

collective interests of State utility commissions. In the Telecommunications Act,⁵ Congress references NARUC as “the national organization of the State commissions” responsible for economic and safety regulation of the intrastate operation of carriers and utilities.⁶

On December 28, 2012, the FCC published a Notice of Proposed Rulemaking (*NPRM*) in the above captioned proceeding.⁷ The *NPRM*, as NARUC urged late last year, considers proposed changes to the FCC’s rules governing Rates for interstate inmate calling services. NARUC’s December 2012 letter referenced a November 2012 resolution specifically urging the FCC, with respect to CC Docket No. 96-128, commonly known as the

(NARUC) to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commission’s of those States in which the defendant rate bureaus operate.” 471 U.S. 52, n. 10. See also, *Indianapolis Power and Light Co. v. ICC*, 587 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976); Compare, *NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *NARUC v. DOE*, 851 F.2d 1424, 1425 (D.C. Cir. 1988); *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985).

⁴ NRC Atomic Safety and Licensing Board *Memorandum and Order* (Granting Intervention to Petitioners and Denying Withdrawal Motion), LBP-10-11, *In the Matter of U.S. Department of Energy (High Level Waste Repository)* Docket No. 63-001-HLW; ASLBP No. 09-892-HLW-CABO4, mimeo at 31 (June 29, 2010) (“We agree with NARUC that, because state utility commissioners are responsible for protecting ratepayers’ interests and overseeing the operations of regulated electric utilities, these economic harms constitute its members’ injury-in-fact.”)

⁵ *Communications Act of 1934*, as amended by the *Telecommunications Act of 1996*, 47 U.S.C. §151 *et seq.*, Pub.L.No. 101-104, 110 Stat. 56 (1996) (West Supp. 1998) (“Act” or “1996 Act”).

⁶ See 47 U.S.C. § 410(c) (1971) (NARUC nominates members to FCC Joint Federal-State Boards which consider universal service, separations, and related concerns and provide formal recommendations that the FCC must act upon; Cf. 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). Cf. *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains “...Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the "bingo card" system.)

⁷ *In the Matter of Rates for Interstate Inmate Calling Services*, “Notice of Proposed Rulemaking”, Docket No. 12-375 (rel. December 28, 2012) (FCC-12-167). The full text of the *NPRM* is available online at: <http://www.fcc.gov/document/rates-interstate-inmate-calling-services>.

“Wright Petition,” to take remedial action with respect to inflated *interstate* prison phone rates. A copy of that resolution is appended to these reply comments.

The Wright Petition seeks to remedy some of the inequities visited upon consumers who accept calls from prisoners by establishing benchmark rates that cap the cost of *interstate* prison phone calls. Currently, the cost of *interstate* prison phone calls ranges up to more than \$17.00 for a 15- minute call. It is less expensive for a consumer in the U.S. to call China than it is to accept a collect phone call from a prisoner in another state.

It does not appear from the record that all charges can be justified on the bases of additional security measures. In New York, the prison phone rates are \$.048 per minute for local, intrastate and interstate calls, inclusive of all security features required by New York corrections officials. In Texas, prison phone rates are relatively low at \$.23 to \$.43 per minute inclusive of all necessary security features.

Excessive *interstate* rates mainly affect prisoners’ family members – who have *no other option* but to pay the rates. Phone calls are the primary means of communication for many prisoners/families, because many prisoners are functionally illiterate and many are held in distant facilities, which makes in-person visitation difficult. Research indicates that family contact during incarceration leads to greater post-release success for prisoners, and thus less recidivism. High phone rates that economically limit family contact frustrate that positive outcome.

NARUC respectfully submits these short Reply Comments to

- [1] Commend the FCC for acting expeditiously to issue this rulemaking,
- [2] Continue to urge the FCC to act expeditiously "to prohibit unreasonable *interstate* rates and charges for inmate telephone services,"
- [3] Express our appreciation for [a] the NPRM's acknowledgement that intrastate ISC rates are "set by the States," [b] the NRPM's focus on the establishment of a benchmark rate for domestic *interstate* interexchange inmate collect calling services," and [c] the suggestion in paragraph 34 of the NPRM, mimeo at page13, that "rates for interstate long-distance calls not exceed rates for intrastate, long-distance calls." Indeed, the extensive comments filed by the Indiana Utility Regulatory Commission in this docket suggest that approach could be useful for many States; and
- [4] To generally oppose arguments responding to paragraph 49 of the NPRM, that would expand the FCC's jurisdiction to intrastate toll rates or unnecessarily supplant existing State Public Service Commission decisions over this service. Specifically, while we agree with NASUCA and others that the FCC's authority with respect to *interstate* interexchange calling is clear, the scope of the FCC's authority to address intrastate, long-distance calls and/or operator services is not. There was little analysis of the FCC's legal authority in the comments filed in response to the NPRM. Accordingly, if the FCC considers any significant expansion of existing authority, NARUC respectfully requests it issue a further notice of proposed rulemaking outlining the FCC's proffered legal rationale to give the association and other interested stakeholders a fair opportunity to respond.

Respectfully Submitted,

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Appendix A - Resolution Urging the FCC to take Action to Ensure Fair and Reasonable Telephone Rates from Correctional and Detention Facilities

WHEREAS, Inmate telephone service contracts are exclusive agreements between detention facilities and telephone companies that provide specialized functionality to enable monitoring of inmate telephone calls; *and*

WHEREAS, Although costly specialized equipment and monitoring services are provided, the contracts for inmate telephone systems often include high connection fees and per minute rate charges which are unrelated to the cost of providing the service; *and*

WHEREAS, Contracts for inmate telephone systems are often made by the operators of detention or correctional facilities and commonly include commissions paid to the State or local contracting agencies; *and*

WHEREAS, The commissions are based on gross revenues of inmate phone calls and could provide an incentive for operators of detention and correctional facilities to contract with telephone service providers that charge higher rates and/or provide higher commissions; *and*

WHEREAS, According to a Prison Legal News survey, roughly 85% of State prison systems receive commission payments and the average commission to State and local contracting agencies is 42% of the gross revenues from inmates' phone calls resulting in annual commissions totaling over \$152 million nationwide; *and*

WHEREAS, Inmate calling rates vary from State to State, however in many States, the charge for a fifteen minute telephone call from an inmate ranges from \$10 to \$17; *and*

WHEREAS, Most inmate calls are made as collect calls. As a result, family members and friends of inmates must bear the burden of above market per minute rates and connection fees; *and*

WHEREAS, In 2007, 52% of those in State prisons and 63% of those in federal prisons were parents of minor children according to a Prison Policy Initiative report (*The Price to Call Home: State-Sanctioned Monopolization in the Prison Phone Industry*); *and*

WHEREAS, High rates pose a significant barrier to frequent and meaningful communication between inmates and their families, in many cases forcing families to limit the frequency and length of communication with inmates; *and*

WHEREAS, Communication with the outside world is critical for inmates' successful re-entry into society so that inmates can secure housing and employment; *and*

WHEREAS, Successful reentry is critical to reducing overcrowding and high costs of maintaining prison systems; *and*

WHEREAS, A 2012 study by the Vera Institute of Justice (*The Price of Prisons: What Incarceration Costs Taxpayers*), reported the total taxpayer cost of prisons in the United States now exceeds \$39 billion, the average cost of incarceration per inmate per year is \$31,286 and more than four out of every ten prisoners return to custody within three years of release; *and*

WHEREAS, Due to the growing costs of prison systems, both Republican and Democratic 2012 Party Platforms explicitly recognized the importance of programs that reduce recidivism; *and*

WHEREAS, Maintaining contact with family members and community, specifically through telephone communication, has been consistently shown to reduce recidivism which saves taxpayer dollars (*Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners' Family Relationships*, Journal of Contemporary Criminal Justice); *and*

WHEREAS, The Federal Communications Commission (FCC) was asked to resolve the issue of inmate telephone rates that are much higher than rates charged to other customers by imposing price caps on long-distance prison telephone rates in the "Wright Petition" which was filed in 2003; *and*

WHEREAS, In 2007, after no final action had been taken by the FCC, the Petitioners submitted an alternative rulemaking petition seeking per-minute rate caps on interstate long-distance services, however, no decision has been made; *and*

WHEREAS, Many States have addressed this issue by limiting rates for local calling, commissions, and connection fees; *and*

WHEREAS, California, Nebraska, New Mexico, New York, Michigan, Missouri, Rhode Island and South Carolina have banned prison telephone system commissions and, as a result, the cost of prison phone calls in those States have dropped; *and*

WHEREAS, A broad coalition of groups and organizations have urged the FCC to address high phone rates in correctional institutions, including the FCC Consumer Advisory Committee and the National Association of State Utility Consumer Advocates; *now, therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC), convened at its 2012 Annual Meeting in Baltimore, Maryland, and encourages the FCC to take immediate action on the "Wright Petition" by prohibiting unreasonable interstate rates and charges for inmate telephone services; *and be it further*

RESOLVED, That State and federal action should consider policies that could lower prison phone rates as a step to reduce recidivism and thereby lower the taxpayer cost of prisons.

Sponsored by the Committee on Telecommunications

Adopted by the NARUC Board of Directors, November 13, 2012

Adopted by the NARUC Committee of the Whole, November 14, 2012