



March 25, 2013

Federal Communications Commission  
Washington, D.C. 20554

Submitted via Electronic Filing Comment Filing System  
<http://fjallfoss.fcc.gov/ecfs2/>

Re: Comment regarding WC Docket No. 12-375 - In the Matter of Rates for Interstate Inmate Calling Services

Dear Chairman Genachowski and Commissioners McDowell, Clyburn, Rosenworcel and Pai:

T.W. Vending, Inc. d/b/a TurnKey Corrections (“TurnKey”) provides the comments below in response to the Federal Communications Commission’s (“FCC”) Notice of Proposed Rulemaking in the Matter of Rates for Interstate Inmate Calling Services – WC Docket No. 12-375. TurnKey is a small provider of inmate commissary, vending, phone services and video visitation services to approximately 70 jails in the Midwest and Northwest.

TurnKey, like many other companies in the inmate calling services (“ICS”) market, is thankful that the FCC is addressing issues affecting competition in this market. As a general proposition, smaller ICS companies find that a level playing field does not exist when it comes to competing in the ICS market. As a result, consumers (including inmates, friends and family members located outside of correctional facilities, and ultimately society as a whole) do not realize the benefits or cost savings that usually result from natural competition. Because the FCC is addressing these issues, TurnKey is optimistic that the ICS market will become more competitive and efficient for the consumer.

#### Exclusive Contracts

It is TurnKey’s opinion that exclusive contracts are the main reason why ICS rates have increased to a price that is far above what would exist in a competitive market. With an exclusive contract, the ICS provider controls the phone services between inmates and their family and friends, and the ICS provider is not concerned about charging a competitive rate. If a member of the general public wishes to speak with an inmate, she is left with no choice but to pay the fee charged.

In addition to permitting an above-market rate, exclusive contracts have also allowed the major ICS providers to control and monopolize the market in other ways. For example, it has been TurnKey's experience that at least one major ICS provider, upon being awarded an exclusive phone service contract, includes language in the contract that governs a whole host of other services that were not a part of the original bidding process. For example, a correctional facility will put its inmate phone services out for bid and the successful bidder will obtain an exclusive contract to provide such services. The contract provided to the correctional facility by the ICS provider will include a provision stating that the ICS provider is granted the "exclusive right and license to install, maintain, and derive revenue" from all telecommunications services to the facility including "phone calls, video calls, message, prepaid calling cards and email." This provision is contained in the contract even though the ICS provider never bid, presented, negotiated or discussed these services with the facility. TurnKey learned about these contractual provisions after negotiating to provide video visitation services to certain correctional facilities, only to have the large ICS provider threaten legal action that will cost TurnKey "hundreds of thousands of dollars". After TurnKey informed the correctional facility that it may not be able to provide the video visitation services due to the ICS provider's threats, the correctional facility personnel expressed surprise that the exclusivity provision for all telecommunications services was included in the contract when nothing other than phone services was put out for bid or was bid on. In fact, several correctional facility personnel felt that this was especially unfair given that the ICS provider was not providing the video visitation services to the facility that the ICS provider was attempting to prevent TurnKey from providing.

One of the main reasons correctional facilities expressed interest in having TurnKey provide video visitation and email services is that TurnKey provides these services at rates significantly below the rates the large ICS provider charges for equivalent phone services. TurnKey's rates for video visitation services are also three times lower than the ICS provider's rates for the same services. Lower rates leads to more time spent visiting by an inmate's friends and family.

The exclusivity provisions contained in the large ICS provider's contracts also trouble TurnKey as they appear to be contrary to the public policy behind state and county competitive bidding laws. As an example, a county jail that is interested in video visitation requests bids to obtain the best price for its consumers. A number of companies submit bids. One of the two major ICS providers has a history of not submitting a bid, but only a letter from its lawyer stating that the ICS provider is not required to bid as it has the exclusive right to provide the service to the jail. At the same time, the ICS provider threatens legal action that will cost "hundreds of thousands of dollars" against competitors who attempt to obtain the contract to provide video visitation services to the jail. The county jails and smaller ICS providers do not have the resources to engage in expensive litigation. The jails are then left in the position of accepting video visitation services at whatever rate the large ICS provider sets, or not being able to provide video visitation services to its inmates. At the end of the day, the ICS provider has obtained the contractual right to provide or exclude video visitation at the facility without ever having to bid on the contract.

States have competitive bidding laws to ensure consumers, including inmates and their families, receive the best market price. Exclusive contracts are being used to avoid the competitive bidding process. ICS providers should not be allowed to make themselves the exclusive providers of services that are required by state law to be bid on, especially when the company never bid on the services at issue. Even more troubling is that at least one large ICS provider included services in its exclusive contract that it did not yet have the capability to provide, thus foreclosing correctional facilities from offering such services to its inmates even though the service was available in the marketplace.<sup>1</sup>

The exclusive contracts are even more problematic for county correctional facilities when coupled with automatic renewing provisions. The contracts shared with TurnKey by certain counties provide that the contract automatically renews if not cancelled within a certain period of time. Jail administrators have told TurnKey that at the end of a contract period, the administrators attempted to solicit new proposals for phone, video visitation and email services. Such solicitation was met with correspondence from the large ICS provider's legal counsel stating that the contract had automatically renewed because the administrator failed to affirmatively notify the ICS provider of its intent to not renew the contract by a certain date. In a recent case, the jail administrator solicited other proposals approximately two months before its contract was going to expire. The ICS provider stated the contract had renewed two weeks earlier. This situation is problematic in county jails because the administration often changes as new officials are elected.

The end result is a successful ICS bidder who can charge above-market rates for phone, video visitation and other communication services to customers who are in a vulnerable position and can be taken advantage of – inmates and their family and friends. The rates are substantially higher when an exclusive contract has been granted because the ICS provider has eliminated all other providers' ability to compete. The concept of lack of competition leading to above-market rates and harm to consumers is not a new one and is applicable in the ICS market. What is unique about the harm in this context, however, is that it not only harms the direct consumers of the services, but also, as studies have shown, society as whole.<sup>2</sup>

Given modern-day technology, the costs for providing secure phone and video services to correctional facilities are low (and are getting lower). Unfortunately, given the existence of

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<sup>1</sup> The ICS provider, through the terms of its exclusive contracts, began making itself the exclusive provider of video visitation services at all its facilities in 2008, but only became capable of providing such services in March of 2012.

<sup>2</sup> See Footnote 155 of FCC Notice of Proposed Rulemaking:  
<http://www.fcc.gov/document/rates-interstate-inmate-calling-services>.

exclusive contracts, and certain companies' use of the contracts to prevent other low cost services from being provided to correctional facilities, the facilities, and ultimately the consumers, do not always realize this cost savings. TurnKey is hopeful that through the FCC's actions, this issue will be addressed in a manner that benefits the ICS marketplace, and as a result, inmates, their friends and family, and society as a whole.

#### Site Commissions and Per Call Charges

It is TurnKey's opinion that site commissions are not the cause of above-market and unreasonable rates paid by consumers. As a general proposition, it is TurnKey's belief that telecommunications services (including phone and video visitation services) should be provided to the consumer at a low and competitive cost. But even with private companies providing telecommunication services, there are costs to jails to facilitate phone calls, video visits, and related services. The jails have to provide staff supervision, some equipment and space for inmates to call or video visit with friends and relatives. State and county jails are already in a budget crisis. Jails cannot allocate significant resources to facilitating inmate communications with friends and families, and are not able to recoup any costs directly if a private company is providing the service. It is also important to note that the jails are not deriving substantial revenues from commissions.

Significantly, high-quoted commission percentages are not really an accurate depiction of the amount being paid to jails. For example, the quoted commissions may, at first glance, appear high and seem as if jails are receiving a significant amount of revenue. However, the offered commission rate is in reality quite inflated compared to actual commissions paid. For example, in response to a jail's request for proposal, some phone providers offer high commission rates to win the contract. The phone provider then provides the jail a contract in which the commissions are only paid for certain types of calls. The contract identifies "other" types of calls for which there is zero commission. An example of one of these "other" types of calls is a call from one area code to another, or in some cases, international calls. When a weighted percentage is applied, the true commission rate paid by a provider is a third of the percentage offered and agreed to by a correctional facility.

ICS providers also use other fees and connection charges to circumvent paying commissions to a jail. For example, an ICS provider will quote a high commission rate. Users are then charged a low rate per minute for usage and this amount is used to calculate the commission. However, users are also charged connection fees that range anywhere from \$3 to \$15 for each call. These connection fees are not included in commission calculations. The only beneficiary of this fee is the ICS provider. If a true commission rate was required to be disclosed, it would be a fraction of the rate offered in the contract.

TurnKey requests the FCC to require full disclosure in plain language of how commissions are calculated. TurnKey provides video visitation services at a low per minute rate, and does not charge connection fees. TurnKey also does not limit its commission to specific types of calls. TurnKey engages in these practices because it believes full and honest disclosure can only benefit the ICS market as a whole.

Existing Contracts

TurnKey is in favor of the proposed one-year fresh look transition period for existing ICS contracts to allow for review and termination/renegotiation of existing contracts. In keeping with the mission of seeking just and reasonable rates for prisoners as required by Section 201(b) of the Communications Act, TurnKey sees no reason to delay addressing existing contracts. As is often quoted, “justice delayed is justice denied.”

TurnKey appreciates the opportunity to provide comments on the proposed rules. If TurnKey can answer any questions or provide further information that may enhance the FCC’s understanding of TurnKey’s position with respect to the proposed rules and the changes that should be made to ensure just and reasonable interstate rates for prisoners, please feel free to contact me.

Sincerely,

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