

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

In the Matter of:)	
)	
Implementation of Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996)	CC Docket No. 96-128
)	
)	DA 03-4027
Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues In Pending Rulemaking)	
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**COMMENTS OF THE AMERICAN CIVIL LIBERTIES UNION AND
THE WASHINGTON LAWYERS' COMMITTEE FOR CIVIL
RIGHTS AND URBAN AFFAIRS**

The American Civil Liberties Union (“ACLU”) and the Washington Lawyers’ Committee for Civil Rights and Urban Affairs (“WLC”) (collectively, the “Commenters”) hereby respond to the Commission’s public notice in the above-referenced proceeding¹ seeking comment on the exclusive service agreements and other restrictions on prison inmate calling options that Martha Wright and other prisoner and non-prisoner petitioners raised in the *Wright Petition*.² The Commenters agree that the Commission should prohibit providers of prisoner calling services from entering into exclusive service agreements with privately-administered prison facilities and from paying excessive commissions to such administrators for the exclusive

¹ FCC Public Notice, *Petition for Rulemaking Filed Regarding Issues Related to Inmate Calling Services, Pleading Cycle Established*, CC Docket No. 96-128, DA No. 03-4027 (Dec. 31, 2003). The comment deadline was extended from February 9, 2004, to March 10, 2004.

² Martha Wright, et al. *Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking* (Oct. 31, 2003).

right to provide calling services in a prison facility. These exclusive arrangements prevent competitive forces from driving down the cost of prisoner calling services, and the commissions dramatically increase such costs.³

I. INTRODUCTION AND SUMMARY.

The ACLU is a nationwide, nonprofit, nonpartisan organization of more than 400,000 members dedicated to the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. The ACLU established the National Prison Project in 1972 to protect and promote the civil and constitutional rights of prisoners. Through the National Prison Project, the ACLU advocates for the reform of criminal justice policy and educates the public about the social and fiscal ramifications of the current trend of moving away from rehabilitation toward debilitating imprisonment.

For more than thirty years, the WLC has represented both individuals and groups seeking to protect their constitutional and civil rights. The WLC's mission is to address issues of discrimination, poverty, and other injustices in our community. It represents people with claims of discrimination based upon race, gender, national origin, disability, age, religion, and sexual orientation. It also assists immigrants seeking asylum and educational issues. The WLC has a very long history of providing legal assistance to D.C. men and women who are incarcerated.

More than two million people are currently incarcerated in the United States, many of them located in overcrowded prisons. Contact with family and friends is the single most important factor in stabilizing a prisoner's mental health and supporting a prisoner's successful

³ Although the *Wright Petition* addresses long distance telephone services provided to prisoners in privately-administered prison facilities, the Commenters support the implementation of similar relief in all prisons.

return to society. These ties, however, can be difficult, or even impossible, for prisoners to maintain in the face of the excessive charges for prisoner calling services.

Agreements allowing one telecommunications carrier to provide exclusive service to a prison facility and commissions paid to prison administrators for such exclusivity are responsible for prisoner calling rates that far exceed market rates for long distance telephone services that are available to the general public. Particularly for the many prisoners from low-income backgrounds whose friends and families cannot afford the expense, these rates prevent prisoners and their families and friends from associating with each other, in violation of their Constitutional rights. Accordingly, the Commenters urge the Commission to grant the *Wright Petition* and allow competition in the prisoner calling market and prohibit the payment of commissions to prison administrators.

The *Wright Petition* arises from a referral order in a class action brought in the United States District Court for the District of Columbia.⁴ The plaintiffs in the class action lawsuit allege that the exclusive dealing arrangements between certain telecommunications carriers and private prison administrators restrict the choices prisoners and their families and friends have for telephone services in violation of Section 201(b) of the Communications Act of 1934, as amended (the “Communications Act”),⁵ and the First, Fifth and Fourteenth Amendments.⁶ The reasonableness of these restrictions and prisoner calling rates are common elements in the statutory and Constitutional claims raised in the class action lawsuit. For example, whether exclusive dealing arrangements abridge prisoners’ First Amendment rights will depend partly

⁴ *Wright v. Corrections Corp. of America*, C.A. No. 00-293 (GK) (D.D.C. Aug. 22, 2001).

⁵ 47 U.S.C. § 201(b).

⁶ *Wright Petition* at 6-7.

upon whether these arrangements are justified and whether the calling rates charged under those arrangements are reasonable. Although the *Wright Petition* does not request that the Commission act on the Constitutional claims raised in the class action lawsuit, the Commission's decision in this proceeding regarding telecommunications issues will impact the court's consideration of the plaintiffs' non-Communications Act claims.

II. THE COMMISSION SHOULD ALLOW COMPETITION IN THE PROVISION OF PRISON CALLING SERVICES BY PROHIBITING EXCLUSIVE DEALING ARRANGEMENTS AND THE PAYMENT OF COMMISSIONS UNDER THOSE ARRANGEMENTS.

In many facilities, prisoners are able to communicate with family and friends only through the telephone, and then only using collect calling services. As the *Wright Petition* explained, those calling services are in turn provided by one carrier in each prison, which secures the exclusive right to serve the facility under an arrangement by which it pays the prison administrator a substantial commission. Carriers increase their calling rates to some of the highest rates in the country to recoup the commissions. These exclusive dealing arrangements have been long defended as necessary due to certain security and penological measures, such as call monitoring, blocking and routing functions.⁷

These exclusive arrangements and the commissions paid for them result in unreasonable calling rates. Because collect calling services are typically the only option available to a prisoner, his or her family members and friends pay these high rates. Many of the consumers who receive collect calls from prisoners are economically disadvantaged. These consumers are often presented with an untenable choice – pay unreasonable amounts every month to talk to their loved ones who are in prison, or pay for housing, food and medicine.

⁷ See, e.g., *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 17 FCC Rcd 3248, 3276-77 (2002).

The *Wright Petition* proposes one way for multiple carriers to provide prisoner calling services to a prison without sacrificing security and penological measures that have been implemented at the facility. The affidavit of Douglas Dawson, which is attached to the *Wright Petition*, details how competitive services can be made available to prisoners and their families and friends and the feasibility of such a competitive system. The introduction of competitive telephone services in a prison would eventually put downward pressure on prisoner calling rates as competition has done in other markets. Not only would consumers have a choice of telephone service providers, but they also would enjoy lower calling rates. Prisoners would be able to spend more time on the telephone with parents, children, spouses, siblings and friends, strengthening ties with their community and reducing the chance of recidivism. This, in turn, benefits society by decreasing the prison population and the cost of housing them and increasing the number of productive, law-abiding citizens that contribute to the community.

Similarly, those using prisoner calling services should be presented with a choice of calling services. In particular, debit card and debit account systems should be available in private prisons. In many cases, debit services are less expensive than collect calling service. Providing an alternative, less expensive calling service should also put downward pressure on collect calling rates. Furthermore, it provides both non-prisoner and prisoner consumers with the ability to choose, a basic freedom they previously lacked. The federal penal system has already successfully implemented a debit system; thus, the security and penological measures prison administrators must employ can still be used when debit calling services are available.⁸

⁸ Affidavit of Douglas A. Dawson at 16-18 (Oct. 29, 2003) (Attachment A to *Wright Petition*); see also CURE Comments, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, at 7 (May 24, 2002) (noting that the federal penal system and some state prison systems allow the use of debit systems).

Allowing carriers to recoup the substantial commissions they pay to prison administrators through prisoner calling rates also disserves the public. As previously noted, those paying for prisoner calls are typically a prisoner's family and friends. Requiring them to pay for the commissions to prison administrators discriminates against these consumers and unfairly penalizes them for maintaining a relationship with someone that is incarcerated. These consumers should be afforded the same right to affordable and non-discriminatory telecommunications services that all consumers enjoy under the Communications Act.

III. CONCLUSION.

The Commenters urge the Commission to act quickly to address the unreasonably high rates that consumers are currently paying for prisoner calling services. Carriers and privately-administered prison facilities should be prohibited from entering into exclusive dealing arrangements and carriers should be prohibited from paying commissions to the administrators under these arrangements. The Commission should take whatever steps are necessary to ensure that non-inmate and inmate consumers have a choice of inmate calling services and providers of such services. Competition in the inmate calling market will lead to lower calling rates, support the rehabilitation of inmates, and benefit society as a whole.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Jessica Feierman, hereby certify on this 10th day of March, 2004, a copy of the foregoing Comments have been served via electronic mail (*) or first class mail, postage pre-paid, to the following:

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