Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF STEPHEN A. RAHER

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Dated: March 25, 2013

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SUMMARY

The Commission has gathered ample evidence demonstrating a persistent pattern of supra-competitive ICS rates. The Commission can and should impose rate caps under 47 U.S.C. § 201(b). Rate caps should be based on benchmark rates calculated by surveying just and reasonable costs in a representative sample of correctional facilities. The Commission should also use a two-part regulatory system, modeled on the rules implementing the Cable Television Consumer Protection and Competition Act of 1992, which would allow a provider to exceed rate caps if it can show that the cap denies a reasonable return on rate base.

The Commission should ensure uniformly reasonable ICS rates by prescribing a rate regulation system for states to implement as to intrastate calls. In addition, based on evidence produced in other proceedings, the Commission should require a debit calling option in most facilities, and should take broad steps to encourage competition in the ICS industry.

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STEPHEN A. RAHER

Pursuant to the Notice of Proposed Rulemaking ("NPRM")[1] that initiated the above-captioned proceeding, the undersigned, Stephen A. Raher, submits the following comments for the Commission's consideration in connection with the Wireline Competition Bureau's Docket 12-375.

I am an attorney in private practice in Oregon. I am familiar with the issues raised in the NPRM due to my prior employment as a criminal justice policy analyst focused on prisons and correctional facilities. I have recently published work about the treatment of inmate calling services ("ICS") under the Telecommunications Act of 1996 (the "1996 Act") and the history of the Wright Petition.[2] A copy of my resume is attached hereto as Exhibit 1.

I regularly collaborate with many individuals and entities throughout the country on projects addressing correctional policy issues (including inmate telephone service); however, I submit these comments solely on my own behalf and not in any representative capacity or on behalf of any employer.

[1] 78 Fed. Reg. 4369 (Jan. 22, 2013).
[2] "Phoning Home: Prison Telecommunications in a Deregulatory Age," chapter in *Prison Privatization: The Many Facets of a Controversial Industry* (Byron Price & John Morris, eds.) (Prager Press, 2012).

I. The Commission Should Impose Rate Caps

The NPRM begins with a lengthy discussion of the petitioners' request for rate caps on interstate long distance ICS. The imposition of rate caps under sections 201 and 276 of the Communications Act of 1934 (the "1934 Act" or "Act") would be legally proper, socially beneficial, and would bring much-needed fairness to ICS pricing. Although some have questioned the ability of the Commission to regulate ICS rates and practices, in reality there is no impediment to the Commission's jurisdiction in these matters. In particular, the Commission can and should regulate ICS in state and private correctional facilities. To set price caps based on appropriate benchmark rates, the FCC should gather cost data through an independent review process. Using two tiers (based on facility size) the Commission should follow the model used to implement the provisions of the Cable Act of 1992,[3] by setting price caps that providers may exceed only by charging cost-of-service rates established through a rate case proceeding.

A. Rate Caps are Beneficial and Legally Proper

The Commission asks whether interstate interexchange ICS rates can be regulated under both sections 201 and 276 of the Act.[4] The answer to this question is emphatically "yes." Furthermore, because of the uniquely anti-competitive nature of the ICS market, some form of price regulation is necessary to effectuate section 201(b)'s mandate of just and reasonable rates.

The ICS industry has predictably focused on section 276's requirement that providers be "fairly compensated" for payphone calls. Yet, as the Supreme Court has noted, the 1996 Act (which enacted section 276) was structured as an amendment to the 1934 Act, not a displacement of the pre-1996 statutory provisions.[5] Thus, inmate services are subject to both section 276's fair *compensation* requirement, and section 201(b)'s reasonable *rate* requirement.

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[3] *In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 Rate Regulation*, MM Docket No. 92-266, Report and Order and Further Notice of Proposed Rulemaking [hereinafter "Cable Rate Order"], 8 FCC Rcd. 5631 (1993).

[4] NPRM ¶ 49.

[5] *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378, n.5 (1999).

The 1996 Act unquestionably changed the landscape of American telecommunications law, by emphasizing a preference for competition in lieu of regulation. Yet even the forceful language of the 1996 Act does not abolish rate regulation—rather, it preserves the Commission's regulatory authority over markets that are not efficient and competitive.[6]

Given the amendments enacted in 1996 and subsequent changes in technology, it is fair to say that the Act generally establishes a rebuttable presumption in favor of telecommunications rate deregulation. But for reasons already acknowledged by the Commission, this presumption has been soundly rebutted in the context of the ICS industry. The Commission moved to a market-based price regime for free-world payphones because the market is subject to meaningful competition.[7] But when considering ICS pricing, the Commission correctly concluded that there is no competition on the consumer level, and that competition which does exist (in the institutional procurement process) is likely to drive consumer rates *up*.[8]

Given evidence already in the record, it is clear that ICS customers are subject to unjust locational rents.[9] Thus, as explained in more detail below, the Commission should exercise its powers under section 201(b) of the Act and impose rate caps to ensure that prison inmates and their friends, families, and attorneys are not subject to the supra-competitive rates that are prevalent today. If the Commission imposes a system of price regulation that allows ICS providers to earn a reasonable rate of return on rate base, there is no danger of confiscatory caps or any violation of section 276.[10]

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[6] *See e.g.*, 1996 Act, Pub. L. No. 104-104 § 401, 47 U.S.C. § 160.
[7] *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Third Report and Order, and Order on Reconsideration of the Second report and Order [hereinafter "Third Payphone Order"], 14 FCC Rcd. 2545 ¶ 39 (1999)
[8] *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Remand & Notice of Proposed Rulemaking [hereinafter "Inmate Calling Order"], 17 FCC Rcd. 3248 ¶ 12 (2002).
[9] *See* Third Payphone Order ¶ 37.
[10] *See Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

B. The Commission is Authorized to Prescribe Generally Applicable Regulations That Cover State and Private Facilities

The Commission asks for comments on its ability to regulate inmate services within state and private correctional facilities.[11] Given the plain text of the Act, as well as the District Court's application of the doctrine of primary jurisdiction,[12] it is difficult to understand why the Commission would *not* have jurisdiction to regulate ICS rates and practices. State and private correctional facilities must comply with numerous generally applicable federal laws, including existing telecommunications laws, and there is no reason that ICS rate regulation should not apply equally to all facilities offering covered services.

Opponents of the Wright Petition have raised many vague concerns regarding ill-defined security issues. The Commission should not be distracted by these self-serving arguments. Appropriately designed rate regulation (such as the system proposed in these comments) would in no way dictate or interfere with security measures, but instead would simply require ICS providers to demonstrate to the Commission that rates attributable to security measures are accurate and reasonable.

C. The Commission Should Use the Regulatory Process to Obtain Reliable Information on ICS Cost Structures

The Commission has noted the need for reliable data on ICS rates and costs.[13] In particular, the Commission notes two submissions it has received: (1) a nationwide analysis of prison phone contracts published in 2011 by Prison Legal News (the "PLN Study"), and (2) a 2008 "Call Cost Study" submitted by a coalition of ICS providers (the "ICS Study").

The PLN Study is based on thorough and transparent methodology, and provides the most comprehensive and reliable evidence currently available concerning customer rates and site commissions in the ICS industry. Due to the authors' status as public interest researchers, the PLN Study does not benefit from access to ICS providers' cost data. The ICS Study purports to

[11] NPRM ¶ 52.
[12] *Wright v. Corr. Corp. of Am.*, Case No. 00-293, mem. op. (D.D.C. Aug. 22, 2011).
[13] NPRM ¶¶ 25, 43.

provide such cost data, but this study suffers from faulty design, as other commenters have already explained.[14] The Commission should not rely on self-reported cost data disclosed by ICS providers as part of a policy-making debate. The ICS Study consists of an opaque summary of costs, apparently based on unaudited self-reported data, with no assurance that figures are based on standardized accounting rules and proper allocation of costs for centralized equipment. Instead, the Commission should obtain cost information from an independent study and/or through individualized rate-case proceedings.

Although the PLN Study does not show ICS providers' costs or profit margins, it does reveal one important feature of inmate services rates—the wide variety in pricing proves that some jurisdictions have successfully designed contracts that allow for appropriate security measures without exorbitant phone rates. When establishing rate caps, the Commission should carefully study the procedures and practices in states that have managed to implement rate structures that are closer in line with free-world rates and base benchmark rates on those same states.

D. The Commission Should Model ICS Rate Regulation on the System Used to Implement the Cable Television Consumer Protection and Competition Act of 1992

The Alternative Wright Petition establishes a legally and factually sound argument in favor of rate caps. For the reasons already expressed by various supporters of the Petitioners, the Commission should impose rate caps. The only colorable argument advanced in opposition to rate caps is that some providers may have costs in excess of the cap, and thus would not be able to fully recover their expenses. Such hypothetical possibilities should not deter the Commission from providing protection that ratepayers need.

The Commission should impose rate caps based on an independent survey of ICS provider costs, covering a representative sample of correctional facilities. These rate caps should be set conservatively, with greater weight given to jurisdictions that have negotiated ICS prices

[14] *See* NPRM ¶ 25, n.86.

more in line with free-world rates. Protections for high cost-of-service locations can be provided through two mechanisms, which are discussed in turn.

First, many ICS providers have noted the impact of facility size on costs. Because ICS operations at smaller correctional facilities may not be able to achieve economies of scale available in larger prisons, the Commission should establish a two-tier system of rate caps that uses a separate category for small facilities. A facility should be assigned to one of the two tiers based on its average daily population during a twelve-month lookback period. Facilities with average daily populations of less than fifty inmates should be assigned to a "small facility" tier. By using fifty inmates as the cutoff, the small facility tier would include nearly 40% of local jails, which together house less than 5% of the country's jail population.[15] The Commission could then set rate caps for each tier based on an independent study of ICS costs in facilities of the appropriate size.

Second, the Commission can provide a safeguard for any provider who contends that it is unable to cover its reasonable costs under the applicable rate cap. Such a safeguard was utilized in the Cable Rate Order, and the Commission should use a similar mechanism when regulating ICS prices. In the Cable Rate Order, the Commission announced that it would impose caps based on a benchmarking survey that focused on systems with effective competition.[16] The order also provided, as a secondary mechanism, that operators who wished to charge rates above the benchmark could initiate a rate-making proceeding using standard cost-of-service principles.[17]

The two-step approach used in the Cable Rate Order should be used to regulate ICS rates because it would provide long-overdue consumer rate protection, while minimizing administrative burdens for the majority of ICS providers and providing a safeguard for providers

[15] U.S. Dept. of Justice, Bureau of Justice Statistics, *Census of Jail Facilities, 2006,* NCJ No. 230188 (Dec. 2011), tbls. 8, 10.
[16] Cable Rate Order ¶¶ 206-207, 223, 228.
[17] *Id.* ¶¶ 259, 262

in unusual circumstances. Such a procedure would ensure just and reasonable rates, while also complying with section 276's mandate of reasonable compensation.

1. Security Costs

ICS providers' primary justification for charging rates above those found in the free world is the cost of necessary security measures. ICS providers should be able to include such costs in their rate base if they can show that the cost is reasonable and is required by the terms of their contract with a correctional agency, or by applicable law. Whenever security costs are attributable to multiple facilities or contracts, cost allocations should be performed using generally accepted regulatory accounting procedures.

2. Site Commissions

Section 276 requires that payphone providers are fairly compensated for "calls."[18] Yet for purposes of this provision, the Commission has already concluded that location rents are not unavoidable costs of a payphone call, and therefore should not be included in a payphone provider's rate base.[19] In the ICS industry, location rents take the form of "site commissions" that may fund prison-related programs or simply provide revenue to the contracting government's general fund. The Commission has previously announced that such site commissions are not part of the provider's cost, but rather should be treated as profit.[20]

In connection with the current proceeding, the Commission asks whether it should address site commissions when examining ICS rates.[21] If the Commission is to have any impact on ICS rates, it *must* address the critical issue of site commissions. The Commission's pervious holdings regarding site commissions are correct, and for the economic and regulatory reasons previously stated, when the Commission sets rates in the future, site commissions should be excluded from a provider's rate base. The most frequent response from opponents of ICS rate

[18] 47 U.S.C. § 276(b)(1)(A).
[19] Third Payphone Order ¶¶ 154-156.
[20] Inmate Calling Order ¶ 15.
[21] NPRM ¶¶ 37-38.

regulation is that site commissions fund important prison-related programs.[22] Such arguments are unpersuasive for two reasons.

First, there is no universal requirement that site commission revenue be directed to inmate welfare or other beneficial prison programs. Some jurisdictions treat commissions as general fund revenue, thus providing no benefit to inmates or prison systems.[23] In other instances, site commissions are simply used as general purpose unrestricted fund that prison operators can use without any significant oversight. For example, internal correspondence from the federal Bureau of Prisons ("BOP") indicates that contracting staff believed that one private prison operator was using site commission revenue to subsidize an unprofitable inmate commissary operated by a sub-contractor.[24]

Second, even to the extent that site commissions are used to fund "worthy" programs, this is still not an acceptable use of ratepayer funds under standard principles of telecommunications finance. One of the cardinal rules of regulatory accounting is to avoid cross-subsidization between classes of customers and categories of service.[25] Thus, if revenue from one type of calling service is generally not supposed to subsidize another class of service, it is especially true that call revenue should not be used to subsidize activities entirely unrelated to telecommunications, as is currently the case with site commissions in many jurisdictions.

If ICS providers in certain states cannot operate profitably due to high mandatory site commissions, then this is a problem that should be addressed by the state.[26] If certain states persist in levying some type of commission on ICS customers, that is their prerogative, however

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[22] *See e.g.*, NPRM ¶ 37, n.116.
[23] Steven J. Jackson, "Ex-Communication: Competition and collusion in the U.S. Prison Telephone Industry," 22 *Critical Studies in Media Comm'cn*, 263, 277-278, n.5 (2005).
[24] *See* BOP emails attached hereto as Exhibit 2. These emails were produced to the commenter by BOP in connection with the Freedom of Information Act litigation *Raher v. Fed. Bureau of Prisons*, Case No. 09-526 (D. Or.).
[25] 1 Leonard Saul Goodman, *The Process of Ratemaking* (1998) at 374.
[26] *See* Inmate Calling Order ¶¶ 39-40.

these states should not be able to use the telecommunications network to collect this revenue (i.e., by utilizing the network's billing infrastructure).

E. Intrastate-Interstate Parity

Although the NPRM addresses interstate ICS, the Commission also asks whether it should impose an intrastate-interstate parity rule.[27] While intrastate rates vary largely by jurisdiction, some states have successfully mandated rates below the Commission's tentatively suggested benchmark rates, and the Commission should not interfere with rates in these low-cost jurisdictions.

The Commission should, however, ensure that intrastate rates are just and reasonable, and are consistent with a comprehensive rate system that complies with all applicable provisions of the Act. This can most easily be accomplished by the Commission prescribing a rate-setting methodology for state regulators to implement consistent with the overall regime requiring just and reasonable interstate ICS rates. Such a "cooperative federalism" approach[28] would preserve local control while establishing a uniform regulatory structure and clearly articulated policy objectives. It would also be consistent with the Commission's preemptive power to implement the Act.[29]

II. In Addition to Rate Regulation, the Commission is Statutorily Empowered to Regulate General ICS Practices

The remaining topics addressed in these comments relate to issues other than price. The Commission asks if it has authority to address non-rate matters such as debit calling and non-geographic numbers. NPRM ¶ 41; 53.

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[27] NPRM ¶ 34.

[28] *See generally* Philip J. Weiser, "Federal Common Law, Cooperative Federalism, and the Enforcement of the Telecom Act" 76 *N.Y. Univ. L. Rev.* 1692 (2001).

[29] *See generally AT&T Corp. v. Iowa Utils Bd.*, 525 U.S. 366 (1999) (upholding the ability of the Commission to prescribe rules for states to use in implementing provisions of the Act); 47 U.S.C. § 276(c).

The Commission is empowered to address these issues under section 201(b), which requires not only reasonable rates, but also just and reasonable practices and regulations.[30] Section 205(a) empowers the commission to prescribe just and reasonable rates and practices.[31]

The Supreme Court has upheld the Commission's power to regulate practices related to the provision of payphone service.[32] In upholding the Commission's regulatory authority, the Court noted that the Commission's definition of an "unreasonable practice" for purposes of section 201(b) is entitled to deference under *Chevron U.S.A. v. Natural Resources Defense Council*.[33]

Given the plain text of section 201(b) and the holding of *Global Crossing*, it is clear that the Commission can address non-price matters by regulating practices and encouraging competition in the ICS market.

A. Debit or Prepaid Calling

The Wright Petition does an excellent job of explaining the benefits of debit or prepaid calling. Although there may be some justification for allowing small facilities (i.e., jails with less than fifty inmates) to opt out of debit calling for purposes of administrative efficiency, larger correctional facilities typically have inmate trust fund accounting systems in place that can be adapted to accommodate debit or prepaid calling systems. The Commission should mandate access to debit or prepaid calling in such facilities, and should promulgate regulations prohibiting excessive fees in connection with such systems.

B. The Commission Should Encourage Competition in the ICS Market, Such as VoIP Services

The Commission asks how it should address the use of non-geographic phone numbers and VoIP services in the context of ICS.[34] Despite the lack of competition in inmate services,

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[30] 47 U.S.C. § 201(b).
[31] 47 U.S.C. § 205(a).
[32] *Global Crossing Telecomm'cns v. Metrophones Telecomm'cns*, 550 U.S. 45, 55 (2007).
[33] *Id.* (citing *Chevron*, 467 U.S. 837, 843-844 (1984).
[34] NPRM ¶ 41.

recipients of ICS calls do have some market-based options that can apparently result in lower call rates through the use of non-geographic numbers. Some of these alternative services are the subject of the currently pending Securus Petition.[35]

Given the pro-competition mandate of the 1996 Act, the Commission should encourage competitive alternatives such as those that are subject to attack in the Securus Petition. Although Securus makes generalized allegations of security concerns, these allegations do not withstand closer scrutiny, for the reasons stated by various commenters in response to the Securus Petition.

By fostering the growth of wireless service and mandating number portability, the Commission has established a general regulatory regime that has led to increased decoupling of telephone numbers from geographic location. Because of these widespread changes, ICS providers must adapt security measures to accommodate this new fact of life, rather than using security as a façade to attack services that introduce price competition into the industry.

III. Conclusion

The systematic imposition of supra-competitive rates on ICS customers is well documented. ICS providers have had many years (during the Commission's lengthy delay in acting on the Wright Petition) to voluntarily reform their practices; while rates have declined in some jurisdictions, reliable data still shows exorbitant rates due to the lack of effective competition. Because of these continued high rates, Commission should regulate ICS prices and practices as proposed herein.

Respectfully submitted,

/s/ Stephen A. Raher

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[35] *In the Matter of Petition for Declaratory Ruling of Securus Technologies, Inc.,* WCB Docket No. 09-144, Petition for Declaratory Ruling [hereinafter "Securus Petition"] (Jul. 24, 2009).

EXHIBIT 1

Resume

STEPHEN A. RAHER

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(503) 727-2163 • stephen.raher@gmail.com

EDUCATION

Lewis & Clark Law School, *Portland, OR* – Juris Doctor, *summa cum laude*, 2009

- Member, Cornelius Honor Society
- American Bankruptcy Institute Outstanding Student Award
- Paul H. Casey Business Law Scholarship, 2007-2009; Business Law Roundtable Scholar, 2009

University of Colorado - Graduate School of Public Affairs, *Colorado Springs, CO* – Master of Public Administration, 2002

Colorado College, *Colorado Springs, CO* – Bachelor of Arts in Music, 1998

EXPERIENCE

Perkins Coie LLP*, Portland, OR* *November 2011 - present*

Associate Attorney: Advise clients regarding legal issues arising in bankruptcy, insolvency, and commercial litigation.

Judge Elizabeth L. Perris, U.S. Bankruptcy Court for the District of Oregon*, Portland, OR* *August 2009 - present*

Law Clerk: Performed legal research and recommend disposition of pending motions; drafted opinions and court orders.

Sixteenth Amendment Tax Services, *Portland, OR* *July 2005 - August 2009*

Proprietor: Provided tax return preparation, bookkeeping, and forensic accounting services to small businesses, tax exempt organizations, and individuals. Advised clients on business and investment planning strategies.

Greene & Markley, PC, *Portland, OR* *January 2008 - May 2009*

Law Clerk: Performed legal research with a focus on tax controversies, bankruptcy, and commercial litigation.

Professor Ed Brunet (Lewis & Clark Law School), *Portland, OR* *October 2007 - February 2008*

Research Assistant: Performed legal research for article *Summary Judgment is Constitutional*, 93 Iowa L. Rev. 1625 (2008).

KRCC-FM, *Colorado Springs, CO* *December 2004 - February 2006*

Associate News Producer: Wrote and produced news stories with strict deadlines and edited submissions from freelance reporters. Produced twice-weekly public radio news program focused on public affairs and regional news. Produced several stories for national outlets including National Public Radio and WBUR's *Here and Now*.

Colorado Criminal Justice Reform Coalition, *Colorado Springs, CO* *November 1999 - June 2004*

Co-Director/Senior Policy Analyst: Published research on criminal justice policy and state budgeting. Developed and executed legislative campaigns, including writing model legislation, lobbying for passage of legislation, testifying before state legislative committees, and monitoring implementation of enacted bills. Planned and coordinated strategic litigation.

PUBLICATIONS & WORKS IN PROGRESS

- "Phoning Home: Prison Telecommunications in a Deregulatory Age," chapter in *Prison Privatization: The Many Facets of a Controversial Industry* (Praeger Press, 2012).
- *The Business of Punishing: Impediments to Accountability in the Private Corrections Industry*, 13 Richmond J. of Law & the Public Interest 209 (2010).
- "Interpreting Initiatives and Referenda," chapter in *Interpreting Oregon Law* (Oregon State Bar, 2009) (co-authored with Steven J. Johansen).
- "Judicial Review of Legislative Procedure: Determining Who Determines the Rules of Proceedings," presented at the Midwest Political Science Association Spring Conference (Chicago, 2009).

PUBLIC AND COMMUNITY SERVICE

Treasurer and Board Member, Private Corrections Institute *January 2004 - present*
Board Member, Community Shares of Colorado *January 2003 - December 2003*
Treasurer and Board Member, Community Council for Adolescent Development *June 2000 - October 2002*
Member, Secretary of State's Advisory Committee on Lobbyist Reporting Requirements *Summer 2001*

EXHIBIT 2

BOP Emails

From: Daniel M. Simpson
Sent: Tuesday, April 19, 2005 9:15 AM
To: Mary E Carney
Cc: Randy R. Taylor
Subject: Re: Fwd: RCDC Commissary Services Intent

I don't have the actual agreement yet, but they way it was explained to us was MidState would "run" the commissary. That may be a bag and drop system. As for the performance pay for Reeves it is allocated from PMB budget and not part of the per diem. If MidState was to receive the customary mark up for wholesale goods this may not be a concern, but the possibility of a private vendor draining the commissary profit for their own profit seems wrong. Of course we will need to see the actual contract.

I am getting you a copy of Big Springs commissary contract since I also have concerns with it. If the company is supplying the items decides the unit price and then marks it up another 20% there seems to be a concern there. Under this scenario the inmates are being paid from the trust fund and not in the per diem rate. They have been supplementing the trust fund with telephone commission profits and comments made by the contractor indicate that without those funds the commissary operation would be in the hole. Of course the telephone commission is supposed to come off the board bill. This commissary was profitable until a sub-sub-contractor was hired to run it. I think under this operation the sub-sub-contractor actually staffs the commissary.

Dan Simpson
Privatization Field Administrator
Federal Bureau of Prisons
Correctional Programs Division (PMB)
El Paso, Texas
(915) 534-6311

>>> Mary E Carney 4/19/2005 6:42 AM >>>

(b)(5)

>>> Randy R. Taylor 4/19/2005 7:10 AM >>>
I have a few questions.

The 20% mark up will still go to the trust fund, correct?

I read in the attached .pdf that Midstate will be the sole supplier and pack the goods for delivery off of the inmates order at an offsite location. Reeves staff will be delivering them. Where does inmate labor come in?

If inmates are used, then they are paid out of trust fund profits, aren't they?

I would have to review the contract to see if Midstate was receiving profit other what they would normally make on the "wholesale" of their goods.

As I understand the current process the inmates pull/fill the order out of bulk stores and package it for the purchasing inmate.

I am not sure the regulations regarding convict labor apply to trust fund inmates. The sales and work they perform benefits the population through the trust fund.

Therefor without the agreement between Geo and Midstate it would be hard to tell if any impropriety has taken place.

My thoughts, let me know what you think Mary.

>>> Daniel M. Simpson 4/18/2005 2:55 PM >>>
Mary,

Reeves County is proposing to use a sub-contractor to operate the inmate commissary. They also intend to continue to use inmate labor in order to reduce their subcontractor's operating costs and allow the subcontractor to deduct their profit as a operating expense.

Is there any legal considerations we need to know about if a subcontractor proposes to derive a profits based upon inmate labor and inmate funds?

Dan Simpson
Privatization Field Administrator
Federal Bureau of Prisons
Correctional Programs Division (PMB)
El Paso, Texas
(915) 534-6311

>>> Valerie Lavender 4/18/2005 10:50 AM >>>
Randy,

As oulined in the SOW, the contractor is to provide written notice of their intent to tneter into any third party contracts and/or agreements. Attached is a copy of the contractor s written notice of intent. The contractor has also been advised to provide the CO with a copy of the contract prior to executing.

In the event I receive a copy of the contract, I will forward to you and Dan.

Let me know if you have any questions. Thanks!!
Valerie

>>> Elena White 4/18/2005 9:08:03 AM >>>
See attached letter.

Elena White
Secure Oversight Monitor
Correctional Programs Division
Privatization Management Branch
432-268-6978 - Big Spring Office
432-268-6885 - Fax
432-213-1269 - BOP Cell
432-447-2926 ext 1021 RCDC Office
eawhite@bop.gov

From: Matthew D. Nace
To: Taylor, Randy R.
Date: 7/25/2007 7:43 AM
Subject: Fwd: ITS Rebates for CAR VI Contracts

Please call me about this (when you have time) so we can discuss.

Thanks Randy!

>>> Carey Cleland 7/19/2007 2:33 PM >>>
Randy,

I have discovered an issue that needs to be addressed for our new CAR VI contracts. After reviewing the Big Spring Invoice it was discovered that the BOP has not been receiving any of the telephone commissions that Cornel has been receiving as a result of the Inmate telephone system (ITS). This amount is only $3,000 per month as a result of a $10,000 expense deduction for over 22,000 inmates exceeding 300 minutes per month on their personal telephone calls. The BOP does not allow inmates to exceed 300 minutes per month on their phone calls.

On our current contracts we modified them June 2002 (Mod. 13 for Cal. City) restricting inmates to 300 minutes, then in November we modified our contracts again (Mod. 18) taking out the 300 minutes and replacing it with language that says they shall not exceed the limits established by BOP policy.

The CAR VI SOW, page 49, states "The contractor shall implement telephone limitations as directed by the CO". I feel that we need to direct the contractor to follow BOP policy P.S. 5264.07, Telephone Regulations for Inmates, limiting their phone calls to 15 minutes per call and not to exceed 300 minutes per calendar month. This will save us $13,000 per month at Big Spring alone. This can be done by technical direction from the CO.