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STATE OF ALABAMA

ALABAMA PUBLIC SERVICE COMMISSION
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JEREMY H. ODEN, ASSOCIATE COMMISSIONER

TERRY DUNN, ASSOCIATE COMMISSIONER

JOHN A. GARNER, EXECUTIVE DIRECTOR

Re: GENERIC PROCEEDING CONSIDERING THE PROMULGATION OF TELEPHONE RULES GOVERNING INMATE PHONE SERVICE) DOCKET 15957

FURTHER ORDER ADOPTING REVISED INMATE PHONE SERVICE RULES

BY THE COMMISSION:

1.00 BACKGROUND

1.01 In the Commission's[1] October 1, 2013 Order for the above styled proceeding, as amended and supplanted by the Errata and Substitute Order Proposing Revised Inmate Phone Service Rules and Establishing a Comment Period issued on October 7, 2013 (collectively, the "Order"), the Commission proposed reforms to Inmate Calling Service ("ICS") in Alabama and established a comment cycle ending November 8, 2013.

1.02 The Order revised the Commission's service description in Alabama to Inmate Calling Service ("ICS") vice Inmate Phone Service to ensure uniformity with the Federal Communications Commission's ("FCC") service description. Existing ICS rates in Alabama consist of an operator surcharge of $2.25 per call. In addition to the operator surcharge, local calls are assessed a usage charge of $0.50 regardless of call duration. Toll calls are assessed a usage charge of $0.30 per minute. The Order proposes

[1] The term "Commission" used throughout this document refers to the Alabama Public Service Commission.

elimination of the operator surcharge and establishing a "postalized" usage charge of $0.25 per minute for both local and toll calls. The Order prohibits "text-to-collect" call delivery establishes a charge for "pay now" call delivery that is equal to the charge of the actual call duration priced at the approved per-minute rate plus the approved payment processing fee. Additionally, providers are required to offer a free, two-minute, initial call to new inmates.

1.03 The Order calls for a schedule of "capped" payment processing and convenience fees. Bill set up or establishment fees, intrastate regulatory recovery fees, and account refund fees are prohibited. With respect to payment transfer fees, the Order prohibits providers from participating in any revenue sharing with payment transfer services from charges assessed to ICS customers.

1.04 The Order proposes that Video Visitation rates be capped at $0.50 per minute. Minimum customer account and service information requirements, tariff submission, records retention, and regulatory reporting requirements are proposed. Finally, the Order calls for strict compliance with Alabama with respect to customer refunds and unclaimed property.

1.05 By filing[2] dated October 29, 2013, Global Tel*Link Corporation ("GTL") submitted a motionto extend the deadline for filing comments in the proceeding. By Order dated November 5, 2013, the Commission extended the deadline for the submission of comments through December 6, 2013.

1.06 By filing[3] dated October 31, 2013, Securus Technologies, Inc. ("Securus") submitted a motion requesting that the Commission hold this rulemaking proceeding in abeyance and stay all further actions in this Docket. By filing[4] dated November 21, 2013, Securus

[2] *Global Tel*Link Motion for Extension of Comment Deadline*, submitted by Chèrie R. Kiser, Attorney, Cahill Gordon & Reindel LLP, filed October 29, 2013, Commission Tracking Number TR1324611.
[3] *Securus Technologies, Inc. Motion to Hold Proceeding in Abeyance*, submitted by Riley W. Roby, Counsel, Balch & Bingham, LLP., filed October 31, 2013. Commission Tracking Number TR1324634.
[4] *Amended Motion of Securus Technologies, Inc.*, submitted by Riley W. Roby, Counsel, Balch & Bingham, LLP., filed November 21, 2013, Commission Tracking Number TR1324714 (the "Amended Motion").

amended its motion to hold the proceeding in abeyance (the "Original Motion") for purposes of requesting additional, alternative relief. The additional relief sought by Securus was for the Commission to extend the period of time for interested parties to file comments related to the APSC Order until January 13, 2013, should the Commission otherwise decline to grant the abeyance requested in the Original Motion. By filing[5] dated November 22, 2013, GTL submitted a motion in support of the request by Securus to extend the time for interested parties in this proceeding to file comments with the Commission.

1.07 By Order under this Docket dated December 3, 2013, the Commission denied the motion filed by Securus to hold the proceeding in abeyance. However, the Commission approved the Securus amended motion providing that limited supplemental comments to this proceeding would be accepted for the Commission's consideration if filed by January 13, 2014.

1.08 Comments to the proceeding were received from Securus, GTL, Telmate, LLC ("Telmate"), ATN, Inc. d/b/a AmTel ("AmTel"), Embarq Payphone Services, Inc. ("CenturyLink")[6], Network Communications International Corp. ("NCIC"), Pay Tel Communications, Inc. ("Pay Tel"), Turnkey Corrections ("Turnkey"), Video Visitation Technologies ("VisitTech"), Prison Policy Initiative ("PPI"), and Equal Justice Initiative ("EJI"). Supplemental comments were received from Sheriff Larry Amerson of Calhoun County, AL, Sheriff Todd Entrekin from Etowah County, AL, Ms. Jacqueline Dicie from Hoover, AL, and GTL.

[5] *Global TEL*LINK Corporation Motion in Support of Securus Request for Extension of Time*, submitted by Chèrie R. Kiser, Attorney, Cahill Gordon & Reindel LLP, filed November 22, 2013, Commission Tracking Number TR1324751.

[6] By petition dated December 17, 2013, Embarq Payphone Services, Inc. (EPSI), requested Commission approval to change its name to "CenturyLink Public Communications, Inc. d/b/a CenturyLink". The petition was approved on January 14, 2014 under Dockets 25966 and U-5059.

2.00 ICS SERVICES

2.01 General

ICS provides outbound only calling. All calls, whether collect, debit, or prepaid, rely on automated collect, interactive voice response ("IVR") to identify the calling party and the confinement facility from which the call originates. The called party can accept or deny the call. This control is typically exercised via numeric keypad or voice responses to IVR prompts. There are four billing categories for ICS calls: collect, prepaid, debit, and direct billed.

2.02 Single Payment Services

ICS collect call charges may be applied to the subscriber's respective wireline provider billing statement via agreements between ICS providers and local exchange carriers or, alternately through billing aggregators who in turn, have billing agreements with the called party's wireline provider. Some wireline providers bill ICS collect calls but other wireline providers and most wireless providers will not do so. Single payment services allow for calls to parties that have not established prepaid ICS accounts and whose providers will not bill collect ICS calls.

2.03 "Pay Now" is trademarked by Securus Technologies which charges $14.99 for each Pay Now call. Typically, the ICS provider, using IVR, can place the inmate on hold then prompt the called party to accept the collect charges by authorizing payment from their debit/credit card.

2.04 Another option for billing ICS collect calls to wireless phones is available from third-party services approved to include charges on the wireless carrier's subscriber bills. Before such a call can be completed, the called party's wireless carrier and ability to process Short Message Service (SMS) messages (texting) is identified using a database "dip". Calls to wireless phones that are not SMS capable are denied. The billing

arrangement is predicated on a revenue sharing agreement between the third-party provider and the ICS provider. The third-party provider, in turn, has a payment arrangement with wireless carriers. Such third-party services include Bill-to-Mobile, Text Collect, Text2Connect, Text-to-Cell, and similar services (collectively "text-connect").

2.05 Text-connect relies on IVR to inform the called party of the inmate's identity, the charge and maximum duration for the collect call, and then prompts the recipient for authorization to accept the call. Once the call is completed, the called party receives an informational text message indicating that the charge will be added to their wireless bill. Because of the informational text at the call conclusion, the wireless provider can bill the call to its customer as a "premium SMS text message" service.

2.06 The ICS provider establishes the maximum duration of Pay Now and text-connect calls. The charge is unaffected by the actual call duration. Therefore, a call of 1-minute duration is charged the same as a call that extends through the maximum allowable duration. The call is switched over the ICS provider's network and the provider records the actual duration of the call but the usage data is generally withheld from confinement facilities.

2.07 Prepaid and Direct Billed Services

Debit service consists of ICS accounts into which funds are deposited for the inmate to prepay for calls to parties of their choosing (subject to confinement facility approval). Debit service is also provided via prepaid inmate phone cards. The face value listed on the card represents the inmate's purchasing power in terms of the provider's debit calling service. The cards are sold by the ICS provider to inmate commissary companies and, more frequently, directly to confinement facilities at a 40% to 60% of the card's face value. The cards are subsequently resold to inmates at face value.

2.08 Prepaid service is a calling account established for a non-inmate, typically a family member. The prepaid service subscriber selects determines the telephone numbers that

may be called by the inmate and paid for using the subscriber's prepaid ICS account. The Commission notes that CenturyLink subcontracts the debit and prepaid portion of its inmate services offering in Alabama to Inmate Calling Solutions, LLC of San Antonio, TX d/b/a ICSolutions. In other states, CenturyLink subcontracts these services to ICSolutions and other authorized ICS providers.

2.09 Direct billed service is postpaid. Direct billed customers are typically bail bondsmen and attorneys. All inmate calls to direct billed subscribers are charged to the subscriber's account. Periodic payments are made in accordance with the terms of the agreement between the subscriber and the ICS provider.

2.10 Video Visitation, Voice Mail, and Email

Traditional face-to-face visitation requires confinement facility security personnel to escort inmates from the cell block to the visitation room. Additionally, confinement facility personnel must be present to provide security in the visitation area and in the holding area where non-inmates await their opportunity to visit inmates. Frequently, minor children are not authorized in the face-to-face visitation area. Video Visitation ("VV") is offered by ICS providers in a growing number of confinement facilities. Hardened VV terminals are maintained in or near the cell blocks. Separate VV terminals are located in a secure area of the confinement facility away from the inmates. Those wishing a VV with an inmate schedule the visit electronically and the inmate chooses which visits to accept. The visiting parties can see and speak to one another on the VV terminals and minor children may be authorized in the visitor's area. The visit duration is prescribed, typically 20 minutes, and the individual visiting the inmate prepays the prescribed charges for the prescribed visit duration. VV charges range from $0.50/min to $1.00/min. Remote VV is possible but rarely offered in Alabama. With remote VV, the party visiting the inmate may do so from a location away from the confinement facility using a personal computer with a web camera and microphone. One way voice mail and/or email service is offered in a few confinement facilities. Non-inmates may prepay to leave voice mail messages that the inmate my access from confinement facility phone.

Non-inmates may also prepay to store email messages for an inmate that are subsequently downloaded for the inmate.

2.11 ICS is Non-competitive from the End-user Perspective

Consumers in a competitive market are free to make service choices based on a number of factors including lowest price. Users of ICS have no choice with respect to their service provider. The provider is selected by the confinement facility and is the exclusive service provider for the facility's inmates. In its Report and Order for the Inmate Calling Service proceeding, the FCC notes:

> While the process of awarding contracts to provide ICS may include competitive bidding, such competition in many instances benefits correctional facilities, not necessarily ICS consumers—inmates and their family and friends who pay the ICS rates, who are not parties to the agreements, and whose interest in just and reasonable rates is not necessarily represented in bidding or negotiation.[7]

2.12 Calling Rates

Automated operator services are used for collect calls, debit calls, and prepaid calls whether local or toll. ICS calls are typically transported via Internet Protocol ("IP") connection, routed at the provider's network operation center, and transported using least cost routing before they are terminated. All traffic, local and toll, is similarly routed with little to no difference in provider costs for transport and termination. Therefore, the Commission finds no justification for establishing a rate structure that prices local calls differently than toll calls. Doing so creates an incentive for arbitrage wherein inmate families and acquaintances subscribe to cellular phones whose calling area is included in the confinement facility's local calling area or they pay for telephone numbers local to the confinement facility from a myriad of online services in order to take advantage of lower local calling rates. Meanwhile, those using toll service pay a disproportionately higher rate for service that costs no more to provide. Therefore, the Commission seeks a rate

[7] *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, rel. September 26, 2013 ("FCC ICS Order"), par. 40.

structure that is fair and reasonable for all calls and does not target a preferential class of customers for lower rates at the expense of other customers.

Terminating access charges are at interstate levels in all jurisdictions and being reduced to zero in accordance with the FCC's Inter-carrier Compensation Reform Order. The costs for ICS services are believed to be declining:

> The record in this proceeding suggests that the costs of providing ICS are decreasing, in part due to technology advances. As one smaller ICS provider stated, "[g]iven modern-day technology, the costs for providing secure phone and video services to correctional facilities are low (and are getting lower)." As ICS moves increasingly to IP technology, we expect costs to decline as is the case for similar services that are not ICS.[8]

2.13 Two-Month ICS Trial at Alabama DOC Facilities

CenturyLink conducted a holiday promotion[9] of its ICS rates at Alabama Department of Corrections confinement facilities for the period November 1, 2013 through January 1, 2014 using the following pre-trial and promotional rates shown on Attachment A to this Order.

2.14 Due to the existing price cap of $2.75 on intrastate local calls, the promotional rates resulted in an increase in the price of a 15-minute local call in Alabama for collect, debit, and prepaid calls. The price for collect, debit, and prepaid toll calls was significantly less. The price for interstate collect, debit, and prepaid calls fell sharply.

2.15 The Commission required CenturyLink to provide average pre-trial usage and revenue for each calling category and to report the same for each month of the trial. The raw data is treated as proprietary but the Commission obtained

[8] FCC ICS Order, para. 29.
[9] *In the Matter of Embarq Payphone Services, Inc. Application for Waiver of Rule T-15.1(B)(4) Related to Inmate Phone Rate Caps*, Docket No. 15957, dated September 26, 2013. Approved October 1, 2013 under APSC Docket 32091.

CenturyLink's consent to publicly disclose general information about the trial results. The average pre-trial basis of comparison covers the period June through October, 2013. The trial was conducted over a period that includes the Thanksgiving, Christmas, and New Year's holidays. The pre-trial period includes the holidays of Father's Day, Independence Day, Labor Day and Veteran's Day.

2.16 The usage level wherein the total price for intrastate local calls are equivalent, based on pre-trial and trial rates, is 13 minutes for collect calls and 14 minutes for debit/prepaid calls. Local calls of shorter duration are cheaper during the trial period and longer duration local calls are more expensive. The average duration for intrastate local calls during the pre-trial period is 20.5 minutes. In November, the average duration for local calls decreased to 14.9 minutes and decreased further to 13.7 minutes in December as inmates adjusted their calling behavior to approximate the average call duration wherein the break-even price for local calls are achieved. As anticipated, intrastate local usage decreased during the trial period. Local calling minutes decreased by 27.4% between the pre-trial period average and the month of November. For December, the decrease was 36.2%. The Commission received several complaints from inmate spouses and acquaintances unhappy about the temporary elimination of the local call cap. In each case, the complaining party resides outside the confinement facility local calling area and in, one case, outside the state.

2.17 Based on 15-minute call duration, intrastate collect, debit, and prepaid toll calls decreased in price during the trial by 53.3% to 57.8%. As anticipated, usage in these categories increased by 87.7% in November and by 121% in December as compared to pre-trial average usage. The largest percentage price decrease for the trial is in the interstate calling category where prices decreased by 73.1% to 74.9%. Usage during November increased as follows: collect (48.9%), debit (661.3%), prepaid (216.4%) and total interstate usage (225.1%). For December the increased usage compared to pre-trial are: collect (65.4%), debit (880.9%),

prepaid (318.6%) and total interstate usage (315.3%).

2.18 CenturyLink experienced decreased intrastate and interstate revenue during both November and December as compared to the pre-trial period. For the month of November, intrastate revenue decreased by 19.7% and interstate revenue fell by 24.1%. In the month of December, intrastate revenue decreased was 11.9% less and interstate revenue 3.2% less than average revenue during the pre-trial period. The Commission notes that intrastate ICS prices during the trial decreased by over 50% on average and interstate prices by approximately 74%. Therefore, call stimulation mitigated the effects of the price decreases.

3.00 JURISDICTIONAL ISSUES

3.01 Applicability of Alabama's Communications Reform Act to ICS Providers

The Federal Telecommunications Act of 1996 defines service provided to confinement facilities as payphone service:

> (d) "Payphone service" defined
> As used in this section, the term "payphone service" means the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services.[10]

Commission Rule T-15.1(A)(1) provides:

> All IPS [Inmate Phone Serice] providers must be certified by the Commission. IPS certification includes all authority necessary to provide inmate phone service and payphone service at inmate facilities including authority for limited toll resale and operator services. IPS certification does not include customer-owned, coin-operated telephone (COCOT) authority for payphone service offered generally to the public at locations other than at inmate facilities. Such authority must be requested separately as an add-on to the Certificate of Public Convenience and Necessity (Certificate).

[10] 47 U.S. Code § 276 - Provision of payphone service.

ICS authority in Alabama is limited to service at inmate confinement facilities. Therefore, ICS providers do not have authority to serve the public as an incumbent local exchange carrier ("ILEC"), local exchange carrier ("LEC") or an inter-exchange carrier ("IXC"). Such authority requires an application for a CPCN from the Commission, who after thorough review of the applicant's capabilities and plans for providing service to the public, may grant or deny the authority. If the application is approved, specific LEC or IXC authority is identified with the CPCN.

3.02 Alabama's Communications Reform Act (the "Act") establishes the process for carriers subject to the Act to elect whether they will be regulated under its terms.

> "An incumbent local exchange carrier, local exchange carrier, or inter-exchange carrier shall be deemed to have elected to be regulated under this chapter unless the carrier files written notice with the commission declining regulation under this chapter not later than August 31, 2005;…"[11]

ICS providers cannot confer upon themselves ILEC, LEC, or IXC authority not specifically provided them in their CPCN from the Commission. The Act is clear as to which providers are subject to regulation under its provisions including any limitations to the Commission's authority provided therein. There is no process in the Act wherein payphone service providers may elect to be regulated under its terms. The Act makes clear that the Commission's regulatory authority is otherwise unaffected.

> "Nothing in this chapter shall do any of the following:
>
> Alter the jurisdiction, rights, powers, authority, or duties of the commission except as specifically provided for in this chapter."[12]

3.03 In comments submitted for this proceeding, some ICS providers contend the Commission lacks regulatory authority for their broadband enabled services, citing Section 37-2A-4 in

[11] *Process for Election*, Code of Alabama, 1975, Section 37-2A-5(a).
[12] *Interpretation*, Code of Alabama, 1975, Section 37-2A-11(b).

the Act (Jurisdiction of the Public Service Commission). However, the Act is not applicable to payphone providers. Therefore, limitations on the Commission's jurisdiction provided within the Act are not applicable to ICS in Alabama.

3.04 Distinction between ICS and Prepaid Phone Card Service

Prepaid telephone calling card service is provisioned over other carriers' equipment and facilities. The card provider is not involved in provisioning the end-user equipment, signal transport, or switching of the user calls. The provider is wholly dependent on the switching and transport facilities of regulated interexchange and local carriers. Essentially, prepaid telephone card service is resold service. The card may be used on any end-user instrument, including the user's own phone, phones at other locations, and coin-operated and non-coin operated public payphones. The cards sold by retail merchants offer virtually unlimited access to the public telephone switched network ("PTSN") but, because inmate calling is outward only, cannot be used to call inmates in confinement facilities. Further, these non-inmate calling cards cannot be utilized by inmates for calling from the confinement facility. Inmate prepaid telephone calling cards that may be used for outbound calls from the facility must be those issued by the exclusive ICS provider serving the confinement facility. Unlike prepaid telephone calling card service, ICS involves a large capital investment in hardened confinement facility instruments, security biometrics hardware and software, provider switching equipment, and provider interfaces with broadband network facilities.

3.05 While ICS requires the use of a personal identification number ("PIN") just like prepaid telephone calling card service, there are major distinctions. The PIN for a prepaid telephone calling card provides for the use of only that specific card. The PIN is directly linked to a specific unique item of tangible property – the calling card. The cards are offered for sale to the general public at retail locations. ICS, however, is not available to the general public. Its use is limited to calls originating from the confinement facility served exclusively by the ICS provider. Typically, the ICS PIN is not linked to a specific item of tangible property, like a calling card, but to the inmate. The majority of

confinement facilities issue inmates PINs when they are booked. The PIN is created by the confinement facility and identifies the particular inmate. The ICS provider generates a random 4-5 digit ID number which is added to complete the PIN and is typically used in a database that provides information on a myriad of inmate functions. The same PIN must be used by the inmate for all types of ICS calls including those calls paid for by the called party. It is also used by the inmate for transactions in their Inmate Trust Fund account.

3.06 State and local sales taxes are applied in full at the retail establishment where prepaid telephone calling cards are sold. The card is fully transportable allowing for the origination of calls from outside the state or the country. ICS debit calls from Alabama confinement facilities always originate from within the state regardless of where the calls terminate and, therefore, are always subject to applicable Alabama taxes.

3.07 Retail prepaid telephone calling cards are not regulated by the Commission. Providers of prepaid telephone calling service sold to the general public do not require a CPCN to provide service in Alabama. ICS is fully regulated by the Commission and providers must possess a CPCN to offer service in Alabama. As with other regulated telecommunications service, any resale of inmate debit service via cards or other manner remains fully subject to Commission jurisdiction and may necessitate the reseller obtaining authority and certification from the Commission before resale is authorized.

3.08 When an inmate is released or a prepaid account closed, remaining prepaid and debit service balances are subject to refund. Some ICS providers make refunds in the form of prepaid telephone calling cards that can be used on the public switched network. The PIN for the prepaid telephone calling card is not the PIN used by the inmate in the confinement facility and the calls are no longer subject to the restrictions and monitoring applicable to ICS.

3.09 Some commenters to the FCC proceeding recommended incorporating an analysis of

prepaid phone card service costs into the cost analysis for ICS:

> Petitioners propose a rate-setting methodology that combines an analysis of prevailing non-ICS prepaid calling card rates with estimates of the additional costs necessary to provide ICS. Using their methodology, Petitioners propose a per-minute rate of $0.07 for both collect and debit interstate ICS calls.
>
> Some ICS providers, however, oppose Petitioners' proposal, stating that interstate ICS is not comparable to prepaid calling card services and that basing a methodology on such an assumption could preclude ICS providers from being fairly compensated. Some claim that the rate levels proposed by Petitioners, if adopted, would undermine ICS providers' financial viability.[13]

GTL responded to the Petitioners' recommendation as follows:

> Traditional long distance service[s] are not comparable to inmate calling services given that the services 'have significantly different architectures, features, operations and cost structures.'".[14]

The FCC concluded:

> We do not find on the basis of this record that using commercial prepaid calling card rates is a reasonable starting point for calculating ICS calling rates given the significant differences between the two services, most notably, security requirements.[15]

3.10 The Commission also concludes that ICS is not comparable to prepaid phone card service. Based on the Commission's consultations with the Alabama Department of Revenue and the State Treasurer, ICS providers shall not claim taxing and unclaimed property requirements applicable to prepaid phone card service.

[13] FCC ICS Order, para. 67.
[14] FCC ICS Order, footnote 252.
[15] FCC ICS Order, para. 67.

4.00 SITE COMMISSIONS

4.01 The FCC does not recognize site commissions as costs when pricing ICS.

> Site commission payments are not costs that are reasonably and directly related to the provision of ICS because they are payments made to correctional facilities or departments of corrections for a wide range of purposes, most or all of which have no reasonable and direct relation to the provision of ICS. After carefully considering the record, we reaffirm the Commission's previous holding and conclude that site commission payments are not part of the cost of providing ICS and therefore not compensable in interstate ICS rates.[16]

4.02 The FCC has not, however, ruled out any recognition of site facility ICS-related costs in establishing ICS rates:

> Although it is clear that site commissions are a revenue stream to the correctional facility, we cannot foreclose the possibility that some portion of payments from ICS providers to some correctional facilities may, in certain circumstances, reimburse correctional facilities for their costs of providing ICS. As a result, we provide several avenues for exploring this issue further. First, we set the interim safe harbors and interim rate caps at conservative levels above costs in our record. Second, any ICS provider seeking a waiver of the rate cap or seeking to justify costs between the safe harbor and the interim rate cap may provide specific details about payments to correctional facilities that it contends are compensable for costs meeting our cost standards through interstate ICS rates as articulated in this Order. Third, as part of the mandatory data collection we initiate below, we will seek further information on payments to correctional facilities and whether they cover any costs of service. Finally, in our accompanying Further Notice, we seek comment on whether we should categorically find that payments to correctional facilities are not compensable costs, or whether there are certain compensable costs that those payments can legitimately address.[17]

[16] FCC ICS Order, para. 54.
[17] FCC ICS Order, footnote 203.

4.03 Without assistance from confinement facilities, ICS cannot function. Simply put, ICS does not run itself. The ICS provider installs equipment and facilities but it is confinement facility personnel working in conjunction with and frequently on behalf of the ICS provider that ensures the service operates as intended. Without recovery of their associated costs, there is little incentive for site facilities to continue performing a very necessary role in ensuring that reliable and efficient service is provided to the inmates. Absent any recognition of site facility costs in ICS rates, the Commission is concerned that inmates may not continue enjoying the same level of access to existing and emerging ICS services. In his Dissent, [FCC] Commissioner Pai notes that this [the FCC] Order recognizes that excluding site commissions from cost data used to develop our safe harbor benchmark and rate cap may be an "under inclusive approach given that correctional institutions themselves often incur costs to provide ICS and those costs may need to be included in any costs-of-service estimates."[18]

4.04 The Commission intends to identify and quantify the site facility costs applicable to ICS in Alabama and to provide that information for the FCC's consideration in their ongoing interstate ICS reforms proceeding. Therefore, the Commission seeks the cooperation of state, county, and local confinement facility management to assist Commission staff with this endeavor.

4.05 <u>FCC Order Does Not Preclude ICS Providers from Paying Site Commissions</u>

Following implementation of the FCC's interim interstate rate caps in February 2014, several ICS providers serving Alabama confinement facilities notified the facilities that site commissions for interstate calling are being discontinued. The Commission suspects that providers are ending site commissions for interstate calls due to the magnitude of the interstate rate decrease. Prior to February, interstate toll rates in Alabama were $3.95 for the operator surcharge per call plus $0.89 per minute. These rates were not set by the Commission which has jurisdiction only over intrastate rates. The FCC's ICS Order is their first attempt at regulating interstate rates. The Commission, however, has been

[18] FCC ICS Order, footnote 203.

regulating intrastate rates for several years.

4.06 A 15-minute, interstate, prepaid call under the preexisting interstate rate structure would result in a $17.30 charge to the subscriber. Alabama's existing intrastate price for the same 15-minute toll call is $6.75, a difference of $10.55. The FCC's newly implemented interim rate caps price interstate collect calls at $0.25/min and prepaid/debit calls $0.21/min. A prepaid interstate call that previously yielded $17.30 in revenue for the ICS provider now yields only $3.15; a decrease of $14.15 per 15-minute call. The FCC's interim interstate rate caps are based on the cost study submitted by Pay Tel.[19] Pay Tel is a small to medium sized provider that presently serves only jails. Pay Tel reports average actual and projected costs for debit and collect ICS calls of $0.208 per minute and $0.225 per minute, respectively, inclusive of additional fees for continuous voice biometric identification service.[20] For the above referenced 15-minute interstate call now capped at $3.15, Pay Tel's average reported cost for the call is $3.12[21] resulting in a margin of $0.03. Prior to implementation of the FCC's interim rate caps, Pay Tel's margin for the call was $14.18 ($17.30 - $3.12). Providers with similar costs that deny site commissions for interstate calls on the basis that there is now insufficient revenue to support the payments have a legitimate claim. However, any ICS provider denying site commissions on the premise that the FCC prohibits such arrangements is incorrect.

> We do not conclude that ICS providers and correctional facilities cannot have arrangements that include site commissions. We conclude only that, under the Act, such commission payments are not costs that can be recovered through interstate ICS rates. Our statutory obligations relate to the rates charged to end users—the inmates and the parties whom they call. We say nothing in this Order about how correctional facilities spend their funds or from where they derive. We state only that site commission payments as a category are not a compensable component of interstate ICS rates. We note that we would similarly treat "in-kind" payment requirements that replace site commission payments in ICS

[19] FCC ICS Order, para. 76.
[20] FCC ICS Order, para. 75.
[21] Reported prepaid per-minute cost of $0.208 @ 15 minutes = $3.12.

contracts.[22]

4.07 The FCC's position is that site commissions should not be included in the costs upon which interstate rates are based. To the extent that the FCC's interim rate cap exceeds the provider's costs, a margin exists from which site commission payments are possible.

> The interim rate caps we establish are not a finding of cost-based ICS rates because we use the highest costs in the record, which include the costs of advanced ICS security features, to set an upper bound for interstate rates that will be subject to cost justification.[23]

4.08 Commission Does Not Preclude Intrastate Site Commissions

The Commission acknowledges that confinement facilities may incur costs associated with providing ICS and is committed to identifying and quantifying such costs to the extent they exist and are quantifiable. Additionally, the Commission does not preclude recognition of site commissions in establishing intrastate ICS rates. Regardless of debate over the appropriateness of facility site commissions, such commissions are nevertheless embedded within the current and projected funding for many confinement facilities. The FY 2015 budgets, for instance, have already been approved by policy makers. The first and second-year ICS rates proposed in section 6.00 of this Order are higher than the Commission's targeted rates in year three. The initially higher rates provide an opportunity for confinement facilities to request a higher site commission than may otherwise be provided under the targeted rates for year three as policy makers with fiscal oversight deal with any projected budgetary shortfalls from potential site commission reductions. The Commission takes such action to safeguard the public interests. Additionally, the targeted debit and prepaid call rate cap in year three for jails ($0.25/min) is higher than the FCC's interim rate caps for interstate debit and prepaid calls ($0.21). For purposes of addressing future site commission payments, the Commission urges ICS providers and confinement facilities to consider the differences between intrastate and interstate interim rate caps.

[22] FCC ICS Order, para. 56.
[23] FCC ICS Order, para. 74.

4.09 Inflated Site Commissions

The Commission acknowledges that facility site commissions are frequently the primary driver for confinement facility selection of the ICS provider. Intense competition among providers to secure contracts as the confinement facility's exclusive ICS provider has resulted in increasingly higher site commission commitments.

4.10 Site commissions apply to debit, prepaid, direct billed and, for the most part, collect call usage. Site commission commitments applicable to the aforementioned ICS calls do not apply to certain collect inmate calls. Securus, for example, prices "Pay Now" and Text2Connect calls at $14.99 and $9.99 respectively. In their contracts with confinement facilities, Securus refers to "Pay Now" and Text2Connect services as promotional offerings. Securus pays facilities $1.60 (10.7%) of the $14.99 revenue for Pay Now calls and $0.30 (3.0%) of the $9.99 revenue for Text2Connect calls. The total Pay Now and Text2Conect calls are reported in site facility commission settlement statements but associated call usage and revenue for the calls is not disclosed. Therefore, the Commission questions whether the associated minutes of use for these single payment services were likewise excluded from cost data submitted to the FCC. Purchasers of the services paid for the allowed call duration regardless of the minutes actually utilized. Therefore, the purchased minutes and associated revenue are reportable for such calls.

4.11 Relationship to Ancillary Charges

Site commissions are not applicable to ancillary charges (fees) assessed by the provider. Existing intrastate ICS rates and caps were approved by the Commission in March, 2009. Therefore, all ICS providers are limited to the same maximum charges for ICS calls. Nevertheless, site commissions offered by providers have soared. The highest site commission known to exist in Alabama is 84.1% offered by ICSolutions to a county jail. Another Alabama jail is receiving 82% site commissions from Telmate. Based on data obtained by the staff during this proceeding from ICS providers serving confinement facilities in Alabama, the average toll call duration is 10.4 minutes (would be billed as 11 minutes). An 11-minute intrastate ICS toll call, priced at the existing intrastate toll cap,

results in a $5.55 charge. A provider that pays 80% site commissions retains $1.11 of the toll call or $0.101/min. Existing ICS local calls are capped at $2.75 and the average local call duration in Alabama is 10 minutes. For an 80% site commission, the ICS provider retains $0.55 per local call or $0.055/min. Local ICS calls, on average, comprise 81% of all ICS calls in Alabama. Therefore, the weighted average call revenue retained by an ICS provider paying 80% site commissions is $0.064/min. The Commission postulates that ICS providers offering abnormally high site commissions are either grossly exaggerating their reported service costs or they are compensating for calling revenue losses by substantially inflating ICS charges that are not exposed to site commissions, i.e., the numerous ancillary charges (fees) that the provider assesses to its ICS customers. Prison Policy Initiative made the following observation:

> …in order to collect revenue to make up the money lost to commissions, prison telephone companies add hefty charges through multitudes of extra fees that often nearly double the price of a call.[24]

4.12 In its ICS Reform Order, the FCC focuses heavily on rates and site commissions as the primary reasons for the high prices paid by ICS customers. In paragraph 38 of its ICS Reform Order, the FCC touts states that have eliminated site commissions and the associated lower ICS usage rates that follow. Paragraphs 63-71 of the FCC's ICS Order, indicates that the FCC's safe harbor rates relied heavily upon rates[25] effective in the states that deny site commissions. However, rates and site commissions are only a portion of the service price borne by customers. The Commission performed a cursory review of the ICS tariffs in those states cited in the FCC ICS Order and, for the most part, found the tariffs notably silent with respect to identification of ancillary charges. Usage charges in conjunction with ancillary charges comprise the total price for ICS. As previously acknowledged, the Commission agrees wholeheartedly with the FCC that site commissions, specifically excessive site commissions, can substantially drive up ICS

[24] *Please Deposit All of Your Money*, page 2.
[25] The Commission notes that the FCC set safe harbor rates not by analysis of costs but on the basis of the rates charged in those states that deny site commissions.

rates. However, revenue shortfalls from the application of disproportionately low usage rates can just as easily be counterbalanced by bloated ICS ancillary charges to the same extent that such charges are used by providers to compensate for facility site commission payments.

4.13 Prepaid Inmate Calling Cards Provide the Equivalent of Site Commissions

Implementation of the FCC's interim rate caps for interstate service failed to curtail ICS provider enthusiasm for selling their debit service to canteen/trust fund operators and/or confinement facilities in both prisons and jails at 40% to 60% of the prepaid inmate calling card face value. Canteen/trust fund operators and/or confinement facilities resell the prepaid calling cards to inmates for full face value and retain the margin.

4.14 The Commission questions this practice for several reasons. Sales of prepaid inmate calling cards for a price that includes extremely generous discounts off the "retail price" of the service undermines any provider contention that the FCC's interim rate caps are set too low. The Commission assumes the providers are not selling their service below cost and are likely earning a margin on the sale of service from the prepaid cards. Additionally, the Commission assumes the providers are in compliance with Commission Orders and are pricing calling card calls at the approved rates. The FCC caps debit service rates for inmates at $0.21 per minute. With sales of prepaid inmate calling cards at a 40% to 60% discount of the capped inmate charge for debit service, the provider's effective sales price for debit service using the cards is $0.084 to $0.126 per minute. Assuming a 15-minute average call duration, the calling card discount range referenced above results in effective intrastate rates of $0.07 to $0.11 per minute for local calls and $0.18 to $0.27 per minute for toll calls, based on existing intrastate rates in Alabama. Of course, the inmate sees no such economic benefit, paying the full per minute rate for the service. The economic benefit is reserved for the resellers of inmate phone service within the confinement facility.

4.15 If the ICS providers are willing to sell their debit service to an intermediary at a 40% to

60% discount, the Commission questions why the providers can't offer the same discounts directly to the inmates. Can similar discounts be provided on prepaid service for inmate families? Furthermore, the Commission seeks to determine the extent that wholesale service offerings inflate cost data supporting retail ICS rates. Should wholesale operational and administrative costs, along with an allocated portion of provider overhead expense be separated from cost studies supporting retail rates?

5.00 ICS BASIC SERVICE REQUIREMENTS

5.01 Initial Inmate Call

The October 1, 2013 Order for this proceeding, as amended and supplanted by the Errata and Substitute Order Proposing Revised Inmate Phone Service Rules and Establishing a Comment Period issued on October 7, 2013 (collectively, the "Order") recommends that ICS providers offer new inmates an initial call at no charge:

> To ensure that newly confined inmates are provided ample opportunity to inform family members of their confinement status, identification of the confinement facility ICS provider, and procedures for establishing a prepaid ICS account, staff recommends that new inmates (those transferred from another confinement facility and/or newly processed into the confinement facility regardless of previous booking instances) be provided an initial two (2) minute call, at no charge…[26]

The Commission Order also states that ICS providers will not charge inmates for calls to the designated customer service number for the ICS provider (Order, page 24)

5.02 Several commenters indicate they make such a call available to new inmates. Pay Tel provides an initial one-minute free call to inmates in those circumstances when the initial inmate call is not otherwise billable as a traditional collect call.

[26] Order, Part III K, page 23.

> We have found that this one minute call allows adequate time for the inmate and called party to exchange essential information and then allows the called party to connect immediately to the Pay Tel call center for assistance in setting up a prepaid account. With collect calls that are billable through the Local Exchange Carrier, however, there is no need to establish a prepaid account. As such, the call is simply processed as a collect call.[27]

5.03 AMTEL provides a free three-minute initial inmate call when such calls cannot be billed as collect (AMTEL comments, page 2). CenturyLink indicated that it is willing to accept a requirement for a free initial inmate call but asserts that a two-minute period is excessive (EPSI subsequently renamed "CenturyLink" comments, page 10). CenturyLink also reminds the Commission that inmates are not authorized to speak with live operators making the Commission's requirement for inmate access to the provider's customer service problematic (CenturyLink comments, page 11).

5.04 GTL recommends changing the call duration to 30 seconds:

> GTL is not opposed to providing limited free inmate calls in the specific situations outlined in the Order; however, GTL recommends that the time limit for such calls be reduced to 30 seconds. Thirty seconds provides ample time for an inmate to inform his or her family about his or her whereabouts. Once the initial 30 seconds is complete, the ICS provider can then provide the family member information on establishing an account for further communications with the inmate.[28]

Additionally, GTL reminds the Commission that inmates are not permitted to dial toll-free numbers for the provider's customer service.

> The Order also suggests that ICS providers cannot charge inmates for calls to the designated customer service number for the ICS provider. Under the Commission's rules, inmates are not permitted to call toll-free numbers, and the ICS provider must block all calls to toll-free numbers (in addition to other types of prohibited

[27] Pay Tel comments dated December 5, 2013, pp 10-11.
[28] GTL comments dated December 6, 2013, pp 15-16.

> numbers). Inmates therefore are not permitted to call GTL's customer service number, which is required to be a toll-free number under Commission rules. Individuals using GTL's services, however, have numerous other ways to contact GTL. GTL's contact information for its billing and customer service departments is included on customer bills for those customers placing collect call charges on their local exchange carrier bill, and is also available on GTL's website. To ensure inmates have access to information regarding GTL's services, GTL makes posters available in correctional facilities, which can be hung in each individual inmate calling location. The poster provides detail on the applicable call rates, instructions on how to place a call, and contact information for lodging complaints and inquires. This information usually is provided in both English and Spanish. GTL also provides ongoing comprehensive training to facility personnel to ensure they have the knowledge to answer inmate questions in regards to ICS usage, rates, and charges.[29]

5.05 NCIC (comments, page 1) and Securus are opposed to a requirement requiring an initial inmate call at no charge. NCIC recommends that the policy on initial inmate phone calls be left to the contracting parties. Securus is opposed to providing an initial inmate phone call without compensation and challenges the Commission's authority to oppose such a requirement.

> The Commission proposes a procedure by which ICS providers must allow a new or newly transferred inmate a free, initial two (2) minute call at the end of which instructions would be provided for establishing an ICS account with the ICS provider. The Commission's recommendation amounts to a taking without just compensation because it fails to allow the provider to recover the costs associated with providing such free 2-minute call when a significant amount of the costs associated with the call are incurred with the initial connection of the call. Moreover, such proposal would require Alabama confinement facilities, already operating on very limited budgets, and to operate and administer the free 2-minute phone call system when the Commission lacks jurisdiction to impose such mandates upon another state agency. Moreover, any attempt to impose upon the ICS provider all of the costs for such initial inmate call without recovery amounts to a taking by the

[29] GTL comments dated December 6, 2013, page 16.

Commission without just compensation to the ICS provider.[30]

5.06 The Commission does not concur with the comments of Securus that it lacks jurisdiction in this matter. The Commission fully regulates ICS and may, therefore, establish minimum requirements for providing the service. There was no attempt to impose a mandate upon another state agency. To the extent that confinement facilities authorize inmates to initiate telephone calls, the proposed requirement affects charges for the call that are borne entirely by the inmate. The confinement facility pays nothing for the call or any other ICS call and is, therefore, unaffected by the requirement.

5.07 The Commission is persuaded by the comments referenced herein to grant providers broad discretion with respect to an initial inmate call allowance. ***Therefore, the Commission modifies the recommendation from its Order and authorizes providers such discretion without imposing a minimum requirement. Nevertheless, the Commission encourages ICS providers to offer accommodation for an initial inmate call, at no charge, when the call cannot be complete via traditional collect billing arrangements. Such an accommodation offers inmate families the opportunity to establish contact with inmates and arrange for prepaid or debit calling services.***

5.08 The Commission concedes that inmates are not authorized to speak with live attendants. Therefore, any requirement that inmates be provided with toll-free access to ICS provider customer service is impractical. Nevertheless, existing Commission Rule T-15.1(B)(8) requires ICS providers to provide a toll-free number for customer service inquiries. ***Consequently, the Commission requires that prepaid and direct billed customers be provided a toll-free number for customer service inquiries. For debit service customers, providers shall include in the tariff filed with the Commission their procedures for addressing inmate service and billing related inquiries.***

5.09 <u>Minimum Customer Account and Service Information Requirements</u>

[30] Securus comments dated December 6, 2013, pp 9-10.

In Section III I of the Order, the Commission recommends minimum account information be provided to ICS customers:

> Commission Telephone Rule T-5(C) requires that detailed monthly electronic or paper account statements be provided to customers at no charge. Monthly, individualized ICS customer account statements must be provided to ICS customers of debit, prepaid, and direct billed service (including VVS). The default customer account statement shall be in electronic format, available over the internet and printable. The most recent three-months of statements shall be maintained online. In lieu of an electronic statement, a paper bill, mailed or faxed to the customer (customer's option), shall be provided at the request of prepaid and direct-billed customers (debit service excluded), subject to the paper bill fee…[31]

Additionally, the Order recommended inclusion of certain customer service information on the customer account statement and that the provider's website include Alabama specific rates and other Alabama specific information:

> Electronic and paper account statements shall include the provider's toll free number for customers to call in order to inquire about the information listed on their statement of payments/charges and/or to discuss suspected billing errors and/or service issues. Additionally, the Universal Resource Locator (URL) to the provider's ICS website shall be listed. The provider's toll-free number and URL shall be prominently displayed in font size that is easily located by the consumer.

5.10 With respect to customer account information requirements for debit accounts, CenturyLink responded:

> …debit users are inmates and, due to correctional facility policies, EPSI cannot send detailed customer account statements to them by mail. EPSI does provide detailed debit account reconciliations to detention staff and to company representatives who handle inmate complaints, and who could provide the information to the inmates. The Order should be amended as it relates to debit services to accommodate current practice and procedures.[32]

[31] Order, Part III I, page 20.
[32] CenturyLink comments, dated December 6, 2013, page 8.

5.11 Pay Tel uses a similar system for providing account information to inmates:

> While Pay Tel has and will continue to provide detailed monthly statements to each of its prepaid and direct billed customers, we do not automatically provide this to the inmates for debit accounts. Being incarcerated, inmates do not have ready access to the internet to log in and look up their accounts. In addition, Pay Tel is typically only on-site to perform repairs, and for security reasons our time in the detention areas of the facility is strictly controlled. There is no easy way to distribute inmate statements for debit accounts without expecting facility personnel to print and distribute them. Pay Tel does provide a debit account activity statement (a sample of which is provided as Exhibit B) to any inmate upon request.[33]

Inmates in facilities served by Pay Tel may request an account statement from the floor officer within the cellblock. The floor officer may email Pay Tel Tech support and/or open a service ticket requesting the account statement. Pay Tel subsequently emails the account statement to the floor officer who prints the statement and provides it to the inmate. Pay Tel does not charge the confinement facility or the inmate for the debit account statement.

5.12 Securus objections with respect to alleged Commission requirements for written debit and prepaid service account statements (Securus comments, pp. 8-9) reflect an apparent misinterpretation of the Order. The Order exempted debit service from any requirement for written account statements and made such statements optional for prepaid customers, subject to a paper bill fee. GTL objects to electronic bill statements for debit service:

> GTL, however, questions the feasibility of providing electronic account statements to debit customers, i.e., inmates. Inmates generally have no way to access the Internet in order to retrieve account statements or to review the Alabama specific website the Order would require. The Order already recognizes that a paper bill is not required for debit service, and the same exclusion should apply for electronic statements.[34]

[33] Pay Tel comments dated December 5, 2013, page 8.
[34] GTL comments dated December 6, 2013, page 14.

5.13 The Commission concedes that electronic account statements for debit service are impractical since inmates are denied internet access. Additionally, paper statements for debit service cannot be distributed without participation from confinement facility personnel.

5.14 The Commission modifies the requirements of the Order for customer account statements. ***For prepaid and direct billed service, monthly electronic customer account statements shall be provided, at no charge. Customers will be provided access to their electronic account statements for the most recent three months activity. Optional paper bills shall be provided for prepaid and direct billed ICS subject to the optional paper billing ancillary charge referenced in Section 8.00 of this Order. Electronic and paper account statements shall include the provider's toll free number for customers to call in order to inquire about the information listed on their statement of payments/charges and/or to discuss suspected billing errors and/or service issues. Additionally, the URL for the Commission's ICS webpage shall be listed on the account statement. The provider's toll-free customer inquiry contact information, and Commission URL shall be prominently displayed and of no smaller font size that that used for listing the charges and fees.***

5.15 ***For debit ICS, electronic account statements are not required. However, if requested by the confinement facility, monthly account statements on paper shall be provided, without charge to the inmates or the facility, for dissemination by facility personnel to inmates in the manner cited by CenturyLink. Optionally, and at the discretion of the facility, account statements specifically requested by inmates shall be submitted to designated confinement facility personnel, via email or FAX, at no charge to inmates or the facility, for dissemination in the manner cited by Pay Tel. Both methods are previously referenced in this Section. ICS contracts shall offer the confinement facilities one of the options or their choice from both options for providing inmates with monthly debit account statements contingent upon the confinement facility's election to provide such debit account information to inmates.***

5.16 Customer Account Statement Format

The Order establishes minimum informational requirements for customer account statements.[35] In Exhibits A through C of their comments[36], Pay Tel provided the Commission with examples of their online account statements and their debit account transaction history. The Commission approves of the detail Pay Tel provides its customers in online account statements and revises the Order to require the following minimum account statement information:

Prepaid and Direct Billed Service Account Statements

General Information

Provider contact information for customer billing inquiries, the Alabama PSC ICS webpage URL, customer account number, account statement date, account activity period.

Call Detail

Each call will be listed individually and shall include call date, call start time, call duration in minutes[37], call origination location, call rate, and call charge.

Payments

Payments into the account shall be listed individually. For each payment, providers shall indicate the date the payment was received, the payment method, and the payment amount.

Activity Period Charges

The following shall be listed individually: total call charges, Alabama Utility Gross Receipts Tax, Federal USF fee, other Federal fees, and total current charges.

[35] Order, Section III I, Page 21
[36] Pay Tel comments dated December 5, 2013, pages 18-20.
[37] Calls will be billed in one-minute increments with fractions thereof rounded to the next whole minute.

Account Summary

Beginning account balance (from preceding account statement ending balance), total customer payments submitted during the current activity period, total current charges, and the ending account balance (funds available).

The account statement need not follow the recommended terminology or category headings listed above but the minimum information included therein and separation into the specified level of detail shall nevertheless be provided.

Debit Service Account Statements

General Information

Inmate name, inmate I.D, confinement facility name.

Payments

Payments into the account shall be listed individually. For each payment, the provider shall include the payment receipt date and payment amount.

Activity Detail

Each call shall be listed individually and shall include the telephone number called, date/time of call, call duration in minutes, call charge, Alabama Utility Gross Receipts Tax, and account balance.

5.17 Kiosk Receipt for ICS Payments

The Order established minimum informational requirements to be included on customer receipts associated with kiosk payments or transfers of funds from the inmate's canteen/trust fund to their debit ICS account at kiosks.

> For payments at kiosks, the customer receipt shall provide the customer name, transaction date, identity of the account to which the payment applies, amount paid, payment processing fee, and

balance applied to the customer's ICS account.[38]

CenturyLink expressed concern over these requirements:

> EPSI also has concerns relating to the requirements for payments made at kiosks. Kiosks are often provided by the commissary or inmate banking system provider and are offered as a convenience. Imposing specific requirements for kiosks creates the risk that these providers will decline to make the kiosks available. Diminished availability of the kiosks would be detrimental to customers because the kiosks are a primary funding channel for cash-only consumers, while other cash-payment options such as cashier's checks, money orders or Western Union are subject to higher fees from third parties. The availability of account funding information within monthly account statements should significantly reduce concerns about consumer disclosures for kiosk transactions.[39]

The Order makes clear that there shall be no up-front assessment of taxes and government fees associated with ICS payments.[40] Therefore, the only provider charge that shall be assessed when payment is made at a kiosk is the authorized payment processing fee for debit/credit card payments or the authorized convenience fee for transfers from inmate canteen/trust funds to ICS debit accounts.

5.18 ***The Commission revises the Order with respect to information requirements for kiosk payment receipts. The kiosk receipt shall list payee identification information, the method of payment, the date and amount of payment and the applicable payment or convenience fee. Alternatively, ICS providers may post signage on or within close proximity of the kiosk identifying the authorized payment or convenience fee by payment type (debit/credit card or transfer from canteen/trust funds). The use of signage identifying the applicable payment or convenience fee relieves the provider of the requirement to include such information on the kiosk receipt. Taxes and government fees shall be assessed only when the ICS service is used and, therefore,***

[38] Order, Section III I, Page 21.
[39] CenturyLink comments, dated December 6, 2013, page 8.
[40] Order, Section III D, Page 12.

shall not be assessed on payments.

5.19 Webpage Requirements

The Order requires that providers establish a webpage for Alabama specific ICS information.

> The Provider's ICS website shall have a webpage specifically devoted to Alabama ICS. The Alabama specific ICS webpage shall include the following information:
>
> (1) available services;
> (2) payment options (including information about kiosks);
> (3) ICS rates;
> (4) ICS fees;
> (5) description and rate/amount of the State Utility Gross Receipts Tax and government fees;
> (6) monthly customer statement options (electronic or paper);
> (7) refund procedures;
> (8) customer service contact information;
> (9) a link to the Alabama PSC ICS webpage (to be provided by the Commission).[41]

5.20 CenturyLink objects to the webpage requirement:

> The requirement that ICS providers maintain an Alabama-specific webpage is particularly problematic. The resources and costs necessary for EPSI to develop and maintain a webpage solely for its inmate services in Alabama make the requirement unduly burdensome for EPSI. It is important to note that specific ICS rates, available services and payment options are determined by the facility, rather than applying identically throughout Alabama. Most if not all of the information required to be provided on the Alabama website is already generally available when a customer's account is funded or serviced, except for a link to the Alabama Public Service Commission website. As an alternative to the website requirements imposed in the Order, EPSI suggests that it could provide a "referral link" on the company's home page for "Alabama customers" which would then state the following:
>
> > Inmate calling services are regulated by the Alabama PSC. As each facility has different rules

[41] Order, Section III I, Page 21.

> and available services, please visit our customer service portal [link] to the find the information relevant to the facility from which you are receiving calls.[42]

5.21 Pay Tel's comments are similar:

> Pay Tel fully supports the requirement for pertinent information to be available to customers and potential-customers on vendor websites and that rate/fee/policy information should be available to interested parties before being required to register or open a new account.
>
> We request clarification of the Alabama specific webpage. The ICS rates and fees may be state specific, however virtually all of the other requirements are the same for every state that Pay Tel serves. Today, a customer can visit the Pay Tel website and view available services, payment options, customer statements, refund procedures, and customer service contact information. See attached Payment Options page in Exhibit D. In addition, by clicking on a specific state on our service map, the customer will be able to view state-specific rates by facility and view Pay Tel's state tariff as well. See attached Rates pages in Exhibit E Adding a link to the Alabama PSC from this page would be easy to implement. We request that the Commission clarify its website requirement to ensure that all of the desired information is provided without the necessity to duplicate every portion of the existing website in an Alabama-specific page. One option would be for the vendor to provide a link to the Payment Options page and any other required information from the Alabama landing page.[43]

5.22 The Commission's intrastate ICS reforms provide uniformity in rates, fees, and other ICS requirements making possible a webpage that is applicable to all ICS providers in Alabama. ***Therefore, the Commission revises its previous recommendation. Providers are not required to provide an Alabama specific page of rates and services on their website. The Commission shall create a webpage for ICS in Alabama. In addition to information about intrastate service, rates, fees, refund procedures, complaint***

[42] CenturyLink comments, dated December 6, 2013, page 9.
[43] Pay Tel comments dated December 5, 2013, pages 9-10.

procedures, etc., the Commission shall provide a list of confinement facilities and identify the ICS provider serving each confinement facility. Additionally, pertinent extracts from the ICS provider tariff shall be accessible from the webpage. ICS providers shall provide a link to the Commission ICS webpage on their website along with the following recommended verbiage: "Alabama Inmate Calling Service customers may click here [Link] for information from the Alabama Public Service Commission about services, rates, fees, refunds, complaint procedures and other useful information applicable to Inmate Calling Service in Alabama."

5.23 Customer Payment Limits

The Order prohibited providers from establishing any limits on maximum customer payments:

> The provider will not establish a ceiling on the payment that may be submitted by a customer, regardless of payment method utilized. Such artificial barriers deprive the customer of available "economies of scale' with little increase in the provider's actual costs. The staff believes such ceilings can be used to force customers into paying the provider's processing fees more frequently. Consequently, the maximum payment processing fees referenced herein are flat-rated regardless of the payment amount and method of payment.[44]

5.24 Telmate responded to the Commission's proposed elimination of payment caps by pointing out that payment caps reduces provider exposure to credit card fraud:

> ICS providers should be allowed to set fraud thresholds of $100 per twenty-four hour period and $300 per month. Under the proposed ICS rates, these thresholds would permit sufficient economies of scale to shield customers from unreasonably frequent fees while, at the same time, insulating providers from fraud risk and protecting inmates from extortion risk—both of which are higher among inmate populations than in typical markets.[45]

[44] Order, Section III G, footnote 5, page 21.
[45] Telmate comments, dated December 6, 2013, page 3.

5.25 Pay Tel concurs:

> We agree that the limit of a payment should not be set arbitrarily low to force families into making multiple small payments and therefore incurring multiple fees. However, to protect against the higher costs and fraud risks associated with large credit card deposits where customers can "Deny All Knowledge" of the charges within thirty days; we believe that a better approach would be to set a deposit cap of no less than $100 per deposit. Based on Pay Tel's data, the average credit card payment is $27.63; and 92% of deposits are less than $50. Only 1% of payments are $100 or more where there is no cap, therefore the impact of requiring a deposit cap of not less than $100 is minimal to consumers.[46]

5.26 CenturyLink also points out the problems associated with credit card fraud but urges the Commission to consider the issue of minimum customer payment thresholds set be some providers.

> First, EPSI agrees that "guaranteed funds" payment methods, such as Western Union payments and cashier's checks, do not need to have funding limits. However, credit and debit card payments are prone to fraud and charge-backs, so that providers must have the ability to work with their merchant banks to establish funding limits for these payment mechanisms. Further, while the Order focuses on funding maximums it ignores the more serious problem of funding minimums. These minimums can be abused by providers who can force customers to fund amounts of $25 or more and then make it very difficult for them to obtain refunds of unused amounts. EPSI believes the Commission should also address this potential avenue of customer abuse and require that funding minimums be prohibited.[47]

5.27 Based on the comments, the Commission concedes that there are issues with potential debit/credit card fraud. The $100 per payment (deposit) recommended by Telmate and Pay Tel is a reasonable approach to addressing the issue of debit/credit card fraud without severely limiting payment maximums. The Commission agrees with CenturyLink that the issue of funding minimums should also be addressed. The Commission can conceive

[46] Pay Tel comments dated December 5, 2013, pages 3-4.
[47] CenturyLink comments, dated December 6, 2013, page 7.

of no possible justification for requiring that customers deposit more funds than they desire to submit to the provider or any amount that is exceeds their financial means before accessing ICS. ***Therefore, the Commission revises its Order to prohibit ICS providers from establishing payment maximums for cash, money order, check, and online banking customer payments (deposits). The ICS provider may establish a maximum limit of $100 per payment for debit/credit card transactions and a limit of $300 for total debit/credit card payments during the most recent 30 (thirty) day period. Providers have the flexibility and are encouraged to increase the maximum payment limits, on a case-by-case basis, for customers who have demonstrated to the provider's satisfaction, by past payment activity or by their financial means, that they do not pose a risk for fraudulent debit/credit card payments. Furthermore, the Order is revised to prohibit providers from establishing any funding minimums for debit/prepaid ICS.***

5.28 Limitations to Calling List Associated with Prepaid ICS Account

Inmate calls to any of the telephone numbers included on the prepaid ICS account authorized calling list will be charged to the funds in the prepaid account. Having multiple numbers associated with the prepaid account can be beneficial to both the subscriber and the inmate. In addition to the subscriber's wireline phone number, their wireless phone number can be associated with the account along with wireless numbers belonging to their children and/or numbers associated with the inmate's parents. Associating multiple numbers with the prepaid account frequently eliminates the necessity for prepaid subscribers to establish and fund separate prepaid accounts with the requisite fees associated therewith.

5.29 NCIC allows up to ten (10) wireline or wireless numbers to be associated with a subscriber's prepaid ICS at no charge. Other ICS providers limit the authorized calling list to a single number and some charge a wireless administration fee for any wireless phone numbers linked to the account. The Commission can conceive of no justification for a provider to disallow the association of multiple numbers to a prepaid account if the prepaid subscriber requests that the numbers be linked with the account, and the

confinement facility has no objections to the inmate calling any of the listed numbers. Additionally, the Commission finds no justification whatsoever to charge a fee for including a wireless number with the authorized call list for prepaid service. Absent such justification, the practice unfairly discriminates based on telecommunications technology. The Commission asserts that it is reasonable for ICS providers to include no fewer than 5 wireline and/or wireless numbers to the authorized call list for prepaid ICS at no additional charge or fee to the subscriber. ***Consequently, the Commission revises its Order to require that providers include, at no additional charge, up to 5 wireline/wireless numbers on the call list for prepaid ICS subject to the prepaid subscriber's request that the numbers be associated with their prepaid ICS account. The Commission prohibits assessment of additional charges or fees based on the underlying telecommunications technology associated with any telephone number. Future requests for Commission consideration of any proposed wireless administration fee must be accompanied by a detailed study substantiating the additional costs for including wireless numbers on the authorized call list for prepaid ICS.***

6.00 ICS Rates

6.01 The Order recommends elimination of operator surcharges and adoption of a $0.25/min "postalized" rate for local and toll intrastate calls.

> Staff recommends elimination of existing operator surcharges and establishment of a single per-minute, postalized rate of $0.25 applicable to both local and toll calls, and to both prepaid and collect calls. Like the FCC ICS rates, the staff's recommended ICS rate is intended to recover all associated ICS biometrics and security monitoring costs. Call durations shall be rated in increments of no greater than one (1) minute.[48]

CenturyLink does not object to the proposed rates in the Order[49]. NCIC[50], AMTEL[51], and Pay Tel[52] concurred with the proposed rates. GTL, however responds that it cannot

[48] Order, Section III E, page 13.
[49] CenturyLink comments, dated December 6, 2013, page 4.
[50] NCIC comments, dated December 2, 2013, page 1.
[51] AMTEL comments, dated December 11, 2013, page 2.

support the "arbitrarily low rate of $0.25 per-minute for all ICS calls in Alabama"[53]. GTL went on to compare the proposed ICS rates to those for other carriers in Alabama:

> In addition, the Commission's proposed rate cap is irrationally low when compared to non-inmate, intrastate collect calling offered to the general public in Alabama. Alabama carriers are charging rates for non-inmate intrastate collect calling well above the rate caps proposed by the Commission for ICS. For example, one carrier charges $0.30 per minute for collect calling with per call charges ranging from $1.50 to $4.90, while another charges between $0.11 to 0.23 for the initial minute, $0.09 to $0.24 for each additional minute plus per call surcharges ranging from $0.25 to $4.90 depending on the type of call. These non-inmate collect calling services include no integrated security features, yet they are significantly higher than what the Commission has proposed for inmates who make the same type of calls with the security features that all parties recognize are an essential integrated feature necessary for ICS.[54]

6.02 The Commission notes that GTL cites retail services no longer regulated by the Commission in accordance with the Act. The Commission also notes that most IXCs, toll resellers, and CLECs have withdrawn their tariffs in Alabama. Though not required to do so, some companies continue to submit their tariffs to the Commission for informational purposes in order to claim legal protection offered under the "filed rate doctrine". Such filings receive a docket number but the Commission does not vote to approve the tariffs. In contrast to the ICS provided by GTL, the cited carriers compete in a fully competitive marketplace where customers have a choice of providers.

6.03 Securus also takes exception to the proposed rates:

> The rate cap proposed by the Commission is demonstrably below cost for the Alabama confinement facilities that Securus serves as evidenced by the information provided by Securus to the Commission in response to the Commission's data requests. Further, the Commission's proposal fails to permit a "per call" fee that would acknowledge the reality that a significantly high percentage of ICS call costs are incurred in the initial screening and

[52] Pay Tel comments dated December 5, 2013, page 6.
[53] GTL comments dated December 6, 2013, page 3.
[54] GTL comments dated December 6, 2013, page 8.

> set-up of the ICS call. Such regulation by this Commission fails to permit Securus and other ICS providers an opportunity to recover their costs and to realize a reasonable profit on the ICS service offered at Alabama confinement facilities and must not be imposed by the Commission.[55]

The information that Securus submitted in response to the January 25, 2013 Commission data request included call revenue and minutes-of-use data – not costs. The data indicates that Securus' average ICS revenue in Alabama during CY2012 was $0.27/min[56]. The Order proposes removal of the existing $2.75 cap on local calls thus allowing for additional revenue when local calls exceed 11 minutes (based on the $0.25/min rate proposed in the Order).

6.04 The FCC's $0.21/min interim rate cap for debit/prepaid calls is based on the detailed cost study submitted by Pay Tel:

> We establish an interim rate cap for debit and prepaid interstate ICS calls of $0.21 per minute based on the public debit call cost data included in Pay Tel's cost submission. The costs reported by Pay Tel for debit calling represent the highest, total-company costs of any data submission in the record and therefore represent a conservative approach to setting our interim debit and prepaid rate cap. Specifically, Pay Tel reported that the average of its actual and projected 2012-2015 debit calling costs, excluding commissions and including continuous voice biometric identification fees, is $0.208 per minute.[57]

The FCC notes that the costs submitted by Pay Tel are on the high end of cost data included in the record. The FCC notes that Pay Tel is a relatively small provider that serves only jails and is expected to have higher costs than the larger ICS providers that serve both jails and prisons. Finally, the FCC notes that transport and termination costs are decreasing resulting in corresponding cost decreases for ICS providers.

[55] Securus comments dated December 6, 2013, pp 4-5.
[56] Securus response to Commission Data Request dated March 15, 2013.
[57] FCC ICS Order, para. 76.

> The interim rate cap is also significantly higher than the cost study submitted by Securus. Second, Pay Tel serves jails exclusively, which are generally smaller and which providers claim are more costly to serve than prisons. As a result, we expect that the rates of most facilities, whether jails or prisons, large or small, should fall below this rate. Third, we include Pay Tel's estimated increases in cost projections used to calculate our rate caps, despite record evidence showing that many ICS costs are significantly decreasing. We thus accept at face value Pay Tel's projected costs – costs that it reports to be increasing – which may include costs that we would conclude, after a thorough review, may not be related to the provision of ICS, and costs that it may have the incentive to overstate as the Commission evaluates reform. Finally, we note that Pay Tel's and all ICS providers' transport and termination costs will continue to decline pursuant to the Commission's intercarrier compensation reform, further reducing the cost of providing the transport and termination of ICS. For all these reasons, we find Pay Tel's debit calling cost data to be an appropriately conservative basis for our debit and prepaid rate cap and adopt a $0.21 per minute interim rate cap for debit and prepaid interstate ICS calls.[58]

6.05 The FCC based its $0.25/min interim rate cap for collect calls on the 2008 ICS Provider Data Submission to the FCC which includes data submitted by both Securus:

> In 2008, the ICS Provider Data Submission identified the cost of debit and the adjusted cost of collect ICS calls as being $0.164 per minute and $0.246[59] per minute respectively, assuming a 15-minute call duration. Both Pay Tel and Securus were participants in the 2008 study.[60]
>
> *Collect Call Rate Cap*. We use a similar approach to establish the $0.25 per minute interim rate cap for interstate ICS collect calls. The costs reported by the ICS Provider Data Submission represent the highest costs of any data submitted in the record and represent a conservative approach to setting our interim collect rate cap. Specifically, the ICS Provider Data Submission reported an effective per minute cost for ICS collect calls of $0.246 per minute, assuming a 15-minute call duration. We base our collect call rate cap on this record information and note that this cost is higher than

[58] FCC ICS Order, para. 77.
[59] The actual rate is $0.236 per minute but the FCC added $0.01 to the rate to account for bad debt costs. See footnote 274 to FCC ICS Order, page 42.
[60] FCC ICS Order, para. 75.

> both Pay Tel's and Securus' reported costs of collect calls ($0.225 per minute for collect calls and $0.124 per minute for all calls, respectively).[61]

Therefore, the claim that the proposed rates in the Order are below Securus' costs is unsubstantiated in both the record for the FCC's ICS proceeding and the record for this proceeding.

6.06 Service to Prisons Versus Jails

In it comments to the FCC, the Commission opined that the cost to serve prisons with ICS is likely less than the costs for serving jails[62]. Underlying cost support cited in the FCC Order appears to validate that contention. In response to the FCC's 2012 ICS NPRM, CenturyLink did not file a cost study but "…did file summary cost information for its ICS operations. Specifically, CenturyLink reported that its per minute costs to serve state departments of corrections facilities (excluding site commission payments) averaged $0.116 and that its per-minute costs to serve county correctional facilities (excluding site commission payments) averaged $0.137".[63] CenturyLink indicates that the state departments of corrections facilities it serves produced a median per-minute cost of $0.108, a low per-minute cost of $0.058 and high per-minute cost of $0.188.[64] Pay Tel serves only jails. The cost data Pay Tel submitted to the FCC supports "…average total costs for collect and debit per-minute calling of approximately $0.23 and $0.21, respectively, (including the cost of an advanced security feature known as continuous voice biometric identification)."[65] Therefore, the record suggests a lower interim rate cap is appropriate for prisons.

6.07 Inmates at correctional facilities have longer incarceration periods than jail inmates requiring accounts to be established, funded, and refunded less frequently than jail

[61] FCC ICS Order, para. 78.
[62] *Comments of The Alabama Public Service Commission*, WC Docket No. 12-375, dated December 13, 2013, page 4.
[63] FCC ICS Order, para. 28.
[64] FCC ICS Order, footnote 98.
[65] FCC ICS Order, para. 27.

inmates. Additionally, prisons have larger average inmate populations than most county and municipal jails in Alabama generating higher call revenues and, therefore, lower average costs. Nevertheless, the Commission seeks further cost analysis for purposes of identifying average costs by confinement facility type and by average inmate population.

6.08 Security Biometrics

According to Legacy Inmate Communications:

> Detention facilities are legally required to track, record and monitor all calls made by inmates to prevent illegal activity and prosecute further criminal behavior. At most facilities, inmates are assigned a unique Personal Identification Number (PIN) which they are required to use when making calls. These PIN's are used to track inmate calling patterns, identify call recordings and records, and manage inmate contacts. As an example: an inmate incarcerated for raping someone would not be allowed to contact the victim by placing a contact restriction on that inmate's PIN. [66]

6.09 "Security biometrics" refers to a vast array of software driven features offered by ICS providers. Frequently, the provider's "suite" of tools provided under the heading "security biometrics" includes capabilities and features dedicated to ensuring ICS is provided in a manner that protects the public and inmates embedded with other functions and features that have nothing to do with inmate calling. Embedded features include jail management capabilities and features designed to facilitate communications between law enforcement agencies as well monitoring capabilities, including GPS tracking capability for inmate ankle bracelets.

6.10 ICS providers generally offer voice biometric authentication to confinement facilities. Voice biometric authentication is used to verify that the voice print of the inmate using the phone is matched with the voice print on file for that inmate's PIN. ICS providers record and store an inmate's voice at booking. The recording of the inmate's name is

[66] *Voice Biometrics Enhance Prison Calling Security*, Legacy Inmate Communications blog at http://www.legacyinmate.com/blog/post/voice-biometrics-enhance-prison-calling-security, April 4, 2014.

saved to use with all future calls. When the inmate attempts to access the ICS system, they are prompted to enter their PIN, state their name and often required to repeat a short script to verify that their voice print matches that on file associated with the PIN number they are attempting to use for funding the transaction. Following the initial voice print-PIN match, voice print detection is no longer monitored for the remaining call duration. Additional security is required following voice authentication. "Recording and listening to phone calls is standard practice in correctional investigations and phone system sophistication ranges from simple recording devices to advanced biometrics. Most systems in use include basic recording and pre-call validation features. Investigators listen to calls to obtain information, but it is usually after the fact."[67]

6.11 Monitoring inmate every phone call is impractical due to the volume of inmate calls and the staffing required for performing the monitoring function. In fact, a "best practices" mandate from the Federal Bureau of Prisons in 1999 recommended that state and federal prisons aim to monitor a mere 4% of inmate calls (at random, no less), as a high bar of achievement.[68] Therefore, physical monitoring of phone calls leaves a potential security gap in terms of protecting the public and the inmate population from possible criminal activity.

6.12 Continuous voice biometrics ("CVB") goes beyond simple voice print PIN matching. The intended security provided by voice biometric authentication can be bypassed when, following the PIN-voice match, the inmate is coerced to hand the phone to a fellow inmate. CVB includes a variety of features used in monitoring the entire duration of every call. CVB is able to identify any change in the inmate voice, indicating an attempt by the inmate to mask their identity or a potential change in the person using the phone.

[67] *Correctional News Participates in Technology-Centered Executive Focus Group*, Correctional News at http://www.correctionalnews.com/articles/2012/01/4/correctional-news-participates-in-technology-centered-executive-focus-group, January 4, 2012.

[68] *Determining the Optimal Balance*, Balancing the Cost of Inmate Phone Rates While Protecting Vulnerable Populations — Victims, Witnesses, Jurors, Public Servants, Jail/Prison Staff and Inmates — as well as the General Public, A White Paper in response to United States Federal Communications Commission's Notice of Proposed Rulemaking, in the Matter of Rates for Interstate Calling Services, WC Docket No. 12-375, by Jonathan Klein in Collaboration with JLG Technologies, LLC, July 2013, page 4.

Inmate attempts to mask their identity or handing the phone to another inmate during a call is one indication of potential criminal activity. Additionally suspected three-way calls, prohibited by detention facilities, are detected. Other available features include key word search as well as phonetic word/phrase search to aid in detecting potential criminal activity. Typically the call review is completed automatically after call completion and alerts sent to applicable investigators.

6.13 The recommended maximum ICS rates in the Order include costs for CVB.[69] Telmate, however, argues that providers should be allowed to automatically pass through costs for advanced biometric features to customers.

> The Commission should permit automatic recovery of costs associated with innovative ICS products if, in light of the benefits and cost, the correctional facilities deem them appropriate. Telmate, for example, developed and deploys a secure verification process called TelmateVerified. This patent-pending product, not available through any other industry participant, helps law enforcement prevent and solve crimes—even in real time. That service, however, is too expensive to provide at the recommended rate and does not neatly fall within a proposed fee category. The proposed framework therefore prevents inmates, law enforcement, and the public from immediately benefitting from TelmateVerified's many advantages.[70]

The Commission has no intentions of permitting ICS providers "automatic recovery" from inmates and inmate families for security features it chooses to deploy at confinement facilities. Such security features must be scrutinized in terms of whether there are required to provide secure inmate calling. Furthermore, Telmate is not guaranteed recovery of its development and marketing costs for an exclusive CVB product when a comparable CVB product in available and the costs thereof already included in the interim ICS rates.

[69] Order, Section III E, page 13.
[70] Telmate comments, dated December 6, 2013, page 7.

6.14 Securus seeks authority to charge for advanced security biometrics without prior Commission approval:

> Securus requests that the Commission consider permitting Securus and other ICS providers the opportunity to recover (1) the costs to process customer accounts with wireless numbers, (2) the costs to provide voice biometrics as required by Alabama confinement facilities for security purposes, and (3) the costs to provide specialized investigative and tracking services as required by Alabama confinement facilities for security purposes. Such cost recovery should be permitted by the Commission without the requirement for prior Commission approval.[71]

6.15 The Commission has no intention of relinquishing its responsibility for ensuring that ICS providers include only justifiable and verifiable costs in ICS rates and that end user charges are limited to essential security biometrics. The Commission notes that Securus recently acquired JLG Technologies, LLC and its affiliates, the leading supplier of continuous voice biometric analysis and investigative tools to the corrections and law enforcement sectors. The acquisition uniquely positions Securus to actively pursue new security biometric features and aggressively market them to law enforcement as well as other ICS providers while passing the costs directly to inmates and their families.

6.16 GTL likewise argues for the authority to assess a separate charge for advanced biometric security features:

> The Order states that, like the new FCC ICS rates, the new $0.25 rate cap is intended to recover all associated ICS biometrics and security monitoring costs. Law enforcement officials, however, increasingly are requesting that ICS providers offer inmate phone systems with more advanced security features, which leads to increased costs that ICS providers must recover. Comments filed by the Alabama Sheriffs Association demonstrate the importance of the security features associated with ICS and, more importantly, how those security measures are related to the ICS costs. As the Alabama Sheriffs Association points out, "without these security measures, the risks to institutional security and public safety would

[71] Securus comments dated December 6, 2013, page 7.

> quickly outweigh the benefits of allowing inmate telephone access." GTL currently imposes a $0.45 per-call charge for biometric service when that service is specifically requested by the correctional facility. The indiscriminately low usage rates proposed by the Commission (on top of the proposals regarding fees discussed below) will eliminate the ability of correctional facilities to avail themselves of this critical security feature.[72]

The Commission is not persuaded by GTL's claim that law enforcement officials are increasingly requesting that ICS providers offer inmate phone systems with more advanced security features. In a competitive telecommunications marketplace, end users choose the services they need and/or want commensurate with the price for the services. With ICS, however, the selection of services and the associated price thereof is determined by parties other than the end users. The Commission does not refute the claim law enforcement increasingly covets more tools to assist them with performing their mission. However, the Commission must focus on what is essential for providing inmate calling and for ensuring ICS rates are just and reasonable. Moreover, GTL also states that it charges $0.45 per call for biometrics service when biometrics is requested by the correctional facility. That charge is 80% higher than the $0.25 per call charge that JLG contends is typically charged for its high-end, pre-call and advanced CVB service[73].

6.17 The FCC's interim rate caps include the cost of providing continuous voice biometrics.[74] In Pay Tel's cost study submission for the FCC's 2012 ICS NPRM, Pay Tel's per-minute cost of Investigator Pro™ is shown as $0.0193[75]. The FCC added this per minute CVB cost to Pay Tel's $0.189 average cost for prepaid and debit calls to arrive at $0.208 per minute as the cost for debit and prepaid calls utilizing CVB[76]. The FCC rounded its calculation to $0.21/min, thereby establishing the $0.21/min rate cap for debit and prepaid

[72] GTL comments dated December 6, 2013, page 9.
[73] *JLG Notice of Ex Parte (Gallaso)*, WC Docket No. 12-375 - Rates for Interstate Inmate Calling Services, Rec. July 30, 2013, page 1. JLG indicates that the costs of CVB is $0.02 per minute and that the providers commonly charge $0.25 per call for CVB.
[74] FCC ICS Order, para. 58.
[75] *Pay Tel Communications, Inc., Inmate Calling Services Cost Presentation for WC Docket 12-375 (public Version)*, dated July 23, 2013 (rec. July 24, 2013), Cost Summary.
[76] FCC ICS Order, para. 75.

ICS calls[77]. The FCC's allowance in ICS rates for CVB is supported by JLG Technologies, vendor for Investigator Pro™, which estimates ICS provider cost is $0.02 per minute.[78]

6.18 The FCC's $0.02 per minute allowance in its interim rate caps for CVB is, nevertheless, problematic. ICS providers that charge the maximum allowable rates under the FCC's interim rate caps are compensated for the cost of providing CVB. However, CVB is not widely deployed. JLG's and its "Investigator Pro" product is the industry leader in CVB, counting Securus, Pay Tel, ICSolutions, and CenturyLink as customers. Nevertheless, the system is deployed at only 152 confinement facilities nationwide in 24 of the 50 states.[79] It is not deployed in Alabama. In its June 11, 2014 press release announcing the acquisition of JLG Technologies and its affiliates, Securus revealed that the system is used in only 189 of the over 2,600 confinement facilities Securus serves nationwide.[80] The FCC does not require ICS providers to prove that CVB is used at a confinement facility before charging it customers a rate that assumes its use. Therefore, the Commission concurs with providers that the security biometrics component of the ICS rate should be isolated and applied by providers only when CVB is offered to the confinement facility.

6.19 Security biometrics are essential for inmate voice services and the applicable costs should be borne by ICS end users, provided those biometrics are for purposes of protecting the public and inmates from possible inmate criminal activity and/or inmate intimidation. However, inmate voice service end users should not be required to pay for features and functionality used primarily for purposes that do not directly protect the public and inmates. For example, inmate voice end users should not bear the cost burden for biometrics supporting video visitation, jail management systems, automated inquiry systems, non-related investigator tools, cell phone detection technology, ankle bracelets,

[77] Supra footnote 57.
[78] Supra footnote 73.
[79] *Who Our Customers Are*. JLG Technologies website, URL: http://jlgtechnologies.com/customers/index.shtml
[80] *Securus Technologies, Inc. Announces Acquisition of JLG Technologies and Affiliated Companies*, Securus Press Release dated June 11, 2014.

and data mining.

6.20 Pay Tel requests that the Commission consider additional costs for biometric security services with limitations:

> Pay Tel agrees with the Staff-proposed postalized rate cap of $0.25 per minute, billed in one minute increments, inclusive of voice biometric technology costs. In the interest of continuing to encourage innovation, Vendors could be permitted to submit cost justification for approval to the Commission for any additional ICS-related technology. We recommend that this should be narrowly defined to only those features which are directly related to ICS, and that such requests be limited to once per year.[81]

6.21 Security biometrics is rapidly evolving. New security products that protect inmates and the public from potential crime and/or violence resulting from inmate use of ICS deserve serious consideration. Consequently, there is merit in establishing a rate structure with sufficient flexibility for recognizing evolving security biometric requirements and costs. Moreover, because security biometric costs are spread over the provider's total ICS minutes, the per-minute cost for security biometrics included in rates may conceivably decrease with increased usage. The inclusion of single payment service usage in the per-minute CVB cost analysis may facilitate such decreases. Providers do not presently report single payment minutes but such services also use security biometrics and the prepaid minutes associated with those services rightfully belong in the CVB cost calculations. Therefore, a separate security biometrics price component may prove advantageous to ICS customers. The Commission intends to define the specific security biometrics essential for providing inmate voice service as well as identify features and functionality not recoverable from ICS end users.

6.22 ***The Commission revises its Order with respect to security biometrics to allow for separation of the security biometrics price component from intrastate ICS rates in future ICS rate analysis. The Commission intends to include the prepaid minutes***

[81] Pay Tel comments dated December 5, 2013, pp 6-7.

associated with single payment services in CVB cost calculations. Consequently, providers will maintain and report to the Commission prepaid minutes applicable to single payment services. Additionally, ICS providers shall submit to the Commission, by no later than the implementation date for this Order, a list of the security biometric features provided at each Alabama confinement facility served along with a detailed description of the features and functionality associated therewith and the vendor source for the product(s).

6.23 Interim ICS Rate Caps

The Commission is responsible for ensuring that ICS usage rates are fair and reasonable and for protecting the public interest. Therefore, the Commission must ensure that Alabama confinement facilities are not unduly harmed by Commission action in this proceeding. In Comments filed with the FCC, the Commission requested that the FCC "…consider alternatives to immediate exclusion of site commissions from ICS rates to include capping site commissions, setting a future date when site commissions must be excluded from ICS rates, or capping and phasing-down site commissions." The Commission reasoned that such alternatives "…will reduce the burden on state and local policy makers who are responsible for fiscal oversight of confinement facilities and may protect confinement facilities from the harmful consequences of potential funding shortfalls." [82] The Commission contends that the proposed $0.25 per minute interim rate cap for all ICS calls is fair and reasonable. To ensure that policy makers have ample opportunity to correct any funding shortfalls resulting from potential reductions in site commissions, the Commission seeks to phase down rates to the targeted interim rate caps. Furthermore, the Commission contends that the record supports a lower interim rate cap for ICS at prisons. ***Therefore the Commission revises its Order to set a $0.30/min interim rate cap for all ICS calls at jails during the first year of implementation, reduced to $0.28/min beginning on the first anniversary of implementation, and further reduced to $0.25/min on the second anniversary of implementation. For ICS at***

[82] *Comments of The Alabama Public Service Commission*, WC Docket No. 12-375, dated December 13, 2013, page 3.

prisons, the interim rate cap for all ICS calls is set at $0.25/min during the first year of implementation. The rate cap for prepaid and debit calls shall be reduced to $0.23/min beginning on the first anniversary of implementation and to $0.21/min on the second anniversary of implementation. The rate cap for automated collect calls at prisons shall remain at $0.25/min. The Commission seeks comments from interested parties on whether it should consider reducing the ICS rate caps to the third-year targeted level, on a case-by-case basis any time during the first and second year following implementation, should any ICS provider disproportionately reduce site commission payments to a confinement facility.[83]

6.24 The interim ICS rate caps include cost recovery for CVB. Nevertheless, the Commission finds that security biometrics is rapidly evolving and that there is a lack of consistency in security biometric features and functionality among providers. Therefore, the Commission considers it prudent to separate the security biometrics cost component for detailed and more frequent cost analysis when establishing final ICS rates. The Commission intends to define the specific security biometrics essential for providing inmate voice service as well as identify features and functionality not recoverable from ICS end users. Furthermore, the Commission shall verify which providers are not providing the essential requirements for security biometrics and shall reduce the rate caps for those providers accordingly. ***The Commission revises its Order with respect to security biometrics to require each ICS provider to submit to the Commission, by no later than the implementation date for this Order, a list of the security biometric features provided at each Alabama confinement facility served along with a detailed description of the features and functionality associated therewith. Additionally, ICS providers shall identify the vendor source for each security biometric service or feature.***

6.25 Single Payment Services

The Order recommends elimination of text-connect service and setting the charge for

[83] Based on a comparison of average intrastate ICS usage revenues at the facility preceding and following implementation of the interim rate caps.

"Pay Now" calls at the approved ICS usage rate plus the approved payment processing fee.[84] In response, Securus challenges the Commission's authority to regulate their Text2Connect service:

> The Commission cannot prohibit "text-to-collect" call processing from intrastate ICS in Alabama because (a) the Commission does not have jurisdiction to regulate wireless telecommunication services pursuant to Alabama Code Section 40-21-120(2), and (b) the Commission cannot interfere with contract rates and charges imposed by third parties on Securus and other ICS providers for simply sending a call to the third party for processing the "text-to-collect" call.
>
> As the Commission notes, "text-to-collect" is a call processing service wherein the wireless recipient of an attempted collect ICS call receives a message from a third-party service that identifies the calling party, i.e. inmate and correctional institution, and proposes to complete the call to the wireless recipient for a charge. The recipient is quoted the charge and required to positively accept "twice", i.e. double acceptance, before the call is completed to the called party.
>
> The third party call processor offers this service pursuant to a contract that the third party processor maintains with wireless telecommunication service providers. The fee charged to the called party is established by the contract that the third party processor has entered with the wireless telecommunication service providers. In the event that the recipient of the ICS call proactively elects to accept the "text-to-collect" call, the fee for the "text-to-collect" service is billed on the ICS call recipient's wireless bill. Securus, like other ICS providers, simply allows the calls to be sent to the third party processor for processing. Because the fee charged to the called party is established by a national contract between the third party processor and the wireless telecommunication service providers, the fee is the same throughout the nation, regardless whether the call originated at an Alabama confinement facility or a facility in any other state.[85]

6.26 The Commission is no way attempting to regulate wireless carriers or wireless service.

[84] Order, Section III B, page 11.
[85] Securus comments dated December 6, 2013, pp 2-3.

The charge assessed to the call recipient's wireless bill is not that of the wireless carrier nor does the call originate from a wireless phone. The call originates from an inmate, over a wireline phone, from a confinement facility served by Securus using regulated ICS. The charges assessed to the wireless recipient's wireless bill are those submitted to the wireless carrier by a third-party processor of Text2connect calls. The ICS provider, not the third-party processor, sets the call price and negotiates the percentage revenue retained by the third-party call processor for their services. The wireless carrier's fee for including the charge on their customer's billing statement is established under agreement with the third-party call processor. The arrangement is no different than an inmate collect call submitted by an ICS provider's third-party billing aggregator to a wireline carrier. The third-party billing aggregator pays a fee to the wireline carrier for billing on their customer's monthly statement. The Commission does not interject itself into the contractual arrangements between the third-party billing aggregator and the wireline carrier. Nevertheless, the Commission establishes the end user price for the collect inmate call charged to the wireline end user regardless of the circuitous billing arrangements selected by the ICS provider.

6.27 ICS provider, NCIC, which uses third-party provider Bill To Mobile for its text-connect offering and charges $5.99 for the text-connect call, concurs with the Commission's assessment:

> NCIC recommends that the Commission allow Text-to-Collect offering due to the proliferation of cellular users today. "Text Collect" type products should be permitted, but regulated since the call is not originated from a wireless phone, but instead from an inmate phone terminating to a mobile phone. Although these content providers are not actually providing the service, they do have control over the rates charged to the end user and should be able to charge the rates outlined by the PSC. NCIC is familiar with the service and is aware that IPS providers are able to determine the amount that is charged to the wireless customer. NCIC suggests Text-to-Collect be capped at $5.99 per call.[86]

[86] NCIC comments, dated December 2, 2013, page 2.

6.28 Securus provides its single pay services through 3CInteractive ("3CI"), a third-party call processor for billing services to mobile subscribers, including ICS calls based on its patented Text-Collect™ process. Securus charges $9.99 for its branded "Text2Connect" call. Maximum call times are dictated by the corrections facility. The price for the call is the same regardless of the actual call duration. By comparison, NCIC, a relatively small provider offers its text-connect service for $5.99 - 40% less than Securus.

6.29 Securus' Pay Now™ is a similar service except that the call recipient may elect to bill the call to a debit/credit card. The charge is $14.99 per call up to the maximum allowable call duration. With Pay Now, the calls originate from inmates using ICS and terminate not only to wireless but also wireline subscribers. Securus describes[87] how Pay Now works:

> Pay Now™ is an Automated Operator Service (AOS) offering where the called party pays for each call using a major credit card. This AOS is offered exclusively by Securus Technologies, Inc.
>
> The AOS will prompt the called party to pay with their credit card in order to connect to a friend or family member detained at a Securus-managed corrections facility. Prior to accepting the charge, the calling party's name and the name of the facility from where they are calling is announced to the called party via an Interactive Voice Response (IVR) system.
>
> The called party will also be advised of the cost of the call and the maximum allotted call time.
>
> NOTE: Shorter duration calls or disconnected calls will not be credited for any unused minutes.
>
> The call time is a maximum set duration as dictated by the facility.[88]

[87] The Commission notes that Securus' description of Pay Now makes no mention of any attempt by Securus to steer Pay Now call recipients toward establishing a prepaid calling account.
[88] *How it Works*, Securus Pay Now™ website, URL: http://www.1tel.com/how-it-works.php.

6.30 The Pay Now call recipient's debit/credit card statement contains a URL to Securus' website for Pay Now:

> 1tel.com is a short web address, or domain name, that we use on your credit card statement. We use this domain to make it easier for you to contact us for any service need.[89]

The "Terms and Conditions" page, Item 9, advises customers for the service to direct all notices to 3CI. However, the inmate collect call originates from a confinement facility in which Securus has the exclusive contract for providing ICS. Securus may only provide ICS under authority granted by the Commission through a CPCN. Therefore, Securus, rather than any unregulated intermediary, is responsible to the Commission for the price charged and for customer service inquiries associated with the call.

6.31 ICS Provider Compliance with Commission Telephone Rule T-15.1, Inmate Phone Service ("IPS"), is required. Securus and other ICS providers that fail to identify single payment services and the associated charges in their tariff are non-compliant with Commission rules.

> All IPS providers must file tariffs with the Commission which set forth the services provided along with the charges and surcharges for those services. Tariffs shall also identify the billing and collection methods utilized by the IPS provider; such as LEC or direct billed collect, prepaid calling card, debit account, prepaid collect account and any other payment alternatives.[90]
>
> The operator service and per-minute rates charged the customer for any local (intraLATA/interLATA) collect call shall not exceed the currently effective caps ordered by the Commission. The customer shall not be billed by the IPS provider for any call related or non-call related charges, excluding applicable government taxes and fees, not specifically included in the tariff on file with the Commission. Further, the IPS provider will disclose in the tariff on file with the Commission the identity of all government taxes and

[89] See URL: http://www.1tel.com/faq.php#4.
[90] Commission Telephone Rule T-15.1(A)(2).

> fees that may be assessed the customer.[91]
>
> Any IPS provider wishing to increase rates which exceed the currently effective caps ordered by the Commission shall file a petition with cost justification to the Commission. No rate increases will be implemented without Commission approval.[92]

Additionally, the Alabama Utility Gross Receipts Tax applies to all collect calls originating from Alabama confinement facilities. The Commission is unsure whether ICS providers of single payment services have historically remitted the applicable state taxes for single payment services and shall defer the determination to the ADOR for compliance verification.

6.32 Securus objects to any Commission attempt at regulating the price for Pay Now type services:

> The Commission erroneously seeks to interfere with contractual relationships between Securus and other ICS providers and third party "pay now" call processors by capping the rates that Securus and other ICS providers may charge for "pay now" calls and lacks the jurisdiction to do so. As the Commission notes, "pay now" call processing is a call processing service wherein a collect call from a confinement facility is temporarily connected to a wireless or wireline recipient with the identification of the caller announced by the third-party call processor and the recipient afforded an opportunity to bill the flat rate cost of the call to the recipient's debit or credit card.
>
> The charge imposed by the third-party call processor for the "pay now" call processing service is charged pursuant to a contract between the ICS provider like Securus and the third party call processor. The credit card processing system used by the third-party call process is only capable of imposing a flat fee for the "pay now" call processing service. The fee charged by the third-party call processor for the "pay now" call processing service is the same fee charged throughout the nation without regard to whether the confinement facility call originated in Alabama or any other state. Any attempt by the Commission to cap the fee that Securus or any other ICS provider can charge for offering "pay now" call

[91] Ibid, T-15.1(B)(4).
[92] Ibid, T-15.1(B)(5).

> processing services (a) unreasonably interferes with the ICS providers' contracts with the third-party call processors and (b) restricts the ICS providers' ability to recover the costs incurred by the ICS provider in offering the "pay now" call processing services.[93]

6.33 The Commission rejects the claim that it does not have the jurisdiction to set rates for collect calls. Securus does not dispute the Commission's authority to set ICS collect call rates provided Securus delivers the call. However, Securus advocates Commission surrender of its pricing jurisdiction whenever Securus chooses to convey the billing and delivery functions for ICS calls to a third-party over which the Commission has no regulatory jurisdiction. For the Commission to do so is tantamount to sanctioning an alternative to the Commission's ICS rate regulation, the consequences for which may be incentivizing providers to shift as many inmate collect calls as possible to the more lucrative unregulated price structure. Moreover, the Commission will have created both the precedent and the incentive for ICS providers to pursue third-party service arrangements for prepaid collect and debit ICS calls in order that they too may be shielded from regulation. The Commission asserts its jurisdiction over the charges for collect calls originating from Alabama confinement facilities regardless of any intermediaries the ICS provider chooses to include prior to call termination. Therefore, Securus and other providers may pursue alternatives for billing and delivery of those calls free from Commission interference with the "contractual relationships" associated therewith provided the charge to the end user complies with the Commission's maximum ICS rates.

6.34 Single pay services allow for de facto circumvention of the Commission's capped ICS rates. A Text2Collect call of 15-minutes maximum duration equates to an effective rate of $0.67/min. Subtracting the $3.00 maximum collect call bill processing fee recommended in the Order from the $9.99 Test2Connect charge results in net usage of $6.99 and an effective rate of $0.47/min. The effective rate for a $14.99 Securus Pay Now call is $1.00/min. Subtracting the $3.00 maximum debit/credit card processing fee

[93] Securus comments dated December 6, 2013, pp 3-4.

recommended in the Order from the $14.99 Pay Now charge results in net usage of $11.99 and an effective rate of $0.80/min. The Securus website shows the $14.99 Pay Now charge call fee is $1.80[94] and the "transaction fee" is $13.19[95]. If the call is less than the authorized duration, the effective rates are even higher. With Pay Now collect calls, there is no premium text messaging involved and no fees paid to the wireline or wireless carrier for billing the charge using their customer's account. Nevertheless, Securus charges $9.99 for a Text2Collect call and $14.99, or 50% more, for the same call using Pay Now.

6.35 Free from regulatory oversight, ICS providers could impose their will with respect to charges for single payment services. Additionally, the resulting disparity between capped prepaid call minutes and the much higher charges for single payment services provides no incentive for ICS providers to adequately inform call recipients about the provider's lower cost prepaid service or about funding the inmate's debit call account. Call recipients that visit the 1tel.com website for Pay Now referenced on their credit card statement will not find any mention of Securus' lower priced prepaid calling service alternative. Instead, they are informed, via the frequently asked questions page, that Pay Now calls are limited to $150 or 10 calls per month per customer. Furthermore, the Securus "Friends and Family" services webpage is not linked on the 1tel.com website.

6.36 Single Payment Services Offered by Other ICS Providers

GTL offers service using "collect2phone™", which like Securus' Text2Connect, is priced at $9.99. GTL's Pay Now clone is marketed as "Collect2Card™" and, like Pay Now, is priced at $14.99. The trademarks are registered to 3CI[96]. Credit card charges on the statements of Collect2Card call recipients reference a 2fon.net website. GTL is not mentioned on the website nor is there a link to GTL's "Friends and Family" webpage wherein the recipient may be informed about prepaid collect alternatives. Telmate's text-

[94] The Commission suspects the call fee is set at $1.80 because the lowest ICS local phone call rate is in North Carolina where the rate is $1.71 for a 15-minute call, plus tax, for a total charge of $1.80.
[95] Securus Pay Now™ charges are listed at URL http://www.1tel.com/pricing.php.
[96] URL: http://www.trademark247.com/collect2phone-86054508-1.html

connect offering is branded as Mobile Pay™ and its service for billing collect calls to a credit card is branded as Quick Connect™. The Commission is unable to determine Telmate's end user charge for Mobile Pay and Quick Connect and the underlying third-party provider.

6.37 Commission Pricing for Single Payment Services

The Commission concedes that the nature of text-connect and Pay Now calls makes it impractical to charge for actual call duration. The intent is to inform the call recipient of the total charge up front before seeking customer approval for accepting the charge. Nevertheless, the Commission seeks to ensure that its ICS rate caps are not circumvented using single payment call services. NCIC charges $5.99 per text-connect call and recommends that the Commission authorize ICS providers to provide the service at that rate.

6.38 Single payment call charges consist of a calling element and a transaction fee element. Absent specific cost justification to the contrary, the Commission contends the approved bill processing fee applicable to other ICS collect calls is applicable to text-connect service and the Commission approved credit card payment processing fee, is applicable to Pay Now type service. The Commission's proposed cap for both the bill processing fee[97] and payment processing fee is $3.00 (see Section 8.00 in this Order) which when deducted from the $5.99 charge proposed by NCIC (rounded to $6.00), leaves $3.00 applicable to the call usage element maximum charge. The Commission's proposed maximum collect call rate for prisons is $0.25/min. The $3.00 call usage rate element divided by $0.25/min yields a 12-minute authorized call duration which the Commission imputes as the authorized call duration for single payment service calls in prisons and jails. The Commission notes that the 6% Alabama Utility Gross Receipts Tax is applicable to all collect calls originated from Alabama confinement facilities. The proposed pre-tax cap for both text-connect and Pay Now calls originating from prisons is

[97] With additional cost analysis, the Commission anticipates the maximum bill processing fee recommended herein will be decreased. See "Bill Processing Fee" in Section 8.00 (Authorized Ancillary Charges).

$6.00 per call ($3.00 usage charge and $3.00 transaction fee).

6.39 The collect call rate cap for jails proposed herein is set at $0.30/min during the first year of rate implementation, is decreased to $0.28/min in year two, and to $0.25/min beginning on the second anniversary of rate implementation. Based on the imputed 12-minute call duration and the maximum transaction fees, the recommended pre-tax cap for both text-connect and Pay Now calls from jails is $6.60 per call in year one, $6.36 in year two, and $6.00 beginning with year three. Providers are authorized to add the applicable 6% Alabama Utility Gross Receipts Tax to the maximum pre-tax charge and quote the resulting after tax charge for single payment services. Should the Commission subsequently revise the maximum ICS collect call rates and/or its maximum transaction fees associated therewith, the maximum pre-tax charge for single payment service calls shall be adjusted accordingly.

6.40 Because the customer is paying for 12-minutes usage regardless of actual call duration, ICS providers will ensure that both the purchased minutes and associated revenues for single payment calls are reported for cost study purposes and in any reporting requirements mandated by the Commission and the FCC. The Commission shall consider provider requests for a waiver of the capped single payment charge. Waiver requests shall include:

1. Detailed justification from the ICS provider as to why the provider is unable to meet the Commission's cap on the charge for the applicable single payment service.
2. Identification of the third-party vendor(s) used for text-connect and/or Pay Now service along with the vendor(s) charges to the ICS provider.
3. Identification of any corporate affiliation between the ICS provider, or the provider's parent company, and the provider's third-party vendor(s) for the single payment service.
4. Identification of any patents held by the ICS Provider or their parent company for services provided by the third-party vendor(s) supporting the single payment service.
5. A copy of the contract(s) between the ICS provider and third-party vendor(s) for the single payment service(s).

6. Identification of alternative vendors considered and the competing vendors' price quotes.
7. For single payment service costs in excess of the third-party vendor charges, a detailed study supporting the additional costs. The study shall include accompanying data for the number of annual calls and annual revenue applicable to the single payment service as well as detailed analysis for apportionment of shared costs.[98]
8. The requested single payment charge.

6.41 The most frequent complaint heard from inmates in some Alabama confinement facilities is the high number of calls disconnected due to suspected three-way call violations. The software used to identify such suspected violations is adjustable by the provider. At higher sensitivity levels, the software may misidentify background noise or the accidental engagement of a dial pad button during the conversation as dual-tone, multi-frequency signaling associated with call forwarding. Such calls are disconnected for suspected three-way call violations and the ICS provider does not authorize customer refunds under such circumstances. These premature call disconnections without refund are particularly costly to ICS customers under the current rate structure that includes a fixed per-call set up charge (operator surcharge) which must be paid again when the inmate re-dials the called party. The recommended "postalized" ICS rates will mitigate the impact of misidentified three-way call violations but single payment services will remain susceptible. ICS providers that offer single payment services do not allow refunds for premature call disconnections. Therefore, those calls prematurely disconnected then subsequently redialed require the recipient to pay the entire single payment charge again. Since single payment service calls are usually terminated to mobile phones, there is an inherent risk for a caller to accept such calls while driving or walking within commercial buildings where structural interference in some areas may interfere with cellular signals leading to disconnected calls. Another risk for premature disconnection is three-way call monitoring by the provider. The Commission is concerned about the potential for single payment service abuse resulting from manipulation of software used to monitor suspected three-way call violations. Therefore, the Commission intends to monitor premature

[98] Items # 5, 6, and 7 shall be submitted directly to the Commission's Utility Services Division and labeled "Proprietary".

disconnections associated with single payment services.

6.42 ***The Order is, therefore, revised by eliminating the recommendation to prohibit text-connect single payment service. The Commission adopts NCIC's recommendation to allow but cap charges for text-connect service. The charge for "Pay Now" and similar single payment services, wherein inmate collect calls are billed to the call recipient's debit/credit card, are similarly capped. The charge to the end user for single payment services consists of a usage (calling minutes) element and a transaction fee element. The Commission imputes a 12-minute authorized call allowance for single payment service calls. Providers may offer longer authorized call durations, however, ICS provider charges to end users shall not exceed the Commission's cap on the charge for single payment calls. The usage element of the capped charge is computed by applying the Commission's maximum collect call rate for the type confinement facility served (prison or jail) to the imputed 12-minute call allowance. The transaction fee element of the end user charge shall not exceed the Commission's maximum bill processing fee for text-connect service or the payment processing fee for Pay Now service as provided in Section 8.00 of this Order. The combined usage and transaction fee elements constitute the pre-tax maximum charge for both text-collect and Pay Now service. The provider is authorized to apply the 6% Alabama Utility Gross Receipts Tax to the pre-tax charge for purposes of establishing the maximum after tax charge for single payment service. ICS providers may request a waiver of the Commission's maximum charge for single payment services subject to the provisions for requesting the waiver as referenced herein. The Commission shall monitor single payment call durations for potential abuse via premature disconnections.***

6.43 ***ICS providers shall list in their tariff the single payment services offered, the terms and conditions as well as the charge for the service(s), the underlying provider(s) of the service(s), and the webpage and/or other contact information associated with the charge on the call recipient's mobile phone bill and/or credit card statement. Upon request, ICS providers shall submit to the Commission scripts of the IVR message(s)***

used for single payment services. ICS providers shall ensure that the charge for single payment service on the call recipient's mobile phone bill and/or credit card statement identifies the ICS provider that serves the confinement facility from which the single payment collect call originated. Any website associated with the charge on the call recipient's billing statement shall identify the ICS provider that serves the confinement facility from which the single payment collect call originated and include a prominently displayed link to the ICS provider's webpage. ICS providers shall be proactive in informing single pay service call recipients about the prepaid collect services available from the provider and the procedures for establishing a prepaid collect ICS account.

6.44 Restrictions on ICS Resale

Confinement facilities and/or inmate canteen/trust fund operators order blocks of numbered cards from ICS providers and resell the cards to inmates for purposes of providing debit service, primarily at small facilities that lack the Jail Management System, inmate banking system, and commissary account interfaces necessary for funding and tracking inmate debit service. The cards, made of paper, are typically sold in face value increments of $10 and are discounted to resellers. The Order[99] requires that the amount paid by inmates for the card shall provide inmates the equivalent ICS purchasing power in accordance with the provider's tariffed debit calling rates. In comments, CenturyLink contends the Commission may not have jurisdiction to prevent confinement facilities and canteen/trust fund operators from marking up the face value of prepaid ICS cards:

> EPSI does not mark-up its prepaid services and, therefore, does not object to this requirement as it applies to ICS providers. However, EPSI notes that inmate facilities themselves sometimes impose markups, which are outside of EPSI' s control. EPSI is unsure whether the Commission has jurisdiction to impose these prohibitions on inmate facilities, since they are not under the Commission's regulatory jurisdiction.[100]

[99] Order, Section III L, page 24.
[100] CenturyLink comments, dated December 6, 2013, page 11.

6.45 The Commission concedes that it lacks regulatory jurisdiction over confinement facilities. Nevertheless, unrestricted resale of ICS creates an incentive for circumventing the Commission's cap on end user ICS rates. ***Therefore, the Commission exercises its jurisdiction to prohibit providers from offering ICS service to resellers that mark up the price paid by the inmate such that the effective price for the service exceeds the maximum cap authorized by the Commission for debit calls. ICS providers shall include on each prepaid inmate calling card the face value for ICS commensurate with Commission approved ICS rates. Providers shall not offer prepaid inmate calling cards for resale to any confinement facility or canteen/trust fund service that resells or is suspected of reselling the calling cards at a price greater than the face value listed thereon. Upon suspected violations, the Commission shall exercise its available remedies that include investigation of the reseller prices and suspension of ICS provider sales to the reseller. ICS providers shall establish new or amend existing agreements/contracts with resellers that include the above restrictions for resale of its ICS services and identify the Commission's remedies for suspected violations of the resale restrictions. The resale user agreement shall require the reseller to acknowledge by signature and date their understanding of the resale limitations and consequences for violations of the agreement. ICS providers shall provide a copy of the reseller user agreement upon Commission request.***

6.46 Pay Tel's comments indicate concurrence with the Commission's position on ICS resale:

> Pay Tel agrees that phone cards sold through commissary vendors and/or directly by confinement facilities should not be sold for any amount above the face value of that card. Arrangements for any share retained by the commissary vendor (if any) and the facility in the form of commission/card discount can be part of the negotiated terms of sale for the cards without impacting the face value of the card or the cost to the inmate.[101]

[101] Pay Tel comments dated December 5, 2013, page 12.

6.47 ***Inmates using ICS prepaid phone cards shall be charged for actual usage[102] at rates no greater than the maximum debit calling rates authorized by the Commission plus Alabama Utility Gross Receipts Tax[103]. Absent specific approval from the Commission, ICS providers are not authorized to assess additional intrastate charges/fees for prepaid phone card service nor are ICS providers authorized to charge inmates for calls of a predetermined maximum usage limit regardless of actual duration[104].*** There are additional issues associated with resale of ICS not addressed in the Order including replacement of damaged/lost/stolen calling cards, balance transfers, card expiration, and refund requirements.

6.48 Because plastic can be used to inflict harm and is, therefore, not authorized for inmate possession, prepaid inmate calling cards are made of paper. In some instances, the "calling card" is nothing more than a paper kiosk receipt. Paper calling cards are not durable and subject to degradation. Additionally, calling cards may be lost or stolen. Upon activating the calling card, the ICS provider has a record of the inmate PIN associated with the calling card and is thus capable of issuing a replacement calling card. Any unused balance from the previous card can be restored in full to the replacement calling card. ***The Commission, therefore, requires ICS providers to issue replacement prepaid calling cards under such circumstances and restore to the replacement card the unused balance from the card it replaces at no charge to the card holder. The replacement balance shall be based upon the purchase price paid by the inmate, not the price paid by the reseller. Inmates shall be advised of procedures for replacing damaged/lost/stolen prepaid cards through information printed on the card and/or by signage inside the confinement facility. ICS providers shall include the above referenced calling card replacement procedures in their tariff.***

6.49 Cards purchased in $10 increments frequently have "stranded balances" remaining which

[102] In usage increments not to exceed one-minute with fractions thereof rounded upward to the nearest whole usage increment.
[103] The Alabama Utility Gross Receipts Tax applies to interstate and intrastate inmate debit calls including inmate calls using prepaid phone cards.
[104] In the manner single payment service customers are charged.

are insufficient for practical use by the inmate for calling purposes. ***The Commission requires ICS providers to fully transfer, at no charge to the inmate, unused balances from prepaid inmate calling cards to new prepaid calling cards purchased by or for the inmate. Additionally, ICS providers shall transfer unused balances from an expired inmate calling card to a new calling card purchased by or for the same inmate. Balances transferred shall be based upon the purchase price paid by the inmate, not the price paid by the reseller. Typically such transfers are accomplished upon request from the inmate. ICS providers shall inform inmates of the prepaid card balance transfer procedures through information printed on the card and/or by signage inside the confinement facility. ICS providers shall include the above referenced balance transfer procedures for inmate prepaid calling cards in their tariff.***

6.50 ICS providers establish an expiration date for prepaid inmate calling cards upon which the card can is no longer valid and all remaining prepaid card balances are held by the ICS provider for disposition. Typical inmate prepaid calling card expiration dates are 6 months from the date of purchase and ***the Commission adopts that standard for ICS in Alabama as the minimum period before the card is deemed expired provided the inmate is not released from custody or requests a refund from the provider prior to the 6 months expiration date. Under such circumstances, the prepaid inmate phone card expires on the earlier of the date the inmate is released from the confinement facility or upon the date the ICS provider receives the inmate's refund request. Additionally, a card that is damaged/lost/stolen and replaced with another, cards that have no remaining balance, or cards wherein the remaining balance was transferred to a newly purchased card, may be considered expired. ICS providers shall include language in the tariff identifying the expiration date associated with their prepaid inmate calling card.***

6.51 ***ICS providers shall, at no charge to the inmate, refund the prepaid inmate phone card unused balance upon the earlier of an inmate request for refund or the inmate's release from the confinement facility. Refunds shall be based upon the purchase price***

paid by the inmate, not the price paid by the reseller. Refunds may be accomplished via transfer of the unused balance to the inmate's canteen/trust fund for inmates that remain in custody, by debit release card, or check for inmates that are released from the confinement facility, provided the amount subject to refund is $1 or more[105]. Refunds to the canteen/trust fund of inmates released from the confinement facility may be used for purposes of consolidating the inmate refund. The Commission's preference is refunds via a debit release card rather than by check. Many inmates have no established banking account and may face difficultly attempting to cash a refund check without paying a check cashing fee to do so.

6.52 ***ICS providers shall not make refunds using prepaid telephone calling cards for use over the public switched network. Using this method, the ICS provider dictates how the refund will be spent and requires that it be spent on their service. With the preponderance of wireless phones, such cards frequently are not used, effectively leaving the former inmate with no refund of their prepaid service and providing ICS providers an opportunity to retain control of the former inmate's prepaid funds. Additionally, converting prepaid ICS service to a non-ICS service requires the Commission to establish maximum calling rates applicable for the non-ICS service.***

6.53 Video Visitation Service ("VVS") and Inmate Voice Mail

The Order proposed capping the rates for VVS and Inmate Voice Mail services:

> Staff recommends that the per minute rate for VVS be capped at $0.50 per minute, with billing increments of no greater than one (1) minute, until such time as ICS providers individually submit to the Commission detailed cost studies for ICS and petition the Commission for alternative rates. Staff's recommended rate cap is based on the VVS rate currently charged by ICS competitor, Homewav, and allows for commissions paid to the confinement facilities.

[105] The Commission does not require providers to refund amounts of less than $1.

> Downloadable VVS recorded messages will be capped at $1.00 for the first minute and $0.50 for each additional recorded minute.[106]

6.54 Several ICS providers objected to the Commission's proposed regulation of VVS.

> Internet and wireless-based ICS services such as video visitation, downloadable video messaging, inmate email, and text messaging are not traditional inmate calling services. Indeed, they are not "calling" services at all—at least not in the telephony sense. The FCC already regulates internet and wireless services, and in it its recent review of interstate ICS rates, it intentionally chose not to regulate those services separately in the ICS context. As to such services, then, there exists a federal preemption question that the Commission has yet to publically consider.[107]
>
> The Commission again seeks to overextend its jurisdictional authority and regulate the rates and other terms upon which Securus and other ICS providers offer and provide video visitation service ("VVS") at Alabama confinement facilities because VVS is an internet protocol-based broadband communications service and outside the purview of the Commission's jurisdiction.[108]

Securus and CenturyLink cited Section 37-2A-4 in Alabama's Communications Reform Act which limits the Commission's authority over broadband and broadband enabled services. However, as addressed herein, under Section 3.0 (Jurisdictional Issues), the Act and its provisions and/or restrictions are not applicable to ICS providers.

6.55 CenturyLink also points out that regulation of VVS may impede its deployment:

> As an additional practical matter, because VVS technology is just being developed and deployed, flexibility is necessary to determine the most efficient and cost-effective way to provide these services to meet the needs of potential customers. Importantly, these services are generally developed and provided by small software companies that do not have staff dedicated to regulatory compliance. EPSI believes that imposing burdensome regulations

[106] Order, Section III F, page 15.
[107] Telmate comments, dated December 6, 2013, page 6.
[108] Securus comments dated December 6, 2013, page 5.

> on these services at this critical time in their development will impede competition and may jeopardize the roll out of these developing services in Alabama. Impeding the roll out of the services ultimately would be detrimental to inmates and family members in the state.[109]

6.56 ICS providers, AmTel and NCIC, concurred with the Commission's proposed caps for VVS and Inmate Voice Mail service. Pay Tel indicated agreement with the rates pending submission of cost studies:

> Pay Tel supports Staff's opinion that VVS, Email and messaging services are inmate communications services which fall under the purview of the Commission. We believe that a maximum rate of $0.50 per message or email would be appropriate to cover the costs associated with the provision of these services. Rate caps proposed for Video Visitation are aligned with those charged by companies who offer these services as their primary business focus, and as such, Pay Tel supports the levels proposed until such time as a cost justification is provided substantiating higher costs.[110]

6.57 ICS is a payphone service under the Telecommunications Act and the regulatory rules applicable to payphone service providers do not mirror those for telecommunication carriers. Nevertheless, for certain services, some ICS providers infer they deserve the regulatory status and exemptions due providers of broadband telecommunication service. ICS providers do not offer broadband internet service to end users but are, themselves, subscribers to broadband services. Indeed, inmates are prohibited internet access and have no choice in the technology and associated carrier used for providing ICS. The Commission is in no way attempting to set the price that broadband carriers charge for services provided to their end users, which for ICS are the ICS providers rather than the inmates. Rather, the Commission exercises regulatory jurisdiction over all ICS end user services that are provided under payphone service authority granted by the Commission irrespective of the underlying services to which ICS providers subscribe.

[109] CenturyLink comments, dated December 6, 2013, page 6.
[110] Pay Tel comments dated December 5, 2013, pp 13-14.

6.58 The Commission concedes that VVS is in the early stages of deployment in Alabama and concurs that ICS providers need flexibility for purposes of seeking the most cost effective measures necessary for making the service economically viable. The Commission nevertheless urges the FCC to address rates for VVS, Inmate Voice Mail, Inmate Email, and similar services noting that ICS providers, rather than inmate end users, are subscribers to the underlying broadband technology that support these ICS services. The Commission asserts its jurisdiction over all intrastate ICS services until such time that jurisdiction, or a portion thereof, is officially preempted by the FCC.

6.59 There are issues related to VVS, not covered in the Order, that the Commission is compelled to address. Subsequent to the Order, staff reviewed the terms of VVS End User Agreements between Securus and certain Alabama confinement facilities. Among the conditions in the agreement is the requirement that "For non-professional visitors, Customer [the facility] will eliminate all face to face visitation through glass or otherwise at the facility and will utilize video visitation for all non-professional on-site visitations." The agreement also proposes to restrict the disciplinary measures that facilities may impose upon cell blocks: "Customer will allow inmates to conduct remote visits without quantity limits than for punishment for *individual* inmate misbehavior". Securus requires that $20 be deducted from the facility's site commission payments[111] for any VVS sessions provided without charge by the facility. At other confinement facilities served by Securus, face-to-face visitation is reserved for weekends only.

6.60 The Commission is concerned that ICS providers may be using VVS service agreements and the lure of site commission payments to dictate confinement facility policies detrimental to inmates and their families. Additionally, the Commission is concerned that VVS User Agreements that include restrictions on face-to-face visitation for services regulated by the Commission constitute tacit Commission approval of such restrictions. Therefore, the Commission requires that restrictions on face-to-face visitation and any restriction on the disciplinary measures employed by the confinement facility be

[111] Securus offers 20% site commissions for VVS.

eliminated as a pre-condition for deploying VVS in Alabama. Such restrictions may, however, be included in the user agreement provided the warden or confinement facility administrator signs and dates a letter to the provider, using confinement facility letterhead, which states that the restrictions on face-to-face visitation included in the agreement is the facility's policy and that the facility accepts any restrictions on its disciplinary procedures as specified in the agreement.

6.61 ***The Commission revises the Order as it relates to VVS and Inmate Voice Mail. The Commission defers to a later date the establishment of maximum rates for these services. ICS providers are required to submit to the Commission's Utility Services Division, copies of VVS User agreements with Alabama confinement facilities. Any user agreement that includes restrictions on face-to-face visitation and/or facility disciplinary measures as a precondition for deploying VVS must be accompanied by a letter signed by the warden or confinement facility administrator indicating that restrictions on face-to-face visitations cited in the agreement are the facility's official policy and/or that the facility concurs with any restrictions to its available disciplinary measures provided in the agreement.***

7.00 Unauthorized Ancillary Charges

7.01 Regulatory Cost Recovery Fee & USF Collection Admin Fee

The FCC only began regulating ICS provider rates in 2013 and, to the Commission's knowledge, has not specifically authorized ICS providers to charge a regulatory cost recovery fee for interstate services. In CC Docket No. 96-45, released December 13, 2002, the FCC authorizes providers to recover administrative expenses for collecting and remitting Universal Service Fund ("USF") end user fees to the Universal Service Fund Administration Company ("USAC") but did not specify the amount or rate that shall be charged. When is the provider fully compensated for their regulatory costs – when have they over recovered their regulatory costs?

The regulatory recovery fees charged by providers vary considerably. Telmate charges a $0.99 Regulatory Assessment Fee at the first and fifth call record. Securus assesses a $3.49[112] Federal Regulatory Recovery Fee on any month an interstate call appears on the end user bill. The application of this regulatory fee can substantially drive up end user charges. Assume, for example, 10-minute interstate ICS calls at the $0.21/min cap for interstate ICS debit calls imposed by the FCC. For a single call, the call charges are $2.10, the USF fee is $0.35[113], and Securus adds a $3.49 Federal Regulatory Recovery Fee to the call charges and USF fee for a total end user charge of $5.94. For that single call, the $3.49 Federal Regulatory Recovery Fee assessed by Securus comprises 59% of the charges the end user is required to pay. The fee exceeds the combined charge for the call and USF fee. After a second call of the same duration, the fee still comprises 42% of the total end user charges.

7.02 The FCC expended considerable time and effort attempting to determine the cost of ICS calls to within a fraction of a penny. Additionally, the FCC goes to great lengths to ensure the USF fee is adjusted quarterly for projected expenditures and that the federal Telecommunications Relay Service ("TRS") Fund[114] is adjusted to support actual costs. Regulatory recovery fees represent a considerable proportion of ICS charges for customers of some providers and, if authorized, deserve intense regulatory scrutiny to ensure that consumers are not overcharged. Several ICS providers presently absorb regulatory costs electing not to charge consumers a separate recovery fee while the regulatory recovery fees assessed by a few (frequently the largest) ICS providers appear disproportionate to customer charges. To the extent that any interstate regulatory recovery fee and/or USF Administrative Fee is specifically quantified and listed in the ICS provider's FCC approved interstate tariff or such fee is specifically quantified and approved by FCC Order included in the Combined Federal Register, the Commission acknowledges that such fees are applicable to ICS service in Alabama. The Commission,

[112] Includes the USF Admin Fee.
[113] Based on the 2Q, 2014 USF contribution rate of 16.6%.
[114] On March 7, 2011, the Federal Communications Commission (FCC) awarded Rolka Loube Saltzer Associates, LLC (RLSA) of Harrisburg, PA a contract to administer the Interstate TRS Fund, beginning a transition of fund administration from the National Exchange Carrier Association (NECA) to RLSA.

however, does not otherwise acknowledge ICS fees that lack regulatory approval nor should any consumer be expected to pay fees that lack specific regulatory approval.

7.03 The Commission does not authorize the assessment of an intrastate regulatory recovery fee. When ICS providers apply for the CPCM to provide intrastate service in Alabama, applicants attest by signature, that they shall comply with all existing and future Commission orders and rulings[115] and confirm they will pay the requisite Inspection and Supervision Fees[116] to the Commission in order to provide service in Alabama. The Commission does not distinguish regulatory costs from other costs of providing service that are recoverable from revenue generated via customer rates. Securus objects to the Commission position that prohibits the assessment of an intrastate regulatory recovery fee:

> Securus asserts that it should be allowed to charge a regulatory cost recovery fee for ICS offered by Securus in Alabama notwithstanding the Commission's recommendation to the contrary. As evidenced by the Order, the Commission now seeks to significantly broaden its regulatory oversight of Securus and other ICS providers to Alabama confinement facilities. As such, the administrative burden incurred by Securus to comply with the Commission's proposed regulatory oversight will increase significantly. These regulatory costs in addition to the other pressures that will be exerted upon Securus and other ICS providers if the Commission's proposals are finalized will adversely impact ICS providers' ability to realize a reasonable rate of return for the services offered to Alabama confinement facilities. Therefore, Securus and ICS providers in Alabama should not be prohibited from imposing a fee to recoup the costs associated with the additional regulatory costs incurred.[117]

7.04 Commenting on the Commission's refusal to allow an intrastate regulatory recovery fee, account set up fee, and refund fee, Pay Tel concurs that such fees should not be considered:

[115] *Application for Certificate of Public Convenience and Necessity to provide Inmate Phone Service (IPS) in the State of Alabama*, Section 6.6.
[116] Ibid Section 6.2.
[117] Securus comments dated December 6, 2013, page 7.

> As indicated in the cost data provided to the FCC by Pay Tel, these expenses are a cost of doing business reflected in the overall average cost per minute. Pay Tel supports the prohibition of such fees.[118]

Additionally, NCIC expressed support for the Commission's position with respect to regulatory recovery fees[119].

7.05 ***The Commission reaffirms its recommendation in the Order with respect to regulatory recovery fees. Separate intrastate regulatory recovery fees are not authorized in Alabama. The interim intrastate ICS rates recommended herein are considered sufficient to recover reasonable regulatory costs incurred by the provider. Future studies submitted in support of semi-permanent intrastate ICS rates, shall include the provider's annualized known and measurable costs for intrastate regulatory compliance. FCC approved regulatory fees for interstate ICS may be assessed for ICS in Alabama to the extent that such fees are included in the provider's FCC approved interstate tariff or are specifically quantified and approved in FCC Orders. Absent such specific FCC approval, the fees lack legitimacy and ICS providers are prohibited from assessing them to ICS calls that originate in Alabama.***

7.06 Refund Fee

The Commission Order prohibits provider assessment of fees to refund customer prepayments of ICS.

> No telephone utility certified in Alabama is authorized to assess a service charge for refunding customer funds. The Commission considers administrative costs associated with customer refunds to be normal business overhead to be borne exclusively by the provider and, therefore, does not authorize a refund fee.[120]

The Commission reaffirms that ICS providers shall not charge fees for refunding

[118] Pay Tel comments dated December 5, 2013, page 4.
[119] NCIC comments, dated December 2, 2013, page 4.
[120] Order, Section III H(2), page 19.

customer prepayments.

7.07 Account Set-up and/or Account Maintenance Fee

The Commission reaffirms that ICS providers are not authorized to assess an account set-up or account establishment fee in accordance with the Order[121]. ***Additionally, providers shall not assess an account maintenance fee.***

7.08 Provider Assessed Fines

At least one ICS provider attempted to assess its Alabama customers a $25 penalty for each instance of actual or suspected violations of the confinement facility's three-way call policy. The Commission required a full customer refund of these charges with interest. Such assessments are prohibited for ICS in Alabama in accordance with the Order:

> The ICS account is established with an expectation that the funds submitted to the provider are exclusively for ICS including applicable taxes and government mandated fees. The funds associated therewith are the property of the ICS customer until utilized in part or in whole for ICS. Providers and/or confinement facilities are not authorized to assess monetary penalties/fines/fees to ICS customer accounts for violation of confinement facility security policies or otherwise access the customer's ICS prepayments without Commission authorization and the explicit consent of the ICS customer.[122]

The Commission reaffirms that such fines/penalties are prohibited.

7.09 Other Ancillary Charges or Fees

No ancillary charge or fee, except those specifically referenced and quantified in Section 8.0 of this Order (Authorized Ancillary Charges) shall be assessed to intrastate ICS customers in Alabama.

8.00 Authorized Ancillary Charges

[121] Order, Section III H(1), pp 18-19.
[122] Order, Section III H(3), page 19.

8.01 General

The Commission authorizes providers to assess an ancillary charge ("fee") for debit/credit card payment processing and for transfers of funds from inmate canteen/trust accounts to an ICS debit call account. Fees will not be assessed for payment via check, money order, or via online banking. Providers are authorized to charge recipients of inmate collect calls, billed by the recipient's carrier, a processing fee to recover the associated billing costs. Additionally, provider fees may be charged for an optional paper billing statement and for returned checks. No other ICS provider fees are authorized without specific approval via a Commission Order.

8.02 GTL asserts the Commission was arbitrary in establishing fee limits:

> The Commission correctly recognizes that ancillary products offered by ICS providers "result in additional provider costs," and that ICS providers "should be provided an opportunity to recover" these "legitimate business costs." At the same time, however, the Commission arbitrarily establishes the maximum amount that ICS providers may charge for certain of these ancillary products. The Commission claims the established rates are intended to recover the actual costs incurred by the ICS provider, but provides no evidence of how it developed its proposed fee limits.[123]

The recommended Commission caps for provider fees are not arbitrary but are based on Pay Tel's comments to the FCC[124] with respect to recommended fees:

> Pay Tel Communications, Inc. ("Pay Tel"), by its attorneys, respectfully submits these further comments in response to the Public Notice, WC Docket No. 12-375 ("Public Notice"), released June 26, 2013, in the above-captioned proceeding. In the Public Notice, the Wireline Competition Bureau ("Bureau") seeks additional comment on certain fees related to inmate calling services ("ICS").[125]

[123] GTL comments dated December 6, 2013, page 11.
[124] Further Comments of Pay Tel Communications, Inc., WC Docket No. 12-375, dated July 17, 2013.
[125] Ibid., page 1.

8.03 All ICS providers had an opportunity to submit comments with respect to ancillary charges. Pay Tel complied with the FCC's request and submitted supporting cost studies. With regard to the largest ICS providers, the FCC makes note of their failure to adequately comply in footnote 316 of the FCC ICS Reform Order:

> See also Petitioners July 24, 2013 Ex Parte Letter at 2 (noting that the three largest ICS providers, who control "at least 90% of the ICS market," were "remarkably silent" when asked to submit data regarding ancillary charges).

The Petitioner's July 24, 2013 Ex Parte Letter referenced in the FCC's footnote 316 expounds on the silence of the largest ICS providers:

> Despite the fact that the FCC specifically requested that the ICS providers to supply data regarding their own Ancillary Fees, two of the largest ICS providers failed to file a response, and the largest ICS provider took the reader on a trip through the rate regulations from the 1980s and 1990s. While GTL feigned a response, it flatly refused to provide any other information than "rates and fees charged by interstate ICS providers are comparable to those being charged by other non-dominate providers for non-inmate operation service calling." But at least GTL acknowledged the FCC's public notice, even though it declined to follow the FCC's instructions. Securus did not file any response to the public notice. Nor did CenturyLink.
>
> NCIC and Pay Tel did submit comments in response to the Public Notice, which proffered information and proposals on reforming Ancillary Fees. However, these filings must not distract the FCC from the fact that the three largest ICS providers, who control 95% of the state DOC ICS contracts, and more than 90% of the ICS industry's revenues, have simply refused to cooperate with the FCC in this proceeding.[126]

8.04 CenturyLink is mentioned by Petitioners as one of the providers that did not respond to the FCC's Public Notice. Nevertheless, in response to the Commission's Order,

[126] *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Comments of Lee G. Petro, Drinker Biddle & Reath LLP, on behalf of Martha Wright, et al (the "Petitioners"), dated July 24, 2013, pp 1-2.

CenturyLink comments:

> EPSI [CenturyLink] supports the prohibition on ancillary charges as set forth in the October 2013 Order, as it believes the prohibition of these fees will prevent abuses and ensure a level playing field in the competitive ICS market.[127]

Pay Tel and NCIC also expressed their support for the Commission's recommended fees:

> In general, Pay Tel supports the notion that any fees beyond those specifically permitted are expressly prohibited. We feel that every fee adds to the customer's true call cost, reduces the funds available for call acceptance, makes it more confusing for the customer who is accepting these calls and ultimately reduces commissionable revenue for the facility.[128]

8.05 In their comments to the Order, GTL appears to continue the pattern of comparing rates and fees charged by non-ICS providers for which it was criticized in the Petitioners' Ex Parte filing[129] to the FCC proceeding:

> Further, the Commission's proposed caps on fees are arbitrarily low when compared to fees charged by other Alabama telecommunications carriers for similar non-ICS services. For example, AT&T Alabama charges a $5.00 payment convenience fee for payment made via telephone using a credit card, electronic check, or other similar payment type. Other carriers charge historic invoice fees (ranging from $10.00 to $25.00), account detail fees for providing call detail in paper ($5.95), and duplicate bill charges ($2.95 for less than 10 pages, $2.95 plus $0.20 per page for 11+ pages) in the non-ICS context. The Commission has made no attempt to explain why fees charged by ICS providers warrant different treatment than the fees charged by non-ICS providers for the same types of ancillary products.[130]

The Alabama Legislature passed the Communications Reform Act in 2005 that

[127] CenturyLink comments, dated December 6, 2013, page 8.
[128] Pay Tel comments dated December 5, 2013, page 5.
[129] Supra footnote 126.
[130] GTL comments dated December 6, 2013, page 12.

deregulated retail prices for AT&T and other ILECs. Prior to passage of the Act, AT&T's credit card payment fee was $2.50. In 2006, AT&T increased its credit card payment fee to $3.35. On June 24, 2010, AT&T raised its credit card processing fee to $5.00. The Commission did not vote to approve either the 2006 or the 2010 AT&T credit card payment fee increase because it lacks jurisdiction over the fee. Additionally, the Commission no longer has jurisdiction for AT&T duplicate bill charges. Unlike ICS providers, AT&T offers their customers an initial paper bill at no charge and assesses a fee for duplicate paper bills that have been archived.

8.06 As a practical matter, comparing prices between regulated providers of divergent service technologies and/or vastly different service markets is a meaningless diversion wrought with inaccurate and misleading conclusions. Seasoned regulators are well aware that local exchange carriers, for example, have markedly different cost characteristics than toll carriers. The network, services, service support structure, and organizational structure are dissimilar. There are often markedly dissimilar costs between different type carriers within the same service market. Competitive Local Exchange Carriers, for instance, exhibit different cost characteristics than Incumbent Local Exchange Carriers. Therefore, GTL's attempt to compare regulated ICS prices to the regulated and unregulated prices applicable to different service technologies with vastly dissimilar service markets lacks credibility and is not useful in the context of this proceeding.

8.07 A comparison of prices between similar service providers is far more meaningful and credible. The Commission capped existing intrastate ICS rates in 2009. Therefore, all ICS providers are subject to the same maximum inmate calling rates. GTL, the largest ICS provider, has greater economies of scale than its competitors and should therefore have lower average, per unit costs. Consequently, one would expect GTL to be the low-price market leader for ICS end user fees. The Commission contends that a comparison of GTL's end user fees with those of its smaller competitors in this proceeding: CenturyLink, Pay Tel, NCIC, and AmTel, is far more valid and insightful.

8.08 Debit/Credit Card Payment Fees

ICS payments using debit/credit cards are submitted via the provider's website, over the phone using automated IVR, over the phone using the ICS provider's live payment agents, and at confinement facility payment kiosks. Credit card merchant account processors typically charge ICS providers 3% to 3.5% of the payment for processing debit/credit card transactions. Large ICS providers can negotiate credit card transaction fees at the lower end of that range. Therefore, ICS providers pay third-party merchant account processors $0.75 to $0.88 processing charges for a $25 ICS customer debit/credit card payment. Providers incur costs for establishing their payment gateway necessary for submission of credit card information from the web, phone, and kiosks. Providers must also pay for Payment Card Industry Data Security Standard ("PCI") equipment and compliance monitoring for purposes of encryption, transmission, and storage of credit card account information associated with the five major credit card companies.

> The Council's five founding global payment brands -- American Express, Discover Financial Services, JCB International, MasterCard, and Visa Inc. – have incorporated the PCI DSS as the technical requirements for their data security compliance programs. Each founding member also recognizes the practitioners and companies – Qualified Security Assessors and Approved Scanning Vendors -- certified by the PCI Security Standards Council as being qualified to validate compliance to the PCI DSS, making the Council a centralized resource for access to standards and services approved by all five payment brands.[131]

8.09 Additional ICS provider payment processing costs are incurred for credit card chargebacks, fraud management and refund processing, IVR and web capability, broadband/telecom facilities, and applicable administrative costs. Many of these costs are volume sensitive - a higher number of credit card transactions results in a lower average cost per transaction with the caveat that, at various stages of increased transaction volume, additional bandwidth and server capacity is required. The Commission notes that, with the exception of merchant account processor costs, the remaining card payment

[131] *What Is the PCI Security Standards Council*, PCI Security Standards website, URL: https://www.pcisecuritystandards.org/security_standards/role_of_pci_council.php.

costs are controlled by ICS providers rather than third parties.

8.10 The Order recommended a $3.00 maximum fee for card payments over the web, over the phone using IVR, and from kiosks. For card payments over the phone using the ICS provider's live payment agents, the Order recommends a $5.95 maximum fee.[132] These mirror the recommended maximum ICS fees Pay Tel submitted[133] in response to the FCC's Public Notice for WC Docket No. 12-375 ("Public Notice"), released June 26, 2013. Securus objects to the recommend maximum card payment fees.

> …the Commission's Order proposes to impose certain maximum fees that fail to allow Securus to recover in full its actual costs for such services. For instance, the Commission proposes (1) a maximum fee equal to $3.00 for website payments via credit card or debit card paid to Securus, and (2) a maximum fee equal to $3.00 for IVR phone payment via credit card or debit card paid to Securus. Securus incurs costs that exceed the proposed maximum fees because Securus must (1) pay the per transaction fee imposed on Securus by the third party credit/debit card payment processor for processing such payments, (2) incur expense associated with specialize encryption software to enhance security associated with accepting payments via credit/debit card, and (3) incur any and all bad debt associated with any credit card fraud and chargebacks to Securus for fraudulent credit card charges. Because the Commission proposes to impose maximum fees lower than Securus' costs providing such ancillary services, the Commission must revisit any such fee caps that it may impose on ICS providers.[134]

8.11 Securus contends that the recommended maximum payment fees exceed their actual costs for such services. The Commission notes that Securus charges debit/credit card payment fees of up to: $7.95 for web and kiosk payments and up to $9.95 for IVR and live customer service representative payments. However, when provided an opportunity to respond to the FCC's Public Notice seeking comment on certain fees related to ICS, Securus was "notably silent". The Commission is, therefore, unable to verify the validity

[132] Order, Section III G(1), page 16.
[133] Further Comments of Pay Tel Communications, Inc., WC Docket No. 12-375, dated July 17, 2013, page 6.
[134] Securus comments dated December 6, 2013, page 6.

of Securus' claim. Pay Tel, on the other hand, responded to the FCC's Public Notice and in its comments recommended the maximum payment fees previously cited. Furthermore, Pay Tel submitted cost analyses[135] to the FCC supporting the recommended ICS rates included in its response to the FCC Public Notice. Securus is one of the nation's largest ICS providers and completes far more card payment transactions than Pay Tel. As previously discussed, average card payment service costs are volume sensitive. Therefore, one would expect Securus to experience lower average costs than Pay Tel for processing card payments. CenturyLink, NCIC, Pay Tel, and AmTel[136] support the recommended maximum payment fees. The Order authorizes a $3.00 fee for cash payments at kiosks but, upon reconsideration, the Commission does not find justification for imposing such a fee. ***Therefore, the Commission reaffirms its Order with respect to maximum debit/credit card payment fees:***

Submitted via web, by phone using IVR, and via kiosk - $3.00

Payment by phone via a live payment center agent - $5.95

The $3.00 debit/credit card payment fee also applies to the transaction fee portion of "Pay Now" type calls.

The authorization for a cash payment fee at kiosks is rescinded.

8.12 Bill Processing Fee

The Order recommends a maximum $3.00 bill processing fee[137] for inmate collect calls billed by the call recipient's serving carrier. The Commission anticipates a lower maximum fee when studies isolating actual collect call bill processing costs are submitted. In the interim, for consistency, the Commission uses its recommended maximum debit/credit card payment fee as a surrogate. The fee is applicable once during the carrier's normal billing cycle for all collect calls billed to the call recipient by the ICS

[135] Further Data Substantiating the Cost of ICS Service as Presented in the Further Comments of Pay Tel Communications filed July 17, 2013, Docket No. 12-375, Pay Tel Notice of Ex Parte, rec. July 23, 2013.
[136] The Commission notes that AmTel recommends that it be allowed to charge more than the recommended maximum for payment fees processed by its live agents for purposes of supporting other inmate services provided free of charge to inmates and inmate families.
[137] Order, Section III G(2), page 17.

provider. The bill processing fee shall also apply to the transaction fee portion of text-connect calls but, because text-connect is a single pay service, the bill processing fee may be charged for each collect call accepted by the call recipient. Provider comments with respect to the proposed maximum bill processing fee are minimal. Pay Tel, NCIC, and AmTel concur with the recommend fee. AmTel adds that it "…does not charge any bill processing fees; AmTel absorbs the fees from the RBOCs for the customers."[138] ***The Commission reaffirms the $3.00 maximum bill processing fee recommended in the Order noting that specific collect call bill processing costs shall be isolated in detail and analyzed going forward.***

8.13 Payment Transfer Fees

The Order requires that ICS providers identify payment transfer fees charged their customers by third-party services and justify differences with fees charged the customers of other ICS providers:

> Staff emphasizes that ICS providers are prohibited from receiving any portion of fees paid by their customers to third-party financial services for submission of payments for ICS and/or for transferring funds into inmate accounts. Any evidence that ICS providers are benefitting financially from fees charged their prospective or existing customers by third-party money transfer services and/or that ICS providers are paying confinement facilities commissions therefrom, constitutes tacit admission that the fees are excessive and shall subject the provider to Commission regulatory action including, but not limited to, customer refunds with interest.
>
> All ICS providers shall submit, for informational purposes to the Commission, the transaction fee charged their customers by Western Union and MoneyGram for ICS payments and will update this information as the fees change. Staff will compare fees submitted by all ICS providers and require justification from ICS providers for any observed anomalies. ICS providers shall fully inform customers on their websites of all the payment methods available, the payment processing charges associated therewith, including the money order and check payment option available at no charge, and the estimated time required to establish ICS service

[138] AmTel comments dated December 11, 2013, page 3.

applicable to each payment option.[139]

8.14 GTL objects to the Commission's position with respect to payment transfer fees:

> The Commission's jurisdiction over certain fees also poses a serious issue. ICS providers cannot control the fees established by third-parties, such as Western Union or MoneyGram…[140]

The Commission disagrees with GTL's contention that ICS providers cannot control third-party payment transfer fees. ICS providers, in fact, can and frequently do collaborate with third-party providers for purposes of setting the payment transfer fees their customers pay. Moreover, the Commission contends some ICS providers are not seeking the most economical payment transfer fees for their customers. Additionally, a few ICS providers appear engaged in arrangements with Western Union and MoneyGram wherein the provider receives a portion of the customer's transfer fee charged by those services.

8.15 Western Union's charge for "Quick Collect" service is $9.95. With Quick Collect, customer name and address is forwarded to the Inmate Calling Service provider along with the 10-digit account number and payment amount. AmTel comments in this proceeding suggests the $9.95 Quick Collect fee includes revenue sharing:

> CSA[141] respectfully does not agree with a prohibition of the Call Center receiving a portion of a payment from Western Union and CSA does not accept payments from MoneyGram. CSA representatives frequently have to make refunds for Western Union Quick Collect payments and this portion of a processing fee helps to recover the associated refund expense. The Western Union Quick Collect Payment is presently at $10.00 [$9.95] per transaction.[142]

However, Western Union also offers a "Prepaid Services" option for $5.95 and a Swift

[139] Order, Section III G(1)(f), pp 16-17.
[140] GTL comments dated December 6, 2013, page 11.
[141] Customer Service of America, "CSA" and AmTel are subsidiaries of ATN, Inc. CSA is the Call Center for AmTel.
[142] AmTel comments dated December 11, 2013, page 3.

Pay option for $5.50. For these options, only the 10-digit account number and payment amount is submitted to the ICS provider. For Swift Pay service, the ICS provider, in some instances, must agree to designate Western Union as their exclusive payment transfer service. Western Union is known to negotiate these fees with providers. Customers of the following ICS providers pay the Western Union payment transfer fees indicated in parentheses: Pay Tel ($5.95), NCIC ($5.00), CenturyLink ($5.50), AmTel ($9.95), GTL ($10.95), Securus ($11.95). The Commission contends that higher payment transfer fees than Western Union's $9.95 Quick Collect fee suggests additional revenue sharing arrangements with ISC providers.

8.16 Competition exists among ICS providers seeking contracts to serve inmates but end user prices are not a priority for confinement facilities that choose the inmate's exclusive ICS provider. ICS is non-competitive from the end user's perspective and the lack of true market competition erodes the incentive for ICS providers to seek the same or a lower third-party transfer fee provided to customers of other ICS providers. Moreover, some ICS providers appear undeterred from seeking a share of the revenue generated by the third-party payment fees. ICS customers that pay higher than necessary payment transfer fees are essentially charged twice for the service. They are charged by the third-party payment transfer service for submitting their money to the ICS provider and pay an additional premium when ICS providers fail to seek the lower priced option and/or seek for themselves a piece of the "third-party" charges. In comments to the FCC, Pay Tel shares the Commission's observations:

> The following table shows the range of fees charged for payment processing gathered from publicly available information, including ICS vendor websites. The disparity in the figures is confusing to consumers, serves to drive up the overall cost of inmate calling, and suggests that some ICS providers are using payment processing fees, which are excluded when calculating facility commissions, as profit centers.[143]
>
> Many ICS vendors typically characterize fees charged by third

[143] Further Comments of Pay Tel Communications, Inc., WC Docket No. 12-375, dated July 17, 2013, page 4.

> party payment services such as MoneyGram or Western Union as being "set by the third party provider." In reality, the ICS vendors have the option of selecting different third party payment services rates and, based on the inflated rates selected by some providers; it appears that some ICS providers may have entered into profit sharing arrangements with the payment processors. Pay Tel has not elected to enter into such arrangements and instead has negotiated the lowest fees possible for its customers. Meaningful reform of the ICS industry will require attention to all fees, including third party payment services, to ensure that the payment options are priced for cost recovery and not used as a way to circumvent rate caps.[144]

8.17 MoneyGram competes with Western Union for payment transfer services. MoneyGram's standard fee is $5.65 at its Walmart locations and $5.95 at other MoneyGram service centers but these fees appear somewhat negotiable. The customer's name, address, 10-digit account number and payment amount are provided to the ICS provider. Numerous ICS providers do not utilize MoneyGram for their customer payment transfer services while others use both Western Union and MoneyGram. MoneyGram appears to charge a provider's ICS customers a higher fee if the ICS provider collaborates for a share of the revenue. Customers of the following ICS providers pay the MoneyGram payment transfer fees indicated in parentheses at locations other than Walmart: NCIC ($4.99), Pay Tel ($5.95), Securus ($10.99).

8.18 Securus submitted comments responding to the payment transfer fee recommendation in the Order:

> …the Commission seeks to impose regulatory oversight on the transaction fees charged to ICS providers by third-party financial service providers, such as Western Union and MoneyGram, where the Commission lacks any statutory or other jurisdiction over such third-party financial service providers to regulate what such third-party financial service providers may charge Securus and other ICS providers.[145]

[144] Further Comments of Pay Tel Communications, Inc., WC Docket No. 12-375, dated July 17, 2013, page 5.
[145] Securus comments dated December 6, 2013, page 6.

The Commission in no way seeks to impose regulatory oversight over third-party payment services for which it has no jurisdiction. Nevertheless, where market competition is lacking, the regulator's role is to create polices that serve as proxy for competition in order to ensure that provider economic choices mimic those of providers in a competitive marketplace. The Commission asserts that ICS providers can enter into payment transfer service agreements, on behalf of their customers, with both Western Union and MoneyGram for a fee that does not exceed $5.95 per payment. In its FCC comments, Pay Tel recommended that payment transfer fees be capped at the "Lowest payment option available from the Third Party Vendor with no fee revenue share commission paid to the ICS Vendor."[146]

8.19 Based on staff research, ICS providers may cancel existing contracts with Western Union on 30-days' notice. Moreover, Western Union contracts include a provision requiring vendor compliance with all regulatory requirements as well as local, state, and federal laws. Providers can cancel contracts with MoneyGram on 15-days' notice

8.20 ***Therefore, the Commission revises its recommendation in the Order with respect to payment transfer fees. ICS providers shall submit to the Commission's Utility Services Division before the implementation date for this Order, the payment transfer fees charged its customers by third-party payment transfer services. The provider's payment transfer fees shall be considered non-proprietary, subject to public release. For any third-party payment transfer fees that exceed $5.95, the provider shall submit a sworn affidavit signed by the provider's Owner, President, or Chief Executive Officer and notarized, affirming that the ICS provider, its parent company, nor any subsidiary/affiliate of the provider or its parent company receives no portion of the revenue charged the provider's customers by the listed third-party payment transfer services. For any payment transfer fee that exceeds $5.95, the ICS provider shall also provide to the Commission a copy of the provider's contract with the third-party payment transfer service and shall justify to the Commission in writing, signed by the***

[146] Further Comments of Pay Tel Communications, Inc., WC Docket No. 12-375, dated July 17, 2013, page 6.

provider's Owner, President, or Chief Executive Officer, why it is unable to arrange for payment transfer services at fees that do not exceed $5.95. Such filings are subject to full investigation by the Commission and to Commission regulatory proceedings. ICS providers shall fully cooperate with the Commission investigation to include submitting, in writing, to the third-party payment service (copied to the Commission) its approval for the Commission to discuss all aspects of the provider's contract with the third-party payment service. Providers seeking authority to provide ICS in Alabama shall comply with this requirement before any such authority is granted. The ICS provider shall update its list of third-party payment transfer fees on file with the Commission for any changes thereto within 10 days following implementation, provided none of the changes to the third party payment transfer fees exceed $5.95. For any proposed changes to the third-party payment transfer fees on file with the Commission that exceed $5.95, the ICS provider shall submit the contract, affidavit, and justification requirements referenced herein no less than 10-days in advance of the proposed implementation date for the changes.

8.21 Inmate Canteen/Trust Fund Transfer (Convenience) Fee

The Order recommends a maximum fee of 5% of the amount transferred from the inmate canteen/trust account into ICS accounts for purposes of recovering the charges assessed to ICS providers for such transfers.[147] AmTel indicates that it does not charge a fee to recover costs for transferring funds from canteen/trust accounts.[148] NCIC and Pay Tel concur with the fee. Pay Tel adds:

> This is a necessary fee, appropriate to pass on the cost of establishing the commissary interface necessary to enable debit calling. Commissary and Jail Management System vendors may charge the ICS vendor an initial amount for developing/deploying the interface and an on-going percentage of debit sales. The maximum 5% is appropriate to recover this expense.[149]

[147] Order, Section III G(3), page 17.
[148] AmTel comments dated December 11, 2013, page 3.
[149] Pay Tel comments dated December 5, 2013, page 4.

8.22 ***The Commission reaffirms its recommended maximum 5% convenience fee for recovering ICS provider costs associated with canteen/trust account transfers into the inmate's ICS account.***

8.23 Paper Billing Fee

Local exchange and toll carriers in Alabama are required to provide their customers with a paper billing statement, via the Postal Service, at no charge. Customers may opt out of the paper bill and receive an electronic statement at no charge. In the Order, ICS providers are required to provide Electronic billing statements for prepaid and direct-billed service at no charge to the customer. Optionally, customers may request a paper copy of their bill via the postal service. The Order authorizes a maximum $2 fee for printing and postage associated with providing the paper bill statement to ICS customers that request it in lieu of the default electronic statement. Pay Tel concurs with the recommended paper bill fee.

> Provided that ICS vendors are permitted to provide account statements on-line and paper statements upon request, it is appropriate to charge a modest fee associated with the printing and mailing of paper statements to prepaid account holders. Pay Tel concurs with the proposed $2.00 Paper Bill Fee recommended by Staff.[150]

8.24 ***The Commission reaffirms the $2 maximum fee for paper billing statements requested by customers of prepaid and direct-billed ICS in lieu of the electronic bill statement.***

9.00 Taxes and Government Fees

9.01 The Order is emphatic that the 6% Alabama Utility Gross Receipts Tax applies to ICS.

> Staff sought guidance from the Alabama Department of Revenue ("ADOR") on whether the State Utility Gross Receipts Tax or sales taxes apply to ICS. On August 13, 2013, the Commission received

[150] Pay Tel comments dated December 5, 2013, page 5.

> a response from the Assistant Director, Sales and Use Tax Division of ADOR (Attachment A). ADOR's guidance is that the six-percent (6%) State Utility Gross Receipts Tax applies to all ICS local service, intrastate toll and interstate toll charges. Local and State sales taxes do not apply to ICS charges.[151]

9.02 In response, NCIC requests verification that the Utility Gross Receipts Tax applies to ICS. The Code of Alabama makes it very clear that the Utility Gross Receipts Tax applies to all toll calls that originate in Alabama. By letter dated May 7, 2014 from Commission Executive Director, John Garner[152], to ADOR Commissioner Julie Magee, the Commission requested a definitive assessment from ADOR concerning the applicability of the Gross Receipts Tax to prepaid (debit and prepaid) ICS. Included with the letter was a staff "white paper" that discussed in detail all inmate calling services referenced herein. By letter dated May 9, 2014, signed by ADOR Commissioner Julie Magee, a definitive assessment was provided.

> Section 40-21-82(b), Code of Alabama 1975, as amended levies the Utility Gross Receipts tax on any utility furnishing telegraph or telephone services in the State of Alabama. ICS providers do furnish telecommunications services. Prepaid ICS is tied to the ICS providers' calling platform at the confinement facility who is the exclusive provider of ICS in the facility. The service may not be used outside of the facility. Based on the facts provided in your letter, it is the Department's position that ICS providers should charge the Utility Gross Receipts tax for the prepaid ICS service.[153]

9.03 To avoid any misinterpretation, the Alabama Utility Gross Receipts Tax, rather than sales tax, shall likewise be assessed to prepaid inmate calling card service. Inmate calling card service, though funded differently, provides inmate debit service that is exclusive to the ICS provider and to service at the confinement facility wherein the inmate is incarcerated. It is not equivalent to prepaid telephone calling card service sold commercially for use almost anywhere on the public switched network. The taxes and rules concerning refunds

[151] Order, Section III C, page 11.
[152] John Garner also serves as the Commission's Chief Administrative Law Judge.
[153] RE: Taxation of Inmate Calling Services, Letter to Commission Executive Director, John Garner, from Alabama Department of Revenue Commissioner, Julie Magee, dated May 9, 2014, pp 2-3.

of unused balances that are applicable to prepaid telephone calling cards do not apply to prepaid inmate calling cards. Providers are encouraged to direct all questions to the ADOR with respect to application of the Alabama Utility Gross Receipts Tax to ancillary services and ancillary charges.

9.04 The Order prohibits providers from assessing taxes and applicable government fees to the purchase price for debit and prepaid ICS.[154] The Alabama Utility Gross Receipts Tax applies to the charge for ICS only when the call duration is known. For interstate calls, the USF fee and federal TRS fee apply only when the total usage charges (USF) and call duration is known (TRS).

9.05 ***The Commission reaffirms its Order with respect to the tax applicable to ICS and with respect to prohibiting the upfront assessment of tax and federal fees to the purchase price for debit and prepaid ICS.***

10.00 Refunds and Unclaimed Property

10.01 Refunds Required

Commission telecommunication rules require providers to refund customers for any overcharges.[155] Additionally providers shall fully refund unauthorized ICS charges in accordance with Commission requirements for such refunds which may, at the Commission's discretion, include a requirement to assess accumulated interest to the refund due the customer. Moreover, ICS providers shall refund unused debit, prepaid inmate phone card, and prepaid collect funds. Prepaid services were adopted to benefit ICS providers in that prepayment eliminates the non-collectable expense associated with billed-collect services. Prepaid balances that remain after deducting authorized charges for ICS, however, remain the property of the account holder, including any unused balances associated with prepaid inmate calling cards[156]. ICS providers are not

[154] Order, Section III D, page 12.
[155] Order, Section III M, page 24.
[156] See "Restrictions on ICS Resale" in Section 6.00 (ICS Rates).

authorized to permanently retain any unused prepaid ICS balances, unless specifically authorized by the Commission, nor are providers authorized to permanently retain unclaimed customer refunds. Any known or suspected non-compliance with these restrictions shall subject the provider to Commission procedural actions and available remedies and/or to the consequences for non-compliance from other Alabama government agencies.

10.02 Minimum Amounts Subject to Refund

The Commission authorizes ICS providers the option of foregoing a prepayment refund for an amount less than $1.00. Nevertheless, non-refunded prepayments shall not be permanently retained by the provider. Non-refunded prepaid balances of $0.01 up to $1.00 shall be aggregated and submitted to the Alabama State Treasurer, along with unclaimed refunds of $1.00 or more, in accordance with Alabama's Uniform Disposition of Unclaimed Property Act. ***The Order is revised accordingly.***

10.03 Refund Procedures

The Order requires the following with respect to refunds:

> ICS providers will be proactive in informing customers of procedures for refunding unused debit and prepaid balances. ICS customers will be refunded their unused balances in full. The provider will not assess any fee to the customer's balance or request any payment from the customer for refunds. Refunds of unused account balances for prepaid ICS and VVS may be made via check or credits to the customer's credit/debit card. Refunds of unused account balances for debit service shall be made by credits to the inmate's trust fund account. The Commission will consider other refund methods, e.g., calling cards that can be used outside the facility, on a case by case basis. However, these methods and the rates/charges applicable to the calling cards must be approved by the Commission and included within the ICS provider's tariff on file with the Commission.[157]

As discussed under "Restrictions on ICS Resale" in Section 6.00 (ICS Rates) of this

[157] Order, Section III M, pp 24-25.

Order, the Commission prefers refunds to inmates using debit release cards versus checks or that the funds be transferred to the inmate canteen/trust account for refund. Refunds of prepaid ICS, wherein payment was submitted via debit/credit cards, may be issued by crediting the refund amount to the card account, by debit card, or by check. For other methods of prepayment, refunds shall be made using checks or debit cards. However, the Commission does not authorize the issuance of refunds to any class of customers using prepaid telephone calling cards. When a prepaid telephone calling card is used for refunds, the ICS provider, rather than the customer, dictates how refunds shall be spent. Many customers use wireless phones for their telecommunication requirements and have little need for prepaid telephone calling cards. Moreover, the Commission would be required to regulate the calling rates/terms to which the ICS refund is converted along with the associated expiration date for the card. ***Therefore, the Commission revises its Order to preclude ICS refunds using prepaid telephone calling cards.***

10.04 Unclaimed Property

ICS services are subject to Alabama's Disposition of Unclaimed Property Act of 2004 ("Unclaimed Property Act"). The staff "white paper" on ICS services provided to ADOR, discussed previously in Section 9.00 (Taxes and Government Fees) of this Order, was also submitted to the Alabama State Treasurer's Unclaimed Property Division requesting a definitive assessment with respect to applicability of the Unclaimed Property Act on ICS. On May 2, 2014, the Commission President, Executive Director and Chief Administrative Law Judge, and the Director of the Commission's Utility Services Division conducted a conference call with Alabama's State Treasurer and the Director of the State Treasurer's Unclaimed Property Division. The State Treasurer confirmed both the Commission's findings that ICS is subject to Alabama's Unclaimed Property Act and the Commission's findings with regard to the applicable dormancy period for customer refunds under the Act.

> Title 35, Chapter 12, Article 2A, in the Code of Alabama codifies the Uniform Disposition of Unclaimed Property Act of 2004. Section 35-12-72(a)(15) is applicable to utility service and defines

> unclaimed as a "Deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable". The Commission hereby defines the terminology "one year after the deposit or refund becomes payable" to be one year from the date of the last customer generated debit or credit to the customer account, i.e. one year following the last customer payment for ICS in the account or one year after the customer's last usage of funds in the account for ICS, whichever comes later.[158]

10.05 CenturyLink disagrees that ICS prepayments should be considered property subject to unclaimed property requirements under Alabama law:

> The October 2013 Order imposes significant new requirements that unused debit or prepaid ICS dollars be refunded or treated as unclaimed property under Alabama law (pp. 24-26). EPSI believes that it is a mischaracterization of prepaid ICS services to classify end-user payment amounts as "property" subject to potential abandonment. Instead, such payments are, in fact, the purchase of services to be rendered and what is owed to the end-user is a service delivery obligation, not money. Further, while network usage is certainly a contributing component of ICS costs, the fixed elements of labor, call processing technology, and equipment represent the vast majority of ICS costs and are incurred by the ICS provider regardless of whether the end-user ever completes a phone call. Therefore, ICS providers are entitled by law to spend amounts collected for the purchase of services on establishing and supporting the infrastructure necessary to deliver such services. For these reasons, EPSI believes that the requirements in the Order related to refunds and unclaimed property are inappropriate and unnecessary, and should be eliminated.[159]

Alabama's Unclaimed Property Act defines "property" as:

> PROPERTY. Tangible property held in a safe deposit box or other safekeeping depository in this state, and fixed and certain interest in intangible property that is held, issued, or owed in the course of a holder's business, or by a government, governmental subdivision, agency, or instrumentality, and all income or increments therefrom. The term includes, but is not limited to, property that is referred to

[158] Ibid, page 25.
[159] CenturyLink comments, dated December 6, 2013, page 8.

> as or evidenced by any of the following:
>
> a. Money, a check, draft, deposit, interest, or dividend.
>
> b. Credit balance, customer's overpayment, gift certificate, security deposit, refund, credit memorandum, unpaid wage, unused ticket, mineral proceeds, or unidentified remittance.[160]

10.06 Any unutilized prepayment for ICS is clearly a credit balance included in the Act's definition of property. The Commission requires refunds for any remaining balance for ICS prepayment after charges are deducted by the provider for calling services rendered and "refunds" are also included in the Act's definition of property. Therefore, the Commission disagrees with CenturyLink's claim that it is a mischaracterization of prepaid ICS services to classify end-user payment amounts as "property". The Act clearly defines credit balances and refunds as "property".

10.07 The Commission agrees that a service obligation is owed to the ICS customer for prepayments submitted to the provider. However, ICS is outbound only service from inmates at detention facilities. Once the inmate is released from the facility, that obligation can no longer be fulfilled by the ICS provider to the former inmate and their family members. The Commission agrees with CenturyLink's assessment of the provider's cost elements but disagrees with the conclusion that "…ICS providers are entitled by law to spend amounts collected for the purchase of services on establishing and supporting the infrastructure necessary to deliver such services". The provider is entitled to seek the necessary capital for establishing and supporting their infrastructure with the expectation that revenue generated by sales of their services is sufficient to cover their costs. The provider is also entitled to use ICS sales revenue for their costs of service and for profit. However, prepayments are not sales until the customer uses the service for which prepayment is intended whereupon the provider is entitled only to that portion of the customer's prepayment commensurate with the charges for services rendered. Unused prepayments entrusted to the provider remain the property of the customer and

[160] *Article 2A, Uniform Disposition of Unclaimed Property Act of 2004,* Code of Alabama, 1975, Section 35-12-71(11).

the provider is not authorized by Alabama law to seize the property of inmates and their families to support the provider's network infrastructure and/or increase the provider's profitability.

10.08 The Order precludes ICS providers from assessing customers any charges for refunds and from assessing dormancy charges to unclaimed funds.

> The Commission does not consider ICS provided under exclusive contract with the confinement facility to represent any explicit or implied contractual agreement with users of their ICS service for purposes of determining whether dormancy charges apply to the customer's abandoned property. Furthermore, the Commission prohibits any attempt by ICS providers to include in ICS offerings to their customers, or otherwise in their tariff on file with the Commission, any requirement that the customer's property is subsequently subject to dormancy charges in the event of abandonment. Dormancy charges are not applicable to ICS in Alabama.[161]

10.09 Securus objects to the one-year dormancy period for unclaimed property:

> The Commission proposes to require Securus and other ICS providers to keep all unexpired prepaid ICS customer accounts open and valid for a period of one (1) year following account inactivity before the ICS provider is permitted to terminate the account and tender account proceeds to the Alabama State Treasurer pursuant to the Alabama Uniform Disposition of Unclaimed Property Act of 2004. Because ICS providers like Securus encounter burdensome accounting difficulties if otherwise required to maintain such inactive accounts for a 1-year period, Securus respectfully requests that the Commission permit the ICS provider to transfer such inactive prepaid account balance to the Alabama State Treasurer following a period of inactivity equal to 180 days. Such request is wholly consistent with Securus' current tariffed terms and conditions and does not impose unduly burdensome accounting requirements on the ICS provider.[162]

[161] Order, Section III M, page 25.
[162] Securus comments dated December 6, 2013, page 10.

10.10 The Alabama Unclaimed Property Act is not a Commission requirement. It is an Act of the Alabama Legislature and carries with it the force of law. The dormancy period for utility refunds is listed on the Alabama State Treasurer website as 1 year[163]. The dormancy period for utility refunds is the shortest of those authorized. The Commission does not have authority to grant a waiver from the law. Securus comments demonstrate a misunderstanding of unclaimed property requirements. The Unclaimed Property Act does not require providers to keep an account "open and valid" for the duration of the prescribed dormancy period. It requires providers to retain the funds due the customer for the duration of the dormancy period, during which time the provider actively seeks to refund the customer. The customer's opportunity to claim the money due them does not end when the funds are remitted to the Alabama State Treasurer[164]. The property is listed Money Quest Alabama, the Alabama State Treasury's official website for unclaimed property searches:

> The Alabama State Treasury serves as custodian of these assets and makes every effort to return them to the rightful owner or their heirs. This site allows you to search the Alabama unclaimed property database to see whether the state may be holding assets that belong to you, your family or your business. You may also print claim forms and track the progress of your submitted claims. Claims submitted for assets held by the State of Alabama are processed by the State Treasurer's Office. There is never a charge to search the database, file and track a claim or receive your assets![165]

10.11 ***The Commission reaffirms its Order with respect to unclaimed property. Unclaimed refunds due ICS customers in Alabama and other customer prepaid funds[166] retained and not returned to the owner are subject to Alabama's Unclaimed Property Act. ICS providers shall comply with its requirements and with the Alabama State Treasurer's Unclaimed Property reporting procedures.***

[163] Reporting of Unclaimed Property, Appendix, Alabama Dormancy Periods / Reporting Guide, Alabama State Treasurer, URL: http://www.treasury.state.al.us/Content/Business_Owners.htm
[164] Custody by state; recovery by holder; defense of holder; Code of Alabama, Section 35-12-79.
[165] URL: https://www.moneyquest.alabama.gov/
[166] Includes unused balances associated with prepaid inmate calling cards.

11.00 Tariff Requirements

11.01 The Order establishes the following tariff requirements:

> ICS providers will submit revised tariffs that comply with the requirements in the final Order for this proceeding and rules adopted therein. Within the provider's tariff, a separate section will be established identifying all services provided to confinement facilities in Alabama, a description of each service provided, and the associated rates for each service. Additionally, a separate tariff section will be provided that identifies, defines, and provides the associated price for all ICS fees and ancillary charges. The provider will not assess any rate or charge to ICS customers without Commission approval nor will any rates of charges be included in the tariff that are not specifically listed in the separate tariff sections referenced above. No existing or new ICS will be offered by the provider until the service and associated rates are approved by Commission and included in the provider's tariff on file with the Commission.[167]

11.02 Section III P, page 27, in the Order establishes the Commission's filing requirements. PayTel's comments are supportive of the requirements.

> Pay Tel supports the tariff filing and reporting requirements proposed by Staff. Pay Tel believes the only way to protect consumers from inflated fees is for the Commission to require ICS vendors to list all payment processing fees on the vendor website and in their tariff including third party negotiated fees such as Western Union® and MoneyGram®. Following a review of cost justification by the Commission the fees would be approved or denied.[168]

11.03 The Commission shall develop a template for the ICS tariff and include it on the Commission website before implementation of this Order to include an abbreviated version that identifies only the provider's rates and ancillary charges. ***The Commission revises its Order with respect to the services that shall be included in the ICS provider***

[167] Order, Section III O, page 26.
[168] Pay Tel comments dated December 5, 2013, page 5.

tariff. The provider shall identify all services, along with the rates and fees associated therewith, provided at/from confinement facilities in Alabama including but not limited to single payment services, prepaid inmate phone cards, and video visitation service. The tariff shall identify a provider point of contact for questions about the tariff and a point of contact for customer service inquiries, including the contact name, mailing address, telephone number, and email address. As a minimum, the Commission's abbreviated version of the tariff is due within ten (10) days following implementation of this Order and the full version of the tariff no later than sixty (60) days following the Order implementation. All updates shall be submitted to the Commission's Utility Services Division.

12.00 Record Retention and Reporting Requirements

12.01 The Order requires that providers maintain the following records:

> ICS providers shall maintain electronic and/or paper copies of the following documents, records, or forms applicable to ICS in Alabama for the months in the current calendar year plus the most recent three (3) complete calendar years (Jan – Dec):
>
> (1) customer monthly account statements, referenced in Part III I;
> (2) forms showing the State Utility Gross Receipts Tax collected and the State Utility Gross Receipts Tax remitted to the Alabama Department of Revenue;
> (3) forms showing USF fee collections and payments submitted to USAC;
> (4) forms showing collections of the federal TRS fee and payments remitted to the TRS Fund Administrator;
> (5) records showing unused customer balances, by customer identification, and records of refunds by customer identification including the date, amount, and method of refund;
> (6) Unclaimed Property Report forms showing submission of unclaimed customer funds to the Alabama State Treasurer.[169]

[169] Order, Section III J, page 22.

12.02 GTL supports the record retention requirements provided adequate time is provided for providers to achieve compliance with the requirements:

> GTL supports the Commission's proposals with two recommended modifications. First, the Commission must ensure adequate implementation time for its proposals. To the extent ICS providers do not already keep the requested records in the format proposed by the Commission, it will take some time for ICS providers to come into compliance with the new rules.[170]

12.03 Pay Tel indicates it is in compliance with the requirements and concurs with the requirements.[171]

12.04 ***Upon further review, the Commission vacates and supplants the record retention requirements in the Order with the following.***

1. ***On a monthly basis, beginning with January 2013, segregated into collect, prepaid collect, prepaid debit, prepaid inmate phone card, and direct-billed service at each Alabama confinement facility served:***
    a. ***Number of local calls, local minutes of use, and associated local call revenue.***
    b. ***Number of intrastate toll calls, intrastate toll minutes of use, and associated intrastate toll revenue.***
    c. ***Number of interstate toll calls, interstate toll minutes of use, and associated interstate toll revenue.***

2. ***On a monthly basis, beginning with January 2013, for service originating at Alabama confinement facilities:***
    a. ***Number of single payment service calls billed to mobile phones (text-connect) and associated revenue.***
    b. ***Number of single payment service calls billed to debit/credit cards (Pay Now) and associated revenue.***
    c. ***Alabama Utility Gross Receipts Tax collected.***
    d. ***Unused prepaid collect, prepaid debit, and prepaid inmate phone card account balances refunded by service type, customer name, customer mailing address and phone number (if known), PIN (if applicable) and confinement facility association.***
    e. ***Unclaimed funds by service type, customer name, last known customer***

[170] GTL comments dated December 6, 2013, pp 14-15.
[171] Pay Tel comments dated December 5, 2013, page 10.

mailing address and phone number, PIN (if applicable), Alabama confinement facility association, and date funds are declared unclaimed.

3. ***Beginning with implementation of the Order:***
    a. ***Monthly prepaid minutes associated with single payment services (imputed call duration for collect calls billed using text-connect type service and for collect calls billed to a debit/credit card).***
    b. ***Monthly data identifying the total single payment service calls originating from Alabama confinement facilities and the number of single payment service calls terminated for suspected three-way call violations.***
    c. ***Monthly data, by confinement facility, identifying the total number of ICS calls and the total number of ICS calls disconnected for suspected three-way call violations.***
    d. ***Monthly customer account detail separated into prepaid collect, prepaid debit, prepaid inmate phone card, and direct-billed service with customer name, customer mailing address and phone number (if known), PIN (if applicable), and Alabama confinement facility association. Monthly customer account detail shall be retained for 36 months.***

4. ***Proof of the following beginning with implementation of the Order:***
    a. ***Alabama Utility Gross Receipts Tax remittance reports to the ADOR.***
    b. ***Unclaimed Property Report to the Alabama State Treasurer.***

12.05 ***The records retained by the ICS provider, as referenced herein, as well as the provider's ledgers, books, and records are subject to audit by the Commission. Section 37-1-82 in the Code of Alabama requires providers under the Commission's jurisdiction to make their books and records available for inspection at a location within the state of Alabama. If all or parts of the provider's books, documents, and/or records referenced herein are not presented for inspection at a location within the state of Alabama, the ICS provider is required to reimburse the Commission for employee(s) out-of-state travel, meals, lodging, and incidental expenses associated with inspection/review of the company's books and records. For purposes of compliance verification or customer complaint investigation, providers shall submit electronic or paper copies of ICS customer account statements upon Commission request.***

12.06 Reporting Requirements

The Order requires providers to report the following to the Commission quarterly:

(1) local ICS minutes, number of calls, and associated revenue;
(2) intrastate ICS minutes, number of calls, and associated revenue;
(3) interstate ICS minutes, number of calls, and associated revenue.[172]

12.07 CenturyLink recommends less frequent reporting to the Commission:

> EPSI suggests that reporting should be required annually, rather than quarterly as the October 2013 Order currently requires. Annual reporting should provide sufficient information to allow the Commission to exercise adequate oversight of inmate calling services providers.[173]

The Commission concurs with CenturyLink's recommendation and revises its reporting requirements.

12.08 ***By no later than January 31, 2015 for the period ending on the last day of the preceding December and annually thereafter[174], ICS providers shall report the following, electronically, to the Commission Utility Services Division:***

> ***From the record retention requirements identified in this Order, item 1 (a through c), item 2 (a through e), item 3 (a through c), and item 4 (a through b).***

13.00 Patents and Acquisitions

13.01 In the Further Notice of Proposed Rulemaking for WC Docket No. 12-375, the FCC seeks comments on ways to foster competition within the ICS industry[175] The focus is primarily on competition within confinement facilities. The Commission, however, contends that a significant impediment to reduced ICS provider costs exists beyond

[172] Order, Section III N, page 26.
[173] CenturyLink comments, dated December 6, 2013, page 12.
[174] Portions of the initial annual report include the period than begins January, 2013. Subsequent annual reports include only the most recent calendar year.
[175] FCC ICS Order, para. 177.

detention facility walls, far removed from contracts and site commissions. Patents are a two-edged sword. They are used to safeguard innovative products and designs from misappropriation that deprives innovators an opportunity to recover research and development costs and ultimately profit from their efforts. On the other hand, patent shopping and the subsequent control exercised over competitors through patent litigation and the threat of such litigation may be used to stifle competition. Moreover, the pursuit of market domination through an aggressive strategy of acquiring the supporting protocols/architecture upon which ICS depends may be able to exert control over their competitors' costs and, therefore, ICS prices.

13.02 The Commission finds the following statement disconcerting:

> Richard A. Smith, President and Chief Executive Officer of Securus Technologies said, "It is well known that Securus Technologies has by far the largest patent portfolio in the corrections industry and we have spent in excess of $200 million developing sophisticated technology – and we have solid patents. **You cannot operate in our industry legally without having a patent license agreement with us** [emphasis added] and GTL's license agreement expired in early August, 2013 – they did not renew the license agreement so we had to file this lawsuit."
>
> "Without an agreement, GTL cannot legally provide the Securus patented services to prisons and jails – so they cannot run their business and we will ask the Court to stop them," said Smith.[176]

13.03 Securus controls the overwhelming majority of ICS industry patents:

> "We have had a total of 121 patents issued by the United States Patent and Trademark Office and patent offices in other countries and have another 61 patents pending - so 182 patents issued or pending," said Richard A. ("Rick") Smith, President and Chief Executive Officer of Securus Technologies, Inc. "That represents approximately 75% of the entire corrections sector patents (Issued

[176] *Securus Technologies Files Lawsuit in Federal Court Against Global Tel*Link for Patent Infringement When Global Fails to Renew Existing License*, Securus Press Release dated October 4, 2013. URL: https://securustech.net/press-releases/-/asset_publisher/JBo9KqWeTcqo/

> plus Notice of Allowance plus Pending status patents) and we are filing an additional 20 to 30 patents per year.[177]

13.04 U.S. Patent Office files indicate Securus was assigned Patent 8190121[178], "System and Method for Authorizing and Monetizing Collect Cellular Telephone Calls" from 3C Interactive which is believed to be the patent for text-connect service. Additionally, Securus acquired IVR platform provider, Telerus, and, more recently, JLG Technologies, LLC and their affiliates, the leading supplier of continuous voice biometrics.[179] Further research is necessary for purposes of identifying ICS provider patents as well as provider acquisitions of suppliers that offer critical ICS protocols, architectures, and supporting services.

13.05 ***The Commission will follow ongoing ICS proceedings at the FCC to determine if this issue is addressed at the federal level wherein jurisdiction for such matters is reserved and may subsequently submit comments to the extent this matter is addressed in such proceedings.***

14.00 Cost Studies

14.01 Transparency Required

For some ICS providers, organizational and financial relationships with affiliates, subsidiaries and partnerships are not easily identified. For cost study purposes, it is essential that such relationships be revealed for purposes of verifying that (A) third-party costs reported by providers are those over which the provider and/or the provider's corporate parent exercise no organizational control; and, (2) provider costs associated with affiliates and subsidiaries that serve other providers and/or provide non-related

[177] *Securus Technologies Announces Continued Strong Growth of Patent Portfolio,* Securus Press Release dated April 4, 2014, URL: http://www.freshnews.com/news/924349/securus-technologies-announces-continued-strong-growth-patent-portfolio

[178] *Patent Assignment Abstract of Title*, United States Patent and Trademark Office, Patent 8190121. Also published as US 8626118 B2, US 20090054031, US 20120202454, and US 20140080443.

[179] Securus Technologies, Inc. Announces Acquisition of JLG Technologies and Affiliated Companies, Securus Press Release dated June 11, 2014.

services represent a reasonable allocation of that portion of costs specific to the provider and to the service(s) under review. Consequently, the Commission shall only consider cost support submitted by providers that fully reveal, to the Commission's satisfaction, their organizational structure and that of their parent organization (if applicable) including all affiliate and subsidiary relationships. Additionally, affiliates and subsidiaries are subject to the Commission's discovery process[180] for information contributed in support of the provider's ICS costs.

14.02 Cost Study Strategy

Following implementation of this Order and the interim rates and fees provided herein, the Commission intends to analyze costs supporting future intrastate ICS rates, provider ancillary charges, and confinement facility cost reimbursement,. To assist the staff in developing cost study procedures, the Commission shall establish a workgroup consisting of staff and selected representatives from ICS providers that serve or intend to provide ICS service to Alabama confinement facilities; one provider that serves primarily jails and another with extensive experience serving prisons. The proposed cost study procedures and supporting requirements developed by the study group shall be subject to review and comment by all ICS providers before adoption. The studies shall focus on intrastate data that is national in scope. Rates and fees adopted from the cost study analysis shall apply to all providers in Alabama regardless of participation in the study process. Separate costs for prisons and jails shall be identified and jails may be further subdivided according to facility size.

14.03 The Commission intends to establish a separate security biometrics component for intrastate ICS rates due to the rapid evolution of this technology and subsequent changes in detention facility security requirements. Commission consideration shall be given to reviewing minimum security biometrics requirements and the associated price component thereof every two years. The Commission shall consider a review of intrastate ICS along

[180] Data may be deemed confidential and shall not be released to parties outside the Commission absent specific approval from ICS provider..

with the associated rates and charges every three years[181].

15.00 Implementation

The Order shall be implemented on October 1, 2014.

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission will consider comments from interested parties pertaining to the content provided herein, if properly filed with the Secretary of the Commission before the close of business on August 11, 2014.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 7th day of July, 2014.

ALABAMA PUBLIC SERVICE COMMISSION

Twinkle Andress Cavanaugh

Twinkle Andress Cavanaugh, President

Jeremy H. Oden

Jeremy H. Oden, Commissioner

Terry L. Dunn

Terry L. Dunn, Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr.

Walter L. Thomas, Jr., Secretary

[181] The Commission's authority to investigate, review, and revise ICS policies, practices, rules, rates and charges are in no way constrained by the recommended window for periodic ICS review.

CenturyLink Holiday Promotion
Alabama Department of Corrections Facilities
November – December 2013

	PRE-TRIAL			PROMOTION		
	Per Call Surcharge	Per Call Usage	Per Minute Usage	Per Call Surcharge	Per Call Usage	Per Minute Usage
INTRASTATE Collect						
Local	$2.25	$0.50	$0.00	$0.00	$0.00	$0.21
Toll	$2.25	$0.00	$0.30	$0.00	$0.00	$0.21
INTRASTATE Debit/Prepaid						
Local	$2.25	$0.50	$0.00	$0.00	$0.00	$0.19
Toll	$2.25	$0.00	$0.30	$0.00	$0.00	$0.19
INTERSTATE	**See Note**					
Collect	$3.95	$0.00	$0.89	$0.00	$0.00	$0.31
Debit/Prepaid	$3.95	$0.00	$0.89	$0.00	$0.00	$0.29

	PRE-TRIAL	PROMOTION	
	15 Minute Call	15 Minute Call	Price Change
INTRASTATE Collect			
Local	$2.75	$3.15	14.5%
Toll	$6.75	$3.15	-53.3%
INTRASTATE Debit/Prepaid			
Local	$2.75	$2.85	3.6%
Toll	$6.75	$2.85	-57.8%
INTERSTATE			
Collect	$17.30	$4.65	-73.1%
Debit/Prepaid	$17.30	$4.35	-74.9%

Note: Interstate rates are not set by the Alabama Public Service Commission.