Captive Market

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New rules lower the cost of phone calls to and from prison inmates.

In February, the Federal Communications Commission put into effect new regulations limiting how much prisoners can be charged for phone calls. Under the new rules, interstate phone calls by prisoners are capped at 21 cents for debit calls and 25 cents per minute for collect calls. Those rates are still high compared to the price of regular phone calls, but are considerably lower than what many prisoners had been paying—as much as $17 for a 15-minute call, according to the FCC.

The rate caps came 14 years after a retired nurse from Washington, D.C., named Martha Wright became the lead plaintiff in a federal class action lawsuit that challenged the high prices, including per-minute charges and related account fees, charged prisoners and their families for phone calls. (Wright was spending as much as $1,000 a year to talk to her grandson, who was serving time for manslaughter, according to the suit.) The case was referred by the court to the FCC, which spent more than a dozen years on the matter before releasing the new regulations.

There’s a lot of money to be made in the prison phone business: according to Bloomberg News, it’s a $1.2 billion industry. But the high cost of prison calls comes with a social cost, say criminal justice reform groups.

“Studies show that family contact is really essential to success on release from prison. People who keep those connections do better,” Bonnie Teneriello, a staff attorney with Prisoners’ Legal Services of Mass., told the Advocate. In addition to maintaining family relationships, she said, inmates who’ve stayed connected to their community fare better on release. “How are you going to find a job, find a place to live? You need to talk to people before you get out.”

While reform advocates describe the new rate caps as progress, they also note their limitations, starting with the fact that they apply to interstate calls only. That means that just a tiny percentage of the clients she represents will benefit from the caps, Teneriello said, since most of their calls are within Massachusetts.

In addition, while the FCC regulations limit per-minute costs, other provisions that would have addressed additional fees were stayed by a federal court in response to objections by companies that provide prison phone services. Those companies say security measures and other costs specific to the prison industry justify higher charges than those in the regular phone system.

Critics of the system also object to the common practice of contracts between phone companies and correctional departments including high commissions that return money to the departments. Those commissions amount to “kickbacks,” in the words of the Easthampton-based Prison Policy Initiative, and provide a disincentive for corrections officials to negotiate lower call rates.

But others defend the use of commissions as a way to generate funds for vital services at a time when public funding is often being cut. At the Hampden County Sheriff’s Department—whose contract with Global Tel Link Corp. provides it with a 74 percent commission on in-state calls—that money is used for programs that support successful re-entry, said spokesman Rich McCarthy. While the department has worked to lower phone rates for inmates, he said, “I’m not going to dodge the commission thing. It’s for the greater good to have it. … We know we use that [money] to great effect.”
The Prison Policy Initiative has been tracking the prison phone system for several years. In a 2012 report, "The Price to Call Home," PPI described the industry as a state-sanctioned monopoly that exploits captive markets—prisoners and their families, who are typically low-income.

The market is dominated by a handful of providers—Global Tel Link and Securus Technologies are the two biggest—that contract with state and county correctional departments. Massachusetts is among the majority of states that allow these contracts to include commissions—a practice, the report said, that works against the interests of prisoners and their families: "[S]tate prison systems have no incentive to select the telephone company that offers the lowest rates; rather, correctional departments have an incentive to reap the most profit by selecting the telephone company that provides the highest commission."

In a follow-up report in 2013, "Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry," PPI detailed the "astronomical sums" prisoners and their families pay for calls, with per-minute costs typically ranging from 85 to 89 cents and per-call surcharges of $3 to $5, resulting in 15-minute calls costing as much as $18. In addition to those per-call costs, the report noted other associated charges, including fees to open and close accounts with the phone provider, monthly maintenance fees on that account, and charges for reconnecting dropped calls.

These fees, the report noted, provide an opportunity for the phone companies to generate revenue to offset the commissions they pay to correctional departments. And those commissions can be substantial: the PPI report found examples from around the country of commissions topping 65 and 70 percent. (The highest was 84.1 percent, paid to a county jail in Alabama.) "Making it harder for incarcerated people to stay in touch with people outside prison and jail harms incarcerated people, their families and communities, and society at large," the PPI report said. "Affordable phone calls are directly related to the safety and well-being of all communities because communication reduces the likelihood that incarcerated people will commit another offense after their release."

"Unfortunately, opportunities for government and private profit from prison telephone calls are clouding out this common-sense principle, and communities are suffering to fill the phone industry's coffers."

Reforming the prison phone system had been a top priority for Mignon Clyburn, who served as the FCC's acting chair from May to November of 2013. In an announcement of the new rules last August, the FCC described them as "long-overdue steps to ensure that the rates for interstate long-distance calls made by prison inmates are just, reasonable and fair," and cited reports showing that inmates who maintain contact with family and friends have lower rates of recidivism and "are more likely to become productive citizens upon their release."

The FCC had hoped to go even further. In its August report, the commission described the 21- and 25-cent rate caps as "interim" rates but suggested that 12 cents for debit calls and 14 cents for collect calls were "just, reasonable and cost-based" rates that would still allow phone companies to cover the costs of necessary security measures. It also called on phone companies to justify their rates as cost-based. In addition, the FCC said it would seek public comment about reforming interstate rates and policies.

Securus Technologies challenged the new FCC regulations, arguing, in part, that the commission does not have jurisdiction over in-state calls. In January, a federal appeals court sided with Securus and stayed several of the regulations. The 21- and 25-cent rate caps, which survived the court order, went into effect on Feb. 11.

Securus has vowed to continue to fight the FCC rules. In an interview with Bloomberg News, the company's president and CEO, Richard Smith, said the rate caps will cost it $10 million to $15 million a year in revenue and will hamper its ability to provide security features.

Tom Wheeler, who replaced Clyburn as FCC chair late last year, has said the agency will continue to push to reform the prison phone industry.

While the FCC has wrestled with prison phone costs on the federal level, a parallel effort has been taking place in Massachusetts. In 2009, Prisoners' Legal Services filed a petition with the Mass. Department of Telecommunications...
and Cable on behalf of relatives, attorneys and others who receive calls from inmates, seeking "relief from the unjust and unreasonable cost" of those calls as well as improvements in the quality of phone service. Because the prison phone system is "an effective monopoly market," it denies customers the opportunity to take their business to an alternative company, the petition said, it is up to the DTC to set reasonable rates.

Under the Mass. Department of Corrections' current contract with Global Tel Link for state correctional facilities, collect calls both in and out of state cost 10 cents per minute, with an 86 cent per-call surcharge, resulting in a 20-minute call costing $2.86. Debit calls are 75 cents per minute with a 65 cent surcharge, that brings the cost of a 20-minute call to $2.15.

Those rates are significantly lower than the kinds of hefty charges cited in the FCC regulations. But critics remain concerned about associated fees, as well as the commissions paid to correctional institutions. In its petition to the DTC, Prisoners Legal Services noted that that money goes into the state's general fund or, in the case of county jails, in "canteen accounts" to pay for programs at those facilities. "Telephone charges that fund millions of dollars of telephone company profits that are ultimately used for general expenses of the Commonwealth and other non-telephone related budget items are by definition not actual, necessarily incurred costs of providing telephone service and therefore not just and reasonable," the PLS petition said.

The PLS petition has been working its way slowly through the system, with DTC holding a public hearing on the matter last summer. Global Tel Link and Securus Technologies have sought to have the petition dismissed. In documents filed with DTC, Global Tel Link asserted that the commissions it returns to correctional facilities come from the company's profits and are not "passed through" to consumers, and that its fees are in keeping with state regulations. Both companies also argued that providing phone service to prisons carries additional costs related to security and fraud prevention, such as monitoring and recording systems and extra personnel. DTC denied the request to dismiss the case but did impose some limits on the scope of its investigation.

Ja'Yla Leder-Luis, a spokesperson for DTC, told the Advocate that the department couldn't comment on the petition because it is still pending. "The Department is aware of the FCC's actions related to interstate prison phone rates, and is monitoring it," she added.

Tennonello is eager to see the case resolved.
"Every month that goes by is another month of real hardship for people who long to be in touch with their loved ones, people who are thinking, 'Can I make this call or do I have enough to pay my utility bill, my mortgage bill?"

Prior to the new FCC regulations, Hampden County prisoners paid 89 cents a minute, plus a $3.95 per-call surcharge, for interstate collect calls. But after those regulations went into effect in February, the cost of those calls was dropped to comply with the new rate caps of 25 cents per minute for interstate collect calls and 21 cents per minute for pre-paid interstate collect calls, with no surcharges.

The sheriff's department's contract with Global Tel Link includes another, cheaper option for interstate calls: a debit system that costs 12 cents a minute, with no surcharges. Those rates did not have
to be lowered in response to the FCC rules, since they were already nine cents a minute lower than the new rate caps, noted McCarthy, the sheriff's department spokesman.

For in-state calls, which were not affected by the FCC ruling, local collect calls cost a flat rate of 50 cents, plus a $2.50 per-call surcharge, while in-state long-distance collect calls cost 10 cents per minute with a $2.50 surcharge. Users with prepaid collect accounts can also be charged a $4.95 maintenance fee.

For inmates who choose the debit call option, all calls cost 12 cents per minute, with no surcharge or other fees. That rate applies to local and long-distance calls, including calls to other states, Puerto Rico and the Virgin Islands.

"I think we took the steps to make our rates a lot more reasonable now, considering everything," McCarthy told the Advocate, noting that inmates in Hampden facilities pay significantly less for calls than the fees cited in the FCC's hearings and reports.

The contract does include a high commission: 74 percent, which applies to in-state calls only. In the last fiscal year, the commission resulted in about $663,000 for the department, McCarthy said. That money, combined with inmates' commissary payments, yields the department about $1 million a year. (With roughly 5,000 inmates passing through the department each year, that amounts to about $200 per person, McCarthy said. By way of context, he noted that the annual cost of caring for an inmate runs about $45,000.)

The phone and commissary money, McCarthy said, is used to fund a range of programs that help inmates maintain ties with family and prepare for community re-entry. Among the things the money supports: a PIVA bus to the jail; Foundation House, a 50-bed halfway house for men; a library; GED test fees for inmates; an on-site college course program; after-incarceration support programs; a parenting class for female inmates; programs for kids visiting their mothers; and stipends for work done by inmates at the jail or in community service programs.

"The point is, a lot more is accomplished for inmates' successful re-entry through this money from a slightly higher fee now than they'd pay [for phone calls] out on the street," McCarthy said.

Hampden County Sheriff Mike Ashe, McCarthy said, is thoughtful about the kinds of fees that inmates ought to pay. "One of the great passions of his life is successful community re-entry," McCarthy said. "We're not going to make decisions that we feel are working against re-entry."

For instance, while other Massachusetts sheriffs have supported charging inmates for their room and board and medical care, Ashe has rejected such proposals, saying they would only add to the already formidable barriers they'll face when they return home, by saddling them with debt or causing them to defer necessary healthcare for lack of funds.

"We think of ourselves as progressive here," McCarthy said.

But there are times when it's appropriate for an inmate to contribute financially, he continued. For instance, people in work-release programs pay 25 percent of their earnings to cover room and board. And, McCarthy added, phone calls are a "privilege" that can carry reasonable fees.

While advocates of reform focus on the most wholesome examples of prisoner phone calls—to their children, their grandmothers—some of those calls are decidedly less salubrious in nature, McCarthy said. According to investigators in the sheriff's department who monitor inmate calls, about half of all calls are considered "negative," he said. That category includes "predatory or manipulative" calls to spouses or partners, or, in about one-third of the cases, calls to fellow gang members or other criminal associates.

"Fifty percent of our calls are not conducive to successful community re-entry," McCarthy said. "So if we're going to institute any fees, it's going to be telephone calls."

In its current contract, McCarthy said, the sheriff's department struck a good balance between reducing phone rates and maintaining a funding source for vital programs. "Twelve cents a minute anywhere, with all these funds to have a bus out here, to have a halfway house, is better than six cents a minute," McCarthy said. Certainly, he added, it's preferable to fund those programs through "a bit higher phone cost" than through things like room and board fees or medical charges.

"I understand the temptation to fund programs this way," countered Temariello, the Prisoners' Legal Services attorney. "But it's also counterproductive. ... To pay for these programs on the backs of prison families, who are generally low income—that's not the way to do it."

Peter Wagner, executive director of the Prison Policy Initiative, described the new FCC rate caps as "partial yet important progress. The most expensive rates are coming down, and it really sets in motion a bigger discussion about the entire system," he said. Looking ahead, Wagner said, he hopes that "the FCC will find the courage to finish the job, and the state of Massachusetts will step up or even pass the FCC on protecting poor families."