

I. LEC-Billed Collect Calls Represent a Declining Portion of ICS Calls

Pay Tel has advocated for in this proceeding and set forth in its proposed ICS rules a tiered rate cap structure based on facility size and type.¹ Although Pay Tel’s cost analysis shows varying costs depending on call types (e.g., prepaid, collect, debit), Pay Tel believes that one per-minute rate for all calls in each tier is appropriate in light of evolving call patterns in which traditional LEC-billed collect calls represent an ever smaller portion of overall ICS calls.

The drivers of increased costs associated with traditional “collect calling” (i.e., calling billed via billing arrangements with third party carriers—typically, local exchange companies) are validation, billing and collection, and bad debt costs. This should be distinguished from “direct billed” collect calling, where the ICS provider sets up an account directly with a third party and bills in arrears—arrangements typically reserved for known, qualified third parties such as defense attorneys and bail bondsmen. Since they are billed by the ICS provider and not by third parties, these direct billed accounts do not have the same validation, billing and collection, and bad debt costs that are associated with LEC-billed collect calls. When discussing “collect” calls herein, Pay Tel is referring to LEC-billed collect calls, as opposed to direct billed collect calls.

Pay Tel has analyzed its own data, as well as call data found in the context of recent RFPs and in responses to the Commission’s Mandatory Data Collection. Pay Tel’s analysis shows that the number of LEC-billed collect calls has diminished significantly and continues to decline and that LEC-billed collect calls represent a very small percentage of overall ICS calls—and the data is consistent across ICS providers of all sizes and across facilities of varying sizes.

As shown by the following table, Pay Tel’s own data shows a marked decrease in LEC-billed collect calls as compared to total calls across all Pay Tel facilities since 2012:

Year	% of Collect Calls
2012	4.7%
2013	2.6%
2014	1.5%
2015 (first 6 months)	1.3%

As shown above, Pay Tel’s analysis reveals that LEC-billed collect calls generally make up only about 1% to 2% of all ICS calls at a given facility.

Publicly available data for other non-Pay Tel facilities is similar, as shown in the table below.² In order to arrive at the following percentages, Pay Tel examined call data provided in the context of recent

¹ See, e.g., Pay Tel Communications, Inc., Proposed ICS Rules, at 4 (§ 64.6040), WC Docket No. 12-375 (July 10, 2015).

² Pay Tel attaches as Attachment 1 the data culled from RFPs that it used in making this analysis, grouped by DOC or ICS provider.

RFPs and, for each example, simply divided the number of LEC-billed collect calls by the total number of calls.

LEC-Billed Collect Calls as Percentage of Total Calls

ICS Vendor/Source	Agency	Month/Year	% LEC-Billed Collect Calls
RFP Data	South Dakota DOC	April 2014 – March 2015	1.6%
GTL/RFP Data	Wilson County, TN	January 2014 – December 2014	2.7%
GTL dba VAC/RFP Data	Oakland County, MI	February 2015	2.4%
Securus/RFP Data	Garrett County, MD	January 2015	0.0%
Securus/RFP Data	New Hanover County, NC	January 2015	0.0%

While the above data constitutes a limited sample, this data reflects what Pay Tel is observing in the industry generally with respect to the decline in LEC-billed collect calls. This general trend is supported by the data submissions filed in response to the FCC’s Mandatory Data Collection.³

II. Public Sources for Average Daily Population (ADP) in Jails

Pay Tel in its proposed ICS rules advocates for a tiered rate cap structure based upon facility size and type, where the size of a jail facility is tied to its average daily population, or ADP.⁴ In response to queries from Commission Staff, Pay Tel below discusses public resources that provide ADP figures for jails.

³ Pay Tel reviewed data from the public responses of GTL, Securus and Telmate submitted in response to the FCC’s Mandatory Data Collection. That data show a marked decline in collect calling over the 2012-2014 reporting period. It bears noting that the definition of “collect calling” for Mandatory Data Collection purposes expressly included so-called “one call” and “convenience billing” options within its definition, and also included direct billed collect calls, indicating that the reported data substantially overstates the actual extent of traditional LEC-billed collect calling. See FCC, Instructions for Inmate Calling Services Mandatory Data Collection, *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-327664A1.pdf (defining collect calling as “a calling arrangement whereby the called party agrees to pay for charges associated with an Inmate Calling Services call originating from an Inmate Telephone. Services such as, but not limited to, text-to-collect and pay now are considered to fall under the collect calling definition for purposes of this data collection and should be filed within the ‘collect’ tab on the spreadsheet.”).

⁴ See Pay Tel Communications, Inc., Proposed ICS Rules, at 1 (§ 64.6000(2) (definition of ADP)); 4 (§ 64.6040), WC Docket No. 12-375 (July 10, 2015).

A number of such public resources exist. At a national level, it appears the most comprehensive data source for local jail ADP information comes via the Department of Justice's Bureau of Justice Statistics, which publishes the Annual Survey of Jails. A summary report on the Annual Survey of Jails is typically issued mid-year in the form of a press release and statistical summary.⁵

However, the lengthier "Codebook" related to the Annual Survey and the supporting detail/dataset underlying same is published through the National Archive of Criminal Justice Data (NACJD).⁶ The most recent full Annual Survey appears to be from 2013. That underlying dataset is where one can find annual ADP information for hundreds of jails, although the Annual Survey dataset does not refresh data for all jails nationwide on a yearly basis. Instead, data on the size of the jail population and selected inmate characteristics are obtained every five to six years from the Census of Jails.⁷ In each of the years between the full censuses, a sample survey of jails is conducted to estimate baseline characteristics of the nation's jails and inmates housed in these jails.⁸

The underlying dataset is available in delimited format (and various other format options) and is freely accessible by individuals who set up an account online through the NACJD (and agree to certain terms of use in so doing).

According to the 2013 Codebook, the 2013 Annual Survey sample comprised 946 reporting units—with 859 of them (roughly 91%) responding to the data collection.⁹ It should be noted that a single county which has more than one physical building or facility is listed as a single entry. For example, Cook County appears in the current data as aggregated into a single listing, although it operates 18+ facilities.

The dataset includes a substantial amount of information, including jurisdiction, facility location and name, ADP (of all confinement facilities operated by a given jurisdiction between July 1, 2012 and June 30, 2013), and number of confined persons.

In addition, several states proactively gather and regularly publish this information. As set forth in the table below, at least four states publish this information on a regular—monthly—basis (California, Florida, Georgia and Tennessee), and at least one state used to publish this information but appears to have stopped doing so a couple of years ago (Virginia). It is possible that other states publish ADP information as well.

⁵ Numerous documents including the Annual Survey of Jails summary reports, press releases and full reports can be found at the following Bureau of Justice Statistics link: <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=261> (last visited August 11, 2015).

⁶ The 2013 Annual Survey of Jails Codebook and underlying dataset can be found at the following National Archive of Criminal Justice Data link: <http://doi.org/10.3886/JCPSR35517.v1> (last visited August 11, 2015).

⁷ U.S. Dep't of Justice, Office of Justice Programs, Bureau of Justice Statistics, Annual Survey of Jails, 2013, at 4-5 (2015) ("2013 ASJ Codebook").

⁸ *Id.*

⁹ 2013 ASJ Codebook, at 10.

STATE PUBLISHED ADP RESOURCES FOR JAILS

State	Producing Organization	Frequency	Title and URL
California	California Board of State & Community Corrections	Monthly and Quarterly	Jail Profile Survey http://www.bscc.ca.gov/s_fsojailprofilesurvey.php
Florida	Florida Department of Corrections	Monthly and Summarized Annually	Florida County Detention Facilities' Average Inmate Population http://www.dc.state.fl.us/pub/jails/index.html
Georgia	Georgia Department of Community Affairs	Monthly	Monthly Jail Reports http://www.dca.state.ga.us/development/research/programs/jailReports.asp
Tennessee	Tennessee Department of Correction	Monthly (Provides a single day snapshot)	Statistics and Information: Jail Summary Reports http://www.state.tn.us/correction/planning/jailsummary.html
Virginia	Compensation Board Commonwealth of Virginia	Monthly – Last report provided as of 05/31/13	Publications and Forms: Jail Average Daily Population Information http://www.scb.virginia.gov/Tuesdaytotal.cfm (Note that many of the links appear to be dead)

III. ICS Reform – Grandfathering of Contracts Must be Limited to “In-Service” Contracts

As Pay Tel has set forth in its proposed ICS rules, only contracts that have been executed and are “in service” at the time the Commission adopts its anticipated Order should be grandfathered for purposes of intrastate rates and site commissions payable on intrastate rates.¹⁰

In support of that position and to illustrate its point, Pay Tel points to the experience of New Mexico. There, facilities and vendors took advantage of a lengthy grandfathering period—which was based on the effective date of an order, rather than its adoption date—to enter into agreements that circumvented reform efforts.

New Mexico legislation enacted in 2001 prohibits payment of commissions to facilities based on phone call revenues.¹¹ As a result, in an attempt to get around this prohibition, most contracts provide non-call revenue related compensation to detention facilities in the form of “space rental” or “technology grants”.

¹⁰ Pay Tel Communications, Inc., Proposed ICS Rules, at 7, WC Docket No. 12-375 (July 10, 2015).

¹¹ N.M. Stat. Ann. § 33-14-1.

Then, in 2007, the New Mexico Public Regulation Commission (NMPRC) initiated two investigations into the practices of Inmate Operator Service Providers (IOSPs) operating in New Mexico. One investigation was targeted at non-tariffed charges and resulted in the IOSPs being required to tariff all processing and service charges.¹² The second investigation centered more generally on the rates and charges of IOSPs.¹³ Almost three years later, that case was resolved through a settlement reached with two providers, and it resulted in the creation of a new rulemaking docket to modify IOSP regulations.¹⁴

After two more years elapsed, the NMPRC established rate and fee caps as part of a comprehensive set of regulations for IOSPs. The rules were adopted in November of 2012, but they included language which grandfathered any contract signed, renewed, or renegotiated up to 90 days after the rules' effective date—rather than only grandfathering contracts in service as of the rules' adoption date.¹⁵ The rules took effect upon publication in the New Mexico Register in August 2013—a full nine months after their adoption.

The grandfathering provision and the lengthy delay in publishing the rules were common knowledge and enabled easy circumvention of the reforms. Counties and providers that were in a position to do so utilized the time to rework and/or finalize long-term contracts to take full advantage of the grandfathering clause.

Certainly, given the opportunity, one would expect a similar dynamic to occur in response to any regulation adopted by the Commission—providers and facilities will look for opportunities, where presented, to perpetuate pre-existing contractual relationships and rates. Pay Tel supports a grandfathering period for contracts in place as of the date of adoption of new rules, but any such grandfathering period should not present an opportunity to avoid application of the new rules by permitting the creation of new contracts under the old rules.

IV. An Alarming Trend – Large ICS Providers Abandoning Small- and Medium-Sized Jails

Pay Tel through this filing draws attention to a point that it has made previously in the record—the trend of the largest ICS providers abandoning small- and medium-sized facilities.¹⁶ As set forth below,

¹² See generally N.M. Pub. Regulation Comm'n, Investigation of Non-Tariffed Charges of Institutional Operators Service Providers, Inc., Case No. 07-00442-UT (initiated 2007).

¹³ See generally N.M. Pub. Regulation Comm'n, Commission Inquiry Into the Rates and Charges of Institutional Operator Service Providers, Case No. 07-00316-UT (initiated 2007).

¹⁴ See generally N.M. Pub. Regulation Comm'n, Petition to Commence Rulemaking Proceeding for Institutional Operator Service Providers Inmate Calling Solutions, LLC, and Public Communications Services, Inc., Case No. 10-00198-UT (initiated 2010).

¹⁵ N.M. Pub. Regulation Comm'n, Petition to Commence Rulemaking Proceeding for Institutional Operator Service Providers Inmate Calling Solutions, LLC, and Public Communications Services, Inc., Case No. 10-00198-UT, Final Order and Rule, at Rule 17.11.12.5 (stating that rules become effective upon publication in New Mexico Register); Rule 17.11.12.14(I) (stating that newly established rate caps would only apply to contracts that were executed, renewed, or renegotiated 90 days "following the Effective Date of this rule") (adopted Nov. 2012).

¹⁶ See, e.g., Pay Tel, Reply Comments, at 22, WC Docket No. 12-375 (Jan. 27, 2015); Pay Tel, Notice of Ex Parte Presentation, Further Response to Joint Filing of Global Tel*Link (GTL), Securus, and Telmate, at 5, WC Docket No. 12-375 (Jan. 7, 2015).

larger providers have increasingly been leaving and/or electing not to bid on contracts at such facilities; a reason for such activity appears to be that they do not make sufficient revenues when operating therein.

This trend underscores the critical need for Commission action that (1) establishes tiered rate caps taking into account the higher costs associated with serving smaller facilities and permits ICS providers to recover those costs; and (2) provides a reasonable facility cost recovery fee that adequately allows these smaller jails to capture the costs they incur in allowing and overseeing ICS.

Simply put, there are a lot of these smaller facilities, and it costs more to provide ICS in them. As has been observed in this proceeding, most jails across the nation have fewer than 100 inmates, and about 35 percent of jails house fewer than 50.¹⁷ Cost data in the record proves that it costs significantly more to provide ICS in smaller facilities; Pay Tel's economic consultant, Don Wood, explained that the Mandatory Data Collection results showed that it costs providers 92% more to serve jails with ADP of 0-99 and 38% more to serve jails with ADP of 100-349, relative to the costs of serving an average jail location.¹⁸

Given the higher costs of serving these facilities, and given the current, uniform interim interstate rate caps,¹⁹ perhaps it is no surprise that the larger providers appear to be focusing instead on contracting with larger jails and prisons (where the interim rate caps on interstate calls are well above cost).

For example, Telmate has declined to bid on certain small facility contracts on the grounds that the facility is "too small" to provide economical service in light of the FCC's price caps. Telmate in January 2015 responded to an official at the Dawson County (Georgia) Jail (ADP of 155) explaining the company's refusal to bid on the provision of service to that facility:

Thank you for your interest in Telmate bidding on Dawson County's Inmate Telephone System. Unfortunately, Dawson's jail is too small; not generating enough revenue for Telmate to provide the customer service and technology we expect to deliver to our customers. The recent reduction in call prices by the FCC has limited Telmate from bidding on smaller facilities as the lower call prices effects (sic) gross revenue.²⁰

Similarly, the largest ICS providers' own figures suggest they have been moving away from serving smaller facilities over the past couple of years. A review of the Mandatory Data Collection filings of Securus and Global Tel*Link demonstrates this trend. As shown in the table below, from 2012 to 2014, GTL went from serving 248 facilities with ADP of 0-99 down to 138 such facilities, a decrease of 44%.²¹

¹⁷ See, e.g., Report and Order and Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, FCC 13-113 (rel. Sept. 26, 2013), at dissent of Commissioner Pai ("*ICS Order*").

¹⁸ Don J. Wood, Expert Report, at 23, WC Docket No. 12-375 (Jan. 12, 2015).

¹⁹ See 47 C.F.R. § 64.6030.

²⁰ Email from Matthew Curran, Account Manager, Telmate, to Davida Simpson, Purchasing Director, Dawson County (GA), (Jan. 27, 2015) (attached hereto as Exhibit A).

²¹ See Global Tel*Link, Response to One-Time Mandatory Data Collection, at 1-3, WC Docket No. 12-375 (Aug. 22, 2014).

And Securus went from serving 796 facilities with ADP of 0-99 down to 640 such facilities, a decrease of 20%.²² Both providers also lost facilities in the second smallest facility size category—jails with ADP of 100-349.²³

GTL and Securus – Serving Smallest Jail Facilities 2012-2014

GTL Facilities Served

ADP	2012	2013	2014	% Decrease
0-99	248	174	138	-44%
100-349	268	244	226	-16%

Securus Facilities Served

ADP	2012	2013	2014	% Decrease
0-99	796	751	640	-20%
100-349	489	473	430	-12%

It appears that larger providers are making the determination that they cannot make “sufficient” profits to justify continuing to serve these small- and medium-sized facilities. Given this dynamic, it is vital that the Commission establish an ICS rate cap tier for such facilities that allows those providers still willing to serve them to earn a reasonable return, so as to ensure the continued viability of this service. Further, it is necessary that the Commission ensure these smaller facilities—which have little to no bargaining power in negotiating contracts with ICS providers—are permitted to recover the costs that they incur related to ICS, so that they, too, are discouraged from reducing or eliminating service.

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²² See Securus Technologies, Inc., Response Mandatory Data Collection, at 1-3, WC Docket No. 12-375 (July 30, 2014).

²³ Notwithstanding its email to the contrary discussed above, it appears that Telmate increased the number of small facilities to which it provided service from 2012 through 2014. From 2012 to 2014, Telmate went from serving 10 facilities with ADP of 0-99 to 12 such facilities; and it went from serving 37 facilities with ADP of 100-349 to 45 such facilities. See Telmate, LLC, Response to Mandatory One-Time Data Collection, at 1-3, WC Docket No. 12-375 (Aug. 18, 2014). Such growth is not surprising for a young company such as Telmate that is looking to grow its market share. In addition, Telmate’s acquisition of Talton Communications brought to Telmate a significant number of contracts with small, county facilities in the southeastern U.S. to which Talton was a party.

EXHIBIT A

From: Matthew Curran [mailto:matthew@telmate.com]
Sent: Tuesday, January 27, 2015 2:28 PM
To: Davida Simpson
Subject: ITS Bid

Ms. Simpson,

Thank you for your interest in Telmate bidding on Dawson County's Inmate Telephone System. Unfortunately, Dawson's jail is too small; not generating enough revenue for Telmate to provide the customer service and technology we expect to deliver to our customers. The recent reduction in call prices by the FCC has limited Telmate from bidding on smaller facilities as the lower call prices effects gross revenue.

In the future, if Dawson County would consider combining bids with surrounding counties Telmate would be interested in bidding. In return, I'm confident Dawson County would receive more competitive proposals.

Thank you for your interest in Telmate.

Matthew

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Matthew Curran / Account Manager

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