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*ADMITTED IN DC ONLY

September 19, 2014

VIA ECFS

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

Re: WC Docket No. 12-375 - Global Tel*Link Corporation - Notice of Ex Parte Presentation

Dear Secretary Dortch:

On September 18, 2014, David Silverman, Senior Vice President and General Counsel for Global Tel*Link Corporation ("GTL") and the undersigned, met with Valery Galasso, Special Advisor & Confidential Assistant to Commissioner Jessica Rosenworcel, to discuss matters relating to inmate calling services ("ICS") addressed by the Federal Communications Commission's ("FCC's") Report and Order and Further Notice of Proposed Rulemaking.[1]

The primary purpose of GTL's meeting was to review the industry proposal for ICS rates filed September 15, 2014, in the above referenced docket. A copy of which is attached. Ms. Galasso asked how the industry proposal compares with the proposed treatment of fees by the Alabama

[1] *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013) ("*Inmate Calling Report and Order and FNPRM*"), *pets. for stay granted in part sub nom. Securus Tech., Inc. v. FCC*, No. 13-1280 (D.C. Cir. Jan.13, 2014) ("*Partial Stay Order*"), *pets. for review pending sub nom. Securus Tech., Inc. v. FCC*, No. 13-1280 (D.C. Cir. filed Nov. 14, 2013) (and consolidated cases).

Public Service Commission ("PSC") in its recent Further Order.[2] GTL provided an outline of the Alabama PSC permitted fees and associated caps proposed by the Further Order. A copy of the outline is attached. The parties also discussed the costs incurred by correctional facilities from the provision of ICS in their facilities. GTL presented an analysis of correctional facility costs prepared by Economists Inc. ("EI"), which is attached.

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this notice is being filed in the appropriate docket.

Please contact me if you have any questions regarding this matter.

Respectfully submitted,

/s/ Chérie R. Kiser

Chérie R. Kiser

Counsel for Global Tel*Link Corporation

Attachments

cc (via e-mail): Valery Galasso

[2] Alabama PSC Docket 15957, *Generic Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Service*, Further Order Adopting Revised Inmate Phone Service Rules (July 7, 2014).

Attachment 1

September 15, 2014

Chairman Tom Wheeler
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Mignon Clyburn
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Jessica Rosenworcel
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Ajit Pai
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Michael O'Rielly
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: WC Docket No. 12-375

Dear Chairman Wheeler, Commissioner Clyburn, Commissioner Rosenworcel, Commissioner Pai, and Commission O'Rielly:

The issues and policies addressed and under further consideration in the *Inmate Calling Report and Order and FNPRM*,[1] have long been of concern to all affected by them – inmates, their friends and families, inmate calling services ("ICS") providers, and local and state governments and correctional facilities. The Federal Communications Commission ("FCC" or "Commission") has worked hard to address and resolve these complex issues, attempting to balance economic needs of consumers against the cost of unique security and public safety features required to provide ICS.

As part of its ongoing review, the Commission has sought comment on additional measures it can take "to ensure that interstate and intrastate ICS are provided consistent with the statute and public interest."[2] The undersigned parties, who are the primary providers of inmate calling services ("ICS") in the United States and represented 85% of the industry revenue in 2013, agree that it is in all parties' interest to address these matters conclusively and in a manner that resolves the market uncertainty caused by the ongoing proceedings at the FCC and the courts. Consequently, the parties have cooperated to develop a consensus proposal that seeks to address the goals outlined by the Commission, reflects the business needs of the parties, addresses the security and administrative needs of correctional facilities, and recognizes the

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[1] *Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107 (2013) ("*Inmate Calling Report and Order and FNPRM*"), *pets. for stay granted in part sub nom. Securus Tech., Inc. v. FCC*, No. 13-1280 (D.C. Cir. Jan.13, 2014) ("*Partial Stay Order*"), *pets. for review pending sub nom. Securus Tech., Inc. v. FCC*, No. 13-1280 (D.C. Cir. filed Nov. 14, 2013) (and consolidated cases).

[2] *Inmate Calling Report and Order and FNPRM* ¶ 128.

rights and interests of inmates and their families and friends. The parties have made difficult compromises to find consensus in the interest of achieving regulatory certainty and the unimpeded provision of ICS in the future.

This consensus proposal consists of several inextricably-linked components. The components work in concert and any single component should not be viewed as supported by the parties in isolation of the other components. Accordingly, a material change to any individual component of this proposal may lead to the withdrawal of support for, and/or direct opposition to, any modified proposal by some or all of the parties.

In the spirit of compromise and consensus, the undersigned parties propose the following framework for the treatment of interstate and intrastate ICS rates going forward:

Rate Caps for Interstate and Intrastate ICS Calling

The parties propose flat rate caps of $0.20 per-minute for all debit and prepaid interstate and intrastate ICS calls, and $0.24 per minute for all interstate and intrastate collect calls.[3] No per-call surcharges should be permitted.[4] To the extent the interstate or intrastate ICS per-minute calling rates at a particular correctional facility are above the cap on the effective date of the new rule, the per-minute rates would be reduced immediately to $0.20 and $0.24, respectively.

The simplified rate structure proposed by the parties will make ICS charges more transparent for inmates and their friends and family. They will be easy for ICS providers and correctional facilities to implement quickly, and will simplify oversight and enforcement.

The new rate caps should become effective 90 days after adoption, along with any site commission reductions and ancillary fee changes outlined below. This period for implementation should ensure ICS providers and correctional facilities have adequate time to implement the new rate caps and any corresponding reductions in site commissions, including any contract amendments or adjustments that may be necessary.

The Commission should permit an ICS provider to seek a waiver of the rate cap for a particular correctional facility if the ICS provider can demonstrate that the proposed rate cap does not allow the ICS provider to economically serve the correctional facility. However, such

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[3] The parties understand the Commission considers Sections 201 and 276 of the Communications Act to support its authority to establish a single, uniform rate cap for both interstate and intrastate ICS calls. *See* 47 U.S.C. §§ 201, 276; *see also Inmate Calling Report and Order and FNPRM* ¶¶ 135-41. The parties' consensus proposal accepts that while the Commission's exercise of jurisdiction might extend to intrastate inmate calling services, the parties do not support a finding of intrastate jurisdiction under Sections 201 and 276 that would extend beyond inmate calling services.

[4] The one exception to this prohibition on per call pricing is in states where per call pricing has been adopted and the per call rate is less than the new flat rates caps under this proposal for a 15 minute call, which would be $3.00 and $3.60, respectively.

waivers should be permissible only on a facility-by-facility basis.[5] An ICS provider seeking such a waiver should be subject to the review and approval process outlined in the *Inmate Calling Report and Order and FNPRM*[6] and the *Pay Tel Waiver Order*[7] for obtaining waivers.

Site Commission or "Admin-Support Payments" for ICS-related Correctional Facility Costs

The parties recognize, as the Commission acknowledged in the *Inmate Calling Report and Order and FNPRM*, that correctional facilities may incur administrative and security costs to provide inmates with access to ICS.[8] The parties' proposal supports the recovery of legitimate costs incurred by correctional facilities that are directly related to the provision of inmate calling services. The parties, however, have not reached agreement as to what amount or what percentage (if any) should be required, or how such admin-support payments can accurately be measured. Accordingly, the industry looks to the FCC to determine the appropriate amount or percentage that should be included in ICS rates for such payments to correctional facilities based on the record presented.

The parties do agree that any admin-support payment adopted should be applied, upon the effective date of the new capped rates (whether or not applied as part of a phased-in approach), to all existing contracts where site commissions are currently being paid. As the Commission has determined, "where site commission payments exist, they are a significant factor contributing to high rates."[9] The per-minute rate caps proposed above are feasible for the parties only if implemented in conjunction with corresponding reductions in site commission payments. Accordingly, if the FCC determines that such admin-support payments to correctional facilities are appropriate, the amount or percentage of such payments will have a direct effect on ICS provider's costs to provide ICS, and therefore, the proposed per-minute rate caps may have to be increased, unless such admin-support payments or percentages are nominal.[10]

ICS provider proposals ranged from the immediate and complete elimination of site commissions to a phased reduction of site commission payments with a transition to a capped admin-support payment. Further, views differed among providers regarding the appropriate calculation of the amount of the admin-support payment: some suggested it be calculated as a percentage of intrastate per minute of use calling revenue; while others preferred the admin-

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[5] For example, waivers could be sought to provide service to individual mental health facilities, youth work camps, and other facilities with unique environments (security, geographic or otherwise) that increase the cost of providing service beyond the cap.

[6] *Inmate Calling Report and Order and FNPRM* ¶¶ 82-84.

[7] *Rates for Interstate Inmate Calling Services*, 29 FCC Rcd 1302 (2014) ("*Pay Tel Waiver Order*").

[8] *Inmate Calling Report and Order and FNPRM* at n.203 ("we cannot foreclose the possibility that some portion of payments from ICS providers to some correctional facilities may, in certain circumstances, reimburse correctional facilities for their costs of providing ICS").

[9] *Inmate Calling Report and Order and FNPRM* ¶ 34.

[10] *See, e.g.*, *Inmate Calling Report and Order and FNPRM* ¶ 3 ("we generally prefer to promote competition to ensure that inmate phone rates are reasonable").

support payment be calculated based on an intrastate per minute of use rate (*e.g.*, $0.015 - $0.025.

If the FCC determines such admin-support payments are appropriate, the parties' submit that ICS providers should be barred from paying and correctional facilities (and their agents) should be prohibited from soliciting or accepting any other compensation or payment other than the FCC-prescribed admin-support payment, including any in-kind payments, exchanges, technology allowances, administrative fees, or the like.[11] The parties propose that the Commission define as impermissible: any payment, service, or product offered to, or solicited by an agency (or its agent) that is not directly related to, or integrated with, the provision of communications services in a correctional facility. This definition permits correctional facilities to obtain new and innovative services that are integrated or associated with ICS (ranging from email and text services to video visitation, wireless and other emerging technologies),[12] while limiting the ability to incorporate items in the contracting process that bear no relationship to the provision of secure communications in the correctional facility.

Reducing ICS providers' site commission payments to FCC-prescribed admin-support amounts is fundamental to the proposed rate caps and fee reductions under this proposal. The parties also propose that any caps established for admin-support payments should not be eligible for adjustment above the cap by ICS providers pursuant to requests for waiver.

Ancillary Fees

The parties respectfully submit that the regulation of ancillary fees for transactions other than the provision of ICS is beyond the scope of the Commission's jurisdiction. However, the overall changes in price and commission described herein dramatically alter the economic landscape of the ICS industry, making it possible for providers to forego many fees and cap others at current levels. Therefore, in the spirit of compromise, the parties propose: the elimination of certain fees, that ancillary fees are limited to a specified list of permissible fees, and that caps be established for other types of fees associated with the provision ICS.

Under this proposal, ICS providers could impose the following types of fees (subject to the caps discussed below), in connection with their provision of ICS: (1) transaction or deposit fees; (2) a cost recovery fee related to validation and security features; (3) third party money transfer fees; and (4) fees for convenience or premium channels. All other types of fees would be prohibited. Attached is a complete list of ICS provider fees that would be eliminated under this proposal.[13] In all, the providers have agreed to eliminate a least nineteen different fees currently charged in the marketplace.

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[11] *Inmate Calling Report and Order and FNPRM* ¶ 56 ("We note that we would similarly treat 'in-kind' payment requirements that replace site commission payments in ICS contracts.").

[12] This definition would not broaden the scope of FCC jurisdiction to include such new and innovative services, whether or not integrated or associated with ICS.

[13] Under the parties' proposal, ICS providers would still be permitted to charge applicable federal, state, and local taxes as well as fees associated with federal, state and local governmental action, including federal and state universal service fund fees, numbering fees, federal and state regulatory fees, and any other federal, state, or local

The parties also propose to publish information regarding the permissible fee amounts on their company websites. This is intended to ensure transparency and compliance, as well as to provide consumers with the information they need regarding the fees associated with ICS. Publication of fees is consistent with ICS providers' existing obligation to make their current interstate rates, terms and conditions available to the public via their company website.[14]

Transaction or deposit fees. Transaction or deposit fees to fund prepaid ICS accounts (those held by friends and family) and debit ICS accounts (those held by inmates) would be subject to a cap for three years. The maximum amount that could be charged would be capped at $7.95 per transaction or deposit. This is consistent with the current market rate for funding ICS accounts.

Money transfer fees. In addition to the amounts charged by third party money transmitters such as Western Union, MoneyGram, etc., ICS providers would be permitted to impose money transfer fees to cover the administrative costs of handling such transactions. Under the parties' proposal, ICS providers would be permitted to charge a maximum $2.50 administrative fee for such money transfer services.

Validation fee. ICS providers would be permitted to impose a maximum validation fee of eight percent (8%) per ICS call. The fee would be applied to the base rate of all ICS calls (*i.e.*, the total charge for the ICS call based on the per-minute rate). Prior to completing an inmate-initiated call, an ICS provider is required to verify the inmate is permitted to call the dialed number, authenticate the called party (by verifying the called party's identity, telephone number, and location), and confirm the called party has provided valid consent to receive the call. The validation fee is intended to recover ICS providers' costs associated with these important call-specific security features, which are necessary for the safety and security of the general public, inmates, their families and friends, and correctional facility employees.

Convenience or premium payment options. Premium payment options give the customer the convenience of paying for the receipt of inmate-initiated calls using various types of payment processing methods. The concept of paying more for a service or product for the convenience of using a preferred billing method is not unique to ICS.[15] The fee associated with these premium payment options reflects that ICS providers incur additional costs for providing consumers with

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fee permitted to be imposed on end user customers. ICS providers would impose such taxes and fees consistent with existing federal and state requirements regarding calculation and disclosure of such taxes and fees.

[14] 47 C.F.R. § 42.10; *see also Inmate Calling Report and Order and FNPRM* ¶ 118.

[15] *See, e.g.*, Dave Lieber, *Watchdog: Are discounted cash prices for gas a violation of Texas law?*, THE DALLAS MORNING NEWS (Jan. 16, 2014), http://www.dallasnews.com/investigations/watchdog/20140116-watchdog-do-cash-discounts-for-gas-purchases-violate-state-law.ece; *Paying for gas with a card could cost you $1 more per gallon as at some stations*, WESH (June 19, 2014), http://www.wesh.com/news/paying-for-gas-with-a-card-could-cost-you-1-extra-at-some-orlando-stations/26554746#!bxYtpk. Consumers can even pay their taxes and college tuition using credit cards on online systems that charge a convenience fee. *See, e.g.*, *Pay your Taxes by Debit or Credit Card*, IRS, http://www.irs.gov/uac/Pay-Taxes-by-Credit-or-Debit-Card (last visited Sept. 14, 2014); *Online Bill/Credit Card Convenience Fees FAQ*, Virginia Commonwealth University, http://www.enrollment.vcu.edu/accounting/tuition-and-fees/faq-convenience-fees/ (last visited Sept. 14, 2014).

such options. ICS providers would be permitted to impose fees for certain "premium" payment options, but such fees should be capped based on the ICS provider's existing fee amounts for such options for a period of three (3) years.

Premium payment options include, but are not limited to, the following types of payment processing methods: (1) billing directly to credit/debit card; (2) billing to an existing wireless telephone account; and (3) transfers from canteen or commissary funds. The following conditions should be required to be satisfied for an ICS provider to impose a premium payment fee on a customer:

- The ICS provider shall provide the customer an option to pay for an inmate-initiated call without incurring a payment processing fee, such as mailed payment by check or money order.

- The ICS provider shall fully inform customers of all payment methods available (including the no-charge option), the payment processing charges associated with each payment method, and the estimated time required to establish service applicable to each payment option.[16]

- The ICS provider shall clearly and conspicuously identify the required information. The information should be presented clearly and prominently so that it is actually noticed and understood by the customer.[17]

    - The ICS provider shall provide a brief, clear, non-misleading, plain language description of the required information. The description must be sufficiently clear in presentation and specific enough in content so that the customer can accurately assess each of the available payment methods.[18]

    - An ICS provider shall clearly and conspicuously disclose any information the customer may need to make inquiries about the available payment methods, such as a toll-free number, e-mail address, or web site address by which customers may inquire or dispute any charges. An ICS provider shall include any restrictions or limitations applicable to each payment method available.

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[16] An ICS provider may provide this information to customers (1) on its website, (2) in its web-posted rates, terms, and conditions, (3) orally when provided in a slow and deliberate manner and in a reasonably understandable volume, or (4) in other printed materials provided to a customer.

[17] For these purposes, clear and conspicuous means notice that would be apparent to the reasonable customer. *See, e.g.*, 47 C.F.R. § 64.2400 *et seq.*; *Joint FCC/FTC Policy Statement for the Advertising of Dial-Around and Other Long-Distance Services to Consumers*, 15 FCC Rcd 8654 (2000).

[18] In determining the effectiveness of the disclosure, the Commission should consider the prominence of the disclosure in comparison to other information, the proximity and placement of the information, the absence of distracting elements, and the clarity and understandability of the text of the disclosure. *See, e.g.*, 47 C.F.R. § 64.2400 *et seq.*; *Joint FCC/FTC Policy Statement for the Advertising of Dial-Around and Other Long-Distance Services*, 15 FCC Rcd 8654 (2000).

Disability Access

The parties commit to continue to comply with their existing obligations under the Americans with Disabilities Act ("ADA"), the Twenty-First Century Communications and Video Accessibility Act of 2010, and Sections 225 and 255 of the Communications Act with respect to inmates with disabilities. In accordance with the requirements of the *Inmate Calling Report and Order and FNPRM*, the parties will not levy or collect an additional charge for any form of telecommunications relay service ("TRS") call.[19] The parties also will work closely with correctional facilities "to ensure that deaf and hard of hearing inmates are afforded access to telecommunications that is equivalent to the access available to hearing inmates."[20]

Enforcement and Compliance

The parties acknowledge that the Commission retains all existing authority to impose fines and penalties on ICS providers or require refunds for non-compliance with its rules.[21] The Commission may investigate ICS providers' compliance with the forthcoming rules on the Commission's own motion or in response to an informal or formal complaint. The Commission also may investigate ICS providers' compliance with existing rules applicable to ICS, including the Commission's oral disclosure requirements.[22]

In addition to the Commission's general enforcement power, the parties propose ICS providers should be required to provide certain information to the Commission annually for three (3) years to ensure the caps on per-minute rates and any admin-support payments adopted are implemented as required. Such information should include a list of the ICS provider's current interstate and intrastate per-minute ICS rates, the ICS provider's current fee amounts, the locations where the ICS provider makes admin-support payments, and the amount of those admin-support payments. In addition, all ICS providers should be required to submit an annual certification by the company Chief Executive Officer, Chief Financial Officer and General Counsel, under penalty of perjury, certifying that the company is in compliance with the FCC ICS rate rules and any admin-support payment rules adopted.

This carefully constructed consensus proposal reflects the collaborative efforts and compromises of the vast majority of the ICS industry, and represents a reasonable path forward toward the Commission's objective "to ensure that rates and practices are just and reasonable,

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19 *Inmate Calling Report and Order and FNPRM* ¶ 95; *see also* 47 U.S.C. § 225(d)(1)(D).

20 *Inmate Calling Report and Order and FNPRM* ¶ 97.

21 47 U.S.C. § 503; 47 C.F.R. § 1.80

22 *Inmate Calling Report and Order and FNPRM* ¶ 118.

and to ensure that payphone compensation is fair to both end users and to providers of payphone services, including ICS providers."[23] The undersigned parties urge the Commission to move expeditiously to adopt the industry consensus proposal set forth herein.

Respectfully submitted,

/s/ Brian D. Oliver
Brian D. Oliver
Chief Executive Officer
Global Tel*Link Corporation

/s/ Richard A. Smith
Richard A. Smith
Chief Executive Officer
Securus Technologies, Inc.

/s/ Kevin O'Neil
Kevin O'Neil
President
Telmate, LLC

Attachment

cc: Rebekah Goodheart
Lynne Engledow
Kalpak Gude
Rhonda Lien
David Zesiger

[23] *Inmate Calling Report and Order and FNPRM* ¶ 100.

ATTACHMENT
WC Docket No. 12-375
Industry Proposal Letter
September 15, 2014

Fees Eliminated under the Industry Proposal in Addition to the Per-Call Surcharge

VINE
State regulatory cost recovery fee
Federal regulatory cost recovery fee
Refund fees
Account set-up fee
Billing statement fee
Single bill fee
USF administration fee
Wireless administration fee
Location validation fee
Voice biometrics fee
Technology fee
Account close-out fee
Withdrawal fee
Carrier Cost Recovery fee
Collect Call Regulatory fee
Funding fee
Regulatory Assessment fee
Account Services fee

Your submission has been accepted

ECFS Filing Receipt - Confirmation number: 2014915662025

Proceeding

Name	Subject
12-375	Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 et al.

Contact Info

Name of Filer: Global Tel*Link, Securus and Telmate

Address

Address Line 1: 1990 K Street
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Details

Type of Filing: LETTER

Document(s)

File Name	Custom Description	Size
12-375, Industry proposal letter.pdf		88 KB

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http://apps.fcc.gov/ecfs/comment/confirm?confirmation=2014915662025
For any problems please contact the Help Desk at 202-418-0193.

Attachment 2

Fee Information from July 7, 2014 Alabama ICS Order

Permitted Fees and Associated Caps

- Fee for use of single payment services (services that allow for calls to parties that have not established prepaid ICS accounts and who cannot accept traditional collect calls; allows customers to put call charges on credit/debit card or wireless carrier bill; examples include Pay Now, Bill-to-Mobile, Text Collect, Text2Connect, Text-to-Cell)[1] (pages 4-5, 58-62)
    - For prisons - $6.00 per call ($3.00 usage charge and $3.00 transaction fee) plus 6% Alabama Utility Gross Receipts Tax
    - For jails - $6.60 per call for first year, $6.36 per call for second year, $6.00 per call for third year and going forward plus 6% Alabama Utility Gross Receipts Tax
- Debit/credit card payment processing fee for payment submitted via web, phone using IVR, and kiosks - $3.00 (page 81)
- Debit/credit card payment processing fee for payment submitted by phone via live agent - $5.95 (page 81)
- Bill processing fee for collect calls billed by call recipient's serving carrier - $3.00 (page 82)
- Paper billing fee for prepaid and direct-billed customers in lieu of electronic bill statement - $2.00 (page 88)
- Third-party (Western Union, Money Gram) payment transfer fee - $5.95[2] (pages 86-87)
- Inmate canteen/trust fund transfer fee - 5% of amount transferred from inmate canteen/trust account into ICS account (pages 87-88)
- Interstate regulatory recovery fee and/or USF administration fee only if specifically quantified and listed in the ICS provider's FCC approved interstate tariff or set forth in an approved FCC order published in the Federal Register (pages 70-73)

Prohibited Fees

- Fees associated with underlying telecommunications technology for any telephone number, such as a wireless administration fee[3] (page 37)

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[1] Waiver requests may be filed.

[2] Third-party payment transfer fees that exceed $5.95 may be permitted if ICS provider submits copies of contracts and sworn affidavits to Alabama commission containing certain information and affirmations.

[3] Providers may request permission to impose such a charge by filing a detailed study substantiating the additional costs for including wireless numbers on the authorized call list for prepaid ICS.

- Security biometrics fees, but may be allowed as separate component from ICS rates in future (pages 48-49)

- Intrastate regulatory recovery fees (pages 70-73)

- Refund fees for refunding customer prepayments (pages 73-74)

- Account set-up or account establishment fees (page 74)

- Account maintenance fees (page 74)

- Fee for cash payments at kiosks (page 81)

- Fines/penalties assessed by ICS provider for actual or suspected violations of a correctional facility's policies with respect to inmate telephone services (page 74)

- Any other charge or fee except those specifically referenced under "Permitted Fees" above (page 74)

Attachment 3

Before the
Federal Communications Commission
Washington, D.C. 20554

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

Correctional Facility ICS Cost Analysis for Global Tel*Link Corporation

Stephen E. Siwek and Christopher C. Holt
Economists Incorporated

September 18, 2014

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I. INTRODUCTION

1. On behalf of Global Tel*Link Corporation ("GTL), Economists Incorporated ("EI")[1] hereby respectfully submits this Correctional Facility ICS Cost Analysis. On September 26, 2013, the Federal Communications Commission released its *Rates for Interstate Inmate Calling Services, Report and Order and Further Notice of Proposed Rulemaking* ("ICS Order and FNPRM").[2] In the *ICS Order and FNPRM*, the Commission has sought to reform interstate and intrastate inmate calling service ("ICS") rates. As part of that review, the Commission has questioned the effect of mandatory site commissions, or payments required to be made by ICS providers to correctional facilities and related state authorities.[3]

2. Affected parties have argued that revenues generated from ICS site commissions are used to offset certain costs borne by the facility, including costs related to ICS and costs that

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1. Economists, Inc. is a premier economic research and consulting firm that specializes in the analysis of antitrust, regulatory and damages issues. EI's Washington, D. C. office is located at 2121 K Street, NW, Suite 1100, Washington, D.C. 20036. The analysis described herein was performed by Stephen E. Siwek and Christopher C. Holt. The authors of this analysis also performed a cost analysis on behalf of GTL based on the Commission's mandatory ICS cost reporting requirements. See *In the Matter of Rates for Interstate Inmate Calling Services*, FCC Mandatory Data Collection Description & Justification for Global Tel*Link Corporation, Economists Incorporated, WC Docket No. 12-375 (Aug. 22, 2014) available at http://apps.fcc.gov/ecfs/document/view?id=7521805461.

2. See *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107 (Sep. 26, 2013) [hereinafter *ICS Order and FNPRM*].

3. *ICS Order and FNPRM* ¶¶ 33-35, 54-58, 130, 133.

are unrelated.[4] There is little evidence in the record to date regarding the magnitude of costs that are associated with ICS and incurred solely by correctional facilities.[5] Such costs ("facility-level ICS costs") would not be borne by ICS providers such as GTL. In an effort to help inform the Commission's future actions in reforming ICS, GTL has collected a sample of relevant anecdotal cost data, and has asked EI to analyze these data for the purpose of presenting a general overview of the nature and magnitude of facility-level ICS costs. In this analysis, EI does not offer any insight regarding whether or to what extent these costs might be offset by site commissions.

II. STAFFING COSTS

3. Based on our review of data provided to us by GTL, correctional facility-level staffing costs associated with ICS are highly variable by contract and are generally non-trivial. Below we summarize the anecdotal staffing cost data provided to us by GTL. We then discuss general inferences that can be drawn from a natural experiment involving the Texas Department of Corrections ("DOC"), which adopted an ICS system as recently as 2008. Based on our findings we present an illustrative analysis of investigative and administrative correctional facility-level ICS costs.

A. Facility-Level Data Summary

4. GTL selected a sample of fourteen contracts intended to be representative of the different types and sizes of correctional facilities for which GTL provides ICS. For each of these contracts, GTL conducted an inquiry into the operational areas where correctional facility staff

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4. See Letter from Harrison A. Moody, President, Virginia Association of Counties, to the Honorable Tom Wheeler, Chairman, FCC, WC Docket No. 12-375 (filed September 3, 2014) [hereinafter *VACo Ex Parte Letter*].

5. The Human Rights Defense Center recently acknowledged the need for additional evidence in the record for informing ICS issues. *See* Letter from Lance T. Weber, General Counsel, Human Rights Defense Center, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed Sep. 16, 2014).

has duties pertaining to ICS and the number of staff hours devoted to ICS-related activities.[6] The results of this inquiry are shown below in Table 1 using anonymous identifiers for each contract.

TABLE 1: SUMMARY STATISTICS

		Customer-Provided Staff FTEs			
Contract ID	**Average Daily Population**	**Administrative**	**Investigative**	**Security**	**Maintenance**
State Departments of Correction					
DOC 1	44,000	0.25	1.0	11.0	0.0
DOC 2	44,000	0.25	2.5	42.0	0.3
DOC 3	42,000	0.25	4.0	0.5	12.0
DOC 4	24,000	0.25	10.0	1.0	3.0
DOC 5	22,000	0.25	5.0	2.0	0.3
DOC 6	15,000	0.25	5.5	2.5	0.3
DOC 7	3,911	0.25	2.5	2.0	0.3
County Facilities					
County 1	8,126	1.25	6.0	0.0	0.1
County 2	2,160	0.25	1.0	0.0	0.0
County 3	1,729	0.25	4.0	3.0	0.8
County 4	991	0.15	1.0	0.5	0.5
County 5	900	0.50	1.0	0.0	0.0
County 6	745	0.15	0.5	0.5	0.0
County 7	253	0.15	0.2	0.3	0.3

5. GTL identified four types of correctional facility staff with regular duties associated in part with ICS: administrative, investigative, security, and maintenance. Administrative ICS costs do not vary across State DOC facilities within the sample; every DOC reports approximately 0.25 full-time-equivalent ("FTE") staff associated with these responsibilities. County correctional facilities also show little variation in administrative staff hours, which range from 0.15 to 1.25. Only two county contracts exceed 0.25 administrative staff FTEs.

6. According to GTL, in some facilities very limited resources are spent on monitoring, with recordings only retrieved on a case by case basis in response to subpoenas or specific investigator requests,

6. Security staff is sometimes required to escort GTL employees within the premises as needed for service and repair. However, policies that dictate such staffing requirements tend to vary significantly by contract. For example, DOC 2 reports 42 FTEs related to the provision of security for ICS, where DOC 3 reports only 0.5 FTEs despite having a comparably large number of inmates. Maintenance hours vary significantly as well. DOC 3, for example, provides its own maintenance on GTL systems rather than using GTL staff.

B. Texas DOC Natural Experiment

7. In the *ICS Order*, the Commission was not comprehensive in identifying all costs that may be considered "related to ICS," but instead provided an open-ended definition for the purpose of determining which costs were compensable through ICS rates.[7] Similarly, when determining which facility-level costs may be related to ICS, a clear cut definition does not exist. And despite that many of the above staffing positions may have day-to-day tasks in some way related to ICS, whether these costs ought to be compensable by way of site commissions or other arrangements with an ICS provider is beyond the scope of this analysis. However, we note here that an economic approach for determining which costs are "related" to ICS would likely take into account the incremental change in costs associated with the use of ICS.[8] Put differently, one

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7. *ICS Order and FNPRM* ¶53 ("[W]e conclude that only costs that are reasonable and directly related to the provision of ICS, including a reasonable share of common costs are recoverable through ICS rates…Such compensable costs would likely include, for example, the cost of capital…; expanse for originating, switching, transporting, and terminating ICS calls; and costs associated with security features relating to the provision of ICS.[] On the other hand, costs not related to the provision of ICS may include, for example, site commission payments,[] costs of non-regulated service, costs relating to general security features of the correctional facility unrelated to ICS, and costs to integrate inmate calling with other services, such as commissary ordering, internal and external messaging, and personnel costs to manage inmate commissary accounts.[]").

8. *See, e.g.*, Christian Henrichson & Sarah Galgano, A Guide to Calculating Justice-System Marginal Costs, U.S. Department of Justice Bureau of Justice Assistance (May 2013) at 4-5 ("In the context of the criminal justice system, the marginal cost is the amount of change in an agency's total operating costs when output (such as arrests, court filings, or jail days) changes because of changes in policies or programs…The term 'marginal cost' comes from the field of economics, which defines it as the change in total cost when the quantity produced [changes]").

could infer facility-level ICS costs by estimating which costs would not exist in the absence of ICS.

8. The recent experience of the Texas DOC offers a natural experiment that at least partially informs a useful benchmark for conducting a facility-level ICS cost analysis. In 2007, the Texas DOC approved the implementation of an ICS system allowing prepaid and collect calls for the first time; inmate calling had previously been highly restricted, limited to one five-minute collect call every 90 days.[9] The calling system was made available over the course of subsequent years, first becoming available in some facilities in 2009.[10] By observing the experience of the Texas DOC before and after obtaining ICS, one can infer the difference in costs borne at the facility level as a result of adopting the ICS system. Publicly available documents suggest that the Texas DOC requested to increase their investigative staff by 30 FTEs as a direct result of the new ICS system.[11] The purpose of these staff positions was to "effectively monitor the new offender telephone system."[12] A review of appropriations requests from 2008 to 2013 reveals several other requests for additional staff, but no other requests for additional FTEs *as a direct result of the new ICS system*. Because the Texas DOC represents the largest DOC in the country, that no other additional staff are requested specifically for the telephone system suggests that the effect on staffing in the administrative, security, and maintenance may be *de minimis*,

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9. *See* Huffington Post, *Texas INMATE Phone System Debuts: The "Cell" Phone*, (May 9, 2009), available at http://www.huffingtonpost.com/2009/04/05/texas-inmate-phone-system_n_183260.html. See *also* Texas Department of Criminal Justice, Agency Strategic Plan Fiscal Years 2013-2017 (July 6, 2012), available at https://www.tdcj.state.tx.us/documents/finance/Agency_Strategic_Plan_FY2013-17.pdf at 5 ("In response to SB 1580 enacted by the 80th Legislature, the agency began implementation of an offender telephone system offering both prepaid and collect calling options."). *See also* Texas S.B. No 1580, available at http://www.capitol.state.tx.us/tlodocs/80R/billtext/html/SB01580F.htm.

10. *Id.*

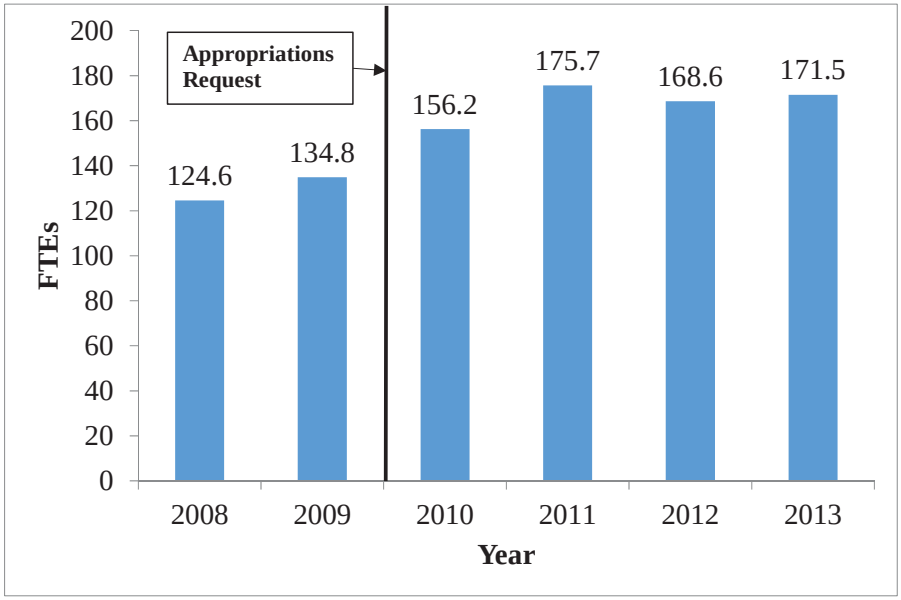
11. *See* Texas Department of Criminal Justice, Agency Operating Budget 2010 (August 2009) at 3 ("The FY 2010 Operating Budget also includes an appropriation to add 30 positions to the Office of Inspector General to effectively monitor the new offender telephone system.").

12. *Id.*

particularly in smaller facilities, or may depend entirely on the nuances of the facility (such as those apparent in GTL's contract with DOC 3).

9. As shown in Figure 1, realized increases in investigative FTEs appear to be consistent with the appropriations request, which occurred prior to the 2010 fiscal year. The Texas DOC experience therefore suggests that investigative costs may increase with the addition of an ICS system.

FIGURE 1: TEXAS DOC OFFICE OF THE INSPECTOR GENERAL FTES, 2008-2013



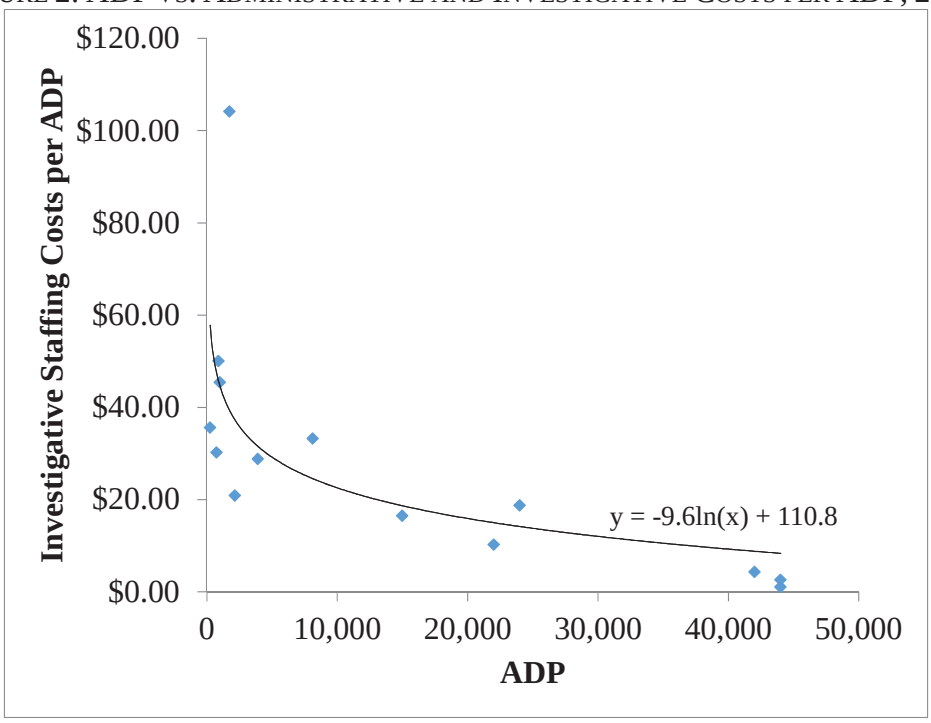
Source: Texas Department of Criminal Justice, Agency Operating Budgets 2010-2014

C. Illustrative Analysis of Facility-Level ICS Staffing Costs

10. Based on the data received from GTL and the review of the Texas DOC experience, we perform an illustrative analysis of staffing costs. The data in the GTL sample suggest that investigative ICS costs per inmate tend to decrease with the size of the facility or contract. For illustrative purposes, we assume an average investigator salary of $45,000 and calculate investigative staffing costs per average daily population ("ADP"). Figure 2 plots these

data points against overall ADP to show that, as the size of a facility increases, investigative costs per inmate decrease as investigators become responsible for a larger population.

FIGURE 2: ADP VS. ADMINISTRATIVE AND INVESTIGATIVE COSTS PER ADP, 2014



Note: Los Angeles County not shown. Assumes average investigator salary of $45,000.

The trend-line represents a simple univariate regression where the dependent variable is the assumed investigative staffing cost per ADP, and the independent variable is the natural log of ADP. The coefficient of -9.6 suggests that a one percent increase in ADP confers a decrease in investigative costs per ADP of approximately ten cents.[13]

11. Table 2 below compares an approximation of each contract's administrative and investigative ICS costs with estimated site commissions in 2014 (annualized). We present the same metrics for the Texas DOC and assume that its administrative FTEs are consistent with those observed in the GTL sample of DOC facilities. We also assume, for the sake of this illustrative analysis, that the FTE figures estimated by GTL reflect incremental hours that would

13. This relationship is found to be statistically significant at the five percent level.

not exist in the absence of ICS; this approach is likely to overstate costs to the extent that staff hours would simply be redirected to other duties in the absence of an ICS system.[14] This comparison shows that the median costs as a percentage of intrastate calling revenues are 3.9 and 7.8 percent for DOC and County facilities in the GTL sample, respectively.[15] Overall, these ICS-related staffing costs range from $0.001 to $0.057 per intrastate minute of use. Costs per intrastate MOU were significantly lower in DOC contracts, where they showed a median of $0.005, compared with a median of $0.016 across county contracts within the sample. Expressed in terms of average daily population, staffing costs in the sample range from $1.28 to $110.61 per inmate. Median costs per ADP are $10.74 and $52.22 for DOC and County contracts, respectively. The estimated cost per ADP in the Texas ADP, at $9.24 is consistent with the range of values among larger DOC facilities in the GTL sample.

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14. We note further that an ICS system may have positive and negative externalities associated with it that are not considered here. For example, an ICS system may provide a benefit to investigators seeking to gather criminal evidence, but may also carry a social cost by facilitating criminal activity. We do not offer any analysis regarding these issues.

15. We assume that the average salary for administrative staff is also $45,000.

TABLE 2: COST AND COMMISSION COMPARISON

Contract	ADP	Admin. FTEs	Investigative FTEs	Admin. & Investigative Costs per ADP	Admin. & Investigative Costs per Intrastate MOU	Admin. & Investigative Costs as % of Intrastate Revenue
Texas DOC	**147,291**	**0.25**	**30**	**$9.24**	**not available**	**not available**
DOC 1	44,000	0.25	1.0	$1.28	$0.001	0.3%
DOC 2	44,000	0.25	2.5	$2.81	$0.001	0.7%
DOC 3	42,000	0.25	4.0	$4.55	$0.002	1.5%
DOC 4	24,000	0.25	10.0	$19.22	$0.009	9.1%
DOC 5	22,000	0.25	5.0	$10.74	$0.008	3.9%
DOC 6	15,000	0.25	5.5	$17.25	$0.005	4.6%
DOC 7	3,911	0.25	2.5	$31.64	$0.006	14.1%
Median DOC Contract	**24,000**	**0.25**	**4.0**	**$10.74**	**$0.005**	**3.9%**
County 1	8,126	1.25	6.0	$40.15	$0.008	7.8%
County 2	2,160	0.25	1.0	$26.04	$0.005	4.4%
County 3	1,729	0.25	4.0	$110.61	$0.032	13.2%
County 4	991	0.15	1.0	$52.22	$0.016	7.7%
County 5	900	0.50	1.0	$75.00	$0.057	14.7%
County 6	745	0.15	0.5	$39.26	$0.011	4.8%
County 7	253	0.15	0.2	$62.25	$0.021	8.9%
Median County Contract	**991**	**0.25**	**1.0**	**$52.22**	**$0.016**	**7.8%**

Note: Assumes average investigator salary of $45,000
Source: GTL; Texas Department of Criminal Justice, FY 2015 2019 Agency Strategic Plan at 7.

III. REAL ESTATE AND OTHER COSTS

12. Based on discussions with GTL, employee staffing is the largest ICS-related cost not borne by the ICS provider. Nevertheless, in connection with this analysis, EI also considered the possibility that the cost of the physical space required to provide ICS services to inmates might also be significant.

13. The dimensions of physical space occupied by a full size inmate phone are 21.5 inches high by 7.5 inches wide and 2.5 inches deep. Thus a full size phone occupies an area of 18.75 square inches (7.5 x 2.5 = 18.75), or 0.1302 square feet. Even if an ICS provider was

required by a facility to rent such a trivial amount of space, the cost of acquiring that space would likely be nominal relative to the overall size of the facility.[16]

14. Conceivably, telephone equipment closet space could also represent an additional cost element required by the ICS carrier to provide ICS services. Even here however, the rental cost associated with telephone closet "space" would likely be very low as only a relatively small amount of space is required on facility premises to house ICS equipment.

15. Finally, in this context, it is important to recognize that any rent needed to provide space for ICS services differs conceptually from "locational rents" that the facility might be able to capture through site commission payments from ICS providers. Unlike real estate costs, in this analysis, locational rents are not considered "costs" at all.

16. Based on discussion with GTL, other costs such as material costs and internal IT expenses may in some cases be non-trivial. In order to conduct a meaningful analysis of these types of costs, additional information is needed.

IV. CONCLUSION

17. We conclude that facility-level ICS costs not borne by the telecommunications provider are non-trivial and may vary significantly by contract. The experience of the Texas DOC seems to suggest that investigative staffing costs, borne by the facility, may exist in the presence of ICS that would not exist otherwise, and that other staffing costs may be *de minimis*. Finally, we find that the median investigative and administrative staffing costs per intrastate

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16. In 2012, GTL asked KPMG LLP to provide estimates of the market rent that could be associated with the space that houses telephones and telephone-related equipment located in various correctional facilities in the state of Florida. KPMG's estimate was $10.00 to $15.00 per square foot. See GTL, *Estimate of Appropriate Market Rent for Tax Purposes, As of June 1, 2012.*

minute of use within the given sample are $0.005 and $0.016, or 3.9 and 7.8 percent of intrastate calling revenues, for DOC and County facilities, respectively.