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28 October 2008

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW – TW – A325
Washington, DC 20554

Re: *Ex Parte* Presentation (via Electronic Filing)
CC Docket No. 96-128; DA 03-4027

Dear Ms. Dortch:

Respectfully submitted herewith, please find an *Ex Parte* Presentation which briefly recaps the history of this proceeding, the scope of the problem which is central to the dispute, the positions of the parties, the inability of state utilities commissions to address abuses of national scope, the plenary jurisdiction and authority of the Federal Communications Commission over this matter, and a proposal for a comprehensive resolution of this intractable challenge.

To more fully outline this proposal, one might observe that information presently before the Commission suggests that it may be possible to reconcile the positions of Petitioners and at least seven of the eight prison phone service providers with regard to rates for prison telephone calls.

This result can be accomplished should the FCC: (1) establish a comprehensive, fair rate (derived from the lower rates outlined in the report, “Inmate Calling Services - Interstate Call Cost Study”) for (2) all intra-state and inter-state (3) prisoner collect, pre-paid, and debit telephone calls that (4) covers legitimate costs, (5) provides a reasonable rate of return to prison phone providers, (6) eliminates “commissions,” (7) forecloses alternative means to unjustifiably inflate the cost of prisoner phone calls, and (8) defers to state public utilities commissions to address requested cost adjustments. In this way, prison phone providers will receive fair and reasonable rates on the widest possible range of prisoner-initiated telephone calls, while consumers are treated fairly rather than being exploited, as they are under the existing hodge-podge of various and inconsistent regulations.

Marlene H. Dortch, Secretary
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I submit this Presentation in accordance with Section 1.1206 of the Commission's Rules for inclusion in the record of this proceeding. Thank you for your attention to this matter. Please let me know if you have any questions, or if I can otherwise be of service. With all best wishes in the meantime, I am,

Sincerely yours,



Michael S. Hamden

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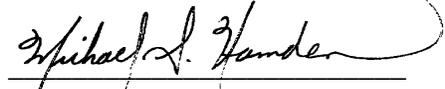
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DECLARATION OF MICHAEL S. HAMDEN

I declare under penalty of perjury that the information contained in the following *Ex Parte Presentation* is true, accurate, and complete to the best of my knowledge and belief formed after reasonable inquiry.

This 29th day of October 2008.

A handwritten signature in black ink that reads "Michael S. Hamden". The signature is written in a cursive style and is positioned above a horizontal line.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996)	CC Docket No. 96-128
)	
Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues In Pending Rulemaking)	DA 03-4027

**WRITTEN *EX PARTE* PRESENTATION OF MICHAEL S. HAMDEN ON
ALTERNATIVE RULEMAKING PROPOSAL REGARDING INMATE CALLING SERVICES**

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1. AMERICAN BAR ASSOCIATION POLICY REGARDING PRISONER ACCESS TO TELEPHONES
2. AMERICAN CORRECTIONAL ASSOCIATION POLICY REGARDING OFFENDER/JUVENILE ACCESS TO TELEPHONES
3. AMERICAN CORRECTIONAL ASSOCIATION STANDARD & COMMENT REGARDING OFFENDER/JUVENILE ACCESS TO TELEPHONES
4. ASSOCIATION OF STATE CORRECTIONAL ADMINISTRATORS RESOLUTION REGARDING TELECOMMUNICATIONS ACCESS FOR INMATES
5. NATIONAL ASSOCIATION OF SHERIFFS’ RESOLUTION REGARDING PRISONER TELEPHONES
6. NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES RESOLUTION 2006-02, “FAIR RATES FOR CALLS FROM INMATES OF CORRECTIONAL INSTITUTIONS”

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**WRITTEN *EX PARTE* PRESENTATION OF MICHAEL S. HAMDEN ON
ALTERNATIVE RULEMAKING PROPOSAL REGARDING INMATE CALLING SERVICES**

Having previously appeared in this proceeding on behalf of North Carolina Prisoner Legal Services, a nonprofit inmate advocacy group, the undersigned submits these comments as a private practitioner with more than 23 years of experience representing prisoners in a variety of matters, including issues pertaining to prison pay telephones.

I. Summary of A Proposed Resolution of This Proceeding

In light of information presently before the Federal Communications Commission (FCC), it seems possible to reconcile the positions of Petitioners and at least seven of the eight prison phone service providers with regard to rates for prison telephone calls. Thus, the FCC should: (1) establish a comprehensive, fair rate (derived from the lower rates outlined in the report, "Inmate Calling Services - Interstate Call Cost Study") for (2) all intra-state and inter-state (3) prisoner collect, pre-paid, and debit telephone calls that (4) covers legitimate costs, (5) provides a reasonable rate of return to prison phone providers, (6) eliminates "commissions," (7) forecloses alternative means to unjustifiably inflate the

cost of prisoner phone calls, and (8) defers to state public service commissions to address requested cost adjustments – all toward the end of providing fair and reasonable rates on the widest possible range of prisoner-initiated telephone calls.

II. Brief Recapitulation of the History of This Proceeding

In 2000, Martha Wright and others filed suit in the Federal District Court for the District of Columbia raising claims that rates on long-distance calls that originated from three privately operated correctional facilities violated sections of the Constitution; the Telecommunications Act, 47 U.S.C. § 151, *et seq*; and the Sherman Anti-Trust Act, 15 U.S.C. § 1, *et seq.*, among other laws. The District Court found that the Federal Communications Commission (FCC) had the requisite expertise to address these claims; that, indeed, the Commission was then grappling with related issues [*Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128 (DA 93-4027)*]; and that the matter would be referred to the FCC under the “primary jurisdiction” doctrine. *Wright, et al. v. Corrections Corp., et al.*, 1:00-cv-00293-GK (Memorandum & Order filed 22 August 2001, DC Cir.)

In November 2003, Martha Wright and other petitioners filed their first petition for rulemaking in the FCC to seek relief from anticompetitive practices concerning collect calls placed by people incarcerated in private prisons. The petition asked the Commission to: (i) “prohibit exclusive inmate calling service agreements and collect call-only restrictions at privately-administered prisons and require such facilities to permit multiple long distance carriers to interconnect with prison telephone systems,” and (ii)

“require inmate service providers to offer debit card or debit account service as an alternative to collect calling services.”¹ The Commission has not ruled on that petition.

On 1 March 2007, Martha Wright and other petitioners filed an alternative proposal, in which they renewed their request for the Commission to provide relief from the “exorbitant rates,” per-call charges, and poor service associated with long-distance calls from private prisons.² Petitioners requested that, if the Commission did not grant their earlier request for relief, then the Commission should, alternatively, provide relief from the costs of long-distance collect calls from prisoners by: (i) establishing benchmark rates for those calls (at a maximum of \$0.20 per minute for debit calling and \$0.25 per minute for collect calling, with no per-call charge, and with higher benchmarks for providers offering prisoners a specified minimum amount of calling services free of charge), and (ii) requiring prison telephone service providers to allow debit calling from prison.³

Since March 2007, many comments have been filed, along with studies and the affidavits of industry experts. It is one of those studies that is central to this comment, and which may provide grounds for a comprehensive resolution of excessive rates for phone calls of all relevant types originating in every correctional facility.

III. A Growing Problem

A. Florida

Over the last decade, the states have been confronted by these issues with increasing frequency. For example, presently pending in Florida is an investigation of a prison phone provider believed to have prematurely disconnected calls that were

¹ *Wright* Petition at 3-4.

² *Alternative Wright* Petition at 8.

³ *Alternative Wright* Petition at 2.

purportedly but inaccurately detected as 3-way calls, costing consumers an estimated \$6.3 million over a four-year period. This abusive practice is alleged to have occurred in at least one Florida correctional facility, the Miami-Dade County Detention Center. In addition to restitution with interest, public staff has recommended a fine in excess of \$1.25 million. “Compliance investigation of TCG Public Communications, Inc.” (Docket No. 060614-TC).

B. Washington

In a recent Washington State investigation, telephone service provider AT&T overcharged families \$67,295 for more than 29,000 calls placed from only two correctional facilities over a four month period in 2005. AT&T agreed to reimburse the families and friends of Washington prisoners in a settlement agreed on 13 December 2007. AT&T will also pay \$302,705 in fines levied by the Washington Utilities and Transportation Commission. (Docket No. UT-060962).

C. Maine

Maine saw the vast profits that prison phone services generate and set up its own operation. The Department charges 30¢ per minute, an amount it admitted is far in excess of actual costs. On 23 June 2008, the Maine Public Utilities Commission determined that it has jurisdiction over the Maine Department of Corrections telephone system and planned to open rate proceedings. The decision was made official on 1 August 2008 and is presently on appeal to the State Supreme Court. *Maine v. Pierce, et al.*, ME S.Ct. Docket No. 2007-467 (20 August 2008)(Utilities Commission Docket No. PUC-08-456).

D. Alabama

In Docket No. 30632, the Alabama Public Service Commission conducted a general proceeding to determine the applicability to inmate phone service providers of the state's Communications Reform Act of 2005. Title 37, Code of Alabama, Chapter 2A, § 37-2A-1, *et seq.* Three service providers claimed the act applied and that they were free to charge what they chose for prisoner calls. One provider acceded to the position of Public Staff that the prison phone providers are subject to regulation.

Ultimately, the Commission concluded that it retains jurisdiction over inmate phone service providers who are subject to all previously issued Orders and Rules. Order of 10 March 2008 (Docket No. 30632).

On 10 June 2008 the Alabama Public Service Commission issued an Order in Docket No. 15957 seeking comments on the Public Staff's proposed rule revisions and rates for Inmate Phone Service ("IPS"). The proposed rates for collect calls are: \$2.25 ("set-up" charge) + 50¢ per minute for local calls and \$2.25 + 30¢ per minute for toll calls. Obviously, these rates seem far in excess of actual costs and a reasonable rate of return.

E.1. New Mexico

There are also two related proceedings in New Mexico. On 25 July 2007, the New Mexico Public Staff petitioned the Commission to make an inquiry into the rates charged by prison phone providers in the state. The Commission issued a Notice of Inquiry on 31 July 2007 in Case No. 07-00316-UT.

On May 13, 2008, the Commission consolidated two previous protests of proposed tariff changes (T-Netix Telecommunications Services, Inc., Case No. 08-

00142-UT, and Case No. 08-00143-UT – Evercom Systems, Inc.) with Case No. 07-00316-UT described above. This inquiry will now include a review of prison phone provider costs for all rates, including any fees charged to open accounts or to make payments.

Actually, three kinds of non-tariffed fees are at issue –service fees (charged to customers setting up an account for the first time), “recharge fees” (billed when a customer reopens an account), and processing fees – imposed either by a service provider or a third party business – for processing a customer’s payment.

On 3 July 2008, an Order issued in Case No. 07-00316-UT (Document #1048477) that required the inmate phone service providers to: 1) file all cost information related to all of their existing or proposed rates, charges, or fees; 2) participate in a status conference at the Commission’s offices to discuss the cost data and scheduling matters; and 3) that allowed the Evercom and T-Netix processing fees to go into effect, subject to refund.

E.2. New Mexico

On 6 December 2007, the Commission issued an Order to Show Cause against Public Communications Services, Inc. (PSC), Case No. 07-00442-UT, regarding untariffed fees charged “each time the customer sets up or recharges a prepaid service account.” These charges were not disclosed to or approved by the PSC.

Again, three kinds of non-tariffed fees are at issue – “recharge fees” (billed when a customer reopens an account), service fees (charged to customers setting up an account for the first time), and processing fees – imposed either by a service provider or a third party business – for processing a customer’s payment.

In a 13 May 2008 order, the Commission expanded the investigation to include all prison phone providers operating in New Mexico. This is an enforcement proceeding to “investigate any instance where any ICS provider imposed a charge that is not tariffed.”

F. North Carolina

A result much more favorable to the prison telephone industry was achieved when, on 1 May 2008, the North Carolina Utilities Commission ruled in favor of providers of prisoner telephone services, allowing the companies to charge higher telephone rates to the friends and families of prisoners for local collect calls. Initially, petitioners sought waiver of a rule which limited the rates. The petition was supported by the Public Utilities Commission Staff with a recommendation that instead of waiver, the rule should be modified pending publication and an opportunity for public comment. Unsuccessfully challenging the waiver request, the increased rates, and the proposed rule as revised by Public Staff, was North Carolina Prisoner Legal Services, a nonprofit organization that provides legal advice and assistance to prisoners.

As in other cases, higher rates for prisoner-initiated telephone calls in North Carolina are driven by “commissions” paid to correctional facilities or agencies in exchange for the right to provide exclusive telephone services, thus creating a monopoly. This practice conveys an appearance of impropriety and will bring the corrections profession into disrepute as the matter gains greater notoriety.

G. Other States

Meanwhile, other states have made serious efforts to put a stop to the abuses. For instance, Missouri, New York, and Michigan have significantly reduced prison telephone rates and commissions. And in one state, Nebraska, correctional officials have simply

refused to accept any commission, preferring instead to choose prison phone services on the basis of quality of service, responsiveness, and other such ordinary consumer concerns. Thus, it is clear that prison telephone services can be provided without the payment of *any* commissions, exaggerated protestations regarding compromises to security and diminished access to prisoner phones notwithstanding.

IV. State Utilities Commissions are Unable to Regulate A Nationwide Industry

This patchwork of widely varying regulatory approaches and outcomes demonstrate that a national framework is sorely needed. Lacking authority to act beyond its borders, state utilities commissions are simply unable to reign-in the abuses of a nationwide prison telephone industry. These state utilities commissions would greatly benefit from oversight of the industry by, and guidance from the Federal Communications Commission.⁴

A. The Wood Report Cost Data Illustrate the Magnitude of the Problem And Support Expansion of the Petitioners' Request

A report was prepared using the FCC's "marginal location analysis," which is designed to "cover costs and provide a reasonable return at a break-even location with no commission." Don J. Wood, "Inmate Calling Services – Interstate Call Cost Study" (filed 15 August 2008)(hereafter, *Wood Report*). A 2002 ruling of the FCC prohibited

⁴ In 2006, the National of State Utility Consumer Advocates (NACUSA) adopted the following resolution:

[R]esolved that NASUCA urges states, the Federal Communications Commission and the U.S. Congress under their proper jurisdictions to take action to reform inmate telephone rates by:

1. Ensuring that the price of calls from inmates are just and reasonable, and
2. Discouraging or reducing "commissions" paid by telephone companies to correctional institutions, and
3. Encouraging the use of prepaid debit accounts for inmates whereby inmates or their called parties may buy low-cost minutes, and
4. Continuing to allow collect calls from inmates but at rates that are just and reasonable . . .

the use of commissions as an element of costs. Order on Remand & Notice of Proposed Rulemaking, FCC 02-39, ¶ 15, p. 8, and ¶ 38, p. 15 (CC Docket No. 96-128, 21 February 2002). Rather, commissions are negotiable allocations of profits between the correctional facility (or “site locations”) and the prison phone service provider. *Id.* See also, Second Report & Order, FCC 97-371 (CC Docket No. 96-128, 9 October 1999); and Third Report & Order, FCC 99-7, ¶ 156 (CC Docket No. 96-128, 4 February 1999).

**B. A COMPARISON OF
WRIGHT ALTERNATIVE PETITION PROPOSED RATES WITH
PRISONER PHONE INDUSTRY COST STUDY RATES**

The “benchmark rates” proposed by the *Wright* Alternative Petition (20¢/minute for debit-card calls and 25¢/minute for collect calls, with no per call/fixed cost charge) are listed first in each category of the following chart.

The *Wood Report* “Cost Study Rates,” filed on behalf of certain members of the prison phone service industry on 15 August 2008, appear as the second listing under each category below.

In the chart that follows, costs for calls of various durations are compared using the *Wright* “benchmark” proposal and the *Wood Report* prison phone service provider cost determination.

Chart A⁵

<u>Type of Call</u>	<u>Fixed Cost</u>	<u>Per Minute</u>	<u>10 Minutes</u>	<u>15 Minutes</u>	<u>20 Minutes</u>
<i>Wright</i> Collect Rate		\$.25	\$2.50	\$3.75	\$5.00 ⁶
PPS Collect Call	\$2.49 +	\$.07 =	\$3.19	\$3.54	\$3.89 ⁷
<i>Wright</i> Debit Rate		\$.20	\$2.00	\$3.00	\$4.00
PPS Debit Call	\$1.56 +	\$.06 =	\$2.16	\$2.46	\$2.76

OTHER RELEVANT DATA

Chart B1

Current Prison Phone Service Rates

Inter-State Collect Call Rates

<u>Inter-State Call</u>	<u>Surcharge</u>	<u>Per Minute</u>	<u>10 Minutes</u>	<u>15 Minutes</u>	<u>20 Minutes</u>
Evercom Systems Inc. 4/1/08 Tariff ⁸	\$3.95	\$.89	\$12.85	\$17.30	\$21.75

Chart B2

Current Prison Phone Service Tariffed Rates

50 State Average Intra-lata Collect Call Rates

	<u>10 Minutes</u>	<u>15 Minutes</u>	<u>20 Minutes</u>
Intra-lata call: Long distance calls inside the state, near the local calling area	\$5.42	\$6.71	\$8.00

⁵ The *Wright* Petitioners' proposed rates of \$.20/minute for debit and \$.25/minute for collect calls are based on the comparative costs of 20 minute collect calls in particular prisons and prison systems. *Wright* Alternative Rulemaking Proposal, pp. 20 – 22 (“composite” collect rates). None the less, costs for 10, 15, and 20 minute calls have been calculated using the *Wright* Petitioners' proposed rates. Beginning with calls of about 14 minutes, the *Wright* Petitioners' proposed rates begin to exceed those proposed in the Wood Study.

⁶ See fn. 5, *supra*.

⁷ It should be noted that the figures that appear in the PPS rates represent the lower of two cost calculations made by Mr. Don Wood, an industry expert retained by seven of the eight prison phone service providers involved in the *Wright* Proceeding.

⁸ The inter-state rates charged by Evercom Systems, Inc., are believed to be representative of the rates charged by the Prison Phone Service Industry.

Chart B3
Current Prison Phone Service Tariffed Rates

50 State Average Inter-lata Collect Call Rates

	<u>10 Minutes</u>	<u>15 Minutes</u>	<u>20 Minutes</u>
Inter-lata call: Long distance calls inside the state, further from the local calling area	\$8.64	\$11.14	\$13.68

Chart B4
Current Prison Phone Service Tariffed Rates

50 State Average Local Collect Call Rates Intra-State

	<u>10 Minutes</u>	<u>15 Minutes</u>	<u>20 Minutes</u>
Local call	\$2.92	\$3.01	\$3.10

V. General Conclusion

The rates shown above are **well below the current long distance rates** that are being charged for prisoner phone calls in every state in the nation. In other words, seven prison phone service providers have submitted documentation to the FCC that they can provide services at lower costs than they are charging at present, and for calls of about 14 minutes or more in duration, at lower rates than the *Wright* Petitioners have demanded.

To put it differently, the *Wood Study* demonstrates that rates very near those proposed by the *Wright* Petitioners provide fair compensation while allowing prison phone service providers to recoup “set-up” costs, eliminate commissions and substantially reduce over-all expenses to the people bearing the cost of prisoner-initiated phone calls. (In some situations, the *Wood Report* figures result in slightly higher rates; in other cases, the rates would be lower. Calls of about 14 minutes or more would be less costly under the rates proposed in the *Wood Report*.)

In short, it seems *there is some common ground upon which it may be possible*

to forge a comprehensive resolution of this intractable injustice which may meet with the satisfaction of many of the interested parties.

VI. Jurisdiction

It is clear that the FCC has plenary authority and the jurisdiction to impose regulations that address the interests of all the parties to this dispute in a way that serves the public interest. Section 276 of the 1996 Telecom Act requires the FCC “to ensure that all payphone service providers (including inmate phone service providers) are fairly compensated for each and every completed intrastate and interstate call . . .” The scope of the Commission’s authority should be broadly construed. 47 U.S.C. § 151. *See also, e.g.,* 47 U.S.C. § 154(i)(Commission authorized to issue such orders, promulgate such regulations, and take such actions as necessary to effectuate purposes of Act). *Accord,* 47 U.S.C. § 303(r); 47 U.S.C. § 201(b)(regulation in public interest). *See also, e.g., In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets,* Report and Order, FCC 08-87, ¶ 15 & n.48 (Mar. 21, 2008)(authority to regulate contractual arrangements between common carriers and other entities not ordinarily subject to FCC regulation); *Cable & Wireless P.L.C. v. FCC,* 166 F.3d 1224 (D.C. Cir. 1999)(Commission’s authority not limited by “extra-jurisdictional” effects of an otherwise proper exercise of regulatory authority); and *FCC v. Midwest Video Corp.,* 440 U.S. 689, 706 (1979)(regulation to achieve purpose of the Act is within the power of the Commission).

VII. Proposal for Comprehensive Resolution of This Proceeding

The FCC must establish a comprehensive, fair rate for all intra-state and inter-state prisoner telephone calls that allows the broadest possible range of calling options, covers legitimate costs, provides a reasonable rate of return to prison phone providers, . eliminates “commissions,” forecloses alternative means to unjustifiably inflate the cost of prisoner phone calls, and defers to state public service commissions to address requested cost adjustments – all toward the end of providing fair and reasonable rates on the widest possible range of prisoner-initiated telephone calls

A. A comprehensive approach is required.

As the Commission previously intimated, the “benchmark” must be comprehensive - “[T]he record in this proceeding strongly suggests that any solution to the problem of high rates for inmates must embrace the states.” Order on Remand at ¶ 29. To achieve workable benchmark rates that are “fair and reasonable,” and which fairly compensate the prison service provider for “each and every call” the benchmark must apply (with such adjustments as may be necessary and appropriate) to both interstate and intrastate calls. New technologies and practices (*e.g.*, “arbitraging”) render any formulae to address one, but not the other, untenable from the outset.

B. “Commissions” must be eliminated.

Commissions are not a part of legitimate costs but rather a profit sharing arrangement agreed by the prison phone service provider and the facility or system through contract. It is commissions that lay at the heart of upwardly spiraling costs for prisoner-initiated phone calls because, in order to compete successfully, a provider must offer higher commissions than its competitors. Thus, if Company A is awarded the

contract on a promise to pay X% of profit in commissions, bidding on the next contract will require Company B to offer X + Y% of profit in order to entice the facility or system to award the contract to Company B. While this practice may encourage the various prison phone providers to keep costs to a minimum so savings can be diverted to commissions, none of these savings are passed on to consumers. The effect is to set in place a system that ensures that no calls can be connected for “fair and reasonable costs to the consumers.” Instead of weighing the relative merits of a contract proposal on the basis of quality of services offered and the responsiveness of a prison phone company to customers, the decision almost always turns on the potential revenue a contract may generate.

Under the existing regime, the only other conceivable basis for competition is security and other features offered by the various competitors, which may be understood as a component of “quality of services.”

C. The FCC must close potential loopholes.

In eliminating commissions, the FCC must close the door to mechanisms that would allow prison phone service providers to inflate service fees that unfairly and unjustifiably increase the price of prisoner phone calls.

Examples of workarounds that can perpetuate the already excessive cost of prisoner-initiated phone calls include practices of prison phone service providers and “billing companies,” often wholly owned subsidiaries of the prison phone providers or their corporate parent. These companies may charge a fee for a customer to establish a pre-paid account; charge again to process a customer’s payment, and confiscate sums left in an account which has been inactive for a period of time. These “tack-on” charges

dramatically increase the cost of communicating with incarcerated loved ones, but they do not appear as a part of the cost of the call reflected on a telephone bill. Such charges should be prohibited. Any fees charged by third parties (such as Western Union and other payment processors) must be passed through to families at cost with no mark-up or profit for prison phone service providers.

As noted earlier, some of these abuses are being investigated in New Mexico, but the practices almost certainly exist in all 50 states. And this is yet another example of the need for comprehensive, national regulation by the FCC.

D. Prison phone providers must continue to be viable businesses.

The FCC must exercise its authority to establish a fair rate to ensure the financial viability of prisoner pay phone providers. It is clear that there can be no telephone service for prisoners and their families if there are no businesses that provide such services. Businesses operate to generate profit, and viability in this context means that in exchange for the provision of valuable telephone services, we should expect a responsible business to generate a reasonable profit. The *Wood Report* sets forth specific information and rates which ensure such an outcome.

E. The Commission should require debit calling and other calling options including pre-paid, debit, and collect calls, consistent with sound correctional practices and security concerns.

Correctional facilities of all kinds must first protect the safety of the community, those who work in the facility, and those who are held in custody. So, with legitimate security concerns in mind, every facility should provide the broadest possible range of calling options, both to encourage downward pressure on rates, and to encourage

incarcerated people to maintain contact with loved ones and their communities. (The *Wood Report* also analyzed the cost of debit calls.)

F. The FCC should defer to state public utilities commissions to address all requested cost adjustments.

Once a fair rate is established, the FCC should defer to state utilities commissions to address a purported need for cost increases that arise from the provision of service in a particular state.

As cost structures may vary in some limited circumstances, prisoner telephone service providers should be afforded the opportunity to petition a particular state public utilities commission to request a rate adjustment.

In such a case, any deviation from the FCC-established rate would have to be justified with complete, specific cost information that supports the request. For instance, if costs are higher in a particular state, the service provider would have a mechanism to seek an appropriate rate-adjustment from the state utilities commission so telephone services will be available to prisoners. Consumers, their representatives, prisoner advocates, and other interested parties would have an opportunity to assess and oppose the proposed rate deviation. If the supporting documentation were deficient or unpersuasive, the utilities commission can be expected to deny the requested rate.

G. Other affected interests, though their concerns be genuine, are not relevant to this proceeding.

This proposal has addressed the interests of consumers who wish to communicate with incarcerated loved ones, the prison phone service providers that make those communications possible, and the impact of this approach on state utilities commissions. The concerns of one important group remain and will be addressed here.

Correctional professionals and others have long encouraged reasonable rates and the broadest possible range of calling options (in light of legitimate security concerns) for prisoner telephone services.⁹ Yet, some of these organizations have filed comments in opposition to the *Wright* benchmarks and the elimination of commissions without commenting on the Wood Report or its implications. Should the *Wright* benchmarks be adopted, these comments assert two general concerns: the loss of revenue to the facilities will negatively impact programs and services; and security will be compromised. Presumably, these concerns would not be ameliorated by adoption of the *Wood Report* or this proposal. These objections will be addressed in the following paragraphs.

H. Revenue derived from prison telephone contracts by correctional facilities and agencies are generated from the imposition of a hidden and unjust tax upon vulnerable people to benefit the public and should be disallowed as a matter of principle.

It is not clear what percentage of revenue derived from prison phone contracts is dedicated to prison programs and services. Some anecdotal estimates put the number at well below 30%. Ordinarily, the revenue generated from such contracts is deposited into the coffers of the governing body to be used for the benefit of the public, generally. Recall that the state of Maine has implemented its own prison telephone service, charging rates two or three times above actual cost in order to generate revenue.

But even those correctional facilities and systems that use the proceeds of prison telephone contracts in whole or in part to benefit prisoners do so at the expense of the prisoners' families. Moreover, as prisoners are in custody of the government for the

⁹ See, e.g., American Correctional Association Public Correctional Policy on Inmate/Juvenile Offender Access to Telephone (24 January 2001); American Correctional Association Standard Governing Correctional Telephone Services (August 2002); National Sheriffs' Association Resolution, final ¶ (14 June 1995); American Bar Association Policy Regarding Prison and Jail Inmate Telephone Services (August 2005); and the National Association of State Utility Consumer Advocates Resolution 2006-02, "Fair Rates for Calls from Inmates of Correctional Institutions."

supposed good of society, the cost of their care should be borne by the public. *See, e.g., Spicer v. Williamson*, 191 N.C. 487, 490, 132 S.E. 291, 293 (1926) (“[I]t is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself.”) Thus, to seek to recover fees for the administration of services and programs, including the maintenance and operation of a prison telephone system, is to impose an unjust tax upon people who are often themselves impoverished and who have little political influence, the families of prisoners.

Furthermore, it is unseemly and of dubious ethical propriety for the custodians of a literally captive group to prey upon emotional connections with loved ones – husbands and wives, or parents and children – merely to generate profit. Such a practice is certain to bring the profession into disrepute and erode the public’s largely justifiable confidence in the honorable people who commit themselves to public service as correctional officers and officials.

So, to the extent that comparatively few facilities may lose some revenue derived in an unscrupulous way simply is not a legitimate concern for the Commission in these proceedings.

I. Telephone privileges for prisoners are premised upon sound correctional policies regarding security and are permitted only to the extent that such concerns are met.

The second general category of concern from correctional professionals rests on security concerns, some of which deserve consideration. But let’s first clear out the underbrush of thorny arguments that obscure serious concerns.

The idea that the abrogation of commissions would have an adverse effect on the development of security devices and measures simply misperceives the components of

legitimate cost and the fundamentals of competition among prison phone service providers. Research and development are legitimate costs of a great many industries, and telecommunications is no exception. For correctional professionals, safety and security are primary concerns. Because security concerns must be satisfied as a prerequisite to the operation of a correctional telephone system, it is, and will continue to be a priority of every service provider to address those concerns. After all, one cannot even begin to vie for business if the system offered is unsecure or fails to meet the stated needs of correctional professionals.

Indeed, competition to develop ever more effective and efficient security measures will provide an important basis for competition among providers (rather than how much money the provider can offer through commissions).

Neither is the elimination of commissions likely to have any appreciable impact upon the number of phones available at any correctional facility. There are two important reasons that is so: (1) telephones are used as a control mechanism to reward good behavior and to discourage rule violations; and (2) correctional professionals have long recognized that the maintenance of family ties significantly increases the chance of a prisoner to successfully transition back into the community.¹⁰

Finally, we come to a very real security concern, sometimes referred to as “arbitrage.”

¹⁰ See, e.g., U.S. Department of Justice, Office of the Inspector General, *Criminal Calls: A Review of the Bureau of Prisons' Management of Inmate Telephone Privileges*, Ch. II, n.6 (Aug. 1999), available at <http://www.usdoj.gov/oig/special/9908/callsp2.htm> (last accessed 30 January 2005) (“telephone usage and other contacts with family contribute to inmate morale, better staff-inmate interactions, and more connection to the community, which in turn has made them less likely to return to prison....”) and State of Louisiana Department of Public Safety and Corrections, *Time in Prison: The Adult Institutions*, p. 5 (2004).

J. Fraud can best be reduced, and security can best be enhanced by adopting a comprehensive approach to rate-setting in the prison phone context.

Should the FCC chose to dispose of the *Wright* proceedings on narrow grounds, rates will have been set for inter-state, long-distance calls that originate from only three privately operated prison facilities. In that event, consumers could easily circumvent the higher inter-state rates and nothing will have been accomplished to resolve these problems in a definitive way, despite more than a decade of deliberation.

This practice of “arbitraging” is already developing as a consequence of ridiculously high prison phone rates. As understood by the undersigned, one purchases a wireless phone at the local Wal-Mart, for instance. Such a phone costs about \$18.00. Calling cards can then be purchased with minutes that cost as little as 10¢ each. To “set-up” the account, one simply provides the zip code for the locale where one’s incarcerated loved one is held. Subsequent calls are billed as local. Obviously, this practice could be arranged in whatever manner is most advantageous to the consumer.¹¹ See, Ex Parte Letter Filing of 24 August 2007, Alliance for Telecommunications Industry Solutions (“ATIS”), Telecommunications Fraud Prevention Committee.

This practice creates two problems that are immediately apparent. First, correctional authorities have no means by which to track such a call to prevent fraud, threats, the conduct of illegal businesses, or other such activity. Second, prison phone service providers are not fairly compensated for the call; indeed, they may receive no compensation whatever if a billing arrangement has not been agreed with the out-of-state carrier.

¹¹ This information is widely disseminated on the internet and is readily accessible on prison “talk boards,” list serves, and the like.

This legitimate and very real concern can be remedied only through a comprehensive approach to rate-setting for prisoner-initiated calls of all types (including interstate and intrastate) and from all kinds of correctional facilities (either privately or governmentally operated), including county jails and state prisons. And, short of removing all phones from the premises of correctional facilities, only in this way can the legitimate concerns of correctional professionals be addressed.

ULTIMATE CONCLUSION & PROPOSED RESOLUTION

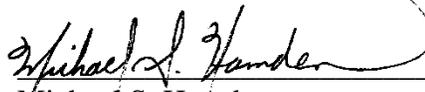
For over 20 years, the prison phone service industry has been permitted to exploit the friends and families of prisoners shamelessly, despite the best regulatory efforts of state utilities commissions and notwithstanding reasoned, incremental efforts by the FCC. These regulatory measures have proven to be ineffectual in curbing the abuses of an industry driven by a desire for windfall profits that has been prodded by the need to offer ever higher commissions.

Perennially underfunded correctional operations have impelled correctional professionals to seek ways to fulfill their legal and constitutional obligations. Thus have they been drawn into a Faustian bargain in which their integrity and professionalism is brought into question by a growing dependence on profits generated by prison telephone services. The cost of these services have unjustly fallen upon the shoulders of a vulnerable and politically powerless group who too often are given no choice but to pay extortionate phone rates or forego conversations with loved ones who are incarcerated.

The time for remedial action is long overdue. The Federal Communication Commission should immediately act to:

- (1) Establish a single fair rate for *all* intra-state and inter-state prisoner phone calls by eliminating commissions while allowing legitimate costs and providing a reasonable rate of return for service providers, irrespective of the location where the call originates (whether in a private or governmentally operated prison or jail).
- (2) Foreclose all opportunities to circumvent the established fair rate by prohibiting additional fees charged by prison phone service providers or their subsidiaries and ensuring that third party payment fees are passed through to families at cost with no mark-up or profit for prison phone service providers.
- (3) Require calling options, including pre-paid, debit, and collect calls consistent with sound correctional practices and security concerns; and
- (4) Defer to state utilities commissions to address a purported need for cost increases that arise from the provision of service in a particular state.

Respectfully submitted this 29th day of October, 2008.



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ATTACHMENT 1.

**AMERICAN BAR ASSOCIATION
CRIMINAL JUSTICE SECTION**

REPORT TO THE HOUSE OF DELEGATES

RECOMMENDATION

ADOPTED AS OFFICIAL ABA POLICY AUGUST 2005

1 RESOLVED, That the American Bar Association encourages federal, state, territorial and local
2 governments, consistent with sound correctional management, law enforcement and national
3 security principles, to afford prison and jail inmates reasonable opportunity to maintain
4 telephonic communication with the free community, and to offer telephone services in the
5 correctional setting with an appropriate range of options at the lowest possible rates.

REPORT

Telecommunications services are integral to human interaction in today's society. Accessing these services is especially important to people who are incarcerated, separated from family, friends and legal counsel by the fact of incarceration. Telephone access is particularly important for the significant percentage of the incarcerated population with limited literacy skills.¹

Leaders in the corrections profession have long recognized the importance of extending telephone privileges to people in their custody as a means of fostering and strengthening ties with their families and their communities.² Telephone access can be a critical component of a prisoner's successful transition to a productive, law-abiding life after leaving prison.³ It can also contribute to safer prisons by reducing the number of disciplinary incidents.⁴ At the same time, we recognize that the desire to provide robust communications services to prisoners remains in tension with legitimate penological constraints of the correctional setting.⁵

Although recognizing the importance of providing expansive telephone privileges, many correctional systems engage in practices that make it difficult, if not impossible, for incarcerated people to use the telephone. First, many correctional facilities only permit prisoners to make

¹ Approximately 40% of the national prison population is functionally illiterate. The Center on Crime, Communities & Culture, *Education as Crime Prevention: Providing Education to Prisoners*, Research Brief: Occasional Paper Series 2 (Sept. 1997).

² See, e.g., the October 1996 Resolution on Excessive Phone Tariffs adopted by the American Correctional Association (ACA); ACA's Public Correctional Policy on Inmate/Juvenile Offender Access to Telephone (adopted 24 January 2001); and ACA's related standards (*Standards for Adult Correctional Institutions* (3rd ed.); *Standards for Adult Local Detention Facilities* (3rd ed.); *Standards for Adult Community Residential Facilities* (4th ed.); *Standards for Adult Correctional Boot Camp Programs* (1st ed.); *Standards for Juvenile Community Residential Facilities* (3rd ed.); *Standards for Juvenile Detention Facilities* (3rd ed.); *Standards for Juvenile Correctional Boot Camp Programs* (1st ed.); *Standards for Juvenile Training Schools* (3rd ed.); *Standards for Small Juvenile Detention Facilities* (1st ed.); and *Small Jail Facilities* (1st ed.)). See also, the National Sheriffs' Association Resolution of 14 June 1995; and USDOJ-BOP, Program Statement 5264.06, *Telephone Regulations for Inmates* (Jan. 31, 2002).

³ See, e.g., U.S. Department of Justice, Office of the Inspector General, *Criminal Calls: A Review of the Bureau of Prisons' Management of Inmate Telephone Privileges*, Ch. II, n.6 (Aug. 1999), available at <http://www.usdoj.gov/oig/special/9908/callsp2.htm> (last accessed 30 January 2005) ("telephone usage and other contacts with family contribute to inmate morale, better staff-inmate interactions, and more connection to the community, which in turn has made them less likely to return to prison...") and State of Louisiana Department of Public Safety and Corrections, *Time in Prison: The Adult Institutions*, p. 5 (2004).

⁴ Bureau of Prisons Program Statement 5264.07, "Telephone Regulations for Inmates," codified at 28 C.F.R. § 540.100 ("Telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development. . . . Contact with the public is a valuable tool in the overall correctional process."); State of Louisiana Department of Public Safety and Corrections, *Time in Prison: The Adult Institutions*, p. 5 (2004), available at <http://www.corrections.state.la.us/Whats%20NEw/PDFs/TimeInPrison.pdf>.

⁵ The "correctional setting" refers to facilities where people are detained or incarcerated, irrespective of their actual status as pretrial, civilly committed, adjudicated, or sentenced. Thus, the Recommendation encompasses jails and other detention facilities, prisons, training schools, residential facilities, and correctional facilities of all types.

collect calls. Second, charges for prisoner-initiated telephone calls are high as compared to rates offered in the residential and business markets and, in some cases, excessive.⁶ In some jurisdictions, escalating prices appear to be driven by “commissions” paid by service providers to correctional facilities for exclusive contracts, which hover in the 30% to 40% range, and can be as high as 65%, of all revenue generated. Third, many correctional systems require telephone service providers to block calls from prisoners to certain prohibited phone numbers for reasons of public safety and crime prevention. Some institutions, however, impose call-blocking requirements for inappropriate reasons, including a local carrier’s failure to enter into a billing agreement with the provider, or because the number called is a cell phone or is a remote call forwarding number. In the case of calls placed to cell phones, many telephone service subscribers are opting for cellular service instead of the more conventional land-line connection. Remote call forwarding is a technology that has been employed by some telephone service providers to compete for business by re-directing calls to customers at costs lower than would otherwise apply. In an age of increasing mobility, it will often be possible to reconcile legitimate security concerns with new technologies. Fourth, many prison systems and jails place unreasonable limits on the number of calls a prisoner is allowed to make or receive, or the aggregate amount of time a prisoner can spend on the telephone during a prescribed period.⁷ Finally, correctional institutions monitor and record inmate telephone calls routinely, but policies that permit monitoring client-attorney communications in the correctional setting or that unreasonably limit the availability of permissible unmonitored calls threaten fundamental rights regarding the effective assistance of counsel and access to the courts.⁸ Such policies are presumptively unconstitutional.⁹

⁶ “[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.” ACA’s October 1996 Resolution on Excessive Phone Tariffs.

⁷ In Texas prisons, inmate access to telephones is quite limited. “Offenders who demonstrate good behavior can earn one 5-minute collect phone call every 90 days. . . .” Texas Department of Criminal Justice, Correctional Institutions Divisions, Frequently Asked Questions (<http://www.tdcj.state.tx.us/faq/faq-cid.htm#telephone>) (last accessed 16 January 2005).

By comparison, the Federal Bureau of Prisons (BOP) policy is generous. BOP Program Statement 5264.07 entitled, “Telephone Regulations for Inmates,” which was codified at 28 C.F.R § 540.100 *et seq.*, states that inmates are generally permitted privileges to contact up to a maximum of 30 individuals on an approved telephone list for up to 300 minutes per month. P.S. 5264.07, §§ 10.a. (30 numbers), and 10.d.(1)(300 minutes). Although advocating that then-unlimited telephone access be restricted, the Office of the Inspector General found the 300-minute limitation to be “arbitrary.” *Criminal Calls, supra n. 3*, Ch. VIII, § I. ¶ 1. (Aug. 1999), available at: <http://www.usdoj.gov/oig/special/9908/callsp7.htm#Punishments> (last accessed 30 January 2005). Indeed, for several consecutive years, the BOP has permitted inmates 400 minutes of telephone access during the months of November and December.

⁸ The U.S. Attorney General signed a directive on 31 October 2001 authorizing correctional officials to monitor inmate-client/attorney communications under certain circumstances. AG Order No. 2529-2001, 66 FR 55062. That directive was subsequently codified at 28 C.F.R. 501.3 (31 Oct. 2001).

⁹ *See infra*, n. 14.

As the billed parties for inmate collect calls, the family and friends of incarcerated people regularly shoulder the high cost of prison telephone services. A call recipient is often confronted with a choice of paying exorbitant rates for a collect call from a jail or prison, or refusing it. Many families cannot afford the inflated rates.¹⁰ One damaging result is that children are frequently unable to maintain contact with parents who are confined. Arbitrarily blocked calls only exacerbate the situation.

Individually and collectively, the foregoing practices also make it more difficult for incarcerated people to communicate with their lawyers. Telephone calls are an efficient means for attorneys to communicate with incarcerated clients, particularly when literacy or English-speaking skills are a factor. It is regularly less burdensome for an attorney to speak with a client over the telephone than to travel to the facility and conduct a meeting or personal interview. The high cost of prisoner phone calls makes it difficult or impossible for many prisoners' lawyers to accept their calls. The vast majority of incarcerated people are represented by public defenders or court-appointed attorneys who operate with extremely limited budgets.¹¹ This has serious implications given the constitutional protections surrounding a prisoner's ability to communicate with counsel.¹² When attorneys are able to accept prisoner calls, the high cost of the calls cuts into the attorneys' budgets, making it difficult for them to afford other items necessary to their clients' defense.

Correctional administrators struggle with the perennial problem of stretching limited financial resources to meet institutional needs. The lure of telecommunications contracts that promise a return of as much as 65% of all revenue can appear irresistible in the absence of alternative sources of revenue. But entering into such an arrangement creates an ethical quagmire of both real and perceived conflicts which compromise both the professional integrity of correctional officials and the public's perception. Given the penological and societal benefits that occur when incarcerated people are able to maintain contact with the outside world, the monetary advantages are not worth the human costs.¹³

¹⁰ See, e.g., *In the Matter of: Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Comments of the Ad Hoc Coalition for the Right to Communicate Regarding Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking*, and accompanying declarations, FCC Docket No. 96-128 (filed 10 March 2004).

¹¹ According to the U.S. Department of Justice, 82% of felony defendants in state cases in the 75 largest counties in the country in 1996, and 66% of felony defendants in federal cases in 1998 were represented by court-appointed attorneys. Department of Justice, Bureau of Justice Statistics, *Defense Counsel in Criminal Cases*, Nov. 2000. Both public defenders and other court-appointed counsel are paid by the same governments (state and federal) whose monies are used to fund the correctional systems from which inmate telephone calls originate. Given the current fiscal crisis in governments at all levels, exorbitant rates for inmate-generated telephone calls seem particularly pernicious.

¹² Compare *Alabama v. Shelton*, 535 U.S. 654 (2002) and *Gideon v. Wainwright*, 372 U.S. 335 (1963) (indigent's constitutional right to counsel in criminal cases) with *Lewis v. Casey*, 518 U.S. 343 (1996) and *Bounds v. Smith*, 430 U.S. 817 (1977)(prisoners' right of access to the courts with regard to certain civil and post-conviction matters).

¹³ The Nebraska Department of Correctional Services does not accept commissions on inmate telephone charges. Instead, rates are set by the Nebraska Public Service Commission. Nebraska Department of Correctional Services, *Frequently Asked Questions*, available at:

Although some courts have recognized the constitutional problems inherent in correctional policies that make it impossible for prisoners to contact lawyers and others,¹⁴ neither the courts¹⁵ nor regulatory agencies¹⁶ have yet required correctional authorities to abandon sole-source contracts and open the prison environment to competition that could result in a broader range of calling options at the lowest possible rates.

The resolution encourages federal, state, territorial and local governments to ensure that incarcerated people are afforded a reasonable opportunity to maintain telephonic communication with family and friends in the free community, consistent with the imperatives of correctional management. While the resolution does not go further to specify particular measures correctional authorities must take to ensure the “reasonable opportunity” that is urged, there are a number of basic steps that have been identified as deserving of serious consideration. First,

http://www.corrections.state.ne.us/frequent_questions/telephone-index.html (last accessed 30 January 2005).

¹⁴ Courts have long recognized that the ability to communicate privately with an attorney by telephone is essential to the exercise of the constitutional rights to counsel and to access to the courts. *Murphy v. Waller*, 51 F.3d 714, 718 & n.7 (7th Cir. 1995)(“Restrictions on a detainee’s telephone privileges that prevented him from contacting his attorney violate the Sixth Amendment right to counsel. . . . In certain limited circumstances, unreasonable restrictions on a detainee’s access to a telephone may also violate the Fourteenth Amendment.”); *Tucker v. Randall*, 948 F.2d 388, 390-91 (7th Cir. 1991)(denying a pre-trial detainee telephone access to his lawyer for four days would implicate the Sixth Amendment); *Johnson-El v. Schoemehl*, 878 F.2d 1043, 1051 (8th Cir.1989)(holding that inmates’ challenge to restrictions on the number and time of telephone calls stated a claim for violation of their rights to counsel); *Miller v. Carlson*, 401 F. Supp. 835 (M.D. Fla. 1975), *aff’d & modified on other grounds*, 563 F.2d 741 (5th Cir. 1977)(granting a permanent injunction precluding the monitoring and denial of inmates’ telephone calls to their attorneys). *See also* Dana Beyerle, *Making Telephone Calls From Jail Can Be Costly*, Times Montgomery Bureau (Sept. 22, 2002)(Etowah, Alabama county jail under court order to provide phones to people incarcerated in the jail based in part on complaints they could not talk to lawyers). They have accordingly held that, when prisons’ collect call-only policies interfere with the ability of incarcerated people to communicate with their lawyers, they may violate these rights. *See, e.g., In re Ron Grimes*, 208 Cal. App. 3d 1175, 1178 (1989)(holding that switch by Humboldt County (California) Jail from coin operated to collect-only calls violated the constitutional rights of people incarcerated there because the public defender’s office, other county departments, and some private attorneys did not accept collect calls).

¹⁵ *See, e.g., Arsberry v. Illinois*, 244 F.3d 558 (7th Cir. 2000). Illinois granted one phone company the exclusive right to provide telephone services to inmates in return for 50 percent of the revenues generated. Prisoners and members of their families challenged the practice as a violation of their free speech rights, as a discriminatory denial of equal protection of the laws, and as a violation of federal anti-trust laws. In the *Arsberry* case, the United States Court of Appeals for the Seventh Circuit concluded that the practice did not violate the constitution or any federal law. *See, also, Daleure v. Kentucky*, 119 F. Supp. 2d 683 (W.D. Kentucky 2000)(The court found defendants’ actions did not violate the Constitution); *Miranda v. Michigan*, 141 F. Supp. 2d 747 (E.D. Mich. 2001)(Plaintiff’s Federal Telecommunications Act claims fell within the primary jurisdiction of the Federal Communications Commission and were dismissed).

¹⁶ *See, e.g., In the Matter of Wright Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking*, CC Docket 96-128 (Federal Communications Commission)(decision pending); *In re: Petition of Outside Connection, Inc.*, DA 03-874 (Federal Communications Commission); *Voluntary Remand of Inmate Telephone Services Issues*. CC Docket No. 96-128 (Federal Communications Commission); and North Carolina Utilities Commission, Docket No. P-100, Sub 84; Docket No. P-55, Sub 1005; and Docket No. P-100, Sub 126. These cases were matters in which prisoner advocates filed briefs, appeared at oral argument, and engaged in discussions with commission personnel, all without success.

correctional authorities should encourage service providers to offer the broadest possible range of calling options that is consistent with sound correctional practices. Toll-free calling, debit calling, and collect calling are options that offer different advantages at varying costs. To the extent that existing technology does not permit full access to toll-free numbers for security reasons, correctional authorities should work proactively with telephone service providers to develop and refine technology that extends security features to toll-free calls. Although correctional authorities must be mindful of security concerns when determining what calling options to offer, some telecommunications experts and numerous correctional systems have found that alternatives to collect call-only policies – such as the debit-calling option presently in place in a significant number of facilities – can satisfy legitimate security concerns.¹⁷

Second, telephone services in the correctional setting should be offered at the lowest possible rates. A wide range of calling options and fair competition in the marketplace will help control excessive costs. Non-exclusive contracts, contracts with multiple vendors, the provision of debit cards through multiple vendors, and unrestricted vendor access to correctional telephone networks are all measures that promote fair competition which will lead to reasonably priced telephone services for prisoners and their families. Greater oversight of the terms and conditions – particularly the site commissions – of service contracts will enable service providers to lower their cost of service and pass those savings on to consumers.

Third, telephone service contracts should expressly forbid call-blocking for any reason other than legitimate security concerns, requests initiated by the customer, or failure to pay legitimately invoiced charges.

Finally, if correctional authorities conclude that limits must be placed on the number of calls a prisoner makes, or on the aggregate amount of telephone time allotted a prisoner in a given period, those limits should be as flexible and generous as possible in light of the many benefits of maintaining ties between incarcerated people, their families, and their communities.

Respectfully submitted,
Catherine Anderson
Chair, Criminal Justice Section
August 2005

¹⁷ See *In the Matter of Wright Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking*, FCC Docket 96-128, Affidavit of Douglas Dawson. The federal Bureau of Prisons permits prisoners to place calls using debit cards, demonstrating that collect call-only policies are not necessary to maintain prison security. See U.S. Department of Justice, Federal Bureau of Prisons, Memorandum For All Institution Controllers All Trust Fund Supervisors, from Michael A. Atwood, Chief, Trust Fund Branch, Trust Fund Message Number 18-02 (Feb. 8, 2002) at 2.

Attachment 2.

Public Correctional Policy on Inmate/Juvenile Offender Access to Telephone

Policy Statement

Recognizing that there is no constitutional right for inmate/juvenile offenders to have access to telephones, nonetheless consistent with the requirements of sound correctional management, inmates/juvenile offenders should have access to a range of reasonably priced telecommunications services. Correctional agencies should ensure that:

A. Contracts involving telecommunications services for inmates/juvenile offenders comply with all applicable state and federal regulations;

B. Contracts are based on rates and surcharges that are commensurate with those charged to the general public for like services. Any deviation from ordinary consumer rates should reflect actual costs associated with the provision of services in a correctional setting; and

C. Contracts for inmate/juvenile offender telecommunications services provide the broadest range of calling options determined to be consistent with the requirements of sound correctional management.

This Public Correctional Policy was unanimously ratified by the American Correctional Association Delegate Assembly of the Winter Conference in Nashville, Tenn., January 24, 2001.

ATTACHMENT 3.

ACA Standard Governing Correctional Telephone Services

Written policy, procedure and practice ensure that inmates/juvenile offenders have access to reasonably priced telephone services. Correctional agencies should ensure that:

A. Contracts involving telephone services for inmates/juvenile offenders comply with all applicable state and federal regulations;

B. Contracts are based on rates and surcharges that are commensurate with those charged to the general public for like services. Any deviation from ordinary consumer rates should reflect actual costs associated with the provision of services in a correctional setting; and

C. Contracts for inmate/juvenile offender telephone services provide the broadest range of calling options determined by the agency administrator to be consistent with the requirements of sound correctional management.

COMMENT

When procuring and renewing telephone services, correctional officials should inquire into the reasons for proposed deviations from standard charges and seek the best possible rates for the broadest possible range of calling options determined to be consistent with sound correctional management.

[This standard was adopted in August 2002 and incorporated into the following ACA Manuals: *Standards for Adult Correctional Institutions, third edition; Standards for Adult Local Detention Facilities, third edition; Standards for Adult Community Residential Facilities, fourth edition; Standards for Adult Correctional Boot Camp Programs, first edition; Standards for Juvenile Community Residential Facilities, third edition; Standards for Juvenile Detention Facilities, third edition; Standards for Juvenile Correctional Boot Camp Programs, first edition; Standards for Juvenile Training Schools, third edition; Standards for Small Juvenile Detention Facilities, first edition; and Small Jail Facilities, first edition.*]

Association of State Correctional Administrators Resolutions

Resolution #14 - Telecommunications Access for Inmates

Whereas, consistent with the requirements of sound correctional management, adult/juvenile offenders should have access to a range of reasonably priced telecommunications services; and,

Whereas, there is no constitutional right for adult/juvenile offenders to have access to telephones;

Therefore be it resolved that Correctional agencies should ensure that:

Contracts involving telecommunications services for adult/juvenile offenders comply with all applicable state and federal regulations; and that

Contracts are based on rates and surcharges that are commensurate with those charged to the general public for like services. Any deviation from ordinary consumer rates should reflect actual costs associated with the provision of services in a correctional setting; and that

Contracts for adult/juvenile offender telecommunications services provide the broadest range of calling options determined to be consistent with the requirements of sound correctional management.

Adopted by the Association of State Correctional Administrators – May 25, 2007.

George M. Camp, Co-Executive Director

Camille G. Camp, Co-Executive Director

NATIONAL SHERIFFS' ASSOCIATION



Resolution

NATIONAL SHERIFFS' ASSOCIATION OPPOSES CHANGE IN FCC PROPOSED BILLED PARTY PREFERENCE FOR INMATE PHONE USAGE

WHEREAS, N.S.A. Legislative Committee has recommended to the Executive Committee and Board of Directors of N.S.A. to oppose the FCC's Billed Party Preference (BPP); and

WHEREAS, sheriffs are responsible for managing and securing jail facilities nationwide; and

WHEREAS, inmate telephone service at the facilities is important for the welfare of inmates and is a positive rehabilitation tool for jail administrators; and

WHEREAS, inmate telephone service can only be provided if service is adequately controlled to prevent criminal telephone activity which harms the public; and

WHEREAS, facilities must contract with inmate phone service providers in order to ensure that inmate calling is adequately controlled and secure; and

WHEREAS, facilities cannot afford to provide this specialized telephone equipment without the financial assistance of the inmate phone service providers; and

WHEREAS, the inmate calling revenues facilities received from inmate phone service providers are increasingly used to finance special programs that benefit the inmates and help reduce recidivism; and

National Sheriffs' Association Opposes
Change in FCC Proposed Billed Party
Preference for Inmate Phone Usage
Page 2

WHEREAS, the FCC is considering a regulatory proposal known as BPP that would destroy the economic foundations of facility contracts with inmate phone service providers; and

WHEREAS, BPP will eliminate the current security and fraud controls maintained by inmate phone service providers; and

WHEREAS, BPP may ultimately lead to the reduction of inmate phones which in turn may subject facilities to potential lawsuits from inmates or groups supporting inmate rights; and

RESOLVED, citizens who pay for inmate calls should not be required to pay unreasonable rates and facilities that contract with inmate phone services providers that charge unreasonable rates expose their facilities to potential lawsuits from inmates, groups supporting inmate rights, and regulatory bodies; and

THEREFORE, BE IT RESOLVED the National Sheriffs' Association opposes the FCC's proposal for BPP; that N.S.A. does not condone the charging of unreasonable rates by inmate phone service providers who contract with facilities; administrators of facilities should be responsible for ensuring that the inmate phone service providers with whom they contract charge reasonable rates by requiring rate caps in those contracts; those rate caps should be monitored by facility administrators, and violations of a rate cap by an inmate phone service provider should result in the termination of that provider's contract with the facility; and in order to assist administrators in their enforcement efforts, the National Sheriffs' Association urges the FCC to establish a firm ceiling for reasonable inmate calling rates and to enforce that ceiling; the N.S.A. urges all administrators to allocate inmate calling revenues to specific programs to help in the rehabilitation of inmates and help reduce recidivism.

Adopted at a general membership
meeting on the 14th day of June, 1995
in San Antonio, Texas

The National Association of State Utility Consumer Advocate Resolution 2006-02

FAIR RATES FOR CALLS FROM INMATES OF CORRECTIONAL INSTITUTIONS

Whereas, the prices for telephone calls from inmates of correctional institutions to their families, friends, and professionals who serve them, are often unreasonably high and unaffordable; and

Whereas, the prices for telephone calls from inmates of correctional institutions often recover the costs of investments, expenses or programs that are unrelated to the cost of telecommunications, and

Whereas, the high cost of calls from inmates often recover revenues paid by telecommunications carriers to states or their correctional departments in the form of “commissions”; and

Whereas, it is widely accepted that a correctional institution inmate’s telephone communication with family, friends, and professionals can be an important factor in his/her chances of rehabilitation; and

Whereas, it is widely accepted that telephone calls by inmates are being substantially repressed or entirely forgone as a direct result of the prices of such calls; and

Whereas, because most inmate calling arrangements require calls to be made as collect calls, which are paid by the family and friends of the inmate, thus burdening those persons who are not incarcerated; and

Whereas, the price of intraLATA and interLATA toll calls has dropped dramatically over the last decade for all segments of that market except for inmates of correctional institutions; and

Whereas, the problem is national in scope, but also implicates intrastate issues;

Whereas, some state public utility commissions may lack jurisdiction under state law over telephone rates set by correctional institutions or their contracting parties;

Wherefore, it is resolved that NASUCA urges states, the Federal Communications Commission and the U.S. Congress under their proper jurisdictions to take action to reform inmate telephone rates by:

1. Ensuring that the price of calls from inmates are just and reasonable, and
2. Discouraging or reducing “commissions” paid by telephone companies to correctional institutions, and

3. Encouraging the use of prepaid debit accounts for inmates whereby inmates or their called parties may buy low-cost minutes, and
4. Continuing to allow collect calls from inmates but at rates that are just and reasonable; and

BE IT FURTHER RESOLVED, that NASUCA authorizes the Telecommunications Committee and Consumer Protection Committee, with the consent of the Executive Committee, to develop specific positions and to take appropriate actions consistent with the terms of this resolution. Those committees shall notify the membership of any action taken pursuant to this resolution.

Endorsed by the Telecommunications Committee

Approved by NASUCA:

Place: Miami Beach, Florida

Date: