



Media Justice Fund of the Funding Exchange Report

Criminal Charges: Excessive Prison Phone Rates Take a Toll on Innocent Families

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Introduction

In the last 20 years, incarceration rates have increased dramatically under the “War on Drugs” and the “War on Terror.” From the 1980’s to the 1990’s, combined prison and jail populations doubled, then further increased by another 50% from the 1990’s to the 2000’s. Mainly poor and disproportionately people of color, America’s 2.3 million imprisoned people do not have easy access to communication with the outside world. According to research conducted by the Media Justice Fund of the Funding Exchange, staying in touch with family, advocates, or community based services such as health professionals and therapists as well as seeking up-to-date information about a changing world is often needlessly challenging. No imprisoned people have the ability to browse internet or use private email accounts. A very small number have any email access at all. Imprisoned people and their families are needlessly hindered from using even the most basic communication tool – the telephone. Criminal justice activist Ellen Barry points out that State-sanctioned violence and incarceration have always been used to demoralize, silence, control and exploit poor people and people of color in the United States. For the last two decades, one of the most widespread human rights abuses confronting people imprisoned and their families has been excessive telephone rates. Journalist Noelle Hanrahan of Prison Radio states, “Prison phones torture families.” Imprisoned people and their families have been either silenced by unaffordable phone services or exploited by being excessively charged.

In this brief we give an overview of this issue, what work has been done on it, and current recommendations offered by advocates working in this area. So far, the vast majority of work done to lower phone rates has been by criminal justice reformers. Very little advocacy has been done by telecommunications experts or media reform advocates. In fact, the telecomm and media reform advocates we canvassed are largely unaware of it. We believe that support from telecommunications advocates, coordinated with the efforts of those already working on the issue, would create a tipping point leading to a timely and lasting resolution for this important communications rights problem.

Throughout this report we make reference to imprisoned people, but it is important to note that access to phones and the high cost of calls is also an issue for those held in federal facilities

under suspicion of being illegal immigrants. A 2007 report by the Government Accountability Office singled out hindered phone access as a “pervasive” issue at ICE run detention centers.

Background

The families of America’s 2.3 million imprisoned people shoulder the burden of paying excessive telephone charges to speak to their loved ones. A typical interstate collect call from a prison has a \$3.95 connection fee. Rates per minute can be as high as \$0.89 per minute. Just one hour of calls per week at that rate can result in phone charges of nearly \$300 per month. Such high charges limit or prevent the amount of communication that loved ones can have with imprisoned people in spite of the fact that phone contact is widely considered to have a rehabilitative effect. Staying connected to family lowers recidivism rates, eases the transition back into the community and helps people who have been to prison find and maintain gainful employment.

Imprisoned people and their families are overwhelmingly long distance users. Due to the ever-increasing numbers of people imprisoned in the last few decades, the average distance away from home people are placed has also increased. Many states now contract private prisons beyond their borders.

Prison phone rates have been an issue since shortly after the break-up of Ma Bell in 1984. After the break-up, a strange monopoly niche market arose around prison phone services. By the middle of the next decade, 98% of prison facilities in the United States were taking a portion of profits from prison phone calls. Known as “commission payments” within the industry but referred to as “kickbacks” by families of imprisoned people, this skimming off the top has been as high as 60% in some states. For example, prior to recent reforms in New York State, the state took 57.5% of the profits from prison phone calls, raising over 200 million dollars through this method between 1996 and 2007. These excessive profits come directly from charging ever-higher prices for prison calls. In turn, those costs are largely paid by the innocent and generally low-income family members who receive collect calls from their imprisoned loved ones. Since the break up of Ma Bell, US consumers are generally paying lower costs for long distance services, while costs have risen dramatically for long distance services for imprisoned people and their families.

Truly a grassroots issue, advocacy to reduce excessive phone charges began in the early 90’s among the family support groups of imprisoned people. Since that time, important reforms have been won at the state level. Grassroots pressure has been decreasing the number of states that participate in accepting commissions, or “kickbacks.” Advocates for families of imprisoned people have made a difference in reducing the phone rates for intrastate calls (calls that start and end within a state), but the most expensive and excessive rates - those for interstate phone calls, especially interstate collect calls - remain very high.

The Federal Communications Commission has the authority to require prisons to offer debit call service as an option for interstate phone calls and to cap interstate calling rates. The standard prison phone service for imprisoned people is the collect call. A little more than half of states

now offer imprisoned people the option of debit or pre-paid calling as an alternative to collect calling. Families of imprisoned people are keen to have a choice of services universally available to them via debit calling or prepaid calling. They are also seeking a price cap on prison phone rates for interstate phone calls. In the words of Kay Perry of CURE (Citizens United for the Rehabilitation of Errants), a long time activist on this issue, “The key issues are reasonable rates and debit calling. We believe the FCC action may be achievable and would address the worst of the problems.”

Actions to Reduce Excessive Interstate Phone Charges and Give Calling Choice.

Though the FCC has been aware of the issue of excessive rates for interstate prison phone calls for at least 13 years, it has yet to resolve the issue. In 2003, prisoners and family members sought relief from the FCC in the Wright Petition. In 2007, the Wright Petitioners filed an “Alternative Rule-making Proposal.” They are asking the FCC to put a limit on the rates that companies could charge for interstate prison calls and a requirement that debit calling be made an available option for all interstate prison calls. Petitioners are recommending a cap of 25 cents per minute for collect calls and 20 cents per minute for debit calls, with no connection fees. (The Wright Alternative Proposal can be found on the FCC website as part of CC Docket No. 96-128.)

The Wright Petitioners believe that these recommended rate caps stand a good chance of being adopted by the Commission. Even though a favorable ruling is possible *if* the Commission addressed prison phone rates, there is no deadline for the FCC to act on this issue at this time. In theory, they never have to act on it. Recently, the Commission has been instructed by Congress to put all of their efforts into the DTV transition. Therefore, the current thinking of the Wright Petitioners is that pressure from Congress will be required to move the FCC to act in the near future.

If the FCC created a cap on interstate prison phone rates, it would not directly lower the cost of all prison phone calls. The FCC can generally regulate only calls that cross state lines. States would still get to decide the rates for calls that start and end within their borders. But interstate calls are generally the most expensive calls. Therefore, action by the FCC to cap the price of interstate phone calls is a direct remedy for the worst abuses being suffered by imprisoned people’s families.

In addition to directly curbing the most expensive of the overpriced services, the Wright Petitioners believe that a cap set by the FCC on interstate calls could provide leverage as well as a persuasive precedent in dealing with state and local officials. A federal cap set by the FCC could create a benchmark rate for state public utility commissions, state courts, legislators, and prison officials. Advocates could argue that the cap is a standard that shouldn’t be exceeded. In this context, it would be difficult for a state commission to conclude that an intrastate call should be more expensive than an interstate call. While setting caps on the rates that can be charged doesn’t directly address the kickback system, the Wright Petitioners also believe that reasonable rate caps would strongly impact the practice. If the FCC capped rates at the proposed benchmark levels, no service provider could afford to offer the now-typical 40%-plus kickback to the prison or the state.

Another key remedy that the Wright Petitioners are seeking is a requirement that the option of debit calling be available for imprisoned people. Debit calls are cheaper than collect calls.

Current Status of Federal Action: Seeking Congressional Involvement

The easiest thing for Congress to do on behalf of imprisoned people's families is to nudge the FCC to act. The Wright Petitioners are currently seeking supporters to approach individual Representatives and Senators to request them to write letters urging the FCC to act on the Wright Petitioners' Alternative Proposal. In addition, supporters may choose to write a letter of support directly to the FCC.

Should the FCC fail to act in a timely way, Congress could pass a law that directly or indirectly lowers prison phone rates, although that would be a much more difficult undertaking. A bill introduced by Rep. Bobby Rush (D. IL.), the Family Telephone Connection Protection Act of 2007 (H.R. 1133), would require the FCC to consider a variety of remedies for the problem of excessive interstate prison telephone rates. A different bill written by the Center for Constitutional Rights would bypass the FCC and directly set a cap on the cost of interstate prison phone calls. (Congress can't change the rates for in-state calls.)

Actions to Reduce Intrastate Calling Charges and Give Calling Choice.

In the last few years a number of actions have led to improvements at the state level. Since 2000, four states have joined Nebraska in not accepting commissions. California is phasing them out. Twenty-nine states are offering debit calls as an alternative to collect calls, up from three in 2000. Due to advocacy efforts, Texas is installing prison phone systems for the first time this year.

While the goals are similar from state to state, the means to achieve them have varied. Tactics have included appeals by families to directors of prisons, public utility commissions, and governors. State court lawsuits have also been pursued. Legislation has been attempted in a few states. On a local level, county commissioners have passed ordinances to regulate prison phone contracts. These actions may be combined. For example, in New York State, after protracted efforts by a large grassroots coalition, commissions were eliminated in 2007. At the time they were eliminated, two legislators were promoting a bill to outlaw commissions and a lawsuit was in the courts. Governor Eliot Spitzer also supported the reform.

Remedies Currently Sought:

According to imprisoned people's advocates we spoke with, here is a list of reforms that are being sought:

Eliminate or reduce commissions, or "kickbacks" (although capping rates at reasonable levels would moot this issue);

Allow debit phone calls, not just collect calls, allowing imprisoned people a cheaper option and creating consumer choice;

Eliminate or reduce connection fees;

Establish timely and effective oversight of prison phone providers;

Allow prison phone calls to accommodate new technology, such as calls to cell phones or VOIP numbers, the use of remote call forwarding, etc.

Criminal Justice Reform Groups Working to Lower Prison Phone Rates at the Federal Level.

Groups working at the federal level include: CURE (Citizens for the Rehabilitation of Errants), a prisoner and family self-help network which launched the Campaign to Promote Equitable Telephone Charges, the etc campaign; Prison Legal News, a monthly magazine which covers prison issues from a human rights perspective; and the DC Prisoners Legal Services Project, now part of the Washington Lawyers' Committee for Civil Rights and Urban Affairs, lawyers who advocate for federal and DC imprisoned people's rights. The lead lawyer for the Wright Petitioners' Alternative Proposal is Frank W. Krogh of Morrison & Foerster LLP. National work has also been done by the Center for Constitutional Rights and the Brennan Center for Justice.

Criminal Justice Reform Groups Working to Lower Prison Phone Rates at the State Level.

Advocacy groups working on this issue vary from state to state. For example in Maine, "Fair Rates for Maine"; in Illinois, "Illinois Campaign for Telephone Justice," in New York, "New York Campaign for Telephone Justice," etc. CURE has chapters in several states and keeps tabs on state activity related to the issue. The Campaign to Promote Equitable Telephone Charges (a project of CURE) has many background documents on this issue, including tables of pending legislation, a breakdown of rates, and tools for local activists to use in state-based campaigns. The Center for Constitutional Rights was involved in a number of lawsuits at the state level on this issue.

<http://www.etccampaign.com/>

Prison Legal News, in coordination with an SSRC Necessary Knowledge funded scholar Steve Jackson, will soon be coming out with a study of contracts and rates for all 50 states. Prison Legal News has a large archive with much information on prison phones.

<https://www.prisonlegalnews.org>