

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Rates for Interstate Inmate Calling)	WC Docket No. 12-375
Services)	

**COMMENTS OF PAY TEL COMMUNICATIONS, INC.
IN RESPONSE TO
THIRD FURTHER NOTICE OF PROPOSED RULEMAKING**

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SUMMARY

Pay Tel Communications, Inc. (“Pay Tel”) respectfully submits these comments in response to the Third Further Notice of Proposed Rulemaking (“Third Further Notice”), released November 5, 2015 in this docket.

Pay Tel, a longstanding proponent of meaningful, comprehensive ICS reform, is disappointed that the Commission in the Second Report and Order (“Second Inmate Rate Order”) did not take any action to reform the site commission payment system, long-acknowledged to be the “primary reason” for unjust and unreasonable ICS rates and the “main cause of the dysfunction of the ICS marketplace.” It remains to be seen which, if any, of the reforms adopted by the Commission in the Second Inmate Rate Order will survive appeals by various parties and ultimately take effect; regardless, there remains work to be done to achieve meaningful, lasting, comprehensive reform of ICS.

In the Third Further Notice, the Commission seeks comment on several important topics as part of its ongoing reform efforts. In summary, Pay Tel responds to the Third Further Notice as follows:

- The Commission should indeed continue to promote competition, but not through mandating that multiple ICS providers operate in a given correctional facility. Instead, the Commission should embrace a pro-competition proposal with which it has already been presented—and should prohibit site commission payments and, in their place, establish a limited per-minute admin-support cost recovery fee additive for correctional facilities. Such a framework would create an ICS marketplace wherein facilities are incentivized to select the ICS provider offering the lowest rates, which would drive up minutes of use and drive down costs for inmates and their families, helping to facilitate proper functioning of the market.
- The Commission should carefully study and obtain cost data on video calling, video visitation and other advanced ICS services—and it should then regulate those services so that providers cannot turn to them (and charge excessive rates and fees for them) in order to unjustly recoup revenues that may be lost as a result of the Second Inmate Rate Order’s reforms.

- The Commission should proceed with its further, one-time data collection, but it must improve upon its August 2014 Mandatory Data Collection in order to gather more meaningful, reliable, verifiable data this time around.
- The Commission should not require ICS providers to file their contracts. ICS contracts are public documents, and they can be obtained through routine public records requests when necessary. Requiring ICS providers to file all of them, however, would create substantial burdens for ICS providers and correctional facilities with little to no offsetting benefit.
- The Commission does not need to regulate international ICS rates at this time. International calls make up a tiny fraction of total ICS minutes of use. Moreover, the international ICS market is unique and appears to be functioning well.
- The Commission must further regulate third-party financial transaction fees in order to prevent ICS providers from circumventing the Second Inmate Rate Order’s ancillary fees rules. Among the areas that the Commission must target are revenue-sharing arrangements between ICS providers and third-party money transfer and payment processing companies, as well as the charges that such third-party companies assess—particularly when those companies are affiliated with ICS providers.

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COMMENTS

Pay Tel Communications, Inc. (“Pay Tel”), by its attorneys, respectfully submits these comments in response to the Third Further Notice of Proposed Rulemaking, WC Docket No. 12-375, released November 5, 2015 in the above-captioned proceeding (“Third Further Notice”).¹

Pay Tel argued years ago that “any reform of ICS requires a holistic approach that analyzes the impacts on the overall ICS industry, rather than a piecemeal strategy . . . that looks at one, insular aspect and tackles it in isolation.”² The Commission in the Second Report and Order (“Second Inmate Rate Order”) got closer to the holistic, comprehensive reform for which Pay Tel has long been an advocate. Unfortunately, the Commission’s efforts again fell short, in large part because it rejected the widely supported proposal to ban site commission payments and, in their place, institute a per-minute cost-recovery fee to provide compensation to correctional facilities.³

Despite that shortcoming, the Commission still has important work to do. As set forth below, the Commission can still achieve one of the goals teed up in the Third Further Notice—promoting competition—by revisiting that idea of banning commissions and mandating facility cost recovery. Even failing that, additional regulatory actions must be taken in order to build upon the Second Inmate Rate Order’s efforts and close loopholes that, currently, offer opportunities that certain ICS providers will likely exploit if left as-is.

¹ Second Report and Order and Third Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, FCC 15-136 (rel. Nov. 5, 2015) (“Second Inmate Rate Order” and “Third Further Notice”).

² Pay Tel, Comments, at 3, WC Docket No. 12-375 (Mar. 25, 2013).

³ See, e.g., Second Inmate Rate Order, at ¶ 118 (concluding that the Commission “do[es] not need to prohibit site commissions in order to ensure that interstate rates for ICS are fair, just, and reasonable and that intrastate rates are fair”).

I. PROMOTING COMPETITION

The Commission seeks comment regarding whether there are ways to promote competition within the ICS market to allow the Commission to sunset or eliminate those regulations adopted in the Second Inmate Rate Order, and it asks whether the reforms adopted therein will facilitate a properly functioning market.⁴

Pay Tel and many others aggressively advocated for a means by which to promote competition: prohibiting site commission payments and replacing them with an explicit, per-minute admin-cost recovery fee as an additive to the rate caps.⁵ The Commission did not adopt this proposal—deciding instead to leave site commission payments unregulated. Like the Commission, Pay Tel is an advocate of the free market and would prefer robust competition over regulation.⁶ The ICS industry, however, is unique in that the end-user consumer—for legitimate reasons relating to the security needs of confinement facilities—does not have the ability to influence pricing decisions. As a result, under the special circumstances here, regulation, unfortunately, is needed in order to promote a properly functioning market and protect consumers.

The Second Inmate Rate Order fails to regulate, much less prohibit, site commission payments.⁷ The Commission has long acknowledged that site commission payments are the “main

⁴ Third Further Notice, at ¶ 291.

⁵ *See, e.g.*, Letter from Brian D. Oliver, CEO, GTL; Richard A. Smith, CEO, Securus; Curt Clifton, Vice President of Government Affairs and Strategic Planning, Telmate; and Vincent Townsend, President, Pay Tel, to Marlene H. Dortch, Secretary, FCC, at 1-2, WC Docket No. 12-375 (Oct. 15, 2015) (“Joint Proposal Letter”).

⁶ *See, e.g.*, Pay Tel, Reply Comments, at 1-2, WC Docket No. 12-375 (Jan. 27, 2015) (“Pay Tel Second Further Notice Reply Comments”).

⁷ *See, e.g.*, Second Inmate Rate Order, at ¶¶ 118, 128, 130.

cause of the dysfunction of the ICS marketplace”⁸ and the “primary reason ICS rates are unjust and unreasonable and ICS compensation is unfair[.]”⁹ In failing to regulate the principal driver “invert[ing] the competitive dynamics of the industry[.]”¹⁰ the Second Inmate Rate Order will not facilitate a properly functioning market. Rather, facilities will continue to demand site commission payments (1) because no Commission action is stopping them from doing so, and (2) because they incur legitimate ICS-related costs for which they need compensation. The rate caps were set near and in some cases even below providers’ costs, without factoring site commissions into the equation, so it is unlikely that rates will ever dip below the caps. To the extent that ICS providers feel they have to pay site commissions in order to retain business, they will likely seek to do so through charging higher fees for unregulated services or other improper arrangements (like revenue-sharing with third-party payment processors)—consequences that the Commission actually discusses in the Third Further Notice.¹¹

The Commission has already been presented with the solution to the problem of the “inverted competitive dynamic,” and parties representing the varying interests in this proceeding have supported it. Numerous ICS providers, including Pay Tel, as well as the National Sheriffs’ Association and other correctional facilities, a key regulator who helped shape ICS reform in Alabama, and, critically, even some inmate advocates, urged the Commission to prohibit site commission payments altogether and to replace them with an explicit, per-minute admin-cost

⁸ Second Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, FCC 14-158, at ¶ 24 (rel. Oct. 22, 2014) (“Second Further Notice”).

⁹ *Id.* at ¶ 21.

¹⁰ *Id.* at ¶ 20.

¹¹ Third Further Notice, at ¶ 296 (discussing whether ICS providers are and will continue to use video visitation and other services as a means “to recover decreased rates”); *id.* at ¶ 325 (discussing providers’ concern that some providers are entering into “secondary fee-sharing arrangements”).

recovery fee as an additive to the rate caps that would compensate facilities for their legitimate costs related to ICS.¹² As Pay Tel repeatedly pointed out, the joint proposal submitted by four providers “is the only proposal that achieves the Commission’s goal of a market-based approach to ICS that will create incentives for facilities to select providers based on lower costs to consumers and create competition between providers based on maximizing consumer welfare.”¹³ Adopting a cost-recovery fee in lieu of site commission payments would “remove upward pressure on ICS rates”¹⁴ and would ultimately drive down ICS rates (closer to inmate advocates’ goal of \$0.05/minute in prisons) because “correctional facilities will be incentivized to negotiate with providers for lower rates in order to spur more phone usage[.]”¹⁵ Thus, the cost-recovery fee additive mechanism would actually create the proper incentives in the ICS market to force rates down, while also allowing facilities to be “made whole” for their ICS-related costs. Creating this mechanism in conjunction with the elimination of site commission payments would allow ICS providers to “benefit from the certainty and stability in the marketplace[.]”¹⁶ That is the means by which competition can be promoted and a properly functioning market may emerge. The framework that the Second Inmate Rate Order creates will not accomplish those ends.

Instead of looking to that solution to promote competition, curiously, the Commission recycles an old idea, seeking comment on whether intra-facility competition amongst ICS

¹² See, e.g., Joint Proposal Letter, at 1-2; National Sheriffs’ Association, Ex Parte Presentation, at 4-5, WC Docket No. 12-375 (June 12, 2015); Darrell Baker, Director, Utility Services Division, Alabama Public Service Commission, Ex Parte Presentation, at 3-6, WC Docket No. 12-375 (July 12, 2015); Michael S. Hamden, Ex Parte Presentation, at 6-8, WC Docket No. 12-375 (Sept. 23, 2015).

¹³ Letter from Marcus W. Trathen, Counsel to Pay Tel, to Marlene H. Dortch, Secretary, FCC, at 2, WC Docket No. 12-375 (Oct. 15, 2015).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

providers is appropriate.¹⁷ For the reasons that Pay Tel and others (providers, correctional facilities, and fraud prevention experts alike) have repeatedly explained, having multiple providers provide ICS in the same facility is unworkable, primarily for safety and security reasons.¹⁸ The Commission long ago considered and wisely rejected the notion that multiple providers must be allowed to provide ICS in the same facility.¹⁹ The security concerns that existed in the past remain today, and the Commission should reaffirm its previous position.

The Ohio Department of Rehabilitation and Correction explained the security and safety concerns in response to the Commission's Second Further Notice less than a year ago, and its comments remain on point:

[a]n exclusive agreement with a single provider assures consistent quality both in service provided and in security measures. Requiring prison authorities to deal with multiple ICS providers does not provide the type of fundamental assurances that [facilities] need[] to protect [their] and the public's interests. If correctional systems were required by the Commission to accommodate inmates choosing among multiple carriers, it would be surrendering its duty to protect and control the inmates in its custody.²⁰

¹⁷ Third Further Notice, at ¶¶ 292-95.

¹⁸ See, e.g., Pay Tel Second Further Notice Reply Comments, at 50-52.

¹⁹ See, e.g., Order on Remand & Notice of Proposed Rulemaking, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 17 FCC Rcd 3248, 3276, ¶ 72 (2002) (“[L]egitimate security considerations preclude reliance on competitive choices, and the resulting market forces, to constrain rates for inmate calling.”); Second Report and Order and Order on Reconsideration, *Billed Party Preference for IntraLATA 0+ Calls*, CC Docket No. 92-77, 13 FCC Rcd 6122, 6156, ¶ 57 (1998) (“We are persuaded by comments of the United States Attorney General, other federal officials, and nearly all who have commented on this issue that implementation of BPP for outgoing calls by prison inmates should not be adopted. With regard to such calls, it has generally been the practice of prison authorities at both the federal and state levels, including state political subdivisions, to grant an outbound calling monopoly to a single IXC serving the particular prison. This approach appears to recognize the special security requirements applicable to inmate calls.”).

²⁰ Ohio Department of Rehabilitation and Corrections, Comments, at 4, WC Docket No. 12-375 (Jan. 12, 2015).

Requiring multiple providers to serve the same facility raises numerous security concerns: investigations relating to events dealing with calls and called parties would become more complex and take longer, due to having to deal with records from several providers; analyzing call patterns and calling activity would be much less efficient than it is today; and inmates would be able to place calls using multiple providers in order to make the calls more difficult to track.²¹ In addition, in a multiple-provider environment, officers would have to be trained on multiple systems, there would be complications relating to call validation, and there would be potential chain of custody evidentiary issues.²²

Worse, these increased security concerns resulting from a multiple-provider scheme would not be offset with benefits to inmates and their families. ICS rates would not decrease in a multiple-provider environment, and competition would not necessarily increase. The presence of multiple providers in a facility would make it virtually impossible for providers to accurately project call revenue and recover their investments, and providers' costs would likely increase with a ban on exclusive contracts.²³

HRDC's argument that consumers ought to be afforded the choice to select telecommunications providers in order to allow a competitive and free market to prevail in the ICS industry is misguided.²⁴ Increased contact between incarcerated persons and their families and friends may have proven societal benefits, but it must be remembered that ICS is a privilege and

²¹ See Pay Tel Second Further Notice Reply Comments, at 51-52.

²² See *id.*

²³ See *id.* Pay Tel would also note that having multiple ICS providers operating in the same facility through the same system is not feasible; no provider would allow other providers to have access to the software that would be needed to integrate an ICS system among numerous competitors, and the economics of sharing ICS traffic in this manner make this an unrealistic option.

²⁴ See Third Further Notice, at ¶ 293; *id.* at n.1015 (citing various comments from HRDC).

not a right. As set forth above, facilities (which are the experts on security-related matters, not the Commission) want to maintain the one-provider-per-facility structure for safety and security reasons, and that should end the debate. By definition, incarcerated persons do not have certain freedoms. They are not like the average person who gets to comparison shop around for phone services at Verizon, AT&T, and T-Mobile. The argument that inmates should be able to pick and choose their provider should get no traction, especially now that the Commission has adopted rate caps for all interstate and intrastate calls and eliminated many ancillary services charges and capped those few that are still permitted.

The Commission could have ensured lower rates, better service, and more competition by eliminating commissions and putting in place a cost-recovery mechanism. It could still do so. Compromising security by forcing multiple ICS providers to operate in a given facility is not the solution.

II. VIDEO VISITATION AND CALLING AND OTHER ADVANCED ICS

The Commission also seeks comment on numerous questions related to video calling, video visitation, and other advanced ICS (including email and voice and text messaging), and what, if anything, it should do to regulate these services.²⁵ Pay Tel shares the concerns of the Commission, Prison Policy Initiative, and HRDC that unregulated services such as these are already being used by some providers to recover decreased interstate rates and that such practices will only continue once the Second Inmate Rate Order's rate caps and ancillary fees rules take effect.²⁶ In addition,

²⁵ *Id.* at ¶¶ 296-307.

²⁶ *Id.* at ¶ 296.

Pay Tel agrees with Prison Policy Initiative that failure to regulate video services would lead to the elimination of both traditional telephone ICS and in-person visitation.²⁷

The Commission should regulate these services, including, eventually, adopting rate caps and reforms to ancillary service charges, and it has the authority to do so.²⁸ The Commission ought to learn from its experience with traditional ICS phone calling over the past fifteen years and recognize that the “same perverse incentives”²⁹ that have harmed the traditional ICS market exist and will infect the video visitation and other advanced ICS markets if left unchecked. The

²⁷ *Id.* at ¶ 296 n.1028 (quoting Prison Policy Initiative: “[F]ailure to regulate prison and jail video communication charges will leave this industry with a ready method to instantly subvert the FCC’s price caps on long-distance calls simply by replacing facilities’ current telephones with video phones and labeling the verbal communications that take place as ‘video calls’.”); *id.* at ¶ 301 n.1045.

Even with regulation, it is only natural that communications via these services will become more commonplace, in line with what is occurring outside of the ICS context.

²⁸ Pay Tel agrees with the Commission’s finding that it has the authority to regulate ICS regardless of the technology used to deliver the service. *See* Second Inmate Rate Order, at ¶ 250. Pay Tel would also note that, in its *Net Neutrality Order*, the Commission singled out such newer ICS technology services as within the scope of its authority:

“We also note that the provisions of section 276 underlying the Commission’s regulation of inmate calling services (ICS) and the ICS rules themselves do not appear to vary depending on whether broadband Internet access service is an ‘information service’ or ‘telecommunications service.’ We note, however, that The D.C. Prisoners’ Legal Services Project, Inc., et al. (the ICS Petitioners) express concern that forbearance under this order could be misconstrued as a limitation on the Commission’s authority with respect to any advanced ICS services (such as video visitation) that may replace or supplement traditional ICS telephone calls. It is not our intent to limit in any way the Commission’s ability to address ICS, particularly given the Commission’s finding in 2013 that the ICS market ‘is failing to protect the inmates and families who pay [ICS] charges.’ We therefore find that forbearance would fail to meet the statutory test of section 10 of the Act, in that the protections of section 276 remain necessary to protect consumers and serve the public interest. Accordingly, out of an abundance of caution we make clear that we are not forbearing from applying section 276 to the extent applicable to ICS, as well as the ICS rules.”

Report and Order on Remand, Declaratory Ruling, and Order, *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, 30 FCC Rcd 5601, 5856, ¶ 521 (Mar. 12, 2015).

²⁹ Third Further Notice, at ¶ 305.

Commission should regulate these services on the front end and foreclose opportunities for service providers to gouge consumers before exploitation using these services becomes standard operating procedure.

That said, the Commission should not rush to regulate products and services it admits it does not understand well,³⁰ and it cannot regulate these advanced ICS services without gathering substantial cost data regarding them. It has asked in the Third Further Notice for “general comment on the costs to providers of video visitation.”³¹ The Commission, in fact, needs very specific input, and should consider as part of its one-time data collection (or as part of a different data collection) requiring providers to submit detailed cost studies relating to those advanced ICS services (including video calling and video visitation) that likely require regulation.³² Among the cost categories that ICS providers should be required to report, if the Commission is going to gather any meaningful data on which to base any rate or fee regulation as to these advanced services, are capital investment, costs of service, commission payments, and ancillary service charges, among others.

III. ONE-TIME DATA COLLECTION

Pay Tel supports the Commission’s adoption in the Second Inmate Rate Order of a one-time Mandatory Data Collection to take place two years from the Order’s effective date.³³ But the

³⁰ *Id.* at ¶ 296 (Commission acknowledging that it needs to “gain a better understanding of” the use of “newer technologies”). Pay Tel appreciates the Commission’s acknowledgement that it needs more information regarding these technologies. Pay Tel does not fault the Commission for asking whether and why there are rate differences between video visitation and traditional ICS, but the question reveals the Commission’s ignorance regarding the former. At a basic level, ICS is made affordable (in large part) through concentrated demand. By contrast, video visitation has (for now, at least) lower demand, along with higher infrastructure and hardware costs, and it therefore warrants a higher rate per minute.

³¹ *Id.* at ¶ 303.

³² *Id.* at ¶ 305 (seeking comment on regulating video services to ensure that they “do not create loopholes that providers may exploit”).

³³ *Id.* at ¶ 308.

Commission must dramatically improve upon the format and instructions that were used in the August 2014 Mandatory Data Collection if the future collection exercise is going to be of meaningful benefit and provide truly useful data.

Certain determinations reached by the Commission in the Second Inmate Rate Order lead Pay Tel to conclude that the prior Mandatory Data Collection process failed to ensure consistent reporting by ICS providers. ICS providers are not all one and the same; in reality, entities that have been identified by the Commission as “ICS Providers” vary significantly in operational scope. Some of the entities that submitted cost data offer a self-provisioned, end-to-end ICS service to facilities. Other entities provide a subset (but not all) of the functions necessary for a complete end-to-end ICS service, while other entities resell ICS service provisioned by others. Each type of ICS provider’s costs vary significantly.

Unfortunately, the Mandatory Data Collection previously undertaken by the Commission asked each reporting entity to provide a quantification of certain categories of cost and the associated minutes of use, without requiring the provider to describe in sufficient detail what set of operational activities these costs represent. Simply dividing reported costs by reported minutes of use in order to calculate a per-MOU cost for each reporting ICS provider, with no means by which to differentiate between different types of providers in the market, does not yield per-MOU costs that can be averaged or compared in any meaningful way.³⁴

³⁴ Don Wood, Pay Tel’s economic consultant, reviewed the Mandatory Data Collection filings of the 14 providers who responded to same. Three of those providers did not produce confidential cost data for analysis, and Wood found three other providers’ confidential data unreliable. Wood’s proposed rates were generated using the responses of the eight providers whose confidential data represented a largely reliable dataset that demonstrated notable consistency in results. *See, e.g.*, Don J. Wood, Ex Parte Presentation, WC Docket No. 12-375, at Attachment, pp. 4, 8 (Feb. 13, 2015) (“Wood February 13 Ex Parte”).

For example, the Commission identified two ICS providers that are “quite small” and that “operate in relatively small jails.”³⁵ Based on its calculation of a relatively low per-MOU cost for these entities, the Commission concluded that these providers are “more efficient” than other reporting ICS providers.³⁶ This observation provides the stated basis for a number of important conclusions in the Second Inmate Rate Order, yet the Commission reached its conclusion as to the “more efficient” nature of these two providers without any information regarding the operational scope of these entities, specifically, regarding whether their reported costs represent the costs necessary to provide a complete, end-to-end ICS service.

As an additional example of the problems with the Mandatory Data Collection in this regard, consider CenturyLink’s situation: CenturyLink operates as a service aggregator of sorts for other ICS providers—bidding for and entering into facility contracts but then subcontracting the majority of the service functions to other ICS providers. CenturyLink utilizes the technology and services of ICSolutions or Securus to provide service to its clients.³⁷ For example, CenturyLink holds the contract to provide ICS to the Texas Department of Criminal Justice, but Securus provides the centralized call platform and handles all prepaid account setup and billing.³⁸ It is unclear how the Commission’s Mandatory Data Collection instructions and reporting template, which did not consider that ICS providers would offer such radically different versions of ICS, accommodated this (or other non-traditional) circumstances. Did both companies report the

³⁵ Second Inmate Rate Order, at ¶58.

³⁶ *Id.*

³⁷ *See, e.g.*, Pay Tel, Ex Parte Presentation, WC Docket No. 12-375, at 1-2 (May 5, 2015).

³⁸ CenturyLink provides a specific website for the Texas Department of Criminal Justice, which provides rate and fee information for consumers as well as account setup options. *See* Texas Offender Telephone, Family and Friends Enrollment, <http://texasoffenderfriendsandfamily.com/>. This information reflects that Securus and JPay, Inc. (a Securus affiliate) provide payment processing and account setup.

minutes of use? If not, how were costs represented to avoid the appearance of an unrealistically low cost per minute for CenturyLink?

Pay Tel does not mean to imply that data were reported inaccurately; rather, the Mandatory Data Collection itself was flawed.³⁹ To truly understand costs in the ICS market, it is necessary, among other things, to take these unique arrangements into consideration and to ensure that the data collection process requires that the scope of an ICS provider's operations be fully reported along with that provider's relevant costs. If the future data collection does not start from a more accurate place, the data provided will yet again yield a muddled picture of the true costs of providing ICS.

This are just a couple of examples of the problems with the way the Mandatory Data Collection was conducted that must be rectified in advance of the subsequent collection two years from now. The responses to the Mandatory Data Collection varied widely in terms of the degree of transparency and documentation offered by providers.⁴⁰ It will be unavoidable that some providers will offer more data, including backup materials, than others. But the threshold that all providers must meet in order for their responses to be considered sufficient and compliant must be raised. Pay Tel, for example, was the only one of fourteen ICS providers responding to the Mandatory Data Collection to provide complete workpapers for each facility it served.⁴¹ In direct contrast, the Commission elected to place substantial weight on the reported costs of two small

³⁹ A similar condition exists with NCIC, which provides technology and services to a variety of resellers and also has direct accounts. For example, the proposal made by AmTel in response to an RFP for ICS issued by Dawson County, Georgia, references "ICE" as the inmate platform of its choice and provides patent references for this product, which is in fact owned and operated by NCIC. *See* AmTel Response to Dawson County, GA, Request for Proposal, at 1, 25 (Feb. 18, 2015) (obtained through public records request) (excerpt from RFP attached as Exhibit A).

⁴⁰ *See, e.g.*, Wood February 13 Ex Parte, at Attachment, p. 4.

⁴¹ *See, e.g., id.*

ICS providers that are treated by the Commission as “more efficient,” neither of which provided a comparable level of backup information or supporting workpapers. The Commission should require as part of its next data collection some sort of means by which it can evaluate the accuracy of data provided, whether through backup workpapers, audited financial statements, or other legitimate sources of validation.

Before proceeding with its future one-time data collection, the Commission should seek comment on the design and content of any data collection template to be used, and on the minimum level of supporting documentation that will be required in order for a provider’s costs to be considered.

IV. CONTRACT FILING REQUIREMENT

The Commission also asks whether it should require ICS providers to file all contracts.⁴² Pay Tel does not see the value in requiring ICS providers to file contracts with the FCC, and certainly the benefits (if any) arising from such a requirement would not outweigh the substantial costs and burdens ICS providers would incur in complying with it.⁴³ The Commission is correct that “ICS contracts are public documents”⁴⁴ and as such, they can, generally, be obtained by any interested party upon request. State public records laws already provide an appropriate and effective mechanism by which those parties desiring to see an ICS contract can obtain access thereto.

⁴² Third Further Notice, at ¶ 315.

⁴³ *See id.* at ¶ 312 (quoting Securus’s position that ICS providers would face extensive burdens associated with producing such contracts, including updates thereto, particularly in redacted form that would be required given the confidential nature of their information).

⁴⁴ *Id.* at ¶ 315 n.1086.

In addition, the Commission's annual reporting requirement ensures that ICS providers will already be reporting to the Commission the "guts" of what one might want to discover in an ICS contract, including rates, ancillary fees, site commission payments, video visitation services information (minutes of use, rates, and ancillary service charges), and disability-related call data.⁴⁵ To the extent such information will be public, if someone reviewing the information has reason to believe an ICS provider is falsifying the reporting or its annual certification, it can bring a complaint to the Commission, which should be investigated. Further, the Commission intends to treat some portion of the annually reported data as confidential,⁴⁶ which itself is an acknowledgement that certain provider-facility information should not be disclosed and actually bolsters the argument that the Commission's default setting should not be that ICS contracts must be filed and made public.

V. INTERNATIONAL CALLS

The Commission seeks comment regarding a broad range of topics dealing with international calling rates.⁴⁷ Pay Tel does not believe the Commission needs to address international rates at this time. International calling represents a minimal percentage of calling in jails and prisons nationwide, and just a fraction of Pay Tel's aggregate minutes of use. If, however, the Commission insists on tackling international calls, applying the Second Inmate Rate Order's adopted caps to such calls is not appropriate.⁴⁸ International calling rates vary widely by the

⁴⁵ Second Inmate Rate Order, at ¶ 267.

⁴⁶ *Id.* at ¶ 268.

⁴⁷ Third Further Notice, at ¶¶ 316-23.

⁴⁸ *Id.* at ¶¶ 317, 320.

location called, and rate latitude and flexibility are needed in order to allow ICS providers to adjust to calling patterns at any given site.

In addition, as the Commission notes, a large portion of international calling is related to inmates held on behalf of ICE and is conducted in accordance with the ICE ICS contract.⁴⁹ The ICE ICS program appears to be operating well, with reasonable rates for detainees' calls (including a free calling element).⁵⁰ If it is not broken, the Commission need not fix it.

VI. THIRD-PARTY FINANCIAL TRANSACTION FEES

The Commission seeks additional comment regarding third-party financial transactions, focusing on revenue-sharing arrangements between ICS providers and financial services companies.⁵¹ Pay Tel supports the Second Inmate Rate Order's prohibition of any ICS provider mark-ups over and above the money transfer or payment processing fee assessed by a third party (e.g., Western Union or Money Gram) for financial transactions.⁵² And Pay Tel agrees with fellow providers ICSolutions and CenturyLink that further regulation is necessary in this area in order to give real meaning to the prohibition on mark-ups and prevent ICS providers from circumventing the rule.⁵³

As currently drafted, the Second Inmate Rate Order's rules appear to allow ICS providers to pass through any financial transaction fee charged by a third party, without any further parameters or restrictions on those fees, so long as the ICS provider does not itself impose a mark-

⁴⁹ *Id.* at ¶¶ 321-22.

⁵⁰ *Id.* at ¶¶ 322.

⁵¹ *Id.* at ¶¶ 324-26.

⁵² Second Inmate Rate Order, at ¶¶ 170-72.

⁵³ Third Further Notice, at ¶ 325 (citing filings by CenturyLink and ICSolutions arguing that the Commission should regulate revenue-sharing agreements between providers and third-party payment processors).

up on them.⁵⁴ The Commission states that its approach will ensure that, “in transactions like these, ICS providers do not receive excessive compensation” and will “also protect[] consumers from unreasonable additional fees that might result in unjust and unreasonable rates.”⁵⁵

Further clarification and, perhaps, regulation is necessary in order for those statements to be true. The Commission should prohibit revenue-sharing agreements between ICS providers and financial companies that are assessing money transfer and payment processing fees. A revenue-sharing arrangement is, in effect, just a mark-up for the ICS provider by another name. Such arrangements should be prohibited regardless of whether the third party is affiliated with the ICS provider.

On that note, the Commission must also monitor closely situations where a “third-party” money transfer or payment processing company is affiliated with an ICS provider (whether the ICS provider owns it, or the two companies share the same parent company). For example, Securus owns JPay, Inc.; Global Tel*Link owns Touch Pay; and the same parent company, Keefe Group, owns ICSolutions and Access Corrections. JPay, Touch Pay, and Access Corrections provide, among other things, payment processing services for unregulated services such as trust fund and commissary payments. Fees assessed by such affiliated companies, for all practical purposes, end up in the same bucket as the affiliated ICS providers’ revenues. They are not “third parties” in the way that Western Union or Money Gram are. Excessive, unreasonable charges levied by companies set up in this manner should be subject to Sections 201(b) and Section 276.

* * *

⁵⁴ See 47 C.F.R. § 64.6020(a)(2).

⁵⁵ Second Inmate Rate Order, at ¶ 172.

Dated: January 19, 2016

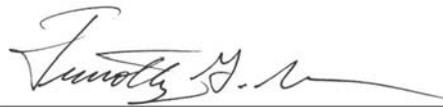
Respectfully submitted,

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EXHIBIT A

February 18, 2015

Dawson County Board of Commissioners
Attention: Purchasing Director
25 Justice Way, Suite 2233
Dawsonville, GA 30534

RE: RFP # 249 – 15, Inmate Telephone Service

Dear Davida Simpson,

Thank you for allowing AmTel an opportunity to present our Inmate Telephone System “ITS” solution and *enhanced customer services*. AmTel is confident that we can meet or exceed all requirements in the Inmate Telephone bid. AmTel’s goal in preparation of the enclosed response to “RFP # 249-15” is to provide straight forward, yet detailed explanation of all materials needed for a fully integrated state-of-the-art, web-based inmate telephone solution. This complete turnkey installation will be provided at no cost to your facility.

“ICE” is our Inmate Telephone platform of choice, as it brings an entirely new level of tools to the Investigative Divisions. ICE helps to eliminate boundaries involving cross-jurisdictional counties and/or jails. The value-added investigative features provide investigators the ability to confirm positive IDs, then link communications and/or E-Commerce activity among users and confinement institutions throughout more than 450 correctional facilities in the US, as well as the US Territories and six other countries.

AmTel’s *Value Added Services* also include Kiosks, which are coordinated through one of our strategic partners. This technology is not only secure, but provides facilities with:

- Remote video visitation
- Automated grievances
- Medical scheduling
- Commissary interface
- Text based inmate messaging
- Law library
- Automated crime tip
- E-Mail
- Correctional facility information:
- Inmate handbook
- Inmate notifications
- Menus; etc.

Each Kiosk also includes instructional videos that give step-by-step instruction.

We aim to set a matchless standard for service, and are willing to do whatever it takes to ensure that the facility staff and phone customers are satisfied with our equipment and services. Additionally, AmTel’s corporate and maintenance offices are located in Georgia, which would allow us to provide hands-on assistance the very day that it is requested. *We believe that technology is of no value unless it is backed by good customer service!*

especially with the new digital and VOIP switches. Some companies may list several patents regarding this subject, but the truth is that those patents were written, developed, and tested using phone calls that terminate through Regional Bell Operating Switches (RBOC) central offices like AT&T, BellSouth, etc., using the SS7 Network. That solution today only relates to about 8% of inmate phone traffic because it only consists of Collect Calls.

Due to the changes in the digital telephone network, AmTel uses platform analysis and other internal processes to help alert our customers with this type of fraud. Once certain parameters or call patterns are met, the AmTel staff, Operations, and Customer Support group becomes like an extended department of investigators for our customers. As an example, during the week September 23rd, AmTel staff informed one of our customers of fraudulent activity that was happening from an inmate at their location; i.e., St. Tammany Parish Detention Center. The inmate was impersonating officers and is now facing about 600 additional charges.

The ICE platform currently holds:

- ✓ Patent Application Number 13/037,865 - Allows monitoring of inmate call recordings for silence recognition to detect and disconnect unauthorized third-party call connections.
- ✓ Patent Application Number 13/211,719 – Use of Voice Biometrics Software to analyze inmate telephone calls.

- e. Call-chaining, chain-dialing or getting a second dial tone is not permitted.

AmTel Response: AmTel has read, agrees, and will comply with the above stated requirements. ICE never allows a direct copper connection between an inmate station device and an analog central office trunk. By preventing this connection, hook switch dialing cannot be used to make calls or fraud the system. Internally, the system will not accept hook switch dialing.

- f. System shall prevent users (inmates or callers) from dialing extra digits once call is accepted. Vendors to describe process.

AmTel Response: AmTel has read, agrees, and will comply with the above stated requirements. Once the call is connected any attempt to dial extra digits or place a three-way call will automatically disconnect and the CDR will be flagged as a fraud attempt.

4. Damage and Repair Liability

- a. The County will have no liability to the Vendor for fraud, theft, vandalism and/or damage or loss of the Vendor's equipment inflicted by inmates or the public.