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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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In the Matter of )  
)  
Billed Party Preference )  
for 0+ InterLATA Calls )

CC Docket No. 92-77

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REPLY COMMENTS OF GATEWAY TECHNOLOGIES, INC.

Gateway Technologies, Inc. ("Gateway"), by its attorneys, hereby submits these reply comments in the above-captioned proceeding on alternatives to Billed Party Preference ("BPP") for "inmate only" telecommunications services.<sup>1</sup> Gateway recommends that the Commission adopt a combined rate benchmark and rate disclosure policy as a balanced regulatory tool to deter and combat excessive rates in the correctional institution telecommunications market.

INTRODUCTION

Gateway's recommendation for specific rate benchmark and rate disclosure requirements for inmate services—a "cap and disclose" approach<sup>2</sup>—is supported by the vast majority of comments in this proceeding. As these comments reveal, the inmate services industry has made a concerted, good faith effort to deter those few unscrupulous providers from charging excessive rates for inmate services. Individual carriers and associations have made new proposals that would place significant constraints on inmate rates, focusing competition more on price than commissions for

<sup>1</sup> *Billed Party Preference for 0+ InterLATA Calls*, Second Further Notice of Proposed Rulemaking, CC Docket No. 92-77, FCC 96-253, ¶¶ 3, 49 (released June 6, 1996) ("NPRM" or "Second Further Notice").

<sup>2</sup> See Gateway Comments at 1-3.

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correctional institutions. Indeed, following Gateway's lead, the Inmate Calling Services Providers Coalition ("ICSPC") has, at long last, finally endorsed a reasonable rate benchmark, set at roughly the average inmate rates of the three largest OSPs, which, if exceeded, would require inmate providers to (a) disclose rates to end users in real time, and (b) provide the Commission with cost justification in support of their higher charges.

These proposals are designed to put downward pressure on inmate rates and provide real options for parties receiving collect calls from inmates, for whom specific rate information provides an important alternative to carrier selection—an option not available on inmate services. Yet, while the inmate services industry is moving toward compromise, certain public interest groups representing inmates and their families have retreated to uncompromising, inflammatory positions that ignore the realities of serving the highly specialized collect-only inmate market.<sup>3</sup> Their argument that inmate services rates should be "capped" at general operator service rates is spurious, because the FCC has already determined that inmate providers are not OSPs and, unlike OSPs, face "exceptional circumstances" and special security requirements that impose significantly higher costs for inmate services.<sup>4</sup>

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<sup>3</sup> See Citizens United for the Rehabilitation of Errants ("CURE") Comments at 7; American Friends Service Committee Comments at 2.

<sup>4</sup> Gateway Comments at 2-4; *Second Further Notice* ¶ 48.

## DISCUSSION

### **I. THE INMATE SERVICE INDUSTRY HAS UNITED IN RECOGNIZING THAT A PROPER RATE BENCHMARK MUST BE BASED ON THE AVERAGE INMATE RATE OF THE THREE LARGEST OSPs**

For the first time, the inmate services industry has united behind similar proposals to rid the market of the few unscrupulous providers charging excessive inmate service rates. Last year, the ICSPC proposed a rate cap that Gateway characterized as “unconscionable,” a “charade” and “an outrageous invitation for continued price gouging” because it would have permitted inmate service providers to exceed AT&T’s inmate rates *by as much as 72.1% for an 11-minute call*.<sup>5</sup> In response to Gateway’s call for a far lower rate cap, the ICSPC has finally voiced its support for an inmate rate benchmark based on the average inmate service rates of AT&T, MCI and Sprint.<sup>6</sup> Gateway is very pleased that the ICSPC has now agreed to the principle that a rate benchmark should assist in efforts to reduce inmate service rates by reflecting the rates of the largest OSPs.

There is also agreement on how a rate benchmark should be structured and implemented. First, both Gateway and ICSPC believe that inmate rates above the average benchmark would be subject to a rebuttable presumption that they are unjust and unreasonable.<sup>7</sup> Second, although their specific numbers are slightly different,

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<sup>5</sup> Letter from Glenn B. Manishin, Counsel for Gateway, to William F. Caton, FCC, CC Docket No. 92-77, at 1, 4, 6 (filed May 5, 1996)(“1995 Rate Cap Proposal”).

<sup>6</sup> ICSPC Comments at iii, 8. In its *1995 Rate Cap Proposal*, Gateway originally suggested capping inmate rates at the then-dominant (AT&T) inmate rate. Subsequent to this filing, the Commission reclassified AT&T as a nondominant provider. In light of this change, and in view of the NPRM’s reliance on a similar average for OSP rate disclosures, Gateway modified its proposal to recommend a ceiling for inmate services at the average inmate services rates of the three largest IXCs. Gateway Comments at 5 n.14.

<sup>7</sup> Gateway Comments at 9; ICSPC Comments at 10-11.

ICSPC has joined Gateway in advocating application of a small “safe harbor” to account for the cost differences between most smaller inmate service providers and the major OSPs.<sup>8</sup>

Inmate service rates are based on a per-call surcharge (\$3.00 in the case of the “big three” carriers) and per-minute rates, which in combination recover the costs associated with providing equipment, collect calling services and associated security services (*e.g.*, call blocking and screening) for correctional institutions. Yet, most providers of collect-only inmate traffic typically do not enjoy the same economies of scale that allow the so-called larger OSPs to offer lower per-minute transport costs, including discounted night/evening/weekend rate structures.<sup>9</sup> Therefore, a reasonable “safe harbor” is necessary for carriers who are unable to match the larger OSPs’ costs.

Gateway has supported the principle of a safe harbor as part of an inmate rate benchmark.<sup>10</sup> The safe harbor provision in Gateway’s proposal is its reliance on the OSPs’ average *daytime* MTS rates, as opposed to the discounts the larger carriers offer for evening, night and weekend traffic.<sup>11</sup> ICSPC, in contrast, includes an explicit safe harbor provision, under which inmate rates within 115% of the average inmate rates of the largest three OSPs would be presumed just and unreasonable. The ICSPC proposal,

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<sup>8</sup> “These differences include the disparate traffic patterns and resulting higher labor/overhead costs associated with providing collect-only telephone service to correctional facilities.” Gateway Comments at 6.

<sup>9</sup> See Gateway Comments at 7.

<sup>10</sup> *E.g.*, Comments of Gateway Technologies, Inc. on Further Notice of Proposed Rulemaking, CC Docket No. 92-77, at 24 (filed Aug. 1, 1994).

<sup>11</sup> “The higher costs faced by inmate service providers warrant the use of the leading OSP average *daytime* MTS rates as the benchmark for rates in the industry.” Gateway Comments at 7 (emphasis in original).

on the other hand, is based on average inmate rates using the OSPs' ordinary time-of-day discounts, not daytime MTS per-minute rates.

Thus, both Gateway and ICSPC support a small "cushion" to reflect cost differences among providers and ease the Commission's administrative enforcement burdens. Indeed, the two proposals are numerically almost identical. Gateway strongly believes that the traffic patterns at correctional institutions—where peak traffic is at night—should allow inmate carriers to utilize per-minute rates that do not incorporate the steep night/evening discounts applied by the larger OSPs to all their MTS traffic. Our proposal to apply the larger OSPs' daytime per-minute rates is preferable to a generic 115% rule. On the other hand, because the numbers involved are extremely close, we have no objection to use of the same "115%" criterion for both ordinary OSP services and inmate services.

ICSPC and Gateway depart sharply, however, on the issue of application of a per-call "payphone compensation" charge to inmate services. Despite its assertion that Gateway "mischaracterized" the ICSPC proposal for a \$0.90 per-call charge in CC Docket No. 96-128,<sup>12</sup> the fact of the matter is that in its comments there, ICSPC proposed that the Commission "establish a uniform inmate system charge of \$0.90 applicable to all calls made from inmate calling systems."<sup>13</sup> Only after Gateway objected to this attempt to double-recover costs associated with inmate services—once in a payphone equipment charge, and again in inmate service rates—did the ICSPC modify its proposal so that the \$0.90 per-call charge would *not* apply if the Commission adopts an

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<sup>12</sup> ICSPC Comments at 9 n.19.

<sup>13</sup> ICSPC Comments, CC Docket No. 96-128, at iii (filed July 1, 1996).

inmate service benchmark at 115% of the *inmate* rates of AT&T, MCI and Sprint. ICSPC Comments at iii. While we are again pleased that the ICSPC has moderated its position, Gateway has strong objections to the concept of a federally imposed per-call charge for inmate service CPE as a means of avoiding state limits on local inmate service rates.<sup>14</sup>

As an alternative to Gateway's rate proposal, the inmate advocacy group CURE suggests a rate threshold that ignores the unique costs associated with serving the inmate telecommunications market.<sup>15</sup> CURE would have the Commission force inmate service providers to charge rates designed to recover the costs associated with operator services, rather than inmate services. Zealously representing its constituents, CURE proposes that the Commission order providers to make inmate collect services available at ordinary OSP rates—both surcharge *and* per-minute rates—prices that are below-cost and will harm the very constituency CURE purportedly seeks to protect.<sup>16</sup>

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<sup>14</sup> As ICSPC concedes, the purpose of the charge is to avoid state-imposed rate caps on "local" (intrastate and intraLATA) inmate services. *Id.* at 5. A uniform per-call payphone compensation charge, however, would not necessarily require that local inmate service rates be reduced correspondingly. Nor is this simplistic approach a viable answer to the highly differentiated level of local inmate service rate ceilings, which lead to significant disparities between cost and price for inmate services in different states (and among different correctional institutions). As competition increases in the inmate services industry, and in the payphone market generally as a result of Section 276 of the 1996 Act, market forces may or may not permit retention of current surcharges as a means of recovering costs for inmate services. Adopting a mandatory per-call "floor" to these surcharges is therefore inappropriate.

<sup>15</sup> CURE submits that a properly fashioned rate cap should: (1) establish an inmate services surcharge that does not exceed the surcharge associated with ordinary calling card usage or, at a minimum, ordinary collect calling services; (2) prohibit the imposition of a second surcharge for any subsequent collect call placed by an inmate to the same number on the same day; and (3) establish rates comparable to those enjoyed by all other recipients of collect calls from non-prison telephones. CURE Comments at 7.

<sup>16</sup> As ICSPC notes, if specialized inmate CPE and services are unavailable due to federal price caps—driving inmate providers out of business—correctional institutions will have no alternative but to curtail inmate telephone usage, thus depriving prisoners of contact with their families, and to look to strained tax revenues for the inmate welfare funds now generated by commissions. ICSPC Comments at 5-7.

CURE's proposal is inconsistent with the well-established record in this and related proceedings, and should be summarily rejected. First, the Commission has properly refused to reconsider the exemption of inmate CPE from payphone unblocking requirements, acknowledging the record evidence that "inmate rates have been brought under control during the past five years, that the market is highly competitive, and that inmate service providers are being called upon to meet benchmark rates that are based on those of dominant carriers *for similar calls.*"<sup>17</sup> Second, the Commission has expressly recognized the validity of specialized inmate service and equipment costs and the need for inmate rates to be priced at a level that allows for their recovery by inmate carriers.<sup>18</sup>

[P]risons often install and maintain security equipment for a number of legitimate reasons involving security and other government prerogatives. Given that prisons would likely seek to recover the cost of any equipment employed for legitimate security reasons, we would expect that competitive prices for inmate-only telephone calls from prisons could be higher than the rates of calls from ordinary locations.

CURE's proposal offers neither evidence nor policy justification to alter these conclusions, and should be disregarded.

## **II. EXCEEDING THE INMATE RATE BENCHMARK SHOULD REQUIRE INMATE CARRIERS TO BEAR THE BURDEN OF COST-JUSTIFYING THEIR RATES AND TO SUPPLY RATE DISCLOSURES IN REAL TIME**

Gateway and the ICSPC agree that the Commission should implement simple regulatory requirements that are triggered when an inmate carrier charges rates that

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<sup>17</sup> *Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, Report and Order and Notice of Proposed Rulemaking, CC Docket No. 94-158, ¶ 29 (released March 5, 1996)(emphasis supplied); see GTE Comments at 10.

<sup>18</sup> NPRM at ¶ 48.

exceed the benchmark.<sup>19</sup> Inmate service providers wishing to charge rates above the benchmark should be required to (i) provide cost justification to the Commission in support of their rates, and (ii) disclose rates to the called party in *real time* before the call is completed and charges are incurred. Although provision of call-specific rate information will be expensive, and perhaps burdensome for some carriers, that is exactly the point. The cost and inconvenience associated with providing cost justification and investing in the ability to supply rate quotes in real time will offer a powerful incentive for inmate providers to keep their rates below the 115% benchmark.<sup>20</sup>

There are straightforward reasons why parties receiving calls initiated from correctional institutions should have adequate information on the rates they will be charged. Because “dial around” is not permissible in a correctional institution setting, the Commission should strive for the “next best” thing.<sup>21</sup> This means that unlike OSP services in general, a “warning” disclosure is inadequate to protect parties receiving inmate-originated collect calls, since the called party cannot select an alternative carrier. By requiring carriers exceeding the benchmark to provide real time rate quotes, the Commission will provide inmate families with the tools they need to make informed judgments, consistent with their personal budgets, as to whether to accept collect calls from inmates and, if so, how long to talk.<sup>22</sup> As ICSPC notes, “the called party, once

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<sup>19</sup> Gateway Comments at 10-12; ICSPC Comments at 10.

<sup>20</sup> Gateway voluntarily provides real time rate disclosure, and as ICSPC concedes, a rate quote requirement “will not be administratively burdensome because most ICSPs currently announce at the start of a call that it is a collect call from a confinement facility. Any ICSP charging rates in excess of the benchmark would simply add a price disclosure statement to that message.” ICSPC Comments at 12.

<sup>21</sup> Gateway Comments at 3.

<sup>22</sup> *Id.*

armed with the rate information provided by the disclosure, will be in a better position to decide how often and for how long he or she will accept calls from the inmate."<sup>23</sup>

### CONCLUSION

Following Gateway's lead, the inmate service provider industry has moved towards a consensus position on an effective, balanced regulatory solution to deter excessive rates in the inmate telecommunications market. Gateway urges the Commission to adopt a rate benchmark that meets these goals by requiring rates exceeding the inmate service ceiling to trigger requirements for making rate disclosures in real time and providing cost justification to the Commission.

Respectfully submitted,

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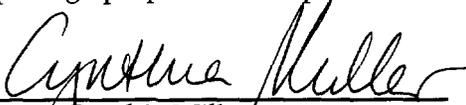
Dated: August 16, 1996.

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<sup>23</sup> ICSPC Comments at 12.

## CERTIFICATE OF SERVICE

I, Cynthia Miller, do hereby certify on this 16th day of August, 1996, that I have served a copy of the foregoing document via first class mail, postage prepaid, to the parties below:

  
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