

EXHIBIT A

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

In the Matter of

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

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

CC Docket No. 96-128

**DECLARATION OF DOUGLAS A. DAWSON IN RESPONSE TO
PAY TEL COMMUNICATIONS, INC. LETTER AND
SUPPORTING DECLARATION OF DON J. WOOD**

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

I. Introduction

1. My name is Douglas A. Dawson, and I am the President of CCG Consulting, Inc. (“CCG”), located at 7712 Stanmore Drive, Beltsville, MD 20705. I have filed several expert declarations in this docket in support of Petitioners’ requests, including their Alternative Rulemaking Proposal (“Proposal”).¹

2. I submit this declaration in response to an ex parte letter filed by Pay Tel Communications, Inc. (“Pay Tel”) on June 15, 2009 (“Pay Tel Letter”) and an attached declaration by its consultant, Don J. Wood (“Wood Declaration”).²

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”).

² See letter from Marcus W. Trathen, Counsel to Pay Tel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128 (June 15, 2009) (“Pay Tel Letter”), Exh. A, Declaration of Don J. Wood in Response to Petitioners’ November 19, 2008 and December 23, 2008 *Ex Parte* filings, and to the December 22, 2008 *Declaration of Douglas A. Dawson* (June 11, 2009) (“Wood Declaration”).

II. Summary

3. One of the most striking aspects of the Pay Tel rebuttal is what it does not address. Neither Pay Tel nor Mr. Wood made any mention of my demonstration that Mr. Wood's Cost Study should be rejected due to lack of any back-up cost support.³ Apparently, they are willing to let Mr. Wood's study stand without cost support, which is reason alone to disregard the Cost Study.

4. They also did not dispute my observation that, in spite of the skewed sample of facilities that Mr. Wood examined, the results of his Cost Study are not far out of line with Petitioners' proposed benchmark rates. For example, the 25-location sample used in Mr. Wood's Cost Study yields a cost of \$0.19 per minute for a 12-minute interstate debit call and a cost under \$0.24 per minute for a 15-minute interstate collect call, which are lower than Petitioners' requested debit and collect calling benchmark rates of \$0.20 and \$0.25 per minute, respectively. Those results confirm that the proposed benchmarks are, if anything, too high, rather than too low, as rates reflecting average inmate calling costs. Certainly, there is nothing on record anywhere in this docket that will support keeping interstate inmate rates as high as they are today.

5. Mr. Wood and Pay Tel have tried to discredit my declaration by asserting that I do not understand the costs of prison calling, particularly with regard to the cost of terminating an interstate call. However, they have cited costs that cannot be correct. First, they have double-counted the cost of post-billing adjustments, such as bad debt and unpaid calls. Second, they have stated that the costs for post-billing adjustments for debit calls are nearly as expensive as the cost of those adjustments for collect calls. Everybody in the industry understands the large

³ See Declaration of Douglas A. Dawson in Response to the "Inmate Calling Services Interstate Call Cost Study" and Other Recent Filings, ¶¶ 4-6 (Dec. 22, 2008) ("Dawson Response to Cost Study"), attached as Exh. A to letter from Frank W. Krogh, Counsel to Petitioners, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-128 (Dec. 23, 2008) (citing Don J. Wood, Inmate Calling Service Interstate Call Cost Study, CC Docket No. 96-128 (Aug. 15, 2008) ("Cost Study")).

amount of bad debt associated with collect calls from prisons. However, Pay Tel and Mr. Wood are asserting that debit calls are nearly as expensive without providing any cost support or any explanation of how the cost of post-billing adjustments could possibly be the same, or nearly the same, for debit calls as for collect calls. The entire purpose of debit calling is to collect the fees up front, so Pay Tel's assertion seems to be nothing more than an unsupported attempt to justify today's high rates.

6. Mr. Wood has also criticized my cost methodology, since I have looked at the "average" cost of calling for all prisons. Pay Tel has gone on record in the docket in favor of some sort of tiered rates, such that small, higher cost facilities have higher rates than large facilities. Petitioners agree with Pay Tel's suggestion, as long as any tiered approach is implemented fairly, as discussed below. Mr. Wood's Cost Study would set rates for all prisons at the highest cost of the smallest jail, which is indefensible and unlawful.

7. Mr. Wood says Petitioners' proposal is flawed, since it is inconsistent with a rate design that includes a flat rate to establish a call and a per minute usage rate. As I have previously explained, it is not necessary to use the rate structure advocated by Mr. Wood. The rate design that Mr. Wood thinks is mandatory is acceptable, however, as long as the rates used produce a total charge equivalent to Petitioners' requested benchmarks for an interstate inmate call of average length, based on reliable call length data, and other conditions noted by Petitioners are met.

8. Mr. Wood, as Pay Tel's expert consultant, also did not take any exception to my demonstration that the cost of prepaid calling is close to the cost of debit calling and should be priced appropriately. Pay Tel did discuss one aspect of the prepaid calling issue, which I will address below in this declaration.

9. Pay Tel continues to assert that establishing the requested benchmark rates for interstate calls will increase "arbitrage," which is completely false and illogical. It is always excessive rates, not reasonable rates, that spawn arbitrage and bypass. Cutting interstate calling

rates will decrease the desire to bypass or arbitrage interstate calling services and rates. Any arbitrage that might occur under reasonable interstate rates would be the economic result of excessive local and intrastate rates, not reasonable interstate rates.

10. Pay Tel claims that the requested benchmark rates would reduce prison security. Petitioners are only asking for lower rates, however, and there is no evidence from prisons that have already lowered rates that more affordable calling has or would somehow decrease security. The prison service providers always roll out the security red herring when they feel economically threatened, and the Commission should ignore this argument. I have gone on record in this and other dockets as a proponent of maintaining all legitimate inmate calling security features.

III. Cost Study Issues

11. Neither Pay Tel nor Mr. Wood responded to my observation that Wood's Cost Study provided no cost support that would allow this Commission to validate the study's results. If Pay Tel wants this Commission to take the service providers seriously, they need to file real cost support to prove the validity of their cost claims. The information supplied by Mr. Wood presented nearly zero cost support to substantiate his results. One must infer that the prison calling service providers have not filed cost support because they know they cannot support the current high rates they are charging. Mr. Wood asserts in paragraph 30 of his declaration that I lack experience with the calculation of service providers' costs.⁴ What I and this Commission lack instead is any cost support for the claims made by Mr. Wood and the service providers. They possess all of the facts needed to show their real costs, and instead have chosen to file a faith-based Cost Study with zero cost support.

12. Mr. Wood, in paragraph 23 of his declaration, talks about the cost to terminate long distance calls. In my analysis, I stated that a reasonable cost to terminate an interstate call is

⁴ Wood Declaration, ¶ 30.

1.5 cents per minute, but I conservatively allowed 2 cents for my analysis. Mr. Wood concluded in his Cost Study that the prison providers' termination costs are 7 cents per minute for collect calling and 6 cents per minute for debit calling.⁵ Mr. Wood accounts for the higher numbers by asserting that a large percentage of the calls are uncollectible or unbillable.⁶

13. My 2 cent terminating cost represents only the costs that the prison provider would have to pay to some underlying carrier to deliver the call to the final termination point. This would be the fee paid to a wholesale long distance provider like AT&T, Sprint or Qwest. There are some additional costs associated with completing calls, notably transport and post-billing adjustments such as the cost of calls that are uncollectible when customers refuse to pay for the calls. I have accounted for those costs elsewhere in my cost estimates, so the 2 cent cost as I have used it is strictly the cost of paying an underlying carrier to terminate the calls.

14. Mr. Wood does not directly dispute my 2 cents per minute estimate for terminating costs, but he applies a multiplier for post-billing costs to arrive at his figures. There are two problems with his approach.

15. First, Mr. Wood's estimate of 6 cents per minute for the termination cost of debit calling is only slightly less than his estimate of 7 cents for collect calling termination costs, which is an unrealistically small difference, given the vast difference between those two calling categories in the costs that he cites in justifying his high usage rates (*e.g.*, uncollectibles and unbillables). If one can agree that the cost to pay a long distance carrier to terminate a completed, compensated call is no more than 2 cents per minute, then Mr. Wood is claiming an additional cost of 4 cents per minute to account for non-payment of debit calls. The whole point of a debit system is that the prison service provider collects and validates the payment before allowing the calls. As such, almost all calls are paid for and the amount of fraud will be

⁵ See Cost Study at 4-5.

⁶ Wood Declaration, ¶ 23.

miniscule compared to collect calling. Given the low rate of uncompensated debit calls, especially compared to uncompensated collect calls, Mr. Wood's inflated estimate of 6 cents per minute for the termination of inmate debit calls is too far-fetched to be taken seriously. It is time for Mr. Wood and the prison service providers to use correct facts, or at least internally consistent and realistic assumptions, and to stop trying to confuse the Commission with bogus arguments and misleading facts.

16. Second, as I also pointed out in my previous declaration, Mr. Wood already accounted for the additional unbillable and uncollectible costs of collect calling in the higher *per-call* estimate that he calculated for collect calls in his Cost Study.⁷ In padding his *per-minute* termination cost for collect calling with the same factors, he is double counting them. If the double counting of uncollectible and unbillable calls is eliminated, and the difference in costs between debit and collect calling is taken into account, Mr. Wood's real termination cost is about the same as mine, or 2 cents per minute. He has not explained in any coherent, internally consistent way why the termination cost of either debit or collect calling should be any higher.

IV. Cost Methodology

17. Mr. Wood presents a long argument on pages 5 through 7 of his declaration asserting that I have argued in favor of using a single set of average rates to apply across all prisons and jails.⁸ This is not true, and his argument misses the point that I and the Petitioners would support reasonable differentiation in rates for different sizes of prisons and jails. Pay Tel has suggested in this docket the use of some kind of tiered rate approach, and I support that concept. As an example, the rates for the smallest facilities might be set at the costs calculated in Mr. Wood's Cost Study for small marginal facilities. The rates in larger, more average-size

⁷ See Dawson Response to Cost Study, ¶ 24 (citing Cost Study at 4-5, 10, 12).

⁸ Wood Declaration, ¶¶ 14-21.

facilities could be set at the requested benchmark rates, as Petitioners have suggested. The rates in the very largest facilities, perhaps for prisons with more than 250 prisoners, ought to be set at a rate lower than the “average,” or benchmark, rate. That approach would be fair to consumers as well as service providers.

18. Mr. Wood argues that a “death spiral” would ensue unless rates in all prisons are set at the highest rates calculated in his study for the smallest, highest-cost, marginal facilities. That is preposterous and amounts to a demand for excessive rates for almost all interstate inmate calls. Under this concept, service to every prison would be guaranteed to be profitable, but in reality, any service to prisons with costs lower than the most costly facility would be generating excess profits. There is no legal or rate-making justification for requiring excessive profits at most facilities so that the highest-cost facility is able to make a profit. There are certainly practical rate methodologies that can allow a reasonable opportunity to earn a profit for large multi-facility providers using rates that are lower than the marginal costs that Mr. Wood thinks are appropriate for the smallest facilities. The idea of setting rates in tiers, as suggested by Pay Tel, is an appropriate way to achieve what I suggested, and in effect, would be establishing an average cost-based rate for each tier of prisons and jails.

V. Prepaid Costs versus Debit Costs

19. In my last declaration, I said that prepaid calling costs are similar to debit calling costs and should be priced accordingly. Pay Tel disagrees but offers no substantive support for its position, other than that I am simply uninformed. Pay Tel insists that I was addressing only prepaid calling in a situation where the prisoner sets up a prepaid account, rather than the supposedly costly situation where a party receiving inmate calls sets up the prepaid account. As is clear from paragraph 31 of my previous declaration, I was addressing both situations.⁹ In the

⁹ Dawson Response to Cost Study, ¶ 31.

case of a prepaid account established by a party receiving inmate calls, the prepaid account holder is not “unknown” to the service provider, as Pay Tel continues to assert, anymore than any long distance service subscriber is “unknown” to his or her carrier. Pay Tel has not explained why the percentage of calls that would be bad debt under a prepaid system would be anywhere near the percentage of collect calls that are bad debt. Everybody in the industry recognizes the huge amount of uncollected revenue associated with collect calling. All that is required to get a call completed with a collect call is for somebody at the receiving end of the call to say they will pay for the call. Prison providers have testified in the past that as much as 50% to 60% of all collect calls are never paid for, which is quite believable.

20. In the case of a prepaid call, however, the account holder has already been subject to whatever credit check and other background investigation the service provider deems appropriate, and the call has been paid and subjected to the service provider’s payment verification procedures. No further billing is necessary. The risk of ultimate nonpayment thus is vastly less than in the case of collect calling

21. There might be some fraud in a prepaid system. Certainly, some of the calls will be paid for with bad checks or stolen credit cards. But it is disingenuous for the prison service providers to try to claim that the amount of bad debt under such a system would be as large as the 50% or 60% of bad debt that occurs with collect calls. Pay Tel has not explained how the bad debt risk for these two categories of calls could possibly be similar. One of the contributing factors to the bad debt on collect calls is the outrageously high cost per minute of collect calling, as documented earlier in this docket. There are many cases where family members could not pay the collect calling bill due to the sheer size of the amount being billed. With a prepaid system, family members will decide up front how much calling to pay for, which will drastically reduce the bad debt of prepaid calling compared to collect calling. In light of the lack of any serious support for a contrary finding and the degree of control the service provider enjoys with a prepaid

account, it must be concluded that the cost of prepaid calling is much closer to the cost of debit calling than it is to the cost of collect calling.

VI. Arbitrage

22. Pay Tel argues that “Rate arbitrage is currently occurring in jails in various states, but the problem will be made much worse by the Petitioners’ proposal.”¹⁰ This is not true.¹¹ As Pay Tel asserts, some persons receiving interstate inmate calls procure telecommunications services using numbers that are local to the facilities where the calls originate. Prisoners and their families are drawn to these providers because of the current high cost of interstate inmate calling. Lowering the cost of interstate calling would decrease, rather than increase, incentives to use these services, contrary to Pay Tel’s assertions. Pay Tel argues that the requested benchmark interstate rates would be lower than local inmate rates in most jurisdictions, reversing the incentives and producing the opposite arbitrage behavior. Based on information provided by Petitioners, I understand that Pay Tel’s local inmate collect rate data is not reliable and that it cannot be assumed that, on balance, local inmate calling rates in jails and other local facilities are significantly higher than the requested benchmark rates. Thus, Pay Tel’s argument is not factually supported.

23. The Pay Tel letter makes the ludicrous claim that “it is clear from their filings that the Petitioners have no regard for the ability of the law enforcement community to maintain adequate security in confinement facilities.”¹² I have always gone on record that any changes to prison calling must always first recognize the security needs of the prison. Lower rates are only a

¹⁰ Pay Tel Letter at 4.

¹¹ The arbitrage argument is made directly by Pay Tel, since Mr. Wood only mentions arbitrage briefly in a footnote. Wood Declaration, ¶ 17 n.5. Thus, they have presented no expert testimony on the arbitrage issue.

¹² Pay Tel Letter at 4.

threat to profits, not prison security. Pay Tel's security argument is only a scare tactic designed to discredit my testimony. If interstate rates become cheap enough, the economic incentive to bypass or arbitrage the rates will disappear, as it always has in other arbitrage situations generated by excessive rates.

24. Similarly, Pay Tel says that the requested benchmark rates will somehow "encourage" prisoners to use cell phones to bypass the prison calling systems. Again, that is economic gibberish. There are only two reasons why prisoners would want to use cell phones – either to bypass the high cost of calling or to bypass the security measures. The requested benchmark rates would lower rates and would thus eliminate or greatly reduce the economic incentive to bypass the prison calling system by using cell phones. I sympathize with and support prison officials in looking for ways to keep cell phones out of prisons, a task that would be made much easier by reducing long distance inmate calling rates.

25. One final issue about this arbitrage argument is that jails and other small correctional facilities, which seem to be the main concern of the Pay Tel Letter, generally have very transient prisoner populations. Any arbitrage theory relies on the ability of the parties receiving inmate calls to learn about and procure services using telephone numbers with the appropriate area codes. The jails and other local facilities that are the focus of Pay Tel's argument have too high a turnover rate to allow for such sophisticated, multi-step behavior. The *weekly* turnover rate for jails housing fewer than 500 inmates is over 80 percent and over 100 percent at facilities with fewer than 100 prisoners.¹³ That is too short a period of time to enable parties receiving inmate calls to arrange for bypass services with the appropriate numbers. At larger facilities, where turnover is lower, there is more time for corrections personnel to check the telephone numbers that inmates request permission to call. Thus, even if Pay Tel's arbitrage

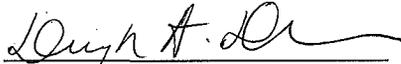
¹³ Bureau of Justice Statistics, U.S. Dep't of Justice, *Jail Inmates at Midyear 2008*, Table 4 (Mar. 2009).

argument made economic sense and was supported by the rate data, which it is not, the argument depends on a scenario that is the least likely in the very situations where Pay Tel is most concerned about such behavior.

VII. Other Issues

26. Neither Pay Tel nor Mr. Wood clarified an issue I raised in my last declaration, which is the time frame associated with the total minutes that were used in his Cost Study. Mr. Wood showed an average of 144,693 minutes for the 28 facility sample, with no indication of whether this represents a month, a week or a day. I assumed in my analysis that he meant 144,693 minutes per day, but if it was for a longer period of time, his conclusions are even less representative and less meaningful for most interstate inmate calls than I realized.

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


DOUGLAS A. DAWSON

Executed on this 2nd day of November, 2009.