

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)
) **WC Docket No. 12-375**
)
Rates For Interstate Inmate)
Calling Services)

COMMENTS OF

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THE D.C. PRISONERS' LEGAL SERVICES PROJECT, INC.,
CITIZENS UNITED FOR REHABILITATION OF ERRANTS,
PRISON POLICY INITIATIVE, AND
THE CAMPAIGN FOR PRISON PHONE JUSTICE**

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SUMMARY

The FCC has the sole authority to regulate interstate telecommunications services. The Petitioners have been urging the FCC to exercise its authority to ensure that “fair”, “just” and “reasonable” telephone rates are charged to inmates and their friends and families for more than 12 years. Despite the fact that the Petitioners filed two separate proposals to provide relief to the affected parties, the FCC has failed to act.

Since 2001, when the U.S. District Court directed the FCC to address this issue “with dispatch,” Inmate Calling Service providers have benefited from this inaction, and have made billions of dollars by charging rates that far exceed the cost of providing ICS services. As a result, inmates, their families, and our larger society, have suffered greatly. During this same time, the technology involved in providing ICS calls has led to enormous cost-savings for the ICS providers, but ICS customers have not enjoyed concomitant relief through reduced rates. The only parties benefiting from these technological developments are the ICS providers and the state, county and local prisons which divide the spoils of these excess profits through revenue-sharing practices.

As demonstrated herein, the lack of FCC oversight to ensure just and reasonable ICS rates, has caused significant harm to millions of people each year. Despite calls from many organizations, including the FCC’s Consumer Advisory Committee, the National Association of Regulatory Utility Commissioners, the American Bar Association, the American Correctional Association, and U.S. and state legislators, the FCC has failed to act.

The issuance of the Notice of Proposed Rulemaking in this proceeding reflects the FCC’s opportunity to end the abuses in the ICS industry and provide substantial relief to those who are directly and adversely affected. The urgent need for FCC action is clear, and there is no legitimate question that the FCC has the authority to provide the relief the Petitioners seek.

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COMMENTS

Martha Wright, Dorothy Wade, Annette Wade, Ethel Peoples, Mattie Lucas, Laurie Nelson, Winston Bliss, Sheila Taylor, Gaffney & Schember, M. Elizabeth Kent, Katharine Goray, Ulandis Forte, Charles Wade, Earl Peoples, Darrell Nelson, Melvin Taylor, Jackie Lucas, Peter Bliss, David Hernandez, Lisa Hernandez, Vendella F. Oura, along with The D.C. Prisoners’ Legal Services Project, Inc., Citizens United for Rehabilitation of Errants, the Prison Policy Initiative, and The Campaign for Prison Phone Justice (jointly, the “Petitioners”) hereby submit these Comments in response to the Notice of Proposed Rulemaking, released on December 28, 2012, in the above-captioned proceeding.¹

In the *NPRM*, the Federal Communications Commission (“FCC”) granted two long-pending petitions for rulemaking, filed in 2003 and 2007², which sought to establish just and reasonable “charges, practices, classifications, and regulations” relating to inmate calling

¹ *Rates for Interstate Inmate Calling Services*, Notice of Proposed Rulemaking, 27 FCC Rcd 16,629 (2013)(the “*NPRM*”). The *NPRM* was published in the Federal Register on January 22, 2013, and established March 25, 2013 as the deadline for filing Comments in this proceeding. 78 FED REG 4369 (rel. Jan. 22, 2013).

² See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Petition of Martha Wright et al. for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking, CC Docket No. 96-128 (filed Nov. 3, 2003) (the “*First Wright Petition*”); See also *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Petitioners’ Alternative Rulemaking Proposal, CC Docket No. 96-128, at 4-6 (filed Mar. 1, 2007) (the “*Alternative Wright Petition*”).

services (“ICS”).³ Despite the fact that both the *First Wright Petition* and the *Alternative Wright Petition* were separately released for public comment, and an extensive record was established for each, the *NPRM* requested that the record be updated, and specifically required the ICS providers to submit relevant cost data.⁴

As detailed below, the Petitioners urge the FCC to adopt benchmark ICS rates for interstate calls originating from public, private, state, county, and local correctional and detention facilities. The *Alternative Wright Petition* sought the establishment of benchmark ICS rates of \$0.20 per minute for debit calls, and \$0.25 per minute for collect calls, with no per-call charge. The *Alternative Wright Petition* demonstrated that these benchmark ICS rates were just and reasonable, and still would have delivered a fair return to the ICS providers. Despite this showing, the ICS providers repeatedly rejected the proposed benchmark rates, and the FCC failed to take action over the intervening 5 years.

During this period, while the Petitioners awaited FCC action, the state of the ICS industry has changed considerably. Only four ICS providers now account for nearly all telephone services provided to inmates, and two ICS providers, and Global Tel*Link Corporation (GTL) and Securus Technologies, control more 70% of the market. The consolidation of the ICS providers has led to large, centralized ICS systems, whereby all calls leaving correctional and detention centers are routed first to the ICS providers’ call centers, where the applicable security safeguards are applied. As discussed below, the consolidation of the ICS providers, and the centralized application of safety protocols, has led to the substantial reduction in the costs associated with providing ICS. While the *Alternative Wright Petition*

³ 47 U.S.C. § 201(b) (2012) (“All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.”).

⁴ *NPRM*, 27 FCC Rcd at 16,637.

sought to establish per-minute rates of \$.20 and \$.25 respectively, those rates are no longer just and reasonable.

Therefore, it is now incumbent upon the FCC to establish a benchmark ICS rate cap at **\$0.07 per minute, for debit, pre-paid, and collect calls, with no per-call rate, and no other ancillary fees or taxes, from all private, public, state, county and local correctional and detention facilities.** Any justification for rates above the proposed \$0.07 per minute benchmark ICS rate has evaporated during this long-pending proceeding. Moreover, this proposed rate will continue to provide the ICS providers a fair profit for their services, regardless of the size of the institution or the volume of originating calls from any given facility.

BACKGROUND

The individually-named parties to this proceeding are the original plaintiffs in a class action brought in the United District Court for the District of Columbia against Corrections Corporation of America in 2000, seeking to set aside exclusive telephone contracts among the private prisons and certain telephone companies. The matter was subsequently referred to the FCC in August 2001 to act “with dispatch.”⁵ These parties have prosecuted actively this action through The D.C. Prisoners’ Legal Services Project, Inc., before the FCC since 2001, and await a determination from the FCC on their proposals.

Citizens United for Rehabilitation of Errants (CURE) is a grassroots criminal justice reform organization with 18,000 members throughout the country. Approximately 60% of CURE’s members are incarcerated; many of their members have loved ones who are incarcerated. CURE has been working since the 1990s to reduce the high cost of calls for

⁵ *Wright v. Corrections Corp. of America*, C.A. No. 00-293 (GK), Memorandum Opinion, slip op. at 15 (D.D.C. Aug. 22, 2001). A copy is provided as Exhibit A.

incarcerated persons and their loved ones. Since 2000, CURE has conducted the eTc Campaign (Equitable Telephone Charges) whose sole purpose is to promote lower prison phone rates.⁶

The non-profit, non-partisan Prison Policy Initiative was founded in 2001 to examine how the American system of incarceration negatively impacts everyone, not just the incarcerated. In 2012, the organization prepared the report "The Price To Call Home: State-Sanctioned Monopolization In The Prison Phone Industry," on how the inmate calling service industry hurts families and undermines public safety.⁷

The Campaign for Prison Phone Justice is a national effort challenging high prison phone rates, including kickbacks to prisons from ICS providers. The Campaign is advocating across the country that those entities having authority over the rates should lower them where they are not reasonable. The Campaign is jointly led by the Media Action Grassroots Network, Working Narratives, Prison Legal News and diverse civil and human rights organizations. The campaign is also working with Participant Media as part of the social action campaign for Ava DuVernay's film *Middle of Nowhere*.

The Petitioners represent just a small fraction of the parties seeking ICS reform. As noted in the *NPRM*, there is substantial focus in and concern about the "wide disparity among interstate interexchange ICS rate levels and significant public interest concerns."⁸ However, this substantial interest is not a recent phenomenon.

The Petitioners, along with many other national, state, and local public interest and social justice organizations have been urging rate reform for years. Despite these efforts, the *First Wright Petition* and the *Alternative Wright Petition* remained pending before the FCC for years after the District Court directed the FCC to act "with dispatch." The *NPRM* asks the

⁶ See www.etccampaign.com.

⁷ www.prisonpolicy.org/phones/report.html (Sept. 11, 2012).

⁸ *NPRM*, 27 FCC Rcd at 16,629.

parties to refresh the record on many of the points that have been extensively and repeatedly addressed by the Petitioners and the ICS providers since 2003.

As discussed below, while the statutory obligations of the FCC have not changed over the intervening years, the “facts on the ground” have changed considerably. Technology has driven the actual cost of ICS calls to a fraction of what they were when the petitions were filed, thus eliminating any reasonable explanation for charging exorbitant ICS rates to customers. Since the parties to the ICS contracts share in the bounty of excessive profits earned under the agreements, there is no incentive for either party to take into account the interests of the actual customers. Thus, the need for the FCC’s intervention to establish “just and reasonable” rates is both real and immediate.

DISCUSSION

I. THE FCC HAS STATUTORY AUTHORITY TO ESTABLISH PETITIONER’S PROPOSED RATES.

In the *NPRM*, the FCC requests comment on the “scope of the Commission’s legal authority to regulate ICS.”⁹ The *NPRM* focuses both on Sections 276 and 201 of the Communications Act of 1934, as amended (the “Act”) as possible sources for such authority. The *NPRM* also raises issues with respect to the transmission of calls using VoIP technology, and asks whether the use of VoIP “impacts” the statutory analysis.¹⁰

As discussed below, there is no legitimate question that the Act provides the FCC with sufficient authority to regulate all ICS rates and practices. Section 276 was written specifically to apply to inmate telephone service,¹¹ and Section 201(b) prohibits unjust and unreasonable rates and practices.¹² These provisions apply to ICS providers regardless of the transmission

⁹ *NPRM*, 27 FCC Rcd 16,647.

¹⁰ *Id.*

¹¹ 47 U.S.C. § 276 (2012).

¹² 47 U.S.C. § 201(b) (2012).

service being used, and must lead to the FCC’s regulation of ICS rates in the form of a benchmark of setting maximum allowable per-minute rates.

1. Section 276 Of The Communications Act Requires FCC Action.

Congress granted the FCC explicit authority to regulate ICS under Section 276 of the Act. Section 276 directs the FCC to “establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every intrastate and interstate call,”¹³ and specifically includes “inmate telephone service in correctional institutions” in the definition of “payphone services.”¹⁴

In implementing this provision, the FCC has held that “fair compensation” to payphone service providers is not a one-way street. Instead, Section 276 requires that rates “balance the interests of [payphone service providers] and those parties that will ultimately pay” the required compensation, so that rates are “fair to both payphone owners and the beneficiaries of these calls.”¹⁵ The FCC ultimately utilized a “bottom-up” methodology to determine what a “fair” compensation rate would be in the context of payphone services. This “bottom-up” approach looked at the separate cost elements involved in a call, and established a rate that survived judicial review. In upholding the “fair” rate, the U.S. Court of Appeals determined that the FCC’s approach that involved the examination of the separate cost elements was appropriate.¹⁶

Moreover, federal courts have recognized the FCC’s jurisdiction under Section 276 to address ICS rates and practices. For example, in referring the *Wright* case to the FCC under the doctrine of primary jurisdiction, the district court said, “Congress has given the FCC explicit

¹³ 47 U.S.C. § 276(b)(1)(A) (2012).

¹⁴ 47 U.S.C. § 276(d) (2012).

¹⁵ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Report and Order, 14 FCC Rcd 2545, 2570-2571, 2579 (1999) *aff’d*, *Am. Pub. Commc’ns Council v. FCC*, 215 F.3d 51, 58 (D.C. Cir. 2000).

¹⁶ *Id.*

statutory authority to regulate inmate payphone services in particular.”¹⁷ Another federal district court has also recognized that “Section 276 directs the FCC to create and administer regulations concerning the provision of payphone services, including both interstate and intrastate calls,” and that “Section 276 grants the FCC specific authority to regulate inmate payphone service.”¹⁸

In fact, at least one of the ICS providers has already conceded the applicability of Section 276 to the instant matter. In particular, T-Netix (now Securus) stated:

As the Commission has consistently held, inmate payphones are governed by Section 276 just as are public payphones...the Commission may exert federal authority over the rates applied to inmate phones...[and]...Section 276 would operate to prohibit any state authority from imposing or permitting site commissions for inmate services.¹⁹

Finally, the U.S. Supreme Court has affirmed the role of Section 276 in prescribing rates, and noted the interplay between the authority of Section 276 to establish rates, and the agency’s authority under Section 201, discussed *infra*, to address unreasonable rates and practices.²⁰ Therefore, there can be no doubt that the FCC may use its authority under Section 276 to examine and to regulate ICS phone rates and practices.

2. Section 201 Of The Communications Act Requires Just And Reasonable Rates.

Section 201(b) provides the FCC with the broad legal authority to regulate ICS.²¹ Under Section 201(b), the FCC has general authority to prescribe rules and regulations to prohibit

¹⁷ *Wright v. Corrections Corp. of America*, C.A. No. 00-293 (GK), Memorandum Opinion, slip op. at 8 (D.D.C. Aug. 22, 2001) (citing 47 U.S.C. § 276(d)).

¹⁸ *Fair v. Sprint Payphone Svcs., Inc.*, 148 F. Supp. 2d 622 (D.S.C. 2001).

¹⁹ *See Initial Comments of T-Netix, Inc.*, filed May 24, 2002, pg. 6 (T-Netix merged with Evercom Systems, Inc. on September 9, 2004).

²⁰ *See Global Crossing Telecommunications, Inc. v. Metrophones Telecommunications, Inc.*, 550 U.S. 124 (2007) (“[Section 276] nowhere forbids the FCC to rely on §201(b). Rather, by helping to secure enforcement of the mandated regulations the FCC furthers basic §276 purposes.”).

²¹ 47 U.S.C. § 201(b) (2012).

unjust and unreasonable interstate charges and practices related to interstate and foreign communications.

As applied in this proceeding, Section 201(b) provides the FCC with the authority to (i) prohibit unjust or unreasonable rates, (ii) disallow an additional call set-up charge when inmates' calls are disconnected, mandate that ICS providers offer debit calling, and (iii) prohibit ancillary charges such as those imposed for adding additional funds to a pre-paid ICS account. Specifically, Section 201(b) of the Act provides that, “[a]ll charges [or] practices . . . for and in connection with [interstate or foreign communication by wire or radio] . . . shall be just and reasonable, and any such charge [or] practice . . . that is unjust or unreasonable is hereby declared to be unlawful.”²²

In addition, Section 201(b) authorizes the FCC to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.”²³ In the recent *Connect America Fund Order*, relying on Supreme Court precedent, the FCC confirmed that its “rulemaking authority under 201(b) *explicitly* gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies. . . .”²⁴

An ICS telephone call fits squarely within the definition of interstate or foreign communication by wire or radio, and the FCC may therefore prescribe rules and regulations to ensure that ICS charges and practices are just and reasonable. The language of Section 201(b) is expansive, granting the FCC jurisdiction to prohibit *all* unjust and unreasonable practices in connection with interstate or foreign communication by wire or radio. Section 201(b) makes no distinction between services provided at privately- and publicly-administered facilities.

Moreover, federal courts across the nation have determined that the FCC has primary jurisdiction to resolve this matter. For example, the 7th Circuit explicitly confirmed that a claim

²² *Id.*

²³ *Id.*

²⁴ *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663 (2011) (citing *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 380 (1999)).

that ICS providers charge unreasonably high rates falls “squarely within the FCC’s jurisdiction.”²⁵ The court further explained that a comparison of ICS rates to the rates of comparable calls of other persons is within the primary jurisdiction of the regulatory agency.²⁶

Indeed, as noted above, the District Court for the District of Columbia directed the class action Petitioners in this case to bring their claims to the FCC in accordance with the doctrine of primary jurisdiction. In directing the plaintiffs to file their complaints with the FCC, the court said, “First and foremost, the FCC is statutorily charged with handling all claims contesting the reasonableness of telephone rates. 47 U.S.C. § 201(b) . . . Consequently, courts routinely refer rate challenges to the FCC.”²⁷ The court continued, “Significantly, the FCC, in exercising its mandate to regulate the reasonableness of rates, is authorized to reject inclusion in Defendants’ cost-basis of the 25-50% commissions received by [ICS providers]. Therefore, insofar as [Petitioners’] challenge is to the commissions received by [ICS providers] and the impact those commissions have on increasing rates, the FCC can adequately address those issues by prohibiting long-distance carriers from considering commission costs in their cost-basis.”²⁸

Further, the FCC has recognized that the protection of the public “from unfair and deceptive practices or possible rate gouging” is a “substantial governmental interest.”²⁹ While the FCC declined to set benchmark rates in the *1998 Billing Party Preference Order*, this was due to the fact that, at that time, “rates [were] filed with the Commission and must conform to

²⁵ *Arsberry v. Illinois*, 244 F.3d 558, 563 (7th Cir. 2001) (“the complaint includes a claim under the Federal Communications Act...that the phone companies charge unreasonably high rates and also engage in rate discrimination. These claims are squarely within the FCC’s jurisdiction.”).

²⁶ *Id.* at 565 (“The plaintiffs are asking us to compare the rates on inmate calls with rates on comparable calls of other persons; that is what we cannot do but the regulatory agencies can.”).

²⁷ *Wright v. Corrections Corp. of America*, C.A. No. 00-293 (GK), Memorandum Opinion, slip op. at 6-7 (D.D.C. Aug. 22, 2001).

²⁸ *Id.* at 7.

²⁹ *Billed Party Preference for InterLATA 0+ Calls*, Second Report and Order and Order on Reconsideration, 13 FCC Rcd 6122, 6137 (1998).

the just and reasonable requirements of Section 201 of the Act.”³⁰ The FCC also believed that benchmarks might stifle the development of competition. However, in 2013, ICS providers do not submit their rates to the FCC,³¹ resulting in a substantial need for the FCC to step in, and establish “just and reasonable” ICS rates and practices in this proceeding.

Additionally, the FCC has specific authority to establish a benchmark ICS rate under Section 205(a) of the Act when addressing unjust or unreasonable rates.³² The FCC has used rate comparisons, benchmarks, and other factors to evaluate the justness and reasonableness of rates in a variety of proceedings, including rulemakings.³³ The authority provided to the FCC under Section 205(a) does not require a full evidentiary hearing, but rather can be carried out through a notice and comment rulemaking proceeding.³⁴

Specifically, the FCC examined this question at length in the *Return Represcription and Enforcement Processes* proceeding, where it considered both case law, and the requirements

³⁰ *Id.*, at 6156.

³¹ In fact, ICS providers have flatly refused to submit their specific cost data to the FCC, or to meet with the Petitioners’ counsel despite being specifically requested to do in August 2011. *See Letter of Stephanie A. Joyce, Esquire*, Counsel to Securus Technologies, dated September 20, 2011 (“The Commission has expressed interest in obtaining updated cost information from Securus...Securus will provide the Commission with information as to how its costs today differ from its costs at the time of the Wood Study, *expressed as a percentage figure*.”). Subsequently, in response to the FCC’s request for updated cost information, Securus filed an eight sentence letter, merely stating that its costs had increased 16%, but providing no data in support of that assertion. *See Letter of Stephanie A. Joyce, Esquire*, Counsel to Securus Technologies, dated October 11, 2011. A copy of the “updated cost information” submission is attached as Exhibit B.

³² 47 U.S.C. § 205(a) (2012).

³³ *See, e.g., Access Charge Reform*, First Report and Order, 12 FCC Rcd 15,982, paras. 75-87 (1997), *aff’d Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998); *See also Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12962, paras. 58, 70-75 (2000), *aff’d in pertinent part, Texas Office of Pub. Util. Counsel*, 265 F.3d 313 (5th Cir. 2001).

³⁴ *Connect America Fund*, 26 FCC Rcd at 17,870 (“In *AT&T v. FCC*, for example, the Second Circuit made clear that because section 205 does not require a hearing ‘on the record,’ the Administrative Procedure Act (APA) does not require a full evidentiary hearing in section 205 prescription proceedings. 572 F.2d 17, 21-23 (2d Cir. 1978). Moreover, the court found that the language of section 205(a) itself did not impose greater hearing requirements than the APA - concluding that AT&T ‘may not complain that it had anything less than a ‘full opportunity’ to be heard’ after receiving, in the context of the particular proceeding on review, three rounds of comments. 572 F.2d at 22.”)

under Section 553 the Administrative Procedure Act.³⁵ The FCC concluded that the requirements under Section 205(a) and the APA which:

generally define[s] what administrative procedures are required of federal agencies, does not require trial-type hearings in ratemakings. Only if an agency's enabling statute requires that rules 'be made on the record after opportunity for an agency's hearing' does Section 553 mandate trial-type procedures in addition to, or instead of, notice and comment procedures.³⁶

Therefore, since Section 205(a) does not require "on the record" proceedings, the FCC need only follow the standard notice and comment procedures in the instant proceeding.

Moreover, in *AT&T Corp. v. Business Telecom, Inc.*, the FCC based its reasonableness assessment on comparable rates in a formal complaint case.³⁷ In that case, AT&T and Sprint brought a complaint under section 208 of the Act against BTI, alleging that BTI's access rates were unjust and unreasonable under section 201(b).³⁸ The FCC compared BTI's access rates to other, comparable rates and found they were substantially higher without justification, thereby violating section 201(b).

In choosing to use a comparable rate method in determining whether BTI's rates were just and reasonable, the FCC recognized that it possesses broad discretion in selecting methods to evaluate the reasonableness of rates and stated, "[a]s long as the FCC makes a reasonable

³⁵ *Amendment of Parts 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Represcription and Enforcement Processes*, Report and Order, 10 FCC Rcd 6788, 6814, (1995) (citing 5 USC § 553).

³⁶ *Id.* (citing *United States v. Florida East Coast Railway Co.*, 410 U.S. 224 (1973), *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 US 519 (1978), and *AT&T v. FCC*, 572 F.2d 17 (2d Cir. 1978)).

³⁷ *AT&T Corp v. Business Telecom, Inc.*, 16 FCC Rcd 12312, 12324 (2001), recon. denied, 16 FCC Rcd 21750 (2001)(*"BTT"*). See also, *Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9940-41 (establishing benchmark based on comparable rates in a rulemaking proceeding)(*"Seventh Access Charge Order"*); *Beehive Tel. Co., Inc.*, 13 FCC Rcd 12,275, 12,285-87 (1998) (prescribing rates in a tariff investigation based on costs and investments of comparable carriers).

³⁸ 16 FCC Rcd 12,312 (2001).

selection from the available alternatives, its selection of rate evaluation methods will be upheld, even if the court thinks that a different decision would have been more reasonable.”³⁹

Finally, the FCC has also taken steps to regulate rates when it discovers a wide disparity between rate of compensation, and the actual cost for providing Video Relay Services. In declining to use past cost data, the FCC stated “we decline to perpetuate the large discrepancy between actual costs and provider compensation in the face of substantial evidence that providers are receiving far more in compensation than it costs them to provide service.”⁴⁰

Thus, when the market fails to constrain rates for a given service, the FCC looks to the rates charged for other services using comparable network functions to assess the reasonableness of the service rate in question. The FCC has recognized that “services offered under substantially similar circumstances using similar facilities lead to the expectation of similar charges.”⁴¹ In this case, the market fails to constrain ICS rates because, as in the CLEC access charge context, in which the FCC set benchmark rates, the party paying the rate is not the party choosing the carrier.⁴² Therefore, a FCC decision using comparable ICS rates in other states to establish benchmarks is consistent with its actions in *BTI* and *Beehive*.

3. FCC Has Authority to Regulate ICS Calls Using VoIP.

Finally, the FCC need not resolve the classification of interconnected VoIP service in order to regulate ICS rates and practices.⁴³ Instead, the FCC has authority to regulate ICS rates

³⁹ *BTI*, at 12,325 (citing *Southwestern Bell Tel. Co. v. FCC*, 168 F.3d 1334 (D.C. Cir. 1999)).

⁴⁰ *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 25 FCC Rcd 8689, 8695 (2010), *aff'd Sorenson Communications, Inc. v. FCC*, 659 F.3d 1035 (2011)(“agency ratemaking is far from an exact science and involves policy determinations in which the agency is acknowledged to have expertise.”).

⁴¹ *Beehive* at 12324.

⁴² *Seventh Access Charge Order*, 16 FCC Rcd at 9935.

⁴³ *NPRM*, 27 FCC Rcd at 16,647.

and practices whether ICS is provided solely through the PSTN or involving interconnected VoIP technologies.⁴⁴

First, while the FCC has not yet classified interconnected VoIP as either an information service or a telecommunications service,⁴⁵ the FCC has authority to regulate ICS provided with VoIP regardless of how the FCC ultimately decides to classify interconnected VoIP. If the FCC ultimately classifies interconnected VoIP as a telecommunications service, ICS provided through VoIP technologies explicitly will be subject to FCC jurisdiction and regulation as explained above, in the same manner as all other telecommunications services under Title II of the Act.

Even if the FCC did not exercise authority to regulate the rates for VoIP-based prison telephone services under Section 201 of the Act it has ample authority to regulate prison phone rates under Section 276 of the Act. Section 276(b)(1) provides:

the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that (A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation.⁴⁶

⁴⁴ The FCC defines interconnected VoIP services as services that (1) enable real-time, two-way voice communications; (2) require a broadband connection from the user's location; (3) require IP-compatible customer premises equipment; and (4) permit users to receive calls from and terminate calls to the PSTN. *E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10,245, 10,258-58 (2005) (*VoIP 911 Order*) (defining "interconnected VoIP service").

⁴⁵ See *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4910 (2004) (*IP-Enabled Services Notice*). The FCC has resolved many of the issues raised in the *IP-Enabled Services Notice* and has exercised its ancillary jurisdiction under Title I of the Act to apply various Title II regulations to VoIP providers. See *VoIP 911 Order*, 20 FCC Rcd at 10246; See also *Universal Service Contribution Methodology*, 21 FCC Rcd 7518, 7538-43 (2006) (*2006 Interim Contribution Methodology Order*), *aff'd in part, vacated in part sub nom. Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1244 (D.C. Cir. 2007); See also *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6954-57 (2007) (*CPNI Order*); See also *IP-Enabled Services*, Report and Order, 22 FCC Rcd 11,275, 11,283-291 (2007) (*TRS Order*); and See *Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order, 22 FCC Rcd 19,531 (2007) (*VoIP LNP Order*).

⁴⁶ 47 U.S.C. § 276(b)(1) (2012).

Nothing in this provision suggests that the regulatory authority given to the FCC is limited to any specific technology or means of providing payphone services or that it matters for purposes of the provision whether the service provider is considered a “telecommunications carrier” or some other kind of service provider. Furthermore Section 276(d) specifically includes “inmate telephone service in correctional institutions” among the categories of service regulated as “payphone service” under the Act.

Thus, even in the absence of Section 201, the FCC would have authority to regulate the compensation of providers of both interstate and intrastate “inmate telephone service in correctional institutions” to ensure that those providers are “fairly compensated”. While fair compensation should not be so low as to deny the service provider an opportunity to earn a reasonable profit such compensation is not “fair” if it is so high as to generate profit in excess of that required to support the network investment used to provide the service. Thus the rate for inmate telephone service is not “fair” if it is so low as to cause the service provider to fail and similarly is not “fair” if it overcompensates the service provider at the expense of a captive (literally) customer and members of his family who have no alternative service provider. The FCC has already found that commissions are not a component of the cost of providing prison phone services and are more appropriately characterized as additional profit. Since that profit does not support investment required to provide the inmate telephone services it should not be recovered through the rates for those services.

Finally, the FCC also has ample authority to regulate ICS rates and practices resulting from ICS calls handled using VoIP technology under its ancillary jurisdiction. Ancillary jurisdiction may be employed at the FCC’s discretion, when Title I of the Act gives the FCC subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is reasonably ancillary to the effective performance of its various responsibilities.⁴⁷ Both

⁴⁷ See *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968) (*Southwestern Cable*)(upholding certain regulations applied to cable television systems before the FCC had an

predicates for ancillary jurisdiction are satisfied in the context of regulating ICS rates and practices when provided through VoIP technologies.

As the FCC has previously concluded, interconnected VoIP service falls within the subject matter jurisdiction granted to the FCC under the Act.⁴⁸ Establishing a benchmark ICS rate, and prohibiting certain practices and ancillary fees connected with the ICS calls that use interconnected VoIP is reasonably ancillary to the effective performance of the FCC's responsibilities under Sections 1, 201, and 276 of the Act. To the extent ICS providers are replacing traditional ICS call transport with interconnected VoIP transport technology, it is critical that the same safeguards against unjust and unreasonable rates and practices apply both to legacy ICS services as well as to interconnected VoIP services.⁴⁹

The FCC has previously held that interconnected VoIP cannot be separated into intrastate and interstate communications, and therefore is subject exclusively to federal regulation.⁵⁰ In the *Vonage Order*, the FCC clarified that “this FCC, not the state commissions, has the responsibility and obligation to decide whether certain regulations apply to DigitalVoice and other IP-enabled services having the same capabilities. For such services, comparable regulations of other states must likewise yield to important federal objectives.”⁵¹ Therefore, the FCC has the jurisdiction to regulate ICS calls provided using interconnected VoIP.

express congressional grant of regulatory authority over that medium.). *See also United States v. Midwest Video Corp.*, 406 U.S. 649, 667-78 (1972) (critical question was whether FCC had reasonably determined new rules would further the achievement of long established regulatory goals.).

⁴⁸ *See VoIP 911 Order*, 20 FCC Rcd at 10,261-62 (“[I]nterconnected VoIP services are covered by the statutory definitions of ‘wire communications’ and/or ‘radio communication’ because they involve transmission of [voice] by aid of wire, cable, or other like connection . . . ‘and/or transmission by radio . . . ‘ of voice. Therefore, these services come within the scope of the Commission’s subject matter jurisdiction granted in section 2(a) of the Act.”).

⁴⁹ *See TRS Order*, 22 FCC Rcd at 11,288.

⁵⁰ *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22,404 (2004).

⁵¹ 19 FCC Rcd at 22,405.

Finally, from a policy perspective, ICS provided through traditional telecommunications and ICS provided through interconnected VoIP must be treated equally under the law. In practice, the end user customer cannot differentiate between ICS provided over traditional facilities or interconnected VoIP. Further, the same policies necessitating just and reasonable ICS rates and practices apply regardless of the technology used. Any precedent in other contexts tending to show that VoIP services are competitive and that end users are not subject to unjust rates is inapplicable in the ICS setting.⁵²

In the ICS context, the users (inmates and their families) do not have the ability to select between providers, which is true regardless of the actual facilities used to transport calls. Should the FCC apply regulations only to legacy ICS telecommunications services, providers would undoubtedly add a VoIP link from correctional facilities to the PSTN in an effort to avoid any regulations they found to be unfavorable. Therefore, the proposed benchmark ICS rates and practices must extend to interconnected VoIP ICS providers as well as those ICS providers that may use traditional telecommunications to deliver services.

⁵² In the *IP-Enabled Services Notice*, the FCC stated, “While several of the regulatory obligations discussed in previous sections of this Notice may have general applicability to any entity that seeks to offer voice services, many of the “economic” regulations set forth here have been written to apply specifically to cases involving a monopoly service provider using its bottleneck facilities to provide services to a public that is without significant power to negotiate the rates, terms, and conditions of those services . . . As a threshold matter, therefore, we seek comment on whether any of these economic regulations are appropriate in the context of IP-enabled services, given that customers often can obtain these services from multiple, intermodal, facilities- and non-facilities-based service providers.” *IP-Enabled Services Notice*, 19 FCC Rcd at 4912-13. In this proceeding, ICS providers are exactly the type of monopoly service providers using bottleneck facilities that economic regulations should apply to. The public is without significant power to negotiate the terms, rates and conditions of ICS, and therefore economic regulations are appropriate in the context of ICS provided over interconnected VoIP and traditional telecommunications services.

II. THE RATES PROPOSED HEREIN RESULTS IN “JUST AND REASONABLE” RATES REQUIRED UNDER THE COMMUNICATIONS ACT.

The *NPRM* sought comment on the per-call and per-minute aspects of the Petitioners’ proposal.⁵³ The Petitioners previously had proposed establishing the ICS per-minute rates at \$.20 for prepaid and debit calls, and \$0.25 for collect calls. As discussed in this section, based on the technological developments and consolidation of the ICS industry, the Petitioners now propose that the FCC establish a benchmark ICS per-minute rate for all interstate calls at \$0.07, regardless of the type of call (prepaid, debit, or collect) or the type or size of the institution, with no separate per-call charge, and no additional or ancillary fees.

Attached hereto as Exhibit C is a Declaration of Coleman Bazelon, a Principal in the Telecommunications and Media Practice Group at The Brattle Group, Inc., wherein he provides overwhelming evidence that the relevant costs associated with ICS calls are substantially lower than the rates being charged to inmates and their families. Moreover, his proposed benchmark ICS rate will continue to provide an economic incentive for ICS providers to continue to bid actively for new ICS contracts with state, county and local correctional and detention facilities.

1. Technological Developments Have Fundamentally Changed How Inmate Calls Are Handled.

The FCC last considered rules addressing ICS rates and practices was in 2002. Over the intervening years, the technology used by ICS providers has changed, and the ICS provider industry has consolidated substantially. The ICS industry now consists of three to five companies that are the sole competitors for the ICS contracts offered by state, county and local correctional and detention facilities. This has both technical and cost-of-service implications.

Specifically, the path of an ICS call originating from a prison or jail has changed substantially. Each of the major ICS providers now route each call through their centralized

⁵³ *NPRM*, 27 FCC Rcd at 16,637.

calling centers – which are located hundreds, if not thousands, of miles from both the caller and the person receiving the call. All of the security measures are applied at the centralized location.

For example, attached are diagrams of the ICS call architecture provided by the ICS providers in recent RFP proposals and FCC filings. Exhibit D includes diagrams from each of the main ICS providers. As shown there, the only on-premises equipment at each correction and detention facility is a VoIP router, several workstations for the site's guards, and the actual inmate telephone handsets. Once a call is initiated, it is forwarded to a centralized ICS calling center, where security measures are applied, and the call is then forwarded to the called party. Moreover, the operator-assisted collect call function has been eliminated, and these services are now automated and provided by the ICS provider without the intervention of a live operator.

This new ICS calling architecture demonstrates that the incremental cost of adding a new correctional or detention facility to an ICS provider's roster of clients is minimal, and almost all services provided by the ICS providers occur off-site. The only on-site work to be done after a new ICS contract is signed involves the facility owner selecting from a menu of computerized security-related options, and installing new telephones (if necessary) and the wiring to connect the phones to the VoIP router for outgoing calls. Once the call is routed, the ICS provider's centralized calling centers handle the rest of the call.

2. Technological Development Is Driving Consolidation Among ICS Providers.

Along with technological developments which permit ICS providers to centralize the calling functions for hundreds or thousands of facilities and take advantage of significant economies of scale, the ICS industry has rapidly consolidated. For example, GTL purchased four previously-independent ICS providers in the past three years.⁵⁴ In addition, Securus

⁵⁴ See www.gtl.net (last visited March 19, 2013) ("Effective October 12, 2011, Global Tel*Link acquired Conversant Technologies, Inc.; Effective August 1, 2011, Global Tel*Link acquired Value-Added Communications, Inc.; Effective November 10, 2010, Global Tel*Link acquired Public Communications Services; Effective June 16th 2010, facilities previously

Technologies is actually a merger of two previously-independent ICS providers, T-Netix, Inc. and Evercom Systems, Inc.⁵⁵ CenturyLink acquired Embarq Corporation in 2009, which had been spun off from Sprint Corporation in 2006.⁵⁶

Not only have the ICS providers reshuffled and merged, but the two leading ICS providers, GTL and Securus, have been the subject of acquisitions by private equity funds. GTL was first purchased by Veritas/Goldman Sachs for \$345 million in 2008. Two years later, the company was sold to American Securities for \$1 billion, resulting in a \$655 million profit for its investors in two short years.⁵⁷ Securus was purchased by Castle Harlan in 2011 for \$450 million from H.I.G. Capital which purchased and merged T-Netix and Evercom.⁵⁸ According to Standard and Poor's, the market is now highly consolidated, with Global Tel Link and Securus controlling more than 70% of the estimated \$1.2 billion annual market.⁵⁹

3. Despite Technological Developments And Consolidation There Exists a Wide Disparity in Rates.

One would expect that the technological developments discussed above, coupled with the efficiencies brought about by the consolidation of the ICS industry, would have led to the rapid lowering of ICS rates to inmates and their families as a result of lower costs. In addition, one

serviced by Inmate Telephone Inc. will hereafter be serviced by DSI-ITI, LLC...DSI-ITI, LLC is a wholly owned subsidiary of Global Tel*Link Corporation.”).

⁵⁵ See www.securustech.net/history.asp (last visited March 19, 2013).

⁵⁶ See www.centurylink.com (last visited March 19, 2013).

⁵⁷ See *The Price To Call Home: State-Sanctioned Monopolization In The Prison Phone Industry*, by Drew Kukorowski, rel. Sept. 11, 2012 (available at www.prisonpolicy.org/phones/report.html) (last visited March 19, 2013) (*citing* David Carey, The Deal Pipeline, American Securities Buys Global Tel*Link from Veritas, (Oct. 31, 2011), <http://www.thedeal.com/content/private-equity/american-securities-buys-global-tellink-from-veritas.php> (last visited Sept. 10, 2012); American Securities, <http://www.american-securities.com> (last visited Sept. 5, 2012)).

⁵⁸ See www.businessweek.com/news/2012-10-04/prison-phones-prove-captive-market-for-private-equity (last visited March 19, 2013).

⁵⁹ See www.bna.com/fcc-proposes-cap-n17179871636 (last visited March 19, 2013).

would expect that these factors would have led to more uniform rates among the correctional and detention centers served by the same ICS providers.

However, nothing could be further from the truth. As shown in Exhibit E, the ICS rates being charged to inmates bear no semblance to the actual cost of the ICS service being provided. Incredibly, the same ICS providers charge widely divergent rates for the same ICS in different states.

For example, GTL charges a first-minute rate of \$3.94 in Ohio for a collect call, but only charges \$0.048 per-minute in New York, with no separate first-minute rate. Of the rates in 29 states to which GTL provides service, the diverse range of the first minute call is astounding. In Rhode Island, GTL charges \$1.30 for the first minute of a collect call, and in Idaho, it charges \$3.80.

The range of per-minute rates is equally divergent. In South Dakota, GTL charges \$0.09 per minute for pre-paid and debit calls, but charges \$0.69 per minute in Maine. All told, a 15-minute call handled by GTL could cost anywhere from \$0.72 in New York, to \$17.14 in Ohio, and \$17.30 in Georgia and Minnesota.

A similar disparity exists among the rates charged by Securus. In Alaska, the first-minute charge for collect calls is \$3.95, whereas Securus merely charges a flat rate of \$0.65 in New Mexico, and \$1.00 in Missouri. For pre-paid and debit calls, the disparity is even more extreme, with no first-minute charges in five of the states it serves, but first-minute charges of \$3.95 in Alaska, and \$2.00 in Arizona.

The disparity among the per-minute rates charged by Securus is just as extreme, with rates between \$0.05 to \$0.89 for collect, pre-paid and debit calling. As with the incomprehensible range of GTL's calls, a 15-minute call handled by Securus ranges from \$0.59 in New Mexico, to \$8.00 in Arizona, and \$17.30 in Alaska.

Finally, ICS calls handled by CenturyLink offer no respite for inmates either. The first-minute rate charged in Alabama is \$3.95 for collect, pre-paid, and debit calls, but in Wisconsin

the rate is only \$.18. The per-minute rate charges range from 0.10 in New Hampshire to \$0.89 in Alabama. As a result, depending on the state in which an inmate is incarcerated, a 15-minute call could be \$2.70 if the inmate is located in New Hampshire or Wisconsin, but it could be \$11.85 in Nevada, or \$17.30 in Alabama.

4. ICS Providers Profit-Sharing Is Not A Legitimate Cost.

The ICS providers have long pointed to the commissions paid to state, county and local governments as the reason for this disparity in rates. These commissions are established by voluntary contract negotiations between the phone company and the procurement official for the correctional or detention facilities, and provide either a percentage of the revenue earned by the ICS provider, or, in some cases, a flat fee.

As shown in Exhibit F, these commissions ranged from 20% to 76.6% in 2012. Overall, the commissions paid to state correctional and detention facilities for ICS calls have been more than \$100 million per year for at least the last four years. Notably, this figure does not include the commissions paid to county and local correctional and detention centers. However, we do know that Los Angeles County, the largest county in the United States, receives a 67.5% commission, and an annual guarantee of \$15 million. See Exhibit G.

Regardless of the amount of the commissions paid to state, county and local governments, though, the FCC has determined that these payments are actually an apportionment of the profits earned from providing the ICS calls,⁶⁰ and cannot be classified as a cost for purposes of determining the rate to be charged ICS customers. In particular, the FCC stated:

[W]e find the cost data deficient because ICSPC treats the commissions paid to the inmate facilities as costs rather than profits. As noted earlier, these commissions are location rents that are negotiable by contract with the facility

⁶⁰ *NPRM*, 27 FCC Rcd at 16,643.

owners and represent an apportionment of profits between the facility owners and the providers of the inmate payphone service.⁶¹

Several states have also acknowledged that the incorporation of commissions paid to state, county and local correctional and detention facilities is unreasonable.⁶²

Thus, it is an unjust and unreasonable practice to require ICS customers to contribute *solely* for the purpose of providing excess profits to be divided between the ICS provider and the corrective agency. This conclusion is confirmed by the FCC's action in the *Connect America Fund* decision, where it determined "excess revenues that are shared in access stimulation schemes provide additional proof that the LEC's rates are above cost."⁶³ There, the FCC concluded that "how access revenues are used is not relevant in determining whether switched access rates are just and reasonable in accordance with Section 201(b)."⁶⁴

Moreover, while the rates referenced below are still too high, once the commissions are eliminated from the cost analysis, the ICS rates charged consumers are substantially lower. The following eight states do not permit commissions, and their 15 minute call-rates are substantially lower than those in states that do require commissions:

⁶¹ See *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand, 17 FCC Rcd 3248, 3262 (2002) ("*Inmate Payphone Order*"); See also *Arsberry v. Illinois*, 244 F.3d 558, 566 (7th Cir. 2001)(Posner, J.) (noting that the state of Illinois is a monopolist, "exercising as it does an iron control over access to the inmate market, [that] has rented pieces of the market to different phone companies" and that these companies will pass on much of the rental fee to their customers)

⁶² See *Evercom Systems Inc.*, Order Granting In Part, And Denying In Part, Petition For Reconsideration, Regulatory Commission of Alaska No. U-00-143, 2001 WL 1246903 (April 24, 2001) ("The inclusion of a commission requirement in a bid solicitation for regulated utility service conflicts with the regulatory objective of ensuring that utility costs are necessarily incurred and rates are just and reasonable...By allowing commissions to be recovered through rates, the governing regulatory body acquiesces in this commission-based bid process and promotes a system where the service provider has an incentive to increase the price of service regardless of the actual costs incurred."); See also *Investigate Long Distance Charges*, Corrected Order, Georgia Public Service Commission No. 14530-U, 2002 WL 31096880 (March 19, 2002) ("The Commission finds that the rates to be charged for ITS should relate to the costs incurred in providing the service, and that the commission paid to the GDC is not one of those costs.").

⁶³ *Connect America Fund*, 26 FCC Rcd at 17,876-17,877.

⁶⁴ *Id.*, at 17,876.

| <u>State</u> | <u>Collect</u> | <u>Pre-Paid</u> | <u>Debit</u> | <u>ICS Provider</u> |
|-----------------|----------------|-----------------|--------------|---------------------|
| California: | \$6.60 | \$6.60 | --- | GTL |
| Michigan: | \$3.45 | \$3.45 | \$3.15 | GTL |
| Missouri: | \$1.75 | \$0.75 | \$0.75 | Securus |
| Nebraska: | \$1.45 | \$1.25 | \$1.25 | GTL |
| New Mexico: | \$3.25 | \$2.25 | --- | Securus |
| New York: | \$0.72 | \$0.72 | \$0.72 | GTL |
| Rhode Island: | \$5.80 | --- | \$5.22 | GTL |
| South Carolina: | \$0.99 | \$0.75 | \$0.75 | GTL |

Contrasted with the states that do require the payment of commissions, and taking into account the ICS’s centralized calling systems, it should be clear that the commissions do, in fact, lead to a perverse result, whereby the ICS providers and the state, county and local governments have every opportunity to share in the excess profits, far beyond a “just and reasonable” rate that “fairly compensates” the ICS providers.

There is simply no other legitimate explanation for GTL to charge \$1.25 for a fifteen minute debit call in Nebraska, and charge \$11.61 for the same call in Delaware. It is equally unjust and unreasonable that Securus would charge \$0.75 for a fifteen-minute pre-paid call in Missouri, but yet charge \$5.10 in North Dakota and \$8.00 in Arizona.

In light of the FCC’s determination that the sharing of the revenue earned from ICS calls is a profit-sharing arrangement, it is clear that the widely-divergent spread among the same services being provided in neighboring states requires that the FCC exclude commissions from the costs to be included in determining “fair compensation.” Stated in another way, the usurious ICS rates and ancillary fees currently charged by the ICS providers in most states, which are not being charged in others, conclusively demonstrate that the anti-consumer practice of dividing the excess revenues cannot be taken into account when determining a “just and reasonable” ICS rate.⁶⁵

⁶⁵ *Id.*

5. ICS Providers Regularly Charge Excessive Ancillary Fees.

As shown above, the wide disparity in rates between states being served by the same ICS provider clearly demonstrates that the ICS rates are unjust and unreasonable. However, there are additional charges that are imposed by ICS Providers in addition to the per-minute and per-call charges.

For example, as shown in Exhibit H, GTL charges \$9.50 to open a new pre-paid or debit account. Next, an additional \$4.75 charge is added to the account when a party wishes to add \$25.00 to the debit card balance, and a \$9.50 charge is added to the account when a party wishes to add \$50.00. If there is a balance at the end the month, GTL charges \$2.89 to send a paper bill to the account holder. Finally, if an inmate is released, and a balance remains in the account, GTL charges \$5.00 for the account holder to receive its refund.

Securus imposes similar excessive charges. As shown in Exhibit H, Securus charges \$7.95 each time an account is funded over the internet or on the telephone. The only way to avoid this cost is to send a check, which imposes substantial delay and hardship on the customers. Despite the FCC's encouragement of mobile wireless communications, Securus charges a monthly fee of \$2.99 to maintain a wireless number on the account. In the event that the inmate is released, and there is a balance of more than \$4.95 in the account, Securus will issue a refund, but will first extract a \$4.95 penalty from the refunded amount. Since the ICS providers treat these ancillary charges as "cost-recovery", they do not consider this revenue when calculating the commissions paid to the correctional and detention facilities. Instead, these charges – untethered from actual costs – go straight to the ICS providers' bottom lines.

In addition, the FCC must use its authority to disallow additional set-up charges when inmates' calls are disconnected. When a call is disconnected because of an error by the ICS provider, charging the customer an additional set up fee is unjust and unreasonable. The record in this proceeding contains hundreds of complaints about the frequent disconnection of calls by the ICS providers. In addition, this issue has been the subject of a Pennsylvania PUC

proceeding,⁶⁶ and is the subject of a pending proceeding before the Massachusetts Department of Telecommunications,⁶⁷ where approximately 80% of the ICS customers who filed complaints noted frequent early-termination of calls.⁶⁸

The failure to offer debit calling is also an unjust and unreasonable practice violating Section 201. ICS providers have previously asserted that the uncollectible revenue associated with collect calls drives up costs, and therefore the ICS rates charged to its customers. Additionally, some inmates are unable to place collect calls to individuals whose phone provider does not have a billing relationship with the ICS provider.

Debit calling and prepaid accounts eliminate both problems. The failure to offer debit calling is unreasonable because it drives up the price of ICS calls without any justification, and is unjust because it inhibits inmates from calling certain individuals served by a LEC that does not have a billing relationship with the ICS provider, also without justification. Since each of the ICS providers have demonstrated the capability to provide such services in some states, *See Exhibit E*, it is unreasonable that such services are not available to all inmates.

III. The ICS Rates and Ancillary Fees Are Unjust And Unreasonable.

As noted above, Section 276 provides to the FCC the authority to establish maximum benchmark ICS rates. Moreover, Section 201(b) requires the FCC to ensure that the rates being charged the public are “just and reasonable.” Section 201 gives the FCC the power to find and declare unjust and unreasonable practices to be unlawful. In turn, Section 205 of the

⁶⁶ Jon E. Yount, AC-8297 et. al. v. T-Netix, Inc. and T-Netix Telecommunications, Inc., Penn. Public Utility Commission, Docket No. C-20042655, Opinion and Order, p. 12. (“We are troubled that T-Netix did not regard the inmates as customers, even when their calls were paid for using the inmates’ prepaid accounts. ... While the erroneous disconnections themselves are difficult for the inmates, the fact that T-Netix has done little or nothing to investigate complaints or to make refunds, when appropriate, is unacceptable.”).

⁶⁷ *See* Massachusetts Department of Telecommunications, Docket No. 11-16 (comments may be found at www.mass.gov/ocabr/government/oca-agencies/dtc-lp/dtc-11-16.html).

⁶⁸ *See Amendment 1 and Supplement to Petition*, at 6-14 at www.mass.gov/ocabr/docs/dtc/dockets/11-16/amend1supp51810.pdf.

Communications Act empowers the FCC to take the following steps when confronted with unjust and unreasonable rates and practices:

the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge or the maximum or minimum, or maximum and minimum, charge or charges to be thereafter observed, and what classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent that the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any charge other than the charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.⁶⁹

In the instant matter, therefore, the FCC has the power and the authority to find that the ICS rates and practices are unjust and unreasonable, and to prescribe the rate that it deems to be just, fair, and reasonable. As in *BTI* and *Connect Access Fund*, the FCC may look to comparable ICS rates being charged by ICS providers for similar services in other states, and establish rates and forbid unreasonable practices without having to engage in a full evidentiary hearing.

The Petitioners have demonstrated without doubt that that rates being charged for comparable services by the same ICS providers in different states are widely disparate. The Bazelon Declaration establishes that the actual cost for providing ICS service is so low that a maximum benchmark ICS rate of \$0.07 will still deliver to the ICS providers a fair profit for their services.⁷⁰ Therefore, the FCC must find that, based on the evidence presented herein, that the benchmark ICS rate of \$0.07 per minute, with no set up or other ancillary fees, is just and reasonable.

In addition, the FCC must find that the ancillary fees imposed on ICS customers are unjust and unreasonable. Such fees add to the effective price of inmate calls and are not related to the cost of providing the service. There is no cognizable reason why a party should pay \$9.50 to deposit \$50, twice as much as the fee to deposit \$25. Even if an ICS provider incurs some

⁶⁹ 47 U.S.C. § 205(a) (2012).

⁷⁰ *Bazelon Declaration*, pg. 17.

cost for the funding of the account, it is impossible to believe that the costs double when \$50 is added, rather than \$25. Further, there is also no legitimate reason why it should cost a customer \$5.00 to close an account, or \$3.00 to receive a bill in the mail. Simply put, these charges are far beyond what the costs that ICS providers could reasonably incur for providing the service, and they must be found to be unjust and unreasonable.

IV. The Marginal Location Methodology Is Inapplicable To ICS Rates.

The FCC also sought comment on the “Wood Study” filed by the ICS providers, which proposed to use the marginal location methodology to establish ICS rates.⁷¹ The ICS providers submitted the Wood Study in an effort to utilize a marginal location methodology developed to establish commercial payphone rates in 1999.⁷²

The Petitioners have previously addressed, at length, the inapplicability of the marginal location methodology contained in the Wood study. In particular, the Petitioners’ *Ex Parte* submission on November 5, 2009, contained a detailed discussion of why the marginal location methodology is irrelevant in the ICS context, demonstrating that the purported goal of “promoting widespread deployment” does not apply since there is already active competition to provide ICS services.⁷³

In fact, the FCC has already concluded that the marginal location methodology does not apply in the prison context. As the FCC explained in the *Inmate Payphone Order*:

In the [*Methodology Order*], the Commission, . . . to promote widespread payphone deployment, concluded that it should set a payphone compensation rate that would be large enough “to ensure that the current number of payphones is maintained.” To accomplish this goal, the Commission adopted a methodology that permitted a significant contribution to common costs. That policy has little

⁷¹ *NPRM*, 27 FCC Rcd at 16,638.

⁷² *Id.* (citing *Implementation of Pay Telephone Reclassification and Compensation Provisions Of The Telecommunications Act of 1996*, 14 FCC Rcd 2545 (1999)).

⁷³ *Ex Parte Submission*, November 5, 2009, pg. 4.

or no application in the prison context because . . . prison payphones are already profitable.⁷⁴

Thus, there is no apparent reason why the FCC is seeking comment on a price-setting approach whose application to the ICS context has already been completely repudiated by both the FCC and the Petitioners.⁷⁵ However, nothing in the intervening 10 years since the *Inmate Payphone Order* has changed the fact that ICS providers are competing on a high level for each and every ICS contract, which delivers an exclusive right to serve a high-volume market with no competitive alternatives, thus eviscerating the justification for utilizing the marginal location methodology.

V. The FCC Must Mandate A Fresh Look Period for Existing Contracts.

As originally proposed in the *Alternative Wright Petition*, the implementation of the new maximum benchmark ICS rate must be applied to all new ICS contracts. Moreover, the Petitioners have proposed that there be a one-year phase-in period for the new ICS rate on existing contracts. Finally, the Petitioners have proposed that the FCC prohibit ICS providers and correctional and detention facilities from attempting to avoid the application of the new ICS rate by simply renewing existing contracts. In the *NPRM*, the FCC has requested comment on this proposal, and sought information on the length of contracts, and their ability to be amended.⁷⁶

The Petitioners have demonstrated that contracts between ICS providers and correctional and detention facilities are regularly updated and amended. As noted in the Petitioner's *ex parte* submission on June 28, 2012, the Florida DOC contract with Securus was

⁷⁴ *Inmate Payphone Order*, 17 FCC Rcd at 3256 (2002) (quoting *Methodology Order*, 14 FCC Rcd at 2571).

⁷⁵ *See also Bazelon Declaration*, pgs. 26-27.

⁷⁶ *NPRM*, 27 FCC Rcd at 16,646.

amended on four separate occasions, each time changing the ICS rates.⁷⁷ Previously, the Petitioners referenced the ICS agreement with the Indiana DOC that had been amended as well.

Thus, the record has been established that the parties to ICS agreements regularly amend ICS contracts to revise terms, and change their obligations. Should the FCC adopt the proposed ICS rate, it must apply the one-year fresh look proposal to existing contracts to require the integration of the proposed ICS rate (or a lower rate) without further negotiation.

As noted in the *Alternative Wright Petition*, the FCC has confirmed that it has “undoubted power to regulate the contractual or other arrangements between common carriers and other entities, even those entities that are generally not subject to Commission regulation.”⁷⁸ In addition, the FCC has concluded that similar fresh-look mandates “do not constitute a regulatory taking” since the proposed maximum ICS rate will provide the “opportunity for adequate cost recovery.”⁷⁹ Finally, the FCC has invalidated exclusivity provisions in cellular service resale agreements,⁸⁰ and the U.S. Court of Appeals has confirmed that the FCC “has the power to...modify...private contracts when necessary to serve the public interest.”⁸¹

Therefore, there is ample precedent for the adoption of the fresh-look proposal. To ensure that the parties to ICS contracts do not circumvent or otherwise attempt to nullify the pro-consumer benefits the maximum benchmark ICS rate, the proposed one-year transition process can and must be implemented upon the adoption of the proposed ICS rates.

⁷⁷ *Letter of Lee G. Petro*, dated June 28, 2012, pg. 3 (responding to Securus allegation that contracts are not renegotiated “unless they are close to expiry.”).

⁷⁸ *See Alternative Wright Petition*, pg. 29 (citing *Promotion of Competitive Networks in Local Telecommunications Markets*, 15 FCC Rcd 22,983, 22,300, nt. 85 (2000)). *See also Local Competition Order*, 11 FCC Rcd 15,499, 16,044-45 (1996).

⁷⁹ *Connect America Fund*, 26 FCC Rcd at 17,998. *See also Connolly v. Pension Ben. Guaranty Corp.*, 475 U.S. 211, 224-25 (1986); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 605 (1944).

⁸⁰ *See TRAC Communications, Inc. v. Detroit Cellular Telephone Co.*, 4 FCC Rcd 3769 (CCB 1989), *aff'd*, 5 FCC Rcd 4647 (1990).

⁸¹ *See Western Union Telegraph Co. v. FCC*, 815 F.2d 1495, 1501 (D.C. Cir. 1987).

VI. THE BENEFITS ASSOCIATED WITH ADOPTION OF BENCHMARK RATES FAR OUTWEIGH ANY COGNIZABLE COSTS.

The *NPRM* requested a cost-benefit analysis supporting the proposed benchmark ICS rates. In particular, the *NPRM* stated that the FCC is attempting “to determine whether the proposals above will provide public benefits that outweigh their costs, and we seek to maximize the net benefits to the public from any proposals that we adopt.”⁸² The Petitioners provide below a discussion of the enormous benefits that arise from setting the proposed benchmark ICS rate of \$0.07 per minute.

As a preliminary matter, though, no cost-benefit analysis, based on any provision of the Communications Act, could override the absolute command of Section 201(b) that:

all charges, practices...in connection with...communication service shall be just and reasonable, and any...charge, practice...that is unjust or unreasonable is hereby declared to be unlawful.⁸³

Moreover, any cost-benefit analysis based on non-Communications Act factors would be *ultra vires*. For that reason, courts have rejected FCC attempts to balance carriers’ obligations under Section 201(b) against factors outside the FCC’s jurisdiction. For example, in *MCI v. FCC*, the court rejected, as *ultra vires*, the FCC’s attempt to “offset” damages from lower rates paid by MCI for some LEC access services, against MCI own damages from excessive LEC rates for other access services. Instead, the court held that such an offset would amount to adjudicating LEC claims against MCI for undercharges, over which the FCC has no jurisdiction.⁸⁴

The FCC has also rejected a similar cost-benefit approach in addressing traffic pumping in the *Connect America Fund Order*. There, it correctly held, in response to claims that access stimulation facilitated broadband deployment in rural areas, that “how...revenues are used is

⁸² *NPRM*, 27 FCC at 16,646

⁸³ 47 U.S.C. 201(b) (2012).

⁸⁴ 59 F.3d 1407, 1418-19 (D.C. Cir. 1995), *cert. denied*, 517 U.S. 1219 (1996).

not relevant in determining whether...rates are just and reasonable in accordance with Section 201(b).⁸⁵

The only Communications Act provisions that might provide a basis for declining to apply Section 201(b) in the ICS context would be the forbearance provisions of Section 10 of the Act.⁸⁶ The ICS providers, however, could not possibly demonstrate that the application of Section 201(b) to ICS calls is not necessary to ensure that ICS rates and practices are just and reasonable, or that such enforcement is not necessary for the protection of consumers.⁸⁷ Any attempt to excuse ICS providers from the application of Section 201(b) thus would amount to an end-run around the conditions placed on forbearance relief and would violate the Act for that reason as well.

Finally, claims that the requested relief would amount to FCC regulation of state and local correctional facilities cannot be considered “costs” of applying Section 201(b) to ICS rates and practices. As the D.C. Circuit explained in affirming the FCC regulation of carriers’ payments to entities not regulated by the FCC:

[N]o canon of administrative law requires us to view the regulatory scope of agency actions in terms of their practical or even foreseeable effects. Otherwise, we would have to conclude, for example, that the Environmental Protection Agency regulates the automobile industry when it requires states and localities to comply with national ambient air quality standards, or that the Department of Commerce regulates foreign manufacturers when it collects tariffs on foreign made goods.⁸⁸

As such, while the adoption of a benchmark ICS rate may impose some costs on parties outside the jurisdiction of the FCC, the FCC may not rely on these purported costs to avoid its statutory obligations under the Act. Even assuming, however, that the FCC could or should consider non-

⁸⁵ *Connect America Fund*, 26 FCC Rcd at 17,876.

⁸⁶ 47 U.S.C. § 160 (2012).

⁸⁷ 47 U.S.C. §§160(a)(1), 160(a)(2) (2012).

⁸⁸ *Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224, 1230 (D.C. Cir. 1999); *See also National Cable & Telecommunications Association v. FCC*, 567 F.3d 659 (D.C. Cir. 2009)(“We decline to put issues relating to their cable service outside the Commission's authority simply because those issues also matter to their landlords.”).

Communications factors in determining how to enforce Section 201(b) in the ICS context, all relevant factors overwhelmingly support Petitioners' request for relief.

1. Establishment Of A Benchmark ICS Rate Is Economically Efficient.

First, the adoption of a benchmark ICS rate will lead to additional efficiencies in the ICS industry. Specifically, the FCC has previously found that the adoption of price caps provide a powerful incentive for service providers to become more efficient. For example, when the FCC adopted price caps to apply to local exchange carriers' interstate access charges, the FCC stated that price caps would:

harness the profit-making incentives common to all businesses to produce a set of outcomes that advance the public interest goals of just, reasonable, and nondiscriminatory rates, as well as a communications system that offers innovative, high quality services.⁸⁹

The price cap regime was imposed because of a concern that traditional rate-of return regulation did not result in sufficient incentives to improve efficiency. Indeed, the FCC's previous reviews of rate-of-return regulation over many years led it to conclude that, under certain circumstances, rate-of return regulated firms have an incentive to raise rather than lower their costs by increasing investment in the asset base on which the regulated return is calculated well beyond the efficient level.⁹⁰

Subsequently, in affirming the decision of the FCC to apply certain accounting procedures in connection with the price-cap regime, U.S. Court of Appeals stated that:

Price cap regulation is intended to provide better incentives to the carriers than rate of return regulation, because the carriers have an opportunity to earn greater profits if they succeed in reducing costs and becoming more efficient.⁹¹

⁸⁹ See *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786 (1990), *aff'd*, *Nat'l Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

⁹⁰ *Id.*, at nt. 30. (citing the Averch-Johnson Effect, *Behavior of the Firm Under Regulatory Constraint*, American Economic Review, December 1962, pp. 1052-1069.).

⁹¹ *Bell Atlantic Telephone Co. v. FCC*, 79 F.3d 1195, 1198 (D.C. Cir. 1996).

As the Commission recently noted in the *Connect America Fund*, there can be a “race to the top” manifested by a practice of increasing investment in plant and equipment on which a regulated return may be earned.⁹²

A “race to the top” of sorts characterizes the prison phone industry as well, and the solution to this problem is to impose the proposed maximum benchmark ICS rate. The price terms for prison phone calls are determined not by the telephone consumers who make or receive the calls but instead by a third party (the prison administrator) who does not bear the cost of the call. In addition, the transactional process under which these services are purchased often involves bidding where the objective of the bid is not to determine which provider can supply the required services at the lowest price, but rather which provider will pay the highest commission to the prison administration in exchange for the exclusive right to provide prison services.⁹³

This process leads inevitably to a “race to the top” in bids for commissions that must ultimately be paid for by those who make and receive calls. The imposition of these higher prices, well in excess of the underlying costs, needlessly suppresses demand for prison phone calls with the consequent effects that have been demonstrated in the *Bazelon Declaration*.

Where the Commission was faced with a race to the top problem in the regulation of LEC access charge rates it decided to impose price cap regulation to better align LEC incentives with those that would obtain in a competitive market. Here the Commission should impose a maximum benchmark ICS rate for prison phone calls to create an efficiency incentive in the prison phone industry which is lacking today because of the nature of the procurement process used to acquire these services.

⁹² *Connect America Fund*, Sixth Order On Reconsideration And Memorandum Opinion And Order, FCC No. 13-16, ¶ 2 (rel. Feb. 27, 2013).

⁹³ *NPRM*, 27 FCC Rcd at 16,632 (citing *Inmate Payphone Order*, 17 FCC Rcd at 3276).

A maximum benchmark ICS rate will result in substantially reduced charges for prison phone calling as well as a continuing incentive to improve efficiency in the delivery of these services. Importantly, the imposition of a cap is in no way intended to render the provision of prison phone services unprofitable. To the contrary, as in the case of the LEC price cap regime, the imposition of the rate cap gives the service provider the opportunity to capture the gains achieved through greater efficiency and to become more profitable as those efficiencies are realized.

In light of the well-established precedent to support the adoption of a maximum benchmark per-minute ICS rate, and the FCC finding that a benchmark rate leads to economic efficiencies in other contexts, any cost-benefit analysis with respect to the ICS industry must find that the proposed benchmark ICS rate proposed herein will lead to beneficial results.⁹⁴

2. Lowering of Rates Will Have Positive Impact on Recidivism.

The adoption of a benchmark ICS rate that is just and reasonable will significantly reduce the cost of ICS calls for its customers. The impact will not only be felt in the pocketbook of the inmate and family members, but society will greatly benefit through the reduction of recidivism rates and the corresponding reduction in correctional costs.

Currently, there are more than 1.6 million people incarcerated in the United States. Among those that are incarcerated, 52% of the state inmates have at least one child, and 63% in federal prison have at least one child. At least 50% of the incarcerated are located more than 100 miles from home, and 10% are located more than 500 miles from home. While 700,000 inmates were released in 2012, at least 40% will likely return to prison within three years.

The positive impact of staying in contact with family members and friends has been extensively documented, and there should be no question at this point that society benefits from

⁹⁴ See *Bazon Declaration*, pg. 26-27.

a reduction in recidivism, beyond the cost savings.⁹⁵ As noted by The Vera Institute of Justice in its comments filed on March 14, 2013:

By promoting better outcomes for incarcerated parents, visitation can help reduce the negative effects of imprisonment and the stigma experienced by children of having an incarcerated parent. Maintaining relationships with their incarcerated parents can reduce children's risks of homelessness and of involvement in the child welfare system.⁹⁶

In addition, Congress has found that “inmates who are connected to their children and families are more likely to avoid negative incidents have reduced sentences” and that “released prisoners cite family support as the most important factor in helping them stay out of prison.”⁹⁷

A similar point was presented by the National Association of Regulatory Utility Commissioners (“NARUC”), which passed a resolution asking the FCC to act on the *Alternative Petition*, in 2012.⁹⁸ The General Counsel for NARUC followed up with an *ex parte* submission on December 28, 2012, urging the FCC to act and noting:

Excessive interstate rates mainly affect prisoners' family members – who have no other option but to pay the rates. Phone calls are the primary means of communication for many prisoners/families, because many prisoners are functionally illiterate and many are held in distant facilities, which makes in-person visitation difficult. Research indicates that family contact during incarceration leads to greater post-release success for prisoners, and thus less recidivism. High phone rates that economically limit family contact frustrate that positive outcome.⁹⁹

⁹⁵ Damian J. Martinez and Johnna Christian, *The Familial Relationships of Former Prisoners: Examining the Link Between Residence and Informal Support Mechanisms*, *Journal of Contemporary Ethnography* 38, no. 2 (2009): 201-24; Creasie Finney Hairston, *Prisoners and Their Families: Parenting Issues During Incarceration* (paper presented at From Prison to Home: The Effect of Incarceration and Reentry on Children, Families and Communities, a conference hosted by the U.S. Department of Health and Human Services and Urban Institute, Washington DC, January 30-31, 2002); Rebecca Naser and Christy Visher, *Family Members' Experiences with Incarceration and Reentry* *Western Criminology Review* 7, no. 2 (2006).

⁹⁶ *Comments of The Vera Institute of Justice*, filed March 14, 2013, pg. 2 (citing Christopher Wildeman and Bruce Western, “Incarceration in Fragile Families,” *Future of Children*, 20(2) (2010): 168).

⁹⁷ Second Chance Act of 2007, Pub. L. No. 110-199, § 3(7), 122 Stat. 657, 659 (2007).

⁹⁸ See Exhibit I.

⁹⁹ See *Letter from James Bradford Ramsey, General Counsel for NARUC*, dated December 28, 2012, CC Dkt. No. 96-128.

Finally, the American Correctional Association, which presumably represents prisons and other correctional interests, adopted a resolution in 2001, and reaffirmed it twice, stating that it is “sound correctional management that adult/juvenile offenders should have access to a range of reasonably priced telecommunications services” and that the “rates and surcharges that are commensurate with those charged to the general public for like services.”¹⁰⁰

From a cost perspective, the United States spends more than \$60 billion dollars each year on prison costs. On average, each prisoner in a state prison costs more than \$31,000 a year. As discussed in the Bazelon Declaration, if recidivism can be reduced by just 1%, the cost savings would be more than \$250 million per year, and a study by the Pew Center estimates that there would be a cost savings of \$653 million in one year if recidivism were to be reduced by 10%.¹⁰¹

Thus, the benefits arising from encouraging contact between family members and inmates are substantial, and there is every reason to believe that the adoption of the benchmark ICS rate proposed herein will go a long way towards encouraging such contacts. For example, as noted in the Bazelon Declaration, when New York eliminated its commissions, the costs of ICS calls went down, and the volume of calls increased to such a degree that automatic reductions built into the ICS contract were triggered:

The Department of Correctional Services’ one-year contract extension with Global Tel Link, Inc., which runs from April 1, 2007 through March 31, 2008, triggered a second rate reduction if call volume increased by at least 18 percent in the first six months of the contract. Call volume, as measured in completed calls, increased by 35 percent during that period (April 1 through Sept. 30) as compared to the prior six months (Oct. 1, 2006 through March 31, 2007), while the number of call minutes jumped by 36 percent.¹⁰²

¹⁰⁰ See Exhibit J.

¹⁰¹ See *Bazelon Declaration*, pg. 24.

¹⁰² See www.doccs.ny.gov/PressRel/2007/phoneratereduction.html (last visited March 23, 2013)(“Inmates’ families and loved ones have saved more than \$10.5 million based on the volume of calls since the lower rates went into effect. The cost of a 20-minute phone call - the average length of a call from an inmate – has dropped to \$2.68, from \$6.20 prior to April 1.).

There is no question, therefore, that lower rates will encourage contact between inmates and their families and friends, which will lead to bottom-line savings for states, counties, and local governments through lower recidivism rates.

3. Lowering Rates Will Provide Relief to Millions of Families.

The record in this docket has been supplemented by tens of thousands of personal stories relating to the impact of the egregious ICS rates that are currently being charged, and requesting immediate action by the FCC.¹⁰³

It is impossible to understate the importance of these stories portrayed through personal testimonies. The facts presented in the following quotes, along with the thousands submitted into the record, must be incorporated into any cost/benefit analysis:

As a military wife who has been through multiple deployments with my husband, I know the value and importance of communication when your loved one is away. How that is all that you have, and how much it means. With phone rates at such an incredibly higher cost for inmates families and friends it affects the morale of the inmate and the mental stability and health of their family when they cannot communicate more than maybe 1-2 calls a month or they have to choose between groceries and bills for a phone call. That is simply not right. Personally I talk to my friend whom is in a TDCJ unit, and it costs me over \$10 for 15 minutes. Besides his dad, I am all that he has on the outside looking out for him. He has told me over and over again just how much phone calls help him to stay positive, productive and out of trouble. *Letter from Amanda Callahan*, WC Docket No. 12-375 (filed Jan. 15, 2013).

The only thing that helps me make it through my day until my husband is able to come home is the phone calls I receive from him after he eats dinner and that's when I get my kiss goodnight. With him in Nevada, we live in Colorado I can't go see him every weekend; I can only afford to see my husband every four months. He has also stated that the phone calls are one of the only thing that keeps him calm. *Letter from Colette Croteau*, WC Docket No. 12-375 (filed Jan. 22, 2013).

With no internet/email access, limited postal delivery and the many other restrictions placed on prisoners, their families and even attorneys, telephones are a vital part of both prison and society. Allowing prison telephone fees to remain as high as they are, with no end in sight to the proposed increases, this matter is certainly against public policy, and I would ask, on behalf of myself, my family

¹⁰³ Almost three years ago, Senators Diane Feinstein and Patrick Leahy also urged the FCC to make a "swift examination" of this issue. In June 2010, the Chairman of the FCC stated that the FCC would "address the questions raised in this proceeding as quickly and equitably as possible." See Exhibit K.

and friends, and the millions of others affected by this issue to consider promulgating rules which would curtail these abuses. *Letter from Dale Shackelford*, WC Docket No. 12-375 (filed March 4, 2013).

My personal experience is, my wife has a disability, she's blind, she's on a care taker program with a fix income. I cannot call her because the phone calls cost \$9.20 for 15 minutes. I have a 19 year old son in college living on his own requesting advice but I can't afford to call him; both are in Detroit MI. This State [Pennsylvania] prison employment system only allows a small percentage of inmates to make 42¢ everyone else 19¢. Jobs are unavailable for almost half of the population do to the overcrowding. *Letter from Gregory Thomas*, WC Docket No. 12-375 (filed March 4, 2013).

My recent experience with the inmate phone system has me horrified that the excessive cost precludes most inmates from contact with their family at a time these ties need to be maintained. The thought that the correction system is receiving financial gain at inmates expense is troubling also. I was fortunate to be able to afford to pay for calls, but the phrase "highway robbery" came to mind each time I made a payment. Today, as I closed an account, I was told there was a \$5.00 fee to do so. This account with Offender Connect [Securus] had already charged \$25 to get \$20.25 credit toward calls, so after paying a \$4.75 service fee to get service I had to pay \$5 to close the account. Practices like these should not be acceptable. Do not let the incarcerated be extorted in this manner any longer. *Letter from Linda Humphrey*, WC Docket No. 12-375 (filed Feb. 12, 2013)

Recently in the past year I have been hospitalized several times. I nor my wife can write very well and have to have someone else do it for us. So we are forced to use the phone system. I have only been able to talk to my wife once in three months due to the cost of these calls. She not able to even send me money like I need it. These phone calls are making our bonds stronger yet there is only so much we can in a 15 minute span that has to last for 2 to 3 months before we can afford to do it again. This is a very serious hardship on me and my family that just keeps getting harder to endure. *Letter from George Fierras*, WC Docket No. 12-375 (filed Aug. 10, 2012)

Our son, at Mac Dougall Correctional Institute in Suffield, CT has been incarcerated since 1997. His collect calls originally cost us about \$20 for 15 minutes. In 2008 Global Tel Link offered a pre-paid contract which reduced the cost to \$12.97 for 15 min. Of course, that required us to pay up front. We try to maintain a minimum balance of \$25 (2 calls) which means that most of the time we have \$100 or more of our Social Security Retirement tied up in that account. *Letter from Tom and Dora Pickles*, WC Docket No. 12-375 (filed Aug. 6, 2012).

Going for so long without talking to my family has made it extremely tough to maintain any type of strong bond with them. Not to mention, there have been two deaths in my family, and my father's house burned down, all of which I learned from the news, and had to endure weeks of unanswered letters until I finally received a visit. **Yes, it is my fault I am in prison, but in how many ways will I be made to pay for my crime?** *Letter of T.L. Terry*, WC Docket No. 12-375 (filed Aug. 3, 2013)(emphasis added).

These personal testimonies represent just a fraction of the tens of thousands of additional personal stories and signatories to petitions urging the FCC to act on reforming the ICS rates.

Thus, while there may be costs associated with the adoption of the proposed benchmark ICS rate, it is clear that the benefits associated with the adoption of a benchmark ICS rate are enormous. Not only will the persons that actually use ICS to remain in contact with their family and friends experience lower rates, the correctional agencies will save more in reduced recidivism costs in the long run than they will lose in reduced commission payments in the short run. In light of its statutory obligations to prohibit unjust and unreasonable rates and practices, the FCC must adopt the benchmark ICS rates and practices proposed herein.

CONCLUSION

There is no question that reform is needed, nor is there any question that the FCC has the requisite authority to provide the relief requested herein. The evidence supporting the need for a maximum per-minute benchmark ICS rate is overwhelming, and the ICS providers only justification for the exorbitant rates is that they need higher rates to properly divide up the spoils with the authorities seeking ICS services. However, this is not a legitimate justification for imposing rates that bear no semblance to the cost of providing the service and thus, violate Section 201(b) of the Communications Act.

As such, the Petitioners respectfully request that the FCC adopt a benchmark ICS rate of \$0.07 per minute, with no separate set-up or per-call charge, and eliminate the usurious ancillary charges and practices such as “re-loading” and penalties to receive a refund. Further, to the extent that the ICS provider drops a call, the ICS customer must not endure reconnection fees. The record in this proceeding demonstrates that ICS customers are truly held “captive” to the ICS providers, and are forced to pay additional fees at every turn.

The FCC is the only agency that can provide respite from this extraordinary situation. The Communications Act provides the FCC with the requisite statutory authority, and the record in this proceeding demonstrates the urgent need for relief. ICS customers literally cannot afford to endure more delay. Therefore, the Petitioners respectfully request immediate action consistent with the evidence offered.

Respectfully submitted,

By: 

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March 25, 2013

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**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

WC Docket No. 12-375

**Rates For Interstate Inmate
Calling Services**

COMMENTS OF

**MARTHA WRIGHT, ET. AL.,
THE D.C. PRISONERS' LEGAL SERVICES PROJECT, INC.,
CITIZENS UNITED FOR REHABILITATION OF ERRANTS,
PRISON POLICY INITIATIVE, AND
THE CAMPAIGN FOR PRISON PHONE JUSTICE**

EXHIBITS A-K

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March 25, 2013

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARTHA WRIGHT, et al.

Plaintiffs,

v.

CORRECTIONS CORPORATION OF
AMERICA, et al.,

Defendants.

Civil Action
No. 00-293 (GK)

FILED

AUG 22 2001

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

ORDER

This matter is before the Court on the Motions to Dismiss Plaintiffs' Complaint by Defendant telephone companies and Defendant Corrections Corporation of America ("CCA"). Upon consideration of the motions, oppositions, replies, the Motions Hearing held on August 9, 2001, and the entire record herein, for the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED, that the Motions to Dismiss the Complaint under the doctrine of Primary Jurisdiction are granted; it is further

ORDERED, that this case is dismissed without prejudice; it is further

ORDERED, that parties are directed to file the appropriate pleadings with the FCC to ensure that the issues raised in this lawsuit are presented to the FCC.

OK

August 22, 2001

Date

Gladys Kessler

Gladys Kessler
United States District Judge

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARTHA WRIGHT, et al.

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CORRECTIONS CORPORATION OF
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NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

MEMORANDUM OPINION

This matter is before the Court on the Motions to Dismiss Plaintiffs' Complaint by Defendant telephone companies and Defendant Corrections Corporation of America ("CCA"). Upon consideration of the motions, oppositions, replies, the Motions Hearing held on August 9, 2001, and the entire record herein, for the reasons stated below, the Court grants the Motions to Dismiss the Complaint under the doctrine of primary jurisdiction.

I. BACKGROUND

This case involves a putative class-action challenge to the rates and terms arising from the long distance telephone service arrangements between telephone companies and prison facilities operated by the Corrections Corporation of America, Inc. ("CCA").

The Court sincerely appreciates the informative and thoughtful contribution of Mr. John E. Engles, Deputy Associate General Counsel, Federal Communications Commission, during the Motions Hearing.

Plaintiffs may be divided into two groups: (1) inmates incarcerated at CCA facilities; and (2) family members, legal counsel and other recipients of inmate calls. Defendants are CCA¹ and various telephone companies.²

Specifically, Plaintiffs challenge the "exclusive dealing contracts" between CCA facilities and Defendant telephone companies. Under these contracts, each CCA facility grants to one telephone company the exclusive right to provide telephone services to that facility's inmates; in return, CCA receives a commission ranging from 25-50% of the revenues generated by the telephone companies from inmate calls. The exclusive dealing contracts further provide that the only way inmates may communicate by telephone is through a collect call-only feature, which charges the highest operator assisted rate.³ Inmates cannot receive calls from outside the facility, and neither inmates nor recipients of

¹CCA is a private for-profit corporation which operates eighty prisons and jails in twenty-six states pursuant to agreements with state and local governments. CCA owns and operates four institutions housing D.C. prisoners: Central Arizona Detention Center; the Torrance County, New Mexico, Detention Center; Northeast, Ohio Correctional Center; and District of Columbia Correctional Treatment Facility.

Defendant telephone companies are Evercom Inc. ("Evercom"), American Telephone and Telegraph Company ("AT&T"), MCI Worldcom Communications Inc. ("MCI"), Pioneer Telephone Corporation ("Pioneer") and Global Telecommunications Link ("Global Tel Link").

² Plaintiffs allege, for example, that for a typical long-distance call, a Plaintiff must pay an initial surcharge of \$4.00 and then \$.55 per minute thereafter.

inmate calls are permitted to use other long-distance carriers or take advantage of less-expensive calling options for inmate-initiated calls.⁵

Plaintiffs allege that these exclusive dealing contracts have resulted in exorbitant and unconscionable long distance rates, which severely burden communication between inmates and their family members and counsel. They also claim that the terms of these contracts, rather than furthering any security purpose or covering the cost involved in providing phone service to inmates, are primarily designed to enrich Defendants (through the inflated rates and high commission fees, at the expense of the recipients of inmate calls. They allege violations of the First Amendment, Fourteenth Amendment, Sherman Anti-Trust Act, 15 U.S.C. § 1 et seq., Communications Act, 47 U.S.C. § 151 et seq., and D.C. state law. Plaintiffs seek monetary damages and an injunction against the exclusive dealing contracts. All Defendants have moved to dismiss the Complaint for failure to state a claim and/or for lack of jurisdiction.

⁵ For example, Plaintiffs allege that they are prohibited from using calling features such as direct-dial, dial around, and 1-800-COLLECT, all of which would result in rates considerably cheaper than the collect call-only rates mandated by the exclusive dealing contracts. See Pls.' Opp'n at 2; Compl. ¶¶ 9-15, ¶¶ 42-45, ¶¶ 51-72. They also allege that debit cards are not permitted in most CCA facilities, even though debit cards are regularly used in prisons operated by the Federal Bureau of Prisons. See Pls.' Opp'n, Ex. A ("Federal Bureau of Prisons Memorandum").

II. STANDARD OF REVIEW

A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Davis v. Monroe County Bd. of Educ., 119 S. Ct. 1661, 1676 (1999). For purposes of ruling on a motion to dismiss, the factual allegations of the complaint must be presumed to be true and liberally construed in favor of the plaintiff. Shear v. National Rifle Ass'n of Am., 606 F.2d 1251, 1253 (D.C. Cir. 1979).

III. DISCUSSION

Defendants raise a number of jurisdictional bars to reaching the merits of this case.⁶ Among other things, they urge that the Court should exercise its discretion to refer Plaintiffs' action to the FCC under the doctrine of primary jurisdiction. Specifically, Defendants argue that Plaintiffs' suit is primarily a challenge to the reasonableness of the collect call-only phone rates charged. Defendants maintain that because the FCC is statutorily charged with evaluating and regulating the reasonableness of phone rates, it is the forum best-suited to resolve Plaintiffs' claims.

The doctrine of primary jurisdiction is properly invoked in

⁶ Defendants Global, AT&T, and Pioneer assert that the Complaint should be dismissed for lack of personal jurisdiction. Defendant AT&T also asserts that the action should be dismissed against it for failure to join an indispensable party.

situations where a court has jurisdiction over a claim or case but it is likely that the case will require "resolution of issues which, under a regulatory scheme, have been placed in the hands of an administrative body." See Western Pacific R.R. Co., 352 U.S. 59, 64 (1956). Referral to the administrative agency does not deprive a court of jurisdiction, and a court has discretion either to retain jurisdiction or, if the parties would not be unfairly disadvantaged, to dismiss the case without prejudice. Reiter v. Cooper, 507 U.S. 258, 268 (1992).

No rigid formula exists for applying the doctrine of primary jurisdiction. Instead, invocation of the doctrine rests both on the advantages of allowing an agency to apply its expert judgment and on a concern for achieving uniform outcomes. Alinet Communications Service, Inc. v. National Exchange Carrier Association, Inc., 965 F.2d 1118 (D.C. Cir. 1992). Expert judgment extends to policy judgments needed to implement an agency's mandate. Id. at 1120. Applying these principles to the case at hand, the Court concludes that Plaintiffs' claims are best resolved by initial consideration by the FCC and application of the primary jurisdiction doctrine.

A. Advantages of Agency Expertise

Although Plaintiffs have advanced numerous constitutional and statutory claims in this action, what is common to all is the complaint that the rates contained in the exclusive dealing

contracts between CCA and Defendant phone companies are unreasonable. Plaintiffs allege that those rates are inflated in part because of the 25-50% commissions received by Defendant CCA. Any remedy would require the Court to order one of two arrangements: (1) that the exclusive dealing contracts contain lower phone rates; or (2) that CCA offer inmates a choice of phone carriers or calling options.

Either arrangement, however, would require a determination of complex economic and technical issues, such as whether telephone rates can be lowered or whether the alternative telephone arrangements Plaintiffs seek are technologically feasible given the exigencies of the prison environment. As explained below, these are issues that have been and continue to be best addressed by the FCC.⁷

First and foremost, the FCC is statutorily charged with handling all claims contesting the reasonableness of telephone rates. 47 U.S.C. § 201(b) ("All charges, practices, classifications and regulations...shall be just and reasonable...[.]"). Consequently, courts routinely refer rate challenges to the FCC. See e.g., Ambassador, Inc. v. U.S. 325 U.S.

⁷ During the Motions Hearing, the Court asked Plaintiffs counsel to propose a remedy that would redress the injuries in this case. See August 9, 2001 Motions Hearing Transcript ("Motions Hearing Tr.") at 24:17-26:19. The inability of counsel to articulate a remedy that this Court could enter demonstrates the complexity of the issues involved and the need for FCC guidance on how best to resolve this matter.

317, 324 (1945) (holding that "where the claim of unlawfulness of a [tariffed] regulation is grounded in lack of reasonableness, the objection must be addressed to the [FCC]"); Western Pacific R.R. Co., 350 U.S. at 68-70 (holding that "both the issues of tariff construction and the reasonableness of the tariff as applied were initially matters for the [agency's] determination"); AT&T Co. v. INR Capital Corp., 888 F.Supp. 221-244 (D. Mass. 1995) ("[t]here is no doubt that a determination of the reasonableness or discriminatory nature of common carrier rules and charges is squarely at the heart of the FCC's mandate").³

Significantly, the FCC, in exercising its mandate to regulate the reasonableness of rates, is authorized to reject inclusion in Defendants' cost-basis of the 25-50% commissions received by CCA. Therefore, insofar as Plaintiffs' challenge is to the commissions received by CCA and the impact those commissions have on increasing rates, the FCC can adequately address those issues by prohibiting long-distance carriers from considering commission costs in their cost-basis. See Motions Hearing Tr. at 48:16-49:5 FCC has authority to order that Defendants' rates not reflect commissions

³ Contrary to Plaintiffs' contention, the D.C. Circuit's recent decision in MCI Worldcom, Inc. v. FCC, 209 F.3d 750 (D.C. Cir. 2000), does not affect the FCC's jurisdiction to regulate the rates of long-distance carriers. The D.C. Circuit decision prohibited the filing of tariffs for long-distance carriers, but in no way altered the FCC's statutory duty to ensure that the rates of those carriers are reasonable and non-discriminatory. See Motions Hearing Tr. at 8:9-20; 11:5-12.

or other considerations in cost-basis).

Second, Congress has given the FCC explicit statutory authority to regulate inmate payphone services in particular. 47 U.S.C. § 275(d) (providing authority to FCC to regulate payphone service, including "the provision of inmate telephone service in correctional institutions."). Indeed, the FCC has considered and continues to consider the issue of inmate calling services. See In the Matter of Billed Party Preference For Inmate C- Calls, Second Further Notice of Proposed Rulemaking, CC Docket No. 92-77, 11 F.C.C. Rcd. 7274 (rel. June 5, 1996) (declining to require billed party preference in the prison context for security reasons) (Attached as Ex. 18 to Def. AT&T's Mot. to Dismiss); In the Matter of Billed Party Preference For Inmate C- Calls, 13 F.C.C. Rcd 6122, Second Report and Order, CC Docket No. 92-77 (rel. Jan. 29, 1998) (declining to impose price benchmarks or rate caps) (Attached as Ex. 19 to AT&T's Mot. to Dismiss). The FCC therefore has already developed the necessary specialized expertise on the underlying telephone technology, the telephone industry's economics, practices and rates, and the feasibility of alternative phone systems that provide adequate security measures.

Third, the FCC has the explicit statutory authority to consider the reasonableness of Plaintiffs' request to have access to other calling options, such as 1-800 services and dial around. See Motions Hearing Tr. at 19:15-24 (the statutory requirement that

carriers make services available upon reasonable request provides the FCC with authority to determine whether Plaintiffs' request for different calling options is reasonable; 47 U.S.C. 201(a) ("It shall be the duty of every common carrier . . . to furnish such communication service upon reasonable request.").

Fourth, the FCC is currently considering challenges to the very same rates and practices challenged by Plaintiffs in this action. In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Public Notice, CC Docket, No. 98-128, 14 F.C.C. Rcd. 7065 (rel. May 6, 1999). In particular, the pleadings in that proceeding raised the principle issues raised by the pleadings in this case: the reasonableness of inmate telephone rates and the feasibility of different calling options, such as debit cards, 1-800 calls, or direct dial services. See Motions Hearing Tr. at 12:23-14:2; 15:17-16:5; 17:17-18:23. Moreover, the FCC invited comments from parties representing inmates and their families in that proceeding, and has received comments from them. See Defs.' Reply, Ex. 5 ("Comments of Citizens United For Rehabilitation of Errants and the Coalition of Families and Friends

* The FCC has exercised this authority in analogous, non-inmate contexts on several occasions. For example, the FCC determined that AT&T's practice of giving volume discounts to single customers who have large communications needs but not to a group of customers who might be able to pool their needs was prohibited. See Motions Hearing Tr. at 20: 2-13

of Prisoners of the American Friends Service Committee ("CURE/AFSC"), CC Docket No. 96-128 (filed June 21, 1999)). The pendency of nearly identical claims before the FCC makes invocation of the primary jurisdiction in this case particularly suitable. See Total Tele. Comm. Serv. v. AT&T, 919 F.Supp. 472, 478-479 (D.D.C. 1995).

Finally, courts faced with similar challenges to inmate phone rates have already referred such challenges to the FCC under the doctrine of primary jurisdiction. See e.g., Arsberry v. Illinois, No. 99-CV-2457 (N.D. Ill. March 22, 2000) (court referred to FCC because of its experience in determining fairness of telephone rates), aff'd in part on other grounds, Arsberry v. Illinois, 244 F.3d 558 (7th Cir. 2001) (dismissing the equal protection claim under the doctrine of primary jurisdiction but reaching the merits on the other claims); Dalmore v. Kentucky, 97-CV-769H (W.D. Ky. Feb. 10, 2000).

Accordingly, for all the foregoing reasons the Court concludes that the FCC is clearly in the best position to resolve the core issues in this case, namely the reasonableness of the

¹² The Utility Consumers' Action Network ("UCAN") also filed comments in the FCC's proceeding and advised the FCC that it "recently undertook a detailed six month investigation into the billing practices of collect calls that originate from correctional facilities. UCAN seeks to share "its findings with the [FCC] and to educate the [FCC] staff as to paramount issues at stake in this proceeding." See Defs.' Reply, Ex. 7 ("Opening Comments of UCAN," CC Docket No. 96-128 (filed June 21, 1999)).

rates charged and the feasibility of alternative telephone arrangements in JCA facilities.²²

B. Uniformity

Concern about inconsistent judgments further strengthens the case for application of the primary jurisdiction doctrine. Congress specifically delegated to the FCC the authority to regulate common carriers' rates, "classifications, practices, and charges," for interstate calls, including the rates and practices that apply to collect calls made by inmates. 47 U.S.C. § 203(a). As explained above, parties representing inmates are presently applying to the FCC for the same relief Plaintiffs seek in this action. As such, there is a risk that this Court may render a ruling that undermines or is inconsistent with FCC determinations on the rates and terms of Defendants' arrangements. There is also a risk that any decision would be inconsistent with the decisions of state courts and state regulatory bodies that are currently deciding these matters. See Defs.' Reply, Ex. 9 (October 26, 2009 Order dismissing class-action inmate challenge to phone rates on grounds of primary jurisdiction in Valdez v. State of New Mexico, No. D-0117-CV-2009-00104 (1st Judicial Dist. County of Rio Arriba)).

²² The Court observes that other non-JCA prison facilities have used different calling arrangements that provide for both lower rates and adequate security measures. See e.g., Pls.' Opp'n., Ex. 2 ("Federal Bureau of Prison Memo" (charge for debit cards in Federal Bureau of Prisons is \$1.15 per minute)). The Court expects and anticipates that the FCC will examine this disparity in the course of its present proceeding.

Accordingly, the Court concludes that uniformity concerns counsel in favor of FCC referral.

C. Constitutional Issues

Plaintiffs seek to avoid application of the primary jurisdiction doctrine by arguing that their challenge raises constitutional issues that should be resolved by this Court. However, the presence of constitutional issues in an action poses no absolute bar to invoking primary jurisdiction. See Allnet Communications Service, Inc., 965 F.2d at 1121 (concluding that even a constitutional issue may warrant an "initial take" by the Commission).

The constitutional issues are certainly no bar in this case. First, the FCC has considered constitutional issues in the telephone regulatory context in the past. See Motions Hearing Tr. at 49:21-50:5. Second, all of Plaintiffs' constitutional claims essentially revolve around the reasonableness of the rates charged. For example, Plaintiffs' equal protection claim is premised on the theory that Plaintiffs are charged a higher tariffed rate vis a vis other rate-payers -- both inside and outside similar prison facilities. Their claim is therefore one of a discriminatory rate charge, and is exactly the type of claim that falls within the primary jurisdiction of the FCC and state regulators. See e.g., Arberry, 244 F.3d at 565.

Similarly, Plaintiffs' First Amendment and due process claims

are premised on the theory that the exclusive dealing contracts, and in particular, the collect call-only long distance rates are so unreasonable that communications between inmates and their family and counsel are unconstitutionally burdened. The FCC's "partial take" on the reasonableness of the current rates and on other terms of the exclusive dealing contracts, while not dispositive of the constitutional issues, would substantially assist the Court in its task of adjudicating these claims." See Allnet, 965 F.2d at 1121.

Importantly, the primary jurisdictional referral would mean only that the FCC will exercise its regulatory authority in the

For example, in order to prevail on their First Amendment claims, Plaintiffs must first demonstrate that the exclusive dealings contracts entered into between Defendants result in rates which are so exorbitant that reasonable access to the telephone is denied. See Johnson v. California, 207 F.3d 650, 656 (9th Cir. 2000) (rates not "so exorbitant" to deny plaintiff phone access); Strandberg v. City of Helena, 791 F.2d 744, 747 (9th Cir. 1986) (as long as limitations on phone access are reasonable, there is no First Amendment violation); Washington v. Reno, 39 F.3d 1093, 1100 (6th Cir. 1994) (inmate has no right to unlimited telephone use and telephone access is subject to rational limitations in face of security interests).

If Plaintiffs were to make such a showing, this Court would then have to evaluate whether the current arrangement resulting in the burdening of phone access is reasonably related to a legitimate penological interest. See Turner v. Safley, 462 U.S. 78 (1983). The FCC has considered and continues to consider factual issues bearing on this question, such as the costs associated with serving inmate facilities, the level of bad debt associated with inmate payphone service providers, factors promoting the use of debit cards, the burden on rate-payers, and the feasibility of other billing options.

first instance. After the FCC does so, to the extent that any constitutional claims remain the Court will have the benefit of the agency's expert findings in addressing them. See e.g., Far East Conference v. United States, 342 U.S. 570, 574-575 (1952). Primary jurisdiction doctrine requires that in "cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over. This is so even though the facts after they have been appraised by specialized competence serve as a premise for legal consequences to be judicially defined." (emphasis added).

Therefore, in view of the fact that the Court would benefit from the FCC's expertise; that concerns for uniformity counsel against decision at this time; and that the constitutional issues are no bar to FCC referral, the Court concludes that the FCC is the entity best suited to make the initial determination of the issues presented by Plaintiffs' claims.

On a final note, the Court observes that there are a number of cases now pending throughout the country involving similar challenges to phone rates that are alleged to be unconscionable and discriminatory. These cases raise issues that are of great human concern to inmates, their family members and their counsel. The hardships of prison life are only exacerbated by limiting the ability of prisoners and their families and lawyers to maintain person-to-person communications. In referring this matter to the

FCC, the Court expects the agency to move with dispatch to conclude its ongoing proceedings so as to provide both courts and parties with meaningful analysis and guidance on these issues.

IV. CONCLUSION

For the reasons stated above, this case is dismissed without prejudice under the doctrine of primary jurisdiction.²³ An Order will issue with this Opinion.

Aug 22, 2001
Date

Gladys Kessler
Gladys Kessler
United States District Judge

²³ The Court has the option under the doctrine of primary jurisdiction of either staying the case or dismissing it without prejudice. The Court discerns no prejudice to the parties in dismissing, as opposed to staying, this case.

EXHIBIT B

Arent Fox

October 11, 2011

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Stephanie A. Joyce

Attorney
202.857.6081 DIRECT
202.857.6395 FAX
joyce.stephanie@arentfox.com

Re: CC Docket No. 96-128, Alternative Rulemaking Proposal of Martha Wright, et al.

Dear Ms. Dortch:

Securus Technologies, Inc. (“Securus”) files this letter to provide the Commission with the updated cost information offered in its previous letter dated September 20, 2011.

Securus has reviewed its overall cost of service for providing inmate telecommunications service. Securus used whole-year data that was available after the submission of the industry cost study (the “Wood Study”) in 2008. The data reviewed is specific to Securus and does not represent the costs of any other company that was involved in the Wood Study.

Securus estimates that its overall per-call costs have increased approximately 16.3%. Its overall per-minute costs have increased approximately 16.5%.

Please do not hesitate to contact me with any additional questions or concerns: 202.857.6081. Thank you for your consideration.

Sincerely,

s/Stephanie A. Joyce

Counsel for Securus Technologies, Inc.

cc: Chairman Julius Genachowski (*via electronic mail*)
Commissioner Michael Copps (*via electronic mail*)
Commissioner Robert McDowell (*via electronic mail*)
Commissioner Mignon Clyburn (*via electronic mail*)
Sharon Gillett, Chief, Wireline Competition Bureau (*via electronic mail*)
Austin Schlick, General Counsel (*via electronic mail*)
Zachary Katz, Legal Advisor to Chairman Genachowski (*via electronic mail*)

Arent Fox

Margaret McCarthy, Policy Advisor to Commissioner Copps (*via electronic mail*)

Christine Kurth, Legal Advisor to Commissioner McDowell (*via electronic mail*)

Angela Kronenberg, Legal Advisor to Commissioner Clyburn (*via electronic mail*)

Albert Lewis, Chief, Pricing Policy Division, Wireline Competition Bureau (*via electronic mail*)

Marcus Maher, Legal Advisor to Chief of the Wireline Competition Bureau (*via electronic mail*)

Pamela Arluk, Assistant Chief, Pricing Policy Division, Wireline Competition Bureau (*via electronic mail*)

Lynne Hewitt Engledow, Pricing Policy Division, Wireline Competition Bureau (*via electronic mail*)

Michelle Berlove, Pricing Policy Division, Wireline Competition Bureau (*via electronic mail*)

Jennifer Prime, Acting Legal Advisor, Office of the Bureau Chief, Wireline Competition Bureau (*via electronic mail*)

Arent Fox

September 20, 2011

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Stephanie A. Joyce

Attorney
202.857.6081 DIRECT
202.857.6395 FAX
joyce.stephanie@arentfox.com

Re: CC Docket No. 96-128, Alternative Rulemaking Proposal of Martha Wright, et al.

Dear Ms. Dortch:

Securus Technologies, Inc. (“Securus”) files this letter to inform the Commission that it will provide updated cost information in this proceeding.

On August 15, 2008, seven providers of inmate telecommunications services, including Securus, submitted a study performed by economist Don Wood after having analyzed those providers’ cost information. CC Docket No. 96-128, Inmate Calling Services Interstate Call Cost Study, Wood & Wood (Aug. 15, 2008) (“Wood Study”). The providers each submitted their cost data to Mr. Wood separately under seal, and did not share that data with each other.

The study employed the “marginal cost location” methodology that the Commission has used in this docket when reviewing the costs associated with providing public payphones. Wood Study at 4 n.9. That is, the study included only the costs associated with payphone service provided in correctional facilities where no site commissions are imposed. Without consideration of the cost of site commissions that are secured either by public contract or state statute, the Wood Study concluded that, collectively and on average, the providers experienced the following costs of providing interstate toll calls:

Debit Calls

| | |
|-----------------------------------|--------|
| Fixed Per-Call Cost | \$1.56 |
| Time-Sensitive Transmission Costs | \$0.06 |

Arent Fox

Collect Calls

| | |
|-----------------------------------|--------|
| Fixed Per-Call Cost | \$2.49 |
| Time-Sensitive Transmission Costs | \$0.07 |

Wood Study at 4.

The Commission has expressed interest in obtaining updated cost information from Securus. To that end, Securus is reviewing its overall cost of service. Securus will provide the Commission with information as to how its costs today differ from its costs at the time of the Wood Study, expressed as a percentage figure. Securus estimates that it can provide this updated information in approximately three weeks.

Please do not hesitate to contact me with any additional questions or concerns: 202.857.6081. Thank you for your consideration.

Sincerely,

s/Stephanie A. Joyce

Counsel for Securus Technologies, Inc.

cc: Chairman Julius Genachowski (*via electronic mail*)
Commissioner Michael Copps (*via electronic mail*)
Commissioner Robert McDowell (*via electronic mail*)
Commissioner Mignon Clyburn (*via electronic mail*)
Sharon Gillett, Chief, Wireline Competition Bureau (*via electronic mail*)
Austin Schlick, General Counsel (*via electronic mail*)
Zachary Katz, Legal Advisor to Chairman Genachowski (*via electronic mail*)
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Christine Kurth, Legal Advisor to Commissioner McDowell (*via electronic mail*)
Angela Kronenberg, Legal Advisor to Commissioner Clyburn (*via electronic mail*)
Albert Lewis, Chief, Pricing Policy Division, Wireline Competition Bureau (*via electronic mail*)
Marcus Maher, Legal Advisor to Chief of the Wireline Competition Bureau (*via electronic mail*)
Pamela Arluk, Assistant Chief, Pricing Policy Division, Wireline Competition Bureau (*via electronic mail*)
Lynne Hewitt Engledow, Pricing Policy Division, Wireline Competition Bureau (*via electronic mail*)

Arent Fox

Michelle Berlove, Pricing Policy Division, Wireline Competition Bureau (*via electronic mail*)
Jennifer Prime, Acting Legal Advisor, Office of the Bureau Chief, Wireline Competition Bureau (*via electronic mail*)

EXHIBIT C

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Rates for Interstate Inmate)
Calling Services)

WC Docket No. 12-375

DECLARATION OF COLEMAN BAZELON

Coleman Bazelon, being duly sworn, declares as follows:

I. EXPERIENCE AND QUALIFICATIONS

1. My name is Coleman Bazelon. I am a Principal in the Washington, D.C. office of *The Brattle Group, Inc.* (“*Brattle*”). *Brattle* is an economic consulting firm providing expertise in a range of economic, litigation, and regulatory matters. More specifically, I am part of the Telecommunications and Media practice.

2. I have expertise in regulation and strategy in the wireless, wireline, and video industry sectors. Much of my practice involves valuation of complex telecommunications assets. I have consulted and testified on behalf of clients in numerous telecommunications matters, ranging from wireless license auctions, spectrum management, and competition policy, to patent infringement, wireless reselling, and broadband deployment. I also frequently advise regulatory and legislative bodies, including the U.S. Federal Communications Commission (“FCC”) and the U.S. Congress.

3. Prior to joining *Brattle*, I served as a Vice President with Analysis Group, an economic and strategy consulting firm. I have also served as a Principal Analyst in the Microeconomic and Financial Studies Division of the Congressional Budget Office (“CBO”) where I researched reforms of radio spectrum management, estimated the budgetary and private sector impacts of spectrum-related legislative proposals, and advised on auction design and privatization issues for all research at the CBO.

4. I received my Ph.D. and M.S. in Agricultural and Resource Economics from the University of California at Berkeley. I also hold a Diploma in Economics from the London School of Economics and Political Science and a B.A. from Wesleyan University. My curricula vitae is attached as Attachment A.

II. OVERVIEW

5. This is a case about “fair,”¹ “just and reasonable”² rates for collect and debit calls made from prisons in the United States.³ I have been asked to provide economic analysis of what a just and reasonable rate would be. To do so I perform three broad analyses in this Declaration. First, I update the analysis of Douglas A. Dawson previously submitted to the FCC in support of regulated prison calling rates of \$0.15 to \$0.20 per minute for debit calls and \$0.20 to \$0.25 per minute for collect calls.⁴ Given continuing downward cost trends and developments in the national telecommunications network since the last Dawson Declaration, I find that a fixed rate no greater than \$0.07 per minute for both debit and collect calls—and probably less than that amount—would meet the “just and reasonable” standard set forth in the Telecommunications Act

¹ “(b)(1) the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that—(A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone.” 47 U.S.C. 276(b).

² “(b) All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful...” 47 U.S.C. § 201(b). See also Federal Communications Commission, “Notice of Proposed Rulemaking,” In the Matter of Rates for Interstate Inmate Calling Services, WC Docket No. 12-375 (Adopted: December 24, 2012), Section III “Ensuring ICS Rates are Just and Reasonable.” (Hereinafter “Inmate Calling NPRM 2012”.)

³ Prisoners make calls from federal, state and local facilities. The FCC has jurisdiction over interstate calling, regardless of the type of institution the call is coming from.

⁴ “Affidavit of Douglas A. Dawson,” Federal Communications Commission, In the Matter of: Martha Wright, Dorothy Wade, Annette Wade, Ethel Peoples, Mattie Lucas, Laurie Nelson, Winston Bliss, Sheila Taylor, Gaffney & Schember, M. Elizabeth Kent, Katharine Goray, Ulandis Forte, Charles Wade, Earl Peoples, Darrell Nelson, Melvin Taylor, Jackie Lucas, Peter Bliss, David Hernandez, Lisa Hernandez, and Vandella F. Oura, Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking (October 29, 2003), ¶ 43 (Hereinafter “Dawson 2003”); see also “Declaration of Douglas A. Dawson in Support of Petitioners’ Alternative Proposal,” Federal Communications Commission, In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues In Pending Rulemaking, CC Docket No. 96-128, DA 03-4027 (February 16, 2007), ¶¶ 38, 41 and 43. (Hereinafter “Dawson 2007”.)

of 1996. Second, I address some of the costs and benefits of implementing a national maximum rate for debit and collect calls and conclude that benefits likely far outweigh the costs. Third, I discuss the Marginal Location Methodology used in public payphone rate setting and explain its inapplicability to the prison payphone marketplace.

6. Before delving into these analyses, it is helpful to discuss some of the economic and policy drivers that created the current prison payphone marketplace. Prior to 1984, AT&T was the only provider of prison payphone services as it was the only provider of operator assisted (the only kind then) collect calling services.⁵ At that time, rates for prison services were similar to rates for other like services provided outside the prison setting.⁶ The breakup of AT&T in 1984 and subsequent introduction of competition in providing prison payphone services coincided with a rapid increase in the U.S. prison population.⁷ Along with a growing population, prisoners were being incarcerated further from their homes, increasing the reliance on phone calls to stay connected with family and friends.⁸ Prisons began to impose additional penal requirements, such as call monitoring and recording, on prisoner phone services, which along with the growing prison population and increased importance of calling created a differentiated product—prison payphone services.⁹

7. Normally, the introduction of competition into a previously monopolized telecommunications service would be expected to benefit the users of that service. In fact, the main thrust of the Telecommunications Act of 1996 was to introduce market forces in the telecommunications sector, thereby replacing regulators with competition in allocating resources

⁵ Steven J. Jackson, “Ex-Communication: Competition and Collusion in the U.S. Prison Telephone Industry,” *Critical Studies in Media Communications*, Vol. 22, No 4 (October 2005), p. 268. (Hereinafter “Jackson 2005”.)

⁶ Jackson 2005, p. 268.

⁷ Justice Policy Institute, “The Punishing Decade: Prison and Jail Estimates at the Millennium,” (May 2000), p. 1, available at: http://www.justicepolicy.org/images/upload/00-05_rep_punishingdecade_ac.pdf (last accessed March 21, 2013).

⁸ Jackson 2005, pp. 266-267.

⁹ Ben Iddings, “The Big Disconnect: Will Anyone Answer the Call to Lower Excessive Prisoner Telephone Rates?,” *North Carolina Journal of Law & Technology*, Vol. 8, Issue 1 (Fall 2006), p. 173. See also, Jackson 2005, p. 267.

and promoting efficient provision of services.¹⁰ The prison payphone market, however, has some unique characteristics—market failures—that the thoughtful observer would realize undermines this usual presumption of competition. Specifically, given that penal institutions allow only one carrier to operate, that one carrier is a monopoly provider within a given prison.¹¹ Competition between alternative service providers, then, occurs at the level of obtaining the (usually multi-year) monopoly right to serve the prisoners in a given institution. Unsurprisingly, once a service provider is accepted, its incentives are to maximize the amount of profit it can extract from an institution where it has a contract. This is essentially equivalent to maximizing revenue, because incremental costs are small and stable. The service provider then shares those profits with the prison as an incentive to be chosen as the monopoly provider. Since the prison or prison system also selects the carrier, competition for the carrier is essentially competition for the provider that can create the most profit from a given prison or prison system.¹²

8. Before prison payphones became their own market segment with competitors vying to win contracts, AT&T provided the service, but priced it as part of the then much larger collect calling market. At the time, regulation of collect calling tariffs did not break out the prison market as a separately tariffed market.¹³ Consequently, AT&T did not set rates so as to maximize the profits it could earn from the prison payphone market. Only when the prison payphone industry became its own market *and* competition for exclusive contracts was introduced was there the incentive and ability to price services so as to extract monopoly profits.

¹⁰ As the FCC describes, “The Telecommunications Act of 1996 is the first major overhaul of telecommunications law in almost 62 years. The goal of this new law is to let anyone enter any communications business—to let any communications business compete in any market against any other.” See “Telecommunications Act of 1996,” available at <http://transition.fcc.gov/telecom.html> (last accessed January 13, 2013).

¹¹ One solution, offered by the original Wright Petition, would be to introduce competition in providing phone services in the prison. As discussed below, this approach alone will not assure competitive prices. See, Petitioners for Rulemaking by Martha Wright, *et al.*, “Petitioners’ Alternative Rulemaking Proposal,” Federal Communications Commission, In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996; Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues In Pending Rulemaking, CC Docket No. 96-128, DA 03-4027 (March 1, 2007), p. 4. (Hereinafter “Wright 2007”.)

¹² Although such a procurement structure is used when assigning a monopoly franchise the point here is to overcome the extraction of monopoly profits from prisoners and their families in the first place.

¹³ Jackson 2005, p. 268.

9. Given this market failure of the prison payphone market—that individual prisoners face no competitive choices—competition is not sufficient to police prices. One approach suggested in the original Wright Petition would be to provide an open access platform so that multiple providers could offer services to individual prisoners.¹⁴ This would allow choice of service providers and create incentives for service providers to offer attractive service offerings to prisoners in an attempt to win their business. Such competition would likely discipline prices to some extent. The problem is that the open platform only narrows the point of monopoly power; it does not in itself eliminate it. The cost of the open platform and the continuing scope for commissions to be built into the rates it charges could still create an incentive to extract some excess profits or revenues from the prison payphone market. An open platform approach would still require regulatory intervention to set the prices for the bottleneck access platform. Consequently, it is more straightforward to simply regulate the rates charged prisoners.

10. In regulating prison payphone rates, a simple benchmark rate—which sets a maximum allowed rate, but not a minimum or required rate, for all service providers—is appropriate. As explained in greater detail below, technical innovations in the provision of prison phone services imply that variation in costs at different facilities has largely been eliminated. Consequently, facility specific rates are unneeded and the costs of adjudicating such facility-specific rates would greatly outweigh any potential benefits of recognizing small variations in the costs of providing services to individual facilities.

11. Just and reasonable rates are ones that at a minimum do not allow for excessive profits. Market failures occur when market forces do not create efficient competition, implying that market forces are not able to fulfill the mandate contained in the Communications Act of 1934, as amended, for “just and reasonable” rates. Because market forces do not spur efficient competition in the prison payphone market, regulated maximum rates are an appropriate remedy for this specific market failure. As noted above, those rates should be set no greater than \$0.07 per minute for debit and collect calls, and possibly lower. Details of the analysis supporting these rates are provided in the next section. Following that is an analysis of costs and benefits of

¹⁴ Wright 2007, p. 5-6. See also, Dawson 2003, ¶¶ 3-5.

regulating prison payphone rates, followed by a discussion of the inapplicability of the Marginal Location Methodology.

III. COSTS OF PROVIDING PRISON PAYPHONE SERVICES

12. The prices paid by prisoners and those they call can be broken down into four separate cost components:

1. Cost of the call
2. Added billing and collection costs associated with collect calling
3. Excess profit for carrier
4. Commission for prison

The last two components, excess profits for the service providers and the prisons' commissions, are not legitimate costs under a just and reasonable standard.¹⁵ Those cost components would be competed away but for the market failures associated with the prison calling market. Therefore, to identify a "just and reasonable" rate, the analysis below focuses on the first two cost components.

DAWSON DECLARATION ANALYSIS

13. In his 2007 Declaration, Mr. Dawson concludes that a "reasonable inmate long distance calling rate[]" would be "\$0.15 to \$0.20 per minute for debit calling and \$0.20 to \$0.25 per minute for collect calling..."¹⁶ These per minute rates are suggested "with no per-call charge."¹⁷ In this subsection I will explain his basis for concluding in 2007 those rates were reasonable. The next subsection will update his analysis.

14. Mr. Dawson starts by referencing his analysis of costs from his 2003 Testimony.¹⁸ In that earlier analysis, he notes that analysis of the Inmate Calling Service Providers Coalition ("Coalition") shows underlying costs, including reasonable service provider profits but excluding

¹⁵ See *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand, 17 FCC Rcd 3248, 3262 (2002).

¹⁶ Dawson 2007, ¶ 43.

¹⁷ Dawson 2007, ¶ 33 and 42.

¹⁸ Dawson 2007, ¶ 25.

commissions, of \$0.126 per minute for a local call.¹⁹ Substituting long distance transportation and termination costs of \$0.027 per minute for estimated local transportation and termination costs of \$0.020 per minute raised the cost of long distance inmate calling to \$0.133 per minute.²⁰ In his 2007 Declaration, he updates the long distance transportation and termination cost to \$0.0125 per minute, reducing the total cost of a long distance inmate call to \$0.121 per minute.²¹ Mr. Dawson observed that this estimated cost includes about \$0.06 per minute of costs associated with billing and uncollectable revenue, suggesting that the cost of debit calls—which do not have added billing or collections costs—is about \$0.06 per minute.²²

15. Mr. Dawson then compares those debit and collect calling costs to other inmate service rates and to commercial debit and collect calling rates. In his 2007 analysis, he notes that the Federal Bureau of Prisons Inmate Telephone System charged \$0.23 per minute, but only \$0.17 of that amount was attributable to providing the debit phone service, with the remaining \$0.06 profit of the system used to fund prisoner services.²³ The profit is analogous to commissions charged in state systems and, therefore, is not considered a cost of providing the service. Mr. Dawson then notes that this \$0.17 per minute prison debit rate is reasonable when compared to the rates charged net of commissions by several state systems, including Vermont (\$0.135 per minute for a 20 minute call), Maryland (\$0.12 per minute) and Missouri (\$0.10 per minute).²⁴ It is worth noting that these rates from the 2007 analysis of \$0.10 to \$0.135 per minute were provided by private companies and included an allowance for profits in them.

16. Mr. Dawson then analyzed comparable commercial debit calling rates. He noted that to perform an apples-to-apples comparison “a comparable rate for prison debit calling would be the price for commercial pre-paid calling cards plus the added cost of the prison telephone system,

¹⁹ Dawson 2003, ¶ 72.

²⁰ Dawson 2003, ¶ 72.

²¹ Dawson 2007, ¶ 26. Note that Mr. Dawson appears to have made an arithmetic error in this calculation. Reducing per minute long distance costs from \$0.027 to \$0.0125 is a net reduction of \$0.0145. $\$0.133 - \$0.0145 = \$0.1185$, not \$0.121 as Mr. Dawson reported. Both of these rates, however, round to twelve cents, so this error does not have any material impact on any of his analyses or conclusions.

²² “(\$0.121 total cost less the cost of billing and uncollectibles).” See Dawson 2007, ¶ 26.

²³ Dawson 2007, ¶ 30.

²⁴ Dawson 2007, ¶ 32.

expressed on a usage basis.”²⁵ He noted that AT&T offered a rate of \$0.05 per minute, with other lower rates available.²⁶ His earlier 2003 analysis indicated that the added cost of a prison payphone system would be between \$0.044 and \$0.059 per minute, but in his 2007 analysis noted that costs have likely come down since then.²⁷ He also noted that an earlier MCI analysis suggested underlying costs of \$0.066 per minute.²⁸ Taking prison phone system costs conservatively as \$0.07 per minute, Mr. Dawson estimated total costs of debit calls as \$0.12 per minute.²⁹ Mr. Dawson concluded that the prison calling rates reported above and the commercial debit call rates adjusted for the cost of the prison phone system both support the debit rate he proffered of \$0.15 to \$0.20 per minute as reasonable.³⁰

17. To derive his estimate of the cost of collect calling, Mr. Dawson estimated the added costs associated with collect calls that are not included in his estimates for debit calls. These additional costs include the cost of billing the calls and of bad debt in collecting payment.³¹ He reported a Coalition estimate of \$0.029 per minute for billing and \$0.034 per minute for uncollectables, but noted that the uncollectables estimate is based on much higher prison phone rates than he was advocating and, therefore, the uncollectables would be less if the amount charged was less.³² He concluded that \$0.05 per minute was a reasonable total incremental cost of collect calls over debit calls from prison.³³ Consequently, his suggested rate of \$0.20 to \$0.25 per minute for collect calls from prisons is supported as the debit rate of \$0.15 to \$0.20 per minute plus the \$0.05 per minute added costs associated with collect calls.

²⁵ Dawson 2007, ¶ 34.

²⁶ Dawson 2007, ¶ 36.

²⁷ Dawson 2007, ¶ 37.

²⁸ Dawson 2007, ¶ 38.

²⁹ “(the \$0.05 AT&T calling card rate plus \$0.07 for the prison phone system).” See Dawson 2007, ¶ 38.

³⁰ Dawson 2007, ¶ 38.

³¹ Dawson 2007, ¶ 40.

³² Dawson 2007, ¶¶ 40-41.

³³ Dawson 2007, ¶¶ 40-41.

UPDATED DAWSON ANALYSIS

18. In this subsection I will update the Dawson analysis, taking account of developments in the telecommunications sector in the intervening years. I begin by examining commercial rates for debit and collect calling, recognizing the need to add prison specific costs. Then I examine some of the lower actual prison rates. Combining the results of both of these analyses, I estimate that a reasonable regulated rate is no higher than \$0.07 per minute for both prison debit and collect calls and possibly lower.

19. Pre-paid domestic phone calls—so called calling card calls—are very inexpensive. Rates are easily found as low as \$0.01 per minute with a \$0.49 connection charge.³⁴ AT&T offers pre-paid interstate calling as low as \$0.04 per minute with no connection charge.³⁵ Many other cards can be found with per minute rates under \$0.02.³⁶ Given that these commercial rates are retail rates sold to individuals, any wholesale contract offering calling services to an entire prison or prison system would be able to implement volume discounts, suggesting lower commercially offered rates. Such a rate would have to be lower than AT&T's rate offered to individual customers of \$0.04 per minute. Taken together, a reasonable estimate of commercial pre-paid calling rates is easily no greater than \$0.03 per minute and likely much lower than that amount.

20. The underlying costs to deliver prison phone service, as expressed in some contracts and RFPs, seem consistent with these commercial rates. One estimate of the base rate per minute with no per call connection charges from a Michigan contract is less than \$0.04 per minute.³⁷

³⁴ See, for example, PennyTalk, "Explore our Low Rates" available at: <http://www.pennytalk.com/rates/?CallingFrom=US&CallingTo=US> (last accessed March 22, 2013). PennyTalk also charges \$0.99 per month account service charge.

³⁵ 1,000 minutes for \$40.00. See AT&T, "Product Selection," available at: <https://att.ecustomersupport.com/ATTLDExternalWeb/loadProductsForDisplay.do?ProductLineID=2> (last accessed March 21, 2013). Some intrastate rates may be higher.

³⁶ See domestic rates found at Callingcards.com, "International Calling Cards," available at http://callingcards.com/shopping/rate_table1.asp?GUID=70704D38391E14409F45EFABDF358E70 (last accessed March 22, 2013). Some of these rates include other small costs such as 3 minute rounding or payphone specific connection charges.

³⁷ "The firm fixed price for performing services" is \$0.0393 per minute for interstate collect calls and \$0.0343 per minute for interstate debit calls. See "Notice of Contract No. 071B1300298 between The State of Michigan and Public Communications Services, Inc" (March 18, 2011) p. 94. (Hereinafter "Michigan Contract".)

Another example that is consistent with underlying phone service costs of about \$0.03 per minute is Talk Telio's bid in Missouri of total price to inmates of \$0.05 per minute with no set-up fee.³⁸

21. As noted above, Mr. Dawson's 2003 analysis suggested prison phone system costs between \$0.044 and \$0.059 per minute. His estimate of these costs consists of depreciation, maintenance and administrative and sales expenses, spread out over a prison with 1,743 prisoners³⁹ who call 1.0 hour (for the \$0.059 estimate) or 1.5 hrs (for the \$0.044 estimate) per week.⁴⁰ About one-quarter of those prison phone system costs were for hardware, the vast majority of that for the switching equipment.⁴¹ Although all costs associated with providing prison phone systems have likely come down in the last decade, these hardware costs have certainly come down in the interim for at least two reasons. First, telephone switches are like computers, and their price decreases with the cost of computing power—the so-called Moore's Law effect. For example, the ongoing debates about inter carrier compensation around "bill and keep"—where the per minute cost of completing a call (including the cost of switching) has fallen so much that carriers would generally no longer compensate each other for completing calls—suggest that costs such as switching have fallen dramatically over the past decade.

22. Second, and perhaps more significantly, modern prison payphone systems use centralized switches, spreading the cost of switching, call recording and other fixed costs over more users.⁴²

³⁸ Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Lee G. Petro, Drinker Biddle & Reath, LLP, February 15, 2012, p. 2 and Exhibit A, p. 11. (Hereinafter "Petro Letter".)

³⁹ 1,743 prisoners per prison is the average of three privately owned prisons Mr. Dawson uses in his original analysis. See Dawson 2003, ¶ 57.

⁴⁰ Dawson 2003, ¶¶ 68-71. This example also demonstrates how quickly fixed costs fall as they are spread out over more usages. In this example, a 50% increase in usage reduced the per-minute cost by 25%.

⁴¹ \$69,000 in annual hardware costs/\$249,000 in total system costs = 28%. See Dawson 2003, ¶ 68, and footnote 48.

⁴² "Today there is very little capital investment made by prison telephone provider at each prison. All of the brains of the prison calling network are housed now at large centralized locations. Today a prison calling system consists primarily of telephones, an Ethernet pipe to the outside world and some sort of small data router. Everything else is done at the centralized hubs in the network." See "Affidavit of Douglas A. Dawson," Before the Commonwealth of Massachusetts, Department of Telecommunications and Cable, No. D.T.C. 11-16, Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of Such Calls, ¶ 24. (Hereinafter

Larger, centralized switches are cheaper per unit of functionality than smaller switching equipment that would be installed at a prison facility to serve just that facility. (The per ‘switch’ costs are lower for a properly utilized larger switch.) Sharing these costs over many prisons spreads these fixed costs over more users, reducing the contribution of these fixed systems costs to the per minute cost of a call, irrespective of the number of prisoners at the facilities.⁴³

23. Although I do not have an estimate of just how much lower these system costs are today compared with the estimates Mr. Dawson made in 2003, they have come down significantly. Mr. Dawson suggests the reduction is at least half of what they were, suggesting a total prison specific cost structure, including switching and other capital costs and overhead, of no more than \$0.03 per minute.⁴⁴ Of course, the base \$0.03 per minute commercial debit rate already has switching and other costs embedded. Here we are interested in the *added* costs associated with providing prison phone service, not the total costs. Only a fraction of the revised Dawson cost estimate of \$0.03 per minute represents the costs associated with a prison pay phone system that are incremental to the cost of providing commercial debit calling. For example, the commercial debit calling rate already accounts for switching costs. Consequently, a per minute cost of \$0.02 for the specific prison phone related costs would seem conservative.

24. Mr. Dawson estimated the difference between debit and collect calls as about \$0.05.⁴⁵ This cost differential is driven by the added billing and collections cost of collect calls that do not exist for debit calls.⁴⁶ This differential has likely come down in the intervening years. Industry players have responded to bad debt, for example by limiting the amount of debt that can be accumulated. Furthermore, 3rd party payment processors also help manage payment risk, presumably leading to lower bad debt for prison phone service providers.

“Dawson 2012”.) See also Notice of Award, State of Missouri Office of Administration Division of Purchasing and Materials Management (June 28, 2011) Securus RFP, pp. 12-16.

⁴³ Dawson 2012, ¶ 22.

⁴⁴ Dawson 2012, ¶ 27.

⁴⁵ Dawson 2007, ¶ 41.

⁴⁶ Dawson 2007, ¶ 40.

25. More recent experience over the past few years confirms that the difference between debit and collect calls has, in fact, come down. Several jurisdictions do not charge differential rates for collect and debit calls.⁴⁷ Although the underlying economic cost difference may be greater than zero, it is unlikely to be very large if many jurisdictions do not build this cost difference into their rates. In other cases the difference between collect and debit calls is very small. For example, it was just \$0.02 per minute in a 2011 Michigan contract,⁴⁸ \$0.01 per minute in Global Tel*Link's 2008 RFP response in Wisconsin,⁴⁹ and \$0.005 per minute for a 20 minute call in PCS's 2008 RFP response in Wisconsin⁵⁰ and as the base rate difference in the contract awarded in Michigan in 2011.⁵¹ The differential is higher in other jurisdictions with significantly higher overall rates, but it is very unlikely that underlying costs vary as much in these states as the cost differential implies. It is more likely that the higher price differentials are an artifact of price discrimination rather than underlying cost differentials.⁵² This view is supported by Mr. Dawson, who said, "Generally it seems like prison telephone providers will charge as much for calls as they can get away with in each jurisdiction."⁵³ Consequently, I conservatively take the cost difference between collect and debit calls as no more than \$0.02 per minute, especially since there are several prison payphone contracts that reflect a differential of this size or smaller.

⁴⁷ See, New Jersey and Texas rates as reported in Government Accountability Office, "Bureau of Prisons, Improved Evaluations and Increased Coordination Could Improve Cell Phone Detection," GAO-11-893 (September 2011), p. 13. (Hereinafter "GAO 2011".)

⁴⁸ Michigan Contract, Exhibit 2, "Summary of the per Minute Rates."

⁴⁹ "Global Tel*Link's State of Wisconsin Department of Corrections, Request for Proposal SM-1752, Inmate Telephone Services, Volume II – Cost and Revenue Proposal" (October 16, 2008), p. 3.

⁵⁰ PCS RFP Response, State of Wisconsin, Department of Corrections, RFP Number SM-1752, Inmate Telephone Services, p. E-2.

⁵¹ "The firm fixed price for performing services" is \$0.0393 per minute for interstate collect calls and \$0.0343 per minute for interstate debit calls. Michigan Contract, p. 94.

⁵² If demand for collect services is more inelastic than the demand for debit services, then a profit maximizing strategy is to charge relatively more for the inelastic collect services than for the relatively more elastic debit services. This is as an example of Ramsey pricing. See, F. P. Ramsey, "A Contribution to the Theory of Taxation," *The Economic Journal*, Vol. 37, No. 145 (March, 1927), pp. 47-61. Given that a prisoner who has the option (and means) to place a debit call always has the option to place a collect call, but the reverse is not necessarily true, implies that demand for debit calls is likely more elastic than the demand for collect calls.

⁵³ Dawson 2012, ¶ 16.

26. Taken together, the above analysis suggests that a reasonable rate for a debit call would be no greater than \$0.05 per minute⁵⁴ and no more than \$0.07 per minute for collect calls.⁵⁵ ***I proffer \$0.07 per minute for both debit and collect calls, with no set up or per call fixed fees, as a just and reasonable benchmark rate for inmate calling services.*** This rate is clearly economic for a commercial provider to offer—it is greater than commercial rates adjusted for prison specific costs and, as noted below, it is greater than the rate already charged in some states—and provides a buffer of additional revenue to continue to fund modest commissions. In fact, this is a conservative estimate and the analysis above could justify even lower rates. The section below on the costs and benefits of reform discusses this issue in more detail.

27. The suggested rate of \$0.07 per minute with no per-call fees will cover the costs of the calls and it is unnecessary to create a 2-part tariff approach with a fixed per-call component plus a variable per-minute component. There are very few cost components that change with the number of call initiations and that do not vary with the length of the call. The infrastructure components such as handsets and transport are not impacted by the number of calls, but are driven by the total number of call-minutes. The capacity of a switch is determined by the total number of simultaneous calls it must handle, but once installed this very small cost component of a call does not vary. Billing costs, where it takes the same effort to bill a one-minute call as it does to bill a ten-minute call, is roughly fixed per call, but represents only a small part of a call's costs.

28. Only if the new lower rates induced the average length of a call to drop significantly, which is counterintuitive, would the elimination of the per-call fee and recovering all costs based on a per-minute charge potentially cause concerns. (The concern is only 'potential' because it would only arise *if* there were significant per call costs.) Lower prison calling prices would be expected to increase the demand for calls made from prisons. Increased demand could be expressed as more calls and/or longer calls. Only if the additional calls induced by lower prices were much shorter than current call lengths would they bring down the average length of calls. Given that the average length of existing calls would be expected to increase at lower prices, it

⁵⁴ The \$0.03 per minute cost of the call based on commercial rates plus \$0.02 per minute added cost of the prison phone system components.

⁵⁵ The \$0.05 per minute cost of debit calling plus \$0.02 per minute cost differential for collect calls.

seems very unlikely that the net effect of lower prices would be shorter average call length. There is only limited evidence of what happens when prison calling rates are dramatically reduced, but New York provides one relevant experience. In 2007, New York reduced the price of prison calls by 57.5% and saw a 35% increase in the number of call and a 36% increase in the total call volume.⁵⁶ In this example, lower prices *increased* the length of calls as well as the number of calls. Consequently, there is very little reason to believe there will be any concerns with recovering all costs—regardless of how much are generated on a per-call basis versus on a per-minute basis—through a per-minute charge alone.

29. Per minute calling rates have other advantages. Foremost, they are simple to understand. This reduces confusion over actual or expected call costs by prisoners and those they call. An additional advantage of flat per minute calling rates is that they eliminate billing issues associated with dropped calls. Reinitiating a dropped call will no longer incur inappropriate excess call initiation fees.

30. Now I turn to other calling rates as a validation of the rates calculated above. First I examine actual prison calling rates. I follow Mr. Dawson’s convention of estimating net calling rates after removing the portion of charges that go to commissions to penal institutions. These commissions are not related to the provision of phone service and, as argued more extensively in the next section of this Declaration, should not be an explicit component of a regulated prisoner phone rate.

31. Since prisoner calling rates are often priced as what is referred to as two-part tariffs, to make rates from different states comparable, it is helpful to express them on a per minute basis. However, to do so, it is necessary to assume an average length of a prison call. Throughout my analysis I use 15 minutes per call. This is well within the range of currently observed call lengths. For instance, in 2010 in California, the average length of all inmate calls was 12.3 minutes, or 12.1 minutes for interstate calls alone.⁵⁷ In July 2000 the average length of an inmate

⁵⁶ See New York State, “Department of Corrections and Community Supervision,” (December 13, 2007) available at: <http://www.doccs.ny.gov/PressRel/2007/phoneratereduction.html> (last accessed March 21, 2013).

⁵⁷ California Telephone Agency. *Inmate Ward Telephone System/Managed Access System Services*, “Attachment 1.” Received from Lee Petro via email, March 8, 2013.

call in New York was 18 minutes for an interstate call and 17.5 minutes for an intrastate call.⁵⁸ 15 minutes is also the convention for average call length used by the Petitioners in this matter.⁵⁹ However, the results reported below are not very sensitive to call length, and my conclusions would not change if a little bit longer or shorter call length were used.

32. Table 1, below, is based on the collect call rates reported by Prison Legal News based on their own research.⁶⁰ For the states with data available, I calculated the total cost of a 15 minute call (including both set-up and per minute fees), deducted the estimated commissions, and then divided by 15 to express the costs on a per minute basis. This amount represents the fees that are collected by the underlying service provider and are comparable to the \$0.07 per minute rate for collect calls calculated above. The underlying costs of providing prison phone service may vary somewhat state by state, but nothing that would support the variation reported in Table 1.

⁵⁸ MCI Telecommunications. "Check Summary: Report 8/99-7/00," September 18, 2000. Received from Lee Petro via email, March 8, 2013.

⁵⁹ *Petitioners Comments*, p.18.

⁶⁰ See Appendix A.

Table 1: Interstate Collect Call Rates Less Commission for State Prisons, 2012

| State | 15 minute Call Less Commission (\$/Minute) | State (Continued) | 15 minute Call Less Commission (\$/Minute) |
|----------------|---|------------------------------|---|
| New Mexico | 0.04 | North Dakota | 0.24 |
| New York | 0.05 | Wyoming | 0.25 |
| Oklahoma | 0.05 | Texas | 0.26 |
| South Carolina | 0.07 | Arizona | 0.26 |
| Florida | 0.09 | West Virginia | 0.30 |
| North Carolina | 0.10 | Kansas | 0.30 |
| Nebraska | 0.10 | Utah | 0.33 |
| Connecticut | 0.10 | Maine | 0.36 |
| Montana | 0.10 | Nevada | 0.36 |
| Louisiana | 0.11 | Mississippi | 0.38 |
| Missouri | 0.12 | Virginia | 0.38 |
| Massachusetts | 0.12 | Rhode Island | 0.39 |
| Wisconsin | 0.13 | Arkansas | 0.39 |
| Indiana | 0.14 | South Dakota | 0.41 |
| Vermont | 0.15 | Pennsylvania* | 0.41 |
| Illinois | 0.17 | Tennessee | 0.43 |
| Colorado | 0.18 | Georgia | 0.46 |
| New Jersey | 0.19 | Delaware | 0.46 |
| Kentucky | 0.20 | Minnesota | 0.47 |
| Maryland | 0.22 | Idaho | 0.99 |
| Michigan | 0.23 | Alaska | 1.07 |

Source: *The Brattle Group* Analysis. See Appendix A.

Notes:

*Pennsylvania figure calculated with commission data that may be incomplete. Refer to Appendix A.

Commission data for Alabama, Hawaii, Washington and Iowa were not available.

Commission data for California, New Hampshire, Ohio and Oregon were available, but there was not enough information to calculate these figures. Refer to Appendix A for state specific footnotes.

33. As the table above indicates, the New Mexico rate, based on a 15 minute call, is only \$0.04 per minute and lower than the \$0.07 per minute suggested above as an upper bound on prison calling rates. In New York, where the state abolished commissions and made a concerted

effort to lower prison calling rates,⁶¹ and Oklahoma the per-minute cost of a collect call is only \$0.05 per minute. These examples suggest that it is commercially viable to provide prison phone service for only \$0.05 per minute. South Carolina charges an average of \$0.07 per minute—right in line with the estimated costs provided above. Florida, North Carolina, Nebraska, Connecticut and Montana all have average rates less commissions based on 15 minute calls of \$0.10 or less. All of these rates are commercially provided and demonstrate that it is possible, absent commissions, to provide prison phone service for far less than the rates currently charged in most states today.

34. The reasonableness of the above analysis is also supported by bids of service providers to provide prison calling services in many states. For example, in its 2008 bid in Wisconsin, service provider GTL offered a rate of \$0.089 per minute with no connection fee for debit calling and a rate of \$0.099 per minute with no connection fee for collect calling.⁶² In a Missouri bid from 2011 that it narrowly lost, Talk Telio offered a flat rate of \$0.05 per minute for both debit and collect calls with no per call fees.⁶³ And, of course, the effective realized rates in New Mexico, New York, Oklahoma and South Carolina indicate that \$0.07 per minute is feasible. As these examples demonstrate, \$0.07 per minute for both debit and collect calls is greater than several commercially offered rates.

35. ***Taking all of the above information together, I proffer \$0.07 per minute for both debit and collect calls, with no set up or per call fixed fees, as a just and reasonable rate for inmate calling services.*** This rate is clearly economic—it is greater than commercial rates adjusted for prison specific costs and, as noted below, it is greater than the rate already charged in some states—and provides a buffer of additional revenue to continue to fund modest commissions. It will not, however, allow for excessive profits for service providers or penal institutions. The section below on the costs and benefits of reform discusses this issue in more detail.

⁶¹ New York eliminated commissions (sometimes referred to as ‘kickbacks’) in 2007. See, http://www.salon.com/2012/10/01/prisoners_crippling_phone_bills/ (last visited March 22, 2013).

⁶² “Global Tel*Link’s State of Wisconsin Department of Corrections, Request for Proposal SM-1752, Inmate Telephone Services, Volume II – Cost and Revenue Proposal” (October 16, 2008), p. 3.

⁶³ Petro Letter, p. 2 and Exhibit A. It is worth noting that Talk Telio received the maximum points allowable for scoring the price component of their bid, but price accounted for less than half the total points used to evaluate the bid. Nevertheless, Talk Telio only narrowly lost the bid to Securus.

IV. COSTS AND BENEFITS OF REFORMING PRISON PAYPHONE RATES

36. The market failures of the prison payphone market—that prisoners’ lack of choice in a service provider results in no mechanism to moderate rates—means that the prices charged are almost certainly not efficient and social welfare could be improved with alternative rates. This section will evaluate the costs and benefits of setting a maximum benchmark rate for prison phone calls. As explained below, the benefits of the proposed benchmark maximum calling rate likely greatly exceed the associated costs.

37. As an initial matter, it is worth observing that from an economic perspective, reducing prison phone rates would be expected to improve welfare. Absent competitive pressures, the current price of most prison calling is far above the costs of providing the call. Consequently, the price does not properly signal the costs of the resources used when making a phone call from a prison.⁶⁴ If the prison phone market was a well-working market, the higher price would suggest that the resources employed to produce the good in question are more valuable than for an alternative lower priced good.⁶⁵ Only if the prices of goods and services were related to their

⁶⁴ The benefits of prison phone calls, discussed below, are also not reflected in the price of calls, further distorting economic efficiency.

⁶⁵ Economic efficiency is achieved because activities in an economy are coordinated through these price signals, rather than through central coordination or administration. “Fundamentally, in a system where the knowledge of the relevant facts is dispersed among many people, prices can act to coordinate the separate actions of different people in the same way as subjective values help the individual to coordinate the parts of his plan. It is worth contemplating for a moment a very simple and commonplace instance of the action of the price system to see what precisely it accomplishes. Assume that somewhere in the world a new opportunity for the use of some raw material, say tin, has arisen, or that one of the sources of supply of tin has been eliminated. It does not matter for our purpose—and it is very significant that it does not matter—which of these two causes has made tin more scarce. All that the users of tin need to know is that some of the tin they used to consume is now more profitably employed elsewhere, and that in consequence they must economize tin. There is no need for the great majority of them even to know where the more urgent need has arisen, or in favor of what other needs they ought to husband the supply. If only some of them know directly of the new demand, and switch resources over to it, and if the people who are aware of the new gap thus created in turn fill it from still other sources, the effect will rapidly spread throughout the whole economic system and influence not only all the uses of tin, but also those of its substitutes and the substitutes of these substitutes, the supply of all the things made of tin, and their substitutes, and so on; and all this without the great majority of those instrumental in bringing about these substitutions knowing anything at all about the original cause of these changes. The whole acts as one market, not because any of its members survey the whole field, but because their limited individual fields of vision sufficiently overlap so that through many intermediaries the relevant information is communicated to all. The mere fact that there is one price for any commodity—or rather that local prices are connected in a manner determined by the cost of transport, etc.—brings about the solution which (it is just conceptually possible) might have been arrived at by one single mind possessing all the information which is in fact dispersed

costs—broadly defined to include all costs, including competitive profits and any non-market externalities—then they would send the right signals that encourage resources to be used efficiently.

38. The problem with inefficient prices, such as those in the prison phone market, is that they waste resources—what economists call a dead weight loss. A phone call that is priced greater than it would be if it was provided in a competitive market sends the signal that these calls use more resources than they in fact do. This creates a situation where some consumers (prisoners and their families) value the services more than they cost to produce, but are unable to purchase them. This creates unrealized gains from trade. When prisoners and their families pay a price that covers the costs of the call, both they and the providers of the call can be made better off, at least in theory.⁶⁶ The reason economists argue for efficient prices is that through the elimination of the dead weight loss, the gain to the benefitting party exceeds the loss to the losing party.⁶⁷ Because the excessive prices charged for prison calls imply a dead weight loss, a regulated rate that reduces that dead weight loss would be expected to improve total welfare.⁶⁸

THE COSTS OF THE CURRENT SYSTEM/THE BENEFITS OF REFORM

39. The costs of the current system and, consequently, the benefits from reforming it, are two-fold. First, any reduction in costs of calls from prisons would directly benefit prisoners and those they call in the form of lower phone bills. Second, to the extent the savings in these expenses lead to additional phone calling (more and/or longer calls), the prisoners and their families will certainly benefit, but so will society overall through the positive externality of the reduced recidivism that results from keeping prisoners connected to their families and communities.

among all the people involved in the process.” F. A. Hayek, “The Use of Knowledge in Society,” *The American Economic Review*, Vol. XXXV, No. 4 (September 1945), p. 526.

⁶⁶ In practice, the reforms proposed here would also result in a transfer from prisons and service providers to prisoners and their families, separate from creating a net benefit to society.

⁶⁷ At least in theory the winner could compensate the loser and still be better off. This meets the so called Pareto Efficiency criteria.

⁶⁸ An reduction in rates that does not overshoot the efficient level is expected to improve welfare.

40. Costs of Prison Calls. As the analysis of Section III, above, indicates, the cost of providing prison phone services is certainly less than \$0.07 per minute. Yet, most prisoners pay more—often much more—than this amount. Table 2, below, reports the per-minute rates for a 15-minute collect call from a Prison Legal News survey. There are at least 6 states where the cost of a 15 minute interstate collect call, inclusive of commissions, is more than \$1 per minute. A call in an additional 15 states is more than \$0.50 per minute and in another 11 states the cost is more than \$0.25 per minute. Together, of the states surveyed by Prison Legal News, ***at least 32 states charged \$0.25 per minute or more for a 15-minute interstate collect call.***

Table 2: Collect Call Rates for State Prisons, 2012

| State | 15 minute Call (\$/Minute) | State (Continued) | 15 minute Call (\$/Minute) |
|----------------|-------------------------------|----------------------|-------------------------------|
| New Mexico* | 0.04 | Kentucky | 0.43 |
| New York | 0.05 | California | 0.44 |
| South Carolina | 0.07 | Maryland | 0.47 |
| Nebraska | 0.10 | Kansas | 0.51 |
| Missouri | 0.12 | West Virginia | 0.56 |
| Montana | 0.14 | Arizona | 0.56 |
| Florida | 0.14 | Virginia | 0.59 |
| Massachusetts | 0.16 | South Dakota | 0.64 |
| Oregon | 0.16 | Utah | 0.65 |
| Wisconsin | 0.18 | Arkansas | 0.71 |
| New Hampshire | 0.18 | Pennsylvania | 0.73 |
| Oklahoma | 0.20 | Washington | 0.73 |
| North Carolina | 0.23 | Wyoming | 0.74 |
| Michigan | 0.23 | Delaware | 0.77 |
| Vermont | 0.23 | Nevada | 0.79 |
| Indiana | 0.24 | Tennessee | 0.85 |
| Connecticut | 0.32 | Maine | 0.89 |
| New Jersey | 0.33 | Mississippi | 0.97 |
| Colorado | 0.35 | Idaho | 1.10 |
| Louisiana | 0.36 | Ohio | 1.14 |
| Rhode Island | 0.39 | Georgia | 1.15 |
| Illinois | 0.39 | Minnesota | 1.15 |
| North Dakota | 0.40 | Alabama | 1.15 |
| Texas | 0.43 | Alaska | 1.15 |

Source: *The Brattle Group* Analysis. See Appendix A.

Notes:

*The calling rate for New Mexico is listed as a flat rate of \$.65 for a 20 minute call. Assuming the rate for a 15 minute call would be the same or less, I used the flat rate of \$.65 rate for the calculation. Thus .04 dollars per minute can be seen as an upper limit.

Collect call rates were not available for Hawaii or Iowa.

41. More recent evidence of rates from prisons suggests charges remain well above costs. Phone bill evidence from Virginia suggests collect calls to Washington, DC are billed at a \$2.50

per-call fee plus \$0.20 per minute.⁶⁹ Another phone bill with charges from Florida to Alabama suggests per-call charges of \$3.50 plus \$0.89 per minute.⁷⁰

42. As the analysis above indicates, prisons in most states charge significantly more to prisoners to make phone calls than the underlying cost of those calls. Any maximum allowed rate pegged to a benchmark that reduces these charges will directly benefit prisoners and those they call.

43. Economic benefits of lower rates. From a purely economic perspective, the first order effect of lower rates for calls that would have been placed at higher rates is simply a transfer from service providers and the penal institutions they contract with, to prisoners, their families and others they call. The additional calls that will be made if rates are lower (but do not happen with today's higher rates) provide a net benefit to society. This net benefit arises through the elimination of the distortion in the use of resources that were referred to above as a dead weight loss. Part of this efficiency benefit will go to consumers of prison phone services and part will go to the service providers and, possibly, the institutions they serve.

44. The net economic benefit to consumers of prison phone services is the difference they would have been willing to pay for the additional calls made, less the new cost of those calls. This willingness to pay is distributed between the old rate paid (because additional calls could have been purchased at that rate prior to the rate reduction) and the new rate. The amount of additional calling will depend on how responsive calling volumes are to a change in its price—what economists call the elasticity of demand—for prison phone services. The elasticity of demand for prison phone services is expected to be inelastic—that is, the amount of calls made is not very responsive to prices. This inelastic demand is expected because prisoners have fewer

⁶⁹ Securus Account Statement, dated 9/26/2012. Received from Deborah Golden via email, February 5, 2013. The bill includes a 3 minute call billed at \$3.10 and a 10 minute call billed at \$4.50. This implies a pricing structure where the Call Cost = \$2.50 plus \$0.20 times the number of minutes of the call. Examination of other charges on the same bill confirms this pricing structure.

⁷⁰ Global Tel Link. Billing Summary for Southern Poverty Law Center, October 31, 2012. Received from Lee Petro via email, February 4, 2013. The bill includes a 1 minute call billed at \$4.84 and a 2 minute call billed at \$5.73. This implies a pricing structure where the Call Cost = \$3.95 plus \$0.89 times the number of minutes of the call. This rate structure is consistent with another invoice from GTL dated September 29, 2012. Global Tel Link, Billing Summary for Account Number 2023191000, September 29, 2012. Received from Deborah Golden via email February 5, 2013.

alternatives to making phone calls. They mostly cannot see people in person and do not have access to e-mail. In New York, when prices fell by 57.5%, total usage increased by 36%, suggesting an elasticity of demand of -0.63.⁷¹

45. When rates are reduced and demand is inelastic, there will be less revenue generated from prison calling services. To the extent the reduced revenue forces a reduction in commissions, prisons will lose revenues. Service providers will also lose through reduced revenues from services. But lower prices will induce an increase in the amount of prison calls made, leading to a partial offset for service providers, and possibly prisons. The above elasticity estimate suggests that a 10% reduction in price will lead to a 6.3% increase in call volumes.

46. Social benefits of lower rates. There are at least 2 social externalities associated with prison calling. The first is through the benefits of reduced recidivism from greater contact between prisoners and their family and community. The second is more effective prisoner management, including reduced use of contraband cell phones in prisons. Although exact pecuniary levels of these added benefits from lower calling rates are not quantified here, they are nonetheless real.

47. Prisoners making phone calls to their family and community have a well-documented social externality—namely, that better family and community contacts reduce recidivism rates. Many studies find that maintaining family and community contacts is an important predictor of recidivism.⁷² Furthermore, the GAO found that “BOP extends telephone privileges to inmates and asserts that telephone privileges help inmates maintain family and community ties and facilitate the reintegration of inmates into society upon release from prison.”⁷³

48. This social benefit of reductions in recidivism rates is difficult to quantify accurately, but it must be large. In 2011, the average U.S. state and federal prison population was 1.6 million

⁷¹ <http://www.doccs.ny.gov/PressRel/2007/phoneratereduction.html>.

⁷² See the discussion in Jackson 2005, pp. 272-273.

⁷³ GAO 2011, p. 6.

inmates and 688,384 were released in that year.⁷⁴ According to one study, in 2010 each prisoner in a state institution cost taxpayers an average of \$31,286.⁷⁵ A conservative estimate of recidivism rates would suggest 40% of prisoners return to prison within 3 years.⁷⁶ With almost 700,000 prisoners released each year, these numbers suggest 280,000 will return to prison within 3 years. Consequently, a reduction of just 1% in the number of reincarcerated prisoners would imply 2,800 prisoners not returning to prison and annual savings of almost \$90 million.⁷⁷ Reductions in the next year's 'class' of returning prisoners generate additional savings of about the same amount. If the average prisoner serves 3 years,⁷⁸ then a 1% reduction in recidivism would save more than \$250 million per year, year after year.⁷⁹

49. Yet another benefit of lower prison calling rates relates to inmate management issues. Contraband cell phones are a threat to prisons, both in facilitating additional criminal activity and threatening institutional safety.⁸⁰ Any substitution away from cell phones to prison provided calling services brings more prisoner communications under monitoring and reduces these threats. Making prison calling more cost competitive with cellular rates will inevitably create some substitution in usage toward the calling services provided by the institution.

⁷⁴ E. Ann Carson & William J. Sabol, "Prisoners in 2011," U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Bulletin (December 2012), p. 1, available at: <http://bjs.ojp.usdoj.gov/content/pub/pdf/p11.pdf>.

⁷⁵ Christian Henrichson & Ruth Delaney, "The Price of Prisons, What Incarceration Costs Taxpayers," VERA Institute of Justice (July 20, 2012), p. 10, available at: http://www.vera.org/sites/default/files/resources/downloads/Price_of_Prisons_updated_version_072512.pdf.

⁷⁶ "When excluding California, whose size skews the national picture, recidivism rates between 1994 and 2007 have consistently remained around 40 percent." The PEW Center on the States, "State of Recidivism, The Revolving Door of America's Prisons" (April 2011), p. 2, available at: http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/State_Recidivism_Revolving_Door_America_Prisons%20.pdf. Including California would have made the rate higher. Furthermore, the Department of Justice estimated a 3-year recidivism rate of prisoners released in 1994 of 67.5%. U.S. Department of Justice, Office of Justice Programs, "Recidivism of Prisoners Released in 1994," Bureau of Justice Statistics Special Report (June 2002), p. 1, available at: <http://bjs.ojp.usdoj.gov/content/pub/pdf/rpr94.pdf>.

⁷⁷ $1\% * 280,000 = 2,800$ prisoners * \$31,286 per prisoner = \$87,600,800.

⁷⁸ http://www.nytimes.com/2012/06/06/us/average-prison-stay-grew-36-percent-in-two-decades.html?_r=0.

⁷⁹ $\$87,600,800 * 3 = \$262,802,400$.

⁸⁰ GAO 2011, p. 19.

50. Although the exact values of these externalities—lower recidivism and better prisoner management—are not estimated here, they do provide further justification for lowering prison calling rates. In fact, they provide an argument for subsidizing prisoner calling rates. The efficient level of rates based on market costs does not account for these other positive externalities. If the added benefits arising from lower rates were actually considered during the rate-setting process, rates would be set lower than the rate suggested by the analysis in the previous section.

THE COSTS OF REFORM/BENEFITS OF THE CURRENT SYSTEM

51. The only beneficiaries of the current high rates are the current service providers and the penal institutions that receive commissions from the service providers they contract with. However, any lost revenues to service providers result in a direct benefit to prisoners and those they call. The impact on the service providers may also be offset from any increased volume of calls placed.⁸¹

52. A significant portion of the rates charged in many states go to the penal institutions in the form of commissions. Prison Legal News estimated that total commissions nationwide were more than \$100 million in 2012.⁸² As the FCC has previously found, these commissions are not economic costs of providing prison calling services.⁸³ Rather, they are more akin to a tax. As noted above, some of the revenues from commissions ultimately paid by prisoners and their families currently may be put to good uses, but because they distort the calling market, they come with added costs. A more straightforward funding source for these prisoner benefits, such as from general tax revenues, would distort economic resources less than taxing prison phone calls as a source of revenue.

53. Since the proposed benchmark maximum rate of \$0.07 per minute is still above reasonable estimates of costs, including a competitive profit, there could still be some room for

⁸¹ How much the increase in calling volumes offsets service provider losses will depend on how the elasticity of demand for calling services (to determine the amount of increase in inmate calling) and on what happens with commissions.

⁸² Human Rights Defense Center, “Comment in the Matter of Rates for Inmate Calling Services, WC Docket No. 12-375,” (March 25, 2013), Exhibit C.

⁸³ Inmate Calling NPRM 2012, ¶ 37.

small commissions. In fact, with a fixed maximum rate, the competition for contracts would induce efficient provision of prison phone service.⁸⁴ If commissions are still allowed, then it is likely that service providers would still compete on the basis of commissions in trying to secure the contracts for given facilities. The amount of money available to offer in commissions would be the difference between the benchmark maximum rate and the costs of providing service. The firms that could offer the highest commissions would be the ones that could provide the underlying service at least cost, for a given set level of service quality.⁸⁵ In the absence of commissions, competition for contracts would focus on other areas, such as providing better service to prisoners.

THE NET BENEFITS OF A BENCHMARK MAXIMUM RATE

54. It is well beyond the scope of the current analysis to provide a full accounting of the net benefits of regulating prison phone rates by establishing a maximum benchmark. Nevertheless, those net benefits are expected to be positive. Through the elimination of a dead weight loss we expect the gains to prisoners and those they call to exceed the loss in revenues to service providers and prisons. Some of benefits will be in the form of transfers from service providers and prisons to prisoners and those they call. The transfer of provider profits to the consumers of prison phone services should be seen a good thing from the social perspective, largely because it is only excess profits that would be transferred while those receiving the monetary benefits tend to be low income and can disproportionately benefit from the increased income.

55. A secondary concern is the loss in commissions to prisons. But it is very likely that through reduced recidivism rates prisons systems will not lose any money from reduced phone rates and associated commissions. As noted above, one estimate of the commissions earned by prisons is about \$100 million per year. A less-than-one percent reduction in recidivism would offset that lost revenue in lower prisoner costs. We do not know what the reduced recidivism rates would be from lower calling rates, but a 1% reduction does not seem an aggressive

⁸⁴ As with any regulated price, the quality of the service must be specified or lower quality service could result from cost cutting measures.

⁸⁵ The winning bidder would be expected to earn above competitive profits by the difference between how efficiently it could provide the service and the next most efficient provider.

estimate.⁸⁶ Although the savings from reduced recidivism may not exactly match the lost commission revenues at each facility or in every budget line, the prison system in the U.S. would save enough to offset the lost commission revenues.

V. INAPPLICABILITY OF MARGINAL LOCATION METHODOLOGY TO THE PRISON PHONE MARKET

56. Marginal Location Methodology—as adopted by the FCC for calculating public payphone rates⁸⁷—is not applicable to the prison payphone marketplace. The reasons used to justify this methodology in the public payphone market do not hold today for prison phone calling. Applying such a methodology here would be unnecessarily complicated and would overcompensate most prison phone service providers.

57. The idea behind the Marginal Location Methodology is to estimate a rate where the marginal location just breaks even. As the FCC said in its 1999 Order, “A marginal payphone location is a location where the payphone operator is able to just recoup its costs, including earning a normal rate of return on the asset, but is unable to make payments to the location owner.”⁸⁸ It is the average call volume at that marginal location that would be used along with cost analysis to set the appropriate rate. Applying this methodology to prison phone systems would be to set a benchmark rate for all prisons based on the call volume at a marginal prison that just barely breaks even without paying commissions (if commissions are taken as analogous to payments to the location owner.)

58. This methodology has been criticized when applied to payphones.⁸⁹ Among other defects, it guarantees overpayments at most (non marginal) locations. In the case of prison calling services, costs are less facility specific than for payphones. The centralized nature of

⁸⁶ If the impact of better family and community ties induced by lower calling rates was actually less than 1% it seems unlikely that multiple studies would have identified the importance of this predictor of recidivism.

⁸⁷ See, Federal Communications Commission, “Third Report and Order, and Order on Reconsideration of the Second Report and Order,” In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128 (Adopted: January 28, 1999). (Hereinafter “1999 Payphone Order”.)

⁸⁸ 1999 Payphone Order, ¶ 139.

⁸⁹ There was some dissent in the applicability of this methodology to payphones. 1999 Payphone Order, ¶ 140.

providing prison calling services implies that costs are shared over multiple facilities. Consequently, this methodology is less relevant for prison calling rates than for payphone rates.

59. The Marginal Location Methodology is also inapplicable because it is a cost-based methodology. The justification for regulating prison calling rates is that the market fails to set just and reasonable rates. Cost-based rate regulation is a second-best attempt to approximate the outcome of a competitive market. As the analysis above indicates, most of the components of providing prison phone services can be priced in reference to competitively determined service components. Consequently, there is no need to apply a regulated cost of service approach to determining a just and reasonable rate. In fact, if a cost-based methodology produces a rate significantly higher than the \$0.07 per minute proposed here, it must be in error because it would imply paying more for a service, or component of service, that could be purchased more inexpensively in the competitive marketplace, thereby undermining the rationale for using cost-based regulation in the first place.

Respectfully submitted,

By: 

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March 25, 2013

Appendix A: Underlying Data for Interstate Collect Call Calculations

| State | | Interstate Collect Call Base Rate | Interstate Collect Call Minute Rate | Commissions |
|----------------|------|--------------------------------------|--|-------------|
| Alabama | | \$3.95 | \$0.89 | Missing |
| Alaska | | \$3.95 | \$0.89 | 7.0% |
| Arizona | | \$2.40 | \$0.40 | 53.7% |
| Arkansas | | \$3.95 | \$0.45 | 45.0% |
| California | [1] | \$0.00 | \$0.44 | Missing |
| Colorado | [2] | \$3.00 | \$0.15 | 49.0% |
| Connecticut | | \$0.00 | \$0.32 | 68.8% |
| Delaware | | \$1.71 | \$0.66 | 40.0% |
| Florida | [3] | \$1.20 | \$0.06 | 35.0% |
| Georgia | | \$3.95 | \$0.89 | 60.0% |
| Hawaii | | Missing | Missing | Missing |
| Idaho | [4] | \$3.80 | \$0.85 | 10.6% |
| Illinois | [5] | \$2.50 | \$0.23 | 56.0% |
| Indiana | | \$0.00 | \$0.24 | 43.5% |
| Iowa | [6] | Missing | Missing | Missing |
| Kansas | [7] | \$1.70 | \$0.40 | 41.3% |
| Kentucky | | \$2.00 | \$0.30 | 54.0% |
| Louisiana | | \$2.15 | \$0.22 | 70.0% |
| Maine | [8] | \$3.00 | \$0.69 | 60.0% |
| Maryland | [9] | \$2.85 | \$0.30 | 54.0% |
| Massachusetts | | \$0.86 | \$0.10 | 22.5% |
| Michigan | | \$0.00 | \$0.23 | 0.0% |
| Minnesota | | \$3.95 | \$0.89 | 59.0% |
| Mississippi | [10] | \$3.30 | \$0.75 | 60.5% |
| Missouri | | \$1.00 | \$0.05 | 0.0% |
| Montana | | \$0.24 | \$0.12 | 25.0% |
| Nebraska | | \$0.70 | \$0.05 | 0.0% |
| Nevada | | \$3.00 | \$0.59 | 54.2% |
| New Hampshire | [11] | \$1.20 | \$0.10 | Missing |
| New Jersey | | \$0.00 | \$0.33 | 41.0% |
| New Mexico | [12] | \$0.65 | \$0.00 | 0.0% |
| New York | | \$0.00 | \$0.05 | 0.0% |
| North Carolina | [13] | \$3.40 | \$0.00 | 58.0% |
| North Dakota | [14] | \$2.40 | \$0.24 | 40.0% |
| Ohio | [15] | \$3.94 | \$0.88 | Missing |
| Oklahoma | [16] | \$3.00 | \$0.00 | 76.6% |
| Oregon | [17] | \$0.00 | \$0.16 | Missing |
| Pennsylvania | [18] | \$3.50 | \$0.50 | 44.4% |
| Rhode Island | | \$1.30 | \$0.30 | 0.0% |
| South Carolina | [19] | \$0.99 | \$0.00 | 0.0% |
| South Dakota | [20] | \$3.15 | \$0.43 | 35.5% |
| Tennessee | [21] | \$3.54 | \$0.62 | 50.1% |
| Texas | [22] | \$0.00 | \$0.43 | 40.0% |
| Utah | [23] | \$3.00 | \$0.45 | 50.0% |

| State | Interstate Collect Call Base Rate | Interstate Collect Call Minute Rate | Commissions |
|--------------------|--------------------------------------|--|-------------|
| Vermont | \$1.25 | \$0.15 | 37.0% |
| Virginia [24] | \$2.40 | \$0.43 | 35.0% |
| Washington | \$3.50 | \$0.50 | Missing |
| West Virginia [25] | \$0.85 | \$0.50 | 46.0% |
| Wisconsin | \$0.00 | \$0.18 | 30.0% |
| Wyoming [26] | \$2.80 | \$0.55 | 65.5% |

Source: Prison Legal News, 2013.

Notes: Compiled by Prison Legal News.

- [1] No commissions, but California Technology Agency receives an \$800,000 annual fee from GTL.
- [2] FY2012 commission amount is for 10 months of the FY.
- [3] FY2009 commission amount is only for January through June 2009.
- [4] No commission percentage; the commission is \$2.25 per debit call, \$2.00 per pre-paid collect call and \$1.75 per collect call. Community Work Centers have a 20% commission.
- [5] FY2012 commission amount is through April 2012.
- [6] Not called “commissions,” but the Iowa DOC receives payments from its ICS provider.
- [7] FY2012 commission amount is through May 2012.
- [8] Uses a calendar year, not fiscal; 2012 amount is through November 2012.
- [9] Rates per email from MD DOC; no per-minute charge for first minute of collect interstate calls. ICS contract changed to GTL in March 2013, resulting in reduced rates.
- [10] Collect rate is per call to GTL on 3/8/13.
- [11] Commission is \$27,000/month + 20%, starting September 2012.
- [12] All flat rates are for 20-minute calls.
- [13] FY2012 commission amount is through October 2012.
- [14] \$.30 for the first minute for collect interstate calls, then \$.24/min. thereafter.
- [15] Ohio DOC receives a flat/fixed annual commission of \$15 million. Collect rate is per call to GTL on 3/8/13.
- [16] Commission is a flat rate of \$2.30 per call, which equates to 76% based on a flat rate cost of \$3.00 per call.
- [17] \$750,000/quarter plus 50% commission if profit is over \$1.5 million.
- [18] FY2012 commission data is incomplete.
- [19] All flat rates are for 15-minute calls.
- [20] 33-38% on collect calls (varies by distance); \$1.00 commission per debit call (all distances).
- [21] Actual rates are \$3.53525 + .61755/min. collect and \$3.181735 +.555795/min. debit.
- [22] FY2012 ended on August 31; commission amount is as of August 5, 2012.
- [23] Rates are per call to VAC on 3/8/13.
- [24] FY2012 commission amount is for 11 months.
- [25] FY2012 commission amount is through September 2012.
- [26] FY2012 commission amount is from January through August 2012.

Attachment A

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Dr. Coleman Bazon is a principal in the Washington, DC office of *The Brattle Group*. He is an expert in regulation and strategy in the wireless, wireline, and video sectors. He has consulted and testified on behalf of clients in numerous telecommunications matters, ranging from wireless license auctions, spectrum management, and competition policy, to patent infringement, wireless reselling, and broadband deployment.

Dr. Bazon frequently advises regulatory and legislative bodies, including the U.S. Federal Communications Commission and the U.S. Congress. He also has expertise in the federal government's use of discount rates for policy and regulatory analysis, intellectual property valuation, economic impact analysis, and antitrust and damages analysis.

Throughout his career, Dr. Bazon has had extensive experience with spectrum license auctions. He advises on and evaluates numerous auction designs and regularly serves as an auction advisor for bidders in spectrum license auctions.

Prior to joining *Brattle*, Dr. Bazon was a vice president with Analysis Group, an economic and strategy consulting firm. During that time, he expanded the firm's telecommunications practice area. He also served as a principal analyst in the Microeconomic and Financial Studies Division of the Congressional Budget Office where he researched reforms of radio spectrum management; estimated the budgetary and private sector impacts of spectrum-related legislative proposals; and advised on auction design and privatization issues for all research at the CBO.

Dr. Bazon received his Ph.D. and M.S. in Agricultural and Resource Economics from the University of California at Berkeley. He also holds a Diploma in Economics from the London School of Economics and Political Science and a B.A. from Wesleyan University.

SELECTED CONSULTING PROJECTS

Litigation

- ◆ Assessed commercial viability of full text searching of books business model.
- ◆ Assessed Domestic Industry requirement in ITC 337 case.
- ◆ Estimated value of satellite assets in bankruptcy.
- ◆ Estimated damages from denial of pole attachments.
- ◆ Provided written testimony evaluating the performance of a numbering resource administrator.
- ◆ Provided written testimony on the ability to estimate damages for a class of satellite phone users.
- ◆ Provided written testimony on the economic value of Rights-of-Ways in Massachusetts.
- ◆ Estimated damages for a broadcast tower permit revocation.
- ◆ Provided oral testimony on the proprietary nature of specific information contained in a statewide public safety network bid.
- ◆ Provided written testimony on economic value associated with items provided in a labor neutrality agreement.
- ◆ Estimated damages associated with USF and other telephone taxes paid by a calling card reseller.
- ◆ Assessed the damages associated with the infringement of patents related to VoIP technology and the likely impact of a permanent injunction.
- ◆ Estimated recoverable data costs for two pesticides.
- ◆ Estimated cost of delay in granting local cable franchise.
- ◆ Analyzed the economic underpinnings of an exclusivity clause of a mobile phone affiliation agreement.
- ◆ Assessed commonality issues of physicians for class certification of RICO action against a set of health insurance companies.
- ◆ Estimated “Loss of Use” damages for a severed fibre optic cable.
- ◆ Provided written testimony estimating the value of a surety bond in a contract dispute involving toll free phone numbers used in an enhanced service application.
- ◆ Assessed damages associated with infringement of patents used to provide Voice over Internet Protocol (VoIP).
- ◆ Assessed basis for guidance of a large telecommunications firm in a 10-b securities litigation.
- ◆ Valued digital television radio spectrum in St. Louis in the pre-litigation phase of a breach of contract dispute.
- ◆ Estimated damages in a breach of contract case involving the sale of a fibre optic network.
- ◆ Researched the basis for generally optimistic forecasts of broadband deployment in the later 1990s and early 2000s in an anti-trust litigation.
- ◆ Researched the basis for generally optimistic beliefs about the telecommunications sector .in the late 1990s in a 10-b securities litigation.

- ◆ Assessed the market for Competitive Local Exchange Carriers in an SEC fraud case.
- ◆ Assessed a bankruptcy sale proposal for a national tier 1 broadband backbone provider.
- ◆ Examined the business case asserted for a small wireless reseller in a breach of contract litigation.
- ◆ Assessed damages associated with infringement of patents used in DNA fingerprinting applications.
- ◆ Assessed changes in contributions to the Cable Royalty Fund on behalf of Sports Claimants in a Copyright Arbitration Royalty Panel (CARP) proceeding.
- ◆ Assessed the capital adequacy of the U.S. branch of a foreign bank.

Regulatory Proceedings

- ◆ Estimated economic impact of LNP on RLECs.
- ◆ Assessed relevance of U.S. UNE-L experience for New Zealand benchmarking proceeding.
- ◆ Authored analysis of harm from revoking LightSquared's ATC authorization .
- ◆ Estimated value of pairing Upper 700 MHz A Block with public safety.
- ◆ Estimated impact of increased regulatory uncertainty on spectrum value.
- ◆ Estimated value of government provision of GPS service to private industry.
- ◆ Coauthored analysis of feasibility of reallocating broadcast television through the use of incentive auctions.
- ◆ Analyzed impact on spectrum value of pairing AWS III spectrum.
- ◆ Coauthored analysis of the merits of licensed versus unlicensed allocation of the TV White Spaces.
- ◆ Estimated the value of TV White Spaces.
- ◆ Provided written testimony on the economic harm of using proprietary information in retention marketing.
- ◆ Provided written testimony on the economics of pole attachment rates.
- ◆ Estimated the value of the PCS H-Block spectrum band.
- ◆ Estimated the economic impact of ITC Exclusion Order on cell phone handsets.
- ◆ Authored several reports on the 700 MHz auction rules.
- ◆ Analyzed the relationship between the size of cable systems and the economics of the programming market.
- ◆ Presented analysis on pricing differentials in overlapping cable markets.
- ◆ Assessed proposed regulation of mobile phone roaming rates.
- ◆ Analyzed impact of local franchise requirements on competition in the video marketplace.
- ◆ Developed and assessed Indian spectrum management proposals.
- ◆ Analyzed economic ramifications of à la carte cable channel pricing on consumers and the cable and television programming industries.

- ◆ Examined the relative merits of licensed versus unlicensed radio spectrum and the effects of “underlay” licenses on existing commercial licensees.
- ◆ Examined federalism issues related to mobile telephony regulation.
- ◆ Examined and refuted arguments suggesting that the California Telecommunications Consumer Bill of Rights was an appropriate response to market failures.
- ◆ Assessed the impact on consumers of California’s Telecommunications Consumer Bill of Rights proposal.
- ◆ Provided written testimony refuting analysis purporting to show a positive relationship between UNE-P and telecom network investment.
- ◆ Provided written testimony examining the effects of unbundling regulations on capital spending in the telecommunications sector.
- ◆ Estimated the adjustment to the TELRIC pricing formula to account for irreversible investment in the local telephone network.
- ◆ Examined the impact of irreversible investments in the local telephone network on the TELRIC pricing methodology.
- ◆ Assessed the degree of market overlap of two food service firms for purposes of merger review.
- ◆ Provided written testimony that assessed the validity of an analysis of the costs of a DTV tuner mandate.
- ◆ Provided written testimony of a forecast of toll free number demand for the toll free number administrator, SMS/800, in a rate case proceeding.

Other

- ◆ Assessed business case and value of HF license holder.
- ◆ Analyzed likely auction outcomes for TV broadcaster participating in incentive auction.
- ◆ Assessed value of commercial mobile spectrum bands.
- ◆ Analyzed economic impacts of the commercial casino industry.
- ◆ Evaluated impact of digitization on copyright industries.
- ◆ Analyzed economic and employment effects of Dutch gas hub.
- ◆ Advised bidder in Indian 3G spectrum license auction.
- ◆ Estimated economic and employment effects of network neutrality regulation.
- ◆ Analyzed relative costs of wireless and wireline deployments in rural areas.
- ◆ Analyzed potential harms from Internet gambling.
- ◆ Estimated economic value of reallocating TV spectrum for wireless broadband.
- ◆ Estimated economic and employment effects of electric power transmission construction in support of new wind generation facilities.
- ◆ Estimated economic and employment effects of broadband stimulus grant applications.

- ◆ Estimated employment effects of an ATC-mobile satellite network deployment.
- ◆ Analyzed the impact of reducing international mobile phone roaming charges.
- ◆ Developed an auction platform for an electricity procurement auction.
- ◆ Analyzed the economic impacts of reduced mobile phone taxes in Africa and the Middle East.
- ◆ Evaluated the impact of reducing ethanol requirements on gasoline prices.
- ◆ Analyzed FRAND licensing requirements for intellectual property in the DTV standard.
- ◆ Advised bidder in Canadian AWS spectrum license auction.
- ◆ Advised bidder in FCC 700 MHz spectrum license auction.
- ◆ Evaluated a business plan for proposed dam removals.
- ◆ Assessed a business plan involving the WiMAX market.
- ◆ Estimated the value of a portfolio of spectrum licenses.
- ◆ Assessed the budgetary impacts of legislation to license TV white spaces.
- ◆ Analyzed the economics of the military's build versus buy decision for broadband satellite communications capacity.
- ◆ Advised bidder in FCC AWS spectrum license auction.
- ◆ Provided framework to estimate impact of the effect of designation of TV white spaces as unlicensed on 700 MHz auction receipts.
- ◆ Analyzed Universal Service Fund expenditures.
- ◆ Analyzed cable franchising requirements.
- ◆ Valued proposals to re-band the Upper 700 MHz Band of radio spectrum.
- ◆ Analyzed proposed accelerated digital television transition impacts on society and the federal budget.
- ◆ Coauthored a report on the value of a portfolio of patents used to provide Voice over Internet Protocol (VoIP).
- ◆ Coauthored a report to the U.S. Chamber of Commerce on the economic effects of telecommunications deregulation.
- ◆ Assessed the business cases for IRU swaps of a large international fibre optic network owner.
- ◆ Examined the effects of unbundling regulations on broadband penetration internationally.

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“Testimony of Coleman Bazelon, Principal, *The Brattle Group*, before the U.S. House of Representatives, Committee on Energy and Commerce, Subcommittee on Communications, Technology, and the Internet,” June 17, 2010 (spectrum valuation).

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“Expert Report of Coleman Bazelon,” *Gemalto PTE LTD and Gemplus S.A. v. Telecommunications Industry Association*, United States District Court for the Eastern District of Virginia, Alexandria Division, Case 1:08-cv-00776-LMB-TRJ, November 6, 2008.

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“Rebuttal Report of Dr. Coleman Bazelon,” *Level 3 Communications, LLC, v. City of St. Louis, Missouri*, United States District Court for the Eastern District of Missouri, Eastern Division, Consolidated Case No. 4:04-CV-871 CAS, June 17, 2005.

“Affidavit of Dr. Coleman Bazelon,” *Informed Communications Systems, Inc. v. Intelogistics Corp., d/b/a Prosodie Interactive*, United States District Court, Southern District of Florida, Miami Division, Case No.: 04-61245 CIV Huck/Turnoff (October 12, 2004).

EXPERT DESIGNATIONS

- ◆ *Touch America, Inc. v. Qwest Communications International, Inc.*
- Designated as an expert in Arbitration (June 2003)

- ◆ *Informed Communications Systems, Inc. v. Intelogistics Corp., d/b/a Prosodie Interactive*, United States District Court, Southern District of Florida, Miami Division, Case No.: 04-61245 CIV Huck/Turnoff
 - Filed affidavit (October 12, 2004)
- ◆ *Level 3 Communications, LLC v. City of St. Louis, Missouri*, United States District Court for the Eastern District of Missouri, Eastern Division, Consolidated Case No. 4:04-CV-871 CAS
 - Filed Rebuttal Report (June 17, 2005)
 - Deposition (July 14, 2005)
- ◆ *Cable Merger before the FTC*
 - Presented analysis to FTC staff (March 20, 2007)
- ◆ *Gulfside Casino Partnership v. Mississippi Riverboat Council, et al.*, United States District Court for the Southern District of Mississippi, Southern Division, Cause No. 1:07-CV-110-LG-JMR
 - Filed affidavit (May 4, 2007)
- ◆ *Motorola, Inc. v. State of Mississippi Department of Information Technology Services and M/ACom, Inc., Chancery Court of Hinds County, Mississippi, Cause No. G2006-2179 S/2*
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- ◆ *American Towers, Inc. v. Jackson & Campbell, P.C., et al.*, DC Superior Court, No. 003277-06
 - Deposition (March 19, 2009)
 - Filed Affidavit (May 22, 2009)
- ◆ *The Massachusetts Turnpike Authority v. Level 3 Communications, LLC, et al.*, The United States District Court for the District of Massachusetts, Civ. Act. No. 06-11816
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 - Filed Rebuttal Report (December 17, 2007)
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- ◆ *Kenneth Stickrath, et al v. Globalstar, Inc.*, United States District Court for the Northern District of California, San Francisco Division, Case No. 07-CV-01941 THE
 - Filed Declaration (April 25, 2008)
 - Deposition (June 11, 2008)
- ◆ *In re: Complaint and request for emergency relief against Verizon Florida LLC for anticompetitive behavior in violation of Sections 364.01(4), 364.3381, and 364.10, F.S., and for failure to facilitate transfer of customers' numbers to Bright House Networks Information Services (Florida) LLC, and its affiliate, Bright House Networks, LLC*, Florida Public Service Commission, Docket No. 070691-TP
 - Filed Direct Testimony (May 30, 2008)
 - Filed Rebuttal Testimony (July 25, 2008)
 - Deposition (August 13, 2008)
- ◆ *Gemalto PTE LTD and Gemplus S.A. v. Telecommunications Industry Association*, United States District Court for the Eastern District of Virginia, Alexandria Division, Case 1:08-cv-00776- LMB-TRJ
 - Filed Expert Report (November 6, 2008)
 - Deposition (December 2, 2008)
 - Filed Supplemental Expert Report (December 16, 2008)
- ◆ *Salsgiver Communications, Inc., Salsgiver Telecom, Inc., and Salsgiver Inc. v. Consolidated Communications Holdings, Inc., North Pittsburgh Systems, Inc., and North Pittsburgh Telephone*

Company, Inc., Court of Common Pleas, Allegheny County, Pennsylvania, Civil Division, No. GD 08-7616

- Filed Damages Analysis (February 27, 2009)
- Deposition (April 3, 2012)
- Filed Expert Report (May 10, 2012)

◆ *Certain Products Containing Interactive Program Guide and Parental Control Technology* (Inv. No. 337-TA-820)

- Designated as an expert (June 8, 2012)

◆ *In re: Petition for Suspension or Modification of Application of the Requirements of 47 U.S.C. § 251(b) and (c), pursuant to 47 U.S.C. § 251(f)(2) regarding Time Warner Cable Information Services (Maine) LLC's Request, State of Maine Public Utilities Commission, Docket No. 2012-198, Docket No. 2012-218, Docket No. 2012-219, Docket No. 2012-220, Docket No. 2012-221*

- Filed Direct Testimony (August 20, 2012)
- Filed Rebuttal Testimony (October 12, 2012)
- Testified (October 23, 2012)

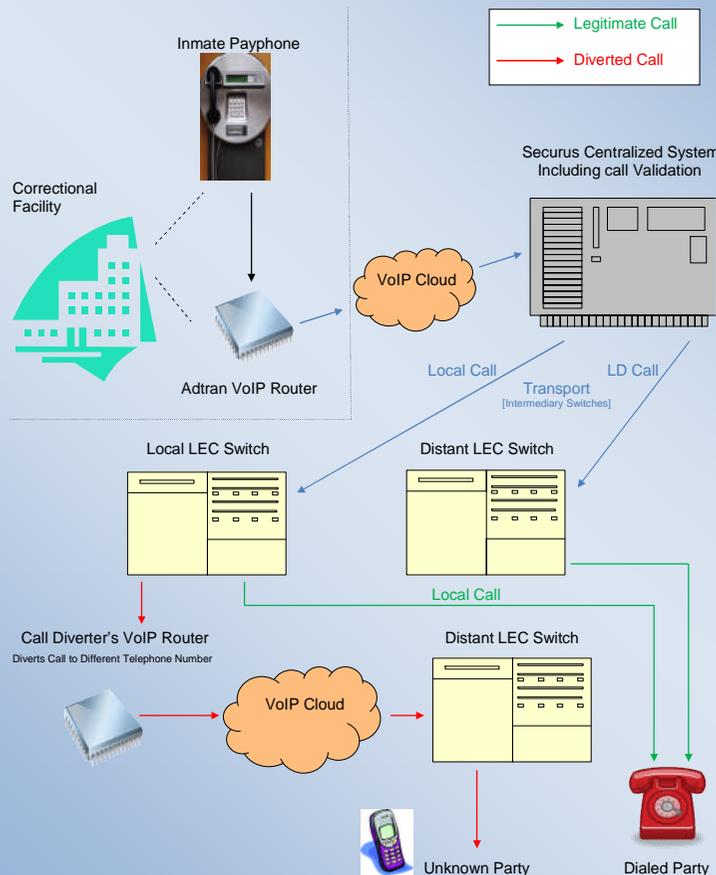
January 18, 2013

EXHIBIT D

Securus

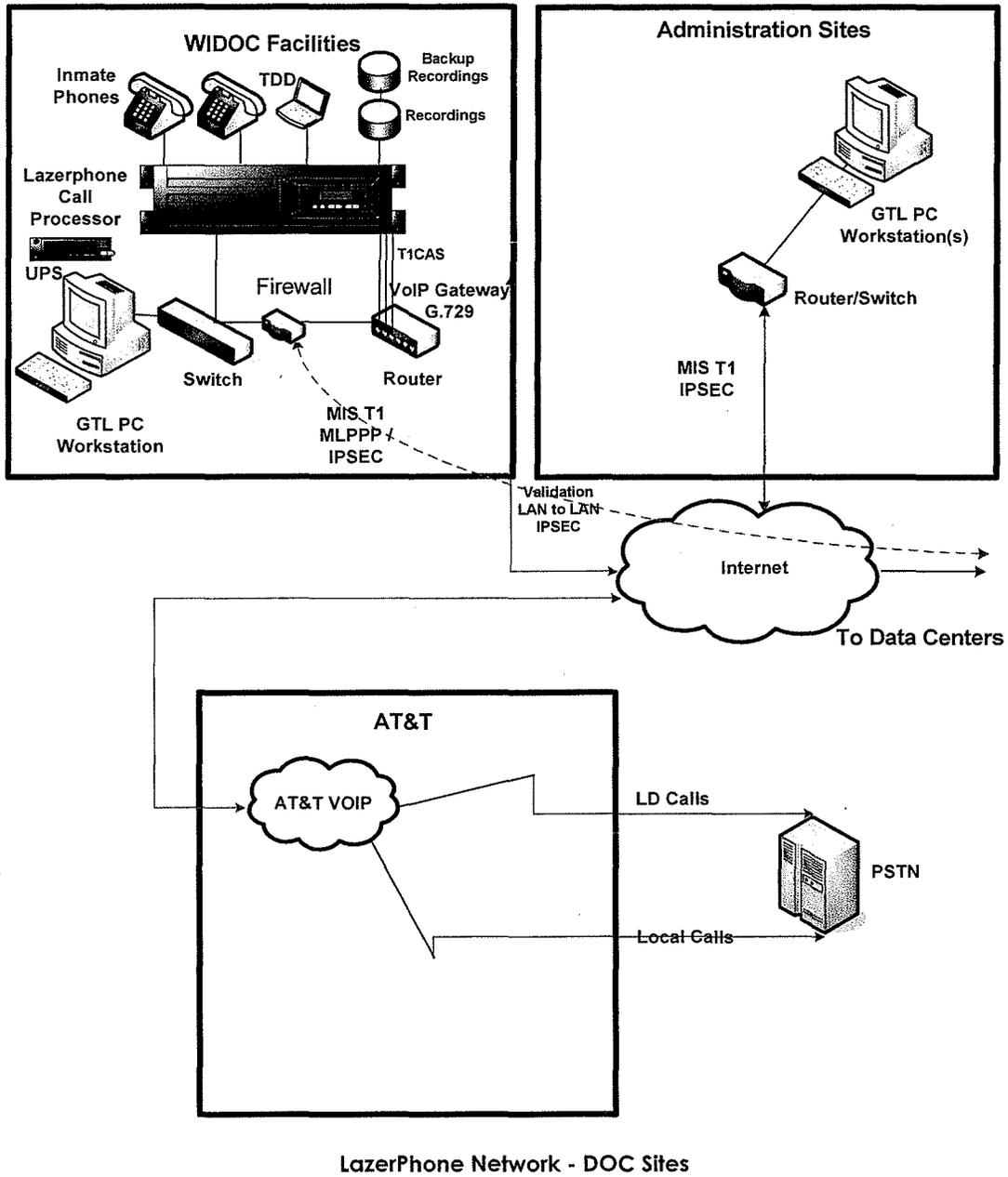
- Provides Service to 2,200 Facilities via Public Contract (State, County and Local Jails)
- Service provided in 44 States, D.C., and Canada
- Provides inmate calling service with safety, security and investigative features critical to correctional facilities
- As recognized in the *Dial Around* docket, and for safety and security, Securus Inmate Services are permitted to block dial-around and forwarded calls

SCP Centralized System Path of an Inmate Call

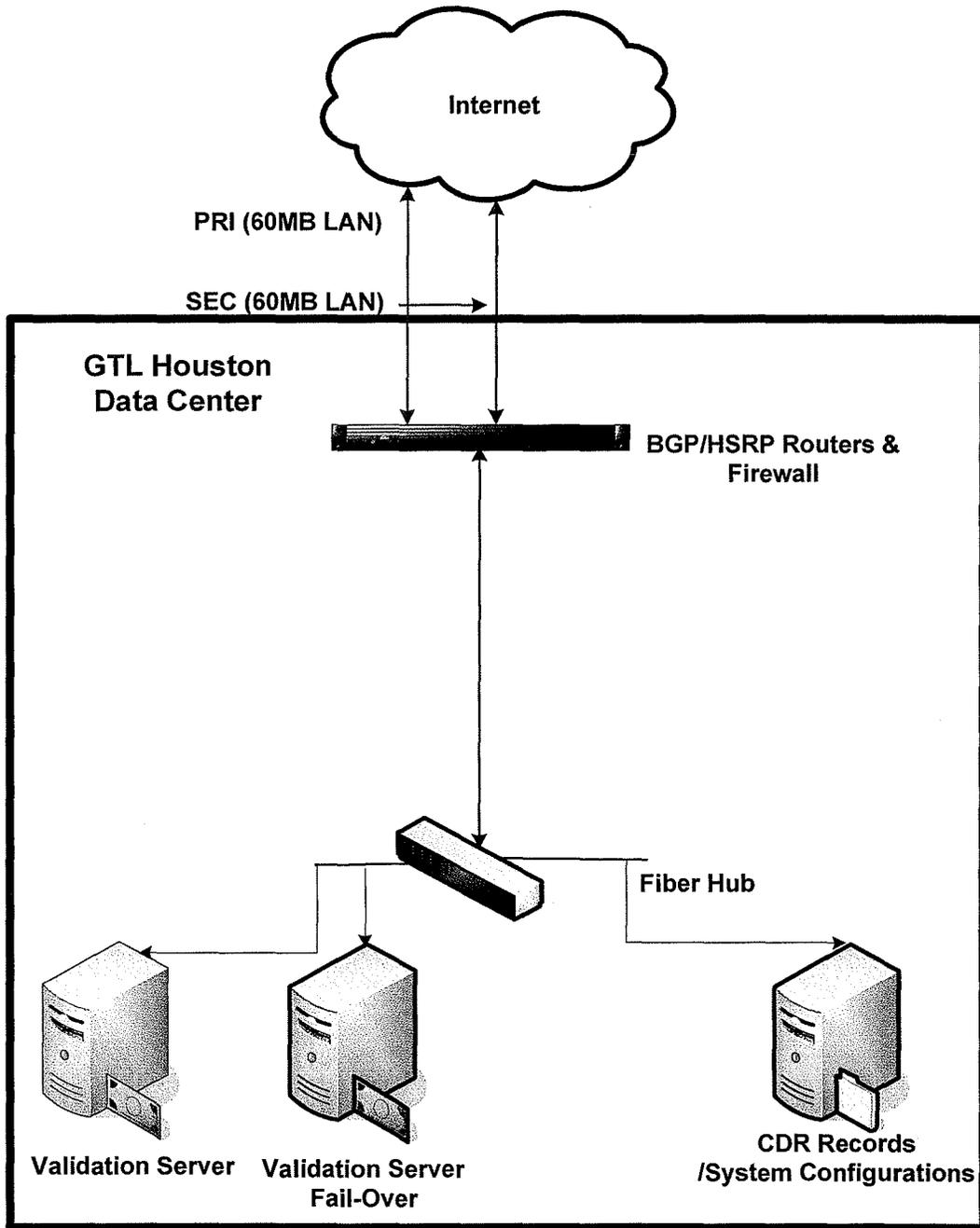


| Legitimate Inmate Call | Diverted Inmate Call |
|---|---|
| ✓ Terminating number is validated in LIDB | X False local number is queried in LIDB |
| ✓ Name and address of terminating number is generally known <ul style="list-style-type: none"> • LIDB is real-time query in industry-standard database | X False local number is queried in LIDB <ul style="list-style-type: none"> ○ Commercial databases (e.g., LSSi) not real-time database or industry-standard |
| ✓ OCN of carrier serving called party is known <ul style="list-style-type: none"> • Enables blocking calls to cell phones where required (e.g., FL DOC) | X OCN of transport provider is known <ul style="list-style-type: none"> ○ Prevents blocking calls to cell phones, hindering contract compliance |
| ✓ Service provider is certificated carrier holding public contract after bid <ul style="list-style-type: none"> • States require certificate as OSP, LD reseller, or LEC | X Call diverter registers as "interconnected VoIP" (if at all) and does not hold public contract <ul style="list-style-type: none"> ○ Call diversion cannot satisfy VoIP definition in 47 C.F.R. § 9.3 |
| ✓ Service provider must block calls to protected persons and to persons whom inmates are prohibited from calling | X Call diverters enable inmates to complete calls to prohibited numbers |

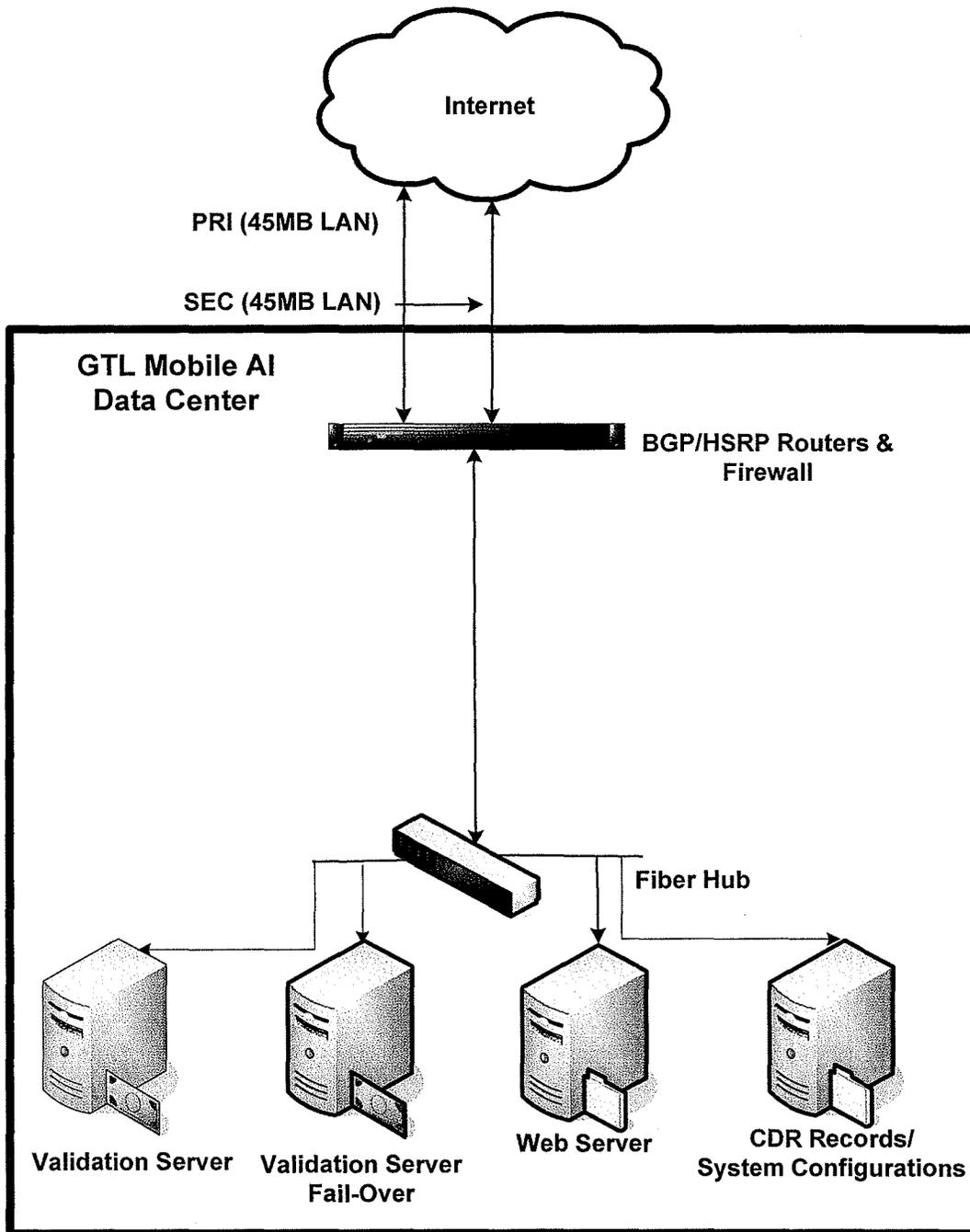
Securus' correctional authority clients discovered the call diversion scheme and demanded that it be blocked.



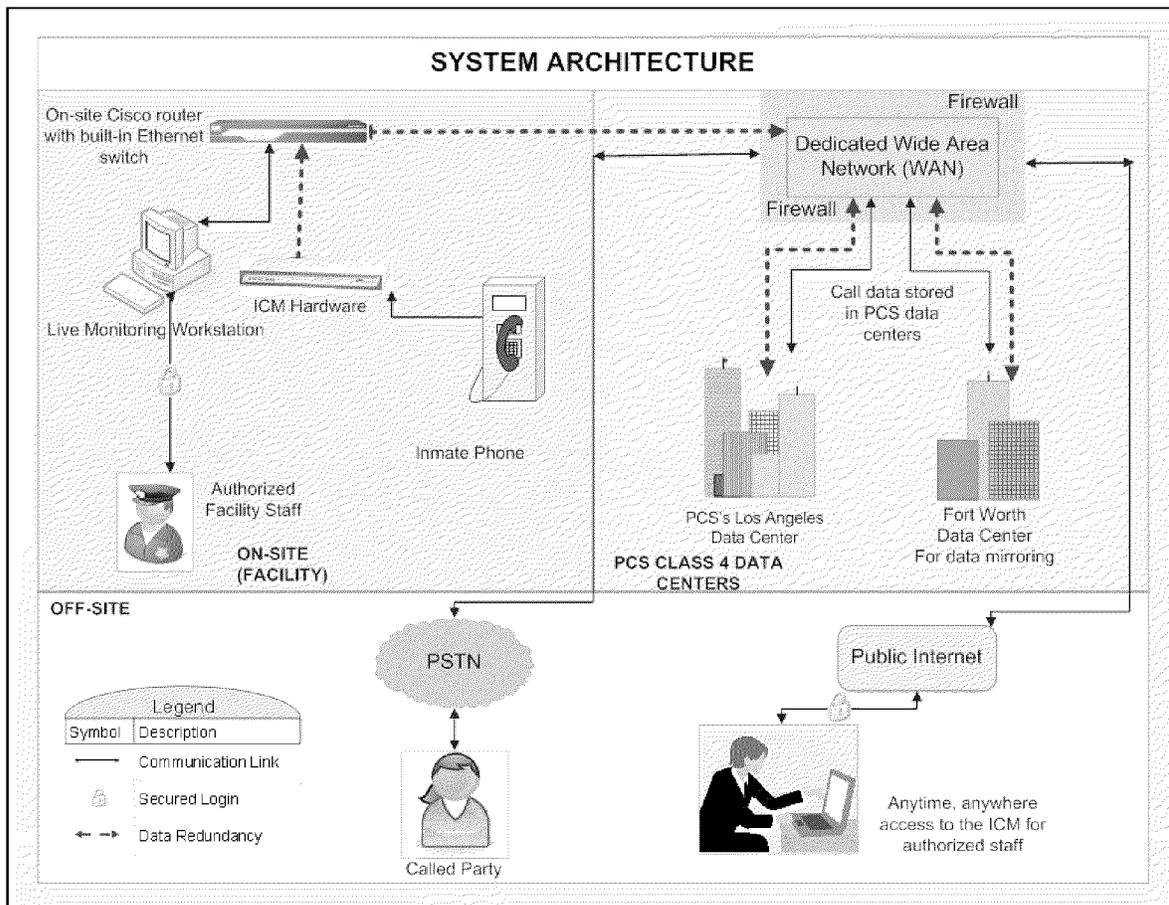
LazerPhone Network - DOC Sites



LazerPhone Network ~ GTL Houston Data Center



LazerPhone Network ~ GTL Mobile Data Center



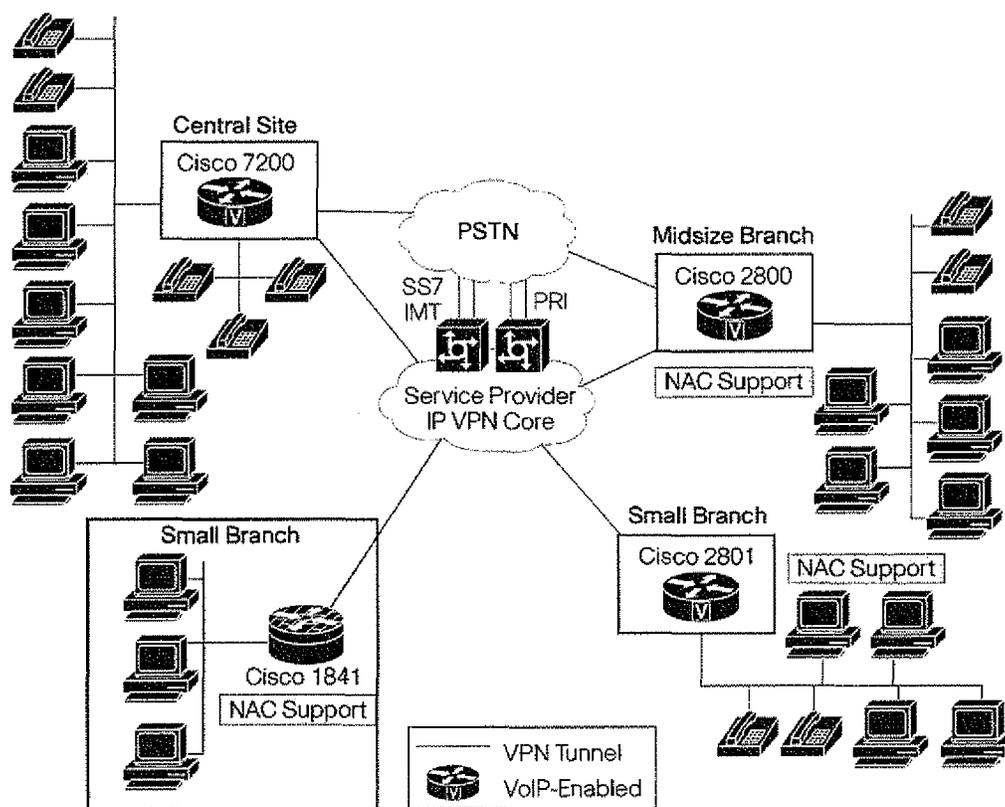
2.7.5.6 Complaint Investigations

Proposer shall describe the means and the process in sufficient detail for the timely investigation of Inmate complaints pertaining to ITS operations and/or billing errors. The process shall provide various means for the Proposer to receive either inmate or outside customer complaints including, but not limited to, an 800-number, 24/7 fax number, an e-mail address and/or web link.

PCS Response: PCS has read, agrees and will comply. The PCS Customer Service Department is dedicated to providing friendly and helpful solutions to end user customer service requests. Customers who accept calls from any of the PCS managed correctional facilities may call a dedicated toll-free number: **(888) 288-9879. This number is staffed with live representatives 24 hours a day, seven days a week, with average wait times of less than 30 seconds.** The Customer Service Representatives handle issues such as setting up prepaid accounts, customer billing, call rate inquiries, disputes, credits, refunds, complaints, and questions.

router that enable the hardware-based encryption on the motherboard provide a robust array of features such as Cisco IOS Firewall, IPS support, IP Security (IPSec) VPNs (Digital Encryption Standard [DES], Triple DES [3DES], and Advanced Encryption Standard [AES]), SSL Web VPN, Dynamic Multipoint VPN (DMVPN), Group Encrypted Transport (GET) VPN, and Easy VPN, Network Admissions Control (NAC) for antivirus defense, Secure Shell (SSH) Protocol Version 2.0, and Simple Network Management Protocol (SNMP) in one solution set. In addition, the Cisco 1841 router offers bundled network security solutions with IPSEC and SSL VPN encryption-acceleration modules, making it the industry's most robust and adaptable security solution available for small-to-medium-sized businesses and small enterprise branch offices. As Figure 2 demonstrates, the Cisco 1800 Series routers help enable customers to deliver high-performance, concurrent, mission-critical data applications with integrated, end-to-end security.

Figure 2. Secure Network Connectivity with Cisco 1841 Router



Integrated Services

The new, high-performance and secure integrated services architecture of the Cisco 1841 router (as shown in Figure 2) enables customers to deploy simultaneous services such as secured data communications with traditional IP routing at wire-speed performance. By offering a hardware-based encryption on the motherboard that can be enabled with an optional Cisco IOS Software security image and the flexibility to integrate a wide array of services, modules, and interface cards, the Cisco 1841 router helps enable businesses to incorporate the functions of a standalone secure data solution.

Primary Features and Benefits

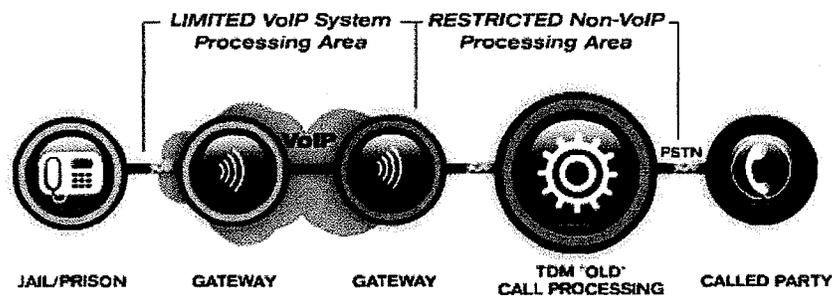
Architecture Features and Benefits

The Cisco 1841 modular architecture has been specifically designed to meet requirements of small to medium-sized businesses and small enterprise branch offices as well as service provider-managed applications for concurrent services at wire-speed performance. The Cisco 1841 router, together with other Cisco integrated services routers

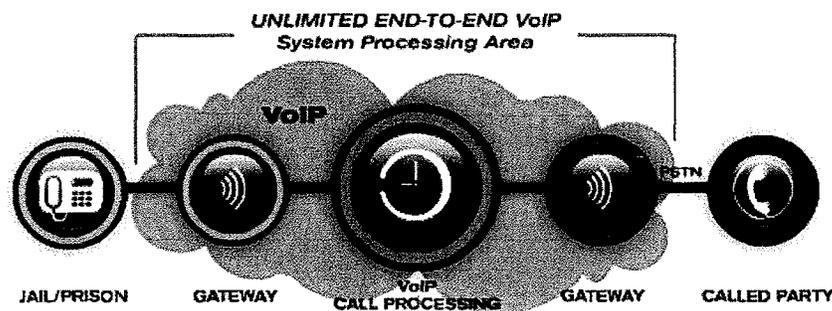
Benefits include:

- High-quality recordings, allowing investigators to easily discern key words as well as suspicious background sounds in both the inmate’s and the called party’s environment
- Reduced complaints due to poor sound quality
- Improved effectiveness of the ITS to detect and prevent fraudulent activity, such as 3-Way calling attempts

TRADITIONAL PROVIDERS



SECURUS' SCP-SECURE CALL PLATFORM



LEGEND: ● IP ● Facility ● Central ● Carrier Termination

EXHIBIT E

Interstate ICS Rates*

*Obtained from Prison Legal News. Reprinted with Permission.

Rates (2012)

Cost of 15-Minute Call

| Company | Collect | Pre-Paid | Debit | Collect | Pre-Paid | Debit | |
|---------|------------------|---------------------|--------------------|------------------------|-------------|-------------|-------------|
| IL | CCPS | 2.50 + .19-.26/min. | 1.80 +.16-.26/min. | N/A | \$5.35-6.40 | \$4.20-5.70 | N/A |
| AL | CenturyLink | \$3.95 + .89/min. | \$3.95 + .89/min. | \$3.95 + .89/min. | \$17.30 | \$17.30 | \$17.30 |
| KS | CenturyLink | 1.70 + .40/min. | 1.30 + .35/min. | 1.28 + .30/min. | \$7.70 | \$6.55 | \$5.78 |
| NH | CenturyLink | 1.20 + .10/min. | .15/min. | .15/min. | \$2.70 | \$2.25 | \$2.25 |
| NV | CenturyLink | 3.00 + .59/min. | 3.00 + .59/min. | 3.00 + .59/min. | \$11.85 | \$11.85 | \$11.85 |
| TX | CenturyLink | .43/min. | .43/min. | .387/min. | \$6.45 | \$6.45 | \$5.81 |
| WI | CenturyLink | .18/min. | ? | N/A | \$2.70 | ? | N/A |
| WY | CenturyLink | 2.80 + .55/min. | 2.40 + .50/min. | 2.00 + .25/min. | \$11.05 | \$9.90 | \$5.75 |
| AR | GTL | 3.95 + .45/min. | N/A | N/A | \$10.70 | N/A | N/A |
| CA | GTL | .44/min. | .44/min. | N/A | \$6.60 | \$6.60 | N/A |
| CO | GTL | 3.00 + .15/min. | 1.50 + .13/min. | 1.50 + .10/min. | \$5.25 | \$3.45 | \$3.00 |
| DE | GTL | 1.71 + .66/min. | 1.71 + .66/min. | 1.71 + .66/min. | \$11.61 | \$11.61 | \$11.61 |
| GA | GTL | 3.95 + .89/min. | ? | N/A | \$17.30 | ? | N/A |
| IA | GTL | N/A | N/A | 3.00 + .30/min. | N/A | N/A | \$7.50 |
| ID | GTL | 3.80 + .85/min. | 3.60 + .80/min. | 3.40 flat | \$16.55 | \$15.60 | \$3.40 |
| IN | GTL | .24/min. | ? | .24/min. | \$3.60 | ? | \$3.60 |
| MA | GTL | .86 + .10/min. | .86 + .10/min. | .65 + .08/min. | \$2.36 | \$2.36 | \$1.85 |
| ME | GTL | 3.00 + .69/min. | 3.00 + .69/min. | N/A | \$13.35 | \$13.35 | N/A |
| MI | GTL | .23/min. | .23/min. | .21/min. | \$3.45 | \$3.45 | \$3.15 |
| MN | GTL | 3.95 + .89/min. | ? | .32/min. | \$17.30 | ? | \$4.80 |
| MS | GTL | 3.30 + .75/min. | ? | ? | \$14.55 | ? | ? |
| NC | GTL | 3.40 flat | ? | 3.06 flat | \$3.40 | ? | \$3.06 |
| NE | GTL | .70 + .05/min. | .50 + .05/min. | .50 + .05/min. | \$1.45 | \$1.25 | \$1.25 |
| NJ | GTL | .33/min. | .33/min. | .33/min. | \$4.95 | \$4.95 | \$4.95 |
| NY | GTL | .048/min. | .048/min. | .048/min. | \$0.72 | \$0.72 | \$0.72 |
| OH | GTL | 3.94 + .88/min. | ? | ? | \$17.14 | ? | ? |
| OK | GTL | 3.00 flat | 3.00 flat | N/A | \$3.00 | \$3.00 | N/A |
| PA | GTL | 3.50 + .50/min. | 2.45 + .46/min. | 2.33 + .43/min. | \$11.00 | \$9.35 | \$8.78 |
| RI | GTL | 1.30 + .30/min. | ? | 1.17 + .27/min. | \$5.80 | ? | \$5.22 |
| SC | GTL | .99 flat | .75 flat | .75 flat | \$0.99 | \$0.75 | \$0.75 |
| SD | GTL | 3.15 + .43/min. | 1.35 + .09/min. | 1.35 + .09/min. | \$9.60 | \$2.70 | \$2.70 |
| TN | GTL | 3.535 + .6175/min. | ? | 3.1817 + .55579/min. | \$12.80 | ? | \$11.52 |
| UT | GTL | 3.00 + .45/min. | 3.00 + .45/min. | N/A | \$9.75 | \$9.75 | N/A |
| VA | GTL | 2.40 + .43/min. | 2.40 + .40/min. | 2.40 + .40/min. | \$8.85 | \$8.40 | \$8.40 |
| VT | GTL | 1.25 + .15/min. | 1.00 + .10/min. | .50 + .10/min. | \$3.50 | \$2.50 | \$2.00 |
| WA | GTL | 3.50 + .50/min. | 3.50 + .50/min. | 3.50 + .50/min. | \$11.00 | \$11.00 | \$11.00 |
| WV | GTL | .85 + .50/min. | ? | N/A | \$8.35 | ? | N/A |
| HI | Hawaii Telcom | ? | ? | N/A | ? | ? | N/A |
| FBOP | Multiple vendors | 2.45 + .40/min. | ? | ? | \$8.45 | ? | ? |
| AK | Securus | 3.95 + .89/min. | 3.95 + .89/min. | N/A | \$17.30 | \$17.30 | N/A |
| AZ | Securus | 2.40 + .40/min. | 2.00 + .40/min. | 2.00 + .40/min. | \$8.40 | \$8.00 | \$8.00 |
| CT | Securus | .3245/min. | .2433/min. | N/A | \$4.87 | \$3.65 | N/A |
| FL | Securus | 1.20 + .06/min. | 1.02 + .06/min. | N/A | \$2.10 | \$1.92 | N/A |
| KY | Securus | 2.00 + .30/min. | ? | 2.00 + .30/min. | \$6.50 | ? | \$6.50 |
| LA | Securus | 2.15 + .17-.27/min. | ? | 1.935 + .153-.243/min. | \$4.70-6.20 | ? | \$4.23-5.58 |
| MD | Securus | 2.85 + .30/min. | .30/min. | .30/min. | \$7.05 | \$4.50 | \$4.50 |
| MO | Securus | 1.00 + .05/min. | .05/min. | .05/min. | \$1.75 | \$0.75 | \$0.75 |
| ND | Securus | 2.40 + .24/min. | .34/min. | .34/min. | \$6.06 | \$5.10 | \$5.10 |
| NM | Securus | .65 flat | .59 flat | .65 flat | \$0.65 | \$0.59 | \$0.65 |
| MT | Telmate | .24 + .12/min. | .24 + .12/min. | .24 + .12/min. | \$2.04 | \$2.04 | \$2.04 |
| OR | Telmate | .16/min. | .16/min. | .16/min. | \$2.40 | \$2.40 | \$2.40 |

Debit calling only; \$9.00 max for calls.

Confirmed 03/08/2013 with provider

Confirmed 03/08/2013 with provider

All flat rates are for 15-minute calls.

Inmate voicemail also available, \$1.00 for a 60-second message.

Actual rates are \$3.53525 + .61755/min. collect and \$3.181735 + .555795/min. debit

Confirmed 03/08/2013 with provider

Confirmed Debit Rates on 03/08/2013 with provider; other rates in contract.

Debit calls included in contract but not in practice

Provided by MD DOC; no per-minute charge for first minute of collect interstate calls. Pending Contract with GTL, under protest.

\$.30 for the first minute for collect interstate calls, then \$.24/min. thereafter.

All flat rates are for 20-minute calls.

EXHIBIT F

ICS Commission Data

*Obtained from Prison Legal News. Reprinted with Permission.

| State | Company | Commission Payments | | | | Percentage |
|----------------|------------------|-----------------------|-----------------------|-----------------------|-----------------------|------------|
| | | FY 2009 | FY 2010 | FY 2011 | FY 2012 | 2012 |
| Alabama | CenturyLink | ? | ? | ? | ? | ? |
| Alaska | Securus | \$84,125.08 | \$74,503.59 | \$83,393.95 | \$85,438.58 | 7% |
| Arizona | Securus | 3,723,046.36 | 3,884,803.26 | 4,120,894.06 | 4,314,062.50 | 53.70% |
| Arkansas | GTL | 2,394,900.77 | 2,475,527.50 | 2,447,253.75 | 2,010,223.57 | 45% |
| California | GTL | 5,985,850.00 | NONE | NONE | NONE | NONE |
| Colorado | GTL | 2,800,132.91 | 2,464,650.70 | 2,495,865.97 | 1,912,792.10 | 49% |
| Connecticut | Securus | 3,590,667.50 | 3,797,824.40 | 4,032,757.64 | 4,212,201.86 | 68.75% |
| Delaware | GTL | 1,310,401.78 | 1,444,827.32 | 1,195,151.36 | 998,380.04 | 40% |
| Florida | Securus | 2,727,756.86 | 5,374,083.28 | 5,205,803.74 | 5,156,269.19 | 35% |
| Georgia | GTL | 7,445,914.55 | 7,695,712.76 | 6,284,715.76 | 5,316,672.82 | 60% |
| Hawaii | Hawaiian Telcom | 104,875.00 | ? | ? | ? | ? |
| Idaho | GTL | 1,248,804.57 | 1,368,425.38 | 1,495,963.54 | 1,441,051.81 | see note |
| Illinois | CCPS | 10,392,626.00 | 10,940,246.00 | 12,649,898.00 | 11,699,879.00 | 56% |
| Indiana | GTL | 1,693,965.32 | 1,547,481.77 | 1,929,932.14 | 1,696,977.76 | 43.50% |
| Iowa | GTL | 1,231,000.00 | 1,231,000.00 | 750,000.00 | 650,972.00 | see note |
| Kansas | CenturyLink | 1,814,693.80 | 1,876,165.29 | 1,769,540.31 | 1,839,450.64 | 41.30% |
| Kentucky | Securus | 3,333,168.00 | 2,706,767.00 | 2,880,166.00 | 2,796,139.00 | 54% |
| Louisiana | Securus | 3,602,686.75 | 3,303,407.37 | 3,289,038.16 | 3,044,009.33 | 70% |
| Maine | GTL | 234,329.79 | 225,504.10 | 171,379.45 | 319,383.27 | 60% |
| Maryland | Securus | ? | ? | ? | ? | 48-60% |
| Massachusetts | GTL | 1,972,546.06 | 1,870,044.28 | 1,706,889.43 | 1,714,972.89 | 15-30% |
| Michigan | GTL | NONE | NONE | NONE | NONE | NONE |
| Minnesota | GTL | 3,388,860.00 | 3,470,898.00 | 3,767,811.00 | 3,690,953.00 | 59% |
| Mississippi | GTL | 2,788,922.59 | 2,262,203.71 | 1,945,008.21 | 1,651,805.23 | 60.50% |
| Missouri | Securus | NONE | NONE | NONE | NONE | NONE |
| Montana | Telmate | 252,121.02 | 226,095.50 | 227,834.67 | 220,617.00 | 25% |
| Nebraska | GTL | NONE | NONE | NONE | NONE | NONE |
| Nevada | CenturyLink | 3,033,941.22 | 2,747,336.97 | 2,736,802.16 | 2,706,372.51 | 54.20% |
| New Hampshire | CenturyLink | ? | ? | ? | ? | 20% |
| New Jersey | GTL | ? | ? | ? | ? | 41% |
| New Mexico | Securus | NONE | NONE | NONE | NONE | NONE |
| New York | GTL | NONE | NONE | NONE | NONE | NONE |
| North Carolina | GTL | 7,578,956.67 | 7,217,875.33 | 7,464,539.07 | 6,881,021.44 | 58% |
| North Dakota | Securus | 126,245.62 | 114,110.95 | 107,516.94 | 90,435.73 | 40% |
| Ohio | GTL | ? | ? | 15,000,000.00 | 15,000,000.00 | see note |
| Oklahoma | GTL | 1,240,396.00 | 1,218,429.88 | 1,167,318.18 | 1,017,657.90 | 76.60% |
| Oregon | Telmate | 3,000,000.00 | 3,000,000.00 | 3,000,000.00 | 3,000,000.00 | see note |
| Pennsylvania | GTL | 7,174,942.65 | 7,250,923.88 | 7,361,264.77 | 585,138.73 | 44.40% |
| Rhode Island | GTL | NONE | NONE | NONE | NONE | NONE |
| South Carolina | GTL | NONE | NONE | NONE | NONE | NONE |
| South Dakota | GTL | 241,839.00 | 154,767.00 | 229,398.76 | 520,332.05 | 33-38% |
| Tennessee | GTL | ? | 2,954,100.00 | 2,679,000.00 | 2,555,800.00 | 50.10% |
| Texas | CenturyLink | 224,228.00 | 4,276,006.00 | 5,673,568.00 | 5,893,470.00 | 40% |
| Utah | GTL | 798,429.40 | 699,489.59 | 745,155.88 | 765,858.16 | 45-55% |
| Vermont | GTL | 65,091.87 | 63,584.34 | 40,974.59 | 44,781.29 | 37% |
| Virginia | GTL | 4,524,329.69 | 4,033,303.82 | 4,104,977.98 | 3,208,762.44 | 35% |
| Washington | GTL | ? | ? | ? | ? | ? |
| West Virginia | GTL | 903,735.30 | 890,005.21 | 919,726.80 | 696,374.46 | 46% |
| Wisconsin | CenturyLink | 2,039,339.45 | 2,052,346.15 | 2,171,279.29 | 2,344,085.34 | 30% |
| Wyoming | CenturyLink | 347,512.83 | 475,976.21 | 532,305.11 | 385,340.50 | 65.50% |
| FBOP | Multiple vendors | 7,180,900.58 | 5,734,687.35 | 4,255,246.24 | 3,220,277.21 | 58% |
| TOTALS: | | 100,601,282.99 | 101,123,113.89 | 116,638,370.91 | 103,923,222.05 | |

No commissions, but California Technology Agency receives an \$800,000 annual fee from GTL

FY2012 commission amount is for 10 months of the FY.

FY2009 commission amount is only for January through June 2009.

The commission is \$2.25 per debit call, \$2.00 per pre-paid collect call and \$1.75 per collect call. Community Work Centers have a 20% FY2012 commission amount is through April 2012.

Not called "commissions," but the Iowa DOC receives payments from its ICS provider.

Commissions amounts are for calendar years, not fiscal years.

Uses a calendar year, not fiscal; 2012 amount is through November 2012.

Commission is \$27,000/month + 20%, starting September 2012.

Ohio DOC receives a flat/fixed annual commission of \$15 million.

Commission is a flat rate of \$2.30 per call, which equates to a 76.6% commission based on a flat rate cost of \$3.00 per call.

\$750,000/quarter plus 50% commission if profit is over \$1.5 million.

FY2012 commission data is incomplete.

33-38% on collect calls (varies by distance); \$1.00 commission per debit call (all distances).

FY2012 ended on August 31; commission amount is as of August 5, 2012.

FY2012 commission amount is for 11 months.

FY2012 commission amount is through September 2012.

FY2012 commission amount is from January through August 2012.

Commission does not apply to direct-dial calls; according to the FBOP, most ICS calls are direct dial.

EXHIBIT G



LEROY D. BACA, SHERIFF

County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



A Tradition of Service

September 20, 2011

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
Los Angeles, California 90012

Dear Supervisors:

**APPROVE AGREEMENT WITH PUBLIC COMMUNICATIONS SERVICES,
INCORPORATED FOR INMATE TELEPHONE SYSTEM AND SERVICES
(ALL DISTRICTS) (3 VOTES)**

SUBJECT

This letter is a joint recommendation by the Sheriff and the Chief Probation Officer. The Los Angeles County Sheriff's Department (Department) and Probation Department (Probation) are seeking your Board's approval and execution of an Agreement with Public Communications Services, Incorporated (PCS) to provide Inmate Telephone System and Services for the inmates and juveniles being held in both the Department's and Probation's facilities.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and instruct the Mayor of the Board to sign the attached revenue-generating Agreement with PCS to provide Inmate Telephone System and Services for inmates and juveniles being held throughout the Department's and Probation's facilities, with an initial five-year term from November 1, 2011, through October 31, 2016, and three additional one-year option periods, plus one additional six-month period in any increment.
2. Delegate authority to the Sheriff or his designee to execute Change Orders and Amendments to the Agreement as set forth throughout the Agreement, including: when the original contracting entity has merged, been purchased, or otherwise changed; include new or revised standard County of Los Angeles (County) contract provisions adopted by your Board as required from time to time, including all applicable documents; implement kiosks and incorporate new technologies, methodologies, and techniques into the system at additional cost or less revenue to the County if it is in the best interest of the County; implement rate adjustments mandated by the Federal Communications Commission; and implement rate decreases for Inmate Telephone Billing Rates and for speed-dial calls.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the recommended actions will allow the Department and Probation to continue providing telephone services to inmates and juveniles being held throughout the Department's and Probation's facilities.

The Agreement will allow the Department and Probation to add, change, and/or remove telephones and kiosks. The telephone system will allow the Department and Probation to have call monitoring and recording capabilities, system administration, and complete maintenance of all equipment, hardware, and software.

Implementation of Strategic Plan Goals

The services provided under this Agreement support the County's Strategic Plan, Goal 1, Operational Effectiveness; and Goal 5, Public Safety. This Agreement will allow inmates and juveniles to have access to telephones that generate revenue, which is used to support various programs and projects for the inmates and juveniles.

FISCAL IMPACT/FINANCING

This is a revenue-generating Agreement. The Department and Probation will receive a Commission Rate of 67.5 percent from the Total Billable Amount, or the aggregate of all claims by the contractor against customers for calls, excluding applicable taxes. The Department will receive a Minimum Annual Guarantee in the amount of \$15 million and Probation will receive \$59,000 for each year of the Agreement. Revenue generated from the Departments' inmate telephone system is deposited into the Inmate Welfare Fund (IWF) and used for various educational and recreational programs and projects that benefit the inmates. Revenue generated by Probation will be deposited into their Detentions Budget (DB) account to benefit juveniles housed at their facilities.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Pursuant to California Penal Code Section 4025(d), any commission received from the telephone provider shall be deposited into the IWF.

There is an active Agreement Number 75480 with Global Tel*link Corporation for inmate telephone services, which was adopted by your Board on April 8, 2008. We are currently in the six-month extension approved by your Board on June 21, 2011, which will expire on December 31, 2011.

Approval of the Agreement with PCS will ensure uninterrupted telephone services for inmates and juveniles located throughout the Department's and Probation's facilities, and will allow for the completion of the necessary transition period prior to the expiration of the existing agreement with Global Tel*link Corporation.

PCS is in compliance with all Board and Chief Executive Office requirements, including Jury Service Program, Safely Surrendered Baby Law, and Defaulted Property Tax Reduction Program.

County Counsel has reviewed and approved this Agreement as to form.

CONTRACTING PROCESS

On December 31, 2009, the Department released a Request For Proposals (RFP) to solicit for an agreement with a vendor to provide telephone system and services to inmates and juveniles located throughout the Department's and Probation's facilities. The Department sent notification of the RFP to 32 vendors through the United States mail and/or by e-mail. The RFP solicitation was also posted on the County's and the Department's websites. The Mandatory Proposers' Conference and Mandatory Custody Facility Site Visit were held from April 13 - April 15, 2010, which ten vendors attended.

On August 5, 2010, the RFP solicitation closed, and the Department received four proposals. An evaluation committee comprised of individuals from the Department and two other non-County agencies convened to evaluate the proposals utilizing the informed averaging method in accordance with the Proposal Evaluation Methodology Policy approved by your Board on March 31, 2009. It was determined that PCS's proposal received the highest score, and PCS was the selected vendor for this Agreement. One non-selected proposer requested a Proposed Contractor Selection Review, which the Department conducted and found to be without merit. The Department offered the proposer the opportunity to request a County Review Panel under Board Policy 5.055, but the proposer did not ask that a County Review Panel be convened.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of this action will ensure the uninterrupted telephone services for inmates and juveniles who are being held in the Department's and Probation's facilities. Additionally, it will allow for the continued growth of the IWF and DB, which is the principle source of funding for all inmate programs and benefits juveniles housed at Probation's facilities.

CONCLUSION

Upon approval by your Board, please return two adopted copies of this Board letter and three original executed copies of the Agreement to the Department's Contracts Unit.

Sincerely,



LEROY D. BACA
Sheriff



DONALD H. BLEVINS
Chief Probation Officer

EXHIBIT H

3. Specify miscellaneous fees incurred by call recipients for which revenue share to County is not realized (includes but not limited to administrative and convenience fees, single bill fees, and fees associated with credit card based Pre-Paid Accounts):

Single bill fee: \$2.89

Convenience fee: See Table Below

Other: See Table Below

GTL charges these fees as a means of cost recovery as they represent tangible costs to GTL and must be accounted for in the development of our commission offer. These additional costs are not attributable to the cost of originating and completing a telephone call, and they are not incurred by GTL on behalf of every called party GTL serves.

Rather than embed these costs resulting from the optional services in the surcharges and rate per minute applied to all account holders, when not all account holders choose to avail themselves of the optional services, GTL provides consumers with a choice to use these services and accordingly charges a separate cost recovery fee.

Detailed below, GTL outlines fees and charges that may be charged to a called party. These additional taxes and services result in incremental costs to GTL that are recovered through specific fees applied to the account. Our ability to charge cost recovery fees allows us to offer Los Angeles County our most aggressive financial offer.

| Description of Charge | When Applied | Amount Charged |
|--------------------------------------|---|---------------------------|
| Federal Universal Service Fee (FUSF) | Monthly per Invoice of interstate calls | 13.6% of interstate calls |
| Federal Usage Tax | Monthly per Invoice | Varies |
| State Usage Tax | Monthly per Invoice | Varies |
| Local/City Usage Tax | Monthly per Invoice | Varies |
| Single Bill Fee | Monthly per Paper Invoice | \$2.89 |
| Automated IVR Deposit of \$25* | Per Transaction | \$4.75 |
| Automated IVR Deposit of \$50* | Per Transaction | \$9.50 |

| | | |
|---|---|-------------------------|
| Credit Card Deposit through GTL Website** | Per Transaction | \$9.50 |
| State Carrier Cost Recovery Fee | Intrastate calls billed via Paper Invoice | \$1.95 |
| State Carrier Cost Recovery Fee | Intrastate Prepaid calls | Up to 5% of Call Amount |
| Federal Administrative Cost Recovery Fee | Interstate Calls billed via paper invoice | \$1.99 |
| Federal Administrative Cost Recovery Fee | Interstate Prepaid Calls | Up to 5% of Call Amount |
| AdvancePay Account Close-Out Fee | One Time | \$5.00 |
| Wireless Telephone Account Fee | Monthly for wireless telephone users | Pending Tariff Approval |
| Deposit sent to GTL via Western Union*** | Per Transaction | \$0.00 |
| Certified Check mailed to GTL | Per Transaction | \$0.00 |
| Money Order mailed to GTL | Per Transaction | \$0.00 |

*Funding an AdvancePay account via IVR deposit (e.g. using a credit card) is an optional personal choice. Fees related to such transactions are disclosed at the time of transactions and offset GTL's costs of third-party merchant fees, system support, customer service staff and network service infrastructure associated with making this optional service available.

**For AdvancePay account payments via Website deposit a \$9.50 fee will be charged directly by TouchPay, who provides their services on behalf of GTL.

***When a person sends money to GTL for an AdvancePay account via Western Union, that person pays Western Union a fee for that service.

All fees, currently tarified and prospectively tarified, are subject to change from time to time as prescribed by the FCC, tax authorities or by GTL and at the discretion of the entities charging those taxes, charges and/or fees.

The fees and taxes described above are cost recovery in nature and are not considered revenue and therefore commission is not paid on these cost recovery items.

Note: The County reserves the right to select a proposal in the best interest of the County.



SECURUS Technologies MOVE CLOSE

ADVANCE CONNECT TERMS, CONDITIONS & FEES

* When you call or log on; there is no minimum payment if you mail us a check or use your online banking service through your local bank. A payment processing fee of up to \$7.95 for credit/debit card payments made over the phone or on the web may apply. This fee does not apply to payments made by mail, or using your online banking service through your bank. There is no minimum funding amount if you go to Western Union and MoneyGram; however, a payment processing fee may also apply. Please note that the balance in your Account may not reflect recent call activity. Due to our call processing cycles, it is possible to spend more than the total amount of funds in your Account. Please monitor your Account balance and use **Rate-My-Calls** so you know how much each call costs to ensure you don't spend more than you intend to, as you will be responsible for payment of any balance due on your Account. You have 180 days from the date of the last call received to request a refund of any unused balance in your Account. For Alaska residents, there is an exception to that closing and refund policy.

If you receive and accept state-to-state or international calls, you may also be charged a Federal Regulatory Recovery Fee of \$3.49.

You may add multiple phone numbers to your Account to ensure you can be reached wherever you are. **If you add one or more cell phone numbers to your Account, you may be charged a monthly Wireless Administration Fee of up to \$2.99.**

SECURUS Technologies MOVE CLOSE

INMATE DEBIT TERMS, CONDITIONS & FEES

* When you fund online; there is no minimum payment if you mail us a check using a remittance slip. A payment processing fee of up to \$7.95 for credit/debit card payments made over the phone or on the web may apply. A payment processing fee may also apply at MoneyGram. This fee does not apply to payments made by mail. When you fund an Inmate Debit account, the funds become property of the inmate. You will not be able to request a refund from an Inmate Debit account.?

SECURUS Technologies MOVE CLOSE

DIRECT BILL TERMS, CONDITIONS & FEES

A monthly bill processing charge of up to \$2.49 may apply. Verification of ownership of the phone number, including corresponding physical address, may be required in place of a credit check.

A payment processing fee of up to \$7.95 for credit/debit card payments made to Securus Correctional Billing Services (SCBS) over the phone or on the web may apply. This fee does not apply to payments made by mail or by using your online banking service through your bank. A payment processing fee may also apply for payments made through Western Union and MoneyGram.

There is no minimum payment amount for payments made through SCBS. Your bill must be paid in full by the due date in order to continue receiving calls.

If you receive and accept state-to-state or international calls, you may also be charged a Federal Regulatory Recovery Fee of \$3.49.

Alaska Residents: No credit check is required for Direct Bill Accounts.

Late or non-payment of your Direct Bill invoice may result in your telephone number being blocked from receiving calls and may also restrict your ability to obtain future credit. Securus may also take further collection action, including referral to a collection agency.

SECURUS Technologies MOVE CLOSE

TRADITIONAL COLLECT TERMS, CONDITIONS & FEES

With this option, you are assigned a 90-day rolling spending limit for your Traditional Collect account, and are subject to more rigorous controls. Each time you accept a collect call from an inmate, the charges are deducted from your available spending limit, and we submit those charges to your local telephone company to add to your local telephone bill. If you reach or exceed your spending limit during any rolling 90-day period, your Traditional Collect account will be temporarily blocked from receiving additional inmate calls. As the charges roll off and your balance drops back below the 90-day rolling spending limit, your account will be unblocked and you will be able to accept additional inmate calls up to the spending limit. Should you wish to receive inmate calls prior to waiting for your Traditional Collect account to be unblocked, you can contact us to establish an AdvanceConnect or Direct Bill account.

*** A monthly bill statement fee of up to \$3.49 may apply and will appear on your local phone bill. No fee will be assessed in any month in which no collect calls were accepted.**

If you receive and accept state-to-state or international calls, you may also be charged a Federal Regulatory Recovery Fee of \$3.49.

EXHIBIT I



N A R U C
National Association of Regulatory Utility Commissioners

December 28, 2012

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: *Written Ex Parte Comment on the "Wright Petition" concerning inmate calling rates filed in CC Docket No. 96-128.*

Dear Chairman Genachowski:

As you are undoubtedly already aware, last month the Commissioners attending the National Association of Regulatory Utility Commissioners (NARUC) Annual Meeting in Baltimore, Maryland, passed a resolution specifically urging the FCC, with respect to CC Docket No. 96-128, commonly known as the "Wright Petition," to take remedial action with respect to inflated *interstate* prison phone rates. A copy of that resolution is appended to this letter.

The trade press reports that under your guidance, the FCC is actively considering action on that petition. NARUC encourages you to act expeditiously "to prohibit unreasonable *interstate* rates and charges for inmate telephone services."

The Wright Petition seeks to remedy some of the inequities visited upon consumers who accept calls from prisoners by establishing benchmark rates that cap the cost of *interstate* prison phone calls. Currently, the cost of *interstate* prison phone calls ranges up to more than \$17.00 for a 15- minute call. It is less expensive for a consumer in the U.S. to call China than it is to accept a collect phone call from a prisoner in another state.

It does not appear from the record that all charges can be justified on the bases of additional security measures. In New York, the prison phone rates are \$.048 per minute for local, intrastate and interstate calls, inclusive of all security features required by New York corrections officials. In Texas, prison phone rates are relatively low at \$.23 to \$.43 per minute inclusive of all necessary security features. Excessive *interstate* rates mainly affect prisoners' family members – who have *no other option* but to pay the rates. Phone calls are the primary means of communication for many prisoners/families, because many prisoners are functionally illiterate and many are held in distant facilities, which makes in-person visitation difficult. Research indicates that family contact during incarceration leads to greater post-release success for prisoners, and thus less recidivism. High phone rates that economically limit family contact frustrate that positive outcome.

If you have questions about this letter, please do not hesitate to contact the undersigned at 202.898.2207 or jramsay@naruc.org. Thank you for your attention to this matter.

Respectfully submitted,

*James Bradford Ramsay
NARUC General Counsel*

*cc: The Honorable Robert McDowell, Commissioner
The Honorable Mignon Clyburn, Commissioner
The Honorable Jessica Rosenworcel, Commissioner
The Honorable Ajit Pai, Commissioner
Zachary Katz, Chief of Staff, Office of the Chairman
Michael Steffen, Legal Advisor, Office of the Chairman
Christine D. Kurth, Policy Director & Wireline Counsel, Office of Commissioner McDowell
Angela Kronenberg, Wireline Legal Advisor, Office of Commissioner Clyburn
Priscilla Delgado Argeris, Legal Advisor, Office of Commissioner Rosenworcel
Nicholas Degani, Legal Advisor, Wireline, Office of Commissioner Pai*

Resolution Urging the FCC to take Action to Ensure Fair and Reasonable Telephone Rates from Correctional and Detention Facilities

WHEREAS, Inmate telephone service contracts are exclusive agreements between detention facilities and telephone companies that provide specialized functionality to enable monitoring of inmate telephone calls; *and*

WHEREAS, Although costly specialized equipment and monitoring services are provided, the contracts for inmate telephone systems often include high connection fees and per minute rate charges which are unrelated to the cost of providing the service; *and*

WHEREAS, Contracts for inmate telephone systems are often made by the operators of detention or correctional facilities and commonly include commissions paid to the State or local contracting agencies; *and*

WHEREAS, The commissions are based on gross revenues of inmate phone calls and could provide an incentive for operators of detention and correctional facilities to contract with telephone service providers that charge higher rates and/or provide higher commissions; *and*

WHEREAS, According to a Prison Legal News survey, roughly 85% of State prison systems receive commission payments and the average commission to State and local contracting agencies is 42% of the gross revenues from inmates' phone calls resulting in annual commissions totaling over \$152 million nationwide; *and*

WHEREAS, Inmate calling rates vary from State to State, however in many States, the charge for a fifteen minute telephone call from an inmate ranges from \$10 to \$17; *and*

WHEREAS, Most inmate calls are made as collect calls. As a result, family members and friends of inmates must bear the burden of above market per minute rates and connection fees; *and*

WHEREAS, In 2007, 52% of those in State prisons and 63% of those in federal prisons were parents of minor children according to a Prison Policy Initiative report (*The Price to Call Home: State-Sanctioned Monopolization in the Prison Phone Industry*); *and*

WHEREAS, High rates pose a significant barrier to frequent and meaningful communication between inmates and their families, in many cases forcing families to limit the frequency and length of communication with inmates; *and*

WHEREAS, Communication with the outside world is critical for inmates' successful re-entry into society so that inmates can secure housing and employment; *and*

WHEREAS, Successful reentry is critical to reducing overcrowding and high costs of maintaining prison systems; *and*

WHEREAS, A 2012 study by the Vera Institute of Justice (*The Price of Prisons: What Incarceration Costs Taxpayers*), reported the total taxpayer cost of prisons in the United States now exceeds \$39 billion, the average cost of incarceration per inmate per year is \$31,286 and more than four out of every ten prisoners return to custody within three years of release; *and*

WHEREAS, Due to the growing costs of prison systems, both Republican and Democratic 2012 Party Platforms explicitly recognized the importance of programs that reduce recidivism; *and*

WHEREAS, Maintaining contact with family members and community, specifically through telephone communication, has been consistently shown to reduce recidivism which saves taxpayer dollars (*Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners' Family Relationships*, Journal of Contemporary Criminal Justice); *and*

WHEREAS, The Federal Communications Commission (FCC) was asked to resolve the issue of inmate telephone rates that are much higher than rates charged to other customers by imposing price caps on long-distance prison telephone rates in the "Wright Petition" which was filed in 2003; *and*

WHEREAS, In 2007, after no final action had been taken by the FCC, the Petitioners submitted an alternative rulemaking petition seeking per-minute rate caps on interstate long-distance services, however, no decision has been made; *and*

WHEREAS, Many States have addressed this issue by limiting rates for local calling, commissions, and connection fees; *and*

WHEREAS, California, Nebraska, New Mexico, New York, Michigan, Missouri, Rhode Island and South Carolina have banned prison telephone system commissions and, as a result, the cost of prison phone calls in those States have dropped; *and*

WHEREAS, A broad coalition of groups and organizations have urged the FCC to address high phone rates in correctional institutions, including the FCC Consumer Advisory Committee and the National Association of State Utility Consumer Advocates; *now, therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners (NARUC), convened at its 2012 Annual Meeting in Baltimore, Maryland, and encourages the FCC to take immediate action on the "Wright Petition" by prohibiting unreasonable interstate rates and charges for inmate telephone services; *and be it further*

RESOLVED, That State and federal action should consider policies that could lower prison phone rates as a step to reduce recidivism and thereby lower the taxpayer cost of prisons.

Sponsored by the Committee on Telecommunications

Adopted by the NARUC Board of Directors, November 13, 2012

Adopted by the NARUC Committee of the Whole, November 14, 2012

EXHIBIT J

Record Detail

| | |
|--------------------|---|
| Name | Public Correctional Policy on Adult/Juvenile Offender Access to Telephones |
| Type | Policy |
| Date | Jan. 24, 2001; Feb. 1, 2006; Feb. 1, 2011 |
| Description | <p>Public Correctional Policy on Adult/Juvenile Offender Access to Telephones</p> <p>Policy Statement:</p> <p>Recognizing that there is no constitutional right for adult/juvenile offenders to have access to telephones, it is nonetheless consistent with the requirements of sound correctional management that adult/juvenile offenders should have access to a range of reasonably priced telecommunications services. When contracting for telecommunications services for adult/juvenile offenders, correctional agencies should:</p> <p>A. Comply with all applicable state and federal regulations;</p> <p>B. Establish rates and surcharges that are commensurate with those charged to the general public for like services. Any deviation from ordinary consumer rates should reflect actual costs associated with the provision of services in a correctional setting; and</p> <p>C. Provide the broadest range of calling options determined to be consistent with the requirements of sound correctional management.</p> <p>This Public Correctional Policy was unanimously ratified by the American Correctional Association Delegate Assembly at the Winter Conference in Nashville, Tenn., Jan. 24, 2001. It was reviewed and amended at the Winter Conference in Nashville, Tenn., Feb. 1, 2006. It was reviewed and amended at the Winter Conference in San Antonio, Feb. 1, 2011.</p> |

EXHIBIT K



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 24, 2010

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Feinstein:

Thank you for your letter regarding inmate calling service (ICS) and the related rulemaking proceeding pending before the Commission. I appreciate this opportunity to learn your thoughts about this very complex issue.

In addition to the two petitions that you mention in your letter, the Commission also is considering a related petition for declaratory ruling filed in 2009 by Securus – one of the largest providers of ICS. Securus asserts that certain service providers allow inmates to place local calls to their family and friends by inappropriately avoiding long distance charges. In its petition, Securus seeks to be allowed to block these calls. Some commenters, on the other hand, argue that these types of call-routing arrangements exist because the rates for ICS are unreasonably high.

This proceeding raises complex factual questions and issues. Commission staff is reviewing the extensive record that has been compiled, and continues to meet with interested parties to obtain a better understanding of the information that has been submitted to the Commission. I understand your concerns and want to assure you that the Commission is working to address the questions raised in this proceeding as quickly and equitably as possible.

I appreciate your interest in this important matter. If I can provide any further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Julius Genachowski". The signature is stylized with a large initial "J" and a long horizontal stroke.

Julius Genachowski



OFFICE OF
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

June 24, 2010

The Honorable Patrick J. Leahy
United States Senate
433 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Leahy:

Thank you for your letter regarding inmate calling service (ICS) and the related rulemaking proceeding pending before the Commission. I appreciate this opportunity to learn your thoughts about this very complex issue.

In addition to the two petitions that you mention in your letter, the Commission also is considering a related petition for declaratory ruling filed in 2009 by Securus – one of the largest providers of ICS. Securus asserts that certain service providers allow inmates to place local calls to their family and friends by inappropriately avoiding long distance charges. In its petition, Securus seeks to be allowed to block these calls. Some commenters, on the other hand, argue that these types of call-routing arrangements exist because the rates for ICS are unreasonably high.

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I appreciate your interest in this important matter. If I can provide any further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Genachowski", with a large, sweeping flourish at the end.

Julius Genachowski

PATRICK J. LEAHY, VERMONT, CHAIRMAN

HERB KOHL, WISCONSIN
DIANNE FEINSTEIN, CALIFORNIA
RUSSELL D. FEINGOLD, WISCONSIN
CHARLES E. SCHUMER, NEW YORK
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JOHN CORNYN, TEXAS
TOM COBURN, OKLAHOMA

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*
BRIAN A. BENCKOWSKI, *Republican Staff Director*

May 13, 2010

The Honorable Julius Genachowski
Chairman
Offices of the Commissioners
Federal Communications Commission
445 12th Street SW
Room 8-B201
Washington, DC 20554

Dear Chairman Genachowski:

We write to express our concern regarding the lack of regulation of interstate telephone calling services for incarcerated persons and their family members. A petition for rulemaking was first filed with the Commission in 2003 on behalf of Martha Wright. The Commission never took any action on this petition; as a result, in March 2007 petitioners filed an alternative rulemaking proposal related to inmate calling services (CC Docket No. 96-128). This second petition requested that the Commission establish benchmark rates for all interstate inmate calling services at a rate no higher than \$0.20 per minute for debit calling services and \$0.25 per minute for collect calling services.

A substantial number of comments have been submitted to the Commission by a wide array of organizations, including telecommunications carriers, civil liberties groups, and prison and correctional authorities. Telecommunications carriers have also provided the Commission with cost estimates for interstate debit and collect calls. Based on this information, we ask that you act expeditiously to issue federal regulations on this topic.

We recognize that the majority of phone calls that inmates make are intrastate calls and hence may not be subject to federal regulation. We note, however, that the children and families of incarcerated individuals tend to be low-income and often rely on federal assistance to meet basic needs. We urge the Commission to consider these issues and to propose recommendations that will help guide state governments and the telecommunications industry in establishing appropriate rates and other reform measures to address the high costs that are often charged for intrastate calls.

We look forward to your continued attention to this issue and to a swift examination of the issue of inmate telephone rates.

Sincerely,



PATRICK LEAHY
United States Senator



DIANNE FEINSTEIN
United States Senator

cc: Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker