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"An organization of lawyers, law students, legal workers, and jailhouse lawyers... in the service of the people, to the end that human rights shall be regarded as more sacred than property interests." Preamble to the NLG Constitution

January 12, 2015

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

RE: Inmate Calling Services - public comment for WC Docket No. 12-375

Dear Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O'Reilly:

The Mass Incarceration Committee of the National Lawyers Guild (NLG) writes to inform you of our support of the reforms suggested to regulate Inmate Call Services (ICS). We strongly advocate that the FCC:

- 1) Ban commissions and other payments to correctional facilities
- 2) Cap the rate for all interstate and intrastate ICS phone calls
- 3) Eliminate ancillary charges

The National Lawyers Guild's Mass Incarceration Committee is a group of lawyers, legal workers, and law students, all working to end the use of prisons as a form of punishment, and to advocate for alternatives to incarceration in a human rights framework. As an organization that provides legal support to those incarcerated and that works directly with prisoners and jailhouse lawyers, our work is directly impacted by the excessive phone rates in contacting clients, and working to maintain their connection with people in the community. NLG advocates for these changes to the ICS system. Giving prisoners the ability to utilize the ICS system at a fair rate is central to the NLG's organizational framework, and thus a fair ICS rate is essential to the NLG's goals.

It is well established that a prisoner's ability to stay connected with family and friends will help reduce recidivism by allowing prisoners to maintain ties with their community, foster a support network and connect with services on the outside to assist them in reentry, thus keeping people out of prison.

I. The FCC should ban commissions and other in-kind payments to correctional facilities.

The FCC should ban the use of commissions and other in-kind payments that are currently used to create a monopoly by service providers in correctional facilities. We agree with the Commission that the current model of site commission payments does not provide inmates with the best possible services at the lowest cost; in fact, it does quite the opposite.¹

¹ Stephanie Clifford and Jessica Silver-Greenberg, *In Prisons, Sky-High Rates and Money Transfer Fees*, N.Y. Times, June 26, 2014, <http://www.nytimes.com/2014/06/27/business/in-prisons-sky-high-phone-rates-and-money-transfer-fees.html> ("But even some industry executives see problems with the current setup, saying commission systems

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The "reverse competition" created by these commissions has the effect of aligning the interests of the correctional facility and the ICS provider at the expense of the incarcerated person and their family.² The families of incarcerated people frequently bear the burden of these costs, and are often unable to afford them. By creating this monopoly on ICS services, and greatly increasing the cost of services to ICS users who have no other means of contacting their loved ones, these commissions unjustly take advantage of the incarcerated in favor of profit, and are repugnant to prisoners' basic human rights.

Justifying such a scheme by directing proceeds from the commissions to jail operation costs or general Inmate Welfare Funds (IWF) unjustly saddles family members with the financial burdens of incarceration: a burden that, if it must be borne, should be shared by all citizens of the community. Further, the welfare of incarcerated people is best served by contact with family members, and that those family members are better served (and are better able to maintain continued communication with their loved ones) if they are not forced to pay such exorbitant costs to maintain that contact.

The NLG agrees with the Commission's previous determination that site commissions are an apportionment of profits between service providers and correctional facilities and not, in and of themselves, a cost of ICS.³ However, while the NLG recognizes that commissions may make up some of the cost to facilities of providing phone services, we would urge that any alternative to site commissions not include a plan that would have these costs recouped in such a way so as to burden the families of incarcerated people through per-call charges. Since the site commissions ultimately make up only a tiny fraction of correctional budgets in most cases (the Mandatory Data Collection estimates that site commission payments represent 0.3 percent of a correctional facility's overall operating budget, while one ICS provider calculated it as 0.4 percent),⁴ a full ban on site commissions would not have an overwhelming effect on the operating capabilities of correctional facilities. The ban should be implemented.

II. The FCC should set a rate cap and limit on maximum per-call charges for interstate and intrastate ICS phone calls to maximize ICS usage.

The FCC should provide a cap on both intrastate and interstate ICS phone rates and set flat rate charges only for calls that exceed a certain duration. The NLG agrees with the Wright Petitioners that the FCC should set a rate cap at or below \$0.07 per minute, and that no phone call should cost more than \$3.00 total. Additionally, we believe that a flat rate charge for all calls would unfairly penalize people who make shorter telephone calls and advocate for a reasonable flat rate charge for calls that exceed a specific duration, such as 30 minutes.

encourage providers to charge inmates more, not less, for services. Companies often win contracts based on how much they will offer states via commissions, rather than the rates they charge inmates.")

² Para. 3, 22, 23; *Second Further Notice of Proposed Rulemaking*, FCC 14-158; WC Docket 12-375.

³ Para. 22; *Second Further Notice of Proposed Rulemaking*, FCC 14-158; WC Docket 12-375.

⁴ Para. 23; *Second Further Notice of Proposed Rulemaking*, FCC 14-158; WC Docket 12-375.

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The NLG opposes a tiered rate system based on facility type, which can result in much higher rates for people in county jails than the rates in prisons. Such a system unfairly affects many incarcerated people who are held for long sentences in county jails and individuals awaiting trial. Incarcerated people do not have control over the facility in which they are placed; thus, they should not be penalized by paying higher rates merely because of the type of facility in which they are detained.

Following the FCC's adoption of reforms to cap rates on interstate calls, there was a nearly 70% increase in the interstate call volume.⁵ This significant increase in ICS usage indicates that unjustifiably high ICS rates kept prisoners from utilizing ICS to make interstate calls, and a cap would alleviate the financial constraints that contribute to inmates' inability to communicate to the outside world.

We urge the FCC to place rate caps on both interstate and intrastate ICS calls. Often, prisons are located hundreds of miles away from a prisoners' family, even if they are within the same state, making visits infrequent or even impossible. Additionally, attorneys and legal advocates for prisoners who may provide assistance with criminal defense, civil issues, or parole hearings often do not have the resources or ability to make frequent legal visits to their clients in prison due to the distance of many prisons within the state, thus necessitating affordable access to telephone communication. In making plans for reentry, prisoners often must make many phone calls to family, other community members, and organizations that may assist with reentry, which makes preparation for reintegration difficult for incarcerated people when they cannot make phone calls at a fair rate. Without a rate cap, the ICS system strains the limited financial resources of prisoners, their families, and others providing assistance to them, ultimately contributing to recidivism.⁶

We encourage the FCC to utilize a policy that incentivizes facilities to maximize ICS usage; however, we do not advocate for the FCC's "minutes of use" proposal, in which facilities may recover funds by charging an additional per-minute rate to prisoners. This policy increases the burden for incarcerated people to use the ICS system and takes advantage of prisoners and their families. A facility should not be able to profit from the hardships of the incarcerated or their families. Phone companies should incentivize maximum ICS usage through contractual arrangements, such as providing financial rewards to facilities that exceed a certain volume of minutes.

Commission reform and rate caps must happen together. If a rate cap is imposed while commissions are still in place, ICS providers would have to pay large portions of their revenue to facilities, which would make the FCC unable to enforce its statutory obligation to ensure that providers are "fairly compensated."⁷ Thus, rate caps cannot be successful without commission reform.

⁵ Para. 5; *Second Further Notice of Proposed Rulemaking*; FCC 14-158; WC Docket 12-375.

⁶ Collateral Costs: Incarceration's Effect on Economic Mobility; p. 4
<http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/CollateralCosts1pdf.pdf>.

⁷ 47 U.S.C. § 276(A): the FCC must "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated."

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III. The FCC should eliminate all ancillary charges and view all ancillary services as basic requirements for user access to ICS.

Ancillary charges extort prisoners and their families by charging astronomical fees, conservatively estimated at 38% of total user payments, for services that are inherent in the operation of ICS.⁸ The record currently supports an ancillary fee model that prevents providers from charging ancillary fees for services seen as basic but permits ancillary fees for user-driven "luxuries" such as paying with a credit card or by check over the phone. This approach is unfair because it penalizes poverty. By assessing ancillary charges against families who do not have internet access or the choice to fund accounts using funds readily available in their bank accounts, the model would target the families who could least afford the additional charges. Further, such ancillary charges would reduce the amount of funds available for use in the account and therefore add additional penalty to these same families by reducing the amount of time they are able to talk to their incarcerated loved ones.

Rather, a model that eliminates ancillary fees entirely and accepts all ancillary services as a basic operational cost will diminish that rift and promote strong family and community ties for all prisoners despite a prisoner's family's socioeconomic status. As a result of the potential for additional financial and social penalization of prisoners and families under any model that allows ancillary fees, just and reasonable ICS rates demands their elimination and the incorporation of their cost into the basic rate cap.

IV. Deaf and hard-of-hearing prisoners must be provided equal access to ICS at the same rate as hearing prisoners.

Equal access to ICS for deaf and hard-of-hearing prisoners is essential. As their disability results in isolation well beyond that of a typical prisoner, the deaf and hard-of-hearing are some of the most vulnerable prisoners and require specific and immediate attention when assessing changes to interstate and intrastate and phone rates. However, as pointed out time and time again in comments filed by Helping Educate to Advance the Rights of the Deaf (HEARD), the additional rates imposed upon prisoners using TTY to make phone calls is not the defining factor in the denial of equal access to deaf and hard-of-hearing prisoners. Equal access for these prisoners requires special attention to the technology available to deaf and hard of hearing prisoners. We endorse and adopt HEARD's comment on WC Docket No. 12-375 in response to the Further Notice of Proposed Rulemaking. In doing so, we laud the need for telephones, videophones, captioned telephones, TTYs and other auxiliary aids in all jails and prisons as well as the need to ensure that prisoners who are deaf and hard of hearing are not charged additional rates as a result of their accommodation needs.

Sincerely,

The Mass Incarceration Committee of the National Lawyers Guild

⁸ Para. 80; *Second Further Notice of Proposed Rulemaking*; FCC 14-158; WC Docket 12-375.

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