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July 3, 2013

By Electronic Filing ***Ex Parte Presentation***

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Docket No. 12-375, Rates for Interstate Inmate Calling Services

Dear Ms. Dortch:

This *ex parte* presentation responds to questions raised by Staff in a May 29, 2013 meeting with representatives of Pay Tel Communications, Inc., as well as issues raised in connection with the FCC's Notice of Proposed Rulemaking (NPRM) issued December 28, 2012 in this proceeding.

(1) Costs in Prisons vs. Jails

Pay Tel has previously advocated that the Commission should consider, in connection with any ICS rate reform, a tiered rate structure that distinguishes between, at a minimum, ICS in jails and prisons. *See, e.g.*, Comments of Pay Tel Communications, at 9-11 (March 25, 2013). Attached is further information about the distinctions between jails and prisons that provides further support for the distinction urged by Pay Tel. As shown by the attached materials, a primary driver of the differences between jails and prisons is the heavy turnover of the inmate population in jails. The national turnover average for jails is 62.2% per week—meaning that over one-half of the inmate population changes in the course of single week. In contrast, the prison population has a weekly turnover rate of just 1.01%. The implications of these differing rates are significant for ICS costs. As new inmates arrive, new accounts must be set up for numerous called parties contacted by each inmate, accounts must be serviced, and the provider incurs additional costs in processing refunds and managing inactive accounts. Using a sample 212-bed facility, the ICS provider will have to set up approximately 8 times as many accounts as would be required by a provider in a similarly-sized prison facility over the course of a year. Consistent with these dynamics where new inmates are being booked in jails on a rotating basis requiring immediate access to inmate phones, jails require nearly twice as many inmate telephones as similar sized prisons for the same number of inmates (1 phone for every 16 inmates in prisons versus 1 phone for every 8 inmates in jails). More phones equates to higher capital investment, higher repair cost, and higher demand for bandwidth. Also, the transitional nature of the jail inmate population, combined with local jail policies, requires numerous system integrations to better serve the needs of inmates that are not required in a prison setting. These include jail management system integration, commissary system integration, inmate banking integration, recording of visitation phones, and similar locally-driven requirements. Together, these factors—combined with the obvious fact that jails are typically smaller in size and therefore have

far fewer calling minutes over which to spread ICS costs—mean that the cost structure for ICS in jails is far different from that in prisons, and that, accordingly, mandated rate caps or benchmarks that are designed to only recover prison ICS costs will not be sufficient to recover jail ICS costs.

(2) Change in ICS Costs Since 2008

Pay Tel has also previously advocated in this proceeding that, while technology has transformed service to jails in recent years in terms of how the networks are managed and configured, overall costs of ICS has generally remained in line with the cost study filed in this proceeding by various ICS providers in 2008. *See, e.g.,* Comments of Pay Tel Communications, at 11-13 (March 25, 2013).[1] Attached is a further description of the technical transformation that has occurred in the industry over the last five years with an explanation of how that transformation has impacted ICS costs. The vast majority of ICS provided to jails in 2008 were fairly straightforward premise-based systems offering basic call processing functionality. Since that time, ICS in jails has evolved to a centralized broadband-based platform, where call management functions are handled remotely in a centralized platform. These changes have facilitated the provision of advanced inmate calling services to even small and mid-sized jails, which has greatly enhanced facility safety and security. The advent of centralized call processing has created greater efficiency, but due to offsetting cost increases and greater demand for technology, but they have not led to an overall reduction in ICS costs in jails. Among other things, Pay Tel has experienced significant increases in costs over this time period associated with the following:

- Increased transport costs as all calls, including local calls, now must be transported back to the centralized platform for every attempt (not just completed calls), which represents an entirely new cost;
- Increased capital costs associated with centralized platform equipment, including investments in redundancy, data storage, and IT professionals;
- Increased costs in handling customer accounts as account billing has transitioned to in-house arrangements.
- Increased costs associated with integrating ICS systems with jail commissary systems, inmate banking systems, jail management systems, and implementation of other advanced investigative tools requiring integration.
- Dramatic increase in zero-revenue calls such as free first calls to connect with family, free calls to public defenders, calls to perform balance inquiries on trust accounts, calls to transfer funds to debit phone accounts, calls to place commissary orders, and calls to initiate grievances. Zero-revenue calls can constitute over one-half of the total calls in the growing-number of jails where these system integrations are required by the jail to provide free services and features to the inmate.

And, of course, over this same time-frame, Pay Tel, like every other business operating in United States, experienced normal increases in overhead, salaries and benefits expenses. This occurs year after year with no adjustment to state PSC rate caps for local calls—creating a situation where ICS providers in jails are unable to offset increased costs for the majority call revenue without initiating an expensive and burdensome rate proceeding at the PSC.

[1] As noted in Pay Tel's Comments, the Wood Study did not factor in costs incurred to defray facility system administration, the costs associated with systems integration with local jail administrative systems, nor required free calls.

(3) Rate Arbitrage

Pay Tel has previously observed in its comments in this proceeding that taking regulatory action only as to interstate rates will undoubtedly lead to a significant increase in the "rate arbitrage," which raises critical security and fraud concerns. Adopting a federal benchmark for interstate calls—in isolation—would only reduce interstate long distance rates, leaving local and intrastate long distance rates as they are today. This will give consumers the incentive to take advantage of readily available technology (e.g., VoIP or prepaid cellular phone service) to obtain phone numbers associated with interstate jurisdictions and receive the corresponding benefits of cheaper calls. As illustrated by the attached *ex parte* presentation, currently only a small portion 15.9% of called parties from jails have a financial incentive to "shop" for a lower calling rate by obtaining a phone number local to the county jail., Under the proposed interstate rate cap of $0.07 per minute with no per call surcharge, however, the situation will be completely reversed, as 97.3% of called parties in the jail setting will now have an incentive to engage in rate arbitrage to seek the advantage of the lower interstate rate. Viewing the jail ICS industry as a whole, under the Petitioners' proposal the potential for arbitrage will be 6 times greater than under existing rate structures, and some 38 million consumers will have an incentive to engage in arbitrage. Rate arbitrage is a well-recognized and significant security risk for jails, where existing calling security protocols require accurate identification information for all parties to the call.

* * *

Please do not hesitate to contact the undersigned should any questions arise concerning this submittal.

Sincerely yours,

/s/ Marcus W. Trathen
Marcus W. Trathen

cc: Deena Shetler (via email)
Kalpak Gude (via email)
Pamela Arluk (via email)
Randolph Clarke (via email)
Lynne Engledow (via email)
David Zesiger (via email)
Gregory Haledjian (via email)
Rhonda Lien (via email)
Anjali Vohra (via email)

Declaration of Vincent Townsend

I, Vincent Townsend, declare and state as follows:

I am the President of Pay Tel Communications, Inc. I have read the foregoing ex parte presentation of Pay Tel Communications, Inc., including its three Attachments: (i)Changes in ICS Costs in Jails: 2008 to Present; (ii) Inmate Calling Service (ICS) Market Distinctions—Prisons vs. Jails; and (iii) Inmate Calling Arbitrage. I declare under penalty of perjury under the laws of the United States of America that the foregoing information and materials are true and correct to the best of my knowledge, information, and belief.

Dated: July 3, 2013

Vincent Townsend

Vincent Townsend
President