

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

-----X
In the Matter Of X
X
BILLED PARTY PREFERENCE X CC Docket
No.92-77
FOR 0+ INTERLATA CALLS X
X
-----X

COMMENTS OF THE
PUBLIC UTILITY LAW PROJECT OF NEW YORK INC.

PUBLIC UTILITY LAW PROJECT
OF NEW YORK, INC.

B. Robert Piller, Esq.
Executive Director

By: Trudi J. Renwick, Ph.D.
Economic Policy Analyst
Public Utility Law Project of
New York, Inc.
Pieter Schuyler Financial Center
39 Columbia Street
Albany, New York 12207-2717

(518) 449-3375

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SUMMARY

The Public Utility Law Project of New York (PULP) is a public interest law firm representing the interests of low-income utility and energy consumers. PULP respectfully submits these comments on the specific issue of whether customers receiving calls from correctional institutions should have the benefit of Billed Party Preference (BPP).

For the families of prisoners in New York State, the current system of collect-only calls represents a pure monopoly. Prisoners held in state facilities wishing to make telephone contact with their families must use the single authorized provider to place these calls. The person who accepts these calls must accept all the rates and conditions established by this single provider.

PULP urges the FCC to include calls from inmates in the BPP system. In New York, families of inmates, many of which are low-income and include minors, are paying higher than competitive rates for these telephone services. Consumer-oriented competition in this market can be expected to bring down rates and stimulate the providers of these services to halt abuses and improve service quality. BPP for inmate-only calls will not necessarily increase fraud and abuse of the phone system. Inmate calls should not be excluded out of concern for the impact of lost commission

revenues on prison budgets. Worthwhile prison programs should be funded from general tax revenues, not from a special tax on innocent relatives.

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- Exhibit 1: Correspondence from Prisoners' Legal Services
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INTRODUCTION

The Public Utility Law Project of New York (PULP), a public interest law firm representing the interests of low-income utility and energy consumers, submits comments in response to the Further Notice of Proposed Rulemaking (FNPR) issued May 19, 1994. The FNPR solicits further comments on the implementation of a "billed party preference" (BPP) system for 0+interLATA payphone traffic and for other types of operator-assisted interLATA traffic.¹ BPP allows customers

¹ Consideration of this system began in May 1992. See Billed Party Preference for 0+ InterLATA Calls, Notice of Proposed Rulemaking, CC Docket No. 92-77, 7 FCC Rcd 3027

receiving interLATA collect calls to have them routed by their selected carrier.

In the FNPR the Commission restates its preliminary conclusion that the introduction of a BPP system will serve the public interest. The Commission found that BPP would stimulate competition in operator services and that this competition should "result in lower prices and better services."² Among other issues, the FNPR requests specific comments on the breadth of coverage of BPP and specifically whether calls received from inmates of correctional institutions should be excluded from BPP.

PULP provides legal representation and technical assistance to low-income utility and energy consumers, and to not-for-profit agencies and organizations whose objectives include services to or advocacy on behalf of poor consumers. PULP routinely represents the special needs of low-income New Yorkers before the New York State Public Service Commission in utility rate cases and in generic proceedings where utility policies are set, before state and local Departments of Social Services where utility and energy assistance programs are designed and administered, and in courts where issues

(1992).

² FNPR at 2.

involving utility and energy rights and benefits are litigated.

PULP intervenes at the federal level before legislative, administrative or regulatory bodies when federal policy will significantly impact the low-income residents of New York. Since many of the families of inmates accepting collect calls from correctional institutions are low-income, PULP respectfully submits these comments on the specific issue of whether calls received from inmates of correctional institutions should be excluded from BPP.

In New York State, the more than 65,000 prisoners held in state-administered correctional facilities communicate with family and friends through the Inmate Call Home Program operated by the New York State Department of Correctional Services (DOCS). Since its inception in 1985 the program has mushroomed from 50 coinless phones at a single facility to a statewide system with over 2,300 phones.³ There are at least

³ Value-Added Communications Inc. (VAC) has served as the exclusive provider of the state program since 1995. The contract with the Department of Corrections notes that VAC "submitted the most qualified bid and **offered the highest paid commission rate.**" (Emphasis added.)

another 3,000 inmate-only phones in county and city correctional facilities in New York State.⁴

For the families of prisoners in New York State, the current system of collect-only calls represents a pure monopoly. Prisoners held in state facilities wishing to make telephone contact with their families must use VAC, the single authorized provider to place these calls. The person who accepts these calls must accept the rates and conditions established by this single provider. Unlike other pay telephones, inmate-phones usually block access code dialing and therefore neither the inmate nor the family has any ability to select a carrier.⁵ Also, unlike most other pay phones, it is not possible for the family to call in to the prison to call back the inmate using the family's carrier after receiving a brief collect call.

⁴ See the March 8, 1994 Comments of The NYNEX Telephone Companies In the Matter of The Petition of the Inmate Calling Services Providers for Declaratory Ruling, RM-8181. NYNEX estimated that the inmate-only phones of the New York State Department of Corrections represent 39 percent of the inmate-only phones in service in the New York Telephone service territory.

⁵ Correctional facilities were specifically exempted from the Commission's rules that prohibit the blocking of access code dialing at call aggregator locations. Policies and Rules Concerning Operator Services Providers, 6 FCC Rcd 2744, 2752 (1991).

Families of prisoners should be given the opportunity to share the potential benefits of a BPP system. Like other consumers, families of inmates can expect BPP to result in lower rates and better service. Since many of the recipients of the collect calls from prisoners are indigent, there is a compelling public interest served by the inclusion of these calls in a BPP system.

CHARGES FOR COLLECT CALLS FROM INMATES OFTEN CONSTITUTE A FINANCIAL BURDEN FOR THE FAMILIES OF PRISONERS

Increasingly inmate phones provide the vital link between inmates and their families. With illiteracy rates estimated at about 40 percent of the inmate population and prisons located in distant communities, the telephone is often the only regular means of communication between a family and an inmate.⁶ Although only one fifth of all inmates are married, 57 percent of inmates are parents of one or more minor children.⁷ According to some estimates, the number of children with an imprisoned parent grew from 21,000 in 1978 to

⁶ "Who Goes to Prison," Americans Behind Bars, Edna Clark Foundation, 1993.

⁷ U.S. Department of Justice, Bureau of Justice Statistics, Survey of State Prison Inmates, 1991, March 1993, NCJ-136949, p. 10.

one million in 1990. Some predict that by the year 2000, prisons will be home to more than two million parents.⁸

A Department of Justice special report on women in prison reports that two-thirds of the women in State prisons had at least one child younger than 18; altogether, they were mothers to more than 56,000 minor children.⁹ An estimated 46 percent of the women with minor children said they talked with those children on the phone at least once a week. Since entering prison, three-quarters of the women interviewed had talked with their children on the phone. Sixteen percent of female inmates with minor children made daily telephone calls to their children.

If prisons were located in the communities from which most inmates originate, long distance collect calls would be less important to the maintenance of family ties. In New York State, however, prisoners are seldom detained in their own communities. According the New York State Department of Corrections, almost seventy percent of state inmates are from

⁸ Daphne Muse, "Parenting in Prison," Mothering, Fall 1994, p. 99. Estimates of the number of children are based on data gathered by the Center for Children of Incarcerated Parents at Pacific Oaks College in Pasadena, California.

⁹ U.S. Department of Justice, Bureau of Justice Statistics Special Report, Women in Prison, March 1994, NCJ-145321, pp. 6-7.

New York City but less than eight percent are held in the City. The other 92 percent of the inmates are housed in 68 facilities, many of which are located a considerable distance from New York City. The Attica facility, for example, is 410 miles from New York City. The families of these inmates have very limited opportunities for visitation and pay the highest rates for collect calls.¹⁰

A pamphlet providing advice to those working with children of incarcerated parents in New York summarized the situation as follows:

Since all calls must be placed "collect" with the charges borne by the family, these calls can be expensive. The distance is often great between prisons and the communities in which the families live, resulting in substantial phone bills for the family which can be a financial hardship.¹¹

MANY INMATES AND THEIR FAMILIES ARE ECONOMICALLY DISADVANTAGED

The 1991 Department of Justice Survey of State Prison Inmates found that more than half of all state prison inmates reported an annual income of less than \$10,000 prior to their arrest.¹² Approximately 48 percent of all inmates and 61

¹⁰ Rates for long distance calls vary by distance with higher rates charged for calls over a greater distance.

¹¹ The Osborne Association, How Can I Help? Sustaining and Enhancing Family Ties for Children of Incarcerated Parents. p. 13.

¹² Survey of State Prison Inmates, 1991, p. 3.

percent of female inmates had incomes below the federal poverty guidelines in the month prior to incarceration.¹³ Only 55 percent of the inmates were employed full time during the month in which they were arrested for their current offense. Before their admission to prison, an estimated 38% were receiving support from Social Security, welfare or charity.

Many of the families of these inmates are also low-income. The 1991 Department of Justice survey found that 70 percent of the female inmates and half the male inmates lived with their children prior to incarceration.¹⁴ If more than fifty percent of these families had incomes below the poverty line in the year prior to incarceration, most of these children remain economically disadvantaged after the parent is incarcerated. This data, while less comprehensive and detailed than a researcher would like, is sufficient to confirm the expectation that the families of inmates are predominately economically needy.

¹³ Special analysis of the Survey of Inmates of State Correctional Facilities conducted by Dr. Caroline Wolf-Harlow of the U.S. Department of Justice, U.S. Bureau of Justice Statistics. This analysis is consistent with an earlier estimate that the "average inmate was at the poverty level before entering jail" published in U. S. Department of Justice, Bureau of Justice Statistics, Report to the Nation on Crime and Justice, Second Edition, March 1988, NCJ-105506, March 1988, p. 49.

¹⁴ Survey of State Prison Inmates at 10.

**PROVIDERS OF COLLECT-ONLY CALLS FROM CORRECTIONAL FACILITIES
DO NOT FACE THE PRICE-DISCIPLINE IMPOSED BY THE MARKETPLACE**

The families of inmates pay high rates when they accept collect calls from the State correctional system. Not only do they pay the premium rates (compared to direct dial calls) charged for collect calls by all carriers, but the rates they pay are higher than the rates charged by most carriers for collect calls.

For example, a family in Brooklyn accepting a fifteen minute collect call from a prisoner at Great Meadows Correctional Facility in upstate New York would be charged \$4.85 --- 47 percent more than the direct dial weekday rate of \$3.29. The cost of the call from the prison includes a surcharge despite the fact that the system used in the state correctional facilities is completely automated. The rates paid exceed by almost eight percent the AT&T collect call rate of \$4.50.¹⁵

One of the principal benefits expected from the implementation of the BPP system is intensified price

¹⁵ These rate comparisons hold true even if one assumes a call of 30 minutes --- the maximum length permitted by the system. For a 30 minute call the relevant charges are \$6.44, \$8.00 and \$7.35 for a direct dial call, an inmate call carried by VAC and an AT&T collect call respectively. Rate estimates based on July 1994 telephone conversations with VAC and AT&T.

competition among long distance carriers for collect call services.¹⁶ While there may be little public sympathy for prisoners, the families of prisoners are not criminals and often suffer economically. Absent a competing compelling public interest, there is not any justification to exclude these consumers from the anticipated fall in rates when BPP is implemented.

**A CAP ON CHARGES FOR CALLS IS NOT SUFFICIENT PROTECTION FOR
THE FAMILIES OF INMATES AND CANNOT SUBSTITUTE
FOR SERVICE QUALITY COMPETITION**

The suggestion has been made that prisons be exempted from BPP if they subscribe to an OSP that charges rates below that of the dominant carrier for inter and intraLATA calls.¹⁷ While price competition and lower rates are the principal benefits expected from the transition to Billed Party Preference, giving consumers the ability to choose carriers should also enhance service quality. Providers of ordinary long distance services who mistreat customers or offer substandard service risk the loss of these customers to competitors.

¹⁶ See FNPR at 6-7.

¹⁷ See FNPR at 25.

A monopoly provider of collect-only services faces no such risk.¹⁸ The families of inmates must either meet the terms set by the provider or forego telephone communication with the incarcerated family member. Consequently, the provider is able to continue practices that would be untenable in the face of competition.¹⁹ With Billed Party Preference customers not satisfied with their treatment by their chosen long distance carrier could take their business to a competing carrier.

¹⁸ Basic residential telephone service is also supplied by a single provider but these providers are subject to tight regulation. For example, in New York there are strict restrictions on service suspensions and terminations, deposit requirements and complaint handling. On the other hand, recognizing that competitive options exist for long distance services, long distance providers are subject to much lighter regulation. Despite their monopolistic market position, the OSPs providing collect-only service from the correctional facilities are also lightly regulated.

¹⁹ PULP has learned of numerous complaints regarding the treatment of families of inmates by the monopoly provider of phone services for state facilities. The provider routinely blocks calls to a specific number without any formal notification to the blocked party. For example, a six month block was placed on the phone of an inmate's terminally ill relative because of her two day delay in paying a phone bill. In a similar vein, the provider often collects an advance payment equivalent to one month of estimated collect calling service and customers who routinely accept auto-collect calls from inmates may be voluntarily or involuntarily "capped" at the advance payment level. See Exhibit 1 which contains copies of the correspondence from Prisoners' Legal Services.

**THE CURRENT SYSTEM DOES NOT ENCOURAGE COMPETITION DIRECTED
TOWARD CONSUMERS**

The FNPR notes that one of the three principal benefits of Billed Party Preference would be that it would lead OSPs to "refocus their competitive energies on serving end users rather than paying commissions for the 0+ traffic from public phones."²⁰ This is particularly important for the market segment represented by inmate-only phone services. Excerpts from advertisements directed toward prison administrators illustrate how few competitive energies are currently focused on end users. One publication introduces the subject of inmate telephone systems in the context of increasing inmate populations and inadequate funding:

... new alternative revenue sources are being sought and this can be answered by inmate phone system commission plans.²¹

A glossy AT&T promotional brochure boasts:

COMMISSIONS.
ONE MORE WAY TO OFFSET THE COST OF CORRECTIONS.

Every year, the taxpayers' cost of housing prisoners skyrockets. To help alleviate that burden AT&T Inmate Calling Services offers commissions on every AT&T call made at contracted facilities. Over time, those commissions could be surprisingly substantial.

²⁰ FNPR at 6.

²¹ Robert E. Cefail, Everything You Need To Know About Inmate Phones, Robert Cefail & Associates, 1993, p. 10.

The same promotional package quotes David Gutierrez, Assistant Jail Administrator, Lubbock County, Texas as a satisfied customer:

in just eight months with AT&T service, our commission revenues have more than doubled.

There is no mention in this promotional package of the rates charged to inmate families for these calls.²²

The June 1993 issue of "American Jails" contains six full page advertisements for jail phone systems for companies including RC&A (Robert Cefail and Associates), Ameritech, BELLSOUTH, USWEST and MCI. Copies of these ads can be found in Exhibit 2. Not one word in any of these ads refers to the rates charged inmate families for calls.

**NO COMPELLING PUBLIC INTEREST IS SERVED BY THE EXCLUSION FROM
BPP OF CALLS RECEIVED FROM PRISONERS**

The FNPR notes that dozens of prisons and sheriff's offices and the OSPs serving them argue that BPP should not apply to calls from correctional institutions asserting that BPP would impede the ability of correctional facilities to prevent fraud, harassing phone calls, or other criminal or

²² Promotional materials from RC & A Communications are even further removed from telecommunications concerns of end users. RC & A offers correctional officers free Criminon courses/modules for inmates including "The Way to Happiness Course," based on The Way to Happiness, written by L. Ron Hubbard. See Exhibit 2 which contains a copy of this brochure.

abusive use of prison phones.²³ In contrast, MCI argues that BPP significantly enhances fraud prevention and detection over today's industry experience.²⁴

There are numerous mechanisms by which correctional institutions can continue to prevent telephone fraud and abuse after the implementation of BPP. In New York State the Department of Corrections allows inmates to place calls to only those numbers contained on a small preapproved list and these limits are imposed using customer premises equipment which is not inconsistent with BPP.

Representatives of prisons also argue that BPP would eliminate their commission revenues and that without 0+ commission revenues they could be forced to limit calling. These proponents of the prison call exclusion ignore the existence of alternative inmate telephone systems, most notably the federal debit card system. Currently the New York City correctional facility at Rikers Island uses an automated debit system which can eliminate burdensome collect call

²³ FNPR at 22.

²⁴ See MCI Reply Comments at 14.

charges to families while maintaining commission revenues.²⁵

Finally, proponents of the exclusion mention the growing importance of inmate-phone commissions for the budgets of state and local correctional facilities. They are correct that commission revenues are large and growing. Telephone commission revenues to the Department of Corrections from the New York state system were \$11 million dollars in the year ended March 1993 and estimated to reach \$21 million in the year ended March 1994.²⁶ These funds flow through the Family Benefit Fund and are used to pay for medical care, infection control, family busing programs, postage, nurseries, the family violence program, film and cable TV contracts and various family services.²⁷

The families of prisoners should not be denied the benefits of BPP in order to protect inmate-phone commissions.

²⁵ "Dropping Dimes with Aid of Lasers: On Rikers Island, New Technology for Calls to the Outside." New York Times, September 29, 1993, p. B1.

²⁶ These estimates are based on a conversation with a staff member of the New York State Assembly Subcommittee on Corrections. Confirmation of these amounts has been requested but not yet received from the New York State Department of Corrections in a Freedom of Information Act request dated June 16, 1994.

²⁷ See letter from the New York State Department of Corrections contained in Exhibit 3.

These commissions represent a special tax imposed on the families and friends of prisoners. Even if all states used these revenues to fund worthwhile prison programs and services, the FCC should not encourage the tax. Since many families of prisoners are indigent, the imposition of this special tax on those least able to pay is particularly poor, if not perverse, public policy. If the FCC excludes the calls from correctional facilities from BPP on these grounds it will be condoning anti-competitive practices and inflated rates to achieve state purposes unrelated to telecommunications.

CONCLUSION

PULP urges that calls from inmates be included in the Commission order on BPP. In New York, families of inmates, many of which include indigent minors, are paying higher than competitive rates for these telephone services. Consumer-oriented competition in this market can be expected to bring down rates, halt abuses and improve service quality. Exclusion of inmate-only calls will not necessarily reduce fraud and many other means are available to restrict usage. Alternatives to collect-only phone systems are currently

available. Worthwhile prison programs should be funded from general tax revenues, not from FCC-encourage uneconomic telephone commissions.

Respectfully submitted,

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