THE PRICE TO CALL HOME:

STATE-SANCTIONED MONOPOLIZATION IN THE PRISON PHONE INDUSTRY

PRISON POLICY INITIATIVE

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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.

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by Drew Kukorowski
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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 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.

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.

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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 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.

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.

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 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.

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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 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.

AMERICAN SECURITIES: A PRIMER

Who is American Securities?
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.

Sources: 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).

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

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.

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

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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.

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.

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.

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

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 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), and the Center for Media Justice.

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 § 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. § 540.100(a).

[25] 42 U.S.C. § 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. § 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. § 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.