

November 12, 2012

To: Joseph DiVincenzo, Jr., Essex County Executive; Philip Alagia, Essex County Chief of Staff; Alfaro Ortiz, Director, Essex County Correctional Facility; David Boyd, Deputy Director, Essex County Correctional Facility; John Tsoukaris, Newark Field Office Director; Mark Vogler, Assistant Field Office Director; Fred Madera, Officer in Charge

From: New Jersey Advocates for Immigrant Detainees and New York University School of Law Immigrant Rights Clinic

Cc: Essex County Board of Chosen Freeholders: Blonnie R. Watson, President; Patricia Sebold; Rufus I. Johnson; Donald M. Payne, Jr.; Rolando Bobadilla; D. Bilal Beasley; Carol Y. Clark; Leonard M. Luciano; Brendan W. Gill
Deborah Davis Ford, Clerk of the Board of Chosen Freeholders

Request to End the Current Contract for Detainee Telephone Services At Essex County Correctional Facility

As proposed at our last quarterly meeting on September 25, New Jersey Advocates for Immigrant Detainees and the New York University School of Law Immigrant Rights Clinic hereby submit our formal request for an end to the current contract for telephone services at Essex County Correctional Facility (“ECCF”). In submitting this request, we emphasize that meaningful telephone access is critical for all individuals detained or incarcerated at ECCF to navigate the complex legal issues they face and to maintain their ties to family and community.

Based on the reasons outlined below, we request that the County negotiate and enter into a new contract that would provide reasonable, affordable telephone services for all individuals being held at ECCF. Such a contract would necessarily eliminate the commission that the County receives under the current scheme.

I. Background

Telephone services at ECCF are provided in connection with the State of New Jersey contract with Global Tel*Link (“GTL”) (state contract no. 61618). Under the pricing option that Essex County has selected, individuals held at ECCF are subject to prohibitive telephone costs.¹

Under these rates, when detainees and others incarcerated at ECCF (or their families) pay for phone service, a fifteen-minute phone call within New Jersey can cost as much as \$5.50. A fifteen-minute call to New York City can cost \$12.60,² and an international call of the same duration can be up to \$17.85.³ Rates for collect calls subject the family members and loved ones of those held or incarcerated at ECCF to even higher costs. A fifteen-minute collect call within the state can cost as much as \$5.70 and a fifteen-minute collect call to New York City costs \$12.85.

¹ See Attachment A.

² As county officials have explained, a sizeable percentage of immigrant detainees at ECCF are New Yorkers.

³ It is critical that detainee telephone services provide reasonable rates for international calls, since many immigrant detainees have family in their countries of origin and in many cases are expected to be in contact with them in order to prepare for certain defenses to their deportation cases.

The phone rates offered at ECCF are gross inflations of the prevailing local rates in New Jersey. For instance, Verizon, the largest telephone service provider in the state, appears to charge no more than \$0.05 per minute for residential long distance service in Essex County. Even taking into account the additional services necessary for the provision of telephone services in a detention setting, the rates reflect an unreasonable markup over the actual cost of making phone calls from the facility. For instance, the contract utilized by New York State prisons offers a flat rate of \$0.05 per minute for all nationwide calls; a fifteen-minute call under this scheme costs a mere 75 cents. An even sharper contrast is provided by the prison phone contract used by Rhode Island, which has also contracted with GTL for its services. Prisoners in Rhode Island, as of 2008, were charged a flat fee of 70 cents for any in-state phone call up to 20 minutes. Although interstate calls are more expensive, they are far lower than the interstate rate offered by the current contract at ECCF: a fifteen-minute interstate call from Rhode Island cost \$5.80 as of 2008, which amounts to 55% less than a comparable call made from ECCF to neighboring New York City today.

II. Improper Commissions in the County's Provision of Telephone Services

Given that neither New York nor Rhode Island takes a commission under their respective telephone contracts, more reasonable telephone rates are clearly possible but for the commission that the County seeks to acquire under the state contract. Prison phone rates have also plummeted in the six other states that have banned commissions: Nebraska, New Mexico, Michigan, South Carolina, California, and Missouri. The County has ostensibly entered into the current telephone contract, instead of searching for a plan that offers more reasonable rates, because it is entitled to a 54% commission from GTL under the current contract. In other words, the exorbitant prices paid by individuals detained or incarcerated at ECCF and their families are generating a revenue stream for Essex County.

With respect to the issue of commission, we first note that the County is not permitted to profit from immigrant detainee telephone services, based on our understanding of the Intergovernmental Service Agreement (IGSA) between Essex County and ICE. Article 24(D) of the IGSA clearly states that the County, the provider of detention services at both ECCF and Delaney Hall, "shall not be entitled to any commissions, fees, or revenues generated by . . . the detainee telephones." To our knowledge, there is no clause in the contract that provides an exception to the telephone contract at ECCF.

In addition, under Article 5 of the IGSA, the facility must comply with the complete set of the 2008 ICE Performance Based National Detention Standards. The PBNDS expect telephone contracts to "be based on rates and surcharges commensurate with those charged to the general public" (Telephone Access, PBNDS p. 2).⁴ As detailed above, the current rates constitute an unreasonable markup from the prices that are charged to the general public, even after factoring in the costs associated with providing telephone services in a detention setting.

At the last quarterly meeting, county officials explained that telephone commissions are legitimate because the money is used to fund additional services for immigrant detainees. In subsequent communications, however, the County clarified that the spending from detainee commission revenues

⁴ The 2011 Performance-Based National Detention Standards (available at <http://www.ice.gov/detention-standards/2011/>) expand the facility's duty with respect to service provision. Specifically, a new provision expands the obligation to provide reasonable telephone access, stipulating that "[f]acilities shall strive to reduce telephone costs" (Telephone Access, PBNDS 2011, p. 304). During the meeting on September 25, both County and ICE officials expressed their commitment to begin implementing the 2011 PBNDS at ECCF under the direction of ICE Headquarters.

is not tracked distinctly, and that this money is used more generally to pay for unforeseen items not directly included in the facility's pre-determined operational budget. These items purportedly include hot water coolers, extra food items, additional computers and stationery, clothing, additional video visitation areas, free phone calls, and free mail if necessary.

In our view, none of these expenses constitute unforeseen items for the County's operational budget, inasmuch as they are clearly spelled out in the 2008 PBNDS. According to these standards, ECCF must provide a hot-water urn (Food Service, PBNDS p. 7); maintain an inventory of food items to monitor and adjust for "excesses or shortages" (Food Service, PBNDS p. 31); provide an "adequate number" of computers (Law Library, PBNDS p. 2); provide paper, writing instruments, and envelopes at no cost (Correspondence and Other Mail, PBNDS p. 7); issue and replace appropriate clothing (Personal Hygiene, PBNDS p. 2); establish a visitation system that allows detainees to maintain connections with the community (Visitation, PBNDS p. 2); permit free calls in specific circumstances and for indigent detainees (Telephone Access, PBNDS pp. 4-5); and provide free postage to indigent detainees (Correspondence and Other Mail, PBNDS p. 7).

To the extent that the County is utilizing phone commissions to fund these items, it is coercing detainees and their loved ones to subsidize the cost of detention, all the while receiving a per diem reimbursement of \$108.00 per detainee from U.S. Immigrations and Customs Enforcement (ICE) intended precisely for the purpose of providing these services. Further, we are aware that the County also receives reimbursement from the State of New Jersey as well as the U.S. Marshall Service intended to fund services for state and federal inmates. The County's practice of acquiring a telephone commission thus amounts to an unjustifiable circumvention of its own responsibility for managing and implementing a sound operational budget.

III. The Negative Impact of Excessive Telephone Rates

The excessive phone rates, which are direct results of the County's improper profit motive, significantly restrict all detainees' and inmates' access to telephone service. In effect, the high cost of telephone service prevents individuals held at ECCF from maintaining much-needed connections to the outside world and from preparing their legal cases. Furthermore, as the impact of Hurricane Sandy highlights, reasonably priced telephone access may provide the only way for detainees and inmates to communicate with their support network in times of crisis that significantly disrupt visitation.

The importance of access to family and community for individuals who are detained or incarcerated is well recognized. Maintaining ties to the outside world is critical to boosting morale among detainees who suffer mentally and physically from prolonged confinement.⁵ Ensuring meaningful access to the outside world to all confined individuals also furthers public safety goals, since family contact for incarcerated populations is consistently associated with reduced recidivism and successful family reunification after release from jail or prison.⁶

Additionally, telephone access is indispensable for detainees and others incarcerated at ECCF because of the daunting challenge of addressing complex legal issues within a setting of confinement. The

⁵ N.Y.U. Immigrant Rights Clinic, *Locked Up But Not Forgotten* 1, 35, available at <http://afsc.org/sites/afsc.civicactions.net/files/documents/LockedUpFINAL.pdf> (2010) (hereinafter "*Locked Up*").

⁶ See, e.g.,

Nancy G. La Vigne, Rebecca L. Naser, Lisa E. Brooks, and Jennifer L. Castro, *Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners' Family Relationships*, 21 JOURNAL OF CONTEMPORARY CRIMINAL JUSTICE 314, 316, 328, available at <http://ccj.sagepub.com/content/21/4/314.full.pdf> (2005).⁷ *Locked Up*, at 23.

importance of telephone access is particularly salient in light of the fact that 84% of immigrants in detention are unrepresented. For these individuals, communication with family and community members serve as the key medium for accessing the information and documents necessary for developing winning arguments.⁷

Both detainees and community members have raised these concerns to the County. We have submitted letters and reports that urge the County to provide detainees with low-cost telephone access.⁸ A recent complaint sent to Director Tsoukaris on August 21, 2012, signed by hundreds of detainees noted that the current contract is “extremely expensive,” specifically noting the unreasonable cost of phone calls within the state and to “next door” New York City.

IV. Conclusion

In light of the above reasons, we request that the County implement an alternative to the current telephone contract by taking the following steps:

- (1) ***Immediately*** begin a bidding process or other procedures necessary to begin negotiations for a new telephone contract: We request that the County begin a new bidding process and/or search for ways to amend the current contract to eliminate commission and to decrease the rates charged to detainees. This transition process should ensure transparency and foster community participation. We are happy to work with the County and detainees' families and allies in order to explore a number of creative solutions.
- (2) ***In the meantime***, switch to Option 6 of the state contract's County Price Matrix: While we recognize that the transition to a new telephone contract cannot be accomplished instantaneously, there is something that the County can do right away: switch to Option 6 of the state contract's County Price Matrix. This pricing option would decrease the County's commission to 15% and cut the cost to detainees by approximately half for the time being. We reiterate that the County has no legitimate basis for benefiting from *any* commission, and that it should expeditiously transition to a telephone contract that best serves the needs of detainees and their families.
- (3) ***Before January***, enter into a new telephone contract that provides fair and equitable access: Ultimately, the County should negotiate and implement a telephone contract under which detainees would pay fees comparable to those charged to the general public. As explained above, such a contract would necessarily eliminate any commission for the County.

Thank you for the consideration of these concerns and we look forward to your prompt response.

⁷ *Locked Up*, at 23.

⁸ See, e.g., *Locked Up*, at 37, and N.Y.U. Immigrant Rights Clinic, *Immigration Incarceration 30*, available at <http://afsc.org/sites/afsc.civicaactions.net/files/documents/ImmigrationIncarceration2012.pdf> (2012).

Attachment A: Rate Information for Essex County, NJ

	MOU (Per Minute)	Surcharge
INTERNATIONAL		
Collect call	\$0.89	\$4.50
Prepaid call	\$0.89	\$4.50
INTERSTATE		
Collect call	\$0.69	\$2.50
Debit call	\$0.69	\$2.25
Prepaid call	\$0.69	\$2.25
INTRALATA		
Collect call	\$0.15	\$1.95
Debit call	\$0.15	\$1.75
Prepaid call	\$0.15	\$1.95
INTRASTATE		
Collect call	\$0.25	\$1.95
Debit call	\$0.25	\$1.75
Prepaid call	\$0.25	\$1.95
LOCAL		
Collect call	\$0.05	\$1.00
Debit call	\$0.05	\$1.00
Prepaid call	\$0.05	\$1.00