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By Electronic Filing

January 22, 2016

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

Dear Ms. Dortch:

Pursuant to the Protective Order issued in WC Docket No. 12-375,¹ CenturyLink Public Communications, Inc. (“CenturyLink”) hereby files via the Commission’s Electronic Comment Filing System redacted versions of its Petition for Stay Pending Judicial Review and Declaration of Paul Cooper (the “Submissions”). As required, the redacted versions of the Submissions are marked as follows: **“REDACTED – FOR PUBLIC INSPECTION”**, with only the confidentiality and filing method annotations modified.

As explained below, the Submissions contain highly sensitive contractual and business information regarding CenturyLink’s provision of inmate calling services (ICS) to prisons and jails throughout the United States. CenturyLink has therefore requested that this information not be made available for public inspection.

Pursuant to the Protective Order, the non-redacted version of the Submissions (filed separately) are marked as follows: **“CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 12-375 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.”** CenturyLink seeks confidential treatment for the material identified by bold brackets in the non-redacted version of the Submissions (the “Confidential Information”). In accordance with paragraph 4 of the Protective Order, two copies of the Submissions are being transmitted to Lynne Engledow of the Wireline Competition Bureau.

Pursuant to sections 0.457 and 0.459 of the Commission’s rules, CenturyLink supports this request as follows:

47 C.F.R. § 0.457

The Confidential Information included with the Submissions is entitled to confidential treatment under 47 C.F.R. § 0.457 as well as under the Protective Order in WC Docket No. 12-

¹ 28 FCC Rcd. 16954 (2013).

REDACTED – FOR PUBLIC INSPECTION

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375. The information includes data on the per-minute costs of service for calls made at prisons CenturyLink serves, as well as information regarding CenturyLink's ICS contracts and contractual relationships. 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 rules 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 in the Submissions as protected from public disclosure and inspection pursuant to 47 C.F.R. § 0.459(b) as described below.

Information for which confidential treatment is sought

CenturyLink seeks confidential treatment for the bracketed Confidential Information in the Submissions because it is confidential and proprietary commercial and financial information that is entitled to protection from public disclosure and availability. As such, the non-redacted versions of the Submissions are marked "**CONFIDENTIAL INFORMATION – SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 12-375 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION.**"

Commission proceeding in which the information was submitted

The Confidential Information is being submitted with CenturyLink's Submissions 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 for calls made at the prisons CenturyLink serves, as well as additional details regarding CenturyLink's ICS contracts and contractual relationships. 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) and Commission precedent.

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 the Submissions would generally not be subject to routine public inspection under the Commission's rules (47 C.F.R. § 0.457(d)) and precedent, demonstrating that the Commission already anticipates that its release likely would produce competitive harm. The types of services that CenturyLink provides, including ICS, are

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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 Submissions 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 in the Submissions 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.

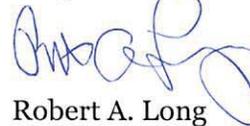
Other information that CenturyLink believes may be useful in assessing whether its request for confidentiality should be granted

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.

* * *

This request for confidential treatment should not be construed as a waiver of any other protection from disclosure or confidential treatment accorded by law. Please contact the undersigned at (202) 662-6000 should you have any questions concerning this submission.

Respectfully submitted,



Robert A. Long

Counsel for CenturyLink

Enclosure

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

**PETITION OF CENTURYLINK
FOR STAY PENDING JUDICIAL REVIEW**

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INTRODUCTION

Petitioner CenturyLink Public Communications, Inc. (“CenturyLink”) respectfully requests that the Commission stay the rate caps for Inmate Calling Services (“ICS”) adopted in its recent *Order*,¹ pending disposition of CenturyLink’s petition for judicial review of the *Order*.² A stay is warranted because the rate caps will prevent CenturyLink from recovering its reasonable cost of providing ICS to multiple facilities in several jurisdictions, in violation of the Communications Act’s requirement the Commission “ensure that all [ICS] providers are fairly compensated for each and every completed intrastate and interstate call using their payphone.”³ The *Order*’s rate caps also violate the Act in other respects, underscoring the need for a stay.

BACKGROUND

The *Order* marks the latest chapter in the Commission’s effort to establish regulations for the inmate calling services market.⁴ The Commission’s initial order, issued in September 2013, imposed interim rate caps of \$0.21 per minute for

¹ See *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) (“*Order*”).

² See *CenturyLink Public Comm’cns, Inc. v. FCC*, No. 16-1012 (D.C. Cir. filed Jan. 15, 2016).

³ 47 U.S.C. § 276(b)(1)(A).

⁴ See *Petition of Global Tel*Link for Stay Pending Judicial Review*, WC Docket No. 12-375, at 3–6 (Dec. 22, 2015) (tracing the proceeding’s history) (“*GTL Petition*”).

debit and prepaid interstate ICS calls, and \$0.25 per minute for collect interstate ICS calls.⁵ In addition, the *2013 Order* directed that all ICS rates must be “cost-based,” and provided “safe harbor” rates of \$0.12 per minute for interstate prepaid and debit calls and \$0.14 per minute for interstate collect calls, below which calling rates would be presumed lawful.⁶ Although the *2013 Order* solicited comments on the Commission’s authority to regulate intrastate ICS calls, it did not adopt new regulations for such calls.⁷

A coalition of ICS providers, corrections officials, and other parties petitioned for review of the *2013 Order* and sought a stay of its enforcement. The United States Court of Appeals for the District of Columbia Circuit granted the stay request in part in January 2014, ruling that petitioners were likely to succeed in their challenge to the *2013 Order*’s cost-based rate requirement, safe-harbor provisions, and annual reporting requirements.⁸ Thereafter, the court granted the Commission’s unopposed motion to hold the case in abeyance.⁹ As a result, the

⁵ *Report and Order and Further Notice of Proposed Rulemaking, Rates for Interstate Inmate Calling Services*, 28 FCC Rcd. 14107, ¶ 48 (2013) (“*2013 Order*”).

⁶ *Id.* ¶¶ 12, 60, 120.

⁷ *See id.* ¶¶ 135–41.

⁸ *See Order, Securus Techs., Inc. v. FCC*, Nos. 13-1280 et al. (D.C. Cir. Jan. 13, 2014).

⁹ *See Uncontested Mot. of Federal Comm’ns Comm’n to Hold Case in Abeyance, Securus Techs., Inc. v. FCC*, Nos. 13-1280 et al., at 3 (D.C. Cir. filed Dec. 10, 2014).

2013 Order's interim rate caps went into effect—subject to future judicial review—while the rest of the *2013 Order*'s core provisions did not.

In 2014, the Commission issued a Second Further Notice of Proposed Rulemaking¹⁰ and conducted a mandatory data collection from ICS providers, including CenturyLink. Responses to the mandatory data collection demonstrated that the cost of providing ICS varies significantly from state to state and facility to facility, depending on factors including the level of infrastructure investment required to provide service, the nature and extent of applicable security procedures, and the imposition, either as a matter of state law or contractual obligation, of mandatory site commissions as a prerequisite for providing service. As Global Tel*Link has noted, the responses also showed that “the rate caps adopted by the Commission will cause 40 percent (40%) of all debit/prepaid minutes of use across all responding ICS providers and all facility types to be provided at below-cost rates.”¹¹

CenturyLink's data indicated that, nationwide, its average cost of service for prisons in 2014 was [REDACTED]

¹⁰ *Second Further Notice of Proposed Rulemaking, Rates for Interstate Inmate Calling Services*, 29 FCC Rcd. 13170 (2014) (“*2014 FNPRM*”).

¹¹ *GTL Petition* at 14–15 (citing Stephen E. Siwek & Christopher C. Holt, Comments on Wheeler/Clyburn ICS Proposal (Oct. 10, 2015), attached to Letter from Chérie R. Kiser, Counsel for GTL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (Oct. 10, 2015)) (emphases omitted). The percentage of below-cost minutes jumps to 88 percent for all debit/prepaid minutes in prisons with between 5,000 and 19,999 inmates. *See id.* at 15.

[REDACTED] exclusive of site commissions.¹² CenturyLink's cost of service for prisons in 2014 ranged from a low of [REDACTED] [REDACTED] per minute depending on call type, exclusive of site commissions.¹³ Just [REDACTED] [REDACTED] large prison systems with per-minute costs exceeding the *Order's* new rate caps accounted for approximately [REDACTED] of CenturyLink's total ICS minutes in 2014.¹⁴

The Texas prison system, CenturyLink's largest ICS customer, is particularly instructive. Because Texas had not previously allowed regular inmate telephone calling, CenturyLink was required to make a significant capital investment of over [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] to install the wiring and other phone infrastructure necessary to provide service at the 114 facilities overseen by the Texas Department of Criminal Justice.¹⁵ Special security features required by state law, such as voice biometric screening and strict manual processes for pre-registering and verifying

¹² See Declaration of Paul Cooper, Vice President and General Manager, CenturyLink Public Comm'cns, Inc., ¶ 9 (attached as Exhibit A) ("Cooper Decl.").

¹³ See *id.* ¶ 10 (table). The contracts that gave rise to these costs were competitively procured. See *id.* ¶¶ 5, 14.

¹⁴ See *id.* ¶¶ 11–12; see also *id.* ¶ 31.

¹⁵ See *id.* ¶ 16.

each party called by an inmate, further increase the cost of service in Texas.¹⁶ Together, these capital carrying costs and security-related processes cost CenturyLink approximately [REDACTED] [REDACTED] to maintain in 2014.¹⁷ Additional costs of service, including network access, technical support, field operations and repair, billing, and customer care brought CenturyLink’s total cost of service in Texas prisons (exclusive of the 40 percent site commission required by statute) to [REDACTED] [REDACTED] in 2014.¹⁸

The *Order*, which was released by the Commission on November 5, 2015, and published in the Federal Register on December 18, 2015,¹⁹ does not challenge the accuracy of CenturyLink’s cost data. Instead, it “assumes” that the data reflect actual costs and “take[s] the data at face value.”²⁰ Nevertheless, the *Order* adopts rate caps that are well below the cost of service documented by CenturyLink and other ICS providers. Following a brief 90-day transition period, the *Order* imposes

¹⁶ See *id.* The Utah and Arizona Departments of Correction, which CenturyLink began serving in 2015, impose similarly strict security, registration, and verification processes. See Cooper Decl. ¶ 19.

¹⁷ See *id.* ¶ 16.

¹⁸ *Id.* ¶ 17.

¹⁹ See 80 Fed. Reg. 79136 (Dec. 18, 2015).

²⁰ *Order* ¶¶ 53, 57. But see, e.g., *id.* ¶ 116 (suggesting, without further analysis, that some firms whose costs exceed the rate caps “may” have used “reporting methods” that “varied from those of other providers” or “may be less efficient than their peers”).

a cap of \$0.11 per minute for debit and prepaid calls from prisons and an initial cap of \$0.14 per minute for collect calls from prisons.²¹ In support of this approach, the *Order* asserts that some ICS providers reported average per-minute costs below the rate caps, and that additional providers could achieve below-cap costs “through increased” (but unexplained) “efficiencies.”²² Even so, the *Order* concedes that its rate caps “are below the costs . . . reported to [the Commission] under the Mandatory Data Collection,” “may not be sufficient for certain providers,” and will cause some ICS providers to “operate at a loss.”²³

The *Order* acknowledges that “site commissions” (payments by ICS providers to the facilities they serve) are often required by statute or existing contracts and are “a significant driver of rates,” and expressly declines to prohibit commission payments.²⁴ Instead, the *Order* merely “discourage[s]” such payments and excludes commissions from its cost-of-service calculations on the ground that “site commissions do not constitute a legitimate cost . . . of providing ICS.”²⁵ The

²¹ See *Order* ¶ 9. The rate for collect calls at prisons falls to \$0.11 per minute in 2018. Although the *Order* also adopts a tiered rate structure that allows higher rates for jails, depending on the number of inmates housed, CenturyLink submitted data showing that the cost to serve jails with more than 100 inmates is generally comparable to the cost of serving prisons. Cooper Decl. ¶ 13.

²² *Order* ¶¶ 58–59; see also *id.* ¶ 54 (finding caps sufficient to allow recovery of “efficiently incurred ICS costs (excluding reported commissions)”).

²³ *Id.* ¶ 116 & n.365, ¶ 219.

²⁴ See *id.* ¶¶ 9, 118.

²⁵ *Id.*

Order bills itself as a change in law that is “likely to . . . trigger the renegotiation of many ICS contracts,”²⁶ but does not address instances in which commissions are mandated by statute (as in Texas) or in which an existing multi-year contract lacks a changed-circumstances clause.²⁷

Two additional aspects of the *Order* are relevant here. *First*, although the proceeding is captioned “Rates for *Interstate* Inmate Calling Services,” the *Order* asserts jurisdiction over intrastate ICS calls based on section 276 of the Communications Act.²⁸ *Second*, the *Order* states that its rate caps and other restrictions may be waived in “extraordinary circumstances” and that such requests will, at least in some instances, be judged “at the holding company level.”²⁹

ARGUMENT

The Commission should stay the *Order*’s rate caps³⁰ pending judicial review. Under Commission precedent, a stay is warranted where (1) the petitioner is likely to prevail on the merits; (2) the petitioner will suffer irreparable harm if a stay is not granted; (3) other interested parties will not be substantially harmed by a

²⁶ *Id.* ¶ 132.

²⁷ *See id.* ¶ 125 (acknowledging that “the caps would be significantly higher” if commissions were taken into account).

²⁸ *See* 47 U.S.C. § 276; *Order* ¶¶ 106–16.

²⁹ *Order* ¶¶ 217–19.

³⁰ *See* 47 C.F.R. §§ 64.6010, 64.6030 (2016).

stay; and (4) the public interest favors granting a stay.³¹ All those requirements are satisfied here.

I. CENTURLINK IS LIKELY TO SUCCEED ON THE MERITS

CenturyLink is likely to succeed on the merits in a challenge to the *Order* because the rate caps set by the *Order* are arbitrary, capricious, and contrary to law. Although section 276 requires the Commission to “ensure that all [ICS] providers are fairly compensated for *each and every completed intrastate and interstate call*,”³² the *Order* concedes that its rate caps will cause some providers to “operate at a loss.”³³ This mandate to lose money cannot be squared with section 276’s text or purpose.

Challenges to the *Order* are likely to succeed on additional grounds as well. The Commission lacks jurisdiction under section 276 to adopt caps for intrastate rates. In addition, the Commission cannot rely on waiver provisions to cure the *Order*’s deficiencies.

³¹ See Order Denying Stay Request, *Amendment of Parts 73 and 76 of the Commission’s Rules*, 4 FCC Rcd. 6476, ¶ 6 (1989); see also *Winter v. NRDC*, 555 U.S. 7 (2008).

³² 47 U.S.C. § 276(b)(1)(A) (emphasis added).

³³ See Order ¶¶ 116 & n.365, 219.

A. The Order’s Rate Caps Are Unlawful Because They Prevent ICS Providers From Recovering Their Costs

1. Section 276 unambiguously requires the Commission to measure compensation on a per-call basis. Specifically, section 276 directs the Commission “to prescribe regulations that . . . establish a *per call* compensation plan to ensure that all [ICS] providers are fairly compensated *for each and every completed intrastate and interstate call using their payphone.*”³⁴ Thus, if an ICS provider serves 10 prisons and facilitates 100 calls at each of those prisons, the provider is entitled to fair compensation for “each and every” one of those 1,000 calls, judged on a “per call” basis.

The *Order* contravenes section 276’s straightforward command. At no point does the *Order* show that its rate caps will allow ICS providers to obtain fair compensation for “each and every . . . call” made using their facilities, on a “per call” basis. Instead, the *Order*’s rate caps are based on cost estimates “calculated using a weighted *average per minute cost*” of service.³⁵ This model is intended to “allow” ICS providers, “*in the aggregate, . . . to recover average costs.*”³⁶ The resulting rate structure thus seeks to ensure fair compensation on a per-company

³⁴ 47 U.S.C. § 276(b)(1)(A) (emphasis added). Section 276(b)(1)(A) includes an exception, not relevant here, for “telecommunications relay service calls” made by “hearing disabled individuals.”

³⁵ *Order* ¶ 52.

³⁶ *Id.* ¶ 52 n.170 (emphasis added).

(rather than a per-call) basis, on the assumption that providers will lose money on some calls while earning offsetting profits on others.³⁷ Indeed, the *Order* purports to provide fair compensation “at each and every tier” of facility (i.e., small jails, large jails, prisons), rather than fair compensation for “each and every . . . call,” as section 276 requires.³⁸

The *Order*’s rate structure relies on a subtle, but significant revision of the statutory text. In effect, the *Order* treats section 276 as if it were amended to read “the Commission shall . . . prescribe regulations that establish a ~~per-call~~ compensation plan to ensure that all [ICS] providers are fairly compensated ~~for each and every completed intrastate and interstate call using their payphone.~~” By treating the struck out text as inoperative, the *Order* contravenes the rule that agencies must “favo[r] that interpretation which *avoids* surplusage” and gives effect to every word in the statute.³⁹

Precedent confirms that the *Order*’s aggregate rate structure violates section 276. In *Illinois Public Telecommunications Association v. FCC*, a group of

³⁷ *Order* ¶ 52 n.170; *see also id.* ¶ 219 (explaining that waiver petitions will “be evaluated at the holding company level”).

³⁸ *Compare Order* ¶ 52 n.170, with 47 U.S.C. § 276(b)(1)(A).

³⁹ *Emory v. United Air Lines, Inc.*, 720 F.3d 915, 926 (D.C. Cir. 2013) (quoting *Freeman v. Quicken Loans, Inc.*, 132 S. Ct. 2034, 2043 (2012)); *see also Indep. Ins. Agents of Am. v. Hawke*, 211 F.3d 638, 644 (D.C. Cir. 2000) (applying the “endlessly reiterated principle of statutory construction . . . that all words in a statute are to be assigned meaning, and that nothing therein is to be construed as surplusage” (quoting *Qi-Zhou v. Meissner*, 70 F.3d 136, 139 (D.C. Cir. 1995))).

regional bell operating companies (RBOCs) challenged a regulation that guaranteed payphone service providers “compensation . . . [for] access code and 800-calls,” but provided no “compensation for so-called ‘0+’ calls” or “calls made from inmate payphones.”⁴⁰ The RBOCs argued that “the Commission’s failure to provide compensation for 0+ calls” and inmate calls was “contrary to the plain language of § 276,” and in particular “the ‘each and every completed call’ language” in that provision.⁴¹ The D.C. Circuit agreed with the RBOCs on both issues. As to the 0+ calls, the court held that “[t]he Commission’s failure to provide interim compensation for 0+ calls is patently inconsistent with § 276’s command that fair compensation be provided for ‘each and every completed . . . call.’”⁴² As to the inmate calling issue, the court held that the Commission’s rule was “blatantly inconsistent with the language of the statute,” which “requires the Commission to promulgate regulations that will ensure that [ICS providers] receive fair compensation ‘for each and every completed intrastate and interstate call using their payphone.’”⁴³ The court therefore remanded the rule, stating that “the Commission must correct” the “flaw[s]” in the rule’s “compensation scheme.”⁴⁴

⁴⁰ 117 F.3d 555, 565–66 (D.C. Cir. 1997).

⁴¹ *Id.* at 565–66.

⁴² *Id.* at 566 (alteration in original, citation omitted).

⁴³ *Id.* (citation omitted).

⁴⁴ *Id.*

The *Order* suffers from the same fundamental defect. Although the rule in *Illinois Bell* provided no compensation whatsoever for ICS calls, the result under section 276 is the same where, as here, a rule imposes clearly inadequate compensation—for example by preventing a provider from recovering its cost of service. In both instances, the rule is “patently inconsistent with § 276’s command that *fair compensation* be provided for ‘each and every completed . . . call.’”⁴⁵ Unfair compensation is not an option.⁴⁶

2. The *Order* also violates section 276 because it offers fair compensation only to a limited and arbitrarily defined subset of ICS providers.

ICS providers will be able to “operate profitably” under the *Order*’s rate caps only if they meet the Commission’s test for “efficiency,” which among other things requires providers to incur “the lowest possible costs . . . necessary to” deliver service.⁴⁷ The *Order* erroneously assumes that every provider could achieve the lowest documented cost of service at every facility within a given class, irrespective of local variables such as security standards, called-party

⁴⁵ *Id.* (emphasis added, alteration in original, and citation omitted).

⁴⁶ *Cf. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Fifth Order on Reconsideration and Order on Remand, 17 FCC Rcd. 21274, 21302-03, ¶ 82 (2002) (“fair” compensation under section 276 “implies fairness to both sides”).

⁴⁷ *See Order* ¶¶ 53–54 & n.173.

verification requirements, wages, and capital-investment needs.⁴⁸ That is simply not possible. The record clearly shows that the cost of service varies significantly from jurisdiction to jurisdiction and facility to facility depending on the considerations identified above.⁴⁹ The fact that an ICS provider can provide service in a low-cost jurisdiction, such as West Virginia, for less than \$0.11 per minute does not imply that the provider (or any other provider) could do so in high-cost jurisdictions, such as Texas.⁵⁰ The *Order* is arbitrary and capricious, and will likely be set aside on that basis, because it fails to address this important problem.⁵¹

Moreover, even providers that are able to meet the *Order*'s "efficiency" test are assured fair compensation under the new rate caps only if they exclude site-commission payments from their cost base. This requirement is arbitrary and unreasonable, particularly in jurisdictions where site commissions are a mandatory

⁴⁸ See *id.* ¶ 58 (explaining that the \$0.11 per minute rate cap for prisons "is greater than the average per minute cost of each of the more efficient reporting providers," including two providers that "are quite small, and operate in relatively small jails only").

⁴⁹ See Cooper Decl. ¶¶ 5, 10–11, 20; Dissenting Statement of Commissioner Ajit Pai, *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, FCC 15-136, at 203 n.61 ("Pai Dissent"). These differences exist even when one excludes site commissions from the analysis. See Cooper Decl. ¶¶ 10–11, 20.

⁵⁰ See Cooper Decl. ¶¶ 5, 10–11, 16–24.

⁵¹ See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

prerequisite for providing service.⁵² In Texas, for example, a 40 percent site commission is required by statute⁵³—thus making commission payments an unavoidable cost,⁵⁴ whether the Commission “discourage[s]”⁵⁵ them or not. In other jurisdictions, ICS contracts require minimum “per diem” payments and provide for automatic dissolution of the contract if such payments are not made.⁵⁶ Elsewhere, ICS contracts contain termination-for-convenience clauses that allow prisons and jails to terminate the agreement if commissions are not paid.⁵⁷ Although the *Order* states that it amounts to a *force majeure* that will “likely . . . trigger the renegotiation of many ICS contracts,”⁵⁸ many ICS contracts are silent on the issue and hence will *not* automatically be renegotiated as a result of the new rate caps.⁵⁹ Even when a facility agrees to renegotiate (or is obligated to do so by

⁵² See *GTL Petition* at 10–13 (accurately describing site commissions in these cases as “location rents”); see also Cooper Decl. ¶¶ 6, 18.

⁵³ See Tex. Gov. Code Ann. § 495.025(a)(2) (mandating that the Texas Board of Criminal Justice “may not consider a proposal or award a contract to provide [ICS] service unless under the contract the vendor . . . pays the [Texas Department of Criminal Justice] a commission of not less than 40 percent of the gross revenue received from the use of any service provided”).

⁵⁴ See Cooper Decl. ¶¶ 6, 18.

⁵⁵ See *Order* ¶ 9.

⁵⁶ See Cooper Decl. ¶ 21.

⁵⁷ See *id.* ¶ 23.

⁵⁸ *Order* ¶ 132.

⁵⁹ See Cooper Decl. ¶ 24.

virtue of a regulatory *force majeure* clause), the *Order*'s 90-day transition period for prisons is woefully inadequate to allow for execution of a new agreement.⁶⁰

The bottom line is this: Even if the Commission were authorized to assess compensation on a corporate, rather than a per-call basis, the restrictions outlined above would still violate section 276's directive "that *all* [ICS] providers" be "fairly compensated."⁶¹ Indeed, the *Order*'s concession that it will cause some providers to "operate at a loss"⁶² is fatal in light of that categorical directive.

B. The *Order* Is Unlawful In Several Additional Respects

A challenge to the *Order* is likely to succeed on the merits for at least two additional reasons.

First, as explained by Global Tel*Link in its stay petition, the Commission lacks jurisdiction under section 276 to impose rate caps on intrastate calls. Section 276's text, structure, purpose, and history dictate that the provision operates as a "one-way ratchet"⁶³ that may be used to preempt state regulation "only when

⁶⁰ *See id.* ¶ 26 (explaining that in the wake of the *Order*, CenturyLink has been successful in renegotiating only a small fraction of its ICS contracts).

⁶¹ 47 U.S.C. § 276(b)(1)(A) (emphasis added).

⁶² *Order* ¶¶ 116 & n.365, 219.

⁶³ *GTL Petition* at 22.

intrastate payphone service rates are *too low* to ensure fair compensation.”⁶⁴

CenturyLink agrees with and joins Global Tel*Link’s arguments on this issue.⁶⁵

Second, the Commission cannot cure the *Order*’s shortcomings through the use of waivers. Section 276 requires the Commission to “establish a per call compensation plan to ensure that all [ICS] providers are fairly compensated for each and every . . . call using their payphone.”⁶⁶ Thus, it is the Commission’s compensation plan—and not “case-by-case” waivers of that plan⁶⁷—that must ensure fair compensation. As the Supreme Court has observed in a prior case involving the Commission’s regulations, due process protections “‘d[o] not leave [regulated parties] . . . at the mercy of *noblesse oblige*.’”⁶⁸

Other features of the *Order*’s waiver provisions reinforce this conclusion. The *Order* indicates that waivers will be granted only in “extraordinary circumstances,” and only then “at the holding company level.”⁶⁹ This standard would likely preclude relief for nationwide, integrated providers such as

⁶⁴ Pai Dissent at 200.

⁶⁵ See *GTL Petition* at 20–23.

⁶⁶ 47 U.S.C. § 276(b)(1)(A).

⁶⁷ *Order* ¶¶ 219–20.

⁶⁸ *FCC v. Fox Television Stations, Inc.*, 132 S. Ct. 2307, 2318 (2012) (quoting *United States v. Stevens*, 559 U.S. 460, 480 (2010)).

⁶⁹ *Order* ¶¶ 217 & nn.775–776, 219. *But see Order* ¶ 220 (omitting the holding company and “extraordinary circumstances” requirements, and indicating that the Commission “will consider waiver petitions, including those from providers claiming to serve high-cost facilities, . . . on a case-by-case basis”).

CenturyLink that have numerous business lines and serve prisons and jails with varying costs of service.⁷⁰ As the D.C. Circuit has explained, when the Commission is “on record that it will not freely grant waivers,” the lawfulness of its rule “must be assessed without reference to the waiver provisions.” *Home Box Office v. FCC*, 567 F.2d 9, 50 (D.C. Cir. 1977). CenturyLink agrees with and joins the arguments of Telmate LLC on this issue.⁷¹

II. THE BALANCE OF EQUITIES FAVORS A STAY

The additional requirements for a stay are met here, because CenturyLink will suffer irreparable harm if the *Order*’s rate caps go into effect and a stay of the *Order* will not harm other parties or the public.

A. CenturyLink Would Suffer Irreparable Harm if the *Order* Took Effect

The *Order*’s rate caps will irreparably harm CenturyLink because they will prevent CenturyLink from recovering its cost of service in many jurisdictions.

As explained above, CenturyLink’s cost of service in Texas prisons is

excluding site commissions—well above the permanent \$0.11 cap for debit and prepaid calls from prisons and the initial \$0.14 cap for collect calls from those

⁷⁰ See Cooper Decl. ¶ 25.

⁷¹ See Petition of Telmate, LLC for Stay Pending Judicial Review, *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, at 15 (Jan. 6, 2016) (“*Telmate Petition*”).

prisons.⁷² CenturyLink’s cost of service is similar in other high-cost jurisdictions.⁷³ Nationwide, the record shows that CenturyLink’s average cost of service in prisons, exclusive of site commissions, is [REDACTED], and that it costs CenturyLink up to [REDACTED] [REDACTED] provide service in prisons, also exclusive of site commissions.⁷⁴

These costs are fully documented in the administrative record and are reasonably computed.⁷⁵ The broad range in CenturyLink’s costs illustrates the point.⁷⁶ In jurisdictions such as West Virginia, CenturyLink’s cost of service is low—as reflected in the \$0.03 per minute end-user rate CenturyLink charges in West Virginia prisons—because few capital expenses are necessary and correctional authorities do not require advanced call-verification procedures.⁷⁷ CenturyLink will be able to operate under the rate caps in these low-cost

⁷² See Cooper Decl. ¶¶ 11, 17.

⁷³ See *id.* ¶¶ 10–11.

⁷⁴ *Id.* ¶¶ 9–10.

⁷⁵ See Letter from Thomas M. Dethlefs, Associate General Counsel-Regulatory, CenturyLink, to Marlene H. Dortch, Secretary, FCC, Re: *Rates for Interstate Inmate Calling Service*, WC Docket. No. 12-375 (Oct. 6, 2015); see also Cooper Decl. ¶¶ 5, 14. The *Order* takes the cost data in the record “at face value,” *Order* ¶ 53, and therefore must be judged on that basis, see *SEC v. Chenery Corp.*, 318 U.S. 80, 95 (1943).

⁷⁶ See Pai Dissent at 203 n.61; Cooper Decl. ¶¶ 10–11, 19–20.

⁷⁷ See Cooper Decl. ¶ 20.

jurisdictions. But that is not true in other jurisdictions with higher costs of service.⁷⁸ In Texas prisons, for example, the cost of providing state-mandated biometric security controls and manual verification of parties that receive inmate calls amounts to over [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] per minute—accounting for nearly all of the applicable \$0.11 per minute cap.⁷⁹ Additional legitimate costs, such as the expenses associated with network access, customer service, and billing—together with amortization of a [REDACTED] investment in equipment and wiring necessary to make service possible—bring the baseline cost of service to well over the *Order*'s maximum rate.⁸⁰ And the 40 percent site commission mandated by state law, which CenturyLink has no way of avoiding, brings the total even higher.⁸¹

Contrary to the *Order*'s vague assertion, CenturyLink cannot reduce or eliminate these costs by seeking out “increased efficiencies.”⁸² The difference between CenturyLink’s cost of service in West Virginia and its cost of service in Texas is not evidence that CenturyLink operates inefficiently in Texas or that

⁷⁸ See *id.* ¶¶ 5–6, 21–22.

⁷⁹ See *id.* ¶ 16.

⁸⁰ See *id.* ¶¶ 16–17.

⁸¹ See *id.* ¶¶ 6, 18.

⁸² See *Order* ¶ 52 n.170.

CenturyLink could somehow achieve below-cap costs if it worked at it hard enough. Instead, this variation is evidence that costs vary substantially from jurisdiction to jurisdiction depending on the jurisdiction’s particular capital, security, verification, and other requirements.⁸³

Under the *Order*, CenturyLink will be unable to recover its costs for [REDACTED] of the calls it completes,⁸⁴ in violation of section 276’s requirement of fair compensation for “each and every . . . call.”⁸⁵ CenturyLink has no mechanism to recover its losses on those calls if, as outlined above, it ultimately prevails on its petition for review. Such unrecoverable losses constitute irreparable harm.⁸⁶ The expense associated with renegotiating existing contracts (including loss of goodwill),⁸⁷ which CenturyLink also cannot recover if it prevails on the merits, likewise constitutes irreparable harm.⁸⁸

⁸³ See Pai Dissent at 203 n.61; Cooper Decl. ¶¶ 5, 10–11, 16–24.

⁸⁴ See Cooper Decl. ¶ 29; see also *id.* ¶ 30.

⁸⁵ 47 U.S.C. § 276(b)(1)(A).

⁸⁶ See, e.g., *Sottera, Inc. v. FDA*, 627 F.3d 891, 898 (D.C. Cir. 2010); *Nat’l Tank Truck Carriers, Inc. v. Burke*, 608 F.2d 819, 824 (1st Cir. 1979); *Brendsel v. Office of Fed. Hous. Enter. Oversight*, 339 F. Supp. 2d 52, 66 (D.D.C. 2004). See also Cooper Decl. ¶ 32 (estimating that CenturyLink will face an estimated [REDACTED] in lost earnings annually if rates are reduced to the *Order*’s new rate caps).

⁸⁷ See Cooper Decl. ¶¶ 27–28, 32–33.

⁸⁸ See *GTL Petition* at 24.

B. A Stay of the *Order* Will Not Harm Other Parties or the Public

In contrast to CenturyLink, other interested parties will not suffer material irreparable injury if the *Order*'s rate caps are stayed pending judicial review. The interim rate caps set in 2013 and left intact by the D.C. Circuit's 2014 stay order would remain in force while the *Order* is stayed. As Global Tel*Link has explained, parties representing inmates and their families "cannot claim to be harmed by rates that comply with [the 2013 interim] caps, since they are nearly identical to what [the Martha Wright petitioners] requested in the first place."⁸⁹

The public interest likewise favors a stay. Congress defined the public interest in section 276, indicating that the Commission's regulations must "promote competition" and "the widespread deployment of [ICS] services."⁹⁰ But as Commissioner Pai pointed out in dissent, the "ineluctable result" of the *Order*'s below-cost rate caps is *reduced* competition and *reduced* availability of ICS, particularly in high-cost jurisdictions.⁹¹ Thus, granting a stay will serve, rather than frustrate, the public interest.

⁸⁹ *GTL Petition* at 25.

⁹⁰ 47 U.S.C. § 276(b)(1).

⁹¹ *See* Pai Dissent at 203.

CONCLUSION

The Commission should stay the *Order* pending judicial review. Due to the irreparable harm that will be caused by the new rate caps if they are permitted to take effect, and to allow sufficient time for the court of appeals to address a stay motion in the event that the Commission does not grant relief, CenturyLink respectfully requests that the Commission adjudicate this Petition as expeditiously as possible. The need for expeditious review is particularly important given that the Commission may rule on stay petitions filed by other ICS providers in the near future; if those petitions are denied, the parties that filed those petitions may immediately seek a stay from the court of appeals, effectively requiring CenturyLink to follow suit.

Respectfully submitted,

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January 22, 2016

CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of January, 2016, the foregoing Petition of CenturyLink for Stay Pending Judicial Review was served via electronic mail on the following persons:

Marlene H. Dortch
Secretary, Federal Communications Commission
Marlene.Dortch@fcc.gov

Chairman Tom Wheeler
Federal Communications Commission
Tom.Wheeler@fcc.gov

Commissioner Mignon Clyburn
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Robert A. Long, Jr.

EXHIBIT A

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

DECLARATION OF PAUL COOPER

1. My name is Paul Cooper. I am over the age of 21. I have never been convicted of a felony or a crime of moral turpitude. I am competent to make this declaration and, unless otherwise indicated, all the facts set forth in this declaration are based on my personal knowledge.

2. I am currently the Vice President and General Manager of CenturyLink Public Communications, Inc. (“CenturyLink”), a subsidiary of CenturyLink, Inc. CenturyLink, Inc. is a publicly traded corporation that, through its affiliates, provides voice, broadband, video and communications services to consumers and businesses. Prior to my current position, I served as a Senior Director at Embarq Corporation following its spin-off from Sprint Corporation, where I previously served in various managerial roles. I am a graduate of Bates College (B.A. in Economics and Political Science), University of Rochester (M.A. in Economics) and the University of Chicago - Booth School of Business (M.B.A. with a focus in Finance and Marketing).

3. CenturyLink provides inmate calling services (“ICS”) to correctional facilities across the country. CenturyLink is the third largest provider of ICS in the country, as measured by the number of inmates served.

4. The systems and services that CenturyLink supplies allow inmates to make phone calls from the correctional facility and permit correctional staff to review the calls, along with providing many other specialized security features that are critical to these institutions and for public safety.

5. Providers of common carrier services, such as long-distance voice calling, can often cross-subsidize the cost of serving high-cost consumers by charging above-cost rates to low-cost consumers. The ICS market does not operate in this fashion. ICS is not a commodity service and is not purchased by a diffuse set of mass-market consumers. Rather, ICS is a managed information-technology service, for which each facility requires its own custom installation with specific technological features and terms of service. Each ICS contract is likewise bid separately, typically through a formal structured procurement process. These characteristics cause costs to vary widely from facility to facility and from jurisdiction to jurisdiction. Because ICS providers are unable to charge a uniform average rate for a service at facilities with varying costs, it not possible for ICS providers to cross-subsidize service at high-cost facilities with revenues earned from low-cost facilities.

6. CenturyLink currently is a party to more than thirty ICS contracts. Under its ICS contracts, CenturyLink typically is obligated to pay site commissions to correctional institutions based on end user revenues. In Texas, a state statute requires the ICS provider to pay the state prison system a commission of at least 40 percent of the gross revenue generated from providing ICS, thus making site commissions an unavoidable cost of providing ICS and a form of location rent.

7. The vast majority of CenturyLink's ICS contracts require CenturyLink to pay site commissions. Where required by the contract, site commissions account for between 26

and 82 percent of CenturyLink's direct costs to provide intrastate and interstate ICS for its individual clients.

8. CenturyLink's cost of providing service to prisons and jails in 2014 is documented in CenturyLink's response to the Commission's mandatory data collection and in CenturyLink's *ex parte* submissions.¹

9. The rate caps set in the *Order* are below CenturyLink's average cost of service for prisons and jails.² Based on the cost data described in paragraph 8 above, CenturyLink's average cost to serve prisons in 2014 was [REDACTED], exclusive of site commissions.

10. CenturyLink's costs of service in 2014 for prisons, exclusive of site commissions, are set forth in the table below. These costs are derived directly from the data submitted by CenturyLink to the Commission in 2014 in response to its mandatory data collection, and were previously summarized for the Commission.³ A full explanation of the methodology used in the data collection is provided in the "Description and Justification" document that accompanied the data collection submission.⁴

¹ See, e.g., Letter from Thomas M. Dethlefs, Associate General Counsel-Regulatory, CenturyLink, to Marlene H. Dortch, Secretary, FCC, *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375 – CenturyLink Supplemental Response to Mandatory Data Collection (Nov. 19, 2014); Letter from Thomas M. Dethlefs, Associate General Counsel-Regulatory, CenturyLink, to Marlene H. Dortch, Secretary, FCC, *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375 – CenturyLink Complete Response to Mandatory Data Collection (Sept. 16, 2014) ("*CenturyLink Data Collection Response*").

² See Letter from Thomas M. Dethlefs, Associate General Counsel-Regulatory, CenturyLink, to Marlene H. Dortch, Secretary, FCC, at 1–2 (Oct. 15, 2015) ("*CenturyLink October 15 Letter*").

³ See Letter from Thomas M. Dethlefs, Associate General Counsel-Regulatory, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (July 28, 2015) ("*CenturyLink July Letter*").

⁴ See *CenturyLink Data Collection Response, Description and Justification* (Sept. 16, 2014). Except for the costs in paragraph 11, all costs presented in this Declaration are rounded to the nearest cent. In some instances, data originally presented by CenturyLink before the Commission were rounded to the nearest tenth of a cent.

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

11. Based on the cost data described in paragraph 8 above, CenturyLink's per-minute costs of service for each of the prisons included in the 2014 cost study (exclusive of site commissions) are as follows: [REDACTED]

12. Just [REDACTED] large prison systems with per-minute costs exceeding the *Order's* new rate caps accounted for approximately [REDACTED] of CenturyLink's total ICS minutes in 2014.

13. Based on the cost data described in paragraph 8 above, CenturyLink's cost of service for jails that house more than 100 inmates is generally comparable to CenturyLink's cost of service for prisons.⁵

⁵ See Letter from Thomas M. Dethlefs, Associate General Counsel-Regulatory, CenturyLink, to Marlene H. Dortch, Secretary, FCC, at 1-4 (May 20, 2015).

14. All of CenturyLink's ICS contracts with state departments of corrections were procured through a competitive proposal process, with pricing being a heavily weighted component. In addition, nearly all of CenturyLink's contracts with county jails were procured through a competitive structured process. CenturyLink would not have been able to win these contracts without having a competitive cost structure.

15. CenturyLink has an existing, multi-year contract with the Texas Department of Criminal Justice to provide ICS service for all prisons in Texas. This is CenturyLink's largest contract in terms of both revenue and the number of inmates served.

16. Because Texas had not previously allowed regular inmate calling prior to CenturyLink's contract, CenturyLink was required to spend over [REDACTED] [REDACTED] in capital investment for wiring and phone infrastructure at the 114 facilities overseen by the Texas Department of Criminal Justice.⁶ Also, pursuant to CenturyLink's Texas contract, regulations issued by the Department, and Texas state law, CenturyLink must (i) implement special security features, such as voice biometric screening and (ii) strict manual processes for pre-registering and verifying each party called by an inmate. In 2014, these capital carrying costs and security-related processes alone cost CenturyLink [REDACTED] [REDACTED] to maintain.⁷ Moreover, the strict security and verification requirements imposed by the State decrease the number of calls CenturyLink can use to recover its fixed costs.

17. CenturyLink's total cost of service for Texas prisons in 2014, including (i) the security, verification, and capital costs described in paragraph 16 above, and (ii) network

⁶ See CenturyLink October 15 Letter at 2.

⁷ See CenturyLink October 15 Letter at 2.

access, technical support, field operations and repair, billing and customer care, and other ordinary costs of operation, was [REDACTED] [REDACTED] exclusive of site commissions.⁸

18. Texas law further provides that the Texas Board of Criminal Justice “may not consider a proposal or award a contract to provide [ICS] service unless under the contract the vendor . . . pays the [Texas Department of Criminal Justice] a commission of not less than 40 percent of the gross revenue received from the use of any service provided.”⁹ The first \$10 million of CenturyLink’s Texas site commission payments, and 50% of all CenturyLink Texas site commission payments thereafter, are deposited in the State’s Crime Victims’ Compensation Fund, while the remainder is deposited in the general revenue fund.

19. In 2015, CenturyLink contracted with the Arizona and Utah Departments of Corrections to provide ICS. Under these contracts and applicable regulations and state law, CenturyLink must provide security and verification services similar to those required in Texas and described in paragraph 16 above.

20. In 2015, subsequent to the submitted cost study, CenturyLink contracted with the West Virginia Division of Corrections to provide ICS. CenturyLink’s end-user rate in West Virginia prisons is \$0.03 per minute. CenturyLink is able to provide service at that low rate for several reasons. *First*, the West Virginia contract provides for only a nominal site commission of 0.1 percent. *Second*, CenturyLink’s cost of service in West Virginia is much lower than in Texas and other jurisdictions because the West Virginia Department of Corrections does not require CenturyLink to implement manual screening and verification of parties called

⁸ CenturyLink October 15 Letter at 2.

⁹ Tex. Gov. Code Ann. § 495.025(a)(2).

by inmates. *Third*, in contrast to Texas, CenturyLink did not need to make a significant capital expenditure to deliver ICS in West Virginia because West Virginia prisons were already substantially equipped with the wiring and other equipment necessary to deliver ICS when CenturyLink contracted to provide that service.

21. CenturyLink contracts with the Alabama Department of Corrections to provide ICS. The Alabama Department of Corrections requires ICS providers, as a condition of delivering service, to make fixed per-inmate/per-day (“per diem”) commission payments to the State. The Alabama contract does not allow for re-negotiation of commission payments under any circumstance. Instead, the contract states that, if CenturyLink fails to make the required per diem payments for any reason, the contract must be placed into emergency status and bids for a new contract must be solicited. Given CenturyLink’s prior knowledge of calling patterns in Alabama, it is almost certain that after the *Order*’s new rate caps are implemented, CenturyLink would be forced to operate at a loss if it continued to pay the contracted per-diem.

22. The vast majority of the terms and conditions in CenturyLink’s ICS contracts were set by customers, and were explicitly or effectively non-negotiable as part of a structured procurement process.

23. The majority of CenturyLink’s ICS contracts contain a termination-for-convenience clause, which is typical in contracts with public entities. This clause allows the facility to terminate the contract at its sole option, including if CenturyLink fails to continue making contractually required site-commission payments.

24. The majority of CenturyLink’s ICS contracts do not contain a regulatory *force majeure* clause or other clause that would automatically trigger a right (or duty) to renegotiate the contract in light of the Commission’s 2015 ICS *Order*. Where CenturyLink’s

contracts do contain such a clause, the contracts do not specify a remedy for the change in circumstances, such as a duty to renegotiate the contract. As a practical matter, even if a *force majeure* clause—including one with language explicitly addressing regulatory events—is included in a contract, the facility would be able to terminate the contract without penalty should it believe that the revised terms CenturyLink is offering are unacceptable for any reason.

25. Because CenturyLink has multiple contracts, and also provides many other services in addition to ICS, it is unlikely that CenturyLink would qualify for a waiver of the *Order's* rate caps at high-cost facilities if the waiver request were judged at the holding company level.

26. Since the Commission released the *Order* in November 2015, CenturyLink has attempted to renegotiate its ICS contracts to ensure that CenturyLink charges only rates that fall within the *Order's* rate caps and, if possible, to readjust site commissions so that provision of ICS is economic for CenturyLink. Despite this effort, CenturyLink has only been able to complete renegotiation of two of its contracts as of the date of this declaration.

27. If the *Order* ultimately is vacated in whole or in part upon judicial review, CenturyLink would have to engage in another round of contract renegotiation to undo changes agreed to by the contract parties while the appeal is pending. This process would be costly and time consuming; CenturyLink estimates that the renegotiation of its contracts will take hundreds of hours and potentially over a thousand hours given the multiple rounds of renegotiation that likely will be required. Renegotiating the contracts will prevent the responsible personnel at CenturyLink from pursuing other opportunities for the company and will hinder CenturyLink's ability to compete for new contracts.

28. CenturyLink anticipates that it may be unable to successfully renegotiate all of its contracts. Some of CenturyLink's contracts do not permit renegotiation in the event of changes in the law. In addition, several entities' ability to renegotiate contracts is limited due to the timing of budget cycles and/or state law. If CenturyLink is forced to breach or terminate an existing ICS contract because it cannot economically provide service under the *Order's* rate caps, CenturyLink will lose revenue, profit, and goodwill.

29. Based on the data described in paragraph 8 above, CenturyLink's cost of service exceeded the *Order's* initial rate caps for [REDACTED] [REDACTED] of the ICS calls from prisons and jails served by CenturyLink in 2014, excluding site commissions. Based on the same data, CenturyLink's cost of service exceeded the *Order's* initial rate caps for [REDACTED] of all prison and jail call minutes in 2014, also exclusive of site commissions.

30. These percentages will likely grow even greater as the rate cap for collect calls declines from \$0.14 per minute in 2016 to \$0.11 per minute in July 2018. Over 30 percent of CenturyLink's call minutes for prisons in 2014 were for collect calls, due in large measure to CenturyLink's extensive use of direct billing for a large correctional account.¹⁰

31. In 2014, calls originating in Texas prisons represented [REDACTED] [REDACTED] of the ICS minutes and [REDACTED] [REDACTED] of ICS calls served by CenturyLink. Under the *Order's* rate caps, [REDACTED]

¹⁰ See Letter from Thomas M. Dethlefs, Associate General Counsel-Regulatory, CenturyLink, to Marlene H. Dortch, Secretary, FCC, *Re: Rates for Interstate Inmate Calling Service*, WC Docket No. 12-375, at 1 (Oct. 6, 2015).

of the calls placed from Texas prisons must be billed at a rate well below CenturyLink's actual cost of service.

31. CenturyLink estimates that charging rates at the levels imposed by the *Order*, as a result of the *Order*, will have a significant negative impact on its earnings. I have estimated that CenturyLink will face [REDACTED]

[REDACTED] in lost earnings annually if rates are reduced to the *Order*'s rate caps. Additionally, CenturyLink will be forced to serve some of its accounts at a loss. These calculations include adjustments to contracts that CenturyLink has already negotiated and executed or expects to execute in the immediate future, but do not include adjustments that have not been renegotiated.

32. CenturyLink has tens of millions of dollars in capital investment at risk in Alabama and Texas alone. Due to the high capital investment required to be made in ICS facilities, CenturyLink typically does not break even on a multi-year contract until towards the end of the contract term.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Kansas City, Missouri on the 21st day of January 2016.



Paul Cooper