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January 2, 2015

Received & Inspected
JAN 12 2015
FCC Mail Room

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

DOCKET FILE COPY ORIGINAL

Re: WC Docket No. 12-375; FCC 14-158

Rates for Interstate Inmate Calling Services; Second Further
Notice of Proposed Rulemaking

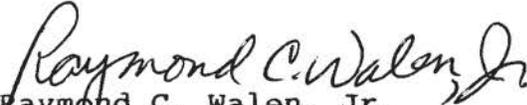
Dear Secretary Dortch:

Here are the original and one copy of my comments in response
to the Commission's Second Further Notice of Proposed Rulemaking.

I am giving them to the prison officials for mailing on January
2, 2015. If they do not arrive by January 5, 2015, I request
that the Commission give me the benefit of the "mailbox" rule
under which the federal courts consider prisoners' papers filed
on the date they were given to prison officials for mailing.
Rule 4(c), Federal Rules of Appellate Procedure.

Please let me know if there is any problem. Thank you very much.

Very truly yours,


Raymond C. Walen, Jr.

Encls.

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Re: WC Docket No. 12-375; FCC 14-158

Rates for Interstate Inmate Calling Services; Second Further
Notice of Proposed Rulemaking

Dear Commissioners:

I write in response to your November 21, 2014 Second Further
Notice of Proposed Rulemaking and request for comment and to
thank you for your efforts to reform ICS rates and practices.

For the reasons detailed below and in the enclosures, I request
that you will:

- A. Prohibit site commissions in all forms, including "special equipment funds" and "administrative support" payments. The resulting lower rates will mean higher telephone usage by prisoners.
- B. Cap interstate and intrastate ICS telephone rates at \$0.05 per minute.
- C. Prohibit all ancillary charges because they drive the costs of ICS beyond just, fair and reasonable.
- D. Promote competition by prohibiting site commissions and exclusive contracts.
- E. Preempt state regulations that are inconsistent with the Commission's rules.
- F. Void site commissions in existing contracts, effective immediately.
- G. Provide no "transition" period.
- H. Require that telephone service be available to the handicapped at the same rates charged for those services in the community.
- I. Limit rates for advanced services to those charged for comparable services in the community.
- J. Establish annual review of all prison telephone contracts for compliance with the rules.
- K. Enforce the rules by defining as a violation of rate caps each telephone call for which an excessive rate is charged.
- L. Find that the benefits to the public of prohibiting site commissions and other excessive fees associated with ICS outweigh the costs of doing so.

I. My Background

I have been in prison in Michigan since 1982. The telephone is an indispensable means of maintaining family contact, and it is essential for access to courts and counsel. Over the past thirty-two years I have relied on the telephone to contact lawyers, private investigators, and others helping me with challenges to my criminal convictions and challenges to conditions of confinement. Few lawyers who represent the imprisoned have the time or resources for many visits, and a telephone call can quickly clear up questions that might otherwise involve several letters.

I worked as a staff paralegal for Prison Legal Services of Michigan Inc. (PLSM), a private non-profit corporation, from October 1987 until it closed in November 2008. From 1975 until April 2003, PLSM had offices in the State Prison of Southern Michigan in Jackson, and at various times during those years it had offices inside other Michigan prisons.

Prisoner access to reasonably priced telephone calls was vital to our work. The average reading level in Michigan prisons is below eighth grade and in many cases it was easier to communicate by telephone than by mail.

I was a named plaintiff in Cain et al v. Michigan Department of Corrections, Ingham County Circuit Court Case No. 88-61119-AZ, a state-wide prisoner class action case in which one of the issues was prisoner telephones. The court appointed me and six other men to represent the plaintiff class from 1988 through 1996, when the court appointed PLSM as counsel. We remained active in the case as class representatives until settlement and monitoring were complete in November 2005. I am still in prison and I use the telephone almost daily, but not as much as I would if the rates were lower.

II. Michigan's Experience

In December 2013 I commented on the Commission's previous proposals in this matter. My letter included Enclosures numbered 1 through 6, some of which I refer to in this letter. I later published an article about prisoner telephone services in Michigan, Raymond C. Walen, Jr., "Humpty Dumpty and Prison Telephones," Prisons and Corrections Forum, Spring 2014, a publication of the Prisons and Corrections Section of the State Bar of Michigan. A copy is attached to this letter as Enclosure 7. It is available on-line at www.michbar.org/prisons/forum.

Prisoners' contact with people outside correlates with success on release. Regular contact provides moral support and

encouragement. It allow prisoners before they are released to arrange living quarters, clothing, employment, transportation, and more, that they will need when released.

Besides high telephone phone rates, Michigan has decided as a matter of policy to limit prisoners' contact with their families, friends and potential employers by limiting the telephone numbers prisoners can call, imposing strict limits on visitation, and limiting the postage prisoners can buy. The courts have rejected legal challenges to these limits. An order from the Commission that requires just, fair, and reasonable telephone rates is the last chance to overcome any of these barriers.

III. Michigan's prisoner telephone system

Michigan's prisoner telephones do not accept any incoming calls. Prisoners need a Personal Identification Number (PIN) to make outgoing calls. When the receiver is lifted, the recording prompts the user to push 1 for English or 2 for Spanish; then to push 1 for a debit call or 0 for a collect call. The recording prompts the user to enter his or her PIN number. If it is a debit call, the recording gives the balance on the account then asks for the area code and telephone number. On a collect call, it asks for the area code and telephone number.

The number dialed must be either on the Universal List or on the prisoner's list of allowed numbers. The Universal List is composed of agencies that all prisoners may call and whose numbers need not be on the prisoner's list of allowed numbers. If the party to whom a collect call is made has a cell phone, or if their carrier does not have a billing agreement with PCS, they cannot receive a collect call and must set up a prepaid account. For each such number, PCS allows a one-time complementary 1-minute call, at the beginning and end of which a recording provides information on how to set up a prepaid account.

To make debit calls, a prisoner fills out and turns in a "Disbursement Authorization/Catalog Order Form" made out for at least \$10 or more, in increments of \$5. Enclosure 8. See MDOC Policy Directive PD 05.03.130, ¶H. When it is processed the calls go through.

All prisoners' calls, except those to attorneys, legal services organizations, and public officials who have requested confidentiality, are recorded and may be monitored.

From 1996 until May 25, 2011, prisoners had to turn in to staff a list of up to twenty telephone numbers they wanted to call.

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Staff would verify any attorney numbers and mark them confidential, and then send the list to the telephone company for entry into the computer.

When Michigan contracted with PCS, the system was automated. The written lists were eliminated, except for "non-monitored" numbers. For all other numbers, the first twenty numbers a prisoner dials each calendar quarter are his or her "allowed numbers." Director's Office Memorandum 2014-8, (formerly numbered 2011-17, effective 5/25/11) Enclosure 9.

IV. Current telephone rates in Michigan

In 2011 Michigan contracted with Prison Communications Services, Inc. (PCS), a subsidiary of Global Tel*Link (GTL). When I call someone on the prisoner telephone, the recording says "Thank you for using Global Tel Link." The forms I use to put money into my telephone debit account say "PCS." Enclosure 8. My mother's bill for my collect calls comes from Public Communications Services, Inc. Michigan's contract is entitled Contract No. 071B1300208 Between The State of Michigan and Public Communications Services, Inc. It is available at www.michigan.gov/documents/buymichiganfirst/1300208_348329_7.pdf. The file begins with Change Notice No. 3, followed by Change Notice No. 2, Change Notice No. 1, and then the Contract.

As of May 25, 2011, a fifteen minute intrastate debit call costs \$2.88 (\$0.192 per minute). The base rates are \$0.0393 per minute for collect and prepaid telephone calls, and \$0.0343 for debit calls. There is no difference in base price for local and interstate calls. See Change Notice No. 1, attached to my December 10, 2013 letter as Enclosure 4, page 2, "Summary of the Per Minute Rates."

Michigan also selected an "option" called the "Key Word Search Addition," which costs \$0.0075 per minute, bringing the rate to \$0.0468 per minute for collect and prepaid calls, and \$0.0418 per minute for debit calls. The contract describes the "Key Word Search": "Quickly scan thousands of recordings to locate key words. Vastly reduce staff time listening to call recordings. Search for sounds that make up words (phonetically)." Enclosure 4, p 7.

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Michigan negotiated a "Special Equipment Fund Addition," which further increased the cost of the calls:

Payment	Type	Base rate	Key word	SpecEquip Fund	TotalPer MinuteRate
Collect/ prepaid	Local	\$0.0393	\$0.0075	\$0.1532	\$0.2000
	Interstate	0.0393	0.0075	0.1832	0.2300
Debit	Local	0.0343	0.0075	0.1382	0.1800
	Interstate	0.0343	0.0075	0.1682	0.2100

"Summary of the Per Minute Rates," Change Notice No. 1 to the Contract Between the State of Michigan and Public Communications Services, Inc. I enclosed a copy of this as Enclosure 2, page 2, with my December 10, 2013 letter to the Commission.

The contract rates do not include state and federal taxes or Universal Service Fund charges. Contract, pp 94-95, Enclosure 4, pp 10-11. We are charged tax of 6.67% on all debit calls, \$0.18 on a 15-minute intrastate debit call.

Prisoners' families and friends who prepay to receive calls can do so by mailing a cashier's check of money order to PCS. There is no charge for paying this way. They may also pay by credit card by phone or internet. Credit card payments are charged \$3.95 per transaction. For example, if my sister pays \$25 by credit card, the first \$3.95 is deducted and there is \$21.05 left for telephone calls. The credit card fee is specified at pages 94 and 95 of the contract, included with my December 10, 2013 letter as Enclosure 4, pages 10 and 11. The minimum prepayment is \$25 for families and friends; it is \$10 for prisoners who pay for debit calls. Michigan Department of Corrections Policy Directive PD 05.03.130, ¶H, available at www.michigan.gov/corrections/policydirectives.

Change Notice No. 2 to Michigan's contract with PCS provides for kiosks in the lobbies of two prisons at which our families and friends can prepay for our calls. A copy is attached as Enclosure 10. Also see Enclosure 7, p 4.

After the Commission's September 13, 2013 order, Michigan and PCS issued Change Notice No. 3, which cut the rate on prepaid interstate calls to \$0.21.

The assertions in Pay Tel's October 2, 2014 Ex Parte Presentation in response to the joint filing by GTL, Securus, and Telmate, that Michigan is a state "where site commissions have been eliminated," and that we pay \$0.044 per minute, is not true. Pay Tel Ex Parte Presentation, p 4. Attachment B to Pay Tel's

Ex Parte Presentation is equally misleading. It includes Michigan in a table of "DOC Contracts without Commissions," and asserts that we pay and "estimated rate per minute" of \$0.044 which includes a base rate plus an "addition of a Special Equipment Fund additive for 'cell phone detection technology or other further technology initiatives within the DOC.'"

The misinformation in Pay Tel's proposal even crept into the Commission's November 21, 2014 Second Further Notice of Proposed Rulemaking, pp 39-40, ¶ 68, which refers to "the eight state prison systems that barred site commissions."

As discussed in Enclosure 7 with this letter, PCS pays Michigan millions of dollars annually. Michigan's appropriations bill for the current fiscal year, 2014 Public Act 252, includes nearly \$14,000,000 to Corrections from the PCS "special equipment fund." The line items in the bill show \$5,800,000 for equipment and special maintenance, Art V, Part 1, §104; \$6,000,000 for "security improvements," Art V, Part 1, §110; and \$2,000,000 for programming, Art V, Part 2, §219(2). This is the basically the same as last fiscal year. Enclosure 7, p 5.

V. Comments on the November 21, 2014 notice and related documents

I read (1) the Commission's 11/21/14 Second Notice of Proposed Rulemaking; (2) the 9/18/14 letter to the Commission from GTL counsel Cherie R. Kiser and attachments including the 9/15/14 submission from GTL, Securus Technologies, Inc., and Telmate LLC; GTL's undated summary of the 7/7/14 Alabama Public Service Commission order; and the 9/18/14 GTL Correctional Facility ICS Cost Analysis; (3) PayTel's 10/2/14 ex parte presentation in response to the joint filing by GTL, Securus, and Telmate; (4) the 10/8/14 letter from Stephanie A. Joyce of the Arent Fox law firm on behalf of Securus; and (5) the December 4, 2014 letter from Dorsey Nunn of Legal Services for Prisoners with Children.

Here are my comments:

A. The Commission should prohibit site commissions in all forms, including "special equipment funds" and "administrative support" payments. The resulting lower rates will mean higher telephone usage by prisoners.

1. The Commission should prohibit site commissions in all forms because failure to do so would be an abdication of the Commission's duty to insure fair, just and reasonable rates. Absent the prohibition of site commissions, fair, just and reasonable rates are impossible to achieve. The customers have

no voice in the process. The parties to the contracts are the ICS telephone companies and the governmental units that run the jails and prisons. These parties have no incentive to reform or engage in meaningful oversight because their financial interest is too significant. A judge is disqualified from presiding over a case in which he or she has a financial interest. 28 U.S.C. §455(b)(4). For the same reasons, the states are disqualified from overseeing ICS reform.

The States' and counties' argument in favor of site commissions is, "we need them to pay for x." My response is, "If x is such a great idea, then it should be paid for by everyone in the State, not just by prisoners and those who accept their telephone calls." It is fundamentally unfair to tax prisoners' families and friends to pay for things which, if the State really needs them, should be paid for by all of the taxpayers. It is also fundamentally unfair to compensate PCS for what amounts to nearly quintupling its regular rate so that it can provide a kickback to the State.

2. The Commission must be sure to prohibit site commissions under other names, such as "special equipment funds" or "administrative support." Michigan, for example, from 1991 through 2007, used site commissions to fund the "county jail program," described in Enclosure 7, p 2. To ease prison overcrowding, when counties sentenced to jail a criminal defendant who could have been sentenced either to jail or to prison, the State paid the cost of his or her care in jail.

In 2007, Michigan's legislature prohibited any surcharges other than those necessary to meet "special equipment costs." The price of a 15-minute intrastate debit call dropped from \$7.85 to \$1.50. Many of us thought the legislature had banned site commissions. We were wrong. The governor saw a loophole and requested that bids for Michigan's ICS contract provide for a "Special Equipment Fund." Enclosure 7, pp 3-4. PCS offered a base rate less than \$0.04 per minute for calls within the United States, with a "Special Equipment Fund" option which in mid-2011 increased rates to between \$0.18 to \$0.23 per minute, depending on the type of call. The State receives \$1.4505 for every 15-minute intrastate debit call, nearly \$16 million per year, with which it pays for lights, cameras, Tasers, and various counseling programs that were funded from Michigan's general fund budget before this windfall. Enclosure 7, pp 4-5.

"Administrative support" payments are an invitation to States to abuse and game the system. Modern prisoner telephone systems are completely automated. The only three instances in which a prison employee's involvement is required are entering an attorney or public official's telephone number as confidential,

sending payment for prisoners' debit calls to the telephone company, and escorting a repairman inside the prison when a telephone malfunctions. None of these justify increasing the cost of telephone calls.

Prisoners have a constitutional right to confidential communications with their attorneys. When a prisoner puts an attorney's number on his or her list, prison staff notify the telephone company to make the appropriate computer entry so that the recorder is turned off when the attorney's number is dialed. MDOC Policy Directive PD 05.03.130, Director's Office Memorandum 2014-8, Enclosure 9. The Department of Corrections requested software that records prisoners' telephone calls. There is no justification for making prisoners and their families and friends pay to turn it off when a prisoner makes a call the State is not lawfully allowed to record.

Prisoners use a disbursement form, Enclosure 8, to pay for debit calling. Prison staff take the form to the business office money is deducted from the prisoner's institutional account and sent to PCS to pay for debit calls. PD 05.03.130, ¶H. Prisoners use a similar disbursement form for nearly every other purchase, including coats, shoes, socks, and underwear; electric shavers and beard trimmers; radios, televisions, and MP3 players; hobbycraft items; books; music; and mailing packages. There is no charge for any of these. There is nothing unique about sending money to the telephone company that requires compensation for the time spent doing it.

Outside contractors come into prisons every day. They include garbage and trash removal, exterminators, fencing contractors, alarm contractors, paving, tree trimmers, computer maintenance, and telephone repairmen for both institutional and prisoner telephones. Each one is escorted by a staff member whose job it is to escort the contractors. As with disbursements, there is nothing unique that requires that the State be reimbursed for escorting a telephone repairman but not any other contractors.

Much has also been said about the States' alleged costs for recording and monitoring prisoners' telephone calls. The recording costs the State nothing. That is included in the base rate of under \$0.04 per minute. If the State wants to listen to the recordings, there is no reason the callers should underwrite that. The prison mailroom staff open all incoming mail and inspect it for contraband, and they read all incoming publications to check for objectionable content. The property room staff open and inspect all incoming property purchases, as well as searching the property of every prisoner who transfers into or out of a prison. There is no "administrative support" charge added to the price of anything else to pay for these

inspections, and there is no justification to single out telephone calls and increase their cost to pay for monitoring the calls of those suspected of wrongdoing.

Cell phone detection systems most assuredly must not be paid for by a tax on prisoners' legitimate telephone calls. The prisoners who use the legitimate prison telephone system are not the ones using illegal cell phones. Charging them and their families and friends for the cost of detecting illegal cell phones is as unfair, unjust, and unreasonable as it would be to charge buyers of legal prescription medications for the cost of detecting illegal meth labs.

3. Lower rates will mean higher telephone usage by prisoners. Most Michigan prisoners work at jobs that pay the princely sum of \$1.14 per day, twenty days per month. They have a fixed income and budget for telephone calls, say \$10 per month, which does not even cover one 15-minute intrastate call per week. The amount available to spend on telephone calls does not usually change. If the price goes up we make fewer calls; if the price goes down we make more.

"'One 15-minute phone call costs me a day's pay,' wrote Paul Dye, an inmate at Thumb Correctional Facility, who said he earns \$3.34 per day working as a building trades program tutor. 'Think about it, what if you had to spend a day's pay just to make one 15-minute phone call?'" Jacob Kanclerz, "Prisoner Wages Start at 17 Cents Per Hour, Unchanged Since 1990," Michigan Information Research Service (MIRS), June 23, 2014.

4. The Commission's legal authority to ban site commissions comes from 47 U.S.C. 151, which defines the purpose of the Commission as, "to make available so far as possible, to all the people of the United States ... a rapid, effective, nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges ..."; 47 U.S.C. 201(b), which provides that any charge or practice that is unjust or unreasonable is unlawful; 47 U.S.C. 202(a), which provides that unjust or unreasonable discrimination in charges or practices are unlawful and that subjecting any particular person or class of persons to "any undue or unreasonable prejudice or disadvantage" is unlawful; 47 U.S.C. 205(a), which empowers the Commission to determine and prescribe just, fair and reasonable charges, and set maximum charges; 47 U.S.C. 254(b), which provides, "Quality services should be available at just, reasonable, and affordable rates;" 47 U.S.C. 276(b)(2), which allows the Commission to determine whether public interest payphones should be maintained and to ensure that they are supported "fairly and equitably."

B. The Commission should cap interstate and intrastate ICS telephone rates at \$0.05 per minute.

1. Most of Michigan's prisoners are in rural areas. GTL's base rate for calls from Michigan to all over the country is under \$0.04 per minute. This is comparable to all but one of the other bidders for the contract. Final Pricing Comparison by CAPPS and MI-CURE (2011), Enclosure 11.

Despite the justifications offered by the telephone companies, the only conceivable reason for setting rates higher than \$0.04 per minute is to turn prisons into profit centers for corporations and corrections agencies. If I can telephone someone in Tuscumbia, Alabama, from a Michigan prison for under \$0.04 per minute, as the base rate in the Contract between Michigan and PCS provides, then why can not a prisoner in Alabama telephone Michigan for the same price? His call is coming up here on the same telephone lines and through the same equipment on which my call goes down there. The suggestion in the telephone companies' proposal, and Alabama's rules, that a higher rate is appropriate is unjustifiable.

Do not accept the argument that jails have a higher turnover and accounts are opened and closed more quickly than in prisons. Do not accept the argument that it costs the company money to accept its customers' money. It is not as though the telephone company had to send someone out to collect the money. Once the account is opened, the telephone company has the customers' money. And it can all be done by telephone or computer with no humans involved. Any company that does not have the technology for that is not in the telephone business.

1. The Commission should order a unitary rate. Prisons and jail have different size populations and different turnover rates, but all prisoners dial the phone the same way and they all pay for their calls. Five out of six of the bids for Michigan's ICS were between \$0.03 and \$0.065 per minute. Enclosure 11. Without the inappropriate "add-ons" for cell phone detection and "technology grants," the price would be even lower. Anything higher is unfair, unjust and unreasonable.

2. The Commission should forbid tiered rates. The rates set in Alabama's rules are a prime example. The high rate is seven times Michigan's base rate, and the lowest rate is five times Michigan's base rate. And, as noted above, there is no legitimate reason to differentiate between jails and prisons.

3. a. Debit/prepaid and collect calling. On collect calls the telephone company has to bill and wait for its money; on debit and prepaid calls it has the money before the calls

are made. That difference may justify a slightly higher rate for collect calling than for debit and prepaid calling. In Michigan, GTL, through PCS, determined the difference to be \$0.005, when it set the base prices for ICS calls at \$0.0343 (debit) and \$0.0393 (collect). A \$0.05 per minute rate cap on all calls would solve the problem.

b. The Commission should prohibit per-call or per-connection charges. These unfairly inflate the cost of calls. When Michigan had a per-connection charge with Sprint, the cost of a 1-minute intrastate debit call was \$3.27, the \$2.95 connection charge plus \$0.32 for the first minute. Enclosure 2. Prices like this are unfair, unjust and unreasonable.

c. The Commission should prohibit flat rate charges. Michigan's experience, where certain local calls were billed a \$2.00 flat rate, came out to as little as \$0.13 per minute or as high as \$2.00 per minute, both of which are unreasonable compared to the bids in Enclosure 11.

d. The Commission should prohibit waivers. The only way that a rate cap would not permit a provider to serve a correctional facility economically is if it were required to pay site commissions or provide other services for which the States and counties rather than telephone customers should be bearing the cost, such as cell phone detection, biometric identification, and so forth. Without having to pay for those things, every legitimate telephone service provider should be able to keep its rates under \$0.05 per minute and remain profitable. Most assuredly the sheriff in every little rural jail has a telephone. If the telephone companies say they need a waiver for prisoner telephones at a particular jail or prison, the Commission should ask how much the sheriff or warden pays for his telephone service.

4. The Commission's legal authority to cap ICS rates comes from the statutes cited above in section V.A., p 9. In addition, 47 U.S.C. 254(g) requires that rates in rural areas be no higher than those in urban areas. 47 U.S.C. 276(b)(2) requires that the Commission to determine whether it is in the public interest that certain payphones be maintained and "fairly and equitably" supported; 47 U.S.C. 276(d) defines "payphone service" to include inmate telephone service within correctional institutions, and any "ancillary services."

C. The Commission must prohibit all ancillary charges because they drive the costs of ICS beyond just, fair and reasonable.

1. The telephone companies, in collusion with the States and counties, make up the ancillary fees to circumvent any rate cap. The only way the Commission should consider approving any ancillary fees is if the only criterion for approval is whether the telephone companies can ask for them with a straight face.

They seek "transaction and deposit fees" and "money transfer fees" for prepaid and debit calls. This says to the customer, "You want to give me money, but I will not accept it unless you pay me more." That is unfair, unjust, and unreasonable in any market.

They want an additional fee every time a call is accepted. They call these "validation fees" for each call. When the prisoner dials a number, the software determines if it is on his or her approved list, and if the person receiving the call pushes the number indicated in the recording to indicate that the call is accepted, then it is connected.

Telephone companies justify "premium payment option" fees by claiming that the customers are simply paying for things that make payment more convenient for them. They fail to mention that the "convenience" of paying by credit or debit card is also infinitely more convenient for the telephone company.

To prepay for telephone calls from PCS without paying any ancillary charges, the customer must buy a certified check or money order, fill it out, put it in an envelope along with a letter explaining what he or she wants, address the envelope, affix a stamp, and mail it to the telephone company. When the telephone company receives it, someone has to pick up the mail, sort it, send it to the right department, open the letter, read it, add the money to the customer's account, fill out a deposit slip, and take the money order to the bank.

When a customer prepays by credit or debit card via telephone or computer, he or she simply enters a credit or debit card number and the amount of money to add to the account, and the funds are electronically transferred to the telephone company's account in a few nanoseconds with no human contact. Michigan allows only a \$3.95 fee for payment by credit or debit card. Even this should not be allowed.

Certainly this method of payment is convenient for the customer, but there can be no question that it is also infinitely cheaper

and more convenient for the telephone company than when the customer mails in a check or money order. Charging a fee for this is unfair, unjust and unreasonable and the only possible justification for it is "because we can." The Commission must say, "No, you can not."

2. The Commission's legal authority to prohibit ancillary charges comes from the statutes cited above in section V.A., p 9.

D. The Commission should promote competition by prohibiting site commissions and exclusive contracts.

1. Michigan's experience with exclusive contracts and site commissions, detailed in my letters and Enclosures, exemplifies why they must be prohibited. The States and counties award monopolies to the bidder that offers them the most money, although that usually means the highest price for telephone calls.

2. The Commission's legal authority to promote competition by prohibiting site commissions and exclusive contracts comes from the statutes cited above in section V.A., p 9, as well as 47 U.S.C. 276(b), which provides that the Commission shall prescribe regulations that promote competition; 47 U.S.C. 276(b)(2), which requires the Commission to determine whether it is in the public interest that certain payphones be maintained and "fairly and equitably" supported; and 47 U.S.C. 276(d), which defines "payphone service" to include "the provision of inmate telephone service in correctional institutions, and any ancillary services."

E. The Commission should preempt state regulations that are inconsistent with the Commission's rules.

1. Besides having an inherent conflict of interest when it comes to setting rates where site commissions or other forms of remuneration to their unit of government are involved, Section V.A.1., pp 6-7, above, the States and counties lack the national perspective that the Commission has and they may not know what a fair, just, and reasonable rate is.

The Alabama rules highlight the vital importance of preemption. The per minute rates (Second Further Notice of Proposed Rulemaking, ¶69, p 40) and ancillary fee schedule (Joint Providers' proposal Attachment 2) set by Alabama look as though they were written by the telephone companies. In some instances, they are higher than the rates the telephone companies seek. Does the State of Alabama receive site commissions or other payment in goods or services from ICS providers? State

regulations that set higher rates than the Commission's caps must be preempted and no waivers granted.

2. The Commission's legal authority to preempt state regulations that are inconsistent with the Commission's rules comes from 47 U.S.C. 276(c), which provides that the Commission's regulations preempt State requirements that are inconsistent with the Commission's regulations.

F. The Commission should void site commissions in existing contracts, effective immediately.

1. The Commission should do this because, as noted above, site commissions lead to unfair, unjust, unreasonable and therefore unlawful rates and, as the Michigan Supreme Court so eloquently put it, "A wrongdoer should never profit from crime." Lichon v. American Universal Insurance Co., 435 Mich. 408, 413; 459 N.W.2d 288 (1990). The Commission should find that a fair, just, and reasonable site commission rate is zero, and that any provisions to the contrary in existing contracts are void.

2. The Commission's legal authority to void site commissions in existing contracts comes from the 47 U.S.C. 201(b), which provides that unjust and/or unreasonable charges are unlawful; and 47 U.S.C. 205(a), which authorizes the Commission to set "just and reasonable" charges when it is of the opinion that any charge is in violation of the Act.

G. The Commission should prohibit site commissions immediately and provide no transition period.

1. By ordering site commissions to stop immediately, the Commission would be telling the telephone companies and the States and counties involved, "Stop breaking the law right now." A transition period that is longer than it takes to get the word out to stop, while the beneficiaries of this unlawful practice can "adjust" to the new situation, is analogous to the police telling a criminal, "Robbery is unlawful. You have to stop. But you can keep doing it while you look for a legal job."

2. Any site commissions charged to customers after the effective date of the Commission's order prohibiting them should be refunded to the customers. 47 U.S.C. 208(a).

3. The Commission's legal authority provide no "transition" period comes from 47 U.S.C. 206 through 209.

- H. The Commission should require that telephone service be available to the handicapped at the same rates charged for those services in the community.

The Commission's legal authority to require that telephone service be available to the handicapped at the same rates charged for those services in the community comes from 47 U.S.C. 225(d)(1)(D), which requires that those rates be "no greater than the rates paid for functionally equivalent voice communication services."

- I. The Commission should limit rates for advanced services to those charged for comparable services in the community.

1. The Commission should do this because there is no legitimate rationale for charging those in prison more than those outside are charged.

J-Pay provides video visiting at State prisons in Indiana. Video visiting has not replaced in-person visiting, but is an alternative that is convenient for those who live long distances away or are unable to travel. The fee is \$9.95 for thirty minutes. Next to this, the Alabama fee cap of \$0.50 per minute (Second Further Notice of Proposed Rulemaking, ¶150, p 84) sounds high. Are there site commissions involved?

Michigan offers e-mail service through J-Pay. The fee is \$0.25 per page, with a \$5.00 minimum purchase against which subsequent "letters" are billed. Prison Legal News has reported that the price of the J-Pay e-mail service varies from state-to-state, from \$0.17 to \$0.60 per page, depending on the deal that J-Pay has negotiated with the States. I do not know if these involve site commissions, but the wide range of prices from a single vendor for the same service seems to suggest that they do. "Prison Systems Increasingly Provide E-mail - For a Price," Prison Legal News, November 2014, p 35.

The costs of research and development of new technology must not be underwritten by prisoners and their families and friends. If GTL and others want to get into the market, they have to have the technology. If they want to get into the carpentry business, they buy hammers and saws and then sell their carpentry service. They don't bill every customer for the cost of inventing the hammer and the saw.

2. The Commission's authority to limit rates for advanced services to those charged for comparable services in the community comes from 47 U.S.C. 151, which defines the purpose of the Commission as, "to make available so far as possible, to all the people of the United States ... a rapid, effective,

nationwide, and world-wide wire and radio communication service with adequate facilities at reasonable charges ..."

J. The Commission should establish annual review of all prison telephone contracts for compliance with the rules.

1. The Commission should annually review all ICS telephone contracts and change orders because reports are not reliable. For example, the Pay Tel presentation (p 4, and Attachment B) cited Michigan as a state where site commissions are banned, and the Commission's Second Further Notice of Proposed Rulemaking (p 38, ¶69) referred to this. Surely the source they cited (www.prisonphonejustice.org) acted in the best of good faith, but they got it wrong. The only way to get it right is for the Commission to review all contracts annually and post them on its website for others to review.

The Commission should also consider reviewing all bids for ICS services so that it can see what choices the providers are offering to the States and counties.

2. The Commission's legal authority to establish annual review of all prison telephone contracts for compliance with the rules comes from 47 U.S.C. 211(b), which authorizes the Commission to require the filing of "any ... contracts of any carrier;" 47 U.S.C. 219(a), which authorizes the Commission to require annual reports from all carriers subject to the Act and to require specific answers to all questions, information related to charges, or contracts affecting the same; and 47 U.S.C. 220, which authorizes the Commission to prescribe the forms of accounts, records and memoranda to be kept by carriers.

K. The Commission should enforce the rules by defining as a violation of the rate caps each telephone call for which an excessive rate is charged.

1. The telephone companies' proposals for ICS rates and ancillary charges show that they do not take these proceedings seriously. They will do their best to circumvent the rules until they are held to account for each and every violation.

2. The Commission's legal authority to enforce the rules by defining as a violation of the rate caps each telephone call for which an excessive rate is charged comes from 47 U.S.C. 201(a) which provides that all charges shall be "just and reasonable;" 47 U.S.C. 205(a) which authorizes the Commission to prescribe maximum charges and order carriers to cease and desist from violations; 47 U.S.C. 205(b), which provides "each distinct violation shall be a separate offense;" and 47 U.S.C.

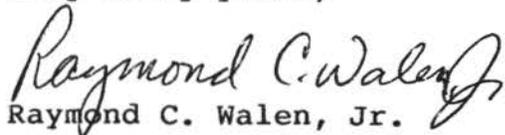
Federal Communications Commission
January 2, 2015
Page Seventeen

206 through 209, which authorize the Commission to enforce its rules and award damages.

- L. The Commission should find that the benefits to the public of prohibiting site commissions and other excessive fees associated with ICS outweigh the costs of doing so.

Thank you for the opportunity to present my comments.

Very truly yours,


Raymond C. Walen, Jr.

Encls.

Table of Enclosures

Enclosures 1 through 6 were submitted with my December 10, 2013 letter to the Commission.

- 1 MDOC Spreadsheet showing the site commissions Michigan received from telephone companies from FY 1993 through FY 1996. This was part of Plaintiff's Exhibit 126 in Cain et al v. MDOC. 1 page.
- 2 Page 156 of Contract No. 071B10001568 Between the State of Michigan and Sprint. 1 page.
- 3 August 1, 2008 rate schedule for ICS calls from Michigan prisons. 1 page.
- 4 Change Notice No. 1 to Contract No. 071B1300208 Between the State of Michigan and Public Communications Services, Inc. (pages 1 through 5); cited in footnotes 30 and 31 of Enclosure 7.

Selected pages from the same contract, cover page, 87, 92, 93, 94, 95, 96 (6 through 12) cited in footnotes 12, 15, 19, 28, and 31 of Enclosure 7.
- 5 Aaron Auperlee, "Dad Says Spike in Telephone Fee at Michigan Prisons Will Make Communicating with Son More Difficult" (July 6, 2011) Jackson Citizen Patriot; cited in footnote 17 of Enclosure 7; 2 pages.
- 6 Enrolled Senate Bill 138 (2 pages); "Snyder Signs Supplemental Notes D.O.C. Boilerplate," Gongwer News Service (July 14, 2011) (2 pages); cited in footnote 13 of Enclosure 7; 4 pages total.

Enclosures 7 through 16 are attached.

- 7 Raymond C. Walen, Jr., "Humpty Dumpty and Prison Telephones," Prisons and Corrections Forum, Volume 14, No. 1, Spring 2014; 6 pages.
- 8 Michigan Department of Corrections, Disbursement Authorization/Catalog Order Form; 1 page.
- 9 Michigan Department of Corrections Director's Office Memorandum, 2014-8; 3 pages.
- 10 Change Notice No. 2 to Contract 071B1300208 Between the State of Michigan and Public Communications Services, Inc.; 2 pages.

- 11 "Final Pricing Comparison," an analysis of proposed rates from companies bidding for Michigan's 2011 ICS contract; prepared by the Citizens' Alliance on Public Spending (CAPPS) and Michigan CURE (June 2011); cited in footnote 18 of Enclosure 7; 1 page.
- 12 Russ Marlan, MDOC Executive Bureau Administrator, letter to Kay D. Perry, Executive Director of MI-CURE (January 10, 2013), Enclosure, "Special Equipment Fund;" cited in footnotes 20 and 27 of Enclosure 7; 3 pages
- 13 MI-CURE NEWS, February 2013, page 1; cited in footnote 23 of Enclosure 7; 1 page.
- 14 MDOC Report to the Legislature, Pursuant to 2013 Mich. Public Acts 59, §219(3), Special Equipment Fund Revenues and Expenditures (February 1, 2014); cited in footnote 26 of Enclosure 7; 2 pages.
- 15 Contract Between the State of Michigan and Sprint, No. 071B10001568 (May 21, 2001 to May 21, 2006) p 53, ¶7.4; cited in footnote 29 of Enclosure 7; 1 page.
- 16 Senate Fiscal Agency, Bill Analysis, Senate Bill 951 (S-1, Draft 2) FY 2012-2013 Corrections Budget; Item 9 indicating what the "Special Equipment Fund" will buy; 1 page.

PRISONS AND CORRECTIONS FORUM

A Publication of the State Bar of Michigan's Prisons & Corrections Section

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Humpty Dumpty and Prison Telephones

By Raymond C. Walen, Jr.

Michigan prisoners have had access to telephones since 1972. From then until 1991, whichever telephone company served a community also provided operator-assisted collect call services to any prisons in its area. The charges were reasonable, in that they were the same as collect calls in the community. The dramatic increase in prisoner telephone rates is a result of the national trend by states demanding site commission payments from telephone service providers in exchange for the exclusive right to provide prisoner telephone service. As the Federal Communications Commission determined in its 2013 Report and Order,¹ these payments have caused prisoners and their friends and families to subsidize state expenses not related to telephones, such as staff salaries and benefits, personnel training, and general revenues.

There are many reasons that reasonably priced telephone calls should be re-instated. Studies have shown that, like visitation, prisoners' telephone contact with their families and friends goes a long way towards reducing recidivism for the prisoner. In family members, the lack of regular contact between incarcerated parents and their children is linked to truancy, homelessness, depression, aggression, and poor classroom performance in children.² Prisoners' access to reasonably priced telephone calls is also vital to legal service providers. The average reading level in Michigan prisons is below the eighth grade, making it far easier for prisoners to communicate by telephone than by mail.

This article considers how site commission payments were introduced and operate in Michigan.

Establishment of Site Commissions

In 1991, the State of Michigan began charging the telephone companies a commission, which it interchangeably called "premises fees."³ Michigan contracted with four

1 Federal Communications Commission, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-113 (Sept. 26, 2013) para. 3.
2 FCC Report and Order, 13-113 (n. 1) paras. 2, 131.
3 *E.g.*, the contract between the State of Michigan and Sprint, No. 07B1001567, May 21, 2001, p. 10; MDOC Operating Procedure APA-05.03.130, Telephone Commissions (Nov. 26, 2001; rescinded Apr. 21, 2009).

Walen, Enclosure 7, page 1

\$7.85 any time of day, and a fifteen minute interstate call cost \$17.34. The prices for intraLATA calls included a \$2.00 surcharge assessed at the point the called party took the call. The surcharges on intrastate and interstate calls were \$2.95 and \$3.99, respectively. When a call was dropped, the bill was the surcharge plus the minutes. Refunds were possible, but getting a refund involved such a run-around from the telephone company that few people pursued them.

Elimination of Site Commissions

In 2007, a years-long lobbying effort by Michigan CURE (MI-CURE), American Friends Service Committee (AFSC), and Citizens' Alliance on Prisons & Public Spending (CAPPS)⁷ paid off. Michigan's legislature incorporated language into the FY 2007-2008 Corrections Appropriations bill as proposed by the State Bar of Michigan Prisons and Corrections Section:

Any contract for prisoner telephone services entered into after the effective date of this act shall include a condition that the fee schedules for prisoner telephone calls, including rates and any surcharges other than those necessary to meet special equipment costs, be the same as fee schedules for calls placed from outside of correctional facilities.⁸

The same language was carried forward into the Corrections Appropriations bills through FY 2011-2012.⁹

The Prisons and Corrections Section's position paper explained that "special equipment costs" meant the costs of equipment needed for monitoring and recording of prisoner telephone calls under M.C.L. § 791.270. Because under the contract the telephone company rather than the State assumes that cost, there was no longer

any acceptable rationale for the high commissions to the MDOC.

From August 1, 2008 until mid-June of 2011, the rates for prisoners' calls were as follows: collect and prepaid collect calls \$0.12 per minute intrastate and \$0.15 per minute interstate; debit calls \$0.10 per minute intrastate and \$0.12 per minute interstate. International debit calls were \$0.50 per minute. All taxes were included in these prices and nothing was kicked back to the State.

Site Commissions Return Under A New Name

In 2010 Michigan solicited bids for a new prisoner telephone contract,¹⁰ and in February 2011, Michigan awarded the prisoner telephone contract to the current provider, Public Communications Services, Inc. (PCS) of Los Angeles, California, a wholly-owned subsidiary of Global Tel-Link. The contract does not expressly contain any reference to the Corrections Appropriations bill that bars "any surcharges other than those necessary to meet special equipment costs."¹¹ Under the contract, PCS provides all hardware and software for calling, monitoring, and recording prisoner telephone calls. The "base rate" for these services is \$0.0393 per minute for collect and prepaid collect calls (local, intrastate, and interstate), and \$0.0343 for debit calls (local, intrastate and interstate). The base rate for debit-only international calls is \$0.4995 per minute.

Two months later, the State and PCS increased the rate charged on prisoner telephone calls. Local, intrastate, and interstate calls on which the base rate is under \$0.04 per minute were increased to between \$0.18 and \$0.23 per minute, plus taxes. The new rate includes two surcharges. The first is \$0.0075 per minute on all calls to pay for a "Key Word Search Addition" to the monitoring and recording software for the prisoner telephones. The second is a surcharge that varies from \$0.1382 per minute to \$0.2430 per minute, depending on the type of call, to pay for the "Special Equipment Fund Addition."

The proceeds of the Special Equipment Fund are divided between the State and the telephone company

7 Information about these not-for-profit advocacy organizations is available at their respective websites: MI-CURE, www.mi-cure.org; Michigan AFSC Criminal Justice Program, www.prisoneradvocacy.org; CAPPS, www.capps-mi.org.

8 2007 Mich. Pub. Acts 124, § 219; Prisons and Corrections Section of the State Bar of Michigan, Report on Public Policy Position, "Prisoner Telephone Calls", adopted March 4, 2006, available at <http://www.michbar.org/prisons/pdfs/TelephonePosition.pdf>.

9 2008 Mich. Pub. Acts 245, § 219; 2009 Mich. Pub. Acts 114, § 119; 2010 Mich. Pub. Acts 110, § 119; 2011 Mich. Pub. Acts 63, § 219 (enrolled House Bill 4526).

10 Request for Proposal No. 071I0200002, Inmate Telephones.

11 Contract between the State of Michigan and Public Communications Services, Inc., No. 071B1300208 (Feb. 9, 2011) (PCS Contract of 2011).

not to use it.¹⁹ In addition to cell phone detection, the MDOC's Five-Year Plan for spending its share of the Special Equipment Fund includes Tasers, handheld radios, integrated camera/perimeter lighting systems, ballistic vests, electronic round tracking, integrated personal protection systems, software licensing, and contingency and Department of Technology, Management and Budget's (DTMB) fees.²⁰ For all practical purposes, the Special Equipment Fund is a means of raising revenue for things other than monitoring and recording the prisoner telephone system. The Executive Summary to PCS's Telephone Pricing Clarification provides:

Understanding that budgets are shrinking for all State agencies, as part of our Best and Final Offer, PCS is also willing to work with the MDOC to create a Special Equipment Fund to help bridge any potential budget shortfalls. The amount of this fund can be set at the discretion of the MDOC.²¹

This spending has been questioned by the Michigan NGOs that advocate on behalf of prisoners and their families.²² For example, MI-CURE asks:²³

Why have we spent even \$1 on Tasers, let alone the \$1 million proposed by the MDOC? . . . [MDOC spokesman Russ] Marlan testified [before the House Judiciary Committee] that there is an expectation that prisoners will behave themselves and follow the rules laid out by the department. If that system has worked so well, why do we need Tasers?

Within the past few years, the MDOC has reduced perimeter surveillances of its facilities, arguing that those were unnecessary. Why then, must we spend \$9 million for integrated camera/perimeter lighting in 18 prisons?

MDOC (Embarq, Global, Unisys, PCS, Pinnacle and Securus) by the Citizens Alliance on Prisons & Public Spending (CAPPs) and Michigan CURE (June 2011).

19 It was among the available options in the PCS Contract (n. 11), Exh. 6-P, Pricing for Optional Services, Special Equipment Fund, but was not adopted in the subsequent change order to the contract. See Change Notice No. 1 (Apr. 23, 2011) to the PCS Contract of 2011 (n. 11) (Change Notice No. 1).

20 Russ Marlan, MDOC Executive Bureau Administrator, Letter to Kay D. Perry, Executive Director, MI-CURE (Jan. 10, 2013), Enclosure, "Special Equipment Fund".

21 CAPPs, Consensus, Fall 2011, p. 13.

22 Including those mentioned in note 7.

23 MI-CURE NEWS (February 2013), p. 1.

Citizens of the state are not expecting corrections officers, parole agents, or probation agents to perform as police officers. Why are we spending \$1 million for [ballistic vests]?

Why must incarcerated persons and their loved ones purchase \$900,000 worth of equipment to ensure that officers are performing their rounds as required?

The department has had personal protection systems for years . . . Why must they now spend \$16.4 million on integrated personal protection systems? How would the new system have prevented previous problems?²⁴

The MDOC abandoned the pretense of cell phone detection. In FY 2012-2013 it requested, and the Legislature approved, use of the Special Equipment Fund to buy Tasers and "Personal Protection Devices" used for prison staff and program volunteers.

Even these limits have been lifted from the Corrections Appropriations bill for the current fiscal year: \$6 million for unspecified "capital outlay"; \$5.8 million for unspecified "operations support"; and \$2 million for counseling programs such as the "Violence Prevention Program," "Thinking For Change," and sex offender treatment.²⁵ The MDOC reports that "capital outlay" is integrated personal protection systems at four prisons and "operations support" includes \$5.3 million for integrated camera/perimeter lighting systems and software licensing at four prisons and \$500,000 for Tasers, stun-cuffs, radios, vests, and, they say, cell phone detection.²⁶

The PCS Share of the Special Equipment Fund

At the low end estimate of 6.25 million minutes billed monthly, the PCS share of the Special Equipment Fund surcharge is \$278,812.50 per month. The MDOC denies that this share is a management fee:

[The management fee] is a holdback to cover the vendor's expenses associated with the cost of transporting, processing and billing inmate

24 *Ibid.*

25 FY-2014 Corrections Appropriations Bill, 2013 Mich. Pub. Acts 59, Art. V, Part I, §§ 105-112, Part II, § 219(2).

26 MDOC Report to the Legislature, Pursuant to 2013 Mich. Pub. Acts 59, § 219(3), Special Equipment Fund Revenues and Expenditures (Feb. 1, 2014).

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STATE OF MICHIGAN
DEPARTMENT OF CORRECTIONS
LANSING

DANIEL H. HEYNS
DIRECTOR

DIRECTOR'S OFFICE MEMORANDUM 2014 – 8

EFFECTIVE: January 1, 2014

DATE: December 30, 2013

TO: Executive Policy Team
Administrative Management Team
Wardens

FROM: Daniel H. Heyns, Director

SUBJECT: PD 05.03.130 "Prisoner Telephone Use"

SUPERSEDES 2013- 11(effective 01/01/13)

The Department entered into a contract with Public Communications Services (PCS) in 2011 to provide telephone services to prisoners. As part of PCS telephone services, prisoners may call the first 20 personal numbers the prisoner chooses to call each quarter (i.e., Jan-Mar; Apr-Jun; Jul-Sep; Oct-Dec) unless the number is blocked in accordance with PD 05.03.130. The first 20 personal numbers called each quarter will become the prisoner's "Personal Allowed Numbers" (PAN). Prisoners also may call numbers on the universal list. Staff have no responsibility for verifying or approving the numbers on a prisoner's PAN except as set forth in this Director's Office Memorandum.

Prisoners are prohibited from calling the victim of an offense for which the prisoner is serving unless the victim authorized the call in writing as set forth in PD 05.03.130. Prisoners who attempt to call a victim who they are not authorized to call shall be subject to discipline as set forth in PD 03.03.105 "Prisoner Discipline". In addition, the prisoner may have his/her telephone privileges restricted as set forth in PD 05.03.130.

At the beginning of each quarter, all personal telephone numbers on a prisoner's PAN will be reset unless the number is not monitored; a number that is not monitored will remain on a prisoner's PAN until s/he requests that the number be deleted or changed, the number is blocked under PD 05.03.130, or the number has not been called for at least five years. This means that a new PAN will be created each quarter based on the first 20 personal numbers the prisoner calls during that quarter reduced by any non-monitored telephone numbers remaining on the PAN. (See information below for additional requirements regarding non-monitored calls.) This will enable prisoners to add or change telephone numbers of those they want to call by simply calling a new or different number each quarter. As a result, the only PAN changes that will be allowed during a quarter are as follows:

Walén, Enclosure 9, page 1