

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Martha Wright, Dorothy Wade, Annette Wade,
Ethel Peoples, Mattie Lucas, Laurie Nelson,
Winston Bliss, Sheila Taylor, Gaffney &
Schember, M. Elizabeth Kent, Katharine Goray,
Ulandis Forte, Charles Wade, Earl Peoples,
Darrell Nelson, Melvin Taylor, Jackie Lucas,
Peter Bliss, David Hernandez, Lisa Hernandez
and Vendella F. Oura

Petition for Rulemaking or, in the Alternative,
Petition to Address Referral Issues in Pending
Rulemaking

CC Docket No. 96-128

REPLY COMMENTS OF T-NETIX, INC.

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Dated: April 21, 2004

SUMMARY

The record in this proceeding reveals that the true end of the Wright Petition is simply to achieve lower rates for inmates and their families. Yet the means by which Petitioners seek to accomplish this goal are dangerous, unproven, and counterproductive. Overriding the single-provider system for inmate telecommunications and imposing mandatory, federally-regulated interconnection, as the Petition seeks to do, will not only dismantle prison security, but it will legislate an end to the industry entirely by driving providers out of the market. This result would harm inmates and families by returning correctional facilities to an era in which prisons lacked the technology and financial resources to make phones available to inmates

As several commenters have deduced, Petitioners fail to identify any statutory authority by which their relief may be granted. Neither Section 201, nor Section 226, nor Section 276 contemplate the imposition of unbundling and interconnection for inmate phones. The Commission's rules prohibiting exclusive building access contracts, promulgated in accordance with Congress's mandates in Section 251, are also not, as the record demonstrates, a useful analog to the scheme proposed in the Petition. Moreover, the relief Petitioners request necessarily requires the Commission to intrude upon the authority of correctional authorities to determine the manner in which inmate phones operate and are used. The Commission cannot, as a matter of law and practical reality, assume such authority.

Commenters have proved also that the Petition is deeply flawed in its technical discussion. Not only does the network architecture outlined in the Dawson Affidavit fail to ensure telephone security, but it may be unworkable. In addition, Dawson's faulty understanding of the operational requirements of the inmate telecommunications system led him to grossly underestimate the type and amount of facilities required, thus resulting in a false estimate of the costs of service under his plan. None of the commenters that urge the Commission to rely on his

affidavit indicate that they conducted any analysis into the validity of his assumptions and theory.

The Wright Petition does not present a feasible or wise course of action for the Commission. It is simply another attempt by Ms. Wright to obtain rate relief that she was properly denied in court. The issue of inmate phone rates are, however, the subject of an ongoing Commission investigation, for which several parties have already provided valuable input. Petitioners' efforts are better directed to that proceeding.

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REPLY COMMENTS OF T-NETIX, INC.

T-NETIX, Inc. (“T-NETIX”), by and through counsel, hereby replies to comments filed in response to the Petition of Martha Wright *et al.* for Rulemaking (“Wright Petition” or “Petition”) in order to emphasize the danger — corroborated by four state Departments of Corrections — of imposing radical market structure changes for inmate telecommunications services. As the record demonstrates, the multi-provider scheme outlined in the Petition and its supporting affidavit by Douglas A. Dawson (“Dawson Affidavit” or “Aff.”) is unworkable, not secure, and will unquestionably drive inmate operator service providers out of the market. The Petition must therefore be denied.

**I. COMMENTERS AGREE THAT THE COMMISSION DOES NOT HAVE
AUTHORITY TO OVERRIDE A CORRECTIONAL FACILITY’S SELECTION
OF A SINGLE TELECOMMUNICATIONS PROVIDER**

The drastic relief requested in the Petition would directly interfere with the governance of correctional facilities — a task committed to state and local authorities by statute

— and has no support in either the Communications Act of 1934 or the Telecommunications Act of 1996. Several commenters, including both service providers and state correctional agencies, have emphasized these legal impediments to granting the Petition and how precarious would be the Commission’s position if it granted the requested relief.

A. Several Parties, Including Four State DOCs, Have Shown that Inmate Telecommunications Is and Must Be Governed by the Competent Correctional Authorities

The manner in which inmates use the phone, as well as the manner in which the phones work, is demonstrably within the authority of correctional authorities to prescribe.¹ And as noted by several parties, the fact that the Petition is nominally directed only at so-called private facilities is irrelevant to this point: private facilities operate as arms of the state and thus must comport with the same statutes and regulations as any state facility.² Thus, for the Commission to grant the Petition necessarily will infringe on state rights.

As the Massachusetts DOC urges, “[w]e do not want to lose our ability to make decisions regarding how inmate telephone systems will operate in our prisons.” That “ability to make decisions” is a matter of statute.³ In addition, it is one that several federal courts, including

¹ See T-NETIX Comments at 8-10; Letter from Devon Brown, Commission of the New Jersey Department of Corrections, to Marlene H. Dortch, at 2-3 (Feb. 9, 2004) (“New Jersey DOC”); Letter from Roger Werholtz, Secretary of the Kansas Department of Corrections at 1 (Feb. 4, 2004) (“Kansas DOC”); Letter from Massachusetts Department of Correction; AT&T Comments at 9; Comments of Correctional Corporation of America at 37 (“CCA Comments”); New York State Department of Correctional Services Comments at 2 (“New York DOCS”); Comments of the Association of Private Correctional and Treatment Organizations at 8 (“APTCO Comments”); RBOC Payphone Coalition Comments at 3; WorldCom Comments at 9-11.

² “There are, however, no material distinctions between the inmate calling services provided at privately or publicly administered correctional facilities[.]” CCA Comments at 7. See also T-NETIX Comments at 6-7; APTCO Comments at 5 (stating that “three-fifths” of states house prisoners in private facilities); WorldCom Comments at 17 (noting that CCA runs prisons only “pursuant to contracts with state DOCs”); RBOC Payphone Coalition Comments at 6 (“The fact that state correctional policy is executed by private contractors rather than by government employees does not alter the fact that correctional policy remains a matter within the control of responsible government correctional officials”).

³ T-NETIX Comments at 8 n.9 (quoting N.Y. Correct Law § 6-112 (Consol. 2003); New Mexico Stat. Ann. 1978, § 3-2-10). See also AT&T Comments at 10 (discussing Oklahoma corrections statute, 57 Okla. Stat. §§ 561, 563.3).

the Supreme Court, have recognized as warranting great deference.⁴ The New York DOCS thus cautions the Commission to “decline the invitation to determine how prison administrators should meet legitimate security and other penological needs while affording inmate telephone service.”⁵ More specifically, the RBOC Payphone Coalition warns that the Petition “seeks to draw the Commission well outside the area of its expertise and beyond its statutory authority.”⁶

The reasons warranting the Commission’s restraint in the context of inmate phones are not only statutory, but practical. The administration of inmate telecommunications is inextricably linked to correctional policy generally and requires a “balancing of different levels of inmate calling service to be provided” with the ability to ensure security and crime prevention.⁷ These considerations have never been, and cannot fairly be, assessed by this Commission, which lacks any expertise in the complex and specialized realm of prison administration. Accordingly, the Commission should retain its longstanding policy of deferring to the penological objectives of correctional authorities and recognizing the “exceptional circumstances” surrounding inmate phones.⁸

B. The Record Is Clear That the Petition Seeks to Contravene Settled Commission Precedent Yet Has No Legislative Support

The Commission has resisted pleas to intervene in the market for inmate phones for over a decade. In 1991 it held that inmate phones are exempt from the “dial-around’

⁴ *Turner v. Safley*, 482 U.S. 78, 84 (1987); *Strandberg v. City of Helena*, 791 F.2d 744, 747 (9th Cir. 1986); *Fillmore v. Ordonez*, 829 F. Supp. 1544, 1563 (D. Kan. 1993), *aff’d* 17 F.3d 1436 (10th Cir. 1994). *See also* WorldCom Comments at 11 (discussing same); AT&T Comments at 6-7 (citing same).

⁵ NY DOCS Comments at 2.

⁶ RBOC Payphone Coalition Comments at 3.

⁷ CCA Comments at 37. *See also* Affidavit of Robert Koberger (New York DOCS) ¶ 6 (“DOCS had to balance the desire to provide access to an inmate’s friends and family with the need to protect the public from fraud and abuse.”).

⁸ *Policies and Rules Concerning Operator Service Providers*, Report and Order, 6 FCC Rcd. 2744, 2752 ¶ 15 (1991) (“1991 TOCSIA Order”).

unblocking and rate quote requirements of the Telephone Operator Consumer Services Improvement Act (“TOCSIA”),⁹ and in 1998 re-affirmed the decision by rejecting a scheme that would have allowed a choice of interexchange carrier (“IXC”) for inmate collect calls.¹⁰ There is a reason for the Commission’s obstinacy: correctional facilities have “special security requirements”¹¹ that constitute “exceptional circumstances”¹² such that typical payphone regulations should not apply.

Thus, CURE is incorrect when it asserts that the Commission “has never questioned the assumption that such security functions are incompatible with competition.”¹³ To the contrary, the regulations that the Commission expressly withheld from inmate phones are pro-competitive rules meant to foster competition in long-distance calling.¹⁴ In fact, the Commission’s consideration of 0+ dialing rules, and its decision not to impose them on prison payphones, has continued into the post-1996 Act environment in which the Commission was commanded by Congress to create and foster a “pro-competitive, de-regulatory national framework.”¹⁵ Yet even under this new regime, the FCC refused to impose dial-around rules, or even rate caps, on prison phones.¹⁶

⁹ *1991 TOCSIA Order*, 6 FCC Rcd. at 2752 ¶ 15.

¹⁰ *Billed Party Preference for InterLATA 0+ Calls*, Second Further Notice of Proposed Rulemaking, 11 FCC Rcd. 7274, 7301 ¶ 48 (1996); Second Report and Order and Order on Reconsideration, 13 FCC Rcd. 6122, 6156 ¶ 57 (1998) (“*BPP Second Report and Order*”).

¹¹ *Id.*

¹² *1991 TOCSIA Order*, 6 FCC Rcd. at 2752 ¶ 15.

¹³ CURE Comments at 8.

¹⁴ *See also* APTCO Comments at 12 (“Contrary to Petitioners’ claims, the Commission has considered competitive options and found such options too precarious.”).

¹⁵ *BPP Second Report and Order*, 13 FCC Rcd. at 6126 ¶ 6 (quoting S. Conf. Rep. No. 230, 104th Cong., 2d Sess. at 113 (1996)).

¹⁶ *Id.*, 13 FCC Rcd. at 6156 ¶ 58.

The Petition provides no basis for reversing that policy. As several commenters have noted, Petitioners provide no valid statutory support for their request for mandatory unbundling of the prison telecommunications system.¹⁷ Their reliance on Section 201(b) of the 1934 Act is misplaced, as that provision has never been used to require facilities-based competition.¹⁸ Further, the *Competitive Networks Proceeding*,¹⁹ Petitioners' sole precedent under Section 201(b), expressly exempted inmate phones from its building access rules²⁰ and is in fact actually grounded in Section 251 of the 1996 Act.²¹ Yet "Petitioners can cite to no case where it was held that inmate payphones are subject to this section [251] of the 1996 Act."²² Nor is Section 276 — the provision dedicated to public payphones — a proper basis of authority, as that section specifically empowers property owners to choose the payphone service provider ("PSP") of their choice.²³ Thus, as WorldCom cogently explains, Section 276 provides no basis for the Commission "to overturn the carrier chosen by a DOCS to carry calls" from inmate payphones.²⁴

Nor are exclusive inmate service contracts actionable in antitrust. As T-NETIX has demonstrated, state entities are permitted to execute exclusive service contracts in the course

¹⁷ T-NETIX Comments at 11-15; CCA Comments at 24-26; WorldCom Comments at 12-16; APTCO Comments at 7-8.

¹⁸ T-NETIX Comments at 11; APTCO Comments at 7. *See also* RBOC Payphone Coalition Comments at 8 ("The Commission can no more derive jurisdiction from Section 201(b) over prison administrators than it can over the prices that equipment vendors charge.").

¹⁹ *Promotion of Competitive Networks in Local Telecommunications Markets*, First Report and Order, FCC 00-366, 15 FCC Rcd. 22983 (2000) ("*Competitive Networks Order*").

²⁰ WorldCom Comments at 16 ("The Commission expressly exempted statewide, governmental purchasers of telecommunications services, such as DOCS, from its ban on entering into exclusive contracts.") (citing *Competitive Networks Order*, 15 FCC Rcd. 22983 (2000)). *See also* T-NETIX Comments at 11; APTCO Comments at 7.

²¹ T-NETIX Comments at 11-12; APTCO Comments at 9; CCA Comments at 25-26.

²² WorldCom Comments at 12.

²³ *Id.* at 14.

²⁴ *Id.*

of performing governmental tasks.²⁵ These contracts are immune from antitrust liability.²⁶ In the context of inmate telephones, courts have “consistently acknowledged” the legality of these exclusive contracts.²⁷ Accordingly, Petitioners’ insistence that exclusive inmate service contracts are anticompetitive²⁸ necessarily fails, providing no valid justification for the Commission to interfere with the rights of state agencies to administer inmate telecommunications systems.

II. THE RECORD OVERWHELMINGLY DEMONSTRATES THAT THE PETITION WOULD EXACERBATE THE SIGNIFICANT SECURITY CONCERNS INHERENT IN INMATE TELECOMMUNICATIONS

The record is replete with explanations as to the unique security needs of inmate telephone systems.²⁹ The system must provide several security features, including call blocking and 3-way call detection, in order to prevent inmates from conducting unlawful or fraudulent activities from within the prison. For, as the New York DOCS relates, phones within prisons may be used for “a number of crimes,” including drug deals, murders, and witness intimidation.³⁰

²⁵ T-NETIX Comments at 18-19 (citing *Otter Tail Power Co. v. United States*, 410 U.S. 366, 370 (1973); *Sea-Land Service, Inc. v. Alaska R.R.*, 659 F.2d 243, 247 (D.C. Cir. 1981)).

²⁶ *Id.* at 18-19, 7 (citing, *inter alia*, *Name.Space, Inc. v. Network Solutions*, 202 F.3d 573, 581-82 (2d Cir. 2000). *See also* *Arsberry v. Illinois*, 244 F.3d 558, 566 (7th Cir. 2001) (“States and other public agencies do not violate the antitrust laws by charging fees or taxes that exploit the monopoly of force that is the definition of government.”).

²⁷ AT&T Comments at 6-7 (citing, *inter alia*, *Washington v. Reno*, 35 F.3d 1093, 1100 (6th Cir. 1994)).

²⁸ Petition at 15. *See also* ACLU Comments at 3 (“Agreements allowing one telecommunications carrier to provide exclusive service ... are responsible for prisoner calling rates that far exceed market rates[.]”).

²⁹ T-NETIX Comments at 3-4, 20-22; Schott Aff. ¶¶ 3-6 (T-NETIX); New Jersey DOCS at 3; Massachusetts DOC; NY DOCS Comments at 4, 14-15; CCA Comments at 9; Evercom Comments at 10; WorldCom Comments at 18-22.

³⁰ New York DOCS Comments at 14.

The majority of commenters agree that the Dawson Affidavit fails properly to acknowledge or accommodate prison security needs.³¹ As CCA aptly states, Dawson’s proposed network architecture “may not even be functional, much less provide the requisite unassailable assurance that correctional facilities can meet their interest in ... preventing criminal and fraudulent activity.”³² Further, as T-NETIX affiant Alan Schott summarized, “Dawson is very cavalier about the real security concerns that remain vital to authorities.”³³ Dawson’s treatment of prison security may be the product of his lack of expertise in this field.³⁴ As the RBOC Payphone Coalition notes, “he is careful to *avoid* claiming that he has any experience or expertise with provision of inmate calling services.”³⁵ Thus, his affidavit “is over-simplified and therefore flawed.”³⁶ Flawed too are the commenters who, based on emotional rhetoric and anecdotal evidence of specific calling rates of some carriers, blindly endorse his proposal without conducting any serious scrutiny of its analysis.³⁷

As is revealed in the comments of ACLU, the Ad Hoc Coalition, and others, the Petition is nothing more than a means of attacking inmate phone rates yet again.³⁸ Regardless of any valid rate complaint these parties may have, this effort is entirely misplaced where it

³¹ New Jersey DOC; Kansas DOC; Massachusetts DOC; AT&T Comments at 8-9; CCA Comments at 29; Evercom Comments at 10; NY DOCS Comments at 4, 7; APTCO Comments at 7, 11; WorldCom Comments at 18-22.

³² CCA Comments at 29.

³³ Dawson Aff. ¶ 28.

³⁴ T-NETIX Comments at 3.

³⁵ RBOC Payphone Coalition Comments at 10 (emphasis in original).

³⁶ APTCO Comments at 12. *See also* Evercom Comments at 10 (Dawson “provides no specific technical explanation of how such interconnections could occur while ensuring security concerns are appropriately addressed.”); WorldCom Comments at 22-23 (“monitoring and investigation of possible criminal activity from within correctional facilities would be even further frustrated”); APTCO Comments at 7 (Dawson “ignores several obvious objections

³⁷ ACLU Comments at 5; CURE Comments at 9; NASUCA Comments at 16.

³⁸ ACLU Comments at 5; Ad Hoc Coalition Comments at 6, 13-14; CURE Comments at 5-7.

attempts to dismantle prison security. Remarkably, these parties have admittedly not even reviewed the substance of the Petition's proposed unbundling/interconnection architecture and have no basis to assess whether it will meet the security needs of facilities.³⁹ Accordingly, their support for the Petition is at best superficial, and fails to establish any valid grounds for the Commission to grant the relief that Ms. Wright requests.

The Commission is already grappling with the rate issues surrounding inmate phones in other proceedings within this docket.⁴⁰ T-NETIX, whose rates are among the lowest in the country, has in fact suggested a means for the Commission to lower the costs of service for inmate service providers, and thus to achieve lower prices. No one has asserted that the Commission is without authority to scrutinize inmate telephone service rates. What is sharply refuted, however, is the assertion of the Petition and its supporters that the inmate telecommunications system should be subjected to a system of forced unbundling and interconnection at cost-based rates, or that the security needs of prisons are a mere "pretext"⁴¹ that require little effort to maintain. Such arguments are not a proper avenue for achieving lower rates.

As four state DOCs and several carriers have noted, the security features of prison phones are now more necessary than ever. In addition to the unlawful activity discussed in the

³⁹ E.g., CURE Comments at 5 (noting that "[t]he affidavit of Douglas Dawson ... details how competitive services can be made available to prisoners and their families").

⁴⁰ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand and Notice of Proposed Rulemaking, CC Docket No. 96-128, FCC 02-39 (Feb. 21, 2002). Comments on the issues raised in this *NPRM*, which include the question of site commissions paid to correctional facilities, were filed May 24 and June 24, 2002.

⁴¹ Dawson asserts that the security justifications for the single-provider system are "factually unsubstantiated and pretextual." Dawson Aff. ¶ 39.

DOC comments,⁴² secure inmate phones have been a vital tool for correctional facilities in detecting terrorist activity. For example, the call monitoring and recording equipment used by MCI in one New York facility was instrumental in linking Elsayid Nosair to the 1993 attack on the World Trade Center.⁴³ Such security features have also been helpful to Federal Drug Enforcement Administration investigations,⁴⁴ and have been expressly recognized by the Department of Justice as a necessary component of law enforcement efforts.⁴⁵ These unique capabilities of inmate phones are neither expendable nor easily replicated, yet the Dawson Affidavit does not address these issues in a serious or thoughtful manner.

III. THE RECORD DEMONSTRATES THAT THE REQUESTED RELIEF IS UNNECESSARY, HYPER-REGULATORY, AND A THREAT TO THIS INDUSTRY

The market for inmate telephone services is, as many commenters and Dr. Jeffrey Eisenach of CapAnalysis agree, robustly competitive.⁴⁶ Through the competitive bidding process, this market requires inmate service providers to offer their highest quality, most reliable service and to minimize costs.⁴⁷ The competitive pressure occurs “up front,” and has “bigger stakes,” which creates lasting benefits for both the correctional facility and the inmate.⁴⁸ Rather, because carriers are required to pass through a substantial portion of their revenues through site commissions, the only way for them to maximize profits is to increase efficiency and lower

⁴² New York DOCS Comments at 14. *See also* New Jersey DOC at 2 (a multi-provider system may enable “an inappropriate call to be made to a victim, witness, or accomplice”); Massachusetts DOC (security features were necessary “to eliminate or reduce the amount of fraud, crime, and threatening phone calls”).

⁴³ New York DOCS Comments at 15.

⁴⁴ *Id.* at 14-15.

⁴⁵ APTCO Comments at 11-12 & n.22 (discussing submissions by Attorney General Janet Reno urging the Commission to craft regulations that will preserve inmate phone security).

⁴⁶ T-NETIX Comments at 16-17; Jeffrey A. Eisenach *et al.*, *Mandatory Unbundling: Bad Policy for Prison Payphones* at 5-6, 8-11 (Mar. 9, 2004) (“CapAnalysis Paper”); Evercom Comments at 4.

⁴⁷ CapAnalysis Paper at 12.

⁴⁸ *Id.* at 9.

costs. Thus, the notion that this market is monopolistic or somehow removed from the competitive marketplace is simply incorrect.⁴⁹

Petitioners nonetheless seek to replace the existing system with one in which an inmate calling platform provider is required to unbundle its ports and interconnect with any requesting IXC.⁵⁰ As T-NETIX and others have explained in great detail, this scheme is technically flawed such that it may not even function;⁵¹ for example, Dawson fails to include facilities to carry local calls.⁵² More immediately apparent are the astronomical costs that Dawson's concept would impose on service providers — costs that he neither recognizes nor includes in his proposed pseudo-access charge of \$ 0.07 per minute.⁵³

The record is clear that the Dawson Affidavit either underestimates or fails to account for the costs incurred in providing an inmate calling platform.⁵⁴ According to WorldCom's figures, the actual costs of providing inmate service are more than four times what Dawson predicts.⁵⁵ The affidavits of Alan Schott and Robert Koberger (NY DOCS) and the declarations submitted by CCA and Evercom analyze Dawson's cost estimates in minute detail. To summarize, they demonstrate the following:

- Dawson grossly underestimates switching costs. Schott Aff. ¶¶ 42, 54; Bohacek/Kickler Decl. ¶¶ 28, 31.

⁴⁹ See Petition at 9 (suggesting that the Commission falsely perceives a “statutory prohibition in inmate services”); ACLU Comments at 3; NASUCA Comments at 15.

⁵⁰ Petition at 18-19; Dawson Aff. ¶¶ 40-43.

⁵¹ T-NETIX Comments at 24-26; CCA Comments at 29; Bohacek/Kickler Decl. (Evercom) ¶ 8; Evercom Comments at 5; Declaration of Robert L. Rae ¶¶ 9-11 (Mar. 10, 2004) (Evercom).

⁵² T-NETIX Comments at 25.

⁵³ Petition at 19.

⁵⁴ T-NETIX Comments at 27-32; CCA Comments at 31; Evercom Comments at 5; New Jersey DOC at 2; APTCO Comments at 16; WorldCom Comments at 26-30.

⁵⁵ WorldCom Comments at 29 (Dawson's estimate is \$92,358.10 versus WorldCom's figure of \$4,255,366.38).

- Dawson’s inmate-to-phone ratio is far lower than many facilities require, thus underestimating the requisite capital investment for inmate phones. Schott Aff. ¶¶ 54-55; Rae Decl. ¶ 10 (Evercom).
- Dawson underestimates the costs of maintaining calling platforms by 100%. Rae Decl. ¶ 36 (Evercom) (Dawson estimates maintenance to be 13.2% of installation costs, while Evercom’s true costs are 25%).
- Dawson’s estimated cost of T-1 trunks is far below actual market rates. Schott Aff. ¶ 56; Koberger Aff. ¶ 34 (New York DOCS); Bohacek/Kickler Decl. ¶ 8 (CCA).
- Dawson underestimates the costs of billing and collection in a multi-provider system. Koberger Aff. ¶ 35 (New York DOCS). *See also* Schott Aff. ¶¶ 16-17 (discussing the complexities of billing in a multi-provider environment).

The inevitable result of Dawson’s flawed cost estimates is the Petition’s failure to grasp the competitive consequences of its proposal. Put simply, a forced unbundling/interconnection regime will drive inmate service providers out of the market.⁵⁶ Providing them with patently below-cost rates, while simultaneously inviting an unlimited number of IXCs to provide long-distance services, will render platform providers unable to do business. As a result, several facilities, especially smaller facilities and those in rural areas, will be left without a calling platform, sending the industry back to the days of live operators.⁵⁷ This system will be more expensive, more restrictive, and less efficient — as well as more vulnerable to unlawful activity.

In addition to this catastrophic impact on correctional institutions, the Petition will require the Commission to adopt a comprehensive set of regulations governing the operations and rates of inmate phones.⁵⁸ These regulations would have to ensure nondiscriminatory access

⁵⁶ T-NETIX Comments at 33-34; Evercom Comments at 6; Rae Decl. ¶ 12 (Evercom); APTCO Comments at 11; New York DOCS Comments at 8; Koberger Aff. ¶ 21 (New York DOCS); New Jersey DOC at 2.

⁵⁷ T-NETIX Comments at 33.

⁵⁸ T-NETIX Comments at 35-37; CCA Comments at 33; Evercom Comments at 7-8 (a Section 271-like “competitive checklist” will be necessary); APTCO Comments at 10, 27.

to the inmate calling platform, as well as carrier interoperability, terms of interconnection, and normalization of the business rules regarding customer billing.⁵⁹ Thus, APTCO's observation that granting the Petition would constitute "regulatory over-reaching" is an apt statement.⁶⁰ It would put the Commission in the position of "micromanaging" this industry,⁶¹ as well as becoming the arbitration board for adjudicating the inevitable disputes between carriers.⁶² If the Commission thought that its struggles with regard to TELRIC pricing and UNE rates were difficult, its challenge in regulating cost-based interconnection rates for all prison phone systems nationwide would be, in comparison, impossible. This result cannot be squared with the Commission's goal of de-regulating telecommunications in favor of market-based solutions.⁶³

The Wright Petition, in short, would needlessly dismantle the inmate telecommunications industry and embroil the Commission in a quasi-Section 251 regulatory morass that Congress never intended to authorize. It proposes a scheme that would fail to meet legitimate and necessary security needs, substitute the judgment of this Commission for expert state and local correctional officials, impose tremendous costs on service providers, and result in the destruction of vigorous, beneficial competition in this market. The Commission should therefore "decline the invitation"⁶⁴ to make the radical changes to the inmate service market proposed by the Petition.

⁵⁹ Schott Aff. ¶ 33a-j; Evercom at 7-8.

⁶⁰ APTCO Comments at 27.

⁶¹ *Id.* at 10.

⁶² Evercom Comments at 7.

⁶³ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Report and Order and Order on Remand, FCC 03-36 ¶¶ 1, 5 (rel. Aug. 21, 2003), *rev'd in part, aff'd in part United States Telecom Ass'n v. FCC*, 2004 WL 374262 (D.C. Cir. 2004).

⁶⁴ New York DOCS Comments at 2.

CONCLUSION

For all these reasons, the Petition should be denied.

Respectfully submitted,

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Dated: April 21, 2004

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