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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Petition for Declaratory Ruling to Unbundle Correctional Institution Payphones	)	RM-8181

COMMENTS OF ADVANCED TECHNOLOGIES CELLULAR TELECOMMUNICATIONS, INC.

Pursuant to the Commission's Public Notice of February 9, 1993, [1] Advanced Technologies Cellular Telecommunications ("Advanced Technologies"), Inc., by its undersigned counsel, hereby submits comments supporting the "Petition for Declaratory Ruling" filed by the Inmate Calling Services Providers Task Force of the American Public Communications Council ("APCC").

1. Advanced Technologies is an interexchange carrier ("IXC") located in Tucson, Arizona. One of its principal businesses is providing inmate-only telephone service at correctional institutional through the use of store-and-forward pay telephones.

2. In competing for business with local exchange companies ("LECs") at prison payphone locations, Advanced Technologies often faces a serious competitive disadvantage. Because the FCC now treats inmate telephone equipment and services as regulated

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[1] Petition for Declaratory Ruling Filed to Unbundle Correctional Institution Payphones, DA 93-137, RM-8181 (released February 9, 1993).

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accounts, LECs can cross-subsidize their competitive inmate service offerings with income from other regulated services. In contrast to the LECs, Advanced Technologies, as a small IXC, has no similar captive body of ratepayers from which to cross-subsidize its service offerings. Instead, Advanced Technologies's must charge rates for its prison-only operator services that reflect its true costs of providing its services.

3. Besides being anticompetitive and poor public policy, the LECs' current practice of treating certain prison calling services and all inmate telephone equipment as part of their regulated services violates the Commission's policies in two different areas. First, the inmate services provided by Advanced Technologies and other carriers include recording, storage, or retrieval of information. Specific services provided include recording inmates' phone calls, limiting the length of inmate calls, and prohibiting inmates from calling all but a certain approved list of telephone numbers. Under the Commission's Computer II decision and subsequent decisions interpreting Computer II, services such as these must be classified as enhanced and offered on an unregulated basis because they are "more than a basic transmission service." [2/]

4. Indeed, these very services or closely related services have already been classified as enhanced services. For example,

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[2/] Amendment of Section 64.702 of the Commission's Rules and Regulations ("Computer II"), 77 F.C.C. 2d 384, 420, 428 (1980) (subsequent history omitted); North American Telecommunications Ass'n, 101 F.C.C. 2d 349, 358 (1985), recon. denied, 3 FCC Rcd 4385 (1988).

in Computer II, the Commission found voice storage, which many LECs now provide to correctional institutions, to be an example of an enhanced service. [3] Other LEC services involving recording, storage or retrieval functions should be treated similarly.

5. Second, to foreclose the opportunity for unlawful LEC cross-subsidization, the FCC should require that telephone equipment, as well as specialized enhanced inmate phone services, be provided by LECs on an unregulated basis. As correctly asserted by APCC, prison pay telephones and related equipment should be classified as unregulated customer premises equipment ("CPE") rather than as regulated LEC pay telephone equipment. Coin operated or pay telephones presently are not classified as CPE because the Commission has characterized them as forming "an integral part of a communications transmission service, i.e., pay telephone service, and as such should remain subject to regulation . . . ." [4] The Commission, however, has made clear that not all pay telephones should be classified as public telephones. Its definition of public pay telephone service includes only those services provided to the transient public from public locations such as airports and streets, as well as semi-public locations such as gas stations or restaurants. [5]

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[3] Computer II, 77 F.C.C. 2d at 421.

[4] Tonka Tools, Inc. and Southern Merchandise Corporation, 58 RR 2d 903, 910 (1985). See also Computer II, 77 F.C.C. 2d at 398 n.10, 447.

[5] See Tonka, 58 RR 2d 910 n.31.

Public telephone service then simply does not include inmate-only locations which are neither public nor semi-public locations. The Commission's exclusion of inmate-only telephones from its regulations under the Operator Services Act -- regulations which were applied to all other types of pay telephone locations -- only demonstrates that inmate-only telephones are not public payphones. [6/] Therefore, prison pay telephones ought to be classified as unregulated customer premises equipment ("CPE").

6. For the above reasons, the Commission should grant APCC's Petition and declare that certain specialized inmate-only LEC telephone services are unregulated enhanced services and that telephones customized for inmate-only services offered by LECs are unregulated CPE.

Respectfully submitted,

ADVANCED TECHNOLOGIES CELLULAR TELECOMMUNICATIONS, INC.

By: Randolph J. May

Randolph J. May
Elizabeth C. Buckingham

SUTHERLAND, ASBILL & BRENNAN
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2404
(202) 383-0100

March 8, 1993

Its Counsel

[6/] Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd 2744, 2752 n.30 (1991), recon. denied in part and granted in part on other grounds, 7 FCC Rcd 3882 (1992) (excluding inmate-only telephones from regulation because the phones are not installed in locations generally available to the public or to transient users).

CERTIFICATE OF SERVICE

I, Joan T. Prouty, hereby certify that a copy of the foregoing Comments of Advanced Technologies Cellular Telecommunications, Inc. has been served by hand this 8th day of March 1993 to the following:

Hon. James H. Quello
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Hon. Ervin S. Duggan
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Hon. Sherrie P. Marshall
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, D.C. 20554

Hon. Andrew C. Barrett
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Cheryl A. Tritt, Esq.
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

Albert H. Kramer
Keck, Mahin & Kate
1201 New York Avenue, N.W.
Penthouse
Washington, D.C. 20005

Joan T. Prouty