

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

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

COMMENTS OF THE NATIONAL SHERIFFS' ASSOCIATION

The National Sheriffs' Association (NSA), by its attorney, hereby submits comments on the *Second Further Notice of Proposed Rulemaking (SFNPRM)*,¹ in which the Commission seeks comment on a number of issues in connection with the regulation of Inmate Calling Services (ICS). In its comments, NSA demonstrates that Sheriffs incur significant costs in allowing ICS in jails and that Sheriffs must be allowed to recover their costs to encourage the deployment of ICS. NSA supports a tiered rate structure for ICS rates to ensure that the rates for ICS providers that serve jails are sufficient to allow ICS providers to recover their costs. NSA also supports a transition of at least two years for the implementation of the rules.

NSA represents over 3,000 Sheriffs nationwide who operate approximately 80% of the jails in the country. Sheriffs, typically, are the chief law enforcement official of their counties with numerous duties in addition to the operation of county jails. The Sheriffs in the United States are very diverse and have different jurisdictional sizes and challenges, including budget constraints. Similarly, the size of the jails operated by Sheriffs and their inmate populations are very diverse with different challenges. Accordingly, the needs of Sheriffs with respect to ICS, the cost to provide ICS in jails and the cost to the Sheriffs to perform ICS-related duties varies by

¹ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Further Notice of Proposed Rulemaking, FCC 14-158 (rel. October 22, 2014) (*Second Further Notice of Proposed Rulemaking or SFNPRM*).

- Respond to ICS system alerts
- Forward alerts and recorded calls to investigators
- Conduct real-time monitoring of inmate conversations
- Analyze call recording of inmate conversations
- Burn CDs of conversations for further review by investigators
- Respond to law enforcement requests and subpoenas for call detail records and recordings

Facility officers also must perform various administrative functions when inmates have access to ICS. Facility officers may be required to perform duties such as:

- Be trained on the operation of the ICS system
- Answer questions from inmates and family members (how calls are billed, why calls are blocked, how to open an account to receive calls to CLEC and wireless carrier numbers)
- Maintain and administer the list of numbers to be blocked (facility numbers, officers' numbers, judges' numbers, witnesses' numbers, victims' numbers, jurors' numbers)
- Take requests from the public to have numbers blocked
- Administer prepaid cards and/or debit system, if utilized
- Train inmates on the use of ICS to include use of trust account balance inquiry, transfer of funds to debit account, placement of debit calls
- Administer a PIN system, if utilized
- Administer a voice biometric system, if utilized
- Maintain an approved number list, if utilized
- Contact the ICS provider for service issues
- Accompany ICS technicians while in the facility to service inmate phone systems
- Maintain negative databases of blocked numbers
- Initiate call traffic reviews
- Flag calls to specific phone numbers for review
- Flag calls from various cell blocks to the same phone numbers

In addition, facility officers have increased training requirements to learn to use the complex ICS system, including:

- Administer the facility's phone use rules and restrictions
- Establish security levels and clearance codes for various officers
- Authorize selected facility officers for levels of access and control
- Remove and implement administrative blocks
- Administer special numbers, PREA, crime tip lines, attorneys, etc.
- Generate reports and statistical analyses
- Research and identify call traffic patterns

To determine the cost of performing duties associated with ICS, NSA conducted a survey

monitoring/security and administrative duties.

ICS Providers Should Pay Jails for the Costs Incurred to Allow ICS

The Commission asks for comment on how to enable facilities to recover the demonstrated costs related to the provision of ICS “in a manner that does not disrupt a market-based approach to lowering rates for end users of ICS.”⁶ As an initial matter, the Commission is incorrectly focusing only on lower rates for end users. Section 276 of the Act requires the Commission to ensure the deployment of payphone services to the benefit of the general public. Denying payments to jails or restricting such payments to levels that do not at least cover costs, will have the effect of reducing the incentive and ability to allow ICS in jails.

In this regard, the Commission has it exactly backwards when it asks if site commissions hinder the widespread deployment of payphone services. On the contrary, site commissions and/or other payments to correctional facilities have made it possible for even the smallest of jails and jails with the most limited of budgets to allow this labor intensive activity. This conclusion is supported by the numerous comments in the record in which Sheriffs and jail administrators have stated that a loss of compensation from ICS providers would force them to reexamine whether and the extent to which, ICS would be allowed in their jail.

The NSA survey clearly shows that jails incur a significant cost for duties officers must perform if inmate calling services are to be allowed. Today’s sophisticated ICS system requires technically proficient and experienced facility officers. Inmate phone services can only be provided when trained officers daily monitor and review information to protect the public from abuse and prevent criminal activity. Accordingly, jails must receive cost recovery to administer the ICS system. There is no valid reason to restrict the ability of jails to recover these costs from

⁶ *SFNPRM* at ¶28.

correctional facilities for costs, such as security costs, that the Commission would likely consider reasonably and directly related to the provision of ICS.

As shown in the data provided by NSA, at least some portion of commission payments, in fact, reimburse jails for security and administrative costs directly related to ICS. Accordingly, the Commission's proposal to eliminate all commission payments is not justified.

The Commission also states that where states have eliminated site commissions, rates have fallen dramatically. The Commission predicts that prohibiting site commissions "will enable the market to perform properly and encourage selection of ICS providers based on price, technology and services rather than on the highest site commission payment."⁷ The Commission seeks comment on whether this approach will foster a competitive market that will ensure just and reasonable rates and fair compensation for ICS while minimizing regulatory burdens on ICS providers and the Commission.

It is not at all clear that site commissions must be eliminated to reduce ICS rates, especially since the Commission intends to cap all ICS rates. However, it is clear that eliminating payments to jails will reduce the ability and incentive of Sheriffs to allow ICS in jails. Accordingly, the Commission should not eliminate site commissions for jails.

A Single Nationwide ICS Rate Will Adversely Impact the Availability of ICS in Jails

The Commission asks whether it should establish one nationwide per minute rate for interstate and intrastate ICS or whether it should establish tiered rate caps. The record shows that the cost to provide ICS in jails, and especially smaller jails, is greater than the cost to serve prisons. Thus, as NSA has argued previously, a uniform ICS rate will not provide adequate compensation to ICS providers that primarily serve jails and smaller facilities and, as a result, a

⁷ *SFNPRM* at ¶21.

ICS, effective 90 days after adoption of a final order. The proposal urges the FCC to prohibit all in-kind payments and administrative fees not directly related to the provision of ICS. The proposal also argues that any compensation to correctional facilities must be nominal or else it will require higher ICS rates.

NSA notes that these three carriers primarily serve prisons and large jails. Therefore, it appears that their proposed ICS rate does not reflect the cost to serve small jails. A single rate as proposed by these carriers will not support ICS in all facilities and will decrease the deployment in jails, contrary to section 276 of the Act. A uniform, low rate also would provide no incentive to increase the number of ICS providers willing to provide service in small jails. On the contrary, it may encourage ICS providers to stop providing service in higher cost facilities altogether to increase their profit margins.

Similarly, the uniform, nominal compensation rate for jails proposed by these carriers does not accurately reflect the cost to Sheriffs to allow access to ICS in jails and, in particular, small jails. Accordingly, the nominal compensation rate proposed by the carriers will not provide adequate compensation to Sheriffs, which could lead to less access to ICS in jails.

A Transition Period of at Least Two Years Should be Adopted

The Commission asks about the impact of the ICS requirements on existing contracts between correctional facilities and ICS providers and asks if there should be a transition period before any new rules go into effect. The Commission asks whether 90 days after the effective date of the order is an appropriate transition period to comply with new rules and rate caps; whether a two year transition period should be allowed; or whether “one state or state subdivision budget cycle to transition away from site commission payments to allow facilities and states time to adjust” is the appropriate period. The Commission also asks for comment on

ICS in jails. Further, to reduce the impact of any new rules and to provide Sheriffs with the opportunity to adjust their budgets, the Commission should adopt at least a two-year transition period.

Respectfully submitted,

NATIONAL SHERIFFS' ASSOCIATION

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Dated: January 12, 2015

NSA Member Data Summary - ADP 1-99

Line #	A			B			C			D			E			F			G			H			I			J			K			L			M			N			O			P			Q			R			S			T			U			V			W			X			Y			Z			AA			AB			AC			AD			AE																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																	
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Survey Notes

1. Column B- ADP- Average Daily Population

2. Column Z- Calculated Monthly Admin. Expense

$$(((C*52)/12)*((D+E)/2080))+(((F*52)/12)*((G+H)/2080))+(((I*52)/12)*((J+K)/2080))$$

3. Column AA- Calculated Monthly Security Expense

$$(((M*52)/12)*((N+O)/2080))+(((P*52)/12)*((Q+R)/2080))+(((S*52)/12)*((T+U)/2080))$$

4. Column AB- Average Monthly Call Minutes

$$\text{AVERAGE}(W,X,Y)$$

5. Column AC- Average Admin Cost Per Minute

$$+Z/AB$$

6. Column AD- Average Security Cost Per Minute

$$+AA/AB$$

7. Column AE- Average Total Cost Per Minute

$$+AD+AC$$