

HUMAN RIGHTS DEFENSE CENTER

Dedicated to Protecting Human Rights

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June 16, 2011

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

RE: Comment Regarding CC Docket No. 96-128 (“Wright Petition”)

Dear Ms. Dortch:

I am the associate editor of *Prison Legal News* (PLN), a nationally-distributed monthly publication that reports on criminal justice and corrections-related issues, and a project of the Human Rights Defense Center (HRDC). This letter and the related attachments are submitted as a formal comment relative to CC Docket No. 96-128.

CC Docket No. 96-128, commonly known as the “Wright Petition,” requests that the FCC enact rules to require competition among prison phone service providers by prohibiting such providers from entering into exclusive service agreements with contracting government agencies, and that the FCC impose caps on interstate prison phone rates. The FCC has the authority to implement such rules pursuant to 47 U.S.C. § 201(b).

PLN has previously submitted formal comments regarding the Wright Petition, on April 18, 2007, May 14, 2007, September 21, 2008 and April 25, 2011. Our last comment included the results of our comprehensive multi-year research project on prison phone services, including a state-by-state comparison of prison phone rates, commission (kickback) percentages, and dollar amounts of commission payments from prison phone contracts nationwide.

We now want to bring to your attention additional information regarding the actual cost of prison phone services provided by telecommunications companies, which has been a point of heated contention in the Wright Petition as evidenced by filings made by both the petitioners and by companies that provide prison and jail phone services.

PLN is a project of the Human Rights Defense Center

Secretary Marlene H. Dortch
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As indicated in our April 25, 2011 comment, prison phone rates vary widely among different states and even within the same state. Local collect calls cost as much as \$2.75 + \$.23/minute (Colorado), intrastate collect calls cost as much as \$3.95 + \$.69/minute (Oregon) and interstate collect calls range up to \$4.95 + \$.89/minute (Washington). This is despite the fact that prison phone services all provide essentially the same service with the same security features.

Recently, in February 2011, the Michigan Department of Corrections (MDOC) entered into a phone service contract with Public Communications Services, Inc. (PCS), which is now owned by Global Tel*Link – the nation’s largest prison telecommunications company, which provides prison phone services in more than half the states. Michigan is one of 8 states that do not accept commission “kickbacks” from prison phone service firms.

Under the terms of the MDOC contract, the charged rates are \$.0393/minute for collect calls and \$.0343/minute for debit calls regardless of whether the calls are local, intrastate or interstate. See Exhibit 1, attached – excerpts from contract between the State of Michigan and PCS, effective February 9, 2011 (first page and exhibits 5P and 6P of the contract). The contract also provides for “optional” services that can be added for an additional charge; such options include a “key word search” feature and a “special equipment fund” charge.

On April 23, 2011, the MDOC executed Change Notice No. 1 to the PCS phone contract (see Exhibit 2, attached). The change added the optional key word search feature for an additional \$.0075/minute and the optional special equipment fund charge for \$.1532 to \$.2430/minute, resulting in total per-minute charges of \$.20/minute for collect local and intrastate calls, \$.23 per minute for collect interstate calls, \$.18/minute for local and intrastate debit calls, and \$.21 per minute for interstate debit calls.

It is important to note that the base per-minute rates under the MDOC contract (\$.0393/minute for collect calls and \$.0343/minute for debit calls) are the lowest in the nation. According to MDOC spokesman John Cordell in a June 10, 2011 email, the “[b]ase rate charged by PCS” covers “the cost of operating expense and their capital costs.” The optional features that the MDOC added in the April 2011 Change Notice are just that – optional. The word search option is an extra security feature and the special equipment fund “will be used to install the latest cell phone detection, jamming or managed signal technologies.” (see Exhibit 3, attached).

That is, the optional features are above and beyond the operational and capital costs of PCS, which can generate profit at the contractual base rates of \$.0393/minute for collect calls and \$.0343/minute for debit calls. These low rates demonstrate the actual cost (plus an unspecified profit margin for PCS) in providing phone services to the MDOC, despite the claims of prison phone service companies that their costs are much higher due to security features, specialized equipment, etc. If PCS could not generate a sufficient amount of profit at the low base rates specified in the MDOC contract, it would not have entered into that contract.

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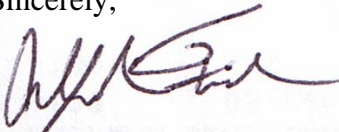
Further, since PCS is owned by Global Tel*Link, the largest prison phone service company in the nation, such low rates *could* be offered in most other state prison systems, but are not. As we found during our research into this issue, included with our April 25, 2011 comment submitted to your office, prison phone rates are usually much higher due to commission “kickbacks” paid to the contracting agency, averaging 42% of gross revenue generated by prison phone calls. And since prison phone contracts tend to be awarded based on the highest kickback percentage rather than the lowest phone rates, the usual competitive forces that result in lower prices to consumers are largely absent in the prison phone service market.

We submit that the low base rates in the MDOC contract of \$.0393/minute for collect calls and \$.0343/minute for debit calls demonstrate that prison phone companies are perfectly capable of charging such low rates while still generating profit (despite protestations that their operating costs are higher which they claim justifies higher rates). This is particularly true given that the MDOC says the base rates cover PCS’s “cost of operating expense and their capital costs.”

Consequently, the caps on interstate prison phone rates requested in the March 2007 alternative rulemaking proposal submitted in the Wright Petition would not unduly burden prison phone service companies, as the MDOC contract evidences that such companies can generate profit at rates of less than \$.04/minute for both collect and debit prison phone calls.

Thank you for your continued time and attention in this regard;

Sincerely,

A handwritten signature in dark ink, appearing to read "Alex Friedmann", written over a light-colored rectangular background.

Alex Friedmann
Associate Editor, PLN

cc: Paul Wright, PLN Editor

Attachments: Exhibits 1-3

EXHIBIT 1

Form No. DMB 234 (Rev. 1/96)
AUTHORITY: Act 431 of 1984
COMPLETION: Required
PENALTY: Contract will not be executed unless form is filed

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
PURCHASING OPERATIONS
P.O. BOX 30026, LANSING, MI 48909
OR
530 W. ALLEGAN, LANSING, MI 48933

March 18, 2011

NOTICE
OF
CONTRACT NO. 071B1300208
between
THE STATE OF MICHIGAN
and

NAME & ADDRESS OF CONTRACTOR Public Communications Services, Inc. 11859 Wilshire Blvd, Suite 600 Los Angeles, CA 90025 Email: Chris.Moore@gtl.net	TELEPHONE (800) 350-1000 Chris Moore
	CONTRACTOR NUMBER/MAIL CODE
	BUYER/CA (517) 241-3215 Steve Motz
Contract Compliance Inspector: Cheryl Groves 517-373-0287 Inmate Telephone Services	
CONTRACT PERIOD: From: February 9, 2011 To: February 8, 2016	
TERMS N/A	SHIPMENT N/A
F.O.B. N/A	SHIPPED FROM N/A
MINIMUM DELIVERY REQUIREMENTS N/A	
MISCELLANEOUS INFORMATION:	

TOTAL ESTIMATED CONTRACT VALUE: \$5.00



Exhibit 5P - Pricing

The Contractor will have full responsibility for project implementation. Items, which are not produced or provided directly, shall be marked as such. Prices shall be inclusive of any and all costs associated with full implementation, which may include but is not limited to applicable, such cost of manufacture, packing, handling loading/unloading, removal of debris, transportation, inside delivery, installation, training, maintenance, documentation, insurance, and any other item that could be interpreted as the overall cost to procurement.

The firm fixed price for performing services in accordance with the provisions and requirements stated in this Contract is provided below. This price is fixed/firm throughout the life of the contract.

Collect/Pre-paid Collect Calls:

Call Type	Per Call Surcharge (Firm Fixed Price)	Rate per minute (Firm fixed Price)
Local	\$0	\$0.0393
Intralata	\$0	\$0.0393
Intrastate	\$0	\$0.0393
Interstate	\$0	\$0.0393

Debit/Debit Cards:

Call Type	Per Call Surcharge (Firm Fixed Price)	Rate per minute (Firm fixed Price)
Local	\$0	\$0.0343
Intralata	\$0	\$0.0343
Intrastate	\$0	\$0.0343
Interstate	\$0	\$0.0343
International	\$0	\$0.4995

Additional Costs:

The above rates are inclusive of all fees (except for a credit card fee). There will be no fees or taxes allowed other than those identified below:

Allowable Additional Costs not included in the Firm Fixed Per Minute Rates include:

- Federal and local taxes and Universal Service Fund may be passed through, however they shall not exceed the actual cost to the provider
- Credit Card Transaction Fee
 - Vendors charging a Credit Card Transaction Fee must provide a **single fee** that will be applicable for all funding methods (IVR, Live Operator, Kiosk, Website, etc.) in all amounts.

Single Credit Card Transaction Fee
\$3.95

- Other than the Allowable Additional Costs disclosed by the Contractor in Exhibit 5P, no additional fee/cost or billing statement fee or other expenses may be charged by the vendor's, subcontractor(s), or by a vendor's third-party agent.
- In the event kiosks or alternative payment channels are implemented, other than the Allowable Additional Costs disclosed by the Contractor in Exhibit 5P, no additional taxes or other expenses may be charged by another vendor's subcontractor, or vendor's third-party alternative payment channel provider, such as TouchPay, JPay, ICSolutions (ICS), V-Connect (Value Added Communications / VAC), EZCard, or any other third-party account funding channel or company.



- The amount charged for credit card transactions must be provided as the \$3.95 single fixed fee regardless of the amount deposited – i.e. \$25, \$50 or \$500.
- The all-inclusive firm fixed per minute rate includes bill rendering fees/bill service fees for collect calls, pre-paid collect account set up fees, account maintenance fees, minimum usage fees, inactivity fees and account termination fees.
- Per minute pricing shall be based on the understanding that Carrier Assessed Administrative Fees will not be allowed.
- All allowable additional costs are included in the table below:

Additional costs not included in Firm Fixed Per Minute Call Rate Contractor is allowed to charge.	Pre-Paid Collect Calls	Collect Calls	Debit/Debit Card Calls
account close-out fees	No	No	No
account maintenance fees	No	No	No
automated IVR deposit fee	No	No	No
bill processing/rendering fee	No	No	No
bill statement or billing recovery fees	No	No	No
check by phone processing fees	No	No	No
credit card transaction fees	*\$3.95	No	No
internet web deposit fee	No	No	No
regulatory recovery fees	No	No	No
single bill fees	No	No	No
Universal Service Fund	**Yes	**Yes	**Yes
Taxes	**Yes	**Yes	**Yes
Account Inactivity Fee	No	No	No
Zero utilization fees	No	No	No
Other fees not identified in table	No	No	No

* Vendors charging a Credit Card Transaction Fee must provide a **single fee** that will be applicable for all funding methods (IVR, Live Operator, Kiosk, Website, etc.) in all amounts.

** Federal and local taxes and Universal Service Fund may be passed through; however they shall not exceed the actual cost to the provider



Exhibit 6P – Pricing for Optional Services

Exhibit 6P includes pricing for the optional services described in Exhibit 4. The State may select to procure these optional services at any time during the contract period.

The following rate adjustments are provided for each of the Optional Services listed below:

Optional Service	Addition to the Per-Minute Rate for Each Call Type
1 - Special Equipment Fund (1)	See Special Equipment Fund Table for pricing
2 - RESERVED	
3 - Nexidia Key Word Search	\$0.0075
4 - InTime Labor Management	\$0.0050
5 - Cell Phone Detection/Control	To be determined based on the product, scope, and features selected by the State
6 - iPhones (2)	To be determined based on quantity
7 - Additional Investigative Site Administrators (3)	\$0.0035
8 - Voice Verification/Biometrics	\$0.0450

(1) See Special Equipment Fund Table for pricing.

(2) The PCS Team would work with the MDOC to determine the number of phones and service desired and would then negotiate whether any additional per-minute price is required to meet those needs.

(3) This includes 3 or more site administrators in addition to the 5 that are already included as part of the standard service offering.

STATE OF MICHIGAN
 DEPARTMENT OF TECHNOLOGY MANAGEMENT AND BUDGET
 PURCHASING OPERATIONS
 P.O. BOX 30026, LANSING, MI 48909
 OR
 530 W. ALLEGAN, LANSING, MI 48933

April 23, 2011

EXHIBIT 2

CHANGE NOTICE NO. 1
OF
CONTRACT NO. 071B1300208
between
THE STATE OF MICHIGAN
And

NAME & ADDRESS OF CONTRACTOR Public Communications Services, Inc. 11859 Wilshire Blvd, Suite 600 Los Angeles, CA 90025 Email: Chris.Moore@gtl.net	TELEPHONE (800) 350-1000 Chris Moore CONTRACTOR NUMBER/MAIL CODE BUYER/CA (517) 241-3215 Steve Motz
Contract Compliance Inspector: Cheryl Groves 517-373-0287 Inmate Telephone Services	
CONTRACT PERIOD: From: February 9, 2011 To: February 8, 2016	
TERMS <p style="text-align: center;">N/A</p>	SHIPMENT <p style="text-align: center;">N/A</p>
F.O.B. <p style="text-align: center;">N/A</p>	SHIPPED FROM <p style="text-align: center;">N/A</p>
MINIMUM DELIVERY REQUIREMENTS <p style="text-align: center;">N/A</p>	
MISCELLANEOUS INFORMATION:	

NATURE OF CHANGE(S):

Effective immediately, the Special Equipment Fund (per Month) Table in Exhibit 6P, has been replaced by the Attached Special Equipment Fund (per Month) Revised V2 Table. Change Notice #1 also includes a summary of the Per Minute Rates that have been set based on the options selected by the State.

All other pricing, specifications, terms and conditions remain unchanged.

AUTHORITY/REASON(S):

Per Contractor, DOC, and DTMB approval.

TOTAL ESTIMATED CONTRACT VALUE REMAINS: \$5.00

Summary of the Per Minute Rates

		Per Call Surcharge <small>(From Exhibit 5P)</small>	Base Rate Per Minute <small>Does Not Include Options Selected by Agency (From Exhibit 5P)</small>	Optional Key Word Search Addition <small>Option Selected by Agency through Change Notice #1 (From Exhibit 6P)</small>	Optional Special Equipment Fund Addition <small>Option Selected by Agency through Change Notice #1 (From Exhibit 6P)</small>	Per Minute Rate <small>Including Options Selected by Agency</small>
Collect/ Prepaid	Local	= \$0.00	+ \$0.0393	+ \$0.0075	+ \$0.1532	= \$0.2000
	Interstate	= \$0.00	+ \$0.0393	+ \$0.0075	+ \$0.1832	= \$0.2300
Debit	Local	= \$0.00	+ \$0.0343	+ \$0.0075	+ \$0.1382	= \$0.1800
	Interstate	= \$0.00	+ \$0.0343	+ \$0.0075	+ \$0.1682	= \$0.2100
	International	= \$0.00	+ \$0.4995	+ \$0.0075	+ \$0.2430	= \$0.7500

This table provides a summary of the Per Minute Rates and Optional Services selected by the State and their accompanying costs.
This does not amend or modify any of the pricing or terms in the Contract



EXHIBIT 3

New MDOC Phone Rates

John Cordell <cordeljc@michigan.gov>

Fri, Jun 10, 2011 at 1:48 PM

To: stein919@gmail.com

Here are the rates and a breakdown of what the rate pays for. Michigan now has the 11th least expensive rate in the nation, while improving the system hardware and capabilities.

The new rate for MDOC, \$.20 collect and \$.18 prepaid is broken into 4 categories: PCS base rate, PCS word search, PCS SEF administrative charge and MDOC SEF. In this example I am using the \$.20 collect call rate.

1. Base rate charged by PCS to cover the cost of operating expense and their capital costs \$.0393 per minute.
2. Word Search capabilities for investigative capabilities, \$.0075 per minute. The base rate and word search are both fixed costs and are the same regardless of collect or prepaid call type.
3. Special Equipment Fund Administrative overhead - 29% of SEF revenue or \$.0444 per minute.
4. Special Equipment Fund MDOC - this fund will be used to install the latest cell phone detection, jamming or managed signal technologies. The MDOC's portion of the Special Equipment Fund is \$.1088 per minute.

John C. Cordell
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"Less Stress, More Fun"
