



December 15, 2014

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 205554

RE: Inmate Calling Services – Public Comment for WC Docket No. 12-375

Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O’Reilly:

On behalf of Community Initiatives for Visiting Immigrants in Confinement (CIVIC) and the other California-based organizational signatories of this letter, we write in strong support of the reforms proposed by the Federal Communications Commission (FCC) to regulate Inmate Calling Service (ICS) providers. In particular, we urge the FCC to:

- 1.) Cap the rate for all intrastate ICS phone calls**
- 2.) Ban commissions and other in-kind payments to all correctional facilities**
- 3.) Eliminate expensive consumer-end surcharges and fees**

CIVIC is a national network of independent immigration detention visitation programs working to end the isolation and abuse of people in U.S. immigration detention through visitation, independent monitoring, storytelling, and advocacy. For the individuals and families who are directly affected by immigration detention the high cost of phone calls is devastating and threatens due process rights, as well as the ability of families to reunite and remain together.¹

I. Introduction – The Defeat of Assembly Bill 1876 (AB 1876)

CIVIC recognizes that in California, immigrants in detention are not the only population negatively affected by the high cost of phone calls from correctional facilities. California’s state prisoners, county jail inmates, and juvenile inmates are also impacted and in need of federal protection.

This is why CIVIC, along with the California Immigrant Policy Center, the Ella Baker Center for Human Rights and the Friends Committee on Legislation of California (see Attachment 1), co-sponsored AB 1876, a bill introduced in the California State Legislature in 2014 by Assemblymember Bill Quirk (20th Assembly District). The

¹ For more information about the adverse effect of high phone costs on immigrants in detention, see comments filed with the FCC by CIVIC posted on March 26, 2013:
<http://apps.fcc.gov/ecfs/comment/view?id=6017169697>

bill would have banned the ability of prison phone companies to pay commission payments to county jails and private detention facilities that drive up the cost of phone calls for the families of prisoners. The bill successfully passed through the Assembly Local Government Committee, the full Assembly, and the Senate Public Safety Committee. Before it could go the Senate Floor for a vote, it was held on suspense in the Senate Appropriations Committee. The California State Sheriff's Association of California made the defeat of AB 1876 one of their top lobbying priorities for the 2014 legislative session.

The below comments outline why regulation of Inmate Calling Services in California is necessary, the challenges to passing effective regulation, and why the FCC's proposed rules are crucial to ensure the safety, well being, and rights of all Californians and all those incarcerated in the United States.

II. Existing Law in California

In 2007, the California legislature passed Senate Bill 81 (SB 81). This bill outlawed commission payments between prison phone companies and the California Department of Corrections and Rehabilitation (CDCR). The implementation of SB 81 effectively reduced phone call rates for state prisoners and demonstrated the direct correlation between the commission structure of contracts and high phone call rates. However, the law did not regulate ancillary fees that ICS providers routinely charge the families of prisoners. As a result, the cost of calls is still prohibitive and underscores why the FCC should regulate unsubstantiated charges.² While SB 81 protects state prisoners from exorbitant phone costs, county jails and private detention facilities in California remain unprotected.

Moreover, due to California's "realignment" plan in response to *Brown v. Plata*, 131 S. Ct. 1910 (2011), the number of people held in county jails and for-profit prisons has increased. California state prison realignment, or Assembly Bill 109, was signed into law by Gov. Jerry Brown in April 2011 and went into effect in October 2011. The legislation "realigns" from the state to the local level responsibility for supervising people convicted of "non-serious, non-violent, and non-sex related" felony crimes. This means that thousands of people convicted for such crimes face local jail time with high phone rates, while before they would have been housed in state prison and eligible for lower phone rates. The families of detained immigrants and people convicted of low level crimes in California continue to bear the burden of exorbitant phone call rates that enable counties, private detention facilities, and ICS providers to profit.

Prior to the passage of SB 81, in 2003, California Assemblymember Mark Leno introduced Assembly Bill 230 (AB 230), a bill that would have required any contract

² At the West County Detention Facility, a county jail in Richmond, California that contracts with Immigration and Customs Enforcement (ICE) to hold immigrants in detention, Global Tel Link charges consumers \$8.75 every time a deposit of \$25 is made.

for phone service to state prison inmates and California Youth Authority wards to be negotiated to provide the lowest possible costs, with a proviso that service contracts cover state expenses and provide a reasonable profit margin for the vendor. The bill also specified that state profits must not be a basis for awarding a contract. AB 230, like AB 1876, was held on suspense in the Assembly Appropriations Committee.

According to California Penal Code 4025, any money, refund, rebate or commission received from a telephone company in exchange for providing telephone services to inmates must be deposited in an Inmate Welfare Fund (IWF). However, welfare is defined very broadly and any remaining funds may be expended for the maintenance of county jail facilities. In addition, most California county jails fund the rehabilitative programming offered to inmates through a combination of the revenue received from ICS contracts and the jail commissary store.³ Instead of viewing rehabilitative programs as a core cost of incarceration, California county jails have passed the responsibility of funding such crucial services to the disadvantaged families of inmates who pay outrageous fees for both phone calls and commissary items.

Included in California Penal Code 4025 is the following provision, "An itemized report of these expenditures [IWF] shall be submitted annually to the [county] board of supervisors."⁴ CIVIC learned through its California Public Record Act requests that sheriff's departments do, in fact, submit an itemized list of their expenditures to their county board of supervisors. However, when probed for information that proves such expenditures are accurate, like receipts or financial documents, sheriff's departments claim they do not keep such records or refuse to disclose them. This is unfortunate and demonstrates a lack of transparency around how the IWF is spent. The families of prisoners who fund, almost entirely, the IWF through commissions paid to the sheriff's departments on phone call rates and commissary charges, should be entitled to know exactly how the fund is spent to benefit their loved ones.

In 2005, Santa Clara County was sued over its administration of the IWF in a class action lawsuit litigated by Fenwick & West. The lawsuit alleged that the IWF had been unlawfully used for guards' salaries instead of for education and rehabilitation programs. In the 2008 settlement, despite the fact that the county claimed no wrongdoing, it agreed to reinstate \$1.5 million to the IWF, money that was used to restore long-defunct jail programming.⁵

³ For example, in 2012 in Contra Costa County, CA, commission payments from Global Tel Link constituted \$653,506 of the total \$1,432,223 balance of the Inmate Welfare Fund, while commissary commissions totaled \$654,539.

⁴ See <http://law.onecle.com/california/penal/4025.html>

⁵ See "County jail inmates will get expanded services under settlement agreement," *San Jose Mercury News*, September 2008.

III. Rates, Commission, and Revenue

In August 2013, Community Initiatives for Visiting Immigrants in Confinement (CIVIC) filed a series of California Public Record Act requests to obtain information about the ICS rates charged in California county jails, the commission percentages paid to California County Sheriff's Departments, and the revenue generated for the Inmate Welfare Fund (IWF). The following information was obtained through this research:

County	Interstate fee and per/min rate	Commission % of Gross Revenue	Amount of Revenue Earned	Other Payments
Alameda	\$3.65 + .65	70.5%	\$1,629,046.05 fiscal year 2012/2013	Minimum annual guarantee of \$1.5million; \$150,000 yearly technology grant
Contra Costa	\$3.25 + .25	57%	\$693,778 fiscal year 2012/2013	\$75,000 annual bonus payment
Los Angeles	\$4.63 + .08	67.5%	\$25,416,506 fiscal year 2010/2011	Minimum Annual Guarantee of \$15million committed to sheriff's department and \$59,000 to probation department
San Diego	\$3.10 + .25	80%	\$5,451,189 fiscal year 2011/2012	Unknown
San Mateo	\$3.15 + .69	82.3%	Unknown	Minimum Annual Guarantee of \$820,000
Stanislaus	\$3.22 + .47 (collect)	65%	\$290,901 fiscal year 2010/2011	\$282,000 bonus payment for consideration of contract extension
Tulare	\$3.15 + .63	72%	\$361,436 fiscal year 2011/2012	\$50,000 annual bonus payment
Ventura	\$3.45 + .79 (prepaid)	56%	\$625,658 fiscal year 2011/2012	Minimum Annual Guarantee of \$550,000; \$100,000 annual bonus; \$60,000 annual payment

IV. Contract Analysis

In conducting our research, CIVIC was able to identify several patterns and points of concern regarding ICS contract structures. Below we discuss these issues with a special focus on how prisoners and their families are impacted.

A. Increased commission percentages following FCC interstate ruling

CIVIC noticed a disturbing trend in contracts between ICS providers and California County Sheriff's Departments, when we filed California Public Record Act requests in August 2013. As the Commission knows, the rules for the regulation of interstate rates created by the FCC were announced in August 2013 with an implementation date of February 10, 2014. Many California counties renewed or renegotiated their ICS contracts in 2013, many of them right around the time of the FCC's August announcement. CIVIC is concerned that in anticipation of the revenue that would be lost from the regulation of lucrative interstate rate charges, California County Sheriff Departments and ICS providers renegotiated and increased commission percentages so that intrastate rates would yield more revenue. This trend demonstrates why the FCC's regulation of both interstate and intrastate rates is so crucial, and how the effective implementation of one ruling depends on the other.

1. In June 2013, Stanislaus County, California extended its contract with Global Tel Link through 2015 and several contract provisions were amended including an increase of commission percentage paid by Global Tel Link to Stanislaus County from 54 percent to 65 percent on all gross revenue.
2. In Tulare County, California between 2010-2012, Global Tel Link paid the Tulare County Sheriff's Department 55 percent commission on all gross revenue generated from their contract. In April 2013, a new contract between Global Tel Link and the Tulare County Sheriff's Department increased the commission percentage paid to the county from 55 percent to 72 percent.
3. San Mateo County, California contracted with Global Tel Link to provide ICS at least from 2007-2013. The commission percentage collected by the San Mateo Sheriff's Department throughout this contract period with Global Tel Link was 50 percent. San Mateo County entered into a new contract with Securus Technologies in April 2013. The commission percentage paid by Securus Technologies increased from 50 percent (under previous contract with GTL) to 82.3 percent.

B. Disparity between interstate and intrastate rates

Across the United States, ICS rates for interstate calls have dropped drastically due to the FCC ruling implemented in February 2014. For immigrants in detention and state prisoners who are often transferred far away from their families and incarcerated in facilities run by private prison corporations, this protection is essential. However, as a result, the cost of intrastate (within-state) calls in California now drastically exceeds the cost of interstate (between states) calls, demonstrating the way that call rates are not adequately based on or determined by actual cost.

1. Prior to the implementation of the FCC rules on interstate ICS rates, a 15-minute interstate phone call in San Mateo County, California cost \$16.41. After the FCC order was implemented, the rate cap of \$3.75 for all 15-minute interstate calls was imposed, saving consumers \$12.66. However, because the cost of intrastate calls remains unregulated by the FCC, a 15-minute intrastate call (within-state and between counties) costs \$12.81 in San Mateo County.
2. Prior to the implementation of the FCC rules on interstate ICS rates, a 15-minute interstate phone call in Tulare County, California cost \$15.44. After the FCC order was implemented, the rate cap of \$3.75 for all 15-minute interstate calls was imposed, saving consumers \$11.69. However, because the cost of intrastate calls remains unregulated by the FCC, a 15-minute intrastate call (within-state and between counties) costs \$12.60 in Tulare County.

C. Fees

According to many of the contracts CIVIC obtained between California County Sheriff's Departments and ICS providers, the schedule of fees that are charged to consumers by ICS providers are rarely included in the contracts between the two parties. Due to this, some California County Sheriff's Departments claim that the fees are out of their hands and ICS providers should be held responsible. Due to the constant shifting of responsibility for fair phone rates between Sheriff's Departments and ICS providers, we feel it is very clear that neither can be trusted and regulations by the FCC are necessary to ensure the rights of prisoners and their families to fair phone call rates nationwide. Fees that are charged to consumers by ICS providers are arbitrarily created and prohibitively expensive. For families across the country, these fees piled on top of all the other excessive charges outlined above, are too much to bear.

On one occasion, the schedule of fees was included in the 2012 ICS contract obtained by CIVIC between the Alameda County Sheriff's Department and Global Tel Link. The chart is pasted below:

Notwithstanding the foregoing, Gross Revenue does not include:

Account Transaction Fees	When Applied	Amount
Automated IVR Deposit of \$25*	Per Transaction	\$4.75
Automated IVR Deposit of \$50*	Per Transaction	\$9.50
Credit Card Deposit through GTL Website	Per Transaction	\$9.50
AdvancePay Account Close-Out Fee	One Time	\$5.00
Deposit sent to GTL via Western Union**	Per Transaction	\$0.00
Certified Check mailed to GTL	Per Transaction	\$0.00
Money Order mailed to GTL	Per Transaction	\$0.00
Federal, State and Cost Recovery Fees	When Applied	Amount
Federal Universal Service Fee (FUSF)	Monthly per Invoice of Interstate Calls	15.7%
Federal Administration Cost Recovery Fee	Intrastate and Interstate Collect Calls billed via paper invoice	\$3.49
State Carrier Cost Recovery Fee	Intrastate Calls billed via paper Invoice	\$1.99
State and Federal Administrative Cost Recovery Fee	Intrastate and Interstate Prepaid Calls	Up to 8% of Call Amount

D. Surcharges

The FCC should eliminate all surcharge fees on intrastate calls, as the Commission did by setting the \$3.75 rate cap on all 15-minute interstate calls in the last ruling. Surcharges in California contracts with ICS providers are usually applied to the first minute of any particular call. For example, in Contra Costa County, California an intrastate call from county jail costs \$3.25 for the first minute and .25 for each additional minute. It should be noted that calls from county jail in Contra Costa County are limited to 10 minutes per call, after which the call is automatically disconnected. As a result, families are charged \$3.25 for the first minute of every call and no call is permitted to exceed 10 minutes. This unnecessarily drives up the cost of calls for the families of prisoners. Moreover, prisoners and detainees across the state of California report that ICS providers routinely drop calls without explanation, and each time a call is disconnected, families are forced to pay the first-minute connection fee again. There is no adequate procedure for inmates and families to report dropped calls and receive compensation. Many California County Sheriff's Departments have recognized the prevalence of this problem and have initiated contracts with a company called Praeses to research and negotiate payment for unpaid compensation from ICS providers due to prevalence of dropped calls. However, no one has recognized the loss that the family members of prisoners have incurred and their right to receive compensation.

E. Praeses

Praeses LLC is a company that specializes in partnering with correctional facilities to provide inmate telecommunications management. As one of its services the company offers historical reconciliation services. As Praeses' website states, "Praeses will conduct a historical reconciliation of the call detail records, calling rates, billing files, and commission and traffic reports for the life of the current contract to validate any due monies are accurately paid."⁶ Praeses boasts that it has identified and collected over \$8.5 million in earned but unpaid funds on behalf of its clients. CIVIC is aware that the following counties in California contract with Praeses: Alameda, Monterey, Placer, Sacramento, San Francisco, San Joaquin, Santa Barbara, Stanislaus, and Tulare.

1. In Tulare County, California Praeses charges 10.56 percent of gross revenue generated from the contract between the Tulare County Sheriff's Department and Global Tel Link for its contract management services. For historical reconciliation services, Praeses would charge 25 percent of any unpaid compensation discovered and paid by Global Tel Link.
2. In Contra Costa County, California Praeses charges 9.94 percent of gross revenue generated from the contract between the Contra Costa County Sheriff's Department and Global Tel Link for its contract management services. For historical reconciliation services, Praeses would charge 33.33 percent of any unpaid compensation discovered and paid by Global Tel Link.

In terms of Praeses, there are two issues we would like to bring to the FCC's attention. First, California County Sheriff's Departments contract with Praeses to recover potential profit lost from the prevalence of dropped calls and use Inmate Welfare Fund (IWF) money to pay for historical reconciliation services. However the service agreement between California Sheriff's Departments and Praeses does not acknowledge the way families of inmates have lost actual money because of the prevalence of dropped calls and the expensive surcharges they must pay⁷, nor does the service provide recourse for families to recover such money.

Second, the IWF is a fund designated to directly benefit inmates. For this reason, we do not believe it is ethical for California Sheriff's Departments to use IWF monies to pay Praeses for either contract management or historical reconciliation services. Essentially, the families of inmates are charged exorbitant phone call rates that fund the IWF and this fund, in turn, is supposed to benefit their incarcerated loved ones. However, both contract management and historical reconciliation services are geared toward providing Sheriff's Departments with maximum profit and revenue,

⁶ See <http://www.praeses.com/reconciliation.html>

⁷ See page 7 of this comment for more information about surcharges.

while inmates and their families continue to bear the burden of high phone call rates and charges and have no recourse to challenge the bad service provided by primary ICS providers.

V. Conclusion

The major theme of the above comment is that California County Sheriff's Departments, Probations Departments, and ICS providers have a track record of privileging profit over the safety, well being, and rights of prisoners in California and their families. We do not believe the economic exploitation of prisoners and their loved ones is a necessary and beneficial way of funding rehabilitative programs for California prisoners. As we are sure the comments of prisoners themselves will demonstrate, family contact is the most crucial component to ensure the safety and well being of people locked up in prisons, jails, immigration detention centers, juvenile facilities -- and for all people on the outside as well. We urge the FCC to pass strong regulations that leave little room for the above mentioned parties to shift their techniques of exploitation in the future, to the detriment of our communities in California and nationwide.

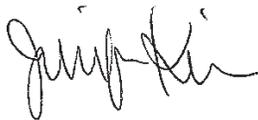
Sincerely,



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Attachment 1



Community Initiatives for Visiting Immigrants in Confinement is a national non-profit organization and network of independent immigration detention visitation programs working to end the isolation and abuse of people in U.S. immigration detention through visitation, independent monitoring, storytelling, and advocacy.



The California Immigrant Policy Center (CIPC) is a non-partisan, non-profit statewide organization founded in 1996. CIPC seeks to inform public debate and policy decisions on issues affecting the state's immigrants and their families in order to improve the quality of life for all Californians.



The Ella Baker Center for Human Rights (EBC) advances racial and economic justice to ensure dignity and opportunity for low-income people and people of color.



The Friends Committee on Legislation of California (FCLCA) is a Quaker-based lobby that advocates for state laws that are just, compassionate and respectful of the inherent worth of every person. FCLCA advocates on behalf of families of the incarcerated and recognizes the necessity of maintaining family connections during incarceration in order to promote successful re-entry into the community.