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December 20, 2013

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TW-A325  
Washington, DC 20554

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Executive Director  
Hagerstown, Maryland

RE: WC Docket No. 12-375 (Rates for Interstate Inmate Calling Services)

Dear Madam Secretary:

On behalf of the American Jail Association (AJA), we write today to express AJA's concern with the Order and Further Notice of Proposed Rulemaking released by the Federal Communications Commission on September 26, 2013 ("Order"), and due to take effect on February 11, 2014.

By setting arbitrary rates and rules, the order will seriously jeopardize Jail Administrators' ability to manage the Inmate Telephone Services in their facilities. This will result in safety and security issues for jail staff, inmates, and the general public. A key component of an Inmate Calling Service (ICS), is the ability to monitor telephone conversations between inmates and the general public. It has been shown that this is a valuable law enforcement tool and has resulted in numerous cases where lives have been saved as a result of investigations stemming from that monitoring.

The FCC fails to take into consideration the unique costs associated with ICS systems and has taken a one-size-fits-all approach to setting rates. For example, equipment must be detention grade, which costs more to acquire, install, and maintain than conventional telephone systems do. Service life is shorter and, as mentioned above, there are features built in that assist law enforcement in protecting the public.

AJA recognizes and supports that regular access to communications between inmates and their families is an effective tool for reducing recidivism. Although there is no Constitutional right to this communication, jails routinely offer this benefit to inmates as another tool in helping inmates re-enter their communities.

In addition, fees paid to jails through the use of ICS help to support programs essential for re-entry and to thus reduce recidivism. Without these much needed funds, costs would be borne on the back of taxpayers, or worse, programs would be eliminated altogether because of the lack of adequate funding.

Throughout the rule's proposal and review, AJA leadership has met with

appropriate staff at the FCC (filing an ex parte for June 13<sup>th</sup> and July 29<sup>th</sup>) to express the problematic budgetary impact of the order on jails. AJA also participated in the FCC's ICS industry panel, which included various stakeholders on both sides of the argument. Further, AJA submitted official comment on the proposed rule. Additionally, AJA conducted an internal survey outlining various impacts the proposed ICS rule would have on AJA member facilities in order to provide FCC personnel with greater context. AJA greatly appreciates the opportunities to discuss this rule with FCC staff; however, we are disappointed to see that our concerns were not reflected in the final rule.

It should be noted that the rule will have a significant impact despite the level of action by AJA. Our members work diligently to provide a safe environment for its officers and inmate population. AJA's philosophy is entrenched in the belief that each facility is a part of the local community, and as a result, each facility does whatever it can to ease an inmate's transition from incarceration to productive member of society.

Thus, phone services have a direct impact on this belief and our desire to improve a jail's environment for employees and inmates alike. The American Jail Association represents thousands of jails in all 50 States, with each facility operating a unique budget, inmate population, and geographic footprint. These variables present considerable difference between jails and prisons. Unlike Federal prisons, jails must cope with stringent State budgetary concerns. Jails must operate a balanced budget each year, providing essential services first, and then expanding additional services benefiting inmates, if possible. Prisons do not have this issue; their operations have much more flexibility and costs can be spread out over time.

For example, a jail cannot assume that a recidivism course could be offered indefinitely if the funding is not available in each year's budget. This budgetary line of thinking must be considered when understanding the ICS' rule impact on our members. Further, the turnover rate for jails is significantly higher than prisons. Smaller jails are forced to raise rates in order to provide phone services to an ever-changing inmate population. A jail's population evolves hourly, while a prison's population is much more consistent over a longer period of time. This is a significant distinction because calls within jails are typically local, whereas prisons experience a higher rate of interstate calls, meaning the new rate caps between the two facilities offer different outcomes.

The FCC cannot reasonably expect the uniform cap rate to have the same impact on all applicable facilities. The interim "safe harbor" rate caps of \$0.12 per minute for debit and prepaid calls and \$0.14 per minute for collect calls. Within AJA's own membership, jails vary from large city and county jails to rural facilities with no more than 15 beds. Following our survey, AJA could not endorse one, single rate or "one-size-fits-all" solution that would appease all jail facilities. Given the input provided to the FCC, it is disappointing that the Commission's office did not offer any kind of flexibility for facilities based on their size, inmate population, or fiscal budget. We ask that the Commissioner's office understand the uniqueness of each jail and take into account its operations and budget constraints.

Because of these budgetary restraints, phone contracts are relied upon in order to offer the most beneficial programs to an inmate during their length of

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stay, and cap rates may force jails to discontinue GED programs and other inmate welfare programs. For example, in the survey we shared with the FCC, AJA members stated that a phone contract helps fund work programs, substance abuse classes, recreation equipment, and other services that otherwise would not be feasible within their annual budget. Because jails experience fewer tax breaks as well as support at the county, State, Federal levels, any outside funding support that benefits inmate welfare programs is maximized and recycled within the jail's overall budget.

If the Commission's office enforces an indefinite cap rate, AJA members predict such rates would hinder phone contract procurement, significantly impacting operations. These contracts not only include the phone service, but also the safety systems that help monitor and police phone calls, as well as phone maintenance during the length of the contract. These contracts offer an array of services that would otherwise be impossible to execute in most jail settings, and any cap that would predetermine the cost of a call can have an impact on the feasibility of a contract. Our survey concluded that most jails would either cease phone operations entirely, or have to cut other beneficiary inmate welfare services, such as drug and alcohol rehabilitation, GED certification, television, games, and many others.

AJA provides phone services, despite there being no Constitutional requirement to do so. These phone calls allow inmates to reach out to family, friends, and their attorneys; such a connection is vital for inmate management, the safety of the facility, and inmate transition once freed into the community. We know from firsthand experience that if given the opportunity to use a phone and call home, an inmate is much more likely to behave and follow officer's orders. Further, phone calls greatly increase the interaction between attorney and client; for those jails in rural communities, the logistical benefits of a phone call versus in-person visit is extraordinary. It is not uncommon to have an inmate whose attorney works upwards of 100 miles away from the jail.

AJA supports fair and just ICS calling rates that appease all stakeholders, however the interim cap rates offered do little to encourage continued phone services in our Nation's jails, and leave few alternatives for our members.

We urge the Commission's office to work with AJA and its members towards finding a resolution that allows phone services to continue for both the benefit of the facility, and the benefit of the inmate and their family.

Sincerely,



Esteban M. Gonzalez  
President



Robert J. Kasabian  
Executive Director