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November 1, 2007

Electronic Ex Parte Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Petitioners' Alternative Rulemaking Proposal
CC Docket No. 96-128

Dear Ms. Dortch:

Petitioners submit this additional support for their Alternative Rulemaking Proposal in the above-captioned docket ("Proposal")¹ confirming the comparable rates analysis presented in the Proposal and the supporting Declaration of Douglas A. Dawson ("Dawson Alternative Declaration").² The contract extension recently executed between the New York State Department of Correctional Services ("NYDCS") and Verizon (later assigned to Global Tel*Link Corporation) initially provided inmate interstate collect calling service for a per-call surcharge of \$1.50 plus \$0.08 per minute,

¹ Petitioners' Alternative Rulemaking Proposal, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. No. 96-128 (Mar. 1, 2007) ("Proposal"); FCC Public Notice, *Comment Sought on Alternative Rulemaking Proposal Regarding Issues Related to Inmate Calling Services*, 22 FCC Rcd 4229 (WCB 2007).

² See Declaration of Douglas A. Dawson in Support of Petitioners' Alternative Proposal (Feb. 16, 2007) ("Dawson Alternative Declaration"), attached as App. B to Proposal.

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which decreased to \$1.28 per call and \$0.068 per minute last month.³ For an 18-plus minute interstate collect call, the average call length for NYDCS prisoner calls, the total composite per-minute cost thus is \$0.135.⁴

Counsel also has just learned that the Florida Department of Corrections (“FDOC”) recently entered into a new Inmate Telephone Service contract with Securus Technologies, Inc. (“Securus”), providing for inmate interstate collect calling service for a connect charge of \$1.20 plus \$0.04 per minute and inmate interstate prepaid service for a connect charge of \$1.02 plus \$0.04 per minute.⁵ After paying a 35 percent commission, Securus receives slightly under \$0.09 per minute for a 15-minute collect call and \$0.08 per minute for a 15-minute prepaid call.⁶

These rates are so low because the low cost of providing interstate inmate calling services enables carriers to offer those services profitably at reasonable rates and, in the case of the NYDCS contract, because Global Tel*Link Corporation (“Global”) pays no commission on these calls.⁷ Mr. Dawson stated, before the recent NYDCS extension and rate reduction, that the composite rate for NYDCS prisoner interstate collect calls, net of commission payments, was \$0.135 per minute.⁸ That Global is actually able to provide interstate inmate collect calling at that low rate, and that Securus is able to provide interstate inmate calling services at even lower rates, constitute further evidence that the proposed benchmark rates, which are higher than the NYDCS and FDOC rates, more than cover the costs of interstate inmate calling services. No party has explained how Global, Securus and other inmate calling service providers are able to provide interstate inmate calling services at rates that, net of commission payments, are below

³ See Attachment 1 to Contract Extension Agreement X160812 between Verizon and the NYDCS at 1, 3, 5 (“NYDCS Extension”), attached to letter from Chad Powell, F.O.I.L. Office, New York Department of Correctional Services, to Frank W. Krogh, FOIL Log No. 07-1157 (Aug. 15, 2007) (attached hereto as Exh. 1). See also New York State Department of Correctional Services Agreement for Assignment and Assumption of Contract No. X160812 with Global Tel*Link Corporation (June 20, 2007) (attached hereto as Exh. 2).

⁴ See Dawson Alternative Declaration ¶ 42 & n.44 (average length of NYDCS inmate call is 18-plus minutes).

⁵ Contract #C2372, Contract Between The Department of Corrections and Securus Technologies, Inc., Through its Wholly Owned Subsidiary, T-NETIX Telecommunications Services, Inc. at 1-2, 40, 41, 51 (Sept. 25, 2007) (attached hereto as Exh. 3).

⁶ See *id.* at 41.

⁷ NYDCS Extension at 3.

⁸ Dawson Alternative Declaration ¶ 42.

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the requested benchmarks to several disparate state systems but are unable to provide such services at comparable rates to all state and other large systems.

It is no answer to say that the high rates paid by most prison inmates are comparable to some commercial operator service rates available to the general public, as T-NETIX, Inc. and Evercom Systems, Inc. (“T-NETIX/Evercom”) suggested in their ex parte filings.⁹ As Mr. Dawson explained, there is no longer any relationship between the cost of interstate operator service collect calling services and their rates. Users of commercial operator services are paying for the convenience of making a call without a cell phone or calling card.¹⁰

More importantly, unlike the users of commercial payphone operator services, prisoners have no other options to the monopoly service provided by the carrier with an exclusive service contract for each facility.¹¹ As the Commission explained in the *CLEC Access Reform Order*, while it may be appropriate to “abstain entirely from regulating the market in which . . . customers” enjoy the freedom to “decide whether [to] find an alternative provider,” it is necessary to restrict carriers’ “exercise of . . . monopoly power” “in the manner that they recover their costs from those . . . consumers *that have no competitive alternative.*”¹² Commercial payphone operator service rates available to users with a variety of other choices thus have no bearing on a comparable rates analysis of prison inmate calling services.

Moreover, whatever similarity the operator services cited by T-NETIX/Evercom may bear to inmate collect calling services, they bear no resemblance at all to inmate *debit* calling services, which do not require any live or automated operator assistance. Those commercial operator service rates are thus doubly irrelevant to inmate debit calling rates.

Not only is the record support for Petitioners’ requested relief stronger now than before, but the need for relief is becoming more urgent. The use of private correctional facilities to relieve prison overcrowding is growing, and those facilities are often far from the state contracting with the facilities and the families and loved ones paying for

⁹ See, e.g., “Standard ‘Non-Inmate’ Interstate Operator Assistance Rates” (July 20, 2007), attached to ex parte letter from Stephanie A. Joyce, Counsel to T-NETIX, Inc. and Evercom Systems, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128 (July 26, 2007).

¹⁰ Dawson Alternative Declaration ¶¶ 10-11.

¹¹ *Id.* ¶ 11.

¹² *Access Charge Reform*, 16 FCC Rcd 9923, 9938 (2001) (“*CLEC Access Reform Order*”), *recon. denied*, 19 FCC Rcd 9108 (2004) (emphasis added).

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prisoners' collect calls. For example, about one-third of Hawaii's 6,000 state inmates are held in private prisons in other states.¹³ According to a recent article in the New York Times,

Several recidivism studies have found that convicts who keep in touch with family members through visits and phone privileges are less likely to violate their parole or commit new offenses.¹⁴

Prisoners housed in facilities far from home, however, “are beyond visitation,” according to one researcher, and they often cannot afford the long distance charges for calls home.¹⁵ Excessive interstate inmate calling rates thus will become an increasingly burdensome problem in the future. In most states, those rates remain unreasonably excessive, as illustrated by a Global Tel*Link bill of \$19.25 plus a “single bill fee” of \$1.50 for a 20-minute call on April 13 from a Mississippi prison to a number in Louisiana, attached as Exhibit 4. Petitioners accordingly request that their Proposal be granted expeditiously.

¹³ Solomon Moore, *States Export Their Inmates As Prisons Fill*, N. Y. Times, July 31, 2007, at A1.

¹⁴ *Id.* at A14.

¹⁵ *Id.*

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In accordance with Section 1.1206(b)(1) of the Commission's rules, a copy of this presentation is submitted for inclusion in the record of the above-captioned docket. Please do not hesitate to contact the undersigned with any questions or concerns about this letter or the issues discussed.

Very truly yours,

/s/ Frank W. Krogh
Frank W. Krogh

Counsel to Petitioners

cc: Scott K. Bergmann
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