

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 4, 2012

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T.R.A. DOCKET ROOM

IN RE:)
PETITION OF TELMATE, LLC FOR)
CERTIFICATE OF AUTHORITY TO) DOCKET NO. 11-00181
RESELL TELECOMMUNICATIONS)
SERVICES IN TENNESSEE)
)

REPLY TO TELMATE'S OPPOSITION TO PAY-TEL'S PETITION TO INTERVENE

Pay-Tel Communications, Inc. ("Pay-Tel") has filed a Petition to Intervene in the above-captioned application of Telmate, LLC for a certificate of convenience and necessity. Telmate has filed a "Response" opposing that Petition. Because such petitions are rarely opposed, Pay-Tel asks leave, pursuant to TRA Rule 1220-1-2-.06(3), to submit the following Reply.

Telmate's filing is not timely

Pay-Tel's Petition to Intervene was filed on April 19, 2012. A copy was served by mail on Telmate's "regulatory consultant" who had signed Telmate's application. Under TRA Rule 1220-1-2-.06(2), anyone "opposing a motion shall file and serve a response within seven (7) days after service of the motion." Under TRA Rule 1220-1-1-10(2), "service by first class mail is complete upon mailing."

Telmate did not file its response opposing the motion until May 3, 2012, two weeks after the Petition was filed. The Response does not provide any explanation for the late filing which should, therefore, be rejected as untimely.

This CCN application is a contested case

Telmate initially claims, "There has not been a contested case convened in this docket, nor is there any justification for a contested case." Response of Telmate, at 3. Telmate then

argues that since there is no "contested case," there is no proceeding in which Pay-Tel can intervene.

Under Tennessee law, an application for a certificate of convenience and necessity requires "a hearing" by the Authority. T.C.A. § 65-4-201(c). By definition, a "contested case" means a proceeding "determined by an agency after an opportunity for a hearing." T.C.A. § 4-5-102(3). "Such a proceeding may include . . . granting of certificates of convenience and necessity." *Id.* Since a hearing is required on Telmate's application, this proceeding is, by definition, a "contested case."

As a competitor of Telmate, Pay-Tel has a legal right to intervene

Telmate's next argument is that Pay-Tel's petition to intervene does not state "facts" demonstrating that Pay-Tel's legal interest may be determined in this proceeding. The petition does state the "fact" that Pay-Tel and Telmate are competitors in the inmate telephone business. Pay-Tel, therefore, has an interest in determining whether Telmate will demonstrate, as it is required to do, that Telmate will "adhere to all applicable Authority's policies, rules and order." T.C.A. 365-4-201(c)(1). Pay-Tel is not protected from competition, but it is protected from competitors who fail to demonstrate that they will follow the law. Pay-Tel is not required to make allegations or present evidence that Telmate will not abide by state law. The burden of proof is on Telmate to demonstrate that it will. As a competitor, Pay-Tel has a legal interest in making sure Telmate carries that statutory burden. That alone is sufficient grounds to justify Pay-Tel's intervention. Here, Telmate is not applying for certification to provide local telephone service but indicates that local service will be provided through its "regulatory partner Airespring." It is not clear from Telmate's responses to the TRA's data requests how that partnership will work in Tennessee or which carrier will contract with an inmate facility for

service. These issues should be explored at the hearing. As a competitor, Pay-Tel has a legal right to participate in that hearing.

The Petition to Intervene was timely filed

Telmate implies that the Petition to Intervene was not filed "at least seven days before the hearing." T.C.A. § 4-5-310. The Petition was filed on April 19, 2012. No hearing notice had been issued at that time and, as of this date, no hearing notice has yet been set. The Petition was timely filed.

Telmate's application has not been unduly delayed


Finally, Telmate asserts that its application, which has been pending for six months, has been unduly delayed. As the docket reflects, the staff issued two rounds of data requests about the application. Each time, Telmate asked for an extension of time to respond. Another month was spent examining whether Telmate's data responses were, as the applicant claimed, confidential. They were not, as Telmate eventually conceded. Telmate has no cause to complain about the time spent by the staff investigating the carrier's application. Telmate itself is responsible, in part, for the delay.

CONCLUSION

To counsel's knowledge, the TRA has never denied a petition to intervene filed by a potential competitor of the applicant. A competitor has a legal interest in making sure that the applicant meets the statutory criteria for certification. Telmate's objections should be overruled and the Petition granted.

Respectfully submitted,

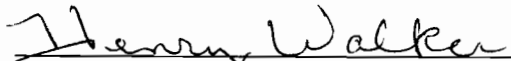
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CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of May, 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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