

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Rates for Interstate Inmate Calling Services) WC Docket No. 12-375
)
)

To The Commission

COMMENTS OF FORMER FCC COMMISSIONER TYRONE BROWN

My name is Tyrone Brown. I was appointed by U.S. President Jimmy Carter to serve on the Federal Communications Commission from 1977 to 1981. I submit these Comments in response to the Commission’s Notice of Proposed Rulemaking¹ on its regulation of interstate interexchange inmate calling services (“ICS”) at the nation’s jails and prisons. I commend particularly Commissioner Mignon Clyburn for her tireless advocacy on this issue.

I join the commenters in this proceeding who believe that high interstate ICS rates have myriad negative consequences, particularly for low-income and minority Americans who are disproportionately arrested and incarcerated. The Commission should prioritize the development of rules that promote fair interstate ICS rates for persons who are incarcerated and the family members who must pay high rates to try to maintain contact with them. Families with a loved one in prison should not be forced to choose between a phone call and putting food on their table.

¹ See Rates For Interstate Inmate Calling Services, WC Docket No. 12-375 (Dec. 28, 2012) (“NPRM”).

The record shows considerable disparities in phone rates for debit or collect-based payphone calling at the nation's jails. Inmates and their families pay as much as \$3.95 for connection fees per call and per minute charges up to \$.89 per call.² A coalition of civil rights organizations and activists has informed the Commission that the costs for inmate calls can "result in charges of \$10-17 for a 15-minute collect call or \$250 per month for a weekly one-hour call."³ Yet, consumers who are not incarcerated pay much less for long distance phone service.⁴

Studies reveal that a disproportionate number of people who are incarcerated are low income African American and Hispanic men.⁵ Studies also reveal that while violent crime in America has declined, the rate of incarceration has tripled since 1980, fueling a "prison-industrial complex" that profits from arresting and incarcerating people.⁶ This growth in the U.S. prison population over the past generation has come largely as a result of criminalizing non-violent, often drug-related activities that other countries treat with

² See NPRM at ¶2.

³ See Leadership Conference on Civil and Human Rights et al., Letter to FCC Chairman Julius Genachowski To Cap Interstate Prison Phone Rates (May 18, 2012), Docket No. 96-128, available at <http://apps.fcc.gov/ecfs/document/view?id=7021918702> (last visited March 15, 2013) ("Leadership Conference et al. Letter").

⁴ See Comments of Minority Media and Telecommunications Council, p. 3, n. 8 (Verizon offers long distance phone service for as low as \$.05 a minute).

⁵ See Bruce Western and Becky Pettit, Collateral Costs: Incarceration's Effect on Economic Mobility, The Pew Charitable Trusts (2010) at pp. 3-4, available at http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Economic_Mobility/Collateral%20Costs%20FINAL.pdf (last visited March 25, 2013).

⁶ See e.g., John W. Whitehead, Jailing Americans for Profit: The Rise of the Prison Industrial Complex, Huff Post Crime (April, 10, 2012), available at http://www.huffingtonpost.com/john-w-whitehead/prison-privatization_b_1414467.html?view=print&comm_ref=false (last visited March 24, 2013). See also Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Color-Blindness, The New Press (2010).

community service or mental health/drug treatment solutions.⁷ Individuals in these categories in prison populations today are overwhelmingly Black and Hispanic men.⁸

Finally, I agree with commenters, such as the Minority Media and Telecommunications Council (MMTC), who suggest that exorbitant and unfair calling costs could have constitutional implications. Most notably, unnecessarily high prison phone costs implicate the 6th Amendment right to assistance of counsel in that they can deprive persons who have been arrested and who remain incarcerated of the opportunity to communicate with their counsel.⁹

⁷ See Eric Schlosser, *The Prison-Industrial Complex*, Atlantic (Dec. 1998), available at <http://www.theatlantic.com/magazine/archive/1998/12/the-prison-industrial-complex/304669/> (last visited March 25, 2013).

⁸ See Lisa Bloom, *When Will The U.S. Stop Mass Incarceration*, CNN.com (July 3, 2012), available at <http://www.cnn.com/2012/07/03/opinion/bloom-prison-spending> (last visited March 25, 2013) (stating that nonviolent offenders are 60% of the U.S. prison population). See also E. Ann Carson and William J. Sabol, *Prisoners in 2011*, U.S. Department of Justice, Bureau of Justice Statistics (Dec. 2012), p. 8, available at <http://bjs.gov/content/pub/pdf/p11.pdf> (demonstrating that young Black and Hispanic males are more likely to be incarcerated than White males); Criminal Justice Fact Sheet, National Association for the Advancement of Color People, available at <http://www.naacp.org/pages/criminal-justice-fact-sheet> (last visited March 25, 2013) (stating that “African Americans are sent to prison for drug offenses at 10 times the rate of Whites.”)

⁹ See American Bar Association, *Recommendation Adopted By The House of Delegates* (Aug. 8-9, 2005) at pp. 4-5, available at <http://www.americanbar.org/content/dam/aba/migrated/leadership/2005/annual/dailyjournal/115b.authcheckdam.doc> (last visited March 15, 2013) (stating that the “...high cost of prisoner phone calls makes it difficult or impossible for many prisoners’ lawyers to accept their calls.” Also citing *Alabama v. Shelton*, 535 U.S. 654, 661 (2002); *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963) (supporting the proposition that the Sixth Amendment of the U.S. Constitution provides a right to counsel in state criminal prosecutions through the Fourteenth Amendment). See also Milton J. Valencia, *Inmates, Families Challenging Costly Phone Bills*, The Boston Globe Online (July 13, 2013), available at <http://www.bostonglobe.com/metro/2012/07/12/inmates-families-challenging-costly-phone-bills/SWxp4emcQXp05c0pL2Z2AO/story.html> (last visited March 25, 2013) (stating that “... high phone rates for prison calls, inflated by surcharges, also draw the ire of public defenders, who say they are spending more than \$100,000 a year accepting collect calls from jailed clients.”); Zev Yaroslavsky, *Jail*

By failing to regulate prison industry phone rates, I believe the Commission inadvertently helps to perpetuate the multi-billion dollar “prison-industrial complex,” which has placed the U.S. at the top of the list of countries for the number of its citizens who are incarcerated.¹⁰ The Commission has the power to prohibit unjustly discriminatory rates imposed on the vulnerable prison population. It should act quickly to exercise that authority.

Respectfully Submitted,

Tyrone Brown

Former FCC Commissioner Tyrone Brown

March 25, 2013

Phone Calls Ring Up Big Bills, Los Angeles County Supervisor, available at <http://zev.lacounty.gov/news/public-safety/jail-phone-contract-numbers-please> (last visited March 25, 2013) (stating that inmates’ attorneys take issue with the high cost of the Los Angeles county jail’s payphone contract and “ defense lawyers complain that the collect call system interferes with client contact.”)

¹⁰ See U.S. Jails More People Than Any Other Country, Chart Of The Day, Bloomberg (Oct. 15, 2012), available at <http://www.bloomberg.com/news/2012-10-15/u-s-jails-more-people-than-any-other-country-chart-of-the-day.html> (last visited March 25, 2013).