

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**REPLY COMMENTS OF THE
NATIONAL SHERIFFS' ASSOCIATION**

The National Sheriffs' Association (NSA), by its attorney, hereby files reply comments in the *Second Report and Order and Third Further Notice of Proposed Rulemaking (FNPRM)*¹ in the above-referenced docket. Specifically, NSA opposes the comments of various parties who argue that the Commission should: prohibit exclusive contracts and require competitive providers within correctional facilities; require international calling; and adopt requirements in connection with video communications and visitation. These suggestions of commenters go beyond the Commission's jurisdiction and would intrude on a Sheriff's jurisdiction to operate its jail(s) and to determine the services available to inmates.

NSA represents over 3,000 Sheriffs nationwide who operate approximately 80% of the jails in the country. Sheriffs face different challenges in operating jails, in part, due to differences in the inmate population, facility size and budgets. However, a top priority for all Sheriffs is to maintain and ensure security in all aspects of the jail's operation. This requires Sheriffs to implement different strategies in managing the inmate population, including restrictions on communicating with the outside population and in-facility visitation.

¹ Second Report and Order and Third Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, FCC 15-136 (rel. Nov. 5, 2015) (FNPRM).

Inmates oftentimes try to continue criminal activity from jails. They communicate with other criminals outside the jail to circumvent security. They contact witnesses, their victims, judges, attorneys and law enforcement to harass or intimidate. They receive contraband from visitors to the jail. Sheriffs must have the ability to assess the security risks of any service or new technology and restrict or tailor them as necessary to ensure that security is maintained. A number of the proposals suggested by the Commission and supported by some commenters would intrude on the ability of Sheriffs to implement the security measures that they deem necessary and, therefore they should be rejected.

The Commission Should not Ban Exclusive Contracts

The Commission asks whether a ban on exclusive ICS contracts in correctional facilities would promote competition in the ICS market. In response, the Wright Petitioners argue that the Commission should implement a wholesale/retail market for ICS where the jail would contract with a wholesale provider of ICS that would provide a standard level of service meeting the facility's security requirements². The wholesale provider also would install and maintain equipment at the facility and establish a demarcation point or permit colocation at the facility to allow access to retail providers. As proposed by the Wright Petitioners, the wholesale providers would have to allow any retail provider to provide the actual calling capability to inmates, which would create a "direct relationship between ICS providers and their customer, and would permit consumers to choose an ICS retail provider that best meets their needs."³

² Comments of the Wright Petitioners, the D.C. Prisoners' Legal Services Project, and Citizens United for Rehabilitation or Errants at 5-7 (Wright Petitioners).

³ Comments of the Wright Petitioners at 6.

NSA urges the Commission to reject a ban on exclusive ICS contracts and the wholesale/retail market idea promoted by the Wright Petitioners because the Commission does not have the legal authority to require multiple ICS providers in jails. The comments filed in this docket by NSA and many Sheriffs make clear that most Sheriffs have no requirement to allow ICS in jails or to allow inmates to make telephone calls. The record further shows that allowing multiple ICS providers in a jail will make it more difficult, if not impossible, to ensure security and will make it more costly and burdensome to allow the service in jails. As demonstrated in the record, Sheriffs contract with one service provider to control and monitor inmate calls. This facilitates law enforcement's ability to monitor and track inmate calling for victim protection, investigative resources, and other public safety purposes. Further, the record shows that the security concerns caused by banning exclusive contracts could lead to Sheriffs eliminating ICS service rather than accept security risks. Thus, rather than promoting competition and expanding access to ICS, banning exclusion contracts would most likely lead to a reduction in ICS in jails and a reduction in access to ICS for inmates, contrary to Section 276(b)(1) of the Act.

The Wright Petitioners' proposal does not reduce or eliminate the security and cost concerns associated with allowing multiple ICS providers in a jail. On the contrary, the Wright Petitioners' proposal would have the opposite effect because it would remove the Sheriff from direct control over the ICS providers that have contact with inmates and access to the facility. While the Wright Petitioners believe it would be a positive development to allow inmates to "choose an ICS retail provider that best meets their needs," this is contrary to the goal of ensuring maximum security and protection for the public from the inmate population.

The Commission Should Take a Hands-off Approach and Allow Video Calling, Video Visitation and Other New Technologies to Develop

The comments clearly show that video calling, video visitation and other new technologies are in their infancy and not widely adopted by correctional facilities or available to inmates. The comments also show that there are many issues associated with these new technologies including security and cost issues, such as the need for enhancements in security measures, new infrastructure, training for Sheriffs and procedures for the maintenance and storage of data that will impact whether, ultimately, they are widely adopted by correctional facilities. NSA is in the process of studying these issues and the impact of video calling on jails and it will report to the Commission when the study is complete. NSA anticipates that it will be able to report to the Commission within six months.

At this time, therefore, and as the Commission has done many times in the past, the Commission should take a hands-off regulatory approach to allow Sheriffs and correctional officers and providers to experiment with these new technologies to determine whether they can be adopted for use in jails and correctional facilities. Thus, NSA urges the Commission not to adopt rate regulations and other regulatory proposals such as iwebsite's request that the Commission restrict the ability of ICS providers to bundle video visitation with other services, to allow these new technologies and services to develop.

The Commission has No Jurisdiction Over the Type of Calling and Visitation Allowed in Jails

A number of commenters ask the Commission to take actions that clearly are beyond its jurisdiction, including requiring jails and correctional facilities to allow international calling and

to prohibit correctional facilities from eliminating or restricting in-person visitation if they implement video visitation. As demonstrated in this docket, most Sheriffs are not required to allow inmates to make telephone calls at all, including international calls, and the Commission has no jurisdiction to impose such a requirement on Sheriffs. In addition, the Commission clearly has no jurisdiction to require or dictate the terms of in-person visitation in jails or correctional facilities. At center, these issues involve whether or not inmates should have access to certain services and the activities that are allowed in jails. These issues are within the exclusive jurisdiction of the Sheriffs and the states and they are beyond the jurisdiction of the Commission. Accordingly, these arguments should be rejected.

Conclusion

Sheriffs must continue to have the ability to adopt the security measures that they deem necessary. As the chief law enforcement official of their counties, Sheriffs have the jurisdiction to analyze the security needs of the county's citizens, Sheriff's Office and jail personnel, and the inmate population and determine the security mechanisms necessary to ensure their safety, including whether certain types of calling should be restricted and whether multiple ICS providers are allowed to provide service within a facility. Accordingly, the Commission should not ban exclusive ICS contracts; it should take a hands-off approach to video communications to allow Sheriffs to experiment with these technologies to determine whether they can be adopted

in a manner that meets security and cost concerns; and it should reject calls to require international calling or in-person visitation and other practices that clearly exceed its jurisdiction.

Respectfully submitted,

NATIONAL SHERIFFS' ASSOCIATION

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Dated: February 8, 2016