

*Law Offices*

October 6, 2015

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**By ECFS**

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

RE: *Ex Parte* Notice  
*Rates for Interstate Inmate Calling Services*  
**WC Docket No. 12-375**

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the FCC's rules, the Martha Wright Petitioners hereby submit the following response to the October 5, 2015 ex parte submission of Andrew D. Lipman on behalf of his anonymous ICS clients.

Mr. Lipman argues that the FCC's recently-announced treatment of site commissions will "lead to failure." His sole argument for this position is that the interim rate structure adopted in the August 2013 Report and Order did not solve "failures in the ICS market."

What Mr. Lipman ignores, perhaps inadvertently, is that the August 2013 Report and Order did not address unjust, unreasonable and unfair INTRASTATE ICS rates and did not address unjust, unreasonable and unfair ancillary fees. Instead, the FCC adopted interim interstate ICS rates while the other issues tabled for resolution in the forthcoming Second Report and Order. The FCC did not take action with respect to site commissions, and the record reveals that certain ICS providers currently pay site commissions to correctional authorities, while others do not.

The adoption of the announced treatment of site commissions will actually eliminate the confusion regarding site commissions, and put the responsibility of deciding whether to pay site commissions on the two parties that have the ability to negotiate such payment, i.e., the ICS providers and correctional facilities. More importantly, this decision eliminates the obligation to pay site commissions from ICS consumers through their unjust, unreasonable and unfair ICS rates and charges. ICS consumers **do not** have a seat at the table when ICS service agreements are negotiated, and **do not** have the opportunity to opt out from paying site commissions. ICS providers and correctional authorities **do** have the opportunity to negotiate these terms, and therefore they should have the responsibility to resolve this issue through the procurement process without shifting the impact of site commissions onto ICS consumers.

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What Mr. Lipman also ignores, perhaps inadvertently, is that the cost-based requirements for ICS rates and charges included in the August 2013 Report and Order, which would have limited his purported “failure” and would have given clear direction to ICS providers and correctional facilities, was appealed by the ICS providers and correctional facilities, and those rules are currently stayed pending resolution of this proceeding.

Thus, any confusion or purported short-term industry failure associated with the August 2013 Report and Order to address every aspect of the ICS industry falls squarely on the shoulders of the ICS industry and the correctional authorities who have sought to delay ICS reform for more than 15 years – most recently through their appellate litigation.

Threats of further appellate review and purported overruling of a future Second Report and Order must be weighed against the fact the FCC has determined that the fees and charges imposed on ICS consumers are unjust, unreasonable and unfair. These unjust, unreasonable and unfair rates and charges could have been eliminated by choice years ago if the ICS providers and correctional authorities had wanted to do so.

Instead, large ICS providers have advocated the adoption of ICS rates and charges that are substantially higher than their actual cost of providing those services, and correctional authorities have argued for a guaranteed funding mechanism whereby the ICS customer pays for the cost of their loved one’s incarceration. These parties have always had the ability to reduce the impact on ICS consumers and have elected not to do so. By Mr. Lipman’s logic, if a food truck was on fire, he would shift the blame for the damage caused by his client blocking the fire hydrant to the fire department for not having longer hoses.

In light of the choices made by ICS providers and correctional authorities, the FCC has the statutory obligation under Sections 4(i), 201, 205 and 276 to address the long history of unjust, unreasonable and unfair ICS rates and charges in the forthcoming Second Report and Order. Should there be any questions regarding this submission, please contact undersigned counsel.

Respectfully submitted,



Lee G. Petro

*Counsel for Martha Wright Petitioners*

Marlene H. Dortch, Secretary

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cc (by/email):

Chairman Tom Wheeler  
Commissioner Mignon Clyburn  
Commissioner Jessica Rosenworcel  
Commissioner Ajit Pai  
Commissioner Michael O'Rielly  
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