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September 26, 2012

By ECFS
Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

RE: *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*
Petitioners' Alternative Rulemaking Proposal
CC Docket No. 96-128

Dear Ms. Dortch:

Martha Wright, *et al.* ("Petitioners"), by and through her attorneys, respectfully submit into the record the attached recent calls for immediate action by the New York Times Editorial Board, Commissioner Mignon Clyburn, the New Mexico Public Regulatory Commission, and the FCC Consumer Advisory Committee in the instant proceeding.

For example, attached is an editorial from the New York Times Editorial Board, published on September 24, 2012, highlighting many of the points the Petitioners have raised on numerous occasions in this proceeding, noting the recent letter from Representatives Henry Waxman and Bobby Rush directed to Chairman Genachowski, and concluding that the FCC "has danced around this issue for far too long."

Also attached is the Statement from Commissioner Mignon Clyburn, released on September 24, 2012, calling for Chairman Genachowski to "propose a rulemaking for a vote by the full Commission that will lead to lower interstate long distance rates for incarcerated individuals and their families."

A similar stance was taken by the New Mexico Public Regulatory Commission, which adopted the attached resolution on September 25, 2012. In the resolution, the NM PRC restated many of the positions previously highlighted by the Petitioners, and urged the FCC "to act on the 'Wright Petition' (CC Docket No. 96-128) and set standards to ensure that families of those who are either incarcerated or detained in immigration proceedings are provided affordable options to remain connected."

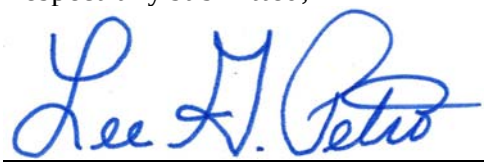
Finally, the FCC's Consumer Advisory Committee adopted the attached Resolution on September 21, 2012, again highlighting the issues previously discussed by the Petitioners, and urging the FCC to take the following steps:

1. Ensure that the price of calls from inmates are reasonable;
2. Restrict "commissions" paid by telephone companies to correctional institutions to a reasonable amount above the actual cost of providing the service;

3. Encourage the use of prepaid debit accounts for inmates whereby inmates or their called parties may buy low-cost minutes, and
4. Continue to allow collect calls from inmates with charges that are a reasonable amount above the actual cost of providing the call.

In light of these urgent calls for action, and in consideration of the fact that the FCC was directed by the D.C. Circuit Court to act "with dispatch" in 2001, the Petitioners respectfully request that the Commission move forward to grant the Petitioners' 2007 Alternative Proposal.

Respectfully submitted,



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Counsel for Martha Wright, et al.

Attachments

cc (*via electronic mail)* :

Chairman Julius Genachowski
Michael Steffen, Legal Advisor to Chairman Genachowski
Commissioner Robert McDowell
Christine Kurth, Legal Advisor to Commissioner McDowell
Commissioner Mignon Clyburn
Angela Kronenberg, Legal Advisor to Commissioner Clyburn
Commissioner Jessica Rosenworcel
Priscilla Delgado Argeris, Legal Advisor to Commissioner Rosenworcel
Commissioner Ajit Pai
Nicholas Degani, Legal Adviser to Commission Pai
Sean Lev, General Counsel
Julie Veach, Chief, Wireline Competition Bureau
Victoria Goldberg – Acting Chief, Pricing Policy Division, Wireline Competition Bureau
Deena Shetler – Associate Bureau Chief, Wireline Competition Bureau
Nicholas Alexander – Acting Deputy Division Chief, Pricing Policy Division, Wireline Competition Bureau
Pamela Arluk – Assistant Division Chief, Pricing Policy Division, Wireline Competition Bureau

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EDITORIAL

Costly Phone Calls for Inmates

Published: September 23, 2012

ACADEMY AWARD® NOMINEE
JOHN HAWKES

Members of Congress and civil rights groups are pushing the Federal Communications Commission to rein in telephone companies that, in many states, charge inmates spectacularly high rates that can force their families to choose between keeping in touch with a relative behind bars and, in some cases, putting food on the table.

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The time is long past for the F.C.C. — which has been weighing this issue for nearly a decade — to break up what amount to monopolies and ensure that prisoners across the country have access to reasonably priced interstate telephone service.

The calls are expensive because they are placed through independent telephone companies that pay the state a "commission" — essentially a legalized kickback — that ranges from 15 percent to 60 percent either as a portion of revenue, a fixed upfront fee or a combination of both. According to a new report by the Prison Policy Initiative, a research group based in Massachusetts, depending on the size of the kickback, a 15-minute call can cost the family as little as $2.36 or as much as $17.

Prison officials and phone companies that defend the system of commissions say that extra charges are necessary to pay for the security screening required when inmates make calls. But this presents no problem in New York State, which banned the kickbacks several years ago and required its prison telephone vendor to provide service at the lowest possible cost to the inmates and their families.

Service is similarly inexpensive and easily managed in federal prisons, which use a computer-controlled system that allows inmates to place monitored calls to a limited group of preregistered telephone numbers. The federal system, though affordable, also makes a profit.

Overcharging inmates is not just unfair but also counterproductive, because it discourages inmates from keeping in touch with a world where they will be expected to fit in. As Representative Henry Waxman, Democrat of California, and Representative Bobby Rush, Democrat of Illinois, noted in a recent letter to the F.C.C., the agency has danced around this issue for far too long.

A version of this editorial appeared in print on September 24, 2012, on page A22 of the New York edition with the headline: Costly Phone Calls for Inmates.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115

Majority (202) 225–2927
Minority (202) 225–3641

September 12, 2012

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Genachowski:

We write in regard to a matter that has been pending at the Federal Communications Commission (FCC) for close to a decade: the exorbitant rates that the families of prisoners pay to communicate with an incarcerated family member. Although this issue has been the subject of several rounds of notice and comment, as well as legislation introduced by Rep. Rush during the 110th Congress, the FCC has yet to take final action. We urge you to do so as soon as possible.

Research shows that regular contact between prisoners and family members during incarceration reduces recidivism.[1] Phone calls are the primary means for families to maintain contact with incarcerated relatives. Experts across the political spectrum have recommended minimizing the cost of prison phone calls as a way to support strong family relationships with inmates.[2] Yet under current policies and practices, prisoners and their families pay unusually high rates for phone service that discourage regular contact. In fact, a one hour call from prison often costs as much as a month of unlimited home phone service.

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[1] House Oversight and Government Reform Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, Testimony of Nancy G. La Vigne, Director, Justice Policy Center, the Urban Institute, *Hearing on Housing D.C. Code Felons Far Away From Home: Effects on Crime, Recidivism, and Reentry*, 111th Cong. (May 5, 2010).

[2] The Commission on Safety and Abuse in America's Prisons, *Confronting Confinement* (June 2006).

When inmates and families lose contact, society ultimately pays the price. Over 67% of released prisoners are rearrested within three years. At a time when the United States has the highest *per capita* incarceration rate in the world and spends nearly $58 billion per year to manage its prison population, we should be doing more to reduce recidivism.[3]

The extremely high cost of phone calls for prisoners and their families led a group of affected individuals to seek relief from the FCC. That request, known as the Wright Petition, has been before the Commission since 2003. Over five years ago, the Wright petitioners proposed rates that would ensure reasonable and affordable phone service for inmates and their families without short-changing states, prisons, and telephone service providers.

Recently, a coalition of civil rights groups and conservative leaders wrote the FCC asking the agency to cap the rates charged for interstate prison phone calls.[4] This diverse coalition of advocates came together to urge FCC action because of their common view that exorbitant prison phone rates do nothing to further the safety of our society or help rehabilitate prisoners.[5] In fact, they conclude that allowing current practices to continue is not sound public policy.[6] The coalition also notes that its proposed policy change will not undermine prison security.[7]

Earlier this week, the Prison Policy Initiative released a new report on the prison phone system titled *The Price to Call Home: State-Sanctioned Monopolization in the Prison Phone Industry*.[8] This study also concludes that high prison phone rates harm society both economically and socially and recommends that the FCC approve the Wright Petition and cap

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[3] Department of Justice, *Federal Prison System FY 2012 Budget Request* (online at http://www.justice.gov/jmd/2012summary/pdf/fy12-bop-bud-summary.pdf) and National Association of State Budget Officers, *State Expenditure Report: Examining Fiscal 2009-2011 State Spending* (online at http://www.nasbo.org/sites/default/files/2010%20State%20Expenditure%20Report.pdf).

[4] Letter from the Leadership Conference on Civil and Human Rights et al. to Federal Communications Commission Chairman Julius Genachowski (May 18, 2012).

[5] As David Keene, former chair of the American Conservative Union stated: "This makes no sense. This does nothing to further the safety of civil society. It does nothing to help rehabilitate those people who have been removed from that society as a result of criminal convictions. And in fact, it makes it less likely that these people will even be able to reintegrate themselves as useful citizens." *See* The Leadership Conference on Civil and Human Rights, *In Joint Letter, Left, Right, and Center Urge FCC to End Practice of Predatory Prison Phone Rates* (May 18, 2012).

[6] *Id.*

[7] *Id.*

[8] Prison Policy Initiative, *The Price to Call Home: State-Sanctioned Monopolization in the Prison Phone Industry* (Sept. 11, 2012).

prison phone rates.[9] Notably, the study asserts that lower prison telephone rates would lessen the ongoing security problem of contraband cell phones in prisons. Accordingly, lowering prison telephone rates "would improve safety by providing less incentive for incarcerated people to acquire contraband cell phones." [10]

We encourage the FCC to move expeditiously to resolve this issue. Thank you for your attention to this matter.

Sincerely,

Henry A. Waxman

Bobby L. Rush

cc: The Honorable Fred Upton
Chairman

The Honorable Robert M. McDowell
Commissioner
Federal Communications Commission

The Honorable Mignon Clyburn
Commissioner
Federal Communications Commission

The Honorable Jessica Rosenworcel
Commissioner
Federal Communications Commission

The Honorable Ajit Pai
Commissioner
Federal Communications Commission

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[9] *Id.*
[10] *Id.*

The price to call home: state-sanctioned monopolization in the prison phone industry

Sections:

1. Introduction
2. The Prison Telephone Market is Broken
3. Exorbitant Prison Phone Rates Result from the Monopolistic Market
4. Exorbitant Prison Phone Prices Harm Society
5. Government Regulation in the Prison Phone Industry
6. Why Federal Regulation Would Ameliorate the Problem
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A Prison Policy Initiative Report
by Drew Kukorowski
September 11, 2012

1. Introduction

Exorbitant calling rates make the prison telephone industry one of the most lucrative businesses in the United States today. This industry is so profitable because prison phone companies have state-sanctioned monopolistic control over the state prison markets,[1] and the government agency with authority to rein in these rates across the nation has been reluctant to offer meaningful relief.

Prison phone companies are awarded these monopolies through bidding processes in which they submit contract proposals to the state prison systems; in all but eight states, these contracts include promises to pay "commissions" — in effect, kickbacks — to states, in either the form of a percentage of revenue, a fixed up-front payment, or a combination of the two.[2] Thus, state prison systems have no incentive to select the telephone company that offers the lowest rates; rather, correctional departments have an incentive to reap the most profit by selecting the telephone company that provides the highest commission.[3]

This market oddity — that the government entity has an incentive to select the highest bidder and that the actual consumers have no input in the bidding process — makes the prison telephone market susceptible to prices that are well-above ordinary rates for non-incarcerated persons. This fact, coupled with what economists would label as the "relative inelastic demand"[4] that incarcerated persons and their families have to speak with one another, leads to exorbitant prices. The prison telephone market is structured to be exploitative because it grants monopolies to producers, and because the consumers — the incarcerated persons and their families who are actually footing the bills — have no comparable alternative ways of communicating.[5]

Exorbitant telephone rates are not only bad for incarcerated persons and their families, but are

The prison telephone market is structured to be exploitative

bad for society at large. High phone rates reduce incarcerated persons' ability to communicate with family, and family contact has been consistently shown to lower recidivism.[6] Currently, there is public debate about reducing the costs of mass incarceration by focusing on ways to lower the likelihood that incarcerated persons will re-offend after their release.[7] For example, the Republican Party Platform for 2012 endorses "the institution of family-friendly policies … [to] reduce the rate of recidivism, thus reducing the enormous fiscal and social costs of incarceration."[8] And the Democratic Party Platform for 2012 notes that the party "support[s]… initiatives to reduce recidivism." [9] Lowering prison telephone rates would serve the uncontroversial goal of reducing the likelihood that incarcerated persons will commit another crime after their release.

because it grants monopolies to producers, and because the consumers have no comparable alternative ways of communicating

Fortunately, government regulation can help achieve this goal. The Federal Communications Commission is considering a modest regulation to impose price caps on long-distance prison telephone rates. This report finds that such regulation, when considered against the backdrop of the corporate monopolization of the prison telephone market, would both reduce the price-gouging that incarcerated persons' families suffer and simultaneously contribute to the social good by reducing recidivism.

Regulation would both reduce the price-gouging that incarcerated persons' families suffer and simultaneously contribute to the social good by reducing recidivism.

2. The Prison Telephone Market is Broken

Markets for goods and services work best when consumers have the freedom to select the best seller. In the prison phone market, though, the consumers have no choice as to which telephone company to use. That choice is made for them by the state prison system. But state prison systems cannot be expected to advocate for lower phone rates because they don't have consumer interests in mind. And prison telephone companies have little incentive to provide reasonable rates to their customers because they do not answer to those customers.

These state-sanctioned monopolies prey upon people who are least able to select alternative methods of communication and who are least able to sustain additional expenses. Incarcerated persons have below average literacy rates that make it less practical for them to communicate in writing.[10] It is difficult for families of incarcerated persons to pay for phone calls because people in prison tend to come from low-income households.[11] A study of recently released people from Illinois prisons found that the price of phone calls from prison was one of the two most significant barriers to family contact during incarceration.[12] Therefore, prison phone companies not only have monopolies, but their customers have no comparable alternatives to telephone communication.

In addition to these structural problems with the prison telephone industry, corporate agglomeration has exacerbated the already exorbitant rates. Over the past few years, three corporations have emerged to dominate the market. 90% of incarcerated persons live

American Securities: A primer[39]

Who is American Securities?

in states with prison phone service that is exclusively controlled by Global Tel*Link, Securus Technologies, or CenturyLink.[13] The largest of these corporations, Global Tel*Link, currently has contracts for 27 state correctional departments after its acquisition of four smaller prison phone companies between 2009 and 2011.[14] Global Tel*Link-controlled states contain approximately 57% of the total state population of incarcerated people in the United States.[15] Government regulation was designed to control this kind of corporate domination over a captive market.

3. Exorbitant Prison Phone Rates Result from the Monopolistic Market

The combination of corporate consolidation in the prison phone industry, state-granted monopolies, and inelastic demand for prison telephone service has led to exorbitant rates. In many states, someone behind bars must pay about $15 for a fifteen minute phone call.[16] For families trying to stay in touch on a regular basis, such prices are often backbreaking.

Because rates vary widely between states — even between states that use the same prison phone company — nationwide regulation appropriate. For example, a fifteen minute long-distance phone call from Global Tel*Link costs $2.36 in Massachusetts, but that same call costs more than $17 in Georgia.[17] This large difference in rates originates in large part from the wide range — anywhere from 15% to 60% — in the size of kickbacks that prison phone companies pay to state governments.[18]

The phone companies and state prison systems use different arguments to defend the high rates. Prison phone companies argue that rates must be high in order to cover costs associated with providing secure telephone service, such as call monitoring.[19] But this argument is refuted by phone rates charged in New York. New York law bans kickbacks and requires that "the lowest possible cost to the user shall be emphasized."[20] Currently, Global Tel*Link charges incarcerated persons and their families about $0.05 per minute, local and long-distance, in the New York prison system. Thus, low rates in the prison phone market are entirely consistent with call monitoring and other security measures.

Correctional departments argue that revenue

A New York private equity firm that purchased prison telephone behemoth Global Tel*Link last year.

How did American Securities acquire Global Tel*Link?
By purchasing the prison phone company from two other New York private equity firms, Veritas and Goldman Sachs Direct, for $1 billion in 2011. Veritas and Goldman Sachs purchased Global Tel*Link in 2009 for $345 million. That's a $655 million return on their investment in two years.

What kinds of companies does American Securities invest in?
According to its website, American Securities specializes in "stable demand industries." And it doesn't get much more stable than a monopoly over the prison telephone industry with a captive consumer market.

Never heard of American Securities before?
Aside from Global Tel*Link, their investments include Oreck Vacuums and Potbelly Sandwich Works.

The combination of corporate consolidation in the prison phone industry, state-granted monopolies, and inelastic demand for prison telephone service has led to exorbitant rates.

Both prison phone companies

from kickbacks provides for prison amenities that would otherwise go unfunded by state legislatures.[21] This argument fails to stand up to scrutiny when considering that the federal prison system charges comparatively low rates: $0.06/minute local and $0.23/minute long-distance, and still generates enormous revenue. As a recent Government Accountability Office report points out, the federal prison phone rates were sufficient to cover costs and generate $34 million in profit in 2010.[22] Thus, profits can still be generated when prices are capped at relatively low levels. Both prison phone companies and state prison systems would be able to cover costs and generate revenue even with price caps.

and state prison systems would be able to cover costs and generate revenue even with price caps.

4. Exorbitant Prison Phone Prices Harm Society

The link between family contact during incarceration and reduced recidivism is well-documented.[23] Indeed, the federal Bureau of Prisons states that "telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development."[24] Congress itself has found, in the context of re-enacting the Second Chance Act of 2007, that "there is evidence to suggest that inmates who are connected to their children and families are more likely to avoid negative incidents and have reduced sentences."[25] And the American Correctional Association, the world's largest professional corrections association and an accreditation agency for correctional facilities, has repeatedly resolved that "sound correctional management" requires that "adult/juvenile offenders should have access to a range of reasonably priced telecommunications services" and that rates for such services should be "commensurate with those charged to the general public for like services."[26] Thus, a variety of stakeholders and policy-making bodies agree that high phone prices are harmful, and yet high prison phone prices persist.

In addition to reducing recidivism, lower telephone prices that lead to increased contact between incarcerated people and their children increase incarcerated persons' involvement with their children after release.[27] As of 2007, 52% of people incarcerated in state prisons and 63% of people incarcerated in the federal system were parents of minor children.[28] Lowering the cost of communications for these incarcerated persons and their children would improve parent-child relationships by permitting more frequent communication.

The telephone is one of the few ways that people in prison can remain in touch with their children. (Photo: Lucy Nicholson/Reuters, 2012)

The economic consequences of high prison phone rates are harmful, as well. The apparent

The apparent revenues generated by high prison phone rates are

revenues generated by high prison phone rates are offset by the costs of larger prison populations caused by increased rates of re-offending. Foregoing revenue from exorbitant phone rates now will decrease correctional departments' costs in the future because fewer people will find themselves back in prison. If state governments are serious about lowering costs by reducing prison populations, lowering prison phone rates provides a simple, straightforward, and evidence-based way to achieve that goal.

offset by the costs of larger prison populations caused by increased rates of re-offending.

High prison phone rates also function as a regressive tax on communities that experience higher incarceration rates.[29] This is the opposite of our generally progressive tax structure where tax burdens increase as income rises. In this context, low-income families pay exorbitant phone rates that fund state revenues. But taxpayers are already paying for prisons. It is unfair that taxpayers whose family members are incarcerated should be subject to an additional tax, especially one that also enriches prison phone corporations and makes incarcerated people more likely to return to prison.

It is unfair that taxpayers whose family members are incarcerated should be subject to an additional tax.

Finally, lower prison telephone rates would also lessen the recent problem of contraband cell phones.[30] The connection between high prison phone rates and contraband cell phone spurred Congress to order a government study into the effect of high prison phone rates on the demand for contraband cell phones.[31] And even *TIME Magazine* notes that the "notoriously expensive" cost of using prison telephones contributes to the demand for cell phones in prison.[32] Lowering prison telephone rates would improve safety by providing less incentive for incarcerated people to acquire contraband cell phones.

5. Government Regulation in the Prison Phone Industry

Currently, prison phone companies are subject to minimal governmental regulation. Pressuring state utility agencies, which regulate local and in-state long-distance phone rates, to lower prison phone rates has been successful in a few places, but is unlikely to succeed everywhere. The commissions that states receive from prison phone companies give states little incentive to enact affordable rates. At the federal level, the Federal Communications Commission (FCC) currently limits its regulation of the prison phone industry to disclosure requirements mandating that prison phone companies inform collect call recipients of prices before family members accept calls from incarcerated persons.[33]

In 2000, a group of plaintiffs brought a class action lawsuit against the Corrections Corporation of America and several prison phone companies, alleging that the prison phone agreements between the parties violated, among other things, federal anti-trust law. The federal district court referred the case to the FCC, stating that the FCC was better suited to addressing the concerns raised by the lawsuit. The plaintiffs then petitioned the FCC to enact regulations that would introduce competition to the prison phone market in the hopes of lowering prison phone rates by breaking up the monopolistic prison phone industry. After several years of little movement from the FCC, the plaintiffs shifted their request by petitioning the FCC to impose price caps or benchmark rates of $0.20 - $0.25 per minute for interstate long-distance rates.[34] This petition — known as the Wright Petition, after

original plaintiff Martha Wright — is still pending before the FCC.

The rates requested by the Wright Petition would be more affordable and would still permit phone companies to earn profits. As demonstrated by the example of the federal prison system discussed in section 3, rates as low as $0.06 per minute can still generate significant revenue. Despite widespread consensus that prison phone rates should be lower, the FCC has failed to impose price caps in this market because of obstructionism by prison phone companies. Prison phone companies continue to resist a regulation that is eminently reasonable and that would permit them to make handsome profits while simultaneously reducing crime. This is corporate greed and disregard for public welfare at its worst.

Despite widespread consensus that prison phone rates should be lower, the FCC has failed to impose price caps in this market because of obstructionism by prison phone companies.

6. Why Federal Regulation Would Ameliorate the Problem

The Federal Communication Commission's statutory purpose, stated in the law that created the commission in 1934, is to regulate telecommunications such that service is available nationwide at "reasonable charges."[35] Under no circumstances can the current prison phone rates be deemed reasonable.

The FCC is ideally situated to regulate this broken market. The FCC already has consumer protection capabilities such that it can field consumer complaints and resolve disputes with phone companies without the time and costs associated with litigation.

Federal regulation of interstate long-distance prison phone rates would bring much-needed relief to incarcerated persons and their families, and it would increase public safety by reducing recidivism through increased family communications. While such regulation would not necessarily affect prison phone long-distance rates within a single state,[36] the highest prison phone rates currently apply to interstate phone calls.[37] Setting price caps for interstate prison long-distance rates would bring rates more in line with rates in the non-prison market while still enabling prison phone companies to earn profits.[38] In sum, federal regulation of this market is imperative.

7. Summary & Recommendations

State-sanctioned monopolies for prison telephone companies encourage exorbitant phone rates for incarcerated persons and their families. High prison phone rates — effectively regressive taxes — reduce communication between incarcerated persons and their families. Criminological research undeniably demonstrates that increased communication with family during incarceration reduces the risk that incarcerated persons will re-offend after their release. But neither prison phone corporations nor state prison systems have a strong incentive to lower rates. As a result, incarcerated persons, their families, and the public at large suffer while a few select corporations reap the profits.

Government regulation of this predatory industry is the best solution. The Federal Communications Commission should set price caps on prison phone rates by approving the

Government regulation of this predatory industry is the best solution.

Wright Petition. State governments should refuse to engage in the collusive and pernicious practice of accepting kickbacks from prison phone revenue. And the public should exercise its political power to ensure that justice is brought to the prison phone industry by participating in the relentless advocacy campaigns for this issue, such as those organized by Citizens United for the Rehabilitation of Errants (CURE), the Center for Media Justice, Thousand Kites, and the Prison Phone Justice Campaign.

Acknowledgements

I thank Barbara Fair, Alex Friedman, Stephen Healy, Kelsey Kauffman, Taren Stinebrickner-Kauffman, Nick Szuberla, and Paul Wright for sharing their expertise on fighting the monopolistic prison telephone industry with me, and I thank Leah Sakala and Peter Wagner for their assistance developing and distributing this report.

About the author

Drew Kukorowski has an M.A. in Philosophy from Tufts University and a J.D. degree from the University of North Carolina School of Law. He is currently a research associate at the Prison Policy Initiative.

About the Prison Policy Initiative

The non-profit, non-partisan Prison Policy Initiative was founded in 2001 to demonstrate how the American system of incarceration negatively impacts everyone, not just the incarcerated. The Easthampton, Massachusetts based organization is most famous for its work documenting how mass incarceration skews our democracy. Other projects have included a groundbreaking report about sentencing enhancement zones, and online resources giving activists, journalists and policymakers the tools they need to participate in setting effective criminal justice policy.

Endnotes

[1] Paul R. Zimmerman & Susan M.V. Flaherty, *Location Monopolies and Prison Phone Rates*, 47 QUARTERLY REVIEW OF ECONOMICS AND FINANCE 261, 262 (2007). Specifically, Zimmerman & Flaherty identify prison telephone companies as having ‘location monopolies,’ i.e., the telephone service provider is the exclusive provider for all of the prisons in a state.

[2] *See* John E. Dannenberg, *Nationwide PLN Survey Examines Prison Phone Contracts, Kickbacks*, 22 PRISON LEGAL NEWS 1, 4-5 (2011); *see also* Steven J. Jackson, *Ex-Communication: Competition and Collusion in the U.S. Prison Telephone Industry*, 22 CRITICAL STUDIES IN MEDIA COMMUNICATION 263, 269 (2005). Dannenberg’s article is a tour de force that is required reading for this issue.

[3] *See* Jackson, *supra* note 2, at 269.

[4] Roughly, demand for a specific product is inelastic when changes in the product’s price do not have a corresponding effect on the demand for that good.

[5] *See* Zimmerman & Flaherty, *supra* note 1, at 262 (arguing that mail and email are not close substitutes of telephone communication because of the high rate of illiteracy among incarcerated persons).

[6] *See* Nancy G. La Vigne, Rebecca L. Naser, Lisa E. Brooks, & Jennifer L. Castro, *Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners' Family Relationships*, 21 JOURNAL OF CONTEMPORARY CRIMINAL JUSTICE 314, 316 (2005).

[7] There is also significant action by states to consider new ways to reduce recidivism. *See* CHRISTIAN HENRICHSON & RUTH DELANEY, VERA INSTITUTE OF JUSTICE, THE PRICE OF PRISONS: WHAT INCARCERATION COSTS TAXPAYERS 12 (2012) (noting that several states have increased efforts to reduce recidivism through improved reentry programs), *available at* http://www.vera.org/download?file=3542 /Price%2520of%2520Prisons_updated%2520version_072512.pdf (last visited Sept. 5, 2012).

[8] REPUBLICAN PARTY PLATFORM 38 (2012), *available at* http://www.gop.com/wp-content /uploads/2012/08/2012GOPPlatform.pdf (last visited Sept. 4, 2012).

[9] DEMOCRATIC NATIONAL PLATFORM (2012), *available at* http://assets.dstatic.org /dnc-platform/2012-National-Platform.pdf (last visited Sept. 7, 2012).

[10] *See* ELIZABETH GREENBERG, ERIC DUNLEAVY, MARK KUTNER, & SHEIDA WHITE, U.S. DEPT. OF EDUCATION, NATIONAL CENTER FOR EDUCATION STATISTICS, LITERACY BEHIND BARS: RESULTS FROM THE 2003 NATIONAL ASSESSMENT OF ADULT LITERACY PRISON SURVEY 29 (2007), *available at* http://nces.ed.gov/pubs2007 /2007473.pdf (last visited Sept. 5, 2012).

[11] *See* generally BRUCE WESTERN, PUNISHMENT AND INEQUALITY IN AMERICA 85-107 (2006) (Ch.4).

[12] *See* La Vigne et al., *supra* note 6, at 323 (2005).

[13] Note that this data only reflects state prison contracts, not local jail contracts or contracts with private prisons. Thus, it is likely that these companies control phone service for even more incarcerated persons. Percentage was calculated by consulting Dannenberg (2011) and U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2010 14 (2012), *available at* http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2230 (last visited Sept. 5, 2012).

[14] *See* Dannenberg, *supra* note 2, at 16, and Global Tel*Link website, *available at* http://www.gtl.net/ (noting that Global Tel*Link owns the contracts for Conversant Technologies, Value-Added Communications, Public Communications Services, and Inmate Telephone Inc.) (last visited Sept. 10, 2012).

[15] *See* note 13, *supra*.

[16] In Mississippi, for example, someone behind bars in the state Department of Corrections pays $14.55 for a 15-minute phone call. *See* U.S. GOVERNMENT ACCOUNTABILITY OFFICE, IMPROVED EVALUATIONS AND INCREASED COORDINATION COULD IMPROVE CELL PHONE DETECTION 14 (2011), *available at* http://www.gao.gov/assets/330/322805.pdf (last visited Sept. 5, 2012). In Georgia, that price rises to more than $17. *See* GEORGIA DEPARTMENT OF CORRECTIONS, INMATE TELEPHONE SYSTEM: GLOBAL TEL LINK CUSTOMER USER GUIDE 4, *available at* http://www.dcor.state.ga.us/pdf/GDC_GTL_user_manual.pdf (last visited on Sept. 3, 2012).

[17] *See* Dannenberg, *supra* note 2, at 16.

[18] *See* id. at 2.

[19] *See* Zimmerman & Flaherty, *supra* note 1, at 263.

[20] N.Y. CORR. LAW S 623.

[21] *See* Zimmerman & Flaherty, *supra* note 1, at 263; *see also* Justin Carver, *An Efficiency Analysis of Contracts for the Provision of Telephone Services to Prisons*, 54 FED. COMM. L.J. 391, 400 (2002).

[22] *See* U.S. GAO, *supra* note 16, at 15.

[23] *See* La Vigne et al., *supra* note 6, at 316; *see also* Rebecca L. Naser & Christy A. Visher, *Family Members' Experiences with Incarceration and Reentry*, 7 WESTERN CRIMINOLOGY REVIEW 20, 21 (2006) (noting that "a remarkably consistent association has been found between family contact during incarceration and lower recidivism rates").

[24] 28 C.F.R. S 540.100(a).

[25] 42 U.S.C. S 17501(b)(6).

[26] AMERICAN CORRECTIONAL ASSOCIATION, PUBLIC CORRECTIONAL POLICIES, PUBLIC CORRECTIONAL POLICY ON ADULT/JUVENILE OFFENDER ACCESS TO TELEPHONES 2001-1 (amended 2011), *available at* https://www.aca.org/government /policyresolution/PDFs/Public_Correctional_Policies.pdf (last visited Sept. 8, 2012). This Policy Statement was unanimously adopted in 2001, and was amended and endorsed in 2006 and 2011.

[27] *See* La Vigne et al., *supra* note 6, at 328.

[28] LAUREN E. GLAZE & LAURA M. MARUSCHAK, BUREAU OF JUSTICE STATISTICS, PARENTS IN PRISON AND THEIR MINOR CHILDREN 1 (2008; revised 2010), *available at* http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=823 (last visited Sept. 6, 2012).

[29] *See* Carver, *supra* note 21, at 400 (2002).

[30] *See, e.g.*, TODD W. BURKE & STEPHEN S. OWEN, FBI LAW ENFORCEMENT BULLETIN, CELL PHONES AS PRISON CONTRABAND (2010), *available at* http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/july-2010/cell-phones-as-prison-contraband (last visited Sept. 6, 2012). This FBI bulletin also acknowledges that part of correctional administrators' objection to cell phones lies in the fact that cell phone use reduces revenue from prison-approved phones. *See also* DAVID R. SHAW, CALIFORNIA OFFICE OF THE INSPECTOR GENERAL, SPECIAL REPORT: INMATE CELL PHONE USE ENDANGERS PRISON SECURITY AND PUBLIC SAFETY 6 (2009) (noting that a correctional officer in the California prison system earned $150,000 in a single year smuggling cell phones).

[31] Cell Phone Contraband Act of 2010, Pub. L. No. 111-225, 124 Stat. 2387 (2010).

[32] Tom McNichol, TIME MAGAZINE, *Prison Cell Phone Use a Growing Problem*, *available at* http://www.time.com/time/nation/article/0,8599,1900859,00.html (May 26, 2009) (last visited Sept.

3, 2012).

[33] 47 C.F.R. S 64.710.

[34] Federal Communications Commission, *Implementation of Pay Telephone Reclassification and Compensation Provisions of Telecommunications Act of 1996*. Petitioners' Alternative Rulemaking Proposal, CC Docket No. 96-128 (Feb. 28, 2007). Given that this request was submitted in 2007, and the low long-distance rates that prevail today, the requested rates would already seem too high.

[35] 47 U.S.C. S 151.

[36] FCC jurisdiction only extends to interstate telecommunications.

[37] *See* Dannenberg, *supra* note 2, at 16.

[38] *See* Zimmerman & Flaherty, *supra* note 1, at 277.

[39] David Carey, THE DEAL PIPELINE, *American Securities Buys Global Tel*Link from Veritas*, (Oct. 31, 2011), http://www.thedeal.com/content/private-equity/american-securities-buys-global-tellink-from-veritas.php (last visited Sept. 10, 2012); American Securities, http://www.american-securities.com (last visited Sept. 5, 2012).

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC. 515 F 2d 385 (D.C. Circ 1974).

FOR IMMEDIATE RELEASE
September 24, 2012

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STATEMENT OF FCC COMMISSIONER MIGNON L. CLYBURN ON MEETING PETITIONERS MARTHA WRIGHT AND ULANDIS FORTE AND SCREENING THE AWARD-WINNING FILM *MIDDLE OF NOWHERE*

"This journey began in Washington, D.C. twenty years ago when Martha Wright's grandson, Ulandis Forte, was convicted, sent to prison in Lorton, Virginia and was subsequently transferred to several out of state prisons, including Arizona, New Mexico, Ohio, and Pennsylvania. Due to poor health and financial limitations, Mrs. Wright, who resides in D.C., could not easily visit her grandson. Written correspondence would also prove difficult because she is blind. Like many of us, this family relied on the telephone to stay connected. But they would soon be forced to terms with one of the stark realities of incarceration: prison payphone rates. Their story is shared by many families every day as approximately two million Americans are currently incarcerated.

The cost of calling from prisons is over and above the basic monthly phone service families of prisoners already pay, and in many cases families will spend significantly more for receiving calls from prison. Typically, a connection fee is charged for a prison payphone call, along with per minute fees. While prices vary by state and prison, the connection fee is usually $3 to $4 dollars, and the per-minute fee for interstate long distance service can be as high as $.89 per minute. For example, one fifteen-minute interstate phone call from prisons in two different states—one in the East and one in the West—costs about $17. For those families, they will spend an additional $34 over and above their basic monthly phone rate to speak twice a month for a total of 30 minutes. Many cannot afford this. In fact, neither Mrs. Wright nor Mr. Forte had the financial means to talk on the phone for very long and they kept their conversations as short as possible—to five minutes or less. Over ten years ago, they joined with others to file a lawsuit, which led to petitioning this Commission to request lower payphone rates in prisons.

An award-winning film, *Middle of Nowhere,* beautifully portrays the compelling story of a young family separated by long distance due to incarceration. It captures the struggles families face when their loved ones are serving their sentences hundreds of miles from home. Staying connected is challenging. Traveling for in-person visits is time-consuming and often expensive, and such hardships are most acute for low-income families who struggle just to make ends meet. So access to low-cost phone service options should be part of the answer to this family divide. Connecting husbands to wives, parents to children, and grandparents to grandchildren should be a national priority because these tangible means of communicating not only will help these families keep in contact, but the general society benefits overall, as studies show that prisoners are less likely to reoffend if they are able to maintain these relationships with their loved ones.

I am uplifted that both political parties during their respective conventions this summer reiterated their commitments to policies that will reduce the recidivism rate in our nation, and I

am further energized in that this agency also has a role to play in doing just that. It is the Commission's responsibility to ensure that interstate phone rates are just and reasonable, and we have an obligation to ensure that basic, affordable phone service is available to all Americans, including low-income consumers. Incarcerated individuals and their loved ones should not be the exceptions here, and as watchdogs of the public interest, this Commission must and should act expeditiously. I am pleased that the Chairman has been receptive to the Wright Petitioners, and my discussions with him and his office have been very positive about the next steps needed to move forward in this proceeding. It is my hope that soon the Chairman will propose a rulemaking for a vote by the full Commission that will lead to lower interstate long distance rates for incarcerated individuals and their families. I look forward to working with my colleagues to ensure that we do the *right* thing by answering the Wright Petition.

The good news here is that the familial bond between Mrs. Wright and her grandson was not broken by exorbitant prison payphone rates. Mr. Forte has paid his debt to society, was recently released from prison, and they are now reunited. But what this family has not done is stop fighting for all of the others who remain desperate to hear the voices of their incarcerated loved ones on a regular basis. They know what it's like when you can't afford to make even a short call, let alone the more important ones containing the missing news that all families want to share—such as hearing your child's first words or describing their first academic highlight or great sports feat. And let us not minimize the power behind simply hearing and expressing those three words, 'I love you.' That is what Mrs. Wright and Mr. Forte are fighting for, and I am proud to stand with them."

- FCC -

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

Resolution No. 12-0925

REQUESTING THE FCC ACT ON THE "WRIGHT PETITION" TO PROTECT CONSUMERS OF INMATE TELEPHONE SERVICES

WHEREAS security requirements present in jails, prisons, and other detention and correctional facilities require these facilities to obtain specialized telephone facilities to enable monitoring of inmate telephone calls;

WHEREAS inmate telephone system service contracts generally include provisions for local exchange carrier and inter-exchange carrier services to enable the completion of telephone calls originating with inmates in a facility;

WHEREAS the purchasing and contracting decisions for inmate telephone systems are made by the operators of the detention and correctional facilities;

WHEREAS the financial interests of the consumers of the telephone services are often left out of the equation when considering inmate telephone systems;

WHEREAS the terms of exclusive contracts between facilities and the specialized telephone companies providing inmate phone services may result in high rates per minute and excessive connection fees;

WHEREAS high connection fees can substantially raise costs to callers and recipients beyond posted rates when calls are disconnected in progress, requiring multiple connection fees to be paid to complete a single telephone call;

WHEREAS inmate telephone services have been characterized by the addition of other fees and surcharges, such as fees to recharge pre-paid inmate calling cards or accounts;

WHEREAS it has been shown that inmates with strong family and community bonds are much less likely to re-offend and end up back in the correctional system;

WHEREAS the inmates can be detained in a facility distant from their home communities, requiring long distance calls to maintain family and community ties;

WHEREAS unreasonable telephone fees and surcharge pose a real barrier to frequent and adequate communications between inmates and their families, in many cases forcing families to limit communication with an inmate due to high costs;

WHEREAS inmate telephone phone calls are a critical part of the reentry process that allow incarcerated or detained individuals prepare for parole, coordinate legal defense, find housing and secure employment;

WHEREAS eight states, including New Mexico, have banned prison phone commissions and as a result the cost of phone calls in those states have dropped;

WHEREAS, in 2001, the federal district judge hearing *Wright v. Corrections Corporation of America*, a case seeking judicial relief for consumers of inmate telephone services, acknowledged the civil rights issues plead, but dismissed the case citing the primary jurisdiction of the Federal Communications Commission; and

WHEREAS the "Wright Petition" was filed with the FCC in 2003 seeking a rulemaking on inmate telephone services, and in 2007 after no final action by the FCC, petitioners submitted an alternate rulemaking petition seeking per-minute rate caps on interstate long-distance services similar to what New Mexico and other states have imposed on an intrastate basis,

THEREFORE BE IT RESOLVED that the New Mexico Public Regulation Commissioner urges the FCC to act on the "Wright Petition" (CC Docket No. 96-128) and set standards to ensure that families of those who are either incarcerated or detained in immigration proceedings are provided affordable options to remain connected.

ISSUED under the seal of the Commission in Santa Fe, New Mexico, this 25th day of September, 212.

NEW MEXICO PUBLIC REGULATION COMMISSION

PATRICK H. LYONS, CHAIRMAN

THERESA BECENTI-AGUILAR, VICE CHAIR

JASON A. MARKS, COMMISSIONER

DOUGLAS J. HOWE, COMMISSIONER

BEN L. HALL, COMMISSIONER

FCC CONSUMER ADVISORY COMMITTEE
Recommendation Regarding Affordable Phone Access for Incarcerated Individuals and Families

Whereas telephones and phone calls are a vital part of our communications system;

Whereas, the prices for telephone calls from incarcerated individuals to their families, friends, and professionals who serve them, may be unreasonably high and unaffordable; and

Whereas these excessive rates deter regular telephone contact, challenging a national goal of the reduction of recidivism among inmates;

Whereas phone calls are a critical part of the reentry process as maintaining strong family and community connections help inmates prepare for parole, coordinate their legal defense, find housing and secure employment;

Whereas, most inmate calling arrangements require calls to be made as collect calls, which are paid by the family and friends of the inmate, thus burdening those persons who are not incarcerated; and

Whereas, the problem is national in scope and the FCC has failed to take action,

Therefore be it resolved that the FCC Consumer Advisory Committee urges the Federal Communications Commission:

1. Ensure that the price of calls from inmates are reasonable
2. Restrict "commissions" paid by telephone companies to correctional institutions to a reasonable amount above the actual cost of providing the service
3. Encourage the use of prepaid debit accounts for inmates whereby inmates or their called parties may buy low-cost minutes, and
4. Continue to allow collect calls from inmates with charges that are a reasonable amount above the actual cost of providing the call.

BE IT FURTHER RESOLVED, that as the only agency with jurisdiction over long distance rates, the Federal Communications Commission is the correct venue to resolve this problem.

Adopted: September 21, 2012
Abstentions: Coleman Institute for cognitive Disabilities, CTIA the Wireless Association, NCTA, Time Warner Cable, T-Mobile, Verizon

Respectfully Submitted:

Debra R. Berlyn, Chairperson
FCC Consumer Advisory Committee