

ORAL ARGUMENT NOT YET SCHEDULED

No. 15-1461 and Consolidated Cases

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

GLOBAL TEL*LINK,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION, AND
UNITED STATES OF AMERICA,

Respondents.

On Petitions for Review of an Order of the Federal Communications Commission

**BRIEF FOR THE COUNTY OF SANTA CLARA AND CITY AND
COUNTY OF SAN FRANCISCO**

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FOR AMICUS CURIAE COUNTY OF SANTA CLARA

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), *amici* County of Santa Clara and City and County of San Francisco submit the following Certificate of Parties, Rulings, and Related Cases.

A. **Parties and *Amici***

These cases involve the following parties:

1. Petitioners

No. 15-1461: Global Tel*Link

No. 15-1498: Securus Technologies, Inc.

No. 16-1012: Centurylink Public Communications, Inc.

No. 16-1029: Telmate, LLC

No. 16-1038: National Association of Regulatory Utility

Commissioners

No. 16-1046: Pay Tel Communications, Inc.

No. 16-1057: State of Oklahoma, *ex rel.* Joseph M. Allbaugh, Interim

Director of the Oklahoma Department of Corrections; John Whetsel, Sheriff

of Oklahoma County, Oklahoma; The Oklahoma Sheriffs' Association, on

behalf of its members.

2. Respondents

Federal Communications Commission and the United States of America

3. Intervenorors and *Amici Curiae*

No. 15-1461: *Intervenorors for Petitioners*: Centurylink Public

Communications, Inc.; Indiana Sheriff's Association; Lake County Sheriff's Department; Marion County Sheriff's Office.

Intervenorors for Respondents: Campaign for Prison Phone Justice; Citizens United for Rehabilitation of Errants; DC Prisoners' Project of the Washington Lawyers' Committee for Civil Rights and Urban Affairs; Dedra Emmons; Ulandis Forte; Human Rights Defense Center; Laura Lamancusa; Jackie Lucas; Darrell Nelson; Earl J. Peoples; Ethel Peoples; Prison Policy Initiative; United Church of Christ; Office of Communication, Inc.; Charles Wade; Network Communications International Corp.

Amici Curiae in Support of Respondents: County of Santa Clara, City and County of San Francisco, State of Minnesota, State of Illinois, State of Massachusetts, State of New Mexico, State of New York, State of Washington, and Washington, D.C.

No. 16-1057: *Intervenors for Petitioners*: State of Arizona, State of Arkansas, State of Indiana, State of Kansas, State of Louisiana, State of Missouri, State of Nevada, State of Wisconsin.

B. Rulings Under Review

These consolidated appeals challenge the Federal Communications Commission's Order, *In the Matter of Rates for Interstate Inmate Calling Services*, "Second Report and Order and Third Further Notice of Proposed Rulemaking," 30 FCC Rcd. 12763, FCC 15-136, WC Dkt. No. 12-375 (released November 5, 2015), published December 18, 2015 at 80 Fed. Reg. 79,136.

C. Related Cases

The cases consolidated in this action are Case Nos. 15-1461, 15-1498, 16-1012, 16-1029, 16-1038, 16-1046, and 16-1057.

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GLOSSARY OF ABBREVIATIONS

- 2013 Order: *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd. 14107 (2013)
- 2015 Order: *Rates for Interstate Inmate Calling Services*, Third Report and Order and Second Notice of Proposed Rulemaking, 30 FCC Rcd. 12763 (2015)
- FCC: Federal Communications Commission
- GTL: Global Tel*Link
- San Francisco: City and County of San Francisco
- Santa Clara: County of Santa Clara

**STATEMENT OF IDENTITY, INTEREST IN CASE, AND SOURCE OF
AUTHORITY TO FILE**

The County of Santa Clara (“Santa Clara”) is located at the southern end of the San Francisco bay and is the home to 1.9 million residents. Encompassing “Silicon Valley,” Santa Clara spans 1,312 square miles and contains San Jose, a major metropolitan area and the Nation’s tenth most populous city. Santa Clara operates the fifth largest jail system in California and one of the 20 largest jail systems in the country. That system currently houses over 3,500 inmates.

The City and County of San Francisco (“San Francisco”) encompasses 46.9 square miles and is the home to over 850,000 residents. The San Francisco jail system is comprised of five County Jail facilities and has an average daily population of 1,300 inmates.

As their jurisdictions’ primary providers of services to incarcerated persons, their families, and offenders on probation, Santa Clara and San Francisco (the “Counties”) have a strong interest in supporting the Federal Communications Commission’s rate caps for inmate calling services. Inmate calling data from the Counties demonstrates that reductions in inmate call rates increase the number and total minutes of inmate calls.

This Court granted the County of Santa Clara’s motion for leave to participate as *amicus curiae* on August 23, 2016.

STATEMENT OF AUTHORSHIP AND FINANCIAL CONTRIBUTIONS

County Counsel for the County of Santa Clara authored this brief in whole. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief and no person contributed money intended to fund preparing or submitting the brief.

ARGUMENT

Like other counties across the country, the County of Santa Clara (“Santa Clara”) and the City and County of San Francisco (“San Francisco”) (collectively, the “Counties”) make phone services available to inmates in the jails that they operate. In recent years, the Counties have reduced their rates for inmate calling services, resulting in an increase in the number of phone calls made by their jail inmates. Based on data from the Counties demonstrating the impact of reduced inmate calling rates on inmate phone calls, it is clear that the lower rate caps for intrastate inmate calls established in the Federal Communications Commission’s 2015 Inmate Calling Services Order (“2015 Order”) will increase communications between inmates and their family and friends. *See Rates for Interstate Inmate Calling Services*, Third Report and Order and Second Notice of Proposed Rulemaking, 30 FCC Rcd. 12763 (2015).

I.

EMPIRICAL DATA FROM THE COUNTIES DEMONSTRATES THAT LOWERING INMATE CALLING RATES INCREASES THE NUMBER AND TOTAL MINUTES OF PHONE CALLS MADE BY JAIL INMATES.

Data from the Counties show that inmate call activity increases when the rates for inmate calls are reduced. This is clear from the rise in inmate calls that occurred after Santa Clara reduced interstate calling rates in response to the Federal Communications Commission’s 2013 Order lowering the rate caps for interstate inmate calls. This is also clear from the upturn in inmate calls that

occurred after Santa Clara and San Francisco voluntarily reduced their intrastate calling rates in 2015 and 2014, respectively.

Until February 2014, the rates for interstate calls in Santa Clara's jails were set by contract. County of Santa Clara Finance and Government Operations Committee, *Status Report on Reduced Inmate Telephone Call Rates* (No. 79437), 2.¹ In 2013, the Federal Communications Commission ("FCC") issued an order lowering the rate cap for interstate inmate calls (the "2013 Order"). *See Rates for Interstate Inmate Calling Services*, 28 FCC Rcd 14107, 14147–53 ¶¶73–81 (2013). As a result, the rate cap mandated in the 2013 Order replaced Santa Clara's contractual rate and lowered the cost of interstate calls for inmates in Santa Clara's jails from an average cost per minute of \$1.25 to the capped rate of 21¢ per minute for debit and prepaid interstate calls and 25¢ per minute for collect interstate calls.

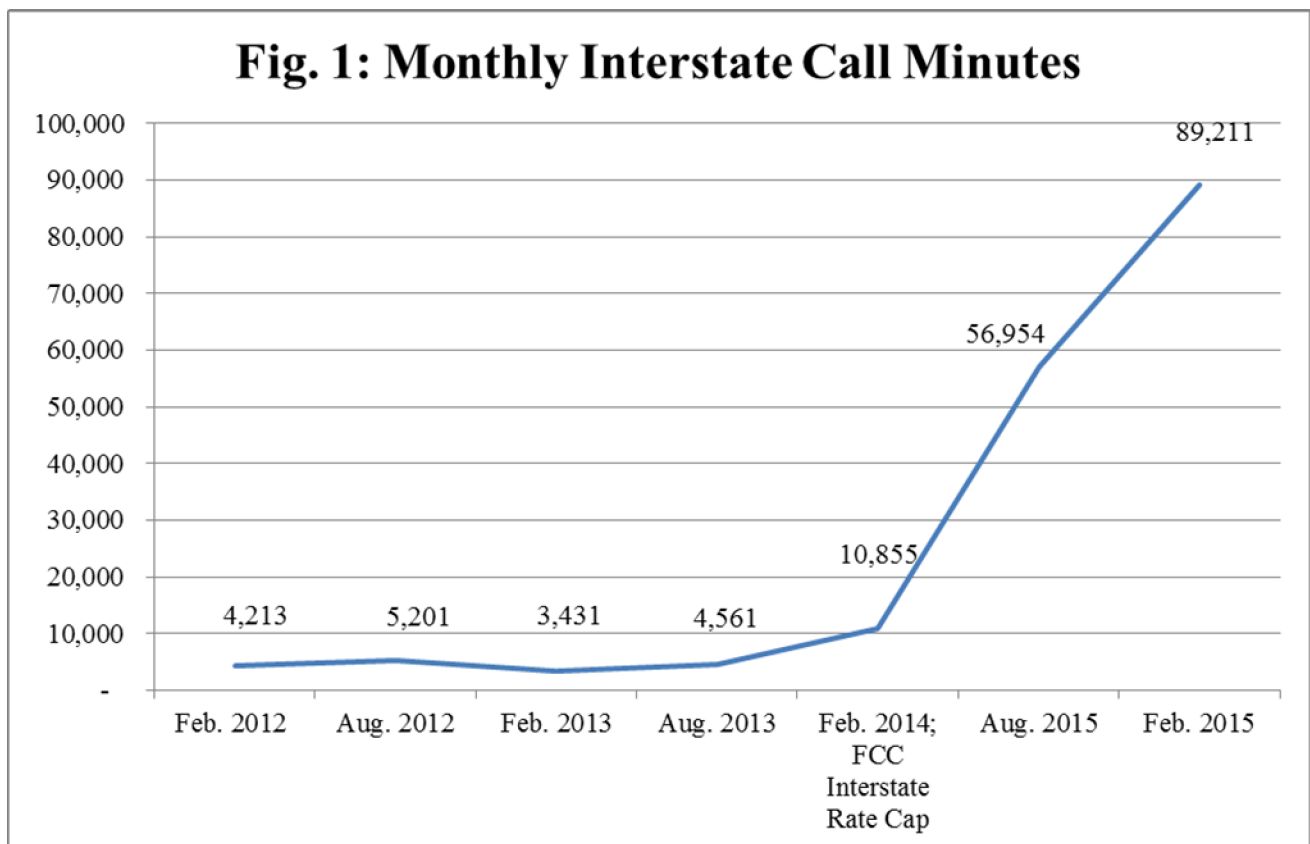
Following this reduction in interstate calling rates, Santa Clara witnessed an upswing in inmate calls. As illustrated in Table 1 and Figure 1, the monthly average number of interstate calls and the average monthly interstate call minutes increased after the FCC's 2013 Order went into effect in February 2014.

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¹ Available at <http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=1&ID=6779&Inline=True> (last accessed Sept. 7, 2016).

Table 1: County of Santa Clara Data Regarding Interstate Inmate Calls				
	2012	2013	2014	2015
Cost per Minute for Interstate Calls	\$1.36	\$1.35	22¢	21¢
Average Monthly Number of Interstate Calls	579	596	4,668	7,007
Average Monthly Interstate Call Minutes	4,874	5,088	49,194	73,319



Santa Clara and San Francisco saw a similar increase in inmate phone activity after they reduced the intrastate calling rates for inmates in their jails. In June 2014, San Francisco voluntarily reduced the rates for intrastate inmate calling services. Effective July 2014, the cost of a local call in the San Francisco jail was reduced to a \$1.25 surcharge and 10¢ per minute and the cost of an intrastate call

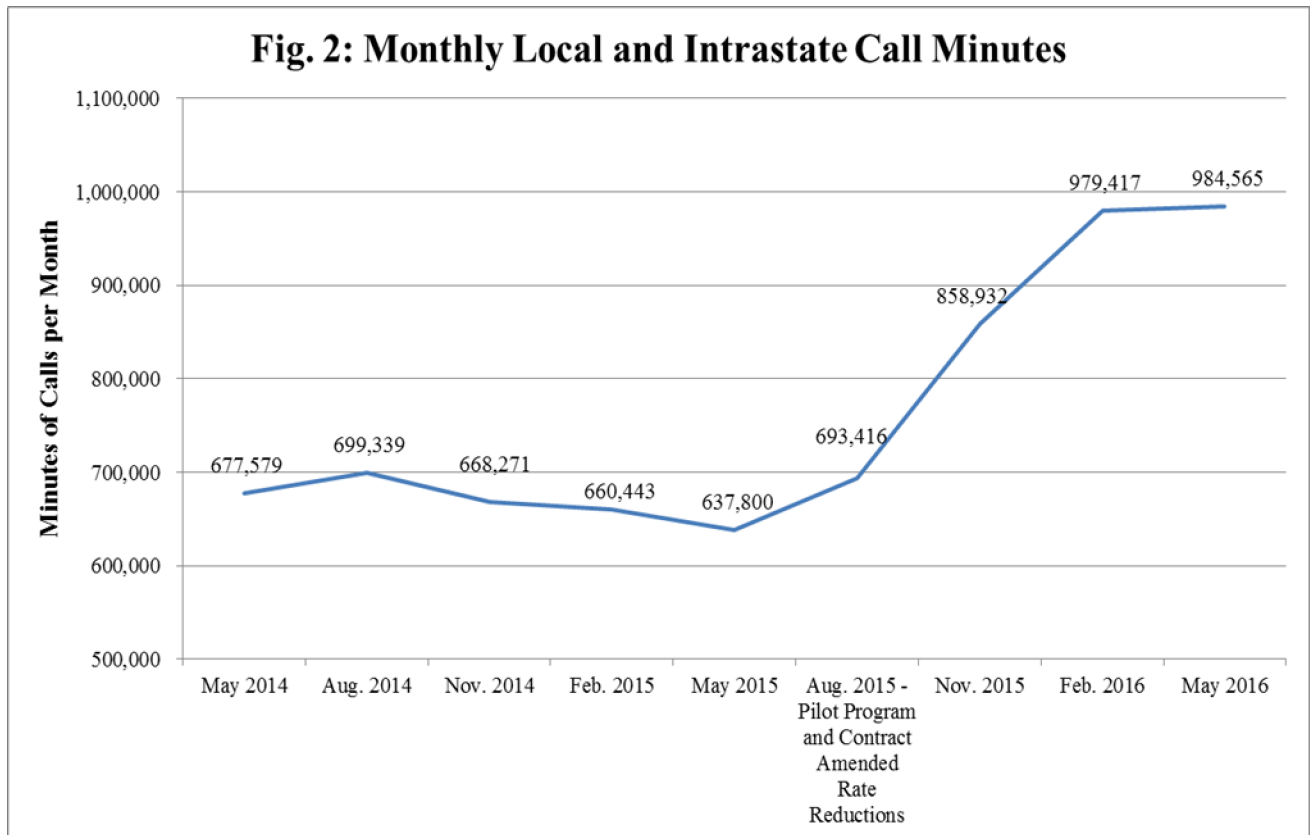
was reduced to a \$1.50 surcharge and 17¢ per minute. City and County of San Francisco Board of Supervisors, Resolution: Contract Amendment – Global Tel*Link – Inmate Telephone Services. After implementing these lower rates for intrastate calls, San Francisco observed a rise in both the number and total minutes of calls placed by inmates in its jail.

The same was true for Santa Clara when it reduced its local and intrastate calling rates in 2015. Following the lead of San Francisco, Santa Clara negotiated a reduction in the intrastate calling rates charged to its jail inmates that became effective in August 2015. For local calls, charges were reduced to \$1.35 for the first minute and 10¢ for each additional minute. For intrastate calls, charges were reduced to \$1.67 for the first minute and 17¢ for each additional minute. *Id.* at 3. Santa Clara also reduced administrative fees for account setup and closeout. *Id.*

As illustrated in Table 2 and Figure 2, when local and intrastate call rates were reduced by Santa Clara beginning in the middle of 2015, the number and total minutes of local and intrastate calls by its inmates grew.²

² The average cost per minute for intrastate and local calls for the period of January through May 2016 included the connection cost for the first minute of the call. In accordance with the FCC's 2015 Order, this connection charge was eliminated from the Inmate Calling Services for the County of Santa Clara jails on June 20, 2016. County of Santa Clara Finance and Government Operations Committee, Report Relating to the Status of Inmate Telephone Services (No. 82423), 1. Available at: http://sccgov.igq2.com/Citizens/Detail_LegiFile.aspx?Frame=SplitView&MeetingID=7335&MediaPosition=2698.655&ID=82423&CssClass (last accessed Sept. 19, 2016). As a result, local calls by Santa Clara inmates will now cost 10¢ per minute, and intrastate calls will now cost 17¢ per minute.

Table 2: County of Santa Clara Data Regarding Intrastate Inmate Calls				
	Calendar Year 2013	Calendar Year 2014	Calendar Year 2015	Jan. – May 2016
Average Cost per Minute For Intrastate Calls	46¢	45¢	38¢	30¢
Average Monthly Number of Intrastate Calls	13,984	16,336	17,920	26,535
Average Monthly Minutes Intrastate Calls	149,252	177,177	197,160	300,023
Average Cost per Minute for Local Calls	34¢	34¢	28¢	21¢
Average Monthly Number of Local Calls	47,022	45,514	45,117	58,513
Average Monthly Minutes Local Calls	503,885	495,510	505,315	668,859



These data illustrate that when the cost of phone calls is reduced, the number and total minutes of inmates calls increase. Thus, the FCC's 2015 Order – which reduces the rate cap for intrastate inmate calls – will undoubtedly result in a rise in inmate call activity. This, in turn, will improve inmate connectivity with friends and family.

CONCLUSION

The Counties have experienced an upturn in inmate call activity after the implementation of the FCC's 2013 Order reducing interstate call rates and their voluntary reduction of intrastate call rates in 2014 and 2015. Thus, the Counties have no doubt that the reduction in rate caps for inmate calling adopted by the FCC in 2015 will increase inmate call activity nationwide. This increase in inmate call activity will increase inmate communications with friends and family, resulting in benefits to inmates, their family and friends, and the criminal justice system.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. Pursuant to Fed. R. App. P. 32(a)(7)(c), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i).

2. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(a)(7)(B)(iii) and Circuit Rule 32(a)(1), the brief contains 1,083 words.

3. The brief has been prepared in proportionally spaced typeface using Microsoft Word 2010 in 14 point Times New Roman font. As permitted by Fed. R. App. P. 32(a)(7)(B), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

By: /s/
Danny Y. Chou

CERTIFICATE OF SERVICE

I hereby certify that, on September 28, 2016, a true and correct copy of the foregoing BRIEF FOR THE COUNTY OF SANTA CLARA AND CITY AND COUNTY OF SAN FRANCISCO was served via the Court's CM/ECF system on counsel of record for all parties.

By: /s/
Danny Y. Chou