

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

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

**OPPOSITION OF THE NATIONAL SHERIFFS' ASSOCIATION**

The National Sheriffs' Association (NSA), by its attorney, hereby opposes the Petition for Reconsideration filed by Michael S. Hamden in the above-captioned proceeding. Specifically, NSA opposes Mr. Hamden's request that the Commission ban site commissions and payments of any kind to correctional facilities. NSA also opposes Mr. Hamden's request that, as an alternative to site commissions, the Commission set an arbitrary, "modest," interim facility cost-recovery fee.

**The Commission Lacks Jurisdiction to Ban All Payments to Correctional Facilities**

In the Petition, Mr. Hamden asks the FCC to "*prohibit payments to facilities in all forms*," thereby eliminating to the fullest possible extent the mechanisms by which providers and facilities can circumvent a prohibition on site commission payments."<sup>1</sup> According to Mr. Hamden, because the Commission did not ban site commissions and payments of any kind to correctional facilities, "providers will likely use revenues generated from unfair charges to inmates and their families for *unregulated* products and services in order to pay excessive site commissions,"<sup>2</sup> among other things. Mr. Hamden includes video visitation, trust fund and commissary payment fees among the list of unregulated products and services that could be

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<sup>1</sup> Petition for Reconsideration at 2.

<sup>2</sup> Petition for Reconsideration at 5.

impacted.

Mr. Hamden's request is unlawful and should be denied. The Commission clearly has no authority over correctional facilities and the products and services they allow in their facilities. The Commission also has no authority to interfere with the pricing of unregulated services and products in correctional facilities. Accordingly, Mr. Hamden's request that the Commission should prohibit ICS providers from making payments of any kind to correctional facilities must be denied.

Further, the record is clear that there is no basis to deny commission payments for ICS services because some portion of payments to correctional facilities does, in fact, reimburse correctional facilities for costs, such as security costs, that are reasonably and directly related to the provision of ICS. There is no dispute that Sheriffs and the officers and employees working in jails perform security and administrative duties that are reasonably and directly related to the provision of ICS. In many cases, the duties performed by Sheriffs and jails are the same or similar in nature as the security features and duties found by the Commission as recoverable cost, including monitoring calls, determining numbers to be blocked and unblocked, enrolling inmates in voice biometrics service and maintenance and repair of ICS equipment. Moreover, a number of security and administrative tasks that are performed by ICS providers in some cases, and the cost of which was included in the ICS provider's cost study data, are performed by Sheriffs and jails in other cases.<sup>3</sup> It would be arbitrary and capricious for the Commission to deny Sheriffs

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<sup>3</sup> In its *ex parte* letter dated June 12, 2015, NSA showed that while Securus and GTL argue they perform many of the security duties in jails, Pay Tel, CenturyLink and Network Communications International Corp. (NCIC) state that jails perform many of those duties. For example, PayTel states that the jails that it serves monitor calls to detect illegal activity and to protect the public and NCIC states that facilities staff for the average jail "will often handle as much as 90% of the onsite work." NSA *Ex Parte* at 3. Even Securus acknowledges that it does not perform all of the duties related to security in connection with ICS. For example, in its December 8, 2014, ex

the ability to obtain payment for the cost associated with these tasks. Accordingly, Mr. Hamden's request that the Commission should prohibit ICS providers from paying site commissions or making payments of any kind to correctional facilities must be denied.

**The Commission Should not Set an Arbitrary Facility Cost-Recovery Fee**

In addition to banning payments to correctional facilities, Mr. Hamden asks the Commission to consider whether facilities should be compensated "for the actual costs they incur directly related to ICS – and no other costs – through a modest facility cost-recovery fee as an additive to the rate caps."<sup>4</sup> Mr. Hamden asks the Commission to set a fee based on the current record, "[e]ven in the absence of absolute certainty regarding a fact-based assessment of actual facility ICS administrative costs,"<sup>5</sup> "while gathering more comprehensive data and continuing to study the issue."<sup>6</sup>

Any interim facility cost-recovery fee must take into account the differences between prisons and jails and between small and larger jails. The Commission has already found that the rates for ICS calls should be higher for jails than prisons and the rates for smaller jails should be higher than the rates for larger jails because of factors such as churn and economies of scale. The same factors that led the Commission to conclude that tiered rates were necessary also apply to facility cost-recovery.

In addition, any interim facility cost-recovery fee also must take into account the cost data submitted by NSA concerning the costs incurred by Sheriffs and jails. In the Order, the Commission states that the evidence submitted in the record and discussed in the Order indicates

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parte, Securus shows that it does not perform duties including the transporting of inmates to phones; enrolling inmates in biometrics; and determining numbers to be blocked and unblocked.

<sup>4</sup> Petition for Reconsideration at 2-3.

<sup>5</sup> Petition for Reconsideration at 15.

<sup>6</sup> Petition for Reconsideration at 15.

that the legitimate costs incurred by facilities in connection with ICS “would likely amount to no more than one or two cents per billable minute.”<sup>7</sup> The only evidence discussed in the Order that supports such a low facility cost-recovery fee is an analysis from GTL’s cost consultant that showed median cost recovery rates of \$0.005 per minute for prisons and \$0.016 per minute for jails.

The Commission entirely ignores the data provided by NSA and recites a number of criticisms of the NSA cost survey leveled by parties. For example, the Commission states that Mr. Lipman points out that the NSA survey “was based on only three months data from only approximately five percent of NSA’s members and that NSA had not provided any indication of whether the survey respondents were representative of NSA’s broader membership” Other faults mentioned by the Commission in its Order are “NSA did not provide the raw data, a copy of the survey, any information on the methodology used by members to allocate time, or detailed descriptions of the tasks encompassed by various categories of costs such as “administrative,” “security,” or “other.”<sup>8</sup> The Commission fails to explain, however, why these criticisms doom the NSA cost survey data even though they all equally apply to the cost recovery data and analysis performed by GTL’s cost consultant, which the Commission apparently accepts. NSA notes, for example, that the GTL analysis is based on “a sample of relevant anecdotal cost data”<sup>9</sup> collected by GTL and a sample size of only seven jails, only one of which with less than 350 average daily population.<sup>10</sup>

The Commission also fails to explain why it entirely ignores the data provided by other parties that show a much higher facility compensation fee than one or two cents per minute. For

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<sup>7</sup> Order at ¶139.

<sup>8</sup> Order at ¶137.

<sup>9</sup> See, Global Tel\*Link Corp. Reply Comments, Attachment 2 at 3.

<sup>10</sup> See, Global Tel\*Link Corp. Reply Comments, Attachment 2 at 7.

example, the Commission ignores CenturyLink's calculation of a per-minute facility cost of \$0.0528 per minute<sup>11</sup> and the data provided by Praeses, LLC, showing the average facility cost per minute is \$0.18 with a standard deviation of \$0.12.<sup>12</sup>

Thus, the Commission must include the NSA cost survey data in any calculation of an interim facility cost-recovery fee. Moreover, based on the data in the record, an interim facility cost-recovery fee of only one or two cents per minute for jails would be arbitrary and capricious.

### **Conclusion**

NSA asks the Commission to deny the Petition for Reconsideration filed by Michael S. Hamden. Mr. Hamden's request that the Commission should prohibit ICS providers from making payments of any kind to correctional facilities is beyond the Commission's jurisdiction and must be denied. Further, the record is clear that there is no basis to deny commission payments for ICS services because some portion of payments to correctional facilities does, in fact, reimburse correctional facilities for costs, such as security costs, that are reasonably and directly related to the provision of ICS. The Commission also should not set an arbitrary facility

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<sup>11</sup> See, NSA Written *Ex Parte* Communication, at 4, dated June 12, 2015, citing Ex Parte Letter from Thomas M. Dethlefs, Associate General Counsel, Regulatory for CenturyLink, dated September 19, 2014, at 2 and Attachment B.

<sup>12</sup> See, NSA Written *Ex Parte* Communication at 4.

cost-recovery fee. Rather, any facility cost-recovery fee must include the results of the NSA cost survey and must take into account the differences between prisons and jails and between small and larger jails.

Respectfully submitted,

**NATIONAL SHERIFFS' ASSOCIATION**

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**CERTIFICATE OF SERVICE**

I hereby certify that, on March 23, 2016, the foregoing Opposition of the National Sheriffs' Association was served via electronic mail and via US mail on the following person:

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