

**In the  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

GLOBAL TEL*LINK, <i>et al.</i>	)	
	)	
<i>Petitioners,</i>	)	
	)	
v.	)	
	)	
FEDERAL COMMUNICATIONS	)	
COMMISSION and UNITED STATES	)	No. 15-1461 (and
OF AMERICA	)	consolidated cases)
	)	
<i>Respondents,</i>	)	
	)	
ULANDIS FORTE, <i>et al.</i>	)	
	)	
<i>Movant-Intervenors.</i>	)	

**MOVANT-INTERVENORS' JOINT OPPOSITION TO  
MOTIONS FOR STAY PENDING JUDICIAL REVIEW**

Andrew Jay Schwartzman  
Eric G. Null  
Institute for Public Representation  
Georgetown University Law Center  
600 New Jersey Ave., NW  
Washington, DC 20001  
*Counsel for Movant-Intervenors*

February 12, 2016

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... ii

INTRODUCTION .....1

ARGUMENT .....3

    I. Staying the *Order* would exacerbate the substantial harm prisoners and their families have been suffering for years.....3

        A. ICS rates are exorbitant and prisoners and their families cannot afford to pay them. ....4

        B. High ICS rates reduce inmate communication and cause concrete harm to prisoners and their families.....6

        C. State-level reform is insufficient for prisoners and their families; however, it could provide relief to ICS providers. ....11

        D. Petitioners incorrectly argue that the Wright Petitioners will not be harmed by a stay.....12

    II. Granting a stay would be detrimental to the public interest.....13

        A. The *Order* will help reduce recidivism and decrease costs within the incarceration system.....14

        B. The *Order* will benefit prison welfare and prison security.....16

        C. The *Order* will reduce the burden on defense lawyers representing incarcerated clients.....17

    III. Petitioners fail to show irreparable harm.....17

CONCLUSION .....20

Movant-Intervenors, the Wright Petitioners,<sup>1</sup> DC Prisoners' Project of the Washington Lawyers Committee for Civil Rights and Urban Affairs, Citizens for Rehabilitation of Errants, Prison Policy Initiative, Campaign for Prison Phone Justice, Human Rights Defense Center, and the United Church of Christ, Office of Communication, Inc. respectfully submit this opposition to the pending motions for stay in this proceeding.<sup>2</sup>

### INTRODUCTION

Maintaining ties with the outside world is vital not just for inmates but for their families and loved ones, their counsel, and society. Telephone calls are the most practical means for such communication, especially because prisoners are often incarcerated far from home. But even as recent advances in technology and increased consolidation have greatly reduced the cost of providing inmate calling services ("ICS"), ICS providers continue to charge exorbitant prices. They can charge these prices because they operate in a monopoly market. Only one ICS provider, chosen by bid, serves each institution. Often, the bid winner is the provider that agrees to share the greatest percentage of its revenue with the

---

<sup>1</sup> Although the lead petitioner, Martha Wright, died in 2014, these individuals and organizations have been collectively referred to throughout this proceeding as "the Wright Petitioners." The individual petitioners include Ulandis Forte, Ethel Peoples, Laurie Lamancusa, Dedra Emmons, Charles Wade, Earl Peoples, Darrell Nelson, and Jackie Lucas.

<sup>2</sup> Movant-Intervenors filed their unopposed Motion For Leave To Intervene on January 8, 2016.

correctional institution, not necessarily the one that will provide the best service. Thus, competition in this setting perversely *increases* ICS rates, which are often borne by prisoners and their families, who can rarely afford these calls.

After adopting interim rate caps for interstate calls in 2013, the Federal Communications Commission (“FCC”) collected data on the costs of providing ICS and considered whether to adopt permanent caps for both inter- and intrastate ICS calls. The *Order* on review sets interstate and intrastate rate caps for ICS and caps ancillary fees.<sup>3</sup> Intrastate caps are particularly important because more than 80% of calls to and from correctional facilities are intrastate.<sup>4</sup> These new rules will bring sorely-needed relief to prisoners and families who have been exploited by monopolistic ICS providers for years.

Four ICS providers (“Petitioners”) have sought partial stays of the rules. However, none have met the heavy burden of proving that (1) they are likely to succeed on the merits, (2) they will be irreparably injured without a stay, (3) a stay will not substantially harm third parties, and (4) a stay will not harm the public interest.<sup>5</sup> Notably, this is a *balancing test*. A stay requires more than Petitioners’

---

<sup>3</sup> Second Report and Order and Third Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, 30 FCCRcd 12763 (2015) (“*Order*”).

<sup>4</sup> *Id.* at 12768, ¶7.

<sup>5</sup> *Virginia Petroleum Jobbers Ass’n v. Federal Power Commission*, 259 F.2d 921, 925 (1958) (*Petroleum Jobbers*). See *Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

claimed likelihood of success on the merits and purported injuries.<sup>6</sup> Rather, this Court should also weigh the extensive harm to third parties and the public interest.

In this Opposition, Movant-Intervenors elaborate on the harm faced by third parties and the broader public interest considerations. In addition, because Petitioner CenturyLink Public Communications, Inc., inexplicably waited six weeks to seek an administrative stay, the Commission did not have an opportunity to address CenturyLink's arguments before it sought stay relief from this Court.<sup>7</sup> Accordingly, Movant-Intervenors briefly address CenturyLink's assertions with respect to the irreparable harm it would supposedly suffer.

## ARGUMENT

### **I. Staying the *Order* would exacerbate the substantial harm prisoners and their families have been suffering for years.**

Petitioners argue that third parties “will not suffer irreparable injury if the *Order*'s rate caps are stayed pending judicial review” because the interim rates will

---

<sup>6</sup> Respondent FCC thoroughly addressed Petitioners' claims in its unusually detailed decision denying three requests for administrative stays and in its opposition to the now-pending motions before this Court.

<sup>7</sup> The FCC released the text of its decision on November 5, 2015. It was published in the *Federal Register* on December 18, 2015 (80 Fed. Reg. 79020). GTL and Securus filed their administrative stay motions on December 22, 2015, and Telmate filed its motion on January 6, 2016. By contrast, CenturyLink did not file its administrative stay motion until February 5, 2016. Thus, the Commission did not have an opportunity to address CenturyLink's factual assertions before CenturyLink filed its stay motion, by direction of this Court, on February 12, 2016.

remain in effect.<sup>8</sup> This argument is not persuasive. Even the interim caps have left prisoners continuing to pay unjust and unreasonable prices for ICS. Millions of prisoners and their families have been waiting for comprehensive ICS rate reform for over a decade. The *Order* gave those prisoners relief from the monopolistic practices of the ICS providers. Staying the rule will only further delay this relief.

**A. ICS rates are exorbitant and prisoners and their families cannot afford to pay them.**

Incarceration is financially devastating for inmates and their families, a disproportionate number of which are already low-income.<sup>9</sup> More than two-thirds of incarcerated people reported annual incomes of under \$12,000 prior to arrest.<sup>10</sup> While incarcerated, inmates earn an average of 93 cents per day.<sup>11</sup> With such low incomes, prisoners can rarely afford to pay ICS rates.

Inmates' families often cannot afford high ICS rates either. They are typically "scrambl[ing] to make ends meet" after the financially devastating event

---

<sup>8</sup> Motion of CenturyLink for Partial Stay Pending Judicial Review at 19 (CenturyLink Motion). *See* Motion of Global Tel\*Link for Partial Stay Pending Judicial Review at 19-20 (GTL Motion); Motion of Telmate, LLC for Stay Pending Judicial Review at 20 (Telmate Motion).

<sup>9</sup> Letter from HRDC (Sept. 8, 2015). All comments, letters, notices of ex parte presentations, and other documents referenced in the record were filed in FCC Docket Number 12-375 unless otherwise specified. All such documents are available on the Internet through the FCC's Electronic Comment Filing System.

<sup>10</sup> Letter from Legal Services for Prisoners with Children (Dec. 4, 2014).

<sup>11</sup> Center of the Administration of Criminal Law Comments at 4-5 (Mar. 25, 2013) (*Center Comments*).

of a family member being jailed.<sup>12</sup> Nevertheless, families are often forced to pay extremely high bills to communicate with their loved ones.

Rates for prison phone calls far exceed ordinary phone rates. The FCC found that the family of one inmate paid between \$300 and \$400 per month during his 10-month incarceration, and that one mother paid \$40 per week for phone calls with her son.<sup>13</sup> A single fifteen-minute phone call can cost \$20 or more.<sup>14</sup> The record contains substantial evidence of high ICS rates.<sup>15</sup>

High per-minute rates are compounded by punishing ancillary fees. For example, in “single-call” programs, ancillary fees can account for up to 88% of the \$14.99 a customer pays for a single conversation.<sup>16</sup> These fees are often unavoidable. The FCC found that ICS providers charged at least 52 different ancillary fees, including to open and close accounts, to use and not use accounts, and even to issue a refund of funds belonging to the user.<sup>17</sup>

---

<sup>12</sup> *Id.*

<sup>13</sup> *Order*, 30 FCCRcd at 12767, ¶3.

<sup>14</sup> Letter from Deborah Aylor-Polisoto (Dec. 17, 2013).

<sup>15</sup> *See, e.g.*, Letter from Prison Policy Initiative (July 8, 2014) (describing how costs of communicating reached \$400/month, driving a family into debt); Letter from HRDC (Oct. 4, 2015) (reporting that phone bills can exceed \$700/month).

<sup>16</sup> Comments from Prison Policy Initiative re: Second Further Notice of Proposed Rulemaking ¶¶ 98-102, single call programs at 3 (Jan. 12, 2015).

<sup>17</sup> *Order*, 30 FCCRcd at 12838, n.519 (ancillary fees include “an account close-out fee, account transfer fee, automated information services, automated operator recharge fee, bill processing charge for direct billed calls, bill processing fee, bill statement fee, biometric service charge, carrier cost recovery fee, collect call bill statement fee, collect call regulatory fee, collect interstate USF cost recovery fee,

**B. High ICS rates reduce inmate communication and cause concrete harm to prisoners and their families.**

Difficulty in paying prison phone bills causes several harms. First, high ICS rates force families to decide between necessities and speaking with incarcerated family members. Some families have reported forgoing medical operations, necessary medications,<sup>18</sup> and food in order to cover the costs of calls.<sup>19</sup> Others reported losing their telephone service altogether because they were unable to pay prison phone bills.<sup>20</sup> Some are left with no choice but to cut off contact altogether.<sup>21</sup> One inmate characterized the effect on poor families:

---

continuous voice verification, credit card charge-back fee, credit card processing fee, federal regulatory recovery fee, federal USF, federal USF administration fee for LEC billed calls, federal USF administration fee for non-LEC billed calls, funding fee, funding fee from cashier's check deposit, funding fee from credit/debit cards, funding fee from money order deposit, funding fee from Western Union deposit, live operator recharge fee, live prepaid account set-up fee, load fee, location validation, minimum payment fee, monthly bill statement fee, payment fee - IVR/web, payment fee - live operator, per call administrative fee for calls from county facilities, prepaid accounts, prepaid deposit fees, processing fee, refund fee, regulatory assessment fee, sales tax, state cost recovery fee, state regulatory cost recovery fee for LEC-billed calls, state regulatory cost recovery fee for non-LEC billed calls, state USF, state USF administration fee for LEC billed calls, technology, USF administrative fee, USF federal, USF federal (LEC billed), validation recovery fee, victim information and notification everyday (VINE), voice biometrics, web interface account set-up and recharge fee, and wireless administration fee.”).

<sup>18</sup> *Center Comments* at 6; Statement of Commissioner Clyburn, 30 FCCRcd at 12956.

<sup>19</sup> *Order*, 30 FCCRcd at 12767, ¶3.

<sup>20</sup> *Center Comments* at 6.

<sup>21</sup> *Id.*; see also Letter from HRDC (Oct. 4, 2015) (citing Letter from Prison Legal News (April 18, 2007) (Dkt. 96-128)) (explaining that some families have to cut



It's a wife that has three children at home, and her husband is in jail, so now she has a choice: "Do I send money to him so he can afford to stay in touch with the kids, or do I feed the kids?"<sup>22</sup>

Another inmate seeking intrastate rate regulation in New Jersey told the FCC that it is "at times impossible for me to stay in touch with my family."<sup>23</sup> He stated that he has gone for months without speaking to his wife or three children, and at one point lost contact with them for three years. He also emphasized that the "prison's rules and manuals [] say they promote family and community ties," but that in practice such contact is simply unaffordable.<sup>24</sup> The record is replete with letters from parents, spouses, and prisoners describing the damage that high ICS costs inflicts on their health and relationships.<sup>25</sup>

Second, high ICS rates discourage inmates' contact with their loved ones, which particularly affects children. Over 2.7 million children have an incarcerated

---

off telephone contact with loved ones and sometimes bills are as high as \$700 per month) ("*Letter from Prison Legal News*").

<sup>22</sup> Comments from Prison Policy Initiative re: Second Further Notice of Proposed Rulemaking §III(C) (Jan. 12, 2015) (citing Daniel Wagner, *Prison Bankers Cash in on Captive Customers*, Center for Public Integrity (Sept. 30, 2014)).

<sup>23</sup> Letter from Rasool McCrimmon (Dec. 26, 2014).

<sup>24</sup> *Id.*

<sup>25</sup> *See, e.g.*, Letter from David Holmes (Mar. 19, 2013) (wishing he could afford to speak with his wife more than once a week, in the hopes of improving his marriage); Letter from Ian Robinson (Mar. 11, 2013) (lamenting the strain placed by high rates on his relationship with his daughter, who once asked him "how can I love somebody I don't know?"); Letter from Marteze Harris (Mar. 25, 2013) (noting that while "phone calls are our lifelines to sanity," inmates cannot ask their families to foot such "outrageous" bills).

parent<sup>26</sup> but only 53% of incarcerated parents in state prisons had direct phone contact with their children during their confinement.<sup>27</sup> The importance of the parent-child relationship cannot be overstated. The daughter of a former inmate commented, “[m]y dad was in jail when I was a child and at this price there is no way my mom would have been able to afford to let me talk to him. Without my dad I would not be who I am today.”<sup>28</sup> Alex Garcia, an inmate, wrote that when he moved to a facility with no connection fees and lower per-minute charges, he was able to call his daughter “before she heads for kindergarten [5min., \$0.60], after school [5min., \$0.60], and give her a kiss good night [5min., \$0.60].”<sup>29</sup>

The ICS rate structure often discourages this interaction. Richard Heary was at one time able to communicate with his children on a daily basis. Once he moved to a jail with high rates, he contacted his children only 20 times during two years of confinement.<sup>30</sup> Inmates’ partners described similar hardships: “because I’m a single mom now, I can’t afford to indulge [my daughter] so she can talk to the only man she’s ever called Daddy. That is wrong.”<sup>31</sup>

---

<sup>26</sup> Letter from Legal Services for Prisoners with Children (Dec. 4, 2014).

<sup>27</sup> Comments of Vera Institute of Justice at 2 (Mar. 14, 2013) (“*Vera Inst. Comments*”).

<sup>28</sup> Letter from Prison Policy Initiative (June 20, 2014) (citing Leah Sakala, *The Father’s Day Profiteers that Put Hallmark to Shame*, Huff. Post (June 13, 2014)).

<sup>29</sup> Letter from Alex Garcia (Mar. 21, 2013).

<sup>30</sup> Letter from Richard Heary (Mar. 13, 2013).

<sup>31</sup> Letter from Prison Policy Initiative, *supra* note 28.

Without opportunities to stay connected with their imprisoned parents, children are more likely to have substance abuse problems, perform poorly in school, and engage in criminal conduct.<sup>32</sup> These children also face a greater likelihood of ending up homeless, in foster care, or in the juvenile justice system.<sup>33</sup>

As Commissioner Clyburn stated,

[i]f you were to ask their [children's] teachers, it is affecting their academic performance. If you ask the school counselors, it affects their behavior and attitudes. And if you were to speak with the guardians, families and friends, it impacts their ability to adequately and affordably care for these children."<sup>34</sup>

Obstructing parental communication is not only emotionally damaging, but unnecessarily punishes those children for something they did not do.

In some states, such as New York, parents could lose parental rights for failing to communicate with their child. New York Domestic Relations law requires a parent to communicate with their child at least once every six months, or lose her ability to refuse adoption of the child.<sup>35</sup> High ICS rates could contribute to this loss of rights.

Third, high ICS rates harm a prisoner's ability to return to society.

Infrequent communication with families can contribute to feelings of isolation and

---

<sup>32</sup> *Center Comments* at 11.

<sup>33</sup> *Vera Inst. Comments* at 2-3.

<sup>34</sup> Remarks of Commissioner Clyburn at Inmate Calling Workshop, July 10, 2013, [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-322109A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-322109A1.pdf).

<sup>35</sup> *Order*, 30 FCCRcd at 12766-67, n.14; N.Y. Dom. Rel. §111(2).

complicate the re-entry process. M. Domingues, an inmate on death row who has watched hundreds of inmates cycle through his facility, described what happens when prisoners gradually lose touch with their families while in prison:

Inmates that have minimal contact with family tend to believe no one gives a damn about them and therefore don't care about themselves. As they quit caring about themselves they quit caring about what they do to others. They go home with that mentality and eventually commit more crime.<sup>36</sup>

The Ohio Department of Rehabilitation and Correction noted, when it lowered intrastate ICS rates, that telephone calls “are one of the primary means of inmates maintaining connections with family,” and that such calls “positively influ[ence] behavior in prison and the likelihood an offender will succeed upon release from prison.”<sup>37</sup> Former inmate Brian Nelson stated he has “become an asset to society” since his release and credits his ability to stay in touch with family and priests for his smooth transition back to society.<sup>38</sup>

The benefits of the *Order* to prisoners and their families are legion. Any attempt to delay this relief will further exacerbate the harms that high ICS rates cause. These harms more than outweigh the speculative harms to ICS providers.

---

<sup>36</sup> Letter from M. Domingues (Mar. 1, 2013).

<sup>37</sup> *Order*, 30 FCCRcd at 12774, ¶19.

<sup>38</sup> Letter from Prison Policy Initiative, *supra* note 22.

**C. State-level reform is insufficient for prisoners and their families; however, it could provide relief to ICS providers.**

Petitioners claim that a stay of the intrastate caps will not harm third parties because “states retain the authority to constrain intrastate rates at any time, and many states have done so.”<sup>39</sup> This argument should be rejected.

State efforts to rein in intrastate charges are rare and, when they occur, are challenged nearly in perpetuity by the ICS providers. In New Mexico, it took six years to adopt intrastate rates. The delay was primarily caused by the ICS providers fighting the new rule by seeking reconsideration and renewing contracts to take advantage of the rule’s grandfathering provision. In Massachusetts in 2009, GTL filed a petition for relief of new intrastate rates, which was not put out for comment until 2011. In 2013, Securus filed a motion to hold the proceeding in abeyance pending the FCC’s on-going rulemaking. In Louisiana, which adopted intrastate rates, ICS providers sought to suppress the new rules and requested stays of certain portions of the rules. A similar course took place in Alabama.<sup>40</sup> Thus, the argument that prisoners and their families will not be harmed by a stay because they can (somehow) convince 40 or more state legislatures to reduce intrastate rates, against the substantial pushback of the ICS providers, is absurd.

---

<sup>39</sup> GTL Motion at 20.

<sup>40</sup> Reply Comments of Martha Wright *et al.* at 10 (Jan. 13, 2014).

Actually, the process can work the other way. ICS providers could seek relief from state legislatures by using their political clout. For example, CenturyLink claims that Texas requires a “40 percent site commission mandated by state law, which CenturyLink has no way of avoiding.”<sup>41</sup> While the Texas law appears to allow renegotiation of the current 40% rate, this is the type of provision that CenturyLink could ask Texas to modify or remove in light of the *Order*.

The Court should not issue a stay of the *Order* on the grounds that prisoners and their families can seek relief on a state-by-state basis that would be incredibly onerous. This is merely another attempt to place significant burdens on those that can least afford or carry them.

**D. Petitioners incorrectly argue that the Wright Petitioners will not be harmed by a stay.**

Petitioners argue that Wright Petitioners “cannot claim to be harmed by rates that comply with [the 2013 interim] caps, since they are nearly identical to what [those parties] requested in the first place.”<sup>42</sup> This is outrageously wrong.

It is true that in 2007, Wright Petitioners filed an Alternative Rulemaking Proposal seeking interstate rate caps of \$0.20 for debit calls and \$0.25 for collect calls with no per-call charge.<sup>43</sup> However, those proposals were made based on rate

---

<sup>41</sup> CenturyLink Motion at 18.

<sup>42</sup> GTL Motion at 20; Centurylink Motion at 19-20.

<sup>43</sup> Alternative Rulemaking Proposal of Wright Petitioners at 16 (2007).

and cost information from 2006 and earlier,<sup>44</sup> and without the type of evidentiary record the FCC has developed. Further, it only covered a small portion of ICS charges (interstate rates and per-call charges). Nine years later, based on an extensive record, the FCC found that advances in technology and new industry cost data supported lower interstate rate caps than the Wright Petitioners originally proposed.<sup>45</sup> This hardly means that Movant-Intervenors would not incur harm by having to pay more than what the current record demonstrates to be just and reasonable for interstate calls, and it certainly has no bearing on the harm they would incur for intrastate calls.

## **II. Granting a stay would be detrimental to the public interest.**

Petitioners claim that the public interest favors a stay.<sup>46</sup> Securus argues it will have to discontinue certain services under the new caps<sup>47</sup> and Telmate argues that a stay would allow ICS providers to “continue doing business.”<sup>48</sup> On the contrary, the public interest would be significantly harmed by a stay.

The record clearly shows the harms to the public interest that unjust, unreasonable, and unfair ICS rates impose. The *Order* caps intrastate calls (which

---

<sup>44</sup> *Id.* at 2.

<sup>45</sup> *Order*, 30 FCCRcd at 12769-70, ¶9.

<sup>46</sup> CenturyLink Motion at 20; GTL Motion at 20; Telmate Motion at 19-20; Securus Technologies Inc. Emergency Motion for Partial Stay of FCC Order 15-136 Pending Review at 19-20 (Securus Motion).

<sup>47</sup> Securus Motion, at 19-20.

<sup>48</sup> Telmate Motion at 20.

account for 80% of calls to and from correctional facilities<sup>49</sup>) and ancillary fees, and lowers the cap on interstate rates. The *Order* will have even more profound public interest benefits than the interim caps. Staying the *Order* would only further delay these much-needed benefits.

**A. The *Order* will help reduce recidivism and decrease costs within the incarceration system.**

Lower ICS rates will help increase prisoner communication and therefore ease the transition into society upon release and reduce the chance of recidivism. Ninety-five percent of the United States' 2.2 million incarcerated persons will one day return to society,<sup>50</sup> but 75% of released inmates are re-arrested within five years.<sup>51</sup> Inmates are significantly less likely to relapse following their release if they maintain contact with friends and family during their confinement.<sup>52</sup>

Inmates who frequently communicate with loved ones are more likely to maintain a stake in the welfare of the community to which they will return. This increases their opportunity to obtain gainful employment and otherwise transition out of the criminal justice system.<sup>53</sup> Fifty-one former Attorneys General

---

<sup>49</sup> *Order*, 30 FCCRcd at 12768, ¶7.

<sup>50</sup> Letter from Former Attorneys General (Jan. 9, 2015).

<sup>51</sup> *Order*, 30 FCCRcd at 12767, ¶4 (citing U.S. Department of Justice, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010* at 1 (2014), <http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>).

<sup>52</sup> *Id.* at 12766-67, ¶3.

<sup>53</sup> *Center Comments* at 2 (citing Nancy La Vigne, *Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners' Family Relationships*,



commented that studies show that “people who maintain supportive relationships with family members have better outcomes – such as stable housing and employment – when they return to the community,”<sup>54</sup> and that such former inmates “are more likely to succeed after their release.”<sup>55</sup> Their contributions to society benefit the public.

Reducing recidivism will also save the criminal justice system millions of dollars. As mentioned above, studies show 75% of released inmates are re-arrested within five years. Incarceration costs taxpayers \$31,000 per year per inmate on average.<sup>56</sup> Reducing recidivism could save between \$60 and \$70 billion dollars in detention costs per year, nationwide.<sup>57</sup> The criminal justice system would save more than \$250 million if recidivism were reduced by even one percent.<sup>58</sup> This would create significant cost-savings to taxpayers, jails and prisons, and society.

---

21 J. Contemp. Crim. Justice 314, 316 (2005) (showing the positive effects of increased family contact)).

<sup>54</sup> Letter from Former Attorneys General, *supra* note 50 (citing a 2011 study from the Vera Institute); *see also* Letter from Prison Legal News, *supra* note 21 (quoting Donal Campbell, former Commissioner of Tenn. Dept. of Corrections: “As you know, maintaining contact with family and friends in the new world is an important part of an inmates rehabilitation and preparation to return to the community.”).

<sup>55</sup> Letter from Former Attorneys General, *supra* note 50 (citing a 2012 study from the Vera Institute).

<sup>56</sup> *Order*, 30 FCCRcd at 12767, ¶4.

<sup>57</sup> Transcript of Reforming ICS Rates Workshop at 126 (testimony of Alex Friedmann, HRDC) (July 16, 2013), <https://transition.fcc.gov/files/documents/ics-workshop-transcript-07102013.pdf>.

<sup>58</sup> Wright Petitioners’ Comments (Mar. 25, 2013) (Ex. C, Bazelon Decl. ¶48).

**B. The *Order* will benefit prison welfare and prison security.**

Phone calls are a lifeline to the outside world for inmates. This communication can have a profound impact on the emotional well-being of prisoners, thereby making prisons safer.<sup>59</sup> One commenter stated the following:

I get to see my [imprisoned] loved one once in every six months or so, and he doesn't get any visitors apart from me, so calling daily helps him retain his sanity. I think the connection he's given to his family is really important; there are so many times that he's called really angry at other inmates, saying that he just wanted to talk so that he can cool down and not start a fight. If calls are made more affordable, especially for indigent families, it may reduce prison violence as well as make the prisons a safer place for [corrections officers] to work in.<sup>60</sup>

If more inmates speak with family and friends to “cool down and not start a fight,” inmates, guards, and the prison generally will be safer.

Lower ICS rates also reduce the demand for contraband cell phones.<sup>61</sup>

Using contraband cell phones not only undermines prison security, but can result in increased incarceration time for inmates and increased costs to the state.<sup>62</sup> Low

---

<sup>59</sup> *Order*, 30 FCCRcd at 12767-68, at ¶5.

<sup>60</sup> *Id.*

<sup>61</sup> See Letter from Prison Policy Initiative (June 12, 2015) (attaching Amanda Seitz, *Phone Calls from Prison Cheaper*, Dayton Daily News, April 1, 2015) (“Lowering the phone charges will help inmates stay connected to their family while they serve their time and could reduce the number of cellphones smuggled into the prisons, DRC director Gary Mohr said.”).

<sup>62</sup> *Center Comments* at 2.

ICS costs, therefore, promote prison security and the interests of all stakeholders in the criminal justice community.

**C. The *Order* will reduce the burden on defense lawyers representing incarcerated clients.**

Maintaining the new rules will reduce burdens on lawyers representing incarcerated persons. Public defender offices can spend “more than \$100,000 a year accepting collect calls from prisoners.”<sup>63</sup> High phone bills may also deter private lawyers from representing incarcerated clients.<sup>64</sup> Low ICS rates will allow lawyers additional resources to more zealously represent their clients.

Thus, the public interest will be harmed by a stay of the *Order*.

**III. Petitioners fail to show irreparable harm.**

Petitioners fail to show that they will suffer irreparable harm if the *Order* is stayed. First, it is important to note the self-serving nature of the Petitioners’ claims with respect to irreparable harm. Specifically, claims that a “substantial percentage of contracts [] are not subject to renegotiation”<sup>65</sup> or that “revising hundreds of contracts would consume tremendous resources and potentially ... risk

---

<sup>63</sup> Report and Order, *Rates for Interstate Inmate Calling Services*, 28 FCCRcd 14107, 14131, ¶44 (2013).

<sup>64</sup> See, e.g., *Order*, 30 FCCRcd at 12765, n.4 (describing an attorney who paid \$56 for a four-minute phone call with an inmate client in a Florida institution).

<sup>65</sup> GTL Motion at 19. Similarly, Telmate has indicated it may be unable to negotiate some of its contracts and has asserted that “some facilities have already threatened Telmate with litigation if it does so.” Telmate Motion at 19.

the providers' goodwill"<sup>66</sup> are not supported by the record. Indeed, the providers failed to submit contracts to the FCC to substantiate their assertions despite the FCC repeatedly requesting copies of those contracts.<sup>67</sup> Consequently, the FCC based its decision on information submitted by Movant-Intervenors and others after an onerous exercise to obtain examples of the contracts from publicly-available sources. Thus, Petitioners have purposely withheld key evidence and now seek to use that fact against the FCC.

Second, a central element of CenturyLink's claim of harm is that, in many jurisdictions, the Commission's new rate caps do not permit it to recover other costs after paying mandated site commissions, which are not compensable costs.<sup>68</sup> This and similar arguments should also be rejected.

As an initial matter, based on an exhaustive review of industry costs, the Commission found that the caps it adopted will allow companies to earn a fair profit.<sup>69</sup> Even if CenturyLink were correct, it is in this predicament largely of its own volition. CenturyLink has been on notice that the FCC might impose caps

---

<sup>66</sup> GTL Motion at 19.

<sup>67</sup> See Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, 27 FCCRcd 16629, at 16637, 16645, ¶¶18, 19, 43 (2012). In addition, the FCC issued two public notices specifically asking for data about contracts. *Data on Service Contracts Included in Record of Inmate Calling Service Rates Proceeding*, 28 FCCRcd 9083 (2013); *More Data Sought on Extra Fees Levied on Inmate Calling Services*, 28 FCCRcd 9080 (2013).

<sup>68</sup> CenturyLink Motion at 16-17.

<sup>69</sup> *Order*, 30 FCCRcd at 12787, ¶49

that would not include site commissions as costs since August 2013. Since then, it voluntarily entered into several ICS contracts that require some of the very highest site commissions ever negotiated, including Alabama (87.69%), Arizona (93.9%), and Utah (90%).<sup>70</sup> The Court should not grant stay relief based on CenturyLink's own willingness to enter into contracts it knew could be altered in the future.

Further, CenturyLink spends considerable time discussing its investment in Texas, stating it has made significant "capital investment for wiring and phone infrastructure at the 114 facilities overseen by the Texas Department of Criminal Justice."<sup>71</sup> However, CenturyLink entered into this agreement in 2008. Under the Internal Revenue Code, investments in telecommunications equipment may be amortized in 7 years.<sup>72</sup> Thus, capital investment made in 2008 was likely fully amortized and beyond its useful life by 2015. Therefore, CenturyLink's concern about its "investment in equipment and wiring necessary to make service possible" is largely irrelevant.<sup>73</sup> In any event, the Texas contract has a *force majeure* provision allowing renegotiation in the event of regulatory change.<sup>74</sup> As

---

<sup>70</sup> Wright Petitioners' Opposition to CenturyLink Motion for Stay, at 8-9.

<sup>71</sup> CenturyLink Motion, Ex. 2 at 5.

<sup>72</sup> See Internal Revenue Manual, 1.35.6.10, Property and Equipment Capitalization ([https://www.irs.gov/irm/part1/irm\\_01-035-006.html](https://www.irs.gov/irm/part1/irm_01-035-006.html)).

<sup>73</sup> CenturyLink Motion at 18.

<sup>74</sup> Wright Petitioners' Letter at 1 (Aug. 2, 2013).

mentioned above, this is the type of statute that could be modified or repealed if CenturyLink lobbied the Texas state legislature in light of the *Order*.

Third, ICS providers' argument ignores evidence that lower ICS rates increase call volume, which in turn increases revenue. Praeses, a firm that negotiates contracts for jails and prisons, reported that since the interim rate reform, interstate call volume in facilities operated by its clients increased 76% and revenue increased 12%; it expects a similar increase for intrastate calls after the rules go into effect.<sup>75</sup> Similarly, ICSolutions reported increases in call volume by as much as 150%, and increases in revenue by approximately 30% when implementing lower rates.<sup>76</sup> Further, many letters from prisoners stated that they would make more calls if they could afford them.<sup>77</sup> Thus, ICS providers have failed to show irreparable harm.

## CONCLUSION

The Court should deny the requests for stay and grant all such other relief as may be necessary and proper.

---

<sup>75</sup> *Order*, 30 FCCRcd at 12792, ¶56.

<sup>76</sup> *Id.*

<sup>77</sup> *See, e.g.*, Letter from Raymond Kolarik (Mar. 21, 2013) (“[i]f rates could be more reasonable, it would allow myself and others to better stay in touch with our families; Gillett Letter (suggesting his call volume would increase by a factor of ten); Letter from Joseph Richmond (Mar. 19, 2013) (asserting that lower rates would lead him to call more often, and for more minutes per call).

Respectfully submitted,

/s/ Andrew Jay Schwartzman

Andrew Jay Schwartzman

Eric G. Null

Institute for Public Representation

Georgetown University Law Center

600 New Jersey Ave., NW

Washington, DC 20001

202-662-9535

*Counsel for Movant-Intervenors*

**CERTIFICATE OF SERVICE**

I hereby certify that on February 12, 2016, a copy of the foregoing Movant-Intervenor's Joint Opposition to Motions for Stay Pending Judicial Review was electronically filed with the Clerk of the Court using CM/ECF and was served on counsel of record who have registered for such services as of February 12, 2016.

/s/ Eric G. Null

Eric G. Null

Institute for Public Representation