

July 24, 2008

Paul C. Besozzi
Direct 202-457-5292
pbesozzi@pattonboggs.com



VIA FEDERAL EXPRESS

Walter L. Thomas, Jr.
Secretary
Alabama Public Service Commission
RSA Union Bldg.
100 North Union St., Room 850
Montgomery, AL 36104

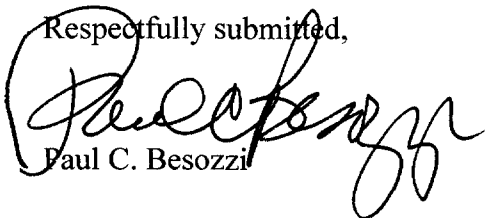
Re: Generic Proceeding Considering the Promulgation of Telephone Service Rules Governing Inmate Phone Service, Docket 15957 -- Joint Comments of Evercom Systems, Inc. and T-NETIX Telecommunications Services, Inc.

Dear Mr. Thomas:

Enclosed herewith for filing with the Commission are an original and ten (10) copies of the "Joint Comments of Evercom Systems, Inc. and T-NETX Telecommunications Services, Inc." for filing in the above-referenced docket.

Please stamp the "stamp-in" copy as received and return it to me via the enclosed Federal Express envelope. If you have any questions, please contact me at (202) 457-5292 or pbesozzi@pattonboggs.com or Carly Didden at (202) 457-6323 or cdidden@pattonboggs.com.

Respectfully submitted,



Paul C. Besozzi



Enclosures

cc: Curtis L. Hopfinger

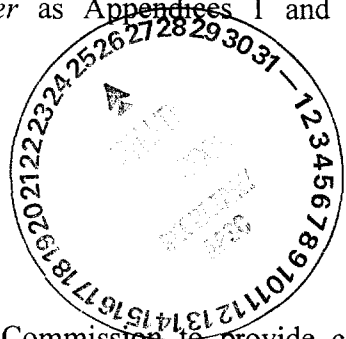
BEFORE THE ALABAMA PUBLIC SERVICE COMMISSION

Generic Proceeding Considering the)
Promulgation of Telephone Service) Docket 15957
Rules Governing Inmate Phone Service)

JOINT COMMENTS OF EVERCOM SYSTEMS, INC. AND T-NETIX TELECOMMUNICATIONS SERVICES, INC.

COME NOW, Evercom Systems, Inc. and T-NETIX Telecommunications Services, Inc. (collectively, "E&T" or "Companies") and file these Joint Comments pursuant to the Order issued by the Alabama Public Service Commission ("Commission") in the above-entitled docket on June 10, 2008 ("Order") proposing revised rules relating to Inmate Phone Service ("IPS").

Specifically, the Order afforded the opportunity for interested persons to comment in writing, by no later than July 25, 2008, on the Staff proposed (a) Telephone Rule T-15.1 and (b) rate/call duration caps, each attached to the Order as Appendices 1 and 2, respectively (collectively "Proposed Rule").



I. BACKGROUND

A. INTEREST OF E&T

Having previously been authorized by the Commission to provide competitive pay telephone services, including IPS, in the State of Alabama, E&T or certain of their predecessors have been providing such services since the early 1990s. E&T collectively currently service some ninety-seven (97) confinement facilities in the State, mostly smaller municipal and county

1 E&T are separate, indirect operating subsidiaries of Securus Technologies, Inc. ("Securus"). Where necessary or appropriate herein, the Companies will be individually referred to as "Evercom" or "T-NETIX."

jails.² E&T have previously actively participated in related proceedings concerning the Commission's regulation of IPS.³ E&T clearly have a direct interest in the outcome of this proceeding which will result in a new, expanded provision in the Commission's Telephone Rules specifically dedicated to IPS, including call duration and rate caps.

B. SPECIALIZED NATURE OF IPS

In its prior rulings establishing the regulatory framework for IPS, the Commission has long recognized the specialized nature of this telecommunications service. For security and other valid reasons, IPS must be offered subject to rules and regulations of the State Department of Corrections or the city or county government administering the confinement facility.⁴ The types and duration of calls must be controlled. In most cases, calls are monitored and recorded by facility administrators. The opportunity for three-way, chain calls and call-forwarding must be precluded. Detailed reporting and voice overlays identifying calls are also required. Moreover, law enforcement officials are increasingly requesting that IPS providers offer more advanced features in IPS systems; one such example is the issuance of an alert when a particular inmate dials a certain number to aid such officials in their investigations.

As a result, the equipment installed and software required to provide and support IPS is more sophisticated and complex than that for the payphone on the corner or even in the lobby of the confinement facility itself.⁵ E&T have invested substantial sums in research and development

² Evercom currently serves all but one of the ninety-seven (97) Alabama facilities collectively served by E&T.

³ See Order, at p. 1 citing Joint Comments submitted in Docket No. 30632.

⁴ Telephone Rule T-15(C)(1).

⁵ *Generic Proceeding to Determine Whether Certain Amendments to the Commission's Rules, Regulations and Guidelines Governing the Provision of Customer-Owned Coin-Operated Telephone Service in Correctional Facilities Should Be Adopted*, 1993 Ala. PUC Lexis 176, Docket No. 23185, Order, December 6, 1993, p.14 ("The Commission has previously recognized that the provision of payphone service in the prison/inmate environment is

to develop and update their platforms for IPS to meet confinement facility needs and must continue to do so.

Further, there is no “one-size-fits all” IPS installation. Each IPS system must be customized depending on the specific needs of the particular confinement facility. Each site has unique requirements that cause variations in the software, storage and network facilities configurations. This customization, when coupled with the additional, special requirements necessitated by the unique environment, inevitably adds to the cost of deploying, maintaining, providing and updating IPS.⁶ In E&T’s experience, the requirement to specially tailor the systems to fit the individual facility especially add to the costs of deploying and maintaining systems at smaller facilities, as well as those located in remote areas and those with low calling volumes.⁷

II. SUMMARY

In light of the Commission’s conclusion that IPS providers remain under the full jurisdiction of the Commission, E&T agree that the codification of Commission rules applicable to IPS is appropriate. E&T offer specific substantive, clarifying and editorial changes to certain

fundamentally different from payphone service provided outside of confinement institutions.”) (“*December 1993 Order*”); see *Generic Proceeding On Customer-Owned Coin-Operated Telephones*, Docket No, 21682, Report and Order, November 7, 1991, at pp. 5-6 (“*November 1991 Order*”); see also *Policies and Rules Concerning Operator Service Providers, Report and Order*, 6 FCC Rcd 2744, 2752 ¶15 (1991) (Inmate telephone industry faces “exceptional circumstances”), *aff’d, Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, 10 FCC Rcd 1533 (1995).

⁶ “We recognize that the provision of inmate calling services implicates important security concerns and, therefore, involves costs unique to the prison environment....[A] prison payphone provider typically is contractually obligated to monitor and control inmate calling to prevent abuse and ongoing criminal activity and to assist in criminal investigations.” *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 17 FCC Rcd, 3248, 3276 ¶72 (2002).

⁷ Because IPS is very much a “premises-based system”, the IPS industry substantially lacks economies of scale. As the FCC has observed, inmate services entail a “great diversity of local costs and conditions.” *Id.*, ¶9.

Sections of the Proposed Rule. E&T believe that these proposed changes are reflective of the unique environment of IPS and E&T's direct experiences in providing IPS.

With respect to the Staff's proposed requirement for a twenty (20) minute call duration on IPS calls, E&T respectfully submit that such a mandate flies in the face of the previously thoughtful policy adopted by the Commission. That policy expressly recognized that in the IPS context, confinement facility administrators should have the authority to determine the appropriate call duration. Nothing has changed that would warrant the Commission discarding that conclusion.

E&T also oppose the imposition of a rate cap on the Operator Service Charge (\$2.25) that is below the current dominant carrier rate for automated operator assisted calls in the non-inmate context. Such a disparity, particularly in the local collect call context, ignores the special cost requirements for IPS. The Staff has offered no justification or analysis that would support this discount over what is a reasonable charge paid by consumers outside confinement facility walls.

III. SPECIFIC COMMENTS ON STAFF-PROPOSED TELEPHONE RULE T-15.1

As an initial general comment, E&T note that the Commission's current Telephone Rules include in Rule T-15(C) a series of provisions relating to "Coinless Inmate Telephone Collect-Only Service." E&T assume that those provisions are being replaced and superseded in their entirety by the Proposed Rule in its final form. There is no reason to bifurcate or duplicate requirements applicable to IPS.

Because the call duration and rate caps are, in E&T's view, the most substantive modification of the current Commission rules from a business perspective, E&T first offer their comments on Appendix 2 to the Proposed Rule.

Thereafter, E&T provide specific comments and recommendations regarding certain of the various provisions of the Proposed Rule.⁸ Where E&T advocate specific language changes to the Proposed Rule those changes are reflected as redlines in the text of the provision immediately above the specific comments.

A. COMMENTS ON PROPOSED CALL DURATION/RATE CAPS

As reflected in Appendix 2, the *Order* proposes the following caps on the duration and rates of inmate collect calls.⁹

Maximum Allowable Inmate Phone Service Charges for Local Calls

Operator Services Charge (per call)	\$2.25
Local Message Rate (per call @ 20 minute allowance)	\$0.50
Total allowable charges per local call	\$2.75*

Maximum Allowable Inmate Phone Service Charges for Toll Calls

Operator Services Charge (per call)	\$2.25
Per-minute usage Rate	\$0.30
Total allowable charges per toll call (@ 20 minute allowance)	\$8.25*

***Excludes applicable taxes**

The proposed caps would require a reduction across-the-board (e.g., all calls) in Evercom's tariffed per-call Operator Services Charge, which currently matches the tariffed dominant carrier (i.e., AT&T) rate. The proposed total-call-cost cap for toll calls would, for the first time, prevent E&T's operations in Alabama from recovering any further charges on any IPS toll calls in excess of twenty (20) minutes in duration.

⁸ Where E&T have no comments on a particular Section in the Proposed Rule that provision is not set forth herein.

⁹ Section T-15.1(B)(4) provides that "[t]he surcharge and per-minutes rates charged the customer for any local (intraLATA /interLATA) collect call shall not exceed the currently effective caps ordered by the Commission."

1. Twenty Minute Call Duration

The Proposed Rule requires IPS providers to limit the duration of an inmate collect call to twenty minutes – seemingly nothing more and nothing less – for the proposed rates. In that regard, the *Order* explains that “staff proposes that an allowance of twenty (20) minutes duration per call be established prior to any systematic intervention by the IPS provider to terminate the inmate call.”¹⁰ The only proposed exemption relates to a prepaid card call where the remaining “balance [is] insufficient to pay the charges for a call of twenty minutes.”¹¹

In the *December 1993 Order*, the Commission noted that in setting rules for IPS, among other things:

“...[T]he Commission must give great weight to the judgment of the administrators of correctional facilities who are uniquely qualified to evaluate the telecommunications needs of their facilities and how the telecommunication services made available to inmates will benefit the facilities and the public interest by improving morale, enhancing security and providing a source of much needed revenue.”¹²

The Commission went on to specifically address the matter of the limitation of the duration of inmate calls, stating:

“The determination of time limitation should...be at the discretion of confinement facility administrators.... Because differing circumstances at the various confinement facilities throughout the State may dictate differing lengths of call duration, the COCOTs’ tariff need not specify a particular call duration.”¹³

¹⁰ *Order*, at p. 3.

¹¹ *Id.*

¹² *December 1993 Order*, at p. 14.

¹³ *Id.*, at pp. 19-20. The Commission subsequently declined to reconsider this policy decision. *Alabama Public Service Commission v All Customer Owned, Coin-Operated Telephone Service Providers Serving Confinement Facilities*, 1995 WL 507634 (Docket No. 23871) Order, July 31, 1995. E&T have identified no subsequent Commission decision which reversed or diluted this clearly stated policy decision.

Consistent with this policy, facility administrators at all of the institutions served by E&T in Alabama have set a call duration limit of fifteen (15) minutes.¹⁴ The Staff's proposed duration cap also restricts the flexibility of those facility administrators who might decide in certain limited or special circumstances, if not across-the-board, to have a call duration limit exceeding twenty (20) minutes. Thus, implementation of the Staff's proposal would be effectively overruling that exercise of expert discretion which the Commission so clearly authorized in the *December 1993 Order*. Therefore, E&T respectfully recommend that the mandated twenty (20) minute allowance be eliminated and any such limit or allowance be permitted to be set by the facility administrator, as the Commission previously expressly sanctioned.¹⁵

2. Specific Rate Caps

The source of the Staff's proposed rate caps on local and toll collect IPS calls is unclear. The *Order* does not contain any explanation of, justification for or data supporting these proposed caps and the basis for the Staff's apparent conclusion that the proposed caps will allow IPS providers to "earn a just and reasonable return on their investment."¹⁶ E&T respectfully submit that the record is therefore devoid of substantive grounds for rolling-back a fundamental element of the Commission-approved tariffed rates.

a. Local Call Flat Rate - With respect to local inmate collect calls, Evercom's current tariffed flat rate is \$3.00 for a call of unlimited duration. That flat rate matches the dominant carrier's (i.e., AT&T's) tariffed rate for such inmate calls.

¹⁴ Indeed, in the case of certain platforms, the facility administrator has the ability, without the intervention of E&T, to set the call duration.

¹⁵ E&T also note that such a mandatory allowance is even inconsistent with Section T-15.1(C)(13) of the Proposed Rule, which would require that "[i]nmate facilities shall have the capability to limit or deny access to inmate phone service at times deemed proper by the inmate facility."

¹⁶ See *Order*, at p. 3.

This \$3.00 inmate flat rate for a local collect call is significantly lower than the tariffed rate for non-inmate local collect calls in Alabama, including those made from public payphones. Based on E&T's research, non-inmate operator-assisted calls (based on a ten (10) - minute call) range from \$4.50 to \$5.25.¹⁷ Obviously for calls of longer duration (e.g., the current fifteen (15) minute maximum duration at all of the facilities served by E&T in Alabama) the disparity grows even greater.

Yet as the Commission has acknowledged, there are "fundamental differences" between IPS and the payphone service on the street corner or the residential phone service in your home. These services are not required to bear the costs of the sophisticated security and monitoring requirements discussed above. Still the Staff proposal would widen the existing disparity by capping the Operator Services Charge at \$2.25.

But the Operator Services Charge is a particularly important component of an IPS provider's recovery of the fixed costs associated with the special requirements for IPS. Every IPS call, whether completed or not, transits through E&T's calling security platform, in addition to other traditional network databases, before the phone rings at the other end. Of course, IPS providers do not charge for uncompleted calls, but the principal cost of E&T's IPS service, including call software development, database management, high-speed data connectivity to the IPS platform, is incurred prior to the completion of any call. When this reality is coupled with E&T's experience regarding the number of IPS calls that are actually accepted, connected and can therefore be billed (forty (40) percent or less), and average bad debt rates on collect calls¹⁸,

¹⁷ Based on review of published tariffs the rates for such calls would be AT&T (\$4.50), Qwest (\$4.50), Embarq (\$5.25) and Frontier (\$4.50). It is worthy of note that the per-call surcharge on these calls is, except for the case of Embarq, tariffed at \$2.50 per call. Embarq is tariffed at \$2.25 per call, the lowest amount and the amount proposed by the Staff. E&T believe that these rates would apply to calls made from public payphones as well.

¹⁸ E&T estimate a bad debt rate of 15-20%, which is approximately three times the rate that incumbent local exchange carriers incur. Charges for completed calls must recover not only the fixed costs and uncollectibles

E&T estimate that roughly one third of the IPS calls contribute to underwriting the costs of developing, installing, operating and maintaining the specialized software and hardware necessary to provide IPS.

Based on an analysis of E&T's Alabama in-state traffic for the May 2007 through May 2008 period, E&T estimate that 40-45 percent (40-45%) of the revenue from their Alabama facilities are based on local calls and, therefore, the proposed reduction of \$0.25 per call would have a substantial revenue impact on the Companies (approximately eight percent (8%) of local inmate call-related revenues during the period). That revenue impact would no doubt affect the ability of the Companies to invest in new, updated inmate calling equipment to replace or upgrade some of their existing platforms, including deploying some of the advanced features requested by facility administrators and law enforcement personnel.

As reflected in their approved tariffs E&T support the concept of a flat rate local inmate call. However, E&T submit that the current tariffed rate of \$3.00 for a call of unlimited duration is a fair, just and reasonable rate.¹⁹ Without further analysis or justification, the Commission should not in effect now retroactively reject tariffs that it previously approved by requiring the reduction to the maximum \$2.75 proposed by the Staff. The maximum flat rate for a local IPS call should be set at no less than \$3.00.

b. Toll Call Rates – E&T's current tariffed rate for the Operator Services Charge on inmate toll calls is \$2.50, which matches the dominant carrier's (i.e., AT&T) charge for non-

associated with providing IPS, but also the variable costs associated with both the completed calls and attempted calls.

¹⁹ E&T's estimated overall profit margin on IPS is only 2-3%, which can understatedly be described as not exceeding a just and reasonable return on investment

inmate calls in Alabama.²⁰ Again, E&T respectfully submit that in light of the special nature of IPS, there are no grounds for further reducing the tariffed rate for the Operator Services Charge by \$0.25. This will produce a further substantial reduction in surcharge revenue from such calls on the other 55-60% of the Companies' Alabama in-state traffic. Again, the Staff has not justified discriminating against IPS providers in establishing a cap on this charge. To do so, ignores the additional requirements imposed on IPS by the unique nature of the inmate telecommunications environment. Indeed, the reduction below the tariffed, dominant carrier rate is akin to a penalty for providing IPS.

The Staff does propose an increase above E&T's current tariffed per-minute rate for intraLATA toll calls that could offset some of the revenue loss discussed previously. Of course, E&T would have to impose the proposed reductions because they are a cap on rates. But E&T need not do so with the proposed increase. While E&T may desire to implement such a rate increase at the correctional facilities they serve, the reality is that E&T cannot do so without facility administrator consent, which consent such administrators are under no obligation to give and, in E&T's experience, frequently deny. Therefore, there is no guarantee that E&T would be able to increase those intraLATA per-minute rates at some or even all of their sites in Alabama. Therefore, E&T are most likely not to receive the full benefit of this potential revenue loss offset.

In addition, if the Commission were to cut off at twenty (20) minutes the allowable charges on a toll call that exceeds that duration it would be forcing inmate providers in effect to provide free services for those additional toll call minutes. E&T have for other reasons already opposed that duration limitation and urged the Commission not to include it. E&T also

²⁰ Qwest is also tariffed at \$2.50 for IntraLATA toll calls and \$2.25 for InterLATA. Embarq and Frontier are tariffed at \$2.25 for both.

recommend that the Commission reject the Staff proposal for a \$2.25 Operator Service Charge on toll calls and set it at \$2.50, the tariffed rate.

If, despite the foregoing analysis, the Commission determines that there should be a reduction of \$0.25 in the tariffed rate levels for the Operator Service Charge, before doing so it must permit the development of a reasonable record to justify any such a conclusion. With all due respect, the Staff has offered nothing as part of the proposal that would do so.

B. SPECIFIC COMMENTS ON PROVISIONS OF PROPOSED RULE

- 1. Proposed Rule Section (A)(1): General Requirements - All IPS providers shall adhere to ~~appropriate~~ other General Rules, Telephone Rules and orders of the Alabama Public Service Commission as designated by the Commission.**

E&T Comment – E&T respectfully submit that it is for the Commission to determine and specify to IPS providers what are the “appropriate” rules and orders that the Commission expects such providers to adhere to beyond those specified in the Proposed Rule. Otherwise, IPS providers are left to make their own best judgment as to what might be “appropriate,” which could result in confusion and inconsistency. Therefore, E&T submit that what constitutes the “appropriate” additional requirements should be designated by the Commission.

- 2. Proposed Rule Section (A)(2): General Requirements - All IPS providers must be certified by the Commission as a Customer Owned, Coin Operated Telephone (COCOT) providers with additional IPS authority and will file tariffs with the Commission. Existing COCOT providers who possess a Certificate of Public Convenience and Necessity (Certificate) from the Commission as of the effective date for these rules (~~effective date~~²) shall request additional authority to provide IPS. Requests for additional IPS authority ~~from~~ existing COCOT providers must be received at the Commission within ninety (90) days from the effective date.**

E&T Comment - E&T and perhaps some other existing, already-certificated COCOT providers also have limited or full toll resale authorizations from the Commission, with

separate approved tariffs. The Commission should clarify whether the “additional IPS authority” obtained in accordance with the Proposed Rule supplants the requirement for a separate toll resale authorization and separate tariff. E&T believe it would be more efficient if the provision of IPS services were pursuant to a single certificate (including toll resale) and such providers were permitted to file or update a single tariff that includes all of these services. E&T also recommend minor editorial changes in this Proposed Rule Section.

3. **Proposed Rule Section (A)(3): General Requirements - All IPS providers must file tariffs with the Commission which set forth the services provided along with the charges and surcharges for those services. Additionally, the various billing and collection methods utilized by the IPS provider will be stated in the tariff. Existing COCOT providers will submit tariffs for IPS within 90 days from the effective date.**

E&T Comment – Again, as noted above, E&T respectfully submit that maintaining a single comprehensive certificate and tariff for COCOT/IPS services is a sensible, efficient approach. E&T recommend that the Commission clarify whether, to the extent existing approved tariffs already cover IPS services, they can be modified to comply with the Proposed Rule or whether the Commission is requiring an entirely new, separate tariff for IPS.

The Section requires the “various billing and collection methods utilized by the IPS provider will be stated in the tariff.” E&T assume that this requirement relates to options such as LEC or direct billed collect, prepaid calling card, debit account, prepaid collect account and any other payment alternatives, as are already reflected in E&T’s approved tariffs. If there are more detailed or extensive requirements, the Commission should so specify.

4. **Proposed Rule Section (A)(4): General Requirements - IPS providers shall not obtain services from a local exchange carrier, operator service provider, toll carrier, or toll reseller unless the carrier or provider possesses a valid Certificate from the Commission with specific authority to provide the applicable service(s) within the state of Alabama as reflected on the lists maintained by the Commission.**

E&T Comment – E&T recommend this change to ensure agreement on which carriers or providers are so certified by the Commission.

5. **Proposed Rule Section (A)(5): General Requirements - No local exchange carrier, operator service provider, toll carrier or toll reseller certified by the Commission shall provide service to an IPS provider unless the IPS provider possesses a valid Certificate from the Commission with specific authority to provide IPS within the state of Alabama.**

E&T Comment – As noted above, E&T have been previously authorized to provide IPS services and are currently doing so at some ninety-seven (97) facilities in the State. Of course, E&T would comply with any additional applicable certification requirements of the Proposed Rule, for which applications would be due within ninety (90) days under Section (A)(2) above. However, in its Order adopting a final rule, the Commission should confirm that pending receipt of that additional authority, E&T and other previously-authorized IPS providers can continue to receive services from such carriers or providers.

6. **Proposed Rule Section (B)(1): Rates & Billing - Unless a prepaid calling card (prepaid card) purchased, or prepaid debit account established, through the inmate facility system is utilized by the inmate, the customer of the IPS provider is the called end-user party that agrees to accept and pay for calls originating in inmate confinement facilities and terminating at the end-users premises.**

E&T Comment - At various points in the Proposed Rule, the Commission uses the term “calling card system,” “calling card” or “debit card.” E&T recommend that to avoid confusion and to ensure consistency, the term “prepaid calling card (‘prepaid card’)” be used when referring to a system whereby the inmate purchases, generally from the

commissary at the confinement facility, a card which allows the inmate to initiate calls through a platform that tracks and, based on the duration of the call, subtracts from the purchased value of the prepaid card at a tariffed rate. In addition, there are other forms of prepaid accounts that can be set up by the inmate through the confinement facility that do not involve the use of a prepaid card. For these, E&T recommend use of the term “prepaid debit account.”

The Proposed Rule uses the term “inmate facility” generally elsewhere. Therefore, E&T recommend changing it here for consistency.

7. **Proposed Rule Section (B)(2): Rates & Billing - IPS providers will fully disclose all the charges associated with the use purchase of prepaid calling cards to place and complete IPS calls. Such disclosure will identify the amount of the operator services surcharge for each call and the price per minute thereafter. Any other call-related charges included in the purchase price of the prepaid debit card will be fully disclosed in consumer friendly terminology to the purchaser. ~~and That information, along with, prices for the calling cards~~ will be included in tariffs on file with the Commission.**

E&T Comment – Again, to be consistent E&T recommend use of the term “prepaid card” herein. The Proposed Rule should be clarified to make clear that the required disclosure should be made to the inmate who generally is purchasing the card from the confinement facility. Prepaid cards are generally sold in different dollar denominations, in part determined by the particular confinement facility administrators. E&T recommend that any calling-related charges (e.g., operator service charge and per minute fee) associated with the use of the prepaid card be disclosed and included in the tariffs, as they have in the past, as opposed to the “purchase price of the card.”

8. **Proposed Rule Section (B)(3): Rates & Billing - IPS providers that sell prepaid packages of minutes must provide adequate notice to the purchaser customer that the purchaser customer is entitled to a refund or credit for any minutes that are unused at the time the prepaid minutes account is closed. If a purchaser customer**

has paid for minutes in advance, a refund or credit for the unused minutes shall be issued within sixty (60) days of the prepaid minutes account being closed.

E&T Comment – E&T assume that the Commission is seeking to address a form of prepaid debit account where the inmate purchases, again through the confinement facility administrators or the commissary at the facility, a package or block of minutes. None of E&T’s facilities in State of Alabama currently employ such a product. E&T recommend that the Proposed Rule be clarified to refer to the “purchaser” instead of the “customer.” In addition, E&T recommend use of the term “prepaid minutes account” rather than just “account.” In E&T’s experience in other jurisdictions, the value of unused minutes at the time the account is closed is recredited to the inmate’s commissary account and can be refunded at the time of his or her release from the facility.

- 9. Proposed Rule Section (B)(4): Rates & Billing - The surcharge and per-minutes 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 charges, such as the operator services and usage charges, not specifically identified and included in the tariff on file with the Commission.**

E&T Comment – E&T note that there are often state and Federal fees and charges to be included on bills to the called-party customers on collect calls. These fees and charges, are not, and because they may not be fixed, cannot be specifically identified for each collect call. Therefore, the Proposed Rule requirement for billing charges must be limited to “call-related charges such as operator surcharge and usage.”

- 10. Proposed Rule Section (B)(5): Rates & Billing - Any IPS provider wishing to increase rates to 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.**

E&T Comment – E&T recommend that Proposed Rule be clarified that it is intended to refer to increases over and above the Commission-prescribed rate caps. That limitation is consistent with the Staff proposal as described in the *Order* at pp. 2-3.

- 11. Proposed Rule Section (B)(6): Rates & Billing - No set-use fees, as defined in Order for Docket No. 26996, dated August 11, 1999, shall be charged to IPS customers. Such rRates shall not contain such a set-use fee component.**

E&T Comment – E&T recommend that the Commission specifically tie the definition of set use fee to the Order for Docket 26996, dated August 11, 1999, referred to in the *Order*.

- 12. Proposed Rule Section (B)(7): Rates & Billing - IPS providers shall adhere to the applicable Commission Ttelephone Rrules that govern third-party billing set forth in Rule T-16.**

E&T Comment – E&T do not object to complying with the applicable Commission Telephone Rules governing third-party billing. E&T assume that the Commission is referring to those recently adopted by the Commission in Docket 15957. If there are other rules that the Commission so intended, the Commission should specifically designate them so that IPS providers will be certain of the Commission’s intent and requirements.

- 13. Proposed Rule Section (B)(8): Rates & Billing - IPS providers shall maintain a toll-free number for customer service inquiries and maintain procedures adequate to allow the IPS provider ~~company~~ to promptly receive and respond to such inquiries.**

E&T Comment – E&T recommend changing “company” to “IPS provider.”

- 14. Proposed Rule Section (B)(9): Rates & Billing - The IPS provider will (a) fully cooperate with the Commission to investigate complaints from IPS customers**

~~consumers with regard to billing; (b) in connection with any such investigation will provide IPS customer specific billing information to the Commission; and (c) will validate the charges included on IPS customer bills. IPS providers will issue billing credits for unsatisfactory non-compliant service, including wrongful disconnections, as required by the Commission and shall credit customer bills for wrongful disconnections.~~

E&T Comment - E&T recommend that the Commission consistently use the term “customer” in this provision. E&T are prepared to provide customer-specific billing information to the Commission in connection with the investigation of a billing complaint by that customer and recommends that the language of the Proposed Rule be tied to that situation. E&T would be prepared to provide such information in other circumstances where so providing it is not in violation of federal, state or local laws, regulations or orders. E&T believe that IPS providers should be required to issue credits when services are found not to be in compliance with the applicable Commission Rules.

15. Proposed Rule Section (C)(2): Service Requirements - No more than three instruments will share a common voice grade (non-broadband) access line or channel, unless otherwise specifically authorized by the Commission for good cause.

E&T Comment – E&T note that this limitation may be a barrier to efficiencies in the current or future technological environment. E&T suggest that the Proposed Rule specifically contemplate that the IPS provider be permitted to attach a greater number of instruments if approved by the Commission.

16. Proposed Rule Section (C)(3): Service Requirements - All instruments shall be installed in compliance with accepted telecommunications industry standards and the current ~~National Electric Code~~ and the National Electric Safety Code as applicable to IPS.

E&T Comment – E&T note that the current COCOT rules (Rule T-15(B)(3)) refer only to the National Electric Safety Code. E&T recommend that the rules be parallel.

17. **Proposed Rule Section (C)(4): Service Requirements — IPS Instruments shall comply with the applicable requirements of accommodate the handicapped and hearing impaired persons as required by the Americans with Disabilities (ADA) Act.**

E&T Comment – E&T recommend simplification as reflected above.

18. **Proposed Rule Section (C)(5): Service Requirements - All calls from IPS instruments will be automated-collect, billed to the called party, or charged to a prepaiddebit card or debit account authorized by the inmate facility or other billing or charging methods permitted by the IPS provider's tariff for IPS calls. Each IPS operator, live or mechanical, shall state the name of the IPS provider at the initiation of any call. The called party shall be fully informed as to which provider is furnishing the call before the customer is offered the option of accepting charges.**

E&T Comment – E&T again recommend use of the term “prepaid card” in lieu of “debit card” for consistency. The Proposed Rule should also include “prepaid debit account” or “other billing or charging methods permitted by the IPS provider’s tariff.” With respect to the requirement concerning the announcement of the identity of the IPS provider, E&T already are required to do so by the Federal rule, and consistent with the comment immediately following regarding proposed Section (C)(6) recommend a cross reference to that rule in a single Section (Section (C)(6)) to comprehensively address these issues.

19. **Proposed Rule Section (C)(6): Service Requirements - Each IPS provider shall comply on all intrastate IPS calls with the standards established by the Federal Communications Commission in Section 64.710 of its rules, including any amendments thereto, regarding “Operator Services For Prison Inmate Phones.” An option for the called party to obtain information disclosing all applicable charges that may be billed to the called party from the IPS provider will be clearly and distinctly included in the automated message accompanying the call before the called party is prompted to accept charges. Price disclosure information will be provided, free of charge and will utilize consumer friendly terminology to describe all nonrecurring surcharges, the per-minute rate, and a statement that applicable taxes will added to the total charge.**

E&T Comment – E&T currently are obligated under applicable Federal rules, which include the identification of the ISP at the beginning of the call, to provide price

disclosure information. 47 C.F.R. §64.710. E&T recommend that the Commission substitute a cross reference to the applicable Federal rule provision, which substantively accomplishes the same objective and includes terms and conditions that E&T and other ISPs in Alabama already are subject to for interstate calls. This approach was recently followed by the Nevada Public Utilities Commission in revising its rules for IPS.²¹

In the event that the Commission declines to adopt this approach, it must clarify what “all applicable charges that may be billed” is intended to include, since end-user customers will receive billings for Universal Service Fund contributions and taxes and other fees. The alternative would be to revise the language to read “all applicable charges imposed by the IPS provider that may be billed....”

- 20. Proposed Rule Section (C)(7): Service Requirements - The IPS provider shall ensure that a positive response, via voice or pulse tone, from the called party indicating a willingness to accept charges for the call is received before the call is completed. The IPS provider shall allow the called party the option to terminate/reject the call at no charge before call completion. IPS providers shall not charge for any uncompleted calls. In the event the IPS provider does not receive a positive response within a reasonable time ~~fifteen (15) seconds~~ from the last prompt, the call shall be terminated without charge.**

E&T Comment – E&T’s practices and policies generally follow these procedures. However, E&T recommend that the IPS provider be given discretion to set the time from the last prompt before the call is terminated since not all equipment may be set or be calibrated to do so after fifteen (15) seconds precisely.

- 21. Proposed Rule Section (C)(8): Service Requirements - Call traffic shall be outbound only. ~~All other methods of outbound calling and all inbound calls will be blocked.~~ The IPS provider shall block or arrange to have blocked calls to local and long-distance directory assistance, toll-free numbers, pay-per-call (900) numbers, N11 codes (311, 911, etc.), 10XXX and any other numbers or calling methods (e.g.,**

²¹ See, e.g., Nevada Administrative Code Section 704.7495.

conference, three-way, or call forwarding) that the institution and/or Commission finds that jeopardize the security and integrity of the institution and public safety.

E&T Comment – E&T recommend adding “900” (i.e., pay-per-call) numbers to the type of calls to be blocked list. E&T believe that facility administrators should have broad discretion with respect to blocking numbers or services that potentially would jeopardize the requirements of the institution, including conference or three-way calling and call forwarding. The Proposed Rule restricts calling to “outbound only.” Therefore, E&T see no need to ban “all other methods of outbound calling” and would delete those words as confusing and unnecessary.

- 22. Proposed Rule Section (C)(9): Service Requirements - IPS transmission quality will, as a minimum, be equivalent to the level of service provided over wireline, voice grade circuits. There will be no transmission delay, feedback, excessive noise, or echo perceptible to either the inmate or the called party. The Commission, recognizing that IPS providers rely upon the facilities of local exchange and/or interexchange carriers and other providers not in control of the IPS provider, will make the final determination as to the acceptable level of transmission service quality.**

E&T Comment – E&T make consistent efforts to ensure the reliability and quality of their IPS. However, E&T believe that the Commission and the Proposed Rule should recognize that most IPS providers rely upon the facilities and services of third-party carriers or other providers to route and carry traffic and these are facilities over which the IPS provider has no control over the quality of service. In making its determination of acceptable level of transmission service quality, the Commission should be required to take this factor into consideration, along with the unique environment in which IPS is provided and service standards applicable to other payphone services.

- 23. Proposed Rule Section (C)(10): Service Requirements - The IPS provider will cooperate with the Commission to investigate complaints regarding transmission**

service quality, disconnections, and service related disputes from inmate facilities relating to the IPS provider's services.

E&T Comment – E&T believe that this requirement should focus on complaints made against the IPS provider from whom the Commission is seeking the cooperation.

- 24. Proposed Rule Section (C)(11): Service Requirements - Subject to compliance with any access requirements of the inmate facility, IPS providers will make available to the Commission any instrument used for IPS for purposes of making test calls, free of charge, to telephone numbers of the Commission's choosing.**

E&T Comment – E&T presume that the Commission intends this provision to apply to installed instruments. Also, E&T do not necessarily have unfettered access to the confinement facilities that they serve, so availability to such instruments should be subject to any restrictions imposed on E&T by the administrators of those facilities.

- 25. Proposed Rule Section (C)(12): Service Requirements - Subject to compliance with any access requirements of the inmate facility, aAll telephone instruments and the telecommunications facilities used for transmission of service are subject to random and periodic inspections to assure compliance with Commission requirements. Findings of non-compliance will be brought to the attention of the Inmate-Phone Service provider and the inmate facility by letter. If violations are not corrected within thirty (30) days from the date of the Commission's letter, unless otherwise extended by the Commission, the provider may be subject to additional Commission action up to and including revocation of the Commission issued Certificate authorizing the provider to offer COCOT payphone service and/or IPS within the state of Alabama.**

E&T Comment – E&T have no objection to providing access to their installed instruments and facilities for IPS service for “random and periodic inspections.” However, as noted above, E&T do not have unfettered access to or the ability to dictate the timing of access to confinement facilities. In addition, there may be compliance issues, particularly as it relates to transmission quality issues that are not in the control of

the IPS provider. Finally, E&T believe that in unusual circumstances the thirty (30) -day period should be able to be extended.

- 26. Proposed Rule Section (C)(14): Service Requirements - Upon request by the inmate facility administration, the IPS provider shall promptly furnish to the inmate facility call detail information where the provision of such information is not in violation of federal, state or local laws, regulations or orders.**

E&T Comment – E&T recommend adding the word “inmate” to be consistent.

- 27. Proposed Rule Section (D)(1): Reporting Requirements - All IPS providers shall submit to the Commission, upon request but routinely on a quarterly basis by inmate facility location, a written report of all access lines and the number of telephone instruments used to provide IPS inmate service. The reporting period is as of the end of each quarter for the calendar year (March, June, September, and December). The report must be received at the Commission prior to the end of the succeeding month that follows the reporting period (April, July, October, and January).**

E&T Comment – E&T recommend changing “inmate service” to “IPS.”

- 28. Proposed Rule Section (D)(2): Reporting Requirements - Upon request from the Commission, IPS providers must, in a timely manner and in accordance with confidentiality agreements between the IPS provider and Commission staff as necessary, submit data requested by the Commission relating to its Alabama IPS operations, including but not limited to, information associated with its Alabama IPS operations, revenue, expenses, and facilities/usage data by inmate facility.**

E&T Comment – E&T recommend clarifying that all such data would relate to operations in the State of Alabama. In certain instances, the inmate facility might also have to be a party, under the terms of E&T’s agreements with the facility, to turn over data relating to a particular facility.

II. CONCLUSION

E&T respectfully submit that the Staff’s proposed twenty (20) minute call duration requirement is ill-advised and inconsistent with prior Commission findings regarding the

requirements of IPS. There have been no changes in the IPS context which warrant removing the discretion to set call duration from the confinement facility administrators.

The Staff proposal to cap the Operator Services Charge on IPS collect calls at \$2.25, a reduction below the dominant carrier rate for similar calls which do not have to underwrite the special costs associated with IPS, also ignores these real differences. The Staff proposal will particularly exacerbate the charge disparity on local IPS calls, which in E&T's experience make up a large share of their IPS traffic, putting even greater financial pressure on IPS providers. Therefore, if there is to be a cap on a local flat rate call, E&T submit it should be \$3.00 and not reduced to \$2.75.

Finally, E&T recommend that the text of the Proposed Rule, in certain Sections, be modified for purposes of clarity, consistency and to reflect the realities of the IPS based on E&T's extended experience in providing the service. E&T believe that their recommendations in this regard are reasonable and consistent with the Commission's objectives.

Respectfully Submitted,
EVERCOM SYSTEMS, INC.
T-NETIX TELECOMMUNICATIONS
SERVICES, INC.

By: 
Curtis L. Hopfinger
Director – Government and Regulatory Affairs
Evercom Systems, Inc. and T-NETIX
Telecommunications Services, Inc.
14651 Dallas Parkway, 6th FL
Dallas, TX 75254
972-277-0319
chopfinger@securustech.net

Paul C. Besozzi
Carly T. Didden
Patton Boggs LLP
2550 M Street NW
Washington, D.C. 20037
202-457-5292
pbsozzi@pattonboggs.com

Of Counsel

Dated: July 24, 2008

CERTIFICATE OF SERVICE

I, Curtis L. Hopfinger, do hereby certify that on this 24th day of July 2008, I did serve or cause to be served, by first class U.S. mail, postage prepaid, the foregoing "Joint Comments of Evercom Systems, Inc. and T-NETIX Telecommunications Services, Inc." on the following individuals:

Darrell Baker
Director
Telecommunications Division
Alabama Public Service Commission
100 N. Union Street
RSA Union, Suite 922
Montgomery, AL 36130

Dorothy E. Cukier
Senior Counsel - Director
Global Tel Link Corporation
12021 Sunset Hills Road
Suite 100
Reston, VA 20190

J. Vincent Townsend
President
Pay Tel Communications, Inc.
P.O. Box 8179
Greensboro, NC 27419

David Cotton
President and Chairman
Alliance of Specialized Communications
Providers (formerly, Southern Public
Communications Association)
2315 Queens Road
Many, LA 71449


Curtis L. Hopfinger