

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**Implementation of the Pay Telephone
Reclassification and Compensation
Provisions of the Telecommunications
Act of 1996**

**Petition for Rulemaking or, in the
Alternative, Petition to Address Referral
Issues In Pending Rulemaking**

CC Docket No. 96-128

DA 03-4027

**DECLARATION OF DOUGLAS A. DAWSON IN SUPPORT OF PETITIONERS'
ALTERNATIVE PROPOSAL**

Douglas A. Dawson, being duly sworn, declares as follows:

I. INTRODUCTION

1. My name is Douglas A. Dawson, and I am the President of CCG Consulting LLC ("CCG"), located at 7712 Stanmore Drive, Beltsville, Maryland, 20705. CCG is a general telephone consulting firm. CCG works for over 350 communications companies, which include local exchange carriers ("LECs"), competitive LECs, cable TV providers, electric utilities, wireless providers, paging companies, municipalities and other governments and interexchange carriers ("IXCs").

2. I submit this Declaration in support of petitioners' alternative proposal to have the Federal Communications Commission ("Commission" or "FCC") address certain issues involving prison inmate calling services referred to the Commission by the United States District Court for the District of Columbia in *Wright, et al. v. Corrections Corporation of America, et al.* ("*Wright*").¹ I have specific experience and expertise relevant to the issues in

¹ CA No. 00-293 (GK) (D.D.C.).

this proceeding, which involves the provisioning of long distance calling for prison inmates. I have assisted in the launch of over 50 long distance companies in my career. In that role, I have done virtually everything associated with creating or running long distance companies, gaining substantial expertise in the long distance business. I am also familiar with all regulatory aspects of long distance, including the development of rates and costs and, prior to detariffing, the preparation and filing of tariffs.

3. I have helped numerous companies select hardware for long distance service, and I know the capabilities and technical specifications of such hardware. I have negotiated numerous wholesale long distance service agreements between facilities-based IXC's such as Sprint, Frontier, Qwest and WorldCom (now MCI), and resale carriers, and I understand the underlying long distance networks and issues associated with using them. I have had extensive experience with, and, consequently, have an in-depth understanding of, the capabilities and configurations of the network switching systems that lie at the heart of all telephone systems. I also have helped numerous companies with the provisioning of ancillary long distance products such as calling cards, operator services, pre-paid cards, international toll and Internet telephony. Most recently, my company has assisted clients in purchasing and installing Voice over Internet Protocol ("VoIP") long distance service. My CV, including testimony in prior cases, is attached as Exhibit 1.

II. PURPOSE OF THIS TESTIMONY

4. In this Declaration, I have been asked to examine the rates charged for interstate long distance calling in prison systems. Because the *Wright* case focuses on inmate calling at prisons operated by the Corrections Corporation of America ("CCA") during a period when inmate calling services were provided at those facilities by Evercom Systems, Inc. ("Evercom"), AT&T, MCI and other service providers, I will use data relating to the service provider defendants in the *Wright* case, as well as other inmate service providers, to illustrate the points I

am making. The inmate calling services provided by the *Wright* defendants are typical, with regard to the rates and the methods used to bill long distance calls by prisoners, of most prison inmate calling services. The issue of inmate service pricing is a generic question, and the conclusions drawn in this analysis would apply to all prison calling systems, public and private. CCA and other prison administrators and the service providers control inmate calling on a monopoly basis and have permitted only a limited set of very expensive options for making long distance calls.

5. For the reasons set forth in this Declaration and based on my extensive background in the telecommunications field, I conclude that the rates charged for interstate calling in these and other prisons are excessive. First, most calls are billed as collect calls when in fact the calls are fully automated and do not require an operator. As such, the rates for such calls are set at historic operator-assisted rates and are far in excess of the costs of such calls. Other calls from prisons are made as debit calls but are still billed at rates far above their costs and above comparable rates for other debit calling services and comparable products. Finally, service providers are required to pay prison administrators hefty commissions based on calling volumes that add tremendous mark-ups to inmate calling rates.

6. In brief, in this Declaration, I will: a) demonstrate that collect calls today are very different from collect calls that historically used live operators; b) compare the prices that inmate service providers charge for prison calling to the actual cost of such calls; and c) compare the prices that inmate service providers charge to comparable commercial service rates.

III. RATE ISSUES

7. This section will begin with a discussion of how collect calling rates have been set historically. Next I will examine the rates charged in prisons today. Most inmate calling rates have not decreased over time as the costs for providing long distance have decreased. I will demonstrate that most prison rates are set far in excess of cost. Finally, I will compare the rates

typically charged in prisons to some lower priced inmate telephone services and analogous commercial long distance rates.

Historic Rates for Collect Calls

8. Rates for collect calls have historically been higher than rates for automated calls to account for the difference in the way the calls were processed. Collect calls, until several years ago, always required the intervention of a live operator. I touched on the processing of collect calls in my initial Affidavit in this matter, which is attached, without exhibits, hereto.² Such live operators would be housed in stand-alone operator call centers and required expensive terminals to process the calls. Thus, the price of operator-handled calls reflected the cost of the operator's wages plus the cost of the operator centers and the hardware needed to handle such calls. In addition, a large number of collect calls are never completed because the called party either does not answer or refuses to pay for the call. The cost of the labor for uncompleted calls had to be recovered in the price of the completed calls. Different types of operator calls were historically priced using standard work seconds, meaning that a standard rate per second was applied to different types of operator calls depending on how long each type of call lasted, on average. For example, if the average collect call required two minutes of live operator assistance, it would be priced at twice the rate of another operator call type that required only one minute of operator time.

9. Historically, the price for operator-handled calls was strictly regulated. AT&T, GTE and the Bell System companies provided the vast majority of all operator-handled calls. Regulators at both the federal and the state level would routinely look at the underlying costs of

² Affidavit of Douglas A. Dawson, *Martha Wright, et al.; Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking*, CC Docket No. 96-128 (Oct. 29, 2003) ("Dawson Aff."), attached hereto as Exhibit 2.

making operator-assisted calls for these companies and make certain that the rates reflected the underlying costs.

10. However, it has been many years since operator and collect call rates have been cost-based and cost justified. In general, both the FCC and the states have stopped looking at the cost of long distance calling due to the significant decreases in rates charged to customers brought about by competition. In the following paragraphs, I will look at some of the industry trends that have contributed to lower long distance rates. Collect calling has seen some of the largest decreases in costs since the era when regulators required cost-based long distance rates, largely because the costly elements of that system have been almost totally replaced by computers. Those cost declines, however, have not been matched by rate declines. In the prison systems discussed in my initial Affidavit, there were no live operators involved in completing collect calls (and there are fewer and fewer live operators doing this anywhere in the country). Expensive people have been replaced by computerized systems that have almost no incremental cost for processing an operator call. This Commission is no doubt well aware that there is no connection between the cost of a modern collect call and the price charged for these calls.

11. Collect calls are still priced at a high rate simply because people without cell phones or calling cards are willing to use such services at those rates, especially given that the called party pays for the call. In prisons, however, the callers do not have other options. They are not allowed to use cell phones or calling cards. Instead, they are faced with a monopoly provider insisting that they use collect calling, or, in some cases, debit calling. There is a huge difference between callers who voluntarily elect to use collect calling and prisoners who are given no options.

The Decline in All Telecommunications Costs

12. The cost of providing long distance in general has dropped steadily over the last few decades. The cost required to process a collect call has dropped dramatically over the last

decade for a number of reasons. As noted above, live operators are no longer required to complete collect calls (or many of the other types of calls that were formerly handled by operators, such as calling card calls). Operators have not been totally eliminated, but the vast majority of collect calls are now fully automated. Large commercial automated collect calling products have been introduced into the marketplace, with the best known one perhaps being the "1-800 COLLECT" product that is constantly touted in advertisements on television. This commercial product does not use live operators and instead records the name of a caller and then queries the called party, using voice recognition software, to determine if the called party will accept the collect call. The way that this product functions is very similar to how prison systems process collect calls today – everything is done with computers, and it is a well known axiom that computer time is far cheaper than human labor time. The use of an automated operator has resulted in a drastic reduction in the cost of completing a collect call simply by removing the live operator and the infrastructure required to support the live operator from the process.

13. Other factors have also contributed to lower costs for providing long distance, and these cost reductions have been reflected in the long distance marketplace in the form of lower long distance rates. Without creating an exhaustive list, some of the more important trends that have contributed to lower long distance rates include: reduction in transport costs as transport technologies have improved; drastic reductions in switching costs as the cost of switching hardware and software has plummeted in recent years; reduction of access charges over the years; and a reduction in the regulation and thus the regulatory costs of providing long distance. Perhaps the most significant trend in the long distance market was the introduction and the flourishing of competition. The competitive marketplace has functioned as the Commission had hoped and resulted in significantly lowered long distance rates for consumers.

14. All of these various factors have lowered the cost of providing long distance service. These cost reductions, which have steadily gained momentum over time, have directly

led to ever lower prices for long distance calling for the general public. However, none of the reductions in costs have resulted in lower prison inmate calling rates. The prison long distance providers have benefited from the drop in industry-wide costs, as has every long distance provider; yet there has been no reduction in the rates charged for prison calling.

15. The steady drop in costs has resulted in a drop in rates for general commercial long distance products, over time. A typical residential interstate call that would have cost more than 20 cents per minute 15 years ago is now routinely available for as little as 5 cents per minute. As another example, calling card calls were priced at around 30 cents a call for many years through AT&T and the other major carriers. Again, these prices reflected the use of old technology and the lack of serious competition and deregulation. Today, one cannot read an airline magazine without seeing ads for calling cards offered at 6 or 7 cents per minute.

Inmate Service Rates

16. The long distance rates in CCA and other prisons – privately administered and public – have not reflected the same sorts of price reductions seen everywhere else in the industry. As discussed in my initial Affidavit, the marketplace has not been allowed to operate in the prison inmate service market because the chosen service provider enjoys an effective monopoly in any given prison. In addition to allowing the provider to collect high rates for calling, the prison systems have layered on gigantic commissions, typically based on calling volumes, constituting more than 30 percent of the inmate calling service revenue. As monopolists, neither the service provider nor the prison administrator has any motivation to lower calling rates.

17. All of the prison facilities I have reviewed offer collect calling. In addition, as discussed in my initial Affidavit, some prisons offer debit calling. I will examine the inmate service rates for both collect calling and for debit calling. The rates charged for interstate collect calls in the prisons I have reviewed have two components. The first component is a flat rate,

per-call charge that mimics the traditional set-up charges that have been billed for operator-handled calls. These flat rate charges are derived from the operator surcharges that operator service providers have historically charged to recover the fixed cost of the operator labor and systems used by the live operators. The second rate component for each long distance call is a per-minute charge. Debit calls typically are charged only a per-minute rate.

18. As discussed in my previous Affidavit, Evercom's tariffed interstate inmate service rates just prior to detariffing in 2000 were \$0.59 per minute plus a \$3.95 per-call charge for collect calling and \$0.65 per minute for debit card calls.³ Evercom's and other inmate service providers' rates apparently have not declined since then. Evercom is now a wholly-owned subsidiary of Securus Technologies,⁴ and it no longer posts its rates, but as recently as August, 2005, Evercom's website showed a per minute rate of \$0.89 and a service charge of \$3.95 for its interstate inmate service.⁵ SBC's website shows an interstate inmate collect calling rate of \$0.85 per minute plus a \$3.95 service charge per call.⁶

³ During the period from September 14, 1999, to the detariffing of Evercom's rates on June 27, 2000, Evercom's standard tariffed debit card service rate, which applied to its Inmate-only Debit Account Service, was \$0.65 per minute. See Evercom Systems, Inc. Tariff FCC No. 1, Section 3.4.1 (effective Sept. 14, 1999), and its standard tariffed rate for interstate, interexchange operator assisted inmate calls, including collect calls, was \$0.59 per minute plus a \$3.95 service charge. See Evercom Systems, Inc. Tariff FCC No. 1, Section 3.5 (effective Sept. 14, 1999), and FCC Public Notice, Tariff Transmittal Public Reference Log (June 28, 2000). The relevant portions of Evercom's Tariff No. 1 and cancellation notice are attached as Exhibit 3 hereto.

⁴ See Securus Technologies Home Page, www.securus.net (follow "About Securus" hyperlink) (last visited Aug. 1, 2006).

⁵ Evercom Systems, Inc. Federal Rate Schedule, www.evercom.net/faqs/FCC.pdf (last visited Aug. 29, 2005) (no longer available). See Exhibit 4.

⁶ See, e.g., SBC, Alternate Billed Services in Ohio, http://www05.sbc.com/Products_Services/Residential/ProdInfo_1/1..864--12-3-0.00.html (last visited Aug. 1, 2006); SBC, Alternate Billed Services in Oklahoma, www01.sbc.com/Products_Services/Residential/ProdInfo_1/1.1191.294--5-3-2.00.html (last visited Aug. 1, 2006).

19. Although service contracts are generally not public, inmate service providers' rates also can be derived from telephone bills of the families and others accepting collect calls from prisoners and prisoners' commissary bills for debit calls, which have been provided to counsel for the petitioners in this proceeding.⁷ For example, the telephone bills attached as Exhibit 5 show Evercom charges for inmate collect calls from a prison facility in Burlington, Colorado in May 2002 and February and March 2003. Based on the total charges shown for calls of different duration, Evercom charged \$3.00 per call plus \$0.45 per minute for those calls.⁸ By October 2003, Evercom's rates for collect calls from the same facility had risen even higher. Exhibit 6 shows a charge of \$17.30 for each of several 15 minute calls from October 2003 to January 2004, which had cost \$9.75 in March 2003, more than a 77 percent increase.⁹ The \$17.30 charge for a 15 minute call is consistent with the rates previously shown on Evercom's website of \$0.89 per minute plus a \$3.95 service charge.¹⁰

⁷ Identifying information has been deleted from the attached copies of the bills.

⁸ These rates can be derived by solving two simultaneous equations using the data for two calls of different duration. For example, Exhibit 5 shows that a 15 minute call on May 1, 2002 cost \$9.75, and a one minute call on the same day cost \$3.45. Where x is the per-minute rate and y is the per-call rate,

$$\begin{aligned} 15x + y &= 9.75 \text{ and} \\ x + y &= 3.45. \end{aligned}$$

$$\begin{aligned} \text{Thus, } y &= 9.75 - 15x, \text{ and } y = 3.45 - x. \\ 9.75 - 15x &= 3.45 - x. \\ 6.30 &= 14x. \\ \$0.45 &= x, \text{ and } y = 3.45 - .45, \text{ or } \$3.00. \end{aligned}$$

The same rates were charged in February and March 2003, when six 15 minute calls each cost \$9.75, according to Exhibit 5.

⁹ Compare Exhibit 6 with Exhibit 5.

¹⁰ Applying the formula used in n. 8, *supra*, $(\$0.89 \times 15) + \$3.95 = \$17.30$.

20. Similarly, Exhibit 7 shows AT&T charges for inmate collect calls from a facility in Oklahoma from May through July, 2003. Applying the methodology used to derive Evercom's inmate rates, AT&T's charges in Exhibit 7 reflect a per-call rate of \$3.95 and a usage rate of \$0.89 per minute.¹¹ Exhibit 8 shows a portion of a prisoner's commissary bill for early 2003 at a Colorado prison facility served by Evercom containing two debit account calls. Applying the same methodology to derive the rates, Evercom charged \$1.80 per call and \$0.45 per minute for those calls.¹²

21. These rates are exceedingly high when judged by contemporary standards. Another way to judge how high these rates are is to look at the size of the long distance bills these calls generate for the families of prisoners. For example, if a prisoner were to call collect for only one hour per week (four calls of 15 minutes duration) from the Burlington facility served by Evercom, the total collect charges for a single month would be over \$275. If a prisoner were to call collect for one hour per week (two calls of 30 minutes duration) from the Oklahoma facility served by AT&T, the total collect charges for a month would be over \$245, or more than one dollar per minute. That is a gigantic phone bill for such a small amount of calling. Although the debit account rates are lower, they are still excessive compared to standard services. Four 15-minute debit calls per week for one month would total \$136.80 under the debit account rates charged in early 2003 at the Colorado facility discussed above. At Evercom's previously tariffed debit account rate of \$0.65 per minute, the same amount of calling for one month would total \$156.

¹¹ Exhibit 7 shows several 30 minute calls, each costing \$30.65. Thirty minutes times \$0.89 per minute, plus \$3.95, equals \$30.65.

¹² For example, Exhibit 8 shows a 20 minute-plus call costing \$11.25. Rounding up to 21 minutes times \$0.45 per minute, plus \$1.80, equals \$11.25.

22. These rates are clearly excessive, by any measure. The “collect” surcharge billed by service providers is no longer justified. Notwithstanding the “operator service,” “operator assist” and “Operator Assisted” designations on the tariffs and bills attached in Exhibits 3, 6-7, these calls are not truly operator assisted calls. Nevertheless, the service providers have maintained the collect calling rates and pricing mechanism that were developed decades ago when there were live operators for all prison inmate calls. With a mechanized collect call, there is no longer any justification for the large set-up charge levied for each call. Although there are automated commercial collect calling products for the general public that also still charge for the call set-up, there is one huge difference between commercial automated collect systems and the prison collect system -- the use of commercial collect products is optional for the caller. A caller in the outside world has a number of alternatives to the use of a collect product. The general public uses calling cards, pre-paid cards or cell phones, and most callers only rely on collect calling in the rare instance when there is no immediately available convenient alternative. They are paying a premium for the convenience of long distance service without any prior contract. The prisoners and their families never have an alternative to the inmate service providers’ monopoly systems.

23. In determining what rates would be reasonable for prison calling, one test of reasonableness is to look at the cost of providing calling. I examined cost issues in my initial Affidavit. The first issue that must be examined in any review of inmate service rates is the commissions that service providers pay to public and private prison administrators based on their traffic volumes. As the FCC has held, commissions do not constitute a legitimate cost of providing service; rather, they are an element of profit.¹³ Because they inflate service providers’ rates, however, they must be recognized and “backed out” in any attempt to derive a reasonable inmate service rate. As discussed in my initial Affidavit, inmate service providers estimate that

¹³ Dawson Aff. at ¶ 67 (attached as Exhibit 2 hereto).

commissions typically amount to about 30 percent of their total inmate calling service costs, including all profit.¹⁴ In other words, commissions add an average of 43 percent (*i.e.*, 30%/70%) to all other costs before commissions.

24. Subtracting the cost of commissions from the illustrative inmate service rates discussed above should yield the amounts that service providers actually collect. Assuming a 15-minute long distance call at the Evercom rates in effect from October 2003 to January 2004 at the Burlington, Colorado facility, the charge would be \$17.30. Assuming a 15-minute call at the AT&T rates in effect from May through July 2003 at the Oklahoma facility discussed above, the total charge would be the same.¹⁵ Assuming a 15-minute debit account call at the Evercom rates in effect in early 2003 at the Colorado facility discussed above, the total charge would be \$8.55. Subtracting the average commission rate of 30 percent from these revenue figures yields the following net revenue:

15-Minute Collect Call - \$17.30

Average Rate per Minute	\$1.15
Commission Rate	30 %
Commission per Minute	\$0.35
Per Minute to Service Provider	\$0.80

15-Minute Debit Account Call - \$8.55

Average Rate per Minute	\$0.57
Commission Rate	30 %
Commission per Minute	\$0.17
Per Minute to Service Provider	\$0.40

Thus, service providers retain an extremely high rate per minute after paying commissions.

¹⁴ *Id.*

¹⁵ The per-minute rate of \$0.89 times 15 plus the per-call charge of \$3.95 equals \$17.30.

Inmate Calling Costs

25. The first test of reasonableness for these rates is the cost to the providers to complete the calls. I analyzed the operating costs of completing inmate calls in my initial Affidavit. There, I calculated a range of costs for prison calling and also cited costs that were provided in other Commission filings by the Inmate Calling Service Providers Coalition (“Coalition”). I cited data from the Coalition showing that the cost of providing an inmate local collect call was \$0.126 per minute.¹⁶ I then made the appropriate adjustments necessary to derive the cost of an inmate long distance collect call by substituting the cost of transport and termination of a long distance call for the local service charge, but accepting all of the Coalition’s other costs. The cost of an inmate long distance collect call derived in that manner was \$0.133 per minute.¹⁷

26. It should be noted that this cost estimate included a cost of \$0.027 per minute for wholesale long distance transport and termination. Today, I typically can procure wholesale transport and terminating service for around \$0.0125 per minute. Accepting all of the Coalition’s other costs, while substituting today’s lower long distance transport and termination cost, the estimated cost of providing inmate long distance collect calling declines from \$0.133 to \$0.121 per minute. Within that cost of a collect call is roughly 6 cents of costs for billing and uncollectible revenues that do not apply to debit calls.¹⁸ Thus, using the Coalition’s own cost figures, the cost of making a debit call ought to cost the inmate providers roughly \$0.06 per minute (\$0.121 total cost less the cost of billing and uncollectibles).

¹⁶ See Dawson Aff. ¶ 72 (attached as Exhibit 2 hereto).

¹⁷ *Id.*

¹⁸ *Id.* ¶ 74.

27. There is clearly a huge difference between the rates the inmate service providers are charging and their costs. The margins retained by these providers are excessive. Every long distance provider strives to make a reasonable profit, and they also strive to find minutes that are highly profitable. However, the monopoly environment in these prisons allows the providers to collect rates that are vastly in excess of costs. Following is a comparison of the amount collected by providers compared to the underlying costs. The higher end of the range of estimated costs, as provided by the prison telephone providers themselves, is used in this chart in order to provide the most conservative possible comparison in favor of the prison providers.

Collect Calls

Revenue Kept by Provider	\$0.80
Reasonable Direct Cost	<u>\$0.12</u>
Profit Margin per Minute	\$0.68
Profit as a Percentage of Revenue	85%

Debit Calls

Revenue kept by Provider	\$0.40
Reasonable Direct Cost	<u>\$0.06</u>
Profit Margin per Minute	\$0.34
Profit as a Percentage of Revenue	85%

28. These profit margins are clearly excessive. Only a monopolist could expect a long distance product with 85 percent margins, after all costs. Most long distance products today generate margins of only a couple of cents per minute, at best. In a competitive market, these prison services would earn a profit of only a couple of pennies per minute. It also should be kept in mind that there is an additional large portion of revenue paid to administrators in the form of commissions, which also should be treated as profit, rather than an element of costs.¹⁹

¹⁹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, 17 FCC Rcd 3248, 3255 (2002) ("Inmate Payphone Order and NPRM"). See also *id.* at 3259-60.

Comparable Debit Calling Rates: Other Inmate Service Rates

29. Another way to analyze the reasonableness of these rates is to look at comparable long distance rates. The most directly analogous rate is the rate charged for debit calling in the federal prison system and other relatively low inmate debit calling rates. In a truly competitive market, all inmate service providers would have to match these lower inmate debit calling rates. There are also commercial long distance products that can be compared to inmate long distance debit calling.

30. The debit account rate applicable to the Inmate Telephone System ("ITS") managed by the Federal Bureau of Prisons ("FBOP") is only \$0.23 per minute, and only \$0.17 per minute of that amount is attributable to telephone service costs. Effective March 1, 2002, the ITS debit calling rate was \$0.17 per minute.²⁰ Effective March 1, 2003, the rate was raised to \$0.20 per minute "[i]n order to maintain the financial integrity of the inmate Trust Fund Program."²¹ According to a FBOP memorandum, "[a]ll of the funds generated from the ITS rate increases will go to the inmate Trust Fund to support Trust Fund Programs."²² Similarly, on July 2, 2004, the ITS debit account rate was raised to \$0.23 per minute "to ensure that adequate financial resources are available for the inmate Trust Fund Program given rising program costs."²³ Thus, for comparative purposes, the ITS debit account long distance rate is still \$0.17

²⁰ U.S. Department of Justice, Federal Bureau of Prisons, Memorandum For All Institution Controllers, All Trust Fund Supervisors, from Michael A. Atwood, Chief, Trust Fund Branch, Trust Fund Message Number: 18-02 (Feb. 8, 2002) at 2, attached hereto as Exhibit 9.

²¹ U.S. Department of Justice, Federal Bureau of Prisons, Memorandum For All Regional Directors regarding ITS Rate Increase Talking Points, from Robert J. Newport for Bruce K. Sasser, Assistant Director for Administration, attachment, Telephone Minutes and Rate Increases (Sept. 27, 2002), attached hereto as Exhibit 10.

²² *Id.*

²³ U.S. Department of Justice, Federal Bureau of Prisons, Memorandum For Inmate Population, from W. Kern, Trust Fund Supervisor, (July 2, 2004), attached hereto as Exhibit 11.

per minute. For economic analytical purposes, the additional cost of six cents per minute can be treated as a commission.

31. Because the debit account rate applicable to federal prison inmates necessarily reflects security functions and the use of equipment similar to the security functions and equipment required at other prison facilities, as well as all of the other costs, including an acceptable profit, of providing inmate service, and because inmate service providers like AT&T, MCI, Evercom and T-NETIX are able to take advantage of the economies of scale generated by customer bases of hundreds or thousands of correctional facilities, the federal debit account rate should be taken into account in deriving an appropriate benchmark rate for inmate debit account and debit card rates generally. Another example is the interstate debit inmate calling rate at Colorado Department of Corrections ("CDOC") facilities of \$0.19 per minute, with a \$1.25 per call surcharge, for a total blended per minute cost of just over \$0.25 for a 20-minute call. The commission rate paid by Value Added Communications, Inc. ("VAC") to the CDOC is 43 percent,²⁴ leaving VAC with net revenue of less than \$0.18 per minute. Similarly, the contract for inmate long distance calling services between the Indiana Department of Administration and T-NETIX provides for prepaid long distance calls at a rate of \$0.25 per minute with no per-call charge and a commission rate of 35 percent,²⁵ leaving T-NETIX with net per minute revenue of slightly over \$0.185 per minute. The Nebraska Department of Corrections inmate telephone service contract with AT&T sets the interstate debit calling rate at \$0.16 per minute plus a \$0.60

²⁴ See Contract between State of Colorado and Value Added Communications, Inc. for Inmate Telephone Services at 6 (Sept. 18, 2006). Relevant portions of the contract are attached hereto as Exhibit 12.

²⁵ Contract for Services Between T-NETIX, Inc. and Indiana Department of Administration, Division of Information Technology at 5, App. 6 (Aug. 17, 2001); Amendment # 1 (Aug. 17, 2005); letter from Arthur E. Heckel, Vice President - Sales, T-NETIX, Inc., to Shelley Harris, Indiana Department of Administration (April 9, 2001). Relevant portions of the contract and the letter are attached as Exhibit 13.

service charge, with no commission payments.²⁶ These charges are equivalent to a total blended charge of \$0.20 per minute for a 15-minute call, with no per-call charge.

32. Even stronger support is provided by an inmate service contract covering Vermont correctional facilities providing an interstate inmate debit rate of \$0.14 per minute plus a connection charge of \$0.75, which is equivalent to a total blended rate of slightly under \$0.18 per minute for a 20-minute call. After backing out the 31.6 percent commission rate paid to the state,²⁷ the service provider is left with net blended revenue of less than \$0.135 per minute. Maryland reduced interstate inmate debit rates in Maryland Department of Public Safety and Correctional Services facilities to \$0.30 per minute, with no per-call charge, and awarded the inmate service contract to T-NETIX (now a wholly-owned subsidiary of Securus Technologies).²⁸ This rate includes a huge 60 percent commission rate.²⁹ After backing out the 60 percent commission, the revenue to T-NETIX is \$0.12 per minute for long distance debit calling. Finally, the Missouri Office of Administration entered into an Offender Telephone Service (“OTS”) contract with Public Communications Services, Inc. providing interstate inmate debit and pre-paid calling services for \$0.10 per minute, with no per-call charge and no

²⁶ State of Nebraska, Service Contract Award to AT&T to provide Inmate Calling Systems, Contract Number SCA-0254 (Nov. 27, 2002), AT&T’s Response to Request for Proposal, SCA-0254 at 51, 86 (Nov. 11, 2002). Relevant portions of the contract are attached hereto as Exhibit 14.

²⁷ Contract between State of Vermont, Department of Corrections, and Public Communication Services for Inmate Services, Contract No. 10314, at Att. B, I (eff. Oct. 1, 2006). Relevant portions of the contract are attached hereto as Exhibit 15.

²⁸ See Securus Technologies Home Page, www.securus.net (follow “About Securus” hyperlink) (last visited Aug. 1, 2006).

²⁹ Maryland Department of Budget and Management Action Agenda, Information Technology Contract, Item 3-IT, at 24B, 25 B (Dec. 17, 2003), attached hereto as Exhibit 16.

commission payments.³⁰ The service providers would not have accepted these contracts if these net rates did not cover costs and a reasonable profit, leaving the total cost of long distance inmate debit calling at less than \$0.14 per minute.

33. In looking at these existing inmate debit service rates, a rate within a range of \$0.15 to \$0.20 per minute, with no per-call charge, would be a generously reasonable estimate of a rate that would be established in a competitive market. These FBOP and state contracts are of a sufficient scope and scale to provide a reasonably comparable sample by which to determine the inmate service rates that would be charged in a competitive market. It is not necessary or appropriate to look at higher inmate service rates than these examples because, in the absence of competition, even the lowest rates in comparable situations must be presumed to be significantly profitable. Service providers would have no incentive to agree to exclusive service arrangements at rates that were not profitable. These examples are sufficiently numerous and wide-ranging to conclude that they accurately represent the total cost of long distance inmate debit calling service plus a reasonable profit. Accordingly, the cost of providing long distance inmate debit calling service is somewhat less than these rates, adjusted for the cost of commissions. Because these federal and state inmate service rates provide a reasonably comparable sample of long distance inmate debit services, and the cost of providing such services, higher inmate rates at other facilities reflect only higher profits, not higher costs.

Comparable Debit Calling Rates: Commercial Rates

34. Various commercial products also provide an additional reasonableness check for inmate debit rates. From the perspective of functionality, the commercial product that is most similar to the prison debit call is the commercial prepaid calling card. These two types of

³⁰ State of Missouri Office of Administration, Notice of Award, Offender Telephone Service, Contract No. C205070001, Public Communications Services, Inc. (May 19, 2006), Best And Final Offer #002 at 8-10. Relevant portions of the contract are attached hereto as Exhibit 17.

services both use the same nationwide network to complete the call; a verification process using a personal identification number is used before placing the call to the final destination; and calls are processed to bill against a pre-established account. The big cost difference between commercial calling card calls and the prison debit call is the extra cost of installing the prison telephone system with all of its security and other penological features. Thus, a comparable rate for prison debit calling would be the price for commercial pre-paid calling cards plus the added cost of the prison telephone system, expressed on a usage basis.

35. Prepaid, debit and calling card rates charged by other carriers for comparable services are far below typical inmate debit calling rates. For example, as long ago as March of 2000, when long distance rates were higher than they are now, an AT&T prepaid card plan was offered for \$0.849 for the first minute and \$0.059 for each additional minute, or less than \$0.14 per minute for a ten minute call.³¹ Also starting in March of 2000, an MCI prepaid card option was offered for \$0.03 per minute plus a \$0.70 per-call surcharge, or \$0.10 per minute for a ten minute call.³² Later that year, another prepaid card option was offered for \$0.029 per minute plus a \$0.50 per-call surcharge, or \$0.079 per minute for a ten minute call,³³ and one of MCI's calling card options was offered for a rate of \$0.15 per minute with no per-call charge and a monthly charge of \$1.00.³⁴

³¹ See AT&T Communications Tariff FCC No. 27, Sections 9.1.1.F.9, 9.1.1.J and 24.1.6.C.9(a) (effective Mar. 15, 2000), attached hereto as Exhibit 18.

³² See MCI WorldCom Communications, Inc. Tariff FCC No. 1, Section C.3.2623311 (effective March 8, 2000), attached hereto as Exhibit 19.

³³ See MCI WorldCom Communications, Inc. Tariff FCC No. 1, Section C.3.26231011 (effective Nov. 10, 2000), attached hereto as Exhibit 20.

³⁴ See MCI WorldCom Communications, Inc. Tariff FCC No. 1, Section C.3.21112 (effective Nov. 1, 2000), attached hereto as Exhibit 21.

36. Current prepaid, debit and calling card rates are even lower. There is a wide range of prepaid calling products available. The calling card from AT&T is probably the most easily recognized brand name product. If one gets a prepaid calling card today directly from AT&T, the rate for interstate calling within the U.S. (excluding Alaska and Hawaii) is \$0.05 per minute, with a 1-minute minimum billing period but no other monthly or per-call charges.³⁵ The same AT&T cards are available from "Sam's Club" (Wal-Mart) for \$0.0347 per minute.³⁶ There are many vendors of calling cards today with rates quoted as low as 2 cents per minute. However, most of the cards with rates at that level have other requirements, such as 3-minute minimum billing periods, that equate to effectively higher rates than the published rate. For purposes of this analysis, the AT&T \$0.05 rate may conservatively be used as representative of current calling card rates. It must be assumed that the carriers offering those rates to consumers are doing so profitably and that a large volume carrier like an inmate service provider could be profitable at that rate or even a lower rate.

37. The next step in deriving an estimate of the cost of inmate debit calling from these commercial retail debit product rates is to add the cost of the prison telephone system. In my initial Affidavit, I estimated the total cost of installing an entire prison telephone system, expressed on a usage basis, to be between \$0.044 and \$0.059 per minute.³⁷ Because that estimate includes all of the costs generated by penological requirements, it can be added to commercial debit product rates to derive a total inmate debit calling cost. In the three years since

³⁵ See "SpeedyPin" Promo AT&T Prepaid Phone Cards, <http://speedypin.com/phone/card/promo-att-prepaid.html?&aff=698> (last visited July 7, 2006).

³⁶ See Sam's Club: AT&T® 800-Minute Phone Card for \$27.76; AT&T® 1200-Minute Phone Card for \$41.64; AT&T® 1500-Minute Prepaid Phone Card for \$52.04, <http://www.samsclub.com/shopping/navigate.do?dest=0> (search "AT&T") (last visited July 6, 2006).

³⁷ Dawson Aff. ¶¶ 50-71 (attached hereto as Exhibit 2).

the preparation of my initial Affidavit, telecommunications system component costs have declined even further. As I predicted, soft switches have reduced switching costs by splitting switching functions into separate components, thereby allowing signaling and penological control functions to be provided to many facilities from a central location.³⁸ Thus, nationwide inmate calling service providers such as MCI, AT&T and Evercom can serve hundreds or thousands of prison facilities from a single switching platform with a central feature server and signaling gateway, leaving only call processing to be provided at each facility. Centralizing switching components that used to be provided at each facility permits additional cost reductions, which may account for some of the decline in rates reflected in the state inmate calling contracts discussed above and makes my previous cost estimate of a prison telephone system of \$0.044 to \$0.059 per minute an absolute ceiling and probably too high.

38. Alternatively, I demonstrated in my previous Reply Declaration in this proceeding, the relevant portion of which is also attached hereto, without exhibits,³⁹ that MCI's inmate calling cost analysis, adjusted to correct overstated cost elements, could be shown to support an estimate of \$0.066 per minute for the cost of installing a prison telephone system.⁴⁰ Thus, the cost of installing a prison telephone system is no more than six cents (based on my cost analysis) to seven cents (based on my adjustments to MCI's cost analysis) per minute. Accepting the estimate of seven cents per minute derived from MCI's adjusted data, an inmate debit rate that would be comparable to a commercial calling card rate today would be \$0.12 per

³⁸ *Id.* ¶ 55.

³⁹ Reply Declaration of Douglas A. Dawson ¶¶ 28-33, *Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking*, CC Docket No. 96-128 (Apr. 21, 2004) ("Dawson Reply Decl."), relevant portions of which are attached hereto as Exhibit 22.

⁴⁰ *Id.* The adjusted MCI estimate of the cost of inmate debit calling -- \$0.086 per minute -- included a \$0.02 per minute long distance termination cost, leaving a cost of \$0.066 per minute for the underlying prison system. *See id.* ¶ 33.

minute (the \$0.05 AT&T calling card rate plus \$0.07 for the prison telephone system). This rate is even less than most of the comparable inmate debit rates discussed above, which strengthens the conclusion that the inmate debit card rate, absent any commissions paid to the prisons, should be no more than \$0.15 to \$0.20 per minute, including profit, and probably less. From the previous analysis of the monies currently collected by service providers, it is clear that they are keeping as much as \$0.40 per minute from each debit call -- a tremendous excess profit.⁴¹

The Cost Difference Between Inmate Collect and Inmate Debit Calling Services

39. With regard to the issue of the reasonable rate for inmate long distance collect calls, it must be remembered that the prison calling product is "collect" only in the sense that the charges are ultimately paid for by the families and friends of the prisoners. These calls are not operator assisted, unlike the historical collect calls performed by live operators, and inmate collect calling rates should not be compared with historical collect calling rates.

40. In the typical prison system, the only difference between a debit call and a collect call is who pays for the call. With limited exceptions, discussed below, the underlying cost of providing the call and the system used to complete a call is the same for both types of calls. Accordingly, the most direct way to derive a reasonable rate for inmate collect calls is to begin with the inmate debit calling rate. The inmate collect rate should be equal to the inmate debit rate plus the additional costs of those processes that are required to provide a collect service -- billing costs paid to the Bell company or other local telephone company serving the called party

⁴¹ The *Inmate Payphone Order and NPRM* notes that a coalition of inmate telephone service providers provided data purporting to show that a 12-minute inmate call costs approximately \$1.30 more than a typical 12-minute non-inmate call. *Inmate Payphone Order and NPRM*, 17 FCC Rcd at 3254. That cost difference comes to only about \$0.11 per minute, and not all of the cost differences are attributed to additional security costs. Even accepting the full difference of \$0.11 per minute, adding that amount to a \$0.05 per minute commercial debit rate yields a total inmate debit calling cost of \$0.16 per minute, which is less than the FBOP debit rate and well within the estimated comparable rate range of \$0.15 to \$0.20 per minute.

and uncollectible revenue resulting from nonpayment of bills. Using the highest estimate available for these costs submitted by the Coalition, billing costs are \$0.029 per minute, and uncollectibles are \$0.034 per minute,⁴² for a total additional cost of \$0.063 per minute.

41. That figure would overestimate the additional costs of collect calling, however, because the \$0.034 per minute component for uncollectible revenues is derived from a much higher assumed billed rate per minute - \$0.82 per minute.⁴³ If prison calling rates were reduced, the amounts of revenue that would be uncollectible would decline. Lower rates equate to smaller bills to families, lowering the amount of revenue to be collected. Also, with lower bills, families could afford to pay the collect call bills. That the derived uncollectible figure of \$0.034 per minute is unrealistically high can be demonstrated by combining the entire potential additional cost of \$0.063 per minute -- which includes the \$0.034 per minute uncollectible figure -- with the high end of the estimated debit calling rate range -- \$0.20 per minute -- to estimate the maximum total collect calling rate, which would come to \$0.263 per minute. If the collect calling billed rate were actually reduced to that level, however, the estimated derived cost of uncollectibles would be reduced accordingly, as discussed above. This would suggest that a reasonable rate for long distance inmate collect calling, using a more realistic uncollectibles adjustment, would be no higher than \$0.05 per minute more than debit calling, or \$0.20 to \$0.25 per minute, with no per-call charge.

42. The conservative nature of a \$0.20 to \$0.25 per minute long distance inmate collect calling rate is demonstrated by the rate charged for inmate collect calling services at New York Department of Correctional Services ("NYDCS") facilities by MCI. NYDCS prisoners pay a \$3.00 connect fee per call plus a per-minute rate of \$0.16 for all calls. Thus, for an 18-plus

⁴² Dawson Aff. ¶ 72 (attached hereto as Exhibit 2). The \$0.029 figure overstates the cost of billing, given that the Coalition included both billing and validation within that estimate. *Id.*

⁴³ *See id.* ¶ 62.

minute call, which is the average for NYDCS prisoner calls, the overall rate is slightly under \$0.32 per minute. MCI pays a 57.5 percent commission in New York.⁴⁴ Accordingly, the effective rate collected by MCI, net of commissions, is about \$0.135 per minute. Similarly, the recent Missouri OTS contract discussed above provides interstate inmate collect calling for only \$0.10 per minute with a \$1.00 set-up charge, which comes to an effective rate of \$0.15 per minute on a 20-minute collect call.⁴⁵ Prisoners in New Hampshire correctional facilities, which are limited to collect calling, pay a \$1.45 connect fee per call plus \$0.20 per minute for interstate long distance calls. Netting out the 18 percent commission paid to the state, the service provider receives just over \$0.23 per minute on a 20-minute collect call.⁴⁶ These directly comparable

⁴⁴ See New York State Department of Correctional Services Comments in Opposition to Petition for Rulemaking Filed Regarding Issues Related to Inmate Calling Services, Exh. A at 45, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128 (Mar. 9, 2004). An 18 minute-plus call is rounded up to the next whole minute in applying these rates. *Id.* Pursuant to an order of Governor Eliot Spitzer, the state will no longer collect its commission after April 1, 2007, which will greatly reduce inmate service rates in NYDCS facilities. See *N.Y. Governor Orders Cuts In Cost of Inmate Collect Calls*, Telecommunications Reports, Feb. 1, 2007.

⁴⁵ See Missouri OTS contract, Best And Final Offer #002 at 9, attached as Exhibit 17.

⁴⁶ See Inmate Calling and Public Pay Telephone Services Contract between New Hampshire Department of Administrative Services and Public Communications Services, Inc. at 15, 22 (Aug. 23, 2000) ("NH Inmate Service Contract"), and Second Amendment to Inmate Calling and Public Pay Telephone Services (Aug. 13, 2003), which are attached hereto as Exhibit B. One facility is covered by a different contract, under which the rates and terms are the same as the NH Inmate Service Contract, except that the connect fee is \$1.50. See Inmate Calling Services, Northern Correctional Facility, Berlin, NH Contract between New Hampshire Department of Administrative Services and Public Communications Services, Inc. at Exh. A, §15.32, Exh. B, §1.1 (Dec. 15, 1999) ("Northern Correctional Contract"), and Third Amendment to Inmate Calling Services (Aug. 13, 2003), which are attached hereto as Exhibit 24. Under the Northern Correctional Contract, the service provider nets \$0.233 per minute on a 20-minute call after commissions. Both contracts have been extended through August 22, 2007. See New Hampshire Governor and Executive Council Minutes, Sept. 13, 2006, Department of Administrative Services items 19 and 20, <http://www.nh.gov/council/> (follow "Current Agenda" hyperlink; then search "Minutes" for September 13, 2006) (last visited Oct. 4, 2006).

inmate collect calling rates support the conclusion that the additional costs of collect calling are not significant and that a benchmark long distance inmate collect calling rate in the range of \$0.20 to \$0.25 per minute, with no per-call charge, is a reasonable maximum and may well be too high.

43. In calculating reasonable inmate long distance calling rates of \$0.15 to \$0.20 per minute for debit calling and \$0.20 to \$0.25 per minute for collect calling, every benefit of the doubt has been given to the service providers, and a good case could be made for even lower rates, particularly in view of the Vermont, Maryland and Missouri contracts. The estimated inmate debit rate range is supported by both a cost analysis and a comparable rates analysis, relying on both other inmate debit calling rates and comparable commercial rates. The estimated inmate collect rate range is supported by an analysis of the difference in costs between debit and collect calling, as well as comparable inmate collect calling rates. The inmate service providers, who are keeping \$0.40 to \$0.80 per minute from calls, after commission payments, are clearly earning huge excess profits from their inmate services.

I declare under penalty of perjury that the foregoing is true and correct.


DOUGLAS A. DAWSON

Executed on this 16 day of February, 2007.