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October 7, 1994

William F. Caton
Secretary
Federal Communications Commission
1919 M Street, Room 222
Washington, DC 20554

Re: Billed Party Preference of 0+
InterLATA Calls
FCC Docket No. 92-77

Dear Secretary Caton:

Since filing our reply comments, FCC staff have brought to our attention that serious consideration is being given to a proposal to cap the rates of collect calls from correctional institutions at the dominant carrier's collect call rates while excluding these calls from the proposed Billed Party Preference system. The Public Utility Law Project of New York Inc. (PULP) at the request of FCC staff submits the following supplemental comments regarding the proposal to impose a revenue cap on rates charged for collect calls from correctional facilities.

PULP argued in its previous submissions¹ that phone calls from correctional institutions should be included in the proposed

¹ See PULP Comments (July 15, 1994) and PULP Reply Comments (September 14, 1994).

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Billed Party Preference system. PULP argued and continues to hold that there is no compelling public interest sufficient to justify denial of the benefits of Billed Party Preference to the families and friends of inmates. Furthermore, since many of the families of inmates are low-income households with minor children for whom collect long distance calls represent the only means of communication with the incarcerated parent, the exclusion of these calls from a system designed to reduce the cost of collect calls is particularly perverse. PULP argued that neither concern for fraud nor the threat of reduced commission payments to correctional institutions are sufficient grounds to exclude these consumers from the proposed system.

PULP strongly opposes the capping of the rates of inmate collect calls at the rates charged by the dominant carrier. Such a limitation is already in place in many jurisdictions, including New York, but fails to protect the families of inmates from exorbitant phone charges. The dominant carrier (AT&T for interLATA calls) places a surcharge for operator assistance on the first minute of each collect call. This surcharge is supposedly cost-based, justified by the labor and other expenses related to the provision of live operator assistance. As has been described in detail in the comments of the providers of inmate phone services, the systems which operate inside correctional institutions are completely automated and use no

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live operators.² It is therefore inappropriate to allow providers to charge operator-assisted rates.

The levels of the commissions paid to correctional institutions by the providers of inmate phone services give an indication of the "margins" earned in this market.³ The providers of inmate telephone services routinely pay commissions as high as 40% of revenues.⁴ The New York State Department of Corrections received commission revenues in excess of \$10 million

² See Further Comments of the Inmate Calling Services Providers Task Force, August 1, 1994, p. 17 Note 9, "However, with most carriers, a caller can default to a live operator even if an Automated Alternative Billing Service system is deployed. By contrast, a prison official can pick a carrier who provides no default live operator..." and Comments of Gateway Technologies, Inc., August 1, 1994 at 6-7, "The use of voice-response units, or 'automated' operator services, in lieu of 'live' operators provides a significant additional increase in both security and fraud protection, because inmates have a demonstrable ability to "con" and harass human operators once a talk path to an operator services center is established" and (at Attachment A, p.2) "With the automated Gateway system, toll calls can only be completed directly to a telephone number that accepts the charges; a talk path can never be established to a live operator."

³ The margin is the difference between the rates charged and the costs incurred.

⁴ Not surprisingly, hundreds of state, county and local jail administrators submitted comments in this proceeding urging the FCC to maintain this lucrative source of revenues. As noted by Southwestern Bell Telephone Company (Reply at 9), "Everyone participating in this docket has no doubt been impressed by the sheer volume of paper filed by various penal institutions and law enforcement agencies. If issues were decided by volume or weight, these forces would win." Of course the thousands of predominantly indigent family members adversely affected by the rates charged by these providers which enable them to make these "generous" commission payments for the most part are not aware of this proceeding and have not had an opportunity to express their positions.

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in Fiscal Year 1993 and expected to receive \$21 million in Fiscal Year 1994.⁵ Gateway cites a Florida Department of Corrections filing that estimates 1992 commission revenues at \$5 million dollars.⁶ If carriers can offer correctional institutions free equipment and a 40% commission while charging no more than dominant carrier rates, then these providers can still earn a reasonable return on their investment with much lower rates.⁷ Gateway rather succinctly summarizes the "basic economics" of prison phones in its Comments:

First, Gateway and its competitors routinely provide CPE to their prison customers free of charge, using revenues generated by service fees to maintain overall profitability. Second, firms providing prison services compete vigorously in commission payments to correctional institutions, funds typically used to finance projects for prisoner welfare and defray the tax expenses needed to operate the institutions. Third, and quite unlike the OSP market, as a result of the use of sophisticated CPE, providers like Gateway can make these substantial payments to prisons without overcharging customers; indeed, as discussed below, Gateway's interstate rates for inmate-only services are virtually the same as the collect calling rates of AT&T and similar OSPs used as a price benchmark in the Commission's FNPRM. [emphasis in the original] [footnote omitted]

⁵ See PULP Comments, July 15, 1994, at 12-13.

⁶ Gateway Comments at 16.

⁷ See Comments of Gateway Technologies, Inc., August 1, 1994 at 2. "Currently, most CPE used in correctional institutions is provided by the serving carriers, like Gateway, without charge. BPP would destroy the economic incentive of carriers to supply this expensive equipment, requiring correctional administrators to purchase the CPE---with taxpayer expenditures of as much as \$317 million [emphasis in the original]---to maintain their important security and anti-fraud management capabilities."

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A rate cap which fails to take into account the unique cost structure faced by providers of telecommunications services to correctional institutions is unacceptable.⁸ A twenty percent discount off the operated-assisted collect call rates of the dominant carrier may appropriately reflect these important cost differences.⁹

⁸ Contrary to the assertion of Gateway (See Gateway Reply Comments at 13) PULP has never proposed a below-cost rate.

⁹ While the exact percentage chosen for the discount is of course somewhat subjective, a twenty percent discount would provide significant relief to the predominantly low-income families of prisoners who routinely accept these calls, while maintaining sufficient revenues to the providers to compensate them for the provision of customer premises equipment. A twenty percent discount would make it possible to continue commission payments.

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CONCLUSION

In conclusion, PULP continues to advocate that calls from correctional institutions be included in a Billed Party Preference system. However, if the FCC goes forward with the implementation of a rate cap for these calls, the rate cap should be set at a rate below the dominant carrier charges for collect calls.

Respectfully submitted,

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