

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

In the Matter of)
)
)
Implementation of Pay Telephone)
Reclassification and Compensation)
Provisions of the Telecommunications)
Act of 1996)
_____)

CC Docket No. 96-128

INITIAL COMMENTS OF EVERCOM SYSTEMS, INC.

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Dated: March 10, 2004

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SUMMARY

Despite its many pages, the Petition filed by Martha Wright and others fails to provide justification for the FCC to abolish a system that it has recognized for many years is necessary in the unique environment of confinement facilities. Even with concepts like increased prepaid that make inherent sense, the Petition trivializes the “costs” associated with launching and maintaining a “pick-your-carrier” system for inmates. Such costs are far more substantial than Petitioners or Mr. Dawson portray. Further, the Commission must very carefully assess, and not underestimate, the ability of inmates to potentially take advantage of such a system in ways that could create significant security issues for the confinement facilities. In that regard, the Commission must listen closely to facility administrators. As of March 10, 2004, four state correctional systems have already opposed the proposal. Moreover, the assumption that the current approach does not have significant transport costs and very aggressive competition levels and that the Petitioners’ proposal would improve those costs is not only flawed, but is in fact a recipe to reduce the current competitive landscape. In addition, the proposed system would add another “access” regime for the Commission to oversee and police. By limiting or eliminating commission payments, the Petitioners would in many jurisdictions jeopardize inmate benefits funded by such payments. In the final analysis, the Commission must determine, as it has in the past for a “billed-party-preference” approach, that the overall benefits outweigh the increased costs and potential risks. The Petitioners have failed to establish that opening the inmates’ dial pad to multiple interexchange carrier choices as proposed satisfies that standard. Therefore, the Petitioners’ arguments should be rejected.

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Pursuant to Public Notice DA 03-4027, Evercom Systems, Inc. (“Evercom” or “Company”), acting through counsel, hereby submits its Initial Comments in response to the *Petition For Rulemaking or, in the Alternative, Petition to Address Referral Issues In a Pending Rulemaking* filed by Martha Wright and others (“Wright Petition” or “Petition”).¹

I. INTRODUCTION AND BACKGROUND

A. Evercom’s Operations And Experience

Evercom currently provides inmate calling services in 43 states and the District of Columbia to over 2000 confinement facilities, which range in size from small municipal facilities with less than 30 beds, to large county and state facilities with in excess of 1000 beds. The Company or its predecessors have been serving the inmate calling industry since the early 1990’s and Evercom’s current management has decades of collective experience in the telecommunications industry,

¹ *Petition For Rulemaking Filed Regarding Issues Related To Inmate Calling Services Pleading Cycle Established, Public Notice*, CC Docket 96-128, DA 03-4027 (rel. Dec. 31, 2003) (“*Public Notice*”), 69 Fed. Reg. 2697 (Jan. 20, 2004). By Order released February 3, 2004, the Commission extended the comment deadlines to March 10, 2004 for initial comments and March 31, 2004 for reply comments. As noted in the *Public Notice*, the Commission is considering the Wright Petition as an *ex parte* presentation in connection with the pending Order on Remand and Notice of Proposed Rulemaking in CC Docket 96-128, 17 FCC Rcd. 3248 (2002) (“*Inmate Payphone Proceeding*”), released in February 2002.

including the provision of inmate calling services.²

Evercom has developed its own proprietary inmate calling services platform and related software necessary to provide the various monitoring and calling features that are the hallmark of providing telecommunications services in this special environment. The Company is constantly working to develop new call control and other features that are demanded by its customers or that will give Evercom a potential advantage in the very competitive process by which the contracts to provide these services are considered and awarded. Based on its extensive, hands-on experience, Evercom thoroughly understands the scope and nature of the changes that would be required if the system proposed by the Petition were adopted.

B. Current Configuration And Regulation Of The Inmate Calling Industry

The Commission is familiar with the current configuration and regulation of the inmate calling industry. In a variety of decisions, in this docket and others, the Commission has recognized the unique circumstances that surround the provision of telecommunications services to inmates in confinement facilities. The Commission has several times endorsed the need for a single carrier system to address the inveterate security concerns that are present in the confinement facility environment. In its February 2002 decision initiating the *Inmate Payphone Proceeding* the Commission carefully articulated the laundry list of how “inmate calling services, largely for security reasons, are quite different from the public payphone services that non-incarcerated individuals use.”³ As noted above, these are differences that the Commission has reanalyzed and rejustified based on input from service providers like Evercom, state correctional facilities and even the Attorney General of the

²In support of its Initial Comments Evercom is submitting the Declaration of its Executive Director of Service, Mr. Robert L. Rae, which is attached as Exhibit 1 hereto.

³ *Inmate Payphone Proceeding*, at ¶¶ 9-12.

United States.⁴ The Petition now again challenges those conclusions in fundamental respects.⁵ The Commission cannot essentially discard its prior reasoned decisions without a thorough examination and understanding of the significant ramifications of doing so.

C. The Petition And Dawson Affidavit

The Petition asserts that the Commission's historic policy of exempting inmate payphones from the unblocking and related requirements applicable to payphones made available to the general public is incorrect, and that the inveterate correctional, security and penological considerations supporting that policy are now without merit. Petitioners call for the creation by the FCC of a new regulatory regime under which the Commission would require inmate calling service providers like Evercom to provide interconnection with and equal access for any and all long-distance carriers and impose a scheme of "access charge" type rate regulation on such providers. As the *Public Notice* describes, the Petition "requests that the Commission prohibit exclusive inmate calling service arrangements" and "permit multiple long-distance carriers to interconnect with prison telephone systems." Petitioners seek to restrict the payment of commissions to confinement facilities, claiming that the only real purpose that such payments serve is to increase the rates paid by the inmates themselves. Petitioners suggest that open competition on the interexchange carrier level is "the answer" to rate inflation. Petitioners further suggest that (i) the costs of implementing and maintaining such a system would be trivial and (ii) there would be no impact on Evercom's ability to meet the extensive security requirements mandated as part of every confinement facility contract.

⁴See *In the Matter of Billed Party Preference for InterLATA 0+ Calls (Second Report and Order on Reconsideration)*, CC Docket No. 92-77, 13 FCC Rcd. 6122, 6156, at ¶ 57 (1998) ("Billed Party Preference Proceeding" and "BPP Order"), revised in part, 16 FCC Rcd. 22314 (2001)

⁵As the Commission well knows, the inmate calling industry is heavily regulated in many states, with tariff or price list requirements and rate caps on calls.

II. THERE IS TODAY BENEFICIAL COMPETITION IN THE INMATE CALLING INDUSTRY

Contrary to the Petitioners' and Mr. Dawson's assumptions there is today healthy competition in the provision of inmate calling services that benefits the users of those services (i.e. the inmates and the parties that they call). As outlined by Mr. Rae, Evercom's experience is that there is contested bidding for many facility contracts. The competitive factors involved in those bidding wars include the quality and reliability of the service provided to the inmates and, increasingly, the ability to control rates offered to the inmates (and/or the called party) for using the service.

Although this process produces a single winner, with an associated single carrier, it fuels competition on another level that ultimately benefits the inmate users. As Mr. Rae describes, the current system allows a successful bidder like Evercom to negotiate with the commitment of delivering a single, exclusive stream of traffic to the carrier that offers the lowest cost connection services. This is particularly the case when a provider like Evercom can do so at 2000 facilities nationwide. The confinement facility at the 30-bed jail in Missoula will potentially have access to the same connection rates as the 300-bed facility in Macon. A system that removes the ability to deliver that stream to a single carrier wipes out the competitive benefits of pitting the carriers against each other in bidding to obtain exclusive access to that large single block of traffic.

Petitioners and Mr. Dawson do not even address, much less dispute, these competitive benefits. Their failure to do so is only one example of the glaringly simplistic assumptions that form the basis for their radical proposal.

III. THE PETITION CAVALIERLY IGNORES THE POTENTIAL COSTS OF DEVELOPING, DEPLOYING AND MAINTAINING THE MULTI-CARRIER SYSTEM

Nowhere is the Petitioner's oversimplification more dramatic and cavalier than when it comes to the cost of putting into place, operating and maintaining such a multiple carrier system,

costs that would fall largely on the providers (like Evercom) of the on-site inmate platform and related equipment. Mr. Dawson at various points describes these costs as “relatively minor” and “small” and “too insignificant.” In any case, they can, according to Mr. Dawson, all be covered as part of the “reasonable profit” contained in a \$0.04 to \$0.06 per minute access fee.

Putting aside the ability to achieve technologically what the Petitioners propose, without affecting the required security concerns, any such fundamental technological change to the current system would not come without substantial costs. Petitioner’s expert trivializes the potential costs of implementing and maintaining a multiple carrier system, without providing any substantive analytical support.

The Commission has been down this road before and well understands that a fundamental technological change, even one that may provide greater individual choice to consumers, may in the final analysis not be worth the price. All of these additional costs must be recovered from those that arguably benefit from the requisite investment. In the *Billed Party Preference Proceeding*,⁶ the Commission was forced to conclude that ultimately the cost was too high. Yet, in effect, what the Petitioners urge here is a form of billed party preference, where the inmate would in effect act as the selecting agent for those who would pay for the call.⁷

As explained by Mr. Rae, the implementation of a multi-carrier system would affect the gamut of interconnection arrangements and platform capabilities. Evercom expects that special software would have to be developed and tested. Hardware modifications also would be required. While the timing and costs are at this point not precisely quantifiable, Evercom expects that they would be substantial. By way of example, Mr. Rae cites the following:

⁶See *BPP Order, supra*, at ¶ 36.

⁷In this respect the proposed system would not even directly give the “billed party” the preference, unless there was some instruction given to the inmate to choose a particular carrier when prompted to do so and the inmate did what he or she was told.

- a. The added costs associated with less efficient, multiple, single-line trunks.
- b. The added costs associated with additional multiple ports.
- c. The added costs associated with developing, deploying and maintaining a system for accurately reading and disclosing rates for multiple carriers.
- d. The added costs associated with developing, deploying and maintaining a message scripting system for multiple carriers.
- e. The added costs associated with handling multi-carrier signaling systems.
- f. The added costs associated with developing, deploying and maintaining a system for validation with multiple carriers.
- g. The added costs associated with developing and deploying a system to prevent 3-way calling where there are multiple carriers.

Again, the foregoing list is by way of example. Evercom cannot prognosticate all the hardware, software and programming changes that will be required. However, based on its extensive experience in building and developing these systems the Company has no doubt that Mr. Dawson has grossly underestimated what would be involved.

Suffice it to say, the implementation of this “billed party preference” type system is fraught with exactly the same potential for cost growth that the Commission encountered when it last considered applying such a system to inmate calling and rejected it. As Mr. Rae observes, the outcome of requiring such a system could in reality mean less services for inmates because some facilities would have to “drop out” of the service universe.⁸ At other facilities, the scope and cost of the services could actually rise.

⁸Indeed, as noted below, Petitioners and Mr. Dawson concede that the system they propose would have little applicability at “locally-administered jails and other low-capacity prison facilities.” Of course the inability to spread the development costs over a large number of facilities would only potentially exacerbate the impact on those facilities where it technically or otherwise might make sense.

And these costs could be multiplied depending, for example, on the scope of Evercom's obligations to allow multiple carrier access. How many carriers must be allowed to interconnect? Any carrier that wants to do so? The Petitioners place no limit on how much "competition" would be required. So the cost equation here is potentially open-ended.

The bottom line is that the Commission, from a cost perspective, is being asked to buy the proverbial "pig in the poke." The Petitioners, because they are not in the business of running prisons or providing inmate calling services, trivialize the costs of implementing and operating a totally revamped system. The Petitioner's exhortations for competition cannot hide the woefully naive analysis that they have put forward on this very significant issue.

IV. ADOPTING THE PROPOSAL WOULD ESTABLISH A NEW "ACCESS CHARGE" REGIME FOR THE FCC TO ADMINISTER

The proposal would require the Commission to set up and police a new "access charge" regime. Under the proposal inmate providers such as Evercom only would be permitted to charge a per-minute access charge based on their costs. Evercom and the multiple interexchange carriers would enter into interconnection agreements to set the economic and other terms on which their facilities would interconnect and the calls would be routed. It is unclear whether the "access charge" that the carriers would pay would be tariffed, but if not it would be policed by the FCC through the complaint process. Presumably the Commission could find itself adjudicating disputes about the access costs offered by providers (like Evercom) and other terms and conditions of these agreements. This is exactly the "game" that the Commission is currently trying to rationalize in the *Intercarrier Compensation Proceeding*.⁹ Moreover, the Commission would undoubtedly have to engage in regulating competitive standards even beyond those rules like the "competitive checklist" criteria

⁹See *In the Matter of Developing A Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd. 9610 (2001)

currently set forth in Section 271 of the Communications Act.¹⁰

In addition, under the proposal Evercom would presumably be obligated to accommodate as many carriers as wanted to be interconnected or face a complaint of discrimination for denying a particular carrier access to its platform. In the meantime, it would be Evercom that assumed any and all liability to the confinement facility for problems relating to the provision of the service. Rest assured that the confinement facility administrators have no interest in further complicating their contractual relationships in connection with the provision of these services.

With respect to the appropriate amount of the “access charge”, Mr. Dawson’s affidavit, through what can best be described as a “back of the envelope” analysis of Evercom’s costs, claims that the “access charge” that Evercom would be justified in charging would be in the range of \$0.04 and \$0.06 per minute. Mr. Dawson’s analysis contains at least several false assumptions and misperceptions. Mr. Rae refutes a number of them in his Declaration and demonstrates that Mr. Dawson’s projection of the appropriate level for such an “access charge” is at best questionable, if not totally inaccurate.

V. ELIMINATION OF COMMISSIONS WOULD HAVE ECONOMIC EFFECTS

Petitioners advocate the elimination of commissions as an expense of providing inmate services. Petitioners would limit the payment of commissions to confinement facilities to the amount necessary to reimburse the facility for its costs of making the service available to inmates.

Once again Petitioners fail to understand the financial role that commission payments play in the provision of inmate services. As noted by Mr. Rae, in certain jurisdictions commissions collected by the facility go to fund activities directly beneficial to the inmates (e.g., GED programs, AIDS awareness, post-jail support and family outreach). In other cases, these commissions are used to fund the operation of the confinement facility (i.e., guards, guns and security). This is particularly

¹⁰ 47 U.S.C. § 271(c).

true at smaller, local or municipal facilities.

If these payments are eliminated or reduced, replacement funds may not be available to the confinement facility from the tax base or other sources. As a result, the inmates' quality of life may be affected because services would have to be cut or reduced in scope.

In many jurisdictions where Evercom operates, the cost to an inmate of placing a collect call using Evercom does not vary widely from the cost of a collect call made from a public payphone in the visitor's center of the facility or on the street corner down the block. Evercom's rates are typically set no higher than dominant carrier rates for the same services. And in many states intrastate rates are capped by state regulators.

VI. ADOPTING THE PROPOSAL WOULD MEAN A BIFURCATED SYSTEM

The Petitioners seek this system to be established only at "privately-administered" confinement facilities.¹¹ Of course, the requirement for multiple carrier access could only be dictated by the FCC for interstate or international calls, which are generally less than a third, on average, of the minutes of use from a typical confinement facility served by Evercom. As the Petitioners concede, these requirements probably do not make sense at the smaller, local or municipal jails.

As a result, Petitioners' system has potential practical application only at the largest facilities that are privately administered, for a limited number of the inmates' calls. Before requiring the major investment necessary to reconfigure hardware and software, the Commission must consider whether such a limited application justifies the costs. From Evercom's perspective, as one of the entities that would bear the greatest portion of the implementation costs and responsibilities, it does not.

¹¹Petitioners act as if state regulatory requirements regarding the administration of telecommunications services are totally inapplicable to privately-administered facilities. But the contracts with the state could impose very similar restrictions.

VII. THE COMMISSION MUST CAREFULLY ASSESS THE PETITION SYSTEM'S IMPACT ON LONG- ESTABLISHED SECURITY CONCERNS

The Petition baldly asserts that a system of multiple carriers interconnecting directly to Evercom's confinement facility platform would in no way dilute or undermine that platform's critical built-in security protections or the other security requirements generally imposed by facility administrators. However, the Petitioners' expert, Mr. Dawson, provides no specific technical explanation of how such interconnections could occur while ensuring security concerns are appropriately addressed.

The Commission has long recognized that confinement facilities have a legitimate basis for restricting inmates' use of telecommunications services. The plain fact is that inmates are just not like any other "consumers" of such services. Therefore, the Commission needs to very carefully consider the assertion that the system proposed by the Petitioners is technologically possible without affecting in any way, or providing any potential opening for resourceful inmates to avoid, the security protections. The Petitioners concede that other suggested methods for injecting competition or inmate choice into the system (e.g., remotely forwarded calls) are open to abuse. The Commission needs to establish a solid technical record that, for example, a system that gives an inmate a "push-the-button" choice among an extended list of long-distance carriers is not susceptible to manipulation.

Indeed, four state prison systems already have objected to the proposal based in part on security concerns. To adopt the Petitioners' proposal in the face of such concerns in effect puts the FCC in the position of running the jails, a position which Evercom believes is inappropriate.

VIII. PROMOTION OF PREPAID CALLING MAKES SENSE IN CERTAIN CASES

The Company generally agrees with the Petition's call for greater use of prepaid calling cards or accounts in the inmate environment. Facility administrators have authorized Evercom to offer

some form of prepaid services at a majority of the facilities that the Company serves. Use of prepaid technology does reduce the well-known problem of uncollectibles associated with collect-only calling.¹² Further, flat, per-minute prepaid charges on interstate long-distance calls generally would likely result in lower costs per call for the inmate.

As the Petition concedes, however, there are administrative and security-related “costs” that accompany a prepaid program. Evercom does not (and indeed cannot) have interaction with the inmates that seek to use prepaid services. Evercom provides prepaid cards to the confinement facility at a discounted basis and it is the facility, usually through its commissary, that sells the cards (or sets up the account) with the individual inmate. This consumes significant time and resources of confinement facility personnel.¹³

The Petition also concedes that prepaid calling cards makes telecommunications services a “commodity” that one prisoner can seek to extract from another, creating the prospect for inmate confrontations that facility administrators seek to avoid at all costs. This is in fact one of the other reasons why such administrators have declined to permit Evercom to establish such programs. Another issue raised by facility administrators is the perceived ingenuity of inmates and the concern that use of a prepaid card or account number will permit the inmate to evade the security systems properly imposed on inmate calling.

Any effort by the Commission in response to the Petition to promote greater use of prepaid calling must take into consideration the circumstances of the individual facility and the genuine burdens that establishing and administering such a program imposes. Presumably, facility administrators may feel that their primary mission is to focus their resources on the operation of a

¹² In fact, the average bad-debt rate in the industry is between 15-25% of revenues generated from collect calls.

¹³The comparison of such facilities to the massive Federal prison system, where the Petition claims that the bulk of the calls are prepaid, is inappropriate.

safe and secure facility, without having to worry about dispensing or administering prepaid telecommunications programs.

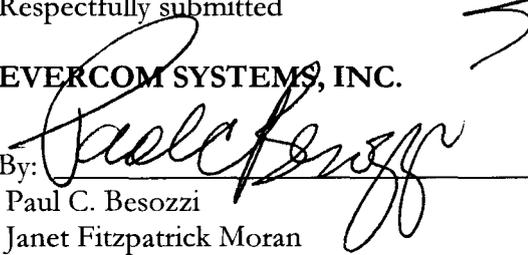
Finally, under no circumstances can prepaid be made the exclusive payment vehicle available to inmates. As Mr. Rae notes, in Evercom's case the average inmate stay is 3 days and it can take that amount of time and longer for the facility administrator to get a prepaid account established and in place. Inmates must always have access to collect-only calling services.

IX. CONCLUSION

Petitioners' proposal glosses over and trivializes the true nature and extent of the technological and economic changes that would be required if it could and were to be implemented. The Commission has repeatedly recognized and affirmed the fundamental uniqueness of providing telecommunications services in the confinement facility environment. It must consider carefully the comments and positions taken by prison administrators who are on the front line of managing these environments. It must consider the benefits of directing the establishment of a system so limited in scope as compared with the costs of doing so. The Petitioners' presentation, for all of its pages, falls far short of providing the facts on these key issues.

Respectfully submitted

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March 10, 2004

Exhibit 1

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DECLARATION OF ROBERT L. RAE

I, **ROBERT L. RAE**, do hereby declare, under penalty of perjury, that the following is true and correct to the best of my knowledge and belief:

I. PERSONAL BACKGROUND AND EXPERIENCE

1. I have a MBA, a Bachelor of Arts degree in Economics and a Bachelor of Sciences degree in Psychology from the University of Pittsburgh. I have approximately fifteen years experience in the telecommunications industry, leading customer service, operations, product support, consulting, engineering and strategic planning activities for companies like Bell Atlantic, Fujitsu, and Steleus Group. My experience ranges from performing technician roles during college to leading teams of 600 highly trained technology engineers supporting the latest in optical networking and switching. At Bell Atlantic, I was actively involved in the NPRM responses given during the development of the Telecommunications Act of 1996 and strategically involved in decisions such as Fiber-to-the-Home implementation, Rate Demarcation, and decisions relating to product development and unbundling of various services. I have given talks on subjects such as Optical Networking and Network Deployment for DSLCon and the IEEE. I have written

articles for publications such as the International Engineering Consortium Annual Review and OSP Magazine. A copy of my CV is attached as Exhibit 1.

2. Since December 2002 I have been the Executive Director of Service for Evercom Systems, Inc. (“Evercom” or “Company”) with responsibility for customer services, operations and supply chain management. I chair many of our development initiatives and work closely with our development teams to develop our future products. I also work closely with all other major components of Evercom’s organizations, such as sales and finance. My day-to-day responsibilities require a detailed and intimate knowledge of the operation of Evercom’s current inmate calling services systems. I am involved in the preparation of Evercom’s proposals to provide inmate calling services at new facilities. Finally, I deal directly with Evercom’s customers concerning the configuration, installation and operation of Evercom’s inmate calling services systems to ensure that those systems meet the stringent customer needs for providing telecommunications services in what remains a unique environment.
3. I have reviewed the Wright Petition, including the Affidavit of Douglas A. Dawson attached thereto, and I am providing this Declaration in support of Evercom’s Initial Comments in response to that Petition and Affidavit. Evercom currently provides inmate calling services at over 2000 locations, many of them small-to-medium-sized county or municipal jails throughout the United States. In light of my day-to-day responsibilities with Evercom, I have a first-hand understanding of and experience with the issues facing confinement facility administrators in the provision of inmate telecommunications services and the potential dramatic impact of the changes advocated by the Petition.

II. COMPETITION IN THE INMATE CALLING INDUSTRY

4. Contrary to Mr. Dawson's suggestion, today there is significant competition in the inmate calling services market. Generally, Evercom competes with other providers of inmate services to obtain the contracts to serve a particular confinement facility. Indeed, in 2003, Evercom responded to 185 Requests for Proposal ("RFP") to provide its inmate calling services. Depending on the size of the facility there were 4-12 bidders that responded to those proposals, including major carriers that offer inmate calling services. There are over 20 competitors in this market, each with measurable share competing for the business of approximately 5,667 facilities. In any given year, 25-30% of these facilities are up for renegotiation of their contracts. These bid events are highly structured and managed tightly under government specifications.
5. Competitive factors generally involved in these bidding contests include (a) quality and reliability of service, (b) effectiveness of security features, (c) ability to service the largest percentage of calls, (d) availability of commissions to defray confinement facility expenses and (e) increasingly the ability to control rates to the inmates for using the service.
6. This current form of competition also drives the competitors, like Evercom, to develop new security features, including expanded call recording and tracking capabilities, more effective fraud detection and criminal investigation tools. Some of these features potentially have a broader, Homeland-Security-type application beyond their use in confinement facilities. Evercom's expenditure of private funds to develop these features, so that it can effectively compete, helps save the use of public funds to do so.
7. Finally, the result of this current form of competition, in which one inmate calling service

provider ultimately exclusively serves a particular confinement facility, permits an ensuing competition among telephone carrier suppliers to further reduce Evercom's cost structure. Evercom, like many other independent inmate calling service providers, uses other carriers to complete the calls generated on its inmate systems. Evercom negotiates with every other carrier to find the lowest cost connection services. Those carriers offering Evercom the lowest rates for bulk purchases are utilized to carry a majority of Evercom's traffic. Dividing this large amount of traffic across many providers would reduce the buying power of an inmate carrier in today's model. Likewise, dividing this traffic into smaller blocks, with multiple circuits leaving each facility to each carrier, and significantly increasing the variability of minutes of use for each carrier, will increase the cost base of providing this service (i.e., in Mr. Dawson's model, it will affect the "access fee" that any of these carriers is willing to pay). Mr. Dawson's analysis wholly ignores the existence or cost benefits and efficiencies of this existing form of competition. Yet all of these competitive factors have a bearing on the charges that inmates must pay for these specialized telecommunications services.

III. COSTS OF PROPOSED ARCHITECTURE

8. So would the costs associated with shifting to a multiple carrier system. Mr. Dawson's analysis trivializes and indeed ignores the costs of imposing a multiple-carrier requirement on what is currently a decentralized inmate calling services system, which typically has a platform in each confinement facility. The ultimate result of imposing these additional costs would make it impractical to implement the multi-carrier proposal at many, particularly rural, locations. Such a sea change would affect the existing cost structure of Evercom's business in at least the following respects:

A. Carrier Trunking

9. A multiple carrier system would likely mean increased trunking costs for the interexchange carriers themselves. Jails and prisons are typically located where the costs of transmission circuits are at their highest (e.g., rural and in other areas distant from population density). Under the current system, Evercom's ability to negotiate circuit rates nationwide and buy in bulk helps to neutralize the high costs to serve the more remote facilities and thereby reduces the upward pricing pressure on serving these areas.
10. Many facilities served by Evercom can be adequately served by a single T-1 or even less capacity. By segmenting traffic to multiple carriers, T-1 service would be less than optimal and carriers would be driven to multiple, single-line trunks. Such an arrangement would clearly collectively cost more to service for each individual carrier than Evercom's costs to aggregate all traffic to one carrier.
11. Further, under the current system, a buffer capacity is deployed for each traffic path or trunk. If all traffic for a particular facility is segmented into multiple paths, each path must also deploy a buffer capacity to handle peak usage. Thus, the net effect of multiple carriers is additional costs for buffer capacity, a less efficient model and ultimately higher costs to the carriers.
12. Given this higher fixed cost per carrier and Dawson's model where carriers would deploy network connections with the hope of selling services at the facility, some facilities might not be served at all, because no carrier would be willing to take the risk of providing transmission circuits given the uncertainty of the potential traffic stream and the associated high fixed costs. It is questionable that many carriers would be interested in paying higher fixed costs under such circumstances. As a result, mandating a change

such as this would limit service to smaller communities leaving inmates and loved ones cut off from receiving this service.

B. Billing and Collection

13. Further, under the multiple-carrier proposal, billing and collection responsibility will shift to the carriers. Billing and collection is a core competency today for inmate calling service providers like Evercom. We understand the special tools that are used to assess credit risk and terminate service access to customers who are a payment risk. Evercom specializes in the ability to make a split-second decision as the inmate is placing a call to establish parameters that allow loved ones to speak, but also does not allow the inmate to place calls at a frequency or duration that would put them in a position where their families could not afford to pay the bill. Evercom's customers are not typically long term customers and the ability to identify credit risks in this rapid turn over market is an art. In my experience, interexchange carriers do not have the specialized, niche service capabilities of an inmate carrier in this area. The typical IXC implements global processes to handle their entire customer base in a generic manner, whereas the inmate provider, like Evercom, has implemented specialized tools to appropriately control high risk inmate calling traffic. Without these specialized capabilities, there is the prospect that billing and collection costs would increase exponentially when dealing with inmate calling.¹ The assumption that billing and collection could easily be assumed by most interexchange carriers is, based on my experience, unrealistic. The cost and specialized expertise would limit the number of carriers willing to serve the inmate market under this proposal. The other possible outcome is that carriers would not detect the extremely high bad debt from this very small number of access lines and would pass on a marginal

¹ In fact, the average bad debt rate in the industry is between 15-25% of revenues generated from collect calls.

increase to recover from all rate payers that they service. By not controlling the bad debt appropriately, the entire telephone using public will bear the marginal cost increase.

C. Inmate Platform Provider Costs

14. The proposed multiple carrier system will also mean higher costs for the inmate calling services platform provider (i.e., Evercom). Mr. Dawson refers to that entity as the inmate telephone system (“ITS”) provider under his proposal. The need for multiple carrier trunking will create additional costs for hardware and personnel, thereby increasing the costs of carrier servicing and provision of the platform service.
15. For example, each trunk translates into ports on the ITS’s platform. There is a 25-60% cost advantage in purchasing larger combined ports (i.e., T-1 versus single line trunks). In addition, each trunk requires implementation and provisioning with the platform provider and its service team. Detailed provisioning records and coding would be required for each single line trunk, an effort that is not a requirement today. The implementation of the records management and systems to handle this process would increase the burden on the ITS provider dramatically. A typical provisioning system alone could be a \$1 to \$2 million dollar development effort for each ITS provider. The implementation of various trunks at various times will involve multiple dispatches of personnel and provisioning events. All of this additional work has costs. Evercom has worked very hard over the past few years to implement very cost effective means to implement ITS platforms and lower the servicing costs. The profit margins in the inmate calling business are very thin and it is these reduced operating costs that allow Evercom to make a profit. By creating multiple dispatches per installation, various interexchange carriers to service, an exponential increase in magnitude in the costs to provision an ITS,

and additional processes that are not required today, Evercom's costs for its entire system will certainly increase significantly. This would translate to higher costs passed from the ITS provider to the carrier and in the end a higher cost or a lack of service to the end user. Dawson's complexity does not exist today in what is a relatively simple model.

D. Rating of Calls

16. Accurate rating of calls would become much more complex in a multiple carrier system. Under the current system, many inmate calling platforms do not perform rating of calls in the processor, but instead rate the completed call in the central billing system located at a headquarters location. In a multiple carrier system, in order to handle the various carriers and rating options, a new logic will be required to be developed for the ITS and the central billing system in order to handle a much more complex, multi-dimensional rating matrix. The development and administration of this rating matrix would impose additional costs on the ITS. Also, because that rating information would have to pass from the carrier to the ITS provider, a standard of communication for these data would have to be developed and implemented for the entire inmate industry. This process would create a burden upon all parties and also the FCC, which would be pulled into an additional task of regulating these entities and their interconnection methods, pricing, and processes. Based on Evercom's prior experience in developing rating features for its platform, such an effort could take several years and cost several million dollars due to the joint development effort. Once again, it may also be erroneous to assume that a local or interexchange carrier would be willing to undertake this joint development effort which will increase the cost to serve this specialized niche population.

E. Messaging Scripts

17. Messaging scripts are difficult to maintain, particularly in a remote ITS platform. A multiple carrier system will make the process of maintaining these scripts even more complex and costly. For example, each carrier must be identified, with rates announced. The ITS platform will need to rate each call by destination and also by carrier. The ability to provide such multiple, tailored messages does not currently exist and would have to be developed, at increased costs. Additionally the maintenance costs of these messages and the provisioning of the correct messages in each system would add significantly to the cost of the processors.

F. Three-Way Call Detection

18. ITS platform providers must, for legitimate security reasons, be able to detect three-way calling. Such detection requires tuning to the characteristics of the incoming trunks and requires T-1 level service due to clarity. As noted above, it is unlikely that many facilities with multiple carriers will require T-1 service to carry the traffic volume. This will make three-way calling detection much more difficult to provide and create potential security concerns. In any case, since each trunk must be tuned for three-way calling detection with the inmate platform, there will be considerable costs to deploy each new trunk and the maintenance costs would increase exponentially.

G. Signaling

19. Not all carriers are able to provide the same signaling services. A variety of signaling options are provided by different switches and carriers (e.g., loop start, E&M and ground start). Again, different carriers and carrier switches limit the availability of some of these services. It is very likely that every carrier switch will have a variety of different

signaling requirements that the ITS platform must accommodate to interface with each carrier. So there will be additional costs imposed on the ITS platform provider to allow provisioning to a variety of different signaling requirements to interface with each carrier.

H. Validation

20. Today, each ITS platform provider, including Evercom, validates the called party number and the ability of the inmate to place a call to that number in order to control bad debt. Under a multiple carrier system the validation process would become more complex and costly.
21. There is no standard for this validation communication today. But if the carrier is now to become the billing party, then the carrier would have to be able to respond to these validation messages in order for the call to be completed. The lack of a standard in this area will only complicate the process of developing an interface for the ITS platform validation process with multiple carriers.
22. New features are deployed everyday which combine the validation logic with the billing processes to reduce bad debt and improve costs margins. The separation of the ITS platform and the billing carrier, with the proposed insertion of a multiple carrier system, would practically stop or greatly complicate the development and deployment of these new features.

IV. IMPACT OF INCREASED COSTS

23. The foregoing analysis only serves to validate Mr. Dawson's own concession that for many smaller, local and municipal jails a multiple carrier system is not economically sustainable. Even under the existing system, ITS platform deployment and support costs create an economic boundary which prevents service of facilities of small sizes. In the smallest facilities that are served by Evercom, the security features are typically less than

the larger facilities due to the cost of the features. Typically, the Company is only able to provide full security features to facilities of 50 beds or more.

24. Increases in ITS platform and support costs engendered by the proposed multiple carrier system will change the current cost model and assure that even some of the larger facilities that Evercom serves today will not have the full suite of security features, thereby potentially heightening security concerns for the facility and community. In addition, since more than 1/3 of Evercom's facilities today are in the partial security feature category, the increased costs would probably move them into the category of "unable to serve."

V. **PREPAID**

25. One aspect of the proposal that Evercom partially supports and is increasingly deploying is prepaid programs. Evercom continues to develop creative methods and tools which allow more calls served today through collect processes to become prepaid customers. Evercom encourages this shift in order to reduce bad debt. Indeed, the growth in wireless and CLECs is already encouraging greater use of prepaid due to Evercom's difficulty in establishing billing agreements with these entities.
26. But prepaid cannot become the exclusive payment option. Evercom services smaller facilities where inmates have typical stays of less than 3 days. This rapid turnover of inmates makes it very difficult to fund and manage prepaid accounts. A move to prepaid exclusively would delay the ability of inmates to contact their families and Evercom's ability to service this customer. Delaying an inmate's ability to make outbound calls slows the release process, which translates into more inmates in the prison system and an additional strain on the overcrowded prison population. To help promote prepaid

accounts in this rapid turn over environment, Evercom has created specialized tools to immediately contact inmate families and establish prepaid accounts. These tools are once again a specialized/patent pending tool of the inmate industry and therefore would be difficult for typical local and interexchange carriers to copy these tools and establish accounts as quickly as we do today. We continue to create and roll out more tools to increase our total percentage of prepaid accounts and dream of a day where prepaid will be the predominant payment method. But we must also deal with the perceptions of confinement facility administrators about prepaid.

27. As mentioned by Mr. Dawson, the sale of prepaid debit cards in facilities is also typically viewed as a security risk. The card becomes a commodity in the jail and becomes something that will create safety concerns. In addition, some facility administrators, who are the ones who administer prepaid programs, view it as an additional responsibility on an already overburdened group of correctional officers.
28. The typical response to the safety problem mentioned above is to address inmates with a combination of prepaid cards and prepaid accounts. But the reality is that the prepaid cards are only allowed in limited facilities and limited circumstances today. Prepaid accounts are typically utilized to allow prepaid calling to only one number and therefore has no value to other inmates. The difficulty in providing this service is that an inmate must first attempt to call a family member to alert them that they are incarcerated. If a collect call is not possible, the inmate's family must then be contacted to establish an account and then action is taken to once again broker a call between the inmate and their family. Due to the difficulty of establishing contact with the family, funding an account, and then once again connecting the inmate and the family, many inmates who would like

to reach their families fail to do so. This is why the collect product and billing arrangements continue to be invaluable tools within this industry. Any attempt to limit all calling exclusively to prepaid will preclude the ability of inmate carriers to satisfy a large portion of their current demand.

29. Evercom is completely in support of moving to prepaid as quickly as possible. Today, we utilize a balanced mix of prepaid accounts with families, prepaid accounts with inmates, prepaid cards, and collect calling with the goal of servicing as much demand and connecting as many families as possible.

VI. COMMISSIONS

30. The Petitioners advocate that commission or other payments to confinement facilities be limited to amounts necessary to cover the costs to the confinement facilities necessary to provide inmate telecommunications services. Mr. Dawson subscribes to the belief that commissions are directly and primarily responsible for higher rates to inmates and therefore, with this exception, should be eliminated because they are of no benefit to the inmate.
31. This position represents a fundamental lack of understanding of the uses that are made of the commissions paid by providers like Evercom. Commissions are used for direct inmate services such as (a) GED Programs, (b) AIDS awareness, (c) drug rehabilitation, (d) post-jail support (e.g., clothing stipend), and (e) family outreach. In addition, commissions are used to fund local, county and state governments, including the costs of incarceration (e.g., guards, guns and security). These funds help close the gap in funding strapped local budgets which are currently burdened by the additional costs of Homeland Security initiatives and tightened budgets. By augmenting tight local budgets, taxes are

supplemented and the need to go to the public with new taxes is offset with funds directly from inmates and their families. Elimination of commissions thus may have the immediate effect of reducing programs that currently support inmates themselves.

32. Also, commissions directly offset the costs of the jail to support and allow inmate calling. As mentioned by Mr. Dawson, inmate security features exist to record calls, control calling, and investigate calling behavior. While the inmate calling platforms have progressed significantly, there is still a large cost to the facilities to listen to inmate calls, investigate behavior on the phone, administer prepaid programs, and configure calling and security features. Also, phone system wiring and in many cases the maintenance of phone sets within the facility and the maintenance of wiring facilities are the responsibility of the prison or jail. The maintenance of this system in this environment is costly and this cost is offset by commission payments. In some facilities, on site administrators are provided by Evercom in lieu of higher commissions. It is reasonable to believe that Evercom would be forced to engage in a much higher level of maintenance and administration if commission payments were eliminated from the business model. Once again this would add costs back into this model. In addition, the tasks performed by the facility are specialties of the facility in that they require information unique to their proximity and knowledge of inmate behavior, security, and prison maintenance. It is much more likely that in a model where commissions were eliminated, Evercom would be forced to compensate the facilities to continue to provide these services due to their expertise in these areas.

VI. SECURITY CONCERNS

33. Mr. Dawson believes that a multiple carrier system could be imposed without diluting

any of the legitimate security concerns that have governed regulatory policies in the inmate calling services industry for many years. It is interesting to me that the Petition did not include or cite support from confinement facility administrators or prosecutors. Indeed, at least four state correctional systems have already opposed the petition (Kansas, New Jersey, Massachusetts and New York). In my experience this is a paramount concern of facility administrators and any system that is not proven or is susceptible of manipulation by “imaginative” inmates should not be required.

VII. COST MODELING

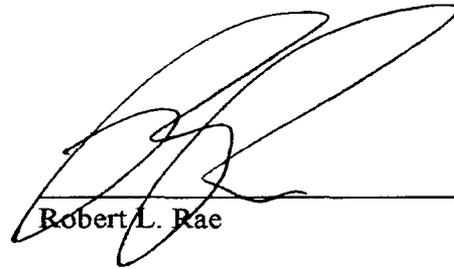
34. Mr. Dawson engages in a great effort to attempt to calculate Evercom’s business costs from past 10K and other reports. As always, when attempting to pull together externally visible piece parts from a public or private company, accuracy in regards to calculating costs can only go so far. Due to the fact that Evercom is now private, I will only go into our costs in a limited manner, but I do want to point out some very large inaccuracies in Mr. Dawson’s assumptions. These are only examples, but the fact that, as noted previously, there are significant costs not assessed or considered by Mr. Dawson will significantly alter the ability of inmates and their families to receive services if Mr. Dawson’s plan is implemented.
35. In the case of calculating switch and phone deployment costs, Mr. Dawson begins by estimating the number of phones per inmate. While some documents may list that a minimum deployment ratio of 25 inmates per phones, this is a truly inaccurate number and reality is somewhere around 10 to 1. This more than doubles the cost estimates for phone installations. Mr. Dawson also leaves out wiring, miscellaneous electronics, and other items that go into the average installation such as workstations for administration

and TDD units for the hearing impaired. Also there is significant labor and wiring costs associated with installations in a facility that are significantly higher than your average IT installation due to the security of the facility and the difficulty in wiring a secured environment.

36. In another section, Mr. Dawson further discusses the maintenance costs where he utilizes available data to propose that annual maintenance costs are typically 13.2% of the installation costs. Evercom's cost studies utilizing actual data shows maintenance expenses are approximately 25% of the cost of the installation. So Mr. Dawson's assumptions are off by almost 100%
37. On the other hand, Mr. Dawson likewise estimates Evercom's SG&A expenses at 2.6 times the cost of maintenance. In reality, Evercom's SG&A is approximately 1.8 times the cost of maintenance. Not mentioned by Mr. Dawson, but worth noting is that included in SG&A is the significant amount of R&D that is required in this market to continue to compete against other carriers and, as mentioned earlier, continue to strengthen the security capabilities of the facilities that are served.
38. Another example of a significant difference is in the area of total long distance costs and terminations. Mr. Dawson utilizes the typical, best IXC rate of 2.5 cents per minute and ignores the higher costs of intralata and intrastate connections. Evercom's costs are significantly higher than 2.5 cents per minute on average for all traffic.
39. At a high level, the inmate telecom business runs at a very thin margin and runs very efficiently. Like all telecom providers, this industry has been squeezed by falling volumes and difficult market conditions. Evercom continues to operate at a negative net income and any position that Evercom or other carriers are enjoying excess profits and

that by changing the model, these profits could be lowered and a cost savings could be passed on to the end user, is far from reality.

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Robert L. Rae

Dated: March 10, 2004

Robert L. Rae

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Professional Profile

Accomplished, seasoned executive with 15 years of experience in the telecommunications and IT industries. Experiences include leading customer service, product support, professional services, network operations, business development, marketing, and strategic planning. The majority of my career has been focused on leading service operations with organizations larger than 500 employees, profit and loss responsibilities, and a strong focus on customer service, team building, process, and metrics. Considerable experience in call center management, field operations, and project management. Strong technical skills in telecommunications and IT technologies including transport technologies, IP and voice switching, network design, and operations support applications.

Career Experience

Evercom Systems, Inc.

Executive Director of Service (December 2002 – Present) – Senior Operations Executive – Evercom is a specialized telecommunications carrier, manufacturer, and software developer serving the justice industry. Operations include network management, installation, provisioning, technical software and telephony support, hardware manufacturing, warehouse, logistics, purchasing, field maintenance, engineering, and network planning. Contributed significantly to Evercom's development and filed for multiple patents tied to architecture and specialized business processes.

Private Consulting Experience

Sterling Commerce (December 2002) – Network Architecture Analysis – Assisted in the winning of a major software sale by providing analysis of the customer's network and their ability to use Sterling's image transport software products.

Steleus Group (July 2002 – November 2002) – Software Product Development and Market Analysis – Using my telecommunications industry contacts and knowledge of telecommunications operations, evaluated the market and provided development input for the next generation of Steleus' product line. Technologies utilized include SS7 and VoIP protocols. Final output was a full marketing study of customer interests and future product design recommendations.

Goodman Networks (May 2002 – June 2002) – Merger and Acquisitions – Evaluated the acquisition of a Professional Services / NOC Business Unit for this nationwide telecommunications engineering company. Evaluation included intellectual property, capital equipment, revenue, and profit forecasts.

EngineX Networks, Inc.

Vice President – Operations (Professional Services / Product Support) (November 2000 – March 2002) -Built and lead a global IP, optical, and wireless engineering business to design, implement and maintain networks for telecommunications service providers and product manufacturers. Services that were provided included product support services, business planning, network architecture design and integration, systems architecture design and integration, implementation services (EFI&T), and maintenance services.

Fujitsu Network Communications, Inc.

Director – Global Technical Operations (Product Services) (April 1999 – November 2000)
Directed the product support divisions for this global telecommunications manufacturer. Team size was approximately 600 employees in 25 global locations. Operating budget was approximately \$50 million. Departments in my division: Technical Assistance Centers, Field Installation and Maintenance, Repair and Return Center, and Customer Educational Services.

Bell Atlantic Corporation

Senior Manager - Customer Services Centers (NOC / Call Center) (November 1996 – April 1999) - Directed the provisioning, maintenance, customer service and dispatch centers for Delaware and a portion of Pennsylvania. Managed to rebuild the worst customer service operation in Bell Atlantic and move it up to the 5th ranked center of 27 in a nine-month period. Operation was comprised of two center locations with a total of 120 employees, dispatching 1000 technicians and managing 1.2 million access lines. Typical work volumes were approximately 8000 customer transactions per day with approximately 2000 dispatchable events.

Senior Manager – Operations Strategic Planning (August 1995 – October 1996)

Directly supported the operations executive team as strategic planner to the president of Bell Atlantic's operations. This division had a multi-billion dollar annual budget and required significant strategic and technical guidance in all planning aspects.

Other Notable Bell Atlantic Positions (June 90 – July 1995)

- Area Marketing Specialist – Led regional service, marketing and public relations initiatives.
- Managed installation, maintenance and construction field forces in various positions.
- Managed the conversion of 15 million access lines from paper records to automated activation.
- Managed smaller, 200,000 access line activation and maintenance centers. Opened the first automated activation center for Bell of Pennsylvania.
- Performed analysis of service trends and implemented new programs to improve performance in Bell Atlantic's sales and collection call center operations.

Education

Masters Business Administration
Bachelor of Arts – Economics
Bachelor of Sciences – Psychology
Implementing Strategy

University of Pittsburgh (September 1991 – July 1994)
University of Pittsburgh (September 1986 – April 1990)
University of Pittsburgh (September 1986 – April 1990)
Wharton School of Business (September 1997)

Technical Knowledge / Skills

Telecommunications and Information Technology

- General technical knowledge of a wide range of telecommunications platforms including: optical transport, access platforms, networking protocols and switching.
- Solid technical knowledge in telecommunications carrier operations, OSS, and business processes.
- Managed corporate IT networks and had deployment and user experience with the following technologies and platforms: PBX, CTI and VoIP; enterprise LAN and WAN architectures; development and operation of corporate internet, intranet, and extranet sites; deployment and operation of corporate VPN and RAS platforms; security policies and management; and disaster recovery.
- Experienced in deploying Customer Relations Management systems (Remedy and Siebel) and Back Office software products (SAP and Great Plains).

Business Skills

- Experienced in developing, implementing, managing and assessing the success of business processes. Management experiences include: construction project management, high volume call centers, manufacturing operations, telecom carrier operations, customer training services, professional services, and corporate business processes.
- Experience opening business entities in the US, Europe, Central and South America, and Asia.
- Strong knowledge of market trends and business issues in the telecommunications industry.
- Extensive Rolodex of business contacts for use in business development and problem resolution.
- Skilled in negotiating contracts with customers, agents, and suppliers to assure that business interests are protected and relationships are profitable.

Recent Speaking / Writing / Patent Credits

- Patent Applications tied to architecture and business process.
- Contact 2000 Call Center Exhibition – Brussels, Belgium – “Web Enabled Global Service With No Dividing Lines” – Speaker – 2000
- IEEE – Dallas, Texas– “Managing the Optical Evolution in Network Operations”– Speaker – 2001
- International Engineering Consortium – “The Public Network Service Provider Challenge: Customer Service and Profitability in the Internet Age” – White paper co-author – 2001
- Outside Plant Magazine – “Rapid Network Deployment in a Slower Economy” – Article co-author – 2001
- DSLCon – Tampa, Florida – “Implementing DSL in Today's Environment” – Speaker – 2001

CERTIFICATE OF SERVICE

I, Paul C. Besozzi, hereby certify that on this 10th day of March 2004, I did cause to be served by commercial overnight courier, or by U.S. Postal Service first-class mail, postage prepaid, or sent electronically, a copy of the foregoing “**Initial Comments Of Evercom Systems, Inc.**” on the following individuals.

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