

Virginia Association of Regional Jails

FCC Potential Action on Inmate Intra-State Call Rates

Prepared by: The Legislative Committee of the Virginia Association of Regional Jails

Synopsis:

The FCC is reportedly seeking to expand its current ruling, FCC 13-113- *Rates for Interstate Inmate Calling Services*, to include local/intrastate calling rates and fee structures for inmates housed in local and state correctional facilities.

Background:

Localities and states contract with private industry to provide local/intrastate/interstate calling services for inmate use. These companies provide the physical infrastructure, software, line/bandwidth, maintenance and administrative support necessary for the provision of these services. Additionally, the phone companies provide investigative tools to identify and interdict continuing criminal enterprise.

Call rates are established by each jail or state correctional agency consistent with local priorities. Subject to federal and state law, jails and prisons receive a portion of the revenue generated by inmate telephone calling in the form of revenue payments paid to the locality or state agency. Facility revenue calculation is generally based on call volume and not on ancillary corporate fees or charges.

To date, the primary opposition to FCC action has come from the industry, with supporting letters of opposition from various states and associations, with additional opposition from the American Jail Association (AJA). Until recently the opposition has been primarily limited to the imposition of interstate calling rate and fee limits.

There are numerous inmate phone companies; primary national providers are Global Tel*Link, Securus, Paytel and ICS. Global Tel*Link and Securus account for approximately 80% of the market. These companies along with AJA have led the opposition to FCC action.

In an attempt to address complaints from inmate families associated with inmate call rates, and what it perceives as the lack of fair and equitable rates, the FCC issued FCC 13-113 dramatically restricting the call rates and fee structure associated with interstate inmate calling. The rule proceeding was initiated by Acting FCC Chairperson Mignon Clyburn. The adopted date of the rule was August 9, 2013, and it was released on September 26, 2013 (see Attachment A). Enacted with a 2 to 1 vote (at the time two commissioner positions were vacant) subject to Commissioner Ajit Pai's dissenting opinion (see Attachment B).

The Commission is presently comprised of Chairman Tom Wheeler, Commissioner Mignon Clyburn, Commissioner Jessica Rosenworcel (voted in assent), Commissioner Ajit Pai, and Commissioner Michael O'Reilly.

As long as the FCC restrictions applied only to interstate calls, most local jails did not see a major impact on their inmate phone revenues. Now, however, the FCC has begun the process of moving forward to apply similar restrictions to local and intrastate calling rates and fees. **A ruling is anticipated later this summer.**

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Association's Questions/Reasons for Concern

Appropriation of Authority –Historically, the Supreme Court has required Federal agencies asserting regulatory authority over business transactions within a single state to demonstrate that those transactions have a significant impact on interstate commerce. With regard to telecommunications, the FCC has traditionally drawn a line between interstate and intrastate calling, with regulation of the latter being left to state legislatures and regulatory commission. It is our position that inmate phone calls originating and terminating within the same state and only incur Virginia taxes and tariffs do not significantly impact interstate commerce, and that the FCC therefore should not be permitted to expand its regulatory authority over such calls. Additionally, the FCC's imposed Universal Services Fund Tax does not apply to intrastate calls. The FCC's assumption of this authority would interfere with the lawful and appropriate oversight of state utility commissions to regulate intrastate commerce, effectively rendering them powerless to perform their statutory duties and responsibilities.

- Imposition on Public Policy – FCC action limiting intrastate call rates would infringe on the authority of localities/states to make legitimate public policy decisions about how best to fund their state and local correctional systems. For a significant number of counties and municipalities, the FCC action would override legitimate decisions of state and local elected officials about that funding. The authority to make those decisions should remain with the states and localities, in the absence of any significant burden on interstate commerce or other compelling interest that justifies Federal preemption.
- Abrogation of Contract/Financial Impact – FCC imposition of rate limitations on intrastate commerce would require the abrogation of existing contracts with inmate phone providers that are lawful under the statutes of Virginia and other states.

If allowed, FCC preemption of local/intrastate rates would have MAJOR budgetary ramifications. Inmate phone service contracts collectively provide a significant part of the operational and capital investment budgets of local and state agencies into the short and midterm future. Virginia jurisdictions are receiving over \$13.5 million dollars a year from this revenue stream (see below for impact on Regional Jails) that would have to be absorbed by the counties and cities. Of that \$13.5 million, the counties and cities served by regional jails would incur an adverse economic impact of \$8,106,783.

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2012 Jail Cost Audit Report - Regional Jails Only- Virginia Compensation Board

Jail Name	ADP	Local Contribution	Local Per Diem	Local Adverse Impact if FCC expands current rule
Albemarle/Charlottesville RJ	518	\$ 7,480,677.00	\$ 39.31	\$ 626,672.00
Blue Ridge Regional Jail	1147	\$ 9,274,192.00	\$ 22.14	\$ 733,887.00
Central Virginia Regional Jail	385	\$ 4,116,565.00	\$ 29.23	\$ 563,960.00
Hampton Roads Regional Jail	1187	\$ 10,581,025.00	\$ 24.35	\$ 566,156.00
Middle Peninsula Regional Jail	188	\$ 3,053,936.00	\$ 44.27	\$ 117,920.00
Middle River Regional Jail	526	\$ 279,667.00	\$ 14.33	\$ 117,920.00
New River Valley Regional Jail	789	\$ 6,168,821.00	\$ 21.12	\$ 414,957.00
Northern Neck Regional Jail	376	\$ -	\$ -	\$ 416,986.00
Northwestern Regional Jail	562	\$ 7,703,817.00	\$ 36.45	\$ 296,995.00
Pamunkey Regional Jail	427	\$ 4,814,653.00	\$ 30.92	\$ 282,025.00
Peumansend Creek Regional Jail	284	\$ 3,466,954.00	\$ 33.44	\$ 97,735.00
Piedmont Regional Jail	731	\$ 136,178.00	\$ 0.50	\$ 486,943.00
Prince William Manassas ADC	856	\$ 24,261,390.00	\$ 76.69	\$ 269,243.00
Rappahannock Regional Jail	1364	\$ 10,845,717.00	\$ 21.62	\$ 1,172,055.00
Riverside Regional Jail	1392	\$ 19,965,451.00	\$ 37.32	\$ 488,040.00
Rockbridge Regional Jail	94	\$ 849,437.00	\$ 24.12	\$ 44,400.00
Southside Regional Jail	205	\$ 1,040,562.00	\$ 13.90	\$ 88,051.00
Southwest Virginia Regional Jail	1664	\$ 11,168,822.00	\$ 18.32	\$ 654,276.00
Virginia Peninsula Regional Jail	395	\$ 4,476,246.00	\$ 31.02	\$ 121,192.00
Western Tidewater Regional Jail	662	\$ 3,732,759.00	\$ 15.42	\$ 328,007.00
Western Virginia Regional Jail	730	\$ 7,182,072.00	\$ 26.97	\$ 219,362.00

Impact to Regional Jails \$ 8,106,783

- Adverse Consequences** – FCC action limiting intrastate call rates would have a direct and material impact on the citizens the proposed rule is designed to “help”. Many correctional agencies use the revenue received from inmate phone contracts to provide rehabilitative and re-integrative programs that will be curtailed, with subsequent negative impact to the community.

Additionally, inmate phone companies provide vital investigative tools designed to detect and prevent the introduction of contraband, interdict and prosecute continuing criminal enterprise and support jail operations. Restrictions on these contracts and revenues could negatively impact the continued development of these technologies, with a material impact on public safety.

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- Unnecessary**– Contrary to FCC claims of fact and regardless of what may exist in other states, Virginia’s jails don’t charge excessive rates for calls to inmate families. Call rates are structured to reflect the demographics and policy priorities of their jurisdictions. On average the costs of an inmate initiated call in Virginia’s regional jails are listed below.

Average Cost of a 15 minute inmate initiated call in Virginia's Regional Jails

Debit				Collect			
Local	IntraLata	InterLata	Inter State	Local	IntraLata	InterLata	InterState
\$ 3.22	\$ 4.21	\$ 6.40	\$ 5.51	\$ 3.38	\$ 4.45	\$ 6.75	\$ 6.04

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