BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 92-518-C - ORDER NO. 93-148

FEBRUARY 24, 1993

IN RE: Application of Inmate Phone Systems Corporation for a Certificate of Public Convenience and Necessity to operate as a reseller of telecommunications services, including operator services, within the State of South Carolina.	))))))	ORDER GRANTING CERTIFICATE

This matter is before the Public Service Commission of South Carolina (the Commission) by way of the Application of Inmate Phone Systems Corporation (Phone Systems) requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of telecommunications service, including operator services, and authorizing it to place telephones in confinement facilities in the State of South Carolina. Phone Systems' Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1992) and the Regulations of the South Carolina Public Service Commission.

The Commission's Executive Director instructed Phone Systems to publish a prepared Notice of Filing in newspapers of general circulation in the affected areas one time. The purpose of the Notice of Filing was to inform interested parties of Phone Systems' Application and the manner and time in which to file the appropriate pleadings for participation in the proceeding. Phone

Systems complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. Petitions to Intervene were filed by Southern Bell Telephone and Telegraph Company (Southern Bell), and the South Carolina Department of Consumer Affairs (the Consumer Advocate).

A hearing was commenced on Tuesday, January 26, 1993, at 11:00 a.m. in the Commission's Hearing Room. The Honorable Henry G. Yonce, presided. Frank R. Ellerbe, III, Esquire, represented Phone Systems; Carl F. McIntosh, Esquire, represented the Consumer Advocate; Caroline N. Watson, Esquire, represented Southern Bell; and Gayle B. Nichols, Staff Counsel, represented the Commission Staff.

At the beginning of the hearing Southern Bell announced that it had entered into a Stipulation with Phone Systems. The terms of the Stipulation are as follows:

1. The Applicant requests the authority to provide automated "0+" intraLATA and/or automated local operator assisted service to confinement facilities. Southern Bell does not oppose this request for authority under the terms and conditions of this Stipulation. Such request for authority will clearly be limited to automated calls originating from confinement facilities.

2. Any request for authority by the Applicant other than that outlined in (1) above will be limited to authority for interLATA service only.

3. Any operator services provided other than those outlined in (1) above should be only for interLATA calls and any "0+" or "0-" intraLATA calls other than those outlined in (1) above will be handed off to the LEC.

4. If any unauthorized intraLATA calls are inadvertently completed by the Applicant, the Applicant should reimburse the LEC pursuant to the

Commission's Order in PSC Docket No. 86-187-C.

Phone Systems presented the testimony of Stephen A. Edwards in support of its Application. Mr. Edwards explained Phone Systems' request for certification to operate as a reseller of interexchange telecommunications services, including operator services, to provide "0+" collect only interLATA and intraLATA service, to provide "0+" collect only local service, and to provide other services from confinement facilities consistent with prior Commission rulings. Mr. Edwards testified that as a non-facilities based reseller, Phone Systems' underlying carrier for interLATA service will be MCI and its underlying carrier for intraLATA service will be the local exchange carrier. Mr. Edwards explained that inmates will be able to complete only coinless, collect calls using an automated telephone. He testified that the called party must positively accept the collect call. Mr. Edwards testified that Phone Systems already has a certificate to sell, vend, and install Coin or Coinless Telephones (COCOTs) in South Carolina.

Additionally, Mr. Edwards testified that Phone Systems wished to withdraw a tariff revision which it had filed subsequent to its initial Application. This tariff revision would have introduced provisions which would have allowed the billing of a premises owner surcharge. Further, Mr. Edwards indicated that Phone Systems wished to modify the language for the operator handled charge for local calls. Mr. Edwards suggested that a specific charge be modified and language be added to indicate that this operator surcharge be the same as that approved for the local exchange

companies.

According to its Application, Phone Systems is a privately-held corporation incorporated in the State of California and has authority to do business as a foreign corporation in South Carolina. Phone Systems asserts in its Application and through its testimony that it has the financial capability to provide the interexchange telecommunications services it desires in South Carolina.

Mr. Edwards admitted that since May 1992 Phone Systems has provided reseller services to the McCormick Correctional Institution. He testified that when Phone Systems realized it did not have the power to provide these services, it filed the current Application for a Certificate of Public Convenience and Necessity with the Commission. Mr. Edwards stated that Phone Systems would make refunds if so ordered. At the conclusion of the hearing the Consumer Advocate moved the Commission to order Phone Systems to issue refunds for service provided prior to the date of certification.

After full consideration of the applicable law and of the evidence presented by Phone Systems, the Consumer Advocate, Southern Bell, and the Commission Staff, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Phone Systems is incorporated under the laws of the State of California and is licensed to do business as a foreign corporation in the State of South Carolina by the Secretary of

State.

2. Phone Systems operates as a non-facilities based reseller of interexchange services and wished to do so on an interLATA and limited intraLATA basis in South Carolina.

3. Phone Systems has the experience, capability, and financial resources to provide the services as described in its Application.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Phone Systems to provide intrastate, interLATA service through the resale of intrastate Wide Area Telecommunications (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission and to provide local and intraLATA services as described in its Application, testimony, and Hearing Exhibit No. 1 to confinement facilities.

2. If Phone Systems incidentally or accidentally completes any intraLATA calls, other than those described above, or other than those originating from confinement facilities, the LEC shall be compensated by Phone Systems as ordered by the Commission in Order No. 86-793, issued August 5, 1986, in Docket No. 86-187-C.

3. The Commission adopts the rate design for Phone Systems for its resale services for interLATA calling which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate level with a flexibility for adjustment

below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984). With the below noted exceptions, the Commission adopts Phone Systems proposed maximum rate tariff, as adjusted at the hearing, and adopts the rates for provision of services to confinement facilities.

4. Phone Systems shall not adjust its rates for interLATA calls below the approved maximum level without notice to the Commission and to the public. Phone Systems shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. A proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of Phone Systems subscribers should constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1992).

5. For the provision of intrastate telecommunications service, Phone Systems may only use underlying facility-based carriers that are certified by this Commission to provide such service. Phone Systems shall notify the Commission in writing of its underlying carrier(s) and of any change in its carrier(s). Phone Systems' request to withdraw its tariff revision concerning a premises owner surcharge and to modify the language for the operator surcharge for local calls be granted.

6. Phone Systems shall file its tariff and an accompanying price list in a three ring notebook to reflect the Commission's findings within thirty (30) days of the date of this Order.

7. Phone Systems is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similar to facilities-based interexchange carriers.

8. The rates charged "0+" collect calls from confinement facilities on a local or intraLATA basis shall be no more than the rates charged by the LEC for local or intraLATA operated assisted calls at the time such call is completed.

9. The rates charged for "0+" collect calls from confinement facilities on an interLATA basis shall be no more than the rates charged for interLATA operator assisted calls by AT&T Communications at the time such call is completed.

10. The Applicant is required to brand all calls so that it is identified as the carrier of such calls to the called party.

11. A "0+" collect call should only be completed upon positive or affirmative acceptance of the charges from the called party. Passive acceptance is prohibited.

12. Call detail information submitted by Phone Systems to the LECs for billing must include the COCOT access line number assigned to the line by the local exchange company.

13. The bill provided to the called party should provide Phone Systems' name and a toll-free number for contacting Phone Systems concerning any billing of service questions.

14. Phone Systems shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178, in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

15. Phone Systems shall comply with all Commission guidelines pertaining to the provision of COCOT service as set forth in Docket No. 85-150-C and any other relevant proceedings. Any departure from those guidelines will not be allowed without a specific request and Commission approval of the requested waiver.

16. A Certificate of Public Convenience and Necessity is hereby granted to Phone Systems in accordance with the terms and conditions of this Order.

17. The Commission grants the Consumer Advocate's motion to order refunds. The Commission finds and concludes that Phone Systems has admitted to providing telecommunications services since May 1992 without authority. Consequently, the Commission determines it is within its discretion and appropriate to require Phone Systems to refund all charges collected by it for completion of intrastate telephone calls prior to it receipt of Certification. These refunds shall be issued within thirty (30) days of the date of this Order and shall include interest at the rate of 12% per annum. Phone Systems shall file with the Commission all necessary information to certify that the refunds have been made.

18. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)

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ATTACHMENT A

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS

FOR INTEREXCHANGE COMPANIES AND AOS'S

(1)SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

(2)SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

(3)RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR 12 MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

*THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION, MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION WORK IN PROGRESS, ACCUMULATED DEFERRED INCOME TAX, CONTRIBUTIONS IN AID OF CONSTRUCTION AND CUSTOMER DEPOSITS.

(4)PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR ENDING _____.

*THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION PAYABLE), PREFERRED STOCK AND COMMON EQUITY.

(5)PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.

(6)ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS WELL AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT (SEE #3 ABOVE).