

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

In the Matter of)

Implementation of Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)

CC Docket No. 96-128

REPLY COMMENTS OF EVERCOM SYSTEMS, INC.

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TABLE OF CONTENTS

I.	INTRODUCTION AND BACKGROUND	1
II.	PROPOSERS ASSERTIONS ABOUT INTERSTATE RATES DO NOT SUPPORT THE GRANT OF THE WRIGHT PETITION.....	5
III.	THE ELIMINATION OR RESTRICTION OF COMMISSIONS IS NOT THE PANACEA THAT PROPOSERS PORTRAY	7
IV.	THERE IS NO REALISTIC CORRELATION BETWEEN A GRANT OF THE WRIGHT PETITION AND REHABILITATION, RECIDIVISM, PAROLE AND THE CONSTITUTIONAL RIGHT TO ACCESS TO COUNSEL AND THE COURTS.....	9
V.	CLAIMS OF “POOR SERVICE” DO NOT JUSTIFY THE GRANT OF THE WRIGHT PETITION.....	11
VI.	IN CERTAIN CASES PREPAID CALLING SHOULD BE AN ALTERNATIVE TO COLLECT-ONLY.....	12
VII.	A MULTIPLE CARRIER SYSTEM WOULD ADD MORE COSTS	13
VIII.	UNIVERSAL SERVICE REQUIREMENTS DO NOT MANDATE THE GRANT OF THE WRIGHT PETITION	14
IX.	PROPOSERS HAVE FAILED TO ESTABLISH THAT IMPLEMENTATION OF A MULTIPLE CARRIER SYSTEM WILL NOT UNDERMINE LEGITIMATE SECURITY CONCERNS	15
X.	THE FCC CANNOT DICTATE THE PROCUREMENT POLICIES PROCEDURES OF FACILITY ADMINISTRATORS	15
XI.	APPLICATION OF A MULTIPLE CARRIER SYSTEM TO ALL FACILITIES WOULD BE DETRIMENTAL TO INMATES	17
XII.	CONCLUSION.....	18

SUMMARY

The supporters of the Wright Petition seek to justify the grant thereof with broad, unsupported claims about interstate rates, commissions, poor service and the alleged impact on the rehabilitation, recidivism, parole and access to counsel of inmates. These assertions are based on the assumption that the inmate, and the party that he or she calls, has the right to make or receive that call on exactly the same terms as any other consumer. The Commission, in a series of decisions, stretching back a decade, has rejected that assumption. So have other regulatory bodies and the courts.

Even assuming arguendo that interstate inmate rates had all the deleterious effects that the supporters claim, granting the Wright Petition and scrapping the current single carrier system will only impose greater pressure on rates. A request for the FCC to reinitiate rate regulation of inmate providers is beyond even the scope of the Wright Petition.

Elimination or severe restriction of commission payments will wind up hurting the very consumers the Wright Petition supporters seek to help. Moreover, commission payments are a private contractual issue between the facility administrator and the carrier, not a communications service subject to regulatory control by the FCC.

The supporters complaints about poor service reflect a lack of understanding that inmate providers do not know for months after a call is made whether it has been returned for non-payment. Blocking and prepayment requirements are reasonable mechanisms for inmate providers to take to combat the 15%-25% uncollectible rate due to fraud and non-payment.

Inmate providers complete millions of calls involving millions of minutes each year; inmates are not being deprived of what the Federal Bureau of Prisons itself views as a “supplemental” method of family contact by the existing single-carrier system. Inmate providers cannot be blamed for the failure of inmates to be rehabilitated, recidivism, and the failure to obtain parole.

The Communications Act's universal service requirements have never been applied to inmate calling. There is no basis for doing so in this proceeding as grounds for granting the Wright Petition.

A multiple carrier system would trigger greater costs associated with developing, deploying and maintaining such a billed-party-preference type mechanism. The Commission has previously exhaustively evaluated and rejected such a system. In any case, by the Wright Petition's own admission, applying such a system to all confinement facilities, big and small, public and private, is unrealistic and unwise.

Moreover, those in the know (i.e., confinement facility administrators) say that a multiple carrier system will undermine inveterate security concerns. The Commission should not start now to second guess those experts. And the Commission should not get into the business of dictating how these facility administrators acquire telecom services for the inmates that they oversee.

Prepaid calling is the one aspect of the Wright Petition, and the supporters' arguments, that makes certain sense, as a second option to collect calling. All other aspects of the Wright Petition, and its supporters' arguments, are based on simplistic unsupported assertions that ring hollow in the face of the opposition comments. The Petition should be denied.

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Pursuant to Public Notice DA 03-4027, **Evercom Systems, Inc.** (“Evercom” or “Company”), acting through counsel, hereby submits its Reply Comments in connection with the *Petition For Rulemaking or, in the Alternative, Petition to Address Referral Issues In a Pending Rulemaking* filed by Martha Wright and others (“Wright Petition” or “Petition”).¹

I. INTRODUCTION AND BACKGROUND

The focus of Evercom’s Reply Comments will be the assertions by the following four (4) groups made in support of the Wright Petition: (a) the American Civil Liberties Union and The Washington Lawyers’ Committee for Civil Rights and Urban Affairs (“ACLU”), (b) Citizens United for Rehabilitation of Errants (“CURE”), (c) The National Association of State Utility Consumer Advocates (“NASUCA”) and (d) the Ad Hoc Coalition for the Right to Communicate (“Ad Hoc”), (collectively, “Proponents”).

¹ *Petition For Rulemaking Filed Regarding Issues Related To Inmate Calling Services Pleading Cycle Established, Public Notice*, CC Docket 96-128, DA 03-4027 (rel. Dec. 31, 2003) (“*Public Notice*”), 69 Fed. Reg. 2697 (Jan. 20, 2004). By *Order* released February 3, 2004, the Commission extended the comment deadlines to March 10, 2004 for initial comments and March 31, 2004 for reply comments. By *Order* released March 24, 2004, the Commission further extended the date for reply comments to April 21, 2004. As noted in the *Public Notice*, the Commission is considering the Wright Petition as an *ex parte* presentation in connection with the pending Order on Remand and Notice of Proposed Rulemaking in CC Docket 96-128, 17 FCC Rcd. 3248 (2002) (“*Inmate Payphone Proceeding*”), released in February 2002.

All other major initial comments filed in response to the Wright Petition strongly oppose the proposals therein for many of the same reasons outlined by Evercom.² Evercom generally agrees with those oppositions and the reasoning set forth therein. For all those various well-articulated reasons the Petition should be denied.

The Proponents claims that the Petition should be granted are based on many broad assertions about rights and entitlements of inmates, and the parties that they call, being undermined or violated. Indeed, Evercom and its competitors are blamed for the failure of inmates to be effectively rehabilitated, the fact that some may engage in further criminal activity after being released, that others are not paroled, and that some inmates' attorneys may choose not to pay for their phone calls.

These claims must be viewed in the context in which Evercom and its competitors offer inmate telecommunications services. As Ad Hoc recites, the use of telephones by inmates is considered in most confinement facilities to be “a privilege”³, one that is a “supplemental means of maintaining community and family ties.”⁴

As stated by the Federal Court in *Washington v. Reno*, 35 F.3rd 1093, 1100 (6th Cir. 1994):

“[An] inmate ‘has no right to unlimited telephone use.’ *Benzel v. Grammer*, 869 F.2d 1105, 1108 (8th Cir.), *cert. denied*, 493 U.S. 895, 110 S.Ct. 244, 107 L.Ed.2d 194 (1989), *citing Lopez v. Reyes*, 692 F.2d 15, 17 (5th Cir. 1982). Instead, a prisoner’s right to telephone access is ‘subject to rational limitations in the face of legitimate security interests of the penal institution.’ *Strandberg v. City of Helena*, 791 F.2d 744, 747 (9th Cir. 1986). ‘The exact nature of telephone service to be

² See Initial Comments of T-NETIX, Inc. (“T-NETIX”), Corrections Corporation of America (“CCA”), RBOC Payphone Coalition (“RBOC”), AT&T Corp. (“AT&T”), WorldCom, Inc. (“WorldCom”), Association of Private Correctional and Treatment Organizations (“APCTO”), Ohio Department of Rehabilitation and Corrections (“ODRC”), New York State Department of Correctional Services (“NYDOCS”), Kansas Department of Corrections (“KDOC”), Massachusetts Department of Correction (“MDOC”) and New Jersey Department of Corrections (“NJDOC”).

³ Ad Hoc Comments, at p. 24 (emphasis supplied).

⁴ *Id.* (emphasis supplied)

provided to inmates is generally to be determined by prison administrators, subject to court scrutiny for unreasonable restrictions.’ *Fillmore v. Ordonez*, 829 F.Supp. 1544, 1563-64 (D. Kan. 1993), *aff’d*, 17 F.3d 1436 (10th Cir. 1994), and *citing Feeley v. Sampson*, 570 F.2d 364, 374 (1st Cir. 1978), and *Jeffries v. Reed*, 631 F. Supp. 1212, 1219 (E.D. Wash. 1986).’⁵

Facility administrators, as the FCC has recognized in the past, must balance the potential for abuse in inmate use of telephones with the needs to provide some telephone contact with families and attorneys. But their paramount responsibility is the security and the prevention of the potential abuses.⁶ The plain fact is that making telephone calls from a confinement facility is not equivalent to making telephone calls from outside such a facility. *See Overton v. Bazzyetta*, 123 Sup. Ct. 2162, 2167 (2003).

As a result, courts have refused to interfere or require changes to confinement facility telephone systems that mandate collect calls using one service provider, on a statewide or individual facility basis, to a limited number of people. *See e.g., Arsberry v. State of Illinois*, 244 F.3d 558, 564-565 (7th Cir. 2001); *Arney v. Simmons*, 26 F. Supp. 2d 1288, 1293-1298 (D. Kan. 1998); *Levingston v. Plummer*, 1995 U.S. Dist. LEXIS 696, *3 (N.D. Cal. Jan. 9, 1995); *Allen v. Josephine County*, 1993 U.S. Dist. LEXIS 276, *20 (D. Or. Sept. 26, 1994). And the fact that the rates paid may be higher than those paid by the general public does not raise concerns about constitutional rights. *Carter v. O’Sullivan*, 924 F. Supp. 903, 911-912 (C.D. Ill. 1996), *aff’d*, 1997 U.S. App., Lexis 16386 (7th Cir. 1997); *see Arsberry v. State of Illinois, supra; Schwerdtfeger v. LaMarque*, 2003 WL, 22384765 (N.D. Cal.), *Allen v. Josephine County, supra*.

⁵Indeed, one Federal Court has concluded that convicted felons may have no right to make telephone calls at all. *See Breneman v. Madigan*, 343 F. Supp. 128, 141 (N.D. Cal. 1972); *see* MCI Comments, at p. 10, n.15 (explaining that in State of Texas inmates in state-managed facilities in general do not have phone privileges).

⁶ *See Gilday v. Dubois*, 124 F.3d 277, 280 (1st Cir. 1997) (The dangers of unrestricted telephone access include “acquiring merchandise by fraud, promoting drug violations, soliciting murder, harassing crime victims, witnesses, and public officials, facilitating escape plots, violating court restraining orders, and threatening domestic violence.”).

As one Federal Court noted about judicial intervention into the decision-making process of prison facility administrators:

“Traditionally, federal courts have adopted a broad hands-off attitude towards problems of prison administration. In part this policy is the product of various limitations of the scope of federal review of conditions in state penal institutions. More fundamentally, this attitude springs from complementary perceptions about the nature of the problems and the efficacy of judicial intervention. Prison administrators are responsible for maintaining internal order and discipline, for securing their institutions against unauthorized access or escape, and for rehabilitating, to that human nature and inadequate resources allow, the inmates placed in their custody. The Herculean obstacles to the effective discharge of these duties are too apparent to warrant explanation. Suffice it to say that the problems of prisons in America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. Most require expertise, comprehensive planning, and the commitment of resources, all of which are peculiarly in the province of the legislative and executive branches of government. For all of those reasons, courts are ill equipped to deal with the increasingly urgent problems of prison administration and reform. Judicial recognition of that fact reflects no more than a healthy sense of realism. Moreover, where state penal institutions are involved, federal courts have a further reason for deference to the appropriate prison authorities.”⁷

It is against this backdrop that the Commission has once again been asked to intervene to change the system under which inmates exercise this privilege. This time the Wright Petition and its Proponents ask the Commission to dramatically reshape the entire technological configuration and operation of the inmate calling services at certain facilities, in the face of uniform opposition by those facility administrators participating in this proceeding. For all the reasons outlined by Evercom in its Initial Comments and those that follow, the FCC should not accept the invitation.

⁷ *Procunier v. Martinez*, 416 U.S. 369, 404-405 (1971) (footnotes omitted).

II. PROPONENTS ASSERTIONS ABOUT INTERSTATE RATES DO NOT SUPPORT THE GRANT OF THE RIGHT PETITION

Proponents assert that a grant of the Wright Petition will be a cure for interstate rates that they believe are too high. NASUCA suggests that the FCC go beyond that and actually regulate interstate rates, presumably by either setting rate caps or reimposing tariff requirements.⁸

Proponents' claims that rates are unreasonable or unrelated to the costs of providing the service are not supported by any detailed analysis or study, but only Proponents general exhortations that this is the case. Mr. Dawson's back-of-the-envelope cost analysis is not a basis for concluding that these rates are unjust and unreasonable under Section 201(b) of the Communications Act.⁹ The Commission has heard these bald assertions about interstate rates before and has never made a finding of any violation of Section 201(b). Other than their claims that the rates are "too high" or "exorbitant." Proponents offer nothing else.

In doing so they ignore a fact that the Commission has agreed with in the past – there are extra costs associated with providing telecommunications services in this unique environment.¹⁰ Further, as noted by Evercom in its Initial Comments, the revamped system proposed by the Wright Petition is not a prescription for rate relief. Development, implementation and maintenance of such a system would add millions in additional costs, costs that would largely be the responsibility of Evercom and the facilities that it services. Adding these unquantified costs to the equation would only put upward pressure on rates and potentially inhibit Evercom's ability to provide services.¹¹

⁸ NASUCA Comments, at pp. 2, 9 and 13.

⁹ As noted by several commenters, Mr. Dawson has demonstrated no hands-on experience with the inmate calling industry. *See e.g.*, RBOC Comments, at pp. 10-11.

¹⁰ *Inmate Payphone Proceeding*, at ¶ 72.

¹¹ Evercom Comments, at pp. 4-7; Rae Declaration, at pp. 4-11.

Indeed, the Wright Petition itself does not ask the Commission to regulate interstate inmate rates. The issue of whether the rates that were challenged in the Federal Court action are appropriate was, by agreement of the Petitioners and the Commission, left for another formal complaint proceeding.¹² So the apparent request by NASUCA that the FCC impose rate caps or tariffing requirements goes beyond what even the Wright Petition demands.

Nevertheless, any decision by the FCC that interstate inmate rates should now be regulated could only be based on a finding that the current rates about which the Proponents complain are unjust and unreasonable. To do so the Commission would have to review current, reasonably detailed data submitted by inmate providers about their costs. No such data have been submitted in connection with the Wright Petition.¹³

NASUCA's suggestion that inmate rates are in many states "unregulated" defies reality.¹⁴ In almost every state where Evercom operates its local and intrastate collect rates are subject to rate caps and/or tariffing/price list requirements.¹⁵ On the federal level, rates, in this era of detariffing, are regulated through the formal and informal complaint process.

In addition to rate caps and tariffing, as NASUCA pointed out, a number of states have sought to regulate rates from other perspectives.¹⁶ So it is myopic to assert that inmate rates are unregulated.

¹² Wright Petition, at p. 7, n. 15.

¹³In the *Inmate Payphone Proceeding*, the Commission has sought data on inmate providers' costs of providing local collect calls. *Inmate Payphone Proceeding*, at ¶ 74.

¹⁴ NASUCA Comments, at p. 6.; *see* NYDOCS Comments, at p. 3.

¹⁵ Based on Evercom's operating experience, a significant percentage of inmate calls are intrastate (i.e., local and intrastate toll) calls. *See* NYDOCS Comments, at p. 4 (87% of calls are intrastate). The Commission has recognized the imposition of state-imposed rate caps. *Inmate Payphone Proceeding*, at ¶ 75.

¹⁶ NASUCA Comments, at pp. 9, 13.

The ACLU claims that current interstate rates prevent inmates from associating with their families by telephone.¹⁷ Yet NASUCA itself reports on the millions of calls completed in an 11-month period in New York alone, including some 124 million minutes of talk time.¹⁸ In 2003, Evercom initiated approximately 8 million calls per month from its facilities, involving approximately 80 million minutes of service per month. Moreover, about 12% of the monthly calls that Evercom permits are free (i.e., without charge) calls because of local requirements or other accommodations.

In addition, due to nonpayment somewhere between 15-25% of the value of Evercom's billed calls are in effect provided free to inmates and the parties that they call. So for many calls, inmates and the parties that they called actually paid the maximum minimum rate – “zero.”

NASUCA also suggests that existing rates lead to uncompleted calls because there is a refusal to accept the call due to the rate level.¹⁹ NASUCA fails to consider that some uncompleted calls are not accepted because the called party does not want to speak with the caller.²⁰

The Proponents' attempt to use arguments about interstate inmate rates as a foundation for grant of the Wright Petition fails. The Petition should be denied. Moreover, there are no grounds, based on the general assertions of Proponents, to commence the direct regulation of interstate inmate rates.

III. THE ELIMINATION OR RESTRICTION OF COMMISSIONS IS NOT THE PANACEA THAT PROPONENTS PORTRAY

Proponents uniformly challenge the payment of commissions to facility administrators. NASUCA would ban them altogether or require that these payments be “unbundled” from the

¹⁷ ACLU Comments, at p. 3.

¹⁸ NASUCA Comments, at p. 11.

¹⁹ NASUCA Comments, at p. 11.

²⁰ Evercom often receives requests to prevent the completion of calls on this basis.

underlying telecom services.²¹ CURE would limit them to reimburse the facilities direct costs of providing the inmate telecom services.²²

Evercom addressed the question of the role of commissions at length in its Initial Comments.²³ NASUCA asserts that commissions are a “windfall in revenues” to the facility and that commissions make prisons in some states “profit centers for state treasures.”²⁴ NASUCA offers no specific states where prisons are providing such “profits” to the state, but discounts the benefit to inmates of use of the funds for personnel and maintenance of the prison facilities or other indirect contributions to inmate welfare.

The fact is that in most jurisdictions these funds are used to directly benefit inmates. In Georgia, for example, the Association of County Commissioners of Georgia reports:

“The revenues received from the telephone providers benefit the inmates directly . . . Most sheriffs have used the money to pay for hygiene products for indigent inmates, recreation equipment, reading and other educational material, mattresses and uniforms. Without these revenues many inmates would loose access to these valuable benefits....”²⁵

The use of commission revenue to fund facility operations and pay for personnel is of direct benefit to the inmates since these personnel protect inmates and provide other services that relate to the operation of the facility – which is the inmates’ home for the period of incarceration. These personnel may administer the prepaid telecom program or oversee other aspects of inmate

²¹ NASUCA Comments, at p. 15.

²² CURE Comments, at p. 3.

²³ Evercom Comments, at pp. 8-9; Rae Declaration, at pp. 13-14.

²⁴ NASUCA comments at pp. 6-7. The ODRC characterizes such allegations as “scurrilous.” ODRC Comments, at p. 5.

²⁵ *Letter, dated March 18, 2004, from Jerry R. Griffin, Executive Director, Association of County Commissioners of Georgia, to Reece McAlister, Executive Secretary, Georgia Public Service Commission.* Attached as Exhibit 1. See KDOC Comments, at p.1; ODRC Comments, at p.5; NYDOCS Comments, at pp. 5-6; CCA Comments, at pp. 34-35.

telephone privileges as well. Again, as Evercom explained, the fact is that eliminating or restricting commissions will not inure to the benefit of the inmates.

Nor does restriction of commissions solely to reimbursement of the facilities costs of providing telecommunications services make sense. As observed by the ODRC, imposing such a limitation would

[c]reate a tremendous burden on prison administrators to account for the costs associated with monitoring phone calls, physical plant costs for the placement of the equipment and other security related expenses. The petitions also conveniently ignore that service providers incur significant additional costs in meeting the security requirements imposed by prison administrators.²⁶

Finally, under Section 203 of the Communications Act, the Commission has jurisdiction over the rates charged by regulated carriers. Commissions are part of the contractual relationship between the confinement facility and the carrier. They are no different than the commissions that independent payphone providers contractually agree to pay to location owners for the right to place equipment on their premises and use the space thereon. The FCC has never sought to exercise control or regulation over those payments. There is no basis for it to do so with respect to the same payments in the inmate context.

For these and all the other reasons set forth by Evercom in its Initial Comments, the Proponents' requests that Commissions be banned or severely limited should be denied.

IV. THERE IS NO REALISTIC CORRELATION BETWEEN A GRANT OF THE WRIGHT PETITION AND REHABILITATION, RECIDIVISM, PAROLE AND THE CONSTITUTIONAL RIGHT TO ACCESS TO COUNSEL AND THE COURTS

Proponents assert that a grant of the Wright Petition, because of its supposed impact on interstate inmate rates at privately-administered facilities, will improve the rehabilitative process,

²⁶ See ODRC Comments, at p. 5.

reduce recidivism, ensure parole for more inmates and guarantee the constitutional right to access to counsel and the courts.²⁷

Whatever the impact of the current system, and the associated interstate inmate rates, inmates are making and completing millions of calls involving millions of minutes of conversation.²⁸ As noted above, Evercom and other members of the inmate calling industry in effect subsidize these calls because many are never paid for.

Telephone calling, is, of course, not the only method of maintaining contact with families. Indeed, as the Federal Bureau of Prisons indicates, “telephone privileges . . . are a supplemental means “of maintaining community and family ties.”²⁹ The primary means is “written correspondence.”³⁰

The Proponents cannot justify the wholesale revamping of the inmate telecommunications system based on an unsubstantiated correlation with the success of rehabilitative efforts, levels of recidivism and inmates’ success at gaining parole. To try to make such an equation is grasping at straws. Moreover, if, as Evercom predicts, such a change has, in the long run, the economic and service availability effects outlined by Mr. Rae, the change would actually be counterproductive in this regard. Presumably the Commission would then be hearing that the Wright Petition system is having the same effects.

As for the impact on the constitutional right to access to counsel and the courts, as noted above, the fact that the recipients of collect calls placed by inmates through these systems pay higher

²⁷ See ACLU Comments, at p. 5; CURE Comments at pp. 4, 5, and 7; NASUCA Comments at p. 6; Ad Hoc Comments, at pp. 4,6, 13, 14, 20, 22, 24-28, and 30-34.

²⁸ NASUCA Comments, at p. 11.

²⁹ Ad Hoc Comments, at p. 24 (emphasis supplied).

³⁰ *Id.*

rates because of a single carrier system does not raise constitutional concerns where there are alternative means of communication.

In summary, the Proponents' attempts to lay at the feet of Evercom and its competitors many of the admitted difficulties associated with incarceration, the release therefrom and the failure of certain inmates to avoid a return is ineffectual. It cannot be the basis for a grant of the Wright Petition.

V. **CLAIMS OF "POOR SERVICE" DO NOT JUSTIFY THE GRANT OF THE WRIGHT PETITION**

Ad Hoc argues that "poor service" received by inmates and called parties would be cured by grant of the Wright Petition.³¹ Ad Hoc particularly complains about call blocking techniques and prepayment requirements.³²

Such procedures are necessitated by Evercom's experience with fraud and uncollectibles. As noted in the Company's Initial Comments, the average bad debt in the industry is between 15% and 25% of revenues generated from collect calls.³³ Evercom, like other inmate providers, must take reasonable measures to minimize the risk of non-payment, due to fraud or overextended credit. These mechanisms are included in many of its state tariffs as approved by regulatory agencies. As a practical matter, these mechanisms are similar to high toll alerts to protect against fraud that are available on other tariffed telecommunications services for businesses and residential subscribers.

In addition, the called party's payment to the LEC of a bill including Evercom charges is not immediately visible to Evercom. Under its billing and collection Agreements with LECs like BellSouth Telecommunications, Evercom is not privy to the billing name and address ("BNA")

³¹ Ad Hoc Comments, at p. 9.

³² *Id.*, at pp. 10.

³³ Evercom Comments, at p. 11, n. 12. This amounts to millions of dollars in free calls made by inmates each year.

associated with a particular ANI. So Evercom would not necessarily immediately know from the LEC that a bill had been paid. Indeed, it would be months between the time when a call is made and the date when Evercom actually knows that the call has been paid for or remains unpaid. The blocking and payment verification methods that are described as “poor service” are reasonably necessary protections against fraud and non-payment.

The grant of the Wright Petition would not change these mechanisms that Ad Hoc describes as “poor service.” Evercom would still have to be vigilant to protect against potential fraud, as would the multiple interexchange carriers.³⁴

VI. IN CERTAIN CASES PREPAID CALLING SHOULD BE AN ALTERNATIVE TO COLLECT-ONLY

As Evercom stated previously, Evercom agrees that greater use of prepaid calling systems (i.e., prepaid debit cards, debit accounts) makes sense in certain cases.³⁵ As noted by CURE, however, prepaid services should be “an alternative” to collect calling.³⁶ Moreover, Evercom agrees with NASUCA that prepaid systems must be “consistent with the specific security needs of the institution.”³⁷ As noted in its Initial Comments, there are facility administrators who strongly believe that there is an increased security risk associated with prepaid calling systems, as well as administrative burdens.³⁸

In some facilities, where the inmate stay is relatively short, prepaid calling may be of little advantage because the inmate is there for such a short period that there is no time to establish a

³⁴ See Rae Declaration, at p. 10. Ad Hoc also complains of dropped calls. Evercom maintains a 24/7-customer service office to address such problems.

³⁵ Evercom Comments, at pp. 10-12.

³⁶ CURE Comments, at p. 9; see NASUCA Comments, at p. 7 (prepaid as an “option”).

³⁷ NASUCA Comments, at p. 3.

³⁸ Evercom Comments, at p. 11; see NYDOCS Comments, at pp. 9-10, 12.

prepaid account.³⁹ In such instances, requiring the establishment of a prepaid account could actually mean a smaller number of inmate calls.⁴⁰ This is yet another reason why prepaid calling products and services should be only an “option”, not a replacement for collect-only calling services.

With these caveats and the others reflected in its Initial Comments, Evercom supports the call for increased use of the prepaid option.⁴¹

VII. A MULTIPLE CARRIER SYSTEM WOULD ADD MORE COSTS

NASUCA, ACLU and CURE all argue that allowing multiple carriers as proposed by the Wright Petition would inevitably reduce inmate calling service rates. The ACLU says this would happen “eventually.”⁴² NASUCA recognizes that such competition may not be “feasible” at all locations.⁴³

In this regard, the Proponents are guilty of the same simplistic assumption as Mr. Dawson – that there are little or no costs associated with developing, implementing and maintaining such a system. The Proponents make absolutely no mention of such costs in their comments. Evercom and Mr. Rae laid out in detail the cost implications of such a dramatic change.⁴⁴ The Proponents’ bare assertions that “it will be so” do not counter the empirical and detailed observations of Mr. Rae. The costs of making such a change will impact rates and at some locations the provision of services. For that reason alone, the Commission should reject this “billed party preference” type

³⁹ The average stay of an inmate in the facilities that Evercom serves is three (3) days.

⁴⁰ A lesser number of calls also means a lesser opportunity for law enforcement to learn facts that would assist them in preventing future crimes. In Evercom’s experience, many inmates who eventually serve long term sentences initially start out with short stays in county or local jails.

⁴¹ Ad Hoc complains that collect-only calling also prevents inmates from reaching attorneys who decline or are prohibited from accepting such calls. Evercom cannot require facility administrators to offer the prepaid option. As noted above, collect only calling policies have been upheld in a number of cases.

⁴² ACLU Comments, at p. 5.

⁴³ NASUCA Comments, at p. 3.

⁴⁴ Evercom Comments, at pp. 4-7, Rae Declaration, at pp. 4-11.

system proposed in the Wright Petition.

VIII. UNIVERSAL SERVICE REQUIREMENTS DO NOT MANDATE THE GRANT OF THE WRIGHT PETITION

The ACLU and CURE contend that the current system is contrary to the universal service principles embodied in Section 254 of the Communications Act. Therefore, they argue, the Commission should grant the Wright Petition and fulfill “the right” of those who speak with inmates to “affordable and non-discriminatory telecommunications services.”⁴⁵

As noted previously, the grant of the Wright Petition and the implementation of the system contemplated therein will not provide the rate relief that Proponents expect. It will add more costs to develop, implement and maintain a multiple-carrier system.

Moreover, the fact is, as the Commission has recognized, the inmates using the telephone are in a unique situation and, as a result, to a degree so are those that they talk with.⁴⁶ There are legitimate security concerns. There are additional costs for monitoring, recording and otherwise controlling costs. This is not the run-of-the-mill residential telephone call or telephone service. There is no indication that the Congress or the FCC specifically considered or intended Section 254 to give inmates and the parties they call the right to make/receive those calls at the same rates that any other member of the general public would make or receive them. There is absolutely no basis for the Commission to try to shoe horn them under the “universal service” umbrella at this point.⁴⁷

⁴⁵ See ACLU Comments, at p. 6; CURE, at pp 4, n. 6.

⁴⁶ See *Daleure v. Commonwealth of Kentucky*, 119 F. Supp. 2d 683, 691 (W.D. Ky. 2000), *appeal dismissed*, 269 F.3d 540 (6th Cir. 2001)(“Because inmates initiate the calls, the recipients are constrained by whatever security measures are appropriate to place on the inmates themselves. The connection between the inmates and the recipients of their calls cannot be severed. It is the relationship of the inmates alone that defined the group.”).

⁴⁷ Universal service is directed to subsidizing high cost and rural areas and services to schools and libraries. There is no indication that confinement facilities or those who receive calls from confinement facilities, were to be included.

IX. PROPONENTS HAVE FAILED TO ESTABLISH THAT IMPLEMENTATION OF A MULTIPLE CARRIER SYSTEM WILL NOT UNDERMINE LEGITIMATE SECURITY CONCERNS

CURE claims that, despite not being experts on the technology used in prison systems, a multiple carrier system can be required without compromising necessary penological and security measures.⁴⁸ CURE relies solely on Mr. Dawson’s assertions in this regard, offering no expert testimony of its own.

However, five (5) state correctional systems filed comments in opposition to the Wright Petition.⁴⁹ In addition, certain specific facilities filed similar oppositions. Each and every one of these oppositions raises concerns about the potential impact on security measures.

As the Ohio Department of Rehabilitation and Correction stated:

“In light of the Swain Affidavit, if correctional systems were required by the Commission to accommodate inmates choosing among multiple carriers and choosing between collect calling and debit card options, it would be surrendering its duty to protect and control the inmates in its custody.”⁵⁰

The FCC has traditionally “listened” to the facility administrators who are on the front lines in dealing with these issues.⁵¹ Neither the Wright Petition nor Mr. Dawson or any of their supporters have provided any analysis or demonstration that would permit the Commission to ignore the comments of true experts. For the security related reasons outlined by the facility administrators, the Wright Petition should be denied in its entirety.

X. THE FCC CANNOT DICTATE THE PROCUREMENT POLICIES PROCEDURES OF FACILITY ADMINISTRATORS

NASUCA suggests that the FCC should become involved in writing the RFPs for facility

⁴⁸ CURE Comments, at pp. 3, 8-9.

⁴⁹ Oppositions were filed by such systems from New York, Ohio, Kansas, New Jersey and Massachusetts.

⁵⁰ ODRC Comments, at p. 3.

⁵¹ *Id.*, at p. 6.

administrators. NASUCA asks the FCC to establish competitive bidding guidelines and prioritization of factors in the competitive bidding process.⁵² NASUCA also wants the FCC to set contract requirements between facility administrators and bidders.⁵³ NASUCA would have the FCC require that existing contracts be reformed and rates adjusted within 180 days.⁵⁴ Finally, NASUCA urges that security, commission or other non-telecommunications costs be stated separately on bills.

As Evercom noted in its Initial Comments and the accompanying Rae Declaration, there is healthy competition for facility contracts. Competitive factors involved in those bidding wars already include the quality and reliability of the service provided to the inmates and, increasingly, the ability to control rates offered to the inmates (and/or the called party) for using the service.⁵⁵

The Commission should not insert itself into writing the terms and conditions of RFPs for facility administrators. As noted above it is their role to balance the requirements for security and protection against abuse with the need of the inmates for telephone privileges. The FCC should not be deciding, by dictating competitive bidding guidelines and prioritization of evaluation factors, how to strike that balance. Nor should it be dictating the terms and conditions of the underlying contract between the facility and the inmate service provider, an agreement to which the Commission is neither a party nor a third-party beneficiary. Such a role goes far beyond the scope of its jurisdiction under the Communications Act.⁵⁶

⁵² NASUCA Comments, at p. 7.

⁵³ *Id.*, at p. 15.

⁵⁴ *Id.*, at p. 16.

⁵⁵ Evercom Comments, at p. 4; Rae Declaration, at pp. 3-4. *See* NYDOCS Comments (Affidavit of Robert E. Koberger), at ¶¶ 29-30; *see* MDOC Comments.

⁵⁶ *See* RBOC Comments, at pp. 3-9.

As for billing, Evercom and its billing agents (usually the ILECs) itemize many fees and components of the charges that are billed to its customers. To require the segregation of certain categories of costs on a bill would be unprecedented. The costs to Evercom of revising its billing systems alone would be significant. The result could be further pressure on the rates charged for and availability of the service. The Commission should not use this proceeding to, in effect, amend its truth-in-billing requirements to establish special provisions for inmate calling service providers. The assertions of NASUCA and the record do not support such an action.

XI. APPLICATION OF A MULTIPLE CARRIER SYSTEM TO ALL FACILITIES WOULD BE DETRIMENTAL TO INMATES

The ACLU and CURE advocate that the system proposed by the Wright Petition be applied to all confinement facilities.⁵⁷ This would ultimately be detrimental to the very inmates that the ACLU and CURE sought to help.

The Wright Petition itself is limited to privately-administered facilities. The Petitioners recognize that it would not make sense to attempt to apply it to local and municipally run facilities.⁵⁸ Further, the Wright Petition recognizes that imposition on state systems would in many instances conflict with state statutory or regulatory requirements.⁵⁹ So there is no support in the Petition itself for the expansion that the ACLU and CURE propose.

More importantly, imposition of these requirements, and the associated costs, on smaller facilities could mean a reduction in telecommunications services to inmates at those facilities. In his Declaration Mr. Rae outlined that impact with precision based on his hands-on experience. The

⁵⁷ ACLU Comments, at p. 2, n. 3; CURE Comments, at p. 2, n. 3.

⁵⁸ Petition, at p. 21, n 51.

⁵⁹ *Id.*, at p. 4, n. 4. As the ODRC notes, even privately-administered facilities are often run in accordance with state directives. ODRC Comments, at p. 7.

ACLU and CURE have offered nothing to counter Mr. Rae's expert opinion.

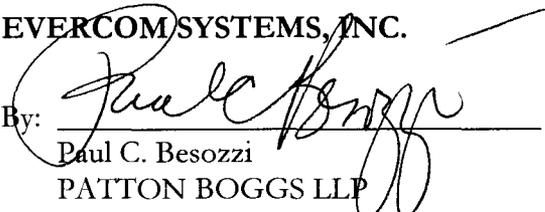
Therefore, even if it made sense to implement some form of the Petitioners' proposal at privately-run facilities, it makes little sense to expand the scope of that application.⁶⁰

XII. CONCLUSION

The Proponents attempts to support the Wright Petition fail on all fronts. They have not offered any concrete reasons that require the Commission to reverse its prior conclusions about a single-carrier system. The continuing soundness of those conclusions is supported and borne out by the body of comments submitted by inmate providers and the facility administrators that they serve. Therefore, except with respect to the potential use of prepaid services as an alternative payment option in the appropriate circumstances, the Commission should deny the Wright Petition in its entirety.

Respectfully submitted;

EVERCOM SYSTEMS, INC.

By: 

Paul C. Besozzi
PATTON BOGGS LLP
2550 M Street, N.W.
Washington, D.C. 20037
202.457.5292

April 21, 2004

⁶⁰ As Evercom previously noted in its comments, the very limited application proposed by Petitioners in and of itself is grounds for rejecting the proposal in its entirety. Evercom Comments, at p 9.

EXHIBIT 1



Association County Commissioners of Georgia
 50 Hurt Plaza, Suite 1000
 Atlanta, Georgia 30303
 (404) 522-5022 FAX (404) 525-2477

March 18, 2004

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 President
 Bartow County

James V. Ham
 1st Vice President
 Monroe County

Rita Rainwater
 2nd Vice President

Billy Croker
 3rd Vice President

Executive Director

Jerry R. Griffin

Board of Managers

Mark Fletcher
 Carroza County

Stephen W. Gooch
 Lumpkin County

Virginia Gray
 Clayton County

Robert Barr
 Carroll County

Walter "Eddie" Elder
 Barrow County

G.B. Moore, III
 Jones County

Jimmy Dixon
 Burke County

Dave S. Willis
 Webster County

Roscoe Brower
 Laurens County

Billy C. Mathis
 Lee County

G.D. Netter
 Ben Hill County

Joe Rivers
 Chatham County

Richard English
 Troup County

Joyce E. Evans
 Lowndes County

Cardee Kilpatrick
 Athens-Clarke County

Tom J. McMichael
 Houston County

Armond Morris
 Irwin County

John Williams
 Wilkinson County

Glenda Battle
 Decatur County

Benjamin Hayward
 Mitchell County

F. Wayne Hill
 Gwinnett County

Jim Parker
 Chattooga County

Mitch Powell
 County Attorney
 Coweta County

Laura Mathis
 County Administrator
 Wilkinson County

Elaine Shiver
 County Clerk
 Tift County

Nancy Jones
 IRMA
 Wayne County

Norman Wheeler
 CSIWCF
 Rockdale County

Mr. Reece McAlister
 Executive Secretary
 Georgia Public Service Commission
 244 Washington Street
 Atlanta, Georgia 30334

Dear Mr. McAlister:

In response to the open comment period for a proposed rule change reflected in docket no. 17990-U, the Association County Commissioners of Georgia asks the Public Service Commission to reject the proposed amendment to 515-12-1-.30(21).

A few years ago, the issue of inmate collect call charges was discussed in the General Assembly. At that time, some phone companies were charging unreasonable fees on collect calls made by inmates to their families. To address this problem the PSC imposed a rule capping the amount that could be charged on collect calls and required all telephone companies contracting with state and local correctional facilities to register with the PSC. These changes addressed the complaints from inmate families and therefore we question why an amendment is now being proposed to eliminate all telephone payments to county jails and other correctional facilities.

The revenues received from the telephone providers benefit the inmates directly and save the taxpayers money. Most sheriffs have used the money to pay for hygiene products for indigent inmates, recreation equipment, reading and other educational material, mattresses and uniforms. Without these revenues many inmates would lose access to these valuable benefits or taxpayers would have to pick up the additional costs. The purchase of recreational and educational material serves to keep the inmates busy and reduces the tension between inmates and jailers. We believe the current fees are reasonable and necessary and encourage you to consider the impact this rule change would have on inmates and taxpayers.

Thank you for the opportunity to voice our concerns with the proposed rule change. If I can provide you with any additional information, please let me know.

Sincerely,

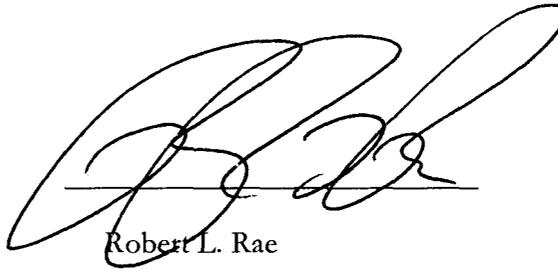
Jerry R. Griffin
 Executive Director



DECLARATION OF ROBERT L. RAE

I, **ROBERT L. RAE**, do hereby declare, under penalty of perjury, the following:

1. I am the Robert L. Rae who previously filed a Declaration as an exhibit to Evercom's Initial Comments in this proceeding.
2. I have reviewed the foregoing "Reply Comments of Evercom Systems, Inc." and the factual statements and representations therein with respect to Evercom and its operations are true and correct to the best of my knowledge and belief.



Robert L. Rae

April 21, 2004

CERTIFICATE OF SERVICE

I, Paul C. Besozzi, hereby certify that on this 21st day of April 2004, I did cause to be served by electronic mail, commercial overnight courier, or by U.S. Postal Service first-class mail, postage prepaid, or sent electronically, a copy of the foregoing “**Reply Comments Of Evercom Systems, Inc.**” on the following individuals.

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