

# PRISON POLICY INITIATIVE

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January 27, 2015

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: WC Docket No. 12-375  
Reply to comments of local government officials

In December 2014 and January 2015, approximately forty-two local-government officials submitted comments in the above-referenced proceeding (collectively, the “Local Government Comments”). The commenters defend site commission payments as “a vital part of our budget to ensure inmates have unlimited use of the inmate telephones which we provide as a privilege.”<sup>1</sup> But our analysis shows that such claims are, at best, an exaggeration.

The Local Government Comments analyzed below include twenty-five letters from local governments that are based on a common form letter (collectively the “Form-Letter Comments”).<sup>2</sup> As noted by Securus Technologies, Inc., the Form-Letter Comments appear to have been drafted by another ICS provider and “sent to . . . hundreds of correctional facilities in which representations are made as to the work that the facilities do and why site commissions remain necessary to reimburse facilities for that work.”<sup>3</sup> It is unclear to what extent—if at all—the Form-Letter Comments accurately represent the inmate calling service (“ICS”) experience at the various authors’ particular facilities; indeed the letters were drafted so indiscriminately that seven commenters submitted letters that were, like the template letter, dated nearly one year in the future.<sup>4</sup>

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<sup>1</sup> *E.g.*, Letter from Jim C. Arnott, Sheriff of Greene County, Missouri (Dec. 1, 2014).

<sup>2</sup> A summary charting how closely the Form-Letter Comments parroted the ICS form letter is attached as Exhibit 1.

<sup>3</sup> Letter from Stephanie A. Joyce, Counsel to Securus Technologies, Inc. (Dec. 8, 2014).

<sup>4</sup> *See id.*, Exhibit 2 (template for the Form-Letter Comments, dated December 1, 2015). The seven letters with inaccurate dates were submitted by Cayuga County (NY) Sheriff David S. Gould (letter dated December 3, 2015, received by the Commission on December 18, 2014); DeWitt County (TX) County Judge Daryl L. Fowler (letter dated December 1, 2015, received by the Commission on January 6, 2015); Fannin County (TX) County Judge Creta L. Carter II (letter dated December 1, 2015, received by the Commission on January 7, 2015); Garza County (TX) County Judge Lee Norman (letter dated December 1, 2015, received by the Commission on December 17(?), 2014); Graham County (AZ) Sheriff Preston Allred (dated December 1, 2015, received by the Commission on December 3, 2015); Panola County (TX) County Judge David L. Anderson (dated December 1, 2015, received by the Commission on December 8, 2014); and Terry County (TX) County Judge J.D. Wagner (dated December 1, 2015, received by the Commission on December 8, 2014).

Throughout this rulemaking proceeding, the Commission has sought input from state and local correctional officials. The Local Government Comments purport to inform the Commission, but—particularly in the context of the Form-Letter Comments—the inaccuracies, vagueness, and typographical errors indicate that *the commenters are simply using their offices to retransmit the industry’s opinions*. None of the comments identify specific legitimate costs of ICS that should justify commissions which would be passed on to consumers through increased rates.

To assist the Commission in addressing the inaccuracies in the Local Government Comments, including the Form-Letter Comments, Prison Policy Initiative submits this analysis.

### **I. The Local Government Commenters Fail to Adhere to the Reasonable-and-Directly-Related Standard Already Established by the Commission**

In its Report and Order and Further Notice of Proposed Rulemaking (“First Report & Order”), the Commission determined that “site commission payments are not a compensable category of ICS costs because they are not costs that are *reasonably and directly related* to provision of ICS.”<sup>5</sup> Subsequently, in the Second Further Notice of Proposed Rulemaking (“Second FNPRM”), the Commission sought comment “on prohibiting all site commission payments for interstate and intrastate ICS to enable market-based dynamics to ensure just and reasonable ICS rates and fair ICS compensation.”<sup>6</sup>

The reasoning behind the Commission’s request for comments regarding prohibition of site commissions is clear: “ICS users and their families, friends and lawyers spent over \$460 million to pay for programs ranging from inmate welfare to roads to correctional facilities’ staff salaries to the state or county’s general budget. These are pass-through payments from the provider to the facility, absent which, rates would be lower.”<sup>7</sup> Not only do site commissions distort what little competition exists in the ICS market,<sup>8</sup> but they also unfairly force ICS users to fund costs wholly unrelated to telecommunications services.

The Commission has long sought to identify the true cost of providing ICS, but the Form-Letter Comments, which were based on a template drafted for use by facilities of various sizes and locations, are especially vague about the costs purportedly incurred by local governments. And where the comments are not hopelessly vague it is likely, based on the record, that Securus was correct in

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<sup>5</sup> First Report & Order, 28 FCC Rcd. 14107 ¶ 55 (emphasis added) (noting that the conclusion is the same under either the “fair compensation” requirement of 47 U.S.C. § 276 or the “just and reasonable” requirement of § 201(b)).

<sup>6</sup> Second FNPRM, 79 Fed. Reg. 69682 ¶ 27.

<sup>7</sup> *Id.* ¶ 23.

<sup>8</sup> See First Report & Order ¶ 41 (“[T]he Commission has previously found that competition during the competitive bidding process for ICS does not exert downward pressure on rates for consumers, and that under most contracts the commission is the single largest component affecting the rates for inmate calling service. We reaffirm those findings here.” (internal quotation marks and footnotes omitted)).

stating that the “functions that are allegedly completed by the facilities are grossly overstated in the letter.”<sup>9</sup>

As for the question of site commissions, such payments are not necessary to the continued provision of ICS or the continued operation of the correctional facilities. As the Commission has already found, site commission payments account for less than one-half of one percent of prison budgets.<sup>10</sup> This is a very small amount of money compared to the benefits that accrue from reduced calling costs.

For example, in 2007, the New York State Department of Corrections and Community Supervision (“DOCCS”) eliminated commissions, going from 57.5% to zero.<sup>11</sup> DOCCS found that call volume nearly tripled and that losing commission revenue was outweighed by gains in security (through fewer illicit cell phones) and decreased recidivism in the long run.<sup>12</sup>

Even if the cost of providing ICS were significant, families of incarcerated people should not disproportionately bear the cost of services that should be paid for by taxpayers at large. Reducing recidivism and providing basic care are core responsibilities of correctional facilities, and providing phones is no different than providing heat or water. The cost of all of these “services” is part and parcel of running a correctional facility; if the government chooses to lock people up—and take away families’ abilities to communicate directly or even to choose their own telephone service provider—it needs to pay for it from general revenue sources.

## **II. Most of the Specific Costs Cited by the Local Government Commenters Are Not Reasonably and Directly Related to ICS and Thus Should Not Be Recovered through Site Commissions**

The concerns expressed in the Local Government Comments largely overstate ICS-related costs, attempt to erode the Commission’s prior ruling regarding reasonable-and-direct relation to ICS, and seek to relitigate other issues already decided in this proceeding. The Commission should not accept this invitation to reconsider its prior conclusions regarding site commissions. In 2002, the Commission concluded that site commissions were “location rents that are negotiable by contract with the facility owners and represent an apportionment of profits between the facility owners and the providers of the inmate payphone service.”<sup>13</sup> More than ten years later, in this proceeding, the Commission reaffirmed its previous conclusion in the First Report and Order.

The Local Government Comments argue that the Commission’s prior holdings cannot stand because correctional facilities incur costs in providing ICS. As the Commission has repeatedly made clear, bona fide security costs that are

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<sup>9</sup> Letter from Stephanie A. Joyce, Counsel to Securus Technologies, Inc. (Dec. 8, 2014).

<sup>10</sup> Second FNPRM ¶23.

<sup>11</sup> July 8, 2013 NYSDOCCS letter, <http://www.prisonpolicy.org/phones/NYDOCCSletter.pdf>

<sup>12</sup> July 8, 2013 NYSDOCCS letter, <http://www.prisonpolicy.org/phones/NYDOCCSletter.pdf>

<sup>13</sup> Order on Remand & Notice of Proposed Rulemaking, 17 FCC Rcd. 3248, 3262 ¶ 38 (footnote omitted).

directly and reasonably related to ICS can be recovered through rates; however, the commenters fail to provide specific credible evidence of such costs and therefore do not present a compelling defense of site commissions. The common types of costs cited in the Local Government Comments are addressed in turn.

#### **A. Expenses with No Logical Connection to Regulated ICS**

Many of the Local Government Comments emphasize numerous costs that are entirely unrelated to telecommunications, or costs that are only tangentially related and which the Commission has already said cannot be recovered through ICS rates. In the First Report and Order, the Commission said that recoverable costs *do not* include “costs relating to general security features of the correctional facility unrelated to ICS, and costs to integrate inmate calling with other services, such as commissary ordering, internal and external messaging, and personnel costs to manage inmate commissary accounts.”<sup>14</sup> Because site commissions are “simply payments made for a wide range of purposes, most or all of which have no reasonable and direct relation to the provision of ICS,”<sup>15</sup> the Commission ruled that site commissions cannot be treated as expenses for purposes of setting ICS rates.

Despite the Commission’s crystal-clear ruling on this subject, the Local Government Comments seek to relitigate this issue by waxing poetic about the various programs funded by site commission revenue. Several California sheriffs go as far as to inform the Commission that “California law explicitly requires the deposit of all commission proceeds in the inmate welfare fund.”<sup>16</sup> The California sheriffs then list numerous commission-funded programs—such as “recreation, enhanced medical services, and programs,”<sup>17</sup> “substance abuse education and treatment program[s],”<sup>18</sup> and “board games, playing cards, exercise equipment . . . televisions and television service” —but do nothing to address the fact that these programs have absolutely no connection to telecommunications.<sup>19</sup>

While the California sheriffs at least focus on laudable programs, the Form-Letter Comments go one step further and proclaim that site commission revenue is needed to fund routine facility security functions. For example, the

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<sup>14</sup> First Report & Order ¶ 53.

<sup>15</sup> *Id.* ¶ 55.

<sup>16</sup> Letter from Kern County (CA) Sheriff-Coroner Donny Youngblood (Jan. 5, 2015), at 2; *see also* Letter from Riverside County (CA) Sheriff Stan Sniff (Dec. 30, 2014); Letter from Orange County (CA) Sheriff-Coroner Sandra Hutchens (Dec. 30, 2012); Letter from Ventura County (CA) Sheriff Geoff Dean (Dec. 16, 2014); Letter from Santa Barbara County (CA) Sheriff-Coroner Bill Brown (Jan. 12, 2015); Letter from San Bernardino County Sheriff-Coroner John McMahan (Nov. 6, 2014). Notably, the law cited by the California Sheriffs does *not* require imposition of a commission on phone revenues—rather, it simply specifies that if such a commission is imposed, proceeds must be deposited into the inmate welfare fund. Cal. Penal Code § 4025(d) (“There shall be deposited in the inmate welfare fund any money, refund, rebate, or commission received from a telephone company or pay telephone provider when the money, refund, rebate, or commission is attributable to the use of pay telephones which are primarily used by inmates while incarcerated.”).

<sup>17</sup> Letter from San Bernardino County Sheriff-Coroner John McMahan (Nov. 6, 2014), at 2.

<sup>18</sup> Letter from Santa Barbara County (CA) Sheriff-Coroner Bill Brown (Jan. 12, 2015), at 2.

<sup>19</sup> Letter from Ventura County (CA) Sheriff Geoff Dean (Dec. 16, 2014), at 2.

Form-Letter Comments defend the use of commission revenue to operate video visitation programs,<sup>20</sup> comply with the Prison Rape Elimination Act,<sup>21</sup> and purchase bedding and clothing.<sup>22</sup> These costs are patently outside of the reasonably-and-directly-related standard that the Commission has already established.

Finally, more than half of the Form-Letter Comments cite the costs of voicemail services,<sup>23</sup> even though the Commission has expressly held that voicemail is an ancillary service that cannot be funded through ICS rates.<sup>24</sup>

Whether commissions are being used to fund worthwhile programs for incarcerated people or general security costs, the legal result is the same—as the Commission noted earlier in this proceeding: “we are bound by our statutory mandate to ensure that end user rates are ‘just and reasonable,’ and ‘fair,’ taking into account end users as well as ICS providers. The Act does not provide a mechanism for funding social welfare programs or other costs unrelated to the provision of ICS, no matter how successful or worthy.”<sup>25</sup> This prior holding remains legally correct, notwithstanding the commenters’ stubborn hope that the Commission will reverse course.

## B. Call-Monitoring Expenses

Nearly all of the Local Government Comments mention the cost of monitoring calls.<sup>26</sup> Call-monitoring is a unique cost that has no clear analog in free-world telecommunications. The Commission has already determined that security costs that are reasonably and directly related to ICS may be recovered through rates.<sup>27</sup> Given the Local Government Comments’ lack of specific contractual information, the question remains whether and to what extent such functions are actually being performed by local governments.

ICS providers market themselves to potential customers based on their claimed ability to provide security intelligence and analysis to correctional facilities.<sup>28</sup> To the extent that monitoring activities are being undertaken by ICS providers, then the providers are compensated through rate revenue and there is no need for local governments to receive site commission payments to cover costs that are incurred by contractors. Alternatively, to the extent that call-monitoring is

<sup>20</sup> *E.g.*, Letter from Fannin County (TX) County Judge Creta L. Carter II (Dec. 1, 2015 [sic]), at 1.

<sup>21</sup> *E.g.*, Letter from Garza County (TX) County Judge Lee Norman (Dec. 1, 2015 [sic]), at 1.

<sup>22</sup> Letter from Denton County (TX) Sheriff Will Travis (Dec. 8, 2014).

<sup>23</sup> *E.g.*, Letter from Graham County (AZ) Sheriff Preston Allred (Dec. 1, 2015 [sic]), at 2 (citing cost of “[f]ree inmate voice mail broadcast from facility staff and approved contact list”).

<sup>24</sup> First Report & Order ¶ 53.

<sup>25</sup> First Report & Order ¶ 57.

<sup>26</sup> This includes expenses for “live alert transmission costs to call investigator” (a frequently-cited cost that is never defined by the commenters) and the “time jail staff monitors calls in order to maintain a safe and secure environment.”

<sup>27</sup> First Report & Order ¶ 58.

<sup>28</sup> *See e.g.*, Global Tel\*Link, Call Analysis, <http://www.gtl.net/correctional-facility-services/investigative-solutions/call-analysis/> (“GTL’s Call IQ@ . . . can monitor recorded calls, producing transcribed call recording logs that are then searched using the advanced screening tools.”); Securus Technologies, THREADS, <https://securustech.net/web/securus/192> (describing automated data analysis services for investigators).



actually being undertaken by local facilities, then the expense of that monitoring can only be recovered through rates if the monitoring is reasonably and directly related to the provision of ICS. But even commenters who do attempt to quantify their ICS-related costs fail to precisely explain the connection and methodology they use to arrive at the purported cost figures. For example, Los Angeles County Sheriff Jim McDonnell does not give a precise cost figure “[b]ecause crimes are arbitrary and there are ebbs and flows in the system, [and] quantifying the costs of the investigatory process is difficult.”<sup>29</sup> This comment suggests that the costs cited by Sheriff McDonnell (\$6 million, in “broad brush stroke[s]”) represent the staffing costs attributable to *general purpose* investigators who use various evidentiary tools, sometimes including phone recordings.<sup>30</sup> Charging the cost of an investigator to ICS users simply because the investigator happens to occasionally listen to phone recordings is not appropriate—the fact that an employee uses ICS security features as a tool does not transform that person’s time into a cost that is reasonably and directly related to operation of the ICS system.

Many of the Local Government Commenters argue that all security costs must be borne by ICS ratepayers because phone usage in a correctional facility is a privilege not a right.<sup>31</sup> Yet this is not a meaningful distinction—regardless of whether facilities impose usage restrictions, the fact remains that Congress has empowered the Commission to regulate ICS rates and practices (both through the general grant of authority over the public switched telephone network<sup>32</sup> and the specific statutory reference to “inmate phones”<sup>33</sup>). Thus, while correctional facilities are free to regulate incarcerated people’s access to ICS, the Commission remains empowered to ensure that rates are fair and reasonable.

To the extent that “monitoring” costs actually consist of general purpose investigators, then such costs should not be recovered through site commissions, but instead should be treated as general investigative costs, as discussed in the following section.

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<sup>29</sup> Letter from Los Angeles County (CA) Sheriff Jim McDonnell (Jan. 9, 2015), at 2.

<sup>30</sup> See also Letter from Ventura County (CA) Sheriff Geoff Dean (Dec. 16, 2014) (summarily estimating that 20% of five deputy positions are “directly” attributable to the ICS phone system, but describing the deputies’ work as “conduct[ing] criminal and other investigations within the jail facilities” – thus suggesting that the employees at issue simply function as general purpose investigators, who happen to sometimes use evidence that comes from the ICS system). Similarly, the comments of Hampden County, Massachusetts purport to show, in a 4-page spreadsheet, the costs of “staff time on inmate phone system”, but almost all of these entries are for time spent on investigations. The principal exception is the full time “Telephone Comm. Asst.” position, but there is no time breakdown on the 13 listed job duties, making it impossible to determine what portion of this position is spent on investigative or other matters that should not be paid for by user fees. Also notably absent from the Hampden County Sheriff’s letter which claims \$165,487 in annual costs, is any mention of the county’s typical commission income. Based on our analysis of the county’s commission reports for select months in 2013, we estimate that the county’s total income from commissions was at least 4 times higher than the total of the county’s exaggerated list of “required” costs.

<sup>31</sup> E.g., Letter from Marion County (IN) Sheriff John R. Layton (Dec. 8, 2014), at 3 (“[P]lease be reminded that the telephone system is wholly voluntary. . . . There is no constitutional obligation that inmates have telephone service.”).

<sup>32</sup> 47 U.S.C. § 201.

<sup>33</sup> 47 U.S.C. § 276(d).

### C. Other Costs of Investigations and Prosecutions

Although the Commission has allowed user rates to include costs of security activities that are reasonably and directly related to the provision of ICS, the Form-Letter Comments attempt to inflate this category far beyond its proper boundaries, citing attenuated investigative and prosecutorial costs.

For example, the Form-Letter Comments claim that the cost of “[p]rosecuting or disciplining inmates for crimes committed while using the inmate phones and visitation phones”<sup>34</sup> and “[a]dministrative disciplinary hearings and sanctions for inmates who commit a rule infraction while using the inmate phone system”<sup>35</sup> should be recouped through ICS site commissions. There is no accepted regulatory definition of telecommunications costs that would include collateral consequences of illegal activity that happens to involve the use of a telephone. Investigation, prosecution, and punishment are normal activities of law enforcement, and funding these activities is the responsibility of government. No amount of pleading from local governments will turn these budget items into telecommunications costs that should be paid from ICS rate revenue.

Moreover, many of the Local Government Comments make a logically confusing argument about the impact of ICS security features. While the commenters make numerous statements about the efficacy of ICS system security features,<sup>36</sup> in the next breath they argue that such valuable tools lead to collateral costs that can only be recovered through user fees. If ICS security features are indeed effective in helping investigators perform their jobs and in “providing evidence to secure a conviction,”<sup>37</sup> then it stands to reason that it would be both cost-effective and administratively efficient for governments to pay for such features from general revenue sources. Instead—in contravention of the Commission’s previous rulings in this proceeding—the Local Government Comments urge that such features cannot possibly be funded in any manner other than a user fee imposed on people whose only connection to the crimes being investigated and prosecuted is the fact that they call incarcerated friends and relatives.

A number of the Form-Letter Comments also claim costs associated with “[h]andling US Marshal inquiries regarding contract inmate phone calls, compliance and reporting.”<sup>38</sup> Setting aside the fact that several jurisdictions claiming these costs do not even appear to house US Marshals Service

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<sup>34</sup> *E.g.*, Letter from Charlevoix County (MI) Sheriff W.D. Schneider (Dec. 1, 2014), at 1.

<sup>35</sup> *E.g.*, Letter from Mohave County (AZ) Sheriff Jim McCabe (Dec. 12, 2014), at 1.

<sup>36</sup> *E.g.*, Letter from Imperial County (CA) Sheriff Raymond Loera (Dec. 30, 2014), at 2 (“In the last year, phone monitoring has diverted access to illicit drugs in our facility on multiple occasions.”); Letter from Los Angeles County (CA) Sheriff Jim McDonnell (Jan. 9, 2015), at 2 (“Call monitoring by Department investigators has thwarted, aborted, or solved crimes”); Letter from Marion County (IN) Sheriff John R. Layton (Dec. 8, 2014), at 2 (“Our Jail’s telephone system led to additional charges being placed on an alleged bomber, who apparently blew up an entire Indianapolis neighborhood, killing two people.”).

<sup>37</sup> Letter from Imperial County (CA) Sheriff Raymond Loera (Dec. 30, 2014), at 2.

<sup>38</sup> *E.g.*, Letter from Wheeler County (TX) Jail Administrator Carrie Gaines (Dec. 1, 2014), at 1.

(“USMS”) inmates,<sup>39</sup> the ones who do are already compensated for the costs through USMS contract payments. USMS contracts with jails are designed to compensate the local government for actual costs, in accordance with Office of Management and Budget Circular A-87 (“Cost Principles for State, Local, and Indian Tribal Governments”).<sup>40</sup> Thus, to the extent that jails actually incur material costs for handling USMS inquiries, then those costs should be (or already are) recouped through the USMS contract payments, not by a blanket fee imposed on all ICS customers.

The aforementioned costs are only tangentially related to provision of ICS, and therefore do not meet the reasonably-and-directly-related standard already established in this proceeding.

#### **D. No-Cost Calls**

Many of the Local Government Comments cite the cost of free calls.<sup>41</sup> To the extent that these free calls are constitutionally or statutorily required, then the expense is attributable to external legal requirements, not to operation of the ICS system. Moreover, many of the free calls described in the Local Government Comments appear to relate to the bail-bond process—to the extent that these calls enable incarcerated people to post bond, then the calls would presumably *reduce* facility expenses by lowering the number of people incarcerated on-site.

#### **E. Specific Features**

Many of the Form-Letter Comments claim that site commissions are necessary to pay for specific ICS features such as “[t]hree-way call detection verification by staff” and “[b]andwidth costs for offering and administering inmate phone platform.”<sup>42</sup> These appear to be costs associated with services delivered by ICS providers. Thus, once again, it is unclear why local governments would need to receive compensation for costs that are incurred by contractors, and which are presumably built into ICS user rates—in fact, this is the same point that Securus Technologies made when it told the Commission “[t]he functions that are allegedly completed by [correctional] facilities are grossly overstated in the [Form-Letter Comments]”<sup>43</sup>.

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<sup>39</sup> The USMS reports on contracts to house incarcerated people in state and county facilities in its Facility Usage Reports (available at [http://www.usmarshals.gov/foia/facility\\_reports/index.html](http://www.usmarshals.gov/foia/facility_reports/index.html)). Some Form-Letter Comments claiming USMS contract related expenses are submitted by jurisdictions that do not appear on the latest USMS Facility Usage Reports.

<sup>40</sup> US Marshals Service, Defendants in Custody and Prisoner Management, <http://www.usmarshals.gov/prisoner/index.html>.

<sup>41</sup> *E.g.*, Letter from San Patricio County (TX) County Judge Terry Simpson (Dec. 15, 2014) (citing cost of “Indigent calling,” “Free calls to public defenders, consulates, embassies and private counsel, ombudsmen [sic],” “Free calls to bail bond companies,” “Free calls to facility commissary providers for ordering,” and “Free booking calls”).

<sup>42</sup> *E.g.*, Letter from Panola County (TX) County Judge David L. Anderson (Dec. 1, 2015 [sic]), at 1.

<sup>43</sup> Letter from Stephanie A. Joyce, Counsel to Securus Technologies, Inc. (Dec. 8, 2014), at 2.



## F. Miscellaneous *De Minimus* Costs

The Local Government Comments claim many costs that—in addition to being indirectly related to ICS—are so irregular or immaterial that they should not be recovered through ICS rates.

For example, the Form-Letter Comments make the curious claim that facilities incur costs related to “[l]itigation resulting from inmates or the public regarding use of the phone system.”<sup>44</sup> Yet none of the letters reference specific litigation. And the genesis of the above-captioned proceeding (i.e., the U.S. District Court’s referral of the Wright Petition to the Commission under the doctrine of primary jurisdiction) illustrates the difficulty of bringing ICS matters into court. Accordingly, it is highly unlikely that any of the jurisdictions submitting Form-Letter Comments—let alone the vast majority of them—have incurred material costs pertaining to ICS-related litigation.

Many of the comments claim that site commissions are necessary to compensate local governments for the cost of “[w]riting Request[s] for Proposals and handling the bidding process.”<sup>45</sup> All correctional facilities purchase goods and services, and making these purchases may entail transactional costs. Accordingly, facilities of any size have procurement staff that are part of the general overhead. But whether ICS procurement is handled by a professional procurement staff or an all-purpose administrator in a small jurisdiction, the fact remains that soliciting bids from ICS providers is not a routine occurrence. Almost all contracts are of more than one year,<sup>46</sup> meaning that procurement does not even occur on an annual basis. Accordingly, if one were to attempt to apportion the irregular costs of procurement among all ICS users, the result would be a *de minimus* amount that is not practical to collect through user fees.

Finally, some comments state that facilities incur staffing costs to transport incarcerated people to on-site telephones.<sup>47</sup> Once again, the commenters use general facility operating costs as a purported justification for site commissions. Correctional facilities incur costs to supervise and transport people for a wide variety of purposes. Simply because staff are responsible for supervising movement for purposes of making phone calls does not make this expense reasonable and directly related to provision of ICS.

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<sup>44</sup> *E.g.*, Letter from San Augustine County (TX) County Judge Samye Johnson (Dec. 1, 2014), at 2.

<sup>45</sup> *E.g.*, Letter from Niagara County (NY) Sheriff James R. Voutour (Dec. 1, 2014), at 2.

<sup>46</sup> We have reviewed hundreds of state and county contracts, many of which are archived on the Prison Phone Justice website at <https://www.prisonphonejustice.org> or have been submitted as exhibits to Prison Policy Initiative reports.

<sup>47</sup> *E.g.*, Letter from Imperial County (CA) Sheriff-Coroner-Marshal Raymond Loera (Dec. 30, 2014), at 2 (“Providing phone service to inmates requires staff to transport an inmate to the phone and transport them back to his or her housing unit. Escorting inmates to obtain access to the phone is staff intensive, especially for inmates within the restrictive housing units.”).


### G. Customer Service

The Form-Letter Comments make a bizarre and internally-contradictory argument concerning the cost of customer service. Most of the commenters claim that their facilities incur costs to provide “[c]ustomer service feature for inmates to report workmanship issues with the inmate phone system.”<sup>48</sup> Yet the very same letters subsequently cite supposed costs for “[f]ree customer service system for inmates – *lightens workload of facilities staff*.”<sup>49</sup> If—as the Form-Letter Comments suggest—ICS providers are responsible for customer service, then the providers, not the facilities, incur the costs of customer service. In turn, the providers are compensated through rate revenue, and local governments do not need site commissions to fund the cost of services that the government no longer performs.

### III. Conclusion

The Commission has welcomed input from correctional authorities, however, the Local Government Comments blithely ignore the Commissions’ previous findings and conclusions, instead insisting that site commissions must be used to cover government costs in providing ICS. Yet a close reading of the Local Government Comments (especially the Form-Letter Comments) indicates that the local governments are largely motivated by a desire to appease existing ICS providers. Because the commenters have largely failed to provide specific and credible evidence of reasonably and directly related costs—despite repeated requests—the Commission should reaffirm its earlier findings and prohibit any profit-sharing arrangements that increase the cost of phone calls.

Respectfully submitted,

  
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Pro Bono Legal Analyst

  
Aleks Kajstura, Esq.  
Legal Director

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<sup>48</sup> E.g., Letter from Pinal County (AZ) Sheriff Paul Babeu (Dec. 10, 2014), at 1.

<sup>49</sup> *Id.* at 2.

# EXHIBIT 1

*An analysis of 25 similar comments and the industry-provided template for those comments.*

**PRISON**  
POLICY INITIATIVE

# An analysis of 25 similar comments and the industry-provided template for those comments

Commenter	Letter is dated in the future (12/1/15 or 12/31/15)	Phone maintenance	USMS Inquiries	Bandwidth	Recording storage	Live alert	3-way/cell detection	Investigation/prosecution	Free calls	Visitation phones	PREA compliance	Customer service	Voicemail	Inmate transport	Call monitoring	Procurement costs	Staff training	Litigation
ICS template letter	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Cayuga County (NY) S.O.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Charlevoix County (MI) S.O.		X		X	X	X	X	X	X		X	X	X	X	X	X	X	X
Columbia County (GA) Detention Center		X				X	X	X	X		X		X	X		X	X	X
Denton County (TX) County Judge			X			X	X	X	X					X	X	X	X	X
DeWitt County (TX) County Judge	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Fannin County (TX) County Judge	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Gage County (NE) Jail Administrator*		X		X	X	X	X	X	X	X	X		X	X		X	X	X
Garza County (TX) County Judge	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Graham County (AZ) S.O.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Greene County (MO) S.O.		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Hutchinson County (TX) County Judge		X		X	X			X	X									
Mohave County (AZ) S.O.		X		X	X	X	X	X		X	X	X		X		X	X	X
Niagara County (NY) S.O.		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Panola County (TX) County Judge	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Pinal County (AZ) S.O.		X		X	X	X	X	X		X	X	X		X		X	X	X
Plymouth County (IA) S.O.		X	X		X			X	X				X	X				X
Saint Augustine County (TX) County Judge		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Terry County (TX) County Judge	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Tuolumne County (CA) S.O.		X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X
Washington County (TX) County Judge		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Wheeler County (TX) S.O.		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Yell County (AR) S.O.		X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Hampden County (MA) S.O.		X				X	X	X		X	X			X		X	X	X
San Patricio County (TX) County Judge		X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X
Waller County (TX) County Judge		X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X

\* The letter from Jail Administrator Lt. Anthony Shepardson does not identify his county, but based on google results for his name and position, we are confident that this letter was from Gage County Nebraska.

# EXHIBIT 2

*Securus' Dec 8, 2014 letter to the FCC about the form letters concerning the costs of ICS to facilities,  
Securus' analysis of which of those tasks are actually provided by Securus and not the facilities,  
and the original template for the form letters.*

**PRISON**  
POLICY INITIATIVE





December 8, 2014

VIA ECFS

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

**Stephanie A. Joyce**

Attorney  
202.857.6081 DIRECT  
202.857.6395 FAX  
joyce.stephanie@arentfox.com

Re: Notice of Permitted *Ex Parte* Meeting, WC Docket No. 12-375

Dear Ms. Dortch:

On December 4, 2014, Securus Technologies, Inc. (“Securus”), represented by Richard Smith, Chief Executive Officer, Dennis Reinhold, Vice President and General Counsel, and the undersigned counsel, met with Commissioner Ajit Pai and Nicholas Degani, his Legal Advisor.

Securus provided large copies of the attached documents and discussed them in detail. The documents contain preliminary figures regarding elasticity of demand, significantly amending the draft figures that Securus had provided earlier this year.<sup>1</sup> After closer examination of call records, Securus has realized that overall demand has not increased more than a trivial amount. In October 2014, interstate minutes of use (“MOU”) were higher than in October 2013, but intrastate MOU had decreased significantly at the same time. In addition, Securus has implemented approximately 35 initiatives to stimulate inmate call usage, and believes that the increase in interstate MOU is, to a meaningful degree, attributable to that work. Securus told the attendees that FTI Consulting will provide a more detailed and authoritative study regarding how Securus has experienced elasticity of demand since the Rate Caps became effective.

With regard to site commissions, Securus reiterated that the Industry Proposal filed September 15, 2014, does provide for a mechanism by which correctional facilities can recover the costs they incur in connection with Inmate Calling Services (“ICS”):

The parties recognize, as the Commission acknowledged in the *Inmate Calling Report and Order and FNPRM*, that correctional facilities may incur administrative and security costs to provide inmates with access to ICS. The parties’ proposal supports the

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<sup>1</sup> WC Docket No. 12-375, Letter from Stephanie Joyce, Counsel to Securus, to Marlene H. Dortch, FCC, at 2 (May 15, 2014).

## Arent Fox

recovery of legitimate costs incurred by correctional facilities that are directly related to the provision of inmate calling services.<sup>2</sup>

The Industry Proposal also stated, however, that

if the FCC determines that such admin-support payments to correctional facilities are appropriate, the amount or percentage of such payments will have a direct effect on ICS provider's costs to provide ICS, and therefore, the proposed per-minute rate caps may have to be increased, unless such admin-support payments or percentages are nominal.<sup>3</sup>

Securus also provided the attached handout regarding the many tasks that Securus performs at correctional facilities for the provision of ICS. This handout was created in response to a letter, a copy of which is also attached, that another ICS provider has sent to, Securus believes, hundreds of correctional facilities in which representations are made as to the work that the facilities do and why site commissions remain necessary to reimburse facilities for that work. The functions that are allegedly completed by the facilities are grossly overstated in the letter. Columbia County Detention Center (Appling, Georgia) and Judge Mary Horn of Denton County, TX each have filed this letter in somewhat modified form.

This disclosure is made in compliance with 47 C.F.R. § 1.1206(a)(1).

Please do not hesitate to contact me with any questions: 202.857.6081.

Sincerely,

s/Stephanie A. Joyce

*Counsel to Securus Technologies, Inc.*

Attachments

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<sup>2</sup> WC Docket No. 12-375, Letter from Brian Oliver, Chief Executive Officer, Global Tel\*Link Corporation, Richard Smith, Chief Executive Officer, Securus Technologies, Inc., and Kevin O'Neal, President, Telmate, LLC, at 3 (Sept. 15, 2014) (citing *Inmate Calling Report and Order and FNPRM* at n.203).

<sup>3</sup> *Id.* at 4.

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Cc: Nicholas Degani, Legal Advisor to Commissioner Pai  
Pamela Arluk, Acting Chief, Pricing Policy Division, Wireline Competition Bureau  
Lynne Engledow, Acting Deputy Chief, Pricing Policy Division, Wireline Competition  
Bureau  
*All via electronic mail*

## Securus Handles Most Items for Facilities Related to ITS Use

<u>Function</u>	<u>Securus Responsibility</u>
• Maintaining phones and monitoring maintenance of phones	Yes
• Handling US Marshal inquiries regarding contract inmate phone calls, compliance and reporting	Yes
• Bandwidth costs for offering and administering inmate phone platform	Yes
• Storing of calls that are used for court	Yes
• Live alert transmission costs to call investigator	No
• Three-way call detection verification by staff	Yes
• Prosecuting or disciplining inmates for crimes committed while using the inmate phones and visitation phones	No
• Visitation phones (use the same recording and security features as the inmate phones)	Yes
• Indigent calling	Yes
• Free calls to public defenders, consulates, embassies and private counsel, ombudsmen	Yes
• Free calls to bail bond companies	Yes
• Free calls to facility commissary providers for ordering	Yes
• Free booking calls	Yes
• Bonding/holding phones	Yes
• Prison Rape Elimination Act (PREA) mandated voicemail systems, handling calls and reporting	Yes
• Customer service feature for inmates to report phone problems and grievances.	Yes
• Free inmate voice mail broadcast from facility staff and approved contact list	?
• Cell phone detection and interception systems	Yes
• Free customer service system for inmates – lightens workload of facilities staff	Yes
• Transporting inmates to phones and visitation phones	No
• Listening to calls. After implementing caps on rates, fees and single-payment products, inmate calling will most likely double resulting in doubling the costs of listening to calls and managing inmate calling privileges	Yes
• Providing call recordings to court	Yes
• Writing Requests for proposals and handling the bidding process	No
• Learning how to use the inmate phone system and the myriad of security features	Yes
• Litigation resulting from inmates or the public regarding use of the phone system	Yes

**Securus handles most items for facilities related to ITS use.**

December 1, 2015

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Re: WC Docket No. 12-375 Second Further Notice of Proposed Rulemaking (Inmate Calling Services)

Dear Ms. Dortch,

Our local government is in support of reasonable inmate calling rate and fee reforms and appreciates the efforts of the FCC to protect inmates and their families from paying excessive rates, fees and third-party billed products. Of concern to us, however, is the potential elimination of commission payments which are a vital part of our budget to ensure inmates have unlimited use of the inmate telephones which we provide as a privilege. We are aware of recent rules implemented in the state of Alabama that require reasonable rates and funding fees, but also allow for continued payment of commissions to jails and prisons. We urge the FCC to consider mirroring the overall regulation implemented in that state.

Below are just a few of the costs we incur in offering inmate phone services to our inmates:

- Maintaining phones and monitoring maintenance of phones
- Handling US Marshal inquiries regarding contract inmate phone calls, compliance and reporting
- Bandwidth costs for offering and administering inmate phone platform.
- Storing of calls that are used for court
- Live alert transmission costs to call investigator
- Three-way call detection verification by staff
- Prosecuting or disciplining inmates for crimes committed while using the inmate phones and visitation phones
- Visitation phones (use the same recording and security features as the inmate phones)
- Indigent calling
- Free calls to public defenders, consulates, embassies and private counsel, ombudsmen
- Free calls to bail bond companies
- Free calls to facility commissary providers for ordering
- Free booking calls
- Bonding/holding phones
- Prison Rape Elimination Act (PREA) mandated voicemail systems, handling calls and reporting
- Customer service feature for inmates to report phone problems and grievances.
- Free inmate voice mail broadcast from facility staff and approved contact list
- Cell phone detection and interception systems
- Free customer service system for inmates – lightens workload of facilities staff
- Transporting inmates to phones and visitation phones



- Listening to calls. After implementing caps on rates, fees and single-payment products, inmate calling will most likely double resulting in doubling the costs of listening to calls and managing inmate calling privileges.
- Providing call recordings to court
- Writing Requests for proposals and handling the bidding process
- Learning how to use the inmate phone system and the myriad of security features
- Litigation resulting from inmates or the public regarding use of the phone system

We would like to make mention that a few inmate phone providers proposed that the FCC eliminate commissions, but we feel that recommendation was in their best interest and not in the best interest of the inmates and the jails. Thank you for understanding our concerns and complexities involved in offering phone services to our varying level of inmates...maximum security, medium and low level security and our juvenile detainees.

Sincerely,

## Elasticity of Demand With Respect to Price

### ITS Sector

October 2013 vs. October 2014 (Same Store)

Interstate Minutes

- +83%

Interstate Revenue

- +23%

Interstate Rate per Minute

- (33%)

Questions: Why have interstate minutes increased?

Response: Here are the reasons:

- |    |   |               |
|----|---|---------------|
| 1) | <b>Intrastate MOU Movement to Interstate</b>  | <b>≈ +60%</b> |
| 2) | <b>Securus Initiatives</b>  | <b>≈ +15%</b> |
|    | <ul style="list-style-type: none"> <li>a) Penetration of Commissary Order by Phone</li> <li>b) Increase in commissary agreements and integrations</li> <li>c) Creation and penetration of Prepaid card vending machines</li> <li>d) Reduction of minimum funding fees to \$25</li> <li>e) Reduction of minimum funding fees to \$0</li> <li>f) Implementation of Inmate Debit</li> <li>g) Western Union refund process</li> <li>h) Kiosk penetration with TouchPay</li> <li>i) Kiosk penetration with EZ Card</li> <li>j) MoneyGram integration</li> <li>k) Online account creation</li> <li>l) Enablement of web payments</li> <li>m) AutoPay</li> <li>n) TextPay</li> <li>o) Modernization of website (mobile responsive)</li> <li>p) Account Activator penetration</li> <li>q) Account Activator Promo Calls</li> <li>r) Free Call Messages in SCP</li> <li>s) More validation codes to Instant Pay</li> <li>t) Dialers</li> <li>u) Account Balance Notifications</li> <li>v) Instant Pay Program</li> <li>w) Credit Card on File</li> <li>x) Reduction of Credit Card Risk Rules</li> <li>y) Separation of phone account and video visitation payments from Visa risk rules</li> <li>z) Consumer email marketing programs</li> <li>aa) Consumer educational material (Posters and brochures) in correctional lobbies</li> <li>bb) Collateral installation kits for facilities</li> <li>cc) SCP Marketing message system</li> <li>dd) Lowered call rates</li> <li>ee) AIS penetration to fund accounts</li> <li>ff) Development and migration of Instant Pay calls to new Captivate Platform</li> <li>gg) Installation of free booking phones</li> <li>hh) Booking only prepaid cards</li> <li>ii) Elimination of chirping by inmates</li> </ul> |               |
| 3) | <b>FCC Direct Implementation of Rate Caps</b>   | <b>≈ +8%</b>  |
|    | <b>Total Increase in Interstate MOU</b>   | <b>≈ +83%</b> |

**Preliminary: Results in interstate revenue decrease of ≈ 26%.**