BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 92-028-C - ORDER NO. 92-431

JUNE 17, 1992

IN RE: Application of Robert Cefail & Associates American Inmate Communications, Inc. for a Certificate of Public Convenience and Necessity to operate as a reseller of telecommunications services, including operator services, within the State of South Carolina.	)	ORDER GRANTING CERTIFICATE

This matter is before the Public Service Commission of South Carolina (the Commission) by way of the Application of Robert Cefail & Associates American Inmate Communications, Inc. (Cefail) requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of telecommunications service, including operator services, and authorizing it to place telephones in confinement facilities in the State of South Carolina. Cefail's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1991) and the Regulations of the South Carolina Public Service Commission.

The Commission's Executive Director instructed Cefail to publish a prepared Notice of Filing in newspapers of general circulation in the affected areas one time. The purpose of the Notice of Filing was to inform interested parties of Cefail's Application and the manner and time in which to file the appropriate pleadings for participation in the proceeding. Cefail

complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. Petitions to Intervene were filed by Southern Bell Telephone and Telegraph Company (Southern Bell), Pay-Tel Communications, Inc. (Pay-Tel), and the South Carolina Department of Consumer Affairs (the Consumer Advocate).

A hearing was commenced on Thursday, May 21, 1992, at 10:30 a.m. in the Commission's Hearing Room. The Honorable Majorie Amos-Frazier presided. Robert D. Coble, Esquire, represented Cefail; Carl F. McIntosh, Esquire, represented the Consumer Advocate; Caroline N. Watson, Esquire, represented Southern Bell; John F. Beach, Esquire, represented Pay-Tel; and Gayle B. Nichols, Staff Counsel, represented the Commission Staff.

After full consideration of the applicable law and the evidence presented by each of the parties, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Cefail presented the testimony of J. Scott Moreland in support of its Application. Mr. Moreland explained Cefail's request for certification to operate as a reseller of interexchange telecommunications services, including operator services, to provide "0+" collect only interLATA and intraLATA service, to provide "0+" collect only local service, and to provide other services from confinement facilities consistent with prior Commission rulings. Mr. Moreland testified that as a non-facilities based reseller, Cefail's underlying carrier for

interLATA service will be MCI and its underlying carrier for intraLATA service will be the local exchange carrier. Mr. Moreland explained that inmates will be able to complete only coinless, collect calls using an automated telephone. He testified that the called party must positively accept the collect call. Mr. Moreland testified that all calls are branded to the calling and called party by Cefail.

2. Mr. Moreland testified that Cefail will block all 800, 900, 976, 911, and directory assistance calls. He testified that, at the request of the confinement facility, calls to a specific telephone number could be screened and denied to prevent harassment.

3. Mr. Moreland testified Cefail is prepared to comply with the Rules and Regulations of the Commission relating to telecommunications services. He testified that Cefail is certificated in eighteen (18) states. Mr. Moreland testified that Cefail is already authorized to sell and install coin or coinless telephones (COCOTs) in South Carolina.

4. According to its Applicant, Cefail is a privately-held corporation incorporated in the State of Florida and has authority to do business as a foreign corporation in South Carolina. Cefail asserts in its Application, and through its testimony, that it has the financial capability to provide the interexchange telecommunications service it desires in South Carolina.

5. On cross-examination, Mr. Moreland admitted that Cefail had on a systemwide basis overcharged customers in North Carolina

for the last two years and that, on one occasion, through computer error, had allowed passive acceptance of automated calls. Mr. Moreland explained, however, that Cefail did not deliberately overcharge its North Carolina customers and that it was willing to repay all overcollections.

6. On cross-examination, Mr. Moreland also admitted that for approximately one year Cefail had provided automated collect call service to the Orangeburg-Calhoun Detention Center. Mr. Moreland testified, however, that Cefail had not charged its customers for these calls and that, in fact, it had absorbed the intraLATA charges imposed by the local exchange carrier (LEC).

Mr. Moreland further testified that in December 1991 or January 1992 it installed coin or coinless telephones in the Newberry County Detention Center, but that these telephones were not programmed with the automated feature and, consequently, required live operators. Mr. Moreland testified that Opticom provided this operator service.[1]

7. J. Vincent Townsend, III, owner and President of Pay-Tel, testified in opposition to Cefail's Application. Mr. Townsend testified that Cefail's history of overcharges and other inmate telephone violations in North Carolina and Virginia demonstrate that Cefail is not fit to be certificated as an inmate telephone provider in South Carolina.

8. Mr. Townsend further testified that for a nine month

1. Opticom was granted a Certificate of Public Convenience and Necessity to provide operator services in January 1991.

period, Cefail provided inmate telephone service to the Orangeburg-Calhoun Detention Center without possessing a COCOT certificate, much less authority to provide automated operator services.

9. At the beginning of the hearing, Southern Bell placed a stipulation between itself and Cefail in evidence. This stipulation addressed the terms of Cefail's request for authority. Hearing Exhibit No. 1. Thereafter, Southern Bell withdrew from further participation in the proceeding.

CONCLUSIONS OF LAW

1. The Commission is concerned about Cefail's violations of pay telephone rules and regulations and, consequently, its fitness to provide the services it requests in this Application. The Commission is particularly concerned about Cefail's admitted violations of the North Carolina Public Utility Commission's regulations and Cefail's provision of COCOT telephones to the Orangeburg-Calhoun Detention Center without authority. Nonetheless, based upon its experience, financial resources, capability, and assertion that it will comply with all applicable rules and regulations of this Commission, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Cefail to provide intrastate, interLATA service through the resale of interstate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Services, or any other services authorized for resale by tariffs of facility-based carriers approved by the

Commission, and to provide local and intraLATA services as described in its Application, testimony, and Hearing Exhibit No. 1 to confinement facilities.

2. If Cefail incidentally or accidentally completes any intraLATA calls, other than those described above, or other than those originating from confinement facilities, the LEC shall be compensated by Cefail as ordered by the Commission in Order No. 86-793, issued August 5, 1986, in Docket No. 86-187-C.

3. The Commission adopts the rate design for Cefail for its resale services for interLATA calling which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate level with a flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984). With the below noted exceptions, the Commission adopts Cefail's proposed maximum rate tariff and adopts the rates for provision of services to confinement facilities. Cefail shall delete its advance payment provision and operator person collect provision from its tariff.

4. Cefail shall not adjust its rates for interLATA calls below the approved maximum level without notice to the Commission and to the public. Cefail shall file its proposed rate change, publish its Notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes and a proposed increase in the maximum rate

level reflected in the tariff, which would be applicable to the general body of Cefail's subscribers should constitute a general ratemaking proceeding and will be treated in accordance with the Notice and Hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1991).

5. For the provision of intrastate telecommunications service, Cefail may only use underlying facility-based carriers that are certified by this Commission to provide such service. Cefail shall notify the Commission in writing of its underlying carrier(s) and of any change in its carrier(s).

6. Cefail shall file its tariff and an accompanying price list in a three ring notebook to reflect the Commission's findings within thirty (30) days of the date of this Order.

7. Cefail is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similar to facilities-based interexchange carriers.

8. The rates charged "0+" collect calls from confinement facilities on a local or intraLATA basis shall be no more than the rates charged by the LEC for local or intraLATA operated assisted calls at the time such call is completed.

9. The rates charged for "0+" collect calls from confinement facilities on an interLATA basis shall be no more than the rates charged for interLATA operator assisted calls by AT&T Communications at the time such call is completed.

10. The Applicant is required to brand all calls so that it

is identified as the carrier of such calls to the called party.

11. A "0+" collect call should only be completed upon positive or affirmative acceptance of the charges from the called party. Passive acceptance is prohibited.

12. Call detail information submitted by Cefail to the LECs for billing must include the COCOT access line number assigned to the line by the local exchange company.

13. The bill provided to the called party should provide Cefail's name and a toll-free number for contacting Cefail concerning any billing of service questions.

14. Cefail shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178, in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

15. Cefail shall comply with all Commission guidelines pertaining to the provision of COCOT service as set forth in Docket No. 85-150-C and any other relevant proceedings. Any departure from those guidelines will not be allowed without a specific request and Commission approval of the requested waiver.

16. The Commission hereby notifies Cefail that, as with other providers of confinement facility telephone services, it will carefully scrutinize Cefail's activities to ensure that it is complying with all of the Commission's Rules and Regulations and with its tariff.

17. A Certificate of Public Convenience and Necessity is hereby granted to Cefail in accordance with the terms and conditions of this Order.

18. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

VICE Chairman

ATTEST:

Executive Director

(SEAL)

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ATTACHMENT A

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS FOR INTEREXCHANGE COMPANIES AND AOS'S

(1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

(2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

(3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR 12 MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

* THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION, MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION WORK IN PROGRESS, ACCUMULATED DEFERRED INCOME TAX, CONTRIBUTIONS IN AID OF CONSTRUCTION AND CUSTOMER DEPOSITS.

(4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR ENDING _____.

* THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION PAYABLE), PREFERRED STOCK AND COMMON EQUITY.

(5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

(6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS WELL AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT (SEE #3 ABOVE).