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REDACTED – FOR PUBLIC INSPECTION

Non-Redacted Via Courier – Redacted Via ECFS

December 20, 2013

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

Re: *In the Matter of Rates for Interstate Inmate Calling Services* – WC Docket No. 12-375

Dear Ms. Dortch:

Pursuant to the FCC’s December 19, 2013 Protective Order issued in WC Docket No. 12-375,¹ CenturyLink submits the attached Comments.

CenturyLink regards certain costing information contained in its Comments as confidential information to be filed pursuant to the Protective Order. Each page of the non-redacted version of the submission has been marked “**CONFIDENTIAL INFORMATION - SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 12-375 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION**”. CenturyLink requests that the non-redacted version of its submission be withheld from public inspection.

This information is also protected from disclosure to the public by Sections 0.457(d) and 0.459 of the Commission’s rules.² The confidential information included in these Comments is competitively sensitive costing information and thus should not be available for public inspection. Such information would not ordinarily be made available to the public. Release of

¹ *In the Matter of Rates for Interstate Inmate Calling Services*, Protective Order, WC Docket No. 12-375, DA 13-2434, rel. Dec. 19, 2013.

² 47 C.F.R. §§ 0.457(d), 0.459.

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the confidential information in the Comments would have a substantial negative competitive impact on CenturyLink. Accordingly, the non-redacted information in question is appropriate for non-disclosure under sections 0.457(d) and 0.459. Pursuant to 47 C.F.R. § 0.459(b), CenturyLink provides justification for the confidential treatment of this information in the Appendix to this letter.

For the non-redacted version of its submission, CenturyLink is providing to the Office of the Secretary an original hard copy of the cover letter and Comments, along with an extra copy to be stamped and returned to the courier. Additionally, as required by the Protective Order, CenturyLink is transmitting two hard copies of the non-redacted version of its submission to Lynne Engledow of the Wireline Competition Bureau. CenturyLink is also filing today under separate cover, via the Commission's Electronic Comment Filing System (ECFS), a redacted version of its Comments and cover letter. Each page of the redacted version of the Comments (mirroring the corresponding pages of the non-redacted version with confidential information) is marked "**REDACTED – FOR PUBLIC INSPECTION,**" with the confidential information on page 14 omitted.

This cover letter includes no confidential information and the text is the same in both the non-redacted and redacted versions except for the confidentiality markings.

Please contact me via the above contact information if you have any questions.

Sincerely,

/s/ Thomas Dethlefs

Enclosures

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APPENDIX

Confidentiality Justification

CenturyLink requests confidential treatment of certain information in the attached Comments of CenturyLink. The information includes costing information which is competitively sensitive and its public disclosure would have a negative competitive impact on CenturyLink. Such information would not ordinarily be made available to the public, and should be afforded confidential treatment under both 47 C.F.R. §§ 0.457 and 0.459. In addition, the confidential information is protected from disclosure under the December 19, 2013 Protective Order³ in the above-referenced docket.

47 C.F.R. § 0.457

Specific costing information in the Comments is confidential and proprietary to CenturyLink as “commercial or financial information” under section 0.457(d). Disclosure of such information to the public would risk revealing company-sensitive proprietary information and have a harmful competitive effect on CenturyLink’s ongoing business enterprise and its operations. Therefore, in the normal course of Commission practice this information should be considered “Records not routinely available for public inspection.”

47 C.F.R. § 0.459

The specific costing information is also subject to protection under 47 C.F.R. § 0.459(b), as demonstrated below.

Information for which confidential treatment is sought

CenturyLink requests that the specific costing information be treated on a confidential basis under Exemption 4 of the Freedom of Information Act. This information is competitively sensitive data that CenturyLink maintains as confidential and does not normally make available to the public. Release of the information would have a substantial negative competitive impact on CenturyLink. Each page of the non-redacted version of the Comments has been marked **“CONFIDENTIAL INFORMATION - SUBJECT TO PROTECTIVE ORDER IN WC DOCKET NO. 12-375 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION”**.

³ *In the Matter of Rates for Interstate Inmate Calling Services*, Protective Order, WC Docket No. 12-375, DA 13-2434, rel. Dec. 19, 2013.

Commission proceeding in which the information was submitted

The information is being submitted in connection with CenturyLink's Comments as filed in WC Docket No. 12-375.

Degree to which the information in question is commercial or financial, or contains a trade secret or is privileged

The information designated in the Comments as confidential is costing information. As noted above, this data is competitively sensitive information that is not normally released to the public, as such release would have a substantial negative competitive impact on CenturyLink.

Degree to which the information concerns a service that is subject to competition; and manner in which disclosure of the information could result in substantial competitive harm

This type of commercial information would generally not be subject to routine public inspection under the Commission's rules (47 C.F.R. § 0.457(d)), demonstrating that the Commission already anticipates that the release of this kind of information likely would produce competitive harm. CenturyLink confirms that release of the information designated as confidential in its submission would cause it substantial competitive harm by allowing its competitors to become aware of sensitive proprietary information regarding the operation of CenturyLink's business.

Measures taken by CenturyLink to prevent unauthorized disclosure; and availability of the information to the public and extent of any previous disclosure of the information to third parties

CenturyLink has treated and treats the non-public information included in its submission (in non-redacted form) as confidential and has protected it from public disclosure to parties outside the Company. CenturyLink has not made the costing information available to the public.

Justification of the period during which CenturyLink asserts the material should not be available for public disclosure

CenturyLink cannot determine at this time any date on which this information should not be considered confidential or would become stale for purposes of the current matters, except that the information would be handled in conformity with general CenturyLink records retention policies, absent any continuing legal hold on the data.

Other information that CenturyLink believes may be useful in assessing whether its request for confidentiality should be granted

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Under applicable Commission and court rulings, the information in question should be withheld from public disclosure. Exemption 4 of the Freedom of Information Act shields information that is (1) commercial or financial in nature; (2) obtained from a person outside government; and (3) privileged or confidential. The information in question satisfies this test.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Rates for Interstate Inmate Calling Services) WC Docket No. 12-375

COMMENTS OF CENTURYLINK

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COMMENTS OF CENTURYLINK

I. INTRODUCTION AND SUMMARY

CenturyLink, Inc. on behalf of itself and its subsidiaries submits these comments in response to the Commission’s *Further Notice of Proposed Rulemaking*¹ in the above-captioned proceeding. The *Further Notice* seeks comment concerning (1) the Commission’s authority to regulate rates for intrastate inmate calling services (“ICS”), (2) the regulation of inmate calling services for the deaf and hard of hearing community, (3) additional reforms concerning the rate structure and cost determinations for interstate and intrastate inmate calling service rates, (4) the regulation of ancillary charges imposed by ICS providers, (5) call blocking by ICS providers, (6) exclusive ICS contracts and (7) the need, if any, for ICS quality of service standards.

The Further Notice proposes regulatory changes that would dramatically increase the reach of the Commission’s rules to include intrastate ICS outside the scope of the agency’s

¹ *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-113, WC Docket No. 12-375 (rel. Sept. 26, 2013) (*Order* or *Further Notice*), Errata rel. Oct. 22, 2013 and Nov. 6, 2013, FCC 13-113. Separately, the Report and Order, addressing regulation of interstate ICS services, is subject of at least four appeals before the U.S. Court of Appeals for the District of Columbia Circuit. *See Securus Technologies, Inc. v. FCC*, Case No. 13-1280 (D.C. Cir. Nov. 14, 2013); *Global Tel*Link, v. FCC*, Case No. 1281 (D.C. Cir. Nov. 14, 2013); *CenturyLink Public Communications, Inc. v. FCC*, Case No. 13-1291 (D.C. Cir. Nov. 22, 2013); *Mississippi Department of Corrections and South Dakota Department of Corrections v. FCC*, Case No. 13-1300 (D.C. Cir. Dec. 9, 2013) (These appeals have been consolidated under Lead Case No. 13-1280).

authority and to set policies that are best left to correctional institutions and the states. The Commission should respect the limits of its authority, decline to adopt additional intrastate ICS regulations, and instead leave regulation of intrastate ICS rates and related policy judgments to correctional institutions and the states. If the Commission nevertheless imposes new regulation of intrastate ICS services, it should prudently limit any such measures so that it does not encroach on policy matters appropriately left to correctional institutions and the states.

II. THE COMMISSION LACKS AUTHORITY TO REGULATE INTRASTATE ICS RATES

In the *Further Notice*, the Commission tentatively concludes that Section 276 of the Telecommunications Act of 1996 (the “Act”)² affords the Commission broad discretion to regulate intrastate ICS rates and practices that deny fair compensation, and to preempt inconsistent state requirements.³ This assertion is mistaken. In fact, Section 276 gives the Commission only limited authority to ensure payphone owners are paid for coinless or dial-around calls. It does not give the Commission carte blanche authority over intrastate ICS, and it does not authorize the rate regulation proposed in the *Further Notice*. In particular, Section 276 does not authorize the Commission to cap carriers’ intrastate ICS rates, to require that they be “cost-based” or geographically averaged across contracts, or to otherwise limit the compensation required or negotiated by correctional institutions for calls ICS providers complete. It also does not authorize the Commission to ignore state laws mandating commissions on ICS calling, the terms of public contracts entered by state authorities with ICS providers, or the security and policy judgments of correctional authorities about ICS calling.

² 47 U.S.C. §276.

³ *Further Notice* ¶ 135.

Section 276 governs aspects of the provision of payphone service, which is defined to be “the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.”⁴ The stated purposes of Section 276 are to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public.⁵ To achieve these ends, Congress directed Bell operating companies to eliminate any remaining subsidies for their payphones and provide telephone lines to competing payphones on a nondiscriminatory basis.⁶ Section 276 also directed the Commission to prescribe regulations to ensure among other things that “all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone.”⁷ This directive addressed the problem of coinless or so-called dial-around calls, where payphone users could bypass a payphone owner’s default carrier for another long distance provider, particularly long distance calling card providers. Accordingly, to the extent that Section 276 grants the Commission authority over intrastate ICS, the provision has a narrow focus of ensuring that payphone service providers receive compensation for all completed calls where they would not otherwise have received compensation.

The Commission has recognized the limited purpose and scope of Section 276 from the very beginning of its long and difficult implementation of Section 276’s per-call compensation regime. For example, in its *1996 Payphone NPRM*, the Commission noted that “[t]he issue of

⁴ 47 U.S.C. § 276(d).

⁵ 47 U.S.C. § 276(b)(1).

⁶ 47 U.S.C. § 276(a)

⁷ 47 U.S.C. § 276(b)(1)(A).

fair compensation arises only in cases where a caller uses a PSP's equipment to dial around the payphone's presubscribed IXC, because the PSP does not receive any revenue to cover its marginal cost in originating the call, or where a government-mandated rate, such as for local coin calls, may not be high enough to be "fairly" compensatory."⁸ The legislative history for Section 276 also reflects that, in granting Commission limited authority over per-call compensation, Congress was addressing the concerns of payphone owners, not payphone end users. Its primary focus was on compensation of payphone owners for coinless calls, where a caller dials an access number or a toll free number to place a call instead of depositing money in the payphone.⁹ In such cases, the payphone service provider would not receive compensation for calls it completed. However, the Commission observed that in some states, payphone providers were required to provide local payphone service at a subsidized local coin rate that may not cover the marginal cost of service.¹⁰ Thus, in implementing Section 276, the Commission chose to prescribe compensation for local coin calls in addition to access code calls, toll-free calls, and 0+ calls.¹¹ However, the focus of the Commission's action was not the local aspect of these calls. Rather, the common denominator prompting the action taken by the Commission was that payphone service providers were not receiving sufficient compensation for the calls they completed.

⁸ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 11 FCC Rcd 6716, 6725-26 ¶ 16, n. 54 (1996) ("1996 Payphone NPRM").

⁹ House Report 104-204 Part I, Communications Act of 1995, p. 88 (July 24, 1995); *1996 Payphone NPRM*, 11 FCC Rcd at 6726 ¶17.

¹⁰ *1996 Payphone NPRM*, 11 FCC Rcd at 6728 ¶ 22, n. 64; *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541, 20576-77 ¶ 68 (1996) ("1996 Payphone Order").

¹¹ *Illinois Public Telecommunications Association v. FCC*, 117 F.3d 555, 559 (D.C. Cir. 1997).

The Commission also determined in its initial orders implementing Section 276 that where a payphone service provider is compensated pursuant to a contract, as is the case with today's specialty ICS providers, it would not be entitled to the per call compensation rates the Commission prescribed. The Commission determined that, because "virtually all calls originated by inmate payphones are 0+calls, inmate PSPs tend to receive their compensation pursuant to contract, which makes them ineligible to receive a per-call compensation amount."¹² Thus, the Commission concluded consistent with Section 276 that "[w]hen a PSP is able to negotiate for itself the terms of compensation for the calls its payphones originate, the[] [Commission's] statutory obligation to provide fair compensation is satisfied."¹³

Section 276 was never an invitation for the Commission to extend its authority over rates charged to end users for intrastate payphone originated calling, whether from inmate payphones or conventional payphones, nor to indirectly prohibit site commissions for any type of payphone through regulation of *intrastate end user rates*. Indeed, in nearly twenty years of developing, implementing, and applying rules under Section 276 -- including a very contentious rulemaking challenged at many stages -- the Commission has never to CenturyLink's knowledge previously claimed that Section 276 provides it general authority over intrastate end-user rates for any form of payphone services. Likewise, Section 276(c) does not give Commission unlimited power to preempt state laws or regulations on intrastate calling. On the contrary, the scope of preemption is expressly limited "[t]o the extent that any State requirements are inconsistent with the

¹² *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, 11 FCC Rcd 21233, ¶ 72 (1996) ("1996 Payphone Reconsideration Order").

¹³ *Id.*

Commission’s regulations ... *on such matters...*”¹⁴ “Such matters” plainly refers to the specific “Contents of Regulations” specifically enumerated in Section 276(b)(1)(A) through 276(b)(1)(E).¹⁵ Regulation of intrastate end-user rates for payphone-originated calls -- including inmate payphones -- simply cannot be read to be within the scope of authority Congress extended to the Commission.

Section 276 clearly does not authorize the Commission to limit ICS rates that it believes are excessive. Indeed, the rate caps and cost-based rules that the Commission is considering imposing on intrastate services would undermine the very purposes of Section 276. Caps and requirements that ICS rates be cost-based limit the profit opportunity in providing service and thereby reduce the incentive for ICS providers to enter the market to provide ICS services. Such rules undermine competition among ICS providers and inhibit the deployment of inmate payphone service, directly contrary to Section 276’s stated purposes.

Implicit in the use of rate caps, for example, is the assumption that providers will subsidize the cost of providing service to high-cost institutions with revenues from low-cost institutions. However, the reality is that ICS providers will simply stop serving correctional facilities where the cost of providing service exceeds the rate caps. There is no obligation to serve in the ICS business, and so providers will simply decline to serve high-cost institutions where they cannot earn a profit. If the Commission’s rate cap rules are applied to intrastate calls, which make up the vast majority of calls, there will be no way of avoiding this problem. In

¹⁴ 47 U.S.C. § 276(c).

¹⁵ 47 U.S.C. §§ 276(b)(1)(A) – 276(b)(1)(E).

short, the Commission's proposals to cap intrastate ICS rates cannot be squared with the purposes and limitations of Section 276.

To be sure, imposing rate caps and cost-based rules on ICS providers will lead providers to serve only the largest and lowest cost correctional institutions. Based on the Commission's *Interstate ICS Order*, CenturyLink will ultimately have to stop serving certain types of facilities with longer-term inmates and traditionally low call volumes (e.g., state juvenile facilities and secure mental health facilities)¹⁶ and potentially other correctional facilities with small numbers of inmates. Other providers are likely to do the same, and this issue will be exacerbated if the interstate rate caps and rules are extended to cover intrastate calls. As a result, in extending its authority over intrastate calls and reducing intrastate rates, the Commission will have acted in violation of Section 276. Indeed, it will have turned Section 276 on its head.

The *Further Notice* treats Section 276 as if it provides the Commission with the same authority over intrastate ICS that Section 201 confers for interstate services. That is simply not the case. The Commission's authority under Section 276 over intrastate services is far more limited, and the language differences between Section 276 and 201 are significant. Section 276 specifically describes the purposes that the Commission's determination of fair compensation must serve, which includes promoting competition and the widespread deployment of payphone services.¹⁷ Section 201 does not. Furthermore, Section 276 limits the Commission's authority to

¹⁶ Facilities with longer-term inmates/residents are more prone to rate arbitrage, where called parties are more likely to obtain non-geographic phone numbers to arbitrage differences in rates. Combined with relatively low call volumes and relatively high costs of operations (higher fixed costs plus higher repair calls), these types of facilities will be particularly unattractive to serve.

¹⁷ Indeed, far from promoting greater availability of "payphones" for the use of the public, the *Further Notice*'s goal of forcing lower end-user rates for ICS calls risks reducing the deployment of today's inmate phones.

ensuring that ICS providers receive fair compensation for payphone calls; if Congress meant to grant the Commission authority over intrastate end user rates for payphone-originated calling, it would have provided such authority explicitly, instead of limiting the focus to compensation to payphone owners for completed interstate and intrastate calls. Section 201, in contrast, gives the Commission broad authority to ensure that “[a]ll charges, practices, classifications, and regulations for and in connection with” interstate and foreign communications are “just and reasonable.” Clearly, the Commission’s authority under Section 276 is much more limited than the Commission’s authority under Section 201, and does not encompass the rate caps, safe harbors and cost-based rules the Commission is considering.

The *Further Notice* questions whether the reference to “any ancillary services” in the definition of payphone services broadens the scope of Section 276 in the same way that the “for and in connection with” clause of Section 201 broadens its scope. The answer is no. The reference to “any ancillary services” in Section 276 is meant merely to cover such services as directory assistance and operator services associated with payphone service. It is not a carte blanche authorization to regulate any service no matter how remotely connected to payphone or ICS services, and in particular, services that are not payphone communications services.

III. THE COMMISSION SHOULD NOT ATTEMPT TO REGULATE INTRASTATE ICS RATES

Even if the Commission had theoretical authority to regulate intrastate ICS more broadly under Section 276, it would be highly imprudent for the Commission to do so. If applied to intrastate ICS, the likely consequences of the Commission’s reforms will be detrimental to inmates and their families, as it may lead to less, not more, communication between them. This result will follow because of the Commission’s treatment of site commissions.

Site commissions are used by correctional institutions for a variety of purposes. In some places, they help supplement limited correctional budgets. In others, they specifically fund inmate benefits, including health and welfare programs such as rehabilitation and educational programs, programs to assist inmates once they are released, law libraries, recreation supplies, sports equipment, and alcohol and drug treatment programs. Among the things that site commissions are used to fund are the phone systems and related security requirements (including equipment and monitoring prison staff) in correctional institutions. Site commissions are mandated by public procurement contracts issued by many correctional authorities and in some cases are mandated by state law. The Texas statute that authorizes inmate calling requires a 40% commission to fund the Compensation to Victims of Crime Fund.¹⁸

While the *Order* does not purport to prohibit site commissions, it clearly seeks to eliminate them by imposing a rate-of-return regime and preventing their inclusion in the interstate rates charged by ICS providers. If ICS providers cannot recover the cost of site commissions in their rates, one of two things will happen. Either ICS providers will stop paying site commissions, to the extent they can,¹⁹ or they will stop offering service to correctional institutions required to charge them. In either case, the result will be detrimental to inmates and their families, at least for an interim period. Although each correctional institution will have to decide what to cut when the funding from site commissions disappears, the Commission should expect that the cuts will come from the services presently being offered and funded by site

¹⁸ Tex. Gov't Code § 495.027(a) & (c).

¹⁹ The *Order* does not purport to entitle ICS providers to discontinue paying, or to require correctional institutions to continue requiring, such commissions. Instead, it simply expects that ICS providers will be able “renegotiate” publicly awarded contracts.

commissions including specifically the provision of inmate calling services. It should expect those correctional institutions required to charge site commissions to lose inmate calling services altogether because it will not be economical for ICS providers to serve them.

Texas, the largest state prison system in the United States and CenturyLink's largest ICS customer, shows how extending the *Order's* rules for interstate calls to intrastate calls could lead to loss of inmate calling privileges. The Commission clearly believes that frequent inmate calling is a desirable policy. It is not a right, however. Until 2008, Texas did not allow inmates regular phone calls to family members. As part of a 2008 statute enabling the installation of ICS in Texas prisons, the Texas Department of Criminal Justice was required to collect a commission of no less than 40 percent of gross revenue. Further, these proceeds were in turn directed as a primary funding source for the State's Compensation to Victims of Crime Fund.²⁰

The elimination of site commissions -- the clear intention and inevitable result of the *Order and Further Notice*-- would not only eliminate this funding source but could put CenturyLink in an untenable legal position. Despite the Commission's apparent belief that contracts can be quickly and readily renegotiated, this is untrue, and especially so in Texas. Finally, the *Order and Further Notice* appear to provide no timely mechanism for applying for a waiver to resolve such a problem.

Even for contracts with commissions not explicitly set by state or local law, the *Order* is particularly unfair to ICS providers that are currently parties to publicly awarded contracts that specify end user rates and/or require the payment of site commissions on interstate calls. Given that most calls from correctional institutions are intrastate, extending the Commission's new

²⁰ Tex. Gov't Code §495.027(a) & (c).

regulatory regime to intrastate calls would be many times more unfair. Prior to the *Order*, there was no rule against the payment of site commissions and, in fact, the payment of site commissions to correctional institutions was the standard practice. Although eight states and the United States Bureau of Prisons have, in recent years, opted to discontinue commissions on inmate calling, the large majority of state and local correctional authorities require, by law or contract, the payment of commissions by ICS providers.

ICS contracts are typically multi-year in term, requiring substantial up-front investment in specialized facilities. It is not a given that ICS providers can discontinue paying site commissions under these contracts, or renegotiate or terminate these agreements, until the terms of the contracts expire. Accordingly, barring the recovery of site commissions from intrastate rates, without grandfathering existing contracts, would be manifestly unfair. Moreover, it would lead ICS providers to decline to bid on many ICS opportunities -- particularly high-cost facilities, such as jails, juvenile detention centers, secure mental health facilities, and small state systems. It certainly would not encourage competition in the ICS business or the deployment of ICS, which Section 276 envisioned.

IV. NO FURTHER ICS REGULATIONS FOR THE DEAF AND HARD OF HEARING COMMUNITY ARE NECESSARY

The *Further Notice* seeks comment on whether the Commission should prescribe discounted rates for ICS calls using TTY's and seeks comment on certain other issues relating to ICS for the deaf and hard of hearing community. First, the *Further Notice* proposes a discounted rate of 25% of the interstate safe harbor rate for TTY calls, which is far too low. In

CenturyLink's experience, TTY calls can take up to two times as long as regular calls, not the three or four times suggested by some commenters.²¹

Second, the *Further Notice* asks whether action is required to ensure that ICS providers do not deny access to TRS by blocking calls to 711 and/or state established TRS access numbers. Blocking policies to numbers such as 711, 800 toll-free, etc. are established by correctional facilities, not CenturyLink. In practice, calls to Relay Operators are typically accomplished using a toll-free number without any CenturyLink charges, but the called party may be billed by the TRS provider for its services. These rates are set by the TRS provider and appropriately will differ from the rates for calls placed through the inmate phone system. CenturyLink does not believe that any separate regulatory action is required for this narrow category of calls.

Third, the *Further Notice* seeks comment on whether ICS providers should be required to collect and report data on TRS usage via ICS and complaints from individuals that access TRS ICS. Such reporting requirements are unnecessary and will only add to the cost of providing ICS for the deaf and hard of hearing community, as they require staff training as well as special back office programming to designate and database these specific types of complaints. More important, the Commission has already established a robust consumer complaint process that is sufficient to address complaints that may arise. Any additional information concerning TRS usage via ICS serves no real purpose.

²¹ CenturyLink acknowledges that it is unable to determine whether these observed TDD/TTY calls contain effectively the same content as traditional voice calls. However, data from some facilities show that TTY calls actually have shorter durations than a voice-to-voice call. The *Further Notice* also seeks data regarding TDD/TTY calls' minutes of use compared to overall minutes of use; for CenturyLink this amount is less than one percent.

Finally, the *Further Notice* seeks comment on how the Commission can facilitate the availability of VRS and other forms of assistive technologies in correctional facilities. VRS is recognized as an important service by CenturyLink and the correctional facilities it serves. As noted by the Commission, this service is not widely deployed. The primary issue impeding VRS deployment is cost, both equipment installation and the ongoing cost of service and monitoring. In the one facility where CenturyLink has agreed to provide VRS,²² its cost of deployment will be paid for by revenue from the inmate telephone system through a reduction in site commissions.

Ultimately, whether VRS and other forms of assistive technologies are deployed in correctional facilities will depend on whether ICS providers can earn a reasonable return, which in turn depends upon their freedom to price such services. Price caps and rules that require ICS services to be cost-based will ultimately frustrate the deployment of VRS and other forms of assistive technologies.

V. NO FURTHER REGULATION OF INTERSTATE AND INTRASTATE ICS RATES IS WARRANTED

The rate caps, safe harbors and cost-based rules that the Commission has already adopted are presently subject to at least four appeals.²³ Although the Commission recently denied two requests for stay, and has opposed stay motions now pending before the D.C. Circuit, CenturyLink believes that the *Report and Order* may be vacated and/or remanded in whole or part, chiefly as having failed to adhere to requirements of the Administrative Procedures Act. Extending comparable new rules to intrastate ICS calling would pose an even greater overreach

²² This service is in the process of being deployed at the facility.

²³ See note 1, *supra*.

of Commission authority. Consequently, the Commission should not consider extending this regulatory regime to intrastate ICS traffic until the appeals are resolved. If the Commission nevertheless imposes additional rules, they at least should be consistent with the following recommendations.

First, existing contracts should be exempted until the conclusion of their term. The *Order* failed to adopt such a rule, but the Commission should not compound its error by repeating it on a larger scale for intrastate ICS.

Second, if safe harbors and rate caps are to be set prior to conducting rate analyses based on an actual representative sample of facilities, they should be increased to levels consistent with the record evidence that costs at many facilities are well above the interim safe harbor and rate cap levels set by the Commission for interstate calls. Excluding site commissions, CenturyLink's weighted average cost of serving all of its correctional institution accounts, is *****BEGIN CONFIDENTIAL***** [REDACTED] *****END CONFIDENTIAL*****²⁴ The cost of serving ten of CenturyLink's fifteen county contracts exceeds the safe harbor levels adopted in the *Order* for interstate calls. Thus, the interim safe harbor levels have been set far too low. Furthermore, CenturyLink presently serves several correctional institutions that have a cost of service above the *Order's* interim rate caps.

The safe harbors and rate caps should also be adjusted over time to account for the increased costs of new security feature costs and for inflation to reflect that costs of serving

²⁴ CenturyLink's weighted average cost changes over time as CenturyLink gains or loses correctional institution contracts.

correctional institutions may rise over time.²⁵ Rates should not be set based on the volume of minutes at correctional institutions. In CenturyLink's experience, there is no consistent direct relationship between costs and the volume of minutes at a correctional institution.²⁶

Third, if rates are to be tiered, there should be a distinction between jails and prisons. Jails tend to house inmates for shorter periods of time and have much higher inmate turnover. As a result, account set-up costs are higher and ICS providers experience more problems with fraud. Whether particular facilities are part of a centralized system should not be considered a significant issue. Centralization only impacts call processing, not the bulk of other costs associated with inmate calling.

In any tiered structure, juvenile facilities and secure mental health facilities should be separate. Like jails, these institutions are very costly to serve, albeit for different reasons. These

²⁵ The *Report and Order* cites a NARUC filing stating: "It does not appear from the record that all charges can be justified on the basis of additional security measures. In New York, the prison phone rates are \$0.048 per minute for local, intrastate and interstate calls, inclusive of all security features required by New York corrections officials." *Order*, fn. 123. However, the New York contract decision was made in 2008, well before advanced security features such as voice biometrics, speech and keyword search analysis, location identification of called parties, and other features were generally available. In addition, to CenturyLink's knowledge, none of the other state departments of correction used to devise the interim interstate safe harbor rates have chosen to implement such advanced features, in large part due to the fact that most of these contracts are older and at the time of decision these types of advanced features were not available or proven. *See Order*, ¶62.

²⁶ As a general rule, larger detention facilities are relatively less costly to serve than smaller ones. However, local factors such as infrastructure availability, system integration, allowed number verification, system technician requirements and other factors vary widely and often are not correlated with facility size.

facilities are smaller than state prisons, and while inmates/residents tend to stay for longer terms, their calling volumes are traditionally very low, making their cost to serve very high.²⁷

Fourth, the Commission should not impose a per call cap. The per-minute cost of completing a call does not typically decline to zero over the length of a call. Thus there is no principled basis for capping the amount that can be charged for a call. Furthermore, ICS providers should have flexibility to assess per call charges under any rules the Commission adopts. When per call charges are eliminated, call volumes typically increase but call duration tends to become shorter, impacting costs incurred on a per-call basis such as call validation, which impacts the costs that an ICS provider will incur.

Fifth, although CenturyLink strongly disagrees with the Commission's cost based rules for interstate calls, if rates are to be cost-based, they should be set based upon historical costs taking into account all investments that have been made to provide inmate calling services. ICS providers must be able to recover the very large investments they often make to serve particular institutions. The costs of communications facilities, billing systems, software licensing, and especially security requirements must be recovered in ICS rates.

In CenturyLink's experience, technological advancements have had the effect of reducing the costs of basic ICS services and features. At the same time, however, the costs of advanced security features -- capabilities necessary to meet today's expectations for public safety -- have offset the bulk of the reductions in cost for basic services and features. Other technological advancements described in the *Further Notice* such as video conferencing between inmates and their families, email, voicemail, secure media alternatives and secure photo-sharing services for

²⁷ The cost of vandalism at these institutions also is often much higher than at adult correctional facilities.

inmates all involve completely new services, not technological advancements in existing services. Furthermore, services such as video conferencing are very expensive, and all of these services raise monitoring costs necessary to ensure security at correctional institutions. Inmate calling is not an inexpensive service, and new services -- in the locations where they can be economically justified -- will add new costs and complexities to providing ICS.

Finally, the Commission should not mandate that correctional institutions allow international calls. Today, international calling is not allowed at the majority of correctional institutions that CenturyLink serves. Where it is allowed, international calling represents less than one percent of the call volume. However, CenturyLink does not presently serve Immigration and Custom Enforcement Facilities, and the Company recognizes that it may make sense for international calling to be allowed at such facilities. Ultimately, that question should be decided by the correctional institutions themselves, not the Commission. The Commission lacks the authority to compel any facility to require any inmate calling service, much less to require any type of service, whether intrastate, interstate, or international. If a correctional institution chooses not to grant international calling privileges to its inmates, ICS providers cannot offer such service.

VI. ANCILLARY CHARGES MUST BE REGULATED IN A REASONABLE WAY

The *Further Notice* seeks comments on steps that could be undertaken to ensure that ancillary charges are just and reasonable. Ancillary charges include charges for functions necessary to provide ICS such as initiating, maintaining and closing debit or prepaid ICS accounts, sending a paper bill, or sending calls to a wireless number.²⁸ Ancillary charges also

²⁸ *Further Notice* ¶ 167.

include so-called “alternative billing programs” such as collect-to-cell phones through enhanced text messaging or automated per-call payment programs, where discretionary transaction fees can exceed \$10 per call.

CenturyLink supports reasonable fees for certain transactions, which can constitute a significant portion of aggregate spending on ICS. Without controls on ancillary charges, the practical effect of rate caps is likely to be limited, if not wholly neutralized.

Many of the functions necessary to provide ICS involve billing, which in the inmate calling services business are relatively costly to provide. There are various ways to manage the payment for inmate calling. Traditional collect calls and prepaid accounts are two examples. Some ways are more convenient for end-users, but may be more costly to provide. . Some of the functions may involve representative time on the telephone. Others involve credit and/or debit card processing costs. There is also the cost of bad debt, including collections activity and post service billing, which is markedly higher for ICS services than for other long distance and operator services. CenturyLink believes that separate charges should be allowed for the discrete functions that are necessary to provide ICS, and that the cost of providing the ancillary functions should not be included as part of ICS rates. Consumers of higher-cost options should be charged reasonable fees reflective of these options, and consumers of lower-cost options should not be forced to subsidize them.

VII. THE COMMISSION HAS ALREADY ADEQUATELY ADDRESSED CALL BLOCKING

In the *Order*, the Commission concludes that billing-related call blocking of interstate ICS is permissible only if the ICS provider offers a “prepaid collect” option.²⁹ The *Further*

²⁹ *Order*, ¶113.

Notice in turn seeks comment on whether this conclusion resolves the issues surrounding billing-related blocking of interstate ICS calls. CenturyLink believes it does.³⁰ The Commission should leave issues relating to the blocking of intrastate calls to correctional institutions and the states.

The *Order's* mandate regarding "prepaid collect" options will reduce the ICS provider's problems with uncollectibles, but it will not eliminate them. Inevitably, there will still be problems with fraud and charge-backs that the mandate will not fully address. While the Commission might consider requiring prepaid calling for interstate ICS at correctional facilities, the Commission should not mandate the provision of debit calling. When debit calling can be installed, ICS providers including CenturyLink prefer it due to its low cost of administration and reduced bad debt. However, debit calling will not work at a correctional institution unless the correctional institution provides a purchase method such as a commissary or inmate banking account that has systems that can interface with the ICS provider's telephone system. Some correctional institutions -- especially smaller institutions and those with more transient populations -- do not have this capability. In addition, debit calling raises security issues because billing and address information are typically not verified with debit calling. At some correctional institutions, this concern has driven authorities to not permit debit calling.³¹

Some correctional institutions will also insist on blocking of calls to non-geographically based telephone numbers. For example, CenturyLink's contract with the Texas Department of Criminal Justice has always prohibited completion of calls to anyone or any service that provides non-geographically based telephone numbers. For the Texas Department of Criminal Justice and

³⁰ It is possible to block only interstate calls while not blocking intrastate calls.

³¹ Within high security prisons, debit calling balances and PIN numbers are inmate currency. Some correctional authorities prohibit debit calling to protect inmates from coercion and violence from other inmates.

many other correctional institutions, the issue is the critical need to know to whom and where the call terminates. Non-geographic telephone numbers interfere with a correctional institution's ability to know who and where the inmate caller is contacting.

VIII. THE COMMISSION SHOULD NOT PROHIBIT EXCLUSIVE ICS CONTRACTS

The *Further Notice* seeks comment on whether there are ways to foster competition within correctional facilities to constrain ICS rates to just, reasonable, and fair levels. The ICS marketplace is intensively competitive, and CenturyLink disputes the notion that ICS rates overseen by correctional authorities rise to being unjust, unreasonable or unfair, simply because other policy considerations argue against commissions. One approach proffered by the Commission is requiring multiple providers at a single facility. Correctional institutions and ICS providers have generally opposed this approach because of security concerns for a multitude of reasons discussed below. The bottom line is that this idea simply cannot work.

The competitive nature of ICS services, which is not disputed, provides significant incentive for ICS providers to negotiate lower pricing for network services, which in turn can be used to provide more attractive financial offers to customers. The lowest prices come when bulk purchase agreements are made with the most competitive carriers, and dividing this traffic among multiple providers, with multiple fixed access circuits leaving a correctional facility or central processing center, is economically inefficient and would increase costs for these services. For a single-site facility that may require on-site processing equipment, single T-1 access services would need to be replaced by multiple T-1s. Even if multiple carriers were willing to incur this fixed cost with an uncertain traffic stream, the "threshold" price per minute for these

carriers would be far higher than for a single, competitively chosen, carrier. All these factors impact the charges that inmates and family members must pay for these specialized services.

Under a multiple-carrier proposal, billing and collection responsibility would transfer to these third-party carriers. This function is highly specialized -- spanning account establishment, user authentication, fraud and bad debt controls, and other issues. It is a core competency that CenturyLink has developed over many years. This is especially important for county jails, where accounts must be established in "real-time" as a newly-booked inmate is attempting to post bond or seek legal counsel. The typical interexchange carrier by design imposes broad-brush credit and account policies that would create major obstacles for these inmates and their family members. Further, it is highly unlikely that any IXCs -- other than specialized ICS providers themselves -- would be willing to develop the processes necessary to serve this specialized market. In the end, one would end up with the same single provider.

CenturyLink's process for establishing billing relationships with customers choosing prepaid collect (the predominant form of calling in its network) also includes security components. One such component includes verifying billing name and address (BNA) of customers for use by law enforcement in investigations, which is an inherent part of CenturyLink's account setup process and is integrated with the investigative database provided to facility staff. Were CenturyLink to lose control over end-user billing, the amount and quality of reverse lookup information it is able to provide to law enforcement would be jeopardized.

Multiple providers within a correctional institution will also make it virtually impossible for correctional institutions to track calls and provide the necessary level of security.

Correctional facilities are not apartment houses. Any regime in which multiple providers serve a

correctional institution would require massive systems work to allow billing information from the various providers to be shared with other providers and to allow correctional institutions to monitor and track calls. Many carriers are not set up to handle the very complex security arrangements that many correctional institutions appropriately require. It is simply unrealistic to assume that facilities-based service can be provided cost-effectively by more than one provider while meeting even the most basic security needs for public and inmate safety.

Even if the issues above could be resolved, a major issue regarding ICS-to-IXC interfacing would remain. Each ICS provider and system is different and requires customized contractual and technical terms. If terms and conditions and/or technical interfaces cannot be resolved between an ICS provider and a prospective IXC, it will not be possible to have multiple providers serving a single facility. In addition, if a prospective IXC will not accept certain terms, such as indemnification, an ICS provider will not be able to uphold its contractual obligations to public entities that by law often require unqualified indemnity or other protections.

IX. THERE IS NO NEED FOR QUALITY OF SERVICE RULES

The *Further Notice* also seeks comment on whether the Commission should impose minimum service quality requirements on ICS providers. The answer is no. ICS providers have a vested interest in ensuring the quality of service because inmate calls are the primary source of revenue for these providers. CenturyLink has standard established service level agreements which are often more stringent than those required by its contracts with correctional institutions. In addition, every one of the ICS accounts it serves has a ratio of inmates to phones of no more than 25 to 1, the ICE standard quoted in the *Further Notice*. Furthermore, correctional institutions have a vested interest in ensuring inmate phones are plentiful and functional. Broken phones are a potential safety issue and non-functioning phones easily lead to inmate unrest, not

to mention a loss of revenue for the ICS provider. Thus, both ICS providers and correctional institutions have a vested interest in ensuring ICS quality of service.

There is simply no need for additional service quality requirements. To the extent that end users are legitimately dissatisfied with the quality of a connection, they can and do complain to the ICS provider seeking a credit or refund. End users also submit complaints to correctional authorities and to third parties, such as state commissions and the Better Business Bureaus. Most end user concerns are not about the quality of the service but about its higher cost -- a cost driven by security requirements and commission mandates from state and local authorities.

X. CONCLUSION

CenturyLink shares the Commission's interest in cost-effective, high-quality inmate calling services. However, the Commission must be mindful of the limits of its authority and the risks that new ICS regulations -- however well-intentioned -- may undermine goals of inmate welfare, public safety, and competition in ICS service.

Respectfully submitted,

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