



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

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WIRELINE COMPETITION BUREAU ADDRESSES APPLICABLE RATES FOR INMATE CALLING SERVICES AND EFFECTIVE DATES FOR PROVISIONS OF THE *INMATE CALLING SERVICES SECOND REPORT AND ORDER*

WC Docket No. 12-375

With this Public Notice, we remind providers of Inmate Calling Services (ICS) of the applicable rates for ICS and effective dates for provisions of the Federal Communications Commission's (Commission) 2015 order governing ICS.¹

Background. On November 5, 2015, the Commission released the *2015 ICS Order*, which undertook comprehensive reform of the ICS marketplace and, among other things, established new rate caps for both interstate and intrastate ICS calls, limited ancillary service charges, and adopted other measures designed to ensure that ICS rates are fair, just, and reasonable. Several parties filed motions asking the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to stay many of the rules adopted in the *2015 ICS Order*.² On March 7, 2016, the D.C. Circuit stayed two individual provisions of the Commission's ICS rules: 47 CFR § 64.6010 (setting caps on ICS calling rates that vary based on the size and type of facility being served) and 47 CFR § 64.6020(b)(2) (setting caps for single-call services).³ The D.C. Circuit's *March 7 Order* left the Commission's order and adopted rules undisturbed "in all other respects."⁴

Effective Dates of Rules. In accordance with the *2015 ICS Order*, the rules limiting charges for ancillary services – other than the rule related to single-call services, which the D.C. Circuit stayed – will take effect on March 17, 2016 for all ICS calls from prisons, and on June 20, 2016 for all ICS calls from

¹ *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763 (2015) (*2015 ICS Order*). This Public Notice supersedes the information in the previous Public Notice regarding the effective dates of the Commission's ICS rules and requirements. *Wireline Competition Bureau Announces the Comment Cycle and Effective Dates for the Inmate Calling Second Report and Order and Third FNPRM*, Public Notice, 30 FCC Rcd 14507 (WCB 2015).

² See Opposition of Respondent the Federal Communications Commission to Motions for Partial Stay at 2, *Global Tel*Link v. FCC*, No. 15-1461 (D.C. Cir. Feb. 12, 2016) (summarizing the motions ICS providers filed with the D.C. Circuit).

³ See *Global Tel*Link v. FCC*, No. 15-1461 (D.C. Cir. Mar. 7, 2016) (*March 7 Order*).

⁴ *Id.* at 2.

jails.⁵ Those same effective dates also apply to the rates for ICS calls involving TTY devices,⁶ the rule governing the treatment of taxes and fees,⁷ the rule prohibiting per-call or per-connection charges,⁸ the rule prohibiting flat-rate calling,⁹ and the rules governing minimum and maximum calling account balances.¹⁰ In addition, as noted below, the interim rate caps – \$0.21 per-minute for debit and prepaid ICS calls and \$0.25 per-minute for collect ICS calls – first established in the *2013 ICS Order*¹¹ and extended in the *2015 ICS Order*¹² remain in effect for interstate ICS calls, and will take effect for intrastate calls from prisons on March 17, 2016, and for intrastate ICS calls from jails on June 20, 2016.¹³

The rules requiring annual reporting and certification are subject to the Paperwork Reduction Act, as is the rule requiring consumer disclosure of ICS rates.¹⁴ Those rules will take effect upon publication in the Federal Register of a notice of Office of Management and Budget (OMB) approval.¹⁵ All other rules and requirements adopted in the *2015 ICS Order* are either in effect, or will take effect on March 17, 2016, except for the one-time Mandatory Data Collection, which is to occur two years after it is approved by OMB.¹⁶

Telmate Request. On March 11, 2016, Telmate, LLC (Telmate) sought clarification from the Wireline Competition Bureau as to the effectiveness of the interim rate caps with respect to intrastate calls.¹⁷ Contrary to certain statements made by Telmate, the interim rate caps will apply to all interstate

⁵ 47 CFR § 64.6020(a), (b)(1), (3)-(5). As noted above, 47 CFR § 64.6020(b)(2) has been stayed by the D.C. Circuit. *See March 7 Order.*

⁶ 47 CFR § 64.6040(a)-(b).

⁷ 47 CFR § 64.6070.

⁸ 47 CFR § 64.6080.

⁹ 47 CFR § 64.6090.

¹⁰ 47 CFR § 64.6100.

¹¹ *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107 (2013) (*2013 ICS Order*).

¹² *See* 47 CFR § 64.6030 (stating that “[n]o Provider shall charge a rate for Collect Calling in excess of \$0.25 per minute, or a rate for Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of \$0.21 per minute”). Under the Commission’s rule, the interim caps will “sunset upon the effectiveness of the rates established in section 64.6010.” 47 CFR § 64.6030. The D.C. Circuit has, for the time being, stayed the rates established under section 64.6010. *See March 7 Order* at 1-2. Thus, the interim caps have not sunset.

¹³ *See 2015 ICS Order*, 30 FCC Rcd at 12918, para. 336 (indicating that the definitions adopted in 47 CFR § 64.6000 take effect 90 days from publication in the Federal Register, but that rules and requirements governing the rates and fees for ICS in jails take effect 6 months from the date of publication); *see also infra*, addressing Telmate, LLC’s request for clarification.

¹⁴ 47 CFR § 64.6060 (imposing annual reporting and certification requirements); 47 CFR § 64.6110 (requiring disclosure of ICS rates).

¹⁵ *2015 ICS Order*, 30 FCC Rcd at 12918, para. 338.

¹⁶ *See id.* at 12862, 12918-19, paras. 198, 336, 339.

¹⁷ Letter from Brita Strandberg, Counsel to Telmate, LLC, to Matthew DelNero, Chief, Wireline Competition Bureau, FCC, WC Docket No. 12-375 (filed Mar. 11, 2016) (Telmate Letter); *see also* Letter from Marcus Trathen, Counsel to Pay Tel Communications, Inc., to Matthew DelNero, Chief, Wireline Competition Bureau, FCC, WC

(continued...)

and intrastate ICS calls. The interim rate caps apply to intrastate ICS calls by operation of the rules adopted in the *2015 ICS Order* and the terms of the D.C. Circuit's *March 7 Order*.¹⁸ Rule 64.6000(j) defines "Inmate Calling Service" as "a service that allows Inmates to make calls to individuals outside the Correctional Facility where the Inmate is being held, regardless of the technology used to deliver the service."¹⁹ The definition does not distinguish between interstate or intrastate calls, and thus the "Inmate Calling Services Interim Rate Cap" set forth in rule 64.6030 applies to both interstate and intrastate calls. More specifically, rule 64.6030 prohibits any "Provider" from charging rates for "Collect Calling . . . Debit Calling, Prepaid Calling, or Prepaid Collect Calling" in excess of the interim rate caps.²⁰ The terms "Provider," "Debit Calling," "Prepaid Calling," and "Prepaid Collect Calling" all incorporate the definition of "Inmate Calling Service" and thus apply to both interstate and intrastate calls.²¹ Likewise, the Commission's definition of "Collect Calling" encompasses both interstate and intrastate calls.²² Accordingly, and as discussed above, the interim rate caps will remain in effect for interstate ICS calls and will take effect for intrastate calls in accordance with the schedule adopted in *2015 ICS Order*.

For further information, please contact Gil Strobel, Wireline Competition Bureau, Pricing Policy Division, at 202-418-7084 or via e-mail at gil.strobel@fcc.gov.

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Docket No. 12-375 at 1 (filed Mar. 15, 2016) (contending that clarification is not necessary but agreeing with Telmate that the interim rate caps should not be construed to reach intrastate calls). The Wright Petitioners filed an "initial response" to the Telmate Letter later that same day. Letter from Andrew Jay Schwartzman, Counsel to the Wright Petitioners, to Matthew DelNero, Chief, Wireline Competition Bureau, FCC, WC Docket No. 12-375 at 1 (filed Mar. 11, 2016) (Wright Petitioners' Response).

¹⁸ Contrary to Telmate's contention (Telmate Letter at 3), it is not a "bizarre result" of the *March 7 Order* that ICS providers will, for the time being, be unable to charge as much for some categories of calls (calls from small jails, and collect calls from medium- and large-sized jails) as the permanent rate caps would have permitted. The Commission found that the cost of providing both interstate and intrastate ICS for most calls and facilities is much less than what providers are permitted to charge under the interim rate caps. *See 2015 ICS Order*, 30 FCC Rcd at 12775, para. 22 (adopting rate caps that are lower than the interim rate caps for the vast majority of calls). In view of that finding – and when for most calls, the interim rate caps permit ICS providers to charge much higher rates than would the permanent rate caps – the *March 7 Order* reasonably ensures that intrastate calls will not go unregulated while the *2015 ICS Order* is appealed. Insofar as Telmate contends that the interim rate caps cannot reasonably apply to intrastate calls because, "read literally," the definition of Inmate Calling Services "would also apply to international calls," *see* Telmate Letter at 3, the Commission made clear in the *2015 ICS Order* that "international calls are not subject to [the Commission's] rate caps" – a point that Telmate acknowledges. *See* Telmate Letter at 3 (quoting *2015 ICS Order*, 30 FCC Rcd at 12798, para. 69).

¹⁹ 47 CFR § 64.6000(j); *see also* Wright Petitioners' Response at 2-3 (discussing the effect of the Commission's revision of 47 CFR § 64.6000(j)).

²⁰ 47 CFR § 64.6030.

²¹ *See* 47 CFR § 64.6000(g), (p), (q), (s).

²² *See* 47 CFR § 64.6000(d) (defining Collect Calling as "an arrangement whereby the called party takes affirmative action clearly indicating that it will pay the charges associated with a call originating from an Inmate Telephone"); *see also* 47 CFR § 64.6000(k) (defining "Inmate Telephone" as "a telephone instrument, or other device capable of initiating calls" – not limited to interstate calls – "set aside by authorities of a Correctional Facility for use by Inmates").