

March 25, 2013



Submitted Online Only

Sturm College of Law
Clinical Programs

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

Re: Comment in the Matter of Rates for Inmates Calling Services, WC Docket No. 12-375

Dear Commissioner Genachowski:

The University of Denver Sturm College of Law Civil Rights Clinic writes on behalf of two disability rights organizations to provide public comment on Federal Communications Commission (“FCC”) Proceeding Number 12-375¹, regarding the FCC’s proposed regulation of prison telecommunications rates. The Legal Center for People with Disabilities and Older People (Legal Center), part of Colorado’s Protection & Advocacy System, “protects and promotes the rights of people with disabilities and older people in Colorado through direct legal representation, advocacy, education and legislative analysis.”² The Colorado Developmental Disabilities Council (“CODDC”) is “a 24-member body appointed by the Governor to advise the Governor and General Assembly on matters affecting persons with developmental disabilities under the federal definition ...[including] advocating for the development and implementation of public policy to further the independence, self-determination and community inclusion of Coloradoans with developmental disabilities.”³

The Legal Center and CODDC are concerned that in the absence of government regulation, private prison telecommunication providers, also referred to as “inmate calling services” (ICS), have imposed exorbitant phone rates on incarcerated individuals. These rates disproportionately impact Deaf and hard of hearing inmates, who often require longer call times to communicate with friends and family using assisted communication devices. Accordingly, we urge the FCC to provide federal oversight of and national rate caps on inmate calling services, and also to provide more regulation and lower rate caps on calls at the state level.

Under the current system, states put the contracts to run inmate calling services out to bid to private providers. While government entities are usually required to accept the lowest bid submitted via a competitive bidding process, states contracting for inmate calling services are currently under no such obligation, and therefore have no incentive to select

¹ Rates for Interstate Inmate Calling Services, 78 Fed. Reg. 4369-01 (Jan. 22, 2013)(amending 47 C.F.R. pt. 64).

² The Legal Center for People with Disabilities website, *available at* <http://www.thelegalcenter.org/index.php?s=10194>.

³ Colorado Developmental Disabilities Council website, *available at* <http://www.coddc.org/>.

phone companies that offer the lowest rates to inmates.⁴ In fact, because the states themselves receive a portion of the revenue generated by inmate calling services, states actually benefit by selecting the company that offers the highest percentage of revenue and consequently the highest phone rates for inmates.

The Legal Center and CODDC note that these exorbitant prison calling rates affect thousands of families in Colorado, particularly in low-income communities, which have higher incarceration rates.⁵ Most Colorado Department of Corrections (“CDOC”) facilities are located far from Colorado’s population centers. For example, the majority of CDOC inmates are housed within its Cañon City complex. Cañon City is approximately 130 miles away from Denver, the capital of the state and home to 2.9 million⁶ of Colorado’s approximately 5.2 million residents.⁷ The Cañon City complex is closer to Colorado Springs, a distant second to Denver as Colorado’s second most populous city with approximately 425,000 residents,⁸ but still 50 miles away. The distance makes it very difficult for inmates’ families and friends to visit on a consistent basis, if at all. As a result, telephone calls are critical in maintaining familial relationships. Yet calls by inmates can cost as much as 24 times the rate as calls made by people outside of prison.⁹

These costs are greater for Deaf and hard of hearing inmates. To communicate via telephone, Deaf and hard of hearing individuals must type on a Text Telephone (“TTY”). The TTY then translates the typed letters into sound.¹⁰ As a result, the average length of a telephone conversation using TTY is approximately four times longer than a voice telephone conversation. In addition to paying for the longer call time, Deaf and hard of hearing inmates who use TTYs also have to pay additional fees for connecting to a TTY relay operator.¹¹

The disproportionate impact of prison phone rates on Deaf and hard of hearing individuals is inconsistent with the Telecommunications Act of 1996 (“Act”), regarding the provision of payphone services, codified at 47 U.S.C. § 276. The Act explicitly

⁴ See Steven J. Jackson, *Ex-Communication: Competition and Collusion in the U.S. Prison Telephone Industry*, 22 CRITICAL STUDIES IN MEDIA COMMUNICATION, 263, 269 (2005).

⁵ Drew Kukorowski, *The Price to Call Home: State-Sanctioned Monopolization in the Prison Phone Industry. A Prison Policy Initiative Report* (Prison Policy Initiative: September 11, 2012) (citing Bruce Western, PUNISHMENT AND INEQUALITY IN AMERICA, 85-107 (Russell Sage Found. 2006) (Ch.4)).

⁶ Denver Metro Chamber of Commerce, <http://www.metrodenver.org/demographics-communities/demographics/population.html> (last visited on Mar. 23, 2013).

⁷ U.S. Census Quickfacts for Colorado, available at <http://quickfacts.census.gov/qfd/states/08000.html> (last visited on Mar. 23, 2013).

⁸ U.S. Census Quickfacts for Colorado Springs, available at <http://quickfacts.census.gov/qfd/states/08/0816000.html> (last visited Mar. 23, 2013).

⁹ John E. Dannenburg, *Nationwide PLN Survey Plan Examines Prison Phone Contracts, Kickbacks*, PRISON LEGAL NEWS (April 2011) available at http://www.prisonphonejustice.org/includes/_public/_publications/Telephones//revised%20nationwide%20pln%20survey%20examines%20prison%20phone%20contracts,%20kickbacks.pdf.

¹⁰ See TTY/TDD Communications, <http://www.howto.gov/contact-centers/technologies/tty-tdd-communications> (last visited Mar. 25, 2013).

¹¹ Rates for Interstate Inmate Calling Services, FCC 12-167 (adopted Dec. 24, 2012).

exempts “telecommunications relay service calls for hearing disabled individuals” from the per call compensation plan.¹² When signing the Act, President Clinton stated that “service providers would be required to address the needs of individuals with disabilities.”¹³ Both the statutory exemption for hearing disabled individuals and the President’s admonition have failed to provide any protection to Deaf and hard of hearing individuals in prison.

In Colorado, the prison telephone contract is awarded to a private provider through a bidding process. The winning company receives a percentage of revenue generated by inmate calls, a fixed up-front payment, or a combination of the two. The remainder of the revenue goes to the state. The CDOC has awarded the contract to provide inmate calling services to a company named Value Added Communications. Currently, in Colorado the rates per inmate call are as follows:

- Local call: \$2.75 plus \$.23 per minute;
- Intrastate call: \$2.75 plus \$.23 per minute; and
- Interstate call: \$3.95 plus \$.89 per minute.¹⁴

Based on these rates, a 10-minute local call costs an inmate in CDOC custody \$5.05. The same call would cost a Deaf or hearing impaired inmate in CDOC custody approximately four times that amount - over \$20.00 – not including additional charges for using the TTY. Colorado’s rate for local inmate calls is the highest local rate in the entire country.¹⁵ Inmate calls are a cash cow for both the private provider, Value Added Communications, and the state: in Colorado, 43% of the cost of each inmate phone call accrues as revenue, resulting in \$3,879,287 in 2011.¹⁶

Inmates, their families, and communities pay the price for these excessive charges. Telephone privileges and familial contact contribute to an inmate’s personal development, and can result in fewer disciplinary incidents and, as a result, reduced sentences.¹⁷ Moreover, 97% of all currently incarcerated individual in Colorado will ultimately be released back into society.¹⁸ Inmates who have the ability to communicate with family while incarcerated have an easier time reintegrating back into society.¹⁹ The role that families play in facilitating an inmate’s re-entry to his or her community is one of the

¹² 47 U.S.C. § 276 (b)(1)(A) (1996).

¹³ President Clinton’s Statement On The Telecom Bill Signing, 1996 WL 54454 (Feb. 9, 1996).

¹⁴ Prison Legal News research data (revised Oct. 23, 2012) available at http://nationinside.org/images/pdf/RATE_CHART_10_30_12.pdf

¹⁵ *Id.*

¹⁶ See Revenue Reporting Form, Colorado Public Utilities Commission (uploaded Sep. 7, 2012) available at https://www.dora.state.co.us/pls/efi/EFI.Show_Filing?p_fil=G_138082&p_session_id= (Form for 2012 was not available at time of comment).

¹⁷ 42 U.S.C. S 17501(b)(6), Community Safety through Recidivism Prevention (2008).

¹⁸ Kirk Mitchell, *Colorado Prisons Moving 321 Inmates Out of Lockdown*, DENVER POST (Jan 21, 2012) (Executive Director Tom Clements admits that “97 percent of all offenders will someday be released”) available at http://www.denverpost.com/news/ci_19787816#ixzz2OT8kJjJP.

¹⁹ 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 (2005).

factors that “lead[s] to success or failure after release,”²⁰ and the vital connection between family contact and reduced recidivism has been well documented.²¹ By limiting or eliminating inmates’ ability to maintain family relationships while incarcerated, the exorbitant phone rates significantly increase the likelihood that released inmates will recidivate.²² Recidivism has devastating costs not just for inmates, their families and communities, but also for taxpayers. For example, in fiscal year 2008-2009, Colorado’s higher-than-national-average recidivism rate cost taxpayers “at least \$42.1 million.”²³

Neither private providers who operate inmate calling systems, nor the states that profit enormously from them, have any incentive to ensure inmate calling rates are reasonable. Without regulation, they have and will continue to exploit the captive market inmates and their families provide. While draconian calling rates affect all inmates and their families, the burden upon Deaf or hard of hearing inmates and their families is even more severe. Allowing private inmate calling service providers to continue to monopolize this market in collusion with the state is a disservice to inmates, their families, their communities and taxpayers in general, and is counter to public policy supporting the rehabilitation of inmates and their reintegration into society.

Competition is meant to bring prices down; however, the current system favors the companies with the highest rates. Without federal oversight, these telephone companies will continue to raise prison telephone rates, thereby increasing the already immense costs that inmates and their families must bear. The burden families of Deaf or hard of hearing inmates is more severe, further necessitating FCC regulation of inmate calling services.

Accordingly, for the foregoing reasons, the Legal Center and the CODDC urge the FCC to regulate the cost of local, intrastate, and long distance phone calls from prison to ensure that rates for inmates are commensurate with the rates available to the general public and the rates for Deaf and hard of hearing inmates are equivalent.

Sincerely,



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²⁰ *Id.*

²¹ See 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”).

²² See La Vigne *et. al.*, *supra* note 19.

²³ Mike Krause, *Colorado Taxpayers Should Want Parolees to Succeed*, DENVER BUSINESS JOURNAL (Apr. 29, 2011) available at <http://www.bizjournals.com/denver/print-edition/2011/04/29/Taxpayers-should-want-parolees-to-.html?page=all>.