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VIA ELECTRONIC SUBMISSION

March 22, 2013

Federal Communications Commission
FCC 12-167
Before the Federal Communications Commission
Washington, D.C. 20554
In the Matter of Rates for Interstate Inmate Calling Services
WC Docket No. 12-375

Immigration Equality Comments on
NOTICE OF PROPOSED RULEMAKING

Dear Sirs/Madams:

Immigration Equality is a national organization that advocates for the rights of lesbian, gay, bisexual, transgender, (“LGBT”) and HIV-positive immigrants. Immigration Equality runs a pro bono asylum project, provides technical assistance to attorneys, maintains an informational website, and fields questions from LGBT and HIV-positive individuals from around the world. Additionally, through education, outreach and advocacy, Immigration Equality works to change the laws that unfairly impact LGBT and HIV-positive immigrants. Immigration Equality runs a national hotline that provides free legal information for detained LGBT and HIV-positive immigrants, regularly provides direct representation for detainees, and matches low-income asylum seekers in detention with volunteer attorneys. Immigration Equality has helped draft training materials for detention staff who work with LGBT immigrants and has authored the leading manual on preparing sexual orientation-based and HIV-based asylum claims.

We submit these comments to urge the Federal Communications Commission (“FCC”) to take steps to regulate the high cost of calls at immigration detention facilities. These rates prevent many detained, indigent asylum seekers from presenting their claims meaningfully in immigration court, severely jeopardizing their right to Due Process. To prevail on their claims, all asylum seekers must obtain evidence, including letters from witnesses, country condition information, identity documents, and court records. Troublingly, the high cost of detention calls creates a Catch-22 for detained asylum seekers—the government demands that they produce evidence to support their claim, and then creates a significant financial barrier to obtaining that very evidence. For LGBT asylum seekers in particular,

statements from friends and family can be dispositive in corroborating an individual's sexual orientation or gender identity.

For example, one client of ours, Juanita (not her real name), a transgender woman detained in New Jersey, was unable to afford the rates to call her home village in Mexico to collect letters from her family members in support of her asylum claim. As her family's primary language was not Spanish, but rather Mixtec, an indigenous Mesoamerican language, Juanita's attorney was unable to communicate effectively with her family members in order to obtain statements. The immigration judge reviewing Juanita's case later questioned why there were no affidavits from her Mexican family or friends corroborating Juanita's claims. Juanita's attorney was able to overcome this evidentiary gap by explaining the language barrier; however, the majority of detained immigrants have no legal representation in immigration court and left to communicate with the outside world entirely on their own, primarily through use of collect phone calls..

The costly rates of detention calls extend to local calls, as well. Juanita had difficulty in calling the local hospital in New Jersey that held her medical records because they would not accept her collect calls. Without these medical records, it would have been almost impossible for her to prove her case. The medical records corroborated the ongoing, debilitating psychological effects she suffered after being beaten and raped in Mexico. If Juanita had not had an attorney, she would not have been able to communicate with the hospital and may not have won her case. We highlight Juanita's case, not because the facts are extreme, but because they are so ordinary. On any given day, more than 30,000 foreign nationals are held in immigration detention. Each detainee must meet the same legal standards for relief in their immigration cases as those are not detained. Yet each detainee faces the almost insurmountable barrier of communicating with would-be witnesses and those who can gather evidence on their behalf. Making matters worse, detained immigration cases are heard on an expedited calendar, so, for anyone who needs to communicate with someone in a foreign country, using the postal system will generally not be fast enough.

Costly phone rates also increase the isolation and alienation experienced by detained LGBT immigrants. Because detainees often have loved ones who lack immigration status in the United States, they cannot visit detention centers in person and must rely on expensive telephone calls as their only means of contact. One Immigration Equality client, a gay man detained for 18 months, ran out of savings in detention and therefore simply could not afford to call anyone except for the few who were willing to accept his collect calls. In part because of the isolation he felt in detention, he was diagnosed with clinical depression and required a course of anti-depressants in detention, at the government's expense. Most of the transgender detainees whom we represent are held in "administrative segregation" or isolation for at least part of the time they are detained. The isolation they already face is greatly magnified when exorbitant phone rates render it impossible to call their loved ones.

The excessive costs of collect calls fall not only on immigrant detainees themselves, but also on the non-profit organizations that provide free legal services to these communities. Because detainees often simply cannot afford phone rates, legal service organizations like Immigration Equality must accept collect calls in order to speak with detainees. For non-profit organizations with limited resources, the high costs of these calls results in the wasteful expenditure of financial resources that could be used to represent more immigrants, most of whom are unrepresented in their removal proceedings. In 2012, Immigration Equality spent \$2,639.52 on collect calls from detention centers.

The excessive rates charged for these phone calls are especially unreasonable given that the audio quality is often poor and calls are frequently dropped. Complex billing methods add to the burden on legal service providers. In order to run its national hotline, Immigration Equality must set up a separate collect call account with each individual detention center. With more than 250 immigration detention centers nationwide, the lack of a centralized structure poses an extraordinary burden on non-profit legal service providers like Immigration Equality. Any account that does not retain a minimum balance results in the rejection of all calls from that detention center. For desperate LGBT asylum seekers who fear deportation to a country where they will be attacked or possibly murdered, rejected attorney calls can literally be a matter of life and death.

In addition to high basic rates, hidden fees also add an unnecessary level of unnavigable and unexpected costs to detention calls. For example, GlobalTel, one of the nation's largest providers of detention call services, charges a \$4.75 service fee for every \$25 billed to an account, simply to pay online or by phone. Additionally, after an individual is released from detention, GlobalTel charges a fee of \$5 simply to recover the money already paid, and claims any remaining money on an account as forfeited after ninety days. Perhaps most mystifyingly of all, GlobalTel also administers a fee it labels a "FUSF Admin" fee for each detention call made, without a clear explanation that this is a fee that goes to Federal Universal Service Fund. The Federal Universal Service Fund is an FCC created fund that lists its goals on its own website as follows:

- Promote the availability of quality services at just, reasonable and affordable rates for all consumers
- Increase nationwide access to advanced telecommunications services
- Advance the availability of such services to all consumers, including those in low income, rural, insular, and high cost areas at rates that are reasonably comparable to those charged in urban areas
- Increase access to telecommunications and advanced services in schools, libraries and rural health care facilities
- Provide equitable and non-discriminatory contributions from all providers of telecommunications services to the fund supporting universal service programs

The FCC's promise of promoting "just, reasonable, and affordable rates" to "low income, insular" communities stands in stark contrast to the situation of immigrant detainees, who continue to struggle with exorbitantly high phone rates. Moreover, rather than being transparent and reasonable, private prison phone companies often erect significant barriers to communication between customers and the phone company. For example, Immigration Equality's legal team must regularly wait on hold for upwards of twenty minutes simply to make a billing inquiry with a GlobalTel service representative. Rather than offering easy-to-understand payment methods, detention call service provider Offender Connect, lists on its website a broad array of confusing options including features named "PIN Debit and Trust Fund Deposits" and "Offender Trust Fund Deposits." For indigent immigrant detainees and their families whose command of English may be imperfect, simply trying to understand what and how they are paying these phone companies can be nearly impossible.

Until the FCC begins to regulate phone rates at immigration detention centers nationwide, it falls far short of its mission under the Telecommunications Act of 1996 to "make available so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, rapid, efficient, Nation-wide, and world-wide wire and radio communication services with adequate facilities at reasonable charges... for the purpose of promoting safety of life and property through the use of wire and radio communications." Phone access is crucial to detained immigrants for maintaining contact with their loved ones, and also for purposes of securing evidence to defend against deportation proceedings. Without phone rates that are reasonably priced, the basic guarantee that an immigrant be able to present evidence in defense of her own removal becomes illusory.

Sincerely,

A handwritten signature in black ink, appearing to read "Victoria F. Neilson". The signature is fluid and cursive, with the first name being the most prominent.

Victoria F. Neilson, Esq. Legal Director

And Clement Lee, Staff Attorney