



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;

¹ See Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2020* (Mar. 24, 2020), available at <https://www.prisonpolicy.org/reports/pie2020.html> (last visited Jan. 13, 2021) (citing U.S. Bureau of Justice Statistics, Census of State and Federal Adult Correctional Facilities, 2012, ICPSR 37294 (September 15, 2020), available at <https://doi.org/10.3886/ICPSR37294.v2> (last visited Jan. 13, 2021) (reporting number of state incarceration facilities); Federal Bureau of Prisons, *Our Locations*, available at <https://www.bop.gov/locations/list.jsp> (last visited Jan. 13, 2021) (reporting number of federal incarceration facilities); Report, U.S. Off. of Juvenile Justice &

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

Delinquency Prevention, *Number of facilities and juvenile offenders by facility operation, United States, 2018*, in *Juvenile Residential Facility Census Databook: 2000-2018* (last updated December 11, 2020), available at https://www.ojjdp.gov/ojstatbb/jrfcdb/asp/display_profile.asp (last visited Jan. 13, 2021) (reporting number of youth incarceration facilities); E. Ann Carson & Mary P. Cowhig, Bureau of Justice Statistics, *Mortality in Local Jails, 2000-2016 – Statistical Tables*, NCJ 251921 (February 2020), available at <https://www.bjs.gov/content/pub/pdf/mlj0016st.pdf> (last visited Jan. 13, 2021) (reporting number of jails); U.S. Immigrations & Customs Enforcement, ERO Custody Management Division, *Authorized Dedicated Facility List* (last updated December 7, 2020), available at <https://www.ice.gov/doclib/facilityInspections/dedicatedNonDedicatedFacilityList.xlsx> (last visited Jan. 13, 2021); Todd D. Minton & Mary Cowhig, Bureau of Justice Statistics, *Jails in Indian Country, 2016*, NCJ 250981 (December, 2017), available at <https://www.bjs.gov/content/pub/pdf/jic16.pdf> (last visited Jan. 13, 2021) (reporting number of indigenous/tribal jails) (“The American criminal justice system holds almost 2.3 million people in 1,833 state prisons, 110 federal prisons, 1,772 juvenile correctional facilities, 3,134 local jails, 218 immigration detention facilities, and 80 Indian Country jails as well as in military prisons, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories.”).

² After the Commission granted the Wright Petition in 2015, the U.S. Court of Appeals for the D.C. Circuit reversed it “in part by constricting the meaning of the word ‘fair’” in § 276 of the Communications Act of 1934, and by “limiting the means by which the [FCC] can calculate fair, just, and reasonable charges.” See S.1764, 116th Cong. § 2(8) (2019-2020) (citing *Global Tel-Link v. FCC*, 866 F.3d 397 (D.C. Cir. 2017) (finding the FCC lacked statutory authority to cap intrastate call rates as ordered in 2015)); see also *Rates for Interstate Inmate Calling Services*, 30 FCC Rcd. 12763, 12775-76, 12838-62 (Nov. 5, 2015), 80 Fed. Reg. 79136-01 (Dec. 18, 2015) (attempting to set permanent rate caps and ancillary fee caps for interstate and intrastate inmate call service calls).

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

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 unsupportable 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 afflicts 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.

⁴ See generally *Rates for Interstate Inmate Calling Services* (Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking), FCC 20-111, WC Docket No. 12-375 (August 7, 2020) (hereinafter “NPRM”) at 5-11 ¶¶12-26.

⁵ See *Rates for Interstate Inmate Calling Services* (Report and Order on Remand and Fourth Notice of Proposed Rulemaking), 35 FCC Rcd 8485, 8497 ¶26 (2020).

⁶ *Id.*

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

⁸ See, e.g., *Incarcerated Women and Girls*, Sentencing Project (Nov. 24, 2020), available at <https://www.sentencingproject.org/publications/incarcerated-women-and-girls/> (last visited Jan. 14, 2021).

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.

⁹ See Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (2016), available at <https://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/> (last visited December 13, 2020) (“Nellis”).

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).

¹³ Danielle Wallace & Xia Wang, *Does in-prison physical and mental health impact recidivism?*, 11 SSM Population Health 1, 11 (Mar. 2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7113431/pdf/main.pdf> (last visited Jan. 14, 2021); see also Amy Novotney, *The risks of social isolation*, 50 Am. Psychological Ass’n Monitor on Psychology 32 (2019), available at <https://www.apa.org/monitor/2019/05/ce-corner-isolation> (last visited Jan. 14, 2021) (“[L]ack of social connection heightens health risks as much as smoking 15 cigarettes a day or having alcohol use disorder.”) (internal citation omitted).

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.¹⁴ 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,¹⁵

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¹⁴ See Emma Kaufman, Uncovering the U.S. prisoner transfer system and alleviating coronavirus outbreaks in prisons, Journalists Resource, Harvard Kennedy School Shorenstein Center (April 23, 2020), available at <https://journalistsresource.org/studies/government/criminal-justice/prisoner-transfer-emma-kaufman/> (last visited December 13, 2020).

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