



# PUBLIC NOTICE

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## FCC ENFORCEMENT ADVISORY

### ENFORCEMENT BUREAU REMINDS PROVIDERS OF INMATE CALLING SERVICES THAT THEY ARE RESPONSIBLE FOR COMPLYING WITH THE COMMISSION'S RULES RELATING TO THOSE SERVICES

#### WC Docket No. 12-375

As directed by the Commission in the *2020 ICS Order on Remand*,<sup>1</sup> the Enforcement Bureau reminds providers of calling services for incarcerated individuals of their obligations under the Commission's rules, their duty of candor in connection with interactions with the Commission, and the potential penalties for noncompliance.<sup>2</sup>

The Commission takes very seriously its oversight of inmate calling services (ICS). Compliance with the ICS rules<sup>3</sup> is integral to the Commission's mandate that the rates and charges for these services are just and reasonable as required by section 201(b) of the Communications Act of 1934, as amended (the Act).<sup>4</sup> Failure to comply with the Commission's ICS rules may subject providers to enforcement action, including monetary forfeitures.<sup>5</sup> The Enforcement Bureau takes this opportunity to remind providers of some of their specific obligations:

**The interim rate caps remain in effect.** ICS providers are prohibited from charging more than the interim rate caps currently in effect for all interstate calls.<sup>6</sup> Specifically, no ICS providers may charge more than \$0.25 per minute for interstate Collect Calling or \$0.21 per minute for interstate Debit Calling,

<sup>1</sup> *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485, 8502, para. 51 (2020) (*2020 ICS Order and Further Notice*).

<sup>2</sup> See 47 CFR § 64.6000 *et seq.* (setting out the Commission's ICS rules); *2020 ICS Order and Further Notice*, 35 FCC Rcd at 8502, 8533, paras. 51, 133 (discussing providers' duty of candor); 47 U.S.C. § 503(b)(2) (providing for forfeitures for violations of the Commission's rules); 47 CFR § 1.80(b)(2).

<sup>3</sup> See 47 CFR § 64.6000 *et seq.* The Commission's jurisdiction, and therefore its rules, are limited to interstate and international ICS calls and to ancillary services related to those calls.

<sup>4</sup> 47 U.S.C. § 201(b).

<sup>5</sup> 47 U.S.C. § 503(b)(2); *see also* 47 CFR § 1.80(b)(2).

<sup>6</sup> See *2020 ICS Order and Further Notice*, 35 FCC Rcd at 8509, para. 66; 47 CFR § 64.6030.

Prepaid Calling, or Prepaid Collect Calling.<sup>7</sup> If an ICS provider cannot definitively establish that a domestic call is intrastate, the ICS provider shall charge no more than the applicable interstate rate cap for that call.<sup>8</sup>

**Ancillary service charges and caps.** Ancillary service charges are any charges a consumer pays that are not included in the per-minute charges assessed for individual calls.<sup>9</sup> The Commission's rules permit five types of ancillary service charges in connection with interstate or international calls. The five permitted ancillary service charges are:

1. *Automated Payment Fees.* Automated Payment Fees are "credit card payment, debit card payment, and bill processing fees, including fees for payments made by interactive voice response, web, or kiosk."<sup>10</sup> These fees are capped at \$3.00 per use.<sup>11</sup>
2. *Single-Call and Related Services Fees.* These fees are for "billing arrangements whereby an Inmate's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the Provider of Inmate Calling Services or does not want to establish an account."<sup>12</sup> ICS providers may charge "the exact transaction fee charged by the third-party provider, with no markup, plus the adopted, per-minute rate."<sup>13</sup>
3. *Live Agent Fee.* This fee is "associated with the optional use of a live operator to complete Inmate Calling Services Transactions."<sup>14</sup> These fees are capped at \$5.95 per use.<sup>15</sup>
4. *Paper Bill/Statement Fees.* These are fees "associated with providing customers of Inmate Calling Services an optional paper billing statement."<sup>16</sup> These fees are capped at \$2.00 per use.<sup>17</sup>
5. *Third-Party Financial Transaction Fees.* These are "the exact fees, with no markup, that Providers of Inmate Calling Services are charged by third parties to transfer money or process financial transactions to facilitate a Consumer's ability to make account payments via a third party."<sup>18</sup>

In the *2020 ICS Order on Remand*, the Commission concluded that "ancillary service charges generally cannot be practically segregated between the interstate and the intrastate jurisdiction except in the limited number of cases where, at the time a charge is imposed and the consumer accepts the charge, the call to

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<sup>7</sup> 47 CFR § 64.6030.

<sup>8</sup> See *2020 ICS Order and Further Notice*, 35 FCC Rcd at 8537, para. 53.

<sup>9</sup> 47 CFR § 64.6000(a).

<sup>10</sup> *Id.* § 64.6000(a)(1).

<sup>11</sup> *Id.* § 64.6020(b)(1).

<sup>12</sup> *Id.* § 64.6000(a)(2).

<sup>13</sup> *Id.* § 64.6020(b)(2).

<sup>14</sup> *Id.* § 64.6000(a)(3).

<sup>15</sup> *Id.* § 64.6020(b)(3).

<sup>16</sup> *Id.* § 64.6000(a)(4).

<sup>17</sup> *Id.* § 64.6020(b)(4).

<sup>18</sup> *Id.* § 64.6000(a)(4).

which the service is ancillary is a clearly intrastate-only call.”<sup>19</sup> Thus, the Commission’s ancillary service charge rules will apply in most cases.<sup>20</sup>

If an ICS provider cannot definitively establish that a call is intrastate, that provider should apply the Commission’s interstate ancillary service charge rules in connection with that call.<sup>21</sup> The Enforcement Bureau emphasizes that ICS providers are prohibited, either directly or indirectly, from imposing ancillary service charges not specified in the Commission’s rules in connection with interstate or international calls. ICS providers are also prohibited from collecting, directly or indirectly, amounts that exceed the ancillary service fee caps in connection with those calls. This includes marking up third-party fees, whether that markup is an explicit fee on top of the base cost that would be charged by a third party or the product of a revenue sharing agreement that drives the base cost up beyond what would ordinarily be charged by a third party.<sup>22</sup>

If a provider takes steps to segregate interstate and intrastate activity, such as by providing separate paper bills for interstate and intrastate calling services and assessing separate ancillary service charges for those bills, the Commission will presumptively consider those actions to be unjust and unreasonable practices that violate section 201(b) of the Act.<sup>23</sup> A provider that takes such actions “should be prepared to demonstrate to the Commission that its affected interstate ancillary service charges are just and reasonable, including that the affected charges do not recover jurisdictionally common costs that are already, or should properly be, recovered through the provider’s corresponding intrastate ancillary service charges.”<sup>24</sup>

**Other rules regarding inmate calling services.** We remind providers that they are liable for ensuring compliance with *all* of the Commission’s ICS rules, not just those described above. For example, providers are prohibited from levying or collecting any charge in excess of 25% of the applicable per-minute rate for TTY-to-TTY calls or from assessing any charge or fee for TRS-to-voice or voice-to-TTY calls.<sup>25</sup> ICS providers shall not charge one-time fees at call initiation or offer flat rate calling options that involve a single fee for a call regardless of the call’s duration.<sup>26</sup>

**Duty of candor.** We further remind ICS providers that they have a duty of absolute candor in connection with their interactions with the Commission.<sup>27</sup> As the Commission has emphasized, “it is imperative that inmate calling services providers proceed in good faith and with absolute candor in their interactions with the Commission.”<sup>28</sup> While this applies to all interactions with the Commission, it is especially important in connection with required data submissions and annual reports.<sup>29</sup> ICS providers are required to certify

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<sup>19</sup> *2020 ICS Order and Further Notice*, 35 FCC Rcd at 8495, para. 28.

<sup>20</sup> *Id.* at 8497-500, paras. 33-46 (explaining when the Commission’s ancillary service charge rules and fee caps apply).

<sup>21</sup> *Id.* at 8503, para. 53.

<sup>22</sup> *Id.* at 8516-17, para. 91 & n.220.

<sup>23</sup> *Id.* at 8501, para. 49.

<sup>24</sup> *Id.* at 8501-02, para. 49.

<sup>25</sup> 47 CFR § 64.6040(a)-(b).

<sup>26</sup> *Id.* §§ 64.6000(h), (o), 64.6080, 64.6090.

<sup>27</sup> *See 2020 ICS Order and Further Notice*, 35 FCC Rcd at 8502, 8533, paras. 51, 133.

<sup>28</sup> *Id.* at 8533, para. 133.

<sup>29</sup> 47 CFR § 64.6060.

annually that the information in their annual reports is “true and accurate” and that they are in compliance with the Commission’s ICS rules.<sup>30</sup> The senior executive providing the certification must have “first-hand knowledge of the accuracy and completeness of the information provided” in the annual report and must also “acknowledge that failure to comply with the [Commission’s ICS rules] may result in civil or criminal prosecution.”<sup>31</sup> ICS providers also have a duty to provide complete and accurate information in other reports or submissions made to the Commission.<sup>32</sup> Submission of inaccurate, incomplete, or untruthful information hinders the Commission’s ability to meaningfully evaluate the information provided. ICS providers should be aware that false statements or misrepresentation to the Commission may be punishable by fine or imprisonment under Title 18 of the U.S. Code.<sup>33</sup>

**Consequences for violating the Commission’s rules.** Failure to comply with the Act or the Commission’s rules may subject an ICS provider to sanctions including, but not limited to, substantial monetary forfeitures.<sup>34</sup> The Enforcement Bureau will continue to monitor and enforce compliance with the Commission’s ICS rules and will take whatever action the Commission deems necessary to address noncompliance.

**Further information.** Media inquiries should be directed to Anne Veigle of the Office of Media Relations, by telephone, at: (202) 418-0506, or, by e-mail, at: [anne.veigle@fcc.gov](mailto:anne.veigle@fcc.gov). Questions about substantive obligations should be sent to Kalun Lee of the Enforcement Bureau, by telephone, at: (202) 418-0796, or, by e-mail, at: [kalun.lee@fcc.gov](mailto:kalun.lee@fcc.gov), or Peter Bean of the Wireline Competition Bureau, by telephone, at: (202) 418-0786, or by e-mail, at: [peter.bean@fcc.gov](mailto:peter.bean@fcc.gov).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, or audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). You may also contact the Enforcement Bureau on its TTY line at (202) 418-1148 for further information about this Enforcement Advisory, or the FCC on its TTY line at 1-888-TELL-FCC (1-888-835-5322) for further information about inmate calling services.

Issued by: Chief, Enforcement Bureau

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<sup>30</sup> See 47 CFR § 64.6060; see also FCC Form 2301(b) – Inmate Calling Services Annual Certification Form.

<sup>31</sup> FCC Form 2301(b) – Inmate Calling Services Annual Certification Form.

<sup>32</sup> See *2020 ICS Order and Further Notice*, 35 FCC Rcd at 8533, para. 133.

<sup>33</sup> 18 U.S.C. § 1001.

<sup>34</sup> 47 U.S.C. § 503(b)(2); see also 47 CFR § 1.80(b)(2).