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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	Docket No. 96-128

REPLY OF THE INMATE CALLING SERVICE PROVIDERS COALITION TO OPPOSITION TO PETITION FOR FURTHER RECONSIDERATION

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The Inmate Calling Service Providers Coalition (the "Coalition") submits the following reply to the opposition of Citizens United for Rehabilitation of Errants ("CURE") to the Coalition's petition for further reconsideration ("Petition") of the Commission's *Order on Remand* in this proceeding. *Order on Remand and Notice of Proposed Rulemaking*, FCC 02-39, released February 21, 2002, requesting comment on the remand issues in this proceeding ("*Remand Order*").

DISCUSSION

The Coalition's petition requests reconsideration of two determinations made in the *Remand Order*, in order to ensure meaningful evaluation, consistent with statutory requirements and the Commission's own previous payphone orders, of the additional cost data that the Commission has invited parties to submit in the Notice of Proposed Rulemaking accompanying the *Remand Order*.

First, the *Remand Order* states that Section 276(b)(1)(A) of the Communications Act, 47 U.S.C. § 276(b)(1)(A), does not require inmate service providers to be fairly compensated by the end users to whom they provide service. According to the *Remand Order*, the fair compensation requirement only applies to a fictitious internal compensation payment that the inmate service provider must impute as a commission paid to its "payphone service provider" side by its "operator service provider" side. *Remand Order*, ¶¶ 33-35. As the Coalition showed, this ruling is inconsistent with the integrated nature of inmate calling services, with the plain meaning of Section 276, and with prior Commission and court interpretations of Section 276.

Second, the *Remand Order* rules that, unless inmate service providers individually demonstrate their unprofitability, compensation for a class of calls will only be adjusted if revenues collected under a state rate ceiling do not exceed the direct cost attributed to that class of calls. This standard is virtually impossible to meet and is inconsistent with every previous payphone compensation order.

Accordingly, the Coalition requested the Commission to reconsider and rule that (1) Section 276 requires that inmate service providers be fairly compensated for the service they provide to end users, and (2) the fair compensation cost standard applied in the *Third Payphone Order*,[1] under which each class of calls makes a proportionate contribution to common costs, is applicable to inmate services as well as payphone services.

The only party opposing the Coalition's petition is CURE. CURE treats the petition as if it requests the Commission to order compensation based on the existing

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[1] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Second Report and Order, 13 FCC Rcd 1778, ¶ 92; Third Report and Order and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545, ¶ 81 (1999)("*Third Payphone Order*").

record, without further submission of cost data. CURE at 5, 6. But the petition makes clear that it requests reconsideration only of the cost *standards* applied in the Remand Order. As promised in its petition, the Coalition has submitted in response to the NPRM a cost showing demonstrating the need for additional compensation in certain states for local collect calls. *See* the Coalition's Comments, filed May 24, 2002. The purpose of the Coalition's petition for reconsideration is simply to prevent the inconsistent and impossible-to-meet cost standard stated in the *Remand Order* from being applied to the Commission's further cost showings in support of compensation relief.

Regarding the cost standard issue,[2] CURE states that the *Remand Order* "refrains from imposing upon either [ICS] providers or the correctional institutions any particular methodology" for recovering costs. CURE at 2. But in fact, the *Remand Order does* impose a particular methodology. As explained in the Coalition's petition, under the *Remand Order* providers seeking additional compensation for local collect calls must demonstrate that the revenues collected for local collect calls under a state rate ceiling do not exceed the direct cost attributed to that class of calls. Providers are not authorized to include any fixed or common costs in the compensation rate for local collect calls. This methodology is imposed on providers and is inconsistent with the methodology adopted in the Commission's other payphone compensation orders. Petition at 16-17.

The remainder of CURE's arguments simply restate points in the *Remand Order* that are explicitly refuted by the Coalition's petition. CURE claims that "to the extent ICS providers believe that a particular state's rate caps prevent them from earning a fair return they can decline to bid on the proposed contracts," and cites comments of certain service

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[2] CURE does not attempt to rebut the Coalition's first argument, that the fair compensation requirement applies to the rates that inmate service providers charge end users.

providers who claimed, four years ago, that they could provide service without additional compensation. CURE at 3. But the Commission has never denied fair compensation on the basis that service providers were providing or could provide service in some manner without additional compensation. To the contrary, the Commission has deregulated local coin calling, and prescribed dial-around compensation, despite the fact that payphone service providers had been offering payphone service at the lower rates. Further, as the Coalition has shown, the service providers who previously claimed to be able to provide service without additional compensation have *not* stepped in to provide service in the states with the lowest rate ceilings. To the contrary, the number of service providers in such states has shrunk drastically, creating the threat that inmates of small county jails will be deprived of any service. Petition at 18, n. 14.

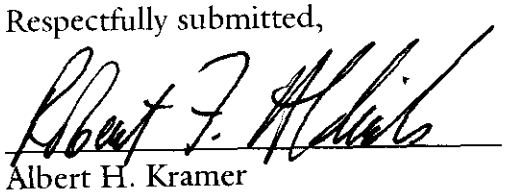
CURE also argues that additional compensation would not address providers' cost recovery issues because the additional revenues would simply be captured by confinement facilities through increased commissions. As explained in the Coalition's petition, the cost standard previously adopted by the Commission addresses such concerns by basing fair compensation on the cost of serving a "marginal" payphone location where no commissions are paid. Where no commissions are paid, no revenues are captured by the confinement facility. The marginal location methodology reflects a judgement by the Commission that continued service to marginal locations is more important than the elimination of profits from high-volume facilities. Petition at 19. The cost study submitted with the Coalition's comments in this proceeding follows this approach, focusing on marginal locations where no commissions are paid, and excluding commissions as an element of the costs incurred by service providers.

CONCLUSION

The only opponent of the Coalition's petition for further reconsideration offers no convincing rebuttal of the Coalition's arguments. Therefore, the Commission must grant the Coalition's petition.

Dated: June 17, 2002

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June 2002, a true and correct copy of the foregoing Reply of the Inmate Calling Service Providers Coalition to Opposition to Petition for Further Reconsideration, was sent by first-class U.S. Mail, postage pre-paid to the following parties:

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