

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

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

NOTICE OF PROPOSED SETTLEMENT AND FAIRNESS HEARING

**IF YOU ARE AN INMATE IN A FEDERAL CORRECTIONAL
INSTITUTION OPERATED BY THE FEDERAL BUREAU OF PRISONS,
PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR
RIGHTS.**

I. BACKGROUND OF THE LITIGATION

On June 2, 1993, several inmates at the Federal Medical Center, Lexington, Kentucky filed a lawsuit against the Federal Bureau of Prisons on behalf of themselves and all inmates who are incarcerated in federal correctional institutions operated by the Bureau of Prisons. The lawsuit challenges various aspects of the Bureau of Prisons inmate telephone regulations, 28 C.F.R., part 540, subpart I (1994), and the Inmate Telephone System.

Plaintiffs have decided that settlement of the case according to the terms of the proposed Settlement Agreement, which is attached to this Notice for your review, is in the best interests of the plaintiffs and the class. Although the Bureau of Prisons denies that its inmate telephone regulations or the

¹ This Notice is provided pursuant to Rule 23(e) of the Federal Rules of Civil Procedure.

Washington v. Reno



PC-KY-002-003

Inmate Telephone System violate any law or constitutional provision, it has decided to settle this case according to the proposed Settlement Agreement.

The Court has not made a final decision on whether the plaintiffs have valid claims, and this Notice should not be understood as an expression of any opinion by the Court as to any claim or defense asserted by any party.

II. PROPOSED SETTLEMENT AGREEMENT

The proposed Settlement Agreement and a Summary of the Settlement Agreement are attached to this Notice. The Summary of the Settlement Agreement is provided to put you on notice of the important aspects of the proposed Settlement Agreement. *You should read the entire proposed Settlement Agreement to know its complete terms, conditions and limitations.*

A memorandum from class counsel is also being made available for your review along with this Notice.

III. RIGHTS AND OBLIGATIONS OF ALL CLASS MEMBERS

• *Named Plaintiffs.* The named plaintiffs are Conchita Washington, Gloria Batton Robinson, Antoinette M. Frink, Patricia M. Darks, Norma Fay Cook, Martha Marie Preston, Loven L. Lewis, Lori Saunders, and Reshawn Richardson. The Court has approved them as class representatives. The Court has also appointed attorneys Douglas L. McSwain, Ann D. Sturgill, and Gene L.

Humphreys to represent the named plaintiffs and act as class counsel in this case.

- *You will be bound by all the terms of the proposed Settlement Agreement, should the Court approve it, and you will thereafter be prohibited from challenging any of its provisions.* The proposed Settlement Agreement will become effective upon approval by the Court. If the Court does not approve the proposed Settlement Agreement, it will be void, and the litigation may continue toward a trial on the merits.

- *You may file comments or objections to the proposed Settlement Agreement with the Court as provided in the following section.*

IV. FAIRNESS HEARING

The Court, with the Honorable Henry R. Wilhoit, Jr. presiding, will hold a hearing on November 3, 1995 at 11:00 a.m. in Courtroom B at the United States Courthouse, 101 Barr Street, Lexington, Kentucky. The hearing is being held pursuant to Rule 23(e) of the Federal Rules of Civil Procedure to determine whether the Court should approve the proposed Settlement Agreement as fair, adequate and reasonable.

Any inmate incarcerated in a federal correctional institution may comment on the proposed Settlement Agreement or object to approval of the proposed Settlement Agreement in a written document that must be filed with the Court. To file a written comment or objection with the Court, you should mail it

to the Clerk of Court for the United States District Court for the Eastern District of Kentucky, P.O. Box 3074, Lexington, Kentucky 40596-3074. Your written comment or objection should include:

- Your name, address, and inmate register number; and
- If you file an objection, the specific reasons why you object to the proposed Settlement Agreement. You should also cite any legal authority that supports your objection.

All written comments and objections must be filed with the Clerk of Court NO LATER THAN SEPTEMBER 22, 1995, with proof of service² on the following counsel:

Counsel for Plaintiff Class

Douglas L. McSwain
Ann D. Sturgill
Gene L. Humphreys
Sturgill, Turner & Truitt
155 East Main Street
Lexington, KY 40507

Counsel for Defendants

Raphael O. Gomez
Kathleen E. Moriarty
U.S. Department of Justice
Civil Division
901 E Street N.W., Room 814
Washington, D.C. 20530

Any inmate who files a timely written objection or comment may also present the comment or objection at the fairness hearing through privately retained counsel.

V. ADDITIONAL INFORMATION

The pleadings and other records in this litigation are on file with the Clerk of the United States District Court for the Eastern District of Kentucky. Any questions you have concerning

² Proof of service may be accomplished by mailing a copy of your written comments and objections by first class mail to counsel at the addresses listed above.

matters contained in this Notice or about the lawsuit generally should *not be directed to the Court*, but should be directed to class counsel:

Douglas L. McSwain
Ann D. Sturgill
Gene L. Humphreys
Sturgill, Turner & Truitt
155 East Main Street
Lexington, KY 40507
(606) 255-8581.

BY ORDER OF THE COURT:

DATE:

August 4, 1995



HENRY R. WILHOIT, JR.
UNITED STATES DISTRICT JUDGE

SUMMARY OF THE SETTLEMENT AGREEMENT

1. The Bureau of Prisons ("Bureau") will procure a New Telephone System to provide the collect calling required by the Settlement Agreement and the debit calling privileges provided in the Bureau's telephone regulations, 28 C.F.R. part 540 (1994).

2. For a period of four years from the date of an award of the contract for the New Telephone System, the Bureau will allow inmates to make at least 120 minutes per month of collect calls, unless they refuse to participate in the Inmate Financial Responsibility Program or are detained in Special Housing Units or Control Units. In the interim period while the Bureau is procuring the New Telephone System, the Bureau will maintain the status quo in which some institutions have a collect phone system, others have a debit system, and still others have a debit and collect system.

3. If the Bureau sets the debit rates under the New Telephone System, the rates will not exceed the highest debit rate charged by the state correctional institution having the highest debit rates.

4. The Bureau will have the discretion to limit inmate telephone calls to numbers on the inmates' approved telephone lists. Inmates may submit changes to their telephone lists up to three times per month, and the changes will be ordinarily be processed within 5 working days. Additional changes will be permitted if the inmate's Unit Team determines that there is a demonstrated need for prompt communication.

5. Inmates who refuse to participate in the Inmate Financial Responsibility Program will be allowed to make at least 60 minutes of debit phone calls per month. The Bureau may limit the commissary privileges of inmates who refuse to participate in the Inmate Financial Responsibility Program, but shall permit Inmates in Refusal Status to spend at least \$25 per month in the prison commissaries, excluding stamps and telephone credits.

6. In determining an inmate's payments under the Inmate Financial Responsibility Program, Bureau staff will look at an inmate's account deposits for the last six months and will exclude \$75 per month for the purchase of telephone credits.

7. The Bureau will give \$4 million to the Commissary Fund, Federal Prisons, 31 U.S.C. § 1321(a)(22), or its successor. The \$4 million will be distributed to the correctional institutions to be used by the Wardens for any purpose that is not prohibited by Bureau policy and accrues to the benefit of the inmate body, as a whole, such as amusements, education, library, or general welfare work. The Wardens shall establish a procedure for receiving the inmates' suggestions or recommendations for how the funds should be spent.

8. Beginning in FY96, the Bureau will pay the Commissary Fund an amount equal to 50% of the salaries and benefits of the Trust Fund Supervisor position in each institution while the duties of the position remain the same as they presently are.

9. The Bureau shall conduct a survey comparing the prices of items sold in the commissaries of several correctional institutions operated by the Bureau with prices of identical or similar items sold in retail convenience stores and supermarkets in the community surrounding the correctional institutions. This survey will be distributed to the correctional institutions for review by the inmates.

10. The Bureau will permit inmates to use the Administrative Remedy process to resolve disputes concerning their telephone privileges, accounts, and service. If the grievance alleges an error in a charge or credit to the inmate's telephone account, or a telephone service problem, the inmate may obtain a record of the inmate's telephone calls by paying a \$3.00 fee, which will be waived if payment would impose a financial hardship, and will be refunded, along with the amount of the erroneous charges, if Bureau staff agree that there was an erroneous charge.

11. The Bureau will destroy all copies of the Request for Telephone Privilege form that was used when the Inmate Telephone System was first implemented but is no longer in use.

12. The Settlement Agreement will remain in effect for four years from the award of a contract for the New Telephone System.

13. If an inmate believes the Bureau has not complied with the Settlement Agreement, the inmate must first attempt to resolve the dispute by filing a Request for Administrative Remedy with the Warden, pursuant to the existing Administrative Remedy process. If the inmate is dissatisfied with the Warden's response, the inmate may either file an administrative appeal or may file an enforcement action with the United States District Court for the Eastern District of Kentucky. If an inmate files an enforcement action with the Court, the inmate must attach copies of the appropriate paperwork from the Administrative Remedy process.

14. The Settlement Agreement, if approved by the Court, would be a full and complete adjudication of all claims raised in Plaintiffs' Third Amended Complaint and Amendment to Third Amended Complaint, except plaintiffs' request for attorney's fees and costs, which will be resolved through a separate agreement or Court order.