

regarding the provision of payphone service to Cumberland County that were included in the Pay Tel Petition.²

On February 29, 2008, NCPLS filed comments.

On March 11, 2008, the Public Staff filed reply comments.

On March 12, 2008, NCPLS filed a Motion to Revise and Extend Comments filed earlier in this docket in which NCPLS inadvertently omitted the last page in its comments originally filed with the Commission.

On March 14, 2008, the Petitioners filed reply comments.

Lastly, on March 17, 2008, the Commission issued its *Order Allowing Supplementation of Comments* in response to NCPLS's Motion.

THE PETITION

The Petitioners stated that they are the predominant provider of inmate calling services (ICS), which consist exclusively of automated collect phone calls. The operation of the rate caps for ICS calls subject to Rule R13-9(d) varies widely.³ The rate cap for Concord Telephone Company (Concord) is at \$1.71, the highest of those listed by the Petitioners. The Petitioners have also noted that the Commission has recently approved a statewide rate of \$1.71 for operator-assisted local collect calls, which mirrors the charges imposed by Concord for such local calls in its territory.

The Petitioners identified the rate caps in North Carolina as among the most stringent in the nation. The Petitioners stated, as shown on their Exhibit A, that only five states have lower local rate caps than the predominant cap applicable in AT&T's service areas in North Carolina. The Petitioners stated that the rate caps applicable in many of the non-AT&T LEC areas of North Carolina are the lowest in the nation.

The Petitioners contended that Rule R13-9(d)'s maximum charge for local collect calls made from confinement facilities is an anachronism and no longer bears any relation to the costs incurred by ICS providers for the provision of such calls. The

² Embarq stated that the Petitioners claimed that Embarq "has a contract with Cumberland County but has sub-contracted the service to Evercom." To clarify the service arrangement Embarq stated that, "in Cumberland County, Evercom provides the call control equipment (monitoring and recording, validation of each call) and the customer service for billing inquiries which is provided through its affiliate, Correctional Billing Services." Embarq further pointed out that a sister company to Embarq, Embarq Payphone Services, Inc. (EPSI), has sub-contracted this equipment from Evercom and that EPSI provides the payphone service to the confinement facility in Cumberland County.

³ Rule R13-9(d) provides that "the recipient of a local automated collect station-to-station call may not be charged more for the call than would have been charged by the local exchange company for a local collect station-to-station call." Furthermore, Rule R13-9(d) "prohibits Payphone Service Providers (PSP(s)) operating in a confinement facilities from charging more than what a local exchange carrier (LEC) would charge for a local collect call initiated outside a confinement facility."

petitioners argued that the Local Rate Cap was established decades ago primarily for collect calls from LEC payphones, not inmate phones. As stated by the Petitioners, only one county, Concord [sic], has inmate phone service provided by a LEC, Concord Telephone. The Petitioners suggested that although it may have made sense to tie local ICS rates to LEC payphone rates twenty years ago, the Local Rate Caps association with LEC rates no longer reflects real-world circumstances.

The Petitioners claimed that the cost of providing ICS service has increased dramatically over the past twenty years. The equipment installed and used in confinement facilities is significantly more sophisticated - and more costly - than the simple telephone and line used years ago. The Petitioners commented that the demands of law enforcement for sophisticated, competitive, computerized equipment continue to increase, particularly demands for monitoring capabilities in the post-9/11 environment; these demands result in additional installation, operational, and maintenance expenses.

The Petitioners attached three additional exhibits to their filing: (1) Exhibit B provided a summary of the various systems and call management and accounting processes that are currently associated with ICS service; (2) Exhibit C provided the Average Daily Population statistics for confinement facilities in the state; and, (3) Exhibit D provided a copy of a September 12, 2001, letter filed with the Commission by Sheriff Wayne V. Gay (on behalf of himself and 38 other county sheriffs), addressing the availability of inmate telephone service in North Carolina.

Lastly, the Petitioners stated that the Commission should waive the LRC for areas where the cap falls below the Concord Telephone benchmark of \$1.71 per call for local operator assisted station-to-station calling. The Petitioners further argued that, "even at the minimum rate of \$1.71," the Petitioners will not be able to recover the total cost of a local collect call from a confinement facility, but it would offer some much needed relief and serve to bring clarity to what otherwise is a disparate and confusing rate structure.

COMMENTS

The Public Staff: The Public Staff acknowledged that the Petitioners are certificated payphone service providers (PSPs) that, collectively, provide inmate calling services (ICS) to most of North Carolina's county confinement facilities. The Public Staff commented that the Petitioners provide ICS using payphones equipped with automated systems that enable the completion of station-to-station collect calls without the intervention of a live operator. The automated call process differs from traditional live operator assisted collect call processing wherein, the operator completes the call setup and connection to the point of call completion, denial, or request for instructions for incomplete calls. The Public Staff also stated that the sophisticated automated equipment used by PSPs may also be programmed to provide additional call screening, recording, and blocking functions requested by the PSPs or the confinement facility administration.

The Public Staff noted that, prior to the late 1980s, when the Commission began certifying independent payphone providers in North Carolina, ICS was provided exclusively by incumbent local exchange carriers (ILECs) to provide live operator assisted collect calls. Moreover, the local and long distance collect charges billed by the ILECs and AT&T Communications were significantly higher than the charges for comparable direct-dialed or calling card calls, primarily due to the significant labor costs associated with these calls. The Public Staff pointed out that the Commission, in its *Order Allowing Automated Collect Calling*, issued December 22, 1989, in Docket No. P-100, Sub 84, concluded that “the cost to the call recipient for an automated collect call should not exceed the tariff rates of the local exchange company for a local or intraLATA toll call, or the tariff rates of AT&T for an interLATA toll call.” These rate restrictions were incorporated into Commission Rule R13-9(e)⁴, and they remained in effect for toll calls until January 2, 2004, when the Commission modified the rule to reflect deregulation of intraLATA and interLATA long distance services and long distance operator services by the North Carolina General Assembly.⁵ Also, during this process, Rule R13-9(f) was rewritten to remove references to toll calls and renumbered as R13-9(d). The Public Staff stated that the rate cap on local automated collect calls, which limits the charges that can be imposed on a call recipient to those set by the local exchange company for local collect station-to-station calls, has remained in effect since that time.

The Public Staff observed that representatives of North Carolina’s confinement facility PSP industry have long contended, as do the Petitioners, that the Commission’s authorized charges for calls from confinement facilities are unreasonably low compared to those allowed in many other states. The Public Staff said it would not address those comments here but would address the specific rule waiver and rate change that appears to be the primary goal of the petition.

The Petitioners have proposed that ICS service provider’s be permitted to charge the statewide local collect operator services rate of \$1.71 that is currently approved for Network PTS, Inc. (Network) and Legacy Long Distance International, Inc. (Legacy). The Public Staff agreed that the Commission in its *Recommended Orders Granting Certificate of Public Convenience and Necessity* in Docket Nos. P-1350, Sub 1, (Network) and P-1173, Sub 1 (Legacy) had authorized Network and Legacy to charge \$1.71 per call for local operator assisted calls, including collect calls.

The Public Staff noted that, during the process of investigating Network’s and Legacy’s CLP certificate applications, it was determined that the rates the companies proposed to charge for certain local operator services were reminiscent of the exorbitant amounts charged by alternate operator services (AOS) providers in the late 1980s. These excessive charges were an important reason why the Commission ultimately

⁴ The rule was again renumbered to Rule R13-9(e) by *Order Amending Commission Rule R13* issued on October 7, 1997, in Docket No. P-100, Sub 84a.

⁵ See the *Order Concerning Compliance with Senate Bill 814* issued on January 2, 2004, in Docket No. P-100, Sub 72b.

denied AOS providers the opportunity to become certified in North Carolina in Docket Nos. P-100, Sub 101 and P-100, Sub 84.

However, the Public Staff also pointed out that Network and Legacy voluntarily agreed to cap their statewide rate for operator-assisted calls at Concord's rate of \$1.71 per call in their certification dockets. They also agreed to limit their charges for local automated collect calls from payphones to those authorized under R13-9(d).

The Public Staff stated that, out of fairness to PSPs and in recognition that adoption of a statewide rate cap for local automated collect calls makes sense, it did not oppose Petitioners proposal that they be allowed to charge up to Concord's current rate of \$1.71 for local automated collect calls and to charge up to Concord's rates for those calls in the future.

The Public Staff recommended that, rather than the Commission granting a waiver of R13-9(d) and setting a surrogate rate for local automated collect calls outside of the standard rulemaking procedure, the Commission should adopt an interim R13-9(d) allowing the new rate of \$1.71 per call to take place immediately.

North Carolina Prisoner Legal Services, Inc.: NCPLS is a non-profit, public service organization providing legal advice and assistance to persons incarcerated in North Carolina. In the instant case, NCPLS noted that Petitioners, who provide telephone service to prisoners in confinement facilities in North Carolina, have sought the imposition of a statewide charge of \$1.71 per call for local automated calls initiated in such facilities.

Such relief had already been granted on an *ad hoc* basis to Legacy Long Distance International, Inc. (Docket No. P-1173, Sub 1, July 13, 2006) and Network PTS, Inc. (Docket No. P-1350, Sub 1, July 13, 2006). In those proceedings, the applicants voluntarily capped their rates for "station-to-station operator assisted, sent-paid, collect, third number and non-customer dialed credit card local [calls]" at \$1.71, and the Public Staff did not oppose either application. In the current proceeding, the Public Staff also does not oppose the Petitioner's waiver request but recognizes that setting a "surrogate rate for local [inmate-initiated collect] automated collect calls tends to circumvent the standard rulemaking process." Because of this, the Public Staff instead recommended the adoption of an interim revision of Rule R13-9(d) which would allow a rate no greater than that charged by the Concord Telephone Company for local collect station-to-station calls. The Public Staff recommended immediate implementation of the interim rule, with comments allowed subsequently. Absent significant objections, the Public Staff recommended that the Commission make the interim rule permanent.

NCPLS raised several objections to the proposed interim rule, including that the restriction on inmate choice in calling to collect calls made through a single service provider is unfair and unjust, that inmate initiated telephone calls are not available at affordable rates, and that under prevailing circumstances, the proposed rate is neither

reasonable nor fair. In this regard, the NCPLS cited to extremely high commissions paid to the operators of confinement facilities. Some of these funds go into the general fund and some are used for the benefit of prisoners. Regardless of the manner in which these commissions are utilized, they impose financial burdens on the friends and families of inmates. Also the high cost of inmate phone calls is prohibitive for many lawyers, thereby impairing representation. The NCPLS asserted that allowing the rate of a single telephone company, in this case Concord, to be used as a statewide rate “amount[s] to usurpation of the jurisdiction and function of the Commission.” The Telecommunications Act of 1996 in Sections 201(b) and 276(b)(2) require that telephone charges and service practices must be “just and reasonable” and public interest payphones must be supported “fairly and equitably.” The Commission clearly has general supervisory authority over rates and is charged with fixing reasonable rates and charges over matters within its jurisdiction. Limiting inmate-initiated calls to collect only—the most expensive means of placing a call—adversely affects the availability of reasonably affordable local exchange service. The NCPLS pointed to Petitioner’s Exhibit B as listing costs that are “exaggerated, redundant, ordinary business expenses, and others that should be borne by correctional personnel.” The NCPLS argued that the relief sought by the Petitioners is not consistent with the proper administration of the rules, since it amounts to a form of *ad hoc* rulemaking. The Petitioners have set forth no persuasive reason why they should be excused from complying with Rule R13-9(d) as it is presently written.

Finally, while admitting that certain options may be foreclosed in North Carolina at the present time, the NCPLS suggested that a more equitable telephone service for inmates would: (1) allow inmates to use commercial calling card, collect calling platforms (e.g., 800-COLLECT, 800-CALL-ATT), and prepaid calling cards; (2) allow inmates to direct-dial their calls (with call blocking in place); (3) allow inmates to place calls to “personal” 800 numbers that are billed to the called party; (4) allow competitive inmate calling service providers to provide service at the same facility simultaneously; and (5) prohibit the practice of offering commissions for exclusive service contracts.

REPLY COMMENTS

The **Public Staff** stated in its reply comments that NCPLS’s comments offer many valuable insights into the problems inmates face due to the high per-call charges and enhanced security measures associated with inmate payphones. These views might warrant strong consideration if the Commission were currently trying to evaluate Petitioners’ costs and attempting to use them to establish a rate for local automated collect calls. The Public Staff stated that, despite NCPLS’s views to the contrary, it is impractical and, arguably, beyond the Commission’s authority for the Commission to examine the operating costs of all of the PSPs authorized to provide payphone services to inmates and to dictate to correctional facilities how they choose to provide for their inmates’ needs.

The Public Staff pointed out that the Commission concluded in the Legacy and Network dockets that the companies’ proposed rate of \$1.71 for station-to-station

operator-assisted, sent-paid, collect, third number, and non-customer dialed credit card local calls was “reasonable and fair.” The Public Staff stated that it concurred and recommended capping the rate for local automated collect calls statewide at \$1.71 per call.

Since all interested parties have now had an opportunity to comment on the proposed revised Rule, the Public Staff requested that the Commission issue an Order adopting a permanent, rather than an interim version of Rule R13-9(d), as set forth below. The version in the Public Staff’s reply comments is identical to the interim rule proposed in its initial comments except that the name “Concord Telephone Company” in the interim rule has been updated to reflect Concord’s acquisition by Windstream North Carolina, Inc. This revision would authorize PSPs to begin immediately charging call recipients up to the Windstream Concord Telephone, Inc. current rate of \$1.71 for station-to-station automated collect calls and to mirror Windstream Concord Telephone’s rates for these calls in the future.

The Public Staff’s proposed revision is as follows:

Proposed revised Rule R13-9(d): *0+ Local Automated Collect Station-to-Station.* The recipient of a local automated collect station-to-station call may not be charged more for the call than would have been charged by Windstream Concord Telephone, Inc. for a local collect station-to-station call.

The **Petitioners** noted that the Public Staff generally supported the rate relief sought by the Petitioners. The adoption of a single rate would be beneficial to consumers across the state and is consistent with the rate the Commission recently approved for two CLPs. However, the Petitioners opposed a permanent rule change and argued that a waiver of the current rule is more appropriate because it allows the ICS providers the benefit of the Concord rate and any higher rate if approved in the future. The Petitioners viewed a waiver of the current rule as allowing the use of the Concord rate as a rate “floor” rather than making it a rate “ceiling.”

The Petitioners reiterated that the current rule is not reflective of the actual costs incurred by the ICS providers and results in rates that do not cover the costs of ICS calls. The Petitioners contended that the rate relief which would be provided by allowing the use of the Concord rate would still result in pricing inmate calling at artificially low levels.

In responding to the comments provided by NCPLS, the Petitioners disputed the claim made that telephone service is not currently provided to inmates at affordable rates on the grounds that it is unsubstantiated. The Petitioners maintained that fair compensation, to recover the providers’ cost, is expected to be achieved on each and every completed call. The Petitioners pointed out that “the modest nature of Petitioners’ request is shown by the fact that, at \$1.71, North Carolina’s local collect rate will be among the eight lowest average rates in the nation.”

The Petitioners argued that, as a matter of public policy, subsidization of inmate calling should not be required of ICS providers through antiquated local calling rates. Rather, any subsidization of costs to provide inmates with calling privileges should be provided by explicit funding from government sources.

Suggestions that the Commission lacks authority to provide the relief sought by Petitioners are without merit. As the NCPLS itself has acknowledged, the Commission has plenary power to supervise public utilities and establish rates. The Petitioners noted that larger concerns with ICS rates are in fact under investigation by the FCC at this time.

The Petitioners also noted that PayTel and E&T offer calling card and/or prepayment options in some confinement facilities and that they have the capability to provide debit type services in most North Carolina facilities. However, for reasons relating to safety and security, no facilities in the state have activated such services to their knowledge.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The Commission notes that this docket was initiated to investigate the relatively narrow question of whether Rule R13-9(d) should be waived or revised as to set the rate cap for automated collect station-to-station calls commonly used for ICS purposes at the amount charged by Windstream Concord Telephone Company, Inc. for this service. The Commission has already approved a \$1.71 rate cap for Legacy and Network and has pronounced the \$1.71 rate for local operator-assisted calls to be “reasonable and fair.” The Commission concludes that it is likewise reasonable and fair for the Commission to extend this relief to other service providers by way of a rule change rather than through individual waivers in an effort to provide Petitioners greater compensation for the services they provide. Should the Commission determine in the future that a higher rate is justified, the Commission can increase the rate through a subsequent rule change if necessary. The Commission has always used surrogate rate caps for operator-handled calls ever since Commission Rule R13-9 was initially adopted nearly twenty-two years ago in 1986, and concludes to decline to deviate from that policy on the basis of the record in this docket.

The NCPLS, by contrast, has sought to broaden the scope of this proceeding significantly. The NCPLS appears to advocate a comprehensive restructuring of ICS far beyond the limited scope of this docket. The NCPLS acknowledges that “certain options may be foreclosed in North Carolina at the present time.” The Commission concurs with the Public Staff that it would be “impractical and, arguably, beyond the Commission’s authority for the Commission to examine the operating costs of all of the PSPs who are authorized to provide payphone services to inmates and to dictate to facilities how they choose to provide for their inmates’ needs.” The Commission

therefore concludes that it would be inadvisable for the Commission at this time to consider the comprehensive restructuring that the NCPLS advocates in the absence of more explicit guidance from the General Assembly or the FCC.

Accordingly, the Commission concludes that good cause exists to approve the revisions to Rule R13-9(d) set forth in Appendix A.

IT IS, THEREFORE, SO ORDERED:

ISSUED BY ORDER OF THE COMMISSION.

This the 1st day of May 2008.

NORTH CAROLINA UTILITIES COMMISSION

Gail L. Mount

Gail L. Mount, Deputy Clerk

kh050108.01

Rule R13-9(d). Disconnection, Denial, and Billing of Telephone Service.

Rule R13-9(d) is rewritten to read as follows:

0+ Local Automated Collect Station-to-Station. The recipient of a local automated collect station-to-station call may not be charged more for the call than would have been charged by Windstream Concord Telephone, Inc. for a local collect station-to-station call.