January 15, 2021

Hon. Ajit Pai, Chairman
Hon. Jessica Rosenworcel, Commissioner
Hon. Brendan Carr, Commissioner
Hon. Geoffrey Starks, Commissioner
Hon. Nathan Simington, Commissioner
Federal Communications Commission
45 L Street N.E.
Washington, DC 20554

Dear Chairman Pai and Commissioners:

RE: Rates for Interstate Inmate Calling Services, WC Docket No. 12-375: Reply Comments of the Inmate Telephone Rate Control Supporters

The Multicultural Media, Telecom and Internet Council (MMTC), along with the 19 undersigned national public interest, civil rights, and business advocacy organizations (collectively the “Inmate Telephone Rate Control Supporters”) respectfully submit this letter as our Reply Comments regarding the FCC’s policies governing intrastate telephony for incarcerated persons. Together, our organizations represent millions of stakeholders from every state across the country.

**Position of the Inmate Telephone Rate Control Supporters**

The American criminal justice system holds at least two million Americans behind in detention facilities of all types.\(^1\) Mass incarceration has created a captive market valued at nearly $40 billion;  

therein, private companies profit from vulnerable consumers’ reliance on inmate telephone services. When these consumers want to call loved ones who are incarcerated, they have no alternatives to expensive private services.

This proceeding continues the work of the “Wright Petitioners” who have led the fight for inmate telephone rate reform for two decades. Indeed, the late Mrs. Martha Wright raised the issue in 2012 at the age of 86 in Washington, DC. She filed a petition asking the FCC to regulate prison telephone rates so she could afford to maintain contact with her incarcerated grandson.2

A conviction should not impose a permanent life sentence on incarcerated people and their loved ones. This is especially true where a disproportionate number of incarcerated people are racial minorities from low-income families. Requiring families to pay excessive, predatory prices to make a telephone call – or to accept a collect call from an incarcerated family member - is immoral and unethical. The rest of the world has enjoyed the benefit of downward telephone prices for many years.

Racial injustice is implicated here because of the disproportionate impact on racial minorities and their families. Traditionally, as a matter of policy, federal civil rights mandates can supersede state interests when racial justice is on the line.3 Therefore, we strongly support what the FCC already

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3 While the FCC has determined that intrastate calls are within the jurisdiction of states, we note that issues involving the unequal treatment of racial minorities usually have federal remedies, and that telephony hardware and software almost always cross state lines. Compare, e.g., Heart of Atlanta Motel v. U.S., 379 U.S. 241, 258 (1964) (“the power of Congress to promote interstate commerce also includes the power to regulate the local incidents thereof, including local activities

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has done to lower the costs of intrastate phone rates, and we encourage all states to take further action to lower intrastate rates as the FCC and states such as New York have done.

The FCC’s Inmate Calling Proceeding Must Remedy the Injustices in Prison Phone Rates.

The question at hand is whether the FCC has jurisdiction to set rate caps on calls that originate and conclude in the same state – aka “intrastate” calls. The Commission has tried to cap intrastate rates since 2013, but various proposed rules were shot down by courts because of this jurisdictional issue.4

As the Commission has noted, only 20% of calls from prisons and jails are interstate or international; 80% of calls are thus intrastate, and thereby subject to exorbitant call rates.5 For example, FCC staff identified 15-minute intrastate calls that cost as much as $24.80 - an interstate call would cost $3.15 at maximum.6

We encourage the FCC to encourage states to act to reduce intrastate prison phone rates. This injustice cannot stand.

A. Predatory Intrastate Phone Rates Impose a Tax on Pain, and Unfairly Strip Wealth from Innocent Families of Disproportionately Incarcerated Minorities.

The moral abhorrence of these excessive inmate call rates – which are ultimately paid by the incarcerated persons’ family members – has become quite clear in this very protracted7 proceeding. High call rates are ethically unsupported irrespective of whether the call is deemed “interstate,” “intrastate,” or “mixed.” They can bankrupt innocent families, and disrupt telephone-based family support systems that assure incarcerated persons they are valued and wanted by loved ones.

Further, it is well known that the nation’s massive incarceration problem disproportionately affects racial minorities, especially Black and Hispanic men and increasingly Black women,8 as well as those with low-income and education levels. A recent Sentencing Project study found that “African Americans are incarcerated in state prisons across the country at more than five times the rate of

in both the States of origin and destination, which might have a substantial and harmful effect upon that commerce …. Congress may—as it has—prohibit racial discrimination by motels serving travelers, however “local” their operations may appear.”) Thus, the FCC has a strong jurisdictional basis upon which to require that “intrastate” telephony rates mirror interstate rates.


6 Id.

7 The proceeding has lasted 20 years thus far: 11 years of petitioning followed by nine years of litigation.

whites.”9 LGBTQ people of color have a higher rate of incarceration.10 It is well established that there are disproportionate incarceration rates among economically disadvantaged populations,11 and almost 70% of persons incarcerated in state prisons have not completed high school.12

Therefore, millions of families may already have suffered an economic disadvantage prior to their loved ones’ incarceration as a result of being racial minorities, low-income, or under-educated. At-risk consumers and low-income families are already suffering economic disadvantages; without rate caps, they are further forced to choose between calling an incarcerated family member and buying essential food and medicines.

Uncapped, exorbitant phone rates are merely additional taxes on the pain and unfair wealth-stripping already suffered by the families of incarcerated persons.

B. Predatory Phone Rates Promote Increased Recidivism.

Evidence further demonstrates an “established link between poor mental health in prison and recidivism.”13 Given that unaffordable inmate call rates intuitively promote isolation, they likely also contribute to inmate recidivism. Numerous states bear the enormous financial and life-quality costs of recidivism because prisoners, once released, are free to settle in any state.

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10 See National Center for Transgender Equality, LGBTQ People Behind Bars (2020), available at https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf (last visited December 18, 2020) (LGBTQ individuals tend to be incarcerated at higher rates than their counterparts.) When focusing on racial minority and transgender LGBTQ individuals, “the rates are truly astounding. LGBTQ people of color and low-income LGBTQ people, are disproportionately likely to come into contact with the criminal justice system. A history of bias, abuse, and profiling toward LGBTQ people by law enforcement, along with high rates of poverty, homelessness, and discrimination in schools and the workplace, has contributed to disproportionate contacts with the justice system, leading to higher levels of incarceration. Policies that criminalize poverty, homelessness, and participation in survival economies such as sex work also disproportionately impact LGBTQ people – especially transgender women of color.”) Id.

11 See Nellis, supra n. 9.

12 See Desmond & Emirbayer, Race in America (2016).

C. The Travel Costs of Visiting an Incarcerated Person Family Members Make the Telephone the Only Option, Particularly During the COVID-19 Pandemic.

Telephone services are especially important to the families of incarcerated peoples at this moment in history. Incarcerated persons are often assigned to prisons far from their homes. It can be impractical as well as costly and time-prohibitive for family members to visit relatives held in prisons that may be located hundreds or even thousands of miles away. Particularly under the COVID-19 pandemic, where prison visitation is often impossible, the telephone may be the only way to communicate with loved ones.

Conclusion

We fully support what the FCC has done to lower the costs of intrastate phone rates. Some states—notably including New York—are following the FCC’s good example. We encourage all states to take further action to lower intrastate rates as the FCC has done.

To the full extent permitted by law, and pursuant to the enormous federal interest in maintaining affordable service for vulnerable populations, the Commission should ensure that intrastate inmate telephone rates are no higher than interstate rates.

Respectfully submitted,

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15 This letter reflects the institutional views of the organizations comprising the Inmate Telephone Rate Control Supporters, rather than the individual views of the organizations’ officers, directors, or members.
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Appendix

Inmate Telephone Rate Control Supporters

1. Multicultural Media, Telecom, and Internet Council (MMTC)
2. Arizona Inmate Families and Friends Association
3. Arizona Justice Project
4. ASPIRA Association
5. Daniel Alexander Payne Community Development Corporation, Ex-Offender Reclamation Program
6. Episcopal Diocese of Arizona, Prison Ministry Program
7. Hispanic Federation
8. Japanese American Citizens League
9. LGBT Technology Partnership and Institute
10. MANA, A National Latina Organization
11. Metropolitan AME Church, Washington, DC
12. National Association for Equal Protection in Higher Education (NAFEO)
13. National Association for the Advancement of Colored People (NAACP)
14. National Coalition on Black Civic Participation
15. National Council of Negro Women
16. National Organization of Black County Officials (NOBCO)
17. National Organization of Black Elected Legislative Women (NOBEL Women)
18. National Urban League
19. OCA – Asian Pacific American Advocates National Advocates