Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Pay Telephone	)	
Reclassification and Compensation	)	
Provisions of the Telecommunications Act of 1996	)	CC Docket No. **96-128**
	)	
Petition for Rulemaking or, in the Alternative,	)	
Petition to Address Referral Issues in Pending	)	
Rulemaking	)	
	)	

COMMENTS OF THE ASSOCIATION OF PRJYATE
CORRECTIONAL AND TREATMENT ORGANIZATIONS

The Association of Private Correctional and Treatment Organizations (APCTO) hereby submits its comments in response to the Alternative Rulemaking Proposal filed in this matter on March 1, 2007 by Martha Wright, *et al* ("Wright Petition"). APCTO is a non-profit association which represents a broad array of providers of correctional and treatment services throughout the United States and worldwide. APCTO members include academics, non-profit as well as for-profit corporations, service providers, government officials, students and others who are interested in innovative, cost effective public-private partnerships that benefit more than 150,000 juveniles and adults under the supervision of correctional systems in the United States. Since its establishment in 2001, APCTO has endeavored to assure that correctional services provided by the private sector meet or exceed professional standards and facilitate the development of cooperation between government departments and the private sector to provide the best possible operation and management of correctional and other treatment facilities and to do so in an efficient manner.

APCTO's private members operate and manage many different types of correctional facilities and do so pursuant to contracts with federal, state and local governmental departments and agencies. Whether a correctional facility is operated by a governmental department or by a private corporation pursuant to a contract, the responsibilities are the same -- to operate the correctional facility in conformance with applicable laws and policies, to ensure the safety and security of the inmate population, employees and the general public, and to do so in a manner which precludes inefficient use of the public's resources.

The March 1, 2007 Wright Petition asks that the Federal Communications Commission (((Commission")mandate rate caps (which Petitioners call "benchmark rates") to be applicable to interstate long distance calls from correctional facilities. Specifically, Petitioners propose that per minute rates for debit card calls be capped at $0.20 per minute, and that per minute rates for collect calls not exceed $0.25 per minute. In addition, under the Wright Proposal, per call surcharges and call set-up charges would be prohibited. The Petitioners also ask the Commission to require that all prison inmates be allowed to use prepaid calling cards or debit cards rather than collect calling services. Finally, the Wright Proposal would prohibit commission payments or other compensation by providers of inmate telephone services to the operators of the correctional facilities.

The Wright Petition's March 1, 2007 proposal is an alternative to an earlier inmate calling proposal which the same petitioners presented to the Commission in this docket in 2003.[1] Petitioners' 2003 proposal differed from that put forth in the current Wright Petition in several important respects. First, the 2003 proposal sought the implementation of a costly and unworkable system of equal access-type routing of inmate calls to providers selected by inmates,

[1] Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking, filed November 3,2003 ("Initial Petition").

rather than by the entities responsible for management of the institutions. Second, the 2003 proposal was limited to inmate calling services at ***privately*** operated correctional facilities.

APCTO submitted comments in response to the 2003 proposal wherein it opposed the requests contained in that proposal on legal, public policy, jurisdictional and public safety grounds[2]. Underlying APCTO's objections to the 2003 proposal was a very fundamental premise -- that the relief requested by Petitioners would result in the Commission inserting itself into the management and operation of federal, state, and local correctional facilities -- a wholly inappropriate role for the Commission. As APCTO explained in its comments in response to the 2003 proposal, the Commission has correctly recognized in the past the unique circumstances, particularly relating to security concerns, surrounding the provision of inmate telephone service at correctional facilities. More specifically, the Commission has historically given great deference to corrections officials regarding the operation and management of correctional facilities and exempted inmate telephone service from certain requirements typically applied to other providers of telecommunication services. APCTO submits that the underlying reasons for this past reverence and treatment of inmate telephone services still exist today. APCTO notes that the alternative relief now requested in the Wright Petition would result in the improper supervision by the Commission of an important aspect of federal, state and local correctional facilities operation and management just as would have been the case had the 2003 proposal been mandated by the Commission.

As APCTO and other commenters explained in 2004 comments on the first Wright proposal, provision of inmate telephone service is a costly undertaking. For example, there are costs associated with monitoring and recording inmate telephone calls, where permitted by law

[2] Comments of the Association of Private Correctional and Treatment Organizations, filed in CC Docket No. 96-128, March 10,2004.

and authorized by the applicable federal, state, or local correctional agency. There are also unique costs associated with the staffing necessary to manage inmate telephone services. For example, correctional officers are often needed to monitor the telephone area and coordinate the inmates use of the telephones, including the administering of inmate changes to the inmate's list of permitted callers. Additional staff are also needed to monitor calls, investigate calling patterns, decipher coded conversations in inmate telephone calls, and gather intelligence from inmate telephone calls.

Correctional facilities are also responsible for the safety and security of their inmate populations, of employees, of visitors to the facilities, and to the general public. As part of that responsibility, correctional facilities and those who manage the facilities must take all steps necessary to ensure that the inmate telephone system is not used for unlawful or improper purposes, *i.e.*, that it not be used to contact judges, law enforcement officials or potential witnesses, to plan other criminal activities, to contact persons who do not wish to be called by inmates, or to commit fraud. Prevention of such conduct requires the acquisition and use of sophisticated telecommunications facilities, including hardware and software.

The alternative relief now requested in the Wright Petition would severally impact the need for correctional agencies, and those who manage or operate correctional facilities, to make the necessary capital investment and available resources associated with the operation and management of an inmate telephone service.

Further, how to obtain inmate telephone service resources and how to utilize them efficiently are institutional management decisions. Such decisions are to be made by correctional professionals, not by federal regulators whose regulatory jurisdiction does not include correctional management experience. The alternative relief now requested in the March

1, 2007 Wright Petition would have the improper effect of allowing the Commission to micromanage the inmate telephone system in facilities across the nation, and result in the Commission usurping the correctional policy decisions of federal, state or local correctional officials or by private correctional companies (such as those APCTO members) hired by these officials because of their expertise in correctional management and operations. However well-intended efforts to limit calling prices may be, such rate regulation of inmate telephone service would be a wholly-unwarranted interference with the operation and management of correctional facilities and the provision of services at these facilities.

Moreover, the Petitioners' March 1, 2007 proposal suggests that inmate long distance telephone service rates can be provided on a "one-size-fits-all" basis. However, the Petitioners fail to explain that there are profound differences between the assorted correctional facilities spread across the United States. For example, there are varying sizes of correctional facilities with some housing as low as 250 inmates (or less) and others housing as many as 2,500 inmates. There are various inmate populations housed in these different correctional facilities, including male adults, female adults, male juveniles, female juveniles, undocumented male aliens, undocumented female aliens adults, as well as families. There are various security levels at these facilities including maximum, medium, minimum and low which affect the costs of providing inmate long distance telephone service from those facilities. There are differences in the age of the facilities and the distance between the facilities and the nearest population center. There are varying level of staff available to assist in the operation and maintenance at these different facilities. All of these factors impact the costs of providing inmates' long distance telephone service at each of these facilities. With such enormous differences, it would be inappropriate for

the Commission to prescribe a "one-size-fits-all" rate cap or benchmark rate for interstate calls from all these different type of correctional facilities.

Neither should the Commission interfere with the carrier selection process at correctional facilities or with the compensation arrangements between telephone service providers and the operators or managers of correctional facilities. Whether the facilities operator is a governmental entity or a private corporation, it is imperative that the operator retain the ability to select the service provider which best meets the needs of the institution in the judgment of the entities responsible for operation and management of the facility. Moreover, as noted above, compensation in the form of commission payments is an important source of the funding needed to provide the resources, including human resources, needed by the managers and operators of correctional facilities to ensure that telephone service is provided safely and securely and is not used for improper purposes.

Inmate telephone service is different from telephone service made available to the public. At correctional facilities, access to telephone service is not a right -- it is a privilege whose availability is governed by the administrations which operate the facilities, subject to their overriding safety and security responsibilities. As noted above, the costs of providing inmate calling service are far different from the costs of providing telephone service at telephone "aggregator" or other public locations. It is for these reasons that the Telephone Operator Consumer Services Improvement Act is not applicable to inmate calling service, and why the Commission consistently and unwaveringly has refused to impose any such competitive access or rate limitations on inmate telephone services, and why it should not do so now.

Respectfully submitted,

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