



**STATE OF ALABAMA**  
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Re: GENERIC PROCEEDING CONSIDERING THE )  
PROMULGATION OF TELEPHONE RULES ) DOCKET 15957  
GOVERNING INMATE PHONE SERVICE )

ERRATA AND SUBSTITUTE ORDER PROPOSING REVISED INMATE PHONE  
SERVICE RULES AND ESTABLISHING A COMMENT PERIOD

BY THE COMMISSION:

On October 1, 2013, the Commission issued an Order in the above styled proceeding, proposing revised Inmate Phone Service rules and establishing a period, through November 8, 2013, during which interested parties may submit to the Commission comments regarding the proposed changes to the Inmate Phone Service rules.

The Commission's Order of October 1, 2013 is hereby amended by the errata as noted below:

**ERRATA**

<u>PAGE</u>	<u>LOCATION</u>	<u>AMENDMENT</u>
Page 1	Order heading	Substitute "GOVERNING" for "GOVERING"
Page 4	Paragraph 1, line 5	Substitute "confinement facility." for "inmate facility."
Page 5	Paragraph 1, line 3	Strike: "Opportunities are available for ICS customers to call parties whose residence in relation to the inmate facility would normally be rated as a toll call using the local call rate."

Substitute: “Opportunities are available for ICS customers to utilize the local calling rate for calls to recipients located outside the confinement facility’s local calling area.”

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|---------|------------------------|---|
| Page 8  | Paragraph 1, line 6    | Strike: “maximizing commissions to”<br><br>Substitute: “the percentage commission offered”  |
| Page 8  | Paragraph 1, line 7    | Strike: “no voice whatsoever in the selection of their provider and no choice with regard to the rates they must pay and the provider’s customer service.”<br><br>Substitute: “no choice whatsoever in the selection of their provider, the rates charged, and the provider’s service quality.” |
| Page 11 | Paragraph 3, line 2    | Replace “\$0.25 per-minute” with “\$0.25”   |
| Page 11 | Paragraph 4, line 6    | Replace “and the existing” with “at the existing”   |
| Page 13 | Paragraph 1, line 2    | Replace “expensive, some” with “expensive. Some”  |
| Page 17 | Paragraph G(6), line 2 | Replace “as provide in paragraph H” with “as provided in paragraph I”   |
| Page 19 | Paragraph 1, line 4    | Replace “F(5)” with “G(6)”  |
| Page 20 | Paragraph 3, line 4    | Replace “inquiries, shall” with “inquiries, and shall”  |
| Page 22 | Paragraph 3, line 2    | Strike the duplicate period at the end of the sentence  |
| Page 23 | Paragraph 3, line 4    | Strike: “unused account balances may be made via check or credits to the customer’s credit/debit card. for prepaid ICSand VVS .”<br><br>Substitute: “unused account balances for prepaid ICS and VVS may be made via check or credits to the customer’s credit/debit card.”                     |
| Page 23 | Paragraph 3, line 6    | Strike the duplicate period at the end of the sentence  |
| Page 23 | Paragraph 4, line 9    | Amended to: “used to determine whether abandoned property”  |

Page 24	Paragraph 2, line 5	Strike “submitted” and replace with “remitted”
Page 24	Paragraph N, listed items (1), (2) and (3)	Strike: “ICS minutes and associated revenue” Substitute: “ICS minutes, number of calls, and associated revenue”

This Order, amended for the errata listed above, is substituted for and takes the place of the Order entered in the above-referenced Docket on October 1, 2013.

## I. BACKGROUND

In the Commission’s November 6, 2012 Order for the above styled proceeding, the Commission staff proposed changes to Commission Telephone Rule T-15.1 for Inmate Phone Service (IPS). Specifically, the staff sought comments from IPS providers on whether the existing local and toll IPS rates, consisting of an operator surcharge and a usage component, should be replaced with a usage rate only. Additionally, staff addressed the charges applied to customer bills when collect calls are terminated to local service providers that do not have collect call billing arrangements with IPS providers and whether such charges should be allowed in excess of the tariff rates for the calls. Comments were solicited from interested parties.

On January 25, 2013, staff submitted a data request to IPS providers for the following information with responses due by March 15, 2013:

1. Revenue and expenses for the most recent three-year period.
2. IPS revenues and minutes of use separated into local, intraLATA toll and interLATA toll categories.
3. Identification of fees charged IPS customers for submitting payment via Western Union and Moneygram, and the fees charged IPS customers by third-parties for billing and collection of IPS charges.
4. Description of each type fee charged plus the total fees assessed IPS customers by fee type.
5. Number of text-to-collect charges assessed IPS customers and the total charges assessed.
6. Credit card fees assessed IPS customers.
7. Refunds and unclaimed property reports filed with the State Treasurer.
8. Alabama Gross Receipts Tax collections and remittances.

9. Whether online and paper account statements are available to customers.

On May 14, 2013, staff submitted another data request to IPS providers requesting the following additional information with responses due by June 17, 2013:

1. How USF fees are assessed by the provider for their IPS and USF remittances.
2. Whether sales taxes are charged by the provider for IPS.

Additionally, staff viewed the FCC workshop on reforming inmate calling services, streamed over the internet on July 10, 2013. Following the workshop, the FCC, on August 9, 2013, issued a news release that it is taking immediate action to reduce interstate inmate calling service rates.

The FCC's reforms are summarized as follows:

- Requires that all interstate inmate calling rates, including ancillary charges, be based on the cost of providing the inmate calling service
- Provides immediate relief to exorbitant rates:
- Adopts an interim rate cap of \$0.21 per minute for debit and pre-paid calls and \$0.25 per minute for collect calls, dramatically decreasing rates of over \$17 for a 15-minute call to no more than \$3.75 or \$3.15 a call
- Presumes that rates of \$0.12 per minute for debit and prepaid calls (\$1.80 for a 15-minute call) and \$0.14 cents per minute for collect calls (\$2.10 for a 15-minute call) are just, reasonable and cost-based (safe-harbor rates)
- These rates include the costs of modern security features such as advanced mechanisms that block calls to victims, witnesses, prosecutors and other prohibited parties; biometric caller verification; real-time recording systems; and monitoring to prevent evasion of restrictions on call-forwarding or three-way calling
- Concludes that "site commissions" payments from providers to correctional facilities may not be included in any interstate rate or charge
- Clarifies that inmates or their loved ones who use Telecommunications Relay Services because of hearing and speech disabilities may not be charged higher rates
- Requires a mandatory data collection, annual certification requirement, and enforcement provisions to ensure compliance with this Order
- Seeks comment on reforming rates and practices affecting calls within a state
- Seeks comment on fostering competition to reduce rates

Based on the additional information obtained by staff and the FCC's action, staff determined that changes to Commission Rule T-15.1 as proposed in the Commission Order of November 6, 2012 are insufficient to address needed reforms in Alabama IPS. Consequently, staff substitutes the proposed revisions to Commission Rule T-15.1 referenced herein for those provided in the rulemaking proceeding established by the November 6, 2012 Commission Order.

## **II. GENERAL**

### **A. "Inmate Calling Service" Adopted as Service Description**

Previous Commission Orders under this Docket and Commission Rule T-15.1 use the terminology "Inmate Phone Service" to describe the telecommunications service provided to those incarcerated in prisons and jails in Alabama. The FCC identifies these services as "Inmate Calling Service". For consistency, staff will hereafter refer to the telecommunications service provided to those incarcerated in prisons and jails in Alabama as "Inmate Calling Service" (ICS).

### **B. ICS Service in Alabama**

Service at confinement facilities is offered under contract with a single ICS provider. Competition for the contracts is intense. In Alabama and many other states, confinement facilities are allowed to receive commissions on ICS revenues at their facilities. The commissions can be as much as 80 percent or higher.

ICS is provided via collect calling, debit accounts, prepaid accounts, and direct billing arrangements. Both debit and prepaid calling accounts are prepaid service. The distinction between the two is that the purchaser of prepaid service pays only for inmate calls to their local telephone number. For debit service, the inmate chooses to use their funds to pay for a call to any phone number that is not otherwise blocked by the confinement facility. Direct billed accounts are established by ICS providers for credit-worthy individuals, bail-bond services, attorneys, public agencies, etc., typically with a credit limit. Debit and Prepaid service are currently the dominant ICS options.

Some confinement facilities require inmates to submit a list of the numbers they intend to call using debit calling service. The maximum duration of inmate calls is in accordance with individual confinement facility policy. Twenty minutes is generally the maximum time allotted. Confinement facilities require that calls be monitored electronically with the capability for a member of the facility staff to listen to conversations as desired. Key words and phrases are scanned, via software, and flagged for additional attention. Three-way calls are prohibited and software is usually provided to detect the presence of such calls.

Video Visitation is a burgeoning inmate calling service. Video Visitation is provided for both the inmates and their visitors at the inmate facility or the “visitor” may connect remotely using a PC with a web camera and high-speed internet connection at home, work, or elsewhere. Additionally some ICS providers offer recorded video messages that can be downloaded by the inmate, as well as inmate email, and text messaging services. Such services are relatively new and are therefore not addressed in previous Commission ICS proceedings.

### C. Inmate Calling Rates and Fees

Existing Alabama ICS usage rates are established in two tiers, one for local and one for toll calls. The rate structure was established when collect calling was the dominant service platform. It includes a flat-rate operator surcharge of \$2.25 per local or toll call. The usage charges are capped at \$0.50 per local call and \$0.30 per minute for toll calls. Local calls are thus capped at \$2.75 (\$2.25 operator surcharge plus \$0.50 for usage). The charge for toll calls depends on call duration. For a twenty-minute toll call, as an example, the ICS customer is charged \$8.25 (\$2.25 plus \$0.30 per minute).

Predictably, the economics of such a rate structure incents ICS customers toward local calling when possible, particularly for inmates incarcerated for more than a temporary period. Opportunities are available for ICS customers to utilize the local calling rate for calls to recipients located outside the confinement facility’s local calling area. One of the most common ways to accomplish this is for the inmate’s called party to acquire a cellular phone whose number is within the confinement facility’s wireline local calling area. Another is using a service such as “Cons Call Home”, where for a monthly fee of \$7.50, the called party is provided with a number that is local to the inmate facility or a toll free number. Calls to the local or toll free number is

routed by the service to the called party. Consequently, most ICS traffic in Alabama is rated as local calls. The percentage of ICS minutes at Alabama confinement facilities that are rated as local calls ranges from 56.4% to 93.6% with a statewide average of 81%.

In addition to the tariffed charges for calls, ICS providers typically assess fees for various aspects of the service including an account maintenance fee, biometric or voice verification fee, billing cost recovery fee, bill processing fee, bill statement fee, carrier cost recovery, etc. ICS customers who pre-pay by money transfer at Western Union or MoneyGram are charged a fee by those financial services. ICS providers can influence the amount of the fee charged by Western Union or MoneyGram based on negotiated arrangements with those financial services. Additionally, ICS customers pay the State Utility Gross Tax assessed to the price of their local and intrastate services as well as the Federal Universal Service Fund fee and the Federal TRS Fund fee applicable to interstate calls.

Purchasers of prepaid ICS usually have several payment options. Payment can be made by check or money order. Credit/debit cards can be used on the internet or over the phone using either interactive voice response (IVR) or a live agent. Purchasers may pay using a money transfer service such as Western Union or Money Gram. Kiosks are also available at some confinement facilities providing the capability of depositing funds for prepaid accounts or debit accounts via cash or credit card. Inmates may also transfer funds from their trust/commissary accounts to their inmate phone debit account.

#### D. ICS Has Evolved

ICS has evolved from exclusive reliance on the public switched network to service routed over an internet protocol (IP) based platform to the provider's switch, frequently located out-of-state. The calls are subsequently routed to their destination over the provider's trunks or those of an underlying carrier. Therefore, there is little difference in provider cost for calls that terminate in the local calling area of the inmate facility and those that terminate outside the inmate facility's local calling area. The use of IP technology avoids originating access expense. Terminating access expenses are incurred.

Collect calls represent a relatively small and declining percentage of ICS traffic. One reason for the shift to prepaid ICS is lower costs for the provider. Prepaid ICS eliminates the

substantial expense of billing agreements and the uncollectable receivables associated with local service provider billing. Additionally, many wireless providers refuse to accept ICS collect calls and the number of ILECs and CLECs that accept ICS collect calls is declining. To ensure the completion of collect calls by local wireline and wireless providers that refuse to accept and bill for collect ICS calls, ICS providers rely on prepaid calling options and/or third-party billing and collection services. Called parties may be charged a bill statement fee when third-party billing and collection services are used by their ICS providers.

Most wireless providers do not offer billing of collect calls creating an opportunity for third-party services to enter into agreements with ICS providers and wireless companies for completing the calls. One such service is “text-to-collect”. The wireless recipient of an attempted collect ICS call is sent a premium text message from the third-party service identifying the calling party and offering to complete the call for a charge of \$9.99. The maximum duration of the call is subject to confinement facility policy; usually no more than 20 minutes and frequently less. Regardless of whether the call lasts 1 minute or 20 minutes, the charge is \$9.99. Based on research, staff estimates the ICS provider receives 45 to 50% of the \$9.99 charge, the wireless provider receives 35 to 40%, and the third-party “middleman” receives the remainder. The premium text message is then billed directly to the wireless customer by the wireless provider. No additional usage charges apply. From the charges assessed the wireless caller, confinement facilities typically receive 30 cents or less commission per call (3% of the total charge).

The lure of such lucrative margins creates a further incentive to eliminate the “middle man” third-party and the wireless provider altogether. At least one ICS provider is doing so under a program called “pay now”. Attempted collect calls to wireless or un-billable wireline parties are temporarily connected to the called party for a short “free call”. However, the provider uses an automated operator to identify the calling party and offers to continue the call for a charge of \$14.99 billed to the recipient’s debit or credit card. Staff has listened to the messages that accompany such calls. The called party is advised that \$1.80 of the charge is for the call and the remaining \$13.19 is a call processing charge. Like “text-to-collect” calls, the maximum duration of the call is subject to confinement facility policy. Regardless of whether the call lasts 1 minute or 20 minutes, the charge is \$14.99. No additional usage charges apply.

From the charges assessed the called party, staff understands that confinement facilities typically receive \$1.60 or less commission (approximately 11% of the total charge).

More ICS providers are likely to pursue “pay now” type call processing, leading staff to conclude that the percentage of inmate calls billed in this manner will increase. According to ICS provider, IC Solutions<sup>1</sup>, more than 25 percent of calls at some inmate facilities across the nation are being completed as “pay now” and text-to-collect calls. As more calls are completed using “text-to-collect” and “pay now”, the average price for inmate calling will trend upward regardless of regulatory caps established for ICS usage rates and authorized fees. Additionally confinement facilities, regardless of the contractual percentage commission pledged by ICS providers, will experience decreasing commissions compared to what they would receive from other prepaid, debit, and collect calls.

### **III. ICS REFORM**

#### **A. Commissions Paid to Confinement Facilities**

Whether confinement facilities should be allowed to receive commissions from ICS, and the extent thereof, is a decision reserved for state and local policy makers with fiscal oversight for prisons and jails, not the state agency responsible for regulating service provision, pricing, billing, customer relations, and other terms and conditions of ICS at those confinement facilities. Consequently, the Commission takes no position on policy that authorizes or does not otherwise restrict the payment of commissions to confinement facilities from ICS. Nevertheless, staff believes the decision for selection of the exclusive provider of ICS service at a confinement facility, from a group of providers competing for the contract, could be disproportionately influenced by the percentage commission offered the confinement facility. The actual users of ICS services have no choice whatsoever in the selection of their provider, the rates charged, and the provider’s service quality. Therefore, Commission regulation of provider rates and service is undertaken as a proxy for fair market competition to ensure that inmates and their families are provided the highest quality service and customer support at prices that are just and reasonable.

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<sup>1</sup> IC Solutions, Bid No. WG13-01, Presented to Baldwin County, Alabama, November 14, 2012, “Rates & Commission (Completed Schedule B)”, Tab 6, Page 4.

In recognition of existing public policy, staff recommendations addressed herein considers the financial interests of ICS customers, ICS providers, and inmate confinement facilities. In the event that public policy regarding commission payments to confinement facilities changes, the staff recommendations in this order shall be revisited and adjusted accordingly.

In the August 9, 2013 announcement capping interstate ICS rates, the FCC presumed the cost of ICS is currently \$0.12 per minute for debit and prepaid ICS calls and \$0.14 per minute for collect ICS calls<sup>2</sup>. ICS providers are promising commissions of 80% or higher to some confinement facilities. Staff calculates the average ICS revenue per call in Alabama at \$0.27 per minute, 80% of which equates to \$0.216 per minute commission. Staff is perplexed at how ICS providers can commit to paying confinement facilities a commission of 21.6 cents on a call that costs the provider 12 cents (total cost to the provider of 33.6 cents) yet generates only 27 cents in revenue. Either ICS providers are operating at a loss, are generating revenue by means other than inmate calls, or are shielding some portion of ICS revenue from commissions. As previously discussed, one way to reduce commissionable ICS revenue is through “text collect” and “pay now” calls. Another way to reduce the revenue against which commissions apply is by shifting a higher proportion of ICS revenues to fees assessed by the provider.

Staff considers the ICS “baseline offering” as debit or prepaid service paid by check or money order with no associated payment processing fee and an online customer account activity statement. With payment by money order or check, customer funds are devoted entirely to ICS service but there is a delay in establishing service availability. Many inmates processed into city/county jails are released after hours or days. Consequently, payment by check or money order is not always viable. Therefore, many customers choose collect calling or the expeditious establishment of prepaid service via money transfers, kiosks, or by credit/debit card. These “above baseline” ancillary services result in additional provider costs. Staff considers these legitimate business costs that the ICS provider should be provided an opportunity to recover. The Commission emphasizes, however, that ICS fees authorized by the Commission are intended

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<sup>2</sup> Staff believes the presumed costs referenced by the FCC are more applicable to high occupancy state and federal correctional facilities but significantly underestimate the average costs applicable to smaller city/county confinement facilities.

only to recover actual provider costs, not generate net income for the ICS provider and/or revenue for the confinement facility. Consequently, confinement facilities shall not seek/accept nor shall ICS providers offer/pay commissions to confinement facilities from ICS customer fees.

The funds most ICS customers can afford to devote to inmate calls are finite. Therefore, any proportion absorbed by unnecessary or excessive ICS provider fees decreases the amount devoted for inmate calls and reduces commissionable revenue. The interests of ICS customers and confinement facilities are best served by eliminating unnecessary or excessive provider fees and thereby maximizing customer funds available for inmate calls. Furthermore, restricting commissionable revenue to ICS usage makes it far easier for confinement facilities to verify they are being paid the full extent of commissions due from the ICS provider.

#### B. Calls to Recipients Whose Providers Do Not Accept Collect Calls

Staff considers the charges associated with “text-to-collect” and “pay now” ICS call processing to be exorbitant and an obstacle to ensuring that ICS rates are affordable for consumers. “Pay now” call processing demonstrates that “text-to-collect” is not a necessary method for completing calls to customers whose providers refuse to bill collect calls. Staff finds no reason why the ICS provider can’t offer the called party the option to “pay now” and/or the opportunity to establish a prepaid account using the call processing fees and usage rates approved by the Commission.

Staff recommends that “text-to-collect” be prohibited from intrastate ICS in Alabama. Staff further recommends that any “pay now” option for collect calls be restricted to the applicable usage rates and payment processing fees recommended in paragraphs E and F below.

#### C. Applicable State Taxes

Staff sought guidance from the Alabama Department of Revenue (“ADOR”) on whether the State Utility Gross Receipts Tax or sales taxes apply to ICS. On August 13, 2013, the Commission received a response from the Assistant Director, Sales and Use Tax Division of ADOR (Attachment A). ADOR’s guidance is that the six-percent (6%) State Utility Gross Receipts Tax applies to all ICS local service, intrastate toll and interstate toll charges. Local and State sales taxes do not apply to ICS charges. Section 40-21-80 (11), *Code of Alabama*, provides

that the tax shall not be applied to provider fees and/or "...services which are ancillary to the provision of telephone service but are not directly related to the transmission of voice, data, or information...". Additionally, the tax is not applicable to government mandated fees.

D. No Up-Front Assessment of Taxes and Government Fees

The provider is unable determine the nature of the calls and their duration until the calls are rated. Consequently, ADOR guidance (Attachment A) is that the State Utility Gross Receipts Tax be applied only as the service is used. Taxes<sup>3</sup> and government mandated fees<sup>4</sup> applicable to ICS in Alabama shall be assessed to each call at the time of the call and not beforehand.

E. ICS Usage Charges

Based on information reported by ICS providers in the staff's January 25, 2013 data request, the composite ICS local and toll revenue, including operator surcharges and usage charges, averaged \$0.27 per minute in Alabama (total reported local and toll ICS calling revenue divided by total reported local and toll minutes).

On August 9, 2013, the FCC capped the price for interstate ICS calls at \$0.21 per minute for prepaid calls and \$0.25 per minute for collect calls with no call set-up allowance. The FCC rates presume that ICS provider costs average \$0.12 per minute for prepaid calls and \$0.14 per minute for collect calls. The staff considered mirroring the FCC rate caps. However, those rates do not take into consideration commissions to confinement facilities. On the other hand, the FCC failed to acknowledge the anticipated effects of call volume stimulation, which can be substantial, increasing both ICS provider revenue and corresponding commissions. Additionally, Intercarrier Compensation Reform is decreasing access costs. Terminating access rates are at interstate levels throughout the state and are being phased down to zero.

The existing ICS rate structure in Alabama is designed for a collect calling service platform with live operator interaction. However, collect calls comprise only a small percentage of total ICS traffic. ICS consists primarily of debit and prepaid calls with direct dialing to the

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<sup>3</sup> The three percent (3%) Federal Excise Tax on local telephone service is not applicable to ICS.

<sup>4</sup> The USF fee and Federal Telephone Relay Service ("TRS") Fund fee are applicable only to interstate calls.

authorized telephone number pre-approved by the inmate facility. Operator services are not applicable. Additionally, collect calls are fully automated requiring no live operator interaction.

Staff recommends elimination of existing operator surcharges and establishment of a single per-minute, postalized rate of \$0.25 applicable to both local and toll calls, and to both prepaid and collect calls. Like the FCC ICS rates, the staff's recommended ICS rate is intended to recover all associated ICS biometrics and security monitoring costs. Call durations shall be rated in increments of no greater than one (1) minute.

ICS providers at the FCC workshop testified that postalized ICS call rates (single per-minute rate for calls) and/or lower per-minute rates result in increased call volume. In some cases, the usage stimulation is extensive (above 100%). One ICS provider in Alabama confided to staff that they converted their ICS local rates in Alabama to a postalized rate of \$0.15 per-minute, equating to a 46% decrease in price based on the average duration of a local ICS call in Alabama at the existing rate cap for local calls. Nevertheless, the provider reports that total revenue remained unchanged due to the effects of call stimulation. Staff anticipates that a postalized rate structure and elimination of unnecessary or excessive ICS fees will significantly increase the volume of inmate calls. Along with staff measures addressing "text-to-collect" and "pay now" call delivery, the total commissionable revenue at confinement facilities is expected to increase accordingly.

#### F. Video Visitation Authority, Rates, and Other Inmate Services

Video Visitation Service ("VVS") is relatively new to Alabama confinement facilities. The service is offered by some certificated ICS providers and by others who do not currently possess a Certificate of Public Convenience and Necessity ("CPVN"). VVS is telephone calling accompanied by video images captured by webcams on either the instrument or via a webcam attachment to a personal computer. VVS is not internet service and those offering the service are not internet service providers. Confinement facilities do not authorize inmate subscription to traditional internet service. In fact, much of VVS is provided exclusively to both parties within the confinement facility. The audio and video, like traditional ICS, is transmitted over broadband facilities. It is essentially enhanced ICS.

VVS offers significant advantages to inmate family and friends. Children are frequently barred from visitation areas in confinement facilities. Without VVS, many inmates and their children have little to no opportunity for face-to-face contact. Studies show that such contact between inmate parents and their children not only lowers the recidivism rate among inmates but decreases the delinquency rate of their children. VVS can also amount to a substantial travel-related cost savings for inmate families, particularly if they live a significant distance from the confinement facility and have access to a computer with web cam. The convenience of remote VVS may also lead to more frequent “visitation”. In some areas, Richmond, VA for one, local churches with prison ministries have established sites with web cam equipped computers for inmate families to utilize the service.

Confinement facilities find VVS advantageous. Traditional visitation areas pose a security risk in terms of transporting inmates to and from visitation. Additionally, contraband is sometimes smuggled to inmates during visitation. The confinement facility must dedicate personnel to transport and monitor inmates during visitation. With in-house VVS, inmate families including their children, may access a VVS terminal located in a secure area of the facility for a “visit” with the inmate at another VVS terminal located inside the cell block. VVS from home or another remote site must be scheduled and approved beforehand.

VVS is not without its potential issues. Many inmates prefer the live face-to-face visitation. Additionally, confinement facilities may be inclined to eliminate free live visitation, especially with the revenue incentive associated with VVS. The service can be relatively expensive. Some ICS providers are charging up to \$1.00 per minute for VVS.

There are non-ICS providers offering VVS to confinement facilities. Among them are Turnkey Corrections, a manufacturer of kiosks and a provider of inmate canteen services; and Homewav. Turnkey Corrections offers VVS for \$0.35 per minute while Homewav provides the service for \$0.50 per minute. Both companies offer commissions to confinement facilities. However, ICS providers offer VVS at rates that are as much as \$1.00 per minute (double the rate of Homewav and nearly triple the Turnkey rate).

VVS is an ICS and, therefore, falls under the Commission’s regulatory jurisdiction. Consequently, providers of VVS in Alabama must possess a CPCN from the Commission. Staff recommends that ICS providers in Alabama that possess a CPCN for ICS from the Commission,

on or before the date of the final order in this rulemaking proceeding, be granted additional VVS authority. Those offering VVS without a CPCN from the Commission must request such authority within 90 days from the date of the final order in this proceeding or cease providing the service.

Staff recommends that the per minute rate for VVS be capped at \$0.50 per minute, with billing increments of no greater than one (1) minute, until such time as ICS providers individually submit to the Commission detailed cost studies for ICS and petition the Commission for alternative rates. Staff's recommended rate cap is based on the VVS rate currently charged by ICS competitor, Homewav, and allows for commissions paid to the confinement facilities.

The provider will not fix the charges for VVS based on minimum call duration. For instance, providers will not offer VVS for \$10.00 with a twenty-minute call allowance regardless of actual call duration. VVS will be priced at the capped rate applied to the actual call duration. Downloadable VVS recorded messages will be capped at \$1.00 for the first minute and \$0.50 for each additional recorded minute. The maximum fees and ancillary charges referenced in Part G (below) are applicable to VVS as are the State Utility Gross Receipts Tax and government mandated fees referenced herein. Affordable VVS rates are in the best interests of Alabama inmates, their families, and the confinement facilities.

Staff requests comments from interested parties on whether the rates for email and text messaging services offered by ICS providers should be capped by the Commission and, if so, at what rates.

#### G. ICS Fees and Ancillary Charges

Staff emphasizes that authorized fees for ICS service are intended only to recover actual costs incurred by the ICS provider. They are not a profit center for the service provider nor are they to be a source of commissionable revenue for the inmate facility. Any evidence to the contrary constitutes tacit admission that the approved fees are above provider cost. All fees and charges assessed by the ICS provider must be approved by the Commission and will be included in the provider's tariff on file with the Commission.

## (1) Payment Processing Fees

Based on the method of payment selected by the purchaser of ICS, costs are incurred by the provider. The ICS customer will be provided the opportunity of paying for debit/prepaid ICS service, via check or money order, without incurring a payment processing fee. Other payment methods that provide establishment of service more expeditiously result in additional costs to the provider from credit or debit card processing services, costs for establishing web-based payment interfaces, costs for IVR and live customer payment processing service, and the costs of providing and servicing kiosks at confinement facilities. Staff recommends recognition of the following maximum fees:

- (a) Payment by check or money order - No charge
- (b) Website payment<sup>5</sup> via credit or debit card – \$3.00
- (c) IVR phone payment (footnote 5) via credit or debit card - \$3.00
- (d) Live agent phone payment (footnote 5) via credit or debit card - \$5.95
- (e) Kiosk payment (footnote 5) via cash, credit, or debit card - \$3.00
- (f) Money Transfer services (Western Union and MoneyGram) – Staff recognizes that these fees are set by these financial services but is also aware that agents hosting such services are paid a portion of the fee. Additionally merchants may negotiate the fee charged their customers. Staff emphasizes that ICS providers are prohibited from receiving any portion of fees paid by their customers to third-party financial services for submission of payments for ICS and/or for transferring funds into inmate accounts. Any evidence that ICS providers are benefitting financially from fees charged their prospective or existing customers by third-party money transfer services and/or that ICS providers are paying confinement facilities commissions therefrom, constitutes tacit admission that the fees are excessive and shall subject the

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<sup>5</sup> The provider will not establish a ceiling on the payment that may be submitted by a customer, regardless of payment method utilized. Such artificial barriers deprive the customer of available “economies of scale” with little increase in the provider’s actual costs. The staff believes such ceilings can be used to force customers into paying the provider’s processing fees more frequently. Consequently, the maximum payment processing fees referenced herein are flat-rated regardless of the payment amount and method of payment.

provider to Commission regulatory action including, but not limited to, customer refunds with interest. All ICS providers shall submit, for informational purposes to the Commission, the transaction fee charged their customers by Western Union and MoneyGram for ICS payments and will update this information as the fees change. Staff will compare fees submitted by all ICS providers and require justification from ICS providers for any observed anomalies.

ICS providers shall fully inform customers on their websites of all the payment methods available, the payment processing charges associated therewith, including the money order and check payment option available at no charge, and the estimated time required to establish ICS service applicable to each payment option.

(2) Bill Processing Fees

- (a) Collect Calls – ICS providers must pay third-party processing and LEC charges for adding charges to local exchange carrier (“LEC”) bills. Staff recommends a maximum fee of \$3.00 regardless of the number of calls included on the customer’s bill.
- (b) Bill processing fees are not authorized for debit, prepaid, and direct-billed ICS. The Commission considers such costs normal business overhead recovered via the authorized ICS usage charge.

- (3) Convenience Fee – ICS providers are typically required to invest in software interfaces with inmate trust/canteen accounts for purposes of transferring inmate funds into ICS debit accounts. Additionally, inmate trust/canteen service providers typically assess ICS providers a percentage of the inmate funds transferred as a fee for the service. Usually, the transfers are very small amounts (\$3 to \$5). The staff recommends a maximum convenience fee of five-percent (5%) of the funds transferred into the inmate’s ICS account for purposes of recovering the ICS provider’s costs.

- (4) Regulatory Cost Recovery Fee – The Commission considers the costs of complying with regulatory requirements and payment of Inspection and Supervision Fees (“I&S fees”) as normal utility overhead. The Commission has not heretofore authorized a regulatory cost recovery fee for intrastate service telephone service. Any such fees applied to Alabama LEC bills are those specifically authorized by the FCC for interstate carriers subject to FCC regulatory fee assessments and who are required to file interstate tariffs with the FCC. ICS providers were heretofore not regulated by the FCC and have not been assessed FCC regulatory fees. It appears the FCC has asserted regulatory jurisdiction over ICS providers based on its August 9, 2013 action to cap interstate ICS charges. Should the FCC specifically authorize a regulatory cost recovery fee for ICS providers, the Commission will consider its applicability. In the interim, the Commission does not authorize such a fee for intrastate service.
  
- (5) Returned Check Charge – Section 8-8-15(b) in the Code of Alabama establishes the maximum returned check charge as \$30. This is the maximum allowable returned check charge authorized for ICS in Alabama.
  
- (6) Paper Bill Fee – All ICS customers (including VVS) will be provided an electronic statement of payments and charges, free-of-charge, as provide in paragraph I, below. Customers may optionally request that a detailed paper bill be mailed or faxed to them for any or all of the account activity corresponding to the most recent three-months statements available online in electronic format. The maximum allowable paper bill fee (including postage and handling) is \$2.00.

#### H. Other Ancillary Charges Prohibited

- (1) Account set-up fee – The Commission authorizes service installation charges for telephone utilities involving connection/activation and/or transfer of facilities. The provision of ICS to an inmate does not require any connection/activation or transfer of underlying facilities. There is no need to establish customer accounts for ICS collect calls. The called party is billed and a bill processing fee is charged. Account and billing information must be collected

by the ICS provider for debit, prepaid, and direct-billed accounts. However, the migration to these type services resulted in substantial cost savings to providers allowing them to avoid that portion of uncollectable charges typically associated with collect ICS calls. The inherent cost savings associated with debit and prepaid service was cited by ICS providers as justification for seeking Commission approval to introduce debit and prepaid service. It is, therefore, incomprehensible that providers should now insist on charging these customers for the “privilege” of using a service established for the provider’s benefit. The Commission considers account establishment as a normal administrative cost that should be borne exclusively by the provider. Consequently, the Commission does not authorize any fee for ICS account set-up.

- (2) Refund fee - With debit and prepaid service, providers not only avoid uncollectable expenses, they benefit from the interest-free utilization of customer owned funds. No telephone utility certified in Alabama is authorized to assess a service charge for refunding customer funds. The Commission considers administrative costs associated with customer refunds to be normal business overhead to be borne exclusively by the provider and, therefore, does not authorize a refund fee.
- (3) Provider assessed “fines” and penalties for prohibited inmate behavior – The ICS account is established with an expectation that the funds submitted to the provider are exclusively for ICS including applicable taxes and government mandated fees. The funds associated therewith are the property of the ICS customer until utilized in part or in whole for ICS. Providers and/or confinement facilities are not authorized to assess monetary penalties/fines/fees to ICS customer accounts for violation of confinement facility security policies or otherwise access the customer’s ICS prepayments without Commission authorization and the explicit consent of the ICS customer.
- (4) Other fees and charges - Providers are not authorized to assess any usage charges and/or fees other than those specifically referenced herein under Section III, Parts C through G(6), without specific Commission approval. Any proposed tariffs submitted to the Commission

by an ICS provider seeking approval for rates and fees not specifically listed in Section III, Parts C through G(6) of this Order, and/or seeking approval for rates and/or fees that exceed the maximum charges associated therewith, shall not be effective without the provider's formal request that the Commission grant an exemption/waiver from the limitations imposed by Section III, Parts C through G(6). Additionally, the fees/rates shall not be effective absent a Commission Order granting the requested exemption/waiver specified in the provider's request. Any unauthorized fees charged by providers and/or any commissions paid therefrom are subject to Commission regulatory action including, but not limited to, customer refunds with interest.

I. Minimum Customer Account and Service Information Requirements

Commission Telephone Rule T-5(C) requires that detailed monthly electronic or paper account statements be provided to customers at no charge. Monthly, individualized ICS customer account statements must be provided to ICS customers of debit, prepaid, and direct-billed service (including VVS). The default customer account statement shall be in electronic format, available over the internet and printable. The most recent three-months of statements shall be maintained online. In lieu of an electronic statement, a paper bill, mailed or faxed to the customer (customer's option), shall be provided at the request of prepaid and direct-billed customers (debit service excluded), subject to the paper bill fee referenced in G(6), above.

The monthly billing statement shall include the following:

- (1) For each call (including VVS): the date/time for the call, the call destination city and state or called number including area code (necessary only for debit accounts), call duration, and the charge for the call. If charged to the customer's debit, prepaid, or direct billed account, charges for inmate texting service, inmate email service, and video visitation shall be listed in the same detail applicable to inmate calls.
- (2) Applicable Alabama Utility Gross Receipts Taxes shall be listed in a separate category and labeled appropriately. The tax rate, and the total taxes assessed shall be provided.
- (3) Any applicable ICS provider fees will be listed individually in a separate category and labeled appropriately. The name of the applicable fee, amount charged by fee type, and total provider fees shall be clearly identified.

- (4) Government fees shall be listed in a separate category and labeled "Government Fees". The description and amount for each government fee shall be listed individually.
- (5) The statement shall provide the customer name, beginning and end date of the applicable billing period, beginning account balance, date and amount of payments received, and the ending account balance.

For payments at kiosks, the customer receipt shall provide the customer name, transaction date, identity of the account to which the payment applies, amount paid, payment processing fee, and balance applied to the customer's ICS account.

Electronic and paper account statements shall include the provider's toll free number for customers to call in order to inquire about the information listed on their statement of payments/charges and/or to discuss suspected billing errors and/or service issues. Additionally, the Universal Resource Locator (URL) to the provider's ICS website shall be listed. The provider's toll-free number and URL shall be prominently displayed in font size that is easily located by the consumer.

The Provider's ICS website shall have a webpage specifically devoted to Alabama ICS. The Alabama specific ICS webpage shall include the following information:

- (1) available services;
- (2) payment options (including information about kiosks);
- (3) ICS rates;
- (4) ICS fees;
- (5) description and rate/amount of the State Utility Gross Receipts Tax and government fees;
- (6) monthly customer statement options (electronic or paper);
- (7) refund procedures;
- (8) customer service contact information;
- (9) a link to the Alabama PSC ICS webpage (to be provided by the Commission).

The ICS provider's electronic and paper account statement and their Alabama specific ICS webpage format and content is subject to review and approval by the Commission Telecommunications Division staff.

For purposes of resolving billing disputes, ICS providers shall fax or include as email attachments, copies of the customer's monthly statements, as requested by the Commission, at no charge to the customer and/or the Commission. These documents will be considered proprietary

by the Commission and will not be released to outside parties, including the ICS customer, without explicit provider approval.

Providers shall submit to the Commission the name(s), telephone number, and email address of a point of contact(s) within the company for purposes of addressing consumer inquiries and resolving customer disputes. The contact information shall be revised and updated as necessary. Providers shall promptly acknowledge receipt of Commission inquiries, and shall fully cooperate with Commission staff to promptly investigate and resolve all inquiries and disputes to the Commission's satisfaction.

J. Records Retention and Auditing Requirements

ICS providers shall maintain electronic and/or paper copies of the following documents, records, or forms applicable to ICS in Alabama for the months in the current calendar year plus the most recent three (3) complete calendar years (Jan – Dec):

- (1) customer monthly account statements, referenced in Part III I;
- (2) forms showing the State Utility Gross Receipts Tax collected and the State Utility Gross Receipts Tax remitted to the Alabama Department of Revenue;
- (3) forms showing USF fee collections and payments submitted to USAC;
- (4) forms showing collections of the federal TRS fee and payments remitted to the TRS Fund Administrator;
- (5) records showing unused customer balances, by customer identification, and records of refunds by customer identification including the date, amount, and method of refund;
- (6) Unclaimed Property Report forms showing submission of unclaimed customer funds to the Alabama State Treasurer.

The records and forms to be retained by the ICS provider, as referenced herein, are subject to audit by the Commission, by the Commission on behalf of the Alabama Department of Corrections and local governments as requested, and other state agencies, including but not limited to the Alabama Department of Revenue, Alabama State Treasurer and State Examiners. Additionally, the ICS provider may be required to make available for inspection to the aforementioned entities other information not specifically identified herein.

For purposes of verifying compliance with tariffs and Commission rules for ICS, providers shall submit to the Commission, upon request, electronic or paper copies of ICS customer monthly account statements associated with ICS service at any confinement facility

designated by Commission staff, for any or all of the most recent three-month period requested by staff. Upon Commission staff request, providers shall submit to the Commission electronic or paper copies of ICS customer monthly account statements associated with ICS service for any service category designated by staff (debit phone, prepaid phone, VVS, etc.) at any of the Alabama confinement facilities served by the provider. All customer account statements submitted to the Commission by the ICS provider will be considered proprietary and will not be released to any party outside the Commission without explicit approval from the ICS provider.

Section 37-1-82 in the Code of Alabama requires all providers under the Commission's jurisdiction to make its books and records available for inspection at a location within the state of Alabama. If all or part of the provider's books, documents, and/or records referenced herein are located outside of Alabama and not made available for inspection at a location within Alabama, the ICS provider is required to reimburse the State of Alabama for all Commission employee travel, meal, lodging, and incidental expenses associated with the inspection of the provider's books, documents, and/or records.

#### K. Initial Inmate Call and Other Non-rated Calls

To ensure that newly confined inmates are provided ample opportunity to inform family members of their confinement status, identification of the confinement facility ICS provider, and procedures for establishing a prepaid ICS account, staff recommends that new inmates (those transferred from another confinement facility and/or newly processed into the confinement facility regardless of previous booking instances) be provided an initial two (2) minute call, at no charge provided the confinement facility does not block the inmate from calling the number.. A call attempt resulting in a busy signal or when there is no answer does not constitute compliance with this requirement.

The ICS provider shall inform the called party that the inmate is being provided two-minutes of conversation time and that at the end of the two minutes, information will be provided on procedures for establishing an ICS account. However, no part of the inmate's two-minute initial call allowance shall be utilized by the ICS provider to announce the call or for subsequent information regarding procedures for establishing a prepaid ICS account. Staff believes that this arrangement is beneficial to the inmate, the called party, the ICS provider and the confinement

facility. Providers who choose to utilize a collect call arrangement must nevertheless comply with this requirement and offer an initial two-minute call to the inmate, free of charge to the called party. The initial two-minute call allowance does not apply to established direct billing arrangements (attorneys, bail bondsmen, etc.).

ICS providers will not charge inmates for calls to the designated customer service number for the ICS provider.

L. ICS Resale

ICS providers sometimes offer to the facilities they serve, ICS phone cards in increments of \$10, \$20, etc., for resale to inmates. The total price paid by the ICS customer, including any markups by the ICS provider and/or the confinement facility must not exceed the purchasing power of ICS services using the card. Therefore, if the face value of the calling card is, for example, \$10, the inmate may not be charged more than \$10 for the card (including any markups or fees not specifically approved by the Commission) and the card must be redeemable for \$10 of ICS based on the ICS provider's tariffed rates on file with the Commission. Additionally, taxes and government fees will not be assessed up front but are applicable only when calls are placed by the customer.

M. Refunds and Unclaimed Property

Commission Rule T-5(C)(6) requires that providers refund customers any overcharges for the previous thirty-six (36) month period.

ICS providers will be proactive in informing customers of procedures for refunding unused debit and prepaid balances. ICS customers will be refunded their unused balances in full. The provider will not assess any fee to the customer's balance or request any payment from the customer for refunds. Refunds of unused account balances for prepaid ICS and VVS may be made via check or credits to the customer's credit/debit card. Refunds of unused account balances for debit service shall be made by credits to the inmate's trust fund account. The Commission will consider other refund methods, e.g., calling cards that can be used outside the facility, on a case by case basis. However, these methods and the rates/charges applicable to the

calling cards must be approved by the Commission and included within the ICS provider's tariff on file with the Commission.

Title 35, Chapter 12, Article 2A, in the Code of Alabama codifies the Uniform Disposition of Unclaimed Property Act of 2004 ("the Act"). Section 35-12-72(a)(15) is applicable to utility service and defines unclaimed as a "Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable". The Commission hereby defines the terminology "one year after the deposit or refund becomes payable" to be one year from the date of the last customer generated debit or credit to the customer account, i.e. one year following the last customer payment for ICS in the account or one year after the customer's last usage of funds in the account for ICS, whichever comes later. Section 35-12-74 of the Act identifies the criteria used to determine whether abandoned property should be submitted to the State Treasurer.

Section 35-12-76 of the Act, addresses dormancy charges and whether they are applicable to abandoned property. Paragraph (b) reads:

"A holder may deduct from property presumed abandoned a charge imposed by reason of the apparent owner's failure to claim the property within a specified time only if there is a valid and enforceable written contract between the holder and the apparent owner under which the holder may impose the charge and the holder regularly imposes the charge. The amount of the deduction is limited to an amount that is not unconscionable."

The Commission does not consider ICS provided under exclusive contract with the confinement facility to represent any explicit or implied contractual agreement with users of their ICS service for purposes of determining whether dormancy charges apply to the customer's abandoned property. Furthermore, the Commission prohibits any attempt by ICS providers to include in ICS offerings to their customers, or otherwise in their tariff on file with the Commission, any requirement that the customer's property is subsequently subject to dormancy charges in the event of abandonment. Dormancy charges are not applicable to ICS in Alabama.

Section 35-12-76 of the Act establishes the procedures for submitting a report of abandoned property to the Alabama State Treasurer. Paragraph (c) requires the report to be filed before November 1 each year, for the most recent 12-month period ending June

30. Section 35-12-77 of the Act requires the total amount of unclaimed property for the period covered by the report be remitted with the report to the State Treasurer, Unclaimed Property Division. Attachment B, provided by the State Treasurer, shows prescribed dormancy periods and National Association of Unclaimed Property Administrators (NAUPA) codes.

N. Reporting Requirements

ICS providers will submit the following information to the Commission for each Alabama confinement facility served:

- (1) local ICS minutes, number of calls, and associated revenue;
- (2) intrastate ICS minutes, number of calls, and associated revenue;
- (3) interstate ICS minutes, number of calls, and associated revenue.

The initial report is due January 31, 2014 for the previous six-month period ending December 31, 2013. Thereafter, reports are due quarterly, every year, on the last business day of April, July, October, and January for the most recent three-month period ending in March, June, September, and December respectively.

O. Tariffs

ICS providers will submit revised tariffs that comply with the requirements in the final Order for this proceeding and rules adopted therein. Within the provider's tariff, a separate section will be established identifying all services provided to confinement facilities in Alabama, a description of each service provided, and the associated rates for each service. Additionally, a separate tariff section will be provided that identifies, defines, and provides the associated price for all ICS fees and ancillary charges. The provider will not assess any rate or charge to ICS customers without Commission approval nor will any rates of charges be included in the tariff that are not specifically listed in the separate tariff sections referenced above. No existing or new ICS will be offered by the provider until the service and associated rates are approved by Commission and included in the provider's tariff on file with the Commission.

P. Tariff Filing Requirements

Section 37-1-81 in the Code of Alabama is applicable to ICS. Requests for additions to or revisions in the provider's tariff will be submitted with a requested effective date of no less than thirty (30) days from the date the filing is received at the Commission (file date). The Commission may suspend the tariff for investigation for a period of up to six (6) months from the file date. Commission Rule T-12 provides the specific format for telecommunications tariffs.

Tariffs and additions/revisions thereto filed with the Commission are considered public record and subject to intervention, in accordance with Commission rules and practices, from other providers and affected parties. In the event the Commission suspends the tariff for investigation due to intervention, the Commission may seek comments from other interested parties with regard to any issues identified by intervenors. Additionally, the Commission staff welcomes informal questions and comments from providers and affected parties on any aspect of ICS tariff filings.

Q. Implementation

In responses to the staff data request of January 25, 2013, ICS providers indicated that their contracts with Alabama confinement facilities include a provision that allows for the terms of the contract to be revised in the event of regulatory changes. Therefore, staff recommends that the changes to ICS approved by the Commission be implemented no later than ninety (90) days from the date of Commission's final order for this proceeding.

R. Comment Period

Staff recommends that the Commission consider comments from interested parties on the staff's changes to Commission Rule T-15.1 proposed herein, provided said comments are filed with the Commission on or before November 8, 2013.

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission will consider comments from interested parties concerning matters discussed above provided said comments are properly filed with the Secretary of the Commission before the close of business on or before November 8, 2013.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DATED at Montgomery, Alabama, this 7th day of October, 2013.

ALABAMA PUBLIC SERVICE COMMISSION



Twinkle Andress Cavanaugh, President

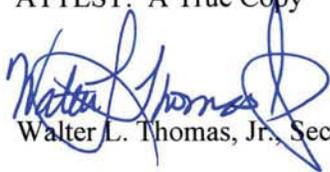


Jeremy H. Oden, Commissioner



Terry L. Dunn, Commissioner

ATTEST: A True Copy



Walter L. Thomas, Jr., Secretary



**JULIE P. MAGEE**  
Commissioner

# State of Alabama Department of Revenue

(www.revenue.alabama.gov)  
50 North Ripley Street  
Montgomery, Alabama 36132

August 13, 2013

**MICHAEL E. MASON**  
Assistant Commissioner

**JOE GARRETT**  
Deputy Commissioner

Mr. John A. Garner  
Executive Director  
Alabama Public Service Commission  
PO Box 304260  
Montgomery, AL 36130

Dear Mr. Garner:

Re: Taxation of Inmate Calling Services

This letter is in response to your letter dated July 18, 2013, concerning the correct application of tax for Inmate Calling Services (ICS) in Alabama.

The facts as presented in your letter are as follows:

Inmate Calling Service (ICS) providers are the exclusive service providers for inmate calls in a confinement facility. ICS is provided over the provider's instruments and their facilities. In 2008, Alabama ICS providers began offering required prepaid accounts. The inmate's family is required to purchase what is essentially a debit account. The inmate is not issued a calling card, per se, but is assigned a personal identification number (PIN) for accessing their prepaid accounts in order to make calls. Typically, inmates must provide the confinement facility with a limited list of numbers that they are authorized to call using the service. In most cases, those are the only numbers the inmates are permitted to call. ICS prepayment is made by the inmate's family over the Internet or phone using a credit card, via money order, by mail, or by credit card at kiosks located within the confinement facilities.

ICS providers furnish telecommunications services. Prepaid ICS is tied to the ICS providers' calling platform at the inmate's confinement facility who is the exclusive provider of ICS in the confinement facility. The service cannot be used outside the confinement facility. Inmate calls are completed over ICS provider instruments located within correctional facilities, and then in most cases routed to the ICS provider's call center, via internet protocol (IP) circuits, where they are completed through the public telephone network (PTN). Additionally, ICS providers are required to provide an array of electronic security hardware so that correctional facility personnel may monitor calls.

It should be noted that with ICS, the purchasers of the service are relatives or acquaintances of the inmate that frequently live in other jurisdictions and purchase the service on the inmate's behalf. The purchaser of the service does not receive tangible personal property in



Mr. John A. Garner  
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the form of a prepaid calling card. In fact, the purchaser, cannot use the service at all. Retail prepaid calling card sellers are not regulated by the Alabama Public Service Commission. ICS providers, however, are regulated telecommunication service providers and must acquire a Public Convenience and Necessity from the PSC in order to furnish telecommunications service in Alabama. In addition, ICS providers are required to refund purchasers for unused service unlike sellers of prepaid calling cards.

I will address your concerns in the order in which they were posed in your letter.

1. *Should ICS providers charge the Utility Gross Receipts Tax or sales tax for the prepaid ICS?*

Section 40-21-82(b) Code of Alabama 1975, as amended levies a the Utility Gross Receipts tax on any utility furnishing telegraph or telephone services in the State of Alabama.

“Prepaid Telephone Calling Card” is defined in Section 40-23-1(a)(13) as a sale of tangible personal property subject to sales tax.

This Division notes that there are differences between prepaid calling cards and prepaid ICS accounts. Prepaid calling cards are available at various retail outlets and can be utilized from any phone. Prepaid calling card providers do not furnish telecommunications service; they simply provide access to the services furnished by telecommunications providers. In contrast, ICS providers do furnish telecommunications services. Prepaid ICS is tied to the ICS providers’ calling platform at the confinement facility who is the exclusive provider of ICS in the facility. The service may not be used outside of the facility. Whereas, retail prepaid calling cards can be used in any state and often internationally.

Based on the facts provided in your letter and these important distinctions, it is the Department’s position that ICS providers should charge the Utility Gross Receipts tax for the prepaid ICS service.

2. *If sales tax applies, is it the state and local sales tax rate for the location of the one that purchases prepaid ICS service or the tax rates for the confinement facility where the service is used?*

Sales tax does not apply to prepaid ICS services. Instead, ICS providers should charge the Utility Gross Receipts tax for the prepaid ICS services.

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3. *Must the utility gross receipts tax be applied, up front, when the prepaid service is purchased or may it be applied to the cost of each call as the service is used?*

Utility Gross Receipts tax should be applied to the cost of each call as the service is used.

Although this letter provides the current opinion of the Sales and Use Tax Division regarding this matter, it is not an official revenue ruling in accordance with Section 40-2A-5, Code of Alabama 1975. Consequently, it is not legally binding on the Department of Revenue and the State.

I trust this answers the questions posed in your letter. However, if you need any additional assistance, please do not hesitate to contact my office.

Sincerely

A handwritten signature in black ink, appearing to read 'DLB', with a large circular flourish on the left side.

Dan L. Bass, Assistant Director  
Sales and Use Tax Division

DLB:tlf  
Attachment

**ALABAMA DORMANCY PERIOD AND REPORTING GUIDE**  
**FOR**  
**CLASSIFYING AND REMITTING PROPERTY UNCLAIMED/ABANDONED**

<b>TYPE PROPERTY</b>	<b>DORMANCY PERIOD</b> (In Years)
Certificates of Deposit .....	3
Checking .....	3
Credit Memos.....	1
Debt (government bonds).....	3
Debt (private bonds).....	3
Demutualization (funds/securities).....	2
Dissolution/Liquidation.....	1
Dividends.....	3
Federal Courts/Agencies.....	1
Fiduciaries.....	3
Gift Certificate*.....	3
Insurance Proceeds.....	3
IRA Keogh.....	3
Life Insurance Matured.....	3
Mineral Proceeds.....	3
Money Order.....	5
Official Bank Checks .....	3
Safe Deposit Boxes.....	3
Savings.....	3
Securities.....	3
State Courts/Agencies.....	1
Travelers Checks.....	15
Utility Deposits.....	1
Utility Refunds.....	1
Vendor Payments.....	3
Wages.....	1
All other Property.....	3

**REPORTING PERIODS:** July 1<sup>st</sup> – June 30<sup>th</sup>

**DATE PROPERTY DUE:** November 1<sup>st</sup> (report & remit) for period ending June 30<sup>th</sup>

**AGGREGATE AMOUNT:** Value less than \$50

**NEGATIVE REPORTING:** Negative reports (filing of no property) are **NO** longer required in the State of Alabama.

\* *Gift Certificate would comprise property other than those exempt under § 35-12-73 of The Alabama Disposition of Unclaimed Property Act of 2004.*

*The Alabama Disposition of Unclaimed Property Act of 2004 as mandated under Article 2A, Title 35, Chapter 12, § 70 – 96, Code of Alabama 1975, as amended, sets out the time periods in designating when personal property is considered unclaimed/abandoned and reportable to the State of Alabama, Treasurer's Office.*

**NAUPA PROPERTY TYPE CODES**

<b>Code</b>	<b>Description</b>	<b>Code</b>	<b>Description</b>
AC01	Checking Accounts	MI04	Production Payments
AC02	Savings Accounts	MI05	Working Interest
AC03	Mature CD or Savings Certificate	MI06	Bonuses
AC04	Christmas Club Funds	MI07	Delay Rentals
AC05	Money On Deposit To Secure	MI08	Shut-In Royalties
AC06	Security Deposit	MI09	Minimum Royalties
AC07	Unidentified Deposit	MI99	Aggregate Mineral Proceeds<\$50.00
AC08	Suspense Accounts		
AC99	Aggregate Account Balances<\$50.00	MS01	Wages, Payroll and Salary
		MS02	Commissions
CK01	Cashier's Checks	MS03	Worker's Compensation Benefits
CK02	Certified Checks	MS04	Payment For Goods/Services
CK03	Registered Checks	MS05	Customer Overpayments
CK04	Treasurer's Checks	MS06	Unidentified Remittances
CK05	Drafts	MS07	Unrefunded Overcharges
CK06	Warrants	MS08	Accounts Payable
CK07	Money Orders	MS09	Credit Balances-Accounts Receivable
CK08	Traveler's Checks	MS10	Discounts Due
CK09	Foreign Exchange Checks	MS11	Refunds Due
CK10	Expense Checks	MS12	Unredeemed Gift Certificates
CK11	Pension Checks	MS13	Unclaimed Loan Collateral
CK12	Credit Checks or Memos	MS14	Pension & Profit Sharing Plans
CK13	Vendor Checks	MS15	Dissolution or Liquidation Proceeds
CK14	Checks Written Off to Income	MS16	Miscellaneous Outstanding Checks
CK15	Other Outstanding Official Checks	MS17	Miscellaneous Intangible Property
CK16	CD Interest Checks	MS18	Suspense Liabilities
CK99	Aggregate Uncashed Checks<\$50.00	MS19	Credit Memos
		MS99	Aggregate Miscellaneous Property<\$50.00
CS01	Educational Savings Accounts - Cash	SC01	Dividends
CS02	Educational Savings Accts - Mut. Fds.		
	Educational Savings Accts -	SC02	Interest (Bond Coupons)
CS03	Securities	SC03	Principal Payments
CS04	Educational Savings Accts - Other	SC04	Equity Payments
		SC05	Profits
CS01	Educational Savings Accounts-Cash	SC06	Funds Paid To Purchase Shares
CS02	Educational Savings Accts-Mut Funds	SC07	Funds For Stocks/Bonds
CS03	Educational Savings Accts-Securities	SC08	Shares Of Stock (Returned By Post Office)
		SC09	Cash For Fractional Shares
CT01	Escrow Funds	SC10	Unexchanged Stock Of Successor Corp
CT02	Condemnation Awards	SC11	Other Certificate Of Ownership
CT03	Missing Heir's Funds	SC12	Underlying Shares/Outstanding Certificates
CT04	Suspense Accounts-Courts	SC13	Liquidation/Redemption-Unsurrendered
CT05	Other Court Deposits		Stocks or Bonds
CT99	Aggregate Court Deposits<\$50.00	SC14	Debentures
		SC15	U S Government Securities
HS01	Health Savings Account	SC16	Mutual Fund Shares
HS02	Health Savings Accounts - Investment	SC17	Warrants (Rights)
HS03	Health Savings Accounts - Other		

IN01	Individual Policy Benefits	SC18	Matured Bond Principal
IN02	Group Policy Benefits or Claim	SC19	Dividend Reinvestment Plans
IN03	Proceeds Due Beneficiaries	SC20	Credit Balances-Securities
IN04	Proceeds From Mature Policies, Endowments or Annuities	SC99	Aggregate Security Related Cash<\$50.00
IN05	Premium Refunds	SD01	Safe Box Contents
IN06	Unidentified Remittances-Insurance	SD02	Other Safekeeping
IN07	Other Amts Due Under Policy Terms	SD03	Other Tangible Property
IN08	Agent Credit Balances	TR01	Paying Agent Account
IN99	Aggregate Insurance Property<\$50.00	TR02	Undelivered or Uncashed Dividends
IR01	Traditional IRA-Cash	TR03	Funds Held In Fiduciary Capacity
IR02	Traditional IRA-Mutual Funds	TR04	Escrow Accounts
IR03	Traditional IRA-Securities	TR05	Trust Vouchers
IR04	Traditional IRA - Other	TR99	Aggregate Trust Property<\$50.00
IR05	Roth IRA - Cash	UT01	Utility Deposits
IR06	Roth IRA - Mutual Funds	UT02	Membership Fees
IR07	Roth IRA - Securities	UT03	Refunds Or Rebates
IR08	Roth IRA - Other	UT04	Capital Credit Distributions
IR09	IRA - Other	UT99	Aggregate Utilities<\$50.00
IR10	IRA - (Reserved for Future Category)	ZZZZ	Properties Not Identified Above
MI01	Net Revenue Interest		
MI02	Royalties		
MI03	Overriding Royalties		

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