

CONTRACT ADDENDUM (2021 FCC ORDER)

BACKGROUND:

On May 24, 2021, the Federal Communications Commission (“FCC”) released its Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking (the “Order”) In summary, this Order (a) implements new interim interstate and international rate caps; (b) significantly changes the previous industry practice with respect to the rate caps applied to both interstate and intrastate calls; (c) modifies rules relating to ancillary and third party transaction fees; (d) modifies applicable regulation with respect to consumer reporting and cost recovery of site commissions; and (e) provides notice of further proposed rulemaking which will likely have further significant impact on the industry. Unlike prior FCC action in this area, the Order was **unanimous** and **bipartisan**.

APPLICATION OF FCC INTERIM RATE CAPS FOR INTERSTATE AND INTRASTATE CALLS:

The Order mandates new interim calling rate caps for all interstate calls for prisons and large jails. See Order, Paragraphs 3, 28, 40, 93-99. The Order also mandates a new approach with respect to intrastate and local calls. “[T]o the extent that a provider cannot determine that the physical endpoints of a call are within the same state, **that provider must comply with our new interim interstate rate caps for that call.**” Order, Paragraph 41 (emphasis added). Other than landline calls (which are a small percentage of overall calling traffic), Provider cannot currently make an accurate determination with respect to the physical endpoint of the called party, and, therefore, is required to apply the new calling rate caps to most intrastate and local calling traffic as well as all interstate calling traffic. To achieve rate uniformity between landline and non-landline calls, Provider intends to rate landline calls in the same manner as non-landline calls.

Accordingly, on or about October 26, 2021, if Customer has telephone calling rates that exceed the applicable calling rate cap (for prisons, \$0.12 per minute plus, if applicable, \$0.02 per minute contractually prescribed site commission allowance and, for large jails, \$0.14 per minute plus, if applicable, \$0.02 per minute contractually prescribed site commission allowance), those rates will be reduced to the applicable calling rate cap.

APPLICATION OF FCC INTERIM RATE CAPS FOR INTERNATIONAL CALLS:

The Order mandates a new interim rate cap for all international calls which is calculated using the interstate rate cap described above plus the average per-minute amount paid by the provider to its underlying wholesale international carriers to terminate international calls to the same “international destination” over the preceding calendar quarter (the “International Rate Cap”). See Order, Paragraphs 3, 178-184; 47 CFR § 64.6030(e).

Accordingly, on or about October 26, 2021, Provider will charge international calling rates equal to or less than the International Rate Cap.

ADJUSTMENT TO FACILITY COMPENSATION (CALLING):

The Order states as follows: “Where site commission payments result from contractual obligations or negotiations with providers, providers may recover from consumers no more than the \$0.02 per minute for prisons and \$0.02 per minute for larger jails, as proposed in the 2020 ICS Notice.” See Order, Paragraph 3. The FCC goes on to state that “the \$0.02 figure does not prevent or prohibit the payment of additional site commissions amounts to correctional facilities should the calling services provider and the facility enter into a contract resulting in the provider making per-minute payments to the facility higher than \$0.02,” however, in the next sentence, the FCC “limit[s] the providers’ ability to recover these commissions to \$0.02. See Order, Paragraph 168. This Paragraph concludes with the FCC seeking comment “on whether providers should be prohibited from

entering into any correctional facility contract that requires the payment of site commission payments with respect to interstate and international inmate calling services.”

FCC staff has advised Provider that the Order precludes providers from recovering, or charging, more than \$0.02 in their ICS rates for contractually prescribed site commission costs, and that no contractually prescribed site commission costs can be recovered in the provider-related rate component of the ICS rate for prisons and large jails and paid to a facility. See FCC Proceeding No. 12-375, Securus Ex Parte Notice filed August 23, 2021 and Securus Petition for Clarification filed September 17, 2021.

Accordingly, effective on or about October 26, 2021, the following will take place:

- The commission percentages (for prepaid, collect, and debit calling) and, if applicable, the prepaid calling card discount, are hereby reduced to 14.28%, and this percentage will apply to all call traffic.
- Provider will also pay Customer a fixed monthly commission of \$194,223.84 per month during the term of the Agreement. This fixed monthly payment and, if applicable, any other payments owed under the Agreement other than the 14.28% percentage-based commission described above will be funded by revenue generated from Provider’s products and services but will not be funded by telephone service revenue generated from Customer’s facility(s).
- For international call traffic only, the per-minute amount paid by the provider as a passthrough to its underlying wholesale international carriers to terminate international calls will not be commissionable.