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October 5, 2015

ELECTRONICALLY FILED

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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

Dear Ms. Dortch:

Pursuant to 47 C.F.R. § 1.1206(b)(1), the undersigned submits this written *ex parte* presentation, on behalf of clients with an interest in the provision of Inmate Calling Services (ICS), for filing in the above-referenced docket.

The undersigned has consistently urged the FCC to adopt ICS reforms that will curb the payment of site commissions and argued that failure to do so jeopardizes the likelihood the FCC's important ICS reforms would survive judicial review. The FCC's proposed reforms,¹ rather than bar or limit site commissions, instead rely on rate caps to restrain excessive site commissions, which are "strongly discouraged."² But the FCC has already traveled down this path and it lead to failure.

After the FCC adopted interim rate caps on ICS in 2013, "failures in the ICS market continue[d]" due to "pressure to pay site commissions that exceed the direct and reasonable costs incurred by the correctional facility in connection with the provision of ICS."³ The FCC plainly admitted that

¹ Federal Communications Commission, FACT SHEET: Ensuring Just, Reasonable, and Fair Rates for Inmate Calling Services, (rel. Sept. 30, 2015).

² *Id.*

³ *Rates for Interstate Inmate Calling Services*, Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 13170, 13180 ¶ 20 (2014) ("*Second FNPRM*").

its rate caps “did not completely address the problems in the ICS marketplace.”⁴ Concluding that while the rate caps were in effect the level of site commissions increased and in some cases rose as high as “as 96% of gross revenue.”⁵ In light of these developments, the *Second FNPRM* acknowledged “that site commissions are the primary reason ICS rates are unjust and unreasonable and ICS compensation is unfair” *Id.*

The FCC’s failure — again — to rein in site commissions is arbitrary and capricious decision-making because the FCC cannot “entirely fail[] to consider an important aspect of the problem.”⁶ By neglecting to curb site commissions, the FCC is ignoring the most important aspect of the problem.

And it is evident that site commissions will continue to drive up ICS costs and rates. Last week’s announcement from the American Jail Association (“AJA”)⁷ to its members aptly illustrates that the correctional facilities perceive the FCC’s proposed rules as a victory allowing them to continue demanding excessive site commissions from ICS providers. The AJA alert’s headline emphasizes that site commissions are “allowed,” suggesting that its members have no intention of changing their practices that drive up the rates for ICS to unreasonably high levels. AJA’s statement says, in pertinent part:

Site commissions are “discouraged” but not restricted if such payments by ICS providers fit within the rate caps. This is a 180 degree reversal of where we began our discussions with the FCC on the ICS issue. We believe the FCC now better understands the need for facilities to recoup some costs directly related to ICS in jails.⁸

The FCC must rethink its approach. It must not approve ICS reforms that fail to tackle the most pressing source of high ICS rates. Site commissions must either be prohibited entirely or else limited by a specific per minute cap. Otherwise the FCC’s ICS reforms will continue to cause unreasonable rates for ICS and are unlikely to survive review.

Please do not hesitate to contact the undersigned should you have any questions about this submission.

⁴ *Id.* ¶ 21.

⁵ *Id.* at 13182 ¶ 26.

⁶ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal citations omitted).

⁷ Attachment A, American Jail Association, AJAlert, “FCC proposed tiered ICS rates for jails; commissions allowed,” (Oct. 2, 2015).

⁸ *Id.*

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Sincerely,

/s/ Andrew D. Lipman

Andrew D. Lipman

Attachment