

PRISON LEGAL NEWS

Dedicated to Protecting Human Rights

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Please Reply to Tennessee Office:

April 18, 2007

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**RE: Comment Regarding CC Docket No. 96-128 (Implementation
of Pay Telephone Reclassification and Compensation Provisions
of the Telecommunications Act of 1996)**

Dear Ms. Dortch:

I am contacting you in my capacity as Associate Editor for *Prison Legal News* (PLN), a nationally-distributed monthly publication that reports on criminal justice and corrections-related issues, in reference to CC Docket No. 96-128.

Docket No. 96-128, referred to as the Wright petition, requests that the FCC enact rules to require competition among prison phone service providers by prohibiting such providers from entering into exclusive service agreements with contracting government agencies, and from imposing other restrictions on prison phone calling options. The FCC has the authority to implement such rules pursuant to 47 U.S.C. § 201(b).

PLN has reported extensively on prison phone services, including litigation, legislation and reform efforts, and our experience in this area leads us to make the following remarks in support of granting the rule-making requested in the Wright petition:

1. Competition, or Lack Thereof

Upon entering into contracts with correctional agencies, prison phone service providers enjoy a complete monopoly on phone services within the jurisdiction controlled by the contract. This legalized monopoly, with a resultant lack of competition, is in effect during the term of the contract. And while such contracts may be rebid, the company that currently holds the contract has a significant advantage in terms of winning the rebid and maintaining its monopoly, since competitors must factor in start-up costs and equipment costs.

In a free market economy, competition acts to lower prices to the benefit of consumers. In the prison phone service market, however, competition exists only when a contract is initially bid, and perhaps during rebids. Even this level of competition makes a mockery of free market economics, however, as the lowest cost for providing prison phone services is rarely taken into account as a contract requirement.

This lack of consumer-friendly competition is due to the industry-standard practice of providing “commissions” to the contracting governmental agencies, which is the polite term for contractually-agreed kickbacks. Prison phone service providers agree to pay a certain percentage of their revenues to the contracting agency as a type of profit-sharing agreement – with these commissions ranging up to 60% of billed phone revenues. Such collusive arrangements, which result in millions of dollars in “commissions,” create a vested interest by the contracting agency to maximize the rates charged to consumers in order to increase the resulting shared profits; or, at least, not to actively seek lower rates that would decrease their kickback.

These “commissions” are passed on to consumers in the form of higher phone rates. Notably, the consumers who actually pay the inflated rates – primarily the family members and friends of prisoners, not the prisoners themselves – have no say whatsoever in the contracting process or the selection of the phone service provider.

While phone rates available to the general public have dropped dramatically in recent years, with phone companies routinely touting long distance rates of \$.10 per minute or less, competition in the prison phone service industry has, to quote one writer, “worked in precisely the opposite direction, with companies offering the highest bids (in terms of rates and commissions) routinely awarded contracts, the costs of which are passed on to the (literally) captive market.” [Steven J. Jackson, “Ex-Communication: Competition and Collusion in the U.S. Prison Telephone Industry”].

In 2005, Virginia received \$7 million in commissions from MCI’s prison phone service, at a 40% commission rate. New York has reaped more than \$200 million in prison phone service profits since 1996 under a 57.5% commission. At least ten states reportedly take in \$10 million or more each year from prison phone commissions; California alone receives over \$20 million in annual prison phone profits. The states that have the most expensive prison phone rates include Washington, Montana, Arizona, Kansas, New Jersey and Arkansas.

MCI has acknowledged that commissions of 20-63% are “customary.” Consider what this means in terms of prison phone service providers’ profits in comparison to their billed phone rates. Since these companies generate a profit despite paying hefty kickbacks to the contracting agencies, absent such “commissions” they could provide the same phone services, and still make a profit, at rates up to 40-60% *lower* than those presently billed. The higher rates charged under exclusive prison phone service contracts represent excess profit paid to the contracting agency at the expense of consumers, who have no say in the contracting process.

2. Impact on Families of Prisoners

Price gouging is an ugly phrase, but as indicated above, that is exactly what prisoners' family members and friends experience when they accept collect calls from their imprisoned loved ones. An estimated 1.5 million children have a parent in prison, and almost 500,000 women are married to incarcerated spouses. Sixty-five percent of female prisoners have minor children. These families and children, and their incarcerated family members, do not live in a vacuum.

Phone calls are a vital resource for maintaining parental and spousal relationships over years of incarceration. Yet prisoners' families are subject to extortionate rates charged by prison phone service providers and the agencies they contract with – rates that often average over a dollar a minute for long distance calls when the connection fee is included. A fifteen-minute call can cost as much as \$17.77. Under the Arkansas Dept of Correction's contract with MCI, prison calls are billed at \$.89 per minute with a \$3.95 connection fee for interstate collect calls (\$30.65 for a 30-minute phone call). This results in socio-economic disparity – families who can afford to accept such expensive phone calls do so, while impoverished families do not.

Such grossly inflated rates are not justified except as a means of monopolistic price-gouging; as indicated above, if the contractual kickbacks were excluded, prison phone service providers could charge about half the current rates and still remain profitable. This is fact, not theory. The Federal Bureau of Prisons (BOP), for example, does not accept prison phone service commissions; consequently, the rate for out-of-state debit calls from BOP facilities is \$.17 per minute. The prison phone service industry's argument that technical expenses and equipment costs justify high phone rates does not explain why such rates vary widely from one jurisdiction to another, with states that forgo "commission" kickbacks having the lowest rates.

There have been many reported cases of families having to cut off telephone contact with their imprisoned loved ones due to outrageous phone bills – bills that exceed \$700 per month for some families. In one case, a concerned mother was billed \$7,000 over a ten-month period after accepting calls from her 18-year-old son jailed in Panama City, Florida. Certainly consumers have a responsibility to budget for the phone services they accept. But what mother would refuse a phone call from her imprisoned son? And what choice does she have as to the cost of those calls if there is only one prison phone service provider, and only one rate?

The inflated rates charged by prison phone service companies should not be borne on the backs of prisoners' families, who are overwhelmingly the ones who must pay such exorbitant costs and the least able, financially, to make such payments. Families of prisoners, whose only "crime" is having a loved one in prison, should not be punished for that familial relationship by having to pay exorbitant phone rates. As stated by Madeleine Severin, there is "something fundamentally unjust about families of prisoners being charged outrageous prices solely because they accept collect calls from people in prison." ["Is There a Winning Argument Against Excessive Rates for Collect Calls from Prisoners?"] 25 *Cardozo L. Rev.* 1469 (2004)].

3. Impact on Prisoners and Society – Rehabilitation

Research has indicated that of the 2.2 million men and women held in our nation's correctional facilities, almost 70% perform at the lowest levels of reading and are considered functionally illiterate (more than triple the rate in the general population). For these prisoners, writing letters is not a viable substitute for contacting family members and maintaining family and parental relationships.

Further, many prisons, both state and federal, are located in rural areas; prisoners may be housed far across the state from their families or, in terms of federal prisoners, clear across the country. There has also been a growing trend over the past several decades to transfer prisoners to other states under contracts with private prison companies. Thus, Hawaiian prisoners have been moved to prisons in Mississippi and Oklahoma, California prisoners have been shipped to Indiana, Alaskan and Washington prisoners have been moved to Arizona, etc. As of July 1, 2005, at least seven states housed prisoners in out-of-state prisons. For these prisoners, family visits are not a viable option for maintaining family and parental relationships.

Such prisoners who cannot adequately read or write, or who are unable to receive visits, must rely on prison phone services. And when the cost of such phone services is excessively high the ability to make such calls is diminished or even extinguished, with family contact and relationships suffering as a result. This impacts more than just prisoners and their loved ones.

Several studies have shown that practices and programs which "facilitate and strengthen family connections during incarceration" can "reduce the strain of parental separation, reduce recidivism rates, and increase the likelihood of successful re-entry" of prisoners after they are released. [Re-Entry Policy Council Report, 2005].

According to a 2004 study by the Washington, D.C.-based Urban Institute, "Our analysis found that [released prisoners] with closer family relationships, stronger family support, and fewer negative dynamics in relationships with intimate partners were more likely to have worked after release and were less likely to have used drugs." The study authors, Christy Visher, Vera Kachnowski, Nancy La Vigne and Jeremy Travis, noted that "It is evident that family support, when it exists, is a strong asset that can be brought to the table in the reentry planning process." For many prisoners, phone calls to their families and children are the primary means of maintaining family ties and parental relationships during their incarceration.

These findings are recognized by the Federal Bureau of Prisons, which states, in its institutional policy regarding phone services, that "[t]elephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development ... [and are] a valuable tool in the overall correctional process." Further, Donal Campbell, former Commissioner of the Tennessee Dept. of Corrections, stated in reference to prison phone calls, "As you know, maintaining contact with family and friends in the free world is an important part of an inmate's rehabilitation and preparation to return to the community."

An estimated 95% of prisoners currently in custody will one day be released. To the extent that strong family support and relationships during incarceration result in lower recidivism rates (e.g., less crime), this issue affects society as a whole. And to the extent that prison phone calls are a primary means to maintain such strong family relationships during incarceration, the affordability of such phone calls is also an issue that affects society as a whole.

4. Abuse, Corruption and Lack of Accountability.

There is little oversight over prison phone service providers or their prison phone service contracts, other than through the contracting government agencies. The “commissions” paid to such agencies cited above result in a natural incentive to maintain a hands-off approach in terms of investigating abuses by prison phone service providers, as such investigations or scrutiny may jeopardize the lucrative kickbacks that the contracting agencies receive.

While state public utility regulatory agencies may have the authority to investigate and make rules related to prison phone services, in practice this is rarely done. Prison phone services are not a significant issue for state regulatory agencies; also, prison phone service companies employ many attorneys and lobbyists to protect their business interests, while there is no similar representation for the consumers – primarily prisoners’ family members – who are most affected by exorbitant prison phone rates. When state public utility regulatory agencies have intervened, however, they frequently uncover gross abuses by prison phone service providers.

The prison phone service industry has been repeatedly sanctioned for overcharging and fraudulent practices. In Louisiana, the state Public Service Commission ordered prison phone service provider Global Tel*Link to refund \$1.2 million in overcharges from June 1993 to May 1994. In 1996, North American Intelcom agreed to refund \$400,000 overcharged to members of the public who accepted prison phone calls, following an investigation by the Florida Public Service Commission. The following year, the Florida Public Service Commission ordered MCI to refund overcharges on collect calls made from state prisons; to settle the claims, MCI paid a \$10,000 fine and placed \$189,482 into a prisoner trust fund. More recently, on May 4, 2001, the California Public Utility Commission ordered MCI to refund \$522,458 in overcharges on collect calls made by California prisoners between June 1996 and July 1999.

The prison phone service industry has also been plagued by conflicts of interest and outright criminal practices. In October 2001, the Georgia Public Service Commission opened an investigation into complaints that MCI was charging separate connection and per-minute fees, which violated state tariff rules. As part of this investigation, the State Ethics Commission noted that Senate Majority Leader Charles Walker’s family-owned business, CresTech, was an MCI subcontractor that was involved in the state’s prison phone services under a multi-million dollar contract. Walker had failed to disclose his interest in CresTech.

In Florida, a 1996 report faulted the state Dept. of Correction for a prison phone contract with WorldCom because the contract was not competitively bid. WorldCom lobbyist Liddon Albert Woodard, Jr. was a personal friend of Deputy DOC Secretary William Thurber, which, according to the state Attorney General’s office, created an "appearance of impropriety."

Former Alabama state auditor Terry Ellis, former Mobile County Commissioner Dan Wiley and another defendant pleaded guilty in July 1999 to federal charges of tax evasion and money laundering related to a prison pay phone scam involving Global Tel*Link. Two other defendants, including lobbyist Willie Hamner, were also implicated. Ellis was a co-owner of the phone company, then known as National Telcoin, from 1990 to 1995; Hamner was a salesman for the company. Ellis hid his interest in the company to avoid an apparent conflict of interest. The federal indictment further stated that Global Tel*Link added extra time to bills for collect calls originating from prisons and jails, usually one or two minutes, and added an extra charge of about 25 cents to each call. Ellis, Hamner and Wiley submitted fake accounting reports to hide the excess billed revenue.

And in North Carolina, a scandal involving the North Carolina Coin Tel Company's \$1.2 million contract to provide prison phone services resulted in criminal charges. Former North Carolina DOC director of departmental services D.R. Hursey and AT&T employee Michael A. Weaver, who was one of the owners of Coin Tel, were indicted in 1993; six other state officials resigned, retired or were transferred to other jobs. Hursey and Weaver were accused of engaging in a bid rigging conspiracy involving prison pay phones, as well as fraudulent billing.

Due to the lack of effective regulation and oversight of the prison phone service industry, such abuses, overcharges and outright criminal enterprises are difficult to detect, with the result that consumers are defrauded and subjected to overcharges with little or no recourse.

5. Absence of Other Regulatory Means

With rare exceptions, state and federal courts have failed to provide relief related to prison phone services, "commission" kickbacks, high rates charged to prisoners' families, etc. Generally, such issues do not raise constitutional claims on the federal level and are often dismissed under the filed rate or primary jurisdiction doctrines. As noted above, in some cases state public utility regulatory agencies have taken action; however, in other cases even that avenue of redress is blocked. For example, in 1998 the Colorado Supreme Court held that the state's Public Utilities Commission lacked jurisdiction over the Dept. of Corrections in regard to excessive prison phone rates charged by Sprint Communications, as Sprint was providing an "unregulated utility." See: *Powell v. Colorado Public Utilities Commission*, 956 P.2d 608 (Colo. 1998).

Some state Departments of Correction have voluntarily reduced prison phone rates, including Nebraska, New Hampshire and West Virginia, as well as the District of Columbia. Recently, Florida DOC Secretary James McDonough reduced prison phone rates by about 30%. Such voluntary rate reductions, often by forgoing lucrative "commissions," are dependent on the stance of individual state policymakers in regard to economic fairness and social responsibility. The vast majority of states prefer to keep prison phone rates high so as to maximize their share of the profits generated by prison phone calls.

Legislative regulation on the state level is extremely difficult to achieve, as prisoners are a disfavored population who have no political voice (e.g., they cannot vote), and their family members have no political advocacy group to speak on their behalf. Further, lawmakers have

little desire to be seen advocating for prisoners or their families, lest they be perceived as “soft on crime.” In fact, bills addressing prison phone rates have been introduced in only three states (New Jersey, Oklahoma and Washington). Considering that most states receive millions of dollars from prison phone service providers, which helps reduce ballooning state budgets, there is little incentive for state lawmakers to provide relief from exorbitant prison phone rates.

Professional organizations such as the American Correctional Association (ACA) and the American Bar Association (ABA) have passed resolutions against excessive prison phone rates; the ACA specifically stated that “[c]orrectional agencies should discourage profiteering on tariffs placed on phone calls which are far in excess of the actual cost of the call, and which could discourage or hinder family or community contacts.” However, these organizations carry little weight in terms of effecting institutional policy change.

With a hands-off policy by the courts, infrequent actions taken by state regulatory agencies, the lack of a strong lobby for prisoners’ families who are victimized by excessively high prison phone rates, and unreceptive lawmakers who are unwilling to take a stand on this issue, there is virtually no effective regulation of prison phone service providers.

Conclusion

Prison Legal News strongly encourages the FCC to consider the above comments when reaching a decision regarding the rule-making requested in the Wright petition, CC Docket No. 96-128. We urge the FCC to grant the remedies outlined in the Wright petition pursuant to the authority granted under 47 U.S.C. § 201(b), including the establishment of reasonable benchmark rates and rate caps, as well as other appropriate actions to protect against price-gouging and monopolistic practices of prison phone service providers.

Such action is necessary because free market forces have consistently failed to provide reasonable, competitive phone rates for the captive market that consists of prisoners and their families, to the detriment of consumers and society as a whole.

Sincerely,

Alex Friedmann
Associate Editor, PLN

cc: Paul Wright, PLN Editor