

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ESTABLISHMENT OF AN OPERATOR)	
SURCHARGE RATE FOR COLLECT)	ADMINISTRATIVE
TELEPHONE CALLS FROM)	CASE NO. 378
CONFINEMENT FACILITIES)	

O R D E R

On July 1, 1999, the Commission entered an Order which limited the surcharges on calls originating from a confinement facility to \$1.50 per call. This reduction was ordered to be effective November 15, 1999 for services provided to the Department of Corrections ("DOC") and upon the expiration of each existing contract for other facilities. The Order also required the elimination of set-use fees on calls originating from confinement facilities and capped toll rates assessed for interLATA and intraLATA calls at the level in effect July 1, 1999. Petitions for rehearing have been filed by the Plaintiffs' Group, MCI WorldCom ("MCI"), Evercom Systems, Inc. ("Evercom"), Cincinnati Bell Telephone Company ("Cincinnati Bell"), and BellSouth Public Communications, Inc. ("BellSouth Public").

MCI and Evercom have requested rehearing on the Commission's establishment of a maximum per-minute toll rate for calls originating from inmate facilities. Both assert that the capping of carriers' rates to those currently charged is discriminatory. According to MCI, utilities with higher rates have an unfair advantage over utilities with lower rates in competing for the inmate business. Also, according to MCI, utilities that

are new entrants to the Kentucky market have an unfair advantage over utilities with current low rates, as the Commission did not establish a maximum rate for the new entrants.

MCI argues that no maximum should be set for toll rates because of the need for flexibility. In the alternative, MCI asserts that the Commission should set a per-minute rate that would be applicable to all carriers. As another option, MCI proposes that the Commission set the rate at the maximum of the public operator service rates.

The Plaintiffs' Group responded to MCI's arguments, noting that any provider could seek approval for future rate increases in the per-minute charge upon a demonstration of good cause shown, as was provided for in the July 1, 1999 Order. The Plaintiffs' Group argues that the Order enables a carrier with low toll rates to compete for inmate services by increasing those toll rates upon demonstrating to the Commission that the rate increase is necessary to pay higher commissions than it could otherwise afford.

Having considered the parties' arguments regarding the establishment of a maximum toll rate at each carrier's July 1, 1999 rates, the Commission finds that its Order may result in unreasonable preferences for some carriers, in violation of KRS 278.170, and therefore grants rehearing. Rehearing is granted for the purpose of establishing a maximum per-minute toll rate for interLATA and intraLATA calls originating from confinement facilities. The rehearing will also address alternatives to the establishment of a maximum per-minute toll rate.

Parties should provide testimony regarding proposals for a maximum per-minute toll rate applicable to inmate services. The testimony should include options to this proposal and a detailed explanation of positions taken.

The Commission finds that a measure of stability regarding the maximum toll rates for inmate calling should be established. Accordingly, on an interim basis pending resolution of the rehearing granted herein, the Commission establishes \$0.28 for interLATA calls and \$0.23 for intraLATA calls as the maximum rates for inmate calling. This will enable the Department of Corrections and other confinement facilities whose contracts terminate prior to June 30, 2000 to rebid their contracts. The rate which the Commission will determine on rehearing will be assessed on a prospective basis.

The Plaintiffs' Group seeks rehearing of the issue regarding the effective date for the reductions ordered by the Commission. The contracts for inmate services between carriers and Kentucky confinement facilities will terminate on various dates, up to April 2005. The Plaintiffs' Group argues that the Commission should not allow rates that it has determined to be unjust and unreasonable to remain in effect for so lengthy a period. Upon considering the Plaintiffs' Group's petition and Evercom's response thereto, the Commission agrees that reductions it has ordered must be effective across Kentucky prior to the termination of the lengthiest of these contracts. Nevertheless, the Commission finds that the parties to the contracts must be given a reasonable period of time to adjust to the restrictions announced in this docket. Accordingly, the inmate telephone rate reductions, including the \$1.50 surcharge maximum and the toll rate reductions that may result from the rehearing granted herein, must be implemented upon the termination of each contract and no later than June 30, 2000.

The Commission has the right and duty to regulate rates and services no matter what a contract provides. See Board of Education of Jefferson County v. William Dohrman, Inc. 620 S.W. 2d 328 (Ky.App., 1981). Parties affected by the rate reductions have had ample notice that the Commission was contemplating the rate reductions.

Cincinnati Bell and Evercom have argued in their petitions that the Commission lacks support from the record for its decisions. Specifically, these utilities argue that the record does not contain the tariffs from other jurisdictions that were utilized in part for the establishment of the \$1.50 maximum surcharge rate. This is inaccurate. A data request entered April 5, 1999 requested information from all of the telecommunications carriers participating in the case regarding their tariffs and rates in other jurisdictions. This material has been filed and was considered by the Commission in its determination.

Cincinnati Bell and Evercom also argue that the establishment of lower rates for inmate calls than exist for the general public is unlawful. However, as noted by the Plaintiffs' Group in its response, the Commission sees no discrimination here, and previously has cited key differences between public and inmate calling. These differences support the Commission's establishment of a rate classification for inmate calling.

BellSouth Public argues that the Commission failed to consider the impact of its decision on small confinement facilities with low volumes of telephone traffic. In its response, the Plaintiffs' Group contends that the record indicates adequate consideration of the effects on all confinement facilities, including the small ones. Evercom asserts that the Commission inappropriately failed to examine the costs

associated with the provision of inmate services. Neither of these petitions contains new evidence which has not been considered by the Commission. Accordingly, they should be denied.

The Commission, having considered the petitions for rehearing, and having been otherwise sufficiently advised, HEREBY ORDERS that:

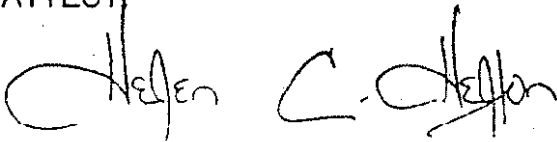
1. Rehearing on the appropriate maximum per-minute intraLATA and interLATA toll rate applicable to inmate services is granted.
2. On or before September 8, 1999, all interested parties shall file testimony regarding an appropriate maximum per-minute rate or alternatives to a maximum per-minute toll rate.
3. On or before September 24, 1999, all parties may file data requests to all other parties.
4. On or before October 20, 1999, all parties must respond to the data requests.
5. On an interim basis, pending a final decision on rehearing, carriers shall charge a maximum of \$0.28 cents for interLATA inmate calls and \$0.23 for intraLATA inmate calls to be effective for service rendered on and after November 15, 1999 for the DOC and upon the termination of each contract for inmate services but no later than June 30, 2000.
6. The rate adjustments ordered in the July 1, 1999 Order, together with the per-minute rate cap to be set in the rehearing granted herein, shall be effective upon the termination of each contract for inmate services or on June 30, 2000, whichever is earlier.

7. The requests for reharing of all other issues are denied.

Done at Frankfort, Kentucky, this 9th day of August, 1999.

By the Commission

ATTEST:

A handwritten signature in black ink, appearing to read "Stephen C. Coffey". The signature is written in a cursive style with a horizontal line underneath the name.

Executive Director