

Pay Tel Inactive Account Policy

Obligations of Customer

The Customer agrees to notify the Company of changes in the customer's contact information, including email address, phone number, and mailing address. In particular, Customer agrees to notify the Company if Customer no longer subscribes to the telephone number upon which Customer's Prepaid Account is based. Customer understands and acknowledges that if Customer does not inform the Company of changes to Customer's contact information, the Company may be unable to locate the Customer and notify the Customer of account status or changes.

Account Notification

In the event that Customers' Prepaid Account has no activity for a period of not less than three (3) months, the Company will inform the Customer of the account status and provide directions on how to access account information.

Balance Transfer

In the event that Customer's Prepaid Account has been inactive for a period of not less than six (6) months, and the Customer has not requested a refund, the Company may classify the account as inactive and transfer any Prepaid Account balance with more than a *de minimis* balance to an Inactive Prepaid Account Phone Card and issue the Card to Customers with an address. The Company will only issue Inactive Prepaid Account Phone Cards to those Prepaid Account Customers who meet the criteria described herein, and the Company will not make Inactive Prepaid Account Phone Cards available to any other customer or person, or under any other circumstance than that specifically described in this Section 3.6.8.

This process is necessary to protect the balance of the Customer's funds. Upon account opening, a Customer's account is identified by and associated with the ten-digit phone number then in use by the Customer. If at some point the Customer no longer subscribes to that particular telephone number, then the number in question typically is assigned to another telephone subscriber. That new telephone subscriber may attempt to open an account with the Company using the telephone number formerly used by the Customer. To protect the Customer's funds and avoid confusion in the event a new subscriber attempts to open an account with the Company using the same telephone number, the Company will transfer the Customer's funds to an Inactive Prepaid Account Phone Card identified by the Customer's original phone number preceded by two digits. This transfer will maintain the Customer's account balance with the customer's name, address and Personal Identification Number ("PIN") created when the account was opened. The Company will issue the Inactive Prepaid Account Phone Card to the Customer in the manner the Company determines to be the most effective and efficient, (via U.S. Postal mail or email).

Inactive Prepaid Account Phone Card for Inactive Prepaid Account Customers

The Customer can use the Inactive Prepaid Account Phone Card to make calls from any telephone, transfer the balance to an existing active Prepaid Account or to open a new Prepaid Account with the Company. The call restrictions applicable to calls made from Confinement Facilities set out in Section 2.2 hereof are not applicable to the Inactive Prepaid Account Phone Card calls described in this Section 3.6.8. Network usage will be debited from the funds available on the Inactive Prepaid Account Phone Card on a real time basis in full minute increments as the call progresses. Call timing is rounded up to the nearest one (1) minute increment after the initial minimum period of one (1) minute.

Refund

The Customer may, at any time, transfer the available balance on the Inactive Prepaid Account Phone Card to an existing active Prepaid Account, open a new Prepaid Account with the Company or obtain a refund of any remaining balance by mailing the Inactive Prepaid Account Phone Card to the Company at the address printed on the Card. In the event the Customer does not receive the Inactive Prepaid Account Phone Card from the Company or otherwise does not possess the Card and contacts the Company for the purposes of obtaining a refund, the Company will refund the Customer's funds provided the Customer can show proof of identity.

Proof of Identity

The Company cannot discuss any account information with a Customer unless the Customer has previously established a Personal Identification Number (PIN) for security purposes. When a Customer first contacts the Company, the Customer is provided instructions via the Company automated phone system or website on how to create a personal six-digit PIN. When a customer speaks with a Customer Service Representative, the PIN must be confirmed to verify the identity of the Customer before personal account information is discussed. The PIN requirement is a federal requirement to protect the Customer's personal information.

To use an Inactive Prepaid Account Phone Card, the Customer must provide the PIN originally created by the Customer when the Prepaid Account was established.

If the PIN is Forgotten

If the Customer forgets their PIN, they have two choices: 1) create a new PIN using the Company website; or 2) create a new PIN with Proof of Identity.

Create a new PIN using the Company website: if the Customer's account was established on Pay Tel's website and the Customer provided an answer to a security question, the Customer can visit www.paytelinactiveaccount.com and follow the "Forgot Your PIN" instructions on the Customer Log In page. When the requested information is provided, the Customer will then be able to enter a new PIN.

Create a New PIN with Proof of Identity: If the Customer forgets their PIN and the account was not set up on the Company website, a new PIN will need to be created with proof of identity. To create a new PIN, the Customer must fax or mail a copy of their drivers license and a copy of their most recent telephone bill showing they are the responsible party for the telephone account. Also, the Customer must include with the fax or mailed copy a new six-digit PIN they wish to use.

Fax No. 1-800-776-8423 or mail to: Pay Tel Communications, Inc., PO Box 19290, Greensboro, NC 27419.

Abbreviated Tariff Guideline

XYZ Company
d/b/a ZYX Company

Alabama Abbreviated Tariff
Page 1 of ___pages

INMATE CALLING SERVICES

1. Rates (per minute)

A. Billed Collect calls

Prison: \$0.25
Jail: \$0.30

B. Inmate Debit and Prepaid Collect calls

Prison: \$0.25
Jail: \$0.30

C. Single Payment Call Billed by Wireless Carrier

Prison:
Jail:

D. Single Payment Call Billed to Debit/Credit Card

Prison:
Jail:

E. Prepaid Calling Cards Used for Refunds: \$0.10

Issued: (Date)

Effective¹: (Date)

¹ For the abbreviated tariff, the issue date is the date the abbreviated tariff is filed with the Commission. The effective date is the effective date for this Order.

XYZ Company
d/b/a ZYX Company

Alabama Abbreviated Tariff
Page 1 of __pages

INMATE CALLING SERVICES

2. Ancillary Fees

- A. Payment by debit/credit card online or telephonically via interactive voice response (IVR); or by cash or debit/credit card at the provider's kiosk:

\$3.00

- B. Payment by debit/Credit card telephonically via a live agent:

\$5.95

- C. Bill processing fee for collect calls billed by the call recipient's carrier:

\$3.00

- D. Convenience Fee for transfers from the inmate's canteen/trust fund:

5% of amount transferred

- E. Optional Paper Bill Statement Fee:

\$2.00

(Name of Company) hereby affirms to the Commission that no ancillary fees other than those listed above are assessed to ICS customers in Alabama.

Issued: (Date)

Effective: (Date)

XYZ Company
d/b/a ZYX Company

Alabama Abbreviated Tariff
Page 1 of ___pages

INMATE CALLING SERVICES

3. Provider Point of Contact:

Name:
Title:
Telephone No:
Email:

Issued: (Date)

Effective: (Date)

Requirements Applicable to Commission Rule T-15.1 (Inmate Phone Service)

ICS Basic Service

Inmate Calling Basic Service includes the following at no additional charge:

1. Account Statements:
 - A. For prepaid (excluding inmate debit) and direct-billed customers, online access to the most recent three months of account statements.
 - B. For inmate debit accounts, access to account activity statements shall be provided to detention staff for dissemination to inmates upon request.
2. A toll-free number to the provider for customer service and billing inquiries for prepaid (excluding inmate debit) and direct-billed customers.
3. Account set up and maintenance.
 - A. Calling is technology neutral. There shall be no price differential or added fees for prepaid calls to either wireline or wireless recipients.
 - B. Up to 5 numbers (wireline and/or wireless) shall be added to the authorized calling list for prepaid customers at no additional charge to the customer.
 - i. Providers may charge a fee for each number in excess of the 5 provided free as part of ICS basic service. The fee, along with supporting cost data, must be submitted by the provider for Commission approval.
4. Provider will not assess charges for customer payment by money order, check, or online banking.
5. Provider shall transfer prepaid account balances and issue refunds without charge.

Optional Services

ICS basic service excludes single payment services, payment (funding) by debit/credit card, cash payment at ICS provider kiosks, bill processing for collect calls billed by wireline or wireless carriers, transfers from inmate canteen/trust accounts, and paper account statements for prepaid (excludes inmate debit) and direct-billed accounts.

Call Rates

1. Providers will charge no more than the capped rates approved by the Commission for prisons and jails (whichever is applicable).
2. Billing increments shall not exceed one (1) minute. Any call duration that includes a residual of less than a whole minute shall be rounded up to the nearest whole minute for purposes of pricing the call.
3. Operator surcharges and/or call set-up charges shall not be assessed by the provider.
4. Flat rate pricing (imputed minimum call duration) shall not be used except for optional single payment collect calls to wireless recipients.

Taxes and Government Fees

1. The Alabama Utility Gross Receipts Tax applies to ICS in Alabama. Sales taxes are not applicable to ICS.
2. With the exception of single payment calls, providers will only assess taxes and government fees following usage of the service. Taxes and government fees are applicable to each call after the charge¹ for call usage is determined.
3. The charge for a single payment call is based on a minimum usage allowance. Therefore, the call duration is known before the call is

¹ Derived by applying the Commission's maximum authorized rate for the call (or a lower rate) to the call duration.

completed. Providers may assess taxes and government fees for single payment calls up front upon receipt of the customer's payment.

Ancillary Fees

1. Providers shall assess only those ancillary fees approved by the Commission².
2. Providers must first petition the Commission for approval to assess any ancillary fee not specifically approved by the Commission and may not assess any ancillary fee absent a Commission Order approving the fee.

Other Charges

1. Providers will fully disclose all services/charges assessed to inmates and/or those they call from Alabama confinement facilities, regardless of whether the provider deems the service/charge subject to the Commission's jurisdiction, in order that the Commission may make the determination regarding jurisdiction.
2. Providers shall not introduce a service for which a charge is assessed to inmates and/or those they call without first notifying the Commission by letter about the proposed service/charge and without first obtaining written confirmation from the Commission with respect to the Commission's jurisdiction over the proposed service/charge.
3. Providers are prohibited from assessing any fines or penalties on inmates and/or those they call due to suspected or actual three-way call violations or for any other reason absent specific Commission approval.

Customer Account (Activity) Statement Format

1. General Information: Statements shall include the customer's name and account number, the account statement date, the applicable billing period, a toll-free number to the provider for addressing billing

² The ancillary fees authorized by the Commission are provided in Appendix D to this Order.

inquiries, and the URL (hyperlink) to the Commission's Inmate Calling Service webpage.

2. The beginning and ending account balance shall be listed.
3. Payments (deposits) the amount thereof and the date received shall be listed separately and shall exclude any ancillary fees, taxes, or government fees.
4. Call detail: Calls shall be listed individually and shall include call date/time, duration (in call minutes); the number called and the call charge (excluding any taxes and government fees).
5. Ancillary fees, to include any payment fees assessed by the provider, shall be listed separately and include a description of the fee, the date applied, and the charge associated therewith.
6. Taxes, government mandated fees, and any authorized federal regulatory fee shall be listed individually.

Provider Kiosks

1. The provider's kiosk receipt shall list the account to which the payment applies, the payment (deposit) amount, the date of the payment, the applicable payment ancillary fee (listed separately), and the balance applied to the inmate calling account.
2. 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;
 - C. US Department of the Treasury registration requirements through the Financial Crimes Enforcement Network (FinCen).

Funding Limits

1. Providers will establish no funding limit less than \$100 per payment and no total funding transactions limit of less than \$300 over the most recent thirty (30) day period of activity.
2. Providers will not establish a minimum funding limit.

Single Payment Calls

1. Single payment calls consist of two components that determine the maximum price that may be charged for the call: the usage charge and the billing/processing charge.
2. For purposes of pricing intrastate single payment calls, providers shall utilize a call duration allowance of 12 minutes. Call allowances of more than 12 minutes are authorized provided the usage portion of the single payment call is based on usage of 12 minutes. The capped collect call rate applicable to the facility from which the call originates (or a lower rate) shall be applied to the 12-minute call allowance for purposes of determining the usage charge for the single payment call.
3. Providers may add a billing/processing charge to the usage charge for a single payment call. The sum of the two components constitutes the Commission's maximum single payment call price.
 - A. For single payment calls billed to the wireless account of call recipients, the authorized³ billing/processing charge shall not exceed the Commission's maximum Bill Processing Fee⁴.
 - B. For single payment calls billed to the recipient's debit/credit card, the authorized billing/processing charge shall not exceed the Commission's maximum Credit Card Payment Fee⁵.

³ ICS providers may petition the Commission for a waiver of the maximum billing/processing charge applicable to single payment calls billed to the wireless account of call recipients.

⁴ The maximum Bill Processing Fee as provided in Appendix D of this Order is \$3.00.

⁵ The maximum Credit Card Payment Fee as provided in Appendix D of this Order is \$3.00.

4. ICS providers offering single payment services shall inform the called party of the prepaid service options available to them including the rates and payment fee associated therewith.
 - A. This information shall be included, up front, in the call processing script before single payment service options are disclosed.
 - B. Call recipients shall, as a minimum, be provided an opportunity to establish a prepaid calling account with the provider, choose a single payment option, or reject the inmate collect call.
 - C. Providers shall submit via email to the Commission, within 24 hours of the Commission's request, the scripts⁶ applicable to their single payment services in Alabama.

Prepaid Inmate Calling Cards

1. ICS providers shall permanently and prominently affix the face value to prepaid inmate calling cards before transfer of the cards to the reseller. The face value is the inmate's purchase price for the card.
2. Providers shall redeem prepaid inmate calling cards for call minutes on the basis of the face value of the calling card divided by the Commission's maximum debit call rate applicable to the facility.
3. ICS providers shall suspend sales of prepaid inmate calling cards to resellers that are known or suspected of reselling the cards in excess of the card's face value.
4. ICS providers shall, at no charge to the inmate, restore the unused prepaid calling card balance associated with lost, stolen, or unusable calling cards and shall transfer any unused balance remaining on a prepaid calling card to a prepaid inmate calling card subsequently purchased by the inmate.
5. ICS providers shall, at no charge to and by request of the inmate, refund any unused balance on prepaid inmate calling cards.

⁶ A script in this case refers to the information the provider exchanges with wireless recipients of inmate collect calls to include prompts for the customer to select payment options presented by the provider.

6. Providers may establish an expiration date for prepaid inmate calling cards of no less than six (6) months after the date of card purchase by the inmate. Nevertheless, providers shall transfer any unused balance on expired cards to cards subsequently purchased by inmates or shall otherwise refund the unused prepaid balance on the card.
7. Unused balances associated with prepaid inmate calling cards not transferred to a calling card subsequently purchased by the inmate or for which the refund due the inmate is unclaimed, are subject to Alabama's Uniform Disposition of Unclaimed Property Act.
8. Prepaid Inmate Calling Card refunds shall be based on the unused portion of the inmate's purchase price for the card (face value) without any adjustment for the discount arrangement between the provider and the reseller. Providers may settle with resellers for any differential associated with the card's face value and the reseller discount.

Refunds

1. Prepaid balances of less than \$1.00 are considered de minimis and need not be refunded by the provider. Nevertheless, such de minimis amounts shall not be retained by the provider but aggregated and remitted to the Treasurer, State of Alabama in accordance with Alabama's Uniform Disposition of Unclaimed Property Act.
2. ICS providers shall not assess any charge for refunding unused prepaid ICS balances. Dormancy charges are not applicable.
3. On the date the provider ceases providing service to a confinement facility, refunds are due to all inmate debit account (including inmate calling card) customers. Such refunds are not conditional upon a customer request for refund but shall be generated automatically by the provider.
4. In accordance with Alabama's Uniform Disposition of Unclaimed Property Act, unused prepaid ICS balances shall be held for one-year after the refund becomes payable⁷.

⁷ See §§ 35-12-71(11), 35-12-72, and (35-12-72(15)) in the Code of Alabama, 1975.

- A. For inmate prepaid debit ICS (including inmate calling card) accounts, refunds become payable upon:
- i. The inmate's release from custody;
 - ii. Or upon the inmate's request for refund;
 - iii. Or, barring the release of the inmate or a request for refund, three (3) months after the last customer generated debit or credit to the account.
- B. For prepaid ICS accounts wherein the subscriber is a non-inmate, refunds become payable upon:
- i. The customer's request for refund;
 - ii. Or, barring a request for refund, three (3) months after the last customer generated debit or credit to the prepaid account.
- C. ICS providers shall honor customer refund requests during the one-year dormancy period after the refund becomes payable.
- D. If one (1) year elapses from the time the refund becomes payable, the refund shall be considered unclaimed.
- E. Unclaimed refunds shall be remitted to the Treasurer, State of Alabama, in accordance with their submission requirements⁸.

Refund Procedures

1. When an inmate is released from custody, debit release cards are the preferred method for refunding unused prepaid debit account balances and unused prepaid calling card balances. Alternatively, providers may, at no cost to the inmate, transfer refunds due the inmate to the inmate canteen/trust account for refund. Providers may also issue refunds to inmates using checks (least preferred method).
2. For prepaid ICS accounts wherein the subscriber is a non-inmate, refunds shall be issued via credits to the subscriber's debit/credit card if that payment method was used by the subscriber. For accounts where credits to the subscriber's debit/credit card is no longer possible or where the subscriber used an alternate payment (funding) method, refunds may be issued by debit card, or by check.

⁸ See URL: <http://www.moneyquest.alabama.gov/report.aspx?id=109>

3. Refunds to any class of customers using prepaid telephone calling cards are not authorized except as provided below.
 - A. In the event the customer's prepaid account has been inactive for a period of not less than six (6) months, and the customer has not requested a refund, the provider may classify the account as inactive and transfer any prepaid account balance with more than a de minimis balance to an inactive prepaid account phone card and issue the card to customers with an address.
 - B. The customer can use the inactive prepaid account phone card to make calls⁹ from any telephone, transfer the balance to an existing active prepaid account, open a new prepaid account with the provider or, at any time, obtain a refund of any remaining balance, via check or debit card, by mailing the inactive prepaid account phone card to the provider at the address printed on the card.¹⁰

Tariffs

1. The provider shall identify all ICSA services, along with the rates and fees associated therewith, provided at/from confinement facilities in Alabama including inmate billed collect service, prepaid inmate debit, prepaid collect, direct-billed service, single payment services, and prepaid inmate calling cards.
2. All rates and ancillary fees shall be identified and listed together along with the applicable rate/charge/fee in a standalone section of the tariff. No rate/charge/fee shall be included in other sections of the provider's tariff unless it is also listed in the standalone section of the provider's tariff reserved for that purpose.
3. Refund/unclaimed property procedures shall be listed in a standalone section of the tariff.
4. Procedures applicable to resale of prepaid inmate calling cards shall be included in the tariff along with procedures for notifying wireless

⁹ The rate for such calls is capped at \$0.10/min. Provider's electing to issue refunds using prepaid calling cards after six months of account inactivity shall include their procedures for doing so and the capped calling rate in their tariff.

¹⁰ Detailed procedures for applying the procedures described in 3A and 3B are attached to this Order as Appendix E.

recipients of inmate collect calls of their available service/payment options.

5. The tariff shall identify a provider point of contact for questions about the tariff and a point of contact for customer service inquiries including the contact name, mailing address, telephone number, and email address.
6. Providers will submit an abbreviated tariff within ten (10) days following the effective date of this Order. The abbreviated tariff is the standalone tariff section referenced in item 2 (above) consisting of rates/fees/charges but absent any terms or conditions¹¹.
7. The provider's complete tariff shall be submitted with sixty (60) days following the effective date of this Order.

Record Retention Requirements

1. On a monthly basis, beginning with January 2013, segregated into collect, prepaid collect, prepaid debit, prepaid inmate calling card, and direct-billed service at each Alabama confinement facility served:
 - A. Number of local calls, local minutes of use, and associated local call revenue.
 - B. Number of intrastate toll calls, intrastate toll minutes of use, and associated intrastate toll revenue.
 - C. Number of interstate toll calls, interstate toll minutes of use, and associated interstate toll revenue.
2. On a monthly basis, beginning with January 2013, for service originating at Alabama confinement facilities:
 - A. Number of single payment service calls billed to mobile phones (text-connect) and associated revenue.

¹¹ Essentially, the abbreviated tariff is the ICS provider price list and serves as a "placeholder" ensuring that the Commission's capped rates, fees, and charges are implemented during the interim that precedes the provider filing of the complete tariff 60 days after the effective date. See Appendix F to this Order for an abbreviated tariff guideline.

- B. Number of single payment service calls billed to debit/credit cards (Pay Now) and associated revenue.
 - C. Alabama Utility Gross Receipts Tax collected.
 - D. Unused prepaid collect, prepaid debit, and prepaid inmate phone card account balances refunded by service type, customer name, customer mailing address and phone number (if known), PIN (if applicable) and confinement facility association.
 - E. Unclaimed funds by service type, customer name, last known customer mailing address and phone number, PIN (if applicable), Alabama confinement facility association, and date funds are declared unclaimed.
3. Beginning with the effective date of the Order:
- A. Monthly prepaid minutes associated with single payment services (imputed call duration for collect calls billed using text-connect type service and for collect calls billed to a debit/credit card).
 - B. Monthly data identifying the total single payment service calls originating from Alabama confinement facilities and the number of single payment service calls terminated for suspected three-way call violations.
 - C. Monthly data, by confinement facility, identifying the total number of ICS calls and the total number of ICS calls disconnected for suspected three-way call violations.
 - D. Monthly customer account detail separated into prepaid collect, prepaid debit, prepaid inmate phone card, and direct-billed service with customer name, customer mailing address and phone number (if known), PIN (if applicable), and Alabama confinement facility association. Monthly customer account detail shall be retained for 36 months.
 - E. Alabama Utility Gross Receipts Tax remittance reports to the Alabama Department of Revenue.
 - F. Unclaimed Property Reports to the Alabama State Treasurer.

Reporting Requirements

1. From the Record Retention Requirements listed in the preceding section, providers shall report the following, electronically, to the Commission Utility Services Division by no later than February 28,

2015 for the period ending on the last day of the preceding December and annually thereafter:

- A. Items 1A through 1C.
 - B. Items 2A through 2E.
 - C. Items 3A through 3C and 3E through 3F.
2. Providers shall submit to the Commission's Utility Services Division a report showing the number of provider kiosks at each Alabama confinement facility. The initial report is due by no later than February 28, 2015. Subsequent reports 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).
 3. Providers shall submit to the Commission's Utility Services Division a report of the security biometric features provided at each Alabama confinement facility served along with a description of the features and functionality associated therewith and the vendor source for the product(s). The initial report is due by no later than February 28, 2015 and annually thereafter.
 4. Providers shall submit to the Commission's Utility Services Division a list of the Alabama confinement facilities they serve including the contract start date and term of the contract. The initial report is due by no later than February 28, 2015. Providers will update the report as additional facilities are added, upon renewal of existing contracts, or when the provider no longer serves a facility included in a prior report.
 5. 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:
 - A. 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.
 - B. 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.

6. 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 the provider's efforts and progress associated therewith to acquire for its customers payment transfer fees from Western Union/MoneyGram that are \$5.95 or less.

**Alabama Public Service Commission Ex Parte Presentation
Response to Second Further Notice of Proposed Rulemaking**

Received & Inspected

JAN 20 2015

FCC Mail Room

Introduction

In paragraph 3 of the FNPRM, the Commission observes that competition in the inmate calling service market is failing to ensure rates are just and reasonable. The only competition in the inmate calling service market is competition for facility contracts. Unlike other telecommunication markets, the economic interests of the end users for inmate calling service (ICS) – the inmates and those they call – are not represented in the process for service provider selection. Therefore, service providers compete for contracts based on the economic interests of those with the authority to choose the end users' exclusive provider – confinement facilities and/or those with fiscal oversight for them. The ICS industry is a monopoly market like no other. While there are exclusive electricity and natural gas providers in designated service areas within each state, the end users for those services have a voice and an advocate to represent their interests in utility ratemaking proceedings. Inmates and those they call are powerless to influence the decision over rates they pay for service. Neither the ICS providers nor confinement facilities are to blame for the underrepresentation of ICS end users. The ICS market is inherently flawed. It evolved out of an inmate payphone industry that, quite frankly, received insufficient attention from federal and state regulators in years gone by. Economic approaches that work in other utility markets will not work in the ICS market as currently structured and providers cannot be expected to behave as if they are responsible to the end users. Until the ICS marketplace is restructured to better represent the interests of end users, it is absolutely critical that regulators serve as a proxy for marketplace competition.

The Commission observes:

Excessive rates are primarily caused by the widespread use of site commission payments – fees paid by ICS providers to correctional

facilities or departments of corrections to win the exclusive right to provide inmate calling service at a facility.¹

If the Commission means that excessive inmate calling rates are primarily the result of site commission payments, the APSC does not fully agree with the Commission's observation. First, some states have been regulating intrastate ICS calling rates for several years and those rates are in, many cases, very close to the FCC's interim rate caps. Rates are but one component of ICS provider revenues. The other components are revenues from ancillary fees, revenues from single payment services (Pay NowTM, Text2ConnectTM, and similar single call offerings), revenues from non-refunded customer prepayments, and revenues from other services such as video visitation. The ICS market can be viewed as an inflated balloon. Squeeze or distort any one area of the balloon and the contents will simply displace to another area within the balloon. In March 2009, the APSC capped intrastate ICS rates in Alabama. Based on 2012 provider data, the effective per-minute intrastate ICS rate in Alabama was \$0.27/min. Site commission percentages nevertheless increased as did ancillary fees. Additionally, single payment services were introduced without APSC approval. We essentially squeezed one portion of the balloon and providers responded by shifting revenue generation to other areas. Escalating site commission payments are the result of (A) a flawed process for selecting the ICS provider; and (B) the ability of ICS providers to pay higher site commissions by increasing revenues from sources other than calling rates. Therefore, the APSC believes a holistic approach is necessary and that by simultaneously setting just and reasonable rates and fees in all sources of provider revenue, site commissions will return to a reasonable level that more closely approximates facility costs without the need to proceed down the slippery slope of interference in contractual matters outside our regulatory jurisdiction.

¹ *In the Matter of Rates for Interstate Inmate Calling Services, Second Further Notice of Proposed Rulemaking*, WC Docket No. 12-375, released October 22, 2014 ("FNPRM"), par. 3.

The Commission points out:

These site commission payments, which have recently been as high as 96% of gross revenues, inflate rates and fees, as ICS providers must increase rates in order to pay the site commissions.²

This happened in Alabama during the third and fourth quarters of 2014. Ironically, the providers offering the highest site commissions in recent Requests for Proposal (“RFP”) are the same providers that on September 15, 2014 submitted a joint proposal (“Proposal”) to the Commission for addressing the issues in the first FNPRM. In the Proposal, three ICS providers recommended mandatory elimination or a substantial reduction of interstate and intrastate site commissions. Their recent bids at Alabama confinement facilities offering commissions of up to 96% did not inflate rates as the rates in Alabama are capped. We see no evidence that these providers increased fees in order to drastically escalate their site commission offerings. Therefore, what is the reason these three providers offered such high site commissions during a period when they know that site commission payments are under intense regulatory scrutiny and after they have called for their elimination and/or significant reduction? One clue is the contractual language included in provider contracts with confinement facilities. It is essentially a “force majeure” clause that allows the providers to protect themselves financially from regulatory changes. We suspect that a sudden escalation in “potential” site commission payments can be used as a means of pressuring the Commission into the action recommended in the Proposal. Subsequently, the providers that offered excessive site commissions can simply renegotiate the contract with the facility.

The providers that submitted the Proposal to the Commission can more easily offer higher site commissions. These three providers assess much higher ancillary fees on ICS end users than does the competition. Additionally, they are the only ICS providers in Alabama that divert ICS traffic away from confinement facilities via their single payment offerings. As much as 17% of traffic at facilities is diverted to Pay Now and Text2Connect type services accounting for 42% of

² FNPRM, par. 3.

the call revenue generated from the facility.³ The minutes and revenue for single payment services are not reported to the facility. The Alabama jail included in our site commission analysis is served by Securus. The “commission” paid to the jail for Pay Now and Text2Connect calling is equivalent to 7.9% of the provider’s single payment call revenue from the jail while the commission paid on collect and prepaid calls from the jail was 54%. When inmate collect and prepaid calls are combined with the calls diverted to the provider’s single payment service offerings, the effective commission paid to the facility was 35% versus the 54% offered under contract. When single payment calls are offered by the provider, that provider can promise a higher contractual site commission percentage but effectively pay much less than the contract requirement. The effective per-minute intrastate rate charged end users for collect and prepaid calls from the jail was \$0.24/min. For single payment calls, it was \$0.85/min.

The APSC asserts that the ICS industry in Alabama should not be painted with a broad brush. The smaller ICS providers in Alabama were, for the most part, already compliant with the ancillary fee caps prescribed in our December 9, 2014 ICS Order and none offer single payment services. NCIC serves a large county jail in Alabama and voluntarily adopted the third-year prison rates prescribed in our Order (\$0.25/min and \$0.21/min) more than two months prior to the release of our Order while maintaining the same level of site commission payments. Their ancillary fees are among the lowest in the industry and are compliant with our recent Order. The outliers are the large ICS providers that submitted the Proposal to the FCC and, for whatever reason, are responsible for the recent escalation in site commission offerings.

Restrictions on Payments to Correctional Facilities

The Commission concludes:

The record is clear that site commissions are the primary reason ICS rates are unjust and unreasonable and ICS compensation is unfair, and that such

³ *Generic Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Calling Service*, APSC Docket 15957, dated December 9, 2014 (“APSC Order”), Appendix A.

payments have continued to increase since our Order. Moreover, where states have eliminated site commissions, rates have fallen dramatically. We therefore predict that prohibiting such payments will enable the market to perform properly and encourage selection of ICS providers based on price, technology and services rather than on the highest site commission payment.

The APSC agrees that site commissions is one reason that total ICS charges to end users are higher than they could be but it is not the only reason and we disagree that eliminating site commissions alone will enable the market to perform properly. ICS charges are higher than they could be because the Commission has not yet addressed the other sources of provider revenue. Once all sources of ICS provider revenue are capped, ICS providers will be unable to offer excessive site commissions. In its August 11, 2014 comments to our ICS proceeding, Telmate concurs with our conclusion:

The Order's caps on rates and fees, while reasonable, will dramatically reduce indirectly site commission payments that the Commission has avoided regulating directly. (page 3)

The APSC's position on site commissions and our role with respect to controlling them is expressed in paragraph 4.06 of our December 9, 2014 ICS Order:

The Commission [APSC] neither requires nor precludes the payment of intrastate site commissions. Our regulatory obligation is to ensure that ICS rates and charges are fair and reasonable. We satisfy that regulatory obligation through caps on ICS rates, ancillary fees, single payment services and the requirement that providers refund unused balances for prepaid ICS. After complying with our rate caps and rules, the provider is free to utilize their net profit as they see fit without interference from the Commission. Once the Commission's regulatory obligations are met with respect to ICS rates and fees, the payment of site commissions neither increases the prices consumers pay for ICS nor will elimination of site commissions reduce ICS prices.

In many of the states where site commission payments were eliminated, only state correctional facilities are affected. Jails are not affected by the site commission restriction. Additionally, the

confinement facilities are statutorily required to select bids based on the lowest rates.⁴ For end users at the vast majority of confinement facilities, the market cannot perform properly because the end user's interests are not the basis on which the provider is selected. The ICS market is dysfunctional and non-competitive as currently structured. The Commission mentions new technology and services as advantages of eliminating site commissions. The APSC predicts these will instead be tools to eliminate the competition. Facilities will be enticed to a greater degree by providers offering new services for the facilities, some of which have little to no direct correlation with inmate calling. Clearly, this favors the large ICS providers with massive product development budgets. Further, one ICS provider currently possesses 75% of the patents associated with ICS. The APSC urges the Commission to first address all the sources of ICS revenue as we have done. Thereafter, we seek reform of the RFP process such that bidders are selected based on the lowest rates to end users. The APSC intends to recommend such a framework in a separate Ex Parte filing with the Commission either alone or jointly with other parties.

In paragraph 23, the Commission appears to minimize the budgetary impact of site commissions for state and local governments:

...using publicly available data in 2012, the Human Rights Defense Center (HRDC) estimated ICS providers paid over \$123 million in site commissions to correctional facilities. To put the number in context, however, the record and data from the Mandatory Data Collection suggest that these payments represented just 0.3 percent of prison facilities total budgets in 2012. Similarly, one ICS provider estimated that site commission payments represented 0.4 percent of total prison/jail operating budgets in 2013. What appears to be of limited relative importance to the combined budgets of correctional facilities has potentially life-altering impacts on prisoners and their families.

⁴ *The "Competitive Market" is Not Responsible for Low ICS Rates in DOCs in States that have Eliminated Commissions...*, Pay Tel Ex Parte Presentation for WC Docket No. 12-375, dated January 7, 2015, Table 1, pages 3-4.

The FY 2015 budget for the Alabama State Department of Corrections (DOC) is \$ 394,281,304 which is \$2,002,898 less than budgeted in FY 2014. The budget for DOC and almost every other state agency was cut from FY 2014 spending levels to make up for the required \$70,000,000 increase in Medicaid spending. DOC accounts for 21.4% of the State General Fund. Medicaid and DOC combined account for 58.7% of the budget. FY 2014 DOC site commissions was \$5,219,500 or 1.3% of the entire FY 2015 budget. We selected a medium sized Alabama County and found that the budgeted expenditures for its Sheriff Department and County Jail comprise 44.1% of the county's entire budget for FY 2015. Jail operations alone account for 18% of the county's budget. FY 2014 site commission payments to the County Jail totaled \$57,347 representing 2.4% of the FY 2015 budget for the jail. The 1.3% share of the Alabama DOC budget related to site commissions and the 2.4% share applicable to the selected county jail budget when applied to the FCC's FY 2015 budget yields equivalent funds of \$5,000,000 to over \$9,000,000. We assume the FCC would not consider such proportional reductions in its FY 2015 budget to be of limited relative importance.

In Paragraph 35, the Commission asks:

Are ICS providers inherently “monopoly providers of payphone service” and therefore able “to charge supra-competitive prices?” Do inmates have access to competing alternatives? One way to mitigate this problem would be to require correctional institutions to enter into service contracts with multiple ICS providers instead of awarding a monopoly to a single provider, as the Wright Petitioners initially suggested.

Further, it is unclear whether allowing multiple providers at correctional institutions would substantially lower ICS costs to consumers if facilities were still able to receive site commission payments.

ICS providers are the exclusive providers of telecommunication services in confinement facilities and, worse, the end user has no influence in the decision of the service provider. Therefore, they are monopoly providers able to charge supra-competitive prices. The APSC believes it may be possible to require resale competition in the large correctional facilities but there likely isn't enough revenue in the small facilities to justify resale competition.