Inmate Calling Services

WC Docket No. 12-375

Andrew D. Lipman

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FCC Authority to Cap Intrastate Rates

- Section 276(b)(2)(A) *expressly* empowers FCC to determine "fair compensation" for both interstate and intrastate calls
- Section 276(c) *expressly* preempts State requirements to the extent inconsistent with FCC rules adopted under this section
  - Therefore, any rule of construction regarding *implied* preemption is irrelevant

FCC Authority Extends to *All* Intrastate Calls

- Some parties claim that Section 276(b)(2)(A) only gives the FCC authority over local coin calls, not over "toll" calls
  - Nothing in the statutory language supports this view; the statute says "each and every completed intrastate and interstate call"
  - FCC's authority over intrastate toll rates is neither lesser nor greater than over local coin rates
  - DC Circuit in *Illinois Public Tel. v. FCC* specifically found that "compensation" includes rates paid by end-users

FCC Authority Extends to *All* Intrastate Calls (cont'd)

- It does not matter
  - whether local call or not
  - whether paid by coin or not
  - whether the equipment owner and the common carrier are the same entity or not

“Ancillary Charges”

- Although statute expressly includes “ancillary” services in the scope of ICS, it does not define that term
- Context, both within Section 276 and more broadly throughout Title II, requires that this term be limited to ancillary *communications* services, not to financial or other services that may be offered to ICS customers

FCC Has Authority to Limit or Prohibit Site Commissions

- Communications Act requires balancing of consumer (ratepayer) and carrier (investor) interests
  - Site commissions destroy this balance
  - It is impossible simultaneously to protect consumers, allow a reasonable return to carriers, *and* satisfy the insatiable demands of facilities for commission payments

Authority to Limit or Prohibit Site Commissions (2)

- No market forces control amount of site commissions
  - Facility owners can make unlimited demands, unless restricted by state or local law
  - Service providers cannot offer service at all unless they agree to commission demands
  - Consumers who bear the cost of commissions don't have a seat at the table

Authority to Limit or Prohibit Site Commissions (3)

- Just and reasonable rates should be based on the cost of service
  - Commission payments to subsidize unrelated prison programs are not a cost of ICS
  - Prisons have not documented any costs they incur that are actually caused by the provision of ICS
  - Contrast the extensive cost studies, evaluated by outside experts, submitted by ICS providers

Authority to Limit or Prohibit Site Commissions (4)

- Sec. 276(b)(1) requires FCC "to ensure that *all payphone service* [including ICS] *providers are fairly compensated* for each and every completed intrastate and interstate call[.]"
- It does not require that correctional facilities be fairly compensated, or be compensated at all

Authority to Limit or Prohibit Site Commissions (5)

- *If* facilities could show that they incur costs as a direct result of allowing inmates access to ICS, that would not otherwise be incurred, FCC could allow this as part of the cost of service
  - *But* no such demonstration has yet been made, only unverified and undocumented assertions that vary wildly from one facility to the next

Authority to Limit or Prohibit Site Commissions (6)

- Limiting site commissions is within the FCC's express statutory authority under § 276(b)(1)(A) to adopt regulations to ensure fair compensation (fair both to consumers and to providers)
- But, alternatively, this would clearly be within FCC ancillary jurisdiction under *American Library Ass'n v. FCC*:
  1. the Commission's general jurisdictional grant under Title I covers the regulated subject and
  2. the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities.
- Regulation of site commissions is within Title I jurisdiction because it affects price and availability of communications services, and is reasonably ancillary to ensuring that ICS providers are fairly compensated