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ADMITTED IN DC ONLY

August 10, 2015

VIA ECFS

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

Re: WC Docket No. 12-375 - Global Tel*Link Corporation – Written *Ex Parte* Presentation

Dear Secretary Dortch:

Global Tel*Link Corporation (“GTL”),¹ by its attorneys, hereby submits this written *ex parte* in the above-referenced matter² to address the per-minute rate cap proposals for inmate calling services (“ICS”) that have been filed to date.³

¹ This filing is made by GTL on behalf of itself and its wholly owned subsidiaries that also provide inmate calling services: DSI-ITI, LLC, Public Communications Services, Inc., and Value-Added Communications, Inc.

² *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013) (“*ICS Order and First FNPRM*”), *pets. for stay granted in part sub nom. Securus Tech., Inc. v. FCC*, No. 13-1280 (D.C. Cir. Jan. 13, 2014), *pets. for review pending sub nom. Securus Tech., Inc. v. FCC*, No. 13-1280 (D.C. Cir. filed Nov. 14, 2013) (and consolidated cases); *Rates for Interstate Inmate Calling Services*, 29 FCC Rcd 13170 (2014) (“*Second ICS FNPRM*”).

³ This filing does not address issues relating to facility cost recovery, which GTL has addressed in previous filings. *See, e.g.*, WC Docket No. 12-375, Letter from Chérie R. Kiser, Counsel to GTL (dated July 9, 2015), *attaching*, Economists Inc., Further Comparison of Correctional Facility ICS Cost Analyses (dated July 9, 2015) (“*EI July 9 Analysis*”); WC Docket No. 12-375, Letter from Chérie R. Kiser (dated June 29, 2015), *attaching* Economists Inc. Comparison of Correctional Facility ICS Costs Analyses (dated June 25, 2015) (“*EI June 25 Analysis*”); WC Docket No. 12-375, Letter from Chérie R. Kiser, Counsel for GTL (dated Sept. 19, 2014), *attaching* Economists Inc. Correctional Facility ICS Cost Analysis for Global Tel*Link Corporation (dated Sept. 18, 2014); *see also* Declaration of Stephen E. Siwek and Christopher C. Holt in Support of Comments of Global Tel*Link Corporation on Second Further Notice of Proposed Rulemaking (dated Jan. 12, 2015) (“*Siwek/Holt Declaration*”),

The Joint Provider Reform Proposal's Backstop Rate Caps Are Intended to Produce Market-Based ICS Per-Minute Rates

The backstop rate caps under the Joint Provider Reform Proposal⁴ are supported by the record, ICS provider data submitted in response to the FCC's mandatory data collection, and the FCC's own analysis of that data. For example, record evidence demonstrates that five (5) of the largest ICS providers have overall per minute costs ranging between \$0.1341 and \$0.1967 depending on the provider.⁵ In a previous submission, Economists Inc. demonstrated that the "combined" average cost per minute across carriers, facility types, *and* call arrangement types (debit/prepaid and collect) is \$0.150 per minute based on ICS provider cost data.⁶ The record

attached to WC Docket No. 12-375, Comments of Global Tel*Link Corporation on Second Further Notice of Proposed Rulemaking (dated Jan. 12, 2015) ("GTL January 2015 Comments"); Reply Declaration of Stephen E. Siwek and Christopher C. Holt in Support of Reply Comments of Global Tel*Link Corporation on Second Further Notice of Proposed Rulemaking (dated Jan. 27, 2015) ("Siwek/Holt Reply Declaration"), *attached to* WC Docket No. 12-375, Reply Comments of Global Tel*Link Corporation on Second Further Notice of Proposed Rulemaking (dated Jan. 27, 2015) ("GTL January 2015 Reply Comments").

⁴ Letter from Global Tel*Link Corporation, Securus Technologies, Inc., and Telmate, LLC (filed Sept. 15, 2014) (hereinafter "Joint Provider Reform Proposal" or the "Proposal"). Some commenters have alleged that the Proposal's recommendation for a unitary set of backstop rate caps differs from GTL's prior position opposing the adoption of a one-size-fits-all rate. *See, e.g.*, Pay Tel Ex-Parte Presentation (dated Oct. 2, 2014). This is not the case. Pay Tel fails to understand GTL's position. In its prior filings, GTL explained that the FCC could not establish an ICS rate that failed to account for the differences in the service needs of correctional facilities and their varying security requirements, *i.e.*, there is no one-size-fits-all rate for the varying security and service requirements of each correctional facility. This fact is well-established by the FCC and the record. *See, e.g.*, *ICS Order and First FNPRM* ¶¶ 8, 58 (recognizing "the legitimate and unique requirements for security and public safety in the provision of inmate phone services" and "the critical security needs of correctional facilities."); *Second ICS FNPRM* ¶ 19 (taking "steps to reform and modernize interstate and intrastate ICS regulations while ensuring adequate security measures for correctional facilities"); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 17 FCC Rcd 3248, ¶ 9 (2002) ("inmate calling services, largely for security reasons, are quite different from the public payphone services that non-incarcerated individuals use"); *Billed Party Preference for InterLATA 0+ Calls*, 13 FCC Rcd 6122, ¶ 46 (1998) (noting "special security requirements applicable to inmate calls"); *see also* WC Docket No. 12-375, Petition for Reconsideration of the National Sheriffs' Association at 2 (filed Dec. 13, 2013) ("Inmate telephone systems are built to reflect the unique needs of each correctional facility and provide a variety of important security components."); WC Docket No. 12-375, Letter from American Jail Association (filed Nov. 1, 2013) (discussing "the complex and specialized environment in which inmate calling services are offered"); Louisiana Department of Public Safety and Corrections March 2013 Comments at 8 (discussing "the unique nature of the provision of an offender telephone system"); Idaho Department of Correction March 2013 Comments at 1 (noting "the unique nature of corrections and the important need to balance security needs and family contact").

⁵ *See, e.g.*, Global Tel*Link Corporation Response to Mandatory Data Collection, Description & Justification, at 3 (filed Aug. 22, 2014); Telmate, LLC Response to Mandatory Data Collection, Report Implementing the FCC Mandatory Data Collection, at 3 (filed Aug. 18, 2014); Pay Tel Communications, Inc. Response to Mandatory Data Collection, Cost Analysis of Inmate Calling Services, at 2 (filed Aug. 18, 2014); Securus Technologies, Inc. Response to Mandatory Data Collection, Report Implementing the FCC Mandatory Data Collection, at 3 (filed July 17, 2014); *Second ICS FNPRM* ¶ 60 (providing rates for CenturyLink) (citing CenturyLink August 2, 2013 Letter at 3).

⁶ Siwek/Holt Declaration ¶¶ 5, 6, 7.

evidence and Economists Inc.'s analysis also is consistent with the FCC's own findings on average ICS costs.⁷

There have been questions as to the reliability of the cost data submitted by ICS providers.⁸ Any perceived variations in the cost data are easily explained by the way in which the FCC designed the data collection and the way in which individual ICS providers retain and report their data. Further, as CenturyLink explains, inconsistencies between the reported data do not mean the "cost data is somehow suspect."⁹ It means that some ICS providers allocate costs differently than others or reported the data in a different manner, as was recognized by the FCC.¹⁰ Regardless, the FCC "must use 'the best data available'" in its decision making,¹¹ and the ICS provider cost data represents "the best underlying data available that can be verified by interested parties and the Commission" with "[a]ll data, formulas, and other aspects of the models" being "made available to other parties for their evaluation."¹²

In the attached analysis, Economists Inc. analyzes the rate cap proposals by other parties by market segment using the confidential cost data as reported by the 12 ICS providers that supplied their confidential cost data to Economists Inc.¹³ As shown in Figure C, the average overall debit/prepaid costs for 9 out of 12 ICS providers are below the Joint Provider Reform Proposal's backstop rate cap for debit/prepaid calls.¹⁴ Importantly, the three (3) carriers with average costs above the Joint Provider Reform Proposal's backstop rate cap account for only 0.5

⁷ *Second ICS FNPRM* ¶ 53. Economists Inc. ascertained that the cost figures reported in the FCC's Table One reflected ICS providers' total costs (both common and direct costs) rather than just common costs as indicated in Table One. *See* Siwek/Holt Declaration ¶ 6.

⁸ *See, e.g.*, Letter from Martha Wright Petitioners (dated Sept. 17, 2014) (providing "general concerns with the data submissions" based on information from consultant Coleman Bazelon). GTL has responded to Mr. Bazelon's specific concerns with GTL's data submissions, and will not re-state those responses here. *See* Siwek/Holt Declaration ¶¶ 4-6. The FCC designed the data collection and ICS providers responded based on their particular business operations with reliance on internal accountants and outside economic consultants as necessary. There is no evidence that Mr. Bazelon's opinion holds any more weight than the opinions of these other highly-qualified and trained consultants and in-house subject-matter experts who provided company-specific information and analyses in this proceeding. Indeed, other outside consultants specifically have said that the filings of "eight ICS providers – Pay Tel Communications, Securus, GTL, NCIC, Lattice, ICSolutions, Telmate, and CenturyLink – provide important and reliable information that should be relied upon by the Commission." *See* WC Docket No. 12-375, Expert Report of Don J. Wood (dated Jan. 12, 2015).

⁹ WC Docket No. 12-375, Letter from CenturyLink (dated May 20, 2015).

¹⁰ *Second ICS FNPRM* ¶ 52 ("we note that, as a whole, ICS providers allocated common costs among types of facilities and types of services differently as compared to the volumes of traffic those facilities and services experienced").

¹¹ *Association of Private Sector Colleges & Universities v. Department of Education*, 2015 WL 3866659 (D.C. Cir. June 23, 2015) ("the APA does not 'demand the perfect at the expense of the achievable.' Instead, 'the accuracy of any particular [data] ... must be evaluated by reference to the data that was available to the agency at the relevant time.' Agencies, in other words, must use 'the best data available'") (internal citations omitted).

¹² *WorldCom, Inc.*, 18 FCC Rcd 17722, ¶ 38 (2003).

¹³ Stephen E. Siwek and Christopher C. Holt, Further Comments with Regard to Rate Cap Proposals (dated August 10, 2015) ("Siwek/Holt Further Comment on Rate Cap Proposals").

¹⁴ *Id.* at 8.

percent (0.5%) of all debit/prepaid minutes of use. The Proposal’s backstop rate cap for debit/prepaid calls therefore represents an appropriate and reasonable industry-wide average rate that covers 99.5 percent (99.5%) of all debit/prepaid minutes of use reported by these ICS providers.

The “use of industry-wide averages in setting rates is not novel” and “the Supreme Court has affirmed ratemaking methodologies employing composite industry data or other averaging methods on more than one occasion.”¹⁵ For example, the Supreme Court “has repeatedly recognized that legislatures and administrative agencies may calculate rates for a regulated class without first evaluating the separate financial position of each member of the class; it has been thought to be sufficient if the agency has before it representative evidence, ample in quantity to measure with appropriate precision the financial and other requirements of the pertinent parties.”¹⁶ Agency ratemaking does not “require that the cost of each company be ascertained and its rates fixed with respect to its own costs.”¹⁷

The “imposition of maximum prices” may not be rejected “merely because ‘high cost operators may be more seriously affected . . . than others.’”¹⁸ Recognizing the need for “more expeditious administrative methods,” the Supreme Court found that “rate-making agencies are not bound to the service of any single regulatory formula; they are permitted . . . ‘to make the pragmatic adjustments which may be called for by particular circumstances.’”¹⁹ The FCC “has broad discretion in selecting methods to evaluate the reasonableness of rates,”²⁰ and it “is not arbitrary . . . for an industry-wide rate regulatory scheme to use industry-wide average cost data.”²¹

As the FCC recognized in the *ICS Order and First FNPRM*, a unitary set of ICS rate caps based on the average costs of serving multiple facilities allows for cost variances among correctional facilities.²² “It is a given that when a regulatory pricing structure is established, providers subject to those rates will serve higher and lower cost customers or locations and will effectively be required to average its costs among those customers.”²³ This is no different than wireline or wireless carriers that use regional or nationwide prices to serve end users with a wide range of cost and traffic characteristics.²⁴ Moreover, as the FCC acknowledged, “no regulatory rate structure is precise enough to account for the differences between all providers let alone all

¹⁵ *Southwestern Bell Telephone Co. v. FCC*, 168 F.3d 1344, 1352 (D.C. Cir. 1999).

¹⁶ *Permian Basin Area Rate Cases*, 390 U.S. 747, 769 (1968).

¹⁷ *FPC v. Texaco Inc.*, 417 U.S. 380, 387 (1974).

¹⁸ *Permian Basin*, 390 U.S. at 769 (citing *Bowles v. Willingham*, 321 U.S. 503, 518 (1944)).

¹⁹ *Permian Basin*, 390 U.S. at 776-77 (citing *FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575, 586 (1942)).

²⁰ *AT&T Corp., Complainant v. Business Telecom, Inc., Defendant*, 16 FCC Rcd 12312, ¶ 25 (2001).

²¹ *Edison Elec. Institute v. ICC*, 969 F.2d 1221, 1226 (D.C. Cir. 1992).

²² *ICS Order and First FNPRM* ¶ 63, n.230.

²³ *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 15927, ¶ 31 (2013) (“*Order Denying Stay*”).

²⁴ *ICS Order and First FNPRM* at n.280; see also *Order Denying Stay* ¶ 31.

the locations served by each provider”²⁵ and the rate cap “approach is tailored to provide flexibility for the ICS providers.”²⁶

The FCC also has recognized the benefits of utilizing industry average cost data for setting rates in other settings. In the price cap context, the FCC found that using “industry average data” would “likely improve economic efficiency” as all price cap carriers would “now face the same efficiency incentives.”²⁷ In the rate-of-return framework, the FCC determined that it:

has unquestioned authority and wide discretion to prescribe multi-carrier rates of return for geographic or other logical groups in a regulatory environment in which prescription of individual carrier rates of return threatens a complete breakdown of the administrative process. The single exchange carrier group that we have adopted is based upon decisionally significant, typical, shared financial and risk characteristics in providing interstate access service, and provides a reasonable and effective procedure to determine rates of return under the circumstances we face. Accordingly, it is within the Commission’s discretion to adopt one group of all exchange carriers, even though significant economic consequences to individual carriers may result, especially since we have provided carriers with the opportunity to seek special relief by requesting exclusion from the group and by requesting individual treatment.²⁸

The same holds true in the ICS context. The ability to seek a waiver negates any potential “economic consequences to individual carriers” that may result from adoption of the Proposal’s backstop rate caps. Under the Proposal, any ICS provider who believes its costs for a particular correctional facility exceed the backstop rate caps may seek a waiver.²⁹ The majority of ICS providers support the ability to seek waivers as necessary for those facilities that may present unique circumstances.³⁰ Under the FCC’s current regime, the interim interstate ICS rate

²⁵ *Order Denying Stay* ¶ 32.

²⁶ *ICS Order and First FNPRM* at n.195. The use of the Joint Provider Reform Proposal backstop rate cap allows for the flexibility endorsed by the FCC because it gives ICS providers the ability to price their services based on the specific security and service needs requested by each correctional facility, while achieving the FCC’s goals of just and reasonable rates to inmates and their families and fair compensation to ICS providers.

²⁷ *Price Cap Performance Review for Local Exchange Carriers*, 12 FCC Rcd 16642, ¶ 158 (1997); *see also* WC Docket No. 12-375, Letter from Andrew D. Lipman at 29-30 (dated July 21, 2015).

²⁸ *Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers*, 59 Rad. Reg. 2d 651, ¶ 16 (1985).

²⁹ Proposal at 2-3. The Proposal contemplated that “waivers could be sought to provide service to individual mental health facilities, youth work camps, and other facilities with unique environments (security or otherwise) that increase the cost of providing service beyond the cap.” *See id.* at n.5.

³⁰ *See, e.g.*, GTL January 2015 Comments at 13-14; Securus January 2015 Comments at 40-41; CenturyLink January 2015 Reply Comments at 31; WC Docket No. 12-375, Pay Tel Ethical Proposal for Reform of Inmate Calling Rates and Fees (filed Oct. 3, 2014) (stating its proposed rates would be subject to waiver process for facilities with costs above the proposed rate caps); *see also* Michael Hamden January 2015 Comments at 16-17 (supporting waiver process).

caps are subject to waiver “in extraordinary circumstances and for good cause shown.”³¹ In the past, the FCC has declined to provide “a quantitative definition of ‘exceptional circumstances’ because determination of what is exceptional necessarily must be made case-by-case based upon the entire showing made by the carrier” and “[t]o quantify ‘exceptional circumstance’ in a vacuum would promote certainty at the expense of reason.”³² The availability of the waiver procedure eliminates the need to modify the Proposal’s backstop rate caps for the possibility that an extremely small share (0.5%) of the ICS market is served by ICS providers that may have higher costs.

The “Below-Cost” Rate Cap Proposals by Others Are Not Supported by Record Evidence and Legally Unsound

Economists Inc. demonstrates in the attached analysis that the below-cost rate caps proposed by Pay Tel, Baker/Wood,³³ HRDC, and the Wright Petitioners are unrealistic and unsupported by evidence.³⁴ Those proposed rate caps are at or below the average costs per minute reported by ICS providers to varying degrees.³⁵ These below-cost proposals are untenable because they would require a significant portion of the ICS market to operate at a loss

³¹ *ICS Order and First FNPRM* at n.270.

³² *Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers*, 59 Rad. Reg. 2d 651, ¶ 21 (1985).

³³ Darrell Baker directs the Utility Services Division within the Alabama Public Service Commission (“PSC”), which has responsibility for oversight of ICS providers. *See* Ala. Code § 37-1-32 (stating the PSC has “general supervision of all persons, firms and corporations operating utilities mentioned in this title,” including providers of telecommunication services); *see also* APSC Annual Report 2014 at 3, 35, 43-44. The Alabama PSC’s Code of Ethics provides “[e]mployees should avoid any conduct that may undermine the public trust.” *See* <http://www.psc.state.al.us/Releases/2010/EthicsPolicyRelease.pdf>. Mr. Baker’s decision to team up with Pay Tel (a carrier that is regulated by Mr. Baker and the PSC) and Pay Tel’s economic consultant in joint presentations to the FCC raises questions about whether Mr. Baker has engaged in behavior that gives rise to an appearance of impropriety under the PSC’s Code of Ethics. Moreover, the position taken by Mr. Baker in conjunction with Pay Tel’s consultant are contrary to the decisions made by the Alabama PSC with respect to ICS rate caps, site commission payments, and permissible ancillary fees. *Compare* WC Docket No. 12-375, Alabama Public Service Commission Ex Parte, Further Order, Appendix D (filed Jan. 16, 2015) *with* WC Docket No. 12-375, Ex Parte Notification filed by Darrell Baker and Don Woods (dated July 1, 2015) (providing Framework for Consideration”).

³⁴ *See* Siwek/Holt Further Comment on Rate Cap Proposals at Table 1, p.1; Table 2, p.5. On July 1, 2015, Baker/Wood submitted a “Framework for Consideration” that included proposed per-minute rate caps as well as proposed rates for facility cost recovery. *See* WC Docket No. 12-375, Letter from Darrell Baker (dated July 1, 2015) (reporting ex parte notification of meeting between FCC staff, Baker, and Don Wood, consultant for Pay Tel). On July 8, 2015, Mr. Baker submitted a “further analysis of provider specific costs and facility compensation,” which both continued to endorse as well as revise the recommendations from the Baker/Wood filing made July 1. *See* WC Docket No. 12-375, Letter from Darrell Baker (dated July 8, 2015). Subsequently, Mr. Baker submitted a revision to the July 8 analysis, which continued to endorse recommendations from the July 1 Baker/Wood filing. *See* WC Docket No. 12-375, Letter from Darrell Baker (dated July 12, 2015). For sake of completeness, we refer herein to the most recent reiteration of the Baker/Wood analysis as filed on July 12, 2015. As the Human Rights Defense Center points out, however, the “shifting numbers” presented by Baker/Wood “indicate the arbitrary nature of such rates.” *See* WC Docket No. 12-375, Letter from Human Rights Defense Center at 8 (dated July 29, 2015).

³⁵ *See* Siwek/Holt Further Comment on Rate Cap Proposals at Table 1, Table 2, Figures A, B, and C.

and leave no room to meet the individual needs of the wide-variety of correctional facilities.³⁶ For example, in the case of the proposals made by Pay Tel and the Wright Petitioners, approximately eighty-two percent (82%) of all debit/prepaid prison minutes of use would be provided at below-cost rates; in the case of HRDC's proposal, the percentage below cost jumps to 100%.³⁷

In addition to being economically unsound, the below-cost proposals are contrary to well-established law. As other parties have pointed out, FCC precedent holds that "rates must be based primarily on the cost of service, including a reasonable return on investment (*i.e.*, profit)."³⁸ The FCC's policy consistently has been "that cost of providing service is at the heart of the statutory requirements under Sections 201-205 of the Act for just, reasonable and non-discriminatory rates and that costs are to be directly controlling in the fixing of rates, or are to be considered as reference points or benchmarks, from which to measure the extent of any departures therefrom."³⁹ The ratemaking process "involves a balancing of the investor and the consumer interests . . . the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business."⁴⁰ Thus, the FCC cannot impose rates so low that ICS providers cannot possibly recover their costs⁴¹ and cannot adopt rate regulation that effectively guarantees carriers an economic loss,⁴² both of which will result from adoption of the below-cost rate proposals.

There Is No Economic or Legal Justification for Tiered ICS Rates

As GTL previously has explained, use of tiered rates will not help achieve the FCC's goal of realizing lower ICS rates and promoting competition.⁴³ A tiered rate scheme removes the flexibility ICS providers require to respond to the specific needs of correctional facilities. The record demonstrates that the per-minute price at many correctional facilities is driven by the specific communications and security needs of the facility regardless of whether it is a jail or

³⁶ CenturyLink reached a similar conclusion, finding that "[w]hen common costs are allocated on a per-minute-of-use basis, excluding site commissions, the average cost for debit/prepaid calls in prisons is \$0.14 per minute and for collect calls is approximately \$0.17 per minute. See WC Docket No. 12-375, Letter from CenturyLink (dated July 20, 2015) (citing *Second ICS FNPRM* ¶ 53).

³⁷ Siwek/Holt Further Comment on Rate Cap Proposals at 4-5.

³⁸ Letter filed by Andrew D. Lipman at 2 (dated Feb. 20, 2015); *Alabama Cable Telecomms. Ass'n v. Alabama Power Co.*, 16 FCC Rcd 12209, ¶ 51 (2001) ("if the end results of the regulations are '[r]ates which enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed' then the regulations are constitutionally valid") (citing *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 605 (1944)); see also *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989).

³⁹ *AT&T Co., (Long Lines Department) Transmittal No. 11935*, 59 FCC 2d 671, ¶ 13 (1976).

⁴⁰ *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

⁴¹ WC Docket No. 12-375, Letter from Andrew D. Lipman at 2-3 (dated Feb. 20, 2015); WC Docket No. 12-375, Letter From Andrew D. Lipman at 23-27 (dated July 21, 2015).

⁴² *AT&T v. FCC*, 836 F.2d 1386, 1391-92 (D.C. Cir. 1988) (rejecting FCC rule that would "guarantee the regulated company an economic loss").

⁴³ *Second ICS FNPRM* ¶ 70; see also Siwek/Holt Declaration ¶ 12.

prison.⁴⁴ “[P]ermitting flexibility in price-setting generates economic efficiencies that benefit ratepayers through lower rates.”⁴⁵ ICS providers must have the ability to tailor their services based on correctional facility requests. The use of backstop rate caps, as part of a “market-based approach” provides that flexibility and ensures all “customers receive the benefits of more efficient prices, even in those places and for those services where competition does not develop quickly.”⁴⁶ Adoption of a single set of rate caps for all correctional facilities allows the parties with the most knowledge about the correctional facility - correctional officials and the ICS provider - to determine the appropriate rates for ICS at the particular facility based on the security needs of that facility.⁴⁷

There is no economic justification for a tiered rate structure based on an arbitrary distinction between “jails vs. prisons.” As the attached Economists Inc. analysis explains,⁴⁸ while prisons and jails might be considered different types of facilities, there is no economically significant distinction between the two when it comes to the cost of providing ICS service.⁴⁹ Rather, the economies of scale observed in the ICS industry appear to be driven mainly by prison population, call volume, and the specific service needs of the correctional facility.

The “differences between jails and prisons are not absolute,”⁵⁰ and there is scant record evidence that would support establishing a complex and difficult to enforce system of ICS rates based on the type of correctional facility. Record evidence shows that jails do not always have higher costs than other larger facilities;⁵¹ for some ICS providers, the cost of serving prisons exceeds the cost of serving a jail⁵² or “the costs to serve jails and prisons are actually similar.”⁵³

⁴⁴ See, e.g., GTL January 12, 2015 Comments at 13-14 (explaining that adoption of a single set of rate caps for all correctional facilities allows the parties with the most knowledge about the correctional facility - correctional officials and the ICS provider - to determine the appropriate rates for ICS at the particular facility based on the security needs of that facility).

⁴⁵ *Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786, ¶ 35 (1990) (“1990 Order”).

⁴⁶ *Access Charge Reform, et al.*, 12 FCC Rcd 15982, ¶ 267 (1997).

⁴⁷ GTL January 2015 Comments at 12-13.

⁴⁸ Siwek/Holt Further Comment on Rate Cap Proposals at 6-7.

⁴⁹ WC Docket No. 12-375, Letter from Human Rights Defense Center (dated July 29, 2015) (providing information to demonstrate that “large jails can share the same economies of scale as prison systems, that differentiating between ICS rates at large jails and small DOCs makes little sense, and again illustrates the arbitrary nature of the higher jail rates and tiered rate structure proposed by Pay-Tel and Mr. Baker”).

⁵⁰ *Second ICS FNPRM* ¶ 67 (citing CenturyLink January 2014 Comments at 5-6).

⁵¹ Martha Wright December 2013 Comments at 11-12; WC Docket No. 12-375, CenturyLink Ex Parte at 3 (dated Oct. 10, 2014).

⁵² WC Docket No. 12-375, Letter from CenturyLink (dated Apr. 28, 2015) (“These rate caps should be uniform across facilities. CenturyLink noted that while ICS providers incur certain unique costs to serve jails, ICS providers also incur certain unique costs to serve prisons. In CenturyLink’s experience, the cost to serve jails with more than 100 inmates and the cost to serve prisons are comparable. Accordingly, the Commission should not adopt a tiered rate cap structure that presupposes that prisons are necessarily less costly to serve than jails.”); see also Letter from Human Rights Defense Center (dated July 29, 2015) (providing examples that “call[] into serious question the propriety of a tiered rate structure based on facility size or ADP – particularly at the levels suggested by Pay-Tel and Mr. Baker – as well as the tiered cost recover proposed by the NSA”); *Second ICS FNPRM* ¶ 53

Tiered rates based on an artificial “jails vs. prisons” construct also raises serious legal concerns as the rates would discriminate against consumers based on the type of facility an inmate is housed in.⁵⁴ It is difficult to justify to consumers with loved ones in jails that they should pay more simply because their loved one is incarcerated in a jail rather than a prison.⁵⁵ It is inconsistent with the basic tenets of the Communications Act and FCC policy to discriminate between similarly situated customers based on an “empty distinction” such as the type of facility.⁵⁶ While pricing differences based on the specific communications needs of a correctional facility are permissible under Section 202(a),⁵⁷ a price differential based on the artificial designation of a facility as a prison or a jail undermines well-established nondiscrimination principles of 202(a). This is the reason Congress and the FCC prohibit interexchange carriers from discriminating against subscribers in rural and high cost areas by charging them more than subscribers in urban areas for the same long distance service.⁵⁸ Pricing differences should be based on service distinctions and the individual case basis requirements of a correctional facility,⁵⁹ not on the label assigned to a correctional facility.

In sum, the ICS rates set forth in the Joint Provider Reform Proposal are economically reasonable and are supported by the record, cost analysis, and ICS cost provider data. The FCC

(analysis of ICS provider data demonstrates that the cost of serving jails versus the cost of serving prisons is similar).

⁵³ WC Docket No. 12-375, Letter from CenturyLink (dated July 20, 2015). According to CenturyLink, “[w]hile jails incur a number of unique costs, there are many unique factors that similarly increase the cost to serve prisons.” See WC Docket No. 12-375, Letter from CenturyLink (dated May 20, 2015).

⁵⁴ GTL January 2015 Reply Comments at 8; see also Ex Parte Submission of Securus (dated July 27, 2015).

⁵⁵ ICSolutions January 2015 Comments at 21; GTL January 2015 Reply Comments at 8.

⁵⁶ 47 U.S.C. § 202(a) (making “unjust or unreasonable discrimination” unlawful); see also Securus January 2015 Comments at 24.

⁵⁷ Individually negotiated contracts are not unreasonably discriminatory under Section 202(a) when made generally available to other similarly situated customers willing and able to meet the contract’s terms. See *Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880, ¶ 129 (1991). An inquiry under Section 202(a) requires a review of: (1) whether the services are “like;” (2) if they are “like,” whether there is a price difference; and (3) if there is a difference whether it is reasonable. *MCI Telecommunications Corp. v. FCC*, 842 F.2d 1296, 1303 (D.C. Cir. 1988).

⁵⁸ 47 U.S.C. § 254(g); 47 C.F.R. § 64.1900. The FCC has found “the rate integration policy codified in section 254(g) derived from section 202(a) the requirement that rates not be unreasonably discriminatory.” See *Policy and Rules Concerning the Interstate Interexchange Marketplace*, 14 FCC Rcd 391, ¶ 15 (1998).

⁵⁹ Correctional facility ICS are and always have been provided pursuant to contract because they are individual case basis (“ICB”) offerings, which have been recognized as beneficial to consumers. See *ICS Order and First FNPRM* ¶ 2; see also, e.g., *AT&T Communications Revisions to Tariff F.C.C. No. 12*, 4 FCC Rcd 4932, ¶¶ 47, 61 (1989) (“We have no doubt that carriers will continue to offer integrated service packages in response to indications of very real customer demand for such offerings. . . . Customers have characterized this as a ‘turnkey’ approach”) (subsequent history omitted); see also *Price Cap Performance Review for Local Exchange Carriers*, 11 FCC Rcd 858, ¶¶ 61-62 (1995) (“ICB pricing is the practice of developing a price for a particular service or facility in response to each customer request for the service or facility”); *Local Exchange Carriers’ Individual Case Basis DS3 Service Offerings*, 23 FCC Rcd 569, n.2 (2008) (finding ICB offerings “refer to the carrier practice of providing a particular service in response to a specific request from a customer under individualized rates, terms, and conditions”) (internal citations omitted).

must select rate caps that are (1) low enough to protect end users from exorbitant rates, but (2) high enough to allow a market-based solution to take effect.⁶⁰ The rate caps proposed by the Joint Provider Reform Proposal meet these criteria, and should be adopted.

Pursuant to Section 1.1206(b) of the FCC's rules, a copy of this notice is being filed in the appropriate docket.

Please contact me if you have any questions regarding this matter.

Respectfully submitted,

/s/ Chérie R. Kiser

Chérie R. Kiser

Counsel for Global Tel*Link Corporation

Attachment

cc (via e-mail): Madeleine Findley
Pamela Arluk
Lynne Engledow
Rhonda Lien
Bakari Middleton
Thomas Parisi
Gil Strobel
Don Sussman

⁶⁰ GTL January 2015 Comments at 8 (citing Siwek/Holt Declaration ¶ 4). Further, as stated in the Proposal, it is in the best interests of all parties to address ICS rate issues conclusively and in a manner that resolves the market uncertainty caused by the ongoing proceedings at the FCC and the courts. For that reason and in the spirit of compromise and consensus, GTL supports the adoption of three inextricably-linked components of the Proposal – implementation of non-tiered backstop rate caps, reform of the existing site commission system, and acceptance of the Proposal's backstop rate caps for ancillary charges.

Further Comments with Regard to Rate Cap Proposals

Stephen E. Siwek and Christopher C. Holt

Economists Incorporated

August 10, 2015

I. INTRODUCTION

Several parties have proposed rate caps on the provision of inmate calling services (“ICS”) in this proceeding. These proposals are summarized in Table 1.

TABLE 1: SUMMARY OF PROPOSED RATE CAPS

	Proposed Cap(s)	
Party	Jails	Prisons
CenturyLink	\$0.21 (Debit/Prepaid); \$0.25 (Collect) (excluding certain specialized facilities and those with less than 100 beds)	
Joint Provider Reform Proposal	\$0.20 (Debit/Prepaid); \$0.24 (Collect)	
Human Rights Defense Center (HRDC)	\$0.05	
NCIC	\$0.21 (Debit/Prepaid); \$0.25 (Collect) (“short-term facilities”)	\$0.12 (Debit/Prepaid); \$0.14 (Collect) (“longer-term facilities”)
Darrell Baker/Don Wood	\$0.18 to \$0.21 (\$0.19 Composite)	\$0.08 to \$0.12 (\$0.10 Composite)
Pay Tel	\$0.16 to \$0.22	\$0.08
Martha Wright Petitioners/Coleman Bazelon	\$0.08 (Debit/Prepaid); \$0.10 (Collect); + \$0.10 for Jails < 350 Beds	\$0.08 (Debit/Prepaid); \$0.10 (Collect)

Sources: Reply Comments of CenturyLink, WC Docket No. 12-375 (Jan. 27, 2015) at 2; Comments of Network Communications International Corp., WC Docket No. 12-375 (Jan. 12, 2015); Joint Letter of Global Tel*Link, Securus, and Telmate to Chairman Wheeler, et al., WC Docket No. 12-375 (Sept. 15, 2014) [hereinafter “Joint Provider Reform Proposal”]; Second Further Notice Declaration of Coleman Bazelon, WC Docket No. 12-375 (Jan. 12, 2015) at 6; Letter from Human Rights Defense Center, WC Docket No. 12-375 (July 29, 2015) at 11; Pay Tel, Ex Parte Presentation, “Proposed ICS Rules”, WC Docket No. 12-375 (Jul. 14, 2015) at 4; Darrell Baker, Ex Parte Presentation, WC Docket No. 12-375 (July 12, 2015) [hereinafter Baker/Wood Proposal] at 4, 5.

Pay Tel, Baker/Wood,¹ and other parties have proposed tiered rate caps that vary based on facility size and type.² Pay Tel's proposal, for example, is based largely upon a concern that its competitors will achieve a competitive advantage by allowing them significant leeway in pricing for large facilities, thus creating the opportunity for "windfall" profits.³ Pay Tel has proposed a rate cap of \$0.08 per minute for all prison facilities, asserting that "the cap will become the rate" and that "future cost savings will result in more money to the provider and/or facility instead of a cost savings for the consumer."⁴ These claims ignore basic economic principles which suggest that eliminating the existing site commission regime in exchange for an admin-support payment based on legitimate costs associated with having ICS in correctional facilities will allow market forces to put downward pressure on ICS prices. As stated in previous filings, these market effects already can be observed empirically; in states that have eliminated site commissions, end-user prices for ICS service have dropped significantly.⁵ A uniform rate cap is superior to a tiered rate cap because it allows ICS providers to cross-subsidize facilities in the most efficient manner and is consistent with the Commission's intent to impose a "backstop" rate cap, rather than traditional price cap or rate-of-return regulation.⁶ For example, a uniform backstop rate cap allows ICS providers to better respond to the varying needs of individual correctional facilities.⁷ Correctional facilities similar in size and population may have very different communications needs based on their purpose (*e.g.*, housing in a minimum vs. maximum security setting). Such service demands of the facility ultimately influence the costs of providing ICS, and therefore the price to be charged to the end-user. Correctional facility ICS

1. On July 1, 2015, Baker/Wood submitted a "Framework for Consideration" that included proposed per-minute rate caps as well as proposed rates for facility cost recovery. *See* WC Docket No. 12-375, Letter from Darrell Baker (dated July 1, 2015) (reporting *ex parte* notification of meeting between FCC staff, Baker, and Don Wood, consultant for Pay Tel). On July 8, 2015, Mr. Baker submitted a "further analysis of provider specific costs and facility compensation," which both continued to endorse as well as revise the recommendations from the Baker/Wood filing made July 1. *See* WC Docket No. 12-375, Letter from Darrell Baker (dated July 8, 2015). Subsequently, Mr. Baker submitted a revision to the July 8 analysis, which continued to endorse recommendations from the July 1 Baker/Wood filing. *See* WC Docket No. 12-375, Letter from Darrell Baker (dated July 12, 2015). For sake of completeness, we refer herein to the most recent reiteration of the Baker/Wood analysis as filed on July 12, 2015.

2. *See, e.g.*, Pay Tel, Ex Parte Presentation, "ICS Reform Pay Tel Ex Parte Presentation", WC Docket No. 12-375 (Jul. 14, 2015) [hereinafter "Pay Tel July 14, 2015 Presentation"] at 5; Baker/Wood Proposal at 4, 5; *see also* Table 1.

3. *See, e.g.*, Expert Report of Don J. Wood, WC Docket No. 12-375 (Jan. 12, 2015) at 32; *see also* Pay Tel, Ex Parte Presentation, "Further Response to Joint Filing of Global Tel*Link (GTL), Securus, and Telmate", WC Docket No. 12-375 (Jan. 7, 2015) at 4-8, ("Pay Tel Further Response to Joint Provider Proposal").

4. Pay Tel July 14, 2015 Presentation at 9.

5. *See* Declaration of Stephen E. Siwek and Christopher C. Holt in Support of Comments of Global Tel*Link Corporation on Second Further Notice of Proposed Rulemaking, WC Docket No. 12-375 (Jan. 12, 2015) [hereinafter Siwek/Holt Jan. 12, 2015 Declaration] note 8.

6. *See* Siwek/Holt Jan. 12, 2015 Declaration at 5-6; *see also* Rates for Interstate Inmate Calling Services, 29 FCC Rcd 13170, ¶ 47 (2014) [hereinafter "Second ICS FNPRM"].

7. *See* GTL January 12, 2015 Comments at 13-14 (explaining that adoption of a single set of rate caps for all correctional facilities allows the parties with the most knowledge about the correctional facility - correctional officials and the ICS provider - to determine the appropriate rates for ICS at the particular facility based on the security needs of that facility).

are, and always have been, provided pursuant to individual case basis (“ICB”) contracts because they are tailored to fit the unique requirements of a given facility.⁸

Below we compare ICS providers’ reported costs with proposed caps. We note that several are below reported costs per minute of use (“MOU”). We also conclude that the technical distinction between jails and prisons does not bear relevance to the costs incurred by ICS providers at these facilities. Rather, costs are driven by inmate population, call volume, and the specific security and service needs of the correctional facility.

II. ICS PROVIDERS’ AVERAGE COSTS PER MOU

We begin by comparing the debit/prepaid rate cap of \$0.20 per minute put forward by GTL, Securus, and Telmate (as put forward in the “Joint Provider Reform Proposal”) with ICS carriers’ costs per minute as reported to the Commission.⁹ Carriers generally reported disparate costs per minute based on facility size category.¹⁰ Some carriers exhibit a wider distribution of costs per minute than others. For example, one carrier reported costs ranging from \$0.06 to \$0.36 per minute. In several cases, these costs per minute exceed the proposed rate cap of \$0.20 per minute (indicated by the solid black line). However, for all but three carriers, average overall costs (indicated by the dotted black line) were below the Joint Provider Reform Proposal backstop cap. Figure A shows average debit/prepaid costs per minute as reported by the 12 carriers for which we have received data.¹¹ The Joint Provider Reform Proposal debit/prepaid rate cap is indicated with the horizontal black line.

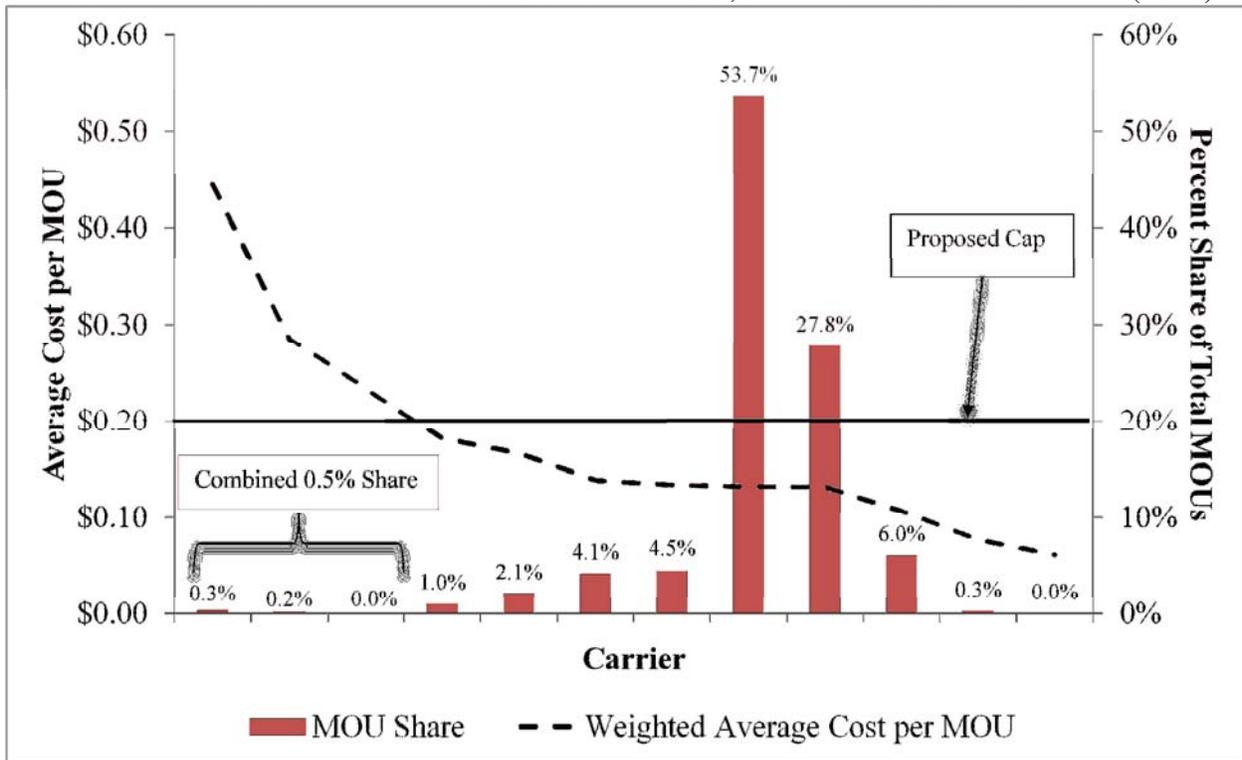
8. Rates for Interstate Inmate Calling Services, 28 FCC Rcd 14107, ¶ 21 (2013). ICS is provided pursuant to individual case basis (“ICB”) contracts, which have long have been recognized as beneficial to consumers. *See, e.g., AT&T Communications Revisions to Tariff F.C.C. No. 12*, 4 FCC Rcd 4932, ¶¶ 47, 61 (1989) (“We have no doubt that carriers will continue to offer integrated service packages in response to indications of very real customer demand for such offerings. . . . Customers have characterized this as a ‘turnkey’ approach”) (subsequent history omitted); *see also Price Cap Performance Review for Local Exchange Carriers*, 11 FCC Rcd 858, ¶¶ 61-62 (1995) (“ICB pricing is the practice of developing a price for a particular service or facility in response to each customer request for the service or facility”); *Local Exchange Carriers’ Individual Case Basis DS3 Service Offerings*, 23 FCC Rcd 569, n.2 (2008) (finding ICB offerings “refer to the carrier practice of providing a particular service in response to a specific request from a customer under individualized rates, terms, and conditions”) (internal citations omitted).

9. We do not review costs associated with collect calls here, noting that most carriers reported costs per minute for collect calls in excess of the proposed cap of \$0.24 per minute. However, we note that the same principles are applicable.

10. Two of the twelve carriers reported uniform costs across multiple facility categories. This is likely an artifact of those carriers’ methodologies for calculating costs.

11. Carriers’ identities have been made anonymous. Identifying letters are not intended to be consistent across figures (*i.e.*, carrier “A” in Figure A is not necessarily the same provider as carrier “A” in Figure B).

FIGURE A: DEBIT/PREPAID AVERAGE COSTS PER MOU, SHARE OF MOUS BY CARRIER (2013)



Source: Carrier cost submissions to FCC

Figure A also includes each carrier’s share of total debit/prepaid MOUs in 2013. Notably, those carriers reporting average costs per minute above the proposed cap account for only 0.5 percent of all debit/prepaid MOUs in 2013. In other words, 99.5 percent of debit/prepaid services appear to be provided by carriers that reported costs below the proposed rate cap.

III. RATE CAPS PROPOSED BY BAKER/WOOD, HRDC, PAY TEL, AND MARTHA WRIGHT PETITIONERS ARE UNREALISTIC

The rates caps proposed by Baker/Wood, Pay Tel, HRDC, and the Wright Petitioners are unrealistic because they are at or below average costs per minute for a significant portion -- 45 to 100 percent, depending on the rate cap proposal -- of the ICS market.¹² Table 2 illustrates these percentages across market segments.

12. To determine this percentage, we first calculated 2013 average costs for each carrier and within each FCC facility size category. We classify an ICS provider as having costs at or below a cap in a given facility size category if its costs per MOU are equal to or greater than the proposed rate cap when rounded to the nearest penny. Finally, we calculate the percentages shown in Table 2 as the sum total MOUs at or below the proposed cap divided by the total MOUs within each market segment shown.

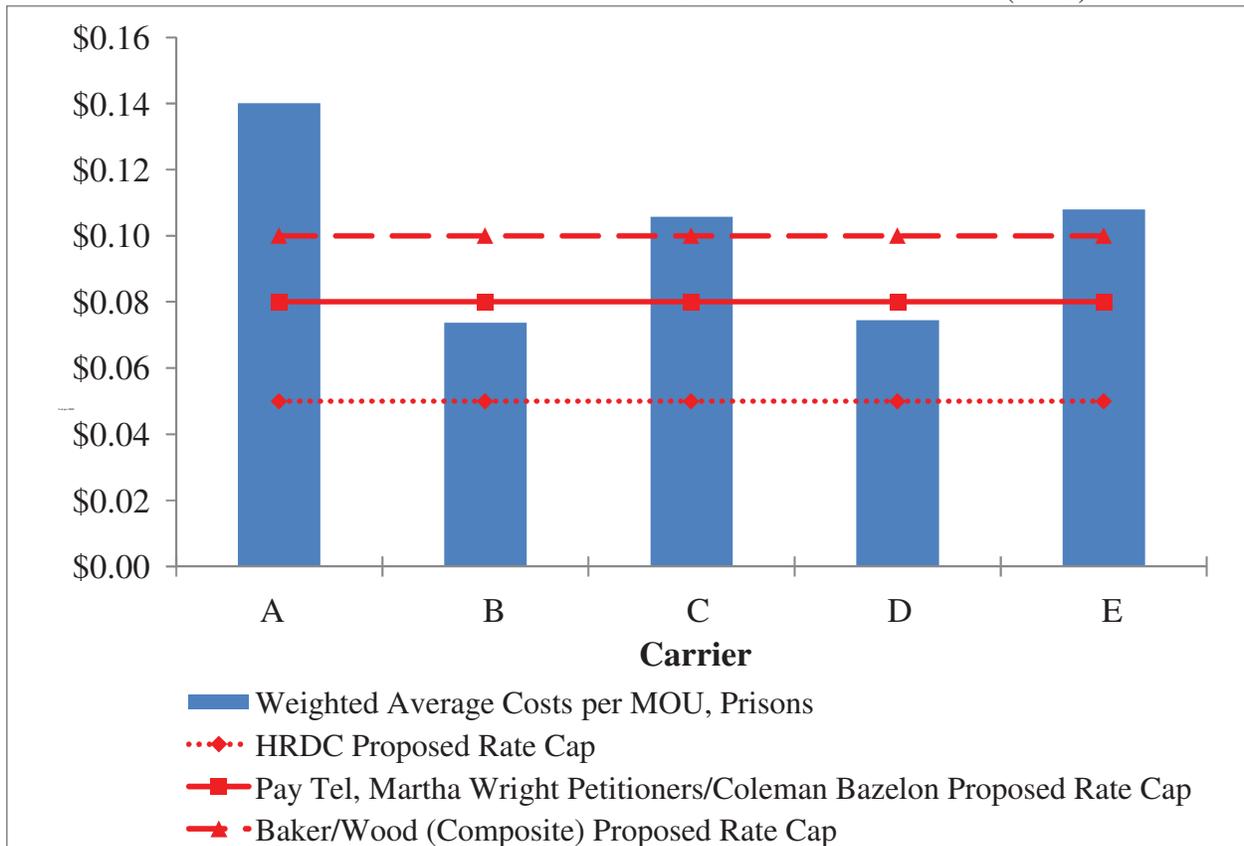
TABLE 2: PERCENTAGE OF ICS PROVIDERS' COSTS AT OR ABOVE PROPOSED RATE CAPS

Proposal	Market Segment			
	All MOUs (Debit/Prepaid + Collect, Jails + Prisons)	Debit/Prepaid Only	Prisons Only	Debit/Prepaid, Prisons Only
Baker/Wood	45%	42%	75%	74%
HRDC	100%	100%	100%	100%
Pay Tel	47%	44%	83%	82%
Petitioners	80%	80%	82%	82%

Source: Carrier cost submissions to FCC

Figure B below further illustrates that the proposed rate caps are at or below average costs per minute for the majority of the prison segment of the ICS market. Such proposals would require a significant portion of the ICS market to operate at a loss (or with near-zero margins) – for example, 82 percent of all debit/prepaid prison MOUs in the case of the Pay Tel and Wright Petitioner proposals; and 100 percent of all debit/prepaid prison MOUs in the case of the HRDC proposal.

FIGURE B: DEBIT/PREPAID COSTS PER MOU IN PRISON FACILITIES (2013)



Source: Carrier cost submissions to FCC

IV. ALLOWING FACILITY COST RECOVERY FEES OF A LARGE MAGNITUDE IS TANTAMOUNT TO MAINTAINING THE EXISTING SYSTEM OF SITE COMMISSIONS

Pay Tel also claims that cost recovery fees will “motivate facilities to encourage lower rates (to stimulate more MOUs).”¹³ This assertion is economically sensible. However, if site commissions are replaced with facility cost recovery fees of similar or greater magnitude, the two changes will offset each other, thus failing to drive lower rates for end users. Our analysis with regard to the magnitude of proposed facility cost recovery fees can be found in recent *ex parte* filings.¹⁴

V. DISTINCTIONS BETWEEN PRISONS AND JAILS ARE ECONOMICALLY ARBITRARY

Pay Tel proposes a rate cap of \$0.08 for prisons and \$0.16-\$0.18 for large jails.¹⁵ Similarly, Baker/Wood proposes a rate cap of \$0.08 for small prisons (1-4,999 ADP) and \$0.18 for large jails.¹⁶ Such proposals would in some cases result in significantly disparate caps being placed on facilities of similar size. While prisons and jails might be considered different types of facilities by definition, there is no economically significant distinction between the two when it comes to the cost of providing ICS service. Rather, the economies of scale observed in the ICS industry appear to be driven mainly by prison population and call volume.¹⁷ That is, facilities with larger inmate populations (and therefore larger call volumes) exhibit lower costs per inmate (and per MOU).

Figure C shows debit/prepaid costs per minute among ICS providers that serve both prisons and large jails (1,000+ ADP). For two out of five of these carriers, the costs per minute of at least one prison size category actually exceed the costs per minute of large jails. Putting aside the comments discussed in the previous section, applying the proposal here would also be counterintuitive because it would impose a lower rate cap on facilities that face higher costs per minute. In the case of one ICS provider, the costs of serving small prisons (1-4,999 ADP) was \$0.21 per minute, and the costs of serving large jails (1,000 and over) was \$0.11 per minute. The

13. Pay Tel July 14, 2015 Presentation at 9.

14. See Stephen E. Siwek and Christopher C. Holt, “Comparison of Correctional Facility ICS Cost Analyses”, Attachment A to Global Tel*Link Corporation, Ex Parte Presentation, WC Docket No. 12-375 (Jun. 25, 2015).

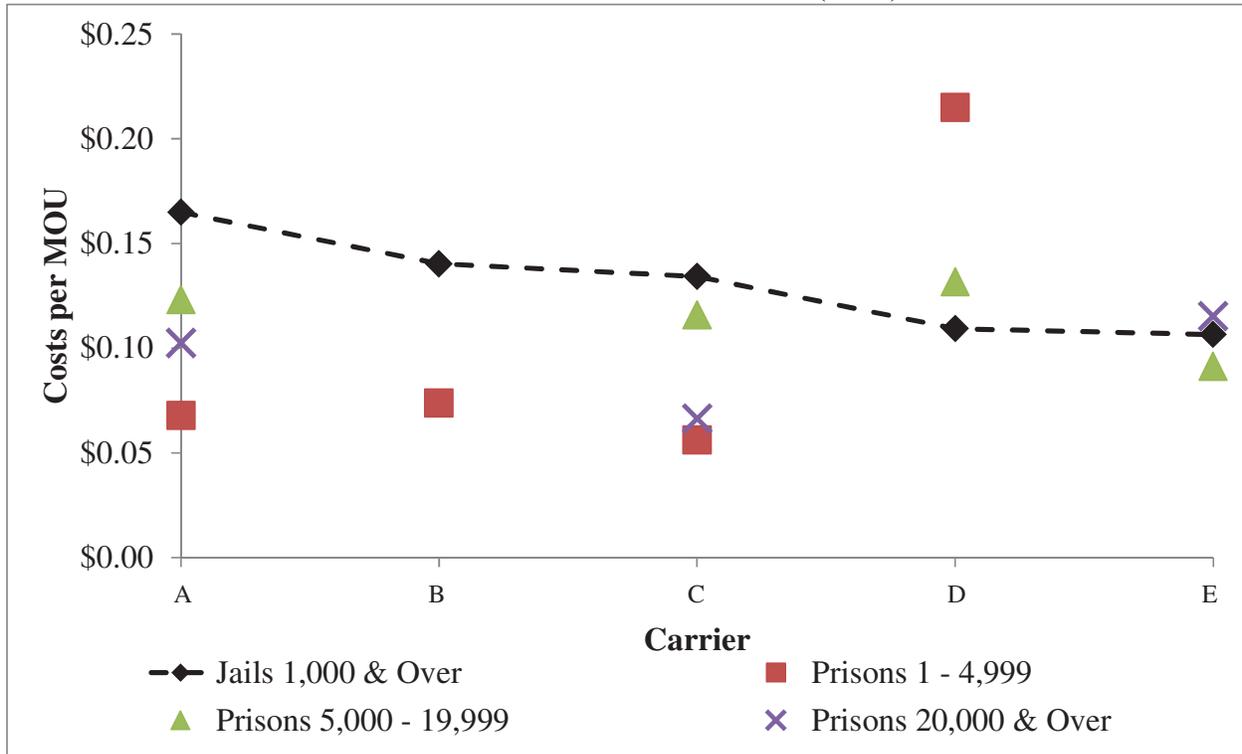
15. Pay Tel July 14, 2015 Presentation at 5.

16. Baker/Wood Proposal at 4.

17. See Stephen E. Siwek and Christopher C. Holt, “Correctional Facility ICS Cost Analysis for Global Tel*Link Corporation”, WC Docket No. 12-375, (Sep. 18, 2014) at 7-8 (“as the size of a facility increases, investigative costs per inmate decrease as investigators become responsible for a larger population.”). Comments of Securus Technologies, Inc. on Second Further Notice of Proposed Rulemaking, WC Docket No. 12-375 (“Jan. 12, 2015) at 19-24 (“[I]f the Commission is resolute in adopting some sort of tiered rate structure, the appropriate determining factor is call volume.”).

Baker/Wood proposed rate caps would therefore be \$0.13 *under* cost for small prisons, but \$0.07 *over* cost for large jails.¹⁸

FIGURE C: DEBIT/PREPAID COSTS PER MOU BY FACILITY SIZE CATEGORY AMONG CARRIERS SERVING LARGE JAILS AND PRISONS (2013)



Source: Carrier cost submissions to FCC

VI. CONCLUSION

We conclude that, despite disparate costs across facilities faced by ICS providers, carriers comprising the vast majority of the market reported average debit/prepaid costs below the rate cap of \$0.20 set forth in the Joint Provider Reform Proposal. We also conclude that caps proposed by the HRDC, Pay Tel, the Martha Wright Petitioners/Coleman Bazelon are below costs for large portions (45 to 100 percent) of the ICS market. Finally, we conclude that a uniform rate cap is superior in the context of a “backstop” rate cap intended to produce market-based prices for ICS.

18. These figures pertain to debit and prepaid calls.