

Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

October 4, 2015

The Honorable Tom Wheeler, Chairman
Federal Communications Commission
445 12th St. S.W.
Washington, D.C. 20554

Re: Comment for WC Docket 12-375

Dear Chairman Wheeler:

The Human Rights Defense Center (HRDC), publisher of *Prison Legal News* (PLN) respectfully submits this comment for WC Docket No. 12-375 regarding the abuse, corruption, and lack of accountability by Inmate Calling Service (ICS) providers and this nation's correctional facilities and the critical need for the Commission to address this issue as part of comprehensive ICS reform.

In April 2007, we filed our first comment on CC Docket 96-128 that detailed instances of abuse, corruption, and the lack of accountability in the prison phone industry due to the lack of oversight over the ICS industry and the absence of market competition that results in extremely lucrative monopoly contracts with legal kickbacks to the government agencies that run this nation's correctional facilities. (**Attachment 1 at pages 5-6**)

Unfortunately, nothing has changed in the eight years since our first filing. A recent criminal case involving a Global Tel*Link (GTL) employee who bribed the former Commissioner of the Mississippi Department of Corrections (MDOC) to award/retain contracts to GTL not only heightens the need for comprehensive reform to eliminate this type of corruption for which HRDC has long lobbied, but takes it to the next level.

GTL employee Sam Waggoner was charged by Information in U.S. District Court on August 19, 2015 with bribing Christopher B. Epps, the former MDOC Commissioner to contract/retain GTL as its ICS provider¹ (**Attachment 2**); Mr. Waggoner pled guilty to all charges two days later (**Attachment 3**); and the same day he also forfeited the amount of \$200,000 to the U.S.

¹ *United States of America v. Sam Waggoner, USDC S. Dist Mississippi, Northern Division, Case No. 3:15cr69HTW-FKB.*

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Government (**Attachment 4**), representing “the proceeds he obtained as a result of the illegal conduct.” (**Attachment 5**)

While employed by GTL as a consultant, Sam Waggoner:

“did knowingly and corruptly give, offer, or agree to give something of value to CHRISTOPHER B. EPPS, with intent to influence or reward CHRISTOPHER B. EPPS in connection with the business, transaction, or series of transactions of the Mississippi Department of Corrections, involving something of value of \$5,000.00 or more, that is, the awarding and the retention of contracts to WAGGONER’S employer, GTL, for inmate telephone services at MDOC facilities. Specifically, on or about July 30, 2014 and on or about August 26, 2014, the defendant SAM WAGGONER, paid kickbacks in the form of cash generated by his monthly commission from GTL to CHRISTOPHER B. EPPS.”

(Attachment 2 at Paragraph 6)

While employed as a consultant for GTL, Mr. Waggoner was paid “five (5) percent of the revenue generated by the inmate telephone services contracts it had with the State of Mississippi.” Mr. Waggoner was charged with and pled guilty to paying “kickbacks in the form of cash generated by his monthly commission from GTL to CHRISTOPHER B. EPPS.” (**Attachment 2 at Paragraph 6**). The five percent kickback paid Mr. Waggoner was separate and in addition to kickbacks in excess of \$1,500,000 that GTL pays annually to MDOC under the terms of the most recent ICS contract. Due to the lack of transparency inherent in the ICS industry, we have no way of knowing if GTL employs other consultants paid to influence the decisions of correctional facilities with respect to ICS under the same type of compensation arrangements or through outright bribery and criminal corruption. Mr. Waggoner’s current employment status is unclear as he faces a maximum prison penalty of 10 years in prison and a \$250,000 fine. (**Attachment 5**)

GTL and MDOC are not strangers to secretive practices. As noted in an earlier comment filed by HRDC on this Docket², Global Tel*Link (GTL) and the Mississippi Department of Corrections refused to produce ICS contracts and related records under the guise of a protective order, HRDC was forced to file a lawsuit in order to obtain the records.³ The case settled in May 2009 and the records were finally produced. Given the criminal activity at hand by MDOC and GTL employees, it is clear to see why they fought so hard to avoid disclosing public records as required by law.

That GTL would hire a consultant who bribed the head of a state prison system is not speculative; it is a fact. Yet, in the many thousands of documents filed on this Docket, this is the first we’ve heard of ICS providers hiring paid consultants to influence state prison system decision-makers. Is Mr. Waggoner the only consultant ever hired by GTL for this purpose? Do other ICS providers employ consultants who are compensated based on the gross revenues generated by correctional facilities? If so, it is clearly in the consultant’s best interest to generate the highest revenues possible to result in the highest compensation paid to that individual.

² Human Rights Defense Center, Comment filed on WC Docket 12-375, filed July 15, 2015 at 2.

³ *Prison Legal News v. Mississippi Department of Corrections and Global Tel*Link Corporation*, Hinds County, Mississippi, Civil Action No. G2009-391 T/1.

This is only one example of corruption in the ICS industry that stems directly from the lack of oversight and transparency in the ICS industry; we would not be surprised to hear that there are more. The fact that GTL paid Mr. Waggoner 5% of the revenues generated by MDOC not only tells us that GTL must be taking huge profits to justify paying such a high percentage to a consultant. We should also mention the consultant's incentive to jack up the ICS rates as high as possible to increase their personal compensation. How many prisoners and their families have been forced to pay artificially high ICS rates as the result of an ICS provider's paid consultant dealing with a correctional facility? This prosecution should be a red flag to us all about the inherent corruption that exists with this practice, as evidenced by the Waggoner case.

There is much more we could say, but instead we will let the attached documents speak for themselves and allow the Commission to draw its own conclusion.

We are calling on the Commission to use its subpoena power to further investigate the practice of ICS providers hiring "consultants" to lobby correctional facilities for monopoly contracts. In light of the Waggoner case, at a minimum, we further request that the FCC require all ICS providers to identify all paid consultants assigned to each correctional facility as well as their compensation structure.

Sincerely,



Paul Wright
Executive Director, HRDC

Attachments 1-5

PRISON LEGAL NEWS

Dedicated to Protecting Human Rights

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April 18, 2007

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**RE: Comment Regarding CC Docket No. 96-128 (Implementation
of Pay Telephone Reclassification and Compensation Provisions
of the Telecommunications Act of 1996)**

Dear Ms. Dortch:

I am contacting you in my capacity as Associate Editor for *Prison Legal News* (PLN), a nationally-distributed monthly publication that reports on criminal justice and corrections-related issues, in reference to CC Docket No. 96-128.

Docket No. 96-128, referred to as the Wright petition, requests that the FCC enact rules to require competition among prison phone service providers by prohibiting such providers from entering into exclusive service agreements with contracting government agencies, and from imposing other restrictions on prison phone calling options. The FCC has the authority to implement such rules pursuant to 47 U.S.C. § 201(b).

PLN has reported extensively on prison phone services, including litigation, legislation and reform efforts, and our experience in this area leads us to make the following remarks in support of granting the rule-making requested in the Wright petition:

1. Competition, or Lack Thereof

Upon entering into contracts with correctional agencies, prison phone service providers enjoy a complete monopoly on phone services within the jurisdiction controlled by the contract. This legalized monopoly, with a resultant lack of competition, is in effect during the term of the contract. And while such contracts may be rebid, the company that currently holds the contract has a significant advantage in terms of winning the rebid and maintaining its monopoly, since competitors must factor in start-up costs and equipment costs.

In a free market economy, competition acts to lower prices to the benefit of consumers. In the prison phone service market, however, competition exists only when a contract is initially bid, and perhaps during rebids. Even this level of competition makes a mockery of free market economics, however, as the lowest cost for providing prison phone services is rarely taken into account as a contract requirement.

This lack of consumer-friendly competition is due to the industry-standard practice of providing “commissions” to the contracting governmental agencies, which is the polite term for contractually-agreed kickbacks. Prison phone service providers agree to pay a certain percentage of their revenues to the contracting agency as a type of profit-sharing agreement – with these commissions ranging up to 60% of billed phone revenues. Such collusive arrangements, which result in millions of dollars in “commissions,” create a vested interest by the contracting agency to maximize the rates charged to consumers in order to increase the resulting shared profits; or, at least, not to actively seek lower rates that would decrease their kickback.

These “commissions” are passed on to consumers in the form of higher phone rates. Notably, the consumers who actually pay the inflated rates – primarily the family members and friends of prisoners, not the prisoners themselves – have no say whatsoever in the contracting process or the selection of the phone service provider.

While phone rates available to the general public have dropped dramatically in recent years, with phone companies routinely touting long distance rates of \$.10 per minute or less, competition in the prison phone service industry has, to quote one writer, “worked in precisely the opposite direction, with companies offering the highest bids (in terms of rates and commissions) routinely awarded contracts, the costs of which are passed on to the (literally) captive market.” [Steven J. Jackson, “Ex-Communication: Competition and Collusion in the U.S. Prison Telephone Industry”].

In 2005, Virginia received \$7 million in commissions from MCI’s prison phone service, at a 40% commission rate. New York has reaped more than \$200 million in prison phone service profits since 1996 under a 57.5% commission. At least ten states reportedly take in \$10 million or more each year from prison phone commissions; California alone receives over \$20 million in annual prison phone profits. The states that have the most expensive prison phone rates include Washington, Montana, Arizona, Kansas, New Jersey and Arkansas.

MCI has acknowledged that commissions of 20-63% are “customary.” Consider what this means in terms of prison phone service providers’ profits in comparison to their billed phone rates. Since these companies generate a profit despite paying hefty kickbacks to the contracting agencies, absent such “commissions” they could provide the same phone services, and still make a profit, at rates up to 40-60% *lower* than those presently billed. The higher rates charged under exclusive prison phone service contracts represent excess profit paid to the contracting agency at the expense of consumers, who have no say in the contracting process.

2. Impact on Families of Prisoners

Price gouging is an ugly phrase, but as indicated above, that is exactly what prisoners' family members and friends experience when they accept collect calls from their imprisoned loved ones. An estimated 1.5 million children have a parent in prison, and almost 500,000 women are married to incarcerated spouses. Sixty-five percent of female prisoners have minor children. These families and children, and their incarcerated family members, do not live in a vacuum.

Phone calls are a vital resource for maintaining parental and spousal relationships over years of incarceration. Yet prisoners' families are subject to extortionate rates charged by prison phone service providers and the agencies they contract with – rates that often average over a dollar a minute for long distance calls when the connection fee is included. A fifteen-minute call can cost as much as \$17.77. Under the Arkansas Dept of Correction's contract with MCI, prison calls are billed at \$.89 per minute with a \$3.95 connection fee for interstate collect calls (\$30.65 for a 30-minute phone call). This results in socio-economic disparity – families who can afford to accept such expensive phone calls do so, while impoverished families do not.

Such grossly inflated rates are not justified except as a means of monopolistic price-gouging; as indicated above, if the contractual kickbacks were excluded, prison phone service providers could charge about half the current rates and still remain profitable. This is fact, not theory. The Federal Bureau of Prisons (BOP), for example, does not accept prison phone service commissions; consequently, the rate for out-of-state debit calls from BOP facilities is \$.17 per minute. The prison phone service industry's argument that technical expenses and equipment costs justify high phone rates does not explain why such rates vary widely from one jurisdiction to another, with states that forgo "commission" kickbacks having the lowest rates.

There have been many reported cases of families having to cut off telephone contact with their imprisoned loved ones due to outrageous phone bills – bills that exceed \$700 per month for some families. In one case, a concerned mother was billed \$7,000 over a ten-month period after accepting calls from her 18-year-old son jailed in Panama City, Florida. Certainly consumers have a responsibility to budget for the phone services they accept. But what mother would refuse a phone call from her imprisoned son? And what choice does she have as to the cost of those calls if there is only one prison phone service provider, and only one rate?

The inflated rates charged by prison phone service companies should not be borne on the backs of prisoners' families, who are overwhelmingly the ones who must pay such exorbitant costs and the least able, financially, to make such payments. Families of prisoners, whose only "crime" is having a loved one in prison, should not be punished for that familial relationship by having to pay exorbitant phone rates. As stated by Madeleine Severin, there is "something fundamentally unjust about families of prisoners being charged outrageous prices solely because they accept collect calls from people in prison." ["Is There a Winning Argument Against Excessive Rates for Collect Calls from Prisoners?" 25 *Cardozo L. Rev.* 1469 (2004)].

3. Impact on Prisoners and Society – Rehabilitation

Research has indicated that of the 2.2 million men and women held in our nation's correctional facilities, almost 70% perform at the lowest levels of reading and are considered functionally illiterate (more than triple the rate in the general population). For these prisoners, writing letters is not a viable substitute for contacting family members and maintaining family and parental relationships.

Further, many prisons, both state and federal, are located in rural areas; prisoners may be housed far across the state from their families or, in terms of federal prisoners, clear across the country. There has also been a growing trend over the past several decades to transfer prisoners to other states under contracts with private prison companies. Thus, Hawaiian prisoners have been moved to prisons in Mississippi and Oklahoma, California prisoners have been shipped to Indiana, Alaskan and Washington prisoners have been moved to Arizona, etc. As of July 1, 2005, at least seven states housed prisoners in out-of-state prisons. For these prisoners, family visits are not a viable option for maintaining family and parental relationships.

Such prisoners who cannot adequately read or write, or who are unable to receive visits, must rely on prison phone services. And when the cost of such phone services is excessively high the ability to make such calls is diminished or even extinguished, with family contact and relationships suffering as a result. This impacts more than just prisoners and their loved ones.

Several studies have shown that practices and programs which "facilitate and strengthen family connections during incarceration" can "reduce the strain of parental separation, reduce recidivism rates, and increase the likelihood of successful re-entry" of prisoners after they are released. [Re-Entry Policy Council Report, 2005].

According to a 2004 study by the Washington, D.C.-based Urban Institute, "Our analysis found that [released prisoners] with closer family relationships, stronger family support, and fewer negative dynamics in relationships with intimate partners were more likely to have worked after release and were less likely to have used drugs." The study authors, Christy Visher, Vera Kachnowski, Nancy La Vigne and Jeremy Travis, noted that "It is evident that family support, when it exists, is a strong asset that can be brought to the table in the reentry planning process." For many prisoners, phone calls to their families and children are the primary means of maintaining family ties and parental relationships during their incarceration.

These findings are recognized by the Federal Bureau of Prisons, which states, in its institutional policy regarding phone services, that "[t]elephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development ... [and are] a valuable tool in the overall correctional process." Further, Donal Campbell, former Commissioner of the Tennessee Dept. of Corrections, stated in reference to prison phone calls, "As you know, maintaining contact with family and friends in the free world is an important part of an inmate's rehabilitation and preparation to return to the community."

An estimated 95% of prisoners currently in custody will one day be released. To the extent that strong family support and relationships during incarceration result in lower recidivism rates (e.g., less crime), this issue affects society as a whole. And to the extent that prison phone calls are a primary means to maintain such strong family relationships during incarceration, the affordability of such phone calls is also an issue that affects society as a whole.

4. Abuse, Corruption and Lack of Accountability.

There is little oversight over prison phone service providers or their prison phone service contracts, other than through the contracting government agencies. The “commissions” paid to such agencies cited above result in a natural incentive to maintain a hands-off approach in terms of investigating abuses by prison phone service providers, as such investigations or scrutiny may jeopardize the lucrative kickbacks that the contracting agencies receive.

While state public utility regulatory agencies may have the authority to investigate and make rules related to prison phone services, in practice this is rarely done. Prison phone services are not a significant issue for state regulatory agencies; also, prison phone service companies employ many attorneys and lobbyists to protect their business interests, while there is no similar representation for the consumers – primarily prisoners’ family members – who are most affected by exorbitant prison phone rates. When state public utility regulatory agencies have intervened, however, they frequently uncover gross abuses by prison phone service providers.

The prison phone service industry has been repeatedly sanctioned for overcharging and fraudulent practices. In Louisiana, the state Public Service Commission ordered prison phone service provider Global Tel*Link to refund \$1.2 million in overcharges from June 1993 to May 1994. In 1996, North American Intelcom agreed to refund \$400,000 overcharged to members of the public who accepted prison phone calls, following an investigation by the Florida Public Service Commission. The following year, the Florida Public Service Commission ordered MCI to refund overcharges on collect calls made from state prisons; to settle the claims, MCI paid a \$10,000 fine and placed \$189,482 into a prisoner trust fund. More recently, on May 4, 2001, the California Public Utility Commission ordered MCI to refund \$522,458 in overcharges on collect calls made by California prisoners between June 1996 and July 1999.

The prison phone service industry has also been plagued by conflicts of interest and outright criminal practices. In October 2001, the Georgia Public Service Commission opened an investigation into complaints that MCI was charging separate connection and per-minute fees, which violated state tariff rules. As part of this investigation, the State Ethics Commission noted that Senate Majority Leader Charles Walker’s family-owned business, CresTech, was an MCI subcontractor that was involved in the state’s prison phone services under a multi-million dollar contract. Walker had failed to disclose his interest in CresTech.

In Florida, a 1996 report faulted the state Dept. of Correction for a prison phone contract with WorldCom because the contract was not competitively bid. WorldCom lobbyist Liddon Albert Woodard, Jr. was a personal friend of Deputy DOC Secretary William Thurber, which, according to the state Attorney General’s office, created an "appearance of impropriety."

Former Alabama state auditor Terry Ellis, former Mobile County Commissioner Dan Wiley and another defendant pleaded guilty in July 1999 to federal charges of tax evasion and money laundering related to a prison pay phone scam involving Global Tel*Link. Two other defendants, including lobbyist Willie Hamner, were also implicated. Ellis was a co-owner of the phone company, then known as National Telcoin, from 1990 to 1995; Hamner was a salesman for the company. Ellis hid his interest in the company to avoid an apparent conflict of interest. The federal indictment further stated that Global Tel*Link added extra time to bills for collect calls originating from prisons and jails, usually one or two minutes, and added an extra charge of about 25 cents to each call. Ellis, Hamner and Wiley submitted fake accounting reports to hide the excess billed revenue.

And in North Carolina, a scandal involving the North Carolina Coin Tel Company's \$1.2 million contract to provide prison phone services resulted in criminal charges. Former North Carolina DOC director of departmental services D.R. Hursey and AT&T employee Michael A. Weaver, who was one of the owners of Coin Tel, were indicted in 1993; six other state officials resigned, retired or were transferred to other jobs. Hursey and Weaver were accused of engaging in a bid rigging conspiracy involving prison pay phones, as well as fraudulent billing.

Due to the lack of effective regulation and oversight of the prison phone service industry, such abuses, overcharges and outright criminal enterprises are difficult to detect, with the result that consumers are defrauded and subjected to overcharges with little or no recourse.

5. Absence of Other Regulatory Means

With rare exceptions, state and federal courts have failed to provide relief related to prison phone services, "commission" kickbacks, high rates charged to prisoners' families, etc. Generally, such issues do not raise constitutional claims on the federal level and are often dismissed under the filed rate or primary jurisdiction doctrines. As noted above, in some cases state public utility regulatory agencies have taken action; however, in other cases even that avenue of redress is blocked. For example, in 1998 the Colorado Supreme Court held that the state's Public Utilities Commission lacked jurisdiction over the Dept. of Corrections in regard to excessive prison phone rates charged by Sprint Communications, as Sprint was providing an "unregulated utility." See: *Powell v. Colorado Public Utilities Commission*, 956 P.2d 608 (Colo. 1998).

Some state Departments of Correction have voluntarily reduced prison phone rates, including Nebraska, New Hampshire and West Virginia, as well as the District of Columbia. Recently, Florida DOC Secretary James McDonough reduced prison phone rates by about 30%. Such voluntary rate reductions, often by forgoing lucrative "commissions," are dependent on the stance of individual state policymakers in regard to economic fairness and social responsibility. The vast majority of states prefer to keep prison phone rates high so as to maximize their share of the profits generated by prison phone calls.

Legislative regulation on the state level is extremely difficult to achieve, as prisoners are a disfavored population who have no political voice (e.g., they cannot vote), and their family members have no political advocacy group to speak on their behalf. Further, lawmakers have

little desire to be seen advocating for prisoners or their families, lest they be perceived as “soft on crime.” In fact, bills addressing prison phone rates have been introduced in only three states (New Jersey, Oklahoma and Washington). Considering that most states receive millions of dollars from prison phone service providers, which helps reduce ballooning state budgets, there is little incentive for state lawmakers to provide relief from exorbitant prison phone rates.

Professional organizations such as the American Correctional Association (ACA) and the American Bar Association (ABA) have passed resolutions against excessive prison phone rates; the ACA specifically stated that “[c]orrectional agencies should discourage profiteering on tariffs placed on phone calls which are far in excess of the actual cost of the call, and which could discourage or hinder family or community contacts.” However, these organizations carry little weight in terms of effecting institutional policy change.

With a hands-off policy by the courts, infrequent actions taken by state regulatory agencies, the lack of a strong lobby for prisoners’ families who are victimized by excessively high prison phone rates, and unreceptive lawmakers who are unwilling to take a stand on this issue, there is virtually no effective regulation of prison phone service providers.

Conclusion

Prison Legal News strongly encourages the FCC to consider the above comments when reaching a decision regarding the rule-making requested in the Wright petition, CC Docket No. 96-128. We urge the FCC to grant the remedies outlined in the Wright petition pursuant to the authority granted under 47 U.S.C. § 201(b), including the establishment of reasonable benchmark rates and rate caps, as well as other appropriate actions to protect against price-gouging and monopolistic practices of prison phone service providers.

Such action is necessary because free market forces have consistently failed to provide reasonable, competitive phone rates for the captive market that consists of prisoners and their families, to the detriment of consumers and society as a whole.

Sincerely,

Alex Friedmann
Associate Editor, PLN

cc: Paul Wright, PLN Editor

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION



UNITED STATES OF AMERICA

v.

SAM WAGGONER

CRIMINAL NO.

18 USC § 666(a)(2)

3:15-cr-00069-HTW-FKB

The United States Attorney charges:

At all times relevant to this information:

1. The Mississippi Department of Corrections (MDOC) was a state government agency as that term is defined in Section 666(d), Title 18, United States Code, and which received benefits in excess of \$10,000 annually between 2007 and 2014 under Federal programs providing Federal assistance to MDOC.
2. Global Tel-Link (GTL) was under contract with the State of Mississippi to provide telephone services to inmates at MDOC facilities.
3. The defendant, **SAM WAGGONER**, was a paid consultant for GTL.
4. GTL paid the defendant, **SAM WAGGONER**, five (5) percent of the revenue generated by the inmate telephone services contracts it had with the State of Mississippi.
5. CHRISTOPHER B. EPPS was the commissioner of the MDOC.
6. That beginning sometime in or about 2012, and continuing until at least August 26, 2014, in Hinds County, in the Northern Division of the Southern District of Mississippi and elsewhere, the defendant, **SAM WAGGONER**, did knowingly and corruptly give, offer, or agree to give something of value to CHRISTOPHER B. EPPS, with intent to influence or reward CHRISTOPHER B. EPPS in connection with the business, transaction, or series of transactions of the Mississippi Department of Corrections, involving something of value of \$5,000.00 or

more, that is, the awarding and the retention of contracts to **WAGGONER'S** employer, GTL, for inmate telephone services at MDOC facilities. Specifically, on or about July 30, 2014, and on or about August 26, 2014, the defendant, **SAM WAGGONER**, paid kickbacks in the form of cash generated by his monthly commission from GTL to CHRISTOPHER B. EPPS.

All in violation of Section 666(a)(2), Title 18, United States Code.

NOTICE OF INTENT TO SEEK CRIMINAL FORFEITURE

7. As a result of committing the offense alleged in this Indictment, the defendant shall forfeit to the United States all property involved in or traceable to property involved in the offense, including but not limited to all proceeds obtained directly or indirectly from the offense, and all property used to facilitate the offense.

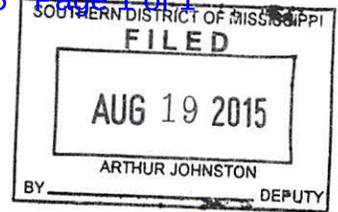
The defendant shall forfeit a money judgment in the amount of \$200,000.00.

8. Further, if any property described above, as a result of any act or omission of the defendant: (a) cannot be located upon the exercise of due diligence; (b) has been transferred or sold to, or deposited with, a third party; (c) has been placed beyond the jurisdiction of the Court; (d) has been substantially diminished in value; or (e) has been commingled with other property, which cannot be divided without difficulty, then it is the intent of the United States to seek a judgment of forfeiture of any other property of the defendant, up to the value of the property described in this notice or any bill of particulars supporting it.

All pursuant to Section 981(a)(1)(A) & (C), Title 18, United States Code and Section 2461, Title 28, United States Code.



HAROLD BRITTAIN
Acting United States Attorney



CRIMINAL CASE COVER SHEET
U.S. DISTRICT COURT
PLACE OF OFFENSE:

CITY: JACKSON

COUNTY: HINDS

RELATED CASE INFORMATION:

SUPERSEDING INDICTMENT _____ DOCKET # 3:15cr69HTW-FKB
SAME DEFENDANT _____ NEW DEFENDANT _____
MAGISTRATE JUDGE CASE NUMBER _____
R 20/ R 40 FROM DISTRICT OF _____

DEFENDANT INFORMATION:

JUVENILE: ___ YES X ___ NO

MATTER TO BE SEALED: X YES ___ NO

NAME/ALIAS: SAM WAGGONER

U.S. ATTORNEY INFORMATION:

AUSA J. SCOTT GILBERT BAR # 102123
AUSA DARREN J. LAMARCA BAR # 1782

INTERPRETER: X No _____ Yes LIST LANGUAGE AND/OR DIALECT: _____

LOCATION STATUS: ARREST DATE _____

___ ALREADY IN FEDERAL CUSTODY AS OF _____
___ ALREADY IN STATE CUSTODY
___ ON PRETRIAL RELEASE

U.S.C. CITATIONS

TOTAL # OF COUNTS: 1 _____ PETTY _____ MISDEMEANOR 1 FELONY

(CLERK'S OFFICE USE ONLY)	INDEX KEY/CODE	DESCRIPTION OF OFFENSE CHARGED	COUNT(S)
Set 1 18:666C.F	18 USC § 666(A)(2)	Bribery concerning programs Receiving federal funds	1
Set 1 _____	_____	_____	_____

Date: 8-18-15

SIGNATURE OF AUSA:

PLEA AGREEMENT



Subject United States v. Sam Waggoner Criminal No.	Date May 6, 2015
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To:
Nick Bain

From:
Darren J. LaMarca
Assistant United States Attorney
Southern District of Mississippi
Criminal Division

Sam Waggoner, Defendant herein, and Darren LaMarca, attorney for Defendant, have been notified and understand and agree to the items contained herein, as well as in the Plea Supplement, and that:

1. **Count of Conviction.** It is understood that, as of the date of this plea agreement, Defendant and Defendant's attorney have indicated that Defendant desires to plead guilty to the information.

2. **Sentence.** Defendant understands that the penalty for the offense charged in the information, charging a violation of Title 18, United States Code, Section 666(a)(2), is not more than 10 years in prison; a term of supervised release of not more than 3 years; and a fine of up to \$250,000. Defendant further understands that if a term of supervised release is imposed, that term will be in addition to any prison sentence Defendant receives; further, if any of the terms of Defendant's supervised release are violated, Defendant can be returned to prison for the entire term of supervised release, without credit for any time already served on the term of supervised release prior to Defendant's violation of those conditions. It is further understood that the Court may require Defendant to pay restitution in this matter in accordance with applicable law.

Defendant further understands that Defendant is liable to make restitution for the full amount of the loss determined by the Court, to include relevant conduct, which amount is not limited to the

count of conviction. Defendant further understands that if the Court orders Defendant to pay restitution, restitution payments cannot be made to the victim directly but must be made to the Clerk of Court, Southern District of Mississippi. Defendant understands that an order of forfeiture will be entered by the Court as a part of Defendant's sentence and that such order is mandatory.

3. **Determination of Sentencing Guidelines.** It is further understood that the United States Sentencing Guidelines are advisory only and that Defendant and Defendant's attorney have discussed the fact that the Court must review the Guidelines in reaching a decision as to the appropriate sentence in this case, but the Court may impose a sentence other than that indicated by the Guidelines if the Court finds that another sentence would be more appropriate. Defendant specifically acknowledges that Defendant is not relying upon anyone's calculation of a particular Guideline range for the offense to which Defendant is entering this plea, and recognizes that the Court will make the final determination of the sentence and that Defendant may be sentenced up to the maximum penalties set forth above.

4. **Breach of This Agreement and Further Crimes.** It is further understood that should Defendant fail or refuse as to any part of this plea agreement or commit any further crimes, then, at its discretion, the U.S. Attorney may treat such conduct as a breach of this plea agreement and Defendant's breach shall be considered sufficient grounds for the pursuit of any prosecutions which the U.S. Attorney has not sought as a result of this plea agreement, including any such prosecutions that might have been dismissed or otherwise barred by the Double Jeopardy Clause, and any federal criminal violation of which this office has knowledge.

5. **Financial Obligations.** It is further understood and specifically agreed to by Defendant that, at the time of the execution of this document or at the time the plea is entered, Defendant will then and there pay over the special assessment of \$100.00 per count required by Title 18, United States Code, Section 3013, to the Office of the United States District Court Clerk; Defendant shall thereafter produce proof of payment to the U.S. Attorney or the U.S. Probation Office. If the Defendant is adjudged to be indigent, payment of the special assessment at the time the plea is entered is waived, but Defendant agrees that it may be made payable first from any funds available to Defendant while Defendant is incarcerated. Defendant understands and agrees that, pursuant to Title 18, United States Code, Section 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided in Section 3613. Furthermore, Defendant agrees to complete a Department of Justice Financial Statement no later than the day the guilty plea is entered and provide same to the undersigned AUSA. Defendant also agrees to provide all of Defendant's financial information to the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, Defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If Defendant is incarcerated, Defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program regardless of whether the Court specifically directs participation or imposes a schedule of payments. Defendant understands and agrees that Defendant shall participate in the Treasury Offset Program until any and all monetary penalties are satisfied and paid in full by Defendant.

6. **Transferring and Liquidating Assets.** Defendant understands and agrees that Defendant is prohibited from transferring or liquidating any and all assets held or owned by

Defendant as of the date this Plea Agreement is signed. Defendant must obtain prior written approval from the U.S. Attorney's Financial Litigation Unit prior to the transfer or liquidation of any and all assets after this Plea Agreement is signed and if Defendant fails to do so the Defendant understands and agrees that an unapproved transfer or liquidation of any asset shall be deemed a fraudulent transfer or liquidation.

7. **Future Direct Contact With Defendant.** Defendant and Defendant's attorney acknowledge that if forfeiture, restitution, a fine, or special assessment or any combination of forfeiture, restitution, fine, and special assessment is ordered in Defendant's case that this will require regular contact with Defendant during any period of incarceration, probation, and supervised release. Further, Defendant and Defendant's attorney understand that it is essential that defense counsel contact the U.S. Attorney's Financial Litigation Unit immediately after sentencing in this case to confirm in writing whether defense counsel will continue to represent Defendant in this case and in matters involving the collection of the financial obligations imposed by the Court. If the U.S. Attorney does not receive any written acknowledgment from defense counsel within two weeks from the date of the entry of Judgment in this case, the U.S. Attorney will presume that defense counsel no longer represents Defendant and the Financial Litigation Unit will communicate directly with Defendant regarding collection of the financial obligations imposed by the Court. Defendant and Defendant's attorney understand and agree that such direct contact with Defendant shall not be deemed an improper *ex parte* contact with Defendant if defense counsel fails to notify the U.S. Attorney of any continued legal representation within two weeks after the date of entry of the Judgment in this case.

8. **Waivers.** Defendant, knowing and understanding all of the matters aforesaid, including the maximum possible penalty that could be imposed, and being advised of Defendant's rights to remain silent, to trial by jury, to subpoena witnesses on Defendant's own behalf, to

confront the witnesses against Defendant, and to appeal the conviction and sentence, in exchange for the U.S. Attorney entering into this plea agreement and accompanying plea supplement, hereby expressly waives the following rights (except that Defendant reserves the right to raise ineffective assistance of counsel claims):

a. the right to appeal the conviction and sentence imposed in this case, or the manner in which that sentence was imposed, on the grounds set forth in Title 18, United States Code, Section 3742, or on any ground whatsoever, and

b. the right to contest the conviction and sentence or the manner in which the sentence was imposed in any post-conviction proceeding, including but not limited to a motion brought under Title 28, United States Code, Section 2255, and any type of proceeding claiming double jeopardy or excessive penalty as a result of any forfeiture ordered or to be ordered in this case, and

c. any right to seek attorney fees and/or costs under the "Hyde Amendment," Title 18, United States Code, Section 3006A, and the Defendant acknowledges that the government's position in the instant prosecution was not vexatious, frivolous, or in bad faith, and

d. all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought by Defendant or by Defendant's representative under the Freedom of Information Act, set forth at Title 5, United States Code, Section 552, or the Privacy Act of 1974, at Title 5, United States Code, Section 552a.

e. Defendant further acknowledges and agrees that any factual issues regarding the sentencing will be resolved by the sentencing judge under a preponderance of the

evidence standard, and Defendant waives any right to a jury determination of these sentencing issues. Defendant further agrees that, in making its sentencing decision, the district court may consider any relevant evidence without regard to its admissibility under the rules of evidence applicable at trial.

Defendant waives these rights in exchange for the United States Attorney entering into this plea agreement and accompanying plea supplement.

9. **Complete Agreement.** It is further understood that this plea agreement and the plea supplement completely reflects all promises, agreements and conditions made by and between the United States Attorney's Office for the Southern District of Mississippi and Defendant.

Defendant and Defendant's attorney of record declare that the terms of this plea agreement have been:

1. **READ BY OR TO DEFENDANT;**
2. **EXPLAINED TO DEFENDANT BY DEFENDANT'S ATTORNEY;**
3. **UNDERSTOOD BY DEFENDANT;**
4. **VOLUNTARILY ACCEPTED BY DEFENDANT; and**
5. **AGREED TO AND ACCEPTED BY DEFENDANT.**

WITNESS OUR SIGNATURES, as set forth below.

GREGORY K. DAVIS
United States Attorney



 Darren J. LaMarca
 Assistant United States Attorney

8/21/15
Date



 Sam Waggoner
 Defendant

7-15-15
Date



 Nick Bain
 Attorney for Defendant

7-10-15
Date

Attachment 4

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 3:15cr69 HTW-FKB

SAM WAGGONER

AGREED PRELIMINARY ORDER OF FORFEITURE

PURSUANT to a separate Plea Agreement and Plea Supplement between **SAM WAGGONER**, by and with the consent of his attorney, and the **UNITED STATES OF AMERICA** (hereinafter “the Government”), **SAM WAGGONER** agrees that the following findings are correct, and further agrees with the adjudications made herein. Accordingly, the Court finds as follows:

1. The defendant is fully aware of the consequences of having agreed to forfeit to the Government his interests in and to the hereinafter described property, having been apprised of such by his attorney and by this Court; and he has freely and voluntarily, with knowledge of the consequences, entered into a Plea Agreement and Plea Supplement with the Government to forfeit such property.
2. The defendant agrees that a **\$200,000.00 money judgment** constitutes or was derived from proceeds that the defendant obtained, directly or indirectly, as a result of the offense charged in the Information. Such property is, therefore, subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(c) and 28 U.S.C. § 2461.
3. The defendant has been apprised that Rule 32.2 of the Federal Rules of Criminal Procedure, and Section 982, Title 18, United States Code, require the Court to order the forfeiture of the **\$200,000.00 money judgment** at, and as a part of, the sentencing

proceeding. The defendant does hereby waive such requirement and the requirement that the forfeiture be made a part of the sentence as ordered by the Court in the document entitled, "Judgment in a Criminal Case." The defendant and his attorney further agree that the Court should enter this order immediately, and agree that the forfeiture ordered hereunder will be a part of the sentence of the Court regardless whether ordered at that proceeding and/or whether attached as a part of the said Judgment in a Criminal Case.

IT IS, THEREFORE, ORDERED AND ADJUDGED AS FOLLOWS:

- a. That the defendant shall forfeit to the United States,
a \$200,000.00 money judgment.
- b. The Court has determined, based on the defendant's Plea Agreement and Plea Supplement, that the following property is subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(c) and 28 U.S.C. § 2461, that the defendant had an interest in such property and that the Government has established the requisite nexus between such property and such offense:
a \$200,000.00 money judgment.
- c. The United States may conduct any discovery it considers necessary to identify, locate, or dispose of the property subject to forfeiture or substitute assets for such property.
- d. That any ancillary hearing is hereby dispensed with as the forfeiture provides for a money judgment. Pursuant to Fed. R. Crim. P. 32.2(b)(4), this Agreed Preliminary Order of Forfeiture shall become final as to the defendant at the time of sentencing [or before sentencing if the defendant consents] and shall be made part of the sentence and included in the document entitled, "Judgment in a

Criminal Case”, and that this order, or an abstract thereof, shall be enrolled in all appropriate Judgment Rolls.

The Court shall retain jurisdiction to enforce this Order pursuant to Fed. R. Crim. P. 32.2(e), and to amend it as necessary to substitute property to satisfy the money judgment in whole or in part.

SO ORDERED AND ADJUDGED this, the 21st day of August, 2015.


UNITED STATES DISTRICT JUDGE

AGREED:



J. Scott Gilbert
Assistant United States Attorney



Sam Waggoner
Defendant



Nick Bain
Attorney for Defendant



Jackson Division

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Two Mississippi Businessmen Charged with Bribery of Former Corrections Commissioner

U.S. Attorney's Office
August 21, 2015

Southern District of Mississippi
(601) 965-4480

JACKSON, MS—Irb Benjamin, 69, of Madison, and Sam Waggoner, 61, of Carthage, were charged today with paying bribes and kickbacks to former Mississippi Department of Corrections Commissioner (MDOC) Christopher B. Epps in exchange for receiving contracts involving the MDOC and its operations, announced Acting United States Attorney Harold Brittain, FBI Special Agent in Charge (SAC) Donald Alway, IRS—Criminal Investigation Special Agent in Charge Jerome McDuffie, U.S. Postal Inspector Robert Wemyss, and Mississippi State Auditor Stacey Pickering.

Benjamin was charged in a three count indictment returned by a federal grand jury with conspiracy to commit honest services wire fraud and with two counts of bribery. According to the indictment returned against Benjamin, from some time in 2010 until September, 2014, Benjamin gave Epps bribes and kickbacks in exchange for Epps awarding or directing the awarding of MDOC contracts or work to Benjamin's company, Mississippi Correctional Management (MCM), to provide alcohol and drug treatment services to inmates at MDOC work centers in Alcorn and Simpson Counties. MCM was paid about \$774,000.00 as a result of those contracts.

The indictment alleges that Benjamin paid Epps for Epps' help in getting MCM consulting contracts with Alcorn, Washington and Chickasaw Counties. Those contracts involved Benjamin providing consulting services during the construction and the subsequent operation of three regional corrections facilities. Benjamin purportedly provided consulting services to assist the regional corrections facilities in obtaining and maintaining accreditation by the American Correctional Association. The contract with Alcorn County paid MCM about \$399,260.00; the contract with Washington County paid MCM about \$245,080.00; and, the contract with Chickasaw County paid MCM about \$217,900.00.

The indictment also alleges that Benjamin paid Epps monthly kickbacks from the consultant fees Benjamin received from Carter Gopal Lee Facility Management (CGL), after CGL obtained a contract in 2014 to provide maintenance services to MDOC facilities. Epps used his influence over CGL to get Benjamin the job as a consultant for CGL. The value of the CGL contract was \$4,800,000.

Waggoner was charged by Criminal Information with one count of bribery related to his payments of bribes and kickbacks to Epps from sometime in 2012 until at least August 26, 2014. According to the Criminal Information, Waggoner was a consultant for Global Tel-Link (GTL), which provided telephone services at MDOC facilities. The Criminal Information cites two specific instances in 2014 where Waggoner paid Epps kickbacks from money Waggoner received from GTL as a consultant.

Harold Brittain, Acting U.S. Attorney in this case, stated: "The abuse of power and position by public officials has plagued our state for many years. Our tolerance for public corruption is zero. We will hold accountable under the law everyone who bears the responsibility of public service and sells the trust that has been bestowed upon them. We will not tolerate such fraud and abuses by public officials that have cost our citizens so dearly."

In commenting on this case, FBI SAC Donald Alway applauded the investigators and prosecutors, whose hard work and determined efforts revealed these additional participants in this conspiracy of public corruption, and led to the charges announced today. He added, "Our society will not tolerate bribery, kickbacks, or other 'under-the-table' deals. This is not just another cost of doing business with government. The FBI, working alongside its law enforcement partners, will use every appropriate tool and available resource to find, stop, and punish those who conspire to betray the public trust in order to enrich themselves."

"Postal Inspectors bring to a task force unique skills for hunting down suspected fraud through the U.S. Mail," said U.S. Postal Inspector in Charge Adrian Gonzalez. "Postal Inspectors steadfastly work with our partners and defend the nation's mail system in hopes that criminals abusing the American public's trust are brought to justice."

Special Agent Jerome R. McDuffie, IRS—Criminal Investigation, stated: "This is a very important investigation to the state of Mississippi and all individuals who rely on the trust they instill in their public officials, whether elected or appointed. The extent to which Christopher Epps has damaged that trust will require as much effort to rebuild as it did to uncover. The Special Agents of IRS—Criminal Investigation remain committed to working with our law enforcement partners in uncovering public

corruption at even the highest levels of government as well holding accountable those individuals

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corruption at even the highest levels of government, as well as holding accountable those individuals involved.”

“We will continue to fight public corruption in Mississippi and work with our partners,” said State Auditor Pickering. “Our agents and this team are working daily to identify and bring charges against all individuals associated with the Mississippi Department of Corrections case. I’d like to thank the U.S. Attorney’s Office, FBI, IRS, and the U.S. Postal Service for a joint effort in this ongoing case.”

Both defendants are scheduled to make their initial appearances before U.S. Magistrate Judge F. Keith Ball on Friday, August 21, 2015, at 1:30 p.m. Waggoner faces a maximum penalty of 10 years in prison and a \$250,000.00 fine, as well as forfeiture of the proceeds he obtained as a result of the illegal conduct. Benjamin faces a maximum penalty of 20 years in prison and a \$250,000.00 fine for the conspiracy count, and a maximum of 10 years in prison and a \$250,000.00 fine for each of the bribery counts. Benjamin also faces the forfeiture of his ill-gotten gains.

This case was investigated by the Federal Bureau of Investigation, U.S. Postal Inspection Service, Mississippi State Auditor’s Office and IRS Criminal Investigation. It is being prosecuted by Deputy Criminal Chief Darren LaMarca, Assistant United States Attorney Scott Gilbert, and financial analyst Kim Mitchell.

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