

II. THE COMMISSION HAS ALREADY RULED THAT INMATE PHONES RAISE "EXCEPTIONAL" CONSIDERATIONS THAT WARRANT THEIR EXCLUSION FROM COMMISSION REGULATION

The Commission has already recognized that inmate phones and inmate calling systems ("ICS") raise exceptional considerations that warrant their exclusion from any Commission rules. In its Initial Comments, ICSPTF explained that applying BPP to ICSSs would be inconsistent with the Commission's previous exclusion of inmate facilities as "aggregators" for purposes of the Telephone Operator Consumer Services Improvement Act ("TOCSIA"). Initial Comments at 18-20. Without repeating what has already been said in those comments and elsewhere in the record, ICSPTF will emphasize a few additional points.

One of the objectives of TOCSIA was to guarantee consumers unrestricted access to the carrier of their choice. Several parties filed comments in the proceeding conducted to implement TOCSIA and explained that prison officials should not be required to grant inmates such access because of the unique needs at prisons. The Commission agreed:

We are persuaded that the provision of [inmate-only] phones to inmates presents an exceptional set of circumstances that warrants their exclusion from [TOCSIA].

*Policies and Rules Concerning Operator Service Providers*, 6 FCC Rcd 2744, 2752 (1991) (emphasis added). The Commission thus implicitly recognized that inmate facilities are unique and that deference to prison officials in their administration of inmate phone systems must therefore be given. Indeed, the Commission went on to state:

Accordingly, inmate-only phones at correctional institutions will not be subject to any requirements under [TOCSIA] or the Commission's rules.

*Id.* (emphasis added). Thus, the Commission not only ruled that inmate phones raise exceptional considerations that warrant their exclusion from TOCSIA; the Commission also recognized that inmate phones raise exceptional considerations generally and should therefore not be subject to any of the Commission's rules.

Clearly, the exceptional considerations that were present in TOCSIA are present here. By extending BPP to inmate facilities, prisoners would be able to access any carrier of their choosing by coordinating that selection with an outside accomplice. But concerns with allowing prisoners to access their carrier of choice was one of the "exceptional" considerations that convinced the Commission to exclude inmate phones from regulation. So too should it be considered an "exceptional" consideration for the present purposes.

The United States Court of Appeals has admonished the Commission to be consistent in its rulings or otherwise provide a sufficient justification for why it is changing course.<sup>3/</sup> The Commission has already ruled that inmate phone raise exceptional considerations and should therefore not be subject to Commission regulation. Thus, BPP should not apply to inmate phones.

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<sup>3/</sup>See, e.g., Telephone & Data Systems, Inc. v. FCC, 19 F.3d 42, 49 (D.C. Cir. 1994) (Commission may not "blithely cast" previous rulings aside).

III. CORRECTIONS OFFICIALS WOULD LOSE IMPORTANT CONTROL OVER INMATE CALLING IF BPP IS APPLIED TO INMATE FACILITIES

A. Prisons Officials Must Control Inmate Calling Including The IXC Who Carries The Calls

By their very nature, prisons are designed to restrict a prisoner's access to the outside world. Prison officials bear the important responsibility of determining how this access should be controlled. Fences, cells, locks -- these are all security tools designed to restrict inmate access to the outside world.

The telephone is a conduit between the prison and the outside world. A prisoner's use of the telephone, therefore, must also be restricted. A prison official can no more allow inmates to have free and open access to the information superhighway than they can the automobile highway. The record in this proceeding is replete with reasons why.<sup>4/</sup>

Indeed, without adequate restrictions, a prisoner could use the telephone to intimidate and harass witnesses, judges,

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<sup>4/</sup>See, e.g., ICSPTF Initial Comments at 9 (inmate attempted murder conspiracy with outside accomplice); Comments of State of Tennessee Finance & Administration ("The problems include . . . instances of abusive and threatening calls"); Comments of State of S.C. Division of Information Resource Mgmt. ("current system prevents harassing calls"); Comments of S.C. Jail Admin. Assoc. ("control necessary to prevent criminal activity perpetrated by inmates using telephones, i.e., harassment of sentencing judges, prosecuting attorneys, jurors, witnesses and others"); Comments of the Illinois Department of Central Mgmt. Services ("These abuses are generally in the form of personal harassments"); Letter from Frederick, Maryland Sheriff's Office ("unauthorized calls will be made to judges, prosecutors, law enforcement and correctional personnel, as well as leaving witnesses and victims open to intimidation"); Comments of Arizona Department of Corrections ("Another telephone crime perpetrated by inmates using inmate telephones is the harassment of sentencing judges, prosecuting attorneys, jurors, witnesses and others").

prosecutors and victims. Prisoners could also commit additional crimes against society, all from within the "protected" institution. For example, an article from the *Pittsburgh Tribune-Review* tells of how an inmate recently used the telephone to engineer a multimillion dollar fraudulent enterprise, using no less than 20 to 25 "salaried" employees, all while serving time for a previous theft conviction. That inmate used the phone to coax unsuspecting people to disclose credit card information, and then used that information to place orders for expensive items, by telephone, from four different continents worldwide.<sup>5/</sup>

Prison official control over inmate calling does not just mean exercising control at that facility. MCI has suggested that prison officials can adequately control inmate calling in a BPP environment through the use of customer premises equipment ("CPE").<sup>6/</sup> Even assuming prison officials would have the means to obtain and maintain a CPE system with adequate controls (a premise that is unjustified and which is addressed below), CPE alone could not ensure adequate control. CPE would only control an inmate's entrance to the network. It could not give prison officials necessary control over the carriage of the call throughout the network after the call is placed. That control would be left to any of a large number of different carriers, none of whom would have any particular obligation to the facility and none of whom is

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<sup>5/</sup>"Inmate's Scam Netted Millions," *Pittsburgh Tribune-Review*, February 27, 1993.

<sup>6/</sup>MCI ex parte filing, October 25, 1993.

the choice of the prison official. Prison officials must maintain control over the entire transmission of the call, from its origination to its termination. This means control over who carries the call, whether the prisoner can access live operators in the carrier's network, the type of screening capability in the network necessary to meet the prison's needs, etc. In short, it means controlling who is the carrier of their inmates' calls.

Nevertheless, despite the overwhelming evidence concerning the need for prison officials to exercise adequate control over inmate calling, the FNPRM appears to ignore the need for prison official control over inmate calling and instead suggests that the only issue relevant to its analysis on whether BPP should apply to inmate facilities is whether, and how, BPP will impact the ability to control fraud from inmate facilities. The FNPRM's analysis is flawed. While calling fraud from prisons is clearly a significant problem, and indeed, its prevention is a primary reason for inmate calling controls, fraud prevention is not the only reason why prison officials must control inmate calling.

B. Mandating BPP at Inmate Facilities  
Would Substantially Dilute Official  
Control of Fraud and Diminish Security

Many prison officials have determined that the most effective way to ensure that they maintain necessary control over inmate calling is to contract with a single inmate calling services ("ICS") provider who is qualified to handle inmate calls and who is legally obligated to honor inmate call restrictions imposed by the prison. ICS providers serve multiple functions for prison

officials, each of which is necessary to ensure that prison officials maintain adequate control.

First, the ICS provider supplies and maintains the specialized inmate calling systems at correctional institutions. In its Initial Comments, ICSPTF explained in detail how these systems work and what functions they provide. Without repeating that discussion, the following are examples of the sophisticated functionality that inmate calling systems can provide:

- Automated collect-only calling capability or default to specially trained operators;
- Calling time of day and duration restrictions;
- Personal identification numbers (pins);
- Negative and positive called number screening to restrict access to approved numbers only;
- Call recording and monitoring capability on a selective basis;
- Calling storage capability;
- Calling detail and traffic analysis; and
- Three-way call detection capability.

All of these features allow prison officials to control inmate calling, and thus prevent unwanted calling.

Second, the ICS provider acts in the prison official's stead in administering those systems and controls. The ICS provider stays in daily contact with the prison officials to determine which controls to implement, how they should be implemented, and to which particular calls they should apply. For example, if a prison official suspects that a particular inmate is about to commit a crime, or that an outside number is suspected of receiving inmate

calls for criminal purposes, the prison official would instruct the ICS provider to screen particular numbers, monitor particular calls or provide call detail information on that inmate or terminating line. If the ICS provider suspects fraud based on information relating to calling patterns, credit rating of the called party, or any other variable permitted by the prison official, the ICS provider can act as the prison official's proxy to stop calling by a particular inmate or to a particular party.

Third, the ICS provider is the carrier of the prison's calls chosen by the prison official and is bound to provide the service ordered, and only the service ordered, to the prison. The ICS provider, as carrier, must honor the calling restrictions that prison officials request in carrying the call, including, among other things, access to only automated or specially trained operators.

Each of these three functions is vitally important in terms of prison official control over inmate calling. Of equal importance, they must be provided on an integrated basis by one provider. It is only if the services are provided by one provider that the necessary control over inmate calling can be retained. Not only will BPP destroy the ability of the prison officials to obtain these services on a "one-stop" basis; BPP would take away the ability of ICS provider to offer any of these services by eliminating the economic base of the services.

1. Specialized CPE Will no Longer be Available

The record is replete with explanations of why ICS providers would no longer supply CPE with the ability to perform the functions described above as well as other functions. Once the ICS provider loses the ability to use the CPE to generate the revenue stream provided by carrying the inmate traffic, there is no reason to provide the CPE at no charge to the prison.

MCI has suggested that prison officials could nonetheless retain control over inmate calling in a BPP environment by purchasing CPE that has the same functionality as the sophisticated CPE now supplied by ICS providers at no charge.<sup>7/</sup> This suggestion completely ignores the financial pressures that prison and jail officials are currently under; dozens of prison and jail officials have told the Commission, in no uncertain terms, that they will be unable to supply inmate calling equipment if BPP applies. As the study conducted by Charles L. Jackson and Jeffrey H. Rohlfs, "The Many Costs and Few Benefits of Billed Party Preference," (the Jackson-Rohlfs Study)<sup>8/</sup> makes clear, the only real alternate source of funding for such equipment is the taxpayers, an unlikely source of support in these times of fiscal constraint.

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<sup>7/</sup>MCI ex parte filing, October 25, 1993.

<sup>8/</sup>The Jackson-Rohlfs Study is attached to the Further Comments submitted by the APCC in this docket.

2. There Would Be no Expert Manager of the ICS Accountable to the Prison Official

Part and parcel of providing the ICS is administering it as the prison officials' proxy. As a threshold matter, there is no system administration to be done if there is no equipment. But even assuming a system were purchased, ongoing support, update, system administration and monitoring are continuous tasks, now performed at no charge by equipment providers. It is not just that the ICS that must be administered; it is constant analysis of traffic patterns, call velocity, review of calling pattern, compliance with system parameters, etc., that give the control required by prison officials. For the same reasons ICS providers would be unable to continue to provide the ICS in a BPP environment, they will no longer be able to afford to provide system administration and monitoring of calling. There would be no one to consult with prison officials in suspicious circumstances and vice-versa. Again, taxpayer funding for these functions in the current environment is unlikely.

3. Prison Officials Would not be Able to Control Calls in the Network

Even if prison and jail officials were able to independently purchase ICS equipment and pay experts who know how to administer the controls, BPP would take away the ability of prison officials to control the carriage of the call -- the third important role of ICS providers. If inmate calls are allowed to go to any carrier, such as BPP requires, prison officials would lose significant control over inmate calls once the calls are placed into the

network. Prison officials could not be assured that the restrictions they require on inmate calling at the facility level would be honored by a carrier that has no obligation to the facility.

An extreme, but not entirely far fetched, example of how the CPE could be rendered ineffective would be for a criminal organization to create a new long distance company, or perhaps gain control of an existing carrier, to which the "friends and family" of an inmate would "PIC" their phones. Regardless of the PINs, blocked numbers or other control features in place at the facility, once the call entered the network of the inmate's "friends and family" carrier, the inmate would be free to call the world. The carrier could re-route the call to a number different than the number dialed, and prison officials would not know where those calls were terminating. Calls could be billed to third numbers, witnesses, victims, etc.

A less extreme and more likely problem is that inmate calls could be routed to a carrier that does not have the network functionality necessary to honor, or that simply does not care to honor, or is indifferent to honoring, inmate call restrictions. For example, a smaller carrier may not have the equipment necessary to receive ANI digit screening codes and thus would not be able to determine if the call is subject to any billing restrictions, let alone if it originates from an inmate institution. Most carriers will not have operators who are specially trained to recognize the

"social engineering" tactics that inmates use to commit fraud or call prohibited numbers.<sup>9/</sup>

C. BPP Would Diminish Officials' Control of Prisons by Reducing Inmate Access to Phones, Abolishing Important Inmate Programs, and Eliminating Prison Administration Tools

The comments filed in this proceeding have made clear that, in addition to the security and fraud advantages of the current system, inmate calling systems have enhanced prison officials' control through the flexibility they accord. The importance of the current mechanisms providing ICSs in the prison environment is explained in the Jackson-Rohlf's Study.

As the Jackson-Rohlf's Study explains, prior to competition, many LECs, particularly those in rural areas where a good number of jails and prisons are located, provided only very limited phone equipment and inmate access to phones because of the significant fraud risk such phones created and because close supervision of inmates using the phones was required. In some cases, the only phone available for inmate calling was either the public payphone in the prison visiting area or the phone provided for the prison staff.<sup>10/</sup> In any event, the inmates who were allowed to use the

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<sup>9/</sup>The Commission assumes that both local and interLATA exchange carriers will move toward "Automated Alternative Billing Service ("AABS") systems. However, with most carriers, a caller can default to a live operator even if an AABS system is deployed. By contrast, a prison official can pick a carrier who provides no default live operators (or only to a trained operator) if the prison official is allowed to pick the carrier.

<sup>10/</sup>In some cases, there were no phones at all. Unrefuted evidence on this point is already in the record of this proceeding.  
(continued...)

phones did so under strict supervision, with a corrections officer actually dialing the digits, placing the call and listening to every word.

The revenues paid by ICS providers in return for the right to place ICSs under the current system have financed inmate calling equipment which, in turn, has dramatically increased inmate access to phones. Unlike a decade ago, inmates now have frequent and unsupervised calling opportunities.

As stated in the May 6, 1993 Comments of the Citizens United for the Rehabilitation of Errants (C.U.R.E.), it has been well documented that frequent calling is an important inmate rehabilitation tool. C.U.R.E. notes that "there is strong empirical evidence that telephone communications are an essential means of preserving family and social ties that help to reduce recidivism, preserve the family unit, encourage prison discipline, and promote society's efforts to rehabilitation offenders." C.U.R.E. Comments at 11.

What C.U.R.E. and others supporting BPP at inmate institutions have failed to recognize, however, is that BPP will take away the revenue base supporting inmate telephone equipment. Indeed, the ability of inmate families to select the carrier of their choice

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<sup>10</sup>(...continued)  
For example, the record contains a transcript of the sworn testimony of Randall Ray, the Captain of the Buncombe County Jail in North Carolina, stating that the local LEC servicing his facility refused to install inmate-only phones at his facility because, as he was told by the LEC, "it was not economically feasible. . . ." ICSPF ex parte filing, September 15, 1993.

for inmate calls may be an empty benefit if inmate calling is dramatically reduced.

In addition to reducing inmate phone availability, BPP would also abolish the beneficial inmate programs that have been financed by the current system. As the record reflects, a significant number of prison officials use the commissions they receive from inmate calling to fund important programs such as education programs, vocational training, family visitation programs, alcohol/drug rehabilitation programs, legal rights courses, anger awareness/management classes, nutrition counseling and parenting classes.

Generating the ability and revenue for prisons and jails to conduct these activities is an important collateral benefit of the current ICS mechanism and enhances overall control of prison administration by corrections officials. As the Jackson/Rohlfs study concludes, BPP will destroy the economics of inmate calling systems and will thus eliminate the important benefits these systems have provided, along with the control they bring.

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In sum, BPP will eliminate an important tool that prison officials currently use and have determined is effective in prison administration and control. Regardless of the theoretical solutions to the inmate calling problem that proponents of BPP may offer, the basic fact remains: BPP would strip prison officials of their control over inmate calling. For this fundamental reason alone, BPP should not apply to inmate institutions.

IV. FRAUD FROM INMATE FACILITIES CANNOT BE CONTROLLED UNDER BPP AS EFFECTIVELY AND EFFICIENTLY AS FRAUD IS CONTROLLED UNDER THE CURRENT SYSTEM

The FNPRM seeks comment on the effectiveness and costs of controlling fraud originating from inmate lines with or without BPP. Inmate fraud would be much more difficult and costly to control under BPP.<sup>11/</sup>

Under the current system, ICS providers know that every call they carry is coming from a prison. This allows them to take the necessary fraud precautions on every inmate call. In addition to the use of the specialized CPE-based fraud control equipment discussed above, ICS providers can detect and prevent fraud by a variety of steps, such as (a) analyzing a variety of traffic and other relevant information; (b) coordinating the implementation of PINs and number blocking with each particular facility; (c) entering into relationships with LECs in frequently served areas to receive billing name and address information for terminating numbers on a timely basis; (d) contacting suspicious customers to verify credit worthiness in order to avoid the potential for subscription fraud; (e) hiring only specially trained operators to handle inmate calls; (f) "branding" the calls as

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<sup>11/</sup>ICSPTF has already explained why BPP is fundamentally flawed and should not apply to inmate facilities for reasons independent of the additional fraud risk that BPP presents. BPP would strip prison officials of their control over inmate calling -- control that is necessary for prison security and administration needs. Even if the Commission is prepared to act to require the costly fraud control features that would have to be implemented in the network to prevent fraud under BPP (and which would still not be as effective at controlling fraud as CPE-based ICSs), that Commission action does nothing to cure that fundamental defect of BPP at inmate facilities.

coming from specific prisons to put call recipients on notice; and (g) limiting the allowed time of inmate calls. Other procedures are also taken, some of which are proprietary in nature and cannot be disclosed.

In order to prevent fraud in a BPP environment, other carriers would also have to take fraud prevention measures. The proposals that have been suggested for fraud control under BPP are enormously expensive (and would still not be as effective as the control procedures taken by ICS providers). For example, in an *ex parte* letter dated October 25, 1993, MCI suggested that every carrier could implement control functionality in their networks similar to the control functionality ICS providers currently use (and which MCI apparently already has deployed in its network).

ICSPTF has already explained why such a proposal could not be as effective as the current system in its December 7, 1993 response to MCI's proposal and will not re-open that debate here. However, ICSPTF pointed out that the potential effectiveness of MCI's proposal is contingent on three unlikely occurrences: (1) universal deployment by every carrier of network-based controls such as MCI has implemented; (2) universal deployment by the LECs of "flex ANI" screening; and (3) universal deployment of an information sharing arrangement between every inmate facility in the nation and every carrier that could conceivably carry inmate calls under BPP. Some discussion is warranted.

A. There Is No Evidence Regarding The Cost Of Deploying Fraud Prevention Measures

MCI has acknowledged that it is the only carrier that has implemented the network-based controls necessary to prevent fraud in a BPP environment. If the Commission desires to prevent fraud in a BPP environment, the Commission would clearly be required to mandate that all carriers implement similar controls. However, there is nothing in the record about how much these network-based systems would cost, how those costs would be recovered (a particularly important issue, as we discuss below), what technical requirements would be necessary, etc. At a minimum, the Commission would be required to analyze such factors and subject them to a cost-benefit analysis before it could begin to think about ordering universal deployment.<sup>12/</sup>

B. Even If The Commission Orders Universal Deployment of "Flex ANI" It Will Not Prevent Fraud

Universal deployment of "flex ANI" by the LECs, which can provide carriers with ANI II code "29" to signify that a call is originating from an inmate facility -- information that the ICS provider inherently knows -- presents problems similar to those presented by the necessity for the Commission to order all carriers to take fraud prevention measures. There are a significant number of LECs that have not implemented this service, and have no apparent intention of offering it in the near future. Indeed, a

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<sup>12/</sup>See Motor Vehicle Manufacturers Association, Inc. v. State Farm Automobile Insurance Co. ("State Farm"), 103 S.Ct. 2856 (1983) (agencies must consider all relevant data in promulgating rules).

large number of jails and prisons are located in the service territory of smaller, independent LECs who are unlikely to upgrade their networks to provide flex ANI screening. Thus, the Commission would also have to mandate deployment of flex ANI throughout the nation. Again, the record is void of any information on the extent to which flex ANI is already deployed, on what universal deployment of flex ANI would cost, how those costs could be recovered, etc. The Commission lacks the information necessary to conduct a cost-benefit analysis, but cannot proceed without one.<sup>13/</sup>

Moreover, even if the Commission ordered universal deployment of "flex ANI", there is a serious question as to how effective this screening service alone could be at controlling inmate fraud. As a passing matter, it is worth observing that LEC screening services are not always reliable. Errors in the passing of these digits can and do occur. Indeed, the Commission is currently considering the allocation of liability when such failures occur.<sup>14/</sup>

Of greater importance, unless the Commission takes the additional step of mandating that all carriers translate the code into specific billing instructions for the operator, the ANI II code "29" alone will not necessarily prevent fraud from occurring. The Local Exchange Routing Guide ("LERG"), published by Bell

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<sup>13/</sup>Id.; State of California v. FCC ("Computer III"), 905 F.2d at 1230; ITT World Communications v. FCC, 725 F.2d 732, 741-42 (D.C. Cir. 1984).

<sup>14/</sup>In the Matter of Policies and Rules Concerning Toll Fraud, CC Dkt. 93-292 (released December 2, 1993).

Communications Research, provides the following description for ANI II code "29":

the ANI II digit pair 29 is used to designate lines within a confinement/detention facility that are intended for inmate/detainee use and require outward call screening and restriction (e.g., 0+ collect only service).

Thus, all the ANI digits "29" say is: (1) that the call is coming from a prison, and (2) that the call should not be billed to the originating line. There are no specific billing instructions.

That description alone will not necessarily prevent inmate fraud. To refer back to the smaller, independent carrier example discussed above, an inmate placing a call under BPP might default to a live operator and convince that operator to bill the call to a fraudulent third-number (e.g. "my facility has authorized my uncle to pay for my calls. His number is ...."). The operator, who is unlikely to be trained to recognize social engineering tactics, in the absence of additional information would be acting in accordance with the LERG description of ANI digits 29 by completing those calls. To translate the ANI II "29" into specific billing instructions, it will be necessary for the Commission to order the LECs to provide, and for the IXCs to subscribe to, a separate service that allows the IXCs to query for the specific billing instructions associated with the ANI in question.

C. A LIDB Monitoring Service Is Not An Effective Fraud Prevention Measure

In late filed *ex parte* communications, Sprint and MCI suggested that the other LECs be forced to upgrade LIDB so that it could signal an OSP of a suspicious number of calls from inmate facilities to a particular number. The LIDB would apparently monitor all calls originating from any inmate facility to a particular line and notify a carrier when the number of calls from any inmate facility, or combination of inmate facilities, to that particular line reaches a predetermined threshold. The theory seems to be that a velocity monitoring service in LIDB could help carriers detect a new opportunity for subscription fraud that would appear under BPP, where a party can frequently select new OSPs to avoid payment. The Commission has requested comment on whether LECs providing LIDB should be required to offer such a service. FNPRM at ¶ 51.

There is nothing in the record that suggests that any LEC is currently offering a LIDB-based service of this sort. Nor is there any indication that any LEC could want to offer this service. Clearly, the deployment of the service would impose significant new costs throughout the network. It is unclear what "infrastructure" would be required to offer the service. For example, would the existing signalling capability between LIDB networks and OSP networks be capable of exchanging the necessary information? Would additional modifications or upgrades to the OSS 7 network (as distinguished from the SS 7 network) be required?

Moreover, it is important to highlight what a LIDB-based service would not do. It would not provide a carrier with sufficient information to adequately evaluate whether there is a legitimate risk of prospective fraud. For example, it would not monitor inmate calling in any manner from the originating point of the call. Thus, the carrier would not know anything about the calling patterns and volumes from a particular inmate facility or particular inmate. Nor would the carrier have any information about the terminating line number, such as payment history, billing name and address, or other relevant information.

Yet, as ICS providers under the current system are fully aware, this is critical information in evaluating whether there is a risk of fraud. Volume monitoring data on the terminating line alone is not a reliable source of information. ICS providers currently identify potential fraud and prevent that fraud from occurring by looking at the whole calling transaction; *i.e.*, where the call is being originated, which inmate is placing the call, what if any peculiar calling patterns are associated with that inmate or facility, the payment history of the terminating line, etc.

A velocity monitoring service in LIDB would only tell carriers when the number of calls from inmate institutions to a particular line number has crossed an arbitrary threshold. This may or may not mean there is a fraud potential, and could result in many legitimate calls being denied service. For example, law firms that do criminal defense work would clearly have difficulty receiving

inmate calls, despite the fact that fraud is unlikely, simply because they had received a threshold-breaking number of inmate calls. Prisoner rights groups and other locations that receive high volumes of inmate calls would encounter similar problems.

Moreover, the existence of such a LIDB service would pose a variety of additional regulatory issues. A presubscribed carrier who received notification that a subscriber had reached the threshold in response to a LIDB query would be faced with a dilemma.<sup>15/</sup> As the discussion above indicates, given the complexity of making a determination when fraud is occurring, it would be unreasonable, based on the single fact that a subscriber had exceeded the threshold, to cut off service, even assuming all carriers amended their tariffs to allow them to take that action.<sup>16/</sup> Different customers, such as prisoners' rights groups, may require different thresholds to receive legitimate traffic. Setting the LIDB thresholds to accommodate individual customer needs may be very expensive.

Cost recovery for such a service also raises serious issues. Since its purpose would be to prevent fraud from inmate facilities, its cost would likely be assessed to inmate calls. If a primary

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<sup>15/</sup>It is unclear what that threshold should be. Different carriers may want different thresholds.

<sup>16/</sup>Indeed, in a number of fraud incidents recounted before the Commission in the Pacific Mutual proceeding, Public Notice, DA 91-284, 6 FCC Rcd 1545 (1991), the carriers indicated that they did not believe they could cut off service to a customer or refuse to carry traffic from that customer's premises without the customer's explicit authorization, even when the high toll notifiers within the carrier's network led the carrier to believe fraud was occurring.

purpose of applying BPP to inmate calls is to reduce their costs, any additional costs assessed on inmate calls to implement BPP must be carefully scrutinized.

In short, the detection and prevention of fraud from inmate facilities is a clearly a complex process. It requires controls and monitoring at both the originating and receiving points of the call and involve a variety of information sources and technologies, as well as human judgment, to determine what is and is not a legitimate fraud risk and what preventative action should be taken in order to prevent the fraud from occurring. ICS providers are currently motivated to conduct this process since they have a legal obligation to prevent fraud pursuant to their contracts with facilities and because they are financially responsible for the calls they carry. Fraud from inmate institutions can be detected and prevented most efficiently by a single provider who performs multiple functions for particular facilities, not by any carrier serving any inmate from any facility.

For these reasons, ICSPTF does not believe a LIDB velocity service would be very beneficial, particularly because there is a system in place now that works well. In any event, the Commission must further develop the record on the costs and benefits of any such LIDB service and its potential efficacy before it can be used as a basis for believing fraud can be prevented in a BPP environment. There has been no cost information, technical information or anything else upon which the Commission can even begin to assume that such a service may be a feasible option.

V. ALTHOUGH THE COMMISSION DID NOT SEPARATELY ANALYZE THE COSTS AND BENEFITS OF APPLYING BPP TO INMATE FACILITIES, IT IS CLEAR THAT THE COSTS OF BPP SIGNIFICANTLY OUTWEIGH THE SINGLE ALLEGED BENEFIT.

The Commission did not conduct a separate cost-benefit analysis of BPP for inmate institutions. Rather, the costs and benefits of BPP for inmate facilities was included in the general cost-benefit analysis of BPP. In its separate comments, APCC is submitting the Jackson-Rohlf's study, which shows that the costs of BPP far outweighs the costs. ICSPTF agrees with that analysis.

There are, however, some special considerations that apply to the cost-benefit analysis of applying BPP to inmate institutions. Clearly, the Commission must examine these considerations before concluding that BPP can be applied to inmate institutions. The discussion below provides the minimum factors that the Commission must consider in that analysis. ICSPTF will not attempt to quantify the costs and potential benefit here. However, it is clear that any cost/benefit analysis would conclude that the costs of BPP at inmate facilities significantly outweigh the potential benefit and that BPP should therefore not apply.

A. Neither The Convenience Of Avoiding Access Codes Nor Enhancing The Position Of AT&T'S Competitors Applies At Inmate Facilities

The "primary" alleged benefits of BPP<sup>17/</sup> -- simplified dialing procedures for consumers -- cannot occur at inmate facilities since access code calling is generally not allowed from prisons; nor is

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<sup>17/</sup>By addressing the purported benefits of BPP, ICSPTF does not mean to imply that they are valid benefits.

access code dialing required under TOCSIA.<sup>18/</sup> Indeed, virtually all inmate calls are currently dialed on a "0+" basis. Thus, BPP can provide no benefit of more convenient dialing from prisons.

Another stated benefit of BPP -- the balancing of competition in the "0+" market -- also does not apply in the inmate environment. The justification for this supposed benefit is that because AT&T customers can reach the AT&T network by dialing "0+" more frequently than customers of other carriers can reach their carrier's network by dialing "0+," AT&T holds a marketplace advantage in the marketing of its service on a presubscribed basis. BPP, therefore, is designed to "give MCI, Sprint, and others the ability to offer customers the same 0+ calling option that AT&T offers and that many customers appear to prefer." FNPRM at ¶ 6. Virtually all prisoners, however, are limited to placing "0+" collect calls. They generally have no other dialing option. Neither AT&T nor any other carrier, therefore, has any "0+" marketplace advantage in the inmate calling market. Thus, a second key benefit of BPP is also meaningless in the inmate environment.

B. Commission Payments And Savings From  
"Guaranteed Automatic Routing" Are  
Transfer Payments, Not Benefits.

The Commission's other benefits are the purported savings derived by diverting traffic from the "third tier" higher priced OSPs to other lower-priced carriers and the "savings" from

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<sup>18/</sup>Of course, the benefit of reduced TOCSIA enforcement at inmate facilities is similarly meaningless since TOCSIA does not apply to prisons.

eliminating commissions. Nowhere than in the inmate environment is it clearer that any "savings" from eliminating commissions or diverting traffic from one OSP to another are in reality transfer payments. As the discussion above makes clear, see Sections III(B)(1), (2) and Section III(C), supra, and as the Jackson-Rohlf's study highlight, to the extent the commissions from ICS providers dry up, either the programs and services (including ICSs) they support will be eliminated or their costs will be "transferred" to taxpayers.<sup>19/</sup>

C. In Any Event, Inmate Calls Are Not Likely To Cost Less Under BPP

The inapplicability of all the alleged benefits of BPP to inmate facilities leaves the possibility of lower rates on certain inmate calls as the only conceivable benefit that possibly could apply. However, BPP may very likely not result in any general reduction of the rates for inmate calls. Rather, there is a significant possibility that a good number of inmate families and others that pay for inmate calls will actually see their rates increase, not decrease, under BPP.

Indeed, ICSPTF's research shows that a significant number of inmate call recipients are the current beneficiaries of rate caps, both as required by state regulatory commissions and by contracts

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<sup>19/</sup>For purposes of this discussion, any negligible real efficiency gains derived from diverting inmate traffic from relatively "inefficient" third tier OSP providers to relatively "efficient" other providers can be ignored. Indeed, there is no evidence that any such efficiencies exist.