

January 23, 2014

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***Notice of Ex Parte Presentation –
Supplemental to Waiver Petition***

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

***Re: WC Docket No. 12-375, Petition of Pay Tel Communications, Inc. for Waiver of
Interim Interstate ICS Rates***

Dear Ms. Dortch:

This Notice serves to supplement the Petition for Waiver of Interim Interstate ICS Rates filed January 8, 2014 by Pay Tel Communications, Inc. (“Waiver Petition”). Reflecting discussions with Staff, Pay Tel supplements and revises its Waiver Petition as provided herein.

Pay Tel has demonstrated an intrastate shortfall in excess of \$1.6 million due to the prevalence of below average cost rate caps and restrictions in its service territory.¹ In light of the ongoing proceedings before the Commission with regards to adoption of permanent ICS rates and the proposed extension of the existing rate regime to intrastate rates, including preemption of below-cost intrastate rates, and acknowledging the existing court proceeding resulting in the stay of portions of the Commission’s newly-adopted ICS rate rules other than the rate cap,² Pay Tel seeks waiver of Commission Rule 47 C.F.R. § 64.6030, subject to the commitment that Pay Tel will not assess a rate for interstate long distance calls in excess of \$0.46/minute for existing or

¹ See, e.g., Pay Tel Petition for Waiver of Interim Interstate ICS Rates at 12–19, WC Docket No. 12-375 (Jan. 8, 2014); Pay Tel Petition for Partial Stay of Rates for Interstate Inmate Calling Services Order at 12–16, WC Docket No. 12-375 (Nov. 26, 2013); Pay Tel Comments in Response to Further Notice of Proposed Rulemaking at 10–15, WC Docket No. 12-375 (Dec. 20, 2013). See also Pay Tel Ex Parte Presentation, Supplemental Information, WC Docket No. 12-375 (Jan. 16, 2014) (showing that, if Pay Tel’s demonstrated costs for all calling types are utilized in lieu of the Order’s rate caps, Pay Tel’s intrastate shortfall would be \$2,565,809, instead of \$1,666,412).

² See *Securus Technologies, Inc. v. FCC*, Order, No. 13-1280 (D.C. Cir. Jan. 13, 2014) (staying 47 C.F.R. §§ 64.6010, 64.6020, and 64.6060 during the pendency of the petitions for review).

new clients.³ This revised commitment reflects, as requested by FCC staff and consistent with the FCC's Order released September 26, 2013,⁴ the elimination of interstate commissions from Pay Tel's interstate rates and is the minimum average rate which is necessary for Pay Tel to achieve interstate revenue neutrality after the effective date of the new rules.⁵ Attached is an analysis demonstrating this "break even" calculation.

Grant of the requested relief will permit Pay Tel to remain in business as the Commission continues to investigate the appropriate regulatory environment for the ICS industry, while providing protection to consumers who will continue to benefit from Pay Tel's industry-leading low fee structure and the below-cost local rates which predominate throughout Pay Tel's footprint, while also ensuring that consumers of interstate services receive meaningful decreases in interstate rates.

Consistent with Pay Tel's prior submissions in support of its waiver request, grant of the instant waiver will, in no way, result in a financial windfall to Pay Tel; indeed Pay Tel's profit margins over the past twelve years have hovered between 5.9% and -3.6%, and its profit margin was only 1.4% in 2012.⁶ If the instant waiver is granted, Pay Tel will still be faced with a net intrastate shortfall; indeed, the magnitude of this shortfall will be greater than as under its original proposal.

* * *

³ Pay Tel proposes to establish the proposed waiver commitment rate of \$0.46/minute as a "postalized" rate without any additional per-call surcharges. This commitment would not apply in those facilities with rates currently below the proposed \$0.46/minute rate (as to those rates, Pay Tel does not have the contractual flexibility to unilaterally increase rates). As a result, this proposal would not result in interstate rate increases in any existing Pay Tel facility. Pay Tel's existing rates are set out in Exhibit F to its Waiver Petition.

⁴ Report and Order and Further Notice of Proposed Rulemaking, *In re Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375 (Sept. 26, 2013).

⁵ With regards to ancillary charges, Pay Tel's existing fees are acknowledged to be the lowest in the industry, *see* Waiver Petition at n.69; consistent with its past practice, Pay Tel will assess the minimum in fees which are necessary to recover its costs, while providing full disclosure of such fees to its customers. However, Pay Tel reserves the right to revise its fee structure, or to impose new fees, consistent with applicable law and regulations.

⁶ *See* Waiver Petition, Exhibit G (Townsend Declaration) at ¶ 7.

Please do not hesitate to contact the undersigned should any questions arise concerning this filing.

Sincerely yours,

/s/ Marcus W. Trathen
Marcus W. Trathen

**Attachment to Pay Tel Ex Parte
January 23, 2014**

Pay Tel "Break Even" Analysis

Annual interstate revenue	\$1,596,603
Average 43.8% commission	\$(699,312)
Annual revenue need	<u>\$897,291</u>
Total interstate minutes	1,989,479
Per minute rate need	\$0.46

Amount Available for Intrastate Shortfall

Modified annual interstate revenue	\$897,291
Cost (@ \$0.21/min)	(417,791)
	<u>\$479,500</u>