

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.20554**

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**In the Matter of** )  
**Rates for Interstate Inmate Calling Services** ) **WC Docket No 12-375**  
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**COMMENTS OF NETWORK COMMUNICATIONS INTERNATIONAL CORP.**

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Network Communications International Corp. (“NCIC”) respectfully submits these comments in response to the Second Further Notice of Proposed Rulemaking, WC Docket No. 12-375 (“Notice”), released October 22, 2014. NCIC applauds the Commission on taking steps to reform and modernize interstate inmate calling services (“ICS”) regulations. In the Notice, the Commission requests comments on a variety of measures such as:

- Eliminating all site commission payments;
- Facility costs and recovery thereof associated with the provision of ICS;
- Reformation of ancillary fees;
- Alternative suggestions in promoting competition in the ICS market;
- Impact of ICS rate reforms and cyclic reviews of the reforms; and,
- Issues related to enforcement, disability access, advanced communications in the correctional setting, and the cost/benefit analysis of all the proposals herein.

## **INTRODUCTION AND SUMMARY**

NCIC has been the leader in conservative pricing with regards to ICS rates, fees and single-payment products over the past five years. NCIC has two sole owners, Jay Walters and William Pope, and the owners have made the moral decision not to gouge inmates and their families, even though it has caused the company to be less competitive in winning commission-focused bids. With that said, NCIC has worked diligently during these FCC rate proceedings to educate jails and their staffs about the manipulation of commissions by some ICS providers, who increase non-commissionable ancillary fees and charge high rates on their single-payment products in order to win contracts by offering “artificially high” commission percentages. The efforts of the FCC have been long awaited and NCIC hopes the FCC acts swiftly to address these abuses. In moving forward, the FCC needs to balance the needs of inmates, their families, correction facilities and ICS providers - as has been done by the Alabama Public Service Commission’s recent ICS ruling. NCIC urges the FCC to consider the two-tier pricing mandated in Alabama which follows the safe-harbor rates for long-term prisons and the interim caps of \$.21/\$.25 caps for small county and city jails, but does not attempt to regulate cost-recovery (commissions).

## **DISCUSSION**

### **I. Payments to Correctional Facilities**

#### **A. Restrictions**

**1. Site Commissions-** Site commissions are not the reason for the increases in ICS rates, as was pointed out by the Alabama Public Service Commission (Rebuttal to GTL, et al Proposal filed Sept 30) when they capped

rates in 2008 that were below the current interim FCC rates, yet the “perceived” commissions continued to increase. Similarly, the state of Louisiana has had inmate rates capped below the current FCC interim rates for almost a decade and has seen the same increases in commissions. By capping the rates, the FCC has already eliminated the potential for the rates to continue to rise whether commissions are paid or not. Furthermore, if the FCC caps ancillary fees and single payment (Premium / Convenience products) as is being done in Alabama, actual commissions paid to jails will drop significantly, as well as profit made by the ICS providers. In the case of the ICS providers with the highest fees and single pay products, their profits will drop by as much as 70%.

During these proceedings, the FCC has failed to realize that almost every inmate in a federal prison or state prison is first processed through a small holding facility or county/parish jail. With that said, many of these small facilities have a much higher cost of offering inmate telephone services since they only hold an inmate for a few hours or maybe up to two weeks. Many of these small jails will have to limit or eliminate phone services for inmates/detainees if they cannot recover their costs of providing the services. For example, there are facilities like Kotzebue Regional Jail in Kotzebue Alaska, where the jail actually maintains the phone equipment and provides the phone lines, service and cleans the phones. Since collect calling revenue is less than \$200 per month at small jails like this, there is no incentive for an ICS provider to offer phone service there, so the jail would have to return to letting inmates make an occasional phone call from the administration phone. Many city jails and county jails are small, remotely located,

have low call volumes, have problems with contraband mobile phones and often are required to provide their own phone lines or bandwidth and maintenance to encourage an ICS provider to offer services at their facility. The commissions are vital in covering the costs of the bandwidth, maintenance, listening to calls, providing call recordings in court, etc.

No state regulatory authority, with the exception of New Mexico, has attempted to eliminate commission payments to city and county jails. So, by attempting to dictate contract terms at a local level, the FCC is overstepping its jurisdiction and opening to additional scrutiny its efforts to control the rates charged to inmates and their families. By capping the rates, fees and single payment products, the FCC has already reduced the potential commissions and ICS profits by up to 70%. Is it really necessary for the FCC to risk all this work to attempt to regulate how the remaining profit is shared with the jails as was attempted in New Mexico? In New Mexico, the few providers operating there have been using other products, not necessarily telecom products, as inducements to win contracts. The Curry County (NM) Inmate Telephone Request for Proposal flies in the face of the NM PRC ruling and specifically requests a Jail Management System be “given” to the county in return for consideration for the inmate phone award. After the first FCC Workshop, Jason Marks, former commissioner at the New Mexico Public Regulation Commission, indicated that the PRC did not anticipate the gaming of the system by ICS providers offering other products in lieu of commissions. Now the state of New Mexico has predominantly one provider; basically a monopoly, as a result of overregulation.

In states such as New York and Michigan, the state sheriff associations receive donations/sponsorships from “Preferred” providers. By eliminating commissions, the FCC will be facilitating an even worse competitive situation as states with opt to choose the most generous provider as their “preferred” provider. The New York Sheriff’s Association does not allow any other inmate telephone providers to purchase booths at their trade shows in order to protect their preferred provider’s market share.

To date, NONE of the approximately 3,100 jails have requested higher rates, fees or single payment products. Their only concern has been the loss of commissions. Is it possible that the handful of ICS providers who are embracing the elimination of commissions are doing so in order to bring more states (NARUC, attorney generals, counties, etc) in to fight the FCC’s preemption of intrastate rates after the ruling is released? If the FCC does not eliminate commissions, the state may not oppose preemption.

**2. Alabama** – The Alabama PSC was absolutely right in its assessment that ancillary fees were the cause of the increased commissions and it was the first regulator to address the “fee game”. Most state regulators had implemented rate caps on inmate telephone calling long ago (when most of the calls were collect calls). What changed was the transition from traditional collect calling to a new product called Prepaid Collect Calling, where billing was done via a credit card rather than a regulated LEC phone bill. Some providers began amending state tariffs to include transaction or funding fees, allowing them to bypass the cap on per-minute rates. As commissions became more and more

competitive, the fees and single-payment products prices began to increase. If the FCC will cap the rates, fees and single payment products as was done in Alabama, then there is a level playing field and the commissions will drop back to their true numbers, which are in the 30%-40% range on MUCH lower rates.

**3. Competition “gaming” in the Market** - If rates, ancillary fees and single-payment products are capped, then how can commission “gaming” continue, as suggested by Securus in paragraph 26 of the Second Notice? Securus has been the prominent (almost monopolistic) provider in the state of New Mexico since the banning of commissions due to providing Jail Management Systems (ex. Curry County) and other incentives.

The Prison Policy Initiative noted on their blog on September 5, 2013, AFTER the FCC ruling on lowering interstate rates, that some inmate phone provider had “quietly raised some of its fees”, proving the point that the interstate commissions, in general, are driven by fees and not by rates. This was reinforced in CenturyLink’s response to Lee Petro’s expose’ on a 96% commission offer to Escambia County, Florida where CenturyLink indicated they use the ancillary fees to offset losses due to high commissions.

**4. Prohibition of Site Commission Payments** - Unfortunately, eliminating commissions will seriously impact the smaller jails and short-term facilities which have a MUCH higher cost of offering phone services to inmates, due to the quick turnover of inmates and/or detainees. An easier way to regulate lower commissions is to require lower rates for the longer-term facilities (state

and federal facilities) using safe harbor rates of \$.12 debit and \$.14 collect. The states will continue to have the option to choose no commission and choose the provider with the lowest rate and fee offer. Currently, the state correctional authorities that are not accepting commissions may still have high ancillary fees and premium product charges. If the FCC regulates those rates, it will likely change the landscape of how low the per-minute rates can go and definitely lower potential commission offers.

Another factor is that every inmate in a state or federal prison was initially processed through a city holding facility or county jail before transfer to a long-term prison. This emphasizes the critical importance of offering phone service to the inmates at their initial arrest, even if their incarceration is only for a few hours.

If the FCC chooses not to regulate commissions, then there is no need to have a two-year transition, as mentioned in paragraph 28. Rates, fees and premium products could be reduced immediately to everyone's benefit -- the inmates, their families and the jails.

#### **5. Demonstration of Costs Incurred by Facilities to Provide ICS -**

Below are some of the costs to offer phone services to inmates, including free calls, which make up more than 30% of all inmate calls:

- Maintaining phones and monitoring maintenance of phones
- Handling US Marshal inquiries and reporting
- Bandwidth costs

- Storing of calls that are used for court
- Live alert transmission costs to call investigator
- Three-way call detection verification by staff
- Prosecuting or disciplining inmates for crimes committed when using the inmate phones and visitation phones
- Visitation phones (use the same recording and security features as the inmate phones)
- Indigent calling
- Free calls to public defenders, consulates, embassies, private counsel and ombudsmen
- Free calls to bail bond companies
- Free calls to facility commissary providers for ordering
- Free booking calls
- Bonding/holding phones
- Prison Rape Elimination Act calls
- Customer service feature for inmates to report problems
- Free inmate voice mail broadcast from facility staff
- Cell phone detection and interception systems
- Free customer service system for inmates – lightens workload of facilities staff
- Transporting inmates to phones and visitation phones
- Listening to calls. After implementing caps on rates, fees and single-payment products, inmate calling will most likely double

resulting in doubling the costs of listening to calls and managing inmate calling privileges.

- Providing call recordings to court
- Writing Requests for Proposals and handling bidding process for ICS
- Training Jail staff to use the inmate phone system and security features.
- Time of day option for inmates to know time and date.
- Handling lawsuits that resulted from offering inmate phone services

## **B. Payments to Correctional Facilities – Legal Authority**

**1. Prohibiting Site Commissions** - The FCC does not have authority to regulate site commissions. A federal appellate court has held that site commissions are outside the scope of governmental agency regulation. *See* Comments of Securus, WC Docket No. 12-375, at 12, n.45 (filed December 20, 2013) (citing *Arsberry v. Illinois*, 244 F.3d 558, 566 (7th Cir. 2001) (“States and other public agencies . . . have to get revenue somehow, and the ‘somehow’ is not the business of the federal courts unless a specific federal right is infringed”). Similarly, the FCC does not have a place in dictating how service providers use their net profits. As the Alabama Public Service Commission (“Alabama PSC”) pointed out, the FCC has not based the rate caps on commission payments and concluded that “site commissions are not part of the cost of ICS.” *See* Rebuttal of Alabama PSC, WC Docket No. 12-375, at 2 (filed September 30, 2014).

Therefore, “any subsequent sharing of net profit by a provider with their investors or with confinement facilities has no direct or indirect bearing on the prices paid by inmates and inmate families.” *Id.* at 3. Indeed, the FCC has previously determined in the payphone context that locational rents are profit and not costs; therefore, the FCC must here adhere to the same line of reasoning and cannot diverge from its precedent. *See, e.g.*, ICS Second FNPRM, WC Docket No. 12-375, at ¶ 35 (released October 22, 2014) (soliciting comment on whether market conditions for ICS differ sufficiently from those the Commission previously found in the case of public payphones as to warrant different treatment under section 276”); *Payphone Industry Rules and Policies*, 14 FCC Rcd 2545, ¶ 37, n.72 (released February 4, 1999) (“We conclude that these locational rents should be treated as a form of profit rather than a cost . . . Presumably, the location owner would seek to extract at least part of this additional profit. Thus, it does not seem appropriate to treat locational rent as a fixed cost. . Finally, we note that, when a payphone earns positive profits, it is not clear exactly how the payphone provider and location owner will negotiate the division of those profits.”).

In addition, as the Commission has previously recognized, it is not the FCC’s role to meddle in private contracts made freely between parties. *See Telecommunications Relay Services & The Americans With Disabilities Act of 1990 (Fifth Report and Order)*, 17 FCC Rcd 21233, ¶ 24 (2002) (“the Commission does not regulate payphone rates, the contractual relationship between a payphone owner and the long distance carrier for the payphone equipment, or the rates for calling cards, including prepaid cards”).

Here, by suggesting the elimination of all site commissions, the FCC is in effect dictating the terms of contracts to which it is not a party and that are between ICS providers and the correctional facilities. The FCC has also determined that operator-assisted call commissions are not within the scope of Section 276. *See Payphone Industry Rules and Policies (Reconsideration)*, 11 FCC Rcd 21233, ¶ 52 (1996) (Because the *level of 0+ commissions paid pursuant to contract* on operator service calls is *beyond the scope of both Section 276* and this proceeding, we decline to require, as requested by NJPA, that “LECs are required to make available, on a nondiscriminatory basis, any commission payments provided to their own payphone divisions in return for the presubscription of operator service traffic to the LEC”) (emphasis added). In addition, the FCC has previously recognized that commission payments do not have an effect on the end user of the service but rather provide incentives for the parties to the contract. *See Access Charge Reform*, 19 FCC Rcd 9108, ¶ 70 (2004) (The commission payments challenged by the IXCs go to the hotel or university itself, not to the students or hotel guests who place the bulk of the 8YY calls from these institutions . . . [Therefore,] the primary effect of the commission payments appears to be to create a financial incentive for the institutions to switch from the incumbent to a competitive service provider”). Similarly, here, the incentive is for the correctional facility to switch to the most competitive ICS provider.

**2. Reformation and “Fair Compensation”** - Once again, there needs to be a differentiation between long-term facilities (state and federal prisons) versus short-term facilities (city and county jails). Both the FCC and most of the

ICS industry have agreed that \$.21 per minute for debit and \$.25 per minute for collect seem to be a fair maximum (not minimum) price for the short-term facilities. Ideally, one would think the safe-harbor rates would work for the long-term facilities. Unfortunately, there is no easy gauge to estimate “fair compensation” of one jail versus another, so the FCC is probably safe in not regulating commissions, but instead urge that jails forego commissions in order to lower rates/fees to the inmates and their families.

This is similar to the Universal Service Fund, in that telecommunications providers who serve rural areas are not able to profit at typical consumer prices and therefore are subsidized by the fund to offer the same telecommunication facilities, rates and services to these low-demand areas. Will the FCC consider subsidizing jails and or ICS providers who offer services in these same USF-funded areas to offset higher costs to provide services?

The Joint Provider Reform Proposal recommended elimination of commissions, yet their suggested rates were almost identical to the State of Alabama ruling, their account funding fees were more than twice as much as the Alabama ruling and they asked for a waiver on their highest priced products, which Alabama addressed to lower the rates for those products by more than half...and yet Alabama still permits commission payments. This would lead one to believe that commissions can still be paid on lower rates, allowing cost-recovery to the jails and a nominal profit for ICS providers. It is noteworthy that the same providers asking the FCC to eliminate commission payments to jails and not regulate their single-payment products are appealing the Alabama PSC ruling.

**3. Prohibition of Site Commissions and Fostering a More Competitive Marketplace** - Obviously, the distortion of site commissions is not from the rates of the calls, but instead the hidden fees and premium products that are not regulated. By regulating such rates, fees and third-party billed products, and creating a level playing field, the FCC would then undermine fair competition by eliminating commissions and allowing the three largest providers to offer additional products (most likely below cost) in order to gain new business.

If a correctional institution provisions its own inmate telephone service, as many do currently, most likely they will not have the volumes/cost efficiencies to offer services for a cost less than the ICS providers, so will the FCC consider allowing them a higher price than the current \$.21/\$.25 rates ruling to ensure fair compensation?

**4. A Test of the New Rate Caps in Alabama** - In a trial at Shelby County, Alabama, NCIC lowered the inmate calling rates to the postalized rates of \$.21 per minute for debit and \$.25 per minute for collect, instead of the previous capped rate of \$2.70 for a 15 minute call (still below the FCC caps). The result was a 30% increase in inmate calling, a 30% increase in costs to provide inmate phone services and no increase or decrease in revenue -- the inmates are still spending approximately \$70 per month in telecommunications usage. By lowering the prices on all aspects of inmate communication -- rates, fees and single-payment products -- you are in effect capping the commissions! Amazingly, customer service voicemail inquiries from inmates dropped 71% since a dropped call only cost \$.21 versus \$2.70.

In the trial, NCIC already had fees and single-payment products below the Alabama maximum caps. NCIC assumes that by cutting fees and single-payment products from as high as \$15 per transaction to \$5.95 for live assistance and \$3.00 for automated/web funding, inmate calling will most likely double. And ICS profits will be cut by as much as 70%, thereby minimizing the potential to offer high commissions.

**5. Section 276 – Language on Authority to Prohibit Site Commissions** - From a filing by the American Public Communications Counsel (“APCC”) concerning Section 276 of the Communications Act: *“The commenter’s take varying positions on what action the Commission should take to ensure fair compensation for local coin calls from payphones. The independent payphone providers support the Commission’s option of a nationwide local coin call rate. They argue that a nationwide rate is necessary to override inconsistent state rules, to ensure predictability of rates for interstate travelers, to break the dependence of PSPs on 0+ commissions, and to establish a single, uniform rate for all local coin calls. APCC contends that this nationwide rate would serve as the maximum rate that PSPs could receive for a local coin call, and PSPs would likely respond to competition in local areas by lowering this per-call rate. Other parties specifically oppose a nationwide local coin rate. They argue that regional differences in handling payphone calls make a single nationwide rate impractical. Several commenters’ state that the Commission lacks authority to set local coin rates under both Section 276 and the Act. They argue that the ability to ensure compensation is different than jurisdiction over retail rates, and that nothing in*

*Section 276 suggests that Congress intended to remove local coin rates from the jurisdiction of the states. APCC contends, however, that the Commission has the requisite authority to impose a nationwide local coin rate, because Section 276's mandate to ensure fair compensation extends to setting local coin rates”*

The APCC was asking the FCC to regulate the compensation of toll-free calls from payphones as individual states were not able to control or demand the compensation from out-of-state providers, many of whom were not certified in the particular state. At no time did the APCC ask for the FCC to also regulate contracts and commission to the site-owners, and 276 makes no mention of attempting to regulate contracts.

**6. Section 276 and Site Commissions** - In the context of establishing payphone rules, the FCC did not attempt to regulate the commission payments or rents paid to the site-owners, but instead regulated fair compensation (cost recovery) between telecommunication providers who were normally based in different states. In this case, the FCC didn't even attempt to regulate Operator Service Provider (OSP) rates, which were and still can be exorbitant. In the case of convenience stores, they have virtually no cost in having the payphones installed at their location. They do not need to monitor their customers' phone calls or transport the customers with an armed guard to the payphone.

**7. Market Conditions for ICS vs. Public Payphones: Monopolistic and Supra-Competitive pricing** - ICS providers have generally been the monopolistic provider in most jails, but that is quickly changing with jails

installing video visitation systems provided by a non-ICS provider whereby inmates can make both video and non-video calls to family members. Many commissary and kiosk providers are also offering inmate email and text message services, which also compete with telephone services.

Have prices been supra-competitive? Absolutely! Especially, in states and jails that failed to understand rates, ancillary fees and single-payment products. Now that the FCC and several states are taking action to cap rates, fees and single-payment products, it will make it impossible for rates to go up and will result in more robust competition on features and commissions. Also, state and county correctional entities can still request non-commission bids and choose bidders who offer the lowest rates and fees.

When the FCC suggests allowing multiple ICS providers to offer services in a jail, it suggests a misunderstanding of the difficulty of managing an inmate telephone platform, which can be overwhelming to jail staff and require hours of training. The idea of managing two or more systems would result in a reduction of available phone use to inmates to limit the need to listen to recordings and use the multiple systems, especially in small jails which may only have five phones in total. It would be more cost effective for most small jails to eliminate unlimited use of ICS phones and go back to allowing use of an administrative phone at the jail's convenience.

## **C. Possible Reforms to Site Commissions**

**1. Quantifying and Recovering Costs Incurred by Correctional Facilities** - Since prison/jail entities range in size from 1 bed to 183,000 beds (state of California), one would think that there is no simple comparison in the cost of offering ICS. Ideally, cost efficiencies increase with prison/jail size and calling volume. Larger prisons normally limit phone availability, so inmates in long-term facilities make fewer calls than inmates in short-term facilities. Additionally, short-term facilities and holding tanks will often have phones available 24 hours per day because there are intakes 24 hours per day. Thus, the cost at a smaller facility is higher due to more calls per inmate, monitoring and management of inmate calls and transporting of inmates to the inmate phones and visitation phones.

Furthermore, each facility is different in regards to the amount of work necessary to offer ICS. Many small facilities provide the phones, the phone lines, the bandwidth, computers for monitoring calls, the maintenance of phones and sales of physical calling cards; whereas larger facilities normally require the ICS provider to conduct all these tasks.

**2. Quantifying Facility Costs, Correctional Facility Budgets in regards to Mandatory Data Collection** - There is no standardized practice by jails on how to manage inmate calling and the costs involved in offering the privilege of phone use. There are over 3,100 county/parish jails and there would be different costs for each if they were to submit a facility-specific cost study.

The cost studies provided so far in this proceeding have been done predominantly by ICS providers and almost none are provided by county jails. Why? Because the jails are not regulated by the FCC and therefore do not understand the process of how to file comments and cost-studies on their own behalf. Unfortunately, the jails are reliant on the ICS providers to act in their best interest. Sheriff Dean of Ventura County, Ca points out the obvious in his filing of December 16, 2014 where he says “ICS providers also seem to point to commission as the sole reason calls in a jail are costly”...meaning that many of the ICS providers filing proposals and recommendations for rulings are doing so for their own benefit and not necessarily the benefit of the jails and inmates.

As mentioned previously, the FCC should cap the rates, ancillary fees and single-payment products at the rates they deem reasonable to inmates and then let market-forces manage the cost-recovery paid to the jails and prison. This sentiment is echoed by the Oregon State Sheriff’s Association in their January 5<sup>th</sup>, 2015 where they also “...propose that instead of prohibiting site commissions, the Commission cap the rates [and fees] ICS providers may charge for calls, and let market forces dictate how much of the profit ICS providers are willing to share with correctional facilities”.

**3. State Roles in Site Commissions and Interstate Rates** - Each state has a different approach in regulating telecommunications. States such as Alabama and Louisiana have obviously been very involved in rate regulation to ensure fair rates to inmates and their families, whereas states such as Florida have completely deregulated and refuse to interfere in market-forces to insure (or not)

fair rates for inmate calling services. So, there will be no consistent management at the state levels.

## **II. Interstate and Intrastate ICS Rate Reform**

**1. Facilitating Just Rates by Eliminating Site Commissions -** Will the elimination of site commissions facilitate the market moving to just and reasonable rates? No, as has been seen in the state of New Mexico, ICS providers and facilities have not sought to charge lower rates and fees below the caps, but instead ICS providers now offer additional services, products and/or incentives in lieu of commission payments. Only the FCC can set the rates at just and reasonable levels and then let market forces control the activities from there. Many state departments of correction will continue their current policies of low rates and no commissions even after the FCC caps the rates. However, with the FCC addressing ancillary fees and single-payment products, the FCC will be both educating the DOCs/jails on these practices and force just and reasonable rates and fees onto the industry.

**2. Ensure Fair Compensation, Reduce Administrative Costs and Management of Rate Tiers by allowing a Waiver Process –** The waiver process probably would not be effective in any of these circumstances. Would the FCC not be opening itself up to more administrative work to manage the many hundreds of waivers filed by ICS providers as opposed to coming out with a simple two-tier or three-tier system based on facility size?

**A. Proposals for a Unitary Rate**

**1. Joint Provider Reform Proposal** - Although NCIC services only 1 state facility, the Joint Provider Reform Proposal has suggested rates that are too high for long-term prisons, such as federal and state department of corrections and too low for city and county jail facilities. It is also strange that the Joint Provider Reform Proposal suggested eliminating commissions or suggesting the FCC choose the cost-recovery level. Once again, to quote Sheriff Geoff Dean of Ventura County, California “ICS providers do not understand the extent to which a jail allows them to conduct business. ICS providers operator their business within an environment which is created, operated and managed by our jail staff and physical facilities”, basically stating that neither the FCC nor ICS providers have begun to understand the complexities of the costs to offer the privilege of inmate calling.

**B. Tiered Rate Caps**

**1. Rate Caps – Short Term vs. Long Term** - In long-term prison facilities, lower rates may increase usage, but by eliminating commission payments to smaller facilities, the usage will actually decrease as has been indicated in multiple responses by state sheriff associations and individual jails due to the possible increase in workload of managing the inmate calling. In paragraph 70, the commenter’s were correct in stating that some jails hold long-term inmates, but not enough to justify charging higher fees for account establishment. The Texas County Jail Population Report for December 1, 2014 published by the Texas Commission on Jail Standards showed that 7.8% of total

available beds were held by contract inmates, which includes short-term inmates from adjacent counties, short-term immigration detainees and some contract long-term state prisoners.

### **III. Reforms to Ancillary Charges**

#### **A. Background**

**1. Increase of Ancillary Fees after Order Release -** Ancillary fees came about as a way to bypass state rate caps, as a new means to increase revenue without actually increasing the per-minute rates. ICS providers have used these fees either to build profit or to offer higher “perceived” commissions to win bids that are based on highest percentage offered. Slowly, jails are catching onto the hidden revenue from ancillary fees and single-payment products and are addressing these in their Requests for Proposal. The market distortion was not due to site commissions, but instead to the lack of rate and fee regulation, as has been proven by the Alabama PSC.

**2. Mandatory Data Collection on Ancillary Charges –** When ruling on fees, the Commission needs to consider a higher fee for account establishment using a live account representative. NCIC averages almost 10 minutes of live operator time per successful account establishment. Currently NCIC charges \$4.95 to establish an account with up to 10 permitted destination numbers. The Alabama Public Service commission was generous to allow up to \$5.95 on funding via a live operator. By allowing ICS providers to recoup their cost in offering live assistance, family members will have more convenient access

to a live representative instead of forcing families to use IVR or to visit a website for any questions upon finding out their family member has just been incarcerated.

**B. Discussion**

**1. Prohibition of Certain Ancillary Fees**

**a. Approach to Prohibiting and/or Capping Certain Ancillary Fees and Whether Approach will Promote Just Rates/Fair Compensation** - By capping the ancillary charges for payment processing and account establishment using live representatives, the FCC will be promoting fair compensation for ICS providers and leveling the competitive playing field to the detriment of the abusive ICS providers. Unfortunately, modifying the rates for various overhead costs can be confusing to inmate families, as it is best to quote flat pricing, such as \$.25 per minute. Also offering a lower, automated ancillary fee charge for funding accounts using a website, will save both the inmate families and the ICS providers money. The Alabama PSC ruling allowed for a generous \$3.00 per transaction using automated means although some providers, such as NCIC, charge even less.

**b. Alabama and New Mexico's Approach to Capping Ancillary Fees** - The Alabama PSC took a fair approach in considering families and ICS providers cost into account, by allowing fees to help offset costs, especially by allowing a higher fee to cover live account representative costs. New Mexico's regulations did not take into consideration the use of live representatives and the lower fees have

provided an incentive to limit access to live representatives and force users to IVR's and web portals for inquiries.

**c. Comments on Proposed Ancillary Fees -** The Prison Policy Initiatives report “Please Deposit All of Your Money:...” (May 2013) outlines 11 fees that ICS providers have been charging to offset billing costs, add additional profit or buffer profit in order to offer high commission percentages. The Alabama Public Service Commission worked closely with ICS providers to understand the fees and determine the fees used to actually offset costs of prepaid collect account funding, LEC and/or direct billing and kiosk cost, then came out with a comprehensive ruling eliminating most of the fees and capping the cost recovery fees at or near costs of the providers in the state.

**d. Joint Provider Reform Proposal – Permissible Fees -** Whether site commissions are permitted or not, the Joint Proposal recommends fees that are extraordinarily high compared to the Alabama fees and the rates were also considerably higher for long-term prisons, compared to the Alabama caps. The Alabama ruling placed the fees closer to cost than what the Joint Providers had suggested, minimizing the potential of profiting from the ancillary fees. The Joint Providers recommended fees per each destination number, whereas the Alabama ruling required up to 5 destination numbers per fee payment, thereby eliminating further profiting.

**e. Seeking Approval of Ancillary Fees** - There would probably be no need for approval of waivers for any additional ancillary charges other than the main funding fees and cost recovery fees that were outlined in the recent Alabama PSC ruling. Below is a chart of the fees (with most priced at cost):

<b>Ancillary Fee Caps Payment Fees</b>	<b>Maximum Fee</b>
Money order or check mailed to provider or payment via online banking transfer	\$0.00
Debit/credit card online or telephonically via interactive voice response (IVR); or by cash or debit/credit card at the ICS provider's kiosk	\$3.00
Debit/Credit card telephonically via a live agent	\$5.95
Bill processing fee for collect calls billed by the call recipient's carrier*	\$3.00 (cost)
Convenience Fee for transfers from the inmate's canteen/trust fund	5% of transfer amount (cost)
Fee for Optional Paper Billing Statement	\$2.00 (cost)

**2. Rate Caps for Ancillary Charges**

**a. Capping Ancillary Fee Rates** - As mentioned above, the Alabama PSC took providers' costs into consideration when establishing the caps for ancillary charges. Allowing a higher charge for live representative interaction is vital as it is common sense that a live operator is more compassionate than an IVR when dealing with a family member who is just finding out their loved one has been incarcerated.

**b. Recovery of Costs via Per Minute Rate Rather than Ancillary Fee** - Unfortunately, building in the ancillary charges into the per-minute rates will lead to a push to more automation and less personal interaction with the ICS provider as the ICS providers will need to reduce their costs to remain profitable. A quick search of “inmate phone” on PrisonTalk.com will show you how hard it is dealing with IVR’s, websites and emails for communicating with an ICS provider.

**c. Fee Proposals – Joint Provider Reform Proposal** - The Joint Providers proposed funding fees of \$7.95 for three years seem to be somewhat high, especially for automated transactions on IVR or websites. Also, why would the cap only be for 3 years and not indefinite? The providers also did not specify how many destination numbers (home, mobile, office, other relatives) could be added to the account without additional costs, whereas Alabama specifically requires up to 5 destination numbers in their ruling, possibly saving a family member up to \$31.80 if they needed 5 numbers in their account. The proposed \$5.95 for live funding fees and \$3.00 for automated funding fees outlined by the Alabama PSC is more in line with actual costs to fund accounts.

The \$2.50 funding fee added to payment processors, such as Western Union and MoneyGram, is rather exorbitant considering the users of these payment options are the most credit-challenged users of ICS and do not have a credit card or debit card, so they are required to travel to a location to make the payment and pay the \$5.00 processing fee charged at

the location. Based on NCIC's experience, less than 1% of our transactions are funded through these payment processing companies.

### **3. Charges for Other Services**

**a. Single Call Services** – In paragraph 98 of the NPRM, the FCC asks “Are such services an end run around the Commission’s rate caps?” Absolutely! NCIC offers a Single Payment product billed to major credit cards on interstate and charges of \$.25 for a 1 minute collect call compared to the \$14.99 by some providers. Appendix A of the recent Alabama PSC ruling (Docket 15957) is a summary of an Alabama county jail’s commission for February and March 2014 and shows Single Payment products were 72% of their reported revenue and they received a 7.9% commission on these Single Payment call revenues.

By using a third-party, who is neither incorporated nor certified to operate in a state, to bill Single Payment (Convenience) products allows ICS providers to bypass regulations, sales and franchise taxes, state and federal required fees and USF as well as hide revenue from commission payment requirements in a contract as they are not revenues billed by the ICS provider.

**b. Single Call Services and Additional Costs Incurred** – In response to paragraph 99 of the NPRM: Payments processed using major credit cards and debit cards, the ICS provider does not incur additional costs in providing single call services. In the case of the Text Collect

products, yes, the ICS providers incur a cost of 30%-50% to bill these transactions, similar to traditional collect billing. In its ruling, the Alabama PSC took this cost into consideration on the Text Collect, allowing ICS providers to offer this service at a cap of \$6.00 per call. These products do circumvent rate regulations since they are essentially inmate phone calls to their family, but the billing is performed by a third-party provider.

**c. Single Call Services – Infringement on Contractual Relationships** - NCIC is not aware of the process of all the third-party providers of these products, but based on our experience with this product, the ICS provider often originates and terminates the call on its own network and only uses the third party provider to validate the destination number for billing, to send the text message to the end user and to bill/collect on the calls for a percentage of the revenue.

**d. Single Call Services to Wireless Phones Subject to Regulation based on Section 276** - NCIC is not aware of the process of all the third-party providers of these products, but based on our experience with this product, the ICS provider originates the call on their network, plays an announcement twice indicating the price of the call (double opt-in), then completes the call. After the call is terminated, a text message is sent indicating they will be billed \$5.99 for the call. Some third-party providers now handle the connection of the call and play the acceptance

messages. The end result is the completion of an ICS call to a wireless phone.

**e. Alabama PSC Single Call Service Flat Rate** - The Alabama PSC was more than generous to offer this product at a flat rate, especially for Single Call Services billed to a major credit card / debit card. One would think the per-minute rate is more than sufficient when billed on a card. There should not be a transition period for adaption of these products as they are currently the most excessively priced ICS products.

#### **IV. Additional Ways to Promote Competition**

**A. Barriers and Authority** - There currently is competition with ICS providers now, in the form of Video Visitation systems which allow both video and non-video calls at unregulated rates, email, text messaging, face-to-face visits, mail and hearing-impaired video systems.

#### **V. Existing Contracts**

**A. Discussion of Requirements Implementation and Impact on Contracts** - Almost every ICS contract has a provision for renegotiation due to changes in the regulatory environment, so no one year grace period should be required for implementation of rates and fees. Currently, many ICS providers are pushing their current jail customers to sign contract extensions in hopes of having a grand-fathering of existing contracts.

## **VI. Transition Periods**

**A. Transition Time-Frame** - Ideally, all rate, ancillary fee and Single Call caps should be implemented within 90 days following the effective date of the order to provide immediate relief to inmate families. Once a cap is in place, there should be no potential for abuse, so a five year transition on commissions should suffice in helping the prisons adjust with the implementation of newer technologies and new policies to lower their costs, such as wide-spread use of GPS bracelets to release non-violent offenders, decriminalizing certain drugs, reducing sentences for drug-related offenses, allowing judges more discretion in sentencing and quicker deportation of foreign criminals, most of which will be implemented within the next five years.

## CONCLUSION

The Commission should act in accordance with the recommendations made herein.

Respectfully submitted,

\_\_\_\_\_/s/William L. Pope

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