

# PRISON POLICY INITIATIVE

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July 17, 2013

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

Dear Ms. Dortch,

I am submitting this letter to share several points on the differences between prisons and jails that I didn't have time to address during my presentation at the *Workshop on Reforming Inmate Calling Services Rates* on July 10<sup>th</sup>.

In short, the industry and its sheriff and jail partners have repeatedly emphasized the fact that local jails are very different from state and federal prisons. From the perspective of the sheriffs who run these facilities for local governments, rather than running a larger facility for a state or federal government, this is no doubt true. But from the perspective of the FCC deciding whether to protect consumers from predatory pricing, the distinction between jails and prisons is largely<sup>1</sup> irrelevant.

By way of background, I've prepared a helpful table to provide an overview of prisons and jails:

	<b>Prisons</b>	<b>Jails</b>
<b>Daily population<sup>2</sup></b>	1,504,150	735,601
<b>Operating authority</b>	State or Federal	County or Municipal
<b>People incarcerated are largely</b>	Convicted of felonies (more serious crimes)	Presumed innocent, or convicted of misdemeanors (less serious crimes)
<b>Number of facilities<sup>3</sup></b>	1,821	3,085
<b>Average daily population per facility<sup>4</sup></b>	786	204

<sup>1</sup> There is, however, one relevant distinction between prisons and jails that opponents of regulation are reluctant to bring to your attention: 61% of people in jail on any given day have not been convicted of anything. Rather, they have been arrested, are attempting to make bail, and are presumed innocent under the law. (The 61% figure is drawn from Table 7 of the Bureau of Justice Statistics report *Jail Inmates at Mid-Year 2011, Statistical Tables*, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4235>.)

<sup>2</sup> Bureau of Justice Statistics, *Correctional Populations in the United States, 2011*, Table 2, (Nov. 2012) available at <http://www.bjs.gov/content/pub/pdf/cpus11.pdf>.

<sup>3</sup> Prison data is based on an analysis of United States Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. *Census of State and Federal Adult Correctional Facilities, 2005*.

ICPSR24642-v2. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2010-10-05. doi:10.3886/ICPSR24642.v2 available at

<http://dx.doi.org/10.3886/ICPSR24642.v2> and the jail data is based on an analysis of United States

Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. *Census of Jail Facilities, 2006*. ICPSR26602-v1. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2010-01-26. doi:10.3886/ICPSR26602.v1 available at

<http://dx.doi.org/10.3886/ICPSR26602.v1>.

At the FCC's July 10<sup>th</sup> workshop, a number of presenters used different examples to make the rhetorical point that because some jails are small, no jails should be subject to price regulation. I heard, for example, concerns about how FCC regulation would affect telephone companies' contracts with 50-, 24-, and 15-person jails.

The correctional population data simply do not support such claims, and I'll examine here the most extreme red herring presented at the workshop: 15-person jails.<sup>5</sup> According to the *Census of Jail Facilities*,<sup>6</sup> there were 679 jails holding between one and 15 people in 2006. The combined total number of people held in these tiny jails, however, comprises an extremely small percentage of the total jail population.<sup>7</sup> Put another way, the vast majority of people who are held in jail — and therefore the vast majority of the people who create business for telecommunications companies by placing calls to their families — are in larger facilities.

The 2006 *Census of Jail Facilities* shows that just 5,160 people were confined in those 679 jails, or 0.84% of the entire jail population.<sup>8</sup> Of the 2.3 million people incarcerated in all prisons and jails in the United States, the portion confined in these tiny jails is a microscopic 0.22%.<sup>9</sup>

The Sheriffs Association, the American Jail Association, and the industry as a whole have presented you with a red herring by focusing on small jails. I urge you to ignore this distraction and act quickly bring fairness to the prison and jail telephone market.

Sincerely,



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<sup>4</sup> *Ibid.*

<sup>5</sup> The other examples cited at the workshop don't stand up to scrutiny either. According to the same dataset, there were 10,587 people confined in jails that held 1-24 people, and 31,846 people confined in jails that held 1-50 people. Thus, of the 2.3 million people incarcerated in this country, only 1.4% are held in jails that hold 1 to 50 people. Small jails, no matter how they are defined, are a red herring intended to delay regulation of telephone calls from correctional facilities.

<sup>6</sup> See *supra* note 3.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> This calculation is based on *supra* note 3 and *supra* note 2.