

# Inmate pay phone access fosters family ties, enhances security for all

## *Controls to protect public, commissions fuel long-distance debate on call system*

**N**o other program as much as this one seeks to balance the oftentimes competing and legitimate needs of inmates and their loved ones on one side, with prison security and the general public's concerns on the other.

At first blush, one would be hard pressed to identify the debate: since studies have shown maintenance of family ties reduces recidivism, it would seem allowing inmates such a privilege would benefit all New Yorkers. And the possibility of losing phone privileges would seem to aid in fostering positive inmate behavior and maintaining prison security.

But the debate flows from just those propositions:

- How far should the state go in its restrictions on the program, controls that are designed to enhance prison security and promote public safety?
- Should the state be charging commissions on the phone calls to at least partially offset the cost of other inmate programs that some say should be funded by all taxpayers through the state's budget?



**A bank of inmate phones at Hudson with fence perimeter and razor wire in the background.**

These are among the issues that have dogged the Inmate Call Home Program since its inception.

The intent here is to set out the state's position on the past and present of the program, and to explain a major policy and rate change in the program taking effect this month. The goal is to sort out these issues so that, regardless of one's position on the issue, readers are aware of the background and the state's position on the Inmate Call Home Program.

Up until the mid-1980s, each prison in the state negotiated its own contract with local telephone companies to provide collect call-only inmate phone service. The rates charged and program rules were as diverse as the system.

In 1985, the first call-home program was piloted at Sing Sing Correctional Facility. From that beginning grew today's system with uniform rates and program rules.

There are now 3,335 collect call-only telephones available to the state's 66,000 inmates in common areas in the 71 facilities operated by the Department of Correctional Services. Phones are operational from 7 a.m. to 11 p.m.

Approximately 500,000 inmate calls are now completed each month, totaling roughly 9.5 million minutes. Attempted calls that are not completed add in excess of 2 million phone uses per month.

There are those who surmise that the cost of those inmate telephone calls should be approximate to what New Yorkers pay when they pick up their telephones at home and dial a call.

But that residential customer is paying in the neighborhood of \$30 a month to the phone company for the privilege of having a phone, before even one call is made. Those basic charges include federal, state and local taxes and excise surcharges, line and equipment fees plus other costs.

For 66,909 inmates, those \$30 per month charges would total \$24 million annually – but inmates do not pay a penny in monthly charges to have phone service available to them.

The state realizes that its prison population includes violent and predatory felons, and those familiar with scamming the public and breaking laws in other ways.

## **Auditors OK phone contract, spending**

An audit by the state Comptroller spanning five years and 35 million inmate calls found appropriate oversight of the Inmate Call Home Program as well as proper accounting for commissions totaling \$109 million received by the state during the period April 1, 1996 through March 31, 2001.

In its audit issued in July 2003, the Comptroller wrote: "The Department was required to deposit all program revenue in a designated state account. We determined that all of the revenue received during the five-year contract period was deposited in this account.

"Further, all expenditures from this account should relate to certain authorized purposes that are intended to benefit the inmates at the correctional facilities (such as inmate health care and family visiting programs). We examined a sample of \$502,688 in expenditures for a one-year period, and determined that all of the expenditures related to authorized purposes.

"We also determined that the expenditures were properly approved and adequately documented.

"We conclude that an appropriate degree of internal control is provided by these policies and procedures," auditors said of the contract with vendor MCI.

The Comptroller recommended an outside firm or some analytical measurement be employed to enhance checks on MCI's accounting, even though it found no fault in the Department's review of MCI's accounts. That additional check on MCI would cost \$150,000 annually, auditors said. ☎

The state must therefore have systems to safeguard the public against inmate misuse of the phone system. It must also have ways to prevent inmates from using phones to disrupt prison security by, for example, planning escapes.

Therefore, each inmate is assigned a Personal Identification Number and can register up to 15 telephone numbers at a time on that PIN. That allows the prison system to know which inmates are making calls and who they are calling.

Together, inmates have registered 1,331,674 telephone numbers, about one-third of which are active at this time.

PINS and phone registries are only the beginning of the system that the Department must have in place to safeguard the public and maintain prison security when inmates have access to telephones.

#### **The past: developing a system to meet needs**

The prison inmate telephone system, to ensure facility security and public safety includes:

- Multi-lingual operators to assist and communicate with inmates fluent in other than English.

- Implementation of call-blocking to ensure inmates are not making random calls to or harassing the general public, calling the victims of their crimes, unrelated minor children, witnesses who testified against inmates, prosecuting district attorneys, presiding judges or unincarcerated co-defendants.
- Automatic blocking of all 800 or 900 area code numbers.
- The playing of a pre-recorded message at the beginning of each call informing the recipient that the call is being placed from a prison, followed by calling inmates stating their name.
- Inmates may have criminal cohorts on the outside planning future crimes, so the Department needs to know to whom inmates are talking. Therefore, third party calling is strictly forbidden and, through staff monitoring as well as certain technology, the Department attempts to prevent all such calls.

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## **Court upholds phone audio taping as a tool to detect inmate crimes**

Elsayid Nosair provides the link federal prosecutors need to connect him and others to the 1993 bombing of the World Trade Center. Buffalo prosecutors prove that David “Sly” Green of the L.A. Boys is the mastermind behind a substantial criminal operation in the Erie County area. Suffolk County smashes a heroin packaging ring in Central Islip, leading to 20 arrests. Dutchess County connects two Mad Drama street gang members to an unsolved murder in Poughkeepsie. The Manhattan district attorney catches up with and convicts a suspect in a 12-year-old kidnap-murder.

All of these cases share two commonalities: key defendants were in prison at the time criminal investigations were underway. And audio tapes of inmate phone calls helped prosecutors to build their cases, conversations that included documentation on the originator and the name and location of the telephone call recipient(s).

The Department’s ability to document who is receiving inmate calls and the recipient’s location have often been crucial in detecting crimes committed in prison, and in protecting the public from crimes committed or being planned by inmates and outsiders.

While the lack of computerization would require a lengthy hand count of such cases made in past years by the Department, 2003’s computerization shows 250 cases in the first seven months of the year – cases being investigated by the Department or federal, state or local law enforcement agencies involving taped inmate conversations.

None of those investigatory costs are underwritten by the Inmate Call Home Program: all are paid directly by taxpayers. An argument could be made that law enforcement agen-

cies should be allowed to bill the program for prosecution of inmates who misuse the system in criminal enterprises.

Inmate Green complained that the taping of inmate phone calls violated his rights because it was done without a court order or his direct knowledge.

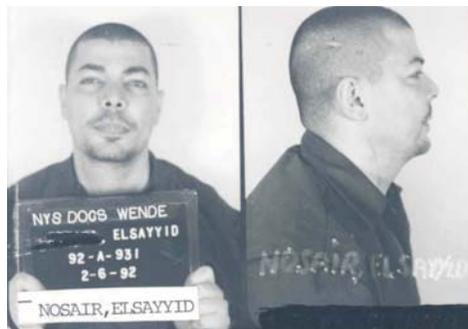
In rejecting his claim and upholding the Department’s policy, a federal appeals court noted there are notices in English and Spanish located in the area of all inmate phones. The notice reads: “All inmate telephone conversations are subject to electronic monitoring by Department personnel.”

It also threw out his contention that his knowledge of the potential for taping did not indicate his agreement:

“When an inmate has repeatedly received notice that calls placed on prison telephones are subject to surveillance,” the court reasoned, “the evidence indicates that he is aware of the monitoring program, and he nevertheless uses the telephones, by that use he impliedly consents to be monitored...”

The court was also unimpressed with his argument that the state went beyond monitoring when it taped his calls.

Said the court, “That is of no importance. Recording is simply one way of preserving the information gained from the electronic monitoring. The prison need no more have provided notice that it would record the intercepted conversations than that it might maintain shorthand notes. Moreover, the relevant New York state regulations provided public notice that the state recorded inmate telephone conversations.” ☎



- To monitor compliance with these legitimate security needs, inmates are warned via signs in English and Spanish that equipment has been installed and staff assigned to monitor calls that are tape recorded, stored and retrievable.

Besides these protections built into the prison phone system to safeguard the public, other controls are necessary in order to maintain safety and security in prison. The system must also provide for:

- The ability to flag and then disconnect any inappropriate PIN use or to hang up on the third party transfers.
- The ability to recall phone conversations for a period of time set by the Department.
- The ability to set time limits on inmate calls in order to maintain availability of phones to all inmates. The current limit is 30 minutes per call.
- The ability to transfer an inmate's phone registry and PIN to another prison as the inmate moves, and to terminate activity on that PIN and registry at the sending facility.
- A statewide system that allows it to be monitored from various locations. The system provides access to any inmate's phone records and to review suspect conversations.
- The ability to block any telephone number from being dialed at any individual prison or across the system.

No outside phone company charges residential customers for these controls because they are not required on those systems. As a result, phone charges under the Inmate Call Home Program are in part higher because of these stringent, state-of-the-art procedures necessary to safeguard the state's prisons and to protect the public from inmates who would misuse the system to commit crimes.

New York taxpayers directly finance some aspects of the phone program. Prison counselors, for example, maintain individual inmate call registries. If an inmate commits a disciplinary infraction, the Department's computer mainframe has been designed to automatically stop all telephone access by inmates who have lost this privilege as punishment for misbehavior. Phone use by the inmate cannot be restored unless or until the sanction period has been served or the mainframe has recorded a change in the punishment.

In the first seven months of this year, the Department has, on its own or in conjunction with other law enforcement agencies, participated in 250 investigations that, in part, relied upon the phone system to generate evidence or investigatory leads.

#### **The present: preserving the system to protect the public**

Under state law, every phone company has the right to compete on an equal footing for this contract, which by law is publicly advertised and competitive bids sought.

That competitive bidding process is reviewed and approved by the state Attorney General and then by the Office of the State Comptroller. Only then is the contract awarded, in this case to MCI. MCI is the nation's second-largest long-distance carrier

## **PSC details phone rate decision**

In a December 7, 1998, recommendation by staff adopted by the state's Public Service Commission, staff outlined tariff revisions that were to be made in the Inmate Call Home Program. PSC Communications Division staff found:



“MCI's contract with DOCS sets forth the terms and conditions under which MCI will provide calling services to correctional facilities in New York for a three year period. DOCS has the right to renew the contract for two additional one year periods. Under the terms of the contract, MCI provides collect and person-to-person collect calling to inmates of the correctional facilities, and provides DOCS with a number of security features not traditionally associated with collect calling.

“MCI's systems can be programmed by date and time to turn on and off, limit inmate calls to a specific length, limit the number of calls and recipients of calls available to each inmate, and restrict certain classes of service (such as 800 or 900 calls). DOCS also requires MCI to provide monitoring and recording capability, including all equipment necessary to perform these functions. Because of these additional costs, MCI asks that its Maximum Security service be treated as a unique service not subject to the rate caps applicable to standard Alternate Operator Service.

“The service provided by MCI and DOCS is more than just the provision of collect call service. The service permits the selective blocking and passage of certain calls from the inmates, allows for the ability to monitor and record conversations, includes some 150 high capacity T-1 facilities to handle the traffic from 3500 phones, and provides for maintenance and repair of the telephones.

“We should also note that the FCC has elected to forbear from imposing rate caps or benchmarks on interstate calls from prisons. The FCC reasoned that the communications equipment employed for legitimate security reasons could result in higher rates on collect calls from inmates in prisons than the rates from ordinary locations.” ☎

as well as the largest carrier of inmate phone programs. The system it put in place uses state-of-the-art equipment.

MCI bills customers for their calls, and pays the state a commission on them. Customers are not required to be MCI customers to receive telephone calls from inmates. They must however, either subscribe to a telephone company that will collect and forward charges to MCI, or else they must have a direct-payment arrangement with MCI.

Like any telephone company, MCI has the right to suspend or terminate service for nonpayment of bills.

MCI pays New York's taxpayers a commission rate equal to 57.5 percent of the gross profits on calls placed through its system.

While some states have contracts under which they receive commissions of less than 57.5 percent, that often results in less money in the taxpayers' pocket and improved balance sheets for telephone vendors.

Some program critics, unaware or in spite of the regulations and controls under which the Inmate Call Home Program operates, object to what they consider exorbitant rates, which average 16 cents per minute across the state.

They believe the system should charge rates more in line with residential rates. However, none has recommended that inmates be assessed the monthly phone service fees or any equivalent charges paid by residential customers.

Other critics believe that the state should forego any commissions, and transfer to the taxpayers all costs borne by the Inmate Benefit Fund described below.

That debate has provided the niche in recent years for the creation of phone companies specifically designed to serve inmate families by circumventing prison rules and public safety.

Known as "resellers," they operate no equipment or systems of their own. Instead, they go into a community near a prison and buy a block of local telephone numbers.

They then re-sell these numbers to inmate families. They explain to the families that when inmates call these local numbers, the calls will be forwarded to the recipient's home phones – oftentimes hundreds of miles away – over systems that charge rates far lower than those charged by MCI.

The prison community addresses assigned to these resold local numbers may or may not even exist, but one thing is for sure: they are not the residence of the call recipient.

There is no communications platform today that guarantees the detection of all third-party transfers, especially those using digital switches. As a result, the reselling process thwarts major portions of the security system designed to protect the prison system and New Yorkers in general. That's because as a matter of basic security, the Department

## Phone commissions earmarked for inmate, family programs

Since 1987, two years after the statewide inmate telephone program began, the Governor and the Legislature have required that all commissions be placed in and dispensed from a special account: the Family Benefit Fund (FBF).

That ensures that, since the funds came from inmate-related sources, they could identify these dollars and budget them each year specifically for programs serving inmates or their families.

Of the \$23.4 million in commissions anticipated this fiscal year, the state budget allocates \$17.6 million for medical care, including funding for the state's AIDS Institute, AIDS pharmaceuticals, staff training and related programs. While those are certainly legitimate state expenditures, the fact they are made from the FBF reduces the taxpayers' burden.

Commissions on the phone program pay \$330,000 annually for operation and maintenance of phone equipment – a cost that excludes the staff hours and equipment devoted to interface the system with the Department's mainframe, the cost of counselors maintaining individual inmate phone registries, the staff time to monitor inmate phone calls and the salaries, expenses and resources of investigators on the federal, state and local law enforcement level probing allegations of misuse of the system or its use in criminal activities.

The existence of the FBF also allows the state budget to address a second area: financing some inmate privileges for which taxpayers and legislators have expressed an unwillingness to spend tax dollars.



**Inmates with their children at Taconic.**

If not for the FBF, some legislators have said, these programs would be dropped from the budget before they would support funding them with tax dollars.

Among those programs to be paid for or partially offset by the \$5.8 million balance of the fund this year are:

- Cable TV, wherein the fund pays for basic cable service but inmates themselves must pay if they want premium channels. "Sex channels" are not allowed under any circumstances. (\$231,000 from the FBF)
- Free bus service, that transported 26,094 visitors from New York City and upstate cities to various prisons last year. (\$809,540)
- The Family Reunion Program, which allowed 17,188 relatives to spend a two-day period last year with inmates inside the secure perimeter at 16 prisons accommodating 18 facilities. (\$414,000)
- Nursery and family development programs at Bedford Hills and Taconic that, among other things, last year saw 67 new mothers reside with their infants up to age 18 months. (\$1.1 million)
- Medical parole, allowing 279 terminally ill inmates to earn release since 1992. (\$81,000) ☎

needs to know that the telephone number dialed actually matches the location where the call is completed.

The profits these companies receive from inmate families should properly be collected under the state contract with MCI. After all, MCI competitively bid and was properly awarded a state contract to be the exclusive provider of the phone system and the necessary security enhancements.

Resellers are therefore pocketing commissions that should rightfully flow from MCI to state taxpayers who finance this and other inmate programs.

These companies say they are willing to provide the Department with numbers they resell for the state's verification. It is the Department's position that the resellers have no right to provide any service whatsoever, and that taxpayers should not foot the bill to monitor, verify or reconcile these numbers. MCI, by comparison, is required to perform all those services under its contract.

The Department believes the resellers should be stopped, and has thus far been successful in its legal steps to prevent them from interfering with prison security, public safety and the MCI contract.

At the same time, inmates have been advised that, because usage of these numbers employs third-party dialing that violates Departmental policy, they are subject to disciplinary sanctions if found to be using such numbers.

**The future: making the phone system fairer**

To date, the Inmate Call Home Program contract has:

- Received the state Attorney General's approval as meeting all standards set for state contracts.
- Gained approval by the state Comptroller, both in the contract bidding process and by his audit of the program's performance and spending.
- Obtained approval for telephone rates from the Public Service Commission as fair and equitable.
- Documented before a federal judge that the system is appropriate while he denied the injunctive relief sought by one would-be reseller of phone numbers.

Rather than becoming complacent with that track record, the Department instead views it as one to build upon.

Commissioner Glenn S. Goord recognizes that the existing telephone rate structure, in an attempt to attain fairness, uses complex formulae that cause the eyes to glaze over.

The rate structure is laid out on a single page – but a single page that lists 126 separate rates based upon the time the call is placed and the distance it covers. It is the same confusion that often confronts the general public when deciding between competing telephone company offers.

Commissioner Goord believes rate structures both in and

<b>Inmate Call Home Program rate change comparison</b>			
<i>Data from 09/01/01 – 08/31/02</i>			
	<b>Intralata calls</b>	<b>Interlata calls</b>	<b>Interstate calls</b>
<b>Number of calls</b>	1,168,432.00	4,669,669.00	868,816.00
<b>Number of minutes</b>	21,084,644.00	86,878,767.00	16,234,652.00
<b>Percent of all calls</b>	17.00	70.00	13.00
<b>Revenue generated</b>	\$3,522,858.00	\$30,068,304.00	\$5,763,436.00
<b>Pre-8/1/03 call cost<sup>1</sup></b>	3.02	6.44	6.63
<b>Post-8/1/03 call cost</b>	6.04	6.04	6.04
<b>Percent change</b>	+100.00	-6.00	-9.00
<sup>1</sup> Estimates based upon average inmate calls of approximately 18+ minutes billed, like all phone companies, to the next-highest minute.			

out of prison should reflect fairness:

- Everyone using a phone should pay a fair share of the base cost to make the system work.
- Confusing rates structures should be eliminated wherever possible in favor of flat rates.
- Callers should have a pretty good idea when they pick up the phone as to what the call will cost them.

Effective August 1, 2003, the Department implemented revenue-neutral changes that make charges clearer and allow for easy estimation of the cost of each call:

- Picking up any of the Call Home phone handsets to make a call will cost a \$3 connect fee. That raises the interlata rate from \$1.58 to the \$3 already charged for all other calls.
- Calls will cost a flat 16 cents per minute, raising intralata calls from nine cents and reducing the average interlata and interstate by two and three cents respectively.

Enacting fairness in the rate structure increases the cost of local calls. But here, time and distance do matter in balancing the realities of the location of the state's prisons:

- Families of that 17 percent of inmates incarcerated closest to home will see fairness increase the cost of their phone calls. But they can more easily enjoy face-to-face visits with their incarcerated loved ones who are housed near them.
- Families of the 83 percent of inmates housed further from home – those who must travel the greatest distance to visit loved ones – will see fairness reduce their phone costs.

While fostering inmate family ties remains a high priority for the Department, its mission remains the same: safeguarding its employees and the general public, while providing constitutional incarceration and programs for inmates.

All of these goals are advanced by preventing safety and security disruption by resellers, and by making phone rates more equitable. ☎