

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

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

REPLY 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**

Lee G. Petro
Jennifer L. Oberhausen
Jennifer M. Roussil

DRINKER BIDDLE & REATH LLP
1500 K Street N.W.
Suite 1100
Washington, DC 20005-1209
(202) 230-5857

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SUMMARY

In January 1984, an elderly lady made a phone call and asked the unforgettable question “Where’s The Beef?!”[®] While she was referencing a paltry burger patty on an oversized bun when she asked the question of the “Flaky Bun” executives, she easily could have been asking the same question after reviewing the ICS providers’ Comments filed in the instant proceeding.

Despite direct orders from the FCC for parties to provide specific evidence to support its proposals, the ICS providers failed to provide any support for their arguments presented in their Comments. Instead of supplying “most up-to-date information” and “specific analysis and facts” the ICS providers complained that it would be “difficult” to provide this information, and instead proffered only generalizations and inaccurate conclusions on questions of both law of fact.

In the absence of any specific evidence to support their opposition to the adoption of a benchmark rate for interstate ICS telephone calls, the FCC must accept the evidence supplied by the Petitioners and other parties, and adopt the Petitioners’ proposal to impose a benchmark ICS rate of \$0.07, with no set-up fees or other ancillary charges. Moreover, the FCC can and must direct all existing contracts to be reformed to integrate the proposed ICS rate within one year of the effective date of the order in this proceeding.

Finally, the FCC must reject the call by CenturyLink to establish an advisory committee. Simply put, the ICS providers have used every available option at hand to delay FCC action in this proceeding over the past 12 years, and have had every opportunity to call for consensus. Aided by the FCC’s inaction, millions of inmates and their families have endured usurious rates and abusive practices while the ICS providers have reaped billions in revenue.

Further delay is no longer an option. The FCC requested specific data, and, while the Petitioners provided specific cost data in support of the Petitioners, the ICS providers declared that it would be too “time-consuming” to provide this information. In light of their failure, the ICS providers must not be permitted to delay action any further.

TABLE OF CONTENTS

SUMMARY..... i

TABLE OF CONTENTS ii

DISCUSSION 2

 I. THERE IS OVERWHELMING SUPPORT FOR ICS REFORM. 2

 II. THERE IS NO LEGITIMATE QUESTION THAT THE FCC HAS THE
 AUTHORITY TO PROVIDE THE REQUESTED RELIEF..... 4

 III. ICS PROVIDERS FAILED TO PROVIDE SPECIFIC EVIDENCE TO SUPPORT
 THEIR OPPOSITION TO THE ADOPTION OF BENCHMARK RATES.7

 IV. IN LIGHT OF ICS PROVIDERS’ FAILURE TO SUPPORT OPPOSITION, THE
 FCC MUST ACCEPT THE PETITIONERS’ PROPOSAL AND ESTABLISH
 BENCHMARK RATES..... 11

 V. THE FCC MUST MANDATE A FRESH LOOK PERIOD FOR ALL EXISTING
 CONTRACTS.....14

 VI. THE ICS PROVIDERS’ RESPONSE TO THE ISSUE OF DROPPED CALLS IS
 NOT CREDIBLE.18

 VII. A SIGNIFICANT AMOUNT OF REVENUE-SHARING FUNDS ARE NOT USED
 BY STATES AND LOCAL AUTHORITIES FOR BENEFIT OF INMATES.....25

 VIII.BENEFITS ASSOCIATED WITH ADOPTION OF BENCHMARK RATES FAR
 OUTWEIGH ANY COGNIZABLE COSTS.27

CONCLUSION 30

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Calling Services)

REPLY 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 Reply Comments in connection with the above-captioned proceeding.¹

On March 25, 2013, the Petitioners submitted Comments calling for the FCC to establish a benchmark Inmate Calling Service ("ICS") rate 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.

As demonstrated in the Petitioners' Comments, the cost to provide ICS is well below the proposed rate, and the 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.

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 April 22, 2013, as the deadline for filing Comments in this proceeding. 78 FED REG 4369 (rel. Jan. 22, 2013).

Nothing in the comments submitted by the ICS providers undermines this proposal. In fact, despite the fact that the FCC requested specific evidence to support the ICS providers' opposition to the adoption of a benchmark ICS rate, the ICS providers declined to provide any specific data, claiming it would be "difficult" and "time-consuming."² In light of their election not to provide any evidence in support of their opposition to the proposed benchmark ICS rate, the Commission must grant the Petitioners' proposal, and provide immediate relief to millions of inmates and their families.

DISCUSSION

I. THERE IS OVERWHELMING SUPPORT FOR ICS REFORM.

Over the past 10 years, tens of thousands of interested parties have urged the FCC to take action on reforming the ICS rates and practices. In response to the *NPRM*, the voice for reform was even louder, with almost unanimous support for the FCC to step in and reduce the rates affecting inmates and their families. Commenters noted the high rates of recidivism, the disproportionate impact on the poor, minorities, and immigrant detainees, and the need for inmates and their families to maintain strong contact, and strongly urged the FCC to take action.

In particular, many parties focused on the positive benefits of low ICS rates to reduce the high rate of recidivism among recently released inmates. The Prisoners Legal Services of Massachusetts noted that "97% of the prison population will be released to our communities" and, with the Massachusetts recidivism rate is at 44%, "we simply cannot afford to compromise support systems that are proven to contribute to successful reentry and lower recidivism."³ The Vera Institute of Justice agreed, stating that "[r]egular phone contact is often the only way to

² *Comments of Global Tel*Link Corp.*, WC Dkt. 12-375, filed Mar. 25, 2013, pg. 26 ("*GTL Comments*").

³ *Comments of Prisoners Legal Services of MA*, WC Dkt. 12-375, filed Mar. 25, 2013, pg. 2 (internal citations omitted).

maintain an on-going connection with family members” and noted regular contact between inmates and their children has “proven beneficial on a number of levels including being associated with higher self-esteem, improved non-verbal IQ scores, better adjustment to school and foster care, and few behavioral problems.”⁴ Moreover, the Minority Media and Telecommunications Council stated that “incarceration is concentrated among men, the young, and uneducated and racial and ethnic minorities – especially African Americans.”⁵

Comments filed by the Center on the Administration of Criminal Law also addressed many of these same issues, noting:

- The country’s leading provider of out-of-state incarceration services, which houses more than 80,000 inmates in 60 plus facilities, ‘maintains a geographic stronghold in Tennessee, housing inmates from as far afield as Montana, Hawaii, and Puerto Rico.’ It would obviously be extremely expensive for an inmate’s Hawaiian or Montanan family to make the trip to Tennessee to visit their incarcerated loved one.⁶
- High inmate calling service rates incentivize the acquisition and use of cell phones and, by doing so, set inmates up for failure. Several states expressly prohibit cell phone use in prison. Using such a device can result in a loss of ‘good time’ credits (meaning more time served) or a transfer to a ‘higher-security institution.’ It can also result in additional jail time following a conviction for contraband possession.”⁷
- Inmates that keep in touch with their loved ones are involved in fewer disciplinary incidents—prison is a safer place for both prisoners and prison employees. And, at least in some instances, the end result of frequent inmate-family contact is that an inmate secures an early release through “good behavior.”⁸
- When released inmates return to a life of crime, ‘they cost society all over again’ in the form of more arrests, more prosecutions, increased prison populations, and more victims. To the extent that reducing inmate calling

⁴ *Comments of the Vera Inst. of Justice*, WC Dkt. 12-375, filed Mar. 14, 2013, pg. 3 (internal citations omitted).

⁵ *Comments of the Minority Media and Telecomms. Council*, WC Dkt. 12-375, filed Mar. 25, 2013, pg. 8 (internal citations omitted).

⁶ *Comments of the Ctr. on the Admin. of Criminal Law*, WC Dkt. 12-375, filed Mar. 25, 2013, pg. 3.

⁷ *Id.*, at pg. 12 (internal citations omitted).

⁸ *Id.*, at pg. 8 (internal citations omitted).

service rates reduces recidivism, lowering rates promises to reduce these costs as well.”⁹

- A child that stays in touch with an incarcerated mother or father is less likely to drop out of school or be suspended. Keeping in contact with an incarcerated parent can also reduce instances of child depression and feelings of alienation that can lead a child to engage in antisocial behavior. Moreover, maintaining the parent-child relationship during incarceration makes it more likely that the parent will be an active participant in his or her child’s life upon release, which is more often than not to the child’s benefit.¹⁰

The Human Rights Defense Center tied many of these factors in its statement that “[w]hen families cannot pay the cost of phone calls from their incarcerated loved ones, those same families and their communities pay a different kind of price: isolation, stress, decreased rehabilitation and increased recidivism rates.”¹¹

Based on the comments referenced herein, along with the tens of thousands of comments entered into the record from inmates and their families, there can be no question of the need for reform with respect to ICS rates and practices. Reducing ICS rates and eliminating excessive ancillary fees imposed by ICS providers will encourage contact between inmates and their families, friends and counsel, which has been shown to have direct and unquestioned social benefits.

II. THERE IS NO LEGITIMATE QUESTION THAT THE FCC HAS THE AUTHORITY TO PROVIDE THE REQUESTED RELIEF.

As explained in Petitioners’ Comments, the FCC has authority to regulate ICS rates and practices under Sections 276 and 201 of the Communications Act of 1934, as amended, as well as under Title I ancillary jurisdiction.¹² Even the ICS providers agreed with the Petitioners with respect to the FCC’s jurisdiction over interstate ICS rates.

⁹ *Id.*, at pg. 10 (internal citations omitted).

¹⁰ *Id.*, at pg. 11 (internal citations omitted).

¹¹ *Comments of the Human Rights Defense Ctr.*, WC Dkt. 12-375, filed Mar. 25, 2013, pg. 1.

¹² *Petitioners’ Comments*, pg. 5.

For example, Securus acknowledged that the FCC has jurisdiction over interstate ICS rates, and agreed that the FCC's proposed actions are not an attempt to regulate the operations of a correctional facility.¹³ GTL acknowledged that Section 201(b) gives the FCC broad license to regulate interstate calling to ensure just and reasonable rates and that Section 276 applies to all service providers for all payphone calls.¹⁴ CenturyLink conceded that the FCC has jurisdiction "with respect to the rates charged for interstate ICS provided by service providers",¹⁵ and Pay Tel Communications, Inc., stated that the FCC has the authority to address "all aspects of the ICS environment."¹⁶ In fact, Pay Tel went one step further, affirming that:

[t]here is no question but that the Commission has jurisdiction over intrastate inmate calling rates. In enacting Section 276, Congress unambiguously granted the FCC authority "to establish regulations 'to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call.'" In the payphone service provider context, the Commission's authority pursuant to that statutory command has been construed such that the Section 276(b)(1)(A) "fair compensation" requirement includes the rates paid for local coin calls because they are part of the compensation that payphone service providers receive for their services; accordingly, the Commission's authority extends to regulating such rates.¹⁷

Thus, all interested parties in the proceeding agree that the Commission has the requisite authority to regulate the ICS industry.

Despite their acknowledgement that the FCC has the requisite authority to ensure just, reasonable and fair ICS rates and practices, certain ICS providers attempted to limit this authority. For example, GTL cited *Arsberry v. Illinois* to argue that regulation of state and local corrections facilities must be left to local authorities.¹⁸ However, any fair reading of *Arsberry* would acknowledge that the court explicitly stated that the claim under the Communications Act

¹³ See *Comments of Securus Tech., Inc.*, WC Dkt. 12-375, filed Mar. 25, 2013, pgs. 8-10 ("*Securus Comments*").

¹⁴ *GTL Comments*, pg. 32.

¹⁵ *Comments of CenturyLink*, WC Dkt. 12-375, filed Mar. 25, 2013, pg. 18.

¹⁶ *Comments of Pay Tel Communs., Inc.*, WC Dkt 12-375, filed Mar. 25, 2013, pg. 3.

¹⁷ *Id.*, pg. 6, nt. 17 (internal citations omitted)(emphasis added).

¹⁸ *GTL Comments*, pgs. 33-34.

that ICS providers charge unreasonably high rates and engage in rate discrimination is squarely within the FCC's jurisdiction.¹⁹

Moreover, Securus attempted to raise several arguments in an effort to limit the FCC's regulatory authority, but each ultimately fails. First, Securus explained that interstate long-distance calls have been detariffed since 1996, and that the adoption of a benchmark ICS rate would be a return to the pre-1996 regulatory scheme.²⁰ However, the Petitioners have not asked the FCC to impose new tariff filing requirements on ICS rates and practices. The Petitioners, along with an overwhelming number of other commenters in this proceeding, have requested that the FCC establish a benchmark ICS rate. There would be no need for filing a tariff relating to the benchmark ICS rate, because the ICS providers simply would be required to charge less than the proposed rate.

Securus then argued that rate regulation should be imposed only if a demonstrable market failure has occurred. Securus conceded that the FCC may establish rate regulation where there are "unjust and unreasonable rate or rates", and a "systemic, price-inflating harm to the inmate telecommunications market."²¹ However, Securus concluded that there is no market failure in the ICS industry, and cites to its *Expert Report* in support of this conclusion.²²

¹⁹ 244 F.3d 558, 565 (7th Cir. 2001) ("A claim of discriminatory tariffed telephone rates is precisely the kind of claim that is within the primary jurisdiction of the telephone regulators. 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.") (emphasis added).

²⁰ *Securus Comments*, pg. 14 (citing *Policy and Rules Concerning the Interstate Interexchange Marketplace*, Second Report and Order, 11 FCC Rcd 20730 (1996)).

²¹ *Securus Comments*, pg. 14 (citing *Petition of the State of Ohio for Authority to Continue to Regulate Commercial Mobile Radio Services*, Report and Order, 10 FCC Rcd 7842, 7851 (1995)).

²² *Securus Comments*, pg. 15 (citing *Expert Report of Stephen E. Siwek*).

As noted in the *NPRM*, while competition exists among the providers for new ICS contracts, once an ICS provider wins a contract, it becomes the sole ICS provider for that facility, and inmates only have access to the ICS options proffered by a single provider at that location.²³

As such, the ICS industry is a text-book example of a “market failure.” The Petitioners and the other parties supporting reform of the ICS industry have provided conclusive evidence that, post-RFP grant:

- i. an ICS provider holds a monopoly on the ICS options at the prison or detention center;
- ii. the rates charged to ICS customers (inmates and their families) are far beyond any reasonable cost to provide such services; and
- iii. there is no incentive for either of the ICS contracting parties to voluntarily reduce the charges imposed on ICS customers since the contracting parties split the revenues through the payment of commissions.

Only through wishful thinking does such a regime *not* represent a market failure in its purest sense. While there may be competition to earn the right to be each location’s monopolist, the ICS consumer is not protected from unjust and unreasonable rates once the monopolist signs the contract. As a result, the ICS consumer never benefits from the brief period of competition among ICS providers during in the RFP process.

Instead, ICS consumers are forced to pay whatever per-minute rate is charged by the ICS provider, all the while enduring repeated dropped calls, and paying all other usurious fees (i.e., \$5.00 to receive a refund!). If this does not represent a “systemic, price-inflating harm,” then the term has no meaning.

III. ICS PROVIDERS FAILED TO PROVIDE SPECIFIC EVIDENCE TO SUPPORT THEIR OPPOSITION TO THE ADOPTION OF BENCHMARK RATES.

In light of the substantial delay between the submission of the Alternative Proposal in 2007, and the release of the *NPRM*, the Commission sought updated information on every aspect of the ICS industry. The Commission noted that some of this information would need to

²³ *NPRM*, 16632.

come from the ICS providers,²⁴ and repeatedly called for the submission of detailed, specific evidence from all parties.

For example, the FCC requested specific data and evidence on the following matters, most of which could only come from the ICS providers:

- what costs are associated with the per-call charge; ¶18
- what are costs associated with call security; ¶19
- support of or disproving per-minute rate caps are arbitrary and capricious; ¶21
- provide alternate methodologies supported by sufficiently-detailed data; ¶25
- what are current ratios of debit to collect calling in correctional facilities; ¶32
- updated data on how much these site commissions are and how much they add to the per-call costs; ¶37
- provide data on the average number of calls that are blocked per month and the reason for the blocking; ¶40
- updated data from all interested parties and the public, but especially from ICS providers; ¶43 (emphasis added)
- most up-to-date information available regarding interstate ICS rates to aid us in developing a clearer understanding of the ICS market. This includes per-call and per-minute rates, information on commissions and what percentage of a rate they comprise, the number of disconnected calls, the average length of calls, and how calls break out by type, i.e. collect, prepaid and debit; ¶43
- The ICS Provider Proposal also provides no information about the geographic distribution of facilities in the sample, the distribution between state prisons and local prisons (jails), and the distribution between public and privately administrated facilities. Information about these facilities characteristics would be relevant to analyzing whether the sample is representative; ¶44, nt. 148 and
- specific analysis and facts to support any claims of significant costs or benefits associated with the proposals herein. ¶48

Despite the clarity with which the FCC made these requests, almost all of the ICS providers elected not to provide specific data and evidence, and clearly articulated their lack of interest in responding to the FCC's direct call to do so.²⁵

²⁴ *NPRM*, 27 FCC Rcd at 16,645.

For example, GTL responded that it would not provide updated data because “it would be extraordinarily difficult and time-consuming.”²⁶ Incredibly, while it took issue with the April 2011 *Prison Legal News* study, claiming it was “stale” and that “accurate and up-to-date information is available,”²⁷ GTL then chose not to provide this accurate, up-to-date information, even though it is in the best position to do so through its contracts with 30 state-run prison systems, and 12 of the 20 largest prison systems.²⁸

While Securus provided a study prepared by *Economists Incorporated*, this study did not provide the detailed information requested by the FCC. Instead, it merely disclosed the average of expenses that Securus claims to incur at a select set of facilities. However, as noted above, the FCC demanded to “see the ICS providers’ math” rather than just the end result. Moreover, the attached Statement of Dr. Coleman Bazelon highlights several fundamental problems with Securus’ study.²⁹

Other than its flawed study, Securus’ only other substantive disclosure was that the company spent over \$4.5 million in research and development in 2012.³⁰ While it is laudable that the company is attempting to develop new products and upgrade its facilities, the amount it spent on research and development in 2012 is less than one-half of what it earned from serving the Florida state prison system during that same period!³¹ Since Securus boasted that it has

²⁵ This excludes the most helpful comments of Network Communications International Corp. (NCIC), filed March 25, 2013, WC Dkt. 12-375. As shown in the attached Declaration of Dr. Coleman Bazelon, see Exhibit A, the information supplied by NCIC provided the only useful cost data entered into the record by the ICS providers.

²⁶ *GTL Comments*, pg. 26.

²⁷ *Id.*

²⁸ *Id.*, pg. 27.

²⁹ See *Declaration of Dr. Coleman Bazelon*, Exhibit A (failing to provide information on “how costs change with facility size”, “whether there is a threshold size of a facility where costs begin to decline”, and miscalculating the “gross margin.”).

³⁰ *Securus Comments*, pg. 5.

³¹ Securus is obligated to share 35% of its revenue with the State of Florida. In 2012, Securus paid Florida \$5,156,269.19. Therefore, Securus earned revenue of *at least*

contracts with “1,800 correctional authorities”, one can reasonably assume that this research and development budget is but a drop in the bucket compared to the revenues earned from the other 1,799 correctional authorities.³²

Lest the Petitioners’ only focus on GTL and Securus, the other ICS providers also failed to adequately respond to the FCC’s marching orders. Pay Tel urged the Commission to take “a holistic view of ICS” but only provided two charts based on publicly-available information, along with a statement that, for the jails it serves, “84% were local calls, but those calls generated only 66% of that year’s revenue.”³³ The disproportionate contribution of interstate ICS revenue to Pay Tel’s bottom line is clear evidence of the benefits arising from the FCC’s adoption of the Petitioners’ proposal. Finally, CenturyLink did not provide any analysis of the costs, nor did it provide updated data with respect to the ICS industry.

Thus, the ICS providers clearly declined the opportunity to supply to the FCC the information that only they would have, i.e., the actual costs to provide their service.³⁴ In light of this decision, and as discussed in more detail below, the FCC may rest its ultimate decision on the information provided by the Petitioners and their supporters.

\$8,507,843.85 before it sent its check to Florida. As noted in the Petitioners’ Comments, it is common for the ICS providers to carve out from its revenue-sharing plan with the correctional authorities classes of ancillary fees, such as adding money to a prepaid account, or requesting a refund. *Petitioners’ Comments*, Exhibit H. Thus, it is likely that this \$4.5 million expense is even a smaller percentage of Securus’ overall revenue when these other sources are included.

³² *Securus Comments*, Hopfinger Declaration, pg. 1.

³³ *Pay Tel Comments*, pg. 7.

³⁴ The ICS providers were mostly uniform in their rejection of the marginal location methodology utilized in the *Wood Study*, however. See, e.g., *GTL Comments*, pg. 17; *Pay Tel Comments*, pg. 12. Neither Securus nor CenturyLink addressed it in their Comments, which would lead one to believe that they do not support it as well.

IV. IN LIGHT OF ICS PROVIDERS' FAILURE TO SUPPORT OPPOSITION, THE FCC MUST ACCEPT THE PETITIONERS' PROPOSAL AND ESTABLISH BENCHMARK RATES.

Because the ICS providers flatly refused the FCC's request to provide specific cost data and detailed evidence of the costs associated with the imposition of a benchmark ICS rate, the FCC must accept the Petitioners' showing that the existing costs are *prima facie* unjust and unreasonable, and adopt the proposed ICS benchmark rate set forth in the Petitioners' Comments. As noted above, the FCC detailed, in no uncertain terms, the information to be provided by the ICS providers in this proceeding, and specifically directed the parties that were best positioned to provide this information to do so.

Also demonstrated above was the ICS providers' surprising decision to take a pass on the FCC's request. In light of the long-pending proceeding (caused in no small part by the ICS providers), the FCC gave the ICS providers yet another opportunity to counter the need for the benchmark ICS rate proposed in the Alternative Proposal. Instead, the ICS providers simply said, "Thanks, but no thanks." As a result, well-established precedent obligates the FCC's to use the information provided by the Petitioners to adopt a benchmark ICS rate.

For example, in *McLeodUSA Publishing Company v. Wood County Telephone Company, Inc.*, the FCC adopted the complainant's proposed rate for subscriber listing information (SLI) because "Wood County has failed to meet its burden of providing credible and verifiable cost data supporting a rate for base file SLI in excess of the presumptively reasonable rate."³⁵ In reaching its decision, the FCC noted that Wood County had "unique access to the information concerning its costs" and imposed the burden of proof on "the party with unique access to crucial information."³⁶ The FCC also noted that the "[t]he need for information

³⁵ Memorandum Opinion and Order, 17 FCC Rcd 6151 (2002).

³⁶ *Id.*, pg. 6155, nt. 36.

justifying [the rate]...is particularly important” where the purported cost “dramatically exceeds” the presumptive reasonable rate.³⁷

The FCC concluded by finding that “[i]t is neither fair nor reasonable” for a service provider “to earn a complete double recovery” of its costs,³⁸ especially where the service provider fails to explain “what specific costs [its] charges were intended to cover.”³⁹ Thus, when a service provider fails to provide justifications for specific costs, the FCC will find that its showing is “unverifiable and unreliable”, and the FCC “will decline to consider these costs” in determining the presumptively reasonable rates,⁴⁰ and grant the proponent’s request that the service provider charges no more than a reasonable rate.

This decision followed a long line of cases that recognized the obligation of service providers to “come forward with relevant information or evidence determined to be in the sole possession or control of the carrier.”⁴¹ In its *Second Report and Order* relating to interconnection rates, the FCC took the local exchange carriers to task for failing to file the justification for their pricing of interconnection rates, despite being requested by the FCC to provide this information on several occasions.⁴² Noting this failure, the FCC looked to the “best currently available, verifiable and reasonable surrogate” for the information that the local exchange carriers did not provide.⁴³ The FCC justified this action as a direct result of the local

³⁷ *Id.*, pg. 6157.

³⁸ *Id.*, pg. 6162.

³⁹ *Id.*, pg. 6163.

⁴⁰ *Id.*, pg. 6164.

⁴¹ *See Implementation of the Telecommunications Act of 1996 – Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22,497, 22,615, nt. 782 (1997)(citing *Gen. Servs. Admin. v. AT&T*, 2 FCC Rcd 3574 (1987)).

⁴² *See Local Exchange Carriers’ Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, Second Report and Order, 12 FCC Rcd 18,730 (1997).

⁴³ *Id.*, 12 FCC Rcd at 18,892.

exchange carriers' failure "to provide adequate support" for their factors "[n]otwithstanding these clear and specific filing requirements."⁴⁴

Thus, where the FCC requests specific information from parties uniquely able to provide the information, and the parties refuse to respond to the FCC's request, the parties may no longer protest the imposition of a benchmark ICS rate where the proposed rate is supported by "currently available, verifiable, and reasonable" cost data. In its Comments, the Petitioners demonstrated that the ICS rates are unjust and unreasonable by provide numerous examples of the widely-divergent rates among the various states, and even among the same provider. This fact also was noted in the *NPRM*, and, the FCC specifically requested that the ICS providers submit specific data to justify this wide divergence.

The ICS providers' response claiming fatigue or complexity is wholly insufficient, and effectively removes them from the decision-making process.⁴⁵ The Petitioners and the other commenters requesting relief established a *prima facie* case that the rates were unjust and unreasonable, and the FCC must move forward immediately to adopt the proposed benchmark ICS rate in light of the ICS providers' abdication of its critical role.

Finally, CenturyLink's call for the establishment of an advisory committee must be rejected. CenturyLink proposed that a federal advisory committee be established to create a "structured discussion of an agreed upon comprehensive framework and timeline for a resolution of the legitimate concerns raised by the petitioners and previous commenters in this proceeding."⁴⁶ In support of this proposal, CenturyLink cited a 2009 *ex parte* submission by the American Bar Association, which CenturyLink apparently understood to call for an advisory

⁴⁴ *Id.*, 12 FCC Rcd at 18,895.

⁴⁵ Securus did include the helpful statement that "Costs of Service Have Decreased in Some Respects But Increased in Others." *Securus Comments*, pg. 4. GTL also offered the following guidance "While it is accurate that certain telecommunications costs have declined over the past 10 years...many of the costs associated with providing inmate calling services have increased." *GTL Comments*, pg. 19.

⁴⁶ *CenturyLink Comments*, pg. 2-3.

committee.⁴⁷ However, the cited letter did nothing of the sort. Instead, it urged the Commission to adopt a fair rate based in the record that had been established over the previous eight years. Thus, the ABA did not support the creation of an advisory committee in 2005 when it adopted a Resolution urging the FCC to resolve this matter then, nor did it call for an advisory committee in 2009.

Incredibly, while CenturyLink would be interested in serving on an advisory committee to resolve this proceeding, it did not see it fit to respond to a direct call from the FCC to supply the cost data referenced above. There is simply no evidence that CenturyLink, nor any other ICS provider, would come to the table of an advisory committee with any more interest in resolving this proceeding than what the ICS providers have shown over the past 10 years. Instead, it is plainly obvious that the creation of an advisory committee would only delay this matter for many more years, all while the ICS providers and the correctional and detention authorities continue to share in the spoils earned from the inmates and their families. In sum, if the ICS providers would not respond to the direct requests from the FCC in the *NPRM*, what basis is there to believe it would do so in an advisory committee that would be dominated by the very same ICS providers?

V. THE FCC MUST MANDATE A FRESH LOOK PERIOD FOR ALL EXISTING CONTRACTS.

Many of the ICS providers ask the FCC to grandfather existing ICS contracts in the event that a benchmark ICS rate is adopted. For example, Securus stated that the United States Constitution, Article 1, Section 10 protects contracts from being abrogated or altered by new regulations.⁴⁸ Securus also relied on the application of the *Sierra-Mobile* Doctrine to argue

⁴⁷ *Id.* (citing Letter of Thomas M. Susman, American Bar Association, CC Dkt. 96-128, filed Jan. 15, 2009).

⁴⁸ *Securus Comments*, pgs. 11-12.

against the adoption of FCC-mandated fresh-look period for ICS agreements.⁴⁹ Both GTL and CenturyLink requested that the FCC the proposed benchmark ICS rates only to new contracts entered into after the effective date of the new rules.⁵⁰

First, Securus is simply incorrect that Article 1, Section 10 of the US Constitution prohibits the FCC from taking the requested action. Instead, Article 1, Section 10 of the U.S. Constitution states, “No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts”⁵¹ Article 1, Section 10 prevents a *state* from passing a law impairing the obligation of contracts,⁵² but does not apply to the federal government. Therefore, Securus’ citation of Article 1, Section 10 in the context of FCC-mandated benchmark ICS rates is simply false.⁵³

Moreover, Securus’ reliance on the *Sierra-Mobile* Doctrine is also misplaced. Specifically, the *Sierra-Mobile* Doctrine was developed in the context of energy rate regulation, and establishes a presumption of just and reasonable rates between the contracting parties who have had the opportunity to freely negotiate the terms of the agreements.⁵⁴

The presumption can be rebutted, however, where it is shown that the freely-negotiated terms “seriously harms the consuming public.”⁵⁵ In a recent case, inexplicably ignored by

⁴⁹ *Id.* (citing *Fed. Power Comm’n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and *United Gas Pipe Line Co. v. Mobile Gas Svc. Corp.*, 350 U.S. 332 (1956)).

⁵⁰ *GTL Comments*, pg. 29; *CenturyLink Comments*, pg. 15.

⁵¹ U.S. Const. Art. 1, Sec. 10 (emphasis added).

⁵² Securus also quoted *Arkansas Natural Gas. Co. v. Arkansas R.R. Comm’n*, 261 U.S. 379 (1923). However, that case applied Article 1, Section 10 of the Constitution to prevent a state from enacting a law that would invalidate an existing contract, not the federal government.

⁵³ *See, e.g., Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213 (1827).

⁵⁴ *See, e.g., Morgan Stanley Capital Group Inc., v. Public Util. Dist. No. 1 of Snohomish Cty.*, 554 U.S. 527 (2008).

⁵⁵ *Id.*, 554 U.S., at 545-546. *See also Verizon Communs., Inc., v. FCC*, 535 U.S. 467, 479 (2002) (“When commercial parties did avail themselves of rate agreements, the principal regulatory responsibility was not to relieve a contracting party of an unreasonable rate, but to protect against potential discrimination by favorable contract rates between allied businesses to the detriment of other wholesale customers.”)(internal citations omitted).

Securus, the Supreme Court stated that the presumption not only applied to the contracting parties, but it also applied to “consumers, advocacy groups, state utility commissions, [and] elected officials acting *parens patriae*.”⁵⁶

Thus, while there may be a high threshold for satisfying the public interest standard of the *Sierra-Mobile* Doctrine, it is clear that the Commission may not ignore the serious and harmful effects caused by the “allied” contractual parties on the ICS consumer. As was the case in *Verizon, supra*, the contracting parties to ICS agreements do not bear the ultimate burden of the terms of ICS contracts. Instead, as extensively detailed in this proceeding, ICS consumers experience serious harms from the contracts, and those harms will continue for years to come absent action by the FCC to reform existing contracts to the new proposed benchmark ICS rates.

The Commission previously acknowledged this difference in *IDB Mobile Communications, Inc. v. COMSAT Corp.*, where it stated:

[A] carrier cannot obtain the remedy of contract reformation by showing only that the contract requires it to pay an unduly high price for communications services. Such *private* economic harm, standing alone, lacks the substantial and clear detriment to the *public* interest required by the *Sierra-Mobile* doctrine.”⁵⁷

In the instant proceed case, the Petitioners have shown the requisite harm to the public interest.⁵⁸ Thus, there is no legitimate question that the Commission has authority to impose the “fresh look” period when adopting the proposed ICS benchmark rate.

⁵⁶ *NRG Power Mktg., LLC et al., v. Maine Pub. Util. Comm’n.*, 558 U.S. 165, 176 (2010).

⁵⁷ Memorandum Opinion and Order, 16 FCC Rcd 11474, 11480 (2001) (emphasis in original).

⁵⁸ Each of the cases Securus cites under the *Sierra-Mobile* Doctrine involve parties seeking to excuse themselves from performing under a contract after subsequent events rendered the terms of the contract less favorable to the party seeking to abrogation. Securus also cites *ACC Long Distance Corp. v. Yankee Microwave, Inc.*, Memorandum Opinion and Order, 10 FCC Rcd 654 (1995) and *Ryder Communs., Inc. v. AT&T Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 13603 (2003) in support its contention that the Commission has not amended contracts in the past. However, both cases involve private parties seeking to excuse themselves from performing under the terms of an existing contract. The parties did not attempt to demonstrate harm to the public from the existing contract, but merely argued that the terms of the contract were unjust or unreasonable as to the contracting party. Finally, Securus cites *Echostar Communs. Corp. v. Fox/Liberty Networks LLC*, Memorandum Opinion and Order, 13

Finally, while GTL and CenturyLink have requested that the new rates only apply to new contracts, both parties note that the current term of existing contracts range from three to ten years, and often have automatic renewal periods. CenturyLink also argued that “in most cases, the ability to renegotiate rates is prohibited.”⁵⁹

However, the Petitioners previously demonstrated that the ICS agreements are regularly amended, which includes changes in the rates charged to ICS customers.⁶⁰ In fact, CenturyLink has amended its contract with the State of Kansas on three occasions in the past four years.⁶¹ In addition, GTL has amended its contract with the State of Iowa three times, its contract with the State of Massachusetts four times, and the State of Virginia seven times.⁶² Meanwhile, other well-experienced ICS providers also supported the “fresh look” period, which further undermines the position taken by Securus, CenturyLink and GTL.⁶³

Thus, it is not credible that “the ability to renegotiate rates is prohibited” as CenturyLink would have the FCC believe, and instead, the Petitioners have demonstrated on numerous occasions that such reformations occur on a regular basis. In light of the long-term nature of the existing agreements, coupled with oft-used automatic renewal provisions, the ICS providers must be required to modify their existing ICS agreements.

There is simply no legitimate justification for the FCC not to adopt a one-year, fresh-look period, which would provide immediate relief from the serious public harms caused by the ICS

FCC Rcd 21,841 (1998) as an example of the Commission applying *Sierra-Mobile* in the context of a contract to buy network programming. *Securus Comments*, pg. 13. However, *EchoStar* was decided solely on procedural grounds. (“Because we are deciding this matter on procedural grounds, we find that there is no need to reach the merits of this proceeding.”).

⁵⁹ *CenturyLink Comments*, pg. 16.

⁶⁰ *See Petitioners Comments*, pg. 29 (citing *Letter of Lee G. Petro*, CC Dkt. 96-128, dated June 28, 2012, pg. 3.) (noting that Securus had amended its contract with the State of Florida on four occasions).

⁶¹ *See Exhibit B*.

⁶² *See Exhibit C*.

⁶³ *See Comments of Telmate, LLC*, WC Dkt. 12-375, filed Mar. 25, 2013, pg. 16; *See Comments of TurnKey Corrections*, WC Dkt. 12-375, filed Mar. 25, 2013, pg. 5.

agreements. Such reformation would provide ICS customers immediate relief, while permitting the current contracts to remain unamended would present an incentive for the contracting parties to attempt to extend or renew the existing contracts for their own pecuniary benefit, while ICS customers wait up to 10 years in the future for relief.

VI. THE ICS PROVIDERS' RESPONSE TO THE ISSUE OF DROPPED CALLS IS NOT CREDIBLE.

One topic bears special mention because of the remarkable claims made by the ICS providers. Specifically, the ICS providers argued that the responsibility for dropped calls is to be placed squarely on the customers.

Incredibly, the ICS providers argued that dropped calls are to be expected for anyone with a wireless phone, and that the recipients of ICS calls must obtain a landline to ensure a reliable connection.⁶⁴ Moreover, Securus' Mr. Hopfinger went so far to say that he has "first-hand knowledge that inmate calls are not 'dropped' without cause" and that the calls are dropped *only* because the Securus "system detects that the inmate or the called party is attempting to create a three-way call or to forward the call to some third party."⁶⁵

Setting aside whether it is even credible that Mr. Hopfinger has "first-hand knowledge" of each and every dropped call experienced by Securus' customers, the unsubstantiated allegation that each and every dropped call is the result of an attempt by the caller to violate prison rules is not reflected in the extensive record in this proceeding, nor in proceedings before state public utility commissions.

For example, in addition to the thousands of letters filed in the record of this proceeding, the experiences of Massachusetts attorneys, as recorded in their testimony and affidavits from the state's recent Department of Telecommunications proceedings, provide specific accounts of

⁶⁴ *GTL Comments*, pg. 30 ("To avoid dropped calls, GTL advises its customers that call recipients should use landline telephones.").

⁶⁵ *Securus Comments*, Hopfinger Declaration, pgs. 9-10.

dropped calls which undermine the ICS providers' apparent "first-hand knowledge."⁶⁶ The testimony and sworn affidavits of these attorneys is especially relevant as many of the largest ICS providers, including Securus and GTL, provide inmate phone services to various correctional facilities within the state.

In its comments, Securus averred that the issue of dropped calls were "baseless" accusations, and asserted that inmate calls are dropped only when parties are attempting to make illegal three-way calls or forward a call to a third-party.⁶⁷ The sworn affidavits of criminal defense attorneys in Massachusetts flatly contradict this claim. One attorney stated that every month, about one in every five calls to his office is dropped prematurely.⁶⁸ Despite the fact that neither the attorney, "nor anyone at [his] office has ever attempted to add a third party or forward a call from an incarcerated client," the disconnection is almost always preceded by a recording stating that the system detected an attempt to add a third party.⁶⁹ Another attorney notes that, while "[v]ery few calls are dropped prematurely or cut-off in the office," calls to both his cellular phone and home phone were frequently dropped, and were generally preceded by a message stating that the system detected an attempt at a three-way call.⁷⁰ Patricia Garin, testifying on behalf of the Northeastern Prisoners' Rights Project, also noted that one in every three calls to her cell phone are dropped due to a "detected" third-party call attempt.⁷¹

Securus also stated that calls are dropped "for cause" when inmates attempt to "thwart" technology designed to detect third-party calls.⁷² Mr. Hopfinger stated that inmates try to "mask the sound of re-dialing the phone" by "scream[ing] or blow[ing] into the handset," or by

⁶⁶ MA Dep't of Telecomms., Dkt. No. 11-16 (comments and other records in the proceeding are available at: <http://www.mass.gov/ocabr/government/oca-agencies/dtc-lp/dtc-11-16.html>).

⁶⁷ *Securus Comments*, pg. 17.

⁶⁸ *See Exhibit D (Amendment 1 and Supplement to Petition, Affidavit A-24, ¶ 4)*.

⁶⁹ *Id.* (emphasis added).

⁷⁰ *Id.*

⁷¹ *Id.* (Affidavit A-30, ¶ 5).

⁷² *Securus Comments*, pg. 18.

banging the handset against the wall.⁷³ Mr. Hopfinger’s allegations that these practices, “developed by inmates” as a means of engaging in illegal activity, also are undermined by numerous accounts from attorneys that regularly receive inmate calls of such poor quality the inmate must yell into the phone in order to be heard.

For example, Carmen Guhn-Knight, provided sworn testimony on behalf of the firm where she is a paralegal stating that “[s]ometimes our clients sound impossibly quiet I often tell our clients to hang up and try calling again and maybe it’ll be better. Sometimes it works and sometimes it doesn’t.”⁷⁴ Ms. Garin testified that she has talked to many fellow attorneys who have to have their clients yell into the phone, making them “very concerned about the fact that our clients have to be yelling their legal business so that we can hear them.”⁷⁵ Another attorney described how during calls received on the office’s main telephone line it is “frequently very difficult to hear what the prisoner is saying unless he or she shouts.”⁷⁶ Further undermining Mr. Hopfinger’s conclusion is the statement by CenturyLink in its Comments that, while the call detection features use “algorithms that analyze a variety of data points” and flag suspicious activities, these “algorithms are capable of mistakenly flagging benign activities and dropping calls.”⁷⁷

The last explanation Securus provided in its comments is that phone records showing a “spate” of short phone calls are not evidence that calls are dropped, but instead, reflects a “phenomenon” developed by inmates to avoid paying for phone services.⁷⁸ Mr. Hopfinger stated

⁷³ *Securus Comments*, Hopfinger Declaration, at pg. 10.

⁷⁴ *See* Exhibit E (Testimony of Carmen Guhn-Knight, 133:11-16).

⁷⁵ *Id.* (Testimony of Patricia Garin, 51:19-24).

⁷⁶ *See* Exhibit D (Affidavit A-29 ¶ 3).

⁷⁷ *CenturyLink Comments*, at 7 n. 16 (CenturyLink noted that “all but one of CenturyLink’s customers requires flagging the call record within the database, but not disconnecting the call in progress. CenturyLink’s single customer that does require immediate termination of the call is a state correctional system with per-minute-only calling rates.).

⁷⁸ *Securus Comments* at 18, Hopfinger Declaration, pg. 10.

that inmates “attempt to avoid billing altogether by having multiple phone calls, one after the other, in the hopes that they billing system will not be activated by such short calls, or that they can falsely claim that the system cut off their calls.”⁷⁹

Securus’ assertion is countered by common-sense logic. Why would an ICS customer, who already has difficulty affording the excessive per-call and per-minute rate, run the risk of having one’s account being charged successive connection fees of \$2.00 or more, simply in the hopes of having to pay connection fee only once? Further, Securus’ claim is contradicted by testimony and affidavits stating that when calls from inmates have connections that are so poor that the inmate cannot be heard, the parties often disconnect the call and reinitiate in the hopes of getting a better connection.⁸⁰ Elizabeth Matos, an attorney with Prisoners’ Legal Services, also testified that when the connection is so bad she can’t hear the client, she tells clients to reinitiate a call in an effort to get a better connection.⁸¹

By far the most popular explanation proffered by ICS providers for dropped calls is that the devices the consumer uses to answer inmate calls, specifically cordless and cellular phones, are to blame. Providers are quick to “warn” consumers that calls to wireless and cordless phones are likely to cause enough static to cause a disconnect, and that calls to wireless phones are more likely to be disconnected due to a loss in signal.⁸² GTL’s comments state that

⁷⁹ *Id.*

⁸⁰ Ms. Guhn-Knight’s sworn testimony is again illustrative here. “The connection is frequently poor. Sometimes our clients sound impossibly quiet and other times there is constant static on the line. I often tell our clients to hang up and try calling again and maybe it’ll be better. Sometimes it works and sometimes it doesn’t.” See Exhibit E (Testimony of Carmen Guhn-Knight, 133:9-16).

⁸¹ See Exhibit E (Testimony of Elizabeth Matos, 14:1-7).

⁸² See Securus, *Friends and Family Telephone Service Guide*, http://www.securustech.net/downloads/guide_english.pdf (last visited April 19, 2013) (Calls may be disconnected due to the “[u]se [of] a cordless phone (static could cause a disconnect)” and “Due to the nature of cell phone service, there is no credit to on dropped calls on cell phones”); GTL, *Friends and Family Support*, <http://www.gtl.net/familyandfriends/index.shtml> (last visited April 19, 2013) (“The quality of telephone calls to wireless devices and cordless phones that receive voice transmission via frequencies as opposed to wires may vary” and “[a]ccordingly, the quality and integrity of calls to cell phones and cordless phones cannot be guaranteed.”); Pay

“[a]nyone that uses a wireless phone is susceptible to dropped calls - it is not an experience unique to the inmate calling environment.”⁸³ Further, while most ICS providers, invoking the “nature of cell phone service” do not reimburse, or “take responsibility for” dropped calls to cellular phones,⁸⁴ many also warn that something as simple as pauses in the conversation, even short ones, can cause a disconnection.⁸⁵

While cell phone service can be certainly more unreliable than calls to landline phones, the testimony and sworn affidavits discussed above demonstrate that static and poor call quality, while more prevalent on wireless phones, is not an experience unique to cellular phone use. One attorney stated that, of the three hundred inmate calls her office receives every month, “[a]pproximately 15-20% of the calls have too much static to hear the other party.”⁸⁶ Another attorney acknowledged that while phone calls to his home phone and cellular phone were “markedly worse: at least one call in three received at home had a terrible connection,” and calls

Tel, *Why Are Some Calls Disconnected?*, <http://www.paytel.com/faq-ftc-14.html> (last visited April 19, 2013) (Calls may be disconnected due to “[u]se of a cordless phone (static),” “[u]se of a wireless phone (dropped cell tower or static)” and “PAY-TEL does not accept responsibility for dropped wireless phone calls.”).

⁸³ *Comments of Global Tel-Link Corp.*, 30 (filed March 25, 2013) (internal citations omitted). GTL also stated in its comments that “[d]ropped calls can result from a variety of circumstances wholly unrelated to the inmate calling platform, such as when an inmate calls a person using a wireless phone, a home portable phone, or background noise or static triggers the security system that is designed to detect and deter three-way calling.” *Id.*

⁸⁴ *See Global Tel*Link Billing Support*, (last visited April 19, 2013) (“Delivery of correctional calls to any cell phone is not guaranteed. If calls to cell phones are dropped, disconnected, or of poor quality, GTL will not issue credit for those calls.”).

⁸⁵ *See Securus, Friends and Family Telephone Service Guide*, (Calls may be disconnected if the parties “[s]top [the] conversation for any length of time (a period of silence may cause a disconnect)”); *GTL, Friends and Family Support*, (“DON’T stop the conversation for any length of time, even short pauses may result in disconnection.”); Pay Tel, *Why Are Some Calls Disconnected?* (Calls may be disconnected if the parties “[s]top talking without hanging up”).

⁸⁶ *See Exhibit D (Affidavit A-27 ¶ 3)* (“there are occasions when there is feedback or an echo, when what the speaker says is echoed back after a very slight delay. This also interferes with conversations. In addition, about 10% of the calls we receive are cut off when we press “0” to answer the call.”); *(Affidavit A-28 ¶ 3)* (In an office that receives an average of 450 calls from incarcerated individuals a month, “[w]e estimate that one call per week from the state facilities have bad connections and are hard to hear, and approximately three calls per week from county facilities have the same problem.”).

to his office phone experience a terrible connection one in every six or seven calls.⁸⁷ Ms. Garin testified that when she takes calls on her cell phone because she cannot be in the office, she only uses her cellular phone “from a sitting still position in a place where reception was strong” but calls are still cut-off about one in every three times.⁸⁸

Regardless of whether the frequency of dropped calls is unavoidable for calls made to cellular phones, the ICS provider’s policies with respect to ICS calls to wireless phones have a heightened impact on the parties that are least able to afford the additional reconnection and wireless calling fees. For example, a 2012 Center for Disease Control report shows that 51.8% of poor households are wireless-only households, where “wireless-only” households are defined as “at least one wireless phone and no working landline telephones inside the household.”⁸⁹ Further, 42.3% of “near poor” households were wireless-only.⁹⁰ These statistics demonstrate that the majority of families that are affected by dropped calls are of low income, and are least able to afford the reconnection fees imposed by ICS providers.⁹¹

Further, according to a Pew Report, the incarceration of a father lowers a family’s income an average of 22% a year.⁹² The data on wireless-only households as broken down by

⁸⁷ See Exhibit D (Affidavit A-30 ¶ 4); (Affidavit A-29 ¶ 3) (on one office line, “about one-in-ten calls have voices on the line, static or echoes.”).

⁸⁸ See Exhibit E (Testimony of Patricia Garin, 52:9-13).

⁸⁹ Stephen J. Blumberg & Julian V. Luke, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January–June 2012*, Center for Disease Control, Table 2 (Dec. 2012), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200905.htm>. The study’s “Household Poverty Status” is based on household income and household size using the U.S. Census Bureau’s poverty thresholds. “‘Poor’ persons are defined as those below the poverty threshold. ‘Near poor’ persons have incomes of 100% to less than 200% of the poverty threshold. ‘Not poor’ persons have incomes of 200% of the poverty threshold or greater.” *Id.* at p. 10.

⁹⁰ *Id.* at Table 2.

⁹¹ Mindy Herman-Stahl, et al., *Incarceration and the Family: A Review of Research and Promising Approaches for Serving Fathers and Families*, § 3.3 (2008), available at <http://aspe.hhs.gov/hsp/08/mfs-ip/incarceration&family/index.shtml>.

⁹² Bruce Western and Becky Pettit, *Collateral Costs: Incarceration’s Effect on Economic Mobility*, The Pew Charitable Trusts (2010) pg.5, [www.pewtrustsorg/Reports/Economic_Mobility/Collateral%20Costs%20FINAL.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Economic_Mobility/Collateral%20Costs%20FINAL.pdf).

racial demographics further shows that many customers of ICS providers are likely to be wireless-only households. For example, one in every thirty-six Hispanic men and one in every twelve African American men are in prison or jail.⁹³ The CDC's report shows that 46.5% of Hispanic or Latino households and 37.7% of African American households did not have access to a landline.⁹⁴

As a recent New York Times article pointed out, there are many reasons for the prevalence of wireless-only homes among the poor.⁹⁵ One reason for this is that they cannot afford both a landline and a cellular phone and they are increasingly choosing to keep only their cellular phone.⁹⁶ This may be because, at least in part, cellular phones have become more affordable, because the "barrier to owning one is lower with pay-as-you-go plans."⁹⁷ Further, the FCC and some states have programs that allow subsidies to be applied to wireless bills for low-income residents.⁹⁸

Thus, the ICS policies have a dramatic effect on the customers without landlines, which disproportionately falls on the parties that are the least-able to afford paying additional reconnection fees. The attempt by ICS providers to place the blame on its customers for an apparent deficiency in the ICS technology adds insult to injury.

Certainly, the sworn testimony by members of the bar lend significant credibility to the conclusion that (1) dropped calls happen on a regular basis; (2) the reason for the dropped calls does not rest with the ICS customers; and (3) the dropped calls are not caused by call forwarding

⁹³ *Id.*, at 4.

⁹⁴ *Wireless Substitution*, Table 2. The exact breakdown for wireless-only households in the demographic categories as used by the CDC are as follows: Hispanic or Latino, any race(s): 46.5; Non-Hispanic black, single race: 37.7; Non-Hispanic other, single race: 43.4?; Non-Hispanic multiple race: 40.2. *Id.*

⁹⁵ Sabrina Tavernise, *Youth, Mobility and Poverty Help Drive Cellphone-Only Status*, N.Y. Times, (April 20, 2011), http://www.nytimes.com/2011/04/21/us/21wireless.html?_r=0.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

or other nefarious intentions. In light of this evidence, the FCC must ensure that ICS customers are not unjustly charged for reconnection fees by the ICS providers, especially when it has been shown that the problem rests squarely with the ICS providers themselves.

VII. A SIGNIFICANT AMOUNT OF REVENUE-SHARING FUNDS ARE NOT USED BY STATES AND LOCAL AUTHORITIES FOR BENEFIT OF INMATES.

Several parties filed comments discussing the beneficial nature of the revenue-sharing relationship among ICS providers, states, and local authorities. These parties point to the need of sharing of ICS revenue to provide educational services to inmates through inmate welfare funds.

For example, the California Department of Corrections stated that the benchmark ICS rates would have a “significantly negative impact” and the California State Sheriffs’ Association highlighted the fact that inmates do not “pay for the costs associated with their incarceration” so the collection of revenue for the inmate welfare fund “is one of their only opportunities to directly contribute to the programs designed to assist them.”⁹⁹ The California State Sheriffs’ Association also stated that “the law requires any revenue received from inmate telephone contracts to be deposited in an Inmate Welfare Fund, which in turn, funds programs and services that directly benefit the inmates.”¹⁰⁰

Setting aside for a moment whether inmates actually desire an “opportunity” to make a contribution to the state’s incarceration expenses, it bears mentioning that the full text of the “law” does not require that all funds of the Inmate Welfare Fund be used for the “benefit of the inmates.” Instead, the law actually states that:

[a]ny funds that are not needed for the welfare of the inmates may be expended for the maintenance of county jail facilities” and permits “inmate welfare funds

⁹⁹ See *Comments of California Department of Corrections and Rehabilitation*, WC Dkt. 12-375, filed Mar. 25, 2013, pg. 1. See also *Comments of California State Sheriffs’ Association*, WC Dkt. 12-375, filed Mar. 22, 2013, pg. 2.

¹⁰⁰ See *California State Sheriffs’ Association Comments*, pg. 1 (emphasis in original).

[to] be used to augment those required county expenses as determined by the sheriff to be in the best interests of inmates.”¹⁰¹

Therefore, despite the fact that Los Angeles County receives a minimum guaranteed payment of \$15 million under its current ICS agreement, only 51 percent of those funds are allocated for the Inmate Welfare Fund, while the other 49 percent is allocated “to jail facility maintenance.”¹⁰²

A similar arrangement exists in Orange County, California. As shown in Exhibit G, the Inmate Welfare Fund had a budget of \$5,016,429 in 2010. Of that amount, an incredible 74 percent of the funds were used for staff salaries, and only 0.8 percent was used for the actual services, supplies and training for inmate educational programs, and 0.06 percent was used for services, supplies and training for inmate re-entry programs.¹⁰³

Moreover, the Comments submitted by the Louisiana Department of Corrections highlighted the fact that only \$997,000 of the more than \$3.8 million received from ICS revenue-sharing goes to the benefit the inmates, with the remaining funds going towards “operations.”¹⁰⁴ As shown in Exhibit H, other states and counties also extract revenues shared with ICS providers for non-inmate educational needs, including:

- Alabama – all profits directed to salaries, equipment and supplies for the county jail;
- Arizona – \$500,000 transferred to building renewal fund on an annual basis;
- Arkansas – funds are transferred to other department funds or for disbursements in support of department operations or debt service;
- Colorado – Jefferson County – 80 percent of the inmate welfare fund in 2012 went to salaries and benefits.
- Connecticut - \$350,000 set aside for inmate educational services and reentry initiatives;
- Florida – all funds transferred to state’s general revenue fund;

¹⁰¹ Cal. Penal Code § 4025 (2012).

¹⁰² See Exhibit F.

¹⁰³ See Exhibit G, pg. 5

¹⁰⁴ See *Comments of State of Louisiana, Dpt. of Public Safety and Corrections*, pgs. 2-3.

- Maryland – only 10 of 23 counties report that they dedicate 100% earned from revenue-sharing to county inmate welfare fund;
- Massachusetts – all funds transferred to state’s general revenue fund.
- Ohio – permits funds to be used for building maintenance and employee salaries;
- Tennessee – counties use all funds for certification training of local correctional personnel;
- Texas – 50 percent of revenues deposited in state’s general revenue fund;
- Virginia – spending of funds left to discretion of local Sherriff; and
- Wisconsin – Two-thirds of revenue is deposited in state’s general revenue fund.

Therefore, while it may be correct that some of funds derived from the revenue-sharing arrangements between correctional and detention authorities and the ICS providers are being used for the benefit of inmates, it is obvious that a significant portion of these revenue-sharing arrangements do not directly benefit the inmates’ education or rehabilitation, and instead are often used for general expenses of the governmental entity and deposited in its general fund.

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

As discussed in the Petitioners’ Comments, the FCC’s interest in conducting a cost-benefit analysis before implementing the proposed benchmark ICS rate must not undermine its obligations to enforce the requirement under 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.¹⁰⁵

Under the Act, an unjust or unreasonable rate cannot be justified through a cost-benefit analysis. The Petitioners’ Comments provided overwhelming evidence that a “cost-benefit analysis” cannot replace an analysis as to whether “rates are just and reasonable in accordance

¹⁰⁵ *Petitioners’ Comments*, at pg. 30 (citing 47 U.S.C. §201(b) (2012)).

with Section 201(b).”¹⁰⁶ However, to ensure a full record, Petitioners also submitted overwhelming evidence through its cost-benefit analysis that the proposed reforms to the ICS industry would yield significant benefits with the only cost being a reduction in the funds to be divided up between the ICS providers and the correctional and detention facilities.

As noted above, several correctional institutions argued that the reduction in their revenue-sharing regime with the ICS providers would eliminate inmate education and other beneficial programs. However, even if the state, county and local authorities actually dedicated the funds referenced in their comments for inmate education and re-entry programs, the attached Declaration from Dr. Coleman Bazelon demonstrates that it would be more efficient to reform the ICS rates.

Dr. Bazelon’s Declaration demonstrates that even a slight reduction of the recidivism rates would save the states more money than they earn through the revenue-sharing programs with ICS providers.¹⁰⁷ For example, Dr. Bazelon notes that, for Mississippi, “a reduction in recidivism of less than 4% would offset any lost revenues from reduced commissions from prisoner calling services.”¹⁰⁸ A similar result would occur in Louisiana if its recidivism rate is reduced by the same amount.¹⁰⁹

As discussed above, the connection between recidivism and strong ties among inmates and their community has been demonstrated in many different settings. The Vera Institute noted that increased contact between prisoners and their families in Minnesota led to a 13% reduction in felony reconvictions in that state.¹¹⁰ The Petitioners previously cited the significant

¹⁰⁶ *Petitioners’ Comments*, at pg. 31 (citing *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663, 17,876 (2011)).

¹⁰⁷ *See* Exhibit A, pg. 5 (even a one percent reduction in recidivism rates would save \$250 million).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*, at pg. 6 (“if only 219 fewer prisoners returned to prison as a result of lower prison calling rates, there would be no net cost impact for the state.”).

¹¹⁰ *Vera Comments*, at pg. 4.

growth in ICS calls when New York reduced its rates, supporting the conclusion that lower rates lead to increased contact between inmates and their families and friends.¹¹¹ Moreover, Telmate cited a 233% growth in ICS calls in one state when it began charging a uniform rate for all types calls, and also noted that the adoption of a uniform rate resulted in the reduction of “rate arbitrage” since there was no incentive for inmates’ families to obtain local numbers to take advantage of the lower rates.¹¹²

In light of the direct connection between reduced ICS rates and increased contact between inmates and their community, which, in turn, has been proved conclusively to reduce recidivism and lead to better lives for the children of inmates, there should not be any question that the benefits associated with the adoption of the proposed benchmark ICS rate and practices will overwhelm any “cost” cited by the parties to the current revenue-sharing regime.

The Petitioners have proposed a rate which has been proven to provide an adequate pool of revenue to share among the parties, and have also demonstrated that the proposed benchmark ICS rate will lead to substantial savings for the state, county and local correctional and detention facilities. While the ICS providers would assuredly prefer to have a larger pool of profits to share with the correctional and detention authorities, this pecuniary interest cannot outweigh the enormous benefits arising from the proposed ICS rates and practices.¹¹³

¹¹¹ *Petitioners’ Comments*, pg. 36

¹¹² *Comments of Telmate, LLC*, pg. 13.

¹¹³ *Cf.* Bobby Strong, *Look At the Sky, Urinetown, The Musical*, Greg Kotis, Mark Hollmann (Macmillan 2003) (“And we keep filling moneybags, With broken lives and dreams, But what's it for? I can't ignore, These black immoral, Profit-making schemes”).

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 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. Nothing filed by the ICS providers or their supporters alters these conclusions.

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: 

Lee G. Petro
Jennifer L. Oberhausen
Jennifer M. Roussilⁱ

DRINKER BIDDLE & REATH LLP
1500 K Street N.W.
Suite 1100
Washington, DC 20005-1209
(202) 230-5857

April 22, 2013

ⁱ Admitted in Maryland only. District of Columbia Bar application pending; practice supervised by partners of the firm who are active D.C. Bar members pursuant to D.C. Bar Rule 49(c)(8).

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

In the Matter of:

WC Docket No. 12-375

**Rates For Interstate Inmate
Calling Services**

REPLY 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-H

Lee G. Petro
Jennifer L. Oberhausen
Jennifer M. Roussil

DRINKER BIDDLE & REATH LLP
1500 K Street N.W.
Suite 1100
Washington, DC 20005-1209
(202) 230-5857

April 22, 2013

EXHIBIT A

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

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

REPLY DECLARATION OF COLEMAN BAZELON

Coleman Bazelon, being duly sworn, declares as follows:

I. PURPOSE

1. My name is Coleman Bazelon. Previously, I filed a Declaration in this Proceeding.¹ This Reply Declaration briefly reviews the major points of my original Declaration, noting relevant information filed by Commenters that pertain to that analysis. I also comment on the analysis submitted by Stephen Siwek of Economists Incorporated on behalf of Securus Technologies, Inc.²

II. ANALYSIS FROM PREVIOUS DECLARATION

2. In my original Declaration, I provided analysis supporting two propositions. The first was that a fair, just, and reasonable benchmark rate for prison calling services would be \$0.07 per minute for debit and collect calls, with no per call or set up fees.³ The second was that any revenue lost by correctional facilities from reduced commissions would almost certainly be more

¹ “Declaration of Coleman Bazelon,” Martha Wright, et al, D.C. Prisoners’ Legal Services Project, Inc., Cure, Prison Policy Initiative, and the Campaign for Prison Phone Justice, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 et al., WC Docket No. 12-375, March 25, 2013, Exhibit C. (Hereinafter, “Bazelon Declaration”)

² “Expert Report of Stephen E. Siwek,” On Behalf of Securus Technologies, Inc., WC Docket No. 12-375, March 25, 2013. (Hereinafter, “Siwek Report”)

³ Bazelon Declaration, ¶ 26.

than made up for in lower prisoner costs as a result of reduced recidivism rates.⁴ Here I briefly review these two findings and address additional information in the record that supports my original conclusions.

A \$0.07 PER MINUTE BENCHMARK RATE IS FAIR, JUST, AND REASONABLE

3. Given market failures in the provision of prison phone services, competition in the industry does not lead to lower prices and better service for prisoners, but rather to higher prices and larger commissions for correctional institutions.⁵ Consequently, setting a benchmark rate is a reasonable regulatory approach to assure fair, just, and reasonable rates are charged for prison phone services. Rather than establishing such a benchmark rate based on detailed, firm specific cost analysis, the rate should be based on the costs of competitively provided telecommunications services, with prison specific adjustments made where necessary. By basing the benchmark rate on competitively provided components, market forces assure the resulting rate meets the Communication Act's fair, just and reasonable standards.

4. My original analysis divided the proposed benchmark rate into three component parts.

- 1) The cost of commercially provided debit calling services,
- 2) the added prison specific costs above the costs of commercial debit calling services,
and
- 3) additional billing and collection costs associated with collect calling.

5. The first component—the cost of providing debit calling services, including all switching, transport, billing and costs as well as profit—is well measured by commercially provided debit calling services offered to individuals. Those services are provided in a competitive market and meet the fair, just, and reasonable standard for rates. After reviewing

⁴ Bazon Declaration, ¶ 55.

⁵ “Comments of Verizon and Verizon Wireless,” In the Matter of Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, March 25, 2013, p. 2.

retail rates, I estimated this component of the total cost of prison calling services was \$0.03 per minute.⁶

6. The second component—the added costs of providing debit calling services in a prison setting, including caller access restrictions and call monitoring, recording and storage costs—was estimated based on cost modeling of the services provided. I estimated a reasonable update of previous analysis in the record was a prison specific cost component of \$0.02 per minute.⁷ Although portions of the required prison specific services can be found to be provided commercially—for example call monitoring, recording and storage services for call centers—no evidence was introduced in the record supporting market based estimates of these cost components. Should such evidence be introduced, it could further inform the estimate of the prison specific costs.

7. Although no market based estimates of these costs were introduced, some commenters did introduce evidence related to these costs. For example, NCIC submitted that storage costs were \$0.005 per call per month.⁸ For a 15 minute call, this would be \$0.0003 (3 one-hundredths of a penny) per minute per month for storage.⁹ Even 2 years of storage would add less than \$0.01 per minute to the cost of a call.¹⁰ NCIC also submitted that its solution for biometric identification costs an average of \$0.10 per call.¹¹ On a per minute basis, this cost would also be less than \$0.01 per minute.¹² Overall, the specific cost data submitted in the record are consistent with my initial estimate of \$0.02 per minute for prison specific costs of providing prison calling services.

8. The third component of costs—additional billing and collections costs associated with collect calling, over and above the costs of debit calling—was also derived from industry data.

⁶ Bazelon Declaration, ¶ 19.

⁷ Bazelon Declaration, ¶ 23.

⁸ Network Communications International Corp., “Comments on Notice of Proposed Rulemaking,” In Re: Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, p. 6. (Hereinafter “NCIC Comments”)

⁹ $\$0.005/15 = \0.0003 .

¹⁰ $\$0.0003 \times 24 = \0.0072 .

¹¹ NCIC Comments, pp.6-7.

¹² $\$0.10/15 = \0.0066 .

The estimate I provided in my original Declaration was \$0.02 per minute.¹³ Whether or not the costs associated with collect calling are decreasing or not,¹⁴ what is clear is that collect calling has become a much less important part of the prison payphone service mix.¹⁵ Telmate reports that its collect calling is only 8% of its paid calling volume.¹⁶ Pay Tel reports that 80% of inmate calls are placed to wireless phones.¹⁷ This is consistent with higher debit calling rates because debit calls can more easily be made to wireless numbers. Collect calls to wireless numbers require third-party payment facilitators, suggesting payment issues for the ICS providers are reduced.¹⁸

9. My review of comments filed in this proceeding only reinforces the conclusion I came to in my original Declaration that a benchmark rate of \$0.07 per minute meets the fair, just, and reasonable standard set out in the Communications Act.

**A LOWER PRISON POPULATION WILL MAKE UP FOR ANY LOST REVENUE FROM
REDUCED OR ELIMINATED COMMISSIONS**

10. In my initial Declaration, I noted it would only take a very small reduction in recidivism to result from the better family contacts that would be encouraged by lower prison calling rates to more than make up any revenues lost from reduced or eliminated commissions that penal institutions receive. In that analysis, I calculated that a one percent reduction in recidivism would be equivalent to about 2,800 fewer prisoners, nationwide.¹⁹ At a little more than \$31,000 average per prisoner cost and an average term of incarceration of 3 years, the national savings

¹³ Bazelon Declaration, ¶ 25.

¹⁴ At least one commenter pointed to some increased costs associated with billing and collecting collect calls. See, NCIC Comments, p. 5. However, some of the evidence provided was anecdotal and it was not clear how widely applicable it was.

¹⁵ “Ten years ago, prepaid calling was very rare.” This implies the relative importance of collect calling has decreased. “Comments of Securus Technologies, Inc.,” Rates for Interstate Calling Services, WC Docket No. 12-375, p. 22.

¹⁶ Comments of Telmate, LLC, In the Matter of Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, March 25, 2013, p. 15. (Hereinafter, “Telmate Comments”)

¹⁷ “Comments of Pay Tel Communications, Inc.,” In the Matter of Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, p. 8.

¹⁸ Bazelon Declaration, ¶ 24. Also, as an example, see the services provided by V-Connect. Available at: <http://www.myvconnect.com/index-2.aspx>.

¹⁹ Bazelon Declaration, ¶ 48.

from a 1% reduction in incarceration rates would be about \$250 million, far more than the commissions collected by penal institutions.²⁰

11. Concern over lost revenue was expressed in Comments filed by two State DOCs. In both cases, however, a very small reduction in the state's recidivism rate would more than make up for the lost revenue.

- The Mississippi Department of Corrections reports that the total commission it received in its fiscal year 2012 was \$1,651,805.²¹ Mississippi's average annual prisoner costs of \$15,151²² suggests that if lower prison calling rates in Mississippi resulted in just 112 fewer prisoners, the State of Mississippi would be no worse off financially. Based on analysis from the 2004-2007 timeframe, Mississippi released 8,428 prisoners in a year and 33.3% (or 2,807) returned to prison within 3 years.²³ This suggests that in Mississippi (a state with one of the lowest prisoner costs in the nation²⁴) a reduction in recidivism of less than 4% would offset any lost revenues from reduced commissions from prisoner calling services.²⁵
- The Louisiana Department of Public Safety & Corrections reports that for the 2012-2013 fiscal year they expect to receive \$3,817,051 in commissions.²⁶ Louisiana's average annual inmate cost was \$17,486 in Fiscal Year 2010.²⁷ This

²⁰ Bazelon Declaration, ¶¶ 48 & 55.

²¹ "Initial Comments of the Mississippi Department of Corrections," Commission Seeks Comment on Rates for Inmate Calling Services, WC Docket No. 12-375, February 14, 2013.

²² The Mississippi DOC reports its daily prisoner costs at \$41.51. See, <http://www.mdcc.state.ms.us/Research%20and%20Statistics/OffenderCostPerday/Cost%20Per%20Inmate%20Day%20FY%202012.pdf>. This suggests annual costs of \$15,151.

²³ The PEW Center on the States, "State of Recidivism, The Revolving Door of America's Prisons" (April 2011), p. 10, available at: http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/State_Recidivism_Revolving_Door_America_Prisons%20.pdf.

²⁴ <http://blogs.clarionledger.com/politics/2013/01/10/state-prison-population-continues-to-soar/>.

²⁵ $112/2,807 = 0.0399$.

²⁶ "Comment on Proposed Rule Making by the Louisiana Department of Public Safety & Corrections," Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, FCC 12-167, March 22, 2013, p. 3.

²⁷ Christian Henrichson & Ruth Delaney, "The Price of Prisons, What Incarceration Costs Taxpayers," VERA Institute of Justice (July 20, 2012), p. 10, available at:

suggests that if only 219 fewer prisoners returned to prison as a result of lower prison calling rates, there would be no net cost impact for the state.²⁸ Based on analysis from the 2004-2007 timeframe, Louisiana released 13,391 prisoners in a year and 39.3% (or 5,263²⁹) returned to prison within 3 years.³⁰ This suggests that if the recidivism rate dropped by about 4%, there would be no revenue impact on Louisiana.³¹

Mississippi has one of the highest calling rates and Louisiana's rate is still in the top two-thirds of calling rates³² and receives relatively large amounts of revenue from calling commissions. In fact, these two states are the only two DOCs that filed comments in this proceeding, suggesting they have the greatest vested interest in keeping commissions at current levels. Nevertheless, a relatively small reduction in recidivism—on the order of 4%—would completely offset any lost revenues these states receive from commissions.

12. A reduction in recidivism of 4% based on increased family and community contacts as a result of lower prison calling rates seems modest. One commenter, the VERA Institute, reports a finding from Minnesota that receiving contact between prisoners and their families leads to a 13% reduction in recidivism rates.³³ A significant reduction in phone calling rates has historically led to a significant increase in prisoner calls. In my initial report I reported on the experience in New York where a 57.5% price decrease led to a 36% increase in calling.³⁴ Telemate reports that in one state, reducing its calling rates to \$0.12 per minute resulted in a

http://www.vera.org/sites/default/files/resources/downloads/Price_of_Prisons_updated_version_072512.pdf

²⁸ $\$3,817,051/\$17,486 = 218.29$.

²⁹ $13,391 \times 0.393 = 5262.663$.

³⁰ The PEW Center on the States, "State of Recidivism, The Revolving Door of America's Prisons" (April 2011), p. 10, available at:

http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/State_Recidivism_Revolving_Door_America_Prisons%20.pdf.

³¹ $219/5,263 = .0416$.

³² Bazelon Declaration, Table 2.

³³ VERA Institute of Justice, In the Matter of Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, March 14, 2013, p. 4.

³⁴ Bazelon Declaration, ¶ 44.

233% increase in call volumes.³⁵ Such significant increases in call volumes indicate the amount of increased family and community contact that can be expected from reduced prison calling rates. States with higher prison phone rates currently can expect to see greater increases in calling volumes from calling rate reductions, suggesting they will see the biggest increases in family contact and, therefore, benefit the most in reduced recidivism rates.

III. SIWEK ANALYSIS

13. Stephen Siwek of Economists Incorporated submitted an Expert Report on behalf of Securus Technologies, Inc.³⁶ His assignment from Securus was to “present cost and traffic data from sites that Securus served in 2012.”³⁷ Instead of providing cost and traffic data for all of Securus’ facilities, Mr. Siwek provides data for the state DOCs served by Securus and a sample of 10 facilities in each of a high, medium and low volume grouping of facilities. The presentation of the data in the 4 groupings is less transparent than simply presenting all of the data and summary statistics based on the entire population of facilities where Securus provides calling services. Nevertheless, the vast majority of Securus’ business is in the DOC and “High 10” facilities and the statistics about these facilities are most informative.

14. The data seem to have some anomalies that raise questions (unanswered by Mr. Siwek.) For example, the variation in the cost data by category raises questions about how costs change with facility size, but without more information about the sample Mr. Siwek chose to present, it is not possible to assess how those costs change with facility size or whether there is a threshold size of a facility where costs begin to decline. Perhaps more puzzling is the data reported on margins in his Table 7b. There Mr. Siwek reports margins of -16.3% and -83.3% for the “Medium 10” and “Low 10” categories, respectively. This suggests that Securus loses money on these facilities—a -83.3% margin suggests Securus receives \$0.5455 in revenue for every \$1 in costs it incurs.

³⁵ Telmate Comments, p. 13.

³⁶ Siwek Report.

³⁷ Siwek Report, ¶ 1.5.

15. Nevertheless, the information provided by Mr. Siwek about the majority of Securus' business in the DOC and "High 10" categories confirms that ICS providers such as Securus earn remarkably high profits.

- For the DOC category of facilities, Mr. Siwek reports an average gross margin³⁸ of 19.8%,³⁹ suggesting that Securus keeps one in 5 dollars in revenue it takes in from state DOCs. He also reports that for this category commissions are 59.3% of costs.⁴⁰ This suggests that for state DOCs commissions are 47.6% of revenues.⁴¹ Treating commissions as a pass through from prisoners to institutions and focusing on Securus' business operations, the above information indicates that Securus keeps 37.8% of its non-commission revenue.⁴² Put another way, of the revenue unrelated to commissions, Securus keeps almost \$2 of every \$5 collected.
- For the "High 10" category of facilities, Mr. Siwek reports that the average gross margin of 22.2%,⁴³ suggesting that Securus again keeps one in 5 dollars in revenue it takes in from facilities in the "High 10" category. He also reports that for this category commissions are 75.4% of costs.⁴⁴ This suggests that for this category commissions are 58.7% of revenues.⁴⁵ Treating commissions as a pass through from prisoners to institutions and focusing on Securus' business operations, the above information indicates that Securus keeps 53.8% of its non-commission revenue.⁴⁶ Put another way, of the revenue unrelated to commissions, Securus keeps more than half of the revenue collected.

³⁸ Mr. Siwek appears to include cost items in his calculation of gross margin, including items such as billing, that usually are not included in a gross margin, but fall under net income. A properly calculated gross margin would be even higher than those discussed here.

³⁹ Siwek Report, Table 7a.

⁴⁰ Siwek Report, Table 5.

⁴¹ $(1-19.8\%) \times 59.3\% = 47.6\%$.

⁴² $19.8\% / (1-47.6\%) = 37.8\%$.

⁴³ Siwek Report, Table 7b.

⁴⁴ Siwek Report, Table 5.

⁴⁵ $(1-22.2\%) \times 75.4\% = 58.7\%$.

⁴⁶ $22.2\% / (1-58.7\%) = 53.8\%$.

16. For these two categories of facilities reported by Mr. Siwek which account for the vast majority of Securus' business, if Securus no longer had to collect and pay commissions, its profits would still be (before accounting for increased sales induced by the lower commission-free rates) between about 40% and 50% of its revenue from providing prison payphone services. This is clearly a market that is not enjoying the disciplining effects of competition.

Respectfully submitted,

By: 

Coleman Bazelon
THE BRATTLE GROUP, INC.
1850 M Street, NW
Suite 1200
Washington, DC 20036

April 22, 2013

EXHIBIT B

Division of Purchases
900 SW Jackson, Room 102N
Topeka, KS 66612-1286



phone: 785-296-2376
fax: 785-296-7240
email: chris.howe@da.ks.gov
www.da.ks.gov/purch

Dennis R. Taylor, Secretary
Chris Howe, Director

Department of Administration

Sam Brownback, Governor

AMENDMENT

Amendment Date: November 29, 2011

Amendment Number: 3

Contract ID: 10481

Procurement Officer: Greg Davis
Telephone: 785-296-2770
E-Mail Address: greg.davis@da.ks.gov
Web Address: <http://da.ks.gov/purch>

Agency: Dept. of Corrections
Location(s): Various KDOC Facilities

Period of Contract: December 17, 2007 through December 16, 2012

Contractor: CenturyLink Correctional Markets
Formerly (EMBARQ Payphone Services, Inc.)
SMART ID: 0000155806
9300 Metcalf Avenue
Overland Park, KS 66212
E-Mail: michael.p.hynes@embarq.com
Toll Free Telephone: 877-907-7774
Local Telephone: 913-534-5699
Fax: 913-397-3591
FEIN: 59-3268090
Contact Person: Mike Hynes
Telephone: 866-224-5139
Cell: 724-612-6249

Amendment No. 3

to

No. 10481

**Agreement Between
Kansas Department of Corrections (KDOC) and
CenturyLink Correctional Markets (CCM) for
Inmate Telephone Service**

This Amendment is made this 14th day of October, 2011 by and between the KDOC and CenturyLink Correctional Markets¹.

WITNESSETH:

WHEREAS, the parties entered into an Agreement for Inmate Telephone Service (Agreement) dated December 16, 2007; and,

WHEREAS, the parties entered into Amendment No. 1 to the Agreement dated January 15, 2009; and,

WHEREAS, the parties entered into Amendment No. 2 to the Agreement dated September 9, 2010; and,

WHEREAS, the parties have determined that the Agreement requires further amendment;

NOW, THEREFORE, the parties hereby agree to amend the Agreement as follows:

1. All terms and conditions of the Agreement, Amendment No. 1, Amendment No. 2 and Agreement shall remain in full force and effect except as specifically amended herein.
2. Section C. Agreement Term and Termination, Subsection 1. Agreement Term of the Agreement is amended to reflect that the Agreement is extended through December, 16, 2012, with the option to extend this Agreement on a month to month basis thereafter.

¹ Embarq Payphone Services changed its name to CenturyLink Correctional Markets effective June 1, 2009.

CONTRACT AWARD

Date of Award: September 21, 2007 (Updated November 29, 2011)

Contract Number: 10481

PR Number: 014621

Replaces Contract: 05221

Procurement Officer: Greg Davis (New Procurement Officer)
Telephone: 785-296-2770
E-Mail Address: greg.davis@da.ks.gov
Web Address: <http://da.ks.gov/purch>

Item: Telephone Services - Inmate

Agency: Dept. of Corrections
Location(s): Various KDOC Facilities

Period of Contract: December 17, 2007 through December 16, 2012

Contractor: CenturyLink Correctional Markets
Formerly (EMBARQ Payphone Services, Inc.)
SMART ID: 0000155806
9300 Metcalf Avenue
Overland Park, KS 66212
E-Mail: michael.p.hynes@embarq.com
Toll Free Telephone: 877-907-7774
Local Telephone: 913-534-5699
Fax: 913-397-3591
FEIN: 59-3268090
Contact Person: Mike Hynes
Telephone: 866-224-5139
Cell: 724-612-6249

Prices: See Attached

Payment Terms: Net 30

Political Subdivisions: Pricing **is** available to the political subdivisions of the State of Kansas.
Procurement Cards: Agencies **may** use State of Kansas Business Procurement Card for purchases from this contract.

Administrative Fee: **No** Administrative Fee will be assessed against purchases from this contract.

**AGREEMENT FOR INMATE TELEPHONE SERVICE
BETWEEN
KANSAS DEPARTMENT OF CORRECTIONS
AND
EMBARQ PAYPHONE SERVICES
CONTRACT NO. 10481**

AND NOW, on this 16th day of December, 2007, this Agreement is made by and between the Kansas Department of Corrections, by and on behalf of the State of Kansas, and as approved by the Kansas Department of Administration Division of Purchases, (hereafter, "State") and Embarq Payphone Services, a firm incorporated under the laws of the State of Kansas (hereafter, "Contractor").

WITNESSETH:

WHEREAS, the Kansas Department of Corrections (KDOC) desires to acquire inmate telephone service in order to replace an existing contract for its adult offender facilities, as listed in **Attachment B** of this Agreement, which may be increased or decreased by KDOC during the term of the contract; and

WHEREAS, State duly issued Request for Proposal No. 10481, on the date of June 13, 2007 soliciting bids from vendors for inmate telephone service; and

WHEREAS, Contractor, a qualified provider of telecommunications services for the corrections industry, submitted a proposal in response to the RFP; and

WHEREAS, ensuing negotiations between a Procurement Negotiating Committee representing KDOC, the Department of Administration, and the State of Kansas, and Contractor have resulted in a determination by State that it is in the best interest of KDOC and the State to enter into an agreement with Contractor for acquisition of inmate telephone service.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises contained herein, it is mutually agreed as follows:

I. GENERAL TERMS

A. Scope:

State grants Contractor the exclusive right and privilege to install and operate prison inmate telephones and related telephone equipment at State's Facilities listed in **Attachment B** of this Agreement (hereafter, "Facilities). Contractor shall, at no cost to State, provide all inside wiring for the inmate telephones, install the inmate telephones, and the related hardware and software/firmware specifically identified herein, to enable inmates at the Facilities to make auto-collect local and long distance calls, debit local, long distance and international calls, and/or pre-paid local, long distance and international calls from the Facilities pursuant to the terms set forth herein.

ADDENDUM

June 8, 2009

Addendum Number: 1

Contract Number: 10481

PR Number: 014621

Item: Telephone Services-Inmate

Agency: Kansas Department of Corrections

Period of Contract: December 17, 2007 through January 1, 2010
With two (2) one (1) year renewal options

Contractor: EMBARQ Payphone Services, Inc.
9300 Metcalf Avenue
Overland Park, Kansas 66212
Toll Free Telephone: 877.907.7774
Local Telephone: 913.534.5699
Fax: 913.397.3591
FEIN: 59.3268090

Contact Person: Mike Hynes
michael.p.hynes@embarq.com
Telephone: 866.224.5139
Cell: 724.612.6249

Conditions:
Please see the attached

Charles E. Miller
Procurement Officer

CEM:nl

Amendment No. 1
to
Agreement #10481 Between
Kansas Department of Corrections and
Embarq Payphone Services for
Inmate Telephone Service

This First Amendment ("Amendment") has an effective date of January 15, 2009 ("Amendment Effective Date") by and between Kansas Department of Corrections with its principal place of business located at 900 SW Jackson Street, 4th Floor, Topeka, KS 66612 ("KDOC") and Embarq Payphone Services, Inc. with its principal place of business located at 9300 Metcalf Avenue, Overland Park, KS ("Contractor").

WITNESSETH:

WHEREAS, on December 16, 2007, KDOC and Contractor entered into an Agreement for Inmate Telephone Service ("Agreement") under which Contractor agreed to install and operate prison inmate telephones, related equipment and additional/optional services further described in Section II upon the premises of KDOC's Facilities; and,

WHEREAS, the parties have determined that the Agreement requires Amendment;

NOW, THEREFORE, in consideration of the mutual covenants herein, and other good and valuable consideration, KDOC and Contractor (through its subcontractor, JPay Inc.) hereby agree as follows:

1. **Attachment D**, Contractor Responsibilities for Kiosk Features and Functionalities and Related Applications, and **Attachment E**, Required Equipment, Transaction Fees and Compensation, are hereby added to the Agreement.

RECEIVED
2009-01-10
DIVISION OF PRISONS
KANSAS

ATTACHMENT D

**CONTRACTOR RESPONSIBILITIES FOR KIOSK FEATURES AND
FUNCTIONALITIES AND RELATED APPLICATIONS**

I. General Requirements

- A. Contractor will provide all services described in this Amendment through its subcontractor, JPay, Inc. ("JPay").

EXHIBIT C

**AGREEMENT 06-015
FOR INMATE CALLING SERVICES (ICS) TELECOMMUNICATIONS SERVICES**

This Agreement is effective on June 1, 2007, and is entered into by and between the State of Iowa, Iowa Department of Corrections (DOC) and Public Communications Services, Inc. (PCS).

WHEREAS, PCS desires to provide service to the DOC with the support of provisioning of telecommunications services to inmates (Inmate Calling) in the correctional institutions of the Iowa Department of Corrections (DOC) provided by the Iowa Telecommunications and Technology Commission operating the Iowa Communications Network (ICN), pursuant to an agreement between DOC and the ICN; and

WHEREAS, DOC desires to use the services of PCS to support the ICN's provisioning of Inmate Calling to the DOC, where such PCS services are appropriate and where the parties have agreed to the provision of such services; and

WHEREAS, the parties desire to set forth a framework for the provisioning of such services by PCS and the payment therefore by the ICN; and

WHEREAS, the DOC has requested the assistance of the ICN in negotiating and administration the Agreement with PCS;

NOW, THEREFORE, in the consideration of the mutual covenants contained in this Agreement, the sufficiency of which is acknowledged, DOC and PCS agree as follows:

SECTION 1. IDENTITY OF THE PARTIES.

1.1 The Iowa Department of Corrections is an agency of the State of Iowa and is responsible for the management, and operation of the State of Iowa prison system. DOC's principal office address is 510 East 12th Street, Des Moines, Iowa 50319.

1.2 Public Communications Services is a California corporation organized under the laws of the state of California and is authorized to do business in the State of Iowa. PCS's Address is 11859 Wilshire Blvd., Suite 600, Los Angeles, CA 90025.

SECTION 2. TERM. The term of this Agreement shall commence on the effective date of the Agreement and continue for three (3) years from the service start date of October 1, 2007. Upon mutual agreement of PCS, DOC and the ICN the Agreement may be renewed upon the same terms and conditions for three (3) additional one-year (1 year) periods.

2.1 At the end of the service term or any renewals provided for above, the ICN may extend the Agreement on a month-to-month basis for up to six months to ensure the ICN and DOC retain an operational system at all times. PCS shall agree to this possible extension at the same rates and terms as agreed to in the previously agreed to contract term.

SECTION 3. DOCUMENTS INCORPORATED BY REFERENCE.

3.1 Incorporation of Bid Proposal Documents. The Request for Proposal RFP #06-015 for Inmate Calling System (RFP), and PCS Bid Proposal in response to the RFP together with any clarifications, attachments, appendices, amendments or other writings of the ICN or PCS (collectively "Bid Proposal") are incorporated into this Agreement by this reference as if fully set forth in the Agreement, except that no objection or amendment by PCS to the RFP requirements shall be incorporated by reference into the Agreement unless the ICN has explicitly accepted PCS's objection in writing.

**Amendment 1
ICN Contract 06-015**

THIS AMENDMENT is made by and between the IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION operating the Iowa Communications Network (collectively, ICN) and on behalf of the Iowa Department of Corrections (DOC), and PUBLIC COMMUNICATIONS SERVICES, INC. (PCS). In consideration of the mutual promises herein made, ICN and PCS agree as follows:

SECTION 1. PURPOSE OF AMENDMENT. DOC has identified the need for an additional T1 interface at the DOC Oakdale location. The parties intend to amend the Scope of Services section of the Agreement to add the following:

Effective October 1, 2007, PCS will invoice ICN \$800/month for an additional T1 interface at the DOC Oakdale location which revises the monthly invoice amount for the Inmate Calling System to \$42,800.00. This monthly invoice total covers all costs for 21 T1 interfaces.

SECTION 2. AMENDMENT ALLOWED. Sections 5.3 and 20.3 of the Agreement provide for amendments with mutual written consent of the parties.

SECTION 3. EXECUTION. In full consideration of the mutual covenants set forth above and for other good and valuable consideration the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties have entered into this Amendment and have caused their duly authorized representatives to execute this Amendment. All previous terms and conditions of the Agreement shall remain in full force and effect except as modified by this Amendment.

PUBLIC COMMUNICATION SERVICES, INC.

By: 

Title: President & COO

Date: 9/12/07

**IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION Operating the
IOWA COMMUNICATIONS NETWORK**

By: 

Title: ICN CONTRACTING OFFICER

Date: 9-13-07

Amendment 2
ICN Contract 06-015

THIS AMENDMENT is made by and between the IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION operating the Iowa Communications Network (collectively, "ICN") and on behalf of the Iowa Department of Corrections ("DOC"), and PUBLIC COMMUNICATIONS SERVICES, INC. ("PCS"). In consideration of the mutual promises herein made, ICN and PCS agree as follows:

SECTION 1. PURPOSE OF AMENDMENT.

A) The Parties shall exercise a one year Agreement renewal. The renewal term shall start October 1, 2010, and end September 30, 2011. The Agreement may be extended with mutual written consent for three additional one-year periods.

B) Attachment A, Scope of Services, is amended as follows effective September 7, 2010:
PCS escalation contact information listed in Section 10 is deleted in its entirety and replaced with the following:

Escalation to PCS

ICN- Inmate Calling Service - Change/Information

This service is provided from 0800 to 1630 weekdays.

Issues that go beyond the Target Date are escalated internally for direction.

ICN-Inmate Calling Service - Incident

This service is provided 24 hour a day / 7 Days a week. Support Requests for Incident Resolution will be worked according to the following standards:

ICNSP 2030 - Service Desk Support Request Management

ICNSP 2002 - Operations Notification and Escalation

If the Target Date is exceeded on an Incident Resolution Support Request, the following contacts shall be made until a satisfactory result is obtained- (24 hours a day / 7 Days a week). If at any time there are questions on an escalation, the ICN Service Desk should escalate internally for support.

1. One hour past the Target Date:

Technical Services Supervisor, Matthew McFalls

Direct Line: (817) 491-5163

Cell Phone: (424) 832-4787

2. Two hours past the Target Date:

Field Service Manager-East Coast, Maureen O'Gorman

Direct Line: (910) 646-3177

Cell Phone: (603) 738-4555

3. Three hours past the target Date:
Manager of Technical Services, George McNitt
Direct Line: (817) 491-5160

4. Four hours past the target Date:
Vice President of Operations, Doyle Schaefers
Direct Line: (800) 350-1000, x 3027
Cell Phone: (310) 600-6433

5. Five hours past the Target Date:
Chief Operating Officer, Tommie Joe
Direct Line: (800) 350-1000, x 3037
Cell Phone: (310) 922-3037

6. Six hours past the Target Date:
Chief Executive Officer, Paul Jennings
Direct Line: (800) 350-1000, x 3101
Cell Phone: (310) 600-3540

C) Section 26 is deleted in its entirety and replaced with the following:

26. **Contract Costs.** Pertaining to this Agreement 06-015.

- 1) Fixed monthly cost to lease a turnkey system: **\$42,800.00**
Detail of cost components that are included in the monthly cost:

Fixed Monthly Cost Detail:

Equipment Rental	\$11,950
Site Administrator**	\$ 3,250
MPLS	\$ 500
Platform Charges	\$26,300

- 2) Monthly variable costs:

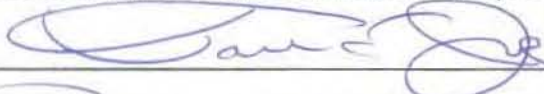
Hardware:	\$800/month for every additional T-1 port added
Software:	All upgrades included in Platform Charges
Billing/ Invoicing Services:	Cost for debit services included in Platform charges
Per call Fees:	\$0.31 per completed call over 60,000
Administration:	Included in Platform Charges

- 3) There shall be no other charges and/or other costs or fees associated with this Agreement.


SECTION 2. AMENDMENT ALLOWED. Sections 5.3 and 20.3 of the Agreement provide for amendments with mutual written consent of the parties.

SECTION 3. EXECUTION. In full consideration of the mutual covenants set forth above and for other good and valuable consideration the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties have entered into this Amendment and have caused their duly authorized representatives to execute this Amendment. All previous terms and conditions of the Agreement shall remain in full force and effect except as modified by this Amendment.

PUBLIC COMMUNICATION SERVICES, INC.

By: 
Title: President & COO
Date: 10/1/10

IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION
Operating the IOWA COMMUNICATIONS NETWORK

By: 
Title: ICN CONTRACTING OFFICER
Date: 9-28-10

**Amendment 3
ICN Agreement 06-015**

THIS AMENDMENT is made by and between the IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION operating the Iowa Communications Network (collectively, "ICN") and on behalf of the Iowa Department of Corrections ("DOC"), and Public Communications Services, Inc. ("PCS"). In consideration of the mutual promises herein made, ICN and PCS agree as follows:

SECTION 1. PURPOSE OF AMENDMENT. The Parties hereby agree to amend the Agreement as follows:

A) Section 2. Term is amended to provide a month to month renewal option.

B) Effective October 1, 2011, the Agreement shall automatically renew on a month to month basis unless terminated according to Section 14. The automatic month to month extensions shall not extend the term of the Agreement beyond September 30, 2013.

SECTION 2. AMENDMENT ALLOWED. Sections 5.3 and 20.3 of the Agreement provide for amendments with mutual written consent of the parties.

SECTION 3. EXECUTION. In full consideration of the mutual covenants set forth above and for other good and valuable consideration the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties have entered into this Amendment and have caused their duly authorized representatives to execute this Amendment. All previous terms and conditions of the Agreement shall remain in full force and effect except as modified by this Amendment.

PUBLIC COMMUNICATIONS SERVICES, INC.

By: 

Jeffrey B. Haidinger

Title: President, Services

Date: 2/6/12

**IOWA TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION
Operating the IOWA COMMUNICATIONS NETWORK**

By: 

Title: Executive Director

Date: 2-3-12

**FIRST AMENDMENT TO
CONTRACT FOR A SECURE INMATE CALLING SYSTEM AND RELATED
SERVICES
DOC FILE NO.1000-PHONE2006**

THIS FIRST AMENDMENT TO CONTRACT FOR A SECURE INMATE CALLING SYSTEM AND RELATED SERVICES, DOC File No. 1000-Phone2006, dated Dec 5, 2007 ("Amendment"), amends and revises that certain Contract, DOC File No. 1000-Phone2006 (the "Contract"), dated February 10, 2006, by and between Massachusetts Department of Correction, with an address at 50 Maple Street, Suite 3, Milford, MA 01757 ("MA DOC"), and Global Tel*Link Corporation, a Delaware corporation having its principal place of business at 2609 Cameron Street, Mobile, AL 36607 ("GTL").

MA DOC and GTL hereby agree to amend and revise the Contract as follows:

A new Section 5.13.7.1 is added to the Contract to provide for the establishment of calling rates and commission rates for domestic prepaid debit calling.

Section 5.13.7.1 Domestic Prepaid Debit Calling:

- A. Commission: The MA DOC's adjusted commission rate for inmate debit calling, both domestic and international, will be twenty percent (20%) of gross billable inmate debit revenue, commencing on December 1st, 2007.
- B. Call Rate-Domestic: The adjusted call rate for inmate domestic debit calling will be twenty-five percent (25%) off the collect call rate as indicated in the table below.
- C. Call Rate-International: The adjusted call rate for inmate international debit calling will be twenty-five percent (25%) off the current international voucher debit rate, which is indicated in the attached MA DOC international rate chart.

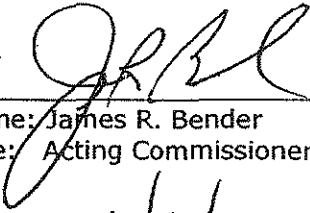
Except as set forth above, there is no other revision or amendment to the Contract or the obligations of MA DOC and GTL, and the Contract remains in full force and effect.

[[Signature Page Follows]]

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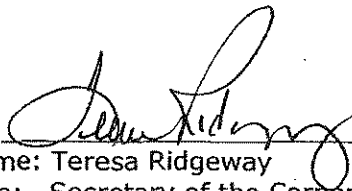
IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have duly executed this Amendment as of the date first written above, which is entered by the second party to sign.

**MASSACHUSETTS DEPARTMENT
OF CORRECTION**

By: 
Name: James R. Bender
Title: Acting Commissioner

Date: 11/20/07

GLOBAL TEL*LINK CORPORATION

By: 
Name: Teresa Ridgeway
Title: Secretary of the Corporation

Date: 12/05/07

**SECOND AMENDMENT TO
CONTRACT FOR A SECURE INMATE CALLING SYSTEM AND RELATED
SERVICES
DOC FILE NO. 1000-PHONE2006**

THIS SECOND AMENDMENT TO CONTRACT FOR A SECURE INMATE CALLING SYSTEM AND RELATED SERVICES DOC File No.1000-Phone2006, dated October, 2009, ("Second Amendment"), amends and revises that certain Contract between the Massachusetts Department of Correction, with an address at 50 Maple Street, Suite 3, Milford, MA 01717 ("MA DOC") and Global Tel*Link Corporation, a Delaware corporation, having its principle place of business at 2609 Cameron Street, Mobile, AL 36607 ("GTL").

MA DOC and GTL hereby agree to amend and revise the Contract as follows:

Section 5.13.7.1 in Amendment #1 is amended to replace subsection A with:

A. Commission: The MA DOC adjusted commission rate for inmate debit calling, both domestic and international shall be 18.5% of gross billable inmate debit revenue. The MA DOC adjusted commission rate for collect calls & Advance Pay collect calls is 33.5%. These adjustments in commission rates will commence on the November, 2009 billing cycle.

Subsection B is replaced with:

B. Call Rate-Domestic shall be in accordance with Attachment A.

Section 2.20 is amended to include the statement:

"Pursuant to the exercise of the first of three one (1) year renewal options, the current expiration date of the Contract shall be March 2, 2011."

All other terms and conditions of the Standard Contract between GTL and the DOC remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have duly executed this Amendment as of the date first written above, which is entered by the second party to sign.

Global Tel*Link Corporation

Massachusetts Department of Corrections

By: _____
Jeffrey B. Haidinger
President, Services

By: _____
Peter Macchi.
Director Administrative Services
Division

**THIRD AMENDMENT TO
CONTRACT FOR A SECURE INMATE CALLING SYSTEM AND RELATED
SERVICES
DOC FILE NO. 1000-PHONE2006**

THIS THIRD AMENDMENT TO CONTRACT FOR A SECURE INMATE CALLING SYSTEM AND RELATED SERVICES DOC File No.1000-Phone2006, dated September 9, 2010, ("Third Amendment"), amends and revises that certain Contract between the Massachusetts Department of Correction, with an address at 50 Maple Street, Suite 3, Milford, MA 01717 ("MA DOC") and Global Tel*Link Corporation, a Delaware corporation, having its principle place of business at 2609 Cameron Street, Mobile, AL 36607 ("GTL").

MA DOC and GTL hereby agree to amend and revise the Contract as follows:

Section 5.13.7.1 in Amendment #2 is amended to replace subsection A with:

- A. Commission: The MA DOC adjusted commission rate for inmate debit calling, both domestic and international shall be 15% of gross billable inmate debit revenue, commencing on the October 2010 billing cycle. The MA DOC adjusted commission rate for collect calls & Advance Pay collect calls is 30%.

Subsection C is replaced with:

- C. Call Rate-International shall be in accordance with Attachment A.

Section 2.20 is amended to include the statement:

"Pursuant to the exercise of the second (2) of three one (1) year renewal options, the current expiration date of the Contract shall be March 2, 2012."

All other terms and conditions of the Standard Contract between GTL and the DOC remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have duly executed this Amendment as of the date first written above, which is entered by the second party to sign.

Global Tel*Link Corporation

Massachusetts Department of Corrections

By: _____


Jeffrey B. Haidinger
President, Services

By: _____


Kyra Silva
Director, Administrative Services
Division

**FOURTH AMENDMENT TO
CONTRACT FOR A SECURE INMATE CALLING SYSTEM AND RELATED
SERVICES
DOC FILE NO. 1000-PHONE2006**

THIS FOURTH AMENDMENT TO THE CONTRACT FOR A SECURE INMATE CALLING SYSTEM AND RELATED SERVICES DOC File No. 1000-Phone2006, dated October 14, 2011, ("Fourth Amendment"), amends and revises the Contract between the Massachusetts Department of Correction, with an address at 50 Maple Street, Suite 3, Milford, MA 01717 ("MA DOC") and Global Tel*Link Corporation, a Delaware corporation, having its principle place of business at 2609 Cameron Street, Mobile, AL 36607 ("GTL").

MA DOC and GTL hereby agree to amend and revise the Contract as follows:

Section 2.20 is amended to include the statement:

"Pursuant to the exercise of the third (3) and final of three one (1) year renewal options, the current expiration date of the Contract shall be March 2, 2013."

All other terms and conditions of the Standard Contract between GTL and the DOC remain in full force and effect.

Current inmate domestic debit and collect calling rates are attached.

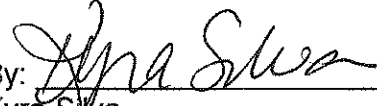
IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have duly executed this Amendment as of the date first written above, which is entered by the second party to sign.

Global Tel*Link Corporation

By: 

Jeffrey B. Haidinger
President, Services

Massachusetts Department of Corrections

By: 

Kyra Silva
Director, Administrative Services
Division

**DEPARTMENT OF CORRECTIONS
6900 ATMORE DRIVE
RICHMOND, VIRGINIA 23225**

CONTRACT #DOC-05-005

This contract entered into this 18th day of October 2005, by MCI Worldcom Communications Services, Inc. hereinafter called the “Contractor or MCI” and the Commonwealth of Virginia, on behalf of the Virginia Department of Corrections and the Department of Juvenile Justice, hereinafter called “DOC, DJJ or DOC/DJJ.”

WITNESSETH that the Contractor and the Department, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF CONTRACT: The Contractor shall provide the Services to the Purchasing Agency as set forth in the Contract Documents.

PERIOD OF PERFORMANCE: January 1, 2006 through December 31, 2007 and renewable for six (6) one-year periods.

The contract documents shall consist of:

1. This signed Contract including the attached Memorandum of Understanding, Attachment 1: General Terms and Conditions, Attachment 2: Special Terms and Conditions, and Attachment 3: Negotiated Service Terms and Conditions;
2. The Request for Proposal # DOC-05-005 dated August 20, 2004 sections and attachments as follows: Section II: Minority Participation, Section III: Statement of Needs, Attachment B: Minority Participation, Attachment D: Security Standards, Attachment E: Telephone Count - DOC, and Attachment G: Telephone Count – DJJ; and
3. The Contractor’s Proposal dated November 15, 2004

To the extent that the terms of the contract documents as listed above are in conflict, the specific provisions as stated in this Contract, Memorandum of Understanding and Attachments 1, 2 and 3 shall prevail. Other contract documents listed in #2 and #3 above shall take precedence based upon the order in which they are listed.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:

PURCHASING AGENCY:

Signature:	Signature:
Title:	Title:
Date:	Date:

**DEPARTMENT OF CORRECTIONS
6900 ATMORE DRIVE
RICHMOND, VA 23225**

CONTRACT MODIFICATION AGREEMENT

Date: January 19, 2006

Contract Number: DOC-05-005

Modification Number: 001

Issued By: Department of Corrections
Procurement and Risk Management
6900 Atmore Drive
Richmond, VA 23225

Contractor: MCI Worldcom Communications Services, Inc.
1945 Old Gallows Road
Vienna, Virginia 22182

Commodity: Inmate Telephone Services

This contract modification is entered into pursuant to Contract Attachment 1 section K.of the Contract.

Description of Modification:

1. Section II: Call Fees and Surcharge Rates shall be deleted in its entirety and shall be replaced with the following:

The Contractor shall offer rates that do not exceed dominant inter-exchange carrier rates or dominant local exchange carrier rates or local state tariff rates, when applicable and shall utilize a least cost routing system to minimize costs to inmates. No additional charge for services shall be added to the cost of a call placed by an inmate. With the exception of applicable taxes, no additional charge for service shall be added to the cost of a call placed by an inmate. The Contractor will provide the DOC/DJJ with written notice of pending rate changes thirty (30) days prior to the rate change. The Contractor will provide the Purchasing Agency with written notice of pending rate changes thirty (30) days prior to the rate change. In addition, the Contractor will provide the Purchasing Agency a copy of the draft tariff on the date of execution of the contract. The Contractor will provide the DOC/DJJ Contract Administrators a copy of all relevant tariffs filed after contract execution within ten (10) days of the effective date of the tariff.

The Collect Call and Prepay rates and surcharges shall be as follows for all calls (Local, Intralata, Interlata and Interstate) made using the inmate phone system:

Collect Call Payment Option

	<u>Rate Per Minute</u>	<u>Surcharge</u>
Local	-	\$1.00
Intralata	\$0.15	\$1.50
Interlata	\$0.25	\$2.25
Interstate	\$0.43	\$2.40

Prepaid Call Payment Option

	<u>Rate Per Minute</u>	<u>Surcharge</u>
Local	-	\$0.90
Intralata	\$0.14	\$1.25
Interlata	\$0.23	\$1.75
Interstate	\$0.40	\$2.40

Prepay Payment Option:

The Prepay payment option is a new payment option in the Commonwealth of Virginia's Inmate Telephone System. The Contractor shall be fully responsible for the administration of the prepay program to include but not limited to: providing materials detailing operations of the prepay payment option to all DOC/DJJ facilities to be made available to inmates and families & friends of inmates; and collection of all prepay funds and monitoring of prepay accounts.

The Prepay payment option will allow families and friend of inmates to set-up a prepaid account with the Contractor. Once a prepaid account is set-up, an inmate may only call the party named on the prepay account and a deduction will be made against available funds in the prepay account. When funds in the prepaid account are depleted, the Contractor will notify the account holder.

These rates and payment options shall go into effect February 1, 2006.

2. Section III of the Contract shall be amended to reflect that the Commission rate shall be amended effective February 1, 2006, whereby the Commission Rate shall be 35% of Commissionable Revenue.
3. Section I. H. 1. of the Contract shall be amended such that the DOC call limit is increased for fifteen (15) minutes to twenty (20) minutes effective February 1, 2006.

Except as provided herein, all terms and conditions of Contract DOC-05-005, dated October 18, 2005 shall remain unchanged and in full force and effect.

CONTRACTOR:

PURCHASING AGENCY:

BY:	BY:

TITLE:	TITLE:
DATE:	DATE:

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, §§2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

**DEPARTMENT OF CORRECTIONS
6900 ATMORE DRIVE
RICHMOND, VA 23225**

CONTRACT MODIFICATION AGREEMENT

Date: November 15, 2007

Contract Number: DOC-05-005

Modification Number: 002

Issued By: Department of Corrections
Procurement and Risk Management
6900 Atmore Drive
Richmond, VA 23225

Contractor: Global Tel*Link
12021 Sunset Hills Road, Suite 100
Reston, Virginia 20190

Commodity: Inmate Phone Services

This contract modification is entered into pursuant to Section IV., Paragraph O., of the Contract.

Description of Modification:

1. Whereas the Commonwealth desires to renew the performance period of the contract; now therefore it is agreed that the contract performance period shall be renewed from January 1, 2008 through December 31, 2008.
2. Reference letter dated March 2, 2007; effective November 7, 2006, Global Tel*Link Corporation acquired certain assets and operations from MCI Communications Services, Inc. including the business of providing managed telecommunication services to inmates.
3. Reference pgs. 42-44, attachment 3, assigned staff; replace in its entirety with the following :

GTL Virginia DOC Account Management Team

Name: Mr. Jeff Haidinger
Job Responsibility: GTL President of Services
Location: Reston, VA
Tenure: Over 29 years experience in Telcom sales and business development. Jeff has been with GTL for over 2 years.

Name: Mr. Tom Sweeney
Job Responsibility: GTL Senior Vice President of Sales
Location: Boiling Springs, SC

DOC-05-005 Inmate Phone Services

Tenure: Over 29 years experience in the telcom and corrections market. Tom has been with GTL for over 2½ years.

Name: Mr. Tim Miller
Job Responsibility: Area Sales Director – Eastern Region
Location: Jackson, NJ

Tenure: Over 27 years experience in the telcom and corrections market. Tim has been with GTL for over 2½ years

Name: Mr. Jim Beamer
Job Responsibility: Virginia DOC Account Executive
Location: Reston, VA

Tenure: Over 17 years in the computer and telcom markets. Jim has been an Account Executive with GTL for over 3 years

Name: Mr. Pat Pline
Job Responsibility: Director Northeast Field Service
Location: Albany, NY

Tenure: Over 22 years with MCI. Pat has been a Director with GTL since July 2007.

Dedicated GTL On-Site Support

Name: Mr. Tom Zidar
Job Responsibility: GTL Field Service Manager and VA DOC project Manger
Location: DOC Headquarters, Richmond VA

Tenure: Over 7 years with MCI and 30 years in the Telcom industry. Tom has been a Field Service Manager with GTL since July 2007.

Except as provided herein, all terms and conditions of contract DOC-05-005, dated October 18, 2005, and Modification 001, dated January 19, 2006, as heretofore changed, remain unchanged and in full force and effect.

CONTRACTOR:

PURCHASING AGENCY:

BY:	BY:
TITLE:	TITLE:
DATE:	DATE:

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, §§2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

**DEPARTMENT OF CORRECTIONS
6900 ATMORE DRIVE
RICHMOND, VA 23225**

CONTRACT MODIFICATION AGREEMENT

Date: August 27, 2008

Contract Number: DOC-05-005

Modification Number: 003

Issued By: Department of Corrections
Procurement and Risk Management
6900 Atmore Drive
Richmond, VA 23225

Contractor: Global Tel*Link
12021 Sunset Hills Road, Suite 100
Reston, Virginia 20190

Commodity: Inmate Phone Services

This contract modification is entered into pursuant to Section IV., Paragraph O. and Section V., Paragraph P., of the Contract.

Description of Modification:

Whereas the Commonwealth desires to renew the performance period of the contract; now therefore it is agreed that the contract performance period shall be renewed from January 1, 2009 through April 30, 2009.

Except as provided herein, all terms and conditions of contract DOC-05-005, dated October 18, 2005, Modification 001, dated January 19, 2006, and Modification 002 dated November 15, 2007, as heretofore changed, remain unchanged and in full force and effect.

CONTRACTOR:

PURCHASING AGENCY:

BY:	BY:
TITLE:	TITLE:
DATE:	DATE:

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, §§2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

DOC-05-005 Inmate Phone Services

**DEPARTMENT OF CORRECTIONS
6900 ATMORE DRIVE
RICHMOND, VA 23225**

CONTRACT MODIFICATION AGREEMENT

Date: December 15, 2008

Contract Number: DOC-05-005

Modification Number: 004

Issued By: Department of Corrections
Procurement and Risk Management
6900 Atmore Drive
Richmond, VA 23225

Contractor: Global Tel*Link
12021 Sunset Hills Road, Suite 100
Reston, Virginia 20190

Commodity: Inmate Phone Services

This contract modification is entered into pursuant to Section IV., Paragraph O. and Section V., Paragraph P., of the Contract.

Description of Modification:

Whereas the Commonwealth desires to renew the performance period of the contract; now therefore it is agreed that the contract performance period shall be renewed from May 1, 2009 through August 31, 2009.

Except as provided herein, all terms and conditions of contract DOC-05-005 dated October 18, 2005, Modification 001 dated January 19, 2006, Modification 002 dated November 15, 2007, and Modification 003 dated August 27, 2008, as heretofore changed, remain unchanged and in full force and effect.

CONTRACTOR:

PURCHASING AGENCY:

BY:	BY:
TITLE:	TITLE:
DATE:	DATE:

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, §§2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

DOC-05-005 Inmate Phone Services

**DEPARTMENT OF CORRECTIONS
6900 ATMORE DRIVE
RICHMOND, VA 23225**

CONTRACT MODIFICATION AGREEMENT

Date: February 12, 2009

Contract Number: DOC-05-005

Modification Number: 005

Issued By: Department of Corrections
Procurement and Risk Management
6900 Atmore Drive
Richmond, VA 23225

Contractor: Global Tel*Link
12021 Sunset Hills Road, Suite 100
Reston, Virginia 20190

Commodity: Inmate Phone Services

This contract modification is entered into pursuant to Memorandum of Understanding, Attachment 2, Paragraph J. of the Special Terms and Conditions of the Contract.

Description of Modification:

Whereas the Commonwealth desires to renew the performance period of the contract; now therefore it is agreed that the contract performance period shall be renewed from September 1, 2009 through December 31, 2009.

Except as provided herein, all terms and conditions of contract DOC-05-005 dated October 18, 2005, Modification 001 dated January 19, 2006, Modification 002 dated November 15, 2007, Modification 003 dated August 27, 2008, and Modification 004 dated December 15, 2008, as heretofore changed, remain unchanged and in full force and effect.

CONTRACTOR:

PURCHASING AGENCY:

BY:	BY:
TITLE:	TITLE:
DATE:	DATE:

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, §§2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

DOC-05-005 Inmate Phone Services

**DEPARTMENT OF CORRECTIONS
6900 ATMORE DRIVE
RICHMOND, VA 23225**

CONTRACT MODIFICATION AGREEMENT

Date: December 22, 2009

Contract Number: DOC-05-005

Modification Number: 006

Issued By: Department of Corrections (DOC)
Procurement and Risk Management
6900 Atmore Drive
Richmond, VA 23225

Contractor: Global Tel*Link (GTL)
12021 Sunset Hills Road, Suite 100
Reston, Virginia 20190

Commodity: Inmate Phone Services

This contract modification is entered into pursuant to Memorandum of Understanding, Attachment 1, Paragraph K. of the General Terms and Conditions and Attachment 2, Paragraph J. of the Special Terms and Conditions.

Description of Modification:

1. Whereas the Commonwealth desires to renew the performance period of the contract; now therefore it is agreed that the contract performance period shall be renewed from January 1, 2010 through December 31, 2013.
2. Effective January 1, 2010:
 - a. GTL (the Contractor) agrees to fund a minimum of \$150,000 annually, or \$600,000 in advance, towards DOC technology initiatives.
 - b. If the Contractor receives annual revenue exceeding \$13,000,000 from the DOC, the Contractor will increase the technology funding to the DOC, by February 28 of the subsequent year (2/28/11, 2/28/12, 2/28/13, and 2/28/14), as listed below:

Supplemental Technology Funding	
If Total Revenue Per Year is Greater Than:	Supplemental Technology Funding Available at the Beginning of Each Year:
\$13,000,000	\$100,000
\$13,500,000	\$150,000
\$14,000,000	\$200,000
\$14,500,000	\$250,000
\$15,000,000	\$300,000

- c. The DOC will identify and notify GTL of the technology initiative(s), and GTL will pay all resulting invoices associated with the technology initiative(s), providing the amount does not exceed the above funding formula.
3. Effective on, or before, February 28, 2010:
- a. The Contractor and the DOC will allow phone calls to cellular phones in accordance with DOC Procedure 803.3.
 - b. The Contractor and the DJJ will allow phone calls to cellular phones in accordance with DJJ procedures.
 - c. The Contractor and the DOC will allow debit calling at the below rates and in accordance with DOC procedures.

	Debit Call Payment Option	
	Rate Per Minute	Surcharge
Local	-	\$0.90
Intralata	\$0.14	\$1.25
Interlata	\$0.23	\$1.75
Interstate	\$0.40	\$2.40

Except as provided herein, all terms and conditions of contract DOC-05-005 dated October 18, 2005, Modification 001 dated January 19, 2006, Modification 002 dated November 15, 2007, Modification 003 dated August 27, 2008, and Modification 004 dated December 15, 2008, as heretofore changed, remain unchanged and in full force and effect.

CONTRACTOR:	PURCHASING AGENCY:
BY:	BY:
NAME:	NAME:
TITLE:	TITLE:
DATE:	DATE:

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, §§2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

**DEPARTMENT OF CORRECTIONS
6900 ATMORE DRIVE
RICHMOND, VA 23225**

CONTRACT MODIFICATION AGREEMENT

Date: March 16, 2012

Contract Number: DOC-05-005

Modification Number: 007

Issued By: Department of Corrections (DOC)
Procurement and Risk Management
6900 Atmore Drive
Richmond, VA 23225

Contractor: Global Tel*Link (GTL)
12021 Sunset Hills Road, Suite 100
Reston, Virginia 20190

Commodity: Inmate Phone Services

This contract modification is entered into pursuant to Memorandum of Understanding, Attachment 1, Paragraph K, of the General Terms and Conditions.

Description of Modification:

Effective April 1, 2012:

1. GTL and the DOC agree to allow debit calling via the GTL online e-commerce web site and telephone Interactive Voice Response (IVR) system. Deposits of funds into an inmate's trust fund account that are made by a credit card transaction originated via web payment or any other payment method will be processed by GTL as the authorized agent of the DOC. In its capacity as agent, GTL will:
 - a. Process credit card funds for transfer to the applicable inmate trust account established and maintained by the DOC via Automated Clearing House (ACH); and
 - b. Operate the systems or software managing the inmate trust funds. Money applied to the inmate debit account shall be made in increments of \$10.00.
2. Credit card transactions processed via the GTL web payment option (Debit II) will be charged standard GTL fees to cover such items as credit card charge-backs and credit card usage fees. Standard GTL credit card fees are listed below:

Transaction Amount			
#	Low End	Upper End	Fee
1	\$0.00	\$25.00	\$3.75
2	\$25.00	\$50.00	\$4.50
3	\$50.01	\$100.00	\$5.75
4	\$100.01	\$150.00	\$7.25
5	\$150.01	\$200.00	\$8.50

Except as provided herein, all terms and conditions of contract DOC-05-005 dated October 18, 2005, as heretofore changed, remain unchanged and in full force and effect.

CONTRACTOR:

PURCHASING AGENCY:

BY:	BY:
NAME:	NAME:
TITLE:	TITLE:
DATE:	DATE:

Note: This public body does not discriminate against faith-based organizations in accordance with the Code of Virginia, §§2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

EXHIBIT D

AFFIDAVIT

I, Beverly Chorbajian, Esq., do hereby affirm that:

1. I am a lawyer duly licensed to practice law in the Commonwealth of Massachusetts. My mailing address is 390 Main St., Suite 659, Worcester, MA 01608.
2. I represent and receive telephone calls from clients who are incarcerated in state and county correctional facilities in the Commonwealth. I requested and utilize collect and/or direct bill telephone service with Global Tel*Link (GTL) and Evercom Systems, Inc. (Evercom) (or affiliates) so that I can communicate with my incarcerated clients by telephone. I am the customer of record on accounts with GTL and Evercom and am responsible for paying for the telephone services they render to me .
3. My office receives between 25 and 35 telephone calls per week from clients in Massachusetts correctional institutions. Approximately one-third of the calls are from county institutions serviced by Evercom and two-thirds are from clients in state institutions serviced by GTL.
4. I conservatively estimate that half the calls we receive from correctional institutions have poor reception and that one out of five calls are dropped prematurely. The calls dropped by Evercom every month are almost all preceded by a recorded message that the system detected an attempt to add a third party. Neither I nor anyone in my office has ever attempted to add a third party or forward a call from an incarcerated client.

Signed under the penalties of perjury this 4 day of May, 2010.


Beverly Chorbajian

AFFIDAVIT

I, Peter T. Sargent, Esq., do hereby affirm that:

1. I am a lawyer duly licensed to practice law in the Commonwealth of Massachusetts. My mailing address is P.O. Box 425, Gardner, MA 01440.
2. I represent and receive telephone calls from clients who are incarcerated in state and county correctional facilities in the Commonwealth. I requested and utilize collect and/or direct bill telephone service with Global Tel*Link (GTL) and Evercom Systems, Inc. (Evercom) (or affiliates) so that I can communicate with my incarcerated clients by telephone. I am the customer of record on accounts with GTL and Evercom and am responsible for paying for the telephone services they render to me.
3. I have two ongoing problems with prisoner telephone calls. First, every other month or so I get a call from a county institution answered by my assistant and put on hold that is terminated when I pick up the receiver. The system appears to perceive this as a third-party call. Second, clients at county institutions have told me that they cannot get through to me with collect calls in months when I have run over some preset spending limit. I am given no warning of the cut-off before it happens, and am not offered an opportunity to pay off any balance to make it possible to receive more calls.

Signed under the penalties of perjury this 29th day of April, 2010.


Peter T. Sargent

AFFIDAVIT

I, Debra Beard-Bader, Esq., do hereby affirm that:

1. I am a lawyer duly licensed to practice law in the Commonwealth of Massachusetts. I am the attorney in charge of the Alternative Commitment Unit of the Committee for Public Counsel Services (CPCS). Our mailing address is 144 Main St., 4th floor, Brockton, MA 02301.
2. This office represents and receives telephone calls from clients who are incarcerated in state correctional facilities in the Commonwealth. Approximately 95% of the calls come from the Massachusetts Treatment Center operated by the Massachusetts Department of Correction. Global Tel*Link provides telephone service that allows us to receive telephone calls from clients incarcerated at the Treatment Center. CPCS is the customer of record for GTL telephone call charges.
3. On average this office receives 300 calls per month. Approximately 15-20% of the calls have too much static to hear the other party. Also, there are occasions when there is feedback or an echo, when what the speaker says is echoed back after a very slight delay. This also interferes with conversations. In addition, about 10% of the calls we receive are cut off when we press "0" to answer the call.

Signed under the penalties of perjury this 21 day of April, 2010.



Debra Beard-Bader

AFFIDAVIT

I, John S. Redden, Esq., do hereby affirm that:

1. I am a lawyer duly licensed to practice law in the Commonwealth of Massachusetts. I am the attorney in charge of the Brockton Superior Trial Unit of the Committee for Public Counsel Services. Our mailing address is 144 Main St., 4th floor, Brockton, MA 02301.
2. This office represents and receives telephone calls from clients who are incarcerated in state and county correctional facilities in the Commonwealth. The office utilizes collect call telephone services provided by Global Tel*Link (GTL) and Evercom Systems, Inc. (Evercom) (or affiliates) that allow our incarcerated clients to call us. CPCS is the customer of record on the GTL and Evercom telephone accounts.
3. This office receives approximately 450 telephone calls from incarcerated individuals each month. Approximately 10% of those calls come from individuals in DOC facilities, and approximately 90% come from individuals in county facilities. We estimate that one call per week from state facilities have bad connections and are hard to hear, and approximately three calls per week from county facilities have the same problem.

Signed under the penalties of perjury this 5th day of May, 2010.




John S. Redden

AFFIDAVIT

I, Patricia C. Voorhies, do hereby affirm that:

1. I am the Managing Director of Clinical and Experiential Education at Northeastern University School of Law. Our mailing address is 360 Huntington Ave., Boston, MA 02115.
2. The Prisoners' Rights Clinic (the Clinic) represents and receives telephone calls from clients who are incarcerated in state correctional facilities in the Commonwealth operated by the Massachusetts Department of Correction. The Clinic utilizes collect call telephone services provided by Global Tel*Link (GTL) that allow our incarcerated clients to call the Clinic. Northeastern University is the customer of record on the GTL telephone account. Calls are broken out by "budget centers," including the Clinic. The Clinic is responsible for payment of the calls billed to it including prisoner-initiated calls.
3. This office receives approximately 40-50 telephone calls from incarcerated individuals each week. On the main telephone line, which receives 30-40 calls per week, it is frequently very difficult to hear what the prisoner is saying unless he or she shouts. On the second line to the clinic administrator, with about 10 calls per week, about one-in-ten calls have other voices on the line, static or echoes.

Signed under the penalties of perjury this 3rd day of May, 2010.



Patricia C. Voorhies

AFFIDAVIT

I, Patricia Garin, Esq., do hereby affirm that:

1. I am a lawyer duly licensed to practice law in the Commonwealth of Massachusetts. I am a partner in the law firm Stern Shapiro Weisberg & Garin, LLP. Our mailing address is 90 Canal St., Boston, MA 02114.
2. The firm represents and receives telephone calls from clients who are incarcerated in state and county correctional facilities in the Commonwealth. We requested and utilize collect and/or direct bill telephone service with Global Tel*Link (GTL) and Evercom Systems, Inc. (Evercom) (or affiliates) so that we can communicate with our incarcerated clients by telephone. Stern Shapiro Weisberg & Garin LLP is the customer of record on accounts with GTL and Evercom. The firm is responsible for paying for the telephone services rendered by these providers to us.
3. Our office receives between approximately 40 and more than 75 telephone calls per month from clients in Massachusetts correctional institutions. The number of calls depends on the number of incarcerated clients and the status of legal proceedings, among other factors. We receive from 30 to more than 60 calls per month from state correctional institutions serviced by GTL. We receive from 10 to 15 calls per month from county correctional facilities serviced by Evercom.
4. The sound quality of telephone calls received from incarcerated clients varies. For calls received in the office from clients in state correctional institutions, I estimate that one in every six or seven calls had a connection or reception problem. But connection problems with calls from incarcerated clients that I received at home on my personal cellular phone were markedly worse: at least one call in three received at home had a terrible connection and was hard to hear versus one in six or seven problem calls in the office.
5. With respect to dropped or cut-off calls, I had a similar experience: calls at home on my personal cellular phone from incarcerated clients in state correctional institutions were much more likely to be dropped or cut-off prematurely than calls received at the office. Very few calls are dropped or prematurely cut off in the office. But calls received on my personal phone at home were frequently dropped, generally preceded by a message that an attempt to make a three-way call was detected. I never attempted to add a third party to such a call nor did I ever attempt to forward such a call to a third party.

Signed under the penalties of perjury this 30th day of April, 2010.



Patricia Garin

EXHIBIT E

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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

DOCKET NO.: DTC11-16

* * * * *

PETITION OF RECIPIENTS OF COLLECT CALLS FROM *
PRISONERS AT CORRECTIONAL INSTITUTIONS IN *
MASSACHUSETTS SEEKING RELIEF FROM THE UNJUST *
AND UNREASONABLE COST OF SUCH CALLS *

* * * * *

BEFORE: HEARING OFFICER KALUN LEE

OFFICE OF THE DIVISION OF INSURANCE

First Floor, Hearing Room E

1000 Washington Street

Boston, Massachusetts

Thursday, July 19, 2012 10:00 a.m. - 5:00 p.m.

Laurie J. Jordan

Professional Court Reporter

1 statement.

2 Would any of the petitioners or
3 respondents like to make a statement? Yes, we will
4 start with Prisoners Legal Services.

5 MS. MATOS: Yes, that's okay. There
6 are other petitioners here on behalf of the
7 petitioners and organizations, if they would like to
8 make a comment.

9 THE HEARING OFFICER: If I could get
10 you to come up to the microphone then. Thank you.

11 Good morning, Ms. Matos.

12 MS. MATOS: Good morning. Thank you
13 for having us here today.

14 THE HEARING OFFICER: Before you
15 begin, if you could spell your name for the court
16 reporter.

17 MS. MATOS: Sure. First name is
18 Elizabeth, E-L-I-Z-A-B-E-T-H, last name is Matos,
19 M-A-T-O-S.

20 THE HEARING OFFICER: You are here to
21 represent Prisoners Legal Services?

22 MS. MATOS: Yes.

23 THE HEARING OFFICER: Your contact
24 information is a matter of record in the filings,

1 poor. At Prisoners Legal Services, we receive calls
2 from prisoners in all of these facilities regularly.
3 I can attest personally that calls are frequently
4 dropped, connections are often so bad that you can't
5 understand anything that your client is saying on the
6 other line. And they often have to call back and we
7 incur those fees.

8 Aside from the fees, it compromises our
9 ability to get accurately and timely facts from our
10 clients. And the fact that the rates are so high
11 should account for this service. There is no reason
12 why -- You'll hear this from others today and I'm sure
13 you received it in your comments that
14 across-the-board the quality of service is so poor
15 and it just doesn't correlate with the rates that we
16 are paying.

17 High phone rates and commissions
18 unfairly penalize families of prisoners and do
19 nothing to improve public safety in our communities.
20 Family ties while incarcerated are proven to lower
21 recidivism and the phone is a lifeline for prisoners
22 and their families. To keep those lines of
23 communication open, it's imperative that the DTC take
24 this matter, investigate what a reasonable rate would

1 believe that is the substance of all of his testimony
2 today.

3 THE HEARING OFFICER: Mr. Dawson, are
4 you going to be available during the day?

5 MR. DAWSON: Yes, Sir.

6 THE HEARING OFFICER: Then if he is
7 going to be available, I am just going to ask him to
8 save his comments until the end of the day when we
9 anticipate more time.

10 He will have an opportunity to speak on
11 the record, but I would just like to give a lot of
12 the working folks a chance to speak first.

13 MS. TENNERIELLO: Thank you very much.

14 THE HEARING OFFICER: The next person
15 I have on the list is Patricia Garin.

16 MS. GARIN: Good morning, I am one of
17 the attorneys on the case who signed the petition.
18 I also am here to speak on behalf of several of the
19 petitioners.

20 THE HEARING OFFICER: Do you receive
21 phone calls from one of these facilities?

22 MS. GARIN: Yes.

23 THE HEARING OFFICER: I note that you
24 provided the court reporter with your business card?

1 MS. GARIN: Yes, I did.

2 THE HEARING OFFICER: Thank you very
3 much. Ms. Garin, before we get started, do you want
4 your statement to be sworn or unsworn?

5 MS. GARIN: Swearing in is fine. I am
6 also one of the attorneys of record on this case.

7 THE HEARING OFFICER: I think we can
8 forgo the swearing in. If you could identify for the
9 record the facilities from which you receive phone
10 calls.

11 MS. GARIN: I am going to be testifying
12 on behalf of the Northeastern Prisoners Rights
13 Project and we receive phone calls from all of the
14 18 DOC facilities in the State. They are serviced
15 by telecom, collect phone calls.

16 I am going to be testifying on behalf
17 of my law firm. It was one of the petitioners. We
18 also receive phone calls from State and county
19 facilities. I am testifying on behalf of MACDA, the
20 Mass. Association of Criminal Defense Attorneys and
21 those are all or most of the criminal defense
22 attorneys in the State. There is 1062 members. The
23 1062 members certainly receive calls from all of the
24 facilities in the State.

1 to call every day. It's just too expensive.

2 I think those two clients are
3 representative of what happens to a great number of
4 clients and families in the system.

5 I just want to comment briefly about
6 the quality of the service. It's inconsistent from
7 prison to prison. Some prisons you can hear better,
8 some prisons you cannot hear the calls at all. My
9 client who is in Bridgewater State Hospital -- My
10 client is already mentally ill. At Bridgewater
11 State Hospital the echo in the calls is so loud that
12 you cannot speak without hearing the echo come back
13 at you and shake in your ears.

14 This is really hard for any person to
15 deal with it day in and day out. It is very tough
16 if you already have mental health issues to have to
17 put up with that hammering echo in your head when you
18 are trying to talk to your family.

19 I have talked to many people who have
20 to have their clients yell into the phone. Those of
21 us who are attorneys are very concerned about the fact
22 that our clients have to be yelling their legal
23 business so that we can hear them on these telephone
24 calls.

1 The quality of service is
2 inconsistent. I want to tell you that at one point
3 a year and a half ago I decided to get a GTL account
4 on my cell phone for when I went out of town so that
5 prisoners could call me in an emergency because I
6 wouldn't be at my office. Sometimes if there is
7 emergency, I wouldn't be using it so often. It was
8 a disaster.

9 The calls to my office don't get cut off
10 that often. On my cell phone, I would say one out
11 of every third call would get cut off and a recording
12 would come on and say a third-party call has been
13 detected.

14 I never connected with a third-party
15 ever. I only use the call from a sitting still
16 position in a place where reception was strong. It
17 didn't matter. The calls got cut off with the
18 recording coming on saying third-party call
19 detected. And then the client would call again and
20 we would have another connection fee, get cut off,
21 call again, get cut off.

22 The other problem was that I didn't use
23 it that often. I only used the account when I went
24 out of town. So, it would go months without being

1 know about per minute, that's what I know it costs.

2 So, for one minute to connect, it's
3 \$2.77. For 30 minutes it's \$5.85. It's ridiculous.
4 And I don't have a choice. When I call Securus and
5 I speak to customer service and they say thank you
6 for choosing Securus. What choice did I make? I
7 have no choice. They are a monopoly. I don't know
8 about the research. I don't know about the
9 kickbacks. I don't know about the commissions. I
10 don't know where the money goes. But I know that
11 prison for private is new to this society.

12 These phone calls are just one part of
13 it. It's outrageous. The outrage that I feel, I
14 can't even begin to put it into words what happens
15 -- It is just ridiculous. I don't know what else to
16 say, but thank you.

17 THE HEARING OFFICER: Thank you,
18 Ma'am. The next person I have on the list is Carmen
19 Guhn-Knight.

20 MS. GUHN-KNIGHT: Good afternoon.

21 THE HEARING OFFICER: You are an
22 attorney?

23 MS. GUHN-KNIGHT: I am not. I am a
24 paralegal at the Law Offices of Howard Friedman.

1 Howard Friedman is one of the petitioners. So, I am
2 speaking on behalf of the firm.

3 THE HEARING OFFICER: If I could get
4 you to spell your name and provide your contact
5 information for reporter, please.

6 MS. GUHN-KNIGHT: Yes. My name is
7 Carmen Guhn-Knight. It is spelled C-A-R-M-E-N, last
8 name G-U-H-N,-, K-N-I-G-H-T. Contact information
9 at the Law Offices of Howard Friedman is
10 617-742-4100. It's 90 Canal Street, Fifth Floor,
11 Boston, Massachusetts.

12 THE HEARING OFFICER: And the
13 statement you are giving is under oath today?

14 MS. GUHN-KNIGHT: Yes.

15 THE HEARING OFFICER: Can you tell us
16 which facilities you are receiving phone calls from.

17 MS. GUHN-KNIGHT: We accept all calls
18 that come to our office, so calls from across the
19 State.

20 THE HEARING OFFICER: Thank you. You
21 may begin.

22 MS. GUHN-KNIGHT: The Law Offices of
23 Howard Friedman is a civil rights firm that brings
24 lawsuits including class action lawsuits on behalf

1 of prisoners. We have numerous clients incarcerated
2 across the State.

3 The telephone is the most practical way
4 for us to communicate with our clients. Our work
5 depends upon reliable phone service with prisoners.
6 Prisoners depend on the phone to inform us of
7 important developments and to seek legal advice in
8 a timely manner. However, the service we pay for and
9 we pay extravagantly is not reliable.

10 Calls are occasionally dropped. The
11 connection is frequently poor. Sometimes our
12 clients sound impossibly quiet and other times there
13 is constant static on the line. I often tell our
14 clients to hang up and try calling again and maybe
15 it'll be better. Sometimes it works and sometimes
16 it doesn't.

17 The high cost of prisoner phone calls
18 places burdens on attorneys, prisoners and in some
19 instances all taxpayers. The cost imposes yet
20 another financial disincentive, and there are many,
21 for private attorneys to represent prisoners whose
22 civil legal needs are greatly underserved. Because
23 prisoners are typically liable for the cost of a
24 lawsuit when it is successful, any recovery they

EXHIBIT F

EDUCATION BASED INCARCERATION



Los Angeles County
Sheriff's Department

A MESSAGE FROM THE SHERIFF

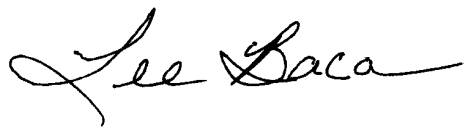
As the Sheriff of Los Angeles County, I am charged with running the nation's largest jail system in a fair and impartial way. We know, from the documented high rates of recidivism across the nation, that traditional incarceration with punishment at the core, does not work. In Los Angeles County we have adopted a philosophy within the jails called **Education-Based Incarceration**. This system works well within the boundaries of our Departmental Mission statement and Core Values, by providing dignity in the jails.

Creating a system that supports reducing the risks and needs of its offenders through education and rehabilitation has shown success. These successes can be seen in reduced rates of recidivism, increased employability, and family reunification, which, in totality, are reinvestments in the communities within Los Angeles County.

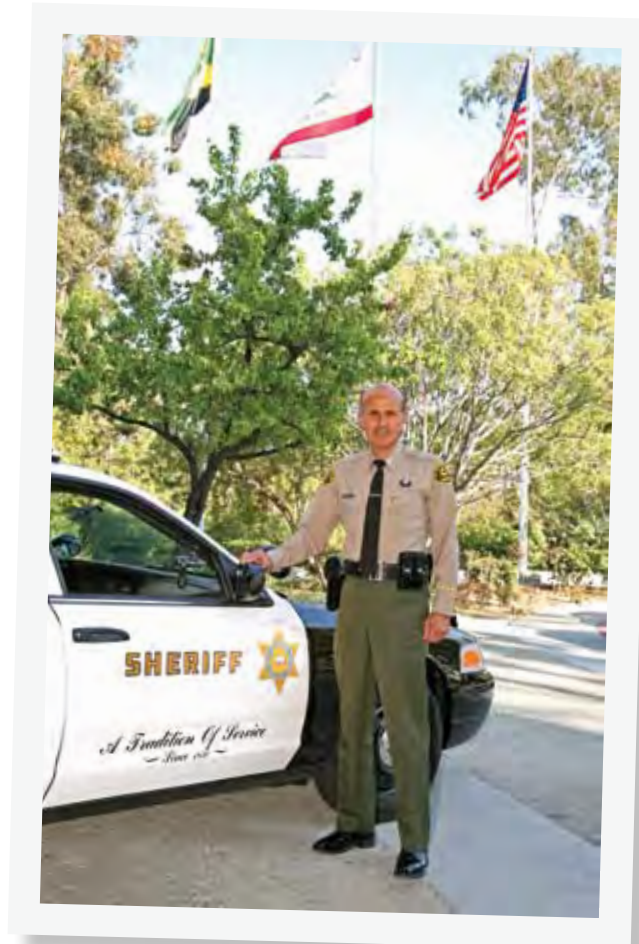
People agree that education is a better option than incarceration. Unfortunately, some people make choices in their lives that land them in jail. The values needed to succeed in jail are often in direct conflict with societal norms. **Education-Based Incarceration** creates a safe and empowering environment, conducive to learning and self-retrospection; it, allows the offenders to reprioritize their lives and opt for success!

It is a great honor to present this publication highlighting the successes of Education-Based Incarceration through the Offender Services Bureau, Correctional Services Division, of the Los Angeles County Sheriff's Department.

Sincerely,



Leroy D. Baca
Sheriff



INMATE WELFARE COMMISSION

The Inmate Welfare Commission was formed in 1951 by Los Angeles County Sheriff Eugene Biscailuz. The concept of the Inmate Welfare Fund was established in law with the enactment of California Penal Code Section 4025 in 1949.

The funds... *“shall be expended by the Sheriff primarily for the benefit, education and welfare of the inmates confined within the jail. Any funds that are not needed for the welfare of the inmates may be expended for the maintenance of county jail facilities. Maintenance of county jail facilities may include, but is not limited to, the salary and benefits of personnel used in the programs to benefit the inmates, including, but not limited to, education, drug and alcohol treatment, welfare, library, accounting, and other programs deemed appropriate by the sheriff.”*



The Inmate Welfare Commission is an advisory body. This is a non-delegated duty, and the final decision to make expenditures rests with the Sheriff. The Inmate Welfare Commission’s authority is derived solely from the Sheriff, while, by law, the Sheriff retains the responsibility for the expenditure of funds.

● Inmate Welfare Fund

The Inmate Welfare Commission’s primary duty is to provide meaningful assistance to the inmate population of the Los Angeles County jail system by reviewing and making recommendations to the Sheriff regarding funding for education, recreation, vocational training, counseling, and community transition. Funds for the Inmate Welfare Fund (IWF) are derived from revenue sharing contracts such as inmate telephones, commissary and vending.



The Inmate Welfare Fund allocates 51 percent of the funds to be spent on inmate programming and services and 49 percent to jail facility maintenance. In addition, the IWF also assists with funding needs for the forty-eight (48) courthouse lock-ups and twenty-three (23) station jails within Los Angeles County.

EXHIBIT G

INTERNAL CONTROL AUDIT:

SHERIFF-CORONER INMATE WELFARE FUND AND SELECTED JAIL COMMISSARY PROCESSES

For the Period July 1, 2010
through June 30, 2011

We audited internal controls and processes over the administration and use of the Sheriff-Coroner's Inmate Welfare Fund. Specifically, we audited fund receipts and disbursements to ensure they are valid, supported, timely, and made in accordance with California Penal Code Section 4025, and with County and Sheriff-Coroner policies and procedures. We also assessed the effectiveness and efficiency of administering the Inmate Welfare Fund. In addition, we audited selected controls and processes over Jail Commissary funds and operations because profits from the Jail Commissary are a revenue source for the Inmate Welfare Fund. During the audit period, the Inmate Welfare Fund had \$3.5 million in revenues and \$4.4 million in expenditures.

Our audit found that internal controls and processes over Inmate Welfare Fund receipts and disbursements are adequate and effective to ensure they are valid, timely, supported and in compliance with the Penal Code and County policies. However, we found where improvement is needed over the administration of the Inmate Welfare Fund and Jail Commissary Fund, specifically involving reconciliations of inmate accounts, declining fund balances available, price determinations of commissary merchandise, commissary order forms and physical inventories. We identified **four (4) Significant Control Weaknesses** and **three (3) Control Findings** where controls and processes can be further enhanced. The Sheriff-Coroner agreed with the findings and recommendations.

AUDIT NO: 1123

REPORT DATE: MAY 16, 2012

Director: Dr. Peter Hughes, MBA, CPA, CIA

Deputy Director: Eli Littner, CPA, CIA

Senior Audit Manager: Michael Goodwin, CPA, CIA

Audit Manager: Michael Dean, CPA, CIA

Audit Manager: Kenneth Wong, CPA, CIA

RISK BASED AUDITING

GAO & IIA Peer Review Compliant – 2001, 2004, 2007, 2010



American Institute of Certified Public Accountants Award to Dr. Peter Hughes as 2010 Outstanding CPA of the Year for Local Government

GRC (Government, Risk & Compliance) Group 2010 Award to IAD as MVP in Risk Management



2009 Association of Certified Fraud Examiners' Hubbard Award to Dr. Peter Hughes for the Most Outstanding Article of the Year – Ethics Pays



2008 Association of Local Government Auditors' Bronze Website Award



2005 Institute of Internal Auditors' Award for Recognition of Commitment to Professional Excellence, Quality, and Outreach

Internal Audit Department

O R A N G E C O U N T Y
6th Largest County in the USA



OC Internal Auditor's Report

BACKGROUND

The mission of the Sheriff-Coroner is to protect the residents of Orange County and provide exceptional law enforcement services with leadership, integrity and respect. The Sheriff-Coroner has four major "commands" or divisions – (1) Field Operations & Investigative Services Command; (2) Custody and Court Services Command; (3) Professional Services Command; and (4) Administrative Services Command. The Inmate Services Division, which oversees and administers the Inmate Welfare Fund and Jail Commissary, is under the Custody and Court Services Command. The Administrative Services Command and Financial/Administrative Services provide financial support to the department.

Inmate Services Division Overview

The Inmate Services Division, established in 2004, contains 200 professional staff, 2 sworn staff and 1,100 volunteer staff. The Inmate Services Division's annual budget is approximately **\$37 million**. The division assures inmate needs are met based on compliance with State *Correction Standards* found in Title 15 of the *California Code of Regulations* by providing supporting services, including meals, commissary, educational, vocational, and recreational programs to foster rehabilitation and reduce recidivism (repeat offenders) of inmates once they leave the Sheriff's custody. The Inmate Services Division consists of the following units:

- ✓ **Commissary Operations** has an operating budget of \$8.8 million and 39 employees, whose goal is to provide high quality products and services to those incarcerated in the Sheriff's jail facilities, and secondly to provide funding to the Sheriff's Inmate Welfare Fund to support vocational and educational training programs. Each year, up to \$1 million in profit from commissary operations is transferred to the Inmate Welfare Fund.
- ✓ **Food Services Unit** provides three daily nutritional meals to each inmate housed in the County's four jail facilities. A staff of 83 operates four kitchens, three inmate dining halls, four warehouses, and prepares approximately 5.2 million meals annually. Their annual operating budget is \$15 million.
- ✓ **Correctional Programs Unit** was created to minimize the number of inmates who recommit crimes after release. It provides opportunities for inmates to participate in effective rehabilitative experiences while incarcerated in the County's four jail facilities. The unit is comprised of 39 employees and has an operating budget of \$12 million.
- ✓ **Inmate Re-Entry Unit** was created to combat the high recidivism rates. Any staff member can work in the Re-Entry Unit, and annual expenditures for services and supplies were about \$2,900.
- ✓ **Division Support Unit** contains 29 employees and provides professional support including recruiting, clerical, accounts payable, purchasing, revenue forecasting, auditing, legislative analysis, safety, inmate rights training, research and analysis, and the Inmate Law Library.

Inmate Welfare Fund

Under the *California Penal Code* Section 4025, an Inmate Welfare Fund is mandated to provide services essential for the benefit, welfare, and educational needs of inmates confined in detention facilities. This code section governs the establishment, use and reporting requirements for the Inmate Welfare Fund. The section states:

"The Sheriff may operate a store in connection with the County jail and for this purpose may purchase confectionery, tobacco, and tobacco users' supplies, postage and writing materials, and toilet articles and supplies and sell these goods, articles and supplies for cash to inmates in the jail...any profit shall be deposited in an inmate welfare fund to be kept in the treasury of the County."

The Inmate Welfare Fund is administered by the Sheriff-Coroner's Inmate Services Division, and is recorded under Fund 144. As of June 30, 2011, the Inmate Welfare Fund had **\$3.5 million in revenues** and **\$4.4 million in expenditures**, and required an \$875,000 fund balance transfer to cover the difference.



OC Internal Auditor's Report

Inmate Welfare Fund Revenues

The Inmate Welfare Fund's primary revenue source is from **telephone commissions**. Based on a contract with Global-Tel Link (formerly AT&T), the contractor pays the County a **minimum annual guarantee of \$2.6 million** that is allocated between the Sheriff-Coroner's Inmate Welfare Fund and the Probation Department based on inmate collect-only telephone calls at the Central Jail Complex, Theo Lacy, James Musick, Juvenile Hall (Probation), Youth Guidance Center (Probation), Los Pinos Conservation Camp (Probation) and Western Medical Center Ward.

The second main revenue source comes from **Jail Commissary profit transfers**. California Penal Code Section 4025 requires commissary profits to be deposited into the Inmate Welfare Fund. Commissary profits are monitored by Sheriff-Coroner budget staff and are transferred annually to the Inmate Welfare Fund. See below for further discussion of the Jail Commissary and profit transfers.

Other revenue sources for the Inmate Welfare Fund come from **education services, rental revenue, interest income, bankruptcy repayments, sale of capital assets, and other miscellaneous revenue**. The table below shows all revenue components of the Inmate Welfare Fund for Fiscal Years 09/10 and 10/11:

TYPE	NAME	6/30/10 AMOUNT	6/30/10 %	6/30/11 AMOUNT	6/30/11 %
Service Revenue	Telephone Commissions	\$ 2,406,001	64%	\$2,476,372	70%
Miscellaneous Revenue	Commissary Profit Transfer	700,000	19%	500,000	14%
Service Revenue	Education Services	337,779	9%	285,932	8%
Service Revenue	Rental Revenue	194,316	5%	194,316	5%
Miscellaneous Revenue	Interest Income	74,062	2%	34,681	1%
Miscellaneous Revenue	Bankruptcy Repayment	44,876	1%	40,777	1%
Miscellaneous Revenue	Sale of Capital Assets	4,046	<1%	0	0%
Miscellaneous Revenue	Other	696	<1%	6,752	<1%
TOTAL REVENUE		\$3,761,776	100%	\$3,538,830	100%
FUND BALANCE AVAILABLE		\$1,254,653		\$874,574	
TOTAL REVENUE AND FBA		\$5,016,429		\$4,413,404	

Inmate Welfare Fund Expenditures

Penal Code Section 4025 states: *"The money and property deposited in the inmate welfare fund shall be expended by sheriff primarily for the benefit, education, and welfare of the inmates confined within a jail. Any funds that are not needed for the welfare of the inmates may be expended for the maintenance of county jail facilities. Maintenance of county jail facilities may include the salary and benefits of personnel used in the programs to benefit the inmates, including, but not limited to, education, drug and alcohol treatment, welfare, library, accounting, and other programs deemed appropriate by the Sheriff."*

The largest expenditures from the Inmate Welfare Fund are **salary and benefit costs** for all Sheriff-Coroner employees that work in inmate welfare programs. The second largest expenditures result from **staff support – services, supplies, training & equipment** that includes operational costs for telephone service, office supplies and equipment, equipment repair & maintenance, property casualty insurance, inmate service liaison, training costs, validated parking and other expenses related to volunteers, and any fixed asset purchases. Other fund expenditures are for **hot water systems, audio-visual, recreation, library services, and minor construction**. These purchases are requested by personnel in the inmate programs and are approved by Inmate Services Division management. Expenditures can be made by contract, revolving funds or purchasing cards. The table below shows Inmate Welfare Fund expenditures for Fiscal Years 09/10 and 10/11:



OC Internal Auditor's Report

TYPE	NAME	6/30/10 AMOUNT	6/30/10 %	6/30/11 AMOUNT	6/30/11 %
Staff Support	Salaries	\$ 3,716,411	74%	\$3,334,505	76%
Staff Support	Services, Supplies, Training	875,569	17%	862,996	20%
General Inmate Welfare	Hot Water System	29,150	<1%	14,800	<1%
Inmate Education	Services, Supplies & Equip.	40,930	<1%	21,962	<1%
Inmate Resources	Audio Visual	39,268	<1%	37,905	<1%
Inmate Resources	Recreation	25,508	<1%	21,948	<1%
Inmate Resources	Library	144,693	3%	116,326	3%
Inmate Re-Entry	Services, Supplies, Training	2,981	<1%	2,826	<1%
Construction	Warehouse & Musick Bldg.	141,919	3%	136	<1%
TOTAL EXPENDITURES		\$5,016,429	100%	\$4,413,404	100%

Jail Commissary Operations

The Inmate Services Division operates a commissary for inmates and federal detainees held at three County jail facilities. The commissary is located in a warehouse in Anaheim. Profits from the jail commissary operations are deposited in the Inmate Welfare Fund. Uniform prices for commissary items are established at a level to support the Sheriff-Coroner's Inmate Welfare Fund program. All commodities sold in the jail commissary are approved items for that purpose. A price list of items available is established, kept current, and posted on printed order forms. Copies of the order forms are made available to inmates and federal detainees. The Jail Commissary Fund is Fund 143 in the County's General Ledger.

Jail Commissary Profit Transfers and Operating Reserves

Penal Code Section 4025 states that any profits resulting from commissary sales shall be deposited into the Inmate Welfare Fund. Sheriff-Coroner's Budget & Administrative Support tracks the annual jail commissary profits/losses and the profit transfers to the Inmate Welfare Fund.

The Sheriff-Coroner maintains an operating reserve for the jail commissary. The reserve is divided into two components: Reserve Designated for Operations and Reserve Designated for Inventory Material/Supplies. During our audit period, the reserve balance was **\$481,000**. A five-year analysis of the Jail Commissary Operating Reserve since FY 06-07 shows the reserve balance between \$481,000 and \$580,000 with minor annual fluctuations.

SCOPE AND METHODOLOGY

Our audit evaluated internal controls and processes over the administration and use of the Inmate Welfare Fund and selected Jail Commissary processes for the period July 1, 2010 through June 30, 2011. Our methodology included inquiry, auditor observation and testing of relevant documents over the following:

1. Evaluated controls and processes over all revenue categories of the Inmate Welfare Fund and tested a sample of transactions.
2. Evaluated controls and processes over all expenditure categories of the Inmate Welfare Fund and tested a sample of transactions.
3. Analyzed Inmate Welfare Fund financial statements for FY 09-10 and 10-11, including the trend of declining fund balances in the Inmate Welfare Fund and Jail Commissary Fund.
4. Evaluated cash receipting and reconciliation processes for inmate accounts.
5. Evaluated selected aspects of Jail Commissary operations including profit transfers, use of operating reserves, pricing methodology, commissary order forms, and controls over physical inventories.

EXHIBIT H

STATE STATUTES

State	Statute	Notes*
Alabama	<p>For County Jails, statutes have language reflecting the principle that: "All profits realized in the operation of the jail canteen and inmate telephone system shall be expended at the discretion of the sheriff for salaries, equipment, and supplies for the county jail and other law enforcement purposes in [named] County that are in the interest of the public." Ala. Code §§ 45-1-232; 45-3-231.20; 45-5-231; 45-11-234; 45-13-231; 45-18-230; 45-25-231 (2011).</p>	Applies to Counties.
Alaska	<p>Commission is excluded from the state's general revenue fund: "(b) The program receipts listed in this subsection are accounted for separately, and appropriations from these program receipts are not made from the unrestricted general fund: (43) receipts of the Department of Corrections from the inmate telephone system" Alaska Stat. § 37-05-146 (2012).</p>	State received \$85,438.58 from revenue-sharing with Securus in 2012.
Arizona	<p>"A. A special services fund is established in the state department of corrections. The department shall administer the fund. B. The director shall transfer five hundred thousand dollars from the special services fund annually to the department of corrections building renewal fund established by section 41-797. Any remaining monies in the special services fund, including the inmate recreation fund, may be used for the following purposes: 1. The benefit, education and welfare of committed offenders, including the establishment, maintenance, purchase of items for resale and other necessary expenses of operation of canteens and hobby shops. 2. To pay the costs of a telephonic victim notification system. Revenues that are generated by the inmate telephone system and the automated public access program shall be deposited in the special services fund." Ariz. Rev. Stat. Ann. § 41-1604.03 (2012).</p>	State received \$4.3 million from revenue-sharing with Securus in 2012.
Arkansas	<p>"(a) There is created . . . a cash fund entitled the Department of Correction Nontax Revenue Receipts Fund to consist of receipts for telephone calls from coinless telephones located on Department of Correction grounds, and from other nontax receipts not previously identified to a fund of deposit. (b) Funds held in this special fund are to be</p>	State received \$2.0 million from revenue-sharing with GTL in 2012.

State	Statute	Notes*
	<p>administered and expended by the Director of the Department of Correction within guidelines established by the Board of Corrections for periodic transfers to other department funds or for disbursements in support of department operations or debt service.” Ark. Code Ann. § 12-27-128 (2012).</p>	
California	<p>“(d) There shall be deposited in the inmate welfare fund any money, refund, rebate, or commission received from a telephone company or pay telephone provider when the money, refund, rebate, or commission is attributable to the use of pay telephones which are primarily used by inmates while incarcerated. (e) The money and property deposited in the inmate welfare fund shall be expended by the sheriff primarily for the benefit, education, and welfare of the inmates confined within the jail. Any funds that are not needed for the welfare of the inmates may be expended for the maintenance of county jail facilities. Maintenance of county jail facilities may include, but is not limited to, the salary and benefits of personnel used in the programs to benefit the inmates, including, but not limited to, education, drug and alcohol treatment, welfare, library, accounting, and other programs deemed appropriate by the sheriff. Inmate welfare funds shall not be used to pay required county expenses of confining inmates in a local detention system, such as meals, clothing, housing, or medical services or expenses, except that inmate welfare funds may be used to augment those required county expenses as determined by the sheriff to be in the best interests of inmates. An itemized report of these expenditures shall be submitted annually to the board of supervisors.” Cal. Penal Code § 4025 (2012).</p>	<p>Applies to Counties. Los Angeles County – 15 million guaranteed payment – 49% used for jail maintenance. Orange County – 74% of \$5 million inmate fund used for staff salaries.</p>
Colorado	<p>‘Any profits arising from the operation of the canteen and vending machines shall be expended for the educational, recreational, and social benefit of the inmates and to supplement direct inmate needs.’ Colo. Rev. Stat. Ann. § 17-24-126(3) (West 2013).</p>	<p>Jefferson County – 86% of inmate welfare fund used for staff salaries and benefits. (see attached).</p>
Connecticut	<p>“For the fiscal year ending June 30, 2007, and each fiscal year thereafter, the sum of \$350,000 from revenue derived by the Department of Information Technology from the contract for the provision of pay telephone service to inmates of correctional facilities shall be transferred to the Department of</p>	<p>State received \$4.2 million from revenue-sharing with Securus in 2012.</p>

State	Statute	Notes*
	Correction, for Other Current Expenses, for expanding inmate educational services and reentry program initiatives.” Conn. Gen. Stat. § 18-81x (2011).	
Florida	“All proceeds from contracted telephone commissions must be deposited in the General Revenue Fund.” Fla. Stat. § 945.215(b) (2012).	State received \$5.2 million from revenue-sharing with Securus in 2012.
Hawaii	“(c) All proceeds or revenues that are derived from any commission that is realized pursuant to a telephone service agreement executed by the department for the provision of telephone services for inmates shall be deposited into the automated victim information and notification system special fund.” Haw. Rev. Stat. § 353-136 (West 2012).	State received \$74,284 from revenue-sharing with Hawaii Telecom in 2008 (most recent available).
Illinois	“The moneys deposited into the Department of Corrections Reimbursement and Education Fund shall be appropriated to the Department of Corrections for the expenses of the Department. The following shall be deposited into the Department of Corrections Reimbursement and Education Fund: . . . (iii) Moneys received by the Department as commissions from inmate collect call telephone systems.” 730 Ill. Comp. Stat. 5 / 3-4-1(b) (2012).	State received \$11.7 million from revenue-sharing with CCPS in 2012.
Indiana	“The correctional facilities calling system fund is established for the purposes of improving, repairing, rehabilitating, and equipping department of correction facilities. The fund consists of the following: (1) Money deposited in the fund under section 5(d) of this chapter. (2) Money appropriated by the general assembly. (3) Money received from any other source.” Ind. Code § 5-22-23-7(a) (2012). Ind. Code § 5-22-23-5 requires that commissions received from the inmate telephone system be deposited in the “correctional facilities calling system fund.”	State received \$1.7 million from revenue-sharing with GTL in 2012.
Iowa	“The department is authorized to establish and maintain an inmate telephone fund for the deposit of moneys received for inmate telephone calls. All funds deposited in this fund shall be used for the benefit of inmates. The director shall adopt rules providing for the disbursement of moneys from the fund.” Iowa Code § 904.508A (2013).	State received \$650,972 from revenue-sharing with GTL in 2012.
Maryland	“Each inmate welfare] fund consists of: 1. profits derived from the sale of goods through the	State received \$5.1 million from revenue-

State	Statute	Notes*
	<p>commissary operation and telephone and vending machine commissions; and 2. subject to subparagraph (ii) of this paragraph, money received from other sources.” Md. Code Ann., Corr. Servs. § 10-503(2)(i).</p>	<p>sharing with Securus in 2010.</p> <p>Only 10 of the 23 Maryland counties use funds for inmate welfare fund. (see attached).</p>
Massachusetts	<p>Section 2. There shall be a General Fund of the commonwealth, into which all revenue payable to the commonwealth shall be paid, except revenue required by law to be paid into a fund other than the General Fund and revenue for or on account of sinking funds, trust funds or trust deposits, which funds shall be maintained and the revenue applied in accordance with law or the purposes of the fund. G.L. c. 29 § 2 (April 1, 2013).</p>	<p>State received \$1.7 million from revenue-sharing with GTL in 2012.</p>
Mississippi	<p>“(1) The department is authorized to maintain a bank account which shall be designated as the Inmate Welfare Fund. All monies now held in a similar fund for the benefit and welfare of inmates shall be deposited into the Inmate Welfare Fund. This fund shall be used for the benefit and welfare of inmates in the custody of the department. . . . (3) All inmate telephone call commissions shall be paid to the department. Monies in the fund may be expended by the department, upon requisition by the commissioner or his designee, only for the purposes established in this subsection. (a) Twenty-five percent (25%) of the inmate telephone call commissions shall be used to purchase and maintain telecommunication equipment to be used by the department. (b) . . . Beginning on July 1, 2008, thirty-five percent (35%) of the inmate telephone call commissions shall be deposited into the Prison Agricultural Enterprise Fund. . . . (c) Forty percent (40%) of the inmate telephone call commissions shall be deposited into the Inmate Welfare Fund.” Miss. Code Ann. § 47-5-158 (2013).</p>	<p>State received \$1.7 million from revenue-sharing with GTL in 2012.</p>
Montana	<p>“(1) There is an account in the state special revenue fund. The net proceeds from state prison inmate canteen purchases and inmate telephone use, cash proceeds from the disposition of confiscated contraband, and any public money held for the needs of inmates and their families and not otherwise allocated must be deposited in the account. Money in an account established under 53-1-107 may not be deposited in the account</p>	<p>State received \$220,617 from revenue-sharing with Telmate in 2012.</p>

State	Statute	Notes*
	<p>established in this subsection.</p> <p>(2) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of corrections, which may allocate the money referred to in subsection (1) to the state prisons in proportion to the amount that each state prison contributed to the fund. The administrator of each state prison shall consult with the inmates about the use of the money allocated to the state prison and may use the money for the needs of the inmates and their families.” Mont. Code Ann. § 53-1-109 (2011).</p>	
Ohio	<p>“(A) There is hereby created in the state treasury the prisoner programs fund. The director of rehabilitation and correction shall deposit in the fund all moneys received by the department from commissions on telephone systems and services provided to prisoners in relation to electronic mail, prisoner trust fund deposits, and the purchase of music, digital music players, and other electronic devices. The money in the fund shall be used only to pay for the costs of the following:</p> <p>(1) The purchase of material, supplies, and equipment used in any library program, educational program, religious program, recreational program, or pre-release program . . . (2) The construction, alteration, repair, or reconstruction of buildings and structures owned by the department for use in any . . . program . . . (3) The payment of salary, wages, and other compensation to employees of the department who are employed in any . . . program . . . (4) The compensation to vendors that contract with the department for the provision of services for the benefit of prisoners in any . . . program . . . (5) The payment of prisoner release payments in an appropriate amount as determined pursuant to rule;</p> <p>(6) The purchase of other goods and the payment of other services that are determined, in the discretion of the director, to be goods and services that may provide additional benefit to prisoners.” Ohio Rev. Code Ann. § 5120.132 (2012).</p>	<p>State receives \$15 million annual flat-rate payment from GTL.</p>
Oklahoma	<p>“A. There shall be established a Canteen System Board of Directors for all canteen system services The overall canteen operation composed of all correctional facility canteen operations, inmate telephone systems and inmate electronic mail systems shall be collectively called the Canteen System and such system shall be required to be self-supporting from sales receipts.</p>	<p>State received \$1 million from revenue-sharing with GTL in 2012.</p>

State	Statute	Notes*
	<p>E. . . . All revenues from canteen operations, inmate telephone system services and inmate electronic mail system operations shall be used exclusively for the benefit of the inmates of the various institutions and personnel of the Department of Corrections as determined by the Canteen System Board of Directors.” Okla. Stat. tit. 57, § 537 (2012).</p>	
Oregon	<p>“(1) Revenues, less operating expenses, from the following sources shall be deposited into an account established by the Department of Corrections to provide money to enhance inmate activities and programs including education programs: . . . (c) Operation of inmate telephones in correctional institutions; (2) The Department of Corrections shall limit use of the fund to uses benefiting the general inmate population and enhancing inmate activities and programs including education programs.” Or. Rev. Stat. § 421.068 (2011).</p>	<p>State received \$3 million from revenue-sharing with Telmate in 2012.</p>
Tennessee	<p>No statute on point for state prisons. “A fee of ten cents (10cent(s)) shall be collected for each completed telephone call made by an inmate housed in a local jail or workhouse. Such fees shall be remitted by the telephone service provider to the state treasurer each quarter and credited to a special account in the state general fund designated as the local correctional officer training fund to be used exclusively to fund certification training provided through the institute for local correctional personnel within the state. . . .” Tenn. Code Ann. § 41-7-104(c) (2012).</p>	<p>Applies to Counties: State received \$2.5 million from revenue-sharing with GTL in 2012.</p>
Texas	<p>“(b) The board shall award a contract to a single private vendor to install, operate, and maintain the inmate pay telephone service. The initial term of the contract may not be less than seven years. The contract must provide the board with the option of renewing the contract for additional two-year terms. (c) The department shall transfer 50 percent of all commissions paid to the department by a vendor under this section to the compensation to victims of crime fund established by Subchapter B, Chapter 56, Code of Criminal Procedure, and the other 50 percent to the credit of the undedicated portion of the general revenue fund, except that the department shall transfer the first \$10 million of the commissions collected in any given year under a contract awarded under this section to the compensation to victims of crime fund established</p>	<p>State received \$5.9 million from revenue-sharing with CenturyLink in 2012.</p>

State	Statute	Notes*
	by Subchapter B, Chapter 56, Code of Criminal Procedure. This section does not reduce any appropriation to the department.” Tex. Gov’t Code Ann. § 495.027 (2012).	
Utah	“(1) (a) There is created within the General Fund a restricted account known as the Prison Telephone Surcharge Account. . . . (2) Upon appropriation by the Legislature, money from the Prison Telephone Surcharge Account shall be used by the department for education and training programs for offenders and inmates as defined in Section 64-13-1. . . .” Utah Code Ann. § 64-13-42 (2012).	State received \$765,858.16 from revenue-sharing with GTL in 2012.
Vermont	“The department shall accept monies generated by commissions on telephone services, commissary sales, and sales of approved items not available on commissary by the department to inmates at its correctional facilities and shall establish with such monies an inmate recreation special fund. The fund shall be used to provide postage to inmates in a manner consistent with department policy. The fund may be used for costs associated with the oversight and accounting of inmate cash accounts. The fund may be used, at the discretion of the commissioner, to hire persons or purchase services, equipment, and goods to establish or enhance recreation activities for inmates confined in any of the department's facilities, and for voluntary inmate contributions that promote the restoration of crime victims or communities. The inmates . . . may also choose to create a loan fund . . . from which offenders may borrow in order to help them obtain housing upon release from incarceration.” Vt. Stat. Ann. tit. 28, § 816 (2013).	State received \$44,781.29 from revenue-sharing with GTL in 2012.
Virginia	For local correctional facilities: “Each sheriff who operates a correctional facility is authorized to provide for the establishment and operation of a store or commissary to deal in such articles as he deems proper. The net profits from the operation of such store shall be used within the facility for educational, recreational or other purposes for the benefit of the inmates as may be prescribed by the sheriff. The sheriff shall be the purchasing agent in all matters involving the commissary and nonappropriated funds received from inmates. The funds from such operation of a store or commissary and from the inmate telephone services account shall be considered public funds. ” Va. Code Ann. § 53.1-127.1 (2012).	Applies to Counties: State received \$3.2 million from revenue-sharing with GTL in 2012.
West Virginia	“(a) The Commissioner of Corrections shall	State received

State	Statute	Notes*
	<p>establish an inmate benefit fund for each of the institutions under his or her jurisdiction. The inmate benefit fund is a fund held by the institutions for the benefit and welfare of inmates incarcerated in state correctional facilities and for the benefit of victims.</p> <p>(b) . . . Moneys to be deposited into an inmate benefit fund consist of: . . . (3) All proceeds from contracted inmate telephone commissions; . . .</p> <p>(c) The inmate benefit fund may only be used for the following purposes at correctional facilities: (1) Open-house visitation functions or other nonroutine inmate functions; (2) Holiday functions which may include decorations and gifts for children of inmates; (3) Cable television service; (4) Rental of video cassettes; (5) Payment of video license;</p> <p>(6) Recreational supplies, equipment or area surfacing; (7) Reimbursement of employee wages for overtime incurred during open-house visitations and holiday functions; (8) Postsecondary education classes; (9) Reimbursement of a pro rata share of inmate work compensation; (10) Household equipment and supplies in day rooms or units as approved by chief executive officers of institutions, excluding supplies used in the daily maintenance and sanitation of the unit; (11) Christmas or other holidays gift certificates for each inmate to be used at the exchange or commissary; (12) Any expense associated with the operation of the fund; (13) Expenditures necessary to properly operate an automated inmate family and victim information notification system; (14) Any expense for improvement of the facility which will benefit the inmate population that is not otherwise funded; (15) Any expense related to the installation, operation and maintenance of the inmate telephone system; and (16) For restitution of any negative balance on any inmate's trustee account for inmate medical copay, legal and ancillary related postage, and photocopy fees that are due the State of West Virginia, if the balance is uncollectible from an inmate after one calendar year from an inmate's release on parole or discharge date.'</p> <p>W. Va. Code § 25-1-3b (2012).</p>	<p>\$696,374 from revenue-sharing with GTL in 2012.</p>
Wisconsin	<p>"The department shall collect moneys for commissions from telephone companies for contracts to provide telephone services to inmates. . . . The secretary of administration shall do all of the following:</p>	<p>State received \$2.3 million from revenue-sharing with CenturyLink in 2012.</p>

State	Statute	Notes*
	(1) Deposit two-thirds of all moneys collected under this section in the general fund as general purpose revenue-earned. (2) Credit one-third of all moneys collected under this section to the appropriation account [for Adult Correctional Services].” Wis. Stat. § 310.105 (2013).	

* - Revenue information from *Petitioners Comments*, Exhibit E.



Description of Fund Structure

Government entities follow basic fund accounting principles when structuring their financial systems. Each fund is considered to be a separate fiscal and accounting entity with a self-balancing set of accounts. This segregation allows for more accountability over special activities or revenues that are restricted in some fashion. Funds are established based on statutory, regulatory or policy restrictions and limitations imposed by the State of Colorado, the Board of County Commissioners, and/or generally accepted accounting standards.

As a result, the County budget is developed to accommodate its own fund structure. Jefferson County currently has 41 separate funds reported in its *Comprehensive Annual Financial Report (CAFR)*. Of these, the County is required to prepare and adopt an annual budget for 37 County funds (it does not appropriate budget for the Forfeiture, Jeffco Finance Corp Debt and Jeffco Finance Capital Funds); in addition, the Board of County Commissioners, acting as the Board of Directors, is required to prepare and adopt an annual budget for the Meadow Ranch Public Improvement District. As required by statute, each separate fund must balance - that is, total expenditures can not exceed the combined total of current revenues anticipated to be collected plus the amount of available and unrestricted fund balance - and each must be separately monitored to ensure that actual expenditures do not exceed approved appropriations. The County budget is adopted at the fund level each year by the Board of County Commissioners. The following schedules provide a three-year summary of revenues, expenditures and fund balances for each individual fund along with a brief description of the purpose of each fund. Funds included are:

- ❖ GENERAL FUND – (includes Boettcher Mansion, Clerk & Recorder Electronic Filing, Dog Licensing and Public Trustee as sub-funds)

- ❖ SPECIAL REVENUE FUNDS
 - ◆ *Community Development Fund*
 - ◆ *Contingent Fund*
 - ◆ *Forfeiture Fund*
 - ◆ *Inmate Welfare Fund*
 - ◆ *Open Space – Cities Share Fund*
 - ◆ *Road & Bridge Fund*
 - ◆ *Solid Waste Emergency Response Fund*
 - ◆ *Traffic Impact Funds (5 by region)*
 - ◆ *Workforce Development Fund*
 - ◆ *Conservation Trust Fund*
 - ◆ *Developmentally Disabled Fund*
 - ◆ *Head Start Fund*
 - ◆ *Open Space Fund*
 - ◆ *Patrol Fund*
 - ◆ *Social Services Fund*
 - ◆ *Solid Waste Management Fund*
 - ◆ *Wildland Fire Fund*

- ❖ ENTERPRISE FUNDS & COMPONENT UNIT FUNDS
 - ◆ *Airport Fund*
 - ◆ *Library Fund*
 - ◆ *Health & Environment Fund*

- ❖ DEBT SERVICE FUNDS
 - ◆ *Jeffco Finance Corp Debt Service Fund*
 - ◆ *Southeast Sales Tax Debt Service Fund*
 - ◆ *Open Space Debt Service Funds (3 by individual bond series)*

- ❖ CAPITAL PROJECT FUNDS
 - ◆ *Capital Expenditures Fund*
 - ◆ *Open Space Acquisition Fund*
 - ◆ *Jeffco Finance Corp Capital Project Fund*
 - ◆ *Southeast Sales Tax Capital Projects Fund*

- ❖ INTERNAL SERVICE FUNDS
 - ◆ *Employee Benefits Fund*
 - ◆ *Fleet Services Fund*
 - ◆ *Insurance (Risk Management) Fund*
 - ◆ *Facilities & Construction Mgmt. Fund*
 - ◆ *Information Technology Services Fund*
 - ◆ *Workers Compensation Fund*

- ❖ FIDUCIARY FUNDS
 - ◆ *Meadow Ranch Public Improvement District*

**Jefferson County - 2012 Adopted Budget
Summary of Revenues and Expenditures by Fund**

Inmate Welfare Fund - 200				
The Inmate Welfare Fund accounts for monies received from commissions for telephone services and jail commissary sales. These monies are spent for the welfare of incarcerated inmates/detainees.				
Categories	2009 Actuals	2010 Actuals	2011 Adopted	2012 Adopted
Revenues				
Charges for Services	\$ 662,721	\$ 677,877	\$ 674,000	\$ 674,000
Investment Income	30,526	23,602	16,482	16,264
Total Revenues and Transfers In:	\$ 693,247	\$ 701,479	\$ 690,482	\$ 690,264
Expenditures				
Salaries & Benefits	\$ 533,038	\$ 509,347	\$ 596,905	\$ 551,971
Supplies	130,671	131,574	162,508	162,508
Services & Charges	8,130	5,894	58,350	58,350
Interdepartmental	16,282	35,615	18,347	15,235
AMENDED EXPENDITURE CURRENT FY	-	-	52,250	-
Total Expenditures and Transfers Out:	\$ 688,121	\$ 682,430	\$ 888,360	\$ 788,064
Net Change	\$ 5,126	\$ 19,049	\$ (197,878)	\$ (97,800)
Beginning Fund Balance	\$ 1,616,281	\$ 1,621,407	\$ 1,640,456	\$ 1,442,578
Ending Fund Balance	\$ 1,621,407	\$ 1,640,456	\$ 1,442,578	\$ 1,344,778

Open Space Fund - 050				
The Open Space Fund accounts for revenues generated from the ½ percent countywide sales tax, implemented in 1973 and expended for the acquisition, development and maintenance of Open Space land.				
Categories	2009 Actuals	2010 Actuals	2011 Adopted	2012 Adopted
Revenues				
Taxes & Special Assessments	\$ 13,142,872	\$ 18,579,080	\$ 10,241,699	\$ 11,006,846
Intergovernmentals	29,250	29,920	-	-
Charges for Services	244,357	295,739	244,979	247,883
Fines & Forfeitures	11,369	16,315	9,500	9,500
Investment Income	609,752	445,413	333,087	309,012
Rental Income	16,622	16,439	22,612	20,672
Contributions & Donations	3,631	3,568	37,000	17,500
Miscellaneous	51,244	52,874	50,000	50,000
Claims & Judgements	-	6,387	-	-
Intra-County Transfers	389,004	86,000	86,000	86,000
Proceeds From Disposition of Assets	-	-	1,000	1,000
Total Revenues and Transfers In:	\$ 14,498,101	\$ 19,531,735	\$ 11,025,877	\$ 11,748,413
Expenditures				
Salaries & Benefits	\$ 6,863,894	\$ 7,002,263	\$ 7,004,442	\$ 7,229,979
Supplies	409,525	409,791	545,640	546,995
Services & Charges	475,165	628,759	741,983	649,132
Operating Capital	54,469	-	82,500	82,000
Capital Projects & Equipment	3,812,670	1,138,156	2,970,000	5,200,000
Intergovernmental	2,793,213	1,900,446	2,000,000	1,220,000
Interdepartmental	1,740,909	1,810,400	1,819,119	1,898,831
AMENDED EXPENDITURE CURRENT FY	-	-	1,198,105	-
Total Expenditures and Transfers Out:	\$ 16,149,845	\$ 12,889,815	\$ 16,361,789	\$ 16,826,937
Net Change	\$ (1,651,744)	\$ 6,641,920	\$ (5,335,912)	\$ (5,078,524)
Beginning Fund Balance	\$ 32,736,632	\$ 31,084,888	\$ 37,726,808	\$ 32,390,896
Ending Fund Balance	\$ 31,084,888	\$ 37,726,808	\$ 32,390,896	\$ 27,312,372

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE

Senate Bill 778 (Senator Pugh)
 Judicial Proceedings

Correctional Services - Inmate Welfare Fund - Telephone Financial Assistance

This bill requires the Department of Public Safety and Correctional Services (DPSCS) and the managing official of a local correctional facility with an inmate welfare fund to adopt regulations that require a portion of the profits derived from telephone commissions that accrue to the funds to be used for telephone calls that take place between an inmate and the minor child of an inmate. The bill specifies that distributions must be made according to the financial need of an inmate. DPSCS and each local correctional facility must report to the General Assembly by December 31 of each year on the nature and dollar amount of any expenditure from each fund.

Fiscal Summary

State Effect: Special fund revenues to the inmate welfare funds decrease by \$866,600 in FY 2014 and by \$1.2 million annually thereafter. DPSCS can handle the bill’s reporting requirement with existing resources.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
SF Revenue	(\$866,600)	(\$1,155,500)	(\$1,155,500)	(\$1,155,500)	(\$1,155,500)
Expenditure	0	0	0	0	0
Net Effect	(\$866,600)	(\$1,155,500)	(\$1,155,500)	(\$1,155,500)	(\$1,155,500)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill is likely to present some operational and administrative difficulties in most jurisdictions. For some, the monetary losses to the inmate welfare funds may prove significant, and some jurisdictions may need additional staff. However, to the extent that an inmate welfare fund currently exists within a county, most local correctional officials should be able to implement the bill’s requirements with existing resources. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Current Law/Background: Generally, State agencies do not contract directly with telephone service providers. The Department of Budget and Management is responsible for the contracts relating to the use of telephones at all State facilities, including State correctional facilities. However, the inmate payphone contract is considered an Information Technology procurement. As such, the procurement is handled by DPSCS via a competitive sealed proposal process, which takes into consideration both technical and financial aspects of each proposal. The selected proposal must be reviewed and approved by the Department of Information Technology and the Board of Public Works. DPSCS facilities are allowed to retain commissions to support inmate services.

The contract governing inmate calls from DPSCS facilities is structured to be a revenue producing instrument for the agency. The funds are deposited into the inmate welfare funds, special funds in each State correctional facility that are used by DPSCS for items benefiting the inmate population, including education and vocational training, hygienic supplies for indigent inmates, salaries relating to clergy and medical staff, special recreational equipment and supplies, support of the inmate grievance process, and inmate legal support. Inmate telephone commissions deposited into the funds totaled nearly \$5.0 million in fiscal 2012. The inmate welfare funds also receive about \$2.0 million annually from commissary activities, vending machines, and other nontelephone related sources; in fiscal 2012, the total was \$2.3 million.

Chapter 142 of 2002 (SB 271) authorized the establishment of an inmate welfare fund in each local correctional facility. Each fund is a special, continuing, nonlapsing fund that may be used only for goods and services that benefit the general inmate population, as defined by regulations adopted by the managing official of each facility. Each fund consists of profits derived from the sale of goods through the commissary operation and telephone and vending machine commissions and money received from other sources. Any investment earnings of a fund must be credited to the fund. The county chief financial officer is required to pay out money from each fund as approved by the county budget. In Dorchester County, pay outs may also be done by the managing official of the local correctional facility.

Money from the State general fund or a county's general fund, including any federal funds, may not be transferred by budget amendment or otherwise to a county's inmate welfare fund.

State Fiscal Effect: In fiscal 2012, the inmate welfare funds received \$4,958,265 from commissions on inmate telephone calls. DPSCS assumes that 4,938 qualifying inmates, with one minor child, make two calls per month, lasting 15 minutes each. Based on that information, and assuming a collect call local rate of 65 cents per minute, the bill reduces deposits to the funds by \$96,291 per month, and by \$1,155,492 per year. In fiscal 2014, due to the bill's October 1, 2013 effective date, special fund revenues decrease by \$866,619. Actual decreases may vary depending on the number of eligible inmates, the number and duration of calls, and the departmental methodology used to determine financial need.

Local Fiscal Effect: In 2012, the Maryland Correctional Administrators Association (MCAA) surveyed local correctional facilities regarding inmate telephone commissions and whether the profits from the commissions are deposited to an inmate welfare fund, a general fund, or another fund. Sixteen of the 23 counties responded, with 11 showing deposits to an inmate welfare fund. Ten of the jurisdictions (Allegany, Caroline, Dorchester, Garrett, Harford, Queen Anne's, St. Mary's, Talbot, Washington, and Wicomico counties) reported sending 100% of profits to an inmate welfare fund. Five jurisdictions (Baltimore, Calvert, Carroll, Charles, and Prince George's counties) reported sending 100% of profits to the general fund. Frederick County reported a 50/50 share between the general fund and an inmate welfare fund. It is possible that some of the jurisdictions that did not respond to the MCAA survey also have inmate welfare funds.

Montgomery County indicates that it is the only county in the State that accepts no commissions for its inmate telephone program. Under the bill, Montgomery County and any other county without an inmate welfare program would not have a fund to draw upon to be used for telephone calls that take place between an inmate and the minor child of an inmate.

Harford County estimates that the bill results in decreased telephone revenues for its inmate welfare fund of about \$27,800 in fiscal 2014, growing to about \$37,200 by fiscal 2018. Wicomico County estimates commission losses of only \$2,000 annually, but reports that it needs to hire one additional correctional officer to handle verification and reporting responsibilities.

It is likely that the bill presents some operational and administrative difficulties for correctional facilities in most jurisdictions. However, to the extent that an inmate welfare fund currently exists within the county, most local correctional officials should be able to implement the bill's requirements with existing resources.

Additional Information

Prior Introductions: Similar bills were introduced in 2012 addressing only local correctional facilities. SB 910 of 2012 received a hearing by the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1147, received a hearing in the House Judiciary Committee but was subsequently withdrawn.

Cross File: Although HB 1138 (Delegate Carter, *et al.* – Judiciary) is identified as a cross file, it is different.

Information Source(s): Harford and Wicomico counties, Maryland Correctional Administrators Association, Baltimore City, Department of Public Safety and Correctional Services, Department of Legislative Services

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Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

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Proceeding

Name	Subject
12-375	Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 et al.

Contact Info

Name of Filer: MARTHA WRIGHT, ET AL., D.C.
PRISONERS' LEGAL SERVICES
PROJECT, INC., CURE, PRISON POLICY INITIATIVE & THE
CAMPAIGN FOR PRISON PHONE JUSTICE
Email Address: LEE.PETRO@DBR.COM
Attorney/Author Name: LEE G. PETRO
**Lawfirm Name (required if represented by
counsel):** DRINKER BIDDLE & REATH, LLP

Address

Address For: Law Firm
Address Line 1: 1500 K STREET, N.W.
Address Line 2: SUITE 1100
City: WASHINGTON
State: DISTRICT OF COLUMBIA
Zip: 20005
+4: 1209

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