

Admin Minnesota

Materials Management Division

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CONTRACT RELEASE: T-512

DATE: AUGUST 28, 2000

PRODUCT/SERVICE: TELECOMMUNICATIONS: INMATE PHONE SERVICES, DEPARTMENT OF CORRECTIONS

CONTRACT PERIOD: JANUARY 7, 2000, THROUGH JANUARY 6, 2005

ACQUISITION MANAGEMENT SPECIALIST: JOAN BREISLER

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<u>CONTRACT VENDOR</u>	<u>CONTRACT NO.</u>	<u>TERMS</u>	<u>DELIVERY</u>
MCI WORLDCOM Communications, Inc. 5500 Wayzata Blvd., Suite 500 Minneapolis, MN 55416	424947	N/A	As agreed

CONTRACT USERS: This Contract is for use by the Department of Corrections Correctional Facilities or the Department of Administration, InterTechnologies Group only.

STATE AGENCY CONTRACT USE: This Contract must be used by the Department of Corrections or the Department of Administration, InterTechnologies Group unless a specific exception is granted by the Acquisition Management Specialist listed above.

AGENCY ORDERING INSTRUCTIONS: Orders are to be placed directly with the Contract vendor. The agency should use a contract release order (CRO) or a blanket purchase order (BPC). The person ordering should include his or her name and phone number.

SCOPE: To provide inmate phone services for the Department of Corrections or the Department of Administration, InterTechnologies Group.

PRICES: At no time should the ordering entity pay more than the Contract price. Agencies must contact the AMS immediately and fill out a Vendor Performance Report if there is a discrepancy between the price on the invoice and the Contract price.

Terms, conditions and rates are as stated on Exhibits A and B of the Contract documents.

REVISION:

08/28/00 AMS Change.

T-512

EXHIBIT A

This Contract, for the provision of inmate telephone services for the State of Minnesota, Department of Corrections, is entered into between the State of Minnesota, acting through its Department of Administration ("State"), and MCI WORLDCOM Communications, Inc., on behalf of itself and its U.S.-based affiliates, and their respective successors (collectively, "MCI WorldCom").

TERMS AND CONDITIONS

The State and MCI WorldCom agree to the following terms and conditions:

Elements of Contract

This Contract shall consist of the following elements:

- (a) The terms and conditions of this Exhibit A;
- (b) The State's Request for Proposal ("RFP") and associated addenda, incorporated herein by reference; and
- (c) MCI WorldCom's response to the State's RFP including all eight commission and rate options offered and written clarifications submitted to the State between November 17, 1999, and December 28, 1999, all of which are incorporated herein by reference.

In the case of conflict or inconsistency among the above referenced documents, priority shall be given to the documents in the order in which they are listed above.

Term

The term of this Contract shall be for a five-year period beginning upon the effective date. Pursuant to Minnesota law, the Contract shall be effective upon the date of final execution by the authorized representatives of the State.

Commission and Rates

The initial commission and rate Option to be utilized will be Option 8 as set forth in Exhibit B. The call rates and surcharges and the commission rates set forth in Option 8 will be in effect through November 30, 2000. As of December 1, 2000, the per call charge for a local debit call shall increase to not less than \$0.35. At such time, the State reserves the right to make a one-time selection from among the other Options set forth in Exhibit B that include a local debit per call charge of at least \$0.35, and the call rates and

surcharges and the commission rates set forth in the Option so selected by the State shall thereafter apply, except to the extent MCI WorldCom and the State may agree upon a local debit per call charge greater than \$0.35, per the clause herein entitled "System Features and Equipment, Introductory Paragraph."

Notwithstanding any contrary provision in the following like-named 'General Proposal Terms and Contract Provisions, Instructions' in the RFP, MCI WorldCom and the State agree as follows:

1. Laws and Regulations

This Contract, including all matters relating to the validity, construction, performance and enforcement thereof, shall be governed in all respects by the laws of the State of Minnesota without reference to its principles of conflicts of law, subject to the following clarification: MCI WorldCom, in conducting business as contemplated herein, is subject to the Communications Act of 1934, as amended, and as interpreted and applied by the Federal Communications Commission (FCC) (collectively, the "Act") and therefore the laws of the State of Minnesota will apply except to the extent the Act or any other applicable federal law (collectively, "Federal law") preempts Minnesota law.

2. State Audits, Minn. Stat. §16C.05, subd. 5

MCI WorldCom reserves the right, in accordance with applicable law, including Minn. Stat. Ch. 13, to designate any such books, records, etc., as exempt from public disclosure or otherwise confidential, proprietary, trade secret and/or privileged. Notwithstanding the above, such records shall remain subject to State audit and their disclosure, if any, as required by applicable law.

3. Antitrust

MCI WorldCom understands and will comply, with the understanding that MCI WorldCom will assign to the State all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States or the State of Minnesota, relating to the particular services to be provided under this contract, to the extent that the State has received less compensation as commissions than it is otherwise entitled to under this contract, as a result of any violations of such laws.

4. Governing Law

MCI WorldCom understands and will comply, subject to the paragraph above concerning Law and Regulations, with the further understanding that the Uniform Commercial Code will not apply to the Contract due to its nature and subject matter.

5. Jurisdiction and Venue

MCI WorldCom understands and will comply, subject to the paragraph above concerning Law and Regulations.

6. Contract Assignment

MCI WorldCom understands and will comply, with the understanding that MCI WorldCom may assign or otherwise transfer this contract, in whole or in part, to its parent, or to any other controlled affiliate or subsidiary thereof, as long as such assignees agree to become bound by all of the terms and conditions hereof.

7. Most Favored Customer

This requirement does not apply to this Contract because goods and services are not being purchased by the State of Minnesota.

8. Amendment(s)

The State may at any time by a written Contract amendment, make changes within the general scope of the Contract. No amendment shall be effective until signed by the appropriate parties from MCI WorldCom and the State.

9. Contractual (Hold Harmless) Liability

MCI WorldCom understands and will comply, subject to the following clarifications:

(a) MCI WorldCom's obligation to indemnify and hold the State, etc., harmless hereunder would not apply to the extent any claim or causes of action result from the negligence or willful misconduct of the entity or person(s) seeking indemnification ("Indemnitee(s)");

(b) MCI WorldCom's obligation to indemnify and hold the State, etc., harmless from any intellectual property-related claims or causes of action, will be governed exclusively by the General Condition below entitled "Intellectual Property Indemnification" as clarified by MCI WorldCom's response and the State; and

(c) To the fullest extent permitted by applicable law, in no event will MCI WorldCom be liable for any special, indirect, incidental, consequential, punitive or exemplary damages of any kind or amount whatsoever, even if advised of the possibility of such damages.

10. Intellectual Property Indemnification

(a) MCI WorldCom will pass through to the State the warranties and indemnities in this regard that MCI WorldCom's equipment supplier(s) and software provider(s) may provide, to the extent the terms of such warranties permit us to do so, with the understanding that the State would look exclusively and directly to such manufacturer(s), etc. for its remedies under the terms of such warranty; and

(b) As to its own network services or other deliverables manufactured or developed by MCI WorldCom:

(1) MCI WorldCom, at its expense, will defend the State from and against any third party claim, action, suit, or proceeding ("Claim") alleging that MCI WorldCom's transport network or any technology developed by the MCI WorldCom's personnel for the subject contract and provided by MCI WorldCom to the State pursuant to the subject contract (individually a "Service" and collectively the "Services"), when used in conformity with all applicable written instructions and documentation, infringes any U.S. patent, trademark, or copyright or constitutes misappropriation of a trade secret under U.S. law. MCI WorldCom will indemnify the State for damages for infringement occurring during the term of the contract and finally awarded against the State or agreed to by MCI WorldCom in settlement of such Claim, and for the State's reasonable costs incurred as a result of such Claim. MCI WorldCom shall have the exclusive right to defend, counter-sue, or settle any such Claim and to collect all damages, costs, fees, and other charges awarded from any such Claim. MCI WorldCom's obligation to defend and indemnify the State under this clause is contingent upon the State's providing MCI WorldCom (a) prompt written notice of any Claim; and (b) at MCI WorldCom's expense, all information and assistance requested by it to settle, defend, or bring a counter-suit in conjunction with any Claim.

Notwithstanding anything to the contrary in this provision, the State shall have the right to participate in the investigation and defense of, and any negotiations regarding, any such Claim, with separate counsel chosen and paid for by the State.

(2) Notwithstanding anything to the contrary herein, MCI WorldCom shall have no obligation to defend or indemnify the State for any Claim arising out of or relating to (a) designs or specifications provided by the State, (b) modifications to any service or product provided hereunder made by or on behalf of the State where but for such modifications there would have been no claim of infringement or misappropriation,

(c) use of any service or product provided hereunder in combination with any other products or services where but for this combination there would have been no claim of infringement or misappropriation, (d) transmission of State supplied content, data, or other information, or (e) infringement after the expiration or termination of the contract. To the extent permitted by applicable law, the State shall defend, indemnify and hold MCI WorldCom harmless from and against any Claims covered by the exclusions set forth in this paragraph.

(3) If the State's indemnified use of any Service is enjoined or otherwise prohibited, or if MCI WorldCom reasonably believes that there exists a threat of the same, MCI WorldCom shall have the right, in its sole discretion and at its expense, in addition to its indemnification obligations above, to: (a) obtain for the State the right to continue to use the affected Service; (b) replace the affected Service with a non-infringing service; (c) modify the affected Service so that it becomes non-infringing; or, if none of the foregoing in subsections (a)-(c) above can be accomplished after the exercise of reasonable commercial efforts and without materially impacting the economic viability of MCI WorldCom, then (d) terminate provision of the affected Service and/or terminate this Contract, after such advance notice to the State as is practicable under the circumstances.

(4) THIS SECTION SETS FORTH THE SOLE AND EXCLUSIVE REMEDY OF THE STATE, AND THE ENTIRE OBLIGATION AND LIABILITY OF MCI WORLDCOM, AS TO ANY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY RIGHTS IN CONNECTION WITH ANY SERVICES, PRODUCTS, OR OTHER DELIVERABLES PROVIDED HEREUNDER.

11. Data Privacy - Government Data Practices Act

MCI WorldCom understands and will comply, with the understanding that its response above to the General Condition entitled "Contractual (Hold Harmless) Liability" would apply equally to MCI WorldCom's obligation to indemnify under this provision.

12. Payment of Subcontractors

This provision is inapplicable to the Contract as the State will not be making any payments to MCI WorldCom.

13. Disposition of Documents

MCI WorldCom understands and will comply, with the understanding that the State's right to use the proposal or any other materials submitted in response to the RFP is limited to evaluation and contract award under the RFP, subject in any

case to the respective rights and obligations of the State and MCI WorldCom under Minnesota Statutes Chapters 13 and 16C.

14. Warranty Language for the Year 2000 & Year 2000 Dispute Resolution Language

In performing this Contract, MCI WorldCom will utilize only that Information Technology which its supplier or manufacturer warrants as being "Year 2000 Compliant." All such warranties are made by the supplier or manufacturer, not by MCI WorldCom, and accrue directly to the benefit of the State. Any service failure, interruption or impairment arising from a failure of Information Technology to be Year 2000 Compliant will be treated by the parties in the same manner as any other service failure, interruption or impairment arising under this contract. As used herein, the term "Information Technology" means hardware, software and/or firmware provided by MCI WorldCom's first-tier subcontractor, Global Tel*Link Corporation and installed on Minnesota Department of Corrections' premises for dedicated use under this Contract. As used in this Contract, "Year 2000 Compliant" means, with respect to Information Technology, that the Information Technology accurately processes date/time data including, but not limited to, calculating, comparing, and sequencing from, into, and between the twentieth and twenty- first centuries, and years 1999 and 2000 and leap year calculations to the extent that other information technology used in combination with the Information Technology being utilized properly exchanges date/time data with it.

MCI WorldCom is using and shall continue to use reasonable efforts, including continued testing of its network for Year 2000 readiness, to prevent any material interruption or impairment, by the so-called "Year 2000 Problem," of the network services provided under this contract by MCI WorldCom. Upon the State's reasonable request, MCI WorldCom will provide an update on the state of its Year 2000 readiness. The "Year 2000 Problem" generically refers to the potential inability of some computer systems to accurately handle date-related functions involving dates of January 1, 2000 and thereafter. MCI WorldCom shall have no liability for impairment or interruption caused by hardware or software provided by the State. If there is a service interruption or impairment from a Year 2000 Problem, the rights and obligations of the State and MCI WorldCom, including the forum and procedure for resolving disputes related to a service interruption or impairment from a Year 2000 Problem, shall be the same as those available for other similar service impairments or interruptions.

Notwithstanding any contrary provision in the Special Terms and Conditions/Technical Specifications in the RFP, MCI WorldCom and the State agree as follows:

1. Installation Schedule

After Contract execution, MCI WorldCom will negotiate in good faith with the Department of Corrections to establish a mutually acceptable installation schedule based upon the installation schedule proposed, which is intended to replace the current inmate telephone system as soon as reasonably practicable, while addressing the need to avoid any interruption in inmate telephone service.

2. Calls, Per Minute Rates and Per Call Surcharges

MCI WorldCom understands and will comply, with the understanding that the per minute rates and per call surcharges for interstate inmate collect calls may not exceed the applicable tariffed rates/surcharges of AT&T for such calls, in effect during the term of the Contract.

The per minute rates and per call surcharges for interLATA (both interstate and intrastate) inmate collect calls will not exceed the applicable tariffed rates/surcharges of AT&T in effect from time to time during the term of this Contract, and the per minute rates and per call surcharges for intraLATA and local inmate collect calls will not exceed the applicable tariffed rates/surcharges of US West in effect from time to time during the term of this Contract. In addition to such per minute rates and per call surcharges, MCI WorldCom will have the right to charge collect call recipients, other applicable charges such as taxes, tax-like charges, tax-related surcharges, and other tariffed charges, including but not limited to, federal and State Universal Service Fund charges and Primary Interexchange Carrier Charges, all as may be provided in MCI WorldCom's applicable federal and State tariff(s) from time to time during the term of this Contract.

MCI WorldCom will exercise commercially reasonable efforts to notify the State as soon as practicable of any planned changes in the per minute rates or per call surcharges for inmate collect calls, but MCI WorldCom's failure to provide such notice shall not affect MCI WorldCom's right to revise such rates or surcharges subject to the not-to-exceed limitations stated herein, nor otherwise constitute a breach or default of MCI WorldCom's obligations under this Contract.

MCI WorldCom understands and agrees that the State will not have any liability for fraudulent calls, uncollectibles or disputed charges, in that such matters will be between MCI WorldCom and the called/billed parties from the inmate telephone system provided under this contract, and will be governed by MCI WorldCom's applicable federal and State tariff(s) in effect from time to time during the Contract term. Fraudulent calls, uncollectibles or disputed charges will not reduce the "Commissionable Revenue" on which MCI WorldCom will pay the State commissions, as reflected in MCI WorldCom's response to the RFP section VI.A.

3. System Features and Equipment. Introductory Paragraph

MCI WorldCom understands and will comply, with the understanding per the State's answers to the questions in RFP Addendum #2, that the per call charge for local debit calls through November 30, 2000, will be \$0.25, and as of December 1, 2000, will be the greater of (a) \$0.35, or (b) such other amount as MCI WorldCom and the State may agree based upon the applicable tariffed rate of the then predominant local exchange carrier.

4. Commission Structure

MCI WorldCom understands and will comply, subject to the clarification that MCI WorldCom will pay the Department commissions on "Commissionable Revenue," which is revenue of MCI WorldCom from noncoin-sent paid calls generated by telephones covered by this Contract, handled by MCI WorldCom operator services and carried on MCI WorldCom's network, net of "Excluded Revenue." "Excluded Revenue" encompasses but is not limited to: (i) taxes, tax-related surcharges, tax-like surcharges and surcharges, except those surcharges MCI WorldCom elects to commission, in its sole discretion; (ii) credits; (iii) calls billed to any prepaid card, debit card, or any other similar product or services using advance payment for calls; (iv) any amount MCI WorldCom or its affiliates collects for, or pays to, third parties, including but not limited to payments in support of statutory or regulatory programs mandated by governmental or quasi-governmental authorities such as the Federal or state Universal Service Fund ("USF") and the Primary Interexchange Carrier Charge ("PICC"); (v) any amount MCI WorldCom or its affiliates pays to payphone service providers, including but not limited to amounts paid pursuant to Section 276 of the Telecommunications Act of 1996 and its implementing regulations (together, "Section 276"); (vi) any costs incurred by MCI WorldCom or its affiliates in connection with such compensation requirements in support of programs mandated by governmental or quasi-governmental authorities, including without limitation those of Section 276." "Operator Service" means the interstate, intrastate/interLATA and intraLATA calls from telephones covered under this contract, such as collect, billed to third party, local telephone company calling card, and other forms of credit card billed calls which are dialed using 0- (where allowed), 0+, 01+, 00+ or 00- dialing patterns and that originate from telephones currently pre-subscribed with the Local Exchange Carrier (LEC) to route operator services traffic to MCI WorldCom or currently programmed to route Operator Service traffic to MCI WorldCom using 10-10-XXX, 800-277-9190 or 800-277-9191 access numbers. "Operator Service Calls" shall mean any calls using Operator Service, though Operator Service Calls shall not include any calls made by dialing a toll free number such as 1-800-COLLECT, or by using an MCI WorldCom-branded prepaid card, debit card or any other similar product or service using advance payment for calls.

Fraudulent calls, uncollectibles or disputed charges will not reduce the "Commissionable Revenue" on which MCI WorldCom will pay commissions, as reflected in MCI WorldCom's response to the RFP, section VI.A.


5. Additional Agencies

In the event the State seeks to make the services provided by this Contract available to additional governmental facilities that are not State correctional facilities, the commission rate and other terms for such non-State facilities, as well as the additional commissions, if any, to be paid to the State based upon MCI WorldCom revenue derived from such non-State facilities, will be subject to mutual agreement of all affected parties at that time in connection with MCI WorldCom's determination whether to consent to such an arrangement.

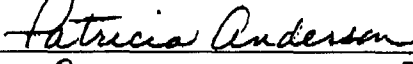
In witness whereof, the parties have caused duly authorized representatives to execute this Agreement on the dates set forth below intending to be bound thereby.

MCI WORLDCOM Communications, Inc.

The Vendor certifies that the appropriate person(s) have executed this Agreement on behalf of the Vendor as required by applicable articles, bylaws, resolutions, or ordinances.

By: 
Title: Jerry A. Edgerton, Senior V.P.
Date: 1/5/00

DEPARTMENT OF ADMINISTRATION

By: 
Title: Acquisition Mgmt Spec.
Date: 1-6-2000

**Approved as to form and execution by
the Office of the Attorney General**


By: 
Title: Legal Assistant
Date: Jan 6 2000

EXHIBIT B

Comission Structure

MCI WorldCom's standard rate structure: Postalized rates all times of day.

	Debit	Collect
Local	\$.35/per call	\$1.50 Surcharge + \$.20 per min.
IntraLATA Intrastate	\$.34 per min.	\$3.00 Surcharge + \$.15 per min.
InterLATA Intrastate	\$.34 per min.	\$3.00 Surcharge + \$.30 per min.
Interstate	\$.34 per min.	ATT FCC Tariff
International	\$.34 per units.	ATT FCC Tariff

MCI WorldCom's commission is 46% for Local Calls and 48% for Long Distance Calls.

MCI WorldCom's rate alternative Option 1: Postalized rates all times of day:

	Debit	Collect
Local	\$.35/per call	\$1.00 Surcharge
IntraLATA Intrastate	\$.34 per min.	\$3.00 Surcharge + \$.15 per min.
InterLATA Intrastate	\$.34 per min.	\$3.00 Surcharge + \$.30 per min.
Interstate	\$.34 per min.	\$3.50 Surcharge + \$.55 per min.
International	\$.34 per units.	ATT FCC Tariff

MCI WorldCom's commission is 44% for Local Calls and 47% for Long Distance Calls.

MCI WorldCom's rate alternative Option 2: Postalized rates all times of day:

	Debit	Collect
Local	\$.35/per call	\$1.65 per call.
IntraLATA Intrastate	\$.34 per min.	\$3.00 Surcharge + \$.15 per min.
InterLATA Intrastate	\$.34 per min.	\$3.00 Surcharge + \$.30 per min.
Interstate	\$.34 per min.	\$3.50 Surcharge + \$.55 per min.
International	\$.34 per units.	ATT FCC Tariff.

MCI WorldCom's commission is 45% for Local Calls and 47% for Long Distance Calls.

MCI WorldCom's rate alternative Option 3: Postalized rates all times of day:

	Debit	Collect
Local	\$.25/per call	\$.35 per call
IntraLATA Intrastate	\$.34 per min.	\$3.00 Surcharge + \$.15 per min.
InterLATA Intrastate	\$.34 per min.	\$3.00 Surcharge + \$.30 per min.
Interstate	\$.34 per min.	\$3.50 Surcharge + \$.55 per min.
International	\$.34 per units.	ATT FCC Tariff

MCI WorldCom's commission is 43% for Local Calls and 45% for Long Distance Calls.

MCI WorldCom's rate alternative Option 4: Postalized rates all times of day

	Debit	Collect
Local	\$.30 per call	\$1.65 per call
IntraLATA Intrastate	\$.30 per min.	\$2.50 Surcharge + \$.15 per min.
InterLATA Intrastate	\$.30 per min.	\$2.50 Surcharge + \$.30 per min.
Interstate	\$.30 per min.	\$3.50 Surcharge + \$.55 per min.
International	\$.30 per units.	ATT FCC Tariff

MCI WorldCom's commission is 43% for Local Calls and 44% for Long Distance Calls.

MCI WorldCom's rate alternative Option 5: Postalized rates all times of day

	Debit	Collect
Local	\$.25/per call	\$1.65 per call
IntraLATA Intrastate	\$.30 per min.	\$2.00 Surcharge + \$.15 per min.
InterLATA Intrastate	\$.30 per min.	\$2.00 Surcharge + \$.30 per min.
Interstate	\$.30 per min.	\$3.50 Surcharge + \$.55 per min.
International	\$.30 per units.	ATT FCC Tariff

MCI WorldCom's commission is 41% for Local Calls and 44% for Long Distance Calls.

MCI WorldCom's rate alternative Option 6: Postalized rates all times of day

	Debit	Collect
Local	\$.25 per call	\$1.65 per call
IntraLATA Intrastate	\$.25 per min.	\$2.00 Surcharge + \$.15 per min.
InterLATA Intrastate	\$.25 per min.	\$2.00 Surcharge + \$.25 per min.
Interstate	\$.25 per min.	\$3.50 Surcharge + \$.55 per min.
International	\$.25 per units.	ATT FCC Tariff

MCI WorldCom's commission is 37% for Local and 41% for Long Distance calls.

MCI WorldCom's rate alternative Option 7: Postalized rates all times of day

	Debit	Collect
Local	\$.35 per call	\$1.65 per call
IntraLATA Intrastate	\$.34 per min.	\$2.50 Surcharge + \$.13 per min.
InterLATA Intrastate	\$.34 per min.	\$2.50 Surcharge + \$.23 per min.
Interstate	\$.34 per min.	\$3.50 Surcharge + \$.55 per min.
International	\$.34 per units.	ATT FCC Tariff

MCI WorldCom's commission is 41% for Local Calls and 44% for Long Distance Calls.

MCI WorldCom's rate alternative Option 8: Postalized rates all times of day:

	Debit	Collect
Local	\$.25 per call.	\$1.00 per call + \$.05 per min.
IntraLATA Intrastate	\$.34 per min.	\$3.00 Surcharge + \$.13 per min.
InterLATA Intrastate	\$.34 per min.	\$3.00 Surcharge + \$.23 per min.
Interstate	\$.34 per min.	\$3.50 Surcharge + \$.55 per min.
International	\$.34 per units.	ATT FCC Tariff

MCI WorldCom's commission is 40% for Local Calls and 44% for Long Distance Calls.