

normally included in the monthly usage and revenue report to the facility.

6.50 The term “reseller”, as applied to inmate calling cards, conveys a different meaning than the same term applied to resale of local exchange or toll service on the public switched telephone network. The resellers of local exchange or toll service purchase the retail services from an incumbent provider at wholesale then sell the service to end users under their own brand in accordance with the reseller’s pricing schedule rather than the prices of the wholesale provider. The end user’s contractual relationship is with the reseller, not the wholesale provider. Prepaid Inmate Calling Card Service is not rebranded and re-priced. The card carries the ICS provider’s brand and is sold to the inmate at the ICS provider’s retail price. Canteen service companies and confinement facilities that resell the cards are simply intermediaries between the ICS provider and the provider’s customer—the inmate. At no point does the reseller become the end user’s ICS provider.

6.51 In their comments referenced above, Securus contends:

“Any replacement of lost or stolen cards or issuance of cash refunds of balances would need to be handled by the confinement facility or commissary that initially sold the card to the inmate. To do otherwise would be equivalent to the Commission imposing a refund requirement on convenience stores that sell long distance calling cards if such cards became lost or stolen.”

The equivalency that Securus associates with sales of prepaid phone cards at convenience stores contradicts their justification that replacement of calling cards, balance transfers, and refunds of unused account balances are the responsibility of the reseller. The convenience store is simply an intermediary between the providers of long distance calling cards and the end users just as confinement facilities and canteen service companies are intermediaries between the ICS provider and their end users. Long distance calling cards are sold to the convenience store at a price discount in relation to the card’s face value. The convenience store does not rebrand the card and at no point are they the provider of the service. Consequently, requiring resellers to replace inmate calling cards or to transfer/refund unused balances associated therewith is the equivalent of imposing the same requirement on convenience stores that resell long distance calling

cards.

- 6.52 CenturyLink claims prepaid inmate calling cards can be used for bartering or gambling and for fraud. That some inmates *could* use prepaid inmate calling cards for bartering or gambling is not a reasonable justification for denying inmates an opportunity to restore their unused prepaid calling card balance when, for whatever reason, cards are unusable, lost, or stolen nor should the inmate be denied the opportunity to transfer any remaining balance from an existing inmate calling card to a newly purchased card. Otherwise, the inmate's money is confiscated without delivering the service for which the funds are intended. The Commission is unclear what is meant by CenturyLink's claim that the prepaid inmate calling card can be used for fraud. Any inmate calling service can be used to commit fraud. It is not limited to use of prepaid inmate calling cards.
- 6.53 If the reseller is to replace unusable, lost, or stolen calling cards, the ICS provider must transfer any unused balance from the exiting personal identification number (PIN) to a replacement calling card PIN assigned by the provider. Likewise, unused balances in an inmate's existing prepaid calling card account must be transferred to any subsequent prepaid call card purchased by that inmate. Only the ICS provider can ensure compliance with these requirements. Moreover, inmates must be refunded any unused prepaid inmate calling card balance upon request, subject to our requirement in this Order that the unused balance is \$1.00 or more. When resellers obtain prepaid inmate calling cards from ICS providers at a discount price based on the card's face value, the reseller and provider are sharing in the revenue from the inmate's purchase price. The reseller cannot be expected to refund the provider's portion of the inmate's unused calling card balance nor is it reasonable to require inmates to request separate refunds from the reseller and the provider.
- 6.54 We are obligated to ensure that inmates are afforded the same consumer protections afforded other purchasers of services regulated by the Commission. CenturyLink and Securus correctly assert that the Commission lacks regulatory authority over confinement facilities and canteen service companies. Nevertheless, we exert regulatory authority over

ICS provided within the confinement facilities. The provider of prepaid inmate calling card service is the ICS provider, not resellers who are merely intermediaries. ICS providers are the controlling party in ICS resale agreements. Consequently, they exert influence over the procedures associated therewith. Providers are expected to arrange for necessary settlement procedures with resellers to ensure the provider fully complies with our requirements. Therefore, we affirm that ICS providers are responsible for restoring unusable, lost, or stolen prepaid calling cards, for transferring unused balances from existing to newly purchased cards, and for refunding to inmates the unused prepaid balance remaining on their calling card.

- 6.55 CenturyLink and Securus contend that our Order penalizes providers for the actions of resellers. We require only that ICS providers suspend sales of prepaid inmate calling cards to entities that are known or suspected of reselling the cards in excess of the card's face value. There is nothing in our Order that suggests providers will otherwise face penalties for the actions of canteen service companies or the confinement facility. Only when the provider knowingly and wantonly violates the Commission rule by failing to suspend sales to an entity that is reselling the provider's prepaid inmate calling cards at a price that exceeds the card's face value will the Commission pursue its available remedies with respect to the provider.

Video Visitation Service

Comments from Parties to the Proceeding

- 6.56 **CenturyLink:** The Further Order describes video visitation as a service that involves a terminal in the cell block where the inmate is located which is connected (through a broadband connection) to a similar terminal in the visiting area, which allows the inmate and the visitor to see and speak to each other. (¶ 2.10). Clearly, these services are explicitly excluded from the Commission's jurisdiction under ALA. CODE§ 37-2A-4 (1975 as amended) as broadband or VoIP services and are services that have never been held to be included in the scope of telephone services regulated by the

Commission. Nevertheless, the Commission asserts broad regulatory authority over the rates, terms and conditions for these services. (¶ 6.61). This assertion of jurisdiction is in error, as it ignores the plain language of ALA. CODE § 37-2A-4, as well as the scope of the Commission's jurisdiction under ALA. CODE § 37-2-1. For these reasons, the Commission should reconsider its ruling and find that it does not have regulatory jurisdiction over video visitation services.⁵⁸

GTL:

- 6.57 Regulation of any aspect of VVS also is beyond the Commission's statutory jurisdiction. VVS "is transmitted over broadband facilities" and is an "enhanced" service. VVS is not subject to regulation by the Commission. Accordingly, the Commission should not require ICS providers to submit VVS contracts for review or to include VVS in ICS provider tariffs, and should take no further action with respect to VVS.⁵⁹

Commission Response

- 6.58 Regulatory authority over Video Visitation Service ("VVS") is one of the issues under review by the FCC in its Further Notice of Proposed Rulemaking (the "FNPRM") for WC Docket No. 12-375, released October 22, 2014. The Commission hereby vacates those portions of our October 1, 2013 Order related to VVS and ¶¶ 6.53 through 6.61 of our July Order under this Docket. Subject to subsequent FCC Orders which may deem VVS a regulated ICS service, we defer intrastate rulemaking for VVS to a later date.
- 6.59 The Commission caps on ICS rates are shown in Appendix B, attached hereto. The provider shall submit a letter to the Commission's Utility Services Division with the filing of their tariff and annually thereafter, on the anniversary of the tariff's effective date, disclosing and describing all services not listed in the tariff, provided for a charge to ICS customers in Alabama. This requirement includes those services the provider considers unregulated. Our intent is to verify that services not included within the provider's tariff are appropriately excluded therefrom. The letter shall include a point of contact name for

⁵⁸ CenturyLink Comments, pages 7-8.

⁵⁹ GTL Comments, pages 17-18.

responding to Commission questions about the services, the point of contact's phone number, and their email address. Providers will fully cooperate and promptly respond to questions from Commission staff with respect to these non-tariffed services.

7.00 UNAUTHORIZED ANCILLARY FEES

Regulatory Cost Recovery Fee

Comments from Parties to the Proceeding

GTL:

7.01 The Further Order determines that certain types of fees are not permissible. One of the "unauthorized" fees is an interstate cost recovery fee. The Commission has no jurisdiction to restrict ICS providers from imposing fees related to interstate ICS. The FCC specifically permits carriers "to recover legitimate administrative and other costs," and to "recover those legitimate administrative and other related costs through rates or other line items." There is no prohibition against the recovery of interstate costs through the use of interstate fees or other line item charges. The FCC has determined that the "costs associated with the business of providing telecommunications service . . . may be recovered through rates or other line item charges," and the decision "whether to include these charges as part of their rates, or to list the charges in separate line items" is left to carriers. This well-established FCC precedent applies to ICS providers, which are regulated (and always have been regulated) as interexchange carriers at the federal level. There is no support for the Commission's proposal to prohibit ICS providers from imposing interstate cost recovery fees on their Alabama customers making interstate ICS calls.⁶⁰

Commission Response

7.02 GTL erroneously concludes that the Commission prohibits interstate cost recovery fees. Our position is unambiguous:

To the extent that any interstate regulatory recovery fee and/or USF

⁶⁰ GTL Comments, pages 10-11.

Administrative Fee is specifically quantified and listed in the ICS provider's FCC approved interstate tariff or such fee is specifically quantified and approved by FCC Order included in the Combined Federal Register, the Commission acknowledges that such fees are applicable to ICS service in Alabama.⁶¹

The Commission recognizes our jurisdiction does not extend to interstate rates but objects to the imposition of interstate regulatory fees on Alabama consumers that are unquantified and whose level is subject solely to the discretion of the ICS provider. We require ICS providers that impose such fees to cite the source granting the provider authority to assess the fee and the specific amount thereof. The imposition of interstate regulatory recovery fees is an issue under review in the FNPRM. The Commission does not authorize the assessment of an intrastate regulatory recovery fee.⁶² We choose, however, to vacate the provisions of our Order that prohibits assessment of interstate regulatory fees that are unquantified by the federal regulator and await the FCC Order for the FNPRM to determine whether we shall revisit this issue at a later date. We note that GTL proposed elimination of interstate and intrastate regulatory recovery fees in its September 15, 2014 letter to the FCC.⁶³

8.00 AUTHORIZED ANCILLARY FEES

Debit/Credit Card Payment Fee

Comments from Parties to the Proceeding

- 8.01 **GTL:**
The Further Order identifies certain fees that are authorized to be charged by ICS providers, but places arbitrary caps on those fees.⁶⁴

In the Order, the Commission correctly recognized that ancillary products offered by ICS providers "result in additional provider costs," and that ICS providers "should be provided an opportunity to recover" these "legitimate business costs." The proposed maximum fee caps, however, fail to provide recovery of these

⁶¹ Order, ¶ 7.02.

⁶² Order, ¶ 7.03.

⁶³ Proposal, page 4 and attachment thereto.

⁶⁴ GTL Comments, page 8.

recognized costs. For example, the Commission proposes an arbitrary limit on the amount that may be charged to a customer for the convenience of paying for a call by using a debit or credit card. The Commission relies on information submitted by Pay Tel in the FCC's ICS proceeding to establish its maximum fee amounts, and posits that larger ICS providers can negotiate even lower credit card transaction fees. Credit card transaction fees are set by the credit card company, not ICS providers, and there is no support in the record for the Commission's conclusion that larger ICS providers have more bargaining power than Pay Tel or smaller ICS providers with respect to such transaction fees. The concept of paying more for a service or product for the convenience of using a credit/debit card is not unique to ICS.⁶⁵

Commission Response

- 8.02 GTL alleges the Commission's caps on ancillary fees are arbitrary. We base our ancillary fee caps on Pay Tel's confidential and proprietary cost study submitted to the FCC.⁶⁶ The cost study supports Pay Tel's Further Comments to the FCC⁶⁷ in which Pay Tel recommends adoption of the caps on ICS provider ancillary fees shown in Appendix C, page 1. Pay Tel's existing ancillary fees are shown on Appendix C, page 2. We add to the caps on ancillary fees recommended by Pay Tel a convenience fee for transfers from the inmate's trust fund to the inmate's ICS account via the canteen service company's kiosk. The cap on the convenience fee is 5%. We also add a \$3.00 bill processing fee to cover the billing cost for collect inmate calls to a wireline/wireless carrier customer account and a \$2.00 paper bill fee when prepaid customers request an optional paper copy of their electronic monthly account statement provided free-of-charge.
- 8.03 GTL is correct that there is no support in the record that larger ICS providers can negotiate lower credit card transaction fees than smaller providers but one would certainly expect they are no higher. Moreover, the card transaction fee paid to financial institutions is but one component of the authorized credit card payment fee we authorize. As we note

⁶⁵ GTL Comments, pages 8-9.

⁶⁶ Further Data Substantiating the Cost of ICS Service as Presented in the Further Comments of Pay Tel Communications filed July 17, 2013, Docket No. 12-375, Pay Tel Notice of Ex Parte, rec. July 24, 2013.

⁶⁷ Further Comments of Pay Tel Communications, Inc., WC Docket No. 12-375, dated July 17, 2013.

in ¶ 8.08 of our July Order “Credit card merchant account processors typically charge ICS providers 3% to 3.5% of the [customer] payment for processing debit/credit card transactions.” Therefore, the negotiable element of payment processing costs is only one component that we take into account when establishing our cap on credit card payment fees.

Additional ICS provider payment processing costs are incurred for credit card chargebacks, fraud management and refund processing, IVR and web capability, broadband/telecom facilities, and applicable administrative costs. Many of these costs are volume sensitive - a higher number of credit card transactions results in a lower average cost per transaction with the caveat that, at various stages of increased transaction volume, additional bandwidth and server capacity is required. The Commission notes that, with the exception of merchant account processor costs, the remaining card payment costs are controlled by ICS providers rather than third parties.⁶⁸

8.04 Pay Tel’s cost study included all of these cost elements. Our July Order references the largest ICS providers’ lack of cost information with respect to ancillary fees.

All ICS providers had an opportunity to submit comments with respect to ancillary charges. Pay Tel complied with the FCC’s request and submitted supporting cost studies. With regard to the largest ICS providers, the FCC makes note of their failure to adequately comply in footnote 316 of the FCC ICS Reform Order:

See also Petitioners July 24, 2013 Ex Parte Letter at 2 (noting that the three largest ICS providers, who control “at least 90% of the ICS market,” were “remarkably silent” when asked to submit data regarding ancillary charges).⁶⁹

8.05 Counsel for Martha Wright (“The Wright Petition”) also notes the lack of cost data provided by GTL, Securus, and Telmate:

Despite the fact that the FCC specifically requested that the ICS providers to supply data regarding their own Ancillary Fees, two of

⁶⁸ Order, ¶ 8.09.

⁶⁹ Order, ¶ 8.03.

the largest ICS providers failed to file a response, and the largest ICS provider took the reader on a trip through the rate regulations from the 1980s and 1990s. While GTL feigned a response, it flatly refused to provide any other information than “rates and fees charged by interstate ICS providers are comparable to those being charged by other non-dominate providers for non-inmate operation service calling.” But at least GTL acknowledged the FCC’s public notice, even though it declined to follow the FCC’s instructions. Securus did not file any response to the public notice. Nor did CenturyLink.

NCIC and Pay Tel did submit comments in response to the Public Notice, which proffered information and proposals on reforming Ancillary Fees. However, these filings must not distract the FCC from the fact that the three largest ICS providers, who control 95% of the state DOC ICS contracts, and more than 90% of the ICS industry’s revenues, have simply refused to cooperate with the FCC in this proceeding.⁷⁰

- 8.06 The Commission notes that the only ICS providers who submitted comments opposing the Commission’s caps on ancillary fees are Securus and GTL. Both providers charge ancillary fees that are among the highest in the industry. CenturyLink, NCIC, Pay Tel, and AmTel support our caps on ancillary fees. The ancillary fees charged by these providers presently comply or very nearly comply with the Commission’s caps adopted herein.

Payment Transfer Fees

Comments from Parties to the Proceeding

- 8.07 **GTL:** ICS providers cannot control the fees established by third-parties, such as Western Union or MoneyGram. While the Commission concludes that ICS providers can enter into payment transfer service arrangements for a fee that does not exceed \$5.95 per payment, there is no evidence that such arrangements are available to ICS providers in the marketplace. Further, ICS providers’ agreements with third-party financial service providers like

⁷⁰ Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, Comments of Lee G. Petro, Drinker Biddle & Reath LLP, on behalf of Martha Wright, et al (the “Petitioners”), dated July 24, 2013, pp 1-2.

Western Union and MoneyGram are not subject to regulation.⁷¹

Securus

8.08

The Order states that any "third-party payment transfer fees that exceed \$5.95" require a special officer certification to justify the rate. Again, the Commission seeks to exert jurisdiction over third-party financial vendors and institutions with which ICS providers like Securus have relationships to provide alternative payment options for ICS customers. The Commission is trying to cap the amounts that financial service providers like Western Union and MoneyGram can charge customers for payment transfer services. This decision is unlawful and unreasonable on several grounds:

- The Commission's order does recognize that Western Union and MoneyGram offer different levels of service and charge different fees for these various levels of service.
- The Commission does not have jurisdiction over these entities and cannot dictate the level of service to which ICS providers subscribe.
- Likewise, the Commission does not have authority to regulate the fees of other financial institutions such as banks and credit unions, simply because a Securus customer may pay their Securus account using a cashier's check, money order, wire transfer or other payment transfer instrument from one of these financial service providers.
- It is also inappropriate, beyond the Commission's jurisdiction, and prohibited, for the Commission to require an ICS provider to provide the Commission with its contracts with any financial entity or require the ICS to allow the Commission to have open access with the financial service provider to discuss the services the ICS may receive.⁷²

Western Union and MoneyGram provide different levels of service and have different charges for such services. Securus has negotiated in good faith for a national contract with both Western Union and MoneyGram that Securus cannot adjust for a single jurisdiction like Alabama. Moreover, Securus is not, and should not be, privy to the type or level of service that Western Union and MoneyGram provide to its competitors just as Securus is not privy

⁷¹ GTL Comments, pages 9-10.

⁷² Securus Comments, pages 12-13.

to any such agreement these competitors have with other financial institutions. Should the Commission seek to exceed its jurisdiction and interfere with Securus' contracts with third parties like Western Union and MoneyGram, Securus may be forced to cause Western Union and MoneyGram to discontinue providing these services to Securus customers in Alabama.⁷³

Commission Response

- 8.09 GTL contends that “ICS providers cannot control the fees established by third-parties, such as Western Union or MoneyGram” while Securus admits that it has “...**negotiated** in good faith for a national contract with both Western Union and MoneyGram.” The Commission asserts that third-party payment transfer fees assessed to an ICS provider’s customers are negotiable. The record shows that Western Union payment transfer fees range from \$5.00 (NCIC) to \$11.95 (Securus). MoneyGram payment transfer fees range from \$4.99 (NCIC) to \$10.99 (Securus). ICS providers are well aware of the fees charged their competitors’ customers.
- 8.10 ICS providers are the exclusive providers in confinement facilities they serve. The end user of ICS is not the confinement facilities but the inmates and those they call from the facility. Unfortunately, they have no voice whatsoever in selecting the ICS provider. That decision is made by facility operators whose interests do not typically coincide with those of ICS end users. Therefore, the end users of the service are unable to exert any influence over prices charged to them by or on behalf of the provider. Free from such market constraints, ICS providers have no incentive to seek the lowest possible third-party charges for their customers. What’s more, some providers may purposely manipulate the fees charged by third-party providers for purposes of sharing in the revenue generated therefrom even though the ICS providers do not provide the payment transfer services. In such situations, the regulator is compelled to act in order to protect the consumers from unfair, unreasonable, and unjust ancillary fees imposed by or on behalf the only inmate phone service provider available to them.

⁷³ Securus Comments, pages 13-14.

- 8.11 ICS users may fund accounts using checks, money orders, and, in some cases, via online banking transfers. However, there is a latency issue associated with the use of such payment methods. Securus states that the delay between payment submission and processing of the payment may be as long as 7 to 10 business days⁷⁴. Including weekends and holidays, 7 to 10 business days can mean a delay of nearly 2 calendar weeks before a prepaid ICS account is activated and the party is able to receive calls from the inmate. Most inmates, particularly those in jails, are released within 72 hours making such delayed payment methods impractical. ICS users that possess debit/credit cards may establish service quickly by paying for the service online or over the phone via the ICS provider's call service center. However, for ICS customers without debit/credit cards, a third-party payment transfer service is the only viable option for quickly establishing an ICS prepaid account. The effective price those customers pay for ICS is heavily influenced by the payment transfer fee charged by the payment transfer service. On their website⁷⁵, Pay Tel thoroughly informs consumers about debit cards that can be purchased and funded for \$3.00 at Walmart stores then used to purchase Pay Tel's prepaid service online or over the phone subject to their \$3.00 credit card payment fee (total cost for the consumer to fund their account is \$6.00).
- 8.12 The two preeminent payment transfer services are Western Union and MoneyGram. ICS providers have established agreements with one or both payment transfer services with respect to the fees charged the provider's customers for payment transfers. Securus contends that the Commission's order does recognize that Western Union and MoneyGram offer different levels of service and charge different fees for these various levels of service. To the contrary, we identified the differences in third-party payment transfer services in our Order.

Western Union's charge for "Quick Collect" service is \$9.95. With Quick Collect, customer name and address is forwarded to the Inmate Calling Service provider along with the 10-digit account number and payment amount.

⁷⁴ See URL: <http://apps.securustech.net/paymentmethods.asp>

⁷⁵ See URL: <http://www.paytel.com/paymentoptions.html>

However, Western Union also offers a "Prepaid Services" option for \$5.95 and a Swift Pay option for \$5.50. For these options, only the 10-digit account number and payment amount is submitted to the ICS provider.⁷⁶

MoneyGram's standard fee is \$5.65 at its Walmart locations and \$5.95 at other MoneyGram service centers but these fees appear somewhat negotiable. The customer's name, address, 10-digit account number and payment amount are provided to the ICS provider.⁷⁷

- 8.13 The 10-digit account number is the area code and phone number associated with the prepaid account. For Western Union's \$5.95 and lower payment transfer fee options the customer name and address are usually omitted from the information Western Union forwards to the ICS provider. Name and address are not required for ICS providers to activate the customer's account. However, providers must eventually follow up to obtain that information from customer's establishing a new account, associating a different telephone number to an account than previously used, or who previously had an account with the provider which was subsequently deactivated. For replenishment of funds in established accounts wherein the customer's phone number associated with the account is unchanged and the account remains active, it is unnecessary to follow up with the customer for purposes of acquiring their name and address. That information is already on record with the provider. Therefore, customers replenishing the funds in their existing ICS account are paying a premium with Quick Collect for their ICS provider to acquire information the provider has and does not need. MoneyGram provides all the information to ICS providers that Western Union includes in their Quick Collect service for a payment transfer fee of \$5.95 (\$5.65 for MoneyGram payment centers located at Walmart).
- 8.14 As discussed in ¶ 8.15 of our July Order, Western Union and MoneyGram negotiate payment transfer fees with ICS providers. NCIC, for instance, negotiated payment transfer fees for their customers with Western Union. NCIC customers pay \$5.00 for

⁷⁶ Order, ¶ 8.15.

⁷⁷ Order, ¶ 8.17.

same day delivery of their payments. Western Union provides NCIC with customer name and address, the 10-digit account number, and the payment amount. The customer's account is immediately activated. NCIC does accept any portion of the customer's payment transfer fee to Western Union. Unfortunately, the same cannot be said for providers that arrange for assessment of Western Union's Quick Collect payment transfer fee.

- 8.15 As indicated in ¶ 8.15 of the July Order, the record shows a portion of the \$9.95 Quick Collect, payment transfer fee is shared with the ICS provider. The Commission asserts in ¶ 8.14 of that Order that some ICS providers appear to have arranged for revenue sharing in the fees charged to their customers by Western Union and MoneyGram. Pay Tel made the same observation in its comments to the FCC:

Many ICS vendors typically characterize fees charged by third party payment services such as MoneyGram or Western Union as being "set by the third party provider." In reality, the ICS vendors have the option of selecting different third party payment services rates and, based on the inflated rates selected by some providers; it appears that some ICS providers may have entered into profit sharing arrangements with the payment processors. Pay Tel has not elected to enter into such arrangements and instead has negotiated the lowest fees possible for its customers. Meaningful reform of the ICS industry will require attention to all fees, including third party payment services, to ensure that the payment options are priced for cost recovery and not used as a way to circumvent rate caps.⁷⁸

- 8.16 To date, not one ICS provider in this proceeding refutes the claim. In addition to the \$5.00 Western Union payment transfer fee for NCIC, Western Union charges the following fees to ICS provider customers: CenturyLink (\$5.50), Pay Tel (\$5.95), AmTel (\$5.95)⁷⁹, GTL (\$10.95), and Securus (\$11.95). The Commission notes that GTL and Securus arrange with Western Union to charge their customers Quick Collect fees that are higher than Western Union's \$9.95 fee for the service, indicating an arrangement by those providers with Western Union for increased revenue sharing of their customers' payment

⁷⁸ Further Comments of Pay Tel Communications, Inc., WC Docket No. 12-375, dated July 17, 2013, page 5.

⁷⁹ AmTel arranged with Western Union recently for the \$5.95 payment transfer fee for their customers.

transfer fee. While MoneyGram charges Pay Tel customers \$5.95 to transfer payments (\$5.65 at MoneyGram Walmart locations), and charges NCIC customers a flat rate \$4.99 for payment transfers, they charge Securus customers \$10.99 for the same service.

8.17 Securus, GTL, and Telmate seek FCC approval to tack on an additional \$2.50 to the payment transfer fees that Western Union and MoneyGram currently assess their customers.⁸⁰ That request is, from the Commission's perspective, indicative of a mindset that payment transfer fees are viewed by these ICS providers as a potential source of additional revenue and that pursuing fair and reasonable prices for their customers is not a management priority. We find no justification whatsoever for ICS providers to share in the fees for a service they do not provide. Essentially, their customers are charged twice for payment transfer: the portion attributable to the payment service Western Union or MoneyGram provide and the portion of the customer charge not applicable to the payment transfer but reserved exclusively for and remitted to the ICS provider.

8.18 The Commission grants authority for ICS providers to operate in the State of Alabama contingent upon providing service to the public in a manner which in the public interests. Therefore, the ICS provider is obligated to seek fair and reasonably priced third-party service arrangements for its customers to extent that such third-party services support the provider's operations and to the extent that the prices associated therewith are negotiable. The Commission has clearly demonstrated that ICS providers can arrange for payment transfer fees for its customers at both Western Union and MoneyGram that are no higher than \$5.95.

8.19 In ¶ 8.20 our July Order, the Commission requires that ICS providers comply with following:

1. ICS providers shall submit to the Commission's Utility Services Division the payment transfer fees charged its customers by third-party payment transfer services.

⁸⁰ Proposal, page 5.

2. For any third-party payment transfer fees that exceed \$5.95, the provider shall submit a sworn affidavit signed affirming that the ICS provider, its parent company, nor any subsidiary/affiliate of the provider or its parent company receives a portion of the revenue charged the provider's customers by the listed third-party payment transfer services.
3. For any payment transfer fee that exceeds \$5.95, the ICS provider shall also provide to the Commission a copy of the provider's contract with the third-party payment transfer service and shall justify to the Commission in writing why it is unable to arrange for payment transfer services at fees that do not exceed \$5.95.
4. Such filings are subject to full investigation by the Commission and to Commission regulatory proceedings. ICS providers shall fully cooperate with the Commission investigation to include submitting, in writing, to the third-party payment service (copied to the Commission) its approval for the Commission to discuss all aspects of the provider's contract with the third-party payment service.

8.20 Both Securus and GTL claim the Commission is attempting to assert jurisdiction over third-party payment transfer services and regulate the fees they charge ICS providers. Nowhere in our July Order or in this Order do we attempt to impose any requirements on Western Union and MoneyGram nor do we attempt to limit their fees. All of our requirements are for purposes of seeking justification from ICS providers as to why they are unable or unwilling to seek payment transfer fees for their customers that are unquestionably provided to the customers of other ICS providers by Western Union and MoneyGram. Additionally, the Commission seeks confirmation from ICS providers that they are not receiving a portion of the payment transfer fees charged their customers by Western Union and MoneyGram. We have determined that ICS providers are not entitled to any portion of the fee for a payment transfer service they do not provide.

8.21 In their comments, GTL contends there is no evidence that such arrangements [payment transfer fees of \$5.95] are available to ICS providers in the marketplace. Indeed, there is clear and undeniable evidence. The existing payment transfer fees at Western Union and/or MoneyGram for customers of NCIC, Pay Tel, AmTel, and CenturyLink are \$5.95

or less. Other than Securus and GTL, all the commenting parties to this proceeding either (A) have arranged with Western Union and/or MoneyGram for payment transfer fees of \$5.95 or less for their customers; or (B) have not objected to the requirement that they do so. Perhaps not coincidentally, the payment transfer fees that are assessed by Western Union and/or MoneyGram to Securus and GTL customers are among the highest in the industry. Securus warns: "Should the Commission seek to exceed its jurisdiction and interfere with Securus' contracts with third parties like Western Union and MoneyGram, Securus may be forced to cause Western Union and MoneyGram to discontinue providing these services to Securus customers in Alabama." The Commission has no requirement that ICS providers utilize the services of Western Union or MoneyGram. If Securus is unwilling to secure for its customers payment transfer fees of \$5.95 or less, it is free to eliminate third-party payment transfers from its available payment methods.

- 8.22 Securus asserts it has negotiated for a national contract with both Western Union and MoneyGram that Securus cannot adjust for a single jurisdiction like Alabama. Yet Securus provided no evidence that Western Union and MoneyGram will not negotiate for the same fees they are currently charging customers of other ICS providers in Alabama. The Commission questions why Securus does not seek for its customers in every state the lower payment transfer fees that Western Union and MoneyGram currently charge customers of other ICS providers. In ¶ 8.19 of our July Order, we established that ICS providers may cancel existing contracts with Western Union on 30-days' notice. Moreover, Western Union contracts include a provision requiring vendor compliance with all regulatory requirements as well as local, state, and federal laws. Providers can cancel contracts with MoneyGram on 15-days' notice. The record is clear that ICS providers can secure payment transfer fees of \$5.95 or less for their customers at Western Union/MoneyGram and we expect ICS providers operating in Alabama, under authority granted by the Commission, to do so. The Commission concludes that negotiated payment transfer fees priced at \$5.95 or less are fair and reasonable for the provider's customers. Therefore, for those providers that arrange for payment transfer fees compliant with that price, we require no demonstration by the provider that the fees exclude any form of revenue sharing.

- 8.23 We hereby supplant the requirements in ¶ 8.20 of our July Order for this proceeding. ICS providers shall submit to the Commission's Utility Services Division, within 15 days from the effective date of this Order, a letter identifying the payment transfer fees charged its customers by third-party payment transfer services⁸¹. Providers will thereafter notify the Commission's Utility Services Division of any decreases in the fees charged its customers by third-party payment transfer services within fifteen (15) days from the effective date of the decreased fees.
- 8.24 For proposed increases in the payment transfer fees charged the provider's customers by Western Union/MoneyGram, the ICS provider shall notify the Commission thirty (30) days prior to the effective date for the proposed fee increases, by letter to Commission's Utility Services Division. The notification shall include a listing of the proposed fees and a detailed justification of the reasons for the proposed increases. The notification of proposed fee increases is considered non-proprietary and subject to Commission's established procedures and available remedies including intervention, discovery, a public hearing, and redress.
- 8.25 For payment transfer fees charged the provider's customers by Western Union/MoneyGram that exceed \$5.95 as of the 15th day from the effective date of this Order, the provider shall submit a letter to the Commission's Utility Services Division identifying its efforts and progress associated therewith to acquire for its customers payment transfer fees from Western Union/MoneyGram that are \$5.95 or less.
- 8.26 By the 45th day⁸² from the effective date of this Order, Providers whose customers are charged payment transfer fees by Western Union/MoneyGram that exceed \$5.95 shall submit the following to the Commission:

⁸¹ The Commission notes that payment transfer fees assessed the provider's customers by third-party payment transfer services are established based on agreements between the provider and the third-party payment transfer service. Such agreements are necessary in order to identify the provider to which the payment will be submitted, the provider's address and the financial entity to which payments are transferred. Additionally, it is customary for the provider to negotiate the fees charges its customers by payment transfer services.

⁸² Or on the next business day if the 45th day from the effective date of this Order falls on a weekend or federally recognized holiday.

A petition for waiver from the requirement to arrange payment transfer fees of no more than \$5.95. The petition for waiver shall include the following:

A detailed explanation of why the provider is unable to arrange with Western Union/MoneyGram for payment transfer fees of \$5.95 or less for its customers.

A sworn affidavit signed by the ICS Provider CEO or President affirming that the ICS provider receives no portion of the revenue charged the provider's customers by the applicable payment transfer services.

Identification of the payment transfer fee(s) charged the provider's customers by Western Union/MoneyGram and the additional services the provider receives from Western Union/MoneyGram for assessing payment transfer fees that are higher than the fees charged the customers of other ICS providers.

- 8.27 The petition for waiver from this requirement is subject to the Commission's established procedures and available remedies including intervention, discovery, a public hearing, and redress.

Inmate Canteen/Trust Fund Transfer Fee

Comments from Parties to the Proceeding

- 8.28 **Pay Tel:**
Pay Tel acknowledges that vendors engaged in the sale of Commissary products to confinement facilities are in a unique position where the profitable recurring sales of goods to inmates at (unregulated) prices easily supports the installation and maintenance of deposit kiosks with no cash deposit fee. However, the same economic model does not exist for ICS vendors who are solely providing the kiosk for inmate telephone account funding purposes. In contrast, an ICS provider's rates are regulated with a limited profit margin, leaving little room to pay for the purchase and installation of a kiosk. Credit Card payments via kiosk (for which a fee is still permitted) represent a small fraction of transactions, and are wholly insufficient to cover kiosk expenses. A recent review of transactions at a kiosk in a 1,200 bed facility

revealed that credit card transactions represent only 10% of total transactions.

Kiosk Expenses include:

- Initial investment in kiosk, installation, training, internet bandwidth to connect to ICS platform
- Cost of licensing and on-going compliance with Money Transfer Agent regulations
- Recurring Cost of internet bandwidth
- Recurring Cost of repairs, maintenance, printer maintenance, etc.
- Recurring Cost of cash pickup, armored car
- Cost of integration with Commissary Vendor

For this reason, we respectfully request the Commission modify its proposed rules to permit a reasonable \$3.50 kiosk cash fee. Without this revenue to defray the costs; it will be difficult if not impossible to justify the expense of a lobby kiosk in all but the largest jails. In Alabama, only 3 out of 67 cities or counties with jails would have sufficient volume to qualify. ICS vendors who just so happen to be owned by or affiliated with commissary companies will be the only ones able to afford the expense at the other 64 locations. We are concerned that the prohibition against this fee will potentially eliminate a convenient cash payment option for consumers in a significant number of facilities in Alabama; forcing them to utilize more expensive options such as Western Union or MoneyGram.

Kiosk Providers Must Comply with State and Federal Registration Requirements

While the regulation of money transfers is adequately governed by the Alabama Securities Commission and the United States Department of the Treasury, it would be prudent to refer to those regulations as a compliance requirement for the provision of an ICS-provider kiosk. We ask you to consider an addition to the rules which states the following: Prior to establishing kiosk service for the acceptance of money to be applied to called party accounts and/or transferred to inmate trust account holders; the kiosk-providing vendor (whether an ICS vendor or kiosk subcontractor) must fully comply with: a) applicable Alabama Statues; b) the rules of the Alabama Securities Commission (ASC), including registration, licensure and bonding of money transmitters; and c) US Department of the Treasury registration requirements through the Financial Crimes Enforcement Network (FinCen). Each vendor's annual report should be required to include: proof of State ASC and FinCen registration by the vendor or its kiosk

subcontractor or an affidavit from a company officer indicating that no kiosk services are provided in the State of Alabama.⁸³

NCIC:

- 8.29 NCIC approves of all of the Commission's proposed changes, however, encourages the Commission to allow for a \$3.00 fee on Kiosk payments via Cash, as originally proposed in the Further Order Proposing Revised Inmate Phone Service Rules and Establishing A Comment Cycle, Docket No. 15957, dated October 1, 2013. There are many different costs associated with these kiosks, some of which include routine maintenance, recurring software fees, and the actual cost of collecting the deposits from the kiosks. This fee would help cover these costs and ensure that payment by cash remains a convenient option for the customer. Cash paying customers are the primary users of kiosks, and as such a kiosk within the facility is necessary to accommodate these specific customers. Without the cash payment fee the likelihood of an ISP providing a kiosk as a convenience to the customer is not feasible.⁸⁴

Commission Response

- 8.30 Canteen service companies provide payment kiosks strictly for deposits into inmate trust funds. The canteen operators assess fees to users of their kiosks for deposits. ICS providers have agreements with canteen service companies whereby inmates may transfer funds into their inmate calling account requiring an electronic interface between the canteen service company and the ICS provider's jail management system. The ICS provider is charged from three to five percent of the amount transferred depending on the canteen service company. Increasingly, however, ICS providers are installing their own payment kiosks used exclusively for ICS payments and must assess fees to recover their capital investment as well as recover the expense associated with servicing and maintaining the kiosks.

⁸³ RE: Docket 15957 -Generic Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Service, Comments of Pay Tel Communications Inc., dated August 11, 2014 ("Pay Tel Comments").

⁸⁴ Comments - Revised Proposed Rules for Inmate Calling Services (ICS) - Generic Proceeding considering the promulgation of telephone rules governing inmate phone service, Network Communications International Corp, dated August 9, 2014.

- 8.31 In our October 1, 2013 Proposed Order under this Docket, the Commission authorized assessment of a \$3.00 fee for cash payments and a \$3.00 fee for credit card payments at kiosks installed at the confinement facility by the ICS provider. In our July 7, 2014 Further Order under this Docket, the \$3.00 cash payment fee was omitted. We recognize the necessity for charging a payment fee to recover the associated provider costs for customer deposits into inmate calling accounts at the ICS provider's kiosk using both cash and credit card. Consequently, we hereby reinstate the \$3.00 cash payment fee for customer deposits at ICS provider kiosks.
- 8.32 We concur with Pay Tel that the kiosk-providing vendor (whether an ICS vendor or kiosk subcontractor) must fully comply with: a) applicable Alabama Statutes; b) the rules of the Alabama Securities Commission (ASC), including registration, licensure and bonding of money transmitters; and c) US Department of the Treasury registration requirements through the Financial Crimes Enforcement Network (FinCen). However, we decline at this time to impose the specific reporting requirements recommended by Pay Tel. As part of our confinement facility visits and inspections, the Commission staff routinely checks ICS provider kiosks to ensure compliance with our rates and consumer information requirements. Therefore, we find it prudent that ICS providers submit to the Commission's Utility Services Division a report showing the number of provider kiosks at each Alabama confinement facility. The report shall be submitted semiannually by December 1st and July 1st each year and shall indicate the number of kiosks provided by confinement facility location as of the first day of the preceding month (November 1st and June 1st). The Commission shall make the reports available to the Alabama Securities Commission upon request.
- 8.33 The Commission's caps on ICS ancillary fees are shown in Appendix D, attached hereto. The provider shall fully disclose, within the letter to the Commission's Utility Services Division referenced in ¶ 6.59 of this Order, all ancillary fees not listed in the tariff, charged to ICS customers in Alabama and the amount of the charge associated therewith. This requirement includes ancillary fees the provider considers unregulated. Our intent is to verify that ancillary fees not included within the provider's tariff are appropriately

excluded therefrom. Providers will fully cooperate and promptly respond to questions from Commission staff with respect to these non-tariffed ancillary fees.

9.00 REFUNDS AND UNCLAIMED PROPERTY

Refunds Required

Comments from Parties to the Proceeding

GTL:

9.01

GTL's approved ICS tariff states that unused funds in an inmate debit account are refundable upon request by the inmate, that the balance of available usage expires three months from the date of last activity, and that no refunds of unused balances are available after the expiration date. Similarly, GTL's approved ICS tariff states that Advance Pay accounts (i.e., prepaid accounts established by an inmate's friends and family) may be closed by the customer at any time, that a refund may be issued when requested by the customer, and that the account is automatically dissolved after three months of no activity (no calls placed, no account replenishment, no customer service inquiries). ICS providers should not be required to automatically refund "unused debit, prepaid inmate calling card, and prepaid collect funds" as suggested in the Further Order. Refunds should be given when requested by a customer and consistent with the existing process outlined in GTL's approved Alabama tariff.

Under the Uniform Disposition of Unclaimed Property Act of 2004, a deposit or refund is considered "unclaimed" one year after the deposit or refund becomes payable. With respect to ICS, the Commission has interpreted this to mean a refund or deposit becomes "unclaimed" one year following the last customer payment for ICS in the account or one year after the customer's last usage of funds in the account for ICS, whichever comes later. Under the terms of GTL's approved tariff, the requirements of the Alabama Uniform Disposition of Property Act do not apply to GTL's inmate debit and prepaid ICS accounts as there will be no "unclaimed" refund one year following the last customer payment or usage.⁸⁵

⁸⁵ GTL Comments, pages 14-15.

Commission Response

9.02 Alabama's Uniform Disposition of Unclaimed Property Act of 2004⁸⁶ establishes unclaimed property requirements. Property is defined in section 35-12-71(11) and includes credit balances, customer overpayments, and refunds. Section 35-12-72, which addresses the presumption of abandonment, provides that a deposit or refund owed to a subscriber by a utility, is considered abandoned one year after the deposit or refund becomes payable (35-12-72(15)). Thereafter, abandoned property is subject to the custody of the State of Alabama (35-12-74). Section 35-12-76 requires the holder of the abandoned property to file a report with and remit the abandoned funds to the Treasurer, State of Alabama. The State Treasurer maintains on their website⁸⁷ a database listing unclaimed property along with the name and last known address associated with the unclaimed property, if available. The website identifies the reason unclaimed property is handled in this manner:

“Each year, millions of dollars in assets are turned over to the Alabama Treasurer's Office by financial institutions and businesses that lose contact with the owners. These assets may be in the form of cash, stocks, bonds, insurance benefits and even valuables from safe deposit boxes. By law, once these funds are deemed abandoned, they are turned over to the state. The Alabama State Treasury serves as custodian of these assets and makes every effort to return them to the rightful owner or their heirs.”

9.03 GTL cannot blatantly ignore Alabama's Uniform Disposition of Unclaimed Property Act, craft its own dormancy period for refunds, seize refunds owed their former customers, then retain those funds rather than remit them to the Alabama State Treasurer as required by law. The Commission requested from the State Treasurer, copies of unclaimed property reports submitted by ICS providers over the previous three-year period. GTL filed unclaimed property reports with the Treasurer but each year claims that it held \$0.00 in unclaimed property. GTL is not alone in that respect. The preponderance⁸⁸ of ICS

⁸⁶ Title 35, Chapter 12, Article 2A, Code of Alabama, 1975.

⁸⁷ See URL: <http://www.moneyquestalabama.com/>

⁸⁸ Pay Tel and Securus are notable exceptions.

providers operating in Alabama failed to file reports with and remit any unclaimed property to the State Treasurer. One would, therefore, reasonably conclude that these providers are improperly increasing their profitability by seizing funds to which they are not entitled. Commission Rule T-5(C)(6) requires that providers refund customers any overcharges for the previous thirty-six (36) month period. Therefore, the Commission could, by its own rules, initiate action requiring ICS providers to identify all refunds due Alabama ICS customers over the previous thirty-six (36) month period and to file amended unclaimed property reports with the State Treasurer. Such actions would provide these property owners a reasonable opportunity to claim the funds due them as required under Alabama law.

- 9.04 GTL cites provisions in its revised ICS tariff submitted to the Commission in compliance with Commission Rule T-15.1(A)(2) as justification for non-compliance with Alabama's Uniform Disposition of Unclaimed Property Act. The Commission's Order implanting the existing Commission rules for ICS under this Docket, is dated March 3, 2009. The Order authorized providers to simply revise existing tariffs for changes in our rules.⁸⁹ We clarify that the Commission did not vote to approve GTL's tariff but considered it and other revised ICS tariffs presumptively valid. Alabama law supersedes Commission policies, rules, and administrative requirements. Moreover, Alabama's Uniform Disposition of Unclaimed Property Act establishes the legal basis for the refund dormancy period and unclaimed property obligations in Alabama, not GTL's nor any other ICS provider tariff. The staff's inattentiveness to the refund provisions in GTL's revised tariff and/or lack of familiarity with the requirements in Alabama's Uniform Disposition of Unclaimed Property Act when the tariff was reviewed for completeness neither indemnifies nor holds GTL harmless from its failure to comply with Alabama law. Contrary to GTL's claim that "Refunds should be given when requested by a customer and consistent with the existing process outlined in GTL's approved Alabama tariff", GTL is responsible for ensuring that its refund procedures fully comply with Alabama law and that its tariff reflects that compliance.

⁸⁹ *Re: Generic Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Service*, Commission Order for Docket 15957, March 3, 2009, page 6.