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March 25, 2013

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-B204
Washington, DC 20554

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

Dear Secretary Dortch,

The New York University School of Law Immigrant Rights Clinic (“IRC”)¹ and New Jersey Advocates for Immigrant Detainees (“NJAID”) file a joint comment in the above referenced proceeding. IRC is a leading institution in both local and national struggles for immigrant rights, representing immigrants and immigrant rights organizations in their cases and campaigns. NJAID is a coalition of civic and religious organizations whose goals include bringing attention to the plight of immigrant detainees in New Jersey correctional facilities and working to improve the conditions in those institutions.

The U.S. government detains nearly 400,000 immigrants each year pending deportation proceedings. Not all of these individuals are deported. In fact, about half of all cases in immigration court are eventually closed, permitting the immigrant to remain in the U.S. with their families and loved ones. Detention complicates this process by depriving immigrants of their liberty and separating them from their families for months—sometimes years—as they defend their cases. While immigration detention is not considered criminal punishment, detainees are often held in local jails and prisons that have contracted with Immigration Customs and Enforcement. Many detainees are thus subject to the same exorbitant phone rates as others held at such facilities.

Telephone access is critical for the vast number of detainees who are separated from their families and communities. Maintaining ties to the outside world is critical to boosting morale among detainees who suffer mentally and physically from prolonged confinement. Furthermore, the majority of detainees are unrepresented and must depend on family and community contacts to develop winning legal arguments. For all of the reasons outlined herein, we urge the FCC to set reasonable interstate phone rates for correctional and detention facilities nationwide. We further ask that regulatory measures be implemented without delay despite the transition in leadership at the FCC.

SUMMARY OF COMMENTS

After receiving numerous complaints from immigrant detainees and their families regarding the high telephone rates in New Jersey county jails, IRC and NJAID have been engaging our local community leaders about the issue and investigating the current phone plans. Through these conversations and investigations, we have learned a great deal about how the system works in New Jersey, and how immigrants in particular are adversely affected by the exorbitant phone rates.

Our comments below are therefore divided into two parts. First, we present research on interstate rates and call volume in New Jersey, focusing on data on three county jails. Our data shows that:

- interstate rates do comprise a significant portion of calls made at local correctional facilities;
- these rates burden prisoners, detainees, and their families to a greater extent than local rates; and
- these rates are not justified by the evidence which we have uncovered on the costs of service provision.

In light of exorbitant rates and the lack of political will by local governments, we believe that federal regulation of interstate rates is critical to ensure just and reasonable rates for all individuals held in New Jersey jails, prisons, and detention facilities.

In the second part of our comment, we emphasize the importance of interstate telephone service to immigrant detainees. Immigrant detainees are particularly vulnerable to interstate rates due to their dependence of family and community for legal matters, as well as frequent transfers across state borders. We are certain that the FCC’s regulation of interstate rates will benefit the hundreds of thousands of immigrants detained each year, as well as their families and communities.

COMMENTS

I. INDIVIDUALS HELD AT STATE AND COUNTY JAILS IN NEW JERSEY ARE SUBJECT TO PROHIBITIVE INTERSTATE TELEPHONE RATES WHICH DO NOT REFLECT THE ACTUAL COST OF PROVIDING SERVICES

As requested by paragraph 43 of the Notice of Proposed Rulemaking (NPRM), we provide up-to-date information on prison phone rates in New Jersey by focusing on three county facilities:

Facility name	Location	Types of prisoners/detainees held	No. of beds (approx.)
Essex County Correctional Facility (ECCF)	Newark, NJ	Federal, State, County, ICE*	2,400
Monmouth County Correctional Institution (MCCI)	Freehold, NJ	Federal, State, County, ICE*	1,300
Bergen County Jail (BCJ)	Hackensack, NJ	State, County, ICE *	1,250

* = Refers to immigrant detainees held under contract with U.S. Immigration and Customs Enforcement

1. *Structure of telephone contract and site commissions.* Many county jails in New Jersey including ECCF and MCCI provide telephone service through State Contract No. 61618, which exists between the State of New Jersey and Global Tel*Link (GTL).² The State Contract provides a menu of six pricing options,³ one of which a county may select for its own correctional facility. Essex County has selected an option that provides a 54% commission, and Monmouth County has opted into an option that provides a 55% commission. Both counties, like many others, have disregarded lower cost schemes offered

by the State Contract. For instance, one of the pricing options offers a more reasonable per-minute rate of \$0.25 and \$1.00 surcharge for interstate calls, but it has not been utilized because it provides a 15% commission. Counties may also choose to enter into their own contracts with service providers to receive an even higher proportion of revenue. Bergen County, for instance, has its own contract with GTL and receives a 60.5% commission from telephone usage at BCJ.⁴

2. *Exorbitant rates and surcharges.* Under these pricing schemes, interstate calls are prohibitively expensive. The following chart shows the rates for debit interstate calls at each of the facilities:

Facility	Per-call surcharge	Per-minute rate	Cost of 15-minute call
ECCF	\$2.50	\$0.69	\$12.85
MCCI	\$1.75	\$0.89	\$15.10
BCJ	\$3.25	\$0.69	\$13.60

Imposing rate caps and eliminating per-call surcharges would ensure just and reasonable interstate phone service at these facilities and all other New Jersey correctional institutions (NPRM ¶¶ 17-18). As other commenters have noted, phone calls are much more affordable in states that have lower rates and no surcharge. For instance, the interstate rate in New York—\$0.048—is commensurate with the prevailing interstate long-distance rate charged to the general public in New Jersey (\$0.05).⁵ As a result, a 15-minute interstate call costs approximately 75 cents, or around 5% of what it costs at MCCI. We therefore request that the FCC adopt the lowest rate cap possible.

3. *Cost of service provision.* Because these prohibitive rates are not justified by the costs of service provision, adopting rate caps will not preclude phone companies from recovering their legitimate costs (NPRM ¶ 21). In a prior contract that existed between Essex County and Inmate Telephone Service, Inc. (“ITI,” now a part of GTL), ITI avers that its “annual investment totals \$365,700 over the course of the five year contract,” or \$73,140 per year.⁶ ITI also states that it will pay the cost of a full-time maintenance staff person; according to the current contract that ECCF has opted into, the cost of such a full-time staffer is approximately \$50,400 per year. **Therefore, we can estimate that the cost of the provision of phone service to be \$123,540 per year.** Given that the total annual revenue generated by phone use at ECCF is estimated at \$1.7 million, we can calculate that Essex County and GTL together are profiting around \$1.576 million per year—**almost thirteen times the actual cost of service.**

4. *Potential impact on call volume.* We can also expect that if rates are lowered, telephone companies will benefit from a higher call volume of interstate calls (NPRM ¶ 27). As a result of the prohibitive rates noted above in paragraph 3, individuals and families are forced to spend fewer minutes when making interstate calls. The summary commission reports provided by GTL to each of the three counties in 2012 show that interstate calls on average, interstate calls are shorter than local calls⁷:

Call length data based on January 2012 commission reports: (A similar trend continued throughout the year at all three facilities)		
Facility	Average length of interstate call:	Average length of local call:
ECCF	9.95 minutes	12.16 minutes
MCCI	6.21 minutes	8.70 minutes
BCJ	9.16 minutes	10.52 minutes

Furthermore, the above chart also demonstrates that interstate calls are shorter in facilities that have more expensive rates. Of the three, MCCI has the most expensive interstate and local rates (see paragraph 2 above), followed by BCJ and ECCF respectively. Accordingly, the average interstate call at MCCI is the shortest. In sum, the data indicates that calling patterns depend on the affordability of rates and that reduced rates will lead to a greater volume of interstate calls.

5. *Lack of political will by local governments.* Although we are currently advocating on state and local levels to reduce intrastate telephone rates in New Jersey, our efforts have had limited success. Specifically, last November, we submitted a formal request to the Essex County Executive regarding telephone rates at ECCF. The County Executive rejected our request, stating that they saw no need to discontinue the current contract. Evident in the County's statement is a plain disregard for the public interest: "All detainees and inmates, as well as those outside the facility, are made aware of all costs associated with services provided at the facility and have free choice whether to avail themselves of these services."⁸ County officials clarified that this "free choice" means that individuals are free not to call their loved ones. It is clear that local governments will not opt for contracts that provide lower rates insofar as they receive substantial revenue from telephone commissions. In 2012, telephone usage at the facilities generated approximately \$950,000 in revenue for Essex County⁹; \$388,345.88 for Monmouth County, and \$530,351.30 for Bergen County. Given the apparent lack of political will, we urge the FCC to exercise its authority to regulate interstate rates at all correctional facilities. We believe that such action will encourage state and county governments to reevaluate their policies (NPRM ¶ 50).

II. REGULATION OF INTERSTATE RATES AT CORRECTIONAL AND DETENTION FACILITIES WILL HAVE AN EXTRAORDINARY BENEFICIAL IMPACT ON IMMIGRANT DETAINEES

1. *Scope of immigration detention.* The regulation of interstate rates is likely to have an extraordinary beneficial impact on immigrant detainees. As many commenters have noted, the regulation of interstate rates will help incarcerated individuals maintain family and community ties, and thereby promote public safety. These lessons are equally true for the numerous immigrants subjected to detention. In 2011, 429,247 noncitizens were detained by U.S. immigration authorities in order to facilitate their attempted deportations.¹⁰ The average immigration detainee population on any given day for federal fiscal year 2011 was 33,330.¹¹ As previously noted, not all immigrant detainees are deported. Many have significant ties to the community, including spouses and children in the U.S. Immigrant detainees thus face the same damage to family unity, difficulties in re-entering the community, and collateral effects on the health and well being of family members as U.S. citizens held by criminal justice authorities.¹² Community support is also critical for the substantial number of detainees who have compelling and meritorious claims to asylum and other forms of humanitarian relief.

2. *Immigrant detainees' vulnerability to interstate rates due to interstate transfers.* Immigrant detainees represent a substantial and particularly captive long-distance market for prison phone providers. Immigrant detainees are frequently detained in out-of-state facilities far outside their local calling areas. In a 2009 report, Human Rights Watch found that facilities in two states with some of the largest immigrant populations in the country, California and New York, were significantly more likely to originate transfers of immigrant detainees than they were to receive new ones.¹⁴ Another report by Human Rights Watch found that 27 percent of the transfers affecting the one million immigrants detained between 1998 and 2010 were interstate.¹⁵ Furthermore, the average distance of an immigrant detainee transfer during that period was approximately 370 miles.¹⁶ Unlike prisoners in the federal Bureau of Prisons ("BOP") system who may also experience interstate transfers,¹⁷ immigrant detainees do not have the benefit of fixed nationwide phone rates. Thus, they represent a huge and particularly captive long-distance market for prison phone providers.

Mr. S has been a lawful permanent resident for approximately 43 years. He is one of many New Yorkers detained in New Jersey. **Mr. S has to work for nearly one month at MCCI, where the weekly wage is \$4.00, to make a single 15-minute phone call to his teenage son in New York City.**¹³

3. *Contact with family and community.* Immigrant detainees are particularly vulnerable to the high cost of prison phone rates for additional reasons. Unlike purely criminal detainees, noncitizens can be detained without having committed a crime at all,¹⁸ may be held without bail,¹⁹ and can be incarcerated with no clear endpoint to their detention.²⁰ Given how easily it is for them to be brought into the detention system and how difficult it may be to get out, it is particularly important for immigrant detainees to keep in touch with their families and the outside world. Affordable interstate rates will ensure fair and reasonable telephone access to the large number of immigrants detained outside of their home states (NPRM ¶ 48).

Ms. F speaks with her husband, detained at ECCF, almost every other day. **“He feels so much better when I talk to him,”** she says. Because of her work schedule and lack of access to transportation, she is unable to visit him at the facility. Ms. F noted that lower phone rates at the facility “would be good, not only for [my husband] but also to others . . . Some of them don’t have any money to make any phone calls.”

4. *Importance of telephone access for immigration proceedings.* Furthermore, there is no right to a government-funded attorney in immigration proceedings.²¹ As a result, the vast majority of immigrant detainees are not represented by counsel.²² Thus, the telephone is a critical tool for the thousands of detainees who must fight their deportations without the assistance of an attorney. An applicant for asylum, for instance, needs affordable telephone service to connect with experts and gather documents to demonstrate the possibility of persecution abroad. A lawful permanent resident seeking cancellation of removal must have telephone access in order to gather extensive documentation to demonstrate family and community ties, such as proof of education and/or employment, tax records, and letters of support. Affordable interstate rates will help ensure a fair day in court for the large number of immigrant detainees who have meritorious claims to relief from deportation.

“Telephone rates at [ECCF] are expensive. Very expensive. And communication is of the essence over there; you’d think they know.” Mr. B is a long-time permanent resident and New Yorker who was detained at ECCF for four months. His phone calls were particularly important—and expensive—because most of his family and friends live in New York City. While in detention, he kept in close contact with his wife, mother, brother, and friends by telephone. They provided him with emotional and moral support, and helped him gather documents for his immigration proceeding. Mr. B was granted relief and released from detention last spring. He is currently applying for U.S. citizenship.

CONCLUSION

We believe that the FCC has the necessary authority to regulate interstate prison phone services contracted by state and county governments.²³ Thus, on behalf of the thousands of people held in immigration detention in New Jersey every year, and the thousands more held nationwide, IRC and NJAID implore the FCC to take action to stop what is nothing more than pure price-gouging. IRC and NJAID also ask that the FCC require the necessary transparency to prevent future exploitation by prison telephone companies of vulnerable immigrant detainees, other persons held in correctional facilities, and their families.

Respectfully submitted,

New Jersey Advocates for Immigrant Detainees
New York University School of Law Immigrant Rights Clinic

¹ The views expressed herein represent the views of the Immigrant Rights Clinic and not necessarily those of New York University or its affiliates. This comment was written by Leila Kang '14 and Jesse Rockoff '14 for IRC and NJAID.

² Available at http://www.state.nj.us/treaEEsury/purchase/nea/contracts/t1934_05-x-32533.shtml.

³ See "County Price Matrix," available at

<https://www.net1.state.nj.us/treasury/dpp/ebid/Buyer/GetDocument.aspx?DocId=12912&DocName=T1934CountyPriceMatrix.pdf&DocLoc=15>.

⁴ A copy of the contract was obtained via public records and is on file with the authors of the comment.

⁵ Verizon Residential, <http://www.verizon.com> (accessed October 2012 and January 2013 to obtain pricing information for Newark, NJ and Freehold, NJ customers). This rate does not include monthly fees, or applicable taxes and fees.

⁶ A copy of the contract was obtained via public records and is on file with the authors of the comment.

⁷ Copies of these reports were obtained via public records and are on file with the authors of this comment.

⁸ Letter from Essex County Department of Corrections Business Office to NJAID, dated Jan. 4, 2013 (on file with authors of this comment).

⁹ We received the Essex County commission reports from January 2012 through November 2012 in our request for all 2012 commission reports. The commission generated through these 11 months was \$872,099.90. We added the monthly average, \$79,281.81, to this sum in order to reach the \$950,000 estimate.

¹⁰ JOHN SIMANSKI AND LESLEY M. SAPP, U.S. DEP'T OF HOMELAND SECURITY, IMMIGRATION ENFORCEMENT ACTIONS: 2011 (2012), at 4, available at http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf.

¹¹ U.S. DEP'T OF HOMELAND SECURITY, IMMIGRATION AND CUSTOMS ENFORCEMENT, FACT SHEET: DETENTION MANAGEMENT (2011), available at <http://www.ice.gov/news/library/factsheets/detention-mgmt.htm>.

¹² See NEW YORK UNIV. SCHOOL OF LAW IMMIGRANT RIGHTS CLINIC, LOCKED UP BUT NOT FORGOTTEN (2010), at 7, available at <https://afsc.org/sites/afsc.civicaactions.net/files/documents/LockedUpFINAL.pdf>.

¹³ The names of individuals discussed in all of the anecdotes herein are concealed for their protection. The stories are based on personal knowledge and/or information obtained through telephone interviews.

¹⁴ See HUMAN RIGHTS WATCH, LOCKED UP FAR AWAY at 32 (2009), available at http://www.hrw.org/sites/default/files/reports/us1209webwcover_0.pdf.

¹⁵ HUMAN RIGHTS WATCH, A COSTLY MOVE, at 19 (2011), available at http://www.hrw.org/sites/default/files/reports/us0611webwcover_0.pdf.

¹⁶ *Id.* at 20.

¹⁷ BOP prisoners are given far greater due process protections against transfers than immigrant detainees. See LOCKED UP FAR AWAY, *supra* note 8, at 19-24.

¹⁸ See 8 U.S.C. § 1226(a) (2012) (providing authority to detain potentially any noncitizen).

¹⁹ See *id.* § 1226(c)(2).

²⁰ See *Demore v. Kim*, 538 U.S. 510, 532 (2003) (Kennedy, J., concurring) (holding that detention of noncitizens may be continued for an indeterminate length of time so long as it is not "unreasonable" or "unjustified").

²¹ See 8 U.S.C. § 1229a(b)(4)(A) (2012).

²² See NINA SIULC ET AL., VERA INSTITUTE OF JUSTICE, LEGAL ORIENTATION PROGRAM: EVALUATION AND PERFORMANCE AND OUTCOME MEASUREMENT REPORT, PHASE II (2008), at 59, available at <http://www.justice.gov/eoir/reports/LOPEvaluation-final.pdf> (estimating that approximately 86% of detained immigrants nationwide are unrepresented by counsel).

²³ IRC and NJAID intend to file a reply comment addressing the FCC's legal authority over state and local contracts for interstate phone service, should this authority be challenged by other commenters.