

INMATE TELEPHONE SERVICE/SECURUS PETITION TALKING POINTS
CC Dkt. No. 96-128; WC Dkt. No. 09-144

- **Both Sets Of Issues Arise From Exorbitant Long Distance Inmate Telephone Rates.** Interstate inmate telephone service rates remain extortionate in most jails and prisons. The highest inmate rates are for interstate collect calling, which are as much as \$4.28 per call plus \$0.98 per minute. The burden of exorbitant inmate collect calling rates falls on innocent families, not prisoners.
- **Reasonable Long Distance Inmate Rates Would Reduce The Incentive To Use The Call Routing Services Targeted By Securus And The Economic Incentive To Use Contraband Cell Phones In Prison.** The excessive long distance rates charged by Securus and other inmate service providers created the market for Millicorp's and other providers' routing services.
- **Proposed Benchmarks And Debit Calling Option Would Lower Rates.** The Wright Petitioners' Alternative Rulemaking Proposal in CC Dkt. No. 96-128 requests that the FCC: (1) establish interstate long distance inmate benchmark rates of \$0.20 and \$0.25 per minute for debit and collect calling service, respectively, with no per-call charge; and (2) require that debit calling be offered as an option to collect calling. The service providers' August 15, 2008 cost study confirms the reasonableness of the proposed benchmarks.
- **Call Blocking Remedy Sought By Securus Would Reinforce The "Moat" Around Inmate Service Providers' Monopoly Niche, Protecting Exorbitant Rates.** By eliminating the call routing options sought by parties receiving inmate calls, the remedy sought by Securus in WC Dkt. No. 09-144 would help maintain its unreasonable long distance inmate rates. Reinforcing Securus' service monopoly, rather than addressing its unreasonable rates, would be a misallocation of regulatory resources and would undermine the Commission's pro-consumer and pro-competitive goals.
- **Granting Rate Relief Would Be A Far More Effective And Pro-Consumer Remedy For Securus' Problems Than The Call Blocking Relief It Requests.** Reducing long distance inmate rates to the requested benchmark levels would reduce the incentive to use the call routing services that allegedly threaten Securus. The requested rate relief also would enable Securus and other service providers to cast off the yoke of burdensome commission payments by means of a "fresh look" transition. Without commission payments, inmate service providers could offer services profitably at significantly lower rates, as some do now in certain states, such as Securus in New Mexico. Accordingly, there is no reason to grant call blocking relief to Securus.
- **The Securus Petition Should Be Considered Only In The Inmate Payphone Proceeding.** The inmate payphone proceeding in CC Dkt. No. 96-128 addresses "inmate calling service practices that may serve legitimate security needs but have the unintended, and perhaps unnecessary, effect of increasing the costs incurred by inmates and their families." That description entirely subsumes Securus' requested relief.

WRIGHT PETITIONERS' ALTERNATIVE RULEMAKING PROPOSAL
TALKING POINTS
CC Dkt. No. 96-128

- **Long Distance Inmate Telephone Rates Remain Exorbitant.** Inmate telephone services are the last unregulated telecommunications monopoly niche. In spite of reform efforts in some states, most interstate inmate telephone rates remain extortionate. In fact, interstate rates are a profit center for inmate service providers and subsidize their intrastate inmate services. Many prisons permit no alternatives to collect calling.
- **There Is Consensus For Reform.** The gathering consensus for effective relief is reflected in reports, recommendations and studies by a national prison commission, the ABA, NARUC, corrections officials and penological experts. Reasonable inmate calling rates would help maintain the critical family and community connections that are so crucial to rehabilitation and the reduction of recidivism. The growing trend in outsourcing incarceration to private entities in distant states, precluding family visits, has aggravated the disruptive effects of unreasonable interstate inmate calling rates.
- **High Commissions Demanded To Secure Service Contracts Increase Rates.** Requiring successful bidders for exclusive prison calling service contracts to pay commissions, amounting to as much as 65 percent of gross revenues, “perversely” results in higher service rates. *Inmate Payphone Order*, 17 FCC Rcd 3248, 3253 (2002).
- **Judicial Referral To FCC.** Inmate telephone service competition and rates issues raised in *Wright v. Corrections Corp. of America*, a prisoners’ rights class action, were referred to the FCC in 2001. FCC is obligated to respond to referral. After extensive FCC mediation efforts, the *Wright* plaintiffs filed a Petition for Rulemaking in 2003 requesting the FCC to require competition in the provision of interstate long distance inmate calling services.
- **Proposed Benchmarks And Debit Calling Option Would Lower Rates.** The *Wright* Petitioners filed an Alternative Rulemaking Proposal in 2007 requesting that the FCC: (1) establish interstate long distance inmate benchmark rates of \$0.20 per minute for debit calling service and \$0.25 per minute for collect calling service, for prisoners in all facilities, public and private, with no per-call charges; and (2) require that inmate calling service providers offer debit calling as an option to collect calling. Petitioners demonstrated that some inmate calling services are now provided at rates, net of commission payments, lower than the requested benchmarks (such as Securus rates in New Mexico and Florida).
- **Service Providers’ Cost Study Confirms Reasonableness Of Proposed Benchmarks.** The cost study submitted by the service providers on August 15, 2008 focused exclusively on unprofitable, high-cost “marginal” locations, which tend to be jails and other small correctional facilities. Although the Commission has held that the rationale for the marginal location sampling methodology used in the cost study is inapplicable to the “profitable” inmate payphone market, even the improperly skewed high-cost sample used in the cost study yielded results largely consistent with Petitioners’ requested benchmarks.

- *The 25 location sample used in the service providers' cost study yields a cost of \$0.19 per minute for a 12-minute interstate debit call and a cost under \$0.24 per minute for a 15-minute interstate collect call, which are less than the requested benchmark rates.*
- **Commissions Constitute Profits, Not Costs.** The FCC has found that service providers' commission payments "represent an apportionment of profits," and are "not a cost," so comparable inmate calling rates should be calculated net of commissions. *Inmate Payphone Order*, 17 FCC Rcd at 3255, 3262.
- Petitioners agree with Pay Tel Communications that governing legal standards could be met by a **tiered rate structure**, *i.e.*, rates somewhat higher than the requested benchmarks for facilities with fewer than 25 prisoners, which have higher costs; the benchmark rates for facilities between 25 and 250 prisoners; and lower rates for larger facilities, which have higher traffic volumes and lower service costs. Inmate rate relief also would reduce the economic incentive to use contraband cell phones in prison.
- **One-Year "Fresh Look" Transition Period.** Benchmark rates should be phased in over a one-year transition period to permit service providers to renegotiate commission payments and other contract terms. The benchmark rates also should include a "downward ratchet" provision prohibiting service providers with rates below the benchmarks from raising them during the transition.
- **If Benchmarks Include Per-Call Charges, An Inmate Should Be Permitted To Reinitiate Disconnected Call To Same Number With No Additional Per-Call Charge.** If the Commission concludes that benchmarks should be set as a combination of per-call and usage charges, such charges should generate no more revenue than the requested benchmark per-minute rates for an interstate inmate call of average length. Also, any per-call charge should be waived automatically for a call reinitiated by the same prisoner to the same number within two minutes of the end of the previous call, in order to ameliorate the problem of improperly disconnected calls.
- **If The Commission Imposes Prepaid Calling, Rather Than Debit Calling, As A Required Service Option, Safeguards Must Be Imposed.** If the Commission requires prepaid calling, rather than debit calling, as a service option, with prepaid accounts set up by the parties receiving inmate calls, such calls should be subject to the benchmark rate for debit calling, and additional safeguards should be imposed. Because service providers contract directly with, and are prepaid by, the prepaid account holders, bad debt rates are low, as with debit calling.

SECURUS PETITION TALKING POINTS
WC Dkt. No. 09-144

- **The Securus Petition Confirms The Need For Immediate Rate Relief For Long Distance Inmate Payphone Services.** The call routing services targeted by the Securus Petition provide inmate call recipients with numbers local to the correctional facilities where inmate calls originate. The prisoner making the call pays the inmate service provider for a local call, and the call recipient pays the call routing service a termination fee. Call routing services exploit the vast spread between the inmate service providers' local rates and their exorbitant long distance rates.
- **Inmate Rate Relief Would Reduce The Incentive To Use The Call Routing Services Targeted By Securus.** The long distance rates charged by Securus and other inmate service providers created the market for Millicorp's and other providers' routing services, and the inmate service providers are now reaping the inevitable results of their unreasonable long distance rates. To the extent that call routing services pose any threat to security, as Securus claims, the threat was generated by inmate service providers' unreasonable rates.
- **Reducing Interstate Long Distance Inmate Rates To The Benchmark Levels Requested By The Wright Petitioners Would Be A Much More Efficient And Pro-Consumer Remedy Than The Call Blocking Relief Requested By Securus.** Long distance inmate services, including collect calls paid by call recipients, would be reasonably priced, reducing or eliminating the arbitrage and avoidance behavior by consumers that service providers claim poses a threat to prison security. Providing a "fresh look" transition as part of inmate rate relief also would enable inmate service providers to renegotiate their service contracts, eliminating or greatly reducing their commission payments. They could then provide long distance inmate services profitably at much lower rates, as Securus does, for example, in New Mexico.
- **The Call Blocking Relief Requested By Securus Would Merely Perpetuate And Reinforce The Restrictive Practices And Excessive Inmate Rates That Create The Demand For Call Routing Services.** In the absence of inmate rate relief, Securus' call blocking remedy would meet none of these pro-consumer efficiency goals. There is no justification for adding yet another restriction on inmate calling options, thereby maintaining already excessive long distance inmate rates.
- **Declaratory Relief May Not Be Available To Securus.**
 - **Securus Appears To Request A New Rule, Not An Interpretation.** Securus requests authorization to veto non-inmates' service choices, which goes beyond any prior approved blocking. Unlike the competitive long distance services at issue in the *TOCSIA* proceeding, which were reached by dialing an access code, the call routing services targeted by Securus are offered to parties receiving inmate calls. Securus requests that the authorization given to inmate service providers in *TOCSIA* to block access to competitive service platforms be expanded to authorize the blocking of calls to certain numbers.

- **Factual Disputes Preclude Declaratory Relief.**

- Millicorp raises significant factual issues regarding the configuration of the services at issue and the security implications of call routing services. Securus permits calls to other VoIP and cell phone numbers. Securus and Global Tel*Link also concede that a number that can be connected with the billing name and address and physical location of the user does not pose a security issue. Millicorp states that it provides that data for parties using its services to the contracted inmate service provider for each correctional facility originating calls to Millicorp customers.
- The practices of some state correctional authorities also call into question Securus' factual assumptions. For example, the Michigan DOC has approved the use of VoIP routing services using numbers local to correctional facilities to receive inmate calls.