

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re:)	
)	
Rates for Interstate Inmate Calling Services)	WC Docket No. 12-375
)	
Petition for Partial Reconsideration by Michael S. Hamden)	Rept. No. 3038
)	

OPPOSITION

The Wright Petitioners, by and through their attorney, and pursuant to Section 1.429(f) of the Commission’s rules, 47 C.F.R. § 1.429(f) (2016), hereby submit this Opposition to the Petition for Partial Reconsideration by Michael S. Hamden, filed on January 19, 2016, in the above-referenced proceeding (the “Petition”).¹ The Petition seeks reconsideration of the Second Report and Order, adopted on October 22, 2015, wherein the Commission, *inter alia*, adopted caps on all domestic inmate calling service (ICS) rates and ancillary fees charged to ICS customers.²

As discussed in more detail below, Mr. Hamden’s call for reconsideration of the Commission’s decision to not ban site commissions, and his associated call for the adoption of a replacement fee for correctional authorities, must be rejected. The Commission fully considered and rejected these arguments in the Second Report and Order, and Mr. Hamden failed to present any new arguments that calls that decision into question.³

¹ Notice of the Petition was published in the Federal Register on March 8, 2016, which established March 23, 2016, as the deadline for submitting Oppositions to the Petition. 81 FED. REG. 12,062 (March 8, 2016).

² *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763 (Nov. 5, 2015) (the “*Second Report & Order*”).

³ See 47 C.F.R. 1.429(l)(3)(2016).

Instead, Mr. Hamden supports his argument for taking his proposed actions based on his assumption that the “Commission has underestimated the avarice⁴ of facilities and the sinister ingenuity of providers.”⁵ Mr. Hamden continues, stating that the “most vexing problem with this approach is that ICS providers and correctional professionals will find ways to preserve and promote their unholy alliance – most likely through the expansion of unregulated services such as video visitation and commissary accounts – and at the continuing expense and exploitation of prisoners and their families.”⁶

The Wright Petitioners have no quarrel with Mr. Hamden’s characterization of the goals and interests of the correctional facilities and ICS providers. However, the Wright Petitioners agree with the Commission (and disagree with Mr. Hamden) that the best way to deal with their avarice, ingenuity and unholy alliance is to cap the ICS rates and fees that can be charged by ICS providers to inmates and their families.

DISCUSSION

I. **The Commission Was Correct To Not Regulate Site Commissions and Not Impose An Administrative Fee.**

Mr. Hamden’s concern regarding the willingness of ICS providers and correctional authorities to exploit prisoners and their families is well-placed. The Wright Petitioners have spent the last 15 years documenting and presenting these abuses to the Commission in the hope that the Commission would invoke their statutory authority to provide much needed relief.

⁴ “Avarice” Merriam-Webster (noun, “excessive or insatiable desire for wealth or gain.”). See also Bobby Strong, *Look At the Sky, Urinetown, The Musical*, Greg Kotis, Mark Hollmann (Macmillan 2003) (“And we keep filling moneybags, With broken lives and dreams, But what’s it for? I can’t ignore, These black immoral, Profit-making schemes”).

⁵ *Petition*, pg. 12.

⁶ *Id.*

In fact, it is noteworthy that the original lawsuit filed by the Wright Petitioners sought to eliminate exclusive contracts between private prisons and ICS providers, and the Commission was lukewarm at best to regulate the terms of private agreements. Instead, the Wright Petitioners submitted the 2007 Alternative Proposal requesting the FCC adopt benchmark ICS rates so to fit squarely within the Commission's statutory authority.

Thus, Mr. Hamden's faith in the adoption of an outright ban on site commissions and the adoption of an administrative cost recovery fee is misplaced. In fact, Mr. Hamden's faith is undermined by the actions that have occurred since the release of the Second Report and Order. The Wright Petitioners have noted parties are urging correctional facilities and their governing bodies to adopt new taxes on ICS that would replace the payment of site commissions previously paid by ICS providers. Moreover, even though the Commission did not eliminate site commissions in the Second Report and Order, correctional authorities have nevertheless filed appeals with the DC Court of Appeals arguing that they are entitled to additional funding. While Mr. Hamden believes that these issues would evaporate if the Commission was to ban site commissions and impose an administrative cost recovery fee on inmates and their families, it is likely that ICS providers and correctional authorities would only seek new and innovative ways to funnel additional funds in connection with entering into their exclusive contracts.

It is also necessary to note that the correctional authorities have provided little support for their need of a dedicated funding mechanism. Instead, while there appeared to be some agreement among certain parties in the proceeding that an administrative fee of (1) \$0.03 cents for facilities with 1-299 ADP; (ii) \$0.02 for 300-999 ADP; and (iii) \$0.01 for

1000+ ADP , there was no factual basis in the record to support these numbers.⁷ In fact, a large county like Los Angeles County, which currently receives a guaranteed annual payment of \$15 million under its exclusive ICS agreement, would need to have 1.5 **billions** minutes of use to replace its annual site commission payment from Global Tel*Link.

Therefore, the FCC was correct to ultimately decline to establish rules that would have created an administrative fee for correctional facilities in the absence of concrete evidence in the record of the actual costs incurred by correctional facilities.⁸ The elimination of site commissions and the creation of an administrative fee for correctional authorities would have created a multitude of new issues for the Commission to resolve, but would not have any direct impact on inmates and their families. Instead, the Commission was correct to establish caps on ICS rates and fees, and leave ICS providers and correctional authorities the ability to split ICS revenues without Commission intervention or direction.

II. Need for Clarification

While the Wright Petitioners disagree with Mr. Hamden that the Commission should reconsider its decision to not ban site commissions and/or impose an administrative fee on inmates and their families, Mr. Hamden's comments regarding the clarification of the rules associated with the definition of "Authorized Fee," "Mandatory Tax," and "Mandatory Fee" do merit further consideration.⁹ As the Commission is aware, the Wright Petitioners have

⁷ See *Ex Parte Presentation of Andrew D. Lipman* (now counsel to Securus Technologies, Inc.), filed Sept. 28, 2015 (<http://apps.fcc.gov/ecfs/document/view?id=60001325431>).

⁸ See *Opposition of National Sheriffs' Association*, filed March 23, 2016, pg. 5 ("Moreover, based on the data in the record, an interim facility cost-recovery fee of only one or two cents per minute for jails would be arbitrary and capricious.").

⁹ See *Petition*, pg. 15.

highlighted recent actions by parties associated with the ICS industry to encourage government agencies to adopt new taxes on inmates and their families.

In fact, on February 3, 2016, the Wright Petitioners submitted a copy of a “How To Guide” published by an unnamed party that provided the following detailed advice to local and state governments with regarding to the adoption of new mandatory taxes:

- In order for an ICS provider to add on a Mandatory Fee to a customer's per minute rate, the Mandatory Fee must be an official directive that a governing body has adopted independently and of its own accord - ideally, it should be imposed by a resolution or ordinance of a state, county or municipality.
- The FCC order does not offer much insight as to what form of government action is needed to impose a valid fee. A fee that is imposed only pursuant to a contract would most likely be challenged by customer advocates and might not be upheld by the FCC. However, a fee that is imposed by a resolution or ordinance of a county or municipality, and that applies to all ICS services regardless of who is awarded a particular contract, most likely would be considered valid.
- ICS providers should not be present at any meeting of a governing body when it considers, drafts, or adopts a Mandatory Fee. Nor should ICS provider provide a writing of any kind to a correctional facility that includes a template or instructions for establishing a Mandatory Fee. The terms "site commission" and "commission" must never be used in any context or in any forum.
- If you make the decision that your facility wants to get a Mandatory Fee imposed by resolution or ordinance - don't be greedy! We don't want public activists and the FCC targeting facilities for collecting excessive mandatory fees. As a general rule, there should be some relationship to the amount of mandatory fees that you seek to get approved and the costs you directly incur related to the ICS system. The "mandatory fee" should be imposed by a resolution or ordinance.¹⁰

Thus, whether it does so in the context of this Petition or by other mechanisms, the Commission should clarify, as the Chief of the Wireline Competition Bureau did on December 3, 2015, that the any mandatory fees, taxes or other charges imposed by local, state and federal governments that can be passed onto consumers were to have been in

¹⁰ See *Wright Petitioners Ex Parte Submission*, filed February 3, 2016 (<http://apps.fcc.gov/ecfs/comment/view?id=60001391266>).

existence as of the adoption of the Second Report and Order, and ICS providers and local, state and federal agencies must not create new taxes or fees to serve as “an alternative means for correctional facilities to ‘generate some level of funding through inmate calling services.’”¹¹

CONCLUSION

Mr. Hamden’s concerns about the avarice, ingenuity and unholy alliance among ICS providers and correctional authorities are well-placed. However, the Wright Petitioners do not agree with Mr. Hamden that the Commission should reconsider its decision (i) to not ban site commission and (ii) to not impose an administrative fee paid directly to correctional facilities by inmates and their families. The Commission provided a thorough explanation for not taking Mr. Hamden’s preferred approach, and the Petition fails to present any new information that would undermine the Commission’s decision.

Respectfully submitted,

By: 

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March 23, 2016

¹¹ See Letter from Matthew S. DelNero, Chief Wireline Competition Bureau, Federal Communications Commission, to Robert Pickens, President, Securus Technologies, Inc., DA 15-1392, pg. 1 (Dec. 3, 2015) (citing Letter from Brian D. Oliver, Chief Executive Officer, GTL, Richard A. Smith, Chief Executive Officer, Securus, and Kevin O’Neil, President, Telmate, to Chairman Tom Wheeler, Chairman, WC Docket No. 12-375, at 4-5, n. 13 (filed Sept. 15, 2014) .

CERTIFICATE OF SERVICE

I, Lee G. Petro, hereby certify that I caused a copy of the foregoing "**Opposition**" to be served upon the following by first-class and email correspondence:

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