

**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 attorney, hereby submits reply comments on the *Second Further Notice of Proposed Rulemaking (SFNPRM)*,¹ in which the Commission requested comment on a number of issues in connection with the regulation of Inmate Calling Services (ICS). As shown herein, the comments draw into question a number of the Commission's conclusions and assumptions that should be reexamined. In addition, the comments support NSA's position 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; that a tiered rate for ICS services is appropriate; and that there should be a significant transition period before the implementation of the rules.

The Commission Lacks Jurisdiction over Intrastate ICS Rates

NSA supports the arguments of the National Association of Regulatory Utility Commissioners and the Georgia Department of Corrections that neither Section 276 nor any other provision of the Act provides the Commission with authority to regulate intrastate ICS rates. Rather, the states retain the ability to regulate intrastate ICS rates.

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*).

Sheriffs Incur Cost in Allowing ICS in Jails That They Should be Allowed to Recover

The survey conducted by NSA and submitted on the record demonstrates that Sheriffs incur real and significant costs in allowing ICS in jails. NSA's cost survey is supported by a number of Sheriffs who have submitted cost information and the comments of ICS providers.

Further, the record supports NSA's position that Sheriffs must be allowed to recover their costs if ICS services are to continue to be widely available in jails. In many, if not most, cases, inmate calling is a discretionary service allowed for the benefit of inmates and their families. If jails are not permitted to recover their ICS costs, then some Sheriffs may be forced to significantly limit or eliminate altogether access to inmate phones in their jails. 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. Not only would this be contrary to the Commission's mandate pursuant to Section 276 of the Act, which requires the Commission to ensure the deployment of payphone services to the benefit of the general public, it would be contrary to the ultimate objective of inmates and their families.

The record also shows that a one-size-fits-all approach to compensation for prisons and jails is not appropriate. The record makes clear that because of differences in the number of inmates and the characteristics of the inmate population, such as length of stay, the per minute cost of security and administrative functions differs between prisons and jails and between the largest jails and smaller jails. Therefore, a single compensation amount for prisons and jails would not be sufficient. Similarly, a single compensation amount for all jails is not appropriate and would not be sufficient.

In spite of the record evidence, some supporters of inmates and their families argue that even

if there is a cost to Sheriffs to allow ICS in jails, the Commission should prohibit any kind of compensation because ICS should be supported by tax revenues. This position not only is wrong, it also is shortsighted. As the record shows, in most cases there is no right to ICS services and the Commission has no ability to force states or localities to subsidize ICS service to inmates through taxation. Denying compensation to Sheriffs would place ICS services in the list of many services and costs that must compete for funding out of the general budget. As many law enforcement commenters have stated, their budgets are being cut and many programs already are vying for the limited resources that they have, some of which are mandated by state and federal law. If the cost of allowing ICS must compete with all other budget needs, it may not be funded. However, if the cost of allowing ICS has its own source of funding, it is less likely to be impacted by the budget process.

Finally, the record draws into question the Commission's conclusion that site commissions and other payments to correctional facilities are the root cause of "unreasonable" ICS rates. Rather, a number of commenters identify fees for ancillary services as the real driver of high calling rates to inmates and their families. Some of these same commenters note that commissions usually are not paid on ancillary fees. Accordingly, it is not at all clear that eliminating payments to jails is necessary to reduce rates to inmates and their families. 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 payments for jails.

Compensation for ICS Providers Must be Sufficient to Ensure the Availability of ICS in Jails

NSA also is concerned that compensation to ICS providers should be sufficient to ensure the continued availability of ICS in jails. The record clearly shows that the cost to provide ICS

services in jails is greater than the cost to provide ICS service in prisons. The record also shows that the cost to provide service varies among ICS providers. Accordingly, a uniform ICS rate will not provide adequate compensation to ICS providers that primarily serve jails and smaller facilities and will impact whether ICS providers will be willing to provide service in higher cost jails. This is not mere speculation as a number of ICS providers have stated that they may stop providing ICS altogether in higher cost facilities, like jails, if rate caps are based on average costs. Accordingly, a tiered rate structure should be implemented.

A Transition Period of at Least Two Years Should be Adopted

The record supports NSA's position that there should be a significant transition period before any new rules go into effect. NSA supports a transition period of at least two years before any new rules become effective to permit jails time to try to adjust their budgets so that ICS in jails can be continued. A short implementation period will preclude the ability of Sheriffs operating jails to modify their budgets to account for the loss of revenues they will experience or consider other alternatives that will allow them to maintain the security and administrative functions necessary to allow ICS. A two-year transition period also may reduce the impact on existing contracts. However, if the Commission's new rules apply to only interstate ICS rates, then a shorter transition period may be sufficient as the anticipated impact to Sheriffs should be reduced.

Conclusion

NSA asks the Commission to adopt the recommendations contained herein and in its comments. As shown, Sheriffs incur real and significant costs in connection with the security

and administrative duties that are incurred when ICS is allowed in jails and, at a minimum, they must be allowed to recover these costs to ensure the continued deployment of ICS in jails. Moreover, the needs and cost structure for jails and prisons are different and, therefore, one uniform rate for ICS calls and a uniform approach for compensation for facilities is not sufficient to ensure the continuation of 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 27, 2015