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December 9, 2008

By Electronic Filing Ex Parte Presentation

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W. – TW-A325
Washington, D.C. 20554

Re: Docket No. 96-128, Inmate Remand and *Wright* Petition

Dear Ms. Dortch:

By this letter, Pay Tel Communications, Inc. respectfully responds to the *ex parte* letter submitted by the Martha Wright, *et al.*, Petitioners dated November 19, 2008, in the above-referenced proceeding.

The Petitioners' November 19, 2008 *ex parte* filing continues to set forth arguments whose factual foundations are simply incorrect. Specifically, Petitioners have continued to ignore all evidence presented to them and have instead decided to doggedly cling to the following erroneous premises:

1. Inmate calling service ("ICS") providers incur costs primarily on a usage sensitive, per-minute basis.
2. All confinement facilities are highly profitable for ICS providers to serve.
3. All ICS providers who serve small, high-cost confinement facilities also serve very large, lower-cost facilities.
4. Service to small, high-cost confinement facilities is assured, even if the Commission establishes a rate that is below the cost of the ICS providers serving those locations.

5. A distortion of the economically-rational rate structure is necessary in order to address the perceived problem of “premature disconnections.”
6. Call transmission costs are trivial.
7. Prepaid collect calling programs offered in jails are identical to prepaid or debit programs typically offered in prisons.

Given their porous foundation, it is hardly surprising that the Petitioners’ ultimate recommendations are fatally flawed. Each of these errors is addressed below.

Factual Error No. 1: ICS providers incur costs primarily on a usage-sensitive, per-minute basis.

At pp. 1-2 of their letter, Petitioners assert that the cost study submitted by various ICS providers on August 15, 2008 in this proceeding (the “Wood Study”) “largely supports the benchmark rates requested by Petitioners.” Such a statement underscores the Petitioners continuing inability to recognize the importance of both the *level and structure* of rates, and the relationship of any proposed rate to the *level and structure* of the underlying costs. Petitioners note that the Wood Study reports interstate collect call costs of \$2.49 per call and \$0.07 per minute,¹ calculate that for a 15 minute call the effective per-minute cost is about \$0.24 per minute, and excitedly conclude that because \$0.24 is less than their proposal of \$0.25, it must therefore be true that the Wood Study “largely supports Petitioners’ requested benchmark rates.”²

With this mathematical sleight-of-hand, Petitioners intentionally obfuscate the critical point: ICS providers do *not* incur a cost of \$0.24 per minute to provide an interstate call; they incur, at a minimum, \$2.49 when the call is initiated (regardless of the length of the call) and \$0.07 per minute for each minute of the actual call duration. The fact that for a 15 minute call the effective per-minute cost is approximately equal to the

¹ As explained at pp. 4-5 of the Wood Study, two analyses were actually conducted: one using a set of 25 locations, and the other using a set of 28 locations (both sets of locations are consistent with the Commission’s previous definitions of “marginal locations”). The 25-location results are, as stated by Petitioners, \$2.49 per call and \$0.07 per minute. The 28-location results of \$3.19 per call and \$0.07 per minute apparently do not serve the Petitioners’ interests and are not mentioned in this section of their letter.

² As explained in detail at pp. 15-16 of the Wood Study, the costs cited by Petitioners do not include several categories of costs (including but not limited to facility administration fees) actually incurred by ICS providers. In order to simplify the discussion, issues related to these additional costs are not addressed in this section. It should be noted, however, that, as stated in the Wood Study, rates set at \$2.49 per call and \$0.07 will not be compensatory for ICS providers serving marginal locations.

Petitioners' benchmark rate says nothing whatsoever about whether the Petitioners' proposed *rate structure*—one based solely on per-minute rates with no per-call charges—is in any way reasonable, related to the underlying costs, or representative of “fair compensation” as required by Section 276(b)(1)(A) of the 1996 Act.

Petitioners have offered no supportable basis for their proposal to distort the relationship between cost structure and rate structure.³ While there are no identifiable positive effects, Petitioners' proposed rate structure does create significant problems which are specified at pp. 16-17 of the Wood Study. Most notably, the Petitioners' proposed rate structure would fail to provide “fair compensation” to ICS providers serving many locations. At many county jails (and similarly-sized confinement facilities), the maximum allowed call length is less than 15 minutes.⁴ According to the Petitioners' own analysis, imposing their proposed benchmark rate would prevent ICS providers serving these locations from receiving “fair compensation.” If the call length at such a location is 10 minutes (rather than the 15 minutes assumed, but not supported, by Petitioners), applying the Petitioners' analysis shows that the ICS provider would incur an effective per-minute cost of \$0.32 for a collect call, but receive only the proposed rate of \$0.25 per minute—a shortfall of \$0.07 per minute for that call.

Section 276(b)(1)(A) requires that the Commission “establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone.” According to Petitioners' own methodology, their proposal would preclude fair compensation to ICS providers for all interstate collect calls of less than 14 minutes.⁵ Such a result, of course, is barred by Section 276(b)(1)(A).

³ Petitioners do suggest that the distorted rate structure would address the perceived issues associated with “premature disconnections,” but later in their letter acknowledge (pp. 16-17) that other less drastic but equally effective means are available to do so. With this concession, Petitioners are now offering no reason why the rate structure *needs* to be distorted so that it fails to reflect the underlying cost structure.

⁴ *See, e.g.*, Pay Tel *ex parte* letters dated June 16, 2008 (p. 9) and Sept. 9, 2008 (p. 2) (stating that Pay Tel's average interstate collect call is 8.9 minutes); Pay Tel *ex parte* letter dated Sept. 9, 2008 at Exh. 5 (showing that 100% of Pay Tel facilities do not permit calls in excess of 15 minutes, with a substantial portion restricted to calls not to exceed 10 minutes); Embarq *ex parte* letter dated July 11, 2008, p. 3 (stating that most facilities served by Embarq have 15 minute limits and that Embarq's average call length is 12 minutes).

⁵ Using the 25 location results, at 14 minutes the average cost per minute incurred by ICS providers would be equal to the Petitioners' proposed rate. For any call of less than 14 minutes, the average cost per minute incurred by ICS providers would be higher than the Petitioners' proposed rate. Using the 28 location results, ICS providers would incur an average cost per minute that exceeds the proposed rate for all calls of less than 20 minutes.

Moreover, adoption of the Petitioners' per-minute rate proposal would cause severe dislocations in existing calling patterns. For a five-minute call, the Petitioners' proposal would result in rates which are currently below the intrastate local and long distance rates in every state in the nation. As Pay Tel and other commenters have previously observed, such an approach would incent inmates to substitute interstate for intrastate calls through the use of various arbitrage techniques and schemes, all of which will serve to undermine security and transparency in the inmate calling setting.⁶ This problem has been acknowledged by the inmate activist community as a legitimate and real concern associated with rate structures that are not reflective of the manner in which costs are incurred and which result in widely divergent rates across call types. See Michael Hamden Oct. 28, 2008 *ex parte* presentation, at § VII.J.

The significant problems associated with fair compensation for calls of varying duration (and for calls made from facilities with varying call duration limits) can be avoided if the Petitioners' proposal to distort the relationship between cost and rate structures is rejected. A rate structure that recognizes the underlying cost structure—simply, that some costs are incurred on a per-call basis and are independent of call duration, while other costs are incurred on a per-minute basis—would ensure that ICS providers receive the proper compensation for each completed call.

Factual Error No. 2: All confinement facilities are highly profitable for ICS providers to serve.

In order to justify their proposal, Petitioners continue to suggest that all (or nearly all) confinement locations exhibit the characteristics of a large prison; in their view, a location with high call volumes and low costs. In their attempt to dismiss the importance of confinement facilities with other characteristics—those with lower call volumes and higher costs—Petitioners cite (at p. 8) to Bureau of Justice statistics report.⁷ This report, according to Petitioners, supports their assertion that the costs incurred by ICS providers at most county jails are unimportant and need not be considered by the Commission.

Petitioners correctly note that, according to the report they cite, “jail jurisdictions with an average daily population of 1000 or more inmates ... accounted for over 50 percent of the U.S. jail population at mid-year 2007” (the actual figure is 52%). These large locations, according to Petitioners, “presumably” have lower costs and therefore should be the only locations considered by the Commission. As an initial matter, Petitioners offer no explanation why the calls made by the remaining 48% of the U.S. jail

⁶ See Pay Tel *ex parte* letter dated Sept. 9, 2008; ATIS TFPC *ex parte* letter dated Aug. 24, 2007; American Correctional Association *ex parte* letter dated July 31, 2008; American Jail Association *ex parte* dated Aug 15, 2008; and Pay Tel *ex parte* presentation dated June 16, 2008.

⁷ Available at <http://www.ojp.usdoj.gov/bjs/abstract/jim07.htm>.

population—calls being made from smaller locations that “presumably” have higher costs—should simply be ignored. It is also important to take note of what Petitioners elected to omit from their citation. According to the Bureau of Justice Statistics report, while these large locations account for 52% of the jail population, they account for only about 6% of jail locations. Petitioners would have the Commission ignore the characteristics—and resulting ICS provider costs—of a full 94% of all jail locations. Again, this approach simply cannot be squared with Section 276’s command to ensure that all inmate calls receive fair compensation.

In reality, inmates make interstate calls from confinement facilities that exhibit a wide range of characteristics. Some locations are large, have high call volumes, and longer call durations, and these are the locations that Petitioners “presume” to have lower costs. According to the Bureau of Justice Statistics report relied upon by Petitioners, however, the vast majority of U.S. jail locations do *not* share the characteristics of high call volumes and long call durations, and therefore do *not* share the “presumably” lower costs. If a single rate is going to be established for calls made from all confinement facilities, then it is essential that the higher costs incurred by ICS providers at smaller jail locations (the vast majority of jail locations in the U.S.) be fully considered. The Petitioners’ approach, by contrast, would forever condemn some higher cost facilities to below cost rates. For providers that predominantly serve such facilities (e.g., companies like Pay Tel that focus on local jails) this proposal would, literally, preclude them from profitably providing service.

This reality is no surprise to Petitioners’ consultant, at least. Mr. Dawson acknowledged in his original affidavit that “[b]ecause of the unavoidable inefficiencies of serving extremely small facilities, [Petitioners’] analysis may not apply to locally-administered jails and other low-capacity prison facilities.”⁸ As more than one-third of all incarcerated adults are held in “locally administered jails,”⁹ the hole in Petitioners’ analysis is gaping and the potential harmful effect of Petitioners’ approach applied to all facilities is enormous.

At a minimum, by Petitioners’ own admission, should the Commission seriously consider adopting the Petitioners’ proposals, smaller facilities such as “locally administered jails” must be exempted in order to comport with the “fair compensation” requirements of Section 276(b)(1)(A).

⁸ Alternative Wright Petition, Dawson Declaration, Exhibit 2 (Dawson Affidavit of Oct. 29, 2003), at 37 n.46.

⁹ Pay Tel Comments, May 2, 2007, p. 5 (citing Bureau of Justice and Federal Bureau of Prisons reports).

Factual Error No. 3: All ICS providers who serve small, high-cost confinement facilities also serve very large, lower-cost facilities.

The Petitioners' "one size fits all" rate proposal can be valid only if Petitioners can demonstrate that all confinement facilities cause ICS providers to incur the same, or nearly the same, level of cost. They have not done so, and in fact devote a significant portion of their letter to the argument that the confinement locations used in the Wood Study represent locations whose costs are different—and perhaps significantly so—than the costs incurred at other locations. If correct (and Pay Tel would agree with the concept that costs are different at locations with different characteristics), the Petitioners' assertion that costs vary significantly by location means that their proposal to establish a single per-minute rate for all locations based primarily on the costs incurred large, high-volume facilities *cannot* be consistent with a requirement for "fair compensation."

While acknowledging that costs vary significantly by location, Petitioners nevertheless assert (p. 9) that a rate should be developed "to cover the average cost of serving large and small" locations. Such an "average across all locations" approach, would, as Petitioners must concede, result in inmates at larger confinement facilities paying higher than necessary rates in order to subsidize below-cost rates at smaller confinement facilities. Such a scenario is not a problem, Petitioners argue, because in previous payphone-related orders the Commission "addressed subsidies of one type of service by another, not by larger to smaller customers of the same service."

In reality, Petitioners' proposal to average costs across all confinement locations creates two readily-identifiable problems.

First, while it is true that the Commission has not directly addressed the "is it reasonable for customers at large locations to be required to subsidize customers at small locations?" question in a payphone context, Petitioners have offered no public policy argument in favor of requiring such subsidies beyond their stated desire to have a single national rate. There is no reason to simply assume, as Petitioners have done, that their proposed "one size fits all" rate structure represents the best available public policy solution for inmates, confinement facilities, or ICS providers. Instead of taking the opportunity to explain why their single-rate proposal is superior, Petitioners instead have elected to create a false dichotomy: either adopt the "one size fits all" national rate, or adopt "ad hoc individualized pricing depending on the size of the served facility." In reality, a significant amount of middle ground exists between "one national rate" and "a different rate for every confinement facility." The Commission, for example, could simply exempt high-cost facilities such as jails from any newly adopted rate requirement or it could adopt a tiered rate structured using facility size as a proxy for cost differentials.

Second, Petitioners assume—incorrectly and with no stated basis—that all ICS providers serve a mixture of both the largest and the smallest confinement facilities, so that a national rate will permit them to recover their costs “on average”: “a typical service provider serves many facilities of different sizes and types.” Petitioners’ Nov. 19, 2008 *ex parte* letter p. 9 n.33. Of course, such an approach—even if the underlying premise were factually sound—is inconsistent with the requirements of Section 276(b)(1)(A). The Act does *not* permit the Commission to establish, as Petitioners would have it do, a per call compensation plan to ensure that all payphone service providers are fairly compensated, *on average*, for calls made “across many facilities of different sizes and types.” Nor does the Act permit the Commission to establish a per call compensation plan to ensure that *some* payphone service providers are fairly compensated, *if* they serve a mixture of high and low cost facilities. Instead, §276(b)(1)(A) requires that the Commission “establish a per call compensation plan to ensure that *all* payphone service providers are fairly compensated *for each and every completed intrastate and interstate call* using their payphone.” (emphasis supplied) Petitioners cannot simply wish these requirements away with an assurance that, based on their (flawed) assumptions, things will somehow work out to permit cost recovery on “average” for some unidentified mix of locations and ICS providers.

Even if the Act permitted such a “it’ll all somehow average out in the end” approach, Petitioners’ fundamental assumptions about the operation of ICS providers and the structure of the industry are simply wrong. In support of their proposal to base rates on “the average cost of serving large and small” facilities, Petitioners assume (p. 9) that a “typical” ICS provider offers service at a range of confinement facility sizes that encompasses both the highest- and lowest-cost locations so that its costs are the same as “the average cost of serving large and small customers.” Petitioners provide no basis for this critical assumption, nor can they—in reality, many ICS providers serve primarily either the largest (lowest cost) prisons and very large jail facilities or the smallest (highest cost) county jail facilities. For example, of Pay Tel’s 174 facilities, 49% have an average daily population fewer than 100 inmates, 84% have an average daily population of fewer than 300 inmates, and 91% have an average daily population of fewer than 500 inmates. As a result, many ICS providers such as Pay Tel will not, and cannot, receive fair compensation based on a rate that reflects what Petitioners assert is the “average cost of serving large and small customers.”

As additional support of their rhetorical theme that all problems will somehow work themselves out if their proposal is adopted, Petitioners make the (wholly unsubstantiated) assertion that “service providers enjoy economies of scale that reduce costs for all facilities, independently of the sizes of the served facilities.” Petitioners’ Nov. 19, 2008 *ex parte* letter, p. 9 n.33. Once again, Petitioners have betrayed their lack of even a basic understanding of how ICS providers operate. Amounts of investment and associated costs are, of course, a direct function of the “sizes of the served facilities,” as

the Petitioners' own consultant, Mr. Dawson, is forced to acknowledge.¹⁰ Because the required equipment can only be scaled downward in discrete sizes (it is impossible to install 1.5 telephone sets, for example) small locations with lower calling volumes will cause an ICS provider to incur significantly higher per-call costs. No matter how efficient an ICS provider may be in its centralized operations, no "economies of scale" will change the fact that the majority of the costs associated with serving a given facility are directly related to the size of that facility. However much they may want to do so, Petitioners cannot simply wish away the realities of the cost structure of the industry—ICS providers who serve primarily small facilities incur higher per-call costs to provide service. No process of "averaging" will permit these ICS providers to receive fair compensation based on a single national rate.

Factual Error No. 4: Service to small, high-cost confinement facilities is assured, even if the Commission establishes a rate that is below the cost of the ICS providers serving those locations.

From a public policy perspective, the Petitioners flawed assumption that service to small, high-cost confinement facilities is assured is certainly the most dangerous—if they are wrong, the interests of inmates, law enforcement, and ICS providers may be irreparably harmed before the Commission's decision can be reversed.

Petitioners devote a significant portion of their letter (pp. 1-5) to an argument that the Commission's marginal location analysis previously adopted and utilized in the *Methodology Order* and *Implementation Order* is not applicable in the context of inmate calling services. Petitioners' basic theory appears to be that in these previous orders, the Commission sought to ensure the continued availability and widespread deployment of payphones, while no such objective needs to be considered here. Not only are Petitioners wrong about this, they are asking the Commission to gamble with the continued availability of ICS provider services to inmates at smaller jail locations (and to do so with no factual foundation whatsoever).

Petitioners argue (p. 4) that a marginal location analysis designed to "preserve the current level of payphone deployment" is "entirely inapplicable in the correctional setting," because, according to Petitioners, at all confinement locations (including, presumably, the smallest county jails) "inmate payphone use is as robust and call volumes as high as correctional officials will allow. Unlike the declining deployment of payphones available to the general public, inmate payphones are *guaranteed heavy use*

¹⁰ See Alternative Wright Petition, Dawson Declaration, Exhibit 2 (Dawson Affidavit of Oct. 29, 2003), at 37 n.46 (acknowledging that "[b]ecause of the unavoidable inefficiencies of serving extremely small facilities, [Petitioners'] analysis may not apply to locally-administered jails and other low-capacity prison facilities.").

by the ultimate captive market” (emphasis added). Such a sweeping statement makes it clear that, once again, Petitioners are unable to conceive of a confinement facility whose characteristics are different than those of a large prison, even though their own research indicates that 94% of all jail locations have these different characteristics. Petitioners offer no explanation of how their “guaranteed heavy use” can be generated by a relatively small number of inmates, nor can they. In the real world, payphones in smaller jail facilities experience lower average use—and correspondingly higher per-call costs—than payphones in larger prison facilities.

Petitioners cannot wish away the fact that establishing a national rate for all confinement facilities that fails to provide fair compensation for ICS providers serving these smaller jail locations puts the availability of service at those locations in jeopardy. If the availability of services at smaller jail facilities is an important public policy issue—and it is likely that inmates at these locations would agree with ICS providers that it is—then the basic question to be addressed by the Commission in this context is *not* fundamentally different than the question addressed in the *Methodology Order* and *Implementation Order*: how should a cost basis for fair compensation be calculated so that the availability of service is maintained? A marginal location analysis continues to represent the correct approach, and Petitioners’ proposed average cost analysis continues to be the wrong approach, for all of the reasons set forth by the Commission in those orders. If a single national rate is to be adopted, and if maintaining the availability of service to inmates at smaller jails is an important public policy consideration, then a marginal location analysis must be utilized.

Petitioners attempt to rebut the use of a marginal location analysis by providing a rather shameless out-of-context citation to the Commission’s 2002 *Inmate Payphone Order*.¹¹ To support their contention (p. 4) of “the inappropriateness of applying a ‘marginal location’ approach” to a study of the cost of inmate services, Petitioners quote from the *Inmate Payphone Order* as follows: “that policy has little or no application in the prison context.”¹² Petitioners fail to mention, however, that the Commission’s discussion from which this passage was lifted directly addresses the method of allocating overhead costs, not the use of a marginal location analysis, and was in the context of the Commission’s rejection of a cost study that was **not** based on a marginal location analysis. The sentence preceding the one cited by Petitioners makes it abundantly clear that the “policy” being addressed is not one related to the use of a marginal location analysis, but rather to “a methodology that permitted a significant contribution to common costs.” Petitioners continue their selective editing of the FCC’s order by omitting a critical passage that would have revealed the actual subject of the Commission’s language. As presented by Petitioners (p. 5), the sentence reads “Any

¹¹ See Petitioners’ Nov. 19, 2008 *ex parte* letter, pp. 4-5 at n.16 and n.17.

¹² Citing *Inmate Payphone Order*, 17 FCC Rcd 3248, 3256 at ¶ 19 (2002).

increase in inmate calling services' revenue ... will only encourage higher location commissions." The actual sentence, however, is substantively different: "Any increase in inmate calling services' revenue *to permit a larger contribution to common costs* will not encourage it to provide more payphones but will only encourage higher location commissions" (emphasis added). It is important to note that the Commission's conclusion being cited is based on an assumption that the ICS provider is already receiving fair compensation for calls made at the location in question, because commission payments are being made. In the end, not only does the language cited by Petitioners refer to a policy that is wholly unrelated to the use of a marginal location analysis, it refers to a factual scenario—and therefore a conclusion—that would be inapplicable in such an analysis (if commissions are being paid, the location would not appear in a marginal location analysis, and a conclusion that increased revenues would simply result in increased commissions would not apply).

Petitioners' also (p. 2) attempt to rebut the use of the marginal location analysis by denigrating it as an "inappropriate sampling technique." In reality, the Wood Study utilizes the marginal location analysis as explained by the Commission. Petitioners' "inappropriate sampling technique" is nothing more than the requirement of the method that the only sites to be considered are locations that are just able to recoup costs, including a normal rate of return, without payments to the operator of the facility. This is precisely the methodology required by the Commission and the methodology followed by the Wood Study.

In the end, the marginal location cost analysis is the one analysis prescribed by the Commission and upheld by the courts for payphone cost analysis. Its methods are well-established through a series of Commission orders and its rationale is fully applicable in the inmate setting.

Factual Error No. 5: A distortion of the economically-rational rate structure is necessary in order to address the problem of "premature disconnections."

The only potential benefit identified by Petitioners of their proposal to distort the relationship between the structure of costs and rates is the potential for addressing the perceived problem of "prematurely" disconnected calls. As noted previously, such an approach creates significant problems, including the possibility that inmates will overpay and the possibility that ICS providers will not be fairly compensated. Fortunately, Petitioners have now agreed that a less dramatic solution may be acceptable. At pp. 15-16, Petitioners describe a remedy for the premature disconnect problem that permits the rate structure to reflect the way that costs are actually incurred by including both a per-call and per-minute rate. Specifically, they describe a process for waiving a second per-call charge in certain circumstances, pursuant to the limitations previously proposed by

Pay Tel.¹³ Developing this kind of workable approach represents a solution that is far superior to a distortion of the cost-rate relationship that will introduce additional, significant problems.

Factual Error No. 6: Call transmission costs are trivial.

A major driver of Petitioners' rate proposal is their assumed transmission cost. Criticizing the \$0.06 per minute cost for debit calling and the \$0.07 per minute cost for collect calling shown by the Wood Study, Petitioners state that their consultant, Mr. Dawson, "has previously demonstrated that interstate toll termination costs are approximately \$0.0125 per minute, one-fourth or less of the service provider's figures. Petitioners' Nov. 19, 2008 *ex parte* letter pp. 5-6.

In point of fact, Mr. Dawson's analysis merely states: "Today, I typically can procure wholesale transport and terminating service for around \$0.0125 per minute." Dawson Declaration, at ¶ 26 (Feb. 16, 2007). This is the entirety of his analysis. Mr. Dawson provides no evidence that this rate is available for purchase by ICS providers or any further information regarding the nature of any such charges.

By contrast, the Wood Study is based on the actual costs incurred by ICS providers to terminate toll calls. *See* Wood Study, at p. 14 § D.3.4. These costs are not hypothetical costs that may or may not be available in the marketplace but instead are actual costs incurred by providers across a universe of seven different companies, including some of the larger, sophisticated providers. There is simply no basis for disregarding these real-world costs in favor of an unsupported, hypothetical statement of Petitioners' consultant.

Factual Error No. 7: Prepaid collect calling programs offered in jails are identical to prepaid or debit programs typically offered in prisons.

Once again demonstrating their ignorance of differences between prisons and jails, the Petitioners assume that prepaid collect calling programs offered in jails and prepaid/debit calling programs offered in prisons are identical and, therefore, would incur the same costs. *See* Petitioners' Nov. 19, 2008 *ex parte* letter, pp. 17-18.

In fact, prepaid programs offered in jails are substantially more costly and burdensome than those offered in prisons. Prepaid or debit programs typically offered in

¹³ *See* Pay Tel *ex parte* letter dated Oct. 17, 2008 (describing Pay Tel's policy which permits disconnected calls to be re-connected to the number dialed by the inmate, for no additional call set-up fee, and with the remaining number of minutes from the original call available for the inmate to use).

prisons are tied into existing management and commissary accounts established by inmates. Inmates are permitted to transfer money into these accounts which ICS providers can draw down on in providing phone service. These accounts are internally administered and are established with known persons *in the facility* using cash or cash equivalents. As a result, as Petitioners observe, these accounts do have greatly reduced billing and collection costs and can be offered at a discount over collect calling.

Jails, however, do not typically have the resources available to offer internally administered calling accounts. As an alternative, some ICS providers such as Pay Tel offer prepaid collect accounts. These are accounts that are administered outside the jail by the ICS provider with persons who are unknown to the provider (i.e., the inmate's family or friends) and often funded by non-cash methods of payment such as credit cards and checks. As Pay Tel has previously explained with respect to the establishment of prepaid collect accounts in jails:

[A]n ICS provider must put in place systems and controls to set up thousands of individual customer accounts on a 24-hours-a-day, 7-days-a-week basis. Customers must be educated about the program, funds must be received and allocated to the proper accounts, billing must be drawn down from the proper accounts, and customers must be notified of current balances on a real-time basis. All of this results in substantial additional costs to the provider in establishing the systems to handle thousands of individual customer accounts.

Pay Tel Oct. 17, 2008 *ex parte* letter, p. 3. In addition, on top of these additional costs of administering the accounts, the provider still has exposure to fraud and uncollectibles since the provider is not receiving a cash payment. (For example, in just one facility over the past 18 months, Pay Tel incurred several hundred thousand dollars in uncollectible calls resulting from a fraudulent calling scheme involving the use of stolen credit cards to open prepaid collect calling accounts.)

Petitioners' cite the Comments of Consolidated Communications Public Services for the proposition that no per-call charge is necessary with a prepaid option, but, again, the CCPS Comments were directed to prepaid accounts *in the prison setting* where accounts are internally administered and billing and collection expenses are greatly reduced. With such internally administered accounts, it is true that collection and establishment of accounts is much more straightforward than in the jail environment with prepaid collect calling accounts. In jails, however, a debit-like rate for prepaid collect accounts is unworkable and would not permit the provider to recover the additional costs incurred in establishing and administering accounts. Adoption of Petitioners' proposal in

jails would result in the elimination of prepaid programs, which otherwise have provided positive benefits for inmates, consumers and providers.

Once again, by their comments on prepaid accounts, Petitioners' demonstrate their myopic focus on large prisons and their unfamiliarity with smaller facilities such as jails.

* * * * *

In accordance with Section 1.1206 of the Commission's rules, this letter is submitted for inclusion in the record of the above-captioned proceeding. Please do not hesitate to contact the undersigned should any questions arise concerning this letter or the issues addressed herein.

Sincerely yours,

/s/ Marcus W. Trathen

Marcus W. Trathen

cc: Pamela Arluk (via email)
Amy Bender (via email)
Randolph Clarke (via email)
Darryl Cooper (via email)
Lynne Engledow (via email)
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