

BRENNAN
CENTER
FOR JUSTICE

Brennan Center for Justice
at New York University School of Law

161 Avenue of the Americas
12th Floor
New York, New York 10013
212.998.6730 Fax 212.995.4550
www.brennancenter.org

December 4, 2008

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW-TW_A325
Washington, DC 20554

Executive Director:

Michael Waldman

Board of Directors:

James E. Johnson, *Chair*

Patricia Bauman

Nancy Brennan

Zachary W. Carter

John Ferejohn

Peter M. Fishbein

Gail Furman

Susan Sachs Goldman

Helen Hershkoff

Thomas M. Jorde

Ruth Lazarus

Paul Lightfoot

Burt Neuborne

Lawrence B. Pedowitz

Steven A. Reiss

Richard Revesz

Cristina Rodriguez

Stephen Schulhofer

John Sexton

Rev. Walter J. Smith, S.J.

Sung-Hee Suh

Clyde A. Szych

Adam Winkler

Re *Ex Parte* Presentation (via Electronic Filing)
CC Docket No. 96-128; DA 03-4027

Dear Secretary Dortch,

The Brennan Center for Justice at NYU School of Law, counsel for the Ad Hoc Coalition for the Right to Communicate (“Coalition”), writes to urge the Federal Communications Commission (“Commission”) to take action on the outstanding Alternative Rulemaking Proposal filed by Martha Wright *et al.* on March 1, 2007. Specifically, we urge the Commission to adopt the proposals of the Wright petition by establishing benchmark rates for long-distance calls from incarcerated persons, with no-per call charge, and requiring prison telephone service providers to offer debit call as well as collect call service.

First, the calling service providers’ own cost estimates for interstate inmate debit and collect calls do not undercut, and even largely support, the benchmark rates requested by the Petitioners as demonstrated by a review of submissions recently provided to this Commission, including a cost study filed on behalf of certain calling service providers, and the responses from the Petitioners and concerned individuals including Mr. Michael Hamden.¹ This underscores the fact

¹ See Don J. Wood, Inmate Calling Services – Interstate Call Cost Study, CC DKT. No. 96-128 (August 15, 2008), Petitioners’ *Ex Parte* Filing, CC DKT. No. 96-128 (November 19, 2008), Written *Ex Parte* Presentation of Michael S. Hamden on Alternative Rulemaking Proposal Regarding Inmate Calling Services, CC DKT. No. 96-128 (October 29, 2009).

that a comprehensive solution providing relief from the excessive cost of long-distance calls from prisons is achievable. Our nation's precipitous economic downturn makes clear that such a solution is now, more than ever, utterly imperative.

Second, as set forth in the Coalition's² two prior submissions³ to the Commission in support of the petitions filed by Martha Wright, *et al.*, the exorbitant cost of collect calls from incarcerated persons seriously impairs Coalition members' ability to connect with their loved ones, provide competent representation, and provide vitally needed social services. These are problems of critical proportion as permitting incarcerated individuals to remain in contact with their available support networks leads to better outcomes for those individuals both while they are incarcerated, and when they re-enter society once their term of incarceration is completed.⁴ Stability following re-entry is also the better outcome for society.

Third, the need for action by the Commission is extremely pressing. The nation's economic crisis has made the cost of staying in touch with incarcerated family members and clients even more difficult to bear.⁵ The majority of individuals incarcerated are from low-income families, and a large number of these individuals are represented by publicly-funded counsel.⁶ As the nation's

² The Coalition is comprised of a diverse group of over 50 individuals and organizations that includes family members of incarcerated individuals, legal representatives, social service providers, and groups that advocate on behalf of people in prison and their families.

³ Comments of the Ad Hoc Coalition for the Right to Communicate Regarding Petitioners' Alternative Rulemaking Proposal, CC DKT. No. 96-128 (May 2, 2007), Comments of the Ad Hoc Coalition for the Right to Communicate Regarding Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking, CC DKT. No. 96-128 (March 10, 2004), ("2004 Coalition Comments").

⁴ Prisoners who are unable to maintain contact with their families are more likely to have disciplinary problems while in prison, less likely to secure and successfully complete parole, and more likely to commit another crime upon their release. 2004 Coalition Comments at 19-29, Appendix A at 10, 18.

⁵ See, e.g., Peter Goodman, *U.S. Jobless Rate Hits 14-Year High*, The New York Times, November 7, 2008 (reporting 6.5% unemployment rate, and loss of 1.2 million jobs in the country in the past year).


⁶ See Christopher J. Mumola, *Incarcerated Parents and Their Children*, U.S. Department of Justice, Bureau of Justice Statistics, 1999; Stephen K. Smith, Carol

jobless rate increases and expenses rise, family members – often too far from loved ones to visit – are forced to make harrowing choices between paying for their only link to an incarcerated family member, paying for food, shelter and medical treatment for those at home, or paying to communicate with their lawyers. Public defender offices and social service providers similarly have been severely impacted by the financial crisis. As states slash their budgets it has become increasingly difficult to provide constitutionally mandated indigent defense services in criminal cases.⁷ Non-profits are also being forced to scale back their operations in the face of shrinking endowments and expected declines in charitable giving.⁸ Legal and social service providers can either reject collect calls from their clients given the expense, or pay for collect calls out of badly needed funds that could be put to better use by serving the growing number of individuals in dire need of assistance.

The urgent need for the Commission to provide relief from the excessive cost of long-distance collect calls from prisons can not be overstated. Now is the time for action.

In accordance with Section 1.1206(b)(1) of the Commission's rules, a copy of this presentation is submitted for inclusion in the record of the above-captioned docket. Please feel free to contact the undersigned with any questions.

Respectfully Submitted,

By: 

Melanca Clark

Laura Abel

Counsel for the Ad Hoc Coalition for the Right to Communicate
Brennan Center for Justice at New York University School of Law
161 Avenue of the Americas, 12th Floor
New York, New York 10013
(212) 992-8639

J. DeFrances, *Indigent Defense*, U.S. Department of Justice, Bureau of Justice Statistics, 1996.

⁷ See Scott Michels, *Facing Budget 'Crisis,' Public Defenders May Refuse Cases*, ABC News, June 13, 2008 (stating that public defenders are under extraordinary strain and have been forced to fire or furlough attorneys and reject cases due to budgetary constraints).

⁸ See Phillip Rucker, *Less in Hand to Offer*, Washington Post, November 23, 2008 (reporting that non-profit organizations have trimmed overhead costs, instituted hiring freezes, and are considering cuts in services in an attempt to remain solvent in the face of the economic downturn).

Ms. Marlene H. Dortch, Secretary

December 4, 2008

Page 4

cc: Chairman Kevin J. Martin
Commissioner Jonathan S. Adelstein
Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Deborah Taylor Tate

Courtesy Copies via Email to:

Nick Alexander
Pamela Arluk
Amy Bender
Scott Bergmann
Randy Clark
Darryl Cooper
Scott Duetchman
Lynne Engledow
Douglas Galbi
John Hunter
Albert Lewis
Marcus Maher
Chris Moore
Penny Nance
Greg Orlando
Dana Shaffer