

IN RE: Docket No. 22071-U: Encartele, Inc.’s Application for Certificate of Authority to Provide Institutional Telecommunication Services.

Docket No. 22120-U Complaint of Pay Tel Communications, Inc. against Encartele, Inc.

**ORDER ADOPTING AND MODIFYING HEARING OFFICER’S
RECOMMENDED DECISION**

I. Statement of Proceedings

On December 19, 2005, Encartele, Inc. (“Encartele”) filed an application to provide institutional telecommunications service in Georgia (Docket No. 22071-U). On January 3, 2006, Pay Tel Communications, Inc. (“Pay Tel”) filed a complaint against Encartele for allegedly doing business in Georgia without proper certification (Docket No. 22120-U). On April 4, 2006, the two dockets were consolidated and assigned to a hearing officer.

A hearing was held on July 21, 2006 before Hearing Officer John Tucker. Encartele and Pay Tel each presented witnesses. Cross-examination was conducted by all parties to the proceeding. Briefs and Reply Briefs were filed on September 19, 2006 and October 12, 2006 respectively.

On November 20, 2006, a stipulation signed by Staff, Encartele, Pay Tel and the Consumers’ Utility Counsel Division of the Governor’s Office of Consumer Affairs (“CUC”) was filed with the Commission (See “Attachment A”). In summary, the terms of the stipulation provide for the certification of Encartele to provide ITS, the imposition of a \$10,000.00 penalty upon Encartele for providing ITS without a certificate to be paid within thirty days of the date of the Commission order adopting the stipulation, that Encartele agrees that it will transport all ITS calls over a public access line, unless and until the Commission modifies its existing rules to permit ITS providers to use alternative technologies to transport calls, that Encartele notifies all institutions to which it provided ITS without a certificate of its violation, and that Encartele will abide by Georgia law, as well as Commission rules and orders.

On November 29, 2006, the Hearing Officer issued a Recommended Decision certifying the record to the Commission and adopting the Stipulation. The Hearing Officer concluded that Encartele possesses the technical and financial capability to provide ITS in Georgia, and that its

application should therefore be granted. (Recommended Decision, p. 2). The Hearing Officer also concluded that the Complaint of Pay Tel should be dismissed upon Encartele's payment of the \$10,000.00 civil penalty. *Id.*

II. Jurisdiction

The Commission has general authority over providers of telephone service pursuant to O.C.G.A. §§ 46-2-20 and 46-2-21. The Georgia Telecommunications and Competition Development Act ("Georgia Act"), O.C.G.A. § 46-5-160 *et seq.*, provides the Commission with authority over providers of telecommunications services. The Georgia Act also provides that providers of telecommunications services must first obtain certificates of authority from the Commission. O.C.G.A. § 46-5-163(a). In addition, the Commission has the jurisdiction to implement and administer the express provisions of the Georgia Act through rulemaking proceedings and orders in specific cases. O.C.G.A. § 46-5-168(a). The Georgia Act also provides the Commission with the authority, *inter alia*, to grant, modify, impose conditions upon, or revoke a certificate; to resolve complaints against a local exchange company regarding that company's service; and to approve and if necessary revise, suspend, or deny tariffs in accordance with the provisions of Title 46, Chapter 5, Article 4 of the Georgia Code. O.C.G.A. § 46-5-168(b)(2), (b)(5), (b)(7).

The Commission also has the authority to impose civil penalties upon companies subject to its jurisdiction for the willful violation of any law administered by the Commission. O.C.G.A. § 46-2-91(a).

III. Findings of Fact and Conclusions of Law

The Commission adopts the Hearing Officer's Recommended Findings of Fact. In the "Discussion and Conclusions of Law" section of the Hearing Officer's Recommended Decision, the Hearing Officer recommends that the Commission grant Encartele a certificate of authority and dismiss Pay Tel's Complaint against Encartele upon the payment of the \$10,000 penalty provided for in the stipulation submitted by the parties.

The Commission concludes that Encartele has demonstrated that it possesses the technical and financial capability to provide ITS and should be granted a certificate of authority. In providing ITS without a certificate of authority, Encartele violated the express terms of the Georgia Act, specifically O.C.G.A. § 46-5-163(a). The Commission administers the Georgia Act. The Commission concludes that a penalty should be imposed upon Encartele for its actions in providing ITS without a certificate of authority. Further, the Commission agrees that the recommended civil penalty of \$10,000, provided for in the stipulation is appropriate.

However, the Commission determines that it is in the best interests of consumers to use the \$10,000 penalty to provide a discount to Encartele's customers. At the December 19, 2006 Administrative Session, Staff informed the Commission that Encartele had agreed to account for the \$10,000 penalty by a \$1 reduction to the surcharge of the first \$10,000 ITS collect calls. The \$1 reduction will reduce the surcharge from \$2.20 (Local) and \$2.10 (Inter/IntraLATA) to \$1.20 and \$1.10, respectively (the effective cap minus a dollar). Encartele also agreed that the

following conditions should apply: (1) Encartele must file monthly records to demonstrate compliance with the \$1.00 discount on the surcharge, (2) Encartele must amend its tariffs with regard to rates in order to be consistent with the Commission ordered caps currently in effect, and must clarify in the tariff that the rates are maximum rates, and (3) Encartele must make a best effort to provide notice to its customers within thirty (30) days of when, based on experience, it contemplates the \$10,000 will be used up and the dollar reduction to the surcharge will no longer be available. The notice must be approved by the Commission Staff.

With respect to the monthly compliance filings, Staff will review the information to ensure that Encartele has properly implemented the Commission order. Encartele must provide information sufficient to demonstrate that it has complied with the terms of this order. If the information is not sufficient to ensure compliance, additional information may be requested.

Because Encartele indicated that there may be some technical difficulties in notifying customers of the change to the surcharge, it agreed at this point to make its “best efforts” to provide notice. Should it be determined that it is possible for Encartele to notify its customers of the increase to the surcharge that will take effect once the \$10,000 penalty is used up, then Encartele must provide such notice.

The Commission also adopts the remaining terms and conditions included within the parties’ stipulation.

IV. Ordering Paragraphs

The Commission finds and concludes that the issues presented to the Commission for decision should be resolved in accord with the terms and conditions as discussed in the preceding sections of this Order.

WHEREFORE IT IS ORDERED, that the Stipulation agreed to by the parties and the Hearing Officer’s Recommended Decision is adopted as modified herein.

ORDERED FURTHER, that Encartele is hereby granted a certificate of authority to provide ITS, subject to terms and conditions set forth herein.

ORDERED FURTHER, that a \$10,000 civil penalty be imposed upon Encartele for its provisioning of ITS in Georgia without first obtaining a certificate of authority from the Commission. Encartele shall account for the \$10,000 penalty through a \$1 reduction to the surcharge in the first 10,000 ITS calls for which Encartele recovers charges. The following conditions shall apply to the \$1 reduction to the surcharge: (1) Encartele must file monthly records to demonstrate compliance with the \$1.00 discount on the surcharge, (2) Encartele must amend its tariffs with regard to rates in order to be consistent with the Commission ordered caps currently in effect, and must clarify in the tariff that the rates are maximum rates, and (3) Encartele must make a best effort to provide notice to its customers within thirty (30) days of when, based on experience, it contemplates the \$10,000 will be used up and the dollar reduction to the surcharge will no longer be available. The notice must be approved by the Commission Staff.

ORDERED FURTHER, that upon a demonstration by Encartele that it has accounted for the \$10,000 penalty in compliance with the terms and conditions of this order, the Complaint of Pay Tel in this proceeding shall be dismissed.

ORDERED FURTHER, that all findings, conclusions and decisions contained within the preceding sections of this Order are adopted as findings of fact, conclusions of law, and decisions of regulatory policy of this Commission.

ORDERED FURTHER, that any motion for reconsideration, rehearing or oral argument shall not stay the effectiveness of this Order unless expressly so ordered by the Commission.

ORDERED FURTHER, that jurisdiction over this proceeding is expressly retained for the purpose of entering such further order or orders as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 19th day of December, 2006.

Reece McAlister
Executive Secretary

Stan Wise
Chairman

Date: _____

Date: _____