

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE: INQUIRY INTO REGULATORY REQUIREMENTS FOR ALTERNATIVE OPERATOR SERVICES COMPANIES	DOCKET NO. NOI-2019-0001
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REQUEST FOR LEAVE TO REPLY TO NEW ARGUMENT

The Office of Consumer Advocate (OCA), Iowa Department of Justice, requests leave to file these additional comments in reply to new argument advanced in reply comments filed October 4, 2019, by Global Tel*Link Corp. and its subsidiary Public Communications. Inc. (GlobalTel).

Iowa Code § 904.508A (2019) does not “mandate” the payment of site commissions. *See* Global Tel Reply at 3. The statute merely “authorize[s]” the Department of Corrections “to establish and maintain an inmate telephone fund for the deposit of moneys received for inmate telephone calls.” Evidently, only one state (Texas) mandates the payment of site commissions. *Global Tel*Link v. FCC* (“*Global Tel*”), 866 F.3d 397, 424 (D.C. Cir. 2017) (Pillard, J., dissenting in part and concurring in part). Several states prohibit them. *See* Human Rights Defense Center at 2. The Iowa Department of Corrections has reduced the per minute rate for calls from Iowa state prisons to \$.11. ISSDA at 1. This rate may include a site commission, but there is no requirement that it include a site commission.

Citing *Global Tel*, Global Tel argues that site commissions “are a cost of doing business.” Global Tel Reply at 3-4. With respect to interstate calls, the court’s 2-1

decision in *Global Tel* held only that the FCC could not “categorically exclude” the site commissions from the calculus used to set ICS rate caps. *Id.* at 412-14. The decision left to the FCC to assess on remand “which portions of the site commissions might be directly related to the provision of ICS and therefore legitimate, and which are not.” *Id.* at 414. The FCC, meanwhile, in an order not under review, had concluded that “most of the money providers pay to facilities is **not** directly related to the provision of ICS” and hence that “the bulk of site commission payments should **not** be considered in calculating the rate caps.” *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order on Reconsideration, FCC 16-102, 31 F.C.C.R. 9300 (Aug. 9, 2016), n. 94 (emphasis added). The most that can be said based on *Global Tel*, therefore, is that a small portion of the site commissions should be considered in determining the justness and reasonableness of a proposed rate. The dissenting *Global Tel* judge expressed an opposing view, as had the FCC—that the site commissions are “not . . . real costs of doing business, but [rather] an apportionment of profit between providers and correctional facilities.” *Id.* at 424 (Pillard, J., dissenting in part and concurring in part) (inner quotes omitted).

Global Tel argues the Board should not prohibit or otherwise regulate site commissions. Global Tel Reply at 4. After reviewing an extensive record, the FCC concluded it does not need to prohibit site commissions in order to ensure that rates are just and reasonable, that providers should be left to decide whether to pay site commissions and if so in what amount, and that the prudent course is to focus on the agency’s core ratemaking authority and not prohibit or specifically regulate site commission payments. Order on Reconsideration ¶¶ 35-37.

CONCLUSION

OCA supports this inquiry and looks forward to continuing to participate in it.

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