



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

June 28, 2014

Submitted Online Only

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

**Re: Comment for WC Docket No. 12-375
(Further Notice of Proposed Rulemaking)**

Dear Chairman Wheeler:

The Human Rights Defense Center (HRDC) submits this comment for WC Docket No. 12-375 for the purpose of placing into the record the following recent news articles concerning prison phone-related issues:

- “In Prisons, Sky-High Phone Rates and Money Transfer Fees,” by Stephanie Clifford, *The New York Times* (June 26, 2014) [Exhibit 1].
- “The high cost of phoning home: Prisoners demand cheaper connection,” by Ken Stier, *AlJazeera America* (June 25, 2014) [Exhibit 2].

These news reports reflect a continued interest in this issue by the media and the public, and describe ongoing problems which indicate that while the FCC’s Aug. 9, 2013 Order reforming certain prison phone-related practices was a good start, more reforms are needed.

We are further submitting an article published in the April 2014 issue of *Prison Legal News*, HRDC’s monthly publication, titled “Lowering Recidivism through Family Communication,” which addresses the impact of family communication during incarceration – including through phone calls – on recidivism rates of released prisoners. [Exhibit 3].

Thank you for your time and attention in this regard.

Sincerely,



Paul Wright
Executive Director, HRDC

Attachments

In Prisons, Sky-High Phone Rates and Money Transfer Fees

By STEPHANIE CLIFFORD and JESSICA SILVER-GREENBERG

New York Time – JUNE 26, 2014

Inside the razor wire on Eagle Crest Way, in rural Clallam Bay, Wash., telephone calls start at \$3.15. Emails out, beyond the security fence, run 33 cents. Money transfers in, to what pass for bank accounts, cost \$4.95.

Within that perimeter lies the Clallam Bay Corrections Center, a state prison — and an attractive business opportunity. One private company, JPay, has a grip on Internet and financial services. Another, Global Tel-Link, controls the phones.

These companies are part of a new breed of businesses flourishing inside American jails and prisons. Many of these players are being bankrolled by one of the most powerful forces in American finance: private equity. Private investment firms have invested many billions of dollars in the prison industry, betting — correctly — that it is a growth business.

Wall Street previously championed companies like Corrections Corporation of America, the nation's largest private corrections company. But unlike companies that have thrived by running prisons, the likes of Global Tel-Link and JPay are becoming de facto banks, phone companies and Internet service providers for inmates and their families across the nation.

It is a lucrative proposition, in part because these companies often operate beyond the reach of regulations that protect ordinary consumers. Inmates say they are being gouged by high costs and hidden fees. Friends and families say they have little choice but to shoulder the financial burden.

But private enterprises are not the only ones profiting. Eager to reduce costs and bolster dwindling budgets, states, counties and cities are seeking a substantial cut in return for letting the businesses into prisons, a review of dozens of contracts by The New York Times found. In Baldwin County, Ala., for instance, the sheriff's department collects 84 percent of the gross revenue from calls at the county jail. A Texas company has guaranteed the county at least \$55 a month per inmate, according to a copy of the contract.

Similar stories are playing out in places like the Emanuel Women's Facility in Swainsboro, Ga.; MacDougall Correctional Institution in Ridgefield, S.C.; and the New

Jersey State Prison in Trenton, The Times found. Some corrections departments use the commissions to provide services, said Steve Gehrke, a spokesman for the Washington State Department of Corrections. In Washington State, all commissions go toward compensating victims and improving services like libraries.

But even some industry executives see problems with the current setup, saying the commission system encourages providers to charge inmates more, not less, for services. Companies often win contracts based on how much they will offer states via commissions, rather than the rates they charge inmates.

Global Tel-Link, of Reston, Va., has contracts with 2,200 correctional operations serving at least 1.1 million inmates. It argued in recent comments to the Federal Communications Commission that the more states and cities demand in commissions, the more it will charge inmates. “There is no free lunch,” the company said.

“It is clear that it drives up the prices for these services and the commission system should be modified,” said Ryan Shapiro, the chief executive of JPay, which is based in Miami. Doing that, he added, can be difficult because many state budgets are strained.

Not that JPay is shying away from the business. It has deals in 33 states to provide money transfers, and contracts in 17 states to provide email, along with other services in states across the country. Now, it is offering a \$50 tablet that allows inmates to download MP3s and get limited access to email, educational videos and books. The response from corrections departments has been overwhelming, Mr. Shapiro said.

The response from inmates and their families has been less enthusiastic.

Ely Peterson often wires a small amount of money each month to the commissary account of his fiancée, who is serving a 15-year-sentence at the Tennessee Prison for Women in Nashville for acting as an accomplice to murder. But transferring \$25 costs Mr. Peterson \$6.90. Mr. Peterson, who is 72 and a retired Marine, said that some months he can barely afford to send \$15 to his fiancée, who uses her commissary account to buy food.

Walter Chruby, who has served 19 years of a life sentence for murder, calls such rates “unjust and unreasonable.” Mr. Chruby, 51, who is at State Correctional Institution-Laurel Highlands, in Somerset, Pa., argued in a lawsuit filed in federal court in Alexandria, Va., in April against Global Tel-Link that prisoners had no choice but to pay the high rates.

Mr. Chruby’s sentiment was echoed in dozens of lawsuits filed by inmates against Securus, Global Tel-Link and other providers. While the F.C.C. capped interstate telephone rates at 25 cents a minute earlier this year, after agitation from prisoners’ rights advocates, local phone rates can still be steep and other fees vary widely from state to state. For instance, using a phone to transfer \$10 into an inmate’s account via JPay to the

Southeast Correctional Center in Charleston, Mo., costs \$3.95, while a similar transfer to the Illinois Youth Center in Chicago runs \$5.95.

Placing a 15-minute in-state call from a Union County, N.J., jail costs \$8.50, according to the New Jersey Institute for Social Justice, which recently filed a petition asking for lower in-state rates. In New York State, which does not accept commissions from providers, a 15-minute phone call costs just 72 cents.

Donna Starkey, of Nashville, Tenn., said that even dropped calls eat up money when she calls her son, who is serving a three-year sentence at Lois M. DeBerry Special Needs Facility.

Securus, Global Tel-Link, another company, CenturyLink, as well as corrections departments in Arizona, Mississippi and South Dakota, have challenged the F.C.C.'s rules in court. The companies say they need to charge high rates for security concerns — inmates' access to financial services, telephones and the Internet is limited and, in most cases, monitored by providers. Even after prisoners are released, high fees can be difficult to escape. Rather than giving released inmates checks for the money they had when they were incarcerated, as well as any prison earnings, many prisons are putting the money on prepaid debit cards, which often come with high fees.

On its EZ Exit prepaid card, for instance, EZ Card & Kiosk of Irvine, Calif., charges \$15 to replace a lost card, \$4.95 a month to maintain it, \$4 to receive a paper statement and \$2.99 to withdraw money from an A.T.M.

Ronald Hodge, the company's chief executive, said that EZ Card tries to keep fees low but must balance that with administrative costs. "We, along with our jail customers, are very concerned about the cost and impact of the card," he said.

The high cost of phoning home: Prisoners demand cheaper connection

Often the only lifeline to the outside world, phone calls are more expensive than most inmates can pay

AlJazeera America

June 25, 2014 5:00AM ET

by **Ken Stier**

The message was simple, reflecting a basic human desire. “I would love to speak with my wife, children and grandchildren,” Kenneth Daniels, 53, wrote. But his message had a cruel kicker: “But I can’t afford to.”

Daniels is an inmate at a Michigan state prison, and his statement was made to the Federal Communications Commission. His family in Detroit is poor, and he earns just \$8 a month at the prison job he will probably do for the rest of his life — hardly enough to afford phone calls to relatives.

Nor is he alone. The FCC received abundant testimony from inmates cut off from the outside world not just by the bars behind which they serve their sentences but also by the huge payments demanded by phone companies for lines in U.S. correctional facilities.

One was Dennis Wynn, who has served 31 years and explained how he could not afford to call his dying mother. “She passed away without me ever being able to say goodbye,” he wrote the FCC. His meager earnings — just 74 cents a day — are spent on essential toiletries and food to supplement prison grub.

“Over the years, I have lost most of my contact with my family and friends due to the increased cost of a telephone call from the prison setting,” complained David Wroblewski, who has spent more than two decades in a maximum security prison. “Hello, does anybody hear me out there?” he wondered.

Last year the FCC did listen to petitioners like these, and for the first time imposed limits on interstate call rates, which typically ran about \$1 a minute — often on top of connection fees. The FCC order, which went into effect earlier this year, caps these calls at \$0.21 per minute for debit

calls and \$0.25 for collect calls. In Alabama a standard 15-minute call, which used to cost \$17, is now under \$3.

But this is still far more expensive than normal rates, and the calls are notorious for poor sound quality and abrupt endings. Prison phone companies, known as inmate calling service (ICS) firms, are putting up a robust fight to protect a highly profitable, billion-dollar-a-year industry. They have thrown up legal challenges and sought waivers from the FCC order, even though it covers only interstate calls, which make up just 15 percent of the calls handled by ICS companies.

Many companies have jacked up local phone rates and imposed a host of ancillary charges to make up for lower interstate call revenue, say reform advocates. That has often led, they say, to locals calls' being more expensive than interstate calls.

"Prisoners who have a family members down the street actually pay more than family members who have a prisoner, say, in Alaska or California that are making long distance calls, which doesn't make a lot of sense," said Alex Friedman, managing editor of Prison Legal News.

"We won a notable battle but not the war," acknowledged Lee Petro, an experienced FCC lawyer at Drinker Battle & Reath, a law firm that has allowed him to work pro bono on the issue for the last five years.

One of the industry's strategies involves enlisting the lobbying heft of correctional officers, whose institutions can have revenue-sharing arrangements with ICS companies.

Prison reform advocates say this commission-based business model essentially provides legal kickbacks to jails and prisons in exchange for granting monopolistic contracts. It's a model that is being replicated with rapidly expanding videoconferencing services offered by many of the same companies.

The Campaign for Prison Phone Justice calculates that the ICS industry paid more than \$500 million over the last four years to state prison administrators in the 42 states that have not yet banned such arrangements. In addition, payments to the country's thousands of county jails are very likely "astronomically higher" said Friedman, because of the huge churn of people processed in local jails — about 12 million annually.

The ICS industry argues that phone monitoring capabilities prevent thousands of criminal orders from being issued from the inside and solve tens of thousands of crimes every year. After years of insisting inmates should have telecom services priced comparably with those on the outside, the American Correctional Association recently sided with the National Sheriff's Association in arguing that the FCC's "unreasonably low rates ... undermines the ability of law enforcement to detect and deter criminal activity."

But it is an argument that does not persuade reform advocates. Peter Wagner of the Prison Policy Initiative argues high landline rates abet cellphone smuggling, which declined significantly in New York state when landline rates dropped. Mobile calls are generally not monitored and have been linked with a whole range of abuses.

Two leading ICS firms — Securus Technologies and GTL (formerly Global Tel Link) — each service 2,200 correctional facilities and together account for 80 percent of the market. Requests for comment from both companies were unsuccessful.

When the FCC issued its order — aimed at “just and reasonable phone rates” — it was hailed as a landmark decision that the agency acknowledged was “long overdue.” The FCC even argued that lowering phone rates is good policy and would lead to reduced crime rates. “The record indicates that the lack of regular contact between incarcerated parents and their children is linked to truancy, homelessness, depression, aggression and poor classroom performance,” said the 131-page FCC order. “Studies have demonstrated that increased contact with families during incarceration leads to lower rates of recidivism and associated lower taxpayer costs.” A 1 percent reduction in recidivism should save taxpayers \$250 million, it noted.

Telephone contact is critical because many prisons are located in remote areas, making in-person visits expensive, time consuming and thus infrequent. The number of American children with an incarcerated parent is large — about 2.7 million — and growing. More than half of them are under 10 years old. Also, most incarcerated parents are more than 100 miles away; of those in federal prisons, 84 percent are at least 100 miles away, with 43 percent more than 500 miles away.

Close to 60 percent of mothers and fathers who are serving time never get a visit from their children, according to Ann Adalist-Estrin, director of the National Resource Center on Children and Families of the Incarcerated.

And what is tough for prisoners’ families is even more so for the prisoners themselves.

“If state and federal governments are going to keep people in prison until they die, 20 to 55 years after they been incarcerated, then they should at least provide us with reasonable telephone services,” demanded Ali Shabazz, a member of the Michigan-based National Lifers of America. He has served more than 50 years behind bars. “To live this long in prison takes a lot of family support and communication.”

Lowering Recidivism through Family Communication

Prison Legal News
April 2014, p.24

by Alex Friedmann

There are currently 2.2 million people held in prisons and jails in the United States,¹ and an estimated 95% of prisoners currently in custody will one day be released. Based on 2012 data, around 637,400 people are released annually from state and federal prisons.²

According to an April 2011 report by the Pew Center on the States, the average national recidivism rate is 43.3%.³ Based on that average rate, an estimated 276,000 released prisoners can be expected to recidivate each year, many committing new crimes and returning to prison.

This negatively impacts our communities in several ways, including the societal costs of more crime and victimization as well as the fiscal costs of reincarcerating ex-prisoners who commit new offenses – at an average annual cost of \$31,286 per prisoner, according to a 2012 report by the Vera Institute.⁴

Studies have consistently found that prisoners who maintain close contact with their family members while incarcerated have better post-release outcomes and lower recidivism rates.

These findings represent a body of research stretching back over 40 years. For example, according to “Explorations in Inmate-Family Relationships,” a 1972 study: “The central finding of this research is the strong and consistent positive relationship that exists between parole success and maintaining strong family ties while in prison. Only 50 percent of the ‘no contact’ inmates completed their first year on parole without being arrested, while 70 percent of those with three visitors were ‘arrest free’ during this period. In addition, the ‘loners’ were six times more likely to wind up back in prison during the first year (12 percent returned compared to 2 percent for those with three or more visitors). For all Base Expectancy levels, we found that those who maintained closer ties performed more satisfactorily on parole.”⁵

These findings still ring true. An article published in August 2012 in *Corrections Today*, a publication of the American Correctional Association, titled “The Role of Family and Pro-Social Relationships in Reducing Recidivism,” noted that “Family can be a critical component in assisting individuals transitioning from incarceration because family members provide both social control and social support, which inhibit criminal activity.... In contrast, those without positive supportive relationships are more likely to engage in criminal behavior.”⁶

Further, a Vera Institute study, published in October 2012, found that “Incarcerated men and women who maintain contact with supportive family members are more likely to succeed after their release.... Research on people returning from prison

shows that family members can be valuable sources of support during incarceration and after release. For example, prison inmates who had more contact with their families and who reported positive relationships overall are less likely to be re-incarcerated.”⁷

Another Vera Institute report, published in 2011, stated: “Research shows that incarcerated people who maintain supportive relationships with family members have better outcomes – such as stable housing and employment – when they return to the community. Many corrections practitioners and policy makers intuitively understand the positive role families can play in the reentry process, but they often do not know how to help people in prison draw on these social supports.”⁸

According to research published in *Western Criminology Review* in 2006, “a remarkably consistent association has been found between family contact during incarceration and lower recidivism rates.”⁹

Correctional practices that “facilitate and strengthen family connections during incarceration” can “reduce the strain of parental separation, reduce recidivism rates, and increase the likelihood of successful re-entry,” according to a 2005 report by the Re-Entry Policy Council.¹⁰

A 2003 study by the Washington, D.C.-based Urban Institute, “Families Left Behind: The Hidden Costs of Incarceration and Reentry,” as revised in 2005, noted: “Research findings highlight the importance of contact among family members during incarceration. Facilitating contact has been shown to reduce the strain of separation and increase the likelihood of successful reunification. Studies comparing the outcomes of prisoners who maintained family connections during prison through letters and personal visits with those who did not suggest that maintaining family ties reduces recidivism rates.”¹¹

Also, a 2004 study by the Urban Institute stated, “Our analysis found that [released prisoners] with closer family relationships, stronger family support, and fewer negative dynamics in relationships with intimate partners were more likely to have worked after release and were less likely to have used drugs.” The study authors, Christy Visher, Vera Kachnowski, Nancy La Vigne and Jeremy Travis, concluded, “It is evident that family support, when it exists, is a strong asset that can be brought to the table in the reentry planning process.”¹²

It is thus abundantly clear that maintaining close family relationships during incarceration results in lower recidivism rates and therefore less crime, which affects society as a whole. Yet in spite of this clear correlation, corrections officials often do little to encourage contact between prisoners and their family members.

There are three primary forms of communication available to prisoners: letters, visits and phone calls.

With respect to letters, many prisoners are illiterate or functionally illiterate, which frustrates correspondence. A 2007 report by the National Center for Education Statistics found that 39% of prisoners scored “below basic” for quantitative literacy testing, while another 39% scored at only a “basic” level.¹³

Other studies likewise have found high levels of illiteracy or poor written communication skills among prisoners, which makes letter-writing as a means of regular contact between prisoners and their families problematic.

Further, an increasing number of jails are adopting postcard-only policies, whereby prisoners can only receive, and sometimes send, mail in the form of postcards –

a very limited means of correspondence. [See: *PLN*, Nov. 2010, p.22]. Such policies place additional burdens on communication between prisoners and their families; *PLN* and other organizations have challenged postcard-only policies in various jurisdictions, including Florida, Tennessee, Oregon, Washington and Michigan. [See: *PLN*, Jan. 2014, p.42; Nov. 2013, p.24; June 2013, p.42; Jan. 2012, p.30; Sept. 2011, p.19].

In regard to visitation, a November 2011 study by the Minnesota Department of Corrections examined recidivism rates for 16,420 ex-prisoners over a five-year period, comparing rates for those who received visits while incarcerated and those who didn't. The study found that "Any visit reduced the risk of recidivism by 13 percent for felony reconvictions and 25 percent for technical violation revocations, which reflects the fact that visitation generally had a greater impact on revocations. The findings further showed that more frequent and recent visits were associated with a decreased risk of recidivism."¹⁴ [See: *PLN*, May 2013, p.1].

However, prison officials often make visitation an unpleasant process, including lengthy waits, onerous searches, restricted visitation times and rigid enforcement of often petty rules. For example, one female attorney said she was told by prison officials that she could not visit a prisoner because her underwire bra set off the metal detector. After leaving, removing her bra and then returning, she was told she could not visit because she wasn't wearing a bra.

According to the 2011 Vera Institute study, "Many family members also indicated that prison rules and practices – including searches, long waits, and inconsistent interpretations of dress codes for visitors – can be unclear, unpleasant, too restrictive, and even keep people from visiting again."

Due to such problematic issues with visitation, and because prisoners are frequently housed at facilities located far from their families which makes in-person visits difficult (federal prisoners, for example, may be held at any federal prison in the United States), phone calls are a primary means of maintaining family contact.

As acknowledged by the largest prison phone company in the nation, Global Tel*Link: "Studies and reports continue to support that recidivism can be significantly reduced by regular connection and communications between inmates, families and friends – [a] 13% reduction in felony reconviction and a 25% reduction in technical violations."¹⁵

Kevin O'Neil, president of Telmate, another phone service provider, agreed, stating, "The more inmates connect with their friends and family members the less likely they are to be rearrested after they're released."¹⁶

When the Federal Communications Commission voted in August 2013 to reduce the cost of interstate prison phone calls nationwide, the issue of rehabilitation and recidivism played a contributing role in the FCC's decision.

As stated by FCC Commissioner Mignon Clyburn: "Studies have shown that having meaningful contact beyond prison walls can make a real difference in maintaining community ties, promoting rehabilitation, and reducing recidivism. Making these calls more affordable can facilitate all of these objectives and more."¹⁷

The FCC's order imposing rate caps on interstate prison phone calls went into effect on February 11, 2014, though other parts of the order have been stayed by the D.C. Circuit Court of Appeals. [See: *PLN*, Feb. 2014, p.10].

Notably, numerous corrections officials filed objections to the FCC’s plan to impose rate caps, and intrastate (in-state) prison phone rates, which were not affected by the FCC’s order, remain high. Meanwhile, prisons and jails nationwide have received hundreds of millions of dollars in “commission” kickbacks from prison phone companies, and such kickbacks have long resulted in inflated phone rates that create financial barriers to communication between prisoners and their family members. [See: *PLN*, Dec. 2013, p.1; April 2011, p.1].

In conclusion, although research has consistently found that regular contact between prisoners and their families results in better post-release outcomes and lower recidivism rates, corrections officials have done little to facilitate – and have sometimes deliberately frustrated – such communication with respect to written correspondence, visitation and phone calls.

Investments in prison-based literacy programs and less restrictive mail policies, revising visitation policies to encourage visits by family members, and reducing intrastate prison and jail phone rates would provide prisoners with greater opportunities to maintain close relationships with their families, leading to lower recidivism rates and less crime in our communities.

Few corrections officials seem willing to take such actions, though, which is a strong indicator that reducing recidivism – thus reducing the size of our nation’s prison population and the associated costs – is not one of their priorities.

END NOTES

¹ <http://www.bjs.gov/content/pub/pdf/cpus12.pdf>

² <http://www.bjs.gov/content/pub/pdf/p12tar9112.pdf>

³ http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/State_Recidivism_Revolution_Door_America_Prisons%20.pdf

⁴ www.vera.org/sites/default/files/resources/downloads/Price_of_Prisons_updated_version_072512.pdf

⁵ <http://www.fcnetwork.org/reading/holt-miller/holt-millersum.html>

⁶ <https://www.aca.org/fileupload/177/ahaidar/Flower.pdf>

⁷ <http://www.vera.org/files/the-family-and-recidivism.pdf>

⁸ <http://www.vera.org/sites/default/files/resources/downloads/Piloting-a-Tool-for-Reentry-Updated.pdf>

⁹ <http://wcr.sonoma.edu/v07n2/20-naser/naser.pdf> (citing other sources)

¹⁰ <http://csgjusticecenter.org/wp-content/uploads/2013/03/Report-of-the-Reentry-Council.pdf>

¹¹ http://www.urban.org/UploadedPDF/310882_families_left_behind.pdf

¹² http://www.urban.org/UploadedPDF/310946_BaltimorePrisoners.pdf

¹³ <http://nces.ed.gov/pubs2007/2007473.pdf>

¹⁴ <http://www.doc.state.mn.us/pages/files/large-files/Publications/11-11MNPisonVisitationStudy.pdf>

¹⁵ Petitioners’ Opposition to Petition for Stay of Report and Order Pending Appeal, FCC WC Docket No. 12-375, Exhibit D, page 6 (October 29, 2013)

¹⁶ www.telmate.com/oregon-doc-installatio

¹⁷ http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0926/FCC-13-113A2.txt