

Suit Over Fees for Inmates' Phone Calls Is Revived

By DANNY HAKIM

ALBANY, Feb. 20 — The State Court of Appeals said on Tuesday that a lower court must hear a suit alleging that the state had illegally placed exorbitant charges on collect phone calls made by prison inmates.

The 4-to-2 ruling overturns decisions by lower courts that dismissed the case. It also comes a few weeks after Gov. Eliot Spitzer reversed the Pataki-era policy of adding state fees that more than doubled the rates charged to people who receive collect calls from inmates in the state corrections system.

The suit, brought by families and lawyers of inmates, alleges that the State Department of Correctional Services overstepped its authority by essentially imposing a tax without legislative approval. The suit also contends that the fees violated state constitutional provisions related to taxation, free speech, due process and equal protection.

Rachel Meeropol, a lawyer with the Center for Constitutional Rights, a group that represented the plaintiffs, said they would move to seek class action status in the case.

A complaint about a system that Spitzer has already changed.

“We will seek certification soon on behalf of everyone who has received a collect call from a prisoner in New York State,” she said, adding that the state had been making from \$15 million to \$23 million per year from the surcharges. “We will have the right to seek damages for about three years of contract payments.”

A spokeswoman for the State Department of Correctional Services, the defendant in the suit, declined to comment. John T. Milgrim, a spokesman for the attorney general’s office, which is representing the department, said his office was reviewing the decision.

The Court of Appeals said the case could proceed on all four of its constitutional claims, while dismissing three other claims. The State Supreme Court previously dismissed the case, originally brought in 2004,

saying that the statute of limitations had passed on bringing such a suit against the state.

The Court of Appeals majority rejected that assertion, stating that the clock did not start running on a statute of limitations until a rate change was approved by the Public Service Commission in late 2003. The added-fee system began in the late 1990s.

Governor Spitzer changed the policy shortly after taking office, when his administration said that the state would no longer share in revenue from prisoner phone calls. That would reduce the cost of a 20-minute call to about \$3 from about \$6.20, the administration said. The changes are to take effect on April 1.