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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 12-375; DA 20-127; FRS 16478]

**Wireline Competition Bureau Seeks to Refresh the Record on Ancillary Service Charges Related to Inmate Calling Services**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; solicitation of comments.

**SUMMARY:** In this document, the Wireline Competition Bureau (Bureau) seeks to refresh the record on ancillary service charges imposed in connection with inmate calling services (ICS) in response to a remand from the United States Court of Appeals for the District of Columbia Circuit.

**DATES:** Comments are due **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Reply Comments are due **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Washington, DC 20554

**FOR FURTHER INFORMATION CONTACT:** Minsoo Kim, Wireline Competition Bureau, Pricing Policy Division, via phone at 202-418-1739 or via email at [Minsoo.Kim@fcc.gov](mailto:Minsoo.Kim@fcc.gov)

**SUPPLEMENTARY INFORMATION:** This is a summary of the Public Notice that the Federal Communications Commission's Wireline Competition Bureau released on February 4, 2020. A full-text version of the Public Notice is available at the following internet address: <https://docs.fcc.gov/public/attachments/DA-20-127A1.pdf>.

In this document, the Wireline Competition Bureau (Bureau) seeks to refresh the record on ancillary service charges imposed in connection with inmate calling services (ICS). In the *2015 ICS Order*, the Commission adopted rules limiting the ancillary services for which ICS providers could assess fees and capping the permissible charges for these ancillary services.

In *Global Tel\*Link v. FCC*, the United States Court of Appeals for the District of Columbia Circuit affirmed the Commission's plenary authority to cap ancillary service charges for interstate ICS, but held that, based on the record before the Court, the Commission lacked authority to regulate ancillary service charges for intrastate ICS. Because the Court could not "discern from the record whether ancillary fees can be segregated between interstate and intrastate calls," the Court remanded the issue to the Commission for further consideration. The Bureau seeks to refresh the record on ancillary service charges in response to the D.C. Circuit's remand.

The *2015 ICS Order* did not address whether any particular ancillary service charge could be segregated between interstate and intrastate calls given the Commission's imposition of identical rate caps for interstate and intrastate calls alike. The Bureau now seeks specific comment on whether each permitted ICS ancillary service charge may be segregated between interstate and intrastate calls and, if so, how. The Bureau asks commenters to explain in detail the basis for any claim that an ancillary service charge may be segregated, including addressing the range of different functions that might be associated with each charge where relevant. For example, a "Live Agent Fee" can be assessed when an ICS consumer uses an optional live operator to complete different types of ICS-related transactions. To the extent these individual transactions jurisdictionally differ (e.g., if a live operator is used by an ICS consumer to complete either an interstate or intrastate ICS call as well as to assist that same consumer with

paper billing), how should the Commission factor that transaction into applying the Live Agent Fee cap?

The Bureau also seeks comment on how the Commission should proceed in the event any permitted ancillary service is “jurisdictionally mixed” and cannot be segregated between interstate and intrastate calls. Jurisdictionally mixed services are “[s]ervices that are capable of communications both between intrastate end points and between interstate end points.” Jurisdictionally mixed services “are generally subject to dual federal/state jurisdiction, except where it is impossible or impractical to separate the service’s intrastate from interstate components and the state regulation of the intrastate component interferes with valid federal rules or policies.”

To the extent any permitted ancillary service charge or associated function is jurisdictionally mixed, the Bureau seeks comment on how best to apply the prescribed cap to that ancillary service or function pursuant to section 201(b) of the Communications Act of 1934, as amended. Should the Bureau simply apply the cap to jurisdictionally mixed services? Is it possible or practical to allow higher rates on only a portion of such ancillary services? How would such a rule apply here? Is it possible to separate the interstate and intrastate aspects of each such ancillary service charge or function? If so, how? If not, can the Commission proceed to regulate the entire ancillary service charge to the extent it is not jurisdictionally severable? One court has interpreted *GTL v. FCC* to hold that the Commission may not cap interstate ancillary fees “except to the extent those for interstate calls ‘can be segregated’ from intrastate calls.” Given the holdings of the Supreme Court and federal appellate courts on the issue, is that interpretation correct?

Finally, the Bureau asks commenters to (1) suggest specific rule language responsive to the D.C. Circuit’s remand, and (2) propose any additional steps the Commission should take to ensure, consistent with the D.C. Circuit’s opinion, that its actions on remand “properly reflect[]” the reforms adopted in 2015 and that providers of interstate ICS do not circumvent or frustrate the Commission’s ancillary service charge rules. For example, should the Commission prohibit an ICS provider that generates separate paper bills for interstate and intrastate ICS (merely to impose two separate paper bill charges on ICS consumers) from imposing a \$2.00 charge for the interstate paper bill and an additional charge for the intrastate bill? Alternatively, should the Commission lower the cap for any separate paper bills for interstate ICS to \$0.00 if an ICS provider charges \$2.00 or more for paper bills for intrastate services?

Pursuant to sections 1.415 and 1.419 of the Commission’s rules, interested parties may file comments and reply comments on or before the dates set forth in the Federal Register notice of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

*People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

*Ex Parte Rules.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that

memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation.

If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules. In proceedings governed by section 1.49(f) of the rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

*Additional Information.* For further information, contact Minsoo Kim of the Wireline Competition Bureau at (202) 418-1739 or [Minsoo.Kim@fcc.gov](mailto:Minsoo.Kim@fcc.gov).

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