

TO: Federal Communications Commission
FROM: Wendy Salkin
DATE: February 24, 2013
RE: Rates for Interstate Inmate Calling Services, Docket No. FCC-12-167

Provided that the Commission finds that the following are still accurate—(a) “under most contracts, the [site] commission is the single largest component affecting the rates for inmate calling service” and (b) “because the bidder who charges the highest rates can afford to offer the confinement facilities the largest location commissions, the competitive bidding process may result in higher rates”—the Commission must address site commissions and the effect they have on ICS rates in order to ensure just and reasonable ICS rates.

According to a 2004 study, in those states where site commissions are permitted, “[t]he carrier chosen by the DOC to provide prison phone services is typically the one that offers the largest ‘kickback’ or ‘site commission’ payment to the state.”¹ Differently, “correctional facilities located in states that do not require commissions from ICS providers often charge lower ICS rates.”² For instance, while New York state has “prohibited site commissions in state prisons and interstate per-minute rates in such

¹ Rates for Interstate Inmate Calling Services, 78 Fed. Reg. 4373 (proposed Jan. 22, 2013), available at <https://www.federalregister.gov/articles/2013/01/22/2013-01154/rates-for-interstate-inmate-calling-services#p-47>.

² Paul R. Zimmerman & Susan M.V. Flaherty, *Location Monopolies and Prison Phone Rates*, 47 QUARTERLY REVIEW OF ECONOMICS AND FINANCE 261, 262 (2007), available at <http://www.sciencedirect.com/science/article/pii/S106297690700004X>.

³ *Id.* at 4370, available at <https://www.federalregister.gov/articles/2013/01/22/2013-01154/rates-for-interstate-inmate-calling-services#p-17>.

prisons are as low as \$0.048,” two states that have site commissions, Montana and Colorado, have considerably higher interstate per-minute rates—\$0.12 and up to \$0.89, respectively.⁴

These facts provide some evidence for the following two claims: First, in states in which site commissions are prohibited, ICS rates are lower than in those states in which site commissions are not prohibited. Second, in those states in which site commissions are not prohibited, prisons will typically grant contracts to the ICS providers who offer the largest site commissions.

It is advisable that the Commission determine whether there is a relationship between the size of the site commission awarded and the per-call or per-minute costs incurred by inmates. If it could be shown that, where site commissions are higher, either per-call or per-minute costs (or both) are always or often higher, then it might be possible to determine whether these costs are higher because the ICS is shifting the payment of the site commission onto the inmates who use the ICS by means of the higher rates.

Provided that the Commission could infer that the above causal relationship exists—between higher site commissions and higher per-minute or per-call rates (or both)—the Commission would be in a better position to argue whether the existing ICS rates are just and reasonable. Conversely, without such data and analysis, the Commission’s inquiry should be considered incomplete.

⁴ *Id.*