

**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
	)	
	)	

**REPLY COMMENTS  
OF  
NETWORK COMMUNICATIONS INTERNATIONAL CORP.**

Network Communications International Corp. (“NCIC”) hereby submits these reply comments in response to the Second Further Notice of Proposed Rulemaking, WC Docket No. 12-375 (“Notice”), released October 22, 2014, in the above-referenced proceeding.<sup>1</sup> As NCIC pointed out in its opening comments in this proceeding, NCIC greatly appreciates that the Commission is taking steps to reform and modernize interstate inmate calling services (“ICS”) regulations. The purpose of these reply comments is to demonstrate that the FCC has the authority to regulate ancillary fees that are imposed on ICS consumers.<sup>2</sup>

At the outset, it is important to note that the record in this proceeding provides ample evidence supporting the FCC’s ability to limit ancillary fees imposed on ICS customers.<sup>3</sup> The Commission’s rules define ancillary charges as “any charges to Consumers not included in the

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<sup>1</sup> See *Rates for Interstate Inmate Calling Services*, Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 13,170 (2014) (the “*Second FNPRM*”).

<sup>2</sup> NCIC reiterates the request it made in its comments urging 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 for small county and city jails, provides rate caps for ancillary fees and charges, but does not attempt to regulate cost-recovery (commissions). See NCIC Comments at 2, 5, 13 (filed January 12, 2015).

<sup>3</sup> See, e.g., Comments of Martha Wright, *et al.*, WT Docket No. 12-375, at 5-12 (filed March 23, 2013); Reply Comments of Martha Wright *et al.*, WT Docket No. 12-375, at 4-7 (filed April 22, 2013).

charges assessed for individual calls and that Consumers may be assessed for the use of Inmate Calling Services. Ancillary Charges include, but are not limited to, fees to create, maintain, or close an account with a Provider; fees in connection with account balances, including fees to add money to an account; and fees for obtaining refunds of outstanding funds in an account.”<sup>4</sup>

The *Second FNPRM* proposes to prohibit or cap some types of ancillary charges that are not charges for completion of a call, or charges for a communications service at all, such as account establishment by check or bank account debit; account maintenance; payment by cash, check, or money order; monthly electronic account statements; account closure; and refund of remaining balances and money transfer service fees.<sup>5</sup> In response, commenters submitted information into the record highlighting the excessive charges ancillary fees, directly related to the provisioning of ICS calls, demonstrating that many ancillary fees were unjust, unreasonable and unfair.<sup>6</sup>

While Securus Technologies, Inc. and Global Tel\*Link Corporation, among others, claim in their comments that the FCC does not have jurisdiction to regulate ancillary rates and fees that are charged by providers of inmate phone services,<sup>7</sup> this is simply not the case. Both parties argue that ancillary fees are merely “financial transactions,” and the FCC does not have authority to regulate such fees. To the contrary, it is clear that these types of “financial transactions” – those that are between the service provider and the end users of the service and that directly impact the charges for the regulated services – do fall under the FCC’s authority related to the

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<sup>4</sup> 47 C.F.R. § 64.6000.

<sup>5</sup> See *Second FNPRM* ¶¶ 89, 104.

<sup>6</sup> See, e.g., Prison Policy Initiative Ex Parte Submission, dated May 9, 2013 (providing a copy of its Report - *Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Prison Phone Industry*); Comments of Martha Wright, *et al.*, WT Docket No. 12-375, at 5-12 (filed March 23, 2013).

<sup>7</sup> See Comments of Securus Technologies, Inc., at 25 (filed Jan. 12, 2015) and Comments of Global Tel\*Link Corporation, at 26-34 (filed Jan. 12, 2015).

provision of telecommunications services and, therefore, are subject to the FCC’s explicit statutory authority to regulate “[a]ll charges, practices, classifications, and regulations.”<sup>8</sup> Thus, despite the ICS providers’ inaccurate claims, the regulation of ancillary charges is well within the Commission’s jurisdiction.

It goes without saying that ancillary fees are a significant cause of ICS customers being charged disparate rates. And the plain language of multiple sections of the Communications Act, including Sections 201, 205, and 276 of the Act, are more than enough to refute any claims that the FCC does not have the authority to regulate ancillary fees.<sup>9</sup> For instance, Section 201(b) of the Communications Act explicitly states that the FCC has the authority to determine whether or not a “charge, practice, classification” is unjust or unreasonable.<sup>10</sup> And, as noted, it is also clear that “financial transactions” under Section 201(b) are exclusively related to the provision of telecom services and, consequently, fall under the FCC’s statutory to regulate “[a]ll charges, practices, classifications, and regulations.”<sup>11</sup> Under Section 205 of the Communications Act, the Commission is directed to “determine and prescribe what will be the just and reasonable charge ... and what classification, regulation, or practice is or will be just, fair, and reasonable.”<sup>12</sup> Finally, pursuant to Section 276(d) of the Communications Act, the FCC has substantial authority to regulate ICS rates, including “inmate telephone service in correctional institutions,

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<sup>8</sup> See 47 U.S.C. § 201(b) (emphasis added).

<sup>9</sup> See 47 U.S.C. §§ 201, 205, 206.

<sup>10</sup> 47 U.S.C. § 201(b). As noted above, the Prison Policy Initiative published a study of ancillary fees – *Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees* – which documented the extensive (and oppressive) practice of ICS providers charging additional fees to their customers. See Prison Policy Initiative *Ex Parte* Submission, May 9, 2013.

<sup>11</sup> *Id.* see also, *Tennis Channel Inc. v. Comcast Cable Communications, LLC*, 27 FCC Rcd 9274, 9281-82 (2012) (“The Commission’s interpretation of a statutory provision that Congress has assigned it to enforce is entitled to substantial judicial deference”) citing *Kay v. FCC*, 393 F. 3d 1339, 1343 (D.C. Cir 2005).

<sup>12</sup> 47 U.S.C. § 205.

*and any ancillary services.*”<sup>13</sup> As a result, based on the overwhelmingly straightforward language of the Communications Act, there is no valid argument against the fact that the FCC has the full weight of the Act behind it to regulate *ancillary services*. For parties to suggest otherwise in this proceeding turns a blind eye to the plain language of multiple provisions of the Communications Act and the Commission should, therefore, reject such claims.

The FCC itself has correctly cited *Illinois Public Telecommunications Association v. FCC*, 117 F. 3d 555 (D.C. Cir 1997), as supporting the fact that Section 276 of the Communications Act broadly directs the Commission to regulate the rates for payphone services, and defines such services to include “the provision of ... any ancillary services.”<sup>14</sup> In the First Report and Order in this docket, the Commission properly held that “billing and collection services provided by a common carrier for its own customers are subject to” the FCC’s authority and concluded that it could regulate *all such services* when performed by an ICS provider for its customers.<sup>15</sup> Thus, there is no doubt that the FCC has the jurisdiction to regulate ancillary fees.

In the unlikely event that more evidence is needed to establish that the FCC has the authority to regulate ancillary ICS fees under the Communications Act, the legislative history of Section 276 included the following supporting language which shows that Congress intended to give the Commission authority in regulating ancillary fees:

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<sup>13</sup> 47 U.S.C. § 276(d) (emphasis added).

<sup>14</sup> *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, FCC 14-158, Second Further Notice of Proposed Rulemaking (Oct. 22, 2014).

<sup>15</sup> *See Rates for Interstate Inmate Calling Services*, First Report and Order, 28 FCC Rcd 14107, ¶ 114 (2013) (emphasis added).

## NEW SECTION 276—PROVISION OF PAYPHONE SERVICES

Nothing [in this Section] is intended to limit the authority of the commission to address these structural issues, *or other payphone related issues, under the existing provisions of the Communications Act.*<sup>16</sup>

The language of the cited provision found in the legislative history of the Act, like those specific provisions codified in the Communications Act itself, provided above, shows that Congress fully intended to give the FCC expansive authority to regulate ancillary fees under the Act.<sup>17</sup>

NCIC also reiterates that if the FCC takes further action on ICS ancillary fees and charges, it should use the order of the Alabama Public Service Commission as a benchmark for reasonable fees and charges. NCIS submits that eliminating commissions that may be paid by ICS providers could have a detrimental impact on inmates and their families, ICS providers, and the jails and prisons that rely on these revenue sources to provide inmate phone services. Without commissions, jails and prisons may curtail or restrict the phone services made available to the inmates. Additionally, as NCIC noted in its comments, 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 prisons.<sup>18</sup>

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<sup>16</sup> H.R. Rep. No. 99–647 (1986), at 35.

<sup>17</sup> *See, e.g., Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663 (2011).

<sup>18</sup> *See* NCIC Comments at 18 (filed January 12, 2015).

## CONCLUSION

The Commission should act in accordance with the recommendations made in these reply comments and the comments previously submitted by NCIC in this proceeding.

Respectfully submitted,

By: /s/ William L. Pope  
William L. Pope, President

Network Communications International Corp.  
606 East Magrill  
Longview, Texas 75601  
Telephone: (903) 757-4455  
[bpope@ncic.com](mailto:bpope@ncic.com)

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