

## PROPOSED ICS RULES

The following interim rules are repealed (and the new rules have been recodified):

§ 64.6010 Cost-Based Rates for Inmate Calling Services

§ 64.6020 Interim Safe Harbor

§ 64.6030 Inmate Calling Services Interim Rate Cap

### § 64.6000 Definitions

As used in this subpart:

(1) Additional Products and Services refers to products and services offered by an ICS Provider that are not required for traditional ICS and includes: (i) products and services offered to the inmate or consumer (e.g., email or video visitations services) and paid for by the inmate or consumer, the provider through excess revenues (profits), or the facility through a separately negotiated charge; and (ii) products and services offered to the facility (e.g., Jail Management Services, Automated Inquiry Systems, Cell Phone Detection, Data Inquiry Systems) and paid for by the provider through excess revenues (profits) or the facility through a separately negotiated charge.

(2) ADP, or average daily population, means the average monthly inmate population in a Confinement Facility as certified by the applicable facility. Where more than one Confinement Facility is administered under a common ICS contract, ADP shall be calculated by averaging across all facilities under the contract. For purposes of the ICS Rate Cap and Facility Administrative Support, ADP shall be initially determined as of the commencement of service based on the average of the preceding calendar year and then updated once per year in January with any required rate adjustments to be made effective February 1. ADP reported and certified by the applicable facility may be relied upon and presumed to be accurate by the ICS Provider.

(3) Ancillary charges means any charges to Consumers not included in the charges assessed for individual calls and that Consumers may be assessed for the use of Inmate Calling Services. Ancillary Charges includes, but is 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 or transfer money between accounts; and fees for obtaining refunds of outstanding funds in an account;

(4) Collect calling means a calling arrangement whereby a credit qualified called party agrees to pay for charges associated with an Inmate Calling Services call originating from an Inmate Telephone;

- (5) Consumer means the party paying a Provider of Inmate Calling Services;
- (6) Confinement facility means city, county, regional, state and federal facilities, including jail, detention, prison, work release, mental health, juvenile, and U.S. Immigration and Customs Enforcement facilities;
- (7) Debit calling means a calling arrangement that allows an inmate to pay for ICS by purchasing a prepaid card or transferring funds to a debit phone account;
- (8) Direct billed calling means a calling arrangement that allows credit qualified called parties to establish an account to accept collect phone calls and be direct billed in arrears for those calls by the ICS vendor;
- (9) Facility Administrative Support means a component of ICS costs, measured on a per minute basis, related to a confinement facility's administrative costs associated with the provision of ICS;
- (10) Inmate means a person detained at a confinement facility, regardless of the duration of the detention;
- (11) Inmate calling services, or ICS, means the offering of interstate, intrastate, and/or international calling capabilities from an Inmate Telephone;
- (12) Inmate telephone means a telephone instrument or other device capable of initiating telephone calls set aside by authorities of a correctional institution for use by Inmates;
- (13) Jail means a confinement facility operated by a city, county, sheriff or regional jail authority intended primarily for the short-term housing and detention of individuals who have been arrested for a criminal offense and are attempting to arrange bail or are being held pending trial or other disposition of the charges. The term includes city, county or regional facilities that have contracted with a private company to manage day-to-day operations as well as privately-owned and operated facilities primarily engaged in housing city, county or regional jail inmates;
- (14) Prepaid collect calling means a calling arrangement that allows the called party to establish a prepaid account for acceptance and payment of future calls from inmates;
- (15) Prison means a confinement facility operated by a state or territorial Department of Correction or the Federal Bureau of Prisons housing sentenced individuals serving an extended defined period of incarceration. The term includes private prisons that provide outsourced housing of inmates for State Departments of Correction or the Federal Bureau of Prisons and prison facilities that are managed by private companies under contract with State Departments of Correction or the Federal Bureau of Prisons;
- (16) Provider of Inmate Calling Services, or Provider, means any communications service provider that provides Inmate Calling Services, regardless of the technology used.
- (17) Site commission means any payment in money, in-kind services or tangible or intangible

goods or property, regardless of the form or the terminology used to describe the payment, excluding Facility Administrative Support, from an ICS Provider to (a) the entity that operates a correctional institution, (b) the entity with which a Provider enters into an agreement to provide ICS to a Confinement Facility, (c) a governmental agency that oversees a correction institution, (d) the state, county, or city where the correctional institution is located, or (e) to an agent or other representative of the entities described in (a)-(d).

**§ 64.6010 Rates for Telecommunications Relay Service (TRS) Calling**

No Provider shall levy or collect any charge in addition to or in excess of the rates for Inmate Calling Services (including any applicable Facility Administrative Support) or charges for Ancillary Charges for any form of TRS call.

**§ 64.6020 Billing-Related Call Blocking**

No Provider shall prohibit or prevent completion of a Collect Calling call or decline to establish or otherwise degrade Collect Calling solely for the reason that it lacks a billing relationship with the called party's communications service provider unless the Provider offers Debit Calling, Direct Billed Calling, or Prepaid Collect Calling.

**§ 64.6030 Annual Reporting and Certification Requirement**

(a) All Providers must submit a report to the Commission, by April 1 of each year, regarding their interstate and intrastate Inmate Calling Services for the prior calendar year. The report shall contain:

(1) The following summary information broken out by Confinement Facility (including the name of the facility and the state it is located in); by jurisdictional nature to the extent that there are differences among interstate, intrastate, and local calls; and by the nature of the billing arrangement to the extent that there are differences among Collect Calling, Debit Calling, Direct Billed Calling, Prepaid Collect Calling and Single Calls:

- (i) Rates for Inmate Calling Services;
- (ii) Facility Administrative Support, if applicable, including any per-minute recovery charged to consumers;
- (iii) Ancillary charges, by category;
- (iv) Total billable calls completed;
- (v) Total minutes of use;
- (vi) Total call revenue;
- (vii) The average duration of calls;
- (viii) Facility ADP;
- (ix) Percentage of total ADP comprised of prison inmates (for Jails only);
- (x) List of Additional Products and Services provided and source of funding (if paid by consumer, include cost per unit charged to consumer);

(2) A certification that the Provider was in compliance during the entire prior calendar

year with the rates for Telecommunications Relay Service as required by § 64.6010;

(b) An officer or director from each Provider must certify that the reported information and data are accurate and complete to the best of his or her knowledge, information, and belief.

**§ 64.6040 Inmate Calling Services Rate Cap**

(a) No Provider may charge a rate for any inmate-initiated call from a Confinement Facility that exceeds the following rate caps (excluding any charge for Facility Administrative Support):

<u>Facility Type</u>	<u>Size (ADP)</u>	<u>Rate Cap</u>
Jail	0-349	\$0.22/min.
	350-999	\$0.20/min.
	1,000-2,499	\$0.18/min.
	2,500 and above	\$0.16/min.
Prison	All	\$0.08/min.

All charges shall be assessed on a per-minute basis for the actual call duration, measured from acceptance to call termination rounded up to the next full minute. No per-call fee, per-call surcharge, or connection fee may be charged.

(b) For purposes of the rate cap set in (a), Jails that are contracted to house prison inmates averaging 40% or more of the total facility population (as reported annually by the facility) shall utilize a split rate structure; prison inmates will be charged no more than the prison rate cap and jail inmates will be charged no more than the jail rate cap. ICS providers in Jails shall certify prison contracted population upon first initiating service and by annual certifications thereafter to be posted on their websites.

(c) For purposes of the rate cap set in (a), detention, work release, mental health, juvenile, and U.S. Immigration and Customs Enforcement facilities, other than those that are bid as part of a Department of Correction group, are subject to the cap applicable to Jails. Work release, mental health, juvenile, and U.S. Immigration and Customs Enforcement facilities bid as part of a Department of Correction group are subject to the cap applicable to Prisons.

**§ 64.6050 ICS Ancillary Charges**

Only the following Ancillary Charges may be charged in connection with ICS:

(a) Transaction or Payment Processing Fee. A Provider may charge up to (i) \$3.00 for automated payments via phone IVR, website or kiosk, (ii) \$5.95 for live agent payment processing, and (iii) 5% of the transfer amount for fund transfer from the inmate's trust/commissary account to the inmate's debit phone account.

(b) Money Transfer Fee. A Provider may arrange to receive payments through a third party money transfer agent and must select the lowest priced commercially available product from

each money transfer agent used. A provider may not enter into a revenue sharing arrangement with a third party money transfer agent or impose any supplemental fee for the processing of such payments.

(c) **Voice Biometrics Fee.** A provider may charge up to \$0.02 per minute for voice biometrics where such technology is deployed and active.

(d) **Optional, Single Call Programs.** Single Call programs, including “convenience” or “premium payment” options, which allow the called party to pay for a single call without establishing a prepaid collect account (e.g., billing directly to credit/debit card or billing to an existing wireless telephone account), may only be offered as follows:

- (i) The Provider must clearly disclose to Consumers at the beginning of each call that the ability to place a Single Call is optional and must make other methods of payment or establishing credit available.
- (ii) Total charges for a Single Call shall not exceed the applicable rate cap plus any applicable Facility Administrative Support for the actual call duration plus the permissible ancillary charge for an automated payment by phone.
- (iii) Providers unable to calculate actual call duration at the time of the call may opt to charge the full duration charge and then credit the called party’s credit card for the unused minutes.

(e) ICS Providers may utilize affiliated vendors to provide payment processing, money transfer or voice biometric services provided that any arrangements for the provision of affiliated services comply with the applicable caps on Ancillary Charges.

**§ 64.6060 Facility Administrative Support**

(a) No Provider may pay a Site Commission or any other form of compensation or in-kind products or services except for Facility Administrative Support.

(b) A Confinement Facility can elect to receive Facility Administrative Support by requiring the collection of such support in the contract governing the provision of ICS by the Provider.

(c) To compensate Confinement Facilities for their costs incurred in connection with the provision of ICS, an ICS Provider may collect from Consumers charges for Facility Administrative Support, such charges to be assessed on a per minute of use basis, not to exceed the following amounts, for all completed, billed, inmate-initiated calls from an electing Confinement Facility.

Type	Size (ADP)	Amount per Minute
Jail	1-349	\$0.07
Jail	350-999	\$0.05

Jail	1,000 - 2,499	\$0.05
Jail	2,500+	\$0.03
Prison	All	\$0.02

The entire amount of Facility Administrative Support collected by a Provider from Consumers shall be passed through to an electing Confinement Facility. In the case of a Jail that is contracted to house prison inmates averaging 40% or more of the total facility population, the Facility Administrative Support payment for those prison inmates housed in jails will be based on the prison rate.

(d) No pre-payment or advance payment of Facility Administrative Support shall be permitted. Costs associated with Additional Products or Services provided to the Confinement Facility shall not be deducted from the Facility Administrative Support payment.

(e) Jails and other facilities subject to Jail Rate Caps shall provide certifications, signed by a duly authorized officer of the facility, to the ICS Provider of (i) ADP, and (ii) the percentage of prison inmates in the total inmate population for the facility. The certifications shall be provided as of the commencement of service by an ICS Provider and, thereafter, annually with data as of December 31. Jails that do not provide the required certifications are ineligible for receipt of Facility Administrative Support. Any Facility Administrative Support funds collected by an ICS Provider are held for the benefit of the electing facility. Any unclaimed funds must be refunded to consumers or disposed of in accordance with applicable state law regarding unclaimed property.

**§ 64.6070 Additional Products and Services**

ICS Providers offering Additional Products and Services must maintain a product/services list in a form consistent with Attachment 1 accessible by the public from the provider's website that contains each product/service, price range, product vendor, and source of funding. This list must be provided with the ICS Annual Report, but is not subject to Commission approval. Costs associated with additional products and services are subject to separate accounting from ICS and are not recoverable in the rates charged to Consumers for ICS.

**§ 64.6080 Account Balances**

Account balances must be refunded to customers at any time upon Consumer request at no charge to the Consumer. Unclaimed account balances must be treated in accordance with applicable state law regarding unclaimed property.

**§ 64.6090 Consumer Protection and Disclosure**

(a) ICS Providers must provide consumers with the following information for each individual facility, readily accessible on the provider's website (directly from the main home page and

without having to first establish an account), through brochures available at facilities (electronic or paper form), and through customer service IVR or live agent inquiry:

- (i) Facility name;
- (ii) Average Daily Population (ADP) (not applicable to brochure);
- (iii) Account options available at the facility;
- (iv) Per-Minute Call Rate, Voice Biometric Fee if applicable, Per-Minute Administration Support Fee, and total rate per minute the consumer should expect to pay before taxes;
- (v) Method for obtaining a refund of unused funds;
- (vi) Information on how to file a complaint with the Commission or applicable state regulatory agency.

(b) ICS Providers must provide all called party Consumers a monthly account statement available online. The statement must include an itemized listing of account activity (deposits, calls, credits, etc.), with a separate line item listing for each tax and/or mandated regulatory fee applied, and total charges. The statement must clearly indicate the rates applicable (e.g., Per-Minute Rate, Voice Biometric Fee, and Facility Administrative Support).

(c) The obligations of this section are in addition to customer service requirements applicable generally to telecommunications providers.

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### **Effective Date and Transition Period**

Restrictions on ancillary charges, single call programs, and revised interstate rates become effective 90 days after publication of Order in Federal Register.

For existing contracts (contracts that have been executed and are “in service” at the time of Order adoption), intrastate rates and site commissions payable on intrastate rates are grandfathered for the earlier of \_\_\_\_\_ months from the Order’s adoption date or the expiration or termination of the contract. The terms of existing contracts may not be extended during the transition period, whether by exercise of an existing option or otherwise. For all contracts not “in service” on the Order adoption’s date, new intrastate rate caps, Administrative Support Fee and prohibition of site commissions are effective 90 days after publication of the Order in the Federal Register.

An ICS provider may opt-into full compliance for particular facilities prior to the end of the transition period (including Facility Administrative Support) upon submission of a certification signed by an officer of the company stating that the provider is in compliance with the Order’s intrastate and interstate rap caps and prohibition on site commissions as to the specified facilities.

Within 60 days of the Order's adoption date, providers are required to file with the Commission a list of all "grandfathered" contracts, together with contract expiration dates and a copy of each Facility Commission Statement for the month the Order is adopted.

**Intrastate Issues**

States must bring regulations into compliance by the end of transition period (\_\_\_\_\_ months from Order's adoption date); inconsistent regulations will be subject to preemption. State action that is consistent with the regulations that the Commission adopts would not be subject to preemption.

Attachment 1

Additional Products & Services - Price Disclosure

ICS VENDOR: \_\_\_\_\_

DATE: \_\_\_\_\_

Product or Service	Funding Source Options (check all that may apply)	Product Source Vendor, Affiliation with ICS Vendor (if any)	Price Structure (List Price to Confinement Facility for Each Product and Option)	Fee(s) Charged to Inmate or Called Party
<b>Video Visitation</b>	<input type="checkbox"/> Paid from excess vendor revenue <input type="checkbox"/> Paid by Facility <input type="checkbox"/> Paid by Remote Visitation Fee			
<b>Inmate Tablets</b>	<input type="checkbox"/> Paid from excess vendor revenue <input type="checkbox"/> Paid by Facility <input type="checkbox"/> Paid by Inmate Tablet Rental Fee			
<b>Email</b>	<i>Paid for by fee charged to Inmate/Called Party</i>		N/A	
<b>Messaging</b>	<i>Paid for by fee charged to Inmate/Called Party</i>		N/A	
<b>Voice Verification</b>	<i>Paid for by fee charged to Inmate/Called Party</i>		N/A	<b>\$.02/minute</b>
<b>Other</b>				
<b>Other</b>				
<b>Data Analytics</b>	<input type="checkbox"/> Paid from excess vendor revenue <input type="checkbox"/> Paid by Facility			<i>Prohibited</i>
<b>Tracking Wireless Phones</b>	<input type="checkbox"/> Paid from excess vendor revenue <input type="checkbox"/> Paid by Facility			<i>Prohibited</i>
<b>Jail Management System</b>	<input type="checkbox"/> Paid from excess vendor revenue <input type="checkbox"/> Paid by Facility			<i>Prohibited</i>
<b>Emergency Response System</b>	<input type="checkbox"/> Paid from excess vendor revenue <input type="checkbox"/> Paid by Facility			<i>Prohibited</i>
<b>Parole GPS &amp; RF Monitoring</b>	<input type="checkbox"/> Paid from excess vendor revenue <input type="checkbox"/> Paid by Facility			<i>Prohibited</i>
<b>Interactive Voice Response System</b>	<input type="checkbox"/> Paid from excess vendor revenue <input type="checkbox"/> Paid by Facility			<i>Prohibited</i>
<b>Wireless Managed Access</b>	<input type="checkbox"/> Paid from excess vendor revenue <input type="checkbox"/> Paid by Facility			<i>Prohibited</i>

<b>System</b>				
<b>Telemedicine Application</b>	<input type="checkbox"/> Paid from excess vendor revenue <input type="checkbox"/> Paid by Facility			<i>Prohibited</i>
<b>Wording Spotting</b>	<input type="checkbox"/> Paid from excess vendor revenue <input type="checkbox"/> Paid by Facility			<i>Prohibited</i>
<b>Other</b>	<input type="checkbox"/> Paid from excess vendor revenue <input type="checkbox"/> Paid by Facility			<i>Prohibited</i>
<b>Other</b>	<input type="checkbox"/> Paid from excess vendor revenue <input type="checkbox"/> Paid by Facility			<i>Prohibited</i>

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name \_\_\_\_\_ Title \_\_\_\_\_

Certification of compliance by Company Officer