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October 9, 2015

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

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

Dear Ms. Dortch:

We are General Counsel for the Louisiana Sheriffs' Association and represent many Louisiana Sheriffs directly as well. On behalf of the Association and its member sheriffs, we hereby file this *ex parte* communication in connection with the above-referenced proceeding. The LSA and its 64 Member Sheriffs support and join the comments and reply comments filed by the National Sheriffs' Association in this proceeding. The purpose of this filing is to submit additional information considered by the LSA and its member sheriffs to support the NSA's position that Sheriffs must be allowed to recover their costs if ICS services are to continue to be widely available in jails.

The bedrock principle that often gets lost in ICS discussions is the concept that inmates and detainees have no constitutional right to free access to contact with the outside world through visitation or telephonic communication. *See Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293, 2301, 132 L.Ed. 2d 418 (1995); *see also Holloway v. Magness*, 666 F.3d 1076, 1079-1080 (8th Cir. 2012, *cert. den.*, ___ U.S. ___, 133 S.Ct. 130, 184 L.Ed.2d 62 (2012)). This Commission and all concerned parties must remember the context of ICS. The inmates and detainees that are the users of ICS are incarcerated for significant criminal justice and public safety reasons. The Supreme Court recognizes the impositions of incarceration on the rights of imprisoned persons, for while "prisoners do not shed all Constitutional rights at the prison gate, ... "[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." *Sandin*, 115 S.Ct. at 2301; *quoting Jones v. North Carolina*, 433 U.S. 119, 97 S.Ct. 2532, 2537 53 L.Ed.2d 629 (1977); *in turn quoting, Price v. Johnston*, 334 U.S. 266, 68 S.Ct. 1049, 1060, 92 L.Ed. 1356 (1948).

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Along this line of reasoning, federal courts have held that prison administrators do not have a First Amendment obligation to provide inmates with access to ICS. *See Holloway, supra*. The Eighth Circuit Court of Appeal, in *Holloway*, observed that prison officials “had no obligation to provide that service at a particular cost to users.” *Id.* The *Holloway* case rejects the concept that ICS revenues paid to prison administration are “free revenue streams” to prisons, finding instead that this revenue stream represents a portion of the total cost of the telephone service that a prison chooses to provide to its inmates. The Eighth Circuit went on to observe that “the Constitution does not prohibit charging prisoners for essential prison services, at least in the absence of a showing that the result is a severe deprivation of a fundamental right.” *Holloway*, 666 F.3d at 1080 (citations omitted). In the *Holloway* case, there was evidence which established that the inmates there retained many alternative means with which they could exercise their First Amendment rights, from personal visitation to correspondence through the mail. The court in *Holloway* made an enlightening distinction in the approaches to the issue of ICS rates when it declined to look at ICS rates as *restrictions* on speech, but rather recognized these rates as part of the cost of *facilitating* speech. *Id.*

The access that is provided by ICS, therefore, is not an entitlement, but a service provided to the inmate population by the jail operators, including the Sheriffs of the State of Louisiana. The benefits to the inmate population and their relatives and friends are hopefully significant. Studies referenced in this Docket and related dockets at the state and national levels indicate that there are also benefits to society provided by inmate access to family and friends in the form of reduced recidivism. Nevertheless, we must never forget that there is also a negative side to ICS.

Experience tells us that ICS is also a fertile ground for more nefarious conduct than just checking on grandma. Criminal enterprises, witness intimidation, financial scams, and other types of harassment do occur by way of ICS. In Louisiana, the Sheriffs, the Department of Public Safety, and other elements of law enforcement have the responsibility to detect and prevent such illegal activity in order to protect the law-abiding public and innocent victims. Fortunately, today's technology allows law enforcement the means to utilize ICS features to serve these public safety goals. ICS cannot and should not be analyzed in the relatively sanitary world (in comparison) of other telecommunications services.

ICS and law enforcement's concomitant responsibilities do not come without costs to taxpayers. The payment by ICS operators of commissions to their law enforcement partners in this public safety context help to offset legitimate and necessary law enforcement efforts in these regards. It is important to note that although the inmate telephone systems are there to provide a service to inmates and their families, they provide an even greater service to the victims and to the community at large with their sophisticated security features. In Louisiana alone, contraband has been intercepted, escapes have been prevented, and escapees have been apprehended; criminal enterprises have been shut down; and assaults on persons outside the secure facilities have been prevented - all with the help of the advanced technology provided by these ICS systems.

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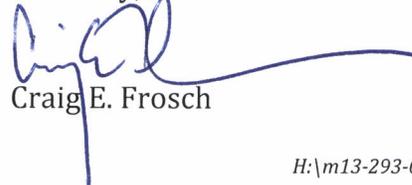
ICS and the revenues provided to the prison administration thereby enable law enforcement to address security issues head-on, with public safety and institutional security always as a top priority. The revenues generated through inmate phone services help to provide manpower and other technology to utilize these security features and to provide other inmate services. The persons benefitting from these services therefore help to provide funding therefor. In this arrangement, the ultimate users properly pay the fees that are used to combat the opportunities for abuse that are created by the broad beneficial access allowed.

Arbitrary cuts in rates, fees and commissions raise the question of who will foot the bill when things like "commissions" are regulated out of existence, as some have proposed? The taxpayer is the jail's only other source of revenue. Capping the rate, indirectly and artificially, deflects costs from the offender, **who caused the costs to be incurred in the first place**, to the taxpayer. Louisiana taxpayers are already picking up the cost to house, feed, provide medication, and mental health services for inmates. Jail budgets are strained as it is. Significant cuts cannot help but adversely affect jail operations at all levels.

Inmate calling is a discretionary service in the parish jail facilities in Louisiana and it is allowed for the benefit of inmates and their families. If the sheriffs and jail administrators are not permitted to recover the costs associated with the provision of ICS, then this discretionary access to phones by inmates and detainees may be significantly limited or eliminated altogether due to cost factors associated with institutional security and public safety functions that are necessary adjuncts to ICS. Currently, the Louisiana Sheriffs have the incentive to allow significant access to ICS service and inmates are able to make calls for most of the day and early evening each day. Denying payments to jails or restricting such payments to levels that do not at least cover the direct costs incurred by Sheriffs and jail administrators in connection with the provision of such services, will have the effect of reducing the incentive and may adversely affect the ability to continue to allow ICS in this manner.

If the cost of allowing ICS must compete with all other budget needs, it may not be funded. However, if the cost of allowing ICS has its own source of funding, it is less likely to be impacted by the budget process. Accordingly, Sheriffs who incur costs in allowing ICS in jails must be allowed to recover their costs to be able to continue to allow ICS at current levels and to encourage the expanded deployment of ICS in jails.

Sincerely,



Craig E. Frosch

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