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The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Comment in the Matter of Rates for Inmate Calling Services, WC Docket No. 12-375

Dear Chairman Genachowski:

The American Bar Association (ABA) submits the following comments in response to the Commission's Notice of Proposed Rulemaking on WC Docket No. 12-375, with respect to Inmate Calling Services (ICS).

In a recent report, the Pew Center on the States found that one out of every thirty-one adults in the United States is either on probation, on parole, or behind bars.[1] The report also found that one in four of those released from behind bars will be re-incarcerated within three years.[2] Family and community connections play a crucial role in determining whether incarcerated or paroled individuals become that one in four.

The American Bar Association's Standards on the Treatment of Prisoners (the Standards) recognize this important link between a prisoner's communication with family and community and their successful re-entry into society. The Standards stress that correctional facilities should initiate re-entry planning during incarceration; ensure open and affordable lines of communication between a prisoner and the prisoner's family and community; and not burden the prisoner with arbitrary fees while he or she is incarcerated. By forcing prisoners to pay exorbitant fees for phone use, many correctional facilities operate in contravention of these standards.

Through the current rulemaking procedure, the Federal Communications Commission (FCC) has an opportunity to help bring correctional facilities back in line with the ABA Standards and reduce the high rates of recidivism that plague our country. The ABA has previously submitted comments on this subject (in January of 2009 and March of 2013),[3] and we commend the FCC

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[1] STATE OF RECIDIVISM: THE REVOLVING DOOR OF AMERICA'S PRISONS 1, PEW CENTER ON THE STATES (Washington, DC: The Pew Charitable Trusts, April 2011).

[2] *Id.*

[3] Letter from Thomas M. Susman, Director, American Bar Association to FCC Secretary Dortch and Commissioners. Ex parte presentation in support of a comprehensive resolution of issues related to prisoner telephone services, Jan. 15, 2009; Comment of Laura G. Bellows, President, American Bar Association, in the Matter of Rates for Inmate Calling Services, WC Docket No. 12-375, Mar. 25, 2013.

for the steps it has already taken to regulate *interstate* calling rates. Now, the FCC has the opportunity to regulate *intrastate* calling rates. The FCC not only has the statutory authority to act on this issue, but it is statutorily *compelled* to regulate the telecommunications market so that prisoners and their families are not subjected to unfair and unreasonable rates imposed by self-interested telecommunications providers and state agencies. Such regulation would promote principles of fairness and equity while furthering the FCC's mission "to make available, so far as possible, to all the people in the United States . . . a rapid, efficient, Nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges."[4]

CURRENT PRISON PHONE CALL RATES

A prisoner's ability to maintain a close connection with his or her family and community while incarcerated rests largely on phone calls. Many correctional facilities are built hundreds of miles from urban centers, holding prisoners far away from family and community support services. Most prisoners come from low-income families, and in-person visits are not a realistic option. For yet another subset of prisoners, written communication is hampered by literacy problems. For many, telephonic communication is the lifeline between the prisoner and the people who will help support him or her during incarceration and upon release. For the last twenty years, this lifeline has been eroded by the absurdly high rates that prisoners' families are required to pay to receive phone calls from loved ones.[5] These excessive, arbitrary phone rates are often the unfair and unreasonable result of monopolistic business practices between states and telecommunications providers, and a lack of regulation and oversight by governmental agencies.

Until 1984, commercial payphone services within state correctional facilities across the country were operated almost exclusively by AT&T and were offered at the same price as similar services offered to the general public.[6] AT&T was broken up by the United States Department of Justice in the mid-1980s due to antitrust violations, and since then states have entered into individual exclusive agreements with a host of telecommunications providers.[7] These exclusive agreements between states and telecommunications providers create insurmountable barriers to entry for other interested service providers who could provide similar, if not better, services, for less cost to prisoners and their families.

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[4] 47 U.S.C. § 151 (2012).

[5] *See* PRISON PHONE CONTRACT DATA / KICKBACKS / DAYTIME COLLECT CALL RATES, NATION INSIDE (2012) *available at* http://nationinside.org/images/pdf/RATE_CHART_10_30_12.pdf (data based on prison phone contracts obtained via public records requests from all 50 states, revised as of December 31, 2012). A local 30-minute phone call can range anywhere from free-of-charge in Alaska, to over $9.00 in Colorado, Maine, or Montana; an intrastate 30-minute phone call can be as little as $1.40-2.40 in Florida, Nebraska, New York, and Rhode Island, but as much as $14.00 in Kansas, over $16.00 in South Dakota, and almost $25.00 in Oregon; an interstate 30-minute phone call will cost the recipient anywhere from under $5.00 in states such as Nebraska, New York, and Florida, to over $30.00 if placed from a prisoner in Alabama, Alaska, Colorado, Connecticut, Georgia, Illinois, Minnesota, North Carolina, Ohio, Oregon, or Washington.

[6] *See* Steven J. Jackson, *Ex-Communication: Competition and Collusion in the U.S. Prison Telephone Industry*, 22 CRITICAL STUDIES IN MEDIA COMMUNICATION 263, 268 (2005).

[7] *Id.* at 269.

Instead of awarding exclusive agreements to the telecommunications provider that offers the lowest costs to the state, and thus the lowest rates to prisoners, states usually choose a provider based on which company is willing to return the largest portion of revenue to the state in the form of commissions.[8] In short, states choose the provider willing to charge prisoners very high rates and return a large percentage of that money to the state. As of December 31, 2012, over half of the states received a 40% or greater commission from these exclusive provider agreements, with an average commission rate of 41.9%.[9] Far from "offer[ing] consumers reliable, meaningful selections in affordable services,"[10] this lack of competition harms both prisoners and communities while enriching state governments and private interests.

While the FCC has taken one step towards limiting these noncompetitive and excessively high phone rates by limiting *interstate* rates, the majority of U.S. prisoners, who are housed in state prisons in the states where they committed their crimes,[11] continue to be subject to noncompetitive and excessively high phone rates for the *intrastate* calls they are most likely to be making in their efforts to stay in contact with family and friends.

THE ABA STANDARDS ON THE TREATMENT OF PRISONERS

The first volumes of the ABA Criminal Justice Standards were issued in 1968 and have guided criminal justice policy-makers and practitioners ever since. Warren Burger, former Chief Justice of the Supreme Court of the United States, described these standards as "the single most comprehensive and probably the most monumental undertaking in the field of criminal justice ever attempted by the American legal profession," further recommending that everyone connected with criminal justice "become totally familiar" with their substantive content.[12]

Policy groups and practitioners around the world have commended the ABA Standards on the Treatment of Prisoners. Human Rights Watch praised the most recently revised Standards, stating that their implementation "would advance the protection of internationally recognized human rights in US prisons and jails…. [T]he Standards would help ensure respect for the rights of prisoners while meeting the needs of institutional order and security."[13]

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[8] David Fisher, *Reach Out and Gouge Someone: The boom in prison phone systems*, U.S. NEWS & WORLD REPORT (April 27, 1997), *available at* http://www.usnews.com/usnews/biztech/articles/970505/archive_006873.htm.

[9] *See* PRISON PHONE CONTRACT DATA, *supra* note 5.

[10] *Competition Reports*, FEDERAL COMMUNICATIONS COMMISSION, http://www.fcc.gov/encyclopedia/competition-reports.

[11] Peter Wagner and Leah Sakalah, *Mass Incarceration: The Whole Pie*, A PRISON POLICY INITIATIVE BRIEFING, Mar. 12, 2014, http://www.prisonpolicy.org/reports/pie.html.

[12] Martin Marcus, *The Making of the ABA Criminal Justice Standards: Forty Years of Excellence*, 23 ABA CRIMINAL JUSTICE (Winter 2009), *available at* http://www.americanbar.org/content/dam/aba/publications/criminal_justice_magazine/makingofstandards_marcus.authcheckdam.pdf.

[13] David C. Fathi, *Letter Supporting Proposed ABA Standards on the Treatment of Prisoners*, HUMAN RIGHTS WATCH (July 22, 2009), http://www.hrw.org/news/2009/07/22/letter-supporting-proposed-aba-standards-treatment-prisoners.

A Prisoner's Access to Telephones

The ABA Standards on the Treatment of Prisoners, *Standard 23-8.7. Access to telephones*, provides:

> (a) Correctional authorities should afford prisoners a reasonable opportunity to maintain telephonic communication with people and organizations in the community, and a correctional facility should offer telephone services with an appropriate range of options at the lowest possible rate, taking into account security needs. Commissions and other revenue from telephone service should not subsidize non-telephone prison programs or other public expenses.[14]

With the imposition of such high rates on local and intrastate calls, correctional authorities are hardly affording prisoners a "reasonable opportunity to maintain telephonic communication with people and organizations in the community."

First, many incarcerated individuals do not earn money while incarcerated, and those that do are paid almost nothing.[15] Moreover, most correctional facilities only offer collect calling options. This means that the cost of a prisoner attempting to keep in touch with the outside world falls to his family and community support networks. In most cases, these families and community support networks cannot afford to accept charges because correctional facilities fail to "offer telephone services with an appropriate range of options at the lowest possible rate." The exclusive agreements between states and telecommunications providers leave prisoners with only one option: pay the extremely high cost or have no telephonic communication.

Second, because these agreements are premised on a model of charging prisoners high rates and returning large commissions to the state, the rates offered to inmates are, not surprisingly, anything but the "lowest possible."

Third, states that enter into contracts with high commission rates use those funds to "subsidize non-telephone prison programs or other public expenses." The bulk of the rates are used to offset the commissions required by the state and are not related to the actual expenses incurred by the telecommunication provider. In most instances, the commissions are placed into general correctional facility operational funds, which cover expenses completely unrelated to phone use.[16] Other states place the money into general state funds used to fund public expenses that may be completely detached from correctional facilities all together.[17]

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[14] STANDARDS ON TREATMENT OF PRISONERS 23-8.7 (2010).

[15] *See* Peter Wagner, *The Prison Index: Taking the Pulse of the Crime Control Industry*, PRISON POLICY INITIATIVE (2003).

[16] *See* Justin Carver, *An Efficiency Analysis of Contracts for the Provision of Telephone Services to Prisons*, 54 FED. COMM. L.J. 391, 400 (2002).

[17] *Id.*

Ultimately, commissions charged on phone calls serve as a tax or a fine levied against families of incarcerated individuals.[18] Thus, the commission portion of the rates operate "as an additional punishment imposed on the consumer for no reason other than that a family member of the consumer has been incarcerated."[19]

Charging Prisoners Fees

The ABA Standards on the Treatment of Prisoners, *Standard 23-8.8. Fees and financial obligations*, provides:

> (a) Unless a court orders otherwise in a situation in which a prisoner possesses substantial assets, correctional authorities should not charge prisoners fees for any non-commissary services provided them during the period of imprisonment, including their food or housing or incarceration itself, except that correctional authorities should be permitted to assess prisoners employed at or above minimum wage a reasonable portion of their wages in applicable fees.[20]

In requiring commissions as part of agreements with telecommunications providers, correctional facilities are indirectly charging prisoners fees for non-commissary services provided to them during their period of incarceration. As previously stated, over forty states require commissions from telecommunications providers.[21] While the initial payment for phone usage goes to the provider, a substantial portion of that payment goes right back to the correctional facility or the state through commissions. Through this cycle, correctional facilities are indirectly charging prisoners fees for the programs and services funded by these commissions.

Familial Relationships and Re-entry

The ABA Standards on the Treatment of Prisoners, *Standard 23-1.1. General principles governing imprisonment*, provides:

> (a) A correctional facility should be safe and orderly and should be run in a fair and lawful manner.
> (b) Imprisonment should prepare prisoners to live law-abiding lives upon release. Correctional authorities should facilitate prisoners' reintegration into free society by implementing appropriate conditions of confinement and by sustained planning for such reintegration.[22]

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[18] *Id.*

[19] *Id.* at 400-01.

[20] STANDARDS ON THE TREATMENT OF PRISONERS 23-8.8 (2010).

[21] *See* PRISON PHONE CONTRACT DATA, *supra* note 3.

[22] STANDARDS ON THE TREATMENT OF PRISONERS 23-1.1 (2010).

Standard 23-1.2. Treatment of prisoners, provides:

> In order to effectuate these principles, correctional authorities should: (a) provide prisoners with… (vi) conditions conducive to maintaining healthy relationships with their families… [and] (viii) comprehensive re-entry planning…[23]

Standard 23-8.9. Transition into the community, provides:

> (a) Governmental officials should ensure that each sentenced prisoner confined for more than [6 months] spends a reasonable part of the final portion of the term of imprisonment under conditions that afford the prisoner a reasonable opportunity to adjust to and prepare for re-entry into the community. A correctional agency should provide community-based transitional facilities to assist in this reintegration process.
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> (b) In the months prior to anticipated release of a sentenced prisoner confined for more than [6 months], correctional authorities should develop an individualized re-entry plan for the prisoner … Preparation for re-entry should include assistance in locating housing, identifying and finding job opportunities, developing a resume and learning interviewing skills, debt counseling, and developing or resuming healthy family relationships.[24]

The Public Service Commissioner of Louisiana, Foster Campbell, has called high prison phone rates a crushing blow for poor families trying desperately to stay in contact with loved ones behind bars.[25] Low-income families end up with monthly phone bills reaching several hundred dollars and are forced to make hard financial decisions. For some families, the cost of keeping in touch with their incarcerated loved one surpasses rent as their largest monthly expense.[26] Ultimately, many families are forced to restrict or entirely cut off contact with their incarcerated relatives. This lack of communication between prisoners and their families has devastating consequences on the prisoner's post-release family relationships.

Family and community ties do not simply pick up when a prisoner steps off the bus that returns him or her home. Instead, these relationships are forged and maintained prior to and throughout a person's incarceration.[27] Prisoners report that one of the biggest obstacles in attempting to

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[23] STANDARDS ON THE TREATMENT OF PRISONERS 23-1.2 (2010).

[24] STANDARDS ON THE TREATMENT OF PRISONERS 23-8.9 (2010).

[25] Greg Garland, *PSC probing rates for inmate phone calls*, THE ADVOCATE (2011) http://theadvocate.com/home/928995-79/story.html.

[26] *See* Jackson, *supra* note 6, at 272.

[27] *See* William D. Bales & Daniel P. Mears, *Inmate Social Ties and the Transition to Society: Does Visitation Reduce Recidivism?*, 45 J. RES. IN CRIME & DELINQ. 287, 290 (2008); *see also* Creasie Hairston, James Rolling, and Han-jin Jo, *Family Connections During Imprisonment and Prisoners' Community Re-entry* 1, JANE ADDAMS CENTER FOR SOCIAL POLICE AND RESEARCH, UNIVERSITY OF ILLINOIS AT CHICAGO (2004).

maintain or build a family relationship is the difficulty of communication; in particular, the high costs of visits and collect calls.[28] Some prisoners even choose to withdraw from their families in part or entirely to protect them from burdensome collect call bills.[29]

A prisoner's post-release relationship with his family and community is one, if not the most, significant factor in determining whether he or she will re-offend or violate parole. Dozens of studies over the past seventy-five years have confirmed this fact.

A prisoner's release from incarceration is a critical transition in his life, during which it is imperative that he or she stay away from substance abuse, find employment, refrain from further criminal behavior, and maintain a positive attitude. Immediate connections with family, friends, and community-based organizations upon release help recently released prisoners achieve these goals.[30] Moreover, these connections alleviate some of the fear, loneliness, and confusion many prisoners feel when they first re-enter society from the confines and structure of incarceration.[31]

For many released prisoners, an actively supportive family keeps them from turning to drug abuse or engaging in other behavior that would violate their conditions of parole.[32] Moreover, family acceptance and support plays a large role in an ex-prisoner's confidence and attitude upon release, encouraging him or her to confidently look for work, develop new relationships, and begin planning for the future.[33] Overall, many prisoners who violate parole or re-offend report that they did so because they felt isolated, helpless, and desperate, in large part because of a lack of family support.[34]

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[28] *See* Nancy G. La Vigne, Samuel Wolf, & Jesse Jannetta, *Voices of Experience: Focus Group Findings on Prisoner Re-entry in the State of Rhode Island* 24, URBAN INSTITUTE (2004).

[29] *Id.*

[30] A study of recently released prisoners in New York City found that families not only provide material support, such as housing, food, and finances, but also emotional support in the form of acceptance and encouragement (*see* Marta Nelson, Perry Deess, & Charlotte Allen, *The First Month Out: Post-Incarceration Experiences in New York City* 6, VERA INSTITUTE OF JUSTICE (1999)); a study of recently released prisoners in Chicago found that 92% of participants relied on the financial support of their family at some point in the first few months after release, and 77% of those still looking for employment were relying on income from their spouses, family, and friends (*see* Nancy G. La Vigne, Christy Visher, & Jennifer Castro, *Chicago Prisoner's Experiences Returning Home* 7-8, 10, URBAN INSTITUTE (2004)); a similar study in Baltimore found that 51% of prisoners were receiving financial support from families one-to-three months after release, and 80% were still living with family members (*see* Christy Visher, Vera Kachnowski, Nancy La Vigne, & Jeremy Travis, *Baltimore Prisoner's Experiences Returning Home* 6, URBAN INSTITUTE (2004)); and the participants of the Rhode Island focus groups noted that finding employment while incarcerated was a major obstacle, therefore a strong family and community network upon release was a significant factor for them in finding a job (*see* La Vigne, Visher, & Castro, *supra* at 17).

[31] *See* Marta Nelson, Perry Deess, & Charlotte Allen, *The First Month Out: Post-Incarceration Experiences in New York City* 6, VERA INSTITUTE OF JUSTICE (1999).

[32] Such support came in the form of family members accompanying ex-prisoners to Narcotics Anonymous meetings, or having relatives accompany them whenever they left the house to help temper their temptations. *Id.* at 10.

[33] *Id.* at 11.

[34] *Id.* at 23.

THE CURRENT PROPOSED RULEMAKING BY THE FCC

High inmate calling service (ICS) rates erect often insurmountable barriers to prisoners' maintaining family relationships and place a great number of correctional facilities in contravention of the ABA Standards on the Treatment of Prisoners. The FCC has authority under the Telecommunications Act of 1996 (the Act) to enact regulations that establish rate caps, open up the ICS market to outside competition, and bar site commissions as part of agreements between states and telecommunications providers. In doing so, the FCC would guide these facilities back into compliance fundamental regulatory goals and with the ABA Standards on the Treatment of Prisoners.

Re: **III. ENSURING ICS RATES ARE JUST AND REASONABLE**

A. Rate Caps in the ICS Market

Section 201(b) of the Act provides that all charges in connection with telecommunication services "shall be fair and reasonable."[35] The Act again emphasizes consumer protection in providing that the FCC and the states "should ensure that universal service is available at rates that are just, reasonable, and affordable."[36]

The ABA recommends that the FCC use its authority under section 201(b) to set "the lowest possible rate, taking into account security needs," as recommended by the ABA Standards on the Treatment of Prisoners, Standard 23-8.7(a). Such a fair and reasonable rate would "afford prisoners a reasonable opportunity to maintain telephonic communication with people and organizations in the community," as further required under Standard 23-8.7(a) and by the Act.

In placing just and reasonable caps on all prison phone call rates, especially *intrastate* rates, the FCC would protect prisoners' families by allowing them to stay in touch with their loved ones without unnecessary and potentially devastating financial sacrifice. Moreover, by setting caps at the lowest possible rate that allows phone service providers to recoup their expenses, the FCC would be ensuring that "all payphone service providers are fairly compensated for each and every completed intrastate and interstate call."[37]

Finally, setting rates that are fair and reasonable is conducive for prisoners' "maintaining healthy relationships with their families," and provides prisoners "conditions that afford [them] a reasonable opportunity to adjust to and prepare for re-entry into the community," as dictated by ABA Standard on the Treatment of Prisoners, Standards 23-1.2(a) and 23-8.9(a).

[35] 47 U.S.C. § 201(b) (1996).

[36] 47 U.S.C. § 254(i) (2008).

[37] 47 U.S.C. § 276(b)(1)(A) (1996).

Re: **III. ENSURING ICS RATES ARE JUST AND REASONABLE**
C. Additional Proposals in the Record
36. *Competition in the ICS Market*

The Telecommunications Act of 1996 was "the first major overhaul of telecommunications law in almost 62 years," and specifically states that "[t]he goal of this new law is to let *anyone enter any communications business -- to let any communications business compete in any market against any other*."[38] One of the driving forces behind enactment of the Act was Congress' intent to introduce competition into the telecommunications market to protect consumers from abuse at the hands of monopolistic business practices.[39]

Section 253(a) of the Act provides that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[40] Section 253(d) further provides that if the FCC finds "that a State or local government has permitted or imposed any statute, regulation, or legal requirement" that violates section 253(a), the FCC "*shall* preempt the enforcement of such statute, regulation, or legal requirement."[41]

The ABA recommends that the FCC use its statutory authority under section 253(d) of the Act to preempt states from entering into exclusive provider agreements, and open up the ICS market to fair and widespread competition. Even though states have not enacted statutes or regulations that require exclusive contractual agreements between correctional facilities and telecommunications providers, "by allowing only one company to be the provider of service to a prison, some maintain that the state has put in place a 'legal requirement' that prevents entry into the market."[42] Such legal requirements violate section 253(a) of the Act, and allow the FCC to intervene and preempt enforcement under section 253(d).

Furthermore, section 251(a) of the Act provides that it is the general duty of telecommunications carriers "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[43] In essence, this section requires that the telecommunications provider that controls a prison's telecommunications services lease its facilities to rivals. This allows rivals to enter the market without incurring substantial costs, therefore removing another barrier to entry and promoting market competition.[44] Under such hypothetical agreements, providers would share all the same facilities, *including existing security systems*.[45] By operating under exclusive provider agreements, competing providers are denied access to existing facilities, a practice in violation of section 251(a) of the Act.

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[38] *Telecommunications Act of 1996*, FEDERAL COMMUNICATIONS COMMISSION (May 31, 2011) http://transition.fcc.gov/telecom.html. (Emphasis added).

[39] *See* Carver, *supra* note 16, at 401-02.

[40] 47 U.S.C. § 253(a) (1996).

[41] 47 U.S.C. § 253(d) (1996) (emphasis added).

[42] *See* Carver, *supra* note 16, at 402 (emphasis added).

[43] 47 U.S.C. § 251(a)(1) (1999).

[44] *See* Carver, *supra* note 16, at 403.

[45] *Id.*

Finally, telecommunications providers and states operate against the express intent of the Act by preventing third-party providers from competing collaterally. Over the past decade, several companies have surfaced that offer telephonic services through remote call forwarding techniques.[46] These services allow a prisoner to access the cheaper local call rates when calling family members who live far away, while still being subject to the same security checks (call monitoring, recording, and number verification) as calls placed through the contracted providers.[47] However, prisoners who use these services are often punished[48] and many contracted providers block numbers that operate through such services.[49]

By preventing states from engaging in monopolistic business practices, and opening up the ICS market to outside competition, the FCC would allow the market to actually work. Rates would drop as companies are forced to compete with one another within the same prison market. As rates drop, prisoners gain increased access to telephonic communication with their families and community support services and are better equipped to successfully re-enter society, bringing correctional facilities back in line with the ABA Standards on the Treatment of Prisoners.

Re: **III. ENSURING ICS RATES ARE JUST AND REASONABLE**
C. Additional Proposals in the Record
37-38. *Site Commissions*

There is a distinct difference between ICS rates in states that have barred site commissions as part of telecommunications provider agreements, and those that have not. The average cost of a 30-minute phone call from a prisoner to their families in a state that has barred site commissions is $2.31 for local, $3.99 for intrastate, and $8.89 for interstate calls.[50] In states that require commissions, the average cost of a 30-minute call is $2.95 for local, $8.80 for intrastate, and $18.99 for interstate calls.[51]

While some states have begun to ban commissions,[52] this is not evidence that the market is working. These actions are instead forced responses due to large settlements and judgments being levied against telecommunications providers as the result of questionable billing practices within their correctional facilities.[53] Such practices include "programming phones to start billing

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[46] *See* Jackson, *supra* note 6, at 273.

[47] *Id.*

[48] *Id.*

[49] *See* David M. Reutter, *Alternative Prisoner Phone Service Company Files Unsuccessful Suit*, PRISON LEGAL NEWS 48 (May 2010)

[50] *See* PRISON PHONE CONTRACT DATA, *supra* note 5.

[51] *Id.*

[52] The eight states that have banned commissions as part of telecommunications agreements are California, Michigan, Missouri, Nebraska, New Mexico, New York, Rhode Island, and South Carolina. John E. Dannenberg, Nationwide PLN Survey Examines Prison Phone Contracts, Kickbacks, Prison Legal News, April 1, 2011, at p.7. Available online at: https://www.prisonlegalnews.org/media/issues/04pln11.pdf.

[53] Beginning in the early 1990s, telecommunication providers were agreeing to settlements, and having judgments levied against them, in amounts as high as $1.7 million for illegal prison billing practices (*see* Jackson, *supra* note 6, at 272); in a 2001 settlement, MCI agreed to pay back $500,000 in illegal overcharges to families of those incarcerated in California (*id.*); in February 2013, AT&T agreed to pay $45 million to settle a class action lawsuit brought by families of prisoners in Washington State correctional facilities (Jonathan Martin, *AT&T to pay*

before the recipient accepts the call; imposing surcharges in excess of those allowed; failing to discount calls made at off-peak times; and charging for unauthorized calls."[54] Many prisoners also complain that their calls are prematurely cut off, forcing them to re-dial their family members and subjecting them to repeated connection charges.

Although some states have taken action against these billing practices, many have not. Instead of waiting decades for lawsuits to force state legislative responses, the ABA recommends that the FCC take action now and bar states from receiving site commissions as part of agreements with telecommunications providers. Doing so would not only cause a sharp drop in rates prisoners are forced to pay, but would further stop correctional authorities from charging prisoners fees for non-commissary services, as recommended by the ABA Standards on the Treatment of Prisoners, Standard 23-8.8(a).

Re: **III. ENSURING ICS RATES ARE JUST AND REASONABLE**

D. Cost/Benefit Analysis of Proposals

As discussed above, high phone rates that prevent communication between a prisoner and his or her family greatly lower the odds of that prisoner living a law-abiding life upon release. Placing caps on ICS rates, opening up market competition, and barring site commissions will work to lower the costs prisoners and their post-release support networks must pay to keep in contact and help rebuild the lifeline between them.

Some correctional authorities argue that eliminating commissions and reducing rates will lead to a loss in prison programs and guards.[55] However, any loss in revenue to prisons would be made up for in long-term cost savings to the community. Recent studies show that recidivism has been growing at an alarming rate.[56] In recognizing this trend, and the significant cost burden it places on states, policy makers have increased efforts to reduce future criminal activity and violations of parole in order to keep bodies out of prison beds.[57] Regulations that lower phone rates, which in turn lead to more successful re-entry for prisoners and reduced recidivism, fall squarely in line with these policy trends, and benefit society as a whole.

CONCLUSION

Reaching into the wallets of prisoners and their families to fund prisons via payphone service rates violates the Telecommunications Act of 1996 and runs counter to the ABA Standards on the Treatment of Prisoners. These practices can tear families apart and may well be a significant

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Washington prisoners' families $45 million in telephone class action settlement, THE SEATTLE TIMES (February 3, 2013) http://blogs.seattletimes.com/opinionnw/2013/02/03/att-to-pay-washington-prisoners-families-45-million-in-telephone-class-action-settlement/)).

[54] *See* Carver, *supra* note 12, at 398-99.

[55] *See* Greg Garland, *PSC probing rates for inmate phone calls*, THE ADVOCATE (2011) http://theadvocate.com/home/928995-79/story.html.

[56] *See* STATE OF RECIDIVISM, *supra* note 2.

[57] *See* Christian Henrichson & Ruth Delaney, *The Price of Prisons: What Incarceration Costs Taxpayers* 12, VERA INSTITUTE OF JUSTICE (2012).

factor in the recent rise of recidivism rates. The ABA strongly urges the FCC to play a substantial role in helping to correct these counterproductive and unlawful practices by removing barriers to entry for competing telecommunications providers, barring site commissions, and enforcing caps on prison phone call rates, especially intrastate calling rates.