

contracts.

With thirteen years experience in the inmate telecommunications industry and a wide ranging customer base of local, state and federal customers (confinement institutions), GTL is highly qualified to respond to the issues contained in this proceeding.

In order to understand the issues involved in the instant Petition, GTL submits it is necessary to understand the evolution of the Inmate Calling Services ("ICS") industry. ICS services began in the 1970's with coin payphones located in confinement facilities. Inmates typically had a correctional officer at their side who either dialed the number the inmate requested or watched and listened as the inmate placed the call. Officers maintained a handwritten log of inmate called numbers. From these humble beginnings sprang an entire industry devoted to servicing the unique telecommunications needs of the correctional system as well as the inmates. We ask the Commission to consider the typical inmate call set up process for an inmate call in today's environment:

Upon picking up the receiver, the inmate will hear the following prompt, "*For English, press 1*" – in English; "*For Spanish, press 2*" – in Spanish; and so on. This prompt continues through each language chosen by facility, and available in the system, until the inmate makes a selection. An inmate is then instructed to dial "0", the area code, and the destination number. Any first number other than "0" will initiate a voice prompt which states "*This is an invalid number,*" and the call is disconnected. Once the number is dialed correctly, the system voice prompt states,

"To place a collect call, dial '1'. To place a person-to-person call, dial '2'. To place a prepaid call, dial '3'."

If any other number is pressed or no number is pressed, the system default is to place the call as a collect, station-to-station call. If inmate PINs are in use, the System then instructs the inmate to enter his or her inmate ID number, or PIN. Once the inmate enters the correct PIN, the system automatically retrieves the corresponding pre-recorded name file. If inmate PINs are not in use, the System states, "At the tone, state your name," then "At the tone, state the name of the person you are calling," for a person-to-person to call only. If the call is station-to-station, there is no prompt for the person being called. It should be noted that the time window available for the inmate to state his or her name is programmable as well.

At this point in the call attempt, the inmate is placed on hold. During this time the call is routed through the validation system where the PIN number is checked against the call allow list, a blocked number database is checked, system diagnostics are run and certain fraud/bad debt prevention features are checked. If the call checks through the validation system, it is then passed on to our contracted LIDB hub where the number is checked to make sure it is a valid number (not a payphone, etc.), that there are no restrictions on the phone, that the phone is not a disconnected number, and so forth. A signal is returned to the phone to authorize the call. This entire process, which takes place while the inmate is on hold, normally takes less than 10 seconds.

When an inmate's call cannot be completed, the automated operator will notify the inmate using a message similar to one of the following: *"The called number was busy, please try your call later."* *"The called party did not answer, please try your call later."* *"The called party did not accept your call."* *"The called party has placed a block on this number."*

In all instances, the automated operator will make initial contact with the called party. During the automated greeting, the called party is notified of the inmate's name and the facility from which the inmate is calling. The called party will have contact with the inmate only after positively accepting the call as instructed by the automated operator. Prior to accepting the call, the automated operator will also give the called party the option to hear call rates and to hear the current account balance.

We note that this is simply an example of a typical inmate call setup and does not address the myriad of additional security measures employed by ICS providers after call setup and acceptance.

If OC's Petition is to be believed, the above described security measures, particularly call validation and routing, can simply be disregarded by the Commission without any harm to the public. This is simply not the case.

GTL's comments will focus primarily on two points contained in OC's Petition. The first area we will address is the contention by OC that ICS providers function as local exchange carriers and thus, are bound by the Communications Act to resell their services to OC. Secondly, we will comment on OC's assertions that its service does not undermine

prison security in any way and that it is not providing call forwarding.

II. AN ICS PROVIDER IS NOT A LOCAL EXCHANGE CARRIER

In its Petition, OC states that, as an ICS provider, MCI is a local exchange carrier and therefore bound by Section 251(b)(1) of the Communications Act. This is an incorrect characterization of ICS providers. ICS providers are not in fact certificated as local exchange carriers, nor is such certification required in order to provide ICS. Instead, ICS providers are typically certificated as a special class of IXCs.

The vast majority of state regulatory agencies require some form of authorization to provide telecommunications services to inmates in confinement institutions. States vary in the type of authority granted. While all states who regulate inmate calling services require long distance resale authority, some require operator services or payphone authority, or a combination of both. Several states have separate regulatory requirements specific to the provision of inmate services. **No state, however, requires certification as a local exchange provider in order to offer inmate calling services.**

Because ICS providers are not certificated as local exchange carriers, they cannot be held to the obligations imposed on local exchange carriers imposed by the Communications Act, including the obligation to offer their services for resale. Significantly, given the regulatory status of ICS providers, resale of the local service they obtain on an end-user basis would violate both their certificates of authority and the regulations of the local tariffs under which they purchase the service.

III. OC's SERVICE BREACHES THE SECURITY OF CORRECTIONAL FACILITIES.

One of the most pressing directives of an ICS provider is to furnish correctional institutions with the latest in investigative and security technology. This requirement is unique to the ICS industry and is an integral part of the package of telecommunications services which are provided to confinement facilities. By transferring the call to a second, unknown destination number (whether by remote call forwarding as MCI suggests or by transfer through various carriers' networks as OC claims) OC's service circumvents vital internal ICS and DOC databases and breaches correctional facility security, potentially endangering the public.

In the current inmate calling environment, an ICS must employ a four step validation process for each and every inmate call placed, whether completed or not, in order to insure the validity of the called number. For example, our system queries Local Exchange Company Line Identification Data Bases (LIDB), Local Number Portability (LNP), along with internal company databases and correctional facility blocked databases to determine whether the inmate call attempt is being placed to a blocked number, a billable number, or an allowed number. When an inmate places a call using OC's service, however, all of the above security controls become useless. This is because our system is not validating the call recipient's actual destination number; rather we are validating a local number provisioned specifically for the purpose of forwarding the call to the real destination number. As a result, the number we have queried, and the resulting number reflected in our system's call detail records is useless for investigative purposes (because it does not match the party ultimately called).

To emphasize the importance of the investigative technology we provide, and the manner in which services such as OC's frustrate the protections of that technology, consider the following scenario:

A convicted felony inmate is serving his sentence at a New York DOC correctional facility. He formulates a plan to escape and calls to tell his brother in New Jersey of his plans. His brother subscribes to OC's services and has a local New York phone number which is then forwarded to his home in New Jersey. The inmate uses the local number for his call. His call is recorded by the DOC and during his call he tells his brother that he will be at his house by midnight and will need his brother to assist him in getting out of the country.

The inmate makes a successful escape. Once DOC personnel realize that the inmate is missing, they listen to his recorded phone conversations to determine if there is information they can use to assist in locating him. The DOC hears the inmate's calls to his brother and quickly queries the system to see what destination number the inmate called. They see it is a local number and request the called party's billing name and address from their ICS provider. Their ICS does not have this information as the ICS has no method of determining who provisioned the local number or whom the call was remotely forwarded to. The DOC is then forced to issue subpoenas to OC to get the called party's billing name and address. By this time, the escaped inmate is long out of the country.

Or consider the recent case of the capture of Jesse James Caston, one of the FBI's Ten Most Wanted Fugitives.¹ Louisiana DOC officials used information obtained from an inmate telephone call recording to identify an individual who knew about the whereabouts of the fugitive. Using an accurate destination number for this individual, the FBI was able to locate and question him and

¹ See Attachment 1

determine the whereabouts of Jesse James Caston. Now imagine the results if this individual had used the services of OC. There would be no valid destination number or billing name and address for the individual on file with the ICS provider or the DOC and the resulting delay in the investigative process could have yielded much different results.

In support of our contention, attached to our comments are several letters from our law enforcement customers expressing their concern over the nature of OC's petition and outlining the security reasons that this Petition should be denied by the FCC.

IV. CONCLUSION

Because of the status of ICS providers as resellers of inmate telecommunications and not LECs, the strict prohibitions by correctional facilities against call forwarding and the compelling requirements of law enforcement to have accurate and valid information regarding the destination of inmate calls, we respectfully request that the Commission summarily deny OC's Petition for Declaratory Ruling and allow all ICS providers to block services such as those provided by OC.

Respectfully Submitted,



Craig Ferguson, President
GLOBAL TEL*LINK CORPORATION
2609 Cameron Street
Mobile, Alabama 36607
Phone: 251-479-4500

April 16, 2003

ATTACHMENTS TO GTL COMMENTS

- 1. Letter from Warden Burl Cain**
- 2. Letter from Tennessee Department of Corrections Internal Affairs Director
Darrell Alley**
- 3. Letter from Mobile County Sheriff Jack Tillman**

Louisiana State Penitentiary



M. J. "Mike" Foster, Jr.
Governor

Burl Cain
Warden

Richard L. Stalder
Secretary

January 4, 2001

George Talbot, Jr.
Vice President
Global Tel*link, Inc.
3501 Holiday Drive, Suite 405
New Orleans, LA 70114

RE: **LazerVoice**

Dear George,

The LazerVoice recording and monitoring system installed at the Louisiana State Penitentiary continues to prove to be an invaluable tool in intelligence gathering. In December, our investigative unit provided information obtained through LazerVoice on the whereabouts of Jessie James Caston, one of the FBI's 10 most-wanted fugitives, to the FBI and Louisiana State Police, which was vital in the capture of Caston on December 20, 2000.

Although LazerVoice has proven its effectiveness at the Louisiana State Penitentiary, as we have developed numerous cases against inmates involved in illegal activities and a few involving correctional officers, it has now proven its effectiveness in assisting other law enforcement agencies in the apprehension of armed and extremely dangerous fugitives, such as Caston.

Please allow me this opportunity to again thank you for this system; it is a proven asset in our daily operations and in the safety of the general public. We are extremely proud to have the LazerVoice system in operation at the Louisiana State Penitentiary!

Sincerely,

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

Burl Cain
Warden

BC:aln

xc: File



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DEPARTMENT OF CORRECTION
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April 14, 2003

Mr. Craig Ferguson, President
Global Tel*Link Corporation
2609 Cameron Street
Mobile, Alabama 36607

Re: Petition of Outside Connection, Inc.
WCB/Pricing 03-14

Dear Craig:

This letter is to address the current Petition before the FCC by Outside Connection, Inc. I respectfully request that Global Tel*Link submit this letter to the FCC.

Due to the extensive security measures contained in our inmate telephone system, we are completely opposed to any company providing second and third party telecommunications services for inmate calling.

With the current configuration of your LazerPhone Inmate Telephone System, our Investigators can be assured that the destination telephone numbers as shown in the LazerPhone System are accurate. This information is vital to the State and ensures that law enforcement can respond quickly and accurately in the instances of a jail escape, inmates conducting criminal operations via the telephone or any of the myriad threats to correctional personnel and public safety which arise in a correctional facility.

I cannot stress enough how important it that your system continue to provide accurate information regarding the called party. With the inmate call configuration as described by Outside Connections in its Petition, law enforcement would be forced to subpoena two to three separate entities for accurate information regarding the called party. Contrast this with our current set up wherein an Investigator simply queries the LazerPhone System and is immediately given accurate information regarding the called party's destination number. Therefore, we cannot find any justification nor benefit for the FCC to sustain the Petition of Outside Connection and request that the FCC take the appropriate action to suspend and/or eliminate this type of service.

The inmate calling method advocated by Outside Connection in its Petition would jeopardize public safety and cause innumerable delays for law enforcement in obtaining vital security information regarding inmate telephone calling activities. It would also violate the contractual terms of services regarding security of inmate calls mandated by the State.

Your inmate telephone system has been and continues to be a source of invaluable investigative assistance to law enforcement in Tennessee and we urge the FCC not to take action which comprises the critical security features of your inmate telephone system.

Sincerely,



Darrell Alley
Director of Internal Affairs
Tennessee Department of Corrections

SHERIFF



JACK TILLMAN

MOBILE COUNTY • MOBILE, ALABAMA

30601-0113

TELEPHONE (334) 690-8630

P. O. Box 113

April 14, 2003

Mr. Craig Ferguson, President
Global Tel*Link Corporation
2609 Cameron Street
Mobile, Alabama 36607

Re: Petition of Outside Connection, Inc.
WCB/Pricing 03-14

Dear Craig:

This letter is to address the current Petition before the FCC by Outside Connection, Inc. The Mobile County Sheriff's Department strongly suggests that Global Tel*Link submit this letter to the FCC. Due to security measures contained in our inmate telephone system, we are completely opposed to any company providing second and third party telecommunications services for inmate calling.

With the current configuration of your LazerPhone Inmate Telephone System, our investigators can be assured that the destination telephone numbers, as shown in the telephone system are accurate. This information is vital to the Sheriff's Office and ensures that law enforcement can respond quickly and accurately in the instances of illegal inmate activity via the telephone, such as coordinating escapes and other criminal operations. There are currently a myriad of threats that correctional personnel must deal with on a daily basis, without providing inmates a new tool to circumvent the system.

As you are aware, numerous local law enforcement agencies currently rely on the LazerPhone Inmate Telephone System in Metro Jail. The agencies include the Mobile Police Department, Federal Bureau of Investigation, U.S. Marshall's Service, Mobile County District Attorney's Office and several of the smaller municipal police departments in Mobile County. I cannot overstate the significance of your system in providing accurate information regarding the called party. With the inmate call configuration as described by Outside Connections in its Petition, law enforcement would be forced to subpoena two to three separate entities for accurate information regarding the called party. Contrast this with our current set up wherein an Investigator simply queries the LazerPhone System and is immediately given accurate information regarding the called party's destination number. Therefore, we cannot find any justification nor benefit for the FCC to sustain the Petition of Outside Connection and request that the

FCC take the appropriate action to suspend and/or eliminate this type of service. To put it simply, the inmate calling method advocated by this Petition would jeopardize public safety and cause innumerable delays for law enforcement in obtaining vital security information regarding inmate telephone calling activities.

Sincerely,

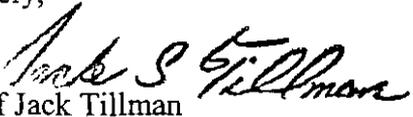

Sheriff Jack Tillman

EXHIBIT 9

COPY



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April 28, 2003

Katrina C. Gleber
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COURIER

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

Re: WCB/Pricing 03-14, Joint Reply Comments

Dear Ms. Dortch:

Enclosed please find the original plus one (1) copy of the Joint Reply Comments of Evercom, Inc. and Public Communications Services, Inc. for filing in the above-captioned docket. I have also included copies for the Chief of the Pricing Policy Division (2 copies), the Reference Information Center (1 copy), and Qualex (1 copy), as required by the Public Notice (DA 03-874).

Please date stamp the copy marked "Stamp-in" and return via courier. If there are any questions, please do not hesitate to contact me at (202) 457-6451.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Katrina C. Gleber'.

Katrina C. Gleber

KCG:mmd

Enclosures

cc: See Service List

Before The
Federal Communications Commission
Washington, DC 20554

In The Matter Of

Petition For Declaratory Ruling
Filed By Outside Connection, Inc.

DA 03-874
WCB/Pricing 03-14

JOINT REPLY COMMENTS OF EVERCOM, INC.
AND PUBLIC COMMUNICATIONS SERVICES, INC.

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Before The
Federal Communications Commission
Washington, DC 20554

In The Matter Of

Petition For Declaratory Ruling
Filed By Outside Connection, Inc.

DA 03-874
WCB/Pricing 03-14

**JOINT REPLY COMMENTS OF EVERCOM, INC.
AND PUBLIC COMMUNICATIONS SERVICES, INC.**

Evercom, Inc. and Public Communications Services, Inc., jointly acting through counsel and in accordance with the Commission's Public Notice DA 03-874, released March 26, 2003, hereby submit their joint reply comments in opposition to the Petition For Declaratory Ruling ("Petition") filed by Outside Connection, Inc. ("OC").

I. BACKGROUND

1. Evercom, Inc. and its affiliates (collectively hereafter "Evercom") provide traditional inmate calling services ("ICS") at approximately 2,000 locations in 43 states and the District of Columbia. Most of the locations served by Evercom are modest-sized correctional facilities such as city and county jails. Similarly, Public Communications Services, Inc. ("PCS") offers ICS at numerous locations in over 20 states, mostly at comparably-sized installations.¹

2. Evercom/PCS have collectively invested millions of dollars for the specialized equipment and software necessary to provide ICS at the facilities they serve. At all these locales, the security policies and legitimate concerns about potential inmate misuse substantially mirror those

¹ Evercom and PCS are hereafter collectively referred to as "Evercom/PCS" or "ICS Providers."

described by WorldCom, Inc. (“WorldCom”) and the New York Department of Corrections.² Therefore, the Commission’s decision on the Petition could fundamentally affect the way Evercom/PCS conduct their ICS businesses. As a result, each clearly has the requisite standing to participate in this proceeding.

II. SUMMARY OF EVERCOM/PCS COMMENTS

3. Evercom/PCS strongly support those who oppose the relief requested in the Petition. From the Evercom/PCS perspective, OC demands the benefits of providing ICS without assuming any of the substantial associated risks and burdens. OC claims the right to a “free ride” on the back of the substantial investments made by Evercom/PCS, investments made in furtherance of contracts fairly won with correctional facilities around the country. OC, seeking to cloak itself in the mantle of the cause of “competition,” wants the Commission’s blessing to siphon calls via a call forwarding scheme that undermines the judicially and administratively recognized security protections applicable to the provision of ICS. OC’s proposed “safeguards” only impose burdens and costs on ICS providers; most importantly, however, there is absolutely no guarantee of their effectiveness. OC claims that Federal communications laws and the Commission’s Rules mandate that Evercom/PCS and the prison administrators to which they are responsible take this gamble. That is not the case. Nor do misleading claims about ICS charges justify the risk. WorldCom and other opponents of the Petition have articulated effectively an array of reasons for rejecting the Petition. There is no basis for the Commission to turn its back on the appropriate regulatory balance for ICS that it has struck in the past and legitimize what, in effect, is no better than OC’s theft of service.

² See generally Comments of WorldCom, Inc., dated April 16, 2003, and Attachments thereto (hereafter “WorldCom Comments”). No commenter in this proceeding, even those supporting the Petition, denies that these concerns exist or asserts that they are inappropriate.

III. OC'S SERVICE CLEARLY CONSTITUTES CALL FORWARDING

4. WorldCom and others have ably addressed the potential dangers of allowing call forwarding in the ICS setting.³ The identical, generic security concerns apply in the case of the facilities served by Evercom/PCS. More specifically, the policies and conditions governing their provision of ICS at these facilities embrace similar restrictions on the use of call forwarding techniques like those advocated by OC.

5. It is disingenuous at best for OC to now suggest that the configuration of its system somehow takes it "outside" of the call forwarding category.⁴ Indeed, PaeTec Communications, Inc. ("PaeTec"), which plays an integral role in OC's provision of its service, expressly concedes that "remote call forwarding," which "parallels traditional foreign exchange service," is exactly what OC is engaged in.⁵ The Commission should not succumb to OC's repeated incantations that its service is really a horse of a different color. A call made to one telephone number in PaeTec's switch gets forwarded to another telephone number in another exchange, another state or possibly even another country. That is call forwarding. The Commission only last year recognized the legitimate security concerns with any "scheme to evade calling restrictions via call-forwarding or three-way calling."⁶

IV. THE SAFEGUARDS PROPOSED BY OC ARE UNRELIABLE AND UNDULY BURDENSOME

6. Nevertheless, OC claims that through the provision by PaeTec and/or OC of billing name and address ("BNA") data, along with employment of other "verification" techniques, ICS

³ See, e.g., WorldCom Comments, at pp. 19-21.

⁴ See Petition, at pp. 13-14.

⁵ See PaeTec Comments, dated April 16, 2003, at pp. 2, 3. So do other proponents of OC's positions. See Comments of Mr. Allen Ostenson, dated April 10, 2003, at p. 1 (hereafter "Ostenson Comments").

⁶ See Attachment 7 to WorldCom Comments, at p. 21.

providers like Evercom/PCS can ameliorate any and all potential security gaps created by the use of call forwarding services like OC's offering. OC has utterly failed to make that case.⁷

7. First, OC outlines how ICS providers could obtain up-to-date BNA information to verify who (and where) are the parties actually receiving the calls forwarded by PaeTec and OC. However, as WorldCom points out, even assuming OC faithfully provided updated BNA data, it would be up to the ICS provider to ensure that such data were received and accurately incorporated into the requisite databases for the ICS provider facility.⁸ These activities would require the allocation and expenditure of time and resources by both the ICS provider and facility administrators in order to accommodate OC's "right" to provide service – time and resources diverted from the task of monitoring the inmates and the equipment installed and maintained by the ICS provider. It is hard to see how such diversions would help maintain, versus potentially dilute, the requisite level of security.

8. Second, if such an accommodation is offered to OC, the same presumably must be offered to OC's competitors, only magnifying the potential burdens placed on ICS and facility providers.⁹ At the same time, it is the ICS provider, like Evercom/PCS, that has the contractual

⁷ Global Tel Link ("Global") minces no words in describing the impact of OC-type services on traditional validation techniques: "all of the . . . security controls become useless." Global Comments, dated April 16, 2003, at p. 6 (emphasis supplied); see also Affidavit of James D. Shutt, dated April 15, 2003, at p. 6 (para.16); Opposition of T-NETIX, Inc., dated April 16, 2003, at p. 7 ("T-NETIX Opposition").

⁸ See WorldCom Comments, at pp. 22-23; Attachment 7 to WorldCom Comments, at pp. 7-8. Moreover, contrary to the "permanency" suggested by the North Carolina Prisoner Legal Services, Inc. ("NCPLS") and Ostenso Comments, there is no legal or technical assurance that the telephone number to which the calls are being forwarded could not be changed, without the prior knowledge of the ICS provider or the facility, further complicating the database update problem. Compare NCPLS Comments, dated April 14, 2003, at p. 3 and Ostenso Comments, at p. 1 with Comments of Ohio Department of Rehabilitation and Correction, dated April 16, 2003, at pp. 2-3.

⁹ Id.; see Affidavit of John D. Shaffer, Ph.D, dated April 15, 2003, at p.6 (para. 17-18)("Shaffer Affidavit"). And such other call forwarding service providers might not be nearly as faithful or as

obligation to the facility and that has invested the substantial sums to comply with the required security protections. It is this provider that is on the legal hook to ensure compliance. OC has no such privity of contract and therefore could not be compelled (or held liable) by the facility administrators.¹⁰ Its proposed “protections” in no way change that status.

9. Indeed, in the context of smaller-sized correctional facilities, such as those serviced by Evercom/PCS, these costs and administrative burdens could become even more telling. In many of the facilities that they service, the personnel and technical resources are less plentiful and would be more taxed by additional responsibilities for receiving and tracking data provided, possibly quite frequently, by call forwarding service providers like OC. Again, focusing on these tasks would no doubt divert attention from monitoring the inmates themselves. So imposing such a requirement on these types of facilities would have an even more impractical impact.

10. Further, the verification techniques suggested by OC (e.g., national reverse directory assistance) only require further efforts to tap. Most importantly, however, the record shows that they are of dubious reliability at best.¹¹

11. So OC’s “cure alls” do not rectify the genuine security concerns that form the primary basis for banning the use of call forwarding technologies. It is for precisely these types of concerns that both the Courts and the Commission have recognized that the unique circumstances surrounding the provision of ICS justify use of single ICS providers.¹² Moreover, for very similar

trustworthy as OC. Some may engage in tactics such as the use of false addresses to set up services in the first place. See Exhibit 1 attached hereto.

¹⁰ See Comments of Value-Added Communications, Inc., dated April 16, 2003, at p. 7 (“Value-Added Comments”).

¹¹ WorldCom Comments, at p. 23; Attachment 7 to WorldCom Comments, at p. 6.

¹² Attachment 7 to WorldCom Comments, at pp. 9-11. As also pointed out, for the same reasons the Commission has not applied the requirements of 47 U.S.C. Section 226, regarding access to alternative long-distance providers, to confinement facilities. Id., at pp. 19-21.

reasons the Commission previously declined to adopt a system where the party billed for the inmate's call gets to choose the carrier.¹³ OC is advocating just such a regime in its Petition.

V. THE AMENDED COMMUNICATIONS ACT DOES NOT PREEMPT THE WELL-ESTABLISHED REGULATORY TREATMENT OF ICS

12. OC (and PaeTec) seek to invoke the 1996 revisions to the Communications Act of 1934 (i.e., the Telecommunications Act of 1996) (collectively the "Act") and the FCC's Rules to counter the long-recognized special circumstances surrounding the provision of ICS.

13. First, OC's self-righteous citations to Sections 251 and 253 are hardly, as WorldCom points out, made with clean hands.¹⁴ From the Evercom/PCS perspective, OC comes to the table seeking the FCC's blessing to interfere, for its own economic benefit, with the contractual relationship established by the ICS Providers with each of the correctional facilities that they serve. Without ever having incurred any of the requisite investments made by Evercom/PCS, OC claims that the Act was intended to protect its right to hijack traffic which the ICS Providers are contractually entitled to carry, without any legal obligations on the part of OC to Evercom/PCS or the correctional facilities. WorldCom properly describes this as stealing for OC's own gain,¹⁵ and at Evercom/PCS's expense.¹⁶ This is hardly the form of "competition" that the Act was intended to protect or promote.

14. Second, the equities aside, OC's (and PaeTec's) legal arguments also don't fit. Neither Evercom nor PCS, which collectively are authorized to provide ICS in almost every state in the

¹³ See In the Matter of Billed Party Preference for InterLATA 0+ Calls, 13 FCC Rcd. 6122, 6156 (para. 57)(1998).

¹⁴ See WorldCom Comments, at pp. 12, 17, 18.

¹⁵ Id., at p. 18.

¹⁶ As Value-Added Communications observes, the end result of this theft is "significantly reduced cost recovery of inmate telephone service providers." Value-Added Comments, at p. 7. At the same time of course there is no offsetting reduction in the ICS Providers' costs needed to be recovered.

Union, are (or are required to be) certified as a local exchange carrier.¹⁷ Further, as WorldCom explains in detail, the services provided by Evercom/PCS and other ICS providers do not fit the Act's definition of local exchange service.¹⁸ So the obligations imposed by Section 251(b) do not apply to Evercom/PCS and similar ICS providers.¹⁹

15. OC (and PaeTec) also invoke Section 253 of the Act, involving the removal of barriers to competition. Neither the Courts nor the FCC have held that this statute preempts the long string of precedent recognizing the special circumstances surrounding the provision of ICS. Indeed, as noted by WorldCom, the FCC, only last year and long after passage of Section 253, specifically cited the legitimate security interest in prohibiting "a scheme to evade calling restrictions via call-forwarding or three-way calling."²⁰ These inveterate security concerns are embodied in the "public safety" safe harbor of Section 253(b), a safe harbor that would extend to facilities housing inmates charged with violating state laws or operated pursuant to uniform statewide policies.

16. OC also claims that ICS providers must follow certain "procedures" under Part 64 of the Commission's Rules to, in effect, play "BNA detective." That way such providers might determine that OC (or some similar call forwarding service provider) was the customer who should

¹⁷ See Global Comments, at p. 5.

¹⁸ See WorldCom Comments, at pp. 9-10.

¹⁹ PaeTec in its comments also claims that Section 251(a) of the Act, concerning telecommunications carriers' general interconnection obligations, mandates OC's "right" to forward these calls. PaeTec Comments, at p. 6. This bald claim ignores the special circumstances surrounding the provision of ICS services described above and the conduct of OC in pirating the traffic as it does. Nothing in the Act or its regulatory progeny requires a telecommunications carrier to interconnect for those purposes. Interestingly in its own tariff for New York, OC represents that there are no connecting carriers necessary to provide its service. See Attachment 6 to WorldCom Comments, at Original Sheet 4.

²⁰ See Attachment 7 to WorldCom Comments, at p. 21.

be billed for local collect calls made to the number leased by PaeTec to OC.²¹ Having “discovered” this, the ICS provider is, according to OC, required to direct bill the call in accordance with “industry policy set forth in Rule 64.1201.”²²

17. Contrary to OC’s implicit suggestion, there is nothing in Section 64.1201 of the Commission’s Rules that obligates or directs ICS providers to do what OC now demands. As WorldCom noted, despite the fact that “OC might want MCI to purchase BNA from PaeTec, and then allow OC to use its operator service, ... MCI has absolutely no obligation to do so.”²³ Section 64.1201 creates no such requirement to do that or to search out BNA information to satisfy OC’s business needs.

VI. SUPPORTERS OF OC’S POSITION ARE OFF BASE ON ICS CHARGES

18. In their comments justifying and supporting OC’s position, Mr. Ostenso and the NCPLS paint a misleading and self-serving picture about charges for ICS.

19. First, Mr. Ostenso characterizes them as “unregulated.” This misnomer totally ignores the fact that in many States ICS charges are based on tariffs approved by the relevant state

²¹ See Petition, at pp. 10-11.

²² Id., at p. 11.

²³ WorldCom Comments, at p. 13. According to OC’s own New York tariff, the non-recurring “Activation Charge” for BNA is \$250.00, with a recurring BNA Data Charge (Per Phone No.) of \$.50. Nothing in the Act or the FCC’s Rules requires ICS providers to incur these additional expenses so that OC can provide its service.

regulatory commission.²⁴ Moreover, in many such States, there are regulatory-imposed rate caps on the charges of ICS providers.²⁵ So the assertion that ICS charges are “unregulated” is unfounded.²⁶

20. Second, the NCPLS characterizes the rates as “excessive” and “extortionate,” creating the impression that ICS providers like Evercom/PCS engage in some massive markup over the rates a “traditional” payphone customer would pay for collect-calling services. That is just not the case. In most jurisdictions, the cost to an inmate of placing a collect call using Evercom/PCS does not vary widely from the cost of a collect call made from a public payphone in the visitor’s center of the facility or on the street corner down the block.²⁷ Moreover, to the extent that there is a variance, the NCPLS conveniently ignores the fact that the ICS Providers incur significant additional costs in meeting the security requirements imposed by facility administrators; so the “cost” of an ICS collect

²⁴ As T-NETIX points out, as tariffed rates they are subject to the filed rate doctrine. T-NETIX Opposition, at pp. 9-10. Tariffs aside, in most States, ICS providers must receive a certificate or some other form of authorization by that commission. Some States have gone beyond just tariffing. In the State of Alaska, for example, the regulatory agency has restricted the extent to which commissions paid to facility administrators can be treated as a cost recoverable through rates.

²⁵ Indeed, the Commission recognized their existence and has left them in place. See In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, 17 FCC Rcd. 3248 (2002).

²⁶ The NCPLS also suggests that the FCC has somehow been asleep at the switch when it has come to ICS issues. NCPLS Comments, at p. 2 (citing “inaction by the FCC”). But the FCC has recognized and reviewed the special regulatory challenges involved with ICS a number of times in at least two dockets over the last seven years.

²⁷ Evercom/PCS’s rates are typically set no higher than dominant carrier rates for the same services. The NCPLS also claims that Section 276 of the Act, 47 U.S.C. Section 276, incorporates special rate standards for ICS services. See NCLPS Comments, at p. 2. That provision focuses on leveling the competitive advantages previously held by the Bell Operating Companies in the provision of payphone services. It does not set standards for end-user charges from payphones, including those of the ICS variety.