PRISON Legal News

VOL. 22 No. 4
ISSN 1075-7678

Dedicated to Protecting Human Rights

April 2011

Nationwide *PLN* Survey Examines Prison Phone Contracts, Kickbacks

by John E. Dannenberg

An exhaustive analysis of prison phone contracts nationwide has revealed that with only limited exceptions, telephone service providers offer lucrative kickbacks (politely termed "commissions") to state contracting agencies – *amounting on average to 42% of gross revenues from prisoners' phone calls* – in order to obtain exclusive, monopolistic contracts for prison phone services.

These contracts are priced not only to unjustly enrich the telephone companies by charging much higher rates than those paid by the general public, but are further inflated to cover the commission payments, which suck over $152 million per year out of the pockets of prisoners' families – who are the overwhelming recipients of prison phone calls. Averaging a 42% kickback nationwide, this indicates that the phone market in state prison systems is worth more than an estimated $362 million annually in gross revenue.

In a research task never before accomplished, *Prison Legal News*, using public records laws, secured prison phone contract information from all 50 states (compiled in 2008-2009 and representing data from 2007-2008). The initial survey was conducted by *PLN* contributing writer Mike Rigby, with follow-up research by *PLN* associate editor Alex Friedmann.

The phone contracts were reviewed to determine the service provider; the kickback percentage; the annual dollar amount of the kickbacks; and the rates charged for local calls, intrastate calls (within a state based on calls from one Local Access and Transport Area to another, known as interLATA), and interstate calls (long distance between states). To simplify this survey, only collect call and daytime rates were analyzed.

Around 30 states allow discounted debit and/or prepaid collect calls, which provide lower prison phone rates (much lower in some cases). However, since other states don't offer such options and not all prisoners or their families have access to debit or prepaid accounts, only collect calls – which are available in all prison systems except Iowa's – were compared. Also, while telephone companies sometimes provide reduced rates for evening and nighttime calls, many prisoners don't have the luxury of scheduling phone calls during those time periods.

Lastly, it should be noted that more recent phone rates may now be in effect due to new contract awards or renewals, and while data was obtained from all 50 states, it was not complete for each category. See the chart accompanying this article for a breakdown of the data obtained.

PLN has previously reported on the egregious nature of exorbitant prison phone rates, notably in our January 2007 cover story, "Ex-Communication: Competition and Collusion in the U.S. Prison Telephone Industry," by University of Michigan professor Steven Jackson.

How Are Phone Rates Regulated?

Domestic phone calls are generally divided into three categories: local, intrastate and interstate. The rates charged for these calls depend on several factors and are regulated by different authorities. Local calls are usually flat-rate within a small area around the call's originating location; e.g., within the same city.

Local and intrastate calls are often regulated by state public utility or service commissions, which set rate caps. These caps are negotiated to allow phone companies to recover capital costs in a reasonable time frame while also satisfying requirements levied by the state. The latter include subsidizing low-income phone users, providing emergency communications for state agencies, and providing required phone coverage (such as emergency-reporting phone booths along major highways). Obviously, some of these state-mandated requirements are not in and of themselves profitable, so negotiation of rate structures includes recouping these otherwise nonrecoverable costs.

At the interstate level, phone com-

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PLN is indexed by the *Alternative Press Index, Criminal Justice Periodicals Index* and the *Department of Justice Index*.

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panies are also regulated by the Federal Communications Commission (FCC). The FCC oversees rate structures across state lines, provides for an orderly integration of smaller telephone companies into the national phone network, and is responsible for implementing the Telecommunications Act of 1996.

These regulatory agencies are necessary to prevent one large company from forming a monopoly and price gouging the public with unreasonably high phone rates. However, such monopolies are only prohibited in the non-prison market. Prison phone service providers are free to bid on contracts at the maximum rates allowed by regulatory agencies, and upon winning such bids are effectively granted a monopoly on phone services within a given prison or jail system.

The Prison Phone Bidding Process

Prisons and jails present unique cost factors to telephone service providers. Such factors include physically secure phones (i.e., no readily removable parts); extensive monitoring and recording capabilities, including the ability to archive phone calls for later review by investigators; and difficult access to the prison-based equipment for servicing.

Some of these requirements, especially the monitoring, recording and archiving aspects, are not unique to prisons and are routinely provided to corporate America's call and customer service centers. Naturally, telephone companies should be allowed to build into their charged rate structure the recovery of capital and operating costs for such expenses.

But that simple logic does not control the cost of prison phone rates. What does control the rates? Pure, unabated greed by both the phone companies and the contracting agencies (e.g., state prison systems, county jails and private prison companies).

The bidding process for prison phone contracts typically begins with a request for proposal (RFP) – a document that outlines the number of phones, locations and technical performance standards required by the contracting agency. The latter include minimum "down time" specifications, frequency of servicing, estimated usage, and (in most but not all cases) audit provisions. From the RFP, telephone companies can determine their cost exposure when making bids. But that is not what guides their bid price or determines the winning bidder in most cases.

With very few exceptions, prison phone contracts contain kickback provisions whereby the service provider agrees to pay "commissions" to the contracting agency based on a percentage of the gross revenue generated by prisoners' phone calls. These kickbacks are not insignificant. At more than $152 million per year nationwide for state prison systems alone, the commissions dwarf all other considerations and are a controlling factor when awarding prison phone contracts.

For example, when Louisiana issued an RFP 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." That is, the most important evaluation criterion was the commission rate.

Prison phone service kickbacks average 42% nationwide among states that accept commissions, and in some cases reach 60% or more. Put into simple terms, up to 60% of what prisoners' families pay to receive phone calls from their incarcerated loved ones has absolutely nothing to do with the cost of the phone service provided. The kickbacks are not controlled by state or federal regulatory agencies, and the only limit on the maximum rate for prison phone calls is the top rate permitted by such agencies or by the phone service contract itself.

It should come as no surprise, then, that many prison phone contracts result in very high rates, with enough profit left over after recouping all of the phone company's costs to permit up to 60% of the gross revenue to be paid to the contracting agency. The kickback rates are listed in the chart accompanying this article, as are the dollar amounts of the commissions received in 2007-2008.

Some prison officials have denied that kickbacks influence their decision when contracting for prison phone services. "There are complaints due to the rates,"

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said Nevada DOC spokesman Greg Smith in 2008, after the DOC entered into a new phone contract with Embarq. "A lot of families do complain that it's expensive, but it's an intricate system, it's not cheap.... We didn't negotiate this [contract] to create more revenue for us."

However, when responding to the RFP for Nevada's prison phone contract, Embarq had presented three options: base rates, lower rates and higher rates. The lower rate option included a smaller kickback (41.5%) and lower guaranteed minimum commission ($1.36 million per year). Instead, the Nevada DOC selected the company's higher rate option, which provided a 54.2% kickback and guaranteed minimum annual commission payment of $2.4 million, even though this resulted in higher local and interstate phone rates for prisoners and their families.

So despite protestations by prison officials, sometimes they do in fact negotiate contracts specifically to create more revenue. This was explicitly acknowledged in an RFP for prison phone services in Alabama. According to a March 13, 2007 memo from the state's 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." It is likely no coincidence that Alabama has one of the highest commission rates – 61.5%.

The History Behind Kickback Commissions

The prison phone service market remained an exclusive monopoly of AT&T until 1984, when it was thrown wide open with AT&T's breakup under a settlement in an antitrust action brought by the U.S. Department of Justice. In 1989, MCI introduced its "Maximum Security" service, part of a larger concerted push into the government and institutional markets. By 1995 MCI held monopoly or near-monopoly contracts for prison phone services in California, Ohio, Connecticut, Virginia, Wisconsin, Missouri and Kentucky (MCI merged with WorldCom in 1998).

Other companies had their own "locked-in" contracts. The reorganized AT&T Prisoner Services Division managed to hold on to prison phone contracts in New Jersey, Pennsylvania, Michigan, New Mexico, Mississippi and Washington, followed by phone companies GTE (in Washington DC, Hawaii, Indiana and parts of Michigan); Sprint (sharing Michigan and also in Nevada); and US West (in New Mexico, Idaho, Oregon, South Dakota and Nebraska).

By the mid-1990s, this new competition had driven prison phone rates – spurred by higher kickback commissions to win contracts – to new heights. According to an American Correctional Association (ACA) survey published in 1995, nearly 90% of prison and jail systems nationwide received a portion of the profits derived from calls placed by prisoners, ranging from 10-55% of gross revenues.

For states struggling to keep up with the costs of exploding prison populations, these kickback payments represented a welcome and multi-million dollar source of income. According to the 1995 ACA survey, based on self-reports, Ohio was making $21 million a year in prison phone commissions (more recently it took in only $14.5 million based on *PLN*'s research), while New York brought in $15 million, California $9 million (more recently $19.5 million in 2007-2008), Florida $8.2 million (more recently $3 million), and Michigan $7.5 million (more recently $10.2 million before phasing out kickbacks in August 2008).

According to the ACA, 32 state prison systems plus 24 city and county jails – a fraction of the national total – reported phone commission payments in 1994 totaling over $100 million. The more recent total was $152.44 million from 43 of the 44 states that received prison phone revenue at the time of *PLN*'s survey (Arizona claimed it did not track commission payments).

Since the survey, one additional state no longer accepts prison phone kickbacks: California. Thus, the nationwide total for commission revenue has since decreased by $19.5 million per year based on California's 2007-2008 commission income (the state's kickback was phased out from a flat $26 million prior to August 2007 to $19.5 million in 2007-2008, $13 million in 2008-2009, $6.5 million in 2009-2010 and zero in FY 2010-2011).

Notably, however, the kickback commission data reported by state prison systems still vastly undervalues the prison phone service market, as it does not include jails, the federal prison system, private prisons or immigration detention facilities.

By 2000, the commission rates for prison phone contracts had soared to new heights, with California at 44%, Georgia 46%, South Carolina 48%, Illinois, Ohio and Pennsylvania at 50%, Indiana 53%, Florida 57%, and a national high in New York at 60% (reduced in 2001 to 57.5%). Ten states were raking in $10 million or more per year from prisoner calls, with California, New York and the federal Bureau of Prisons leading the way with over $20 million each in annual kickbacks. Such patterns were broadly if unevenly replicated at the local level, with city and county jails entering into similar commission-based phone contracts.

According to *PLN*'s research, as of 2008 more than half of the states that reported their kickback percentage were receiving commissions of at least 40%, including thirteen that reaped 50% or more. The Idaho DOC uses a commission structure that includes a per-call kickback ranging from $1.75 per collect call to $2.25 per debit call, which is "not affected by ... the length of call or whether the call is local or long distance." This flat per-call commission translates to an effective kickback rate of 10.5% to 66.1% based on a 15-minute call. Several states have increased their commission rates in recent years, including Vermont and Wyoming.

The emphasis on kickback commissions correlates to a lack of competition in the prison phone industry. If competition truly existed, prison phone rates would gravitate towards a relatively consistent level as phone companies vie with competitors to obtain contracts. Businesses in the non-prison market must be price competitive, which benefits consumers. But that hasn't happened in the prison phone market; the phone rates in the chart accompanying this article are enormously varied across the national map, with high rates in some states and lower rates in others.

This is because prison phone companies don't "compete" in the usual sense. They don't have to offer lower phone rates to match those of their competitors, as prison phone contracts typically are based on the highest commission paid, not the lowest phone rates. Free market competition is thus largely absent in the prison phone industry, at least from the perspective of the consumer – mainly prisoners' families.

As stated in an efficiency analysis of prison phone contracts published in the Federal Communications Law Journal in 2002, "In the prison context, the state contracts with a private entity, and the private entity provides services to the prisoners and also to the state. ... Due to the perverse financial incentives and the political climate surrounding prisons and prisoners, however, neither the state nor the private entity acts in the best interests of the consumers in particular or of society in general."

The Arbitrary Nature of Prison Phone Rates

Referring to the accompanying chart, even a casual examination of prison phone rates nationwide reveals a patchwork of charges that simply cannot be correlated to providing the same basic telephone service. In other words, the rates are arbitrary.

Some local calls are flat rate (typically for 15 to 20 minutes); others have a connection charge plus a per-minute fee. Local collect calls range from as low as a flat rate of $.50 in Florida, North Dakota and South Carolina to $2.75 + $.23/minute in Colorado ($6.20 for a 15-minute local collect call). Alaska is unique in that prisoners can make local calls for free.

Intrastate rates vary from $.048/minute in New York to $3.95 + $.69/minute in Oregon ($.72 versus $14.30 for a 15-minute collect call, respectively).

Interstate rates are as reasonable as New York's $.048/minute with no connection fee, or Nebraska's $.70 + $.05/minute, but most crowd the high end of the scale with a connection charge of $3.00 or more plus per-minute rates up to $.89 – resulting in $10 to $17 for a 15-minute collect call (Washington has the highest interstate rate). This is a far cry from the much lower long distance rates paid by the non-

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incarcerated public, which typically run $.05 to $.10 per minute or simple flat rate monthly fees for unlimited long distance calling in the $50-80 a month range.

Only eleven states have local collect call rates of under $1.00 per call, while Nebraska's interstate rate is *one-twelfth* and New York's interstate rate is *one twenty-fifth* the cost of the highest-priced phone charges for a 15-minute long distance collect call.

The irrationality of the rate structures is further exemplified by Rhode Island's no-kickback commission *low* rates, which are provided by Mobile, Alabama-based Global Tel*Link (GTL) – the same firm that has some of the *highest* rates in other states where the company pays commissions.

Local collect calls made by prisoners in Arkansas cost $4.80 per 15-minute call compared with $.70 in Rhode Island. Further, the rate for interstate collect calls from Arkansas prisons is $10.70 for 15 minutes, compared with $5.80 in Rhode Island – even though the same company, GTL, supplies phone services in both states.

It is readily apparent that the service provided, i.e., prison-based phone calls, is profitable for GTL even at the company's lowest rates; thus, the higher rates charged in states where GTL pays commissions amount to nothing more than price gouging and gross profiteering. Sadly, GTL's kickback-based business model is prevalent across the country, as more than half the state prison systems now employ GTL to provide phone services – either directly or through other GTL-owned firms.

In addition to connect and per-minute charges, some prison phone companies price gouge in other ways. For example, Value-Added Communications (VAC), which provides phone services for New York state prisoners, charges a $7.95 service fee when a prisoner's family adds funds to their phone account by credit card (there is no fee for payments by money order). Further, a $4.95 "monthly inactivity fee" is charged for an account with no call activity for over 180 days. And if a prisoner's family wants to close the account? Unless the account has not been used and is closed within 90 days after it was created, a $4.95 fee is imposed to cover "administrative" expenses.

GTL charges family members a $4.75 service fee for each $25.00 payment made to a prepaid phone account via credit card (i.e., a $9.50 surcharge for a $50.00 payment to a prepaid account – almost a 20% fee). There is a $5.00 charge to close an account and withdraw the remaining balance; also, if an account is not used for 90 days, the balance is forfeited to GTL. Another prison phone company, Securus Technologies, charges a monthly bill statement fee of up to $2.99 plus a "processing fee" of up to $6.95 for credit or debit card payments made online or (ironically) by phone.

Such extra fees cost Securus at least one contract. After Securus won a bid to provide phone services for the New Mexico DOC in April 2009, competitor Public Communications Services (PCS) challenged Securus' bid because it did not factor in the additional billing statement and credit card fees, which inflated the actual cost of phone calls. The New Mexico Dept. of Information Technology agreed. "It's in the best interest of the state to cancel the contract and start over again," said spokeswoman Deborah Martinez, noting that the bid information "was not as clear as it should have been."

Once companies win prison phone contracts and are granted a monopoly on phone services within a certain prison or jail system, however, prisoners' families have no choice but to pay the phone rates and fees if they want to accept calls from their incarcerated loved ones – an extortionate form of price gouging. Do you want to speak with your mother, father, wife, husband or child who's behind bars? Then pay up – at rates up to two dozen times higher than for non-prison calls.

Are All Prison Phone Companies the Same?

Prison phone companies have included some well-known firms and some that offer phone services solely in prisons and jails. Widely known are AT&T and Unisys, but the largest prison phone service provider is GTL. Other companies include Securus (owned by H.I.G. Private Equity), VAC, PCS, McLeod/Consolidated Communications, Embarq (a spin-off from Sprint/Nextel that is now owned by CenturyTel, Inc. d/b/a CenturyLink), ICSolutions, FSH Communications, and Pay-Tel (which mostly services jails in the southeast).

In recent years, many of the firms providing prison and jail phone services have been merged into larger companies. FSH entered the prison phone market after buying the payphone assets of Qwest Communications Int'l, and recently sold its prison phone business to VAC. Securus Technologies, Inc. was formed in 2004 by the merger of T-Netix and Evercom Systems – two of the major players in the prison phone industry. On June 1, 2009, Securus entered into a 5-year contract renewal to provide phone services at 25 facilities operated by Corrections Corp. of America. According to a Securus press release, the contract was worth "over $19 million annually."

GTL has been prominent in consolidating the market. For example, the company took over AT&T's National Public Markets prison phone business on June 2, 2005, and acquired MCI WorldCom's correctional phone services division from Verizon in 2007. GTL also purchased competitor DSI-ITI, LLC in June 2010. GTL was itself acquired by Veritas Capital and GS Direct, LLC (owned by Goldman Sachs) in February 2009, but still does business as Global Tel*Link.

A rational mind would conclude that larger companies with more amortization of overhead costs would provide lower rates to be more competitive. But that is not what happens. The largest firms instead are able to offer larger kickbacks, thus creating the very monopoly that competitive bidding was designed to prevent. This is not to say that GTL, among other prison phone service providers, does not "compete." When GTL is up against a competitor for a contract where the contracting agency has imposed rate caps or does not accept commissions, it will apparently bid lower rates to compensate.

Although all prison phone companies provide the same basic service – secure phone systems for prisons or jails with monitoring, recording and other security features – there are some differences.

One firm, PCS, stood out in terms of providing low phone rates. In three states that ban kickback commissions the winning contractor was PCS on the basis of bidding lower rates for phone services. Those states are Nebraska, Missouri and New Mexico (while Missouri does not accept commissions, it requires payments to cover certain staffing costs).

In another state where kickbacks are banned, Rhode Island, the winning bidder was GTL. What, you ask, the company known for high rates had the *lowest* bid? Indeed, GTL charges Rhode Island prisoners $.70 (flat rate) for local and intrastate calls plus a thrifty $1.30 + $.30/minute for interstate calls. Evidently, absent the need to provide kickback payments, GTL was able to offer lower rates and underbid its competitors.

GTL has since acquired PCS effective November 10, 2010, thereby reducing its competition for no-commission, lower-rate prison phone contracts.

Are All States the Same?

The short answer is "no." Eight states have banned prison phone kickbacks entirely: Nebraska, New Mexico, New York, Rhode Island, Michigan, South Carolina, California (as of 2011) and Missouri (Missouri requires its phone service provider to cover the cost of 21 staff positions to monitor prisoners' calls). New Hampshire, Kansas and Arkansas have reduced their kickback commissions, and Montana recently entered into a limited-commission contract. As a result, prison phone rates in those states have plummeted.

Although not included in *PLN*'s state-by-state survey, the District of Columbia prohibits any "surcharge, commission, or

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other financial imposition" on prisoners' phone calls beyond legally-established phone rates, which are limited to "the maximum rate determined by the Public Service Commission of the District of Columbia." D.C. Code Ann. § 24-263.01.

While phone companies' costs associated with installing and maintaining secure prison phone systems exceed those of installing public telephones, this is not reflected by the widely variant rates charged in different jurisdictions.

For example, GTL charges only $.70 for a local collect call in commission-free Rhode Island. But the company stiffs prisoners' families in Alabama with $2.75 for a local call and charges $4.80 for local calls in Arkansas – no doubt due to GTL's 61.5% and 45% kickbacks in those states, respectively. This indicates that GTL can provide lower rates absent the need to pay hefty commissions to the contracting agency.

Securus provides up to a 32.1% kickback in Alaska, but offers kickbacks of up to 60% in Maryland. Yet Securus' interstate rate in Maryland (with almost *double* its Alaska kickback percentage) is less than *half* the interstate rate in Alaska. Securus partnered with Embarq to handle phone services in Texas' prison system at $.26/minute for local and intrastate calls, and $.43/minute for interstate calls – using a "bundled" rate that includes a 40% kickback. [See: *PLN*, Feb. 2009, p.27; Nov. 2007, p.11]. Thus, for a 15-minute collect interstate call, Securus charges $6.45 in Texas prisons versus $7.50 in Maryland and $17.30 in Alaska. Such disparities further demonstrate the arbitrary nature of prison phone rates among the states, even when provided by the same company.

Maine is unique in that its Department of Corrections supplies phone services for prisoners through the state's Office of Information Technology. That does not mean Maine has forgone making a profit off prisoners' phone calls, though, as the DOC receives an effective 22% commission from collect calls and the charged rates are comparable with those in states that accept commission payments.

In 2007 the Public Utilities Commission held the Maine DOC was a public utility under state law since it was providing phone services, and ordered the DOC to file its rate schedule with the Commission. However, the DOC appealed and the Maine Supreme Court ruled on April 21, 2009 that the DOC was not a public utility and thus not subject to regulation by the Commission. See: *DOC v. Public Utilities Commission*, 968 A.2d 1047 (Maine 2009).

Iowa has a system in which prison phone services are provided through the Iowa Communications Network (ICN), a state agency, which in turn contracts with PCS. The Iowa DOC only permits debit calls, and instead of receiving a percentage-based commission the DOC keeps all of the revenue generated after paying ICN and PCS for phone usage charges. Prison phone rates in Iowa are comparable to those in states that receive kickbacks.

In Oklahoma, a prison actually closed in 2003 due to excessively high phone rates. The North Fork Correctional Facility, located in Sayre and operated by Corrections Corp. of America (CCA), housed almost 1,000 Wisconsin prisoners. Long distance calls from the facility were $3.95 + $.89/minute, and Sayre received a 25-42% commission that amounted to $656,000 annually – nearly equal to the city's entire budget before the private prison opened. When Wisconsin officials pressured CCA and Sayre officials for lower rates, AT&T, the prison's phone service provider, refused. Unable to renegotiate the rates under the city's contract with AT&T, Wisconsin transferred all its prisoners to a different CCA facility. [See: *PLN*, March 2004, p.14].

"We find it hard to believe that they would shut down the prison over telephone rates. We had no interest in shutting the prison down," said AT&T spokesman Kerry Hibbs. But that is exactly what happened, despite AT&T's last-minute cancellation of its contract with Sayre in an effort to forestall the prison's closure and the loss of 225 jobs. "Everyone tried to get those rates lowered," said CCA vice president Louise Grant. "It was not done."

Such is the power of profitable prison phone revenues. CCA's North Fork facility has since reopened, presumably with lower phone rates.

Florida – A State in Flux

Florida prisoners have enjoyed affordable phone rates since April 2006, when then-DOC Commissioner James McDonough reduced the cost of prison phone calls by about 30%. [See: *PLN*, Oct. 2006, p.24]. Soon, however, they may receive a rude wake-up call. In 2009 the Florida legislature passed a bill (S.B. 2626) that removed rate caps for all providers of "operator services" in the state.

On September 24, 2009, the Florida Public Service Commission (in Docket No. 060476-TL) ruled that prison phone calls should be included in the class of services that would no longer have a rate cap. Eight companies, including GTL, PCS, Embarq Florida, Evercom Systems and T-Netix, had argued in favor of removing the rate caps.

Under Florida's prison phone service contract with Securus, the state's recent annual kickback was $3 million and phone charges were substantially lower following McDonough's rate reduction. It remains to be seen whether Securus' current rate of $.50 for local collect calls, and $1.20 + $.04/minute for intrastate and interstate calls, will continue once the rate caps are removed.

If Florida county jails are any indication, the phone rates charged to prisoners' families are far from rational. In Monroe County, local calls are billed at $2.25 and long distance calls cost $1.75 + $.30/minute. The funds obtained by the Monroe County Sheriff's Office from its phone system are deposited into the inmate welfare account to pay for board games, television and other items used for the benefit of prisoners. The jail contracts with ICSolutions, Inc.

Other Florida county jail phone rates include: Escambia County, local $2.25, intrastate $1.75 + $0.30/minute, interstate $4.99 + $0.89/minute; Lake County, local $2.25, interstate $3.95 + $0.45/minute; Gadsden County, local $2.25, intrastate $1.85 + $.50/minute, interstate $2.85 + $.50/minute; and Broward County, local $2.35, intrastate $1.75 + $0.30/minute, interstate $3.66 + $0.59/minute. Broward County, which contracts with Securus, receives a 58.5% commission on prisoners' phone calls.

Thus, Florida jail prisoners are subject to long distance rates ranging from $6.25 to $18.34 for a 15-minute collect call at the above facilities, representing an almost 300% difference between the lowest and highest rates, even when such calls are made from jails within the same state.

PLN Sues to Obtain Phone Contract Data

While most of the states contacted by *PLN* provided their prison phone contract data pursuant to public records requests, albeit sometimes grudgingly, one did not. Mississippi refused to produce a copy of its phone contract with GTL or any data concerning GTL's commissions paid to the state.

A court ruling in a previous case filed by one of GTL's competitors had resulted in a protective order sealing the contract and related kickback commission data, despite the fact that the contract involved a public, taxpayer-funded agency – the Department of Corrections.

PLN filed suit against the Mississippi DOC and GTL on March 10, 2009 seeking disclosure of the prison phone contract and commission data, noting that the state's public records act specifies that "all public records are ... public property, and any person shall have the right to inspect, copy or obtain a reproduction of any public records of any public body."

"Contracts entered into by the state which involve public funds are public documents," stated *PLN* editor Paul Wright. "As such, the prison phone contract and commission information must be produced pursuant to Mississippi's public records act, and Global Tel*Link, a private for-profit company, cannot hide such documents from members of the public. Such secrecy is unacceptable and contrary to public policy." GTL agreed to settle the case in June 2009 by producing a copy of its contract with the State of Mississippi and associated commission data. Those records revealed that GTL paid the state a 55.6% commission – one of the highest in the nation – amounting to $2.8 million in 2008.

PLN was represented by Jackson, Mississippi attorneys Robert B. McDuff and Sibyl C. Byrd. See: *PLN v. Mississippi Dept. of Corrections*, Chancery Court of Hinds County (MS), Case No. G 2009 391 I. [*PLN*, May 2010, p.8].

What Happens Without Kickbacks?

The prison phone contract data obtained by *PLN* provides a before-and-after look at phone rates in several states that have banned, limited or reduced their kickback commissions. The comparisons are telling.

The New Mexico DOC stopped accepting commissions in 2001 following the enactment of House Bill 13, which specified that contracts "to provide inmates with access to telecommunications services in a correctional facility or jail shall not include a commission or other payment to the operator of the correctional facility or jail based upon amounts billed by the telecommunications provider for telephone calls made by inmates in the correctional facility or jail." N.M. Stat. Ann. § 33-14-1.

New Mexico previously had a 48.25% commission rate, and before House Bill 13 went into effect the DOC's intrastate phone rate was $1.80 + $.22/minute for collect calls. Following House Bill 13 the intrastate rate dropped to $1.75 + $.125-$.175/minute – a modest but significant decrease of 14.2% to 28.9% for a 15-minute call. Local and interstate call rates could not be compared due to a lack of pre-2001 data. New Mexico still has high phone rates in comparison with other states that no longer accept commission payments, though.

The State of New York faced (ultimately unsuccessful) legal challenges to its exorbitant prison phone rates, plus a concerted advocacy campaign involving the New York Campaign for Telephone Justice, Prison Families of New York, Inc. and other organizations. On July 19, 2007, then-Governor Eliot Spitzer signed the Family Connections Bill, which prohibited kickback commissions and required the DOC to contract with telephone service providers based on the lowest cost. [See: *PLN*, April 2007, p.20].

Previously, New York had received a commission of 57.5% to 60%, the highest in the nation at the time, which generated $200 million in kickback payments from 1996 through 2007. The no-commission statute went into effect in 2008, and under a new contract with Unisys and VAC, New York prisons now have some of the lowest phone rates in the country – a flat $.048/minute for any type of call (i.e., $.72 per 15-minute call whether local, intrastate or interstate).

Before banning kickback commissions, New York's prison phone rates were $1.28 + $.068/minute for all categories of collect calls (i.e., $2.30 per 15-minute call whether local, intrastate or interstate). Thus, after the commissions ended, the rates dropped 68.7% based on a 15-minute collect call.

In August 2008, Michigan ended its practice of accepting kickback payments from prison phone service providers as a result of legislative action. Under the state's no-commission contract with Embarq, rates decreased significantly to $.12/minute for local and intrastate calls and $.15/minute for interstate calls, with no connection charge. The new rates represent a 10% price drop for local calls, a 77% drop for intrastate calls and an amazing 87% drop for interstate calls from the previous commission-based rates of $2.00 local, $2.95 + $.325/minute intrastate and $3.99 + $.89/minute interstate.

Michigan's prison phone contract has since been bid to PCS, now owned by GTL, but the current low rates remain in effect until a new rate structure is developed. Prior to ending its phone kickbacks, the state received a 50.99% commission that generated $10.2 million in FY 2007.

South Carolina's legislature banned prison phone kickbacks as part of a 2007-2008 appropriations bill, stating, "the State shall forego any commissions or revenues for the provision of pay telephones in institutions of the Department of Corrections and the Department of Juvenile Justice for use by inmates. The State Budget and Control Board shall ensure that the telephone rates charged by vendors for the use of those telephones must be reduced to reflect this foregone state revenue." S.C. Code of Laws § 10-1-210.

The bill was introduced by Republican Senator W. Greg Ryberg, a member of the Senate Corrections and Penology Committee, upon the request of the South Carolina DOC. Prior to the ban on kickbacks, South Carolina's prison phone rates were $.76 for local calls, $1.73 + $.22/minute intrastate and $1.89 + $.22/minute interstate.

The new no-commission rates, effective April 1, 2008, were $.50 for local calls (a 34.2% reduction), $1.00 + $.15/minute for intrastate calls (a 35.4% reduction) and $1.25 + $.15/minute for interstate calls (a 32.5% reduction), with the rate decreases based on a 15-minute call. Under its previous commission-based contract, South Carolina received $1.2 million in FY 2008.

California is phasing out prison phone kickbacks effective by the end of the 2010-2011 fiscal year. Phone rates for California prisoners have been dropping since late 2007, and in early 2011 were down to the final rate of $.58 + $.058/minute for local calls, $.77 + $.084/minute for intrastate calls and $1.52 + $.342/minute for interstate calls, according to the state's Inmate/Ward Telephone System Contract.

California's commission-based rates prior to August 2007, when the kickbacks began to be phased out, were $1.50 + $.15/minute for local calls, $2.00 + $.22/minute intrastate and $3.95 + $.89/minute interstate (the rates in the accompanying chart reflect the initial rate reduction for 2007-2008). The new phone charges as of 2010-2011 thus represent a price drop of 61% for 15-minute local, intrastate and interstate collect calls compared with the rates before the state began to phase out commission payments.

This is yet another example of how banning kickbacks translates to lower phone rates. California prohibited prison phone commissions as a result of state legislation, S.B. 81, enacted during the 2007-2008 session.

Notably, states do not have to eliminate payments from prison phone companies entirely to achieve lower phone rates, as evidenced by Missouri, which has low rates of $1.00 + $.10/minute. While no longer accepting commissions, the state requires its phone service provider to cover the cost of 21 staff positions for monitoring prisoners' calls (about $800,000 to $900,000 annually). Previously, Missouri had received a 55% commission before eliminating prison phone kickbacks in April 1999.

New Hampshire limited its maximum commission rate to 20% and imposed rate caps in a 2006 RFP issued by the state's Division of Plant and Property Management, which resulted in fairly low rates of $1.20 + $.10/minute for prison phone calls. Montana, Kansas and Arkansas have also reduced but not eliminated their kickback commissions, with lower phone rates as a result.

Following a July 2010 RFP, the Montana Department of Corrections contracted with Oregon-based Telmate, LLC to provide prison phone services. By state statute, all commissions from the phone system must go to the inmate welfare fund. The DOC determined that $23,000 per month was sufficient to maintain the fund, and "[t]he RFP was written with the requirement that the commissions only generate enough to maintain the inmate welfare fund. This allowed the vendors responding to the RFP to focus on the rate of the call and not how much money could be generated by commissions."

The Montana DOC's phone rates under its prior contract with PCS, as reflected in the chart accompanying this article, were $2.75 + $.20/minute for local, intrastate and interstate calls. Telmate's rates, pursuant to its limited-commission contract (which has a maximum kickback of 25%), are $.24 + $.12/minute for local, intrastate and interstate calls. This represents a 64.5% reduction from the previous rates for a 15-minute call.

When the Kansas DOC entered into a new telephone contract with Embarq in January 2008, Kansas Secretary of Corrections Roger Werholtz stated, "It is important for inmates to be able to maintain contact with their families and friends. We have recognized for many years that the cost of the phone calls inmates make from our correctional facilities has created a financial hardship for their families, and I am pleased that the new contract will help reduce those costs."

The state's new contract with Embarq included a kickback of 41.3% and a minimum guaranteed annual commission of $1,057,000, compared with the 48.25% kickback and minimum $2,750,000 annual commission in the DOC's prior contract with Securus/T-Netix. Embarq's new collect call rates are $2.61 for local calls, $1.96 + $.41/minute intrastate and $1.70 + $.40/minute interstate. Under the previous higher-commission contract the collect call rates were $4.35 local, $3.26 + $.69/minute intrastate and $2.84 + $.66/minute interstate. Thus, under its reduced-commission contract with Embarq, the Kansas DOC's phone rates dropped by 40% across the board.

And when the Arkansas DOC contracted with GTL in February 2007, the company initially offered a 55% commission with phone rates of $3.00 + $.24/minute for local and intrastate calls, and $3.95 + $.89/minute for interstate calls. Arkansas officials instead considered two alternative rate proposals, one with a 50.75% commission that had a 25% decrease in the per-minute call rates, and the other with a 45% commission that included a 50% decrease in per-minute rates.

The Arkansas DOC selected the 45% commission with lowest per-minute rates ($3.00 + $.12/minute for local and intrastate, and $3.95 + $.45/minute interstate), noting that "while our annual revenues may decrease, we believe this would be a good faith effort to reduce the financial burden on inmate [sic] families." Although the phone rates for Arkansas prisoners still remain high, they are not as high as they could have been had the DOC decided to maximize its commission rate.

The above examples send a clear message that prisoners and their families and advocates should seek both administrative and legislative changes to ban, limit or reduce kickbacks, and encourage prison systems to contract with the *lowest* bidder for phone services. While it seems a Herculean task to convince state officials to forgo millions of dollars in phone revenues, and indeed legislation to reduce prison phone rates has failed in a number of states, it is not impossible and there have been several success stories beyond the states that have already banned kickbacks.

According to the Equitable Telephone Charges (eTc) Campaign, a project of National CURE that advocates for prison phone rate reform, Arkansas selected a lower commission and phone rates in 2007, as described above, due to efforts by prisoners' advocacy groups and threatened legislation to eliminate the commissions entirely.

Also, an effort to impose a $2.00 fee on local calls from Alaskan prisons was scuttled as a result of public opposition. The Alaska DOC had announced that the fee would go into effect on September 1, 2008 under a new prison phone contract with Securus. Previously, prisoners could make local calls at no cost.

The Regulatory Commission of Alaska received a number of complaints concerning the $2.00 per-call charge and opened an investigation, stating "that doubt exists as to the reasonableness" of the fee. The proposed local call charge was withdrawn in January 2009, even though Securus had estimated that based on historical call volume the $2.00 fee "could add [gross] revenues of $4,661,808 annually." Local calls remain free for Alaskan prisoners.

In short, the magnitude of harm caused by typical prison phone contracts that include kickbacks, and thus higher phone rates, is most apparent when comparing rates in the states that accept commissions with those that do not.

Prison Phone Rates on the Federal Level

The federal Bureau of Prisons (BOP) has moved to a debit-based phone system called the Inmate Telephone System (ITS), in which prisoners pay for calls from their institutional accounts, though they can also make collect calls to approved numbers. The system has all of the usual security features but in most cases has resulted in savings to prisoners and their families.

Rates are as low as $.06/minute for local debit calls and $.23/minute for long distance debit calls. However, collect long distance rates are still pricey at $2.45 + $.40/minute ($8.45 for a 15-minute interstate collect call). Intrastate rates are capped at 90% of the applicable state-regulated phone rates, which vary.

BOP prisoners are limited to 300 minutes of calling time per month (400 in November and December), and phone calls are limited to 15 minutes. The ITS was implemented following a settlement in a federal class-action lawsuit, *Washington v. Reno*, in November 1995. [See: *PLN*, Sept. 1996, p.16; March 1995, p.4; Nov.

1994, p.10; March 1994, p.1].

The BOP entered into a 3-year contract with Unisys in 2005 to install and operate a new generation of the ITS (ITS-3, also known as TRUFONE) at more than 100 federal correctional facilities; the contract had an estimated value of $37 million, not including three one-year optional extensions. The BOP declined to provide its phone commission data during *PLN*'s recent survey.

In Congress, legislation to require the FCC to prescribe rules regulating prison phone services, titled the Family Telephone Connection Protection Act, was introduced by U.S. Rep. Bobby Rush in 2005, 2007 and 2009, but was never enacted.

Another piece of federal legislation, the Cell Phone Contraband Act (S.1749), signed into law by President Obama on August 10, 2010, makes it a crime for federal prisoners to possess a cell phone. The law also includes a little-known provision that requires the Government Accountability Office (GAO) to study the BOP's phone rates and investigate less expensive alternatives.

In regard to federal oversight of prison phone services, *PLN* has asked the FCC to address excessive overcharging relative to interstate prison phone calls as part of the *Wright* petition – a rulemaking proposal pending before the FCC (CC Docket No. 96-128). The petition stems from a long-standing federal lawsuit challenging exorbitant phone rates, *Wright v. Corrections Corp. of America*. [See: *PLN*, April 2004, p.39].

An alternative rulemaking proposal, submitted in the *Wright* petition in March 2007, suggests a rate cap of $.25/minute for all interstate collect calls and $.20/minute for all interstate debit calls made by prisoners. Thus far the FCC has taken no action on the *Wright* petition since it was originally filed in 2003, despite having acknowledged in a prior proceeding that "the recipients of collect calls from inmates … require additional safeguards to avoid being charged excessive rates from a monopoly provider."

Legal Challenges Mostly Unsuccessful

Lawsuits challenging exorbitant prison phone rates have met with little success. In *Walton v. NY DOCS*, 18 Misc.3d 775, 849 N.Y.S.2d 395 (N.Y.Sup. 2007), the court held that New York's then-57.5% kickback commission did not violate the constitutional rights of prisoners' families. [See: *PLN*, Oct. 2008, p.24; April 2007, p.20]. This finding was upheld by New York's highest court, the Court of Appeals, in 2009. See: *Walton v. NY DOCS*, 13 N.Y.3d 475, 921 N.E.2d 145 (N.Y. 2009) [*PLN*, Aug. 2010, p.18].

An Indiana appellate court denied an appeal in a class-action suit by prisoners' families raising similar issues. See: *Alexander v. Marion County Sheriff*, 891 N.E.2d 87 (Ind.Ct.App. 2008) [*PLN*, June 2009, p.28]. New Mexico's Supreme Court upheld the dismissal of a lawsuit challenging prison phone rates in 2002 [See: *PLN*, June 2003, p.17], as did New Hampshire's Supreme Court that same year, in *Guglielmo v. WorldCom, Inc.*, 148 N.H. 309, 808 A.2d 65 (N.H. 2002). Further, the Eighth Circuit Court of Appeals affirmed the dismissal of an excessive prison phone rate complaint in *Gilmore v. County of Douglas*, 406 F.3d 935 (8th Cir. 2005).

Such legal actions typically run afoul of the "filed rate doctrine," which holds that once a telecommunications company files its rate structure (tariffs) with an appropriate regulatory agency, and then adheres to those rates, it is insulated from court challenges. [See, e.g.: *PLN*, Jan. 2005, p.6].

A nationwide class-action suit was filed against GTL in California in August 2010, claiming the company exploited its customers "by charging them [] exorbitant, undisclosed per-minute rates (often in excess of $1.00/minute) and excessive service charges," including undisclosed fees for depositing money into prepaid phone accounts. The suit settled under confidential terms before a class was certified. [See: *PLN*, March 2011, p.38].

An Ohio federal court ruled in 2003 that recipients of collect calls from Ohio prisoners could pursue claims against counties and prison phone service providers alleging that unreasonably high rates violated their equal protection, freedom of speech and associational rights. Claims against the State of Ohio, as well as antitrust and telecommunications statute claims, were dismissed. Soon after that ruling the case was stayed pending the resolution of bankruptcy proceedings involving WorldCom, Inc., and no further action was taken by the court. See: *McGuire v. Ameritech Services, Inc.*, 253 F.Supp.2d 988 (S.D. Ohio 2003).

In 2001, the Seventh Circuit Court of Appeals held that Illinois officials did not violate the rights of prisoners or their families by granting phone companies a monopoly on collect phone services at particular prisons in exchange for commission payments. The appellate court found that exorbitant telephone rates did not violate the First Amendment, the kickback payments did not result in unconstitutional takings or violate antitrust laws, and equal protection and due process claims were barred due to the doctrine of primary jurisdiction. See: *Arsberry v. State of Illinois*, 244 F.3d 558 (7th Cir. 2001), *cert. denied*. [*PLN*, May 2002, p.12; Feb. 2001, p.19; June 2000, p.19; Aug. 1999, p.10].

In Michigan, a U.S. District Court dismissed a suit concerning prison phone rates, holding that the filed-rate doctrine barred challenges to the fairness of the rates charged; that the FCC had primary jurisdiction; that the plaintiffs failed to state a claim for rate discrimination; that the state was immune from liability; and that state regulatory and consumer protection law claims were pre-empted by federal statutes. See: *Miranda v. Michigan*, 141 F.Supp.2d 747 (E.D. MI 2001) and *Miranda v. Michigan*, 168 F.Supp.2d 685 (E.D. MI 2001) [*PLN*, May 2002, p.12].

The Ninth Circuit Court of Appeals rejected prisoners' claims that higher phone charges were the result of a "conspiracy" between a warden and the telephone companies, finding that prisoners did not have any constitutional right to particular phone rates. See: *Johnson v. State of California*, 207 F.3d 650 (9th Cir. 2000) [*PLN*, Nov. 2001, p.22].

Even legal challenges by alternative prison phone service providers that offer lower-cost calling options have failed, such as a lawsuit filed against Securus, T-Netix, Evercom and GTL by Millicorp, a Florida-based company that has a Voice Over Internet Protocol (VOIP) subsidiary called "Cons Call Home." Securus, et al. were accused of blocking calls to VOIP numbers set up by Millicorp for prisoners' families. The suit was dismissed in April 2010 under a procedural rule of the federal Telecommunications Act. [See: *PLN*, May 2010, p.48].

Regulation by State Agencies

Some actions before state regulatory agencies have had greater success. The Utilities Consumer Action Network filed a complaint against MCI with the California Public Utilities Commission over irregularities in the company's billing practices and quality of service for calls originating from California prisons. In a 2001 settlement, MCI agreed to refund more than $520,000 in illegal overcharges to families of California prisoners. [See: *PLN*, Nov. 2001, p.19].

This followed a pattern of state regulatory actions and settlements dating from the early 1990s that saw a number of telecommunications companies fined and ordered to pay refunds due to illegal prison phone call billings.

In Louisiana, the state Public Service Commission ordered GTL to refund $1.2 million in overcharges from June 1993 to May 1994. In 1996, North American Intelecom agreed to refund $400,000 overcharged to members of the public who accepted prisoners' phone calls, following an investigation by the Florida Public Service Commission. The following year the Commission ordered MCI to refund almost $2 million in overcharges on collect calls made from Florida state prisons. [See: *PLN*, Aug. 1998, p.8; March 1997, p.12; Sept. 1996, p.13].

More recently, in Washington state, AT&T agreed in December 2007 to pay over $300,000 in fines for overcharging prisoners' families for calls made from the Airway Heights state prison and Washington State Penitentiary. Families were eligible to receive refunds for an estimated $67,295 in overcharges. [See: *PLN*, March 2008, p.34].

Florida's Public Service Commission ordered TCG Public Communications, Inc., previously a subsidiary of AT&T before being acquired by GTL, to pay $1.25 million to settle overbilling complaints at the Miami-Dade Pretrial Detention Center from 2004 through 2007. The settlement, approved in August 2009, provided for the $1.25 million to be paid to the state's general revenue fund; prisoners' families who were overcharged received nothing. [See: *PLN*, Feb. 2010, p.49; April 2009, p.38].

A lawsuit filed in 2000 challenging the lack of notice to consumers who accepted high-priced collect calls from Washington prisoners remains pending in Washington state court. After more than a decade of litigation before the state superior, appellate and supreme courts, and before the state utilities commission, the case boiled down to T-Netix and AT&T arguing over which company was responsible for providing notice to the call recipients. On April 21, 2010, the utilities commission held it was AT&T. Between 2000 and 2010 *PLN* has run five articles related to this case, which is now set for trial. See: *Judd v. AT&T*, 136 Wash App 1022 (2006) [*PLN*, Dec. 2010, p.16; March 2007, p.38].

Most of the time, though, state regulatory agencies take little interest in prison phone services so long as the rates charged are within established rate caps – which are typically set very high. Rather, state public utility or service commissions tend to get involved only when prison phone companies overcharge, impose illegal fees or otherwise violate state regulations. This assumes that such regulatory agencies have jurisdiction over prison phone service providers. In at least two states, Colorado and Virginia, they do not. [See: *PLN*, Aug. 2004, p.44; March 2003, p.12; Nov. 1998, p.23].

There are exceptions, of course, where state regulatory agencies have intervened to set lower rate caps for calls made by prisoners, such as in Kentucky, or to investigate proposed prison phone rate hikes, as in Alaska. A larger problem is that in some cases the utility commissions are largely co-opted by the industries they purport to regulate, with conflicts of interest and a revolving door in which commission staff are later hired by the companies they oversaw.

When former Florida Public Service Commission chairwoman Nancy Argenziano resigned in September 2010, she condemned "the corruption, the bought-and-sold nature of everything related to the operation of the PSC." She noted there was a "universal expectation that if you audition well, PSC employees and commissioners will be rewarded with lucrative jobs with the utilities," indicating a thin line exists between the regulators and the regulated.

The Purpose of Prison Phone Services

Government officials who approve prison phone contracts that include kickbacks and excessively high rates apparently forget why prisoners are afforded phone access in the first place. For one, there is a widely-known and researched correlation between prisoners who maintain contact with their families and those who are successful in staying out of prison after they are released. This, in turn, benefits the community by reducing costs associated with recidivism.

According to Prof. Steven Jackson, "recidivism and community impact studies, some of which were used to justify the introduction of prison calling in the first place[,] ... have found that a powerful predictor of re-offending is the failure to maintain family and community contact while incarcerated."

For example, a research brief by the

Jane Addams Center for Social Policy and Research at the University of Illinois at Chicago, published in 2004, observed that "Family roles and relationships are important in reentry planning, whether or not they are explicitly articulated in formal policies and program documents. Family connections and other social networks impact not only families' and children's well-being but also the achievement of social goals such as the reduction of crime and the building of vibrant communities."

Policy changes that can make a difference in maintaining prisoners' family relationships include making "telephone access to families and friends a basic prison program that is run with attention to the same cost efficiency and cost containment rules that are used for other prison operations." The research brief noted that exorbitant "government sanctioned telephone rates are abusive and take advantage of families' reliance on telephones as a primary means of communication during incarceration."

And according to a 2004 study by the Washington, D.C.-based Urban Institute, "Our analysis found that [released prisoners] with closer family relationships, stronger family support, and fewer negative dynamics in relationships with intimate partners were more likely to have worked after release and were less likely to have used drugs." The study's authors, Christy Visher, Vera Kachnowski, Nancy La Vigne and Jeremy Travis, concluded that "[i]t is evident that family support, when it exists, is a strong asset that can be brought to the table in the reentry planning process."

Such findings have been recognized by corrections officials. The federal Bureau of Prisons states that "Telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development." (Program Statement 5264.07 (2002), as codified at 28 CFR § 540.100(a)).

When GTL tried to raise phone rates in Tennessee in 2002, then-Tennessee Dept. of Corrections Commissioner Donal Campbell stated, "As you know, maintaining contact with family and friends in the free world is an important part of an inmate's rehabilitation and preparation to return to the community. Furthermore, telephone privileges are essential in managing inmate populations…. [Rate increases] would hinder both of the aforementioned departmental objectives in addition to creating an undue hardship for inmates' families."

According to the Oregon DOC, "Ongoing contact with supportive family and friends is an important part of inmates' success in prison and upon release." Also, when South Dakota renewed its contract with FSH in March 2008, Corrections Secretary Tim Reish remarked, "The reduced rates we were able to negotiate will have a positive impact on the inmates' ability to maintain contact with their loved ones while they are in prison."

Wisconsin law provides that prison officials "shall encourage communication between an inmate and an inmate's family, friends, government officials, courts, and people concerned with the welfare of the inmate. Communication fosters reintegration into the community and the maintenance of family ties. It helps to motivate the inmate and thus contributes to morale and to the security of the inmate and staff." Wis.Admin.Code DOC § 309.39.

And in its final June 8, 2006 report, the Commission on Safety and Abuse in America's Prisons noted that prison phone rates were "extraordinarily high," and that lowering the rates would "support family and community bonds."

For many prisoners, particularly those who are functionally illiterate and cannot rely on written correspondence, phone calls are the primary means of maintaining family ties and parental relationships during their incarceration. This is also true for prisoners whose families cannot travel to distant prisons for in-person visitation. While most prisoners are from urban areas, virtually all prisons built in the last 30 years have been built in rural areas far from where most prisoners originate and will return to upon completing their sentences.

Additionally, prisoners' families suffer from the increased isolation that attends fewer phone calls from their incarcerated loved ones due to exorbitant phone rates. Often, prisoners come from low-income families that can ill afford grossly high phone bills that sometimes run into hundreds of dollars per month.

Hence, prison phone contracts awarded on the basis of the highest kickback (and thus the highest cost to prisoners' families) are vindictive and ill-conceived at best, and negatively impact prisoners' familial relationships and recidivism rates at worst.

Excessive prison phone rates are also detrimental from a security standpoint. Cell phones in prisons and jails have become an epidemic problem for corrections officials, who cite a number of security concerns associated with contraband phones, starting with the corrupt staff who smuggle the cell phones into the prisons. [See: *PLN*, Feb. 2011, p.40]. Yet the market for cell phones behind bars is driven in part by the exorbitant rates charged by prison phone companies; prisoners use illegal – but much more affordable – cell phones to stay in touch with their families and friends. By reducing institutional phone rates, prison officials would reduce the demand for and associated security risks of contraband cell phones.

Sadly, the societal and security benefits of providing prisoners with more affordable phone rates are trumped by greed for the lucrative kickbacks. Worse, phone commission money is often paid to the contracting state's prison system or general revenue fund, where it becomes a source of addictive income that makes it difficult to end commission-based contracts. And we're not talking peanuts, as the kickbacks total more than $152 million annually nationwide. California collected $26 million per year before beginning to phase out its commission payments in 2007; New York pocketed up to $20 million annually before banning kickbacks in 2008.

The truth is told by the numbers: Almost 85% of state prison systems receive kickback payments from telephone service providers at the expense of facilitating more affordable phone calls for prisoners and their families, and in spite of the societal benefits that would inure from lower phone rates.

Prison Phone Contracts as Socially Regressive Policy

According to *PLN*'s research into prison phone contracts, the bottom line is that (1) the vast majority of states receive kickbacks from phone companies, which result in higher phone rates; (2) these excessive rates further distance prisoners from their families, who can ill afford high phone bills; (3) the larger community is disadvantaged when prisoners are unable to maintain family ties that will help them succeed post-release; and (4) most states profit handsomely, to the tune of over $152 million a year nationwide, from prison phone kickbacks; however, phone rates drop significantly absent such commissions.

Thus, prison phone contracts, except in those few states that have banned or limited kickback commissions, are nothing short of a socially regressive, socioeconomic-based assault on prisoners' families and the community as a whole. This assault occurs due to the basest of reasons – avarice – by telephone companies and contracting agencies that are willing to sacrifice the known rehabilitative benefits of maintaining prisoners' relationships with their families in exchange for profitable phone revenue.

PLN has reported on prison phone issues since the early 1990s, and most of the news has been negative. The trend, unfortunately, is for consolidation of the prison phone market – which will further erode competition – and deregulation, as in Florida. *PLN* supports federal oversight of and rate caps on interstate prison phone services, as well as closer regulation and lower rate caps on the state level. Most significantly, the contracts should be bid on the basis of who can provide the lowest price to the consumer, the direct opposite of what occurs now.

The American Correctional Association, American Bar Association and National Association of Women Judges have voiced support for reforming prison phone rates, and a number of advocacy organizations are involved in this issue – including National CURE, state CURE chapters and the eTc Campaign, the Center for Constitutional Rights, and the Brennan Center for Justice.

The consensus reached by these groups is that to ensure prisoners maintain their family relationships so they have a lesser chance of re-offending after they are released, and to reduce the unfair financial burden placed on prisoners' families, exorbitant prison phone rates must cease. If prison systems in states ranging from California and New York to Nebraska and South Carolina can reduce their phone rates by forgoing commissions, then there is no reason – except callous greed – why other states cannot do likewise.

PLN extends our thanks and gratitude to the Funding Exchange (www.fex.org), which provided grant funding for PLN's research into prison phone contracts.

Sources: *PLN research data, www.etc-campaign.com, http://ccrjustice.org, www.sfreporter.com, www.aclu.org, Global Tel*Link, www.securustech.net, www.vaci.com, www.icsolutions.com, Media Justice Fund of the Funding Exchange, www.pulp.tc/html/inmate_phones.html, www.justice.gov, www.businesswire.com, www.gores.com, www.lvrj.com, New York Times, www.dsiiti.com, www.epsicare.com, Daily Hampshire Gazette, www.juneauempire.com, http://rca.alaska.gov, www.heraldtribune.com, North Carolina Journal of Law & Technology (Vol. 8, Issue 1: Fall 2006)*

CORRECTION

(October 23, 2012)

The prison phone commission kickback data for Virginia was incorrectly reported in the original chart that accompanied this article. The chart has since been corrected. Virginia's kickback from prison phone revenue was $4.82 million in 2008, not $13.77 million as originally reported. Thus, the total amount of kickbacks for all states (excluding Arizona for which data is not available) was $143.49 million, not $152.44 million as originally reported.

Prison Phone Contract Data / Kickbacks / Daytime Collect Call Rates - REVISED

STATE	PROVIDER	% KICK.	$/YR KICK.	Local Call	Intrastate[1]	Interstate	COMMENT
AK	Securus	15-32.1	247 K	0.00	1.55 + .13-.38/m	3.95 + .89/m	Free local calls
AL	GTL	61.5	5.5 Mil.	2.75	2.25 + .30/m	3.95 + .89/m	
AR	GTL	45	2.06 Mil.	3.00 + .12/m	3.00 + .12/m	3.95 + .45/m	
AZ	Securus	53.7	?	1.84	.36/m	.52/m	
CA	GTL	Flat	19.5 Mil.	1.50 + .107/m	2.00 + .159/m	3.95 + .70/m	Ending kick in 2011 [2]
CO	VAC	43	3.1 Mil.	2.75 + .23/m	2.75 + .23/m	3.95 + .89/m	Highest local rate
CT	GTL	45	4.49 Mil.	2.00	1.75 + .23/m	3.95 + .89/m	
DE	GTL	46	1.35 Mil.	2.00	2.50 + .20/m	2.50 + .89/m	
FL	Securus	35	3 Mil.	.50	1.20 + .04/m	1.20 + .04/m	Rates reduced in 2006
GA	GTL	49.5	7.8 Mil.	2.70	2.00 + .19/m	3.95 + .89/m	
HI	HI Telecom	?	74 K	1.95	1.45 + .14/m	?	
IA	ICN/PCS	Special	846 K	2.00	2.00+.21-.27/m	3.00 + .30/m	Debit calls only [3]
ID	PCS	10.5-66*	1.2 Mil.	3.80	3.80	3.80 + .85/m	* Effective kick rates
IL	McLeod	56	10.7 Mil.	2.71 + .16/m	2.50 + .26/m	3.95 + .89/m	
IN	GTL	18	80 K	2.95	2.25 + .30/m	1.50 + .25/m	Formerly AT&T
KS	Embarq	41.3	1.05 Mil.	2.61	1.96 + .41/m	1.70 + .40/m	Kick reduced in 2008 [4]
KY	Securus	54	3.2 Mil.	1.85	1.50 + .20/m	2.00 + .30/m	Formerly MCI
LA	GTL	55	3.96 Mil.	.98	2.15 + .19/m	2.15 + .21/m	
MA	GTL	35	1.9 Mil.	.86 + .10/m	.86 + .10/m	.86 + .10/m	Current kick is 15-30%
MD	Securus	48-60	6.1 Mil.	.85	2.85 + .30/m	3.00 + .30/m	
ME	Maine DOC	22	370 K est.	1.55 + .25/m	1.55 + .25/m	3.00 + .69/m	State-run phones
MI	Embarq	**NONE**	**NONE**	.12/m	.12/m	.15/m	Ended kick in 2008 [5]
MN	GTL	49	1.44 Mil.	1.00 + .05/m	3.00 + .23/m	3.95 + .89/m	
MO	PCS	**NONE**	800-900 K*	1.00 + .10/m	1.00 + .10/m	1.00 + .10/m	* Pays for 21 staff
MS	GTL	55.6	2.8 Mil.	2.60	1.90 + .20/m	3.00 + .69/m	*PLN* filed suit for data
MT	PCS	50	300 K est.	2.75 + .20/m	2.75 + .20/m	2.75 + .20/m	Kick reduced in 2011 [6]
NC	GTL	52	8.7 Mil.	1.04	2.25 + .19/m	3.95 + .89/m	Formerly AT&T
ND	Securus	40	132 K	.50	2.46 + .24/m	2.46 + .24/m	Effective rates
NE	PCS	**NONE**	**NONE**	.70	.70 + .05/m	.70 + .05/m	
NH	ICS	20	240 K	1.20 + .10/m*	1.20 + .10/m	1.20 + .10/m	* No per/m for 1st 5 min
NJ	GTL	40	4.42 Mil.	1.75 + .05/m	1.75 + .40/m	1.75 + .89/m	Current rates = $.33/m.
NM	PCS	**NONE**	**NONE**	2.15	1.75+.125-.175/m	3.00 + .50/m	Ended kick in 2001
NV	Embarq	54.2*	2.26 Mil.	1.45	.85 + .1175/m	3.50 + .79/m	* $2.4 Mil. min. kick
NY	Unisys/VAC	**NONE**	**NONE**	.048/m	.048/m	.048/m	Ended kick in 2008 [7]
OH	GTL	38	14.5 Mil.	1.14	1.04 + .322/m	3.90 + .871/m	Rates as of 2009
OK	GTL	50*	1.07 Mil.	3.60	3.60	3.60	* 50% of net profit
OR	FSH/VAC	50-60*	3 Mil.	2.64	3.95 + .69/m	3.95 + .89/m	* $3 Mil. min. kick
PA	GTL	44.4	7.05 Mil.	1.65	2.35 + .26/m	3.50 + .50/m	
RI	GTL	**NONE**	**NONE**	.70*	.70*	1.30 + .30/m	* Flat fee for 20 min
SC	Embarq	**NONE**	**NONE**	.50	1.00 + .15/m	1.25 + .15/m	Ended kick in 2008 [8]
SD	FSH	33-38	225 K	3.00	3.00 + .44/m	3.50 + .50/m	Formerly Qwest
TN	GTL	50.1	3.2 Mil.	.895	1.852 + .098/m	3.53 + .617/m	
TX	Embarq/Securus	40	1.81 Mil.	.26/m	.26/m	.43/m	Bundled rate
UT	FSH	45-55	900 K*	3.15	2.80 + .12/m	3.00 + .45/m	* 2009 kickback data
VA	GTL	35	4.82 Mil.*	1.00	2.25 + .25/m	2.40 + .43/m	* Corrected in 2012
VT	PCS	35	372 K	1.40 + .072/m	1.40 + .23/m	3.25 + .50/m	37% kick in 2009
WA	FSH/VAC	51	5.1 Mil.	3.50*	3.50*	4.95 + .89/m	* Flat fee for 20 min
WI	Embarq	30	2.6 Mil.	1.25	1.25 + .28/m	2.00 + .35/m	
WV	GTL	46	900 K	.85	.85 + .20/m	.85 + .50/m	
WY	ICS	34-43	323 K	1.49	1.17 + .17/m	3.55 + .62/m	51.5% kick in 2010
		41.9 Avg	**143.49 Mil.**				

1 Intrastate rates reflect intrastate interLATA rates, or intrastate intraLATA rates if interLATA is not applicable
2 CA is phasing out kickbacks in 2011; new rates = $.58+$.058/m. local, $.77+$.084/m. intra, $1.52+$.342/m. inter
3 Iowa uses a debit-only system and keeps all revenue after paying phone usage charges
4 Kansas reduced its commission from 48.25% in Jan. 2008; old rates = $4.35 local, $3.26+$.69/m. intra, $2.84+$.66/m. inter
5 MI banned kickbacks in August 2008; old rates = $2.00 local, $2.95+$.325/m. intra, $3.99+$.89/m. inter (current provider is PCS)
6 MT contracted with Telmate in 2011 for a limited 25% commission; new rates = $.24+$.12/m. for all categories of calls
7 Prior to 2008, NY had a 57.5% commission; old rates = $1.28+$.068/m. for all categories of calls
8 SC banned kickbacks as of April 1, 2008; old rates = $.76 local, $1.73+$.22/m. intra, $1.89+$.22/m. inter

Source: Prison Legal News research data (as of 2007-2008); revised 10/23/2012