



PUBLIC NOTICE

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DA 14-1206

Released: August 20, 2014

WIRELINE COMPETITION BUREAU ADDRESSES THE PAYMENT OF SITE COMMISSIONS FOR INTERSTATE INMATE CALLING SERVICES

WC Docket No. 12-375

In the 2013 *Inmate Calling Report and Order and FNPRM*, the Commission took numerous steps to address high interstate inmate calling services (ICS) rates.¹ First, the Commission reiterated its numerous earlier determinations that “interstate ICS, typically a common carrier service, falls within the mandates of section 201” of the Communications Act of 1934, as amended (the Act).² Section 201(b) of the Act provides that “charges, practices, classifications, and regulations for and in connection with [interstate common carrier] service, shall be just and reasonable.”³

Second, the Commission addressed site commission payments, which include “payments in money or services from ICS providers to correctional facilities or associated government agencies, regardless of the terminology the parties to the agreement use to describe them.”⁴ The Commission found that “where site commission payments exist, they are a significant factor contributing to high rates.”⁵ The Commission also concluded that, as a category, site commission payments “are not costs that are reasonably and directly related to the provision of ICS.”⁶ Despite this statement, questions have arisen surrounding the ongoing payment of site commissions based on interstate ICS revenue.⁷ These questions

¹ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107 (2013) (*Inmate Calling Report and Order and FNPRM or Order*), *pets. for stay granted in part sub nom. Securus Techs. v. FCC*, No. 13-1280 (D.C. Cir. Jan. 13, 2014) (*Partial Stay Order*); *pets. for review pending sub nom. Securus Techs. v. FCC*, No. 13-1280 (D.C. Cir. filed Nov. 14, 2013) (and consolidated cases).

² *Id.* at 14114, para. 13. The Commission also recognized its jurisdiction to regulate interstate ICS under section 276 of the Act. *See id.* at 14115, para. 14.

³ *Id.* (quoting 47 U.S.C. §201(b)).

⁴ *Id.* at 14135, para. 54 n.199. The Commission also noted that it would treat “in-kind” payments similar to site commission payments. *Id.* at 14137, para. 56.

⁵ *Id.* at 14125, para. 34.

⁶ *Id.* at 14136-37, para. 55. The *Order* acknowledges the possibility that some portion of payments to correctional facilities “may, in certain circumstances, reimburse correctional facilities for . . . costs,” such as security costs, that the Commission would likely consider reasonably and directly related to the provision of ICS. *Id.* at 14135, para. 54 n.203; *see id.* at 14134, para. 53 n.196.

⁷ “The FCC should reiterate that site commissions should not be included in ICS rates and should enforce that rule to ensure a level playing field for ICS carriers.” Letter from Stephanie A. Joyce, Counsel to Securus Technologies, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed May 15, 2014). “The discussion [with Commissioner Clyburn and staff] covered [t]he regulatory uncertainty and competitive distortions created by the *Order and FNPRM* regarding the lawfulness of the continued payment of site commissions on interstate ICS

(continued...)

came to our attention after the United States Court of Appeals for the District of Columbia Circuit issued a partial stay of the *Order*.⁸

We take this opportunity to remind interested parties that the *Partial Stay Order* by the United States Court of Appeals for the District of Columbia Circuit in January 2014 does not affect the ordinary operation of the Commission's complaint process under section 208 of the Act.⁹ Moreover, the *Partial Stay Order* issued did not disturb the Commission's determinations regarding site commissions.¹⁰

Pursuant to a complaint that challenges the lawfulness of an ICS provider's interstate ICS rates, the Commission will conduct an adjudication to determine whether those rates are just and reasonable under section 201 of the Act.¹¹ As part of that review, the Commission will follow its established practice and consider whether the challenged rates exceed the reasonable costs of providing ICS and, in that connection, will examine any payment of site commissions by ICS providers to correctional facilities. Any interstate ICS rates that are found to exceed the recovery of costs reasonably related to the provision of ICS may be found unjust and unreasonable under section 201 of the Act.¹² Such a finding may result in lowering interstate ICS rates (even if those rates are already at or below the interstate ICS rate caps adopted in the *Order*). It may also result in an order of refunds to end users.

For further information on this proceeding, please contact Lynne Hewitt Engledow, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-1520 or lynne.engledow@fcc.gov.

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calls.” Letter from Cherie R. Kiser, Counsel for Global Tel*Link Corporation, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed May 29, 2014). “Pay Tel discussed its positions of record in this proceeding, including the need for clear direction from the FCC on the permissibility of paying commissions from interstate ICS revenues. Pay Tel discussed the confusion in the marketplace that has arisen over this issue and that some providers appear to be continuing to pay commissions from interstate revenues.” Letter from Marcus W. Trathen, Counsel to Pay Tel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed July 10, 2014). “Securus again requested Commission input as to the payment of site commissions out of interstate calling revenue. The market disruption Securus previously has reported has grown even worse.” Letter from Stephanie A. Joyce, Counsel to Securus Technologies, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1 (filed July 23, 2014). “CenturyLink also explained that it continues to pay site commissions required by its contracts with correctional facilities because it does not have a basis to stop paying site commissions.” Letter from Thomas M. Dethlefs, Assoc. General Counsel – Regulatory, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed Aug. 14, 2014).

⁸ See generally *Partial Stay Order*.

⁹ See 47 U.S.C. § 208.

¹⁰ See generally *Partial Stay Order*.

¹¹ The Commission may *sua sponte* initiate investigations.

¹² We note that the Commission could also find ICS rates to exceed what is just and reasonable for reasons other than the payment of site commissions.