City of Detroit

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DATE: March 13, 2009

TO: The Honorable Alberta Tinsley-Talabi, Chairperson
Public Health and Safety Standing Committee

FROM: Loren E. Monroe, CPA
Auditor General JV for

RE: **Contract 2779093 - Global Tel*Link Corporation**

CC: All City Council Members

On February 23, 2009, the Public Health and Safety Standing Committee referred the questions listed below regarding the contract between Global Tel*Link Corporation (Global) and the Detroit Police Department (DPD) to the Office of the Auditor General:

Background

Currently AT&T provides inmate telephone service to DPD facilities. AT&T is discontinuing its inmate telephone services and is in the process of transferring these services to Global. Under the terms of the contract between the DPD and Global, Global will provide the equipment and management services necessary for an inmate telephone system. The basic terms of the contract are:

- Term: Three years
- Compensation to the City: A one time signing bonus of $10,000 plus 23.5% of the gross revenues billed or prepaid for all phones covered.
- Rates (to users): Rates not to exceed the maximum rates as authorized by the Michigan Public Service Commission and the Federal Communications Commission

Questions

1. <u>What is the interest rate on the contract?</u>
   The contract does not have an interest rate. The commission rate payable to the City is 23.5% of gross revenues.

2. Does the contract subject the City to any liability due to overcharging inmates and their families for telephone services?
   If a court were to decide that the contract permitted inmates and their families to be overcharged, the City might incur some liability. Most cases involving overcharging seem to have resulted in the service provider being fined. The Law Department could provide a legal opinion on this issue. We have, however, included a summary (Attachment A) of information we found addressing this issue.

3. What is the estimated total revenue to be received?
   The estimated annual revenue from the contract is $19,200. This estimate is based on the phone system being installed at four locations (Northwest District, Eastern District, Northeast District and Western District). Each location will generate approximately $400 per month. Revenue will vary depending on the number of inmates in the facilities, the number of calls placed and the types of call placed. The typical tariff for inmate telephone services includes a base charge for non-local calls plus a per-minute charge. Local calls are generally charged a flat rate. Collect calls are subject to additional charges.

4. Does the right of the Auditor General to audit the contract need to be clarified?
   The contract does not have an explicit clause outlining the right of the Office of the Auditor General to audit the contract and the revenues generated. It does provide that Global is to maintain records sufficient to permit proper determination of funds due and that such records should be made available for review upon request. Past experience with other contractors indicates that the contractor may interpret "sufficient records" differently than the OAG.

5. Is there a scope of services for the contract?
   A list of equipment to be provided is included but a standard scope of services is not included.

Conclusions and Recommendations

1. **The contract does not contain a tariff or list of charges.**
   It is not possible to determine whether the rates to be charged are excessive. The Michigan Public Service Commission does not regulate inmate telephone rates. The contract parties may negotiate the rates to be charged. We recommend that the rates be incorporated into the contract and that a determination be made, prior to the contract being approved, that the rates are reasonable.

2. Indemnification Language
   We compared that the indemnification language of the contract with the City's standard contract language and with language contained in Global's contract with Polk County, Florida. Our analysis indicated that the language should be

strengthened and recommend that the Law Department review the adequacy of the Global language or that the City's standard language be used.

3. Right to Audit
   We recommend that the City's standard right to audit clause be incorporated into the contract.

Attachment A

Issues Related to Overcharging for Inmate Telephone Services

State of New York

The State of New York was the subject of a lawsuit from inmates asserting that their constitutional rights had been violated because of excessive (600%) overcharges on inmates' calls under the phone contract.

It was asserted that New York State had long viewed prison telephones as a cash cow. In 1998, New York made more than $20 million from its exclusive phone contact with MCI. The phone company provided service to 3,500 pay phones in the state prison system. In exchange, the state kept most of the money the phones generated under MCI's "maximum security rate plan," or 60 cents of every dollar. The high commissions, in part, had caused rates to remain high at prisons in New York and across the country even as phone prices were lowered for the average consumer.

The lawsuit, Walton v. NYSDOCS, sough an order prohibiting the State and MCI from charging exorbitant rates to the family members of prisoners to finance a 57.5% commission to the State of New York. MCI charged inmate family members a 630% markup over consumer rates to received a collect call from inmates.

Overcharging equals an "unlegislated tax." The Walton lawsuit was based on the fact that the plaintiffs' constitutional right to due process, freedom of speech and association, and equal protection under the law were violated by a discriminatory and burdensome tax levied by the NYSDOCS each month without legislative authorization.

Other States

The debate over price gouging in prisons has sparked antitrust lawsuits in several states, including New York, Illinois, Michigan and Indiana, In California, the Utility Consumer's Action Network won a settlement with MCI, after the phone company admitted to billing errors that overcharged friends and families for inmate collect calls.

In Louisiana, the State Public Service Commission ordered Global Tel*Link to refund $1.2 million in overcharges from June 1993 to May 1994. Global Tel*Link was also found to be overcharging customers in Tennessee.

Big phone companies, including Global Tel*Link, providing inmate telephone system in some part of the country, were fined for overcharging for the phone calls placed by inmates. The Washington Utilities and Transportation Commission fined AT&T more than $300,000 for overcharging inmates on collect calls at two state prisons. In 1997, the Florida Public Service Commission ordered MCI to refund overcharges on collect calls made from Florida correctional facilities; to settle the claims, MCI paid a $10,000 fine and put $189,482 into an inmate fund. In 1996, San Antonio-based

North American Intelecom agreed to refund $400,000 overcharged to those who accepted inmates collect calls. In Louisiana, the State Public Service Commission ordered Global Tel*Link to refund $1.2 million in overcharges from June 1993 to May 1994.

The arguments advanced by the government, in the various cases, were:

- The profit generated by the contract was used for the inmate fund, which promotes the health and well being of inmates.
- An inmate phone system is different from outside phone system. It needs recording and monitoring. The security measures attached to the inmate phone system have two purposes: to increase prison security and to enhance public safety.
- Generating revenue for the government to maintain its own phone system for inmates.