

**Before The
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Pay Telephone)	CC Docket No. 96-128
Reclassification and Compensation)	
Provisions of the Telecommunications)	
Act of 1996)	

**COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

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I. INTRODUCTION

The National Association of State Utility Consumer Advocates¹ (“NASUCA”) submits these comments in response to the Public Notice (“Notice”) released on December 31, 2003, in the above proceeding.² Through the Notice, the Federal Communications Commission (“Commission” or “FCC”) seeks comment on the petition filed by Martha Wright and other prison inmate and non-inmate petitioners (“Petitioners”) requesting the FCC to prohibit exclusive calling service agreements and collect call only restrictions at privately administered prisons. The Commission is considering the Wright Petition as an *ex parte* presentation in the *Inmate Payphone Rulemaking*, thus enlarging the scope of this proceeding to include comments

¹ NASUCA is a non-profit, national association organized in 1979, whose members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. NASUCA members operate independently from state utility commissions, primarily as advocates for residential ratepayers, although some members also represent small business ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

² *Petition for Rulemaking Filed Regarding Issues Related to Inmate Calling Services Pleading Cycle Established*, DA 03-4027, CC Docket No. 96-128 (Dec. 31, 2003) (“*Wright Petition*”). On February 3, 2004, by Order, the FCC extended the filing dates for initial and reply comments to March 10, 2004, and March 31, 2004, respectively. *In re Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order, CC Docket No. 96-128 (Feb. 3, 2004).

addressing commissions and rates charged at privately and publicly administered prison or correctional facilities. In the Wright Petition, the Petitioners further request the Commission establish rules that permit competition among carriers who provide telephone service to these facilities. NASUCA's comments on exorbitant inmate phone service rates are submitted herein.

A. SUMMARY STATEMENT

NASUCA urges the Commission to take immediate and strong action to regulate interstate phone rates paid by the recipients of inmate calls who, while not behind bars, are the last consumers truly captivated by a monopolistic payphone market. In many states in the United States, inmates are subject to telephone rates that are unjust and unreasonable. Persons called by inmates and inmates represent the only remaining population that has been denied the benefits of competition and technological productivity in the telecommunications industry. The burden of paying these extraordinarily high rates is primarily borne by low-income consumers and by those who have a critical need to communicate by telephone. In these comments, NASUCA provides specific recommendations for FCC action that will ensure families of inmates are not exposed to an increased risk of service disconnection as a consequence of unjust and unreasonable phone rates imposed upon inmates.

B. RECOMMENDATIONS

First, NASUCA recommends the Commission find that interstate rates for inmate telephone service are not just and reasonable as required under Section 201 of the federal Telecommunications Act of 1996 ("the Act").³ Second, the Commission should prohibit commissions paid to prison or correctional facilities, which inflate the cost of interstate calls

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). The 1996 Act amended the Communications Act of 1934. Hereinafter, the Communications Act of 1934, as amended by the 1996 Act, will be referred as "the Act," and all references to the Act will be as codified in the United States Code.

from inmates and represent costs that are unrelated to the provision of a telecommunications service. Third, the Commission should require that administrators of custodial institutions adopt low-cost interstate calling methods, such as prepaid debit accounts, that are consistent with specific security needs of the institution. Fourth, the Commission should permit competition where feasible among service providers offering interstate calling services to prisons and correctional facilities. Finally, as an alternative to the availability of access to multiple providers, the Commission should require that administrators of custodial facilities secure the lowest-cost interstate services, consistent with the needs of the institution and the inmates, through an RFP or similar process.

II. BACKGROUND

The FCC has previously discussed rates and many of the key issues for inmate telephone service NASUCA raise in these comments. As described by the FCC, inmate telephone service is typically structured as follows:

[T]he confinement facility awards a contract to provide calling services by competitive bidding and grants the winning provider a monopoly on all inmate calling services. To have a realistic chance of winning a contract, the bidder must include an amount to cover commissions paid to the inmate facility. In the case of state prisons, which are often located far from major population centers and where consequently most of the traffic is toll traffic and not subject to state ceilings for local calls, the confinement facility monopolies prove sufficiently remunerative to allow the ICS provider to offer generous commissions. *In fact, under most contracts, the commission is the single largest component affecting the rates for inmate calling service.***** [T]hese commissions have typically ranged between roughly 20 percent and 60 percent.⁴

The Commission has also observed that although correctional institutions use a form of competitive bidding to select inmate telephone service providers, this amounts to selection of a

⁴ *In re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order on Remand and Notice of Proposed Rulemaking*, CC Docket No. 96-128, ¶¶10 and 28 (Feb. 21, 2002) (footnotes omitted) (emphasis added), available at <http://www.pulp.tc/FCCInmatePhoneOrder02-39.pdf>.

winning monopolist who will pay the most to the state for the market power. This “competitive” procurement of service does not, however, ensure competitive rates and charges for those who pay for the service. Instead, the bidding process inflates those rates:

Inmate calling is economically different than other payphone services in two respects. First, inmates have none of the alternatives available to non-incarcerated payphone customers. Inmates only have access to payphones, not cell phones, and inmates lack dial-around capacity. Therefore, neither the inmates who initiate the call nor the individuals who bear the cost of inmate calls – most often the inmates’ families – have a choice among providers. Second, the competition that does exist – among ICS providers in the bidding process – does not exert downward pressure on rates for consumers. *Instead, perversely, because the bidder who charges the highest rates can afford to offer the confinement facilities the largest location commissions, the competitive bidding process may result in higher rates.*⁵

The FCC previously urged states to review more closely the rates for calls from inmates, and particularly singled out the problems associated with the commission element:

[A]ny solution to the problem of high rates for inmates must embrace the states. *States are encouraged to examine the issue of the significant commissions paid by ICS providers to confinement facilities and the downward pressure that these commissions have on ICS providers’ net compensation and, more important, the upward pressure they impose on inmate calling rates.*⁶

In the Wright Petition, the Petitioners requested that the Commission address anticompetitive practices that result in excessive inmate telephone service rates at privately administered prisons.⁷ Second, the Petitioners assert that exclusive service agreements do not advance the public interest because such agreements fail to satisfy Section 201(b) of the Act. Petitioners further ask the Commission permit multiple long distance carriers to interconnect with prison telephone systems in a manner that promotes competition and offer alternative calling options.

⁵ *Id.*, ¶ 12 (emphasis added).

⁶ *Id.*, ¶ 29 (emphasis added).

⁷ Wright Petition, at 10.

III. ARGUMENT

A. THE FCC SHOULD BAN COMMISSIONS PAID TO PRISON FACILITIES BECAUSE THEY DO NOT FURTHER THE FCC'S GOAL OF ENSURING THAT EVERY AMERICAN HAS ACCESS TO AFFORDABLE TELEPHONE SERVICE AT JUST AND REASONABLE RATES.

Commissioner Adelstein recently stated that the FCC is “working to make sure that the federal universal service fund continues to ensure that every American has access to the best telecommunications services at comparable rates.”⁸ High commissions paid by telephone companies to prisons for the right to be the exclusive provider of inmate call services are being added to the rates and bills for the service.⁹ However, in a maze of inconsistent FCC rules and state regulatory commission rules and decisions, a regulatory gap has left some Americans out of the promise of affordable telephone service because the FCC has not prevented prison systems from charging exorbitant rates for interstate calls from prison inmates. This regulatory gap causes substantial hardship to consumers, is not in the public interest, and is contrary to law.

Under contracts with prison administrators, telephone companies are charging unreasonable rates for interstate calls placed by prison inmates. These high charges inhibit usage of the telecommunications network -- communication between inmates and relatives and friends “on the outside” that would otherwise occur if rates were reasonable. As a consequence, heavy burdens are imposed on those who receive and pay for collect calls, potentially increasing the risk of phonelessness, thereby reducing telephone subscription rates -- all contrary to the universal and affordable service principles of under Section 254(b) of the Act.¹⁰

⁸ Remarks of Commissioner Jonathan S. Adelstein, *Preserving the Public Interest in a Dynamic Telecommunications Industry*, 2004 Nat'l Governors Winter Meeting (Feb. 22, 2004).

⁹ See, e.g., *New York State Earns Top Dollar From Collect Calls by Its Inmates*, N.Y. Times, Nov. 30, 1999; *When Johnny Calls Home From Prison*, Editorial, N.Y. Times, Dec. 6, 1999.

¹⁰ 47 U.S.C. § 254(b).

The FCC has found that prison rates must conform with Section 201(b) of the Act which specifically provides that “[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable.”¹¹ The Commission’s decision to resolve inmate call service complaints on a case-by-case basis and to require oral disclosure of payphone rates have not led to a more efficient and less intrusive regulatory process as the FCC optimistically projected in 1998.¹² Excessive inmate phone rates have become increasingly controversial across the country.

The current practice of private and public correctional facilities charging exorbitant (and unregulated) rates for collect calls placed to consumers is unreasonable. Families of the incarcerated carry the burden of paying unreasonably high telephone bills, they risk partial service blocking or disconnections due to unaffordable charges and consequent high arrearages. Thus, they become victims of abusive monopolistic practices in a time when the national telecommunications industry is transitioning to a competitive market. Any competition is not for the benefit of those who make and who pay for the inmate calls, but rather to maximize revenue from the telephone companies to the prisons.

It is widely accepted that communication with the outside world while confined is a critical element in the successful readjustment of an inmate after release. Studies suggest that rehabilitation and the reintegration of inmates and their families play a significant role in reducing recidivism.¹³ High commissions paid to prisons are a disincentive for prisons to negotiate prices that are in the interest of prisoners and their respective families. Therefore,

¹¹ 47 U.S.C. § 201(b). *In re Billed Party Preference for InterLATA 0+ Calls*, CC Docket No. 92-77, 13 FCC Rcd 6122, ¶ 59 (Jan. 28, 1998).

¹² *In re Billed Party Preference for InterLATA 0+ Calls*, ¶ 59.

although the institution receives a windfall in revenues, commissions cause communications between families to become unaffordable and, thereby, undermine the overriding purpose to foster affordable service.

The FCC should require providers of interstate inmate operator services to offer a pre-paid calling option, for example debit calling cards or debit accounts, with greater discounts utilizing competitive bidding guidelines and prioritization of factors in evaluating competitive bids. Inmate operator service providers assert their costs are much higher than other alternative operator service providers because of a higher percentage of uncollectible accounts. However, new technology is available for pre-paid service offerings to minimize uncollectible accounts. Use of optional pre-paid discounts would be a “win-win” situation for inmates and their families – families are charged lower rates and operator service providers would not have to expend substantial funds and resources on collection efforts.

In some states, prisons across the country have become profit centers for state treasuries. Prisons have been induced to accept the highest bid that will bring in the most revenue for the prison – an incentive that often awards the bid to the most expensive instead of the most economical competitor. Prison administrators assert that revenues from these commissions support internal inmate welfare funds and, purportedly, advance the welfare of inmates. However, investigations into various state funds reveal these funds often offset operation and administrative costs of prison facilities; are sometimes used to balance a state’s general fund budget and often do not directly contribute to the welfare of inmates. For example, the Maryland Justice Policy Institute (“MJPI”) reports that Maryland’s Inmate Welfare Fund is used to pay primarily expenses associated with personnel and maintenance of the prison facilities in addition

¹³ CLAIRE A. WALKER, PH. D., EXECUTIVE DIRECTOR, *Opportunities and Challenges of Protecting and Reintegrating Families*, Pittsburgh Child Guidance Foundation, Oct. 21, 2003, available at

to costs associated with prison services.¹⁴ Regardless of the merits of the uses to which the commissions are put, it cannot be denied that users of interstate telecommunications services are being charged for services wholly unrelated to the reasonable cost of the telephone service, often simply to support the state general fund or operation and administrative costs of prison facilities.

B. THE FCC SHOULD ESTABLISH A CONSISTENT POLICY TO REMEDY ARBITRARY INTERSTATE INMATE TELEPHONE CHARGES

In 2002, the FCC declined to act on the problem of prison commissions unrelated to the cost of service being charged to and paid by consumers through interstate rates, stating that

any solution to the problem of high rates for inmates must embrace the states. States are encouraged to examine the issue of the significant commissions paid by [Inmate Calling Service] ICS providers to confinement facilities and the downward pressure that these commissions have on ICS providers' net compensation and, more important, the upward pressure they impose on inmate calling services.¹⁵

The Commission recognized that many inmate calls are not interstate in nature, and that states might adopt more comprehensive policies to abolish or strictly limit the commissions paid by recipients of inmate calls through all rates, whether interstate or intrastate. While the District of Columbia and some states and state regulators indeed have made strides in this area, as discussed below, other states have not. The result is ratemaking chaos, with recipients of interstate calls subjected to widely varying charges unrelated to the cost of service or any other valid ratemaking principle.

In 2000, the Citizens United for the Rehabilitation of Errants (“CURE”) launched the Equitable Telephone Charges (“eTc”) Campaign to challenge prison telephone policies that

<http://trnf.clpgh.org/pcgf/octspeech.html>.

¹⁴ See, Maryland Policy Institute, Inc., *FY 2000 – Inmate Welfare Fund Expenditures*, <http://www.md-justice-policy-inst.org/IWFund.htm> (last visited Mar. 3, 2004).

¹⁵ *In re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand and Notice of Proposed Rulemaking, 17 FCC Rcd 3248, 3260, ¶ 29 CC Docket No. 96-128 (Feb. 21, 2002).

allow commissions paid to prisons and restrict calling options to prisoners.¹⁶ CURE conducted a study that shows that several states have initiated legislative and administrative action that address exorbitant commissions and rates charged by inmate telephone service providers.¹⁷ CURE reports that Connecticut, Indiana, New Mexico, South Dakota, Vermont, and the District of Columbia have led state legislative initiatives in passing laws to prohibit exorbitant commissions paid to prison or correctional facilities or to restrict the use of inmate welfare funds.¹⁸ In contrast, many other states have not acted, and in others, like New York and Virginia, the jurisdiction of the state regulatory commissions to examine the reasonableness of inmate calling rates has been narrowed so as to prevent any review of the commissions.

Following is a summary of recent legislative initiatives enacted in the District of Columbia and in several states. The purpose is not to be exhaustive, but to illustrate the arbitrariness of the current rate structures and to highlight the need for the FCC to adopt a consistent interstate policy to guide states in this matter.

District of Columbia

The District of Columbia was one of the first jurisdictions to enact legislation barring commissions on inmate phone call services. In November 2000, the District of Columbia Council passed Bill 13-632, "Fair Phone Charges For Prisoners Act of 2000". The Office of the People's Counsel for the District of Columbia ("OPC DC") filed testimony supporting Bill 16-632 as being in the public interest of D.C. ratepayers. Bill 16-632 prohibits the imposition of surcharges and commissions in addition to established rates for local and long distance telephone

¹⁶ See, Equitable Telephone Charges (eTc) Campaign - Update March 2003, http://www.curenational.org/~etc/new_legislation.htm (last visited Mar. 3, 2004).

¹⁷ *Id.*

¹⁸ *Id.*

service and regulates the rates on prisoner calls originating in D.C. and from prisons in other states that have contracted to house D.C. prisoners.¹⁹ As a result, there can be no collection of prison commissions from D.C. residents who accept interstate calls placed by D.C. prisoners confined in certain facilities in a number of states.²⁰ On the other hand, Virginia residents receiving interstate calls from an inmate in the same prison as a D.C. prisoner would pay bills that include commissions to the prisons.

Maryland

As noted above, in 2000, the MJPI conducted an investigation in Maryland that revealed that the State of Maryland had been operating under the same telephone contracts since 1989, although renewed contracts had been either extended or slightly modified. Commissions amounted to approximately 42 percent of the billed amount of long distance calls and 20 percent of local and non-long distance toll calls.

New York

The New York State Department of Corrections (“NYSDOCS”) receives a substantial commission collected through the telephone bills for collect calls received by relatives and friends of state prison inmates. Often inmates are housed at locations far from their home communities, making in-person visitation is difficult if not impossible, and thus regular telephone contact is essential for inmates to maintain their family and community ties.

¹⁹ In August 1997, President Clinton signed the National Capital Revitalization and Self-Government Improvement Act (“Revitalization Act”). The Revitalization Act mandated that by October 1, 2001, any person convicted of a felony in Washington, D.C. be imprisoned by the Federal Bureau of Prisons (“FBOP”) or at an institution contracted for by Federal Bureau of Prisons (“FBOP”). The Revitalization Act also mandated closure of Lorton Correctional Facility by the end of December 2001. Thousands of D.C. prisoners were transferred to facilities operated by the Corrections Corporation of America (“CCA”) across the country including Arizona, Montana, Florida, and North Dakota.

According to a NYSDOCS Press Release issued July 31, 2003, “[i]nmates completed nearly 7 million collect-only calls between September 2001 and August 2002, the base year used when computing the rate change plan. Those calls totaled more than 124 million minutes, generating gross revenues exceeding \$39 million. The Department’s commission rate is 57.5 percent on those revenues.”²¹ A NYSDOCS press release on inmate telephone issues, also dated July 31, 2003, indicates that under contracts for inmate telephone services, the state received commission revenues totaling \$109 million during the period April 1, 1996, through March 31, 2001.²²

Commissions impose a heavy burden on the lower income recipients of calls from inmates who accept the calls. Because of the high rates and charges, some call recipients are compelled to refuse or severely limit the length of their calls. According to a NYSDOCS Press Release, “[a]ttempted calls that are not completed add in excess of 2 million phone uses per month.”²³ The large number of incomplete calls to the call recipient suggests that basic telecommunications policies to foster affordable and wide usage of the telecommunications network are being frustrated. The extraction of revenues for the state from relatives of inmates, many of whom are poor, has the effect of a very regressive state tax on interstate communications of prisoners with those who can afford it least.

²⁰ OPC DC has no information on how effectively prison administrators -- including those from CCA -- are enforcing Bill 13-632 to ensure that calls from D.C. prison inmates are not embedded with excessive surcharges.

²¹ *Prison system implementing new inmate collect call phone rates; Reducing costs for the 83 percent of inmates furthest from home*, DOCS Press Release, July 31, 2003, available at <http://www.docs.state.ny.us/PressRel/phones.html>.

²² *Inmate pay phone access fosters family ties, enhances security for all*, DOCS Press Release, July 31, 2003, available at <http://www.docs.state.ny.us/PressRel/phoneinfo.pdf>.

²³ *Id.*, at 1.

Despite requests from inmate relative groups, clergy, and others, on October 30, 2003, the New York PSC issued an order saying it would not examine the reasonableness of the 57.5 percent portion of the rate that is paid to the state.²⁴ As a result, those who pay for interstate calls from New York state inmates are burdened with rates including heavy commissions to the New York State Division of Correctional Services that exceed the charges for the telecom service.²⁵ In contrast, those who receive and pay for interstate calls from inmates in other states that have abolished commissions are not required to pay these state-imposed surcharges on interstate service.

Virginia

In 2001, the Virginia Legislature directed the State Corporations Commission (“SCC”) to conduct a study of the inmate telephone service in that state. The SCC report recommended abolition of commissions and recommended options other than collect calls.²⁶ The SCC had issued orders beginning an investigation of rates, establishing temporary rates and directing the provider of inmate telephone service to file cost data to support its rates.²⁷ Subsequently, the Virginia Supreme Court, in an unpublished order, with two justices dissenting, ruled the SCC

²⁴ See, Case 03-C-1058, *Ordinary Tariff Filing of MCI WorldCom Communications to Change Maximum Security Rate Plan for New York State Department of Corrections from a Mileage-Sensitive Structure for IntraLATA and InterLATA to a Flat Rate Structure, Order Approving Jurisdictional Portion of Rate*, petitions for rehearing pending, available at <http://www.pulp.tc/Inmatephone03c1058order103003.pdf>. Separately itemized charges for commissions to the New York State Division of Correctional Services exceed the charges for the telecom service.

²⁵ See, MCI Worldcom "Maximum Security Rate Plan" tariff for New York, issued Nov. 7, 2003 (NASUCA Attachment A).

²⁶ Rates Charged to Recipients of Inmate Long Distance Calls, *Report of Virginia SCC to Legislature and Governor, House Document 57* (2001), available at <http://www.pulp.tc/SCCReporttoLegislature.pdf>.

²⁷ *Commonwealth ex rel. Jones v. MCI*, Case No. VA PUC 990157 (Sept. 26, 2000), available at <http://www.pulp.tc/SCCOrder09262000.pdf>.

lacked any jurisdiction to review the inmate rates.²⁸ As a result, those who pay for interstate calls from inmates in Virginia facilities must pay rates and bills that include substantial commissions to the state that have not been subjected to scrutiny of the state utility regulator.

Indiana

In 2002, the Indiana Legislature passed a law, Ind. Code 5-22-23-1, *et seq.*, that places restrictions on inmate alternative operator service (“AOS”) contracts and on the use of inmate AOS commission revenue by prisons located in counties with populations of 75,000 or more. Indiana’s legislative approach is a compromise that has not drawn much opposition from local government officials in contrast to a total ban on commissions that would have substantially reduced revenue for local (i.e., city or county) correctional facilities.

As can be seen, the states and the District of Columbia have taken a variety of approaches to the issue. The key point, however, is that regardless of the actions among the states with respect to local and intrastate calling charges under their jurisdiction, the FCC has an independent statutory duty to set reasonable interstate rates. That duty cannot be abdicated or subdelegated to the states.²⁹ After attempting light regulation, and after some states have failed to act, it is now incumbent upon the FCC to use its authority to establish just and reasonable rates for interstate inmate telephone services and thereby fulfill its statutory responsibilities.

C. THE COMMISSION SHOULD PROHIBIT THE CONTAMINATION OF REGULATED TELECOMMUNICATIONS RATES WITH COSTS OF ANCILLARY SERVICES AND COMMISSIONS

The Act does not exempt interstate inmate telephone service from the Commission’s oversight and regulation. The FCC has full jurisdiction over all interstate charges for telephone

²⁸ *Commonwealth ex rel. Jones v. MCI*, (Record Nos. 021262 and 021247 S.C.C. Case No. PUC990157) (*Order*) Feb. 28, 2003), available at http://www.pulp.tc/SupCo_Opinion_PUC199900157.pdf.

²⁹ *United States Telecom Association v. FCC*, ___ F.3d ___, slip op. at 12–18 (D.C. Cir. No. 00-1012, Mar. 2, 2004).

service, which includes any elements paid as commissions by exclusive providers of inmate calling service. Prisons are not public utilities and have no independent right to furnish a public utility service to those on the outside who are called by the inmates. Telephone companies with whom prisons contract should fully comply with the Commission's pricing standards.

In previous FCC decisions, commissions have been deemed justified based on the presumed "legitimate" security costs embedded in the pricing of telephone rates passed on by interexchange carriers. However, technological advances have greatly reduced these costs and have allowed the introduction of low-cost calling methods that can incorporate any security and monitoring features desired by custodial institutions. Today, commissions paid to many institutions under telecommunications contracts have been negotiated without proper incentives to keep end user rates low, a primary reason for increased telephone charges for phone calls between inmates and their families.

Currently, interstate phone bills paid by inmates, inmates' families, their friends, and other called parties are contaminated by the inclusion of non-regulated non-telecommunications costs.³⁰ A telephone within a prison, used to furnish interstate service in connection with outside calls, must be considered as an extension of the telephone company's general system and subject to Commission jurisdiction and regulation; otherwise the public will be subjected to a variety of rates concocted for extraneous purposes other than the provision of telecommunication services, and the rates and charges for interstate calls from inmates will in essence be completely unregulated in some states. Partial regulation of inmate phone calls, as has occurred in New York and Virginia, is tantamount to no regulation at all.

³⁰ "[C]ompanies now routinely pay prison systems millions in annual fees, which they call commissions, for the exclusive right to operate the phones. Firms also offer signing bonuses and upfront advances." *Phone Firms Wrestle for Prisoners' Business in Hot Growth Market; Big Companies Dangle Cash, Add Anti-Fraud Devices to Entice jail Officials*, WALL ST. J., Feb. 15, 1995.

Inmate phone rates typically recover commissions and security costs without any ability of prison administrators, customers, or regulators to identify the true cost of each component. This lack of transparency is one of the means by which prison telephone rates are inflated and avoid scrutiny. Accordingly, NASUCA recommends the Commission require that any security cost, commission, (to the extent not absolutely prohibited) or other non-telecommunications cost be stated separately on bills and in underlying contracts between carriers and custodial institutions. Under these conditions, the Commission would be able to determine whether regulated interstate telecommunications rates are just and reasonable.

The Commission should not allow interstate rates for customers who enjoy absolutely no protection from market forces to be shielded from the Commission's view. This contamination also undermines the consumer's and the custodial institution's ability to seek efficient and reasonable rates. As an intermediate measure, a requirement that telecommunications rates be unbundled from non-telecommunications services in inmate calling contracts would counter the perverse incentives of institutions to select the highest priced carrier instead of the lowest priced carrier. Persons who need to communicate by telephone with inmates face unreasonably high rates for a service that is priced as low as two or three cents per minute in the free market.

By removing any consideration of the commission and the security costs from the telecommunications rates offered by carriers, institutions could seek the low-cost provider and pass on those savings to inmates. Although NASUCA urges a ban on commissions altogether, simply unbundling commissions from the underlying telecommunications rate will provide more transparency, and provide both the carrier and institution with an incentive to propose and accept lower rates that reflect the existing competitive market.

However, as illustrated by New York, which approved rates that collect a “nonjurisdictional” 57.5 percent unbundled commission to the prison system,³¹ a flat ban on these unconscionable commissions is really necessary to remove all traces of these perverse incentives.

IV. CONCLUSION

For the reasons set forth herein, NASUCA urges that the Commission make the following determinations, either through a rulemaking proceeding or by Order:

1. Declare inmate interstate phone rates to be unjust and unreasonable to the extent that such rates are in excess of the reasonable costs of providing appropriate telecommunications service to inmates and their called parties. The affidavit of Douglas Dawson (Wright Petition, Attachment A) provides the record substantial evidence upon which the Commission may rely in determining the reasonable costs of such services.
2. Prohibit the inclusion of contract commissions in the billing of inmate interstate telephone services, whether in the form of a rate component or billing line item;
3. Allow affected custodial institutions and telecommunications carriers up to 180 days to reform their contracts and rates in accordance with the Commission’s determinations;
4. Encourage custodial institutions to develop modern calling methods, such as prepaid debit accounts with direct dialing, in order to decrease the overall costs of inmate interstate calls;
5. Encourage custodial institutions to engage in competitive bidding methods or allow inmate access to multiple competitors in order to secure competitively priced interstate telephone services; and
6. Encourage custodial institutions to consider the procurement of appropriate security measures by lower cost software and hardware solutions as opposed to monthly recurring interstate telecommunications rates.

³¹ See Case 03-C-1058, *Ordinary Tariff Filing of MCI WorldCom Communications to Change Maximum Security Rate Plan for New York State Department of Corrections from a Mileage-Sensitive Structure for IntraLATA and InterLATA to a Flat Rate Structure*, "Order Approving Jurisdictional Portion of Rate," petition for rehearing pending, <http://www.pulp.tc/Inmatephone03c1058order103003.pdf>.

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