

PRISON LEGAL NEWS

Dedicated to Protecting Human Rights

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Please Reply to Tennessee Office:

April 18, 2007

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**RE: Comment Regarding CC Docket No. 96-128 (Implementation
of Pay Telephone Reclassification and Compensation Provisions
of the Telecommunications Act of 1996)**

Dear Ms. Dortch:

I am contacting you in my capacity as Associate Editor for *Prison Legal News* (PLN), a nationally-distributed monthly publication that reports on criminal justice and corrections-related issues, in reference to CC Docket No. 96-128.

Docket No. 96-128, referred to as the Wright petition, requests that the FCC enact rules to require competition among prison phone service providers by prohibiting such providers from entering into exclusive service agreements with contracting government agencies, and from imposing other restrictions on prison phone calling options. The FCC has the authority to implement such rules pursuant to 47 U.S.C. § 201(b).

PLN has reported extensively on prison phone services, including litigation, legislation and reform efforts, and our experience in this area leads us to make the following remarks in support of granting the rule-making requested in the Wright petition:

1. Competition, or Lack Thereof

Upon entering into contracts with correctional agencies, prison phone service providers enjoy a complete monopoly on phone services within the jurisdiction controlled by the contract. This legalized monopoly, with a resultant lack of competition, is in effect during the term of the contract. And while such contracts may be rebid, the company that currently holds the contract has a significant advantage in terms of winning the rebid and maintaining its monopoly, since competitors must factor in start-up costs and equipment costs.

In a free market economy, competition acts to lower prices to the benefit of consumers. In the prison phone service market, however, competition exists only when a contract is initially bid, and perhaps during rebids. Even this level of competition makes a mockery of free market economics, however, as the lowest cost for providing prison phone services is rarely taken into account as a contract requirement.

This lack of consumer-friendly competition is due to the industry-standard practice of providing “commissions” to the contracting governmental agencies, which is the polite term for contractually-agreed kickbacks. Prison phone service providers agree to pay a certain percentage of their revenues to the contracting agency as a type of profit-sharing agreement – with these commissions ranging up to 60% of billed phone revenues. Such collusive arrangements, which result in millions of dollars in “commissions,” create a vested interest by the contracting agency to maximize the rates charged to consumers in order to increase the resulting shared profits; or, at least, not to actively seek lower rates that would decrease their kickback.

These “commissions” are passed on to consumers in the form of higher phone rates. Notably, the consumers who actually pay the inflated rates – primarily the family members and friends of prisoners, not the prisoners themselves – have no say whatsoever in the contracting process or the selection of the phone service provider.

While phone rates available to the general public have dropped dramatically in recent years, with phone companies routinely touting long distance rates of \$.10 per minute or less, competition in the prison phone service industry has, to quote one writer, “worked in precisely the opposite direction, with companies offering the highest bids (in terms of rates and commissions) routinely awarded contracts, the costs of which are passed on to the (literally) captive market.” [Steven J. Jackson, “Ex-Communication: Competition and Collusion in the U.S. Prison Telephone Industry”].

In 2005, Virginia received \$7 million in commissions from MCI’s prison phone service, at a 40% commission rate. New York has reaped more than \$200 million in prison phone service profits since 1996 under a 57.5% commission. At least ten states reportedly take in \$10 million or more each year from prison phone commissions; California alone receives over \$20 million in annual prison phone profits. The states that have the most expensive prison phone rates include Washington, Montana, Arizona, Kansas, New Jersey and Arkansas.

MCI has acknowledged that commissions of 20-63% are “customary.” Consider what this means in terms of prison phone service providers’ profits in comparison to their billed phone rates. Since these companies generate a profit despite paying hefty kickbacks to the contracting agencies, absent such “commissions” they could provide the same phone services, and still make a profit, at rates up to 40-60% *lower* than those presently billed. The higher rates charged under exclusive prison phone service contracts represent excess profit paid to the contracting agency at the expense of consumers, who have no say in the contracting process.

2. Impact on Families of Prisoners

Price gouging is an ugly phrase, but as indicated above, that is exactly what prisoners' family members and friends experience when they accept collect calls from their imprisoned loved ones. An estimated 1.5 million children have a parent in prison, and almost 500,000 women are married to incarcerated spouses. Sixty-five percent of female prisoners have minor children. These families and children, and their incarcerated family members, do not live in a vacuum.

Phone calls are a vital resource for maintaining parental and spousal relationships over years of incarceration. Yet prisoners' families are subject to extortionate rates charged by prison phone service providers and the agencies they contract with – rates that often average over a dollar a minute for long distance calls when the connection fee is included. A fifteen-minute call can cost as much as \$17.77. Under the Arkansas Dept of Correction's contract with MCI, prison calls are billed at \$.89 per minute with a \$3.95 connection fee for interstate collect calls (\$30.65 for a 30-minute phone call). This results in socio-economic disparity – families who can afford to accept such expensive phone calls do so, while impoverished families do not.

Such grossly inflated rates are not justified except as a means of monopolistic price-gouging; as indicated above, if the contractual kickbacks were excluded, prison phone service providers could charge about half the current rates and still remain profitable. This is fact, not theory. The Federal Bureau of Prisons (BOP), for example, does not accept prison phone service commissions; consequently, the rate for out-of-state debit calls from BOP facilities is \$.17 per minute. The prison phone service industry's argument that technical expenses and equipment costs justify high phone rates does not explain why such rates vary widely from one jurisdiction to another, with states that forgo "commission" kickbacks having the lowest rates.

There have been many reported cases of families having to cut off telephone contact with their imprisoned loved ones due to outrageous phone bills – bills that exceed \$700 per month for some families. In one case, a concerned mother was billed \$7,000 over a ten-month period after accepting calls from her 18-year-old son jailed in Panama City, Florida. Certainly consumers have a responsibility to budget for the phone services they accept. But what mother would refuse a phone call from her imprisoned son? And what choice does she have as to the cost of those calls if there is only one prison phone service provider, and only one rate?

The inflated rates charged by prison phone service companies should not be borne on the backs of prisoners' families, who are overwhelmingly the ones who must pay such exorbitant costs and the least able, financially, to make such payments. Families of prisoners, whose only "crime" is having a loved one in prison, should not be punished for that familial relationship by having to pay exorbitant phone rates. As stated by Madeleine Severin, there is "something fundamentally unjust about families of prisoners being charged outrageous prices solely because they accept collect calls from people in prison." ["Is There a Winning Argument Against Excessive Rates for Collect Calls from Prisoners?"] 25 *Cardozo L. Rev.* 1469 (2004)].

3. Impact on Prisoners and Society – Rehabilitation

Research has indicated that of the 2.2 million men and women held in our nation's correctional facilities, almost 70% perform at the lowest levels of reading and are considered functionally illiterate (more than triple the rate in the general population). For these prisoners, writing letters is not a viable substitute for contacting family members and maintaining family and parental relationships.

Further, many prisons, both state and federal, are located in rural areas; prisoners may be housed far across the state from their families or, in terms of federal prisoners, clear across the country. There has also been a growing trend over the past several decades to transfer prisoners to other states under contracts with private prison companies. Thus, Hawaiian prisoners have been moved to prisons in Mississippi and Oklahoma, California prisoners have been shipped to Indiana, Alaskan and Washington prisoners have been moved to Arizona, etc. As of July 1, 2005, at least seven states housed prisoners in out-of-state prisons. For these prisoners, family visits are not a viable option for maintaining family and parental relationships.

Such prisoners who cannot adequately read or write, or who are unable to receive visits, must rely on prison phone services. And when the cost of such phone services is excessively high the ability to make such calls is diminished or even extinguished, with family contact and relationships suffering as a result. This impacts more than just prisoners and their loved ones.

Several studies have shown that practices and programs which "facilitate and strengthen family connections during incarceration" can "reduce the strain of parental separation, reduce recidivism rates, and increase the likelihood of successful re-entry" of prisoners after they are released. [Re-Entry Policy Council Report, 2005].

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 authors, Christy Visher, Vera Kachnowski, Nancy La Vigne and Jeremy Travis, noted that "It is evident that family support, when it exists, is a strong asset that can be brought to the table in the reentry planning process." For many prisoners, phone calls to their families and children are the primary means of maintaining family ties and parental relationships during their incarceration.

These findings are recognized by the Federal Bureau of Prisons, which states, in its institutional policy regarding phone services, that "[t]elephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development ... [and are] a valuable tool in the overall correctional process." Further, Donal Campbell, former Commissioner of the Tennessee Dept. of Corrections, stated in reference to prison phone calls, "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."

An estimated 95% of prisoners currently in custody will one day be released. To the extent that strong family support and relationships during incarceration result in lower recidivism rates (e.g., less crime), this issue affects society as a whole. And to the extent that prison phone calls are a primary means to maintain such strong family relationships during incarceration, the affordability of such phone calls is also an issue that affects society as a whole.

4. Abuse, Corruption and Lack of Accountability.

There is little oversight over prison phone service providers or their prison phone service contracts, other than through the contracting government agencies. The “commissions” paid to such agencies cited above result in a natural incentive to maintain a hands-off approach in terms of investigating abuses by prison phone service providers, as such investigations or scrutiny may jeopardize the lucrative kickbacks that the contracting agencies receive.

While state public utility regulatory agencies may have the authority to investigate and make rules related to prison phone services, in practice this is rarely done. Prison phone services are not a significant issue for state regulatory agencies; also, prison phone service companies employ many attorneys and lobbyists to protect their business interests, while there is no similar representation for the consumers – primarily prisoners’ family members – who are most affected by exorbitant prison phone rates. When state public utility regulatory agencies have intervened, however, they frequently uncover gross abuses by prison phone service providers.

The prison phone service industry has been repeatedly sanctioned for overcharging and fraudulent practices. In Louisiana, the state Public Service Commission ordered prison phone service provider Global Tel*Link to refund \$1.2 million in overcharges from June 1993 to May 1994. In 1996, North American Intelcom agreed to refund \$400,000 overcharged to members of the public who accepted prison phone calls, following an investigation by the Florida Public Service Commission. The following year, the Florida Public Service Commission ordered MCI to refund overcharges on collect calls made from state prisons; to settle the claims, MCI paid a \$10,000 fine and placed \$189,482 into a prisoner trust fund. More recently, on May 4, 2001, the California Public Utility Commission ordered MCI to refund \$522,458 in overcharges on collect calls made by California prisoners between June 1996 and July 1999.

The prison phone service industry has also been plagued by conflicts of interest and outright criminal practices. In October 2001, the Georgia Public Service Commission opened an investigation into complaints that MCI was charging separate connection and per-minute fees, which violated state tariff rules. As part of this investigation, the State Ethics Commission noted that Senate Majority Leader Charles Walker’s family-owned business, CresTech, was an MCI subcontractor that was involved in the state’s prison phone services under a multi-million dollar contract. Walker had failed to disclose his interest in CresTech.

In Florida, a 1996 report faulted the state Dept. of Correction for a prison phone contract with WorldCom because the contract was not competitively bid. WorldCom lobbyist Liddon Albert Woodard, Jr. was a personal friend of Deputy DOC Secretary William Thurber, which, according to the state Attorney General’s office, created an "appearance of impropriety."

Former Alabama state auditor Terry Ellis, former Mobile County Commissioner Dan Wiley and another defendant pleaded guilty in July 1999 to federal charges of tax evasion and money laundering related to a prison pay phone scam involving Global Tel*Link. Two other defendants, including lobbyist Willie Hamner, were also implicated. Ellis was a co-owner of the phone company, then known as National Telcoin, from 1990 to 1995; Hamner was a salesman for the company. Ellis hid his interest in the company to avoid an apparent conflict of interest. The federal indictment further stated that Global Tel*Link added extra time to bills for collect calls originating from prisons and jails, usually one or two minutes, and added an extra charge of about 25 cents to each call. Ellis, Hamner and Wiley submitted fake accounting reports to hide the excess billed revenue.

And in North Carolina, a scandal involving the North Carolina Coin Tel Company's \$1.2 million contract to provide prison phone services resulted in criminal charges. Former North Carolina DOC director of departmental services D.R. Hursey and AT&T employee Michael A. Weaver, who was one of the owners of Coin Tel, were indicted in 1993; six other state officials resigned, retired or were transferred to other jobs. Hursey and Weaver were accused of engaging in a bid rigging conspiracy involving prison pay phones, as well as fraudulent billing.

Due to the lack of effective regulation and oversight of the prison phone service industry, such abuses, overcharges and outright criminal enterprises are difficult to detect, with the result that consumers are defrauded and subjected to overcharges with little or no recourse.

5. Absence of Other Regulatory Means

With rare exceptions, state and federal courts have failed to provide relief related to prison phone services, "commission" kickbacks, high rates charged to prisoners' families, etc. Generally, such issues do not raise constitutional claims on the federal level and are often dismissed under the filed rate or primary jurisdiction doctrines. As noted above, in some cases state public utility regulatory agencies have taken action; however, in other cases even that avenue of redress is blocked. For example, in 1998 the Colorado Supreme Court held that the state's Public Utilities Commission lacked jurisdiction over the Dept. of Corrections in regard to excessive prison phone rates charged by Sprint Communications, as Sprint was providing an "unregulated utility." See: *Powell v. Colorado Public Utilities Commission*, 956 P.2d 608 (Colo. 1998).

Some state Departments of Correction have voluntarily reduced prison phone rates, including Nebraska, New Hampshire and West Virginia, as well as the District of Columbia. Recently, Florida DOC Secretary James McDonough reduced prison phone rates by about 30%. Such voluntary rate reductions, often by forgoing lucrative "commissions," are dependent on the stance of individual state policymakers in regard to economic fairness and social responsibility. The vast majority of states prefer to keep prison phone rates high so as to maximize their share of the profits generated by prison phone calls.

Legislative regulation on the state level is extremely difficult to achieve, as prisoners are a disfavored population who have no political voice (e.g., they cannot vote), and their family members have no political advocacy group to speak on their behalf. Further, lawmakers have

little desire to be seen advocating for prisoners or their families, lest they be perceived as “soft on crime.” In fact, bills addressing prison phone rates have been introduced in only three states (New Jersey, Oklahoma and Washington). Considering that most states receive millions of dollars from prison phone service providers, which helps reduce ballooning state budgets, there is little incentive for state lawmakers to provide relief from exorbitant prison phone rates.

Professional organizations such as the American Correctional Association (ACA) and the American Bar Association (ABA) have passed resolutions against excessive prison phone rates; the ACA specifically stated that “[c]orrectional agencies should discourage profiteering on tariffs placed on phone calls which are far in excess of the actual cost of the call, and which could discourage or hinder family or community contacts.” However, these organizations carry little weight in terms of effecting institutional policy change.

With a hands-off policy by the courts, infrequent actions taken by state regulatory agencies, the lack of a strong lobby for prisoners’ families who are victimized by excessively high prison phone rates, and unreceptive lawmakers who are unwilling to take a stand on this issue, there is virtually no effective regulation of prison phone service providers.

Conclusion

Prison Legal News strongly encourages the FCC to consider the above comments when reaching a decision regarding the rule-making requested in the Wright petition, CC Docket No. 96-128. We urge the FCC to grant the remedies outlined in the Wright petition pursuant to the authority granted under 47 U.S.C. § 201(b), including the establishment of reasonable benchmark rates and rate caps, as well as other appropriate actions to protect against price-gouging and monopolistic practices of prison phone service providers.

Such action is necessary because free market forces have consistently failed to provide reasonable, competitive phone rates for the captive market that consists of prisoners and their families, to the detriment of consumers and society as a whole.

Sincerely,

Alex Friedmann
Associate Editor, PLN

cc: Paul Wright, PLN Editor

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May 14, 2007

SENT VIA ONLINE FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**RE: Reply Comment Regarding CC Docket No. 96-128 (Implementation
of Pay Telephone Reclassification and Compensation Provisions of
the Telecommunications Act of 1996)**

Dear Ms. Dortch:

On April 19, 2007 I submitted a letter in reference to CC Docket No. 96-128 (the *Wright* petition), in my capacity as Associate Editor for *Prison Legal News*, a non profit, nationally-distributed publication that reports on criminal justice and corrections-related issues.

On May 10 I received a responsive e-mail from Douglas Galbi, an FCC economist, who requested clarification of one of the statements in my letter, in which I said, "almost 70% [of prisoners] perform at the lowest levels of reading and are considered functionally illiterate...." That statement was made in the context that phone calls provide an important link between prisoners who have literacy problems and their families and children.

The basis for my statement that almost 70% of prisoners perform at the lowest levels of reading and are considered functionally illiterate can be found at the below link, based on a 1992 report by the National Institute for Literacy (NIFL).

The relevant section states, "In 1992, 40% of the prison population was at quantitative literacy Level 1, compared to 22% of the household population; 32% were at Level 2, compared to 25% of the household population; 22% were at Level 3, compared to 31% of the household population; 6% were at Level 4, compared to 17% of the household population; and 1% were at Level 5, compared to 4% of the household population (Haigler, p19, Table 2.3)." See:

<http://www.nifl.gov/nifl/facts/NALS.html>

For a more detailed analysis, please see the following link for a report on the 1992 National Assessment of Adult Literacy (NAAL) study of prisoners, which states, "About 7 in 10 prisoners perform in Levels 1 and 2 on the prose, document, and quantitative scales. These prisoners are apt to experience difficulty in performing tasks that require them to integrate or synthesize information from complex or lengthy texts or to perform quantitative tasks that involve two or more sequential operations and that require the individual to set up the problem."

<http://nces.ed.gov/naal/index.asp?file=OtherResources/ExecSumLitBehindPrison.asp&PageId=157>

Also see the following link to the National Adult Literacy Database, which describes the two lowest levels of literacy in relation to illiteracy rates for prisoners (with footnotes):

<http://www.nald.ca/fulltext/hudson/bringing/page06.htm>

There is a more recent and comprehensive 2003 report from the National Center for Education Statistics available at the following link; however, please note that the definitions for the lowest literacy levels may not be completely identical between the 1992 and 2003 reports:

<http://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2007473>

Also note that levels of illiteracy among prisoners vary according to the study and other factors (e.g., prison vs. jail populations). For example, a 2005 UK study found that about half of prisoners suffered from "poor literacy and numeracy skills; 1998 test results from the UK prison service found 60% of prisoners "had problems with literacy, and 40% had a severe literacy problem." And according to a report from the director general of HM Prison Service, "Half of all prisoners have serious problems with reading, two-thirds with numeracy and four-fifths with writing." For references please see the following link:

<http://www.nationalliteracytrust.org.uk/Database/stats/keystats3.html>

I trust this information is helpful; please do not hesitate to contact me should you require any additional information on this point or related to other issues raised in my letter regarding the *Wright* petition.

Sincerely,

Alex Friedmann
Associate Editor, PLN

cc: Paul Wright, PLN Editor

PRISON LEGAL NEWS

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September 21, 2008

SENT VIA ONLINE FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**RE: Supplement to Previous Comment Regarding CC Docket No. 96-128
(Implementation of Pay Telephone Reclassification and Compensation
Provisions of the Telecommunications Act of 1996)**

Dear Ms. Dortch:

This correspondence is to supplement comments submitted to the FCC by *Prison Legal News* on April 19, 2007, concerning CC Docket No. 96-128 (the Wright petition). I serve as the associate editor for *PLN*, which is a non-profit, nationally-distributed publication that reports on criminal justice and corrections-related issues, including prison phones services.

On pages 5 and 6 of our earlier comments we described various examples of corruption, abuses and lack of accountability in the prison telecommunications industry, which indicated a need for regulation of prison phone service providers by the FCC since current regulatory means have proven to be ineffective. We now supplement our compilation of abuses with the following recent developments, which reflect a continuing need for intervention by the FCC:

1. Pursuant to a December 13, 2007 settlement between AT&T and the Washington Utilities and Transportation Commission (UTC), AT&T agreed to pay \$302,705 in fines as a result of overcharges on collect phone calls made from two Washington state prisons in 2005. The UTC determined that Zero Plus Dialing, a billing agent for AT&T, was charging \$.89 per minute plus a \$3.95 connection fee and a \$.47 prison surcharge – which resulted in a charge of \$22.22 for a 20-minute call. This was in violation of a state statute (RCW 80.36.130). From March to June 2005, the UTC determined that 29,971 prison phone calls had resulted in overcharges. Source: Washington UTC, Docket No. UT-060962.

2. The Florida Public Service Commission has found that TCG Public Communications (TCG), a subsidiary of Global Tel*Link which provides phone services at Dade County jails, had improperly disconnected phone calls from 2001 to 2007. The Commission has recommended that TCG refund almost \$6.3 million to consumers and pay more than \$1.25 million in fines (this is an ongoing and active case). The disconnected calls were erroneously identified as disallowed 3-way calls and thus were terminated – resulting in consumers having to pay re-connect charges for call-backs. The Commission found that “TCG knew about this problem, but did not correct it during the period in question. On the contrary, TCG continued to profit from these unjustified charges over a period of approximately seven years.” Source: Commission Docket No. 060614-TC.

The two supplemental incidents described above evidence that abuses by prison phone service providers are not relegated to the past; rather, they continue in full force. Further, note that the misconduct by prison phone companies cited in *PLN*'s previous comments, and in this correspondence, are only those that are publicly known.

Some may consider such examples to be an indication that no additional regulation is necessary, since public utility commissions are reining in prison phone companies. However, consider that there is *no uniformity* among the states in regard to public utility actions involving prison phone service providers. The public utility commissions in some states are more attentive to exorbitant rates, overcharges and other abuses by prison telecommunication companies (e.g., in California, Florida and Washington state), while others are not. This lack of uniformity means that citizens in different states receive disparate regulation of prison phone service providers and unequal remedies for their abuses. Regulation by the FCC would provide uniform requirements and rules that would benefit consumers of prison phone services on a national level. This is of particular importance for interstate phone calls made from prisons, which are within the FCC's province and clearly subject to federal jurisdiction and regulation.

Based upon the above information and the reasons cited in our prior comments, *PLN* urges the FCC to grant the remedies outlined in the Wright petition pursuant to the authority granted under 47 U.S.C. § 201(b). Thank you for your continued time and attention;

Sincerely,

Alex Friedmann
Associate Editor, *PLN*

cc: Paul Wright, *PLN* Editor

HUMAN RIGHTS DEFENSE CENTER

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April 25, 2011

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street S.W.
Washington, DC 20554

RE: Comment Regarding CC Docket No. 96-128 (“Wright Petition”)

Dear Ms. Dortch:

I am the associate editor of *Prison Legal News* (PLN), a nationally-distributed monthly publication that reports on criminal justice and corrections-related issues, and a project of the Human Rights Defense Center (HRDC). This letter and the attached document are submitted as a formal comment relative to CC Docket No. 96-128.

CC Docket No. 96-128, referred to as the “Wright Petition,” requests that the FCC enact rules to require competition among prison phone service providers by prohibiting such providers from entering into exclusive service agreements with contracting government agencies, and that the FCC impose caps on interstate prison phone rates. The FCC has the authority to implement such rules pursuant to 47 U.S.C. § 201(b).

PLN has previously submitted formal comments regarding the Wright Petition, on April 18, 2007, May 14, 2007 and September 21, 2008.

Following a multi-year research project, in April 2011 PLN published a comprehensive cover story on prison phone services nationwide, including a state-by-state comparison of prison phone rates, commission (kickback) percentages, and commission payments from prison phone contracts. This is the most detailed look at the prison phone industry to date.

Our research revealed that based on 2008 data, 42 states received commission revenue from companies that provide prison phone services, amounting to \$152.44 million nationwide; that commission rates ranged from 18% to 66.1%, with an average rate of 42%; and that long

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Secretary Marlene H. Dortch
April 25, 2011
Page 2

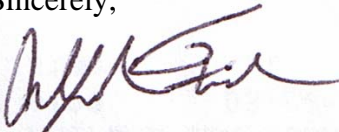
distance (interstate) prison phone rates ranged from \$.048/minute in New York (which banned commission payments in 2008) to \$4.95 + \$.89/minute in Washington State (\$18.30 for a 15-minute long-distance collect call).

Our research further found that prison phone rates are non-uniform and largely arbitrary, with high rates in some states and lower rates in others; that there is little or no competition in the prison phone market from the perspective of the consumer, since contracts are awarded not on the lowest phone rate but on the largest kickback commission; that the prison phone industry is consolidated among a shrinking number of firms, which reduces what little competition exists (one company, Global Tel*Link, provides prison phone services in over half the states); and that, notably, when states reduce or forgo kickback commissions, the cost of prison phone rates drops significantly (based on before-and-after comparisons in states that have reduced or banned commissions). That is, but for the commissions, prison phone rates would be much lower.

A copy of our April 2011 cover story with an accompanying chart that reflects state-by-state prison phone data is attached, and we are submitting this document for consideration by the FCC relative to CC Docket No. 96-128.

We are in the process of putting all of the underlying research data that contributed to our April 2011 cover story online, and would be glad to share such data with the FCC. Thank you for your time and attention in this regard;

Sincerely,

A handwritten signature in dark ink, appearing to read 'Alex Friedmann', is written over a light-colored rectangular background.

Alex Friedmann
Associate Editor, PLN

cc: Paul Wright, PLN Editor

Attachment

HUMAN RIGHTS DEFENSE CENTER

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June 16, 2011

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street S.W.
Washington, DC 20554

RE: Comment Regarding CC Docket No. 96-128 (“Wright Petition”)

Dear Ms. Dortch:

I am the associate editor of *Prison Legal News* (PLN), a nationally-distributed monthly publication that reports on criminal justice and corrections-related issues, and a project of the Human Rights Defense Center (HRDC). This letter and the related attachments are submitted as a formal comment relative to CC Docket No. 96-128.

CC Docket No. 96-128, commonly known as the “Wright Petition,” requests that the FCC enact rules to require competition among prison phone service providers by prohibiting such providers from entering into exclusive service agreements with contracting government agencies, and that the FCC impose caps on interstate prison phone rates. The FCC has the authority to implement such rules pursuant to 47 U.S.C. § 201(b).

PLN has previously submitted formal comments regarding the Wright Petition, on April 18, 2007, May 14, 2007, September 21, 2008 and April 25, 2011. Our last comment included the results of our comprehensive multi-year research project on prison phone services, including a state-by-state comparison of prison phone rates, commission (kickback) percentages, and dollar amounts of commission payments from prison phone contracts nationwide.

We now want to bring to your attention additional information regarding the actual cost of prison phone services provided by telecommunications companies, which has been a point of heated contention in the Wright Petition as evidenced by filings made by both the petitioners and by companies that provide prison and jail phone services.

PLN is a project of the Human Rights Defense Center

Secretary Marlene H. Dortch
June 16, 2011
Page 2

As indicated in our April 25, 2011 comment, prison phone rates vary widely among different states and even within the same state. Local collect calls cost as much as \$2.75 + \$.23/minute (Colorado), intrastate collect calls cost as much as \$3.95 + \$.69/minute (Oregon) and interstate collect calls range up to \$4.95 + \$.89/minute (Washington). This is despite the fact that prison phone services all provide essentially the same service with the same security features.

Recently, in February 2011, the Michigan Department of Corrections (MDOC) entered into a phone service contract with Public Communications Services, Inc. (PCS), which is now owned by Global Tel*Link – the nation’s largest prison telecommunications company, which provides prison phone services in more than half the states. Michigan is one of 8 states that do not accept commission “kickbacks” from prison phone service firms.

Under the terms of the MDOC contract, the charged rates are \$.0393/minute for collect calls and \$.0343/minute for debit calls regardless of whether the calls are local, intrastate or interstate. See Exhibit 1, attached – excerpts from contract between the State of Michigan and PCS, effective February 9, 2011 (first page and exhibits 5P and 6P of the contract). The contract also provides for “optional” services that can be added for an additional charge; such options include a “key word search” feature and a “special equipment fund” charge.

On April 23, 2011, the MDOC executed Change Notice No. 1 to the PCS phone contract (see Exhibit 2, attached). The change added the optional key word search feature for an additional \$.0075/minute and the optional special equipment fund charge for \$.1532 to \$.2430/minute, resulting in total per-minute charges of \$.20/minute for collect local and intrastate calls, \$.23 per minute for collect interstate calls, \$.18/minute for local and intrastate debit calls, and \$.21 per minute for interstate debit calls.

It is important to note that the base per-minute rates under the MDOC contract (\$.0393/minute for collect calls and \$.0343/minute for debit calls) are the lowest in the nation. According to MDOC spokesman John Cordell in a June 10, 2011 email, the “[b]ase rate charged by PCS” covers “the cost of operating expense and their capital costs.” The optional features that the MDOC added in the April 2011 Change Notice are just that – optional. The word search option is an extra security feature and the special equipment fund “will be used to install the latest cell phone detection, jamming or managed signal technologies.” (see Exhibit 3, attached).

That is, the optional features are above and beyond the operational and capital costs of PCS, which can generate profit at the contractual base rates of \$.0393/minute for collect calls and \$.0343/minute for debit calls. These low rates demonstrate the actual cost (plus an unspecified profit margin for PCS) in providing phone services to the MDOC, despite the claims of prison phone service companies that their costs are much higher due to security features, specialized equipment, etc. If PCS could not generate a sufficient amount of profit at the low base rates specified in the MDOC contract, it would not have entered into that contract.

Secretary Marlene H. Dortch
June 16, 2011
Page 3

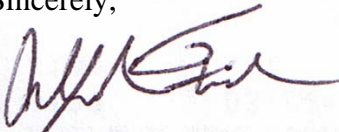
Further, since PCS is owned by Global Tel*Link, the largest prison phone service company in the nation, such low rates *could* be offered in most other state prison systems, but are not. As we found during our research into this issue, included with our April 25, 2011 comment submitted to your office, prison phone rates are usually much higher due to commission “kickbacks” paid to the contracting agency, averaging 42% of gross revenue generated by prison phone calls. And since prison phone contracts tend to be awarded based on the highest kickback percentage rather than the lowest phone rates, the usual competitive forces that result in lower prices to consumers are largely absent in the prison phone service market.

We submit that the low base rates in the MDOC contract of \$.0393/minute for collect calls and \$.0343/minute for debit calls demonstrate that prison phone companies are perfectly capable of charging such low rates while still generating profit (despite protestations that their operating costs are higher which they claim justifies higher rates). This is particularly true given that the MDOC says the base rates cover PCS’s “cost of operating expense and their capital costs.”

Consequently, the caps on interstate prison phone rates requested in the March 2007 alternative rulemaking proposal submitted in the Wright Petition would not unduly burden prison phone service companies, as the MDOC contract evidences that such companies can generate profit at rates of less than \$.04/minute for both collect and debit prison phone calls.

Thank you for your continued time and attention in this regard;

Sincerely,



Alex Friedmann
Associate Editor, PLN

cc: Paul Wright, PLN Editor

Attachments: Exhibits 1-3

EXHIBIT 1

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

March 18, 2011

NOTICE
OF
CONTRACT NO. 071B1300208
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Public Communications Services, Inc. 11859 Wilshire Blvd, Suite 600 Los Angeles, CA 90025 Email: Chris.Moore@gtl.net	TELEPHONE (800) 350-1000 Chris Moore
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 Steve Motz
Contract Compliance Inspector: Cheryl Groves 517-373-0287 Inmate Telephone Services	
CONTRACT PERIOD: From: February 9, 2011 To: February 8, 2016	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION:	

TOTAL ESTIMATED CONTRACT VALUE: \$5.00



Exhibit 5P - Pricing

The Contractor will have full responsibility for project implementation. Items, which are not produced or provided directly, shall be marked as such. Prices shall be inclusive of any and all costs associated with full implementation, which may include but is not limited to applicable, such cost of manufacture, packing, handling loading/unloading, removal of debris, transportation, inside delivery, installation, training, maintenance, documentation, insurance, and any other item that could be interpreted as the overall cost to procurement.

The firm fixed price for performing services in accordance with the provisions and requirements stated in this Contract is provided below. This price is fixed/firm throughout the life of the contract.

Collect/Pre-paid Collect Calls:

Call Type	Per Call Surcharge (Firm Fixed Price)	Rate per minute (Firm fixed Price)
Local	\$0	\$0.0393
Intralata	\$0	\$0.0393
Intrastate	\$0	\$0.0393
Interstate	\$0	\$0.0393

Debit/Debit Cards:

Call Type	Per Call Surcharge (Firm Fixed Price)	Rate per minute (Firm fixed Price)
Local	\$0	\$0.0343
Intralata	\$0	\$0.0343
Intrastate	\$0	\$0.0343
Interstate	\$0	\$0.0343
International	\$0	\$0.4995

Additional Costs:

The above rates are inclusive of all fees (except for a credit card fee). There will be no fees or taxes allowed other than those identified below:

Allowable Additional Costs not included in the Firm Fixed Per Minute Rates include:

- Federal and local taxes and Universal Service Fund may be passed through, however they shall not exceed the actual cost to the provider
- Credit Card Transaction Fee
 - Vendors charging a Credit Card Transaction Fee must provide a **single fee** that will be applicable for all funding methods (IVR, Live Operator, Kiosk, Website, etc.) in all amounts.

Single Credit Card Transaction Fee
\$3.95

- Other than the Allowable Additional Costs disclosed by the Contractor in Exhibit 5P, no additional fee/cost or billing statement fee or other expenses may be charged by the vendor's, subcontractor(s), or by a vendor's third-party agent.
- In the event kiosks or alternative payment channels are implemented, other than the Allowable Additional Costs disclosed by the Contractor in Exhibit 5P, no additional taxes or other expenses may be charged by another vendor's subcontractor, or vendor's third-party alternative payment channel provider, such as TouchPay, JPay, ICSolutions (ICS), V-Connect (Value Added Communications / VAC), EZCard, or any other third-party account funding channel or company.



- The amount charged for credit card transactions must be provided as the \$3.95 single fixed fee regardless of the amount deposited – i.e. \$25, \$50 or \$500.
- The all-inclusive firm fixed per minute rate includes bill rendering fees/bill service fees for collect calls, pre-paid collect account set up fees, account maintenance fees, minimum usage fees, inactivity fees and account termination fees.
- Per minute pricing shall be based on the understanding that Carrier Assessed Administrative Fees will not be allowed.
- All allowable additional costs are included in the table below:

Additional costs not included in Firm Fixed Per Minute Call Rate Contractor is allowed to charge.	Pre-Paid Collect Calls	Collect Calls	Debit/Debit Card Calls
account close-out fees	No	No	No
account maintenance fees	No	No	No
automated IVR deposit fee	No	No	No
bill processing/rendering fee	No	No	No
bill statement or billing recovery fees	No	No	No
check by phone processing fees	No	No	No
credit card transaction fees	*\$3.95	No	No
internet web deposit fee	No	No	No
regulatory recovery fees	No	No	No
single bill fees	No	No	No
Universal Service Fund	**Yes	**Yes	**Yes
Taxes	**Yes	**Yes	**Yes
Account Inactivity Fee	No	No	No
Zero utilization fees	No	No	No
Other fees not identified in table	No	No	No

* Vendors charging a Credit Card Transaction Fee must provide a **single fee** that will be applicable for all funding methods (IVR, Live Operator, Kiosk, Website, etc.) in all amounts.

** Federal and local taxes and Universal Service Fund may be passed through; however they shall not exceed the actual cost to the provider



Exhibit 6P – Pricing for Optional Services

Exhibit 6P includes pricing for the optional services described in Exhibit 4. The State may select to procure these optional services at any time during the contract period.

The following rate adjustments are provided for each of the Optional Services listed below:

Optional Service	Addition to the Per-Minute Rate for Each Call Type
1 - Special Equipment Fund (1)	See Special Equipment Fund Table for pricing
2 - RESERVED	
3 - Nexidia Key Word Search	\$0.0075
4 - InTime Labor Management	\$0.0050
5 - Cell Phone Detection/Control	To be determined based on the product, scope, and features selected by the State
6 - iPhones (2)	To be determined based on quantity
7 - Additional Investigative Site Administrators (3)	\$0.0035
8 - Voice Verification/Biometrics	\$0.0450

(1) See Special Equipment Fund Table for pricing.

(2) The PCS Team would work with the MDOC to determine the number of phones and service desired and would then negotiate whether any additional per-minute price is required to meet those needs.

(3) This includes 3 or more site administrators in addition to the 5 that are already included as part of the standard service offering.

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

April 23, 2011

EXHIBIT 2

CHANGE NOTICE NO. 1
OF
CONTRACT NO. 071B1300208
between
THE STATE OF MICHIGAN
And

NAME & ADDRESS OF CONTRACTOR Public Communications Services, Inc. 11859 Wilshire Blvd, Suite 600 Los Angeles, CA 90025 Email: Chris.Moore@gtl.net	TELEPHONE (800) 350-1000 Chris Moore CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 241-3215 Steve Motz
Contract Compliance Inspector: Cheryl Groves 517-373-0287 Inmate Telephone Services	
CONTRACT PERIOD: From: February 9, 2011 To: February 8, 2016	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S):

Effective immediately, the Special Equipment Fund (per Month) Table in Exhibit 6P, has been replaced by the Attached Special Equipment Fund (per Month) Revised V2 Table. Change Notice #1 also includes a summary of the Per Minute Rates that have been set based on the options selected by the State.

All other pricing, specifications, terms and conditions remain unchanged.

AUTHORITY/REASON(S):

Per Contractor, DOC, and DTMB approval.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$5.00

Summary of the Per Minute Rates

		Per Call Surcharge (From Exhibit 5P)	Base Rate Per Minute Does Not Include Options Selected by Agency (From Exhibit 5P)	Optional Key Word Search Addition Option Selected by Agency through Change Notice #1 (From Exhibit 6P)	Optional Special Equipment Fund Addition Option Selected by Agency through Change Notice #1 (From Exhibit 6P)	Per Minute Rate Including Options Selected by Agency
Collect/ Prepaid	Local	= \$0.00	+ \$0.0393	+ \$0.0075	+ \$0.1532	= \$0.2000
	Interstate	= \$0.00	+ \$0.0393	+ \$0.0075	+ \$0.1832	= \$0.2300
Debit	Local	= \$0.00	+ \$0.0343	+ \$0.0075	+ \$0.1382	= \$0.1800
	Interstate	= \$0.00	+ \$0.0343	+ \$0.0075	+ \$0.1682	= \$0.2100
	International	= \$0.00	+ \$0.4995	+ \$0.0075	+ \$0.2430	= \$0.7500

This table provides a summary of the Per Minute Rates and Optional Services selected by the State and their accompanying costs.
This does not amend or modify any of the pricing or terms in the Contract



EXHIBIT 3

New MDOC Phone Rates

John Cordell <cordeljc@michigan.gov>

Fri, Jun 10, 2011 at 1:48 PM

To: stein919@gmail.com

Here are the rates and a breakdown of what the rate pays for. Michigan now has the 11th least expensive rate in the nation, while improving the system hardware and capabilities.

The new rate for MDOC, \$.20 collect and \$.18 prepaid is broken into 4 categories: PCS base rate, PCS word search, PCS SEF administrative charge and MDOC SEF. In this example I am using the \$.20 collect call rate.

1. Base rate charged by PCS to cover the cost of operating expense and their capital costs \$.0393 per minute.
2. Word Search capabilities for investigative capabilities, \$.0075 per minute. The base rate and word search are both fixed costs and are the same regardless of collect or prepaid call type.
3. Special Equipment Fund Administrative overhead - 29% of SEF revenue or \$.0444 per minute.
4. Special Equipment Fund MDOC - this fund will be used to install the latest cell phone detection, jamming or managed signal technologies. The MDOC's portion of the Special Equipment Fund is \$.1088 per minute.

John C. Cordell
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Michigan Department of Corrections
Office of Public Information
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"Less Stress, More Fun"
