Additionally, there would be substantial technical and administrative barriers to overcome not to mention the regulatory burden of identifying avoided costs for purposes of establishing the resale discount. We do not foresee any possible way of establishing facilities-based competition because of economic inefficiencies associated with duplication, space limitations, and the absence of a standard ICS platform. Perhaps the most important barrier is the fact that confinement facilities maintain total control of ICS and its end users within the facility. The inmates may not be free from external influences in order to exercise economic choices that are in their best interests.

In paragraph 37, the Commission states:

> We seek comment on a definition of site commission payments that are subject to any prohibition or restriction to include "payments in money or services from ICS providers to correctional facilities or associated government agencies, regardless of the terminology the parties to the agreement use to describe them." We seek comment on interpreting this language to include any products or any other thing of value such as, for example, so-called "contract administration" fees. This is consistent with the approach in the Order where the Commission noted that it would treat in-kind payments as site commissions.

Site commissions are not the only means used by some ICS providers to influence the decision with respect to provider selection. The larger ICS providers expend massive financial resources on new product development and on acquiring security related businesses or the patent rights associated with those products. Lowest price end user rates and fees is not the basis upon which the ICS service provider is currently selected. Consequently, these enhanced products are frequently used to influence the RFP selection process in favor of the provider offering them. The products are normally embedded in the contract at no cost to the facility but the ICS provider's costs for the products and the profit thereon must nevertheless be recovered. Thereafter, recovery is accomplished via the rates and fees assessed on ICS end users. It is, therefore, critical that products and services not directly related to the provision of inmate calls

receive the requisite scrutiny to ensure they are essential to the service and/or significantly enhance the security and safety of the confinement facility as well as the general public.

Moreover, there is a "mad dash" by some in the ICS industry to acquire as many patents as possible for ICS related products and service components. This "patent hoarding" may be used to stifle/eliminate competition by ensuring the patent holder is the sole provider of products and services desired by law enforcement. In a 2013 press release, the CEO for one of the largest ICS providers made the following boast.

> "It is well known that Securus Technologies has by far the largest patent portfolio in the corrections industry and we have spent in excess of $200 million developing sophisticated technology – and we have solid patents. **You cannot operate in our industry legally without having a patent license agreement with us** [emphasis added] and GTL's license agreement expired in early August, 2013 – they did not renew the license agreement so we had to file this lawsuit." "Without an agreement, GTL cannot legally provide the Securus patented services to prisons and jails – so they cannot run their business and we will ask the Court to stop them,"[5]

Site commissions or their equivalent are not easily quantified. What is desperately needed is reform of the RFP process in order to shift the selection criteria to the true end users of ICS so that providers are required to compete on the basis of lowest price while maintaining reasonable cost recovery for confinement facilities. When this is accomplished, all of the abuses will be rectified by the marketplace alleviating the need to for regulators to stray into areas that may raise jurisdictional issues. The most efficient providers that are incented to hold down costs will prosper and ICS end users will benefit accordingly. As stated previously, the APSC believes this is a workable approach and intends to submit a proposal for such a market-based solution.

[5] Securus Technologies Files Lawsuit in Federal Court Against Global Tel*Link for Patent Infringement When Global Fails to Renew Existing License, Securus Press Release dated October 4, 2013. URL: https://securustech.net/press-releases/-/asset_publisher/JBo9KqWeTcqo/

Interstate and Intrastate ICS Rate Reform

With respect to proposals for a unitary rate cap, the Commission states in paragraph 61: "Throughout this proceeding interested parties have filed in support of the Commission adopting unitary ICS rate caps for all intrastate and interstate debit/prepaid and collect calls in all facilities. We seek comment here on those proposals."

The APSC does not support a unitary rate cap. The cost support record in this proceeding clearly shows that providers that serve jails exclusively experience higher average costs than providers that serve a mix of state/federal correctional facilities and jails. Those states cited by the Commission as having reduced rates to single digits have done so at correctional facilities rather than jails. The only requested waivers from the Commission's interim rate caps are applicable to jails not prisons.

The Commission used Pay Tel's cost data to set the existing interim rate caps:

> We establish an interim rate cap for debit and prepaid interstate ICS calls of $0.21 per minute based on the public debit call cost data included in Pay Tel's cost submission. ***The costs reported by Pay Tel for debit calling represent the highest, total-company costs of any data submission in the record and therefore represent a conservative approach to setting our interim debit and prepaid rate cap.*** Specifically, Pay Tel reported that the average of its actual and projected 2012-2015 debit calling costs, excluding commissions and including continuous voice biometric identification fees, is $0.208 per minute.[6]

Since Pay Tel served only jails and their data represents the highest costs in the record, which included provider costs that serve both prisons and jails, it follows that jails are more expensive to serve than prisons. In our December 9, 2014 Order for intrastate ICS we set lower intrastate rate caps for prisons than jails.

[6] In the Matter of Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, rel. September 26, 2013 ("FCC ICS Order"), par. 76.

Because inmate sent collect calls represent such a small percentage of total inmate calls, we see the merits of combining collect call rate and prepaid rate into a single per-minute rate for prisons and a single per-minute rate for jails and would support such a proposal.

The APSC urges caution in setting rates too low before the effects of capping all sources of ICS revenue are observed. Regulators can always reopen proceedings and adjust rates further but the consequences for setting them too low initially in combination with the yet unknown financial effects of capping all sources of ICS revenue could produce unintended and detrimental market consequences, particularly for providers that serve higher cost, lower revenue producing jails.

Beginning in paragraph 76, the Commission addresses and seeks comments on the appropriateness of flat-rate call pricing. We question the rationale of establishing usage sensitive rates only to apply them on a non-usage sensitive basis. The per-minute rates are assumed to recover variable and common costs and regulators always strive to ensure that cost recovery is in proportion to the cost causer. Why then should an end user that makes a 1-minute call pay the same total price as one who makes a 15-minute call? The Commission does not establish minimum call durations for toll service providers on the public switched telephone network. Should inmates and those they call be treated any differently? The average inmate call lasts only 11 minutes. If an inmate needs only a brief call to a loved one, they should not be forced to pay for call time not utilized. Moreover, flat-rate call pricing reintroduces the issue of refunds for dropped calls which is often the most frequent complaint we receive from speaking to inmates during our facility inspections. The Commission can be assured that inmates subjected to flat-rate calling based on 15 minutes call duration, will frequently be discouraged or denied the opportunity to speak longer than 15 minutes. Flat-rate pricing allows providers to maximize call revenues and to dictate phone usage to the end users.

The Commission staff did authorize flat rate pricing using the interim rate caps which conflicts with our interpretation of the intent in rule 64.6030. The APSC interpreted the rule as a check on whether the provider is charging compliant per-minute rates when a call set up charge is utilized.

The check, as we interpreted it, was to divide the total charge for a 15-minute call priced using the call set up charge and the provider's per-minute rate additive, by the 15-minute call duration for purposes of deriving an effective per-minute rate. Compliance with the Commission's interim rate caps requires that the provider's **effective per-minute rate** is equal to or less than the applicable per-minute rate caps. Otherwise, the provider is charging excessive rates and must reduce either the non-usage call set up charge or the usage sensitive portion of its rates.

Reforms to Ancillary Charges

In paragraph 83, the Commission mentions the Securus Proposal for capping ancillary fees for optional, convenient payment methods for five years. Securus charges end users $7.95 for credit card payments which is currently one of the highest payment transaction fees in the industry. It is 165% higher than the $3.00 credit card payment processing fee assessed by Pay Tel. The APSC believes that this and other transaction fees were driven upward, not by cost, but by Securus' propensity to subsidize site commission excesses through the assessment of end user fees; particularly those applicable to every end user transaction. Securus, GTL, and Telmate no doubt were very successful with this strategy since they control 85% of the ICS market. They were, for the most part, able to offer higher site commissions than their competitors by shifting their payment excesses to the backs of end users and, in so doing, won the bulk of the business. They also intorduced single payment services allowing for calls priced at an effective rate per minute of $0.85 or more for purposes of subsidizing the excess site commissions. As we demonstrated previously herein, single payment services allows Securus, GTL, and Telmate to divert inmate call traffic away from facilities and pay facilities a mere pittance in commissions while providing the illusion that the facilities are actually getting the site commissions promised them under contract from all calls generated from their facilities. The Proposal asks the Commission to eliminate or significantly reduce site commissions while simultaneously capping for 5 years, their existing level of excessive payment processing fees used to subsidize the excessive site commission payments for which these providers are predominantly responsible. If the Commission agrees to this Proposal, it will essentially grandfather the very mechanisms used

to support the excessive site commissions it so vehemently opposes. In order to remain competitive and financially viable, the majority of ICS providers will then be forced to raise their ancillary fees to the level recommended by Securus. The APSC cannot emphasize strongly enough that the outliers in terms of excessive ancillary fees are the providers that submitted the Proposal to the Commission.

In paragraph 85, the Commission solicits a recommend definition for ancillary services. The APSC recommends that the Commission identify basic ICS and what is included therein for which the provider is compensated from the rates end users pay. The Commission should then identify optional services for which ancillary fees apply. We adopted the following guidelines in our December 9, 2014 ICS Order at Appendix G:

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.

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.

With respect to ancillary payment transaction (funding) fees, funding maximums can be used by the provider to extract such fees from end users more frequently. Some assess a $25 limit on the maximum payment that can be submitted by the end user. The APSC changed the funding maximum for such payments to $100. Moreover, some providers establish a minimum payment threshold. One ICS provider assesses a $6.95 fee if the customer's prepayment is for less than $50. We eliminated funding minimums and any fee assessed thereto. End users can submit any payment amount they choose for the same payment transaction fee as long as the payment amount does not exceed $100. An end user choosing to deposit $10 into their prepaid account using a credit card, for instance, can do so without incurring any additional charges other than the maximum $3.00 credit card payment fee. By establishing what is included in basic ICS and what is optional, the identification of ancillary fees that may assessed by providers is significantly simplified.

In paragraph 86, the Commission asks if ancillary fees are inherently dual jurisdictional in nature. Prepaid ICS can be used for both interstate and intrastate calls. The only fees that apply exclusively to the interstate jurisdiction are the federal Regulatory Cost Recovery Fee and the USF Administration Fee. If the Commission authorizes these fees, states should not prohibit ICS providers from applying them to interstate usage. However, to the extent they are approved for the interstate jurisdiction, the APSC urges the Commission to cap both the federal Regulatory Cost Recovery Fee and the USF Administration Fee on a per-minute basis applicable to all ICS providers. ICS customers with incidental interstate usage should not be assessed the same level of fees as those with heavy interstate usage.

Other ancillary fees are dual jurisdictional. Intrastate ancillary fees should be set no higher than the corresponding caps on interstate ancillary fees but states should be authorized to set lower caps on ancillary fees. Additionally, states should not authorize intrastate ancillary fees specifically prohibited by the Commission but may authorize any fees not specifically prohibited or prohibit dual jurisdictional fees that the Commission otherwise authorizes.

In paragraph 89, the Commission notes: "If the customer does not spend the $25 in the account, GTL charges a $5 refund charge that is only triggered once the customer asks for a refund. If the account remains inactive for 180 days, the remaining funds become the property of GTL." Refund fees are the exception rather than the norm. Most providers do not charge end users to refund the end users' prepayments nor should they.

Prepaid ICS was established to benefit the providers in that it saved them the expense of non-collectable revenue that plagued the industry when all calls were sent collect, billed by the call recipient's carrier. Make no mistake, customer prepayments benefit the providers financially and assessing a fee to refund the customer's prepayment is reprehensible. The APSC includes customer refunds in our definition of inmate calling basic service and prohibits the assessment of any fee on end users for the return of their money.

With respect to GTL seizing the customer's prepayment after 180 days, Alabama and most other states have unclaimed property laws. In Alabama, unclaimed utility refunds or deposits must be retained by the service provider for one-year. Thereafter, the provider is required to remit the unclaimed funds along with an unclaimed property report to the State Treasurer, Unclaimed Property Division. The State Treasurer maintains a searchable online database so that the owners of the unclaimed property may claim it long after it is remitted to the State. Providers are not authorized to retain unclaimed customer prepayments nor is it ethical to do so. The APSC requires ICS providers to comply with Alabama's Unclaimed Property Act.

The APSC used the most complete cost support in the record for this proceeding to set our caps on intrastate ancillary fees; the cost support submitted by Pay Tel. Our caps on ancillary fees can in no way be considered draconian. They are, in fact, the same fees that Pay Tel applied to its end users before the APSC adopted them and are generally in line with what other providers in Alabama charge with the exception of Securus, GTL, and Telmate. These providers were described by the Commission in its First FNPRM as "notably silent" with respect to support for their ancillary fees. They represent the outliers rather than the majority of the ICS providers. In fairness, Telmate did, on page 3 of their August 11, 2014 comments for our proceeding, describe the APSC caps on rates and fees as "reasonable". The APSC questions why the industry's largest providers, GTL and Securus who presumably have greater economies of scale, continue defending ancillary fees that are much higher than their smaller competitors in the ICS industry. Moreover, we question why the Commission would give serious consideration to capping their fees at existing levels, which by all measures are ridiculously exorbitant.

In paragraph 98, the Commission seeks comments on single payment or single call services. Securus, GTL, and Telmate offer single payment services wherein inmate collect call are billed to a wireless recipient's carrier bill via a SMS (premium text message) or to the wireless recipient's credit card if their cell phone is not SMS capable. The call duration is imputed (usually 15 minutes) and represents the maximum amount of call time. Securus and GTL charge $9.99 for a call billed via SMS and $14.99 for calls billed to a credit card. The APSC does not have information on Telmate's single payment service charges.

Other ICS providers route billed collect calls to their payment center, while the inmate is placed on hold, where the call recipient is offered the opportunity to complete the call, using the regulated ICS rates, by establishing a prepaid account with the provider. Regardless of whether the collect call recipient uses the entire 15-minute call time allotment, they prepay for the entire call duration. The effective rate for a 15-minute call using Text2Connet and Pay Now (or similar type services) is $0.67/min and $1.00/min, respectively. This rate structure is far more "revenue friendly" than the comparable ICS rates authorized by regulators with the added bonus that the

full extent of the revenue is shielded from the provider's contractual site commission percentage with the facility.

Appendix A to our December 9, 2014 ICS Order shows our analysis of site commission payments in an Alabama jail served by Securus. For single payment calls, only the number of such calls re reported to the facility. The minutes associated therewith and the call revenue is not reported. Our analysis of this facility shows that 14% of total inmate calls from the facility (collect, prepaid, and direct billed) are diverted to the provider's single payment service. Providers charge end users the full call allowance regardless of actual talk time. Based on an allowance of 15-minutes for the single payment calls, these services accounted for 17% of all inmate call minutes from the facility. Although single payment calls account for 14% of the calls and 17% of the minutes at the facility, they are responsible for 42% of all the revenue generated. The site commissions paid for the single payment calls was 7.9% of their associated revenue while the provider paid the facility 54% on the remaining inmate call revenue. The effective rate per minute for all single payment calls at the facility was $0.85/min. For the remaining inmate calls it was $0.24/min. It is, therefore, readily apparent why single payment calls are attractive for the providers that offer them. The APSC concludes that single payment services are used to bypass our capped rate structure.

Securus uses 3CInteractive ("3CI") as the third-party payment processor for its single payment calls. The patent for the mobile phone verification platform used in processing single payment calls was created by inventors Mark R. Smith, Jeremy R. Martin, Michael J. FitzGibbon, Matthew Joseph Simons, and John L. Duffy of 3CI but Securus purchased and was assigned the patent rights[7]. GTL began offering single payment services identical to and at the same price as those offered by Securus in 2014. GTL also uses 3CI as its third-party payment processor for single payment calls and obviously must pay Securus licensing fees for the right to do so. Not only are single payment services lucrative in terms of revenue potential, Securus acquires additional revenue from the licensing fees associated therewith.

[7] See: http://patents.justia.com/inventor/mark-r-smith

3CI is not the only provider of mobile billing services. NCIC used Bill-To-Mobile for its single payment SMS offering which was priced at $5.99 until NCIC discontinued offering the service in 2014. Single payment calls are flat rated and thus raise the concern of whether end users are refunded for dropped calls. Considering that all the call recipients are using mobile phones, dropped calls could be a significant issue. Moreover, the providers offering single payment services have self-determined that these calls are unregulated. They never approached the APSC to seek such a determination. Because the minutes and revenue are unreported and because the providers have self-determined that the revenues associated with single payment services are unregulated, the APSC questions whether revenue from these calls are also shielded from the FCC's regulatory fee assessment, from USF fees, from State Commission Inspection and Supervision Fees, and from state and federal utility taxes.

What makes single payment service calls unique? The recipients of the calls use wireless technology but prepaid ICS calls may be terminated to cell phones as well and they are subject to our rate caps. Single payment calls may be billed to a credit card but that is not unique. ICS providers bill customer prepayments to credit cards every day at their call centers and are fully capable of billing single payment calls to credit cards without using a third-party processor. The only thing that makes single payment calls unique is the capability for billing calls directly to the wireless recipient's mobile carrier account.

The providers offering single payment services claim that regulated ICS rates should not apply to single payment calls. However, the APSC questions why they should be treated any differently than other inmate calls originating from the confinement facility. The calls are initiated from a confinement facility over the certificated provider's equipment and transported to the provider's server switch. The provider uses a third-party vendor to process the payments for the calls. Providers frequently use third-party bill processors for inmate collect calls billed to wireline carrier accounts yet those calls are subject to the regulated rates. Securus and GTL have thus far failed to disclose what specific services 3CI performs for them and what 3CI charges for their service. Is 3CI processing credit card payments for these carriers? If so, what are is 3CI

charging for payment processing and is it a cost savings over the ICS provider's internal call center payment processing capability?

Until recently when it decided to discontinue the offering, NCIC charged $5.99 for the same single payment service that Securus and GTL offer at $9.99. The APSC reasonably concludes that if NCIC offered the service at $5.99, industry giants Securus and GTL can as well. Rather than prohibit the offerings as some ICS providers recommended in their comments for our proceeding, we chose instead to allow the services provided they are compliant with the same rate caps applicable to other inmate calls.

Our capped ancillary fee for both credit card processing and bill processing[8] is $3.00. After deducting the ancillary fee allowance of $3.00 from NCIC's $5.99 charge for a premium text messaging call, we divided the remainder by our $0.25/min target rate cap for collect calls in both prisons and jails to arrive at 12 minutes which we then imputed as the maximum call allowance for single payment calls. Based on 2012 Alabama ICS call data, the average call duration in Alabama ranged from 9.3 minutes for local calls to 10.4 minutes for toll calls. Therefore, 12 minutes is a reasonable maximum time allowance for single payment service calls. Our December 9, 2014 ICS Order authorizes providers to price single payment service calls in accordance with the capped collect rate applied to a 12 minute maximum call allowance. Providers may then add the $3.00 maximum credit card or bill processing fee to arrive at the maximum allowable call price which we conclude is compliant with our rate and fee caps.

ICS providers that offer single payment calls describe them as convenience options. However, a service is optional only to the extent that a potential customer is aware of their options. The APSC found that wireless recipients of inmate collect calls in Alabama are not being advised of their options. Based on test calls, recipients were not offered the option of establishing a prepaid account with the provider, up front, before being prompted to accept the call at the provider's single payment price. Our December 9, 2014 Order requires providers to make such a disclosure

[8] Fee to cover costs for billing collect calls on the collect call recipient's underlying carrier account.

going forward. Additionally, the calls, call minutes, revenue, and number of dropped calls associated with single payment calls are now reportable.

In paragraph 100, the Commission asks whether Commission regulation of single call services would not impermissibly infringe on contractual relationships. Our response is "absolutely not". The regulator's duty is to set fair and reasonable rates for ICS calls. Nowhere in the APSC Order do we dictate anything with respect to contractual terms between Securus/GTL and 3CI. Neither provider has divulged the terms of their contract with 3CI and refuses to do so. There has been no disclosure of the service provided by 3CI and the associated charge(s) for it. These contracts, whatever the terms, were established without the providers first seeking a determination as to whether the calls are subject to regulated rates. Other ICS providers are completing inmate collect calls to wireless recipients and those calls are subject to the rate caps. Regulators will force those providers into a financial and, therefore, a competitive disadvantage if their competition is not subject to the same regulatory rate caps.

In paragraph 101, the Commission states: "In the case of single call services to wireless phones, ICS providers have asserted that such services are not subject to state commissions' authority since they entail the use of a text message to confirm the source and charges for the call and involve calls to wireless phones, the rates for which are not subject to state jurisdiction." First the charges included on the wireless recipient's bill are not the wireless provider's charges. The wireless provider is billing call charges submitted on behalf of the ICS provider by 3CI. The wireless carrier is compensated by 3CI who is in turn compensated by the ICS provider using the charges collected from the call recipient and remitted to the ICS provider. The ICS provider establishes the contractual price for these calls, not the wireless carrier and the amount that each party receives is negotiated. If, as claimed, the price for the call is set by the wireless carrier, how did NCIC charge $4.00 less for the same type call?

Securus and GTL pay facilities $1.60 for each single payment call billed to a credit card and $0.30 for each call billed to the call recipient's wireless bill. Moreover, Securus and GTL

obviously realize more revenue from these calls than if they otherwise diverted them to their own call center for purposes setting up a prepaid account. Requiring them to price the calls based on capped rates will obviously reduce the revenue they are receiving but that is certainly no reason for regulators to ignore these providers' non-compliance with our rate caps.

The wireless carrier argument fails to address the situation with single payment calls billed to a credit card. Such calls are to wireless phones that are not SMS enabled. Interactive voice response (IVR) is used to provide information about the call and to prompt the call recipient for approval to complete the call. The wireless carrier is nowhere in the "loop".

The use of premium text messaging for single payment services in no way diminishes state commission regulatory jurisdiction for the inmate collect call. The text is not initiated by the inmate. Indeed, it is technically impossible for either the inmate or the ICS provider to conduct text message communications over wireline facilities with the intended wireless recipient of the collect call. Consequently, the ICS provider contracts with an independent third party, such as 3CI, to **communicate separately** with the intended wireless recipient of the collect call for the sole purpose of arranging a billing agreement between 3CI and the wireless customer. While 3CI and the intended wireless recipient of the inmate call communicate using text messaging, the inmate's wireline call is placed on temporary hold. Once 3CI receives approval from the intended call recipient to bill the inmate's collect call to their wireless account, the inmate's wireline call is completed in the same manner that prepaid inmate collect calls are completed to wireless recipients The inmate collect call is in no way altered to provide it with wireless functionality during the course of the transaction. It is wireline call from the moment it originates until it terminates regardless of the communications technology used by the call recipient. The texting is solely limited to communications between 3CI and the wireless customer.

Inmate collect calls are wireline calls by virtue of the facilities upon which they originate, not the communications technology to which they terminate. Our rate caps are therefore applicable to

both billed collect and prepaid collect inmate calls terminating to either wireline or wireless recipients. The APSC is no way attempting to regulate wireless communications, the price wireless carriers charge 3CI for premium text messaging, or what 3CI charges the ICS providers for the billing function it provides. However, the APSC is responsible for ensuring ICS provider compliance with the regulated rates for which we exercise jurisdiction. Furthermore, the ICS provider is obligated to comply with our rates and regulations in accordance with the terms of the certificate of convenience and necessity granting the provider authority to provide ICS in Alabama.

For single payment services that incorporate premium text messaging, the APSC's December 9, 2014 Order allows ICS providers, with cost justification, to request a waiver for the bill processing portion of the capped rate. No such waiver is offered for single payment calls billed to credit cards since the provider has the internal capability of processing credit card payments subject to our ancillary fee caps. Additionally, we do not entertain requests for waiver of the capped usage portion for single payment calls. The charge is calculated based on our collect call per-minute rate cap applied to an imputed call allowance of 12 minutes. The resulting usage charge ensures that single payment calls are not used for purposes of circumventing the APSC's ICS rate caps. Moreover, it assures other ICS providers that they are not disadvantaged financially or competitively by routing inmate collect calls to their own call center for purposes of establishing prepaid service at our capped rates.

In paragraph 103, the Commission seeks comment on the Proposal from Securus, GTL, and Telmate to with respect to third-party payment transfer fees. The specific request, from page 5 of the September 15, 2014 Proposal is:

> In addition to the amounts charged by third party money transmitters such as Western Union, MoneyGram, etc., ICS providers would be permitted to impose money transfer fees to cover the administrative costs of handling such transactions. Under the parties' proposal, ICS providers would be permitted to charge a maximum $2.50 administrative fee for such money transfer services.

The request implies that Western Union and MoneyGram have a standard money transfer fee applicable to the customers of all ICS providers. That is certainly not the case. To a large degree, ICS providers determine what Western Union and MoneyGram charge their customers for money transfers. The APSC Order of December 9, 2014, paragraphs 8.12 through 8.14, provides a very thorough discussion of money transfer fees. The transfer fees are negotiable. The Commission need only observe the range of transfer fees charged the customers of ICS providers by Western Union. In Alabama, it ranges from $5.00 for NCIC customers to $11.95 for Securus customers. Additionally, the record for our proceeding shows that Western Union and MoneyGram are currently sharing revenue with ICS providers when the transfer fee exceeds $5.95 (See APSC ICS Order paragraphs 8.15 through 8.17). No ICS provider has ever disputed that assertion. Rather than giving consideration to further transfer fee additives, the APSC urges the Commission to require, as we have, that providers whose customers are charged transfer fees greater than $5.95 justify why they are unable to obtain for their customers the lower money transfer fees charged by Western Union and MoneyGram to customers of other ICS providers. In Alabama, the only ICS providers whose customers are charged money transfer fees in excess of $5.95 are those who submitted the Proposal to the FCC. They are the outliers. The APSC is opposed to the $2.50 transfer fee additive included in the Proposal and questions why any such additive should be given any consideration when Western Union or MoneyGram are performing the money transfer, not the ICS provider. Any administrative costs incurred with processing the customer's payment is part of routine business overhead.

In paragraphs 107 and 108, the Commission seeks comment on whether the security biometrics portion of the rate should be a separate charge and whether consideration should be given to the Securus request in the Proposal for allowing "incremental product pricing above rate caps if necessary" for "safety and security features". In establishing its interim rate caps, the Commission included an allowance of $0.02/min for Continuous Voice Biometrics ("CVB"). The leading supplier of CVB is JLG Technologies, LLC which, not surprisingly, was acquired by Securus in June, 2014 after release of the Commission's initial ICS Order. JLG's product is "Investigator Pro" and it is not currently deployed at any facility in Alabama or in 18 other

states.[9] Therefore, ICS providers, including those that submitted the Proposal are, in many facilities, recouping the per-minute costs of CVB without actually providing the service. Consequently, the APSC could support a separate allowance for CVB but the existing rate caps should be reduced by the $0.02/min CVB allowance already included in the rates.

The APSC urges caution in any consideration of the Securus request to allow "incremental product pricing above rate caps if necessary" for "safety and security features". As previously stated, the lowest price end user rates and fees is not the basis upon which the ICS service provider is currently selected. The largest ICS providers have committed enormous finances to new product development and/or acquiring product suppliers and/or their patent rights. They, of course, seek recovery of their investment. Consequently, we strongly emphasize that products and services not directly related to the provision of inmate calls receive the requisite regulatory scrutiny to ensure they are essential to the service and/or significantly enhance the security and safety of the confinement facility as well as the general public. Securus controls 75% of the patents in the ICS industry and can effectively stifle competition through patent right litigation and the prices charged other ICS providers for licenses. Uncontrolled growth in so called safety and security features, particularly those that are non-essential, puts the non-dominant ICS providers at a competitive disadvantage.

[9] See URL: http://jlgtechnologies.com/customers/index.shtml