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March 25, 2013

Marlene H. Dortch, Secretary
Office of the Secretary
Federal Communications Commission.
445 12th Street SW.
Washington, DC 20554

Submitted via Electronic Comment Filing System
WC Docket No. 12-375
FCC 12-167

**Re: Rates for Interstate Inmate Calling Services; Notice of
Proposed Rulemaking, 78 Fed. Reg. 4369 (January 22, 2013)**

Dear Ms. Dortch,

The American Immigration Lawyers Association (AILA) submits the following comments in response to the Federal Communications Commission (FCC) Notice of Proposed Rulemaking (NPRM) on “Rates for Interstate Inmate Calling Services,” published in the Federal Register on January 22, 2013.

AILA is a voluntary bar association of more than 12,000 attorneys and law professors practicing, researching and teaching in the field of immigration and nationality law. The organization has been in existence since 1946. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, U.S. lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws.

AILA commends the FCC for granting two longstanding petitions calling for changes to the rules governing rates for interstate interexchange inmate calling services (ICS). We strongly encourage the FCC to regulate interstate telephone rates for phone calls made from correctional facilities to ensure just and reasonable rates for inmates, including individuals in immigration detention.

**Exorbitant Telephone Rates Harm Individuals in Immigration
Detention and Interfere with Clients’ Access to Counsel**

The exorbitant telephone rates paid by individuals in immigration detention are a well-documented concern. According to a 2012 report issued by the ACLU of Georgia that covered four immigration detention

facilities in Georgia, “almost all detainees complained of the phone services being too expensive, sometimes prohibiting detainees from contacting their family members altogether.”¹ In a March 16, 2010 article, the New York Times highlighted how immigrant detainees who were moved from a detention center in New York to a county jail in New Jersey saw their phone costs increase 800 percent to more than 89 cents per minute.² These high phone rates do not only reflect additional costs incurred by the companies for delivering ICS at correctional facilities. Instead, they are the result of the functional monopoly created by exclusive contracts granted to a single ICS provider at each correctional facility, as well as the high commissions paid by the providers to the correctional facilities to obtain these exclusive contracts.

Excessively high phone rates are particularly problematic for immigrant detainees. Noncitizens do not have the right to an attorney provided by the government in immigration court. As a result, 84% of the people in immigration detention cannot afford to hire an attorney. Unrepresented detainees are forced to prepare their cases while they are in detention and without the help of an attorney. Nearly all forms of immigration relief require substantial amounts of corroborating evidence. For example, asylum applicants may have to submit Department of State reports, affidavits from friends and family, official documents from their home countries, birth certificates, expert testimony, newspaper articles, and/or other evidence to show that they fear persecution in their home countries. Individuals who are applying for cancellation of removal may have to submit affidavits, medical records, letters, therapist statements, and/or other evidence showing that his or her removal would result in hardship to specific family members. The only way a detainee can gather this evidence is to call family members, friends, witnesses, and advocacy organizations. If making these phone calls is cost prohibitive, immigrant detainees may not be able to collect the evidence necessary to show they should not be removed from the United States.

High phone rates can also interfere with immigrant detainees’ access to their attorneys in the event that detainees are able to afford an attorney or if an organization or attorney is able to represent them pro bono. The costs of calls make it more difficult and more expensive for attorneys to work with detained clients to gather necessary evidence, and raise the costs of representation. Unfortunately, in addition to other costs associated with representing detained individuals, these phone rates can deter attorneys from representing immigrants in detention.

New ICS Rules Should Apply to Publically- and Privately- Administered Facilities, and Be Implemented as Soon as Possible

Because the immigration detention system relies heavily on privately-administered detention facilities, new ICS-related rules should apply to both publically- and privately-administered facilities. AILA also strongly recommends that the FCC require full

¹ See “Prisoners of Profit: Immigrants and Detention in Georgia” (May 2012), *available at* http://www.acluga.org/download_file/view_inline/42/244/.

² See Nina Bernstein, *Move Across Hudson Further Isolates Immigration Detainees*, N.Y. TIMES, March 16, 2010, *available at* http://www.nytimes.com/2010/03/17/nyregion/17detain.html?_r=0.

implementation of any new ICS-related rules as soon as possible, even in facilities with existing contracts. Regulations can only provide the intended protections in facilities where the standards are actually implemented. We agree that the FCC should mandate a one-year fresh look transition period for existing ICS contracts, such that new rate caps would be effective at the end of the transition period.

Conclusion

We appreciate this opportunity to comment in response to the FCC NPRM on “Rates for Interstate Inmate Calling Services.”

Sincerely,
THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION