

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

SECURUS TECHNOLOGIES, INC.,)	
)	
<i>Petitioners,</i>)	
)	
v.)	
)	
FEDERAL COMMUNICATIONS)	
COMMISSION and UNITED STATES)	No. 16-1321 (and
OF AMERICA)	consolidated cases)
)	
<i>Respondents,</i>)	
)	
ULANDIS FORTE, <i>et al.</i>)	
)	
<i>Movant-Intervenors.</i>)	

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

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
INTRODUCTION	1
ARGUMENT	6
I. Staying the <i>Order</i> would exacerbate the substantial harm prisoners and their families have been suffering for years.	6
A. ICS rates are exorbitant and prisoners and their families cannot afford to pay them.....	6
B. High ICS rates reduce inmate communication and cause concrete harm to prisoners and their families.	8
C. Petitioners incorrectly argue that the Wright Petitioners will not be harmed by a stay.	12
II. Grant of a stay would be detrimental to the public interest.	13
A. The <i>Order</i> will help reduce recidivism and decrease costs within the incarceration system.	14
B. The <i>Order</i> will benefit prison welfare and prison security.	16
C. The <i>Order</i> will reduce the burden on defense lawyers representing incarcerated clients.	17
III. Petitioners fail to show irreparable harm.	20

Movant-Intervenors, the Wright Petitioners,¹ respectfully submit this opposition to the pending motions for stay in this proceeding.²

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. Invariably, only one ICS provider, chosen by bid, serves each institution. Because the consumers of ICS lack choice of providers, the market is wholly dysfunctional. This problem is exacerbated by the fact that in many cases, ICS providers obtain their contracts by agreeing to share their profits with the correctional institutions; thus,

¹ Movant-Intervenors are a coalition of inmates, inmate family members, prison reform groups and civil rights organizations which have sought FCC regulation of inmate calling rates since their first rulemaking petition filed in 2003. They were led by Martha Wright, whose grandson, Movant-Intervenor Ulandis Forte, was an inmate at the time. Even though Ms. Wright died on January 18, 2015, the group has been referred to as “the Wright Petitioners” or “Martha Wright, *et al.*” throughout proceedings at the FCC and in this Court.

² On September 16, 2016, Movant-Intervenors filed an uncontested Motion for Leave to Intervene in No. 16-1321 “and any other cases with which this case has been or may hereafter be consolidated.” As of the date of the filing of this opposition, the Court has not acted upon the motion.

competition in this setting perversely *increases* ICS rates, which are often borne by prisoners and their families.

After the Federal Communications Commission (“FCC”) adopted rules addressing interstate ICS calling practices in 2013,³ a motions panel of this Court partially stayed the new rules, but allowed interim rate caps for interstate calls to go into effect.⁴ At the same time that it issued the interim rate caps, the Commission initiated a rulemaking to consider whether to adopt permanent caps and other regulations for both interstate and intrastate ICS calls. Based on this record, the Commission adopted its *2015 Order* that set interstate and intrastate rate caps for ICS and allowed certain ancillary fees, but disallowed other ancillary fees, absent a waiver.⁵ In response to motions by ICS petitioners, another motions

³ *Rates for Interstate Inmate Calling Services*, 28 FCCRcd 14107, 14111 (2013)(“*2013 Order*”).

⁴ *Securus Technologies, Inc. v. FCC*, et al, D.C. Cir., No. 13-1280 (D.C. Cir. Jan. 13, 2014).

⁵ *Rates for Interstate Inmate Calling Services*, 30 FCCRcd 12763 (2015)(“*2015 Order*”). ICS providers have developed a dizzying array of these charges and markups, most of which are unrelated to any actual additional service provided to users. The Commission stated that

Ancillary service charges reported in response to the Mandatory Data Collection included 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, 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

panel of this Court granted a partial stay of the *2015 Order* which stayed the newly-adopted rate caps and one specific ancillary fee, but allowed the other ancillary fee regulations to go into effect for both interstate and intrastate calls.⁶ The 2013 interim rate caps have remained in effect.

Petitions for Review of the *2015 Order* are under review in No. 15-1461. Briefing in that case will be completed on November 7, 2016.

On August 4, 2016, the FCC acted on a petition for reconsideration of the *2015 Order*, issuing new, somewhat more permissive, rate caps to more properly account for correctional facility costs.⁷

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.

2015 Order, 30 FCCRcd at 12838 n.519.

⁶ See Order, *Global Tel*Link v. FCC*, Nos. 15-1461 *et al.*, Doc. No. 1602581 (D.C. Cir. Mar. 7, 2016) (*Second Stay Order*).

⁷ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, FCC 16-102 (rel. Aug. 9, 2016)(*Order*).

Petitioners’ motions argue that they are likely to succeed on the merits and that they face irreparable harm in the absence of such a stay. The Respondents’ opposition and the FCC’s decision denying requests for administrative stays⁸ persuasively address the merits and harm issues. However, under the familiar four-part *Virginia Petroleum* standard, grant of a stay involves the equitable balancing of four, not two, factors.⁹ The Petitioners’ focus on just two of these factors does not acknowledge that “[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough.”¹⁰ Rather, *Virginia Petroleum* adopted a balancing test that accommodates, rather than ignores, the possibility of harm to third parties and to the public interest. Petitioners make only passing and desultory reference to these two factors, each of which strongly tilts the balance towards denial of a stay.

With respect to harm to third parties, the *Virginia Petroleum* court asked

Would the issuance of a stay substantially harm other parties interested in the proceedings? On this side of the coin, we must determine whether, despite showings of probable success and irreparable injury on the part of petitioner, the issuance of a stay would have a serious adverse effect on other interested persons. *Relief saving one claimant from irreparable injury,*

⁸ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, DA 16-1119 (rel. Sep. 30, 2016)(*Order Denying 2016 Stay Petitions*).

⁹ *Virginia Petroleum Jobbers Ass’n v. Federal Power Commission*, 259 F.2d 921, (1958)(*Virginia Petroleum*). See *Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977).

¹⁰ *Virginia Petroleum*, 259 F.2d at 925.

*at the expense of similar harm caused another, might not qualify as the equitable judgment that a stay represents.*¹¹

As to the public interest factor, in language particularly relevant to this case, the Court stressed that

In litigation involving the administration of regulatory statutes designed to promote the public interest, this factor necessarily becomes crucial. The interests of private litigants must give way to the realization of public purposes.¹²

This opposition addresses the factors that the Petitioners have downplayed. It shows that grant of a stay would impose severe harm on third parties, including inmates, their families and their counsel. It also provides evidence that a stay would cause grievous damage to the public interest because facilitating inmates' contact with friends, families and counsel, among other things, reduces recidivism, cuts the cost of incarceration and reduces the likelihood that inmates' children will enter the penal system. Finally, it briefly rebuts one element of the Petitioners' argument about irreparable harm by presenting evidence that reduced ICS rates generate such a substantial increase in call volume and that net revenues actually increase when rates are cut.

¹¹ *Id* (emphasis added).

¹² *Id.*

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 be materially harmed” if the *Order*’s rate caps are stayed pending judicial review because the interim rates will remain in effect.¹³ This argument is at odds with reality. 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* gives those prisoners relief from the monopolistic and predatory 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 whom are already low-income.¹⁴ More than two-thirds

¹³ Securus Technologies Inc. Emergency Motion for Partial Stay of FCC Order 16-102 Pending Review at 16 (Securus Motion). *See* Motion of Global Tel*Link for Partial Stay Pending Judicial Review at 19 (GTL Motion); Motion of Telmate, LLC for Stay Pending Judicial Review at 18 (Telmate Motion); State and Local Government Petitioners’ Motion for Stay Pending Review at 19 (States’ Motion).

¹⁴ Letter from Human Rights Defense Center (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.

of incarcerated people reported annual incomes of under \$12,000 prior to arrest.¹⁵ While incarcerated, inmates earn an average of 93 cents per day.¹⁶ With such low incomes, prisoners can rarely afford to pay ICS rates and their families are often forced to use a substantial portion of their monthly incomes to maintain telephone contact with their loved ones.¹⁷ One grandmother paid more than \$1,000 a year to talk to her grandson, who explained that “some months she had to choose between paying the phone bill and being able to talk to me and paying for her medication, which she needed to survive.”¹⁸

Rates for prison phone calls far exceed ordinary phone rates. One large national telecommunications carrier offers home phone customers unlimited local and long-distance calling in the United States for just \$32.99 per month or less.¹⁹ Meanwhile, a single fifteen-minute ICS call can cost \$20 or more.²⁰ The FCC’s record contains additional substantial evidence of high ICS rates.²¹

¹⁵ Letter from Legal Services for Prisoners with Children (Dec. 4, 2014).

¹⁶ Center of the Administration of Criminal Law Comments at 4-5 (Mar. 25, 2013) (*Center Comments*).

¹⁷ See Eric Markowitz, *Why Prison Phone Rates Keep Going Up Even Though The FCC Regulated Them*, Int’l Bus. Times (June 30, 2016), <http://www.ibtimes.com/why-prison-phone-rates-keep-going-even-though-fcc-regulated-them-2388200>.

¹⁸ Tracy Connor, *Huge Step: FCC Slashes Cost of Prison Phone Calls*, NBC News (Oct. 22, 2015), <http://www.nbcnews.com/news/us-news/huge-step-fcc-slashes-costs-prison-phone-calls-n449286> p://www.nbcnews.com/news/us-news/huge-step-fcc-slashes-costs-prison-phone-calls-n449286.

¹⁹ See AT&T Website, <https://www.att.com/shop/home-phone/landline.html>.

²⁰ See Letter from Deborah Aylor-Polisoto (Dec. 17, 2013).

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,²² and food in order to cover the costs of calls.²³ Others reported losing their telephone service altogether because they were unable to pay prison phone bills.²⁴ Some are left with no choice but to cut off contact altogether.²⁵ An 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.”²⁶ He stated that he had 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,”

²¹ 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).

²² *Center Comments* at 6; Statement of Commissioner Clyburn, 30 FCCRcd at 12956.

²³ *2015 Order*, 30 FCCRcd at 12767.

²⁴ *Center Comments* at 6.

²⁵ *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 off telephone contact with loved ones and sometimes bills are as high as \$700 per month)(“*Letter from Prison Legal News*”).

²⁶ Letter from Rasool McCrimmon (Dec. 26, 2014).

but that in practice such contact is simply unaffordable.²⁷ The record is replete with letters from parents, spouses, and prisoners describing the damage that high ICS costs inflict on their health and relationships.²⁸

Second, high ICS rates discourage inmates' contact with their loved ones, which particularly affects children. Over 2.7 million children have an incarcerated parent,²⁹ but only 53% of incarcerated parents in state prisons had direct phone contact with their children during their confinement.³⁰ The importance of the parent-child relationship cannot be overstated. 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]."³¹

Without opportunities to stay connected with their imprisoned parents, children are more likely to have substance abuse problems, perform poorly in

²⁷ *Id.*

²⁸ *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).

²⁹ Letter from Legal Services for Prisoners with Children (Dec. 4, 2014).

³⁰ Comments of Vera Institute of Justice at 2 (Mar. 14, 2013) ("*Vera Inst. Comments*").

³¹ Letter from Alex Garcia (Mar. 21, 2013).

school, and engage in criminal conduct.³² These children also face a greater likelihood of ending up homeless, in foster care, or in the juvenile justice system.³³

As Commissioner Clyburn stated,

[i]f you were to ask [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.³⁴

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.³⁵ High ICS rates could contribute to this loss of rights. Recidivism is lower for people who maintain contact with supportive family.³⁶ Infrequent communication with families can contribute to feelings of isolation and complicate the re-entry process. M. Domingues, an

³² *Center Comments* at 11.

³³ *Vera Inst. Comments* at 2-3.

³⁴ Remarks of Commissioner Clyburn at Inmate Calling Workshop, July 10, 2013, https://apps.fcc.gov/edocs_public/attachmatch/DOC-322109A1.pdf.

³⁵ *2015 Order*, 30 FCCRcd at 12766-67, n.14; N.Y. Dom. Rel. §111(2).

³⁶ See Nancy G. La Vigne, *et al.*, Examining the Effect of Incarceration & In-Prison Family Contact on Prisoners' Family Relationships, 21 *J. of Contemporary Crim. Justice* 314, 316 (2005) (“With remarkable consistency, studies have shown that family contact during incarceration is associated with lower recidivism rates.”).

inmate on death row who has watched hundreds of inmates cycle through his facility, said

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.³⁷

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.”³⁸ Family and close friends can provide transitional support, which includes assisting inmates in finding jobs, housing and other opportunities upon release.³⁹ Former inmate Brian Nelson stated that 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.⁴⁰ Thus, maintaining these relationships through frequent communication is crucial to post-release success.

³⁷ Letter from M. Domingues (Mar. 1, 2013).

³⁸ *2015 Order*, 30 FCCRcd at 12774.

³⁹ Lorig Charkoudian, *et al.*, *The Role of Family and Pro-Social Relationships in Reducing Recidivism*, *Corrections Today*, 94 (Aug./Sept. 2012).

⁴⁰ Letter from Prison Policy Initiative (June 20, 2014).

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

Petitioner GTL argues that the 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.”⁴¹ 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.⁴² However, those proposals were made based on rate and cost information from 2006 and earlier,⁴³ and without the type of evidentiary record the FCC has since developed. Further, the proposal 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.⁴⁴ 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.

⁴¹ GTL Motion at 19.

⁴² Alternative Rulemaking Proposal of Wright Petitioners, Dkt. 96-128 at 16 (Mar. 1, 2007).

⁴³ *Id.* at 2.

⁴⁴ *2015 Order*, 30 FCCRcd at 12769-70.

II. Grant of a stay would be detrimental to the public interest.

Petitioners off-handedly claim that the public interest favors a stay.⁴⁵ This could not be more wrong. In an *amici curiae* brief in Docket No. 15-1461 (*States' Brief*), the State of Minnesota, *et al.* provided extensive evidence demonstrating the important value and social benefit of lower ICS rates.⁴⁶ In the brief, the States explained that they “support the FCC’s 2015 Order because providing telephone services to prison inmates at a reasonable cost is feasible, and it fosters public safety, successful rehabilitation, reduction in recidivism, and improved outcomes for offenders’ children and families.”⁴⁷ Indeed, the entire record demonstrates the harms to the public interest that unjust, unreasonable, and unfair ICS rates impose. The *Order* caps intrastate calls (which account for 80% of calls to and from correctional facilities) 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.

⁴⁵ GTL Motion at 20; Securus Motion at 16-17; Telmate Motion at 17-18; States’ Motion at 19.

⁴⁶ Brief for the States of Minnesota, Illinois, Massachusetts, New Mexico, New York, Washington, and Washington D.C., as Amici Curiae in Support of Respondents, *Global Tel*Link v. FCC*, (Sept. 19, 2016)(No. 15-1461)(“*States’ Brief*”).

⁴⁷ *Id.* at 3.

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 their transition into society upon release and reduce the chance of recidivism. As the *States' Brief* explains, “the FCC’s Order promotes positive family and societal relationships, which are important to successful rehabilitation of offenders.”⁴⁸ Ninety-five percent of the United States’ 2.2 million incarcerated persons will one day return to society,⁴⁹ but 75% of released inmates are re-arrested within five years.⁵⁰ Inmates are significantly less likely to relapse following their release if they maintain contact with friends and family during their confinement.⁵¹

As the *States' Brief* points out, “prohibitive cost of telephone calls prevents the maintenance of...important family ties.”⁵² 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

⁴⁸ See *Amici States Brief* at 3.

⁴⁹ Letter from Former Attorneys General (Jan. 9, 2015)(*Letter from Former AGs*).

⁵⁰ *2015 Order*, 30 FCCRcd at 12767 (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>).

⁵¹ *Id.* at 12766-67.

⁵² *States' Brief* at 11.

gainful employment and otherwise transition out of the criminal system.⁵³ Fifty-one former Attorneys General 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,”⁵⁴ and that such former inmates “are more likely to succeed after their release.”⁵⁵ Their contributions to society benefit the public.

Reducing recidivism will also save the criminal justice system millions of dollars. The *States’ Brief* explains that “States have a significant interest in breaking the cycle of recidivism” because “[r]educed recidivism means fewer victims of crime and reduced public expense from incarceration,” and cites a Pew Center on the States study which shows that “during the past two decades, annual state and federal spending on corrections has increased threefold to about \$52 billion.”⁵⁶ It also demonstrated that “[d]uring that same period, corrections spending doubled as a share of state funding,” and “now accounts for one of

⁵³ *Center Comments* at 2 (citing Nancy La Vigne, *Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners’ Family Relationships*, 21 J. Contemp. Crim. Justice 314, 316 (2005)(showing the positive effects of increased family contact)).

⁵⁴ *Letter from Former AGs* (citing a 2011 study from the Vera Institute).

⁵⁵ *Letter from Former AGs* (citing a 2012 study from the Vera Institute).

⁵⁶ *States’ Brief* at 10 (citing Pew Center on the States, *State of Recidivism*, 5 (April 2011), <http://www.pewtrusts.org/en/research-and-analysis/reports/0001/01/01/state-of-recidivism>).

every 14 general fund dollars, and one in every eight state employees works for a corrections agency.”⁵⁷

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.⁵⁸ Reducing recidivism could save between \$60 and \$70 billion dollars in detention costs per year, nationwide.⁵⁹ The criminal justice system would save more than \$250 million if recidivism were reduced by even one percent.⁶⁰ This would create significant cost-savings for taxpayers, jails and prisons, and society.

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.⁶¹ As one commentator said:

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

⁵⁷ *Id.* **Error! Main Document Only.**(testimony of Amsani Yusli cited in Media Action July 7, 2015 *Ex Parte* Letter, Attach. at 5).

⁵⁸ *2015 Order*, 30 FCCRcd at 12767.

⁵⁹ 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>.

⁶⁰ Wright Petitioners' Comments (Mar. 25, 2013) (Ex. C, Bazelon Decl. ¶48).

⁶¹ *2015 Order*, 30 FCCRcd at 12767-68.

as make the prisons a safer place for [corrections officers] to work in.⁶²

Lower ICS rates also reduce the demand for contraband cell phones.⁶³

Using contraband cell phones not only undermines prison security, but can result in increased incarceration time for inmates and increased costs to the state.⁶⁴

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

Denying the stay will reduce burdens on lawyers representing incarcerated persons. Public defender offices can spend “more than \$100,000 a year accepting collect calls from prisoners.”⁶⁵ High phone bills may also deter private lawyers from representing incarcerated clients.⁶⁶ Low ICS rates will allow lawyers additional resources to more zealously represent their clients.

III. Petitioners have failed to show irreparable harm.

Respondents have thoroughly discussed in their opposition the lack of irreparable harm to Petitioners. The Wright Petitioners wish to add a few additional thoughts as to this question.

⁶² *Id.*

⁶³ See Letter from Prison Policy Initiative (June 12, 2015)(attaching Amanda Seitz, *Phone Calls from Prison Cheaper*, Dayton Daily News, April 1, 2015).

⁶⁴ *Center Comments* at 2.

⁶⁵ *2013 Order*, 28 FCCRcd at 14131.

⁶⁶ See, e.g., *2015 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).

Petitioners claim that the intrastate and interstate rate caps in the *Order* will result in the loss of revenue which will, in turn, “undermine critical correctional and rehabilitative programs in jails and prisons—causing yet more irreparable harm.”⁶⁷ In its order denying Petitioners’ Stay Petitions, the FCC thoroughly refuted these claims, stating that “unspecific and unsupported claims of potential lost revenue” drawn from generalized statements and “conclusory affidavits from executives of their respective companies” do not constitute irreparable harm.⁶⁸ Furthermore, the FCC found that a potential loss of revenue alone does not entitle a party to a stay of a regulation, particularly when the regulation in question is aimed at curbing the ill-gotten monopoly ICS profits.⁶⁹

Petitioners’ claims of irreparable harm are refuted by evidence drawn from experience since the interim rate caps became effective. Evidence in the FCC’s record establishes that increased call volume has fully offset the reduction in per minute rates, so that interstate call revenue has actually increased. 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

⁶⁷ States’ Motion at 19. *See* Telmate Motion at 16; GTL Motion at 19; Securus Motion at 14.

⁶⁸ *Order Denying 2016 Stay Petitions* at ¶24.

⁶⁹ *See id.* at ¶25.

rules go into effect.⁷⁰ Other ICS providers report similar findings. ICSolutions documented increases in call volume by as much as 150%, and increases in revenue by approximately 30% when implementing lower rates.⁷¹ Similarly, in February 2016, after displacing a competitor at Brazos County Jail in Texas, and lowering rates to \$0.16 per minute, Network Communications International Corporation saw inmate calling increase 247%.⁷²

Likewise, in an *amicus curiae* brief submitted to this Court in Docket No. 15-1461, the County of Santa Clara submitted data which demonstrated that the County of Santa Clara and the City and County of San Francisco witnessed a significant increase 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 2015.⁷³ As one example shows, at a cost per minute of \$1.36 in 2012, the average monthly number of interstate inmate calls was 579 in Santa Clara. After the *2013 Order* went into effect in February 2014 and the cost per minute was lowered to 22 cents, the average monthly number of interstate calls rose to 4,668 for 2014 and 7,007 in 2015. These changes not only allowed inmates to spend about 50% more time talking to their loved ones, but also generated

⁷⁰ *2015 Order*, 30 FCCRcd at 12792.

⁷¹ *Id.*

⁷² See Brief of Network Communications International Corporation, *Global Tel*Link v. FCC*, at 7 (Sept. 29, 2016)(No. 15-1461).

⁷³ Brief of County of Santa Clara and the City and County of San Francisco, *Global Tel*Link v. FCC*, at 3 (Sept. 28, 2016)(No. 15-1461)(*Santa Clara Brief*).

increased revenue for the providers. For example, average intrastate calling minutes increased from 149,252 per month in 2013, when the average rate was 46 cents per minute, to 300,023 minutes in the first part of 2016, after the rates were reduced to 30 cents per minute. Gross revenue thus went from about \$68,000 to \$90,000.⁷⁴ Similarly, revenue from interstate calls nearly doubled between 2013 and 2015 when rates were reduced from \$1.35 to 21 cents and average monthly interstate call minutes increased from 5,088 to 73,319.⁷⁵ Thus, ICS providers have failed to show irreparable harm.⁷⁶

CONCLUSION

This Court should deny the stay motions and grant all such other relief as may be just and proper.

Respectfully submitted,

/s/ Andrew Jay Schwartzman
Andrew Jay Schwartzman
Drew Simshaw
Counsel for Movant-Intervenors

October 13, 2016

⁷⁴ *Santa Clara Brief* at 5.

⁷⁵ *Id.* at 3.

⁷⁶ Limitations on space preclude extensive discussion, but the record also demonstrates that a large portion of correctional facility funds generated through revenue sharing agreements with ICS companies purportedly used for “inmate welfare,” are in fact used for employee salaries and benefits, facility maintenance and equipment, or even the state’s general fund. *See 2013 Order*, 28 FCCRcd at 14125; *2015 Order*, 30 FCCRcd at 12823.

CERTIFICATE OF SERVICE

I hereby certify that on October 13, 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 October 13, 2016.

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