

ATTACHMENT A

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

In the Matter of)

**Implementation of the Pay Telephone
Reclassification and Compensation
Provisions of the Telecommunications
Act of 1996**)

**Petition for Rulemaking or, in the
Alternative, Petition to Address Referral
Issues In Pending Rulemaking**)

CC Docket No. 96-128

**REPLY DECLARATION OF DOUGLAS A. DAWSON IN SUPPORT OF
PETITIONERS' ALTERNATIVE RULEMAKING PROPOSAL**

Douglas A. Dawson, being duly sworn, declares as follows:

I. Introduction

1. My name is Douglas A. Dawson, and I am the President of CCG Consulting, Inc. ("CCG"), located at 7712 Stanmore Drive, Beltsville, MD 20705. I filed an earlier expert declaration in this docket in support of Petitioners' Alternative Rulemaking Proposal ("Alternative Proposal" or "Proposal").

2. I submit this Reply Declaration to address certain issues raised by other parties challenging my previous declaration in support of the Alternative Proposal ("Dawson Alternative Declaration").

II. Industry Will Never Address The Issue On Its Own.

3. Many of the parties in this case asked the FCC to ignore the Proposal, since the industry is already taking care of the issue of high interstate inmate calling rates. They cite the

fact that some states have already cut inmate rates as proof that the industry is addressing the issue.

4. In fact, only a handful of states have cut interstate inmate rates, while the vast majority still support the kind of excessive rates cited in the Dawson Alternative Declaration. Six states -- Colorado, Indiana, Maryland, Missouri, Nebraska, and Vermont (“Debit Calling States”) -- and the federal Bureau of Prisons (“BOP”) have entered into service contracts adopting interstate inmate debit calling rates that are, net of commission payments, less than the requested interstate debit benchmark rate of \$0.20 per minute.¹ GEO Group also mentions an additional example of an interstate inmate rate of \$0.17 per minute, with no per-call charge, at a Department of Homeland Security facility operated by GEO Group.²

5. Missouri and two additional states -- New Hampshire and New York -- have entered into service contracts adopting interstate inmate collect calling rates that are, net of commissions, less than the requested collect calling benchmark rate of \$0.25 per minute (“Collect Calling States”).³ It has also come to my attention that the Florida Department of Corrections (“Florida DOC”) has entered into an inmate calling services contract with the former MCI WorldCom Communications, Inc. to provide inmate calling services, including interstate collect calling service at a per-minute rate of \$0.195, with a per-call surcharge of \$1.30. After paying the required 33 percent gross revenue commission, these rates are

¹ See Dawson Alternative Declaration ¶¶ 29-33.

² GEO Group Comments at 8. The initial comments filed in response to the Proposal will be cited in this abbreviated manner. GEO Group does not specify the type of interstate service provided at the Homeland Security facility. Because inmate debit calling is less costly than inmate collect calling and typically has no per-call charge, the most conservative assumption would be that the quoted rate is for interstate inmate debit calling.

³ See Dawson Alternative Declaration ¶¶ 39-42.

equivalent to a per-minute rate of a little over \$0.21, with no per-call charge, for a 15-minute call.⁴

6. So few states have adopted lower rates that it is clear that the FCC must intervene if there is to be meaningful interstate prison calling rate relief. A number of parties assert that, over time, the competition that is developing in the inmate calling service market will lead to lower rates. There has been no showing, however, that competition caused any reduction in inmate service rates. In the case of the BOP and the states with lower rates discussed in the Dawson Alternative Declaration, the rates are lower today because of a conscious decision by each authority to reform the cost of prison calling. Global Tel*Link concedes that inmate interstate rates are often reduced “as a result of state legislation or simply at the prison administrator’s insistence.”⁵ These reductions were not the result of robust competition from the inmate calling service (“ICS”) providers. In fact, as the FCC and various commentators have pointed out, ICS “competition” drives rates up by forcing ICS providers to compete in the amount of commissions they are willing to pay to secure contracts, the cost of which is passed on to inmates and their families and loved ones.

7. The filing by John D Rees, Director of the Kentucky DOC, illustrates the approach taken by most state correctional authorities.⁶ It is clear that Mr. Rees believes that the FCC should not consider reducing inmate calling service rates and that such rates are completely within the purview of the State. Similarly, the Idaho DOC considers the current interstate debit

⁴ Contract Between The Florida Department of Corrections and MCI WorldCom Communications, Inc. for a statewide inmate telephone system, Contract # C1864, Amendments #3 (May 26, 2006) and #4 (May 22, 2007), attached hereto as Exhibit 1.

⁵ Global Tel*Link (“Global”) Comments at 9.

⁶ See Letter from John D. Rees, Commissioner, Kentucky Department of Corrections, to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 96-128 (Mar. 22, 2007).

and collect calling rates, both of which are only slightly under a dollar per minute for a 30-minute call, to represent a “considerab[le]” reduction from previous rates.⁷ Kentucky, Idaho and many other states are likely to never lower rates absent an external mandate.

III. Opponents Have Conceded All Of The Prerequisites For The Application Of Petitioners’ Comparable Rates Analysis.

8. No party has attempted to demonstrate that the costs of providing interstate debit calling services for each of the Debit Calling States are somehow unrepresentative of the costs of serving the other state and other large prison systems. Opponents discuss the differences among types, sizes, and locations of correctional facilities and other factors that might account for differences in the cost of providing inmate calling services, but only in the most general terms.⁸ Those factors are characteristics that will vary within any large prison system and thus should even out among large prison systems. Opponents never explain how the costs of serving the Debit Calling States are sufficiently similar to each other but are so different from the costs of serving all other state and other large prison systems that no other system can be served profitably at similar debit calling rates, net of commission payments.

9. For example, the combined entity of T-NETIX and Evercom (“T-NETIX/Evercom”) never explains how it is able to provide inmate interstate prepaid service to prisoners in Indiana correctional facilities for a net rate, after backing out commissions payments, of \$0.185 per minute, or inmate interstate debit service to prisoners in Maryland correctional facilities for a net rate, after commissions, of \$0.12 per minute, but is unable to provide similar services to other prison systems at similar rates.⁹ Public Communications

⁷ Letter from Brent D. Reinke, Director, Idaho Department of Correction, to FCC Commissioners, CC Docket No. 96-128 (Apr. 2, 2007).

⁸ See, e.g., GEO Group Comments at 10; Global Comments at 5-8; CCA Comments at 6-7.

⁹ See Dawson Alternative Declaration ¶¶ 31-32.

Services (“PCS”) never explains how it is able to provide inmate interstate debit service to prisoners in Vermont correctional facilities for a rate, net of commission payments, equivalent to \$0.135 per minute, or inmate interstate debit and prepaid services to prisoners in Missouri correctional facilities for \$0.10 per minute, but is unable to provide similar services to other prison systems at similar rates.¹⁰ It must be concluded that interstate inmate debit calling service can be provided profitably at any state or other large prison system at the requested benchmark rate.

10. Similarly, no party has attempted to demonstrate that the costs of providing interstate collect calling services for each of the Collect Calling States are somehow unrepresentative of the costs of serving the other state and other large prison systems. Opponents never explain how the costs of serving the Collect Calling States are sufficiently similar to each other but are so different from the costs of serving all other state prison systems that no other system can be served profitably at similar collect calling rates, net of commission payments.¹¹

11. In particular, PCS never explains how it is able to provide inmate interstate collect calling service to prisoners in Missouri correctional facilities for a rate equivalent to \$0.15 per minute on a 20-minute call, or to prisoners in New Hampshire correctional facilities for a rate, net of commissions, equivalent to \$0.23 per minute on a 20-minute call, but is unable to provide collect calling service to other prison systems at similar rates.¹² Under the Florida DOC

¹⁰ See *id.* ¶ 32. Assuming that Global has succeeded to AT&T’s inmate service contract with the Nebraska Department of Corrections (*see* Pay Tel Comments at 8), Global has similarly failed to explain how it can provide interstate debit calling to prisoners in Nebraska correctional facilities for a rate equivalent to \$0.20 per minute on a 15-minute call, *see* Dawson Alternative Declaration ¶¶ 31, 42, but is unable to provide similar services to other large prison systems at similar rates.

¹¹ See Alternative Proposal at 19, 21-22.

¹² See Dawson Alternative Declaration ¶ 42.

contract, discussed above, MCI WorldCom, now d/b/a Verizon Business Services, provides interstate inmate collect calling, net of commissions, at a rate equivalent to a little over \$0.21 per minute for a 15-minute call. It must be concluded that interstate inmate collect calling service can be provided profitably at any state or other large prison system at the requested benchmark rate.

12. The nine state prison systems discussed above and the Homeland Security facilities mentioned by GEO Group constitute such a large and varied sample in support of Petitioners' comparable rates analysis that it must be concluded that the costs of providing interstate inmate services are, if anything, significantly lower than the requested benchmark rates. Presumably, all of the interstate inmate rates specified in those state service contracts allow for a reasonable profit, or the service providers would not have agreed to those rates. Given the variety of prison populations, geography, rural/urban settings and other cost factors within and among these nine state prison systems and Homeland Security facilities, it is extremely unlikely that only these systems, and no others, can be served at similarly reasonable rates, net of commissions.

13. In the face of these examples, it is therefore incumbent on the service providers to demonstrate the uniqueness of these state systems and how the six Debit Calling States are similar to one another in their costs but unlike all of the other state and other large prison systems and how the three Collect Calling States are similar to one another but unlike all of the other state and other large prison systems to rebut our comparable rates analysis. The Florida DOC and Homeland Security contracts are additional examples that Opponents must also distinguish from other state and other large systems to rebut our comparable rates analysis. They made no effort to do so with regard to any of the Debit Calling States or the Collect Calling States.

14. A number of the filings say that there is robust competition in the industry.¹³ If that is the case, the low rates cited for the Debit Calling States and Collect Calling States, as well as the Florida DOC and Homeland Security contracts, are the only ones that reflect actual costs. The Opponents' failure to explain how the costs of these examples are significantly lower than the costs of serving all other state prison systems and other large prison systems compels the conclusion that they are representative of all large prison systems with regard to the cost of providing interstate inmate calling services. The higher rates charged by service providers serving other large systems therefore reflect higher profits and commission payments, which must also be treated like profit in any cost of service analysis.

15. Richard Cabe, the economist supporting the T-NETIX/Evercom comments, misses the point of the comparable rates analysis. He finds fault with the fact that I reviewed only the lowest inmate calling rates.¹⁴ However, that is the proper way to conduct a comparable rates analysis in these circumstances. If there are ICS providers willing to provide service to state correctional systems at the low rates I cited, that is evidence that such rates are profitable for such systems. It is not appropriate, from an economics perspective, to consider higher rates in a comparable rates analysis without some showing that those rates reflect higher costs.

16. It is appropriate, however, in any cost analysis, to calculate the average cost of providing a service. Mr. Cabe would have the FCC focus exclusively on the costs of providing service at the smallest prisons with the highest costs.¹⁵ There is no reason why benchmark rates should be set based upon the costs at the smallest marginal facilities, as he suggests. All

¹³ Embarq Comments at 4; Global Comments at 8.

¹⁴ Declaration of Richard Cabe ¶¶ 21-23, 32, attached to T-NETIX/Evercom Comments.

¹⁵ *Id.* ¶¶ 21, 23, 32.

ratemaking is done based upon average costs, knowing that some customers will cost more to serve than the average rate.

Comparison With Payphone and Operator Service Rates

17. Several parties mention the high prices of standard payphone calls and believe those should be the comparable rates for inmate calling. Payphone rates are not comparable for several reasons. First, callers outside of prisons have many options for making calls. The use of a public payphone for callers is voluntary. Prison callers are a captive audience and have no other alternative. Second, public payphone rates are not based upon actual cost. The rates are set by the providers to be as high as the market will bear and are set to reflect the convenience of using payphones. Commercial payphone and other operator service rates thus do not reflect actual costs but, rather, the convenience of using special features or not having to make alternative arrangements. Prisoners use collect calling services because they have no choice, not because they perceive any value to collect services. Because there is no showing that these commercial collect calling service rates are cost-based, especially contrasted with the much lower rates charged for interstate inmate collect calling services provided in the Collect Calling States, they serve no purpose in a comparable rates analysis.

IV. Size of Prisons

Variations in Costs

18. A number of parties have argued that any solution will not fit every prison and jail, particularly tiny ones. The fact of small prisons and jails is not a justification for inaction. All carriers have high cost and low cost customers. Wide variations in the cost of serving different customers have never precluded rate regulation or required different rates for each customer. Typically, carriers provide service at rates averaged over all customers.

19. As shown by the data submitted by Pay Tel Communications, Inc. ("Pay Tel"), interstate calls make up a very small percentage of the calls from local or county jails. For example, Pay Tel's data shows that 34.1 percent of all adult prisoners were held in local and county jails as of the end of 2005, and only 3.7 percent of inmate calls from local and county jails were interstate, whereas 12.3 percent of inmate calls from federal and state prisons, which house 65.9 percent of all prisoners, are interstate.¹⁶ Moreover, based on the data in Cabe's Declaration, the share of all prisoners in the highest cost facilities -- those with fewer than 50 prisoners -- is around two or three percent, at most.¹⁷

20. Thus, the few interstate calls made from the highest cost facilities will have almost no impact on the average cost of all interstate inmate calls, and the requested interstate benchmarks would have an extremely small impact on service providers in those jails. In fact, the requested benchmarks would have even less of an impact on small providers serving local and county jails than they would on larger national providers serving a mix of facilities. Given the much greater number of federal and state prisoners, relative to the number of prisoners in local and county jails, averaging the relatively few interstate calls made from high cost jails with the vast majority of interstate inmate calls made from lower cost large prison systems has little impact on the average cost of interstate inmate calls overall. Thus, the comparable rates examples we provided for the Debit Calling States and Collect Calling States are a valid indicator of average interstate inmate service costs. The record would require much more detailed cost analyses by the service providers before their assertions about jails and small

¹⁶ Pay Tel Comments at 5-6, Exh. 1, 2.

¹⁷ The Cabe Declaration, at ¶ 26, shows 32,788 prisoners in jails with fewer than 50 prisoners as of 1999. Assuming that total figure rose as high as 50,000 prisoners by 2005, that is still a little more than two percent of the total U.S. prison and jail population as of 2005, according to Pay Tel's data, at 5.

prisons, and the impact of those costs on average interstate inmate calling costs, can be taken seriously.¹⁸

Economies of Scale

21. T-NETIX/Evercom argues that there are no economies of scale in providing prison calling, supposedly on the basis of the filing by its economist. It implies that all costs are local to each prison. The other service providers in this case say something quite different. For example, Global Tel*Link¹⁹ says that it is constantly looking for ways to make innovations in equipment, systems and centralization to reduce its costs. These efforts are the very definition of economies of scale. Global Tel*Link is able to become more efficient because it serves many prisons and can seek these efficiencies by developing systems that benefit all of the locations it serves. Pay Tel is even more explicit and expresses the belief that “Evercom and T-Netix merged in 2004 to form Securus Technologies, Inc. to provide better economies of scale.”²⁰ Pay Tel goes on to discuss its own centralized systems for providing support to prisons – systems that save money because of the economies of scale.

22. T-NETIX/Evercom itself claims that it supports “several different calling platforms” to serve its customers.²¹ Even several platforms, spread over several thousand prisons, allow the realization of significant economies of scale.

¹⁸ If a service provider could make a convincing showing that it carried a disproportionate share of interstate inmate calls from high cost facilities, it could seek a waiver of the benchmarks. It would not be sufficient to show merely that it served largely high cost facilities, since so few interstate inmate calls are made from those facilities.

¹⁹ Global Comments at 9 and 10.

²⁰ Pay Tel Comments at 9.

²¹ T-NETIX/Evercom Comments at 7.

23. T-NETIX/Evercom would have the FCC believe that every prison is an accounting silo, that the costs required to provide service to that prison are all local in nature and that costs would be the same if service were provided by T-NETIX/Evercom or by a small provider that served only that prison. That cannot be, and is not, true. Large carriers that serve multiple locations engage in economies of scale savings, by definition. There are many functions they can and do centralize. For example, an ICS provider does not build a brand new billing system for each location. Every ICS provider has centralized management, sales, help desk support and many other functions that reduce its costs. T-NETIX/Evercom makes this argument in an attempt to prove that there cannot be any benchmark rate established because every single jail and prison is so unique that there can be no generalizations about costs and rates. Just the opposite is true; the economies of scale in inmate calling make the requested benchmarks necessary and appropriate.

V. Other Cost Issues

Set-Up Charges

24. Several parties have taken exception to the collect calling benchmark because Petitioners are asking for rates on a per-minute basis, with no set-up charges. I understand from the Petitioners, however, that it is very common for service providers to interrupt and drop inmate collect calls so that inmates are billed for multiple set-up charges. If the FCC is to consider set-up charges as part of any inmate collect benchmark rate, it should consider requiring that additional set-up charges be waived if a caller redials the same number collect within two minutes after a previous collect call is terminated.

25. Two of the service providers assert that inmates will make shorter calls if there is no set-up charge, increasing overall costs, which then have to be recovered through higher per-

minute charges.²² It is not clear from the data presented that interstate collect calls will, in fact, be shorter but more frequent if there is no per-call charge. Consolidated Communications Public Services, Inc. (“CCPS”) and Pay Tel both refer to their experiences with calls from county jails as a point of comparison, and Pay Tel also provides data relating to prepaid calls, without providing any information as to the jurisdiction or type of facilities generating the data.²³ It may well be that interstate calling patterns are different from local and intrastate patterns, irrespective of whether there is a per-call charge. For most callers, interstate calls by their nature tend to be longer than intrastate calls. CCPS’s and Pay Tel’s calling data derived from local and county jails thus is not necessarily indicative of the likely result of the elimination of per-call charges for interstate inmate collect calls. Without better data focusing on interstate inmate calls exclusively, no conclusions as to average call duration or frequency are possible.

26. Moreover, even if there were reliable proof that interstate inmate collect calls would be shorter but more frequent in the absence of a per-call charge, CCPS and Pay Tel have provided no evidence to support the conclusion that per-minute costs will be greater if calls are shorter but more frequent. Given the automated nature of telecommunications services, including interstate collect calls, a minute of traffic is a minute. The first minute of a call does not cause any greater cost than each subsequent minute, and the average length of a call does not affect costs.

27. Pay Tel suggests that billing costs will increase if calls are shorter but more frequent.²⁴ Whatever impact shorter but more frequent calling might have on billing costs,

²² CCPS Comments at 14-17; Pay Tel Comments at 13-14.

²³ CCPS Comments at 14; Pay Tel Comments at 13 n.28.

²⁴ Pay Tel Comments at 13.

however, such impact will be insignificant compared to the countervailing impact of more reasonable rates on uncollectible costs, which comprise a tremendous share of inmate collect calling costs. If the Commission imposes the requested inmate interstate collect calling benchmark of \$0.25 per minute, call recipients will be much better able to pay their monthly long distance bills, greatly reducing uncollectibles. All of the service providers are likely to experience much lower uncollectibles with more reasonable collect calling rates. Those collections cost savings will far outweigh any potential impact of shorter more frequent calling on billing costs.

Reliance on Industry Cost Data

28. Pay Tel's criticism of my reliance on industry cost information from 1999 is disingenuous. It is the service providers' failure to submit current, complete, and verifiable cost data that forces Petitioners and the FCC to partly rely on the service providers' incomplete and outdated cost data submitted in prior phases of this docket. Most of the providers are privately held companies, and they will not make their costs available to outside parties like the FCC or Petitioners.

29. My previous declaration used the industry's own cost data to buttress the comparable rates analysis of service providers' inmate service rates, showing that rates are lower today in some prisons and can be lower everywhere. Multiple ICS providers bidding for contracts in the nine states that have lowered inmate rates is adequate evidence that such rates are reasonable and compensatory.

30. In challenging our reliance on past service provider data, Pay Tel, on page 10, claims that the average cost of local calling was \$0.329 per minute in 2001, citing an industry filing from May 24, 2002. That filing, however, was based entirely upon data from "marginal

inmate phone location[s]” in county jails²⁵ and thus is irrelevant to any attempted showing that average inmate payphone costs are higher than the requested benchmarks. Pay Tel would have the FCC believe that \$0.329 per minute is an average cost of a call for the whole inmate calling industry, when in fact it defines the cost of calls in “marginal” small facilities. Costs at small jails are not representative of the whole industry, particularly in the case of interstate calls, which are relatively rare in county jails. The resulting excessive cost estimate of \$0.329 per minute for a local call is an outlier that should not be taken into account in determining reasonable interstate inmate calling benchmarks, especially given the small volumes of interstate inmate traffic from small jail facilities.

31. The older industry data, while dated, shows that the overall costs of providing inmate calling are lower than our suggested benchmark rates. Pay Tel concedes that the 1999 data I used was based on costs from “all jail facilities in selected states, not just marginal facilities.”²⁶ As such, it provides a conservative cost estimate because it reflects higher than average costs, especially the average costs of interstate inmate calls. The later data filed by the ICS providers from May 24, 2002 is data based upon the cost of calling in small marginal county jails. This data is inadequate as a representation of industry costs, since it looks at only the smallest providers.

32. Furthermore, T-NETIX/Evercom mischaracterizes my statement that state prison contracts with “higher inmate service rates” can be ignored.²⁷ That statement was in the context of my comparable rates analysis, which, as discussed above, focused on the inmate service rates that would have to be matched in a competitive market. Because significantly higher *rates*

²⁵ Inmate Calling Service Providers Coalition Comments at 3 and Workpaper D.5.11 (May 24, 2002), attached as Exhibit 9 to my Affidavit attached to the Wright Petition.

²⁶ Pay Tel Comments at 10.

²⁷ T-NETIX/Evercom Comments at 9.

would not be competitive, they could be ignored in analyzing comparable rates. My prior cost analysis did not ignore facilities with higher *costs*, as T-NETIX/Evercom suggests, but, rather, took into account a representative range of costs.

33. All of the ICS providers in this case have reams of internal cost data, and they all have had an opportunity in this proceeding to educate the FCC about their real costs of providing calling, a course of action they have carefully avoided. In general, the filings by the ICS providers, including their one expert witness, Richard Cabe, are full of “soft” qualitative analysis but lacking in any hard cost support for their claims. They have no basis to criticize others’ use of whatever data is publicly available because they are the sole source of such data. If the suggested benchmark rates are faulty, the service providers have an obligation to supply the FCC with their real costs, rather than complaining that their previously submitted cost data is out of date. The fact that they are unwilling to show their costs is evidence that the suggested benchmark rates are adequate and confirms Petitioners’ analyses.

34. Pay Tel also says that its costs have grown tremendously since 1999, and it describes these increases by category of cost on page 11. However, the information it has provided is useless to me or to the FCC. As filed, these numbers have no context. Since there is no weighting given to individual costs, it is impossible to know whether Pay Tel’s overall inmate service costs have risen or declined. If Pay Tel really wants to demonstrate the cost of interstate inmate calling, it should file a study showing all of its costs of providing interstate service to all of its facilities, divided by total interstate calling minutes at those facilities. Such a study, tied back to Pay Tel’s ledgers, would be the kind of definitive proof needed to rebut our comparable rates and cost of service analyses.

35. The opponents might not want to be more forthcoming because that would reveal how profitable their interstate inmate services are. Pay Tel indicates that its interstate services provide a disproportionate share of total inmate service revenues. Opponents also complain

about their low intrastate inmate rates, which suggests that their interstate revenues are covering at least some of their intrastate inmate service costs.²⁸

36. Pay Tel also alludes numerous times to the effect of 9/11 on the cost of prison calling, but it never cites one example of a category of costs that has increased due to 9/11. Pay Tel provides an exhaustive list of the functions it must perform to complete prison calls, starting on page 18 of its filing. These functions look like the same sort of functions that have been required for many years. For example, they closely resemble the functions required in the 1997 Federal Bureau of Prisons inmate calling RFP attached to my Affidavit in support of the Wright Petition.²⁹ Prison calling rules have always layered on security measures to protect the general public from fraud and other bad behavior from inmate callers. These requirements did not spring into place after 9/11. Pay Tel does not explain how some service providers are able to perform all of these functions at interstate inmate rates, net of commission payments, that are lower than the requested benchmarks.

Research and Development Costs

37. Several filers said my declaration was incomplete because it did not recognize R&D costs as a cost of providing prison calling. This is not true. The only ICS provider for whom I have been able to see complete financial data is the former Evercom. Evercom had a substantial amount of capitalized R&D costs, which it amortized over a period of years, rather than taking it as an expense in the year the cost of R&D was incurred. While the cost of R&D is substantial, in the tens of millions of dollars, according to the ICS providers, when considered on a per minute basis, such costs are very small. For example, if Securus were to take its R&D

²⁸ See, e.g., Pay Tel Comments at 6-8, 17 n.40.

²⁹ See Federal Bureau of Prisons, Request for Proposal, June 2, 1997, attached as Exhibit 3 to my Affidavit attached to the Wright Petition.

costs and spread them over all of the calls made during a ten-year period (the typical IRS allowance for amortizing such an asset), the cost per call would be miniscule, certainly less than a penny per call. Further, my cost numbers assumed that the cost of R&D, as an asset, was included in the equipment cost of providing service to a prison.³⁰

Difference Between Debit and Collect Calling Rates

38. Pay Tel argues that I was too simplistic in defining the difference in the cost between providing debit and collect calling.³¹ What I said in my filing was that the real difference between these two services, in a prison environment, is how carriers bill and collect for these calls. I stand by that statement, and Pay Tel's argument proves my point. The security requirements common to both types of calls are the primary costs incurred for a prison call. Pay Tel is correct in pointing out that there are different features in the billing process for each type of call. With debit calling, there is the process of verifying that there are funds available for the call and that the right person is using the PIN number. For collect calling, the big additional cost, as Pay Tel and others have pointed out, is bad debt (also defined as unbillables or uncollectibles by some carriers), since so many collect calls are never paid by the receiving party. As Corrections Corporation of America points out, bad debt accounts for as much as 25 percent of inmate collect call billings.³²

39. The additional collection and bad debt costs of collect calling are greater than the verification and accounting costs of debit calling. Thus, as I explained previously, if the FCC

³⁰ See Dawson Alternative Declaration ¶¶ 37-38, relying on my original Affidavit attached to the Wright Petition at ¶¶ 50-71, which discusses, at ¶¶ 53-55, capital start-up costs, which includes R&D. This is further explained in my Reply Declaration attached to Petitioners' Reply Comments in support of the Wright Petition at ¶ 23 & n.31.

³¹ Pay Tel Comments at 14-16.

³² CCA Comments at 14.

sets a benchmark rate for debit calling, the benchmark rate for collect calling ought to be the same rate adjusted for the greater costs of collecting the revenue. No party has seriously questioned that analysis. Some service providers stress the costs of setting up and billing debit accounts as factors raising costs above the requested debit calling benchmark, but spread over the number of total minutes, these costs are negligible.

40. Pay Tel also argues, with no supporting data, that the additional cost of providing collect calling is 10 cents per minute. Pay Tel attributes \$1.00 of the cost of a ten-minute inmate collect call to billing and collection, validation, uncollectibles, unbillables, and “post-billing adjustments.”³³ Pay Tel provides no cost support for this number. In my previous Declaration I had estimated this additional cost at 5 cents per minute.³⁴ Even if we accept Pay Tel’s number without support, the cost of interstate inmate collect calling would still be less than the requested 25 cent per minute collect calling benchmark.³⁵ Although PCS describes the additional billing and other costs incurred in providing inmate collect calling service, it does not offer a per minute figure that factors in these costs.³⁶ Similarly, CCPS emphasizes the types of costs incurred in installing debit calling, but does not say what those costs are, relative to the collection and other additional costs of inmate collect calling.³⁷

Length of Calls

³³ Pay Tel Comments at 13.

³⁴ Dawson Alternative Declaration ¶¶ 40-41.

³⁵ See Dawson Alternative Declaration ¶¶ 25-26 (showing total cost of interstate inmate collect calling of about \$0.12 per minute, which includes about \$0.06 per minute for the billing and uncollectibles costs of collect calling). Adding another \$0.04 per minute to meet Pay Tel’s estimate of a total of ten cents per minute in additional costs for collect calling yields a total cost far less than the requested \$0.25 per minute benchmark for interstate inmate collect calling.

³⁶ PCS Comments at 8-9.

³⁷ CCPS Comments at 10-12.

41. CCPS claims we have based our analysis on 20-minute interstate calls.³⁸ The various calculations in my Declaration used 12-minute to 15-minute calls, so it is not clear what CCPS is referring to, and its assertions should be rejected.³⁹

Local Exchange Line Costs

42. Pay Tel also asserts that I misunderstood the role of local service charges in my cost analysis using industry data. Pay Tel claims that I failed to realize that local exchange line costs are an element of any inmate payphone service cost, including the cost of interstate services, and that I should have included those costs in my analysis instead of substituting “long distance retransmission costs” for them.⁴⁰ Large facilities, however, typically use high-volume special access circuits, rather than local switched lines, to interconnect with the local exchange carrier central office for long distance traffic. It is the cost of those special access circuits that I correctly substituted for local line costs in my analysis. In short, opponents have essentially confirmed my cost showing and have presented no contrary data regarding inmate interstate service costs that conflict with the requested benchmarks.

VI. Other Issues

Consolidation of the Industry

43. Global Tel*Link and Pay Tel argue that the industry is busy unloading prison calling service divisions, since the businesses are unprofitable. There is no showing, however, that interstate inmate service costs or rates have anything to do with the consolidation that is occurring. The ICS providers in this case are getting larger and larger as the number of industry

³⁸ CCPS comments at 14.

³⁹ Dawson Alternative Declaration ¶¶ 24 (15-minute call), 31 (15-minute call), 38 n.41 (12-minute call), 42 (18-plus minute call).

⁴⁰ Pay Tel Comments at 15-16.

providers shrinks, allowing them greater economies of scale. For example, Global Tel*Link claims that the RBOCs are trying to unload prison divisions because of unprofitability. However, selling off divisions is not proof of unprofitability. Verizon is in the process of selling its northern LEC properties to Fairpoint. These properties are quite profitable and potentially valuable to Fairpoint. Verizon sold these companies because of a change in strategy, not because of unprofitability. The ICS providers would have the FCC think that they are barely scraping by. However, for the most part, these are privately-held companies and nobody knows how much money they are really making. If there were no profit to be made at low calling rates, like the 10 cent rates in Missouri, then no ICS provider would bid on such jobs, and no company would be buying the ICS divisions that are put on the market.

44. Moreover, no party has presented any data or other evidence that the supposed poor performance of any of the inmate service providers is caused even partly by earnings on interstate calling. As Pay Tel points out, interstate calling accounts for a small percentage of inmate traffic.⁴¹ Also, given the disproportionate revenue contribution provided by the service providers' interstate calling volumes, it is quite likely that the interstate traffic is a profit center for most of them, albeit a small one. Industry trends thus provide no clues as to the reasonableness of the proposed interstate inmate benchmarks.

Setting Up Debit Systems

45. Some of the opponents once again stress the supposed burden on prison staff of administering a debit card or debit account system.⁴² They have never explained, however, why the service provider cannot handle the administration of the system, without prison "staff time, maintenance or cost," as in the case of the Maryland inmate debit/prepaid calling service

⁴¹ Pay Tel Comments at 6.

⁴² See, e.g., Pay Tel Comments at 16.

provided by T-NETIX/Evercom.⁴³ Many of the prison staff functions described at pages 25-27 of Pay Tel's Comments, for example, such as responding to customer inquiries and administration of the PIN system, could be handled by the service provider instead. PCS notes that prison commissary vendors sometimes are reimbursed by inmate service providers for the cost of handling the sale of debit account time,⁴⁴ which is another way of offloading the administration of debit calling accounts onto the service providers. Opponents stress the cost of setting up debit accounts and selling debit account time as a factor that would make a debit calling benchmark unworkable, but those costs become minuscule on a per-minute basis.

Use of Commissions

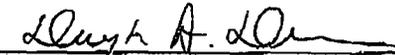
46. Pay Tel says that some of the money raised through commissions goes to compensate the prisons for the legitimate costs of providing telephone service. However, commissions, by and large, are used for other purposes. Throughout this proceeding, there has been substantial evidence that commissions are used for purposes unrelated to inmate telephone service. For example, Global Tel*Link on page 17 of its filing states that it is appropriate for commissions to be used to fund video conferencing for arraignment. There has been no showing of the share of commission payments that defrays the actual costs to the prisons of providing inmate calling services. Moreover, given the competitive bid-driven escalation of commission rates, it is extremely unlikely that inmate calling service provider commission

⁴³ Maryland Department of Budget and Management Action Agenda, Information Technology Contract, Item 3-IT, at 26B (Dec. 17, 2003), attached as Exhibit 16 to the Dawson Alternative Declaration.

⁴⁴ PCS Comments at 6.

payments to any correctional authority or facility bear any relation to the costs incurred by prison administrators for the provision of inmate calling services.

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


DOUGLAS A. DAWSON

Executed on this 20th day of June, 2007

EXHIBIT 1

**CONTRACT AMENDMENT BETWEEN
THE DEPARTMENT OF CORRECTIONS**

AND

MCI WORLDCOM COMMUNICATIONS, INC.

This is an Amendment to the Contract between the Florida Department of Corrections ("Department") and MCI Worldcom Communications, Inc., ("Contractor") to provide a statewide inmate telephone system ("ITS").

This Amendment:

- **revises the end date of the Contract referenced in Section I., A., Contract Term;**
- **renews the Contract for one (1) year pursuant to Section I., B., Contract Renewal;**
- **revises Section II., D., 2., Rate Requirements;**
- **revises Section III., A., Payment;**
- **revises Section IV., A., Department's Contract Manager;**
- **revises Section IV., C., Contractor's Representative;**
- **revises Section IV., Y., Performance Guarantee; and**
- **adds Section VII., CC., Products Available from the Blind or Other Handicapped (RESPECT).**

| | |
|---------------------------|---------------------------------------|
| Original Contract period: | June 1, 2001 through May 31, 2006 |
| Amendment # 1: | January 18, 2002 through May 31, 2006 |
| Amendment # 2: | January 29, 2003 through May 31, 2006 |

In accordance with Section V., **CONTRACT MODIFICATION**, the following changes are hereby made:

1. Section I., A., Contract Term, is revised to read:

A. This Contract began June 1, 2001, and shall end at midnight on May 31, 2007.

This Contract is in its first renewal year.

2. Section II., D., 2., Rate Requirements is revised to read:

2. Rate Requirements

Any rates, surcharges, operator fees or any other amounts, charged to the billed party by the Contractor, shall comply with all applicable regulations, tariffs and rules of the appropriate regulatory authority. Local and local extended area service calls shall be billed at the same rate as local operator-assisted collect calls. Rates and call surcharges charged to the called party shall be as listed below:

| | <u>Per Call Surcharge</u> | <u>Rate Per Minute</u> |
|------------|---------------------------|------------------------|
| Local | \$1.30 | \$ 0.000 |
| IntraState | \$1.30 | \$ 0.195 |
| InterState | \$1.30 | \$ 0.195 |

Any rate changes, surcharge changes, and tax changes shall be communicated in writing to the Department's Contract Manager, Accounting, five days prior to the change. If the Contractor does not comply with this requirement, liquidated damages pursuant to Subsection 7.30 of Department's Request For Proposal # 00-DC-7295 will be applied.

3. Section III., A., Payment, is revised to read:

A. Payment

The Contractor will compensate the Department at a commission rate of thirty-three percent (33%) of gross revenues. This commission rate is effective on June 01, 2006 (start date of the renewal term). Payment of the commission amount shall be tendered to the Department by electronic funds transfer (EFT) to a specified Department account within thirty (30) days after the final day of the Contractor's regular monthly billing cycle.

The surcharges/rates in Section II., D., 2., shall be applicable to renewal year one only. Should the Department elect to renew the Contract for the 2nd renewal term, rates and surcharges will be reviewed and negotiated prior to renewal in the best interest of the State.

4. Section IV., A., Department's Contract Manager, is revised to read:

A. Department's Contract Manager

The Contract Manager for this Contract will be:

Stephen Grizzard, Chief
Bureau of Facility Services
Department of Corrections
2601 Blair Stone Road
Tallahassee, Florida 32399-2500
Telephone: (850) 410-4111
Fax: (850) 922-0027
Email: grizzard.stephen@mail.dc.state.fl.us

The Contract Manager will perform the following functions:

1. Serve as the liaison between the Department and the Contractor;
2. Evaluate the Contractor's performance;
3. Direct the Contract Administrator to process all amendments, renewals and terminations of this Contract; and
4. Evaluate Contractor performance upon completion of the overall Contract. This evaluation will be placed on file and will be considered if the Contract is subsequently used as a reference in future procurements.

The Contract Manager may delegate the following functions to the Local Contract Coordinator:

1. Verify receipt of deliverables from the Contractor;

2. Monitor the Contractor's performance; and
3. Review, verify, and approve invoices from the Contractor.

The Local Contract Coordinator for this Contract will be:

William Dupree, Communications Technician II
Facility Services
Florida Department of Corrections
2601 Blair Stone Road
Tallahassee, FL 32399-2500
Telephone: (850) 410-4110
Fax: (850) 922-0227
E-mail: dupree.william@mail.dc.state.fl.us

The Local Contract Coordinator for **Accounting** will be:

Mike Deariso, Finance and Accounting
Florida Department of Corrections
2601 Blair Stone Road
Tallahassee, FL 32399-2500
Telephone: (850) 922-9836
Fax: (850) 488-1196
E-mail: deariso.mike@mail.dc.state.fl.us

5. Section IV., C., Contractor's Representative, is revised to read:

A. Contractor's Representative

Chuck Parrish, Technical Services Manager
Verizon Business, Southeast Region
75 SW 2nd Ave
Lake Butler, FL 32054
Telephone: (386) 496-1586
Cell: (386) 623-0668
Fax: (386) 496-8005
Email: charles.parrish@mci.com

6. Section VII., Y., Performance Guarantee, is revised to read:

Y. Performance Guarantee

The Contractor shall furnish the Department with a Performance Guarantee equal to \$1,000,000.00. The form of the guarantee shall be a bond, cashier's check, treasurer's check, bank draft, or certified check made payable to the Department. The guarantee shall be furnished to the Contract Manager, Operations within thirty (30) days after execution of this Amendment.

7. Section VII., CC., Products Available from the Blind or Other Handicapped (RESPECT), is added to read:

CC. Products Available from the Blind or Other Handicapped (RESPECT):

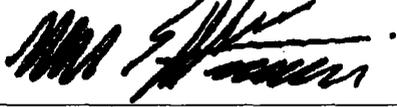
The State/Department supports and encourages the gainful employment of citizens with disabilities. It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the blind or for the severely handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in Section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the Department insofar as dealings with such qualified nonprofit agency are concerned. Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.

This Amendment shall begin on the date on which it is signed by both parties.

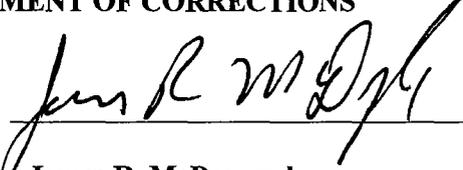
All other terms and conditions of the original Contract and previous Amendments remain in full force and effect.

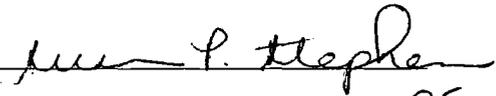
IN WITNESS THEREOF, the parties hereto have caused this Amendment to be executed by their undersigned officials as duly authorized.

CONTRACTOR:
MCI WORLDCOM COMMUNICATIONS, INC.

SIGNED BY: 
NAME: Suleiman Hessami
VP Pricing/Contract Management
TITLE: _____
DATE: 5/12/06
FEID #: _____

DEPARTMENT OF CORRECTIONS

SIGNED BY: 
NAME: James R. McDonough
TITLE: Secretary
Department of Corrections
DATE: 26 May 06

SIGNED BY: 
NAME: P.F.
TITLE: General Counsel
Department of Corrections
DATE: 4-20-06

CONTRACT AMENDMENT BETWEEN
THE FLORIDA DEPARTMENT OF CORRECTIONS
AND
MCI WORLDCOM COMMUNICATIONS, INC.

This is an Amendment to the Contract between the Florida Department of Corrections ("Department") and MCI Worldcom Communications, Inc., ("Contractor") to provide a statewide inmate telephone system ("ITS").

This Amendment:

- extends the current contract;
- revises Section I., A., Contract Term; and
- revises Section IV., A., Department's Contract Manager.

| | |
|---------------------------|---------------------------------------|
| Original Contract period: | June 1, 2001 through May 31, 2006 |
| Amendment # 1: | January 18, 2002 through May 31, 2006 |
| Amendment # 2: | January 29, 2003 through May 31, 2006 |
| Amendment # 3: | May 26, 2006 through May 31, 2007 |

1. Section I., A., Contract Term, is revised to read:

A. This Contract began June 1, 2001 and is scheduled to expire on May 31, 2007. This contract is extended for a period of no more than six (6) months from the expiration date to allow for transition of services under a contract resulting from ITN 06-DC-7695. Upon implementation of new service, this contract shall immediately end.

2. Section IV., A., Department's Contract Manager, is revised to change the name of the Contract Manager and the name of the bureau to which the Local Contract Coordinator is assigned.

A. Department's Contract Manager

The Contract Manager for this Contract will be:

Charlie Terrell, Chief
Bureau of Support Services
Department of Corrections
2601 Blair Stone Road
Tallahassee, Florida 32399-2500
Telephone: (850) 410-4278
Fax: (850) 922-9277
Email: terrell.charlie@mail.dc.state.fl.us

The Local Contract Coordinator for this Contract will be:

William Dupree, Communications Technician II
Bureau of Support Services
Florida Department of Corrections
2601 Blair Stone Road
Tallahassee, FL 32399-2500
Telephone: (850) 410-4110
Fax: (850) 922-9277
E-mail: dupree.william@mail.dc.state.fl.us

IN WITNESS THEREOF, the parties hereto have caused this Amendment to be executed by their undersigned officials as duly authorized.

All other terms and conditions of the original Contract and previous Amendments remain in full force and effect.

This Amendment shall begin on the date on which it is signed by both parties.

IN WITNESS THEREOF, the parties hereto have caused this Amendment to be executed by their undersigned officials as duly authorized.

CONTRACTOR:

MCI WORLDCOM COMMUNICATIONS, INC. *Now Known as MCI Communications Services, Inc. d/b/a Verizon Business Services*

SIGNED BY: Suleiman Hessami^{uc}

NAME: Suleiman Hessami

TITLE: VP Pricing/Contract Mgmt

DATE: 5-11-07

FEID #: _____

DEPARTMENT OF CORRECTIONS

SIGNED BY: James R. McDonough

NAME: **James R. McDonough**

TITLE: **Secretary
Department of Corrections**

DATE: 22 May 07

SIGNED BY: Kathleen Von Hoene

NAME: **Kathleen Von Hoene**

TITLE: **General Counsel
Department of Corrections**

DATE: 4-30-07

ATTACHMENT B

Contrary to the opponents' assertions, the Petitioners' proposal also takes into consideration the cost of administering such a system. The Oppositions, in fact, present inconsistent and misleading cost data by discussing costs that are irrelevant to the current inquiry. In addition, as explained in the Dawson Reply, the Oppositions fail to provide any credible estimates of the costs associated with providing inmate calling services. Many, if not all, of the cost issues raised in the Oppositions have long been solved and implemented throughout the telecommunications industry, and they therefore present no meaningful obstacle to providing competitive inmate calling services.

Opponents also fail to present any credible justification for the excessive commissions paid by inmate service providers to private prison administrators. In fact, the leading providers of inmate calling services recognize that these site commissions drive the rates for inmate calling services to unreasonably high levels. Moreover, inmate debit account services, which are criticized by the Oppositions as a high security risk because they constitute a "commodity" that could be extorted by inmates, are provided at many facilities managed and served by the opponents. The widespread use of debit account calling in prisons confirms that there are easily implemented mechanisms that can minimize the use of debit services as an extortable commodity.

The Oppositions are couched as selfless attempts to protect the public interest, the public welfare, and even the interests of inmates. In reality, they present numerous irrelevant or inaccurate arguments that are intended to delay Commission consideration of the issues referred to it by the court and to preserve their monopolistic practices. Accordingly, the Commission must act quickly to respond to the court's referral and grant the Petitioners' requested relief.

II. OPPONENTS' LEGAL ARGUMENTS ARE IRRELEVANT AND INCORRECT

A. Opponents' Legal Arguments Are Precluded By The Court's Referral

Opponents' first line of defense is that their unreasonable practices are clothed with state penal authority and thus untouchable, especially before this Commission. For example,

Corrections Corporation of America (“CCA”), various inmate calling service providers and state correctional authorities argue that courts and this Commission have traditionally deferred to prison administrators in the area of inmate telephone services and that the Commission also should continue to do so.² MCI and the RBOC Payphone Coalition go so far as to argue that the Communications Act (“the Act”) was never intended to apply to inmate calling services and that the Commission is prohibited from interfering with inmate payphone location providers’ (*i.e.*, prison administrators’) carrier choices.³ The opponents also assert that Section 201(b) of the Act does not authorize the Commission to provide the requested relief.⁴ They claim that private prison administrators under contract with state governments are “state actors,” as well as non-common carriers outside the jurisdiction of the Commission and that the Commission should not “nullify state corrections law” or “preempt” state correctional policies and the states’ exercise of “sovereign authority” under their “police power” to act through private prison administrators in the selection of inmate payphone systems.⁵ T-NETIX also argues that private prison operators, as state actors, are immune from civil suits.⁶ These arguments, however, are all irrelevant at this point, as well as incorrect.

In response to AT&T’s, MCI’s and CCA’s motions to dismiss Petitioners’ federal court complaint, *Wright, et al. v. Corrections Corporation of America, et al.* (“*Wright*”), the court referred the case to the Commission with the instruction that the parties “file the appropriate

² CCA Comments at 10-16; MCI Comments at 10-11, 14-16; AT&T Comments at 3-7; New York State DOCS Comments at 6-7. The initial comments on the Wright Petition will be cited in this abbreviated manner throughout.

³ MCI Comments at 11-14; RBOC Payphone Coalition Comments at 7-8.

⁴ T-NETIX Comments at 6, 11-13; MCI Comments at 12, 16.

⁵ *Id.* at 12-13, 16-17, 31-32; T-NETIX Comments at 7-10, 18-20; RBOC Payphone Coalition Comments at 3-10; Ohio DRC Comments at 5-8.

⁶ T-NETIX Comments at 7.

pleadings with the FCC”.⁷ The court explained that “Congress has given the FCC explicit statutory authority to regulate inmate payphone services in particular,” including the “authority to consider the reasonableness of Plaintiffs’ request to have access to other calling options.”⁸ “Accordingly, ... the FCC is clearly in the best position to resolve ... the feasibility of alternative telephone arrangements in CCA facilities.”⁹

Accordingly, prior judicial and Commission decisions, cited by opponents, to defer to prison administrators are of little weight in this proceeding. The Wright Petition was not filed in a vacuum, but, rather, to effectuate the court’s referral. The issues raised by the Wright Petition, such as the feasibility of competitive long distance telephone services in the prison environment, therefore cannot be analyzed on a stand-alone basis. Instead, the Commission must view every issue through the lens of the *Referral Order* and *Referral Opinion*. As the Supreme Court explained in *Far East Conference*,¹⁰

*court and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice, each acting in the performance of its prescribed statutory duty without regard to the appropriate function of the other in securing the ... objects of the statute. Court and agency are the means adopted to attain the prescribed end, and so far as their duties are defined by the words of the statute, those words should be construed so as to attain that end through coordinated action.*¹¹

⁷ *Wright v. Corrections Corp. of America*, C.A. No. 00-293 (GK), Order, slip op. at 1 (D.D.C. Aug. 22, 2001) (“*Referral Order*”).

⁸ *Wright v. Corrections Corp. of America*, C.A. No. 00-293 (GK), Memorandum Opinion, slip op. at 8 (D.D.C. Aug. 22, 2001) (“*Referral Opinion*”).

⁹ *Id.* at 10-11.

¹⁰ *Far East Conference v. United States*, 342 U.S. 570 (1952) (“*Far East Conference*”).

¹¹ *Id.* at 575 (emphasis added) (quoting *United States v. Morgan*, 307 U.S. 183, 191 (1939)).

Having sought referral to the Commission,¹² AT&T, MCI and CCA cannot now attack the court's *Referral Order* by suggesting that the Commission "punt" the issues that the court directed it to resolve.¹³ The court was aware of arguments that prison administrators are not common carriers and are vested with state action and that courts generally defer to prison administrators. The court did not refer the matter to the Commission for resolution of these constitutional and jurisdictional issues. A deferral by the Commission to prison administrators' discretion on those grounds would be directly contrary to the "coordinated action" expected of an agency.

For example, the RBOC Payphone Coalition argues that the issue of whether particular calling arrangements are consistent with security, anti-fraud and other penological goals is outside the Commission's area of expertise and authority.¹⁴ The court found, however, that "whether the alternative telephone arrangements Plaintiffs seek are technologically feasible given the exigencies of the prison environment" is one of the "issues that have been and continue to be best addressed by the FCC."¹⁵ The court was quite detailed in its endorsement of Commission expertise and jurisdiction, finding that "Congress has given the FCC explicit statutory authority to regulate inmate payphone services in particular," including the "authority to consider the reasonableness of Plaintiffs' request to have access to other calling options"¹⁶ and that "the FCC is clearly in the best position to resolve ... the feasibility of alternative telephone arrangements in CCA facilities."¹⁷ The court also found that "whether the alternative telephone

¹² *Referral Opinion* at 4.

¹³ *Cf. United States Telecom Ass'n v. FCC*, No. 00-1012, slip op. at 16 (D.C. Cir. Mar. 2, 2004) (criticizing Commission's "attempted punt" of issues it delegated to state commissions).

¹⁴ RBOC Payphone Coalition Comments at 2.

¹⁵ *Referral Opinion* at 6.

¹⁶ *Id.* at 8.

¹⁷ *Id.* at 10-11.

arrangements Plaintiffs seek are technologically feasible given the exigencies of the prison environment” is one of the “issues that have been and continue to be best addressed by the FCC.”¹⁸

The Commission should not shy away from performing the mission assigned to it by the court, as the opponents urge. The advice requested by the court and the parallel relief requested by Petitioners do not involve penological judgments or “the setting of correctional policy” or “running the jails,” as opponents would have it.¹⁹ Rather, the Commission has been directed by the court to determine the “feasibility” of alternative calling arrangements in light of the penological interests presented by parties such as CCA. Only the Commission, and not the prison administrators, has the expertise to probe administrators’ claims to determine whether the “exigencies of the prison environment” actually preclude the competitive telephone system presented in the Wright Petition. As the court held:

The FCC ... has already developed the necessary specialized expertise on the underlying telephone technology, the telephone industry’s economics, practices and rates, *and the feasibility of alternative phone systems that provide adequate security measures.*²⁰

In effect, the “division of functions between court and agency” “dictate[d]” in any referral to an expert agency²¹ precludes the Commission from avoiding the “functions” assigned to it by the court. The effect of the court’s specific and detailed findings as to the Commission’s expertise and authority is very much like law of the case.²² The Commission should not act

¹⁸ *Id.* at 6.

¹⁹ T-NETIX Comments at 9; Evercom Comments at 10.

²⁰ *Referral Opinion* at 8 (emphasis added).

²¹ *Federal Maritime Board v. Isbrandtsen Co.*, 356 U.S. 481, 498 (1958).

²² *Cf. United Gas Pipe Line Company*, 1985 FERC LEXIS 2521 at **19 (June 19, 1985) (court’s instructions to agency in remanding agency order constitute “law of this case”).

“without regard to”²³ those findings by following opponents’ jurisdictional advice. Similarly, opponents’ arguments that the Commission cannot regulate commissions paid by common carriers to private prison administrators²⁴ are precluded by the court’s findings that the FCC is authorized to regulate inmate payphone services and “to reject inclusion in Defendants’ cost-basis of the 25-50% commissions received by CCA.”²⁵

Even if the Commission were otherwise inclined to defer to private prison administrators in matters of inmate telephone services, it must still provide the expert advice requested by the court in any order it releases concerning these issues. Where a proceeding before the Commission “derives from a primary jurisdiction referral ... the Commission’s discretion is limited to some extent by the obligation to assist the court....”²⁶ Here, the court directed the Commission to “provide ... meaningful analysis and guidance” on the “reasonableness of the ... terms of the exclusive dealing contracts,”²⁷ which the court could then use in deciding whether these arrangements are “reasonably related to a legitimate penological interest.”²⁸ A failure to provide the requested advice would short-circuit the dialogue contemplated by the court’s referral. Under the opponents’ approach, the Commission would perform the evaluation of prison administrators’ “penological interest[s]” that the court envisioned for itself while denying

²³ *Far East Conference*, 342 U.S. at 575.

²⁴ See MCI Comments at 30-32.

²⁵ *Referral Opinion* at 7. Petitioners agree with MCI that any action to limit inmate service rates by restricting commission payments may only be ordered prospectively. See MCI Comments at 30.

²⁶ *Petition of Home Owners Long Distance, Inc. for a Declaratory Ruling*, 14 FCC Rcd 17139, 17145 (CCB 1999) (“*Home Owners*”).

²⁷ *Referral Opinion* at 13, 15.

²⁸ *Id.* at 13 n.12.

the court the benefit of its expertise as to the “complex economic and technical issues” that the court needs from the Commission to make the ultimate decision.²⁹

Thus, whether or not the Commission ultimately decides to promulgate specific regulations establishing a competitive long distance telecommunications regime for private prison inmates, it has been ordered to provide to the court, at the very least, the benefit of its unique expertise as to whether such an approach is technically and economically feasible. The Wright Petition is simply a procedural vehicle for the Commission to address the court’s request. Once the Commission has made its findings as to technical and economic feasibility of alternative calling arrangements and their compatibility with legitimate security and other penological interests, the court can then decide whether the current arrangements are “reasonably related to a legitimate penological interest.”³⁰ Opponents may then raise their deference and related arguments in court.³¹

Equally foreclosed is MCI’s related objection that the regulation of common carriers’ commission payments to prison administrators is beyond this Commission’s authority because the funds generated by those payments are used to benefit inmates and thus supposedly “serve a valid penological purpose.”³² Questions as to prison administrators’ penological interests constitute the ultimate issue that the court has reserved for itself, once it has the benefit of the Commission’s expertise as to the economic and technical feasibility of the requested relief.³³ All that the Commission has to decide is whether such commissions unreasonably inflate inmate calling rates.

²⁹ *Id.* at 6.

³⁰ *Id.* at 13 n.12.

³¹ Thus, to the extent that MCI argues, *see* MCI Comments at 18, that it is not enough for Petitioners to show that their proposed competitive scheme would be feasible, MCI’s position is precluded by the referral.

³² MCI Comments at 32.

³³ *See Referral Opinion* at 13 n.12.

B. Opponents' Legal Arguments Are Incorrect

Opponents' responses to Petitioners' statutory authority argument are also incorrect on the merits. Section 201(b) of the Act authorizes the Commission to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act."³⁴ Some of the opponents expressly concede that the Commission has authority under Section 201(b) to ensure reasonable inmate telephone rates.³⁵ That concession effectively ends the discussion, since Section 201(b) was held in the *Competitive Networks* proceeding to provide ample authority to ensure reasonable rates by means other than prescribing rates, including "undoubted power to regulate the contractual or other arrangements between common carriers and other entities, even those entities that are generally not subject to Commission regulation."³⁶

Opponents strain to distinguish the *Competitive Networks* proceeding.³⁷ There, the Commission, acting under Section 201(b), adopted various measures to promote competitive access to telecommunications services in multiple tenant environments ("MTEs") and to ensure reasonable rates and practices in such locations, including a prohibition against exclusive contracts between carriers and owners or managers of commercial MTEs for the provision of telecommunications services to the MTEs.³⁸ CCA argues that, in *Competitive Networks*, carriers had complained of exclusion from MTEs, whereas carriers realize that the inmate calling market

³⁴ 47 U.S.C. § 201(b).

³⁵ T-NETIX Comments at 10 & n.16, 20.

³⁶ *Promotion of Competitive Networks in Local Telecommunications Markets*, 15 FCC Rcd 22983, 23000 n.85 (2000) ("*Competitive Networks*") (citation omitted). That decision thus answers T-NETIX's criticism that "Petitioners' proposal unavoidably interferes with contracts between carriers and correctional facilities...." T-NETIX Comments at 19. *See also TRAC Communications, Inc. v. Detroit Cellular Telephone Co.*, 4 FCC Rcd 3769 (CCB 1989), *aff'd*, 5 FCC Rcd 4647 (1990) (exclusivity provision in cellular service resale agreement impeded complainant from reselling services of other carriers and had anticompetitive effect, violating Section 201(b)).

³⁷ *See, e.g.*, CCA Comments at 25-27.

³⁸ *Competitive Networks*, 15 FCC Rcd at 22996-98, 23000.

might not support multiple providers.³⁹ It is not the purpose of the Communications Act or, more specifically, Section 201(b), however, to support carriers. Rather, it is to “make available ... to all the people of the United States, without discrimination ... a rapid, efficient, Nation-wide, and world-wide wire ... communication service with adequate facilities at reasonable charges....”⁴⁰ Moreover, carriers have complained of the current exclusionary practices.⁴¹

MCI notes that the prohibition against exclusive contracts exempts situations where the building owner or manager is authorized to act on behalf of its tenants.⁴² That begs the question presented here, since Petitioners are challenging administrators’ rights to contract on behalf of inmates and their families. The Commission exempted affiliated tenants and building owners from its ban on exclusive contracts because, in that situation, such a ban “would not be consistent with” the purpose of the prohibition, which is “to ensure consumer choice.”⁴³ In the case of prisons, however, exclusive service contracts deny consumer choice. Thus, the rationale for the exemption cited by MCI militates in favor of, not against, the relief requested by Petitioners. In any event, the exemption does not undercut the point that Section 201(b) provides ample authority to provide the requested relief.⁴⁴

³⁹ CCA Comments at 26.

⁴⁰ 47 U.S.C. § 151.

⁴¹ See FCC Public Notice, *Petition for Declaratory Ruling Filed by Outside Connection, Inc. Pleading Cycle Established*, 18 FCC Rcd 5535 (2003).

⁴² MCI Comments at 16, citing *Competitive Networks*, 15 FCC Rcd at 23002.

⁴³ *Competitive Networks*, 15 FCC Rcd at 23002.

⁴⁴ T-NETIX’s irrelevant challenge, see T-NETIX Comments at 13-15, 18-20, to other statutory provisions as possible bases for Commission action, on which Petitioners do not rely, does not undermine Section 201(b) as a valid basis for the requested relief.

AT&T argues that the Commission should not interfere with private contracts, citing *Atlantic City Electric*.⁴⁵ That case, however, clearly held that an agency “may abrogate or modify freely negotiated private contracts ... if required by the public interest.”⁴⁶ T-NETIX argues that *Competitive Networks* did not require the unbundling of a proprietary network platform. Petitioners explained, however, that the Commission has required similarly costly restructuring under its Section 201(b) authority.⁴⁷ For example, the Commission required the provision of payphone call tracking by long distance carriers in order to ensure fair payphone compensation, in spite of their objections that the installation of tracking mechanisms would require significant expenditures.⁴⁸

The Commission’s Section 201(b) authority also includes the authority to restrict or prohibit common carriers’ payments of commissions to private prison administrators. T-NETIX’s thorough statutory analysis in its 2002 comments confirms the Commission’s authority to regulate or prohibit commission payments.⁴⁹

Opponents’ “state actor” immunity arguments are also unfounded. Section 276, which authorizes the Commission to regulate all payphone services, including “inmate telephone

⁴⁵ *Atlantic City Electric Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002) (“*Atlantic City Electric*”).

⁴⁶ *Id.* at 14 (citation omitted).

⁴⁷ To the extent that the Commission is concerned about its jurisdiction to prohibit private prison administrators from demanding or receiving commissions or to require them to allow the competitive provision of interstate inmate calling services, *see* RBOC Payphone Coalition Comments at 8-9, the Commission could limit its relief to a prohibition of commission payments by carriers serving private prisons and against the provision of inmate calling services to any private prisons failing to follow the standards specified by the Commission.

⁴⁸ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541, 20588, 20590-91 (1996) (subsequent history omitted).

⁴⁹ Initial Comments of T-NETIX, Inc. at 5-6 (May 24, 2002) (“2002 T-NETIX Comments”).

channels may result in a greater drain on the government's finances, the responsibility for such [functions] does in fact rest with the government."⁹⁹

C. Debit Card Or Debit Account Calling Should Be A Required Inmate Calling Option In Privately Administered Prisons

Several of the opponents take issue with Petitioners' request that debit card or debit account calling be made available at privately administered prison facilities. Their chief concerns appear to be the possibility that such cards or accounts would constitute a "commodity" that could be the subject of extortion by other inmates and the lesser degree of security that can be imposed on debit calls, relative to collect calls.¹⁰⁰ One way that administrators defeat those problems is to give every inmate a personal identification number ("PIN") that has to be dialed before every call, debit or collect, and to restrict inmates to a limited set of designated telephone numbers that they may call. Each PIN is accordingly matched with a particular inmate's list of numbers in the underlying system provider's database. In that way, the PIN is useless to any other inmate. MCI's scenario of inmates establishing "multiple accounts with multiple false identities involving multiple carriers"¹⁰¹ thus is no more likely than it is right now. Each prisoner has to establish his account with the single underlying service provider, coordinating with the prison administration. The choice of which interconnected carrier to use comes later in

⁹⁹ *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994) (enjoining the use of commissary funds to finance monitoring of inmate telephone calls). Evercom suggests that some commission payments reimburse prison administrators for inmate telephone service-related costs. Rae Decl. at ¶ 32. Under Petitioners' proposal, such payments could be allowed to the extent that administrators could show that they cover direct telephone service costs, as opposed to security-related functions. Thus, a certain fixed percentage of revenue could never serve as the measure of an appropriate reimbursement of facilities' inmate telephone service costs.

¹⁰⁰ See Evercom Comments at 11; CCA Comments at 17-18.

¹⁰¹ MCI Comments at 23.

the telephone calling sequence and therefore cannot affect or disrupt the PIN validation process.¹⁰²

Some of the opponents' security concerns with debit calling also have nothing to do with debit card or debit account calling and would be accommodated under the proposed system. For example, CCA and the Commissioner of the New Jersey Department of Corrections express concern that debit calling would allow inmates to conduct illegal businesses, bypass blocked numbers, make harassing calls or use the prison telephones for other illegitimate purposes.¹⁰³ By using a PIN validation system and a list of pre-approved numbers, however, together with all of the other security functions to be performed by the underlying system provider for every inmate call, none of these concerns would be a factor, either with debit or collect calling.

Opponents' security-related concerns as to debit cards or accounts are not credible. A majority of the 2,000 facilities served by Evercom allows some form of prepaid calling services.¹⁰⁴ MCI discusses examples of correctional agencies that have tried to establish debit-only inmate calling systems, apparently because of the administrative advantages of debit card or debit account calling over collect calling.¹⁰⁵ Apparently, those entities have found that they can overcome whatever security issues might arise with prepaid or debit calling. In fact, the Federal Bureau of Prisons ("FBOP") tried to switch from a collect inmate calling system to a debit-only

¹⁰² Dawson Reply at ¶ 12. Another variation was described in the Dawson Affidavit, at ¶ 35, in which a prisoner's family establishes the account, removing the prisoner from direct control over the funding of the account. Contrary to T-NETIX's misinterpretation, *see* T-NETIX Comments at 32-33, the prisoner could use the account to make any long distance call, not just calls to the family member setting up the account.

¹⁰³ Letter from Devon Brown, Commissioner, New Jersey Dep't of Corrections, to Marlene Dortch, Secretary, FCC, at 3 (Feb. 6, 2004); CCA Comments at 17-18; Bohacek and Kickler Decl. at ¶ 21.

¹⁰⁴ Evercom Comments at 10-11.

¹⁰⁵ MCI Comments at 23-25. MCI even goes so far as to suggest that Petitioners would do away with collect calling options for inmates. *See id.* Petitioners do not advocate debit-only calling systems, but only that debit calling be an option. *See* Dawson Reply at ¶ 43.

inmate calling system and defended its decision as “‘reasonably related’ to legitimate penological interests.”¹⁰⁶ Similarly, an analysis of the FBOP inmate telephone system conducted by the California Department of Corrections (“CDOC”) recommended that the implementation by the CDOC of a debit account system using PIN validation should be examined “*as a prison management, security and investigative tool,*” as well as “a long-term solution to the high cost of collect calls.”¹⁰⁷ Opponents need to explain why such a large sample of prisons and correctional authorities either allows or endorses an option that supposedly presents such a security risk.

Some of the opponents, including state correctional authorities, stress the supposed burden on prison staff of administering a debit card or debit account system.¹⁰⁸ Application of Petitioners’ proposed approach to privately administered prisons, however, would not impinge on state correctional staff. Private prison corporations, such as CCA, administer debit accounts now through the commissaries at many of their facilities. They also might choose to contract that function out to the inmate telephone system operators, depending on which approach proves most efficient. The Maryland Department of Budget and Management Action Agenda attached as Exhibit B to the Dawson Reply indicates that the new inmate debit/prepaid calling service to be provided by T-NETIX will be handled through the correctional facility commissary system. It is totally automated through the pay station equipment system and “*will not require staff time, maintenance or cost from*” the Department of Public Safety and Correctional Services.¹⁰⁹ The Commission need not concern itself with the details of the inmate debit accounts or which of the

¹⁰⁶ *Washington v. Reno*, 35 F.3d at 1099.

¹⁰⁷ Div. of Communs., Virginia State Corp. Comm’n, Report on Rates Charged to Recipients of Inmate Long Distance Calls (2000), attachment, Analysis of the Federal Bureau of Prisons Inmate Telephone System and Applicability to the California Department of Corrections at 14 (attached as Exhibit 8 to the Dawson Affidavit) (emphasis added).

¹⁰⁸ Ohio DRC Comments at 3; T-NETIX Comments at 32; CCA Comments at 19-22; Bohacek and Kickler Decl. at ¶¶ 21-22.

¹⁰⁹ Maryland Department of Budget and Management Action Agenda, Information Technology Contract, Item 3-IT, at 26B (Dec. 17, 2003) (emphasis added).

private parties involved in the process -- private prison administrators or underlying system providers -- should handle the accounts, as long as debit card or debit account calling is an option.¹¹⁰ Moreover, the supposed additional database and customer service costs for service providers of implementing debit card or account calling¹¹¹ would be negligible per minute of usage.¹¹²

Some of the opponents also challenge the cost benefits of debit cards or accounts. As Evercom concedes, however, use of a debit account or prepaid calling option does reduce the significant cost of uncollectibles associated with collect calling and results in lower rates.¹¹³ The Kansas Department of Corrections provides direct billing and prepaid inmate services “as a means of providing payment options for call recipients, at a lower cost than for collect calls.”¹¹⁴ MCI presents a novel theory that the introduction of debit card or debit account calling would not reduce the total amount of uncollectibles, but would simply cause all of the irreducible uncollectible traffic to remain with collect calling.¹¹⁵ As a practical matter, however, in many cases, different parties would be paying for a call, depending on whether it is a debit or collect call. As a result, an inmate will make a debit account call, which is paid, instead of a collect call to someone who ultimately cannot pay for it. Evercom’s experience certainly disproves MCI’s theory, since Evercom “encourages this shift [from collect to prepaid] to reduce bad debt.”¹¹⁶

¹¹⁰ Any division of functions, and the costs incurred thereby, between the prison administrator and underlying system provider can be accommodated in their contract terms so that there is no net effect on the underlying provider’s costs of providing service.

¹¹¹ T-NETIX Comments at 33; CCA Comments at 20.

¹¹² Dawson Reply at ¶¶ 44, 49.

¹¹³ Evercom Comments at 10-11.

¹¹⁴ Werholtz Letter at 1.

¹¹⁵ MCI Comments at 25.

¹¹⁶ Rae Decl. at ¶ 25. CCA also suggests, *see* CCA Comments at 16-17, that the FCC lacks authority to require that debit calling options be offered at privately administered prisons.

ATTACHMENT C

STATE OF COLORADO

DEPARTMENT OF CORRECTIONS

BT-COMMUNICATIONS/CIPS
COLORADO TERRITORIAL CORRECTIONAL FACILITY
P. O. Box 1010
Cañon City, Colorado 81215--1010
Phone (719) 269-4262
Fax (719) 269-4260



Bill Ritter, Jr.
Governor

Aristedes W. Zavaras
Executive Director

June 7, 2007

Clyde Greene
956 Cobblestone Dr.
Highlands Ranch, CO 80126-2428

Dear Mr. Greene,

Your letter concerning the billing charge on your Qwest bill for inmate calls was forwarded to me for response. The Colorado DOC is not the carrier of the inmate calls and is not involved in the billing or collection of collect call charges, that is all done by the carrier of the calls, currently the inmate phone system vendor Value Added Communications (VAC). Zero Plus Dialing is the service VAC uses to do the collect call billing. I will ask our representative at VAC to contact you concerning this charge and what alternatives there might be.

Inmate phone collect call rates are high, the inmate phones are considered 'coinless payphones', and collect calls from payphones are expensive. There is a much better alternative which is debit, or prepaid, calling. To do debit calling the inmate purchases phone time from the Canteen, which we download to the inmate's phone account. As the inmate places debit calls the cost of the calls is deducted from the inmate's phone account balance. Each month we send the inmates who have debit call activity a Reconciliation Report which is similar to a bank statement, showing beginning balance, deposits, itemized list of debit call charges and their ending phone account balance. The inmates can also query their phone account balance, and the cost of their last debit call, using the inmate phone.

Inmate use of the phone is not a right but is a privilege. And whether debit or the more expensive collect calling platforms are used is a choice made by the inmate and by the persons the inmate calls.

Sincerely,

Sue Grisenti
Colorado Department of Corrections Inmate Phone System Coordinator

/sg
cc: CDOC Public Information Officer
VAC
CIPS File
Dianne Tramutola-Lawon, CURE

ATTACHMENT D



December 13, 2005

John Stobart
Division of Purchasing & Materials Management
State of Missouri
Office of Administration
301 West High Street, Room 630
Jefferson City, MO 65101

Dear Mr. Stobart:

Thank you for the opportunity to clarify our response to RFP B2Z05070: Offender Telephone Services.

Public Communications Services, Inc. (PCS) confirms the validity of its proposal for an additional 90 days from December 9, 2005. Our clarifications appear below. PCS' reply is placed under each item.

Once again, thank you for your time and consideration. If you have any questions or concerns, please feel free to contact me either by phone at (800) 310-231-1000 ext. 3015 or email at joe.pekarovic@teampcs.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Pekarovic", written over a horizontal line.

Joseph Pekarovic
Vice President of Inmate Sales



Points for clarification:

3.3.1.a Please clarify if PCS or the facility will do the work? Will the facility have permissions to block or deny for the entire system, or just that site?

This specification involves the blocking of numbers from offender dialing. The PCS Site Administrator will be responsible for maintaining the list of numbers to be blocked from inmate calling and the list of numbers to be accessible to all inmates. In addition, the Site Administrator can provide agency staff with the list of blocked numbers upon request.

While the Site Administrator is available to do the work, authorized agency staff will have permissions to block or deny numbers for the entire system. The access level assigned to the individual user will determine whether they are able to enter the entire OTS or just the OTS for a single facility. MODOC will determine what access level to grant to each staff member.

3.3.1.i Will the system have the ability to deny calls if the offender does not record a name?

Yes. When an offender makes a call, he/she is obligated to use his/her PIN number. The PIN automatically retrieves the offender's prerecorded name for use in the call announcement. Calling privileges can be denied to offenders that do not record a name at PIN setup.

3.3.1.s Will the proposed system provide the capability of flagging the call and not terminating the call?

Yes. The PCS system can be set to flag the three-way call attempts and not terminate the call. It may also be set to initiate a warning. Regardless of the setting, three way call detection events are always flagged in the call detail record and can be viewed in a report designed specifically to track three way call attempts.

3.3.2.e How will this be automated, and what time frame? What if MODOC wants to approve the list? How are numbers deleted from the list?

This specification involves the providing of automated Allow Lists associated with each PIN. The "self-learn" feature of the OTS provides for automated Allow Lists. This feature will be available immediately upon OTS activation.



Using the automated "self-learn" feature, offenders can add new numbers to their Allow Lists by simply dialing the telephone number. The new numbers will be automatically added to the Allow List until the maximum of numbers allowed is reached.

MODOC will have the opportunity to approve all numbers added to the Allow List before the offender can call that number. New numbers will be flagged, and will not be made active and available for offender calling until MODOC has approved them. This approval can be done either electronically or with a form provided by the Site Administrator.

Offenders may remove numbers from their Allow List by accessing the OTS with their PIN and following the voice prompts. One of the options provided is to delete numbers from the Allow List.

PCS will be pleased to work with MODOC to set up the automated Allow List feature in the way that best suits the needs of the State.

3.4.2.c Interface to be developed. How and what time frame?

MODOC's canteen has been designed and is currently managed by Huber & Associates. PCS has entered into a teaming agreement with Huber & Associates to create an interface between the canteen system and the offender telephone system for the purposes of debit implementation. PCS can guarantee that it will be in place and able to be utilized immediately upon cutover to the PCS offender telephone system.

PCS has discussed with Huber & Associates the requirement of this seamless interface. PCS and Huber have carefully analyzed the existing offender banking and canteen processes and have designed complementary and enhanced processes to accommodate debit calling. This will include daily file transfers that download offender debit calling purchases into the offender's telephone account for immediate use.

Please see the associated documents for the Offender Telephone Process, as discussed and developed by Huber & Associates, VAC, and PCS.



Letter of Transmittal

September 16, 2005

State of Missouri
Office of Administration
301 West High Street, Room 630
Jefferson City, MO 65101

Attention: Ted Wilson

Dear Mr. Wilson:

Public Communications Services, Inc. (PCS) appreciates this opportunity to submit our proposal to the State of Missouri for Offender Telephone Services. Our proposal represents PCS' commitment to provide a complete turnkey inmate telephone system solution for the Missouri Department of Corrections.

Submission of this proposal constitutes acceptance by PCS of all conditions contained in the RFP, including the evaluation factors as deemed appropriate by the State of Missouri.

Contact information for the persons authorized to contractually obligate PCS is provided below:

Tommie Joe (Chief Operating Officer)
11859 Wilshire Blvd, Suite 600
Los Angeles, CA 90025
tommie.joe@teampcs.com
Contact Number: 310-231-1000 ext. 3037
Fax Number: 310-954-2118

Joseph Pekarovic (Vice President of Inmate Sales)
11859 Wilshire Blvd, Suite 600
Los Angeles, CA 90025
joe.pekarovic@teampcs.com
Contact Number: 310-231-1000 ext. 3015
Fax Number: 310-954-2119

Once again, thank you for your time and consideration. If you have any questions or concerns, please feel free to contact me either by phone or email.

Sincerely,

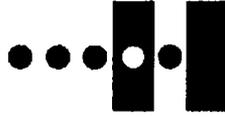
Tommie Joe
Chief Operating Officer

EXECUTIVE SUMMARY

For over 20 years Public Communications Services (PCS) has provided innovative communication solutions for correctional facilities throughout the United States. Today's correctional clients expect and demand more than a stand-alone offender phone system that allows collect-only calls. Our success in servicing over 125,000 offenders has come from listening to our client's unique requirements and then creating solutions that revolve around their needs - including critical operational and financial challenges. At the same time, we understand that security and operational efficiencies are of primary concern. Therefore, we hold ourselves accountable to create a seamless transition at time of implementation and to ensure a fully integrated solution into existing jail management, canteen and offender banking systems.

In this executive summary, we offer an overview of the main features of our proposal. These features include:

- **PCS is the Industry Anchor** – Other companies have entered, exited and entered again into this market while PCS has remained a constant, reliable vendor.
- **Project Overview** – Our proposal offers debit calling, collect calling, robust reporting, full channel recording and monitoring, and full project oversight during both implementation and ongoing maintenance. (For a video demonstration of the PCS Offender Telephone System, please see Appendix C-1 in Section C).
- **Flat Calling Rates** – Offenders and their families will pay the same rate for any call to any number within the United States.
- **The Proposal Strategy** – Our proposal combines the very best of your existing environment with new and creative technology solutions while maintaining minimal disruption.
- **The PCS Solution Team** – Team PCS consists of four established, experience companies that have in-depth knowledge of the Missouri Department of Corrections facilities. These companies are PCS, VAC, ShawnTech and Huber & Assoc. ShawnTech and Huber are current providers for MODOC.
- **The Technical Solution** – The Team PCS solution will be installed in parallel with the existing platform to avoid any loss of service. It will be fully integrated, *including the offender debit program*, at cutover from the existing system.
- **Network Architecture** – Team PCS will connect each site, and each call processor, through a secure high-speed network that has self-healing capability and constant network monitoring.
- **Installation and Maintenance** – Our service plan is designed to deliver a technician to any one of the twenty MODOC facilities in an average of one-hour.
- **Management Solution** – Team PCS has designed a management structure that provides the MODOC with a simplified yet highly effective method to hold Team PCS accountable.
- **The Team PCS Guarantee** – To provide further evidence of our commitment to MODOC, PCS offers 6 guarantees.



www.teamhuber.com

Team PCS is pleased to have Huber and Associates join us as a critical member of our solutions team. As you already know, Huber and Associates is a Missouri based and State of Missouri certified WBE Corporation with its main office located in Jefferson City and a branch office in Springfield. Currently providing the MODOC with the existing Inmate Banking System and providing critical PIN management and operational support, Huber has a unique vantage point from which to understand your needs. Huber has established strong ties with the MODOC and has a thorough understanding of your current banking and PIN requirements. However, Huber also has valuable insight into the additional needs of your banking system as well as in depth knowledge of how to improve the existing processes and create greater efficiencies without compromising security or quality.

Huber and Associates has been a strategic technical solutions partner for the State of Missouri for the past 20 years. As a result of this bid, Huber and Associates were looking for a new partner to compliment their ongoing commitment to the MODOC and allow them to continue their investment in the MODOC. They wanted a partner who would be there for the long run. Team PCS was the best solution to compliment their vision. In addition, Huber and Associates knew from experience that it was critical to find a partner who would design a solution that would build on the existing infrastructure without disrupting the day-to-day flow of processing. PCS and Huber and Associates have designed a solution that achieves this vision.

Huber and PCS are totally committed to implementing the proposed debit system via canteen systems as proposed.

Huber and Associates will continue to provide your Inmate Banking System and PIN management services as a Team PCS partner. Huber will also provide institutional training on hardware and software and system interface technology between the OP2 and PCS. Huber and Associates will continue to maintain the MODOC's Canteen Point of Sale application, which automatically debits inmates accounts. Huber and Associates will ensure that a seamless transition takes place from existing vendor to Team PCS and will ensure that no interruption in service or compromise to your security occurs. Huber and PCS are totally committed to implementing the proposed debit system via canteen systems as proposed.

TEAMING AGREEMENT

This **Teaming Agreement** ("Agreement"), is made and entered into as of August 1, 2005 ("Effective Date"), by and between **Public Communications Services, Inc.**, a California corporation, with offices located at 11859 Wilshire Boulevard, Los Angeles, CA 90025 ("PCS") and **Huber and Associates, Inc.**, a Missouri corporation, with its main office located at 1400 Edgewood, Jefferson City, Missouri ("Huber"). PCS and Huber are sometimes each referred to in this Agreement as a "Party" and, collectively, as the "Parties."

WHEREAS, the Parties mutually desire to exclusively team together their respective complementary technological and other capabilities relative to a proposal to be submitted by PCS to the Missouri Department of Corrections ("Customer") in response to the Customer's Request For Proposal ("RFP") issued June 23, 2005, for Inmate Telephone Services for the state of Missouri Department of Corrections ("Project" or "MODOCS").

NOW THEREFORE, in consideration of these premises, the mutual covenants and undertakings contained in this Agreement, and other good and valuable consideration, the Parties agree as follows:

1. TEAMING ACTIVITIES

(a) With the assistance of Huber, PCS will prepare and submit a proposal to the Customer for the Project. PCS will be identified in the proposal as the proposed prime contractor for the Project. Huber will be identified in the proposal as a proposed subcontractor to PCS responsible for the scope of work associated with the Project as generally described in Exhibit A attached to this Agreement and incorporated herein by this reference, and for the price(s) and/or fee(s) set forth in Exhibit A.

(b) Huber shall provide PCS with all reasonable assistance in the development and preparation of any proposal(s) that may be required, including any best and final offer(s). PCS shall have sole discretion over and responsibility for the written content of any integrated proposal(s). PCS will include appropriate credit in its proposal(s) relative to the areas of contribution furnished by Huber. In its sole discretion, PCS shall determine all aspects of the proposal, including but not limited to meeting the substantive requirements of the RFP, commissions and terms and conditions it will propose to Customer for the Project.

(c) Both Parties will make available their respective management and technical personnel as may be reasonably requested during the conduct of any discussions and negotiations with the Customer concerning the award of a prime contract for the Project to PCS.

(d) Each Party hereby authorizes the other Party to use any information, data or drawings provided hereunder consistent with Paragraph 6, solely for the

Exhibit A
Statement of Work

Client:

Public Communications Services (PCS)

Project Description:

Huber & Associates, Inc., will contract with PCS to provide personal identification number (PIN) management services for Department of Corrections' facilities throughout the State of Missouri. Our PIN management services will include the responsibilities and tasks outlined in this statement of work.

Background/Benefit Information:

Huber & Associates has been a strategic technical solutions partner for the State of Missouri for almost 20 years. We have extensive experience with the Missouri Department of Corrections (DOC) and provide numerous customized I/T services for the agency. For example, Huber & Associates has written and continues to maintain the Institution's Canteen Point-of-Sale application which automatically debits inmates' accounts. And, we support DOC's banking system and provide electronic information about inmate accounts to third-party vendors.

The Canteen Point-of Sale system is an integral part to the collection and transfer of PIN information, and it will also be an essential component to debit system implementation. Currently, inmates "purchase" their unique PIN numbers through the canteen system. These PIN numbers are captured on DOC's computer systems and transmitted nightly and several times during each day to the current phone system vendor. This process has worked well for the last several years and has provided convenience to the inmates, reduced the case worker workload dealing with inmate phone issues, and has ensured accuracy of data by avoiding redundant data entry. The process of obtaining the PINS via the canteen system has worked so well, in fact, that the Agency intends to implement the debit system via the canteen system, too.

Huber & Associates has helped provide PIN administration services for the Missouri DOC for the past five years. During this period, we have implemented a number of time & resource saving tools that have allowed us to not only meet the requirements of the contract, but also exceed requirements in a number of areas. For example, we have written special software to list and electronically transport PIN changes, inmate

intake, releases, and movements from each correctional institution to a secure server at Huber & Associates' headquarters in Jefferson City. This electronic transmission software not only allows us to more quickly process the PIN information, but it greatly reduces the amount of customer involvement needed, which benefits the Department of Corrections, the partnering telephone service provider, and us.

Huber & Associates Responsibilities:

In support of this contract, Huber & Associates will provide a Project Manager/Programmer who will be responsible for keeping the project on track, managing deliverables, and raising and addressing all issues for the project. Our Project Manager/Programmer will:

- Establish and maintain communications with PCS' point-of-contact.
- Monitor project tasks, schedules, and resources against the project plan and provide status reports to PCS' point-of-contact.
- Review and administer any changes with PCS' point-of-contact.
- Coordinate and manage the technical activities of all project personnel.
- Help resolve project issues and escalate issues, as necessary.
- Work with DOC IT Staff to ensure that PIN changes, inmate intake, release, and movement data from each correctional institution continues to transmit electronically to Huber & Associates
- Develop and maintain new programs required to collect and transmit debit information.
- Ensure that facility space is provided at the Huber & Associates headquarters in Jefferson City, Missouri, to house PCS' computer and phone equipment required for PIN Administration.
- Ensure that adequate disk space is available on Huber & Associates' FTP Server to store PIN data to be retrieved by PCS.
- Acquire training on phone system.

Huber & Associates will also provide a PIN Administrator to manage the PIN database related to this contract. This PIN Administrator will:

- Work at the Huber & Associates' headquarters in Jefferson City, Missouri, and perform PIN administration functions through the use of PCS' administrative workstation connected to the same Wide Area Network (WAN) which connects all Missouri Department of Corrections facilities.
- Ensure backup personnel is assigned and trained to take over PIN Administration responsibilities, when required.
- Be well versed on the use of PCS' PIN application software and have the responsibility to perform the PIN Administration tasks listed below.

Huber & Associates Tasks:

The tasks we anticipate performing are outlined below:

Programming Services:

- Extract PIN and Debit information from Canteen Point-of-Sale system.
- Transmit extracted data from Missouri Department of Corrections' server to Huber & Associates' server.
- Translate the captured PIN and Debit information to the format required by PCS.
- Maintain the developed program throughout the duration of this contract.
- Compare, daily, the inmate location file received from the Missouri Department of Corrections to yesterday's file to determine if an inmate has been released.
- Transmit new PIN numbers issued throughout the day from the Intake Centers so new inmates can make calls on the day they arrive at the facility. These PIN files will be transmitted from the Missouri Department of Corrections' server to Huber & Associates' server to be processed by our PIN Administrator.
- Troubleshoot problems with electronic transmissions.
- Work with Department of Corrections' Information Systems staff to correct any data or technical problems.
- Audit Missouri Department of Corrections' issuance of PINS (particularly important when a new facility is populated.)

PIN Administration:

- Process electronically transmitted PIN data.
 - Daily, electronically compare data from yesterday's PIN file with current PIN file.
 - Daily, create electronic printout of released inmates and disable their records on the PCS system. *(There are typically 4 – 6 pages of deletes per day.)*

- Daily, create electronic printout of new inmates and add these records to the PCS system.
 - Daily, create electronic printout of inmates that have moved to a new facility and update their records on the PCS system.
 - Multiple times daily, create an electronic printout of all inmates entering the Intake Centers and add new records to PCS System. (This will allow new inmates to make phone calls upon arrival at the facility.)
- Process phone requests from case workers at Missouri DOC institutions across the state. (Typically, there are 15 – 20 calls per day.)
 - Change offender PIN numbers.
 - Re-activate / de-activate offenders.
 - Research problems and communicate action with case workers (i.e. offenders are unable to complete calls successfully due to incorrect PIN, blocked call number, etc.)
 - Process email requests from case workers at Missouri DOC institutions across the state. (Typically, there are 10 – 15 emails per day.)
 - Change offender PIN numbers.
 - Re-activate / de-activate offenders.
 - Research problems and communicate action with case workers.
 - Process fax requests from case workers at Missouri DOC institutions across the state. (Typically, there are 5 – 7 faxes per day.)
 - Make sure offenders are showing up at the correct facility on the PCS system.
 - Make sure offenders are active / de-active on the PCS system.
 - Research problems and communicate action with case workers.
 - Interface with the Programmer/Project Manager on technical issues when either incorrect or no data is received.

Debit System Administration:

- FTP to PCS a flat file containing: Inmate #, PIN #, Date, and Purchased Phone Units.

Institutional Training on PCS Software and Hardware:

- Conduct onsite PCS software and hardware training for every DOC institution in the State, as needed.

PCS' Responsibilities:

Prior to the start of this SOW, PCS will designate a person (called "your Point of Contact") to whom all our communications will be addressed and who has the authority to act for PCS in all aspects of the project. Your Point of Contact will:

- Serve as the interface between our project team and all of your departments participating in this project.
- Communicate with our Project Manager/Programmer on all PIN-related activities.
- Administer changes with our Project Manager/Programmer.
- Help resolve and escalate project issues within your organization and the Department of Corrections, as necessary.
- Provide Huber & Associates with up-to-date computer and phone equipment needed for PIN and Debit Administration. Equipment will include, but not be limited to:
 - Computer workstation(s) for managing PCS software and processing email requests from institutions.
 - Printer for report handling.
 - Router
 - Phone connection
 - Telephone, phone line, & support number for processing phone requests from institutions.
- Install and configure relevant PCS software on machines provided to Huber & Associates for PIN and Debit Administration.
- Provide Huber & Associates' Project Manager/Programmer and PIN Administrators the training and support that is needed to perform PIN and Debit administration on the PCS system.
- Pay for all travel and other expenditures associated with training.
- Work with Huber & Associates on the electronic file format needed for PIN data so PCS can pull the data nightly from the Huber & Associates' FTP Server.
- Keep Huber & Associates informed of other service opportunities that arise out of this contract.

Deliverables:

Huber & Associates will manage PIN Administration for the Missouri Department of Corrections, providing the services outlined in this statement of work.

checked for funds prior to a call being connected and the charges are debited from the account after the call is terminated.

PCS has had many successful experiences interfacing our debit system with a variety of in-house Canteen and Jail Management Systems (JMS). During an offender's intake, correctional facilities typically use Jail Management Software that automatically creates a booking number for each offender. By integrating the offender telephone system with any of these software packages, the offender has an active phone account upon booking.

The advantages of this method include:

1. Higher system accuracy and less data entry errors.
2. Integration into the canteen for debit phone sales.
3. Inactivation of account upon offender's release.
4. Inactivation of offender's phone account from a given facility once they are moved to another facility.

Once PCS interfaces the purchases of offender debit calling through the facility's JMS and canteen software, offenders can simply purchase debit phone-time with an order form. The amount purchased will automatically be downloaded into PCS' calling platform and calls will be deducted from this amount. There is no requirement for human intervention. Automated debit DOES NOT require the purchase of physical debit cards.

PCS' debit services are programmed into the offender call processor. The call processor also includes the accounting software that allows offender balances to be easily accessed. Each call is itemized and reports can be generated to share with offenders to keep them current on all account balances. In facilities where PIN-based debit services are implemented, offenders can monitor their account balances simply by entering their PIN number into an offender telephone and a voice prompt will tell them their current balance. Within the PCS system, an offender can also transfer balances and get refunds after release from the facility.

The PCS call processor includes the debit calling option within its software. This allows for the same security systems to be consistent with all the issues being addressed in a collect-only environment. For a diagram showing how PCS can integrate debit services for the State of Missouri DOC facilities, see the "System Integration Overview" diagram in Attachment I.

3.4.2.b Capability to allow for each offender to be able to establish an account to which they can deposit/purchase funds to place offender pre-paid calls.

- Read and agreed. The PCS system allows offenders to establish accounts through an integrated debit application. Each offender will be able to use their current offender canteen account to purchase offender pre-paid calling time. Huber &

ATTACHMENT E

**ATTACHMENT A
CONTRACT FOR SERVICES
SPECIFICATIONS OF WORK TO BE PERFORMED**

Definition of Terms

Herein the Vermont Department of Corrections (DOC) shall be referred to as the State. Herein Public Communication Services (PCS) shall be referred to as Contractor. State acknowledges Contractor is subcontracting: inmate commissary services; and the inmate accounting system and services to Compass Group USA, Inc. by and through its Canteen Correctional Services division. Subcontractor's services are mostly defined in sections one (1) and section two (2) of Attachment A, "Scope of Services". However, the Contractor named in this document, is ultimately responsible for satisfying--in full, the scope of services and performance expectations as defined within this contract.

This document serves as a binding contract for an Inmate Accounting System; Inmate Commissary and Inmate Telephone Services. The State of Vermont and/or the Contractor may terminate this contract at any time given 30 day written notice.

1.7.1.2 Canteen Manager will interface with inmate telephone debit system when release procedures are performed. The system will automatically retrieve debit balances from PCS's Debit Administrator System (Radical) and credit balance to the inmate's account for release check. In addition, when debit balance is credited during this release procedure process, the debit account is inactivated in Debit Administrator. (Automated release procedure integration with PCS)

1.7.2 By October 16, 2006 the following functionalities must be fully operable in Canteen Manager. A penalty of \$500.00 per day will be imposed and remitted to the Inmate Recreation Fund, for every day the following functions are non-operable:

1.7.2.1 Canteen Manager will have the ability to import/export specific queried data into MS excel allowing for data manipulation for analytical and investigative purposes. (Export report data into MS Excel)

1.7.2.2 Canteen Manager will interface with Bank to import cleared bank transactions into the checkbook register. (Import files from bank)

1.7.2.3 Batch processing: System must have the ability to interface with external banking system's lock-box program, and internal (DOC) MS Excel generated payroll spreadsheets. In essence, the system must allow for the direct import of multiple transactions of a similar nature, from a single file format to reduce repetitive and extensive data entry. Imported files will be used to post batch deposit and payroll transactions to inmate accounts. The file format will be Microsoft Excel. The required data fields to be pulled from the batch import file include, but are not limited to: inmate ID number; transaction date; and amount of each corresponding transaction. Duplicate fields will need to be manually entered in the beginning of the process (once) to record data to each transaction that is the same for the entire batch. These fields will include transaction date, and Transaction Description. The fields of Transaction Time and Batch number will be generated by the system (the same for each transaction based on the posting of the batch). The following are required steps for the import of data in a "batch posting" format into Canteen Manager:

- 1.7.2.3.1 Open batch process
- 1.7.2.3.2 Select Transaction Type (deposit, withdrawal, adjustment-with Deposit set as the default transaction type)
- 1.7.2.3.3 Enter Transaction Date (blank data field allowing for appropriate number of character spaces/formatting)
- 1.7.2.3.4 Enter Transaction Description (blank data field allowing for appropriate number of character spaces)
- 1.7.2.3.5 Select File for import
- 1.7.2.3.6 Match Inmate ID's from import file to Inmate ID's available in the system. If errors, close batch process pending corrections (activation of released inmates, duplicates, ID# not found, etc.)
- 1.7.2.3.7 Verify number of transactions to be posted and verify total batch amount to be posted.
- 1.7.2.3.8 Verify you are ready to post the batch (Yes/No/Cancel)
- 1.7.2.3.9 The system will post the batch
- 1.7.2.3.10 Batch Verification Reports – the system will generate a Batch Report listing each transaction posted, providing the inmate first and last names; inmate account number; amount of each corresponding

ATTACHMENT F

Clyde Greene
956 Cobblestone Drive
Highlands Ranch, CO 80126-2428
Home 303-470-6591
Cell 303-882-6111

Colorado Department of Corrections
2862 South Circle Drive
Colorado Springs, CO 80906-4195



RECEIVED
MAY 21 2007
OFFENDER SERVICES

To Whom It May Concern:

This is regarding the receive charges of calls from my step son at Four Mile Correction facility. I understand that having to do things from prison for inmate's incurs more cost for security and inmates trying to get away with something.

On our last two months of phone bills from Qwest Communications the billing company for Zero Plus Dialing (800-511-0734) a charge for \$5.00 each month for billing. This is the cost of sending me a bill for a service I have no choice to use. I called Zero Plus and after pushing for answers about the charge they told me they were the billing company for Value Added Communications at 800-786-8521. They also told me that it's cost extra money to run a phone system for inmates at a prison. I find this very intrusting that they know about running a phone system for a prison, but they are just the billing company. I have been unable to get anyone to answer the 800-786-8521. The billing dates from Zero Plus dialing are March 02 and April 02, 2007.

We are paying \$7.20 for 20 minutes of each call, which is high for this day and age of long distant calling. Having an extra \$5.00 a month for billing is outrages, on top of that if you do an internet search on Zero Plus Dialing there are lot's of complaints against Zero Plus Dialing. I believe that along with providing security for the prison system, DOC must provide services at cost to provide services, but at a reasonable cost.

Thank you for your time,


Clyde Greene

CC: Colorado Public Utilities Commission, 9News Investigative team.