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September 18, 2019

Iowa Department of Commerce
Iowa Utilities Board
1375 East Court Avenue
Des Moines, IA 50319

Subject: Inquiry into Regulatory Requirements for AOS Companies

Dear Members of the Board:

The Office of Ombudsman has received complaints over the years related to telephone service in prisons and jails. The complaints include, but are not limited to, concerns about telephone rates, early disconnection, and poor connections. I have attached a copy of articles from my office's 2014 and 2015 Annual Reports regarding our involvement in addressing phone rates in Iowa's prison system.

The Federal Communication Commission adopted a 21 cents per minute charge for pre-paid interstate calls in 2014 and the Iowa Department of Corrections adopted an 11 cents per minute rate for all calls in 2016. The phone rates in Iowa jails have not decreased during this time, and I believe those rates put an undue strain on jail inmates and their families.

I support the Iowa Utilities Board (IUB) taking action to regulate intrastate and local phone rates for incarcerated individuals. AOS providers should be able to justify their rate structures to the IUB. I would specifically request that the IUB consider establishing a safe harbor rate, as well as look closely at the reasonableness of flat rates and high first-minute rates charged by AOS providers.

Thank you for giving my office the opportunity to comment and for your consideration of these comments.

Sincerely,

Kristie Hirschman
Ombudsman

KH/jbc

Attachments: Attachment A and B

Attachment A

From the Ombudsman's 2014 Annual Report:

A Recommendation – Inmate Telephone Rates

Across the nation, telephone rates for inmates have been at an extremely high cost to them and their families. The costs are even more outrageous because we know many inmates earn only pennies per hour and often come from low-income families. This past year, however, the Federal Communications Commission (FCC) began bucking the current system of prisons and jails taking kickbacks and commissions on inmate telephone calls. The FCC ruling to reduce interstate rates for the inmate calling system (ICS) was based on the broader policy considerations that inmates who have pro-social support and more meaningful contact with family and friends are less likely to return to prison, which reduces the burden on the corrections system and reduces other societal costs.

Our office became interested in inmate telephone rates after receiving a complaint about the DOC's implementation of the FCC ruling. The FCC ruling was significant because it not only required interstate calling service rates to be at or below 21 cents per minute, it also tried to mandate using a cost-based system for establishing rates, a safe harbor rate of 12 cents per minute; no extra charges for TTY and relay services for those with disabilities; and some reporting requirements to gauge whether additional action might be necessary. Some provisions of the FCC ruling are being litigated.

The DOC's proposal to comply with the FCC ruling seemed to be a good idea because it substantially reduced the cost of a 20-minute interstate call from \$9 to \$4.20, and reduced the cost of intrastate calls on average approximately \$2.45 per call. But, it more than doubled the cost of a local call from \$2 per call to \$4.20 per call.

In July, the Ombudsman spoke to the Iowa Board of Corrections (Board) about the proposed rates. She noted that the FCC ruling sought to bring ICS rates to levels that are "just, reasonable, and fair." She pointed out that the FCC report/order about the rule changes was particularly critical of telephone rates charged to offenders above and beyond the cost of providing the service. The FCC report was also critical of salaries and benefits paid for by telephone fees. The Ombudsman recommended that the Board and the DOC ensure ICS rates and any other fees they impose or pass on to Iowa inmates for telephone calls are also just, reasonable, and fair. In doing so, she urged them to consider the framework created by the FCC, including the implementation of a cost-based system.

At this time, we intend to monitor follow-up actions to the FCC ruling and determine whether or not DOC expenditures comply with Iowa law and its original intent. Ultimately, we believe the outcome of the court case about the FCC ruling will determine where this policy discussion will go. Our office will continue to research and monitor the issue.

For additional information about offender telephones rates, see:

<http://www.fcc.gov/document/fcc-continues-push-rein-high-cost-inmate-calling>

<http://www.fcc.gov/guides/inmate-telephone-service>

<http://blogs.wsj.com/law/2014/11/20/fcc-lays-groundwork-for-more-curbs-on-prison-call-rates/>

Attachment B

From the Ombudsman's 2015 Annual Report:

Inmates to Benefit From Falling Phone Rates

The cost of inmate telephone calls is going down nationwide. Just how far—and how quickly—will apparently be decided in federal court.

Iowa prison inmates have already seen revolutionary rate drops. If “revolutionary” sounds like an exaggeration, consider this: In about two years' time, the cost of a 20-minute interstate (out-of-state) phone call for an Iowa prison inmate has dropped from \$9 to \$2.20. Even more significantly, the flat-rate charges of yesteryear are gone. Instead of paying \$9 for every interstate call that lasts 20 minutes or less, Iowa prison inmates now pay 11 cents a minute for most phone calls. A five-minute interstate call which had cost \$9 now costs 55 cents.

It would be difficult to overstate the significance of these rate drops for Iowa prison inmates, their families, and their friends. The overall picture for reduced phone rates for inmates at Iowa's 99 county jails and 12 city jails is a bit more nebulous.

Background

The Federal Communications Commission (FCC) in recent years has begun to regulate the high phone rates (and fees) charged to prison and jail inmates across the nation. The FCC's new rules, which also apply to juvenile facilities, are based on the concept that people who have meaningful contact with family and friends are less likely to continue in criminal activity, reducing the burden on the corrections system, and potentially saving taxpayer dollars.

After a competitive bid process, most corrections agencies sign an exclusive contract with one telephone company. These contracts typically include a promise that the company will give a percentage of its revenues to the corrections agency.

The percentage that goes to the corrections agency—known in the industry as site commissions—is usually not small. A study by Prison Legal News, an inmate-advocacy group, found that state corrections departments receive on average nearly half (45 percent) of what inmates pay to the phone companies. An FCC study found that 14 companies under contract to manage inmate phone services gave more than \$460 million in site commissions to corrections agencies in 2013. “The record is clear that site commissions are the primary reason (inmate telephone) rates are unjust and unreasonable,” the FCC wrote in a 2014 notice.

In 2014, the FCC capped the rates inmates pay for *interstate* calls. The cap for interstate debit and prepaid calls was set at 21 cents a minute, while the cap for interstate collect calls was set at 25 cents a minute. The FCC also encouraged corrections officials to establish cost-based systems in which phone charges are designed to recover the costs of providing telephone service to inmates, but not much more than that. Notably, the FCC's 2014 rules did not affect the rates inmates pay for *intrastate* calls (all calls within Iowa including local and long distance).

In response to the caps on inmates' interstate phone rates, prison officials in many states—including Iowa—increased the rates for other types of calls. Our office began investigating this issue in 2014 after receiving a complaint about the Iowa Department of Corrections' (DOC's) implementation of the FCC's 2014 regulations.

The FCC Doubles Down

In 2014 and 2015, the Ombudsman recommended that DOC and the Iowa Board of Corrections (BOC, which oversees the DOC) adopt the FCC's suggestion of a cost-based system with no flat-rate charges (where a standard fee is charged regardless of the call's length). DOC and BOC officials decided to continue with flat-rate charges, but they did agree to lower those rates. Those rates, however, were still high enough to create a profit that prison officials could use for things other than facilitating inmates' communication with family and friends.

Then in October 2015, the FCC voted 3-2 to effectively double down on its 2014 rules.

- Reduced the cap on *interstate* and *intrastate* calls to 11 cents a minute for prisons and to 14 to 22 cents a minute for jails (depending on the size of the facility).

In addition, the FCC voted to:

- Prohibit flat rates.
- Cap the phone rates for people with disabilities.
- Discourage—but not ban—site commission payments.
- Ban a number of ancillary fees and put caps on the rest.

For prisons, the FCC said the new rate caps would take effect on March 17, 2016. To their credit, Iowa DOC officials lowered inmates' phone rates to 11 cents a minute two months before that deadline.

Legal Challenges

On March 7, 2016, a federal appeals court suspended the FCC's newest rate caps, pending the outcome of lawsuit challenging many of the FCC's 2015 "double down" rules. The court's intervention was sought by two telephone companies, which are the plaintiffs in the lawsuit against the FCC.

Corrections officials in Wisconsin, Kansas, and seven other states have joined the lawsuit against the FCC. One of the petitions argues that the FCC's 2015 rules go beyond the agency's legal authority and alleges the FCC is largely ignoring the security-related costs that prisons and jails incur in providing phone service to inmates.

That is where things stand as we prepare to publish this summary in late March 2016. As previously noted, the cost of inmate phone calls is going down, but just how far and how quickly will apparently be decided in federal court.

You can find additional information in an FCC Consumer Guide at <https://www.fcc.gov/consumers/guides/inmate-telephone-service>.

What Does this Mean for Iowa Prison Inmates?

Because of the federal court's stay order, prison agencies across the country are not required (as of late March 2016) to follow the FCC's 2015 vote to cap most *interstate* and *intrastate* calls at 11 cents a minute. It appears instead that prison agencies must abide by the FCC's 2014 decision to cap *interstate* calls at 21 cents a minute (debit and prepaid) and 25 cents a minute (collect).

But none of that stops prisons from adopting phone rates that go lower than currently required. In light of the federal court's stay order, we asked Iowa DOC officials whether they would undo the 11-cents-a-minute cap they approved in January 2016 for both *interstate* and *intrastate* calls. Their answer is no—they are keeping the new 11-cent rate cap. "It's the right thing to do," DOC Director Jerry Bartruff told us.

Iowa's DOC is not alone: Mississippi corrections officials also announced in March 2016 that they are adopting an 11-cent-a-minute rate cap, even though they are not currently required to.

What Does this Mean for Iowa Jail Inmates and Juvenile Facility Residents?

Because of the federal court's stay order, jails across the country are also not required to follow the FCC's 2015 vote to cap most *interstate* and *intrastate* calls at 14 to 22 cents a minute. However, jails and juvenile facilities are still required to abide by the FCC's 2014 move to cap *interstate* phone rates at 21 cents (for debit and prepaid calls) and 25 cents (for collect calls).

Although we do not know what the interstate phone rates were previously for Iowa's jail inmates, we suspect most were paying a lot more than 21 cents or 25 cents per minute. We also do not know whether all Iowa jails have been complying with the federal rate caps. But it is worth noting we have not received any complaints alleging that a jail has not been in compliance.

We are pleased that in March 2016, the Iowa Department of Human Services announced that it had adopted the 11 cents-per-minute rate for residents of the State Training School for Boys in Eldora.

How to File a Complaint

The Office of Ombudsman can review prison and jail telephone complaints about rates, refunds, ancillary fees, and phone rates for disabled inmates. We ask that inmates attempt to resolve these problems through their available grievance process before contacting our office.

Anyone who believes they have been overcharged for an inmate phone call should also file a complaint with the FCC:

- By telephone: 1-888-CALL-FCC (1-888-225-5322)

TTY: 1-888-TELL-FCC ((1-888-835-5322)

ASL Videophone: 1-844-432-2275

- By mail (include your name, address, contact information, and as much detail about your complaint as possible):

Federal Communications Commission
Consumer and Governmental Affairs Bureau
Consumer Inquiries and Complaints Division
445 12th Street S.W.
Washington, DC 20554

- Online: https://consumercomplaints.fcc.gov/hc/en-us/requests/new?ticket_form_id=39744

We will continue to monitor developments and will provide an update in our next annual report in April 2017.