

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

May 3, 2012

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

Docket No. 11-00181

**RESPONSE TO PETITION TO INTERVENE AND REQUEST THAT THE
AUTHORITY DECLINE TO CONVENE A CONTESTED CASE**

Telmate, LLC ("Telmate") submits this as its response to Pay-Tel Communications' ("Pay-Tel") Petition to Intervene in this docket. For the reasons set forth below, Telmate hereby requests the Authority deny the Pay-Tel Petition to Intervene, and decline to convene a contested case. Telmate also respectfully requests that the Authority proceed without additional delay to render a decision on Telmate's Application for Authority to Resell Telecommunications in the State of Tennessee ("Telmate Petition"). We ask that the Telmate Petition be approved at this May 7, 2012 conference, or in the alternative, be placed on the TRA's next available conference agenda without further delay.

I. FACTUAL BACKGROUND.

Telmate is a service provider to inmate facilities in a number of states. Telemate contracts with state and local departments of corrections to provide interexchange telecommunications services via interconnected Voice over Internet Protocol ("VOIP") circuits. Most of the contracts are awarded through a public competitive bidding process. Under the contracts, inmates pre-pay for calls through credit card, cash, money order or money gram, or through a facility commissary account or call center where accounts are funded by the inmate's

friends and family. Billing for collect calls from the inmate facility is provided via Telmate's agreements with an authorized carrier or operator service provider.

Telmate is in the process of expanding its business into more states. In order to qualify to participate in public bidding for contracts in Tennessee, Telmate submitted its application for certification as a reseller to the Authority on October 25, 2011. For the next two months, Telmate worked with the Authority Staff to respond to a number of information requests and supplemental responses to augment the application's details. Telmate information submissions were completed on December 19, 2011. Since that time, Telmate Petition has been complete and awaiting decision by the Authority.

On January 10, 2012, Henry Walker, attorney for Pay-Tel Communications, a direct competitor of Telmate in the inmate services market, filed a Tennessee Open Records Act request for Telmate's confidential data responses. After working with the Authority Staff in an attempt to protect the competitively sensitive information, in mid-February, 2012, Telmate agreed that all of its data responses could be posted in full on the Authority's website.

Therefore, as of February 2012, all impediments to the Authority placing the Telmate Petition on its next Conference Agenda had been removed and Telmate's petition was ready for the Authority's consideration. In mid-February 2012, Telmate received word from Authority Staff that Telmate's Petition would be placed on the Authority's Conference for decision.

Despite the mid-February notice that the Telmate Petition was going to be placed on TRA Conference Agenda for consideration, it was not. Another two months passed, and on April 12, Telmate received word from TRA Staff that the Petition would be placed on the April 23, 2012 Conference Agenda.

On April 20, 2012, three days before the Telmate Petition was scheduled to be considered by TRA, Pay-Tel, through its attorney Mr. Henry Walker, filed the above Petition to Intervene.

The Telmate Petition was removed or otherwise not placed on the April 23, 2012 Conference Agenda. Telmate continues to await Authority consideration of its now six month old application.

II. THERE IS NO JUSTIFICATION TO CONVENE A CONTESTED CASE.

Pay-Tel's petition to intervene cites Tenn. Code Ann. § 4-5-310. However, this statutory provision by its clear terms applies only to interventions in a contested case. Tenn. Code Ann. § 4-5-310. There has not been a contested case convened in this docket, nor is there any justification for a contested case. The Pay-Tel Petition to Intervene makes no claims whatsoever that would justify convening a contested case and further delaying Telmate's Petition. Pay-Tel's Petition states only that it is a competitor of Telmate and is interested in examining "whether Telmate has demonstrated that it will adhere to the TRA's rules, policies and orders." This bare allegation is insufficient grounds to convene a contested case and further delay Telmate's application, especially in light of the express public policy in Tennessee supporting competition within the telecommunications market. Tenn.Code Ann. § 65-4-123 ("The general assembly declares that the policy of this state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets, and by permitting alternative forms of regulation for telecommunications services and telecommunications services providers.").

As Pay-Tel concedes in its Petition to Intervene, Pay-Tel and Telmate compete with each other in the business of bidding on contracts to provide inmate services. Each delay in the Authority's review of the Telmate Petition prevents Telmate from engaging in business in Tennessee or from responding to requests for proposals and winning that business in Tennessee. Each delay further eliminates for Pay-Tel one of its strongest competitors; Telmate has been

winning accounts from Pay-Tel and others throughout the nation when competing head-to-head on the basis of its technology, pricing, customer service and experience.

Based on the lack of any justification whatsoever for the intervention, it seems clear Pay-Tel filed its intervention request solely to delay Telmate's ability to commence competing in the market place against it in Tennessee, and not for any interest of justice.

III. PAY-TEL'S PETITION TO INTERVENE SHOULD BE DENIED.

Under the standard for contested case interventions, the Petition to Intervene must state "facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of law." Tenn. Code Ann. § 4-5-310. Pay-Tel's Petition to Intervene contains no facts other than unsupported statement parroting the language of the statute. This blanket statement is wholly insufficient to meet the test of the statute.

Pay-Tel offers no "facts demonstrating" that its legal rights or interests may be determined or impacted at all. Competition in telecommunications services in Tennessee is expressly permitted; Pay-Tel has no legal right to protect itself against such competition. Pay-Tel's interest in determining "whether Telmate has demonstrated that it will adhere to the TRA's rules, policies and orders," is nothing more than thinly-veiled anti-competitive animus. Where is the actual assertion? Which rules and on what basis is this bare question supported? What are the statutes Telmate is violating or will violate? The Pay-Tel Petition fails on its face to state the necessary facts to support it qualifying for review under the statute. There is simply nothing to review.

Tenn. Code Ann. § 4-5-310(a)(1) requires that the Petition to Intervene be filed "at least seven (7) days before the hearing." Pay-Tel filed its Pay-Tel Petition on April 20, 2012, two months after Telmate was supposed to have appeared on the Authority agenda, and a mere three

days before Telmate was scheduled on the Authority the Conference Agenda. Pay-Tel's Petition is causing undue prejudice to Telmate by further delaying the Authority's consideration of Telmate's now 6-months-old Petition.

IV. CONCLUSION.

Telmate requests the Authority deny the Pay-Tel Petition to Intervene, and decline to convene a contested case. Telmate also respectfully requests that the Authority proceed without additional delay to render a decision on Telmate's Petition for Reseller Authority.

Respectfully submitted,

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

By: 

Misty Smith Kelley (BPR 00)
1800 Republic Centre
633 Chestnut Street
Chattanooga, TN 37450-1800
Telephone: (423) 209-4148
Facsimile: (423) 752-9549
E-mail: mkelley@bakerdonelson.com

Attorney for Telmate, LLC

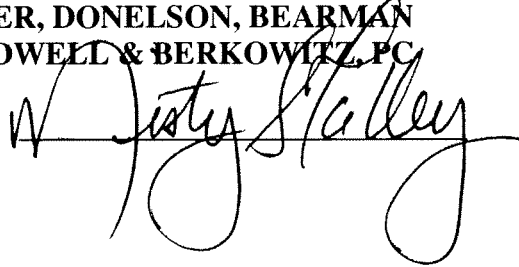
CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served via email and U.S. Mail upon the following on the 3rd day of May, 2012:

Henry Walker
Bradley, Arant, Boult Cummings, LLP
1600 Division Street, Suite 700
Nashville, TN 37203
hwalker@babco.com
Attorney for Pay-Tel Communications

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

By:

A handwritten signature in black ink, appearing to read "Justin Stalley", is written over a horizontal line. The signature is fluid and cursive.