

Distinctions Between Prisons and Jails – Response to Wright Petitioners

Turnover at Jails is 50 Times Higher than Turnover at Prisons

The Petitioners assert that inmate turnover is not as significant as Pay Tel would suggest, and that “...approximately 50% of the inmates in large facilities (500 or more) stay in jail more than one week.”¹ Even accepting the accuracy of those figures for the sake of argument, what the Petitioners carefully avoid saying is that the other 50% of inmates comprise the high and frequent turnover rate in jails that Pay Tel has addressed repeatedly throughout this proceeding. More importantly, the turnover rate (even at the low level Petitioners’ quote in which 50% of inmates stay in the largest county jails for more than a week) is roughly **50 times higher turnover than is seen at prison facilities.** This causes a cascading effect on the underlying costs of service in jails, as follows:



In virtually any industry, it is more expensive to initiate service with a new customer than it is to continue serving an existing customer. The cost difference generally results from the labor required to establish a new account and familiarize the customer with account procedures versus the labor involved in supporting a customer already experienced in using a business’s services. In the jail market, Pay Tel’s typical customer accepts calls for less than a week and then closes his prepaid account and requests a refund of any available balance. Conversely, at the prison level, a single account remains in place anywhere from six months to several years. These underlying facts are not controverted by the Petitioners.

¹ See Letter from Lee G. Petro to FCC Secretary Marlene H. Dortch, WC Docket No. 12-375 (July 16, 2013).

Multiple Free Calls: A Requirement in Jails—Virtually Non-existent in Prisons

The Petitioners chastise ICS companies for "bemoaning" the fact that inmates confined for less than 72 hours are the same inmates who take advantage of making free calls to arrange bail. Unfortunately, the Petitioners misunderstand the fact that there is much more at play here than simply the matter of a single free call to arrange bail. Jails require ICS providers to provide free calls to specific telephone numbers (e.g., bail bondsmen, public defenders, etc.), and they often require a specific number of free calls for every inmate booked. ICS providers must deliver these services and provide the phones used to make those calls; they do so at no cost to the correctional facilities. The crucial points here are that: (a) these are requirements only in jails, not in prisons; (b) 33% of inmates who are booked make only free calls and are then released (meaning ICS providers do not see a penny for provision of services to these inmates);² and (c) in order to support the volume of free calls, more telephone instruments (e.g., the maintenance and system bandwidth associated therewith, etc.) are required.

The "Prisons Versus Jails" Distinction is Not Simply a Matter of Size

The large volumes of calling minutes corresponding to state prison contracts such as those ICS providers have with the Florida DOC and Michigan DOC do create tremendous economies of scale. Such economies of scale do not exist with respect to provision of ICS in jails. Size, however, is not the only distinguishing factor between jails and prisons. As noted above, free call volume is significantly higher in the jail setting due to the extensive number of free phone calls that must be provided where jails require system integrations, including commissary ordering by phone, grievance reporting by phone, trust account banking by phone, and more. The fact is that, on average, in jails that require system integrations the volume of free calls exceeds 50% of the total calls; moreover, those jails require twice as many phone instruments as prisons.

Partial Information is Misleading

In order to distract the FCC from the real costs of providing phone service to county jails, the Petitioners cite to the Charleston County Jail and argue that *"some of the highest call rates, and highest commissions/kickbacks/profit-sharing arrangements, are charged at the county and local jail setting."* The Petitioners' footnote references the Charleston County contract rates for interstate calls. It does not, however, reference the much more relevant—and affordable—local rates in Charleston County. The Petitioners' *ex parte* presentation neglects to mention that Charleston County's inmates pay only \$1.15 for a 15-minute local collect call and just \$0.92 for a prepaid or debit local call. Pay Tel can only assume that these lower rates—which are associated with a whopping 85% of the calls from the Charleston County jail—are omitted because the tiny 2% of interstate calls on which the Petitioners focus are more in line with their argument.

² Based on analysis of Pay Tel Jail facility call traffic.

The Commission should look at the entire ICS picture, and, in so doing, it must consider the very low local rates being charged today and recognize that many local calls are below-cost and currently subsidized by the higher-revenue, lower-quantity long distance calling rates—consistent with the regulatory scheme put in place by the Commission in 2002.³

Convoluting Pricing Schemes Are Not Needed

Contrary to the Petitioners' claims, Pay Tel does not advocate a "convoluted" rate cap structure. Rather, Pay Tel seeks to design a rate structure that ensures recovery of costs of the providing ICS and the facility costs for administration of inmate phones and monitoring of phone calls to protect inmates, staff and the public from criminal activity initiated using the phone. Pay Tel is certain that, if the FCC elects to set rate caps, the ICS industry—inmates, their families and friends, and providers—will be best served by two separate rate caps: one for jails and one for prisons.⁴ This, combined with a cost recovery mechanism for facilities and a single rate cap structure for fees, will ensure continued market participation by the existing mix of ICS vendors active in the marketplace, rather than further market consolidation and domination by the industry's largest providers. Quite simply, adoption of the proposed rate cap suggested by Petitioners will force Pay Tel, and other companies like it, out of business.

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³ See *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 17 FCC Rcd 3248, ¶ 23 (2002).

⁴ Based on our own jail client base, the ratio of inmates to phones is 8:1; Recent State Prison (DOC) RFPs reveal a ratio of 16:1.