



# Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

January 13, 2014

**Submitted Online Only**

The Honorable Tom Wheeler, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

**Re: Reply Comment in the Matter of Rates for Inmate Calling Services,  
WC Docket No. 12-375 (Further Notice of Proposed Rulemaking)**

Dear Chairman Wheeler:

On December 20, 2013, the Human Rights Defense Center (HRDC) submitted a comment concerning the Commission's Further Notice of Proposed Rulemaking on WC Docket No. 12-375. Our comment addressed the following primary issues: the importance of ICS reform, the necessity for reform of intrastate ICS rates, quality of ICS services, insufficient regulation of intrastate ICS calls on the state level and ancillary fees charged by ICS providers.

We now submit this reply comment to address issues raised by Pay-Tel Communications ("Pay-Tel" or "the company") in its comments filed with the FCC on Docket No. 12-375 on December 20, 2013, and in its notice of ex parte presentation filed on December 9, 2013.

In essence, Pay-Tel argues that it is required to subsidize losses from intrastate ICS calls, some of which are subject to local rate caps, through revenue generated from interstate ICS calls. The company states: "The practical effect of this approach has been to force ICS providers like Pay Tel to subsidize below-cost intrastate rates with above-cost interstate rates."<sup>1</sup> Also, "Like other ICS providers in jails, Pay Tel has managed to survive to this point by subsidizing local calls with long distance revenues."<sup>2</sup>

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<sup>1</sup> Pay-Tel petition for partial stay, Docket No. 12-375 (Nov. 26, 2013).

<sup>2</sup> Pay-Tel ex parte presentation, Docket No. 12-375 (Aug. 1, 2013).

Pay-Tel has previously asserted that whereas interstate ICS calls make up only 2.7% of the company's total revenue calls, this small percentage in fact generates 8% of Pay-Tel's total revenue, which is used to subsidize losses due to below-cost rate caps on local calls.<sup>3</sup>

Assuming this is correct, it illustrates the inflated interstate charges that prisoners and their families are required to pay in order to offset Pay-Tel's losses from intrastate ICS calls, and thus the necessity for the Commission's September 26, 2013 Order in Docket No. 12-375 with respect to interstate ICS rates. Indeed, it is neither fair nor reasonable that prisoners who make long distance calls to stay in touch with their families and children must pay inflated interstate ICS rates in order to subsidize losses from intrastate calls made to prisoners' family members and children who reside in the same state as their incarcerated loved ones.

Pay-Tel asserts it uses inflated interstate rates to subsidize losses from intrastate calls due to below-cost local rate caps imposed in some of the states in which it has contracts. "Pay Tel is unable to recover its total company costs because of the existence of below cost rate caps imposed by state public service commissions and facility contractual requirements."<sup>4</sup>

The capped local rates to which Pay-Tel refers predominantly effect county jails in Florida, Georgia, New Mexico, North Carolina, South Carolina, Tennessee and Virginia.<sup>5</sup>

We acknowledge there are differences between ICS services in prisons and jails, specifically in regard to issues related to zero-revenue calls and population turnover (churn) in the latter facilities. However, we submit that Pay-Tel's explanation falls short as to why it is unable to comply with interstate rate caps in spite of its claim that it uses interstate ICS call revenue to subsidize below-cost intrastate calls due to local rate caps. Specifically, as discussed below, local rates are not in fact capped by statute or regulation in three of the states cited by Pay-Tel, the company can seek waivers from local rate caps, and rate caps imposed pursuant to facility contracts are subject to contractual renegotiations or amendments.

Thus, while Pay-Tel raises valid points with respect to differences between prisons and jails, the averaging of interstate and intrastate ICS rates, and preemption of state requirements that are inconsistent with the Commission's Order, we disagree with its rationale and explanation as the company has not addressed other options which remain available to it, including those listed in the preceding paragraph which are described in greater detail below. By extension, the points in this reply comment equally apply to other ICS providers similarly situated to Pay-Tel.

We do not take a position on Pay-Tel's contention that separate rate caps should be implemented for prisons and jails based on differences between facilities that primarily hold pre-trial detention populations and those that primarily house convicted/sentenced populations, as we believe this issue requires additional research and analysis.

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<sup>3</sup> *Ibid.*

<sup>4</sup> Pay-Tel ex parte presentation, Docket No. 12-375 (Dec. 9, 2013).

<sup>5</sup> Pay-Tel ex parte presentation, intrastate rate caps, Docket No. 12-375 (Dec. 9, 2013).

## Analysis of Local Rate Caps

Pay-Tel cites local rate caps in seven states in which it has contracts, primarily in the Southeast: Florida, Georgia, New Mexico, North Carolina, South Carolina, Tennessee and Virginia.<sup>6</sup>

HRDC contacted the public utility commissions in each of those states to verify the information provided to the Commission by Pay-Tel, and the results are set forth below.

### *Florida*

Beth Salak, Director of Regulatory Analysis for the Florida Public Service Commission (FPSC), stated in an email:

Currently, the Florida Department of Corrections negotiates the telephone contracts for the state prisons. The jail contracts would be negotiated at the local level.... You are correct that we did have operator services rate caps. However, the law was changed and the FPSC no longer has that authority.

*See Exhibit A.*

In fact, Florida statutes relating to rate caps were modified in 2009 and the caps for operator services were eliminated. The Florida Public Service Commission then modified its rules to reflect that change. State law was again modified in 2011, and the operator services statute was eliminated.<sup>7</sup>

Pay-Tel acknowledges that Florida deregulated inmate phone services in 2009, thus eliminating the caps; however, it still included Florida on its list of “Intrastate Rate Caps for Local Calls,” noting that Florida jails “have nonetheless required ICS vendors to maintain local call rates at or below the prior rate cap.”<sup>8</sup>

Yet such local rate caps are not mandated by statute or the Florida Public Service Commission; rather, they are a contractual matter, which Pay-Tel terms “facility-imposed constraints.”<sup>9</sup> The company thus has the option of renegotiating or amending its existing Florida contracts so as to comply with the FCC’s Order with respect to interstate rates and address the impact the Order will have on below-cost intrastate rates at the Florida jails with which it contracts.

According to data produced by Pay-Tel, of its 12 contracts in Florida, nine have intrastate rates that result in net positive revenue (surpluses), despite the “rate cap” the company cites for local calls.<sup>10</sup> The company fails to explain why it cannot renegotiate or amend its other three Florida

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<sup>6</sup> *Ibid.*

<sup>7</sup> *See Exhibit A.*

<sup>8</sup> Pay-Tel ex parte presentation, intrastate rate caps, Docket No. 12-375 (Dec. 9, 2013).

<sup>9</sup> Pay-Tel comments, Docket No. 12-375 (Dec. 9, 2013), at 14.

<sup>10</sup> Pay-Tel ex parte presentation, Wood intrastate shortfall analysis, Docket No. 12-375 (Dec. 9, 2013).

contracts to achieve similar results, given that there are no statutory or regulatory rate caps for local ICS calls in Florida.

### ***Tennessee***

According to David Foster, Chief of the Utilities Division for the Tennessee Regulatory Authority (TRA):

The TRA did cap local calls from inmate telephones, but the order is no longer applicable to companies that have elected market regulation.... So basically, our rate cap has been voided by market regulation.

*See Exhibit B*

In a separate email, Mr. Foster verified that Pay-Tel has opted into market regulation and thus is not subject to local rate caps in Tennessee.<sup>11</sup>

Thus, Tennessee is another state where the market, not state statutes or public utility rules or regulations, controls the cost of intrastate calls. Pay-Tel, however, includes Tennessee on its list of “Intrastate Rate Caps for Local Calls,” claiming a cap of \$1.50 per local call and referencing a TRA order that is no longer in effect for companies – including Pay-Tel – that have elected market regulation.<sup>12</sup> The company also references an RFP from Lincoln County, Tennessee. But as noted previously, rate caps specified by contract are subject to renegotiation and amendment, since there are no statutory or regulatory rate caps for local ICS calls in Tennessee.

### ***Virginia***

Katie Cummings, Deputy Director for the Virginia State Corporation Commission (SCC), stated in an email:

The Virginia State Corporation [Commission] has not set rate caps for inmate calling as it has no authority over telecommunications services provided under or relating to any contract to the state government or any agency thereof.

*See Exhibit C.*

However, Pay-Tel included Virginia in its “Intrastate Rate Caps for Local Calls” chart, citing a cap of \$1.50 per local call and referencing an RFP from Henrico County, Virginia.<sup>13</sup> Again, rate caps imposed pursuant to facility contracts, but that are not required by statute or regulation, are subject to contract renegotiation and amendments.

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<sup>11</sup> *See Exhibit B.*

<sup>12</sup> Pay-Tel ex parte presentation, intrastate rate caps, Docket No. 12-375 (Dec. 9, 2013).

<sup>13</sup> *Ibid.*

### ***North Carolina***

Pay-Tel states that a rate cap of \$1.71 applies to local ICS calls in North Carolina, citing North Carolina Rule R13-9(d).<sup>14</sup>

However, according to John Garrison, director of the North Carolina Utilities Commission, Communications Division, “The cap of \$1.71 only applies to the following type of call: 0+Local Automated Collect Station-to-Station.... No other rates are subject to regulation by the Utilities Commission due to preemption by the Federal Communications Commission or deregulation by the North Carolina General Assembly.” *See* Exhibit D.

Thus, the \$1.71 rate cap does not apply to all intrastate ICS calls, but only “0+Local Automated Collect Station-to-Station” calls. Rate caps for other types of intrastate calls are contractual in nature and therefore subject to contract renegotiation and amendments.

This may explain why, of Pay-Tel’s 53 contracts in North Carolina, 16 – 30% – generate net positive revenue (surpluses) in spite of the rate cap for local collect station-to-station calls.<sup>15</sup>

### ***Georgia***

Pay-Tel correctly notes that the Georgia Public Service Commission imposes a rate cap on intrastate ICS calls of \$2.70 (\$2.20 surcharge plus \$.50 local coin rate).<sup>16</sup>

Despite the rate cap, Pay-Tel generates net positive revenue (surpluses) for more than half (30) of its 54 Georgia contracts.<sup>17</sup> The company fails to explain why it cannot renegotiate or amend its other Georgia contracts to address below-cost intrastate ICS rates at those facilities.

### ***New Mexico***

Pay-Tel correctly notes that the New Mexico Public Regulation Commission (PRC) imposes rate caps on intrastate ICS calls.<sup>18</sup> Those rate caps include \$.15/minute for local, intraLATA and interLATA prepaid and prepaid collect calls (\$2.25 for a 15-minute call), and \$1.00 plus \$.15/minute for local, intraLATA and interLATA collect calls (\$3.25 for a 15-minute call).

Pay-Tel did not provide data regarding its New Mexico contracts with respect to intrastate revenue shortfalls or surpluses; thus, it is unknown what impact the intrastate rate caps have on the company’s ICS revenue in that state.<sup>19</sup>

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<sup>14</sup> *Ibid.*

<sup>15</sup> Pay-Tel ex parte presentation, Wood intrastate shortfall analysis, Docket No. 12-375 (Dec. 9, 2013).

<sup>16</sup> Memo from Georgia PSC, May 16, 2008.

<sup>17</sup> Pay-Tel ex parte presentation, Wood intrastate shortfall analysis, Docket No. 12-375 (Dec. 9, 2013).

<sup>18</sup> NMAC 17.11.28.1, *et seq.*

<sup>19</sup> Pay-Tel ex parte presentation, Wood intrastate shortfall analysis, Docket No. 12-375 (Dec. 9, 2013).

Regardless, Pay-Tel failed to mention that it can seek relief from the PRC's rate caps. Pursuant to NMAC 17.11.28.17, "The commission may permit an IOSP [institutional operator service provider] to impose rates higher than the rate caps as provided for in the rate caps chart below as may be amended from time to time or as stated in a separate commission order for good cause shown. Such permission shall not be unreasonably withheld."

Additionally, NMAC 17.11.28.23 provides: "The commission recognizes that public health and safety and the requirements of the correctional institution may require exceptions to requirements contained in this rule. In those cases, the IOSP may petition the commission for a waiver of a particular requirement, which shall not be unreasonably withheld."

In response to an email, John Reynolds with the New Mexico Public Regulation Commission confirmed that "Providers have the ability to seek waivers from the rate caps to serve higher-cost facilities." *See* Exhibit E.

Pay-Tel does not explain why it is unable to petition the New Mexico PRC for a variance from the rate caps for local and intrastate calls under 17.11.28.17, or a waiver under 17.11.28.23, to address losses due to below-cost intrastate rate caps. Incidentally, NMAC 17.11.28.8 states that IOSPs are "exempt from 17.11.15 NMAC, rule concerning payphone providers, 17.11.16.11 NMAC, consumer protection, access to service and rate information, and SCC 94-02-TC, rule concerning operator services providers."

### ***South Carolina***

Pay-Tel correctly notes that the South Carolina Public Service Commission imposes a rate cap of \$2.60 on local ISC calls.<sup>20</sup>

Yet of the company's 13 contracts in South Carolina, 11 generate net positive revenue from intrastate ICS calls.<sup>21</sup>

This indicates that the \$2.60 cap on local ICS rates in South Carolina does not preclude the company from entering into profitable contracts with respect to intrastate calls.

### ***Analysis and Conclusions***

Based on the foregoing, of the 7 states that Pay-Tel identified as having local rate caps,<sup>22</sup> three do not have statutory or regulatory caps (Florida, Tennessee, Virginia); one has a rate cap on only certain types of local calls (North Carolina); and three have statutory or regulatory rate caps that range from \$2.25 to \$2.70 for local ICS calls (Georgia, New Mexico, South Carolina). Of the latter three states, all of the local rate caps are above the safe harbor rates established by the FCC for interstate calls (\$.14/min. for collect calls, \$.12/min. for debit and prepaid calls).

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<sup>20</sup> Pay-Tel ex parte presentation, intrastate rate caps, Docket No. 12-375 (Dec. 9, 2013).

<sup>21</sup> Pay-Tel ex parte presentation, Wood intrastate shortfall analysis, Docket No. 12-375 (Dec. 9, 2013).

<sup>22</sup> Pay-Tel ex parte presentation, intrastate rate caps, Docket No. 12-375 (Dec. 9, 2013).

Pay-Tel asserts that an intrastate shortfall analysis conducted by Don Wood found the company had a net shortfall of \$416,603.11 for the second quarter of 2013 for intrastate collect, debit and prepaid calls – or an estimated \$1,666,412 annualized net shortfall.<sup>23</sup>

Consequently, Pay-Tel claims that “Although well-intentioned, the Order imposes upon the ICS industry a one-size-fits-all regulatory scheme in which Pay Tel will not be able to recover its overall costs of providing ICS in jails and will be forced to either operate at a loss or go out of business.”<sup>24</sup> The company further states the FCC’s “regulatory regime will make Pay Tel financially unsustainable overall.”<sup>25</sup>

HRDC submits that these outcomes are unlikely considering that Pay-Tel has the ability to 1) renegotiate or seek to amend its ICS contracts in states where there are no statutory or regulatory local rate caps; 2) renegotiate or seek to amend its ICS contracts in states that do have statutory or regulatory local rate caps, to modify intrastate rates within the caps and/or reduce commission percentages; and 3) seek waivers from local rate caps in states (like New Mexico) that expressly provide for such waivers.

With respect to the first two options cited above, ICS contracts typically include provisions that accommodate renegotiations or amendments upon agreement of the parties. For example, Exhibit F, a contract between Pay-Tel and the Okanogan County Sheriff’s Office in Washington State, provides, at section 7.2:

Pay Tel may terminate this Agreement at any time upon thirty (30) days written notice to Customer in the event that regulations governing the operation of the Services constitute a material change to the economic assumptions used in connection with Pay Tel’s Services under this Agreement. *Pay Tel agrees to work in good faith with Customer to renegotiate the terms of this Agreement should regulations governing the operations change the economic assumptions, with the mutual goal of a continuation of Services on terms agreeable to both parties.* (Emphasis added).<sup>26</sup>

And at section 4.3:

Customer acknowledges and agrees that it will take no action unreasonably to impede use of the Services by the Inmates and further agrees, to the extent there is any material change in any revenue stream for any reason on which Pay Tel reasonably relied in calculating commission rates to work with Pay Tel to correct the material change *and if necessary, amendment [sic] this Agreement in order to accommodate the interests of both parties.* (Emphasis added).<sup>27</sup>

<sup>23</sup> Pay-Tel ex parte presentation, Wood intrastate shortfall analysis, Docket No. 12-375 (Dec. 9, 2013).

<sup>24</sup> Pay-Tel petition for waiver, Docket No. 12-375 (Jan. 8, 2014).

<sup>25</sup> Pay-Tel comments, Docket No. 12-375 (Dec. 9, 2013).

<sup>26</sup> See Exhibit F.

<sup>27</sup> *Ibid.*

In addition, the company states that “Of the 160 clients to which Pay Tel provides ICS, 117 of these locations have at least one category of intrastate calls in which Pay Tel’s average revenue per minute is below cost.”<sup>28</sup> This is an accurate but misleading statement.

Based on Pay-Tel’s own data, of the company’s 160 contracts,<sup>29</sup> almost half – 75 – generate *net positive revenue* from intrastate ICS calls without the need to subsidize such calls with revenue from interstate calls.<sup>30</sup> That is, while Pay-Tel indicates that many of its contracts show a loss for postpaid collect *or* prepaid/debit ICS calls, the *combined* net revenue for each of 75 of its 160 contracts is positive.

Thus, even with no further action by the FCC, Pay-Tel could retain almost half of its existing contracts that are currently profitable for the company with respect to intrastate ICS calls, while it could discontinue contracts that currently result in a net loss from intrastate calls.

For example, the company notes that its contracts in two states which impose local rate caps – North Carolina and Georgia – “alone account for \$1,717,486.00 of Pay Tel’s total intrastate revenue shortfall.”<sup>31</sup>

If Pay-Tel’s contracts in Georgia and North Carolina in fact account for \$1,717,486.00 of the company’s current intrastate revenue shortfall, as the company states, then perhaps it should reconsider doing business in those states. Nothing forces Pay-Tel to provide ICS services in states where local rate caps make it difficult or impossible to generate profit, and the company has contracts in other states where it generates net positive revenue from intrastate calls (i.e., Kansas, Missouri, Ohio and Washington).<sup>32</sup>

### **Increased Call Volume Due to Lower Rates**

According to Anthony Annucci, Acting Commissioner of the New York Dept. of Corrections and Community Supervision (NYDOCCS), the nation’s fifth largest state prison system, New York eliminated its commissions on ICS calls in 2007, which reduced the cost of a 20-minute call to 96 cents (for local, intrastate and interstate calls) based on a rate of \$.048/minute with no connection fee. *See* Exhibit G.

Commissioner Annucci observed that “The impact of the rate change has been significant. The number of completed calls has risen steadily from 5.4 million in 2006, to what we are projecting to be over 14 million in 2013.”

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<sup>28</sup> *Ibid.*

<sup>29</sup> Pay-Tel ex parte presentation, Wood intrastate shortfall analysis, Docket No. 12-375 (Dec. 9, 2013).

<sup>30</sup> It is unclear whether the data presented in the Wood intrastate shortfall analysis for “Intrastate Average/MOU” rates includes commission payments (i.e., whether the average rates in the analysis encompass both actual call costs and the cost of commission payments under Pay-Tel’s contracts). If commission payments are included, then Pay-Tel presumably could negotiate lower commission rates for its ICS contracts, which would result in increased net revenue if the company maintains its current intrastate rates.

<sup>31</sup> Pay-Tel petition for waiver, Docket No. 12-375 (Jan. 8, 2014).

<sup>32</sup> Pay-Tel ex parte presentation, Wood intrastate shortfall analysis, Docket No. 12-375 (Dec. 9, 2013).

Additionally, regarding a recent order on regulating intrastate rates, the Alabama Public Service Commission noted that:

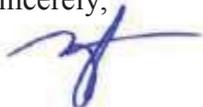
ICS providers at the FCC testified that postalized ICS call rates (single per-minute rate for calls) and/or lower per-minute rates result in increased call volume. In some cases, the usage stimulation is extensive (above 100%). One ICS provider in Alabama confided to staff that they converted their ICS 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 and 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.<sup>33</sup>

Thus, when the FCC's Order goes into effect and the cost of interstate ICS calls drops, based on the experiences in several states – including New York and Alabama – it is likely that interstate call volume (and thus revenue) will increase in a compensatory effect.

Pay-Tel may not have considered this potential increase in interstate call volume and revenue as a result of lower interstate ICS rates. To the extent that Pay-Tel subsidizes below-cost intrastate rates with revenue generated from interstate calls, the company could continue that practice after the FCC's Order goes into effect, in whole or in part, depending on the amount of the resulting increase in interstate ICS call volume and revenue.

In conclusion, we applaud the FCC for enacting much-needed reforms for interstate ICS rates. HRDC, along with our allies, has led a decade-long fight to reduce ICS rates because we know how important it is for prisoners to communicate with their families and how excessively high ICS rates frustrate such communication. Communities across the country – and society as a whole – will benefit from the Commission's landmark Order.

Sincerely,



Paul Wright  
Executive Director, HRDC

Attachments

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<sup>33</sup> “Further Order Proposing Revised Inmate Phone Service Rules and Establishing a Comment Cycle,” Alabama Public Service Commission, Docket 15957, October 1, 2013; *available online at*: [www.prisonpolicy.org/phones/AL-proposed-100113.pdf](http://www.prisonpolicy.org/phones/AL-proposed-100113.pdf).

**David Ganim**

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**From:** Beth Salak <BSalak@PSC.STATE.FL.US>  
**Sent:** Monday, December 23, 2013 4:20 PM  
**To:** David Ganim  
**Subject:** Inmate Rate Caps

Currently, the Florida Department of Corrections negotiates the telephone contracts for the state prisons. The jail contracts would be negotiated at the local level. We are not involved in those negotiations and we do not have the contracts. You are correct that we did have operator services rate caps. However, the law was changed and the FPSC no longer has that authority

Directly below are the Florida statutes that were modified in 2009 eliminating the rate caps for operator services. The PSC then modified its rules eliminating operator services rate caps in 2009. Any rate caps set would have been by rule of the PSC. The statutes were again modified in 2011 and the operator services statute was eliminated. The current statute on pay telephone service providers is at the bottom.

The statutes prior to the elimination of the operator services rate caps

(2008):

### **364.3375 Pay telephone service providers.--**

(1)(a) No person shall provide pay telephone service without first obtaining from the commission a certificate of public convenience and necessity to provide such service, except that the certification provisions of this subsection do not apply to a local exchange telecommunications company providing pay telephone service.

(b) In granting such certificate the commission, if it finds that the action is consistent with the public interest, may exempt a pay telephone provider from some or all of the requirements of this chapter. However, the commission may exempt a pay telephone provider from this section only to prevent fraud or if it finds the exemption to be in the public interest.

(c) A certificate authorizes the pay telephone provider to provide services statewide and to provide access to both local and intrastate interexchange pay telephone service, except that the commission may limit the type of calls that can be handled.

(2) Each pay telephone station shall:

(a) Receive and permit coin-free access to the universal emergency telephone number "911" where operable or to a local exchange company toll operator.

(b) Receive and provide coin-free or coin-return access to local directory assistance and the telephone number of the person responsible for repair service.

(c) Designate a party responsible for processing refunds to customers.

(d) Be equipped with a legible sign, card, or plate of reasonable permanence which provides information determined by the commission, by rule, to adequately inform the end user.

(e) Be eligible to subscribe to flat-rate, single-line business local exchange services.

## Time sensitive: Follow-up re TN inmate phone rates

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**Earl Taylor** <Earl.Taylor@tn.gov>  
To: "Alex F." <stein919@gmail.com>

Mon, Dec 16, 2013 at 12:14 PM

Mr. Friedman, please see note from David Foster, Chief of Utilities division here at the TRA. If you have further questions, feel free to contact Mr. Foster. thanks, Earl Taylor

**From:** David Foster  
**Sent:** Monday, December 16, 2013 10:22 AM  
**To:** Earl Taylor  
**Subject:** RE: Time sensitive: Follow-up re TN inmate phone rates

Earl,

The TRA did cap local calls from inmate telephones, but the order is no longer applicable to companies that have elected market regulation. Further, my understanding is that Global Tel Link has most, if not all, of the prison payphones in Tennessee and they have elected market regulation. So basically our rate cap has been voided by market regulation.

David

## **Time sensitive: Follow-up re TN inmate phone rates**

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**David Foster** <David.Foster@tn.gov>

Mon, Dec 16, 2013 at 2:25 PM

To: "Alex F." <stein919@gmail.com>, Earl Taylor <Earl.Taylor@tn.gov>

Mr. Friedmann,

PayTel has also opted into Market Regulation. Let me know if you need additional information.

David

**David Ganim**

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**From:** Katie Cummings <Katie.Cummings@scc.virginia.gov>  
**Sent:** Monday, December 16, 2013 1:23 PM  
**To:** dganim@prisonlegalnews.org  
**Subject:** Rate Caps in Virginia

I'm responding to your inquiry regarding rate caps for inmate calling in Virginia. The Virginia State Corporation has not set rate caps for inmate calling as it has no authority over telecommunications services provided under or relating to any contract to the state government or any agency thereof. If you have any other questions, let me know.

Katie Cummings  
Deputy Director  
VA SCC  
804 371-9101

**David Ganim**

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**From:** Garrison, John <john.garrison@psncuc.nc.gov>  
**Sent:** Monday, December 16, 2013 8:15 PM  
**To:** David Ganim  
**Subject:** RE: rate cap on inmate phone rates

The cap of \$1.71 only applies to the following type of call: 0+ Local Automated Collect Station-to-Station.

The Utilities Commission's rules on rates from payphones can be found in NCUC Rule R13-9 at:  
<http://www.ncuc.commerce.state.nc.us/ncrules/Chapter13.pdf>

No other rates are subject to regulation by the Utilities Commission due to preemption by the Federal Communications Commission or deregulation by the North Carolina General Assembly.

John Garrison, Director  
Communications Division - Public Staff  
North Carolina Utilities Commission  
4326 Mail Service Center, Raleigh, NC 27699-4326  
Telephone: (919) 733-0878 Fax: (919) 733-9565 [john.garrison@psncuc.nc.gov](mailto:john.garrison@psncuc.nc.gov)

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**From:** David Ganim [dganim@prisonlegalnews.org]  
**Sent:** Monday, December 16, 2013 12:17 PM  
**To:** Garrison, John  
**Cc:** Alex Friedmann  
**Subject:** rate cap on inmate phone rates

Mr. Garrison:

I called your office today, but I was told you were out until tomorrow. Since I am on a time crunch, I thought I would e-mail you.

My name is David Ganim, and I am a paralegal with the Human Rights Defense Center. I am contacting you to verify the rate caps on phone calls made by inmates in the State of North Carolina. If you could, please verify if indeed the rate cap for North Carolina is \$1.71 and does the rate cap extend to all jail pay phone calls or just to inmate local calls? Also, if there is a state statute, rule or regulation that applies to the rate cap, could you reference it or attach to this e-mail?

Thank you so much for your time and I look forward to hearing back from you.

David Ganim  
Prison Legal News  
PO Box 1151  
Lake Worth, FL 33460  
Office:561-360-2523  
Cell:954-295-4225

**David Ganim**

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**From:** Reynolds, John, PRC <John.Reynolds@state.nm.us>  
**Sent:** Monday, December 16, 2013 1:51 PM  
**To:** Ripperger, Mike, PRC; David Ganim  
**Cc:** 'Alex Friedmann'; 'Petro, Lee G.'  
**Subject:** RE: Rate cap for NM inmates (inmate calls)  
**Attachments:** IOSP\_Rule\_NM\_20130815.pdf

Mr. Ganim,

Please find attached Our Commission rule that governs inmate telephone service within New Mexico (not Georgia). The rule became effective last August and it includes per call and per minute caps on page 6. What is indicated as a cap on a 15-minute call is simply a calculated number based on the caps on per call and per minute rates. The caps apply to all intrastate calls that originate from a correctional facility in New Mexico and they apply to rates under contracts that are either new, renegotiated or amended after the effective date of the rule. Providers have the ability to seek waivers from the rate caps to serve higher-cost facilities. You will also note caps on payment and refund processing fees. Providers must allow for an option to pay that is free of any processing fee.

If you have further questions about this matter, please don't hesitate to contact me.

John  
(505) 827-4112

**From:** Ripperger, Mike, PRC  
**Sent:** Monday, December 16, 2013 10:15 AM  
**To:** David Ganim; Reynolds, John, PRC  
**Cc:** 'Alex Friedmann'; 'Petro, Lee G.'  
**Subject:** RE: Rate cap for NM inmates (inmate calls)

You're welcome.

**From:** David Ganim [<mailto:dganim@prisonlegalnews.org>]  
**Sent:** Monday, December 16, 2013 10:12 AM  
**To:** Ripperger, Mike, PRC; Reynolds, John, PRC  
**Cc:** 'Alex Friedmann'; 'Petro, Lee G.'  
**Subject:** RE: Rate cap for NM inmates (inmate calls)

Mr. Ripperger:

Thank you so much for routing this e-mail to the correct person. I greatly appreciate your help!

David Ganim  
Prison Legal News  
PO Box 1151  
Lake Worth, FL 33460  
Office:561-360-2523  
Cell:954-295-4225  
[dganim@prisonlegalnews.org](mailto:dganim@prisonlegalnews.org)  
[www.prisonlegalnews.org](http://www.prisonlegalnews.org)

## MASTER SERVICES AGREEMENT

This Master Services Agreement (hereinafter "Agreement") is made and entered into this 24th day of June, 2011 by and between Okanogan County Sheriff's Office ("Customer") of the one part and Pay Tel Communications, Inc., a North Carolina Corporation ("Pay Tel") of the other part,

WHEREAS, Customer and Pay Tel desire to enter into a long term relationship pursuant to which Pay Tel will act as the exclusive agent and provider to Customer of certain equipment and services including inmate telecommunications equipment set forth in Exhibit A (hereinafter sometimes "Services"); and

WHEREAS, Customer understands the financial commitment on the part of Pay Tel in providing and installing equipment associated with such Services and Customer agrees to cooperate and assist Pay Tel as set forth below.

NOW THEREFORE, in consideration of the mutual promises and obligations hereunder, the parties to this Agreement do hereby agree as follows:

### **1.0 AUTHORITY TO CONTRACT**

1.1 Customer warrants that the person(s) signing this Agreement have obtained the requisite authority to authorize them to bind the entity having jurisdiction over the Premises and this authority is sufficient to bind Customer to agreements of the size and nature of this Agreement.

1.2 Customer further warrants that the person(s) signing this Agreement has/have the right to license the use of the Premises in accordance with the provision of this Agreement.

### **2.0 Location**

2.1 This Agreement is for Services at or connected to the premises at the location or locations described in Exhibit B attached hereto (the "Premises") except as set forth below.

### **3.0 Term**

3.1 The term of the Agreement shall commence upon the commencement of Services and shall continue for a period of five (5) years from that date. This Agreement shall be automatically renewed for successive one year (1) year terms unless written notice of intent to terminate is given by either party no more than 120 days and not less than 60 days prior to the expiration of the then current term. Such notice shall be given in strict conformance with Paragraph 9.1 below.

3.2 During the original or any renewed term of this Agreement, Customer shall not allow any other party the right to supply the same or similar Services at the Premises. In addition, Customer acknowledges and agrees during the original or any renewed term of this Agreement that if Customer commences operations at any location other than the Premises described herein, Pay Tel shall have the exclusive right to provide Services at such new location(s) in accordance with the terms and conditions of this Agreement.

3.3 In connection with the provision of Services, Pay Tel shall have the exclusive right during the original or renewed term of this Agreement, to act as agent for the Customer solely with respect to the implementation of Services at the Premises to provide, for example, telecommunications services. In this regard, Customer agrees that it will not authorize any party other than Pay Tel to act as its agent for the purposes of negotiating, obtaining, renewing, or terminating contracts or agreements relating to the installation, operation and provision of Services at the Premises.

#### **4.0 COMMISSIONS**

4.1 Pay Tel will make commission payments as set forth in Exhibit C. This Exhibit will be modified as but only to the extent there is a material change in the operation of the facility or the use of Services by the inmates. Customer understands and agrees that any material change in operation or use of Services is not anticipated and that Pay Tel has reasonably relied on projected operation and usage information in establishing its commission rate.

4.2 For purposes of commission calculations, Customer will not be responsible for any losses due to fraudulent calls. However, Customer agrees to assist Pay Tel in efforts to prevent losses and fraud and further agrees to aid in the prosecution of any perpetrators of fraudulent calls whether such perpetrators are inside or outside the Premises.

4.3 Customer understands and agrees that the commission rates and terms contained in this Agreement are based on revenues that were projected based on inmate populations and the continued accessibility of communication equipment by the inmates to allow them to initiate collect, pre-paid collect and debit calls. **Customer acknowledges and agrees that it will take no action unreasonably to impede use of the Services by the Inmates and further agrees, to the extent there is any material change in any revenue stream for any reason on which Pay Tel reasonably relied in calculating commission rates to work with Pay Tel to correct the material change and if necessary, amend this Agreement in order to accommodate the interests of both parties.**

#### **5.0 EQUIPMENT AND SERVICES PROVIDED BY PAY TEL**

5.1 Pay Tel will provide, install and operate equipment at the Premises necessary to provide the Services set forth in Exhibit A attached hereto.

5.2 The placement of any equipment to be provided at the Premises will be determined by Pay Tel in consultation with the Customer and may be adjusted as necessary.

5.3 In the event that Pay Tel provides limited free call services, such services are to be afforded only for the limited purpose of calls to approved entities and in approved locations such as in the intake or holding area. Under no circumstances should free calls be allowed for any other purpose such as the allowance of inmate personal calls after the inmate booking process. Paragraph 4.3 is incorporated into this paragraph by reference.

5.4 Pay Tel agrees to provide Services in full compliance with all applicable rules and regulations of the Federal Communications Commission and any applicable State agency.

5.5 All Services will be provided by Pay Tel at its expense.

5.6 Customer hereby authorizes Pay Tel to contact the local telephone company and any other necessary provider to facilitate the provision of Pay Tel Services. Customer will provide space and necessary utilities, including a dedicated 24-hour 120 volt electrical service line, to support the provision of Services. Pay Tel shall pay all charges imposed by any telephone company with respect to the Services.

5.6 Customer hereby grants to Pay Tel the exclusive right and authority to the extent necessary to contract with a long distance carrier to handle inmate long distance calls at the Premises. Pay Tel agrees to charge operator assisted rates for inmate phone calls that are equal to or less than the tariffed rates regulated by the Federal Communications Commission and any similar State agency.

5.7 Any equipment provided by Pay Tel hereunder associated with the operation of the Services is agreed by Customer to be the personal property of Pay Tel and not fixtures, and it is the express intention of both Customer and Pay Tel that such equipment is and shall continue to be personal property of Pay Tel. All equipment installed by Pay Tel at the Premises shall remain the property of Pay Tel. Upon termination of this Agreement for any reason including, without limitation, termination of this Agreement pursuant to Paragraph 7.1 hereof, Pay Tel shall have the absolute right to enter upon the Premises at any reasonable time to remove its equipment. Pay Tel shall repair any and all damage to the Premises by reason of removal of Pay Tel's equipment.

5.8 Pay Tel agrees to maintain its equipment in good operating condition. In order to do so, Pay Tel shall have the right during normal business hours to enter the Premises to perform necessary maintenance and repairs as well as for purposes of inventory control. To assist Pay Tel, Customer agrees promptly to notify Pay Tel of any malfunctions or loss of equipment.

5.9 Nothing herein shall require or obligate Pay Tel to perform maintenance or repairs to equipment that Pay Tel does not install or separately agree to repair or maintain.

5.10 Pay Tel agrees that its equipment will conform with all applicable local, state and federal requirements concerning the provision of Services to those with disabilities as defined by the Americans With Disabilities Act (hereinafter the "ADA"). Customer shall cooperate with Pay Tel to ensure compliance with all access requirements contained in applicable local, state and federal regulations relating to those with disabilities as defined in the ADA.

## **6.0 LIMITED LICENSE**

This Agreement, among other things, applies to the provision of inmate telecommunications services including telephone calls and emails. Services generally include the monitoring, recording and archiving of calls and emails for use by law enforcement officials in accordance with all applicable laws. In order to allow such services, Customer hereby grants to Pay Tel a limited license to act under authority of Customer. Whether or not any call, email or other electronic information ("Electronic Data") is in Pay Tel's custody or control for any period of time, such custody and/or control shall be deemed under the authority of Customer's law enforcement personnel and any direction from Customer with respect to such Electronic Data to Pay Tel shall be done under a limited license to provide such data to law enforcement officials or to use for legitimate business purposes. Pursuant to this Agreement, Customer grants to Pay Tel a perpetual limited license to a) comply with requests submitted to Pay Tel by any representative of Customer; b) disclose electronic data or physical forms of such data to Customer's representatives; c) utilize such data in order to perform functions necessary to provide Services; d) monitor such data to prevent fraud; e) monitor such data for equipment quality control and maintenance purposes; f) use the data in connection with legitimate business purposes; and g) Pay Tel will notify Customer's designated administrative contact of any requests to Pay Tel from Law enforcement or other authorities as soon as is practically possible.

## **7.0 TERMINATION**

7.1 Customer may terminate this Agreement only in the event that Pay Tel materially fails to perform its obligations under this Agreement. Customer shall be required to give written notice to Pay Tel of said failure in strict conformance with Paragraph 8.1 and Pay Tel shall have a minimum of thirty (30) business days to cure such alleged default. Notwithstanding this thirty (30) day cure provision, this period shall be extended for an additional ninety (90) days if such cure has begun and is being diligently pursued but cannot reasonably be effected within the initial thirty (30) day period.

7.2 Pay Tel may terminate this Agreement at any time upon thirty (30) days written notice to Customer in the event that regulations governing the operation of the Services constitute a material change to the economic assumptions used in connection with Pay Tel's Services under this Agreement. Pay Tel agrees to work in good faith with Customer to renegotiate the terms of this Agreement should regulations governing the operations change the economic assumptions, with the mutual goal of a continuation of Services on terms agreeable to both parties.

## **8.0 SUCCESSORS IN INTEREST**

8.1 Customer agrees that Pay Tel shall have the right to assign this Agreement and that Pay Tel shall have the right to grant a security interest in this Agreement and in any of Pay Tel's equipment on the Premises including any and all telephones and their enclosures and/or pedestals, or other equipment associated with Pay Tel's Services. This Agreement shall be binding upon the successors and assignees of both Customer and Pay Tel, including, without limitation, any financial institution providing financial accommodations to Customer or Pay Tel.

## **9.0 MISCELLANEOUS PROVISIONS**

9.1 All notices required to be given under this Agreement and the attached exhibits shall be sent to Pay Tel and to Customer addressed as shown on the signature page of this Agreement. Notices shall be sent by certified mail, return receipt requested. The date of receipt shall be deemed to be the date of giving such notice.

9.2 This written document, including Exhibit A, Exhibit B and Exhibit C shall constitute the entire understanding of the parties and all prior agreements and understandings are merged herein. This Agreement shall not be modified, changed or altered in any respect except in writing signed by Customer and Pay Tel.

9.3 This Agreement shall be construed in accordance with the laws of the State of Washington.

9.4 In the event that any paragraph or part of the agreement is held to be void or unenforceable under any law or regulation, all other paragraphs and subparagraphs hereof shall be deemed severable and remain in full force and effect.

9.5 The plural number as used herein shall equally include the singular and the masculine, feminine, and neuter genders are interchangeable as required by context.

9.6 Any and all claims or disputes arising out of or relating to this Agreement or the breach thereof shall be decided by binding arbitration in accordance with the commercial rules governing arbitration of the American Arbitration Association. Venue for such arbitration shall be Greensboro, North Carolina unless otherwise agreed by the parties. At the conclusion of this arbitration, the award may be confirmed by order of any court having jurisdiction over the parties.

**10.0 LIMITATION OF LIABILITY**

ANYTHING HEREIN TO THE CONTRARY NOTWITHSTANDING, PAY TEL SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF ANY CAUSE OR CIRCUMSTANCE INCLUDING WITHOUT LIMITATION, LOSS OR CORRUPTION OF ELECTRONIC INFORMATION DUE TO BREACH OF CONTRACT, NEGLIGENCE OR ANY OTHER FAULT OR CIRCUMSTANCE. FURTHERMORE, PAY TEL'S LIABILITY FOR DIRECT DAMAGES SHALL NOT EXCEED THE AMOUNT OF COMMISSIONS OTHERWISE DUE CUSTOMER DURING THE PERIOD IN QUESTION OR THE PRECEDING ONE YEAR PERIOD, WHICHEVER IS SHORTER.

This Agreement entered into as of the day and year first written above.

Okanogan Sheriff's Office, Washington

PAY TEL COMMUNICATIONS, INC.:

By: Frank T. Rogers (Seal)

By: Vincent Townsend (Seal)

By: FRANK T. ROGERS (Printed)  
Authorized Agent for Customer

By: Vincent Townsend (Printed)

Date: 07-08-11

Date: \_\_\_\_\_

Attest: [Signature]

Attest: \_\_\_\_\_

Account Representative: George Sheers

Address: 123 5<sup>th</sup> Avenue  
Okanogan, WA 98840

Address: Post Office Box 8179  
Greensboro, North Carolina 27419

Phone: 509-422-7200

Phone: 336-852-7419

Fax: \_\_\_\_\_

Fax: 336-346-1127

EXHIBIT A

**EQUIPMENT AND SERVICES**

Equipment and services will be provided in accordance with Pay Tel's proposal to Customer.

EXHIBIT B

**PROPERTY DESCRIPTION**

The Premises which are the subject of the Agreement dated June 24, 2011.

The Okanogan County Corrections Center  
149 N. 4<sup>th</sup> Avenue  
Okanogan, WA 98840

EXHIBIT C

**RATES AND COMMISSIONS**

Customer may choose from the following rate/commission options. Customer may change the option selected once during the term of the contract. Any such change must be requested in writing.

**RATES PROPOSED**

Call Type	Per Call Charge	Per Minute Rate
Local	\$2.25	\$0.00
IntraLATA	\$3.00	\$0.40
InterLATA	\$3.00	\$0.40
Interstate	\$3.00	\$0.75
International Debit Only	N/A	\$0.95

If the County elects to enable the Investigator Pro™ feature, an additional licensing fee of \$.25 per call (this fee is not included in the above rates and is subject to regulatory approval) is required which will be added to the rates listed above. The license fee will not be included in gross revenue for commissions. (Note: This fee is based on a call duration limit of 15 minutes or less.

**Commission Options**

Selected Option (Check One)	J.L.G Investigator Pro™	Tech Friends	Commission Offer	Minimum Annual Guarantee
<input checked="" type="checkbox"/>	Included	N/A	65%	\$60,000
<input type="checkbox"/>	Included	Included	56.5%	\$52,000

Pay Tel will pay Customer the commission associated with the selected option on a monthly basis. At the end of each contract year, the total commissions paid will be compared against the Minimum Annual Guarantee (MAG). If the commissions paid for the prior twelve month period are higher than the MAG, then no additional funds are due to customer. If the commissions paid are lower than the MAG, Pay Tel will pay Customer the difference. The MAG is based on an Average Daily Population (ADP) of 165. The MAG will be reviewed annually and adjusted as needed to reflect the prior year ADP.



EXHIBIT G

STATE OF NEW YORK  
DEPARTMENT OF CORRECTIONS  
AND COMMUNITY SUPERVISION

THE HARRIMAN STATE CAMPUS – BUILDING 2

1220 WASHINGTON AVENUE

ALBANY, N.Y. 12226-2050

ANDREW M. CUOMO  
GOVERNOR

ANTHONY J. ANNUCCI  
ACTING COMMISSIONER

July 8, 2013

Mr. Gregory V. Haledjian  
Attorney-Advisor  
Pricing Policy Division – Wireless Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Dear Mr. Haledjian:

The New York State Department of Corrections and Community Supervision (DOCCS) welcomes the opportunity to contribute to the Federal Communications Commission's **Workshop on Reforming Rates for Inmate Calling Services**. The Department has considerable experience within this area and offers the following information for the Commission's consideration.

In 2007 DOCCS eliminated its commissions on inmate calls. Prior to that, DOCCS received a 57.5 percent commission on every completed call. The cost of the call included a connection fee (\$1.28 per call) and a per-minute charge (\$.16 per minute), resulting in an average 20 minute call costing the family \$4.48.<sup>1</sup> These fees became the source of acrimony between the Department and inmate advocacy groups and the focus of a class action lawsuit against the Department and the State of New York.

Amidst heavy scrutiny by the offender advocacy groups regarding the cost of inmate calling, in 2007 the Department worked closely with the Governor and Legislature to pass an inmate calling bill (NY Correction Law 623) that requires the per/minute cost of a call to be the preeminent focus of our inmate phone contract. The statute indicates that "The department shall not accept or receive revenue in excess of its reasonable operating cost for establishing and administering such telephone system services." The statute further requires that the "department {can} establish rules and regulations or departmental procedures to ensure that any inmate phone call system established by this section provides reasonable security measures to preserve the safety and security of each correctional facility, all staff and all persons outside a facility who may receive inmate phone calls."

These provisions of the statute prohibit the Department from collecting commissions from the system, but they do allow the Department to roll its administrative and security expenses (call listening and investigations for example) into the cost of the call. Although the Department is not at present attaching these operational costs to the per-minute price of the call, it may add them in the future.

Today the cost of a 20-minute call for an inmate in DOCCS is \$.96. The call rate includes a flat \$.048 per minute charge, for both local and long distance calls, with no connection fee.<sup>ii</sup>

The impact of the rate change has been significant. The number of completed calls has risen steadily from 5.4 million in 2006, to what we are projecting to be over 14 million in 2013. It should be noted that this increase appears to have stabilized. Interestingly, the average call duration remains at 20 minutes (see endnote i below).

Operationally, the Department has experienced both benefits and challenges from this approach. The elimination of the commission created an immediate \$20 million annual revenue short-fall in the Department's operating budget that had to be addressed. The commission revenue had been used to pay for inmate services related to health care and family visitation. This was addressed by executive budget increases and the elimination of some inmate services.

Clearly, lower phone rates have made calling a more attractive option for inmates as the numbers previously provided indicate. However, it has also made control of the phones a strategic option for gangs and unauthorized groups working inside DOCCS facilities who have sought to extort other inmates by attempting to control access to the phones. This requires vigilant monitoring by DOCCS intelligence staff and at times, intervention by DOCCS security staff.

Lower call rates have had benefits for the inmate population. The Department believes that its low calling rates have helped contribute to family reunification, and at less than a nickel per minute, the Call Home Program is among the most cost-effective family reunification options that we offer. Lower rates have also contributed to an improved relationship between the Department and the offender advocacy groups.

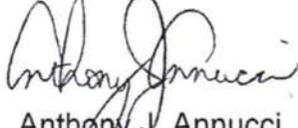
The Department believes that a lower calling rate has also contributed to a lower rate of illicit cell phone use by inmates in New York. In 2012, the Department confiscated less than 100 cell phones, compared to over ten thousand annual seizures in comparably-sized correctional systems.<sup>iii</sup>

Mr. Gregory V. Haledjian  
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In conclusion, the Department's experience indicates that inmate calling rates can be reduced substantially if states eliminate their commissions on the calls, and structure competitive bidding processes that ensure that the cost of the call is among the primary attributes of their inmate calling contracts. Moreover, there are significant benefits that can be attributed to lower calling rates that seem to outweigh the operational challenges that also attach to the process.

Thank you for providing the Department with the opportunity to contribute to your Workshop and we look forward to seeing the results of your process.

Sincerely,



Anthony J. Annucci  
Acting Commissioner

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<sup>i</sup> 20 minutes is the average length of a call completed on the DOCCS system. This was true in 2006 and is still true in 2013.

<sup>ii</sup> International calling is done under a separate system, per minute rates are higher and are based upon long distance calling rates under a separate state contract. International calling is less than 1 percent of DOCCS inmate call volume.

<sup>iii</sup> Phone rates are a contributing factor, but so too are good security measures for both visitation and perimeter security, adequate training and compensation for line staff, and a zero tolerance policy that does not allow anyone to possess a cell phone inside a New York State prison.