



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

December 20, 2013

Submitted Online Only

The Honorable Tom Wheeler, Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Comment in the Matter of Rates for Inmate Calling Services,
WC Docket No. 12-375 (Further Notice of Proposed Rulemaking)**

Dear Chairman Wheeler:

The Human Rights Defense Center (HRDC), on behalf of the Campaign for Prison Phone Justice and in conjunction with Campaign co-coordinators Working Narratives and the Center for Media Justice / Media Action Grassroots Network (MAG-Net), submits this comment concerning the FCC's Further Notice of Proposed Rulemaking related to Inmate Calling Services (ICS).

First, we commend the Commission for its landmark decision to enact reforms related to ICS services, including rate caps and safe harbor rates for interstate prison phone calls, to ensure that ICS rates are just, reasonable and fair. We applaud the fact that the FCC has required ICS rates to be cost-based, and that commissions can no longer be recovered as a cost of ICS services.

In April 2011, HRDC's monthly publication, *Prison Legal News*, published a detailed exposé on the prison phone industry that included state-by-state interstate ICS rates as well as commission percentages and amounts, based on 2007-2008 data. We have since published an updated report in the December 2013 issue of *Prison Legal News* based on 2012-2013 data that includes state-by-state interstate, intrastate interLATA and local ICS rates, plus commission percentages and payments nationwide. This updated report, which includes new data analysis plus comparisons with our previously-reported ICS data, is attached hereto as Exhibit A.

When the Commission's final order on WC Docket No. 12-375 goes into effect it will impact 30 Departments of Corrections (DOCs) that currently charge more than the rate cap established for collect interstate prison phone calls (\$3.75 based on a 15-minute call); the same number of DOCs currently charge more than the cap for debit and/or prepaid interstate calls (\$3.15 based on a 15-

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minute call). Additionally, at least 41 DOCs charge collect interstate rates above the safe harbor rates established by the Commission (\$2.10 based on a 15-minute call), while 40 charge more than the safe harbor rates for debit and/or prepaid interstate calls (\$1.80 based on a 15-minute call). The fact that so many DOCs charge interstate ICS rates above the caps set by the FCC illustrates why the Commission's order is necessary to ensure just and reasonable rates.

As set forth below, we submit that the Commission's rate caps and other reforms applicable to interstate ICS calls should be extended to intrastate calls. We also provide comments on other issues addressed in the Further Notice of Proposed Rulemaking, including legal authority for the Commission's regulation of intrastate ICS rates, ancillary charges and quality of service.

Importance of ICS Reforms

Phone calls are the primary form of communication for prisoners who are housed at facilities located so far from their families that in-person visits are impracticable. This is of particular importance to federal prisoners, who can be housed at any Bureau of Prisons facility nationwide. Further, according to a recent report by Grassroots Leadership, "Locked Up and Shipped Away," over 10,000 state prisoners from Vermont, Hawaii, California and Idaho are housed in out-of-state facilities, often thousands of miles from their homes and families.¹ Access to affordable phone calls is also vitally important for immigrants held in detention.

Research has consistently found that prisoners who maintain close connections with their families while incarcerated are less likely to commit crimes and return to prison following their release. Even ICS providers acknowledge that maintaining family ties has a rehabilitative effect on prisoners and results in reduced recidivism rates. For example, according to Global Tel*Link (GTL): "Studies and reports continue to support that recidivism can be significantly reduced by regular connection and communications between inmates, families and friends – 13% reduction in felony reconviction and a 25% reduction in technical violations." Telmate president Kevin O'Neil agreed, stating, "The more inmates connect with their friends and family members the less likely they are to be rearrested after they're released."²

However, excessively high prison phone rates continue to pose a barrier to communication between prisoners and their family members and children. As the FCC noted in its final order, an estimated 2.7 million children in the United States have an incarcerated parent.³

Current ICS Data

When considering the need for additional ICS reforms as described in the Further Notice of Proposed Rulemaking, the below examination of current prison phone-related data should be useful. More detailed information and analysis is included in Exhibit A.

¹ <http://grassrootsleadership.org/locked-up-and-shipped-away>

² Petitioners' Opposition to Petition for Stay of Report and Order Pending Appeal, WC Docket No. 12-375, Exhibit D, page 6 (October 29, 2013); www.telmate.com/oregon-doc-installatio

³ www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Economic_Mobility/Collateral%20Costs%20FINAL.pdf

Interstate ICS Rates

Alabama, Alaska, Georgia and Minnesota charge the highest collect interstate rates for prison phone calls, at \$17.30 for a 15-minute call. Other states with exceptionally high interstate rates include Ohio, which charges \$16.97 for a collect 15-minute call, and Idaho, which charges \$16.55. [See Exhibit A, page 17].

Based on a 15-minute interstate ICS call, thirteen states charge over \$10.00 for collect calls, eight charge more than \$10.00 for prepaid calls and seven charge over \$10.00 for a debit call. Currently, the average rates for 15-minute interstate ICS calls are \$7.18 for collect, \$6.05 for prepaid and \$5.56 for debit calls, based on state DOC data.

In terms of the lowest interstate rates, three states charge less than \$1.00 for collect, prepaid and debit calls. New Mexico charges a flat \$.65 for collect and debit calls, plus a flat \$.59 for prepaid calls. New York charges \$.048 per minute for all types of calls, or \$.72 for a 15-minute call. The rates in South Carolina include a flat \$.99 for a collect call and flat \$.75 for prepaid/debit calls.

Intrastate ICS Rates

With respect to intrastate interLATA rates, based on a 15-minute prison phone call, eleven states currently charge over \$5.00 for collect calls, seven charge more than \$5.00 for a prepaid call and five charge over \$5.00 for debit calls. The highest intrastate ICS rates are in Delaware, which charges \$10.70 for 15-minute calls of all types. Other high intrastate rates include \$8.40 for a 15-minute collect call in South Dakota, \$6.75 for collect, debit and prepaid calls in Alabama, and \$6.45 for a collect call in Minnesota. [See Exhibit A, page 19].

The current average rates for 15-minute intrastate interLATA prison phone calls are \$3.90 for collect, \$3.41 for prepaid and \$3.42 for debit calls, based on data from state DOCs.

Four states charge less than \$1.00 for a 15-minute intrastate call for collect, debit and prepaid calls: New Mexico (flat \$.65 for collect and debit calls, and flat \$.59 for prepaid); Rhode Island (flat \$.70 for collect and prepaid, and flat \$.63 for debit calls); New York (\$.72 for all types of calls based on a rate of \$.048 per minute); and South Carolina (flat \$.99 for collect and flat \$.75 for debit and prepaid calls).

Local ICS Rates

For local ICS calls, the highest rates (based on a 15-minute call) are \$5.70 for all categories of calls in Mississippi; \$5.30 for collect and prepaid calls and \$4.50 for debit calls in Maine; \$5.00 for collect calls in Colorado; and \$4.95 for all types of calls in New Jersey. Nine states charge more than \$3.00 for a 15-minute local ICS call for all categories of calls.

Average rates for 15-minute local ICS calls are currently \$2.30 for collect, \$2.08 for prepaid and \$1.98 for debit calls, based on data from state DOCs.

Twelve states provide local ICS calls for \$1.00 or less for all types of calls, based on a 15-minute call – including Alaska, which is the only state that offers free local calls. Other than Alaska, the lowest local ICS rates include a flat \$.50 in Florida for all calls; a flat \$.50 for collect and prepaid calls in North Dakota plus \$.05 per minute for debit calls (\$.75 for a 15-minute call); a flat \$.66 for collect, \$.59 for prepaid and \$.65 for debit calls in New Mexico; a flat \$.70 for collect and prepaid calls and \$.63 for debit calls in Rhode Island; a flat \$.70 for collect calls and \$.50 for prepaid and debit calls in Nebraska; and a flat \$.65 for collect calls and \$.50 for prepaid and debit calls in Maryland. [See Exhibit A, page 21].

ICS Commissions

The vast majority of state DOCs continue to receive commission kickbacks from their ICS providers, usually in the form of a percentage of revenue generated from prisoners' phone calls. Based on full or partial commission data from 49 states, prison phone companies paid at least \$123.3 million in ICS kickbacks to DOCs in 2012. [See Exhibit A, page 23]. Notably, this does not include commissions generated from phone services at federal prisons, jails, private prisons, juvenile facilities and immigration detention centers.

Current state DOC commission rates range from a low of 7% in Alaska to a high of 76% in Illinois (although Maryland receives an 87% commission on collect ICS calls). The average commission rate for states that have a percentage-of-revenue commission is 47.79%, based on 2012-2013 data. This represents an increase of over five percent from the average commission rate of 41.9% in 2007-2008.

Eight states have banned ICS commissions, mostly through legislation: California, Michigan, Missouri, Nebraska, New Mexico, New York, Rhode Island and South Carolina.

Not surprisingly, since prison phone companies do not have to recoup commission payments from the phone rates charged in non-commission states, those states have some of the lowest ICS rates in the nation. For instance, of the ten lowest prison phone rates for interstate collect, prepaid and debit calls, five are in states that have banned commissions. Of the ten lowest intrastate rates, six are in states that do not accept commissions, while of the ten lowest local rates, four are in states that prohibit commissions.

ICS Providers

Three ICS providers – GTL, Securus and CenturyLink – control approximately 90% of the state DOC market, either directly or through their subsidiaries. This represents a slight increase since HRDC reported prison phone data for 2007-2008; at that time, GTL, Securus and CenturyLink or their subsidiaries had contracts with 43 (86%) of the state DOCs.

Fifteen DOC phone contracts changed hands over the five-year period from 2007-2008 to 2012-2013; however, most of the states (70%) continued to contract with the same company, and when ICS contracts change it is usually from one of the three largest prison phone providers to another. This fairly low rate of contract turnover, and the fact that just three firms dominate the market, indicates that the prison phone industry is an oligopoly with little actual competition.

ICS Contracts

As HRDC noted in its March 25, 2013 comment, the initial terms of prison phone contracts for three states – Connecticut, Texas and Arizona – extend for 7 years. Such long-term contracts ensure that prison phone companies maintain a monopoly on providing ICS services within state DOCs for prolonged periods of time. Prison phone contracts continue to have lengthy terms.

For example, when Florida rebid its ICS contract in 2013, the initial contract term was for five years with five one-year renewal options. Similarly, the Illinois DOC's recent contract with Securus, which went into effect in September 2012, has an initial term through June 2015 plus an option to renew for up to six more years. And when Oklahoma entered into an ICS contract with VAC (GTL) in 2011, the initial term was for one year – with nine one-year renewals.

Additionally, our April 2011 report on the prison phone industry described how some state DOCs evaluate bids for ICS contracts based primarily on the highest commission rate, in order to maximize their kickback revenue. That practice also continues.

According to the Illinois DOC's 2012 invitation for bids for its prison phone contract, the commission percentage was given the greatest weight among factors used to evaluate the bids – 55%, or 550 of 1,000 total available “price points.”

Likewise, when the Oklahoma DOC asked for a final best offer for bids on the state's ICS contract in 2011, it specified, “The final award of this contract will be based upon the highest revenue sharing offered to DOC for the life of the contract.”

These examples indicate that ICS commissions and the lucrative revenue they generate for corrections agencies remain a compelling factor when selecting prison phone providers.

Necessity for Intrastate Rate Reform

The need for reform of intrastate ICS rates, including rate caps and safe harbor rates similar to those imposed by the Commission on interstate rates, is manifest. One important indicator as to why the Commission needs to regulate intrastate prison phone services is the number of states with *in-state* rates that exceed the FCC's cap and safe harbor rates for *interstate* calls.

At least 23 states charge intrastate rates and 8 states have local rates above the FCC's cap for collect interstate calls (\$3.75 for a 15-minute call). Additionally, at least 23 states have intrastate rates and 9 states charge local rates above the cap for debit and/or prepaid interstate calls (\$3.15 for a 15-minute call), based on 2012-2013 data.

With respect to safe harbor rates, at least 39 states have intrastate rates and 23 states charge local rates that exceed the safe harbor rate established by the Commission for collect interstate calls (\$2.10 for a 15-minute call); similarly, 38 states have intrastate rates and 22 charge local rates above the safe harbor rate for prepaid and/or debit interstate calls (\$1.80 for a 15-minute call).

This indicates that unless rate caps are extended to intrastate and local calls, states can continue to charge in-state rates that far exceed the caps and safe harbor rates the FCC has established for interstate ICS calls. Examples of the disparities that currently exist between capped interstate rates and non-capped intrastate rates include the Delaware DOC, which charges \$10.70 for a 15-minute intrastate call, and the Mississippi DOC, which charges \$5.70 for a 15-minute local call. [See Exhibit A, pages 19, 21].

Further, the need for reform of intrastate ICS rates is evidenced by the fact that the vast majority of ICS calls are in-state calls; only around 15% of prison phone calls are interstate. Thus, absent regulation of intrastate ICS rates by the Commission, the vast majority of prisoners' families and loved ones will continue to be subject to inflated, excessive prison phone rates on the intrastate level – which is not just, reasonable or fair. Indeed, it would be grossly unfair and arbitrary if prisoners have increased phone contact with their children who live in *another* state, due to the rate caps and other reforms implemented by the Commission for interstate calls, while prisoners with children who reside in the *same* state, who do not have the benefit of such reforms, suffer less phone contact with their children due to unregulated intrastate ICS rates.

Note that the families of prisoners who make intrastate calls are sometimes just as affected by high ICS rates as families of prisoners who make interstate calls. For example, Illinois prisoner Chadwick Wallace wrote in a June 25, 2012 comment filed on CC Docket No. 96-128: “My family lives in Alton, IL which is 250+ miles away from my facility, which is located in Joliet, IL. It costs over \$10.00 for me to make one phone call home, and due to financial hardship, I do not get to call home much these days.” [See Exhibit B].

In another comment filed on CC Docket No. 96-128, Earl Harris, a prisoner housed “at SCI-Greene on the western side of Pennsylvania,” wrote that “it costs \$5.15 for me to make a fifteen minute phone call to my family and friends. My grandmother [who resides in Philadelphia] is ninety one years old and her age prevents her from visiting me, she suffers from [] a severe case of arthritis and that prevents her from writing me, my one and only source of communication with my grandmother is to call her but that is very difficult due to the high prices of the [ICS] system here in Pennsylvania’s Department of Corrections.” [See Exhibit C].

Legal Authority for Intrastate Rate Regulation

The legal authority for the Commission to regulate intrastate ICS rates is based on the plain language of 47 U.S.C. § 276(b), which grants the FCC authority to “prescribe regulations that establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call....” Section 276(d) specifies that payphone services include “the provision of inmate telephone service in correctional institutions, and any ancillary services.”

Further, pursuant to 47 U.S.C. § 201(b), “All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.” In addition, “The Commission may prescribe such rules and regulations as may

be necessary in the public interest to carry out the provisions of this chapter.” Although 201(b) applies to “interstate and foreign” telecom services, the requirement for just and reasonable rates is equally applicable to intrastate rates as part of the “fair compensation” that ICS providers are entitled to receive. Consider that fair compensation is not limited to what is fair to the providers but also what is fair to *consumers* – i.e., those who pay the costs of ICS calls.

As the Congressional Black Caucus remarked in its April 22, 2013 comment submitted on WC Docket No. 12-375: “A plain reading of §§ 276 and 201 of the Act indicates that the FCC has broad authority to regulate both interstate and intrastate inmate calling services to ensure that the rates of inmate calling services are reasonable.”

The Caucus added, “The FCC has historically left the regulation of intrastate inmate calls to the states, particularly non-inmate calls, and some may read the general guiding provisions in § 152 of the Act to bar FCC jurisdiction over intrastate calls. However, the plain language of §§ 276 and 201 leaves no doubt that, as to inmate calls, the FCC’s jurisdiction covers both interstate and intrastate telephone calls. Moreover, Congress included a preemption clause (§ 276) to further clarify FCC jurisdiction. This section provides, ‘To the extent that any State requirements are inconsistent with the Commission’s regulations, the Commission’s regulations on such matters shall preempt such State requirements.’”

Thus, §§ 276(b) and 201(b) give the Commission broad authority to regulate both intrastate and interstate ICS rates, and to ensure that such rates are just, reasonable and fair while providing fair compensation for prison phone service providers. Further, the FCC has authority to preempt state requirements inconsistent with the Commission’s regulations pursuant to § 276(c).

Based on the foregoing, HRDC submits that the Commission has the legal authority to regulate intrastate ICS phone rates, which encompasses the authority to impose rate caps and implement other measures to ensure just, reasonable and fair intrastate rates.

Lack of Regulation by State Public Utilities Commissions

Some states lack regulation of intrastate ICS rates. For example, intrastate ICS rates in Colorado, Tennessee and Virginia are wholly or partly unregulated. In 1998, the Colorado Supreme Court affirmed that the state’s Public Utilities Commission lacked jurisdiction over the Colorado DOC with respect to certain ICS charges, nor could it regulate the DOC’s ICS provider because the charges at issue were related to a deregulated service.⁴

In Tennessee, state legislation has barred the Tennessee Regulatory Authority (TRA) – the state’s equivalent of a public utilities commission – from regulating in-state telecom providers that opt for market regulation. Pursuant to T.C.A. § 65-5-109(m), “Upon election of market regulation by a certificated provider, the provider shall be exempt from all authority jurisdiction, including, but not limited to, state-based regulation of retail pricing or retail operations....”

⁴ *Powell v. Colorado Public Utilities Commission*, 956 P.2d 608 (Colo. 1998).

According to TRA executive director Earl Taylor, intrastate prison phone rates in Tennessee are unregulated since the DOC's ICS provider, Global Tel*Link, opted for market regulation. This is ironic because there is little market "regulation" in the prison phone industry; three providers control around 90% of the state DOC market for ICS services, and once a prison phone company wins an ICS contract it enjoys a monopoly on the provision of phone services during the contract term – which, as noted previously, can extend for up to a decade. Thus, the notion of "market regulation" with respect to ICS providers is a misnomer, moreso when it is used to justify the lack of intrastate regulation by state public utilities commissions.

And in Virginia, after the State Corporation Commission (SCC) held in 2001 that "collect call service from state prison facilities is not being offered on a competitive basis," the legislature amended Virginia Code § 56-234(B) to remove the SCC's jurisdiction over telecom contracts with government agencies, including the DOC's ICS contract.⁵ Senator Thomas Norment, who sponsored the bill to eliminate the SCC's jurisdiction, reportedly received almost \$3,000 in campaign contributions from MCI Worldcom, the state's ICS provider at the time.⁶

Section 56-234(B) states, "It shall be the duty of every public utility to charge uniformly therefor all persons, corporations or municipal corporations using such service under like conditions.... The charge for such service shall be at the lowest rate applicable for such service in accordance with schedules filed with the Commission pursuant to § 56-236." However, "[N]othing contained herein ... shall apply to (i) schedules of rates for any telecommunications service provided to the public by virtue of any contract with, (ii) for any service provided under or relating to a contract for telecommunications services with, or (iii) contracts for service rendered by any telephone company to, the state government or any agency thereof, or by any other public utility to any municipal corporation or to the state or federal government."

The amendment to § 56-234(B) was challenged, but in March 2003 the Virginia Supreme Court held – in an unpublished ruling – that the statute precluded the SCC from exercising jurisdiction over "contracts for services rendered by any telephone company to the state government."⁷

Therefore, absent regulatory action by the FCC, in some states there is a lack of regulation of intrastate ICS phone rates – and this problem will be exacerbated as more states move toward deregulation of in-state telecom services.

According to a report by the National Regulatory Research Institute, "Between 2010 and April 30, 2012, 21 state legislatures enacted laws that limit what [Public Utilities Commissions] can regulate. Nine of these states severely limited or completely eliminated COLR obligations and the requirement that carriers provide a tariffed basic local service product.... As of the end of April 2012, deregulation legislation was pending in an additional 14 states." The report further stated that "Many of the new laws cite competition as the reason for deregulation"; however, as noted previously, the ICS market is largely non-competitive.⁸

⁵ <http://www.etccampaign.com/progress.php>

⁶ <http://groups.yahoo.com/neo/groups/patrickcrusade/conversations/topics/21505?var=1>

⁷ *MCI WorldCom Network Services, Inc., v. Jones*, Record Nos. 021262, 021247 and 020859 (Vir. 2003).

⁸ "The Year in Review: The Status of Telecommunications Deregulation in 2012" (National Regulatory Research Institute, June 2012); available at: <https://prodnet.www.neca.org/publicationsdocs/wwpdf/61912nrri.pdf>

Interstate and Intrastate Rate Parity

Lastly, it should be noted that almost half the states currently charge the same rates for interstate ICS calls and intrastate interLATA calls. This indicates that there is little difference in the cost between the provision of intrastate vs. interstate calls. Twenty-two states have collect, prepaid and debit rates for interstate ICS calls that are identical to collect, prepaid and debit rates for intrastate interLATA calls, respectively. In fact, at least 8 states have identical collect, prepaid and/or debit rates for interstate, intrastate interLATA *and* local calls: IL, IN, MS, MT, NJ, NY, OK and OR. [See Exhibit A, pages 17, 19 and 21].

This parity between interstate and intrastate prison phone calls indicates that ICS providers are able to provide in-state and interstate calling services at the same rates (and thus presumably the same costs), and that regulation of intrastate rates by the Commission – including an all-distance rate cap – would therefore not impose an unfair burden on prison phone companies.

Ancillary Charges

A report by the Prison Policy Initiative released in May 2013, titled “Please Deposit all of Your Money: Kickbacks, Rates and Hidden Fees in the Jail Phone Industry,” examined ancillary ICS charges in detail.⁹ Most prison phone companies impose fees to fund prepaid and debit accounts using a credit card; for instance, the report notes that ICS providers “charge up to \$9.50 to pay over the internet, up to \$10 to pay by phone and up to \$12.45 to pay via Western Union.”

As HRDC argued in its March 25, 2013 comment, if such fees are not regulated, ICS providers could circumvent the Commission’s rate caps “by simply increasing the extra fees or adding new account-related fees that effectively raise the overall costs of ICS calls.” Revenue from ancillary fees, which are not subject to commissions, goes directly to ICS providers; thus, providers have an incentive to maximize fees as a means of maximizing their non-commissionable income.

For example, after the FCC voted to cap interstate prison phone rates in August 2013, Securus raised its processing fee for credit card payments made by phone from \$7.95 to \$9.95; it also increased its monthly Wireless Administration Fee from \$2.99 to \$3.99. The company added a State Cost Recovery Fee, which may apply “as a per-call surcharge of up to five percent (5%) and associated applicable taxes” for intrastate calls, plus a Location Validation Fee, which may apply “as a per-call surcharge of up to four percent (4%) and associated applicable taxes” for calls made from facilities that use certain ICS security features.¹⁰ As an example of the many extra fees that ICS providers charge, see Exhibit D (from the Delaware DOC’s contract).

Due to the excessive and abusive nature of ancillary fees charged by ICS providers, the FCC should utilize close scrutiny when determining whether such fees are cost-based, and limit or prohibit ancillary charges that are not. The Commission’s authority to regulate ancillary fees is set forth in § 276(d), which specifies that payphone services include “the provision of inmate telephone service in correctional institutions, and any ancillary services.” Fees related to the management of ICS phone accounts fall within the scope of “ancillary services.”

⁹ <http://www.prisonpolicy.org/phones/pleasedeposit.html>

¹⁰ <https://securustech.net/ac-terms-and-conditions>

In addition, ancillary charges can be considered an inherent part of the cost of ICS services and thus construed as a portion of ICS phone rates. For example, before a prisoner can make a debit ICS call, funds must be placed on their debit phone account. The fee to fund the account (e.g., a \$5.95 fee to place \$25 on the account using a credit card) results in less money available to pay for ICS calls, which effectively *increases* the per-minute rate. Using this example, if a prisoner places \$25 on his debit account with no fee to fund the account, and calls cost \$.25 per minute, he could make calls totaling 100 minutes. However, if a \$5.95 fee is charged to deposit \$25 into the account (resulting in a balance of \$19.05), he could make calls totaling only 76.2 minutes – which equates to an effective ICS rate of \$.328 per minute.

Quality of Service for ICS

Numerous commenters to CC Docket No. 96-128 and WC Docket No. 12-375 cited problems with the quality of ICS calls. Such problems add insult to injury, since consumers of ICS calls typically pay excessive phone rates for low-quality service yet have no other alternative because ICS providers enjoy a monopoly on prison phone services for a given facility or prison system pursuant to their exclusive contracts with corrections agencies. Absent other options, consumers cannot take their business to another provider that offers higher quality service – which again illustrates the fictional notion of competitive “market regulation” in the ICS context.

Quality issues noted by prisoners and ICS call recipients include poor line quality, dropped calls that necessitate call-backs (thus having to pay another connection charge) and inaccurate billing by ICS providers. According to a July 13, 2012 comment filed by Anna Lednum, whose son is incarcerated in Massachusetts, the voice quality is “always very poor.” The “volume [is] weak with a ‘cave’ effect often during calls. The words are often garbled and his sentences are obliterated or interrupted by static, clicking and announcements.” Mrs. Lednum further wrote that “occasionally our call is simply dropped/cut off, or ended one or two minutes early,” and “[d]ue to the poor phone service, often we must drop a call and try again.... Having to repeat the call is expensive, and especially troublesome when due to Poor Service.” She also stated that “[v]ery frequently erroneous remaining debit amounts are quoted; this results in difficulty budgeting and replenishing [her son’s] phone fund in a timely manner.” [See Exhibit E].

In a February 21, 2013 comment filed on WC Docket No. 12-375, Florida prisoner Antonio Hernandez wrote concerning his frustration with dropped calls. “[O]ver time my calls have been dropped quite frequently after only like two minutes. I feel that is GTL doing it on purpose to recharge the \$1.25-\$1.50 first minute fee? And yes, they charge that when the call is dropped and I call right back.” [See Exhibit F].

Poor voice quality and dropped calls are not limited to prisoners and their families; they also affect communication between prisoners and their legal counsel. Many attorneys who represent prisoners at federal, state and county facilities experience problems when trying to communicate with their clients by phone. Patricia Garin, with the law firm of Stern, Shapiro, Weisberg and Garin, LLP in Massachusetts, voiced her concerns in an April 20, 2010 affidavit: “Our office receives between approximately 40 and more than 70 telephone calls per month from clients

in Massachusetts correctional institutions.... The sound quality of telephone calls received from incarcerated clients varies.... 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 ... versus one in six or seven problem calls in the office.”

She added, “With respect to dropped or cut-off calls, I had a similar experience: calls at home on my personal cellular phone from incarcerated clients ... 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.”¹¹ [See Exhibit G].

Patricia C. Voorhies, Managing Director of Clinical and Experimental Education at Northeastern University in Boston, shared similar experiences in a May 3, 2010 affidavit. She wrote: “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.”¹² [See Exhibit H].

Beverly Chorbajian, another Massachusetts attorney, stated in a May 4, 2010 affidavit that based on her conservative estimate, “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.”¹³ [See Exhibit I].

Additionally, HRDC Associate Director Alex Friedmann receives phone calls from prisoners housed in Tennessee state prisons. “The calls are uniformly of poor quality,” he states. “The quality issues often relate to the low sound volume of the ICS system, which makes it difficult to hear the caller even when I maximize the volume level on my phone.”

Notably, the experiences of Mrs. Lednum, Mr. Hernandez, Ms. Garin and Ms. Chorbajian are not unusual or atypical with respect to dropped calls or calls that are terminated due to alleged three-way connections.

As just one example, the Florida Public Service Commission (PSC) found in 2008 that TCG Public Communications, a subsidiary of AT&T Communications of the Southern States, had improperly disconnected calls made by prisoners at the Miami-Dade Pretrial Detention Center due to a faulty system that incorrectly detected three-way connections. Each time a call was improperly disconnected and the prisoner called back, the recipient incurred another connection

¹¹ Reply Comments of Martha Wright, et al., WC Docket No. 12-375, Exhibit A-30 (April 22, 2013).

¹² *Ibid*, Exhibit A-29.

¹³ *Ibid*, Exhibit A-24.

charge of \$1.75 to \$2.25. The PSC estimated that the faulty three-way call detection software resulted in \$6.3 million in improper charges over a six-year period, and found that TCG was aware of the problem but failed to correct it.

The PSC further held that TCG should be assessed a penalty for “willful violation” and “refusal to comply” with Rule 25-24.515(21), Florida Administrative Code, which prohibits terminating prisoner calls “until after a minimum elapsed time of ten minutes.” PSC officials determined that TCG “had the ability to and did not change the three-way detection software’s sensitivity levels at its discretion.” TCG was acquired by Global Tel*Link in 2005.

Although the PSC initially recommended that TCG pay \$6.3 million in refunds to consumers who had been overcharged, that recommendation was later dropped. Rather, the PSC approved a \$1.25 million fine, which was paid by TCG on September 30, 2009. The fine reverted to the State of Florida; call recipients who were overcharged due to the improperly disconnected ICS calls resulting from TCG’s faulty software received no compensation.¹⁴

Thus, with respect to dropped calls, as stated in HRDC’s March 25, 2013 comment, we support a protocol whereby if a call is dropped or ends unexpectedly before the expiration of the maximum duration of the call due to no fault of the calling parties, and a prisoner calls the same number again within a specified period of time (such as 2 to 3 minutes), then the connection charge for the second call is automatically waived. We oppose protocols in which call recipients must file a refund request for connection charges incurred when subsequent calls are made after a call is dropped, as this places the burden on the call recipient rather than the ICS provider.

Additionally, due to state-level deregulation, issues related to quality of service increasingly are being removed from the jurisdiction of state public utilities commissions. For example, based on a 2012 report by the National Regulatory Research Institute, “One of the key components of the deregulation legislation enacted between 2010 and April 2012 is the elimination of quality-of-service metrics and oversight. Thirteen state legislatures eliminated quality-of-service oversight as part of the legislation passed during this timeframe.” Further, “In states where quality-of-service regulation has been eliminated, the commission’s role in responding to customer complaints regarding billing, installation, and other issues has also been diminished.”¹⁵

Based on the foregoing, HRDC submits that it is necessary for the Commission to promulgate minimum quality of service standards for ICS providers, given 1) the consistent and repeated quality complaints expressed by prisoners and ICS call recipients, 2) the history of abuse by ICS providers relative to dropped calls, 3) deregulation on the state level that bars public utilities commissions from addressing service quality issues, and 4) the lack of alternatives available to consumers who want to switch to a different service provider due to quality issues but are unable to do so due to the monopoly model of ICS services within a facility or prison system. Therefore, national standards are necessary in regard to quality of service for prison phone calls.¹⁶

¹⁴ Florida Public Service Commission, Docket No. 060614-TC.

¹⁵ “The Year in Review: The Status of Telecommunications Deregulation in 2012” (National Regulatory Research Institute, June 2012); available at: <https://prodnet.www.neca.org/publicationsdocs/wwwpdf/61912nrri.pdf>

¹⁶ *Cf.*, “Evaluating Telecommunications Service Quality” (National Regulatory Research Institute, February 2011); available at: www.nrri.org/documents/317330/02274032-4254-40d2-8831-e5f71611e03c

ICS for the Deaf and Hard of Hearing Community

HRDC endorses and adopts the comment filed by Helping Education to Advance the Rights of the Deaf (HEARD) on WC Docket No. 12-375 in response to the Further Notice of Proposed Rulemaking, relative to ICS for deaf and hard of hearing prisoners and those with whom they communicate. Specifically, we endorse and adopt HEARD's comment concerning the provision of videophones, captioned telephones, TTYs and other auxiliary aids for prisoners who are deaf and hard of hearing, and the need to ensure that rates charged for such accommodations do not exceed the rates charged for ICS for non-deaf or hard of hearing prisoners.

Regulation of Non-voice Communication Services

HRDC endorses and adopts the comment filed by the Prison Policy Initiative (PPI) on WC Docket No. 12-375 in response to the Further Notice of Proposed Rulemaking, with respect to non-voice-based methods of communication in prisons, jails and other detention facilities. Specifically, we endorse and adopt PPI's comment regarding the need for the Commission to regulate, to the extent possible, the provision of non-voice communication services by ICS providers, including fee-based video visitation and email services.

Conclusions and Recommendations

Based on HRDC's extensive research into ICS services, and data obtained from state DOCs and other agencies concerning current ICS contracts, phone rates, calling options and commissions, it is our conclusion that:

- Intrastate ICS calls, like interstate calls before the Commission implemented rate caps and safe harbor rates, result in excessive costs that place a financial burden on prisoners and their family members, who are often unable to afford the high costs required to maintain phone contact on a regular basis.
- Almost half the state DOCs currently charge intrastate ICS rates above the rate caps established by the Commission for interstate ICS calls, and almost 40 states charge intrastate ICS rates above the safe harbor rates established by the Commission for interstate ICS calls.
- The Commission has legal authority for intrastate ICS rate regulation.
- Most ICS calls are intrastate calls, and in-state calling rates are not subject to regulation by public utilities commissions in a growing number of states due to deregulation. Thus, absent action by the FCC, the majority of ICS calls will not be subject to regulation to ensure just, reasonable and fair rates.

- In addition to excessive intrastate ICS rates, prisoners' families have been negatively impacted by ancillary charges such as fees to fund ICS accounts, cancel accounts and receive refunds from accounts.
- There are significant problems with ICS quality of service, including issues related to line quality, dropped calls, sound volume and billing practices by ICS providers.

In summary and based on the foregoing, we recommend that the Commission take the following remedial actions to ensure just, reasonable and fair ICS phone rates and services:

1. Extend to intrastate ICS phone rates and services the same types of reforms the FCC established for interstate ICS rates and services in its September 26, 2013 final order, including rate caps, safe harbor rates, data reporting, and a requirement that intrastate ICS rates and ancillary charges be cost-based.
2. Establish national standards for ICS providers related to quality of service, including standards concerning line quality and dropped calls. In the latter regard, the standards should address connection charges for subsequent calls following dropped calls.
3. Require periodic reviews of ICS providers to ensure that intrastate ICS rates remain just and reasonable, and to verify that ICS providers are complying with the Commission's mandates.
4. Require compliance with the Commission's mandates by a date certain – not to exceed six months from the date the mandates become effective.

Thank you for your consideration of this comment, and please feel free to contact us should you require any additional information that we may be able to provide.

Sincerely,



Paul Wright
Executive Director, HRDC

Attachments



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Dedicated to Protecting Human Rights

December 2013

FCC Order Heralds Hope for Reform of Prison Phone Industry

by John E. Dannenberg and Alex Friedmann

“After a long time – too long – the Commission takes action to finally address the high cost that prison inmates and their families must pay for phone service. This is not just an issue of markets and rates; it is a broader issue of social justice.” – FCC Commissioner Jessica Rosenworcel

ON AUGUST 9, 2013, THE FEDERAL Communications Commission (FCC), in a landmark decision, voted to cap the cost of long distance rates for phone calls made by prisoners and enact other reforms related to the prison phone industry. [See: *PLN*, Sept. 2013, p.42].

The FCC’s 131-page final order was released in September and published in the *Federal Register* on November 13, 2013. It has not yet gone into effect due to a 90-day

waiting period following publication in the *Register*, plus legal challenges have since been filed by the nation’s two largest prison phone companies.

The order, entered in response to a petition for rulemaking submitted to the FCC, is the result of a decade-long effort to lower prison phone rates and implement much-needed changes in the prison phone industry.

Prison Phone Services: A Primer

THE BILLION-DOLLAR PRISON PHONE industry is comprised of companies that provide phone services for prisoners and detainees held in state, federal and privately-operated prisons, county and municipal jails, juvenile facilities, immigration detention centers and other correctional facilities. Such services are commonly referred to as Inmate Calling Services (ICS).

Five companies, known as ICS providers, dominate the prison phone market; Global Tel*Link (GTL), Securus Technologies, CenturyLink, Telmate and ICSolutions provide phone services for 49 of the 50 state Departments of Corrections. A number of other companies, such as Pay-Tel, NCIC, Legacy and EagleTel, provide ICS services primarily to jails.

When prisoners make phone calls they typically have three payment options – collect, prepaid or debit. Collect calls are paid by the call recipient, prepaid calls are paid from a pre-funded account established by the call recipient and debit calls are funded from a prisoner’s institutional debit account. Prisoners can usually call only a small number of people on a specified list, and calls are frequently limited to 15 or 20 minutes per call.

There are three types of phone calls within the telecommunications industry

– local, intrastate and interstate. Local calls are made to numbers within a local calling area, such as the same city or county. Intrastate calls are made within the boundaries of a state, either within a local access and transport area (LATA), called an intraLATA call, or across LATAs, known as an interLATA call. Interstate (long distance) calls are made across state lines and are generally the most expensive.

Prisoners’ family members and friends pay for the vast majority of ICS calls, either by accepting collect calls, establishing prepaid accounts or sending money to their incarcerated loved ones to place on their debit phone accounts.

ICS rates are much higher than non-prison rates, in large part because prison phone companies pay “commission” kickbacks to the corrections agencies with which they contract. Such commissions are usually based on a percentage of the revenue generated from prisoners’ calls and have nothing to do with the actual cost of providing the phone service. Because ICS providers factor commission payments – which currently average 47.79% for state Departments of Corrections (DOCs) – into the phone rates they charge, the rates are artificially inflated. Absent commission kickbacks, which are received by 42 state DOCs, the rates could be considerably lower. ICS providers paid at least \$123.3 million to state prison systems in 2012.

Phone calls are the primary form of communication for prisoners who are housed at facilities located far from their families and thus do not receive in-person visits. Research has shown that prisoners who maintain close connections with their families while incarcerated are less likely to commit crimes and return to prison following their release.

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Hope for Prison Phone Reform (cont.)

Even prison phone companies acknowledge the fact that maintaining family ties has a beneficial effect on prisoners and results in reduced recidivism. For example, according to GTL, "Studies and reports continue to support that recidivism can be significantly reduced by regular connection and communications between inmates, families and friends – [a] 13% reduction in felony reconviction and a 25% reduction in technical violations." Telpmate president Kevin O'Neil agreed, saying, "The more inmates connect with their friends and family members the less likely they are to be rearrested after they're released."

High prison phone rates, however, create a financial barrier to communication between prisoners and their families due to the costs associated with ICS calls.

"These rates discourage communication between inmates and their families and larger support networks, which negatively impact the millions of children with an incarcerated parent, contribute to the high rate of recidivism in our nation's correctional facilities, and increase the costs of our justice system," the FCC observed.

As stated by the Human Rights Defense Center (HRDC), the parent organization of *Prison Legal News*, "When 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. The costs are also literal; many families of people held in prisons, jails and immigration detention centers pay high phone bills at the expense of groceries, medical bills and other necessities."

Notably, the FCC's recent order establishes a rate cap of \$.25 per minute for collect interstate calls and \$.21 per minute for prepaid and debit interstate calls, which equates to a cap of \$3.75 for a 15-minute collect call and \$3.15 for a 15-minute debit or prepaid call. This is a significant reduction from the highest prison phone rates, which currently range up to \$17.30 for a 15-minute call (or more than \$275 a month for a one-hour call once a week).

PLN and HRDC played an active and instrumental role in the FCC's decision to reduce the costs of prison phone calls and implement other reforms; exorbitant prison

phone rates have been a focus of HRDC, and PLN has reported on ICS-related issues since 1990.

History Behind the FCC's Order

THE HIGH COSTS OF PRISON PHONE CALLS and the practice of commission kickbacks were presented to the FCC in 2003, in the form of a petition for rulemaking filed by attorneys representing Martha Wright, a District of Columbia resident, who filed a lawsuit challenging the phone rates she had to pay to stay in touch with her incarcerated grandson. The federal court referred the matter to the FCC since that agency has primary jurisdiction over interstate phone rates. See: *Wright v. Corrections Corporation of America*, U.S.D.C. (D. DC), Case No. 1:00-cv-00293-GK.

An alternative petition for rulemaking, commonly known as the "Wright petition," which requested a cap on prison phone rates, was filed with the FCC in 2007. See: *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 96-128. Little action was taken on the Wright petition for the next four years.

In April 2011, following extensive research initially funded by a small grant from the Funding Exchange, PLN published a damning exposé on the prison phone industry that included detailed information on prison phone rates and commission percentages and amounts, based on 2007-2008 data. PLN exposed the exorbitant rates that ICS providers charge, reporting that state DOCs received an average kickback of 41.9% of prison phone revenue, that over \$143 million in commission kickbacks had been paid in one year alone under state DOC phone contracts and that eliminating ICS commissions demonstrably resulted in lower phone rates. [See: *PLN*, April 2011, p.1].

As a result of the interest generated by PLN's report on the prison phone industry, which was filed with the FCC on the Wright petition's docket, HRDC co-founded the national Campaign for Prison Phone Justice in conjunction with the Center for Media Justice/Media Action Grassroots Network (MAG-Net) and Working Narratives.

The Campaign, which grew to include 55 supporting organizations and thousands of individual members, coordinated actions to pressure the FCC to act on the Wright petition and reduce the cost of prison phone

Hope for Prison Phone Reform (cont.)

calls – such as letter-writing and email campaigns, plus a rally outside the Commission's Washington, D.C. headquarters. Tens of thousands of people submitted comments to the FCC or signed petitions, including over 1,700 prisoners and dozens of civil rights, faith-based, immigration reform and prisoners' rights organizations. [See: *PLN*, July 2013, p.34; Dec. 2012, p.44; Nov. 2012, p.20].

In December 2012, under the direction of then-Acting Chairwoman Mignon

Clyburn, the FCC issued a Notice of Proposed Rulemaking (NPRM) on the Wright petition (Docket No. 12-375). [See: *PLN*, Feb. 2013, p.46]. In response to the Notice, HRDC filed additional comments with the FCC on March 25, 2013 that included updated data on state-by-state ICS rates and commissions, plus specific recommendations for reforms.

The FCC held a workshop on prison phone-related issues on July 10, 2013, which included testimony from *PLN* managing editor Alex Friedmann as well as Virginia state delegate Patrick Hope and representatives from public utility commissions, prison phone companies and organizations such as the Prison Policy Initiative and National CURE. [See: *PLN*, Aug. 2013, p.26].

Finally, in August 2013, nearly a decade after Martha Wright filed her initial petition for rulemaking with the FCC, the Commission voted to cap the cost of interstate prison phone calls and institute other reforms. The rate caps were very close to those requested in the Wright petition, which had sought benchmark rates (caps) of \$.25 per minute for collect calls and \$.20 per minute for debit and prepaid calls.

The data provided by HRDC was so important to the FCC's deliberations that the Commission's final order referenced *PLN* or HRDC at least 46 times, including references to *PLN*'s April 2011 report on the prison phone industry.

The FCC's order is more than a mechanical implementation of rate caps,

however. In an unusual show of compassion for the plight of those who have suffered as a result of price gouging by prison phone companies and the corrections agencies they contract with, two of the FCC Commissioners included personal remarks in the order that amounted to a public apology for not having stemmed such abuses long ago.

The FCC-mandated cap on prison phone rates threatens the profit margins of ICS providers. With existing contracts that require prison phone companies to continue paying commission kickbacks while they must reduce their rates to comply with the FCC's order, ICS providers face a financial dilemma unless they renegotiate their contracts. Which should not be difficult, as most contracts have provisions for amendments – particularly when there are changes in relevant statutes or regulations.

The order does not threaten the monopolistic nature of the prison phone industry, though, because once a company wins a bid to provide ICS services it enjoys a monopoly during the contract term. Such monopolies discourage competition in the prison phone market and contribute to higher rates. [See: *PLN*, Oct. 2012, p.20; Jan. 2007, p.1].

Two prison phone companies, GTL and Securus, filed petitions for a stay of the FCC's order until they could bring a legal challenge, then filed lawsuits in federal court seeking review of the order in November 2013. In other words, they want to continue price-gouging prisoners

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and their families by postponing the FCC-mandated reforms for as long as possible while using revenue from prisoners' phone calls to subsidize the cost of their litigation in the interim.

On a brighter note, one California county responded to the FCC's order by proposing to manage its own jail and juvenile detention facility phone systems – simply dispensing with ICS providers as an unnecessary anachronism.

An Updated Look at the Prison Phone Industry

PLN's APRIL 2011 EXPOSÉ ON THE PRISON phone industry included a chart with state-by-state ICS rates, commission percentages and annual commission payments for state DOCs. PLN focused on state prison systems due to the impracticality of obtaining similar data from the thousands of jails in cities and counties across the U.S.

The chart with state-by-state prison phone data, included as an exhibit to HRDC's comments submitted to the FCC, was the result of extensive research over a two-year period. As it reflected data from 2007-2008, however, HRDC continued to

collect updated information on prison phone rates as well as commission percentages and payments, plus copies of state DOC phone contracts – most of which have been posted on HRDC's Prison Phone Justice website, www.prisonphonejustice.org.

The updated prison phone data is presented in four charts included with this cover story: Chart A (interstate rates), Chart B (intrastate interLATA rates), Chart C (local rates) and Chart D (commission kickback percentages and amounts).

Interstate Rates

Alabama, Alaska, Georgia and Minnesota charge the highest collect interstate rates for prison phone calls, at \$17.30 for a 15-minute call. Other states with exceptionally high interstate rates include Ohio, which charges \$16.97 for a collect 15-minute call, and Idaho, which charges \$16.55. [See Chart A].

Based on a 15-minute interstate ICS call, 13 states charge over \$10.00 for collect calls, 8 charge more than \$10.00 for prepaid calls and 7 charge over \$10.00 for a debit call.

In terms of the lowest interstate rates, three states charge less than \$1.00 for col-

lect, prepaid and debit calls. New Mexico charges a flat \$.65 for collect and debit calls, plus a flat \$.59 for prepaid calls. New York charges \$.048 per minute for all types of calls, or \$.72 for a 15-minute call. The rates in South Carolina include a flat \$.99 for a collect call and flat \$.75 for prepaid and debit calls.

Currently, the average rates for 15-minute interstate ICS calls are \$7.18 for collect, \$6.05 for prepaid and \$5.56 for debit calls.

Intrastate Rates

For intrastate interLATA rates, based on a 15-minute prison phone call, 11 states currently charge over \$5.00 for collect calls, 7 charge more than \$5.00 for a prepaid call and 5 charge over \$5.00 for debit calls. [See Chart B].

The highest intrastate ICS rates are in Delaware, which charges \$10.70 for 15-minute calls of all types under a contract with GTL. Other high rates include \$8.40 for a 15-minute collect call in South Dakota, \$6.75 for collect, debit and prepaid calls in Alabama, and \$6.45 for a collect call in Minnesota.

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Hope for Prison Phone Reform (cont.)

Four states charge less than \$1.00 for a 15-minute intrastate call for all types of calls: New Mexico (flat \$.65 for collect and debit calls, and flat \$.59 for prepaid); Rhode Island (flat \$.70 for collect and prepaid, and flat \$.63 for debit calls); New York (\$.72 for all types of calls based on a rate of \$.048 per minute); and South Carolina (flat \$.99 for collect and flat \$.75 for debit and prepaid calls).

The current average rates for 15-minute intrastate interLATA prison phone calls are \$3.90 for collect, \$3.41 for prepaid and \$3.42 for debit calls.

Local Rates

Twelve states provide local ICS calls for \$1.00 or less for all types of calls, based on a 15-minute call; however, another 9 states charge more than \$3.00 for a 15-minute local call for all categories of calls. Alaska is the only state that offers free local calls. [See Chart C].

Other than Alaska, the lowest local ICS rates include a flat \$.50 in Florida for all calls; a flat \$.50 for collect and prepaid calls in North Dakota plus \$.05 per minute for debit calls (\$.75 for a 15-minute call); a flat \$.66 for collect, \$.59 for prepaid and \$.65 for debit calls in New Mexico; a flat \$.70 for collect and prepaid calls and \$.63 for debit calls in Rhode Island; a flat \$.70 for collect calls and \$.50 for prepaid and debit calls in Nebraska; \$.048 per minute for all types of calls in New York; and a flat

\$.65 for collect calls and \$.50 for prepaid and debit calls in Maryland.

The highest rates for 15-minute local calls are \$5.70 for all categories of calls in Mississippi; \$5.30 for collect and prepaid calls and \$4.50 for debit calls in Maine; \$5.00 for collect calls in Colorado; and \$4.95 for all types of local calls in New Jersey.

Average rates for 15-minute local ICS calls are currently \$2.30 for collect, \$2.08 for prepaid and \$1.98 for debit calls.

Commission Kickbacks

The vast majority of state DOCs receive commission kickbacks from their ICS providers, usually in the form of a percentage of revenue generated from prisoners' phone calls. Based on full or partial commission data from 49 states, prison phone companies paid at least \$123.3 million in ICS kickbacks to DOCs in 2012. [See Chart D]. Notably, this doesn't include commissions generated from phone services at federal prisons, jails, privately-operated prisons, juvenile facilities, immigration detention centers and other correctional facilities.

Current state DOC commission rates range from a low of 7% in Alaska to a high of 76% in Illinois (though Maryland receives an 87% commission on collect ICS calls while Maine gets a 100% kickback on debit calls). The average commission rate for states that have a percentage-of-revenue commission is 47.79%, based on 2012-2013 data. (For states that receive commissions within a range of percentages, the lowest rate in the range was used when calculating

the average).

Some states, including Ohio, Oregon and New Hampshire, receive a flat commission amount; Oregon receives an additional commission percentage based on the amount of prison phone revenue. Oklahoma receives a payment of \$2.30 for each ICS call, which equates to a 76.6% commission based on the state's current flat rate of \$3.00 per call.

Alabama uses a per-diem rate, in which the state's prison phone provider, CenturyLink, pays \$.572 times the average prisoner population, per month. Idaho has a hybrid model consisting of flat commission amounts for collect, prepaid and debit calls made from prisons, plus 20% of revenue for calls made from Community Work Centers. The commission rate for the Alaska DOC is based on a sliding scale according to the amount of revenue generated by prison phone calls during the preceding year, while Kansas, Washington and several other states receive a percentage commission with a minimum annual guaranteed payment.

Iowa is unique in that it provides ICS services through a government agency, the Iowa Communications Network (ICN), in conjunction with a private contractor, Public Communications Services (PCS) – a subsidiary of Global Tel*Link. Rather than receiving a traditional commission, the state retains all revenue generated from prison phone calls after paying ICN and PSC/GTL's costs for providing the phone service.

Beyond commission payments, some states receive other perks from prison

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phone companies. For example, under its contract with the California Department of Corrections and Rehabilitation, GTL provides cell phone blocking technology at all California state prisons. (Not incidentally, by limiting access to contraband cell phones the company anticipates greater use of, and thus greater revenue from, the prison phone system). GTL also pays an \$800,000 annual fee to the California Technology Agency. [See: *PLN*, Oct. 2013, p.40].

In Virginia, in addition to a 35% commission, GTL pays the state a minimum \$150,000 annual fee for “DOC technology initiatives,” and the fee increases if GTL receives annual prison phone revenue that exceeds \$13 million.

Eight states have banned ICS commission kickbacks, mostly through legislation: California, Michigan, Missouri, Nebraska, New Mexico, New York, Rhode Island and South Carolina.

Unsurprisingly, since prison phone companies don't have to recoup commission payments from the phone rates charged in non-commission states, those states have some of the lowest ICS rates in the nation. For instance, of the 10 lowest interstate prison phone rates for collect, prepaid and debit calls, 5 are in states that have banned commissions. Of the 10 lowest intrastate rates, 6 are in states that do not accept commissions, while of the 10 lowest local rates, 4 are in states that prohibit commissions.

In its comments submitted to the FCC, HRDC cited several examples of states that have banned commissions and achieved much lower prison phone rates as a result. Prior to banning commissions in 2001, New Mexico charged \$10.50 for a 15-minute collect interstate call. The state's current rate for the same type of call is \$.65 – a 93.8% decrease. After South Carolina banned prison phone commissions in April 2008, the cost of a 15-minute collect interstate call dropped from \$5.19 to \$.99, a reduction of 80.9%. And in New York, which prohibited commissions in 2008, the cost of a 15-minute prison phone call fell from \$2.30 to \$.72 – a 68.6% decrease (previously, the New York DOC received a 57.5% commission that generated annual kickback payments of about \$20 million).

As the FCC noted in its Notice of Proposed Rulemaking for the Wright petition, “under most contracts, the commission is the single largest component affecting the rates for inmate calling service.” Or as stated

by HRDC, “Absent having to pay commissions to contracting government agencies, ICS providers could offer significantly lower phone rates.”

Prison Phone Companies

Three companies dominate the prison phone industry: Global Tel*Link, which has DOC contracts in 30 states; Securus Technologies, which provides DOC phone services in 10 states; and CenturyLink, which contracts with DOCs in 5 states. These companies and their subsidiaries

thus control 90% of the state DOC phone market. Other companies with DOC phone contracts include Hawaiian Telcom (Hawaii), Telmate (Missouri and Oregon), and ICSolutions (New Hampshire and Wyoming).

• The nation's largest prison phone service provider, GTL, was purchased by American Securities, LLC in October 2011 in a deal reportedly valued at \$1 billion. American Securities, a private equity firm, owns 18 other companies in addition to GTL – such as the restaurant chain Potbelly

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Hope for Prison Phone Reform (cont.)

Sandwich Works. Previously, GTL was owned by Veritas Capital and GS Direct, the latter being a subsidiary of Goldman, Sachs & Co. [See: *PLN*, Feb. 2012, p.23]. GTL operates several subsidiary ICS companies which include Value Added Communications (VAC), Public Communications Services (PCS), Conversant Technologies and DSI-ITI.

- Securus Technologies was formed through a merger of T-Netix and Evercom Systems in 2004. The company was acquired by Castle Harlan, Inc., a New York-based private equity corporation, on May 31, 2011; the sale was valued at \$440-450 million. Castle Harlan owns 4 other companies in addition to Securus, including Caribbean Restaurants, LLC, which operates 171 Burger Kings in Puerto Rico.

- CenturyLink is the rebranded name of CenturyTel after that firm acquired Embarq Corporation, another telecommunications company, in 2009. CenturyLink bills itself as the “third largest telecommunications company” in the U.S. and primarily provides non-prison Internet, phone and wireless services. It supplies ICS services to a number of jails and 5 state prison systems through CenturyLink Correctional Markets, plus conducts business through its wholly-owned subsidiary, Embarq Payphone Services, Inc.

- Prison phone company ICSolutions was acquired by Centric Group in January 2011 as an affiliate of Keefe Group, which is also owned by Centric. Keefe Group provides commissary, video visitation and other services to prisons and jails nationwide.

- Telpmate, according to a company

spokesman, “provides telecommunications, video visitation, messaging and photo sharing services to hundreds of facilities in nearly every U.S. state and several Canadian provinces, serving facilities of every size ranging from local jails to state prisons and federal ICE facilities.”

An analysis of the nation’s highest prison phone rates charged by ICS providers found that one company is over-represented among state DOCs with the highest rates. For interstate, intrastate and local rates, GTL had 6 or 7 of the highest 10 rates in all categories of calls – collect, prepaid and debit. However, since GTL has 60% of DOC phone contracts (in 30 of 50 states), it is not greatly overrepresented in states that have the highest rates.

Rather, that distinction goes to CenturyLink, which has 2 of the 10 highest interstate ICS rates for prepaid and debit calls, and 2 of the 10 highest rates for local debit calls. Thus, although the company has just 10% of DOC phone contracts (in 5 of 50 states), it is responsible for 20% of the highest rates for those categories of prison phone calls.

BOP, ICE and Private Prisons

Phone services at federal Bureau of Prisons (BOP) facilities are provided by Sprint through a GSA Network contract. The BOP uses an Inmate Telephone System (ITS) known as TRUFONE; the system is primarily debit-based (termed direct-dial), and federal prisoners are limited to 300 minutes of calling time per month.

A September 2011 report by the U.S. Government Accountability Office (GAO) noted that the “BOP’s rates for inmate telephone calls typically are lower than selected states and military branch systems.” [See: *PLN*, Dec. 2012, p.22].

Unlike in most state DOCs, the majority of calls from BOP facilities are interstate (long distance); this is mainly due to the fact that federal prisoners can be housed at any BOP prison nationwide, far from their families. The percentage of long distance calls has recently dropped, though, which the GAO attributed to “technology that allows inmates’ friends and family who do not live within the inmates’ local calling area to acquire telephone numbers local to the inmates’ prison locations.”

Indeed, a cottage industry has developed in which numerous services, some of which advertise in *PLN*, provide prisoners’ families with local forwarding phone numbers for the purpose of skirting more expensive long distance ICS rates.

According to the GAO report, “In fiscal year 2010, BOP’s inmate telephone system generated approximately \$74 million in revenue, cost approximately \$39 million to operate, and showed a profit of approximately \$34 million” (emphasis added). In terms of gross revenue, the BOP’s phone system generated \$69.6 million in fiscal year (FY) 2011, \$65.3 million in FY 2012 and \$60.25 million in FY 2013; net profits were not available.

Revenue from the Bureau of Prisons’ phone services are deposited in the BOP’s Trust Fund, which manages income and pays expenses related to the ITS system. The Trust Fund is primarily used to pay wages for BOP prisoners, and to provide educational and recreational services and programs.

The GAO observed that lowering the BOP’s phone rates could have both positive and negative implications. “The primary advantage would be that inmates would incur lower costs for making calls. This could possibly encourage greater communication

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between inmates and their families, which BOP has stated facilitates the reintegration of inmates into society upon release from prison," the report said. "In contrast, reducing inmate telephone rates could also have some disadvantages....With fewer profits, BOP would have less Trust Fund money to spend on inmate amenities. As a result, unless BOP recouped these revenues from other sources, BOP would have to reduce the wages it pays inmates for their labor and/or scale back the number and type of other educational and recreational activities it currently offers using revenue from the Trust Fund. According to BOP officials, such reductions could make prisons more dangerous to manage and more expensive to operate."

In regard to ICS services at immigration detention facilities, the ability to make affordable phone calls is vitally important for immigrant detainees who are facing deportation hearings or seeking asylum. Approximately 84% of detainees are not represented by counsel; they therefore rely heavily on phone calls to obtain evidence needed in immigration proceedings by calling their families, consulates, legal representatives and human rights organizations.

The Immigration and Customs Enforcement agency (ICE) specifies in its 2011 revised standards for detention facilities that "Each facility shall provide detainees with access to reasonably priced telephone services. Contracts for such services shall comply with all applicable state and federal regulations and be based on rates and surcharges comparable to those charged to the general public. Any variations shall reflect actual costs associated with the provision of services in a detention setting."

The standards further require that detainees be allowed to "make direct or free calls" to local immigration courts, the Executive Office for Immigration Review, the Board of Immigration Appeals, federal and state courts, consular officials, legal representatives and service providers, the Office of the Inspector General of the Department of Homeland Security, the U.N. High Commissioner for Refugees, government offices to obtain documents for immigration cases, the ICE/OPR Joint Intake Center and immediate family members for detainees facing emergencies or who "demonstrate a compelling need."

ICE's revised standards for detention facilities will hopefully resolve problems related to detainees' access to phone services that were cited in a 2010 report by the Office of Inspector General of the Department of Homeland Security. The report concluded that "additional controls" with ICS systems in facilities housing ICE detainees, and that some detainees "had, in the past, been inappropriately charged an additional fee to obtain access to a local telephone service." [See: *PLN*, Feb. 2011, p.33].

With respect to privately-operated prisons, jails and detention centers, it is difficult to obtain ICS-related information from such facilities because they are typically exempt from public records laws and the Freedom of Information Act. [See, e.g.: *PLN*, Feb. 2013, p.14]. Regardless, *PLN* managed to collect prison phone data for several private prisons.

For example, a contract between Corrections Corporation of America and Evercom (Securus) specifies the following collect calling rates for CCA's Whiteville Correctional Facility (WCF) in Tennessee: \$.85 for local calls, \$1.94 + \$.06-.15/

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minute for intrastate calls and \$3.00 + \$.35/minute for interstate calls (the latter costing \$8.25 for a 15-minute call). The contract includes a 58.4% commission, which generated \$347,855.52 in kickbacks at WCF in 2012.

A 2012 prison phone contract for the South Bay Correctional Institution in Florida, operated by the GEO Group, the nation's second-largest for-profit prison company, includes a commission of 35% and phone rates of \$.50 for collect local calls and \$1.20 + \$.04/minute for collect interstate and intrastate calls. The contract, with ICSolutions, generated \$125,600 in commission kickbacks during FY 2012.

This represents the worst of both worlds, with private prison companies profiting not only from housing prisoners but also from ICS commissions paid by prison phone providers.

Current and Former Data Compared

THERE HAVE BEEN SOME NOTABLE CHANGES in the prison phone industry since PLN compiled and analyzed 2007-2008 state-by-state data related to ICS phone rates and commissions, though other aspects of ICS services have remained the same.

Phone Rates

In regard to rates, the average cost of prison phone calls has generally declined from 2007-2008 to 2012-2013. For example, during that time period the rates for interstate collect calls dropped in 22 state DOCs and remained the same in most others.

Of the states that experienced de-

clines in interstate collect ICS costs, the most notable, based on 15-minute calls, included Colorado (from \$17.30 to \$5.25); Connecticut (from \$17.30 to \$4.87); New Mexico (from \$10.50 to \$.65); North Carolina (from \$17.30 to \$3.40); Oregon (from \$17.30 to \$2.40); and Vermont (from \$10.75 to \$3.50).

Further, the 2007-2008 average cost of a 15-minute collect interstate call was \$10.23, compared with a current (2012-2013) average cost of \$7.18. The average cost of a 15-minute collect intrastate call in 2007-2008 was \$4.87, compared with a current average cost of \$3.90. However, the cost of a 15-minute local collect call, which averaged \$2.28 in 2007-2008, increased very slightly to \$2.30 in 2012-2013. (When calculating these averages, where there is a range of phone rates for certain categories of calls, the lowest rate was used to produce a conservative average).

An examination of collect ICS rates for 2007-2008 found that 25 states charged over \$10.00 for a 15-minute interstate call; of those, 10 charged \$17.30 or more. Twenty-two states charged more than \$5.00 for a 15-minute collect intrastate call and 11 states charged over \$3.00 for a collect local call.

Based on current prison phone rate data, the number of states charging over \$10.00 for a 15-minute collect interstate call has dropped to 13 (including just 4 that charge \$17.30); states that charge over \$5.00 for a collect intrastate call dropped to 11, and a dozen states charge more than \$3.00 for a local collect call (a slight increase).

Washington State previously had the highest collect interstate rate in 2007-2008, at \$4.95 + \$.89/minute, or \$18.30 for a

15-minute call. Washington's current collect interstate rate is \$3.50 + \$.50/minute (\$11.00 for a 15-minute call), which, although still unreasonably high, represents a significant decrease.

One notable difference in prison phone services between 2007-2008 and 2012-2013 relates to a shift in the use of flat rates – i.e., when a fixed amount is charged regardless of the call duration. In 2007-2008, with respect to collect calls, only one state offered a flat interstate rate while 4 had flat intrastate rates and 34 used flat local rates. According to current data, 5 states now have flat interstate rates, 8 states offer flat intrastate rates and at least 26 have flat local rates, for all types of calls. Flat rates tend to be associated with lower calling costs, but since they incur the full rate whether the call is for one minute or 15 minutes, per-minute costs are higher for flat rate calls of short duration.

Commissions

The average ICS commission kickback rate has increased by over five percent, from 41.9% in 2007-2008 to a current average of 47.79%. (When calculating these averages, only states with a commission percentage were included, not those that receive commissions based on a flat fee or per-diem basis; where states receive commissions within a range of percentages, the lowest rate was used to produce a conservative average).

As one example of this increase, only one state received a prison phone commission above 60% in 2007-2008 – Alaska (although Idaho received 66% at the upper end of a range of commissions). Current data indicates that *seven states* receive commissions in excess of 60% (Connecticut,

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Illinois, Kansas, Louisiana, Maryland, Mississippi and Wyoming). Whereas previously the highest commission rate among state DOCs was 61.5%, the current highest percentage rate is 78%, for the Illinois DOC.

The total amount of prison phone commissions paid to DOCs in 2007-2008 was \$143.49 million, based on full or partial data from 49 states (the total amount originally reported by PLN in April 2011 was slightly higher; that data was corrected in October 2012). Total commission kickbacks paid to state DOCs during 2012 were at least \$123.3 million.

This reflects a decline of around \$20.2 million in annual commissions paid to DOCs over the past five-year period, though that decline is mainly attributable to California's decision to phase out ICS commissions starting in 2007-2008 (California received commission payments of \$19.5 million that year). Excluding the loss of prison phone kickbacks in California, the total amount of ICS commissions received by state DOCs in 2012 was essentially the same since comparable data was collected for 2007-2008.

As another example of things remain-

ing the same in the prison phone industry, at the time PLN reported nationwide prison phone-related data in April 2011, only eight states had banned commissions or were in the process of doing so. Currently, no other states have banned commissions and 42 states continue to receive kickbacks from ICS providers.

Prison Phone Companies

As indicated above, three companies – GTL, Securus and CenturyLink – currently control 90% of the state DOC market, either directly or through their subsidiaries. This represents a slight increase since PLN reported prison phone data for 2007-2008; at that time, GTL, Securus and CenturyLink or their subsidiaries had contracts with 43 (86%) of the state DOCs.

Fifteen DOC phone contracts changed hands over the five-year period from 2007-2008 to 2012-2013; however, most of the states (70%) continued to contract with the same company, and when ICS contracts change it is usually from one of the three largest prison phone providers to another. This fairly low rate of contract turnover, and the fact that just three firms dominate

the market, indicate that the prison phone industry is an oligopoly with little actual competition.

“While the process of awarding contracts to provide ICS may include competitive bidding such competition in many instances benefits correctional facilities, not necessarily ICS consumers – inmates and their family and friends who pay the ICS rates, who are not parties to the agreements, and whose interest in just and reasonable rates is not necessarily represented in bidding or negotiation,” the FCC noted in its September 2013 final order.

Further, Consolidated Communications Public Services (CCPS) and FSH Communications no longer provide prison phone services to state DOCs; CCPS lost its sole state contract with Illinois in 2012, while FSH sold its prison phone business to VAC, a subsidiary of Global Tel*Link. Additionally, GTL acquired two smaller companies that provide ICS-related services, Conversant Technologies and 3V Technologies, in October 2011.

This reflects the continued consolidation of providers within the prison phone industry – although Telmate, which mostly

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supplies phone services to jails, has won two state DOC contracts since 2007-2008 (Montana in 2010 and Oregon in 2012).

ICS Contracts

Prison phone contracts continue to have lengthy terms. For example, when Florida rebid its ICS contract in 2013, the initial contract term was for five years with five one-year renewal options. Similarly, the Illinois DOC's recent contract with Securus, which went into effect in September 2012, had an initial term through June 2015 plus an option to renew for up to six more years. And when Oklahoma entered into an ICS contract with VAC (GTL) in 2011, the initial term was for one year – with nine one-year renewals.

As HRDC noted in its comments submitted to the FCC, the initial terms of prison phone contracts for three states – Connecticut, Texas and Arizona – extend for 7 years. Such long-term contracts ensure that prison phone companies maintain a monopoly on providing ICS services within state DOCs for prolonged periods of time.

Additionally, PLN's April 2011 report on the prison phone industry described how some state DOCs evaluated bids for ICS contracts based on the highest commission rate, in order to maximize their kickback revenue. That practice also continues.

According to the Illinois DOC's 2012 invitation for bids for its prison phone

contract, the commission rate was given the greatest weight among factors used to evaluate the bids – 55%, or 550 of 1,000 total available “price points.”

The contract was awarded to Securus, which offered an 87.1% commission and flat phone rates of \$4.10 per call for all call types. The contract was subsequently amended in September 2013 to reduce the phone rates to a flat \$3.55 per call and lower the commission to 76%; the amendment was due to a ruling by the Illinois Commerce Commission related to the maximum phone rates that can be charged under state law.

Further, the Florida DOC issued an invitation to negotiate for its ICS contract in April 2013. When selecting Embarq (CenturyLink) as the company that “demonstrate[d] the best value” and was “the most advantageous,” the DOC remarked that CenturyLink's bid “increases the department's commission rate by approximately 27%” while lowering the cost of collect calls. In submitting its best and final offer, CenturyLink asked for “special consideration” of the company's revenue performance, noting that its “billing & customer service program consistently ... generates 25% or more commissionable revenue than other providers.” Securus, bidding for the same contract, stated that its bid addressed the DOC's “requirement for both low rates and high commissions.”

Likewise, when the Oklahoma DOC asked for a final best offer for bids on the state's ICS contract in 2011, it specified, “The final award of this contract will be

based upon the highest revenue sharing offered to DOC for the life of the contract.”

These examples indicate that ICS commissions and the lucrative revenue they generate for corrections agencies remain a compelling factor when selecting prison phone providers.

HRDC's Recommendations to the FCC

HRDC'S RESEARCH FOCUSED ON CORE issues related to the prison phone industry: the cost of ICS calls, the impact of commission kickbacks on those costs, extra fees charged by prison phone companies and how to best address those issues.

HRDC recommended that the FCC “impose rate caps not to exceed \$.05/minute for collect, prepaid and debit interstate calls from prisons, jails and detention centers, with no per-call charges.” The proposed cap was based on current interstate prison phone rates in New York and New Mexico, which are *below* \$.05 per minute, as examples of rates that can be achieved even without regulatory oversight. Both New Mexico and New York have banned ICS commissions.

While prison phone companies complained that a rate cap would be arbitrary and capricious, HRDC demonstrated that the opposite was true – that the unregulated ICS rates currently in effect are themselves arbitrary and capricious.

“Prisoners in different states, or even the same state, pay extremely divergent phone charges that range from \$.65 (New Mexico) to \$17.30 (Alabama, Alaska,



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Georgia and Minnesota) for a 15-minute interstate collect phone call," HRDC wrote in its comments to the FCC. "This is particularly true given that the same ICS provider can offer wildly fluctuating rates in different jurisdictions, which is also arbitrary and capricious. For example, Global Tel*Link charges \$.99 for a 15-minute interstate collect call in South Carolina while charging \$17.30 for the same type of call in Georgia (a neighboring state). Securus charges \$1.75 for a 15-minute interstate collect call in Missouri while charging \$17.30 for the same type of call in Alaska."

Additionally, HRDC observed in March 2013 that "current data indicates that at least 16 states have interstate collect and/or debit call rates that are *below* the proposed benchmark rates of \$.25/min. and \$.20/min. for collect and debit calls, respectively" - i.e., the rate caps requested in the Wright petition. Thus, it was readily apparent that states can adopt ICS rates below the proposed caps while still addressing necessary security concerns in their prison systems.

"Basically," HRDC concluded, "if some states that contract with the largest ICS providers are able to offer reasonable

interstate collect calling rates, such as New Mexico (\$.043/min.), New York (\$.048/min.), South Carolina (\$.066/min.) and Nebraska (\$.0966/min.), then there is no reason why the same ICS providers cannot offer comparable rates in other jurisdictions."

HRDC further argued for the elimination of prison phone kickbacks in order to facilitate lower rates: "Although prohibiting ICS providers from paying commissions is not essential to reducing prison phone rates, commissions are closely correlated with high rates."

In addition, HRDC recommended that extra fees charged by prison phone companies, such as fees to fund, maintain and close prepaid phone accounts, be prohibited. A May 2013 report by the Prison Policy Initiative examined ancillary ICS fees in great detail, noting that Securus charges \$4.95 to close an account while GTL

charges \$5.00. Most prison phone companies charge fees to fund prepaid accounts using a credit card; according to the Prison Policy Initiative report, ICS providers "charge up to \$9.50 to pay over the internet, up to \$10 to pay by phone and up to \$12.45 to pay via Western Union."

If such fees are not banned, HRDC argued, then prison phone companies could circumvent the FCC's rate caps "by simply increasing the extra fees or adding new account-related fees that effectively raise the overall costs of ICS calls." Revenue from ancillary fees goes directly to ICS providers, as the fees are not subject to commission payments.

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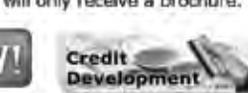
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Hope for Prison Phone Reform (cont.)

reduced phone rates that would result from the FCC's order, have enhanced their account-related fees in an apparent effort to maximize fee revenue to compensate for the lower rates.

For example, after the FCC voted to cap interstate prison phone rates in August 2013, Securus raised its processing fee for credit card payments made by phone from \$7.95 to \$9.95; it also increased its monthly Wireless Administration Fee from \$2.99 to \$3.99. The company added a State Cost Recovery Fee, which may apply "as a per-call surcharge of up to five percent (5%) and associated applicable taxes" for intrastate calls, plus a Location Validation Fee, which may apply "as a per-call surcharge of up to four percent (4%) and associated applicable taxes" for calls made from facilities that use certain security features provided by Securus.

In order to promote competition and provide flexibility in terms of payment options for ICS calls, HRDC further suggested that the FCC require or encourage

debit and prepaid calls in all prison phone systems.

HRDC did not limit its recommendations to the FCC to just the mundane aspects of how to achieve reductions in prison phone rates. It also argued that prisoners should receive a "minimum number of free calling minutes per month," noting that this would be particularly important for juvenile offenders, to ensure they can maintain contact with their families, and for immigrant detainees, who rely on phone calls to contact foreign consulates and human rights and legal organizations.

Providing prisoners and detainees with a minimum number of free calling minutes "would address a long-standing concern with ICS services: that they are socio-economically biased because they condition the ability to make phone calls on the ability of prisoners and call recipients to pay high prison phone rates. Thus, prisoners and family members with sufficient financial resources can maintain phone contact while those who are impoverished cannot." HRDC noted that Alaska provides free local ICS calls, and that the first five minutes of local calls from New Hampshire prisons

do not incur per-minute rates.

Lastly, HRDC recommended in its comments to the FCC that prison phone systems be subject to periodic reviews "to ensure that prison phone rates remain just and reasonable," and that ICS providers be required to comply with the FCC's mandates related to prison phone services within six months after the date the Commission's order goes into effect.

The FCC's Order: What it Does

AS A PREFATORY MATTER, THE FCC's order only applies to interstate prison phone calls and not to local or intrastate calls. Interstate calls "constitute no more than 15 percent of all ICS traffic," according to the Commission. Further, the FCC explained that in imposing rate caps for interstate ICS calls, it was not asserting authority over existing contracts between prison phone companies and corrections agencies.

"The reforms we adopt today are not directed at the contracts between correctional facilities and ICS providers. Nothing in this Order directly overrides such contracts," the FCC wrote. "Rather, our reforms relate only to the relationship between ICS providers and end users, who, as noted, are not parties to these agreements. Our statutory obligations require us to ensure that rates and practices are just and reasonable, and to ensure that payphone compensation is fair both to end users and to providers of payphone services, including ICS providers."

Accordingly, the FCC's final order incorporated the following key provisions:

- All rates charged for ICS calls and ancillary charges or fees must be based on costs that are reasonably and directly related to the provision of prison phone services (i.e., cost-based). Thus, for example, the costs of ICS calls can not include expenses related to the payment of commissions. The FCC did not ban commissions, however – only ordered that they can not be factored into the cost of interstate prison phone calls. "We do not conclude that ICS providers and correctional facilities cannot have arrangements that include site commissions," the FCC stated. "We conclude only that ... such commission payments are not costs that can be recovered through interstate ICS rates."

- ICS rates are capped at a maximum of \$.25 per minute for interstate collect calls and \$.21 per minute for interstate prepaid

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and debit calls, or \$3.75 and \$3.15 for 15-minute collect and debit/prepaid calls, respectively, inclusive of any connection charges. Prison phone companies can seek waivers to charge rates above the caps in "rare occasions" where they serve "extremely high cost facilities."

- An ICS provider's rates are presumptively lawful and in compliance with the FCC's order if they are set at or below "safe harbor" limits of \$.14 per minute for interstate collect calls and \$.12 per minute for interstate debit and prepaid calls, inclusive of any connection charges. This equates to \$2.10 for a 15-minute collect call and \$1.80 for a 15-minute debit or prepaid call. ICS providers that set rates above the safe harbor limits but below the rate caps will have to justify the reasonableness of their rates to the FCC if they are the subject of consumer complaints.

- Prison phone companies shall not levy or collect any charges in addition to or in excess of regular ICS rates for calls made through a Telecommunications Relay Service (TRS) – e.g., calling services for prisoners with hearing or speech disabilities.

- ICS providers must file annual reports

with the FCC disclosing their prison phone rates and fees, as well as additional data that will help the Commission evaluate whether they are in compliance with the order. This reporting requirement will not go into effect until approval is obtained from the Office of Management and Budget.

The FCC's order applies to all correctional facilities nationwide, including prisons, immigration detention centers and jails, and, once implemented and enforced, will significantly reduce the costs of interstate ICS calls.

When the Commission's order goes into effect it will affect 30 state DOCs that currently charge more than the rate cap established for collect interstate calls (\$3.75 based on a 15-minute call). The same number of DOCs currently charge more than the rate cap for debit and/or prepaid interstate calls (\$3.15 based on a 15-minute call).

Additionally, at least 41 state DOCs have collect interstate rates above the safe harbor limit set by the FCC (\$2.10 based on a 15-minute call), while 40 charge more than the safe harbor for debit and/or prepaid calls (\$1.80 based on a 15-minute call).

The fact that so many DOCs have interstate prison phone rates above the caps set by the FCC demonstrates why the Commission's order was necessary and long overdue.

FNPRM on Intrastate Rates

In its final order, the FCC also announced that it would issue an invitation for comments on proposed rulemaking related to intrastate (in-state) prison phone rates; video, email and voicemail services for prisoners; international calling rates; how to ensure that costs of ICS services are "just, reasonable and cost-based"; how the FCC can enforce rules prohibiting companies from blocking calls to cell phones; how to foster competition within the prison phone market; quality issues related to ICS calls; and whether additional measures are needed to protect the communication rights of prisoners with hearing disabilities and those with whom they communicate.

"We seek comment on additional measures we could take to ensure that interstate and intrastate ICS are provided consistent with the statute and public interest, the Commission's authority to implement these measures, and the pros and cons of each



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Hope for Prison Phone Reform (cont.)

measure,” the FCC stated.

The Commission released a Further Notice of Proposed Rulemaking (FNPRM) concerning the above issues on November 13, and a 30-day public comment period ended on December 13, 2013.

The most significant aspect of the FNPRM is the FCC’s interest in extending to in-state prison phone calls the Commission’s reforms related to interstate calls. For most state DOCs, as well as most jails, ICS services are mainly intrastate because prisoners generally make calls to family members and friends who reside in the same state. There are exceptions, such as federal prisoners, who can be housed at any BOP facility nationwide, and prisoners held in private prisons in other states (California, Hawaii, Vermont and Idaho currently house some of their prisoners in out-of-state contract facilities).

By far, though, most of the nation’s 2.2 million prisoners are incarcerated in their home states and make calls within those states. Thus, extending the FCC’s final order to intrastate prison phone calls – including rate caps and safe harbor limits – would significantly reduce the financial burden that intrastate calls impose on prisoners and their families.

As argued by PLN managing editor Alex Friedmann when he testified at the FCC’s workshop in July 2013, since virtually all phone calls are routed electronically across state lines, even local and intrastate calls, there is little remaining distinction between “interstate” and “intrastate.” Thus all ICS calls, both within a state and to other states, should be regulated by the FCC to the same extent.

One indicator why the Commission needs to extend rate caps to intrastate prison phone calls is the number of states with in-state ICS rates that *exceed* the FCC’s cap and safe harbor limits for interstate calls.

Currently, at least 23 states charge intrastate rates and 8 states have local rates above the FCC’s cap for collect interstate calls (\$3.75 for a 15-minute call). Additionally, at least 23 states charge intrastate rates and 9 states have local rates above the cap for debit and/or prepaid interstate calls (\$3.15 for a 15-minute call).

With respect to the safe harbor limits, at least 39 states have intrastate rates and

23 charge local rates that exceed the safe harbor for collect interstate calls (\$2.10 for a 15-minute call); similarly, at least 38 states have intrastate rates and 22 charge local rates above the safe harbor for prepaid and/or debit interstate calls (\$1.80 for a 15-minute call).

Therefore, unless rate caps are extended to intrastate and local calls, states can continue to charge in-state ICS rates that far exceed the caps and safe harbor limits the FCC has established for interstate prison phone calls. The Delaware DOC, for example, currently charges \$10.70 for a 15-minute intrastate call, while in Mississippi a 15-minute local call costs \$5.70.

The Commission’s FNPRM, and thus any future action on intrastate ICS rates and other prison phone reforms, remains pending.

Comments by the Commissioners

WHEN THE FCC DECIDED TO CAP THE cost of interstate ICS calls in August 2013, it did so on a 2-to-1 vote. Then-Acting Chairwoman Mignon Clyburn – who had championed reform of the prison phone industry – and Commissioner Jessica Rosenworcel voted for the rate caps and related measures to curb the worst abuses of ICS providers. Commissioner Ajit Pai, appointed to the FCC in 2012 by President Obama, cast the dissenting vote.

In an unusual epilogue, the Commissioners appended statements reflecting their personal thoughts and comments to the FCC’s final order released on September 26, 2013.

Commissioner Rosenworcel wrote:

“When I step back from the record in this proceeding, there is one number that simply haunts me – perhaps because I am a parent. Across the country, 2.7 million children have at least one parent in prison. That is 2.7 million children who do not know what it means to talk regularly with their mother or father. After all, families with an incarcerated parent are often separated by hundreds of miles. They may lack the time and means to make regular visits. So phone calls may be the only way to stay in touch. Yet when the price of a single phone call can be as much as you and I spend for unlimited monthly plans, it is hard to keep connected. Reaching out can be an impossible strain on the household budget. This harms the families and children of the incarcerated. But it goes far beyond that. It harms all of

CHART A - Interstate ICS Rates

Rates (2012-2013)

Cost of 15-Minute Call

State	Company	Rates (2012-2013)			Cost of 15-Minute Call		
		Collect	Pre-Paid	Debit	Collect	Pre-Paid	Debit
AL	Embarq (CenturyLink) *	\$3.95 + .89/min.	\$3.95 + .89/min.	\$3.95 + .89/min.	\$17.30	\$17.30	\$17.30
AK	Securus	3.95 + .89/min.	3.95 + .89/min.	3.95 + .89/min.	17.30	17.30	17.30
AZ	Securus	2.40 + .40/min.	2.00 + .40/min.	2.00 + .40/min.	8.40	8.00	8.00
AR	GTL	3.95 + .45/min.	N/A	3.95 + .45/min.	10.70	N/A	10.70
CA	GTL	.44/min.	.44/min.	N/A	6.60	6.60	N/A
CO	VAC (GTL)	3.00 + .15/min.	1.50 + .13/min.	1.50 + .10/min.	5.25	3.45	3.00
CT	Securus	.3245/min.	.2433/min.	.3245/min.	4.87	3.65	4.87
DE	GTL	1.55 + .61/min.	1.55 + .61/min.	1.55 + .61/min.	10.70	10.70	10.70
FL	T-NETIX (Securus)	1.20 + .06/min.	1.02 + .06/min.	1.20 + .06/min.	2.10	1.92	2.10
GA	GTL	3.95 + .89/min.	N/A	N/A	17.30	N/A	N/A
HI	Hawaiian Telcom	?	?	?	?	?	?
ID	PCS (GTL)	3.80 + .85/min.	3.60 + .80/min.	3.40 flat	16.55	15.60	3.40
IL	Securus	3.55 flat	3.55 flat	N/A	3.55	3.55	N/A
IN	PCS (GTL)	.24/min.	.24/min.	.24/min.	3.60	3.60	3.60
IA	PCS (GTL)	N/A	N/A	3.00 + .30/min.	N/A	N/A	7.50
KS	Embarq (CenturyLink) *	.18/min.	.18/min.	.17/min.	2.70	2.70	2.55
KY	Securus	2.00 + .30/min.	2.00 + .30/min.	1.60 + .25/min.	6.50	6.50	5.35
LA	Securus	2.15 + .17-.27/min.	1.93 + .15-.24/min.	1.93 + .15-.24/min.	4.70-6.20	4.18-5.53	4.18-5.53
ME	PCS (GTL)	3.00 + .69/min.	3.00 + .69/min.	.30/min.	13.35	13.35	4.50
MD	GTL	.95 + .30/min.	.30/min.	.30/min.	5.45	4.50	4.50
MA	GTL	.86 + .10/min.	.86 + .10/min.	.65 + .075/min.	2.36	2.36	1.78
MI	PCS (GTL)	.23/min.	.23/min.	.21/min.	3.45	3.45	3.15
MN	GTL	3.95 + .89/min.	N/A	.32/min.	17.30	N/A	4.80
MS	GTL	2.10 + .24/min.	2.10 + .24/min.	2.10 + .24/min.	5.70	5.70	5.70
MO	Securus	1.00 + .05/min.	.05/min.	.05/min.	1.75	0.75	0.75
MT	Telmate	.24 + .12/min.	.24 + .12/min.	.24 + .12/min.	2.04	2.04	2.04
NE	PCS (GTL)	.70 + .05/min.	.50 + .05/min.	.50 + .05/min.	1.45	1.25	1.25
NV	CenturyLink *	2.50 + .49/min.	2.50 + .49/min.	2.50 + .49/min.	9.85	9.85	9.85
NH	ICSolutions	1.20 + .10/min.	.15/min.	.15/min.	2.70	2.25	2.25
NJ	GTL	.33/min.	.33/min.	.33/min.	4.95	4.95	4.95
NM	Securus	.65 flat	.59 flat	.65 flat	0.65	0.59	0.65
NY	VAC (GTL)	.048/min.	.048/min.	.048/min.	0.72	0.72	0.72
NC	GTL	3.40 flat	3.40 flat	3.06 flat	3.40	3.40	3.06
ND	Evercom (Securus)	2.40 + .24/min.	2.40 + .24/min.	.34/min.	6.06	6.06	5.10
OH	GTL	3.90 + .871/min.	3.12 + .697/min.	3.12 + .697/min.	16.97	13.58	13.58
OK	VAC (GTL)	3.00 flat	3.00 flat	N/A	3.00	3.00	N/A
OR	Telmate	.16/min.	.16/min.	.16/min.	2.40	2.40	2.40
PA	GTL	3.50 + .50/min.	2.45 + .46/min.	2.33 + .43/min.	11.00	9.35	8.78
RI	GTL	1.30 + .30/min.	1.30 + .30/min.	1.17 + .27/min.	5.80	5.80	5.22
SC	GTL	.99 flat	.75 flat	.75 flat	0.99	0.75	0.75
SD	VAC (GTL)	3.15 + .43/min.	1.35 + .09/min.	1.35 + .09/min.	9.60	2.70	2.70
TN	GTL	3.535 + .6175/min.	3.1817 + .5558/min.	3.1817 + .5558/min.	12.80	11.52	11.52
TX	Embarq (CenturyLink) +	.43/min.	.43/min.	.387/min.	6.45	6.45	5.81
UT	VAC (GTL)	3.00 + .45/min.	3.00 + .45/min.	2.55 + .35/min.	9.75	9.75	7.80
VT	PCS (GTL)	1.25 + .15/min.	1.00 + .10/min.	.50 + .10/min.	3.50	2.50	2.00
VA	GTL	2.40 + .43/min.	2.40 + .40/min.	2.40 + .40/min.	8.85	8.40	8.40
WA	VAC (GTL)	3.50 + .50/min.	3.50 + .50/min.	3.50 + .50/min.	11.00	11.00	11.00
WV	GTL	.85 + .50/min.	.75 + .44/min.	N/A	8.35	7.35	N/A
WI	Embarq (CenturyLink) +	.18/min.	.18/min.	N/A	2.70	2.70	N/A
WY	ICSolutions	2.80 + .55/min.	2.40 + .50/min.	2.00 + .25/min.	11.05	9.90	5.75
BOP	Sprint	2.45 + .40/min.	1.50 + .23/min.	.23/min.	8.45	4.95	3.45

Source: Prison Legal News research data 2012-2013

Averages: \$7.18 \$6.05 \$5.56

* ICS provided by CenturyLink, with prepaid accounts provided by ICSolutions

+ ICS provided by CenturyLink, with prepaid accounts provided by Securus

Bolded states have banned ICS commissions

Hope for Prison Phone Reform (cont.)

us because we know that regular contact between prisoners and family members reduces recidivism.

“Today, this changes. After a long time – too long – the Commission takes action to finally address the high cost that prison inmates and their families must pay for phone service. This is not just an issue of markets and rates; it is a broader issue of social justice. We establish a framework that will immediately reduce interstate inmate calling service rates.... This effort has my unequivocal support.”

Commissioner Rosenworcel also thanked Martha Wright, whose petition for rulemaking submitted to the FCC a decade ago was the genesis of and impetus for the Commission’s order mandating reform of the prison phone industry.

Commissioner Clyburn expressed her appreciation for Mrs. Wright too, and for the many people who had encouraged the FCC to take action.

“For ten years, family, friends and legal representatives of inmates have been urging

the courts and waiting for the FCC to ease the burden of an exorbitant inmate calling rate structure,” she wrote. “Their wait is at long last over. Borrowing from a 1964 anthem inspired by challenges of his time, the immortal songwriter Sam Cooke sang that it’s been a long, long time in coming, but change has finally come.

“Today’s Order reforms the rates and charges for interstate inmate calling services and provides immediate and meaningful relief, particularly for low income families across this nation. This Order fulfills our obligation to ensure just, reasonable and fair phone rates for all Americans, including the millions with loved ones in prison.

“This all began with one Washington, D.C. grandmother, Mrs. Martha Wright, who spoke truth to power in 2003, and reminded us that one voice can still spur a movement and drive meaningful change.... In 2003, she filed a petition with the FCC asking for help. Others who were paying a high toll for interstate inmate calls would follow her lead and after many twists and turns – we are finally here.”

Commissioner Clyburn also acknowledged the burden that exorbitant prison

phone rates place on prisoners’ families. “Too often, families are forced to choose between spending scarce resources to stay in touch with their loved ones or covering life’s basic necessities,” she said. “One family member described how communicating with her husband is a ‘great hardship,’ but that the few minutes that they are able to talk each week, ‘have changed his life.’ Another parent told us how he has spent significant amounts of money to receive collect calls from his son – calls that he ‘cannot afford,’ but accepts because his son’s ‘emotional health and survival in prison is important’ to him.

“These are not isolated anecdotes. There are 2.7 million children with at least one parent in prison and they often want and need to maintain a connection. In addition to coping with the anxiety associated with a parent who is not there on a daily basis, these young people are often suffering severe economic hardships, which are exacerbated by unaffordable inmate calling costs. In the meantime, 700,000 inmates are released from correctional facilities each year. It’s critical for them to have strong support structures in order to re-assimilate

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CHART B - Intrastate ICS Rates

InterLATA Rates (2012-2013)

Cost of 15-Minute Call

State	Company	InterLATA Rates (2012-2013)			Cost of 15-Minute Call		
		Collect	Pre-Paid	Debit	Collect	Pre-Paid	Debit
AL	Embarq (CenturyLink) *	\$2.25 + .30/min.	\$2.25 + .30/min.	\$2.25 + .30/min.	\$6.75	\$6.75	\$6.75
AK	Securus	1.55 + .065-.39/min.	1.55 + .065-.39/min.	1.55 + .065-.39/min.	2.63-7.61	2.63-7.61	2.63-7.61
AZ	Securus	2.00 + .20/min.	1.60 + .20/min.	1.60 + .20/min.	5.00	4.60	4.60
AR	GTL	3.00 + .12/min.	N/A	3.00 + .12/min.	4.80	N/A	4.80
CA	GTL	.135/min.	.135/min.	N/A	2.03	2.03	N/A
CO	VAC (GTL)	2.75 + .15/min.	1.25 + .13/min.	1.25 + .10/min.	5.00	3.20	2.75
CT	Securus	.3245/min.	.2433/min.	.3245/min.	4.87	3.65	4.87
DE	GTL	1.55 + .61/min.	1.55 + .61/min.	1.55 + .61/min.	10.70	10.70	10.70
FL	T-NETIX (Securus)	1.20 + .06/min.	1.02 + .06/min.	1.20 + .06/min.	2.10	1.92	2.10
GA	GTL	2.00 + .19/min.	N/A	N/A	4.85	N/A	N/A
HI	Hawaiian Telcom	1.45 + .09-.14/min.	?	?	2.80-3.55	?	?
ID	PCS (GTL)	3.80 flat	3.60 flat	3.40 flat	3.80	3.60	3.40
IL	Securus	3.55 flat	3.55 flat	N/A	3.55	3.55	N/A
IN	PCS (GTL)	.24/min.	.24/min.	.24/min.	3.60	3.60	3.60
IA	PCS (GTL)	N/A	N/A	2.00 + .19 -.27/min.	N/A	N/A	4.85-6.05
KS	Embarq (CenturyLink) *	.18/min.	.18/min.	.17/min.	2.70	2.70	2.55
KY	Securus	1.50 + .20/min.	1.50 + .20/min.	1.20 + .16/min.	4.50	4.50	3.60
LA	Securus	2.15 + .15-.21/min.	1.93 + .14-.19/min.	1.93 + .14-.19/min.	4.40-5.30	4.03-4.78	4.03-4.78
ME	PCS (GTL)	1.55 + .25/min.	1.55 + .25/min.	.30/min.	5.30	5.30	4.50
MD	GTL	.95 + .30/min.	.30/min.	.30/min.	5.45	4.50	4.50
MA	GTL	.86 + .10/min.	.86 + .10/min.	.65 + .075/min.	2.36	2.36	1.78
MI	PCS (GTL)	.20/min.	.20/min.	.18/min.	3.00	3.00	2.70
MN	GTL	3.00 + .23/min.	N/A	.32/min.	6.45	N/A	4.80
MS	GTL	2.10 + .24/min.	2.10 + .24/min.	2.10 + .24/min.	5.70	5.70	5.70
MO	Securus	1.00 + .05/min.	.05/min.	.05/min.	1.75	0.75	0.75
MT	Telmate	.24 + .12/min.	.24 + .12/min.	.24 + .12/min.	2.04	2.04	2.04
NE	PCS (GTL)	.70 + .05/min.	.50 + .05/min.	.50 + .05/min.	1.45	1.25	1.25
NV	CenturyLink *	1.00 + .13/min.	1.00 + .13/min.	1.00 + .13/min.	2.95	2.95	2.95
NH	ICSolutions	1.20 + .10/min.	.15/min.	.15/min.	2.70	2.25	2.25
NJ	GTL	.33/min.	.33/min.	.33/min.	4.95	4.95	4.95
NM	Securus	.65 flat	.59 flat	.65 flat	0.65	0.59	0.65
NY	VAC (GTL)	.048/min.	.048/min.	.048/min.	0.72	0.72	0.72
NC	GTL	3.40 flat	3.40 flat	3.06 flat	3.40	3.40	3.06
ND	Evercom (Securus)	2.40 + .24/min.	2.40 + .24/min.	.34/min.	6.06	6.06	5.10
OH	GTL	1.04 + .322/min.	.832 + .257/min.	.832 + .257/min.	5.87	4.69	4.69
OK	VAC (GTL)	3.00 flat	3.00 flat	N/A	3.00	3.00	N/A
OR	Telmate	.16/min.	.16/min.	.16/min.	2.40	2.40	2.40
PA	GTL	2.35 + .26/min.	2.15 + .20/min.	2.04 + .19/min.	6.25	5.15	4.89
RI	GTL	.70 flat	.70 flat	.63 flat	0.70	0.70	0.63
SC	GTL	.99 flat	.75 flat	.75 flat	0.99	0.75	0.75
SD	VAC (GTL)	2.70 + .38/min.	1.35 + .09/min.	1.35 + .09/min.	8.40	2.70	2.70
TN	GTL	1.853 + .116/min.	1.667 + .105/min.	1.667 + .105/min.	3.60	3.24	3.24
TX	Embarq (CenturyLink) +	.26/min.	.26/min.	.234/min.	3.90	3.90	3.51
UT	VAC (GTL)	2.80 + .12/min.	2.80 + .12/min.	2.25 + .10/min.	4.60	4.60	3.75
VT	PCS (GTL)	1.25 + .15/min.	1.00 + .10/min.	.50 + .10/min.	3.50	2.50	2.00
VA	GTL	2.25 + .25/min.	1.75 + .23/min.	1.75 + .23/min.	6.00	5.20	5.20
WA	VAC (GTL)	3.50 flat	3.15 flat	3.15 flat	3.50	3.15	3.15
WV	GTL	.85 + .20/min.	.75 + .18/min.	N/A	3.85	3.45	N/A
WI	Embarq (CenturyLink) +	.12/min.	.12/min.	N/A	1.80	1.80	N/A
WY	ICSolutions	1.17 + .17/min.	.98 + .14/min.	.50 + .05/min.	3.72	3.08	1.25
BOP	Sprint	?	?	?	?	?	?

Source: Prison Legal News research data 2012-2013

Averages: \$3.90 \$3.41 \$3.42

* ICS provided by CenturyLink, with prepaid accounts provided by ICSolutions

+ ICS provided by CenturyLink, with prepaid accounts provided by Securus

Bolded states have banned ICS commissions

Hope for Prison Phone Reform (cont.)

successfully. Studies have shown that having meaningful contact beyond prison walls can make a real difference in maintaining community ties, promoting rehabilitation, and reducing recidivism. Making these calls more affordable can facilitate all of these objectives and more.”

She concluded by emphasizing, “change has finally come.”

Reaction to the FCC’s Order

THE FCC’S ORDER WAS WELL-RECEIVED BY the many organizations and individuals who had long urged the Commission to redress the abuses of the prison phone industry. While some felt the order did not go far enough, it is arguably more than any other government agency has done to protect prisoners and their families from exploitation by profit-driven companies and greedy corrections officials.

One community has already taken the FCC’s order as a signal for positive change. In October 2013, Santa Clara County, California Supervisor Joe Simitian introduced a proposal to let offenders held in the county’s juvenile detention facility make free calls to their families and friends, “ending exorbitant phone rates at least 23 times higher than normal,” according to the *Mercury News*.

Under the proposal the county would terminate its contract with GTL, the current ICS provider which gives the county a 61% commission, and supply phone services

at the juvenile facility internally. As a result, phone rates would drop from \$.70 a minute to \$.03 per minute. “It was institutional price gouging. We had a captive audience in every sense of the word,” Simitian observed. A similar proposal is being made for the county’s jails.

“Santa Clara County is setting a wonderful example that the rest of the country should follow,” said Peter Wagner, executive director of the Prison Policy Initiative.

Not everyone was happy with the FCC’s final order, though.

Global Tel*Link and Securus filed petitions to stay the order in October 2013 and requested that the FNPRM be held in abeyance. Securus’ petition complained that the Commission’s order was onerous, requiring the company to renegotiate over 1,700 ICS contracts within 90 days to be in compliance – a task it said was impossible to complete. Securus also claimed that it would be unable to recover commission payments it must continue to pay under its existing contracts.

Additionally, the company argued that the rate caps will require it to provide below-cost phone services – despite the fact that 18 states *already* charge rates within the FCC’s cap on collect interstate calls, and 15 states have rates at or below the cap on prepaid and debit interstate calls. In fact, 7 states currently charge ICS rates for collect, debit and/or prepaid calls that are at or below the FCC’s safe harbor limits.

Incongruously taking the position that it now somehow represents the interests of prisoners and their families, Securus further

argued that the rate caps “could lead correctional facilities to deny inmates access to telecommunications services.” More telling is the company’s complaint that the caps would “deprive state and county governments of funds used for salutary purposes such as victims’ rights funds and inmate welfare”; i.e., services that are funded by commission kickbacks from ICS providers, which in turn are mostly paid by recipients of prisoners’ phone calls – primarily their family members.

GTL’s petition for a stay of the FCC’s order emphasized the company’s bottom line, including the “millions of dollars in unrecoverable losses” that would “create disruption and uncertainty in the industry.” Presumably with a poker face, GTL argued that staying the order would not harm the petitioners. Attorney Lee G. Petro, who represents Martha Wright, the lead petitioner before the FCC, responded that GTL’s argument was “almost laughable,” noting the company was simply trying to safeguard its profit margins. “The FCC is there to protect the public interest, not to protect a company’s bottom line,” he observed, dryly.

Weighing in on the side of Securus and GTL was the National Sheriffs’ Association, which filed a comment with the FCC contending that a “one size fits all” approach to prison phone services fails to account for “the realities of how these services are provided.” Stated another way, because many sheriffs receive commission kickbacks from ICS providers, and have become accustomed to padding their jail budgets with those funds, they will suffer financially under the FCC’s order.

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CHART C - Local ICS Rates

State	Company	Rates (2012-2013)			Cost of 15-Minute Call		
		Collect	Pre-Paid	Debit	Collect	Pre-Paid	Debit
AL	Embarq (CenturyLink) *	\$2.75 flat	\$2.75 flat	\$2.75 flat	\$2.75	\$2.75	\$2.75
AK	Securus	free	free	free	free	free	free
AZ	Securus	1.84 flat	1.60 flat	1.60 flat	1.84	1.60	1.60
AR	GTL	3.00 + .12/min.	N/A	3.00 + .12/min.	4.80	N/A	4.80
CA	GTL	.096/min.	.096/min.	N/A	1.44	1.44	N/A
CO	VAC (GTL)	2.75 + .15/min.	1.25 + .13/min.	1.25 + .10/min.	5.00	3.20	2.75
CT	Securus	.32/min.	.24/min.	.32/min.	4.87	3.65	4.87
DE	GTL	1.22 flat	1.22 flat	1.22 flat	1.22	1.22	1.22
FL	T-NETIX (Securus)	.50 flat	.50 flat	.50 flat	0.50	0.50	0.50
GA	GTL	2.70 flat	N/A	N/A	2.70	N/A	N/A
HI	Hawaiian Telcom	1.95 flat	?	?	1.95	?	?
ID	PCS (GTL)	3.80 flat	3.60 flat	3.40 flat	3.80	3.60	3.40
IL	Securus	3.55 flat	3.55 flat	N/A	3.55	3.55	N/A
IN	PCS (GTL)	.24/min.	.24/min.	.24/min.	3.60	3.60	3.60
IA	PCS (GTL)	N/A	N/A	2.00 flat	N/A	N/A	2.00
KS	Embarq (CenturyLink) *	.18/min.	.18/min.	.17/min.	2.70	2.70	2.55
KY	Securus	1.85 flat	1.85 flat	1.50 flat	1.85	1.85	1.50
LA	Securus	.98 flat	.88 flat	0.88 flat	0.98	0.88	0.88
ME	PCS (GTL)	1.55 + .25/min.	1.55 + .25/min.	.30/min.	5.30	5.30	4.50
MD	GTL	.65 flat	.50 flat	.50 flat	0.65	0.50	0.50
MA	GTL	.86 + .10/min.	.86 + .10/min.	.65 + .075/min.	2.36	2.36	1.78
MI	PCS (GTL)	.20/min.	.20/min.	.18/min.	3.00	3.00	2.70
MN	GTL	1.00 + .05/min.	N/A	.35 flat	1.75	N/A	0.35
MS	GTL	2.10 + .24/min.	2.10 + .24/min.	2.10 + .24/min.	5.70	5.70	5.70
MO	Securus	1.00 + .05/min.	.05/min.	.05/min.	1.75	0.75	0.75
MT	Telmate	.24 + .12/min.	.24 + .12/min.	.24 + .12/min.	2.04	2.04	2.04
NE	PCS (GTL)	.70 flat	.50 flat	.50 flat	0.70	0.50	0.50
NV	CenturyLink *	1.00 + .13/min.	1.00 + .13/min.	1.00 + .13/min.	2.95	2.95	2.95
NH	ICSolutions	1.20 + .10/min.	.50 + .10/min.	.50 + .10/min.	2.20	1.50	1.50
NJ	GTL	.33/min.	.33/min.	.33/min.	4.95	4.95	4.95
NM	Securus	.66 flat	.59 flat	.65 flat	0.66	0.59	0.65
NY	VAC (GTL)	.048/min.	.048/min.	.048/min.	0.72	0.72	0.72
NC	GTL	1.25 flat	1.25 flat	1.13 flat	1.25	1.25	1.13
ND	Evercom (Securus)	.50 flat	.50 flat	.05/min.	0.50	0.50	0.75
OH	GTL	1.14 flat	.911 flat	.911 flat	1.14	0.91	0.91
OK	VAC (GTL)	3.00 flat	3.00 flat	N/A	3.00	3.00	N/A
OR	Telmate	.16/min.	.16/min.	.16/min.	2.40	2.40	2.40
PA	GTL	1.65 flat	1.60 flat	1.52 flat	1.65	1.60	1.52
RI	GTL	.70 flat	.70 flat	.63 flat	0.70	0.70	0.63
SC	GTL	.99 flat	.75 flat	.75 flat	0.99	0.75	0.75
SD	VAC (GTL)	2.70 flat	.90 flat	1.00 flat	2.70	0.90	1.00
TN	GTL	.895 flat	.8055 flat	.8055 flat	0.90	0.81	0.81
TX	Embarq (CenturyLink) +	.26/min.	.26/min.	.234/min.	3.90	3.90	3.51
UT	VAC (GTL)	3.15 flat	3.15 flat	2.50 flat	3.15	3.15	2.50
VT	PCS (GTL)	1.25 + .07/min.	1.00 + .06/min.	.25 + .05/min.	2.30	1.90	1.00
VA	GTL	1.00 flat	.90 flat	.90 flat	1.00	0.90	0.90
WA	VAC (GTL)	3.50 flat	3.15 flat	3.15 flat	3.50	3.15	3.15
WV	GTL	.85 flat	.75 flat	N/A	0.85	0.75	N/A
WI	Embarq (CenturyLink) +	.12/min.	.12/min.	N/A	1.80	1.80	N/A
WY	ICSolutions	.70 + .08/min.	.60 + .07/min.	.50 + .05/min.	1.80	1.65	1.25
BOP	Sprint	varies	1.50 + .06/min.	.06/min.	.95-5.70	2.40	0.90
Averages:					\$2.30	\$2.08	\$1.98

Source: Prison Legal News research data 2012-2013

* ICS provided by CenturyLink, with prepaid accounts provided by ICSolutions

+ ICS provided by CenturyLink, with prepaid accounts provided by Securus

Bolded states have banned ICS commissions

Hope for Prison Phone Reform (cont.)

Both GTL and Securus filed petitions for review in the D.C. Circuit Court of Appeals on November 14, 2013 – just one day after the final order was published in the *Federal Register*. The companies are seeking review of the order on the grounds that it exceeds the FCC's jurisdiction or authority and is "arbitrary, capricious, an abuse of discretion" or otherwise contrary to the law or violative of their rights. See: *Securus Technologies v. FCC*, U.S. Court of Appeals (D.C. Circuit), Case No. 13-1280; *Global Tel*Link v. FCC*, U.S. Court of Appeals (D.C. Circuit), Case No. 13-1281.

However, when drafting the final order the Commission specifically addressed its authority and jurisdiction to regulate prison phone rates, principally under Section 201 of the Communications Act of 1934, which requires that all telecom carriers' interstate rates be "just and reasonable."

Pursuant to 47 U.S.C. § 201(b), "All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful." Further, "[t]he Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter." While 47 U.S.C. § 276 requires all payphone providers to be "fairly compensated," that does not preclude the FCC from promulgating rules to ensure ICS rates are concurrently just and reasonable.

Most provisions of the FCC's final order will go into effect on February 11, 2014 with the exception of data reporting

requirements, though the petitions for review filed by GTL and Securus may result in delays depending on when the D.C. Circuit enters a ruling. Ironically, while both companies have filed petitions seeking to overturn the FCC's order, Securus is simultaneously suing GTL in federal court on a patent infringement claim.

Conclusion: The Bell Tolls

PLN AND HRDC HAVE INVESTED DECADES of work into confronting the injustice of exorbitant prison phone rates and their impact on prisoners, prisoners' families and our communities. The FCC's order represents a major milestone. While the reforms mandated by the FCC face legal challenges from ICS providers that rightly fear the impact they will have on their profit margins, the conclusion is inescapable: The evils of the prison phone industry have been exposed and are being remedied – slowly, perhaps, but surely.

On November 21, 2013, the FCC denied Securus' and GTL's petitions to stay the Commission's order and to hold the FNPRM in abeyance. "Justice delayed is justice denied," Commissioner Clyburn stated. "Families and loved ones have already been waiting ten long years for relief from unlawfully high and unaffordable rates.... I look forward to working with Chairman [Tom] Wheeler and my fellow Commissioners to adopt permanent rate caps to ensure that inmate calling service phone calls are just and reasonable as required by the statute."

Upon denying the petitions to stay, the FCC wrote that "delay of implementation of the reforms adopted in the Order will perpetuate the significant harms that third parties are currently subject to in the form

of unjust, unreasonable and unfair ICS rates and the various secondary harms that those excessive rates cause, such as a higher rate of recidivism and emotional harm to prisoners' children."

Thus, ICS providers should not ask for whom the bell tolls, as it has tolled for them. Prison phone companies have for too long price-gouged prisoners and their loved ones in collusion with corrections agencies that profit from such exploitation through commission kickbacks. If ICS providers want to continue providing prison phone services, they must do so within the new paradigm of regulation, rate caps and public scrutiny.

Lady Justice may be blind, but judging from the FCC's order she is not deaf – and the pleas of prisoners and their families for reform of the abusive prison phone industry are finally being heard, loud and clear. 📣

Sources: *FCC Order (WC Docket No. 12-375, 9/26/13)*; *FCC Order Denying Petitions to Stay (WC Docket No. 12-375, 11/21/13)*; *transcript from FCC Workshop (7/10/2013)*; *San Jose Mercury News*; *Securus' Motion for Stay (WC Docket No. 12-375, 9/17/2013)* and *Petitioners' Response*; *National Sheriffs' Association Comment (WC Docket No. 12-375, October 2013)*; *Huffington Post*; *www.icsolutions.com*; *https://securustech.net*; *www.gtl.net*; *www.telmate.com*; *http://qwest.centurylink.com/corrections*; *www.thedeal.com*; *www.prisonpolicy.org*; *www.paytel.com*; *www.castleharlan.com*; *www.american-securities.com*; *www.prisonphonejustice.org*; *www.phonejustice.org*; *www.epsicare.com*; *www.bloomberg.com*; *www.buzzfeed.com*; "Bureau of Prisons: Improved Evaluations and Increased Coordination Could Improve Cell Phone Detection," *Government Accountability Office, GAO-11-893 (Sept. 2011)*

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CHART D - ICS Commissions

State	Company	Commission Payments				Percentage	
		2009	2010	2011	2012	2012-2013	
AL	Embarq (CenturyLink)*	\$4,463,686.90	\$4,124,126.47	\$3,530,496.70	\$3,038,002.18	see note	9
AK	Securus	84,125.08	74,503.59	83,393.95	85,438.58	7-32.1%	
AZ	Securus	3,723,046.36	3,884,803.26	4,120,894.06	4,314,062.50	53.70%	
AR	GTL	2,394,900.77	2,475,527.50	2,447,253.75	2,010,223.57	45.00%	
CA	GTL	13,000,000.00	6,500,000.00	NONE	NONE	NONE	10
CO	VAC (GTL)	3,017,759.33	2,658,759.15	2,656,328.07	2,029,186.79	49.00%	
CT	Securus	3,590,667.50	3,797,824.40	4,032,757.64	4,212,201.86	68.75%	
DE	GTL	1,310,401.78	1,144,827.32	1,195,151.36	998,380.04	30.00%	11
FL	T-NETIX (Securus)	5,383,690.20	5,374,083.28	5,205,803.74	5,156,269.19	35.00%	
GA	GTL	7,445,914.55	7,695,712.76	6,284,715.76	5,316,672.82	60.00%	
HI	Hawaiian Telcom	106,013.36	97,598.47	103,493.08	100,325.32	?	
ID	PCS (GTL)	1,248,804.57	1,368,425.38	1,495,963.54	1,441,051.81	see note	12
IL	Securus	10,392,626.00	10,940,246.00	12,649,898.00	12,946,806.00	76.00%	2
IN	PCS (GTL)	1,693,965.32	1,547,481.77	1,929,932.14	1,696,977.76	43.50%	
IA	ICN/PCS (GTL)	1,231,000.00	1,231,000.00	750,000.00	650,972.00	see note	3
KS	Embarq (CenturyLink)*	1,814,693.80	1,876,165.29	1,769,540.31	1,839,450.64	68.20%	13
KY	Securus	3,333,168.18	2,706,767.18	2,880,166.42	2,796,139.46	54.00%	14
LA	Securus	3,602,686.75	3,303,407.37	3,289,038.16	3,044,009.33	70.00%	
ME	PCS (GTL)	234,329.79	225,504.10	171,379.45	367,231.71	60-100%	15
MD	GTL	?	?	?	?	65-87%	4
MA	GTL	1,972,546.06	1,870,044.28	1,706,889.43	1,714,972.89	15-30%	
MI	PCS (GTL)	NONE	NONE	NONE	NONE	NONE	
MN	GTL	3,388,860.00	3,470,898.00	3,767,811.00	3,690,953.00	59.00%	
MS	GTL	2,788,922.59	2,262,203.71	1,945,008.21	1,651,805.23	60.50%	
MO	Securus	NONE	NONE	NONE	NONE	NONE	
MT	Telmate	252,121.02	226,095.50	227,834.67	220,617.00	25.00%	16
NE	PCS (GTL)	NONE	NONE	NONE	NONE	NONE	
NV	CenturyLink *	3,033,941.22	2,747,336.97	2,736,802.16	2,706,372.51	54.20%	
NH	ICSolutions	252,000.00	284,000.00	300,000.00	308,000.00	see note	8
NJ	GTL	5,106,355.00	3,734,512.00	3,633,197.00	3,877,997.00	41.00%	
NM	Securus	NONE	NONE	NONE	NONE	NONE	
NY	VAC (GTL)	NONE	NONE	NONE	NONE	NONE	
NC	GTL	7,578,956.67	7,217,875.33	7,464,539.07	6,881,021.44	58.00%	
ND	Evercom (Securus)	126,245.62	114,110.95	107,516.94	97,856.12	40.00%	5
OH	GTL	13,531,849.15	17,236,087.91	15,000,000.00	15,000,000.00	see note	17
OK	VAC (GTL)	1,240,396.00	1,218,429.88	1,167,318.18	1,017,657.90	see note	18
OR	Telmate	3,000,000.00	3,000,000.00	3,000,000.00	3,000,000.00	see note	19
PA	GTL	7,174,942.65	7,250,923.88	7,361,264.77	7,620,897.51	44.40%	
RI	GTL	NONE	NONE	NONE	NONE	NONE	
SC	GTL	NONE	NONE	NONE	NONE	NONE	
SD	VAC (GTL)	241,839.00	154,767.00	229,398.76	520,332.05	33-38%	20
TN	GTL	2,991,100.00	2,916,310.00	2,635,599.00	2,595,417.00	50.10%	
TX	Embarq (CenturyLink)+	224,228.00	4,276,006.00	5,673,568.00	6,760,593.15	40.00%	
UT	VAC (GTL)	798,429.40	699,489.59	745,155.88	765,858.16	55.00%	21
VT	PCS (GTL)	303,160.50	467,295.94	410,513.74	482,292.11	37.00%	
VA	GTL	4,524,329.69	4,033,303.82	4,104,977.98	3,401,139.48	35.00%	22
WA	VAC (GTL)	5,100,000.00	5,100,000.00	5,100,000.00	5,100,000.00	51.00%	23
WV	GTL	903,735.30	890,005.21	919,726.80	931,637.16	46.00%	
WI	Embarq (CenturyLink)+	2,039,339.45	2,052,346.15	2,171,279.29	2,344,085.34	30.00%	
WY	ICSolutions	347,512.83	475,976.21	532,305.11	604,859.00	65.50%	
STATE TOTALS:		\$134,992,290.39	\$132,724,781.62	\$125,536,912.12	\$123,337,765.61	Avg. 47.79%	

Source: Prison Legal News research 2012/2013 (commission amounts are for calendar or fiscal years, depending on how the data was reported).

* ICS provided by CenturyLink, prepaid accounts provided by ICSolutions

+ ICS provided by CenturyLink, prepaid accounts provided by Securus

Consolidated Footnotes – Charts A to D

1 Alaska provides free local calls, plus free calls to the state's Public Defender Agency, Office of Public Advocacy and Ombudsman's Office. First-minute rates for intrastate calls range from \$.17 to \$.60, with subsequent minutes as indicated in Chart B.

2 Illinois' ICS contract changed to Securus in late 2012; the charts reflect current (2013) rates. The state's prior contract was with Consolidated Communications Public Services (CCPS). Illinois' contract with Securus initially had a commission rate of 87.1%, later reduced to 76%; the commission amounts in Chart D are pursuant to the state's prior contract with CCPS, which had a commission rate of 56%.

3 Iowa only allows debit calls, with a maximum charge of \$9.00 for interstate calls and \$7.40 for intrastate calls. The Iowa DOC's phone service is provided through the Iowa Communications Network (ICN), a state government agency, and PCS/GTL. The state does not receive a commission but rather retains all revenue in excess of the cost of providing prison phone services, which is termed "revenue" or "rebates."

4 Maryland's ICS contract changed to GTL in early 2013; the charts reflect current (2013) rates. The commission rate in Chart D (65-87%) is based on documents provided by the MD DOC; the commission for debit/prepaid calls is 65% and the commission for collect calls is 87%. The MD DOC's previous ICS contract with Securus had a commission rate of 48-60%.

5 In North Dakota, the rates are \$.30 for the first minute then \$.24/min. thereafter for collect and prepaid interstate and intrastate calls (plus the connection/per-call charge).

6 Phone rates were obtained from the BOP and from a 2011 report by the General Accountability Office: "Bureau of Prisons: Improved Evaluations and Increased Coordination Could Improve Cell Phone Detection," GAO-11-893 (Sept. 2011).

7 Rates are based on a 2011 email from the Hawaii Department of Public Safety, which confirmed on November 20, 2013 that those rates are still in effect.

8 Under New Hampshire's ICS contract, the first 5 minutes of local calls (all types) do not incur per-minute charges, though the connection/per-call charge applies. The state receives flat commission payments on a monthly basis (\$27,000 per month beginning in September 2012).

9 The Alabama DOC receives a "per diem" commission; commission payments are calculated based on a per diem rate multiplied by the average prisoner population, per month. Under the state's 2012 contract with CenturyLink, the per diem rate is \$.572.

10 California phased out commissions in 2011, but the California Technology Agency receives an \$800,000 annual fee from GTL, plus GTL provides cell phone detection technology at California state prisons at no cost.

11 The FY 2009 and FY 2010 commission amounts for Delaware include combined commission payments for ICS and public payphone services. The state's ICS contract specifies a declining commission rate of 50% in FY 2010 and 2011, 40% in FY 2012 and 30% in FY 2013.

12 Idaho receives a commission of \$2.25 per debit call, \$2.00 per prepaid collect call and \$1.75 per collect call. Community Work Centers have a 20% commission.

13 Kansas receives a minimum guaranteed annual commission of \$2.36 million plus a "signing bonus" of \$250,000 pursuant to its 2013 ICS contract. The commission amounts are from the state's prior ICS contract, which had a commission of 41.3%.

14 In addition to the commission amounts, Kentucky receives an \$80,000 annual technology grant from Securus.

15 Under a contract with PCS/GTL that expired in early 2013, Maine received a 60% commission on collect and prepaid calls plus a 100% commission on debit calls. The Maine DOC currently uses an in-house debit calling system with no collect calls.

16 Montana receives minimum monthly commission payments of \$23,000 or 25% of ICS revenue, whichever is greater.

17 Ohio receives a flat annual commission of \$15 million under a contract that began in 2010. The commission amount for 2009 reflects 11 monthly deposits under the prior contract, while 2010 reflects 14 monthly deposits under both the prior and current contract.

18 Oklahoma receives a flat commission of \$2.30 per call, which equates to a 76.6% commission based on the state's flat ICS rate of \$3.00 per call.

19 Oregon receives a base annual commission of \$3 million, paid quarterly, plus "an additional commission ... of 50% of quarterly gross revenue on all Contractor provided inmate telephone equipment and of quarterly profits on all Enhanced Services over \$1.5 million."

20 South Dakota receives a 38% commission on collect and prepaid local and intraLATA calls, 33% on collect and prepaid interLATA and interstate calls, and \$1.00 commission per debit call (all call types).

21 In addition to ICS commissions, Utah receives a quarterly administrative fee in "an amount equal to 1% of the net sales ... under this Contract for the period." Utah DOC halfway houses that use coin payphones have a 45% commission rate.

22 In addition to ICS commissions, GTL pays Virginia a minimum \$150,000 annual fee "towards DOC technology initiatives," and such fees increase if GTL receives annual ICS revenue that exceeds \$13 million.

23 Washington receives a 51% commission with a minimum annual payment of \$5.1 million. The amounts in Chart D reflect the minimum commissions received by the state; actual amounts may be higher.

For all charts: ICS rates and providers may have changed since this data was compiled by *Prison Legal News* in 2012-2013. Securus rates were checked with the on-line Securus rate calculator (<https://securustech.net/call-rate-calculator>); CenturyLink rates were checked on the company's website: (<http://qwest.centurylink.com/corrections>). Data in the charts was obtained from corrections agencies via public records requests or their websites, or from ICS providers; most source documents are posted on www.prisonphonejustice.org. 

Prison Phone Companies Fight for Lucrative Florida DOC Contract

by David Ganim

IN APRIL 2013, THE FLORIDA DEPARTMENT OF CORRECTIONS (FDOC) issued an invitation for companies to bid on the department's coveted prison phone contract.

The FDOC evaluated responses to the bid invitation and conducted negotiations with three companies: Global Tel*Link (GTL), Securus Technologies, Inc., which currently holds the department's phone contract, and CenturyLink – the nation's three largest prison phone service providers. The FDOC then issued a request for best and final offers (BAFO), and each company responded by June 18, 2013. After reviewing the final bids, the FDOC

selected CenturyLink as the company that demonstrated the best value and service.

CenturyLink was able to woo the FDOC by offering an unusual proposition – increasing the department's "commission" kickback to 62.6% of gross prison phone revenue from the current rate of 35%, while lowering the cost of a 15-minute call by approximately 25%. The 62.6% commission would be in effect for the initial contract term of five years, then change to 63.6% for the first two one-year renewals and increase to 64.1% for the third, fourth and fifth-year renewals.

CenturyLink indicated that its pro-

EXHIBIT B

Chairman Julius Genachowski
Federal Communications Commission
Public Comments
445 12th Street, SW Washington DC
20554

Chadwick Wallace IDOC No. S-05266
Stateville Correctional Center
Box 112
Joliet, IL 60434

Received & Inspected

This is a public comment for
The Wright Petition CC Docket 96-128

JUL 02 2012

FCC Mail Room

Dear Chairman Genachowski,

Hello, my name is Chadwick Wallace, and I am incarcerated in Stateville Correctional Center in the state of Illinois.

I am writing you in regards to the high cost of phone calls from prison. My family lives in Alton, IL which is 250+ miles away from my facility, which is located in Joliet, IL. It costs over \$10.00 for me to make one phone call home, and due to financial hardship, I do not get to call home much these days. People I've talked to in here whose families live closer to this facility tell me they pay less per call, \$6 or \$7.00, which is still outrageous in my opinion.

I feel that the phone company Stateville contracts with, a Mattoon, IL based company called "Consolidated" capitalizes on the fact that 80% of IDOC Prisoners are from Chicago and it's surrounding areas, and are incarcerated in facilities that are primarily located in the mid to southern regions of the state, which means the vast majority of calls made on their network will be long distance, which they charge an exorbitant amount for.

To my understanding, Consolidated holds most of the contracts for prison phone systems in this state, and the collect calls funnel and endless source of money into their pockets, as phones are the only source of real communication for those of us who are forced to live in a prison so far from home.

Being over 200 miles away from home, my friends and family can't make the trip very often, the same holds true for those from the northern region of the state being housed in the southern prisons, especially in the current economy. Even the phone calls have become too expensive.

The entire month of June, I have spoke to my mother a full 60 seconds. That is the length of the one time courtesy call that Consolidated gives when your bill is overdue.

Identity

Name: Incarcerated person
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Out of state phone calls are a perplexing issue of their own. For some reason it's cheaper for me to call my Grandparents who live in Colorado Springs, Colorado, I'm unsure just how much cheaper but the difference is significant compared to calling home in my own state. However, with them being reitred, and on a fixed income they can nary afford the calls, despite the price difference.

The whole phone operation in general amounts to treachery. It's a vampiric entity that feeds on the pocket books of the loved ones who support their imprisoned family and friends. We're forced to feed this beast at the expense of our loved ones livlihood, our only other option is a prison mail system thaqt has time and time again proven to be wholly unreliable, and slower than molasses dripping from a flap-jack (at no fault of the U.S. Postal Service).

Chairman Genachowski, I appreciate your time in reading my letter, and pray that you can be of some help in this matter, if not for us prisoners, then for the families that love and believe in us. Thank you .

Respectfully,

Chadwick Wallace
IDOC No. S-05266
Stateville Correctional Center
Box 112
Joliet, Il 60434

*Chadwick
Wallace*
6/25/2012

Identity

Name: Incarcerated person
Start Page: 4
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EXHIBIT C

TO: Mr. Julius Genachowski
Chairman, Federal communications commission

FCC Mail Room

FROM: Earl Harris #BX9566

DATE: OCTOBER 7, 2012

RE: THE WRIGHT PETITION, CC DOCKET NO. 96-128

I'M WRITING YOU CONCERNING THE WRIGHT PETITION. I AM CURRENTLY SERVING A LIFE SENTENCE HERE AT SCI-GREENE ON THE WESTERN SIDE OF PENNSYLVANIA. I'M FROM PHILADELPHIA AND IT COSTS \$5.15 FOR ME TO MAKE A FIFTEEN MINUTE PHONE CALL TO MY FAMILY AND FRIENDS. MY GRANDMOTHER IS NINETY ONE YEARS OLD AND HER AGE PREVENTS HER FROM VISITING ME, SHE SUFFERS FROM FROM A SEVERE CASE OF ARTHRITIS AND THAT PREVENTS HER FROM WRITING ME, MY ONE AND ONLY SOURCE OF COMMUNICATION WITH MY GRANDMOTHER IS TO CALL HER BUT THAT IS VERY DIFFICULT DUE TO THE HIGH PRICES OF THE SYSTEM HERE IN PENNSYLVANIA'S DEPARTMENT OF CORRECTIONS.

MY GRANDMOTHER PROBABLY WON'T BE ON THIS EARTH MUCH LONGER AND I RERALLY WOULD LIKE TO SPEAK WITH HER AS MUCH AS POSSIBLE BUT I AM NOT ABLE TO SPEAK TO HER ON A REGULAR BASIS BECAUSE THE PRICE TO CALL HER IN PHILADELPHIA IS KILLING ME FINANCIALLY. IT IS A SHAME THAT I CAN'T CALL HER EVERY OTHER DAY TO HEAR HER VOICE, AND WORDS OF INSPIRATION AND ENCOURAGEMENT.

BACK IN 2010 I WAS ONE OF MANY INMATES WHO WAS TRANSFERRED FROM PENNSYLVANIA DEPARTMENT OF CORRECTIONS TO MICHIGAN DUE TO PRISON OVERCROWDINESS HERE IN PENNSYLVANIA. I WAS SENT TO MUSKEGON CORRECTIONAL FACILITY IN MUSKEGON, MICHIGAN. I WAS VERY HAPPY WHILE I WAS HOUSED IN MICHIGAN BECAUSE THE PHONE SYSTEM WAS ONLY \$1.80, TO CALL ANYWHERE IN THE COUNTRY FOR FIFTEEN MINUTES. I WAS ABLE TO CALL MY FAMILY AND FRIENDS EVERY OTHER DAY, I WAS ABLE TO CALL RELATIVES IN FLORIDA AS WELL.

Identity

Name: Incarcerated person
Start Page: 14
End Page: 15
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WHEN I ARRIVED BACK IN PENNSYLVANIA I VERY UPSET BECAUSE I KNEW THAT I WOULDN'T BE ABLE TO CALL MY FAMILY AND FRIENDS LIKE I WAS CALLING THEM WHILE I WAS IN MICHIGAN. THE PA.D.O.C. IS RUNNING A VICIOUS MONOPOLY CONCERNING THE PHONE SYSTEM BECAUSE THE MAJORITY OF THE PRISONERS HERE ON THE WESTERN SIDE OF THE STATE ARE ACTUALLY FROM (PHILADELPHIA) THE EASTERN SIDE OF THE STATE. WE ARE SENT ALL THE WAY OUT HERE ON THE WESTERN SIDE OF THE STATE BECAUSE THE PA.D.O.C. KNOWS THAT OUR PHONE CALLS ARE GOING TO COSTS MORE THAN PRISONERS ON THE EASTERN SIDE OF THE STATE. I BELIEVE THAT THE PA.D.O.C. IS PUNISHING US AND OUR FAMILIES BY FORCING US TO PAY SUCH HIGH RATES FOR A PHONE CALL FROM WITHIN THE STATE.

WE ARE BEING EXPLOITED ALONG WITH OUR FAMILIES, FRIENDS, AND LOVED ONES. WE ARE BEING FORCED TO PAY EXCESSIVE TELEPHONE CHARGES WHEN PEOPLE IN SOCIETY ARE PAYING WAY LESS WHEN USING A PAY FROM. THE NUMBER ONE REASON WHY THE RECIDIVISM RATE IN PENNSYLVANIA IS SO HIGH IS BECAUSE PRISONERS ARE CONSTANTLY LOSING CONTACT WITH FAMILY AND FRIENDS DUE TO THE EXCESSIVE HIGH RATE OF PRISON PHONE CALLS.

PRISONERS FROM PHILADELPHIA ARE SENT ALL THE WAY OUT HERE JUST SO THAT THEY CAN BE CHARGED HIGHER PRICES FOR THEIR PHONE CALLS TO PHILADELPHIA. WHEN I WAS HOUSED AT A PRISON FORTY FIVE MINUTES AWAY FROM PHILADELPHIA, I WAS RECEIVING THREE VISITS A WEEK, NOW THAT I AM ALL THE WAY OUT HERE MY VISITS HAS BEEN CUT DOWN TO TWO A YEAR. WHEN I WAS HOUSED IN THAT FACILITY CLOSER TO MY HOME, I WAS CALLING MY FAMILY AND FRIENDS AT LEAST FOUR TIMES A WEEK. NOW THOSE CALLS HAS BEEN REDUCED TO THREE A MONTH. PLEASE HELP US IN OUR STRUGGLE TO GET THESE PHONE CALLS REDUCED TO A REASONABLE AND MANAGABLE PRICE.

SINCERLY YOURS,

/S/EARL HARRIS BX 9566

Identity

Name: Incarcerated person
Start Page: 14
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Exhibit B-5 – COST REPLY FORM
 CONTRACT NO. DTI-2010-122
 Inmate & Public Coin Telephone Services
Additional Charges

EXHIBIT D

Offeror Name: Global Tel*Link Corporation - Changes compared to original offer in green.

Please disclose any and all other charges, fees, or taxes in the boxes below. Please also indicate Y or N in the appropriate box if this is required by law or regulation.

Description of Charge	Increment (monthly, annually, one-time, etc.)	Amount Charged	Required by law or regulation (Y/N)
Federal Universal Service Fee (FUSF)	Monthly per Invoice of interstate calls	13.6% of interstate calls	Yes
Federal Usage Tax	Monthly per Invoice	Varies	Yes
State Usage Tax	Monthly per Invoice	Varies	Yes
Local/City Usage Tax	Monthly per Invoice	Varies	Yes
Single Bill Fee	Monthly per Paper Invoice	\$2.89	No
Automated IVR Deposit \$25*	Per Transaction	\$4.75	No
Automated IVR Deposit \$50*	Per Transaction	\$4.75	No
Credit Card Deposit through GTL Website**	Per Transaction	\$9.50	No
State Carrier Cost Recovery Fee	Intrastate Calls Billed via Paper Invoice	\$1.95	No
State Carrier Cost Recovery Fee	Intrastate Prepaid Calls	Up to 5% of Call Amount	No
Federal Administrative Cost Recovery Fee	Interstate Calls Billed via Paper Invoice	\$1.99	No
Federal Administrative Cost Recovery Fee	Interstate Prepaid Calls	Up to 5% of Call Amount	No
AdvancePay Account Close-Out Fee	One Time	\$5.00	No
Deposit sent to GTL via Western Union***	Per Transaction	\$0.00	No
Certified Check mailed to GTL	Per Transaction	\$0.00	No
Money Order mailed to GTL	Per Transaction	\$0.00	No
Public Coin Telephone Payphone Surcharge	Per Transaction	\$0.56	Yes

JUL 17 2012

July 13, 2012

EXHIBIT E

Anna Lednum
121 Palmetto Drive
Edgewood, MD 21040

Prisoner's Legal Services

Attn: Ms. Leslie Walker
10 Winthrop Square
3rd Floor
Boston, MA 02110

Subject: Phone Service For Inmates at MCI -Norfolk, MA Concerning Cedric Lednum, W88861

Dear Ms. Walker:

I am the mother of Cedric Lednum, W88861, an inmate at MCI – Norfolk, MA. Since his Dad and I support Cedric's phone debit account, we truly appreciate and thank you for your efforts to rectify the very poor phone service we receive.

Cedric says it may help you to hear from others involved, as well as the inmates; otherwise I would simply not bother you with our complaints.

Cedric calls us averaging four times per week, depending on what needs to be discussed (health, real estate, family, etc.) MCI's phone service is deplorable. I will try to be concise in my details.

- 1) **Cedric's Voice Quality:** Always very poor. Volume weak with a "cave" effect often during calls. The words are often garbled and his sentences are obliterated or interrupted by static, clicking and announcements. This results in indiscernible speech and missed content.
- 2) **Dropped Calls:** Occasionally our call is simply dropped/cut off, or ended one or two minutes early.
- 3) **Switching Phones:** Due to the poor phone service, often we must drop a call and try again. Cedric will go to a different phone; usually it is having the same problems also.
- 4) **Repeated Calling:** Again, due to the poor quality of phone reception repeated calling is common occurrence. Having to repeat the call is expensive, and especially troublesome when due to Poor Service.

Identity

Name: Individual, not incarcerated
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- 5) **"20 Minute" Call Rule:** Not only is repeating the call expensive and troublesome, but there are times when we have to discuss personal family business. The rule of "20 Minute Calls" becomes ridiculous because the majority of the time is spent trying to establish a decent connection and we can't discuss our personal matters within this timeframe. I feel this rule "fills someone's coffers" unnecessarily.
- 6) **Inaccurate Debit Amounts:** Very frequently erroneous remaining debit amounts are quoted; this results in difficulty budgeting and replenishing Cedric's phone fund in a timely manner.

We look forward to fundamentally functional prison phone services at MCI for inmates and pertinent families and friends. With God's blessing, Cedric may be paroled in about two years. Phone service, now, while he is an inmate, has extended ramifications. It is another crucial factor in building and maintaining his future. He cannot be totally cut off from the "outside world" for two more years, then face society in reality and expect normalcy.

Letters for communication are wonderful. No letter, however, can compare to hearing Cedric's voice and conversing with him. We love him dearly. He is a wonderful person and son. Phone conversation not only provides voice contact, but also immediacy and voice inflections, i.e., modulations of voice: tone, pitch and distribution of stress placed on particular phrases/words. We anxiously await his calls. They are very important to us as well as to Cedric.

Again, we thank you greatly for your representation to improve the phone service for the inmates at MCI.

Yours truly,



Anna R. Lednum

Identity

Name: Individual, not incarcerated
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EXHIBIT F

Received & Inspected

MAR 04 2013

FCC Mail Room

02/21/2013

Dear Secretary Dortch:

This is a public comment for WC Docket Number 12-375.

Costs and Experiences

My family, friends and I pay Global Tel on average about \$50.00 per month. Global Tel charges \$5.00 per \$25.00 added to my account when a credit card is used, which leaves only \$20.00. That is almost 20% of all money added to my account. For \$50.00 you only get \$40.00 and so on.

Further, Florida DOC will not allow me to call any number that has not been "approved and verified with a bill matching the name and address of the person requested to be added to the phone approval list of contacts."

Call Charges

The calls are limited to 15 minutes. GTL charges from \$1.25-\$1.50 for the first minute and then about 6¢-8¢ for each additional minute. My total 15 minute long distance calls to my family and friends here in Florida cost about \$1.90.

Dropped Calls

Thinking about it, over time my calls have been dropped quite frequently after only like two minutes. I feel that; is GTL doing it on purpose to recharge the \$1.25-\$1.50 first minute fee? And yes, they charge that when the call is dropped and I call right back.

Lately it don't give notice that 60 seconds are left before the call terminates. I have to call back and say I love you and my good bye's. I think that is a subtle scan to charge that \$1.25-\$1.50 first minute fee again.

 1. _____

Identity

Name: Incarcerated person
 Start Page: 13
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Call Frequency

I use the phone system to communicate with my loved ones about 6-8 times per week. I would talk to them more if the phone rates were lower and I would not have to use snail mail where my messages and responses back average 2-3 weeks.

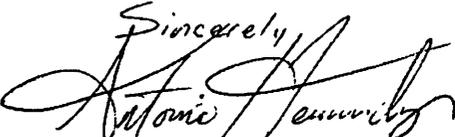
Free Calls

The FCC should mandate a certain amount of free calling time per prisoner each month because there is nothing in this world as important sometimes as hearing the voice of a loved one. The children especially need to hear the voice of their parents and that is in their best interest. That would be great if the FCC did this.

Disabilities Access

I don't know if the rates for TTY calls are the same as regular calls. They should be cheaper because they are disabled and unable to pay high fees.

I believe that the majority of Florida DOC's prison population share these views and concerns but they just don't take the initiative because they probably feel nothing will change and if it does FDCC is known for retaliation and making things worse in the end. However, if we all stood up for what's wrong, the majority would ultimately prevail and the needed change will come. I want to be a part in the change for prison phone justice not only for me, but for everybody in state and federal prisons in the U.S. where our family and friends are the ones who ultimately pay the bill.

Sincerely,


2.

Identity

Name: Incarcerated person
Start Page: 13
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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

Patricia Garin

EXHIBIT H

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

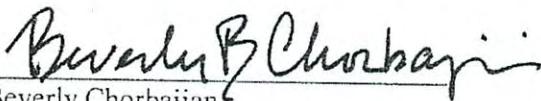
EXHIBIT I

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