Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	**WC Docket No. 12-375**
	)	
Rates For Interstate Inmate	)	
Calling Services	)	

COMMENTS OF

MARTHA WRIGHT, ET. AL.,

THE D.C. PRISONERS' LEGAL SERVICES PROJECT, INC.,

CITIZENS UNITED FOR REHABILITATION OF ERRANTS,

PRISON POLICY INITIATIVE, AND

THE CAMPAIGN FOR PRISON PHONE JUSTICE

Lee G. Petro
Jennifer L. Oberhausen
Jennifer M. Roussil

DRINKER BIDDLE & REATH LLP
1500 K Street N.W.
Suite 1100
Washington, DC 20005-1209
(202) 230-5857

March 25, 2013

SUMMARY

The FCC has the sole authority to regulate interstate telecommunications services. The Petitioners have been urging the FCC to exercise its authority to ensure that "fair", "just" and "reasonable" telephone rates are charged to inmates and their friends and families for more than 12 years. Despite the fact that the Petitioners filed two separate proposals to provide relief to the affected parties, the FCC has failed to act.

Since 2001, when the U.S. District Court directed the FCC to address this issue "with dispatch," Inmate Calling Service providers have benefited from this inaction, and have made billions of dollars by charging rates that far exceed the cost of providing ICS services. As a result, inmates, their families, and our larger society, have suffered greatly. During this same time, the technology involved in providing ICS calls has led to enormous cost-savings for the ICS providers, but ICS customers have not enjoyed concomitant relief through reduced rates. The only parties benefiting from these technological developments are the ICS providers and the state, county and local prisons which divide the spoils of these excess profits through revenue-sharing practices.

As demonstrated herein, the lack of FCC oversight to ensure just and reasonable ICS rates, has caused significant harm to millions of people each year. Despite calls from many organizations, including the FCC's Consumer Advisory Committee, the National Association of Regulatory Utility Commissioners, the American Bar Association, the American Correctional Association, and U.S. and state legislators, the FCC has failed to act.

The issuance of the Notice of Proposed Rulemaking in this proceeding reflects the FCC's opportunity to end the abuses in the ICS industry and provide substantial relief to those who are directly and adversely affected. The urgent need for FCC action is clear, and there is no legitimate question that the FCC has the authority to provide the relief the Petitioners seek.

TABLE OF CONTENTS

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
	)	**WC Docket No. 12-375**
Rates For Interstate Inmate	)	
Calling Services	)	

COMMENTS

Martha Wright, Dorothy Wade, Annette Wade, Ethel Peoples, Mattie Lucas, Laurie Nelson, Winston Bliss, Sheila Taylor, Gaffney & Schember, M. Elizabeth Kent, Katharine Goray, Ulandis Forte, Charles Wade, Earl Peoples, Darrell Nelson, Melvin Taylor, Jackie Lucas, Peter Bliss, David Hernandez, Lisa Hernandez, Vendella F. Oura, along with The D.C. Prisoners' Legal Services Project, Inc., Citizens United for Rehabilitation of Errants, the Prison Policy Initiative, and The Campaign for Prison Phone Justice (jointly, the "Petitioners") hereby submit these Comments in response to the Notice of Proposed Rulemaking, released on December 28, 2012, in the above-captioned proceeding.[1]

In the *NPRM*, the Federal Communications Commission ("FCC") granted two long-pending petitions for rulemaking, filed in 2003 and 2007[2], which sought to establish just and reasonable "charges, practices, classifications, and regulations" relating to inmate calling

---

[1] *Rates for Interstate Inmate Calling Services*, Notice of Proposed Rulemaking, 27 FCC Rcd 16,629 (2013)(the "*NPRM*"). The *NPRM* was published in the Federal Register on January 22, 2013, and established March 25, 2013 as the deadline for filing Comments in this proceeding. 78 FED REG 4369 (rel. Jan. 22, 2013).

[2] *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Petition of Martha Wright et al. for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking, CC Docket No. 96-128 (filed Nov. 3, 2003) (the "*First Wright Petition*"); S*ee also Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Petitioners' Alternative Rulemaking Proposal, CC Docket No. 96-128, at 4-6 (filed Mar. 1, 2007) (the "*Alternative Wright Petition*").

services ("ICS").[3] Despite the fact that both the *First Wright Petition* and the *Alternative Wright Petition* were separately released for public comment, and an extensive record was established for each, the *NPRM* requested that the record be updated, and specifically required the ICS providers to submit relevant cost data.[4]

As detailed below, the Petitioners urge the FCC to adopt benchmark ICS rates for interstate calls originating from public, private, state, county, and local correctional and detention facilities. The *Alternative Wright Petition* sought the establishment of benchmark ICS rates of $0.20 per minute for debit calls, and $0.25 per minute for collect calls, with no per-call charge. The *Alternative Wright Petition* demonstrated that these benchmark ICS rates were just and reasonable, and still would have delivered a fair return to the ICS providers. Despite this showing, the ICS providers repeatedly rejected the proposed benchmark rates, and the FCC failed to take action over the intervening 5 years.

During this period, while the Petitioners awaited FCC action, the state of the ICS industry has changed considerably. Only four ICS providers now account for nearly all telephone services provided to inmates, and two ICS providers, and Global Tel*Link Corporation (GTL) and Securus Technologies, control more 70% of the market. The consolidation of the ICS providers has led to large, centralized ICS systems, whereby all calls leaving correctional and detention centers are routed first to the ICS providers' call centers, where the applicable security safeguards are applied. As discussed below, the consolidation of the ICS providers, and the centralized application of safety protocols, has led to the substantial reduction in the costs associated with providing ICS. While the *Alternative Wright Petition*

---

[3] 47 U.S.C. § 201(b) (2012) ("All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.").

[4] *NPRM*, 27 FCC Rcd at 16,637.

sought to establish per-minute rates of $.20 and $.25 respectively, those rates are no longer just and reasonable.

Therefore, it is now incumbent upon the FCC to establish a benchmark ICS rate cap at **$0.07 per minute, for debit, pre-paid, and collect calls, with no per-call rate, and no other ancillary fees or taxes, from all private, public, state, county and local correctional and detention facilities**. Any justification for rates above the proposed $0.07 per minute benchmark ICS rate has evaporated during this long-pending proceeding. Moreover, this proposed rate will continue to provide the ICS providers a fair profit for their services, regardless of the size of the institution or the volume of originating calls from any given facility.

BACKGROUND

The individually-named parties to this proceeding are the original plaintiffs in a class action brought in the United District Court for the District of Columbia against Corrections Corporation of America in 2000, seeking to set aside exclusive telephone contracts among the private prisons and certain telephone companies. The matter was subsequently referred to the FCC in August 2001 to act "with dispatch."[5] These parties have prosecuted actively this action through The D.C. Prisoners' Legal Services Project, Inc., before the FCC since 2001, and await a determination from the FCC on their proposals.

Citizens United for Rehabilitation of Errants (CURE) is a grassroots criminal justice reform organization with 18,000 members throughout the country. Approximately 60% of CURE's members are incarcerated; many of their members have loved ones who are incarcerated. CURE has been working since the 1990s to reduce the high cost of calls for

[5] *Wright v. Corrections Corp. of America*, C.A. No. 00-293 (GK), Memorandum Opinion, slip op. at 15 (D.D.C. Aug. 22, 2001). A copy is provided as Exhibit A.

incarcerated persons and their loved ones. Since 2000, CURE has conducted the eTc Campaign (Equitable Telephone Charges) whose sole purpose is to promote lower prison phone rates.[6]

The non-profit, non-partisan Prison Policy Initiative was founded in 2001 to examine how the American system of incarceration negatively impacts everyone, not just the incarcerated. In 2012, the organization prepared the report "The Price To Call Home: State-Sanctioned Monopolization In The Prison Phone Industry," on how the inmate calling service industry hurts families and undermines public safety. [7]

The Campaign for Prison Phone Justice is a national effort challenging high prison phone rates, including kickbacks to prisons from ICS providers. The Campaign is advocating across the country that those entities having authority over the rates should lower them where they are not reasonable. The Campaign is jointly led by the Media Action Grassroots Network, Working Narratives, Prison Legal News and diverse civil and human rights organizations. The campaign is also working with Participant Media as part of the social action campaign for Ava DuVernay's film *Middle of Nowhere*.

The Petitioners represent just a small fraction of the parties seeking ICS reform. As noted in the *NPRM*, there is substantial focus in and concern about the "wide disparity among interstate interexchange ICS rate levels and significant public interest concerns."[8] However, this substantial interest is not a recent phenomenon.

The Petitioners, along with many other national, state, and local public interest and social justice organizations have been urging rate reform for years. Despite these efforts, the *First Wright Petition* and the *Alternative Wright Petition* remained pending before the FCC for years after the District Court directed the FCC to act "with dispatch." The *NPRM* asks the

---

6 *See* www.etccampaign.com.

7 www.prisonpolicy.org/phones/report.html (Sept. 11, 2012).

8 *NPRM*, 27 FCC Rcd at 16,629.

parties to refresh the record on many of the points that have been extensively and repeatedly addressed by the Petitioners and the ICS providers since 2003.

As discussed below, while the statutory obligations of the FCC have not changed over the intervening years, the "facts on the ground" have changed considerably. Technology has driven the actual cost of ICS calls to a fraction of what they were when the petitions were filed, thus eliminating any reasonable explanation for charging exorbitant ICS rates to customers. Since the parties to the ICS contracts share in the bounty of excessive profits earned under the agreements, there is no incentive for either party to take into account the interests of the actual customers. Thus, the need for the FCC's intervention to establish "just and reasonable" rates is both real and immediate.

DISCUSSION

I. THE FCC HAS STATUTORY AUTHORITY TO ESTABLISH PETITIONER'S PROPOSED RATES.

In the *NPRM*, the FCC requests comment on the "scope of the Commission's legal authority to regulate ICS."[9] The *NPRM* focuses both on Sections 276 and 201 of the Communications Act of 1934, as amended (the "Act") as possible sources for such authority. The *NPRM* also raises issues with respect to the transmission of calls using VoIP technology, and asks whether the use of VoIP "impacts" the statutory analysis.[10]

As discussed below, there is no legitimate question that the Act provides the FCC with sufficient authority to regulate all ICS rates and practices. Section 276 was written specifically to apply to inmate telephone service,[11] and Section 201(b) prohibits unjust and unreasonable rates and practices.[12] These provisions apply to ICS providers regardless of the transmission

---

9 *NPRM*, 27 FCC Rcd 16,647.

10 *Id*.

11 47 U.S.C. § 276 (2012).

12 47 U.S.C. § 201(b) (2012).

service being used, and must lead to the FCC's regulation of ICS rates in the form of a benchmark of setting maximum allowable per-minute rates.

1. **Section 276 Of The Communications Act Requires FCC Action.**

Congress granted the FCC explicit authority to regulate ICS under Section 276 of the Act. Section 276 directs the FCC to "establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every intrastate and interstate call,"[13] and specifically includes "inmate telephone service in correctional institutions" in the definition of "payphone services."[14]

In implementing this provision, the FCC has held that "fair compensation" to payphone service providers is not a one-way street. Instead, Section 276 requires that rates "balance the interests of [payphone service providers] and those parties that will ultimately pay" the required compensation, so that rates are "fair to both payphone owners and the beneficiaries of these calls."[15] The FCC ultimately utilized a "bottom-up" methodology to determine what a "fair" compensation rate would be in the context of payphone services. This "bottom-up" approach looked at the separate cost elements involved in a call, and established a rate that survived judicial review. In upholding the "fair" rate, the U.S. Court of Appeals determined that the FCC's approach that involved the examination of the separate cost elements was appropriate.[16]

Moreover, federal courts have recognized the FCC's jurisdiction under Section 276 to address ICS rates and practices. For example, in referring the *Wright* case to the FCC under the doctrine of primary jurisdiction, the district court said, "Congress has given the FCC explicit

---

[13] 47 U.S.C. § 276(b)(1)(A) (2012).

[14] 47 U.S.C. § 276(d) (2012).

[15] *See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Report and Order, 14 FCC Rcd 2545, 2570-2571, 2579 (1999) *aff'd*, *Am. Pub. Commc'ns Council v. FCC*, 215 F.3d 51, 58 (D.C. Cir. 2000).

[16] *Id.*

statutory authority to regulate inmate payphone services in particular."[17] Another federal district court has also recognized that "Section 276 directs the FCC to create and administer regulations concerning the provision of payphone services, including both interstate and intrastate calls," and that "Section 276 grants the FCC specific authority to regulate inmate payphone service."[18]

In fact, at least one of the ICS providers has already conceded the applicability of Section 276 to the instant matter. In particular, T-Netix (now Securus) stated:

> As the Commission has consistently held, inmate payphones are governed by Section 276 just as are public payphones...the Commission may exert federal authority over the rates applied to inmate phones...[and]...Section 276 would operate to prohibit any state authority from imposing or permitting site commissions for inmate services.[19]

Finally, the U.S. Supreme Court has affirmed the role of Section 276 in prescribing rates, and noted the interplay between the authority of Section 276 to establish rates, and the agency's authority under Section 201, discussed *infra*, to address unreasonable rates and practices.[20] Therefore, there can be no doubt that the FCC may use its authority under Section 276 to examine and to regulate ICS phone rates and practices.

2. **Section 201 Of The Communications Act Requires Just And Reasonable Rates.**

Section 201(b) provides the FCC with the broad legal authority to regulate ICS.[21] Under Section 201(b), the FCC has general authority to prescribe rules and regulations to prohibit

---

[17] *Wright v. Corrections Corp. of America*, C.A. No. 00-293 (GK), Memorandum Opinion, slip op. at 8 (D.D.C. Aug. 22, 2001) (citing 47 U.S.C. § 276(d)).

[18] *Fair v. Sprint Payphone Svcs., Inc.*, 148 F. Supp. 2d 622 (D.S.C. 2001).

[19] *See Initial Comments of T-Netix, Inc.*, filed May 24, 2002, pg. 6 (T-Netix merged with Evercom Systems, Inc. on September 9, 2004).

[20] *See Global Crossing Telecommunications, Inc. v. Metrophones Telecommunications, Inc.*, 550 U.S. 124 (2007)("[Section 276] nowhere forbids the FCC to rely on §201(b). Rather, by helping to secure enforcement of the mandated regulations the FCC furthers basic §276 purposes.").

[21] 47 U.S.C. § 201(b) (2012).

unjust and unreasonable interstate charges and practices related to interstate and foreign communications.

As applied in this proceeding, Section 201(b) provides the FCC with the authority to (i) prohibit unjust or unreasonable rates, (ii) disallow an additional call set-up charge when inmates' calls are disconnected, mandate that ICS providers offer debit calling, and (iii) prohibit ancillary charges such as those imposed for adding additional funds to a pre-paid ICS account. Specifically, Section 201(b) of the Act provides that, "[a]ll charges [or] practices . . . for and in connection with [interstate or foreign communication by wire or radio] . . . shall be just and reasonable, and any such charge [or] practice . . . that is unjust or unreasonable is hereby declared to be unlawful."[22]

In addition, Section 201(b) authorizes the FCC to "prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter."[23] In the recent *Connect America Fund Order*, relying on Supreme Court precedent, the FCC confirmed that its "rulemaking authority under 201(b) *explicitly* gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies. . . ."[24]

An ICS telephone call fits squarely within the definition of interstate or foreign communication by wire or radio, and the FCC may therefore prescribe rules and regulations to ensure that ICS charges and practices are just and reasonable. The language of Section 201(b) is expansive, granting the FCC jurisdiction to prohibit *all* unjust and unreasonable practices in connection with interstate or foreign communication by wire or radio. Section 201(b) makes no distinction between services provided at privately- and publicly-administered facilities.

Moreover, federal courts across the nation have determined that the FCC has primary jurisdiction to resolve this matter. For example, the 7th Circuit explicitly confirmed that a claim

---

22 *Id.*

23 *Id.*

24 *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17,663 (2011) (citing *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 380 (1999)).

that ICS providers charge unreasonably high rates falls "squarely within the FCC's jurisdiction."[25] The court further explained that a comparison of ICS rates to the rates of comparable calls of other persons is within the primary jurisdiction of the regulatory agency.[26]

Indeed, as noted above, the District Court for the District of Columbia directed the class action Petitioners in this case to bring their claims to the FCC in accordance with the doctrine of primary jurisdiction. In directing the plaintiffs to file their complaints with the FCC, the court said, "First and foremost, the FCC is statutorily charged with handling all claims contesting the reasonableness of telephone rates. 47 U.S.C. § 201(b) . . . Consequently, courts routinely refer rate challenges to the FCC."[27] The court continued, "Significantly, the FCC, in exercising its mandate to regulate the reasonableness of rates, is authorized to reject inclusion in Defendants' cost-basis of the 25-50% commissions received by [ICS providers]. Therefore, insofar as [Petitioners'] challenge is to the commissions received by [ICS providers] and the impact those commissions have on increasing rates, the FCC can adequately address those issues by prohibiting long-distance carriers from considering commission costs in their cost-basis."[28]

Further, the FCC has recognized that the protection of the public "from unfair and deceptive practices or possible rate gouging" is a "substantial governmental interest."[29] While the FCC declined to set benchmark rates in the *1998 Billing Party Preference Order*, this was due to the fact that, at that time, "rates [were] filed with the Commission and must conform to

---

[25] *Arsberry v. Illinois*, 244 F.3d 558, 563 (7th Cir. 2001) ("the complaint includes a claim under the Federal Communications Act...that the phone companies charge unreasonably high rates and also engage in rate discrimination. These claims are squarely within the FCC's jurisdiction.").

[26] *Id.* at 565 ("The plaintiffs are asking us to compare the rates on inmate calls with rates on comparable calls of other persons; that is what we cannot do but the regulatory agencies can.").

[27] *Wright v. Corrections Corp. of America*, C.A. No. 00-293 (GK), Memorandum Opinion, slip op. at 6-7 (D.D.C. Aug. 22, 2001).

[28] *Id.* at 7.

[29] *Billed Party Preference for InterLATA 0+ Calls*, Second Report and Order and Order on Reconsideration, 13 FCC Rcd 6122, 6137 (1998).

the just and reasonable requirements of Section 201 of the Act."[30] The FCC also believed that benchmarks might stifle the development of competition. However, in 2013, ICS providers do not submit their rates to the FCC,[31] resulting in a substantial need for the FCC to step in, and establish "just and reasonable" ICS rates and practices in this proceeding.

Additionally, the FCC has specific authority to establish a benchmark ICS rate under Section 205(a) of the Act when addressing unjust or unreasonable rates.[32] The FCC has used rate comparisons, benchmarks, and other factors to evaluate the justness and reasonableness of rates in a variety of proceedings, including rulemakings.[33] The authority provided to the FCC under Section 205(a) does not require a full evidentiary hearing, but rather can be carried out through a notice and comment rulemaking proceeding.[34]

Specifically, the FCC examined this question at length in the *Return Represcription and Enforcement Processes* proceeding, where it considered both case law, and the requirements

---

30 *Id.*, at 6156.

31 In fact, ICS providers have flatly refused to submit their specific cost data to the FCC, or to meet with the Petitioners' counsel despite being specifically requested to do in August 2011. *See Letter of Stephanie A. Joyce, Esquire*, Counsel to Securus Technologies, dated September 20, 2011 ("The Commission has expressed interest in obtaining updated cost information from Securus...Securus will provide the Commission with information as to how its costs today differ from its costs at the time of the Wood Study, *expressed as a percentage figure*."). Subsequently, in response to the FCC's request for updated cost information, Securus filed an eight sentence letter, merely stating that its costs had increased 16%, but providing no data in support of that assertion. *See Letter of Stephanie A. Joyce, Esquire*, Counsel to Securus Technologies, dated October 11, 2011. A copy of the "updated cost information" submission is attached as Exhibit B.

32 47 U.S.C. § 205(a) (2012).

33 *See, e.g., Access Charge Reform*, First Report and Order, 12 FCC Rcd 15,982, paras. 75-87 (1997*), aff'd Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998); *See also Access Charge Reform*, Sixth Report and Order, 15 FCC Rcd 12962, paras. 58, 70-75 (2000), *aff'd in pertinent part, Texas Office of Pub. Util. Counsel*, 265 F.3d 313 (5th Cir. 2001).

34 *Connect America Fund*, 26 FCC Rcd at 17,870 ("In *AT&T v. FCC*, for example, the Second Circuit made clear that because section 205 does not require a hearing 'on the record,' the Administrative Procedure Act (APA) does not require a full evidentiary hearing in section 205 prescription proceedings. 572 F.2d 17, 21-23 (2d Cir. 1978). Moreover, the court found that the language of section 205(a) itself did not impose greater hearing requirements than the APA - concluding that AT&T 'may not complain that it had anything less than a 'full opportunity' to be heard' after receiving, in the context of the particular proceeding on review, three rounds of comments. 572 F.2d at 22.")

under Section 553 the Administrative Procedure Act.[35] The FCC concluded that the requirements under Section 205(a) and the APA which:

> generally define[s] what administrative procedures are required of federal agencies, does not require trial-type hearings in ratemakings. Only if an agency's enabling statute requires that rules 'be made on the record after opportunity for an agency's hearing' does Section 553 mandate trial-type procedures in addition to, or instead of, notice and comment procedures.[36]

Therefore, since Section 205(a) does not require "on the record" proceedings, the FCC need only follow the standard notice and comment procedures in the instant proceeding.

Moreover, in *AT&T Corp. v. Business Telecom, Inc.*, the FCC based its reasonableness assessment on comparable rates in a formal complaint case.[37] In that case, AT&T and Sprint brought a complaint under section 208 of the Act against BTI, alleging that BTI's access rates were unjust and unreasonable under section 201(b).[38] The FCC compared BTI's access rates to other, comparable rates and found they were substantially higher without justification, thereby violating section 201(b).

In choosing to use a comparable rate method in determining whether BTI's rates were just and reasonable, the FCC recognized that it possesses broad discretion in selecting methods to evaluate the reasonableness of rates and stated, "[a]s long as the FCC makes a reasonable

---

[35] *Amendment of Parts 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Represcription and Enforcement Processes*, Report and Order, 10 FCC Rcd 6788, 6814, (1995) (citing 5 USC § 553).

[36] *Id.* (*citing United States v. Florida East Coast Railway Co.*, 410 U.S. 224 (1973), *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council*, 435 US 519 (1978), and *AT&T v. FCC*, 572 F.2d 17 (2d Cir. 1978)).

[37] *AT&T Corp v. Business Telecom, Inc.*, 16 FCC Rcd 12312, 12324 (2001), recon. denied, 16 FCC Rcd 21750 (2001)("*BTI*"). See also, *Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9940-41 (establishing benchmark based on comparable rates in a rulemaking proceeding)("*Seventh Access Charge Order*"); *Beehive Tel. Co., Inc.*, 13 FCC Rcd 12,275, 12,285-87 (1998) (prescribing rates in a tariff investigation based on costs and investments of comparable carriers).

[38] 16 FCC Rcd 12,312 (2001).

selection from the available alternatives, its selection of rate evaluation methods will be upheld, even if the court thinks that a different decision would have been more reasonable."[39]

Finally, the FCC has also taken steps to regulate rates when it discovers a wide disparity between rate of compensation, and the actual cost for providing Video Relay Services. In declining to use past cost data, the FCC stated "we decline to perpetuate the large discrepancy between actual costs and provider compensation in the face of substantial evidence that providers are receiving far more in compensation than it costs them to provide service."[40]

Thus, when the market fails to constrain rates for a given service, the FCC looks to the rates charged for other services using comparable network functions to assess the reasonableness of the service rate in question. The FCC has recognized that "services offered under substantially similar circumstances using similar facilities lead to the expectation of similar charges."[41] In this case, the market fails to constrain ICS rates because, as in the CLEC access charge context, in which the FCC set benchmark rates, the party paying the rate is not the party choosing the carrier.[42] Therefore, a FCC decision using comparable ICS rates in other states to establish benchmarks is consistent with its actions in *BTI* and *Beehive*.

3. <u>FCC Has Authority to Regulate ICS Calls Using VoIP</u>.

Finally, the FCC need not resolve the classification of interconnected VoIP service in order to regulate ICS rates and practices.[43] Instead, the FCC has authority to regulate ICS rates

---

[39] *BTI*, at 12,325 (citing *Southwestern Bell Tel. Co. v. FCC*, 168 F.3d 1334 (D.C. Cir. 1999)).

[40] *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 25 FCC Rcd 8689, 8695 (2010), *aff'd Sorenson Communications, Inc. v. FCC*, 659 F.3d 1035 (2011)("agency ratemaking is far from an exact science and involves policy determinations in which the agency is acknowledged to have expertise.").

[41] *Beehive* at 12324.

[42] *Seventh Access Charge Order*, 16 FCC Rcd at 9935.

[43] *NPRM*, 27 FCC Rcd at 16,647.

and practices whether ICS is provided solely through the PSTN or involving interconnected VoIP technologies.[44]

First, while the FCC has not yet classified interconnected VoIP as either an information service or a telecommunications service,[45] the FCC has authority to regulate ICS provided with VoIP regardless of how the FCC ultimately decides to classify interconnected VoIP. If the FCC ultimately classifies interconnected VoIP as a telecommunications service, ICS provided through VoIP technologies explicitly will be subject to FCC jurisdiction and regulation as explained above, in the same manner as all other telecommunications services under Title II of the Act.

Even if the FCC did not exercise authority to regulate the rates for VoIP-based prison telephone services under Section 201 of the Act it has ample authority to regulate prison phone rates under Section 276 of the Act. Section 276(b)(1) provides:

> the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that (A) 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, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation.[46]

---

[44] The FCC defines interconnected VoIP services as services that (1) enable real-time, two-way voice communications; (2) require a broadband connection from the user's location; (3) require IP-compatible customer premises equipment; and (4) permit users to receive calls from and terminate calls to the PSTN. *E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10,245, 10,258-58 (2005) (*VoIP 911 Order*) (defining "interconnected VoIP service").

[45] *See IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4910 (2004) (*IP-Enabled Services Notice*). The FCC has resolved many of the issues raised in the *IP-Enabled Services Notice* and has exercised its ancillary jurisdiction under Title I of the Act to apply various Title II regulations to VoIP providers. *See VoIP 911 Order*, 20 FCC Rcd at 10246; *See* also *Universal Service Contribution Methodology*, 21 FCC Rcd 7518, 7538-43 (2006) (*2006 Interim Contribution Methodology Order*), *aff'd in part, vacated in part sub nom. Vonage Holdings Corp. v. FCC*, 489 F.3d 1232, 1244 (D.C. Cir. 2007); *See also Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6954-57 (2007) (*CPNI Order*); *See also IP-Enabled Services*, Report and Order, 22 FCC Rcd 11,275, 11,283-291 (2007) (*TRS Order*); and *See Telephone Number Requirements for IP-Enabled Services Providers*, Report and Order, 22 FCC Rcd 19,531 (2007) (*VoIP LNP Order*).

[46] 47 U.S.C. § 276(b)(1) (2012).

Nothing in this provision suggests that the regulatory authority given to the FCC is limited to any specific technology or means of providing payphone services or that it matters for purposes of the provision whether the service provider is considered a "telecommunications carrier" or some other kind of service provider. Furthermore Section 276(d) specifically includes "inmate telephone service in correctional institutions" among the categories of service regulated as "payphone service" under the Act.

Thus, even in the absence of Section 201, the FCC would have authority to regulate the compensation of providers of both interstate and intrastate "inmate telephone service in correctional institutions" to ensure that those providers are "fairly compensated". While fair compensation should not be so low as to deny the service provider an opportunity to earn a reasonable profit such compensation is not "fair" if it is so high as to generate profit in excess of that required to support the network investment used to provide the service. Thus the rate for inmate telephone service is not "fair" if it is so low as to cause the service provider to fail and similarly is not "fair" if it overcompensates the service provider at the expanse of a captive (literally) customer and members of his family who have no alternative service provider. The FCC has already found that commissions are not a component of the cost of providing prison phone services and are more appropriately characterized as additional profit. Since that profit does not support investment required to provide the inmate telephone services it should not be recovered through the rates for those services.

Finally, the FCC also has ample authority to regulate ICS rates and practices resulting from ICS calls handled using VoIP technology under its ancillary jurisdiction. Ancillary jurisdiction may be employed at the FCC's discretion, when Title I of the Act gives the FCC subject matter jurisdiction over the service to be regulated and the assertion of jurisdiction is reasonably ancillary to the effective performance of its various responsibilities.[47] Both

---

[47] *See United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968) (*Southwestern Cable*)(upholding certain regulations applied to cable television systems before the FCC had an

predicates for ancillary jurisdiction are satisfied in the context of regulating ICS rates and practices when provided through VoIP technologies.

As the FCC has previously concluded, interconnected VoIP service falls within the subject matter jurisdiction granted to the FCC under the Act.[48] Establishing a benchmark ICS rate, and prohibiting certain practices and ancillary fees connected with the ICS calls that use interconnected VoIP is reasonably ancillary to the effective performance of the FCC's responsibilities under Sections 1, 201, and 276 of the Act. To the extent ICS providers are replacing traditional ICS call transport with interconnected VoIP transport technology, it is critical that the same safeguards against unjust and unreasonable rates and practices apply both to legacy ICS services as well as to interconnected VoIP services.[49]

The FCC has previously held that interconnected VoIP cannot be separated into intrastate and interstate communications, and therefore is subject exclusively to federal regulation.[50] In the *Vonage Order*, the FCC clarified that "this FCC, not the state commissions, has the responsibility and obligation to decide whether certain regulations apply to DigitalVoice and other IP-enabled services having the same capabilities. For such services, comparable regulations of other states must likewise yield to important federal objectives."[51] Therefore, the FCC has the jurisdiction to regulate ICS calls provided using interconnected VoIP.

---

express congressional grant of regulatory authority over that medium.). *See also United States v. Midwest Video Corp.*, 406 U.S. 649, 667-78 (1972) (critical question was whether FCC had reasonably determined new rules would further the achievement of long established regulatory goals.).

48 *See VoIP 911 Order*, 20 FCC Rcd at 10,261-62 ("[I]nterconnected VoIP services are covered by the statutory definitions of 'wire communications' and/or 'radio communication' because they involve transmission of [voice] by aid of wire, cable, or other like connection . . . ' and/or transmission by radio . . . ' of voice. Therefore, these services come within the scope of the Commission's subject matter jurisdiction granted in section 2(a) of the Act.'").

49 *See TRS Order*, 22 FCC Rcd at 11,288.

50 *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22,404 (2004).

51 19 FCC Rcd at 22,405.

Finally, from a policy perspective, ICS provided through traditional telecommunications and ICS provided through interconnected VoIP must be treated equally under the law. In practice, the end user customer cannot differentiate between ICS provided over traditional facilities or interconnected VoIP. Further, the same policies necessitating just and reasonable ICS rates and practices apply regardless of the technology used. Any precedent in other contexts tending to show that VoIP services are competitive and that end users are not subject to unjust rates is inapplicable in the ICS setting.[52]

In the ICS context, the users (inmates and their families) do not have the ability to select between providers, which is true regardless of the actual facilities used to transport calls. Should the FCC apply regulations only to legacy ICS telecommunications services, providers would undoubtedly add a VoIP link from correctional facilities to the PSTN in an effort to avoid any regulations they found to be unfavorable. Therefore, the proposed benchmark ICS rates and practices must extend to interconnected VoIP ICS providers as well as those ICS providers that may use traditional telecommunications to deliver services.

---

[52] In the *IP-Enabled Services Notice*, the FCC stated, "While several of the regulatory obligations discussed in previous sections of this Notice may have general applicability to any entity that seeks to offer voice services, many of the "economic" regulations set forth here have been written to apply specifically to cases involving a monopoly service provider using its bottleneck facilities to provide services to a public that is without significant power to negotiate the rates, terms, and conditions of those services . . . As a threshold matter, therefore, we seek comment on whether any of these economic regulations are appropriate in the context of IP-enabled services, given that customers often can obtain these services from multiple, intermodal, facilities- and non-facilities-based service providers." *IP-Enabled Services Notice*, 19 FCC Rcd at 4912-13. In this proceeding, ICS providers are exactly the type of monopoly service providers using bottleneck facilities that economic regulations should apply to. The public is without significant power to negotiate the terms, rates and conditions of ICS, and therefore economic regulations are appropriate in the context of ICS provided over interconnected VoIP and traditional telecommunications services.

II. THE RATES PROPOSED HEREIN RESULTS IN "JUST AND REASONABLE" RATES REQUIRED UNDER THE COMMUNICATIONS ACT.

The *NPRM* sought comment on the per-call and per-minute aspects of the Petitioners' proposal.[53] The Petitioners previously had proposed establishing the ICS per-minute rates at $.20 for prepaid and debit calls, and $0.25 for collect calls. As discussed in this section, based on the technological developments and consolidation of the ICS industry, the Petitioners now propose that the FCC establish a benchmark ICS per-minute rate for all interstate calls at $0.07, regardless of the type of call (prepaid, debit, or collect) or the type or size of the institution, with no separate per-call charge, and no additional or ancillary fees.

Attached hereto as Exhibit C is a Declaration of Coleman Bazelon, a Principal in the Telecommunications and Media Practice Group at The Brattle Group, Inc., wherein he provides overwhelming evidence that the relevant costs associated with ICS calls are substantially lower than the rates being charged to inmates and their families. Moreover, his proposed benchmark ICS rate will continue to provide an economic incentive for ICS providers to continue to bid actively for new ICS contracts with state, county and local correctional and detention facilities.

1. Technological Developments Have Fundamentally Changed How Inmate Calls Are Handled.

The FCC last considered rules addressing ICS rates and practices was in 2002. Over the intervening years, the technology used by ICS providers has changed, and the ICS provider industry has consolidated substantially. The ICS industry now consists of three to five companies that are the sole competitors for the ICS contracts offered by state, county and local correctional and detention facilities. This has both technical and cost-of-service implications.

Specifically, the path of an ICS call originating from a prison or jail has changed substantially. Each of the major ICS providers now route each call through their centralized

---

[53] *NPRM*, 27 FCC Rcd at 16,637.

calling centers – which are located hundreds, if not thousands, of miles from both the caller and the person receiving the call. All of the security measures are applied at the centralized location.

For example, attached are diagrams of the ICS call architecture provided by the ICS providers in recent RFP proposals and FCC filings. Exhibit D includes diagrams from each of the main ICS providers. As shown there, the only on-premises equipment at each correction and detention facility is a VoIP router, several workstations for the site's guards, and the actual inmate telephone handsets. Once a call is initiated, it is forwarded to a centralized ICS calling center, where security measures are applied, and the call is then forwarded to the called party. Moreover, the operated-assisted collect call function has been eliminated, and these services are now automated and provided by the ICS provider without the intervention of a live operator.

This new ICS calling architecture demonstrates that the incremental cost of adding a new correctional or detention facility to an ICS provider's roster of clients is minimal, and almost all services provided by the ICS providers occur off-site. The only on-site work to be done after a new ICS contract is signed involves the facility owner selecting from a menu of computerized security-related options, and installing new telephones (if necessary) and the wiring to connect the phones to the VoIP router for outgoing calls. Once the call is routed, the ICS provider's centralized calling centers handle the rest of the call.

2. **Technological Development Is Driving Consolidation Among ICS Providers.**

Along with technological developments which permit ICS providers to centralize the calling functions for hundreds or thousands of facilities and take advantage of significant economies of scale, the ICS industry has rapidly consolidated. For example, GTL purchased four previously-independent ICS providers in the past three years.[54] In addition, Securus

[54] *See* www.gtl.net (last visited March 19, 2013) ("Effective October 12, 2011, Global Tel*Link acquired Conversant Technologies, Inc.; Effective August 1, 2011, Global Tel*Link acquired Value-Added Communications, Inc.; Effective November 10, 2010, Global Tel*Link acquired Public Communications Services; Effective June 16th 2010, facilities previously

Technologies is actually a merger of two previously-independent ICS providers, T-Netix, Inc. and Evercom Systems, Inc.[55] CenturyLink acquired Embarq Corporation in 2009, which had been spun off from Sprint Corporation in 2006.[56]

Not only have the ICS providers reshuffled and merged, but the two leading ICS providers, GTL and Securus, have been the subject of acquisitions by private equity funds. GTL was first purchased by Veritas/Goldman Sachs for $345 million in 2008. Two years later, the company was sold to American Securities for $1 billion, resulting in a $655 million profit for its investors in two short years.[57] Securus was purchased by Castle Harlan in 2011 for $450 million from H.I.G. Capital which purchased and merged T-Netix and Evercom.[58] According to Standard and Poor's, the market is now highly consolidated, with Global Tel Link and Securus controlling more than 70% of the estimated $1.2 billion annual market.[59]

3. **Despite Technological Developments And Consolidation There Exists a Wide Disparity in Rates.**

One would expect that the technological developments discussed above, coupled with the efficiencies brought about by the consolidation of the ICS industry, would have led to the rapid lowering of ICS rates to inmates and their families as a result of lower costs. In addition, one

---

serviced by Inmate Telephone Inc. will hereafter be serviced by DSI-ITI, LLC...DSI-ITI, LLC is a wholly owned subsidiary of Global Tel*Link Corporation.").

55 *See* www.securustech.net/history.asp (last visited March 19, 2013).

56 *See* www.centurylink.com (last visited March 19, 2013).

57 *See The Price To Call Home: State-Sanctioned Monopolization In The Prison Phone Industry*, by Drew Kukorowski, rel. Sept. 11, 2012 (available at www. prisonpolicy.org/phones/report.html) (last visited March 19, 2013) (*citing* David Carey, The Deal Pipeline, American Securities Buys Global Tel*Link from Veritas, (Oct. 31, 2011), http://www.thedeal.com/content/private-equity/american-securities-buys-global-tellink-from-veritas.php (last visited Sept. 10, 2012); American Securities, http://www.american-securities.com (last visited Sept. 5, 2012)).

58 *See* www.businessweek.com/news/2012-10-04/prison-phones-prove-captive-market-for-private-equity (last visited March 19, 2013).

59 *See* www.bna.com/fcc-proposes-cap-n17179871636 (last visited March 19, 2013).

would expect that these factors would have led to more uniform rates among the correctional and detention centers served by the same ICS providers.

However, nothing could be further from the truth. As shown in Exhibit E, the ICS rates being charged to inmates bear no semblance to the actual cost of the ICS service being provided. Incredibly, the same ICS providers charge widely divergent rates for the same ICS in different states.

For example, GTL charges a first-minute rate of $3.94 in Ohio for a collect call, but only charges $0.048 per-minute in New York, with no separate first-minute rate. Of the rates in 29 states to which GTL provides service, the diverse range of the first minute call is astounding. In Rhode Island, GTL charges $1.30 for the first minute of a collect call, and in Idaho, it charges $3.80.

The range of per-minute rates is equally divergent. In South Dakota, GTL charges $0.09 per minute for pre-paid and debit calls, but charges $0.69 per minute in Maine. All told, a 15-minute call handled by GTL could cost anywhere from $0.72 in New York, to $17.14 in Ohio, and $17.30 in Georgia and Minnesota.

A similar disparity exists among the rates charged by Securus. In Alaska, the first-minute charge for collect calls is $3.95, whereas Securus merely charges a flat rate of $0.65 in New Mexico, and $1.00 in Missouri. For pre-paid and debit calls, the disparity is even more extreme, with no first-minute charges in five of the states it serves, but first-minute charges of $3.95 in Alaska, and $2.00 in Arizona.

The disparity among the per-minute rates charged by Securus is just as extreme, with rates between $0.05 to $0.89 for collect, pre-paid and debit calling. As with the incomprehensible range of GTL's calls, a 15-minute call handled by Securus ranges from $0.59 in New Mexico, to $8.00 in Arizona, and $17.30 in Alaska.

Finally, ICS calls handled by CenturyLink offer no respite for inmates either. The first-minute rate charged in Alabama is $3.95 for collect, pre-paid, and debit calls, but in Wisconsin

the rate is only $.18. The per-minute rate charges range from 0.10 in New Hampshire to $0.89 in Alabama. As a result, depending on the state in which an inmate is incarcerated, a 15-minute call could be $2.70 if the inmate is located in New Hampshire or Wisconsin, but it could be $11.85 in Nevada, or $17.30 in Alabama.

4. ICS Providers Profit-Sharing Is Not A Legitimate Cost.

The ICS providers have long pointed to the commissions paid to state, county and local governments as the reason for this disparity in rates. These commissions are established by voluntary contract negotiations between the phone company and the procurement official for the correctional or detention facilities, and provide either a percentage of the revenue earned by the ICS provider, or, in some cases, a flat fee.

As shown in Exhibit F, these commissions ranged from 20% to 76.6% in 2012. Overall, the commissions paid to state correctional and detention facilities for ICS calls have been more than $100 million per year for at least the last four years. Notably, this figure does not include the commissions paid to county and local correctional and detention centers. However, we do know that Los Angeles County, the largest county in the United States, receives a 67.5% commission, and an annual guarantee of $15 million. *See* Exhibit G.

Regardless of the amount of the commissions paid to state, county and local governments, though, the FCC has determined that these payments are actually an apportionment of the profits earned from providing the ICS calls,[60] and cannot be classified as a cost for purposes of determining the rate to be charged ICS customers. In particular, the FCC stated:

> [W]e find the cost data deficient because ICSPC treats the commissions paid to the inmate facilities as costs rather than profits. As noted earlier, these commissions are location rents that are negotiable by contract with the facility

[60] *NPRM*, 27 FCC Rcd at 16,643.

> owners and represent an apportionment of profits between the facility owners and the providers of the inmate payphone service.[61]

Several states have also acknowledged that the incorporation of commissions paid to state, county and local correctional and detention facilities is unreasonable.[62]

Thus, it is an unjust and unreasonable practice to require ICS customers to contribute *solely* for the purpose of providing excess profits to be divided between the ICS provider and the corrective agency. This conclusion is confirmed by the FCC's action in the *Connect America Fund* decision, where it determined "excess revenues that are shared in access stimulation schemes provide additional proof that the LEC's rates are above cost."[63] There, the FCC concluded that "how access revenues are used is not relevant in determining whether switched access rates are just and reasonable in accordance with Section 201(b)."[64]

Moreover, while the rates referenced below are still too high, once the commissions are eliminated from the cost analysis, the ICS rates charged consumers are substantially lower. The following eight states do not permit commissions, and their 15 minute call-rates are substantially lower than those in states that do require commissions:

---

[61] *See Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand, 17 FCC Rcd 3248, 3262 (2002) ("*Inmate Payphone Order*"); *See also See Arsberry v. Illinois*, 244 F.3d 558, 566 (7th Cir. 2001)(Posner, J.) (noting that the state of Illinois is a monopolist, "exercising as it does an iron control over access to the inmate market, [that] has rented pieces of the market to different phone companies" and that these companies will pass on much of the rental fee to their customers)

[62] *See Evercom Systems Inc.*, Order Granting In Part, And Denying In Part, Petition For Reconsideration, Regulatory Commission of Alaska No. U-00-143, 2001 WL 1246903 (April 24, 2001) ("The inclusion of a commission requirement in a bid solicitation for regulated utility service conflicts with the regulatory objective of ensuring that utility costs are necessarily incurred and rates are just and reasonable...By allowing commissions to be recovered through rates, the governing regulatory body acquiesces in this commission-based bid process and promotes a system where the service provider has an incentive to increase the price of service regardless of the actual costs incurred."); *See also Investigate Long Distance Charges*, Corrected Order, Georgia Public Service Commission No. 14530-U, 2002 WL 31096880 (March 19, 2002) ("The Commission finds that the rates to be charged for ITS should relate to the costs incurred in providing the service, and that the commission paid to the GDC is not one of those costs.").

[63] *Connect America Fund*, 26 FCC Rcd at 17,876-17,877.

[64] *Id.*, at 17,876.

State	Collect	Pre-Paid	Debit	ICS Provider
California:	$6.60	$6.60	---	GTL
Michigan:	$3.45	$3.45	$3.15	GTL
Missouri:	$1.75	$0.75	$0.75	Securus
Nebraska:	$1.45	$1.25	$1.25	GTL
New Mexico:	$3.25	$2.25	---	Securus
New York:	$0.72	$0.72	$0.72	GTL
Rhode Island:	$5.80	---	$5.22	GTL
South Carolina:	$0.99	$0.75	$0.75	GTL

Contrasted with the states that do require the payment of commissions, and taking into account the ICS's centralized calling systems, it should be clear that the commissions do, in fact, lead to a perverse result, whereby the ICS providers and the state, county and local governments have every opportunity to share in the excess profits, far beyond a "just and reasonable" rate that "fairly compensates" the ICS providers.

There is simply no other legitimate explanation for GTL to charge $1.25 for a fifteen minute debit call in Nebraska, and charge $11.61 for the same call in Delaware. It is equally unjust and unreasonable that Securus would charge $0.75 for a fifteen-minute pre-paid call in Missouri, but yet charge $5.10 in North Dakota and $8.00 in Arizona.

In light of the FCC's determination that the sharing of the revenue earned from ICS calls is a profit-sharing arrangement, it is clear that the widely-divergent spread among the same services being provided in neighboring states requires that the FCC exclude commissions from the costs to be included in determining "fair compensation." Stated in another way, the usurious ICS rates and ancillary fees currently charged by the ICS providers in most states, which are not being charged in others, conclusively demonstrate that the anti-consumer practice of dividing the excess revenues cannot be taken into account when determining a "just and reasonable" ICS rate.[65]

---

[65] *Id.*

5. **ICS Providers Regularly Charge Excessive Ancillary Fees.**

As shown above, the wide disparity in rates between states being served by the same ICS provider clearly demonstrates that the ICS rates are unjust and unreasonable. However, there are additional charges that are imposed by ICS Providers in addition to the per-minute and per-call charges.

For example, as shown in Exhibit H, GTL charges $9.50 to open a new pre-paid or debit account. Next, an additional $4.75 charge is added to the account when a party wishes to add $25.00 to the debit card balance, and a $9.50 charge is added to the account when a party wishes to add $50.00. If there is a balance at the end the month, GTL charges $2.89 to send a paper bill to the account holder. Finally, if an inmate is released, and a balance remains in the account, GTL charges $5.00 for the account holder to receive its refund.

Securus imposes similar excessive charges. As shown in Exhibit H, Securus charges $7.95 each time an account is funded over the internet or on the telephone. The only way to avoid this cost is to send a check, which imposes substantial delay and hardship on the customers. Despite the FCC's encouragement of mobile wireless communications, Securus charges a monthly fee of $2.99 to maintain a wireless number on the account. In the event that the inmate is released, and there is a balance of more than $4.95 in the account, Securus will issue a refund, but will first extract a $4.95 penalty from the refunded amount. Since the ICS providers treat these ancillary charges as "cost-recovery", they do not consider this revenue when calculating the commissions paid to the correctional and detention facilities. Instead, these charges – untethered from actual costs – go straight to the ICS providers' bottom lines.

In addition, the FCC must use its authority to disallow additional set-up charges when inmates' calls are disconnected. When a call is disconnected because of an error by the ICS provider, charging the customer an additional set up fee is unjust and unreasonable. The record in this proceeding contains hundreds of complaints about the frequent disconnection of calls by the ICS providers. In addition, this issue has been the subject of a Pennsylvania PUC

proceeding,[66] and is the subject of a pending proceeding before the Massachusetts Department of Telecommunications,[67] where approximately 80% of the ICS customers who filed complaints noted frequent early-termination of calls.[68]

The failure to offer debit calling is also an unjust and unreasonable practice violating Section 201. ICS providers have previously asserted that the uncollectible revenue associated with collect calls drives up costs, and therefore the ICS rates charged to its customers. Additionally, some inmates are unable to place collect calls to individuals whose phone provider does not have a billing relationship with the ICS provider.

Debit calling and prepaid accounts eliminate both problems. The failure to offer debit calling is unreasonable because it drives up the price of ICS calls without any justification, and is unjust because it inhibits inmates from calling certain individuals served by a LEC that does not have a billing relationship with the ICS provider, also without justification. Since each of the ICS providers have demonstrated the capability to provide such services in some states, *See Exhibit E*, it is unreasonable that such services are not available to all inmates.

III. <u>The ICS Rates and Ancillary Fees Are Unjust And Unreasonable</u>.

As noted above, Section 276 provides to the FCC the authority to establish maximum benchmark ICS rates. Moreover, Section 201(b) requires the FCC to ensure that the rates being charged the public are "just and reasonable." Section 201 gives the FCC the power to find and declare unjust and unreasonable practices to be unlawful. In turn, Section 205 of the

---

[66] Jon E. Yount, AC-8297 et. al. v. T-Netix, Inc. and T-Netix Telecommunications, Inc., Penn. Public Utility Commission, Docket No. C-20042655, Opinion and Order, p. 12. ("We are troubled that T-Netix did not regard the inmates as customers, even when their calls were paid for using the inmates' prepaid accounts. ... While the erroneous disconnections themselves are difficult for the inmates, the fact that T-Netix has done little or nothing to investigate complaints or to make refunds, when appropriate, is unacceptable.").

[67] *See* Massachusetts Department of Telecommunications, Docket No. 11-16 (comments may be found at www.mass.gov/ocabr/government/oca-agencies/dtc-lp/dtc-11-16.html).

[68] *See Amendment 1 and Supplement to Petition,* at 6-14 at www.mass.gov/ocabr/docs/dtc/dockets/11-16/amend1supp51810.pdf.

Communications Act empowers the FCC to take the following steps when confronted with unjust and unreasonable rates and practices:

> the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge or the maximum or minimum, or maximum and minimum, charge or charges to be thereafter observed, and what classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent that the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any charge other than the charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.[69]

In the instant matter, therefore, the FCC has the power and the authority to find that the ICS rates and practices are unjust and unreasonable, and to prescribe the rate that it deems to be just, fair, and reasonable. As in *BTI* and *Connect Access Fund*, the FCC may look to comparable ICS rates being charged by ICS providers for similar services in other states, and establish rates and forbid unreasonable practices without having to engage in a full evidentiary hearing.

The Petitioners have demonstrated without doubt that that rates being charged for comparable services *by the same ICS providers* in different states are widely disparate. The Bazelon Declaration establishes that the actual cost for providing ICS service is so low that a maximum benchmark ICS rate of $0.07 will still deliver to the ICS providers a fair profit for their services.[70] Therefore, the FCC must find that, based on the evidence presented herein, that the benchmark ICS rate of $0.07 per minute, with no set up or other ancillary fees, is just and reasonable.

In addition, the FCC must find that the ancillary fees imposed on ICS customers are unjust and unreasonable. Such fees add to the effective price of inmate calls and are not related to the cost of providing the service. There is no cognizable reason why a party should pay $9.50 to deposit $50, twice as much as the fee to deposit $25. Even if an ICS provider incurs some

---

69 47 U.S.C. § 205(a) (2012).

70 *Bazelon Declaration*, pg. 17.

cost for the funding of the account, it is impossible to believe that the costs double when $50 is added, rather than $25. Further, there is also no legitimate reason why it should cost a customer $5.00 to close an account, or $3.00 to receive a bill in the mail. Simply put, these charges are far beyond what the costs that ICS providers could reasonably incur for providing the service, and they must be found to be unjust and unreasonable.

IV. <u>The Marginal Location Methodology Is Inapplicable To ICS Rates</u>.

The FCC also sought comment on the "Wood Study" filed by the ICS providers, which proposed to use the marginal location methodology to establish ICS rates.[71] The ICS providers submitted the Wood Study in an effort to utilize a marginal location methodology developed to establish commercial payphone rates in 1999.[72]

The Petitioners have previously addressed, at length, the inapplicability of the marginal location methodology contained in the Wood study. In particular, the Petitioners' *Ex Parte* submission on November 5, 2009, contained a detailed discussion of why the marginal location methodology is irrelevant in the ICS context, demonstrating that the purported goal of "promoting widespread deployment" does not apply since there is already active competition to provide ICS services.[73]

In fact, the FCC has already concluded that the marginal location methodology does not apply in the prison context. As the FCC explained in the *Inmate Payphone Order*:

> In the [*Methodology Order*], the Commission, . . . to promote widespread payphone deployment, concluded that it should set a payphone compensation rate that would be large enough "to ensure that the current number of payphones is maintained." To accomplish this goal, the Commission adopted a methodology that permitted a significant contribution to common costs. That policy has little

---

[71] *NPRM*, 27 FCC Rcd at 16,638.

[72] *Id.* (*citing Implementation of Pay Telephone Reclassification and Compensation Provisions Of The Telecommunications Act of 1996*, 14 FCC Rcd 2545 (1999)).

[73] *Ex Parte Submission*, November 5, 2009, pg. 4.

> or no application in the prison context because . . . prison payphones are already profitable.[74]

Thus, there is no apparent reason why the FCC is seeking comment on a price-setting approach whose application to the ICS context has already been completely repudiated by both the FCC and the Petitioners.[75] However, nothing in the intervening 10 years since the *Inmate Payphone Order* has changed the fact that ICS providers are competing on a high level for each and every ICS contract, which delivers an exclusive right to serve a high-volume market with no competitive alternatives, thus eviscerating the justification for utilizing the marginal location methodology.

V. <u>The FCC Must Mandate A Fresh Look Period for Existing Contracts</u>.

As originally proposed in the *Alternative Wright Petition*, the implementation of the new maximum benchmark ICS rate must be applied to all new ICS contracts. Moreover, the Petitioners have proposed that there be a one-year phase-in period for the new ICS rate on existing contracts. Finally, the Petitioners have proposed that the FCC prohibit ICS providers and correctional and detention facilities from attempting to avoid the application of the new ICS rate by simply renewing existing contracts. In the *NPRM*, the FCC has requested comment on this proposal, and sought information on the length of contracts, and their ability to be amended.[76]

The Petitioners have demonstrated that contracts between ICS providers and correctional and detention facilities are regularly updated and amended. As noted in the Petitioner's *ex parte* submission on June 28, 2012, the Florida DOC contract with Securus was

---

[74] *Inmate Payphone Order*, 17 FCC Rcd at 3256 (2002) (*quoting Methodology Order*, 14 FCC Rcd at 2571).

[75] *See also Bazelon Declaration*, pgs. 26-27.

[76] *NPRM*, 27 FCC Rcd at 16,646.

amended on four separate occasions, each time changing the ICS rates.[77] Previously, the Petitioners referenced the ICS agreement with the Indiana DOC that had been amended as well.

Thus, the record has been established that the parties to ICS agreements regularly amend ICS contracts to revise terms, and change their obligations. Should the FCC adopt the proposed ICS rate, it must apply the one-year fresh look proposal to existing contracts to require the integration of the proposed ICS rate (or a lower rate) without further negotiation.

As noted in the *Alternative Wright Petition*, the FCC has confirmed that it has "undoubted power to regulate the contractual or other arrangements between common carriers and other entities, even those entities that are generally not subject to Commission regulation."[78] In addition, the FCC has concluded that similar fresh-look mandates "do not constitute a regulatory taking" since the proposed maximum ICS rate will provide the "opportunity for adequate cost recovery."[79] Finally, the FCC has invalidated exclusivity provisions in cellular service resale agreements,[80] and the U.S. Court of Appeals has confirmed that the FCC "has the power to...modify...private contracts when necessary to serve the public interest."[81]

Therefore, there is ample precedent for the adoption of the fresh-look proposal. To ensure that the parties to ICS contracts do not circumvent or otherwise attempt to nullify the pro-consumer benefits the maximum benchmark ICS rate, the proposed one-year transition process can and must be implemented upon the adoption of the proposed ICS rates.

---

[77] *Letter of Lee G. Petro*, dated June 28, 2012, pg. 3 (responding to Securus allegation that contracts are not renegotiated "unless they are close to expiry.").

[78] *See Alternative Wright Petition*, pg. 29 (*citing Promotion of Competitive Networks in Local Telecommunications Markets*, 15 FCC Rcd 22,983, 22,300, nt. 85 (2000)). *See also Local Competition Order*, 11 FCC Rcd 15,499, 16,044-45 (1996).

[79] *Connect America Fund*, 26 FCC Rcd at 17,998. *See also Connolly v. Pension Ben. Guaranty Corp.*, 475 U.S. 211, 224-25 (1986); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 605 (1944).

[80] *See TRAC Communications, Inc. v. Detroit Cellular Telephone Co.*, 4 FCC Rcd 3769 (CCB 1989), *aff'd*, 5 FCC Rcd 4647 (1990).

[81] *See Western Union Telegraph Co. v. FCC*, 815 F.2d 1495, 1501 (D.C. Cir. 1987).

VI. THE BENEFITS ASSOCIATED WITH ADOPTION OF BENCHMARK RATES FAR OUTWEIGH ANY COGNIZABLE COSTS.

The *NPRM* requested a cost-benefit analysis supporting the proposed benchmark ICS rates. In particular, the *NPRM* stated that the FCC is attempting "to determine whether the proposals above will provide public benefits that outweigh their costs, and we seek to maximize the net benefits to the public form any proposals that we adopt."[82] The Petitioners provide below a discussion of the enormous benefits that arise from setting the proposed benchmark ICS rate of $0.07 per minute.

As a preliminary matter, though, no cost-benefit analysis, based on any provision of the Communications Act, could override the absolute command of Section 201(b) that:

> all charges, practices...in connection with...communication service shall be just and reasonable, and any...charge, practice...that is unjust or unreasonable is hereby declared to be unlawful.[83]

Moreover, any cost-benefit analysis based on non-Communications Act factors would be *ultra vires*. For that reason, courts have rejected FCC attempts to balance carriers' obligations under Section 201(b) against factors outside the FCC's jurisdiction. For example, in *MCI. v. FCC*, the court rejected, as *ultra vires*, the FCC's attempt to "offset" damages from lower rates paid by MCI for some LEC access services, against MCI own damages from excessive LEC rates for other access services. Instead, the court held that such an offset would amount to adjudicating LEC claims against MCI for undercharges, over which the FCC has no jurisdiction.[84]

The FCC has also rejected a similar cost-benefit approach in addressing traffic pumping in the *Connect America Fund Order*. There, it correctly held, in response to claims that access stimulation facilitated broadband deployment in rural areas, that "how...revenues are used is

---

82 *NPRM*, 27 FCC at 16,646

83 47 U.S.C. 201(b) (2012).

84 59 F.3d 1407, 1418-19 (D.C. Cir. 1995), *cert. denied*, 517 U.S. 1219 (1996).

not relevant in determining whether...rates are just and reasonable in accordance with Section 201(b).[85]

The only Communications Act provisions that might provide a basis for declining to apply Section 201(b) in the ICS context would be the forbearance provisions of Section 10 of the Act.[86] The ICS providers, however, could not possible demonstrate that the application of Section 201(b) to ICS calls is not necessary to ensure that ICS rates and practices are just and reasonable, or that such enforcement is not necessary for the protection of consumers.[87] Any attempt to excuse ICS providers from the application of Section 201(b) thus would amount to an end-run around the conditions placed on forbearance relief and would violate the Act for that reason as well.

Finally, claims that the requested relief would amount to FCC regulation of state and local correctional facilities cannot be considered "costs" of applying Section 201(b) to ICS rates and practices. As the D.C. Circuit explained in affirming the FCC regulation of carriers' payments to entities not regulated by the FCC:

> [N]o canon of administrative law requires us to view the regulatory scope of agency actions in terms of their practical or even foreseeable effects. Otherwise, we would have to conclude, for example, that the Environmental Protection Agency regulates the automobile industry when it requires states and localities to comply with national ambient air quality standards, or that the Department of Commerce regulates foreign manufacturers when it collects tariffs on foreign made goods.[88]

As such, while the adoption of a benchmark ICS rate may impose some costs on parties outside the jurisdiction of the FCC, the FCC may not rely on these purported costs to avoid its statutory obligations under the Act. Even assuming, however, that the FCC could or should consider non-

---

85 *Connect America Fund*, 26 FCC Rcd at 17,876.

86 47 U.S.C. § 160 (2012).

87 47 U.S.C. §§160(a)(1), 160(a)(2) (2012).

88 *Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224, 1230 (D.C. Cir. 1999); *See also National Cable & Telecommunications Association v. FCC*, 567 F.3d 659 (D.C. Cir. 2009)("We decline to put issues relating to their cable service outside the Commission's authority simply because those issues also matter to their landlords.").

Communications factors in determining how to enforce Section 201(b) in the ICS context, all relevant factors overwhelmingly support Petitioners' request for relief.

1. **Establishment Of A Benchmark ICS Rate Is Economically Efficient.**

First, the adoption of a benchmark ICS rate will lead to additional efficiencies in the ICS industry. Specifically, the FCC has previously found that the adoption of price caps provide a powerful incentive for service providers to become more efficient. For example, when the FCC adopted price caps to apply to local exchange carriers' interstate access charges, the FCC stated that price caps would:

> harness the profit-making incentives common to all businesses to produce a set of outcomes that advance the public interest goals of just, reasonable, and nondiscriminatory rates, as well as a communications system that offers innovative, high quality services.[89]

The price cap regime was imposed because of a concern that traditional rate-of return regulation did not result in sufficient incentives to improve efficiency. Indeed, the FCC's previous reviews of rate-of-return regulation over many years led it to conclude that, under certain circumstances, rate-of return regulated firms have an incentive to raise rather than lower their costs by increasing investment in the asset base on which the regulated return is calculated well beyond the efficient level.[90]

Subsequently, in affirming the decision of the FCC to apply certain accounting procedures in connection with the price-cap regime, U.S. Court of Appeals stated that:

> Price cap regulation is intended to provide better incentives to the carriers than rate of return regulation, because the carriers have an opportunity to earn greater profits if they succeed in reducing costs and becoming more efficient.[91]

---

[89] *See Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786 (1990), *aff'd, Nat'l Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

[90] *Id.*, at nt. 30. (citing the Averch-Johnson Effect, *Behavior of the Firm Under Regulatory Constraint*, American Economic Review, December 1962, pp. 1052-1069.).

[91] *Bell Atlantic Telephone Co. v. FCC*, 79 F.3d 1195, 1198 (D.C. Cir. 1996).

As the Commission recently noted in the *Connect America Fund*, there can be a "race to the top" manifested by a practice of increasing investment in plant and equipment on which a regulated return may be earned.[92]

A "race to the top" of sorts characterizes the prison phone industry as well, and the solution to this problem is to impose the proposed maximum benchmark ICS rate. The price terms for prison phone calls are determined not by the telephone consumers who make or receive the calls but instead by a third party (the prison administrator) who does not bear the cost of the call. In addition, the transactional process under which these services are purchased often involves bidding where the objective of the bid is not to determine which provider can supply the required services at the lowest price, but rather which provider will pay the highest commission to the prison administration in exchange for the exclusive right to provide prison services.[93]

This process leads inevitably to a "race to the top" in bids for commissions that must ultimately be paid for by those who make and receive calls. The imposition of these higher prices, well in excess of the underlying costs, needlessly suppresses demand for prison phone calls with the consequent effects that have been demonstrated in the *Bazelon Declaration*.

Where the Commission was faced with a race to the top problem in the regulation of LEC access charge rates it decided to impose price cap regulation to better align LEC incentives with those that would obtain in a competitive market. Here the Commission should impose a maximum benchmark ICS rate for prison phone calls to create an efficiency incentive in the prison phone industry which is lacking today because of the nature of the procurement process used to acquire these services.

---

92 *Connect America Fund*, Sixth Order On Reconsideration And Memorandum Opinion And Order, FCC No. 13-16, ¶ 2 (rel. Feb. 27, 2013).

93 *NPRM*, 27 FCC Rcd at 16,632 (*citing Inmate Payphone Order*, 17 FCC Rcd at 3276).

A maximum benchmark ICS rate will result in substantially reduced charges for prison phone calling as well as a continuing incentive to improve efficiency in the delivery of these services. Importantly, the imposition of a cap is in no way intended to render the provision of prison phone services unprofitable. To the contrary, as in the case of the LEC price cap regime, the imposition of the rate cap gives the service provider the opportunity to capture the gains achieved through greater efficiency and to become more profitable as those efficiencies are realized.

In light of the well-established precedent to support the adoption of a maximum benchmark per-minute ICS rate, and the FCC finding that a benchmark rate leads to economic efficiencies in other contexts, any cost-benefit analysis with respect to the ICS industry must find that the proposed benchmark ICS rate proposed herein will lead to beneficial results.[94]

2. Lowering of Rates Will Have Positive Impact on Recidivism.

The adoption of a benchmark ICS rate that is just and reasonable will significantly reduce the cost of ICS calls for its customers. The impact will not only be felt in the pocketbook of the inmate and family members, but society will greatly benefit through the reduction of recidivism rates and the corresponding reduction in correctional costs.

Currently, there are more than 1.6 million people incarcerated in the United States. Among those that are incarcerated, 52% of the state inmates have at least one child, and 63% in federal prison have at least one child. At least 50% of the incarcerated are located more than 100 miles from home, and 10% are located more than 500 miles from home. While 700,000 inmates were released in 2012, at least 40% will likely return to prison within three years.

The positive impact of staying in contact with family members and friends has been extensively documented, and there should be no question at this point that society benefits from

---

[94] *See Bazelon Declaration*, pg. 26-27.

a reduction in recidivism, beyond the cost savings.[95] As noted by The Vera Institute of Justice in its comments filed on March 14, 2013:

> By promoting better outcomes for incarcerated parents, visitation can help reduce the negative effects of imprisonment and the stigma experienced by children of having an incarcerated parent. Maintaining relationships with their incarcerated parents can reduce children's risks of homelessness and of involvement in the child welfare system.[96]

In addition, Congress has found that "inmates who are connected to their children and families are more likely to avoid negative incidents have reduced sentences" and that "released prisoners cite family support as the most important factor in helping them stay out of prison."[97]

A similar point was presented by the National Association of Regulatory Utility Commissioners ("NARUC"), which passed a resolution asking the FCC to act on the *Alternative Petition*, in 2012.[98] The General Counsel for NARUC followed up with an *ex parte* submission on December 28, 2012, urging the FCC to act and noting:

> Excessive interstate rates mainly affect prisoners' family members – who have no other option but to pay the rates. Phone calls are the primary means of communication for many prisoners/families, because many prisoners are functionally illiterate and many are held in distant facilities, which makes in-person visitation difficult. Research indicates that family contact during incarceration leads to greater post-release success for prisoners, and thus less recidivism. High phone rates that economically limit family contact frustrate that positive outcome.[99]

---

[95] Damian J. Martinez and Johnna Christian, *The Familial Relationships of Former Prisoners: Examining the Link Between Residence and Informal Support Mechanisms*, Journal of Contemporary Ethnography 38, no. 2 (2009): 201-24; Creasie Finney Hairston, *Prisoners and Their Families: Parenting Issues During Incarceration"* (paper presented at From Prison to Home: The Effect of Incarceration and Reentry on Children, Families and Communities, a conference hosted by the U.S. Department of Health and Human Services and Urban Institute, Washington DC, January 30-31, 2002); Rebecca Naser and Christy Visher, *Family Members' Experiences with Incarceration and Reentry"* Western Criminology Review 7, no. 2 (2006).

[96] *Comments of The Vera Institute of Justice*, filed March 14, 2013, pg. 2 (*citing* Christopher Wildeman and Bruce Western, "Incarceration in Fragile Families," *Future of Children*, 20(2) (2010): 168).

[97] Second Chance Act of 2007, Pub. L. No. 110-199, § 3(7), 122 Stat. 657, 659 (2007).

[98] *See* Exhibit I.

[99] *See Letter from James Bradford Ramsey, General Counsel for NARUC*, dated December 28, 2012, CC Dkt. No. 96-128.

Finally, the American Correctional Association, which presumably represents prisons and other correctional interests, adopted a resolution in 2001, and reaffirmed it twice, stating that it is "sound correctional management that adult/juvenile offenders should have access to a range of reasonably priced telecommunications services" and that the "rates and surcharges that are commensurate with those charged to the general public for like services."[100]

From a cost perspective, the United States spends more than $60 billion dollars each year on prison costs. On average, each prisoner in a state prison costs more than $31,000 a year. As discussed in the Bazelon Declaration, if recidivism can be reduced by just 1%, the cost savings would be more than $250 million per year, and a study by the Pew Center estimates that there would be a cost savings of $653 million in one year if recidivism were to be reduced by 10%.[101]

Thus, the benefits arising from encouraging contact between family members and inmates are substantial, and there is every reason to believe that the adoption of the benchmark ICS rate proposed herein will go a long way towards encouraging such contacts. For example, as noted in the Bazelon Declaration, when New York eliminated its commissions, the costs of ICS calls went down, and the volume of calls increased to such a degree that automatic reductions built into the ICS contract were triggered:

> The Department of Correctional Services' one-year contract extension with Global Tel Link, Inc., which runs from April 1, 2007 through March 31, 2008, triggered a second rate reduction if call volume increased by at least 18 percent in the first six months of the contract. Call volume, as measured in completed calls, increased by 35 percent during that period (April 1 through Sept. 30) as compared to the prior six months (Oct. 1, 2006 through March 31, 2007), while the number of call minutes jumped by 36 percent.[102]

---

100 *See* Exhibit J.

101 *See Bazelon Declaration*, pg. 24.

102 *See* www.doccs.ny.gov/PressRel/2007/phoneratereduction.html (last visited March 23, 2013)("Inmates' families and loved ones have saved more than $10.5 million based on the volume of calls since the lower rates went into effect. The cost of a 20-minute phone call - the average length of a call from an inmate – has dropped to $2.68, from $6.20 prior to April 1.).

There is no question, therefore, that lower rates will encourage contact between inmates and their families and friends, which will lead to bottom-line savings for states, counties, and local governments through lower recidivism rates.

3. **Lowering Rates Will Provide Relief to Millions of Families.**

The record in this docket has been supplemented by tens of thousands of personal stories relating to the impact of the egregious ICS rates that are currently being charged, and requesting immediate action by the FCC.[103]

It is impossible to understate the importance of these stories portrayed through personal testimonies. The facts presented in the following quotes, along with the thousands submitted into the record, must be incorporated into any cost/benefit analysis:

> As a military wife who has been through multiple deployments with my husband, I know the value and importance of communication when your loved one is away. How that is all that you have, and how much it means. With phone rates at such an incredibly higher cost for inmates families and friends it affects the morale of the inmate and the mental stability and health of their family when they cannot communicate more than maybe 1-2 calls a month or they have to choose between groceries and bills for a phone call. That is simply not right. Personally I talk to my friend whom is in a TDCJ unit, and it costs me over $10 for 15 minutes. Besides his dad, I am all that he has on the outside looking out for him. He has told me over and over again just how much phone calls help him to stay positive, productive and out of trouble. *Letter from Amanda Callahan*, WC Docket No. 12-375 (filed Jan. 15, 2013).
>
> The only thing that helps me make it through my day until my husband is able to come home is the phone calls I receive from him after he eats dinner and that's when I get my kiss goodnight. With him in Nevada, we live in Colorado I can't go see him every weekend; I can only afford to see my husband every four months. He has also stated that the phone calls are one of the only thing that keeps him calm. *Letter from Colette Croteau*, WC Docket No. 12-375 (filed Jan. 22, 2013).
>
> With no internet/email access, limited postal delivery and the many other restrictions placed on prisoners, their families and even attorneys, telephones are a vital part of both prison and society. Allowing prison telephone fees to remain as high as they are, with no end in sight to the proposed increases, this matter is certainly against public policy, and I would ask, on behalf of myself, my family

---

[103] Almost three years ago, Senators Diane Feinstein and Patrick Leahy also urged the FCC to make a "swift examination" of this issue. In June 2010, the Chairman of the FCC stated that the FCC would "address the questions raised in this proceeding as quickly and equitably as possible." *See* Exhibit K.

and friends, and the millions of others affected by this issue to consider promulgating rules which would curtail these abuses. *Letter from Dale Shackelford*, WC Docket No. 12-375 (filed March 4, 2013).

My personal experience is, my wife has a disability, she's blind, she's on a care taker program with a fix income. I cannot call her because the phone calls cost $9.20 for 15 minutes. I have a 19 year old son in college living on his own requesting advice but I can't afford to call him; both are in Detroit MI. This State [Pennsylvania] prison employment system only allows a small percentage of inmates to make 42¢ everyone else 19¢. Jobs are unavailable for almost half of the population do to the overcrowding. *Letter from Gregory Thomas*, WC Docket No. 12-375 (filed March 4, 2013).

My recent experience with the inmate phone system has me horrified that the excessive cost precludes most inmates from contact with their family at a time these ties need to be maintained. The thought that the correction system is receiving financial gain at inmates expense is troubling also. I was fortunate to be able to afford to pay for calls, but the phrase "highway robbery" came to mind each time I made a payment. Today, as I closed an account, I was told there was a $5.00 fee to do so. This account with Offender Connect [Securus] had already charged $25 to get $20.25 credit toward calls, so after paying a $4.75 service fee to get service I had to pay $5 to close the account. Practices like these should not be acceptable. Do not let the incarcerated be extorted in this manner any longer. *Letter from Linda Humphrey*, WC Docket No. 12-375 (filed Feb. 12, 2013)

Recently in the past year I have been hospitalized several times. I nor my wife can write very well and have to have someone else do it for us. So we are forced to use the phone system. I have only been able to talk to my wife once in three months due to the cost of these calls. She not able to even send me money like I need it. These phone calls are making our bonds stronger yet there is only so much we can in a 15 minute span that has to last for 2 to 3 months before we can afford to do it again. This is a very serious hardship on me and my family that just keeps getting harder to endure. *Letter from George Fierras*, WC Docket No. 12-375 (filed Aug. 10, 2012)

Our son, at Mac Dougall Correctional Institute in Suffield, CT has been incarcerated since 1997. His collect calls originally cost us about $20 for 15 minutes. In 2008 Global Tel Link offered a pre-paid contract which reduced the cost to $12.97 for 15 min. Of course, that required us to pay up front. We try to maintain a minimum balance of $25 (2 calls) which means that most of the time we have $100 or more of our Social Security Retirement tied up in that account. *Letter from Tom and Dora Pickles*, WC Docket No. 12-375 (filed Aug. 6, 2012).

Going for so long without talking to my family has made it extremely tough to maintain any type of strong bond with them. Not to mention, there have been two deaths in my family, and my father's house burned down, all of which I learned from the news, and had to endure weeks of unanswered letters until I finally received a visit. ***Yes, it is my fault I am in prison, but in how many ways will I be made to pay for my crime***? *Letter of T.L. Terry*, WC Docket No. 12-375 (filed Aug. 3, 2013)(emphasis added).

These personal testimonies represent just a fraction of the tens of thousands of additional personal stories and signatories to petitions urging the FCC to act on reforming the ICS rates.

Thus, while there may be costs associated with the adoption of the proposed benchmark ICS rate, it is clear that the benefits associated with the adoption of a benchmark ICS rate are enormous. Not only will the persons that actually use ICS to remain in contact with their family and friends experience lower rates, the correctional agencies will save more in reduced recidivism costs in the long run than they will lose in reduced commission payments in the short run. In light of its statutory obligations to prohibit unjust and unreasonable rates and practices, the FCC must adopt the benchmark ICS rates and practices proposed herein.

CONCLUSION

There is no question that reform is needed, nor is there any question that the FCC has the requisite authority to provide the relief requested herein. The evidence supporting the need for a maximum per-minute benchmark ICS rate is overwhelming, and the ICS providers only justification for the exorbitant rates is that they need higher rates to properly divide up the spoils with the authorities seeking ICS services. However, this is not a legitimate justification for imposing rates that bear no semblance to the cost of providing the service and thus, violate Section 201(b) of the Communications Act.

As such, the Petitioners respectfully request that the FCC adopt a benchmark ICS rate of $0.07 per minute, with no separate set-up or per-call charge, and eliminate the usurious ancillary charges and practices such as “re-loading” and penalties to receive a refund. Further, to the extent that the ICS provider drops a call, the ICS customer must not endure reconnection fees. The record in this proceeding demonstrates that ICS customers are truly held “captive” to the ICS providers, and are forced to pay additional fees at every turn.

The FCC is the only agency that can provide respite from this extraordinary situation. The Communications Act provides the FCC with the requisite statutory authority, and the record in this proceeding demonstrates the urgent need for relief. ICS customers literally cannot afford to endure more delay. Therefore, the Petitioners respectfully request immediate action consistent with the evidence offered.

Respectfully submitted,

By: _____

Lee G. Petro
Jennifer L. Oberhausen
Jennifer M. Roussil[i]

DRINKER BIDDLE & REATH LLP
1500 K Street N.W.
Suite 1100
Washington, DC 20005-1209
(202) 230-5857

March 25, 2013

[i] Admitted in Maryland only. District of Columbia Bar application pending; practice supervised by partners of the firm who are active D.C. Bar members pursuant to D.C. Bar Rule 49(c)(8).