



# Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

July 31, 2020

Federal Communications Commission  
Secretary Marlene H. Dortch  
Office of the Secretary  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

**Re: Comment on Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking FCC-CIRC2008-05**

Dear Ms. Dortch:

The Human Rights Defense Center (HRDC) respectfully submits this comment to the Federal Communications Commission reiterating our position that we oppose all ancillary fees in regard to interstate and intrastate phone calls made by prisoners and their families. While order FCC-CIRC2008-05 proposes to lower interstate rate caps and adopt rate caps for international calls, we do not feel the order goes far enough, and all ancillary fees relating to phone calls, whether interstate or intrastate should be abolished.

HRDC adheres to its position that \$.05 per minute is more than adequate compensation for companies that provide all Inmate Calling Services (ICS) services, locally, interstate, intrastate and internationally. It is worth noting that outside of the prison and jail context no one in the United States pays \$.05 a minute for phone or video calling service.

The ICS industry, which controls the ability of prisoners to communicate with their loved ones, has grown into an effective duopoly: Securus Technologies, Inc. (Securus), along with rival telecom Global Tel\*Link (GTL), currently control over 70 percent of the ICS industry.<sup>i</sup> Securus maintains monopoly contracts at facilities that collectively house over 1.2 million prisoners,<sup>ii</sup> charging often exorbitant fees which burden families and provide lucrative kickbacks to government agencies. Former Chairwoman Mignon Clyburn and many others in the FCC worked diligently to reform this industry, issuing orders in 2013,<sup>iii</sup> 2015<sup>iv</sup> and 2016<sup>v</sup> to cap the rates for calls made from prisons and jails.

It must be noted that outside of the prison/jail context, telecom companies do not charge regular customers the same sort of ancillary fees as prisoners and their families, and these fees, while often paid by family members of the incarcerated, grossly inflate the costs of prison phone calls. It has been reported that 34% of families of prisoners go into debt because of the costs of telephone calls.<sup>vi</sup> According to the FCC's own report, studies have shown that prisoners who

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have regular contact with family members are more likely to succeed after release and have lower recidivism rates. How are families supposed to stay in touch with loved ones if the costs associated with a simple phone call are prohibitive? This issue has been made even direr due to the Covid 19 pandemic.

With no sense of irony, the FCC purports to encourage free markets and competition, yet everyone, including Chairman Pai, have long acknowledged that prison and jail phone call rates represent a total and abject market failure. Much of the current FCC proposal will only deepen and further perpetuate this market failure while shielding the companies from any real competition and also continuing to deprive consumers, the people who actually pay the bills, of any real choice or say in the matter. At this point in time, the FCC has spent nearly two decades wrestling with various ICS related regulatory proposals. The idea or notion that market competition could resolve these issues is strangely absent in any discussions about the ICS industry. When was the last time the FCC set rates for interstate or intrastate phone calls outside of the ICS context?

HRDC has been dealing with the ICS industry since 1992. In the 1990s the ICS companies justified their obscene phone rates by claiming high rates of fraud and bill non-payment. By the 2000s, all the companies were using prepaid accounts which largely eliminated the issue of bill non-payment. It was in this same time period that the companies invented ancillary fees as means to further gouge and exploit their captive market. As the companies surrendered larger and larger shares of their billed phone rates as kickbacks to the detention facilities that offered them monopoly contracts, they saw and used ancillary fees as a way to further enrich themselves and their hedge fund owners by pocketing money they would not have to share with their government collaborators. Today's FCC proposal legitimizes the notion of ancillary fees as a legitimate charge for consumers, a charge other telecom consumers who have a choice of provider do not pay and are not charged.

Specifically, with regards to the ancillary fees, HRDC is aware of no other phone service provider in the US that charges its customers to pay their bills. When Verizon floated the proposal in 2011 that it would charge consumers \$2 a month to pay their phone bill, consumer outrage and a threatened FCC investigation led to Verizon backing off the proposal within a matter of days. Because the ICS industry has no voluntary customers, they are largely impervious to any consumer or market pressures and demands. The FCC proposal legitimizes and perpetuates this form of consumer exploitation. Of all the ancillary fees being proposed by the FCC, the one allowing ICS companies to charge customers for the privilege of prepaying their phone bill is the most egregious, more so when the companies limit the amount of money customers can put on their account into order to further gouge and exploit the consumer by charging even more per transaction.

The FCC does consumers a disservice by not recognizing these ancillary fees for what they are: fees conjured from whole cloth in the past 15 years to further exploit consumers and pad the bottom line of ICS providers that have chosen to give significant portions of their rate fees back to the government as a kickback. Consumers should not pay the price for these companies' greed and illegitimate business practices. Prisoners and their families should not be the sole Americans forced to pay ancillary fees in a telecom industry where no other consumer is paying them.

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HRDC applauds the FCC for lowering its proposed rate caps from \$.21 to \$.14 per minute for debit card calls and from \$.25 to \$.16 for collect calls. However, this does not go nearly far enough and is an affront to Americans forced to use ICS services. Simply put, where else in America is ANYONE paying \$.14 a minute for telephone service? Nothing illustrates the total, abject and complete market failure of the hedge fund owned ICS duopoly than the very notion that somehow forcing consumers to pay \$.14 a minute for telephone service is a good idea, more so, when phone time is purchased for fractions of a penny per minute by these same companies.

The disconnect between this proposal and reality is seen in the fact that hundreds of prisons around the country currently offer ICS services for \$.05 a minute or less.

That the FCC views the kickbacks paid by the ICS companies as a means for facilities to recoup their costs, legitimizes the practice of giving kickbacks to government agencies in exchange for monopoly contracts. As HRDC has previously noted, GTL was giving criminal bribes to Charles Epps, the commissioner of the Mississippi Department of Corrections in exchange for that state's monopoly prison phone contract. These criminal bribes were in addition to the legal kickbacks GTL paid to the state of Mississippi. While Mr. Epps was convicted and sentenced to federal prison for taking these bribes, GTL retained the phone services contract it obtained through criminal bribery. These are not legitimate expenses.

Due to a lack of transparency in the ICS industry, which the FCC has allowed to continue, no one really knows how much these hedge fund owned companies spend in kickbacks, criminal bribes, campaign donations, lobbying and other expenses to secure these contracts. Yet they seek to shift these expenses to the backs of prisoners and their families as if they were somehow a legitimate business expense. Prisons and jails are in the business of caging people. On any given day, 2.5 million people are locked up in the United States. Prisons and jails consume at least \$90 billion a year in direct operational costs and more if capital construction, employee benefits and other expenses are factored in. To take or reject kickbacks is a policy decision to be made by government officials, it is not a legitimate expense to be passed on to a captive population seeking to exercise the human right of communication.

When New York City decided to provide free phone calls for prisoners, it rightly decided that the cost of phone calls is something to be borne by all tax payers, not just those with an imprisoned loved one. Moreover, profit margins are so high that states can and do still get kickbacks even when rates are \$.05 or lower per minute. The FCC should not allow for correctional facility costs absent actual evidence that facilities actually incur such costs as part of their daily operations.

We ask that the FCC create real competition between phone companies and allow prisoners and those who communicate with them to choose their phone carrier and let the companies providing communication services compete for consumer business like others do. It is telling that the dominant ICS companies, Securus and GTL are totally incapable of competing for consumer business by appealing to consumers to exercise an actual choice. The only way they can round up consumers to exploit is by bribing government officials with a variety of inducements to give them monopoly contracts and to prevent, at all costs, the ability of consumers to have any choice or say in the matter. As the rate caps stand, a fifteen-minute intrastate phone call in Arkansas can cost in excess of \$4.80, while an intrastate phone call in California only costs \$1.23.<sup>vii</sup> Prisoners and their families have no choice, and must either pay the rate or go without external

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communication. And while this FCC report does not comment specifically on intrastate charges, noting that ancillary fees cannot be segregated between the interstate and intrastate jurisdictions except in a limited number of cases, we feel they are just as unfair as the interstate proposal.

The FCC's Commission Chairman Ajit Pai is currently urging state governments to impose price caps on prison phone calls, after having helped kill previous rate caps<sup>viii</sup> and even instructed lawyers to drop the commission court defense of a cap in 2017.<sup>ix</sup> In the past 35 years the only state utility commissions that have deigned to regulate the ICS industry, that HRDC is aware of, are the commissions in New Mexico, Louisiana and Alabama. The state of New York significantly reduced its rates due to executive action by then Governor Spitzer. The reality is that state utility commissions lack the interest and the political will to do anything about the current state of ICS affairs. Thanks to deregulation at the state level, in many places there is no real regulation of the telecom industry. If there were competition in the ICS field, this would not be an issue and the market would regulate it. Where are the believers in free markets, free enterprise and competition when it comes to the ICS?

The Covid-19 pandemic has shown the importance of communication between prisoners and their families, especially as in-person visits are curtailed or eliminated due to the pandemic. Cheap, affordable communication is a fundamental human right. Around the world, people communicate freely and cheaply. This includes prisoners. Consumers can and do use applications at no charge like Skype or Whatsapp to communicate at no additional cost with people around the world. Prisoners and their families in the US are the only ones in the world paying these exorbitant rates and not coincidentally, the US is the only country in the world with an ICS industry. No other government in the world has allowed private sector companies to so viciously and ruthlessly exploit its prisoner population and their families as has the US. Some localities, including the city of New York, have started moving back to the pre ICS era of allowing prisoners to make phone calls at no charge to the prisoner or call recipient. These positive reforms should be encouraged by the FCC so that all Americans can enjoy them and people's rights to affordable communication should not hinge on where they live.

While the order makes some very modest attempt to lower rates and ease the burden of ancillary fees on prisoners and their loved ones, we respectfully ask that the FCC remove all ancillary fees, cap the costs of calls at no more than \$.05 per minute and create real competition between carriers. Allowing the consumers who actually pay the bills with their hard earned money will bring competition to a field that currently has none. The competition that has served consumers outside of the prison context so well since the breakup of the AT&T monopoly in the 1980s would also serve consumers of ICS services well. Removing these communication barriers will benefit everyone, by allowing unrestricted access to affordable services to all incarcerated members of our society, including their families.

Thank you for your time and attention to this matter.

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Sincerely,



Paul Wright  
Executive Director, HRDC

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<sup>i</sup> See Prison Phone Giant GTL Gets Bigger, Again (August 28, 2017)

([www.prisonpolicy.org/blog/2017/08/28/merger](http://www.prisonpolicy.org/blog/2017/08/28/merger))

<sup>ii</sup> See About Us (<https://securustech.net/about-us>)

<sup>iii</sup> See Rates for Interstate Inmate Calling Services, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107 (2013) ([https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-13-113A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-13-113A1.pdf))

<sup>iv</sup> See Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd. 12763 (2015)

<sup>v</sup> See Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, Order on Reconsideration, 31 FCC Rcd 9300 (2016) ([https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-16-102A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-102A1.pdf))

<sup>vi</sup> <https://ellabakercenter.org/sites/default/files/downloads/who-pays.pdf>

<sup>vii</sup> <https://www.prisonphonejustice.org/>

<sup>viii</sup> <https://arstechnica.com/tech-policy/2020/07/ajit-pai-urges-states-to-cap-prison-phone-rates-after-he-helped-kill-fcc-caps/>

<sup>ix</sup> <https://arstechnica.com/tech-policy/2017/02/republican-led-fcc-drops-court-defense-of-inmate-calling-rate-cap/>