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S. Gray

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PUBLIC UTILITIES AND PUBLIC TRANSPORTATION

Competitive Telecommunications Services: Allow Permissive Deregulation

CODE SECTION: O.C.G.A. § 46-2-23 (amended)
BILL NUMBER: HB 1234
ACT NUMBER: 1478
SUMMARY: The Act gives the Public Service Commission discretion to deregulate and detariff telecommunications services where competition for those services exists within the same geographic area.
EFFECTIVE DATE: April 14, 1988

History

Georgia's Southern Bell Company was created when American Telephone and Telegraph (AT&T) was divided into nine "Baby Bell" telephone companies.¹ Since Southern Bell's inception, the telecommunications industry has expanded into new markets, including the public mobile communications service market.² Anticipating demand for mobile services, in 1981 the Federal Communications Commission (FCC) allocated specific radio frequencies for use by mobile communications providers.³ The FCC divided these frequencies into two "blocks" within each particular service area.⁴ Frequencies from one block were assigned to carriers which also provide telephone services; frequencies from the other block were assigned to carriers which do not also provide telephone services.⁵

All public utilities in Georgia, including telecommunications companies, are regulated by the Public Service Commission (PSC).⁶ As a regulated telephone company, Southern Bell faced what it contended was unfair competition with nonregulated radio utilities offering the same services

1. Interview with Representative Roy H. Watson, Jr., House District No. 114 (Feb. 19, 1988) [hereinafter Watson Interview]. Representative Watson chairs the House Committee on Industry and Governmental Affairs, to which HB 1234 was originally assigned. Representative Watson is also a sponsor of the bill.

2. *Id.* A familiar example of public mobile communications service is the cellular car phone.

3. 47 C.F.R. § 22.902 (1981).

4. 47 C.F.R. §§ 22.902, .903 (1981).

5. *Id.*

6. See O.C.G.A. § 46-2-20 (1982); O.C.G.A. § 46-2-23 (1982 & Supp. 1988).

within the same geographic area.⁷

During the 1988 legislative session Southern Bell lobbied for the passage of HB 1234.⁸ The bill was designed to help Southern Bell "compete on an even footing" with nonregulated competitors by allowing the PSC to deregulate telecommunications services where competition with nonregulated companies exists.⁹ The Act affects not only Southern Bell, but approximately four hundred telecommunications companies currently operating within the state.¹⁰

HB 1234

HB 1234 gives the PSC discretion to deregulate and detariff¹¹ a telecommunications service when competition for the service exists within a particular geographic area at the time deregulation is sought.¹² Thus, the definition of "competition" determines when deregulation may occur.¹³ Under the Act, the existence of competition is determined by the PSC after a public hearing.¹⁴

The PSC is authorized to deregulate if competition exists, but is not compelled to do so.¹⁵ In deciding what action to take on an application for deregulation, the PSC must consider a number of factors at a public

7. Secrest, *S. Bell: Deregulation Won't Necessarily Hike Rates*, Atlanta Const., Feb. 4, 1988, at 5C, col. 4 [hereinafter Secrest I]. See also 1983 Op. Att'y Gen. 148 (1983)(addressing PSC's jurisdiction over cellular phone companies).

8. Interview with James R. Newman, Assistant Vice President of Southern Bell, in Atlanta (Feb. 25, 1988) [hereinafter Newman Interview]. Mr. Newman cited increased competition with nonregulated industries as one of Southern Bell's primary motivations for advancing HB 1234. He indicated the extent of Southern Bell's involvement with the drafting of the original version of HB 1234 by referring to it as "our bill." See also Secrest I, *supra* note 7, at col. 1. ("The legislation . . . [was] written by telephone company attorneys . . .").

9. Watson Interview, *supra* note 1.

10. *Id.*

11. Regulation dictates what services the company may provide; tariffing dictates how much the company may charge for those services. Regulatory and Public Affairs Dept. of Southern Bell Co., *Deregulation: A Look At Legislation Addressing Telecommunications 1* (Nov. 1987) (copy on file at Georgia State University Law Review office) [hereinafter *Deregulation Pamphlet*]. For purposes of this article, deregulation and detariffing will be referred to collectively as deregulation.

12. O.C.G.A. § 46-2-23(d) (Supp. 1988). "Nothing in this Code section shall authorize [deregulation of] any service unless functionally equivalent or substitute services are readily available from competitive providers in the relevant geographic market. This finding must be made on the record after public hearing." *Id.*

13. Other states considering similar legislation have attempted to define competition statutorily. For example, Minnesota defines "effective competition" to mean more than 50% of the telecommunications company's customers have an alternative service available. MINN. STAT. § 237.57 subd.3 and 237.59 subd.5(b) (Supp. 1988). Deregulatory legislation has been adopted in at least 21 other states. Watson Interview, *supra* note 1.

14. O.C.G.A. § 46-2-23(d) (Supp. 1988).

15. O.C.G.A. § 46-2-23(f) (Supp. 1988).

hearing.¹⁶ Additionally, under the Act the PSC may reregulate a deregulated service if it determines that reregulation is in the public interest.¹⁷

Upon finding that competition does exist, the PSC may remove all limitations on what services the company may provide; remove all limitations on what the company may charge; remove limitations on what the company may charge for certain services, but retain control over others; or remove limitations on what the company may charge, but require the company to notify the PSC of any later rate changes.¹⁸

Beginning one year after deregulation and continuing for the next five years, a deregulated utility must file a report with the PSC indicating the rates charged at the time of deregulation and the rates charged on each anniversary of the deregulation.¹⁹ The PSC must then summarize the results and make its own report to the House Committee on Industry and the Senate Committee on Public Utilities.²⁰

HB 1234, as introduced, forbade the PSC from considering the profits earned from a deregulated service when determining rates for the company's regulated services.²¹ The House Committee on Industry and Governmental Affairs adopted this provision,²² and added a provision which expressly prohibited a telecommunications company from using profits from the regulated portion of its business to subsidize the deregulated

16. O.C.G.A. § 46-2-23(c)(1)—(6) (Supp. 1988). The factors to be considered are:

- (1) The extent to which competing telecommunications services are available from competitive providers in the relevant geographic market;
- (2) The ability of competitive providers to make functionally equivalent or substitute services readily available;
- (3) The number and size of competitive providers of service;
- (4) The overall impact of the proposed regulatory change on the continued availability of existing services at just and reasonable rates;
- (5) The impact of the proposed regulatory change upon efforts to promote universal availability of basic telecommunications services at affordable rates and to permit telecommunications companies subject to the jurisdiction of the commission to respond to competitive thrusts; and
- (6) Such other factors as the commission may determine are in the public interest.

Id.

17. O.C.G.A. § 46-2-23(e) (Supp. 1988). The PSC or any interested party may initiate a proceeding to determine whether the service should be reregulated. *Id.*

18. O.C.G.A. § 46-2-23(b)(1)—(4) (Supp. 1988).

19. 1988 Ga. Laws 1988. Note that this section was not codified by the General Assembly. The text of the section is contained in an editor's note following O.C.G.A. § 46-2-23 (Supp. 1988).

20. *Id.*

21. HB 1234, as introduced, 1988 Ga. Gen. Assem. The bill originally contained a proposed O.C.G.A. § 46-2-23(e) which read: "When the commission exempts a telecommunication service from all regulation by the commission, the investment, revenues, and expenses associated with the service shall not be considered by the commission in setting rates for the telecommunication company's regulated services." *Id.*

22. HB 1234 (HCS), 1988 Ga. Gen. Assem.

portion.²³ The committee substitute floor amendment changed the House committee version by substituting a provision expressly allowing the PSC to consider profits earned from the deregulated portion of the company's business when determining rates for the regulated portion.²⁴

The Senate committee substitute deleted the section of the House version allowing the PSC to consider profits.²⁵ The Senate substitute instead added a provision stating that no telecommunications company can use current revenues or expenses from regulated services to subsidize unregulated services.²⁶ The Senate version of HB 1234 was passed by the House.²⁷ Thus, O.C.G.A. § 46-2-23 is silent regarding whether the PSC may consider the profits earned from deregulated services when determining rates charged for regulated services.

Commentators disagree on the effect the Act will ultimately have on the cost of consumer telephone service.²⁸ According to a sponsor of the bill, deregulation alone should not influence the rate charged consumers because consumer telephone service is not competitive.²⁹ Therefore, the PSC's role in determining those rates has not changed.³⁰ Additionally, the legislation does not mandate that the PSC deregulate competitive services, but merely allows the PSC to consider deregulation.³¹

In contrast, critics of the Act charge that it could cost Southern Bell customers "hundreds of millions of dollars more each year" if, under the Act, the PSC cannot consider revenues earned from deregulated services in setting rates for regulated services.³² Southern Bell, however, claims the Act will reduce customer rates because the PSC cannot consider money lost in a deregulated portion of the business when determining rates for regulated services.³³ Previously, all losses and revenues were considered when the PSC determined rate increases for consumers.³⁴

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23. *Id.* This provision survived with minor changes in wording and was codified at O.C.G.A. § 46-2-23(g) (Supp. 1988).

24. HB 1234 (CSFA), 1988 Ga. Gen. Assem.

25. HB 1234 (SCSFA), 1988 Ga. Gen. Assem. *See also Legislative Briefs: Southern Bell Receives Senate OK On Deregulation Measure*, Atlanta Const., Feb. 23, 1988, at 3B, col. 2.

26. HB 1234 (SCSFA), 1988 Ga. Gen. Assem.

27. Final Composite Status Sheet, Mar. 7, 1988.

28. *See Secret, Deregulation Bill Would Raise Phone Rates, Critics Charge*, Atlanta Const., Feb. 3, 1988, at 3C, col. 1 [hereinafter Secret II]; *see also Secret I, supra note 7.*

29. Watson Interview, *supra* note 1.

30. *Id.*

31. O.C.G.A. § 46-2-23(b), (f) (Supp. 1988).

32. Secret II, *supra* note 28.

33. Secret I, *supra* note 7, at col. 3.

34. *See Secret II, supra note 28.*