

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Rates for Interstate Inmate Calling Services)	WC Docket No. 12-375
)	
)	
)	

COMMENTS OF VERIZON AND VERIZON WIRELESS¹

The record in this proceeding makes clear that high rates for inmate calling services (ICS) are a significant problem on which the Commission should focus. The record contains undisputed evidence that an inmate’s regular telephone and other communication with family aids in the inmate’s transition back into the community post-incarceration and thus lowers recidivism.² As a result, there is a compelling public interest in ensuring that call rates are reasonable in the unique ICS market. Because Verizon provided ICS until 2007 when it sold this business,³ Verizon has a historical perspective on how this one-of-a-kind market functions and where there may be opportunities for meaningful Commission action. The Commission should concentrate on two issues identified in the *Notice* – i.e., site commissions and exclusive contracts – and take action consistent with its jurisdiction that will result in lower rates for ICS and thus facilitate more inmate-to-family communications.

¹ In addition to Verizon Wireless, the Verizon companies participating in this filing are the regulated, wholly owned subsidiaries of Verizon Communications Inc. (collectively, “Verizon”).

² See *Rates for Interstate Inmate Calling Services*, Notice of Proposed Rulemaking, 27 FCC Rcd 16629, ¶ 4 (2012) (“*Notice*”).

³ Verizon does not profit from high inmate call rates. For the convenience of our customers, Verizon will put charges on those customers’ bills for collect calls placed by inmates. This is a billing service – with the same fees – that Verizon provides to other telecommunications service providers, such as unaffiliated long distance companies.

DISCUSSION

1. In almost every state, site commissions are a significant cause of the high calling rates that inmates and their families face. As the Commission has observed, ICS contracts between providers and public departments of corrections (DOCs) frequently require that ICS providers pay a commission to the DOC.⁴ When Verizon provided ICS, site commissions paid to DOCs tended to range from 40-50% of amounts billed. Site commissions are therefore substantial costs imposed on ICS providers who then must recoup the costs through their calling rates. As a result, Commission action that addresses these site commissions could directly affect the rates for inmate calls.

Commission action may be appropriate here because the market for ICS does not function like most markets. Specifically, in Verizon's experience, when a DOC is seeking a provider of ICS services (typically through an RFP), there are multiple bidders, and nearly all of them can meet the service requirements articulated by the DOC. Accordingly, the competition for the contract tends to revolve around the commission percentage that the bidder is willing to pay the DOC. In other words, the calling rates that the bidders will charge the collect call recipients of the inmates⁵ appear to be irrelevant to the process of selecting a provider; the bidder with the lowest calling rates is simply *not* more likely to win the contract. And since the contracts are exclusive contracts, the inmates' call recipients – usually the inmates' families who often are economically disadvantaged – have no choice but to fund the large commissions. This mismatch between the entity that selects the ICS provider and those who use and pay for the provider's calling services can result in distortions.

⁴ See Notice ¶ 37.

⁵ Nearly all calls from inmates are "collect" calls paid for by the called party.

To be clear, Verizon is not suggesting that there is anything inherently wrong with commissions or that all commissions, regardless of size, should be eliminated. Verizon understands that DOCs may use commissions to fund beneficial inmate services that may not otherwise receive funding. But forcing inmates' families to fund these programs through their calling rates is not the answer. Because higher rates necessarily reduce inmates' telephone communications with their families and thus impede the well-recognized societal benefits resulting from such communications, other funding sources should be pursued.

The Commission should consider the most effective way, consistent with its jurisdiction,⁶ to reduce commissions and ensure that any reductions do in fact lead to lower calling rates. One option could be for the Commission to take steps similar to those measures it recently adopted to combat access stimulation. In its *USF-ICC Transformation Order*, the Commission addressed schemes in which competitive LECs with high switched access rates share the access charge revenue they receive from IXCs or wireless carriers with another party, often a conference or chat line partner.⁷ In these schemes, the LEC and the revenue-sharing party typically attempt to stimulate high call volumes by offering services that are “free” to the end-user.⁸ Notably, the Commission did not ban revenue sharing agreements in its *USF-ICC Transformation Order*.⁹ And the Commission acknowledged that in some instances “shared” access revenues were used for a beneficial purpose, such as broadband deployment.¹⁰ Regardless, the Commission took decisive action against these schemes by requiring the LEC to file a revised tariff with access

⁶ Verizon takes no position regarding the Commission's authority in these Comments.

⁷ See *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶¶ 656-57 (2011) (“*USF-ICC Transformation Order*”).

⁸ *Id.* ¶ 656.

⁹ See *id.* ¶ 672.

¹⁰ *Id.* ¶ 666 (“[H]ow access revenues are used *is not relevant* . . .”) (emphasis added).

rates benchmarked to the rates of the price-cap LEC with the *lowest rates in the state* if a revenue sharing arrangement existed and certain traffic criteria were met.¹¹

A similar approach may be appropriate here. Site commissions paid by ICS providers to DOCs are one form of revenue sharing. Like the IXC and wireless carriers that carry the traffic, inmates and their families have no choice but to submit to the high rates offered by a single provider.¹² Accordingly, rather than attempting to prohibit or otherwise limit commissions – some of which are mandated by state law¹³ – the Commission could determine an appropriate benchmark or rate cap for interstate ICS rates in states where commissions (or commissions above a certain percentage) are paid. The rates for interstate ICS in states where commissions are prohibited, such as New York, may be instructive in setting such a benchmark. Such action would drive down the commission percentage that ICS providers are willing to bid for contracts or eliminate it altogether, thus substantially lowering the costs of providing service. The ICS rates themselves could become a determinative factor in the contract bids, which would lower the calling rates that inmates and their families face.

Additionally, the Commission could pursue a more flexible solution. For example, the Commission could convene discussions between DOCs, ICS providers, inmate advocates, and other stakeholders with the goal of agreeing on voluntary best practices or guidelines pertaining to commission levels and other terms in DOC contracts. The policies and contract terms of DOCs that have already eliminated or capped commissions could serve as a model for other DOCs. A similar collaborative process has proven effective in the cybersecurity context and

¹¹ *Id.*

¹² Unlike other individuals outside of prison facilities, inmates do not typically have access to other forms of communication, such as email, Internet messaging, social media, and video calling.

¹³ *See Notice ¶ 38.*

has been recommended with respect to rights-of-way fees charged by states or localities – fees that similarly include payments or commissions to the government based on a percentage of providers’ revenues and that can likewise impair competition.¹⁴

2. In addition to efforts to lower commission costs, the Commission should explore the competitive effects of the exclusive contracts between the DOCs and ICS providers. The Commission has long recognized that exclusive contracts can be pro-competitive and result in efficiencies that ultimately benefit consumers.¹⁵ Providers compete for the contract and its associated exclusivity. In some scenarios, however, exclusive contracts can foreclose competitors and thus be anticompetitive.¹⁶ When the competitive benefits are outweighed by the harms, the Commission has prohibited exclusivity clauses. The Commission should determine whether such action would be appropriate here.

Six years ago, the Commission concluded that exclusivity clauses in contracts between multiple dwelling unit (MDU) owners and video providers could not be enforced by video providers because the clauses denied tenants/residents their choice of video (and broadband) providers and foreclosed new entrants.¹⁷ The Commission found that “the person signing an

¹⁴ See FCC News Release, *Advisory Committee Adopts Recommendations To Minimize Three Major Cyber Threats, Including an Anti-Bot Code of Conduct, IP Route Hijacking Industry Framework and Secure DNS Best Practices*, at <http://www.fcc.gov/document/csric-adopts-recs-minimize-three-major-cyber-threats> (Mar. 22, 2012); *Connecting America: The National Broadband Plan*, Recommendation 6.6, at <http://download.broadband.gov/plan/national-broadband-plan.pdf> (Mar. 17, 2010).

¹⁵ See, e.g., *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, Report and Order and Further Notice of Proposed Rulemaking, ¶ 26 & n.76 (2007) (“MDU Order”).

¹⁶ *Id.*

¹⁷ *Id.*

exclusivity clause for a MDU may be a builder or manager whose interests do not coincide with those of the MDU's residents.”¹⁸

The ICS context is similar. Here, the DOCs (the landlords in the MDU context) enter into the exclusive contracts that govern which provider of voice services that inmates (the tenants) must use. Neither landlords nor DOCs are the ultimate purchasers of service; thus, they have little incentive to negotiate favorable terms of service for their tenants/inmates (or their families) who will be responsible for paying the bills. Indeed, inmates are in an even worse position than MDU tenants; inmates obviously are in no position to move to another residence if they are unhappy with the selected service provider's service or rates. And unlike others, inmates typically do not have other communications options, such as email and social media.

Allowing multiple ICS providers to serve inmates at a DOC could promote competition among ICS providers. While providers do compete for DOC contracts, as discussed above, that competition is based on the site commission rates ICS providers are willing to pay. If the benefits of competition were extended to the actual users of the service, inmates could select the provider with the lowest rates and therefore engage in more frequent or lengthy communication with their families.

At the same time, it is important to recognize the efficiencies from exclusive contracts. For example, providers of ICS must provide substantial security measures to the DOCs relating to the equipment to place the calls and the calls themselves (e.g., blocking, recording, etc.), given the nature of inmate calling. Because these measures impose additional costs on providers and competing providers would have to duplicate those efforts (or participate in some administratively-complex and burdensome unbundling process), a single provider of ICS may be

¹⁸ *Id.* ¶ 28.

the most efficient outcome. Calling rates may not in fact decrease with multiple providers. While the Commission has previously acknowledged that these considerations may justify exclusive contracts for ICS services,¹⁹ that analysis may be outdated in light of technological advances. As a result, the Commission should revisit its analysis. To the extent the Commission concludes that exclusive contracts are problematic and ICS providers cannot enforce exclusivity clauses, the Commission should then consider ways to encourage potentially reluctant DOCs to explore the use of multiple ICS providers.

CONCLUSION

For the reasons discussed above, the Commission should address inmate call rates that are too high by focusing on site commissions and exclusivity. The goal of these efforts should be to reduce rates for inmates and their families, which serves the public interest.

Respectfully submitted,

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¹⁹ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand and Notice of Proposed Rulemaking, 17 FCC Rcd 3248 (2002); *Billed Party Preference for InterLATA 0+ Calls*, Second Report and Order and Order on Reconsideration, 13 FCC Rcd 6122 (1998).