



STATE OF ALABAMA

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CHRIS "CHIP" BEEKER, JR., ASSOCIATE COMMISSIONER

Re: GENERIC PROCEEDING CONSIDERING THE)
PROMULGATION OF TELEPHONE RULES) DOCKET 15957
GOVERNING INMATE PHONE SERVICE)

NOTICE OF PROPOSED AMENDMENT TO INMATE CALLING SERVICE RULES

BY THE COMMISSION:

1.00 INTRODUCTION

1.01 On November 5, 2015, the Federal Communications Commission ("FCC") released a rule that extended its regulation to include intrastate inmate calling service ("ICS") in addition to interstate ICS. The FCC Rule will become effective on March 17, 2016. The FCC stated that this new FCC Rule would only preempt state ICS regulation that was inconsistent with the requirements in the FCC Rule.

1.02 Conceptually, the new FCC regulations are virtually identical to this Commission's regulation of intrastate ICS. Both the FCC and this Commission place caps on prepaid and debit ICS calls, limit the type and amount of ancillary fees, and find that site commissions should not be included as a cost to set rate caps. However, in its new rule, the FCC set some rate caps and limits that are different from those set by this Commission. This notice describes proposed amendments to this Commission's ICS Rules that would establish complete consistency with the FCC Rules and ensure that the FCC would not preempt this Commission's regulation of intrastate ICS.

2.00 BACKGROUND

- 2.01 The Commission's efforts to reform ICS began in 2012 after discussions with an ICS provider and complaints from customers prompted Commission Staff to reexamine the ICS regulations and the effectiveness of the existing rate structure. Under the rate caps existing at that time, inmates could be charged up to \$6.75 for a fifteen minute toll call (\$2.25 operator surcharge plus \$0.30 per minute usage fee). Some ICS providers were also charging \$14.99 for calls billed to credit cards and \$9.99 for calls billed to the call recipient's cellular account. Further, a few ICS providers were assessing numerous and frequently excessive ancillary charges to end users of their services. Because confinement facilities contract with ICS providers to exclusively offer service at the facility, inmates at the facilities and those they call have no choice in terms of service provider selection.
- 2.02 On November 6, 2012, the Commission established a rulemaking proceeding to consider whether the operator surcharge should be removed and the per-minute local and toll rate be reduced ("2012 Order"). The Commission Staff surmised that the removal of the surcharge and the application of only the per-minute rates would provide a clearer picture to the customer of the total charges. On January 25, 2013 and May 14, 2013, Commission Staff submitted data requests to ICS providers for certain business information, including: revenue and expenses for a three year period, minutes of use for local and toll calls, a description of all ancillary fees charged to ICS customers, and information about the assessment of fees and sales tax.
- 2.03 Based on the information gained through the data requests and through interactions with the FCC, which was also in the process of reforming inmate calling, Commission Staff surmised that the changes proposed in the 2012 Order would no longer be sufficient for the needed reforms.
- 2.04 While the Commission worked to reform intrastate ICS, the FCC was in the process of creating interstate ICS rules. In December 2012, the FCC issued a notice of proposed

rulemaking related to reforming interstate ICS.¹ On August 9, 2013, the FCC issued its first further notice of proposed rulemaking and adopted regulations that, among other things, set upper limits on permissible interstate ICS rates (\$0.21 per minute for prepaid calls and \$0.25 per minute for collect calls with no call set-up allowance).² The FCC rates presume that ICS provider costs average \$0.12 per minute for prepaid calls and \$0.14 per minute for collect calls. The FCC did not issue any regulations regarding intrastate ICS in the 2013 FCC Order and FNPRM.

- 2.05 On October 1, 2013, the Commission issued revised proposed ICS rules and established a comment period ("2013 Order"). In addition to the proposed establishment of a single rate of \$0.25 per minute for both prepaid and collect calls, the 2013 Order also proposed to limit the ancillary fees charged by ICS providers, such as payment processing fees, bill processing fees, convenience fees, returned check charges, and paper bill fees. The 2013 Order also proposed regulations related to video visitation, customer accounts, records retention, prepaid ICS phone cards, refunds, and reporting. The regulations proposed in the 2013 Order were much more comprehensive than those proposed in the 2012 Order.
- 2.06 On July 7, 2014, the Commission issued further revised, proposed ICS rules and established a comment period ("July 2014 Order"). The July 2014 Order was comprehensive, like the 2013 Order, but it included, among other things, a phase-in of the ICS rate caps, different rate caps for debit/prepaid and collect calls, and different rate caps for jails and prisons. In the July 2014 Order, the Commission declined to find that it must recognize site commissions when establishing rate caps. Site commissions are payments from ICS providers to prisons or jails, typically a percentage of ICS revenue.
- 2.07 Between November 6, 2012 and December 9, 2014, ICS providers and other interested parties were afforded three separate opportunities to comment on proposed revisions to the Commission's ICS rules. Some ICS providers generally supported the proposed

¹ *In the Matter of Rates for Interstate Inmate Calling Servs.*, 27 F.C.C. Rcd. 16629 (2012) ("FCC ICS NPRM").

² *In the Matter of Rates for Interstate Inmate Calling Servs.*, 28 F.C.C. Rcd. 14107 (2013) ("2013 FCC Order and FNPRM").

changes while others argued against them. The Commission considered all comments, balanced the competing interests, and altered some of the proposed rules based on the filed comments. On December 9, 2014, after more than two years of review and analysis, the Commission issued the Order that is currently effective establishing just and reasonable ICS rates and practices ("December 2014 Order"). The Order adopted separate rate cap schedules for prisons and jails but did not distinguish either type confinement facility by inmate population. The same rate applies regardless of facility size. The initial rate caps are phased down annually for two years until the permanent rate caps are achieved. Those ancillary charges that providers are authorized to assess are identified and capped. All ancillary charges not specifically identified and authorized in the Order are prohibited. Single payment calls are authorized based on the use of an average call duration imputed at 12 minutes. The maximum price for a single payment call must not exceed the capped collect call, per minute rate applied to the imputed call duration with the capped payment processing charge added thereto. All other average call pricing is prohibited. The Commission did not impose limits on facility site commissions citing its lack of jurisdictional authority to regulate the apportionment of net profits.

- 2.08 In December 2014, two ICS providers, Global Tel*Link Corporation ("GTL") and Securus Technologies, Inc. ("Securus"), appealed the December 2014 Order. On January 16, 2015, the Commission granted a request to stay implementation of the December 2014 Order for all ICS providers to prevent potential rate disparities during the pendency of the appeals by GTL and Securus. That stay expired on July 1, 2015 and the December 2014 Order went into effect at that time for all ICS providers other than GTL and Securus. GTL has represented that it is currently voluntarily complying with the December 2014 Order. As of the date of this notice, those appeals remain pending.

3.00 HARMONIZATION WITH SECOND FCC ORDER

- 3.01 Preemption Authority

The Second FCC Order addresses the FCC's authority to preempt intrastate regulatory requirements for ICS that are inconsistent with FCC regulations.

From Paragraph 204:

...we now adopt the tentative conclusion the Commission first expressed in the 2013 Order, and hold that we have the authority to preempt state requirements that are inconsistent with the rules we adopt in this Order. More specifically, we conclude that a state requirement that ICS be provided at a particular rate that exceeds the caps we have adopted would trigger change-in-law provisions or require renegotiation.

State rates below our rate caps or ancillary fee caps will not be preempted.

From paragraph 211:

...section 276 explicitly grants the Commission authority to preempt state requirements to the extent they are inconsistent with FCC regulations.

We also note that there is no presumption that state-mandated rates deny fair compensation simply because they are lower than our rate caps.

3.02 Prepaid and Billed-Collect Rate Caps

On July 1, 2015, the Commission implemented the prepaid and billed-collect rate caps adopted in its December 2014 Order. Appendix A, attached hereto, compares the prepaid and collect ICS calling rates approved in the Second FCC Order with those approved in the Commission's December 2014 Order. Staff recommends that the Commission adopt the prepaid ICS rate caps for jails and prisons provided in the Second FCC Order effective March 17, 2016 at prisons and June 20, 2016 at jails. For billed-collect ICS, Staff recommends adoption of the rate caps approved in the Second FCC Order to the extent that the FCC rate caps are equal or below the rate caps for billed-collect ICS adopted in the Commission's December 2014 Order. Staff's proposed intrastate rate caps for prepaid and billed-collect ICS and the effective dates associated therewith are shown in Appendix

B, attached hereto. These rate caps supplant the rate caps adopted in the December 2014 Order.

3.03 Ancillary Charge Rate Caps

The ancillary charges adopted in the December 2014 Order are consistent with those approved in the Second FCC Order.³ The Commission approved a prepaid funding maximum of \$100 which is more restrictive than the \$50 prepaid funding maximum adopted by the FCC. Therefore, Staff proposes no changes to the Commission's approved ancillary charge rate caps.

3.04 Single Payment Calls

In its December 2014 Order, the Commission imputed an average call minimum of 12 minutes for purposes of setting the price that providers may charge for single payment calls billed to a credit card or billed as a short message service (SMS) premium text. The maximum price for the call is determined by applying the billed-collect per MOU rate to the imputed 12-minute call duration then adding the credit card or bill processing charge.⁴ In its Second Order, the FCC prohibits the imposition of flat-rate calling.⁵ Consequently, the imputed 12 minute minimum call duration prescribed in the December 2014 Order is inconsistent with the FCC's rules. Staff recommends that the usage portion for single payment calls be priced using the *actual call duration (MOUs)* multiplied by the billed-collect rate cap applicable to the confinement facility from which the inmate call originates. Providers are not authorized single payment call prices predicated on a minimum usage (MOU) allowance. The capped credit card or bill processing fee, whichever is applicable, may then be added to the usage charge for purposes of establishing the single payment call charge billed to the end user. Requiring single payment call pricing based on the actual call duration, rather than a flat-rate usage

³ Second FCC Order, para. 163, Table Four.

⁴ December 2014 Order, para 6.39.

⁵ Second FCC Order, para. 105.

allowance, ensures consistency with the FCC's standards for pricing single payment calls as provided in paragraph 187 of the Second FCC Order.

4.00 OTHER

4.01 Revised Due Date for 2016 Reporting Requirement

Appendix G, pages 11-12, to the December 2014 Order requires the following be reported to the Commission annually by no later than February 28:

On a monthly basis, beginning with January 2013, segregated into collect, prepaid collect, prepaid debit, prepaid inmate calling card, and direct-billed service at each Alabama confinement facility served:

- A. Number of local calls, local minutes of use, and associated local call revenue.
- B. Number of intrastate toll calls, intrastate toll minutes of use, and associated intrastate toll revenue.
- C. Number of interstate toll calls, interstate toll minutes of use, and associated interstate toll revenue.

For reporting year 2016 only, Staff recommends changing the report due date to April 29, 2016. A Excel spreadsheet template with instructions for the report will be posted on the Commission's website by no later than February 15, 2016 at the following URL: <http://www.psc.state.al.us/Telecom/Engineering/documents/inmate.htm>

4.02 Local Taxes/Fees Applicable to Inmate Calling Service

Paragraphs 191 and 192 of the Second FCC Order address the recovery of mandatory applicable pass-through taxes and regulatory fees. To ensure that the Commission is aware of all applicable taxes and fees that are passed on to the customer, the Commission proposes that all ICS providers notify us by letter of any local taxes or fees approved by local governments that are to be passed on to ICS end users. The notification shall

include a written copy of any relevant ordinance or resolution, the date of passage, and the approval authority. The applicable tax/fee rate, a list of the provider's services to which the tax fee is applicable, and a list of the provider's services exempted from the tax/fee shall accompany the notification. Furthermore, ICS providers will break out the tax/fee on customer account statements, identify the jurisdiction which authorizes it, the tax/fee rate, and the total tax/fee charged the end user.

4.03 Access to RFP Responses and ICS Contracts

Governments with fiscal oversight for confinement facilities in Alabama are encouraged to cooperate fully in providing the Commission with ICS provider responses to their Requests for Proposal (RFP) and with a copy of the contract with the ICS provider serving a confinement facility in accordance with the Alabama Open Records Law, § 36-12-40, Code of Alabama. ICS providers possessing a Certificate of Convenience and Necessity from the Commission authorizing the provision of ICS in Alabama shall submit a copy of their contract with any Alabama confinement facility to the Commission upon the Commission's request.

4.04 Commission Guidance Available

State/Local law enforcement and government representatives with responsibility for confinement facility management/oversight are encouraged to contact the Commission's Utility Services Division with any questions regarding the Commission's ICS rules or other questions related to ICS. Questions may be directed to Darrell Baker, Utility Services Division Director, via e-mail (Darrell.Baker@psc.alabama.gov) or telephone (334-242-2947).

5.00 COMMENT PERIOD

ICS providers and other interested parties may submit written comments to the

Commission for the topics referenced herein under Sections 3.00 and 4.00. Comments referencing issues covered in proceedings prior to release of the December 2014 Order will not be addressed. Comments must be filed with the Commission no later than February 29, 2016.

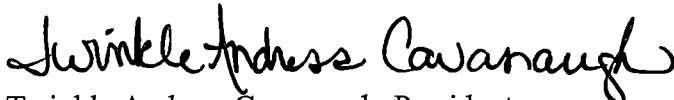
IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission will consider comments from interested parties concerning matters discussed in Sections 3.0 and 4.0 herein provided the comments are filed with the Secretary of the Commission before the close of business on or before February 29, 2016.

IT IS FURTHER ORDERED That the due date for the mandatory ICS provider reporting referenced in paragraph 3.01 herein, is extended to April 29, 2016.

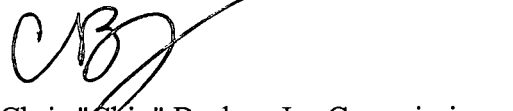
IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 9th day of February, 2016.

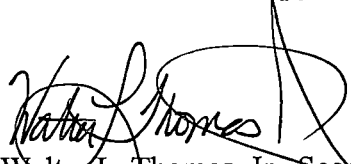
ALABAMA PUBLIC SERVICE COMMISSION


Twinkle Andress Cavanaugh, President


Jeremy H. Oden, Commissioner


Chris "Chip" Beeker, Jr., Commissioner

ATTEST: A True Copy


Walter L. Thomas, Jr., Secretary

ALABAMA INMATE CALLING SERVICE RATE CAPS
 Supplants the Rate Caps Approved in Order for Docket 15957
 Dated December 9, 2014

Prepaid ICS Rate Caps	
FACILITY TYPE/SIZE	EFFECTIVE:
All Jails: \$0.30/min	Through June 19, 2016
Thereafter:	
Jails (0-349 inmates): \$0.22/min.	June 20, 2016
Jails (350-999 inmates): \$0.16/min.	June 20, 2016
Jails (1,000+ inmates): \$0.14/min.	June 20, 2016
Prisons: \$0.25/min	Through March 16, 2016
Thereafter: \$0.11/min	March 17, 2016

Billed-Collect ICS Rate Caps	
FACILITY TYPE/SIZE	EFFECTIVE:
Jails (0-349 inmates)	
Existing: \$0.30/min.	Through June 19, 2016
First Year \$.28/min	June 20, 2016
After 1st year: \$0.25/min.	June 20, 2017
After 2nd year: \$0.22/min.	June 20, 2018
Jails (350-999 inmates)	
Existing: \$0.30/min.	Through June 19, 2016
First Year \$.28/min	June 20, 2016
After 1st year: \$0.25/min.	June 20, 2017
After 2nd year: \$0.16/min.	June 20, 2018
Jails (1,000+ inmates)	
Existing: \$0.30/min.	Through June 19, 2016
First Year \$.28/min	June 20, 2016
After 1st year: \$0.25/min.	June 20, 2017
After 2nd year: \$0.14/min.	June 20, 2018
All Prisons	
Existing: \$0.25/min	Through March 16, 2016
Initially: \$0.14/min	March 17, 2016
After 1st year: \$0.13/min	March 17, 2017
After 2nd year: \$0.11/min	March 17, 2018