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September 30, 2014

Chairman Tom Wheeler
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Mignon Clyburn
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Jessica Rosenworcel
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Ajit Pai
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Michael O’Rielly
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Dear Ms. Kicklighter:

RE: Rebuttal to September 15, 2014 - ICS Vendor Proposal - WC Docket 12-375

Dear Chairman Wheeler, Commissioner Clyburn, Commissioner Rosenworcel, Commissioner Pai, and Commission O’Rielly:

The Alabama Public Service Commission (“APSC”) thanks the FCC (“Commission”) for the opportunity to express our concerns relative to the above referenced consensus proposal (the “Proposal”) submitted to the Commission by Securus Technologies, Inc. (“Securus”), Global Tel*Link Corporation (“GTL”), and Telmate, LLC (“Telmate”). The stated purpose of the proposal is compromise and consensus with respect to the framework for the treatment of interstate and intrastate ICS rates going forward.¹ The Proposal recommends adoption of revised interstate and intrastate: rate

¹ Letter to Commissioners Wheeler, Clyburn, Rosenworcel, Pai, and O’Rielly, dated September 15, 2014, RE: WC Docket No. 12-375, from Richard A. Smith, Chief Executive Officer, Securus Technologies, Inc., Brian D. Oliver, Chief Executive Officer Global Tel*Link Corporation, and Kevin O’Neil, President, Telmate, LLC.

caps, recommendations for site commissions to the extent they are authorized, recommendations for ancillary charges, disability and access, and recommendations for enforcement and compliance.

I. JURISDICTIONAL ISSUES

The Proposal seeks Commission action to impose both interstate and intrastate rates and charges, obviously presuming the Commission will preempt states in the regulation of Inmate Calling Service (“ICS”). Preemption of intrastate regulatory authority over ICS is a matter under review by the Commission in the existing Further Notice of Proposed Rulemaking (FNPRM) under this Docket. The Commission has not ruled on whether it will preempt any or all state regulatory authority. Consequently, Commission consideration of matters that are clearly multi-jurisdictional is premature.

While separate interstate rates may be established for ICS, the schedule of approved ancillary charges cannot be separated by regulatory jurisdiction. Commission adoption of recommendations in the Proposal, without the participation of and consent by the states, is tantamount to preempting state regulatory authority over these matters. The APSC has an established record of exerting intrastate jurisdiction over ICS. We have devoted tremendous time and resources to an ongoing ICS ratemaking proceeding and our staff has accumulated a wealth of knowledge and expertise with respect to ICS and the economics associated therewith. The recommendations included in the Proposal undermine our efforts and essentially constitute attempts by ICS providers to circumvent intrastate regulatory authority.

Site Commissions

Section III C 3 in the Commission’s Order for this Docket released September 26, 2013, explains development of the Commission interim interstate rate caps. Footnote 273 in the Order states:

“Because we conclude site commissions are not part of the cost of ICS, we do not include the site commission profits in setting either the debit, prepaid or collect rate caps.”

Since the Commission’s existing \$0.25/min (collect) and \$0.21/min (prepaid) rate caps already exclude site commission profits, it is unreasonable and intrusive for the Commission to dictate how any provider chooses to utilize their net profits, whether those net profits are shared with investors, with confinement facilities, or with both. Paragraph 58 in the Commission’s Order supports this conclusion:

“We do not conclude that ICS providers and correctional facilities cannot have arrangements that include site commissions. We conclude only that, under the Act, such commission payments are not costs that can be recovered through interstate ICS rates.”

Following implementation of the Commission's rate caps, any subsequent sharing of net profit by a provider with their investors or with confinement facilities has no direct or indirect bearing on the prices paid by inmates and inmate families. Consequently, any claim that site commissions paid after implementation of the rate caps somehow "drives up the prices paid by inmates and their families" is completely fallacious and any assertion that precluding site commissions somehow benefits inmates and inmate families is likewise flawed. In fact, the opposite is true. Since the Commission excluded site commission profits when it set the rate caps, the preclusion of such payments now serves no justifiable purpose. Such action needlessly penalizes confinement facilities and deprives prisons and jails of revenue needed to ensure safety and security of inmates inside the facilities.

Intrastate ICS rates that are equal to or lower than the Commission's interstate rate caps similarly exclude site commission profits. Therefore, Commission rules that preclude any provider from sharing its net profit with confinement facilities in Alabama or any of the states, constitutes unwarranted and unwelcome federal intrusion into intrastate commerce. Article 1, Section 8, Clause 3, of the Constitution empowers Congress "to regulate commerce with foreign nations, and among several states, and with the Indian tribes." Interstate commerce, or commerce among the several states, is the free exchange of commodities between citizens of different states across state lines. Under the 10th Amendment to the U.S. Constitution, the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people. Among those powers reserved to the states is the regulation of intrastate commerce.

Inmate calls that originate and terminate within the state of Alabama are clearly intrastate commerce subject to state purview. Therefore, the APSC asserts its authority to determine whether site commissions for intrastate ICS, and the extent thereof, are authorized within the State of Alabama. The APSC objects to any proposal that usurps APSC authority and oversight over intrastate site commissions absent our advice and consent.

Paragraph 58 in the Commission's Order establishes the Commission's obligations:

Our statutory obligations relate to the rates charged to end users—the inmates and the parties whom they call. We say nothing in this Order about how correctional facilities spend their funds or from where they derive.

Yet that is exactly what the Proposal does. When intrastate rates are equal to or lower than the Commission's rate caps, the Commission will have achieved its statutory obligations with respect to rates charged the end users—the inmates and the parties whom they call. Any site commissions paid to confinement facilities thereafter have no effect whatsoever on prices paid by end users. Therefore, Commission restrictions on such profit sharing arrangements between providers and confinement facilities engaged in intrastate commerce exceed the Commission's statutory obligations. Moreover, the restrictions constitute an unjustified and unnecessary federal intrusion into the funding for state prisons and local jails.

Rhetoric surrounding this proceeding suggests that law enforcement is to blame for site

commission abuses. The APSC emphasizes that sheriffs, police chiefs, wardens, DOC personnel and jailers in Alabama are NOT public enemies, they are public servants. They perform a critical function for this state and our people. These public servants should not be ridiculed for serving the economic interests of the governing bodies they represent. Title 45 in the Code of Alabama authorizes sheriffs in various jurisdictions within this state to operate canteens and inmate telephone systems and to collect revenue used to support the jails. Similar statutes likely exist in other states. Revenues received by the jails/prisons in our state from inmate canteen and phone services are used to support confinement facility operations as well as the health and welfare of those incarcerated.

The APSC asserts that the blame for site commission abuses rests squarely upon ICS providers and much of it upon the parties to this Proposal. Excesses occur when providers demonstrate they are willing to do whatever it takes to win a facility contract. The calling revenue relinquished as a result thereof must be made up from other sources if the provider is to prosper. Hedge fund and other investment firms, seeking the highest possible returns for their investors, have a track record of acquiring parties to this Proposal. By all reasonable indicators, they are prospering quite well.

Site commissions are offered only on a portion of total inmate family spending for ICS. A site commission of 50%, for instance, is not a promise to pay the facility 50% of all the charges assessed by the serving provider to inmates incarcerated at that facility and their families. Rather, it is a commitment to pay the facility 50% of the revenue identified in the contract as subject to commissions. The commissionable revenue includes charges for prepaid calls plus a small portion of sent-collect calls. The non-commissionable revenue consists of ancillary fees, the bulk of charges assessed for convenience or premium payment options (“Pay Now” and Text-Connect calls), and revenue from the provider’s retention of non-refunded prepaid service account balances.

Non-commissionable revenue sources are the “reservoir” upon which excessive site commissions commitments depend. The charges assessed inmates and their families to fill the reservoir are excessive by necessity since they must recover their own associated costs plus replenish the provider’s profit relinquished through call revenue site commissions. Therefore, to effectively constrain excessive site commissions, it is essential to first address the excessive revenue sources that fill the non-commissionable revenue reservoir. This proposal falls far short of accomplishing that.

A few ancillary charges are offered for elimination but most of them are inconsequential non-recurring fees not assessed by providers in Alabama. The list is impressive only in the amount of space occupied on the attachment wherein they are listed. In return, Commission approval is sought for a very substantial ancillary Transaction or Deposit fee applicable **every time** inmate families seek to deposit funds for prepaid service. The Proposal is silent on the issue of revenue sharing arrangements with third-party payment transfer services by the parties to the Proposal. The payment transfer service fees charged their customers are inexplicably much higher than the payment transfer fees charged to customers of their much smaller competitors. Instead, the Proposal ensures the current payment transfer fee overcharges are continued into perpetuity or, worse, allowed to increase. Moreover, Commission approval is

sought for a provider additive to those payment transfer service fees further increasing the charges incurred by inmate families. These additives apply **every time** inmate families seek to deposit funds using the payment transfer services.

The Proposal leaves intact the unnecessary and exorbitant rate structure associated with charges for Pay Now and Text-Connect services and fails to address the issue of non-refunded prepaid customer deposits. Despite appearances to the contrary, the Proposal actually increases the non-commissionable revenue reservoir used by providers to support excessive site commission payments but the surprises don't end there. The Proposal offers the grand illusion of decreased inmate rates but charges for inmate calls under the Proposal actually increase based on introduction of a new Validation Fee rate additive. With application of the Validation Fee, effective inmate rates are higher than the Commission's existing rate caps.

Parties to the Proposal seek the Commission's cooperation to reduce or eliminate not only their exposure to site commission payments; they demand the Commission hold their competitors to the same standard. At the same time, the Proposal provides for increases in both non-commissionable and commissionable revenue. Therefore, the Proposal offers significant increases in provider profits at the expense of not only state prisons and local jails but the inmates and their families. Essentially, the parties to this Proposal seek to acquire the Hope Diamond from the Commission in exchange for a bag of wooden nickels.

This approach is seriously flawed and requires the Commission to insert itself into matters of intrastate commerce that are properly reserved for the states. The APSC offers an approach that allows the Commission to achieve its statutory obligations expressed in paragraph 58 of the Commission's Order: "Our statutory obligations relate to the rates charged to end users—the inmates and the parties whom they call".

Intrastate ICS rates in Alabama were capped in 2009. Nevertheless, site commissions skyrocketed because we failed to adequately address all sources of ICS revenue. Thus far, the Commission has addressed only interim rates, allowing unrestrained provider control over the remaining sources of revenue that are used to subsidize excessive site commissions. The APSC, however, addresses all sources of ICS revenue concomitantly in our current ICS reform proceeding. We believe this approach successfully achieves the results the Commission seeks. Adoption of the APSC's recommendations with respect to ancillary fees, caps on charges for Pay Now and Text-Connect Services and strict requirements for providers to refund the prepaid deposits of their customers will provide substantial reductions in the total charges paid by inmates and their families, likely exceeding the economic impact of the Commission's rate caps. Commenting on the APSC's July 7, 2014 Order which reforms ICS in Alabama, Telmate, LLC states:

Telmate comments here to inform the Commission that the Order's rate and fee caps will result in **dramatically reduced** commission payments to many facilities.²

² *Generic Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Service*, APSC Docket 15957, comments from Kevin O'Neil, President Telmate, LLC, dated August 11, 2014.

The irony is the statement is only true with respect to the percentage site commission payments offered under contract. The APSC received unsolicited letters from Sheriffs in Alabama and other states commending us on our approach but also relating their experience with respect to ancillary fees. Subsequent to switching providers that charge lower ancillary fees than their previous provider, calls and the revenue associated therewith increased to the extent that site commissions actually increased despite acceptance of a lower contract site commission percentage. Inmates and inmate families apparently diverted the savings from lower ancillary fees to increased calling.

The APSC contends that once commissionable and non-commissionable charges are capped, we will have achieved our own statutory obligations for ensuring the total charges assessed inmates and the ones they call are fair and reasonable. Thereafter, any sharing of the provider's net profit with the facilities they serve is a matter of public policy that lies completely outside the regulator's jurisdiction. Moreover, after imposition of caps on all rates and fees, any sharing of provider net profit via site commissions has no impact at all on the charges paid by inmates and their families nor will elimination of them result in savings for ICS customers. Precluding them can only be construed as punitive action directed at state and local governments without cause.

The APSC commends the Commission for the progress it has accomplished thus far in reforming ICS, but make no mistake; far more significant progress is within reach. The Commission capped rates for interstate calls, the smallest category of usage revenue at state prisons and jails. Intrastate calls make up the majority of all inmate calls. Further progress will be achieved when intrastate calling rates are similarly capped. However, far more substantial savings for inmates and inmate families are achievable in both jurisdictions when all sources of provider revenue are scrutinized to the same degree as calling rates and site commissions. The APSC is addressing all sources of ICS revenue. We are on the cusp of releasing an Order that will substantially reform ICS. We seek the support of the Commission and urge the Commission to avoid shortcuts in the ratemaking process that undermine our efforts and stop short of achieving savings in the total charges assessed to inmates and inmate families.

II. RATE CAPS

The Proposal offers a modest \$0.01 reduction in the Commission's interim rate caps for both interstate and intrastate traffic but adds it back, and more, with the proposed Validation Fee. The record in the Commission's proceeding under this docket and the APSC's proposed ICS Order, recognizes that there are lower costs for serving prisons than jails. Cost support provided to the Commission demonstrates substantially lower average costs on a per-minute basis for prisons than jails. The proposed APSC ICS Order establishes lower intrastate rates for prisons than for jails in recognition of the cost differential. In the FNPRM for this Docket, the Commission is considering separate rates for prisons and jails as well as separate rate structures for various size facilities. The APSC urges the Commission to continue its work in studying the differences in costs based on facility type/size and believes the Commission will ultimately come to the same conclusion as the APSC with respect to the need for separate rate structures

according to facility type.

Parties to this Proposal are the nation's primary providers of ICS to prisons and should, therefore, be expected to incur lower average costs of service on a combined facility basis than competitors that almost exclusively serve jails. The Proposal essentially requires no cost justification for the proposed rates unless the rates are found to be insufficient for serving the higher cost jails. Only then does the Proposal contemplate any requirement whatsoever for cost justification. Clearly, the Proposal is skewed in favor of providers that currently serve lower cost prisons while squeezing even further the profit margin of competitors attempting to serve the nation's smaller jails.

From Page 3 in the Proposal:

"As the Commission has determined, "where site commission payments exist, they are a significant factor contributing to high rates." The per-minute rate caps proposed above are feasible for the parties only if implemented in conjunction with corresponding reductions in site commission payments."

Regulation of interstate ICS began in 2013 with release of the Commission's Order for Docket 12-375. The interim rate caps were not implemented until February 2014. Alabama and several other states capped intrastate rates years before the Commission determined interstate ICS rates should be regulated.

In 2009, Alabama's capped intrastate ICS rates. The rate caps provided a \$2.25 maximum operator surcharge with toll rates of \$0.30 per minute. The usage rate for local calls was capped at \$0.50, making the maximum charge for a local call in Alabama \$2.75, regardless of call duration. The effective rate for a 15-minute local call in Alabama was, thus, \$0.18 per minute, substantially lower than the Commission's existing rate caps. The charge for an intrastate toll call in Alabama was \$6.75, resulting in an effective rate of \$0.45 per-minute for a 15-minute call. However, based on 2012 ICS call data submitted by ICS providers to the APSC, local calls comprised 83% of all traffic in Alabama. **Average per-minute revenue in Alabama for 2012 was \$0.27 per minute, which very closely approximates the Commission's interim rate caps. It is also very close to the effective rates recommended by the parties to this Proposal.**

Despite rates capped 5 years earlier, at revenue levels that approximate those from application of the Commission's current rate caps, site commissions continued to escalate in Alabama. The same rates applied to all providers; therefore, **the escalation of site commissions was driven by other sources of ICS revenue.**

The APSC asserts the proliferation of excessive ancillary fees, not call rates, is the most significant contributor toward escalating site commission offerings. Who pays those ancillary fees? Inmates and inmate families must bear them and they are a substantial proportion of the total charges. Had the APSC effectively constrained and capped ancillary fees 5 years ago, when intrastate call rates were capped, we are extremely confident that excessive site commissions would not be an issue and total ICS charges borne by inmate families in our state

would be significantly lower. The proposed Order in our current proceeding limits and caps ancillary fees to a far greater extent than recommended in the Proposal submitted by Securus, GTL, and Telmate.

The Proposal asserts that rates are driving inflated site commissions. The APSC has "already been down that road". Our journey began 5 years earlier. Based on our experience, we contend that the parties to the Proposal are purposely diverting the Commission's attention from their most egregious abuses with respect to inmate charges - ancillary fees. **It is ancillary fees, not rates, that led to excessive site commissions in Alabama and only with more significant reductions in ancillary fees than is recommend in this Proposal will total charges on inmates and their families be significantly reduced.**

Make no mistake, eliminating site commissions will have an adverse impact on inmates as well as the funding for state/local jails and prisons. We urge the Commission to first address excesses in all sources of provider revenue before making any sweeping changes that are detrimental to the nation's penal system. When rates and ancillary charges together are reasonably and effectively capped, voluntary site commissions offered thereafter are a non-issue that has no bearing whatsoever on the prices paid by inmates and their families.

The Rate Cap recommendations in the Proposal are not in the best interests of inmates, inmate families, the ICS industry as a whole, and the states that are exercising regulatory jurisdiction over intrastate ICS.

III. ANCILLARY FEES

The Proposal offers to eliminate certain ancillary fees but safeguards others. As heretofore discussed, any schedule of ancillary fees applies to both the interstate and intrastate jurisdictions. Therefore, the APSC objects to any imposition of ancillary fees for intrastate ICS that provide for revenue in excess of the ancillary fees adopted by or pending approval by the APSC.

Of the proposed ancillary charges offered for elimination as shown on the Attachment to the Proposal, the proposed APSC Order prohibits all of them except for the Federal Regulatory Cost Recovery Fee and the USF Administration Fee. The APSC asserts that these regulatory fees should be passed through to Alabama consumers only when a Commission Order or Commission approved tariff identifies the specific fee or maximum fee providers are authorized to assess Alabama consumers for interstate services.

The Proposal offers to eliminate certain ancillary fees but many of those fees are not currently applicable in Alabama nor have they been authorized since 2009. Consequently, the litany of ancillary fees included in the Attachment, though impressive in terms of their number, have little practical effect with respect to ICS provider revenue in Alabama. Furthermore, the APSC notes that several of the ICS providers serving Alabama confinement facilities do not

currently assess these fees.

The revenue impact of fees recommended for Commission adoption in the Proposal is substantial and increase ancillary fee revenue in Alabama far in excess of any reductions in revenue associated with the token list of ancillary fees offered up for elimination.

Transaction or Deposit Fee

The Proposal seeks approval to charge a \$7.95 fee for every transaction or deposit. This fee will impact the proposed ancillary fees provided in the APSC Order as follows:

Authorized fee for payment by phone

By debit/credit card - \$3.00 in Alabama, \$7.95 in the Proposal
Via live agent - \$5.95 in Alabama, \$7.95 in the Proposal

Authorized fee for online payment

\$3.00 in Alabama, \$7.95 in the Proposal

Kiosk Payment

By debit/credit card - \$3.00 in Alabama, \$7.95 in the Proposal

A prior APSC Order in our proceeding called for a \$3.00 cash payment fee at provider owned kiosks. That fee was eliminated in our July 7, 2014 Order but the restoration of that fee is under further review. Under this Proposal, that \$3.00 fee would be increased to \$7.95 which is significant considering that most cash deposits at kiosks are very small. The Proposal makes no mention of whether the \$7.95 fee applies to payment by check, money order, or online banking which the APSC contends is basic ICS service and provided at no charge. It is our understanding that the \$7.95 fee would also be applicable to transfers from the inmate's commissary account. Such transfers are very small. Consequently, the \$7.95 transaction fee will frequently exceed the amount of the transfer. The APSC's Order caps the transfer charge at 5% of the transferred amount; which is what commissary operators typically charge providers for such transfers. The Proposal does not address the applicability of this fee to Prepaid Inmate Calling Cards.

Payment Transfer Fee

The Proposal seeks Commission approval of a \$2.50 additive to the fees charged by third-party transfer services such as Western Union and Money Gram. The implication is that fees charged by Western Union and MoneyGram "are what they are". This is untrue. ICS providers can contract for lower payment transfer fees for their customers from Western Union and MoneyGram. Customers of PayTel, CenturyLink, and NCIC, among others, are charged

payment transfer fees of \$5.95 and less by these same third-party services. If inmate phone service within each facility was competitive, these providers would likely seek the lower priced payment plans offered by their competitors.

Instead, the parties to this proposal contract for Western Union's more expensive "Quick Collect" service at \$9.95. The record in the APSC proceeding shows that a portion of the \$9.95 fee imposed by Western Union is shared with providers. Additionally, Securus and GTL currently have arrangements with Western Union for additives to the \$9.95 Quick Collect charge. Securus customers are charged \$11.95 and GTL customers are charged \$10.95 by Western Union. Everything in excess of \$9.95 is turned over to the provider. Similar arrangements exist with MoneyGram. That these providers are now seeking another additive on top of what they are already getting from third-party payment transfer services is simply incomprehensible. The providers are not providing the transfer service. What justification is there for a provider additive to the payment transfer fee other than a dubious claim is that it is cover administrative costs for taking the customer's money?

The proposed APSC Order requires that providers justify why they are unable to obtain the same payment transfer fees from third-party payment transfer services that are charged the customers of their competitors. Additionally, the APSC Order requires providers to submit an affidavit affirming that they share in no portion of the revenue associated with third-party payment transfers. The APSC urges the Commission to investigate the abuses associated with third-party payment transfer fees and to take similar action to end these abuses.

Validation Fee

Validation costs were included in the data used by the Commission to establish the existing rate caps. Consequently, these costs are already accounted for in the existing call rates. Call validation is fully automated and involves real-time 'dips' into a Telcordia database for which the provider pays a flat subscription on a quarterly basis and/or dips into the Line Information Database (LIDB). The Proposal seeks authorization to apply an 8% additive to the base rate of each call, which is the equivalent to applying the additive to each call minute. Therefore, \$0.019 would be added to the proposed \$0.24/min rate for collect calls and \$0.016 to the proposed \$0.20/min rate for prepaid calls. The effective per minute rates for those calls under the Proposal will then be \$0.259/min and \$0.216/min, respectively. Essentially, the Proposal is a 'bait and switch'; baiting the Commission with a \$0.01/min reduction in the Commission's capped rates and switching it with an additive that results in higher effective calling rates. The APSC urges the Commission to reject this ludicrous offer.

Convenience or Premium Payment Options

Currently, the only ICS providers offering "Pay Now" (collect to a credit card) and Text-Connect (billed by a wireless provider) service in Alabama are the three parties that submitted the Proposal. GTL added these services immediately preceding or immediately after the Commission implemented its interim rate caps in February, 2014. Securus and GTL rely on 3Cinteractive as their third-party provider for both services. Both charge \$14.99 for "Pay Now" calls and \$9.95 for their Text-Connect offering. A call duration maximum applies, typically 15-

minutes. The site commissions that apply to these calls are extremely low; \$1.60 of the \$14.99 Pay Now call price (11%), and \$0.30 of the \$9.95 Text-Connect call price (0.03%). Clearly, such calls afford these providers an opportunity to reap maximum revenues which add substantially to their profitability.

Interestingly, none of the other ICS providers in Alabama offer these services to their customers. Instead, they direct wireless recipients of sent-collect inmate calls to their service center for purposes of setting up a prepaid account. Using a debit/credit card, the account can be established while the inmate remains on hold. Securus, Telmate, and GTL could do this too but they choose otherwise. What the parties to the Proposal offer the Commission in return for safeguarding this “cash cow” is what their competitors already provide; that is information on how to open a prepaid account.

The APSC takes the position that such calls create an opportunity for providers to circumvent the rate caps and that these calls are a source of revenue used to support excessive site commissions on other inmate calls. Despite assurances to the contrary, allowing such enormously profitable calls to continue in excess of the rate caps can only incentivize these providers to drive as many inmate calls as possible away from prepaid service toward this more profitable alternative. The APSC’s proposed Order does not prohibit such calls. Instead, we impute a call duration maximum of 12 minutes and apply the approved collect call rates to the imputed call duration. The provider is authorized to add the APSC approved credit card processing fee to Pay Now calls and the collect call bill processing fee to Text-Connect calls. The fee for both credit card payments and bill processing in our proposed Order is capped at \$3.00. Based on a \$0.25/min collect call rate, the price for each call is capped at \$6.00. The provider is provided full flexibility with respect to division of revenue with the third-party provider. Nevertheless, the call minutes are indeed priced in accordance with the prescribed rate caps.

IV. RECOMMENDATION

The APSC recommends that the Commission reject the Proposal and continue its efforts toward implementing meaningful and effective ICS reforms. The Proposal is nothing less than a desperate and concerted effort by Securus, Telmate, and GTL to protect their profitability in prisons at the expense of inmates and inmate families. Most of the ancillary fees recommended for elimination are not currently applicable. Consequently, they constitute a hollow offering in exchange for onerous ancillary fees applicable to every deposit and transaction which will result in substantial increases to the total charges borne by inmate and inmate families. Additionally, the Proposal pulls a “bait and switch”, offering a minimal \$0.01/min rate reduction in one hand but adding that amount and more to the capped rates with the other.

Alternative Proposal

The APSC recommends that existing Commission rate caps be maintained while the Commission addresses the other sources of provider revenue. Per paragraph 74 in the Commission’s Order, the rate caps are not cost-based and may thus be considered market based

rates. Furthermore, the APSC recommends that the Commission establish a separate rate schedule for prisons which the Commission's record clearly shows have lower costs than comparable service at jails. These lower costs should be reflected in lower rates for inmates incarcerated at prisons and their families.

The APSC recommends the Commission immediately adopt, on an interim basis, our proposed schedule of ancillary fee caps. The proposed ancillary fees are reflected in the record³ for the Commission's proceeding. Additionally, the APSC's July 7, 2014 Order was submitted into the record⁴ of the Commission's proceeding by NCIC.

Except for the parties to the Proposal, ICS providers in Alabama, for the most part, already comply with our proposed schedule of ancillary fees. Some charge lower ancillary fees than those proposed by the APSC. There is no justifiable reason why the parties to this Proposal should continue charging higher ancillary fees than those charged by their much smaller competitors. Adoption of the APSC's proposed schedule of ancillary fees will provide substantial and immediate rate relief for inmates and their families. Commission adoption of the recommended ancillary fees in this Proposal, on the other hand, will increase the total charges paid by inmates and inmate families served by Securus, GTL, and Telmate. Additionally, inmates and inmate families served by their competitors may experience even higher increases in total charges should those providers increase their fees, which are already lower than those of Securus, GTL and Telmate, to match the Commission authorized ancillary fees.

The APSC further recommends that the Commission adopt the APSC's treatment of charges for Pay Now and Text-Connect (Convenience or Premium Payment Options). Failure to address these calls will allow providers to circumvent the Commission's rate caps and incentivize providers to redirect inmate calls from regulated to unregulated rate structures. The substantially higher revenue associated with these calls creates a reservoir for subsidizing excessive site commissions. Finally, the APSC recommends the Commission adopt our approach which directs providers to refund unused prepaid account balances without the assessment of refund or dormancy charges.

Respectfully submitted,

By: _____/s/_____
Darrell A. Baker
Director, Utility Services Division

cc: Rebekah Goodheart
Lynne Engledow
Rhonda Lien
David Zesiger

³ Further Comments of Pay Tel Communications, Inc., WC Docket No. 12-375, dated July 17, 2013.

⁴ WC Docket No. 12-375 - Notice of Ex parte Communication, Attachment B, submitted by Glenn S. Richards and Carly A. Deckelboim, Counsel for Network Communications International Corp., dated July 9, 2014.