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REDACTED –FOR PUBLIC INSPECTION

VIA ECFS

EX PARTE

October 6, 2015

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

Re: *Rates for Interstate Inmate Calling Service*, WC Docket No. 12-375

Dear Ms. Dortch:

On September 21, 2015, Don J. Wood, a consultant to Pay Tel Communications, filed a “Supplemental Reply Report” in which he mischaracterized and misrepresented cost information submitted by CenturyLink and other inmate calling service (“ICS”) providers in response to the Commission’s 2014 Mandatory Data Collection. None of his criticisms are justified, and several omit relevant and critical information that was fully available in the data CenturyLink submitted.

The Wood analysis improperly excludes collect calling costs.

First, Mr. Wood’s improperly excludes the entire category of collect calling in fabricating a substitute average cost per minute at the prisons CenturyLink serves. In rationalizing this exclusion, he claims that “collect calls represent a small ... percentage of total ICS calls...” He likewise improperly excluded collect calling using equally faulty cost calculations for ICSolutions and Securus.

Beyond the fundamental flaw of excluding relevant data, Mr. Wood fails to even acknowledge that the collect calling category constituted over 30% of the minutes reported for state prison facilities in CenturyLink’s cost analysis. Nor does he mention that his exclusion of

collect calling from CenturyLink's cost analysis dramatically and improperly lowers his calculated average cost of service for CenturyLink.¹

The large percentage of collect calling in CenturyLink's cost analysis is due to CenturyLink's extensive use of direct billing.² Almost 90% of CenturyLink's collect minutes reported in its cost submission were direct-billed and associated with a single large correctional account. The reason for its heavy use is that at this specific institution, direct billing is actually slightly *less* costly to provide than prepaid. This result is driven by a unique called-party name and address verification process that is mandated by the facility under its contract with CenturyLink. This process performs the most complex and costly portion of direct billing – the gathering and verification of consumers' billing information – and avoids the need to incur costs associated with prepaid such as higher consumer inquiry rates, transaction costs from credit and debit card companies, and chargebacks associated with credit and debit cards.

CenturyLink's data does not double-count interest expense.

Second, Mr. Wood wrongly claims that CenturyLink's cost analysis double counts interest expense. Mr. Wood bases his speculation on CenturyLink's Description and Justification to the Mandatory Data Collection, which lists both interest expense and cost of capital as cost categories included in Equipment Costs.³ However, CenturyLink did not double count interest expense as Mr. Wood wrongly asserts. As explicitly directed in the Commission's Mandatory Data Collection Instructions, CenturyLink reported the interest payments associated with its ICS business as Common Equipment Costs. Importantly, these costs benefited from the use of parent CenturyLink, Inc.'s corporate cost of debt rather than an imputed "standalone" cost. CenturyLink also presented a cost of capital component serving as a proxy for the cost of equity. The invested capital base used for these calculations included only those investments that were capitalized for financial accounting purposes.

¹ Mr. Wood presents this re-calculation of CenturyLink's per minute costs at prison locations in redacted form. To replicate Mr. Wood's calculation, CenturyLink performed an average cost calculation at its state prison facilities excluding collect calling. The resulting calculation significantly, and again improperly, decreases its calculated average cost per minute vs. its true and reported average cost per minute using all relevant data, including collect calling.

² See CenturyLink Description and Justification, filed September 16, 2014, p. 2: "Please note that 'collect' includes both traditional collect-billed calls (post-paid billing on a consumer's local telephone bill) and direct-billed calls (post-paid billing on a separate bill sent directly to a consumer)."

³ CenturyLink Description and Justification, filed September 16, 2014, p. 3.

compliance and account management, and additional specialized security software and equipment. These multiple components drive all providers to necessarily outsource some functions. CenturyLink provides many of these components itself and, unlike other ICS providers, has a national network and so does not typically outsource the network it uses to provide ICS.

Additionally, Securus states explicitly in its data submission that it excluded wholesale costs, in part because doing so would not accurately reflect the entire cost of service for those contracts.⁴ CenturyLink also confirmed with ICSolutions that it did not include wholesale costs in its cost data submission, again because ICSolutions provides only a partial service for those contracts. This means that both providers reported costs to serve state prisons that pertain solely to contracts independent of those served by CenturyLink, and that their reported costs would provide wholly inaccurate and unfair comparisons to the actual costs to provide ICS at the prisons CenturyLink serves.

CenturyLink's data was accurate, properly detailed, and fully explained.

Fourth, Mr. Wood wrongly claims that CenturyLink failed to include the documentation required by the Commission's Mandatory Data Collection. On the contrary, CenturyLink fully complied with the Commission's Mandatory Data Collection. CenturyLink's cost analysis and Description and Justification described how CenturyLink prepared its analysis, how it allocated the costs included in its submission and provided descriptions of its cost categories and usage volumes. CenturyLink has approached this proceeding and its data submission with the utmost integrity.

It must be emphasized that the cost of providing ICS varies widely from one correctional facility to another. Consequently, the Commission cannot reasonably set rate caps to serve a type of facility at average cost, as Mr. Wood advocates. By definition, average cost understates the actual cost to provide service at many facilities. Additionally, there must be sufficient headroom in the rate caps to permit multiple ICS providers to be able to serve prisons, including providers with an above-average cost to serve.

⁴ FTI Consulting, Inc. Report Implementing the FCC Mandatory Data Collection on Behalf of Securus Technologies, Inc., filed July 17, 2014, p. 7 (“FTI has excluded wholesale costs from this submission. The reason for this exclusion is twofold. First, *when providing wholesale services, Securus does not provide a full ICS service but only provides a portion of the ICS services being provided to the facilities.* Second, the full cost of the ICS services provided by the retail provider should be reported by the retail provider in its own submission in response to the FCC's Mandatory Data Collection.”) (emphasis added).

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Mr. Wood submitted his faulty and manifestly unfair analysis of prison costs for his client Pay Tel Communications. Pay Tel competes only in the county jail market and does not have experience with the unique operational requirements of ICS in prisons. Yet Pay Tel and Mr. Wood have sought to justify favored treatment for Pay Tel's market, with recommended rate caps for jails far above those it puts forward for prisons when real world costs at jails and prisons are actually comparable. Mr. Wood has used unfair and unreasonable assumptions to mischaracterize CenturyLink's data. In the end, his analysis cannot provide a reasoned basis for assessing CenturyLink's costs. Instead it necessarily casts doubts on the credibility of the analysis he has provided in this proceeding.

Pursuant to the Commission's Protective Order in WC Docket No. 12-375, 28 FCC Rcd 16954 (2013), CenturyLink is designating certain information contained herein as Confidential and thus requests that it not be made available for public inspection (an Appendix is attached for this purpose, which also provides justification for such treatment pursuant to 47 C.F.R. §§ 0.457 and 0.459). Also pursuant to the Protective Order, the non-redacted version of this ex parte letter is marked as follows: "**CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 12-375 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**". In accordance with paragraph 4 of the Protective Order, two copies of this ex parte letter is being transmitted to Lynne Engledow of the Wireline Competition Bureau.

Pursuant to the FCC's Instructions and consistent with paragraph 4 of the Protective Order, a redacted version of this ex parte letter, with the confidential information omitted, is being filed in WC Docket No. 12-375 via the Commission's Electronic Comment Filing System. As required, the redacted version of this ex parte letter is marked as follows: "**REDACTED – FOR PUBLIC INSPECTION**", with only the confidentiality and filing method annotations modified.

Sincerely,

/s/ Thomas M. Dethlefs

Copy via hand delivery to:

Stephanie Weiner
Rebekah Goodheart
Pam Arluk
Lynne Engledow
Madeleine Findley
Rhonda Lien
Bakari Middleton

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APPENDIX

Confidentiality Request and Justification

47 C.F.R. § 0.457

The information included with CenturyLink's October 6, 2015 ex parte notice is entitled to confidential treatment under 47 C.F.R. § 0.457 as well as under the Protective Order in WC Docket No. 12-375.⁵ The information includes data on the per-minute costs of service (2014) for calls made at the prisons CenturyLink serves. This information is the type of confidential and proprietary commercial and financial information that is protected from public disclosure under the Commission's FOIA implementing rules⁶ and thus is also protected from public inspection under 47 C.F.R. § 0.457(d).

47 C.F.R. § 0.459

CenturyLink also considers the confidential information submitted with its October 6, 2015 ex parte notice in WC Docket No. 12-375 as protected from public disclosure and inspection pursuant to 47 C.F.R. § 0.459(b) as described as follows.

Information for which confidential treatment is sought

CenturyLink seeks confidential treatment for information in its ex parte notice because it is confidential and proprietary commercial and financial information that is entitled to protection from public disclosure and availability. As such, this information is marked "**CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 12-375 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**".

⁵ 28 FCC Rcd 16954 ¶ 2 (Dec. 19, 2013). This type of information was similarly filed as confidential in 2014 pursuant to the Commission's Report and Order of September 26, 2013 in WC Docket No. 12-375, in accordance with the Public Notice of June 17, 2014 and the Commission's associated Instructions for the Mandatory Data Collection. *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107 (Sept. 26, 2013), *appeals pending sub nom.*, *Securus Technologies, Inc. v. FCC*, No. 13-1280 (D.C. Cir., pet. for rev. filed Nov. 14, 2013, with Order granting motion to hold in abeyance, Dec. 16, 2014); Public Notice, 29 FCC Rcd 7326 (June 17, 2014); FCC Instructions for Inmate Calling Services Mandatory Data Collection.

⁶ 47 C.F.R. §§ 0.457, 0.459; *see also* 5 U.S.C. § 552.

Commission proceeding in which the information was submitted

The information is being submitted with CenturyLink's October 6, 2015 ex parte notice in WC Docket No. 12-375, *In the Matter of Rates for Interstate Inmate Calling Services*.

Degree to which the information in question is commercial or financial, or contains a trade secret or is privileged

The information that CenturyLink considers proprietary and confidential includes data on the per-minute costs of service (2014) for calls made at the prisons CenturyLink serves. This confidential and proprietary commercial and financial information is not routinely available for public disclosure from CenturyLink and thus is protected from public availability and inspection under 47 C.F.R. § 0.457(d).

Degree to which the information concerns a service that is subject to competition; and manner in which disclosure of the information could result in substantial competitive harm

The type of confidential information in CenturyLink's ex parte notice would generally not be subject to routine public inspection under the Commission's rules (47 C.F.R. § 0.457(d)), demonstrating that the Commission already anticipates that its release likely would produce competitive harm. The types of services that CenturyLink provides, including inmate calling services, are competitive. The release of this confidential information would cause competitive harm by allowing competitors to become aware of sensitive financial and commercial information regarding CenturyLink's business and internal operations in the inmate calling services market.

Measures taken to prevent unauthorized disclosure; and availability of the information to the public and extent of any previous disclosure of the information to third parties

CenturyLink has treated and treats the confidential information disclosed in CenturyLink's ex parte notice as confidential, and has protected the information from public disclosure.

Justification of the period during which CenturyLink asserts that the material should not be available for public disclosure

At this time, CenturyLink cannot determine any date on which the confidential information included with the ex parte notice should not be considered confidential or become stale for purposes of the current matter, except that it will be handled in conformity with CenturyLink's general records retention policy, absent any continuing legal hold.

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Other information that CenturyLink believes may be useful in assessing whether its request for confidentiality should be granted

Under applicable FCC and court rulings, the information in question should be withheld from public disclosure. Exemption 4 of the Freedom of Information Act shields information that is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The information in question satisfies this test.

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