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Marcus W. Trathen
1600 Wells Fargo Capitol Center
150 Fayetteville Street
Raleigh, NC 27601

T 919.839.0300
F 919.839.0304
mtrathen@brookspierce.com

November 20, 2013

By Electronic Filing ***Notice of Ex Parte Presentation***

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

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

Dear Ms. Dortch:

On November 19, 2013, Vincent Townsend, President of Pay Tel Communications, Inc. ("Pay Tel"), Don Wood of Wood & Wood Associates, and Marcus W. Trathen of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, held the following separate meetings:

- Christi Barnhart, Legal Advisor to Commissioner Jessica Rosenworcel.
- Amy Bender, Legal Advisor to Commissioner Michael O'Rielly.
- Nicholas Degani, Legal Advisor to Commissioner Ajit Pai.
- Deena Shetler, Jamie Susskind, Kalpak Gude, Lynne Engledow, Rhonda Lien, David Zesiger of the Wireline Competition Bureau and Joel Marcus and Sarah Citrin of the Office of General Counsel.

In each meeting, Pay Tel discussed its principal concerns with the FCC's Report & Order released on September 26, 2013, including:

- The Order fails to consider the costs demonstrated in the record that apply uniquely in the jail setting as compared to the prison setting. If implemented, the Order will diminish competition in the jail market as only the large national providers willing to cross-subsidize between low cost prisons and high cost jail facilities will survive and many high cost small to medium size jail facilities will be left without a service provider. At a minimum, jails should be exempted from the rate cap, safe harbor and cost-based rates provisions of the Order until an economically viable pricing mechanism can be established.

- By reducing interstate rates to Pay Tel's average costs, without preempting below cost state rate caps, the Order results in an economically unsustainable business model for Pay Tel specifically and jails in general. An analysis of the impact of the FCC's Order prepared by its consultant, Don Wood, shows that at least 117 of Pay Tel"s 160 locations[1] have at least once category of intrastate calls in which average revenue per minute is below cost and that the total amount by which intrastate capped rates are below cost is $2,864,081—or about 11% of Pay Tel's revenues. The Order offers no mechanism for recouping these costs.

- The Order's so-called "safe harbor" is nothing of the sort for providers who serve jails. It is nonsensical for the Order to prescribe a "safe harbor" at a level that is substantially below Pay Tel's demonstrated average costs.

Attached is a hand-out which formed the basis for discussions.

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

Sincerely yours,

/s/ Marcus W. Trathen
Marcus W. Trathen

cc (via email):
Amy Bender (via email)
Christi Barnhart (via email)
Nicholas Degani (via email)
Deena Shetler (via email)
Kalpak Gude (via email)
Lynne Engledow (via email)
David Zesiger (via email)
Rhonda Lien (via email)
Joel Marcus (via email)
Sarah Citrin (via email)

[1] Pay Tel current serves 160 total clients, which operate at 180 discrete facilities. All facilities were considered for purposes of the study. All of these facilities are jails.

REVIEW OF INMATE CALLING SERVICES ORDER – PRESENTATION SUMMARY

I. THE PROBLEM

A. The Interstate Rate Caps Are Not Workable for Jails in the Absence of Intrastate Reform.

- Jails have fundamentally different cost characteristics from prisons.
    - The Order itself cites the higher cost structure of jails in arguing that its rate cap for debit calls (set by reference to Pay Tel's costs) are reasonable and conservative. [¶77]
- The FCC previously required ICS providers like Pay Tel to subsidize below cost intrastate rates with above cost interstate rates. [2002 Remand Order] Now the FCC has reduced interstate rates to cost without preempting below cost intrastate rate caps. This creates an obvious and very real problem.
- Pay Tel has analyzed its projected revenues as compared to its average costs (using its FCC-filed cost study) for all call types, applying the new FCC-mandated rate caps. ***This analysis shows that:***
    - ***Of 160 locations, 117 have at least one category of intrastate calls in which the average revenue per minute is below cost.***
    - ***For these 117 locations, the total amount by which intrastate capped rates are below cost is $2,864,081.***
    - ***If above-cost intrastate locations are assumed to continue to subsidize below-cost locations (not likely to represent a sustainable scenario), the net intrastate subsidy that remains is $1,666,412.***
    - On its face, this violates Section 276 of the Act.
- If the Order is implemented "as is," the Order will result in losses which are not sustainable for providers that are focused on jails. The only providers that will be able to withstand these losses will be the large national providers that are willing to subsidize money-losing jail operations with revenues from their prison facilities.
- The large providers appear to be vacating the small-medium size jail market. If this trend continues, some jails will be without a provider of ICS.

B. The “Safe Harbor” Rates and Enforcement Mechanism Are Unworkable As Applied to Jails

- The “safe harbor” rates come exclusively from DOC data. The cost characteristics of prisons are much different from jails.

- Pay Tel’s average costs are greater than the “safe harbor” rates. None of Pay Tel’s existing rates are within the safe harbor.

- It is irrational to set a “safe harbor” at a level which, by definition, results in non-compensable rates as demonstrated by the only complete data set before the FCC (Pay Tel’s cost study).

- The Order’s approach will simply invite intractable litigation, which will only drive up the costs of providing service, which will have to be reflected in rates.

C. The Order Erred in Treating Prepaid Calls Like Debit Calls For Purposes of the “Safe Harbor” Rates and Rate Caps

- The Order subjects prepaid calls to the same cap and safe harbor as debit calls, despite Pay Tel’s cost study demonstrating that prepaid costs are higher than debit costs.

- The sole basis for the Order’s treatment of prepaid calls as identical to debit calls was citation to comments and data submitted by Human Rights Defense Center (HRDC). However, the HRCD data show that there are differences in prepaid and debit rates.

    - HRDC’s Exhibit B shows that only 17 states have rates that are the same for prepaid and debit, while 13 states have prepaid rates that are above debit rates.

    - The Order itself notes that the HRDC 7 state prison data result in an average rate of $0.1186/min for debit and $0.1268/min for prepaid. [¶ 63] This is 6.4% difference, as compared to a 9.5% difference in Pay Tel's costs.

- That rates may be lower for prepaid does not necessarily reflect the underlying cost of the service, given that rates have not heretofore been set strictly on the basis of cost. Rather, providers may have priced prepaid to encourage use of this service which does not entail the collection risks of collect calling.

- The difference demonstrated by the Pay Tel (and the HRDC) data is significant when rates are lowered to cost. The majority (67%) of all Pay Tel’s calls are prepaid calls. *See* Pay Tel Notice of Ex Parte at 1 n.2 (July 26, 2013).

II. THE SOLUTION

- Apply fee restrictions as you have adopted them. Alternatively, establish defined cost-based rate caps for fees as a less administratively-burdensome alternative.

- Stay effectiveness of cost-based rates, safe harbor and rate caps *only as to jails*.

- Impact:

  - This will allow smaller providers of higher cost facilities to continue operations.

  - It will allow relief for 100% of consumers who will pay less in fees for ICS service. *See* "*Please Deposit All of Your Money*," at 6 (fees can easily double the cost of a single telephone call and can add 50% to the total bill).

  - Application of the rate caps and safe harbors will provide cost savings to the petitioners that sought relief in the first place, those who are receiving calls from inmates in prisons (67% of the inmates in the United States are in prisons).

    - Inmates in prisons are more likely to be housed far from home, and a higher percentage of calls from prisons are interstate calls.
    - Maintains FCC proposed lower rates for high volume, low cost prison ICS.
    - Eliminates devastating effect on ICS vendors serving low volume local jails.

  - This approach will have limited impact otherwise for jail facilities because they already have very low intrastate rates (particularly local); interstate rates have been trending downward, and will continue to do so due to arbitrage.

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