

**Before the
FEDERAL COMMUNICATION COMMISSION
Washington, D.C. 20554**

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

COMMENTS OF TELMATE, LLC

Telmate, LLC (“Telmate”), by its attorneys, hereby comments on the *Report and Order and Further Notice of Proposed Rulemaking* in the above-captioned docket.¹ Addressing both the interim reforms of interstate inmate calling service (“ICS”) rates and the appropriateness of similar federal regulation of intrastate ICS rates, Telmate respectfully requests that the Commission establish higher price caps and safe harbors for jails, create true safe harbors for low-price providers, and leave to the States regulation of intrastate ICS rates.²

I. PURPOSE

Telmate is a relatively young telecommunications company and one of the fastest growing inmate telephone system and service providers in North America. Having entered the ICS market in 2005, Telmate already services over 240 correctional facilities across 40 U.S. States and two Canadian Provinces, including federal facilities, city jails, and county jails.

Telmate’s cutting-edge technology, rapid expansion into new markets, and experience with confined populations of all sizes give it a unique industry perspective. But while its

¹ Report and Order and Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, FCC 13-113 (rel. Sept. 26, 2013) (“Order” or “FNPRM”).

² Telmate agrees with the Dissenting Statement of Commissioner Ajit Pai, which highlights many of the Order’s legal, procedural, and analytical shortcomings. These comments are not intended to limit Telmate’s objections, but rather to emphasize certain issues that Telmate views as important and about which Telmate has particularly relevant experience or views.

relatively small size and advanced and innovative product offerings have allowed Telmate to compete successfully in the ICS market, especially among smaller facilities, those traits also make it susceptible to a complicated, one-size-fits-all, cost-based regulatory regime.

Telmate shares the Commission's commitment to providing the best long-term telecommunications solutions to correctional facilities, inmates, and their friends and families – at a fair price. It also welcomes regulation that spurs competition on free-market factors, e.g., price, technology, and service. That regulation, however, must account for the relatively high cost of serving small facilities with high turnover; it must create true safe harbors that allows providers to offer quality, low-cost service without the compliance costs that accompany cost-justification proceedings; and, it must leave to States the regulation of intrastate calls so that they may continue to develop regulations that encourage innovation, protect the public, and offer quality service to the inmates and their families.

II. PERMANENT INTERSTATE RATES

In its Report and Order of September 26, 2013 (“Order”), the Commission established an across-the-board interim rate cap of 21 cents a minute for debit and prepaid interstate calls and 25 cents a minute for collect interstate calls – to be applied at all correctional institutions whether large or small. It also adopted what it called an interim “safe harbor rate” of 12 cents per minute for debit and prepaid interstate calls and 14 cents a minute for collect interstate calls – which does not prevent parties from challenging the cost-basis of such rates. Unfortunately, any rate regime that ignores the inherently higher costs associated with serving small facilities threatens to deprive inmates in those facilities of ICS (and its many corresponding benefits). Similarly unfortunate, a regime that ignores the high compliance cost associated with rate hearings (and the threat thereof) raises barriers to entry and, especially on marginal accounts, threatens both competition and innovation. The permanent rates should avoid these unintended consequences

by, first, establishing higher price caps and safe harbors for jails and, second, creating true safe harbor rates.

A. Rate Caps and Safe Harbors Must Accommodate the Higher Cost of Serving Small Facilities, or Inmates at Those Facilities Will Lose Phone Service

The rate caps and safe harbors must be raised, at least at smaller facilities, so that ICS providers can continue to serve the inmates serving time there. Basic economies of scale dictate that the cost to provide ICS to jails, which tend to house 100 or fewer inmates for weeks or days at a time, are much higher than the cost to provide that service to large, statewide prison systems, which tend to house thousands of inmates for years at a time. As Commissioner Pai correctly observes, “the record is replete with evidence that the costs of serving a statewide prison system are different than the costs of serving large county jails, which in turn are much different than the costs of serving small jails, secure mental health facilities, and juvenile detention centers.”

Order at 116.

Telmate, for example, currently provides ICS to the Fillmore County Jail in central Nebraska. That facility has seen a maximum of nine (9) inmates over the past year and, on average, holds six (6) inmates at a time. Yet Telmate spent over \$7,500 to install ICS equipment at that facility and, notwithstanding its small size, made 20 service calls *this year* to maintain the equipment and provide its generally high-quality service. To recoup these costs and earn a reasonable return, Telmate charges inmates at the Fillmore County Jail a \$6.00 flat rate for prepaid interstate calls.³ This charge, if amortized over a 15 minute call, would amount to a 40 cent per minute rate. Under the circumstances, that is quite reasonable. Indeed, according to at

³ Telmate also offers to connect collect interstate calls from this facility for a \$10.00 flat fee, though it has only completed one such call from Fillmore this year.

least one study, 40 cents a minute is less than one-third the average for interstate ICS calls from small jails.⁴ Nevertheless, it is nearly *double* the interim rate cap.

Telmate cannot profitably serve small facilities like the Fillmore County Jail, from which inmates place an average of about eight (8) prepaid interstate calls a month, under the rate cap.⁵ Moreover, whatever profit it might earn on its current rates does not justify the time and effort needed to seek an exception from that cap – especially when considering the uncertainty in the exception process and the number of exceptions Telmate would have to file to continue serving its small facilities. The rate cap and safe harbor rates for jails are too low, the margin on existing rates at those facilities is too thin, and the regulatory burden of complying with the interim rate regime is too high.⁶ The Commission must establish a higher rate cap and safe harbor for jails to preserve those inmates’ access to ICS.

B. Safe Harbor Must Be Safe

The interim rate regime provides what are called “safe harbor” rates of 12 cents per minute for debit and prepaid interstate calls and 14 cents a minute for collect interstate calls. Yet despite the label, these rates provide only a presumption of reasonableness: rates within the “safe harbor” are still subject to rebuttal. Far from a true safe harbor, this presumption does little

⁴ See Order at ¶ 77 & n.283, 116 (reaching different conclusions about \$1.39 a minute cost of serving the smallest jails, as calculated in the Expert Report of Steven E. Siwek, filed on behalf of Securus Technologies, Inc. (March 25, 2013)). Yet even if Telmate could profitably serve these small facilities with rates under the cap, which it cannot, the back office (and if challenged, legal) expense of justifying those costs would erode its margins and thereby discourage Telmate from serving them.

⁵ By contrast, Telmate profitably charges inmates 16 cents a minute at the Snake River Correctional Institution (“SRCI”) in eastern Oregon. SRCI is Oregon’s largest prison with 2,336 medium security beds, 154 minimum security beds and 510 Special Housing beds. All told, the facility houses about 3,000 inmates.

⁶ Additionally, the possibility that serving these small facilities at prices above the safe harbor would disqualify Telmate from safe harbor eligibility also would discourage it from serving this type of facility.

to alleviate providers' concern that, even if they offer ICS rates within the "safe harbor," they still might become embroiled in cost-justification proceedings – the threat of which is a powerful disincentive to small, low-priced ICS providers that lack the accounting infrastructure, legal teams, and historical prices needed to put-on a rate case. The result is that upstart ICS providers will less likely enter the market, and as a consequence, the public, correctional facilities, inmates, and their friends and families likely will benefit less from competition. Moreover, because even the lowest-priced providers will be exposed to the possibility that their presumptively reasonable rates later will be disallowed, they might be deterred from investing in new technology for fear that such investment would not be fully recoverable – even at the lowest rates. The unintended consequence of a presumptive safe harbor is therefore that fewer inmates will benefit from competition and that innovation might be unintentionally stifled. The Commission should therefore create true safe harbor rates for prisons and, separately, for jails.

III. REGULATION OF INTRASTATE RATES

It is the jurisdiction of the States, not the Commission, to evaluate whether intrastate rates and practices are just and reasonable. Moreover, unlike the Commission, the States already are capable of doing so. See Order at 111-12, 123-25 (explaining that the Commission has neither the experience nor the staff necessary to implement "*de facto* rate-of-return regulation for ICS provides at all correctional institutions in America"). But even putting those issues aside, there is no need for the Commission to regulate the intrastate ICS market. States have the expertise and capacity needed to regulate intrastate rates; those that have been actively regulating them are making great strides; and in light of the Commission's Order, many are reviewing their existing ICS regulatory policies anew.

The Order commends states which already have accomplished successful reforms that have lowered ICS rates. It also notes that, "States that have lowered [such] rates have done so in

different ways.” Order at ¶ 37. For example, it recognizes that “[s]ome have banned site commissions entirely, [some] permit only limited or sharply-reduced site commissions, . . . [some] have imposed rate caps, disallowed or reduced per-call charges, and required providers to offer less expensive calling options” *Id.* Others, the Order notes, have managed to encourage ICS providers to introduce new equipment and technology such as telephone conferencing, e-mail and voice mail services, and secure social media and photo-sharing alternatives. Order at ¶ 164.

Moreover, consistent with the Order’s stated desire “to encourage other states to undertake reform and to give states sufficient flexibility to structure reforms in a manner that achieves just and reasonable rates,” a number of states are considering new regulations for ICS services. *See, e.g.*, Neb. L.R. 276 (a resolution to study the communications rate structure for persons receiving calls from incarcerated individuals in county and local correctional facilities). Still more are in the final stages of ICS proceedings that were initiated years before the Commission’s Order. *See, e.g.*, Ala. Pub. Serv. Comm’n, No. 15957 (a generic proceeding, initiated in 2007, to consider the promulgation of telephone rules governing inmate phone service); Mass. Dept. of Telecom. & Cable, D.T.C. 11-16 (a proceeding, initiated in 2009, to consider a petition of recipients of collect calls from prisoners at correctional institutions in Massachusetts seeking relief from the unjust and unreasonable cost of such calls).

The result is a host of regulatory programs and proceedings designed both to accommodate States’ overarching policy goals and to promote competition and innovation in the marketplace. And the programs are working. Not only are they helping to drive down costs, they also are helping to improve service quality and offerings, which benefit all involved. For example, a recent study by the Oregon Department of Corrections finds that the implementation

of new equipment and technology – such as telephone conferencing, electronic and voice mail services, and secure social media and photo-sharing alternatives – has dramatically increased the frequency with which inmates communicate with their loved ones and, perhaps not surprisingly, dramatically reduced misconduct within the facilities. At one facility, the new offerings reduced misconduct hearings by nearly 14 percent and segregation by nearly 13 percent. Since being rolled-out to all DOC facilities statewide, instances of inmate misconduct are down about 27 percent year-over-year. The takeaway is that, while Oregon continues to fund inmate betterment programs through site commission payments, it nevertheless provides low-cost, high quality ICS that is driving innovation and improving the lives of citizens within and outside its correctional facilities.

The Commission should not impede this progress. Although the States' different regulatory regimes undoubtedly will meet different levels of success, those differences will spur regulatory innovation that is very much needed to transition the ICS market from static, entrenched-provider system to a robust marketplace that, over time, will improve service and lower costs. Given the States' ongoing efforts, their experience with ratemaking, their sensitivity to (sometimes competing) local public policy(ies), and their undisputed jurisdiction to regulate intrastate ICS rates, the Commission should leave to them regulation of intrastate ICS rates.

IV. CONCLUSION

Wherefore, Telmate respectfully requests that the Commission establish different price caps and safe harbor rates for prisons and jails, create true safe harbors for low-price rates, and leave to the States regulation of intrastate ICS rates, as described more fully above.

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Respectfully submitted,

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