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July 14, 2015

**Via ECFS**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street SW  
Room TW-A325  
Washington, DC 20554

**Re: Written *Ex Parte* Communication  
WC Docket No. 12-375; Inmate Calling Services**

Dear Ms. Dortch:

The National Sheriffs' Association (NSA), by its attorney, hereby submits a written ex parte presentation in the above-referenced docket concerning compensation for Sheriffs and jails for the costs incurred to allow access to inmate calling services. Specifically, NSA responds to the alternative compensation methodologies discussed in recent ex parte letters filed by Mr. Darrell Baker and Mr. Andrew Lipman. NSA also submits a proposed definition of "jail" for the purpose of establishing compensation for Sheriffs and jails.

In his July 8, 2015 letter, Mr. Darrell Baker suggests that the Commission adopt a compensation amount of \$0.02 per minute for prisons and \$0.04 per minute for jails based on an analysis of current average commission payments. According to Mr. Baker, compensation at the proposed rates will result in a substantial reduction in payments to correctional facilities from current commission levels.

In his July 6, 2015 letter, Mr. Lipman<sup>1</sup> states that the Commission should "adopt a formula approach to determining the maximum reasonable site commission payment" that ICS providers could pay to correctional facilities, including jails, "instead of going down the burdensome and potentially endless path of trying to analyze costs on a site-by-site basis." Mr. Lipman suggests that based on the record evidence, "including the studies submitted by GTL and other parties," the Commission should find that ICS providers may pay a maximum site commission of \$0.01 for facilities with an Average Daily Population (ADP) of 1,000 or greater; \$0.02 for facilities with an ADP of 300 to 999; and \$0.03 for facilities with an ADP of less than 300. It is not clear how Mr. Lipman arrived at these amounts since he does not identify the cost data or the formula he used to determine them.

While a formula or proxy-type method to determine compensation for correctional facilities may have merit, it should take into account the differences between prisons and jails and between small and larger jails. As demonstrated in the record, there are a number of differences between jails and prisons which result in a higher cost to Sheriffs and those operating jails to provide the security and administrative duties necessary to allow ICS in jails. Among those differences, jails are typically operated by local jurisdictions that are under the authority of the county government or an elected sheriff and they do not have the economies of scope and scale of state or federal prisons.

Further, jails contain people who have been arrested but not convicted and, as a result, they experience a much greater number of admissions. The U.S. Department of Justice (DOJ) found that although the number of inmates confined in county and city jails was an estimated 744,600 at midyear 2014, jails admitted about 11.4 million persons during the 12-month period ending June 30, 2014.<sup>2</sup> This contrasts with prisons which had only 631,200 admissions in 2013, and a total inmate population of approximately 1.6 million. Among other things, this leads to an increase in the administrative duties and cost experienced by jails for duties such as answering questions from new inmates and the people with whom they communicate about the ICS system, blocking and unblocking numbers, and enrolling inmates in voice biometrics, where available.

The DOJ statistics also show that smaller jails have a greater number of admissions and much higher weekly turnover rates than larger jails. For example, according to DOJ, jails with 1000 or more ADP had a weekly turnover rate of 48.5% and jails with an ADP of 49 or fewer had a weekly turnover rate of 104.2%. With respect to admissions, in 2014, large jails (1000 and more ADP) had 4,498,364 admissions and an ADP of 352,888 and the smallest jails (49 or fewer

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<sup>1</sup> Mr. Lipman also states that "NSA is now in agreement with the undersigned that the appropriate way to deal with site commissions is for the FCC to permit ICS providers to recover in their rates a limited, reasonable amount to cover payment of commissions, based upon the size of the correctional facility." This is not entirely correct. NSA supports a per minute amount for Sheriffs and jails that would be in addition to the ICS rate established by the Commission. The Commission should make clear that ICS providers must remit the facility compensation to the correctional facilities.

<sup>2</sup> Jail Inmates at Midyear 2014, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, dated June 2015, at 1 (page 1 attached hereto, highlighting added).

ADP) had 655,720 admissions and an ADP of 23,490.<sup>3</sup>

Smaller facilities also experience higher per inmate security-related expenses. According to GTL's consultants, Stephen Siwek and Christopher Holt, "[t]he data in the GTL sample suggest that investigative ICS costs per inmate tend to decrease with the size of the facility or contract."<sup>4</sup>

To reflect these differences, compensation for jails should be higher than compensation for prisons and compensation for smaller jails should be higher than compensation for larger jails. Based on the DOJ statistics, a reasonable formula or proxy-type per minute compensation for Sheriffs and jails that would be added to the inmate calling service rate established by the FCC for ICS providers, is as follows:

<u>ADP</u>	<u>Jail Per Minute Compensation</u>
1-349	\$0.08
350-2,499	\$0.05
≥2,500	\$0.02

As shown in NSA's ex parte letter dated June 12, 2015 and the NSA cost survey, the actual cost in many jails exceeds these compensation amounts. Therefore, there is a risk that many jails and, in particular, small jails, may reduce access to inmate calling service because of a lack of funding for the associated cost of allowing access to the service. Numerous Sheriffs have filed letters in this proceeding making this very point. As NSA has argued, fair compensation for Sheriffs is necessary to ensure that these services remain available to inmates.

Finally, in order to implement the compensation structure recommended by NSA, NSA proposes the following definition of "jail."

A jail is a confinement facility:

1. administered by a local law enforcement agency, including a city, county, parish (in Louisiana) or independently elected sheriff; or
2. that confines persons before adjudication.

Respectfully submitted,

/s/ Mary J. Sisak

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<sup>3</sup> The full DOJ chart is attached.

<sup>4</sup> Global Tel\*Link Corp. (GTL) Reply Comments, Attachment 2 at 7, filed Jan. 27, 2015. This study also is useful to show the increase in cost for jails versus prisons. However, it is less useful to determine the amount of the cost because it is based on a sample size of only seven jails.