



*Michael S. Hamden*  
*Attorney, Counselor at Law*  
*& Corrections Consultant*  
*1612 Homestead Road*  
*Chapel Hill, NC 27516*  
*(919) 605 – 2622*  
*Michael.Hamden@yahoo.com*  
*www.HamdenConsulting.com*

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW – TW – A325  
Washington, DC 20554

***Electronic Ex Parte Filing***

Re: *Ex Parte* Presentation (via Electronic Filing)  
CC Docket No. 96-128

Dear Ms. Dortch:

I write to address several points raised by Counsel for the *Wright* Petitioners in an *ex parte* filing submitted on 24 February 2009. I will begin with an effort to clarify those aspects of a comprehensive resolution of the issues in this proceeding with which Petitioners agree or do not object. I will then turn briefly to those matters about which Petitioners have expressed some concern.

Certain proposals for a comprehensive resolution to the matters pending in this docket appear in the *Ex Parte* Presentation of Michael S. Hamden on Alternative Rulemaking Proposal Regarding Inmate Calling Services, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128 (Oct. 29, 2008)*(hereafter, the Proposal). These straightforward proposals call on the FCC to:

(1) Establish a single fair rate for all intra-state and inter-state prisoner phone calls (derived from the lower rates outlined in the report, “Inmate Calling Services - Interstate Call Cost Study,” hereafter, the Wood Study)<sup>1</sup> by eliminating commissions while allowing legitimate costs and providing a reasonable rate of return for service providers, irrespective of the location where the call originates (whether in a private or governmentally operated prison or jail).

<sup>1</sup> Different benchmark rates may be required for intrastate, as opposed to interstate calls, or for different calling options. For example, the Wood Report finds that interstate debit calls may have a “fixed per call cost of \$1.56” and a 6¢ per minute cost, while collect calls have a fixed rate of \$2.49 and a 7¢ per minute cost. At about the 14-minute mark, these rates are more favorable to consumers than those originally proposed by Petitioners. *Compare Krogh Ex Parte* of 24 February 2009 at p. 4, n.12: “12 Petitioners take no position on Hamden’s proposal to impose *the same benchmarks on both* interstate and intrastate inmate rates . . .” with certain well founded exceptions. (Emphasis added.) As a point of clarification, the Proposal of October 29 acknowledges that different benchmarks may be appropriate depending on the type of call being placed.

(2) Foreclose all opportunities to circumvent the established fair rate by prohibiting additional fees charged by prison phone service providers or their subsidiaries and ensuring that third party payment fees are passed through to families at cost with no mark-up or profit for prison phone service providers.

(3) Require calling options, including pre-paid, debit, and collect calls consistent with sound correctional practices and security concerns; and

(4) Defer to state utilities commissions to address a purported need for cost increases that arise from the provision of service in a particular state.

The Petitioners' apparently agree that state utilities commissions simply are not well positioned to regulate a nationwide industry and that such regulation and guidance must be provided by the FCC.<sup>2</sup> Thus, Petitioners' primary concerns are limited to the manner in which fair and reasonable rates should be calculated. Petitioners' criticism of methodology utilized in the Wood Study is too convoluted to permit a brief response, but the rates propounded by the Wood Study are lower on calls of 14 minutes or more than those initially advocated by Petitioners. See Proposal of 29 October 2008 at IV.B.

Petitioners concede that the Proposal at paragraph 2 makes a "useful point" which should be addressed by the Commission. Krogh *Ex Parte* of 24 February 2009 at p.5 n.17. "Tack-on" fees that unjustifiably increase the cost of prisoner calls should be eliminated, while legitimate costs are passed through with no mark-up.

Petitioners also seem to support the broadest range of calling options possible in the correctional setting, and they assert that such options meet all legitimate security concerns of a correctional institution. Krogh *Ex Parte* of 24 February 2009 at pp. 4 - 5. Petitioners are concerned that the relief requested in the Proposal may be qualified in deference to correctional officials' security concerns, an element of the Proposal at paragraph 3.

<sup>2</sup> The undersigned wishes to correct his misimpression that Petitioners seek only regulation of long distance calls from only three private correctional facilities. That understanding grew out of the federal action, *Wright v. Correctional Corporation of America*, 1:00CV00293 (JLG), which was referred to the FCC by the Federal District Judge Gladys Kessler on 21 August 2001. Instead, in this proceeding, Petitioners seek "benchmark rates on 'all interstate inmate telephone services,'" and *not* just those originating from three private correctional facilities. See Krogh *Ex Parte* of 24 February 2009 at p. 2 (referencing statements to that affect at Petitioners' Reply Comments pp. 2-3 n.3, filed 20 June 2007 and others). Happily, Petitioners' request for relief in this proceeding extends to all interstate long distance calls (with no objection to benchmark rates for intrastate calls, on stated conditions). *Id.* at p.4 n.12. The undersigned apologizes for his misunderstanding.



Correctional officials insist on maintaining security at their institutions, including control over telephone systems. They are not unjustified in doing so. There have been occasions when prisoners used telephone privileges to harass and intimidate victims and witnesses or to run illegal enterprises from prison. There remain security concerns that relate to “arbitraging,” not because prisoners and their families should somehow be treated as second-class consumers, but because it makes more difficult the task of correctional officials to track and monitor such calls. To compound the problem, cell phones (which are contraband in a correctional setting) have been discovered in large numbers in correctional facilities in Texas, Florida, South Carolina, and the District of Columbia, heightening the risk of a security breach. Thus, the use of wireless technology does not presently seem to satisfy basic security requirements under existing FCC regulations.

This is not to say that security measures presently utilized, or those that will be available in the near future are inadequate to ensure security and to permit other calling alternatives. Indeed, it appears that adequate technology is presently in place or available to satisfy all such security concerns with regard to pre-paid and debit calling, as well as collect phone calls. But under existing law, correctional officials have broad discretion in assessing the security risks at their institutions.<sup>3</sup> So, meaningful and realistic regulation must take security concerns into account, as the Proposal does.

Finally, Petitioners fear that deference to state utilities commissions to permit deviation from national benchmarks might undo the relief Petitioners seek in this proceeding. Krogh *Ex Parte* of 24 February 2009 at p. 4. While that is a legitimate concern, it seems an unavoidable risk. Under fair benchmarks, some “marginal location” facilities simply will not be economically viable. Although Petitioners minimize the extent of the problem, they state that “even service providers carrying calls from the smallest and most economically ‘marginal’ correctional facilities have interstate costs *largely consistent* with the proposed benchmark rates.” Krogh *Ex Parte* of 24 February 2009 at p. 3 (emphasis added). The problem, of course, is that the prison pay phone provider must achieve financial viability at each venue or

<sup>3</sup> See, e.g., *Turner v. Safley*, 482 U.S. 78 (1987). See, also, resolutions of the American Bar Association (August 2005)(attachment 1 to Proposal of 29 October 2008); American Correctional Association (ACA) Policy (July 2001)(attachment 2, Proposal of 29 October 2008) and related ACA Standards (August 2002)(attachment 3, Proposal of 29 October 2008); Association of State Administrators’ Resolution 14 (May 2007)(attachment 4, Proposal of 29 October 2008); and National Sheriff’s Association Resolution of June 1995 (attachment 5 Proposal of 29 October 2008) – all referencing the primacy of correctional security considerations.



discontinue service, leaving prisoners and their families in some locations without the means to communicate by telephone.<sup>4</sup>

There is no reason to expect state utilities commissions to disregard federal guidance or to stray from established guidelines. Still, there is an undeniable risk of some inconsistent interpretations and decisions.

But there simply is no workable alternative. Federal regulation is required because a nationwide industry cannot be successfully regulated by 50 independent state utilities commissions. On the other hand, with regard to some locales, there will be factors peculiar to the provision of services that will have to be accommodated if prison phone services are to be provided. *See id.*, n. 3. The FCC is not well situated to resolve such cases, even if it had the resources and inclination to do so. But federal guidance in the form of governing regulations will allow state utilities commissions to deal effectively with factors unique to locales and service providers with which they have some familiarity such that necessary adjustments in intrastate and interstate benchmark rates may be applied to ensure the viability of service providers so that prisoners will have access to reasonably priced telephone services.

As demonstrated by the extensive filings of the parties and numerous comments submitted by organizations, citizens, and consumers, this is a matter of significant public interest. *See, e.g.*, the consumer-initiated petition to end abusive prison telephone practices at <http://www.thepetitionsite.com/3/lower-the-cost-of-calls-from-prison>, which had garnered the support of some 356 signatories at last count (8 March 2009).

A comprehensive approach to the resolution of abuses by the prison phone industry will end the exploitation of prisoners and their families, it will ensure the viability of telephone service providers, it will extricate the corrections profession from an ethical quagmire, it will provide federal regulatory guidance to state utilities commissions while leaving the specifics of implementation with state utilities commissions, and it will bring to an end the protracted proceedings before the FCC in this docket.

For these reasons, the comprehensive resolution of prison telephone industry abuses outlined in the Proposal of 29 October 2008 should be adopted with such adjustment as the FCC may deem appropriate.

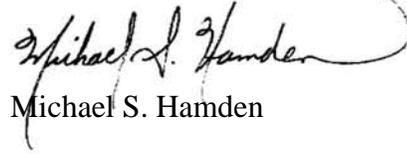
In accordance with Section 1.1206 of the Commission's Rules, this Comment is submitted for inclusion in the record of this proceeding.

<sup>4</sup> Just as 47 U.S.C.A. § 201 requires all telephone charges and practices to be "just and reasonable," § 276 requires fair compensation for "each and every intrastate and interstate call . . . ." Moreover, these statutes set forth the broad mandate of the Federal Communications Commission, but they do not dictate how these requirements are to be met.



Thank you for your kind attention to this matter. Please let me know if you have any questions or if I can otherwise be of service. In the meantime, with all best wishes, I am,

Sincerely yours,



Michael S. Hamden

Courtesy Copies *Via* Email To:

Amy Bender  
[amy.bender@fcc.gov](mailto:amy.bender@fcc.gov)

Pamela Arluk  
[pamela.arluk@fcc.gov](mailto:pamela.arluk@fcc.gov)

Randy Clark  
[randy.clark@fcc.gov](mailto:randy.clark@fcc.gov)

Scott Bergmann  
[scott.bergmann@fcc.gov](mailto:scott.bergmann@fcc.gov)

Lynne Engledow  
[lynne.engledow@fcc.gov](mailto:lynne.engledow@fcc.gov)

Scott Duetchman  
[scott.duetchman@fcc.gov](mailto:scott.duetchman@fcc.gov)

John Hunter  
[john.hunter@fcc.gov](mailto:john.hunter@fcc.gov)

Marcus Maher  
[marcus.maher@fcc.gov](mailto:marcus.maher@fcc.gov)

Darryl Cooper  
[darryl.cooper@fcc.gov](mailto:darryl.cooper@fcc.gov)

Chris Moore  
[chris.moore@fcc.gov](mailto:chris.moore@fcc.gov)

Dana Shaffer  
[dana.shaffer@fcc.gov](mailto:dana.shaffer@fcc.gov)

Albert Lewis  
[albert.lewis@fcc.gov](mailto:albert.lewis@fcc.gov)

Doug Galbi  
[douglas.galbi@fcc.gov](mailto:douglas.galbi@fcc.gov)

Jennifer McKee  
[jennifer.mckee@fcc.gov](mailto:jennifer.mckee@fcc.gov)

Nick Alexander  
[nick.alexander@fcc.gov](mailto:nick.alexander@fcc.gov)

Counsel for Petitioners:  
Frank W. Krogh  
[FKrogh@mofo.com](mailto:FKrogh@mofo.com)

Deborah M. Golden  
[deborah\\_golden@washlaw.org](mailto:deborah_golden@washlaw.org)

