

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

In the Matter of

Implementation of the Pay Telephone
Reclassification and Compensation Provisions
Of the Telecommunications Act of 1996

Petition for Rulemaking or, in the Alternative,
Petition to Address Referral Issues in Pending
Rulemaking

CC Docket No. 96-128

DA 03-4027

REPLY COMMENTS OF T-NETIX, INC. AND EVERCOM SYSTEMS, INC.

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SUMMARY

The record compiled on the Alternative Rulemaking Proposal for inmate telephone service rates by the Wright Petitioners (the "Proposal" or "Petition") makes clear that any action in this docket would be unwarranted, economically harmful and likely unlawful. Industry leaders T-NETIX and Evercom, together with numerous commenters, object to the premature attempt by inmate activists to promulgate regulations duplicating proposed legislation that has not been enacted or even debated in Congress. In addition, the comments raise serious concerns that the FCC has violated the APA by improperly noticing this proceeding, independently rendering adoption of the Proposal unlawful.

Many parties caution that imposition of rate caps and promulgation of a prepaid calling card mandate for inmate services would necessarily infringe on the authority of state and local correctional agency authorities. As the Commission itself has noted, a solution to the perceived "problem" of high inmate phone rates must embrace the states; yet the current Wright Petition "alternative" fails to reflect any of the legitimate interests of state and local governments in operating, and funding, their prisons and jails. Moreover, several parties question the FCC's underlying power to engage in the current rulemaking. T-NETIX and Evercom support a fair and balanced assessment of whether the Commission does indeed have jurisdiction to regulate inmate phone rates.

Numerous commenters, T-NETIX and Evercom among them, emphasized that the Wright Petitioners mischaracterize the income received from inmate phone calls as "extremely high" profits. To the contrary, the record shows that state and local governments use the vast majority of these funds to provide services to inmates, to offset the costs of prisons generally (avoiding tax increases for the general population), and for law enforcement purposes. Certainly nothing in the record indicates that inmate service providers are reaping windfall or excessive

profits from their current contracts. Rather, the evidence is clear that the significant costs associated with the inmate phone service industry, along with robust competition among providers, constrain industry profits to markedly reasonable levels.

The record also demonstrates that rate caps would have significant negative consequences. Characterized by one party as “exterminating the little guy,” rate caps almost assuredly would prevent inmate service providers from covering the substantial costs of service that, as T-NETIX and Evercom showed, are grossly underestimated by Petitioners. Such below-cost rates will likely force small and mid-size carriers from the market, a result that will only work to the detriment of both prisoners and their families.

As several parties explain, rate caps also cannot take into account the wide divergence of correctional institutions in this country. Consequently, there is a substantial risk that services would be reduced to the inmate population in cash-strapped regions to compensate for the funding shortfall, and that new technologies for monitoring and other features could not be implemented under a rate cap regime.

Finally, the record contradicts Petitioners’ request for mandated debit cards. Numerous states and inmate providers demonstrate that the costs of establishing debit card systems outweigh the benefits in many, if not most, correctional facilities. Commenters are rightfully concerned that phone cards would become a cash-equivalent contraband and the cause of prison violence. As such — consistent with decades of federal policy regarding state authority to set correctional policies and rules — any decision to use a debit card system should be made by state and local correctional agencies themselves, and not by this Commission via federal regulatory fiat.

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T-NETIX, Inc. ("T-NETIX") and Evercom Systems, Inc. ("Evercom"), by their attorneys, submit these reply comments regarding the recent Alternative Rulemaking Proposal filed by the Wright Petitioners. Service providers, correctional authorities, and inmate service companies all provide strong and well-substantiated opposition to the Proposal, noting the serious jurisdictional, penological, and economic grounds for rejecting its far-reaching suggestions. Thus, there is broad consensus in the record that the Alternative Rulemaking Proposal's call for inmate rate caps and related pricing constraints should not, and likely may not lawfully, be adopted.

DISCUSSION

The record developed in this docket demonstrates unequivocally that the Alternative Rulemaking Proposal (the "Proposal" or "Petition") advanced by the Wright Petitioners threatens not only the ability of telecommunications providers to serve correctional facilities and inmates, but also the penological objectives of state and local prison systems. Several commenters in addition have raised serious jurisdictional issues, questioning whether the Federal Com-

munications Commission (“FCC” or “Commission”) properly noticed this proceeding or whether it lawfully can intrude, under our system of federalism and the terms of the Communications Act, on the taxation and procurement authority of correctional agencies. On this record, and for the legal and policy reasons explained below, the Commission should reject Petitioners’ proposal and defer to Congress on whether, if at all, the federal government can and should restrict the pricing and calling options made available by state and local governments for incarcerated inmates.

I. COMMENTERS AGREE THE PETITION IS PROCEDURALLY IMPROPER

T-NETIX and Evercom explained in their initial comments that the Alternative Rulemaking Proposal is untimely, being both redundant of ongoing Commission proceedings and a premature attempt to enforce federal legislation that has yet even to be heard in Committee. T-NETIX/Evercom Comments at 5. Added to this concern is Pay-Tel’s cogent argument that the Commission has violated the notice provisions of the Administrative Procedure Act, 5 U.S.C. § 553(b), and GEO Group’s cautionary note that inmate telephone service must remain the province of correctional authorities to which the “the safety and security” of prisons is entrusted. Pay-Tel Comments at 3-4; GEO Group Comments at 14.

T-NETIX and Evercom agree with Pay-Tel that the Proposal “should only be considered by the Commission in the context of a complete review of inmate calling services that analyzes all aspects of both local and non-local calls at both prisons and jails.” Pay-Tel Comments at 4, 7. As we explained, the Petition should be consolidated with the existing inmate rate inquiry in this docket, and Commission action in the docket should be deferred until the fate of H.R. 555 is determined by Congress. T-NETIX/Evercom Comments at 6.

II. SEVERAL PARTIES CORRECTLY OBSERVE THAT ADOPTING PETITIONERS' PROPOSAL WOULD REQUIRE THE COMMISSION TO INFRINGE ON STATE AND CORRECTIONAL AGENCY JURISDICTION

Several state agencies argued, with substantial justification, that action in this docket by the Commission would constitute an unjustified incursion into the correctional management arena that rightfully belongs to the Federal Bureau of Prisons, the states, and local authorities. The Commissioner of the Kentucky Department of Corrections emphasized that “attempts [by the FCC] to impose regulatory or operational change are inappropriate and interfere in the management of correctional facilities.” Kentucky DOC Comments at 1. Similarly, the Virginia Department of Corrections made clear that it desires to continue to negotiate rates directly with the contract provider, as Virginia has made the public policy decision to use proceeds from these phone systems to pay for victim protection services. Virginia DOC Comments at 1. Tennessee likewise views the proposed rate cap as unduly interfering with decisions by state correctional officials. Tennessee DOC Comments at 1. Tennessee inmate payphones are already regulated by the state public regulatory commission, and the state has determined that inmates and their families should bear the cost of the phone system rather than funding the service from general tax revenues. *Id.*

The FCC itself acknowledged in 2002 that “any solution to the problem of high rates for inmates must embrace the states.” *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand and Notice of Proposed Rulemaking, 17 FCC Rcd. 3248, 3261 ¶ 29 (2002). Both inmate calling service providers and state agencies commented that state governments have undisputed constitutional and legal authority to deprive inmates of calling privileges altogether, and therefore also have authority to set rates for phone service. Embarq Comments at 5; Tennessee DOC Comments at 1; Kentucky DOC Comments at 1. Geo Group points out that contracts between state

agencies and prison management and operation companies are subject to applicable procurement law requirements, and as such are not matters into which the FCC should intrude. Geo Group Comments at 17.

Commenters also argued that the Commission cannot claim authority under either Sections 201 or 276 of the Communications Act to regulate inmate phone rates. Embarq Comments at 6; *see* Geo Group Comments at 9. As discussed below, because there is no evidence that inmate service providers are reaping unreasonable profits, inmate service rates are presumptively just and reasonable under § 201. Embarq Comments at 6. Similarly, several industry commenters make clear there is robust competition and widespread availability as required by § 276, and that this “payphone compensation” provision does not provide authority for adoption of the proposed rate cap. Global Tel*Link Comments at 12; Embarq Comments at 5. Thus, prior to imposing constraints on inmate phone rates or practices, the FCC should first consider, and invite specific comment on, whether it has the power to engage in prison pay phone regulation. Only if the answer is in the affirmative should the FCC even reach the question of whether it should act.

T-NETIX and Evercom agree with correctional agency comments that the Commission should not mandate programmatic decisions dictating how a prison or jail is administered. The operation and funding of correctional facilities are tasks unlike any others, and given the wide range in facility types, institutional needs, and regional differences, it is clear that the federal government, including this Commission, should defer to those with expertise in prison administration. *See, e.g., Turner v. Safley*, 482 U.S. 78, 84 (1987) (“Courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform.”) (internal

citations omitted). As the Supreme Court has noted, problems faced in prison administration “are complex and intractable, and ... not readily susceptible of resolution by decree.” *Id.*

The Commission’s expertise in telecommunications administration does not reach into the realm of prison administration, budgeting, and safety. Attempting to draft a one-size-fits-all “solution” for prisons will frustrate correctional officials and state legislators, who have already made determinations as to the appropriate rates for prison phone calls in their jurisdiction, and would inevitably lead to higher taxes for citizens, less safe working conditions for prison employees, and fewer services for the prisoners themselves.

III. THE RECORD DEMONSTRATES THAT PETITIONERS’ COST AND PROFIT ANALYSIS IS MANIFESTLY INCORRECT

T-NETIX and Evercom focused their initial comments on the Wright Petitioners’ flawed economic assumptions and analysis, presenting the Declaration of Richard Cabe, Ph.D. to refute Petitioners’ methodology. T-NETIX/Evercom Comments at 6-10 & Appendix A. As the record now shows, nearly every commenter to address the economic basis of the Petition, and the subsequent Alternative Rulemaking Proposal, has found the Petition’s financial analysis to be deeply flawed and based on unsupportable assumptions.¹ Petitioners’ analysis has been so thoroughly discredited that it cannot legitimately, on this record, serve as the basis for any Commission-mandated service rates for this industry. *E.g., Illinois Pub. Svc. Comm’n v. FCC*, 117 F.3d 555, 564 (D.C. Cir. 1997) (remanding payphone service compensation rate based in part on flawed economic analysis).

¹ Kentucky DOC Comments at 2-3; Public Communications Services (“PCS”) Comments at 8-9; Association of Private Correctional and Treatment Organizations (“APCTO”) Comments at 4-5; Global Tel*Link Comments at 5; Pay-Tel Comments at 10-13; Geo Group Comments at 7-12; Consolidated Communications Public Services (“CCPS”) Comments at 13-17; Corrections Corporation of America (“CCA”) Comments at 6-8; Embarq Comments at 2-3.

A. The Record Disproves Petitioners' Assertions That Inmate Telephone Providers Enjoy "Extremely High" Profits

Petitioners assert that inmate telephone service providers enjoy "extremely high" profits, Dawson Decl. ¶ 24, based on Douglas Dawson's incomplete and internally inconsistent analysis of purported rates and costs in this industry. *See* Proposal at 19-22. Perhaps Dawson's most glaring error is his adoption of an "average" site commission cost that contradicts not only industry data, but also Dawson's own research. T-NETIX/Evercom Comments at 8 (quoting Dawson Decl. ¶¶ 23-24).

The record does not support Petitioners' assertion that inmate service providers are reaping large profits. This conclusion can be determined empirically. For instance, Pay-Tel discloses that over the last 10 years, the highest profit margin on inmate operations was 7.5%, and in 2005 and 2006 was only 1.3%. Comments of Pay-Tel at 8. Likewise, according to the 2006 annual report of Securus Technologies (the parent company of Evercom and T-NETIX), Securus's profit margin last year was only 2.28%. *Id.* at 9. The marginal profitability of inmate services can also be inferred circumstantially: Bell South, Qwest, AT&T, Verizon, Cincinnati Bell, and MCI have all sold or transferred their inmate calling service operations. As Pay-Tel commented, public telecommunications companies of that scale do not divest themselves of lines of business with the high, indeed "excessive," profit margins attributed to them by the Dawson Declaration. *Id.* at 8-9.

More specifically, Petitioners pretend to understand that site commissions are a cost to service providers that must be "backed out" from retail rates to determine carrier profit, Dawson Decl. ¶ 23, yet refuse to reflect the true cost of site commissions or even acknowledge their purpose. As several commenters explain, states generally use site commission revenues to offset prison costs, especially in this era of state and local budget shortfalls, and to provide im-

portant inmate support and services. *E.g.*, Kentucky DOC Comments at 2-3; SPCA Comments at 3. California receives \$20 million in prison phone commissions each year; in 2005 alone, Virginia received \$7 million in commissions from the prison phone service operated by MCI. Prison Legal News Comments at 2. In Idaho, if all phone commissions were eliminated, it would create a shortfall of \$1.086 million in the Idaho Department of Corrections budget. Idaho DOC Comments at 1. Portions of those funds are targeted to provide religious and recreational activities. *Id.* at 1. These are services that enhance inmate living conditions and reflect the best, most humane and rehabilitative policies of correctional officials.

Commenters also explain that site commission revenue redounds to the benefit of inmates, citing as examples video visitation systems, telemedicine programs, anti-recidivism programs, AIDS education, basic adult education classes, and anti-substance abuse programs that are all funded by commissions paid by inmate service providers to the states. Comments of PCS at 6; Comments of Embarq at 4; Global Tel*Link at 6-7. What the Proposal fails to address is the important question of how, if the FCC eliminates this source of state and local correctional funding, those governmental bodies will be able to meet their budgetary requirements. The only avenue left if the Wright Petitioners' proposal is adopted would be to increase general state taxes, through either income, sales or excise taxes. Such action by a federal administrative agency would be remarkable and unprecedented.

In sum, having neither acknowledged the public good that site commissions effect nor accurately reflected the levels of site commissions in their analysis, Petitioners fail to offer a substantiated basis on which the Commission could adopt the sweeping, hyper-regulatory mandates the Petition requests.

B. Record Evidence Shows That the Petition Misstates Both the Rate Levels and the Cost Basis of the Inmate Telephone Industry

T-NETIX and Evercom illustrated that Petitioners' estimates of the cost structure of the inmate telephone industry are flatly incorrect. T-NETIX/Evercom Comments at 8-10. Other commenters observed that the Wright Petitioners' cost estimates are based on seven year-old data from companies that no longer provide inmate phone service. SPCA Comments at 3; Pay-Tel Comments at 10. Indeed, all service provider commenters agree that correctional facilities require complex and costly technological features, including special automated voice-processing systems for call screening, monitoring systems designed to detect call-forwarding or three way calling, blocking mechanisms, recording mechanisms, voice overlays identifying calls, disclosure recordings, and detailed reporting. Global Tel*Link Comments at 5; SPCA Comments at 2; ACPTO Comments at 4; Idaho DOC Comments at 1; PCS Comments at 5. In particular, inmate calling rates increased in response to the increased demand for greater surveillance after September 11, 2001. Pay-Tel Comments at 8.

In addition to the safety and security systems, collect calling from a prison necessarily involves accessing an operator-assisted platform, either live or automated. Geo Group Comments at 8-9. These systems require call verification and routing equipment, billing software, and often, live operators, who set up the calls and arrange for billing. *Id.* The Proposal dramatically understates the cost of maintaining and supporting the hardware and software used in these systems. Geo Group Comments at 8-9; Global Tel*Link Comments at 14.

Industry providers also make clear that collect calls have a hidden cost — high uncollectible rates. PCS Comments at 8; Pay-Tel Comments at 12. If a called party refuses to pay the bill, the bad debt is written off by the local exchange carrier as uncollectible, and is charged back to the inmate service provider. PCS Comments at 8; Pay-Tel Comments at 12.

These charge-backs often amount to 20% of all collect call revenue billed. PCS Comments at 9; Pay-Tel Comments at 12. Charges from completed collect calls must recover not only the fixed costs and uncollectibles associated with providing service to inmates, but also the variable costs associated both with completed calls and with attempted calls. CPSC Comments at 15. Thus, the record plainly justifies and substantiates the cost structure supporting the rates charged by inmate service providers.

Finally, with regard to rates, T-NETIX and Evercom feel constrained to address the claim by an anonymous commenter that he or she paid \$177 to Evercom for two calls from a Kansas prison to a Kentucky residence, and that he or she has filed complaints at the Kentucky PSC regarding these charges. That assertion is false. First, Evercom's maximum tariffed rate for interstate calls is \$3.95 for the initial connection and \$0.89 per minute thereafter. Assuming as true the commenter's statement that the calls were 28 minutes and 15 minutes in length, the maximum amount Evercom possibly could have billed is \$41.72. Second, Evercom has searched at length for any evidence of a consumer complaint regarding a \$177 phone bill, either to Evercom or the Kentucky PSC, and found none. The obvious hyperbole, if not deliberate misstatement, employed by this anonymous commenter unfortunately is a common phenomenon in this industry, and may be fueling much of the unjustified animus the industry currently faces from the inmate advocate community.

C. Inmate Service Providers and Correctional Authorities Agree That the Petition Endangers Technological Innovation

As T-NETIX and Evercom have cautioned, inmate service rate caps would have a chilling effect on the technological advances that have substantially improved correctional security over the past two decades. T-NETIX/Evercom Comments at 9-10; *see* Global Tel*Link Comments at 16-18; Pay-Tel Comments at 17-22. Technological innovation lowers service

providers costs and, in turn, exerts downward pressure on rates through competitive bidding. Global Tel*Link Comments at 9. Petitioners' proposed rate caps would thus have the perverse effect of diminishing inmate welfare and mitigating the rate benefits of improved technology that would otherwise naturally accrue.

For example, some prisons have tested the use of videoconferencing tolls for arraignments and other court proceedings, thereby avoiding the cost and risks associated with transporting inmates to off-site locations. Global Tel*Link Comments at 17. Rate caps, particularly Petitioners' proposed rates that provide no allowance for R&D costs, threaten to kill such initiatives in the cradle.

Commenters thus agree that Petitioners have not given due attention to the effect that their proposed rates will have on inmate welfare and security. Most importantly, the Petition fails to recognize the financial reality that stifling innovation results in stagnant rates. Having been revealed by the record as counterproductive to the very goals it seeks to attain, the Petition should be rejected.

IV. THE RECORD OVERWHELMINGLY DEMONSTRATES THAT INMATE SERVICE RATE CAPS ARE INAPPROPRIATE AND DANGEROUS

The record overwhelmingly opposes rate caps.² Calling the Proposal "dangerous," CCPS Comments at 7, and characterizing rate caps as "exterminating the little guy," SPCA Comments at 3, commenters explicate several objections to inmate rate caps, including lack of statutory authority, preclusion of cost recovery, disuniformity of cost structure, and the possibility of rate arbitrage. The Proposal plainly failed to appreciate what this Commission has long

² T-NETIX/Evercom Comments at 10-12; Kentucky DOC Comments at 2-3; PCS Comments at 5-6; Virginia DOC Comments; Southern Public Communications Ass'n Comments ("SPCA") at 3; Association of Private Correctional and Treatment Organizations Comments at 5-6; Global Tel*Link Comments at 11-18; Geo Group Comments at 12-15; CCPS Comments at 7-9; CCA Comments at 5-10; Emberq Comments at 6.

recognized are the “exceptional circumstances” facing the inmate market;³ the Wright Petitioners unfortunately have no serious response to commenters’ well-founded concerns. The Commission thus has little basis on which to accept Petitioners’ radical proposal.

A. Many Commenters Warn That Rate Caps Cannot Accommodate the Complexity of Inmate Telephone Services

A range of commenters note that a variety of factors affect the costs charged by inmate service providers, and that any attempt to provide a “one-size-fits-all” approach will have severe negative consequences. APCTO Comments at 6; *see, e.g.*, CCA Comments at 6; Geo Group Comments at 10; T-NETIX/Evercom Comments at 10-11. For instance, Global Tel*Link notes that the size of the inmate population at a correctional facility makes a large difference in the costs a carrier incurs to serve the institution. Global*Tel explains that it places more telephones in large prisons and high-security prisons in order to minimize the risks associated with transporting prisoners. Moreover, Global Tel*Link points out that the more complex systems installed in large correctional facilities often require on-site technical support, as equipment problems can not only compromise the institutions ability to monitor and block calls, “but could even cause riots if telephones remain out of service for extended periods.” Global Tel*Link Comments at 5-6.

Other commenters documented additional factors that militate against rate caps. CCA explains that the average length of stay at each prison informs correctional authorities’ decision as to the level of security features they require, which affects cost of service on a site-by-site level. CCA Comments at 7. CCA further explains that prison location (urban vs. rural) also

³ *Policies and Rules Concerning Operator Service Providers*, Report and Order, 6 FCC Red. 2744, 2752 ¶ 15 (1991) (holding that 47 U.S.C. § 226 requirements for unblocking of payphone “dial-around” calls do not apply to inmate phones), *aff’d*, *Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, 10 FCC Red. 1533, 1534-35 (1995).

in part determines the phone system necessary and the cost of providing service to the facility. *Id.* In addition, Geo Group points out that correctional facilities' age, the number of telephones per inmate, and salary levels for employees at each institution affect the costs of providing inmate services. Geo Group Comments at 10. Geo Group observes that because any rates established by the Commission must be just and reasonable under 47 U.S.C. § 201(b), there "would be a need for hearings in full conformance with Section 205 for each and every telecommunications service provider offering intrastate telecommunications at each and every correctional facility," and any prescriptions for maximum permissible rates would need to be supported by record evidence that such rates are just and reasonable. Geo Group Comments at 12.

Due to this disuniformity among jails and prisons, rate caps remain "blunt instruments" not suited to the inmate telephone industry. T-NETIX/Evercom Comments at 11. Rate caps demonstrably are not "administratively feasible" as the Wright Petitioners suggest, Proposal at 15, but rather would embroil the Commission in micro-managing site-by-site cost analyses for which it is ill-suited. Being neither simple nor well supported, Petitioners' proposed rate caps should not be adopted in any form.

B. The Record Illustrates the Significant Danger That Rate Caps Will Force Carriers From the Inmate Services Market

Commenters have expressed concern that the imposition of rate caps will reduce competition in the market. SPCA fears that small and medium size inmate phone companies would be driven out of business, as they have to maintain the same features and services as big companies servicing large prisons, yet lack the resources that support those services. SPCA Comments at 3. Pay-Tel suggests that Evercom and T-NETIX merged in 2004 to form Securus in order to achieve economies of scale and attempt to improve profitability as the largest inmate service provider in the country. Pay-Tel Comments at 8.

Currently, inmate service providers typically face several competitors vying to win business every time they pursue a contract. Embarq Comments at 4. However, if rates are capped, limiting or eliminating the profits on each contract, fewer companies will be able to achieve the economies of scale necessary to remain in business, and competition will necessarily diminish. Given the exit from the inmate market of the major ILECs over the past several years, this is a market structure result that advances no public policy purpose whatever.

V. MANDATORY DEBIT CARDS ARE UNWARRANTED

Commenters oppose the imposition of a mandatory debit card requirement for inmate calling services.⁴ The chief concern is the important requirement of prison safety: as we explained, “debit cards are the equivalent of cash” and can be extorted or taken from inmates with violence. T-NETIX/Evercom Comments at 14. Likewise, according to CCPS, “[i]ntroducing any such form of currency into a correctional facility that houses hardened criminals and violent felons is just asking for trouble.” CCPS Comments at 9. Corrections Corporation of America similarly raises “the problem of creating a prepaid debit commodity” and warns of the “coercion” likely to result when one inmate covets another’s debit card. CCA Comments at 16-17.⁵

In addition to safety concerns, many commenters focused on the administrative infeasibility of mandated debit cards. Kentucky’s DOC objects to the proposed requirement on the ground that the state’s correctional institutions “are not structured to manage and oversee a

⁴ T-NETIX/Evercom Comments at 13-14; PCS Comments at 6-7; CCPS Comments at 9-10; CCA Comments at 11-20.

⁵ Commenters emphasized that debit-based phone time has the potential to become contraband in prisons and jails, which could compromise security. Geo Group Comments at 15; PCS Comments at 7. As commenters pointed out, in a correctional facility, items of value (such as debit cards) possessed by inmates often become items of dispute or are bartered in a “black market” underground economy. Geo Group Comments at 15; CCPS Comments at 9. Even the use of biometric certification may not decrease this risk – inmates may use violence or threat thereof to force another inmate to authorize payment for the calls. CCPS at 10.

debit calling program,” nor does Kentucky have “mechanisms and policies in place to implement and sustain a debit calling program. Kentucky DOC Comments at 3. Geo Group similarly advocates that the decision whether or not to use debit cards should be made at the facility level. Geo Group Comment at 15. In fact, Geo Group’s position dovetails with the concerns of numerous other commenters who observed that the debit card service requires administrative support for the sale of phone time and the maintenance of an expensive software interface between the calling platform and the commissary provider’s premise. PCS Comments at 5, 7.

In smaller correctional facilities, there often is no in-house commissary system. Implementing a debit service outside of an existing commissary system would require additional, and in some cases, cost-prohibitive expense. *Id.* at 7. In addition, correctional facilities would need to make major investments in hardware and software to offer a prepaid debit calling option. CCA Comments at 18. Even for automated inmate calling systems, the software must be able to limit each prisoner to certain phone numbers in order to avoid the harassment of victims, witnesses, or judges. *Id.*; CCPS Comments at 10-11. The record demonstrates that installing these systems is not universally possible.

CONCLUSION

For all these reasons, the Commission should reject the Wright Petitioners’ Alternative Rulemaking Proposal and should not mandate either rate caps or debit cards for the inmate services industry. If it desires to consider the Proposal in any fashion, the FCC should first invite comment specifically focused on its statutory and policy authority to regulate in this area

consistent with the recognized, legitimate governmental interests of state and local correctional agencies.

Respectfully submitted,

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