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By Electronic Filing

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

Ex Parte Presentation

Re: Docket No. 12-375, Rates for Interstate Inmate Calling Services

Dear Ms. Dortch:

In accordance with Section 1.1206 of the Commission's rules, this letter is submitted on behalf of Pay Tel Communications, Inc. for inclusion in the record of the above-captioned proceeding.

Various commenters such as GTL and Attorney Andrew Lipman have questioned the Commission's jurisdiction over inmate calling service (ICS) ancillary fees and related charges.[1] Contrary to these arguments, as set forth below, plain statutory language, Commission rules, and judicial and Commission precedent all firmly establish the Commission's authority to regulate ancillary fees and related charges.

I. Background

The broad umbrella of "ancillary charges"[2] encompasses a variety of fees assessed by ICS providers on end users "for the use of Inmate Calling Services."[3] Broadly speaking, the

[1] *See, e.g.*, GTL, Ex Parte Presentation, at 9-11, WC Docket No. 12-375 (Apr. 3, 2015) ("GTL Apr. 3 Ex Parte Presentation"); Andrew D. Lipman, Comments, at 5-7, WC Docket No. 12-375 (Jan. 26, 2015) ("Lipman Second Further Notice Reply Comments"); Andrew D. Lipman, Comments, at 6-10, WC Docket No. 12-375 (Jan. 12, 2015) ("Lipman Second Further Notice Comments"); Andrew D. Lipman, Ex Parte Presentation, at 6-8, WC Docket No. 12-375 (Sept. 21, 2015) ("Lipman September 21 Ex Parte Presentation").

[2] 47 C.F.R. § 64.6000 (defining "ancillary charges"). The rule defining "ancillary charges" has not been stayed by the D.C. Circuit Court of Appeals. *See Securus Techs. v. FCC*, No. 13-1280 (D.C. Cir. Jan. 13, 2014) (staying 47 C.F.R. §§ 64.6010, 64.6020, 64.6060).

[3] 47 C.F.R. § 64.6000. *See, e.g.*, Second Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, at ¶ 80 n.238, WC Docket No. 12-375, FCC 14-158 (rel. Oct. 22, 2014)

Commission appears to classify "ancillary charges" into two categories: (1) those that are assessed "for functions that are typically a part of normal utility overhead and should be included in the rate for any basic ICS offering," including functions like "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,"[4] and (2) those that are assessed "for services that represent an additional option or convenience for customers[,]"[5] the majority of which relate to payments and payment processing.

It is critical to keep in mind in considering the arguments regarding the Commission's authority to regulate ancillary fees that the ICS industry does not operate like a traditional market because end users (for valid reasons having to do with facility security) have no choice regarding the company from whom they wish to purchase services.[6] Some ICS providers have taken advantage of that fact to impose ancillary charges that bear no relation to cost and, instead, appear to be designed to offset revenues that are lost through the payment of commissions to facilities.[7] Unlike in virtually any other communications sector, consumers who are disenchanted with such practices cannot switch their business to another competitor.

As the Commission explained in the *ICS Order*: "[R]egulating ancillary charges was a necessary aspect of our cost-based reforms, as otherwise providers could simply increase their

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("*Second Further Notice*") (setting forth dozens of examples of fees that ICS providers conceded in response to the Commission's Mandatory Data Collection that they assess on ICS end users).

[4] *Second Further Notice*, at ¶89.

[5] *Id.* at ¶ 88.

[6] *See, e.g.*, *id.* at ¶ 6 (explaining that the interests of ICS providers and confinement facilities are not aligned with ICS end users); *id.* ¶ 20 (explaining that despite the Commission's interim, interstate ICS reforms, "failures in the ICS market continue").

Commission Mignon Clyburn stated it this way, describing the state of the ICS industry in the time since the Commission released the *ICS Order* in 2013:

> "Since our Order was released, we have witnessed disturbing trends. New and increased ancillary charges have appeared, intrastate rates have inched higher than the already outrageous costs, and payments from the providers to those facilities – known as site commissions – have skyrocketed to as high as 96% of gross revenues. While I made it clear early on that I prefer to refrain from regulation, in this instance the record shows, that a comprehensive approach which addresses all rates and fees to enable this market to function properly is warranted. In my 16 years as a regulator, this is the clearest, most egregious case of market failure I have seen. Instead of getting better, rates and fees for consumers are more onerous. Thus, it is imperative for us to move quickly to adopt an Order for total reform."

Second Further Notice, Comments of Commissioner Mignon Clyburn, at 73.

[7] *See, e.g.*, *See, e.g.*, Pay Tel, Comments at 39-41, WC Docket No. 12-375 (Jan. 27, 2015) ("Pay Tel Second Further Notice Reply Comments"); NCIC Comments, at 21, WC Docket No. 12-375 (Jan. 12, 2015); IC Solutions, Comments, at 7, WC Docket No. 12-375 (Jan. 12, 2015).

ancillary charges to offset lower rates subject to our caps."[8] In fact, despite the Commission's efforts, the Commission has found that is exactly what has happened since the *ICS Order*'s release: "[s]ince the release of the Order, evidence indicates that ancillary charges have increased, suggesting that any reforms limited to ICS rates could be circumvented through increased and new ancillary charges."[9]

Such facts are crucial. Those who argue against the Commission's authority over ancillary charges purport to make a technical distinction that such charges are not for "communications services" and are instead for "financial transactions" and "administrative" services, in an attempt to place them in a category that is purportedly beyond the Commission's reach. As set forth below, well-settled law establishes that such charges, even if so classified, are in fact within the Commission's scope. That said, to attempt to bifurcate the discussion—and the Commission's authority—into "can regulate" and "cannot regulate" groups conveniently and intentionally ignores the reality stated above: in the ICS market where consumers have no choice amongst ICS providers/competitors, and where a provider can charge (whether forced to by regulation or otherwise) lower rates for purported "communications services" but then supplement those rates with high ancillary charges, all of those charges assessed upon consumers (rates, fees, etc.) really fall into one bucket—money paid by consumers of ICS services for the ability to use ICS. *All* such charges associated with the provision of ICS must be "just and reasonable"[10] and "fair"[11] under the law. To hold otherwise would eviscerate the Act's very purpose.

II. The Plain Language of Sections 201 and 276 Grants the Commission the Power to Regulate Ancillary Charges

Attorney Lipman criticizes Pay Tel and others who have argued in support of the Commission's authority to regulate ancillary charges for, in his view, not engaging in a sufficiently robust legal analysis regarding such authority.[12] GTL is in accord, pointing out the truism that the Commission "literally has no power to act . . . unless and until Congress confers power upon it,"[13] and then erroneously contending that the Commission lacks the power over ancillary charges.

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[8] Report and Order and Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, at ¶ 91 n.338, WC Docket No. 12-375, FCC 13-113 (rel. Sept. 26, 2013) ("*ICS Order*").

[9] *Second Further Notice*, at ¶ 82; *see also id.* ¶ 5 ("There are indications that ancillary fees have . . . increased in number, price, or both, leading to further expense for ICS consumers that is often unrelated to the cost of providing ICS.").

[10] 47 U.S.C. § 201(b).

[11] 47 U.S.C. § 276(b)(1)(A).

[12] Lipman Second Further Notice Comments, at 6-7; Lipman September 21 Ex Parte Presentation, at 6-7.

[13] GTL Apr. 3 Ex Parte Presentation, at 9-10 (quoting *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986)).

Such arguments fall flat. There has been limited legal analysis regarding this question simply because the statutes at issue, Sections 201 and 276, indicate so clearly that Congress has indeed empowered the Commission with authority in this area. Indeed, Pay Tel wonders why, if GTL so fervently believes the Commission cannot regulate ancillary charges, it is acquiescing to such regulation in the Joint Provider Proposal.[14]

The plain language of Sections 201 and 276 ends the debate. ICS providers' ancillary charges are squarely within the ambit of Section 201, which states that "*all charges*, practices, classifications, and regulations for *and in connection with such* communication service, shall be *just and reasonable*, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful . . . ."[15] GTL's efforts to limit the confines of Section 201(b) to "telecommunications costs,"[16] when the statute plainly states that it applies to *all charges* that are merely "in connection" with communications service, improperly imposes a narrow construction of the statute that simply is not consistent with its plain text.

The Commission has defined "ancillary charges" as

> 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 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 . . . .[17]

Ancillary charges are those charges which are assessed "for the use of" ICS; Pay Tel fails to see how charges assessed "for the use of ICS" are materially different from charges "in connection with" ICS—they are certainly encompassed within the Commission's statutory mandate.

Indeed, as Lipman (perhaps inadvertently) points out, such a construction of Section 201 is consistent with the purposes of Title I of the Act, which mandates that the Commission is to

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[14] *See e.g.*, Letter from Brian D. Oliver, CEO, GTL, Richard A. Smith, CEO, Securus, and Kevin O'Neill, CEO, Telmate, to Chairman Tom Wheeler et al., at 4-6, WC Docket No. 12-375 (filed Sept. 15, 2014) ("Joint Provider Proposal") (consenting to the elimination of at least nineteen different ancillary fees, despite arguing the Commission lacks authority to regulate same).

[15] 47 U.S.C. § 201(b).

[16] GTL Apr. 3 Ex Parte Presentation, at 9.

[17] 47 C.F.R. § 64.6000 (emphasis added). Pay Tel notes that GTL has on multiple occasions cited to the Commission's discussion of "ancillary charges" in the *ICS Order*, rather than to the actual rule the Commission promulgated in which it defined the term. *See, e.g.*, GTL Apr. 3 Ex Parte Presentation, at 9; GTL, Comments, at 9 n.42, WC Docket No. 12-375 (Dec. 20, 2013) ("GTL FNPRM Comments"). Such selective citation is clearly meant to divert attention from the fact that the actual definition of "ancillary charges" is arguably broader than the Commission's other language.

"make available a rapid, efficient, nationwide, and worldwide wire and radio communication service with adequate facilities *and reasonable charges* . . . ."[18] To limit "reasonable charges" to, say, ICS rates, while permitting ICS providers to assess whatever other charges they desire in order to raise the effective rate assessed on ICS end users eviscerates and renders toothless such purposes.

In fact, Lipman[19] and GTL[20] concede that the Commission can "get there" in terms of regulating ancillary charges under Section 201, which by its plain language applies to interstate ICS. Pay Tel doubts whether ancillary charges are divisible as between state and federal jurisdictions,[21] and, thus, the argument might well end there.[22] Assuming for the sake of argument

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[18] Lipman Second Further Notice Comments, at 8 (quoting 47 U.S.C. § 151) (emphasis in original omitted; emphasis here added). The Commission itself explained that its "exercise of authority under sections 201 and 276 is further informed by the principles of Title I of the Act. Among other things, that provision states that it is the Commission's purpose 'to make available, so far as possible, to all the people of the United States' communications services 'at reasonable charges.'" *ICS Order*, at ¶ 15 (quoting 47 U.S.C. § 151).

[19] *See, e.g.*, Lipman Second Further Notice Reply Comments, at 6 (explaining that the "Commission's authority to prohibit 'unjust or unreasonable' charges, classifications, and practices under Section 201(b), and to prescribe just and reasonable charges and practices under Section 205, are both limited to *interstate* communications services under Section 2(b)") (emphasis in original).

[20] *See, e.g.*, GTL FNPRM Comments, at 9-12. GTL has previously argued that the Commission has authority to regulate ancillary charges pursuant to Sections 201 and 202, but that the Commission has taken the position that such regulation is unnecessary: "There is no prohibition against the recovery of costs through the use of fees or other line item charges. The Commission has determined that the costs associated with the business or providing telecommunications service . . . may be recovered through rates or other line item charges. The Commission has further emphasized that the decision whether to include these charges as part of their rates, or to list the charges in separate line items, is left to carriers. In giving telecommunications carriers this flexibility, the Commission emphasized that the requirements of Section 201(b) of the Act continue to apply. . . . The provisions of Section 201 and 202 will continue to restrain the ancillary charges imposed by ICS providers without any further action by the Commission." *Id.* at 9-10 (citations and internal quotations omitted).

[21] As discussed *infra*, the most consistent arguments opposing Commission authority over ancillary charges relate to fees for items such as credit/debit card payment processing, money transfers, and single-call services. How, Pay Tel wonders, if an ICS end user is assessed a fee for loading $20 onto an account via a debit or credit card in order to pay for future calls ("in connection with" ICS), can such fee be classified as either interstate or intrastate?

[22] Similarly, because Section 276 plainly provides the Commission with jurisdiction over intrastate ICS, the Commission has authority under either Section 201 or Section 276 with respect to state-authorized ancillary charges, should such charges exist. Given that Section 276 is incorporated within the Communications Act, the Commission has rulemaking authority under Section 201(b) to adopt rules to implement the provisions of Title II—which include both Section 201(b)'s proscription for "just and reasonable" "charges, practices, classifications, and regulations" and Section 276's command for fair compensation for "each and every completed intrastate and interstate call," including any "ancillary services."

that further analysis is required, the question becomes where and whether the Commission has authority to regulate ancillary charges with respect to intrastate ICS. The answer is found in the plain language of Section 276. That section commands that the Commission "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 payphone . . . ."[23]

The Commission has held that the phrase "fairly compensated" requires that "the interests of both the payphone service providers and the parties paying the compensation must be taken into account."[24] And while the Commission has "acknowledged that a range of compensation rates could be considered fair"[25] or unfair, it has squarely held in the context of ICS that an ICS provider will be deemed "fairly compensated" for Section 276 purposes if it is able to recover its total costs from its aggregate revenues.[26] There is no reason that such "aggregation" reasoning should not apply in reverse, to the parties paying the compensation. The Commission has taken a total, "aggregate revenue" approach to determining whether an ICS provider is "fairly compensated", which considers account revenues derived from not only the rates assessed on ICS end users but also revenues derived from other sources, including ancillary charges.[27] Such rationale must apply with equal force to construction of "fair compensation" with respect to ICS end users. It's a two-way street: if "fair compensation" includes aggregate revenues for ICS providers, then "fair compensation" means aggregate payments made by ICS end users. Such aggregate payments necessarily include ancillary charges assessed on end users by providers "for the use of ICS." Such

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[23] 47 U.S.C. § 276(b)(1)A).

[24] *ICS Order*, at ¶ 14; *see also Second Further Notice*, at ¶ 30 (explaining that the Commission treats the "concept of fairness as encompassing both the compensation received by ICS providers and the cost of the call paid by the end user").

[25] *Second Further Notice*, at ¶ 30; ICS Order, at ¶ 14.

[26] *See, e.g.*, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand and Notice of Proposed Rulemaking, CC Docket No. 96-128, 17 FCC Rcd 3248, 3257-58, para. 23 (2002) (*Inmate Calling Order on Remand and NPRM*); *see also Rates for Interstate Inmate Calling Services*, Pay Tel Communications, Inc.'s Petition for Waiver of Interim Interstate Rates, Order, at ¶¶ 3 n.14; 18, WC Docket No. 12-375 (Feb. 11, 2014) ("Pay Tel Waiver Order") (same).

The Commission explained: "[u]nless an ICS provider can show that (i) revenue from its interstate or intrastate calls fails to recover, for each of these services, both its direct costs and some contribution to common costs, or (ii) the overall profitability of its payphone operations is deficient because the provider fails to recover its total costs from its aggregate revenues (including both revenues from interstate and intrastate calls), then we would see no reason to conclude that the provider has not been 'fairly compensated.'" Pay Tel Waiver Order, at ¶ 18 (quoting *Inmate Calling Order on Remand and NPRM*, at ¶ 23).

[27] *See, e.g.*, Pay Tel Waiver Order, at ¶¶ 18, 20 (explaining that Pay Tel's comprehensive cost showing revealed it would not be able to recover its total costs from its aggregate revenues and therefore granting Pay Tel a limited waiver from the interim interstate ICS rates, while requiring that Pay Tel charge no more than its then-current fees).

a consistent construction of "fairly compensated" is all the more equitable in the unique ICS market, where, again, failure to regulate "ancillary charges" merely opens the door for ICS providers to increase such charges to "offset lower rates subject to" Commission regulation.[28]

Thus, the plain language of Section 276, specifically its "fair compensation" requirement applicable to *both interstate and intrastate ICS*, empowers the Commission with the authority to regulate ancillary charges. Commission regulation of ancillary charges would not, as Lipman contends, amount to using Section 201 (or Section 205) to "'bootstrap' itself authority over any intrastate service not within the scope of Section 276";[29] rather, it would amount to a proper exercise of the Commission's authority under Section 276, both in accord with—but, also, separate and apart from—Section 201.

III. "Ancillary Charges" are Included Within the "Ancillary Services" That the Commission Must Regulate

The Commission not only has authority to regulate ancillary charges pursuant to the plain language of Sections 201(b) (e.g., "charges, practices . . . for and in connection with such communication service") and 276(b)(1)(A) (e.g., "fairly compensated for each and every completed intrastate and interstate call"). It also has such authority pursuant to Section 276(d), which extends the Commission's reach to ICS "ancillary services".[30]

The "ancillary charges" at issue here qualify as "ancillary services" and are therefore manifestly within the Commission's jurisdiction under Section 276. The Commission has not established a consistent, uniform definition of "ancillary services." In various contexts, the Commission has generically defined/characterized "ancillary services" as those services which are "of a nature different from the service ordinarily offered . . . ."[31] On occasion, the Commission

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[28] *ICS Order*, at ¶ 91 n.338. Additionally, Pay Tel would point out that the Commission's above-mentioned construction of Section 276(b)(1)(A), despite referencing "completed" calls, is thus nowhere near as confined as Lipman would lead one to believe. *See* Lipman Second Further Notice Comments, at 9 (arguing "the extent of the Commission's regulatory ambit under Section 276" is limited to completed calls).

[29] Lipman Second Further Notice Reply Comments, at 6. Indeed, GTL endorses the Commission's view that ICS providers can recover "legitimate administrative and other related costs through rates or other line items." GTL FNPRM Comments, at 9 (citation and internal quotation omitted). GTL cannot have it both ways; it cannot argue on the one hand that it gets to assess fees for cost recovery purposes while on the other arguing that such fees should not factor into the cost of ICS paid by end users.

[30] 47 U.S.C. § 276(d).

[31] *Flexibility for Delivery of Communications by Mobile Satellite Service Providers, Notice of Proposed Rulemaking*, 16 FCC Rcd 15532, 15546-15547 (2001); *see also, e.g., Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, 12 FCC Rcd 12809, 12820-12876 (1997) ("Thus, we will allow broadcasters flexibility to respond to the demands of their audience by providing ancillary and supplementary services that do not derogate the mandated free, over-the-air program service. Ancillary and supplementary services could include, but are not limited to, subscription

has conceded that it has embraced a definition of "ancillary" when discussing "ancillary services" that even "departs from dictionary definitions of the term 'ancillary' . . . ."[32] The point, among other things, is that the Commission does not have a fixed definition for "ancillary services"; indeed, the Commission in the *Second Further Notice* seeks a definition for "ancillary services" within the context of Section 276(d).[33]

Thus, GTL's black-and-white statement that "[t]he statute's reference to 'ancillary services' does not equate to ICS provider ancillary charges" simply does not hold up. The Commission has at times considered as "ancillary services" the very kinds of items that are clearly considered "ancillary charges" in the current ICS proceeding. In a 2000 proceeding regarding statistical reporting on average rates for basic service, cable programming and equipment, the Commission sought from cable providers average charges for "ancillary services, i.e., those not included in the average monthly rate for a typical subscriber"—which included the average amount paid by subscribers for services like "installation," "disconnection," "reconnection," and "tier changes."[34] It is obvious that such "ancillary services" are analogous to, among other things, ICS "ancillary charges" such as account set-up and close-out fees.[35] More importantly, such "ancillary services" are analogous to the transaction and deposit fees, money transfer fees, and even single-call fees that are in issue here. For example, an ICS customer's decision to fund an account, rather than pay collect, is effectively a choice for a different, less expensive tier of service.[36] And, as the funding of an account is an obvious prerequisite to using debit or prepaid ICS, each deposit/credit card payment processing fee related to funding an account is, effectively, either an "installation" (starting service) or "reconnection" (sustaining service) charge. Arguably, each utilization of the single-call service is its own installation of service as well; it's a one-time start (and stop) of service.

In the final analysis, at least two key points emerge: (1) a definition of "ancillary services" is not nearly as clear as GTL would have the Commission believe, as the Commission has not

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television programming, computer software distribution, data transmissions, teletext, interactive services, audio signals, and any other services that do not interfere with the required free service.").

[32] *Flexibility for Delivery of Communications by Mobile Satellite Service Providers*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962, 2000-2001 (2003) (referring to "ancillary" with respect to MSS ATC as "terrestrially-based, in-band MSS operations meeting the technical and policy requirements set forth in this Order"). Even in departing in that instance from a dictionary definition of "ancillary," the Commission noted such dictionary definition: "subservient, subordinate, auxiliary, providing support; now esp. providing essential support or services to a central function or industry . . . ." *Id.* at 2001 n.181.

[33] *Second Further Notice*, at ¶ 85.

[34] *Implementation of Section 3 of the Cable television Consumer Protection and Competition Act of 1992*, Order, 15 FCC Rcd 11473, 11475 (2000).

[35] *Second Further Notice*, at ¶ 80 n.238 (listing ancillary charges reported by ICS providers).

[36] 47 C.F.R. § 64.6030 (setting forth a rate for collect calling of $0.25 for minute, as compared to the rate for debit or prepaid calling of $0.21 per minute).

formulated a comprehensive definition in the past applicable across various communications services; and (2) there is Commission precedent supporting a definition of "ancillary services" that encompasses the kinds of payment options and other ancillary charges that are clearly within the Commission's authority under Section 276.

IV. Regulation of ICS Providers' Ancillary Charges for Services Like Billing and Collection is Well Within the Scope of Commission's Authority

Attorney Lipman and GTL have frequently repeated the argument that fees for billing and collection are financial and administrative services beyond the scope of the Commission's jurisdiction,[37] with Attorney Lipman reiterating this claim just this week. Yet, as Lipman points, out, "[s]imply saying this does not make it so."[38]

As mentioned above, the Commission seems to group "ancillary charges" into two groups: (1) those that are assessed "for functions that are typically a part of normal utility overhead and should be included in the rate for any basic ICS offering," including functions like "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,"[39]; and (2) those that are assessed "for services that represent an additional option or convenience for customers[,]" most of which relate to payments and payment processing.[40]

There seems to be little debate as to the Commission's authority to regulate the former group. Neither Lipman nor GTL focuses on such fees in its arguments, and the Joint Provider Proposal willingly eliminates at least nineteen different fees currently charged that, by and large, fall into that first category of "utility overhead functions."[41]

Their primary focus is instead on whether the Commission has jurisdiction over "a very narrow class of ancillary fees, especially those [assessed] when the consumer makes a choice to utilize a certain billing or payment option."[42] Such fees include fees for debit/credit card payment or deposit processing (either online or via a live operator), so-called single-call or single-payment services, bill processing, and money transfer fees.[43] And they fall within the Commission's regulatory sphere.

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[37] *See, e.g.*, Lipman Second Further Notice Reply Comments, at 5; GTL Apr. 3 Ex Parte Presentation, at 10; Lipman September 21 Ex Parte Presentation, at 7.

[38] Lipman Second Further Notice Comments, at 7.

[39] *Second Further Notice*, at ¶89.

[40] *Second Further Notice*, at ¶ 88.

[41] *See, e.g.*, Joint Provider Proposal, at 4, Attachment.

[42] GTL Apr. 3 Ex Parte Presentation, at 11-12 (internal quotation marks omitted).

[43] *See, e.g.*, *Second Further Notice*, at ¶ 97 (displaying table comparing various ancillary fee regulation proposals).

As Pay Tel has previously explained,[44] the Commission has made abundantly clear that it has jurisdiction over such ancillary charges: "[A] carrier's billing and collection for its own service, as opposed to billing services provided to other carriers, is subject to the Commission's Title II jurisdiction. Billing, like all other practices for and in connection with interstate service, must be just and reasonable."[45] As the Commission explained in the *ICS Order*, "the Commission and courts have routinely indicated that billing and collection services provided by a common carrier for its own customers are subject to Title II."[46]

Thus, GTL's argument that this authority is limited in scope such that it "applies only to the extent an ICS provider is billing for completed calls, and not when an ICS provider is billing a customer for some other product or service"[47] misconstrues the Commission's language. The jurisdictional distinction is not about charges for completed calls; it is about whether the fees at issue are charges for services provided by the ICS provider who is doing the billing and collection, or are for charges for services provided by another ICS provider.[48] Such charges, even if "optional," are imposed on ICS end users "in connection with"[49] their request for and are assessed "for the[ir] use of Inmate Calling Services."[50]

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[44] *See, e.g.*, Pay Tel Second Further Notice Reply Comments at 41-43.

[45] *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7506-07, ¶ 25 (1999).

[46] *ICS Order*, at ¶ 114 (citing, among other sources, *Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges* ("Cramming"); Consumer Information and Disclosure; *Truth-in-Billing and Billing Format*, CG Docket Nos. 11-116, 09-158, CC Docket No. 98-170, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 4436, 4480, ¶¶ 123-25 (2012) (finding that the 1986 *Detariffing Order* "did not prevent it from requiring that carrier billing practices 'for and in connection with' telecommunications services must be just and reasonable" under Section 201(b); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Second Recommended Decision, 13 FCC Rcd 24744, 24771-72, ¶¶ 70 & n.87 (1998) ("We believe that a carrier's billing and collection practices for communications services are subject to regulation as common carrier services under Title II of the Act."); *Pub. Serv. Comm'n of Maryland v. FCC*, 909 F.2d 1510, 1512 (D.C. Cir. 1990) (explaining that "[b]illing and collecting for a carrier's own offering is part and parcel of providing that service in the first place, and since the service itself fell within the FCC's jurisdiction, the billing and collecting process did as well"). *Id.* at n.414.

See also, e.g., *ICS Order*, at ¶ 91 n.341 (explaining that "Commission precedent supports our finding that charges other than those directly attributable to the provision of the service itself can be subject to Section 201(b)" (citing sources)).

[47] GTL Apr. 3 Ex Parte Presentation, at 10.

[48] *Truth-in-Billing and Billing Format*, 14 FCC Rcd 7492, 7506-07, ¶ 25 (1999).

[49] 47 U.S.C. § 201(b).

[50] 47 C.F.R. § 64.6000.

The Commission can and should regulate such ancillary charges. Failing to do so contravenes Section 201's "just and reasonable charges in connection with ICS" mandate and Section 276's "fair compensation" mandate because leaving ancillary charges unregulated will perpetuate the situation the Commission has already seen where "providers . . . simply increase their ancillary charges to offset"[51] other reforms, thwarting the Commission's efforts.

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Please do not hesitate to contact the undersigned should any questions arise concerning this letter.

Sincerely yours,

/s/ Marcus W. Trathen
Marcus W. Trathen

/s/ Timothy G. Nelson
Timothy G. Nelson

cc (via email):
Rebekah Goodheart
Madeleine Findley
Lynne Engledow
Rhonda Lien

[51] *ICS Order* at ¶ 91 n.338.