

**Before the
FEDERAL COMMUNICATIONS COMMISSION**

Washington, DC 20554

In the Matter of)
Rates for Interstate Inmate Calling Services) WC Docket No. 12-375
)
)

The New Jersey Institute for Social Justice submits the following reply comments to the above-referenced Notice of Proposed Rulemaking 12-375. In particular, the Institute submits these reply comments in support of the first *Wright* Petition’s proposal to increase competition in inmate calling services by prohibiting exclusive provider contracts and limiting site commissions.

Since the early 1990s, telecommunications deregulation has pushed the price of voice communications ever lower for nearly all consumers; yet inmate calling services ("ICS") has not benefited from this competition. The high prices paid by inmates and their families can be attributed to many factors, but most notably because of two separate but equally important phenomena: the rise of “exclusive” contracts between providers and correctional facilities; and (2) the imposition of separate “commissions” payable to correctional facilities themselves. Together, these two attributes of inmate calling services have created a market in which providers are incentivized to raise prices, not lower them. As a result, inmates' families, who are frequently indigent, almost always struggle to pay these costs.¹

¹ In the United States, over 1.7 million children, or 2.3%, have at least one incarcerated parent. LAUREN E. GLAZE & LAURA M. MARUSCHAK, BUREAU OF JUSTICE STATISTICS SPECIAL REPORT, PARENTS IN PRISON AND THEIR MINOR CHILDREN 2 (2008), available at <http://bjs.gov/content/pub/pdf/pptmc.pdf>. This is an increase of 80% since 1991, when under a million children in the United States had a parent incarcerated. *Id.* The problem is more pervasive in minority communities, with black children seven and a half times more likely and Hispanic children two and a half times more likely to have a parent in prison than a white child. *Id.* The difficulties faced by parents in prison and their children is reflected in the personal visits between children and their parents. *Id.* Only 42% of state prisoners and 55% of federal visitors reported having had a personal visit with their children since admission. Even among those parents who lived with their children prior to incarceration, only about half reported weekly contact with their

I. *Overview of Commission Rates and Call Charges in New Jersey and New York*

In New Jersey, the effects of this policy are especially devastating. At the New Jersey Institute for Social Justice ("ISJ"), we have been working for over a decade on prisoner reentry issues to ensure that those who have paid their debt to society are afforded a reasonable chance for successful integration into society thereafter. Among other areas, our efforts have focused on assisting ex-offenders to train for, obtain and retain jobs. We have successfully placed hundreds of ex-offenders in paid employment. The ISJ has also researched and analyzed the issue of prisoners' telephone rates for several years and have compiled the following information:

New Jersey has exorbitantly high commission rates that are a direct result of longstanding exclusive contracts with telecommunications providers that charge high commission rates and thereby calling rates. Through a "Request for Proposals" (RFP) bidding process, the State of New Jersey entered into an exclusive contract with Global Tel*Link (GTL) on April 1, 2005, for a five year term with two one-year contract extensions if requested by the State.² This contract is currently in effect until March 3, 2014 because of a one-year extension.³ Under the terms of the contract, a county must select one of six pricing options that sets the commission rate, the per-call surcharge, and the per-minute rate.⁴ For example, Essex County has selected a pricing plan that has a 54% commission and sets the interstate per-call surcharge at \$2.50 and the per-minute rate at \$0.69, resulting in a 15-minute call costing \$12.85.⁵ Similarly, Monmouth County has

children, with mothers outpacing fathers 62% to 49%. *Id.* These statistics have clear implications for why the ICS needs to be changed in a way that encourages contact between incarcerated parents and their children.

² State of New Jersey, Dep't of Treasury, T-1934 Inmate/Resident Telephone Control Service, *available at* http://www.state.nj.us/treasury/purchase/boa/contracts/t1934_05-x-32533.shtml.

³ *Id.* at Amendment # 9.

⁴ NJ Dep't of Corrections Renewal Addendum, County Rate/Commission Matrix options, June 4, 2010, *available at* <https://wwwnet1.state.nj.us/treasury/dpp/ebid/Buyer/GetDocument.aspx?DocId=12912&DocName=T1934CountyPriceMatrix.pdf&DocLoc=15>.

⁵ NJ Advocates for Immigrant Detainees, NYU Immigrant Rights Clinic, Comment to FCC NPRM 12-375, Mar. 13, 2013, p. 2.

selected a pricing plan with a 55% commission rate, an interstate per-call surcharge of \$1.75, and a per-minute rate of \$0.89, resulting in a 15-minute call costing \$15.10.⁶

By comparison, New York eliminated commission rates in 2007 and now offers ICS rates similar to rates offered to the general public.⁷ Presently, New York ICS rates are a flat rate of \$0.048 per minute for any type of call (local, intrastate, or interstate), which amounts to any 15-minute call costing \$0.72,⁸ just 5.6% of the cost of a similar call in Essex County, New Jersey, and 4.8% of a similar call in Monmouth County, New Jersey. These numbers illustrate how changes and uniform regulations at the federal level will have a substantial impact on how states administer ICS plans.

II. Discussion

Given the overarching goal of the Telecommunications Act of 1996 to encourage competition by removing barriers to entry, exclusive ICS contracts and commissions seem at odds with the expressed intent of our nation's communications policy.⁹ Indeed, since the 1970s, the Federal Bureau of Prisons has ostensibly operated its inmate telephone system with the goal of fostering "constructive, wholesome community contact"¹⁰ by inmates. This policy recognizes that "[t]elephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development."¹¹ It also furthers public policy goals to permit inmates to regularly communicate with family members, including their children,

⁶ *Id.* at 3; see also Equitable Telephone Charges (eTc) Campaign, Current Status by State, available at http://www.etccampaign.com/etc/current_status.php. Last updated in 2008.

⁷ John E. Dannenberg, *Nationwide PLN Survey Examines Prison Phone Contracts, Kickback*, *Prison Legal News*, Oct. 23, 2012, available at <https://www.prisonlegalnews.org/displayArticle.aspx?articleid=23083&AspxAutoDetectCookieSupport=1>.

⁸ *Id.*

⁹ See 47 U.S.C. § 253.

¹⁰ See *Criminal Calls: A Review of the Bureau of Prisons' Management of Inmate Telephone Privileges*, Dep't of Justice, 1999.

¹¹ *Id.* (citations omitted).

through the phone and other forms of communication, because studies show that regular family contact lowers recidivism.¹²

Despite the recognition by policymakers of the benefits that result from increased inmate communication with families, particularly children, and friends, correctional facilities have adopted policies that often make such communication cost-prohibitive for inmates and their families.

1. Exclusive Contracts are Anti-Competitive.

The ISJ believes that exclusive contracts have contributed to the excessive rates paid by inmates and their families in New Jersey. While still addressing public safety concerns, correctional facilities can – and should – afford all providers with a real and meaningful opportunity to compete for this business. Such a rule would encourage the use of cutting-edge, cost-saving technology (including, potentially, very inexpensive voice-over-internet service).

Because inmates' demand for these services is usually inelastic, exclusive providers feel little or no pressure to keep costs down. We agree with the comments submitted by Verizon and Verizon Wireless to the extent they noted that:

[a]llowing multiple ICS providers to serve inmates at a DOC could promote competition among ICS providers. While providers do compete for DOC contracts, as discussed above, that competition is based on the site commission rates ICS providers are willing to pay. If the benefits of competition were extended to the actual users of the service, inmates could select the provider with the lowest rates and therefore engage in more frequent or lengthy communication with their families.¹³

Therefore, promoting *price* competition among ICS providers could significantly help to lower ICS rates.

¹² See, e.g., Henry Fernandez, *Phoning Home: High Cost Calls Hinder Prison Rehabilitation*, Center for American Progress, Apr. 9, 2007.

¹³ Comment submitted by Verizon and Verizon Wireless in Response to Rates for Inmate Calling Services, Notice of Proposed Rulemaking, at 6.

2. Commissions are Anti-Competitive.

For most states, the bidding process for ICS rewards bidders that offer the highest commission rate to correctional facilities and local governments. Unlike a normal RFP, this process has no elements designed to lower the actual cost of service provided to the user. This system results in high rates for users, a fact acknowledged even by those who support the current regime.

For example, Global Tel-Link Corp., the largest ICS provider in the United States, has acknowledged that the commission is the largest “component affecting the rates for inmate calling services.”¹⁴ Global Tel-Link also noted that “the size of commissions have increased substantially since the First Wright Petition.”¹⁵ Most important, however, is Global Tel-Link’s assessment that “when policymakers eliminate commissions in the midst of a contract, rates have been lowered by the removal of commissions from the cost structure.”¹⁶

The comments submitted also reveal that state and local governments impose commissions because, frankly, they can. For example, the Louisiana Department of Corrections (“La. DOC”) acknowledges that commissions are used to balance the state’s budget:

[a]ll are aware that the budgets of state agencies have been drastically cut to ensure balanced state budgets. La. DOC has been no exception. La. DOC uses the commissions earned from the offender telephone system to defray some of the costs of important rehabilitative services.¹⁷

¹⁴ Comments submitted by Global Tel-Link, at 12.

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 11.

¹⁷ Comments submitted by the Louisiana Department of Corrections, at 5.

III. Conclusion

ISJ recognizes that the unique nature of inmate calling services requires a careful and thoughtful approach by the FCC. ISJ encourages the FCC to curb the abuses brought on by exclusive contracts and commission charges and implement rules to promote, rather than detract, from inmate communication with their children and families.