

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996)	CC Docket No. 96-128
)	
Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking)	DA 03-4027

**STATEMENT OF INTEREST AND COMMENTS ON ALTERNATIVE
RULEMAKING PROPOSAL REGARDING INMATE CALLING SERVICES
FILED BY NORTH CAROLINA PRISONER LEGAL SERVICES, INC.**

Pursuant to the notice published by the Federal Communications Commission on 2 March 2007, and the FCC Order filed 21 March 2007 extending the time for the submission of comments in this proceeding through 2 May 2007, North Carolina Prisoner Legal Services, Inc., submits the following comments in support of the *Alternative Rulemaking Proposal Related to Inmate Calling Services* submitted by Martha Wright, *et al.* (Petitioners) on March 1, 2007.

North Carolina Prisoner Legal Services (NCPLS) is a non-profit, public service law firm that provides legal advice and assistance to people incarcerated in this State. NCPLS addresses matters involving inhumane conditions of confinement or illegal criminal convictions and sentences. Providing North Carolina inmates with information about their legal rights and responsibilities, NCPLS works to reduce frivolous litigation and to resolve legitimate problems through administrative channels. When serious problems cannot be resolved administratively, NCPLS offers legal representation in all

State and Federal courts throughout North Carolina, and beyond. The program has a staff of 37, which includes 17 lawyers, 14 paralegals, and 6 support staff members.

Encompassing some 52,669 square miles, North Carolina incarcerates more than 38,000 people in 78 prisons operated by the North Carolina Department of Correction (NC-DOC). With 100 counties, almost each of which has a jail and/or a municipal lock-up, on any given day an additional 14,000 people are detained pending trial (with some 250,000 annual admissions).

The distance between correctional facilities in North Carolina makes it difficult to communicate with our clients, except by mail.¹ Policies of the NC-DOC discourage telephone communications between prisoners and their clients except “where legal deadlines make a personal visit or correspondence impractical . . . [in which case] attorneys may initiate a request with the Department’s legal section for approval to contact inmates/clients by telephone.”² Moreover, “All telephone calls will be collect and may be monitored. . . . Inmates are not allowed to receive telephone calls. Inmate telephone use is a privilege which may be restricted for disciplinary purposes.”³ And, pursuant to a contract between the Department of Correction and AT & T, the phone company is paying a 30% commission for public pay phones (in visitation rooms or officers lounges, for example) and a 55% commission for prison pay phones. That means

¹ Unfortunately, approximately 40% of the national prison population is functionally illiterate. The Center on Crime, Communities & Culture, *Education as Crime Prevention: Providing Education to Prisoners*, Research Brief: Occasional Paper Series 2 (Sept. 1997).

² NC Dept. of Correction Inmate Rule Book, 18.(B)(2), p. 23. <http://www.doc.state.nc.us/FamilyServices/index.htm> (last accessed 12 April 2007).

³ NC Dept. of Correction Inmate Handbook for Family and Friends, “Can inmates use the Telephone?” at p. 23. This demonstrates the use of telephones by the NC-DOC as a control mechanism on prisoners – both as an incentive and as a punitive measure. <http://www.doc.state.nc.us/FamilyServices/index.htm> (last accessed 12 April 2007).

that our clients and their families are paying almost twice as much in commissions as the general public.

Jail and detention facilities throughout the state generally enter into similar contracts with various carriers based upon the promise that the carrier will provide services exclusively in exchange for payment of the highest possible commission (at a financial and emotional cost to prisoners and their families.)

Thus, exorbitant charges impede communication with family and friends, disrupt ties to communities, and inhibit a prisoner's right to petition the courts for the redress of grievances.

With limited resources, and given the excessive cost of prisoner telephone calls, NCPLS declines to accept all but emergency calls. Our inability to accept such calls increases the time it takes to resolve client concerns and sometimes engenders litigation simply to preserve our clients' rights.

The record in this case is replete with citations to findings of various studies, correctional agencies, and professional organizations that the maintenance of ties between a prisoner and the family are key to a successful transition into the community after release from prison, and that telephones are essential to the realization of that objective.⁴

⁴ See, e.g., Federal Bureau of Prisons Policy Statement PS5264.06 (Telephone Regulations for Inmates); the National Sheriffs' Association (Resolution of 14 June 1995); The American Correctional Association (ACA), *Resolution on Excessive Phone Tarriffs* (October 1996); *Public Correctional Policy on Inmate/Juvenile Offender Access to Telephone* (ACA 2001) and related standards (ACA 2002)(incorporated into standards manuals for 11 types of correctional facilities; and American Bar Association Policy (August 2005); and the report of the Vera Institute of Justice-sponsored Commission on Safety & Abuse In America's Prisons, "*Confronting Confinement*," pp. 36, 39, *passim* (June 2006).

But as an important component of both maintenance of order and security in a correctional facility,⁵ and as a tool that diminishes recidivism, telephone usage that entails excessive charges impinges upon these objectives and the ability of prisoners to keep in touch with their families, who are being exploited by monopolistic practices. It is clear that competition and market forces have failed to resolve this long-standing problem, and that prompt remedial action is needed through regulation by the Federal Communications Commission.

CONCLUSION

Contracts for telephone services in correctional settings are negotiated and agreed between correctional facilities or entire correctional systems and the carrier. These contracts are exclusive and provide the correctional facilities sources of substantial revenue through “commissions” paid by the carrier. Often, the parties seek no input from, nor give any consideration to the interests of prisoners or the citizens (family members, friends, or attorneys) who will receive and pay for the calls. Prisoners and citizens generally have no choice but to accept the terms agreed upon between the correctional facility and the carrier if they place or accept any prisoner-initiated call.

In this proceeding, the FCC has an opportunity to take meaningful steps to expand the calling options available to inmates and their families (including the imposition of bench-mark rates and an expansion of available services, such as debit and toll-free calls), and to encourage competition in other ways. NCPLS requests that the Commission provide the relief requested in the Alternative *Wright* Petition or, in the

⁵ See *supra*, footnote 2 and accompanying text.

alternative, establish the interstate interexchange benchmark, requiring the broadest possible range of calling options.

Respectfully submitted this 27th day of April, 2007.

s/ Michael S. Hamden
Michael S. Hamden, Executive Director
North Carolina Prisoner Legal Services, Inc.
224 South Dawson Street
Post Office Box 25397
Raleigh, NC 27611
(919) 856-2200
MichaelHamden@ncpls.org

CERTIFICATE OF SERVICE

I, Michael S. Hamden, hereby certify that a copy of the foregoing STATEMENT OF INTEREST AND COMMENTS ON ALTERNATIVE RULEMAKING PROPOSAL REGARDING TO INMATE CALLING SERVICES FILED BY NORTH CAROLINA PRISONER LEGAL SERVICES, INC. has been served via email* or by placing the document into an envelope, first-class postage pre-paid, and depositing the envelope into a receptacle for delivery by the United States Postal Service, and addressed as follows:

Pamela Arluk*
Acting Assistant Division Chief
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Larry Fenster
Kecia Boney Lewis
WORLDCOM, Inc. d/b/a MCI
1133 19th Street, N.W.
Washington, D.C. 20036

Best Copy and Printing, Inc.*
Portals II
445 12th Street, S.W., Room CY-B402
Washington, D.C. 20554

Andrew D. Lipman
Kathy L. Cooper
Kathleen G. Ramsey
Swidler Berlin, LLP
3000 K Street, N.W., Suite 300
Washington D.C. 20007

Lynne Hewitt Engledow*
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Counsel to the Association of Private
Correctional and Treatment Organizations

Aaron M. Panner
Kellogg, Huber, Hansen, Todd & Evans, PLLC
Counsel to T-Netix, Inc.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

Counsel to the RBOC Payphone Coalition

David C. Bergmann, Chair
NASUCA Telecommunications Committee
Assistant Consumers' Counsel
Ohio Consumers' Counsel
12 West Broad Street, Suite 1800
Columbus, OH 43215-3285

Roderic V.O. Boggs, Executive Director
Washington Lawyers Committee for Civil
Rights and Urban Affairs
11 Dupont Circle, N.W., Suite 400
Washington, D.C. 20036

Stephen A. Young, Legal Counsel
Ohio Dept. of Rehabilitation and Correction
1050 Freeway Drive North, Suite 207
Columbus, OH 43229

Paul C. Besozzi
Paggon Boggs LLP
2550 M. Street, N.W.
Washington, D.C. 20037

Counsel to Evercom Systems, Inc.

Glenn B. Manishin
Stephanie A. Joyce
Kelley Drye & Warren LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036

Albert Lewis*
Acting Division Chief
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Douglas Galbi*
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Mark D. Schneider
Anita L. Wallgren
Sidley Austin Brown & Wood, LLP
1501 K Street, N.W.

Counsel to Corrections Corp. of America, Inc.

Anthony J. Annucci
Deputy Commissioner and Counsel
Dept. of NY Correctional Services
1220 Washington Ave.
Building 2, Harriman State Campus
Albany, NY 12226-2050

Lawrence J. Lafaro
Stephen C. Garavito
Martha Lewis Marcus
AT & T Corporation
One AT & T Way
Bedminster, NJ 07921

Laura K. Abel
Patricia Allard
Kirsten D. Levingston
Kele Williams
Brennan Center for Justice, NYU School of Law
161 Avenue of the Americas, 12th Floor
New York, NY 10013

Stephen G. Seliger
Laurie S. Elkin
Seliger & Elkin, Ltd. #500
155 North Michigan Avenue
Chicago, IL 60601

Elizabeth Alexander, Director
National Prison Project – ACLU
915 15th Street, NW
Seventh Floor
Washington, DC 20005

Barbara J. Olshanksy
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012

Charles Sullivan, Executive Director
Kay Perry, Chairperson
Citizens United for Rehabilitation of Errants
Post Office Box 2310
Washington, D.C. 20013

Doane F. Kiechel
Frank W. Krogh
Jennifer L. Kostyu
Morrison & Foerster, LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006

Stephen J. Ingley, Executive Director
American Jail Association
1135 Professional Court
Hagerstown, MD 21740

Attorneys for Petitioners *Martha Wright, et al.*

Deborah M. Golden
Staff Attorney
D.C. Prisoners' Project
Washington Lawyers' Committee for
Civil Rights and Urban Affairs
Dupont Circle, Suit 400
Washington, D.C. 20036

s/ Michael S. Hamden
Michael S. Hamden, Executive Director
North Carolina Prisoner Legal Services, Inc.

