



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

March 18, 2014

Via Fax Transmission 1.916.319.2120

Assembly Member Bill Quirk
Capitol Office
Sacramento, CA

RE: Assembly Bill 1876

Dear Assembly Member Quirk,

I am contacting you in my capacity as Executive Director of the Human Rights Defense Center (HRDC) and Editor for *Prison Legal News* (PLN), a nationally-distributed monthly publication that reports on criminal justice and corrections-related issues, in reference to Assembly Bill 1876.

Thank you for introducing Assembly Bill 1876 which would prohibit a county jail from accepting a "commission" or other form of payment or kickback from a telephone company as an incentive to enter into a contract for the provision of inmate phone services at the jail. Please feel free to consult with us as this legislation wends its way through the system. Additionally, HRDC staff are available to testify before any hearings on this matter.

In 2011, HRDC co-founded the Campaign for Prison Phone Justice, a joint project with Media Action Grassroots Network (MAG-Net) and Working Narratives. The Campaign's initial focus was on the national issue of reducing interstate (long distance) prison phone rates through the Federal Communications Commission.

PLN has reported for decades on prison and jail phone services, including litigation, legislation and reform efforts, and our experience and expertise in this area leads us to make the following remarks in support of Assembly Bill 1876 on behalf of HRDC and the Campaign for Prison Phone Justice:

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1. Lack of Competition

Upon entering into contracts with correctional agencies, jail phone service providers enjoy a complete monopoly on telephone services within the jurisdiction controlled by the contract. This legalized monopoly, with a resultant lack of competition, is in effect during the term of the contract. And while such contracts may be rebid, the company that currently holds the contract has a significant advantage in terms of winning the rebid and maintaining its monopoly, as competitors must factor in start-up and equipment costs.

In a free market economy, competition acts to lower prices to the benefit of consumers. In the jail phone service market, however, competition exists only when a contract is initially bid, and perhaps during rebids. Even this level of competition makes a mockery of free market economics, however, as the lowest cost for providing jail phone services is rarely taken into account as a contract requirement.

This lack of consumer-friendly competition is due to the industry-standard practice of providing "commissions" to the contracting county agencies, which is the polite term for contractually-agreed kickbacks. Jail phone service providers typically agree to pay a specified percentage of their revenues to the contracting agency as a type of profit-sharing agreement – with such commissions ranging up to 70% of billed phone revenues. These collusive arrangements, which result in millions of dollars in commissions, create a vested interest by the contracting agency to maximize the rates charged to consumers in order to increase the resulting shared profits; or, at least, not to actively seek lower rates that would decrease their kickback.

These commissions are passed on to consumers in the form of higher phone rates. Notably, the consumers who actually pay the inflated rates – primarily the family members and friends of prisoners, not the prisoners themselves – have no say in the contracting process or the selection of the phone service provider.

While phone rates available to the general public have dropped dramatically in recent years, with phone companies routinely touting long distance rates of \$.10 per minute or less, competition in the jail phone service industry has, to quote one writer, "worked in precisely the opposite direction, with companies offering the highest bids (in terms of rates and commissions) routinely awarded contracts, the costs of which are passed on to the (literally) captive market." (Steven J. Jackson, "Ex-Communication: Competition and Collusion in the U.S. Prison Telephone Industry").

Eight states, recognizing the problems inherent in commission-based phone service contracts, have banned commissions in their Departments of Corrections – including California, New Mexico, Michigan and New York.

2. Impact on Families of Prisoners

Price gouging is an ugly phrase, but as indicated above, that is exactly what prisoners' family members and friends experience when they accept collect calls from their imprisoned loved ones or open prepaid jail phone accounts.

Phone calls are a vital resource for maintaining parental, spousal and familial relationships over years of incarceration, yet prisoners' families are subject to very high rates charged by jail phone service providers and the agencies they contract with. The AB 1876 Fact Sheet details some of these rates: \$12.75 for a 15-minute intrastate call in Alameda County, with 70.5 percent of the gross revenue generated from the calls collected by the Alameda County Sheriff's Department (\$1,629,046 in commissions in fiscal year 2012-2013); \$15.44 for a 15-minute intrastate phone call in Tulare County with a 55 percent commission on gross revenue received by the Tulare County Sheriff's Department (\$361,436 collected in fiscal year 2011-2012, with the commission rate increasing to 72 percent in 2013); and \$13.35 for a 15-minute intrastate phone call in Los Angeles County.

Of note, a new contract was negotiated in 2011 that increased the commission percentage in Los Angeles County from 52 to 67.5 percent, **with a Committed Annual Guarantee of \$15 million for the Sheriff's Department.** In fiscal year 2010-11, the Los Angeles County Sheriff's Department received \$25.4 million in phone commissions. This results in socioeconomic-based disparity, as families who can afford to pay inflated phone rates for calls from their incarcerated loved ones are able to do so, while impoverished families cannot.

Such grossly inflated rates are not justified except as a means of monopolistic price gouging; if the contractual kickbacks were excluded, jail phone service providers could charge about half the current rates and still remain profitable. This is fact, not theory. The eight states that have banned commissions have some of the lowest prison phone rates in the nation, including New York's prison system, which charges less than \$.05 per minute for inmate phone calls. The jail phone service industry's argument that technical expenses and equipment costs justify high phone rates does not explain why such rates vary widely from one jurisdiction to another.

There have been many reported cases of families having to cut off telephone contact with their imprisoned loved ones due to outrageous phone bills – bills that exceed \$700 per month for some families.

The inflated rates charged by jail phone service companies should not be borne on the backs of prisoners' families, who are overwhelmingly the ones who must pay such exorbitant costs and the least able, financially, to make such payments. Families of prisoners, whose only "crime" is having a loved one in prison, should not be punished for that familial relationship by having to pay exorbitant phone rates. As stated by Madeleine Severin, there is "something fundamentally unjust about families of prisoners

being charged outrageous prices solely because they accept collect calls from people in prison." ("Is There a Winning Argument Against Excessive Rates for Collect Calls from Prisoners?" 25 *Cardozo L. Rev.* 1469 (2004)).

3. Impact on Reducing Recidivism Rates

Research has indicated that of the 2.2 million men and women held in our nation's prisons and jails, almost 70% perform at the two lowest levels of reading (more than triple the rate in the general population). For these prisoners, writing letters is not a viable substitute for communicating with family members and maintaining family and parental relationships. Further, many prisoners are housed far across the state from their families, who are unable to travel for in-person visitation.

Such prisoners who cannot adequately read or write, or who are unable to receive visits, must rely on jail phone services. And when the cost of such phone services is excessively high the ability to make such calls is diminished or even extinguished, with family contact and relationships suffering as a result. This impacts more than just prisoners and their loved ones.

Numerous studies have shown that practices and programs which "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" of prisoners after they are released. (Re-Entry Policy Council Report, 2005).

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."

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."

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."

For many prisoners, phone calls to their families and children are the primary means of maintaining family ties and parental relationships during their incarceration, and prisoners who have close contact with their family members have better post-release outcomes and lower recidivism rates.

Notably, many jail prisoners are pretrial detainees who are awaiting trial and have not yet been convicted. To the extent that strong family support and relationships during incarceration result in lower recidivism rates (e.g., less crime), this issue affects our communities. And to the extent that jail phone calls are a primary means to maintain strong family relationships during incarceration, the affordability of such phone calls is also an issue that affects our communities.

4. Abuses and Lack of Accountability.

There is little oversight over jail phone service providers, other than through the contracting county agencies. The commissions paid to such agencies cited above result in a natural incentive to maintain a hands-off approach in terms of investigating abuses by jail phone service providers, as such investigations or scrutiny may jeopardize the lucrative kickbacks that the contracting agencies receive.

While state public utility regulatory agencies may have the authority to investigate and make rules related to jail phone services, in practice this is rarely done. Jail phone services are not a significant issue for state regulatory agencies; also, jail phone service providers employ attorneys and lobbyists to protect their business interests, while there is no similar representation for consumers – primarily prisoners' family members – who are most affected by exorbitant jail phone rates. When state public utility regulatory agencies have intervened, however, they frequently uncover gross abuses by phone service providers.

The prison phone service industry has been repeatedly sanctioned for overcharging and fraudulent practices. In California, for example, on May 4, 2001, the California Public Utility Commission ordered MCI to refund \$522,458 in overcharges on collect calls made by California prisoners between June 1996 and July 1999.

Due to the lack of effective regulation and oversight of the jail phone service industry, abuses and overcharges are difficult to detect, with the result that consumers are defrauded, overcharged and price-gouged with little or no recourse.

5. Absence of Other Regulatory Means

With rare exceptions, state and federal courts have failed to provide relief related to prison phone services, commission kickbacks, high rates charged to prisoners' families, etc. Generally, such issues do not raise constitutional claims on the federal level and are often dismissed under the filed rate or primary jurisdiction doctrines.

Some state Departments of Corrections have voluntarily reduced prison phone rates. As I am sure you are aware, in 2006 then-Governor Schwarzenegger signed SB 81, requiring the phasing out of commissions paid to the state by the prison phone service provider for the California Department of Corrections and Rehabilitation.

Eliminating the commissions has reduced the cost of making calls from state prisons without endangering safety or security, and if the state can take such action to protect consumers who receive phone calls from prisoners – mainly prisoners' family members – then there is no reason why counties can not do so, too.

The Federal Communications Commission voted to cap the cost of interstate (long distance) prison phone rates last year, and the FCC's order partially went into effect on February 11, 2014. However, the rate cap and other reforms implemented by the FCC do not apply to intrastate (in-state) calls, which remain high – even higher than long distance calls – in many jurisdictions. The vast majority of calls made by jail detainees are intrastate and local, which are not subject to the FCC's rate cap.

Thus, Assembly Bill 1876 is needed to address the costs of intrastate and local calls made by prisoners held in county jails, as those rates remain unregulated and in many cases are still unreasonably high due to the commission payments that county agencies receive from jail phone service providers.

Conclusion

The Human Rights Defense Center and Campaign for Prison Phone Justice support Assembly Bill 1876, and encourage you to consider the above comments when reaching a decision on whether you will support this important legislation.

Assembly Bill 1876 is necessary because free market forces have consistently failed to provide reasonable, competitive phone rates for the captive market that consists of prisoners and their families, to the detriment of consumers and society as a whole. Further, it is fundamentally unfair for prisoners' family members to shoulder the burden of higher jail phone rates due to commission kickbacks paid to county agencies and sheriffs' offices.

Please feel free to contact me should you require any additional information.

Sincerely,



Paul Wright
Executive Director, HRDC