

December 23, 2008

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EX PARTE NOTICE

Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

Re: Implementation of the Pay Telephone Reclassification and Compensation
Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128;
Petitioners' Alternative Rulemaking Proposal

Dear Ms. Dortch:

Attached is the Declaration of Douglas A. Dawson in Response to the "Inmate Calling Services Interstate Call Cost Study" and Other Recent Filings, executed on December 22, 2008 ("Dawson Response") (Exhibit A), and a chart prepared by Kay Perry, Chair of the National Chapter of Citizens United for the Rehabilitation of Errants ("CURE Chart") (Exhibit B). These documents are filed on behalf of petitioners Martha Wright, *et al.* ("Petitioners"), in support of Petitioners' Alternative Rulemaking Proposal requesting the imposition of benchmark interstate inmate calling rates and related relief ("Proposal").¹

The Dawson Response confirms that the inmate calling service providers' cost study ("Cost Study") inflates the actual costs of providing interstate inmate calling services through

¹ Petitioners' Alternative Rulemaking Proposal, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. No. 96-128 (Mar. 1, 2007) ("Proposal"); FCC Public Notice, *Comment Sought on Alternative Rulemaking Proposal Regarding Issues Related to Inmate Calling Services*, 22 FCC Rcd 4229 (WCB 2007).

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the use of an unrepresentative sample of correctional facilities and other fatal flaws.² Mr. Dawson demonstrates that the Cost Study “can only serve as supporting a high ceiling over the reasonable cost of serving smaller, marginal correctional facilities, but provides no support for any floor under a reasonable cost estimate.”³ In fact, Montgomery County, Maryland recently entered into a telephone service contract with Global Tel*Link Corp. for inmates of the Department of Correction and Rehabilitation providing for a flat rate of \$0.65 for all inmate collect calls, including interstate calls, further confirming the generosity of the proposed benchmarks for jails and other local correctional facilities.⁴

Mr. Dawson also concludes that the consistency of the Cost Study results with Petitioners’ recommended benchmark rates, notwithstanding the unrepresentative sample of correctional facilities on which the Cost Study is based, demonstrates that the recommended benchmarks are sufficient to accommodate the higher-cost, small facilities that Pay Tel Communications, Inc. (“Pay Tel”) discusses in its most recent filing.⁵ The Cost Study shows that if the Commission adopts a “tiered” approach, as Pay Tel suggests, prisons and other large facilities should be subject to even lower benchmark rates than the rates that Petitioners have proposed.⁶

Mr. Dawson also demonstrates that the cost of providing inmate prepaid calling -- whether involving inmate prepaid accounts or prepaid accounts established by inmate families and others receiving calls from inmates -- is similar to the cost of providing inmate debit calling, contrary to Pay Tel’s arguments.⁷ Accordingly, if the Commission decides not to require that inmate debit calling be offered as an alternative to collect calling and chooses instead to require a prepaid calling option, the rates for such prepaid calling should be subject to the requested generous benchmark rate for inmate debit calling.

² See Don J. Wood, Inmate Calling Service Interstate Call Cost Study, CC Docket No. 96-128 (Aug. 15, 2008) (“Cost Study”).

³ Dawson Response ¶ 16.

⁴ See Contract No. 8426000003-AA between Montgomery County, Maryland and Global Tel*Link Corp. at 1, 11 (May 15, 2008) (attached as Exhibit C).

⁵ See letter from Marcus W. Trathen, Counsel to Pay Tel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128 (Dec. 9, 2008) (“Pay Tel Letter”).

⁶ Dawson Response ¶¶ 18-19.

⁷ See Pay Tel Letter at 11-13; letter from Marcus W. Trathen, Counsel to Pay Tel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128, at 3-4 (Oct. 17, 2008).

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The CURE Chart shows that Pay Tel's local inmate calling rate charts are not accurate and that, contrary to Pay Tel's assertion, local inmate collect calling rates in most jurisdictions (36 out of the 50 states plus District of Columbia), are no higher than the benchmark long distance collect rate requested by Petitioners, assuming a 10-minute call.⁸ Accordingly, Pay Tel's arbitrage argument -- that the relief sought by Petitioners will cause parties receiving calls from inmates in nearby facilities to acquire cell phones and VoIP telephones with out-of-state numbers -- assumes wildly incorrect facts in the vast majority of jurisdictions.⁹

In accordance with Section 1.1206 of the Commission's rules, this letter and attachments are filed with your office for inclusion in the public record of the above-referenced proceeding. Any questions about the Proposal or the enclosed material should be directed to the undersigned.

Yours truly,

/s/ Frank W. Krogh

Frank W. Krogh

Counsel to Petitioners Martha Wright, *et al.*

Attachments

cc: Amy E. Bender
Scott M. Deutchman
Scott K. Bergmann
Nick Alexander
Greg Orlando

⁸ See letter from Marcus W. Trathen, Counsel to Pay Tel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128, at 1-2 & exhibits (Sept. 9, 2008). With regard to those jurisdictions for which CURE lacks reliable local inmate collect calling rate data, the CURE Chart accepts Pay Tel's data.

⁹ Pay Tel argues that other intrastate inmate collect rates are also higher than the requested interstate collect calling benchmark. *Id.* at 2. Those intrastate rates, however, are irrelevant to any arbitrage incentive as long as the local collect rate is still lower than the requested benchmark rate, which it is in 36 jurisdictions. Where the local collect rate is lower than the requested benchmark, arbitrage incentives will remain as they are now -- causing parties receiving calls from out-of-state prisoners to acquire services with numbers that are local to the facilities. See letter from Deborah M. Golden, Counsel to Petitioners, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128, at 3 (Oct. 10, 2007) (out-of-state customers acquiring services with numbers local to the correctional facilities from which they receive calls). Pay Tel also does not explain why there is no harm in out-of-state inmate call recipients acquiring services with numbers that are local to the correctional facilities from which they receive calls, while the opposite incentive would pose a significant security risk.

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EXHIBIT A

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

In the Matter of

**Implementation of the Pay Telephone
Reclassification and Compensation
Provisions of the Telecommunications
Act of 1996**

**Petition for Rulemaking or, in the
Alternative, Petition to Address Referral
Issues In Pending Rulemaking**

CC Docket No. 96-128

**DECLARATION OF DOUGLAS A. DAWSON IN RESPONSE TO
THE "INMATE CALLING SERVICES INTERSTATE CALL COST STUDY"
AND OTHER RECENT FILINGS**

Douglas A. Dawson, being duly sworn, declares as follows:

I. Introduction

1. My name is Douglas A. Dawson, and I am the President of CCG Consulting, Inc. ("CCG"), located at 7712 Stanmore Drive, Beltsville, MD 20705. I have filed several expert declarations in this docket in support of Petitioners' requests, including their Alternative Rulemaking Proposal ("Proposal").¹

2. I submit this Declaration in response to recent filings in this proceeding. First, I will be responding to the "Inmate Calling Services Interstate Call Cost Study" ("Cost Study") filed by Don J. Wood on behalf of the inmate calling service providers.² The Commission should ignore this filing as incomplete and unsubstantiated, except insofar as it implicitly

¹ Petitioners' Alternative Rulemaking Proposal, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. No. 96-128 (Mar. 1, 2007) ("Proposal").

² Don J. Wood, Inmate Calling Service Interstate Call Cost Study, CC Docket No. 96-128 (Aug. 15, 2008) ("Cost Study").

confirms the reasonableness of Petitioners' requested interstate interexchange inmate calling service benchmark rates. Second, I will be commenting on two ex parte presentations of Pay Tel Communications, Inc. ("Pay Tel") concerning the Cost Study and prepaid calling.³

II. Shortcomings of the Cost Study

3. There are a number of shortcomings of the Cost Study. First, it presents a conclusion on the cost of providing interstate calls in correctional facilities, but includes no data to support the costs or any description of the specific assumptions used in the Cost Study. Without factual support for the assumptions supporting the supposed costs, the Commission cannot judge the reasonableness of the results or give the results any consideration. I will describe below the types of cost support that the inmate calling service providers should have filed to provide credence to their Cost Study. Second, the Cost Study is limited entirely to data from unprofitable, "marginal" facilities, according to Mr. Wood, and disproportionately reflects unusually low-volume, high-cost facilities (such as local jails and other small facilities), and this unrepresentative sample improperly inflates the results. Third, I will also comment on the cost methodology used in the Cost Study. Finally, I discuss rate design and whether the Commission is required to use public payphone-type costing in analyzing costs and rates for inmate calling services.

III. Lack of Cost Study Support

4. The Cost Study as filed contains zero cost support that would allow the Commission or any other party to make any reasonable judgments about the validity of the results. The inmate calling service providers are asking the Commission to accept the Cost Study

³ Letter from Marcus W. Trathen, Counsel to Pay Tel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128 (Dec. 9, 2008) ("Pay Tel Letter"); letter from Marcus W. Trathen, Counsel to Pay Tel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128 (Oct. 17, 2008) ("Pay Tel Prepaid Letter").

results on faith alone, since the Cost Study as filed is nothing more than a pronouncement of a final result of some sets of calculations done by Mr. Wood. In order for the Commission to consider this a valid study, the Cost Study should demonstrate how raw data from specific facilities was gathered and used to calculate specific costs. Without such support, the Commission must reject this “Cost Study” because the results have no meaning or relevance to any part of this proceeding.

5. As the providers of the services in question, the inmate calling service providers certainly have all of the relevant data needed to calculate costs. Earlier in this proceeding, I estimated the cost of providing interstate inmate calling.⁴ In estimating the cost, I described the various assumptions I used in deriving the cost components. While I was forced to estimate costs because of the lack of data, the prison providers have all the data needed to know the exact cost of providing interstate calling in correctional facilities. In their comments, the inmate calling service providers took various exceptions to my assumptions, and one would assume that, as the actual service providers, they would have been able to demonstrate why my assumptions were faulty.⁵ They have never done so, either in their comments or as part of the Cost Study. Thus, my original cost calculations, as well as Petitioners’ comparable rates analysis, are still unrefuted.

6. In order for the Cost Study results to be credible and acceptable to the Commission, the following types of supporting data would have to be filed:

⁴ See, e.g., Declaration of Douglas A. Dawson in Support of Petitioners’ Alternative Proposal (Feb. 16, 2007) (“Dawson Alternative Declaration”), attached as Appendix B to the Proposal.

⁵ See, e.g., Comments of Pay Tel Communications, Inc., *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. No. 96-128 (May 2, 2007).

- a. The Cost Study should show the size of each facility and its calling volume (*i.e.*, the number of prisoners and the number of interstate calls and minutes originated at each facility).
- b. The Cost Study should list all of the specific direct costs, defined as those costs incurred directly at a given facility, for each location. Direct costs might include such elements as the cost of an employee who works full time or part time at a given facility, the cost of any software specific to that facility, or the cost of transport or connectivity at a given facility. Every facility would be expected to have some direct costs specifically related to that location.
- c. The Cost Study backup should also show the specific hardware investment in phones and other equipment located at each facility.
- d. Since the Cost Study purports to demonstrate interstate costs, it should describe and demonstrate how costs were allocated to each jurisdiction. Some costs of prison calling should be assigned entirely to a specific jurisdiction. For example, there might be local lines or local termination costs that apply only to local calls. There are long distance costs that would apply only to long distance calls. One would expect this sort of study to show total costs at each facility, and then show how total costs were allocated to each jurisdiction. The Cost Study instead calculates a total cost and assumes that the cost per minute is the same for each jurisdiction.
- e. Most importantly, in order for the Cost Study to be credible, there ought to be a description and worksheets showing how allocated corporate costs were assigned to each location for each given prison provider. All seven of the prison providers included in this Cost Study serve multiple facilities. Based on my experience and previous inmate calling service cost analyses in this proceeding, the majority of

the costs incurred to provide prison calling is incurred at the corporate level rather than directly and locally at a given facility. For example, typically, a group of core engineers support multiple facilities, a group of core programmers support the software for multiple facilities, a core of billing personnel bill for multiple facilities, and a core of customer service representatives handle issues for multiple facilities. If a large portion of costs for a given facility is assigned from corporate groups that support many facilities, then it is reasonable to expect the Cost Study to show the allocation of total corporate costs for a given inmate calling service provider allocated across all facilities operated by that provider. Such a demonstration of properly assigned joint costs is a normal requirement to support cost studies. Since the allocation of corporate costs drives most of the cost of inmate calling, this is the area of the Cost Study for which the cost allocation assumptions are the most critical. Because the inmate service providers have not demonstrated credible support for the figures in the Cost Study, the results must be rejected by the Commission. Improper allocation of corporate costs is an area where the inmate service providers could easily inflate costs.

- f. There is no way to know the basis for the costs used in the Cost Study. Paragraph D.1 of the Cost Study says, “the analysis should be forward-looking,” implying that estimated future costs are used in the analysis.⁶ However, the description of the methodology used to gather cost data suggests that Mr. Wood gathered actual historical cost data. Without backup, there is no way of knowing the basis for the costs. There should have been a detailed list of cost study assumptions in order to base the Cost Study upon forward-looking costs. Such costs are somewhat

⁶ Cost Study at 7.

theoretical estimates, and there is no way to judge the validity of the costs without knowing the basis for the assumptions used.

IV. Inclusion of Marginal Facilities

7. The Cost Study includes two summaries of costs, one covering 25 locations, and a second version that adds three additional facilities. In the header to Table C-1, the 25 facilities included in the first summary are described as “marginal” facilities, defined by Mr. Wood as locations “in which the service provider is just able to recover its costs and locations in which the provider is unable to recover its costs.”⁷ The three facilities added in the second analysis are “low volume, high-cost locations”⁸ “whose traffic characteristics cause them to represent locations at which cost recovery is unlikely.”⁹ Since the Cost Study does not include any information about the size or other characteristics of each specific facility, there is no way for the Commission to judge whether any or all of these facilities ought to be included in the Cost Study.

8. It is vital to understand the size and other cost characteristics of the facilities used in this Cost Study because the Commission has already ruled that the methodology used in the *Payphone Compensation* proceeding “to ensure that the current number of payphones is maintained.’ . . . has little or no application in the prison context because . . . prison payphones are already profitable.”¹⁰ That rationale applies equally to the marginal location sampling

⁷ *Id.* at 4.

⁸ *Id.* at 9.

⁹ *Id.* at 5.

¹⁰ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand and Notice of Proposed Rulemaking, 17 FCC Rcd 3248, 3256 (2002) (quoting *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 2545, 2571 (1999) (“*Methodology Order*”), *aff’d sub nom. American Public Communications Council v. FCC*, 215 F.3d 51 (D.C. Cir. 2000)).

methodology used in the Cost Study, which was also designed to “ensure widespread deployment of payphones.”¹¹ Because Mr. Wood admits that he nevertheless cherry-picked low profit and unprofitable “marginal” locations in the 25-facility summary and added three money-losing facilities in the 28-location summary, the results are invalid, except perhaps as an indication of service costs for the smallest and most unprofitable facilities. The typical prison is quite profitable for inmate calling service providers, as shown by the tremendous commissions typically paid by the service providers. Any serious study of inmate calling costs thus should have used a representative sample of correctional facilities, rather than the few “marginal” locations the service providers could find.

9. Not only does the Cost Study fail to indicate the size of any of the facilities, but it also lacks any information as to the calling characteristics at each facility. A prison that houses 500 inmates from out of state would have very different interstate calling cost characteristics from a 500 inmate jail housing mostly local inmates. It is possible that the 500 inmate prison might be relevant to the Cost Study, while the 500 inmate jail might be considered marginal and thus unrepresentative of interstate inmate calling costs.

10. In summary, since there is no data about any of the facilities included in the Cost Study, and since the facilities used are referred to in the Cost Study as “marginal” locations, the Commission should reject the Cost Study on this basis alone, except perhaps as an indication of costs at the smallest and least profitable facilities.¹² Without backup support, it has to be assumed that the inmate calling service providers have selected atypically high-cost facilities in order to skew the results.

¹¹ *Methodology Order*, 14 FCC Rcd at 2571.

¹² Even that limited utility assumes that no other flaws in the Cost Study significantly affect its results.

V. Cost Study Methodology and Inputs

11. Even aside from the improper use of marginal locations and the absence of supporting data, the results are provided at such a high summary level that it is hard to make meaningful observations about the results. However, there is a small amount of data disclosed in the Cost Study and in the subsequent ex parte filings submitted by the inmate service providers.¹³

12. The ex parte presentations show that the 25 facilities have a total of 543 phone lines.¹⁴ Thus, on average, each facility has 22 lines and can support 22 simultaneous calls. The low number of inmate phone lines shows that, on average, these are small facilities. Larger facilities include many more lines to accommodate the larger numbers of prisoners. It should also be noted that the three facilities added to generate the 28-facility summary add a total of only 20 more lines, or less than seven lines each for the three small facilities.¹⁵ Those small facilities certainly should not be considered in a Cost Study used to calculate average costs. Similarly, the low average number of lines in the 25-facility study indicates that, in addition to being “marginal” locations, and thus unrepresentative, a number of them are also quite small and should be excluded for that reason as well.

13. The service provider ex parte presentations also indicate that there are 144,361 MOUs for all 543 lines in the 25-location study.¹⁶ This must represent an average day, since this

¹³ See Worksheets, Inmate Calling Services Interstate Call Cost Study, attached to letter from Stephanie A. Joyce, Counsel to Securus Technologies, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128 (Aug. 22, 2008) (“Worksheets”); Worksheet Set A, Inmate Calling Services Interstate Call Cost Study, filed by Stephanie A. Joyce, Counsel to Securus Technologies, Inc., CC Docket No. 96-128 (Oct. 15, 2008).

¹⁴ See, e.g., Worksheets, Worksheet Set A, at 4.

¹⁵ *Id.* at 1 (showing a total of 563 lines for all 28 facilities).

¹⁶ *Id.* at 4.

works out to be slightly over 4.4 hours per line per day.¹⁷ This is another indicator that the sample includes atypically small facilities, because RFPs for larger prisons typically include phones that are busy for more than 4.4 hours per day.

VI. Cost Study Results

14. The primary result of the 25-location analysis in the Cost Study is a pronouncement that the fixed cost of a debit call is \$1.56, with a \$0.06 time sensitive cost per minute, and that the fixed cost of a collect call is \$2.49, with a time sensitive cost of \$0.07 per minute.¹⁸ These are the lowest costs that the prison providers have filed with the Commission. Based on these figures, a 15-minute debit call would cost \$0.164 per minute, while a 15-minute collect call would cost \$0.236 per minute, both less than the Petitioners' requested benchmark rates.

15. Given that the service providers selected marginal locations for the 25-facility study, it can be concluded that the average service costs for prisons and other larger facilities generating most of the interstate calls would be much lower than these figures. The costs calculated in this Cost Study are much closer to the costs I estimated in earlier filings and to the results of Petitioners' comparable rates analysis than they are to earlier exaggerated cost claims made by the inmate calling service providers. These costs are also far below some of the rates being charged by the service providers.¹⁹

¹⁷ I am assuming that the figure of 144,361 MOUs represents an average day for all of the 25 facilities combined. If it actually represents some other time period, such as a month, the usage would then average only several minutes per line per day, which would be extraordinarily low and would make the sample even more unrepresentative.

¹⁸ Cost Study at 4.

¹⁹ Dawson Alternative Declaration ¶¶ 18-20 (showing per-call charges as high as \$3.95 and usage charges as high as \$0.89 per minute, far above these costs).

16. Assuming that this Cost Study represents the best case that the prison providers can make for service costs as high as they can reasonably justify, and in light of the improper high-cost samples used to generate these results, the Cost Study can only serve as supporting a high ceiling over the reasonable cost of serving smaller, marginal correctional facilities, but provides no support for any floor under a reasonable cost estimate.²⁰ Given that a high ceiling over the reasonable cost of serving small facilities is still lower than any figure that the prison providers have claimed to date, far lower than many of the rates charged in large prisons today and fairly consistent with Petitioners' requested benchmark rates, it is starkly clear that most current interstate inmate calling rates are unreasonably excessive and that Petitioners' requested benchmark rates are, if anything, overly generous to the service providers.

17. The sampling methodology used in the Cost Study and the results of that study thus fully address Pay Tel's concern that any remedy imposed by the Commission must take into consideration the cost characteristics of jails and other small correctional facilities.²¹ Because the Cost Study represents only marginal facilities, including a number of unusually small, low-volume, high-cost marginal facilities, its results already represent the costs of small facilities and show that even the smallest facilities can be profitably served at rates consistent with Petitioners' proposed benchmarks.

18. As Pay Tel points out, larger prisons have even lower costs than jails and other small facilities. Pay Tel accordingly suggests a multi-tier approach, with lower benchmarks for larger facilities and higher benchmarks for smaller facilities.²² Pay Tel points out that 6% of all

²⁰ As noted above, even the limited purpose that the Cost Study might serve, namely, putting a high ceiling over the estimated cost of serving smaller, marginal facilities, assumes that the other flaws in the Cost Study do not affect its results significantly.

²¹ See Pay Tel Letter at 4-10.

²² *Id.* at 6.

jails house 52% of the total jail inmates. As Pay Tel suggests, these larger jails will have similar cost characteristics to most prisons, based upon their high calling volumes.²³ Thus, if the Commission were to establish different benchmarks for facilities of different size and scale, the generous benchmarks suggested by Petitioners would be reasonable for smaller facilities, while *lower* benchmarks would be appropriate for large jails and prisons. How low those benchmarks should be would have to be determined in light of a cost study based solely on the costs of larger jails and prisons.

19. Pay Tel cites my earlier filing in this docket in support of its assertion that the Petitioners' proposed benchmark rates ought not to apply to small facilities.²⁴ The cited filing, however, was submitted before Petitioners ever proposed benchmark rates, and addresses the possibility of reconfiguring inmate calling services, rather than imposing benchmark rates.²⁵ Since that filing, I have supported benchmark calling rates that consider all prisons, including small prisons and jails. Accordingly, if the Commission establishes multi-tier benchmark rates, the support given to the Petitioners' proposed benchmarks by the service providers' Cost Study suggests that the Petitioners' generous benchmarks are the appropriate rates for small jails and other small facilities. Pay Tel and the other service providers should not be permitted to submit a Cost Study largely based upon small prisons and jails and then reject proposed benchmarks for the same types of facilities that are largely consistent with that Cost Study.

²³ *Id.* at 5.

²⁴ *Id.* at 8 n.10.

²⁵ Affidavit of Douglas A. Dawson (Oct. 29, 2003), appended as Attachment A to the Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking (Nov. 3, 2003).

VII. Unrealistically High Variable Rates

20. Given all of the cost components that are included in the *fixed* costs calculated in the Cost Study, the *variable* cost per minute is also extraordinarily and unrealistically high, apart from all of the other flaws of the Cost Study. Mr. Wood's methodology assigns almost all of the costs of providing a call to the fixed cost category.²⁶ He describes the variable cost of both debit and collect calls as consisting only of "incremental costs associated with the termination of interstate toll calls,"²⁷ *i.e.*, the cost of long distance call termination. Mr. Wood has already placed all equipment, labor, local line and other operating costs into the fixed cost category. The claim that it costs prison providers \$0.06 per minute to terminate a debit call and \$0.07 per minute to terminate a collect call is simply not credible under any conceivable set of assumptions.

21. As I have stated previously, I often assist carriers in contracting for long distance termination. Just this fall, I helped a start-up enterprise just entering the long distance business to negotiate terminating rates of around \$0.015 per minute. Pay Tel complains that my decades of experience cannot override service providers' actual costs, but the service providers have provided no backup support for their claimed variable costs.²⁸ The Commission is certainly aware of the real cost of long distance call termination. Indeed, as far back as 1996, when transport costs were much higher, an inmate calling industry association, whose membership included predecessors to Securus Technologies, estimated that its members' average long distance transmission cost could be as low as \$0.025 per minute.²⁹ It is not credible that these

²⁶ Cost Study at 10-15.

²⁷ *Id.* at 11-12.

²⁸ Pay Tel Letter at 11.

²⁹ Comments of Inmate Calling Services Providers Coalition at 8 n.14, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. No. 96-128 (July 1, 1996). *See also id.* at 1 n.1 (list of members).

large inmate service providers must pay termination rates more than twice what they paid over a decade ago, given the tremendous decline in telecommunications costs since then, and at least four times what a start-up company with no existing customers can negotiate now. Again, the terminating costs, as described in this Cost Study, do not include line costs or other costs of connecting to the public switched telephone network -- only the long distance terminating costs. The prison providers will have to supply detailed backup to support such atypical, tremendous costs if they are to be taken seriously.

22. It should be noted that if a more realistic termination cost of \$0.02 per minute is substituted for the usage costs assumed in the 25-location calculation in the Cost Study, a 12-minute interstate collect call would cost \$2.49 plus \$0.24 in time sensitive costs, or less than \$0.23 per minute, well under the requested benchmark rate of \$0.25 per minute.³⁰ The same substitution would yield an interstate debit call cost of \$0.15 per minute, well under the requested benchmark of \$0.20 per minute.³¹

23. There is also no explanation for the difference in terminating costs between collect calls (\$0.07 per minute) and debit calls (\$0.06 per minute). Once an inmate call has generated all of its fixed costs, including security and other penological costs, and is sent out of the facility toward the called party, there is no conceivable reason for a higher per-minute cost for a collect call than for a debit call. The service providers need to explain and defend the magnitude of the per-minute terminating costs as well as the difference in terminating cost between the two types of calls.

24. This Cost Study also calculates a substantial cost differential between the fixed costs of debit and collect calling. As explained previously, since inmate calling is entirely

³⁰ See Cost Study at 4.

³¹ See *id.* (fixed cost of \$1.56 plus \$0.24 in transmission costs, divided by 12 equals \$0.15 per minute).

automated, the only difference between the cost of a debit and collect call is the cost of billing and collecting the revenue.³² The prison providers have rightly said that there is a cost incurred in collecting debit calling charges, since the service providers have to deal with prison-operated debit systems. This Cost Study says, nevertheless, that, for both samples studied, an inmate collect call costs about \$1.00 more than an inmate debit call to provide.³³ This extra cost is attributed to collect calls being unbillable or uncollectible.³⁴ With a collect call, there is a cost for actually rendering a bill. The largest cost is for uncollectible revenues for bills that never get paid. I previously calculated the cost differential between a debit and collect inmate long distance call to be about \$0.05 per minute.³⁵ Without the raw data underlying the Cost Study, the Commission can only speculate as to the average call duration that the service providers assumed. If the Cost Study assumed an average call length of 20 minutes, the cost differential would work out to \$0.05 per minute. If the assumed average call length is shorter (which is likely), the cost differential is unreasonably and unrealistically high and has to be explained and better supported to be credible.

VIII. Costs versus Rates

25. Section E of the Cost Study devotes considerable space to an explanation as to why it is necessary for the prison providers to bill prison calls with a large setup charge and lower per-minute rates that match the manner in which costs are calculated. In fact, the Commission has greater flexibility in determining rate structure than the Cost Study admits, and rate structure is not necessarily tied to the manner in which costs are calculated.

³² Dawson Alternative Declaration ¶¶ 39-41.

³³ Cost Study at 4-5.

³⁴ *Id.* at 10, 12.

³⁵ Dawson Alternative Declaration ¶¶ 39-41.

26. There is already a large existing volume of interstate inmate calling that is billed on a per-minute basis without a setup charge for the first minute. Thus, the prison providers who are parties to this case have already found it acceptable in some facilities to charge rates and recover costs entirely on a per-minute basis.³⁶

27. Prison calling is different from payphone service used by the general public in ways that justify greater flexibility in determining rate structure. First, prison phones are used steadily and predictably throughout the day, at scheduled times. Second, there is such high demand to use prison phones that the prison providers can count on having a heavy volume of calling from each phone. Neither of these characteristics is true for a normal public payphone, where call volumes and the length of calls can vary widely for any given payphone on any given day.

28. Because of the predictable calling characteristics in prisons, it is much simpler to design per-minute rates, with no per-call charges, that are compensatory to the prison providers and fair to the ratepayers, which explains why a rate structure with no per-call charge is being used widely for inmate calling today. Mr. Wood states that the prison provider would lose money whenever a prisoner makes a short call. However, he also acknowledges that the prison provider would make additional profit for a call that is longer than average.³⁷ What he fails to point out is that it is basic “Rate Design 101” to set a per-minute rate that can reflect the expected average length of calls.

29. Rate design has always been separate from costs in the telecommunications industry. The phenomenon that Mr. Wood describes of having some joint costs that cannot

³⁶ See letter from Frank W. Krogh, Counsel to Petitioners, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128, at 15-18 (Nov. 19, 2008) (“Petitioners’ Letter”) (inmate debit and prepaid services with no per-call charges).

³⁷ Cost Study at 17.

easily be assigned on a per-minute basis is not unique to prison calling or even to payphone calling. Every long distance carrier has some costs that most properly are assignable to the setup of a call and that could be assigned to the first minute as is done in the Cost Study. However, the industry realized years ago that using an average rate per minute could fairly compensate providers for their costs, and nearly all calls today are billed using a per-minute rate with no setup fee. The Commission is certainly free to contemplate requiring per-minute rates in this proceeding, particularly in light of the reported abuses of repeated setup charges when calls are dropped prematurely.³⁸

IX. Rates for Prepaid Calling

30. Pay Tel argues that prepaid calling rates should be set closer to collect rates than to debit rates. Pay Tel has supplied no facts to substantiate this claim, and, upon examination, the issues it raises confirm that prepaid costs are much closer to debit calling costs.

31. First, Pay Tel argues that there are many specific costs associated with prepaid calling, such as creating a billing system that can handle thousands of accounts, the need to educate inmates, the need to collect funds and the need to assign funds to the proper accounts.³⁹ This list of costs, however, is nearly identical to the functions that are needed to allow debit calling. Pay Tel has identified no significant additional costs for prepaid calling that are not also incurred in providing debit calling, whether in the case of prepaid accounts established by prisoners or by the prisoners' families or others receiving inmate calls.

32. Second, Pay Tel states that there are bad debt costs associated with prepaid calling due to such factors as bad checks, insufficient bank funds or credit card fraud.⁴⁰ In these

³⁸ Petitioners' Letter at 15.

³⁹ Pay Tel Prepaid Letter at 3.

⁴⁰ *Id.*; Pay Tel Letter at 11-12.

discussions, Pay Tel tries to make the case that the cost of bad debt for prepaid calling is similar to the cost of bad debt for collect calling, but they are not similar. In fact, there is a huge difference between prepaid and collect calls with regard to bad debt costs.

33. As noted previously, the service provider Cost Study shows a difference in costs between a debit and collect call to be around \$1.00, because collect calls are so much more likely to be unbillable or uncollectible.⁴¹ Prepaid calls, by their nature, clearly do not pose any risk of being unbillable. They also do not impose the significant costs that collect calls do in terms of being uncollectible, *i.e.*, raising bad debt issues. Since the current rates are so high for inmate collect calls, many prisoner families are unable to pay for them, which contributes to the very high cost of bad debt for inmate collect calling. In addition, collect calls must be collected through third parties like telephone companies, for whom such collections are not a priority.

34. In comparison, the cost of bad debt for prepaid calls ought to be minuscule, and the level of bad debt can be largely controlled by the prison providers. In today's banking world, it is possible to verify funds rather quickly, and the prison providers ought to be able to avoid most prepaid bad debt using the standard commercial practices of typical retailers. Also, many prepaid accounts are funded through third party collection agents like Western Union, and such funds are guaranteed to the prison providers, with zero bad debt. Given that the cost of a prepaid call is paid to the provider in advance, there can be nothing in the magnitude of \$1.00 of bad debt per prepaid call. Contrary to Pay Tel's characterization, prisoners' families and others receiving inmate calls that set up prepaid accounts with service providers are not "unknown" to the service providers, any more than any customer with an ongoing account with a carrier is unknown to that carrier.⁴² A service provider has much more control over collections from its customers with

⁴¹ See Cost Study at 4-5, 10, 12.

⁴² Pay Tel Letter at 12.

prepaid accounts than it does over the collection of collect call charges from third parties serving call recipients with whom the service provider has no relationship at all.

35. The prison providers also make no mention of the fact that, with prepaid calling, they control the accumulated cash balances of the prepaid accounts. Such access to large amounts of cash is a source of liquidity and interest income for the providers, which reduces the cost of providing prepaid calling even further.

36. In summary, the offering of prepaid calling is very similar to the offering of debit calling. The inmate calling service provider must create the software to allow the function, inform the inmates and families of the rules, establish the accounts with the families or others receiving inmate calls, collect the funds and assign them to the proper accounts. There is no reason to conclude that the cost of bad debt for prepaid calling is any greater than the cost of bad debt for debit calling. In most cases, the prison provider is not going to credit a prepaid account with a check or other form of payment until it can confirm that funds exist to cover the check. Pay Tel has provided no evidence or any good argument for charging prepaid calls at collect rates. These calls are very similar to, and should be priced as, debit calls.

X. Conclusion

37. Neither the service providers' Cost Study nor Pay Tel's arguments provide any justification to reject Petitioners' Proposal. In fact, they largely support the proposed benchmark rates, and the requested relief should be granted.

I declare under penalty of perjury that the forgoing is true and correct.


DOUGLAS A. DAWSON

Executed on this 22 day of December, 2008.

EXHIBIT B

LOCAL INMATE COLLECT CALL RATES COMPILED BY KAY PERRY,
CHAIR, CITIZENS UNITED FOR REHABILITATION OF ERRANTS

STATE	SURCHARGE	1ST MINUTE	SUBSEQUENT PER MINUTE	NOTES	RATE FOR 10 MINUTE CALL
AK	0.00	0.00	0.00		(FREE) 0.00
AL	2.85	0.00	0.00	FLAT RATE	2.85
AR	3.00	0.12	0.12		4.20
AZ	2.06	0.00	0.00	FLAT RATE	2.06
CA	1.50	0.063	0.063		2.13
CO	2.75	0.23	0.23		5.05
CT	1.75	0.12	0.12		2.95
DC					1.75*
DE					2.25**
FL	0.50	0.00	0.00	FLAT RATE	0.50
GA	2.20	0.50	0.00		2.70
HI					1.70**
IA	2.00	0.00	0.00	FLAT RATE	2.00
ID					1.91**
IL					4.00**
IN				FLAT RATE	2.95
KS	2.61	0.00	0.00		2.61
KY	1.85	0.00	0.00		1.85
LA					1.81**
MA	0.86	0.10	0.10		1.86
MD	0.85	0.00	0.00	FLAT RATE	0.85
ME	1.55	0.25	0.25		4.05
MI	0.00	0.12	0.12		1.20
MN	0.00	1.05	0.05		1.50
MO	1.00	0.10	0.10		2.00
MS	2.60	0.00	0.00	FLAT RATE	2.60
MT	2.75	0.20	0.20		4.75
NC	1.05	0.00	0.00	FLAT RATE	1.05
ND	1.70	0.35	0.22		4.03
NE	1.00	0.00	0.00	FLAT RATE	1.00
NH	1.20	0.00	0.10	(NO PER MINUTE CHARGE FOR 1ST 5 MIN.)	1.70
NJ	1.75	0.05	0.05		2.25
NM	2.15	0.00	0.00	FLAT RATE	2.15
NV	1.45	0.00	0.00	FLAT RATE	1.45
NY	1.28	0.068	0.068		1.96
OH					2.25**
OK	0.00	0.24	0.24		2.40
OR	2.00	0.00	0.00	FLAT RATE	2.00
PA					2.07**
RI	0.70	0.00	0.00	FLAT RATE	0.70

LOCAL INMATE COLLECT CALL RATES COMPILED BY KAY PERRY,
CHAIR, CITIZENS UNITED FOR REHABILITATION OF ERRANTS

STATE	SURCHARGE	1ST MINUTE	SUBSEQUENT PER MINUTE	NOTES	RATE FOR 10 MINUTE CALL
SC	1.15	0.00	0.00	FLAT RATE	1.15
SD	2.71	0.00	0.00	FLAT RATE	2.71
TN	1.00	0.00	0.00	FLAT RATE	1.00
TX			0.26		2.60
UT	2.80	0.00	0.00	FLAT RATE	2.80
VA	1.00	0.00	0.00	FLAT RATE	1.00
VT					2.15**
WA					1.65**
WI	1.25	0.00	0.00	FLAT RATE	1.25
WV	0.20	0.05	0.05		0.70
WY	1.49	0.00	0.00	FLAT RATE	1.49
				* Rate for 15-minute call.	
				**Based on Pay Tel data.	

EXHIBIT C

CONTRACT NO. 8426000003-AA

 ORIGINAL

This Contract is entered into by and between Montgomery County, Maryland (the "County"), a political subdivision of the State of Maryland, and Global Tel*Link Corporation, whose address is 2609 Cameron Street, Mobile, Alabama 36607 (the "Contractor").

WITNESSETH:

WHEREAS, the County has a need for inmate telephone services for inmates of the Department of Correction and Rehabilitation ("DOC"), and

WHEREAS, the intent of this Contract is to offer telephone services at the lowest possible cost to inmates and their families, and that the Contractor must not, outside of the contracted calling Rates, include/attach any hidden/back-end fees (e.g. Bill Statement Fee, Bill Rendering Fee, Administrative Fee, etc.) to the final bill to inmates and their families, and

WHEREAS, the County reserves the right, at any time during the term of this Contract, to conduct audits of the Contractor's billing statements to inmates and their families, and/or conduct investigative findings of the Contractor's contract with the County; and, in the event of an audit (at no cost to the County), the Contractor must make all records associated with this Contract available to the County within a reasonable time period (agreed to between both parties to the contract), and

WHEREAS, the County requires a qualified establishment to provide inmate telephone services, and the Contractor has represented to the County that Contractor and its Subcontractor are qualified to do business in the State of Maryland, are fully capable of performing the services described in this Contract, and are duly authorized and in compliance with applicable federal, State and local laws, regulations and ordinances applicable to its activities and obligations under this Contract; and hold all valid licenses and permits necessary to perform the services, and will promptly notify the County in the event any such license or permit expires, terminates, or is revoked, and

WHEREAS, the County has relied on such representation to select the Contractor and award this Contract to provide telephone services, and

WHEREAS, this Contract is entered into as a result of a Formal Solicitation in accordance with Section 4.1.2 of the Montgomery County Procurement Regulations,

NOW THEREFORE, for and in consideration of the mutual agreements contained herein, the parties agree as follows:

**ARTICLE 1
SCOPE OF SERVICES**

A. General Requirements

The Contractor must comply with the following general requirements:

CONTRACT NO. 8426000003-AA

3. The Contractor's Invoice or Bill to called-parties must include the Contractor's information and a Toll-Free telephone number for called-parties to use when seeking resolution to problems or answers to questions.
4. The Contractor must begin charges for a call only when the calling party is connected to the called party. The call terminates when either party hangs up the telephone. The Contractor must not bill the calling party for incomplete calls such as network intercept recordings, busy signals, no answers, refusal of calls, and answering machine pickups.

ARTICLE II Compensation and Pricing

- A. The Contractor shall pay no commission to the County for the term of this Contract and the Contractor must not charge the County for any of the following costs and charges associated with this Contract, which include, but are not limited to:

- Costs of purchasing and installing telephone system, including site repair, if necessary;
- Charges from the local telephone company for installation of subscriber lines, plus related taxes;
- Monthly charges for subscriber lines;
- Costs of maintenance and repair procedures;
- Costs for on-site system administrator;
- Costs associated with administrative functions for monthly billing, collection of revenues from inmates' families and friends, and monthly reporting;
- Sales tax on purchases of all goods and services;
- Per call charge from local telephone company, if applicable;
- Charges billed to telephones as a result of inmate fraud;
- Charges for directory assistance calls;
- Charges from local telephone company for moving lines;
- Cost associated with vandalism;
- Cost for obtaining permits, if necessary;
- Training of County employees, as required.

- B. The following pay rates must apply to all inmates' telephone calls regardless of type, (Local, IntraLata / IntraState, IntraLata / InterState, InterLata / IntraState, and InterLata / InterState calling services), other than debit transactions identified in Article I, Section C.6 of this Contract:

1. The Contractor must charge a flat rate of \$0.65 per call, with no additional surcharge and/or usage charges, and regardless of time of day, and call duration.
2. The County's current inmate telephone system does not allow for debit transactions. However, the County reserves the right to include this option and to add it to the inmate telephone system if it determines that it is in the best interest of the inmate population. If and when the County decides to implement the use of debit cards, the County shall utilize the Inmate