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Clerk's Office
N.C. Utilities Commission

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-100, SUB 84C

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

**IN THE MATTER OF)
PAY TEL COMMUNICATIONS, INC., EVERCOM)
SYSTEMS, INC., AND T-NETIX TELECOMMUNICATIONS)
SERVICES, INC.: REQUEST FOR WAIVER OF RULE 13-9(d))
OF THE RULES OF THE NORTH CAROLINA UTILITIES)
COMMISSION)**

**Comments of North Carolina Prisoner Legal Services to
Petitioners' Request for Waiver of Rule 13-9(d)**

1. In accordance with the 15 February 2008 Order of the North Carolina Utilities Commission (which granted an extension of time, through 29 February 2008) North Carolina Prisoner Legal Services, Inc., hereby submits comments to Petitioners' Request for Waiver of Rule 13-9(d).

2. North Carolina Prisoner Legal Services, Inc. (NCPLS), is a non-profit, public service organization that provides legal advice and assistance to people incarcerated in this state. NCPLS addresses matters involving inhumane conditions of confinement and illegal criminal convictions and sentences. Providing North Carolina inmates with information about their legal rights and responsibilities, NCPLS works to reduce frivolous litigation and to resolve legitimate problems through administrative channels. When serious problems cannot be resolved administratively, NCPLS offers legal representation in all State and Federal courts throughout North Carolina, and beyond. The program has a staff of 39, which includes 18 lawyers and 18 paralegals.

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3. These comments are filed by NCPLS by its Interim Director, who can be contacted as follows:

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4. In this proceeding, Petitioners, providers of prisoner telephone services (PSP's), seek a waiver from Rule R13-9(d) such that they may impose a statewide charge of \$1.71 per call for local automated collect calls initiated from North Carolina confinement facilities.

5. The rate the PSP's seek is derived from the tariff permitted Concord Telephone Company for provision of the same service – local automated collect calls initiated from any correctional facility in the state.

6. The PSP's note that other service providers (Network PTS, Inc., and Legacy Long Distance International, Inc.) sought and were granted certificates of public convenience and necessity to provide local exchange and exchange access telecommunications services as a competing local providers at the rate of "\$1.71 for station-to-station operator assisted sent-paid, collect, third number and non-customer dialed credit card local [telephone calls] . . ." ¹

¹ Legacy Long Distance International, Inc., Docket # P-1173, Sub 1, Order of 13 July 2006; Network PTS, Inc., Docket # P-1350, Sub 1, Order of 13 July 2006.

7. In both proceedings this Commission specifically found that:

A. each applicant stated that it would, “to the extent it may be required to do so by the Commission, participate in the support of universally available telephone service *at affordable rates*;”

B. “the proposed rates for intrastate local operator-assisted calls [were] *reasonable and fair*,” and

C. the relief sought would not “adversely impact the availability of *reasonably affordable* local exchange service.”²

8. Because the applicants in those proceedings had voluntarily capped their rates for “station-to-station operator assisted sent-paid, collect, third number and non-customer dialed credit card local [calls] . . .” at \$1.71, the Public Staff did not oppose either application.³

9. In the proceeding *sub judice*, Public Staff do not oppose the Petitioners’ waiver request, but recognize that setting a “surrogate rate for local [inmate-initiated collect] automated collect calls [circumvents] the standard rulemaking process.”⁴

10. Instead, Public Staff recommend the adoption of an interim revision of Rule R13-9(d) which would allow a rate no greater than that which “would have been charged by the Concord Telephone Company for a local collect station-to-station call.”⁵

11. Public Staff further recommend immediate implementation of the “interim rule,” providing the public an opportunity to comment after-the-fact, and absent “significant objections,” officially adopt the interim rule.⁶

² Network PTS, Inc., *id.* at pp. 2-3 (emphasis added); Legacy Long Distance International, Inc., *id.* at pp. 2-3 (emphasis added).

³ *In the Matter of Pay Tel Communications, Inc., et al.*, Docket # P-100, Sub 84c, Comments of Public Staff, p.3, ¶ 8.

⁴ *Id.*, at ¶ 10.

⁵ *Id.*

POSITION OF NCPLS REGARDING PETITIONERS' WAIVER REQUEST

12. NCPLS opposes Petitioners' Waiver Request because: (A) concerns of fairness and equal treatment as among service providers are secondary to those principles as they apply to the public they serve; (B) inmate-initiated telephone calls are not presently available at affordable rates; (C) under prevailing circumstances, the proposed rate is neither reasonable nor fair; (D) allowing a telephone service provider (Concord) to set rates that apply statewide amounts to a usurpation of the jurisdiction and function of the North Carolina Utilities Commission; (E) limiting inmate-initiated calls to collect only, the most expensive means of placing a call, adversely impacts the availability of reasonably affordable local exchange service; (F) the extraordinary relief sought by Petitioners – waiver of the Commission's Rules – is not consistent with the proper administration of the Rules; and (G) the recommendations of Public Staff do not come within the ambit of ordinary rule-making procedures or the proper administration of the Rules.

ARGUMENT

(A) Concerns of fairness and equal treatment as among service providers are secondary to those principles as they apply to the public they serve.

Compelling is the implicit argument of Petitioners that it is but equitable and fair that they be permitted to charge rates allowed other service providers (*i.e.*, “station-to-station operator assisted sent-paid, collect, third number and non-customer dialed credit card local [calls] . . .” – \$1.71 – the rate charged by the Concord Telephone Company for a local collect station-to-station call). The notion that similarly situated parties should be treated in the same way is founded on well-accepted notions of equity and fairness.

⁶ *Id* at pp.3-4, ¶ 11.

But that principle does not apply here. PSPs' customers presumably have a broad range of calling options which may include their choice among a variety of service providers, the use of land-lines, cell phones, and a vast array of calling and payment options. ICS customers provide no alternatives to those who use their services – all calls must be made collect and placed with a single ICS. Petitioners deal with a customer base that is literally held captive to their services and the charges they impose.

(B) Inmate-initiated telephone calls are not available at affordable rates.

While precise, current, comparative cost figures are not readily available, it is common knowledge that average rates for prisoner-initiated telephone services far exceed those of comparable services outside the correctional setting, and that calling options inside correctional facilities are commonly limited to collect-only calls, the most expensive method of placing a telephone call.

For over twenty-five years, the ABA steadfastly has maintained that any limitations placed on “prisoners’ communications should be the least restrictive necessary to serve the legitimate interests of institutional order and security and the protection of the public. *ABA Standards for Criminal Justice, Legal Status of Prisoners*, Standard 23-6.1(a) See ABA Policy 113B (encouraging government at all levels to afford prison and jail inmates reasonable opportunities to maintain telephonic communication with the free community, and to offer telephone services in the correctional setting with an appropriate range of options at the lowest possible rates)(Exhibit 2). See also, Iddings, B. “The Big Disconnect: Will Anyone Answer the Call to Lower Excessive Prisoner Telephone Rates?,” 8 North Carolina Journal of Law & Technology, 159 (2006).

(C) Under prevailing circumstances, the proposed rate is neither reasonable nor fair.

To the extent that telephone service providers are threatened by inadequate profit, the problem stems from the industry practice of paying outlandish “commissions” to correctional facilities or agencies for the exclusive right to provide prisoner telephone services.⁷ These commissions, ranging as high as 65% of revenue, drive service providers to seek ever increasing rates which are, of course, paid by the friends, families, and lawyers of people who are incarcerated.⁸

For informational purposes, the Public Utilities Commission should be advised that these commissions are sometimes subsumed into the coffers of the public fisc for general use. However, in other cases, commissions are used by facility or system administrators for the benefit of prisoners to provide such things as postage and writing materials for the indigent, equipment to maintain or improve the physical health of prisoners, and other legally required materials or services that are not adequately funded by the relevant governing body. This practice is a nationwide problem, notwithstanding

⁷ A report released in June 2006, issued by a diverse national commission including correctional and other public officials and chaired by Nicholas de B. Katzenbach and former federal appellate Judge John L. Gibbons, confirms the need for reduced-rate inmate telephone service. It urges policymakers to “end practices such as [extracting huge commissions from inmate telephone service providers and limiting inmate telephone service to collect calling] that interfere with the maintenance of critically important family and community ties.” *Commission on Safety and Abuse in America’s Prisons: Confronting Confinement*, p. 36 (John J. Gibbons & Nicholas de B. Katzenbach, Comm’n Co-Chairs)(June 2006)(“Prison Report” (footnote omitted). See excerpt, Exhibit 3.

⁸ For example, Evercom Systems, Inc., a petitioner in the present proceeding, provides exclusive services to almost 40,000 prisoners in custody of the North Carolina Department of Correction (DOC). According to a response received to our inquiry, the 2006 contract provided DOC a commission of 55% of revenue. Relevant pages of that contract are attached as Exhibit 4 (with redactions to protect the innocent public official who responded to our inquiry on behalf of DOC).

policy pronouncements to the contrary adopted by a host of professional organizations comprised of corrections officials.⁹

In whatever way these commissions are utilized – all for public purposes that should be borne by the public – they impose extraordinary financial costs on the families and friends of prisoners, many of whom are among the poorest people in our society.

But there are also serious implications for prisoners awaiting trial or otherwise seeking access to the courts.¹⁰ The vast majority of incarcerated people are represented by publicly-funded lawyers such as public defenders, court-appointed attorneys, or nonprofit providers of legal services to prisoners. It is generally less burdensome for an attorney to speak with a client over the telephone than to travel to a correctional facility to conduct a personal interview, especially where distance, literacy, or linguistic barriers preclude other kinds of client communication. But given the limited budgets provided for prisoner representation, the high cost of prisoner phone calls is prohibitive for many lawyers. Of course, this has significant implications for the quality of justice and a prisoner's ability to gain access to the courts.¹¹

⁹ See, e.g., Federal Bureau of Prisons Policy Statement PS5264.08 (Telephone Regulations for Inmates) (Exhibit 5); the National Sheriffs' Association (Resolution of 14 June 1995); The American Correctional Association (ACA), Resolution on Excessive Phone Tarriffs (October 1996); Public Correctional Policy on Inmate/Juvenile Offender Access to Telephone (ACA 2001)(Exhibit 6) and related standards (ACA 2002)(incorporated into standards manuals for 11 types of correctional facilities)(Exhibit 7); American Bar Association Policy (August 2005)(Exhibit 2); and the report of the Vera Institute of Justice-sponsored Commission on Safety & Abuse In America's Prisons, "Confronting Confinement," pp. 36, 39, *passim* (June 2006)(*supra*, n. 7, p.6). See also, "Phone calls 'cut jail suicides,'" BBC News 14 November 2007. (Exhibit 8)

¹⁰ See, e.g., *Lewis v. Casey*, 518 U.S. 343, 355 (1996)(prisoners are entitled to court access "to attack their sentences, directly or collaterally, and . . . to challenge the conditions of their confinement. . . .")

¹¹ 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 violated the Sixth Amendment right to counsel. . . . In certain limited

Despite assertions to the contrary, it seems that they have taken no meaningful steps to address that problem, nor does it seem financially feasible that they could entirely resolve the problem, even if they cared to do so.¹² But whatever the impact, excessive telephone charges resulting from collect-only policies amount to an unjustifiable tax, and one that is borne largely by a discrete, impoverished segment of our society – the families and friends of people who are powerless to choose less expensive carriers or calling options – prisoners.¹³

(D) Allowing a telephone service provider (Concord) to set statewide rates *de facto* violates federal law and amounts to a usurpation of the jurisdiction and function of the North Carolina Utilities Commission.

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). Courts have also held that, when a prison's collect call-only policies interfere with the ability of incarcerated people to communicate with their lawyers, correctional officials may be in violation of the Constitution). *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). However, while the principle remains sound, many of the holdings of these cases were overruled or called into question in *Lewis v. Casey*, 518 U.S. 343, 355 (1996).

¹² Exhibit B of Petitioners filing asserts that “most modern ICS equipment contains or performs the following **basic functions**: Free calls to public defenders . . .” (Emphasis in the original.) While such services are provided to at least one public defenders' office in North Carolina, that seems to be the exception, rather than the rule. Moreover, there is not even a claim that toll-free calls are provided to court-appointed attorneys who represent indigent clients. That portion of criminal defendants constitutes the majority of those being provided counsel at government expense.

¹³ In the interest of full disclosure, NCPLS has worked in partnership with Pay Tel Communications, Inc., for more than a decade, seeking a fair, just, and comprehensive resolution of these issues on a national basis. *See, e.g., In the Matter of: Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, STATEMENT OF INTEREST AND COMMENTS ON ALTERNATIVE RULEMAKING PROPOSAL REGARDING INMATE CALLING SERVICES FILED BY NORTH CAROLINA PRISONER LEGAL SERVICES, INC.*, FCC Docket No. 96-128 (filed 27 April 2007).

The Telecommunications Act of 1996, 47 U.S.C. §§ 201(b) and 276(b)(2) require that telephone service practices be “just and reasonable,”¹⁴ and that payphones, which are to be operated in the public interest, are supported “fairly and equitably.”¹⁵

The powers and authorities of the North Carolina Utilities Commission must be recalled and should inform the outcome of this proceeding. In a nutshell, the Commission has plenary power to “supervise and control [public utilities],” “make and enforce reasonable and necessary rules and regulations,” “have general supervision over the rates charged and service rendered by all public utilities,” “require and compel any public utility to provide . . . reasonable service,” and “fix and regulate . . . reasonable rates and charges.”¹⁶

In this proceeding, we have the fox asking that the dog be chained so the hen-house can be guarded appropriately. If a single telephone service provider is permitted to set statewide rates, what constraints exist to protect the public? Indeed, under such an approach, it seems that serious anti-trust concerns would arise. The monopoly thus

¹⁴ § 201(b). “All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.”

¹⁵ § 276(b)(2) “In the rulemaking conducted pursuant to paragraph (1), the [Federal Communications] Commission shall determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably.”

See also, H.R.555 – Title: *[An Act] To amend the Communications Act of 1934 to require the Federal Communications Commission To Prescribe Rules Regulating Inmate Telephone Service Rates*. Sponsor: Rep Rush, Bobby L. (introduced 1/18/2007). The Act would require the FCC to consider the regulation of inmate telephone service by: (1) prescribing a maximum uniform per-minute rate (paid to telephone service providers); (2) prescribing a maximum uniform service connection or other per-call rate; (3) prescribing variable maximum rates depending on factors such as carrier costs or the size of the correctional facility; (4) requiring providers of inmate telephone service to offer both collect calling and debit account services; (5) prohibiting the payment of commissions by such providers to administrators of correctional facilities; and (6) requiring such administrators to allow more than one service provider at a facility so that prisoners have a choice. (Exhibit 9)

¹⁶ N.C. Gen. Stat. §§ 62-30; 62-31; and 62-32, *seriatim*.

created would be without constraints or protections for the public, generally, or for prisoners, specifically. Why would the Commission, which has a mandate to regulate the industry and to protect the public, permit such a result, even on an interim basis?

(E) Limiting inmate-initiated calls to collect only, the most expensive means of placing a call, adversely impacts the availability of reasonably affordable local exchange service.

Petitioners' Exhibit B lists costs that are exaggerated, redundant, ordinary business expenses, and others that should be borne by correctional personnel.

Exaggerated expenses include "free calls to public defenders" (discussed previously), and 3-way call detection. This latter feature may serve less as a security measure than as a means of generating additional income, with the termination of a call upon detection of "line-noise" as often as a three-way call (based upon experience and anecdotal information). The consequence is that the prisoner must re-initiate the call and pay any surcharge and the super-inflated first-minute rate a second (or third) time.

Petitioners' Exhibit B is also replete with redundant listings. Perhaps unique to correctional and law enforcement settings (apparently including the CIA) is the capacity of the equipment to continuously record and preserve conversations. That function has been listed as encompassing "Full-time, full-channel recording and archiving of conversations," "Real-time monitoring of inmate conversations," "Flag[ing] calls for alerts to monitor conversations in real time," "Playback of inmate conversations," and "Monitor[ing] calls by PIN, phone number, or cell block." This section presents six iterations of the requirements prerequisite to the operation of a pay-phone system in a

correctional setting. And though the equipment must provide these capabilities, the actual functions are [or should be] performed by correctional personnel.

Ordinary business costs include call completion (which one may assume is the basis for billing any customer), call time-limits, installation and expansion of an ICS system, [consultation with respect to] new facility construction, and internal database screening/number blocking/fraud digit detection to prevent secondary dial tone (3-way call detection), all automated functions.

Costs listed under “ICS Client Support” include what amount to help desks available by phone 24/7, as well as training. These costs are generally (and probably should be) borne by the correctional facility or agency. In most industries, the cost of customer support, including training and equipment operation are expenses built into or are options available as provided by contract.

(F) The extraordinary relief sought by Petitioners – waiver of the Commission’s Rules – is not consistent with the proper administration of the Rules.

Rarely is a rigid, inflexible approach to the enforcement of rules consistent with the spirit or purpose of those rules. One can easily imagine circumstances in which an exception is not only permissible, but required, if the benefit of the rule is to be achieved.

Here, Petitioners assert that financial pressures threaten their ability to continue providing prisoner telephone services. A similar argument has been put forward in the FCC and the federal courts.

In FCC proceedings that allege the current rate structure violates federal law, it might be observed that, for more than ten years, the agency charged with enforcing

federal communications law has had before it a proceeding in which at least some of the Petitioners (and NCPLS)¹⁷ have argued that they are being unfairly compensated for inmate-initiated telephone calls. To date, the FCC has not ruled on that argument, and given a decade of proceedings, does not seem to attribute any significance or urgency to the claim. *See, Voluntary Remand of Inmate Telephone Services Issues*, Federal Communications Commission, CC Docket No. 96-128, DA 03-4027.

(F) The recommendation of Public Staff does not come within the ambit of ordinary rule-making procedures or the proper administration of the Rules.

Acquiescence to the requested waiver of Rule 13-9(d) would demonstrate that, with respect to rate-caps for pay telephone services, the exception has swallowed the rule. Indeed, Public Staff seems to concede as much by proffering an “Interim Rule” that would make a waiver unnecessary because the Petitioners would then be in compliance. Surely, that is no way to run a railroad (or to regulate utility companies). If the Commission’s rules are to have meaning and provide guidance, they cannot be administered on an *ad hoc* basis. Certainly, some flexibility is required in appropriate cases to accomplish fairness, equity, and justice. However, in this proceeding, Petitioners – providers of prisoner telephone services – have set forth no persuasive reason that they should be excused from complying with Rule 13-9(d) as it is presently written. Alternative means are available to address cost and profitability concerns. Until the issue of ever-escalating commissions is addressed, no rule or administrative proceeding will provide the relief Petitioners seek. It would be a manifest injustice to

¹⁷ *See supra*, note 13. The involvement of NCPLS has been to advocate a fair and comprehensive resolution of these matters, taking into account the interests of corrections professionals, telephone service providers, as well as prisoners, their families, friends, and their attorneys.

permit temporary relief at the cost of a class of powerless people who are already being exploited shamelessly.

CONCLUSION

One can imagine at least five possible approaches to more equitable telephone services for inmates: (1) allowing inmates to use a commercial calling card, collect calling platforms (800-COLLECT, 800-CALL-ATT), and pre-paid calling cards; (2) allowing inmates to direct-dial their calls (with call-blocking in place); (3) allowing inmates to place calls to “personal” 800 numbers that are billed to the called party; (4) allowing competitive inmate calling service providers to provide service at the same facility simultaneously; and (5) prohibiting the practice of offering commissions for exclusive service contracts. One or more of these options may be foreclosed in North Carolina, at least under present circumstances. But several of these alternatives, alone or in combination, would provide meaningful and lasting relief for Petitioners. It bears remembering that, after all, these businesses and the people who run them provide a service that well serves correctional officials (who can use telephone privileges as a control mechanism and as an aid to rehabilitative efforts), that is a comfort to prisoners, and one that is a blessing to their families (but for the associated ruinous costs).

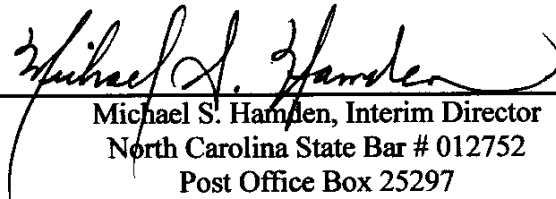
Nonetheless, until the parties come together to resolve competing interests to create service plans that are fair and equitable to prisoners, their families, friends, and attorneys, as well as to the service providers, themselves, the relief requested by Petitioners will only exacerbate the unjust burden foisted upon indigent people. A waiver will not resolve the problem, but it is within the control of service providers to address

their concerns to the correctional facilities and agencies that have a significant need for the services they provide.

The petition for a waiver of Rule 13-9(d) should be denied. If there is to be a revision of that rule, it should be done in accordance with rulemaking procedures, and only after interested parties have had a meaningful opportunity to reflect upon the proposed revision and to express their views.

Respectfully submitted this 29th day of February 2008 (*nunc pro tunc*).

NORTH CAROLINA PRISONER LEGAL SERVICES, INC., by:



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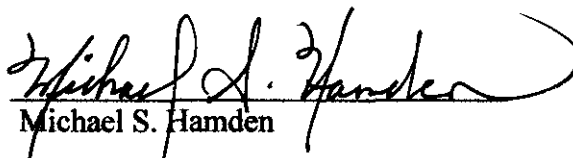
CERTIFICATE OF SERVICE

This is to certify that a copy of the forgoing **Comments of North Carolina Prisoner Legal Services to Petitioners' Request for Waiver of Rule 13-9(d)** was served upon Petitioners through their counsel by placing into the custody of the United States Postal Service a sealed envelope, first-class postage pre-paid, and addressed as follows:

Marcus W. Trathen, Esq.
Brooks, Pierce, McLendon,
Humphrey & Leonard, L.L.P.
P.O. Box 1800
Raleigh, North Carolina 27602

North Carolina Utilities Commission
Robert P. Gruber, Executive Director
Antoinette R. Wike, Chief Counsel
Dianna Jessup, Staff Attorney
4326 Mail Service Center
Raleigh, NC 27699-4326

This 29th day of February 2008.

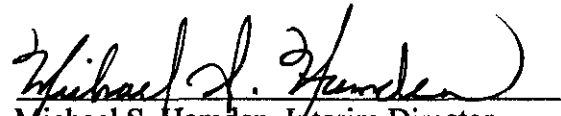

Michael S. Hamden

**State of North Carolina
County of Wake**

VERIFICATION

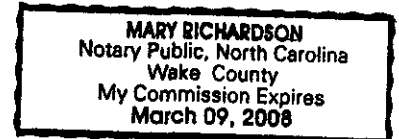
I, Michael S. Hamden, being duly sworn, state that I am the Interim Director of North Carolina Prisoner Legal Services, Inc.; that I have read the preceding Comments of North Carolina Prisoner Legal Services to Petitioners' Request for Waiver of Rule 13-9(d); and that the statements and representations contained therein are true and accurate to the best of my knowledge and belief.

NORTH CAROLINA PRISONER LEGAL SERVICES, INC., by:


Michael S. Hamden, Interim Director
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Raleigh, NC 27611
(919) 856-2200
mhamden@ncpls.org

Sworn to and subscribed before me this 29th day of February, 2008.


Mary Richardson, Notary Public



My Commission Expires: 3/9/08

EXHIBITS

EXHIBIT 1: AFFIDAVIT OF MICHAEL S. HAMDEN

EXHIBIT 2: ABA Policy 113B

Exhibit 3: *Commission on Safety and Abuse in America's Prisons: Confronting Confinement*, p. 36 (John J. Gibbons & Nicholas de B. Katzenbach, Comm'n Co-Chairs)(June 2006)

Exhibit 4: Excerpts from the Exclusive 2006 Telephone Services Contract Between Evercom Systems, Inc., and the North Carolina Department of Correction.

Exhibit 5: Federal Bureau of Prisons Policy Statement PS5264.08 (Telephone Regulations for Inmates).

Exhibit 6: The American Correctional Association (ACA), Public Correctional Policy on Inmate/Juvenile Offender Access to Telephone (ACA 2001).

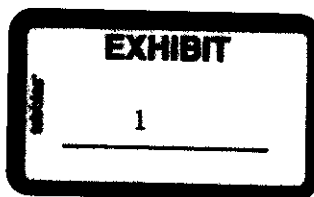
Exhibit 7: American Correctional Association telephone access standards (ACA 2002)(incorporated into standards manuals for 11 types of correctional facilities).

Exhibit 8: "Phone calls 'cut jail suicides,'" BBC News 14 November 2007.

Exhibit 9: *[An Act] To amend the Communications Act of 1934 to require the Federal Communications Commission To Prescribe Rules Regulating Inmate Telephone Service Rates*, H.R. 555, 110th Congress, 1st Session (18 January 2007)

Exhibit 10: Selected News Articles:

- A. Utilities commission fines AT&T for overcharging inmates' phone calls**
- B. New bill could change how inmates make calls**
- C. Prisons Defend Charges On Inmate Phone Calls**
- D. NY Times Editorial: Fixing the Scam on Collect Calls**
- E. Prison Calls Bill Still Awaits Spitzer Signature**
- F. Lawmakers Agree Prison Phones A Right, Not Money Machine**



**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-100, SUB 84C

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

IN THE MATTER OF)
PAY TEL COMMUNICATIONS, INC., EVERCOM)
SYSTEMS, INC., AND T-NETIX TELECOMMUNICATIONS)
SERVICES, INC.: REQUEST FOR WAIVER OF RULE 13-9(d))
OF THE RULES OF THE NORTH CAROLINA UTILITIES)
COMMISSION)

AFFIDAVIT OF MICHAEL S. HAMDEN

1) I am an adult over age 18, have never been adjudged incompetent, suffer from no mental or emotional disability, and make this affidavit of my own free will, stating facts of which I have personal knowledge and opinions which have been formed after reasonable inquiry into the facts.

2) I am a citizen of the United States, and a resident of Orange County, North Carolina, and I am employed by North Carolina Prisoner Legal Services, Inc. My mailing address is Post Office Box 25397, Raleigh, NC 27611. My telephone number is (919) 856-2200.

3) From 1985 through the present I have been employed by North Carolina Prisoner Legal Services, Inc. (NCPLS)

4) I am presently employed as the Interim Director of NCPLS, after having served about 12 years as the Executive Director, and 10 years as a staff attorney.

5) North Carolina Prisoner Legal Services (NCPLS) is a non-profit, public service law firm that provides legal advice and assistance to people incarcerated in this State. NCPLS addresses matters involving inhumane conditions of confinement or illegal criminal convictions and sentences.

6) Encompassing some 52,669 square miles, North Carolina incarcerates more than 38,000 people in 78 prisons operated by the North Carolina Department of Correction (NC-DOC).

7) With 100 counties, almost each of which has a jail and/or a municipal lock-up, on any given day an additional 14,000 people are detained pending trial (with some 250,000 annual admissions).

8) On an annual basis, NCPLS handles some 13,000 cases, a portion of which involve litigation, including class action lawsuits.

9) To the detriment of our clients, the distance between correctional facilities in North Carolina and rules of the North Carolina Department of Correction regarding telephone usage make it difficult to communicate with our clients, except by mail.

10) For at least a decade, our clients' legal interests (and their families' financial interests) have been harmed because of excessive rates for prisoner-initiated telephone calls.

11) North Carolina prisoners are permitted to initiate only collect calls, the most expensive means of placing a telephone call.

12) The rates for prisoner-initiated collect phone calls are significantly higher than those charged for the same pay-phone service provided outside the correctional setting.

13) A small portion of the higher cost may well be attributable to enhanced features of a correctional telephone system, such a call monitoring and recording.

14) However, prisoner-initiated phone calls are vastly more expensive than services provided outside the correctional context as a direct result of industry practices to offer commissions in exchange for the right to provide exclusive services to a particular correctional facility, or to an entire correctional system.

15) Generally, the higher the commission offered, the more likely the service provider will be awarded an exclusive contract by the correctional authority.

16) For example, a 2006 contract between the North Carolina Department of Correction (DOC) and Evercom Systems, Inc., encompasses a term providing for the payment to DOC of a 55% commission on revenue generated through telephone usage.

17) To enhance returns, both for the correctional agency and the service provider, only collect calls are permitted.

18) Similarly, mechanisms such as 3-way call detection are common features of a correctional telephone system. Such a feature disconnects a telephone call when any “line noise” is detected. As a result, the telephone call must be re-initiated and first-minute charges, surcharges, and other costs are imposed a second time.

19) Upon information and belief, 3-way call detection is deployed as much to generate additional fees as a security measure.

20) These practices, and especially the costs associated with the payment of extraordinarily high commissions to correctional authorities, combine to make the cost of prisoner telephone calls prohibitively expensive for most government-funded agencies (such as public defender offices, the office of the appellate defender, or NCPLS, for example) and attorneys who are court-appointed to represent indigent prisoners.

21) Notwithstanding the frequent need of our attorneys to communicate with NCPLS clients, and even in light of the escalating cost of travel, NCPLS generally does not accept telephone calls from prisoners, even when NCPLS represents those persons.

22) There are two exceptions to this general rule: (a) when an NCPLS attorney specifically requests a telephone call from a client; and (b) when NCPLS receptionists are able to ascertain that there exists an emergency.

23) Upon information and belief, the commissions generated through prisoner telephone call revenue are frequently used to augment operating funds that are too often inadequate for the facility administrator to meet legal requirements to protect the health, safety, and welfare of people who are confined in the facility.

24) Too often, however, this revenue is absorbed into the general public fisc to offset the cost of providing other provide government programs and services.

25) In either case, excessive telephone charges constitute a tax on the families and friends, of people who are incarcerated – a segment of society that is least able to afford the additional financial burden of the government obligations.

26) In my opinion, these practices call into question the ethical propriety of a policy that allows government to earn financial profit at the expense of people in its custody; they limit the chance for prisoners to maintain ties with families, friends, and communities; and they call into question the applicability of fundamental legal principles such as equal protection of the law.

27) Struggling with perennial under-funding, the lure of 55% commissions (for example) can seem irresistible. But such arrangements create an ethical quagmire of both real and perceived conflicts which compromise both the professional integrity of correctional officials and the public's perception of these officials.

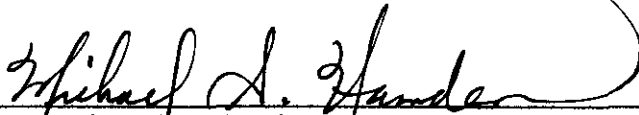
28.) Leaders in the corrections profession have long recognized the importance of providing inmate telephone services, both as a means of maintaining family and community ties, preparing the prisoner for a successful transition to a productive, law-abiding life upon release, and in the meantime, as a control mechanism (*i.e.*, a privilege that can be suspended upon violation of prison rules of conduct).

29.) Finally, these monopolistic practices may violate anti-trust law, and they almost certainly impinge upon constitutional protection of familial relationships, equal protection of the laws, and possibly state laws against unfair trade practices.

30.) The telephone service providers offer prisoners, their families and communities, and their legal counsel a critical means of communication. Unless they can recoup the costs of doing business and make a reasonable return on their investment, they will be unwilling and unable to offer their services. But so long as monopolies are acquired in exchange for outrageous commissions, it would be unconscionable to permit further exploitation of the most impoverished segment of our society through a rate increase of even a single cent.

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Respectfully submitted this 29th day of February, 2008.



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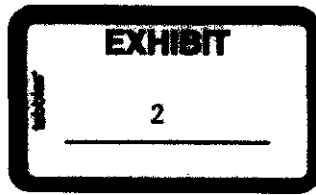
SWORN TO AND SUBSCRIBED BEFORE ME THIS 29TH DAY OF FEBRUARY, 2008.



Mary Richardson, Notary Public

My Commission Expires: 3/9/08

MARY RICHARDSON
Notary Public, North Carolina
Wake County
My Commission Expires
March 09, 2008



**AMERICAN BAR ASSOCIATION
CRIMINAL JUSTICE SECTION**

REPORT TO THE HOUSE OF DELEGATES

UNANIMOUSLY ADOPTED AUGUST 2005

RECOMMENDATION

- 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.¹⁸

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.¹⁹ Telephone access can be a critical component of a prisoner's successful transition to a productive, law-abiding life after leaving prison.²⁰ It can also contribute to safer prisons by reducing the number of disciplinary incidents.²¹ 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.²²

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

¹⁸ 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).

¹⁹ 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).

²⁰ 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).

²¹ 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>.

²² 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.²³ 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.²⁴ 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.²⁵ Such policies are presumptively unconstitutional.²⁶

²³ “[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.

²⁴ 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. [20]*, 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.

²⁵ 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).

²⁶ See *infra*, n. [31].

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.²⁷ 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.²⁸ This has serious implications given the constitutional protections surrounding a prisoner's ability to communicate with counsel.²⁹ 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.³⁰

²⁷ 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).

²⁸ 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.

²⁹ 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).

³⁰ 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,³¹ neither the courts³² nor regulatory agencies³³ 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).

³¹ 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).

³² *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).

³³ *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.³⁴

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

³⁴ 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.



Confronting Confinement

A Report of
**THE COMMISSION ON SAFETY AND ABUSE
IN AMERICA'S PRISONS**

**John J. Gibbons
Nicholas de B. Katzenbach
COMMISSION CO-CHAIRS**

June 2006

6 Support community and family bonds. Reexamine where prisons are located and where prisoners are assigned, encourage visitation, and implement phone call reform.

Strong connections to family and community give hope to people in prison—that elusive element that a correctional facility alone cannot provide but can, if it is not vigilant, destroy. And hope, it turns out, is critical to avoiding violence. The storehouse of self-respect and pride that a person finds in family and community can ward off the shame and humiliation that lead one to violence while incarcerated (Gilligan 1996). For prisoners who are parents, incarceration means being physically removed from children; for them it is critical that we make every effort to maintain family ties. And as former prisoner A. Sage Smith explained, visits from community volunteers “inject a sense of purpose into many prisoners’ consciousness” and “bring a sense of concern and infuse a sense of hope” that can assist a prisoner’s positive transformation. These relationships with people outside the correctional facility also smooth the process of reentry and make it more likely that prisoners will succeed after release.

The Commission was told about various ways to support community and family bonds. We address three strategies here, although many others should also be considered. First, unlike local jails, prisons are filled with people who have been sent far from home, and in some cases transported to other states. The physical distance to the facility can make it nearly impossible for family to visit regularly and impractical to connect prisoners with groups based in their home communities. Recognizing the importance of family and community bonds, many state systems move prisoners to facilities closer to their home communities in the final months before release. But these bonds are important not only as part of the reentry process but as an important ingredient for a safe environment during incarceration.

Decisions about where to send prisoners, combined with the siting of many prisons far from the prisoners’ home communities, disproportionately affect African-American and Latino families and exacerbate the racial divide between prisoners and officers. According to one study, those decisions result in rural prisons, which have a greater concentration of white staff, holding higher percentages of African-American men than correctional facilities in urban areas (Farrigan and Glasmeier 2002). There is widespread agreement that for incarceration to be productive, support must be given to preserving a prisoner’s bonds with his or her family and community.

There are many reasons states build prisons in rural locations far from the urban centers from which most prisoners come: lower-cost land, a more favorable political environment, and the perception of a larger employment pool. These factors—reasonable in theory, sometimes debatable in practice—must be considered against the weakening of prisoners’ ties with family and community. While a shift in priorities would require tremendous political will, lawmakers should at least examine the impact of decisions about where to locate prisons. In the meantime, corrections administrators should look closely at their internal process for assigning

The Cost of Keeping in Touch

When people are incarcerated far from home, phone calls with partners, children, and parents are often the only practical way for these families to stay in touch. **Calling rates vary considerably from state to state.** Where collect calling is the only option and the rates are high, poor families make large sacrifices to speak with an incarcerated loved one.

Average cost of a 15-minute in-state long-distance collect call placed from a correctional facility

NEBRASKA	\$2.25
NEW MEXICO	\$4.38
VERMONT	\$4.70
NEVADA	\$5.03
FLORIDA	\$5.32
NEW JERSEY	\$9.00
WASHINGTON	\$17.77

State correctional facilities that enter into exclusive contracts with telephone companies

typically reap 30 to 40 percent of all revenue generated—enormous sums that state legislatures have come to depend on.

Florida's Inmate Welfare Trust Fund took in **\$15.3 million** in fiscal year 2000.

Nevada collected **\$20.5 million** in 1999.

SOURCES: CALLING RATES PROVIDED BY CITIZENS UNITED FOR THE REHABILITATION OF ERRANTS (CURE); INFORMATION ABOUT COMMISSIONS PROVIDED BY THE AMERICAN BAR ASSOCIATION AND BY ALAN ELSNER IN HIS BOOK *GATES OF JUSTICE*.

people to facilities and make decisions whenever possible that preserve family bonds. And no system should send their prisoners to other states.

Second, both prisons and jails must do a better job of welcoming visitors, providing ample space and time, and even assisting with transportation. There are costs involved to do this well, but these dollars would be well spent. And in many places the most needed investment is in a change of attitude. Visitors are often sent the erroneous and harmful message that they are not welcome in a facility and that they do not play an important role in supporting prisoners and the well-being of the facility. There are valid security concerns that require restrictions on visitation. Nonetheless, author Asha Bhande described to the Commission the humiliating and capricious treatment she received when visiting her incarcerated husband. She explained the consequences: “[Poor] treatment of family members has the potential to make the facility less secure because it can lead to severe tensions between a prisoner and a guard who humiliated or otherwise violated his wife.”

Another way to encourage visitation is by allowing the greatest degree possible of closeness and privacy, given security imperatives. Because contact visits can inspire good behavior, people confined in both prisons and jails should be allowed to touch and embrace their children, partners, and other friends and family. Physical barriers and telephones should be reserved for those who have abused visitation privileges or otherwise have been determined to pose too great a risk. The Commission was told that people detained in the Washington, D.C., jails prefer to be held in the privately run facility rather than the public jail because, despite some of its disadvantages, it allows contact visits with family.

The final way correctional systems, principally prisons, might support family and community bonds is by minimizing the cost of prisoners' telephone calls. At present, most state systems allow only collect calls from prisoners (typically no direct calls out or incoming calls are allowed) and do so through contracts with providers that charge the recipient extraordinarily high rates, with the state receiving a commission. For example, in Florida, where only collect calls are allowed, a prisoner's 15-minute in-state long-distance call from prison costs \$5.32. Calling someone out of state costs \$17.30. The state earned over \$15 million in commissions on prisoners' calls in 2000 (Citizens United for the Rehabilitation of Errants, Florida Corrections Commission).

A growing group of corrections leaders recognizes the critical importance of telephone communication for prisoners and their families. The American Correctional Association has taken the position that prisoners “should have access to a range of reasonably priced telecommunications services” with rates “commensurate with those charged to the general public” (ACA 2003). But many directors of state departments of corrections have been pressured by shortsighted legislatures to use telephone contracts to seek income for state general funds or corrections budgets rather than to ensure family unification. The result is that family members

of prisoners pay many times more than anyone else for the opportunity to speak with a loved one.

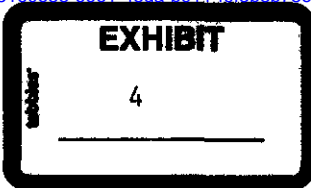
There has been considerable effort to convince lawmakers that, regardless of the income from telephone charges, interference with family unification is too high a price to pay. The American Bar Association recently adopted a recommendation urging “the lowest possible rates,” among other measures to ensure ready telephone contact (ABA 2005). Some states are responding. Vermont requires phone contracts to offer prisoners the option of direct or collect calling at “the lowest reasonable cost” (Vt. Stat. Ann. tit. 28 §802a). New Mexico’s statute bars its prisons and jails from receiving commissions on the amount billed and requires “the lowest cost of service” (N.M. Stat. Ann. §33-14-1). The District of Columbia bars correctional facilities from charging higher than local Public Service Commission rates and also bars surcharges on prisoner calls (D.C. Code Ann. §24-263.01).

Meanwhile, practices in some states more drastically interfere with prisoners’ ability to maintain family and community bonds through phone contact. In Texas, for example, the very ability to make calls is severely restricted: “Offenders who demonstrate good behavior can earn one five-minute call every 90 days” (Texas Department of Criminal Justice 2006). State legislatures and correctional systems must end practices such as these that interfere with the maintenance of critically important family and community ties. ■

Strong connections to family and community give hope to people in prison. And hope, it turns out, is critical to avoiding violence.

PREVENT VIOLENCE: RECOMMENDATIONS RECAP

- 1. Reduce crowding.** States and localities must commit to eliminating the crowded conditions that exist in many of the country’s prisons and jails and work with corrections administrators to set and meet reasonable limits on the number of prisoners that facilities can safely house.
- 2. Promote productivity and rehabilitation.** Invest in programs that are proven to reduce violence and to change behavior over the long term.
- 3. Use objective classification and direct supervision.** Incorporate violence prevention in every facility’s fundamental classification and supervision procedures.
- 4. Use force, non-lethal weaponry, and restraints only as a last resort.** Dramatically reduce the use of non-lethal weapons, restraints, and physical force by using non-forceful responses whenever possible, restricting the use of weaponry to qualified staff, and eliminating the use of restraints except when necessary to prevent serious injury to self or others.
- 5. Employ surveillance technology.** Make good use of recording surveillance cameras to monitor the correctional environment.
- 6. Support community and family bonds.** Reexamine where prisons are located and where prisoners are assigned, encourage visitation, and implement phone call reform.



BEST AND FINAL OFFER - Please respond to the questions below:

I. CHANGING SUBCONTRACTORS: Paragraph 4 of the State's General Terms and Conditions for Goods provides, in pertinent part, that the selected Vendor may change subcontractors, only with prior written consent of the contracting authority of the state. The public payphone portion of this RFP may be performed by subcontractors. Should the subcontractor need to be changed by the selected Vendor, provide details of the change process that you would employ to accomplish the change of subcontractors while maintaining the required level of service and to continue contract performance as required. Additionally, specify what your company will do to minimize service disruption and prevent any loss of revenue, while maintaining the required services during any subcontractor change. Your response should address the potential transition time and the risk of service disruption and loss of revenue, and your proposal for minimizing and compensating for each. Additionally, specify the agreement you have or will require of your subcontractor concerning the subcontractor's transition responsibilities.

AT&T will keep the same payphones and service provided by Evercom in place if awarded this contract. As a result there will be no downtime, service disruptions, or lost commissions for the public payphones. AT&T will have ownership and control of the public phones as stated in earlier documents.

If AT&T needed to change vendors during the contract term the following steps would be taken to replace the public phones:

- -Develop a project plan with the new vendor and Evercom
- -Coordinate dial-tone changes so there will be no interruption in service
- -Schedule times to change out phones
- -Work on a "drop and reinsert" premise - no phones will be taken down until we can put one in its place

II. BAO COST PROPOSAL: The Vendor offers the following commission payable to the State, calculated as a percentage to be multiplied times the revenue generated under the contract.

Commission Payable for Public Payphone Revenue 30 %

Commission Payable for Inmate Payphone Revenue 55 %

- AT&T has committed to pay the annual inmate phone parts a \$30,000 annual estimated value or \$150,000 over the life of the contract. AT&T also proposes to replace all inmate telephone handsets and cords with a new handset designed to provide less repairs and increased transmission. (DuraClear handsets from Wintel)
- AT&T has committed to over \$400,000 in upgrades and new features to be added to the Evercom Inmate Calling Platform for the State of North Carolina DOC.
- AT&T and Evercom's Call Forwarding protection has now been tested and is in general release. Our initial studies have shown that we have stopped the major way fraud is currently being done on most inmate systems. We are also predicting a 5% increase in calls and revenue because of the blocking of illegal call forwarding.

2

Best and Final Offer - Third Round - VENDOR - AT&T

BEST AND FINAL OFFER - Please respond to the requests below:

1. AT&T's Best and Final Offer received on January 29, 2004 states that AT&T will furnish local dial-tone for inmate payphones in approximately 80% of the prison facilities. Please furnish a complete list of facilities for which AT&T will furnish the local dial tone at no charge to the State under the proposed contract. (Note: A list of all prison facilities and their locations is contained in the original RFP)

AT&T Response: Please find the attached document that shows where AT&T can provide local dial. AT&T offers two options:

Option A:

A 58% commission rate and AT&T will provide T1 band width at the facilities marked under Option A. AT&T will also offer to discount, off the States existing price, T1s to the facilities in Option B should the State wish to purchase the dial tone from AT&T

Option B

A 65% commission rate and AT&T will provide T1s to all the facilities in Option A and Option B

2. If AT&T wishes to offer a more favorable price proposal, please submit as part of this Best and Final Offer.

AT&T Response: AT&T submits prior commission rates in the previous Best and Final Offers as our response to item #2.



State of North Carolina Office of Information Technology Services

Michael F. Easley, Governor

George Bakella, State Chief Information Officer

FACSIMILE COVER SHEET

Date: 8/14/06

FAX #: 856-2200

of Pages: 3

(Including cover sheet)

Recipient

Name: Brenda Richardson

Agency/Firm: _____

City, State: _____

Sender:



Office of State Chief Information Officer

Message: Let me know if you need anything

else.





Program Statement

OPI: CPD/CPB
NUMBER: P5264.08
DATE: 1/24/2008
SUBJECT: Inmate Telephone
Regulations

"CORRECTED COPY 2/11/2008"

Boxed Bold - Federal Regulation

Regular Type - Implementing Information

1. PURPOSE AND SCOPE

§ 540.100 Purpose and Scope.

a. The Bureau of Prisons extends telephone privileges to inmates as part of its overall correctional management. Telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development. An inmate may request to call a person of his or her choice outside the institution on a telephone provided for that purpose. However, limitations and conditions may be imposed upon an inmate's telephone privileges to ensure that these are consistent with other aspects of the Bureau's correctional management responsibilities. In addition to the procedures set forth in this subpart, inmate telephone use is subject to those limitations which the Warden determines are necessary to ensure the security or good order, including discipline, of the institution or to protect the public. Restrictions on inmate telephone use may also be imposed as a disciplinary sanction (see 28 CFR part 541).

This Program Statement provides national policy and procedure regarding inmate telephone privileges within Bureau of Prisons (BOP) institutions and contract facilities.

Maintaining pro-social/legal contact with family and community ties is a valuable tool in the overall correctional process. With this objective in mind, the Bureau provides inmates with several means of maintaining such contacts. Primary among these

is written correspondence, supplemented by telephone and visiting privileges.

Although there is no constitutional right for inmates to have unrestricted telephone communication, particularly when alternate methods of communication are readily available, the Bureau provides inmates with telephone access consistent with sound correctional management.

2. **SUMMARY OF CHANGES.** This Program Statement incorporates the following changes:

- References to the Washington v. Reno settlement agreement have been deleted;
- The provision allowing a special extended time frame of 120 days for inmates to file Administrative Remedies related to the telephone charges or credits has been deleted;
- The number of times inmates are allowed to submit proposed changes to their telephone list has been changed from three times per month to once per calendar month; and,
- The requirement that staff forward copies of Institution Supplements to the Central Office, Office of the General Counsel, Litigation Branch has been deleted.
- Adds guidance for inmate use of non-ITS telephones.
- Removes the language requiring Unit staff to approve inmates telephone number request form.
- Provides guidance for inmates administering their own phone lists via TRULINCS.

3. **PROGRAM OBJECTIVES.** The expected results of this program are:

a. All inmates will be afforded the opportunity to maintain family and community contact via the telephone consistent with institution and community safety;

b. Inmates will be responsible for the expense of telephone use; and,

c. All institutions will establish monitoring procedures to preserve the institution's security, orderly management and safety of the community.

4. DIRECTIVES AFFECTED

a. Directive Rescinded

P5264.07 Telephone Regulations for Inmates (1/31/02)

b. Directives Referenced

P1315.07 Inmate Legal Activities (11/5/99)
P1330.16 Administrative Remedy Program (12/31/07)
P1480.05 News Media Contacts (9/21/00)
P4500.05 Trust Fund/Deposit Fund Manual (1/22/07)
P5100.08 Security Designation and Custody Classification Manual (9/12/06)
P5265.11 Correspondence (7/9/99)
P5267.08 Visiting Regulations (5/11/06)
P5270.07 Inmate Discipline and Special Housing Units (12/29/87)
P5360.09 Religious Beliefs and Practices (12/31/04)
P5380.08 Inmate Financial Responsibility Program (8/15/05)
P7331.04 Pretrial Inmates (1/31/03)

c. Rules cited and/or referenced in this Program Statement are contained in 28 CFR part 540, subparts A-B, D, E, and I; 28 CFR part 541, subparts A-B; 28 CFR part 542, subpart B; 28 CFR part 543, subpart B, 28 CFR part 545, subpart B, 28 CFR part 548, and 28 CFR part 551, subpart J.

5. STANDARDS REFERENCED

a. American Correctional Association 4th Edition Standards for Adult Correctional Institutions: 4-4497, 4-4271, 4-4272, and 4-4273

b. American Correctional Association 4th Edition Standards for Adult Local Detention Facilities: 4-ALDF-6A-02, 4-ALDF-6A-05, 4-ALDF-2A-65, 4-ALDF-2A-66, 4-ALDF-5B-11, and 4-ALDF-5B-12

c. American Correctional Association 2nd Edition Standards for the Administration of Correctional Agencies: 2-CO-5D-01

6. **INSTITUTION SUPPLEMENT.** A local Institution Supplement is required and must include the following information:

- a. The maximum length of telephone calls, ordinarily 15 minutes;
- b. The minimum time frames between completed calls and the maximum number of incomplete call attempts per day;
- c. Telephone access procedures for inmates on "days off" or "evening shift," workers;
- d. Establish procedures for those inmates who exhaust the 300 minutes per calendar month limitation to receive additional minutes for good cause;
- e. Establish procedures when a staff assisted call may be made for good cause, including procedures for Pretrial and Holdover inmates.

The institution will involve the Regional Correctional Programs Administrator in developing the Institution Supplement.

7. PRETRIAL, HOLDOVER, AND/OR DETAINEE PROCEDURES. The procedures contained in this Program Statement apply only to institutions where individual Phone Access Codes (PAC) are utilized.

a. **Pretrial Inmates.** The Public Safety Factor (PSF) Serious Telephone Abuse applies to sentenced inmates and therefore, does not apply to pretrial inmates. However, if institution staff receive information about a pretrial inmate that may jeopardize the security and safety of the institution or community, staff will follow the procedures outlined in Section 13 of this Program Statement.

b. **Holdover Inmates.** Inmates with the PSF Serious Telephone Abuse will not be permitted access to the Inmate Telephone System (ITS), except as provided in § 540.101(e) or § 540.105©.

c. **Detainee Inmates.** A detainee of the Immigration and Customs Enforcement (ICE), denoted by the Admission/Release Status (ARS) code of A-INS, who has completed a federal sentence, may have a PSF of Serious Telephone Abuse. The detainee will not be permitted access to ITS, except as provided in § 540.101(e) or § 540.105(c). If institution staff receive information about an immigration detainee that may jeopardize the security and safety of the institution or community, staff will follow the procedures outlined in Section 13 of this Program Statement.

8. **PROCEDURES.** The Bureau's Inmate Telephone System is a calling system that is available in all institutions operated by the BOP.

To ensure the safety and security of the institution and community, inmates must place all personal telephone calls through the ITS and must not circumvent it via call forwarding, including automatic electronic forwarding or any similar telephone function. Additionally toll-free or credit card calls are not authorized, examples include telephone calls to 1-800, 1-888, 1-877, 1-866, 1-900, 1-976, or to credit card access numbers.

a. **Warden's Authority.**

b. **Except as provided in this rule, the Warden shall permit an inmate who has not been restricted from telephone use as the result of a specific institutional disciplinary sanction to make at least one telephone call each month.**

Wardens are responsible for implementing and maintaining an inmate telephone program within their institution. In establishing an institution telephone program, Wardens should consider such variables as the size and complexity of the institution. The Warden has the authority to restrict or suspend temporarily an inmate's regular telephone privilege when there is reasonable suspicion that the inmate has acted in a way that would indicate a threat to the institution's good order or security. Wardens may restrict telephone privileges only in accordance with Section 13 of this Program Statement.

Reasonable suspicion exists when facts and circumstances indicate that the inmate is engaged in, or attempting to engage in, criminal or other prohibited behavior using the telephone. The Warden has the authority to restrict or suspend temporarily an inmate's regular telephone privilege when there is a reasonable suspicion that the inmate has acted in a way that threatens the safety, security, or good order of the institution, or the protection of the public. Reasonable suspicion may be based on reliable, confidential information gathered through intelligence that identifies the inmate in question. In determining reasonable suspicion, the available information should reasonably lead a person with correctional experience to suspect the inmate is engaged in criminal or other prohibited behavior using the telephone system.

b. **Telephone List Preparation and Submission.**

§ 540.101. Procedures.

a. Telephone List Preparation. An inmate telephone call shall ordinarily be made to a number identified on the inmate's official telephone list. This list ordinarily may contain up to 30 numbers. The Associate Warden may authorize the placement of additional numbers on an inmate's telephone list based on the inmate's individual situation, e.g., size of family.

(1) During the admission and orientation process, an inmate who chooses to have telephone privileges shall prepare a proposed telephone list. At the time of submission, the inmate shall acknowledge that, to the best of the inmate's knowledge, the person or persons on the list are agreeable to receiving the inmate's telephone call and that the proposed calls are to be made for a purpose allowable under Bureau policy or institution guidelines.

(2) Except as provided in paragraph (a)(3) of this section, telephone numbers requested by an inmate ordinarily will be placed on the inmate's telephone list. When an inmate requests the placement of numbers for persons other than for immediate family or those persons already approved for the inmate's visiting list, staff ordinarily will notify those persons in writing that their numbers have been placed on the inmate's telephone list. The notice advises the recipient that the recipient's number will be removed from the list if the recipient makes a written request to the institution, or upon the written request of the inmate, or as provided in paragraph (a)(3) of this section.

(3) The Associate Warden may deny placement of a telephone number on an inmate's telephone list if the Associate Warden determines that there is a threat to institution security or good order, or a threat to the public. Any disapproval must be documented in writing to both the inmate and the proposed recipient. As with concerns about any correctional issue, including any portion of these telephone regulations, an inmate may appeal the denial through the administrative remedy procedure (see 28 CFR part 542). The Associate Warden will notify the denied recipient that he or she may appeal the denial by writing to the Warden within 15 days of the receipt of the denial.

Inmates with access to TRULINCS workstations which provide access to telephone list updates shall generate and maintain their lists using TRULINCS. These inmates will not be required to submit a Telephone Number request form (BP-505). All other inmates shall follow the process below.

An inmate who wishes to have telephone privileges must submit a Telephone Number Request form (BP-505) to unit staff. Their telephone list ordinarily may contain up to 30 telephone numbers.

Inmates may submit telephone numbers for any person they choose, including numbers for courts, elected officials and members of the news media. Attorneys may be included on an inmate's telephone list with the understanding that such calls are subject to monitoring.

Unit staff shall sign the Telephone Number Request form verifying the identity of the inmate that has hand delivered the form to the staff member. Once an inmate submits a list, it will be processed within seven calendar days.

Once unit staff sign the BP-505, it must be forwarded to ITS staff in a secure manner and within the time frames established by this Program Statement. At no time will the BP-505 be returned to the inmate or handled by another inmate.

This time frame may be extended if the total number of changes is so large that unit staff or ITS staff cannot process them and still perform their normal duties.

c. Telephone List Modifications.

b. Telephone List Update. Each Warden shall establish procedures to allow an inmate the opportunity to submit telephone list changes on at least a quarterly basis.

An inmate may submit proposed changes to his or her telephone list once per calendar month, unless staff determine that the inmate has a demonstrated need for more prompt communication.

In determining if a more frequent change is to be permitted due to a demonstrated need for prompt communication, staff must rely on their professional judgment and evaluate each request on a case-by-case basis.

Placing additional numbers (above 30) on an inmate's telephone list is within the Associate Warden's discretion. While 30 numbers should meet the need of most inmates, there may be isolated situations when additional numbers may be warranted.

For example, an inmate who has a large family may wish to place additional family members on the telephone list. Additional numbers may also be warranted for an inmate who wishes to place both work and home telephone numbers for his or her spouse and children.

c. Telephone Access Codes. An inmate may not possess another inmate's telephone access code number. An inmate may not give his or her telephone access code number to another inmate, and is to report a compromised telephone access code number immediately to unit staff.

d. Call Blocking. The Associate Warden has authority to block a number on an inmate account in a case-by-case determination. In such cases, the Associate Warden or designee must notify the inmate of an administrative block, ordinarily within five calendar days following the denial or removal of the number.

For security reasons, the Associate Warden also has the authority to block telephone numbers from being called by all inmates at their institution. Examples of numbers blocked institution wide include, but are not limited to gambling lines, etc.

Requests for BOP-wide blocking of telephone numbers shall be approved by the Chief, Intelligence Section or his/her designee.

Telephone numbers for Victims and Witnesses (as defined in 28 C.F.R. § 151-151 a. & b.) that have requested notification regarding an inmate at a Bureau facility will be blocked at the facility where the inmate is housed.

e. Call Blocking by Recipient. In ITS, the call recipient has the capability through his or her home telephone to deny and/or block further telephone calls from the inmate. A voice prompt will direct the called party through the process. This capability is available for direct-dial and collect calls from an inmate.

Once the recipient blocks a telephone number, the recipient can unblock the number only when he or she sends a written request for reinstatement. To ensure the called party's identity, the request for reinstatement must include a copy of a recent telephone bill. Trust Fund staff will process this request expeditiously.

In the event that staff receive a telephonic request from a call recipient to have his/her telephone number blocked from an inmate's telephone list, unit staff may request that the ITS

technician place a temporary suspension, not to exceed 20 calendar days, on an inmate calling that specific telephone number. Unit staff should take reasonable steps to verify the identity of the person making the request (e.g., by calling the number to be blocked). The call recipient should be informed that the blocking of the number is temporary, and that he or she must submit a prompt written request to make it permanent.

Copies of written documentation, blocking or unblocking a telephone number (at the recipient's request or the Associate Warden's discretion) must be forwarded to Trust Fund staff in the Financial Management office.

f. Limitations on Inmate Telephone Calls.

d. Placement and Duration of Telephone Call. The placement and duration of any telephone call is subject to availability of inmate funds. Ordinarily, an inmate who has sufficient funds is allowed at least three minutes for a telephone call. The Warden may limit the maximum length of telephone calling based on the situation at that institution (e.g., institution population or usage demand).

e. Exception. The Warden may allow the placement of collect calls for good cause. Examples of good cause include, but are not limited to, inmates who are new arrivals to the institution, including new commitments and transfers; inmates confined at Metropolitan Correctional Centers, Metropolitan Detention Centers, or Federal Detention Centers; pretrial inmates; inmates in holdover status; inmates who are without funds (see § 540.105(b)); and in cases of family emergencies.

The Warden will establish the maximum length of telephone calls, ordinarily 15 minutes. A warning tone ordinarily will be provided approximately one minute before the call is disconnected. This applies to both debit and collect telephone calls. The Warden determines the interval waiting period between completed telephone calls.

Inmates with ITS accounts are limited to 300 minutes per calendar month. This applies to all inmates with an ITS account in Bureau institutions, and may be used for any combination of collect or direct-dial calls at the inmate's discretion. Ordinarily, the inmates will be allowed an extra 100 minutes per month in November and December.

Inmates who exhaust their 300 minute limitation may be provided additional minutes, at the Warden's discretion, for good cause.

The 300 minutes per calendar month limitation does not apply to an inmate's ability to place unmonitored legal telephone calls.

g. Hours of Telephone Operation. The hours of telephone operation begin at 6:00 AM and end no later than 11:30 PM. Inmate telephones will not be available from at least 11:30 PM to 6:00 AM. Inmate access to telephones will normally be limited during the following times, Monday through Friday, not including holidays:

7:30 am until 10:30 am; and,
12:30 pm until after 4:00 pm count.

Inmates are expected to be at their work assignments and must not use the telephone during their work hours. For inmates who work varied work shifts, at local discretion, institutions may leave one telephone per unit available for inmates on "days off," or "evening shift" such as food service workers, UNICOR workers, etc. Staff are encouraged to take disciplinary action if an inmate leaves his or her work assignment to place a telephone call(s) without the appropriate institution staff member's prior approval.

These restrictions should not be imposed in Pretrial/Holdover institutions or Pretrial/Holdover Units where inmates are not required to work and generally have more need for telephone access during the day to prepare for trial.

h. Complaints. As with any complaint regarding any correctional issue, an inmate may use procedures outlined in the Program Statement on the Administrative Remedy Program to resolve disputes concerning their telephone privileges, e.g. lists, access, accounts, and services.

9. MONITORING OF INMATE TELEPHONE CALLS.

§ 540.102 Monitoring of Inmate Telephone Calls.

The Warden shall establish procedures that enable monitoring of telephone conversations on any telephone located within the institution, said monitoring to be done to preserve the security and orderly management of the institution and to protect the public. The Warden must provide notice to the inmate of the potential for monitoring. Staff may not monitor an inmate's properly placed call to an attorney. The Warden shall notify an inmate of the proper procedures to have an unmonitored telephone conversation with an attorney.

As part of the admission and orientation process, inmates will be advised of the procedures for placing monitored and unmonitored telephone calls.

The notification to inmates will be documented on the Acknowledgment of Inmate form (BP-408) and then filed in the inmate Central File.

In addition, a notice will be placed, in both Spanish and English, at all monitored telephone locations within the institution advising the user that all conversations from that telephone are subject to monitoring and that using the telephone constitutes consent to this monitoring. A notice will advise inmates to contact their unit team to request an unmonitored attorney telephone call. The SIS must ensure that the notice(s) is placed at all monitored telephone locations within the institution.

Requests for information (e.g., subpoenas) on monitored calls should be processed in accordance with the Program Statement Recorded Inmate Telephone Conversations, Requests for Production. The Bureau does not allow inmates to send or receive facsimile communications.

10. INMATE TELEPHONE CALLS TO ATTORNEYS.

§ 540.103 Inmate Telephone Calls to Attorneys.

The Warden may not apply frequency limitations on inmate telephone calls to attorneys when the inmate demonstrates that communication with attorneys by correspondence, visiting, or normal telephone use is not adequate.

The Bureau provides each inmate with several methods to maintain confidential contact with his or her attorney. For example:

- inmate-attorney correspondence is covered under the special mail provisions;
- private inmate-attorney visits are provided; and,
- the inmate is afforded the opportunity to place an occasional unmonitored call to his or her attorney.

Based on these provisions, frequent confidential inmate-attorney calls should be allowed only when an inmate demonstrates that communication with his or her attorney by other means is not adequate. For example, when the inmate or the inmate's attorney can demonstrate an imminent court deadline (see the Program Statements Inmate Correspondence or Inmate Legal Activities).

Staff are to make reasonable efforts to verify unmonitored calls placed on an inmate's behalf are to an attorney's office. Inmates are responsible for the expense of unmonitored attorney telephone calls. When possible, it is preferred that inmates place unmonitored legal calls collect. Third-party or three-way calls are not authorized.

11. INMATE USE OF NON-ITS TELEPHONES (Non-attorney calls). On rare occasion, during times of crisis, staff designated by the Warden may find the need to allow inmates to place telephone calls outside the Inmate Telephone System. These calls should be placed on telephones that are set to record the conversation and shall follow the guidelines detailed below.

a. Additional monitored non-ITS telephones must be operated as follows:

(1) Inmates using the telephones must have read and signed the Acknowledgment of Inmate form (BP-408) indicating their understanding that telephone calls on that device are subject to monitoring;

(2) A notice must be placed, in both English and Spanish, above or near the telephone indicating that all calls are subject to monitoring, and that using the telephone constitutes consent to such monitoring. The notice should also indicate that the telephone is for inmate use only. Staff are not permitted to use the telephone because staff telephone calls may not be monitored;

(3) The telephone must be placed in a secure area (e.g., a locked office);

(4) The telephone must be set to record telephone calls;

(5) Staff coordinating the call shall notify the SIS staff in writing via email that telephone call was placed and shall include the following; and

- The date/time, telephone number, and name of the person being called
- The name and register number of the inmate placing the call
- A brief reason for the call.

(6) SIS staff shall be responsible for inputting this data into the recording system to ensure the call recording can identify the inmate on the telephone. This data must be entered within seven calendar days.

b. Institutional Authorization Procedures for Additional Monitored Non-ITS Telephones (Non-ITS)

PS 5360, expressly provides for an additional monitored inmate telephone located in the Chapel area. As such, the procedures in this document for authorizing that single telephone do not apply. These procedures apply, rather, to additional monitored inmate telephones beyond the single additional telephone permitted by the religious policy (e.g., telephones located in the Lieutenant's office, the Unit Team office).

The following procedures must be followed when requesting additional monitored inmate telephones:

(1) The Warden shall send a request to the Regional Director for consideration and identify the extraordinary reasons justifying the need for additional telephones; and

(2) If approved by the Regional Director, written notification of approval shall be provided to the Warden and the Administration Division's Trust Fund Branch (TFB) staff for processing.

12. RESPONSIBILITY FOR INMATE MISUSE OF TELEPHONES.

§ 540.104 Responsibility for inmate misuse of telephones.

The inmate is responsible for any misuse of the telephone. The Warden shall refer incidents of unlawful inmate telephone use to law enforcement authorities. The Warden shall advise an inmate that violation of the institution's telephone regulations may result in institutional disciplinary action (See part 541, subpart B)

Inmates violating this policy may be subject to disciplinary action pursuant to 28 CFR part 541, subpart B, and the policy on Inmate Discipline.

\$540.105 Expenses of Inmate Telephone Use.

a. An inmate is responsible for the expenses of inmate telephone use. Such expenses may include a fee for replacement of an inmate's telephone access code that is used in an institution which has implemented debit billing for inmate calls. Each inmate is responsible for staying aware of his or her account balance through the automated process provided by the system. Third party billing and electronic transfer of a call to a third party are prohibited.

b. The Warden shall provide at least one collect call each month for an inmate who is without funds. An inmate without funds is defined as an inmate who has not had a trust fund account balance of \$6.00 for the past 30 days. The Warden may increase the number of collect calls based upon local institution conditions (e.g., institution population, staff resources, and usage demand). To prevent abuses of this provision (e.g., inmate shows a pattern of depleting his or her commissary funds prior to placing collect calls), the Warden may impose restrictions on the provisions of this paragraph b.

c. The Warden may direct the government to bear the expense of inmate telephone use or allow a call to be made collect under compelling circumstances such as when an inmate has lost contact with his family or has a family emergency.

13. **TELEPHONE RESTRICTIONS IMPOSED BY THE WARDEN.** Inmates may be subject to telephone restrictions imposed by the Warden to protect the safety, security, and good order of the institution, as well as to protect the public. Telephone restrictions imposed under the authority of this section are separate and apart from telephone restrictions imposed by the UDC or DHO following formal and completed inmate discipline proceedings.

Inmates with telephone restrictions are still entitled to place at least one telephone call per month, unless also under a sanction of telephone restriction the UDC or DHO imposed.

a. **Authorized Circumstances.** Inmates may be subject to telephone restrictions under this section in the following two circumstances:

(1) Public Safety Factor (PSF). An inmate whose current offense, prior history, or threat characteristics indicate a propensity to abuse telephone privileges will be assigned the PSF - Serious Telephone Abuse. If an inmate is assigned the PSF for Serious Telephone Abuse (see the Security Designation and Custody Classification Manual), a telephone restriction is authorized. Telephone restrictions imposed under these circumstances are discretionary and necessary to ensure the institution's safety, security, good order and/or to protect the public. When deemed necessary, the inmate's Unit Manager will ordinarily recommend this type of restriction to the Warden for final decision making.

Upon his/her initial commitment or redesignation, an inmate with a PSF for Serious Telephone Abuse will not be authorized use of the ITS until classified by the unit team. Inmates identified at their initial classification as requiring telephone restrictions will not be permitted access to the ITS until after the final review by the Warden.

(2) Pending Investigation or Disciplinary Action for Possible Telephone Abuse. If an inmate is pending an investigation or disciplinary action for possible telephone abuse, a partial or total telephone restriction is authorized. Telephone restrictions imposed under these circumstances are discretionary and necessary to ensure the institution's safety, security, or good order, and/or to protect the public. When deemed necessary, the Special Investigative Supervisor's office will ordinarily recommend this type of restriction. Any telephone restriction recommended by the SIS office may only be imposed with the Warden's approval, in accordance with the procedures outlined in this section.

b. Procedures for Imposing or Removing Telephone Restrictions.
The following procedures must be followed when imposing, removing, or renewing, a telephone restriction under this section:

(1) The appropriate staff member recommends a telephone restriction to the Warden by completing the Request for Telephone Restriction form (BP-740.052). The recommending staff member should describe briefly the reason for recommending a telephone restriction, as well as the extent of the proposed restriction.

For example, staff may recommend reducing an inmate's telephone use to 100 minutes per month rather than a total restriction, if such a restriction would sufficiently protect the safety, security, or good order of the institution, or protect the public;

(2) The Warden will review the recommendation and either approve, modify, or deny the restriction. If the Warden approves a restriction, such decision must be based on the conclusion that it is necessary to protect the institution's safety, security, or good order, or to protect the public;

(3) If the Warden approves a telephone restriction, a copy of the completed form should be provided to the inmate, the Trust Fund Office, and placed in Section 3 of the inmate's Central File;

(4) Telephone restrictions imposed by the Warden due to a PSF for Serious Telephone Abuse must be reviewed at least every six months, ordinarily in conjunction with the inmate's Program Review, to determine if the restriction should continue or be modified. A decision to continue a current telephone restriction imposed under this section requires no further action, but must be documented in the Program Review Report.

Any proposed change to a current telephone restriction must be made according to these procedures, and requires the Warden's approval. If appropriate, an inmate's telephone privileges can be gradually restored, based on demonstrated responsibility documented by the inmate's Unit Team or other staff;

(5) Telephone restrictions imposed pending an investigation or pending disciplinary action for possible telephone abuse are limited to a period of 30 days. If an additional 30 day period is required to complete either the investigation or disciplinary process, the Warden must re-authorize the restriction using these procedures. Specifically, the Warden's approval must be obtained on another Request for Telephone Restriction form (BP-740.052). Unless re-authorized in this manner, Trust Fund staff will obtain the Warden's approval for reinstatement or continued restrictions every 30 days.

Each subsequent restriction period is limited to 30 days. Staff should make every effort to complete investigations and disciplinary proceedings for possible telephone abuse within the first 30 day period of the telephone restriction;

(6) Inmates with telephone restrictions under this section are still entitled to place at least one telephone call per month, unless also under a sanction of telephone restriction the UDC or DHO imposed following formal, and completed, inmate discipline proceedings. Ordinarily, such telephone calls are placed through the inmate telephone system, not by staff; and,

(7) Inmates may challenge telephone restrictions imposed under this section through the Administrative Remedy Program.

/s/
Harley G. Lappin
Director

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.

ACA STANDARD GOVERNING CORRECTIONAL TELEPHONE SERVICES

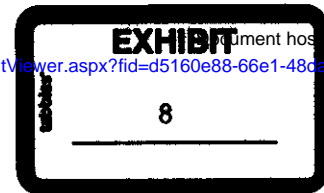
Written policy, procedure and practice ensure that inmates/juvenile offenders have access to reasonably priced telephone services. Correctional agencies should ensure that:

- 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.*]



Phone calls 'cut jail suicides'

Prison reformers have called for more support for new inmates in order to prevent suicides.

The Prison Reform Trust says providing free phone calls to family or friends would reduce stress amongst prisoners during their first few nights in jail.



The first few nights in jail are the worst for new inmates

Research by the trust indicates that almost a third of suicides occur within the first week of imprisonment.

It says that most prisoners are more worried about life outside jail, rather than what will happen to them inside.

Phone call

The director of the Prison Reform Trust, Juliet Lyon, said: "A simple phone call to family may make all the difference in stopping a new prisoner feeling completely overwhelmed by fears and uncertainties."

A report by the trust calls for all prisons to follow the example of Exeter, Holloway and Wandsworth prisons, all of which have "first night" services designed to minimise prisoner stress.

New prisoners are interviewed, and if necessary referred to specialist services. They are also given the opportunity to make phone calls to let their families know they are safe.

The report: *There When You Need Them Most*, says that these measures can play a "key role" in reducing the stress experienced by prisoners.

The authors interviewed 91 prisoners in six prisons and asked them what they were most worried about when they entered jail.

Two-thirds of those interviewed said they were worried about their families. In particular, prisoners are anxious to let their families know their whereabouts.

'Big worry'

One prisoner told the report's authors of the difficulty he has had in contacting his elderly and frail parents. He said: "I

can't find a way to tell them I am in prison.

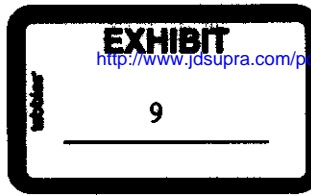
"I was thinking of writing them a letter, but how can I put it? So that has been a big worry. They said I had a free phone call. I said I didn't want it then.

"They said: 'Well, you can come get it within a week.' I went back and they said 'You're too late. You'll have to pay for it yourself.' But I have no money."

The trust also blames much of the stress inmates suffer on the current record-high prison population.

Ms Lyon said: "No one knows how many more first nights people will have to endure as they are bussed from one overcrowded jail to another as the prison system tries to cope with the growing number of people in prison.

Insert H.R. 555.pdf



110TH CONGRESS
1ST SESSION

H. R. 555

To amend the Communications Act of 1934 to require the Federal Communications Commission to prescribe rules regulating inmate telephone service rates.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 18, 2007

Mr. RUSH (for himself, Mr. BOUCHER, Mr. GUTIERREZ, Mr. WYNN, Mr. TOWNS, Mr. CLEAVER, and Mr. CUMMINGS) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Communications Act of 1934 to require the Federal Communications Commission to prescribe rules regulating inmate telephone service rates.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family Telephone Con-
5 nection Protection Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that:

8 (1) The telephone is the primary method by
9 which individuals correspond and maintain contact

1 with family members who are incarcerated in correc-
2 tional institutions.

3 (2) Except for emergency purposes, family
4 members are not allowed to call people incarcerated
5 in correctional institutions; incarcerated persons are
6 typically allowed to call family members and other
7 pre-approved individuals only through payphones
8 physically located on the premises of correctional in-
9 stitutions.

10 (3) Inmate telephone service in correctional in-
11 stitutions often is limited to collect calling.

12 (4) Regardless of whether the prisoners' calls
13 are placed collect or through a debit account, the
14 prisoners' family members typically pay for the calls,
15 either through their telephone bills, in the case of
16 collect calls received from prisoners, or by making
17 deposits directly into prisoners' debit accounts.

18 (5) Innocent citizens are paying excessive tele-
19 phone charges simply due to having a family mem-
20 ber or loved one who is incarcerated.

21 (6) The rates for calls from correctional institu-
22 tions are some of the highest rates in the United
23 States, with some per-minute charges reaching \$1
24 and service or connection charges of \$3.95 per call.

1 (7) Information compiled by the Congress and
2 the Federal Communications Commission shows that
3 the high rates are due in part to the lack of competi-
4 tion between telephone companies that provide long
5 distance inmate telephone service to correctional in-
6 stitutions.

7 (8) There are no competitive forces providing
8 incentives for those carriers to lower prices or oper-
9 ate efficiently because, unlike the mass market, only
10 one carrier is typically permitted to provide long dis-
11 tance inmate telephone service within each correc-
12 tional institution.

13 (9) High calling rates also are due in part to
14 commissions that carriers pay to correctional institu-
15 tion administrators for the exclusive right to provide
16 long distance inmate telephone service in a correc-
17 tional facility. In some cases, such commissions ac-
18 count for 50 percent or more of the total charges.

19 (10) The collection of such commissions by cor-
20 rectional institution administrators and state depart-
21 ments of correction based upon interstate tele-
22 communications revenues is a burden on interstate
23 commerce.

24 (11) Due to the lack of competition for tele-
25 phone services within correctional institutions, fami-

1 lies of people in prison, many of whom have low in-
2 comes, cannot choose the long distance carrier with
3 the lowest calling rates and must pay the excessive
4 rates charged by the carrier having the exclusive
5 right to provide long distance service to the correc-
6 tional institution from which the call originates.

7 (12) It is the policy of the United States to en-
8 sure that all Americans are afforded just and rea-
9 sonable communications services, including those
10 families that pay rates for inmate telephone service.

11 (13) It is clear from various studies that main-
12 taining frequent and meaningful communications be-
13 tween people who are incarcerated and family mem-
14 bers is key to the successful social reintegration of
15 formerly incarcerated individuals. Such contact re-
16 duces recidivism and facilitates rehabilitation, which
17 in turn reduces crime and the future costs of impris-
18 onment.

19 (14) Frequent communications between incar-
20 cerated persons and family members is burdened,
21 and in some cases, prevented, by excessive inmate
22 telephone service rates. Excessive inmate telephone
23 service rates thus weaken the family and community
24 ties that are necessary for successful reentry into so-
25 ciety by persons who were formerly incarcerated and

1 the reduction in crime resulting from successful re-
2 entry.

3 (15) The Commission has the expertise and au-
4 thority to regulate inmate telephone service. Because
5 parties to Commission rulemaking proceedings have
6 raised issues regarding its authority to implement
7 meaningful relief for excessive inmate telephone
8 service rates, Congress finds it necessary and appro-
9 priate to reaffirm that the Commission has the au-
10 thority to implement the types of relief set forth in
11 this Act.

12 **SEC. 3. RESTRICTIONS ON THE PROVISION OF INMATE**
13 **TELEPHONE SERVICE.**

14 (a) DEFINITIONS.—Section 226(a) of the Commu-
15 nications Act of 1934 (47 U.S.C. 226(a)) is amended add-
16 ing at the end the following new paragraphs:

17 “(10) The term ‘collect’ or ‘collect call’ refers to
18 a telephone call from a person incarcerated in a cor-
19 rectional institution that is billed to the subscriber
20 receiving the call.

21 “(11) The term ‘commission’ refers to a fee or
22 other payment by a provider of inmate telephone
23 service to an administrator of a correctional institu-
24 tion, department of correction, or similar entity,

1 based upon, or partly upon, inmate telephone service
2 revenue.

3 “(12) The term ‘debit account’ refers to the
4 payment of inmate telephone service through a pris-
5 oner’s prepaid card or other account, which can be
6 accessed only through an access code, personal iden-
7 tification number, or similar identifier.

8 “(13) The term ‘inmate telephone service’ in-
9 cludes the provision of telephone service enabling
10 persons incarcerated in correctional institutions to
11 originate interstate calls at payphones or other tele-
12 phones that are designated for prisoners’ personal
13 use, regardless of whether the calls are collect, paid
14 through a debit account, or paid through any other
15 means.

16 “(14) The term ‘provider of inmate telephone
17 service’ means any common carrier that provides in-
18 mate telephone service or any other person deter-
19 mined by the Commission to be providing inmate
20 telephone service.”.

21 (b) REGULATIONS.—Section 226 is further amend-
22 ed—

23 (1) by redesignating subsection (i) as subsection
24 (k); and

1 (2) inserting after subsection (h) the following
2 new subsections:

3 “(i) REGULATION OF INMATE TELEPHONE SERV-
4 ICE.—

5 “(1) RATES.—In order to ensure that charges
6 for inmate telephone service are just, reasonable,
7 and nondiscriminatory, the Commission shall con-
8 sider, either in a rulemaking proceeding that is
9 pending as of the date of enactment of the Family
10 Telephone Connection Protection Act of 2007 or in
11 a new rulemaking proceeding, the following types of
12 regulation of inmate telephone service, all of which
13 are within the Commission’s jurisdiction and author-
14 ity:

15 “(A) prescribing a maximum uniform per-
16 minute compensation rate;

17 “(B) prescribing a maximum uniform serv-
18 ice connection or other per-call compensation
19 rate;

20 “(C) prescribing variable maximum com-
21 pensation rates depending on such factors as
22 carrier costs, the size of the correctional facility
23 served, and other relevant factors identified by
24 the Commission;

1 “(D) requiring providers of inmate tele-
2 phone service to offer both collect calling and
3 debit account services;

4 “(E) prohibiting the payment of commis-
5 sions by providers of inmate telephone service
6 to administrators of correctional institutions,
7 departments of correction, and similar entities;
8 and

9 “(F) requiring administrators of correc-
10 tional institutions, departments of correction,
11 and similar entities to allow more than one pro-
12 vider of inmate telephone service to provide
13 interstate inmate telephone service at a correc-
14 tional institution in order that prisoners have a
15 choice of such providers.

16 “(2) SCOPE.—The regulations adopted by the
17 Commission shall be technologically neutral and
18 shall not jeopardize legitimate security and penolog-
19 ical interests. To the extent the Commission regula-
20 tions reduce or eliminate the revenue derived by ad-
21 ministrators of correctional institutions, departments
22 of correction, and similar entities from the receipt of
23 commissions, such effects of Commission regulations
24 shall not be considered as jeopardizing or otherwise
25 affecting legitimate security or penological interests.

1 “(3) DEADLINES AND PERIODIC REVIEW.—The
2 Commission shall prescribe regulations to implement
3 the provisions of this subsection within one year
4 after the date of enactment of the Family Telephone
5 Connection Protection Act of 2007. The Commission
6 shall review, on a triennial basis, the regulations
7 promulgated under this subsection, including wheth-
8 er any Commission-established compensation rates
9 should be modified.

10 “(4) STATE PREEMPTION.—To the extent that
11 any State requirements are inconsistent with the
12 Commission’s regulations affecting or pertaining to
13 interstate inmate telephone service, including restric-
14 tions on the payment of commissions based upon
15 interstate inmate telephone service revenues or earn-
16 ings, the Commission’s regulations on such matters
17 shall preempt such State requirements.

18 “(j) INMATE TELEPHONE SERVICE FULLY SUBJECT
19 TO SECTIONS 251 AND 252.—

20 “(1) Inmate telephone service is fully subject to
21 the requirements of sections 251 and 252 of this
22 Act.

23 “(2) No provider of inmate telephone service
24 may block or otherwise refuse to carry a call placed
25 by an incarcerated person on the grounds that the

10

1 provider has no contractual or other arrangement
2 with the local exchange carrier serving the intended
3 recipient of the call or other common carrier in-
4 volved in any portion of the transmission of the
5 call.”.

○



EXHIBIT 10

SELECTED NEWS ARTICLES



Exhibit 10. A.

Washington Utilities & Transportation Commission

<http://www.utc.wa.gov/webimage.nsf/0/D24E2F6BADE9F94A882573D30057918B> (last accessed 28 February 2008)

Utilities commission fines AT&T for overcharging inmates' phone calls

Jan. 17, 2008 (posted 28 January 2008)

UT-060962

Offenders' families to receive refunds for paying higher phone rates at two state prisons

OLYMPIA, Wash. – In an agreement approved today, state regulators are requiring AT&T to pay thousands of dollars in refunds to families of prison inmates who were overcharged for collect phone calls from two Eastern Washington state prisons.

The Washington Utilities and Transportation Commission (UTC) also fined AT&T \$302,705 for charging higher telephone rates than allowed for thousands of collect calls from the two prisons.

The commission identified 29,971 violations in phone-rate charges during a four-month period in 2005 at Airway Heights Corrections Center in Spokane and the Washington State Penitentiary in Walla Walla. The prisoners' families and others were overcharged \$67,295 for the collect calls.

Prisoners in Washington cannot make direct calls outside the institution, but instead make outgoing-collect calls from pay phones. During the time of the UTC investigation from March to June 2005, AT&T had a contract with the state to provide telephone service from state prisons. AT&T was required to file a price list with the commission, including charges made for collect calls from pay phones at the two Washington prisons.

Richard Laxton, a Seattle resident, filed a complaint with the UTC in August 2005, noting a discrepancy in two collect-phone call charges made from Airway Heights. AT&T billed him \$15.75 for a 20-minute call from the state institution but Zero Plus Dialing, a billing agent for AT&T, charged \$22.22 for the same telephone call.

The commission discovered Zero Plus Dialing was charging a \$3.95 connection fee plus 89 cents-a-minute and a 47-cent prison surcharge for the collect call made from a pay phone at the state prison. The phone company was only allowed to charge \$3.95 for the connection fee and 59 cents a minute for the phone call, according to AT&T's price list.

Beginning Feb. 1, persons seeking refunds may contact AT&T toll-free at 1-800-826-9923 to ask for a reimbursement form. They also can check with AT&T to see if their phone numbers are among the 29,971 on the overcharged phone call list. Customers will have seven months to submit their claim to AT&T, from Feb. 1 to Aug. 31.

If the total amount of the refunds issued by the company is less than \$67,295, AT&T will remit the difference to the Offender Welfare Betterment Account, administered by the Washington State Department of Corrections.

Members of the public, including families of prisoners, are not permitted to place telephone calls to inmates at state prisons. There are approximately 1.6 million collect phone calls made from the state's prisons each year.



Exhibit 10. B.

http://www.vindy.com/content/local_regional/312998552510677.php
(last accessed 29 February 2008)

Published: Monday, May 28, 2007

New bill could change how inmates make calls

The telephone fees help pay for inmate recreational items, including a library.

By MARY GRZEBIENIAK

VINDICATOR CORRESPONDENT

MERCER, Pa. — A bill in Congress could affect calls inmates make from the Mercer County Jail and impact the county's budget.

Warden Jeff Gill reported to the County Prison Board recently that he received a memo from the Pennsylvania Bureau of Prisons stating that U.S. House Resolution 555, a bill to regulate inmate telephone service rates, could force private industry out of providing phone service to jails.

Mercer County uses Inmate Telephone Inc., of Altoona, Pa., to provide phone service to inmates. Their rates, Gill said, are about \$2.92 per 15-minute call for inmates who have a debit arrangement and \$3.27 per 15 minutes for inmates who make collect calls. The jail receives a commission of \$4,000 per month from the phone company plus a percentage of any additional profits. In April, this amounted to \$5,134. This money is used to pay for inmate recreational items, including satellite television, a library, newspapers and miscellaneous items.

What could happen

Sponsors believe the bill is needed because, according to the text of the bill, they believe that many jails use the "highest priced method of dialing out collect calls."

Gill said some jails in Texas, for example, "charge five times the rate we do." He said the county jail's rates for phone calls are average for Pennsylvania.

However, Gill said that the state prison bureau fears private vendors will no longer want to provide the service to prisons if regulation cuts their profits. If the bill passes and jail commissions vanish, the county would have no other source of money to provide extras to inmates except from the county general fund. Information on what action has been taken on the bill since its introduction was unavailable.

Also, District Attorney James Epstein, who serves as prison board president, said recently that the jail's strip-search policy is being reviewed to make sure it is consistent with security concerns as well as prisoners' rights.

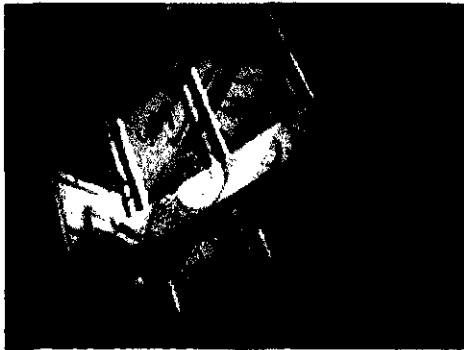


Exhibit. 10. C.

Todaysthv.com (23Aug07 – Arkansas Prison Phones)

<http://www.todaysthv.com/news/news.aspx?storyid=51318> (last accessed 28 February 2008)

Prisons Defend Charges On Inmate Phone Calls



Prison officials say the \$2.5 million in commissions the state gets on inmate calls are needed to keep prison programs operating. Advocates for inmates' families criticized the fees as an additional tax.

The officials told a legislative panel Thursday that they would have to seek additional state money if the 45 percent commissions were cut.

Earlier this year, prison officials cut the cost of collect calls for inmates by \$2, reducing the cost of a 15-minute collect call to \$4.80 from \$6.60. Prison officials also reduced the commission the state receives from the calls from 51 percent to 45 percent, following complaints from lawmakers and advocacy groups.

Those groups, however, told lawmakers Thursday that the commission is still too high and complained of poor service from the company contracting with the state to provide the collect call service.

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Robert Bell, Executive Producer
Created: 8/16/2007 5:56:19 PM
Updated: 8/16/2007 5:56:40 PM



Exhibit 10. D.

http://www.nytimes.com/2007/07/27/opinion/27fri4.html?_r=2&oref=slogin&oref=slogin
New York Times 27 July 2007 (last accessed 28 February 2008)

Editorial

Fixing the Scam on Collect Calls

Published: July 27, 2007

New York's Gov. Eliot Spitzer set an important example earlier this year when he abandoned the longstanding practice of charging prisoners bankrupting fees for collect calls. Telephone rates in New York have since dropped by about half. Those rates are likely to fall further now that Mr. Spitzer has signed a bill requiring the state to consider the cost of inmate phone calls when it negotiates the next contract for prison telephone services.

That's a far cry from how business is done elsewhere. In most states, contracts are awarded to the company that pays the state the largest "commission" for such calls — essentially a legalized kickback. The states and the companies both rack up the cash because inmates are only allowed to make collect calls while the person who accepts the call is charged a massive premium, sometimes as much as six times the going rate for regular calls.



Exhibit 10. E.

http://www.northcountrygazette.org/news/2007/06/21/prison_calls/
(last accessed 28 February 2008)

Prison Calls Bill Still Awaits Spitzer Signature

Posted on Thursday, 21 of June, 2007 at 6:57 pm

ALBANY—Families and friends of inmates in New York State prisons are still awaiting the signature of Gov. Eliot Spitzer on the Family Connections Bill, a measure that eliminates the 58 percent kickback that the state received from the cost of each collect call made by inmates to their friends and family.

In January, Spitzer had ordered that the 58% kickback which generated over \$20 million a year to the state through a contract with first MCI, now Verizon, be eliminated as of April 1.

Both Houses of the Legislature have approved the measure which would amend the New York State Corrections Law to provide prisoners with fair-market telephone rate.

Under the old contract between the state and Verizon, for a family member to speak with a loved one in a DOCS facility, the prisoner had to place a collect call, for which MCI charged \$3 to initiate the call and 16¢ per minute. The average prison phone call is billed at 19 minutes, costing just over \$6—a mark up of 630% over consumer rates. DOCS got a 57.5 percent kickback on MCI's profits.

The new law requires that any contract with a telephone company be awarded to the lowest bidder and guarantees fair market rates for the families and friends of inmates who are allowed to speak with outside contacts only through collect calls. The state Department of Correctional Services is also allowed to create a "prepaid" or collect call system or a combination of both to give consumers choices of payments. It is to take effect on April 1, 2008.

"It is easy to take advantage of people who do not have a voice," said Wanda Best-Deveaux, a Queens, NY, resident whose husband was released from prison last year. "But family members of prisoners do not deserve to be taxed because they have a loved one in prison. The MCI contract with the Department of Corrections not only took advantage of us as we work to keep our families together, it punishes us when we haven't committed any crime." 6-21-07

[In the latter part of July, 2007, the Governor signed the bill into law. – Michael S. Hamden]



Exhibit 10. F.

http://www.northcountrygazette.org/news/2007/07/06/prison_phones/
(last accessed 28 February 2008)

Lawmakers Agree Prison Phones A Right, Not Money Machine

Posted on Friday, 6 of July, 2007 at 9:19 pm

ALBANY—With the end of this year’s legislative session on June 21, the New York State Senate and Assembly reached agreement on legislation that would treat prison telephone service as a right, not as a revenue generator.

“Words cannot describe what this victory means to me - unless they are written on a phone bill that I can now afford to pay,” said Cheri O’Donoghue, whose young son is incarcerated in New York State. “It is such a relief that I can now talk to my son more frequently without financial hardship.”

For more than 10 years, families of inmates have had no choice but to pay phone rates 630 percent higher than normal consumer rates to speak with their loved ones in New York State correctional facilities. In January, Governor Spitzer announced that New York State would forego its nearly 60 percent share of the obscene mark-up. But the corporate mark-up on the contract remained, still more than 200 percent higher than regular consumer rates.

In March, the contract was extended for one year as advocates continued discussions with elected officials and staff to ensure that future telephone systems focus on keeping families together, not on turning a profit. The new contract will take place on April 1, 2008.

The agreed-upon bill centers on one common theme: “that when determining the best value of such telephone service, the lowest possible cost to the telephone user shall be emphasized.”

“New York provided strong leadership by setting an example that every other state needs to follow,” said Annette Warren Dickerson, campaign coordinator for the NY Campaign for Telephone Justice on behalf of the Center for Constitutional Rights (CCR). “Telephone companies have to stop considering the families of prisoners as if they were captive customers. We thank the bill sponsors for passing this legislation and we thank the Governor for his continuous support.”

More than 80 percent of the State’s prisoners come from poor New York City neighborhoods, according to the Albany-based Center for Law and Justice. With two-thirds of the prison facilities located three hours or more from New York City, telephone calls become a critical means for families to keep in touch.

The New York Campaign for Telephone Justice works to end the kickback contract between MCI (doing business as Verizon) and the New York State Department of Correctional Services and deliver choice, affordability, and equitable service to the families and friends of those incarcerated in New York State. The campaign is a project of the Center for Constitutional

Rights, in partnership with Prison Families of New York, Inc. and Prison Families Community Forum.

The Center for Constitutional Rights (CCR) is a nonprofit legal and educational organization dedicated to protecting and advancing the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights.

While the legislature and Gove[r]nor have agreed to stop assessing the surcharge, the families of some prison inmates are seeking reimbursement of the fees that they have had to pay in order to keep in contact with their family members.

CCR is representing Ivey Walton whose son has been incarcerated in a state prison for about 11 years. She says staying in contact with him has strained her fixed income.

Walton is the lead plaintiff in a lawsuit against the state Department of Correctional Services (DOCS) which is asking state Supreme Court to consider the pricing structure imposed by MCI as an unlawful tax that violates freedom of speech. Walton and her fellow plaintiffs want DOCS to refund the money that they have paid for the past 3 ½ years—\$3 surcharge plus 16 cents a minute up to 20 minutes when the recipients of the collect calls were then assessed another surcharge.

CCR has said that it doesn't fault MCI but rather the state for using the collect call system for inmates as a revenue generator.

The state attorney general's office is representing DOCS and has asked the court to dismiss the lawsuit, claiming that the collect calls weren't forced on the recipients—although that was and is the only way that they can talk with their loved ones—and that the money collected benefited the inmates through state programs.

The attorney general's office told the court that it was the state's position that they were under no obligation to provide phone service between the inmates and their families and that they could communicate by letter or personal visitation.

It's expected the judge will rule in 60 days. 7-06-07

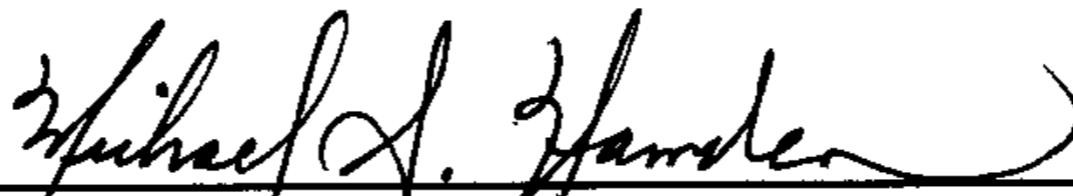
**Addendum to Comments of North Carolina Prisoner Legal Services to
Petitioners' Request for Waiver of Rule 13-9(d)**

their concerns to the correctional facilities and agencies that have a significant need for the services they provide.

The petition for a waiver of Rule 13-9(d) should be denied. If there is to be a revision of that rule, it should be done in accordance with rulemaking procedures, and only after interested parties have had a meaningful opportunity to reflect upon the proposed revision and to express their views.

Respectfully submitted this 29th day of February 2008 (*nunc pro tunc*).

NORTH CAROLINA PRISONER LEGAL SERVICES, INC., by:



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