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April 4, 2016

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**By ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

RE: *Ex Parte* Submission  
*Promoting Technological Solutions to Combat Contraband  
Wireless Devices Use in Correctional Facilities*  
**WC Docket No. 13-111**

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the Commission's rules, the Wright Petitioners hereby submit the following list of suggested questions to be considered at the Field Hearing on April 6th in Columbia, South Carolina.

FCC Commissioner Ajit Pai released an agenda for the field hearing on March 28, 2016.<sup>1</sup> While the agenda indicated that the hearing would "livestreamed" through the South Carolina Bar Association website, it did not indicate whether the public not in attendance would be able to submit questions to the panelists.

The Wright Petitioners applaud Governor Haley and Commissioner Pai for their attention on the issue of contraband cellphones and their use within correctional facilities. As advocates for inmates and their families, we are well aware of the harms that can be caused by contraband cellphones, both within correctional facilities and to the public.

To that end, we respectfully request that the panelists consider the following questions during their discussions:

- Will the panelists please address whether the FCC has statutory authority to regulate intrastate telecommunications transmitted by contraband cellphones? A Federal statute (18 U.S.C § 1791) added cell phones to the definition of "contraband" within federally-run facilities, but there is no similar statutory authority granted by Congress for state prisons and local jails. In light of questions raised by ICS providers and other parties with

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<sup>1</sup> *Commissioner Ajit Pai Announces Agenda for Field Hearing on Contraband Cellphones, Statement*, rel. Mar. 28, 2016 ([https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-338585A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-338585A1.pdf)). See also *FCC Commissioner Ajit Pai and South Carolina Governor Nikki Haley Announce Field Hearing on Contraband Cellphones, Statement*, rel. Feb. 29, 2016 ([https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-337952A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-337952A1.pdf)).

respect to the FCC's jurisdiction over intrastate ICS telephone calls, do the panelists believe that the FCC has the requisite statutory authority with respect to intrastate ICS transmissions made by contraband cell phones?

- Will the panelists please address the costs associated with the development, implementation and maintenance of the various systems currently in use to detect contraband cellphone usage, i.e., jammers, managed access systems and detection systems?<sup>2</sup>
  - Do correctional facilities pay third-party vendors, such as Cell Antenna or ICS providers for installing and maintaining these systems? Do ICS providers supply these services for free?
  - If so, are any of these expenses passed on to non-violating inmates and/or their families through mandatory fees, taxes, increased rates for authorized ICS usage or commissary goods?
- Will the panelists please address the success rate of these technologies? Considering the reported high costs associated with the implementation and maintenance of these systems, have the correctional facilities been able to realize offsetting benefits from the use of these technologies, i.e., has there been an appreciable increase in confiscations tied directly to the implementation of the new technology-based systems?<sup>3</sup>
- Will the panelists please address the findings by the New York State Department of Corrections and Community Supervision (NYDOCCS) that lower ICS telephone rates in New York contributed to a reduction of the usage of contraband cellphones?<sup>4</sup> Have the participating panelists seen similar results since the FCC action to lower rates for interstate ICS telephone calls became effective in February 2014?

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<sup>2</sup> See *Improved Evaluations and Increased Coordination Could Improve Cell Phone Detection*, GAO Report 11-893, pg. 10 (Sept. 2011) (listing the three most common technical solutions in use and being developed).

<sup>3</sup> See e.g., *Inside The Prison System's Illicit Digital World* (<http://fusion.net/story/41931/inside-the-prison-systems-illicit-digital-world/>).

<sup>4</sup> See *Letter of Anthony J. Annucci, Acting Commissioner*, dated July 8, 2013, pg. 2, filed in WC Docket 12-375 (attached hereto as Exhibit A) ("The Department believes that a lower calling rate has also contributed to a lower rate of illicit cell phone use by inmates in New York. In 2012, the Department confiscated less than 100 cell phones, compared to over ten thousand annual seizures in comparably-sized correctional systems.").

- Will the panelists please address the finding by NYDOCCS that non-technological solutions such as (i) adequate training and compensation for staff and (ii) zero tolerance policies can also lead to a reduction of the usage of contraband cellphones?<sup>5</sup>
- Will the panelists please address the impact of these technology-based systems on visitors to correctional facilities? Do the new systems take into account the safety concerns of visitors to correctional facilities, so that the visitors' mobile devices are not immobilized in case of a security breach or other emergency at the facility. In other words, do these systems eliminate the ability of visitors to retain access to wireless service when visiting a facility?

Once again, the Wright Petitioners applaud a renewed focus on inmate issues. Both non-violating inmates and the public may experience significant harms through the use of contraband cell phones, and it is important that these matters are thoroughly examined.

As with all matters before the FCC, questions regarding the FCC's statutory authority to address these issues are paramount, as is the need to protect the public from the imposition of unjust, unreasonable and unfair rates, taxes and/or fees that could be adopted by state and local governments to offset the implementation and maintenance costs of these systems. Finally, any regulations that are ultimately adopted by the FCC must offer greater benefits than the cost to implement them, especially if there are less-costly, more effective means to reach the same goal.

Should you have any questions regarding these matters, please contact undersigned counsel.

Respectfully submitted,



Lee G. Petro

*Counsel for the Wright Petitioners*

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<sup>5</sup> *Id.*, at pg. 3 ("Phone rates are a contributing factor, but so too are good security measures for both visitation and perimeter security, adequate training and compensation for line staff, and a zero tolerance policy that does not allow anyone to possess a cell phone inside a New York State prison.")

**EXHIBIT A**



STATE OF NEW YORK

**DEPARTMENT OF CORRECTIONS  
AND COMMUNITY SUPERVISION**

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ANDREW M. CUOMO  
GOVERNOR

ANTHONY J. ANNUCCI  
ACTING COMMISSIONER

July 8, 2013

Mr. Gregory V. Haledjian  
Attorney-Advisor  
Pricing Policy Division – Wireless Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Dear Mr. Haledjian:

The New York State Department of Corrections and Community Supervision (DOCCS) welcomes the opportunity to contribute to the Federal Communications Commission's **Workshop on Reforming Rates for Inmate Calling Services**. The Department has considerable experience within this area and offers the following information for the Commission's consideration.

In 2007 DOCCS eliminated its commissions on inmate calls. Prior to that, DOCCS received a 57.5 percent commission on every completed call. The cost of the call included a connection fee (\$1.28 per call) and a per-minute charge (\$.16 per minute), resulting in an average 20 minute call costing the family \$4.48.<sup>1</sup> These fees became the source of acrimony between the Department and inmate advocacy groups and the focus of a class action lawsuit against the Department and the State of New York.

Amidst heavy scrutiny by the offender advocacy groups regarding the cost of inmate calling, in 2007 the Department worked closely with the Governor and Legislature to pass an inmate calling bill (NY Correction Law 623) that requires the per/minute cost of a call to be the preeminent focus of our inmate phone contract. The statute indicates that "The department shall not accept or receive revenue in excess of its reasonable operating cost for establishing and administering such telephone system services." The statute further requires that the "department {can} establish rules and regulations or departmental procedures to ensure that any inmate phone call system established by this section provides reasonable security measures to preserve the safety and security of each correctional facility, all staff and all persons outside a facility who may receive inmate phone calls."

These provisions of the statute prohibit the Department from collecting commissions from the system, but they do allow the Department to roll its administrative and security expenses (call listening and investigations for example) into the cost of the call. Although the Department is not at present attaching these operational costs to the per-minute price of the call, it may add them in the future.

Today the cost of a 20-minute call for an inmate in DOCCS is \$.96. The call rate includes a flat \$.048 per minute charge, for both local and long distance calls, with no connection fee.<sup>ii</sup>

The impact of the rate change has been significant. The number of completed calls has risen steadily from 5.4 million in 2006, to what we are projecting to be over 14 million in 2013. It should be noted that this increase appears to have stabilized. Interestingly, the average call duration remains at 20 minutes (see endnote i below).

Operationally, the Department has experienced both benefits and challenges from this approach. The elimination of the commission created an immediate \$20 million annual revenue short-fall in the Department's operating budget that had to be addressed. The commission revenue had been used to pay for inmate services related to health care and family visitation. This was addressed by executive budget increases and the elimination of some inmate services.

Clearly, lower phone rates have made calling a more attractive option for inmates as the numbers previously provided indicate. However, it has also made control of the phones a strategic option for gangs and unauthorized groups working inside DOCCS facilities who have sought to extort other inmates by attempting to control access to the phones. This requires vigilant monitoring by DOCCS intelligence staff and at times, intervention by DOCCS security staff.

Lower call rates have had benefits for the inmate population. The Department believes that its low calling rates have helped contribute to family reunification, and at less than a nickel per minute, the Call Home Program is among the most cost-effective family reunification options that we offer. Lower rates have also contributed to an improved relationship between the Department and the offender advocacy groups.

The Department believes that a lower calling rate has also contributed to a lower rate of illicit cell phone use by inmates in New York. In 2012, the Department confiscated less than 100 cell phones, compared to over ten thousand annual seizures in comparably-sized correctional systems.<sup>iii</sup>

Mr. Gregory V. Haledjian  
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In conclusion, the Department's experience indicates that inmate calling rates can be reduced substantially if states eliminate their commissions on the calls, and structure competitive bidding processes that ensure that the cost of the call is among the primary attributes of their inmate calling contracts. Moreover, there are significant benefits that can be attributed to lower calling rates that seem to outweigh the operational challenges that also attach to the process.

Thank you for providing the Department with the opportunity to contribute to your Workshop and we look forward to seeing the results of your process.

Sincerely,



Anthony J. Annucci  
Acting Commissioner

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<sup>i</sup> 20 minutes is the average length of a call completed on the DOCCS system. This was true in 2006 and is still true in 2013.

<sup>ii</sup> International calling is done under a separate system, per minute rates are higher and are based upon long distance calling rates under a separate state contract. International calling is less than 1 percent of DOCCS inmate call volume.

<sup>iii</sup> Phone rates are a contributing factor, but so too are good security measures for both visitation and perimeter security, adequate training and compensation for line staff, and a zero tolerance policy that does not allow anyone to possess a cell phone inside a New York State prison.

Marlene H. Dortch, Secretary

April 4, 2016

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cc (by/email):

Governor Nikki Haley

Bob Wells, Executive Director, South Carolina Bar Association

Chairman Thomas Wheeler

Commissioner Mignon Clyburn

Commissioner Jessica Rosenworcel

Commissioner Ajit Pai

Commissioner Michael O'Rielly

Matt DelNero, Chief, Wireline Competition Bureau

Gigi Sohn, Counselor to Chairman Wheeler

Rebekah Goodheart, Legal Advisor to Commissioner Clyburn

Travis Litman, Senior Legal Advisor to Commissioner Rosenworcel

Nicholas Degani, Legal Advisor to Commissioner Pai

Amy Bender, Legal Advisor to Commissioner O'Rielly



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Name	Subject
13-111	Promoting Technological Solutions to Combat Contraband Wireless Device Use in Correctional Facilities

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**Details**

**exparte:** YES  
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**Document(s)**

File Name	Custom Description	Size
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