



December 4th, 2014

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

RE: Inmate Calling Services - public comment for WC Docket No. 12-375

Dear Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O'Reilly:

Legal Services for Prisoners with Children writes to inform you of our strong support for many of the reforms proposed to regulate Inmate Call Services (ICS). Specifically, we strongly advocate that the FCC:

- 1) **Ban commissions and other in-kind payments to correctional facilities,**
- 2) **cap the rate for all interstate and intrastate ICS phone calls, and**
- 3) **significantly reform existing ancillary charge policies.**

These reforms would allow the FCC to **minimize costs to incarcerated people (and their families), and incentivize correctional facilities to maximize ICS usage.** Such a policy would further the FCC's goal of "offer[ing] consumers reliable, meaningful choice in affordable services."¹ Additionally, such a policy would serve a broader public good by reducing recidivism and crime, saving taxpayer money, increasing public safety, and making correctional facilities safer for the employees who work there.

I. Introduction

One of the FCC's chief statutory mandates is to pursue policies that enforce just and reasonable phone rates. In today's ICS market, however, inmates and their families are forced to pay exorbitant amounts to call one another and have limited, if any, alternatives. Correctional facilities usually contract with a single provider, and in many cases, only allow collect calls. We agree with the FCC that "in the inmate calling service market, as currently structured, competition is failing" to provide just and reasonable rates to consumers.²

The FCC took important steps last summer to cap interstate phone rates, but in the absence of an intrastate rate cap, a ban on commissions, and an ancillary charge policy—in short, comprehensive reform—ICS rates remain unjust and unreasonable. Should the FCC achieve these policy aims, the benefits would be far-reaching. Incarcerated individuals would have greater contact with their families and loved ones, helping to heal the rift that imprisonment causes and increasing the wellbeing of incarcerated people; tension in carceral facilities due to the forced isolation of incarcerated people may decrease, making the institutions safer for incarcerated people, volunteers, and staff; and phone companies could see an increase in profit due to increased phone usage. Correctional facilities would

¹ See: *Strategic Plan of the FCC* <<http://www.fcc.gov/encyclopedia/strategic-plan-fcc>>.

² Para. 3; *Second Further Notice of Proposed Rulemaking*; FCC 14 – 158; WC Docket 12-375.

further benefit from lower phone rates because inmates would have less of an incentive to participate in the cell phone black market, thus lowering crime rates in prison.

II. Analysis

A. The FCC Should Ban Commissions and In-kind Payments Because They Are Not in the Public Interest.

We agree that the FCC has a mandate to ban facility commissions because the commission practice is not directly related to the provision of ICS, and because such contractual negotiation practices are likely not in the public interest.⁷ We agree with the Joint Provider Reform Proposal (JPRP) that the same reasoning applies to “in-kind payments, technology allowances, administrative fees, gifts, and the like.”⁸

Commission payments do not incentivize facilities to provide quality ICS at a low rate. Rather, they create “reverse competition”, in which providers drive up rates and charges in order to offer higher payments to facilities.⁹ These costs are then passed on to the actual consumers of ICS: incarcerated people and their families. We believe that the first step to ensuring that facilities prioritize lower prices and quality service is to prohibit commission payments and other similar practices.

Simply put, ICS service is a monopoly-by-design. Facilities set the prices and consumers have no competing alternatives. Market forces cannot exist in such an environment. In the absence of competitive pressures, FCC regulation should play a significant role.

Finally, the practice of allowing commissions greatly increases costs to ICS consumers.¹⁰ These commissions are therefore unjust and unreasonable. While sheriffs may argue that a portion of the proceeds from commissions go to the Inmate Welfare Fund (IWF), justifying this practice, we disagree. We believe that the welfare of incarcerated people is better served by more contact with family members, and that family members are better served by having more money in their pockets. Additionally, the FCC itself has noted that ICS income has a “limited overall budget impact”¹¹, and that the revenue only represents about 0.3 percent of the total overall correctional budget¹².

ICS rates affect a particularly vulnerable population of low-income families, and should be regarded as a unique public service. Fifty-two percent of people incarcerated in state facilities and 63% of people incarcerated in federal facilities have children.¹³ Over two-thirds of people detained in jails reported annual incomes under \$12,000 prior to arrest.¹⁴ In many cases, family members live hundreds of miles away from their incarcerated loved ones, and do not have the means to travel to see them. ICS is often the only way for millions of parents, grandparents, close friends, loved ones, and legal advocates to stay in regular contact with people behind bars.

⁷ See 47 USC § 201(b); see also para. 10; *Second Further Notice of Proposed Rulemaking*; FCC 14 – 158; WC Docket 12-375; see also 42 USC § 276(1)(D): “provide for Bell operating company payphone service providers to have the same right that independent payphone providers have to negotiate with the location provider on the location provider’s selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA calls from their payphones, unless the Commission determines in the rulemaking pursuant to this section that it is not in the public interest.”

⁸ Para. 38; *Second Further Notice of Proposed Rulemaking*; FCC 14 – 158; WC Docket 12-375.

⁹ Para. 3, 22, 23; *Second Further Notice of Proposed Rulemaking*; FCC 14 – 158; WC Docket 12-375.

¹⁰ See Inmate Calling Report and Order and FNRPM, 28 FCC Rcd at 14127-28, and para. 38; *Second Further Notice of Proposed Rulemaking*; FCC 14 – 158; WC Docket 12-375.

¹¹ Para. 24; *Second Further Notice of Proposed Rulemaking*; FCC 14 – 158; WC Docket 12-375.

¹² Para. 23; *Second Further Notice of Proposed Rulemaking*; FCC 14 – 158; WC Docket 12-375.

¹³ Bureau of Justice Statistics, Special Report <<http://www.bjs.gov/content/pub/pdf/pptmc.pdf>>.

¹⁴ Alexander, M. *The New Jim Crow*. (2012). New York, NY: The New Press.

Over 2.7 million children have parents inside,¹⁵ and the trauma of having a parent taken away is far-reaching. Commissioner Clyburn highlighted this point when she stated:

“If you were to ask their [children’s] teachers, it is affecting their academic performance. If you ask the school counselors, it affects their behavior and attitudes. And if you were to speak with the guardians, families and friends, it impacts their ability to adequately and affordably care for these children.”¹⁶

Even if the FCC finds that facilities incur costs in the provision of ICS and that they are reasonably entitled to compensation for such costs, facilities should NOT recover these funds from commission payments that increase the costs to consumers and make it extremely difficult for families to stay in touch while a loved one is incarcerated. The FCC itself has stated “that the use of revenues from unreasonably high rates, even if used for a worthwhile purpose, is not relevant to the Commission’s analysis of its statutory obligations.”¹⁷ We believe that the FCC has a statutory obligation to ban commissions.

B. The FCC Should Set a Rate Cap and Limit on Maximum Per-Call Charges to Incentivize Facilities to Maximize ICS Usage.

The FCC should provide a cap on ICS phone rates so as to provide a “backstop” to prevent unreasonably high rates. **We agree with the Wright Petitioners that the FCC should set a rate cap at or below \$0.07/minute, and that no phone call should cost more than \$3.00 total.** We also believe that flat rate charges should only be charged for calls that *exceed* a certain duration, such as 30 minutes. Otherwise, a flat-rate charge would unjustifiably penalize people who are making shorter telephone calls.

We **oppose a tiered rate system** based on facility type. Such complications would create potential loopholes, increase administrative costs, and make policy enforcement more difficult. This includes a rate difference between jails and prisons. Too many incarcerated people—including people serving long felony sentences under California’s AB 109, and individuals awaiting trial, who have not yet been convicted of anything—are held for long sentences in county jails. They should not have to suffer higher rates simply because of the particular facility they were involuntarily placed in.

We encourage the FCC to pursue a policy that incentivizes facilities to maximize ICS usage. In this vein, the FCC proposed that facilities may recover funds by charging an additional per-minute rate to inmates. The Commission justified this proposal by stating that paying facilities on a “minutes of use” (MOU) basis is directly tied to ICS provision and might provide an incentive for facilities to offer more phone time. Jails and prisons should not, however, exploit incarcerated people’s families by using them to make money. No policy should increase burden for incarcerated people to contact their families.

Rather, if a facility is to profit from ICS, it should come from the service provider’s revenue. Phone companies should incentivize maximum ICS usage via contractual arrangement. For example, ICS providers could set financial rewards for facilities that exceed a certain volume of minutes. Such an arrangement would benefit all parties involved, because it increases incarcerated people’s contact with their families, increases provider revenue, and gives money to facilities.

¹⁵ Collateral Costs: Incarceration’s Effect on Social Mobility; p. 4

<http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/CollateralCosts1pdf.pdf>.

¹⁶ See para. 159; *Second Further Notice of Proposed Rulemaking*; FCC 14 – 158; WC Docket 12-375 & 2013 ICS Workshop Transcript (Clyburn, M., Acting Chairman, FCC) (“Regardless of why that inmate is in jail, the exorbitant inmate calling regime deeply and chronically affects the most vulnerable among us...”).

¹⁷ See Connect America Fund et al., WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17876-77, para. 666 (2011) (USF/ICC Transformation Order), pets. for review denied sub nom. *In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

If the FCC chooses to set a cap on per-minute rates, it should also ban commissions.¹⁹ If a rate cap is imposed in the absence of a commission ban, ICS providers would be forced to pay overlarge portions of their revenue to facilities. The FCC could then fail in its statutory obligation to ensure that providers are “fairly compensated.” Thus, rate caps and commission reform must both happen together.

C. The FCC Should Reform its Current Ancillary Charge Policies.

Comprehensive ancillary charge reform is an essential component to ICS reform. Ancillary charges “represent a significant portion of the total expense of ICS to consumers,”²⁰ estimated to be as high as 38% of total consumer payments.²¹ For this reason, we advocate that the FCC take the following actions:

- a. **Eliminate ALL fees for services that a consumer is required to pay in order to access basic ICS.** This includes, but is not limited to, account set-up, maintenance, funding, refund, and closure fees.
- b. **Place a cap on all ancillary charges that the FCC determines to be justified.** (For example, no more than \$7.95 per three-year period for account processing).
- c. **Institute a review process before any ICS provider levies a new ancillary charge or changes an existing charge.**

If rate caps and commission reform take place, high ancillary charges without reform could become a work-around to the FCC’s efforts to create a reasonable and just ICS scheme. As CenturyLink writes: “Ancillary fees are the chief source of consumer abuse and allow circumvention of rate caps.”²² Updating policies around ancillary charges will help ensure that comprehensive ICS reform truly takes place. To underscore this, since the Commission’s interim interstate rate caps took effect, the number and magnitude of ancillary charges have increased.²³ This demonstrates that ancillary charges would be a collateral way for ICS providers to undermine the Commission’s efforts to bring ICS costs to a reasonable level.

We also believe that “per-call” or connection fees are unreasonably high and represent an ancillary charge. The FCC should ban these charges. At the very least, the FCC should introduce a “dropped call” provision that prohibits ICS providers from charging multiple times for a call that has been reinitiated within a few minutes. Such a change would ensure that companies don’t benefit financially from providing unreliable service.

III. Conclusion

Since the provisional interstate rate reforms took effect, interstate call volumes have increased by 70%,²⁴ indicating that excessively high rates may be preventing family members from communicating. The interim interstate regulations were an important—albeit partial—first step. However, the FCC must go further. The vast majority of phone calls are in-state, and comprehensive reform must cover these calls. This reform cannot simply affect rates. The FCC must also prohibit commissions (which are the chief reason for such high rates) and overhaul ancillary charge policies, which, as written now, undermine the FCC’s mission to provide quality and affordable services to the public.

Families play an essential role in reentry when incarcerated people are released. When people in jails and prisons are able to communicate with their loved ones, they are strengthening a crucial support system. Family

¹⁹ 47 USC § 276(A): “establish a per call compensation plan to ensure that all payphone service providers are fairly compensated.”

²⁰ Paragraph 80, *Second Further Notice of Proposed Rulemaking*; FCC 14 – 158; WC Docket 12-375.

²¹ See Letter from Peter Wagner, Exec. Dir., Prison Policy Initiative, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, (filed May 9, 2013) (Please Deposit All of Your Money Study).

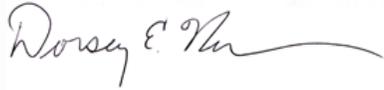
²² CenturyLink Aug. 14, 2014 Ex Parte Letter; CenturyLink FNPRM Comments (“Without controls on ancillary charges, the practical effect of rate caps is likely to be limited, if not wholly neutralized.”).

²³ Para. 82; *Second Further Notice of Proposed Rulemaking*; FCC 14 – 158; WC Docket 12-375.

²⁴ Statement of Commissioner Clyburn, M., Re: Inmate Call Services; *Second Further Notice of Proposed Rulemaking*; FCC 14 – 158; WC Docket 12-375.

members are often essential advocates who help currently incarcerated people obtain proper medical care, prepare for parole hearings or court appearances, enroll in classes, and provide other services and crucial emotional and financial support people need while in prison or jail. For people returning home from prison or jail, family members often provide housing, help find jobs, give emotional and logistical support, and supply motivation to overcome the many challenges that reentry entails. Along with furthering the goals of the FCC, a new ICS policy would serve the legitimate needs of incarcerated and formerly incarcerated people in no small way. It would help ensure that they can successfully transition back into society, enable them to be effective caregivers to their children, and shrink the size of society's ballooning correctional system.

Sincerely,



Dorsey Nunn
Executive Director

