BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 93-504-C - ORDER NO. 94-643

JULY 13, 1994

IN RE: Investigation of Level of Earnings of GTE South, Inc.	) ORDER APPROVING) REFUNDS AND) ESTABLISHING) GENERIC DOCKET

This matter comes before the Public Service Commission of South Carolina (the Commission) on a portion of the Staff investigation of the level of earnings of GTE South, Inc. (GTE or the Company), specifically, certain issues raised by the South Carolina Public Communications Association (SCPCA) on certain refunds due COCOT providers, and other related issues.

By our Order No. 94-264, issued April 1, 1994 in this Docket, the Commission approved the March 22, 1994 Stipulation and Settlement Agreement, executed by all parties to this Docket. That Stipulation and Settlement Agreement resolved all issues in this Docket, with the exception of certain issues raised by SCPCA. As stated in that Stipulation and Settlement Agreement, the SCPCA took issue with the refund as it was configured under the Agreement, and further, took issue with GTE's rate design for Customer Owned Coin Operated Telephones (COCOTs) on a going forward basis. Under the Stipulation, SCPCA specifically reserved its right to have these issues heard before the Commission.

Accordingly, a hearing was held on June 22, 1994, before the Commission with the Honorable Rudolph Mitchell, Vice-Chairman, presiding. John F. Beach, Esquire, represented the SCPCA; M. John Bowen, Jr., Esquire, and Eric Edgington, Esquire, represented GTE; Elliott F. Elam, Jr., Esquire, represented the Consumer Advocate for the State of South Carolina (the Consumer Advocate); Frank P. Mood, Esquire, represented AT&T Communications of the Southern States, Inc. (AT&T); and F. David Butler, General Counsel, represented the Commission Staff. The Intervenors, MCI Telecommunications Corporation (MCI), and U.S. Sprint (Sprint), were not present at the hearing.

Gene R. Stewart, presented testimony and surrebuttal testimony in the case on behalf of the SCPCA. In addition, with permission of all parties, the SCPCA stipulated the testimony of Robert Furlong, Roger Grant, Steve Alexander, Clifton Craig, and Barry Selvidge into the record as if given orally from the stand. Douglas E. Wellemeyer presented rebuttal testimony and supplemental rebuttal testimony for GTE at the hearing.

Gene R. Stewart testified for the SCPCA. Stewart alleged that the present Usage Sensitive Service (USS), and Measured Extended Area Service (MEAS), as approved by this Commission is in violation of S.C. Code Ann.,§58-9-250, which prohibits any unreasonable preference, or advantage to any person or corporation in terms of telephone utility rates. Stewart stated his belief that telephones provided to hotels and motels in South Carolina for intrastate service are billed on a monthly rate, plus a flat

rate per access line, whereas USS and MEAS phones utilized by SCPCA members are billed on a monthly rate, plus the usage sensitive rate. The flat unlimited usage charge to hotel customers is $12.30. Stewart alleges that the average usage sensitive portion for local service provided to the COCOT industry was $21.12. Stewart believes that the refund of approximately $70,000 to COCOT providers under the Stipulation of March 22, 1994 was inadequate, in that the refund was configured based on the unlimited usage charge of $12.30 as a proxy, since GTE claimed it did not have data to calculate the actual usage sensitive charges. Stewart stated his belief that the refund, therefore, should have been much greater than the approximate $70,000 that was proposed to be refunded to SCPCA members.[1] Further, Stewart again stated his belief that the USS and MEAS rates violated the anti-discrimination mandate of §58-9-250, and that GTE should therefore, on a going forward basis, charge SCPCA members the monthly rate plus the flat rate charge presently allowed hotels and motels.

Douglas E. Wellemeyer testified on behalf of GTE. GTE takes a very different view of the evidence, and believes that the various studies presented to the Commission actually validated the refund calculation presented in the Stipulation of March 22, 1994. Wellemeyer believes that based on the figures furnished by SCPCA,

1. The approximately $70,000 is currently in escrow pending the final decision of the Commission as to the refund amount, as per the Stipulation and Settlement Agreement.

a monthly flat rate usage charge of $12.04 would have been correctly used to calculate the refund, therefore presenting a result very close to that calculated in the original refund calculation. Further, Wellemeyer alleges that there are several differences between telephones provided to hotels and motels and COCOT access lines provided to COCOT providers. First, Wellemeyer notes that the usage of the local telephone service varies between the two. Wellemeyer contends that local service resale is not the primary business of hotel/motel operators as it is for COCOT providers, and probably constitutes a very small percentage of a typical hotel's gross sales. Second, Wellemeyer contends that hotel/motel providers are not competing directly in GTE's market for telephone business, but rather provide telephone services only to their patrons, only at their premises, and only incidental to the hotel's primary business. Further, Wellemeyer states his belief that the value of a telephone to a hotel guest depends as much as anything on the ability to originate calls to other guest rooms and hotel facilities, the ability to receive calls, including wake-up calls, and some facility for guest messaging services, all of which is typically offered without any separate charge by the hotel. Wellemeyer then concludes that because of the differences between hotel/motel telephones furnished by GTE and COCOTs, that GTE is justified in charging the flat rate for the hotel/motel phones, and the usage sensitive rates for the COCOTs.

This Commission would note that under the provisions of S.C.

Code Ann.,§58-9-250, telephone utilities may establish classifications of rates and services subject to the approval of the Commission. "... and such classifications may take into account the conditions and circumstances surrounding the service, such as the time used, the purpose for which used, the demand upon plant facilities, the value of the service rendered, or any other reasonable consideration. The Commission may determine any question arising under this section."

The Commission has examined the evidence in this portion of the case, and adopts the reasoning of GTE's witness Wellemeyer in two respects. First, although this Commission observed that both SCPCA and GTE presented different views of the studies presented by SCPCA on the usage sensitive charges, the Commission believes that GTE's interpretation of the studies is the more reasonable and credible, and therefore believes that the refunds calculated at the time of the March 22, 1994 Stipulation were reasonable, and should be approved and affirmed. Further, the Commission believes that GTE has shown successfully the differences between hotel/motel phones, and COCOT phones. Under §58-9-250, GTE has shown that its difference in classifications of rates and services between the two are justified, and that GTE has shown this Commission the difference in the conditions and circumstances surrounding the services provided to each. Obviously, the purposes of the two services are completely different. Within a hotel/motel setting, patrons utilize telephonic service only incidental to the hotel's primary business. With regard to

telephones provided by members of SCPCA, the COCOT telephone business is the providers' primary business. We think that GTE is justified under §58-9-250 in providing for separate rate structures for two very different situations, and we so conclude.

Further, under this scenario, no going forward rate reductions are necessary, since this Commission has held that the present rate structure is just and reasonable, and is consistent with the statutory law.

The SCPCA proposal to limit a 25¢ call to 3 minutes must be addressed. We note that this proposal is of universal interest to a number of payphone providers, both independent and those affiliated with a local exchange carrier (LEC). Therefore, we believe that it would reasonable to establish a Generic Docket to examine timed calls originating from COCOTs and LEC provided pay telephones in areas other than those currently located in low-income areas, in which 10¢ is charged per call. The Commission believes that a Generic Docket would do much to clarify the issues on this question, and would provide the Commission with much needed information and evidence on whether or not the Commission should allow timed calls originating from COCOTs and LEC provided pay telephones.

Finally, this Commission must address GTE's objection to SCPCA's requested introduction into the evidence of Hearing Exhibit 3, which consists of GTE bills rendered for the telephone at Food Chief No. 43. GTE's objection is that it had not verified the validity of the bill, and that, therefore, the Exhibit should

not be admitted. We overrule the objection, and the Exhibit is hereby admitted into the evidence. We believe lack of verification goes only to the weight of the evidence, and not to its admissibility. We therefore admit the evidence for what it is worth.

IT IS THEREFORE ORDERED THAT:

1. The Commission approves and affirms the refunds calculation to SCPCA members under the terms of the March 22, 1994 Stipulation and Agreement approved by the Commission in this Docket. The refunds shall be issued to the appropriate COCOT providers accordingly.

2. The Commission denies the request to change the COCOT rates from a usage sensitive basis to a flat rate basis, and therefore, denies any rate reductions on a going forward basis.

3. A Generic Docket shall be established to examine the concept of timed COCOT calls from COCOTs, as well as LEC provided pay telephones in areas other than those in low-income areas where a local call costs ten cents.

4. Hearing Exhibit 3 is admitted into the evidence.

5. 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)