

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

**IN THE MATTER OF THE PETITION** )  
**SEEKING RELIEF FROM RULE 309 OF** ) **CASE NO. GNR-T-93-12**  
**THE COMMISSION'S OPERATOR** )  
**SERVICES AND PAY TELEPHONE RULES,** )  
**IDAPA 31.51.01.309** ) **ORDER NO. 30249**  
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In this case ten inmates of the Idaho State Correctional Institution (ISCI) filed a Petition requesting that the Commission issue an Order allowing inmates to select a long-distance carrier of their choice when making long-distance collect calls. Traditionally, correctional facilities and other institutions of confinement<sup>1</sup> contract with a single long-distance carrier or operator service provider (OSP) for inmates to make collect calls and block inmate callers from accessing other long-distance carriers. In other words, an inmate must use the long-distance carrier selected by the ISCI instead of a long-distance carrier of the inmate's choosing. The petitioners desired the ability to choose their own long-distance carriers in the "inmate telephone environments." The petitioners advanced a number of legal arguments why the practice of restricting their access to other long-distance carriers should be disallowed. In addition, the petitioners alleged that the calling rates for making long-distance collect calls are excessive and unreasonable.

In response to the Petition, the Commission initiated an inquiry seeking comments and information generally related to the practice of blocking access to other long-distance (i.e., toll) carriers from inmate pay telephones. The Commission's inquiry also examined Operator Services and Pay Telephone Rule 309 (IDAPA 31.51.01.309) which permits, but does not require, the blocking of access to other toll carriers on inmate pay telephones. The Commission also conducted two public workshops in Pocatello and Boise. Written comments were filed by AT&T, Inmate Communication Corporation, Peoples Telephone Company, MCI Telecommunications Corp., Qwest's predecessor U S WEST, the Petitioners, the Staff and two prisoners in the Canyon County Jail.

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<sup>1</sup> "Institutions of confinement" are defined as prisons, jails, mental health or rehabilitation facilities that house inmates or other individuals whose liberties are legally restricted by judgment or order of a court or who are confined under arrest, involuntary commitment or other legal process, and who are physically restrained from leaving the premises. Pay Telephone Rule 300.01, IDAPA 31.51.01.300.01.

After reviewing the record in this case the Commission, on its own motion, has decided to administratively close this proceeding. As set out in greater detail below, state and federal laws restrict the ability of the Commission to grant the relief requested by the petitioners.

## **BACKGROUND**

### ***A. The Petition***

In May 1993, the inmates filed their Petition alleging that they were “not permitted to access other operator service providers” or other toll carriers when making collect calls from institutions of confinement. Petition at 4. The practice of prohibiting callers from accessing other operator service providers or toll carriers is commonly referred to as “blocking.” The Petition did not specifically mention the Commission’s Pay Telephone Rule 309. This rule permits telephone companies serving institutions of confinement to block access to other telecommunications services including: Toll free numbers (e.g., 800); information service numbers (e.g., 900 or 976); 911; directory assistance; access to other toll carriers; and incoming calls. IDAPA 31.51.01.309. The Petition asserts that this blocking practice violates federal and state law.

The Petition sets out three primary legal arguments why the Commission should prohibit blocking. First, the petitioners claim that such blocking practices violate provisions of the federal Telephone Operator Consumer Services Improvement Act of 1990, 47 U.S.C. § 202(a) *et seq.* Second, they allege that the commissions paid by the selected toll carrier to the ISCI are discriminatory under *Idaho Code* § 61-313. Third, the petitioners maintain that the rates for collect calling from institutions of confinement are unreasonably high and in violation of both the federal and state telecommunication laws.<sup>2</sup>

In their supporting brief, the petitioners acknowledge that there are “valid considerations for [authorizing] different measures” for inmate-only pay phones than for other pay phones made available to the general public. The Petition recognizes that some controls over the use of telecommunication devices in correctional institutes are needed “to prevent fraud and . . . control incoming calls.” Brief at 1. However, the petitioners claim that there are software programs and equipment that would provide automated collect calling via a number of different toll carriers. According to the petitioners, such equipment and software would allow

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<sup>2</sup> The petitioners also allege that blocking violates federal and state antitrust laws. Petition at 3. *See infra* note 5.

inmates, and ultimately the party receiving (and paying for) the inmate collect call, to choose from a number of toll carriers. *Id.* at 2-4.

### ***B. State and Federal Jurisdiction***

At the outset, it is important to recognize the interplay between state and federal jurisdiction. The federal Communications Act of 1934 (codified at 47 U.S.C. § 151 *et seq.*) recognizes “a system of dual state and federal regulations over telephone service.” *Louisiana PSC v. Federal Communications Commission*, 476 U.S. 355, 106 S.Ct. 1890 (1986). The Communications Act granted the Federal Communications Commission (FCC) the authority to regulate “interstate and foreign commerce in wire and radio communication” and expressly denied the FCC jurisdiction over “intrastate communication service.” *Id.* 476 U.S. at 360, 106 S.Ct. at 1894 *citing* 47 U.S.C. §§ 151 and 152(b). Intrastate telephone services (including local service and in-state long-distance service) were regulated by the states. States, including Idaho, typically granted exclusive franchises to local exchange carriers. For example, Idaho law provided that no telephone corporation shall provide services to customers located within another telephone corporation’s certificated service area. *Idaho Code* § 62-615(1) (repealed) 1997 Sess. Laws ch. 192, § 5.

The federal Telecommunications Act of 1996 (“1996 Act”) fundamentally restructured local telephone markets. *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 119 S.Ct. 721 (1999); Order No. 27100. In particular, Section 253(a) of the 1996 Act provides that no state may prohibit the ability of “any entity to provide any interstate or intrastate telecommunications service.” 47 U.S.C. § 253(a). Thus, Congress sought to foster competition in all telephone markets, including the local service market. In response to the 1996 Act, our Legislature amended various provisions of the Idaho Telecommunications Act. Order No. 27100; 1997 Sess. Laws ch. 192. In summary, federal law and the FCC regulate interstate services and the rates for those services. Intrastate services are subject to both federal and state laws.

## **DISCUSSION AND FINDINGS**

### ***A. State Law***

In 1988 the Idaho Legislature enacted the Telecommunications Act codified at *Idaho Code* §§ 61-622A and 62-601 *et seq.* The purposes of the 1988 Telecommunications Act are to maintain high-quality universal telecommunications services at just and reasonable rates and “to

encourage innovation within the industry by a balanced program of regulation and competition.” *Idaho Code* § 62-602(1). Pursuant to the Act, a local exchange carrier (LEC) such as Qwest is given a choice. It can offer all of its local telecommunications services at rates set by the Commission pursuant to its traditional ratesetting authority contained in Idaho Code, Title 61, or the LEC may elect to have its non-basic local services<sup>3</sup> subject to the provisions of the 1988 Telecommunications Act and be free from the Title 61 ratesetting authority of the Commission. *Idaho Code* § 62-605(2).

Two telecommunications companies elected to move their services to Title 62 regulation. In 1988 AT&T was the only intrastate toll carrier to hold a Certificate of Public Convenience and Necessity. In July 1988, AT&T filed its notice removing its services to Title 62. Notice of Election, Case No. ATT-T-88-1. All other intrastate toll carriers which did not hold a Certificate of Public Convenience and Necessity were automatically subject to the provisions of Title 62. *Idaho Code* § 62-604(1). In March 1989, Qwest’s predecessor elected to remove its non-basic local services from the Commission’s Title 61 ratesetting authority. Order No. 22416.

Returning to the Petition, we find that since at least 1989, the Commission has had no authority to set the rates for collect toll calls in Idaho pursuant to the 1988 Telecommunications Act, *Idaho Code* §§ 61-604(1), (2) and 62-605(2). Thus, the Commission cannot remedy the allegations of excessive rates for inmate collect toll calls.<sup>4</sup>

### ***B. Federal Law***

The issue of allowing inmates to select a toll carrier of their choice is addressed in Section 226 of the federal Telephone Operator Customer Services Improvement Act of 1990 (TOCSIA). TOCSIA generally requires that every telephone “aggregator” (e.g., pay telephone provider) allow customers using their pay telephones to access toll carriers of their choice. However, Section 226(a) defines an aggregator pay telephone as a telephone “available to the public or transient users of its premises.” 47 U.S.C. § 226(a). The FCC has issued regulations that define the term “aggregator” as not applying to inmate-only pay telephones in correctional institutions. 47 C.F.R. § 64.708(b). As the FCC elaborated in 1996, “neither TOCSIA nor our

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<sup>3</sup> “Basic local exchange service” is defined as the provision of local service to all residential customers and to small business customers with five or fewer telephone lines. *Idaho Code* § 62-603(1) and (11).

<sup>4</sup> The Commission’s ratesetting authority over local service rates has been further restricted by 2005 amendments to *Idaho Code* § 62-605(1), (5).

rules require telephones for use only by prison inmates to be unblocked.” Thus, inmates in institutions of confinement are generally unable to select the collect toll carrier of their choice. *In the Matter of Billed Party Preference for InterLATA 0+ Calls*, 11 F.C.C.R. 7274, ¶ 48 (1993); 13 F.C.C.R. 6122, ¶¶ 56-58 (1998); *In the Matter of Policies and Rules Concerning Operator Service Providers*, 6 F.C.C.R. 2744, ¶ 15 (1991); *FCC Consumer Facts – Inmate Telephone Service*, available at: [www.fcc.gov/cgb/consumerfacts/inmate.html](http://www.fcc.gov/cgb/consumerfacts/inmate.html).

The U.S. District Court for Idaho has also reached the same conclusion. In 1997, in *Goodrick v. GTE Telephone Company*, (unreported) (Case No. CV96-0328-N-EJL at pp. 10-11) (July 1, 1997) the Court found that inmate-only pay telephones are excluded from the TOCSIA requirements that users of pay telephones be able to access a carrier of their choice.<sup>5</sup>

In 1996 Congress significantly changed the 1934 Communications Act when it enacted the federal Telecommunications Act of 1996. Among other things, Section 276 of the 1996 Act permits all pay telephone providers to pay the premise owner a fee or commission based on the cost of the pay telephone and the amount of local and long-distance usage. 47 U.S.C. § 276(b)(1)(D), (E). After enactment of the 1996 Act, the FCC deregulated the pay telephone industry both on an interstate and intrastate basis. *Heber et al.*, Federal Telecommunications Law (2d Ed. 1999) § 8.4.4 at p. 689. Based upon the Idaho Telecommunications Act and 47 U.S.C. § 276(c), the Commission’s jurisdiction over pay telephone service is typically limited to consumer protection issues such as pay telephone labeling and notice of charges. Thus, the Commission has no authority over the rate of commissions made to the ISCI facility.

Over the years the FCC has initiated several dockets to examine the issues of inmate payphone rates and blocking. *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order on Remand and Notice of Proposed Rulemaking*, CC Docket No. 96-128 ¶ 3 (Feb. 21, 2002). A subsequent petition for rulemaking filed by Martha Wright was merged with the 96-128 docket. *Petition for Rulemaking*, DA 03-4027 (Dec. 31, 2003). The FCC “is currently examining long-distance telephone service rates imposed on inmates and their families in ongoing proceeding regarding the provision of inmate payphone service.” The FCC has yet to issue a final decision

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<sup>5</sup> The Court also found that the inmate plaintiff did not possess antitrust standing to bring an antitrust claim. *Goodrick* (unreported at pp. 8-10).

in the 96-128 docket. Rather than having our case remain open pending the FCC's decision, we believe it is reasonable to administratively close this case.

In summary, the Commission does not have the jurisdiction to set the rates for interstate calls, and no longer sets the rates for intrastate collect toll calls.<sup>6</sup> Moreover, the Department of Correction is free to select and negotiate commissions with any payphone provider and/or long-distance carrier of its choice. Finally, TOCSIA does not require that inmate payphones be unblocked. Consequently, we are unable to grant the relief requested by the petitioners and administratively close this proceeding.

### **ORDER**

IT IS HEREBY ORDERED that this proceeding be administratively closed.

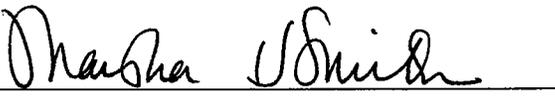
THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. GNR-T-93-12 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this case. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

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<sup>6</sup> The Department's current inmate telephone service provider does offer three different rate schedules: (1) debit calls – set up by purchasing time through the inmate commissary provider; (2) prepaid calls – set up by family and friends through the telephone service provider; and (3) collect calls – where charges are assessed to the called party. *Idaho Department of Correction – Inmate Phone Service, available at: [corrections.state.id.us/our\\_facilities/inmate\\_phones.htm](http://corrections.state.id.us/our_facilities/inmate_phones.htm).*

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 20<sup>th</sup>  
day of February 2007.

  
PAUL KJELLANDER, PRESIDENT

  
MARSHA H. SMITH, COMMISSIONER

  
DENNIS S. HANSEN, COMMISSIONER

ATTEST:

  
Jean D. Jewell  
Commission Secretary

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