Since the current inmate phone system contract was established in March 1991, the cost of making long distance collect calls from DOC institutions has increased. More specifically, the one time surcharge applied to each long distance call placed by an inmate from a DOC facility has increased by 55 percent, from $1.94 in December 1994 to the current $3 per call. In contrast, the increase in the consumer price index for the same period was about six percent.

The impact of the surcharge on a collect call is significant, because the surcharge is assessed regardless of the length of the call. For example, to place a one minute collect call from a DOC facility that would also be charged a toll of 30 cents per minute would cost a total of $3.30. In this example, the surcharge applied to the call is 10 times greater than the per minute cost of the call.

The increases in the surcharge and per minute rates have had an impact on the cost of calls from inmates in DOC facilities. As illustrated in Table 2, the increases in the surcharges and rates have resulted in an increase in the cost of calls from the same facilities to the same call recipient since 1994.

Table 2

Changes in Cost of Selected Long Distance Collect Calls from DOC Facilities

(Selected Examples, August 1994 - September 1996)

From/To	Date	Billing Period	Minutes	Cost of Call
Haynesville CC/ Triangle, VA	December 1994	Evening	15	$4.23
	August 1996	Evening	15	$5.55
Augusta CC/ Occoquan,VA	December 1994	Evening	15	$5.09
	July 1996	Evening	15	$6.45
Haynesville CC/ Washington, DC	August 1994	Night	15	$4.00
	September 1996	Night	15	$6.05

Source: JLARC staff analysis of telephone bills from recipients of calls from inmates in DOC institutions.

Potential Impact of Rising Cost of Collect Calls on Inmate Call Recipients

As discussed in this report, allowing inmates to maintain contact through telephone calls to families and friends has been reported to be a positive tool in an inmate's adjustment to prison life as well as his or her preparation for a return to society.

Yet, there is concern that the cost of utilizing the DOC inmate phone system may limit its use, which might mitigate the positive impact of maintaining ties to the outside through telephone calls. Moreover, concerns about the adequacy of other methods of communication available to inmates have been expressed. Finally, even with reduced costs for the inmate telephone system, the fiscal impact on some call recipients would likely still be substantial.

Costs of Using the Inmate Phone System Could Mitigate Positive Aspects of System. Inmate families, advocacy groups, and corrections officials have noted that the telephone can be a mechanism to help inmates make a positive adjustment to prison life as well as to prepare them for their eventual release. DOC staff noted that "the Department of Corrections recognizes the importance of sustained family contact in the management, adjustment, and rehabilitation of offenders." However, some call recipients have expressed concern that the positive features of telephone contact may be compromised by rising rates and charges. For example:

> *A parent stated that her son had been in DOC's correctional system for about eight years. However, she reported that her primary residential phone service had been disconnected for more than eight months while bills totaling several hundred dollars were paid. As a result, her son now is reluctant to call in order to relieve the expense of the calls on his family.*
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> * * *
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> *The wife of an inmate in a DOC facility estimated that she had spent about $3,000 for collect calls from her husband over a 14 month period. She believes that telephone contact is directly related to his positive adjustment to prison life which is reflected in his continued assignment to an honor section. She noted that the increasing costs associated with using the inmate phone system may force her to reduce the number of calls she can afford to accept from her husband.*

Moreover, families, call recipients, and inmate advocacy groups have noted that these calls are made to many families that are already at a financial disadvantage due to the imprisonment of a wage earner. These concerns are highlighted by a 1991 study conducted by the Bureau of Justice Statistics, an agency of the U.S. Department of Justice. This study of state prison systems' inmates reported that 53 percent of inmates sampled in state prisons nationwide reported earning an annual income of less than $10,000 in the full year prior to their commitment to prison.

Availability of Other Communication Methods. DOC staff have stated that the telephone system is one of three primary methods available to inmates to maintain contact with family and friends. The other methods include correspondence through the mail and visits to inmates at the DOC facility.

However, families and friends of inmates have expressed concern about the impact of proposed DOC policies that could limit the number of hours they can visit an inmate during any one month. In addition to any reductions in visitation time, they are also concerned that reduced visiting hours could require them to rely more on the telephone to maintain direct and meaningful contact, which could be very costly given the current charges for collect phone calls from DOC inmates. With regard to written correspondence, some families contend that, it if the inmate has difficulty reading or writing, written correspondence can be both frustrating and unfulfilling for the inmate.

Lower Cost Calls May Not Totally Eliminate Fiscal Impact on Some Call Recipients

It should be noted that even if rates and surcharges were lowered, the fiscal impact on many recipients of inmate calls could still be substantial. Many of the telephone bills from recipients of DOC inmate calls reviewed by JLARC staff indicate that many individuals receive a significant number of calls in a monthly billing cycle. For example:

> *From July 9, 1996 through August 3, 1996, one call recipient accepted 49 calls from the same DOC inmate at a cost of $278. On one particular day, the call recipient accepted 15 separate calls at a total cost of almost $82. For a 22 month period, this individual reported spending almost $5,700 on calls from DOC inmates.*
>
> * * *
>
> *Another individual's telephone bill for the period February 13, 1995 through March 12, 1995 indicated that 129 collect calls from the same DOC facility had been accepted at a cost of $757. For the previous three months, charges for calls originated in DOC institutions totaled more than $1,700.*

Less costly collect calls from DOC institutions would to some degree mitigate the fiscal impact on call recipients. However, for call recipients who accept a large volume of calls, the fiscal impact would still likely be significant. In such instances, call recipients will need to exercise some personal responsibility to limit the number of calls accepted in order to reduce the costs of inmate calls.

Impact of Phone System Can Vary by Location of DOC Facility

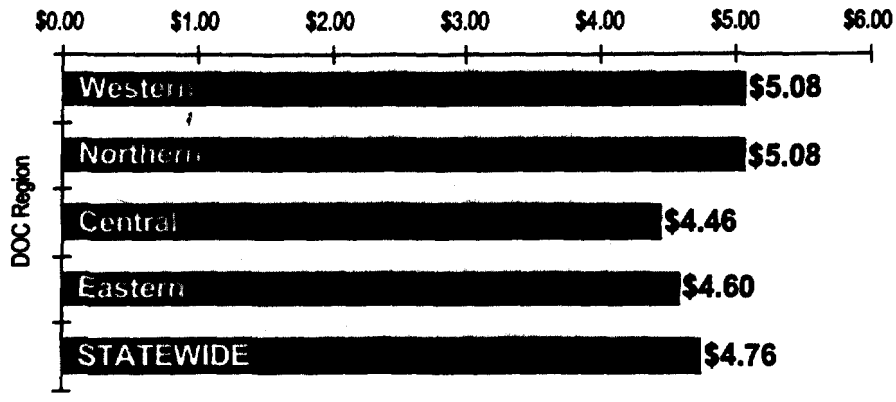
Factors other than the length of a collect call can have an impact on the cost of the call that is charged to the recipient. Another factor appears to be the region of the State in which the DOC facility is located. Inmates in DOC's facilities in the northern and western regions tend to place calls that cost more per call than inmates in facilities

in DOC's eastern and central regions. This variation in cost per call also extends to specific DOC facilities.

Cost of Calls Vary by Region of State. In June 1996, DOC facilities in the western and northern regions of the State had a higher median cost per call than did facilities in the central and eastern regions of the State (Figure 6). It should be noted, however, that the median length of a call from institutions in the central and eastern regions is about 25 seconds less than for calls from institutions in the northern and western regions, but this is not a sufficient difference in call length to explain the entire median cost difference.

Figure 6

Median Cost Per Call by DOC Region, June 1996



Source: JLARC staff analysis of data from the Department of Corrections, June 1996.

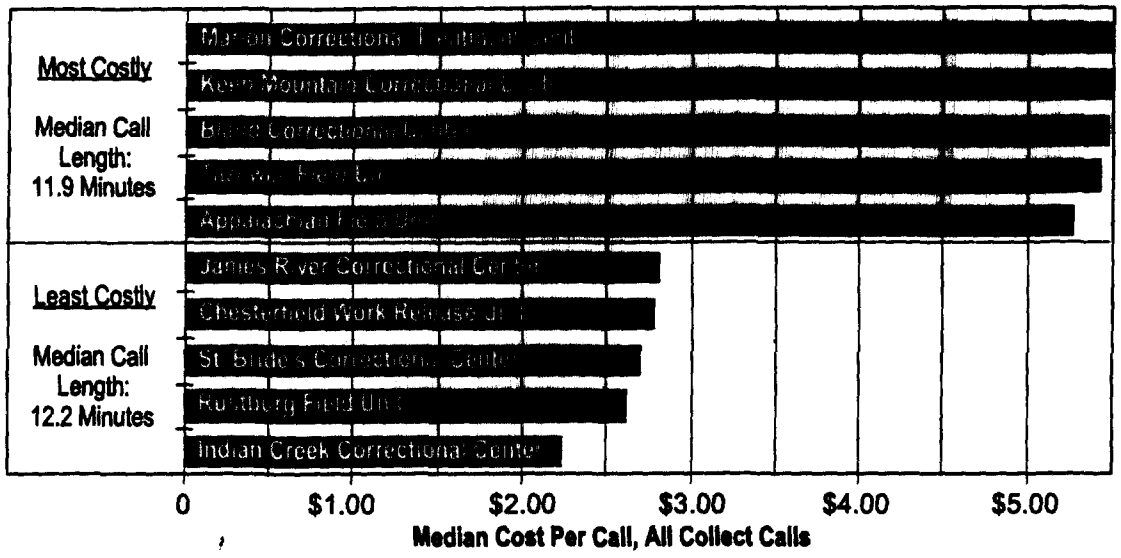
In addition to call length, there are some other possible reasons for the different median costs per call across the four regions of the State. First, many of the inmates in facilities located in the western and northern regions may be from the central or eastern regions of the State. The greater the distance between the inmate and the call recipient, the greater the charges to call collect.

Second, there are a number of DOC institutions within a relatively short distance from the Richmond metropolitan and Tidewater metropolitan areas. Calls from institutions such as the Chesterfield work release unit to Richmond are billed as local collect calls. Calls from the Indian Creek correctional center to Chesapeake and Virginia Beach are also billed as local collect calls.

Impact Is Significant for Some Facilities. Analyzing the fiscal impact by DOC region masks some of the extreme differences between the cost per call from individual DOC facilities. These differences are clearly illustrated in Figure 7. The five facilities with the highest median cost per inmate call in June 1996 were located in DOC's

Figure 7

Five Highest- and Five Lowest-Cost DOC Facilities for Inmate Calls, June 1996



Source: JLARC staff analysis of data from the Department of Corrections, June 1996.

western region. In fact, these facilities were all located west of the City of Roanoke, and the median cost per call from these facilities exceeded $5.

This indicates that many of the inmates in these facilities are of sufficient distance from the call recipients to place collect calls that are long distance and assessed the $3 surcharge. For example, 43 percent of the inmates at Keen Mountain correctional center were sentenced for their most serious crime in courts located in four northern Virginia localities, three central Virginia localities, and six localities in the Tidewater region. While the location of the sentencing court is not the inmates' home of record, it is possible that many of the inmates lived relatively near the location of the sentencing court. For these inmates, calls to family or friends in these localities would be long distance.

Conversely, four of the five facilities with the lowest median cost per call were located in DOC's central or eastern region. Here, many of the calls placed by inmates appear to have been local calls (and not assessed a $3 surcharge) since the median cost per call for these facilities was less than $3.

For example, 55 percent of the inmates at the Indian Creek correctional center in Virginia Beach were sentenced for their most serious crime in courts in Virginia Beach, Portsmouth, Norfolk, and Chesapeake. Therefore, if the individuals who receive their calls live in these localities, many of the calls would not be assessed the $3 long distance surcharge.

The State Crime Commission noted in a 1993 report that "...prisoners in Virginia are frequently housed in facilities on opposite ends of the state from their home and family." As a result, the ability of friends or family to make the trip to the Keen Mountain correctional center in Buchanan County from Central Virginia or the Tidewater region may be limited. For example:

> *One inmate's mother who lived in Lunenburg County reported that her son was incarcerated at Keen Mountain correctional center in Buchanan County. The inmate's mother wrote that "I take care of my grandmother who is 96 years old. She has had two mini strokes and can't do anything for herself. We haven't been able to go and see him because [Keen Mountain correctional center] is so far away and have no one to help me with my grandmother." She also noted that the "The system makes it hard on the families also.... Our contact is through the telephone."*
>
> * * *
>
> *Another parent of an inmate in a DOC facility stated "I have a son who has been in prison for 2 years. He is too far to visit to[o] often and I use the phone system to keep in contact."*

As discussed, the distance between the location of the call recipient and the inmate can impact the cost of the call. In addition, it also appears to have the potential to negatively impact the ability of family and friends to routinely visit, which increases the value of maintaining telephone contact.

STEPS TO REDUCE THE FISCAL IMPACT OF THE INMATE PHONE SYSTEM SHOULD BE TAKEN

One important aspect of the inmate phone system is that it provides relatively direct contact with families and friends who reportedly can help in the inmate's positive adjustment to prison. However, as noted in the previous section, increasing billable charges has the potential to mitigate these positive aspects of the phone system.

Therefore, steps should be taken to limit the fiscal impact of the telephone system on recipients of calls from DOC inmates. Individuals receiving collect calls likely have an expectation that rates and charges will be similar to those they receive for collect calls completed outside of the inmate phone system. Linking charges on calls made through the DOC inmate phone system to charges the public pays for collect calls could reduce the fiscal impact on call recipients. Moreover, increasing the maximum length of time a call is allowed to last would enable recipients to get more value on a per-minute basis and thereby mitigate the effect of the long distance surcharge as well as reduce the need for multiple phone calls.

Federal Government Considering Limits on Rates for Interstate Collect Calls from Correctional Facilities

As part of a 1992 inquiry into interstate collect calls from operator service providers (OSP), the Federal Communications Commission (FCC) is also examining the issue of rates charged for similar calls from correctional institutions. Among the options that have been discussed are billed party preference, price disclosure requirements, and benchmarks or rate caps set at a level consumers expect to be charged for operator services. However, the FCC has not at this time made a decision about what, if any, action it will take.

A national inmate advocacy group, Citizens United for Rehabilitation of Errants (CURE), has filed formal comments with the FCC on this issue. CURE requested that a rate cap be established for interstate collect calls from prison phone systems as an interim measure until the FCC determines what final regulatory action it will take. While preferring other forms of regulation, CURE's July 1996 FCC filing stated that an interim rate cap would provide an "effective and timely solution to the significant problem of excessive charges in the inmate calling market." Finally, it concluded that "...the family and friends of inmates should not be punished or treated differently from other consumers who receive collect calls from payphones."

Long Distance Rates Should Be Comparable to Those the Public Pays for Similar Calls

To mitigate the negative impact of the costs of the inmate phone system on call recipients, limits should be placed on rates charged. DOC's goal when contracting for the current system in 1991 was apparently to limit the cost of calls from inmates charged to call recipients. Currently, inmate calls are billed as collect calls, and are completed through an automated operator. Therefore, an argument can be made that the charges for the inmate phone system should be limited to the long distance rates billed the public for operator assisted collect calls by an industry dominant telephone company. If rates and surcharges were set at that level, cost savings to call recipients would result.

Individuals Receiving Collect Calls Have an Expectation of Rates Similar to Those Charged the Public. Individuals making long distance calls probably have some expectation of what the charges will be based on past experience with the telephone carrier serving their residence or from receiving collect calls from phones that are generally available to the public. As a result, individuals would likely expect to pay similar rates for calls from the inmate phone system. For example:

> *A mother whose son was in a DOC facility noted that she would expect the cost of collect calls from her son in prison to be similar to the collect calls she received at her home in Washington, D.C. from her daughter in South Carolina.*

* * *

> *Another call recipient noted that she was not asking for anything free from the State. She said that she would like her bill for collect calls from prison to be the same as for individuals who receive collect calls from individuals who are not incarcerated.*

Yet, long distance collect calls made through the inmate phone system are generally more expensive than direct dialed, operator assisted calls completed from a public payphone that is pre-subscribed to MCI.

DOC's Intent Was to Limit Cost of Calls. DOC staff reported that the department's intent in the 1991 contract was to limit the charges that were applied to inmate's long distance collect calls. Prior to the current phone system, inmates' collect calls were carried by the local telephone company serving the locality in which the DOC facility was located.

DOC staff noted that at that time they were aware of instances in other states where exorbitant charges were applied to inmate calls. DOC staff stated that they wanted to avoid that situation in Virginia. The intent in establishing the current contract was to limit rates to about what was being charged by the telephone companies serving DOC facilities. At that time, those rates were probably what the public was charged for an operator assisted collect call since all inmate calls were even then required to be placed collect.

The Board of Corrections has also attempted to limit the cost of calls in local jails through its jail regulatory and oversight function. In May 1994, the Board of Corrections proposed changes to jail standards governing access to telephones in local jails to ensure that "the expense of such access [to telephone facilities] shall not exceed the average rate charged to the local community." The Board's goal at that time was to limit the cost of calls from local jails to the level charged the public in each locality.

Type of Call Will Determine Charge Structure. The primary factor that determines the rate structure for a telephone call is the type of call. Calls made from DOC institutions are completed with the assistance of an operator and billed as collect calls. Calls completed as operator assisted collect calls are typically more costly than a direct dial call. In addition to the per minute rates charged, there is an operator surcharge attached to the call. The surcharge is in addition to the per-minute charges.

Finally, there is concern that because the operator in the DOC phone system is automated, it should not be considered an operator assisted call. However, federal law states that:

> The term "operator services" means any interstate telecommunication service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both of an interstate telephone call....

Correctional institutions are not at this time regulated by the FCC as aggregator locations. However, the definition of interstate operator services for all other regulated locations includes automated operator service.

Placing Limits on Rates Should Result in Cost Savings for Recipients. For an operator assisted collect call from a MCI pre-subscribed payphone, the current surcharge is $2.15 and the per minute rates are almost consistent with the per minute rates charged for the DOC prison phone system. Examples of how MCI rates for public payphone operator assisted collect call rates would affect the cost of a call currently completed through the DOC inmate phone system are highlighted in Table 3.

Table 3

Impact of Applying MCI Public Payphone Rates to 15 Minute Inmate Long Distance Call
(Selected Examples)

From/To	Billing Period	Current Cost of Inmate Call	Cost Using MCI Pay-Phone Rates	Difference
Haynesville CC/ Triangle, VA	Evening	$5.55	$4.69	($0.86)
Augusta CC/ Occoquan,VA	Night	$5.70	$4.84	($0.86)
Keen Mountain CC/ Kenbridge, VA	Day	$7.80	$6.94	($0.86)

Source: JLARC staff analysis of telephone bills from recipients of calls from inmates in DOC institutions and MCI tariff schedules filed with the State Corporation Commission.

This does not mean however, that rates could not or should not be set lower than levels currently charged the public. A rate lower than the surcharge that is charged the public could be selected in part to mitigate the inability of inmates and call recipients to select alternate carriers or calling plans that are available to the public. However, the extent to which rates could be lowered would need to be negotiated in the contracting process as the cost of the system's security and operating features would need to be considered and included in the rates.

If the surcharge on collect calls were reduced by $0.85, the cost savings would be significant. The savings in FY 1996 on interstate calls would be more than $686,000. Savings attributable to intrastate calls could not be determined due to the lack of data on the number of calls assessed the $3 surcharge.

Finally, any reductions in the rates charged call recipients and any additional security or operational features required in the next contract, will likely reduce the commission revenue paid to the State because the commission revenue is currently based on gross billable charges. Moreover, commission rates may also need to be reduced to account for any reductions in rates or charges and any additional security or operational features. This would likely further reduce the commission revenue paid to the State.

Next Contract Should Clearly State Rates to Be Benchmarked

The current contract governing the administration and operation of the DOC inmate phone system requires that rates charged "must not exceed AT&T rates or local state tariff rates...." Moreover, no additional charges for services are to be added to the cost of a call. As noted earlier, DOC staff stated that such contract provisions were intended to limit the charges that were applied to inmate calls to approximately the level that call recipients paid at that time for inmate calls. According to DOC staff, AT&T rates were selected because AT&T would likely be hesitant to arbitrarily raise rates due to industry competition. DOC staff stated that they wanted to limit rates charged because they were aware that exorbitant rates had been charged inmates in other states.

Despite these important goals, the language requiring that rates not exceed AT&T rates should have been more specific. The current language requiring MCI to benchmark AT&T tariff rates is too broad because there are a significant number of different AT&T rates and programs tariffed by the State Corporation Commission (SCC).

For example, in 1991, the long distance surcharge for the inmate phone system was apparently the same for operator assisted, collect calls charged the public by AT&T. However, in late 1994, AT&T introduced a tariff schedule for prison systems with collect call controls. This tariff contained a $3 long distance surcharge. In accordance with the provisions of the current contract, MCI chose to benchmark the surcharge in this SCC-approved AT&T tariff. It should be noted that MCI's per minute rates for the inmate phone system are slightly less than AT&T's per minute rates for prison systems with collect call controls.

In 1991, the language in the current contract was apparently sufficient to minimize rates charged inmate call recipients. However, the advent of more specialized tariffs, such as the AT&T tariff for prison systems with collect call controls that contains rates different than those charged the public, will require even more specificity in the contract to ensure rates are limited. SCC staff confirmed that more specificity would likely be desirable in this type of telecommunications contract, especially a contract that does not quote an exact rate and surcharge.

With the ever increasing number of telecommunication services and plans that will likely be available as the industry continues to change and grow, further specificity will ensure that the intended rates are maintained throughout the duration of the

contract. The following are examples of how agencies in other states attempt to ensure rates charged through their systems are consistent with those charged the general public:

> *The request for proposal for the North Carolina public telephone service, which includes the state's inmate phone system, stated that one of its objectives was "to provide high-quality, dependable, well-maintained public coin / coinless telephone service to State clients, consumers, inmates and general telephone users at State locations at prices not to exceed those of the LEC or AT&T for calls of similar type and distance."*
>
> * * *
>
> *The Florida Department of Corrections' contract requires that "At all times the rates charged by the contractor to the called party shall not exceed the dominant carrier (AT&T) rates for the same call - distance, length of call, time of day and day of week. These maximum allowable rates shall reflect the AT&T interlata and interstate rates in effect at the time of the call. It shall be the responsibility of the contractor to remain current on allowable rates...." Florida correctional staff indicated that charges for calls completed by inmates mirror charges for the same type of call completed from a public pay phone.*

At a minimum, language in the contract regarding rates should ensure that the rates the next contractor benchmarks also apply to similar type calls placed by the general public. This should help ensure that charges are not linked to specialized tariffs that reflect higher rates or surcharges.

Finally, the SCC should be consulted when determining what rates to benchmark for the inmate phone system contract. There are a large number of rate tariffs on file with the SCC and care should be taken when selecting the rates and tariffs to benchmark in the contract. SCC staff maintain and are familiar with the telephone companies' tariffs and rates and stated that they would be willing to provide technical assistance to the contracting agency in this area.

Recommendation (1). **The Department of Corrections should require that the next contract for the inmate phone system specify that the rates and surcharges assessed for operator assisted, collect calls from inmates be comparable to State Corporation Commission tariffed rates and surcharges that an industry dominant telecommunications company assesses on similar calls placed by the public. The Department of Corrections should determine the fiscal impact of this recommendation on call recipients and the commission revenue and present its findings to the House Appropriations and Senate Finance Committees by February 1, 1997.**

DOC Should Consider Increasing the Limit on the Duration of Inmate Calls

As noted earlier in the report, calls are currently limited by DOC policy to 15 minutes in length. Because the $3 surcharge is placed on every long distance call, regardless of length, the cost per minute of the surcharge is reduced the greater the length of the call. For example, for a two minute long distance collect call, the cost of the $3 surcharge is $1.50 per minute. For a 15 minute call, the cost is 20 cents per minute. For a 20 minute call, the cost of the surcharge would be 15 cents per minute.

In addition, a review of selected telephone bills from DOC inmate call recipients indicates that, in some cases, inmates are calling back to the same recipient immediately after the 15 minute limit is reached and the initial call is automatically terminated. Because the $3 surcharge is assessed for every subsequent call, increasing the duration of the call would mitigate the impact of the surcharge for back-to-back calls.

An example of how extending the limit on the length of a call from 15 minutes to 20 minutes can impact the total cost of consecutive calls is provided in Table 4. The data for the 15 minute calls are from the phone bill of a call recipient who received four 15 minute consecutive calls from the same DOC facility and inmate phone. The charges were billed at the evening rate. As indicated, three 20 minute calls would cost $3 less than four 15 minute calls.

Table 4

Effect of Increasing Time Limit for Consecutive Calls Totaling 60 Minutes from Cold Springs Field Unit to Charlottesville

Maximum Call Length	Consecutive Calls	Total Cost of Surcharge	Total Per Minute Charges	Total Cost of 60 Minutes
15 Minutes	Four	$12	$10.20	$22.20
20 Minutes	Three	$9	$10.20	$19.20
			Savings:	**$3**

Source: JLARC staff analysis of DOC inmate call recipient telephone bills from February 1996 and MCI tariff rates for the DOC inmate phone system.

DOC staff noted that one of the most frequent complaints they receive regarding the inmate phone system is the 15 minute limit on each call. In 1993, the State Crime Commission recommended extending the limit for automatic termination of calls to 30 minutes. Moreover, some call recipients support increasing the time limit from the current 15 minutes per call. For example:

> *The recipient of long distance inmate collect calls supported increasing the maximum length of calls. She noted that "...after the fifteen minutes are up, if the inmate is in the middle of a conversation ... the inmate must redial which is another collect charge to the family...." Increasing the limit on the call duration would "... be cost effective for the people paying for these calls and I feel more inmates would utilize the telephone system if they felt it were not so much of a financial burden on the families."*

Finally, increasing the time limit is an action that DOC can institute immediately. Because the current rates cannot be changed until the contract expires in December 1997, increasing the time limit is one avenue available to lessen the effect of the long distance surcharge.

Nonetheless, DOC has to balance the impact of extending the time limit from the current 15 minutes on phone availability in the institutions as well as other facility security and operational issues. As a result, DOC should evaluate the impact on facility operations and security of extending the current 15 minute time limit for telephone calls made through the DOC inmate telephone system.

Recommendation (2). **The Department of Corrections should consider extending the current time limit on inmate telephone calls.**

III. Commission Revenue, Administration of the System, and Options for Improving the System

This review also addressed the issue of commission payments that are provided the State through the DOC inmate telephone system. It appears that the use of commission payments for inmate phone systems is a common industry practice. For example, the majority of correctional systems in southeastern states receive some form of commission payments from their inmate phone systems. However, unlike Virginia, most southeastern states use all or some of the revenue for programs or services that benefit inmates. Using the revenue attributable to the Department of Corrections' (DOC) inmate phone system for the benefit of inmates should also be considered in Virginia.

In addition, assigning responsibility for administering the DOC phone contract to the Department of Information Technology (DIT), which is responsible for the State telephone services contract, should be considered to improve oversight and administration of the system. Despite its awareness of certain problems, DOC's oversight and administration of the contract has not consistently addressed these concerns. In addition, DIT could include the DOC inmate phone contract with the entire statewide telecommunications contract, which has the potential to produce additional benefits for the State.

Finally, additional options for improving various facets of the inmate phone system should be considered. For example, DOC should utilize more detailed data to monitor the activities related to the inmate phone system. In addition, an independent audit of the phone system's billing and timing mechanisms should be required in the next contract to be provided by the contracting company. Finally, DOC should initiate steps that could benefit inmate call recipients who, because the calls are collect, are required to pay for the call.

INMATE TELEPHONE COMMISSION REVENUE

Telephone deregulation in the mid 1980's and payphone deregulation in the late 1980's has increased competition among telephone companies. Deregulation has also prompted telephone companies to offer a number of different programs as methods for attracting new customers as well as retaining their existing customer base. In this environment, commissions are used by telephone companies to secure the right to be the exclusive provider of telephone services for an organization. This practice is also common for telephone companies that are competing to provide inmate telephone services to state correctional systems.

Reflective of this practice, many of the correctional systems in the southeastern states, and across the nation, receive some form of commission revenue from their inmate phone systems. In addition, other agencies in Virginia have programs in which they

receive revenue from some of their telephone systems. If the rates charged recipients of calls from the DOC inmate phone system are capped at the level the public is charged, commissions from the inmate phone system could be retained.

In contrast to many other states, however, Virginia has not specified that any portion of commission revenue be used to enhance inmate programs or services. The State may want to consider such a designation for inmate phone system revenue. If inmate telephone system commission revenue is to be used for programs that benefit inmates, DOC should clearly identify how the revenue will be used, and develop measurable goals and objectives for enhancing inmate programs or services.

Inmate Phone System Commission Revenue Is Common in Many States

Interviews with state corrections officials in other states indicate that prison telephone commissions are not unique to Virginia. JLARC staff interviewed corrections officials in 12 southeastern states. All 12 states' correctional systems receive commission payments from the companies that provide the inmate phone systems (Table 5). Commission rates in these states ranged from 10 percent in West Virginia to 63 percent in Louisiana.

Table 5

Southeastern States' Inmate Phone System Commission Programs

State	Commission Rate
Alabama	10 to 20%
Arkansas	46
Florida	40 to 53
Georgia	38 to 60
Kentucky	55
Louisiana	63
Maryland	20
Mississippi	22 to 47
North Carolina	38 to 48
South Carolina	Varies
Tennessee	45 to 48
VIRGINIA	**50**
West Virginia	25

Note: Commission rates for Alabama and Mississippi were obtained from the study of state correctional systems reported in *Corrections Compendium*, 1995.

Source: JLARC staff analysis of interviews with selected states' department of corrections staff, fall 1996 and *Corrections Compendium*, 1995.

Comparisons of commission rates must be made carefully. The commission rates are usually the result of negotiations between state agencies and the telephone companies. In addition, the costs of providing the service will also affect the rate at which the commission is paid. Finally, some states use more than one phone company to provide inmate telephone services, which could also affect the commission rates.

Other studies also indicate that prison inmate telephone system commission payments are common throughout the country. For instance, a 1995 *Corrections Compendium* study of state corrections departments in the 50 states and the District of Columbia reported that 38 of 41 respondents received commission payments from their inmate phone system. Clearly, receiving commission revenue from inmate phone systems is a common practice throughout the United States.

Data collected from other states identified a number of state policies regarding the issue of commissions from inmate telephone systems. For example:

> *The Georgia Department of Corrections was advised by the state's Department of Audits to seek more revenue from inmate telephone contracts. The audit report noted that inmate telephone systems had not been fully implemented in the correctional facilities. The report recommended that the department of corrections should "implement telephone commission programs in all its facilities as quickly as possible to maximize commission income." Facilities identified for telephone system installation included detention centers, diversion centers, transition centers, and boot camps.*
>
> * * *
>
> *Texas currently has no statewide inmate telephone system in place. However, both the state's Comptroller of Public Accounts and the Texas Performance Review recommended in 1995 that the department of corrections enter into a commission-based inmate telephone agreement which would provide a significant amount of revenue for the state as well as better access to phones by inmates. It was estimated that the state could generate $30 to $40 million annually from telephone commissions.*

Despite the Texas state legislature's attempt to institute the recommendation, the Texas corrections system's governing body did not enter into a contract for an inmate phone system. As a result, inmates still are allowed only one call every three months, and the ability to make that call is contingent on the inmate's behavior.

Other Virginia State Agencies Receive Telephone Commission Revenue

A number of Virginia state agencies also receive commission revenue from telephone system contracts. For example, DIT has established a State telephone contract

which enables certain State agencies and institutions to generate commission revenue from calling activity. As a result of this contract, some agencies have generated commission revenue and in some cases used these funds for agency specific programs or services. For example:

> *The Department of Conservation and Recreation (DCR) receives a commission based on call activity from payphones in State parks. Commission revenue generated from these phones is deposited in DCR's Conservation Resources Fund. In addition, some State universities receive commission revenue from campus payphones. Again, commission revenue is retained by the institutions.*

In addition, not all State agencies receiving telephone commission revenue are part of the DIT administered contract. For example, the Virginia Department of Juvenile Justice (DJJ) has negotiated a commission-based telephone contract. DJJ receives commission revenue from telephones serving its juvenile correctional centers which is deposited into the State's general fund. Clearly, commission payments for telephone systems in Virginia are not unique to DOC.

Regulatory Agencies Have Not Addressed Commission Payments

Despite the proliferation of commission payments by telephone companies to be the exclusive provider of telephone services for specific organizations, there has been little if any regulatory action directed at controlling or capping their use. The State Corporation Commission' s (SCC) rules and regulations governing pay telephones contain no provisions related to commission payments. Although the SCC's regulations do not apply to pay phones in correctional institutions, the provision of pay phone service elsewhere is commonly linked with the practice of phone companies providing commissions in order to secure the right to be the exclusive provider of telephone services for an organization or business.

In addition, federal statute authorizes the Federal Communications Commission (FCC) to limit the "amount of commission or any other compensation given to aggregators by providers of operator service." At this time, there are no FCC regulations that attempt to address the issue of commission payments provided by operator service providers. As noted earlier, the FCC has not yet regulated correctional facilities as aggregators. Nonetheless, for interstate calls that are completed through a regulated operator service providers, the FCC has not determined a need to regulate the practice of commission payments.

Commissions Could Be Retained If Rates Are Not Excessive

Although recipients of prison inmate long distance collect calls from Virginia inmates are charged more than recipients of comparable calls completed by the public,

this is not true for all inmate telephone systems. Some states reported that they require the inmate collect call charges be no greater than similar operator assisted collect calls completed by the public.

Despite these rate limitations, which are similar to those recommended by this study, these states still receive commission revenue from their inmate telephone system. For example:

> *Both North Carolina and Florida have established a number of controls to ensure that individuals accepting inmate collect calls are charged no more than individuals accepting comparable collect calls from public payphones. In each case, the states continue to receive commission revenue from their inmate phone systems. In FY 1996, Florida received more than $12 million and North Carolina received more than $6 million in commission revenue through their inmate phone systems.*
>
> * * *
>
> *In Wisconsin, the costs of inmate collect calls are no greater than the cost of similar calls charged the public. Further, in its most recent inmate telephone system request for proposal, Wisconsin's corrections department wanted an inmate telephone system which ensured "that the lowest possible rates [were] charged" to recipients of inmate collect calls. Wisconsin corrections department staff noted that although it was the department's intention to reduce the financial impact of inmate collect calls on call recipients by reducing rates, state officials did not wish to accomplish this at the expense of losing commission revenue. Consequently, the state still receives commission revenue from inmate call activity.*

In these instances, states reportedly have been able to limit charges to rates the public would pay for similar calls while still receiving commission revenue.

Limiting the rates and surcharges for inmate long distance telephone calls completed from Virginia corrections institutions to the level that the public pays for operator assisted collect calls should result in cost savings to inmate call recipients. Moreover, since call recipients would pay rates comparable to rates the public would pay for operator assisted collect calls, any commission payments to DOC would not be funded through money collected from inmate telephone charges above standard collect call rates.

Recommendation (3). **If rates and surcharges for the Department of Corrections inmate phone system are reduced so that they do not exceed the operator assisted collect call rates charged the public by a dominant carrier, the Department of Corrections' commission revenue program should remain in place.**

Utilization of Inmate Telephone Commission Revenue

As highlighted in the previous section of this chapter, it is relatively common for states to receive commission revenue from inmate telephone systems. This is evidenced by the fact that 12 southeastern states receive commission revenue from their inmate telephone systems. In addition, other Virginia state agencies generate commission revenue from selected telephone systems.

However, the manner in which other states utilize the revenue from these commissions does vary. In Virginia, the commission revenue is deposited into the general fund and is not used for particular programs or services. However, in many other states, either all or a portion of the revenue from the inmate phone systems is used for programs that directly or indirectly benefit inmates.

Application of DOC Inmate Telephone System Commission Revenue in Virginia. Revenue from the DOC inmate telephone system is currently deposited in the State's general fund. Since the current contract was established in 1991, about $24 million has been deposited into the general fund. Moreover, there is neither policy nor statute which directs that these funds be reallocated to DOC or earmarked for any inmate program or services. Nonetheless, DOC staff indicated that although commission revenue does not benefit inmates directly, commissions paid to the general fund indirectly help offset the costs to taxpayers for maintaining the State's prison system.

Application of Inmate Telephone System Revenue in Other Southeastern States. As reported earlier, a large number of states receive commission revenue from their inmate phone systems. However, 11 of the states contacted by JLARC staff indicated that either all or a portion of inmate telephone commission revenue is returned to the state corrections department or designated for specific inmate welfare programs (Table 6).

The majority of southeastern states use at least a portion of the funds specifically for programs that benefit inmates. In Alabama, the revenue was intended to be used for the benefit of inmates. However, budget limitations have required that the inmate telephone revenue be allocated to and used by the state department of corrections. In Kentucky, where the revenue is allocated entirely to the state corrections' department, the revenue is used by the department to offset the cost of providing health care to inmates.

Moreover, corrections officials in other states have indicated that revenue from inmate telephone commissions have assisted them in providing programs which previously lacked adequate general fund appropriations. For instance, the state of Maine uses all inmate telephone commission revenue "solely for the benefit of prisoners." More specifically:

> The commissions earned by the Department are absolutely essential for the continuation of educational/vocational, and recreational pro-

Table 6

Application of Inmate Telephone System Commission Revenue in Selected Southeastern States

Key: ✔ = All Revenue ○ = Portion of Revenue

State	Allocated to Inmate Programs	Allocated to General Fund	Allocated to Corrections Department
Alabama			✔
Arkansas	✔		
Florida	✔		
Georgia	✔		
Kentucky			✔
Louisiana	✔		
Maryland	✔		
Mississippi	○		○
North Carolina	✔		
South Carolina	✔		
Tennessee		✔	
VIRGINIA		✔	
West Virginia	✔		

Source: JLARC staff analysis of interviews with selected states' department of corrections staff, fall 1996.

grams; entertainment, including holiday supplies; hair cuts; personal care items for indigent clients; transportation; gate money; bank charges; client postage; and library materials.

Using telephone commission revenue for specific inmate purposes or returning portions of commission revenue to corrections departments has, in general, apparently assisted states in funding programs that benefit inmates.

DOC Inmate Programs Could Benefit from Commission Revenues

Although DOC inmate telephone system revenue is not specifically used for inmate purposes at this time, DOC staff indicated that there are inmate programs that could benefit from the commission revenue. Potential areas identified include inmate treatment programs and academic and vocational education programs.

However, DOC staff indicated that any telephone commission funds should be appropriated specifically for the intended programs and should not simply be a transfer of one revenue stream into the agency with an offsetting reduction in general fund

revenue. To help prevent this, DOC should develop a proposal for using the inmate telephone revenue to fund specific programs that includes goals and objectives for programs that are requested to receive the funding.

Potential Uses of Inmate Phone Revenue. A number of different uses for the revenue from the inmate telephone system have been suggested by DOC and Department of Planning and Budget staff during this study. For example, both proposed using the funding to expand inmate treatment programs or to upgrade the quality of academic and vocational training programs offered to inmates. Reportedly the current funding for these programs has not been sufficient to meet demand.

DOC staff also suggested that the revenue could be used to expand the telemedicine videoconferencing program that is used to provide specialty care for inmates. At the present time, there is a videoconferencing link between the Powhatan correctional center and medical specialists at the Medical College of Virginia (MCV). DOC staff believe that this has been an extremely beneficial arrangement for both inmates and DOC. Inmates are able to secure the services of a specialist more consistently and DOC is able to avoid transporting inmates from the Powhatan correctional center to MCV. DOC staff noted that this technology could be applied to other facilities as well.

Another potential application of revenue from the inmate phone system are programs, services, or facilities designed to facilitate visitation of inmates in DOC institutions. For example, the 1993 State Crime Commission report recommended that matching grant funds be provided to not-for-profit organizations providing transportation for prison visitation. The report also noted that there were few accommodations that facilitated children visitors. Revenue from the inmate phone system could potentially be used for these or other services designed to facilitate visitation of DOC inmates.

Application of Funds Should Be Clearly Established. If commission revenue is specified for direct use for inmate programs or services, the intended purpose of the funding should be clearly specified. Corrections officials in other states noted that this is important to ensure that commission revenues are expended in a manner which is consistent with the intended purposes. If clear guidance is not provided regarding how the funding is to be utilized, the intended benefits of the commission revenue may not be realized.

For example, in 1995, the Georgia Department of Audits recommended that the state's corrections department discontinue using a special fund created to hold telephone commission revenues in trust for inmates. The report found that:

> Department personnel ... felt "ethically obligated" to ensure that these funds were only used to benefit inmates since the source of funds was primarily from the inmates family and friends. [However,] the Department's definition of items 'benefiting' inmates is so broad that there is little reason to utilize a trust fund to differentiate these

> expenditures from normal expenditures made with appropriated funds. Practically any purchase made for a correctional facility can ultimately be rationalized to benefit inmates in some manner. For example, items such as razor wire, fencing, buildings, furniture, televisions, and recreation equipment are purchased with commission funds.

The report added that many of these items were also being purchased with general fund appropriations. In another state that reportedly used funding from the inmate phone system to benefit inmates, security cameras have been purchased with the telephone system commission revenue.

Proposal for Utilizing this Funding Should be Developed. As discussed earlier, there are some DOC programs and services utilized by inmates that could potentially benefit from additional funding. However, there is no clear plan available to prioritize or determine the programs' funding needs. If all or a portion of telephone commission revenue is to be returned to DOC in an effort to enhance inmate programs, DOC should identify potential funding needs of programs or services that benefit inmates, and develop clear and measurable goals and objectives for expenditures of these funds.

At a minimum, DOC should identify the inmate programs or services which are in need of additional funding to maximize their effectiveness and offer strategies to enhance these programs through inmate telephone commission revenue. Moreover, any telephone commission revenue requested should not be used to replace appropriated State funding.

DOC should also consult with other State agencies that provide services to inmates to assess potential needs among those agencies. For example, the Department of Correctional Education (DCE) provides educational services and programs for inmates in DOC facilities. DCE should be requested to identify inmate educational services or programs that could benefit from additional funding. Finally, DOC could consult with inmate advocacy groups for additional suggestions on the potential uses of commission revenues

Recommendation (4). **The General Assembly may wish to require that revenue from the inmate phone system be used for programs or services that directly benefit inmates.**

Recommendation (5). **The Department of Corrections should develop a proposal for using the inmate phone system revenue for specific prison programs designed to benefit inmates. The proposal should include measurable goals and objectives for each program under consideration and be presented to the House Appropriations and Senate Finance Committees by February 1, 1997.**

ADMINISTRATION OF INMATE PHONE SYSTEM CONTRACT SHOULD BE TRANSFERRED TO DIT

Item 14I of the 1996 Appropriations Act requires that JLARC address the need for oversight by an entity independent of DOC. This review indicates that more proactive and consistent administration of the contract governing the inmate phone system is needed. The principal framework in which the inmate phone system operates is the contract. Therefore, a properly written and monitored contract is necessary to ensure that the needs and expectations of DOC, inmates, and call recipients are met.

Nonetheless, concerns with the adequacy of DOC's oversight and monitoring provided the inmate phone system have been identified in this study. A 1993 study by the State Crime Commission also cited concerns with DOC's oversight and monitoring of the system. The area of telecommunications is a rapidly evolving and technology driven industry. Thus, DIT appears to be the agency with the proper focus and infrastructure to best support more proactive and consistent administration of the inmate phone system contract.

Telecommunications Industry Is Rapidly Evolving and Technology-Driven

Since 1988, a number of significant changes have occurred in the telecommunications industry. These changes began with the 1983 federal court ordered AT&T divestiture of the regional Bell telephone operating companies. This divestiture was extended in 1988 to the public payphone industry. The Telecommunications Act of 1996 will likely continue to provide the impetus for rapid and potentially confusing changes in the telecommunications industry.

The 1996 Telecommunications Act requires that many of its provisions be implemented quickly. In addition, the regulatory approach and technology advances in the industry have affected service offerings and rates. These changes will continue to affect both the purchasers and users of telecommunication services. As one telecommunications official recently noted:

> The combined impact of these developments is that every rule, assumption, and tradition in our industry is being shoved aside. And the net result is change.

Even though the service provided to DOC inmates through the phone system is a contracted service, the changes in the industry could even impact how telecommunications contracted services are provided and administered.

Concerns with Administration of the Inmate Phone System Have Been Cited in Other Studies

Concerns with various aspects of the administration of the inmate phone system have apparently been raised since shortly after the establishment of the current system. A 1993 study by the State Crime Commission regarding family and community ties of incarcerated individuals also addressed the issue of the DOC inmate phone system and identified a number of problems. The report stated that:

> The system has also suffered defects well recognized by the phone carrier who asserts that efforts are being made to resolve such defects. Early termination of calls ... improper billing for calls, and inadequate noise barriers in certain phone locations are examples of defects that should not be tolerated. In reviewing these concerns, we found that problems have not always been addressed in prompt fashion.

Concerns with background noise are still reported by some inmate call recipients. MCI staff noted that noise problems often were related to the design of the facility, which enabled background noise to "echo" in the rooms where phones were located. Apparently, the phone companies providing service prior to the current system had good sound barriers, but they were removed when the current contract was established.

At the present time, DOC's security concerns apparently limit what types of barriers can be installed. However, the contract clearly requires that noise reduction equipment be installed and that DOC "reserves the right to decide, on a case-by-case basis, whether the selected equipment accomplishes the noise reduction objective."

Regarding administration of a contract such as the one for the DOC inmate phone system, the State Crime Commission's report concluded that:

> In circumstances such as this, however, where the Commonwealth grants a monopoly to a commercial enterprise to provide service ... responsiveness to legitimate complaints should be made a top priority. Contractual obligations should be met without undue delay and, indeed, greater scrutiny to alleged shortcomings should be applied than might otherwise be the case.

Given the rates that call recipients are currently required to pay, concerns regarding these issues should be properly and promptly addressed.

Department of Information Technology's Focus Facilitates Administration of Telephone Services

The primary purpose of the DOC telephone contract appears to be to provide secure inmate telephone services while minimizing the involvement of DOC staff in the