

## **The FCC's Order Lowering Prison Phone Rates: Fact Sheet**

New Jersey Advocates for Immigrant Detainees<sup>1</sup>

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In 2003, Martha Wright and several families of prisoners petitioned the Federal Communications Commission (FCC) to address the lack of competition in the prison telephone industry that resulted in families of prisoners paying exorbitant rates for phone calls. In 2008, the petitioners filed an alternate proposal requesting that the FCC address these rates and fees directly. After 10 years, the FCC adopted an Order on August 9, 2013 to bring prison phone rates into compliance with the Communications Act, which requires that phone rates be “just, reasonable, fair” to “*all* people.”<sup>2</sup>

### **How Does the Order Lower Prison Phone Rates?**

- Prior to the Order, companies charged as much as \$0.89 per minute, plus a connection fee of up to \$4.95, for interstate phone calls. The Order attempts to regulate such charges by setting baseline (“safe harbor”) rates that are assumed to be just and reasonable and maximum (“hard cap”) rates that the companies should not exceed.
  - It establishes interim “safe harbor” rates of \$0.12 per minute for debit and prepaid interstate calls and \$0.14 per minute for interstate collect calls. Companies should be charging inmates rates at or below these safe harbor rates are rates, and if they do the FCC will presume that they are following the law.
  - It establishes interim “hard cap” rates of \$0.21 per minute for debit and prepaid interstate calls and \$0.25 per minute for interstate collect calls.
  - Companies that charge rates that are above the safe harbor but at or below the hard cap have to prove that their rates are cost-based. “Cost-based” means that the companies need to charge those rates in order to make a reasonable profit.
  - Companies that believe that their cost-based rates exceed the hard cap may request a waiver, but they bear the burden of proof to show that extraordinary circumstances justify the higher rate.
- Prior to the Order, companies justified high phone rates by pointing to commissions they pay to local or state governments for utilizing their services in their prisons and jails. Under the Order, companies are not allowed to factor in commissions as a cost of providing phone services in order to justify higher rates.

### **How Does the Order Affect Other Fees Related to Prison Phone Service?**

- In addition to per-minute rates, phone companies charge people connection fees for each call or other fees to use their services or maintain special prison phone accounts. The Order requires companies to account for the fees it charges when meeting the requirement for fair and reasonable rates.
  - The Order does not prohibit charging a fee in order to connect a call, but connection charges must be included in the rate calculation. The rates in the Order are based on the cost of a fifteen minute call. This means that it requires that the cost of a fifteen minute call, including the connection fee and per-minute charges, divided by fifteen, is at or below the rates outlined above.
  - Similarly, ancillary fees, or those related to the creation or maintenance of an account, must be cost-based; they cannot exist simply for profit.

- The FCC plans to monitor whether companies are dropping calls in order to collect additional connection fees.
- Phone companies may not levy or collect additional charges for calls for deaf and hard-of-hearing inmates and call recipients.

### **Can Phone Companies Block Calls for Billing-Related Reasons?**

- Companies offering collect calling have historically blocked calls to recipients who do not have an account with the company; the order prohibits this kind of billing-related call blocking unless the company also provides a prepaid or debit calling option.

### **How Will the FCC Enforce the Order?**

- The Order takes effect 90 days after publication in the Federal Register.
- The Order requires providers to file annually with the FCC and provide detailed information on costs and rates for interstate and intrastate calls.
- Noncompliance may result in monetary forfeiture or refunds to individual callers.
- Complaints filed by callers against providers must follow the FCC's formal complaint rules set out in federal law 47 C.F.R. § 1.720.

### **Does the Order Do Anything About Intrastate Rates?**

- No, the current Order only impacts interstate rates. However, state public utility boards can regulate intrastate rates in the same manner.
- State legislatures can also require the state to contract with the company who offers the lowest rate, or bar state and local governments from accepting commissions from phone companies.
- The Order applauds states who have already taken these types of measures, such as New York and New Mexico.
  - The FCC is also considering whether they have the authority to regulate intrastate rates, and if so, how they should go about it.

### **Is the FCC Considering Any Other Action?**

- The FCC is seeking further comments on:
  - how to establish permanent safe harbor and hard cap rates
  - limiting ancillary charges or connection fees
  - whether they have the authority to regulate international calls, and if so, how they should go about it
  - persisting issues with billing-related or other types of call blocking
  - the possibility of greater competition between prison phone companies
  - minimum quality of service standards

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<sup>2</sup> You can download the full order and learn more about the New Jersey Advocates for Immigrant Detainees' campaign for phone justice at our website: <http://www.njphonejustice.org/>