

**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)	

REPLY COMMENTS OF THE GEO GROUP, INC.

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Summary

Contrary to claims of petitioners and commenters allied with petitioners, interstate telephone service rates for calls from correctional facilities are not unreasonably high. Provision of inmate telephone service is a costly undertaking with significant facilities and human resource costs necessary to ensure the safety of the inmate population, facilities personnel, and the public at large. Moreover, decisions about correctional facilities services, including telephone services, should be made by the appropriate federal, state, and local correctional officials and facilities operators who are trained and experienced correctional professionals. In reviewing the record of this proceeding, the comments of the various state corrections departments who participated in the proceeding warrant special attention by the Commission since those are the entities responsible for operation of state correctional facilities in accordance with each state's laws and the correctional goals and policies of each state. Each commenting state corrections department explained why the rates for telephone service are necessary to support inmate and public safety programs in the state. Regulation of inmate telephone service is beyond the jurisdiction and outside the expertise of the FCC.

With respect to the constitutional law arguments made in this proceeding, the law is clear and unrefuted: neither the First Amendment right to petition the government for redress of grievances nor the Sixth Amendment right to counsel bear any relevance to the prices for inmate telephone service which may be established by correctional authorities and the entities which provide such service. For the reasons set forth in these reply comments as well as those stated in GEO's initial comments, the Commission should reject the proposal to impose rate caps or benchmarks on the rates for interstate telephone calls from correctional facilities.

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The GEO Group, Inc. (GEO), by its attorneys, hereby submits its reply comments in response to the alternative rulemaking proposal filed by Martha Wright, *et al* (Petitioners) in the above-captioned matter.¹

In its initial comments, GEO, a major operator and manager of correctional facilities pursuant to contracts with federal, state, and local governments, described the unique costs incurred by correctional facilities in order to make available telephone services to inmates. It also explained why there exists no basis for the Commission to adopt a “one size fits all” rate cap or benchmark rate for interstate calls from correctional facilities. In addition, GEO explained that the underlying issue raised by the petitioners in this proceeding -- the financial relationships between telephone service providers and correctional authorities, including compensation paid to those authorities -- is a matter of correctional facilities management, not a matter of telecommunications law or regulatory policy. Such decisions and policies are appropriately in the province of federal, state and local correctional authorities who are responsible for

¹ Petitioners’ Alternative Rulemaking Proposal, filed by Petitioners Martha Wright, *et al*, on March 1, 2007 in CC Docket No. 96-128 (“Alternative Petition”).

implementing the objectives of each jurisdiction's correctional policies and for the safety and security of inmates, employees and for the public at large. Those are not matters within the jurisdiction or expertise of the Federal Communications Commission (FCC). GEO also explained that operators of correctional facilities are not telephone "aggregators" within the ambit of Section 226 of the Communications Act of 1934, and that imposition of rate caps on interstate calls from correctional institutions would be inconsistent with FCC precedent. GEO reiterates these positions, as well as disputes any suggestion that provision of inmate telephone service and the rates charged for this service inhibit inmates' constitutional rights to petition courts for redress of grievances and the right to counsel.

I. Telephone Rates at Correctional Facilities are Just and Reasonable Given the Unique Costs incurred in Providing Service to such Institutions

In its initial comments, GEO noted the false premise underlying the Petitioners' Alternate Proposal -- that telephone rates charged at correctional facilities are unreasonably high and are inappropriate. In addition to providing examples countering petitioners' claim that "typical" long distance inmate collect calling rates include a per-call surcharge of \$3.95 plus as much as \$0.89 per minute,² GEO noted in its initial comments that inmate telephone systems include unique service functionalities and that such services require the obtainment of special equipment such as call verification and routing equipment, billing software, and often live operators, who set up the inmate calls and arrange for billing of those calls to billed parties. Such unique service functions and expenditures increase the costs associated with providing inmate telephone service. In addition to these unique service needs and their related costs, provision of inmate telephone services require sophisticated hardware and software in order to ensure the safety and security of a correctional facility, and those who reside there as well as those who work there. Again, such

² Alternative Petition at 2.

hardware, software, and human resources impose substantial additional costs -- costs which inmate telephone service providers need to recover and are entitled to recover in their rates.

The consensus of other commenters involved in the provision of inmate telephone services supports GEO's conclusions. For example, comments filed by Global Tel*Link highlight its sophisticated software which prevents three-way calling, repetitive dialing of a blocked or unaccepted telephone number, and allows correctional facilities to monitor and record inmate telephone calls, as well as remotely accessed security-related information. Global Tel*Link accurately explained that if the Commission adopts the Petitioners' Alternative Proposal, the imposition of "such caps would have a chilling effect on technological advances that could significantly improve prison security."³

Similarly, the comments of Pay Tel Communications, Inc. (Pay Tel) -- another inmate telephone service provider -- detailed the sophisticated software and hardware components that make up its inmate calling services, including the equipment, the recording and monitoring functions, as well as the administrative terminal functions and the extensive support services provided to correctional facilities 24 hours per day, 365 days per year. Pay Tel also detailed how "all categories of costs [associated with inmate calling services] have increased substantially since 1999," including local service charges, billing and collection fees, validation costs, maintenance costs, and overhead costs.⁴ These comments filed by Global Tel*Link and Pay Tel corroborate GEO's position that inmate telephone systems include unique service functionalities, as well as sophisticated software and hardware which increase the costs associated with providing inmate telephone service.

³ Global Tel*Link Comments, at 16.

⁴ Pay Tel Communications, Inc. Comments, at 10 - 11.

II. The Comments Provide No Basis for a Prescription of a “One Size Fits All” Rate Cap Or Benchmark Rate For Interstate Calls From Correctional Facilities

In its initial comments, GEO also noted that there is no basis for the Commission to prescribe any rate cap or benchmark rate for interstate calls from all correctional facilities on a “one size fits all” basis. This position was underscored in comments submitted by the Association of Private Correctional and Treatment Organizations (APCTO). Specifically, APCTO noted that “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 few 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, as well as families. These differences in inmate populations necessitate differences in the 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 centers. There are varying levels 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.”⁵

APCTO’s comments are consistent with the overwhelming body of initial comments in this proceeding: there simply is no legal basis upon which the Commission could impose a

⁵ Association of Private Correctional and Treatment Organizations (APCTO) Comments, at 5.

uniform rate cap on inmate telephone calls from correctional facilities throughout the United States.

III. Provision of Inmate Telephone Service and the Rates Charged for Such Service is the Responsibility of the Correctional Experts which Manage Correctional Facilities; it is not the Responsibility of the FCC

Several state departments of correction commented in opposition to the Alternative Petition. These comments should be accorded substantial weight by the Commission, since these public departments, unlike the Wright Petitioners or the Commission itself, have actual experience and expertise in the operation and management of state correctional facilities, including the provision of telephone services at those facilities. For example, comments were submitted in opposition to the Alternative Petition by the Commonwealth of Kentucky Department of Corrections. Since the establishment of a penal system by Kentucky's Legislature in 1798, this Commonwealth's Department of Corrections has protected the citizens of Kentucky and provided a safe, secure and humane environment for staff and offenders in carrying out the mandates of the state's legislative and judicial processes. Kentucky Department of Corrections Commissioner John Rees noted that commission payments received by the Commonwealth from telecommunications service providers are used to support inmate services. This statement as well as similar statements of other state corrections authorities refutes the assertion in the Alternate Petition that "inmate service providers' practice of inflating the rates they charge for inmate calling services to recoup the large commissions they pay to prison administrators and state correctional agencies also is unreasonable . . ." ⁶ Instead, Commissioner Rees noted that at Kentucky Department of Corrections facilities, "Commissions are not profit. The revenue from commissions is used for inmate support and services. The revenue is not diverted to resource non-inmate expenses."

⁶ Alternative Petition at 22.

Commissioner Rees also objected to the Alternate Petition's request that the Commission establish procedures to require correctional facilities to offer inmates debit calling services. More specifically, the Alternate Petition argues that it would "help to reduce overall inmate rates to require service providers to offer the more reasonably priced option of debit calling service at all of the prison facilities they serve, and prison administrators should be required to permit such service offerings."⁷ As Commissioner Rees explained, the request to require correctional facilities to offer inmates debit calling services would have a significantly negative impact on the Department of Corrections, since "Kentucky correctional institutions are not structured to manage and oversee a debit calling program, nor are mechanisms and policies in place to implement and sustain a debit calling program."

Similarly, the Commonwealth of Virginia Department of Corrections opposed the Alternative Petition. Since opening correctional facilities in 1800, the Commonwealth of Virginia has enhanced public safety by providing effective programming and supervising sentenced offenders in a humane, cost-efficient manner, consistent with sound correctional principles and constitutional standards. In its comments, the Virginia Department of Corrections also objected to the characterization of inmate telephone commissions as "profit." It noted that telephone service commissions in its correctional facilities are used to fund the Victim Information Network (VINES) -- an important public safety system which notifies crime victims of changes in the status of Virginia prisoners.⁸ As the Virginia Department of Corrections

⁷ *Id.*, at 23.

⁸ Virginia Department of Corrections Comments, at 1. The Virginia example is instructive. Whether or not Virginia – or any other state – should operate a victim information network and how to finance such a network is a public safety/correctional management decision for that state. The Commission's statutory authority over interstate telecommunications services does not empower it to impose economic impediments on states with regard to how they provide and fund their own public safety programs.

explained in its comments, if the Commission adopts the Alternate Proposal, the Virginia Department of Corrections “is uncertain . . . if the Victim Information Network (VINES) could continue to operate.”

The Virginia Department of Corrections also echoed the fact, raised by GEO in its Comments, that provision of inmate telephone services at correctional facilities is a critical component of the overall enhancement of the safety and security of these facilities, and should rest with correctional experts and professionals such as the Commonwealth of Virginia Department of Corrections -- not the FCC. As the Virginia Department of Corrections explained, “the inmate phone system contractor . . . provides telephone intelligence for investigation purposes. The contractor retrieves phone call data and provides information to the Virginia State Police, Secret Service and the Federal Bureau of Investigation.” The Virginia Department of Corrections warned that “it is uncertain with the proposed commission funding cuts if the current contractor would continue to contract with the Commonwealth [of Virginia] and thereby provide these investigative services.”

Finally, the Idaho Department of Corrections explained that “if it is enacted [the Alternative Proposal] would be detrimental to the Idaho Department of Corrections.” Additionally, the Idaho Department of Corrections noted that elimination of commission compensation would create a shortfall to the Department of Corrections of \$1.086 million dollars. Those funds are used to support inmate services which are not covered by taxpayer dollars.⁹ More specifically, inmate telephone commissions are used by the Idaho Department of Corrections to “support positions that provide important inmate services including religious and recreational activities. These services, while not a proper allocation of taxpayer dollars, directly

⁹ Idaho Department of Correction Comments, at 1.

enhance inmate living conditions and provide positive pro-social diversions for the inmate population.” The Idaho Department of Corrections also noted that “the call set-up charge is necessary to off-set the costs of added requests to block calls generated by this population.” Finally, the Idaho Department of Corrections noted that “rates have decreased considerably” as a result of a new contract between the Department and an inmate telephone provider.

These examples provided by state corrections officials -- all experts and professionals with a history of providing correctional services -- make clear that the implementation of corrections programs and policies is not the role of the FCC. Rather, the Commission is statutorily required to ensure that the rates for interstate telecommunications services are just and reasonable¹⁰ and are not unreasonably discriminatory.¹¹ Imposition of mandatory rate caps on interstate calling from correctional facilities which do not enable service providers to recover their costs of providing such services, including the unique costs associated with inmate telephone services, would not result in rates which are just and reasonable.¹² Rather, the imposition of mandatory rate caps would undermine the experts and professionals who are responsible for the safe and secure operation and management of correctional facilities.

IV. Operators of Correctional Facilities are not Telephone “Aggregators” within the Ambit of Section 226 Of the Communications Act

In its initial comments, GEO noted that any suggestion in Petitioners’ Alternative Proposal that the prices and availability of telephone service at correctional institutions are in any manner analogous to those which may have afflicted the hospitality industry and public telephone industry in the past is thoroughly misplaced. Citing the Telephone Operator Consumer

¹⁰ 47 U.S.C. § 201(b).

¹¹ 47 U.S.C. § 202(a).

¹² As GEO noted in its initial comments, most calls from correctional facilities are intrastate and local calls – services which the Commission has no jurisdictional authority to regulate. See, e.g., comments of Idaho Department of Corrections which indicate that only about six percent of the calls made from Idaho correctional facilities are interstate calls.

Services Improvement Act (TOCSIA),¹³ whose provisions are codified at Section 226 of the Communications Act of 1934, as amended,¹⁴ GEO noted requirements on telephone “aggregators” which are defined as “. . . any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services.”¹⁵ It is important to reiterate that under this definition, operators of correctional facilities are not “aggregators.” The FCC has rightly held that the term “aggregator” does not apply to inmate-only phones at correctional institutions and has never sought to impose such requirements or any of TOCSIA’s requirements on those institutions or on those who provide telephone service at those institutions.¹⁶ GEO urges the FCC to continue its fifteen year policy that correctional institutions present “an exceptional set of circumstances” which differentiate them from situations which are subject to the market opening and rate restriction requirements of TOCSIA and the Commission’s rules.

V. Imposition of Rate Caps on Interstate Calls from Correctional Institutions Would be Inconsistent with Well-established Commission Precedent, including the Presumption of Lawfulness which is Accorded to the Rates of Non-dominant Carriers

In its initial comments, GEO also noted that under FCC rules and applicable policies, all providers of interstate interexchange telecommunications services are considered to be non-dominant carriers¹⁷ and their rates are presumptively lawful. As non-dominant carriers under

¹³ Pub. L. No. 101-435, 104 Stat. 986 (1990).

¹⁴ 47 U.S.C. § 226.

¹⁵ 47 U.S.C. § 226(a)(2). Section 64.708(b) of the Commission’s Rules contains an identical definition of “aggregator” (47 C.F.R. § 64.708(b)).

¹⁶ Policies and Rules Concerning Operator Service Providers, 6 FCC Rcd 2744 (1991) at ¶15.

¹⁷ Section 61.3(y) of the Commission’s Rules defines “non-dominant carrier” as “[a] carrier not found to be dominant.” Section 61.3(q) defines “dominant carrier” as “[a] carrier found by the Commission to have market power (i.e., power to control prices).” As far back as 1981, the Commission determined that all facilities-based and resale interexchange carriers other than AT&T should be classified as non-dominant. See Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor (First Report and Order), 85 FCC2d 1 (1981).

FCC rules, provision of inmate telephone service are not subject to dominant carrier regulation and the remedy sought by the Alternative Petition -- imposition of mandatory rate benchmarks or caps -- is simply not consistent with the presumption of lawfulness which accompanies those providers' service offerings.

VI. Provision of Inmate Telephone Service and the Rates Charged for Such Service Do Not Inhibit Inmates' Constitutional Rights to Petition Courts For Redress of Grievances and the Right To Counsel.

Finally, at least one commenting party suggested, without citation to any applicable legal precedent or authority, that inmate telephone calling rates inhibit prisoners' constitutional right to petition courts for redress of grievances and the right to counsel.¹⁸ This is simply incorrect as a matter of constitutional law. Neither the First Amendment right to petition for redress of grievances nor the Sixth Amendment right to counsel in any way extend to the prices which may be charged for telephone services from correctional facilities. The right of access to the federal courts is not a free flowing right but rather is subject to Congress's Article III power to set limits of federal jurisdiction. Roller v. Gunn, 107 F. 3d 227 4th Cir., *cert. den.* 522 U.S. 874 (1997). See also Lewis v. Sullivan, 279 F. 3d. 526 (7th Cir. 2002). Under the expansive view espoused by North Carolina Prisoner Legal Services, any economic impediment to petitioning for habeas corpus would be an unconstitutional impediment to that right. However, neither the Supreme Court nor any of the lower federal courts ever have found such restrictions or economic burdens constitutionally offensive.

Neither is there any support for the proposition that telephone rates considered by some to be "high" somehow interferes with the Sixth Amendment right to counsel. There is no constitutionally-protected right to initiate telephone calls, either to family members or to

In 1995, the Commission extended non-dominant status to AT&T's interstate interexchange services.

¹⁸ Comments of North Carolina Prisoner Legal Services, Inc., at 3.

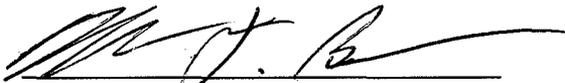
attorneys. State Bank of St. Charles v. Camic, 712 F.2d 1140 (7th Cir.), *cert. den.* 464 U.S. 995 (1983). In Murillo v. Page, 294 Ill. App. 860, 690 N.E.2d 1033 (1998), the court rejected the notion that an Illinois correctional institution's telephone policies impinged on Sixth Amendment rights, noting that if an inmate is "provided with some communication with counsel, then he has not been actually or constructively denied all access to counsel" See also Parker v. Frame, 1992 WL 73107 (E.D. Pa, 1992). In that case, the court dismissed an inmate's claim that prison telephone rates were excessive and amounted to a violation of Sixth Amendment rights.

Conclusion

For the reasons stated in these reply comments, as well as those set forth in GEO's initial comments in this proceeding, the FCC should decline Petitioner's invitation to impose rate caps on inmate calling services from correctional facilities, and the FCC should leave decisions regarding the availability of inmate telephone services and the financial arrangements associated with such services to the professionals and experts established by law for operation and management of federal, state and local correctional facilities.

Respectfully submitted,

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