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Via Messenger

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CC Docket No. 92-77 (Billed Party Preference)

Dear Mr. Caton:

Although Gateway Technologies, Inc. ("Gateway") and most major providers of collect-only inmate telecommunications services charge rates that are comparable to those of AT&T, MCI and other large OSPs, there are a handful of companies whose rates are substantially higher than competitively justifiable. These unscrupulous inmate service providers frequently apply these windfall revenues to offer excessive commissions to correctional facilities, distorting the RFP process—through which correctional institutions contract with inmate providers—by creating incentives for correctional administrators to give undue weight to commission levels in selecting a carrier. Thus, excessive inmate service rates, while a problem of limited scope, harm the interests of both inmates/inmate families and reputable, competitive inmate service providers.

Gateway believes that if the Commission seeks to regulate inmate rates, it should do so through a properly structured "rate cap." Gateway has consistently maintained that a rate cap is a second-best solution for inmate services.[1] As detailed

[1] Comments of Gateway Technologies, Inc. on Further Notice of Proposed Rulemaking, CC Docket No. 92-77 (Aug. 1, 1994)("Gateway Comments").

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in our comments[2] and *ex parte* submissions[3] in this docket, application of billed party preference ("BPP") to correctional institutions presents significant security, fraud and budgetary deficiencies. Because the rate-related problems in inmate services are limited and because BPP would destroy the economic and technical advantages of the present market structure, BPP is bad policy for correctional institutions. Instead, the Commission should regulate inmate rates through its ample investigative and enforcement powers, targeted against specific providers charging unjust and unreasonable rates.[4]

While there are significant policy and legal shortcomings to a rate cap, a properly designed cap could serve as a useful adjunct to BPP and a practical means of controlling excessive rates for inmate services. Therefore, if the Commission is considering implementing a rate cap, it should fashion a rate cap that creates positive incentives for efficiency increases and price reductions forcing all inmate service providers to compete on the basis of both prices and commissions. Moreover, a Commission-administered rate cap should be designed as a substitute for BPP, allowing correctional facilities served by inmate service providers charging rates at or below the rate cap to continue to route all 0+ collect traffic to the presubscribed carrier serving the facility.

Gateway's specific rate cap proposal is detailed in the attached spreadsheet charts. We suggest that application of the prevailing current inmate services surcharge ($3.00) and current daytime MTS rates of the dominant OSP (AT&T) are adequate to fairly compensate inmate service providers for their costs of doing business without creating a *de facto* "maximum" rate that would encourage continued price gouging in the industry. Moreover, by setting the rate cap at the dominant carrier's current rates, Gateway's proposal freezes the rate cap, preventing future increases in inmate service rates—absent Commission approval—merely as a result of dominant carrier price leadership. Gateway's proposal is in marked contrast to that recently offered by the Inmate Calling Service Providers Task Force of the American Public Communications Council ("APCC")[5]—an outrageous proposal that would permit rates for an 11-minute inmate collect call to exceed AT&T's rate by up to a full $2.00. The APCC proposal is a charade because it would do nothing to create pressure for rate competition and rate reductions in inmate services.

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[2] Gateway 1994 BPP Reply Comments at 20; Reply Comments of Gateway Technologies, Inc. on Further Notice of Proposed Rulemaking, CC Docket No. 92-77 (Sept. 14, 1994)("Gateway Reply Comments").

[3] Letter from Gateway Technologies, Inc. to William F. Caton, Acting Secretary, CC Docket No. 92-77 (February 1, 1995) ("Gateway BPP Ex Parte Letter").

[4] Id.

[5] Letter from ICSPTF to William Caton, CC Docket No 94-158 (Feb. 21, 1995).

I. Cost Basis for Inmate Service Rates

There are a number of areas in which costs for inmate service providers substantially exceed those associated with calling card and ordinary collect calling services. First, inmate service providers combine correctional institution telephones ("CPE")—which, in light of their technical sophistication, costs substantially more than most store-and-forward payphone equipment—with their services, offering CPE to correctional facilities free of charge. Second, inmate service providers offer a wide range of security and telephone administration services, including PIN assignment, calling list authorization, service blocking (900, 911, etc.). specific line number blocking (judges, witnesses, etc.), remote polling/updating and reporting. Third, correctional administrators are increasingly demanding more specialized value-added services, including video services and enhanced inmate identification technologies, that increase the costs associated with inmate collect services.

These cost differences are reflected in the current rates of the dominant carrier, AT&T, and prevailing market rates for inmate services. The per-call surcharge for inmate collect calls exceeds the calling card and operator-dialed collect surcharges in every carrier tariff with which Gateway is familiar. For AT&T and MCI, for example, the inmate surcharge of $3.00 is greater than both the ordinary operator-assisted surcharge ($2.25) and the calling card surcharge ($0.80). In addition, despite offering temporary, promotional rates for "automated" collect calling (*e.g.*, 1-800-COLLECT), generally using a $1.50 per-call surcharge, both AT&T and MCI have found it impossible to extend this surcharge to inmate services in light of the unique costs associated with serving the correctional institution market.

Gateway believes that these cost differences must be reflected in a reasonable inmate services rate cap. In addition, however, there are important cost differences between the major OSPs and most smaller inmate service providers, such as Gateway, that require adjustment of per-minute rates for purposes of an inmate services rate cap. OSPs apply their per-minute rates over an entire range of MTS-like services, including operator services generally, not just inmate services. Because most smaller inmate service providers are resellers, providing only inmate services, they lack the economies of scale necessary to drive incremental per-minute transport costs to the levels enjoyed by the largest OSPs.

Importantly, traffic patterns for most inmate service providers are dramatically different from those of AT&T and MCI, whose peak hours of network traffic are for business daytime usage, thus justifying more substantial night/weekend discounts in order to encourage migration of calling to off-peak time

periods. In contrast, as much as 70% of inmate service providers' traffic is in night/weekend periods, denying these providers the traffic volume to offer comparable "off-peak" discounts.[6] Moreover, underlying network costs for inmate service resellers are time and day insensitive, making night and weekend costs no lower than daytime costs. To the contrary, because of their inverted traffic patterns, inmate service providers experience higher labor costs (in overtime pay) in managing the night/weekend inmate traffic. Together, these disparate traffic patterns and increased labor costs make it economically impossible for small inmate service providers to match the night/weekend discount structures that the major OSPs have adopted for their more broadly applicable per-minute MTS rates.

II. Comparison of the Gateway and APCC Proposals

Gateway's rate cap proposal adopts the prevailing $3.00 inmate services surcharge and daytime AT&T MTS rates: $0.25 to $0.35 per minute, by mileage band. Unlike APCC's proposal, however, Gateway does not believe that a rate cap needs to include a "safe harbor" *with a substantial increase over* daytime MTS rates. (Gateway's comments suggested a 10% safe harbor only if a rate cap were structured as an average overall rate, rather than on an element-by-element basis.)[7]

Under APCC's proposal, inmate service providers would be free to exceed AT&T's rates by $0.50 for the first minute and $0.15 for the next 10 minutes. Over an 11-minute call, this proposal would allow inmate service providers to overcharge AT&T daytime rates by a full $2.00, or 32.3%, while Gateway's proposed rate cap would be identical to AT&T's rate for daytime calls. For night/weekend calls, the difference is even more astounding. APCC's cap would exceed AT&T's rate by 72.1% for an 11-minute call and 34.2% for a 3-minute call, while Gateway's proposed cap would exceed AT&T's inmate weekend rates by only 30%% and 11.2%, respectively.

Gateway is convinced that its proposed rate cap levels—which exceed its current tariffed rates—are fair for all inmate service providers and offer significant protection to inmates and inmate families. It would be unconscionable, in Gateway's opinion, to set an inmate services rate cap at the upper bound of current market rates, as that would create incentives for carriers to increase rates under the guise of "complying" with the rate cap. Conversely, it would be unreasonable for a rate cap to require all carriers to meet Gateway's rates, which are among the most competitive in the industry, or for a rate cap to mandate that all carriers—regardless

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[6] In fact, the inmate service traffic structure would justify an inverted rate structure, with higher prices for night/weekend calls than for daytime calls, but most inmate service providers, like Gateway, offer some discounts on night/weekend calls.

[7] Gateway 1994 BPP Reply Comments at 20.

of equipment and service features, customer service capabilities and costs—match AT&T's per-minute inmate service rates. A fair balance must be struck between providing a return on capital to inmate service providers, protecting against rate increases, and recognizing the legitimate cost differences associated with inmate services.

Critical to this balance is the proposal's reliance on AT&T's current rates. By setting the rate cap at AT&T's current rates, the Commission could prevent the dominant carrier—who would also be bound by the rate cap—from unilaterally increasing the industry rate ceiling by raising its rates. Currently, inmate service providers have a market incentive to raise inmate rates in order to offer correctional facilities higher commissions. Gateway's proposal would provide downward pressure on inmate rates while still fostering competition among the inmate service providers to offer correctional facilities commissions. Since rates would be capped, inmate service providers, including the major OSPs, would have to compete on price, service quality and commissions (a large percentage of which would still support inmate welfare programs.) In order to increase commissions, providers would have to cut costs and increase efficiency because a fixed cap could never produce a commission-driven "price-war." Thus, Gateway's proposal would prevent those handful of inmate service providers from charging unjust and unreasonable rates, encourage efficiency in the inmate service market, and refocus inmate provider competition on both commissions and rates.

III. Rate Cap Implementation Mechanisms

There are three issues associated with implementation on which Gateway fundamentally disagrees with APCC.

First, an inmate services rate cap should not be imposed in lieu of BPP, but rather as an adjunct to BPP. One of the fundamental reasons for excluding correctional institutions from BPP is that prisons and jails have unique security/fraud/budget needs which can be satisfied without excessive rate levels. However, the APCC's proposal of adopting a mandatory rate cap with a total exemption of correctional institutions from BPP would remove a major "stick" from the Commission's arsenal. If the "carrot" is that compliance with a reasonable rate requirement allows an inmate service provider to remain as the default carrier, then noncompliance with that rate level should be remedied not by Commission fines, but rather by inmate "self help" in selecting an alternate carrier.

Second, Gateway sees no justification for permitting "cost-of-service" showings by individual inmate service providers who desire exemption from the rate cap. As shown by the Cable Act implementation fiasco, cost-of-service

proceedings are notoriously poor vehicles for making fair rate decisions in light of the imbalance of resources and information, and would place a significant resource burden on inmate families and their representatives. To the contrary, a rate cap should be a rate cap, not a waivable license to initiate costly and complex regulatory rate cases. If market conditions change, the rate cap can and should be modified by the Commission, but it should not allow individual providers to obtain carrier-specific exemptions.

Third, enforcement of a rate cap should be structured in as self-executing a manner as possible. The "stick" of applying BPP to providers that exceed the rate cap is largely self-enforcing. Although CPE reprogramming would be required, compliance monitoring would be extremely simple, since inmate families blocked from using their desired OSPs would immediately know and could easily report violations to one of the inmate representative groups (e.g., CURE or Public Utility Project of New York) or the Commission. As an additional compliance mechanism, Gateway recommends that (1) a rate cap be coupled with a requirement that inmate service providers make rates available on request (*i.e.*, in real time) to both inmates and called parties, and (2) using the California model, that LECs be prohibited from providing billing and collection services to inmate service providers whose rates exceed the Commission-ordered cap. (Of course, a LEC billing prohibition *and* imposing BPP on providers/facilities exceeding a rate cap are superfluous, because both are designed to make it impossible as a business matter to charge prices in excess of the capped rate).

CONCLUSION

The inmate services industry is comprised, for the large part, by reputable companies charging fair and competitive collect rates. It would be unreasonable and uneconomic for the Commission to attempt to drive inmate service rates down to the same levels prevailing for calling card and ordinary operator-assisted services. On the other hand, APCC's proposal for a rate cap set as much as 72% above AT&T's rates is, in Gateway's view, an outrageous invitation for continued price gouging by some unscrupulous industry participants.

Gateway opposes use of the regulatory process to protect firms from the competitive pressures of the marketplace, and invites the Commission adopt its

proposal to rid the inmate services market of firms whose unconscionable rate levels harm inmates, inmate families and the competitive success of inmate service providers who provide superior service at fair rates.

Respectfully submitted,

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Dated: May 5, 1995.

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