



January 19, 2016

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-B204
Washington, DC 20554

**RE: International Rate Regulation for Inmate Calling Services:
WC Docket No. 12-375**

Dear Secretary Dortch,

LatinoJustice PRLDEF (LatinoJustice) and the American Immigration Lawyers Association (AILA) file a joint Comment in the above-referenced proceeding.

LatinoJustice is one of the nation's leading nonprofit civil rights public interest law organizations. It works to advance, promote and protect the legal rights of Latina/os throughout the nation. Its work is focused on addressing systemic discrimination and ensuring equal access to justice in the advancement of immigrant rights, voting rights, housing rights, educational equity, language access rights, workplace justice, criminal justice reform and rights restoration for currently and formerly incarcerated Latina/os, seeking to address all forms of discriminatory bias that adversely impact Latina/os. Over 75% of immigration case completions in 2014 involved Latina/o individuals.¹ Founded in 1946, AILA is a voluntary bar association of more than 14,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. AILA's mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field.



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¹ As used in this Comment, the terms "Hispanic" or "Latino" are used interchangeably as defined by the U.S. Census Bureau and "refer to a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race." Karen R. Humes, Nicholas A. Jones & Roberto R. Ramirez, *Overview of Race and Hispanic Origin: 2010*, 2010 Census Briefs, 1, 2 (March, 2011), <http://www.census.gov/prod/cen2010/briefs/c2010br 02.pdf>; see also U.S. Department of Justice, Executive Office of Immigration Review (USDOJ EOIR) FY 2014 Statistical Yearbook at D1, Immigration Courts: Initial Case Completions by Country of Nationality (published March 2015), <http://www.justice.gov/sites/default/files/eoir/pages/attachments/2015/03/16/fy14syb.pdf> (observing that "Mexico and Central American countries are consistently among the predominant nationalities of these completions," [noting Mexico at 38.79%, El Salvador at 11.20%, Guatemala at 10.97%, Honduras at 10.08%, Ecuador at 1.65%, Dominican Republic at 1.42% and Cuba at 1.32%, etc.]).

The exorbitant phone rates and fees charged in state and local county jails across the United States create a significant hardship for immigrant detainees. There is no right to government-paid or appointed counsel in immigration proceedings,² and *pro se* immigrant detainees heavily rely on phone communication with family, friends, and experts to gather evidence and testimony. The Order³ adopted by the Federal Communications Commission (FCC or “Commission”) on October 22, 2015 provides some much-needed relief to incarcerated individuals and their families. We celebrate the Order’s accomplishments and what these lower rates will mean for thousands of families across the country.

However, it does not provide relief for all families without the regulation of international call rates. Many incarcerated individuals, including immigrant detainees, are still unable to stay in touch with their loved ones abroad under the current Order. The burden of egregiously high phone rates weighs particularly heavily on the immigrant detainee population and their loved ones. Without reasonable access to international calls, immigrant detainees’ chances of successfully seeking immigration relief are significantly diminished.

In response to the Commission’s Third Further Notice of Proposed Rulemaking, we submit that the regulation of international phone rates is essential for the Order to fully realize its intentions. Regulation of international phone rates is critical to promote access to justice for all detainees and to eliminate the pervasive price extortion that has long plagued the prison phone industry. Without it, phone companies may try to evade the lowered domestic rates by charging exorbitant international rates.

Most importantly, leaving international phone rates unregulated debilitates immigrant detainees who need to contact friends and family abroad—as well as experts and institutions in other countries—to gather evidence essential to a fair immigration proceeding.

² Although there is no broad right to government-paid appointed counsel in immigration proceedings (Immigration and Nationality Act § 240(b)(4)(A), 8 U.S.C. § 1229a(b)(4)(A) (2012) (“[T]he alien shall have the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing who is authorized to practice in such proceedings.”); 8 U.S.C. § 1362 (2012) (any person charged with being “removable” is statutorily entitled to legal representation, yet only “at no expense to the Government.”) it should be noted that there may be special exceptions available for indigent immigrant detainees with significant mental impairments. *Franco-Gonzales v. Holder*, 767 F. Supp. 2d 1034 (C.D. Cal. 2010) (recognizing the due process rights of indigent immigrant detainees with serious mental impairments); Press Release, U.S. Dep’t of Justice, Department of Justice and the Department of Homeland Security Announce Safeguards for Unrepresented Immigration Detainees with Serious Mental Disorders or Conditions (Apr. 22, 2013), <http://www.justice.gov/eoir/pages/attachments/2015/04/21/safeguardsunrepresentedimmigration-detainees.pdf> [<http://perma.cc/HR36-3HET>]. More recently, advocates have argued that due process must extend to a right to government-appointed counsel for minors in immigration detention. See *Complaint--Class Action at 23-24, J.E.F.M. v. Holder*, No. 2:14-cv-01026 (W.D. Wash. July 9, 2014); in September 2014, the U.S. Department of Justice, together with the Corporation for National and Community Service, announced \$1.8 million in funding to provide approximately 100 lawyers and paralegals to represent children in immigration proceedings. Press Release, U.S. Dep’t of Justice, Justice Department and CNCS Announce \$1.8 Million in Grants to Enhance Immigration Court Proceedings and Provide Legal Assistance to Unaccompanied Children (Sept. 12, 2014), <http://www.justice.gov/opa/pr/justice-department-and-cnacs-announce-18-million-grantsenhanceimmigration-court-proceedings> [<http://perma.cc/FDY6-3WD2>].

³ *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Notice of Proposed Rulemaking, WC Docket 12-375, FCC 15-136 (adopted Oct. 22, 2015) (*2015 Order or 2015 FNPRM*).

We urge the FCC to adopt a rate cap of 16 cents per minute for all international calls from all correctional facilities and immigration detention centers in the United States. At a minimum, the FCC should adopt these rate caps for international calls in any public or private facility used to detain individuals pursuant to any agreement, contract, or subcontract with the Department of Homeland Security (DHS) and/or operated by DHS.

Adopting a rate cap of 16 cents per minute for all international calls would guarantee greater consistency with the 15 cent per minute international phone rate ICE Detainee Telephone Service Provider, Talton Communications⁴ ("Talton"), offers for landline calls from its designated facilities.⁵ It would also reduce the arbitrary discrepancies in the rates ICE detainees face at different facilities. The price immigrant detainees pay for international calls—a factor which can have serious consequences on their ability to seek immigration relief—should not depend on where the individual happens to be detained. Furthermore, a rate cap as low as 16 cents per minute for international calls is possible for state and local facilities given that Illinois Department of Corrections, for example, charges what results in 12 cents per minute for all domestic and international calls under contract with Securus Technologies, Inc.⁶

Comments

I. The Need for Regulating International Phone Rates in State and Local Facilities

The unreasonably high international phone rates in many state county jails across the United States and federally-run facilities prevent families from staying in touch and interfere with immigrant detainees' ability to adequately pursue relief in immigration proceedings. Immigrant detainees are particularly vulnerable to high international phone rates; they may have family ties in different countries around the world and rely on international calling to gather critical evidence for their immigration cases. Individuals seeking asylum in the United States, for instance, may frequently need to contact friends, family, and institutions in their country of origin or residence in order to gather documentation to prove hardship, past persecution, and country conditions. Furthermore, without a right to government-appointed counsel, detainees often have to make international calls to raise money from family members to help prepare for legal assistance, or even to help prepare for placement in another country after a deportation.⁷

⁴ Talton Communications is the ICE Detainee Telephone Service provider for 40 percent of the ICE average detainee population since 2010. Federal Communications Commission, Transcript of Workshop on Further Reform of Inmate Calling Services, Statement of Kevin Landy, Assistant Director, Office of Detention Policy and Planning, U.S. Immigration and Customs Enforcement, at 191:15-18 and 192:12-15 (July 9, 2014), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-328596A1.pdf.

⁵ *Id.* at 191:12-16 and 193:10-13.

⁶ Illinois Campaign for Prison Phone Justice of the Media Action Grassroots Network, "RE: WC Docket No. 12-375 Comments re Third Further Notice of Proposed Rulemaking 296-307," FCC Comment docket 12-375 (Jan. 19, 2016) ("From our research, we have found that state facilities can offer affordable rates for international calls that are comparable to domestic calls. As we found in the contract for the Illinois Department of Corrections (IDOC)—which houses more than 48,000 people—the cost for domestic and international calls is the same: \$3.55. We believe the FCC can set a rate for international calls which is equal, or closely comparable to, domestic rates.").

⁷ See generally Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 7 (2015); Lucas Guttentag & Ahilan Arulanantham, *Extending the Promise of Gideon: Immigration, Deportation, and the Right to Counsel*, ABA HUMAN RIGHTS MAGAZINE (Vol. 39, No. 4, 2013) (proposing to extend the recognition of a constitutional right to due process and a right to counsel for indigent

According to a 2012 report issued by the ACLU of Georgia which covered four immigration detention facilities in Georgia, “almost all detainees complained of the phone services being too expensive, sometimes prohibiting detainees from contacting their family members altogether.”⁸

Immigrant detainees are already at a serious disadvantage in removal proceedings. From 2007-2012, the majority of detained individuals were not represented, with some studies finding up to 63% of immigrant detainees unrepresented among immigration cases⁹; in 2014, despite national efforts among advocates to increase representation of indigent immigrant detainees, the number of unrepresented detainees remains inordinately high, with an estimated 45% of immigrant detainees continuing to go unrepresented, due to the time and various costs associated with securing effective representation. In a recent study, “detained immigrants with counsel obtained a successful outcome (i.e., case termination or relief) in 21% of cases, ten-and-a-half times greater than the 2% rate for their pro se counterparts.”¹⁰ High ICS rates exacerbate this problem by raising even more barriers for detained immigrants seeking relief under U.S. immigration law.

The data shown in Tables 1 and 2 below from different states illustrates the dire need for FCC regulation of international phone rates across the United States. Hudson County Correctional Facility, which has the capacity to hold 450 immigrant detainees, currently charges \$45 for a 15-minute international call—twenty times the cost of the same call from Elizabeth Detention Center and the San Diego Contract Detention Facility (SDCDF) which both contract with Talton—to a landline abroad. The stark difference illustrates openly how the current lack of regulation regarding international calling rates in detention facilities allows them to freely set rates that are not based on cost, thus permitting facilities and phone companies alike to collect revenue—and sizeable profit margins—at the expense of a population that remains one of the most vulnerable.

criminal defendants in *Gideon v. Wainwright*, 372 U.S. 335, 341 (1963), to civil immigration proceedings where deportation is a potential consequence); see also Leticia Miranda, *Dialing with Dollars: How County Jails Profit from Immigrant Detainees*, THE NATION, May 15, 2014 (“There is no right to court-appointed council if you’re an indigent immigration detainee,” confirms Claudia Valenzuela, associate director of litigation with the National Immigrant Justice Center based in Chicago. “So communicating with family or friends is extremely important because you have to get your own evidence. If you don’t have an attorney, you’re basically navigating alone.”)

⁸ See “Prisoners of Profit: Immigrants and Detention in Georgia” (May 2012), available at http://www.acluga.org/download_file/view_inline/42/244/.alf.

⁹ Eagly & Shafer, *supra* note 7, at 7 (“By looking at individual removal cases decided on the merits, we find that only 37% of immigrants had counsel during our study period from 2007 to 2012. Importantly, this percentage is lower than what is reported in government publications that do not rely on the proportion of cases with representation, but rather rely on the proportion of court proceedings with representation. Our research reveals that represented cases are more likely to have multiple proceedings in a single case and, therefore, a proceeding-based measurement technique artificially inflates representation rates.” [internal citations omitted]); Guttentag & Arulanantham, *supra* note 7 (“Superficially, any person charged with being ‘removable’ is entitled by statute to be represented by counsel—but only ‘at no expense to the Government.’ 8 U.S.C. § 1362 (2012). As a result, half of those who face the drastic sanction of deportation have no lawyers.” (citing USDOJ EOIR Fiscal Year 2011 (FY) Statistical Yearbook, G1)); cf., USDOJ EOIR FY 2014 Statistical Yearbook at F1, Immigration Courts: Initial Case Completions by Representation Status (published March 2015), <http://www.justice.gov/sites/default/files/eoir/pages/attachments/2015/03/16/fy14syb.pdf>.

¹⁰ Eagly & Shafer, *supra* note 7, at 9.

Table 1: International Rates in Immigration Detention Facilities Compared With Proposed Rates

Facility Operator & Capacity	Current Cost of a 15 Minute Call	Proposed Rate Cap
<i>Bergen-1259, NJ</i> Capacity for 195 detainees in ICE custody	\$19.80	\$2.40
<i>Hudson¹¹-2080, NJ</i> Capacity for 450 detainees in ICE custody	\$45.00	\$2.40
<i>San Diego Contract Detention Facility, CA</i> Capacity for 658 detainees in ICE custody	\$2.25 (to landlines) \$5.25 (to mobile phones)	\$2.40
<i>Elizabeth Detention Center, NJ¹²</i> Capacity for 300 detainees in ICE custody	\$2.25 (to landlines) \$5.25 (to mobile phones)	\$2.40

Similarly, in Peoria, Illinois, the international calling rate in its county facilities is 89 cents per minute plus an additional \$4.50 debit call operator surcharge, which would be \$17.85 for a 15-minute phone call.¹³ Lake County’s facilities, also in Illinois, charge \$3.00 for the first minute and connection of an international call, and \$1.00 per minute thereafter, adding up to \$17.00 for a 15-minute call.¹⁴

Table 2: International Rates in Local Facilities Compared With Proposed Rates

County Facility	Current Cost of a 15 Minute Call	Proposed Rate Cap
<i>Peoria, IL¹⁵</i>	\$17.85	\$2.40

¹¹ New Jersey Advocates for Immigrant Detainees and NYU Immigrant Rights Clinic, “RE: International Rate Regulation for Inmate Calling Services: WC Docket No. 12-375,” FCC Comment docket 12-375 (Jan. 19, 2016) (Hudson County, in New Jersey, for example, “provides international phone service through phone cards sold by GTL. Some detainees have reported lower rates for calls to certain countries.”).

¹² Private facility contracted with ICE.

¹³ Comment from Illinois Campaign for Prison Phone Justice Appendix D, Illinois, *available at* <http://apps.fcc.gov/ecfs/document/view?id=60001012492>.

¹⁴ *Id.* at Appendix F.

¹⁵ Contracts with GTL.

<i>Oregon Department of Corrections, OR</i>	\$7.50 ¹⁶ (prepaid)	\$2.40
<i>Lake County, IL¹⁷</i>	\$17.00	\$2.40
<i>Washington County, OR</i>	\$11.74 ¹⁸	\$2.40
<i>Champaign County, IL¹⁹</i>	\$16.94 ²⁰	\$2.40

Several other state and local jails also maintain exorbitant international calling rates. Despite GTL’s lower international calling rate in Delaney Hall, the rate is significantly higher in other state and local facilities in which GTL provides its services. In states such as California, Rhode Island, Kentucky, Indiana, Pennsylvania, and Maryland, which retain GTL’s communication services,²¹ the rates for international calling depend on the country and whether the call is through a debit system or collect. All rates are high, though they range from as low as 64 cents per minute (to France), to between 70 cents and \$1.22 per minute (to differing zones in Mexico), and \$3.24 per minute (to Vietnam).²² Even if the inmate decides to have a “debit contract,” specifically GTL’s “Option A,” international calling rates still range from 75 cents per minute to \$2.00 per minute.²³ Other large private companies that provide inmate communication services such as Securus Technologies, Inc. also provide high international call rates that vary according to the country.²⁴

II. Applying a Rate Cap to International Calls, Especially in ICE Detention Facilities

In order to lift the burden of unreasonably high international phone rates currently placed on immigrant detainees and promote greater uniformity, the FCC should apply a rate cap of 16 cents per minute for international calls. At a minimum, this rate should apply to any public or private facility used to detain individuals pursuant to any agreement, contract or subcontract with the Department of Homeland Security (DHS) and/or operated by DHS. ICE itself has acknowledged the importance of ensuring low-cost phone services to immigrant detainees and has stressed its

¹⁶ Contract for Inmate Payphone and Associated Inmate Monitoring and Recording Equipment and Services (ITS) Contact Number 3999 between Oregon Department of Corrections and Pinnacle Public Services LLC – Telmate, https://www.prisonphonejustice.org/media/phonejustice/OR_contract_with_PPSTelmate_20122015.pdf.

¹⁷ Contracts with Securus Technologies, Inc.

¹⁸ Sheriff’s Office, Washington County, Oregon, <http://www.co.washington.or.us/Sheriff/Jail/ContactInmate/phone-services.cfm>.

¹⁹ Contracts with Inmate Calling Solutions.

²⁰ Champaign County, in Illinois, charges 50 cents per minute for international calls, but does not include local, county, state and federal taxes, regulatory fees comprising an additional \$9.44.

²¹ GTL groups all of its facilities of one state together in the publicly accessible documents online, thus it is impossible to break down the rates of specific detention centers and state and local jails.

²² See Appendix A. Global Tel*Link Domestic/International Rates, Terms, and Conditions, p. 26-28 (May 8, 2015), available at http://tariffs.net/select_client_docs.asp?comp=147#.

²³ *Id.* at p.29-30.

²⁴ Chart of a similarly priced international calling rates to countries provided in Securus Technologies, Inc. price list at

<http://www.securustechnologies.com/documents/10603/11063/Securus+Technologies%2C+Inc.+FCC+Price+List+%28Effective+1-1-2016%29.pdf/4051a4d4-bd96-4e78-b221-ba14a995e47b>. Price lists can be found at <http://www.securustechnologies.com/tariffs>.

policy that "all detention facilities provide reasonable and equitable access for reasonably priced telephone services."²⁵ To achieve the goal of providing equitable and reasonable rates in facilities holding ICE detainees, the FCC must apply a cap that is cost-based and on par with the 15 cent rate being offered by Talton for international calls.²⁶

If the FCC were to adopt these rates, it would provide substantial relief to immigrant detainees in various state and local facilities across the country and their loved ones abroad. For example, in Peoria, Illinois, a 15-minute call would decrease by \$15.45 from the current rate of \$17.85. In Bergen County, New Jersey, the same call would decrease from \$19.80 to \$2.40; a detainee would thus actually be able to speak eight times as long to prepare for their defense, for the same price.

The FCC's decisions should not depend on call volume given how essential international calling is to ICE detainees, even where the number of calls may appear low, likely due to existing prohibitive rates. ICE has indicated that "[s]ince the DTS [Detainee Telephone Service] contract was awarded, the number of calls per detainee and minutes per detainee has increased substantially."²⁷

Conclusion

LatinoJustice PRLDEF and AILA commend the Commission's adoption of the Order providing fair phone rates so that many families are no longer forced to pay unreasonable rates for in-state and interstate calls. However, even with this progress on the intrastate and interstate rates, many families continue to pay exploitative and arbitrary international calling rates in order to maintain contact with one another and/or prepare for their own immigration cases.

Facilities in states and counties throughout the United States vary widely in how much they charge for the same international call and offer rates substantially higher than some private detention facilities. This haphazard pricing scheme demonstrates that without comprehensive regulation, bad actors will continue to enjoy steep profits at the expense of the basic needs of immigrant detainees. We urge the FCC to promulgate reasonable, cost-based regulations for international calling in facilities holding ICE detainees by setting a rate cap of 16 cents per minute for all international calls which ultimately promote greater uniformity and fairness in immigration detention facilities.

It is time to provide fair and meaningful protections for families and communities unfairly impacted by price-gouging and unreasonable rates for phone calls made from a state, county, or private correctional facility. Reasonable regulations will prevent unscrupulous companies from

²⁵ Federal Communications Commission, Transcript of Workshop on Further Reform of Inmate Calling Services, Statement of Kevin Landy, Assistant Director, Office of Detention Policy and Planning, U.S. Immigration and Customs Enforcement, at 195:8-11 (July 9, 2014), available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-328596A1.pdf.

²⁶ See New Jersey Advocates for Immigrant Detainees and NYU Immigrant Rights Clinic, "RE: International Rate Regulation for Inmate Calling Services: WC Docket No. 12-375," FCC Comment docket 12-375 (that FCC must apply a cap that is on equal par to Talton's 15 cent per minute rates on international calls) (filed Jan. 19, 2016).

²⁷ FCC, Statement of Kevin Landy, *supra* note 25, at 193:13-16.

entering into contracts with correctional facilities that prey on the individuals, families and loved ones of those who are detained.

For the aforementioned reasons, LatinoJustice PRLDEF and AILA strongly support such proposed regulations, and urge their adoption.

APPENDIX A

Tables of international calling rates for various countries, excerpted from GlobalTel*Link Domestic/International Rates, Terms, and Conditions (May 8, 2015), *available at* http://tariffs.net/select_client_docs.asp?comp=147.