

“When Is a Collect Call Cruel and Unusual Punishment?”

Panel Discussion on Prison Inmate Telephone Systems

Background Material:

- I. Georgia Public Service Commission -
Order in Docket No. 4530-U**
 - A. Direct Testimony of Frances M. Gutierrez - AT&T**
 - B. Direct Testimony of Thomas W. Sweeney - AT&T**
 - C. Direct Testimony of Paul J. Eide - Sprint**

- II. Summary Material Prepared by Cheryl
Johnson - Mitchell**

Monday, June 17, 2002

**NASUCA Consumer Protection Committee
Dian Callaghan, Chair**



**GEORGIA PUBLIC
SERVICE COMMISSION**

ORDER

DOCKET NO. 14530-U

**IN RE: GEORGIA PUBLIC SERVICE COMMISSION
PROCEEDING TO INVESTIGATE LONG
DISTANCE CHARGES APPLICABLE FROM
INSTITUTIONAL/CORRECTIONAL FACILITIES -
INSTITUTIONAL TELECOMMUNICATIONS SERVICES**



ORDER**Docket No. 14530-U**

In Re: *GPSC Proceeding to Investigate Long Distance Charges Applicable from
Institutional/Correctional Facilities – Institutional Telecommunication Services*

BY THE COMMISSION:

This matter comes before the Georgia Public Service Commission (“Commission”) to investigate the fairness of the rates charged for Institutional Telecommunication Services (ITS).

I. INTRODUCTION**A. Statement of Proceedings**

The Commission initiated this docket after receiving a number of complaints regarding the rates and charges for ITS. The November 29, 2001, Procedural and Scheduling Order (“Order”) requested that interested parties file testimony responding to the thirteen questions set forth in the Order. On December 20, 2001, the following parties filed testimony with the Commission: AT&T Communications of the Southern States LLC (“AT&T”) and TCG Public Communications, Inc., BellSouth Public Communications, Inc. (“BSPC”), MCI WorldCom (“WorldCom”), Pay Tel Communications, Inc. (“Pay Tel”) and Sprint Communications Company L.P. (“Sprint”). Hearings on the testimony took place before the Commission on January 16, 2002.

The Staff of the Georgia Public Service Commission (“Staff”) and the Consumers Utility

Counsel Division ("CUCD") participated in the hearings as well through cross-examination of witnesses. Pursuant to the Procedural and Scheduling Order, the parties filed with the Commission briefs, proposed orders or recommendations on January 30, 2002.

B. Jurisdiction

The Commission has general authority and jurisdiction over the subject matter of this proceeding conferred upon the Commission through O.C.G.A. §§ 46-1-1 *et seq.*, 46-2-20, 46-2-21, and 46-2-23.

The Commission has before it the testimony, evidence, arguments of counsel and appropriate matters of record enabling it to reach its decision.

II. FINDINGS AND CONCLUSIONS

The Procedural and Scheduling Order presented thirteen questions to define the scope of the proceeding. The questions pertained to local, intraLATA and interLATA calls. For the most part, the testimony of the parties attempted to respond to the presented questions.

A. Positions of Parties

1. How are the rates for inmate calls determined (local and long distance)?

BellSouth Telecommunications, Inc. is the dominant provider of local and intraLATA service in Georgia. BSPC's witness, Robert Burnett, prefiled testimony stating that BSPC charges the same rates for local and intraLATA ITS as is charged for similar calls made from the company's public payphones. (Tr. 150).

AT&T is the dominant provider of interLATA in Georgia. AT&T's witness, Frances M. Gutierrez, testified that AT&T's in-state interLATA rates for ITS often mirror the interstate rates or are mandated by the state public service commission. (Tr. 35). Sprint's witness, Larry E. Haataja, testified that in its experience, inmate call rates are usually set at or below the dominant ILEC's operator assisted collect call rate. (Tr. 198). Although Mr. Haataja went on to testify that some Commissions will set the maximum rates to be charged for ITS, or will prohibit providers from charging more than their currently tariffed rates on a prospective basis. (Tr. 198).

2. What makes up the rates/charges for local calls and for long distance calls (provide a basic breakdown of the actual rate)? (Cost justification)

3. How is that different from rates for the same type of service provided outside the Institution?

AT&T's witness, Ms. Gutierrez, stated that the provisioning of ITS involved additional costs for the provider. AT&T pays in the range of 10.5 percent of its revenues in transaction fees to the vendor. (Tr. 55). In addition, costs to the carrier as a result of fraud are higher in the provisioning

of ITS. The costs related to fraud and uncollectibles represents in the range of 20 to 25 percent of AT&T increased costs of providing ITS. (Tr. 55). Specialized equipment necessary for ITS represents anywhere from five to 25 percent of the increased costs of ITS. (Tr. 55-56). The remainder of the additional costs are a result of the commission that a carrier pays to the institutional facility. (Tr. 56).

AT&T's witness testified that on average nationally, it pays commissions for ITS in the range of 40 to 50 percent. In Georgia, WorldCom's contract with the Georgia Department of Corrections provides for a 65 percent commission. (Tr. 57). The evidence reflected that the Request for Proposals issued by the Georgia Department of Corrections did not specify an amount for the commission, but rather, that the commission would be weighted between 25 and 30 percent. (Tr. 61).

Sprint's witness, Mr. Haajata, testified that in some other states the 0+ rate for inmate service was different than the 0+ rate for other types of service. Mr. Haajata listed Kentucky and Nebraska as examples of such states. (Tr. 216).

4. How are rates for inmate calls determined in other states (BellSouth region)?

5. What are the rates for inmate calls in other states (BellSouth region)?

BSPC sponsored testimony stating that for local and intraLATA calls, other states in BellSouth's region determines rates "either according to Commission approved maximum dollar amounts permitted per call or per service or by reviewing the rates of the largest IXC in the state, or as in the case of North Carolina, by referring to the Local Exchange Carrier tariff rate (for local and intraLATA long distance)." (Tr. 151-52).

BSPC provided the local collect inmate calls for other states in the BellSouth region. The rates are as follows:

Alabama: Local Collect Call Surcharge = \$2.50, Local Call Charge = 50¢
Florida: Local Collect Call Surcharge = \$1.75, Local Call Charge = 50¢
Kentucky: Local Collect Call Surcharge = \$1.50, Local Call Charge = 50¢
Louisiana: Local Collect Call Surcharge = \$0.63, Local Call Charge = 35¢
Mississippi: Local Collect Call Surcharge = \$2.06, Local Call Charge = 50¢
North Carolina: Local Collect Call Surcharge = \$0.70, Local Call Charge = 24¢
South Carolina: Local Collect Call Surcharge = \$0.84, Local Call Charge = 50¢
Tennessee: Local Collect Call Surcharge = \$0.50, Local Call Charge = 50¢

(Tr.152).

In Georgia, BellSouth's local call rate includes a \$2.20 surcharge plus \$0.50 Local Call Charge. (Tr. 114).

BSPC also provided the rates for IntraLATA collect long distance calls in other states in BellSouth's region. They are as follows:

Alabama: \$2.50 IntraLATA Long Distance Collect Call Surcharge, Long Distance charges range from 15¢ to 25¢ per minute depending on the distance of the call for daytime rates

Florida: \$1.75 IntraLATA Long Distance Collect Call Surcharge, Long Distance = 30¢ per minute

Kentucky: \$1.50 IntraLATA Long Distance Collect Call Surcharge, Long Distance = 23¢ per minute

Louisiana: \$2.15 IntraLATA Long Distance Collect Call Surcharge, Long Distance ranges from 13¢ to 22¢ per minute depending on the distance of the call for daytime rates

Mississippi: \$2.25 IntraLATA Long Distance Collect Call Surcharge, Long distance ranges from 19¢ to 34¢ per minute depending on the distance of the call for daytime rates

North Carolina: \$1.25 IntraLATA Long Distance Collect Call Surcharge, Long Distance ranges from 16¢ to 51¢ per minute depending on the distance of the call for daytime rates

South Carolina: \$1.50 IntraLATA Long Distance Collect Call Surcharge, Long Distance = 33¢ per minute

Tennessee: \$0.50 IntraLATA Long Distance Collect Call Surcharge.

(Tr.153).

In Georgia, BellSouth's intraLATA rate includes a \$2.20 surcharge plus \$0.24 (day) and \$0.192 (evening/night/weekend) per minute rate. (Tr. 114).

AT&T's witness, Thomas Sweeney, testified that in other states in BellSouth's region, the Commission approves tariff rates. (Tr. 26). Pay Tel's prefiled testimony listed AT&T's interLATA rates for a twelve-minute, sixty-mile call for the states in BellSouth's region. The rates were discussed during cross-examination of AT&T's witness. The rates are as follows:

Alabama:	\$5.85
Florida:	\$5.35
Georgia:	\$12.23
Kentucky:	\$4.86
Louisiana:	\$5.15
Mississippi:	\$4.94
North Carolina:	\$4.53
South Carolina:	\$10.55
Tennessee:	\$7.82

(Tr. 58).

6. **What should the Commission consider when reviewing rates for inmate and inmate related services?**
7. **How should the rates for intralata and interlata for Georgia be capped and what criteria should be used (Dominant carrier rule of thumb, BellSouth operator charges for intralata and AT&T operator charges for interlata plus local or long distance toll)?**

The parties urged the Commission to consider the unique costs of providing ITS, such as specialized equipment, increased uncollectibles and fraud. (Tr. 174-75, 200).

The parties disagreed, however, on whether using the dominant carrier rate as a cap was a good solution. While Pay Tel supported the dominant carrier rate as a cap, it also stated that the carrier may be required to cost justify its rate. (Tr. 176). Sprint testified that the dominant carrier rate should only be used as a guideline because of the problems that could be created from reliance on the dominant carrier's rate. (Tr. 201). BSPC stated that it was opposed to "arbitrary" caps, but if the Commission were to approve a rate cap, it recommended that the Commission set the rates for

local, intraLATA and interLATA at the dominant carrier rate for operator charges, plus local or long distance charges. (Tr. 155). AT&T testified that rates should be based upon an evaluation of an ITS provider's costs. (Tr. 28).

8. Should there be a fixed rate/charge for local calls?

The thrust of the testimony related to Issue Number 8 related to cost recovery. AT&T opposed fixed rates because it did not believe that it allowed for cost recovery. (Tr. 28). Sprint did not oppose a fixed rate/charge as long as it allowed for cost recovery.

9. What type of tariff notice should be given to the Commission regarding rate/charge increases and decreases, what should be the procedure for approving or not approving the request and what should the recourse be for those not approved?

AT&T testified that the Commission should deem rates for inmate service presumptively valid if they are at or below the dominant carrier rate. (Tr. 28). Pay Tel supported a thirty day notice period for any rate increase. (Tr. 178). BSPC favored maintaining the current rules for tariff notification. (Tr. 155-56).

10. How should the recipient of the inmate calls be notified of the charges? (Should they have to push a prompt or should the rates be given up-front?)

11. What information should the carrier provide to the customer about the applicable rate?

Issue Numbers 10 and 11 both address customer notification. At the hearing, Staff asked a number of witnesses who they considered to be the customer for ITS. The responses indicated that the providing carrier would have a relationship with both the institution and the billed party. For ITS, the billed party is the recipient of the call.

WorldCom testified that under the ITS it provides, the recipient of the call is given a voice prompt to dial in order to hear a rate quote. (Tr. 139-40). This is consistent with the method recommended by AT&T, Sprint and Pay Tel. AT&T argues that it is inefficient to announce the price on every call being that most call recipients are repeat customers. (Tr. 28-29). Sprint also supports prompts for callers as a more cost-efficient method. (Tr. 202).

BSPC argues that unless the price quote is mandatory call recipients will not listen to it; therefore, BSPC favors a mandatory price announcement at the beginning of each call. (Tr. 156).

WorldCom's notification to the customer provides the cost of the first minute and then the cost of each additional minute. (Tr. 140). The first minute includes the surcharge. Pay Tel and BSPC support this form of notification. (Tr. 156, 179). AT&T states that it should be possible for the provider to give an exact quote for a call because most institutions have time limits for the calls. (Tr. 29).

12. What activities constitute misleading and deceptive practices by carriers offering ITS?

AT&T categorized as deceptive such practices as "charging intraLATA rates for a local call or interLATA rates for an intraLATA call, adding untariffed charges to the call, requiring "person to person" for all calls by default without offering the inmate an option on how to place the call and billing for calls that the called party refused to accept." (Tr. 29). BSPC added "charging customers rates higher than those quoted, charging for calls that were not accepted by the customer, or adding additional surcharges that were not included in price quotes." (Tr. 157). Pay Tel and Sprint both testified that deceptive practices included providing the billed party with misleading rate quotes and disconnecting the call prematurely. (Tr. 179, 202).

13. What are other considerations to determining fair and equitable rates/charges for ITS?

The carriers generally reiterated their testimony on the additional and increasing costs of ITS. Sprint urged the Commission to make an "apples to apples" comparison with other states. (Tr. 202).

B. Discussion

1. Local and IntraLata ITS

The evidence reflected that the rates in Georgia for local and intraLata ITS are consistent with the rates being charged in other states. However, parties raised valid concerns relating to the dominant carrier rule of thumb. The Commission recognizes that if the dominant carrier were to exit the payphone business, then this would subject the rate to volatility. The Commission determines that the best approach is to set a separate rate for ITS calls. The Commission finds that the rates for local and intraLata ITS set forth below and approved in this Order are just and reasonable. Any carrier wishing to increase its rates for ITS beyond those set forth in this Order are required to file a petition with the Commission along with cost justification for the increase. The Commission must approve the new rate prior to implementation.

2. InterLATA ITS

The threshold question is whether the rates being charged for interLATA ITS are just and reasonable. The record reflects that carriers incur special costs related to ITS. As discussed above, these costs relate to transaction fees to vendors, fraud, increased uncollectibles and the need for specialized equipment. Nothing in the record questions the validity of these costs. However, the most substantial increased cost to the carriers relates to the commission the carriers pay to the correctional facilities in order to prevail in the RFP process.

The RFP process is not designed to ensure just and reasonable rates for the parties that are being billed for the service. The GDC did not consider the charges to the billed party in evaluating the responses to the RFP for ITS. The amount of the commission was weighted in the GDC's selection of the winning bidder. The record reflects that the carriers pass on the costs of the commission to the billed parties. (Tr. 64). This presents a unique circumstance. The higher the

