initial Order Granting Limited Intervention*”), pp. 13- 20 (August 9, 2012).

⁴ See *Petition for Appeal of Initial Order*, p. 1 (August 17, 2012).

determine whether Telmate's application is consistent with state law and requested that the parties be allowed to brief the issue.⁵

September 10, 2012 Authority Conference

At the regularly scheduled Authority Conference held on September 10, 2012, the panel considered Pay-Tel's *Petition for Appeal of Initial Order*. The parties presented arguments on the Hearing Officer's *Initial Order Granting Limited Intervention*.

Pay-Tel's Position

Pay-Tel argued that a hearing is beneficial because it allows for more information to be presented, and historically, the TRA has liberally granted interventions.⁶ Pay-Tel maintained that the statute requires a company to get a CLEC certificate if it wants to provide telephone service in Tennessee and as a requirement of a CLEC certificate, it must provide notice to allow for interested parties to intervene.⁷ In its argument, Pay-Tel expressed concern about not having a sample bill from Telmate, especially in light of Telmate's unique business model. Pay-Tel questioned what Company name would be on the bill and how the telephone call would be branded because it could cause confusion for consumers if different company names are used on the bills and by the operator when the call is made.⁸ Pay-Tel asserted that these issues could be addressed in a hearing and requested that Telmate amend its petition to comply with the statutory requirements for a CLEC Certificate.⁹

Telmate's Position

In response to Pay-Tel's arguments, Telmate affirmed that it filed the type of applications it was told to file by TRA Staff and Telmate certainly has the technical, managerial and financial

⁵ *Id.* at 2.

⁶ Transcript of Authority Conference, pp. 38-39 (September 10, 2012).

⁷ *Id.* at 39-40.

⁸ *Id.* at 41-42.

⁹ *Id.* at 42-43.

ability to provide the services it has applied for.¹⁰ Telmate asserted that it is up to the Authority to decide whether Telmate should file a Reseller or a CLEC Application. Telmate stated it is willing to file whatever the Authority determines to be the correct application. However, Telmate's position is that its applications should not be delayed because the TRA wants to "study how it does Reseller and COCOT Applications."¹¹ Telmate maintains that it filed Reseller and COCOT Applications because it was directed to do so by TRA Staff, and the standards by which the applications are considered are the same as with a CLEC Application. Telmate argued that the Hearing Officer found that "there was no basis whatsoever for the argument that these [the TRA Reseller] rules had been superseded."¹² Further, Telmate asserted that there is no authority for the proposition that the Reseller rules were superseded by the CLEC statute, and it has been the practice of the Authority for seventeen years to routinely grant Reseller and COCOT Applications following the 1995 passage of the statute.¹³ Telmate also pointed out that its business model is different because it is a VoIP provider, and as a VoIP provider, Telmate asserted that it is not regulated by the TRA. The only services Telmate provides are the services of others and for that reason the Reseller and COCOT Applications are the most appropriate applications to file.¹⁴

Deliberations on *Petition for Appeal of Initial Order*

After hearing the arguments presented by the parties, the majority of the panel found that the Hearing Officer's decision was well-reasoned and Pay-Tel had not established any other basis for intervention in the docket other than the issue of whether Telmate should file a CLEC or a Reseller Application. However, the majority found that it needed additional information to

¹⁰ *Id.* at 49-50.

¹¹ *Id.* at 55.

¹² *Id.* at 52.

¹³ *Id.*

¹⁴ *Id.* at 62.

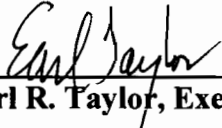
make a determination regarding whether the CLEC statute supersedes the Reseller rules.¹⁵ Thereafter, the majority of the panel voted to accept the *Initial Order Granting Limited Intervention* of the Hearing Officer granting Pay-Tel limited intervention solely on the issue of whether Telmate must obtain a CLEC certificate instead of a Reseller certificate and to have a hearing on October 15, 2012 on the issue of whether a CLEC or Reseller certificate is appropriate for providers seeking to provide inmate payphone services in Tennessee.¹⁶ The panel had concerns about delaying the process even further, but the majority of the panel wanted additional information before deliberating Telmate's Application. The Authority requested that the parties file briefs and argue the issue at the October 15, 2012 Authority Conference.¹⁷

IT IS THEREFORE ORDERED THAT:

1. The Hearing Officer's *Initial Order Granting Limited Intervention* is accepted and adopted by the Authority.
2. Pay-Tel Communications, Inc. will only be allowed to intervene in this docket on a limited basis related to the issue of whether Telmate, LLC should apply for a Reseller or a CLEC Certificate.

Chairman Kenneth C. Hill and Director Sara Kyle concur. Director James M. Allison dissents.

ATTEST:



Earl R. Taylor, Executive Director

¹⁵ *Id.* at 64.

¹⁶ *Id.* at 67. Director Allison did not vote with the majority. Director Allison stated that he did not want to delay deliberations on Telmate's Application because Telmate had filed the appropriate Application based on the long-standing practices of the TRA. Director Allison preferred that a general determination on the appropriate certificate required to provide inmate payphone services going forward be made in a different forum.

¹⁷ *Id.* at 66.

