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H. DOUG EVERETT  
ANGELA ELIZABETH SPEIR



DEBORAH K. FLANNAGAN  
EXECUTIVE DIRECTOR

REECE MCALISTER  
EXECUTIVE SECRETARY

(404) 656-4501  
(800) 282-5813

FAX: (404) 656-2341  
www.psc.state.ga.us

**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.**

### **RECOMMENDED DECISION**

#### **I.**

#### **BACKGROUND**

On December 19, 2005, Encartele, Inc. ("Encartele" or "Applicant") filed with this Commission an application seeking a Certificate of Authority to provide Institutional Telecommunications Service ("ITS"); and on January 3, 2006, Pay Tel Communications, Inc. ("Pay Tel" or "Petitioner") filed a Complaint with this Commission against Encartele for the latter's provision of IYS services in Georgia without certification from this Commission to do so. On April 11, 2006, the Commission assigned both of these matters to its hearing officer, Mr. Jeffrey Stair; and, then, on May 18, 2006, the Commission reassigned the matters to its undersigned hearing officer. On June 6, 2006, the Commission issued an Order consolidating the two above-referenced dockets because of the common parties, similarity and overlap of issues and factual context. On June 12, 2006, the Hearing Officer issued a Notice of Hearing and Procedural and Scheduling Order setting this matter down for hearing on at 1:00pm on July 14, 2006. Then, at the request of counsel for the respective parties, the hearing Officer issued an Amended Notice of Hearing rescheduling the hearing for 10:00am on July 21, 2006. At such hearing, both parties presented testimony and submitted documentary evidence. Subsequently, the parties filed post-hearing briefs and reply briefs in accordance with an extended briefing schedule revised at the request of counsel for the parties and permitted by the hearing officer. After the filing of briefs and before the hearing officer had rendered a decision, the parties and the Commission Staff advised the hearing officer that they were conducting settlement negotiations and requested that no recommended order be issued until such negotiations were completed.

#### **FINDINGS OF FACT**

On November 20, 2006, a Stipulation consented to by the Commission Staff, the Consumers' Utility Counsel Division of the Governor's Office of Consumer Affairs, Encartele and Pay Tel was filed with the Commission either settling all disputed factual and legal issues in this case or agreeing to await the outcome of a pending Commission Notice of Inquiry in Docket No. 23330-U before disputing further as to Commission regulation of ITS and technologically innovative services under Utility Rule 515-12-1-30(19). A copy of such Stipulation is attached hereto as Attachment A to this Order and is

hereby incorporated herein by reference and made a part of this Order as if fully set forth herein. Specifically, the parties agree and the Commission finds that Encartele possesses the technical and financial capabilities to provide ITS services in Georgia in accordance with the laws and regulations of this Commission. Further, in settlement of the disputed issues in this case, Encartele agreed to pay a civil penalty of \$10,000.00 in total satisfaction of all prior alleged statutory and regulatory violations and further agrees in the future to comply with all applicable provisions of Georgia law and the rules and regulation of this Commission; and it is the finding of the Commission that Encartele has the willingness and ability to do so.

Upon approval by the Commission, such Stipulation shall become binding on the parties and the law of the case in this proceeding; and Commission failure to approve the Stipulation shall by its terms render the Stipulation null and void; and, absent such Commission approval, such Stipulation shall not be admissible as evidence in any future proceedings before this Commission.

### III.

#### **DISCUSSION AND CONCLUSIONS OF LAW**

The issues in this proceeding were whether or not, under applicable statutes and Commission rules and regulations, Encartele had provided ITS service in Georgia without authority from the Commission and, if so, what sanctions should be imposed and whether such provision of service without authority disqualified Encartele from receiving a Certificate of Authority. Based on the evidence of record, it is clear Encartele has the technical and financial capability to provide ITS services in Georgia., that its application should, therefore, be granted and that the Complaint of Pay Tel should be dismissed upon Encartele's payment of the \$10,000.00 civil penalty in accordance with this Order.

### IV.

#### **ORDERING PARAGRAPHS**

The Hearing Officer certifies the record in this docket to the Commission and issues this recommendation pursuant to O.C.G.A. 46-2-58(d) and 50-13-17(a). Based upon the evidence and the negotiated consent agreement of the parties, the Hearing Officer recommends that the Commission

#### **WHEREFORE, IT IS:**

**ORDERED**, that, as a civil penalty for providing ITS service without certification from this Commission, Encartele shall pay top the Commission the sum of \$10,000.00 in Georgia within thirty (30) days of the date of this Order. .

**ORDERED FURTHER**, that, upon payment of said civil penalty, the Complaint of Pay Tel in this proceeding be, and hereby is, **Dismissed**, and the Application for a Certificate of Authority by Encartele be, and hereby is, granted, and such Certificate shall be issued to Encartel's satisfactory qualification therefore in accordance with the Commission's rules.

**ORDERED FURTHER**, that all findings, conclusions and decisions contained within this Order are hereby adopted as findings of fact, conclusions of law, and decisions of this Commission.

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

**ORDERED FURTHER**, that jurisdiction over this matter shall be retained for the purpose of entering such further Order or Orders as the Commission may deem just and proper.

**SO RECOMMENDED**, this 29th day of November, 2006.

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John P. Tucker  
Hearing Officer  
(404) 463-0882/[jtucker@psc.state.ga.us](mailto:jtucker@psc.state.ga.us)