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October 14, 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 regulation of Inmate Calling Services (ICS), for filing in the above-referenced docket. This letter responds to the letter from the Martha Wright Petitioners, dated October 6, 2015.¹

The undersigned has consistently urged the Commission to either bar the payment of site commissions altogether or to bar all payments to correctional facilities other than a minimal per-minute facility administrative support charge.² The undersigned believes that absent such a requirement the FCC's rate caps will fail to reform the correctional facilities' practice of demanding site commissions from ICS providers; will result in rates that are confiscatory and will result jeopardize the FCC's order on judicial review.

The Martha Wright Petitioners ("Petitioners") take issue with this argument and instead contend that the FCC's proposed reforms³ will work as the FCC intends despite the failure to regulate site

¹ Letter from L. Petro, Counsel for Petitioners to M. Dortch, FCC (Oct. 6, 2015) ("Petitioners' Oct. 6 *Ex parte*").

² See e.g., Letter from A. Lipman, Morgan Lewis & Bockius, LLP to M. Dortch, FCC at 4-5 (Sept. 21, 2015).

³ See Federal Communications Commission, FACT SHEET: Ensuring Just, Reasonable, and Fair Rates for Inmate Calling Services, (rel. Sept. 30, 2015).

commissions because the proposed order also caps intrastate ICS rates as well as ancillary fees.⁴ Petitioners also contend that the FCC’s proposed reforms “eliminate” ICS users’ “obligation to pay site commissions ...through ICS rates.”⁵

This is simply not accurate. The record in this proceeding demonstrates that absent a clear and unequivocal prohibition on site commissions, correctional facilities will continue to demand site commissions from ICS providers. Even after the FCC imposed interim rate caps and attempted to regulate interstate site commissions in the *2013 Inmate Calling Order*, the correctional facilities continued to insist on their right to demand site commissions. Petitioners themselves pointed this out in their filings, submitting an example of an ICS bid evaluation document from August 2014 that awarded an ICS contract based on the highest site commission stated as a percentage of gross revenue.⁶ Further, the record shows that in mid-2014, subsequent to the *2013 Inmate Calling Order*, correctional facilities continued to insist on payment of site commissions, including on interstate revenue, and vowed to cancel contracts with providers that failed to pay such site commissions.⁷

Nothing in the record suggests that capping intrastate ICS rates or regulating ancillary fees will alleviate the correctional facilities’ demands for site commissions. Instead it demonstrates that the presence of rate caps on both intrastate and interstate ICS calls is unlikely to result in correctional facility restraint regarding site commissions. The FCC itself concluded that the overall level of site commissions increased after the *2013 Inmate Calling Order*. If correctional facilities were simply seeking commissions on intrastate revenue to replace commissions from interstate revenue the level of site commissions on gross revenue, as reported by the Petitioners August 16, 2014 ex prate, would not have increased at all. This undermines any conclusion that the FCC’s proposed caps on intrastate ICS rate and ancillary fees will result in the elimination of site commissions.

Because the FCC’s proposed rules will unlikely succeed in stemming the correctional facility practice of demanding site commission payments, it is inevitable that ICS consumers will continue paying for such commissions through rates — or will be deprived of access to ICS when providers exit the market.

Indeed, Pay Tel articulated in a recent letter numerous ways that ICS providers, forced to pay site commissions while complying with the FCC’s rate caps would develop “work arounds” that

⁴ Petitioners’ Oct. 6 ex parte at 1.

⁵ *Id.*

⁶ Letter from L. Petro, Counsel to Petitioners, to M. Dortch, FCC, at 1 and Attach (Aug. 16, 2014).

⁷ Letter from S. Joyce, Counsel for Securus, to J. Veach, Chief, Wireline Comp. Bur., FCC at 4 and Attachment B. (July 30, 2014).

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would “result in denial of the benefits of ICS reform to consumers.”⁸ Under such circumstances the undersigned agrees with Pay Tel that “rates charged to consumers [will] never fall below the maximum” authorized under the FCC’s caps and the industry will have the incentive to “find new ways to divert consumer funds away from regulated fees and services.”⁹

If ICS providers cannot pay site commissions because of artificially low rate caps imposed by the FCC they will exit the business and ICS will not be available for the ICS consumers.¹⁰ It is plainly in the interests of ICS consumers that the FCC adopt comprehensive reforms that address both site commissions and ICS rates. Regulating one without regulating the other is a recipe for failure.

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

Sincerely,

/s/ Andrew D. Lipman

Andrew D. Lipman

⁸ Letter from M. Trathen, Counsel for Pay Tel to M. Dortch, FCC at 2 (Oct. 8, 2015) (“Pay Tel Oct. 8 *Ex parte*”).

⁹ *Id.*

¹⁰ Letter from S. Joyce, Counsel for Securus, to M. Dortch, FCC at 1 (Oct. 7, 2015) (stating that “if adopted, the rates and rules in the Fact Sheet could be ‘a business-ending event’ for the company); Pay Tel Oct. 8 *Ex parte* at 1 (the FCC’s proposed “regulatory environment would not be sustainable for companies like Pay Tel.”).