

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

**IN THE MATTER OF** )  
 )  
**RATES FOR INTERSTATE INMATE CALLING** ) **WC Docket No. 12-375**  
**SERVICES** )

*“I am enthusiastically in favor of regulations to cap long distance charges in the prison phone industry. Please implement regulations that will allow family members to speak to their incarcerated loved ones at affordable rates. My Son is located in Jessup Md. For me to call that area cost[s] nothing, but to call my son the cost for a call of 15 min. cost[s] me \$11.35 for each call plus an[ ] additional \$6.95 each time I add time for him to call total cost \$56.95 every 6 to 8 weeks. My husband is 85 and I’m 77 both are in bad helth [sic] and must depend on others to take us for a visit. I pray that you will be able to make these much needed changes.”*

Charlotte Bane  
Suitland, Md.  
September 21, 2012, 12:09 a.m.<sup>1</sup>

**COMMENTS OF MICHAEL S. HAMDEN<sup>2</sup>**

Regulating technological communication to promote competitive practices in the public interest is a high calling that affects the lives of virtually all Americans. The absence of such regulation can have an equally important, and sometimes, a devastating impact. In this

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<sup>1</sup> 36,690 Public Comments in Support of the Wright Petition, Prison Policy Initiative, page 452 <http://www.prisonpolicy.org/phones/nov2012petition.pdf> (last accessed 23 March 2013).

<sup>2</sup> Hamden, a private practitioner, has more than 25 years of experience representing prisoners in a variety of matters, including issues pertaining to prison pay telephones. He has previously filed comments regarding practices of the prison pay phone industry, individually and on behalf of North Carolina Prisoner Legal Services, a nonprofit inmate advocacy group. The most recent of those filings (2005 – 2010) are listed at: [http://apps.fcc.gov/ecfs/comment\\_search/execute?proceeding=96-128&applicant=Hamden&lawfirm=&author=&disseminated\\_minDate=01%2F01%2F1996&disseminated\\_maxDate=03%2F23%2F2013&recieved\\_minDate=01%2F01%2F1996&recieved\\_maxDate=03%2F23%2F2013&dateCommentPeriod\\_minDate=&dateCommentPeriod\\_maxDate=&dateReplyComment\\_minDate=&dateReplyComment\\_maxDate=&address.city=&address.state.stateCd=&address.zip=&daNumber=&fileNumber=&bureauIdentificationNumber=&reportNumber=&submissionTypeId=&checkbox\\_exParte=true](http://apps.fcc.gov/ecfs/comment_search/execute?proceeding=96-128&applicant=Hamden&lawfirm=&author=&disseminated_minDate=01%2F01%2F1996&disseminated_maxDate=03%2F23%2F2013&recieved_minDate=01%2F01%2F1996&recieved_maxDate=03%2F23%2F2013&dateCommentPeriod_minDate=&dateCommentPeriod_maxDate=&dateReplyComment_minDate=&dateReplyComment_maxDate=&address.city=&address.state.stateCd=&address.zip=&daNumber=&fileNumber=&bureauIdentificationNumber=&reportNumber=&submissionTypeId=&checkbox_exParte=true)

proceeding, for example, hundreds of thousands of people have been grievously harmed by the sharp practices of Inmate Calling Service Providers that operate in correctional settings.<sup>3</sup>

Unjustifiably high prices, driven by “commissions” and a broad array of fanciful surcharges, have exploited – and too often, have severed – connections between prisoners and their families and friends.

The record in this proceeding is replete with first-hand accounts of mothers who have been unable to afford the cost of telephoning incarcerated loved ones and of children unable to speak regularly with parents in custody of the state. The same record contains accounts of family members who agonize over the choice between meeting monthly expenses and struggling to pay the extortionate rates that result from unconscionable, monopolistic service contracts that generate extraordinary profits for both of the contracting parties, service providers and governmental agencies. Consumers are not parties to such negotiations. Because the contracts are exclusive, the interests of consumers can be disregarded with impunity, and for more than 20 years, they have been.

These practices are not ameliorated by ordinary market forces because competition exists only as among service providers who vie to offer the highest possible “commission” in exchange for exclusive contracts. The consumer is powerless to choose telephone services based on the quality of the service, the rates and surcharges it imposes, or the responsiveness of a particular service provider to customers. Instead, consumers are relegated to the exclusive carrier selected by the authority that governs the correctional facility or system; selections that are based on the most favorable terms the governing authority could negotiate. Since “commissions” are derived

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<sup>3</sup> See, e.g., *36,690 Public Comments in Support of the Wright Petition*, Prison Policy Initiative, page 452 <http://www.prisonpolicy.org/phones/nov2012petition.pdf> (last accessed 23 March 2013). See also, *Petition: Lower the Cost of Calls from Prison* at [www.thepetitionsite.com/3/lower-the-cost-of-calls-from-prison](http://www.thepetitionsite.com/3/lower-the-cost-of-calls-from-prison) (last accessed 23 March 2013)(1,311 signatures).

from revenue, competitive prices are rarely a concern for either the service provider or the governmental agency.<sup>4</sup>

This lamentable construct has predictably perverse consequences, not the least of which is that it is self-perpetuating. Ever escalating “commissions” and increasingly imaginative surcharges relentlessly drive the cost of calls higher. Indeed, the impact extends to the general public and to lawyers who are tasked with the responsibility to arrange bail or defend their clients from criminal charges that can result in, or extend, incarceration. As the record shows, many attorneys simply cannot afford to communicate with clients who are in custody. As a result, people are sometimes needlessly deprived of their liberty while the public bears the cost of their incarceration.

These are clear moral imperatives for the FCC to proscribe extortionate prison phone rates and to prohibit exploitive and unjustifiable surcharges. And the FCC has plenary legal authority to do so.

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<sup>4</sup> “For example, when Louisiana issued an RFP [request for proposals] for prison phone services in 2001, it specified that ‘[t]he maximum points, sixty (60) ... shall be awarded to the bidder who bids the highest percentage of compensation ...,’ and that ‘[t]he State desires that the bidder’s compensation percentages ... be as high as possible.’”

“When the Alaska Dept. of Corrections (DOC) issued an RFP in 2007, bidders were rated on a point system with 60% of the evaluation points assigned to cost. The RFP explicitly stated that ‘[t]he cost proposal providing the largest percentage of generated revenues ... to the state will receive the maximum number of points allocated to cost.’”

And, “[a]ccording to a March 13, 2007 memo from the [Alabama] Department of Finance, the RFP “proposed to award what amounts to an ‘exclusive franchise’ to the successful bidder based on the highest commission rate paid to the State on revenues received from users of the [prison] pay phones.”

John E. Dannenberg, *Nationwide PLN Survey Examines Prison Phone Contracts, Kickbacks*, accessible at [https://www.prisonlegalnews.org/\(X\(1\)S\(mkdthd55iqen34is5imuh4bz\)\)/displayArticle.aspx?articleid=23083&AspxAutoDetectCookieSupport=1](https://www.prisonlegalnews.org/(X(1)S(mkdthd55iqen34is5imuh4bz))/displayArticle.aspx?articleid=23083&AspxAutoDetectCookieSupport=1)

## I. SCOPE OF THESE COMMENTS

In the Notice of Proposed Rulemaking released on 28 December 2012, the FCC seeks renewed comment on alternative proposals put forward by the Petitioners *Martha Wright, et al.*, for reform of inmate calling service (“ICS”) in general, and for rate caps applicable to interstate, interexchange phone calls. The Commission also seeks comment on a number of issues related to the Petitioners’ proposals and to ICS in general. “*Rates for Interstate Inmate Calling Services*,” 78 Fed. Reg. No. 14, pp. 4369 – 4376 (22 January 2013)(*hereafter*, “Notice”).

## II. THE FCC HAS JURISDICTION AND THE LEGAL AUTHORITY TO RESOLVE ALL OF THESE ISSUES IN THE PUBLIC INTEREST

It is clear that the FCC has jurisdiction over this matter and plenary legal authority to impose regulations addressing the interests of all the parties to this dispute in a way that serves the public interest.

### A. Interstate Interexchange Rates (Notice at ¶ 49)

Title 47 U.S.C. Sections 276 and 201 of the Act empower the Commission with a mandate to (1) “establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone,” § 276(b)(1)(A), and to (2) ensure that “[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable” § 201(b).

The statutory language is clear and broad. The Commission is charged with the responsibility of balancing the competing interests of ICS consumers, who are entitled to just and reasonable charges and practices, with ICS providers, who are entitled to fair compensation. *See, e.g.*, Notice at ¶ 16.

That delegation of authority is consonant with other statutes granting the Commission expansive authority. *See, e.g.*, 47 U.S.C. § 151 (conferring upon the Commission broad regulatory jurisdiction). The Commission’s duties and powers are, by definition, vast: it “may perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions.” 47 U.S.C. § 154(i); *accord*, 47 U.S.C. § 303(r)(empowering the Commission to make “such rules and regulations and prescribe such restrictions and conditions . . . as may be necessary to carry out the provisions of this Act”).

Existing law takes these broad powers and fleshes them out, answering the narrower questions pertinent to the matters at hand. Specifically, the Commission has plenary authority to regulate (1) “commissions” on interstate and intrastate ICS calls, and (2) the ancillary surcharges that ICS providers tack-on to such calls.

### **B. Intrastate Rates (Notice at ¶¶ 50 & 52)**

Section 276 of the Telecom Act contains a congressional grant of jurisdiction over ICS providers. *See* 47 U.S.C. § 276(d)(defining “payphone service” to include inmate telephone service). Section 276 also extends the Commission’s authority over intrastate rates, in addition to interstate rates. *See, e.g., Illinois Pub. Telecommunications Ass’n v. FCC*, 117 F.3d 555, 562 (D.C. Cir. 1997), *cert. denied sub nom. Virginia State Corp. Comm’n v. FCC*, 423 U.S. 1046 (1998)(affirming Commission’s deregulation of local payphone rates and rejecting argument that Section 276’s reference to “compensation” implied lack of jurisdiction over “rates”).

**C. Location Rents – “Commissions”  
(Notice at ¶¶ 37 & 38)**

The FCC has previously determined that facility commissions are not a part of legitimate costs. *See Order on Remand & Notice of Proposed Rulemaking*, FCC 02-39, ¶ 15, p. 8, and ¶ 38, p. 15 (CC Docket No. 96-128, 21 February 2002). Rather, commissions are negotiable allocations of profits between the correctional facility (or “site locations”) and the ICS provider. *Id. See also, Second Report & Order*, FCC 97-371 (CC Docket No. 96-128, 9 October 1999); *Third Report & Order*, FCC 99-7, ¶ 156 (CC Docket No. 96-128, 4 February 1999).

The Commission has previously declared that it has authority to “regulate the contractual or other arrangements between common carriers and other entities, even those entities that are generally not subject to Commission regulation.” *In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets*, Report and Order, FCC 08-87, ¶ 15 & n.48 (Mar. 21, 2008). The Commission based its decision on opinion of the Court of Appeals for the District of Columbia in *Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999). In that case, the court determined that the Commission did not exceed its authority in promulgating a rule that prevented domestic carriers from paying more than certain, settled rates for termination services provided by foreign telecommunications companies in order to complete long-distance calls. The court explained that the Commission “does not exceed its authority simply because a regulatory action has extraterritorial consequences. . . . Indeed, no canon of administrative law requires us to view the regulatory scope of agency actions in terms of their practical or even foreseeable effects.” *Id.* at 1230.

Thus, under federal statutes, case law, and regulatory decisions, the Commission has well recognized, broad jurisdiction and authority over contractual arrangements between ICS providers and correctional facilities which extends to “commissions.”

## **D. Surcharges (Notice ¶ 47)**

An emerging and growing cause of the exorbitant cost of ICS service is the arbitrary imposition of extraneous charges that have little relation to actual costs. These fees come in many guises, many of them are deceptive and misleading, and nearly all of them are unnecessary or exorbitant. They have dubious names like “convenience fee,” “bill statement fee,” “account set-up fee,” “wireless fee,” “connection fee,” “government regulatory fee,” “tax,” and “regulatory carrier cost recovery fee,” to name just a few. Some of these are one-time charges and others are recurring, but they have in common the effect of unjustifiably increasing calling costs without adding value, and at the expense of consumers. And these are generally revenues that are not shared with correctional facilities through “commissions,” but are retained by ICS providers to pad profit margins.<sup>5</sup>

One particularly pernicious category of subterfuge that drives up the excessive cost of prisoner-initiated phone calls is the ICS practice of charging fees to establish prepaid accounts, and to process customers payments.<sup>6</sup> These “tack-on” charges dramatically increase the cost of communicating with incarcerated loved ones, but they do not appear as a part of the cost for the

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<sup>5</sup> One industry official has publicly identified the elimination or reduction of these superfluous charges as a means to preserve “commission” revenue and to avoid FCC regulation. The CEO of NCIC, which provides telecom services to inmate facilities, has written an open letter to sheriffs and jail administrators in response to the Notice. See Bill Pope, *The FCC is Taking Steps to Regulate Rates and Fees Charged by Inmate Telephone Providers*, LinkedIn.com (Mar. 8., 2013), <http://www.linkedin.com/groups/FCC-is-taking-steps-regulate-3400924.S.220528568?view=&gid=3400http://www.linkedin.com/groups/FCC-is-taking-steps-regulate-3400924.S.220528568?view=&gid=3400924&type=member&item=220528568> (Some “providers are also adding on Bill Statement Fees, Wireless Fees and other convenience fees that are as high as \$3.95 per call”).

<sup>6</sup> Reported examples include Global Tel\*Link’s practices of charging a \$4.75 service fee for each \$25 credit card payment to a prepaid phone account; and of charging \$5 to close an account and withdraw any remaining balance. Another example is Securus Technologies’ practice of charging processing fees of up to \$6.95 for credit or debit card payments made by phone or online (in addition to a \$2.99 monthly “bill statement fee”). See John E. Dannenberg, *Nationwide PLN Survey Examines Prison Phone Contracts Kickbacks*, Prison Legal News, Apr. 2011, at 6, accessible at: [https://www.prisonlegalnews.org/\(X\(1\)S\(mkdthd55iqen34is5imuh4bz\)\)/displayArticle.aspx?articleid=23083&AspxAutoDetectCookieSupport=1](https://www.prisonlegalnews.org/(X(1)S(mkdthd55iqen34is5imuh4bz))/displayArticle.aspx?articleid=23083&AspxAutoDetectCookieSupport=1)

call reflected on a telephone bill. Such additional provider-imposed charges should be prohibited. Additionally, any payment fees charged by third parties (*e.g.*, Western Union and other payment processors) must be passed through to families at cost with no mark-up or profit for prisoner phone service providers.<sup>7</sup>

The FCC's legal authority to regulate or prohibit these ancillary charges is as certain and expansive as it is for other aspects of ICS practices. If the FCC establishes of a regulatory scheme which ensures that "all payphone service providers [including inmate phone service providers] are fairly compensated for each and every completed intrastate and interstate call," additional, extraneous surcharges would, by definition, run afoul of the Commission's charge to ensure that "[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable" *Cf.* Title 47 U.S.C. § 276(b)(1)(A) with § 201(b).

Moreover, with respect to this and other aspects of the Commission's proper role, the scope of the Commission's authority should be broadly construed. 47 U.S.C. § 151. *See also, e.g.*, 47 U.S.C. § 154(i)(Commission authorized to issue such orders, promulgate such regulations, and take such actions as necessary to effectuate purposes of Act). *Accord*, 47 U.S.C. § 303(r); 47 U.S.C. § 201(b)(regulation in public interest). *See also, e.g., In the Matter of Promotion of Competitive Networks in Local Telecommunications Markets*, Report and Order, FCC 08-87, ¶ 15 & n.48 (Mar. 21, 2008)(authority to regulate contractual arrangements between common carriers and other entities not ordinarily subject to FCC regulation); *Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999)(Commission's authority not limited by "extra-

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<sup>7</sup> This issue was recently addressed in New Mexico, where the state's Public Regulation Commission promulgated a new rule capping the convenience charges for funding prepaid accounts at \$3.00, which in itself seems excessive. *See* Press Release, *N.M. Pub. Regulation Comm'n, New Mexico Families Benefit Under New Prison Phone Regulations* (Nov. 9, 2012). The abuse, however, is happening in all 50 states. It is but one more example of why only comprehensive FCC action will lead to real ICS reform nationwide.

jurisdictional” effects of an otherwise proper exercise of regulatory authority); and *FCC v. Midwest Video Corp.*, 440 U.S. 689, 706 (1979)(regulation to achieve purpose of the Act is within the power of the Commission). And the Supreme Court has long recognized that the Commission’s authority encompasses the regulation of issues and matters “reasonably ancillary to the effective performance of its regulatory duties.” *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968); *see also, FCC v. Midwest Video Corp.*, 440 U.S. 689, 706 (1979) (approving Commission’s regulatory actions where such actions are “necessary to ensure the achievement of the Commission’s statutory responsibilities”).

### **III. ONLY THE FCC CAN ESTABLISH A COMPREHENSIVE REGULATORY SCHEME THAT ENSURES FAIR COMPENSATION AT JUST AND REASONABLE RATES**

The overwhelming technological complexity of the prisoner telecommunications industry, a morass of almost incomprehensible industry terms and acronyms, and the monopolistic character of ICS contracts are all beyond the ken of practically all prisoners and their families.<sup>8</sup>

State regulatory commissions have expertise and may be familiar with ICS issues that arise in their jurisdictions, but they have neither the responsibility nor the capacity to regulate a nationwide industry. Widely divergent regulations, items of call billing that are not tariffed, and broad discrepancies in calling rates that can only be characterized as arbitrary, all demonstrate that regulation at the state level has been ineffectual. Federal regulation is required because coherent and effective policies simply cannot be successfully developed and implemented by 50

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<sup>8</sup> According to one study, for example, 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).

independent state utilities commissions. Thus, oversight of the ICS industry by, and guidance from the Federal Communications Commission would greatly benefit these regulatory officials.<sup>9</sup>

**IV. THE COMMISSION SHOULD ADOPT A COMPREHENSIVE REGULATORY REGIMEN  
THAT ELIMINATES PREDATORY ICS PRACTICES WHILE  
ENSURING FAIR COMPENSATION AT JUST AND REASONABLE RATES**

Despite the best regulatory efforts of state utilities commissions and, notwithstanding reasoned, incremental efforts by the FCC, the prison phone service industry has been permitted to exploit the friends and families of prisoners shamelessly. A nationwide industry that wholly lacks the kind of competition that can protect consumers, widely divergent ICS practices that all work to the disadvantage of consumers and the public, and the inability of state regulators to address industry abuses on a comprehensive basis all point to the need for a federal approach to regulation of ICS Providers. “[T]he record in this proceeding strongly suggests that any solution to the problem of high rates for inmates must embrace the states.” Order on Remand & NPRM at ¶ 29 (96-128)(12 February 2002).

**A. Competing Proposals Reveal Common Ground**

The December 2012 Notice outlines two significant proposals for the resolution of these issues. The *Wright* petitioners offer an alternative proposal to ““establish a benchmark rate for domestic interstate interexchange inmate debit calling service of \$0.20 per minute and a benchmark rate for domestic interstate interexchange inmate collect calling service of \$0.25 per minute, with no setup or other per-call charge.”” Notice at ¶ 17.

The ICS Provider proposal is based on the FCC’s “marginal location analysis,” which is designed to “cover costs and provide a reasonable return at a break-even location with no

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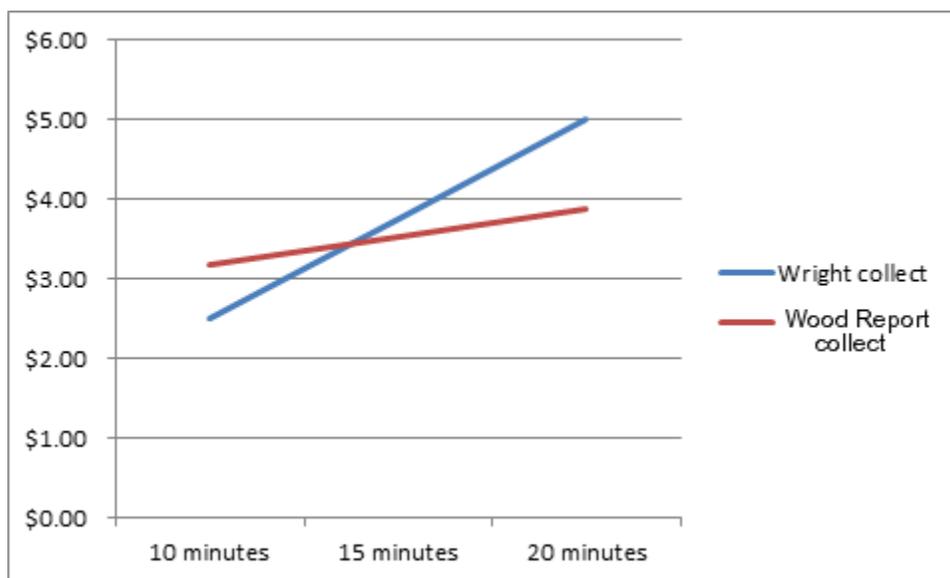
<sup>9</sup> See, e.g., The National Association of State Utility Consumer Advocates Resolution 2006 – 2 (2006), urging the FCC and Congress to reform inmate telephone rates by ensuring just and reasonable calling rates, discouraging or reducing “commissions,” encouraging debit calls, and requiring just and reasonable rates on collect calls.

commission.” See, Don J. Wood, *Inmate Calling Services: Interstate Call Cost Study* (15 Aug. 2008)(*hereafter*, Wood Report). The Wood Report was filed on behalf of seven members of the ICS industry.

When the Wood Report cost determinations are compared with the “benchmark rates” proposed by the *Wright* Alternative Petition, a clear basis for Commission action emerges. For collect calls, the data show that at 14 minutes, the industry cost data and the *Wright* rate proposal are roughly equal (\$3.47, as compared to \$3.50). For longer duration calls, the *Wright* proposed rate would actually exceed the industry proposal. See Table 1 and Figure 1. As Figure 1 demonstrates, due to the larger per-minute component of the *Wright* proposed rate, the difference between the ICS industry cost-showing and the *Wright* proposal diverge markedly as call length approaches 20 minutes.

<b>Table 1: Collect Calls</b>					
<b>Type of Call</b>	<b>Fixed Cost</b>	<b>Per Minute</b>	<b>10 Minutes</b>	<b>15 Minutes</b>	<b>20 Minutes</b>
<i>Wright</i> Collect Rate		\$.25	\$2.50	\$3.75	\$5.00
ICS Collect Call	\$2.49	\$.07	\$3.19	\$3.54	\$3.89

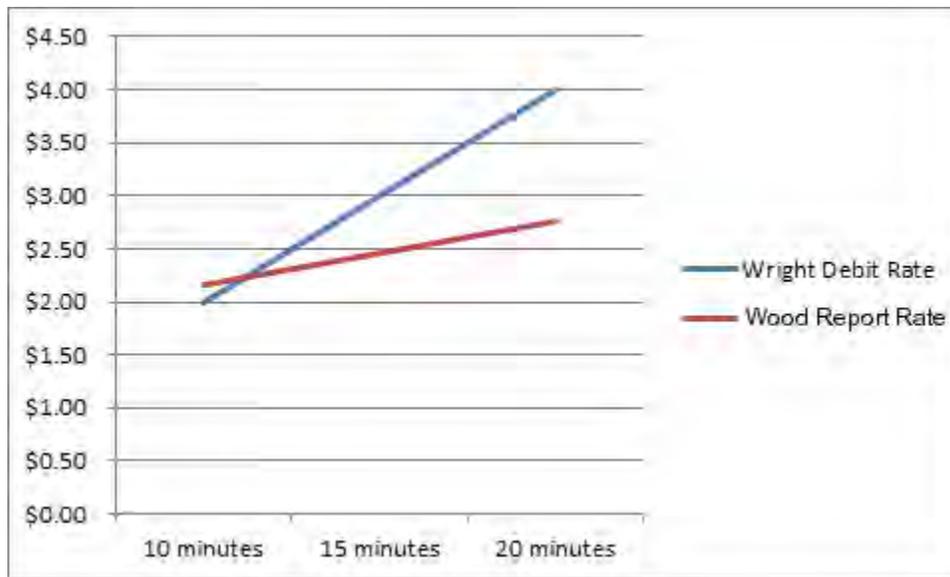
**Figure 1**



The data show a similar pattern for debit calls. At about 11 minutes, the Wood Report cost data and the *Wright* rate proposal are roughly equal (\$2.22, as compared to \$2.20), and for longer duration calls, the *Wright* proposed rate would actually exceed the cost proposed by the Wood Report. See Table 2 and Figure 2. As Figure 2 demonstrates, due to the larger per minute component of the *Wright* proposed rate, the difference between the ICS industry proposal and the *Wright* rate increases markedly as call lengths approach 17 minutes.

<b>Type of Call</b>	<b>Fixed Cost</b>	<b>Per Minute</b>	<b>10 Minutes</b>	<b>15 Minutes</b>	<b>20 Minutes</b>
<i>Wright</i> Debit Rate <sup>1</sup>		\$.20	\$2.00	\$3.00	\$4.00
ICS Debit Call <sup>2</sup>	\$1.56	\$.06	\$2.16	\$2.46	\$2.76

**Figure 2**



As has been convincingly demonstrated by the Petitioners, the rates shown above are well below the current interstate long distance rates that are being charged for prisoner phone calls in every state in the nation. In other words, the ICS industry (including some of the largest and

most dominant providers) has submitted documentation to the FCC establishing that ICS can provide services at substantially lower rates than they are presently charging. Moreover, the data those providers submitted show that, for collect calls of about 14 minutes or more in duration, they can provide services at lower rates than the *Wright* Petitioners have demanded.

To put it differently, the Wood Report demonstrates that rates very near those proposed by the *Wright* Petitioners yield fair compensation, even without the extortionate rates and the broad array of extraneous surcharges that are currently borne by those who pay the cost of prisoner-initiated phone calls.<sup>10</sup>

In short, it seems there is considerable common ground upon which to forge a comprehensive resolution to the otherwise intractable injustice of the existing situation, which may satisfy many interested parties. But to achieve workable benchmark rates that are “fair and reasonable,” and which fairly compensate ICS providers for “each and every call,” any benchmark must apply (with such adjustments as may be necessary and appropriate) to both interstate and intrastate calls. And new technologies and practices (*e.g.*, miscellaneous surcharges) render any formulae to address one, but not the other, or to leave unscrupulous billing practices unattended would be untenable from the outset. Rate caps alone simply are not sufficient to curb the abuses that have developed in the ICS industry.

### **B. A Comprehensive Regulatory Regimen Will Ensure Fair Compensation at Just and Reasonable Rates**

The FCC should establish: (1) a comprehensive, fair rate (derived from the lower rates outlined in the Wood Report (“Inmate Calling Services - Interstate Call Cost Study”) for (2) all

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<sup>10</sup> These cost data were submitted some time ago, but in today’s technological environment, these costs may now be less. In an industry which relies heavily on IP technology, the cost difference between local and long distance calls is expected to be diminishing. The only difference one would expect in costs for the two types of calls is a difference in transmission costs, but these cost differences have been declining rapidly and may now be infinitesimal or non-existent.

intra-state and interstate (3) prisoner collect, pre-paid, and debit telephone calls that (4) covers legitimate costs, (5) provides a reasonable rate of return to ICS providers, (6) eliminates “commissions,” (7) forecloses surcharges and alternative means to unjustifiably inflate the cost of prisoner phone calls, and (8) leaves it to state public utilities commissions to address requested cost adjustments.

As discussed above, the Wood Report sets out benchmark rates for both collect and debit calls that closely comport with the rates proposed by the *Wright* petitioners. Such benchmark rates should be established for both intra- and interstate prisoner calls. These rates cover all legitimate aspects of cost, and provide fair compensation for ICS providers.

To promote competition and to ensure just and reasonable rates, the broadest possible range of calling options should be encouraged, including collect, pre-paid, and debit telephone calls.

“Commissions” are simply a means of generating windfall profits (beyond profits generated on calls) and a revenue-generating mechanism for governmental authorities. But they are largely responsible for already exorbitant and ever increasing rates that exploit prisoners and their families. “Commissions” must be prohibited.

Similarly, surcharges and alternative means to unjustifiably drive-up the cost of prisoner calls must be eliminated. ICS should not be permitted to charge fees that have not been tariffed. And charges billed for the services of third parties (such as Western Union and other payment processors) should be limited to actual costs with no mark-up or profit for ICS providers.

Finally, once a fair rate is established, the FCC should leave to state utilities commissions any purported need for cost increases that arise from the provision of service in a particular state. As cost structures may vary in some limited locations and circumstances, ICS providers should

be afforded the opportunity to petition a particular state public utilities commission to request a corresponding rate adjustment.

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

### CONCLUSION

As observed by the Commission in the Notice, “[a]fter the ICS Provider Proposal was filed, a consensus appeared to be forming about how best to address inmate calling.” Notice at ¶ 14. Indeed, a number of organizations and individuals have explicitly endorsed the proposal first outlined in comments submitted on 28 October 2008 and recapitulated above.<sup>11</sup>

For over 20 years, the ICS industry has been permitted to exploit the friends and families of prisoners shamelessly, despite the best regulatory efforts of state utilities commissions and notwithstanding reasoned, incremental efforts by the FCC. These regulatory measures have proven to be ineffectual.

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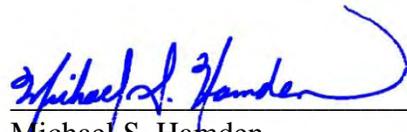
<sup>11</sup> See, *Comments of Michael S. Hamden*, October 28, 2008 (96-128), accessible at <http://apps.fcc.gov/ecfs/document/view?id=6520182602> (last accessed 23 March 2013). Among the organizations which have embraced this approach are the American Bar Association (representing some 400,000 lawyers), the National Association of State Utilities Consumer Advocates (representing members in 40 states), the National Legal Aid and Defender Association (representing some 700 programs and 1200 lawyers), and the National Association of Criminal Defense Lawyers (representing 12,000 members and 40,000 affiliate members). The proposal has also been supported by the D.C. Office of the People's Counsel, the executive director of Vera Institute's Commission on Safety and Abuse in America's Prisons, the Brennan Center for Justice, Ad Hoc Coalition for the Right to Communicate, the Public Defender for the Eleventh Judicial District of Florida (whose 180 attorneys defend about 100,000 indigent clients each year), and perhaps as many as two dozen private citizens and consumers.

Immediate action is urgently needed and long overdue. The Federal Communication

Commission should immediately act to:

- (1) Establish a single fair rate for *all* intra-state and interstate prisoner phone calls by while allowing legitimate costs and fair compensation at just and reasonable rates, irrespective of the origination of the call.
- (2) Foreclose all opportunities to circumvent the established fair rate by prohibiting “commissions,” surcharges, and additional fees imposed by prison phone service providers or their subsidiaries by ensuring that third party payment fees are passed through to families at cost with no mark-up or profit for ICS providers.
- (3) Require calling options, including pre-paid, debit, and collect calls consistent with sound correctional practices and security concerns; and
- (4) Leave it to state utilities commissions to address any purported need for cost increases associated with the provision of services to a particular locale.

Respectfully submitted this 25<sup>th</sup> day of March, 2013.



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