



## STATE OF ALABAMA

ALABAMA PUBLIC SERVICE COMMISSION  
P. O. BOX 304260  
MONTGOMERY, ALABAMA 36130-4260

TWINKLE ANDRESS CAVANAUGH, PRESIDENT

JOHN A. GARNER, EXECUTIVE DIRECTOR

JEREMY H. ODEN, ASSOCIATE COMMISSIONER

CHRIS "CHIP" BEEKER, JR., ASSOCIATE COMMISSIONER

May 22, 2015

### ***By Electronic Filing***

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

***Re: WC Docket No. 12-375 – Written Ex Parte Presentation Global Tel\*Link Corporation***

Dear Ms. Dortch:

The Alabama Public Service Commission ("APSC") hereby submits its comments in response to the May 18, 2015 letter to the Commission from Chérie R. Kiser, Counsel for Global Tel\*Link Corporation ("GTL"). GTL contends the APSC's assertion<sup>1</sup> that the Commission has not prohibited the payment of interstate site commissions is wrong. The APSC disagrees strongly with GTL's conclusion.

GTL cites the Commission's August 20, 2014 Public Notice<sup>2</sup> as evidence that interstate site commissions are prohibited. However, the Commission does not explicitly prohibit interstate site commission payments anywhere in the Public Notice. Doing so would directly contradict the Commission's conclusion in the Commission's Report and Order and Further Notice of Proposed Rulemaking ("FNPRM"), dated September 26, 2013:

We do not conclude that ICS providers and correctional facilities cannot have arrangements that include site commissions. We conclude only that, under the Act, such commission payments are not costs that can be recovered through interstate ICS rates (paragraph 56).

In footnote 7 of the Public Notice, CenturyLink acknowledges that "...it continues to pay site commissions required by its contracts with correctional facilities because it does not have a basis to stop paying site commissions." To our knowledge, neither CenturyLink nor any other provider that continues to honor their existing contract requiring the payment of interstate site commissions has been notified that they are in violation of Commission rules.

---

<sup>1</sup> WC Docket No. 12-375, Letter from Darrell A. Baker, Director, Utility Services Division, Alabama Public Service Commission (dated May 12, 2015) ("APSC May 12 Ex Parte").

<sup>2</sup> Rates for Interstate Inmate Calling Services, 29 FCC Rcd 10043 (2014) ("August 20 Public Notice").

The Commission's Second FNPRM<sup>3</sup>, released after the Commission's August 20, 2014 Public Notice, is further evidence that the Commission has not explicitly prohibited the payment of interstate site commissions. Paragraph 26 repeats the Commission's decision from the First FNPRM that site commissions should not be included in interstate **rates**. In paragraph 29, the Commission seeks comments on its legal authority to restrict site commission **payments** which is consistent with the Commission's position in paragraph 56 of the First FNPRM. If the Commission heretofore prohibited site commission payments as GTL contends, soliciting comments on their authority to do so after the fact would seem entirely unnecessary.

### **Commission Investigation is Not Limited to Site Commission Payments**

The APSC's May 12, 2015 Ex Parte submission is in response to the Securus Technologies, Inc. Ex Parte letter dated May 5, 2015 seeking a Commission investigation into the interstate rates of ICSolutions, LLC based on their continued payment of interstate site commissions.

The Public Notice, however, does not limit the reasons that such investigations are initiated to site commission payments. The Public Notice explicitly states that the Commission may initiate an investigation into a provider's rates based on site commission payments **and other reasons**:

We note that the Commission could also find ICS rates to exceed what is just and reasonable for reasons other than the payment of site commissions (Public Notice, footnote 12).

Site commissions are paid from a provider's profits. Only when calling rates are the provider's only ICS revenue source can one make any definitive conclusions about whether the rates are excessive. Over the years, other sources of ICS revenue have been used to bolster a provider's profits allowing them to offer excessive site commission payments. High ancillary fees and exorbitantly priced single payment services (also referred to as "premium payment options") have served that purpose. GTL and Securus assess among the highest ancillary fees in the industry and offer single payment services priced up to \$14.99 per call. Upon eliminating interstate site commission payments, providers that subsidized those payments with excessive ancillary fees and/or single payment services, should have made corresponding reductions in those fees and charges. That has not happened. In fact, the Commission notes that ancillary fees increased. Charging the maximum interstate rates and frequently applying flat rate pricing to inmate calls, those providers suspended contractual interstate payments to the facilities they serve but made no corresponding reduction in the fees and charges that subsidized them.

The Commission notes in paragraph 26 of the Second FNPRM that maximum intrastate site commissions increased following release of the First FNPRM. The APSC contends there may be

---

<sup>3</sup> In the Matter of Rates for Interstate Inmate Calling Services, Second Further Notice of Proposed Rulemaking, WC Docket No. 12-375, rel. October 22, 2014.

a correlation between the elimination of interstate site commission payments and a corresponding spike in intrastate site commission offerings by those same providers. Shifting site commission payments from the interstate to the intrastate jurisdiction simply reallocates the provider's total site commission payments.

Providers offer facilities compensation on single payment services that range from 3% to 10% per call. We question whether those providers that eliminated interstate site commission payments also eliminated compensation from interstate single payment calls. If not, they still provide interstate compensation to the facilities.

The provider's gross revenue consists of both intrastate and interstate revenue. The same ancillary fees apply to both the interstate and intrastate jurisdiction and together comprise a part of the provider's gross revenue. Additionally, intrastate and interstate single payment services revenue is combined. We note that GTL commonly offers facility contracts based on minimum annual guarantees ("MAGs"). MAGs ensure the facility a guaranteed minimum level of compensation if the specified site commission percentage applicable to actual intrastate usage falls below the established minimum compensation amount. In such instances, the difference is made up by the provider from the provider's gross profits which include revenue from both jurisdictions.

### **Eliminating Site Commissions is no Guarantee that End User Rates will Decrease**

The APSC disputes GTL's contention that elimination of site commissions alone results in lower end user rates. If the Commission ultimately forbids all site commissions on the premise that, absent such apportionment of ICS profits, providers will automatically lower end user rates, price caps would be altogether unnecessary. Such a conclusion presumes that providers will suddenly behave as if a competitive framework has been thrust upon them. That argument only rings true where state legislatures, county governments, or municipalities require selection of the inmate provider based on the lowest end user rates and prices. In most states, however, bid laws are structured such that the provider is selected based on the greatest economic benefit to the state/county/municipality rather than what is most economically advantageous to the ICS end user. Until those with fiscal oversight for confinement facilities change the bid laws and require provider selection based on the lowest rates and charges for the end user of ICS services, where is the impetus for providers to reduce rates and charges? Other incentives may be used to influence provider selection which does not necessitate reductions in the provider's end user prices. Changing the bid process is a political issue requiring a political rather than a regulatory solution.

The APSC's approach is to exercise our available authority for purposes of capping provider rates and charges associated with all regulated ICS revenue sources. That, in turn, impacts the revenue available to support site commission payments. If the providers continue to offer excessive site commissions or if they escalate their percentage offerings going forward, that may

signal a need for the APSC to initiate subsequent proceedings to investigate and recommend further rate remedies.

Respectfully,

A handwritten signature in black ink that reads "Darrell A. Baker". The signature is written in a cursive style with a light grey rectangular highlight behind it.

Darrell A. Baker  
Director, Utility Services Division

cc: Chairman Tom Wheeler  
Commissioner Michael O'Reilly  
Commissioner Jessica Rosenworcel  
Lynne Engledow  
Rhonda Lien

Commissioner Mignon Clyburn  
Commissioner Ajit Pai  
Rebekah Goodheart  
Pamela Arluk  
David Zesinger