

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

In the Matter of)
)
Rates for Interstate Inmate Calling Services) WC Docket No. 12-375
)

COMMENTS OF ASIAN AMERICAN JUSTICE CENTER, THE CENTER FOR MEDIA JUSTICE, COMMUNICATIONS WORKERS OF AMERICA, FREE PRESS, THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, NATIONAL COUNCIL OF LA RAZA, NATIONAL HISPANIC MEDIA COALITION, NATIONAL ORGANIZATION FOR WOMEN FOUNDATION, NATIONAL URBAN LEAGUE, NEW AMERICA FOUNDATION'S OPEN TECHNOLOGY INSTITUTE, PUBLIC KNOWLEDGE, AND UNITED CHURCH OF CHRIST OFFICE OF COMMUNICATIONS INC.

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EXECUTIVE SUMMARY

The Asian American Justice Center, the Center for Media Justice, Communications Workers of America, Free Press, The Leadership Conference on Civil and Human Rights, National Association for the Advancement of Colored People, National Council of La Raza, National Hispanic Media Coalition, National Organization for Women Foundation, National Urban League, New America Foundation's Open Technology Institute, Public Knowledge, and the United Church of Christ Office of Communications Inc. (collectively, "The Phone Justice Commenters") respectfully submit these comments in response to the Notice of Proposed Rulemaking (NPRM) considering rates for interstate interexchange inmate calling services (ICS). We appreciate the Commission's action on two long unresolved petitions for rulemaking: 2007's Alternative Wright Petition and its predecessor filed in 2003, the First Wright Petition. We urge the Commission to keep up its momentum, move swiftly to evaluate input from all commenters, and promulgate the necessary rule changes to secure just and reasonable interstate ICS rates for prisoners and their loved ones back home. Specifically, the Commission should cap ICS rates at the lowest possible per-minute rate that is justified by providers' costs. Furthermore, the Commission should eliminate needless per-call fees and other unjustifiable fees, such as fees to deposit money into an account. Such steps will make it possible for inmates to maintain connections with their families and friends, facilitate their reentry into society, reduce recidivism, and consequently strengthen communities and the nation as a whole.

Section 201(b) of the Communications Act and the Act's payphone provisions grant the Commission clear authority to regulate ICS rates. Prison phone providers are common carriers and therefore have a duty to provide service at just and reasonable rates. In cases like the instant

one, in which carriers run afoul of this duty, the Commission has a specific mandate to right the carriers' courses.

As has been demonstrated in the record developed in the Wright proceedings over the past ten years, phone calls made from correctional facilities are often exorbitantly high-priced. The main factors contributing to such high rates are excessive commissions paid by ICS providers to state prison systems. In return for these payments, states grant exclusive contracts to the carriers, creating a monopoly within individual facilities. These arrangements preclude competition from driving down prices. What is more, inmates' and their families' inelastic demand for communications services and corporate consolidation among ICS providers further exacerbate the problem. As a result, a fifteen-minute call typically costs upwards of \$15. Given that most incarcerated persons hail from low-income communities, their families simply cannot afford to receive such calls, and must make hard choices about whether to keep in touch with their loved ones or put food on the table.

Ensuring that inmates can maintain ties with their families and communities is imperative to advancing the public interest. Regular contact with loved ones greatly improves ex-offenders' chances for successful reentry into society. Reentry cannot be divorced from recidivism and recidivism cannot be divorced from high incarceration rates. Policies that inhibit effective reentry contribute to high recidivism, which contributes to higher crime and re-incarceration rates. And because of the disproportionate representation of African Americans, Latinos, and low-income individuals within the U.S. prison system, civil rights considerations are implicated.

Exorbitant ICS rates do not just impact those who are confined by prison walls. When inmates cannot maintain ties with home, the consequences are felt by their families, their communities, and the entire country. For too long, prison telephone operators have been allowed

to prey on the innocent and those who most need protection. The Phone Justice Commenters urge the Commission to act expediently to address the unreasonably high rates that consumers pay for interstate ICS.

I. The Commission Has Broad Authority To Regulate Interstate ICS Rates.

A. The Communications Act Grants The Commission Legal Authority to Cap Interstate ICS Rates.

Section 201(b) of the Communications Act mandates that common carriers provide service at just and reasonable rates and authorizes the Commission to “prescribe such rules and regulations as may be necessary in the public interest” to fulfill that obligation.¹ Carriers that provide payphone service to inmates are no exception to this rule. Accordingly, when their rates are unjust or unreasonable, as described in Section II(A) of these comments, those rates are unlawful. The Commission can and should declare them to be so and set a reasonable rate for interstate prison payphone service.

Arguably, the Commission has the discretion to go beyond capping rates and to regulate exclusive contracts between state prison systems and carriers. In the matter of *Promotion of Competitive Networks in Local Telecommunications Markets (Competitive Networks)*, the Commission found that Section 201(b) provided the authority to ensure just and reasonable charges via means other than setting rates. There, the Commission was said to have “undoubted power to regulate the contractual or other arrangements between common carriers and other entities, even those entities that are generally not subject to Commission regulation.”² It follows

¹ 47 U.S.C. § 201(b).

² *Promotion of Competitive Networks in Local Telecommunications Markets*, 15 FCC Rcd 22983, 23000 n.85 (2000); see also *TRAC Communications Inc. v. Detroit Cellular Telephone Co.*, 4 FCC Rcd 3769 (1989), *aff’d* 5 FCC Rcd 4647 (1990) (invalidating an exclusivity provision in a cellular resale agreement); *Western Union Telegraph Co. v. FCC*, 815 F. 2d 1495,

that the Commission has authority to make decisions that will impact practices, such as excessive commission payments or unreasonable charges to deposit funds into debit accounts, that have the effect of inflating customer rates.

In any event, the Commission's authority to review interstate ICS rates is clear, as is its power to ensure by means of several methods that those rates are just and reasonable.

B. The Commission's Broad Authority to Cap Interstate ICS Rates is Consistent with The Communications Act's Special Provisions for Payphone Service.

Congress adopted Section 276 of Communications Act to "promote a more evenhanded competitive environment" between independent payphone providers and those that were affiliated with incumbent carriers.³ In doing so, Congress mandated that all payphone providers be fairly compensated for "each and every completed intrastate and interstate call."⁴ In implementing this provision in 2002, the Commission addressed a request by the Inmate Calling Services Providers Coalition to reconsider whether the Commission would preempt state rate caps for inmate telephone services.⁵ There, the Commission identified an inherent value in access to communications services and found that a payphone did not have to be remarkably profitable in order for its operator to be fairly compensated. Specifically, the Commission determined "a payphone that earns just enough revenue to warrant its placement, but not enough to pay anything to the premises owner" is "a viable payphone...because the payphone provides

1501 (D.C. Cir. 1987) (finding that the Commission has the power to modify private contracts when it is necessary to serve the public interest).

³ S. Rep. No. 104-23, at 58 (1995).

⁴ 47 U.S.C. § 276(b)(1)(A).

⁵ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand & Notice of Proposed Rulemaking, 17 FCC Rcd 3248 (2002).

increased value to the premises.”⁶ Accordingly, in the instant proceeding, the Commission need not set an interstate prison phone rate cap that still allows for a payment to the premises owner in order to fairly compensate providers.

II. ICS Rates Are Unreasonable And Prevent Incarcerated Persons From Maintaining Connections With Their Loved Ones and Communities.

A. ICS Rates are Unjust and Unreasonable.

Prison phone rates are extraordinarily high. Most estimates place the price of a fifteen-minute phone call at \$15 for the average state prisoner or his family. This cost typically includes a per-call connection surcharge on top of a per-minute rate. Other, less apparent fees may also be associated with placing calls from prison. For example, Global Tel Link charges a \$4.75 service fee for every \$25.00 credit card payment made to a prepaid account and a \$5 fee to close an account.⁷ Rates can go as high as \$17.30 for a fifteen-minute call, as they do in Georgia.⁸ At an average price of \$15 for every fifteen minutes, it would cost \$240 per month (in addition to one’s regular phone bill) to speak to a loved one in prison for just one hour per week.

Charging significantly higher rates for phone calls from prison unfairly punishes inmates’ families, who are ultimately responsible for paying these costs. Even if an incarcerated person would like to contribute to that phone bill, it is unlikely he or she could meaningfully do so. The average of the maximum wages paid to prisoners by the states is \$4.73 per day.⁹ As a result, the loved ones of inmates—who are more often than not low-income earners—are forced to choose

⁶ *Id.* at 3254-55 ¶ 15

⁷ See John E. Dannenberg, *Nationwide PLN Survey Examines Prison Phone Contracts, Kickbacks*, 22 *Prison Legal News* 1, 1 (2011).

⁸ See Georgia Department of Corrections, *Inmate Telephone System: Global Tel*Link Customer User Guide* available at http://www.dcor.state.ga.us/pdf/GDC_GTL_user_manual.pdf (last visited Mar. 18, 2013).

⁹ Peter Wagner, *The Prison Index: Taking the pulse of the Crime Control Industry* (2003) available at <http://www.prisonpolicy.org/prisonindex/prisonlabor.html>.

between making a call to prison, or putting food on the table and keeping on the lights. What's more, phone calls are often the only regular contact most families can have with their incarcerated loved ones. In-person visits may be out of reach, no matter how frequently or rarely a family member may wish to visit, due to the high cost of traveling long distances across states to visit prisons.¹⁰

What is especially alarming about prison phone operators' unreasonable rates is that they are forced upon society's most vulnerable members. A 2012 report by the Prison Policy Institute rightly pointed out that predatory prison phone rates amount to a regressive tax on communities that experience higher incarceration rates: low-income communities. Taxpayers may pay for prisons, but poor persons are effectively taxed again when they absorb the cost of communicating with their loved ones and neighbors who occupy the very prisons their tax dollars already fund.¹¹

B. Exclusive Contracts, Inelastic Demand, and Consolidation Amalgamate in the Prison Phone Market to Artificially Inflate Prices.

Exorbitant prison calling rates have arisen from the intersection of two modern phenomena: the remarkable boom in U.S. incarceration rates, and the steady proliferation of deregulatory and pro-consolidation attitudes within the telecommunications sphere. As a result, the prison phone business has become an incredibly lucrative and fast-growing industry. It is estimated that the prison phone market grosses roughly \$362 million each year.¹² One reason the

¹⁰ The Sentencing Project estimates that the majority of imprisoned parents in state and federal prisons are held over 100 miles from their last home. Furthermore, over half of female prisoners have never had a visit from their children. See The Sentencing Project, *Women in the Criminal Justice System: Briefing Sheets* (May 2007).

¹¹ See Drew Kukorowski, Prison Policy Initiative, *The Price to Call Home: State-Sanctioned Monopolization in the Prison Phone Industry* (Sep. 11, 2012).

¹² See Dannenberg *supra* note 7.

industry takes in so much money is that, pursuant to exclusive contracts, phone companies operate as monopolies within individual correctional facilities.

These monopolies are awarded through a bidding process. First, states issue a request for proposal (RFP) outlining the capacity needs of the prison. From there, phone companies assess the cost of serving a given facility. However, cost alone does not determine the bidding price. An overwhelming majority of prison phone contracts include commissions paid to the state prison.¹³ These commissions may be fixed up-front payments, percentages of revenue, or both.¹⁴ They are the driving force behind many winning bids for exclusive contracts. Nationally, commissions consist of 42% of prison phone revenues, with some of the highest commission rates circling 60%.¹⁵ Because these contracts generate revenue, state prison systems typically do *not* select the bidder that offers the lowest rates. Instead, they reap the greatest return by selecting the provider that offers the highest commission. This is exactly what happened in Louisiana and Alaska. In an RFP issued by Louisiana in 2001, the state explicitly requested that bidders' commission percentages be set as high as possible and accordingly explained it would reward such bids with the maximum score in the process.¹⁶ A 2007 Alaska RFP similarly spelled out the state's motives: "The cost proposal providing the largest percentage of generated revenues to the state will receive the maximum number of points."¹⁷ However, payphone operators do not bear the burden of these payments. Instead, they unfairly pass the charge on to inmates' families—to the tune of \$143 million per year by 2011 estimates.¹⁸

¹³ See Kukorowski *supra* note 11.

¹⁴ See *id.*

¹⁵ Dannenberg, *supra* note 7.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

In addition to their monopoly status, prison phone providers are also able to capitalize on the relatively inelastic demand for telephone contact between inmates and their families.¹⁹ The demand for a good or service is said to be inelastic when a change in price causes only a modest change in demand. Typically, inelastic goods or services are necessities in the eyes of consumers and have no close substitutes readily or widely available in the market. In the prison phone market, both of these factors contribute to the inelasticity of demand. Many inmates and their families would deem some communication a necessity, and exclusive contracts make choice among service providers impossible.

Corporate consolidation has also exacerbated already high prison phone rates. Three carriers have been allowed to dominate the market: Global Tel Link, Securus Technologies, and Century Link. Taken together, these three companies have exclusive control over the state prison payphone operations in states where 90% of incarcerated persons live. Global Tel Link alone has contracts for over half of the state correctional departments, controlling the phone service of almost 57% of state prison inmates following several mergers over the last five years.²⁰ The prison phone market is merely a microcosm of this country's greater telecommunications market. However, anticompetitive practices have been allowed to proliferate and prices have been allowed to skyrocket within the prison phone market at a rate that far outpaces that in the nationwide market. This proceeding offers the Commission another chance to cap prison phone rates at an affordable level and rescue families, who are ultimately responsible for paying these charges, from predatory and exploitative practices.

¹⁹ See Kukorowski, *supra* note 11.

²⁰ *Id.*

C. Available Evidence Does Not Justify Current ICS Rates.

Although in some cases high prison phone rates conceivably might be justified because of security measures, these costs remain unsubstantiated. In fact, prices vary widely across states, even among states that use the same ICS provider. A fifteen-minute Global Tel Link call costs \$2.36 in Massachusetts and \$17.30 in Georgia.²¹ The price differential is not likely attributable to varying security costs, but instead the disparity can be traced back to the range of commissions that Global Tel Link pays to state governments. In New York, where commissions are prohibited, Global Tel Link is able to provide secure payphone service at only \$0.05 per minute, making a fifteen-minute call only \$0.75.²²

Furthermore, astronomical rates cannot be justified by directing any profits to a good use, such as services for prisoners. Carriers are not permitted to charge unjust or unreasonable rates even if the profits produced by those rates are put toward a beneficial purpose. Prison systems cannot lawfully under the Communications Act use the profits from unreasonably priced phone calls to double-tax society's most vulnerable people.

III. Efforts to Reduce Prison Phone Rates are In Accord with Widespread Efforts to Reduce Recidivism.

Research shows that regular contact with family and friends helps prisoners rehabilitate, facilitates their reentry into society, and decreases recidivism.²³ The Commission should exercise its authority to cap prison phones to encourage contact with inmates and promote the public interest.

²¹ See Global Tel Link Manual, *supra* note 8.

²² See Kukorowski *supra* note 11.

²³ House Oversight and Government Reform Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, Testimony of Nancy G. La Vigne, Director, Justice Policy Center, the Urban Institute, *Hearing on Housing D.C. Code Felons Far Away From Home: Effects on Crime, Recidivism, and Reentry*, 111th Cong. (May 5, 2010).

For inmates, one of the few methods of maintaining contact with loved ones is communication through in-person visits, letter writing, and phone calls. Many prisoners are incarcerated hundreds of miles from loved ones, making in-person visits too expensive. For the significant percentage of the incarcerated with low-literacy skills or in prison systems that place limits on letter-writing, phone calls are often the only way to connect families and maintain bonds. In a study by the Urban Institute, more than half of incarcerated parents reported never receiving a personal visit from their children.²⁴ In a study by the Vera Institute, twenty-seven percent of the incarcerated people surveyed indicated that they had not had any visits during their incarceration, and the primary reason offered was because family members lived too far away. These challenges make lowering the high cost of phone calls even more imperative. Seventy-six percent of family members described significant barriers to maintaining contact, including the cost of calling cards and expensive collect calls.²⁵ In another analysis, though children who are incarcerated or in juvenile detention were found to do better with family support, inmates reported the cost of telephone calls as a major barrier to maintaining contact.²⁶ These burdens and costs are all the more challenging because family members themselves often may struggle with their own limited incomes, educational attainment, and resources.²⁷

²⁴ Jeremy Travis, *et al.*, *Families Left Behind, the Hidden Costs of Incarceration and Reentry*, Urban Institute (June 2005) available at http://www.urban.org/UploadedPDF/310882_families_left_behind.pdf

²⁵ Margaret diZerega and Sandra Villalobos Agudelo, *Piloting a Tool for Reentry, A Promising Approach to Engaging Family Members*, Vera Institute of Justice at 9 (Mar. 2011) available at <http://www.vera.org/sites/default/files/resources/downloads/Piloting-a-Tool-for-Reentry-Updated.pdf>.

²⁶ *Families as Partners: Supporting Incarcerated Youth in Ohio*, Vera Institute Research Brief at 2 (January 2012) available at http://www.vera.org/sites/default/files/resources/downloads/Families_as_partners.pdf

²⁷ Nancy G. La Vigne *et al.*, *One Year Out: Tracking the Experiences of Male Prisoners Returning to Houston, Texas*, Urban Institute (June 2009) available at http://www.urban.org/UploadedPDF/411911_male_prisoners_houston.pdf; Tracey L.

High telephone rates, in combination with other policies limiting inmate access to telephone calls, can make it more difficult for incarcerated people to communicate with their lawyers, which is particularly problematic for inmates with literacy challenges or limited English.²⁸ The high cost of prison phone calls can place an undue burden on the public defenders or court-appointed lawyers who represent the vast majority of incarcerated people. Better communication can also contribute to safer prisons by raising morale and reducing the number of disciplinary incidents.²⁹

In summary, expert commissions have found that excessively high prison phone rates severely and negatively impact violence in prisons, recidivism, and access to counsel. They also place an unfair financial burden on prisoners' families and loved ones. These practices have racial and economic justice implications, given how incarceration trends disproportionately affect communities of color and low-income populations. In 2005, the American Bar Association adopted a resolution urging the "lowest possible rates,"³⁰ among other measures designed to afford prison and jail inmates reasonable opportunity to maintain contact with the free community. The American Correctional Association has stated that prisoners "should have

Shollenberger, *When Relatives Return: Interviews with Family Members of Returning Prisoners in Houston, Texas*, Urban Institute (May 2009), available at http://www.urban.org/UploadedPDF/411903_when_relatives_return.pdf.

²⁸ American Bar Association, Criminal Justice Section, Report to the House of Delegates at 4 (Aug. 2005) available at

http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_policy_am05115b.authcheckdam.pdf.

²⁹ John J. Gibbons and Nicholas deBelleville Katzenbach, *Confronting Confinement: A Report of The Commission on Safety and Abuse in America's Prisons*, 22 Wash. U. J. L. & Pol'y 385, 438-39 (2006), available at

<http://digitalcommons.law.wustl.edu/wujlp/vol22/iss1/25>.

³⁰ American Bar Association *supra* note 28.

access to a range of reasonably priced telecommunications services” with rates “commensurate with those charged to the general public.”³¹

IV. Conclusion.

The public interest suffers when unaffordable prison phone rates prevent inmates from sustaining familial and community ties. The Commission has the authority to ensure that ICS providers can no longer prey on consumers through unjust and unreasonable interstate rates. The Phone Justice Commenters urge the Commission to use its authority to cap prison phone rates and eliminate arbitrary per-call fees so that consumers may realize the benefits of lower recidivism rates and consequently, stronger communities across the United States.

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³¹ American Correctional Association, Public Correctional Policies, Public Correctional Policy on Adult/Juvenile Offender Access to Telephones 2001-1 (amended 2012), *available at* https://www.aca.org/government/policyresolution/PDFs/Public_Correctional_Policies.pdf.