



Human Rights Defense Center

DEDICATED TO PROTECTING HUMAN RIGHTS

April 22, 2013

Submitted Online Only

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Reply Comment in the Matter of Rates for Inmate Calling Services
WC Docket No. 12-375**

Dear Commissioner Genachowski:

On March 25, the Human Rights Defense Center (HRDC) submitted a comment concerning the Commission's Notice of Proposed Rulemaking on WC Docket No. 12-375, with respect to Inmate Calling Services (ICS). Our comment provided updated (FY 2012) data on ICS rates and commission percentages and amounts for the majority of state Departments of Corrections (DOCs) and the federal Bureau of Prisons. We now submit this reply comment to address issues raised by other parties in their initial comments provided to the Commission.

Several ICS providers, state DOCs and county sheriffs submitted comments opposing the ICS benchmark rates urged by the Petitioners,¹ which would ensure that the costs of interstate calls from U.S. correctional facilities are just and reasonable. The content of this reply comment is based on records obtained from governmental agencies, including ICS contracts, commission-related data and prison phone rates, as set forth in our March 25 comment.²

“Robust” Competition is a Myth

The three ICS providers that dominate the market for state DOC prison phone services, Global Tel*Link (GTL), Securus and CenturyLink, claim there is “robust” competition in the prison

¹ See generally, CC Docket No. 96-128, Petitioners' Alternative Rulemaking Proposal Regarding Issues Related to Inmate Calling Services, filed Feb. 28, 2007 (“Alternative Wright Petition”).

² Comments of the Human Rights Defense Center (HRDC) dated March 25, 2013.

phone industry.³ For example, GTL mentions that “for larger contracts, it is typical for more than five or more [sic] service providers to submit bids.”⁴

Through our extensive research, which included submitting numerous public records requests to governmental agencies, we obtained the current ICS contracts from the majority of states. Some of these contracts include RFPs and other bidding-related records. This documentation provides instructive examples regarding the “competitive bidding” alleged by ICS providers:

- In Arizona the “competition” was anything but robust. Records indicate that for the state’s current ICS contract (awarded in 2007), the three “offerors” were GTL, PCS (since acquired by GTL) and Evercom (at the time a division of Securus).⁵
- In Oklahoma’s 2011 ICS bidding process, four bidders represented three companies: Securus, GTL, VAC (owned by GTL) and CenturyLink.⁶
- In Alabama only GTL, Securus, Talton and CenturyLink bid on that state’s current contract, which was awarded to CenturyLink effective June 6, 2012.⁷

GTL, Securus and CenturyLink obfuscate their dominance in the market when they are awarded contracts through subsidiary companies they have acquired – such as VAC (GTL), PCS (GTL), Embarq (CenturyLink), ICS (CenturyLink) and T-NETIX (Securus).

When it comes to contracts with state DOCs, competition mainly exists between the “big three” companies: GTL, Securus and CenturyLink. Only four states do not have contracts with one of the big three companies: Hawaii (Hawaiian Telecom), Illinois (CCPS), Montana (Telmate) and Oregon (Telmate).⁸ Thus, the ICS industry is highly concentrated with only three companies controlling 92% of the market for state prison phone services. This constitutes an oligopoly, which is less competitive than a less concentrated market. According to Prof. Richard Culp, in writing about the private prison industry, “Oligopoly theory and industry life cycle theory suggest that the remaining companies will be less competitive overall, seeking interdependent relationships with their competitors to help secure their position now that industry growth rates have cooled.”⁹ In short, a highly concentrated market is inherently less competitive.

Normally, “competitive” means a contract award goes to the bidder that offers an equivalent service or product for the lowest price. In the ICS market, however, contract awards tend to go

³ Comments of CenturyLink dated March 25, 2013 at 4; Comments of Global Tel*Link Corporation dated March 25, 2013 at 14; Comments of Securus Technologies, Inc. dated March 24, 2013 at i.

⁴ Comments of Global Tel*Link Corporation dated March 25, 2013 at 14.

⁵ Arizona Department of Corrections Procurement Services Memorandum re: RFP No. 060072DC – Inmate Telephone System; specifically “Comprehensive Scores,” dated July 31, 2007. See Exhibit A, attached.

⁶ Oklahoma Department of Corrections to Department of Central Services, Central Purchasing Division re: RFQ# 1310003272 Award Recommendation, dated Aug. 19, 2011. See Exhibit B, attached.

⁷ State of Alabama Department of Finance, Division of Purchasing Tele Services-Pay Inmate Contract Number TA497 Bidding Sheet, unknown date. See Exhibit C, attached.

⁸ Comments of HRDC dated March 25, 2013.

⁹ Culp, Richard. “The Failed Promise of Prison Privatization,” *Prison Legal News*, Oct. 2011, p.1; available at: www.prisonlegalnews.org/23838_displayArticle.aspx.

to the bidder that offers the highest percentage of gross profits or call revenue to the contracting agency; i.e., the highest commission rate. Thus, the ICS market is competitive only in the sense that ICS providers are competing to provide the highest return to the government agencies that contract for prison phone services. Consequently this works to the detriment of the consumer, unlike in other competitive milieus that are based on traditional supply and demand.

For example, in an award recommendation letter from the Oklahoma Administrator of Contracts and Acquisitions to the CPO of the Department of Central Services, the Administrator wrote, “As indicated in the request that was sent out, the final contract award recommendation is being made based upon the proposal that offered the highest revenue sharing rates per call throughout the [assumed ten-year] life of the contract.”¹⁰ The Administrator recommended VAC for the contract award and included a chart showing the commission offerings of the four bidders representing three companies: Securus, GTL, VAC (owned by GTL) and CenturyLink.

Other examples of ICS contracts being based on the highest commission percentage, rather than the lowest cost to the consumer, were included in PLN’s comprehensive April 2011 report on the prison phone industry.¹¹

For example, “[W]hen Louisiana issued an RFP for prison phone services in 2001, it specified that ‘[t]he maximum points, sixty (60) ... shall be awarded to the bidder who bids the highest percentage of compensation ...,’ and that ‘[t]he State desires that the bidder’s compensation percentages ... be as high as possible.’” Also, “When the Alaska Dept. of Corrections (DOC) issued an RFP in 2007, bidders were rated on a point system with 60% of the evaluation points assigned to cost. The RFP explicitly stated that ‘[t]he cost proposal providing the largest percentage of generated revenues ... to the state will receive the maximum number of points allocated to cost.’” Additionally, “According to a March 13, 2007 memo from the [Alabama] Department of Finance, the RFP ‘proposed to award what amounts to an “exclusive franchise” to the successful bidder based on the highest commission rate paid to the State on revenues received from users of the [prison] pay phones.’”¹²

This does not constitute “competition” – much less “robust competition” – as those terms are generally defined and understood outside the ICS market.

Commissions Drive High Prison Phone Rates

In its comment, CenturyLink claims that “The rates and charges determined by facilities are driven by the costs that facilities and ICS providers incur to provide ICS.”¹³ Several providers go into great detail in their comments concerning the costs of providing prison phone services, ranging from personnel expenses for call monitoring to site-specific equipment.

¹⁰ Oklahoma Department of Corrections to Department of Central Services, Central Purchasing Division re: RFQ# 1310003272 Award Recommendation, dated Aug. 19, 2011.

¹¹ Dannenberg, John E. “Nationwide *PLN* Survey Examines Prison Phone Contracts, Kickbacks,” *Prison Legal News*, April 2011, p.1, 3-4; available at: www.prisonphonejustice.org/includes/_public/_publications/Telephones/pln%20april%202011%20prison%20phone%20cover%20story%20revised.pdf.

¹² *Id.*

¹³ Comments of CenturyLink dated March 25, 2013 at 4.

However, CenturyLink contradicts itself by further noting, “ICS providers are able to operate with lower calling rates when site commissions are not required.”¹⁴ CenturyLink then provides examples (South Carolina and Michigan) that corroborate the data submitted in our comment regarding the link between ending commissions and lower, more affordable ICS rates.¹⁵ While some percentage of ICS call charges is needed to cover the operating costs of the phone service and profit for the provider, a significant portion of the revenue generated by ICS calls goes above and beyond what is necessary to provide the service, in the form of commissions – in an amount of more than \$103 million annually in FY 2012, not including commission data for six states, jails, private prisons, juvenile facilities and immigration detention centers.¹⁶

Rehabilitative Programs Should Not Rely on Exorbitant ICS Rates

When county sheriffs and state DOCs argue¹⁷ that “loss or decrease of [ICS commissions] will negatively affect necessary programs for rehabilitation of offenders and will potentially increase recidivism,”¹⁸ they are essentially saying that rehabilitative programs for prisoners (educational opportunities and substance abuse treatment, for example) should be funded by price-gouging prisoners’ families through high phone rates, rather than through general funding from DOC and county jail budgets. Commenters that raise this argument fail to address the propriety of having prisoners’ families fund rehabilitative programs through the high cost of prison telephone calls, which essentially amounts to a tax on ICS call recipients to pay for such programs.

The Mississippi DOC’s comment mentions that state’s 60.5% commission rate and FY 2012 commission total of \$1,651,805.23 (both of which are consistent with our data), without which, it claims, up to six prison programs potentially could be curtailed.¹⁹

The Louisiana DOC “relies upon the commissions earned to provide security monitoring of the telephone calls made from the prisons, assist with operational costs and provide specialized offender education,”²⁰ and also suggests that programs for prisoners would be cut absent ICS commissions. The Louisiana DOC claims that the rate reduction proposed in the Alternative Wright Petition “will force the discontinuance of some, if not all, offender programming and will probably drive telephone providers out of the market.”²¹ Yet how is it that the DOCs in New York and seven other states that have banned ICS commissions are able to operate secure facilities while providing rehabilitative programs *and* affordable prison phone rates?

It is the responsibility of correctional agencies and legislatures to provide rehabilitative programs for prisoners; they were able to do so before entering into ICS contracts that provide commission revenue, and eight states continue to do so without accepting ICS commissions. The argument

¹⁴ *Id.* at 14.

¹⁵ Comments of HRDC dated March 25, 2013.

¹⁶ *Id.*, Exhibit C.

¹⁷ *See, e.g.*, Comments of the Routt County Sheriff’s Office dated March 11, 2013 at 1; Comments of the San Diego County Sheriff’s Department dated March 15, 2013 at 1; Comments of the California State Sheriffs’ Association dated March 22, 2013 at 1; Initial Comments of Mississippi Department of Corrections (MDOC) dated February 14, 2013 at 1.

¹⁸ Initial Comments of MDOC dated February 14, 2013 at 1.

¹⁹ *Id.*

²⁰ Comments of the State of Louisiana Department of Public Safety and Corrections dated March 22, 2013 at 3.

²¹ *Id.* at 6.

that such programs may be eliminated or curtailed absent commission funding, which is mainly derived by overcharging prisoners' families for ICS phone calls, is a red herring that lacks merit. Moreover, there is no evidence correlating the amount of ICS commissions paid to state DOCs and jails with the amount actually spent on rehabilitative programs, nor is there any requirement that ICS commission revenue be used to fund such programs in most cases.

Prison Legal News' Data is Reliable and Accurate

The ICS data collected by Prison Legal News (both in our April 2011 report that reflects 2007-2008 data²² and our more recent research reflecting FY 2012 data²³) is reliable and accurate to the extent that state Departments of Corrections, the federal Bureau of Prisons and ICS providers have supplied accurate information in response to our requests.

GTL incorrectly contends that the earlier data provided by Prison Legal News is unreliable.²⁴ GTL claims that "the [2011] PLN study ... reflects incorrect rates" for several states; however, the "correct" rates that GTL cites are from 2010 or later, even though GTL counterintuitively acknowledges that PLN's April 2011 data was collected from the years 2007-2008.

Nor is GTL particularly forthcoming with its own ICS-related information. For example, GTL successfully moved to seal its contract with the Mississippi Department of Corrections and the amounts of commissions paid to that agency, in a state court proceeding. When PLN requested those records, the MS DOC refused to produce same, citing the protective order entered upon GTL's request in the court proceeding. As a result, PLN was forced to file suit in Hinds County Chancery Court to obtain the requested records,²⁵ which we contended were public records that had been improperly sealed. The case settled with PLN obtaining the requested records. This demonstrates the efforts that PLN has undertaken to ensure we obtain accurate data.

GTL notes that "the [2011] PLN study [analyzing 2007-2008 data] does not provide a currently accurate picture of the inmate calling market," for example, because it only analyzes traditional collect calling rates and not the other options offered by some facilities such as prepaid or debit calling.²⁶ We selected a comparison of collect calling rates for our April 2011 report because 49 state DOC systems offered ICS collect calls but not all provided debit or prepaid calling options. However, our most recent data – submitted as Exhibit B to HRDC's March 25, 2013 comment – includes rate information and 15-minute total call costs for collect, prepaid and debit calls, based on FY 2012 data.²⁷

²² Dannenberg, John E. "Nationwide *PLN* Survey Examines Prison Phone Contracts, Kickbacks," *Prison Legal News*, April 2011, p.1, 3-4; available at:

www.prisonphonejustice.org/includes/_public/_publications/Telephones/pln%20april%202011%20prison%20phone%20cover%20story%20revised.pdf.

²³ Comments of HRDC dated March 25, 2013, Exhibits B and C.

²⁴ Comments of Global Tel*Link Corporation dated March 25, 2013 at 26-27.

²⁵ *Prison Legal News v. Miss. DOC and Global Tel*Link*, Hinds County Chancery Court (MS), Case No. 2009-391 T/1.

²⁶ Comments of Global Tel*Link Corporation dated March 25, 2013 at 26.

²⁷ Comments of HRDC dated March 25, 2013.

GTL contends that PLN's information is "stale," and that "accurate and up-to-date information is available." We agree that the data published in our April 2011 report is no longer timely and also agree that more recent information is available – which is why we have provided updated data (as of FY 2012) in our March 25, 2013 comment submitted to the Commission.²⁸

Further Delay is Unwarranted and Unacceptable

CenturyLink "recommends the establishment of an ICS Federal Advisory Committee (ICS FAC) to address the ICS issue."²⁹ We strongly disagree with this approach. Consumers of ICS services have waited *ten years* for the Commission to address the exorbitant phone rates charged by ICS providers, and further delaying action on this issue through the appointment of a committee does a disservice to the tens of thousands of consumers who have been negatively impacted by such predatory prison phone rates over the past decade. We therefore urge the FCC to act now.

Thank you for your consideration of this reply comment; please feel free to contact us should you require any additional information that we may be able to provide.

Sincerely,



Paul Wright
Executive Director, HRDC

Attachments: Exhibits

²⁸ *Id.*

²⁹ Comments of CenturyLink dated March 25, 2013 at i.

RFP 060072DC - INMATE TELEPHONE SYSTEM - INFORMATION TECHNOLOGY

COMPREHENSIVE SCORES

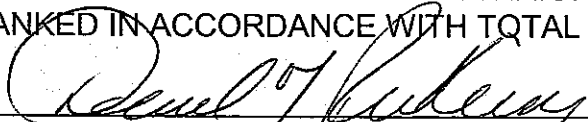
Reevaluation of proposals 7/31/07

EXHIBIT A

		OFFERORS' RAW SCORES		
CRITERIA	ASSIGNED POINTS	GTL	PCS	Evercom (Securus)
#1 - Cost and Commissions.	400	364 (1) 160 (2) 128 (3) 364 (4) 160 (5) 128 (6)	284	336 (1) 200 (7) 384 (2) 200 (8) 376 (3) 200 (9) 400 (4) 200(10) 200 (5) 200(11) 200 (6)
#2 - Technical Requirements.	250	250	250	250
#3 - Vendor Qualification Requirements.	180	180	160	180
#4 - Implementation Plan.	145	145	145	145
#5 - Conformity To UTC's & Special T&C's	25	25	25	25
TOTALS:	1,000.00	964 (1) 964 (4) 760 (2) 760 (5) 728 (3) 728 (6)	864.00	1000(4) 800(7) 984(2) 800(8) 976(3) 800(9) 936(1) 800(10) 800(5) 800(11) 800(6)

EACH OFFEROR'S TOTAL RAW SCORE FOR EACH CRITERION HAS BEEN TRANSFERRED TO THIS COMPREHENSIVE SHEET. THE OFFERORS ARE RANKED IN ACCORDANCE WITH TOTAL RAW SCORE RECEIVED.

Contracts Administration:



 Kristine Yaw, Purchasing Manager

Date:

8/16/07



STATE OF OKLAHOMA
OKLAHOMA DEPARTMENT OF CORRECTIONS

EXHIBIT B

August 19, 2011

Laura Bybee, CPO
Department of Central Services (DCS)
Central Purchasing Division
2401 N. Lincoln Blvd., Suite 116
Oklahoma City, Oklahoma 73105

Ref: RFQ# 1310003272 Award Recommendation

Dear Ms. Bybee:

The Department of Corrections (DOC) has completed the final phase of evaluating the proposals for offender phone services. Throughout the phases of the evaluation process the scores from all four of these suppliers were very competitive with a small amount of difference between the individual scores. As you know, the final step was a 2nd request for best offers that was sent out to all four of the competing suppliers. As indicated in the request that was sent out, the final contract award recommendation is being made based upon the proposal that offered the highest revenue sharing rates per call throughout the life of the contract. Attached to this letter you will find a spreadsheet showing the final comparisons of the proposed revenue sharing rates for each of the vendors. DOC would like to recommend that the final award for offender telephone services (RFQ#1310003272) be made to Value Added Communications.

Enclosed you will find the all of the evaluation documents from the evaluation team. If additional information is needed, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Tina Hicks".

Tina Hicks, Administrator
Contracts and Acquisitions

Contract Year	Securus - Original								VAC							
	\$ per call	Comm/		Ext. Total	Vendor \$/call	Ext. Total	Deposit Fee	Est. Vendors Actual Cost	\$ per call	Comm/		Ext. Total	Vendor \$/call	Ext. Total	Deposit Fee	Est. Vendors Actual Cost
call	%	call	%						call	%						
Initial Year	3.00	2.22	74.00	3,122,434.44	0.78	1,097,071.56	4.75	1.22	3.00	2.30	76.67	3,234,954.60	0.70	984,551.40	4.75	2.92
2nd Year	3.00	2.22	74.00	3,122,434.44	0.78	1,097,071.56	4.75	1.02	3.00	2.30	76.67	3,234,954.60	0.70	984,551.40	4.75	2.92
3rd Year	3.00	2.22	74.00	3,122,434.44	0.78	1,097,071.56	4.75	1.04	3.00	2.30	76.67	3,234,954.60	0.70	984,551.40	4.75	2.92
4th Year	3.00	2.22	74.00	3,122,434.44	0.78	1,097,071.56	4.75	1.05	3.00	2.30	76.67	3,234,954.60	0.70	984,551.40	4.75	2.92
5th Year	3.00	2.22	74.00	3,122,434.44	0.78	1,097,071.56	4.75	1.06	3.00	2.30	76.67	3,234,954.60	0.70	984,551.40	4.75	2.92
6th Year	3.00	2.25	75.00	3,164,629.50	0.75	1,054,876.50	4.75	0.92	3.00	2.30	76.67	3,234,954.60	0.70	984,551.40	4.75	2.92
7th Year	3.00	2.28	76.00	3,206,824.56	0.72	1,012,681.44	4.75	0.92	3.00	2.30	76.67	3,234,954.60	0.70	984,551.40	4.75	2.92
8th Year	3.00	2.31	77.00	3,249,019.62	0.69	970,486.38	4.75	0.93	3.00	2.30	76.67	3,234,954.60	0.70	984,551.40	4.75	2.92
9th Year	3.00	2.34	78.00	3,291,214.68	0.66	928,291.32	4.75	0.94	3.00	2.30	76.67	3,234,954.60	0.70	984,551.40	4.75	2.92
10th Year	3.00	2.37	79.00	3,333,409.74	0.63	886,096.26	4.75	0.95	3.00	2.30	76.67	3,234,954.60	0.70	984,551.40	4.75	2.92
Totals				31,857,270.30		10,337,789.70			3.00	2.30	76.67	32,349,546.00	0.70	9,845,514.00	4.75	2.92

Contract Year	GTL								CenturyLink - A							
	\$ per call	Comm/		Ext. Total	Vendor \$/call	Ext. Total	Deposit Fee	Est. Vendors Actual Cost	\$ per call	Comm/		Ext. Total	Vendor \$/call	Ext. Total	Deposit Fee	Est. Vendors Actual Cost
call	%	call	%						call	%						
Initial Year	3.00	2.295	76.50	3,227,922.09	0.705	991,583.91	4.75	2.97	3.00	1.95	65.00	2,742,678.90	1.05	1,476,827.10	4.75	3.54
2nd Year	3.00	2.295	76.50	3,227,922.09	0.705	991,583.91	4.75	2.97	3.00	1.95	65.00	2,742,678.90	1.05	1,476,827.10	4.75	3.54
3rd Year	3.00	2.295	76.50	3,227,922.09	0.705	991,583.91	4.75	2.97	3.00	1.95	65.00	2,742,678.90	1.05	1,476,827.10	4.75	3.54
4th Year	3.00	2.295	76.50	3,227,922.09	0.705	991,583.91	4.75	2.97	3.00	2.01	67.00	2,827,069.02	0.99	1,392,436.98	4.75	3.54
5th Year	3.00	2.295	76.50	3,227,922.09	0.705	991,583.91	4.75	2.97	3.00	2.01	67.00	2,827,069.02	0.99	1,392,436.98	4.75	3.54
6th Year	3.00	2.295	76.50	3,227,922.09	0.705	991,583.91	4.75	2.97	3.00	2.01	67.00	2,827,069.02	0.99	1,392,436.98	4.75	3.54
7th Year	3.00	2.295	76.50	3,227,922.09	0.705	991,583.91	4.75	2.97	3.00	2.01	67.00	2,827,069.02	0.99	1,392,436.98	4.75	3.54
8th Year	3.00	2.295	76.50	3,227,922.09	0.705	991,583.91	4.75	2.97	3.00	2.01	67.00	2,827,069.02	0.99	1,392,436.98	4.75	3.54
9th Year	3.00	2.295	76.50	3,227,922.09	0.705	991,583.91	4.75	2.97	3.00	2.01	67.00	2,827,069.02	0.99	1,392,436.98	4.75	3.54
10th Year	3.00	2.295	76.50	3,227,922.09	0.705	991,583.91	4.75	2.97	3.00	2.01	67.00	2,827,069.02	0.99	1,392,436.98	4.75	3.54
Totals				32,279,220.90		9,915,839.10			3.00	2.01	67.00	28,017,519.84	0.99	14,177,540.16	4.75	3.54

Pricing is based on
1,406,502 calls (2009
Data).

GTL

	Proposed Per deim rate		Number of Inmates		Days		Total
Inmate Phones	<u>\$0 539</u>	X	25,668.00	X	365	=	<u>5,049,793.98</u>
	Percentage Guarantee		Estimated Revenue				
Public Pay Phones	<u>10.000%</u>	X	\$ 120,000			=	<u>\$ 12,000</u>
					Grand Total	=	<u><u>5,061,793.98</u></u>

Quigilla Coke
Chya Collier

Securus

	Proposed Per deim rate		Number of Inmates		Days		Total
Inmate Phones	<u>\$0 500</u>	X	25,668.00	X	365	=	<u>4,684,410.00</u>
	Percentage Guarantee		Estimated Revenue				
Public Pay Phones	<u>0.250%</u>	X	\$ 120,000			=	<u>\$ 300</u>
					Grand Total	=	<u><u>4,684,710.00</u></u>

Devin Williams
Devin Williams

Talton

	Proposed Per deim rate		Number of Inmates		Days		Total
Inmate Phones	<u>\$0 544</u>	X	25,668.00	X	365	=	<u>5,096,638.08</u>
	Percentage Guarantee		Estimated Revenue				
Public Pay Phones	<u>100.000%</u>	X	\$ 120,000			=	<u>\$ 120,000</u>
					Grand Total	=	<u><u>5,216,638.08</u></u>

Paul Bully
Paul Bully

Century Link

	Proposed Per deim rate		Number of Inmates		Days		Total
Inmate Phones	<u>\$0 572</u>	X	25,668.00	X	365	=	<u>5,358,965.04</u>
	Percentage Guarantee		Estimated Revenue				
Public Pay Phones	<u>87.699%</u>	X	\$ 120,000			=	<u>\$ 105,239</u>
					Grand Total	=	<u><u>5,464,203.84</u></u>

Paul Bully
Paul Bully