

**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, Earle Peoples)	Docket No. 96-128
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)	

**REPLY COMMENTS OF THE
ASSOCIATION OF PRIVATE CORRECTIONAL
AND TREATMENT ORGANIZATIONS**

Andrew D. Lipman
Kathy L. Cooper
Kathleen G. Ramsey
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Tel.: (202) 945-6922
Fax: (202) 424-7645

Counsel for the Association of Private
Correctional and Treatment Organizations

Dated: April 21, 2004

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	ii
I. THE FCC IS NOT THE PROPER FORUM TO ADDRESS BROAD PRISON REFORM ISSUES.....	2
II. COMMISSIONS ARE PERMISSIBLE CHARGES ASSOCIATED WITH INMATE PAYPHONE SERVICES	4
A. Prisons are Permitted to Generate Revenue Through Commissions to Off-Set Tax Payer Burden	4
B. The Imposition of Fees, Such as Commissions, Are Not Required To Be Directly Related to the Actual Cost of Providing the Service	7
C. Inmate Payphone Service Rates Do Not Violate Section 254	9
D. Unbundled Billing Would Not Meet the Objective Sought.....	11
III. CONCLUSION.....	14

SUMMARY

APCTO urges the FCC to deny the *Wright Petition*. The *Wright Petition* and its proponents rely almost exclusively on the many hardships and ills faced by inmates and their families in order to support their cause for lower inmate payphone rates and competitive alternatives. The hardships of inmates and their families may or may not have merit in a debate over penal administration policies, however, these problems are not proper matters for the FCC's consideration. APCTO urges the FCC to focus only on the issues properly before it (*i.e.*, those relating to the reasonableness of the rates and the feasibility of alternative telephone arrangements) and leave the broader policy concerns to Congress, the state legislatures and the courts.

As demonstrated herein, the incorporation of commissions into the inmate payphone rate does not result in an unjust or unreasonable rate to the end user. To the contrary, these commissions are within the proper jurisdiction of the federal, state or local government, are a permissible cost of doing business, and provide valuable resources, including non-telephone related benefits, to inmates and families. If advocates of eliminating commissions believe the financial gap satisfied by the commissions should be born by the general tax payer base, then the advocates must turn to the federal, state and local governments.

**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, Earle Peoples) Docket No. 96-128
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)

**REPLY COMMENTS OF THE
ASSOCIATION OF PRIVATE CORRECTIONAL
AND TREATMENT ORGANIZATIONS**

The Association of Private Correctional and Treatment Organizations (“APCTO” or “Association”), by its undersigned counsel and pursuant to 47 C.F.R. §§ 1.415, 1.419, respectfully submits these reply comments in opposition to the Petition filed by Martha Wright, *et al.* on November 3, 2003.¹ The overwhelming majority of parties participating in this proceeding, including APCTO, urge the FCC to deny the *Wright Petition*. The few parties that support the *Wright Petition* fail to provide any meaningful evidence that the rates imposed on collect calls originating in prisons are unreasonable in violation of section 201 of the Act and that competition and competitive alternatives are feasible. Instead, the parties supporting the *Wright*

¹ Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues In Pending Rulemaking, Docket 96-128, DA-03-4027A2 (2003) (“*Wright Petition*”). See also, *Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunication Act of 1996*, Order on Remand and Notice of Proposed Rulemaking, 17 FCC Rcd 3248, Docket No. 96-128 (2002) (“*Inmate Payphone Rulemaking*”).

Petition focus on numerous, sundry, and largely unsubstantiated claims relating to criminal justice and penal administration policies – all of which are wholly outside the scope of the Court’s referral to the FCC. APCTO urges the FCC to disregard these parties’ attempts to muddle the issues. Rather, the FCC should leave questions relating to broad criminal justice system policy reforms to the courts, Congress and state legislatures, and should address only the issues referred by the Court – which are the reasonableness of the rates charged for inmate calling services and the feasibility of alternative telephone arrangements in prison facilities.

Several commenters also urge the FCC to restrict the payment of commissions as part of the inmate payphone bidding process. As demonstrated herein, the recovery of the cost of commissions through the inmate payphone rate does not result in an unjust or unreasonable rate to the end user. To the contrary, as explained below, these commissions are within the proper jurisdiction of the federal or state government, are a permissible cost of doing business, and provide valuable resources, including non-telephone related benefits, to the very inmates and families that are also receiving the telephone service from the provider who paid the commissions in the first instance.

I. THE FCC IS NOT THE PROPER FORUM TO ADDRESS BROAD PRISON REFORM ISSUES

The *Wright Petition* and its supporters extensively discuss the problems within the United States prison system,² and the record is replete with the many hardships and ills faced by inmates

² Comments of the National Association of the State Utility Consumer Advocates (“NASUCA Comments”), Comments of the Ad Hoc Coalition for the Right to Communicate (“Ad Hoc Comments”), Comments of Citizens United for Rehabilitation of Errants (“CURE Comments”); Comments of the American Civil Liberties Union and the Washington Lawyers’ Committee for Civil Rights and Urban Affairs (“ACLU/WLC Comments”).

and their families and friends during the time the inmate is incarcerated.³ The hardships these parties raise, which include familial visitation rights and the adequacy of legal counsel, among others, may or may not have merit in a debate over penal administration policies. It is clear, however, that these problems are not proper matters for the FCC's consideration and have no bearing on the issues referred to the FCC by the Court.⁴ Although APCTO is tempted to respond to these broader policy arguments in order to provide a more balanced view for the FCC of the complex issues facing prisons today, such a response is unnecessary because the FCC is not the proper forum in which to address these broad issues of prison reform, nor are such broad policy issues even before the FCC in this proceeding.

The United States District Court for the District of Columbia found that

. . . the FCC is clearly in the best position to resolve the core issues in this case, namely the reasonableness of the rates charged and the feasibility of alternative telephone arrangements in CCA facilities.⁵

Accordingly, APCTO, in its comments filed on March 10, 2004 and in its reply comments filed today, only addresses those issues that are properly before the FCC (*i.e.*, those relating to the reasonableness of the rates and the feasibility of alternative telephone arrangements). APCTO

³ The *Wright Petition* and its supporters appear to move their focus from the criminals – a group for which society has determined punishment is justified and necessary – to the friends and families of these criminals – a group more deserving of compassion. In fact, the friends and families cannot be the only victims considered. Innocent victims of the crimes and burdens on tax payers seem to be forgotten in the midst of the arguments for greater prisoner rights.

⁴ These parties appear to be making the point that the high rates for inmate phone service deprive inmates and their families and friends from valuable, therapeutic communication. Such deprivation, although unfortunate, does not prove that the rates are unreasonable.

⁵ *Martha Wright, et al. Plaintiffs, v. Corrections Corporation of America, et al., Defendants*, Memorandum Opinion, Civil Action No. 00-293 (GK), 10-11 (D.C. 2001).

urges the FCC to focus only on these issue and leave the broader policy concerns to Congress, the state legislatures and the courts.

II. COMMISSIONS ARE PERMISSIBLE CHARGES ASSOCIATED WITH INMATE PAYPHONE SERVICES

As demonstrated by numerous parties in this proceeding and as discussed below, commissions are permissible charges associated with inmate payphone services and do not result in unjust and unreasonable rates for such services. Commissions serve an essential role in financing telephone calling services and inmate programs. Furthermore, commissions are legally directed and overseen by governmental authorities, directly or indirectly. If advocates of eliminating commissions believe the financial gap satisfied by the commissions should be born by the general tax payer base, then the advocates must turn to the appropriate federal, state and local governments.

A. Prisons are Permitted to Generate Revenue Through Commissions to Off-Set Tax Payer Burden

Contrary to the claims of the *Wright Petition* proponents, prisons are authorized to raise revenues and off-set costs through all sorts of measures that do not require that prisoners be treated equitably in relation to non-prisoners.⁶ In fact, prisons may be required, directly or indirectly, expressly or impliedly, by legislators and other governing bodies, to develop revenue-generating opportunities to offset costs to government coffers and ultimately, taxpayers.⁷ For

⁶ *Prison Labor It's More than Breaking Rocks*, Robert D. Atkinson, Policy Report, Progressive Policy Institute (May 2002) www.ppionline.org.

⁷ *Id. See also*, Letter from Roger Werholtz, Secretary of the Kansas Department of Corrections, to Marlene H. Dortch, Secretary of the Federal Communications Commission, CC Docket No. 96-128 (February 4, 2004); *see also*, Comments of New York State Department of Correctional Services in Opposition to Petition for Rulemaking Filed Regarding Issues Related to Inmate Calling Services, CC Docket No. 96-128 (March 9, 2004) (“NY DOCS Comments”).

example, prisons are authorized to pay wages to inmates that are substantially below federal and state minimums, although the prisons then sell the products of the inmate labor at whatever price the market will bear.⁸ Thus, prisons are permitted – and are often required - to engage in revenue generating activities, including the collection of commissions on inmate phone calls. The FCC should avoid dictating – which it has no jurisdiction to do - to the legislatures, other branches of government, or agents of the government responsible for prison administration whether to collect commissions.

According to the proponents of the *Wright Petition*, commissions place a hardship on families and result in a windfall in revenues to prisons.⁹ NASUCA even characterizes prisons as “profit centers.”¹⁰ Such a characterization is absurd and irresponsible. The tax payer, already heavily burdened with paying for police, court costs, defense attorneys, and a slew of social services all caused by the criminal behavior of the inmate, also pays to build and maintain housing, feed, educate and entertain the inmates during their incarceration.

The question is not whether the prison is generating revenue (either through, for example, license plate sales or phone surcharges) but whether the revenues generated are properly accounted for, and are being reinvested in the betterment of the prison.¹¹ As noted by the Kansas Department of Corrections,

⁸ *Felons: The American Worker's Newest Competitor?*, The Ultimate Field Guide to the U.S. Economy, Laura Singleton (11/13/02) <http://www.fguide.org/bulletin/prislabr.htm>.

⁹ NASUCA Comments at 6-7; *see also*, CURE Comments at 3, 9; Ad Hoc Coalition Comments at 13; ACLU/WLC Comments at 3.

¹⁰ *Id.* at 7.

¹¹ NY DOCS Comments at 2; *see also*, Letter from Devon Brown, Commissioner of the Department of Corrections for the State of New Jersey, to Marlene H. Dortch, Secretary to the Federal Communications Commission, CC Docket No. 96-128 (February 6, 2004).

The state does receive a commission from the inmate telephone service, which is deposited in the Inmate Benefit Fund and is used primarily to support programs and services for the inmate population. All of the revenues from the inmate telephone service contract are reported to the Legislature and are subject to the state's appropriation process. There is not a "general slush fund" as asserted in the [*Wright Petition*].¹²

NY DOCS explains that the New York state legislature created a specific fund, which is supported by commission revenues. NY DOCS details how the money – which is subject to state legislature oversight - is used to benefit the inmate population as well as family and friends of the inmates. Indeed, many of the programs supported solely through the commissions are directed at the very activities – family communication and visitation – cited by proponents of the *Wright Petition* as essential to inmate rehabilitation and family reunification.¹³ In New York, the revenue from the commissions is also used for the operation and maintenance of the phone equipment – telephones that enable communication between inmates and their families.¹⁴ NY DOCS highlights the reality that these commissions are authorized by the state legislature (the NY Legislature created the fund) and are used for just purposes – supporting the continued existence of telephones and the provision of inmate and family services.

¹² Letter from Roger Werholtz, Secretary of the Kansas Department of Corrections, to Marlene H. Dortch, Secretary of the Federal Communications Commission, CC Docket No. 96-128 (February 4, 2004).

¹³ The revenue from the commission enables, among other things, "free bus service for visitors from New York City and several upstate cities; expenses associated with DOCS' Family Reunion Program which allows relatives to spend two days with the inmate inside a secure perimeter; nursery and family development programs at two facilities housing female offenders" NY DOCS Comments at 6. Without the commissions such programs would cease to exist as legislators have indicated that they would not support funding these programs with tax dollars. NY DOCS Comments at Exhibit A, citing statement in article "Phone commissions earmarked for inmate, family programs."

¹⁴ *Id.*

B. The Imposition of Fees, Such as Commissions, Are Not Required to Be Directly Related to the Actual Cost of Providing the Service.

Proponents of the *Wright Petition* appear to argue that because the commissions have no direct relationship to the cost of the phone call (which they often do),¹⁵ the commissions should be prohibited. If successful, this argument would result in the prohibition of numerous phone related and unrelated charges that have been authorized by Congress, the FCC, state legislatures and the like. Indeed, even federal and state taxes would be prohibited. As explained below, it is not uncommon for there to be certain charges on a consumer's phone bill that have an indirect relationship – or no relationship at all – to the provision of telephone service.

As the FCC is aware, for decades operator service providers (“OSPs”) have charged consumers a property-imposed fee, also known as a location rent. The location rent represents the fee charged by the owner of the premises on which the pay telephone sits. Location rents often appear on a consumer's phone bill, yet they may have little or no relationship with the cost of completing the operator service call. Indeed, it is a cost of doing business for the OSP, similar to expenditures for marketing, employees, etc. The FCC has not found the imposition of location rents on consumers to be unjust or unreasonable.¹⁶

Similar to telephone services, cable services often result in charges to consumers that are unrelated to the actual provision of cable service. Pursuant to section 622 of the Communications Act, local franchising authorities are permitted to collect a franchise fee from

¹⁵ As explained by Corrections Corporation of America, “the revenues associated with the commission system have made it possible for correctional facilities to provide physical space for inmate calling systems, as well as personnel for oversight, review and tracking of inmate calls and the development of sophisticated, automated secure calling features that serve the needs of the prison and general population.” CCA Comments at 34.

¹⁶ *Billed Party Preference for InterLATA 0+ Calls*, 16 FCC Rcd 22314 (2001).

cable operators, which cannot exceed 5 percent of the cable operator's gross revenues.¹⁷ "A franchise fee is paid by the cable system to the local franchising authority for the right to provide cable service to subscribers in a given community."¹⁸ Federal agencies are prohibited from regulating the use of funds derived from these fees. 47 U.S.C. § 542(i). In many cases, the franchise fees are paid into a city's general fund and are used for general revenue purposes.¹⁹ Thus, the use of these fees is not limited solely to those costs associated with regulating and administering the cable system in the community. Furthermore, cable operators are permitted to pass through to subscribers the franchise fees and, thus, are not limited to billing subscribers only those costs directly related to the actual provision of services.²⁰ Rather, it is recognized that such fees are part of the cost of doing business.

In sum, it is not unusual to have service providers bill subscribers for telephone or cable services that may include charges that have no direct relationship to the actual cost of providing the telephone or cable service. Similarly, the commissions paid to prison systems in exchange for a telephone service provider's right to offer telecommunications services within a prison system, like location rents or franchise fees, are sometimes a necessity of doing business. As

¹⁷ 47 U.S.C. § 542.

¹⁸ United Artists Cable of Baltimore, *Order*, 10 FCC Rcd 7250 (1995) (citing section 622).

¹⁹ In assessing the budgetary impact related to a proposal to approved a renewed cable franchise agreement between the City of Charlottesville, Virginia and Adelpia Cable, the City Council noted that the "cable franchise fee generates approximately \$300,000 annually for the general revenue fund" See City of Charlottesville, Virginia, City Council Agenda, December 1, 2003. <www.charlottesville.org/content/files>. Moreover, as noted in the ordinances of the City of Erie, Pennsylvania that govern the regulation of cable communications systems, "the full franchise fee of five percent (5%) will be paid to the City for general revenue purposes." See Codified Ordinances of the City of Erie, Pennsylvania, Article 343.03(a).

²⁰ 47 U.S.C. § 542(c).

demonstrated herein, these types of charges are permissible and can be passed on to the consumers that are benefiting from the services, either directly or indirectly.

C. Inmate Payphone Service Rates Do Not Violate Section 254

In arguing for a ban on commissions, some parties assert that commissions impede the FCC's goal of ensuring access to affordable telephone service at just and reasonable rates in violation of section 254 of the Act.²¹ Such assertions regarding universal service misconstrue the purpose of section 254. Section 254, which encompasses the goals of universal service, does not require carriers to provide service below cost - at a financial loss to the carrier. To the contrary, universal service requires the subsidization of certain services to ensure affordability and availability to low income consumers. To date, collect toll calls from prisons are not included in the list of services eligible for USF subsidization. Thus, accusations that inmate calling rates, which may be expensive to low income consumers, but are incurred at their direction, impede universal service goals are without merit. As explained below, low income subscribers (1) have access to subsidized basic service if they qualify under the FCC's rules and (2) may budget toll call spending by obtaining the rate of the call in advance of accepting the call. Accordingly, low income consumers are adequately protected with the necessary means to obtain affordable telephone services and to avoid the loss of such service.

On May 8, 1997, the FCC issued an Order to implement the provisions of the Act relating to the preservation and advancement of universal service ("USF Order").²² The USF Order

²¹ NASUCA Comments at 5; CURE Comments at n. 6.

²² *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Erratum, FCC 97-157 (rel. June 4, 1997), *aff'd. in part, rev'd in part, remanded in part sub nom Texas Office of Public Utility Council v. FCC*, 183 F.3d 393 (5th Cir. 1999) ("Texas OPUC"), *cert. denied* 2000 WL 684656 (U.S. Sup. Ct. May 30, 2000) ("*Universal Service Order*"). The FCC subsequently released an

affirmed the policy principles for universal telephone service set forth in the Act, including quality service, affordable rates, access to advanced services, access in rural and high cost areas, equitable and non-discriminatory contributions, specific and predictable support mechanisms, and access to advanced telecommunications services for schools, libraries, and health care providers. In the USF Order, the FCC established the universal service fund to provide four categories of support, including support for (1) telephone companies serving high cost areas; (2) low income consumers; (3) schools and libraries; and (4) rural health care providers. Thus, to the extent any user of inmate phone service is a low income consumer, such consumer may receive the benefits of subsidized basic service from an eligible telecommunications carrier. However, a qualifying low income consumer is not entitled to free or subsidized inmate calling because neither inmate payphone service nor toll service has been identified by the FCC as a supported service under section 254. To the extent any party believes inmate calling or toll service should be subsidized by the USF, such party must be required to petition the FCC in the USF docket. This is not the appropriate proceeding for consideration of this issue.

NASUCA claims that the disconnection of a consumer's phone service due to failure to pay inmate phone charges contravenes the "universal and affordable service principles [] under Section 254(b) of the Act."²³ The high cost of a service may be cost prohibitive for low income consumers, but it does not follow that such service – due to its cost - inhibits the universal service goals of section 254. There is no provision of section 254 nor in the FCC rules that conclude that the high cost of a service alone, if cost prohibitive to some consumers, violates

Order implementing changes to its universal service rules to comply with the decision in Texas OPUC. *Federal-State Joint Board on Universal Service; Access Charge Reform*, FCC 99-290, Sixteenth Order on Reconsideration and Eighth Report and Order, CC Docket No. 96-45; Sixth Report and Order in CC Docket 96-262 (rel. Oct. 8, 1999).

²³ NASUCA Comments at 5.

section 254. Low income consumers have the ability to avoid cost prohibitive services that might result in disconnection due to a failure to pay. First, the consumer can decline to order the service. Second, for inmate calling service in particular, the consumer can manage the charges for such service. At the initiation of each inmate phone call, prior to incurring any charges, the consumer may request, and receive on-demand, all rates associated with the inmate phone call.²⁴ These tools provide the consumer ample opportunity to avoid incurring charges that may ultimately result in disconnection of basic phone service due to the consumer's inability to pay the phone bill.

In sum, the inmate phone rate does not violate universal service goals. Neither inmate payphone service nor toll service are included in the list of services supported by federal universal service. Although the FCC has not required carriers to include collect calls in toll limitation services offered to low income consumers, these consumers are able to limit the amount of charges they incur by requesting and receiving all rates applicable to inmate calls and refusing and/or limiting such calls. Section 254 and the Commission's implementing regulations provide no support for certain parties' arguments that inmate payphone rates are not just and reasonable.

D. Unbundled Billing Would Not Meet the Objective Sought

One party advocates unbundling all charges associated with inmate calling on the end user's telephone bill. Specifically, NASUCA advocates that

. . . any security cost, commission, . . . or other non-telecommunications cost be stated separately on bills and in underlying contracts between carriers and custodial institutions.²⁵

²⁴ *Billed Party Preference for InterLATA 0+ Calls*, Second Report and Order and Order on Reconsideration, CC Dkt. No. 92-77, FCC 98-9, para. 60 (rel. Jan. 29, 1998).

²⁵ NASUCA Comments at 15.

Such an unbundling requirement is not supported by the record in this proceeding nor required by the FCC's current rules.²⁶ The Commission's Truth-in-Billing rules do not require a carrier to identify and separately list on the end user's bill the costs associated with providing the service in question. In fact, in its *Order*, the FCC specifically declined "to require carriers to provide a detailed breakdown of their costs and cost reductions on their customer bills."²⁷ The Commission found that "long explanations of a carrier's cost calculations may add complexity to telephone bills, creating confusion that outweighs the benefits of providing such descriptions."²⁸

While not mandating it, the Commission has permitted carriers to recover certain costs associated with federal regulatory actions through separate line item charges on a customer's bill. Some examples of these charges are the USF fee, access fee, and the local number portability fee. Significantly, carriers are *not required* to list these fees as separate line items on their bills, and have the flexibility to recover the costs through their rates.²⁹

²⁶ Moreover, typical of every suggestion by the proponents of the *Wright Petition*, NASUCA fails to explain who is going to pay for the more onerous billing requirement. Martha Wright *et al.* and its supporters consistently advocate for more cheaper rates, yet demand changes that will result in greater costs to the prisons and the carriers.

²⁷ *Truth-In-Billing and Bill Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd. 7942, para. 58 (1999).

²⁸ *Id.* The Truth-In-Billing rules do require charges to be separated by service provider if there is more than one for a customer bill. In addition, billed charges must be brief, clear and non-misleading. 47 C.F.R. § 64.2401.

²⁹ *Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, para. 53 (2002); *Telephone Number Portability*, Report and Order, 13 FCC Rcd 11701, para. 136 (1998). This flexibility is limited in certain cases to the competitive carriers who are not rate regulated. For example, the rate-regulated incumbent local exchange carriers are required to establish separate charges for certain fees such as the subscriber line charge ("SLC") and the local number portability fee, if they want to pass the cost on to end users.

Indeed, unbundling the cost of inmate services on end user bills would not meet the objective sought by the *Wright Petition* of lowering inmate calling rates. NASUCA even admits that unbundled billing is an “intermediate measure” intended to provide more transparency.³⁰ As explained below, there is ample transparency in the rates charged by inmate payphone providers. NASUCA ultimately retracts its unbundling recommendation by concluding that only a ban on commissions will reduce rates.³¹

NASUCA paints a picture of end users ignorant of the rates imposed for calls originating from prisons and a Commission unwilling to supervise such rates.³² This is incorrect. The Commission rules require the disclosure of rates to end users for collect phone calls from prisons.³³ Thus, any friend or family member receiving a call from a prison is provided with the necessary tools to determine whether the friend or family member can afford the phone call.³⁴

NASUCA also appears to be under a misconception that all costs associated with a rate for phone service are directly related to the cost of completing a call. This is incorrect. The cost of providing telecommunications services includes expenses associated with employees, marketing, etc. As discussed herein, non-regulated, non-telecommunications charges are often included in a carrier’s rates and often appear on an end user’s bill often bundled into the rate.

³⁰ NASURA Comments at 15.

³¹ NASURA Comments at 16.

³² NASURA Comments at 15.

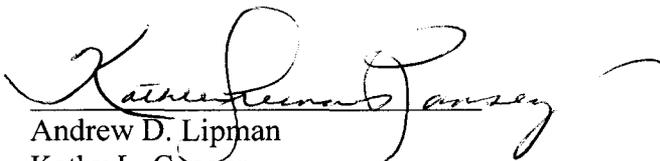
³³ 47 C.F.R. § 67.710. At the initiation of each inmate phone call, prior to incurring any charges, the consumer may request, and receive on-demand, all rates associated with the inmate phone call.

³⁴ *Id.*

III. CONCLUSION

For the reasons discussed herein, the Commission should deny the Petition of Martha Wright *et al.*

Respectfully submitted,



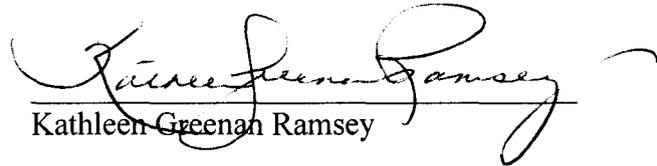
Andrew D. Lipman
Kathy L. Cooper
Kathleen Greenan Ramsey
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Tel.: (202) 945-6922
Fax: (202) 424-7645

Counsel for the Association of Private
Correctional and Treatment Organizations

Dated: April 21, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of April, 2004, except as otherwise noted on the attached service list, I caused true and correct copies of the forgoing Reply Comments of the Association of Private Correctional and Treatment Organizations to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.


Kathleen Greenan Ramsey

SERVICE LIST

Marlene H. Dortch*
Secretary
Federal Communications Commission
445 12th Street, SW
Room CY-B402
Washington, DC 20554

Joi Nolen*
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Qualex International*
Portals II
445 12th Street, SW
Room CY-B402
Washington, DC 20554

Deena Shetler (2 copies)
Deputy Division Chief
Pricing Policy Division
Wireline Competition Bureau
Federal Communication Commission
445 12th Street, S.W., Rm. 5-A221
Washington, D.C. 20554

Deborah M. Golden
D.C. Prisoners' Legal Services Project, Inc.
2639 Connecticut Avenue, N.W.
Suite 225
Washington, D.C. 20008

Stephen G. Seliger
Laurie S. Elkin
Seliger & Elkin, Ltd. #500
155 North Michigan Avenue
Chicago, IL 60601

Barbara J. Olshansky
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012

Cheryl A. Tritt
Frank W. Krogh
Jennifer L. Kostyu
Morrison & Foerster, LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006

*Via electronic filing or delivery.