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**VIA ECFS**

EX PARTE

July 20, 2015

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

Re: CenturyLink Response to Wood Proposal, *Rates for Interstate Inmate Calling Service*, WC Docket No. 12-375

Dear Ms. Dortch:

On June 29, 2015, Don J. Wood, an economic consultant for Pay Tel Communications, Inc. ("Pay Tel") and Darrell Baker of the Alabama Public Service Commission submitted a proposed framework for inmate calling service ("ICS") reform, focusing on the issue of correctional facility cost recovery (the "Wood Proposal"). The proposal included recommendations for specific ICS rate caps and ancillary fee restrictions, and it also noted the need for transition time. On July 15, 2015, Pay Tel submitted an ex parte presentation in support of key elements of the Wood Proposal.

CenturyLink shares Dr. Wood's and Mr. Baker's very legitimate concerns about ancillary fees. CenturyLink's reform proposal includes a similar component. CenturyLink also agrees with Pay Tel about the need for reasonable transition for institutions and providers. But the Wood Proposal's suggested caps for prisons are grossly unrealistic.

**The Wood Proposal's Rate Cap for Prisons is Wholly Unrealistic.**

The Wood Proposal's \$.08 per minute rate cap for prisons and the \$.02 per minute facility cost recovery for prisons are unrealistic and not based on the record. Leaving aside the very real limits of the FCC's authority, these rate caps would not allow ICS providers or correctional institutions to recover their costs of making ICS available at the great majority of prisons nationwide. It would ultimately jeopardize ready access to calling services in many prison facilities.

The proposed \$0.08 per minute rate cap for prisons is a reiteration of the Pay Tel proposal presented in its comments in response to the Commission's Second Further Notice of Proposed Rulemaking. Pay Tel does not serve prisons and would be unaffected by any rate caps imposed on prisons. Its consultant's proposal conveniently purports to justify unreasonable caps for prisons while adopting more reasonable levels for the jails that it serves.

Pay Tel based the \$.08 per minute prison rate cap proposal largely on (1) a selective reading of the Securus Siwek cost study completed well before the release of the Second Further Notice of Proposed Rulemaking, and (2) a sample of the rates charged at eight prisons served by Securus and Global Tel\*Link ("GTL") that had eliminated site commissions.<sup>1</sup> The Siwek study included only a small sample of prisons and did not include all of the significant costs of providing ICS in prisons, including the cost of capital and the cost of debt<sup>2</sup> – legitimate costs that Pay Tel's proposed rate caps for jails do not exclude. Accordingly, the Siwek study does not provide a reasonable basis for estimating the costs of serving prisons and cannot provide a rational basis for attempting to set a rate cap.

Pay Tel's reliance on the \$.067 per minute average rate charged at its sample of eight prisons is also misplaced. In essence, Pay Tel argues that the cost-plus-profit to serve these eight prisons must be below the \$.067 average rate charged, or the ICS providers at these prisons would not have agreed to those rates. But that argument ignores ancillary fee revenues. Securus and GTL in particular rely very heavily on ancillary fees to cover their costs of serving prisons, something that Pay Tel does not account for. CenturyLink has been a critic of ancillary fees, but the impact on per-minute rates of ancillary fee revenue cannot simply be ignored. Accordingly, the \$.067 per minute average rate cannot reasonably be used as a proxy for cost of service and grossly understates the cost to serve the eight prisons in the sample.

Moreover, Pay Tel had created a sample that was not representative of prisons as a group, because it selected only prisons that had eliminated reliance on site commissions and had taken actions specifically intended to lower ICS rates. The same type of selection could be done for jails to justify lower rates for them. For example, Montgomery County, Maryland, which operates a jail with an average daily population of approximately 800 inmates, decided to forgo site commissions and has negotiated a rate with its provider that is effectively about \$.08 per minute excluding ancillary fees. This is the only example CenturyLink knows of where a County facility decided to take this approach to minimize calling rates. If others did the same, similar rate structures no doubt would be seen. Under Pay Tel's logic, Montgomery County's rates would lead one to conclude that the cost to serve all comparable-sized jails is just \$.08 per minute. However, as with prisons, this conclusion would be inconsistent with the record.

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<sup>1</sup> Comments of Pay Tel Communications, Inc. in Response to Second Further Notice of Proposed Rulemaking, WC Docket No. 12-375, pp. 27-32 (Jan. 12, 2015).

<sup>2</sup> Ex Parte Letter of Stephanie A. Joyce, Counsel to Securus Technologies, Inc., to Marlene Dortch, WC Docket No. 12-375, p. 1 (Oct. 28, 2014).

The results of the Mandatory Data Collection conducted by the Commission demonstrate that a \$.08 per minute rate cap for prisons is far below cost. When common costs are allocated on a per-minute-of-use basis, excluding site commissions, the average cost for debit/prepaid calls at prisons is \$.14 per minute and for collect calls is approximately \$.17 per minute.<sup>3</sup> Moreover, in attempting to set any rate caps, the Commission must take into account the full range of costs of serving prisons. Approximately half of the prisons captured in these averages will have a cost of service above the averages. The rate caps adopted by the Commission need to be set well above \$.14 per minute for debit/prepaid calls and \$.17 per minute for collect calls. Otherwise, ICS providers will not be able to economically serve the many prisons with above-average costs.

### **The Wood Proposal's Facility Cost Recovery Cap is Unrealistic for Prisons.**

The Wood Proposal also recommends caps on facility cost recovery charges. Again, a very low proposed facility cost recovery cap for prisons does not impact Pay Tel, because Pay Tel does not serve those institutions. As a result, it can recommend a very low facility cost recovery cap for prisons without compromising its own institutional customers' ability to recover their costs of making ICS available.

Furthermore, the Wood Proposal's \$.02 per minute cap for prisons is completely unsubstantiated. CenturyLink knows of no prison systems that have submitted internal cost data to the Commission. However, this does not mean that these costs do not exist – just as providers have unique costs to supply ICS to prisons versus jails, so too do correctional facilities. These include but are not limited to heightened security measures needed by prisons, disproportionately large numbers of complaints and lawsuits, detailed administration of allowed calling lists per individual inmate,<sup>4</sup> and management of unique calling privileges by inmate depending on classification and disciplinary status. There is simply no rational basis for the Wood Proposal's assumption that prisons' costs are at just \$.02 per minute.

CenturyLink's reform proposal does not include an administrative fee, and CenturyLink believes reform would be more viable based on a uniform rate cap that allows a reasonable commission. If the Commission were to adopt a facility cost recovery fee, it should be set at a level that is based on record evidence.

Furthermore, per-minute caps on facility cost recovery would prove exceedingly difficult to administer. Restricting site commissions using per-minute rate caps would induce ICS providers to offer in-kind services in order to circumvent the caps. Such products as video visitation systems, cell phone detection equipment, GPS tracking devices, or jail management

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<sup>3</sup> Second Further Notice of Proposed Rule Making, *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket 12-375, 29 FCC Rcd 13170, Table One, ¶53 (rel. Oct. 22, 2014).

<sup>4</sup> While CenturyLink manages allowed calling lists at some of the prison facilities it serves, some facilities manage these lists using internal employees.

systems will be offered in lieu of monetary site commissions and will put the Commission in the untenable position of adjudicating what constitutes innovative ICS-related services versus ancillary products provided in lieu of cash commissions.

ICS providers that use these in-kind services in lieu of site commissions will naturally seek to recover these costs in the rates and fees charged to inmate families. In-kind commissions through non-ICS ancillary services would also serve to lock in providers and reduce competition because their presence makes it more difficult and expensive for a correctional facility to transition to a new provider. While in-kind services are not prohibited today and would not be prohibited under CenturyLink's proposal, caps on facility cost recovery will guarantee that in-kind services will become widespread and extremely difficult to manage.

**Any Rate Cap Must Allow Sufficient Headroom for a Reasonable Site Commission, Where Required.**

Rather than capping facility cost recovery charges, the Commission should set rate ICS rate caps with sufficient headroom to allow for a reasonable site commission. Correctional facilities incur a wide range of legitimate cost to make ICS available, and they should be given the flexibility to determine what commission or administrative fee structure, if any, makes sense given their unique requirements. Rate caps with headroom for a reasonable site commission will give correctional facilities the flexibility they need, while ensuring that inmates have ready access to ICS and that their families receive reasonable rates.

**Any ICS Reform Must Address Ancillary Fees.**

The Wood Proposal would also strictly limit ancillary fees, and CenturyLink supports its recommended restrictions. Ancillary fees significantly increase the cost of calling for inmates and their families, and if not addressed their existence would allow the circumvention of any rate caps the Commission might attempt to adopt. Fees for "single call" or "premium payment" options are particularly abusive to consumers. CenturyLink shares with Pay Tel a commitment to responsible business practices in striving to limit ancillary fees.

**Prisons and Jails Have Similar Costs to Serve.**

CenturyLink's ICS operations mostly serve larger jails and prisons. Nevertheless, its experience shows that the costs to serve jails and prisons are actually similar.<sup>5</sup> This is shown in the data CenturyLink submitted to the Commission. Jails have higher inmate turnover, but they have much higher call volume per inmate. Prisons on average are larger and have higher total call volume than jails, but they have higher security costs. Examining the full costs to provide

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<sup>5</sup> See Ex Parte Letter of Thomas M. Dethlefs, CenturyLink, to Marlene H. Dortch, May 20, 2015, p. 3, noting that CenturyLink acknowledges it does not have sufficient experience with jails under 100 inmates to be informative on costs for those institutions.

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service, prisons and jails are comparable at similar sized facilities. They warrant similar treatment.

**Conclusion.**

Viable reform must be based on realistic assessments, and the Wood Proposal falls short on those for prisons. CenturyLink believes that if the Commission is to assert authority over intrastate calling, its five-part reform recommendation offers a more realistic, balanced, and viable approach. That is (1) a simple, unified rate cap for prepaid or collect calls, (2) strict limits on ancillary fees, (3) site commissions allowed when within the rate cap, (4) separate treatment for uniquely high-cost facilities such as juvenile detention centers, secure mental health facilities, and the smallest jails, and (5) a reasonable transition of at least one budget cycle for institutions.

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this ex parte presentation is being filed in the appropriate docket.

Sincerely,

/s/ Thomas M. Dethlefs

Copy via email to:

Pamela Arluk  
Lynne Engledow  
Madeleine Findley  
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Bakari Middleton  
Thomas Parisi  
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