

On information and belief, Encartele is a Nebraska corporation maintaining its principal place of business at 2615 Harney Street, Omaha, Nebraska 68131. Encartele obtained a certificate of authority to conduct business in Georgia on June 7, 2005.

JURISDICTION

3.

The Commission has jurisdiction over this Complaint pursuant to the Telecommunications and Competition Development Act of 1995, O.C.G.A. ' 46-5-160 et. seq., and generally pursuant to O.C.G.A. ' ' 46-2-20, 46-2-21, and 46-5-45.

4.

O.C.G.A ' 46-5-163(a) provides:

A telecommunications company including a telecommunications services reseller shall not provide telecommunications services without a certificate of authority issued by the commission. The provisions of Code Section 46-5-45 shall apply in circumstances where a telecommunications company is providing telecommunications services without a certificate issued by the commission.

5.

O.C.G.A. ' 46-5-45 provides:

Whenever any person is engaged in or is about to engage in the construction, operation, or acquisition of any telephone line, plant, or system without having secured a certificate of public convenience and necessity as required by Code Section 46-5-41, any interested person may file a complaint with the commission. The commission may, with or without notice, make its order requiring the person complained of to cease and desist from such construction, operation, or acquisition until the commission makes and files its decision on the complaint

or until further order of the commission. The commission may, after a hearing conducted after the giving of reasonable notice, make such order and prescribe such terms and conditions with respect thereto as are just and reasonable.

FACTS

6.

Pursuant to an Inmate Telecommunications Agreement (AITS Agreement@) entered into on April 26, 1999, and amended in October 2002, Pay Tel currently provides ITS to the detention facility operated by Twiggs County, Georgia (ATwiggs County@).

7.

Pay Tel=s ITS Agreement with Twiggs County does not expire until August 13, 2011.

8.

By letter dated December 8, 2005, counsel for Twiggs County notified Pay Tel that its ITS Agreement Awill no longer be operative after December 31, 2005.@

9.

On information and belief, Encartele has entered into, will enter into, intends to enter into or has made a proposal to enter into a contract with Twiggs County authorizing Encartele to provide ITS at the Twiggs County detention facility beginning on or about January 1, 2006, or at some other date shortly thereafter.

10.

On information and belief, Pay Tel believes that Encartele may also be providing ITS to the detention facilities of Jeff Davis, Crawford, and Cherokee counties, the Crisp County Youth Detention Center, and possibly other detention facilities located in Georgia.

11.

Based on a review of the records of this Commission, Encartele is not certificated to provide ITS in the State of Georgia. Encartele filed an Application for Certificate of Authority to Provide Institutional Telecommunication Service with the Commission on or about December 19, 2005. The Commission has not acted on Encartele=s Application.

12.

On information and belief, Pay Tel further believes that Encartele, (to the extent it may be providing ITS service) is providing service in a manner which violates the Commission=s ITS rules.

COUNT I

REQUEST FOR A CEASE AND DESIST ORDER BASED ON
ENCARTELE=S PROVISION OF ITS SERVICE WITHOUT
A CERTIFICATE OF AUTHORITY

13.

Pay Tel incorporates by reference the allegations of paragraphs 1 through 12, as if fully set forth herein.

14.

Both the Telecommunications and Competition Development Act of 1995 and Commission Utility Rule 515-12-1-.30(2) require that ITS providers obtain a certificate of authority from the Commission in order to lawfully provide ITS.

15.

As of the date of this pleading, Encartele has not been granted a certificate of authority to provide ITS by this Commission.

16.

Pursuant to O.C.G.A. ' 46-5-45, where it appears that a person is engaged in or is about to engage in the operation of a telephone line without having secured a certificate of authority, any interested person may file a complaint with the Commission, and the Commission may, with or without notice, order the person complained of to cease and desist from such operation until the Commission makes and files its decision on the complaint.

17.

Pay Tel requests that the Commission issue a Cease and Desist Order to prohibit Encartele from providing ITS in the State of Georgia until such time as the Commission may hold a hearing on this matter.

COUNT II

REQUEST FOR A CEASE AND DESIST ORDER BASED ON
ENCARTELE-S PROVISION OF ITS SERVICE
IN VIOLATION OF COMMISSION RULES

18.

Pay Tel incorporates by reference the allegations of paragraphs 1 through 17, as if fully set forth herein.

19.

Pursuant to the Commission Utility Rules governing the provision of ITS, the ITS provider must order a separate public telephone access line for institutional services, which may serve up to three instruments per line installed.

20.

The provisioning of ITS by means of technology other than public access line, such as broadband, is prohibited.

21.

On information and belief, Pay Tel believes that Encartele may be providing ITS by means of broadband and/or VoIP, rather than public access lines.

22.

While Pay Tel favors revising the Commission=s current rules governing ITS to allow ITS providers to utilize new technologies, each ITS provider must comply with the current rules until they are modified by the Commission. Encartele=s failure to comply with the current ITS rules places all other ITS providers at competitive and economic disadvantage.

23.

Pay Tel requests that the Commission issue a Cease and Desist Order to prohibit Encartele from providing ITS in the State of Georgia in a manner which violates this Commission=s rules governing ITS.

PRAYER FOR RELIEF

WHEREFORE, Pay Tel respectfully requests that:

- a. the Commission issue an Order which prohibits Encartele, Inc. from providing ITS in the State of Georgia without a Certificate of Authority;
- b. the Commission issue an Order which prohibits Encartele, Inc. from providing service in violation of this Commission=s rules;
- c. the Commission conduct a hearing on the issues raised in this Complaint; and
- d. the Commission grant such other and further relief as it deems just and proper.

This ____ day of December, 2005.

GALLOWAY & LYNDALL, LLP
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CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing COMPLAINT AGAINST ENCARTELE, INC. upon the following persons by causing copies of the same to be placed in an envelope with adequate postage affixed thereon and deposited in the United States Mail addressed as follows:

Ms. Jeanette Mellinger, Director
Consumers Utility Counsel
2 Martin Luther King, Jr. Drive
Suite 356, East Tower
Atlanta, GA 30334

Business Filings, Inc.
Registered Agent for Encartele, Inc.
1201 Peachtree Street, NE
Atlanta, GA 30361

Mr. Joseph C. Byam
Registered Agent for Encartele, Inc.
317 American National Building
8990 West Dodge Road
Omaha, Nebraska 68114

This ___ day of December, 2005.

Counsel for Pay Tel Communications, Inc.