

APPENDIX C

GOVERNMENTAL AFFAIRS
OFFICE

AMERICAN BAR ASSOCIATION

Governmental Affairs Office
740 Fifteenth Street, NW
Washington, DC 20005-1022
(202) 662-1760
FAX: (202) 662-1762

DIRECTOR

Robert D. Evans
(202) 662-1765
rdcevan@staff.abanet.org

SENIOR LEGISLATIVE COUNSEL

Denise A. Cardman
(202) 662-1761
cardmand@staff.abanet.org

Kevin J. Driscoll
(202) 662-1766
driscollk@staff.abanet.org

Lillian B. Gaskin
(202) 662-1768
gaskinl@staff.abanet.org

LEGISLATIVE COUNSEL

R. Larson Frisby
(202) 662-1098
frisbyr@staff.abanet.org

Kristi Gaines
(202) 662-1763
gainesk@staff.abanet.org

Kenneth J. Goldsmith
(202) 662-1789
goldsmithk@staff.abanet.org

Ellen McBarnette
(202) 662-1767
mcbarnoe@staff.abanet.org

E. Bruce Nicholson
(202) 662-1769
nicholsonb@staff.abanet.org

DIRECTOR GRASSROOTS
OPERATIONS/LEGISLATIVE COUNSEL

Julie M. Strandlie
(202) 662-1764
strandlj@staff.abanet.org

INTELLECTUAL PROPERTY
LAW CONSULTANT

Hayden Gregory
(202) 662-1772
gregoryh@staff.abanet.org

STATE LEGISLATIVE COUNSEL

Rita C. Aguilar
(202) 662-1780
aguilarr@staff.abanet.org

EXECUTIVE ASSISTANT

Julie Pasatiempo
(202) 662-1776
jpasatiempo@staff.abanet.org

STAFF DIRECTOR FOR
INFORMATION SERVICES

Sharon Greene
(202) 662-1014
sgreene@staff.abanet.org

EDITOR WASHINGTON LETTER

Rhonda J. McMillon
(202) 662-1017
mcmillonr@staff.abanet.org

January 31, 2006

The Honorable Bobby L. Rush
U. S. House of Representatives
2416 Rayburn Office Building
Washington, DC 20515-1301

Dear Representative Rush:

I am writing on behalf of the American Bar Association to commend you for your leadership in introducing The Family Telephone Connection Protection Act, H.R.4466, legislation to amend the Communications Act of 1934 to require the Federal Communications Commission to prescribe rules regulating inmate telephone service rates. We strongly support H.R.4466 and we urge your colleagues in the House of Representatives to support this legislation so that it may soon become law.

The ABA Section of Criminal Justice Committee on Corrections and Sentencing developed a policy recommendation that was approved by the ABA House of Delegates, our policy making body, in August 2005. The resolution supported enactment of legislation to assure a reasonable opportunity for prison and jail inmates to maintain telephonic communication with the free community, and to assure that telephone services in the correctional setting are offered with an appropriate range of options at the lowest possible rates. We believe that enactment of H.R.4466 would result in significant strides toward reaching these worthy goals.

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

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 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. 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 total revenue generated from total telephone contracts. 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. 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. 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. This has serious implications given the constitutional protections surrounding a prisoner's ability to communicate with counsel. 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 telephone 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.

H.R.4466 would help to end such ethically troublesome practices by requiring the Federal Communications Commission to set fair rates for interstate telephone calls made from prison. The bill would also require prisons to use both collect-calling and debit-calling systems, which lets inmates use the money accumulated in computer-controlled accounts to place easily monitored calls to a limited group of phone numbers. H.R.4466 would further prohibit providers from paying kickbacks to prison systems, and would require each prison system to allow more than one phone company to enter the market.

The ABA appreciates your strong leadership in introducing this important legislation. We believe passage of H.R.4466 will afford prisoners and their families a reasonable opportunity for telephone communication while maintaining sound correctional practices and we urge members of the House of Representatives to support it.

Sincerely,

Robert D. Evans

Robert D. Evans

APPENDIX D

AMERICAN BAR ASSOCIATION

**ADOPTED BY THE HOUSE OF DELEGATES
August 8-9, 2005**

RECOMMENDATION

RESOLVED, That the American Bar Association encourages federal, state, territorial and local governments, consistent with sound correctional management, law enforcement and national security principles, to afford prison and jail inmates reasonable opportunity 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.

REPORT

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

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

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

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

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

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

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

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

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

⁶ “[C]orrectional agencies should discourage profiteering on tariffs placed on phone calls which are far in excess of the actual cost of the call, and which could discourage or hinder family or community contacts.” ACA’s October 1996 Resolution on Excessive Phone Tariffs.

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

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

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

⁹ *See infra*, n. 14.

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

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

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

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

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

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

¹³ The Nebraska Department of Correctional Services does not accept commissions on inmate telephone charges. Instead, rates are set by the Nebraska Public Service Commission. Nebraska Department of Correctional Services, *Frequently Asked Questions*, available at: http://www.corrections.state.ne.us/frequent_questions/telephone-index.html (last accessed 30 January 2005).

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

The resolution encourages federal, state, territorial and local governments to ensure that incarcerated people are afforded a reasonable opportunity to maintain telephonic communication with family and friends in the free community, consistent with the imperatives of correctional management, law enforcement and national security. While the resolution does not go further to specify particular measures correctional authorities must take to ensure the “reasonable

¹⁴ Courts have long recognized that the ability to communicate privately with an attorney by telephone is essential to the exercise of the constitutional rights to counsel and to access to the courts. *Murphy v. Waller*, 51 F.3d 714, 718 & n.7 (7th Cir. 1995)(“Restrictions on a detainee’s telephone privileges that prevented him from contacting his attorney violate the Sixth Amendment right to counsel. . . . In certain limited circumstances, unreasonable restrictions on a detainee’s access to a telephone may also violate the Fourteenth Amendment.”); *Tucker v. Randall*, 948 F.2d 388, 390-91 (7th Cir. 1991)(denying a pre-trial detainee telephone access to his lawyer for four days would implicate the Sixth Amendment); *Johnson-El v. Schoemehl*, 878 F.2d 1043, 1051 (8th Cir.1989)(holding that inmates’ challenge to restrictions on the number and time of telephone calls stated a claim for violation of their rights to counsel); *Miller v. Carlson*, 401 F. Supp. 835 (M.D. Fla. 1975), *aff’d & modified on other grounds*, 563 F.2d 741 (5th Cir. 1977)(granting a permanent injunction precluding the monitoring and denial of inmates’ telephone calls to their attorneys). See also Dana Beyerle, *Making Telephone Calls From Jail Can Be Costly*, Times Montgomery Bureau (Sept. 22, 2002)(Etowah, Alabama county jail under court order to provide phones to people incarcerated in the jail based in part on complaints they could not talk to lawyers). They have accordingly held that, when prisons’ collect call-only policies interfere with the ability of incarcerated people to communicate with their lawyers, they may violate these rights. See, e.g., *Lynch v. Leis*, Docket No. C-1-00-274 (S.D. Ohio Feb. 19, 2002)(holding that where public defender’s office and many private attorneys refused most collect calls, a prison’s collect call-only policy was unconstitutional)(unpublished decision on file with the Brennan Center); *In re Ron Grimes*, 208 Cal. App. 3d 1175, 1178 (1989)(holding that switch by Humboldt County (California) Jail from coin operated to collect-only calls violated the constitutional rights of people incarcerated there because the public defender’s office, other county departments, and some private attorneys did not accept collect calls).

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

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

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

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

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

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

Respectfully submitted,

Catherine Anderson
Chair, Criminal Justice Section
August 2005

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

GENERAL INFORMATION FORM

1. **Summary of Recommendation.** encourages federal, state, territorial and local governments, consistent with the constraints of sound correctional management, law enforcement and national security principles, to afford prison and jail inmates every reasonable opportunity 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.

The proposed resolution encourages federal, state, territorial and local governments to afford incarcerated people every reasonable opportunity to maintain telephonic communication with the free community consistent with the constraints of sound correctional management principles, and to offer the broadest possible range of telephone services in the correctional setting at the lowest possible rates.

2. **Approved by Submitting Entity.**

This recommendation was approved by the Criminal Justice Section Council at its May 14-15, 2005 meeting.

3. **Similar Recommendations Submitted Previously.**

This recommendation has not previously been submitted to the House of Delegates or the Board of Governors.

4. **Relevant Existing ABA Policies and Affect on These Policies.** None.

5. **Urgency Requiring Action at this Meeting.** The proposed resolution has been the subject of deliberation and discussion among a broad range of people with diverse interests. Drafts of the proposed resolution have been widely circulated, and based upon comments received, the proposed resolution has been repeatedly revised and refined. As it is presently worded, the proposed resolution has been approved by the Corrections and Sentencing Committee of the Criminal Justice Section and is ready for consideration by the Board of Governors and the House of Delegates.

6. **Status of Congressional Legislation (If applicable).** None.

7. **Cost to the Association.** None.

8. **Disclosure of Interest (If Applicable).**

No known conflict of interest exists.

9. Referrals.

Concurrently with submission of this report to the ABA Policy Administration Office for calendaring on the August 2005 House of Delegates agenda, it is being circulated to the following:

Sections, Divisions and Forums:
All Sections and Divisions

10. Contact Person (Prior to 2005 Annual Meeting).

Margaret Love, Esq.
Law Office of Margaret Love
1100 Park Street, N.E.
Washington, D.C. 20002
Phone : (202) 547-0453
E-Mail : margaretlove@pardonlaw.com

Michael S. Hamden, Esq.
NC Prisoner Legal Services Inc.
1110 Wake Forest Road
Raleigh, NC 27604
Phone: (919)856-2200
E-Mail: mhamden@ncpls.org

11. Contact Persons (Who will present the report to the House).

Neal R. Sonnett
Law Offices of Neal R. Sonnett
One Biscayne Tower
Two South Biscayne Blvd. Suite 2
Miami, Florida 33131

Phone: (305) 358-2000
FAX: (305) 358-1233
E-Mail: nsonnett@sonnett.com

Stephen Saltzburg
George Washington University
School of Law
720 20th Street, NW - Room B-303F
Washington, DC
20006

Phone: (202) 994-7089
FAX: (202) 994-7143
E-Mail: ssaltz@main.nlc.gwu.edu

APPENDIX E

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

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.”.

○

APPENDIX F

January 14, 2006 Saturday
Late Edition - Final

SECTION: Section A; Column 1; Editorial Desk; Pg. 14

LENGTH: 455 words

HEADLINE: Keeping in Touch With a Parent in Prison

BODY:

One way to cut down on the number of inmates who end up right back in prison shortly after being released is to make sure that they preserve their ties with their families, especially with spouses and children, while they are serving time. But keeping in touch is often impossible for inmates and their families because of state prison systems that earn huge profits from inmates' phone calls by forcing the family members who receive those collect calls to pay usurious rates. As a result, a family must often choose between talking to a loved one in prison and putting food on the table.

A bill introduced in Congress by Representative Bobby Rush, Democrat of Illinois, would help end this shameful practice by requiring the Federal Communications Commission to set fair rates for interstate phone calls made from prison. The bill will surely face fierce opposition from the telecommunications lobby and from state prison systems that have grown accustomed to gouging the poorest families in the country to subsidize some prison-related activities. But the current arrangement is both counterproductive and morally indefensible.

State prison systems typically use telephone setups that permit only collect calls, made through providers that keep a monopoly on prison telephone service by paying the states a "commission" -- essentially a legal kickback. The kickback does not materialize out of thin air. The people who receive the phone calls often pay as much as six times the going rate. Not surprisingly, the costs discourage inmates from keeping in touch with spouses and children who may live hundreds of miles away and find it difficult or impossible to visit.

Federal prisons use a significantly less expensive debit-calling system, which lets inmates use the money accumulated in computer-controlled accounts to place easily monitored calls to a limited group of phone numbers. The Rush bill would require prisons to use both collect-calling and debit-calling systems. It would also prohibit providers from paying kickbacks to prison systems, and would require each prison system to allow more than one phone company to enter the market. In addition, the law would not let prison phone providers refuse to place calls to phone numbers served by rival companies.

Prison systems are likely to argue that the current arrangement is just fine because it helps pay for programs that benefit the inmates. But the high phone rates are actually a hidden tax on people who already pay for the prisons through their taxes. Beyond that, the states should not be in the business of bleeding low-income families -- and fraying already fragile family ties -- to pay for services that the state itself is obligated to provide.

URL: <http://www.nytimes.com>

LOAD-DATE: January 14, 2006

Editorial

The Bankrupt-Your-Family Calling Plan

Published: December 22, 2006

Studies of prison inmates clearly show that keeping them in contact with friends and family is vital to giving them a chance to create an honest life after jail instead of committing new crimes that land them right back behind bars. Yet the simple act of picking up the phone to call home can be bankrupting for inmates and their families.

The cruel and counterproductive system now in place around the country charges them as much as six times the going rate for collect calls placed from inside state prisons. The collect-call service providers keep a stranglehold on the business by paying the state prisons a legalized kickback called a "commission."

These costs are borne by spouses, parents and other collect-call recipients who typically come from the country's poorest families. Worse still, these families can be barred from receiving a prisoner's collect call at all until they open costly accounts with the same companies that provide the prison phone service.

With bills that sometimes reach into the hundreds of dollars a month, families must often choose between talking to a jailed loved one and paying the rent. The lost contact is especially crushing for imprisoned parents, who make up more than half the national prison population and are often held in prisons hundreds of miles away from their children.

A bill that went nowhere in Congress this year would have mandated fair rates for interstate calls made from prison. The bill, introduced by Representative Bobby Rush, Democrat of Illinois, would also have required prisons to use both the collect-calling system and the less expensive debit-calling system. Used in federal prisons, debit calling lets inmates use computer-controlled accounts to pay for easily monitored calls to specified phone numbers.

The collect-call-only system is being challenged in court in a number of states, including New York, where a closely watched case is scheduled to be argued before the state's highest court in early January. The suit rightly argues that the telephone markup is a hidden levy on families who already support the prison system through their taxes.

State prison officials say the money is used to pay for programs that benefit inmates. But it also gouges the poorest citizens — driving them deeper into poverty — to pay for prison services that the state is obligated to provide. It might be legal, but it is also counterproductive and morally indefensible.

APPENDIX G

March 12, 2001

Ms. Shelly Harris
Sr. Purchasing Administrator
Procurement Division
Indiana Department of Administration
402 West Washington Street, W468
Indianapolis, IN 46204

Dear Ms. Harris:

We would like to thank the State of Indiana for providing T-NETIX with the opportunity to respond to this Request for Proposals for Long Distance Service from Public and Inmate Telephones. T-NETIX is firmly committed to comprehensively satisfying all the requirements of the RFP while ensuring that the State of Indiana receives long distance service of the highest quality at the lowest possible cost.

T-NETIX provides local and long distance service, as well as, advanced call processing and fraud management systems to direct customers and telecommunications companies. T-NETIX processes 40 million calls per month over the 1500 network and premise based systems it owns and operates across the United States. T-NETIX has created a partnership with Qwest Communications for this proposal to assure the provision of expert operator services and long distance calling for the public telephones and excellent network transmission quality on the inmate calls.

T-NETIX will meet all of the requirements set forth in the RFP including the provision of the specified products and services subject to the terms and conditions stated in the RFP. T-NETIX agrees to all of the State of Indiana's mandatory contract clauses and has provided within our response documentation of the required proposal bond of \$100,000 and performance bond of \$1,000,000.

T-NETIX is prepared to complete the transition from the current long distance vendor to our proposed service offering within 30 calendar days of the execution of an agreement between the State of Indiana and T-NETIX. We will have an audit of all telephone numbers to be changed to T-NETIX long distance service completed within the first 10 days. Primary Interexchange Carrier (PIC) changes on the public telephones will be completed within 21 days. New call branding and rate announcements will be installed in the T-NETIX call processing equipment for inmate calls within 25 days of the execution of an agreement. As the current provider of the inmate call processing systems at the IDOC, T-NETIX can assure the State of Indiana that the implementation of the cutover to T-NETIX as the long distance carrier for the inmate collect only phones will be completed within 30 days.

The commissions offered by T-NETIX for both public and inmate calls are very aggressive and we believe the T-NETIX proposal provides the very lowest rate options for inmate collect calling. We have proposed a very reasonable rate schedule on calls from the public telephones. Our proposal includes our most innovative new product, a paperless, card-free prepaid calling solution to inmate calling customers called **T-NET Family Connections™ Prepaid Calling**. This service allows corrections facilities to offer inmate families and friends an alternative to the more costly collect calls and requires no direct involvement by your facilities in the collection of prepaid revenues.

The T-NETIX proposal will remain valid for a minimum of 180 days from the date it is submitted to the State of Indiana. And if T-NETIX is awarded the bid, we will remain committed to the content of our proposal throughout the contract negotiation period.

We are confident that our proposal will provide exceptional service and unsurpassed value in the form of dramatically reduced calling rates and aggressive commission percentages. If you need any additional information, please contact Art Heckel, Eastern Region Director, directly at 973-812-2393 or Art.Heckel@t-netix.com.

Sincerely,

John Gierscher
Chief Financial Officer
T-NETIX, Inc.