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

**Re: Joint *Ex Parte* Comment for CC Docket No. 96-128
("Wright Petition" Alternative Rulemaking Proposal)**

Dear Secretary Dortch:

We, the undersigned organizations, are contacting you in reference to CC Docket No. 96-128, commonly known as the "Wright Petition," to urge the FCC to take action with respect to high phone rates at facilities that hold immigrants in detention on behalf of the U.S. Immigration and Customs Enforcement agency (ICE).

The problems associated with the prison phone industry and high prison phone rates are well-documented and are described in pleadings and other *ex parte* comments entered on the docket for the Wright Petition. In brief, the prison phone industry is based on a monopolistic model in which companies bid on contracts to provide phone services for individual detention facilities or entire prison or jail systems. As an incentive to obtain these lucrative contracts, prison phone companies provide "commissions" – kickbacks – to the contracting agency. Such kickbacks, which range up to 60% of gross prison phone revenue, result in inflated phone rates. Detention centers that hold immigrants are plagued with the same high phone rates as prisons and jails.

While the FCC lauds itself as "promoting competition, innovation, and investment," it has failed to provide regulatory relief for prisoners and immigrants in detention. The FCC has in the past justified a departure from its traditional regulatory approach by rationalizing that the unique security needs of the correctional setting outweigh the economic benefits of competitive phone rates for consumers. Although it is clear that such penological concerns can be addressed while concurrently providing reasonable phone rates, the FCC has not taken action. Additionally, the security justifications cited by phone companies are inadequately suited to validate high phone rates for immigrants because their detention is civil in nature, not criminal.

Immigrants in detention have a critical need for telephone access, and high phone rates leave them particularly vulnerable. Most immigrants in detention have active deportation proceedings going forward or have filed an application for political asylum, yet they have no right to free counsel in such proceedings. In fact, about eighty-four percent of all detained immigrants must represent themselves because they cannot afford private defense lawyers. Thus, the majority of immigrants in detention have to defend themselves in court, and adequate telephone access is imperative to do so effectively.

All of the legal defenses that exist in immigration court become illusory without telephone access. For example, an applicant for political asylum who fears torture or persecution in her home country must provide corroborating evidence to substantiate her claims. She must obtain letters from family members and witnesses, human rights reports, birth certificates and court records. Telephone access is vital to this process and, if phone calls are cost prohibitive, the person seeking asylum risks being deported to a country where her life is in danger. She must spend hours on the telephone making calls to gather evidence, contact human rights agencies for relevant documentation, and communicate with the court and opposing counsel. Other immigration proceedings, such as U visas for victims of crimes, claims of U.S. citizenship and Cancellation of Removal for Lawful Permanent Residents, all require similar corroborating evidence which can only be obtained through adequate telephone access.

The impact of high phone rates on immigrants in detention is well-documented and remains an unaddressed human rights concern. According to a May 2012 report by the ACLU of Georgia, titled “Prisoners of Profit: Immigrants and Detention in Georgia,” detained immigrants held at several facilities “expressed numerous concerns about phone services at the detention facilities. First, almost all detainees complained of the phone services being too expensive, sometimes prohibiting detainees from contacting their family members altogether.”

This concern was echoed in “Locked Up but Not Forgotten,” a report by the NYU School of Law Immigration Rights Clinic (April 2010). There, an immigrant in detention, Pauline Ndziem, was quoted as saying, “It was very difficult because for the phone card I have to charge \$25 and it’s only 15 minutes. Very quick the money is gone, is finished. I tried to call [my family] once, sometimes three times a week but each time it was \$25.” The report also noted, “In a system where there is no right to counsel and where 84% of immigrants in detention have no attorney, expensive telephone rates are arbitrary, inhumane, and prejudicial.”

The impact of high phone rates on immigrants in detention was aptly illustrated in a March 16, 2010 *New York Times* article. According to the article, after an immigration detention facility in New York City was closed and detained immigrants were moved to the Hudson County Correctional Center in New Jersey, “Obama administration officials stressed that the jail was only a short drive from the city. But under a contract with a private telephone company, calls to detainees’ families and lawyers back in New York are decidedly long distance. The result is a 800 percent increase in the cost of a call, to more than 89 cents a minute, in a phone system so cumbersome that detainees say it impedes their ability to contest deportation or contact relatives.” The article also noted that immigrants held at the Hudson County facility had signed a petition threatening a hunger strike as a result of the expensive phone rates.

A January 2010 report by the Office of Inspector General of the U.S. Department of Homeland Security found that “detainees had, in the past, been inappropriately charged an additional fee to obtain access to a local telephone service,” and that officials “assigned to monitor the telephone services contract were neither monitoring nor evaluating contractor adherence to the contract’s financial reporting requirement for accuracy and fairness.”

Further, in “Unseen Prisoners: A Report on Women in Immigration Detention Facilities in Arizona” by the University of Arizona (January 2009), “Numerous women interviewed were unable to place even a single call to their families for weeks after their arrival at the detention facility. They described exorbitant rates for phone calls, including calls to [their] attorneys and consulates... Given the isolated location of the detention facilities, telephone access is a crucial issue for immigrant detainees. Phone calls are often their only means of contact with their families, attorneys, consulates, and social service providers.”

In 2011, ICE released new Performance-Based National Detention Standards, which state that “Detainees shall have reasonable and equitable access to reasonably priced telephone services,” and “Each facility shall provide detainees with access to reasonably priced telephone services. Contracts for such services shall comply with all applicable state and federal regulations and be based on rates and surcharges comparable to those charged to the general public. Any variations shall reflect actual costs associated with the provision of services in a detention setting.” But the ICE standards are not enforceable statutes or regulations, are not legally binding and contain no enforcement mechanism to ensure compliance. It is up to the FCC to promulgate the “federal regulations” applicable to phone services at immigration detention facilities.

In conclusion, deportation has enormous sociological impacts for both immigrants and their communities, and can strip an individual of the very things that make life worth living – family, home, and emotional and economic security. Phone access is vital to immigrants in detention not only in terms of maintaining contact with their families, but also in terms of securing evidence, witnesses and human rights reports to defend against deportation proceedings and to support asylum applications. Therefore, based on the foregoing, we, the undersigned organizations with an interest in immigrants’ rights, strongly urge the FCC to act promptly on the Wright Petition’s alternative rulemaking proposal by establishing reasonable benchmark rates for interstate phone calls made from correctional facilities, including those that hold immigrants in detention.

Thank you for your time and attention in this important matter;

Sincerely,



Holly S. Cooper
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Supporting Organizations:

Advocates for Basic Legal Equality, Inc.
American Friends Service Committee
American Gateways
American Immigration Lawyers Association
Americans for Immigrant Justice (formerly Florida Immigrant Advocacy Center)
Amnesty International USA
Arkansas Interfaith Conference
Arkansas Justice For Our Neighbors
Asian American Justice Center, member of the Asian American Center for Advancing Justice
Asian Americans for Community Involvement, Center for Survivors of Torture
Asian Law Caucus, member of the Asian American Center for Advancing Justice
ASISTA Immigration Assistance
Atlantans Building Leadership for Empowerment
Boston University Civil Litigation Program, Boston University School of Law
Brooklyn Defender Services
The Bronx Defenders
California Immigrant Policy Center
California Rural Legal Assistance Foundation
Casa de Paz
Casa Esperanza
Causa Justa :: Just Cause
Center for Gender & Refugee Studies
Center for New Americans
Centro Legal de la Raza
Chicago New Sanctuary Coalition
Cobb Immigrant Alliance
Community Initiatives for Visiting Immigrants in Confinement (CIVIC)
Community Legal Services of East Palo Alto
Cornell Law School Immigration Appellate Law and Advocacy Clinic
Detention Dialogues
Detention Watch Network
East Bay Community Law Center
El Zócalo Immigrant Resource Center
Ella Baker Center for Human Rights
Enlace, a project of Communities United for People
Esperanza Immigrant Rights Project of Catholic Charities of Los Angeles, Inc.
Families for Freedom
Florida Coastal Immigrant Rights Clinic
Florida Institutional Legal Services, Inc.
Florence Immigrant & Refugee Rights Project
Georgia Detention Watch

Georgia Immigrant and Refugee Rights Coalition
Heartland Alliance's National Immigrant Justice Center
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Defense Project
Immigrant Legal Resource Center
Immigrant Rights Clinic, Washington Square Legal Services, Inc.
Immigration Clinic, University of Miami School of Law
Immigration Justice Task Force, Unitarian Universalists for Social Justice
Immigration Legal Assistance Program, Lutheran Social Services of New England
IRATE & First Friends
Jesuit Social Research Institute/Loyola University New Orleans
Justice for Our Neighbors - Nebraska
Justice for Our Neighbors - Southeastern Michigan
Lawyers' Committee for Civil Rights of the San Francisco Bay Area
Legal Services for Children
Michigan Coalition for Immigrant and Refugee Rights
Migrant Justice
Monmouth County Coalition for Immigrant Rights
National Immigration Law Center
National Immigration Project of the National Lawyers Guild
National Latina Institute for Reproductive Health
National Lawyers Guild
North Carolina Immigrant Rights Project
New Orleans Workers' Center for Racial Justice
New Sanctuary Coalition of New York City
North Georgia Immigrant Justice
Northwest Detention Center Roundtable
Northwest Immigrant Rights Project
Pax Christi New Jersey
Political Asylum/Immigration Representation Project
Public Counsel
Research Institute Without Walls
Rocky Mountain Immigrant Advocacy Network
San Francisco Immigrant Legal & Education Network
Sisters of Mercy West Midwest Justice Team
Tennessee Immigrant and Refugee Rights Coalition
Ubuntu Immigration Project, Countryside Church UU
UC Davis Civil Rights Clinic
U.S. Jesuit Conference, Secretariat for Social and International Ministries
Vermont Immigration and Asylum Advocates
Washington Defender Association's Immigration Project
Who Is My Neighbor? Inc.
Yolo Interfaith Immigration Network

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