



April 2, 2021
By ECFS

Marlene Dortch,
Secretary, Federal Communications Commission
45 L Street NE
Washington, DC 20554

RE: National Association of State Utility Consumer Advocates *Ex Parte Letter*, WC
Docket No. WC 12-375.

Dear Ms. Dortch,

The National Association of State Utility Consumer Advocates (NASUCA)¹ submits this *ex parte* letter for the purpose of requesting a clarification of the Commission’s intent in referencing “credit card payments” and “credit card companies” as part of its discussion of “third-party financial transaction fees” at paragraph 170 of the Second Report and Order and Third Further of Notice of Proposed Rulemaking, FCC 15-136, 30 F.C.C.R. 12763 (2015). We believe the issue is responsive to the request for comment at paragraph 91 of the Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, FCC 20-111 (2020). We refer to these orders as the “2015 Order” and the “2020 Order”.

Our request for clarification concerns the ancillary fee that an inmate calling service (“ICS”) provider is permitted to charge when an inmate or other person, rather than making use of a third-party financial service such as Western Union or MoneyGram, uses a payment (debit or credit) card to make a deposit directly to an ICS account. Our understanding is that 47 C.F.R. § 64.6020(b)(1) places a \$3.00 cap on the ancillary fee that the ICS provider may charge in this circumstance and that the \$3.00 has been determined by the Commission to be more than

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.

sufficient to cover the ICS provider's costs, including any payment card processing fee. See 2015 Order ¶ 167; 2020 Order ¶ 35.

The 2015 Order, however, includes the following references to “credit card payments” and “credit card companies” in the discussion of the separate provision at 47 C.F.R. § 64.6020(b)(5) for “Third-Party Financial Transaction Fees” (emphasis added, footnotes omitted):

170. *Third-Party Financial Transaction Fee.* In the *Second FNPRM*, the Commission asked how it should ensure that money transfer service fees paid by ICS consumers are just and reasonable and fair. The record establishes that inmates' families frequently do not have bank accounts, and therefore rely on third-party money transfer services such as Western Union or MoneyGram to fund calls with inmates. Third-party financial transaction fees as discussed herein consist of two elements. The first element is the transfer of funds from a consumer via the third-party service, i.e., Western Union or MoneyGram, to an inmate's ICS account. The second element is the ICS provider's additional charge imposed on end users for processing the funds transferred via the third party provider for the purpose of paying for ICS calls. We find that this first aspect of third-party financial transaction, e.g., the money transfers *or credit card payments*, does not constitute “ancillary services” within the meaning of section 276. The record suggests that ICS providers have limited control over the fees established by third parties, such as Western Union *or credit card companies*, for payment processing functions.

We request clarification of the following: Does the Commission intend by this passage to authorize an ICS provider to add a payment card processing fee in addition to the \$3.00 automated payment fee in cases where the consumer deals directly with the ICS provider to make the deposit and does not go to a third-party money transfer service such as Western Union or MoneyGram?

We would appreciate the Commission's consideration and clarification of this issue. Thank you.

Respectfully submitted,

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