



PC-KY-002-004

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

CONCHITA WASHINGTON, <u>ET AL.</u> ,)	
)	
Plaintiffs,)	
)	
vs.)	Consolidated Civil Cases
)	Nos. 93-217, 93-290
JANET RENO, Attorney General,)	
<u>ET AL.</u> ,)	
)	
Defendants.)	
)	
)	

SETTLEMENT AGREEMENT

I. INTRODUCTION

This Settlement Agreement ("Settlement Agreement" or "Agreement") is entered into between Plaintiffs, Conchita Washington, Gloria Batton Robinson, Antoinette M. Frink, Patricia M. Darks,¹ Norma Fay Cook, Martha Marie Preston, Loven L. Lewis, Lori Saunders, and Reshawn Richardson, as individual representatives of the class certified by the District Court by Order entered November 18, 1993, of "all federally incarcerated inmates serving their period of incarceration in a federal penal or medical institution," by their attorneys, and Defendants,

¹ Although Ms. Darks is one of the named Plaintiffs and Class Representatives, she is not agreeing to execute this Settlement Agreement in its present form. Specifically, Ms. Darks objects to the agreement in Section II.B.1.c. that the Bureau of Prisons can require inmates at "Debit/Collect Calling Institutions", as defined below, to place collect calls only to persons on the inmates' official telephone lists. Thus, any reference herein to the "parties" or the "Plaintiffs" that indicates assent to this Settlement Agreement, necessarily excludes Ms. Darks. All other named Plaintiffs have agreed to this Settlement Agreement in principle.

Janet Reno, in her official capacity as Attorney General, Kathleen Hawk, in her official capacity as Director of the Bureau of Prisons, Arthur F. Beeler, Jr., in his official capacity as Warden of the Federal Medical Center, Lexington, Michael A. Atwood, in his official capacity as Chief, Trust Fund Branch, Bureau of Prisons, and David Woody, in his official capacity as Chief, Trust Fund ITS Section of the Trust Fund Branch of the Bureau of Prisons, the Bureau of Prisons, and the United States of America, by their attorneys.

In the interest of resolving this action without the need for formal contested litigation, the parties hereby agree to the following terms on which this action is to be fully and finally resolved. Neither this Settlement Agreement, nor any Court approval thereof, constitutes an admission or ruling on the merits of any position taken by any party to this litigation. Nor does this Settlement Agreement constitute an admission of any liability by the defendants for violation of any constitutional provision, statute, or regulation.

II. COLLECT CALLING

A. Beginning with the Award of a New Contract to Provide Inmate Telephone Service at All Correctional Institutions Operated by the Bureau of Prisons

1. The Bureau of Prisons will conduct a procurement to obtain a new telephone system (the "New Telephone System") that will, among other things, enable the Bureau of Prisons to provide inmates in all correctional institutions (as defined in 28 C.F.R. § 500.1(d), or any modifications thereto) operated by the Bureau

of Prisons (hereinafter referred to as "correctional institutions operated by the Bureau of Prisons") with the collect calling privileges required by this Settlement Agreement. (For purposes of this Settlement Agreement, the contract for the New Telephone System will be referred to as the "New Telephone Contract.")

2. For a period of four years from the date of the award of the New Telephone Contract, the Bureau of Prisons shall permit inmates in all correctional institutions operated by the Bureau of Prisons to make at least 120 minutes of collect calls per month (the "Collect Calling Option"), in addition to debit calling privileges as provided in 28 C.F.R., part 540 (as amended in 1994); provided, however, that:

a. The Bureau of Prisons may, in its discretion, require that the collect calls be made to numbers on the inmates' official telephone lists, as provided in 28 C.F.R. § 540.101, or any modifications thereto;

b. The Bureau of Prisons is not required to provide the Collect Calling Option to inmates who are detained in Special Housing Units or Control Units, as specified in 28 C.F.R., part 541, or any modifications thereto;

c. The Bureau of Prisons is not required to provide the Collect Calling Option to inmates who refuse to participate in the Inmate Financial Responsibility Program, but will provide inmates who refuse to participate in the Inmate Financial Responsibility Program with 60 minutes of debit calling per month as provided in Section III. below.;

d. The Bureau of Prisons is not required to provide the Collect Calling Option at any correctional institution operated by the Bureau of Prisons until the New Telephone System is implemented at the institution, other than collect calls that are currently provided in 28 C.F.R. § 540.105. Nevertheless, the Bureau of Prisons shall make its best efforts to award the New Telephone Contract within two years of the Court approval of this Settlement Agreement. The Bureau of Prisons shall also make its best efforts to implement the New Telephone System at all correctional institutions operated by the Bureau of Prisons within a reasonable period of time after the award of the New Telephone Contract. In addition, the Statement of Work for the New Telephone Contract will provide that the vendor must install the New Telephone System in the Debit Calling Institutions listed on Attachment B to this Settlement Agreement within 18 months from the date of the award of the New Telephone Contract. The Bureau of Prisons will work with the vendor to attempt to install the New Telephone System in the Debit Calling Institutions in the order that they are listed on Attachment B; provided, however, that the Bureau of Prisons may modify the order of installation of the New Telephone System if the Bureau of Prisons determines that:

(1) a modified installation schedule will facilitate the timely installation of the New Telephone System in all of the Debit Calling Institutions;

(2) the installation schedule must be modified to ensure that the New Telephone System is installed in any new correctional institutions that the Bureau of Prisons opens for operation during the 18-month period following the award of the New Telephone Contract; or

(3) the installation schedule must be modified to allow the New Telephone System to be installed in any other correctional institutions operated by the Bureau of Prisons that have a compelling need for the New Telephone System (e.g., a hurricane, fire, or other event that causes a significant disruption in the existing inmate telephone service).

3. If, after the expiration of the four-year period following the award of the New Telephone Contract, the Bureau of Prisons decides to reduce the Collect Calling Option, it must employ the following procedures:

a. A notice of a proposed reduction in the Collect Calling Option shall be published in the Federal Register (the "Federal Register Notice");

b. The Federal Register Notice shall specify that inmates and the public will have at least 60 days from the date of Federal Register publication to submit written comments concerning the proposed reduction in the Collect Calling Option to the Bureau of Prisons;

c. Within 21 days of publication in the Federal Register: (1) copies of the Federal Register Notice shall be distributed to each correctional institution operated by the

Bureau of Prisons, (2) copies of the Federal Register Notice shall be made available for inspection by the inmates in the inmate law libraries for the remainder of the comment period specified in the Federal Register Notice, and (3) a notice shall be posted in the institution commissaries and law libraries stating that the Federal Register Notice is available for review by the inmates in the institution law libraries;

d. The Bureau of Prisons shall consider all comments that are postmarked within the time period specified in the Federal Register Notice. If, after considering the comments, the Bureau of Prisons decides to reduce the Collect Calling Option, it shall publish its responses to the comments and its decision concerning the reduction in the Collect Calling Option in the Federal Register (the "Decision Concerning the Collect Calling Option").

4. Nothing in this Settlement Agreement shall render the Decision Concerning the Collect Calling Option a "rule" within the meaning of the Administrative Procedure Act, 5 U.S.C. § 551, et seq., and nothing in this Settlement Agreement requires the Bureau of Prison to follow either the procedures set forth in paragraph II.A.3. of this Settlement Agreement or the rulemaking procedures of the Administrative Procedure Act if it subsequently decides to modify the Decision Concerning the Collect Calling Option.

5. Nothing in this Settlement Agreement shall be construed to provide for judicial review in any court of the

Decision Concerning the Collect Calling Option. Nothing in this Settlement Agreement shall be construed to preclude any person from seeking judicial review of the Decision Concerning the Collect Calling Option; provided, however, that nothing in this Settlement Agreement shall be construed to preclude the Bureau of Prisons from asserting any defenses to any such lawsuit.

B. From Court Approval of the Settlement Agreement Until Implementation of the New Telephone System

1. From the period beginning with Court approval of this Settlement Agreement and ending with the implementation of the New Telephone System, the Bureau of Prisons shall maintain in each correctional institution it operates a telephone system substantially equivalent to the telephone system that presently exists at that institution. Specifically:

a. The correctional institutions listed on Attachment A to this Settlement Agreement have the former collect calling telephone system that does not restrict the number of collect calls and does not require that telephone calls be placed to numbers on an inmate's official telephone list (the "Unlimited Collect Calling" institutions). Until the New Telephone System is installed at each of these institutions, they will retain these Unlimited Collect Calling privileges.

b. The correctional institutions listed on Attachment B to this Settlement Agreement have the Inmate Telephone System that provides debit calls and limits telephone calls to numbers on the inmate's official telephone list (the "Debit Calling" institutions). These institutions do not permit

all inmates to make an unlimited number of collect calls. Until the New Telephone System is installed at each of these institutions, they will continue to provide debit calling and will not be required to provide collect calling for inmates, other than what is currently required in 28 C.F.R. § 540.105. The Bureau of Prisons may, in its discretion, continue to require that telephone calls be placed to numbers on the inmate's official telephone list.

c. The correctional institutions listed on Attachment C to this Settlement Agreement have the Inmate Telephone System that provides debit calls and limits telephone calls to numbers on the inmate's official telephone list. These institutions also permit all inmates to make an unlimited number of collect telephone calls (the "Debit/Collect Calling" institutions). Until the New Telephone System is installed at each of these institutions, they will continue to permit inmates to make, at the inmate's option, either debit or collect calls. The Bureau of Prisons may, in its discretion, require that both debit and collect calls be placed to numbers on the inmate's official telephone list.

2. In any new correctional institution that the Bureau of Prisons opens and operates before the implementation of the New Telephone System, the Bureau of Prisons shall implement the present debit Inmate Telephone System and conduct an expedited procurement to provide for collect calling. During the time period between the implementation of the collect calling system

obtained through the expedited procurement and the implementation of the New Telephone System at each of these institutions, the Bureau of Prisons shall not limit the number of collect calls and shall permit inmates to make, at their option, either debit or collect calls. The Bureau of Prisons may, in its discretion, require that both debit and collect calls be placed to numbers on the inmate's official telephone list.

C. International Collect Calls

1. The Bureau of Prisons acknowledges that it has no practice or policy of precluding inmates from making international collect calls.

2. In the Request for Proposal for the New Telephone System, the Bureau of Prisons will include a specification that bidders may submit bids to provide international debit and collect calls. The bidder's ability to provide international collect calls is one item that the Bureau of Prisons will consider in the procurement of the New Telephone System. However, nothing in this Settlement Agreement requires the Bureau of Prisons to guarantee that the successful bidder for the New Telephone Contract will provide international collect calls.

III. INMATE FINANCIAL RESPONSIBILITY PROGRAM

A. Telephone Privileges of Inmates in Refusal Status

1. Prior to the implementation of the New Telephone System, the Bureau of Prisons shall not limit the telephone privileges of inmates who are incarcerated in a correctional institution operated by the Bureau of Prisons because of the

inmates' refusal to participate in the Inmate Financial Responsibility Program ("Inmates in Refusal Status").

2. Promptly after Court approval of this Settlement Agreement, the Bureau of Prisons will initiate the process of notice and comment rulemaking to modify 28 C.F.R. § 545.11(d)(10) to provide that upon implementation of the New Telephone System, the Bureau of Prisons will permit Inmates in Refusal Status to make sixty minutes of debit telephone calls per month. This modification to 28 C.F.R. § 545.11(d)(10) may take effect in each correctional institution operated by the Bureau of Prisons upon implementation of the New Telephone System at the institution.

B. Commissary Privileges of Inmates in Refusal Status

Upon Court approval of this Settlement Agreement, the Bureau of Prisons may limit the commissary privileges of Inmates in Refusal Status but shall permit Inmates in Refusal Status to spend at least \$25 per month in the commissaries of the correctional institutions operated by the Bureau of Prisons; provided, however, that purchases of stamps and telephone credits shall not be subject to the \$25 spending limit.

C. Calculating Inmate Payments Under the Inmate Financial Responsibility Program

1. Promptly after Court approval of the Settlement Agreement, the Bureau of Prisons will initiate the process of notice and comment rulemaking to propose that 28 C.F.R., part 545, subpart B, be modified to require Bureau of Prisons staff to exclude \$75 per month of deposits into an inmate's account when determining whether an inmate's payment should exceed the minimum

payment required for participation in the Inmate Financial Responsibility Program. The Bureau of Prisons will make its best efforts to complete the rulemaking and implement the new rule before the end of January, 1996.

2. The Bureau of Prisons Program Statement implementing the new rule shall state that when determining whether an inmate's payment should exceed the minimum payment required for participation in the Inmate Financial Responsibility Program, Bureau of Prisons staff will look at an inmate's account deposits for the last six months and will exclude \$450, which represents \$75 per month for six months.

IV. NO LIMITATION ON THE BUREAU OF PRISONS DISCRETION TO LIMIT TELEPHONE PRIVILEGES

Nothing in this Settlement Agreement limits or interferes with the discretion of the Bureau of Prisons and the Wardens of the correctional institutions operated by the Bureau of Prisons to limit inmate telephone privileges -- including the telephone privileges specified in Sections II. and III. of this Agreement -
- to maintain the security or good order of the institution, or to protect the public, see 28 C.F.R. § 540.100, or as a disciplinary sanction, see 28 C.F.R., part 541.

V. DEBIT RATES

A. If the debit rates under the New Telephone Contract ("New Debit Rates") are set by the Bureau of Prisons, the New Debit Rates charged to inmates in correctional institutions operated by the Bureau of Prisons shall not exceed the highest debit rates charged to inmates in the state correctional

institution having the highest debit telephone rates as computed in paragraphs V.B. and V.C. below. In addition, the Bureau of Prisons has no present intention of raising the current debit telephone rates under the existing Inmate Telephone System.

B. If the Bureau of Prisons sets the New Debit Rates, the Bureau of Prisons shall do an annual survey to compare the total charges of debit telephone calls under the New Telephone System with the total charges of debit telephone calls in the state correctional institution with the highest debit charges for thirteen-minute daytime telephone calls of the following distances:

1. local call;
2. interstate long distance call of 100 miles;
3. interstate long distance call of 250 miles;
4. interstate long distance call of 500 miles;
5. interstate long distance call of 750 miles; and
6. interstate long distance call of 1000 miles.

C. If the average New Debit Rate charge per minute exceeds the average state correctional institution charge per minute for the six telephone categories in the survey conducted pursuant to paragraph V.B. above, the Bureau of Prisons shall lower the New Debit Rates in such a manner that ensures that the average New Debit Rate charge per minute will be equal to or lower than the average state correctional institution charge per minute for the six telephone categories in the survey.

D. The highest state correctional institution debit charges identified in the survey conducted pursuant to paragraphs V.B. and V.C. are a ceiling, and the Bureau of Prisons shall use its best efforts to ensure that the New Debit Rate charges are lower than this ceiling.

E. If the Bureau of Prisons sets the New Debit Rates, it shall distribute a copy of the New Debit Rate survey conducted pursuant to paragraphs V.B. and V.C. in the first and fourth years following the Court approval of this Settlement Agreement to each correctional institution operated by the Bureau of Prisons when it distributes the commissary price survey required by Section X. below.

F. The Bureau of Prisons shall not have to conduct or distribute the New Debit Rate survey required by this Section V., and the limitation on the debit rates provided in this Section V., shall not apply to the New Telephone System if the New Debit Rates are set by the vendor that is awarded the New Telephone Contract.

VI. RESOLVING INMATE DISPUTES CONCERNING THE TELEPHONE

A. The Bureau of Prisons shall permit inmates to use the Administrative Remedy process, which is presently described in 28 C.F.R., part 542, or its successor, to resolve disputes concerning their telephone privileges, access, accounts, and service.

B. If an inmate is unable to informally resolve a complaint about telephone privileges, access, accounts, or service, he or

she may file a grievance by submitting a Request to Staff Member or a Request for Administrative Remedy (otherwise known as a "BP-9") with the Warden. The Request to Staff Member or Request for Administrative Remedy must be filed within the time period prescribed by the regulations governing the Administrative Remedy process, unless it involves a dispute concerning a charge or credit to the inmate's telephone account or a telephone service problem for which the inmate seeks recredit to his or her telephone account in which case the grievance will be considered timely as long as it is filed within 120 days from the date of the disputed telephone charge or credit or telephone service problem.

C. If the inmate submits a timely Request to Staff Member or Request for Administrative Remedy concerning a charge or credit to his or her telephone account or a telephone service problem for which the inmate seeks recredit and pays a fee of \$3.00, the inmate shall receive a written report of his or her telephone calls and telephone credit purchases for any thirty-day period within the last 120 days; provided, however, that the \$3.00 fee will be waived if the inmate did not have a balance in excess of \$6.00 in his or her commissary account at any time during the 30-day period prior to the filing of the grievance, or the Bureau of Prisons staff determine, in their discretion, that the payment of the \$3.00 fee would impose a financial hardship on the inmate even if the inmate had a commissary account balance in excess of \$6.00.

D. If the grievance alleges that there was an error in a charge or credit to the inmate's telephone account or a telephone service problem, and the Bureau of Prisons staff ultimately agrees that there was an error or a telephone service problem for which a recredit is warranted in whole or in part, the inmate's commissary account will be credited with the amount of the erroneous charge(s) or credit(s) and any \$3.00 fee that was paid for the written report of the inmate's telephone records.

E. A "telephone service problem" is defined to include poor phone connections, static, or other technical problems that have the actual effect of substantially interfering with communication.

F. Under the New Telephone System, the Bureau of Prisons will continue its practice of providing inmates with a means of determining the balance of telephone credits in their individual telephone accounts and the cost of their debit telephone calls.

G. The provisions of this Section VI. shall be set forth in the appropriate Bureau of Prisons Program Statements, which shall be issued and take effect within 60 days following the Court approval of this Settlement Agreement.

VII. TELEPHONE LISTS

A. The Bureau of Prisons will allow inmates to submit proposed changes to their official telephone lists on any day, up to three times per month. Proposed changes to inmates' telephone lists will be processed within five days, excluding weekends and holidays, unless the total number of changes proposed by the

inmates is so large that the normal institution staff cannot process the changes and complete their other duties. If the inmate's Unit Team determines that there is a demonstrated need for prompt communication, additional changes will be permitted.

B. The Bureau of Prisons will continue its current policy of allowing inmates to make a collect telephone call or a telephone call at government expense to a telephone number that is not on the inmate's official telephone list if the Bureau of Prisons staff determine that compelling circumstances exist, such as a family emergency, see 28 C.F.R. § 540.105(d).

C. The provisions of this Section VII. shall be added to the appropriate Bureau of Prisons Program Statement, which shall be issued within 60 days following the Court approval of this Settlement Agreement.

VIII. CREDIT TO THE COMMISSARY FUND

A. Within 90 days following Court approval of this Settlement Agreement, the Bureau of Prisons shall credit four million dollars (\$4,000,000) to the Commissary Fund, Federal Prisons, 31 U.S.C. § 1321(a)(22) (the "Commissary Fund"). If the Commissary Fund is abolished by statute before the Bureau of Prisons credits the four million dollars required by this paragraph, the Bureau of Prisons shall credit the four million dollars to the successor to the Commissary Fund.

B. The Bureau of Prisons shall distribute the four million dollars to the correctional institutions operated by the Bureau

of Prisons within a reasonable period of time, not to exceed four years from Court approval of this Settlement Agreement.

C. The funds distributed to the correctional institutions pursuant to paragraph VIII.B. above shall be used by the Wardens for any purpose that is not prohibited by Bureau of Prisons policy and that accrues to the benefit of the inmate body, as a whole, such as amusements, education, library, or general welfare work.

D. The Warden of each correctional institution that receives funds pursuant to paragraph VIII.B. above shall establish a procedure for receiving the inmates' suggestions or recommendations for how the funds should be spent.

IX. PAYMENT OF TRUST FUND SUPERVISORS

Beginning in Fiscal Year 1996, the Bureau of Prisons shall credit to the Commissary Fund an amount equal to fifty percent of the salaries and benefits of the Trust Fund Supervisors (the "fifty percent credit"). The Bureau of Prisons shall continue to make the fifty percent credit in successive fiscal years so long as Trust Fund Supervisors have responsibility for supervising the institution warehouse and laundry or any other non-commissary or non-Trust Fund functions. However, nothing in this Settlement Agreement requires the Bureau of Prisons to continue to pay the fifty percent credit if the job duties of the Trust Fund Supervisors are modified, in writing, to relate only to the Commissary Fund, the Prisoners Trust Fund, 31 U.S.C. § 1321(a)(21), the institution commissaries, or other commissary-

related functions, such as the Inmate Telephone System or the New Telephone System.

X. COMMISSARY PRICE SURVEY

The Bureau of Prisons shall conduct two surveys comparing the prices of selected items sold in the commissaries of several correctional institutions operated by the Bureau of Prisons with the prices of identical or similar items sold in retail convenience stores and supermarkets in the community surrounding the correctional institutions. The surveys shall be conducted as follows:

1. The first survey shall be completed within 12 months from the Court approval of the Settlement Agreement, and the second survey shall be completed within three years after the first survey.

2. Each survey shall include one correctional institution operated by the Bureau of Prisons in each of the six Bureau of Prisons regions; and two of the six correctional institutions included in each survey shall house female inmates.

3. Upon completion of each survey, the Bureau of Prisons shall prepare a report for each of the six correctional institutions included in the survey. The report shall include:

a. The name and price of each item surveyed from the institution commissary;

b. The name, size, style, or other common identifier, and price of each identical or similar item surveyed

from a retail convenience store and a supermarket in the community surrounding the correctional institution; and

c. The name and location of the retail convenience store and supermarket whose prices were surveyed.

4. Each report shall be distributed to the correctional institution involved in the survey and to the other correctional institutions operated by the Bureau of Prisons in the region where the survey was conducted. At least one copy of the report shall be placed in each inmate law library for at least 90 days, subject to being reviewed and/or loaned pursuant to library policy. In addition, a notice shall be posted in the institution commissaries and inmate law libraries stating that the report is available for review by the inmates in the inmate law library.

XI. DESTRUCTION OF REQUEST FOR TELEPHONE PRIVILEGE FORMS

A. The Bureau of Prisons shall destroy the discontinued Request for Telephone Privilege forms (form BP-517(52) that was Attachment B to Bureau of Prisons Operations Memorandum Number 067-93 (5300), March 15, 1993) in its current or archived files that were completed by, or on behalf of, any person whom an inmate wanted to place on the inmate's approved telephone list.

B. To accomplish the destruction of these executed Request for Telephone Privilege forms, the Bureau of Prisons shall develop a process for identifying and searching the Central File of each inmate who was incarcerated in a correctional institution operated by the Bureau of Prisons during the time period when the

Request for Telephone Privilege form was in use. This process shall be completed and all Request for Telephone Privileges forms found in the inmate Central Files shall be destroyed within six months from the date of Court approval of this Settlement Agreement.

C. Once the destruction of these records is complete, the Bureau of Prisons, through counsel, shall file with the Court a certificate of compliance indicating that said destruction has been completed. The Bureau shall serve a copy of said certificate on counsel for Plaintiffs.

XII. EFFECTIVE DATE AND TERM OF SETTLEMENT AGREEMENT

A. The effective date of several changes in Bureau of Prisons practice, policy, or procedure required by this Settlement Agreement is set forth above in the respective sections of this Settlement Agreement. If, however, an effective date is not specified for any provision of this Settlement Agreement, that provision shall become effective upon approval by the Court of this Settlement Agreement.

B. Unless otherwise stated herein, this Settlement Agreement, and the obligations of the Bureau of Prisons set forth herein, shall remain in effect for four years from the date of the award of the New Telephone Contract (the "Settlement Period").

C. The Bureau of Prisons shall promptly notify the United States District Court for the Eastern District of Kentucky, with

service upon counsel for the plaintiff class, when each of the following events occurs:

1. The notice of the Request for Proposal for the New Telephone Contract is published in the Commerce Business Daily;
2. The competitive range has been determined from the bids submitted in response to the Request for Proposal for the New Telephone Contract; and
3. The New Telephone Contract is awarded.

However, nothing in this Settlement Agreement shall be construed to give any person the right to participate in the procurement process, have access to source selection or proprietary information, or challenge the award of the New Telephone Contract.

D. The obligations imposed by this Settlement Agreement shall only go into effect if the Court approves the Agreement. In the event that the Court does not approve this Settlement Agreement, it shall be null and void and shall not impose any obligations on any party or member of the plaintiff class.

XIII. SCOPE OF SETTLEMENT AGREEMENT

A. This Settlement Agreement, including the appendices attached hereto, constitutes the entire agreement between and among the parties and supersedes all prior agreements, written or oral.

B. The individual named Plaintiffs, through class counsel, and the Defendants, through counsel, have entered into this Settlement Agreement as a compromise measure to terminate this

litigation and fully and completely resolve all claims raised in Plaintiffs' Third Amended Complaint and the Amendment to Third Amended Complaint, except attorney's fees and costs as may be awarded by the Court. The terms of this Settlement Agreement, the settlement negotiations and mediation sessions that led up to this Settlement Agreement, and the documents or information exchanged between the parties in the course of the settlement negotiations and mediation sessions may not be offered, construed or introduced as evidence of liability or as an admission or statement of wrongdoing by the Bureau of Prisons or the Defendants, either in this action or in any subsequent proceeding of any nature.

C. This Settlement Agreement, if approved by the Court, constitutes a full and complete adjudication of all claims raised in Plaintiffs' Third Amended Complaint and Amendment to Third Amended Complaint, except attorney's fees and costs as may be awarded by the Court.

D. Nothing in this Settlement Agreement, or its approval by the Court, shall prevent any party to this litigation, any member of the class, or any person with standing from bringing any claim against the Bureau of Prisons if it changes or discontinues the policies, privileges, or procedures required by this Settlement Agreement after the expiration of the Settlement Period. Nothing in this Settlement Agreement shall preclude the Bureau of Prisons from asserting any defenses to such claims.

E. Nothing in this Settlement Agreement shall be construed to preclude facial challenges to the Inmate Financial Responsibility Program as a whole, 28 C.F.R. § 545.11, or limit the courts' authority to invalidate the entire Inmate Financial Responsibility Program, including the limitations on telephone and commissary privileges specified in Sections II.A.2.c. and III. of this Settlement Agreement, as a remedy for a finding that the entire Inmate Financial Responsibility Program is invalid on its face. Nor shall anything in this Settlement Agreement be construed to preclude challenges to the limitations on particular privileges for inmates who refuse to participate in the Inmate Financial Responsibility Program other than the limitations on telephone and commissary privileges specified in Sections II.A.2.c. and III. of this Settlement Agreement. However, this Settlement Agreement shall preclude challenges to the particular limitations on telephone and commissary privileges specified in Sections II.A.2.c. and III. of this Settlement Agreement.

F. Nothing in this Settlement Agreement, or its approval by the Court, shall preclude any individual inmate's claim or grievance that the Bureau of Prisons has improperly credited or debited the inmate's telephone account or the inmate's individual deposit account. Nor does anything in this Settlement Agreement, or its approval by the Court, operate as a dismissal or release of any inmate's individual damage claim, if one exists, against the Bureau of Prisons or the United States for any violation of law that Defendants may have committed. Nothing in this

Settlement Agreement shall preclude the Bureau of Prisons or Defendants from asserting any defenses to these individual inmate claims or grievances.

G. Nothing in this Settlement Agreement shall be construed to create any entitlement, right or interest in any person who is not a party to this Agreement or not a member of the plaintiff class.

H. Nothing in this Settlement Agreement shall require the Bureau of Prisons, Department of Justice, or other Defendants to take any action that is prohibited by law or in conflict with any statutory mandate.

XIV. ENFORCEMENT OF THE SETTLEMENT AGREEMENT

A. If any member of the plaintiff class believes that the Defendants have not complied with any term of this Settlement Agreement, the inmate must first attempt to resolve the dispute by filing a Request for Administrative Remedy (otherwise known as a "BP-9") with the Warden pursuant to the Administrative Remedy Procedure, set forth in 28 C.F.R. part 542, or any modifications thereto. If an inmate fails to file a Request for Administrative Remedy within the time period specified in 28 C.F.R. § 542.13(b), or any modifications thereto, such failure shall not be grounds for denying the Request for Administrative Remedy but may affect the relief afforded the inmate.

B. If the inmate is not satisfied with the Warden's response to his or her Request for Administrative Remedy (or "BP-9"), the inmate may:

1. Appeal the Warden's response to the appropriate Regional Director (by filing a "BP-10") as provided in 28 C.F.R. § 542.15, or any modifications thereto; or

2. File an action to enforce the Settlement Agreement in the United States District Court for the Eastern District of Kentucky.

C. If an inmate who has elected to appeal the Warden's response to the Regional Director is not satisfied with the Regional Director's response, the inmate may:

1. Appeal the Regional Director's decision to the General Counsel of the Bureau of Prisons (by filing a "BP-11"), as provided in 28 C.F.R. § 542.15, or any modifications thereto; or

2. File an action to enforce the Settlement Agreement in the United States District Court for the Eastern District of Kentucky.

D. If an inmate who has elected to appeal the Regional Director's response to the General Counsel is not satisfied with the General Counsel's response, the inmate may file an action to enforce the Settlement Agreement in the United States District Court for the Eastern District of Kentucky.

E. If an inmate files an action to enforce the Settlement Agreement in the United States District Court for the Eastern District of Kentucky, the inmate shall attach to the complaint a copy of the Request for Administrative Remedy to the Warden (the BP-9) and the Warden's response. If the inmate appealed the

Warden's response to the Request for Administrative Remedy before filing the action to enforce the Settlement Agreement, the inmate shall also attach copies of the inmate's appeals (the BP-10 and BP-11, if applicable), and the respective responses of the Regional Director and (if applicable) the Office of General Counsel. If an inmate fails to attach copies of the appropriate paperwork from the Administrative Remedy process, the Court may delay consideration of the action for enforcement until it receives copies of the appropriate Administrative Remedy paperwork.

F. Any action by any member of the plaintiff class to enforce any term of this Settlement Agreement may be filed only in the United States District Court for the Eastern District of Kentucky subject to the procedures set forth in this Section XIV., and nothing in this Settlement Agreement shall be construed to provide jurisdiction over this Settlement Agreement in any other court or administrative body. Actions to enforce any term of this Settlement Agreement should be submitted, along with an appropriate filing fee or application to proceed in forma pauperis (i.e., without a filing fee), to:

United States District Court for the Eastern District
of Kentucky, Lexington Division
c/o the Clerk of the Court
U.S. Courthouse
P.O. Box. 3074
Lexington, Kentucky 40596-3074.

Enforcement actions filed by inmates who are proceeding pro se should be submitted on an appropriate form similar to the form attached hereto as Attachment D. The Defendants need not respond

to any enforcement actions filed by inmates who are proceeding pro se and in forma pauperis until ordered by the Court.

G. Nothing in this Settlement Agreement shall be construed to preclude the Court from entering any appropriate order pursuant to 28 U.S.C. § 1406 transferring an action improperly brought in the United States District Court for the Eastern District of Kentucky to another United States District Court if the action does not involve an issue of enforcement of this Agreement. It is understood that an action solely for the recrediting of money to an inmate's telephone account should not be considered an action for enforcement within the meaning of this Section XIV.

H. Nothing in this Settlement Agreement shall be construed to limit the Court's authority to require that an inmate exhaust the Administrative Remedy process by appealing the Warden's response to the Administrative Remedy to the appropriate Regional Director (BP-10) or Office of General Counsel (BP-11) as provided in 28 C.F.R. § 542.15, or any modifications thereto. Nothing in this Settlement Agreement shall be construed to limit the Court's review of any action to enforce the Settlement Agreement to the record created in the Administrative Remedy process, or the Court's authority to review de novo any evidence submitted in support of, or opposition to, an action to enforce the Settlement Agreement. Nothing in this Settlement Agreement shall be construed to limit the Court's authority to issue such orders as may be appropriate to enforce compliance with this Settlement

Agreement, or the right of any party or member of the plaintiff class to appeal any Court order concerning a dispute over the interpretation or application of the Settlement Agreement.

XV. SCHEDULE AND PROCEDURE FOR COURT APPROVAL

A. Subject to approval by the Court, the parties hereby agree to the following procedure and schedule for notice and submission of this Settlement Agreement to the Court for approval pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

B. At the time this Settlement Agreement is submitted to the Court, the parties agree to recommend to the Court that this Settlement Agreement is fair, reasonable, and adequate under Rule 23(e) of the Federal Rules of Civil Procedure. Counsel for the parties will request prompt judicial approval of this Settlement Agreement after notice to the class and a fairness hearing.

C. At the time this Settlement Agreement is submitted to the Court, the parties agree to request an order of the Court providing that the class should be given the following notice of the Settlement Agreement:

1. Within 15 days after entry of the Court order, the Bureau of Prisons shall: (a) send the Settlement Agreement and a Notice of Settlement prepared by the parties to each correctional institution operated by the Bureau of Prisons; (b) make the Notice of Settlement and the Settlement Agreement available for inspection and review by the inmates in the institution law libraries during the comment period specified in paragraph XV.C.2.; and, (c) post a notice in the institution commissaries

and law libraries stating that the Notice of Settlement and the Settlement Agreement are available for review by the inmates in the law libraries.

2. The Court order should provide that any member of the Plaintiff class who wishes to raise an objection to the Settlement Agreement shall submit a written statement to the United States District Court for the Eastern District of Kentucky, Lexington Division, c/o the Clerk of the Court, U.S. Courthouse, Lexington, Kentucky, 40507. The written statement must be received by the Clerk of the Court no later than 45 days from the date of entry of the Court order requiring that the class receive notice of the Settlement Agreement. The written statement shall contain the individual's name, address, telephone number (if any) and inmate register number (if any), along with a statement of his or her objection(s) to the Settlement Agreement and the reason(s) for the objection(s).

D. The parties agree to request that the Court schedule a fairness hearing as required by Rule 23(e) of the Federal Rules of Civil Procedure at the earliest practicable time, but not sooner than 21 days after the expiration of the 45-day period for individuals to submit objections to the Settlement Agreement.

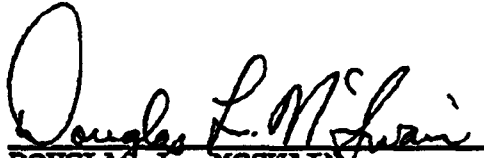
ON BEHALF OF THE CLASS

ON BEHALF OF DEFENDANTS


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Counsel for Defendants

Date: August 2, 1995

Date: August 1, 1995

adopted by ct: 7/2/95
11/3/95

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UNLIMITED COLLECT CALLING INSTITUTIONS

FCI Ashland	MCC Miami
FPC Boron	FPC Nellis
MDC Brooklyn	MCC New York
FPC Bryan	FCI Otisville
MCC Chicago	FPC Pensacola
FCI Danbury	FCI Safford
FPC El Paso	MCC San Diego
FCI El Reno	FCI Seagoville
FCI La Tuna	FPC Seymour Johnson
USP Lewisburg	FCI Talladega
FMC Lexington	FCI Terminal Island
MDC Los Angeles	FCI Three Rivers
FPC Maxwell	FCI Tucson
FCI Memphis	FPC Yankton

(28 institutions)

Attachment A

DEBIT CALLING INSTITUTIONS (by name and date of ITS installation)

(1) FCI Butner (12/18/91)	(20) FCI Dublin (1/25/93)
(2) FPC Alderson (4/6/92)	(21) FCI Marianna (2/8/93)
(3) FCI Sheridan (4/27/92)	(22) FCI Phoenix (2/8/93)
(4) USP Leavenworth (5/11/92)	(23) FCI Milan (2/22/93)
(5) FCI Oxford (6/1/92)	(24) USMCFP Springfield (3/8/93)
(6) FCI Raybrook (7/6/92)	(25) FCI Fairton (3/8/93)
(7) FCI Oakdale (8/3/92)	(26) FMC Rochester (3/22/93)
(8) USP Atlanta (8/24/92)	(27) FCI Schuylkill (4/5/93)
(9) USP Marion (9/14/92)	(28) FCI Sandstone (4/12/93)
(10) FCI Texarkana (9/28/92)	(29) MDC Guaynabo (5/3/93)
(11) MSCI Florence (10/12/92)	(30) FCI Englewood (6/14/93)
(12) FPC Duluth (10/26/92)	(31) FCI Morgantown (6/28/93)
(13) FCI Manchester (10/26/92)	(32) USP Lompoc (7/12/93)
(14) USP Terre Haute (11/16/92)	(33) FCI Big Spring (7/19/93)
(15) LSCI Allenwood (11/30/92)	(34) MSCI Allenwood (7/26/93)
(16) FCI Loretto (12/7/92)	(35) FPC Allenwood (8/2/93)
(17) FCI Fort Worth (12/14/92)	(36) FCI Jesup (8/9/93)
(18) FCI Lompoc (1/4/93)	(37) FCI Petersburg (8/23/93)
(19) FCI Tallahassee (1/11/93)	(38) FPC Millington (8/30/93)

(38 institutions)

Attachment B

DEBIT/COLLECT CALLING INSTITUTIONS

HSCI Allenwood

FCI Bastrop

FMC Carswell

FCI Cumberland

FPC Eglin

FCI Estill

ADX Florence

USP Florence

FCI Fort Dix

FCI Greenville

FPC Loretto

FCI McKean

FDC Miami

FDC Milan

FDC Oakdale

FTC Oklahoma City

FCI Pekin

FDC Sheridan

(18 institutions)

Attachment C

ATTACHMENT D

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
ASHLAND DIVISION

Civil Action No. _____
(To be supplied by the Clerk)

_____ , Plaintiff)	
(Full and Correct Name))	
vs.)	
)	Complaint for
)	Enforcement of the
)	Settlement Agreement
)	in <u>Washington v. Reno</u> ,
Federal Bureau of Prisons, Defendant.)	Nos. 93-717 & 93-290
)	
)	

I. JURISDICTION AND PARTIES

(1) _____ , is a resident of _____
(Plaintiff) (State of residency
prior to incarceration)

who is presently located at _____

(Mailing address at place of confinement)

(2) Defendant Federal Bureau of Prisons is an agency of the United States that is subject to the Settlement Agreement approved by this Court in Washington v. Reno, Nos. 93-217 & 993-290.

[If you are not filing this complaint pro se and in forma pauperis, you must serve a summons and this complaint on the Federal Bureau of Prisons in accordance with Rule 4 of the Federal Rules of Civil Procedure.]

(3) Jurisdiction is invoked as a separate action pursuant to 28 U.S.C. § 1331, and the Order approving the Settlement Agreement in Washington v. Reno, Nos. 93-217 & 93-290.

II. NATURE OF THE ACTION FOR ENFORCEMENT OF
THE SETTLEMENT AGREEMENT IN
WASHINGTON v. RENO, NOS. 93-217 & 93-290

(1) Identify the correctional institution where you allege that the violation of the Settlement Agreement occurred. _____

(2) Briefly state the reasons that you believe the Bureau of Prisons violated the Settlement Agreement in Washington v. Reno, the nationwide prisoner class action challenging the Inmate Telephone System.

III. CAUSE OF ACTION

I allege that my claims arise under the following provisions of the Settlement Agreement in Washington v. Reno, and that the following facts form the basis for my allegations:

(1) Count I: _____

(Identify the provision of the Settlement Agreement that you allege the Bureau of Prisons failed to follow)

Supporting Facts: (Include all facts that you consider to be important, including the names of the persons involved, the places, and the dates. Describe exactly how the Bureau of Prisons violated the Settlement Agreement. State the facts clearly in your own words without citing legal authority or argument.)

(2) Count II: _____

(Identify the provision of the Settlement Agreement that you allege the Bureau of Prisons failed to follow)

Supporting Facts: (Include all facts that you consider to be important, including the names of the persons involved, the places, and the dates. Describe exactly how the Bureau of Prisons violated the Settlement Agreement. State the facts clearly in your own words without citing legal authority or argument.)

IV. ADMINISTRATIVE RELIEF

(1) Have you presented all grounds for relief raised in this complaint to the Warden through a Request for Administrative Remedy (otherwise known as a "BP-9")?

Yes _____ No _____

(2) If your answer to (1) is "Yes," state the date of the Warden's response and the result, and attach a copy of your BP-9 and the Warden's response. _____

(3) Although not required by the Settlement Agreement in Washington v. Reno, did you elect to appeal the Warden's Response to the Regional Director by filing a BP-10?

Yes _____ No _____

(4) If your answer to (3) is "Yes," state the date of the Regional Director's response and the result, and attach a copy of your BP-10 and the Regional Director's response. _____

(5) Although not required by the Settlement Agreement in Washington v. Reno, did you elect to appeal the Regional Director's Response to the Office of General Counsel by filing a BP-11?

Yes _____ No _____

(6) If your answer to (5) is "Yes," state the date of the Office of General Counsel's response and the result, and attach a copy of your BP-11 and the Office of General Counsel's response. _____

(7) If your answer to (1) is "No," state each ground not raised in the Administrative Remedy process and explain why it was not.

V. PREVIOUS LAWSUITS

(1) Have you begun other lawsuits in state or federal court dealing in any way with the same facts involved in this action?

Yes _____ No _____

If your answer is "Yes," describe each lawsuit.

(a) Parties to previous lawsuit:

Plaintiffs: _____
Defendants: _____

(b) Name of court and docket number: _____

(c) Disposition (for example: Was the case dismissed? Were you granted relief? Was it appealed? If so, is the appeal still pending?) _____

(d) Issues raised: _____

(e) Approximate date of filing lawsuit: _____

(f) Approximate date of disposition: _____

(If there is more than one lawsuit, provide the same information on another piece of paper for each lawsuit.)

VI. REQUEST FOR RELIEF

(1) I believe that I am entitled to the following relief:

Signature of Attorney (if any)

(Attorney's full address and
telephone number)

Signature of Plaintiff

(Plaintiffs' full address and
inmate register number)

United States District Court

DISTRICT OF _____

APPLICATION TO PROCEED IN FORMA PAUPERIS, SUPPORTING DOCUMENTATION AND ORDER

v.

CASE NUMBER: _____

I, _____, declare that I am the (check appropriate box)

☐ petitioner/plaintiff☐ movant (filing 28 U.S.C. 2255 motion)☐ respondent/defendant☐ _____
other

in the above-entitled proceeding; that, in support of my request to proceed without being required to prepay fees, cost or give security therefor, I state that because of my poverty, I am unable to pay the costs of said proceeding or give security therefor; that I believe I am entitled to relief. The nature of my action, defense, or other proceeding or the issues I intend to present on appeal are briefly stated as follows:

In further support of this application, I answer the following questions.

1. Are you presently employed? Yes ☐ No ☐
 - a. If the answer is "yes," state the amount of your salary or wages per month, and give the name and address of your employer. (list both gross and net salary)
 - b. If the answer is "no," state the date of last employment and the amount of the salary and wages per month which you received.
2. Have you received within the past twelve months any money from any of the following sources?
 - a. Business, profession or other form of self-employment Yes ☐ No ☐
 - b. Rent payments, interest or dividends? Yes ☐ No ☐
 - c. Pensions, annuities or life insurance payments? Yes ☐ No ☐
 - d. Gifts or inheritances? Yes ☐ No ☐
 - e. Any other sources? Yes ☐ No ☐

11-16411 STURGILL FORMER
If the answer to any of the above is "yes," describe each source of money and state the amount received from each during the past twelve months.

3. Do you own any cash, or do you have money in checking or savings accounts?

Yes ☐ No ☐ (Include any funds in prison accounts.)

If the answer is "yes," state the total value of the items owned.

4. Do you own or have any interest in any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

Yes ☐ No ☐

If the answer is "yes," describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
(Date)

Signature of Applicant

CERTIFICATE
(Prisoner Accounts Only)

I certify that the applicant named herein has the sum of \$ _____
on account to his credit at
institution where he is confined.
his credit according to the

_____ the following securities to

_____ was \$ _____

I further certify that during

The U.S. District Court for the
Eastern District of Kentucky does not
require the completion of this section
for actions to enforce the Settlement
Agreement in Washington v. Reno

Authorized Officer of Institution

ORDER OF COURT

The application is hereby denied

United States Judge

Date

The application is hereby granted. Let the applicant proceed without prepayment of cost or fees or the necessity of giving security therefor.

United States Judge
or Magistrate

Date