

**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 ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

The National Association of State Utility Consumer Advocates (NASUCA)¹ supports and appreciates the unanimous efforts of the Federal Communications Commission (Commission) to reform the rates for inmate calling services (ICS) within its jurisdiction.² As the Commission and the U.S. Court of Appeals for the District of Columbia Circuit have recognized, the rates for ICS have often been unjust and unreasonable, with substantial and damaging social consequences.³ Because inmates and their families cannot choose their ICS provider, the services are a prime example of market failure.⁴ The need for reform is thus acute and compelling.

NASUCA similarly supports and appreciates the Commission’s unanimous exhortation to its “state partners” to act “to address the egregiously high intrastate inmate services rates

¹ NASUCA is a voluntary association of 59 consumer advocates. NASUCA members represent the interests of utility consumers in 44 states, the District of Columbia, Puerto Rico, Barbados and Jamaica. NASUCA is incorporated in Florida as a non-profit corporation. NASUCA’s full members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also represent the interests of utility consumers but are not created by state law or do not have statewide authority. Some NASUCA member offices advocate in states whose respective state commissions do not have jurisdiction over certain telecommunications issues.

² *Rates for Interstate Inmate Calling Services*, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485 (2020) (Report and Order and FNPRM).

³ *Global Tel*Link v. FCC*, 866 F.3d 397, 404 (D.C. Cir. 2017).

⁴ *Id.*; see also Report and Order and FNPRM, 35 FCC Rcd at 8520-21, para. 100.

across the country.”⁵ State action is crucial because the “vast majority of calls made by incarcerated individuals”—“roughly 80%”—“are intrastate calls,” over which the Commission lacks jurisdiction.⁶ As the Commission observes, 33 states allow rates that are at least double the Commission’s interim rate cap for interstate calls, and 27 states allow excessive “first-minute” charges up to *26 times* the charges for the first minute of an interstate call.⁷ There are instances where a 15-minute intrastate debit or prepaid call costs as much \$24.80—almost seven times the maximum \$3.15 allowed by the Commission’s interim rate cap for an interstate debit or prepaid call.⁸ A federal-state partnership can address this problem. The Commission can supply the requisite resources and experience to collect and analyze the data. The states can supply the requisite jurisdiction over the vast majority of the calls.⁹

NASUCA also shares the Commission’s concern regarding the continued growth in the number and dollar amount of ancillary service charges and the fact that such charges inflate the effective price of ICS.¹⁰ The FNPRM seeks comment on whether the Commission’s ancillary

⁵ Report and Order and FNPRM, 35 FCC Rcd at 8486, 8494-95, paras. 4, 26.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See *In re Securus Technologies, LLC*, Docket No. TF-2019-0033 (Iowa Util. Bd. Nov. 13, 2020) at 8-9: “The rates in the current tariff for inmate calling service at the Clarke County Sheriff’s Department, Crawford County Jail, Mahaska County Jail, and the Pocahontas County Jail are not just and reasonable. The rates for per-minute ICS at those correctional facilities are not consistent with the inmate calling rates approved by the FCC for interstate calls. Securus will be required to revise the rates for intrastate calls in the revised tariff to be consistent with rates approved by the FCC for interstate service. Securus will be given until December 31, 2020, to negotiate rates consistent with the FCC rates.” See also *In re Global Tel*Link Corp.*, Docket No. TF-2019-0039 (Iowa Util. Bd. Aug. 20, 2020) at 10: “If the FCC decides to reduce the interstate rates for inmate calling service, the Board may revisit whether the rates approved are just and reasonable.” These orders are available at <https://wcc.efs.iowa.gov/cs/groups/external/documents/docket/mday/mdq1/~edisp/2045039.pdf> and <https://wcc.efs.iowa.gov/cs/groups/external/documents/docket/mday/mdm3/~edisp/2037826.pdf>.

¹⁰ Report and Order and FNPRM, 35 FCC Rcd at 8489-90, para. 12.

service fee caps should be lowered or otherwise modified.¹¹ NASUCA offers several comments.

First, some providers may be charging both an automated payment fee and a credit or debit card fee on the same transaction. NASUCA's understanding is that the Commission's \$3.00 automated payment fee cap includes "credit card payment, debit card payment, and bill processing fees."¹² Avoiding duplicate transaction costs is important because inmates or those they call may not have an available or feasible alternative, such as writing a check, with which to fund an ICS account or card without incurring transaction charges. The Commission should reiterate and reinforce the requirement that payment card fees are included in, and may not be added to, the \$3.00 automated payment fee.

Second, the Commission should adopt an additional regulatory provision prohibiting ICS providers from sharing the money transfer fees or revenues of third parties such as Western Union and MoneyGram. At the state level, the Alabama Public Service Commission has found "no justification whatsoever for ICS providers to share in the fees for a service they do not provide."¹³ The Iowa Utilities Board has similarly prohibited an ICS provider from receiving any payment from a third-party vendor's transaction fees.¹⁴

¹¹ Report and Order and FNPRM, 35 FCC Rcd at 8532, para. 131.

¹² See Report and Order and FNPRM, 35 FCC Rcd at 8497-98, para. 35; 47 C.F.R. §§ 64.6000(a)(1), 64.6020(b)(1); see also Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12847-48, para. 167 (2015).

¹³ *In re Generic Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Service*, Docket 15957, Further Order Adopting Revised Inmate Phone Service Rules (Ala. Pub. Serv. Comm'n June 12, 2015) paras. 8.17, 8.20. The order is available at <http://psc.alabama.gov/telecom/Engineering/documents/Dec%202014%20Order%2015957%20updated%20thru%206-12-2015.pdf>.

¹⁴ *In re Securus Technologies, LLC*, note 9 above, at 9.

Third, ICS providers should be required to automatically refund unused balances in an ICS account or on an ICS debit or credit card when the inmate is released from custody and thus no longer has need for the account or card or following a six-month period of inactivity. At a minimum, if account or card holders are required to affirmatively request a refund, ICS providers should be required to notify the account or card holder of the need to request the refund, rather than having the funds be forfeited. As stated by the Alabama Public Service Commission, the preferred method for refunding unused balances is via debit card or by transfer of funds to the inmate canteen/trust account for refund at the time the inmate is released from custody.¹⁵ The ICS provider should have the necessary contact information with which to make the refund or send the notice.¹⁶ These are important consumer protection actions and disclosures that would protect inmates and their families from losing their funds.

Conclusion

NASUCA requests that these comments be given due consideration.

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Respectfully submitted,

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¹⁵ *In re Generic Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Service*, Docket 15957, note 13 above, ¶ 9.08.

¹⁶ *James v. Global Tel*Link Corp.*, No. 13-4989, 2018 WL 3727371, at *10 (D.N.J. Aug. 6, 2018).