

**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 attorneys, hereby files comments in the *Report and Order and Further Notice of Proposed Rulemaking (FNPRM)*<sup>1</sup> in the above-referenced docket.<sup>2</sup> Specifically, NSA addresses the issues raised in the FNPRM concerning additional reforms of interstate and intrastate inmate calling service (ICS) rates and the appropriateness of Commission action on ICS for the deaf and hard of hearing community, ICS call blocking, mandating competitive providers within correctional facilities, and quality of service for ICS.

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

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<sup>1</sup> 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) (FNPRM).

<sup>2</sup> The following Sheriffs' Associations also participate in these Comments: The Major County Sheriffs' Association, representing 72 Sheriffs; Buckeye State Sheriffs' Association, representing 88 Ohio Sheriffs; County Sheriffs of Colorado, Inc., representing 63 Sheriffs; Florida Sheriffs' Association, representing 67 Sheriffs; Georgia Sheriffs' Association, representing 159 Sheriffs; Minnesota Sheriffs' Association, representing 87 Sheriffs; New York State Sheriffs' Association, representing 58 Sheriffs; North Carolina Sheriffs' Association, representing 100 Sheriffs; South Carolina Sheriffs' Association, representing 46 Sheriffs; and Virginia Sheriffs' Association, representing 122 Sheriffs.

with numerous duties in addition to the operation of county jails. In general, a jail is used by local jurisdictions such as counties and cities to confine people for short periods of time, including people who have been convicted to serve a short sentence, individuals awaiting trial, and people who have not yet paid bail. In contrast, prisons are operated by the state or federal government and are used to house convicted criminals for periods of much longer duration.

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. A top priority for all Sheriffs operating jails is to maintain and ensure security in all aspects of the jail's operation, including the ability of inmates to make and receive calls.

Sheriffs must continue to have control over and the ability to monitor the communications of inmates. Inmates oftentimes try to continue criminal activity from jails. They communicate with other criminals outside of jails and in other jails and prisons to circumvent security. They contact witnesses, their victims, judges, attorneys and law enforcement to harass or intimidate. Inmate telephone systems are built to reflect the unique needs of each correctional facility and provide a variety of important security components to prevent these activities.

Security mechanisms come at a cost to the facility. The small size of most jails, coupled with high turnover rates, means that jails must charge more per minute than larger facilities in order to recover the costs of providing ICS. In comments, NSA detailed some of the very real costs associated with the administration of ICS systems, including monitoring phone calls, analyzing recordings, providing escorts for phone repair technicians, and answering questions

about the system from inmates and their families.<sup>3</sup> New technology and advances in computers and smart phones require jails to continually update ICS systems to ensure that mechanisms are in place to monitor and detect criminal activities. Enhancements in calling services, such as video visitation and Internet visitation, require corresponding enhancements in ICS security measures. Oftentimes the adoption of new technologies increases the cost of ICS for jails. Sheriffs must have flexibility to deploy all necessary security mechanisms to monitor inmates and deal with new communications technologies. This includes an adequate cost recovery mechanism.

In the FNPRM, the Commission requests comment on the permanent rate structure that should be adopted for interstate and intrastate ICS rates and whether there should be a tiered rate structure for ICS rates based on whether a facility is a jail or prison. The Commission also asks how a jail should be defined. NSA supports the development of separate rates for jails operated by Sheriffs. The characteristics that cause the cost structure for jails operated by Sheriffs to be higher than other institutions include the fact that these facilities are operated on a local jurisdiction basis, such as a county, with fewer inmates and higher turnover rates. These characteristics should be included in the definition of jails.

Extending the Commission's interim rate structure to intrastate ICS rates or adopting it on a permanent basis for interstate and intrastate ICS rates will not provide sufficient cost recovery for ICS in jails. A rate structure which sets a low rate cap and safe harbor rates based on average costs that apply to all facilities, like the Commission's interim interstate ICS rates, means that the costs at some facilities are higher than the rate allowed. Jails operated by Sheriffs are most likely to be impacted by this type of rate structure because they are smaller with a higher turnover rate

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<sup>3</sup> Letter from Sheriff (ret.) Aaron D. Kennard, Executive Director, NSA to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed July 31, 2013).

for inmates and, as county-based facilities, they do not have the economies of scale or scope of larger federal and state prisons.

Filings by ICS providers already show that they may stop providing ICS altogether in higher cost facilities, like jails, if rate caps are based on average costs. For example, the Commission has acknowledged that Securus' cost study shows that the smaller institutions it serves are more costly to serve<sup>4</sup> and Securus has stated that it will be difficult to continue providing services.<sup>5</sup> Pay Tel has stated that "it will not be able to provide service to those facilities where it is unable to recover its costs."<sup>6</sup> CenturyLink has stated that cross subsidized facilities will not be able to recover costs which could lead to companies terminating service<sup>7</sup> and that it is "unlikely to pursue contracts with certain county facilities at least until the Commission concludes its anticipated rulemakings to clarify and finalize the ICS rate structure."<sup>8</sup>

ICS providers also may seek to cut their costs by cutting services. Pay Tel, for example, has stated that it will be forced to eliminate the provision of biometric identification services that enhance security under the interim rate caps.<sup>9</sup> The Commission anticipates this result and states that "ICS providers could renegotiate their contracts or terminate existing contracts so they can be rebid based on revised terms that take into account the FCC's requirements related to inmate phone rates and services."<sup>10</sup>

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<sup>4</sup> Order Denying Stay Petitions and Petition to Hold in Abeyance, *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, DA 13-2236, at para. 28 (rel. Nov. 21, 2013).

<sup>5</sup> Letter from Stephanie A. Joyce, Counsel to Securus Technologies, Inc. to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed Nov. 25, 2013).

<sup>6</sup> Petition of Pay Tel Communications, Inc. for Partial Stay of Rates for Interstate Inmate Calling Services Order, WC 12-345, at 24, (Nov. 26, 2013) (Pay Tel Stay Petition).

<sup>7</sup> Petition of CenturyLink for Stay Pending Judicial Review, WC 12-345, at 13 (Nov. 27, 2013).

<sup>8</sup> *Id.*, Declaration of Paul Cooper at para. 18.

<sup>9</sup> Pay Tel Stay Petition at 27.

<sup>10</sup> *Order* at para. 102.

In the Order, the Commission requires ICS providers to submit data concerning the cost of providing interstate and intrastate ICS to enable the Commission to take further action to reform rates, including developing a permanent cap or safe harbor for interstate rates and to evaluate other rate options. Further reform of ICS, including reform of intrastate rates, should only proceed after this data has been obtained.

The Commission also asks for comment on other issues in connection with ICS, including whether: ICS providers should be prohibited from blocking calls to 711 and /or state established TRS access numbers; the Commission should require the availability of international calling; the Commission should prohibit ICS contracts that include a collect calling only requirement; the Commission should prohibit exclusive ICS contracts; and the Commission should require certain quality of service standards, such as the number of phones made available to inmates. NSA contends that the Commission should not adopt any of these requirements and that it does not have the jurisdiction to adopt these requirements. 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.

These issues also impact security. 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. Security considerations also apply to whether multiple ICS providers are allowed to provide service within a facility. 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.

NSA recognizes that maintenance of communication with family can have a positive influence for an inmate's re-integration into society after release from jail. However, Sheriffs must continue to have the ability to finance administrative functions and the security measures that they deem necessary to protect the public and the inmate population. Otherwise, the ability of Sheriffs to provide ICS to inmates will be imperiled, which would not be in the interest of inmates or their families. Accordingly, NSA asks the Commission to adopt the recommendations contained herein.

Respectfully submitted,

**NATIONAL SHERIFFS' ASSOCIATION**

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