

**TESTIMONY BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS,  
TECHNOLOGY, AND THE INTERNET ON BEHALF OF CITIZENS UNITED FOR  
THE REHABILITATION OF ERRANTS ON H.R. 1133, THE FAMILY TELEPHONE  
CONNECTION PROTECTION ACT OF 2009**

Thank you for this opportunity to talk with you. I am Frank W. Krogh, an attorney with the firm of Morrison & Foerster LLP, which represents the Washington Lawyers' Committee for Civil Rights and Urban Affairs in a proceeding before the Federal Communications Commission ("FCC") addressing prison inmates' long distance telephone service rates. We also have been coordinating closely with Citizens United for the Rehabilitation of Errants ("CURE") in the inmate telephone proceeding, and I have been asked by CURE, a nationwide grassroots prison reform organization, to testify in support of H.R. 1133, the Family Telephone Connection Protection Act of 2009. On behalf of CURE, I want to thank Subcommittee Chairman Boucher and Congressman Rush, the sponsor of H.R. 1133, for their leadership in trying to solve the problem of unaffordable inmate telephone rates. The long distance telephone rates that prison inmates and their families have to pay are unconscionable and must be reduced in order to allow prisoners to maintain the family and community connections that are so crucial to rehabilitation. H.R. 1133 will ensure that the FCC addresses this issue forcefully.

**Background: Inmate Telephone Rates Keep Rising While Other  
Telecommunications Rates Have Declined.**

Prison inmates generally pay some of the highest long distance rates in the country. These rates result from the exclusive service agreements that prison administrators typically enter into with telecommunications carriers for inmate calling services. As part of the bidding process, competing service providers generally are expected to offer generous commissions to the prison administrator or state correctional agency or treasury for the right to provide exclusive service to the facilities. The winning bidder is typically the service provider that offers the

highest commission rates, rather than the lowest service rates, and those commission rates often exceed 45 percent and sometimes reach as much as 65 percent of gross revenues. The winning bidder then charges excessive rates for inmate calls in order to cover the huge commissions that it has agreed to pay.

Thus, as the FCC has recognized, this approach “perversely” has the distorting effect of allowing competitive pressures to drive prices up, rather than down, “because the bidder who charges the highest rates can afford to offer the confinement facilities the largest location commissions.”<sup>1</sup> This upward trend in commission payments and rates has continued for years. Typical long distance inmate collect calling rates now include a per-call charge that can be as high as \$3.95 and a per-minute charge of as much as \$0.89. Compare that to typical long distance rates available to the typical residential subscriber or calling card user of a few pennies per minute. Inmate telephone service now stands in isolation as the last remaining telecommunications monopoly niche. At some prison facilities, inmates also are limited to collect calling services and are not offered the cheaper alternative of debit card or debit account calling services, in which the prisoner establishes an account with the prison commissary to pay for telephone calls.

The inflated rates resulting from these exclusive service agreements, excessive commissions and “collect call-only” requirements make long distance telephone calls from prison inmates unaffordable. At current rates, one hour of conversation per week can result in a monthly telephone bill of \$300, a huge financial burden for the innocent low income families and loved ones receiving and paying for inmate collect calls. Prisoners are forced to restrict their

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<sup>1</sup> *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand and Notice of Proposed Rulemaking, 17 FCC Rcd 3248, 3253 (2002).

calling, and their families are forced to restrict their acceptance of collect calls, effectively depriving inmates and family members of their most reasonable means of communication and further straining the family and community ties necessary for released inmates' rehabilitation.

For years, prison inmate advocates have pressed for regulatory mechanisms that would provide relief from the exorbitant rates and limited service options for inmate long distance calling services. CURE and The Coalition of Families and Friends of Prisoners of the American Friends Service Committee ("AFSC") have stressed the need to reduce the burden of oppressively high inmate calling rates, which is borne largely by economically disadvantaged relatives and friends of inmates, often located far from the facilities where the inmates are incarcerated. Not only do these excessive rates directly injure the non-inmates paying them, but, as studies cited by CURE and AFSC explain, they also work to the detriment of society by weakening rehabilitative ties that reduce recidivism, preserve families, ease prison tensions and promote societal efforts to rehabilitate ex-offenders. Moreover, these exorbitant rates are imposed on a captive market that is unable to afford them, while all other consumers enjoy the benefits of increased competition, reduced rates, and choices in telecommunications services.

In 2000, CURE organized a nationwide campaign, the Equitable Telephone Charges ("eTc") Campaign, to mobilize prisoners' family members and other concerned citizens to advocate for more reasonable rates. The eTc Campaign has had significant success in persuading state authorities to reduce inmate service rates, especially intrastate and local rates, and making debit and prepaid calling options more available to prisoners. Excessive interstate long distance inmate rates, however, remain a substantial burden in all but a handful of states.

The need to act on this issue has become widely recognized. In 2005, the American Bar Association adopted a recommendation urging all levels of government to "afford prison and jail

inmates reasonable opportunity to maintain telephonic communication with the free community, and to offer telephone services in the correctional setting with an appropriate range of options at the lowest possible rates.”<sup>2</sup> The recommendation was accompanied by a report citing studies demonstrating the importance of regular telephone communication between prisoners and family and friends for prisoners’ rehabilitation and eventual return to the community as law-abiding citizens.

On February 1, 2006, the American Correctional Association approved an amended formal policy statement recognizing that “offenders should have access to a range of reasonably priced telecommunications services.”<sup>3</sup> A report released in June 2006 by a diverse national prison reform commission, including correctional and other public officials, stresses the negative effects that high inmate telephone rates have on the family and community ties necessary to prevent violence and the need to “smooth the process of reentry and make it more likely that prisoners will succeed after release.”<sup>4</sup> It urges policymakers to “support family and community bonds . . . by minimizing the cost of prisoners’ telephone calls”<sup>5</sup> and to “end practices such as” extracting huge commissions from inmate telephone service providers and limiting inmate

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<sup>2</sup> American Bar Association, Recommendation Adopted by the House of Delegates (Aug. 8-9, 2005). *See also* Catherine Anderson, Chair, Criminal Justice Section, American Bar Association, Report (Aug. 2005).

<sup>3</sup> American Correctional Ass’n., Public Correctional Policy on Adult/Juvenile Offender Access to Telephones (Jan. 24, 2001; Feb. 1, 2006), <http://www.aca.org/government/policyresolution/> (select “Policy,” type in “Access to Telephones” and click on “Search”) (last visited February 14, 2007).

<sup>4</sup> Commission on Safety and Abuse in America’s Prisons, *Confronting Confinement* 35-36 (John J. Gibbons & Nicholas de B. Katzenbach, Comm’n Co-Chairs) (June 2006).

<sup>5</sup> *Id.* at 36.

telephone service to collect calling “that interfere with the maintenance of critically important family and community ties.”<sup>6</sup>

More recently, New York State announced in 2007 that it would waive its 57.5 percent commission on prison inmate calls and renegotiate the state’s inmate telephone service contract in order to reduce the cost of collect calling by about half. Similarly, Missouri, Nebraska, New Hampshire, Florida and a few other states have cut their commissions or taken other steps to lower inmate service rates, citing studies showing that prisoners are less likely to reoffend if they maintain regular contact with their families while in prison.

#### **H.R. 1133 Would Further Rehabilitative Goals.**

H.R. 1133 contains findings that prisoners’ families and loved ones ultimately pay for most calls from prisoners, whether collect calls or otherwise. The bill finds that the excessive rates imposed on “[i]nnocent citizens . . . simply due to having a family member or loved one who is incarcerated” are “a burden on interstate commerce.”<sup>7</sup> The bill also finds that the excessive rates are due to a lack of competition and the high commissions paid by service providers to administrators. Excessive inmate service rates “weaken the family and community ties that are necessary for successful reentry into society” by released prisoners and burden the rehabilitation that “reduces crime and the future costs of imprisonment.”<sup>8</sup> In effect, excessive inmate service rates generate more social and economic costs for all of society, far beyond the excessive calling costs.

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<sup>6</sup> *Id.* at 36-37.

<sup>7</sup> See Family Telephone Connection Protection Act of 2009, H.R. 1133, 111th Cong., 1st Sess. § 2(5), (10) (2009).

<sup>8</sup> *Id.* § 2(13), (14).

H.R. 1133 reaffirms the FCC's authority to regulate inmate telephone service and to implement the types of relief described in the bill. It would require that the FCC consider imposing, among other measures: maximum per-minute rates; a requirement that inmate telephone service providers offer debit calling as well as collect calling services; a prohibition of call blocking by an inmate service provider solely on the ground that the service provider has no contract with the local telephone company serving the intended call recipient; and a prohibition of commission payments by inmate calling service providers to prison administrators and state correctional agencies.

The ABA has endorsed the proposed legislation, pointing out "the human costs" of excessive inmate rates,<sup>9</sup> as have leading newspapers. The ABA pointed out that "the family and friends of incarcerated people," rather than the prisoners themselves, "regularly shoulder the high cost of prison telephone services," which makes it more difficult to achieve "the penological and societal benefits that occur when incarcerated people are able to maintain contact with the outside world."<sup>10</sup> The ABA also noted that entering into exclusive service arrangements that provide commission payments of as much as 65 percent of all telephone revenue "creates an ethical quagmire" for prison administrators.<sup>11</sup>

### **The Wright Proposal Before The FCC**

Some of the FCC remedies described in H.R. 1133 are also proposed in a filing currently pending at the FCC. Martha Wright, the grandmother of a former prisoner, and other petitioners

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<sup>9</sup> Letter from Robert D. Evans, Director, Governmental Affairs Office, ABA, to Rep. Bobby Rush, at 2 (Jan. 31, 2006).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

initially sought relief from exorbitant inmate calling rates in a civil rights class action in federal district court, which referred the telecommunications issues to the FCC. At the FCC, the Wright petitioners have demonstrated that it is entirely feasible for interstate long distance telephone services to be provided to prisoners at rates far below those prevailing at most prison facilities and that market will never bring about reasonable inmate calling service rates without government intervention. It has become clear, based on the actual cost of providing inmate calling services and declining rates for comparable services, that long distance inmate calling services can be provided to prison inmates profitably at much lower rates. In fact, some of the very same service providers that typically charge excessive rates also currently provide long distance calling services to prison inmates where they are required to do so at much more reasonable rates. For example, interstate inmate long distance rates in Florida, Missouri, Nebraska and New York correctional facilities are way below typical interstate inmate rates.

Petitioners accordingly have requested that the FCC impose interstate long distance benchmark rates no higher than \$0.20 per minute for debit calling and \$0.25 per minute for collect calling, with no per-call charges, and that prisoners be offered debit calling as a required calling option. Even the service providers' own cost study, which was artificially limited to the most high-cost locations they could find, showed costs largely consistent with these requested benchmark rates. A debit calling option is especially important because of the prevalence of collect call blocking by inmate calling service providers lacking billing agreements with the called parties' local service providers.

H.R. 1133 would ensure that the FCC consider the remedies proposed by the Wright petitioners and reaffirms the FCC's authority to impose such remedies. This bill therefore would be a useful link in the chain of prison inmate telephone service reform efforts. Like the Second

Chance Act passed last year, H.R. 1133 would enable prisoners to maintain the strong family and community ties necessary for rehabilitation, and CURE urges its swift passage.

CURE would be happy to work with the Subcommittee to explore any and all possible solutions to making all interstate inmate phone calls affordable for families of prisoners. Thank you for your time and attention. I would be happy to answer any questions you may have.

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