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Ex Parte Presentation

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

Re: CC Dockets 92-77 and 96-128

Dear Mr. Caton:

The Inmate Calling Services Providers Coalition ("Coalition") is writing because we wish to express our view on the interrelationship between the Commission's payphone compensation (CC Docket 96-128) and Billed Party Preference/rate ceiling (CC Docket 92-77) proceedings, particularly as they affect providers of inmate calling services. While the Commission must address each proceeding in conjunction with the other, it is important that they be kept analytically distinct. The Coalition also wishes to stress the agreement among the various parties to the rate ceiling proceeding as to an appropriate interstate rate benchmark that would address the Commission's and the industry's concerns over excessive rates and at the same time provide fair compensation to inmate calling service providers. [1]

As the Coalition has repeatedly stressed to the Commission, it is critical that the two components of interstate inmate 0+ collect calls -- the inmate calling services and the

[1] The Coalition will also respond to several points made by Gateway Technologies, Inc. ("Gateway") in its reply comments filed August 16, 1996 in CC Docket 92-77 ("Gateway Reply"). Gateway's reply comments continue its long history of unfounded attacks on the Coalition and contains several mischaracterizations of positions taken by the Coalition. The Coalition is disappointed that Gateway continues to use Commission proceedings as a competitive forum in this manner. Gateway's attacks are all the more unfortunate in that they come at a time when virtually all parties to the proceeding have arrived at a rough consensus regarding a workable benchmark. While the Coalition is not interested in squabbling with Gateway, the Coalition does feel compelled to set the record straight on a number of points.

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long distance transmission -- remain separate and distinct.[2] The Commission should not look to per-minute long distance rates for cost recovery for the expenses associated with inmate calling services. Breaking the link between compensation for inmate calling services and interstate rates allows costs to be properly allocated to cost causers and promotes market efficiencies by allowing carriers and inmate calling service providers to better compete on the basis of price. Moreover, it makes clear to end users -- in this case an inmate caller's friends and family -- exactly what it is that they are paying for. Finally, as detailed in the Coalition's reply comments, it would help end the cross-subsidization of intrastate rates by interstate rates. *See* Coalition BPP Reply at 6.

Thus, the Coalition has proposed a compensation and rate structure that breaks the compensation element out as an explicit charge and does not hide equipment and service costs in long-distance transmission rates. Under the Coalition's proposal, the Commission would adopt, in the payphone compensation proceeding, the $.90 inmate system compensation charge that the Commission has already recognized[3] is a fair rate to compensate inmate calling service providers for the services they render and which the Coalition has demonstrated is necessary to ensure fair compensation for the unique equipment and services required in the inmate environment.[4] The Commission would then be free to establish, in the Billed Party Preference/rate ceiling proceeding, an interstate rate benchmark at the Big Three's existing *non-inmate* regular rates, plus 15%.[5] Thus, the cost

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[2] *See, e.g.,* Comments of Inmate Calling Service Providers Coalition, CC Docket 92-77, filed July 17, 1996 at 9 ("Coalition BPP Comments"); Reply Comments of Inmate Calling Service Providers Coalition, CC Docket 92-77, filed August 16, 1996 at 5-6 ("Coalition BPP Reply").

[3] The Commission has approved a $.90 compensation element for inmate 0+ collect calls for each of the Big Three's inmate services. This is in addition to the long distance per-minute transmission rates. *See* Reply Comments of Inmate Calling Services Providers Coalition, CC Docket 96-128, filed July 15, 1996 at 6-7.

[4] *See* Comments of Inmate Calling Services Providers Coalition, CC Docket 96-128, filed July 1, 1996 at 4-13; Reply Comments of Inmate Calling Services Providers Coalition, CC Docket 96-128, filed July 15, 1996 at 3-6.

[5] If the Commission does not establish a $.90 compensation charge, then the Coalition advocates a rate benchmark set at the Big Three's inmate rates, plus 15%. Because the Big Three's inmate rates are roughly $.90 higher than their standard 0+ collect rates, such a benchmark would provide inmate calling service providers with cost recovery roughly equivalent to the $.90 compensation charge/non-inmate rate proposal. The $.90

(Footnote continued)

recovery and compensation for the inmate calling services portion of a call, captured in the $.90 charge, would be kept wholly separate from the Big Three's transmission rates.

Nearly every party filing comments in the Billed Party Preference supports a benchmark at or near the level proposed by the Coalition. As noted by Gateway, "for the first time, the inmate service industry has united behind similar proposals to rid the market of the few unscrupulous providers charging excessive inmate service rates." Gateway Reply at 3. MCI, for example, proposes that the benchmark should be "set based on the average prison rates of MCI, AT&T and Sprint, plus some margin."[6] Sprint suggests that the Commission set the rate at "115% of the weighted average charges for 0+ calls of the [Big Three]."[7] GTE advocates that the benchmark be set at 120% of the highest of the Big Three's rates.[8] Gateway's proposed benchmark -- 100% of Big Three inmate *daytime* rates -- would yield rates similar to the Coalition's.[9]

While the position that Gateway takes in its reply comments is consistent with the Coalition's with respect to rate levels, there is a fundamental flaw with Gateway's proposal. Gateway's reasoning blurs the distinction between the inmate calling service and long distance transmission components of an inmate call. According to Gateway, "[i]nmate 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." Gateway Reply at 4 (emphasis

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(Footnote continued)

compensation charge approach is, however, preferable. It would allow the Commission to ensure, as required by Section 276, that inmate calling service providers are fairly compensated, without having to capture that compensation in the long distance rates.

6 Comments of MCI, CC Docket 92-7, filed July 17, 1996 at 6.

7 Comments of Sprint Corporation, CC Docket 92-77, filed July 17, 1996 at 1.

8 Comments of GTE, CC Docket 92-77, filed July 17, 1996 at 5.

9 In its reply comments, Gateway attacks an earlier Coalition benchmark proposal as an "outrageous invitation for continued price gouging" and characterizes the Coalition's current proposal as "a response to Gateway's far lower rate cap . . . ." Gateway Reply at 3. This is ironic in light of the fact, that as demonstrated in the Coalition's reply comments, Gateway's current proposal in some instances yields rates *higher than* the Coalition's. Coalition BPP Reply at 4.

added). In effect, Gateway's proposal would hide from called parties the costs of providing inmate calling services by including it as an undifferentiated element in the per-minute transmission rate charged for the call, obscuring the true nature of the charges. Gateway's proposal is also flawed in that it would upset the expectations of called parties regarding how they are used to being charged, *i.e.* lower per-minute rates in the evening and on weekends. Finally, Gateway's proposal would distort inmate calling providers' cost recovery, permitting over-recovery on some calls, and under-recovery on others. If Gateway is truly concerned with inmate calling rates, it should agree that making the cost recovery charge explicit, and not distorting the per-minute transmission rates, will benefit called parties.

Gateway, however, faults the Coalition's $.90 compensation charge/115% of Big Three non-inmate rates proposal, characterizing it as "a means of avoiding state limits on local inmate service rates." Gateway Reply at 6. This argument is spurious. As the Coalition has explained, the $.90 inmate system compensation charge provides a mechanism for inmate calling service providers to be fairly compensated and to recover their costs without involving the Commission in the regulation of state collect calling rates. The states have adopted various approaches to setting rates for collect calls. Adding the $.90 compensation charge to existing rates will preserve independent state judgments as to the appropriate collect calling rates in their jurisdiction. And, if any state believes that the $.90 charge makes the cost of calls too high, it would, of course, be free to adjust its rate ceilings accordingly.[10]

In sum, the payphone compensation and rate ceiling proceedings are interrelated. In the payphone compensation proceeding, the Commission should adopt the Coalition's $.90 inmate system compensation charge to ensure fair compensation for all inmate calls. Then, in the rate ceiling proceeding, the Commission would be free to set an interstate benchmark at the Big Three's non-inmate rates, plus 115%. Such a benchmark is consistent with the proposals of nearly every party participating in the rate ceiling

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[10] Gateway also repeats its assertion that the Coalition originally proposed a double recovery of the $.90 compensation charge -- once through an explicit cost element and once again through the $3.00 inmate surcharge which itself contains a roughly $.90 cost recovery element. The record is absolutely clear, however, that *at no time has the Coalition ever sought double recovery of the $.90 element.* It has always been the Coalition's position that the $.90 per-call charge would not apply if the Commission adopts a rate benchmark at 115% of the Big Three's *inmate* rates. *See* Coalition BPP Comments at 9 ("If the Commission adopts [the] $.90 compensation charge then the benchmark rate should be set at the Big Three's *non-inmate* rates plus 15%.") (emphasis added); Coalition BPP Reply at 3.

proceeding. Proceeding along these lines will allow the Commission to keep the inmate calling services and transmission components of inmate calls separate.

Sincerely yours,

Albert H. Kramer

AHK/pmd

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