



*Michael S. Hamden*  
*Attorney, Counselor at Law*  
*& Corrections Consultant*  
*1612 Homestead Road*  
*Chapel Hill, NC 27516*  
*(919) 605 - 2622*  
[Michael.Hamden@HamdenConsulting.com](mailto:Michael.Hamden@HamdenConsulting.com)

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**EX PARTE NOTICE**  
Electronic Filing

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W., TW-A325  
Washington, D.C. 20554

Re: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128; Petitioners' Alternative Rulemaking Proposal; Petition for Declaratory Ruling of Securus Technologies, Inc., WC Docket No. 09-144

Dear Ms. Dortch:

On January 26 and 27, 2010, the undersigned, together with representatives of the American Bar Association, the National Association of Criminal Defense Lawyers, and the National Legal Aid and Defenders Association participated in a series of meetings with FCC staff, as follows:

**Organizational Representatives**

Bruce Nicholson, Legislative Counsel, American Bar Association  
Kyle O'Dowd, Associate Executive Director for Policy,  
National Association of Criminal Defense Lawyers  
Hillary Evans, Civil Associate, National Association of Legal Aid and Defender Association  
Karl Doss, Staff Attorney, Defender Legal Services,  
National Association of Legal Aid and Defender Association  
Eddie Ellis, Jr., Board Member, National Association of Legal Aid and Defender Association  
Edwin A. Burnette, Board Member, National Association of Legal Aid and Defender Association

## FCC Officials

Jennifer Schneider, Legal Advisor to Commissioner Copps  
Priya Aiyar, Legal Advisor for Wireline Competition and International Issues  
Angie Kronenberg, Acting Legal Advisor, Wireline Division  
Christie Shewman, Legal Advisor for Wireline and Universal Service

And, as a group:

Sharon Gillette, Wireline Bureau Chief  
Albert Lewis, Pricing Policy Division Chief, Wireline Bureau  
Pam Arluck, Assistant Pricing Policy Division Chief, Wireline Bureau  
Marcus Maher, Competition Policy Staff, Wireline Bureau  
Lynn Engledow, Competition Policy Staff, Wireline Bureau  
Jennifer Prime, Telecommunications Access Policy Division, Wireline Bureau  
Julie Veach, Associate General Counsel, Office of General Counsel  
Christopher Killion, Deputy Associate General Counsel, Office of General Counsel  
Diane Griffin, Assistant General Counsel, Office of General Counsel

## Subject of the Meetings & Discussions

At each of the meetings, there was discussion about the ruinous cost of prisoner telephone calls. The U.S. prison population of 2.3 million people is greater than that of any other country (measured either in raw numbers or as a percentage of general population). With a 60% rate of recidivism, and with 700,000 prisoners return to our communities each year, successful re-entry is critical.

Three pillars of rehabilitation and reintegration are the maintenance of family and community connections, work opportunities, and education. The financial downturn has meant that education is being cut at facilities and throughout systems across the nation, work opportunities are limited, and connections with families and communities are adversely affected by the prohibitive cost of telephone calls. The problem is exacerbated by high levels of illiteracy, distance, poverty, and disabilities or health conditions that make travel difficult or impossible.

Also implicated by prohibitively high calling rates is the constitutional right to counsel is implicated. Public defenders are unable to accept or place client calls – except possibly in emergency circumstances – which materially undermines the ability of counsel to confer with the client about the facts, possible witnesses, and viable defenses.

And key stakeholders have been unable to extricate themselves from the spiraling escalation of



cost and commissions (industry officials, because contracts are awarded only on the basis of the amount of commission offered; correctional officials, either because they need operational funds or because the contracts are negotiated by governmental bodies with funds going to the general revenue coffers. But correctional authorities strongly support reasonable rates for prison telephone services, as evidenced by the policy and standards of the American Correctional Association, as well as policies of the National Sheriffs Association, the Association of State Correctional Administrators, and the Bureau of Prisons.<sup>1</sup>

The matter, which has been pending for 14 years, deserves prompt action and comprehensive remedial measures. We advocated the elimination of commissions, the prohibition of “tack-on” charges, and proscriptions against other abusive practices that unjustifiably increase the cost of prisoner initiated phone calls. (But rates that result in cost recovery and a reasonable profit are desirable so that prison phone providers will continue to have an incentive to provide the service.)

The FCC has authority to regulate both interstate and intrastate rates. Explicit jurisdiction over prison payphones is conferred by 47 U.S.C. § 276. When they promote anticompetitive practices, exclusivity contracts may be ruled unenforceable and prohibited. *National Cable & Telecommunications Association*, 567 F.3d 659 (2009)(although addressing the cable TV industry, the essence of the case focused on anticompetitive practices). Cost-based benchmark rates are within FCC’s authority. *Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999). And the FCC has authority to regulate intrastate prison pay phone rates. *IL Public Telecommunications Association v. FCC*, 117 F.3d 555 (1997). Indeed, in this very proceeding inmate payphone service providers have implicitly acknowledged the FCC’s authority in this regard. *ICSPC Initial Comments & Petition for Partial Reconsideration and Clarification of the First Report and Order* (seeking \$0.90 federally-tariffed inmate calling surcharge on local calls because state-imposed rate ceilings were purportedly inadequate . . .”) *See also, Inmate Calling Services Providers Coalition, Petition for Partial Reconsideration and Clarification* (seeking reconsideration of the *Order on Reconsideration*), at 6-11, 14-19 (filed Oct. 21, 1996).

The need for the provision of the broadest possible range of calling options was also discussed, citing the petition bearing over 1,000 signatories urging that prison phone rates be capped. <http://www.thepetitionsite.com/3/lower-the-cost-of-calls-from-prison> .<sup>2</sup>

### **The Heart of the Problem**

As the record shows, the sharp practices of the prison payphone industry cannot be contained through ordinary market forces or a piecemeal approach. Nor is the problem amenable to

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<sup>1</sup> A copy of each policy is attached.

<sup>2</sup> A copy of the petition and its signatories are attached.



resolution through the kind of competition that might work to the advantage of the consumer in other contexts. The correctional setting is unlike other competitive venues. Law enforcement authorities which investigate telephone scams, witness intimidation, and other crimes are unlikely to share confidential information with an array of companies which have no accountability for the disclosure of such information. To do so might well compromise criminal investigations. And if sensitive information were disclosed, it might well be impossible to ascertain the source of the security breach among multiple, changing service providers and their employees.

In short, exclusivity is not the source of consumer abuse in the prison payphone industry. Instead, the problem is the lack of cost-based, benchmarked rates that govern the prices and charges a carrier may legitimately bill. If rates and charges were subject to reasonable regulation, services would be selected on the basis of quality and customer service, not on the basis of the highest commission that could be offered. With cost-based benchmarked rates it would make no difference to the consumer which carrier provided the service since legitimate rates will have been established by the Commission.

### **Conclusion**

Thus, nothing less than a comprehensive approach can be expected to resolve intricate schemes to bilk vulnerable consumers. The elimination of commissions, a prohibition on “tack-on” charges and other abusive practices (such as the misuse of three-way call detection and other technology), and a requirement that prisoners be afforded the broadest possible range of calling options (including debit, credit, collect, and pre-paid calling) will rectify existing wrongful practices and protect consumers from continuing exploitation. Cost-based, benchmarked rates should be set at levels that ensure the recovery of all legitimate costs and provide a reasonable rate of return on investment (*i.e.*, profit in an amount of 10 – 13%).

These points are outlined in the attached document and Exhibits A through C, which were distributed at the meetings. Exhibits D through G are policies of various correctional organizations which were referenced in the meetings, as was Exhibit H, a consumer petition demanding lower intrastate and interstate prison payphone rates.

Thank you for your attention to this matter. With all best wishes, I am,

Sincerely yours,

Michael S. Hamden



