

**JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION
OF THE VIRGINIA GENERAL ASSEMBLY**

**Review of the
Department of
Corrections' Inmate
Telephone System**

House Document No. 70 (1997 Session)

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Preface

Item 14I of the 1996 Appropriation Act directed the Joint Legislative Audit and Review Commission (JLARC) to examine a number of different issues related to the Department of Corrections' (DOC) inmate telephone system. These issues include a comparison of policies in other states, the financial impact on inmate families, and the need for oversight by an entity independent of DOC. This report presents the staff findings and recommendations regarding these and other issues related to DOC's inmate telephone system.

This study found that the fiscal impact on recipients of long distance calls completed through the inmate phone system could be reduced by making the rates charged comparable to those the public pays for similar calls. Even with reduced rates, however, the State could continue to receive revenue from the inmate phone system. All of the southeastern states contacted for this review, and many of the states nationwide, receive some form of revenue from their inmate telephone systems. By making the rates charged for the inmate system comparable to those the public pays for similar calls, any revenue the State received would not be from charges in excess of standard collect call rates.

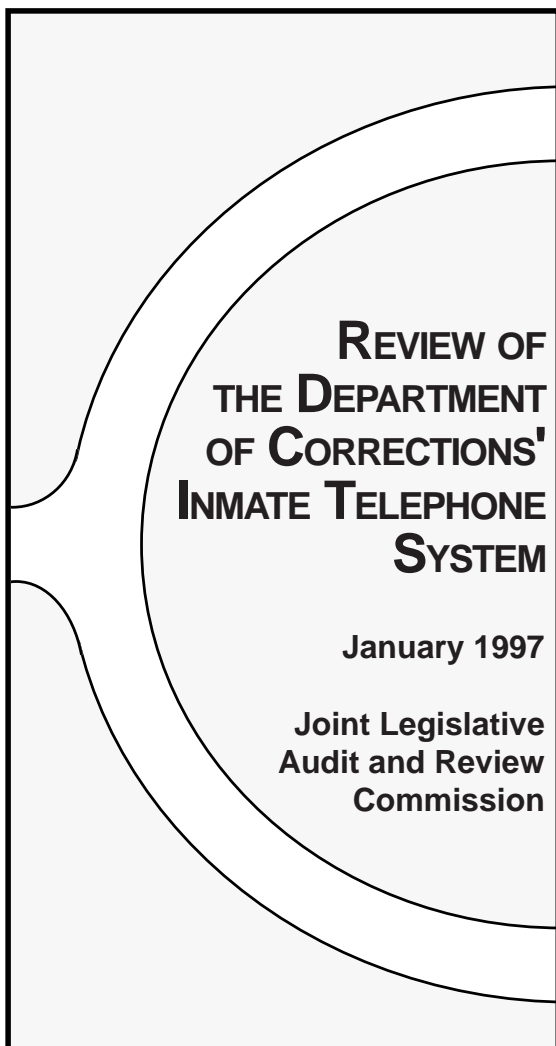
To address shortcomings regarding administration and oversight of the system by DOC, responsibility for the system should be transferred to the Department of Information Technology (DIT). DIT has the necessary infrastructure to best support more proactive and consistent administration of the inmate telephone system. Finally, additional options designed to improve aspects of the inmate phone system, such as requiring an independent audit and advance notification of rate changes, should be considered.

On behalf of JLARC staff, I would like to thank the staff of the Department of Corrections, the State Corporation Commission, the Department of Information Technology, and MCI Telecommunications Corporation who assisted in our review.

Philip A. Leone
Director

January 29, 1997

JLARC Report Summary



Providing inmates access to telephones may result in a number of positive benefits, according to some corrections officials. As a result, telephones have routinely been available to inmates in Department of Corrections (DOC) facilities since the early 1970s. However, problems with the early systems mitigated some of the potential benefits. There was no telephone system uniformity statewide, DOC's role in the op-

eration of the system was staff intensive, and there were few proactive security features available. These shortcomings, in part, led to the 1991 acquisition by DOC of the current inmate phone system, operated by MCI Telecommunications Corporation (MCI).

The current inmate phone system successfully addresses many of the shortcomings of the previous methods used to provide phone service to inmates. DOC's involvement in the administration of the inmate phone system has been significantly reduced. Inmates' access to telephone service is reportedly more uniform across the DOC system. Moreover, the current inmate phone system has security features designed to proactively reduce fraudulent activities conducted by inmates over the telephone as well as to enhance the operation and security of DOC's institutions. Finally, MCI is also required to provide the State with a portion of the billable revenue generated by inmate calls.

Item 14I of the 1996 Appropriation Act directed the Joint Legislative Audit and Review Commission (JLARC) to examine a number of different issues related to the DOC inmate phone system. These issues include a comparison of policies in other states regarding inmate phone systems, the financial impact on inmate families, and the need for oversight by an entity independent of DOC.

While the current DOC inmate phone system has many beneficial features over the previous methods for providing inmate phone services, there are several issues which should be addressed to improve the existing system. Significant findings of this report include:

- Steps to reduce the fiscal impact on recipients of long distance collect calls from the inmate phone system should be taken. The fiscal impact on DOC inmate call recipients has been increasing steadily each year since FY 1992 and could mitigate any benefits attributed to the inmate phone system. Although a number of non-rate factors such as growth in the DOC system's inmate population have contributed to the increasing fiscal impact, the higher rates and long distance surcharges have also increased the fiscal impact on call recipients.
- If the fiscal impact on call recipients is reduced, any revenue the State could receive from the system should be retained. Many states receive commission revenue from their inmate phone systems. However, as in other states, the commission revenue should be used to provide or enhance programs or services that benefit DOC inmates.
- To improve administration and monitoring, responsibility for developing, administering, and monitoring the DOC inmate phone system should be assigned to the Department of Information Technology (DIT). DIT has the necessary infrastructure and resources available to address issues related to telecommunications services and is currently responsible for the acquisition and provision of these services for the State.
- To further improve the inmate phone system and provide for more proactive administration, DOC should require the submission of more detailed inmate phone system data, require an independent audit of the system's

operations, and implement mechanisms intended to benefit inmate call recipients.

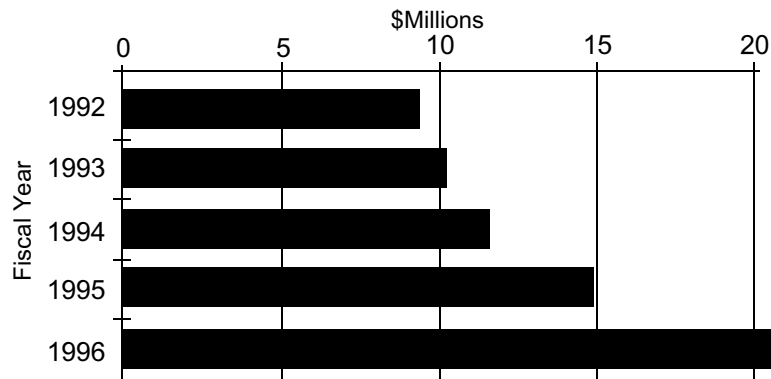
Steps to Reduce the Fiscal Impact on Inmate Call Recipients Should Be Taken

All calls from inmates in DOC facilities are completed as collect calls. As a result, the fiscal impact of receiving inmate calls is placed directly, although voluntarily, on the call recipient and not the inmate. This review indicates that the total billable charges to call recipients have increased significantly since FY 1992. A number of factors have contributed to this increase. Inmates are making more calls that last longer, and the total inmate population has increased since FY 1992. In addition, the increases in the rates charged, primarily the long distance surcharge, have also impacted the total billable charges.

A number of unintended consequences of the increasing billable charges of the phone system could occur. First, call recipients noted that the increasing costs associated with using the system may require them to reduce the number of calls they can accept from inmates, potentially mitigating any benefits that accrue through telephone contact. Second, the impact on call recipients varies by DOC facility. Inmates in DOC facilities located in more remote areas of the State place calls that cost more than calls placed by inmates in facilities located in the central region of the State. As a result, facilities that may be the most difficult to visit due to the distance from home are also the most costly from which to receive calls.

Therefore, steps should be taken to limit the fiscal impact of the telephone system on recipients of calls from DOC inmates. Individuals receiving collect calls appear to have an expectation that rates and charges will be similar to those levied on collect calls completed outside of the inmate

Inmate Telephone System Total Billable Charges Fiscal Years 1992-1996



phone system. Linking charges for calls made through the DOC inmate phone system to charges the public pays for collect calls would reduce the total fiscal impact on call recipients. Nonetheless, call recipients will need to exercise some personal responsibility to limit the number of calls accepted in order to reduce the fiscal impact of inmate calls.

Commission Revenue Could Be Retained and Utilized for Inmate Programs

Commission payments are used by telephone companies in part to secure the right to be the exclusive provider of inmate telephone services to state correctional systems. Reflective of this practice, many of the correctional systems in the United States receive some form of revenue from their inmate phone systems. However, unlike many other states, Virginia has not specified that any portion of commission revenue be used to enhance inmate programs or services. To identify the potential uses for any revenue from the inmate phone system, DOC should develop a proposal for utilizing the revenue and include measurable goals and objectives for enhancing inmate pro-

grams or services.

Commission Payments for State Telephone Systems Are Common. For this review, the study team interviewed corrections officials in a number of southeastern states regarding their inmate phone systems. These states all reported receiving commission payments from the companies that provide inmate phone services. In addition, other studies also indicate that prison inmate telephone system commission payments are common throughout the country. For instance, a 1995 study of state corrections departments in the United States reported that 38 of 41 respondents received commission payments from their inmate phone system.

Utilization of Inmate Telephone Revenue. The majority of the states contacted by JLARC staff indicated that either all or a portion of inmate telephone commission revenue is returned to the state corrections department or designated for specific inmate welfare programs. For example, in Arkansas, the revenue is to be used for the benefit of inmates and has been used to buy recreational equipment. In Kentucky, where the revenue is allocated entirely to the state corrections' department, the revenue is used

by the department to offset the cost of providing health care to inmates. Moreover, corrections officials in other states have indicated that revenue from inmate telephone commissions has assisted them in providing programs which previously lacked adequate general fund appropriations.

DOC Inmate Programs Could Benefit from Commission Revenues. Although DOC inmate telephone system revenue is not specifically used for inmate purposes at this time, DOC staff indicated that there are inmate programs that could benefit from the revenue. Potential areas identified include inmate treatment programs, academic and vocational education programs, and the expansion of telemedicine videoconferencing between hospitals and DOC facilities. In order to prioritize programs' needs for this funding, DOC should develop a proposal for using the inmate telephone revenue to fund specific programs. The proposal should include goals and objectives for programs that are requested to receive the funding.

Administration of Inmate Phone System Contract Could Be Transferred

The mandate for this study also required JLARC to review the need for oversight of the inmate phone system. The principal framework in which the inmate phone system operates is the contract. Therefore, a properly written and proactively administered contract is necessary to ensure that the needs and expectations of DOC, inmates, and call recipients are met. Nonetheless, concerns with the adequacy of the oversight and monitoring provided the inmate phone system have been identified.

In addition, a 1992 study by the State Crime Commission also cited concerns with DOC's oversight and monitoring of the system.

Moreover, the telecommunications industry is a rapidly evolving and technology-driven industry. Significant changes have occurred over the last decade in the industry and more will continue to occur. DIT appears to be the agency with the proper focus and infrastructure to best support more proactive and consistent administration of the inmate phone system in this rapidly changing environment. DIT also appears to be better suited to keeping pace with rapid changes in the telecommunications industry. Finally, including the inmate phone system as part of the next statewide telecommunication contract could also be beneficial in the negotiation process for the provision of the State's telecommunication services.

Additional Options for Improving the Inmate Phone System

In order to enhance the ability of the contracting agency to administer the inmate phone system, the next contract should require the submission of more detailed data related to the system's operation. The data should also be submitted in an automated format for easier analysis and auditing. Moreover, the next contract should require that an independent audit of the phone system's timing, billing, and billable and commission revenue be provided. Finally, additional mechanisms designed to benefit call recipients — such as notification of rate increases and input into the design of the next system — should be implemented.

Table of Contents

	Page
I. Introduction	1
Overview of the Inmate Telephone System	1
JLARC Review and Report Organization	10
II. Impact of the Inmate Phone System	13
Fiscal Impact of the Department of Corrections' Inmate Phone System	13
Steps to Reduce the Fiscal Impact of the Inmate Phone System Should Be Taken	22
III. Commission Revenue, Administration of the System, and Options for Improving the System	31
Inmate Telephone Commission Revenue	31
Administration of Inmate Phone System Contract Should Be Transferred to DIT	40
Additional Options for Improving the System	46
Appendixes	51

I. Introduction

Item 14I of the 1996 Appropriation Act directed the Joint Legislative Audit and Review Commission (JLARC) to examine the fees, costs and revenues related to operation of the Department of Corrections' (DOC) prison inmate telephone system (Appendix A). The mandate further specified that the review shall include, but not necessarily be limited to: (1) a comparison of policies in other states regarding inmate phone systems; (2) the financial impact on inmate families; and (3) the need for oversight by an entity independent of DOC.

Several factors apparently provided the impetus for this study including increases in the State's commission rate from the DOC prison inmate telephone contract, increases in surcharges for inmate long distance collect calls, and concerns about the ability of call recipients to pay for collect calls originating from DOC facilities. Finally, there have been concerns expressed by call recipients regarding the quality of phone services and DOC's responsiveness to rectify identified deficiencies.

This chapter provides an overview of the inmate telephone system, including a discussion of the role of telephone use by inmates and the history of telephones in Virginia's prisons. The features of the current inmate phone system in use in DOC facilities are also described. The chapter concludes with a discussion of the current JLARC review, a description of the research activities conducted by JLARC staff to complete this study, and an overview of the report's organization.

OVERVIEW OF THE INMATE TELEPHONE SYSTEM

Providing access to telephones by inmates has been reported by some corrections officials, including DOC officials, to result in positive benefits. Yet, despite the reported benefits, access to phones by inmates varies depending primarily on the philosophy of each state's system administrator or governing board.

Telephones have routinely been available to inmates in DOC facilities since the early 1970s. However, problems with the early systems mitigated the reported benefits. There was no system uniformity statewide, DOC had to commit significant resources to the operation of the system, and there were few proactive security features available. These shortcomings, in part, led to the acquisition of the current system by DOC, which is operated by MCI Telecommunications Corporation (MCI).

The current inmate phone system is designed to address many of the shortcomings of the previous phone system. Moreover, the telephone carrier providing the phone service is required to provide the State with a significant portion of the revenue generated by inmate calls. In FY 1996, inmates completed more than 4.75 million calls, which resulted in more than \$10 million in commission revenue being paid to the State.

Role of Inmate Telephones

For various reasons, inmate telephone use has generally been viewed positively by prison officials. Telephones reportedly enable inmates to maintain active family and community ties which assist in their adjustment to prison. In addition, some individuals also suggest that these ties assist inmates in their positive adjustment once released from custody. However, despite these potential benefits, the frequency with which inmates are allowed telephone access varies from state to state.

Telephone Access and Ongoing Community Ties. A number of corrections officials and inmate advocates contend that it is important for incarcerated persons to maintain ties with family members and members of their communities. For example, the Federal Bureau of Prisons identifies inmate telephone access as a “means of maintaining community and family ties that will contribute to an inmate’s personal development.” In addition, inmate telephone access has been identified as a mechanism for enhancing morale among inmates and maintaining order and security in prison facilities. The possibility of losing certain telephone privileges due to unacceptable behavior could be used as a factor in maintaining order and discipline among inmates.

Generally, incarcerated persons are afforded additional means of maintaining ties with family and community members. In the Commonwealth, prison inmates can also remain in contact with family and community members through written communications and prison visitations. However, of the various forms of communication available to prison inmates, telephone access tends to be more convenient than visitation and more direct than written communications. As a result, prison inmates and their families have apparently come to rely on telephone communication as a primary means of maintaining ties.

Philosophies of Inmate Telephone Access Vary. Telephone access by prison inmates is governed largely by the philosophy of the prison system’s administrator or governing body. There is no universal standard or case law which determines the minimum or maximum number of calls or minutes an inmate is granted for telephone use. Therefore, inmate telephone use policies differ from state to state.

Inmate telephone use in general has been viewed as a privilege granted by correctional authorities rather than a right. For example, the Federal Bureau of Prisons has established that prison inmate telephone calls are a privilege and not a right. DOC staff also indicated that telephone use is a privilege granted to inmates and not a right that inmates must receive.

While most inmates in Virginia’s correctional institutions have relatively free and unlimited access to telephones, this is not the case throughout the country. For example, inmates in North Carolina’s medium and maximum security institutions are permitted two ten-minute collect calls each month. Additionally, in Texas, despite attempts by the legislature to allow more access to phones by inmates, state prisoners are granted only one five-minute collect call every three months. Moreover, being allowed to make that one call is reportedly contingent upon the inmate’s behavior.

History of Telephones in Virginia Prisons

Early inmate telephone systems had a number of shortcomings. These shortcomings, which primarily involved system uniformity and security, required DOC to invest significant staff resources in addressing issues related to inmate telephone abuse. In addition, DOC staff were also directly involved in the ongoing administration of inmate telephone services.

Early System Was Not Unified. DOC staff reported that prison inmate telephone services were first offered in Virginia during the 1970s. When the decision was made to make phones available to inmates, inmate telephone services in DOC facilities were offered through local telephone companies which provided operator-assisted collect calls. Through these arrangements, standard payphones were installed in prison facilities, and inmates were provided access to a live operator. DOC staff indicated that the department's goal at that time was for inmates to use the prison telephone arrangements, referred to as "five minute parole," as a means of maintaining contact with family members.

However, because local telephone companies apparently varied in size and service delivery capabilities, inmate telephone service delivery could differ from prison to prison. For example, DOC staff reported that in some areas of the State, local telephone companies did not want to install telephones in prisons or did not want to install as many telephones as prison facilities requested. Moreover, DOC reported encountering difficulties in getting adequate and timely service for problems with the telephones used by inmates, especially in rural areas. As a result, telephone service delivery lacked consistency and inmate access to telephones was often inadequate.

DOC Had Administrative Role in Early System's Operation. DOC staff had to provide a significant level of administrative and operational assistance for the early inmate phone systems. For example, in the early inmate telephone systems, DOC staff were responsible for escorting inmates to and from payphones, and sometimes DOC staff were responsible for dialing or checking the number of the called party. These telephone-related activities removed prison staff from duties that they normally performed.

Moreover, DOC staff indicated that the department would dedicate significant staff resources to investigate residential and business complaints concerning inmates' abuse of the telephone system. Much of the telephone abuse by inmates was apparently the result of the telephone system lacking security features which could proactively detect or prevent improper telephone use.

Security Features Were Not Available. DOC staff noted that because earlier telephone systems contained no security features, the direct access of inmates to phones opened new avenues for inmates to call and harass individuals. For example, judges, witnesses, and victims were frequent targets of inmate harassment. Additionally, incidents of fraud, such as ordering goods by mail order, were perpetrated by inmates using telephones.

For example, some local telephone companies serving DOC institutions were not always aware of the different methods used by inmates to commit fraud. As a result, DOC staff also reported that an operator would occasionally assist the inmates in committing fraudulent activities. Because these telephone systems lacked automated security devices and automated operators, inmates had increased opportunities to commit illegal activities. Subsequently, recipients of unwanted inmate calls had to contact DOC and request that DOC prevent these calls from occurring.

However, advances in telephone technology during the late 1980s resulted in security features that could more proactively reduce inmate telephone abuse. DOC staff have noted that these features have reduced the incidents of inmate phone fraud that were common in the previous systems. Moreover, as inmate telephone system technology advanced and telephone companies were able to provide “turnkey” telephone systems for clients, correctional systems became an area aggressively marketed by the telephone industry.

Features of the Department of Corrections’ Current Inmate Telephone System

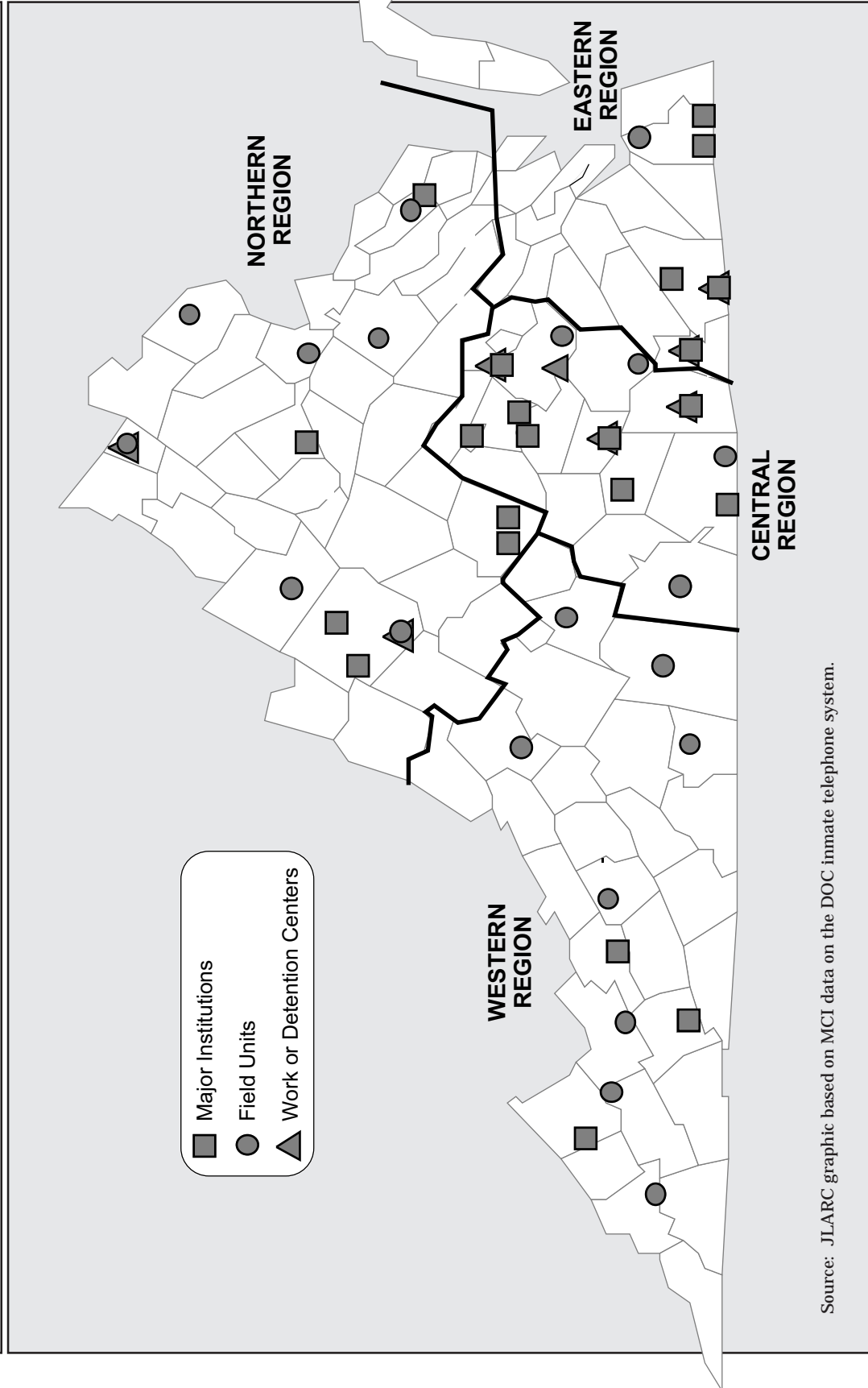
In 1990, DOC issued a request for proposal (RFP) for a prison inmate telephone system providing safeguards which would address security concerns raised in previous systems. In addition, DOC wanted a system that provided equal access to telephones and consistency in service to all of the department’s facilities statewide (Figure 1). Moreover, during the procurement process, the department clearly indicated that providing these features would be at no cost to the State and not require significant DOC staff involvement. More than 20 companies responded to the RFP, and MCI was awarded the contract in 1991. The current contract expires December 31, 1997.

Unlike earlier DOC inmate telephone systems, the current prison inmate telephone system is administered entirely by the contracting telephone company. This arrangement has apparently resulted in fewer administrative responsibilities for DOC, additional security features for public safety, increased telephone availability for prison inmates, and contractor responsiveness to inmate concerns. Finally, the contract requires the payment of commissions to the State based on the system’s billable revenues.

Telephone System Operation. As in previous telephone systems serving DOC facilities, the inmate does not pay for collect calls completed. Rather, the call recipient is responsible for call payment. Additionally, the system prevents inmates from receiving incoming calls. Inmates and call recipients are given a 15-minute time limit for each call, but there is no limit on the number of calls that an inmate can complete or the number of calls that an individual can accept.

Presently, inmates have virtually unlimited phone access. Although inmate telephone use policies are left to the discretion of individual facility administrators, in general, the only time inmates do not have access to phones are periods when they are

Figure 1
DOC Facilities with MCI Inmate Telephone Services



Source: JLARC graphic based on MCI data on the DOC inmate telephone system.

confined to their cells or periods when the phones are shut down by facility administrators. Moreover, inmates are generally not restricted to a preapproved list of numbers that can be called. With the exception of numbers blocked from receiving collect calls, inmates are generally allowed to call anyone who will accept the collect call.

Fewer Administrative Responsibilities for DOC with Current System. In contrast to previous inmate telephone systems, DOC has no administrative responsibilities under the current MCI prison inmate telephone contract. The current telephone contract specifies that “no correctional facility personnel will be needed to assist with the placing of a call.”

Moreover, the contract establishes that MCI “furnish the equipment, software, maintenance and/or other support services” necessary for the operation of the system. Three phone company staff work at DOC’s central office and administer the inmate telephone system. DOC staff indicated that these services are provided at no expense to the department or the State. From an administrative standpoint, the current inmate telephone contract has been beneficial to the department.

Specialized Security Features. In addition to standardizing the prison inmate telephone system statewide, DOC required the system to contain certain features which would counter illegal and harassing inmate telephone activity. DOC staff noted that an inmate telephone system would not exist if it did not possess these security features. Some of the current system’s features include:

- a database to block numbers of DOC employees, state officials, certain private residences on request, and 800, 900, and 976 numbers;
- digital recording and monitoring equipment at each major institution;
- a secured personal identification number (PIN) feature to identify each call made by an inmate;
- reporting capabilities on all calls made from Virginia prisons;
- restrictions on all international calls; and
- announcing to the called party the name of the correctional institution from which the call originates (referred to as branding).

In the current inmate telephone system, an inmate is given a PIN which provides him or her with access to the inmate telephone system. The current system’s PIN feature and reporting capabilities provide the department with the ability to track inmate telephone calling activity. For example, if an inmate is determined to be engaging in fraudulent or harassing activity, the PIN enables the department to discontinue that inmate’s ability to use the telephone. These security features are provided without any administrative support from DOC. Rather, the contracting company carries out these functions.

Moreover, the current inmate telephone system provides call recipients with the capability of having unwanted inmate collect calls blocked. Also, call branding, which announces that the call originates from a DOC prison facility, provides additional safeguards against improper inmate telephone activity. DOC staff indicated that security features, such as those mentioned above, have assisted the department in proactively detecting and reducing improper inmate telephone activity.

Despite these security features, problems with inmates using the phones for fraudulent purposes continue. For example, it is possible that some inmate calls can be transferred to a third party. MCI staff reported cases where inmates will obtain another inmate's PIN and use the phone for fraudulent purposes. Finally, some inmates will reportedly use the phones to encourage visitors to bring contraband into the prison facility.

Inmate Access to Telephones. Prior to the current DOC inmate telephone contract, there was an average of one phone for every 34 inmates. The current inmate telephone contract has increased the number of telephones available to inmates. The most recent data on the number of telephones indicates that MCI currently provides about one phone for every 18 prison inmates statewide.

Although the inmate telephone contract calls for a ratio of one phone for every 15 inmates, MCI staff indicated that this ratio is used as a guideline and that the needs of the prison administrator or design of the facility often dictate the actual number of telephones that can be provided. Nonetheless, inmates still appear to have better access to telephones on a statewide basis than they did in earlier prison telephone systems.

Responsive to Inmate Concerns. DOC required the establishment of an inmate help line and voicemail box that allows inmates to call MCI directly about telephone troubles. When inmates have problems regarding phone service or requests for information pertaining to telephone access, they call the help line and leave a detailed message about the problem. MCI staff generally address these concerns in writing within two working days. This is a feature not offered in earlier inmate telephone systems.

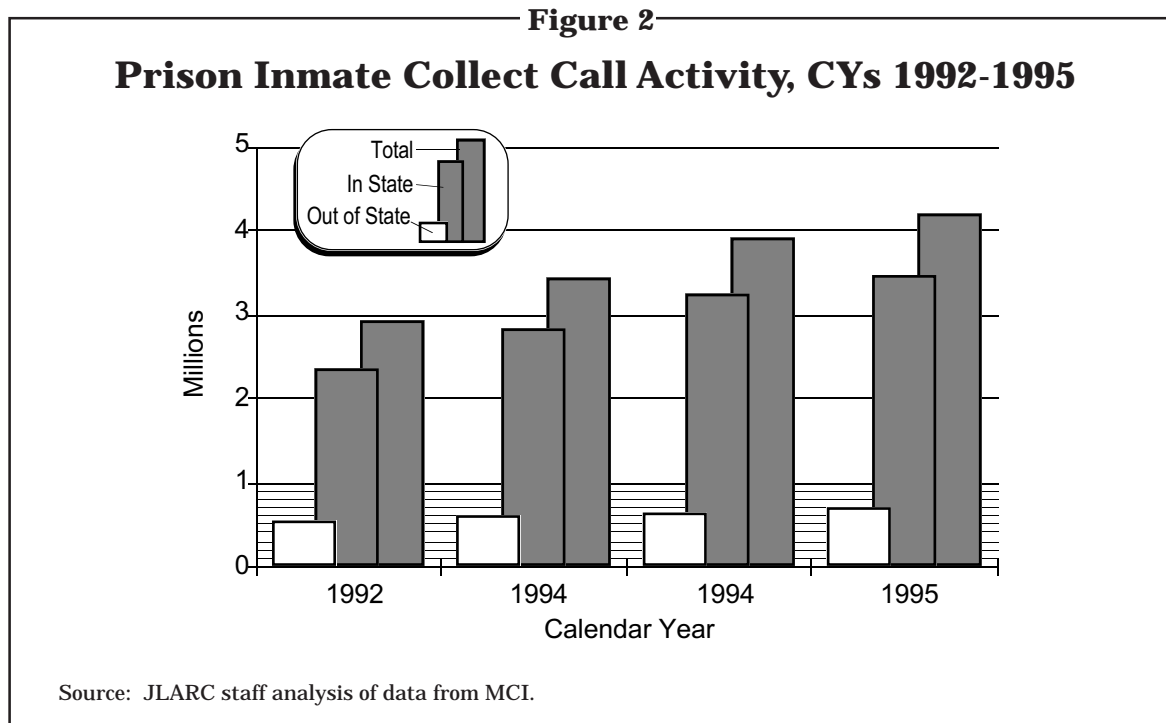
Commission Payments. DOC's current telephone agreement requires MCI to make commission payments to the State. Through June 1995, the commission payments to the State were based on 28 percent of gross billable revenues. Since July 1995, MCI pays the State 50 percent of the gross billable revenues from inmate calls. In previous telephone systems, the State received no commission payments from the companies serving the various DOC facilities.

Call Activity, the Cost of Calls, and Commission Revenue Have Increased

Inmates have completed a significant number of calls since the beginning of the present inmate telephone system contract. The provisions of this contract have also required MCI to provide the State with commission payments based on the system's gross

billable revenues. Finally, since DOC and MCI entered into the contract in 1991, inmate calling activity has increased and revenue generated for the State has increased.

Inmate Calling Activity. Inmate telephone activity data indicate that from the beginning of the inmate telephone contract through July 1996, inmates have completed almost 19 million collect calls. Figure 2 displays the total number and type of calls completed by inmates for each full calendar year of the contract. The total number of calls has increased annually since the current phone contract was established. In FY 1996, the average number of completed calls per DOC inmate was almost 200.



Long Distance Rates. In the current inmate telephone contract, DOC requires that the “cost of calls made must not exceed AT&T rates or local state tariff rates.” The cost, or rate structure, applied to an inmate long distance call consists of per minute charges that vary by the time of day the call is placed and distance. In addition, a \$3.00 operator assisted surcharge is added to each call (Table 1).

The operator assisted surcharge is the rate structure that has increased most significantly. In 1994, the operator assisted surcharge was \$1.94 for each call. In January 1995, it was increased to \$3 per call. In contrast, the operator assisted surcharge for an MCI presubscribed payphone is \$2.15 per call.

Phone System Commission Revenue. As discussed earlier in this chapter, the State receives a 50 percent commission on the gross billable charges of the system. From March 1991 through June 1996, the State has generated almost \$24 million in

Table 1

Long Distance Charges for Intrastate Inmate Collect Calls From DOC Institutions

Per Minute Usage Charges

Mileage Band	<i>Business Day</i>		<i>Evening</i>		<i>Night and Weekend</i>	
	First Minute	Additional Minutes	First Minute	Additional Minutes	First Minute	Additional Minutes
1-10	\$0.19	\$0.19	\$0.14	\$0.13	\$0.13	\$0.13
11-22	\$0.22	\$0.22	\$0.15	\$0.14	\$0.14	\$0.14
23-55	\$0.26	\$0.26	\$0.17	\$0.17	\$0.15	\$0.15
56-124	\$0.30	\$0.30	\$0.23	\$0.23	\$0.18	\$0.18
125-292	\$0.32	\$0.32	\$0.25	\$0.25	\$0.19	\$0.19
293+	\$0.32	\$0.32	\$0.25	\$0.25	\$0.19	\$0.19

Note: Each call is assessed a \$3.00 operator surcharge.

Source: MCI Telecommunications Corporation intercity telecommunications services tariff filed with the Virginia State Corporation Commission, February 1996.

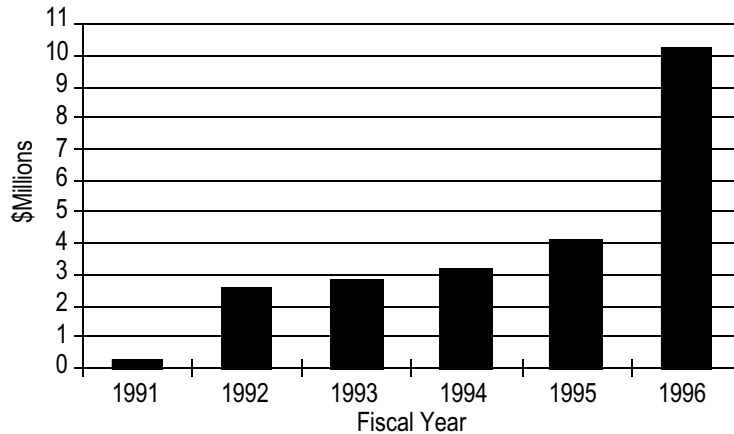
commission revenue from the inmate telephone contract. Figure 3 illustrates that there has also been a steady increase in commission revenue resulting from the prison inmate telephone system.

For example, in FY 1992, the first full fiscal year of the contract, the State received \$2.6 million based on the 28 percent commission rate in place at that time. In FY 1996, when the commission rate was increased to 50 percent, the State received \$10.3 million in commission revenue. MCI has projected that the State will earn \$10.4 million from commissions in FY 1997.

Inmate telephone commission revenue is currently deposited in the State's general fund, and neither statute nor policy directs that these funds be reallocated to DOC or earmarked for any particular prison inmate services. DOC's position is that "the commissions paid to the general fund help offset the costs to the taxpayers for maintaining the prison system." The dramatic increase in commission revenues in FY 1996 led some inmate advocacy groups to question the appropriateness of the charges, which were characterized as an "illegal tax." Such concerns led to this study.

Figure 3

State Commission Revenue from the MCI Prison Inmate Telephone Contract, FYs 1991 - 1996



Note: Revenue for FY 1991 is for the months of March, April, May, and June only.

Source: JLARC staff analysis of Department of Corrections data.

JLARC REVIEW AND REPORT ORGANIZATION

Item 14I of the 1996 Appropriation Act directed JLARC to examine the fees, costs, and revenues related to DOC's prison inmate telephone system. The study mandate required that the study be completed and submitted prior to the 1997 Session of the General Assembly. This section of Chapter I provides an overview of the study issues used to guide the research activities and a brief overview of the report's organization.

Study Issues

JLARC staff developed four primary issues for this study. These issues include a review of:

- the structure and administration of Virginia's prison inmate telephone system,
- the factors that have impacted rates and charges of the system,
- the financial impact on the recipients of prison inmate collect calls, and
- options available for the DOC inmate telephone system that meet the needs of DOC, inmates, and call recipients.

Research Activities

Several research activities were undertaken to address the study issues. These activities included structured interviews, document and file reviews, telephone interviews with selected other states, and observations of the phone system's operation.

Structured Interviews. Structured interviews were conducted with staff from DOC, MCI, the State Corporation Commission (SCC), the Department of Information Technology (DIT), and Virginia Citizens United for Rehabilitation of Errants (CURE). DOC and MCI staff interviews focused on the operation, administration, and costs of the inmate telephone system. Interviews with SCC and DIT staff focused on the regulatory and technical aspect of the system. Also, JLARC staff met with more than ten recipients of inmate collect calls to discuss issues related to the DOC inmate phone system.

Document and File Reviews. Document and file reviews were also conducted by JLARC staff. Documents reviewed included the *Code of Virginia*, the current inmate telephone system contract, related studies on other prison inmate telephone systems, SCC and Federal Communications Commission regulations, inmate telephone policies from other states, and phone bills from recipients of inmate calls. Further, JLARC staff reviewed files related to the inmate telephone system procurement process. JLARC staff used data from these reviews to evaluate the operation and administration of Virginia's inmate telephone system.

Also, JLARC staff reviewed the Virginia State Crime Commission's 1993 report *Improving Family and Community Ties of Incarcerated Persons*. A portion of this report discussed issues related to the DOC inmate phone system. Findings and recommendations from this report were used in order to assess DOC's role in providing oversight and monitoring of the inmate phone contract.

Telephone Interviews with Selected Other States. JLARC staff conducted telephone interviews with correctional staff from 12 southeastern states. In addition, JLARC staff conducted telephone interviews with four additional states that reportedly had noteworthy features related to their telephone systems. The focus of the interviews was to gather information on the operation and administration of inmate telephone systems in other states as well as how commission revenue was utilized. Finally, JLARC staff conducted telephone interviews with staff of selected public utility commissions in other states. Interviews were designed to obtain information on the regulatory activity and authority of these public utility commissions regarding inmate phone systems.

Inmate Phone System Observations. JLARC staff also observed the inmate telephone operation center located in DOC's central office as well as observed inmate telephone systems in a DOC institution. JLARC staff made several collect calls from inmate phones in the facility in order to better understand and observe the operation of the prison inmate telephone system.

Report Organization

This chapter has provided an overview of Virginia's inmate telephone system. Chapter II more closely examines the operation of the DOC inmate telephone system and its financial impact on call recipients. Finally, Chapter III discusses some potential options for the State regarding issues related to the inmate telephone system.

II. Impact of the Inmate Phone System

As discussed in the previous chapter, the current DOC inmate phone system has been in operation since 1991. This system was intended to provide greater uniformity statewide, ensure greater control over fraudulent activities by inmates, and minimize DOC staff's involvement in the administration of this system. Since that time, the system has transmitted almost 19 million collect calls from DOC inmates to recipients both within and outside Virginia. Benefits attributable to these calls have reportedly included the positive effect on the management, adjustment, and rehabilitation of inmates.

The total fiscal impact on the recipients of these calls has been increasing steadily each year. Although the fiscal impact on call recipients has increased to some degree due to factors not related to rates and charges, increases in the surcharge assessed long distance calls has also had a substantial impact on recipients. Moreover, the impact on call recipients varies to some extent by the location of the DOC facility. As a result, the increasing costs associated with using the system could eventually reduce some of the benefits attributed to contact provided through the inmate phone system.

To ensure that the positive benefits of the phone system continue to accrue, steps to reduce the fiscal impact should be taken. Rates and surcharges for the inmate phone system should be capped at rates charged the public for similar calls. Moreover, to lessen the negative impact of the long distance surcharge, DOC should consider increasing the limit on the duration of inmate calls.

FISCAL IMPACT OF THE DEPARTMENT OF CORRECTIONS' INMATE PHONE SYSTEM

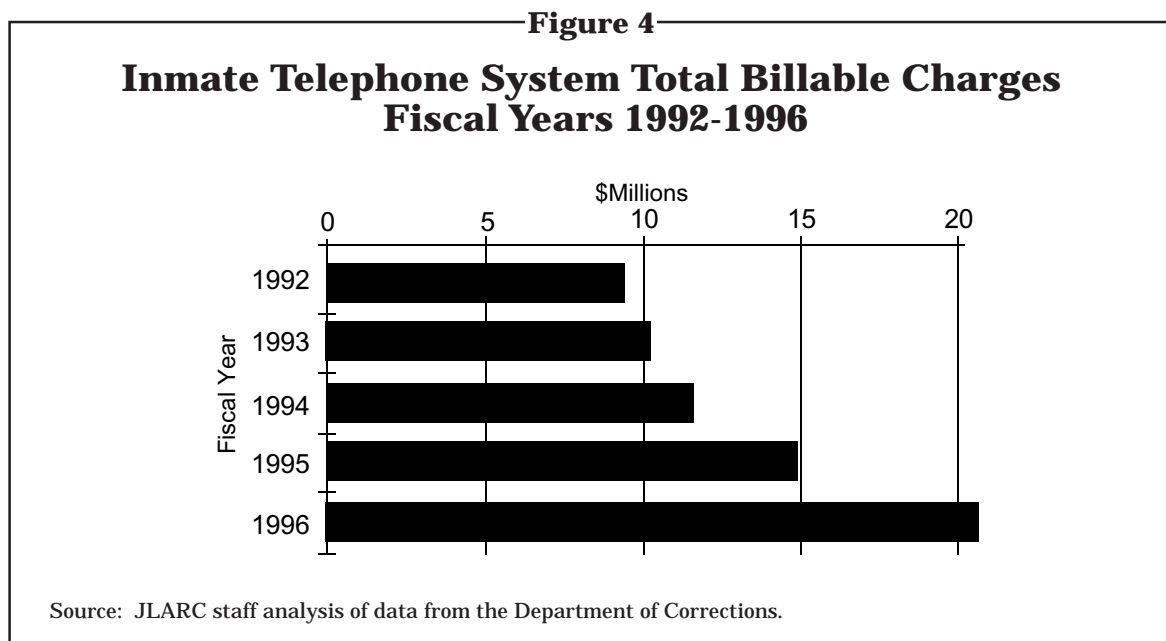
Item 14I of the 1996 Appropriation Act requires that the JLARC review address the financial impact of the DOC inmate phone system on call recipients. This review indicates that the total billable charges to call recipients have increased significantly since FY 1992. A number of factors have contributed to this increase. Inmates are making more calls that last longer and the total inmate population has increased since FY 1992. In addition, increases in the rates charged, primarily the long distance surcharge, have also impacted the total billable charges.

There are a number of potential consequences of the increasing billable charges on both inmates and call recipients. First, call recipients have reported that the increasing costs associated with using the system may require them to reduce the number of calls they can accept from inmates. Because many have reported that positive benefits accrue for the inmate and family through telephone contact, those benefits may be mitigated. Finally, this review determined that DOC facilities located in more remote locations in the State have higher costs per call than facilities located in the central region of the State.

Total Billable Charges from Inmate Phone System Have Increased

As discussed in Chapter I, inmates do not pay for the calls they place through the DOC inmate phone system — the call is placed as a collect call and the call recipient is billed for the call. Therefore, the fiscal impact of receiving calls from individuals in DOC institutions is placed directly, although voluntarily, on the call recipient and not the inmate.

As a result, one measure of the fiscal impact of the inmate phone system is the total charges billed to call recipients. Since FY 1992, the total billable charges from the DOC inmate phone system have steadily increased. From FY 1992 through FY 1996, the total billable charges to call recipients increased from about \$9.5 million to more than \$20 million in FY 1996 (Figure 4).



Also noteworthy is the rate at which the total billable charges to call recipients have increased. From FY 1992 through FY 1996, total charges billed to call recipients have more than doubled. Moreover, from FY 1992 through FY 1994, the annual rate of growth in total charges averaged almost 11 percent. In contrast, for the period from FY 1994 through FY 1996, the total annual charges increased at an average rate of about 33 percent. Clearly, billable charges from the DOC inmate phone system have increased substantially since FY 1994.

A Number of Factors Have Been Responsible for Increases in Billable Charges

One factor that would impact the total charges of a system like the inmate phone system are the rates charged by the telephone carrier. Yet, a number of other factors not

directly related to the rates charged could to some degree result in increases in the total billable charges of the system. Some potential factors include growth in the DOC prison system inmate population, growth in the number of calls placed per inmate, and increases in the length of the calls placed by inmates.

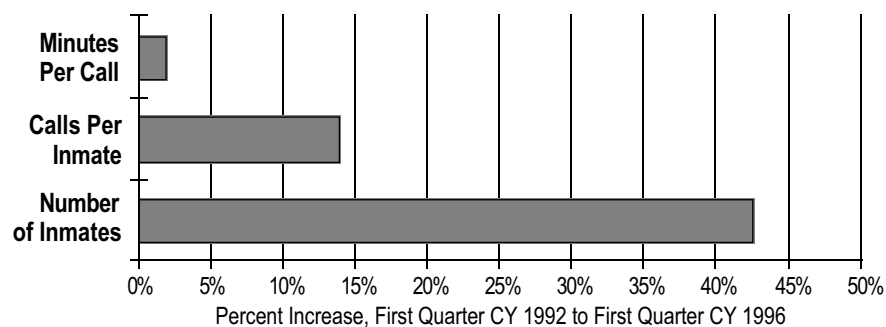
While non-rate factors such as increases in the inmate population and the number of calls made per inmate have had some impact on total charges, increases in the rates charged to call recipients have also had an impact. More specifically, the increase in the service charge or surcharge assessed on every call regardless of length has had a direct impact on the cost of calls. Since December 1994, the surcharge on long distance calls has increased by almost 55 percent.

Non-Rate Factors Have Had An Impact on Total Billable Charges. With a service like the DOC inmate phone system, it is likely that any growth in the number of inmates in the prison system would result in a greater volume of calls. As a result, the total billable charges of the system would likely increase as well. Finally, inmates could be simply placing more calls or talking longer per call, which would likely increase the total charges billed to the call recipients. To determine the potential impact of some of these factors on the total billable costs associated with the DOC inmate phone system, the changes in these factors from the first quarter of calendar year 1992 (January 1992 - March 1992) were compared to the first quarter of calendar year 1996 (January 1996 - March 1996).

As highlighted in Figure 5, the number of minutes per call increased by 2 percent. In addition, the total number of calls made per inmate increased by 14 percent. More significantly, the DOC prison system's inmate population between these two time periods increased by almost 43 percent. The combined effect of increased population, slightly longer calls, and more calls placed per inmate accounts for about 66 percent of the total increase of 120 percent in the phone system's total billable charges. About half of the increase is due to other factors, such as changes in rates and other charges.

Figure 5

Change in Non-Billable Factors that Affect Total Inmate Phone System Charges, 1992 to 1996



Source: JLARC staff analysis of Department of Corrections data.

Exclusive Telephone Provider and Commissions Can Also Impact Costs.

The current DOC phone system is designed so that all inmate calls are carried by the contracting telephone company which is MCI Telecommunications (MCI). One reason for this is to ensure that the security features of the system are not bypassed or compromised. Moreover, it also enables DOC staff to interact with one carrier which reportedly enhances the ease of administration and operation.

On the other hand, neither inmates nor call recipients are able to utilize other carriers of their choice or use recently developed features such as phone cards or specialized calling plans. As a result, the ability to obtain lower rates or use the carrier of choice is non-existent. For example:

The Maine Public Service Commission in a notice of inquiry regarding operator service surcharges noted that individuals using payphones in locations that include correctional institutions often have difficulty in accessing other telephone carriers from these locations: "The end result appears to confirm the market power that exists: under current market conditions, carriers plainly have sufficient market power to increase operator surcharges and sometimes per-minute rates...."

The commissions paid by phone companies to be the exclusive provider of services may also impact the cost of calls paid by users of these systems. For example, in a discussion regarding the provision of operator services from payphones, the Federal Communication Commission noted:

[Operator service providers] generally compete with each other and with the traditional carriers to receive such traffic by offering commissions to payphone or premise owners as the "presubscribed" carrier serving their phones.... While this has proven to be beneficial to the premises owners ... it forces callers to pay exceptionally high rates.

The potential impact of the commission on the cost of calls is important. The current DOC inmate phone system contract requires the telephone contractor to provide the State monthly commission payments based on 50 percent of the gross billable charges. From the remaining 50 percent, the contractor must pay all costs associated with operating the system as well as account for any uncollectable charges. Therefore, the rates and charges will have to be sufficient to ensure that the carrier can pay the required commission as well as return a reasonable profit.

Increases in the Long-Distance Surcharge Have Also Been a Factor in Growth of Total Charges. In addition to the factors discussed earlier in this section, the rates charged to recipients of collect calls from DOC inmates will directly and immediately impact the system's total billable charges. As discussed in Chapter I, the rate structure applied to inmates' long-distance calls from DOC facilities consists of per minute charges and a one time surcharge.

Since the current inmate phone system contract was established in March 1991, the cost of making long distance collect calls from DOC institutions has increased. More specifically, the one time surcharge applied to each long distance call placed by an inmate from a DOC facility has increased by 55 percent, from \$1.94 in December 1994 to the current \$3 per call. In contrast, the increase in the consumer price index for the same period was about six percent.

The impact of the surcharge on a collect call is significant, because the surcharge is assessed regardless of the length of the call. For example, to place a one minute collect call from a DOC facility that would also be charged a toll of 30 cents per minute would cost a total of \$3.30. In this example, the surcharge applied to the call is 10 times greater than the per minute cost of the call.

The increases in the surcharge and per minute rates have had an impact on the cost of calls from inmates in DOC facilities. As illustrated in Table 2, the increases in the surcharges and rates have resulted in an increase in the cost of calls from the same facilities to the same call recipient since 1994.

Table 2

Changes in Cost of Selected Long Distance Collect Calls from DOC Facilities

(Selected Examples, August 1994 - September 1996)

From/To	Date	Billing Period	Minutes	Cost of Call
Haynesville CC/ Triangle, VA	December 1994	Evening	15	\$4.23
	August 1996	Evening	15	\$5.55
Augusta CC/ Ocquan, VA	December 1994	Evening	15	\$5.09
	July 1996	Evening	15	\$6.45
Haynesville CC/ Washington, DC	August 1994	Night	15	\$4.00
	September 1996	Night	15	\$6.05

Source: JLARC staff analysis of telephone bills from recipients of calls from inmates in DOC institutions.

Potential Impact of Rising Cost of Collect Calls on Inmate Call Recipients

As discussed in this report, allowing inmates to maintain contact through telephone calls to families and friends has been reported to be a positive tool in an inmate's adjustment to prison life as well as his or her preparation for a return to society.

Yet, there is concern that the cost of utilizing the DOC inmate phone system may limit its use, which might mitigate the positive impact of maintaining ties to the outside through telephone calls. Moreover, concerns about the adequacy of other methods of communication available to inmates have been expressed. Finally, even with reduced costs for the inmate telephone system, the fiscal impact on some call recipients would likely still be substantial.

Costs of Using the Inmate Phone System Could Mitigate Positive Aspects of System. Inmate families, advocacy groups, and corrections officials have noted that the telephone can be a mechanism to help inmates make a positive adjustment to prison life as well as to prepare them for their eventual release. DOC staff noted that “the Department of Corrections recognizes the importance of sustained family contact in the management, adjustment, and rehabilitation of offenders.” However, some call recipients have expressed concern that the positive features of telephone contact may be compromised by rising rates and charges. For example:

A parent stated that her son had been in DOC's correctional system for about eight years. However, she reported that her primary residential phone service had been disconnected for more than eight months while bills totaling several hundred dollars were paid. As a result, her son now is reluctant to call in order to relieve the expense of the calls on his family.

* * *

The wife of an inmate in a DOC facility estimated that she had spent about \$3,000 for collect calls from her husband over a 14 month period. She believes that telephone contact is directly related to his positive adjustment to prison life which is reflected in his continued assignment to an honor section. She noted that the increasing costs associated with using the inmate phone system may force her to reduce the number of calls she can afford to accept from her husband.

Moreover, families, call recipients, and inmate advocacy groups have noted that these calls are made to many families that are already at a financial disadvantage due to the imprisonment of a wage earner. These concerns are highlighted by a 1991 study conducted by the Bureau of Justice Statistics, an agency of the U.S. Department of Justice. This study of state prison systems' inmates reported that 53 percent of inmates sampled in state prisons nationwide reported earning an annual income of less than \$10,000 in the full year prior to their commitment to prison.

Availability of Other Communication Methods. DOC staff have stated that the telephone system is one of three primary methods available to inmates to maintain contact with family and friends. The other methods include correspondence through the mail and visits to inmates at the DOC facility.

However, families and friends of inmates have expressed concern about the impact of proposed DOC policies that could limit the number of hours they can visit an inmate during any one month. In addition to any reductions in visitation time, they are also concerned that reduced visiting hours could require them to rely more on the telephone to maintain direct and meaningful contact, which could be very costly given the current charges for collect phone calls from DOC inmates. With regard to written correspondence, some families contend that, if the inmate has difficulty reading or writing, written correspondence can be both frustrating and unfulfilling for the inmate.

Lower Cost Calls May Not Totally Eliminate Fiscal Impact on Some Call Recipients

It should be noted that even if rates and surcharges were lowered, the fiscal impact on many recipients of inmate calls could still be substantial. Many of the telephone bills from recipients of DOC inmate calls reviewed by JLARC staff indicate that many individuals receive a significant number of calls in a monthly billing cycle. For example:

From July 9, 1996 through August 3, 1996, one call recipient accepted 49 calls from the same DOC inmate at a cost of \$278. On one particular day, the call recipient accepted 15 separate calls at a total cost of almost \$82. For a 22 month period, this individual reported spending almost \$5,700 on calls from DOC inmates.

* * *

Another individual's telephone bill for the period February 13, 1995 through March 12, 1995 indicated that 129 collect calls from the same DOC facility had been accepted at a cost of \$757. For the previous three months, charges for calls originated in DOC institutions totaled more than \$1,700.

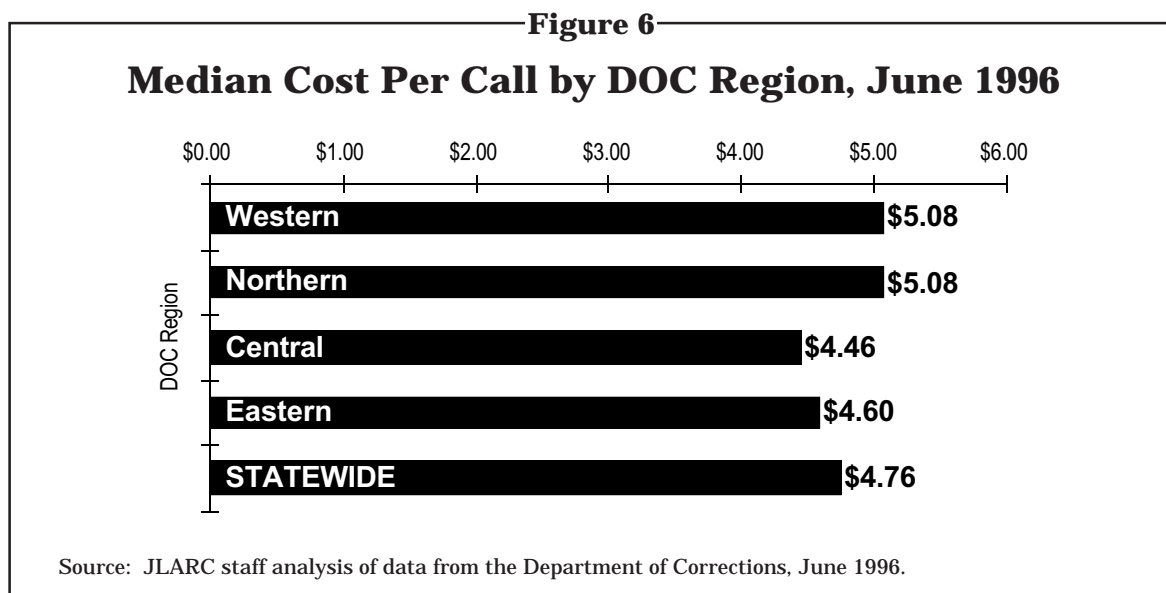
Less costly collect calls from DOC institutions would to some degree mitigate the fiscal impact on call recipients. However, for call recipients who accept a large volume of calls, the fiscal impact would still likely be significant. In such instances, call recipients will need to exercise some personal responsibility to limit the number of calls accepted in order to reduce the costs of inmate calls.

Impact of Phone System Can Vary by Location of DOC Facility

Factors other than the length of a collect call can have an impact on the cost of the call that is charged to the recipient. Another factor appears to be the region of the State in which the DOC facility is located. Inmates in DOC's facilities in the northern and western regions tend to place calls that cost more per call than inmates in facilities

in DOC's eastern and central regions. This variation in cost per call also extends to specific DOC facilities.

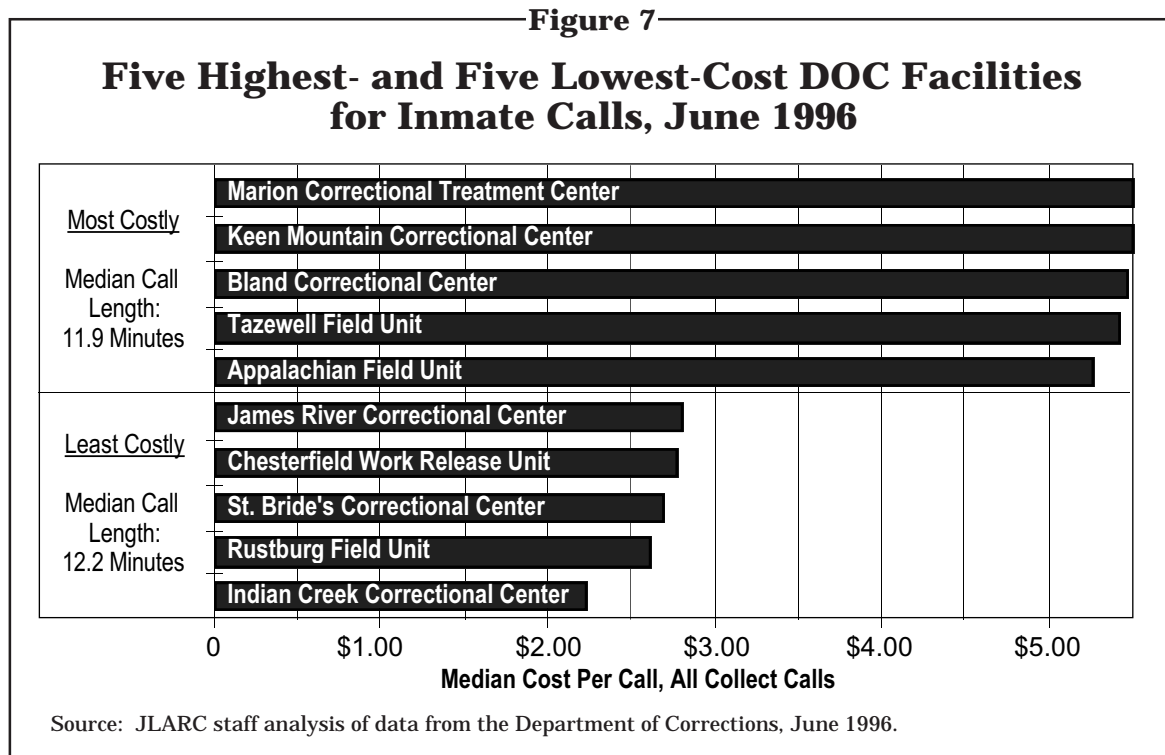
Cost of Calls Vary by Region of State. In June 1996, DOC facilities in the western and northern regions of the State had a higher median cost per call than did facilities in the central and eastern regions of the State (Figure 6). It should be noted, however, that the median length of a call from institutions in the central and eastern regions is about 25 seconds less than for calls from institutions in the northern and western regions, but this is not a sufficient difference in call length to explain the entire median cost difference.



In addition to call length, there are some other possible reasons for the different median costs per call across the four regions of the State. First, many of the inmates in facilities located in the western and northern regions may be from the central or eastern regions of the State. The greater the distance between the inmate and the call recipient, the greater the charges to call collect.

Second, there are a number of DOC institutions within a relatively short distance from the Richmond metropolitan and Tidewater metropolitan areas. Calls from institutions such as the Chesterfield work release unit to Richmond are billed as local collect calls. Calls from the Indian Creek correctional center to Chesapeake and Virginia Beach are also billed as local collect calls.

Impact Is Significant for Some Facilities. Analyzing the fiscal impact by DOC region masks some of the extreme differences between the cost per call from individual DOC facilities. These differences are clearly illustrated in Figure 7. The five facilities with the highest median cost per inmate call in June 1996 were located in DOC's



western region. In fact, these facilities were all located west of the City of Roanoke, and the median cost per call from these facilities exceeded \$5.

This indicates that many of the inmates in these facilities are of sufficient distance from the call recipients to place collect calls that are long distance and assessed the \$3 surcharge. For example, 43 percent of the inmates at Keen Mountain correctional center were sentenced for their most serious crime in courts located in four northern Virginia localities, three central Virginia localities, and six localities in the Tidewater region. While the location of the sentencing court is not the inmates' home of record, it is possible that many of the inmates lived relatively near the location of the sentencing court. For these inmates, calls to family or friends in these localities would be long distance.

Conversely, four of the five facilities with the lowest median cost per call were located in DOC's central or eastern region. Here, many of the calls placed by inmates appear to have been local calls (and not assessed a \$3 surcharge) since the median cost per call for these facilities was less than \$3.

For example, 55 percent of the inmates at the Indian Creek correctional center in Virginia Beach were sentenced for their most serious crime in courts in Virginia Beach, Portsmouth, Norfolk, and Chesapeake. Therefore, if the individuals who receive their calls live in these localities, many of the calls would not be assessed the \$3 long distance surcharge.

The State Crime Commission noted in a 1993 report that "...prisoners in Virginia are frequently housed in facilities on opposite ends of the state from their home and family." As a result, the ability of friends or family to make the trip to the Keen Mountain correctional center in Buchanan County from Central Virginia or the Tidewater region may be limited. For example:

One inmate's mother who lived in Lunenburg County reported that her son was incarcerated at Keen Mountain correctional center in Buchanan County. The inmate's mother wrote that "I take care of my grandmother who is 96 years old. She has had two mini strokes and can't do anything for herself. We haven't been able to go and see him because [Keen Mountain correctional center] is so far away and have no one to help me with my grandmother." She also noted that the "The system makes it hard on the families also.... Our contact is through the telephone."

* * *

Another parent of an inmate in a DOC facility stated "I have a son who has been in prison for 2 years. He is too far to visit to[o]ften and I use the phone system to keep in contact."

As discussed, the distance between the location of the call recipient and the inmate can impact the cost of the call. In addition, it also appears to have the potential to negatively impact the ability of family and friends to routinely visit, which increases the value of maintaining telephone contact.

STEPS TO REDUCE THE FISCAL IMPACT OF THE INMATE PHONE SYSTEM SHOULD BE TAKEN

One important aspect of the inmate phone system is that it provides relatively direct contact with families and friends who reportedly can help in the inmate's positive adjustment to prison. However, as noted in the previous section, increasing billable charges has the potential to mitigate these positive aspects of the phone system.

Therefore, steps should be taken to limit the fiscal impact of the telephone system on recipients of calls from DOC inmates. Individuals receiving collect calls likely have an expectation that rates and charges will be similar to those they receive for collect calls completed outside of the inmate phone system. Linking charges on calls made through the DOC inmate phone system to charges the public pays for collect calls could reduce the fiscal impact on call recipients. Moreover, increasing the maximum length of time a call is allowed to last would enable recipients to get more value on a per-minute basis and thereby mitigate the effect of the long distance surcharge as well as reduce the need for multiple phone calls.

Federal Government Considering Limits on Rates for Interstate Collect Calls from Correctional Facilities

As part of a 1992 inquiry into interstate collect calls from operator service providers (OSP), the Federal Communications Commission (FCC) is also examining the issue of rates charged for similar calls from correctional institutions. Among the options that have been discussed are billed party preference, price disclosure requirements, and benchmarks or rate caps set at a level consumers expect to be charged for operator services. However, the FCC has not at this time made a decision about what, if any, action it will take.

A national inmate advocacy group, Citizens United for Rehabilitation of Errants (CURE), has filed formal comments with the FCC on this issue. CURE requested that a rate cap be established for interstate collect calls from prison phone systems as an interim measure until the FCC determines what final regulatory action it will take. While preferring other forms of regulation, CURE's July 1996 FCC filing stated that an interim rate cap would provide an "effective and timely solution to the significant problem of excessive charges in the inmate calling market." Finally, it concluded that "...the family and friends of inmates should not be punished or treated differently from other consumers who receive collect calls from payphones."

Long Distance Rates Should Be Comparable to Those the Public Pays for Similar Calls

To mitigate the negative impact of the costs of the inmate phone system on call recipients, limits should be placed on rates charged. DOC's goal when contracting for the current system in 1991 was apparently to limit the cost of calls from inmates charged to call recipients. Currently, inmate calls are billed as collect calls, and are completed through an automated operator. Therefore, an argument can be made that the charges for the inmate phone system should be limited to the long distance rates billed the public for operator assisted collect calls by an industry dominant telephone company. If rates and surcharges were set at that level, cost savings to call recipients would result.

Individuals Receiving Collect Calls Have an Expectation of Rates Similar to Those Charged the Public. Individuals making long distance calls probably have some expectation of what the charges will be based on past experience with the telephone carrier serving their residence or from receiving collect calls from phones that are generally available to the public. As a result, individuals would likely expect to pay similar rates for calls from the inmate phone system. For example:

A mother whose son was in a DOC facility noted that she would expect the cost of collect calls from her son in prison to be similar to the collect calls she received at her home in Washington, D.C. from her daughter in South Carolina.

Another call recipient noted that she was not asking for anything free from the State. She said that she would like her bill for collect calls from prison to be the same as for individuals who receive collect calls from individuals who are not incarcerated.

Yet, long distance collect calls made through the inmate phone system are generally more expensive than direct dialed, operator assisted calls completed from a public payphone that is pre-subscribed to MCI.

DOC's Intent Was to Limit Cost of Calls. DOC staff reported that the department's intent in the 1991 contract was to limit the charges that were applied to inmate's long distance collect calls. Prior to the current phone system, inmates' collect calls were carried by the local telephone company serving the locality in which the DOC facility was located.

DOC staff noted that at that time they were aware of instances in other states where exorbitant charges were applied to inmate calls. DOC staff stated that they wanted to avoid that situation in Virginia. The intent in establishing the current contract was to limit rates to about what was being charged by the telephone companies serving DOC facilities. At that time, those rates were probably what the public was charged for an operator assisted collect call since all inmate calls were even then required to be placed collect.

The Board of Corrections has also attempted to limit the cost of calls in local jails through its jail regulatory and oversight function. In May 1994, the Board of Corrections proposed changes to jail standards governing access to telephones in local jails to ensure that "the expense of such access [to telephone facilities] shall not exceed the average rate charged to the local community." The Board's goal at that time was to limit the cost of calls from local jails to the level charged the public in each locality.

Type of Call Will Determine Charge Structure. The primary factor that determines the rate structure for a telephone call is the type of call. Calls made from DOC institutions are completed with the assistance of an operator and billed as collect calls. Calls completed as operator assisted collect calls are typically more costly than a direct dial call. In addition to the per minute rates charged, there is an operator surcharge attached to the call. The surcharge is in addition to the per-minute charges.

Finally, there is concern that because the operator in the DOC phone system is automated, it should not be considered an operator assisted call. However, federal law states that:

The term "operator services" means any interstate telecommunication service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both of an interstate telephone call....

Correctional institutions are not at this time regulated by the FCC as aggregator locations. However, the definition of interstate operator services for all other regulated locations includes automated operator service.

Placing Limits on Rates Should Result in Cost Savings for Recipients.

For an operator assisted collect call from a MCI pre-subscribed payphone, the current surcharge is \$2.15 and the per minute rates are almost consistent with the per minute rates charged for the DOC prison phone system. Examples of how MCI rates for public payphone operator assisted collect call rates would affect the cost of a call currently completed through the DOC inmate phone system are highlighted in Table 3.

Table 3

**Impact of Applying MCI Public Payphone Rates to
15 Minute Inmate Long Distance Call
(Selected Examples)**

From/To	Billing Period	Current Cost of Inmate Call	Cost Using MCI Pay-Phone Rates	Difference
Haynesville CC/ Triangle, VA	Evening	\$5.55	\$4.69	(\$0.86)
Augusta CC/ Occoquan, VA	Night	\$5.70	\$4.84	(\$0.86)
Keen Mountain CC/ Kenbridge, VA	Day	\$7.80	\$6.94	(\$0.86)

Source: JLARC staff analysis of telephone bills from recipients of calls from inmates in DOC institutions and MCI tariff schedules filed with the State Corporation Commission.

This does not mean however, that rates could not or should not be set lower than levels currently charged the public. A rate lower than the surcharge that is charged the public could be selected in part to mitigate the inability of inmates and call recipients to select alternate carriers or calling plans that are available to the public. However, the extent to which rates could be lowered would need to be negotiated in the contracting process as the cost of the system's security and operating features would need to be considered and included in the rates.

If the surcharge on collect calls were reduced by \$0.85, the cost savings would be significant. The savings in FY 1996 on interstate calls would be more than \$686,000. Savings attributable to intrastate calls could not be determined due to the lack of data on the number of calls assessed the \$3 surcharge.

Finally, any reductions in the rates charged call recipients and any additional security or operational features required in the next contract, will likely reduce the commission revenue paid to the State because the commission revenue is currently based on gross billable charges. Moreover, commission rates may also need to be reduced to account for any reductions in rates or charges and any additional security or operational features. This would likely further reduce the commission revenue paid to the State.

Next Contract Should Clearly State Rates to Be Benchmarked

The current contract governing the administration and operation of the DOC inmate phone system requires that rates charged “must not exceed AT&T rates or local state tariff rates....” Moreover, no additional charges for services are to be added to the cost of a call. As noted earlier, DOC staff stated that such contract provisions were intended to limit the charges that were applied to inmate calls to approximately the level that call recipients paid at that time for inmate calls. According to DOC staff, AT&T rates were selected because AT&T would likely be hesitant to arbitrarily raise rates due to industry competition. DOC staff stated that they wanted to limit rates charged because they were aware that exorbitant rates had been charged inmates in other states.

Despite these important goals, the language requiring that rates not exceed AT&T rates should have been more specific. The current language requiring MCI to benchmark AT&T tariff rates is too broad because there are a significant number of different AT&T rates and programs tariffed by the State Corporation Commission (SCC).

For example, in 1991, the long distance surcharge for the inmate phone system was apparently the same for operator assisted, collect calls charged the public by AT&T. However, in late 1994, AT&T introduced a tariff schedule for prison systems with collect call controls. This tariff contained a \$3 long distance surcharge. In accordance with the provisions of the current contract, MCI chose to benchmark the surcharge in this SCC-approved AT&T tariff. It should be noted that MCI's per minute rates for the inmate phone system are slightly less than AT&T's per minute rates for prison systems with collect call controls.

In 1991, the language in the current contract was apparently sufficient to minimize rates charged inmate call recipients. However, the advent of more specialized tariffs, such as the AT&T tariff for prison systems with collect call controls that contains rates different than those charged the public, will require even more specificity in the contract to ensure rates are limited. SCC staff confirmed that more specificity would likely be desirable in this type of telecommunications contract, especially a contract that does not quote an exact rate and surcharge.

With the ever increasing number of telecommunication services and plans that will likely be available as the industry continues to change and grow, further specificity will ensure that the intended rates are maintained throughout the duration of the

contract. The following are examples of how agencies in other states attempt to ensure rates charged through their systems are consistent with those charged the general public:

The request for proposal for the North Carolina public telephone service, which includes the state's inmate phone system, stated that one of its objectives was "to provide high-quality, dependable, well-maintained public coin/coinless telephone service to State clients, consumers, inmates and general telephone users at State locations at prices not to exceed those of the LEC or AT&T for calls of similar type and distance."

* * *

The Florida Department of Corrections' contract requires that "At all times the rates charged by the contractor to the called party shall not exceed the dominant carrier (AT&T) rates for the same call - distance, length of call, time of day and day of week. These maximum allowable rates shall reflect the AT&T interlata and interstate rates in effect at the time of the call. It shall be the responsibility of the contractor to remain current on allowable rates...." Florida correctional staff indicated that charges for calls completed by inmates mirror charges for the same type of call completed from a public pay phone.

At a minimum, language in the contract regarding rates should ensure that the rates the next contractor benchmarks also apply to similar type calls placed by the general public. This should help ensure that charges are not linked to specialized tariffs that reflect higher rates or surcharges.

Finally, the SCC should be consulted when determining what rates to benchmark for the inmate phone system contract. There are a large number of rate tariffs on file with the SCC and care should be taken when selecting the rates and tariffs to benchmark in the contract. SCC staff maintain and are familiar with the telephone companies' tariffs and rates and stated that they would be willing to provide technical assistance to the contracting agency in this area.

Recommendation (1). The Department of Corrections should require that the next contract for the inmate phone system specify that the rates and surcharges assessed for operator assisted, collect calls from inmates be comparable to State Corporation Commission tariffed rates and surcharges that an industry dominant telecommunications company assesses on similar calls placed by the public. The Department of Corrections should determine the fiscal impact of this recommendation on call recipients and the commission revenue and present its findings to the House Appropriations and Senate Finance Committees by February 1, 1997.

DOC Should Consider Increasing the Limit on the Duration of Inmate Calls

As noted earlier in the report, calls are currently limited by DOC policy to 15 minutes in length. Because the \$3 surcharge is placed on every long distance call, regardless of length, the cost per minute of the surcharge is reduced the greater the length of the call. For example, for a two minute long distance collect call, the cost of the \$3 surcharge is \$1.50 per minute. For a 15 minute call, the cost is 20 cents per minute. For a 20 minute call, the cost of the surcharge would be 15 cents per minute.

In addition, a review of selected telephone bills from DOC inmate call recipients indicates that, in some cases, inmates are calling back to the same recipient immediately after the 15 minute limit is reached and the initial call is automatically terminated. Because the \$3 surcharge is assessed for every subsequent call, increasing the duration of the call would mitigate the impact of the surcharge for back-to-back calls.

An example of how extending the limit on the length of a call from 15 minutes to 20 minutes can impact the total cost of consecutive calls is provided in Table 4. The data for the 15 minute calls are from the phone bill of a call recipient who received four 15 minute consecutive calls from the same DOC facility and inmate phone. The charges were billed at the evening rate. As indicated, three 20 minute calls would cost \$3 less than four 15 minute calls.

Table 4

Effect of Increasing Time Limit for Consecutive Calls Totaling 60 Minutes from Cold Springs Field Unit to Charlottesville

Maximum Call Length	Consecutive Calls	Total Cost of Surcharge	Total Per Minute Charges	Total Cost of 60 Minutes
15 Minutes	Four	\$12	\$10.20	\$22.20
20 Minutes	Three	\$9	\$10.20	\$19.20
			Savings:	\$3

Source: JLARC staff analysis of DOC inmate call recipient telephone bills from February 1996 and MCI tariff rates for the DOC inmate phone system.

DOC staff noted that one of the most frequent complaints they receive regarding the inmate phone system is the 15 minute limit on each call. In 1993, the State Crime Commission recommended extending the limit for automatic termination of calls to 30 minutes. Moreover, some call recipients support increasing the time limit from the current 15 minutes per call. For example:

The recipient of long distance inmate collect calls supported increasing the maximum length of calls. She noted that "...after the fifteen minutes are up, if the inmate is in the middle of a conversation... the inmate must redial which is another collect charge to the family...." Increasing the limit on the call duration would "... be cost effective for the people paying for these calls and I feel more inmates would utilize the telephone system if they felt it were not so much of a financial burden on the families."

Finally, increasing the time limit is an action that DOC can institute immediately. Because the current rates cannot be changed until the contract expires in December 1997, increasing the time limit is one avenue available to lessen the effect of the long distance surcharge.

Nonetheless, DOC has to balance the impact of extending the time limit from the current 15 minutes on phone availability in the institutions as well as other facility security and operational issues. As a result, DOC should evaluate the impact on facility operations and security of extending the current 15 minute time limit for telephone calls made through the DOC inmate telephone system.

Recommendation (2). The Department of Corrections should consider extending the current time limit on inmate telephone calls.

III. Commission Revenue, Administration of the System, and Options for Improving the System

This review also addressed the issue of commission payments that are provided the State through the DOC inmate telephone system. It appears that the use of commission payments for inmate phone systems is a common industry practice. For example, the majority of correctional systems in southeastern states receive some form of commission payments from their inmate phone systems. However, unlike Virginia, most southeastern states use all or some of the revenue for programs or services that benefit inmates. Using the revenue attributable to the Department of Corrections' (DOC) inmate phone system for the benefit of inmates should also be considered in Virginia.

In addition, assigning responsibility for administering the DOC phone contract to the Department of Information Technology (DIT), which is responsible for the State telephone services contract, should be considered to improve oversight and administration of the system. Despite its awareness of certain problems, DOC's oversight and administration of the contract has not consistently addressed these concerns. In addition, DIT could include the DOC inmate phone contract with the entire statewide telecommunications contract, which has the potential to produce additional benefits for the State.

Finally, additional options for improving various facets of the inmate phone system should be considered. For example, DOC should utilize more detailed data to monitor the activities related to the inmate phone system. In addition, an independent audit of the phone system's billing and timing mechanisms should be required in the next contract to be provided by the contracting company. Finally, DOC should initiate steps that could benefit inmate call recipients who, because the calls are collect, are required to pay for the call.

INMATE TELEPHONE COMMISSION REVENUE

Telephone deregulation in the mid 1980's and payphone deregulation in the late 1980's has increased competition among telephone companies. Deregulation has also prompted telephone companies to offer a number of different programs as methods for attracting new customers as well as retaining their existing customer base. In this environment, commissions are used by telephone companies to secure the right to be the exclusive provider of telephone services for an organization. This practice is also common for telephone companies that are competing to provide inmate telephone services to state correctional systems.

Reflective of this practice, many of the correctional systems in the southeastern states, and across the nation, receive some form of commission revenue from their inmate phone systems. In addition, other agencies in Virginia have programs in which they

receive revenue from some of their telephone systems. If the rates charged recipients of calls from the DOC inmate phone system are capped at the level the public is charged, commissions from the inmate phone system could be retained.

In contrast to many other states, however, Virginia has not specified that any portion of commission revenue be used to enhance inmate programs or services. The State may want to consider such a designation for inmate phone system revenue. If inmate telephone system commission revenue is to be used for programs that benefit inmates, DOC should clearly identify how the revenue will be used, and develop measurable goals and objectives for enhancing inmate programs or services.

Inmate Phone System Commission Revenue Is Common in Many States

Interviews with state corrections officials in other states indicate that prison telephone commissions are not unique to Virginia. JLARC staff interviewed corrections officials in 12 southeastern states. All 12 states' correctional systems receive commission payments from the companies that provide the inmate phone systems (Table 5). Commission rates in these states ranged from 10 percent in West Virginia to 63 percent in Louisiana.

Table 5

Southeastern States' Inmate Phone System Commission Programs

State	Commission Rate
Alabama	10 to 20%
Arkansas	46
Florida	40 to 53
Georgia	38 to 60
Kentucky	55
Louisiana	63
Maryland	20
Mississippi	22 to 47
North Carolina	38 to 48
South Carolina	Varies
Tennessee	45 to 48
VIRGINIA	50
West Virginia	25

Note: Commission rates for Alabama and Mississippi were obtained from the study of state correctional systems reported in *Corrections Compendium*, 1995.

Source: JLARC staff analysis of interviews with selected states' department of corrections staff, fall 1996 and *Corrections Compendium*, 1995.

Comparisons of commission rates must be made carefully. The commission rates are usually the result of negotiations between state agencies and the telephone companies. In addition, the costs of providing the service will also affect the rate at which the commission is paid. Finally, some states use more than one phone company to provide inmate telephone services, which could also affect the commission rates.

Other studies also indicate that prison inmate telephone system commission payments are common throughout the country. For instance, a 1995 *Corrections Compendium* study of state corrections departments in the 50 states and the District of Columbia reported that 38 of 41 respondents received commission payments from their inmate phone system. Clearly, receiving commission revenue from inmate phone systems is a common practice throughout the United States.

Data collected from other states identified a number of state policies regarding the issue of commissions from inmate telephone systems. For example:

The Georgia Department of Corrections was advised by the state's Department of Audits to seek more revenue from inmate telephone contracts. The audit report noted that inmate telephone systems had not been fully implemented in the correctional facilities. The report recommended that the department of corrections should "implement telephone commission programs in all its facilities as quickly as possible to maximize commission income." Facilities identified for telephone system installation included detention centers, diversion centers, transition centers, and boot camps.

* * *

Texas currently has no statewide inmate telephone system in place. However, both the state's Comptroller of Public Accounts and the Texas Performance Review recommended in 1995 that the department of corrections enter into a commission-based inmate telephone agreement which would provide a significant amount of revenue for the state as well as better access to phones by inmates. It was estimated that the state could generate \$30 to \$40 million annually from telephone commissions.

Despite the Texas state legislature's attempt to institute the recommendation, the Texas corrections system's governing body did not enter into a contract for an inmate phone system. As a result, inmates still are allowed only one call every three months, and the ability to make that call is contingent on the inmate's behavior.

Other Virginia State Agencies Receive Telephone Commission Revenue

A number of Virginia state agencies also receive commission revenue from telephone system contracts. For example, DIT has established a State telephone contract

which enables certain State agencies and institutions to generate commission revenue from calling activity. As a result of this contract, some agencies have generated commission revenue and in some cases used these funds for agency specific programs or services. For example:

The Department of Conservation and Recreation (DCR) receives a commission based on call activity from payphones in State parks. Commission revenue generated from these phones is deposited in DCR's Conservation Resources Fund. In addition, some State universities receive commission revenue from campus payphones. Again, commission revenue is retained by the institutions.

In addition, not all State agencies receiving telephone commission revenue are part of the DIT administered contract. For example, the Virginia Department of Juvenile Justice (DJJ) has negotiated a commission-based telephone contract. DJJ receives commission revenue from telephones serving its juvenile correctional centers which is deposited into the State's general fund. Clearly, commission payments for telephone systems in Virginia are not unique to DOC.

Regulatory Agencies Have Not Addressed Commission Payments

Despite the proliferation of commission payments by telephone companies to be the exclusive provider of telephone services for specific organizations, there has been little if any regulatory action directed at controlling or capping their use. The State Corporation Commission's (SCC) rules and regulations governing pay telephones contain no provisions related to commission payments. Although the SCC's regulations do not apply to pay phones in correctional institutions, the provision of pay phone service elsewhere is commonly linked with the practice of phone companies providing commissions in order to secure the right to be the exclusive provider of telephone services for an organization or business.

In addition, federal statute authorizes the Federal Communications Commission (FCC) to limit the "amount of commission or any other compensation given to aggregators by providers of operator service." At this time, there are no FCC regulations that attempt to address the issue of commission payments provided by operator service providers. As noted earlier, the FCC has not yet regulated correctional facilities as aggregators. Nonetheless, for interstate calls that are completed through a regulated operator service providers, the FCC has not determined a need to regulate the practice of commission payments.

Commissions Could Be Retained If Rates Are Not Excessive

Although recipients of prison inmate long distance collect calls from Virginia inmates are charged more than recipients of comparable calls completed by the public,

this is not true for all inmate telephone systems. Some states reported that they require the inmate collect call charges be no greater than similar operator assisted collect calls completed by the public.

Despite these rate limitations, which are similar to those recommended by this study, these states still receive commission revenue from their inmate telephone system. For example:

Both North Carolina and Florida have established a number of controls to ensure that individuals accepting inmate collect calls are charged no more than individuals accepting comparable collect calls from public payphones. In each case, the states continue to receive commission revenue from their inmate phone systems. In FY 1996, Florida received more than \$12 million and North Carolina received more than \$6 million in commission revenue through their inmate phone systems.

* * *

In Wisconsin, the costs of inmate collect calls are no greater than the cost of similar calls charged the public. Further, in its most recent inmate telephone system request for proposal, Wisconsin's corrections department wanted an inmate telephone system which ensured "that the lowest possible rates [were] charged" to recipients of inmate collect calls. Wisconsin corrections department staff noted that although it was the department's intention to reduce the financial impact of inmate collect calls on call recipients by reducing rates, state officials did not wish to accomplish this at the expense of losing commission revenue. Consequently, the state still receives commission revenue from inmate call activity.

In these instances, states reportedly have been able to limit charges to rates the public would pay for similar calls while still receiving commission revenue.

Limiting the rates and surcharges for inmate long distance telephone calls completed from Virginia corrections institutions to the level that the public pays for operator assisted collect calls should result in cost savings to inmate call recipients. Moreover, since call recipients would pay rates comparable to rates the public would pay for operator assisted collect calls, any commission payments to DOC would not be funded through money collected from inmate telephone charges above standard collect call rates.

***Recommendation (3).* If rates and surcharges for the Department of Corrections inmate phone system are reduced so that they do not exceed the operator assisted collect call rates charged the public by a dominant carrier, the Department of Corrections' commission revenue program should remain in place.**

Utilization of Inmate Telephone Commission Revenue

As highlighted in the previous section of this chapter, it is relatively common for states to receive commission revenue from inmate telephone systems. This is evidenced by the fact that 12 southeastern states receive commission revenue from their inmate telephone systems. In addition, other Virginia state agencies generate commission revenue from selected telephone systems.

However, the manner in which other states utilize the revenue from these commissions does vary. In Virginia, the commission revenue is deposited into the general fund and is not used for particular programs or services. However, in many other states, either all or a portion of the revenue from the inmate phone systems is used for programs that directly or indirectly benefit inmates.

Application of DOC Inmate Telephone System Commission Revenue in Virginia. Revenue from the DOC inmate telephone system is currently deposited in the State's general fund. Since the current contract was established in 1991, about \$24 million has been deposited into the general fund. Moreover, there is neither policy nor statute which directs that these funds be reallocated to DOC or earmarked for any inmate program or services. Nonetheless, DOC staff indicated that although commission revenue does not benefit inmates directly, commissions paid to the general fund indirectly help offset the costs to taxpayers for maintaining the State's prison system.

Application of Inmate Telephone System Revenue in Other Southeastern States. As reported earlier, a large number of states receive commission revenue from their inmate phone systems. However, 11 of the states contacted by JLARC staff indicated that either all or a portion of inmate telephone commission revenue is returned to the state corrections department or designated for specific inmate welfare programs (Table 6).

The majority of southeastern states use at least a portion of the funds specifically for programs that benefit inmates. In Alabama, the revenue was intended to be used for the benefit of inmates. However, budget limitations have required that the inmate telephone revenue be allocated to and used by the state department of corrections. In Kentucky, where the revenue is allocated entirely to the state corrections' department, the revenue is used by the department to offset the cost of providing health care to inmates.

Moreover, corrections officials in other states have indicated that revenue from inmate telephone commissions have assisted them in providing programs which previously lacked adequate general fund appropriations. For instance, the state of Maine uses all inmate telephone commission revenue "solely for the benefit of prisoners." More specifically:

The commissions earned by the Department are absolutely essential for the continuation of educational/vocational, and recreational pro-

Table 6

Application of Inmate Telephone System Commission Revenue in Selected Southeastern States

Key: ✓ = All Revenue ○ = Portion of Revenue

State	Allocated to Inmate Programs	Allocated to General Fund	Allocated to Corrections Department
Alabama			✓
Arkansas	✓		
Florida	✓		
Georgia	✓		
Kentucky			✓
Louisiana	✓		
Maryland	✓		
Mississippi	○		○
North Carolina	✓		
South Carolina	✓		
Tennessee		✓	
VIRGINIA		✓	
West Virginia	✓		

Source: JLARC staff analysis of interviews with selected states' department of corrections staff, fall 1996.

grams; entertainment, including holiday supplies; hair cuts; personal care items for indigent clients; transportation; gate money; bank charges; client postage; and library materials.

Using telephone commission revenue for specific inmate purposes or returning portions of commission revenue to corrections departments has, in general, apparently assisted states in funding programs that benefit inmates.

DOC Inmate Programs Could Benefit from Commission Revenues

Although DOC inmate telephone system revenue is not specifically used for inmate purposes at this time, DOC staff indicated that there are inmate programs that could benefit from the commission revenue. Potential areas identified include inmate treatment programs and academic and vocational education programs.

However, DOC staff indicated that any telephone commission funds should be appropriated specifically for the intended programs and should not simply be a transfer of one revenue stream into the agency with an offsetting reduction in general fund

revenue. To help prevent this, DOC should develop a proposal for using the inmate telephone revenue to fund specific programs that includes goals and objectives for programs that are requested to receive the funding.

Potential Uses of Inmate Phone Revenue. A number of different uses for the revenue from the inmate telephone system have been suggested by DOC and Department of Planning and Budget staff during this study. For example, both proposed using the funding to expand inmate treatment programs or to upgrade the quality of academic and vocational training programs offered to inmates. Reportedly the current funding for these programs has not been sufficient to meet demand.

DOC staff also suggested that the revenue could be used to expand the telemedicine videoconferencing program that is used to provide specialty care for inmates. At the present time, there is a videoconferencing link between the Powhatan correctional center and medical specialists at the Medical College of Virginia (MCV). DOC staff believe that this has been an extremely beneficial arrangement for both inmates and DOC. Inmates are able to secure the services of a specialist more consistently and DOC is able to avoid transporting inmates from the Powhatan correctional center to MCV. DOC staff noted that this technology could be applied to other facilities as well.

Another potential application of revenue from the inmate phone system are programs, services, or facilities designed to facilitate visitation of inmates in DOC institutions. For example, the 1993 State Crime Commission report recommended that matching grant funds be provided to not-for-profit organizations providing transportation for prison visitation. The report also noted that there were few accommodations that facilitated children visitors. Revenue from the inmate phone system could potentially be used for these or other services designed to facilitate visitation of DOC inmates.

Application of Funds Should Be Clearly Established. If commission revenue is specified for direct use for inmate programs or services, the intended purpose of the funding should be clearly specified. Corrections officials in other states noted that this is important to ensure that commission revenues are expended in a manner which is consistent with the intended purposes. If clear guidance is not provided regarding how the funding is to be utilized, the intended benefits of the commission revenue may not be realized.

For example, in 1995, the Georgia Department of Audits recommended that the state's corrections department discontinue using a special fund created to hold telephone commission revenues in trust for inmates. The report found that:

Department personnel ... felt "ethically obligated" to ensure that these funds were only used to benefit inmates since the source of funds was primarily from the inmates family and friends. [However,] the Department's definition of items 'benefiting' inmates is so broad that there is little reason to utilize a trust fund to differentiate these

expenditures from normal expenditures made with appropriated funds. Practically any purchase made for a correctional facility can ultimately be rationalized to benefit inmates in some manner. For example, items such as razor wire, fencing, buildings, furniture, televisions, and recreation equipment are purchased with commission funds.

The report added that many of these items were also being purchased with general fund appropriations. In another state that reportedly used funding from the inmate phone system to benefit inmates, security cameras have been purchased with the telephone system commission revenue.

Proposal for Utilizing this Funding Should be Developed. As discussed earlier, there are some DOC programs and services utilized by inmates that could potentially benefit from additional funding. However, there is no clear plan available to prioritize or determine the programs' funding needs. If all or a portion of telephone commission revenue is to be returned to DOC in an effort to enhance inmate programs, DOC should identify potential funding needs of programs or services that benefit inmates, and develop clear and measurable goals and objectives for expenditures of these funds.

At a minimum, DOC should identify the inmate programs or services which are in need of additional funding to maximize their effectiveness and offer strategies to enhance these programs through inmate telephone commission revenue. Moreover, any telephone commission revenue requested should not be used to replace appropriated State funding.

DOC should also consult with other State agencies that provide services to inmates to assess potential needs among those agencies. For example, the Department of Correctional Education (DCE) provides educational services and programs for inmates in DOC facilities. DCE should be requested to identify inmate educational services or programs that could benefit from additional funding. Finally, DOC could consult with inmate advocacy groups for additional suggestions on the potential uses of commission revenues

Recommendation (4). The General Assembly may wish to require that revenue from the inmate phone system be used for programs or services that directly benefit inmates.

Recommendation (5). The Department of Corrections should develop a proposal for using the inmate phone system revenue for specific prison programs designed to benefit inmates. The proposal should include measurable goals and objectives for each program under consideration and be presented to the House Appropriations and Senate Finance Committees by February 1, 1997.

ADMINISTRATION OF INMATE PHONE SYSTEM CONTRACT SHOULD BE TRANSFERRED TO DIT

Item 14I of the 1996 Appropriations Act requires that JLARC address the need for oversight by an entity independent of DOC. This review indicates that more proactive and consistent administration of the contract governing the inmate phone system is needed. The principal framework in which the inmate phone system operates is the contract. Therefore, a properly written and monitored contract is necessary to ensure that the needs and expectations of DOC, inmates, and call recipients are met.

Nonetheless, concerns with the adequacy of DOC's oversight and monitoring provided the inmate phone system have been identified in this study. A 1993 study by the State Crime Commission also cited concerns with DOC's oversight and monitoring of the system. The area of telecommunications is a rapidly evolving and technology driven industry. Thus, DIT appears to be the agency with the proper focus and infrastructure to best support more proactive and consistent administration of the inmate phone system contract.

Telecommunications Industry Is Rapidly Evolving and Technology-Driven

Since 1988, a number of significant changes have occurred in the telecommunications industry. These changes began with the 1983 federal court ordered AT&T divestiture of the regional Bell telephone operating companies. This divestiture was extended in 1988 to the public payphone industry. The Telecommunications Act of 1996 will likely continue to provide the impetus for rapid and potentially confusing changes in the telecommunications industry.

The 1996 Telecommunications Act requires that many of its provisions be implemented quickly. In addition, the regulatory approach and technology advances in the industry have affected service offerings and rates. These changes will continue to affect both the purchasers and users of telecommunication services. As one telecommunications official recently noted:

The combined impact of these developments is that every rule, assumption, and tradition in our industry is being shoved aside. And the net result is change.

Even though the service provided to DOC inmates through the phone system is a contracted service, the changes in the industry could even impact how telecommunications contracted services are provided and administered.

Concerns with Administration of the Inmate Phone System Have Been Cited in Other Studies

Concerns with various aspects of the administration of the inmate phone system have apparently been raised since shortly after the establishment of the current system. A 1993 study by the State Crime Commission regarding family and community ties of incarcerated individuals also addressed the issue of the DOC inmate phone system and identified a number of problems. The report stated that:

The system has also suffered defects well recognized by the phone carrier who asserts that efforts are being made to resolve such defects. Early termination of calls ... improper billing for calls, and inadequate noise barriers in certain phone locations are examples of defects that should not be tolerated. In reviewing these concerns, we found that problems have not always been addressed in prompt fashion.

Concerns with background noise are still reported by some inmate call recipients. MCI staff noted that noise problems often were related to the design of the facility, which enabled background noise to “echo” in the rooms where phones were located. Apparently, the phone companies providing service prior to the current system had good sound barriers, but they were removed when the current contract was established.

At the present time, DOC’s security concerns apparently limit what types of barriers can be installed. However, the contract clearly requires that noise reduction equipment be installed and that DOC “reserves the right to decide, on a case-by-case basis, whether the selected equipment accomplishes the noise reduction objective.”

Regarding administration of a contract such as the one for the DOC inmate phone system, the State Crime Commission’s report concluded that:

In circumstances such as this, however, where the Commonwealth grants a monopoly to a commercial enterprise to provide service ... responsiveness to legitimate complaints should be made a top priority. Contractual obligations should be met without undue delay and, indeed, greater scrutiny to alleged shortcomings should be applied than might otherwise be the case.

Given the rates that call recipients are currently required to pay, concerns regarding these issues should be properly and promptly addressed.

Department of Information Technology’s Focus Facilitates Administration of Telephone Services

The primary purpose of the DOC telephone contract appears to be to provide secure inmate telephone services while minimizing the involvement of DOC staff in the

day-to-day operation of the system. It therefore seems appropriate that the agency or organization primarily responsible for administering and implementing the inmate telephone system also have a focus or background consistent with the service to be provided and the contract to be administered. DOC does not appear to have the necessary focus or mission for providing day-to-day administration of the inmate telephone system or contract.

A review of the missions of potential agencies considered for the administration of the DOC inmate phone system indicates that the agency with the clearest mission related to the procurement, operation and administration of telecommunication services is DIT (Table 7). Moreover, the *Code of Virginia* prescribes a number of “powers and duties concerning the development, operation and management of communications services.” As a result, DIT has significant experience providing, procuring, and administering telecommunication services to the State and some local governments.

In contrast, the focus of DOC is primarily constructing and operating various classifications of secure confinement facilities ranging from maximum security institu-

Table 7

Selected Agencies' Missions and Roles Regarding Telecommunications

Agency	Focus of Agency's Mission
Department of Corrections	“The Department of Corrections provides secure confinement and a variety of community-based placements and services.... The principal activity of the Department is to ensure that adult criminal offenders are removed from society and housed in a secure environment.”
Department of Information Technology	“The Department is responsible for managing and coordinating the use of various telecommunications services, teleconferencing, and computer processing centers in the Commonwealth.... formulating policies, standards, and specifications for telecommunications, automated data processing, and management information systems; procuring ADP and telecommunications equipment and services on a statewide basis; reviewing and approving agreements and contracts for ADP and communication equipment and services...”
State Corporation Commission	“The <i>Constitution</i> vests in the Commission the duty of regulating the rates, charges, and services of facility-based telephone companies and interexchange carriers and, except as otherwise authorized, their facilities.”

Sources: JLARC staff analysis of the 1990 - 1992 *Executive Budget of the Commonwealth* and the *Virginia Administrative Law Appendix*, 1995.

tions to detention centers and work camps. DOC is also responsible for the oversight of local and regional jails which also share many of the features of the facilities operated by DOC.

Finally, another agency evaluated for the placement of the inmate phone oversight function was the SCC. The SCC is very active in the regulation of public utilities, which includes telecommunications services. However, the SCC is prohibited by the *Code* from regulating telecommunications services provided under contract with a State agency.

Moreover, many of the broad goals of the SCC are simply objectives that the DOC inmate phone system should address through the contract development, implementation, and administration process. For example, two of the SCC's goals are to:

- ensure that public service corporations provide quality service, and
- provide assistance to individuals who have disputes with regulated companies.

These should also be goals or requirements that a State agency contracting for telecommunications services should address through the contract development and contract administration process. A properly developed contract and proactive and consistent administration should ensure that these goals are met.

However, procuring telecommunication services and day-to-day administration of contracts are not a primary focus of either the SCC or DOC. Those activities are a major responsibility of DIT. DIT developed and currently administers the State's contract for statewide telephone service. This expertise is important in a rapidly evolving, technology-driven industry such as telecommunications.

One State telecommunication director reported that individuals involved in negotiating telecommunications contracts should be specialists in that area. Otherwise, non-specialists trying to deal with telecommunications contracts will not have the expertise to deal with the issues related to the systems. In fact, SCC staff noted that DIT has significant telecommunications expertise available for developing and administering the type of contract needed to provide inmate telephone service.

DIT's Infrastructure Supports Proactive Administration of the Inmate Phone Service Contract

One benefit of assigning responsibility for developing and administering the contract for the DOC phone system with DIT is the administrative and technical support structure that would be available. These resources could be used to monitor the contract, interact with the contractor, and respond to call recipients concerns. These resources that are available within DIT are not readily available in other agencies.

DOC currently lacks many of these resources, which is reflected in the concerns expressed regarding DOC's current approach to administration of the inmate phone system contract. DOC staff involved in administering the inmate phone system reported that they do not have a technical background or telecommunications experience. This could limit proactive oversight of calling activity or service related problems. Finally, requiring DIT to administer the inmate phone contract as part of the entire statewide telecommunications service contract could benefit the State, inmates, call recipients, and possibly local jails.

More Proactive and Consistent Oversight of Contract and Services Is Needed. One positive factor that should occur with a reassignment of contract responsibilities for the inmate phone system from DOC to DIT would be more proactive and routine oversight. At this time, DOC staff responsible for the current inmate phone system contract do not provide consistent oversight of the contract or telephone services. For example:

At one time during the current phone system contract, calls were automatically terminating after 15 minutes and 10 seconds instead of terminating at exactly 15 minutes. This problem was linked to the phone system's software. Despite being automatically terminated by the system after 15 minutes and 10 seconds, call recipients were billed for 16 minutes because the system billed in one minute increments. Until the software issue could be resolved, the calls were instead terminated at 14 minutes and 10 seconds and call recipients were billed for 15 minutes. Despite this earlier problem, DOC staff noted that they do not go out to facilities to check whether the call duration cutoff was functioning properly.

Moreover, since the issue of call duration is a DOC policy, DOC should actively monitor this requirement, especially since the charges are rounded up to the next minute and problems have existed in the past. To resolve this particular issue, the SCC worked with MCI despite the fact that the SCC was not responsible for administering the contract.

DOC staff noted that they do not have the technology or the time to check on everything related to the inmate phone system. When discussing rates charged and whether the rate benchmark requirements in the contract were being complied with, DOC staff reported that:

MCI and AT&T rates are tariffed by the SCC and the FCC. As a result, the SCC and FCC indirectly oversee that portion of the contract addressing rates. Because rates are tariffed, the telephone company knows that these agencies are watching them, which will ensure rates are properly charged.

This assumption by DOC staff is incorrect, however. The SCC is prohibited by the *Code of Virginia* from involvement in issues related to telephone services provided under contract with State agencies. Moreover, the FCC does not currently require providers of interstate telephone services to correctional institutions to even file informational tariffs. Clearly, the SCC and FCC do not indirectly monitor that portion of the contract.

DOC staff noted that the primary oversight of calling and commission activity is to compare and check the totals of the commission revenue data provided by the contractor. Although DOC had discussed development of a system to randomly audit the data, nothing has yet been finalized. Moreover, staff noted that the contractor was a large reputable company and would not risk its reputation by not meeting the requirements in the contract. Finally, DOC staff noted that they lack the technology that would likely be necessary to routinely provide this type of oversight.

Conversely, DIT staff noted that technical issues could cause some unanticipated problems with the commission payments or charges. For those reasons, DIT provides routine oversight of the commission payments and calling charges for the telephone contract it administers.

For example, DIT reported that it has established expected benchmarks for commission revenue and calling patterns for the phone systems it administers. DIT receives magnetic tapes for all calling activity and checks the data on the tapes against established benchmarks. DIT staff also reported that they routinely check the calling data on tapes from local exchange carriers against the data on the contractor's long distance tapes to ensure the same calls appear on each data source. Staff in North Carolina's department of corrections reported that cross-checking calling data from two independent sources has enabled them to recover about \$500,000 in improper charges over a two-year period.

Other Indirect Benefits from Assigning Responsibility for Inmate Phone System to DIT Could Also Accrue. In addition to the more proactive and routine oversight of the inmate phone system that would likely be provided by DIT, other indirect benefits of assigning responsibility for the inmate phone system to DIT could also accrue. First, the *Code of Virginia* requires that counties, cities, and towns be included, if they choose, in the State's telecommunications contract administered by DIT. As a result, DIT staff noted that if the inmate phone system contract were included in the State contract, local jails would also have the ability to utilize the inmate phone service if they desired.

Second, if the inmate phone system were included as a section of the State's telecommunication contract, the ability of DIT to negotiate more favorable rates for both the State's telecommunication services and the inmate phone system might be enhanced. DIT noted that the inmate phone system has a significant volume of long distance traffic which would be attractive for a telecommunications company interested in providing telephone service to the State. As a result of this volume, DIT might be in a better position to obtain favorable rates for both the State's phone service and inmate call recipients.

DOC's Security Requirements for Inmate Phone System Must Also Be Addressed

Finally, as discussed in Chapter I, the DOC inmate telephone system has a number of specialized operational and security features that are not part of a traditional phone system. Despite these features, it will likely be necessary for DOC to require additional security features in the next phone system. If DIT were required to administer the DOC inmate phone system contract, DOC's specialized requirements for an inmate phone system would need to be fully and adequately addressed.

DIT staff have stated that the structure and services provided to DOC under the current inmate phone system could be maintained or even expanded if necessary. DIT would need to be especially cognizant of DOC's security requirements to ensure that the phone system meets the needs of inmates, call recipients, DOC, and the general public.

For example, phone company staff should be on-site at DOC's central office to address the system's operations, respond to DOC's requests for service, and support DOC staff. In addition, DOC should develop and agree to all of the requirements in the RFP that apply to the inmate phone system. Finally, the request for proposal and contract pertaining to the DOC inmate phone system should ensure that DOC has the ability to interact directly with the contractor regarding the inmate phone system and that the contractor will be responsive.

***Recommendation (6).* The General Assembly may wish to direct that the Department of Information Technology assume responsibility for developing and administering the next contract for phone service for inmates in facilities operated by the Department of Corrections as part of the next statewide telecommunications services contract.**

ADDITIONAL OPTIONS FOR IMPROVING THE SYSTEM

Previous sections of this report have addressed issues related to the fiscal impact of the inmate phone system, oversight and administration, and commission payments. This section discusses additional options for improving the inmate phone system to address issues identified during this review.

The next inmate phone contract should require the submission of detailed data related to the system's operation. The data should also be submitted in an automated format for easier auditing and analysis including a review of the impact of costs on call recipients. Moreover, the next contract should require that an independent audit of the phone system's timing, billing, and billable and commission revenue be provided. Finally, additional mechanisms designed to benefit call recipients should be implemented.

More Detailed Calling and Revenue Data Should Be Required

Despite the large amount of money involved, the billable and commission revenue has apparently never received a detailed review. DOC receives a monthly check summary report, an institutional summary report, and a report that details call activity by inmate phone. These reports show the number of interstate and intrastate calls, total call minutes, revenue from the calls, and the commission revenue. DOC uses the data in the reports to ensure the commission revenue paid by MCI is correct. However, there is not sufficient detail provided in the reports to ensure that the billable revenue from which the commission payment is calculated is correct.

In the contract, there is an example of a report that was to be provided to DOC by the contractor. This report does indicate the number of calls assessed a surcharge. However, when JLARC staff requested this report, MCI staff noted that that report had never been requested by DOC staff. As a result, the capability to routinely provide the report had been eliminated sometime in 1993.

In addition, there is no report that indicates the total billable revenue, uncollected revenue, and contested revenue. Detail of this type is necessary to begin to properly audit the commission revenue paid the State by the contractor. The contract requires that the commission be paid to the State on the basis of total gross billable revenue. Gross billable revenue includes uncollected charges and charges that are being contested.

While MCI provides DOC data on the total revenue, DOC does not collect the necessary data to fully verify the accuracy of the gross billable revenue. Moreover, DOC staff noted that the data are not provided in a format easily amenable to audit or analysis. Yet, it is possible to receive more detail in a format that is amenable to audit or analysis. For example:

The Florida Department of Corrections requires the inmate phone system contractor to provide call detail data on a high density diskette. Data required on the diskette include: originating phone number, terminating number, length of the call, total amount charged, and the surcharge. From this diskette, the department is able to construct a call exception report that highlights total gross revenue and all billing exceptions.

Such detailed data in an automated format would enable the State to better audit the billings and revenue, as well as monitor the impact of the system on call recipients. Information related to the calls which are assessed the long distance surcharge, uncollectable charges, and contested charges would enable planners and policy makers to have a better understanding of the system's impact on call recipients.

Recommendation (7). The Department of Corrections should require the submission of all reports referenced in the current inmate telephone

system contract and use these reports to more closely review the commission revenue paid to the State.

Recommendation (8). In the next contract, the contractor should be required to provide inmate calling data in an automated format. Data provided should include, at a minimum, originating phone number, billed phone number, date and time of call, length of call, surcharge, and other approved toll charges. The contracting agency should use the data to verify billable revenues, commission payments, and monitor the impact of the system on call recipients.

An Independent Audit of the Phone System's Accuracy Should Be Required

As discussed earlier in this chapter, problems with the inmate telephone system's call timing have occurred. Although the situation was eventually resolved, it is not clear how long the situation lasted. Moreover, there is currently no active monitoring of the system by DOC to ensure that there are no further call timing problems. DOC staff noted that they do not have the resources or the expertise to provide this type of oversight.

This review indicates that some other states have more creatively and aggressively addressed issues related to billing and timing accuracy. For example:

The Florida department of corrections requires that the contractor twice per year provide a report from an independent auditing firm "verifying that the contractor's operating systems are accurately and completely recording all calls made." The reports shall contain a certification from the auditing firm that its findings are totally unbiased and independent from the contractor's interests.

* * *

The request for proposal for North Carolina's public telephone service for all state agencies, including the inmate phone system, stated that "the contractor must provide an annual independent audit of all traffic, revenues, and commissions generated...."

These types of independent audit and review requirements could be an excellent supplement to any of the oversight activities carried out by DOC at no additional cost. However, if the administration of the telephone system is transferred to DIT, the need to consider these types of requirements may be diminished due to the ability of DIT to conduct many of these functions.

Recommendation (9). In the next inmate telephone contract, whether administered by the Department of Corrections or Department of Information

Technology, an annual independent audit of the timing and billing functions of the inmate phone system as well as the billable revenue and any commissions attributable to the system should be required.

Additional Mechanisms that Could Benefit Call Recipients

In addition to the previous recommendations in this report designed to improve the performance of the system and mitigate the fiscal impact on call recipients, additional steps should be taken to benefit the call recipients. Call recipients, because the calls are billed as collect calls, pay to use the system. Therefore, it does not seem unreasonable to expect that steps to address their concerns be taken.

First, because call recipients in effect pay for the system, some attempt should be made to solicit their input in the next contract development process regarding features of the next inmate phone system. Second, steps to increase the awareness of inmates and call recipients of rate increases should also be addressed in the next contract.

Solicit Additional Input When Developing Next Phone System Contract.

DOC staff noted that when the department begins to develop the RFP for the next inmate phone system, they will solicit input from staff in the various DOC institutions about new features or problems they would like to see addressed in the new inmate phone system. This type of input will be in part used to develop a scope of need which will then be transposed into the request for proposal.

When developing the scope of need, DOC should also attempt to solicit input from the users of the system through organizations that are composed of, or represent call recipients. This input could be used to identify any requirements that could be included in the next system to meet call recipients' needs. Although DOC's security and operational needs will likely need to take precedence, there may be some features that call recipients would like to have included in the system. Therefore, some formal attempt to solicit input from inmate call recipients should be taken.

Recommendation (10). In the development of the next inmate telephone contract, steps should be taken to formally solicit input from call recipients of inmate calls during the development of the request for proposal.

Inmate Telephone Carrier Should Notify Call Recipients and Department of Corrections of All Rate Increases. Another concern related to the inmate telephone system that was identified during this review was the lack of advance notice of increases in the rates charged for inmate collect calls. When increases are substantial, the impact on the next month's bill can be significant as well as unexpected. For example:

One inmate call recipient noted that "rates are frequently increased without any prior notification to the customers...." She stated that she often learned of increases in the cost of calls by comparing her monthly

bills. In correspondence with the telephone company questioning why the cost of calls had unexpectedly increased, the phone company responded that "As you observed from comparing your October and December, 1992, telephone bills to your January, 1993 [bill], there has been an increase in rates. This rate increase was made in order to bring [inmate] payphone rates in line with those of AT&T."

MCI staff reported that they were aware of several occasions in which they notified DOC of rate increases. However, they also noted that simply filing a revised tariff with the SCC is public notice. Whether this is adequate public notice, especially when increases in rates or surcharges are significant, is questionable.

In developing the next contract, DOC should require the contractor to notify call recipients at least 30 days prior to a rate or surcharge increase. Individuals receiving the calls should be aware of rate increases in order to determine whether they need to reduce the number of calls they will accept. While the specific method for notifying call recipients will need to be negotiated in the contract development process, consideration should be given to including notification in monthly telephone bills.

DOC also needs to be informed of rate changes to ensure that the requirements in the contract regarding rates are being followed. However, DOC staff involved with the inmate telephone system noted that they are not always informed of rate changes. As a result, proactive contract monitoring on this issue is likely difficult. The next contract should also require that the contracting telephone carrier provide DOC at least 30 days written notice of pending rate increases.

***Recommendation (11).* In the next inmate telephone contract, the contracting company should be required to provide the contracting agency with at least 30 days written notice of rate increases and the rates to be charged. The contractor should also be required to notify call recipients at least 30 days in advance of pending rate increases.**

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