

<http://www.psc.state.al.us/orders2/2007/07nov/30632.html>

Re: GENERIC PROCEEDING TO DETERMINE)
APPLICABILITY OF THE)
COMMUNICATIONS REFORM ACT OF 2005)
TO INMATE PHONE SERVICE)

DOCKET 30632

ORDER

BY THE COMMISSION:

The Alabama Legislature's Communications Reform Act of 2005 (the Act) is codified in Title 37, Code of Alabama, Chapter 2A. The Act limited the Commission's jurisdiction over services as defined in sections 37-2A-2 through 37-2A-4. Some providers have interpreted the retail services provisions of the Act to mean that Inmate Phone Service is no longer subject to the Commission's pricing jurisdiction. At its May 1, 2007, Monthly Meeting, the Commission approved a recommendation from the Legal Division that a generic proceeding be established to determine whether or not providers of Inmate Phone Service are eligible to elect to operate under the Communications Reform Act of 2005.[1] The Staff, having researched the provisions of the Act, offers its interpretation of whether or not it is applicable to Inmate Phone Services.

Inmate Phone Services are provided under contract to the correctional facilities. The contract offering provisions of the Act are as follows:

Beginning August 1, 2006, the Commission shall not have any jurisdiction, right, power, authority, or duty to regulate, supervise, control, oversee, or monitor, directly or indirectly, the costs, rates, charges, terms, or conditions of any new contract offering, but it shall retain jurisdiction over existing contract offerings for the duration of the existing contract offering, unless otherwise agreed to by the affected customer.[2]

However, the Act defines "contract offering" as:

Any retail contractual agreement, whether or not memorialized in writing, by which a local exchange or inter-exchange carrier offers any communications service to any existing customer or potential customer.[3]

Inmate calling is limited to automated collect only, which includes operator surcharges. The correctional facility, with whom the Inmate Phone Services Provider has a contract, is neither a user of the services or a customer. The inmates are users of the facilities provided; however, inmates are not billed for the services because the calls are collect only. The recipients of inmate calls, who are billed by the Inmate Service Providers, are Inmate Phone Service customers. The contract with the correctional facility is essentially a location fee that allows for instrument placement. Therefore, Inmate Phone Services do not fall within the provisions of a "contractual

agreement” with the “existing customer or potential customer” because no such agreement exists.

The Act goes on to say:

Beginning February 1, 2007, the Commission shall not have any jurisdiction, right, power, authority, or duty to regulate, supervise, control, oversee, or monitor, directly or indirectly, any retail telecommunications services and any existing bundled offering, except as provided in subsections (e) and (f) and Section 37-2A-7, nor shall it have any jurisdiction, right, power, authority, or duty to regulate, supervise, control, oversee, or monitor, directly or indirectly, the facilities used to provide such retail telecommunications services or bundled offerings.[4]

Retail “telecommunications services” is the key term that drives this subparagraph. “Telecommunication services” as applicable in the Act is defined as:

The offering of telecommunications for a fee directly to the public, or to any classes of users as to be effectively available directly to the public, regardless of the facilities used. The term does not include the provision of commercial mobile service under Section 332(c) of the Federal Communications Act of 1934.[5]

Inmate Phone Service is not a service available directly to the public. Rather, it is an exclusive arrangement offered only to correctional facilities and end users with no other alternative providers.

Historically, the Commission categorized Inmate Phone Service with Payphone Service and required that Inmate Phone Service providers be certified as Customer Owned, Coin Operated Telephone Service (COCOT) providers. The process whereby providers may elect to be regulated under the Act are included in 37-2A-5. Only Incumbent Local Exchange Carriers, Local Exchange Carriers, and Inter-exchange Carriers are offered the option of opting into the provisions of the Act.

The stated purpose of the Act as defined by the Legislature is:

Purpose.

The Legislature finds that advancements in communications technology and innovation have significantly changed the way people communicate. In particular, wireless and internet technologies delivered by multiple competitors are providing consumers and businesses with advanced communications services, enhancing the quality of life and economic productivity. The Legislature has determined that additional consumer and economic benefits can be achieved through the adoption of new policies promoting market-based competitive forces for today's advanced wireline communications services market, while maintaining commission oversight of basic local wireline telephone service and of issues associated with wholesale transactions that incumbent local exchange carriers have with other telecommunications carriers for the transmission and routing of telephone exchange service and exchange access.[6]

The key terms driving the Legislature's purpose for the Act are: "multiple competitors", and "promoting market-based competitive forces." Clearly, Inmate Phone Service, as configured and delivered, does not fit within those services now deemed competitive enough by the Legislature to warrant reduced Commission oversight.

For services not subject to the Act, the Commission's jurisdiction is unaffected:

(b) Nothing in this chapter shall do any of the following:

(1) Alter the jurisdiction, rights, powers, authority, or duties of the Commission except as specifically provided for in this chapter.[7]

Staff concludes that Inmate Phone Service is not subject to regulation in accordance with the Act and remains under the full jurisdiction of the Commission. Staff further recommends that the Commission seek comments from Inmate Phone Service providers and other interested parties regarding these issues.

The Commission concurs with the Staff's recommendation and hereby establishes a period wherein comments will be received and considered by the Commission in regards to the Act's applicability to Inmate Phone Services.

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That, beginning with the date of this Order and ending December 7, 2007, Inmate Service Providers and other interested parties may submit written comments, regarding the issues addressed herein, for the Commission's consideration.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

Done at Montgomery, Alabama, this 6th day of November, 2007.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

Susan D. Parker, Commissioner

ATTEST: A True Copy
Walter L. Thomas, Jr., Secretary

[1] Legal Division Supplemental Agenda dated April 26, 2007, p. 3.

[2] Act, 37-2A-4(e).

[3] Act, 37-2A-2(6)

[4] Act, 37-2A-4(g)

[5] Act, 37-2A2-2(19)

[6] Act, 37-2A-3.

[7] Act, 37-2A-11B