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PUBLIC UTILITIES AND PUBLIC TRANSPORTATION

Public Service Commission: To Provide Toll-Free Intracounty Calling

CODE SECTION: O.C.G.A. § 46-2-25.1 (new)
BILL NUMBER: SB 524
ACT NUMBER: 1376
SUMMARY: The Act provides for regulation and funding of mandatory intracounty toll-free calling, as determined by the Public Service Commission and permits plans for extended community-of-interest toll-free calling.
EFFECTIVE DATE: April 12, 1990

History

Sixteen years ago, the movement began to pass legislation which would assure reasonable telephone service rates within all of Georgia's 159 counties. The proponents believed that every citizen in Georgia should be able to call within their community without incurring long distance charges.¹ In only thirty-six of Georgia's 159 counties can customers call countywide without paying long distance rates.² In eighty of the remaining 123 counties, the problem is extreme.³ Georgia has thirty-five independent telephone companies, ranging from larger companies like Southern Bell, General and Continental telephone, to hometown telephone companies like Waverly Hall and Hawkinsville.⁴

The problem exists because Georgia telephone exchanges were originally created during the "dark ages," when most people had no real need to call outside of their community.⁵ As the population of the state has increased, even in Georgia's rural counties, a trend toward consolidation of countywide school systems and other public services has emerged.⁶ Telephone companies have resisted this consolidation

1. Lawmakers '90: Legislative Day 35 (GPTV television broadcast, Feb. 28, 1990) (videotape on file at Georgia State University Law Library).

2. *Phone Companies Must Work Out Toll-Free Service By May*, Atlanta J. & Const., Mar. 21, 1990, at C4, col. 1 [hereinafter Work Out].

3. Secrest, *Rural Ga. Shortchanged On Phone Rates*, Atlanta J. & Const., Jan. 28, 1990, at D1, col. 1 [hereinafter Secrest]. For example, in Wheeler county there are six local calling exchanges, five telephone companies, and 1,663 telephone lines. *Id.*

4. *Id.* at D12.

5. Telephone interview with Senator C. Donald Johnson, Jr., Senate District No. 47 (Mar. 21, 1990) [hereinafter Johnson Interview].

6. *Id.*

process. The problem has been compounded by the profitability of long distance service, which makes resisting consolidation worthwhile for the smaller telephone companies.⁷ Unlike the nation-wide long distance telephone companies, the local telephone companies have not had to face competition.⁸

In 1975, HB 603 was introduced, which provided for toll-free calling between two phones in a single county with two or more exchanges.⁹ The bill failed to make it out of committee due to strong opposition from the telephone company lobby, led by Southern Bell.¹⁰ The telephone companies maintained that implementing intracounty toll-free calling was possible, but would require an increased cost, which would have to be borne by their customers.¹¹ Additional opposition to early versions of this type of legislation came from legislators who represented the one-third of the state's population unaffected by this problem because they believed that such legislation would only serve to increase the telephone bills of the people in their districts without providing them any additional services.¹²

Undaunted, a state representative subsequently secured a local constitutional amendment authorizing the city of Hahira, Georgia to own and operate its own telephone service.¹³ The purpose of the amendment was to exert pressure on existing telephone companies to improve the service provided in the county.¹⁴ However, the cost of operating a telephone company was prohibitive and the city took no action on the local constitutional amendment. The city lacked the resources necessary to exercise eminent domain over the land required for the telephone service and to move out the existing telephone companies.¹⁵ With the adoption of the 1981 constitution, all of the local constitutional amendments were voided.¹⁶

In 1989, legislation was introduced by the same sponsor which basically provided for the same type of toll free service HB 603 had provided.¹⁷

7. Secrest, *supra* note 3, at D12.

8. *Id.*

9. Telephone interview with Representative James M. Beck, House District No. 148 (Mar. 23, 1990) [hereinafter Beck Interview]. HB 603 was introduced by Representative James Beck. *Id.*

10. *Id.*

11. Johnson Interview, *supra* note 5.

12. *Id.* The Atlanta area has the nation's largest toll free calling area. The Atlanta area is served by Southern Bell Telephone Company which offers 3,300 square miles of toll free service, over a dozen counties, in fifty-four different exchanges, to 1.3 million customers. Secrest, *supra* note 3, at D12.

13. Beck Interview, *supra* note 9.

14. *Id.*

15. *Id.*

16. *Id.*

17. HB 168, as introduced, 1989 Ga. Gen. Assem.

At that time, the House sponsor requested that a committee be appointed to hold hearings and study the bill.¹⁸ The House Subcommittee on Public Utilities was appointed to conduct the hearings. Hearings were conducted in Hahira, Eastman and Atlanta. However, again the strong telephone company lobby prevailed and no further action was taken on HB 168.¹⁹

In 1989, Senate Resolution 216 provided for the development of a Senate study committee to investigate intracounty toll-free calling.²⁰ The Senate Intra-County Toll Charge Study Committee had two objectives. The first was to determine the extent of the problem, and the second was to determine the cost of implementing intracounty toll-free calling.²¹ The study committee failed to achieve its second goal, because of lack of cooperation from the telephone companies.²² Although financial information was requested from the various companies, the information was never received by the study committee.²³

The study committee report recommended implementation of countywide toll-free calling in Georgia by July 1, 1991. The study committee further recommended that the Public Service Commission (PSC) make a comprehensive review of all current rate schedules, each company's current financial situation, and any request by telephone service providers to reduce the size of toll-free local calling already available in the state's urban areas.²⁴

Several bills providing for intracounty toll-free calling were introduced in the 1990 legislative session. HB 1188 provided in very broad language for the PSC to have complete control over toll calling.²⁵ The House Industry Committee considered this bill to be overly broad. The Committee narrowed the bill and submitted it to the subcommittee. The subcommittee replaced HB 1188 with HB 1708. HB 1708 contained a provision, favored by Southern Bell, for measured service.²⁶

Under measured service, monthly bills are based on such factors as the distance, duration, and time of day of local calls, rather than a flat charge. Measured service has been strongly opposed by many legislators and the PSC because it would not facilitate their goal of intracounty toll-free calling.²⁷

18. *Id.*

19. *Id.*

20. SR 216, 1989 Ga. Gen. Assem.

21. Johnson Interview, *supra* note 5.

22. *Id.*

23. Senate Intra-County Toll Charge Study Committee, Report, at 7 (Dec. 29, 1989).

24. *Id.* at 6-7.

25. Beck Interview, *supra* note 9.

26. *Id.*

27. *Sponsor Might Seek Veto Of His Bill On Toll-Free Calling*, Atlanta J. & Const., Mar. 7, 1990, at D3, col. 5-6.

SB 524

The sponsor of SB 524 garnered unchallenged support for the bill, prior to its being submitted for consideration, by gathering forty-two signatures for the bill while the legislators were in session.²⁸ Once word got out, the telephone lobbyists sprang into action in opposition to the bill. The PSC began holding hearings and developing proposals. The independent telephone companies called emergency meetings. The House Industry Committee called a meeting to discuss the issue.²⁹

Representatives from the PSC supported SB 524 because of the public demand for intracounty toll-free service. The PSC considered waiting to take action in a subsequent legislative session neither economically nor politically acceptable.³⁰ The PSC made it known to the bill's sponsor that the time was right and that the PSC was ready to do whatever was necessary to provide for this type of service.³¹

The PSC also made a proposal which sparked heated debate over SB 524. The PSC report proposed a twenty-two mile radius, expanded community-of-interest toll-free calling area. The PSC staff estimated that this would result in a three-to-four dollar charge to telephone customers statewide.³² Legislators who represented urban areas opposed this proposal because their constituents, particularly in the Atlanta areas, would have a higher bill, with no additional service.³³

SB 524 met strong opposition from the telephone companies. The telephone companies use toll service to subsidize local rates. In so doing, they are able to provide local service to any individual within the state at a reasonable rate.³⁴ Southern Bell estimates the cost of county-wide calling to be \$73 million, and compares this cost to the \$51 million the company projects the services would cost, if it were allowed to offer more favorable options, such as measured service.³⁵

The Senate Committee on Public Utilities substantially amended SB 524. The committee substitute provided for rate schedule criteria and for distribution of costs and rate schedule modification.³⁶ However, there was quite a debate on the Senate floor over an amendment, favorable to Southern Bell, which provided that no telephone company would be

28. Johnson Interview, *supra* note 5. Senator Donald Johnson introduced SB 524. *Id.*

29. *Id.*

30. Secrest, *supra* note 3, at D12.

31. Johnson Interview, *supra* note 5.

32. *Id.*

33. *Id.*

34. *Id.* This is termed the theory of universal service. *Id.*

35. Secrest, *Free Countrywide Calls May Triple Some Bills, Bell Says*, Atlanta J. & Const., Feb. 11, 1990, at C4, col. 5-6.

36. SB 524 (SCS), 1990 Ga. Gen. Assem.

required to share in the loss or expense of another.³⁷ The smaller, independent telephone companies were opposed to the amendment because, they argued, implementation of a county wide toll-free calling plan should require a sharing of expenses and losses among all of the telephone companies to enable the smaller companies to afford the increased service.³⁸ The amendment was adopted, and the bill passed in the Senate by approximately a two vote margin.³⁹

The House Industry Committee amended SB 524 to include provisions for rates for high volume customers, and language which, in effect, gave the telephone companies a veto over the funding of the bill.⁴⁰ This veto power existed because the bill, as amended, would have required telephone companies to mutually agree to funding, via shared expenses. It is impermissible, however, to statutorily mandate that parties agree to anything. Therefore, the telephone companies could veto the funding provision by failing to reach an agreement.⁴¹

On the House floor, several amendments were proposed which would have deleted the "mutually agreed upon" language and inserted language giving the PSC the final decision over funding. All of these amendments failed. However, one particular amendment was defeated only after the Speaker cast his vote against the amendment.⁴² This was only the second time the Speaker had taken such action, and he explained his vote as being in support of the position of the Industry Committee Chairman.⁴³ The bill passed the House, but was assigned to a conference committee after the House and the Senate failed to agree on the bill as amended.⁴⁴

The Conference committee deleted the language providing rates for high volume customers. Additionally, the bill was amended to require

37. Johnson Interview, *supra* note 5.

38. *Id.*

39. SB 524 (SCSFA), 1990 Ga. Gen. Assem.

40. SB 524 (HCS), 1990 Ga. Gen. Assem. This version of the bill provided that no telephone company would be required to share in the expenses or losses of another "except as mutually agreed upon" by the telephone companies and the PSC. *Id.*

41. Johnson Interview, *supra* note 5.

42. *Id.*

43. *Id.*

44. *Id.* The Conference committee consisted of Senator Johnson, the sponsor of the bill; Senator Tysinger, author of the Senate floor amendment; Senator Scott, who also favored the pro-Southern Bell amendments; Representative Watson, Chairman of the House Industry Committee; Representative Beck, long-time supporter of this type of legislation; and Representative George Green, who was neutral. Senator Johnson and Representative Beck had two requirements which had to be met before they would endorse adoption of the bill. First, the bill had to provide for mandatory intracounty toll-free calling and, second, the PSC must be the final arbiter on all matters. *Id.* Senator Johnson had let it be known that he would request the Governor to veto the bill if those two requirements had not been met when the bill was sent to the Governor to sign. *Id.*

sharing of funds between companies only as a last resort.⁴⁵ This came about only after it became apparent that providing an exemption from sharing of expenses and losses would conflict with other language in the bill.⁴⁶ All members of the Conference committee wanted some form of the bill to pass, so a compromise was reached.⁴⁷

The Act's basic goal of mandating toll-free intracounty calling by July 1, 1991, remained constant, from the introduction of SB 524 in the Senate, to its adoption by the Conference committee.⁴⁸ As passed, the Act provides that the PSC shall not approve any rate schedule which provides for intracounty toll charges. All rate schedules must comply with this mandate no later than July 1, 1991.⁴⁹

The Act also sets forth the criteria to be considered in developing rate schedules.⁵⁰ This section was added by the Senate Public Utilities Committee substitute.⁵¹ The Conference committee made only one change in the list of criteria, adding that the increased value resulting from an expanded calling area should be considered with the cost of providing such service.⁵²

In addition to requiring intracounty toll-free calling, the Act mandates that the PSC implement either a plan for expanded community-of-interest toll-free calling beyond county lines or a reduction in intra-LATA (Local Access Transport Area) toll rates, to bring them in line with inter-LATA rates.⁵³ A Local Access Transport Area is the geographic area within which a Bell telephone company can provide service. A call going outside the LATA must be handled by another company, AT&T, for example. This subsection was added by the Senate Public Utilities committee substitute, but required at that time both an

45. SB 524 (CCS), 1990 Ga. Gen. Assem.

46. Beck Interview, *supra* note 9.

47. Johnson Interview, *supra* note 5.

48. Compare SB 524, as introduced, 1990 Ga. Gen. Assem. with O.C.G.A. § 46-2-25.1 (Supp. 1990).

49. O.C.G.A. § 46-2-25.1(a) (Supp. 1990). The PSC has already started holding hearings on implementation of this Act. Telephone companies have been given until May 20, 1990 to develop ways to fund the intracounty toll free calling. See Work Out, *supra* note 2. The Act does provide a limited exception to this mandate. If a telephone company can show either geographic, economic or technological infeasibility then the rate schedule may be modified, at the discretion of the PSC, accordingly. O.C.G.A. § 46-2-25.1(b) (Supp. 1990). Originally, the only exception was for geographic infeasibility. See SB 524, as introduced, 1990 Ga. Gen. Assem. The exception was expanded by the Conference committee substitute. SB 524 (CCS), 1990 Ga. Gen. Assem. There is an estimated two percent of the state's telephone customers who would fall into this category. Johnson interview, *supra* note 5. However, the burden is placed on the telephone company to prove this hardship to the satisfaction of the PSC. *Id.*

50. O.C.G.A. § 46-2-25.1(c) (Supp. 1990).

51. SB 524 (SCS), 1990 Ga. Gen. Assem.

52. SB 524 (CCS), 1990 Ga. Gen. Assem.

53. O.C.G.A. § 46-2-25.1(d) (Supp. 1990).

expanded toll-free calling area and the reduction in intra-LATA rates.⁵⁴ In the House, this provision was changed to require one or the other of the provisions.⁵⁵ Because the Act's more controversial subsection (e) relating to funding does not appear to apply to this subsection, the PSC can use more flexibility in implementing either of these provisions. This would give the PSC leverage when negotiating with the telephone companies over funding the intracounty toll-free calling.⁵⁶

Subsection (e) is the Act's most controversial subsection.⁵⁷ This subsection states that the PSC has the final say on any plan to implement intracounty toll-free calling, and sets forth the method by which the PSC should develop, implement and fund such a plan.⁵⁸ As adopted, this subsection provides that the PSC should not, however, mandate any sharing of funds between telephone companies until all other remedies have been exhausted.⁵⁹

Finally, subsection (e) provides that a telephone company must demonstrate its financial hardship to the PSC before it can be allowed to recover any of its losses from the implementation of this plan.⁶⁰ This provision protects the telephone company customers who are to benefit from this plan by preventing the telephone companies from passing their losses, if any, to their customers.⁶¹

The Conference committee added three additional sections, subsection (f), (g) and Section 2.⁶² Subsection (f) was designed to encourage the telephone companies to develop innovative ways for achieving and funding this plan.⁶³ Subsection (g) was added because of concern expressed by long distance carriers that this Act would in some way adversely affect them.⁶⁴ Subsection (g) simply states that this Act neither alters the rate-making power of the PSC, nor affects the special provisions concerning telecommunications companies.⁶⁵

Section 2 was added to SB 524 in the Conference committee, while the bill still contained the "mutually agreed upon" language.⁶⁶ Committee members were concerned that such wording would unconstitutionally

54. SB 524 (SCS), 1990 Ga. Gen. Assem.

55. Compare SB 524 (HCS), 1990 Ga. Gen. Assem. with SB 524 (SCS), 1990 Ga. Gen. Assem.

56. Beck Interview, *supra* note 9.

57. O.C.G.A. § 46-2-25.1(e) (Supp. 1990); see also *Senate OKs Ban On Long-Distance Rates Within Counties*, Atlanta J. & Const., Feb. 14, 1990, at D-3, col. 5-6.

58. O.C.G.A. § 46-2-25.1(e) (Supp. 1990).

59. *Id.*

60. *Id.*

61. Johnson Interview, *supra* note 5.

62. SB 524 (CCS), 1990 Ga. Gen. Assem..

63. Johnson Interview, *supra* note 5.

64. *Id.*

65. O.C.G.A. § 46-2-25.1(g) (Supp. 1990).

66. SB 524 (CCS), 1990 Ga. Gen. Assem.

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infringe upon the rate-making powers of the PSC. To prevent a court from declaring the entire Act void, the Conference committee added this provision, which allows one portion of the bill to be declared void without affecting the remaining provisions.⁶⁷

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67. Johnson Interview, *supra* note 5.