

FEB 14 2008

Clerk's Office  
N.C. Utilities Commission

DOCKET NO. P-100, SUB 84c

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Pay Tel Communications, Inc.,	)	
Evercom Systems, Inc. and T-NETIX	)	COMMENTS OF THE
Telecommunications Services, Inc.	)	PUBLIC STAFF
Request for Waiver of Rule R13-9(d)	)	
of the Rules of the North Carolina	)	
Utilities Commission	)	

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*Long*  
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NOW COMES THE PUBLIC STAFF - North Carolina Utilities Commission (Public Staff), by and through its Executive Director, Robert P. Gruber, and submits these comments in response to the Commission's January 2, 2008 Order Seeking Comments.

1. On December 27, 2007, Pay Tel Communications, Inc. (Pay Tel) and Evercom Systems, Inc. and T-NETIX Communications Services, Inc. (E&T) filed a Petition for Waiver of Rule R13-9(d). Petitioners are certificated payphone service providers ("PSPs") that, collectively, provide inmate calling services ("ICS") to most of North Carolina's county confinement facilities. Petitioners offer ICS by using payphones equipped with automated systems that enable the completion of station-to-station collect calls without the intervention of a live operator.

2. A "traditional" live operator assisted station-to-station collect call involves several distinct steps. To initiate the call, a caller dials a "0" or a sequence of digits to access a live operator. This operator (1) takes the caller's name, terminating number, and any special calling requests; (2) dials the terminating number and waits on the line until the call is answered; (3) tells the call recipient that he has a collect call, identifies the caller, and asks the recipient if he wishes to accept the call; (4) if the call is accepted, connects the calling and called parties together on the line; and (5) if the call is not answered, or is refused, advises the caller of the situation and asks for further instructions. During an automated collect call, these same functions are provided by automatic software and hardware systems that enable "dumb" payphones to simulate the functions of a live operator and complete collect calls. This sophisticated automated equipment may also be programmed to provide additional call screening, recording, and blocking functions requested by the PSP or the confinement facility administration.

3. Prior to the late 1980s, when the Commission began certifying independent payphone providers in North Carolina, ICS were provided exclusively by incumbent local exchange carriers (ILECs) using live operator assisted collect calls. The local and long distance collect charges billed by the ILECs and AT&T Communications were significantly higher than the charges for comparable direct-dialed or calling card calls, primarily due to the significant labor costs associated with these calls. In 1989, when the Commission authorized PSPs to offer "automated collect only"

calling, it concluded that the cost to the call recipient for an automated collect call should not exceed the tariffed rates of the local exchange company for a local or intraLATA toll call, or the tariffed rates of AT&T for an interLATA toll call.<sup>1</sup> These rate restrictions were incorporated into Commission Rule R13-9(e),<sup>2</sup> and they remained in effect for toll calls until January 2, 2004, when the Commission modified the rule to reflect the deregulation of intraLATA and interLATA long distance services and long distance operator services by the North Carolina General Assembly.<sup>3</sup> During this process, Rule R13-9(f) was rewritten to remove references to toll calls, and renumbered as R13-9(d). The rate cap on local automated collect calls, which limits the charges that can be imposed on a call recipient to those set by the local exchange company for local collect station-to-station calls, has remained in effect since that time.

4. Representatives of North Carolina's confinement facility PSP industry have long contended, as Petitioners do in paragraphs 10 through 14 of their petition, that the Commission's authorized charges for calls from confinement facilities are unreasonably low compared to those allowed in many other states; that Rule R13-9(d)'s cap on automated collect call charges is outdated and bears no relation to the actual costs incurred in providing these calls; and that the capped rates are insufficient to compensate PSPs for the sophisticated services they are expected to provide in a "post-9/11" confinement facility environment. The Public Staff will not address those comments here, but will address the specific rule waiver and rate change that appears to be the primary goal of the petition.

5. In paragraphs 17-19, Petitioners propose that they (and other providers of ICS) be permitted to apply the statewide local collect operator services rate of \$1.71 that is currently approved for Network PTS, Inc. (Network) and Legacy Long Distance International, Inc. (Legacy). Petitioners request that the Commission extend this same rate to confinement facility PSPs by waiving Rule R13-9(d) and authorizing PSPs to impose a charge of up to \$1.71 per call (the current tariffed rate of Concord Telephone Company (Concord)) for a local automated collect call initiated from any confinement facility in North Carolina.

6. Petitioners correctly note that the Commission authorized Network and Legacy to charge this \$1.71 rate for local operator assisted calls, including collect calls, in its orders granting these companies CLP certificates.<sup>4</sup> At that time, \$1.71 was the rate charged for local collect calls by Concord, and it was also the highest rate being charged for a collect call at the time by any ILEC operating in North Carolina.

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<sup>1</sup> See the *Order Allowing Automated Collect Calling*, issued December 22, 1989 in Docket No. P-100, Sub 84.

<sup>2</sup> The rule was again renumbered, to Rule R13-9(f), by the *Order Amending Commission Rule R13*, issued October 7, 1997 in Docket No. P-100, Sub 84a.

<sup>3</sup> See the *Order Concerning Compliance with Senate Bill 814*, issued January 2, 2004 in Docket No. P-100, Sub 72b.

<sup>4</sup> See the *Recommended Orders Granting Certificate of Public Convenience and Necessity* in Docket Nos. P-1350, Sub 1 (Network) and P-1173, Sub 1 (Legacy).

7. During the process of investigating Network's and Legacy's CLP certificate applications, the Public Staff determined that the rates the companies proposed to charge for certain local operator services were reminiscent of the exorbitant amounts charged by alternate operator services (AOS) providers in the late 1980s. Excessive operator service charges billed by AOS companies led to large numbers of customer complaints to the FCC and this Commission. These excessive charges were the primary reason that the Commission ultimately denied AOS providers the opportunity to become certified in North Carolina.<sup>5</sup>

8. In their certification dockets, Network and Legacy voluntarily agreed to cap their statewide rate for local operator-assisted calls at Concord's rate of \$1.71 per call. They also agreed to limit their charges for local automated collect calls from payphones to those authorized under Rule R13-9(d). The Public Staff did not oppose the certification of Network and Legacy subject to these voluntary rate constraints.

9. Out of fairness to PSPs, and recognizing that adoption of a statewide rate cap for local automated collect calls North Carolina makes sense, the Public Staff does not oppose Petitioners' proposal that they (and other PSPs) be allowed to charge up to Concord's current rate of \$1.71 for local automated collect calls and to charge up to Concord's rates for those calls in the future.

10. However, rather than implementing this change by waiving Rule R13-9(d) and setting a surrogate rate for local automated collect calls outside of the standard rulemaking process, the Public Staff recommends that the Commission adopt an interim Rule R13-9(d) and allow its new rate of \$1.71 per call to take effect immediately. The Public Staff proposes the following change to the existing Rule.

Proposed Change - Rule R13-9(d): 0+ Local Automated Collect Station-to-Station. The recipient of a local automated collect station-to-station call may not be charged more for the call than would have been charged by ~~the local exchange company~~ Concord Telephone Company for a local collect station-to-station call.

Interim Rule R13-9(d): 0+ Local Automated Collect Station-to-Station. The recipient of a local automated collect station-to-station call may not be charged more for the call than would have been charged by Concord Telephone Company for a local collect station-to-station call.

11. The Public Staff requests that the Commission adopt this proposed interim Rule R13-9(d), authorizing PSPs to begin immediately charging call recipients up to Concord's current rate of \$1.71 for station-to-station automated collect calls, and to charge up to Concord's rates in the future. The Public Staff further requests that the Commission give all interested parties the opportunity to comment on the interim rule

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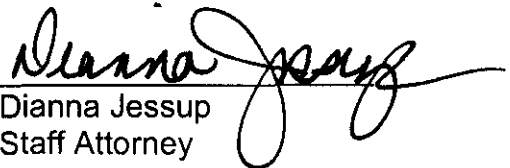
<sup>5</sup> See the *Order Finding That Intrastate Certification of Alternative Operator Services is Not in the Public Interest*, issued October 21, 1988 in Docket Nos. P-100, Sub 101 and P-100, Sub 84.

and issue a further order adopting interim Rule R13-9(d) permanently if no significant objections are received.

Respectfully submitted, this the 14th day of February 2008.

PUBLIC STAFF  
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**CERTIFICATE OF SERVICE**

I certify that a copy of these comments has been served on all parties of record or their attorneys, or both, by depositing a copy in the United States Mail, first class postage prepaid, properly addressed.

This the 14th day of February 2008.

  
Dianna Jessup