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December 3, 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:

Counsel for T-Netix, Inc. and Evercom Systems, Inc. ("T-Netix/Evercom"), in a recent *ex parte* filing,¹ once again implicitly concedes the factual and economic predicate for the comparable rates analysis underlying Petitioners' Alternative Rulemaking Proposal in the above-captioned docket ("Proposal").² T-Netix/Evercom states that the reasonable inmate long distance rates discussed in Petitioners' November 1 *ex parte* -- including the inmate rates offered by the T-Netix/Evercom parent, Securus

¹ 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 (Nov. 6, 2007) ("T-Netix/Evercom Ex Parte").

² 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).

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Technologies, Inc. -- are further evidence of the beneficence of state officials and that the Commission needs only to wait for similar largesse until all inmate rates are reasonable.³ By limiting its comments to the motivations of state officials, T-Netix/Evercom passes up yet another opportunity to argue the merits of this proceeding.

T-Netix/Evercom cannot be correct in stating that “inmate calling rates are set by state public policy decisions” because state officials cannot force service providers to offer inmate services at a loss.⁴ Inmate calling can be provided at a certain rate only if a service provider is willing and able to provide service at that rate profitably. T-Netix/Evercom still has not explained how it and other service providers can afford to provide inmate long distance services at reasonable rates, net of commissions, at several disparate state correctional systems, but are unable to provide similar services in all other state prison systems at similar rates. T-Netix/Evercom does not claim that it (or its parent) is providing service to Florida, Indiana or Maryland inmates at a loss. As T-Netix/Evercom admits, its Florida inmate rates, and presumably, all other inmate rates, cover all prison security costs.⁵

Because neither T-Netix/Evercom nor any other service provider has been able to distinguish the cost characteristics of the state prison systems with reasonable inmate long distance rates, net of commissions, from the cost characteristics of all other state prison systems, they have confirmed the comparable rates analysis presented in the Proposal and the supporting Declaration of Douglas A. Dawson (“Dawson Alternative Declaration”).⁶ Petitioners’ proposed benchmark rates are more than sufficient to cover all costs, net of commissions, of inmate interstate long distance services.

The recently executed contract to provide inmate telephone service to inmates in New Hampshire prison facilities further confirms Petitioners’ analysis. The interstate collect calling rate was reduced to \$1.20 per call plus \$0.10 per minute, or a composite rate of \$0.16 per minute for a 20-minute call, which includes a flat monthly commission

³ T-Netix/Evercom Ex Parte at 1-2.

⁴ *Id.* at 2.

⁵ *Id.*

⁶ 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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payment that rises from \$20,000 currently to \$25,000 by the end of the contract.⁷ The New Hampshire contract also provides for an inmate interstate prepaid rate of \$0.15 per minute with no set-up charge, which also includes a flat commission payment. It is becoming increasingly clear that Petitioners' requested benchmark rates are probably too high and that T-Netix/Evercom and other service providers could easily provide inmate interstate calling for at least \$0.05 per minute less than the proposed benchmarks, net of commissions. In the interest of fairness, however, Petitioners are standing by their generous proposal of a \$0.20 per minute benchmark for interstate long distance inmate debit calls and a \$0.25 per minute benchmark for interstate long distance inmate collect calls.

Failing to rebut Petitioners' comparable rates analysis, counsel complains that Petitioners' November 1 *ex parte* understated the costs of inmate debit calling by stating that such calls "do not require any live or automated operator assistance."⁸ T-Netix/Evercom's response is that inmate debit calls have to bear all of the security and other penological costs of inmate collect calls, which, of course, is true but irrelevant to Petitioners' comparison of inmate debit calls with inmate collect calls.⁹ The "operator assistance" distinction between debit and collect calling simply refers to the functions necessary to secure the called party's acceptance of the charges for a collect call and the related billing and collections costs, which add about \$0.05 per minute.¹⁰ T-Netix/Evercom still has not explained how, if commercial payphone costs are as high as suggested in its July 26, 2007 *ex parte*, and inmate calling costs are even higher, it is able to provide inmate interstate services at much lower rates to Florida, Indiana and Maryland inmates, net of commission payments.¹¹

⁷ Inmate and Pay Telephone Services Agreement between the State of New Hampshire and Inmate Calling Solutions, LLC d/b/a IC Solutions at 22, 24, Exh. B ¶¶ 6, 10 (May 16, 2007) (attached).

⁸ T-Netix/Evercom Ex Parte at 1 (quoting letter from Frank W. Krogh, Counsel to Petitioners Martha Wright, *et al.*, to Marlene H. Dortch, Secretary, FCC, at 3, CC Docket No. 96-128 (Nov. 1, 2007).

⁹ T-Netix/Evercom Ex Parte at 1.

¹⁰ See Proposal at 20-22; Dawson Alternative Declaration at ¶¶ 39-41.

¹¹ 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).

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T-Netix/Evercom also ignores the Commission's holding that 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 Section 201(b) of the Communications Act requires no less, and counsel has failed to explain why, given service providers' abilities to provide inmate calling at reasonable rates profitably, "consumers that have no competitive alternative" should be required to pay much higher rates. Petitioners accordingly request that their Proposal be granted expeditiously.

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: Al Lewis
Pam Arluk
Doug Galbi
Lynne Engledow

dc-509700

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

Subject: Inmate and Pay Telephone Services

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. Identification and Definitions

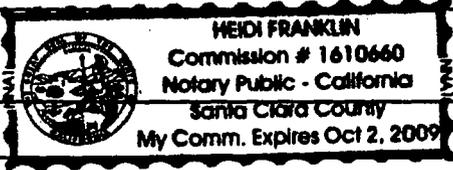
1.1 State Agency Name Department of Administrative Services		1.2 State Agency Address 25 Capitol Street Room 408 Concord, NH 03301	
1.3 Contractor Name Inmate Calling Solutions, LLC d/b/a IC Solutions		1.4 Contractor Address 5883 Rue Ferrari, San Jose, CA 95138	
1.5 Account No.	1.6 Completion Date August 22, 2012	1.7 Audit Date	1.8 Price Limitation \$0.00
1.9 Contracting Officer for State Agency Dennis J. Leclerc		1.10 State Agency Telephone Number 603/271-2888	
1.11 Contractor Signature <i>Brendan Philbin</i>		1.12 Name & Title of Contractor Signor <i>Brendan Philbin, VP & C.O.O.</i>	
1.13 Acknowledgment: State of CA, County of Santa Clara On <i>2/26/07</i> before the undersigned officer, personally appeared the person identified in block 1.12., or satisfactorily proven to be the person whose name is signed in block 1.11., and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] <i>[Signature]</i> <i>2/26/07</i>			
1.13.2 Name & Title of Notary or Justice of the Peace. <i>Heidi Franklin</i>			
1.14 State Agency Signature(s) <i>Donald S. Hill</i>		1.15 Name/Title of State Agency Signor(s) Donald S. Hill Commissioner Administrative Services	
1.16 Approval by Department of Personnel (Rate of Compensation for Individual Consultants) By: _____ Director, On: _____			
1.17 Approval by Attorney General (Form, Substance and Execution) By: <i>[Signature]</i> Assistant Attorney General, On: <i>4/27/07</i>			
1.18 Approval by the Governor and Council By: <i>[Signature]</i> DEPUTY SECRETARY OF STATE MAY 16 2007			
2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("the State"), engages contractor identified in block 1.3 ("the Contractor") to perform, and the Contractor shall perform, that work or sale of goods, or both, identified and more particularly described in EXHIBIT A incorporated herein ("the Services").			
3. EFFECTIVE DATE: COMPLETION OF SERVICES. 3.1 This agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Council of the State of New Hampshire approve this agreement, ("the Effective Date"). 3.2 If the date for commencement in Exhibit A precedes the Effective Date all services performed by Contractor between the commencement date and the Effective Date shall be performed at the sole risk of the contractor and in the event that this Agreement does not become effective, the State shall be under no obligation to pay the contractor for any costs incurred or services performed; however that if this Agreement becomes effective all costs incurred prior to the effective date shall be paid under the terms of this Agreement. All services must be completed by the date specified in block 1.6.			
4. CONDITIONAL NATURE OF AGREEMENT. Notwithstanding anything in this agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the account identified in block 1.5 in the event funds in that account are reduced or unavailable.			

EXHIBIT B PRICING

1. Contractor shall provide services based upon a call access fee (fixed cost to complete a call) and per-minute fee (where applicable). Calls shall be categorized by call termination location as follows:

Local Exchange Calling: Calls made within the local exchange of the telephone, consistent with services provided by the current Local Exchange Carrier for that location. Only an access fee shall be charged for the first five minutes of calling. Per minute fees after the first five minutes of calling may be charged.

Intra-LATA (In-State) Calling: Calls within the 603 (LATA) area code considered as all of geographic New Hampshire. Contractor may charge access fee and per minute rates.

Calling to Areas within the United States: Calls to anywhere in the contiguous United States. Contractor may charge access fee and per minute rates.

Non-Contiguous US State Calls: Calls outside of the contiguous states of the United States shall be the lowest charged to any Contractor customer for calls of same type to same location. No additional rates other than that charged per prevailing law in the country of call termination shall be charged.

Pay Telephones Only:

Maximum rate to establish a collect or third number charge call: \$1.50 Maximum per minute fee: \$.25.

Maximum rate to establish a person to person call: \$3.55. Maximum per minute fee: \$.25.

Maximum rate to establish a toll free number call or use a calling card: \$1.00. No per minute charge shall apply.

2. Rates shall be exclusive of state and federal taxes, PUC or FCC charges and, charges of other regulating government agencies. Quoted rates shall include all other call costs, and be fixed for the duration of the contract. Failure to comply with these requirements shall constitute contract default.
3. Per minute rate charges shall be based upon chargeable time. In all cases, chargeable time begins when call connection is established between the calling telephone and the called telephone. On person-to-person, third party and collect calls, chargeable time begins when connection is established between the calling person and the particular person or station specified by the caller. Chargeable time shall end when the calling telephone hangs up thereby releasing the network connection. If the called telephone hangs up but the calling party does not, chargeable time shall end.
4. Call establishment costs shall only be charged for completed calls to the intended telephone or party. No charges shall result from incomplete or unanswered calls. Calls resulting in connection to answering machines, voice mail or similar services shall be billable if reached from a pay telephone. Inmate telephone charges shall not result due to the positive call acceptance requirements defined within this contract.
5. The Contractor shall provide **pay telephone services located throughout the state with a fixed 20% commission** paid to the state based upon gross charges, exclusive of federal FCC, PUC or other Government imposed fees, taxes or charges. No payments shall be due the Contractor by the State. All fees for services shall be charged to parties for receiving or initiating calls.
6. The Contractor shall make monthly payments to the Department of Corrections for inmate services at the Department of Corrections locations based upon the following table.

Months from Contract Initiation	Payment Dates	Monthly Payment to State
1 through 24	23 rd of Each Month from September 2007 through August, 2009	\$20,000
25 through 36	23 rd of Each Month from September 2009 through August, 2010	\$23,000
37 through 60	23 rd of Each Month from September 2010 through August, 2012	\$25,000

**EXHIBIT B
PRICING
(Continued)**

10. COST OF SERVICES

The Contractor shall provide Inmate Telephone and Pay Telephone services based upon the following prices. No payments shall be due the Contractor by the State.

INMATE COLLECT CALL AND PAY TELEPHONE PRICES

Call Type	Inmate Telephone Cost to Establish Call	Inmate Telephone Call Cost per Minute	Pay Telephone Cost to Establish a Call	Pay Telephone Call Cost per Minute
Local Exchange	<u>\$1.20</u>	<u>\$.10</u> (No charge for first 5 minutes of call)	<u>\$.50</u>	<u>\$.25</u> (No charge for first 5 minutes of call)
Intra-LATA (In State)	<u>\$1.20</u>	<u>\$.10</u>	<u>\$.50</u>	<u>\$.25</u>
Inter-LATA (National State to State)	<u>\$1.20</u>	<u>\$.10</u>	<u>\$.50</u>	<u>\$.25</u>

INMATE PREPAID CALLING AND DEBIT PRICES

Contractor shall provide prepaid calling and debit services as defined within. Only costs as noted below shall apply. Contractor shall not be allowed to charge additional processing fees including one-time account start-up fees.

Call Type	Inmate Telephone Cost to Establish Call	Inmate Telephone Call Cost per Minute
Local Exchange	<u>\$.50</u>	<u>\$.10</u> (No charge for first 5 minutes of call)
Intra-LATA (In State)	<u>No Charge</u>	<u>\$.15</u>
Inter-LATA (National State to State)	<u>No Charge</u>	<u>\$.15</u>