

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

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

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

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SUMMARY

CenturyLink is the most recent ICS provider seeking a stay of the ICS rate caps adopted in the Third Report and Order. Previously, the FCC denied stay petitions filed by three of the largest ICS providers, and CenturyLink has provided no support that its request should be treated any different than the others.

First, CenturyLink's arguments that it will be successful on the merits of its judicial appeal do not distinguish itself from those proffered by other ICS providers, which the FCC has rejected. The FCC has clear authority to regulate both interstate and intrastate ICS rates, and its approach to adopting the ICS rate caps is grounded in 60 years of ratemaking policy.

Second, CenturyLink failed to show that it will be irreparably harmed if its petition is denied. The fact that CenturyLink has willingly entered into ICS service agreements in the past 18 months which promise high site commission rates undermines its requested relief. Also, the FCC followed the ICS reform model long advocated by CenturyLink, and it would appear that the Texas DOC agreement, about which CenturyLink has based a majority of its irreparably harm argument, both (i) permits modification if the FCC adopts rules reducing ICS rates and (ii) is no longer – in 2016 – a carrying cost to the degree that CenturyLink represents to the FCC.

Third, CenturyLink ignores its own excessive local and intrastate rates when arguing that its Petition would not harm other parties. CenturyLink charges between \$6.00 and \$9.40 for ICS calls not currently under the interim ICS rate caps. Finally, CenturyLink places its own pecuniary interests above the public interest, and the FCC must deny its Petition For Stay.

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OPPOSITION TO PETITION FOR STAY

The Wright Petitioners (the “Petitioners”) hereby submit this Opposition to the “Petition Of CenturyLink For Stay Pending Judicial Review” filed by CenturyLink Public Communications, Inc. (the “Petition”).¹ CenturyLink requests that the FCC stay the effectiveness of rate caps for Inmate Calling Services (“ICS”)² adopted in the Second Report and Order, adopted on October 22, 2015, and released on November 5, 2015, in the above-captioned proceeding.³ In particular, the Petition asserts that the “rate caps will prevent CenturyLink from recovering its reasonable cost of providing ICS to multiple facilities in several jurisdictions.”⁴

As set forth below, CenturyLink incorrectly asserts that (i) it will likely prevail in a future judicial review; (ii) it will suffer irreparable harm; (iii) other interested parties will not be substantially harmed if the stay is granted; and (iv) the public interest favors

¹ The Petition was filed on January 22, 2016. Because the Federal government closed at 12:00pm on January 22, 2016 (<http://tinyurl.com/gw79s8h>), Section 1.4(e)(1) of the FCC’s rules considers January 22, 2016 as a holiday, and the Petition is considered filed as of January 27, 2016. See 47 C.F.R. § 1.4(e)(1) (2016). Pursuant to Section 1.45(d) of the FCC’s rules, this Opposition is submitted within seven days of the official filing date of the Petition. See 47 C.F.R. § 1.45(d) (2016).

² See 47 C.F.R. 64.6010.

³ *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763 (2015) (the “*Second R&O*”). The Second R&O was published in the Federal Register on December 18, 2015. See 80 FED. REG. 79135 (Dec. 18, 2015). See also Report and Order, 28 FCC Rcd 14,107 (2013)(the “*First R&O*”), and Notice of Proposed Rulemaking, 27 FCC Rcd 16,629 (2012) (the “*NPRM*”).

⁴ *Petition*, pg. 1.

granting a stay.⁵ Not only does the Petition ignore the enormous impact caused by a further delay in providing real relief to ICS consumers, CenturyLink also fails to satisfy the stringent test for granting a stay.⁶ Therefore, the Petition must be dismissed.

In assessing this Petition, and in particular CenturyLink's claims about immediate and irreparable harm, the Commission should take into account CenturyLink's lassitude in seeking relief. The text of the Commission's decision has been available since November 5, 2015, and a request for a stay could have been filed as soon as the *Second R&O* published in the Federal Register on December 18, 2015. Although other ICS providers requested stay relief almost immediately thereafter, CenturyLink did not file its Petition until January 22, 2016, and because of government closures, the Petition was not deemed filed until January 27, 2016. CenturyLink's assertions about the gravity of the harm it faces are belied by the slow pace at which it has proceeded.

I. CenturyLink Will Not Be Successful On The Merits

A majority of CenturyLink's Petition is spent arguing that the ICS rate caps adopted in the *Second R&O* will not permit it to recover its reasonable costs. CenturyLink also argues that the FCC lacks jurisdiction to regulate intrastate ICS rates,⁷ and that the FCC cannot rely on waivers to accommodate high-cost facilities.⁸

Initially, it should be noted that the Wireline Competition Bureau has considered similar arguments presented by other ICS providers in connection with their earlier-filed

⁵ *Petition*, pg. 7-8.

⁶ *See Virginia Petroleum Jobbers Ass'n v. Federal Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958); *See also Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

⁷ *Petition*, pg. 15.

⁸ *Petition*, pg. 16.

Petitions for Stay. On January 22, 2016, the FCC issued a detailed, comprehensive review of these arguments, and rejected them completely.⁹ However, because CenturyLink attempts to distinguish its situation from other providers due to its contract with Texas, a separate analysis of its claims is provided herein.

A. The Rate Caps Will Permit Recovery of Reasonable Costs.

First, CenturyLink argues that it will not recover its “reasonable costs” under the new ICS rate caps. According to CenturyLink, the FCC was obligated to ensure that each and every call that it completes is fairly compensated.¹⁰ CenturyLink states that the 1997 decision in *Illinois Public Telecommunications Association v. FCC* requires this result, comparing the “no compensation” plan adopted by the FCC in 1996 and subsequently rejected by the court, to the FCC’s ICS rate plan adopted in the *Second R&O*.¹¹

Of course, that comparison is not reasonable, and must be rejected. It is obvious that ICS providers will receive compensation from ICS consumers under the ICS rate caps. In fact, the economic studies presented by the Wright Petitioners throughout this proceeding have demonstrated that most ICS providers will continue to be **over** compensated by the ICS rates adopted in the *Second R&O*, rather than receive **zero** compensation.¹²

⁹ *Rates for Interstate Inmate Calling Services*, Order Denying Stay Petitions, DA 16-83 (Jan. 22, 2016) (denying petitions for stay filed by Global Tel*Link, Securus Technologies, Inc., and Telmate, LLC) {the “2016 Stay Order”}.

¹⁰ *Petition*, pg. 9.

¹¹ *Id.*, at pg. 12 (citing *Illinois Public Telecomms. Association v. FCC*, 117 F.3d 555, 556 (D.C. Cir. 1997)).

¹² *See Wright Petitioners’ Ex Parte Submission*, WC Dkt. 12-375, dated September 17, 2014; *See also Wright Petitioners’ Comments on Second R&O*, WC Dkt. 12-375, filed January 13, 2015; *Wright Petitioners’ Ex Parte Submission*, WC Dkt. 12-375, dated Aug. 14, 2015; *See also Wright Petitioners’ Ex Parte Submission*, WC Dkt. 12-375, dated Oct. 15, 2015.

Thus, CenturyLink's attempt to compare a "zero compensation plan" with the ICS rate plan in Sections 64.6010 and 64.6030 fails to pass even the red-face test. This is especially true when one considers that CenturyLink has repeatedly stated that it can provide ICS rates less than 10 cents, pay site commissions, and generate increased revenue for correctional facilities.¹³

Moreover, CenturyLink's argument that the FCC may not use "weighted average per minute cost" of service" average rates is also incorrect.¹⁴ The FCC has previously found the term "fairly compensated" permits a range of compensation rates that would be considered fair, but that the interests of both the payphone service providers and the parties paying the compensation must be taken into account.¹⁵ This approach is well-established, and FCC has already addressed the very same concerns raised by CenturyLink.¹⁶ If CenturyLink was correct, the FCC would be forced to find the highest cost of all the ICS providers and set

¹³ See *Wright Petitioners' Ex Parte Submission*, WC Dkt. 12-375, dated July 18, 2013 (discussing representations to the Florida DOC). See also Exhibit A (CenturyLink's proposal to the West Virginia DOC stating "In our experience, these rates - which would be the lowest in the country - would allow inmates and their family members unprecedented access to affordable communications. In fact, we forecast that call volume would more than triple under our proposed rate structure."). The offered rates were 3.2 cents/minute, with no per-call surcharge, providing Continuous Voice Biometrics, and with no "transaction, or other ancillary fees." See *Id.*, pg. 1.

¹⁴ *Petition*, pg. 9

¹⁵ See *2016 Stay Order*, at ¶24 (citing *Implementation of the Pay Telephone Reclassification & Compensation Provisions of the Telecommunications Act of 1996*, 17 FCC Rcd 3248, at 3248, ¶23 (2002) "[W]e conclude that the relevant statutory language does not require every call to make an identical contribution to shared and common cost. Section 276 directs the Commission to create a 'per call compensation plan' to guarantee fair compensation, but it does not require the Commission to create the most inflexible and intrusive plan" and 47 C.F.R. § 64.1300 (establishing a single payphone compensation rate)).

¹⁶ See *2016 Stay Order*, at ¶22, nts. 69, 70 (citing *Southwestern Bell Tel. Co. v. FCC*, 168 F.3d 1344, 1352 (1999) ("[T]he Supreme Court has affirmed ratemaking methodologies employing composite industry data or other averaging methods on more than one occasion."); *FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575, 585 (1942); *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 769 (1968); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 2545 (1999))

ICS rates above that cost. Such an absurd result runs counter to established agency rate-making procedures, and thus the argument must be rejected.¹⁷

B. The FCC Has Requisite Authority To Regulate Intrastate ICS Rates.

Further, the FCC clearly has the authority to regulate both interstate and intrastate ICS rates. CenturyLink relies on the argument presented by GTL in its request for stay that Section 276 “operates as a ‘one-way’ ratchet.”¹⁸ The FCC has considered – and rejected – this argument both in the *Second R&O*¹⁹ and the *2016 Stay Order*.²⁰ In fact, Section 276(b)(1)(A) directs the FCC “to establish a compensation plan encompassing ‘each and every completed *intrastate* and interstate call.”²¹ CenturyLink does not even address cases such as *Illinois Public Telecommunications Association v. FCC*, where the FCC’s “authority to set local coin rates” was affirmed, or *Metrophones Telecommunications, Inc. v. Global Crossing Telecommunications, Inc.* where the Section 276 was described as “substantially expand[ing] the Commission’s jurisdiction and giv[ing] it broad authority to regulate both intrastate and interstate payphone calls.”²²

Further, the language cited by GTL, and relied upon by CenturyLink, specifically states that the FCC would use Section 276 “to prescribe compensation only when the

¹⁷ See *2016 Stay Order*, at ¶24 (“It defies logic that Congress expected the Commission to formulate a unique rate for each call based on the specific characteristics of the particular location and provider involved.”).

¹⁸ See *Petition*, pg. 15 (citing *Petition of Global Tel*Link for Stay Pending Judicial Review*, WC Dkt. 12-375, pg. 22 (filed Dec. 22, 2015)).

¹⁹ *Second R&O*, 30 FCC Rcd at 12,790.

²⁰ See *2016 Stay Order*, at ¶36.

²¹ *Id.*, at ¶35.

²² 117 F.3d 555, 562 (D.C. Cir. 1997). *Metrophones Telecomms., Inc. v. Global Crossing Telecomms., Inc.*, 423 F.3d 1056, 1072 (9th Cir. 2005).

payphone providers [i.e., CenturyLink] are not already “fairly compensated.”²³ As discussed, it has been proven beyond doubt that ICS providers “are ***not*** already fairly compensated,” as they have taken advantage of “a prime example of a market failure” to charge unjust, unreasonable, and ***unfair*** ICS rates and fees for more than a decade.²⁴ Thus, the “one-way ratchet” argument provides no solace for CenturyLink’s argument that the FCC lacks jurisdiction to regulate intrastate ICS rates.

C. Waiver Process Has Been Used By FCC and States in ICS Context.

Finally, CenturyLink asserts that it will be successful on the merits in its judicial appeal because the opportunities for waiver relief included in the FCC’s decision are inadequate to address the problems CenturyLink believes it has identified.²⁵ In particular, CenturyLink argues that the grant of a waiver does not satisfy Section 276 because the statute requires the FCC to develop a “plan” to ensure fair compensation, rather than using waivers.²⁶

In making this rather odd argument, CenturyLink ignores the direction of *WAIT Radio* that “a rule is more likely to be undercut if it does not in some way take into account considerations of hardship, equity, or more effective implementation of overall policy.”²⁷ In addition, CenturyLink bases its entirely speculative determination on the assertion that

²³ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 11 FCC Rcd 6716, 6725 (1996).

²⁴ *2016 Stay Order*, ¶ 5.

²⁵ *Petition*, pg. 16.

²⁶ *Id.*

²⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (1969) (citing *Permian Basin Area Rate Cases*, 390 U.S. 747, 822 (1968)).

it would not be eligible for relief because it was a “nationwide, integrated provider.”²⁸ Further, in the recent *2016 Stay Order*, the FCC noted that the availability of a waiver “is simply a safety valve that can be used if there are specific situations in which a particular provider finds that it cannot obtain fair compensation without a limited waiver of the Commission’s rules.”²⁹

Moreover, CenturyLink ignores the fact that the existing ICS waiver process has actually benefited ICS providers at the FCC and on the state level. For example, the FCC granted Pay Tel Communications a limited waiver of the interstate ICS rate cap adopted in the *First R&O*, noting that the combination of the interstate ICS rates and the state-based intrastate ICS rates prevented Pay Tel from recovering its costs.³⁰ On the state level, Securus Technologies obtained rate-cap variances in New Mexico for several of its facilities.³¹

Thus, the waiver process should not be discounted by CenturyLink, and it certainly has failed to demonstrate that it will be successful on appeal because the FCC affirmed its long-standing obligation to make available waivers to address high-cost facilities.

II. CenturyLink Failed to Show That It Will Incur Irreparable Harm.

A. CenturyLink Ignores its Role In Creating Circumstances In Which It Will Not Recover All Costs.

As provided herein, to the extent that CenturyLink will be irreparably harmed (it won’t), it has only itself to blame. CenturyLink apparently made a business decision to

²⁸ *Petition*, pg. 16.

²⁹ *2016 Stay Order*, at ¶ 19, nt. 60.

³⁰ *Rates for Interstate Inmate Calling Services*, Order, 29 FCC Rcd 1302 (2014).

³¹ *See In the Matter Of The Request For Rate Cap Variance Of Securus Technologies, Inc., An Institutional Operator Service Provider*, Case No. 15-00002-UT.

enter into many of its contracts within the last two years, even though, during this same period, the FCC has been actively adopting rate caps on interstate ICS rates, and proposing rules to regulate intrastate ICS rates. Moreover, the purported harm about which CenturyLink complains is, in part, the direct result of its own advocacy during this proceeding. Finally, with respect to CenturyLink’s agreement with the Texas Department of Criminal Justice, about which CenturyLink spends much of the petition discussing, the Wright Petitioners have already shown that this agreement expressly provides that it can be modified in the event of amendments to the FCC’s rules. Moreover, CenturyLink’s investment to construct the Texas system has most likely already been taken off its books. As a result, CenturyLink has failed to show that it will be irreparably harmed if the ICS rate caps are not stayed as requested.

i. CenturyLink Voluntarily Entered Into Contracts with High Commissions

First, CenturyLink’s arguments that it will not recover its “reasonable costs” must be considered in the context of CenturyLink’s rapid expansion of serving correctional facilities. Its apparent willingness to enter into agreements in the past eighteen (18) months, wherein it has agreed to pay site commissions ranging from 74% to 96% of its gross revenues and minimum annual guarantees up to \$4,000,000, must inform the FCC’s consideration of the Petition:

Jurisdiction	Contract Date	Commission Percentage	Commission Payment³²
Alabama DOC	04/16/2013	87.69%	\$3,038,002 (2014)
Arizona DOC	09/25/2014	93.90%	\$4,314,062 (2014)
Florida DOC	06/24/2013	62.6%-64.1%	\$5,156,269 (2014)
Escambia County, Florida	09/25/2014	96%	-

³² See Exhibit B.

Jurisdiction	Contract Date	Commission Percentage	Commission Payment ³²
Idaho DOC	05/19/2014	ADP x \$20.00/month	\$1,441,051 (2014)
Kansas DOC	05/01/2013	68.2% + \$2,360,000 Annual MAG	\$1,839,450 (2014)
Kansas Juvenile	05/01/2013	34%	-
Nevada DOC	08/01/2014	74.2% = \$4,000,000 Annual MAG	\$2,706,372 (2014)
Texas DOC	02/25/2008	40%	\$6,760,593 (2014)
Utah DOC	11/01/2014	90%	\$765,858 (2014)
West Virginia DOC	03/03/2015	0.10%	\$931,637 (2014)
Wisconsin DOC	07/06/2009	30%	\$2,344,085 (2014)

This information demonstrates that, even though it was on notice that the Commission might modify its treatment of site commissions, CenturyLink entered into five contracts since the *First R&O* was adopted on August 9, 2013, and 10 contracts since the FCC released the Notice of Proposed Rulemaking in this proceeding.

In fact, less than two months ago, CenturyLink proposed to provide ICS service to Milwaukee County, serving its jail and House of Correction. In that new agreement, CenturyLink agreed to pay 70.1% commission, \$1,590,000 in a prepaid commission within fifteen days of executing the agreement, and then \$1,390,000 on an annual basis during the term of the contract.³³ This new agreement actually pays higher commissions (67.9% vs. 70.1%) than CenturyLink's previous contract, and it follows on the heels of CenturyLink's agreement to pay 10% commission of its gross billings in connection with providing video visitation services.³⁴

While CenturyLink would likely argue in response, as it has previously, that it was the "incumbent provider" at these locations, which made it "uniquely positioned to make a

³³ See [Exhibit C](#).

³⁴ See [Exhibit D](#). CenturyLink is charging \$0.65 per minute for "calls" made using the Video Visitation System, and \$1.00 for a one-minute video message.

high bid,”³⁵ the fact remains that CenturyLink voluntarily entered into an agreement whereby it will pay more in site commissions than it did before, despite full knowledge that the FCC had just reduced the amount that CenturyLink may charge for ICS service and indicated that it might adopt more stringent limits in the near future.³⁶ Based on these activities, and in light of the substantial public interest benefits arising from the ICS rate caps, CenturyLink has failed to demonstrate that its request for a stay should be granted because its current agreements prevent it from covering its reasonable costs.

ii. CenturyLink Advocated for Unitary Rate and Hands-off Approach to Site Commissions.

Next, CenturyLink’s long-time advocacy in support of the policies adopted in the *Second R&O* undermine the Petition’s protestations to the contrary. Since the first round of comments in this proceeding, CenturyLink has been in favor of adopting a “holistic” rate structure and not regulating site commissions. Specifically, in its initial comments, CenturyLink stated that “[t]he best way to achieve a fair and equitable resolution of the ICS issue is to adopt a holistic rate structure that addresses both intrastate and interstate ICS.”³⁷

Later, in its reply comments filed in response to the Second Further Notice of Proposed Rulemaking, CenturyLink argued against the FCC attempting to “restrict or prohibit site commission payments to correctional facilities for the simple reason that the

³⁵ See *Ex Parte Submission of Mr. Thomas M. Dethlefs*, CenturyLink Public Communications, Inc., WC Dkt. 12-375, Aug. 28, 2014, pg. 1 (discussing CenturyLink’s decision to pay 96% commission on calls in Escambia County, Florida.).

³⁶ See *Exhibit C*, pg. 69.

³⁷ *Comments of CenturyLink*, WC Dkt. 12-375, pg. 4 (March 25, 2013).

Commission lacks authority to do so.”³⁸ Instead, CenturyLink argued that a “prohibition of site commissions, including in-kind payments, exchanges, or other fees – however conceivably defined – would put the Commission in the untenable position of constantly having to adjudicate permissible versus impermissible ICS services. It would also create troublesome distortions in the competitive ICS marketplace – the same competitive marketplace the Commission is relying on to drive down costs to end users.”³⁹

Then, beginning in April 2015, CenturyLink consistently supported the adoption of rules which included “unitary rate caps for ICS calls” and did not limit “correctional facilities discretion to require commissions on ICS services.”⁴⁰ In fact, CenturyLink adamantly argued that the FCC should not touch site commissions, stating that:

any benefits gained by adopting rules restricting commissions would likely be diminished by in-kind commissions such as jail management systems, video visitation units, or cell phone detection equipment. These and other services may be “integrated” with ICS, making them difficult, if not impossible, for the Commission to monitor. ICS providers that use in-kind services in lieu of site commissions will naturally seek to recover these costs in the rates and fees charged to inmate families. In-kind commissions also have the added effect of increasing the costs a correctional facility incurs to transition to a new provider, thereby undermining competition that would otherwise help drive consumer rates lower.⁴¹

Thus, CenturyLink has supported uniform rates and a hands-off approach to site commissions throughout this proceeding which directly undermines the grant of the Petition to stay the ICS rate caps which conform with CenturyLink’s advocacy.

³⁸ See *Reply Comments of CenturyLink*, WC Dkt. 12-375, pg. 2 (Jan. 27, 2015).

³⁹ *Id.*, at pg. 24.

⁴⁰ See *CenturyLink Ex Parte Submission*, WC Dkt. 12-375, pgs. 1-2 (April 28, 2015). See also *CenturyLink Ex Parte Submission*, WC Dkt. 12-375, pgs. 1-2 (August 14, 2015) (arguing for unitary rate caps that are uniform across facilities.).

⁴¹ See *CenturyLink Ex Parte Submission*, WC Dkt. 12-375, pg. 2 (May 14, 2015).

iii. The Texas ICS Agreement

Finally, CenturyLink spends considerable time discussing the impact of its agreement to serve Texas state prisons. According to CenturyLink, it made a “significant capital investment...to install the wiring and other phone infrastructure necessary to provide service at the 114 facilities overseen by the Texas Department of Criminal Justice.”

Initially, it should be noted, that CenturyLink entered into its agreement with Texas in 2008.⁴² So, even though it might have made a “significant capital investment” in 2008, under the Internal Revenue Service’s guidelines for the depreciation of telecommunications equipment, the useful life of that equipment likely ended by 2015.⁴³ As a result, CenturyLink’s concern that the “amortization of [its] investment in equipment and wiring necessary to make service possible” is no longer relevant.⁴⁴ CenturyLink’s financial statements support this conclusion.⁴⁵

Moreover, CenturyLink ignores what the Petitioners have noted previously, namely that the Texas agreement specifically permits modification of the agreement in the event of regulatory change.⁴⁶ Specifically, Section B.I.2 of the agreement between the Texas Department of Criminal Justice and CenturyLink states that:

Should Federal or State statutes or regulations change in the future either reducing or eliminating commissions or reducing the rates, fees or other

⁴² See Exhibit E.

⁴³ See *Internal Revenue Manual*, 1.35.6.10, Property and Equipment Capitalization (https://www.irs.gov/irm/part1/irm_01-035-006.html).

⁴⁴ *Petition*, pg. 19.

⁴⁵ See Exhibit F. CenturyLink had \$44,469,161 in accumulated depreciation between 2009 and 2014. Notably, the amount of accumulated depreciation drops considerably between 2012 and 2013, raising the question whether these “capital carrying costs” associated with the Texas DOC agreement were paid off by 2014. See *Petition*, Exhibit A, pg. 5.

⁴⁶ *Wright Petitioners Ex Parte Submission*, WC Dkt. 12-375, pg. 1 (Aug. 2, 2013).

charges that are allowed or required to be collected by the Contractor for offender calling services provided under this Contract, **the Department and Contractor agree to renegotiate such commissions and/or contract rates, fees or other charges in good faith to preserve,** to the greatest extent possible, the economic benefits of this Contract that were contemplated by both parties, **including without limitation, the possibility of rebalancing any mandated rate reductions or commission reductions by adjusting rates for other types of calls.**⁴⁷

Therefore, CenturyLink's reliance on the Texas ICS agreement to justify the adoption of a stay of the ICS rates caps is completely misplaced. Absent specific evidence to the contrary, CenturyLink is no longer "amortizing" its 2008 investment in telecommunications equipment and wiring installed in Texas, and CenturyLink has failed to provide any evidence that it has attempted – and failed – to invoke Section B.1.2 of its Agreement to permit the restructuring of its agreement with the Texas Department of Criminal Justice.

B. CenturyLink Failed To Demonstrate The Economic Losses are Irreparable.

To be sure, CenturyLink will likely no longer earn the same level of unjust, unreasonable and unfair revenue from ICS customers as the result of the new ICS rate caps, but CenturyLink's losses are not "irreparable" in the context of a request for stay. To establish an irreparable harm, the Commission has stated that the "injury must be 'both certain and great; it must be actual and not theoretical. Petitioners must provide 'proof indicating that the harm [they allege] is certain to occur in the near future.'"⁴⁸ Moreover, the FCC recently denied stay motions, stating:

[I]t is "well settled that economic loss does not, in and of itself, constitute irreparable harm." *Id.* The only exceptions to this rule are when (1) the economic loss threatens the "very existence of the movant's business," *id.*,

⁴⁷ See Exhibit E (*Offender Telephone System Agreement*, Section B.1.2 (emphasis added)).

⁴⁸ See *Connect America Fund*, Order, 27 FCC Rcd 7158, 7160 (2012).

and (2) such loss is great, certain, and imminent. *Cardinal Health, Inc. v. Holder*, 846 F. Supp. 2d 203, 211 (D.D.C. 2012).⁴⁹

CenturyLink failed to make this showing.

The Wright Petitioners have provided conclusive evidence that CenturyLink will not be irreparably harmed by the new ICS rates. We have provided numerous studies showing that, when CenturyLink's facilities are broken down by size, any concern over whether CenturyLink will be harmed is eliminated.⁵⁰ Moreover, CenturyLink's justification for higher rates – namely, high-cost agreements with certain facilities – is directly undermined by its role in entering into agreements when it was on notice that the FCC may adopt rules that restrict its ability to charge unreasonably high ICS rates and fees.

It is also necessary to highlight that CenturyLink's difficulties in lowering its costs may be due to the fact that it subcontracts with other ICS providers to provide a significant number of services it is obligated to provide under its agreements with correctional facilities. The impact of CenturyLink's reliance on other ICS providers has been discussed in prior submissions that were on record before the FCC adopted the *Second R&O*.⁵¹

Thus, it is likely that CenturyLink's reliance on third-parties to provide the "guts" of the ICS services offered to correctional facilities, which it then packages and sells to ICS consumers, also contributes to CenturyLink's inefficient and higher costs associated with its ICS services. This approach to providing ICS service may also explain why CenturyLink's accumulated depreciation has declined in recent years, i.e., as CenturyLink signed new ICS agreements and relied on subcontractors, it was able to reduce its capital investments.

⁴⁹ See *Expanding the Economic and Innovation Opportunities of Spectrum through Incentive Auctions*, Opinion, DA 15-1454 (Dec. 18, 2015).

⁵⁰ See, e.g., *Petitioners' Ex Parte Submission*, WC Dkt. 12-375, filed October 15, 2015.

⁵¹ See *Supplemental Reply Report*, by Don J. Wood, WC Dkt. 12-375, filed September 21, 2015.

Finally, there is substantial evidence in the record that the ICS rate caps will result in an increase of call volume by more than 50%.⁵² In fact, the Wright Petitioners noted that CenturyLink, among others, cited the relationship between reduced ICS rates and an increase in call volume in their best and final offers to the Florida Department of Corrections.⁵³ Similar assertions were made by CenturyLink in its West Virginia Bid Proposal.⁵⁴ Thus, CenturyLink's claim that it will be irreparably harmed is entirely speculative, and fails to establish that a stay of the ICS rate caps is necessary.

III. A Stay Will Harm Users of ICS Services

Next, CenturyLink is simply wrong in concluding that third parties will not be harmed by the grant of the Petition. Co-opting GTL's recently-rejected argument, CenturyLink states that "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.'"⁵⁵

But CenturyLink misses the point. A stay of Section 64.6100(a) not only affects the interstate ICS rates, which indeed the Wright Petitioners proposed - in 2007 - but also

⁵² See *Praeses Ex Parte Submission*, WC Dkt. 12-375, filed Oct. 13, 2015, pg. 2 ("Interstate ICS call volume is now approximately 76 percent higher than before the effective date of the 2013 ICS Order and overall interstate ICS revenue has increased approximately 12 percent. Praeses expects that this same trend will affect intrastate ICS call volume and revenue once the Commission's proposed new intrastate rate caps take effect, thereby substantially mitigating the loss of intrastate ICS revenue that will occur as a result of the lower intrastate ICS rates.").

⁵³ See also *Petitioners' Ex Parte Submission*, WC Dkt. 12-375, filed July 18, 2013 ("the recent statements of CenturyLink, GTL and Securus demonstrate that a lower ICS rate will lead to higher call volumes, and a commission of 50% or more can still be paid to the correctional authority. Each tout their low rate/high commission rate proposals as delivering higher call volumes and higher revenues for the Florida DOC. Their blended 15-minute rate was less than \$0.10 per minute, and each proposed to pay an annual commission in excess of 46%.")

⁵⁴ See *supra*, nt. 13.

⁵⁵ *Petition*, at 21 (citing *GTL Petition for Stay*, at pg. 25). Note, however, the FCC rejected this argument in the 2016 Stay Order. See *2016 Stay Order*, at ¶71.

affects intrastate and local ICS rates. Moreover, and in any event, the fact that the Commission has afforded more substantial relief than originally requested based on the record developed in this proceeding does not mean that the Wright Petitioners should not be entitled to benefit from that action. Even under the current interim rate caps for interstate ICS calls, third parties (i.e., ICS customers) continue to pay unjust, unreasonable and unfair intrastate ICS rates. As the FCC noted in the *2016 Stay Order*, “80% of calls to and from correctional facilities are intrastate, and thus were not subject to the reforms in the 2013 Order.”⁵⁶

For example, the following is sample of the local and intrastate rates currently charged by CenturyLink:

Facility	Prepaid Collect (per call/per min.)			Debit (per call/per min.) ⁵⁷		
	Local	IntraLATA	InterLATA	Local	IntraLATA	InterLATA
Arizona DOC	1.60	1.60/.20	2.00/.24	1.60	1.60/.20	2.00/.24
Escambia County, FL	2.25	1.75/.30	1.75/.30	2.25	1.75/.30	1.75/.30
Hernando County, FL	2.25	1.75/.30	1.75/.30	2.00/.07	1.60/.27	1.60/.27
Hillsborough County, FL	2.50	2.00/.30	2.20/.30	2.50	2.00/.30	2.00/.30
Leon County, FL	1.80	1.40/.24	1.40/.24	1.80	1.40/.24	1.40/.24
Okeechobee County, FL	2.25	1.75/.30	1.75/.30	2.25	1.75/.30	1.75/.30
Pasco County, FL	2.25	1.75/.30	1.75/.30	2.03	1.58/.27	1.58/.27
Putnam County, FL	2.50	1.75/.30	2.50/.30	2.50	1.75/.30	1.75/.30
Sumter County, FL	2.25	1.75/.30	1.75/.30	2.25	1.75/.30	1.75/.30
Johnson County, KS	3.50	3.35/.35	3.40/.40	3.33	3.02/.32	3.06/.36
Platte County, KS	2.50	2.50/.25	2.50/.25	2.50	2.50/.25	2.50/.25
Cole County, MO	1.75/.10	1.75/.10	1.75/.10	1.75/.10	1.75/.10	1.75/.10
Lenoir County, NC	1.25	2.00/.25	2.00/.25	1.25	2.00/.25	2.00/.25

Notable, of course, is that CenturyLink’s local and intrastate ICS rates are substantially more expensive than what is permitted under the current interstate ICS call rate caps – i.e., \$3.15 for a 15-minute call. CenturyLink charges more than \$6.00 for most of

⁵⁶ *2016 Stay Order*, ¶78.

⁵⁷ See www.centurylinkcorrections.com (last visited Feb. 3, 2016).

the intrastate calls listed above, including \$9.40 for a prepaid interLATA call in Johnson County, Missouri. Because CenturyLink has long supported a “holistic” and uniform rate for all domestic ICS calls “at or very near the current levels for interstate call,”⁵⁸ it is not clear how CenturyLink can now argue that its current ICS customers will not be harmed if the FCC grants the requested relief and perpetuates the unjust, unreasonable, and unfair ICS rates, including a 15-minute call that is **3 times** the cost of the interstate ICS rate cap. Thus, any delay in the effectiveness of the *Second R&O* would delay immediate relief to millions of ICS customers currently being charged excessive ICS rates, including a large majority of the intrastate calls carried by CenturyLink and its partners.

IV. The Public Interest Is Best Served By Denying CenturyLink’s Petition.

Finally, this proceeding has conclusively demonstrated that reform of all ICS rates and ancillary fees is critical, and that there will be overwhelmingly positive public interest benefits arising from the FCC’s implementation of the *Second R&O*. Any delay in the effectiveness of the *Second R&O* would be, in fact, counter to the public interest.

The Petitioners have introduced comprehensive evidence that increased contact between inmates and their families and loved ones will reduce recidivism rates, which will decrease the cost of incarceration. In fact, it was shown that just a 1% decrease in the recidivism rate would result in savings of more than 250 million dollars for state, county and local jurisdictions.⁵⁹

⁵⁸ See e.g., *CenturyLink Ex Parte Submission*, WC Dkt. 12-375, filed April 28, 2015, pg. 1. See also *CenturyLink Ex Parte Submission*, May 14, 2015, pg. 1 and *CenturyLink Ex Parte Submission*, August 14, 2015, pg. 1.

⁵⁹ *Petitioners Comments*, pg. 36 (citing Declaration of Coleman Bazelon, Ph.D).

Also, the Petitioners have provided previous statements from Securus, GTL and CenturyLink in response to a Request for Proposal asserting that the reduction in rates and fees would lead to increased call volume, increased revenues for ICS providers, and, in turn, increased commissions paid to the correctional facilities that receive commissions.⁶⁰ In light of several ICS providers' advocacy directed to correctional authorities that low ICS rates would drive up revenue and commissions paid to the correctional authorities, CenturyLink's assertion that low ICS rates and fees will not serve the public interest is simply incorrect.

In sum, CenturyLink failed to establish that its pecuniary interest outweighs the enormous public interest harms associated with any further delay in the effectiveness of the ICS rate caps adopted in the *Second R&O*.⁶¹

CONCLUSION

Thus, CenturyLink has (i) failed to establish that its appeal of the *Second R&O* will be successful on the merits; (ii) failed to provide any solid evidence that it will suffer irreparable harm; (iii) failed to show the lack of harm to third parties (in fact, great harm be caused from a delay in the effectiveness of the lower ICS rates); and (iv) failed to show any public interest benefit from granting a stay.

Therefore, Petitioners oppose CenturyLink's Petition for Stay, and respectfully request that the FCC adopt an order denying the Petition.

⁶⁰ *Petitioners' Ex Parte Submission*, WC Dkt. 12-375, filed July 18, 2013 ("the recent statements of CenturyLink, GTL and Securus demonstrate that a lower ICS rate will lead to higher call volumes, and a commission of 50% or more can still be paid to the correctional authority. Each tout their low rate/high commission rate proposals as delivering higher call volumes and higher revenues for the Florida DOC. Their blended 15-minute rate was less than \$0.10 per minute, and each proposed to pay an annual commission in excess of 46%.").

⁶¹ *2016 Stay Order*, ¶82.

Respectfully submitted,

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February 3, 2016

CERTIFICATE OF SERVICE

I hereby certify that, on February 3, 2016, the forgoing Opposition was served via electronic mail on the following persons:

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