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

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**In the Matter of )  
)  
Amendment of Policies and Rules )  
Concerning Operator Service )  
Providers and Call Aggregators )**

**CC Docket No. 94-158**

**COMMENTS OF ROBERT CEFAIL & ASSOCIATES  
AMERICAN INMATE COMMUNICATIONS, INC.**

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## SUMMARY

Robert Cefail & Associates American Inmate Communications, Inc. ("RC&A"), a provider of specialized inmate telephone services to state, county and federal correctional authorities throughout the United States, hereby submits these comments urging the Commission not to change its longstanding policy of exempting inmate telephone providers from the Commission's alternative operator services ("AOS") rules.

RC&A believes that the Commission's exemption of inmate-only telephones in correctional institutions from the rules applicable to AOS has served the public interest exceptionally well since their adoption by the Commission and, therefore, need not be changed. The Commission has already decided, based upon a complete analysis of the facts concerning the manner and environment in which inmate service is provided, to treat inmate services differently from AOS providers.

In addition, application of AOS rules to the specialized inmate telephone services market will drastically reduce security controls in prison environments, and dramatically increase correctional institutions' costs for providing telephone services to the inmate population. The current AOS exemption for inmate telephone providers has made it economical for prison institutions to make telephone services more accessible to inmates, without sacrificing the prison authorities' access to security controls and monitoring capabilities in provisioning these services. Requiring that prisons act as "aggregators" under the AOS rules will necessitate live operator intervention on many inmate calls that will increase harassment of operators and call recipients, at great risk to prison discipline and social welfare.

RC&A urges the Commission to maintain its exemption of inmate telephone services from the AOS rules in order to prevent these substantial harms. The exemption is in the public interest and recognizes the individualized needs of both inmates and correctional facilities.

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Robert Cefail & Associates American Inmate Communications, Inc. ("RC&A"), a provider of specialized inmate telephone services to state, county and federal correctional facilities throughout the United States, hereby submits, by its undersigned counsel, its comments on the Commission's February 8, 1995 Notice of Proposed Rulemaking and Notice of Inquiry ("NOI") in this proceeding.

RC&A submits that the Commission's exemption of inmate-only telephones in correctional institutions from the rules applicable to alternate operator services ("AOS") available at public and semi-public locations have served the public interest exceptionally well since their adoption by the Commission and, therefore, need not be changed. The Commission's reasoned decision to treat inmate services providers differently from AOS providers was based upon a complete analysis of the facts concerning the manner and environment in which inmate service is provided. *Report and Order*, In the Matter of Policies and Rules Concerning Operator Services Providers, 6 FCC Rcd 2744 (1991) ("*AOS Order*"). By definition, inmate services are offered under highly controlled conditions. Such services are strictly regulated by the responsible federal, state, county or municipal correctional agency. In the few years since the *AOS Order*, inmate service providers such as RC&A have introduced new and increasingly

flexible inmate telephone systems into the market. These new systems reduce significantly the correctional resources needed to oversee inmate telephone usage, and thereby enable correctional facilities to increase the number of telephones available for inmates' use.

At the same time, the systems have become more flexible and sophisticated in protecting against inmate telephone fraud and the perennial problem of inmates utilizing the telephone to harass live operators, witnesses, jury members and others. A significant result of the increased attention to inmate telephone needs has been significantly increased competition in the marketplace. This, in turn, has caused correctional facilities at all levels to become more knowledgeable and aware of the public interest needs of inmate and inmate families, and the ability of technology and a competitive marketplace to meet these needs. Competition has also placed downward pressure on rates. Today the vast majority of correctional institutions require that rates be capped at dominant carrier rates (*i.e.*, at LEC and AT&T rates). This means that ever more sophisticated and expensive inmate telephone systems are being installed and maintained in reliance upon rates that are decreasing. Of course, this does not eliminate complaints from inmates and inmate families, who understandably are unhappy about the circumstances of incarceration. The fact that competition under regulated circumstances have produced very real public interest benefits has been largely ignored. Nonetheless, it is important that the Commission note that the current regulation of inmate service has produced significant and very real public interest benefits. In sum, RC&A strongly believes that the public interest needs of inmate users are being satisfied by state-of-the-art inmate telephone service providers,

such as RC&A, while, at the same time, the resources of correctional institutions are being utilized efficiently and the needs of such correctional institutions are being met.

## I. INTRODUCTION AND BACKGROUND

The Commission has invited comments in this proceeding on, among other things, the changes, if any, that should be made to the rules applicable to inmate-only telephones in correctional institutions. The Commission currently exempts inmate telecommunications services providers from its definition of "aggregator" in its Rules.<sup>1</sup> In particular, the Commission has sought comments on:

- The risks of toll fraud that might result from changes in the Commission's treatment of inmate-only telephones in correctional institutions;
- the needs of inmate users of such telecommunications services;
- the resources and needs of correctional institutions in providing telephone service for inmates; and,
- whether the goals of Section 226 and the public interest have been met through the Commission's present treatment of inmate-only telephones in correctional institutions.

*NOI* at ¶ 10, and n. 24.

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<sup>1</sup> The Commission's Rules define "aggregator" as "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services." 47 C.F.R. § 64.708(b) (1993).

## **II. STATEMENT OF INTEREST**

RC&A is a leading provider of specialized inmate telecommunications services to state, county and federal correctional facilities throughout the United States. As such, RC&A has substantial expertise in meeting the special needs of this highly competitive market.

To prevent fraud and other abuses of inmate phone services, correctional facilities, unlike traditional aggregators like hotels, which provide service to "transient" users or the "public" at large, require effective ways to restrict the level and types of phone service available to inmates. Over time and as a result of useful and diligent efforts, RC&A has built a successful, highly competitive business that responds to the critical needs of prison administrators for reliable and secure inmate telephone services.

For obvious security reasons, correctional authorities do not generally permit the carrying of cash by inmates (or other valuables). Thus, RC&A and other inmate telephone providers install coinless pay telephone systems at correctional facilities. Due to the high propensity for fraud among inmate populations, all calls originated by inmates must be accepted by and billed to the receiving party. Calling cards, other credit cards and third party billing are easy targets for abuse and fraud and, therefore, cannot be accepted by prison authorities. In addition, inmate service providers must be able to screen a number of other types of phone calls which are subject to serious fraud or abuse when originated at a prison location, including 1+, 800/950/10XXX, 911 and directory assistance calls.

Inmate telephone providers such as RC&A also install equipment that restrict calls to be completed by an inmate, and bill such calls on a completely automated basis, thereby avoiding

harassment of operators and called parties that, unfortunately, is a frequent byproduct of traditional inmate service provided through "live" operators. RC&A's telephones are also able to screen, or prevent the completion of, calls directed to telephone numbers specified by prison authorities or to which receiving parties have refused to accept prison calls on a predetermined number of occasions. Thus, for example, at the request of prison authorities, RC&A is able to screen telephone calls by inmates to judges, jury members, emergency agencies and known victims of harassing phone calls. These enhanced service features enable correctional authorities to prevent fraudulent and harassing phone calls effectively.

As detailed below, RC&A urges the Commission to continue to exempt inmate telephone services from the Commission's aggregator rules. The needs of correctional facilities and the public at large for prevention of abusive inmate behavior such as harassing and fraudulent collect or third party calls, warrant an exception for the niche inmate services market. Application of the aggregator rules will result in a drastic technological setback in the effective controls available to prison authorities to prevent inmate abuses. Aggregator status will also deny prison administrators the ability to directly monitor inmate phone usage, an important aspect of preventing security leaks in a correctional facility. If the Commission applies aggregator rules to the inmate market, it will undermine the public interest benefits of specialized inmate phone services, and impose security risks, administrative difficulties and higher costs on correctional facilities. For these reasons the Commission should refrain from applying its aggregator rules (applicable to AOS providers) to inmate telephone services or otherwise making changes in current regulation.

### **III. DISCUSSION: CURRENT INMATE TELEPHONE SERVICE REGULATIONS ARE IN THE PUBLIC INTEREST AND SHOULD BE MAINTAINED**

RC&A believes that changes to the current regulatory treatment of inmate telephone services will inevitably diminish the security and quality of inmate calling services and drive up prison administration costs. RC&A and other inmate telephone services providers have made substantial technical progress in tailoring inmate telephone services to the specific needs of controlled prison environments pursuant to contracts entered into with prison authorities. Requiring inmate telephone providers to adhere to the FCC's aggregator rules will "roll back the clock," increasing fraud and abuse and wasting the resources of prison authorities.

The Commission has previously recognized that inmate telephone services are distinct from traditional aggregator services calls made by the transient public, and therefore should not be regulated in the same way. As the Commission determined in 1991:

We conclude that the definition of "aggregator" does not apply to correctional institutions in situations in which they provide inmate-only phones. We are persuaded that the provision of such phones to inmates presents an exceptional set of circumstances that warrants their exclusion from the regulation being considered herein [regarding the definition of "aggregator"].

*AOS Order* at ¶ 15. The facts and circumstances surrounding inmate telephone services have not changed in the interim four years. As a result, there is no basis for changing this well-established and well-reasoned Commission regulatory policy.

**A. Changes in the Commission's Treatment of Inmate Telecommunications Services Will Result in Toll Fraud**

RC&A believes that if the Commission's Rules are changed and inmate telephone providers and correctional facilities are forced to abide by the Commission's Rules for aggregators, an enormous increase in toll fraud by prisoners will result. Simply put, the Commission's aggregator rules are designed to increase consumer access to operator services of choice and are therefore incompatible with prison authority-established requirements for inmate telephone services, which restrict telephone user access to operator services to avoid fraud and abuse.

As noted above, in order to minimize fraudulent or harassing calls, correctional telephone systems are designed to ensure that inmates are prevented from completing all calls except automated collect calls. Adherence by inmate telephone providers to the Commission's aggregator rules, as is suggested by the *NOI*, would, by definition, preclude such anti-fraud and abuse protections. For example, the Commission's Rules prohibit aggregators from blocking access to 800 and 950 access code numbers to obtain access to any provider of operator services.<sup>2</sup> Allowing inmates access to such services simply invites toll fraud and abuse because inmates will expend considerable resources to circumvent the protections that inmate authorities and inmate telephone providers have instituted over the course of the last several years. Categorizing inmate telephone providers as aggregators, therefore, will increase fraud and abuse, which is precisely why the Commission in its earlier rulemaking exempted inmate telephone

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<sup>2</sup> See 47 C.F.R. § 64.704.

providers from aggregator requirements. Toll fraud, which continues to be a substantial problem for correctional institutions and inmate service providers, contributes to increasing the costs of providing service to inmates. Under current regulatory conditions, the costs of toll fraud is borne by the inmate service provider, and it is a very real cost that ultimately contributes to inmate telephone rates. Treating inmate service providers such as RC&A as aggregators (and consequently allowing inmates access to the public switched network) will both increase toll fraud and simultaneously spread it out over a greater body of rate payers. Accordingly, such treatment is contrary to the public interest.

**B. The Needs of Inmates Are Being Satisfied By Correctional Institutions and Inmate Telecommunications Providers**

Within the bounds that incarceration necessarily imposes on inmates, the inmate telephone industry has worked successfully to satisfy the needs of prison populations. RC&A, for example, has worked with prison authorities to ensure that inmates can have telephonic access, in many instances without charge, to their attorneys. As indicated above, to control toll fraud and abusive calls and for other security reasons, inmates have been prohibited from placing non-collect calls. Ironically, such anti-fraud measures have also facilitated inmate calling. Increased fraud protections have allowed prison authorities to increase the number of telephones in many prison institutions. Moreover, because such telephones require less monitoring, inmates have more privacy when making calls.

Many of the requests for proposal ("RFPs") issued by correctional facilities require (as a condition of service) that inmate telephone providers refund commissions to the prison to

enable the prison to recoup administrative costs of monitoring telephone service. These commissions distributed to correctional facilities frequently are used on services for inmates such as recreation centers that provide a better quality of life for inmates. In sum, inmate telephone providers already offer inmates a variety of benefits while at the same time serving the public interest goal of minimizing the completion of fraudulent and harassing telephone calls.

**C. The Needs of Correctional Institutions Are Currently Being Met and Their Resources Are Being Efficiently Utilized**

Competition among inmate telephone providers is meeting the needs of correctional facilities and ensures that correctional facilities are maximizing their resources. The protections offered by the sophisticated inmate telephone systems being installed today help to eliminate some of the need for prison officials to oversee inmates' use of the telephone facilities. Thus, the use of RC&A's services helps inmate authorities avoid fraudulent telephone calls while saving inmate facilities the labor costs associated with policing the telephone facilities.

In addition, as indicated above, prison authorities believe that allowing prisoners to carry cash would have severe security ramifications. RC&A submits that, if inmate telephone providers are required to act as aggregators under the Commission's Rules, the same security risks would apply. Working 950 or 10XXX access numbers, for example, which would be available to inmates should aggregator rules apply to inmate telephone services, are transferable and present the very same security problems as currency.

Furthermore, as a result of the advances pioneered by carriers such as RC&A, as noted above, the inmate telephone industry today is one of the most competitive telephone markets,

which ensures that prison authorities continue to receive the type of high quality services and competitive rates they require. As described above, correctional facilities typically issue RFPs for their inmate presubscription contracts every several years. Bidding for such contracts is fierce, and inmate authorities have a wide range of choices in selecting a successful bidder. In many of the RFPs for which RC&A has been a successful bidder, the inmate authorities mandate the competitiveness of inmate calling rates. In this environment, prison authorities have programs that they can effectively and efficiently maximize their resources on inmate telephone services.

In addition, the level of awareness and sophistication of smaller county and municipal correctional institutions concerning inmate telephone service has increased drastically over the last four or five years. As a result of the lack of interest in the correctional market by local exchange carriers (who, until only recently, were often unable to provide any of the call completion protections afforded by centralized and automated telephone systems offered by carriers such as RC&A) and a lack of competition, four or five years ago municipal and county officials were largely unaware that specialized systems were available. In addition, small carriers such as RC&A were often prohibited from providing local and intraLATA services by state regulation.

Today, the proven public interest benefits of competition have convinced the vast majority of states to eliminate restrictions against competition. This, combined with increased interest in the confinement market by LECs and interexchange carriers of every size, has introduced a level of competition not previously anticipated. Although it is true that correctional

service is not "competitive" (in that the inmate is truly captive and that once a correction facility has chosen a service provide no other carrier can be accessed), the inmate service market itself is highly competitive. Such competition has introduced public interest benefits in the form of more sophisticated telephone systems and lower rates at all levels including the municipal and county level. Indeed, in a Nevada rulemaking to determine whether inmate service would be reserved to the local exchange carrier, one county sheriff testified that if RC&A were required to remove its inmate telephone system and if the Nevada Public Service Commission were to require service to be provided by Nevada Bell (which at one time could not offer any specialized service to correctional facilities that avoided the use of live operators) that the monitoring of inmate telephone would require up to 50% of each correctional officer's day.<sup>3</sup> The introduction of such resource-saving devices does not go unnoticed among correctional institutions.

**D. The Commission's Present Treatment of Inmate Telecommunications Services is in the Public Interest**

Rather than improving the services already available to inmates, changing the Commission's Rules will degrade security controls and service quality. As noted above, such modifications to the Commission's Rules will hurt -- not help -- the public's interest. Aggregators operating under the Commission's relatively liberal regulatory structure simply cannot provide the same level of control and careful supervision of inmate calls as the telephone systems and equipment deployed by RC&A and other specialized inmate providers. These

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<sup>3</sup> *Opinion*, In the Matter of a Petition by Nevada Bell for a Declaratory Ruling, Docket no. 91-8022 (June 1, 1992) at 21.

automated, secure inmate calling systems that have significantly minimized fraud in the majority of correctional institutions and reduced harassment and other criminal activity will be rendered inoperable under the Commission's aggregator rules. Given the threat to security and reliability that these rule changes pose for prison phone services, it would harm the public interest to allow inmate calls into the public switched network absent the proper safeguards provided by inmate telephone providers.

As the Commission recognized in its operator services rulemaking, the special needs of correctional facilities were not recognized by Congress in the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA").<sup>4</sup> Reviewing this issue, the Commission concluded that inmate telephone services were properly beyond the scope of TOCSIA and exempted such service providers from its aggregator rules. RC&A submits that no compelling reason has been shown or can be shown to remove the exemption for inmate telephone services.<sup>5</sup>

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<sup>4</sup> Pub. L. No. 101-435, 104 Stat. 986 (1990).

<sup>5</sup> The Commission, in its *NOI*, mentions that it has received numerous complaints about inmate telephone services. *NOI* at ¶ 9. The complaints appear to be based on inmate calls being restricted to collect calling and purported high rates being charged by inmate telephone providers. *Id.* As discussed previously, inmate authorities require inmate telephone services to be restricted to collect calling only in order to reduce inmate fraud and abuse. In addition, most contracts with correctional facilities stipulate that telecommunications rates must be competitive with similar services provided by local exchange carriers, or others. In fact, RC&A's rates are competitive with the rates charged by local exchange carriers for similar services.

**CONCLUSION**

For the reasons discussed herein, RC&A respectfully submits that the public interest still requires inmate telecommunications services to be treated differently from general aggregator services. RC&A urges the Commission to continue to exempt inmate telecommunications services from the definition of "aggregator" in its Part 47 AOS Rules or to make other changes that would lessen the degree of competition currently applicable to inmate services.

Respectfully submitted,

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