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

In the Matter of	)	
	)	
Implementation of the 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	)	DA 03-4027

COMMENTS OF GLOBAL TEL*LINK

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Global Tel*Link Corporation ("Global Tel*Link"), by its undersigned counsel, hereby submits these comments in opposition to the Petitioners' Alternative Rulemaking Proposal filed by Martha Wright, *et. al*. on February 28, 2007.[1]

INTRODUCTION AND SUMMARY

The Alternative Proposal would establish artificial rate caps for inmate calling services on a nationwide basis, despite the significant variation in prisons' security needs and desired service levels and resultant cost differentials. This proposal, while well-intentioned, would trample on critical state and local prerogatives and lead to unintended consequences that would harm the public interest. Indeed, even more than the structural remedies proposed in the Wright Petition,[2] the proposed national rate caps would undercut vital security and penological needs and could lead to the withdrawal of inmate calling services altogether.

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[1] *Martha Wright, et. al.*, Petitioners' Alternative Rulemaking Proposal, CC Docket No. 96-128, DA-03-4027 (filed February 28, 2007) (the "Alternative Proposal").

[2] *Martha Wright, et. al.*, Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking, Docket 96-128, DA-03-4027 (rel. Dec. 31, 2003) ("Wright Petition").

Inmate calling rates cannot be examined in isolation, since inmate services are inextricably bound up with pivotal aspects of prison administration, the security of inmates and the public at large, complex budgetary issues, and other inherently local concerns. The Commission has appropriately avoided one-size-fits-all federal mandates in past orders, and instead deferred to state and local officials to strike the right balance between institutional needs and calling rates.[3] The Commission should continue its posture of restraint, because federal regulation is unnecessary in general, and the Alternative Proposal is unlawful and unwise in particular.

BACKGROUND

Global Tel*Link is a leading provider of inmate telecommunications services and equipment for correctional facilities throughout the United States and has served this market since 1989. The company serves all types of correctional facilities, ranging from municipal and county jails that house fewer than ten inmates to state correctional systems that house tens of thousands of inmates. These facilities include state-run and privately managed institutions, and range from minimum-security to maximum-security facilities.

Global Tel*Link has developed patented products and services that have significantly increased security and reliability for prison administrators and correctional officers while enhancing inmate access to telephones. The company offers a wide variety of products, support and maintenance services, calling options, and billing and payment platforms to meet the varied

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[3] *See 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, 17 FCC Rcd 3248 (2002) ("*Inmate Payphone Order on Remand*"); *Billed Party Preference For Interlata 0+ Calls, Second Report and Order and Order on Reconsideration*, CC Docket No. 92-77, 13 FCC Rcd 6122 (1998) ("*0+ Second Report*"); *Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, Report and Order, CC Docket No. 94-158, 11 FCC Rcd 4532 (1996).

needs of its diverse customer base. Global Tel*Link's distinctive products include LazerPhone™ and LazerVoice®, which offer correctional facilities a host of features to maximize their control over the inmate calling environment.

Inmate telecommunications systems have a unique architecture that has been designed to reflect the specialized security needs of correctional settings. Global Tel*Link installs and manages sophisticated data and voice transmission networks and its proprietary software platform to provide the security features required by prisons. For example, this platform prevents inmates from engaging in three-way calling or repetitive dialing of a blocked or unaccepted phone number ("chain calling"), and it blocks inmate call attempts to judges, prosecutors, jurors, and witnesses involved in legal proceedings, among others. This software platform also includes call monitoring and recording features, and it can provide sophisticated tracking which enables law enforcement authorities to assemble data on criminal gang structures based on calling patterns. Global Tel*Link provides durable telephone receivers to minimize maintenance costs for prisons, and it employs a web portal to enable remote access to security-related information. The company also works closely with prisons to install these software and equipment solutions in a way that minimizes the costs and security risks associated with providing telephone services to inmates. Finally, the company develops and administers payment and billing systems, which increasingly include debit payment systems.

DISCUSSION

I. FEDERAL REGULATION OF INMATE CALLING SERVICES IS UNNECESSARY AND UNWORKABLE.

The Petitioners seek to foist a rigid federal mandate on a complex system of local and state prison facilities that should continue to be governed by local and state authorities. The Alternative Proposal betrays a fundamental misunderstanding of the diverse correctional systems

around the country, with their widely divergent security needs, service levels, budgetary practices, and calling rates. The Commission has consistently and appropriately recognized that inmate calling services present unique issues that are best addressed by state and local governments and prison administrators. The Commission should continue to defer to such authorities, secure with the knowledge that competitive bidding and technological innovation, together with pressure from state and local governments, will adequately discipline inmate calling rates.

A. Inmate Calling Services Present Unique Issues That Are Best Administered by State and Local Governments and Prison Administrators, as the Commission Has Long Recognized.

The Petitioners' desire to impose a one-size-fits-all approach in the form of national rate caps cannot be squared with the enormous variability among correctional institutions throughout the United States. The Alternative Proposal seeks a uniform national rate structure for municipal jails and Supermax prisons alike, irrespective of geographic location, security requirements, the desired level of service, or state and local budgetary decisions. In so doing, the Petitioners dramatically oversimplify the security and budgetary challenges confronting prison administrators. Their new proposal would encroach on quintessential state police powers and prerogatives every bit as much as their initial flawed petition. To the extent that regulation of inmate calling services is required, the Commission has recognized that any reforms "must embrace the states."[4] State and local officials have a more complete understanding of, and can more comprehensively address, the full range of relevant considerations. In contrast, the Petitioners urge the Commission to regulate telephone rates in a vacuum.

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[4] *Inmate Payphone Order on Remand* at ¶ 29.

The Commission has made clear that "inmate calling services, largely for security reasons, are quite different from the public payphone services that non-incarcerated individuals use."[5] Indeed, the Commission has stated that, "while one function of the service is to provide communications service to the inmate population, the concerns and requirements of corrections authorities are different and often in conflict with those associated with the provision of basic public payphone service."[6] Correctional facilities require complex and costly technological features for their inmate calling environments, including, among other things, special automated voice-processing systems for call screening, sophisticated blocking mechanisms, recording systems, monitoring to evade restrictions on call-forwarding or three-way calling, voice overlays identifying calls and disclosing recording, and detailed reporting.[7]

Moreover, the substantial costs associated with such security requirements cannot be boiled down into a simple national rate formula, as Petitioners appear to believe. Correctional facilities of different types and sizes vary widely in their security requirements, and individual prison administrators may require customized features. Such variations necessarily affect the system design and implementation costs borne by service providers. Providing inmate calling services to a correctional facility with thousands of inmates, for example, is far different from serving a small municipal or county jail. Larger facilities demand more complex systems to contend with an inmate population with varying prison terms and diverse criminal backgrounds, including organized crime and gang activity, which can be orchestrated through inmate phone conversations. Global Tel*Link typically places more telephones in high-security inmate cell

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[5] *Id.* at ¶ 9; *see also 0+ Second Report* at ¶¶ 57-61 (declining to impose billed party preference requirements on outgoing calls by prison inmates).

[6] *See Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force*, Declaratory Ruling, 11 FCC Rcd 7362, 7373 (1996).

blocks to minimize the security risks associated with transporting prisoners to other locations in the facility to place a call. Moreover, more complex systems require Global Tel*Link to provide on-site technical support, because equipment and software problems not only can compromise the institution's ability to monitor and block calls but could even cause riots if telephones remain out of service for extended periods.

The level of service desired by a correctional institution likewise varies widely and precludes any effort to nationalize rate structures. Correctional facilities take vastly different approaches to inmate access to telephone services. Some institutions provide liberal access to telephones in the interest of facilitating reentry into society or as a means of rewarding good behavior; conversely, withholding telephone privileges can be an important deterrent or punishment. Other institutions might restrict access more broadly to minimize occasions when inmates are allowed out of their cells. Such choices — which plainly are important penological decisions that should remain committed to the discretion of prison administrators — have a direct impact on the number and placement of telephones, the level of on-site personnel, and the maintenance required; in turn, these variations in policy result in significant cost differentials.

Moreover, the Alternative Proposal overlooks important differences in state and local budgetary policies that directly affect inmate service costs and rates. Most significant are the wide variations in site commissions. Even apart from the fact that the Petitioners ignore recent reductions in many prisons' required commission payments (as discussed below), they fail to respect the legitimate budgetary prerogatives at issue. Some state and local governments require significant commissions in order to fund programs that directly benefit inmates, such as educational and vocational programs, recreation supplies, and services that benefit inmates as

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[7] *See Inmate Payphone Order on Remand* at ¶ 9.

they reenter society, including counseling and transportation vouchers. These authorities have determined that the funding should come from levies on discretionary services purchased by the beneficiaries of such programs — just as federal universal service fees are imposed on consumers of telecommunications services rather than through more broad-based taxes. Other state and local governments might reduce or abandon commission payments in an effort to lower calling rates and attempt to make up budgetary shortfalls through increased taxes. Or they may choose to forego such inmate programs altogether. Such choices implicate vital and complex questions of local concern, and accordingly should be made by officials who are accountable to the affected communities.[8]

The Alternative Proposal would short-circuit such political decisionmaking by imposing a rigid system of national rate caps. Indeed, the Petitioners make no effort to conceal their intention to use FCC regulation to drive down or eliminate site commissions.[9] While there may be some merit to lower commission structures, there are trade-offs as well. This complex issue is simply not amenable to a uniform national solution.

Variations in prison budgets undercut the rate-cap proposal in other ways, as well. For example, different staffing levels and technical expertise will determine the level of resources and on-site personnel that an inmate service provider must devote to a correctional facility. The Petitioners' oversimplified approach again fails to account for such matters.

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[8] *See, e.g.*, *United States v. Michigan*, 940 F.2d 143, 155 (6th Cir. 1990) ("The unabridged teachings of the [Supreme] Court convey the Court's own unequivocal commitment to and its adamant recognition of the state's sovereign authority to operate its penal institutions. Anchored in the sensitive principles of federalism, this sovereign authority is a prerogative of the state . . . .").

[9] *See, e.g.*, *Alternative Proposal* at 7.

The Commission has long respected the "exceptional circumstances" that characterize the inmate calling services environment,[10] appropriately rejecting prior calls for federal regulation. The Supreme Court likewise has recognized that "running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources" and has counseled restraint and deference on matters related to correctional facilities.[11] The Commission should continue to heed that sound principle by rejecting the Alternative Proposal.

B. Competitive Bidding and Technological Advances Will Discipline Inmate Calling Rates.

The Petitioners argue that the Commission should abandon its restrained posture in favor of imposing strict rate caps because inmate calling services rates cannot be disciplined by competition in the marketplace.[12] Global Tel*Link's experience indicates that competition for inmate service contracts is robust, and service providers absolutely must compete with respect to rates. Contracts for the provision of inmate calling services are generally awarded by a public bidding process that commences with the publication of a request for proposal by the correctional facility, setting forth the relevant requirements. For larger contracts, it is typical for more than five service providers to submit bids. As part of the bidding process, correctional facilities often demand the submission of itemized rate-structure proposals from bidders so they meet their revenue requirements while minimizing the rates imposed on end users.

Petitioners wrongfully assert that the competitive bidding processes accompanied by commission payments "driv[e] up costs and thus inmate service rates."[13] In fact, service

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[10] *Policies and Rules Concerning Operator Service Providers*, Report and Order, 6 FCC Rcd 2744, 2752 (1991).

[11] *Turner v. Safely*, 482 U.S. 78, 84-85 (1987).

[12] *See Alternative Proposal* at 13-15.

[13] *Id.* at 14.

providers compete vigorously with respect to rates, and winning bids often include the lowest overall rate structure, inclusive of the commission. Moreover, whether as a result of state legislation or simply at the prison administrator's insistence, rates are often capped at levels far below the $0.89 per minute (with a per-call charge of $3.95) that the Petitioners characterize as "typical."[14] In fact, the Petitioners readily concede that interstate inmate calls are priced far lower in a growing number of states; for example, interstate calls can be placed in Missouri at a per-minute rate of $0.10 (with a service charge of $1.00), and in New Hampshire at a per-minute rate of $0.20 (with a service charge of $1.45).[15] Global Tel*Link also has found that fewer correctional facilities are considering requiring a minimum annual guarantee, as a result of local political pressures for reform. Such requirements tended to produce higher rates because service providers had to impose charges sufficient to compensate the prison without a reliable basis for anticipating call volumes.

Technological innovation also lowers service providers' costs and, in turn, exerts downward pressure on rates through competitive bidding. For example, Global Tel*Link continually monitors developments and implements new technologies in an effort to achieve the lowest cost structure for transmission and switching of communications, which in turn enables it to submit lower bids. Moreover, an increasing number of correctional facilities have begun authorizing debit calling services as an alternative to collect calling. Far from resisting such changes, as the Petitioners appear to suggest, the inmate services industry has enthusiastically embraced debit calling, because it produces efficiencies in the billing and collection process.[16]

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[14] *Id.* at 2.

[15] Declaration of Douglas A. Dawson in Support of Petitioners' Alternative Proposal ¶ 42 (Feb. 16, 2007) ("*Alternative Dawson Declaration*").

[16] *See, e.g.*, Comments of Evercom Systems, Inc., CC Docket No. 96-128, March 10, 2004.

Global Tel*Link continues to explore ways to reduce costs by increasing automation, thus limiting the need for on-site personnel, which will further reduce costs and create savings for customers. In sum, the Petitioners' suggestion that the robust competition for inmate service contracts will have no impact on rates is demonstrably false.

C. State and Local Political Processes Provide Adequate Alternative Forums That Are Producing Significant Reforms.

To the extent that Petitioners fault the pace and scope of ongoing reforms and rate reductions, they have adequate forums available in state and local government bodies. In fact, as noted above, proceedings before state legislatures and local governments are far superior to a Commission rulemaking, because of state and local officials' accountability to the affected communities. Only those entities can comprehensively consider, and are fully empowered to address, the full range of interrelated issues. These issues include not only inmate calling rates but also security requirements, appropriate service levels, and budgetary prerogatives, among other considerations. Moreover, in contrast to this notice-and-comment rulemaking process, state and local bodies employ more robust procedures that include hearings with live witness testimony and other fact-finding initiatives.

Ultimately, there is no need for a theoretical debate about the superior accountability and responsiveness of state and local governments with respect to prison reform issues; those processes are actually working, as the Petitioners are forced to concede. As the Petitioners point out, Governor Eliot Spitzer recently issued an order proclaiming that the state of New York would no longer collect commissions after April 1, 2007, "which will greatly reduce inmate service rates in NYDCS facilities."[17] Several other states have recently reformed their commission payment systems and in turn reduced interstate calling rates, including Maryland,

Missouri, New Hampshire, and Vermont, among others;[18] and many more are considering similar action. Again, there can be no single answer to the question of site commissions; as noted above, there are legitimate arguments that support funding discretionary programs for inmates through such payments, and legitimate arguments favoring alternative approaches. But there can be no doubt that state and local governments are considering the arguments on each side of the debate and responding with thoughtful measures appropriate to their local conditions. Imposing a uniform rate structure for all prisons throughout the country, as the Petitioners urge, would displace those important debates. As discussed below, the public policy consequences of doing so could severely harm both inmate populations and the public interest generally.

II. THE PROPOSED RATE CAPS ARE UNLAWFUL AND WOULD RESULT IN DESTRUCTIVE PUBLIC POLICY.

The Alternative Proposal not only calls for unnecessary federal intervention in matters of state and local concern, but also would prove unlawful and affirmatively harmful to the public interest. The proposed rate caps would fail to ensure adequate cost recovery in violation of Section 276 of the Act. Such caps also would be arbitrary and capricious because a uniform federal rate cap cannot be squared with the enormous variation in local needs and resultant costs, and because the Petitioners' cost estimates are incomplete and misleading. In addition to these legal flaws, the Alternative Proposal is unsound from a policy perspective. The Petitioners' invitation to trample on local and state prerogatives — including in particular the ability to assess and respond to vital security needs unique to the prison environment — is not one the Commission should accept. Indeed, the proposed rate caps threaten to undermine prison security (and in turn public safety) by imposing undue constraints on available revenues. And the

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[17] *Alternative Dawson Declaration* at ¶ 42 n. 44.

proposed caps could lead to the withdrawal of inmate calling services altogether, since service providers will not bid on contracts without adequate cost recovery and a reasonable profit, thereby harming the very constituency the Petitioners seek to protect.

A. The Proposed Rate Caps Would Be Inconsistent With Section 276 as Well as Arbitrary and Capricious.

The proposed rate caps would fail to ensure adequate cost recovery in violation of Section 276(b)(1)(A) of the Act, which directs the Commission to "ensure that all payphone service providers are fairly compensated."[19] The Commission has recognized in its prior orders that inmate service providers' "costs must ultimately be recovered."[20] The proposed rate caps fly in the face of that statutory guarantee. By their nature, uniform national rate caps that apply irrespective of a particular prison's (1) security requirements, (2) required commission payments, and (3) any other extraordinary costs, cannot be squared with the statutory assurance of fair compensation.[21] The Petitioners appear to assume that commission payments would be reduced in response to the proposed rate caps, but that is by no means assured. The combination of a high commission payment and a rigid rate cap would almost certainly deprive service providers of fair compensation (or, as discussed below, would result in the withdrawal of inmate calling services altogether). In any event, even if commission payments were to decline, there could be no assurance that the rate caps would fairly compensate inmate service providers in every case.

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[18] *See id.* at ¶¶ 42-43.

[19] 47 U.S.C. § 276(b)(1)(A).

[20] *Inmate Payphone Order on Remand* at ¶ 23.

[21] To the extent that the Petitioners intend to suggest that inmate service providers may charge rates in excess of the caps if the prison foregoes an exclusive service arrangement, Alternative Proposal at 6, interfering with a prison's need to maintain exclusivity for vital security reasons plainly cannot be justified, for all the reasons set forth in opposition to the initial Wright Proposal. *See, e.g.*, Comments of Worldcom, Inc., d/b/a MCI, CC Docket No. 96-128, March 10, 2004; Comments of Evercom Systems, Inc., CC Docket No. 96-128, March 10, 2004.

Again, the rate cap proposal wholly ignores the fact that some facilities may have greater security needs or require additional hardware or on-site assistance than the "average" prison, thus imposing extraordinary costs on the inmate service provider.

For similar reasons, the proposed rate caps would be arbitrary and capricious. As described above, there are enormous variations in the costs of serving different correctional facilities, in light of the differences in size, geography, security needs, levels of service, and other factors. A single rate structure for all collect or debit calls simply cannot account for these cost differentials. While Global Tel*Link believes that competitive bidding obviates the need for rate regulation, any such regulation plainly must occur at the state or local level, in light of the myriad variables in prison service arrangements.

While the Petitioners purport to address that concern by proposing national rate caps that are supposedly "conservative," their data on rates and costs are misleading at best. With respect to rates, the claim that "[t]ypical long distance inmate collect calling rates include a per-call charge of $3.95 plus as much as $0.89 per minute"[22] overstates actual market conditions and indeed is belied by the Petitioners' own declaration, which acknowledges ongoing rate reform efforts in the states.[23]

The Petitioners also miss the mark with their estimates of service providers' costs. The data set forth by the Petitioners do not even purport to reflect the costs of a representative sample of service providers or the extremely broad range of institutions they serve. Not surprisingly, the Petitioners' data significantly understate important costs and overlook some cost categories altogether. Because security is a paramount concern for correctional facilities, service providers must continually improve their security features to be competitive in bidding contests. For

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[22] *Alternative Proposal* at 2.

example, prison officials have asked Global Tel*Link to develop cell-phone detection tools, biometrics systems, and other technologies to deal with emerging security threats. Nevertheless, the Petitioners fail to include any measure of research and development costs their cost model. They also dramatically understate the costs of maintaining and supporting the hardware and software used in inmate calling systems, data storage, bad debt, and other key cost drivers. Moreover, the Petitioners fail to recognize that inmate services contracts often include requirements for the placement of public payphones at locations unrelated to correctional facilities, such as parks and highway rest stops, which must be operated at a loss.

This disregard for inmate service providers' actual costs leads the Petitioners to assert that inmate service providers earn profit margins of 85 percent.[24] That estimate is absurdly inflated. Indeed, if service providers could earn margins even half as high, there would likely be ten times as many providers competing in this segment. Instead, several major providers have been selling their prison payphone units in recent years.[25] It defies economic reality to suggest that any carrier would ever sell a business that produces such lofty returns. In any event, even if such extraordinary margins ever existed — and in Global Tel*Link's experience, no inmate service provider ever has earned such returns — they would rapidly be eroded through competitive bidding processes until they reached a level comparable to margins earned by other telecommunications carriers. Not surprisingly, that is the actual state of affairs in the inmate services segment today.

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[23] *See, e.g.*, *Alternative Dawson Declaration* at ¶¶ 42-43.

[24] *Id.* ¶ 27.

[25] *See, e.g.*, *Alternative Proposal* at 14 n.49; *Alternative Dawson Declaration* at ¶ 18 n.4.

B. The Adoption of the Proposed Rate Caps Would Result in Destructive Public Policy.

In addition to these fundamental legal defects, the Alternative Proposal would improperly usurp state and local prerogatives and usher in unintended consequences that would harm the public interest. As noted above, inmate calling rates cannot be assessed in a vacuum. If the Commission were to substitute its judgment for that of state and local authorities by instituting rigid national rate caps, that imposition would not merely affect inmate calling services but would necessarily encroach on broader aspects of prison governance. In particular, such rate caps would implicate key questions regarding budgetary policy, prison security, and the availability of inmate calling services.

State and local governments approach funding for prisons and inmate services in a variety of ways. As discussed above, some prison administrators impose significant site commissions to defray operational costs and to fund inmate programs that otherwise could not be offered. These officials have concluded that the costs of funding such operations and programs should be borne in part by the prison population and other users of inmate calling services — much like federal universal service programs are funded through interstate calling rates rather than general tax revenues. Others have reduced commission payments — and New York recently eliminated them altogether — in an effort to lower inmate calling rates, but doing so necessarily requires increases in general taxpayer support or curtailment of other services to inmates. Again, there can be no one-size-fits-all solution to this complex public policy issue.

The Petitioners' request to mandate a nationwide rate structure would ignore these budgetary complexities and set in motion profound changes in funding prison operations. For those institutions that rely heavily on commission revenues, the proposed rate caps would impose a Hobson's Choice of (1) maintaining commission levels at the risk of having inmate service

providers fail to submit bids, or (2) lowering commissions at the risk of facing budget shortfalls that require elimination of valuable programs and services. This Commission cannot satisfactorily address such issues; only state and local governments can implement comprehensive reforms that appropriately take account of the budgetary implications of any caps on inmate calling rates. In particular, to the extent that changes in rate and commission structures would require off-setting increases in general taxes, the Commission should exercise extreme caution.[26]

In addition to upending prison budgets, the proposed rate caps could undermine vital security interests. As the Supreme Court has recognized, "the problems that arise in the day-to-day operation of a corrections facility are not susceptible of easy solutions," and "[p]rison administrators therefore should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security."[27] The proposed rate caps represent the polar opposite of such deference, since prison administrators might be foreclosed from implementing security measures if doing so would require increases in calling rates above the prescribed caps. While the Petitioners have sought to estimate the average costs required to implement prison security measures associated with inmate calling, some institutions — particularly maximum security prisons — might seek to install much more sophisticated tools, including customized call-tracking mechanisms, that cannot be funded without exceeding the rate caps.

Moreover, such caps would have a chilling effect on technological advances that could

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[26] *Cf. Arsberry v. Illinois*, 244 F.3d 558, 564 (7th Cir. 2001) ("By what combination of taxes and user charges the state covers the expense of prisons is hardly an issue for the federal courts to resolve.").

significantly improve prison security. For example, some prisons have tested the use of videoconferencing tools for arraignments and other court proceedings, thereby avoiding the costs and risks associated with transporting inmates to off-site locations. Rate caps would threaten to kill such initiatives in the cradle. Even though these initiatives hold the promise of significantly *reducing* overall transportation and security costs, they might require increases in calling rates above the proposed caps to pay for new videoconferencing equipment and increased bandwidth.

Another likely consequence of the proposed rate caps would be reductions in the service level afforded to inmates, through the elimination of telephones, restricted calling hours, or even the withdrawal of discretionary calling altogether. The Petitioners assume that their proposed rate caps would force prison administrators to lower commission structures, but that might not turn out to be the case, particularly where reduced commissions would require tax increases or the elimination of important prison services. If commission payments remained relatively stable, service providers would have no choice in the face of national rate caps but to cut back the level of service offered or to refrain from bidding on new contracts. The Commission has previously recognized that inmate service providers will withdraw from the market rather than operating at a loss.[28] The reduction or withdrawal of services plainly would harm inmates and their families, thereby squarely contradicting the objectives of the Petitioners.

Over time, rate caps would make inmate service contracts less and less attractive, and the marketplace would suffer from a decline in competition and innovation. Such trends would undermine the Petitioners' (and the Commission's) interest in reducing rates while maintaining service availability. In particular, a decrease in the number of competitors operating in this industry would make it harder for already-underserved small facilities in rural areas, which have

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[27] *Bell v. Wolfish*, 441 U.S. 520, 545-46 (1979).

low traffic volumes, to receive inmate calling services.

In short, the Petitioners' assertion that their new proposal would obviate the serious "federal-state jurisdictional issues" that doomed their prior proposal is clearly mistaken.[29] For all the reasons set forth above, the Commission should give significant weight to the comments previously filed by state and local officials and the Corrections Corporation of America, which strongly oppose any Commission mandates regarding inmate calling services.[30] The Commission has appropriately deferred to state and local policymakers and prison administrators in past proceedings and should continue to do so in light of the fundamental legal and policy flaws in the Alternative Proposal.

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[28] *See Inmate Payphone Order on Remand* at ¶ 21.

[29] *Alternative Proposal* at 7.

[30] *See* Comments of Correctional Corporation of America, CC Docket No. 96-128, March 10, 2004; Comments of The Ohio Department of Rehabilitation and Correction, CC Docket No. 96-128, March 26, 2004; New York State Department of Correctional Services Comments in Opposition To Petition For Rulemaking Filed Regarding Issues Related To Inmate Calling Services, CC Docket No. 96-128, March 9, 2004; Comments of Peter V. Macchi, Director of Administrative Services, Massachusetts Department of Correction, CC Docket No. 96-128, February 11, 2004; Comments of Roger Werholz, Secretary, Kansas Department of Corrections, CC Docket No. 96-128, February 4, 2004; Comments of Devon Brown, Commissioner, New Jersey Department of Corrections, CC Docket No. 96-128, February 6, 2004.

CONCLUSION

For the foregoing reasons, the Commission should reject the Alternative Proposal and decline to take any further action in this docket.

Respectfully submitted,

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