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Docket No. 18870-U

In Re: Institutional Telecommunication Services

DOCKET# 18870
DOCUMENT# 169682

ORDER ADOPTING RATES AND A PROCEDURAL AND SCHEDULING ORDER

This order has two parts. First, it makes effective the intraLATA/interLATA rate caps for institutional telecommunications services ("ITS") that the Georgia Public Service Commission adopted by voice vote at the September 19, 2017 Administrative Session. Second, it initiates a proceeding to consider issues related to a cap on site commissions that telecommunications companies providing ITS may pay to inmate facilities.

I. Rate Caps

At its July 6, 2017 Administrative Session, the Commission voted to adopt rate caps for intraLATA/interLATA ITS. This Order does not alter the rate cap for Local ITS calls that the Commission approved in its *Order Modifying Rates for Local Institutional Telecommunications Services* issued July 7, 2016 in Docket No. 18870. The rate for Local ITS calls remains \$0.18 per minute with a cap of \$2.70 per call. As part of its determination of just and reasonable rates, the Commission voted to adopt caps on the commissions that the telecommunications companies that provide ITS may pay to facilities. The Commission did not reduce the voice vote to writing and have it signed by its Chairman and Executive Secretary; therefore, the voice vote did not become an effective order of the Commission.

At its September 19, 2017, Administrative Session, the Commission adopted its Staff's recommendation to approve the same overall rate caps for intraLATA/interLATA ITS calls that were adopted as part of the July 6 vote. As part of this vote, the Commission adopted Staff's recommendation to place the same restrictions on ancillary charges that are set forth in the FCC's 2015 Order. These rate caps are set forth below:

Facility Type	ADP	ICS Vendor Rate	Explicit Cost Recovery Additive	Total Consumer Cost
Jail	0-349	\$.22	\$.09	\$.31
Jail	350-999	\$.16	\$.05	\$.21

Jail	1000+	\$.14	\$.05	\$.19
Prison	ALL	\$.11	\$.05	\$.16

These rates recognize that facilities incur costs that are used and useful in the provision of ITS. Staff's recommendation explained that the "Total Consumer Cost" was made up of an ICS Vendor Rate" and an "Explicit Cost Recovery Additive." Under Staff's recommendation, the "Explicit Cost Recovery Additive," is not a cap on the site commission, but rather an explanation of how the recommended rate was derived.

In developing its recommendation, Staff considered applicable statutes, case law, FCC orders, Commission precedent, the responses to its discovery requests, the evidence and briefs submitted by interested parties and all other submissions in this docket. Staff evaluated record evidence for the purpose of determining the costs associated with the provision of ITS. Staff recommended that the Commission adopt different rate caps based on the size of the facility. A larger average daily population at a facility indicates more minutes of use to recover the costs of providing the service. The economies of scale at a larger facility enable the service to be provided at a lower cost per minute of use. Also, Pay Tel sponsored testimony that the higher turnover rate in jails as opposed to prisons results in higher costs because there are expenses related to establishing a new account. In addition, inmates at jail facilities are entitled to make multiple free calls; whereas prisons do not require the ITS provider to offer free calls. The costs to the provider of the free ITS calls must be recovered through the rates for the other calls.

In reaching its recommendation, Staff evaluated whether the site commissions were used and useful in ITS. The Commission has previously found that these commissions were not used and useful. The exclusion of costs that are not used and useful in the provision of the regulated service is consistent with both common sense and case law. *See, Ga. Power Co. v. Ga. Public Serv. Com.*, 196 Ga. App. 572, 577 (1990) ("a reasonable return on the net valuation of the utility's property used and useful in the public interest." *quoting Georgia Power Co. v. Ga. Public Svc. Comm.*, 231 Ga. 339, 341 (1973)). The Commission's earlier findings that the site commissions are not used and useful were based on the records in those proceedings. In its 2016 Reconsideration Order, the FCC determined that a portion of the site commissions may be used and useful. In addition to reviewing the testimony and evidence submitted by interested parties, Staff issued discovery requests in an effort to gather information about the costs that inmate facilities incur in provisioning ITS. Although parties discussed the FCC's approach and conclusions on ITS, no party argued that the Commission was preempted from analyzing state specific data in the development of rates for Georgia facilities.

The Commission adopts Staff's recommendation to apply the same test to commissions that was used in prior ITS proceedings. Staff rejected the argument that the rate caps must allow for full recovery of the site commissions simply because the telecommunications companies pay the site commissions as part of the contract. ITS providers have long been on notice that the Commission has excluded site commissions from ITS rates where they were not shown to be used and useful. An ITS provider that voluntarily entered into a contract with an institution pursuant to which it agreed to pay a site commission knew or should have known that the Commission can review ITS rates to ensure that they are just and reasonable and do not include costs that are not used and useful in the provisioning of the service. An ITS provider could have

reasonably sought to include in such contract a regulatory out provision that would protect it in the event that ITS rates were adjusted either at the federal or state level.

The evidence showed that facilities incur an expense related to the provision of ITS. Specifically, the discovery responses identify such tasks as monitoring phone calls, performing system administration tasks, PIN administration, administration of debit accounts, answering questions from inmates, friends and families, accepting public requests for blocking or unblocking, administering blocked numbers, escorting technicians into secure areas, administration of debit accounts and voice Biometric enrollment. Staff analyzed the state-specific data by multiplying the hours spent performing functions related to ITS by the hourly wages of the employees who performed these functions. Staff then divided that figure by the number of ITS minutes for the facility. This calculation produced a dollar amount per minute that the facilities incur providing ITS. Staff's recommendation included a spreadsheet that reflected these calculations.

Staff did not have information on enough inmate facilities to develop ITS rates based solely on the Georgia specific data that it collected. Not only did some of the facilities acknowledge that their records are not detailed enough to provide complete answers to the discovery, but the responses varied dramatically facility to facility. Given the relatively small subset of facilities for which the Commission has record evidence and the unevenness of the information submitted, Staff could not develop a reliable recommendation based exclusively on this information. Interestingly, Exhibit 6B to Pay Tel witness's Townsend's testimony is an analysis of the NSA Study that shows significant variation in the total cost per minute. This variation does not always correspond with the size of the facility. That is, the cost per minute varies substantially even within the same range of ADP. However, the much larger number of facilities included in that analysis was sufficient to develop meaningful averages by offsetting the outliers within each group of prison facilities. Staff's discovery did not include data from enough facilities to identify or account for outliers. For this reason, Staff explained in its recommendation that the primary benefit of its analysis of the Georgia facilities' costs that it collected is to confirm that these facilities incur costs related to ITS. This finding is significant because it is a basis for including a portion of the site commissions within the rate caps.

Pay Tel recommended that the Commission adopt the rates set forth in the FCC's 2016 Reconsideration Order. (Pay Tel Brief, p. 4). In supporting this recommendation, Pay Tel provided "Georgia specific cost data prepared using a 'bottom up' cost analysis to account for the characteristics of each confinement facility Pay Tel serves in Georgia." *Id.* Staff recommended adoption of the FCC rate caps with one modification. Based on the responses provided by the Department of Corrections, Staff recommended that the "Explicit Cost Recovery Additive" for the "Prison" category be increased from the 0.02 as set forth in the FCC order to 0.05, which matches the additive for prisons with ADPs of 350-999 and ADPs of over 1000.

Staff's recommended increase above what was allotted for in the FCC rate recognizes that the information submitted by the Department of Corrections in this case reflects facility costs in excess of the \$.02 permitted under the FCC Order. Unlike the other facility types identified in the above-chart, the Department of Corrections is the only facility within the Prison-header. Therefore, an adjustment based on the information provided is reasonable. However,

because the FCC considered many more facilities in its analyses, Staff did not recommend increasing the Explicit Cost Recovery Additive above the comparable cap for Jails with ADPs of 350-999 or 1,000 plus. Doing so would afford too little weight to the record evidence pertaining to the FCC's analysis and to Pay Tel's Georgia specific data in support of its recommendation.

Staff also supported Pay Tel's argument that the Commission should adopt the FCC's limitations on ancillary charges. (Pay Tel Brief, p. 9). Such limitations are intended to prevent providers from circumventing the rate caps. *Id.* The goal of establishing just and reasonable rates is to ensure that consumers are not charged an unreasonable amount for the service. Requiring a consumer to pay fees in addition to rates that have been determined to be just and reasonable defeats the purpose of setting the rates in the first place. The FCC did approve a limited number of ancillary fees and corresponding caps, and the Commission adopts those here.

For the reasons discussed in the Staff's recommendation, the Commission adopted the rate caps for intraLATA/interLATA ITS rates proposed by Staff. As part of these rate caps, the Commission adopted the Staff's recommendation to place the same restrictions on ancillary charges that are set forth in the FCC's 2015 Order.

II. Site Commission Caps

The Commission determined that consideration of whether to impose a cap on the site commissions that an ITS provider pays to inmate facilities is a significant enough issue to initiate a separate proceeding to consider it fully.

Scope of Proceeding

The Commission finds that it is prudent and administratively efficient for interested parties to have the opportunity to pre-file testimony and exhibits on issues pertaining to caps on site commissions. Interested parties may also submit a request that the Commission hold a live evidentiary hearing on this matter.

Legal Authority For Hearing

This hearing will be held under the authority and jurisdiction conferred upon the Georgia Public Service Commission by O.C.G.A. §§ 46-2-20, 46-2-21, 46-2-23 and 46-2-24; and in accordance with the Georgia Administrative Procedure Act, O.C.G.A. Ch. 13, Title 50, and the Rules and Regulations of the Commission. The Commission has exclusive power to determine what are just and reasonable rates and charges to be made by any person, firm or corporation subject to its jurisdiction. O.C.G.A. § 46-2-23. The Commission is authorized to perform the duties imposed upon it of its own initiative. O.C.G.A. § 46-2-20(b).

Hearing Schedule, Filing Dates and Procedures

An original and fifteen copies of all filings, including direct testimony, rebuttal testimony, briefs and proposed orders, shall be accompanied by an electronic version of the filing that shall be made on a CD using Microsoft Word ® format for text documents and Microsoft Excel ® for spread sheets. Under no circumstances should any electronic filing consist of more than four (4) files, including attachments. This filing shall be made at the office of the Executive Secretary, Georgia Public Service Commission, 244 Washington St., SW, Atlanta, Georgia 30334-5701

October 20, 2017

Interested parties may file direct Testimony regarding issues in this docket.

October 27, 2017

Interested parties may file a request that the Commission hold an evidentiary hearing.

December 5, 2017

In the event that an interested party requests that the Commission hold an evidentiary hearing, the Commission will commence hearings directly after the 10 a.m. Administrative Session concludes for Docket No. 18870 beginning with the testimony of any public witnesses pursuant to O.C.G.A. § 46-2-59(g), and the hearing of any appropriate motions. After these preliminary matters, the Commission will conduct hearings on the testimony filed by interested parties. In the event that no party requests that the Commission hold an evidentiary hearing, the Commission will receive the evidence in written form consistent with O.C.G.A. § 50-13-15(1).

December 19, 2017

In the event that no interested party requests that the Commission hold an evidentiary hearing in this matter, briefs are due by 4:00 p.m. In the event that an interested party requests that the Commission hold an evidentiary hearing, then briefs are due within twenty days from the date upon which the transcript of the evidentiary hearing becomes available.

Procedures

The following are procedures to which any party to this hearing should adhere with respect to this docket:

1. **Intervention:**

- (a) Any person or party upon whom a statute does not confer an unconditional right to intervene, or who has not already intervened in this docket must file an application to intervene within 30 days following the first published notice of the proceedings.

(b) Applications must clearly specify the docket in which the applicant seeks to intervene. In addition to the requirements prescribed in O.C.G.A. § 46-2-59 for applications for leave to intervene, the applicant must: (1) identify other intervening parties or intervening party applicants whose interest is similar to that of the applicant along with an explanation of why the identified intervening parties or intervening party applicant will not adequately represent the applicant's interest; and (2) state the applicant's present intention to submit direct testimony and by whom and on what subject. The requirements identified herein shall constitute a continuing obligation of the applicant or intervening party. Any objections to applications must be filed in accordance with O.C.G.A. § 46-2-59(d).

(c) Any application for leave to intervene that is filed late must state the reason why such application was not filed within 30 days of the first published notice. Objections to later intervention application must be filed in conformity with the requirements of O.C.G.A. § 46-2-59(d).

(d) The Commission will take up and rule on applications for leave to intervene at the first hearing date scheduled in this docket.

2. **Service:** In addition to filing either an original and fifteen (15) copies of documents with the Commission's Executive Secretary, an electronic version of a party's filing shall be made on a 3 ½ inch diskette using Microsoft Word© for text documents and Excel© for spread sheets. Copies of all pleadings, filings, correspondence, and any other documents related to and submitted in the course of this docketed matter should be served upon the following individuals, in their capacities as indicated below, and all other intervenors recognized by the Commission in this docket:

Daniel Walsh
Senior Assistant Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334-1300

Prefiled testimony shall be filed in conformity with Commission Rule 515-2-1-.04(3).

3. **Testimony of Witnesses:**

(a) Summations of direct testimony will take no longer than ten (10) minutes, unless the Commission, in its discretion, allows for a longer period of time.

(b) In the absence of a valid objection being made and sustained, the pre-filed testimony and exhibits, with corrections, will be admitted into the record as if given orally prior to the summation made by witnesses subject to a motion to strike after admission or other relevant objection.

(c) Where the testimony of a panel of witnesses is presented, cross-examination may be addressed either to the panel, in which case any member of the panel may respond, or to any individual panel member, in which case that panel member shall respond to the question.

4. **Hearing Exhibits:** It shall be the responsibility of the party sponsoring any hearing exhibits to see that the court reporter and all parties of record, in addition to the individual Commissioners, receive copies of all exhibits at the time of their introduction at the hearing. [Note: Exhibits included with pre-filed testimony should already have been provided in the requisite number of copies filed with the Commission in accordance with Rule 515-2-1-.04(3).]
5. **Discovery:** The Commission hereby declares this matter to be complex litigation and authorizes the Staff to take depositions and to otherwise obtain discovery in this matter.

Record

The parties shall be responsible for bringing before the Commission all evidence that they wish to have considered in this proceeding. The Commission may also require the parties to provide any additional information that the Commission considers useful and necessary in order to reach a decision. Any party filing documents or presenting evidence that is considered by the source of the information to be a "trade secret" under Georgia law, O.C.G.A. § 10-1-761(4), must comply with the rules of the Commission governing such information. *See* GPSC Rule 515-3-1-.11 Trade Secrets (containing rules for asserting trade secret status, filing both under seal and with public disclosure versions, use of protective agreements, petitioning for access, and procedures for challenging trade secret designations). Responses to discovery will not be considered part of the record unless formally introduced and admitted as exhibits.

Rights of Parties

Interested parties have the following rights in connection with this hearing:

- (1) To respond to the matters asserted in this document and to present evidence on any relevant issue;
- (2) To be represented by counsel at its expense;
- (3) To subpoena witnesses and documentary evidence through the Commission by filing requests with the Executive Secretary of the Commission; and
- (4) Such other rights as are conferred by law and the rules and regulations of the Commission.

Issues Involved

(1) Should the Commission adopt caps on site commissions as part of the rates for institutional telecommunications services?

(2) If the Commission adopts site commissions as part of the rates on institutional telecommunications services, should the caps be applied to existing contracts? The determination of this issue may involve consideration of (a) whether and how the current term of an existing contract should be treated differently than a renewal term of a contract for purposes

of applying caps on site commissions, and (b) whether and how facilities of different size or type should be treated differently for purposes of applying caps on site commissions. Part (b) may include what the amount of any site commission cap should be for each size or type of facility, whether there is any basis for differentiating between the sizes and types of facilities for purposes of applying any site commission cap to an existing contract and any other basis for applying a site commission cap differently based on the size or type of facility.

STATUTES INVOLVED

O.C.G.A. § 46-2-20(a) provides that the Commission has general supervisory authority over telephone companies.

O.C.G.A. § 46-2-20(b) provides that the Commission may hear complaints against companies under its jurisdiction and may also perform duties it imposes on itself.

O.C.G.A. § 46-2-23 provides that the Commission has exclusive power to determine what are just and reasonable rates and charges to be made by any person, firm or corporation subject to its jurisdiction.

O.C.G.A. § 46-2-24 provides that in determining what are just and reasonable rates and charges to be made by any person, firm or corporation subject to its jurisdiction the Commission, the Commission is authorized and is directed to consider the quality of service rendered by such utility.

WHEREFORE, it is

ORDERED, that the Commission hereby adopts the rate caps for intraLATA/interLATA ITS calls set forth in this order.

ORDERED FURTHER, that the Commission hereby places the same restrictions on ancillary charges that are set forth in the FCC's 2015 Order.

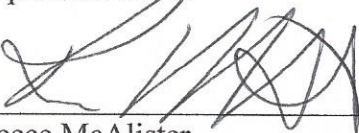
ORDERED FURTHER, that ITS providers shall file compliance tariffs within 30 days of the issuance of this Order, reflecting the rate caps for intraLATA/interLATA ITS calls ordered herein.

ORDERED FURTHER, the Commission hereby adopts the procedures, schedule, and statements regarding the issues set forth within the Procedural and Scheduling Order.

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

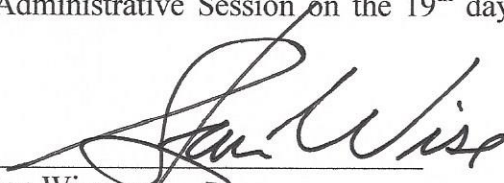
ORDERED FURTHER, that jurisdiction over this matter is expressly retained for the purpose of entering such further Order(s) as this Commission may deem just and proper.

The above by action of the Commission in Administrative Session on the 19th day of September 2017.



Reece McAlister
Executive Secretary

10-2-17
DATE



Stan Wise
Chairman

10-2-17
DATE