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VIA ELECTRONIC FILING

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

Re: *Ex parte filing* - WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*

Dear Ms. Dortch:

Network Communications International Corp. (“NCIC”)¹ submits this *ex parte* letter in rebuttal to Michael S. Hamden’s July 22, 2016, submission in this proceeding. NCIC fully supports the Commission’s decisions to cap interstate and intrastate per minute inmate calling rates, as well as ancillary fees. Those decisions appropriately constrain ICS rates; thus, the Commission should reject Mr. Hamden’s proposal to prohibit or limit site commission payments.

Mr. Hamden’s rationale for a complete ban on site commissions is misguided. His submission advocates for an “interim facility cost-recovery mechanism at a modest increase in per-minute calling rates (say, \$0.01 to \$0.04 per minute, depending on facility size) . . . pending substantive review of a meaningful data collection process to determine the actual, legitimate expense of providing ICS services.”² However, Mr. Hamden mistakenly identifies site commissions as the “underlying cause of dysfunction” in the ICS market when they are actually the *product* of an unregulated environment that permitted high rates and fees.³ His proposal fails for the following reasons.

¹ NCIC provides inmate calling services (“ICS”) in the United States and 12 other countries. In the United States, NCIC provides direct and wholesale services to more than 600 city, county, parish, and state jails in 43 states.

² Letter from Michael S. Hamden to Marlene H. Dortch, WC Docket No. 12-375 at 2 (filed July 22, 2016) (“Hamden Letter”).

³ *Id.* at 1.

1. Site Commissions will Decrease Once the Order goes into Effect

Mr. Hamden fails to explain how ICS providers will pay excessive site commissions to correctional facilities after the D.C. Circuit's stay⁴ is lifted and the Order⁵ goes into effect. Excessive site commissions were the product of the unregulated ICS market that existed prior to the Order. In that environment, ICS providers offered site commissions as high as 96 percent in order to win contracts with facilities, and then recovered the cost of paying those commissions by charging consumers high rates and fees. Once the Order's rate caps go into effect, site commissions will be forced downward to reasonable levels.

2. Mr. Hamden's Cost Recovery Proposal Does Not Work For Every Facility

The interim cost-recovery mechanism (\$0.01 to \$0.04 per minute, depending on facility size) recommended by Mr. Hamden may work for some facilities, but it will not work for every jail and prison across the country. Moreover, the differences in facility cost structures and the changing nature of communications will make it virtually impossible to conduct a "meaningful data collection process to determine the actual expense of providing ICS services."⁶ Jails in particular utilize a wide variety of cost structures for providing inmate phone services, and should have the flexibility to negotiate site commissions that reflect such differences. An approach that provides cost-recovery based solely on facility size oversimplifies these differences.

For example, a 349 bed jail in a rural area is likely to have different costs from a similarly sized jail in a metropolitan area. Also, many ICS providers have been shifting significant maintenance responsibilities to jails. NCIC often leaves spare equipment at jails for maintenance staff to replace broken headsets and phones. In addition, many jails have begun allowing their ICS provider to share bandwidth, eliminating a major source of overhead costs for ICS providers and placing network maintenance responsibilities on the jails.

These shifts in responsibilities highlight the differences in costs between facilities. They also highlight the constantly changing nature of the ICS market and communications generally. Facilities need flexibility to adapt to changing responsibilities and technologies. Facilities will be forced to reduce inmate access to phones if they are locked into a rigid cost recovery mechanism that does not allow them to recover costs.

3. Lower Rates Lead To Increased Call Volume and Higher Facility Costs

Mr. Hamden's cost-recovery estimate is based on a pre-Order market and does not take into account increases in call volume that result from lower rates and fees. In the states of Alabama and Louisiana, where NCIC has lowered rates, it has seen call volumes and minutes increase up to 50 percent. In the Gregg County Jail in Texas, call volume increased by as much

⁴ See Order, *Global Tel*Link v. FCC*, Nos. 15-1461 *et al.*, Doc. No. 1602581 (D.C. Cir. Mar. 7, 2016) (*per curiam*).

⁵ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd. 12763 (2015) ("Order").

⁶ Hamden Letter at 1.

as 300 percent when NCIC lowered calling rates. These higher call volumes also increase the cost to jails to manage inmate calling (by as much as 50 percent).

4. If Site Commissions are Capped or Eliminated, Other Incentives Will Emerge

In lieu of site commissions, ICS providers will find ways to offer other incentives to facilities. Examples of incentives currently offered include tablets, video visitation equipment, telemedicine, video arraignment, jail management software, commissary software, and booking kiosks.⁷ Unofficial incentives are also offered. These include suites at sporting events, parties at trade shows, flights on company planes, and hunting trips.

5. Regulating Site Commissions Jeopardizes the Order's Reforms

As NCIC has previously stated, the Commission does not have authority to regulate site commissions.⁸ The FCC should not jeopardize the important reforms it implemented in the Order by attempting to regulate private, profit-sharing arrangements to which the Commission is not a party. Indeed, additional legal challenges would likely result from the thousands of jails and state departments of corrections that receive site commissions. Instead of facing this uncertainty, the Commission should consolidate the gains it made in the Order and stick to its plan to “monitor the market and [] take appropriate action” if there is not a decrease in site commissions.⁹

For the foregoing reasons, NCIC urges the Commission to deny Mr. Hamden's proposal to prohibit or limit site commission payments.

Respectfully submitted,

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⁷ In New Mexico, where county jail site commissions are regulated, an ICS provider was offering jail management software and other incentives to win contracts.

⁸ See NCIC Opposition to Petition for Partial Reconsideration, WC Docket No. 12-375 at 5-6 (filed March 23, 2016).

⁹ Order ¶ 132.