

2000 WL 35831338 (S.D.N.Y.) (Trial Pleading)
United States District Court, S.D. New York.

BYRD, et al,
v.
GOORD, et al.

No. 1:00CV02135.
May 22, 2000.

Demand for Jury Trial

Amended Class Action Complaint

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PRELIMINARY STATEMENT

The family, minister, counsel and other bill payer recipients of collect telephone calls from inmates, who are confined in the 70 correctional facilities run by the New York State Department of Correctional Services (“NYSDOCS”), bring this class action on behalf of themselves and all others similarly situated. Plaintiffs and class members challenge the single provider/collect call-only telephone system imposed upon them by Defendants, who have jointly garnered over \$150 million in profits from this fundamentally unfair and constitutionally offensive arrangement.

The Single Provider/Collect Call-Only System

Briefly described, NYSDOCS has entered into an exclusive services contract with MCI Worldcom, Inc., and its subsidiary, MCI Telecommunications Corporation (together, “Defendant MCI”). The agreement covers NYSDOCS’s facilities and restricts their inmates, who cannot receive calls, to using Defendant MCI as the single provider of telephone services. The exclusive services contract further restricts inmates to making only collect calls. To secure the NYSDOCS contract, Defendant MCI agreed to pay upfront a significant signing bonus. Defendant MCI further agreed to pay commissions equal to 60 percent of the gross annual revenue from inmate-initiated calls.

To satisfy the required commissions and maximize its own return, Defendant MCI has assessed a surcharge for each call placed. By no small coincidence, the surcharge is 60 percent greater than the normal connection fee for exactly the same service for calls from non-inmates.

Having no competition under the exclusive services contract, Defendant MCI has been unchecked by market forces in the surcharges it assesses for inmate-initiated calls. Nor was Defendant MCI’s market-insulated pricing reviewed by the Public Service Commission until years after the single provider/collect call-only system had been in place. Even then, the review was cursory at best.

The immediate impact of Defendant MCI’s pricing under the single provider/collect call-only system is obvious. Of course, operator assisted, collect calls are by their nature the most expensive means of standard telephone communication. This expense, together with the steep surcharges, sharply limits the duration and number of telephone calls that inmates can make and that Plaintiffs and class members can afford to accept.

Alternative Systems

Far fairer and less expensive telephone services (such as, an inmate debit account system or a “1-888” system) exist that would not unjustifiably affect Plaintiffs and class members, who are seeking to maintain their relationships with the more than 70,000 persons confined in State facilities. At no more cost to the governmental authorities, those alternatives meet security concerns (e.g., preventing calls to unauthorized numbers) assertedly addressed by the single provider/collect call-only system. The New York City Department of Corrections, the Federal Bureau of Prisons and certain States employ such systems. Indeed, for jurisdictions desiring such alternative services, Defendant MCI willingly provides them.

Profit Motive

Since far fairer and less expensive alternatives satisfy security concerns, revenue maximization must be the reason that the governmental and telephone company Defendants do not use them. Indeed, the profit motive could not be clearer given the huge sums of money involved.¹ In fact, Plaintiffs and class members maintain that those Defendants conspired to take advantage of the price-gouging opportunities presented by the single provider/collect call-only system. The truth of that assertion is strongly suggested by the exclusive services contract, itself, with its exorbitant percentages that generate stunning sums.

For instance, under that agreement, Defendant MCI in FY 1997-1998 remitted to NYSDOCS over \$25 million in commissions, which means that Defendant MCI’s total revenues exceeded \$40 million. Self evidently, the higher the rates charged to the bill payers, the more revenue Defendant MCI and NYSDOCS generate. While direct proof of conspiracy must await discovery, plainly, the Defendants collectively recognized the financial potential of the single provider/collect call-only system.

The Victims

With governmental and telephone company coffers enriched, the “costs” of the system are borne by those with no options. The surcharges harvested by Defendant MCI and transferred to NYSDOCS are paid by Plaintiffs and class members. They have no other choice, short of curtailing/ceasing telephone communication with those incarcerated in NYSDOCS facilities. In fact, those bill payers cannot use their own providers, which were selected for affordability and reliability of services. Rather, Defendants in an exercise of monopoly power have preemptorily abrogated the bill payers’ negotiated contracts for telephone service.

Defendants, in sum, have turned the governmental power of imprisonment to their lucrative advantage. The downside of their golden bargain is levied upon Plaintiffs and all others similarly situated.

Relief Sought

To redress those injuries, Plaintiffs and the class members bring this suit to challenge Defendants’ single provider/collect call-only system. Plaintiffs maintain that the restrictions imposed by the single provider/collect call-only system violate the First, Fifth, and Fourteenth Amendments to the United States Constitution, Article I, Section 10 of the United States Constitution, Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1, 2, and New York State statutory and common law. They seek injunctive relief enjoining Defendants from continuing to utilize the single provider/collect call-only system, and request an accounting of revenues derived from Defendants’ utilization of this system. Finally, Plaintiffs seek compensatory and treble damages from Defendant MCI and attorneys’ fees and costs from all Defendants.

JURISDICTION

1. This Court has jurisdiction for claims seeking declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202, and Rule 57 of the Federal Rules of Civil Procedure.
2. This Court has jurisdiction for the federal constitutional claims pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4), and 42 U.S.C. § 1983, and for the federal antitrust claims pursuant to 15 U.S.C. §§ 15, 26, and 28 U.S.C. § 1337 (a). The challenged actions of Defendants are within the flow of interstate trade and commerce and have a direct and substantial effect on that trade and commerce.
3. This Court has supplemental jurisdiction over the remaining claims brought under New York State law pursuant to 28 U.S.C. § 1367(a), in that, such claims arise from a common nucleus of operative facts, and are so intertwined with other matters pending before this Court as to make exercise of supplemental jurisdiction appropriate.
4. Authority for attorneys' fees and expert witness fees is invoked under 42 U.S.C. § 1988.

VENUE

5. Venue is proper in the Southern District of New York under 28 U.S.C. § 1391 (b)(c) and 28 U.S.C. § 1392 in that many of the named Plaintiffs reside in this District, and Defendants transact business here.
6. With regard to the federal antitrust claims, venue is appropriate in this District pursuant to 15 U.S.C. § 22, and 28 U.S.C. §§ 1391(b), (c) and 1392, in that the interstate commerce described herein is conducted into, within, and from the State, and in particular, the Southern District of New York.

JURY DEMAND

7. Plaintiffs and class members demand a trial by jury on each of their claims.

PARTIES

Family. Minister. Counsel and Other Bill Payer Plaintiffs

8. Plaintiff Mary Byrd is a resident of Copiague, New York. Ms. Byrd, who is 79 and divorced, supports herself and her older sister on a meager income. Of her ten children, two of Ms. Byrd's sons, Ja'Far Abbas and Joseph Byrd, have been incarcerated since 1983 and are presently confined in Elmira Correctional Facility and Clinton Correctional Facility, respectively, both of which are operated by NYSDOCS. Because Ms. Byrd suffers from severe, chronic lung disease and is frail, she is unable to visit her sons in person. Thus, the only way she can speak with her sons is to accept their collect telephone calls, which are billed to her by Defendant MCI, the telephone company that has been awarded the exclusive contract to provide telephone service for inmates at NYSDOCS's facilities. Defendant MCI has billed Ms. Byrd for the calls placed by her two sons from April 1, 1996 through the present.
9. Plaintiff Mary Mortimore is a resident of Schenectady, New York. Ms. Mortimore is disabled and receives a limited disability income through the Social Security system. Ms. Mortimore's sons, William and Jeffrey Hilts, are currently confined in NYSDOCS's Oneida Correctional Facility and Eastern Correctional Facility, respectively. Ms. Mortimore's health problems prevent her from visiting her sons. During her sons' incarceration, Ms. Mortimore has only been able to speak to her sons over the telephone by accepting their collect calls. Defendant MCI has billed Ms. Mortimore for the collect calls placed to her by her sons from April 1, 1996 through the present.

10. Plaintiff Carole Bullard is a resident of New York, New York. Ms. Bullard's husband, Zayd Abdur Rashid, has been incarcerated since 1983, and is presently confined in NYSDOCS's Sullivan Correctional Facility. While Ms. Bullard used to visit her husband as part of the Sullivan Correctional Facility's Family Reunion Program, she is now pregnant and can no longer do so because of certain medical risks in her pregnancy. Ms. Bullard thus can only speak with her husband by accepting his collect telephone calls. Defendant MCI has billed Ms. Bullard for the collect calls placed by her husband from April 1, 1996 through the present.

11. Plaintiff Cora Williams is a resident of Buffalo, New York. Her son, Marcus, has been incarcerated in the State correctional system for eight years and is presently confined in Auburn Correctional Facility. Ms. Williams lives on a limited income and is homebound due to poor health. During her son's incarceration, Ms. Williams has only been able to speak with her son by accepting his collect telephone calls. Defendant MCI has billed Ms. Williams for her son's collect calls from April 1, 1996 through the present.

12. Plaintiff Alison Coleman is a resident of Albany, New York. Ms. Coleman is married to John Coleman, who is currently incarcerated in NYSDOCS's Clinton Correctional Facility. During her husband's incarceration, Ms. Coleman has only been able to speak with her husband over the telephone by accepting his collect calls. Defendant MCI has billed Ms. Coleman, who is disabled and has a very limited income, for the collect calls placed to her by her husband for the period from April 1, 1996 through the present.

13. Plaintiff Inez Patterson is a resident of Hogsburg, New York. Ms. Patterson is married to Carl Patterson, who is currently incarcerated in NYSDOCS's Greenhaven Correctional Facility. During her husband's incarceration, Ms. Patterson, has only been able to speak with her husband over the telephone by accepting his collect calls. Defendant MCI has billed Ms. Patterson, who is self-employed and has a limited income, for the collect calls placed to her by her husband from April 1, 1996 through the present.

14. Plaintiff Wanda Best-DeVeaux is a resident of Queens, New York. Ms. Best-DeVeaux is married to Michael DeVeaux, who is currently incarcerated in NYSDOCS's Eastern Correctional Facility. During Mr. DeVeaux's incarceration, Ms. Best-DeVeaux has only been able to speak with her husband over the telephone by accepting his collect calls billed to her by Defendant MCI. Defendant MCI has billed Ms. Best-DeVeaux, who has a limited income, for the collect calls placed to her by her husband from April 1, 1996 through the present.

15. Plaintiff Norma Boothe-Dixon is a resident of Brooklyn, New York. Ms. Boothe-Dixon's husband, Anthony Dixon is presently confined in NYSDOCS's Eastern Correctional Facility. During his incarceration, Ms. Boothe-Dixon has only been able to speak with her husband over the telephone by accepting his collect calls. In addition, Ms. Boothe-Dixon ministers over the telephone to those who are incarcerated. Defendant MCI has billed Ms. Boothe-Dixon for the calls placed to her by her husband and the inmates that she counsels from April 1, 1996 through the present.

16. Plaintiff Reverend Dr. Calvin O. Butts, III, is a resident of New York, New York. Dr. Butts is the Pastor of the Abyssinian Baptist Church, located in Harlem, New York. One of Dr. Butts' pastoral duties is to minister to those who are incarcerated. In this capacity, Dr. Butts receives collect telephone calls from inmates in many of NYSDOCS's facilities. Defendant MCI has billed Dr. Butts for the collect calls placed to him by inmates for the period from April 1, 1996 through the present.

17. Plaintiff Elizabeth Fink is a resident of Brooklyn, New York. Ms. Fink is the Director and Lead Counsel for the Attica Brothers Legal Defense Fund, a law firm dedicated to achieving justice for individuals incarcerated in NYSDOCS's Attica Correctional Facility. To communicate by telephone with her clients, Ms. Fink must accept their collect calls. Defendant MCI has billed Ms. Fink's law firm for her clients' collect calls from April 1, 1996 through the present.

18. Plaintiff William Moses Kunstler Fund for Racial Justice (the "Kunstler Fund") is a not-for-profit civil rights organization incorporated under the laws of this State and headquartered in New York, New York. The Kunstler Fund's primary activities include educating the public about the Rockefeller Drug Laws, demonstrating how those laws have contributed to the tremendous growth in the State's prison population, documenting conditions of individuals serving time in correctional facilities under those laws, and advocating for inmate drug rehabilitation programs.

The Kunstler Fund's work on behalf of inmates requires close contact with inmates and their families. Towards that end, the

Kunstler Fund accepts collect telephone calls from inmates incarcerated in NYSDOCS's facilities. The Kunstler Fund has been billed by Defendant MCI for inmates' collect calls from April 1, 1996 through the present.

Defendants

19. Defendant Glen S. Goord, NYSDOCS Commissioner, is responsible for administering all aspects of the State's correctional system. Defendant Goord has authorized, approved and overseen the implementation of the exclusive services contract between NYSDOCS and Defendant MCI, which prevents those confined in NYSDOCS facilities from using any telephone service other than Defendant MCI's and requires them to make only collect calls. He is sued in his official capacity for injunctive relief.

20. Defendant Eliot L. Spitzer, Attorney General of New York, has authorized and approved the implementation of the exclusive services contract between NYSDOCS and Defendant MCI, which prevents those confined in NYSDOCS facilities from using any telephone service other than Defendant MCI's and requires them to make only collect calls. He is sued in his official capacity for injunctive relief.

21. Defendant H. Carl McCall, the State's Comptroller, has authorized and approved the implementation of the exclusive services contract between NYSDOCS and Defendant MCI, which prevents those confined in NYSDOCS facilities from using any telephone service other than Defendant MCI's and requires them to make only collect calls. He is sued in his official capacity for injunctive relief.

22. Defendant MCI Worldcom, Inc., is a Georgia corporation, and its subsidiary, Defendant MCI Telecommunications, is a Delaware corporation. (As noted, these Defendants are collectively referred to as "Defendant MCI.") Defendant MCI provides long distance and local telephone service to persons and entities in New York State. On April 1, 1996, Defendant MCI entered into an exclusive services contract with NYSDOCS that prevents inmates at State correctional facilities from using any telephone service other than Defendant MCI's and restricts inmates to making only collect calls.

STATEMENT OF FACTS

Genesis of the Single Provider/Collect Call-Only System

23. NYSDOCS instituted the current telephone system for inmates in 1985. Over the years, this system has served as the primary means by which inmates and their families have maintained contact during incarceration. Upon information and belief, the prison telephone system was also intended to be a source of revenue for NYSDOCS.

24. Upon information and belief, since 1985, NYSDOCS has allowed only one telephone company at a time to provide inmate telephone services at its 70 correctional facilities.

25. Since its inception, the prison telephone system has been structured to provide NYSDOCS with large commissions from the operation of the telephone systems at each correctional facility. These required commissions are incorporated into the exclusive services contracts entered into by NYSDOCS and each successive telephone company awarded the contract.

26. Upon information and belief, from the inception of the prison telephone system through Fiscal Year 1999, NYSDOCS has received hundreds of millions of dollars from the telephone companies in exchange for the grant of exclusive licenses to provide inmate telephone service to the correctional facilities throughout the State. Virtually none of the money received under the exclusive services contracts have been used for the maintenance and operation of the prison telephone system. In fact, the agreements have required the telephone company to cover the costs of operation and maintenance of the system.

27. Upon information and belief, during the 15 years that the prison telephone system has been in place, the annual payments made to NYSDOCS have grown in large measure due to NYSDOCS demand for increasing commissions.

The Present Single Provider/Collect Call-Only System

28. On October 30, 1995, NYSDOCS circulated its Request for Proposals (“RFP”) for the provision of telephone service for the prison telephone system. The RFP required a minimum commission of at least 47 percent of the gross revenues from accepted, completed telephone calls processed by the successful bidder, and specified that the services provided to inmates must be collect only telephone services. In its response, Defendant MCI offered NYSDOCS a guaranteed commission of 60 percent of gross revenue, together with a significant signing bonus. The State Defendants awarded Defendant MCI the exclusive services contract.

29. Under its exclusive services contract with NYSDOCS, Defendant MCI paid a significant signing bonus to NYSDOCS. This bonus was provided to NYSDOCS over and above the cost of administration and operation of the telephone system which Defendant MCI agreed to bear alone.

30. Defendant MCI’s contract with NYSDOCS sets forth the terms and conditions under which Defendant MCI is the exclusive provider of telephone service to and from all State correctional facilities in New York for a three-year period. Under the contract, NYSDOCS has the right to renew the contract for two additional one-year periods.

31. Since April 1, 1996, Defendant MCI has been the single provider of inmate telephone services at NYSDOCS facilities. Originally set to expire on March 31, 1999, Defendant MCI’s exclusive services contract has been extended through March 31, 2001.

32. On March 30, 1996, Defendant MCI filed a tariff setting forth the per minute rates and per call surcharges that apply to collect and person-to-person calls made from NYSDOCS facilities. Upon information and belief, Defendant MCI filed those rates as a Special Pricing Arrangement tariff, which was not reviewed or approved by the New York State Public Service Commission (“PSC”). Those rates were to be charged to the recipients of inmate-initiated collect calls, who are not parties to the contract between NYSDOCS and Defendant MCI. As such, those rates should have been reviewed and approved by the PSC.

33. On October 29, 1998, Defendant MCI filed another tariff offering that re-introduced its rate plan as a Maximum Security Rate Plan for NYSDOCS and requested that it be treated as a unique service not subject to standard rate caps. On December 31, 1998, after a review, the PSC approved Defendant MCI’s Maximum Security Rate Plan. Upon information and belief, the PSC’s review was cursory, at best.

34. Upon information and belief, Defendant MCI’s total revenue from providing telephone service to NYSDOCS inmates in Fiscal Years 1996-99 exceeded \$55 million. Upon information and belief, Defendant MCI paid NYSDOCS more than \$93 million in commissions (or 60 percent of total annual revenues) for that same period.

The “Costs” of the Single Provider/Collect Call-Only System

35. Under the exclusive services contract, inmates confined to NYSDOCS’s facilities may use the telephone under severe restrictions. An inmate may not receive telephone calls. He or she may make collect telephone calls to an individual listed on pre-approved list through the sole service provider, Defendant MCI. An inmate may not use other providers (such as the telephone call recipient’s chosen provider) nor alternative billing methods (such as, “800” or “888” services). Consequently, those who receive telephone calls from NYSDOCS inmates incur excessive charges from Defendant MCI, a company with which they never contracted.

36. By their nature, operator-assisted, collect calls are the most expensive means of telephone communication. Moreover, Defendant MCI’s fees for placing collect calls from NYSDOCS inmates are well above those typically charged for collect calls by other persons between the same locations during the same time periods. For example, the typical station-to-station connection toll for a collect call from Ulster County to New York City is \$1.80. On the other hand, for each station-to-station collect call by inmates from NYSDOCS’s Eastern Correctional Facility in Ulster County to New York City, Defendant MCI charges a \$3.00 toll. So, rather than being charged \$.80, the recipient of a collect call from an inmate confined in Eastern Correctional Facility is charged \$3.00, which is 60 percent higher than the standard connection fee, before the conversation

even begins.

37. As that example illustrates, Plaintiffs and the class members bear the negative consequences of Defendants' single provider/collect call-only system. The high costs of calls made under this system place significant financial burdens on those receiving calls. This, in turn, results in fewer calls made, thereby curtailing inmates' access to families, ministers, counsel and others in the outside community.

38. Defendants' sole service provider/collect-call only system also directly undermines the widely acknowledged goal of maintaining family and community ties that so greatly increase the probability of successful re-entry upon release. For this reason, the American Correctional Association, the organization of prison and jail administrators throughout the United States, adopted in early 1996 a *Resolution on Excessive Phone Tariffs*, which provides that:

WHEREAS, correctional professionals have a fundamental responsibility to encourage and support activities which foster the maintenance of family and community ties between offenders and the free world;

THEREFORE BE IT RESOLVED, that correctional agencies should discourage profiteering on tariffs placed on phone calls which are far in excess of the actual cost of the call, and which could discourage or hinder family or community contacts.

39. Furthermore, the recipients of inmate-initiated collect calls have endured poor quality of service for which neither the governmental nor telephone company Defendants have taken responsibility or addressed.

40. Recipients of inmates' collect calls are also frequently charged for unanswered telephone calls, calls that are connected through to answering machines and for re-connections of disconnected calls. All of this only serves to increase Defendants' profits.

41. Despite Plaintiffs and class members having contracts with their own telephone companies, they are compelled to pay Defendant MCI for the collect calls they receive from inmates confined in State correctional facilities. They cannot take advantage of the numerous options available to them under the contracts they have negotiated with their chosen providers.

Examples of Specific Hardships Suffered by Plaintiffs

42. Plaintiff Best-DeVeaux is a customer of AT&T. Notwithstanding, Defendant MCI continues to send her bills for collect calls placed by her husband who is incarcerated in Eastern Correctional Facility. Ms. Best-DeVeaux is thus prohibited from using the services of her own telephone provider, which would considerably reduce her charges. She is also prevented from using other, cheaper options, such as 800 numbers or dial-around services. Because of these prohibitions, her telephone bills average \$300 to \$350 per month. These costs are a hardship because Ms. Best-DeVeaux's salary is very low. She is also a full-time college student and provides financial assistance to her daughter and her two young grandchildren.

43. Plaintiff Mary Byrd is disabled and cannot visit her two sons in person. Thus, she is only able to speak with her sons by accepting collect calls placed by them and billed to her by Defendant MCI. However, because of the exorbitant cost of these calls, Ms. Byrd has at times been unable to pay her telephone bills when they became due. When the telephone company received one payment late, it cut off her long distance service. Ms. Byrd now receives calls from her sons through her sister's account, makes installment payments on her past bills and struggles to pay the \$150 per month that she is currently billed for these collect calls. Because of the high cost of the calls, Ms. Byrd's sons now sharply limit the number and duration of the calls to their mother. As a result, Ms. Byrd and her sons, Ja'Far Abbas and Joseph, have not been able to keep in close contact.

44. Plaintiff Mary Mortimore has been receiving collect calls from her incarcerated sons, Jeffrey and William, for more than seven years. Her telephone bills have averaged between \$200-250 per month for most of this period. However, a stroke in 1992 left Ms. Mortimore with limited vision and mobility, with the latter exacerbated by degenerative disk disease. Because of these ailments, she cannot walk or sit for long periods of time and is unable to work. She is now unemployed and receives Social Security income of \$535 per month.

Ms. Mortimore still cares for William's two children. However, because of her own circumstances, this year Ms. Mortimore had to send Jeffrey's two children back to live with their mother. Moreover, during her sons' incarcerations, family crises have necessitated numerous calls from Jeffrey or William. For example, Jeffrey's son fell out of a window in 1996. He was hospitalized for a long time, battling for his life. During this crisis, Jeffrey called home frequently. Because Ms. Mortimore could not pay the additional expense of these calls, her telephone service was terminated approximately six times. Although telephone service has been restored, the bills from her sons' collect calls remain hard to manage. She has asked her sons to curtail their calls.

Although Plaintiff Mortimore is a customer of AT&T, she is billed by Defendant MCI for the collect calls placed to her by her sons. When Ms. Mortimore called Defendant MCI to complain about being charged for collect calls that were connected through to her answering machine, her complaints went unremedied. When Ms. Mortimore wrote to NYSDOCS stating that the collect calls were too expensive and that inmates should be permitted to use calling cards or 800 numbers to phone home, a representative from the Department told her that these options simply would not be considered.

45. Now that she is pregnant, Plaintiff Carole Bullard tries to speak with her husband, Zayd Abdur Rashid, as frequently as possible so that they can make important family decisions together. Due to the nature of these decisions, an immediate exchange of information is required. Letter writing is neither a reliable nor expeditious means of communication. Ms. Bullard's work schedule coupled with her health status prevent her from regularly visiting her husband. Thus, Ms. Bullard is only able to communicate with Zayd about important family decisions by accepting his collect calls. However, the cost of these calls -- which average between \$400 and \$500 per month -- is a strain to manage. Ms. Bullard's annual income is only \$20,000 to \$25,000 per year and she must cover all living and health care expenses.

46. Plaintiff Cora Williams suffers from severe arthritis and the serious, chronic effects of a brain aneurysm. Because of her illnesses, she is homebound and unable to travel the long distance to visit her son, Marcus, who is incarcerated in the NYSDOCS's Auburn Correctional Facility. Moreover, because of her arthritis, Ms. Williams often cannot grip a pen to write to her son. Thus, she is only able to communicate with Marcus by accepting his collect calls. Plaintiff Williams tries to speak with her son briefly at least once a week, and more frequently, if possible, during the holiday season. However, the cost of these calls -- \$70 to \$80 per month -- is a difficult expense for her to bear because her only source of income is the \$563 per month that she receives from Social Security and Disability benefits. Frequently, Ms. Williams must forego purchasing needed medication so that she can pay her telephone bill and keep in contact with Marcus. When Plaintiff Williams contacted Defendant MCI to inquire about alternative billing options, payment plans or discounts, she received no response to her inquiry.

47. Because she is ill with cancer, Plaintiff Alison Coleman often needs to speak with her husband, John, who is incarcerated, on an urgent basis so that they can make important family decisions together. Due to the nature of these decisions, an immediate exchange of information is required. Because letter writing is neither a reliable nor expeditious means of communication, and because her health status and limited income prevent her from regularly visiting her husband, Ms. Coleman must rely on her husband's collect calls as the sole means of communication with him. However, the cost of these calls -- which average between \$70 and \$80 per month -- is a trying burden. Her annual income is only \$14,000 per year and she must cover all living and health care expenses.

48. Plaintiff Norma Boothe-Dixon's husband, Anthony Dixon, is confined in NYSDOCS's Eastern Correctional Facility. As a minister for her church, Ms. Boothe-Dixon acts as a spiritual counselor to inmates and their families. To the extent that she is financially able to do so, as part of her ministry, Ms. Boothe-Dixon accepts calls from inmates and passes on information to their loved ones, who often cannot afford to receive the collect calls directly. Given the high cost of prison telephone calls, Ms. Boothe-Dixon frequently cannot speak with her husband or provide the counseling and contact services that she usually provides as part of her inmate ministry.

When Ms. Boothe-Dixon complained to Defendant MCI about bill overcharges and the poor quality of telephone service from NYSDOCS facilities, a Defendant MCI representative told her that she had been placed in a "high risk billing category" and that if she did not want calls from prisons, she should have a block put on her phone. Defendant MCI offered no other assistance.

49. Plaintiff Kunstler Fund has been substantially impeded in its efforts to assist individuals incarcerated in NYSDOCS's facilities. The Kunstler Fund cannot use any telephone service other than Defendant MCI's and cannot afford to accept the

majority of calls received from inmates seeking assistance. Moreover, a significant part of the Kunstler Fund's program is to provide a place for families who cannot afford to receive inmate calls to communicate with their loved ones. But as a direct result of the single provider/collect call-only system, the Kunstler Fund can no longer render this service.

Alternative Systems Meet Security Concerns

50. Those injuries and the injuries suffered by other Plaintiffs and class members cannot be excused as merely the regrettable by-products of a system that must address valid security concerns. Any security concerns that NYSDOCS might have can be equally served at no greater cost to the governmental authorities by far less onerous telephone systems. The network functions which allow for call monitoring, call blocking and other security measures are separate from those needed to deliver the telephone services. Those network functions can be effectuated no matter what type of telephone services are used. For example, NYSDOCS could block, monitor and record calls with a fully automated debit account system, which would allow inmates to place calls to persons on pre-approved lists using personal identification numbers. The charges would then be debited to inmates' commissary accounts. The inmates incur the direct dial charges.

51. In fact, the Federal Bureau of Prisons as well as the correctional departments in Arizona and Florida use debit account systems. Furthermore, in this very jurisdiction, the New York City Department of Corrections uses a debit account system, combined with a system in which inmates may also make collect calls via the bill payers' chosen telephone service provider.

52. In short, a number of alternative systems are available. But absent relief from the Court, Defendants will not change course. The single provider/collect call-only system is too seductively lucrative. Profits, not security concerns, dictate the system imposed on the family, minister, counsel and other bill payer Plaintiffs and the class they represent.

CLASS ACTION ALLEGATIONS

53. Plaintiffs bring this action on behalf of themselves and, under Rules 23 (a) and 23(b)(2), (3) of the Federal Rules of Civil Procedure, as representatives of the following class:

Family, minister, counsel and other bill payers who from April 1, 1996 to the present have been billed for collect calls from inmates confined in NYSDOCS facilities.

54. The members of this class are too numerous to be joined in one action. While the exact number of members in the class is presently unknown to Plaintiffs, it is believed to be in the hundreds of thousands. Joinder of all class members is therefore impracticable.

55. Common questions of law and fact exist as to all class members and dominate those questions that affect only the individual members. Those common questions include, but are not limited to:

(a) Whether the governmental Defendants' economic motives, in contrast to any valid penological objectives, account for their establishment of the single provider/collect call-only system in NYSDOCS's facilities;

(b) Whether Defendants conspired to use the governmental power of imprisonment to exploit economically Plaintiffs and class members and to infringe upon their constitutional and legal rights;

(c) Whether the governmental Defendants' conflicts of interest precluded them from bargaining in good faith with Defendant MCI, and/or approving its charges, 60 percent of which would be kicked back to NYSDOCS;

(d) Whether the fees imposed by Defendants on Plaintiffs and class members are illegal levies;

- (e) Whether the fees imposed by Defendants on Plaintiffs and class members constitute illegal regulatory fees; and if so, whether the costs were intended to subsidize governmental functions and maximize profits;
- (f) Whether any enactment by the New York State Legislature has singled out Plaintiffs and class members as directly responsible for the burden of subsidizing the NYSDOCS system;
- (g) Whether Plaintiffs and class members have been deprived of services by Defendant MCI due to its failure to address connection and other problems arising from the single provider/collect call-only system;
- (h) Whether alternative telephone services exist that adequately address the governmental Defendants' purported security and penalogical concerns regarding telephone use by inmates with minimal or no additional cost to NYSDOCS;
- (i) Whether Defendants' conduct has created barriers to entry into the markets for inmate-initiated telephone service at NYSDOCS facilities;
- (j) Whether the governmental Defendants have acted to restrict competition in the markets for inmate-initiated telephone service at NYSDOCS facilities;
- (k) Whether the governmental Defendants have become participants in the markets for inmate-initiated telephone service at NYSDOCS facilities;
- (l) Whether the governmental Defendants have monopolized the markets for inmate-initiated telephone service at NYSDOCS facilities;
- (m) Whether Defendants' conduct in instituting the single provider/collect call-only system in NYSDOCS facilities deprives Plaintiffs and class members of rights guaranteed to them by the Constitution of the United States;
- (n) Whether Defendants' conduct in instituting the single provider/collect call-only system in NYSDOCS facilities violates federal statutory law, and State statutory and common law;
- (o) Whether Defendants have tortuously interfered with the contractual relations between Plaintiffs and class members, on the one hand, and their chosen telephone providers, on the other;
- (p) Whether Plaintiffs and class members are entitled to declaratory and injunctive relief to declare invalid Defendants' actions and to enjoin the constitutional, statutory and common law violations attributable to the single provider/collect call-only system; and
- (q) Whether Plaintiffs and class members are entitled to damages from Defendant MCI for the constitutional, statutory and common law violations they have suffered as a result of the single provider/collect call-only system.

56. The claims of Plaintiffs are typical of the claims of the class.

57. Plaintiffs will fairly and adequately protect the interests of the class. The interests of the class representatives are consistent with those of the class members. In addition, Plaintiffs' counsel are experienced in class actions, civil rights and commercial litigation.

58. Plaintiffs' counsel know of no conflicts among class members or between the attorneys and class members.

59. Use of the class action mechanism here is superior to other available methods for the fair and efficient adjudication of the claims and will prevent the imposition of undue financial, administrative and procedural burdens on the parties and Court that individual litigation of these claims would impose.

60. The Plaintiff class should be certified pursuant to Rule 23(b)(2) for determination of liability because Defendants have acted on grounds generally applicable to the respective classes, thereby making class-wide declaratory, injunctive and other

equitable relief appropriate.

61. Common questions of law and fact also clearly predominate within the meaning of Rule 23(b)(3). Class action treatment provides a fair and efficient method for the adjudication of the controversy herein described, affecting a large number of persons, joinder of whom is impracticable. The class action provides an effective method whereby the enforcement of the rights of Plaintiffs and the class members can be fairly managed without unnecessary expense or duplication.

COUNT I VIOLATION OF FIRST AMENDMENT RIGHTS

62. Plaintiffs and class members repeat and reallege paragraphs 1 through 61 as if fully set forth herein.

63. Plaintiffs and class members bring this claim for violation of the rights to freedom of speech and association guaranteed to them under the First and Fourteenth Amendments to the United States Constitution.

64. There exist alternative telephone systems that will burden substantially less speech than the present single provider/collect call-only system and will equally serve Defendants legitimate governmental interests at little or no additional cost and with negligible additional impact on the allocation of prison resources generally.

65. To the extent that the Defendant MCI's rates for inmate telephone service are higher than they would otherwise have been but for the commission charged by NYSDOCS, Plaintiffs are subject to a regulatory fee that bears no relation to the actual administrative and enforcement costs incurred in facilitating inmate telephone service.

66. By requiring that the State receive significant revenues from the single provider/collect call-only system, Defendants have singled out Plaintiffs and class members for imposition of special fees. The State Legislature has not authorized that treatment, which has a seriously chilling effect on communication by Plaintiffs and class members with NYSDOCS's inmates.

67. Defendants have conspired to create the single provider/collect call-only system at NYSDOCS's facilities which unlawfully burdens the First Amendment rights of Plaintiffs and class members. In addition, Defendants have devised and implemented the actions, policies and practices that require use of the single provider/collect call-only system, which unlawfully burdens the First Amendment rights of Plaintiffs and the class members.

68. These constitutional violations have been directly and proximately caused by the actions, policies and practices devised, implemented and maintained by Defendants, including:

(a) the creation of the single provider/collect call-only system for inmate telephone service at all NYSDOCS facilities, thereby eliminating all competition for such services;

(b) the imposition of special regulatory fees on the First Amendment rights of Plaintiffs and class members;

(c) the imposition of unlegislated taxes upon Plaintiffs and class members;

(d) the prevention of Plaintiffs and class members from using their chosen telephone service providers to receive inmate-initiated calls at lower costs;

(e) the prevention of Plaintiffs and class members from using alternative calling plans (such as, "800" or "888" services) to receive inmate-initiated calls at lower costs; and

(f) the provision of inadequate telephone services to Plaintiffs and class members.

69. By reason of the foregoing, Defendants have abridged Plaintiffs' and class members' freedom of speech in violation of the First and Fourteenth Amendments to the United States Constitution.

70. Defendants have acted with deliberate indifference to the First Amendment rights of Plaintiffs and class members. As a direct, proximate result of Defendants' acts and omissions, Plaintiffs' and class members' First Amendment rights have been violated. By those same acts and omissions, Defendants have acted under color of State law to deprive Plaintiffs and class members of their constitutional rights in violation of 42 U.S.C. § 1983.

71. Further, not only has Defendants single provider/collect call-only system violated Plaintiffs' and class members' constitutional rights, a real and immediate threat exists that Defendants will violate Plaintiffs' and class members' constitutional rights in the future. Indeed, because Defendants' single provider/collect call-only system determines the mode of inmate telephone communication -- and all communication in some instances -- Plaintiffs and class members cannot alter their behavior to avoid future violations of their constitutional rights at the hands of Defendants.

72. Plaintiffs and class members have no adequate remedy at law for future violations and will continue to suffer serious, irreparable harm to their constitutional rights unless Defendants are enjoined.

73. Accordingly, Plaintiffs and class members seek an injunction against Defendants from maintaining the single provider/collect call-only system at NYSDOCS's facilities. Further, they seek from Defendant MCI restitution and damages in an amount exceeding \$93 million for past injuries (that is, the approximate amount of the commissions paid by Defendant MCI to NYSDOCS from April 1, 1996 to the present).

COUNT II VIOLATION OF DUE PROCESS RIGHTS

74. Plaintiffs and class members repeat and reallege paragraphs 1 through 73 above as if fully set forth herein.

75. Plaintiffs and the class members bring this claim against Defendants for violation of the rights guaranteed to them under the First and Fourteenth Amendments to the United States Constitution.

76. Defendants have implemented actions, policies and practices that require use of the single provider/collect call-only system. This restriction unlawfully burdens Plaintiffs' and class members' rights of familial association by impeding communication with their spouses, children and relatives who are NYSDOCS inmates concerning matters of health care, marriage, procreation, pregnancy, parenting and other critical family issues. As a result, Defendants' actions, policies and practices violate Plaintiffs' due process rights under the First and the Fourteenth Amendments to the United States Constitution.

77. Defendants have conspired to create the single provider/collect call-only system at NYSDOCS's facilities, which unlawfully burdens family member Plaintiffs' rights of familial association and the rights of those they represent. In addition, Defendants have devised and implemented the actions, policies and practices that require use of the single provider/collect call-only system, which unlawfully burdens this right.

78. In addition, Defendants' single provider/collect-call only system unlawfully burdens Plaintiffs' and class members' due process rights by imposing regulatory fees for telephone services and prohibiting less costly alternatives for inmate calls. Defendants' operation of this system constitutes a confiscation of Plaintiffs' and class members' property in violation of the Due Process Clause of the Fourteenth Amendment.

79. Defendants have acted with deliberate indifference to the First Amendment and Fourteenth Amendment due process rights of Plaintiffs and class members. As a direct, proximate result of Defendants' acts and omissions, Plaintiffs' and class members' due process rights have been violated. By those same acts and omissions, Defendants have acted under color of State law to deprive Plaintiffs and class members of their due process rights in violation of 42 U.S.C. § 1983.

80. Further, not only has Defendants' single provider/collect call-only system violated Plaintiffs' and class members' constitutional rights, a real and immediate threat exists that Defendants will violate Plaintiffs' and class members' constitutional rights in the future. Indeed, because Defendants' single provider/collect call-only system determines the mode of inmate telephone communication -- and all communication in some instances -- Plaintiffs and class members cannot alter their behavior to avoid future violations of their constitutional rights at the hands of Defendants.

81. Plaintiffs and class members have no adequate remedy at law for future injuries and thus will suffer serious, irreparable harm to their constitutional rights unless Defendants are enjoined.

82. Accordingly, Plaintiffs and class members seek an injunction against Defendants from maintaining the single provider/collect call-only system at NYSDOCS facilities. Further, they seek from Defendant MCI restitution and damages in an amount exceeding \$93 million for past injuries (that is, the approximate amount of the commissions paid by Defendant MCI to NYSDOCS from April 1996 to the present).

COUNT III VIOLATION OF THE RIGHT TO EQUAL PROTECTION

83. Plaintiffs and class members repeat and reallege paragraphs 1 through 82 above as if fully set forth herein.

84. Plaintiffs and class members bring this claim for violation of the right to equal protection of the law guaranteed to them under the Fourteenth Amendment to the United States Constitution.

85. Defendants have implemented and enforced actions, policies and practices that require the use of single provider/collect call-only system. These restrictions are not imposed upon other similarly situated telephone service customers. As a result, Defendants' actions, policies and practices violate the Equal Protection Clause of the Fourteenth Amendment.

86. Defendants have conspired to create the single provider/collect call-only system at NYSDOCS facilities, which unlawfully burdens Plaintiffs' and class members' right to equal protection. In addition, Defendants have devised and implemented the actions, policies and practices that require use of the single provider/collect call-only system, which likewise unlawfully burdens Plaintiffs' and class members' right to equal protection.

87. By reason of the foregoing, Defendants have abridged Plaintiffs' and class members right to equal protection in violation of the Fourteenth Amendment to the United States Constitution.

88. Defendants have acted with deliberate indifference to the right to equal protection of Plaintiffs and class members. As a direct, proximate result of Defendants' acts and omissions, the Defendants have violated Plaintiffs' and class members' constitutional rights. By those same acts and omissions, Defendants have acted under color of State law to deprive Plaintiffs and class members of their constitutional rights in violation of 42 U.S.C. § 1983.

89. Further, not only has Defendants' single provider/collect call-only system violated Plaintiffs' and class members' constitutional rights, a real and immediate threat exists that Defendants will violate Plaintiffs' and class members' constitutional rights in the future. Indeed, because Defendants' single provider/collect call-only system determines the mode of inmate telephone communication -- and all communication in some instances -- Plaintiffs and class members cannot alter their behavior to avoid future violations of their constitutional rights at the hands of Defendants.

90. Plaintiffs and class members have no adequate remedy at law for future violations and will continue to suffer serious, irreparable harm to their constitutional rights unless Defendants are enjoined.

91. Accordingly, Plaintiffs and class members seek an injunction against Defendants from maintaining the single provider/collect call-only system at NYSDOCS facilities. Further, they seek from Defendant MCI restitution and damages in an amount exceeding \$93 million for past injuries (that is, the approximate amount of the commissions paid by Defendant MCI to NYSDOCS from April 1, 1996 to the present).

COUNT IV IMPAIRMENT OF CONTRACT CLAIM

92. Plaintiffs and class members repeat and reallege paragraphs 1 through 91 above as if fully set forth herein.

93. Plaintiffs and class members bring this claim for violation of their right to contract under Article 1, § 10 of the United

States Constitution.

94. Each of Plaintiffs and class members have an ongoing contract with a chosen telephone company for the provision of long distance telephone service. Those contracts specify the services to be provided, the charges for different types of calls and the calling options. The contracts also entitle Plaintiffs and class members to predetermined charges for collect calls and other services.

95. Defendants' actions, policies and practices require use of the single provider/collect call-only system for calls made by inmates confined in NYSDOCS facilities. This system unlawfully interferes with Plaintiffs' and class members' existing contracts for telephone service. Under this arrangement, Plaintiffs and class members cannot enjoy the benefit of their contracts when they receive collect calls from NYSDOCS inmates. In addition, the single provider/collect call-only system further interferes with Plaintiffs' and class members' contractual rights to use other, less expensive calling options available from their chosen providers.

96. Defendants have acted with deliberate indifference to the constitutional rights of Plaintiffs to conduct their contractual relationships free from government interference. As a direct, proximate result, Plaintiffs' and class members' constitutional rights have been violated. By their acts and omissions, Defendants under color of State law have deprived Plaintiffs of these rights in violation of 42 U.S.C. § 1983.

97. Further, not only has Defendants' single provider/collect call-only system violated Plaintiffs' and class members' constitutional rights, a real and immediate threat exists that Defendants will violate Plaintiffs' and class members' constitutional rights in the future. Indeed, because Defendants' single provider/collect call-only system determines the mode of inmate telephone communication -- and all communication in some instances -- Plaintiffs and class members cannot alter their behavior to avoid future violations of their constitutional rights at the hands of Defendants.

98. Plaintiffs and class members have no adequate remedy at law for future violations and will continue to suffer serious, irreparable harm to their constitutional rights unless Defendants are enjoined.

99. Accordingly, Plaintiffs and class members seek an injunction against Defendants from maintaining the single provider/collect call-only system at NYSDOCS facilities. Further, they seek from Defendant MCI restitution and damages in an amount exceeding \$93 million for past injuries (that is, the approximate amount of the commissions paid by Defendant MCI to NYSDOCS from April 1, 1996 to the present).

COUNT V RESTRAINT-OF-TRADE CLAIM

100. Plaintiffs and class members repeat and reallege paragraphs 1 through 99 above as if fully set forth herein.

101. Plaintiffs and class members bring this claim against all Defendants.

102. Beginning on or before April 1, 1996, and continuing up to and including the date of the filing of this Amended Complaint, Defendants and other persons acting for each of them, as well as other individuals not named in the Amended Complaint, have been and are engaged in a continuing combination and conspiracy to restrain trade in the overall market for inmate-initiated telephone service at correctional facilities operated by NYSDOCS and the market for inmate-initiated telephone service at each of the 70 correctional facilities operated by NYSDOCS, in violation of Section 1 of the Sherman Act. 15 U.S.C. § 1.

103. Inmate-initiated telephone service is the relevant product market because the other means of communication available to Plaintiffs -- letters and visits -- are not reasonably interchangeable with such service. See, e.g., ¶¶143-47, *supra*. Each correctional facility operated by NYSDOCS constitutes a relevant geographic market since inmates confined to that facility can only practicably turn for inmate-initiated telephone service to the telephone company (Defendant MCI) which has been granted the exclusive privilege to serve that facility. Alternatively, all 70 correctional facilities operated by NYSDOCS can be viewed as the relevant geographic markets since inmates confined to those facilities collectively can only practicably turn for inmate-initiated telephone service to the telephone company (Defendant MCI) which has been granted the exclusive

privileges to serve those facilities.

104. The conduct complained has a substantial and direct effect on interstate commerce. On information and belief, approximately 15% of the telephone calls made by NYSDOCS inmates are to persons located out of state.

105. As a direct, proximate result of Defendants' unlawful conduct, Plaintiffs and class members have been and continue to be injured in their business and property within the meaning of Section 4 of the Clayton Act. 15 U.S.C. § 15. As a direct, proximate result of Defendants' conduct, Plaintiffs and class members have suffered and will continue to suffer antitrust injuries.

106. Plaintiffs and class members have no adequate remedy at law for future violations and will continue to suffer serious, irreparable harm in their business and property unless the Defendants are enjoined.

107. Accordingly, Plaintiffs and class members seek an injunction against Defendants from maintaining the single provider/collect call-only system at NYSDOCS's facilities. Further, they seek from Defendant MCI restitution and damages in an amount exceeding \$279 million for past injuries (that is, treble the approximate amount of commissions paid by Defendant MCI to NYSDOCS from April 1, 1996 to the present.)

COUNT VI MONOPOLIZATION CLAIM

108. Plaintiffs and class members repeat and reallege paragraphs 1 through 107 above as if fully set forth herein.

109. Plaintiffs and class members bring this claim against all Defendants.

110. In granting Defendant MCI the exclusive right to provide telephone service to inmates in return for a significant signing bonus and a commission of 60 percent on gross profits, the State Defendants have wilfully and intentionally acquired, exercised, and maintained monopoly power in the markets for inmate-initiated telephone service at NYSDOCS facilities.

111. The conduct complained of here has a substantial and direct effect on interstate commerce. On information and belief, approximately 15 percent of the telephone calls made by NYSDOCS inmates are to persons located out-of-state. Moreover, the single provider/collect call-only system prevents Plaintiffs and class members from contracting with other providers in the market place to obtain the benefit of their less expensive calling options.

112. In granting Defendant MCI the exclusive right to provide telephone service to inmates, the State Defendants have not acted pursuant to any clearly articulated and affirmatively expressed State policy to displace competition in the markets for inmate-initiated telephone service at NYSDOCS's facilities.

113. In taking a significant signing bonus and 60 percent of Defendant MCI's gross profits from inmate-initiated calls, the State Defendants have become participants in the markets for inmate-initiated telephone service at NYSDOCS facilities.

114. By reason of the foregoing, Defendants have unlawfully monopolized interstate trade and commerce in the 71 markets for inmate telephone service at NYSDOCS facilities in violation of Section 2 of the Sherman Act. 15 U.S.C. § 2.

115. As a direct, proximate result of Defendants' unlawful conduct, Plaintiffs and class members have been and continue to be injured in their business and property within the meaning of Section 4 of the Clayton Act. 15 U.S.C. § 15. As a direct, proximate result of Defendants' conduct, Plaintiffs and class members have suffered and will continue to suffer antitrust injuries.

116. Plaintiffs and class members have no adequate remedy at law for future violations and will continue to suffer serious, irreparable harm in their business and property unless Defendants are enjoined.

117. Accordingly, Plaintiffs and class members seek an injunction against Defendants from maintaining the single provider/collect call-only system at NYSDOCS facilities. Further, they seek from Defendant MCI restitution and damages in

an amount exceeding \$279 million for past injuries (that is, treble the approximate amount of commissions paid by Defendant MCI to NYSDOCS from April 1, 1996 to the present.)

COUNT VII ATTEMPT TO MONOPOLIZE CLAIM

118. Plaintiffs and class members repeat and reallege paragraphs 1 through 117 above as if fully set forth herein.

119. Plaintiffs and class members bring this claim against all Defendants.

120. By reason of the foregoing, Defendants have unlawfully attempted to monopolize interstate trade and commerce in violation of Section 2 of the Sherman Act. 15 U.S.C. § 2.

121. As a direct, proximate result of Defendants' unlawful conduct, Plaintiffs and class members have been and will continue to be injured in their business and property within the meaning of Section 4 of the Clayton Act. 15 U.S.C. § 15. As a direct, proximate result of Defendants' conduct, Plaintiffs and class members have suffered antitrust injuries.

122. Plaintiffs and class members have no adequate remedy at law for future injuries and thus will continue to suffer serious, irreparable harm to their business and property unless Defendants are enjoined.

123. Accordingly, Plaintiffs and class members seek an injunction against Defendants from maintaining the single provider/collect call-only system at NYSDOCS facilities. Further, they seek from Defendant MCI restitution and damages in an amount exceeding \$279 million for past injuries (that is, treble the approximate amount of commissions paid by Defendant MCI to NYSDOCS from April 1, 1996 to the present.)

COUNT VIII DONNELLY ACT CLAIM

124. Plaintiffs and class members repeat and reallege paragraphs 1 through 123 above as if fully set forth herein.

125. Plaintiffs and class members bring this claim against Defendant MCI.

126. In return for a significant signing bonus and a commission of 60 percent on gross profits, NYSDOCS awarded the exclusive services contract to Defendant MCI to be the single provider of inmate-initiated interstate and intrastate telephone service at NYSDOCS facilities. In doing so, NYSDOCS and Defendant MCI entered into a continuing contract, agreement, arrangement and combination creating a monopoly and unreasonably restraining trade in the furnishing of inmate telephone service in the State of New York in violation of Section 340 of the General Business Law.

127. As a direct, proximate result of the unlawful contract, agreement, arrangement and combination, Plaintiffs and class members have suffered injury.

128. Plaintiffs and class members have no adequate remedy at law for future injuries and thus will suffer serious, irreparable harm in their business and property unless Defendants are enjoined.

129. Accordingly, Plaintiffs and class members seek an injunction against Defendants from maintaining the single provider/collect call-only system at NYSDOCS facilities. Further, they seek from Defendant MCI restitution and damages in an amount exceeding \$279 million for past injuries (that is, treble the approximate amount of commissions paid by Defendant MCI to NYSDOCS from April 1, 1996 to the present.)

COUNT IX TORTUOUS INTERFERENCE WITH EXISTING CONTRACTS CLAIM

130. Plaintiffs and class members repeat and reallege paragraphs 1 through 129 above as if fully set forth herein.

131. Plaintiffs and class members bring this claim against all Defendants.

132. Plaintiffs and class members have existing contracts with their chosen providers for telephone services. Those contracts specify the services provided, billing charges and calling options. Under these contracts, Plaintiffs and class members have bargained for and are entitled to predetermined charges for collect calls and other services.

133. Defendants' single provider/collect call-only system is predicated on Plaintiffs and class members having telephone service in order to receive calls. Defendants thus know that Plaintiffs and class members have existing contracts for telephone service. Notwithstanding that knowledge, by their actions, policies and practices that require use of their single provider/collect call-only system, Defendants have intentionally interfered with Plaintiffs' and class members existing contracts with their chosen providers.

134. As a result of Defendants' intentional interference with those ongoing contracts, Plaintiffs and class members lose the benefits of their contracts on each collect call received from individuals incarcerated in NYSDOCS facilities. Plaintiffs and class members are foreclosed from receiving inmate collect calls under the existing contracts at lower, pre-determined charges. Moreover, Defendants have barred Plaintiffs and class members from using other more reliable, and less expensive calling options (such as, "800" or "888" services) that are available under their existing contracts.

135. Defendants' intentional interference is without justification. Alternative telephone services that would meet Defendants' purported security concerns are available using Plaintiffs' and class members chosen providers.

136. As a direct, proximate result of the foregoing, Defendants have injured Plaintiffs and class members by prohibiting them from using the bargained for services of their chosen providers.

137. Further, not only has Defendants' single provider/collect call-only system violated Plaintiffs' and class members' common law rights, a real and immediate threat exists that Defendants will violate Plaintiffs' and class members' common law rights in the future. Indeed, because Defendants' single provider/collect call-only system determines the mode of inmate telephone communication -- and all communication in some instances - Plaintiffs and class members cannot alter their behavior to avoid future violations of their constitutional rights at the hands of Defendants.

138. Plaintiffs and class members have no adequate remedy at law for future violations and will continue to suffer serious, irreparable harm to their constitutional rights unless Defendants are enjoined.

139. Accordingly, Plaintiffs and class members seek an injunction against Defendants from maintaining the single provider/collect call-only system at NYSDOCS facilities. Further, they seek from Defendant MCI restitution and damages in an amount exceeding \$93 million for past injuries (that is, the approximate amount of the commissions paid by Defendant MCI to NYSDOCS from April 1, 1996 to the present).

COUNT X CLAIM FOR DAMAGES AGAINST DEFENDANT MCI FROM APRIL 1,1996 THROUGH DECEMBER 31, 1998

140. Plaintiffs and class members repeat and reallege paragraphs 1 through 139 above as if fully set forth herein.

141. Upon information and belief, between April 1, 1996 and December 31, 1998, MCI paid approximately \$40 million in commissions to NYSDOCS pursuant to its contract with NYSDOCS.

142. Upon information and belief, during this entire period (as well as prior thereto) the rates and surcharges which MCI charged the Plaintiffs and class members were not reviewed or approved by the PSC as required by law.

143. Accordingly, under the theories of recovery set forth above, Plaintiffs and class members seek from Defendant MCI restitution and damages in the amount of \$40 million. Further, they seek treble damages in the amount of \$120 million from Defendant MCI.

COUNT XI ACCOUNTING CLAIM

144. Plaintiffs and class members repeat and reallege paragraphs 1 through 143 above as if fully set forth herein.

145. Plaintiffs and class members bring this claim against all Defendants.

146. Notwithstanding the governmental Defendants' rehabilitative responsibility for ensuring that inmates incarcerated in NYSDOCS's facilities are able to maintain contact with their families, ministers, counsel and others in the community, the governmental and telephone company Defendants have:

(a) implemented the single provider/collect call-only system for inmate telephone use at NYSDOCS facilities, thereby eliminating competition for such services;

(b) imposed the special and unauthorized regulatory fees as part of single provider/collect call-only system;

(c) the imposition of unlegislated taxes upon Plaintiffs and class members;

(d) prevented Plaintiffs and class members from using their chosen telephone service provider to receive inmate-initiated calls;

(e) prevented Plaintiffs and class members from using alternative calling plans (such as, "800" or "888" services); and

(f) provided inadequate telephone services to Plaintiffs and class members inhibiting the exercise of their First and Fourteenth Amendment rights.

147. Defendants' actions, policies and practices have directly and proximately violated Plaintiffs' legal rights. Defendants' single provider/collect call-only system seriously impedes the ability of Plaintiffs and class members to communicate with NYSDOCS inmates, and also determines the terms under which that communication occurs. Thus, along with past violations, a real and immediate threat exists that Defendants will violate all Plaintiffs' and class members' legal rights in the future. Further, because Defendants' single provider/collect call-only system determines the mode of inmate telephone communication - and all communication in some instances - Plaintiffs and class members cannot alter their behavior to avoid future injuries at the hands of Defendants.

148. Plaintiffs and class members have no adequate remedy at law and thus will suffer serious, irreparable harm to their rights in the future unless Defendants provide an accounting to assess the true costs of the single provider/collect call-only system and the uses to which the revenues generated are put. This information is necessary to determine, among other things, whether Defendants' alleged security concerns have any relationship to the costs of the system, and whether the governmental Defendants have been using the revenues to subsidize governmental functions that they are mandated by law to provide.

149. Plaintiffs and class members are therefore entitled to an accounting of the revenues generated under the exclusive services contract, of the payments made to the State, and of the uses to which the received money has been put.

WHEREFORE, Plaintiffs and class members respectfully request that the Court:

1. Certify this case as a class action;

2. Issue a declaratory judgment that the single provider/collect call-only system and the other acts and practices alleged herein are illegal as to each count;

3. Permanently enjoin the use of the single provider/collect call-only system, and the other acts and practices alleged herein as illegal; and order Defendants to provide to Plaintiffs and class members with telephone service that is legal and proper;

and issue such other injunctive relief that will permanently remedy the violations of Plaintiffs' and class members' rights;

4. Permanently enjoin Defendants from in any way retaliating, harassing or threatening any Plaintiff or class member in retribution for bringing this class action, participating in it or receiving any benefit therefrom;

5. Order Defendant MCI to provide restitution and damages in an amount exceeding \$93 million to Plaintiffs and the class members for injuries incurred due to violations of Plaintiffs' and class members' constitutional and common law rights; and further order that those damages be trebled to an amount exceeding \$279 million for violations of 15 U.S.C. § 15 and the Donnelly Act;

6. Order an accounting by Defendant MCI of costs incurred, revenues collected and payments made to NYSDOCS pursuant to the exclusive services contract from April 1, 1996 through the pendency of the class action;

7. Order an accounting by the governmental Defendants of monies received during the same period from Defendant MCI pursuant to the exclusive services contract, and further order an accounting of the uses to which the governmental Defendants have put the monies received during the same period;

8. Award Plaintiffs and class members attorneys' fees, costs and expenses; and

Provide for such other and further relief as is deemed just and proper.

Dated: New York, New York May 22, 2000

Footnotes

¹ The total nationwide business for inmate telephone services has been estimated to be over \$1 billion.