

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

In the Matter of)
)
Rates for Interstate Inmate Calling Services) WC Docket No. 12-375
)

REPLY COMMENTS OF LATTICE INCORPORATED

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SUMMARY

The Communications Act requires the Commission to promote competition among payphone service providers and widespread deployment of ICS for the benefit of the general public, and to ensure that all payphone service providers—including providers of ICS—are fairly compensated for each and every completed intrastate and interstate call. To the extent that any state requirements are inconsistent with the Commission’s policies and rules, the Commission must preempt those state requirements. Arguments that the Commission’s jurisdiction is somehow less than comprehensive fail to acknowledge the breadth of the authority granted to the Commission in Section 276, and the scope of its mandate.

The Commission’s jurisdiction is not limited to inmate calling rates but extends to site commissions because they impact the cost of inmate calling and the availability of ICS. To the extent that excessive site commissions prevent market forces from driving per-call rates toward costs, the Commission has a statutory duty to rein them in. The record indicates that such regulation is necessary and appropriate today, as part of the Commission’s “per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone.”¹ Even if the Commission lacks jurisdiction over the correctional facilities themselves, Commission precedent supports regulation of the commissions paid by ICS providers and the contracts they enter into.

Accordingly, Lattice urges the Commission to take comprehensive action to address both intrastate and interstate inmate calling services as well as site commissions, with the goal of promoting widespread availability of ICS for the benefit of the general public.

¹ 47 U.S.C. § 276(b)(1)(A).

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Lattice Incorporated (“Lattice”), a provider of inmate calling services (“ICS”) including telephone and Video Visitation services, submits these reply comments in further response to the Federal Communication Commission’s Second Further Notice of Proposed Rulemaking in the above-captioned proceeding.²

DISCUSSION

Almost twenty years ago, Congress authorized the Commission to regulate rates for both intrastate and interstate payphone services, including ICS. Since that time, numerous courts have acknowledged and upheld the Commission’s authority. Despite this history and the express Congressional mandate, a handful of commenters continue to question the Commission’s jurisdiction over rates for intrastate inmate calling services, and over site commissions imposed by operators of correctional facilities. As laid out in Lattice’s initial comments, and for the further reasons set forth below, such arguments ignore governing precedent and are unpersuasive. The Commission has ample authority as well as strong policy justification to reform the rates for intrastate ICS and site commissions.

² *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Further Notice of Proposed Rulemaking (rel. Oct. 22, 2014) (“*Second Further Notice*”).

1. *The Commission's Authority Extends to Intrastate as Well as Interstate ICS*

In 1996, Congress amended the Communications Act of 1934 to “accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans.”³ In keeping with its goal of providing phone service to all Americans, Congress added Section 276 to the Act, granting the Commission broad powers to promote competition among inmate payphone providers and widespread access to payphones by inmates. Underscoring the breadth of the Act, Section 276(d) expressly defines “payphone service” as including “the provision of inmate telephone service in correctional institutions,” whether such service involved interstate or intrastate calls.⁴ Section 276(b)(1) provides:

In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public . . . the Commission shall take all actions necessary (including any re-consideration) to prescribe regulations that –

(A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone⁵

Erasing any doubt about the breadth of the Commission’s new powers to regulate both interstate and intrastate payphone services, the Act mandates that “[t]o the extent that any State requirements are inconsistent with the Commission’s regulations, the Commission’s regulations on such matters shall preempt such State requirements.”⁶

In the years since the passage of Section 276, courts have repeatedly recognized that the Commission has authority to regulate intrastate, as well as interstate, phone services. As early as 1997 in *Illinois Public Telecommunications Ass’n v. FCC*, the D.C. Circuit held that Section 276 “unambiguously grants the Commission authority to regulate the rates” for local coin calls,

³ S. Conf. Rep. No. 104-230, at 1 (1996).

⁴ 47 U.S.C. § 276(d).

⁵ 47 U.S.C. § 276(b)(1)(A)

⁶ 47 U.S.C. § 276(c).

which were “among the intrastate calls for which payphone operators must be ‘fairly compensated.’”⁷ The court stated that “compensation” “encompass[es] rates paid by callers,” and there was “no indication that the Congress intended to exclude local coin rates from the term ‘compensation’ in § 276.”⁸ This same reasoning applies to all “intrastate calls for which payphone operators must be ‘fairly compensated.’”⁹

The court analyzed the issue of whether Congress had given the Commission the necessary authority to set local coin call rates to achieve the goal of fair compensation and determined that it had.¹⁰ The plaintiffs, state utility regulatory commissions and the National Association of the State Utility Consumer Advocates, had argued that the Commission did not have power to regulate local coin rates, but the court rejected that argument. The D.C. Circuit, quoting the United States Supreme Court’s ruling in *Louisiana Public Serv. Comm’n v. FCC*, 476 U.S. 355, 369, 377 (1986), began its analysis with the principal that “[t]he crucial question in any preemption analysis is always whether Congress intended that federal regulation supersede state law,” and had done so in an “unambiguous [and] straightforward” manner.¹¹

According to the D.C. Circuit:

As we have seen, the Congress in § 276 directed the Commission to establish regulations to “ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call.” . . .

It is undisputed that local coin calls are among the intrastate calls for which payphone operators must be “fairly compensated”; the only question is whether in § 276 the Congress gave the Commission the authority to set local coin call rates in order to achieve that goal. We conclude that it did. . . . Because the only compensation that a [payphone service provider] receives for a local call (aside from the subsidies from CCL charges that LEC payphone providers enjoy) is in

⁷ 117 F.3d 555, 562 (D.C. Cir. 1997) (per curiam).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 561.

the form of coins deposited into the phone by the caller, and there is no indication that the Congress intended to exclude local coin rates from the term “compensation” in § 276, we hold that the statute unambiguously grants the Commission authority to regulate the rates for local coin calls.¹²

Having determined that Section 276 “unambiguously” granted the Commission authority over the local coin calls as a subset of intrastate calls, the court rejected plaintiffs’ argument that the Commission’s authority must be narrowly tailored to avoid preempting the states’ authority in order to promote the widespread deployment of payphone services.¹³ According to the court:

The FCC points out that its regulation of intrastate matters must be as narrow as possible only when the preemption arises by implication — for example, where it is impossible to regulate interstate matters without regulating intrastate matters. *See Public Serv. Comm’n v. FCC*, 909 F.2d 1510, 1514-15 (D.C. Cir. 1990); *Public Utility Comm’n v. FCC*, 886 F.2d 1325, 1331-32 (D.C. Cir. 1989). In this case the Commission has never argued that it has jurisdiction over local coin call rates merely by implication. Rather, as we have seen, the Commission has been given an express mandate to preempt State regulation of local coin calls. Accordingly, the requirement that the FCC’s regulation be narrowly tailored simply does not come into play.¹⁴

The D.C. Circuit reached a similar conclusion in *New England Public Communications Council, Inc. v. FCC*.¹⁵ In that case, the Bell operating companies challenged a Commission order requiring the companies to price intrastate service lines at forward-looking cost-based rates. The D.C. Circuit affirmed the Commission’s order. In doing so, the court reiterated its prior holding, noting that “[i]n the Telecommunications Act of 1996, Congress fundamentally restructured the local telephone industry. Section 276 of the Act, which is specifically aimed at promoting competition in the payphone service industry also authorizes the Commission to prescribe regulations consistent with the goal of promoting competition Finally, recognizing that the prescribed regulations would trench on state authority, Congress provided

¹² *Id.* at 562.

¹³ *Id.* at 563.

¹⁴ *Id.*

¹⁵ 334 F.3d 69 (D.C. Cir. 2003).

that section 276 preempts state law “[t]o the extent that any State requirements are inconsistent with the Commission’s regulations.”¹⁶

Addressing the petitioners’ challenge to the Commission’s authority, the court held that “we find that section 276 unambiguously and straightforwardly authorizes the Commission to regulate the BOCs’ intrastate payphone line rates.”¹⁷ The court observed that Congress, “[r]ecognizing that the Commission’s regulations implementing these commands would tread on ground traditionally occupied by the states, . . . included a preemption clause providing that ‘[t]o the extent that any State requirements are inconsistent with the Commission’s regulations,’ the Commission’s regulations would preempt state law.”¹⁸ According to the court:

Two of the five measures prescribed in section 276(b), moreover, expressly apply to intrastate service: subsection (b)(1)(A) directs the Commission to adopt regulations guaranteeing fair compensation for “*intrastate* and interstate call[s],” 47 U.S.C. § 276(b)(1)(A) (emphasis added), and (b)(1)(B) requires the Commission to “discontinue the *intrastate* and interstate carrier access charge payphone service elements . . . and all *intrastate* and interstate payphone subsidies,” *id.* § 276(b)(1)(B) (emphasis added). In fact, we have interpreted subsection (b)(1)(A) to permit Commission regulation of local coin rates, which was long the exclusive domain of the states. *Illinois Public Telecommunications Ass’n*, 117 F.3d at 561-63. And although subsections (b)(1)(D) and (b)(1)(E) do not use the word “intrastate,” the two provisions authorize the Commission to promulgate regulations concerning PSPs’ selection of carriers for long-distance intraLATA and interLATA calls, both of which are often intrastate calls. *See* 47 U.S.C. § 276(b)(1)(D), (b)(1)(E). As the BOCs affirm, “the FCC could not carry out this mandate without addressing intrastate matters.” BOC Petitioners’ Br. at 12-13. All of these provisions, which authorize the Commission to regulate both intrastate and interstate service in implementing section 276(a)’s anti-subsidy and anti-discrimination commands, indicate that those commands, too, apply to both intrastate and interstate matters.¹⁹

The court specifically rejected the petitioners’ argument that not all of Section 276 applied to intrastate matters because the word “intrastate” did not appear in every section of the

¹⁶ *Id.* at 71 (quoting 47 U.S.C. § 276(c)).

¹⁷ *Id.* at 75.

¹⁸ *Id.* at 76 (quoting 47 U.S.C. § 276(c)).

¹⁹ *Id.*

Act. “If Congress had meant to prohibit only interstate subsidies and discrimination, it is difficult to understand why it would have directed the Commission to regulate *intrastate* call compensation and *intrastate* payphone subsidies.”²⁰

Comparing the payphone provision of the statute to the local competition provisions addressed by the U.S. Supreme Court in *AT & T Corp. v. Iowa Utilities Board*,²¹ the D.C. Circuit stated:

Of course, unlike *Iowa Utilities Board*, which involved purely local, intrastate facilities and services, both intrastate and interstate facilities and services are at issue here. But in passing the 1996 Act’s payphone competition provision and the local competition provisions, Congress had exactly the same objective: to authorize the Commission to eliminate barriers to competition. And much as the Supreme Court concluded it would be impossible to implement the local competition provisions while limiting the Commission’s authority to interstate services, so would it make little sense for Congress to command the Commission to promulgate rules opening the payphone market to competition while leaving it powerless to address intrastate subsidies and discrimination, which are, after all, no less an obstacle to fair competition than interstate subsidies and discrimination.²²

More recently, the Ninth Circuit in *Metrophones Telecommunications, Inc. v. Global Crossing Telecommunications, Inc.*²³ held that Section 276 “substantially expands the Commission’s jurisdiction and gives it broad authority to regulate both intrastate and interstate payphone calls.”²⁴ Addressing the extent of federal preemption granted by Section 276(c), the court explained that

our analysis of whether state requirements are “inconsistent” with the federal regulations within the meaning of § 276(c) is substantially identical to the analysis of implied conflict preemption: whether “state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,”

²⁰ *Id.* at 77.

²¹ 525 U.S. 366, 380 (1999) (limiting Commission jurisdiction to interstate matters “would utterly nullify the 1996 amendments”).

²² *New England Public Communications Council*, 334 F.3d 69 at 77.

²³ 423 F.3d 1056 (9th Cir. 2005).

²⁴ 423 F.3d at 1072.

Gade, 505 U.S. at 98, 112 S. Ct. 2374 (internal quotation marks omitted), or, as is more relevant in applying § 276(c), the purposes and objectives of the Commission.²⁵

As explained by the Ninth Circuit, under both implied conflict preemption and its interpretation of Section 276(c), state law is preempted “to the extent it actually interferes with the methods by which the federal [regulatory scheme] was designed to reach its goal.”²⁶ The court further observed:

Although we discern in § 276 a clear intent to create a comprehensive federal plan for payphone regulation, Congress left it to the Commission to decide how to structure the regulations and enforcement mechanisms. Congress did not express a preference for absolute national uniformity or exclusive federal enforcement, leaving those decisions to the Commission and expressly allowing for the operation of state law if consistent with the Commission’s chosen plan. *Cf. CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664, 675 (1993) (holding that an express provision preempting all state laws “relating to railroad safety” was broad and would preempt state claims that cover the same subject matter) (emphasis added).²⁷

Like the courts, the Commission has concluded that Section 276 “establishes a comprehensive federal scheme of payphone regulation, both intra- and interstate, to be administered by the Commission,”²⁸ and contains specific directives with “explicit application to intrastate matters.”²⁹ The Commission has therefore determined that it has “been given an express mandate to preempt state regulation of intrastate payphone line rates; therefore, our jurisdiction does not arise by implication, and it need not be narrowly construed.”³⁰ According to the Commission, the “focus on intrastate regulation . . . is not surprising,” as “[a]n

²⁵ *Id.* at 1073.

²⁶ *Id.* (citation and internal quotation marks omitted).

²⁷ *Id.* at 1073, n.11.

²⁸ Memorandum Opinion and Order, *In re Wisconsin Public Service Comm’n*, 17 FCC Rcd 2051, ¶ 35 (2002) (“*Wisconsin Order*”).

²⁹ *Id.* ¶ 34.

³⁰ *Id.* at ¶ 42 n.97.

overarching federal program is necessary to achieve” the purposes of the statute.³¹ In its Further Notice of Proposed Rulemaking in this proceeding, the FCC thus tentatively concluded “that section 276 affords the Commission broad discretion to regulate intrastate ICS rates and practices that deny fair compensation, and to preempt inconsistent state requirements.”³²

2. *The Commission’s Jurisdiction Extends To Site Commissions Imposed on ICS*

Just as the Commission has authority to regulate intrastate rates, it has the authority to regulate site commissions required by correctional facilities as a condition of making ICS access available to their inmates. As the Commission noted in the *ICS Rates Order*, “[a] significant factor driving . . . excessive [inmate telephone] rates is the widespread use of site commission payments.”³³ Site commissions that are not tied to the costs of administering ICS are inherently inconsistent with the purposes and objectives of the Commission in implementing Section 276’s pro-competitive mandate and fair-compensation requirements.³⁴ A correctional institution’s demand for a commission as a percentage of gross revenues can invert competitive bidding for ICS, making the bid with the highest commission more attractive than the bid with the lowest rate. Because the correctional institution has no incentive to choose the lowest-cost provider, such a bidding process precludes market forces from driving inmate rates lower.³⁵

³¹ *Id.* ¶ 35.

³² Report and Order and Further Notice of Proposed Rulemaking, *In re Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107, ¶ 135 (2013) (“*ICS Rates Order*”).

³³ *ICS Rates Order* ¶ 3.

³⁴ To the extent that they increase the cost of ICS and effectively limit access to ICS, site commissions can impede the accomplishment of the goals of Section 276. See Order on Remand and Notice of Proposed Rulemaking, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand and Notice of Proposed Rulemaking, 17 FCC Rcd 3248, ¶ 29 (2002) (“*Order on Remand*”) (recognizing “the upward pressure [site commissions] impose on inmate calling rates”).

³⁵ *Order on Remand*, ¶ 29; *id.* ¶ 12 (“[P]erversely, because the bidder who charges the highest rates can afford to offer the confinement facilities the largest location commissions, the competitive bidding process may result in higher rates.”).

Whether they are deemed interstate or intrastate in nature, site commissions affect access to ICS and fall within the Commission’s Section 276 mandate. The Commission therefore has the authority to regulate site commissions and the agreements governing them. If the Commission finds that a combination of price caps and commission caps is the best way to implement Section 276, incompatible state regulations must be preempted.

The fact that the party receiving the proceeds of site commissions is not itself a provider of ICS is not a bar to regulation. In an analogous situation, the Commission took action under Section 201(b) of the Act to curb the practice of common carriers entering into exclusive contracts in multiple-tenant environments (“MTEs”).³⁶ The Commission asserted its “authority to regulate the contractual or other arrangements between common carriers and other entities, even those entities that are generally not subject to Commission regulation” such as MTE real estate owners or their agents, and forbade carriers from executing or enforcing the provisions of the offending contracts.³⁷ Thus even when the Commission may not have direct jurisdiction over all parties to a contract, it can assert jurisdiction to “‘modify . . . provisions of private contracts when necessary to serve the public interest.’”³⁸

3. Objections to the Commission’s Jurisdiction Are Unpersuasive

The National Association of Regulatory Utility Commissioners (“NARUC”) and the Arizona Corporation Commission (“ACC”) object to the Commission’s alleged “expansion” of

³⁶ *Promotion of Competitive Networks in Local Telecommunications Markets*, Report and Order, 23 FCC Rcd 5385 (2008) (“*Residential MTEs Order*”); *Promotion of Competitive Networks in Local Telecommunications Markets*, Report and Order, 15 FCC Rcd 22983 (2000).

³⁷ *Residential MTEs Order*, ¶15 (citing *Cable & Wireless v. FCC, P.L.C.*, 166 F.3d 1224, 1230-32 (D.C. Cir. 1999)).

³⁸ *Residential MTEs Order*, ¶17 (citing *Western Union Telegraph Co. v. FCC*, 815 F.2d 1495, 1501 (D.C. Cir. 1987)).

its authority over intrastate rates.³⁹ But the Commission is not expanding its own jurisdiction. As discussed above, almost twenty years ago Congress extended the Commission’s jurisdiction broadly over all payphone services, intrastate and interstate, including ICS. That the Commission only recently identified a need to address intrastate services does not change the fact that it has had the authority to do so.

ACC argues that the Commission does not have authority to “broadly preempt” state authority over ICS and should defer to the states “with respect to intrastate ICS reforms that impact areas where their unique expertise is implicated.”⁴⁰ NARUC also argues that the Commission’s Section 276 authority must be narrowly construed “to avoid preemption” of the states.⁴¹ However, Section 276(c) gives the Commission express authority to preempt any inconsistent state laws without any such limitation.⁴² As the D.C. Circuit and the Commission have recognized, because the Commission has “an express mandate to preempt state regulation of intrastate payphone line rates[,] . . . [its] jurisdiction does not arise by implication, and it need not be narrowly construed.”⁴³

Moreover, the grant of jurisdiction over intrastate rates for inmate calls is consistent with the overarching goals of Section 276. NARUC and others urge a cramped reading of Section 276 as designed only to prevent discrimination or subsidies by the Bell operating companies.⁴⁴

Section 276 encompasses much broader goals, including to “promote competition among

³⁹ NARUC Comments at 2, 3, 5, 8; Arizona Corporation Commission Comments at 6.

⁴⁰ Arizona Corporation Commission Comments at 3-7, 10.

⁴¹ NARUC Comments at 8 & n.21.

⁴² 47 U.S.C. § 276(c).

⁴³ *Wisconsin Order* ¶ 42 n.97; *accord Illinois Public Telecommunications*, 117 F.3d at 563 (because “the Commission has been given an express mandate to preempt State regulation of local coin calls . . . , the requirement that the FCC’s regulation be narrowly tailored simply does not come into play”).

⁴⁴ NARUC Comments at 8; *accord Praeses Comments* at 21-22; *Inmate Calling Solutions, LLC Comments* at 4-5.

payphone service providers” and to “promote the widespread deployment of payphone services for the benefit of the general public.”⁴⁵ In addition, the Commission is charged with the specific duty to “establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call.”⁴⁶ To the extent that state actions interfere with the Commission’s efforts to guarantee fair compensation of ICS providers and promote widespread access to ICS, preemption is fully consistent with Congressional intent in broadly granting the Commission authority over these services.

ACC also alleges that the Commission has exceeded its own purpose.⁴⁷ In ACC’s view, the “FCC’s primary goal with respect to the Wright Petition is to ensure that the interstate payphone rates are just and reasonable” and the Commission has gone “well beyond this” in the *Second Further Notice*.⁴⁸ However, the Commission is not restricted to addressing only part of the ICS rate issue. In the *Second Further Notice*, the Commission clearly articulates the comprehensive nature of its inquiry and provides sufficient notice of the scope of possible reforms:

[The Commission] was unable to adopt comprehensive reform in the *Inmate Calling Report and Order and FNPRM* due to the limited data in the record and administrative notice limited only to interstate ICS. Because we seek comment on a comprehensive solution – rather than just reforming interstate rates – we seek comment on moving to a market-based approach to encourage competition in order to reduce rates to just and reasonable levels and to ensure fair but not excessive ICS compensation.⁴⁹

The ACC argues that the Commission does not have authority to “broadly preempt” state authority over ICS and should defer to the states regarding prison and security policy and in particular “with respect to intrastate ICS reforms that impact areas where their unique expertise

⁴⁵ 47 U.S.C. §§276(b)(1)(C), (D).

⁴⁶ 47 U.S.C. §276(b)(1)(A).

⁴⁷ Arizona Corporation Commission Comments at 8.

⁴⁸ Arizona Corporation Commission Comments at 8.

⁴⁹ *Second Further Notice* ¶6.

is implicated.”⁵⁰ The ACC, however, does not explain why the Commission should ignore the mandate of Section 276 to ensure that “all payphone service providers are fairly compensated for each and every completed intrastate and interstate call,” and to preempt “any state requirements” that are inconsistent with the Commission’s regulations implementing this section.⁵¹

The argument that the Commission cannot regulate site commissions because that implicates how providers “use,” “spend” or “share” their profits is similarly incorrect.⁵² Neither Section 276(b)(1), which directs the Commission to promote competition among payphone providers and promote widespread deployment of payphone services,⁵³ nor section 276(c), which authorizes the Commission to preempt inconsistent state laws, limits the scope of agency authority to rates or costs. Indeed, as the Commission has previously found in an analogous situation it may ““modify . . . provisions of private contracts when necessary to serve the public interest”” even where the Commission does not have jurisdiction over all parties to the contract.⁵⁴ The Commission may regulate site commissions when they prevent market forces from driving per-call rates toward costs. The record indicates that such regulation is necessary and appropriate as part of the Commission’s “per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone.”⁵⁵

Praeses argues that the Commission may not regulate site commissions because it has characterized them as an apportionment of profits rather than provider costs.⁵⁶ Citing the Commission’s view that site commissions are “payments made for a wide range of purposes”

⁵⁰ Arizona Corporation Commission Comments at 3-7, 10.

⁵¹ 47 U.S.C. §§276(b)(1)(A), 276(c).

⁵² See Praeses Comments at 22, 23-25.

⁵³ 47 U.S.C. § 276(b)(1)(A).

⁵⁴ *Residential MTEs Order*, *supra*, note 36.

⁵⁵ 47 U.S.C. § 276(b)(1)(A).

⁵⁶ Praeses Comments at 23, citing *Second Further Notice* ¶¶4, 10.

rather than direct cost recovery,⁵⁷ Praeses concludes that the Commission Section 276 jurisdiction falls short of site commissions. Praeses then goes on to disprove its own argument, asserting that restriction of site commissions would diminish “access to vital funds which are used to support inmate welfare and reduce recidivism” by, *inter alia*, providing access to ICS.⁵⁸

The mandate of Section 276(b)(1)(A) requires the Commission to regulate site commissions and ensure that they do not have the effect of impeding competitive services or limiting widespread access to ICS. Lattice agrees that banning site commissions altogether would discourage correctional facilities from making available access to ICS, and deprive them of any reasonable opportunity to recover their ICS-related administrative and security costs.⁵⁹ In contrast, permitting reasonable site commissions serves the public interest.⁶⁰ Costs may vary among different types of correctional institutions.⁶¹ In the interest of promoting competition and widespread access to ICS, Lattice supports a Commission cap on site commissions associated with both interstate and intrastate ICS to ensure that such commissions do not to drive ICS rates beyond just and reasonable levels.⁶²

⁵⁷ Praeses Comments at 20, citing *ICS Rates Order* ¶55.

⁵⁸ Praeses Comments at 25.

⁵⁹ Praeses Comments at 26.

⁶⁰ See Lattice Comments at 7, citing Joint Providers Reform Proposal at 3.

⁶¹ Lattice Comments at 7-8; Praeses Comments at 26, 31.

⁶² Cf. Praeses Comments at 19.

CONCLUSION

The Commission has a Congressional mandate to promote widespread access to ICS, and to ensure that all payphone service providers—including providers of ICS—are fairly compensated for each and every completed intrastate and interstate call. To the extent that any state requirements are inconsistent with the Commission’s policies and rules, Congress has determined that the Commission should preempt those state requirements. Moreover, the Commission’s jurisdiction is not limited to rates but extends to contractual site commissions that impact the cost of inmate calling and the availability of ICS. Lattice urges the Commission to take appropriate action to address both intrastate and interstate inmate calling services as well as taking steps to regulate site commissions, with the goal of promoting widespread access to ICS.

Respectfully submitted,



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