COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

No. D.T.C. 11-16

PETITION OF RECIPIENTS OF COLLECT CALLS FROM
PRISONERS AT CORRECTIONAL INSTITUTIONS IN MASSACHUSETTS
SEEKING RELIEF FROM
THE UNJUST AND UNREASONABLE COST OF SUCH CALLS

PROPOSED REPLY OF PETITIONERS REGARDING PUBLIC COMMENTS

Introduction

The Petitioners request that the Department consider this brief reply to the Responses of GTL and Securus to public comments given at the July 19, 2012 public hearing. All parties had an equal opportunity to present comments at that hearing. Despite the Department's oral instructions that the hearing would not be an a forum for legal argument, the Respondents used their responses as an opportunity to re-argue the legal sufficiency of evidence put forward in the underlying petition. For this reason, Petitioners now briefly address legal arguments made by the Respondents in their responses to comments submitted at the public hearing.

I. Petitioners' Prima Facie Case Does Not Depend on the Public Comments.

The Respondents attack the public comments as insufficient to support the Petitioners' prima facie case.[1] While the public comments were overwhelmingly supportive of the

[1] The Petitioners do not concede the validity of the Respondents attacks on the consumer witnesses. For example, when Securus attacks the credibility of witnesses who claimed exorbitant telephone bills, *see* Response of Securus to Public Comments ("Response of Securus") at 7-8, it fails to take account of fees associated with debit cards and the cost of dropped calls, wherein a consumer can pay a surcharge of $3.00 or more several times just to complete a single call. *See Amendment #1 And Supplement on Quality of Service*, May 18, 2010,

Petitioners claims, and may be relevant to adjudicatory proceedings, these comments were not presented by Petitioners' counsel and were not structured to address all aspects of Petitioners' claims. Petitioners' claims that current rates are unreasonable and that the quality of service should be investigated are fully supported by evidence in their Petition, Amendments and subsequent briefs.[2]

The Department must take the assertions of fact in the Petitioners' papers as true and construe them in favor of the Petitioners.[3] Dismissal may not be granted unless it appears that the Plaintiffs would be entitled to no relief under any statement of facts that could be proven in support of their claim.[4] The facts already presented by Petitioners apart from the public hearing are more than sufficient to require an adjudicatory proceeding to determine just and reasonable rates.

II. The Defendants' Cannot Refute the Petitioners' Evidence of Unjust and Unreasonable Rates Without Disclosing Evidence of their Costs.

A just and reasonable utility rate is one which allows the utility to recover its cost of service and a "fair and reasonable return" on its investment. *See Hingham v. Dept't of Telecommunications and Energy*, 433 Mass. 198, 203 (2000) (citing *Lowell Gas. Co. v. Dept. of Public Utils.*, 324 Mass. 80, 94-95 (1949)). The Respondents take issue with evidence presented

---

at 12-17 and affidavits cited therein. While the Petitioners argue that the sworn public testimony of consumers was relevant and credible, they maintain that their evidence is sufficient regardless of how that testimony is assessed.

[2] The Petitioners incorporate by reference their previous filings.

[3] *See Petition of the Attorney General of the Commonwealth of Massachusetts, pursuant to G.L. c. 164, § 93, for an Investigation of the Electric Distribution Rates of Fitchburg Gas and Electric Light Co.*, DTE 99-18, Order of Oct. 18, 2001 at 4 (2001) (citing *Riverside Steam & Electric Co.*, DPU 88-123, at 26-27 (1988)).*Investigation of the Electric Distribution Rates of Fitchburg Gas and Electric Light Co.*, DTE 99-18, Order of Oct. 18, 2001 at 4 (2001) (citing *Riverside Steam & Electric Co.*, DPU 88-123, at 26-27 (1988)).

[4] *See id.*

by Plaintiffs' expert Douglas Dawson demonstrating that their charges are out of line with costs,[5] but they do not support their assertions with any evidence. Neither GTL nor Securus has provided any data on their costs of providing service.

Securus claims that its costs have actually risen by over 16%, and that individualized costs at various facilities justify its rates, and it claims to have provided "evidence" of this.[6] The company falsely states that it "stipulated" in Federal litigation to a 16.3 percent increase in its overall nation-wide costs since 2008.[7] There was no such stipulation between the parties before the FCC. Rather, in the Federal case, as in this one, Securus merely asserted a rise in its costs with no documentation whatsoever. *See* Letter of Stephanie Joyce, Counsel for Securus, Oct. 11, 2011, attached as Exh. A. Indeed, the *Wright* petitioners have observed with regard to the above-cited letter from Securus:

> Securus and the other inmate telephone service providers have steadfastly resisted calls for the submission of up-to-date, detailed cost data with respect to their services. This was exhibited most recently by Securus electing to respond to a specific request by the commission's staff by only submitting a one-page letter which summarily stated its costs had increased but provided no supporting evidence.

Letter of Lee Petro, Counsel for Petitioners, July 3, 2012, attached as Exh. B, at p. 2. Far from "stipulating" that Securus' costs have increased, the *Wright* petitioners continue to maintain that industry costs have steadily declined. *See* Letter of Lee Petro, February 15, 2012, attached as

---

[5] Dawson presented evidence that the costs of providing prison phone service have dropped precipitously in recent decades due to modern technology and economies of scale from centralized operations. He also pointed out that the ability of companies in nearby jurisdictions to offer far lower rates further demonstrates that Massachusetts' charges are out of line with actual costs, because costs are largely uniform between facilities and across state lines. *See* Affidavit of Douglas A. Dawson, attached to Surreply of Pettioners, April 201, 2012.

[6] *See* Response of Securus at 9-10.

[7] *See id.*

Exh. C. Similarly, Secuus asserts that cost reductions in transportation and technology are outweighed by increases in other costs, without documenting any of those costs.[8]

Even assuming that Securus' assertions were to create a material dispute of fact, it would be inappropriate to resolve such a dispute in the Respondents' favor on a motion to dismiss[9], and where no discovery has been taken. The Petitioners have presented a prima facie case which cannot be defeated by the statements of the Respondents' counsel. Only discovery can reveal the extent to which the Respondents' charges reflect their actual costs.

In addition, the fact that commissions make up some 35 percent of GTL's charges to consumers, and over 50 percent of Securus' charges in most cases, per-se demonstrates that these charges are not just and reasonable. As extensively argued in Petitioners' previous briefing,[10] commissions are not a cost of providing service and must be paid from profits if at all. Whether or not it is good public policy for telephone consumers to pay for prisoner programs,[11] is irrelevant to the legal issue at hand.

Finally, while consumers at the public hearing understandably compared the high rates they pay for prison telephone service with lower residential rates, the Petitioners do not rely on such a comparison, as suggested by Securus.[12] The Petitioners have presented evidence that Respondents' rates are out of line with the costs of *prison* telephone service, and the Respondents have presented no evidence of their costs that would contradict this. For this reason, Securus' citation to *Sims et al. v. AT&T*[13] is unavailing. In that case the Complainants

---

[8] *Id.* at 11.

[9] *See Petition of the Attorney General*, Supra, n. 1.

[10] *See* Memorandum of Petitioners Opposing Dismissal, March 23, 2012, at 9-14.

[11] *See* Securus Response at 13-14; GTL Response at 2-3,

[12] *See* Response of Securus at 5.

[13] *See* Response of Securus at 5, quoting *Sims et al. v. AT&T*, 2001 Ind. PUC Lexis 503 at *38 (erroneously cited as page 11).

based their argument on a comparison between prison phone rates and market rates for the general public.[14] The Indiana Utility Regulatory Commission (IURC) rejected the Complainants' request for relief "based on the evidence presented,"[15] but there is no indication that any evidence regarding the cost of providing service was presented by either party or considered by the IURC.

The Respondents have yet to counter Petitioners' evidence that prison telephone rates do not reflect their actual costs plus a reasonable rate of return. This claim should not be dismissed.

III. Approved Rates are Subject to Challenge.

The respondents continue to assert that current rates are insulated from challenge because they were (long ago) approved as reasonable.[16] As argued in Plaintiffs' earlier Memorandum, approved rates are subject to modification when the Department deems them no longer to be just and reasonable.[17] Although the Department's past approval of a rate makes it prima facie lawful, such approval is not eternal, and the reasonableness of the rate is always subject to challenge before the Department pursuant to existing law.[18]

The two cases newly cited by Respondent Securus do not change this fact or heighten the burden on Petitioners. In *AT&T v. IMR Capital Corp.*, the court's relevant holding was that a judicial challenge is limited to review of the Department's determination of the reasonableness of the rates.[19] Here, Petitioners seek precisely such a determination from the Department.

---

[14] *See id.*

[15] *Id.* at *40. Even so, rejection of the complaint was informed by the fact that the Indiana Department of Correction had revised the criteria in its Request for Proposals to require rates less than those charged by dominant carriers, and to discourage fees and charges which cause "undue hardship" on prison phone consumers. *Id.* at *42.

[16] *See* Securus Response at 2; GTL Response at 1-2.

[17] *See* Memorandum of Petitioners Opposing Dismissal at 4-6.

[18] *See* M.G.L. c. 159 §17.

[19] *See AT&T v. IMR Capital Corp.*, 888 F. Supp. 221, 246 (D. Mass 1995).

Securus also cites *Metropolitan District Commission v. Department of Public Utilities*, which merely held that when a party seeks an adjustment of a rate, that party has the burden of establishing through the adjudicatory process that the rate should be changed.[20] The Plaintiffs have submitted plentiful evidence to that effect at this preliminary stage , and their evidence was reinforced by compelling testimony at the public hearing; they are therefore entitled to proceed with their claims.

IV. Quality of Service Complaints Should Be Investigated.

The Respondents have presented no reason to dismiss the Petitioners' complaints about the quality of service. The Petitioners' Amendment #1 and Supplement on Quality of Service exhaustively documents, with supporting affidavits, the frustrations experienced by attorneys and family members seeking to complete a phone call, obtain records of calls and charges, or get help from customer service at both GTL and Securus (known as Evercom at the time of the Amendment). Again, while the sworn public comments of consumers are relevant to the petitioners' claims, the Petitioners' prima facie case does not rely on these comments. Because the Respondents seek dismissal, all sworn testimony must be accepted as true[21]; credibility determinations must be left for the fact-finder in adjudicatory proceedings.

As Petitioners have earlier briefed, there is no requirement that consumers follow any internal process with the telephone companies before complaining to the DTC,[22] and indeed the agency has considered the ability of consumers to petition it to be a "protection from degradation

---

[20] *Metropolitan District Commission v. Department of Public Utilities*, 352 Mass. 18, 25 (1967).

[21] *See* Note 2, *supra.*

[22] *See Memorandum of Petitioners Opposing Dismissal*, March 23, 2012, at 18-22.

in the quality of service."[23] Indeed, the Petitioners documented the problems faced by consumers trying to access customer service at GTL and Securus.[24]

Both Respondents are fully on notice of the quality of service complaints. The defenses provided in the Respondents' briefs[25] are assertions unsupported by evidence. If the Respondents did produce evidenc,, it would at best create a material dispute of fact appropriate for adjudication.

CONCLUSION

For the above-stated reasons, the Respondents motion to dismiss should be denied.

Date: November 5, 2012

Respectfully submitted:

Bonita Tenneriello, BBO# 662132
Elizabeth Matos, BBO # 671505
James Pingeon, BBO # 541852
10 Winthrop Square, 3rd Floor
Boston, Massachusetts 02110
(617) 482-2773 (telephone)
(617) 451-6383 (facsimile)
btenneriello@plsma.org
ematos@plsma.org
jpingeon@plsma.org

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail ~~(by hand)~~ on November 12, 2012

sig.

[23] *See Re The Berkshire Gas Company*, DTE 98-61/98-87.

[24] *See Amendment #1*, pp. 2-24 and affidavits of Roger Carver, Sonia Booker, Christine Rapoza attached thereto.

[25] *See* Response of Securus at 16-17 (asserting various explanations for dropped calls, and stating that dropped calls not made to wireless phone are refunded; also asserting that its "practice" is to repair, upgrade or replace malfunctioning equipment and that it "spends substantial sums" to repair phones.); Response of GTL at 3-4 (stating that complaints "were addressed in the ordinary course," and that many of the complaints are due to practices required by Massachusetts DOC or Massachusetts law).

Arent Fox

October 11, 2011

VIA ECFS

Stephanie A. Joyce
Attorney
202.857.6081 DIRECT
202.857.6395 FAX
joyce.stephanie@arentfox.com

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

Re: CC Docket No. 96-128, *Alternative Rulemaking Proposal of Martha Wright, et al.*

Dear Ms. Dortch:

Securus Technologies, Inc. ("Securus") files this letter to provide the Commission with the updated cost information offered in its previous letter dated September 20, 2011.

Securus has reviewed its overall cost of service for providing inmate telecommunications service. Securus used whole-year data that was available after the submission of the industry cost study (the "Wood Study") in 2008. The data reviewed is specific to Securus and does not represent the costs of any other company that was involved in the Wood Study.

Securus estimates that its overall per-call costs have increased approximately 16.3%. Its overall per-minute costs have increased approximately 16.5%.

Please do not hesitate to contact me with any additional questions or concerns: 202.857.6081. Thank you for your consideration.

Sincerely,

s/Stephanie A. Joyce

Counsel for Securus Technologies, Inc.

cc: Chairman Julius Genachowski (*via electronic mail*)
Commissioner Michael Copps (*via electronic mail*)
Commissioner Robert McDowell (*via electronic mail*)
Commissioner Mignon Clyburn (*via electronic mail*)
Sharon Gillett, Chief, Wireline Competition Bureau (*via electronic mail*)
Austin Schlick, General Counsel (*via electronic mail*)
Zachary Katz, Legal Advisor to Chairman Genachowski (*via electronic mail*)

– Exhibit A –

Arent Fox

Margaret McCarthy, Policy Advisor to Commissioner Copps (*via electronic mail*)
Christine Kurth, Legal Advisor to Commissioner McDowell (*via electronic mail*)
Angela Kronenberg, Legal Advisor to Commissioner Clyburn (*via electronic mail*)
Albert Lewis, Chief, Pricing Policy Division, Wireline Competition Bureau (*via electronic mail*)
Marcus Maher, Legal Advisor to Chief of the Wireline Competition Bureau (*via electronic mail*)
Pamela Arluk, Assistant Chief, Pricing Policy Division, Wireline Competition Bureau (*via electronic mail*)
Lynne Hewitt Engledow, Pricing Policy Division, Wireline Competition Bureau (*via electronic mail*)
Michelle Berlove, Pricing Policy Division, Wireline Competition Bureau (*via electronic mail*)
Jennifer Prime, Acting Legal Advisor, Office of the Bureau Chief, Wireline Competition Bureau (*via electronic mail*)

DrinkerBiddle&Reath LLP

Lee G. Petro
202-230-5857 Direct
202-842-8465 Fax
Lee.Petro@dbr.com

Law Offices
1500 K Street N. W.
Suite 1100
Washington, D.C.
20005-1209

(202) 842-8800
(202) 842-8465 fax
www.drinkerbiddle.com

CALIFORNIA
DELAWARE
ILLINOIS
NEW JERSEY
NEW YORK
PENNSYLVANIA
WASHINGTON D.C.
WISCONSIN

July 3, 2012

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

RE: *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*
Petitioners' Alternative Rulemaking Proposal
CC Docket No. 96-128

Dear Ms. Dortch:

Martha Wright, *et al.* ("Petitioners"), by and through her attorneys, respectfully submit into the record of the above-referenced proceeding this Reply in response to the Ex Parte Submission of Securus Technologies, Inc., on July 2, 2012 (the "Securus Response"). In light of the several misstatements contained in the Securus Response, the instant Reply is being submitted.

In particular, the Securus Response contained several arguments in rebuttal to the information supplied by Petitioners on June 28, 2012, regarding the ongoing rate proceeding before the New Mexico Public Regulation Commission. The Petitioners' June 28, 2012 submission included a Hearing Transcript which contained statements that are highly relevant to this long-pending proceeding.

Petitioners noted that counsel for Securus stated in the public hearing that she did not believe any payphone-only facilities still existed.[1] Petitioners also noted that the Hearing Commissioner highlighted two points that Petitioners have been making since this case commenced in 2000, "namely that: (1) inmates have no choice in the selection of their telephone service provider, and (2) that the rates charged by the inmate telephone service providers to the inmates' families are not only widely divergent among the various states, but also among facilities in the same state."[2] Finally, Petitioners noted that the contact between Securus and the Department of Corrections had been amended four times since it was signed in 2007, with two of the most recent amendments being executed in 2012. Petitioners supplied the original contract and the amendments with the submission.[3]

---

1 *Petitioners Ex Parte Submission*, June 28, 2012, pg. 2.

2 *Id.*, pg. 3.

3 *Id.*, Exhibit E, pgs. 183-259.

- Exhibit B -

Securus argues in its Response that its statements regarding the dearth of payphone-only facilities was only relevant to the State of New Mexico and the 24 contracts that Securus currently has in that state.[4] Further, Securus also provides that "the state of the industry has changed, and correctional authorities are permitting prepaid calling with more regularity.[5]

To the extent that this is an accurate characterization of Securus' on-the-record testimony in New Mexico, and the current state of the inmate telephone service industry in general, it also illustrates the fundamental deficiency present in this proceeding since its inception. Specifically, Securus and the other inmate telephone service providers have steadfastly resisted calls for the submission of up-to-date, detailed cost data with respect to their services. This was exhibited most recently by Securus electing to respond to a specific request by the Commission's staff by only submitting a one-page letter, which summarily stated its costs had increased, but provided no supporting evidence.[6] In sum, if Securus wishes to have its comments taken in the correct context, it must actually provide the context (i.e., up-to-date, detailed cost data).

In addition, Securus states that Petitioners "have never supported a tiered approach" in the proceeding,[7] and cites several recent submissions by Petitioners. However, this statement is patently false. Incredibly, three of the submissions cited by Securus in its Response contained Petitioners' Talking Points, which actually stated:

> Petitioners agree with Pay Tel Communications that governing legal standards could be met by a **tiered rate structure**, *i.e.*, rates somewhat higher than the requested benchmarks for facilities with fewer than 25 prisoners, which have higher costs; the benchmark rates for facilities between 25 and 250 prisoners; and lower rates for larger facilities, which have higher traffic volumes and lower service costs. Inmate rate relief also would reduce the economic incentive to use contraband cell phones in prison.

Thus, either Securus did not completely review the submissions to which it cited before submitting the Response, or Securus is attempting to mislead the Commission.

In addition, with respect to its contract with the Florida Department of Corrections, Securus states that "only the most recent amendment in April 2012 affected inmate rates."[8] Securus also states that Petitioners only provided the most recent amendment. *Id.* As with its characterization with respect to Petitioners acceptance of tiered rates, Securus either did not completely review Petitioners' June 28th submission, or it is attempting to mislead the Commission.

---

4 *Securus Response*, pg. 2.

5 *Id.*

6 *See Ex Parte Submission of Securus Technologies, Inc.*, filed October 11, 2011.

7 *Securus Response*, pg. 1, nt. 1 (citing four submissions made on behalf of the Petitioners).

8 *Securus Response*, pg. 2.

In particular, Exhibit E to Petitioners' June 28th submission contained the original contract, and each of the four amendments.[9] Within Exhibit E, the fourth amendment executed in April 2012 was first, and then the remaining amendments and the underlying contract followed. The version available on the Commission's ECFS database contains each of the amendments and the underlying contract,[10] so it is unclear why Securus would state that only the fourth amendment was provided.

More important, however, is Securus' statement that "only the most recent amendment in April 2012 affected inmate rates."[11] Attached hereto as Exhibits A through D are the excerpts from the contract and amendments dealing with inmate rates, which, as noted, were also provided by Petitioners in its June 28th submission.

Specifically, Exhibit A contains Section III.A of the original contract, which provided inmate rates under the categories of Collect Calls and Prepared Calls. The first amendment, Exhibit B, inserted a new rate category, Coin Operated Telephones. The second amendment, Exhibit C, amended the rate table for Coin Operated Telephones to include rates for "1+Inter-lata", "1+Intra-lata" and "1+Interstate" with rates of $1.20 "to connect" and then $0.20 per five minute increment. Finally, the fourth amendment, executed in April 2012 and attached hereto as Exhibit D, changed the rates in each of the phone call categories specified under Section III.A of the agreement. Thus, Securus was simply wrong to state that Petitioners only provided the fourth amendment to the Florida DOC agreement, and that only the fourth amendment "affected inmate rates."

Finally, Securus notes that it has met with several public interest groups previously regarding this matter.[12] It is important to note, however, that Securus declined the Petitioners' offer to hold discussions in September 2011. Rather than being willing to meet to determine if the parties could reach a consensus on any of the issues in this proceeding, Securus declined and instead submitted its October 2011 letter referenced above. Petitioners, and the undersigned counsel, remain ready and willing to meet with Securus should they wish to discuss any matter in this proceeding.

In light of the foregoing, the Petitioners respectfully request that the Commission follow the order from the D.C. Circuit Court, act "with dispatch", and grant the Petitioners' 2007 Alternative Proposal.

---

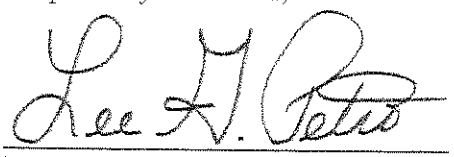
9 *See* Exhibit E, pgs. 183-259.

10 http://apps.fcc.gov/ecfs/document/view?id=7021980001 (last visited July 3, 2012).

11 *Securus Response*, pg. 2.

12 *Securus Response*, pg. 2.

Respectfully submitted,



Lee G. Petro

Drinker Biddle & Reath LLP
1500 K Street N.W.
Suite 1100
Washington, DC 20005-1209
202-230-5857 – Telephone
202-842-8465 - Telecopier

Counsel for Martha Wright, et al.

Attachments

cc *(via electronic mail)* :

Chairman Julius Genachowski
Michael Steffen, Legal Advisor to Chairman Genachowski
Commissioner Robert McDowell
Christine Kurth, Legal Advisor to Commissioner McDowell
Commissioner Mignon Clyburn
Angela Kronenberg, Legal Advisor to Commissioner Clyburn
Commissioner Jessica Rosenworcel
Priscilla Delgado Argeris, Legal Advisor to Commissioner Rosenworcel
Commissioner Ajit Pai
Nicholas Degani, Legal Adviser to Commission Pai
Sean Lev, General Counsel
Julie Veach, Deputy General Counsel
Victoria Goldberg – Acting Chief, Pricing Policy Division, Wireline Competition Bureau
Deena Shetler – Associate Bureau Chief, Wireline Competition Bureau
Nicholas Alexander – Deputy Division Chief, Pricing Policy Division, Wireline Competition Bureau
Pamela Arluk – Assistant Division Chief, Pricing Policy Division, Wireline Competition Bureau
Marcus Maher – Office of General Counsel
Raelynn Remy – Office of General Counsel
Lynne Engledow, Wireline Competition Bureau
Michele Berlove, Wireline Competition Bureau

DrinkerBiddle&Reath LLP

Lee G. Petro
202-230-5857 Direct
202-842-8465 Fax
Lee.Petro@dbr.com

Law Offices
1500 K Street N.W.
Suite 1100
Washington, D.C.
20005-1209

(202) 842-8800
(202) 842-8465 fax
www.drinkerbiddle.com

CALIFORNIA
DELAWARE
ILLINOIS
NEW JERSEY
NEW YORK
PENNSYLVANIA
WASHINGTON D.C.
WISCONSIN

February 15, 2012

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

RE: *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*
Petitioners' Alternative Rulemaking Proposal
CC Docket No. 96-128

Dear Ms. Dortch:

Martha Wright, *et al.* ("Petitioners"), by and through her attorneys, respectfully submit into the record of the above-referenced proceeding this additional information in support of the Petitioners' Alternative Rulemaking Proposal (the "Alternative Proposal"), which was filed with the Commission nearly five years ago, on March 1, 2007. To date, there has been no action on the Alternative Proposal, which was submitted three and half years after the Petitioners submitted its Petition for Rulemaking on October 31, 2003.

Thus, for the past eight and half years, the Petitioners have waited for Commission action - action that was ordered by the District Court of the District of Columbia on August 22, 2001, when it referred the class action lawsuit to the FCC with the instruction that the Commission accept "appropriate pleadings" to "assist the Court in its task of adjudicating" the class action claims.[1] That class-action suit remains pending to date, as the Petitioners, and the D.C. Circuit Court, await direction from the Commission.

In the meantime, there have been sweeping changes to the inmate calling service industry, with companies merging themselves out of existence, and with technological changes making the provision of telephone service to inmates much simpler to provide within the security parameters established by federal, state and local law enforcement agencies.

---

[1] *Wright v. Corrections Corp. of America*, C.A. No. 00-293 (GK)(D.D.C. Aug. 22, 2001), Order, slip op. at 1; Memorandum Opinion, rel. November 5, 2001 (attached as Attachments B, C, and D to the Petitioners' Petition for Rulemaking).

– Exhibit C –

In the Alternative Proposal, the Petitioners proposed the adoption of benchmark rates based on the undisputed fact that the actual cost of providing inmate calling services were substantially lower than the rates changed to inmates and their families. In particular, the Petitioners proposed that the Commission establish benchmark rates of no more than $0.20 per minute for debit calling and $0.25 per minute for collect calling, with no separate per-call charges imposed by the inmate telephone service provider.

In the subsequent pleadings submitted into the record, it became clear that the benchmark rates proposed by the Petitioner were actually more generous than expected, and that the actual charges, net of commissions paid to state and local authorities, could be substantially lowered with no set-up fees.

This result is supported by recent proposals submitted in response to a Request for Proposal issued by the State of Missouri. In particular, the responses received by the State of Missouri proposed the following per-minute charges for collect, pre-paid and debit calls:[2]

Synergy:	$0.09	PCS:	$0.07
Unisys:	$0.05	Securus	$0.05
TalkTelio:	$0.05	CenturyLink:	$0.07-$0.09
Consolidated:	$0.08	(four separate proposals)	

Moreover, as noted in the *Prison Legal News* study submitted by the Petitioners into the record on July 27, 2011, the following ten states had per-minute rates equal to, or lower than, the benchmarks set forth in the Alternative Proposal:

Securus	Florida	$0.04
GTL	Louisiana	$0.21
GTL	Massachusetts	$0.10
Embarq	Michigan	$0.15
PCS	Missouri	$0.10
PCS	Montana	$0.20
PCS	Nebraska	$0.05
ICS	New Hampshire	$0.10
Securus	North Dakota	$0.24
Embarq	South Carolina	$0.15

Clearly, then, the rates proposed in the Alternative Proposal were reasonable, and perhaps overstated the actual costs, net of commissions paid to state and local authorities, of providing inmate telephone services.

---

[2] *See Exhibit A.*

Thus, the Commission can and should move forward to adopt an order granting the Alternative Proposal without further delay. The Alternative Proposal was released on public notice, and the Commission received significant input from all interested parties.[3] The Alternative Proposal was clearly a logical outgrowth of the long-pending proceeding, and the subject matter of the Alternative Proposal was certainly anticipated by the Commission and all interested parties.

However, in the event that the Commission intends to issue a further notice of proposed rulemaking, it must specifically demand that the inmate telephone service providers supply detailed cost information to support their position that the rates set forth in the Alternative Proposal are too low. The inmate telephone service providers have consistently refused to provide such information, and Securus Technologies' most recent submission into the record, a one-page letter indicating that its costs had increased by 16% with no supporting information, is wholly insufficient to counter the overwhelming evidence that the rates set forth in the Alternative Proposal are reasonable and must be adopted.

Morover, in the absence of any specific cost data provided by the inmate telephone service providers, the Commission must rely on the conclusive evidence already in the record, and conclude that Securus and other inmate telephone service providers have conceded that the proposed rates set forth in the Alternative Proposal are reasonable.[4] The inmate telephone service providers have had more than nine years to supply specific cost data, and the Commission must reject the service providers' "generalized assertions that their rates are justified by higher costs."[5]

Therefore, the Petitioners respectfully restate its urgent request that the Commission release an order adopting the proposals set forth in the Alternative Proposal. As the Commission is aware, the District Court of the District of Columbia referred the instant matter to the Commission more than 10 years ago based on the belief that the Commission was best suited to resolve the case. Certainly, no one in 2001 expected that this proceeding would remain pending for more than ten years, with no immediate end in sight.

Unless the Commission specifically requires the inmate telephone service providers to submit into this docket accurate, detailed, and up-to-date cost information, there is no need for the Commission to re-open the record, as it would merely delay action for at least another two to three years. The inmate telephone service providers have been given every chance to provide detailed cost data, and they have declined at every turn. As such, it is time for the Commission to act.

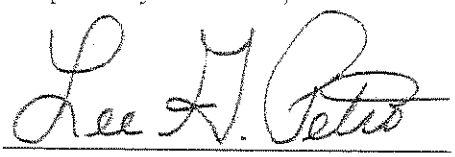
---

3 *Petitioners Reply Comments*, dated June 20, 2007, pgs. 42-49.

4 *Cable & Wireless P.L.C. v. FCC*, 116 F.3d 1224, 1233 (D.C.Cir. 1999) (citing *International Settlement Rates*, 12 FCC Rcd 19806, 19839 (1997).

5 *Access Charge Reform*, 16 FCC Rcd 9923, 9941, nt. 104 (2001).

Respectfully submitted,



Lee G. Petro

Drinker Biddle & Reath LLP
1500 K Street N.W.
Suite 1100
Washington, DC 20005-1209
202-230-5857 – Telephone
202-842-8465 - Telecopier

Counsel for Martha Wright, et al.

Attachments

cc (*via electronic mail)* :

Chairman Julius Genachowski
Commissioner Robert McDowell
Commissioner Mignon Clyburn
Austin Schlick, General Counsel
Sharon Gillett, Chief, Wireline Competition Bureau
Sherrese Smith, Chief Counsel & Legal Advisor to Chairman Genachowski
Michael Steffen, Legal Advisor to Chairman Genachowski
Christine Kurth, Policy Director & Wireline Counsel to Commissioner McDowell
Angela Kronenberg, Wireline Legal Advisor to Commissioner Clyburn
Victoria Goldberg, Acting Chief, Pricing Policy Division, Wireline Competition Bureau
Pamela Arluk, Assistant Chief, Pricing Policy Division, Wireline Competition Bureau
Jennifer Prime, Office of the Bureau Chief, Wireline Competition Bureau