

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

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

**REPLY COMMENTS OF THE  
NATIONAL SHERIFFS' ASSOCIATION**

The National Sheriffs' Association (NSA), by its attorneys, hereby files reply comments in the above-referenced docket.<sup>1</sup> Based on the comments and record before the Commission, NSA is becoming increasingly concerned that the Commission's actions and proposed further actions in connection with inmate calling services (ICS) rates may limit the ability of Sheriffs to provide security in jails and may lead to an exodus from the market by ICS providers serving jails. In light of the harm that would be caused to Sheriffs, inmates and their families if either of these things occur and the lack of record support for the Commission's further proposed reforms in the FNPRM, NSA urges the Commission to delay any further reforms as they may apply to jails at least until ICS providers submit data concerning the cost of providing interstate and intrastate ICS in jails. The comments and record also demonstrate that the Commission lacks jurisdiction to implement many of the proposed reforms in the FNPRM, such as restrictions on call blocking and mandating competitive providers and international calling, and that they should not be implemented because they concern security in correctional institutions.

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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) (*Order* or FNPRM).

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. 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 as inmates oftentimes try to continue criminal activity from jails and harass and intimidate witnesses, their victims, judges, attorneys and law enforcement.

**Further Rate Reform for Jails is Not Supported by the Record**

The comments make clear that 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 means that the costs at some facilities are higher than the rate allowed. The comments show that jails operated by Sheriffs are most likely to be impacted by this type of rate structure because the cost of serving jails is higher than the cost of serving prisons<sup>2</sup> and the cost of serving different types of jail facilities are not uniform and, in fact, can vary greatly.<sup>3</sup>

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<sup>2</sup> See, Comments of Pay Tel Communications, Inc. in Response to Further Notice of Proposed Rulemaking (Pay Tel Comments), WC Docket No. 12-375, at 27 (Dec. 20, 2013), in which Pay Tel urges the Commission to set rate caps applicable to jails “above average costs to allow for service to higher cost facilities.” See, also, Pay Tel Comments at 20, “the demonstrated average costs of providing ICS in jails are well above the safe harbor rate.” (emphasis in original).

<sup>3</sup> *Id.* at 26.

Thus, the comments support NSA's call for a different rate structure and rate for ICS in jails.<sup>4</sup> In its comments, NSA supported a definition of jails based on the characteristics that cause the cost structure for jails operated by Sheriffs to be higher than other institutions, including the fact that these facilities are operated on a local jurisdiction basis, such as a county, with fewer inmates and higher turnover rates. Since there appears to be no discussion in the current record on this issue, NSA urges the Commission to seek further comment on a specific definition of "jails."

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. The comments support NSA's position that further reform of ICS for jails, including reform of intrastate rates, should only proceed after this data has been obtained. As an initial matter, there is very little data provided in the comments that would support further action by the Commission on ICS rates for jails. Further, the data that is available shows that the current interim rates are not sufficient for jails and, as explained by Pay Tel, the Commission's interim safe harbor rates are calculated based upon rate and not cost data.<sup>5</sup>

In addition, the record shows that the Commission's current interim rates and a "one-size-fits-all" average rate structure that is applied to jails and other correctional facilities alike, may very well lead to a reduction in the availability of ICS in jails. Filings by ICS providers already show that they may stop providing ICS altogether in higher cost facilities, like jails, if rate caps

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<sup>4</sup> *Id.* at 27. "It is critical that there be separate rate caps for ICS in prisons and jails to account for the cost differences between the two."

<sup>5</sup> *Id.* at 28.

are based on average costs<sup>6</sup> or that they may seek to cut their costs by cutting services.<sup>7</sup> Thus, further rate reform should not be applied to jails operated by Sheriffs at this time.

**Other Reforms Proposed in the FNPRM Should Not be Adopted**

The comments demonstrate that a number of the other reforms proposed by the Commission in the FNPRM should not be adopted because they involve the management of and security in jails and are beyond the Commission's jurisdiction. Specifically, the Commission should not interfere with call blocking decisions or collect calling only requirements made by Sheriffs and states; the Commission should not interfere with decisions to provide exclusive contracts to ICS providers; and the Commission should not attempt to require the provision of certain equipment and services or access to equipment and services by inmates in jails.

At center, these issues involve whether or not inmates should have access to certain services and the activities that are allowed in jails. The record provides no legal support for a claim of Commission jurisdiction in these areas or for a claim of Commission jurisdiction

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<sup>6</sup> Securus has stated that it will be difficult to continue providing services in smaller institutions. 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). Pay Tel has stated that "it will not be able to provide service to those facilities where it is unable to recover its costs." 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). CenturyLink has stated that cross subsidized facilities will not be able to recover costs which could lead to companies terminating service 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." Petition of CenturyLink for Stay Pending Judicial Review, WC 12-345, at 13 and Declaration of Paul Cooper at para. 18, (Nov. 27, 2013).

<sup>7</sup> 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. Pay Tel Stay Petition at 27.

involving anything beyond ICS rates and, possibly, call quality for interstate calls.<sup>8</sup> On the contrary, these issues are within the exclusive jurisdiction of the Sheriffs and the states.<sup>9</sup>

In addition, the comments make clear that these issues also impact security.<sup>10</sup> 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 apply to call blocking decisions, including whether to allow international calling and the dialing of specific numbers, including 800 and geographic numbers. Contracting with one service provider helps Sheriffs control and monitor inmate calls and facilitates law enforcement's ability to monitor and track inmate calling for victim protection, investigative resources, and other public safety purposes. Allowing collect calling only also is a mechanism employed by Sheriffs to control and monitor inmate calls. Accordingly, any reforms that interfere with jail management or security should not be adopted.

### **Conclusion**

NSA is increasingly concerned that the Commission's actions and proposed further actions in connection with ICS rates may limit the ability of Sheriffs to provide security in jails and may lead to an exodus from the market by ICS providers serving jails. In light of the harm

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<sup>8</sup> The Human Rights Defense Center urges the Commission to mandate certain quality of service standards in connection with line quality and dropped calls.

<sup>9</sup> See, Comments of Securus Technologies, Inc. on Further Notice of Proposed Rulemaking, WC Docket No. 12-375, at 11 (Dec. 20, 2013); Pay Tel Comments at 37-38.

<sup>10</sup> See, Comments of Global Tel\*Link Corporation, WC Docket No. 12-375, at 13 (Dec. 20, 2013); Pay Tel Comments at 37.

that would be caused to Sheriffs, inmates and their families if either of these things occurs and the lack of record support for the Commission's further proposed reforms in the FNPRM, NSA urges the Commission to delay any further reforms as they may apply to jails at this time. The Commission also should not adopt the other reforms proposed in the FNPRM because they involve the management of and security in jails and are beyond the Commission's jurisdiction.

Respectfully submitted,

**NATIONAL SHERIFFS' ASSOCIATION**

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