



Pay-Tel Communications Inc
PO Box 8179 • Greensboro, NC 27419 • www.paytel.com

December 7, 2007



Mr. Walter L. Thomas
Commission Secretary
Public Service Commission
PO Box 304260
Montgomery, AL 36130

Re: Comments Docket No. 30632

Dear Mr. Thomas:

Please find enclosed the comments of Pay Tel Communications, Inc. in the matter of Generic Proceeding to Determine Applicability of the Communications Reform Act of 2005 to Inmate Phone Service, Docket No. 30632.

If you should have any questions, please contact me at 866-729-8352, ext. 227.

Sincerely,

J. Vincent Townsend
President

JVT/bp

Enclosure

**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

In the Matter of
Generic Proceeding to Determine Applicability)
of the Communications Reform Act of 2005 to) Docket No. 30632
Inmate Phone Service)

**COMMENTS OF
PAY TEL COMMUNICATIONS, INC.**

Pay Tel Communications, Inc. ("Pay Tel") respectfully submits these Comments pursuant to the Commission's Order establishing Generic Proceeding to Determine Applicability of the Communications Reform Act of 2005 to Inmate Phone Service, issued November 6, 2007, in the above-referenced proceeding (the "Order").

**I.
Background**

Pay Tel is certified by the Commission as a Customer Owned, Coin Operated Telephone Service ("COCOT") provider that provides telecommunications services within confinement facilities (*i.e.*, "inmate phone services" or "IPS") in the southeast. Pay Tel has an Active Status to provide both Payphone and Inmate Service in Alabama under Docket No. U-4212. The name and address of Pay Tel is as follows:

Pay Tel Communications, Inc.
P.O. Box 8179
Greensboro, North Carolina 27419

Pay Tel, founded in 1986, is one of the nation's leading inmate telephone service providers, serving 177 county confinement facilities in North Carolina, Georgia, Virginia, South Carolina, Tennessee, and Florida. Pay Tel is currently marketing its service to obtain clients in Alabama. Pay Tel was the first IPS provider, beginning in 1991, to

offer customer service dedicated solely to serving inmates' families and was the first inmate calling services provider, also beginning in 1991, to offer in-house billing and prepaid calling plans with discounts on every call. Pay Tel's founder and president, Vincent Townsend, is a recognized expert on fraud prevention in public communications and has served for many years as the payphone industry's representative on the Telecommunications Fraud Prevention Committee of the Alliance for Telecommunications Industry Solutions.

II. Argument

As a general matter, Pay Tel agrees with the Commission Staff's determination, articulated in the Order, that the Communications Reform Act of 2005 (the "Act"), Ala. Code § 37-2A-1 *et seq.*, does not and should not apply to IPS or IPS providers. Pay Tel more specifically addresses the Staff's determination below.

A. **The Act Applies Only to Services Provided in Markets Where Consumers Have a Choice Among Providers, Not to Confinement Facilities.**

As the Order notes, the stated purpose of the Act is to enable "additional consumer and economic benefits . . . through the adoption of new policies promoting *market-based competitive forces* for today's advanced wireline communications services markets, while maintaining commission oversight of basic local wireline telephone service" and wholesale transactions between incumbent local exchange carriers with other carriers for exchange service and exchange access. *Id.* § 37-2A-3 (emphasis added). In acknowledgement of the benefits of competition in a wide-open marketplace, the Act removes certain telecommunications services from the jurisdiction of the Commission. *See id.* § 37-2A-4. However, by its terms, the Act is predicated on

competition among providers: “[W]ireless and Internet technologies delivered by *multiple competitors* are providing consumers and businesses with advanced communications services, enhancing the quality of life and economic productivity.” *Id.* § 37-2A-3 (emphasis added).

Pay Tel agrees with the Staff’s reasoning that the lynchpins of the Act’s deregulatory scheme are the “multiple competitors” and the “market-based competitive forces” at play in the residential and business telecommunications market. Moreover, Pay Tel concurs that IPS is not and cannot be among the services the Act seeks to deregulate because of the unique manner in which IPS is provided. While the Act contemplates deregulating those telecommunications services provided to consumers who have a broad array of providers to choose from, IPS simply does fit within this category of service. IPS is offered only to callers within confinement facilities. There are no “multiple competitors” for callers to choose from in this environment and no “market-based competitive forces” at play. Rather, because of the particular nature of confinement facility setting, inmate callers have only one option for service. And, as articulated in its stated legislative purpose, the Act was intended to loosen regulation in the context of markets where consumer options exist—not where choices are constrained, as they are in confinement facilities.¹

¹ Pay Tel wishes to make clear that there is clearly competition between vendors of IPS for contracts to serve confinement facilities. However, because of the intrinsic nature of the service, including the vital need for security-related technology and capabilities, it is not feasible to have multiple providers of IPS at one confinement facility. Pay Tel believes that the Act was intended to address situations where the ultimate use of the telecommunications service—the party placing the calls—is able to choose from alternative providers of service.

Given the unique context within which IPS is provided, Pay Tel believes that continued regulation of IPS is needed and urges the Commission to retain jurisdiction over IPS.

B. The Act Does Not Apply to Contractual Arrangements Between IPS Providers and Confinement Facilities.

Additionally, Pay Tel agrees with the Staff's determination that the "contract offerings" which the Act removes from the Commission's jurisdiction are not the kinds of contractual arrangements under which IPS operates. The Act divests the Commission of jurisdiction over "any new contract offering," Ala. Code § 37-2A-4(e), and defines a "contract offering" as "any *retail* contractual agreement . . . by which a local exchange or inter-exchange carrier offers any communications service to any existing customer or potential customer." *Id.* § 37-2A-2(6) (emphasis added). Because IPS calling services are offered pursuant to contracts between confinement facilities and IPS providers—and are not "retail" contracts between the provider and a "customer"—the Commission retains jurisdiction over services provided under IPS contracts. As the Order correctly states, the correctional facility with whom the IPS provider has a contract is not a "user" or a "customer" of the service at all.

C. IPS Is Not a "Telecommunications Service" Subject to the Act.

Likewise, Pay Tel agrees with the Staff's interpretation that IPS is not a "telecommunications service" as defined by the Act and therefore remains under the Commission's jurisdiction. The Order notes that the Commission no longer has regulatory authority over "any retail telecommunications service" and certain bundled offerings. Ala. Code § 37-2A-4(g). The Act defines "telecommunications services," in pertinent part, as the "offering of telecommunications for a fee *directly to the public* . . ."

Id. § 37-2A-2(19) (emphasis added). While calls placed from IPS facilities are completed, ultimately, via local exchange facilities to members of the public who agree to accept charges for the calls, Pay Tel believes that, on balance, IPS does not come within the intent of the Act because the capability of placing calls is not available to “the public,” but instead is only available to inmates within the facilities as determined by the rules and regulations of the facility. IPS providers provide services to incarcerated callers in a very particular, non-public environment (*i.e.*, confinement facilities). As such, inmate phone service does not appear to be subject to deregulation under the Act.

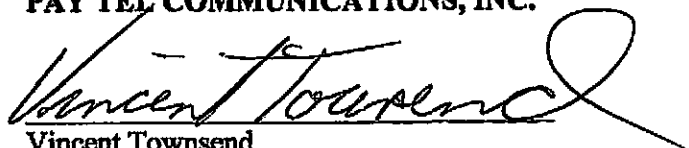
**III.
Conclusion**

WHEREFORE, Pay Tel respectfully requests that the Commission affirm the Staff’s recommendation and issue an Order declaring that the Communications Reform Act of 2005 does not apply to inmate phone service and that inmate phone service remains under the full jurisdiction of the Commission.

Dated: December 7, 2007. Respectfully submitted,

PAY TEL COMMUNICATIONS, INC.

By:



Vincent Townsend
President