

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:

**Rates for Interstate Inmate Calling
Services**

WC Docket No. 12-375

**COMMENTS OF PRISON POLICY INITIATIVE, INC.
ON FIFTH FURTHER NOTICE OF PROPOSED RULEMAKING**

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EXECUTIVE SUMMARY

The genesis for this proceeding occurred nearly eighteen years ago, when the Wright Petitioners came to the Commission seeking relief from exorbitant phone rates. In the intervening years, the Commission has confronted recalcitrant telecommunications companies, a changing technological landscape, new methods of circumventing the Commission's rules, partial vacation by the D.C. Circuit Court of Appeals, and changes in composition of the Commission. In the face of these challenges, the commissioners and Commission staff have worked diligently to provide meaningful relief to inmate calling services ("ICS") ratepayers.

While the Commission should be proud of the progress it has made, substantial work remains, and Prison Policy Initiative welcomes a new phase of this rulemaking. We have paid careful attention to the questions posed in the notice of rulemaking, and we aim to provide data and ideas that will help the Commission further lower rates and fees in the ICS industry.

We begin in section I by explaining why a concerted focus on the unique issues of jail ICS is necessary at this time. We then discuss various ways to further reduce end-user costs, starting with much-needed reforms to current ancillary fee rules (section II), and then outlining a proposal for legislative relief from Universal Service Fund assessments (section III). In section IV, we review the record concerning correctional-facility costs and make suggestions for further actions the Commission should take. Section V responds the Commission's questions about procurement practices and competition in the ICS market. And we conclude in section VI with various miscellaneous issues that the Commission should address in the next phases of this proceeding.

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Pursuant to the Commission’s Fifth Further Notice of Proposed Rulemaking (the “Fifth FNPRM”),¹ the Prison Policy Initiative (“PPI”) submits these comments regarding additional steps needed to bring fairness to the ICS market. The stated purpose of the Fifth FNPRM is to obtain “further evidence and comments from stakeholders to consider additional reforms to inmate calling services rates, services, and practices within [the Commission’s] jurisdiction.”² In support of this objective, PPI provides the following information, comment, and suggestions for the Commission’s consideration.

I. While the Commission Has Made Progress on Lowering Prison Phone Rates, Much Work Remains to be Done to Address Issues Related to Jail Calling

PPI has, both independently and in coalition with the Wright Petitioners, worked diligently to fight unfair ICS rates and practices for the past nine years. During this time, our organization has received correspondence from incarcerated and non-incarcerated ICS users in virtually all states in the country. These cumulative contacts reveal trends and patterns that we hope will inform the Commission’s actions going forward. In particular, we receive many complaints regarding high rates and confusing or unreasonable payment provisions in small jails.

¹ 86 Fed. Reg. 40416 (Jul. 28, 2021).

² Fifth FNPRM ¶ 262, 86 Fed. Reg. at 40420. All citations to the Fifth FNPRM in these comments refer to the paragraph numbering contained in the [Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking](#) [hereinafter “Third R&O”], Dkt. No. 12-375 (May 24, 2021), not the version published in the Federal Register.

With the new interim rates announced in the Third Report & Order, the Commission reaffirmed its intent to allow higher rates in smaller jails because “*based on the current record, providers appear to incur somewhat higher costs in serving jails with average daily populations [“ADP”] less than 1,000.*”³ We encourage the Commission to refine its data analysis with respect to facility size, with a goal of discontinuing the use of tiered rate caps. Throughout these comments, we will discuss several inter-related components that relate to facility size, including the consumer perspective (discussed in the immediately following paragraphs), facility costs (discussed in section IV.B), and carrier costs (discussed throughout).

While we continue to advocate for permanent rate caps at significantly lower levels than the current interim caps, the new caps announced in the Third Report & Order do represent progress for many consumers, particularly those incarcerated in large jails. PPI collected ICS rate information as of June 2021 (prior to the effective date of the Third Report & Order) for 105 jurisdictions with average daily jail populations over 1,000.⁴ Of these jurisdictions, 70% imposed interstate rates in excess of the newly promulgated cap of 16¢ for large jails, with average interstate rate among these facilities of 21¢ per minute. The new interim rate caps will provide financial relief for approximately 170,000 people housed in those jurisdictions (see summary in **Table 1**, on the following page, and complete data in **Appendix 1**).

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³ Third R&O ¶ 47 (emphasis added).

⁴ We used the source data from the Bureau of Justice Statistics’ *Census of Jails, 2013* (available at <https://www.icpsr.umich.edu/web/NACJD/studies/36128/summary>) to identify a total of 139 county jails with average daily populations over 1,000. Fifteen facilities are excluded from our analysis because we could not find rate information; we also excluded four large jails in New York City that do not charge incarcerated people for phone calls. Of the remaining 120 large jails, 25 are located in 10 counties that operate multiple large jails. Because these 25 facilities are all governed by county-level contracts with uniform rates at all facilities within the relevant county, we have consolidated the facilities and list data by county, not facility. Thus, Appendix 1 lists rates for 105 jurisdictions.

Table 1. Summary of Large Jail Rate Survey (Jun. 2021)

	Jail	Jail ADP	Interstate Rates	
	Systems		Average	Std. Dev.
Rates over 16¢	73	169,782	0.21	0.08
Rates at or below 16¢	32	61,563	0.10	0.05

Source: Rate data comes from survey conducted by Prison Policy Initiative in June 2021. Average daily population (ADP) comes from BJS Census of Jails 2013. Complete results can be found in Appendix 1 to these comments.

In contrast, we believe that the new interim rate caps will provide more modest relief to customers in prison. We conducted a similar rate survey of the fifty state prison systems (see **Appendix 2**) and discovered an average per-minute rate of 10¢. Sixteen jurisdictions lowered the price of calling since 2018, with an average reduction of 33%. Massachusetts and Rhode Island’s prison systems increased rates by 20% and 25%, respectively. Notably three state prison systems feature higher rates for intrastate calls than for interstate calling; whereas six systems feature lower interstate rates.

Of all of the people currently incarcerated in the United States, roughly one-third are in jails,⁵ yet jails seem to receive far less than one-third of the attention of policymakers, including telecommunications regulators. For that reason, several of our proposals focus on reducing the economic burdens borne by ICS customers in the jail sector. When evaluating these proposals, we hope the Commission keeps three key facts in mind related to the experience of ICS customers in jails.

First: jail churn is key to understanding the profile of ICS customers. While jails only hold half as many people as state and federal prisons on a given day, jail churn is immense and many more people are impacted by jail policies. Every year, over 600,000 people enter *prison* gates, but people go to *jail* 10.6 million times each year.⁶ Because people in prison are there for longer periods of time, there is more opportunity for a culture of accountability to develop in

⁵ Wendy Sawyer & Peter Wagner, [Mass Incarceration: The Whole Pie 2020](#) (Mar. 24, 2020).

⁶ Bureau of Justice Statistics, [Prisoners in 2017](#) at tbl. 7 (Apr. 2019), Bureau of Justice Statistics, [Jail Inmates in 2016](#), tbl. 1 (Feb. 2018).

correctional systems, with incarcerated people and their family-support networks successfully lobbying administrators for better treatment, including in the form of reasonable phone rates. But because of the comparatively transient population, such advocacy in jails is rare, and things like the award of ICS contracts often go unchecked by public-interest advocates.

Second: Compared to people in prison, callers in jail spend less time on the phone but pay substantially more on calls. In addition to collecting comprehensive rate data, we have analyzed ICS usage data from a number of prison and jail systems (see **Table 2**). Using ICS rates from five states, and estimating usage figures based on a sample of facilities, we estimate that the average ICS caller in jail spends 16% less time on the phone in a typical month than a caller in prison, but pays twice as much for calls due to inflated jail rates.

Table 2. Consumer Spending on ICS in Jails vs. Prisons

	Jails			Prisons				
	Est. per capita monthly MOU	Avg. per-minute rate (\$)	Avg. cost per person (\$/mo)	Est. per capita monthly MOU	Per-minute rate (\$)	Avg. cost per person (\$/mo)	Jail excess spending per person (\$/mo)	Jail excess spending as % of prison spending
Colorado	340	0.43	147.33	403	0.11	43.26	104.08	241%
Illinois	340	0.47	161.16	403	0.01	3.76	157.40	4185%
Michigan	340	0.80	272.68	403	0.16	64.48	208.20	323%
New York	340	0.52	176.57	403	0.04	17.46	159.11	911%
Wisconsin	340	0.53	181.11	403	0.06	24.18	156.93	649%
Averages	--	0.55	187.77	--	0.08	153.14	157.14	103%

Notes

1. "MOU" means minutes of use (voice calling).
2. Per capita jail MOU is estimated based on data reviewed from a sample of 72 jails in 12 states. Source documents are on file at the Prison Policy Initiative, and are available to the FCC or any party-in-interest participating in WCB Docket 12-375, upon request.
3. Average jail calling rates are from 2019, and come from data in "The Biggest priorities for prison and jail phone justice in 40 states," Table 3: <https://www.prisonpolicy.org/blog/2019/09/11/worststatesphones/> (the rates published in this report reflect the cost of a 15-minute call; the per-minute rate used here is the published rate divided by 15).
4. Per capita prison MOU comes from an analysis of monthly ICS call reports from a sample of five state prison systems. Calculations and source documents are available at <https://www.prisonpolicy.org/scans/phones/PrisonMOUSourceDocs.pdf>
5. Prison calling rates are from 2021 and were obtained by PPI staff from corrections department and phone carrier websites.

Higher jail rates appear to be due at least in part to the nature of incentives and bargaining power related to bidding and procurement processes at local jails.⁷ Local governments are often more dependent on non-appropriated revenue, and are thus more eager to reap income from ICS site commissions. At the same time, some carriers appear to have developed a concerted strategy of negotiating jail contracts with higher-than-average rates and lower-than-average site commissions.⁸ Due to information asymmetry, counties with under-resourced procurement staff are particularly vulnerable to agreeing to these high-rate, low-commission contracts—which serves merely to enrich ICS carriers at the expense of low-income ratepayers.

Third: People in jail are under immense pressure and are more susceptible to unfair carrier practices. People in jail have often been forcibly removed from their homes and are facing a profoundly uncertain future.⁹ This makes jail ICS customers vulnerable not only to paying high rates, but also using financially-ineffective single-call products that incur unnecessary transactional fees on a per-call basis (as opposed to funding a prepaid account and incurring fees only when adding funds).¹⁰ Different areas of law have long recognized the need to guard against business practices that exploit consumers who are under stress.¹¹ The Commission should crack down on such exploitation, beginning by granting the petition for reconsideration recently filed by NCIC Inmate Communications (“NCIC”) (we discuss this petition in greater detail in section II.C, below).

⁷ See Peter Wagner & Alexi Jones, *State of Phone Justice: Local Jails, State Prisons, and Private Providers* (Feb. 2019), at https://www.prisonpolicy.org/phones/state_of_phone_justice.html#whobenefits.

⁸ *Id.*, text accompanying n.7.

⁹ See Wendy Sawyer, “[Why expensive phone calls can be life-altering for people in jail—and can derail the justice process](#)” (Feb. 5, 2019).

¹⁰ See PPI, [Notice of Ex Parte Presentation](#), at 2-3 and attachment “Single Calls” (p.5) (May 13, 2021).

¹¹ Stephen Raher, [The Company Store and the Literally Captive Market: Consumer Law in Prisons and Jails](#), 17 *Hastings Race & Poverty L.J.* 3, 35, n.146-148 and accompanying text (2020).

Having reviewed these three key facts related to jail ICS, we turn now to specific proposals for action.

II. The Commission Should Take Steps to Reduce Economic Burdens Created by Ancillary Service Charges

When the Commission first took steps to regulate ancillary service charges, it did so because the record established that ICS carriers used unreasonable, non-cost-based fees as a profit center.¹² Although the Commission has subsequently restricted the type and amount of ancillary charges, carriers are no less motivated to exploit every available opportunity to continue deriving unreasonable profits from such fees. The Commission asks whether current ancillary-fee rules should be modified,¹³ to which PPI answers emphatically: yes.

In this section, we propose three actions that the Commission should take to reduce the economic damage that families incur as a result of paying inflated ancillary fees. First, with regards to “pass-through” third-party fees allowed under 47 C.F.R. § 64.6020(b)(5), the Commission should lower the current price cap and prohibit revenue-sharing agreements. Second, the Commission should prohibit the practice of double dipping used by several ICS carriers. Finally, the Commission should explore ways to counter the problems of single-call products, beginning by granting the currently-pending petition for reconsideration filed by NCIC. These three steps would represent a major step forward in the decades-long fight against oppressive, non-cost-based fees. Each proposal is discussed in more detail below.

A. The Commission Should Stop Unfair Practices Related to Third-Party Transaction Fees

Some of the most common and burdensome ancillary charges are so-called third-party pass-through fees. In actuality, many interested parties confuse two distinct types of third-party pass-through fees: those related to single calls (allowed under 47 C.F.R. § 64.6020(b)(2)) and those related to financial transactions (allowed under § 64.6020(b)(5)). Although both of these

¹² *Rates for Interstate Inmate Calling Services*, WC Dkt. 12-375, [Report and Order and Further Notice of Proposed Rulemaking](#) [hereinafter “First R&O”] ¶¶ 90-91, 28 FCC Rcd. 14156-14158 (Sep. 26, 2013).

¹³ Fifth FNPRM ¶ 326, 86 Fed. Reg. at 40432.

categories diffuse accountability by involving a non-transparent third-party entity, they are functionally and legally different. PPI addresses financial transaction pass-through fees (i.e., those for making payments and funding prepaid accounts) in this section. Single-call fees are addressed later, at page 11.

PPI has focused our recent ICS-related research on addressing third-party fees, but collecting definitive and comprehensive information is difficult. Given the level of difficulty encountered by experienced researchers, it should be obvious that consumers face even steeper challenges in understanding alternative fee structures and making informed decisions. As an example, investigating a carrier's automated payment fees can usually be done with one visit to a website, whereas determining fees charged by Western Union or MoneyGram (which are levied at physical locations and can vary even among the same money transmitter) is far more challenging.

In addition, carriers have disclosed third-party transaction fees that may be legal (at least under the rules in place prior to the Third Report & Order), but which are suspiciously high. PPI discovered that Global Tel*Link's ("GTL") 2019 annual report identifies 140 correctional facilities with fees above \$6.95, which exceeds any known fee charged by a bona fide money transmitter like Western Union or MoneyGram. These fees often approach \$10 per transaction, and in one case, rise to \$12.95 per transaction. PPI brought this to the Commission's attention early this year,¹⁴ but to our knowledge no action has been taken, and GTL again listed similarly high fees in their 2020 annual report.¹⁵

PPI suggests that the Commission take two actions to address the unreasonable financial burden created by inflated third-party transaction fees. First, we recommend temporarily capping such fees at \$3 and \$5.95 for automated payments and live-agent transactions,

¹⁴ PPI, [Ex Parte Submission Re: Transaction Fees Reported by GTL](#) (Feb. 25, 2021).

¹⁵ GTL, [FCC Form 2301\(a\) – Inmate Calling Services Annual Report](#), Tab III. Ancillary Fees, Column E (filed Apr. 1, 2021).

respectively.¹⁶ This action should be an interim measure, with the ultimate goal of imposing even lower caps after the Commission has completed its third mandatory data collection.

The second sorely-needed action is to prohibit revenue sharing between ICS carriers and third-party money transmitters or payment processors. As a matter of law and fact, such revenue sharing is contrary to the spirit of the Commission’s existing rules, and it serves no purpose other than to extract unreasonable profits from consumers.¹⁷ Specifically, the Commission set ancillary-fee caps for the purpose of “allow[ing] ICS providers to recover the costs incurred for providing the ancillary service associated with the relevant fee *while ensuring just, reasonable and fair rates to end users.*”¹⁸ Thus, any portion of the third-party fee that is kicked back to the carrier represents an end-run around the Commission’s carefully constructed rules. Worse yet, in the case of “pass through” fees defined in 47 C.F.R. § 64.6000(a)(5), carriers are required to pass through the “exact fee[], with no markup.” This pass-through mechanism is designed to prevent ICS carriers from using these fees as a revenue source; therefore, any revenue the carrier receives with respect to such fees is functionally equivalent to a “markup” and is *per se* unreasonable.

Inmate Calling Solutions, LLC (“ICSolutions”) suggests that the rules should be modified to crack down on “third party” entities that are affiliated with the carrier.¹⁹ While PPI supports this suggestion, it does not go far enough because carriers can still profit from fees charged by bona fide third parties if there is a contractual agreement to “share” or kick back revenue from the third-party to the carrier. Accordingly, we advocate for a complete prohibition on carriers receiving any payments or consideration in connection with any fees that are levied under 47 C.F.R. § 64.6020(b)(5). This solution is the simplest and most administratively efficient to

¹⁶ This proposal is explained in more detail in NCIC’s [Petition for Reconsideration](#) [hereinafter “NCIC Petition”], at 4-5 (Aug. 27, 2021).

¹⁷ *Rates for Interstate Inmate Calling Services*, WC Dkt. 12-375, [Second Report & Order and Third Further Notice of Proposed Rulemaking](#) [hereinafter “Second R&O”] ¶ 161, 30 FCC Rcd. 12763, 12845 (Nov. 5, 2015); *see also* Fifth FNPRM ¶ 333, 86 Fed. Reg. at 40434 (“[W]e remain concerned about the adverse effect of revenue-sharing arrangements between calling service providers and third-party financial institutions.”).

¹⁸ Second R&O ¶ 166, 30 FCC Rcd. at 12847 (emphasis added).

¹⁹ ICSolutions, [Ex Parte Submission](#) [hereinafter “ICS Ex Parte”] at 5 (May 12, 2021).

implement, and is strongly rooted in the Commission’s long-standing framework regarding third-party fees.²⁰

In the Fifth FNPRM, the Commission asks for “renewed comment on how revenue sharing arrangements work in the context of ancillary service charges, including concrete evidence of these arrangements.”²¹ As explained above, we believe the fairest and most efficient approach is to prohibit revenue sharing outright, in which case extensive factual investigation may not be necessary. Nonetheless, to the extent that the Commission finds it necessary to collect additional information on this topic, we would respond by stating that our organization is unable to provide any greater detail with respect to these arrangements than we already have.²² ICS carriers tightly guard their contractual relationships with financial-service providers, and in the rare instance when PPI has been able to examine such contracts, it has been pursuant to a protective order that strictly prohibits our using such information in a setting such as this proceeding.

Carriers will obviously not voluntarily disclose the terms of their revenue-sharing agreements, since doing so would potentially jeopardize the regulatory loophole that currently allows for collection of unregulated kick-back revenue. Accordingly, if the Commission does conduct further investigation of this topic, PPI proposes a two-step approach to collecting relevant evidence. First, the forthcoming mandatory data collection should require all carriers to provide: (a) full contracts with any entity that receives or processes payments from end-users on the carrier’s behalf (including payment-card processors, acquiring banks, and money

²⁰ A different approach has been adopted by the Alabama Public Service Commission, which uses an indirect prohibition (or at least constraint) on revenue sharing, based on a disclosure requirement. See Alabama Pub. Serv. Comm’n, *Generic Proceeding Considering the Promulgation of Tel. Rules Governing Inmate Phone Serv.*, Dkt. 15957, [Further Order Adopting Revised Inmate Phone Service Rules](#), appx G at 13 (Dec. 9, 2014). This approach still allows revenue sharing (something that is never warranted, in our opinion), but at least confines it with reference to the total cost imposed on consumers.

²¹ Fifth FNPRM ¶ 333, 86 Fed. Reg. at 40434.

²² See Wagner & Jones, *State of Phone Justice*, *supra* n. 7, at https://www.prisonpolicy.org/phones/state_of_phone_justice.html/#moneytransfer.

transmitters); and, (b) a detailed accounting of all consideration (whether in the form of monetary payments, account credits, or other value) the carrier has received from such entities in the last three years.

The second step in any investigation of revenue sharing should be to verify the accuracy of the information produced by the carriers. To do this, the Wireline Competition Bureau should subpoena relevant contracts and accounting documents directly from the third-party entities that are known to serve ICS carriers (this would include, at a minimum, Western Union, MoneyGram, and PayNearMe, as well as any other processors disclosed during the carrier data collection). The Bureau has the power to subpoena relevant information from non-parties, and the course of this proceeding vividly illustrates the high degree to which this particular information is relevant to the Commission’s ongoing attempts to address unreasonable practices related to ancillary charges.²³

B. The Commission Should Prohibit Ancillary-Fee Double Dipping

PPI has previously alerted the Commission to the troublesome practice of at least five ICS carriers who charge automated payment fees while also passing through their alleged payment-card processing costs.²⁴ The Fifth FNPRM asks several questions about this practice and whether the Commission should act in response.²⁵ PPI believes that this practice of double dipping is entirely unjustified, and it constitutes the newest iteration of the rent-seeking game of “whack-a-mole” that carriers have been perpetuating for decades. The Commission should act as quickly as possible to cease this bad-faith practice.

²³ 47 C.F.R. § 0.291 (“The Chief of the Wireline Competition Bureau or her/his designee is authorized to issue non-hearing related subpoenas for the . . . production of books, papers, correspondence, memoranda, schedules of charges, contracts, agreements, and any other records deemed relevant to the investigation of matters within the jurisdiction of the Wireline Competition Bureau.”); *Authority to Issue Subpoenas* (FCC 94-319), Order, 10 FCC Rcd. 707 (Dec. 21, 1994) (“The agency’s power of subpoena is not confined to those over whom it exercises regulatory jurisdiction, but extends to private individuals and entities over whom it does not.”).

²⁴ PPI, [Ex Parte Submission Re: Informal Complaints Regarding Improper Assessment of Ancillary Fees](#) (Mar. 23, 2021).

²⁵ Fifth FNPRM ¶¶ 327-329, 86 Fed. Reg. at 40432.

The fundamental problem of double dipping is that carriers are recouping payment-card processing costs twice over. The Commission allowed carriers to charge automated payment fees of \$3, with the express goal of allowing carriers to recoup the costs of accepting payments via credit and debit cards.²⁶ When carriers impose the \$3 fee allowed under 47 C.F.R. § 64.6020(b)(1) while also making customers pay the carrier’s card-processing costs under § 64.6020(b)(5), this constitutes an unreasonable charge, unjust enrichment, and circumvention of the Commission’s stated purpose in promulgating ICS rules. On May 12, 2021, ICSolutions proposed a clarifying amendment that would allow carriers to charge only one type of funding fee per transaction.²⁷ PPI supports this proposal, and we encourage the Commission to amend 47 C.F.R. § 64.6020 to specify that carriers may only charge one type of funding fee in relation to any single transaction.²⁸

C. Single-Call Fees Should be Subject to the Same Caps as Automated Payments and Live-Agent Transactions

As mentioned previously, people in jail are uniquely susceptible to overpaying for calls by incurring multiple unnecessary transaction fees levied on “single call” products.²⁹ NCIC has raised these concerns in its petition for reconsideration, noting two steps that the Commission should take. First, NCIC expressly requests that the Commission reconsider its interim rules by capping single-call fees at \$3 for automated transactions, and \$5.95 for live-agent transactions.³⁰ Second, while not explicitly requested in the petition, NCIC voices general support for a required number of free jail calls for each customer, which would allow newly incarcerated people to “connect immediately with family or friends to expedite their release, and reduce the reliance on single-call services in general.”³¹ PPI agrees with NCIC that the Commission’s recent decision

²⁶ Second R&O ¶ 167, 30 FCC Rcd. 12848.

²⁷ ICS *Ex Parte* at 3-6.

²⁸ We adopt ICSolutions’ usage of the phrase “funding fee” to refer to the automated-payment fee, live-agent fee, and third-party financial transaction fee described in 47 C.F.R. § 64.6020(b)(1), (3), and (5), respectively. *See ICS Ex Parte* at 5-6.

²⁹ *See supra*, at 5.

³⁰ NCIC Petition at 4-5.

³¹ *Id.* at 4.

to cap third-party fees at \$6.95 will simply encourage some carriers to steer customers toward unnecessarily expensive calling options. We therefore support NCIC's suggestions, both in terms of "fee cap parity" and mandatory free calls.³²

III. The Commission Should Seek Legislative Authority to Exempt ICS Customers from Mandatory Contributions to the Universal Service Fund

One frequent issue that ICS customers have raised with PPI is the high cumulative amounts that they pay in Universal Service Fund ("USF") assessments. In Docket No. 19-232, the Commission denied several requests to waive USF contributions via waiver or forbearance. As an organization that works with low-income communities on matters related to communications technology, we wholeheartedly support the policy underlying the universal service program. But, as we noted in Docket No. 19-232, ICS ratepayers are disproportionately low-income, and the policy goals of the universal service program would be best served by not requiring ICS end-users to make contributions in connection with ICS calls.³³ Indeed, in order to even receive calls from an incarcerated family member, a non-incarcerated ICS customer is likely paying for mobile or wireline phone service, in which case they are already paying USF assessments. Requiring that customer to make additional USF contributions through ICS rates is inequitable.

The Commission denied previous requests for USF relief, questioning whether it had the authority to waive assessments, and finding that the statutory criteria for forbearance had not been met.³⁴ PPI respects the Commission's determination regarding the scope of its authority, but we remain concerned about the financial burdens caused by USF assessments in connection

³² While NCIC suggests two free calls per caller, PPI would advocate for a higher number. A newly incarcerated person may have numerous parties to notify (domestic partners, employers, children, attorneys, landlords), and may have to call multiple persons before a call recipient actually answers. Accordingly, four calls would be more practical, even if such calls are subject to fairly short durational limit.

³³ *Petition of NCIC for Forbearance & Securus Request for Wavier*, WC Dkt. 19-232, [Comments of PPI](#) (Aug. 30, 2019).

³⁴ *Petition of NCIC for Forbearance & Securus Request for Wavier*, WC Dkt. 19-232, [Order](#), 35 FCC Rcd. 8348 (Jul. 31, 2020).

with ICS calls. We are aware of no evidence suggesting that an exemption for ICS callers would jeopardize the fiscal health of the USF, and we believe that an exemption would provide material and much-needed relief for ICS ratepayers. Accordingly, PPI respectfully suggests that the Commission seek a legislative amendment to 47 U.S.C. § 254(d) that would allow the Commission to exempt ICS carriers from USF contributions. If the Commission seeks such an amendment, PPI is committed to supporting such a proposal.

IV. Current Rules Inflate the Amount that Customers Pay in Locational Rents

The Commission's Third Report & Order sensibly reaffirms the obvious fact ICS operates as a locational monopoly, and that site commissions have historically been used in large part to extract locational rents from ratepayers.³⁵ At the same time, the Commission is tasked with implementing the ruling in *GTL v. FCC*, which “[left] it to the Commission to assess on remand which portions of site commissions might be directly related to the provision of ICS and therefore legitimate, and which are not.”³⁶ As part of this undertaking, the Commission asks how to distinguish between facility costs that are properly versus improperly recovered through site commissions.³⁷ In response, PPI encourages the Commission to adhere to its original determination that ICS rates may only be used to recover costs that are reasonably and directly related to the provision of ICS.³⁸ More specifically, the Commission should use this opportunity to correct serious problems with the evidentiary record and to formulate a detailed standard for defining legitimate facility costs.

A. The 2015 NSA Survey is Not Adequate Evidence for Purposes of Rate Setting

As an interim measure, the Commission has allowed prisons and large jails to recover up to 2¢ per minute from ratepayers for payment of site commissions. No comparable cap currently applies to smaller jails.³⁹ The way in which the Commission frames this issue raises the

³⁵ Third R&O ¶¶ 7, 31 at n.82, 86 at n.262, 107, 115, 147 at n.450, and 312.

³⁶ *Global Tel*Link Corp. v. FCC*, 866 F.3d 397 (D.C. Cir. 2017).

³⁷ Fifth FNPRM ¶ 312, 86 Fed. Reg. at 40429.

³⁸ First R&O ¶ 53, 28 FCC Rcd. at 14134-35.

³⁹ Third R&O ¶ 140.

possibility that the current rulemaking will result in tiered caps on site-commission recovery charges. While PPI would strongly prefer the simplicity of uniform caps, we are not necessarily opposed to tiered caps if reliable evidence demonstrates that such a structure is warranted. Yet the National Sheriffs' Association ("NSA") and others continue to point to the NSA's 2015 "survey" of jail ICS costs (the "NSA 2015 Survey")⁴⁰ as justification for allowing higher site-commission recovery (and, by extension, higher rates) in smaller jails.⁴¹ As the Commission itself acknowledges, the NSA 2015 Survey suffers from a plethora of problems. It should not be used to calculate permanent rate caps. Specifically, PPI would make three points in regards to the data contained in the 2015 Survey.

First, the NSA's filing is deficient as a matter of law because the only information in the record is scanned copy of a spreadsheet that is, in several instances, illegible due to poor graphic quality. When a federal agency relies on data in promulgating a regulation, the agency "generally has an obligation under the [Administrative Procedure Act] to provide such data for public inspection."⁴² This requirement is designed to allow the public to test and challenge underlying data relied upon in a rulemaking.⁴³ The public is denied such an opportunity here, where the record only contains a semi-illegible document not in its native file format.

Second, as discussed in the following section, the NSA's definition of ICS-related costs is overbroad. Given these inappropriately expansive descriptions—and the fact that survey relies entirely on self-reported data from correctional facilities that often have a financial interest in boosting site-commission revenue—there is serious reason to doubt the accuracy of the staff-time figures in the survey.

⁴⁰ [Comments of the Nat'l Sheriffs' Ass'n.](#), exh. A (Jan. 12, 2015).

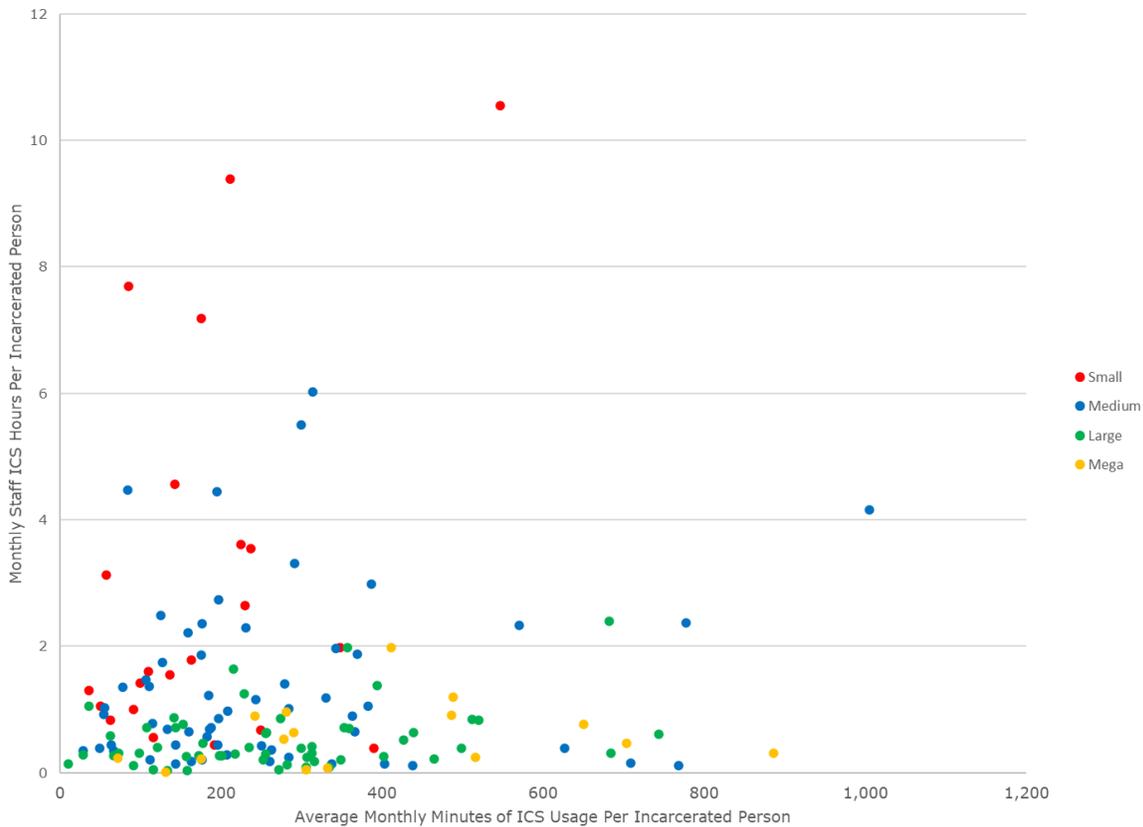
⁴¹ Fifth FNPRM ¶ 316, n.944, 86 Fed. Reg. at 40430.

⁴² *Endangered Species Comm. of the Bldg. Industry Ass'n of Southern Calif. v. Babbitt*, 852 F.Supp. 32, 36 (D.D.C. 1994).

⁴³ *Id.* at 36-37 (quoting *Chemical Mfrs. Ass'n v. Env'tl Protection Agency*, 870 F.2d 177, 200 (5th Cir. 1989)).

Finally, even if one could set aside the reliability problems inherent in the survey, the results, as presented, do not support a factual finding that facility costs are directly related to calling volume or inversely related to facility size. PPI manually retyped the staff-time and minutes-of-use data from the NSA 2015 Survey, and found no correlation between facility size, staff-time allegedly spent on ICS, and ICS minutes of use.⁴⁴ As shown in **Figure 1**, when comparing average per-capita minutes of use in a facility with total staff time allegedly spent on

Figure 1. Comparison of reported staff time spent on ICS and average usage per person



Using data from the NSA 2015 Survey, the vertical (y) axis shows the number of hours that facility staff time claim to spend on ICS-related tasks. The horizontal (x) axis shows the average per-capita minutes of phone time at that same facility. Facilities are grouped into four size categories, reflected by color.

⁴⁴ See also Fifth FNPRM ¶ 317, 86 Fed. Reg. at 40430 (“[T]he [NSA’s] survey data for jails with fewer incarcerated people varied far too widely to comfortably estimate any values that would withstand scrutiny today). PPI’s reconstruction of the NSA 2015 Survey, along with an explanation of how we completed this project, is available at <https://www.prisonpolicy.org/scans/phones/NSA-data-for-web.xlsx>.

ICS-related tasks, there is no obvious overall trend, nor is there any significant trend by facility size.⁴⁵

Because of the numerous problems inherent in the NSA 2015 Survey, the Commission should not rely on that data for purposes of estimating correctional facility costs. Moreover, because parties like the NSA bear the burden of proof when advocating for a rule,⁴⁶ the Commission should not allow any site-commission recovery in excess of the current 2¢ per minute (for facilities of any size), unless and until a representative number of facilities come forward with substantial verifiable evidence of their costs.

B. Site Commissions Should Only be Allowed to the Extent that They Cover Facility Costs that are Reasonably and Directly Related to the Provision of Telecommunications Service

The record conclusively shows that payments to correctional facilities are a major component of ICS rates. PPI therefore supports any lawful action that the Commission can take to address exorbitant site commissions. While this could potentially include a prohibition on contractual payments,⁴⁷ such a bold move cannot realistically be implemented without substantial planning. As just one example: if the Commission prohibited contractual site commissions for interstate and international calling, one likely impact would be that site-commission agreements would simply focus on intrastate calls, thereby creating even greater incentives for regulatory arbitrage than exist currently. Dynamics like this deserve careful consideration before a categorical prohibition on contractual site commissions can be adopted.

Unless and until the Commission decides to directly prohibit or regulate contractual site commissions, it should ensure that site commission payments are not recovered from ratepayers unless such payments are used to cover costs that are legitimately related to the facility's cost of

⁴⁵ For facility size, we have used the same four categories that NSA used in presenting its survey. We label a facility with average daily population of 1-99 as small, 100-349 as medium, 350-999 as large, and over 1,000 as mega.

⁴⁶ 5 U.S.C. § 556(d) (“[T]he proponent of a rule or order has the burden of proof.”).

⁴⁷ See Fifth FNPRM ¶ 314, 86 Fed. Reg. at 40430 (“[S]hould we simply consider prohibiting providers from entering into any contract requiring the payment of contractually prescribed site commissions for interstate and international calling services?”).

providing telecommunications services. PPI proposes that such a determination should be made under the following standard: expenses recovered through site commissions should only be regarded as “legitimate” ICS expenses if they are: (a) incurred by the correctional facility, (b) relate directly to the provision of telecommunication service, and (c) would not be incurred but for the facility’s provision of ICS. The contours and reasons for each of these three requirements are discussed in more detail below.

Incurred by facilities. It is axiomatic that facilities can only recover expenses that they actually incur, but the NSA’s reference to vague categories of expenses makes it necessary to clarify this elemental point. As one example, many counties mention the cost of monitoring calls. In the next paragraph and Table 3, we discuss whether ratepayers should pay for security services; but, even assuming for the sake of argument that such costs are properly recovered through site commission payments, many monitoring activities are not paid for by the correctional facility in the first place. Securus Technologies’ (“Securus”) “guarded exchange” program provides call monitoring services in exchange for a non-commissionable fee that is “deducted from [the] call when engaged.”⁴⁸ Thus, in the facilities that use programs like this, ratepayers are already covering the cost of monitoring, and no additional recovery through site commission payments is appropriate.

Directly related to the provision of telecommunications service. In its 2015 comments, and in more recent filings,⁴⁹ the NSA describes facility costs by rote recitation of various types of tasks that jail staff allegedly perform. In response to the questions posed by the Commission in paragraph 312 of the Fifth FNPRM, we list the NSA’s categories of tasks in **Table 3** and explain whether each category is directly related to the provision of telecommunications services.

⁴⁸ See e.g., Contract between Securus and Plymouth County (MA) Sheriff’s Dept., atch. C at 4 (Nov. 2018), available at

https://www.prisonpolicy.org/scans/mass_contracts/plymouth_securus_nov_2018.pdf.

⁴⁹ [Comments of the Nat’l Sheriffs’ Ass’n](#), (Jan. 12, 2015) and [Comments of the Nat’l Sheriff’s Ass’n](#) (Nov. 23, 2020).

Table 3. Categories of Alleged Facility ICS-Related Costs

Task Category	Directly Related?
Call monitoring	No. These are all security costs that are only indirectly related to telecommunications. Security functions are properly viewed as overhead in a correctional environment, ⁵⁰ and recovering such costs from ratepayers is inequitable and contrary to the policies set forth in 47 U.S.C. § 201(b).
Responding to alerts	
Call recording analysis and interacting with external investigators	
Enrolling users in voice biometrics	
Blocking/unblocking numbers	
System administration	Potentially. The time that staff spend directly administering the ICS system and interacting with the carrier could be considered directly related. However, carriers routinely advertise their systems by emphasizing how much staff-time is saved through technology. Accordingly, it's unclear whether this is a significant time commitment for facilities.
Interacting with ICS company	
Answering questions from end-users	No. Issuing PINs to incarcerated customers and otherwise training them on the use of ICS systems is part of orienting new admittees to the facility—no different than assigning an inmate number or explaining the disciplinary process. ⁵¹ This is not directly related to the provision of telecommunications. As for inquiries from friends and family members, it is dubious that facilities provide any regular or substantial support to non-incarcerated customers, since ICS carriers advertise on the basis of taking over this function.
Administering PIN system	
Training incarcerated users on use of ICS system	
Providing escorts for phone repairs	Potentially, but it is far from clear that providing such an escort represents an actual marginal cost to the facility. To the extent that the escort is a correctional officer who provides the escort as part of their regularly-scheduled shift, this is an expense that would be incurred even in the absence of ICS (see next section on but-for causation).
Administering prepaid cards or debit systems	Potentially. Recovering billing costs is appropriate, but once again, ICS carriers (not correctional facilities) handle many such billing functions. Facility expenses related to incarcerated user accounts may be recoverable, but not to the extent the facility staff handle ICS prepaid systems as part of the normal inmate trust accounting (this would constitute general overhead that would still be incurred even in the absence of ICS).

Not incurred but for the facility's provision of ICS. Finally, facility costs should not be recovered via site commissions if the cost would not have been incurred but for the facility's provision of ICS. This prong is necessary because it reinforces the need for a clear nexus between the telecommunications and the subject expense. But it is also important to establish that this test is only one part of a larger framework. NSA would have but-for causation as the *only* test and would apply it so indiscriminately that it would result in manifestly unfair treatment

⁵⁰ [Comments of Worth Rises](#) at 8-9 (Nov. 23, 2020)

⁵¹ See Fifth FNPRM ¶ 319, 86 Fed. Reg. at 40431.

of ratepayers. For example, many correctional systems employ internal investigators. NSA argues that the time an investigator spends reviewing phone data should be recoverable, because he or she would not spend time on such a task but for the calls placed on the ICS system. This myopic approach ignores the reality that the investigator would be paid to investigate regardless of whether there is a phone system—just because the ICS system’s monitoring feature provides additional investigative tools does not mean that family members should be forced to pay for this facility overhead.

PPI’s proposal, discussed above, is flexible enough to apply to different types of data. The current record contains evidence that the Commission has used to calculate 2¢ per minute site-commission recovery.⁵² By applying PPI’s proposed framework, we are confident that the Commission can substantially reduce this figure below the current 2¢ level. To the extent that any parties wish to increase the allowed facility recovery from the current level, it is their burden to come forward with relevant and reliable evidence.

V. Available Evidence Indicates Procurement Practices Favor the Dominant Carriers by Erecting Substantial Barriers to Entry into the ICS Market

The Commission poses several questions regarding ICS bidding markets and facility procurement practices.⁵³ To help the Commission enhance the current record, PPI has analyzed certain procurement trends based on public records. We present our findings here, along with a proposal to encourage greater competition in the ICS industry.

A. Contract Durations are Long and Incumbent Carriers Frequently Evade Competitive Rebidding through Serial Contract Extensions

The Commission seeks information regarding lengths of ICS monopoly contracts with correctional facilities.⁵⁴ In response to this question, PPI examined 93 contract documents from counties in four states (complete details are available in **Appendix 3**). Our review reveals two important trends that indicate a lack of competition in the bidding market. First, incumbent

⁵² *But see* Third R&O ¶ 136 (“[The Commission’s] updated analysis supports a facility-related rate component of less than the \$0.02 allowance we originally calculated.”).

⁵³ Fifth FNPRM ¶¶ 350-358, 86 Fed. Reg. at 40437-38.

⁵⁴ *Id.* ¶ 353, 86 Fed. Reg. at 40437.

carriers and facilities utilize various methods to extend contracts and avoid competitive rebidding. Appendix 3 shows 66 contracts that have been either expressly amended to extend the term (Table 1) or have been extended through option periods, automatic renewal, or informal mutual agreement of the parties (Table 2). These contracts had an average original average term of 50 months, but through these various methods the contract terms have more than doubled, to an average of 119 months.

Second, *initial* contract terms are also growing longer. The average initial term for the 66 extended contracts noted above (originally issued between 1999 and 2019) is 50 months. But the contracts we reviewed that are still in their initial terms (contracts originating from 2013 through 2020) have an average term of 63 months.

These trends are not just about the avoidance of bidding competition, but they also constitute a barrier to entry into the ICS market. Contract extensions reduce bidding opportunities, which has both direct and indirect impacts on market competition. Directly, fewer bidding opportunities means fewer chances for competitive carriers to enter the market. In addition, many facilities impose minimum-experience requirements when evaluating bids—thus, contract extensions constitute an indirect barrier because competitive carriers cannot gain the experience necessary to pass the screening requirements for many open bids.

B. The Prevalence of Bundled Contracts is a Critical Fact that the Commission Must Address

PPI previously shared the most comprehensive analysis of ICS contract bundling that we have been able to compile from public sources.⁵⁵ We encourage the Commission to use its further mandatory data collections to collect a comprehensive picture of the prevalence of bundled contracts, and to quantify *all* revenue and expenses associated with any contract that bundles regulated and unregulated services.

⁵⁵ Prison Policy Initiative [Ex parte submission re: bundled service contracts](#) (Mar. 23, 2021).

C. The Commission Should Treat Securus and GTL as Dominant Carriers and Structure Permanent Rate Caps to Encourage Competition

The Commission has noted several times that Securus and GTL collectively dominate the ICS market.⁵⁶ We are confident that an analysis of the bidding market will deliver similar results. The Commission asks whether it should classify Securus and GTL as dominant carriers, and if so, “what type of regulatory regime would promote regulatory certainty and permit us to ensure that inmate calling service rates and charges are just and reasonable.”⁵⁷ Separately, the Commission asks whether it should set permanent rate caps based on industry-wide average cost data or facility-level data.⁵⁸ PPI proposes that these two issues should be decided in tandem.

We suggest that, as part of this rulemaking, the Commission formulate a definition of a dominant carrier.⁵⁹ The Commission should then use the forthcoming mandatory data collection to examine costs on both an industry-wide and facility-level basis. Given the dominant carriers’ economies of scale and ability to cover marginal locations, they should be subject to one uniform (i.e., non-tiered) set of price caps based on industry-wide average costs. However, if the review of facility-level expenses reveals an inverse correlation between facility size and carrier costs, then the Commission could calculate a separate (tiered) set of rate caps, based on facility-level data, and apply those caps to competitive carriers. This second set of rate caps would promote competition and ensure that multiple carriers remain available to serve smaller (allegedly higher-cost) correctional facilities.

⁵⁶ *E.g.*, Second R&O ¶ 76, 30 FCC Rcd. at 12801 (Noting that GTL, Securus, and Telmate represent 85% of industry revenue in 2013. GTL subsequently acquired Telmate (*see* Fifth FNPRM ¶ 74, n.220)).

⁵⁷ Fifth FNPRM ¶ 358, 86 Fed. Reg. at 40438.

⁵⁸ Fifth FNPRM ¶ 303, 86 Fed. Reg. at 40427.

⁵⁹ The Commission should use its economic expertise to determine the specific parameters of the definition based on market share and/or bidding market patterns, but for purposes of this discussion, we informally propose a 35% market share, measured by revenue, as a reasonable threshold for defining a dominant carrier.

VI. The Commission Should Carefully Structure its Actions, Including the Upcoming Mandatory Data Collection, to Provide Information Relevant to Other Miscellaneous Issues Raised in the FNPRM

The Fifth FNPRM raises several questions that do not fit within the major themes that have dominated this proceeding in recent years. PPI agrees that many of these miscellaneous topics are important. We encourage the Commission to collect and disseminate as much relevant data as possible, with the goal of informing future policies. Four specific issues are discussed below.

A. A Regular, Recurring Data Collection Would be Beneficial

As illustrated by the labyrinthine path that this proceeding has taken, the ICS market is in a constant state of flux, with new technologies and business practices regularly appearing. To be able to quickly respond to future developments, the Commission should seek to maintain an “evergreen” record through the use of regular recurring mandatory data collections.⁶⁰ Such recurring collections could provide ongoing cost data, while being shorter and more focused than the pending Third Mandatory Data Collection (but more probing and adaptable than the annual reports currently filed by carriers). In addition, the Commission could use such periodic collections to calculate facility-level data for the purpose of revising the competitive-carrier price caps that we propose above (see page 21).

B. Carriers Must Provide Substantial Information before the Commission Can Even Begin to Evaluate Alternative Pricing Models

The Commission seeks comment regarding the potential of “alternative rate structures, such as one under which an incarcerated person would have a specified—or unlimited—number of monthly minutes for use for a predetermined monthly charge.”⁶¹ This issue has also been raised in a petition for waiver filed by Securus.⁶² These proposed alternative structures are vastly premature as a matter of both law and fact.

⁶⁰ See Fifth FNPRM ¶ 342, 86 Fed. Reg. at 40435 (seeking comment on “conduct[ing] cost data collections on a more routine, periodic basis”).

⁶¹ Fifth FNPRM ¶ 305, 86 Fed. Reg. at 40428.

⁶² Securus, [Petition for Waiver of the Per Minute Rate Requirement to Enable Provision of Subscription Based Calling Services](#) (Aug. 30, 2021).

Factually, the record contains absolutely no information about how such structures work, and how they impact the reasonableness of rates. As a bare threshold, any carrier advocating for such a rate structure must provide detailed information about the price, information given to consumers, and the terms and conditions imposed on subscribers (details that are conspicuously absent from Securus’s petition).

After having reviewed the basic terms of the carriers’ proposals, the Commission must then obtain reliable evidence about the “real world” experience of consumers: how are initial disclosures conveyed to customers (especially incarcerated people who lack internet access), what monthly price *and usage* information do customers get (are they provided with adequate information to determine whether their effective per-minute rate under the subscription plan is lower than what they would pay under standard rates?), and how is a customer able to terminate their subscription (does a customer need to call? if so, what are the hold times? if an incarcerated customer is prohibited from using the phone due to segregation, lockdown, work assignment, or medical emergency, can they designate a family member cancel on their behalf?).

Finally, the Commission must review evidence (either projected or actual evidence from similar intrastate calling plans) about the carriers’ profits from such plans. Amorphous references to “better cost management and investment decisions”⁶³ are not adequate. Do carriers advocate for these plans because of administrative simplicity, or is it simply a way to ensure a stream of revenue from a (potentially shifting, but statistically predictable) portion of customers who pay monthly subscription fees but make few or no calls in certain months because of life events?

These facts are legally relevant for two reasons. Under 47 U.S.C. § 201(b), charges *and practices* must be just and reasonable. If carriers use vague or misleading information to lure customers into paying effective per-minute rates under a subscription plan that are higher than (or even equal to) standard rates, then neither the rate nor the practice can be just and reasonable.

⁶³ *Id.* at 3, n.3.

Additionally, under 47 U.S.C. § 276(b)(1)(A), the Commission is responsible for ensuring that payphone service providers are “fairly compensated” for payphone calls (ICS calling is statutorily deemed to be payphone calling under § 276(d)). But consumers paying fixed fees for periods in which they do not make calls is not fair, it is excessive. As the Commission has held, “Section 276 requires us to ensure that per-call compensation is fair, which implies fairness to both sides.”⁶⁴

In sum, the Commission has spent years crafting a regulatory framework that addresses numerous problematic practices of the ICS industry. Allowing carriers to toss aside that framework based on a wink and a “trust us” would be folly. If carriers are serious about pushing a subscription-based model, they must provide detailed, accurate, and verifiable information demonstrating that such models are fair to consumers.

C. The Commission Should Ensure that Non-Filing Companies Are Required to Become Compliant and Participate in the Mandatory Data Collection

The success of the Commission’s oversight of the ICS industry hinges to a significant degree on data collected through the annual-reporting requirement imposed under 47 C.F.R. § 64.6060. Administrative consistency demands that the annual-reporting rule be applied to all ICS carriers, even fringe competitors. Yet, PPI has identified nine carriers who have failed to consistently file annual reports during the three most recent full calendar years. These carriers are reported in **Table 4**. It is also worth noting that PPI does not claim to have comprehensive knowledge of every ICS carrier operating in the U.S., thus there could be other non-reporting companies in addition to these.

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⁶⁴ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. No. 96-128, Fifth Order on Reconsideration and Order on Remand ¶ 82, 17 FCC Rcd. 21274, 21302 (Oct. 23, 2002).

Table 4. Non-Filing ICS Carriers

Company	Reports filed (2018-20)
ATN, Inc./Amtel	2018 only
CenturyLink Public Comm'cns	2018-19
City Tele Coin Co. Inc.	none
Encartele, Inc.	none
Infinity Networks	none
JCW Electronics	none
Lattice, Inc.	none
Smart Communications	2020 only
Turnkey Corrections (dba TKC Telecom)	none

Note

Prison Policy Initiative staff used the FCC's ECFS system to search for each carrier's annual reports (Form 2301(a)) in 2018, 2019, and 2020. We have conducted independent research of public sources to determine that the companies listed here do provide ICS services. We also excluded two companies (Protocall, LLC and Preferred Communications of Texas, LLC), which were both acquired by larger ICS carriers.

The Commission has previously noted that it can take action, including imposition of monetary forfeitures, against carriers that do not comply with applicable rules.⁶⁵ Because of the paramount importance of accurate information, the Commission should follow through on its previous statements and take enforcement action against non-compliant companies.

D. Greater Access to Contract Information Can Only Help

The Commission asks whether “requiring [ICS] contracts to be made publicly available [would] make bidding more competitive.”⁶⁶ PPI supports a public disclosure-requirement, and notes that it is not just bidders that have an interest in obtaining such information. Public interest advocates and the ICS customers they represent have a strong need to understand the entire economic and legal structure of the ICS system writ large and its constituent contractual agreements. PPI has done substantial research on the ICS industry, and facility contracts are a key piece of this research; yet, we incur substantial time simply requesting and obtaining these

⁶⁵ [Enforcement Bureau Advisory](#), DA 20-1364, at 1, n.5, 35 FCC Rcd. (citing 47 U.S.C. § 503(b)(2) & 47 C.F.R. § 1.80(b)(2)) (Nov. 20, 2020).

⁶⁶ Fifth FNPRM ¶ 357, 86 Fed. Reg. at 40438.

public documents on a one-by-one basis. A comprehensive system of proactive disclosure would be beneficial to consumers and competitive carriers.

VII. Conclusion

PPI appreciates the major strides that the Commission has taken over the years to reform the ICS industry, and we thank the Commission for conducting another rulemaking and data collection. As explained above, PPI believes that the next phase in the fight against unfair ICS practices includes addressing particular concerns of jail customers, curtailing unfair ancillary fee practices, and reducing the economic burdens caused by site-commission payments and USF assessments. Armed with the record that has already been compiled, plus the results of the upcoming data collection, we are confident that the Commission can address these problems and take steps to promote a competitive marketplace. As in the past, millions of ICS users await prompt and decisive action, and PPI encourages the Commission to take every lawful action to provide economic relief to consumers.

Respectfully submitted,

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APPENDIX 1

Comments of Prison Policy Initiative, Inc.
on Fifth Further Notice of Proposed Rulemaking

Large Jail Phone Rates

*Interstate rates at jurisdictions
with average daily jail populations over 1,000
(as of June 2021)*

PRISON
POLICY INITIATIVE

Interstate Phone Rates at Jurisdictions with Jail ADP over 1,000

Interstate Rates Exceeding 16¢ / min

<u>Jurisdiction/Facility</u>	<u>Avg. Daily Pop</u>	<u>Carrier</u>	<u>Interstate Rate (\$/min)</u>	<u>Intrastate Rate Difference?</u>
Maricopa County (AZ) Jail Sys.	8,099	GTL	0.20	
Pima County (AZ) Adult Det. Cplx.	2,018	GTL	0.20	
Pinal Co. (AZ) Jail	1,121	Securus	0.18	
Fresno County (CA) Jail	3,017	GTL	0.18	
Kern County (CA) Lerdo Pre-Trial Facility	1,209	Securus	0.21	Higher (10¢)
Los Angeles County (CA) - multiple facilities	17,533	GTL	0.21	
Monterey County (CA) Jail	1,100	Telmate	0.21	
Orange County (CA) - multiple facilities	4,510	GTL	0.21	Higher (2¢)
Riverside County (CA) - multiple facilities	2,582	Securus	0.20	Lower (-6¢)
Sacramento County (CA) - multiple facilities	4,132	ICSolutions	0.21	
San Diego County (CA) Det. Fac.	1,739	Securus	0.21	Higher (12¢)
San Joaquin County (CA) Jail	1,350	Securus	0.21	
Adams County (CO) Det. Fac.	1,046	ICSolutions	0.21	
Arapahoe County (CO) Sheriff's Office	1,076	Securus	0.21	Higher [†]
El Paso County (CO) Criminal Justice Ctr	1,485	GTL	0.21	Higher (23¢)
Jefferson County (CO) Jail	1,141	Securus	0.21	
Broward County (FL) Jails	4,610	Securus	0.21	Lower (-9¢)
Metro West Det. Ctr. (FL)	2,109	GTL	0.21	Lower (-7¢)
Pre-Trial Det. Ctr. (FL)	1,260	GTL	0.21	Lower (-7¢)
Lee County (FL) Core Facility	1,038	GTL	0.21	Higher (1¢)
Marion County (FL) Jail	1,479	Securus	0.21	Higher (14¢)
Palm Beach County (FL) Main Det. Ctr.	1,805	Securus	0.21	Higher (6¢)
Pasco County (FL) Det. Fac.	1,486	ICSolutions	0.21	
Pinellas County (FL) Jail	2,864	GTL	0.21	Higher (3¢)
South County (FL) Jail	1,634	Securus	0.21	Higher (15¢)
St. Lucie County (FL) Main Jail	1,213	GTL	0.21	Higher (9¢)
Chatham County (GA) Adult Det. Ctr.	1,524	Paytel	0.21	Lower (-2¢)
Clayton County (GA) Jail	1,283	Securus	0.21	Lower (-3¢)
Dekalb County (GA) Jail	2,380	Securus	0.21	Lower (-3¢)
Gwinnett County (GA) Jail	2,180	Securus	0.19	Lower (-6¢)
Muscogee County (GA) Jail	1,132	CPC	0.18	
Jenkins Corr. Ctr. (GA)	1,136	Legacy	0.21	Lower (-2¢)
Cook County (IL) Jail	10,565	Legacy	0.06	
Marion County (IN) - multiple facilities	2,041	GTL	0.28	
Sedgwick County (KS) Jail and Work Release	1,199	Securus	0.21	Lower [†]
Louisville/Jefferson (KY) Jail Complex	1,816	Securus	0.21	Higher [†]
Ouachita Parish (LA) Corr. Ctr.	1,050	GTL	0.18	
East Baton Rouge Prison (LA)	1,650	ICSolutions	0.21	Lower (-6¢)
Orleans Parish (LA) Prison	2,468	Securus	0.21	Higher (4¢)
Bristol County (MA) - multiple facilities	1,333	Securus	0.21	
Essex County (MA) CF	1,213	Securus	0.18	
South Bay House of Correction (MA)	1,140	Securus	0.18	
Kent County (MI) C.F. & Comm. Reentry Ctr.	1,119	ICSolutions	0.21	
Oakland County (MI) Law Enf. Cplx	1,177	ICSolutions	0.21	
Andrew C. Baird Det. Fac. (MI)	2,258	GTL	0.21	Higher (41¢)

[†] Indicates facility where intrastate rates include different first-minute rate

Douglas Dept. of Corr. (NE)	1,203	GTL	0.21	Lower (-8¢)
Clark County (NV) Det. Ctr.	3,832	Securus	0.21	
Nassau County (NY) Corr. Ctr.	1,254	GTL	0.21	Higher [†]
Cuyahoga County (OH) Corr. Ctr.	1,897	Securus	0.21	
Hamilton County (OH) Justice Ctr	1,252	Securus	0.21	
Berks County (PA) Prison	1,163	GTL	0.21	Lower (-7¢)
Dauphin County (PA) Prison	1,226	GTL	0.21	Higher (1¢)
Lancaster County (PA) Prison	1,023	Securus	0.21	
Lehigh County (PA) Prison	1,045	GTL	0.21	Higher (3¢)
Montgomery County (PA) C.F.	1,940	GTL	0.19	
Philadelphia Prison System Facilities (PA)	8,930	GTL	0.17	
George W. Hill C.F. (PA)	1,986	GTL	0.17	
Greenville County (SC) Det. Ctr.	1,252	Securus	0.21	
Alvin S. Glenn Det. Ctr. (SC)	1,028	Legacy	0.21	
Metro-Davidson County (TN) Det. Fac.	1,131	Securus	0.21	Lower (-16¢)
Bexar County (TX) Adult Det. Ctr.	3,750	ICSolutions	0.21	
Cameron County (TX) Jails	1,373	Securus	0.21	Higher (4¢)
El Paso County (TX) Det. Fac. - Annex	1,395	GTL	0.21	Lower (-12¢)
Harris County (TX) - multiple facilities	7,961	Securus	0.18	
Lubbock Detention Center (TX)	1,228	ICSolutions	0.21	
Montgomery County (TX) Jail	1,140	Securus	0.21	Higher (32¢)
Tarrant County (TX) - multiple facilities	2,755	Securus	0.21	Higher [†]
Salt Lake County (UT) Jail	2,036	GTL	0.19	Lower (-9¢)
Chesapeake City Jail (VA)	1,144	ICSolutions	0.21	
Norfolk City Jail (VA)	1,423	GTL	0.21	
Richmond City Jail (VA)	1,267	GTL	0.90	Lower (-81¢)
Snohomish County (WA) Sheriff's Office	1,170	GTL	0.20	
Milwaukee House of Correction (WI)	1,658	ICSolutions	0.21	

Interstate Rates at or under 16¢ / min

<u>Jurisdiction/Facility</u>	<u>Avg. Daily Pop</u>	<u>Carrier</u>	<u>Interstate Rate (\$/min)</u>	<u>Intrastate Rate Difference?</u>
Jefferson County (AL) Birmingham Jail	1,177	Telmate	0.14	
Santa Clara County (CA) - multiple facilities	3,963	GTL	0.08	
Santa Barbara County (CA) Jails	1,249	GTL	0.16	
Denver Downtown Det. Ctr. (CO)	1,434	Securus	0.09	
Department of Corrections (Wash. DC)	2,288	GTL	0.08	
Escambia County (FL) Main Jail	1,375	GTL	0.15	
Hillsborough County (FL) Jail	2,090	GTL	0.10	
Orange County (FL) Corr. Dept.	2,923	GTL	0.15	
Cobb County (GA) Sheriffs Office	1,632	GTL	0.12	
Lexington-Fayette County (KY) Jail	1,252	Securus	0.14	
Baltimore County (MD) Det. Ctr.	1,184	ICSolutions	0.16	Lower (-6¢)
Prince Georges County (MD) Corr. Ctr.	1,273	GTL	0.10	Higher (6¢)
Plymouth County House of Corrections (MA)	1,236	Securus	0.14	
St. Louis Co. (MO) Dept. of Justice Services	1,331	Securus	0.05	
Washoe County (NV) Det. Ctr.	1,080	NCIC	0.14	
Camden County (NJ) C.F.	1,497	GTL	0.05	
Essex County (NJ) C.F.	3,391	GTL	0.05	
Hudson County (NJ) C.F.	1,806	GTL	0.05	
Passaic County (NJ) Jail	1,039	GTL	0.05	

† Indicates facility where intrastate rates include different first-minute rate

Monroe County (NY) Jail	1,369	Securus	0.10	
Westchester Dept. of Corr. (NY)	1,332	Securus	0.00	
Mecklenburg County (NC) Jail North	1,909	GTL	0.09	Lower (-4.47¢)
Franklin County (OH) Corr. Ctr.	1,771	GTL	0.04	
York County (PA) Prison	2,387	GTL	0.16	
Shelby Couty (TN) - multiple facilities	4,684	GTL	0.10	
Dallas County (TX) - multiple facilities	5,700	Securus	0.07	
Denton County (TX) Jail	1,147	Securus	0.11	
Hidalgo County (TX) Adult Det. Ctr.	1,097	Securus	0.02	Higher (23¢)
Travis County (TX) Corr. Complex	2,345	Securus	0.02	
Riverside Regional Jail (VA)	1,408	GTL	0.11	
Virginia Beach Municipal Corr. Ctr. (VA)	1,284	GTL	0.11	
King County (WA) C.F.	1,910	Securus	0.13	

Methodology: Phone rates were collected by Prison Policy Initiative staff in June 2021 using service provider and jail websites. Not included in this list are fifteen counties with large jails for which staff could not find published phone rates, as well as four large jails operated by New York City, which does no longer charge incarcerated people for phone calls. Facility identification and average daily population comes from the Bureau of Justice Statistics Census of Jails 2013, available at <https://bjs.ojp.gov/library/publications/census-jails-population-changes-1999-2013>.

APPENDIX 2

Comments of Prison Policy Initiative, Inc.
on Fifth Further Notice of Proposed Rulemaking

*Prison System Phone Rates
as of 2021*

PRISON
POLICY INITIATIVE

Cost of a calling from state prison systems

As of June 2021

State	Interstate Rate (\$/min)	Carrier	% rate change from 2018 interstate rate	Different intrastate rate? ¹
Alaska	0.21	Securus		
Alabama	0.05	Securus	-80.9%	
Arkansas	0.21	Securus		Yes (\$0.25)
Arizona	0.10	CenturyLink/ICSoln	-62.2%	
California	0.03	GTL	-87.9%	
Colorado	0.08	GTL	-33.3%	
Connecticut	0.21	Securus		Yes (\$0.24)
Delaware	0.04	GTL		
Florida	0.14	GTL	-3.3%	
Georgia ²	0.21	Securus		Yes (\$0.16)
Hawaii	0.20	GTL		Yes (\$0.13)
Iowa	0.11	Iowa DOC ³		
Idaho	0.08	ICSolutions	-27.3%	
Illinois	0.01	Securus	-3.6%	
Indiana	0.21	GTL		Yes (\$0.24)
Kansas	0.18	ICSolutions		
Kentucky	0.21	Securus		
Louisiana	0.21	Securus		
Massachusetts	0.13	Securus	20.4%	Yes (\$0.12)
Maryland	0.03	GTL	-7.7%	
Maine ⁵	0.09	Maine DOC ⁴		
Michigan	0.16	GTL	-23.8%	
Minnesota	0.05	GTL		
Missouri	0.05	Securus		
Mississippi	0.04	GTL		
Montana	0.10	ICSolutions	-30.2%	
North Carolina	0.10	GTL		
North Dakota	0.08	Securus	-0.4%	
Nebraska	0.06	GTL		
New Hampshire	0.01	GTL		
New Jersey	0.04	GTL		
New Mexico	0.08	Securus		
Nevada	0.11	Securus		
New York	0.04	Securus		
Ohio	0.05	GTL		
Oklahoma	0.20	Securus	-1.0%	
Oregon	0.09	ICSolutions	-35.7%	
Pennsylvania	0.06	Securus		
Rhode Island	0.06	Securus	25.4%	
South Carolina	0.06	GTL	-38.5%	
South Dakota	0.06	GTL	-25.0%	
Tennessee ⁵	0.21	GTL		Yes (\$0.16)
Texas	0.06	Securus		
Utah	0.19	GTL		Yes (\$0.10)
Virginia	0.04	GTL		
Vermont	0.07	GTL		Yes (\$0.04)

State	Interstate Rate (\$/min)	Carrier	% rate change from 2018 interstate rate	Different intrastate rate?¹
Washington	0.11	GTL		
Wisconsin	0.06	ICSolutions	-66.7%	
West Virginia	0.03	ICSolutions		
Wyoming	0.11	ICSolutions		

Notes

1. Where intrastate rates differ, the per-minute cost for an intrastate call is shown in parentheses
2. Calls can be as low as 13¢ per minute, depending on end point locations.
3. The Iowa Department of Corrections has its own system for calling. However, it buys bandwidth wholesale from ICSolutions. More information can be found at <https://www.prisonpolicy.org/blog/2017/08/28/merger/>.
4. The Maine Department of Corrections has its own system for calling. As of August 2017, it bought bandwidth wholesale from Legacy. However, the Maine DOC is now listed on GTL's website. More information can be found at <https://www.prisonpolicy.org/blog/2017/08/28/merger/>.
5. Calls can be as low as 7¢ per minute, depending on end point locations.

Methodology

Prison Policy Initiative staff manually looked up prepaid rates on providers' and state corrections departments' websites for both intrastate and interstate calls in June 2021. For intrastate calls, we got a rate quote for a phone call to each state's governor's office, and for out-of-state calls we used an out-of-state number. Rates from 2018 are published as Appendix 4 to Prison Policy Initiative's State of Phone Justice report, available at https://www.prisonpolicy.org/phones/appendix_table_4.html

APPENDIX 3

Comments of Prison Policy Initiative, Inc.
on Fifth Further Notice of Proposed Rulemaking

Analysis of ICS Contract Durations

PRISON
POLICY INITIATIVE

Methodology

Prison Policy Initiative conducted this analysis of ICS contract terms using contract documents obtained from county jails through open records requests. Requests were sent to counties in four states (California, Massachusetts, New York, and Wisconsin). One hundred counties responded, although seven were omitted from this analysis because they did not provide complete contract documents.

Of the 93 counties included, 7 are in California, 13 are in Massachusetts, 49 are in New York, and 24 are in Wisconsin.

The results are presented in three separate tables:

Table 1 consists of contracts that have been amended to extend the original term.

Table 2 consists of contracts that have passed their original term, but the incumbent carrier is still providing service to the relevant facility.* In these situations, the contract has been extended either by the exercise of an option period, auto-renewal provisions, or by the parties' mutual, informal agreement to continue the contractual relationship. The nature of the renewal or extension is noted in the table.

Table 3 contains contracts for which the initial term has not yet passed.

Definitions

Except as noted otherwise, in all three tables, "contract date" is defined as the date of the last signature on the original contract, and the "length of initial contract" is based on the contract's description of its initial term.

* This analysis was conducted over several months in 2021. For a handful of contracts that expired in mid-2021, it is possible that some facilities either further extended the contract or issued a contract to a new carrier soon after we obtained and reviewed the documents.

Table 1. Contracts extended by amendment

County (State)	Carrier	Contract date	Length of initial contract (months)	Length of Contract, as amended
Glenn (CA)	PCS/GTL	9/30/2007	24	180
Imperial (CA)	Telmate/GTL	6/1/2015	35	71
Calaveras (CA)	GTL	12/29/2015	60	120
Suffolk (MA)	Securus	8/1/2019	43	103
Tompkins (NY)	GTL	6/15/1999	60	288
Broome (NY)	GTL	1/26/2009	12	156
Steuben (NY)	GTL	2/20/2009	60	144
Tioga (NY)	GTL	5/19/2009	60	192
Clinton (NY)	GTL	10/5/2009	60	168
Washington (NY)	GTL	4/12/2010	Unknown [†]	167
Niagara (NY)	GTL	4/12/2012	60	110
Erie (NY)	ICSolutions	7/2/2012	60	122
Chemung (NY)	GTL	12/9/2013	48	100
Cattaraugus (NY)	GTL	5/21/2014	59	95
Seneca (NY)	GTL	8/9/2014	60	108
Fulton (NY)	GTL	10/1/2014	60	108
Oswego (NY)	GTL	10/22/2014	60	87
Madison (NY)	GTL	11/18/2014	60	83
St. Lawrence (NY)	GTL	2/20/2015	60	108
Yates (NY)	GTL	3/16/2015	Unknown [†]	72
Schuyler (NY)	GTL	3/23/2015	60	119
Suffolk (NY)	Securus	5/1/2015	47	71
Wyoming (NY)	GTL	6/11/2015	60	108
Delaware (NY)	GTL	10/13/2015	Unknown [†]	96
Lewis (NY)	GTL	Not provided	Unknown*	Unknown (most recent amendment extends term by 36 months)
Jefferson (WI)	Securus	5/9/2007	60	191
Polk (WI)	Securus	12/7/2007	36	191
Sheboygan (WI)	Securus	1/11/2008	48	168
Columbia (WI)	Securus	12/14/2009	36	167
Green (WI)	Securus	12/16/2009	36	155
Kenosha (WI)	GTL	12/1/2010	60	156
Price (WI)	Securus	8/19/2011	60	131
La Crosse (WI)	Securus	12/31/2011	37	113
Eau Claire (WI)	Securus	1/3/2012	25	151
Marathon (WI)	Securus	3/25/2013	60	102
Chippewa (WI)	Securus	4/25/2013	50	98
Monroe (WI)	Securus	12/17/2015	36	97
Milwaukee (WI)	CenturyLink/ICS	1/21/2016	24	59
Adams (WI)	Securus	Not provided	Unknown*	Unknown (most recent amendment extends term by 48 months + three 12-month option periods)
Manitowoc (WI)	Securus	Not provided	Unknown*	Unknown (most recent amendment extends term by 36 months + two 12-month option periods)
Waupaca (WI)	Securus	Not provided	Unknown*	Unknown (most recent amendment extends term by 60 months)
Averages			49	129

Notes

* County only provided the most recent amendment; term of that amendment has not passed.

† County did not provide original contract, but the date of the original contract is referenced in the most recent amendment.

Table 2. Contracts extended through options, renewals, or mutual consent

County (State)	Carrier	Contract date	Length of initial contract (months)	Nature of Renewal/Extension	Length of contract, through most recent extension
Monterey (CA)	Telmate/GTL	12/14/2016	35	Renewal option (1 yr)	59
Shasta (CA)	GTL	7/17/2018	36	Automatic renewal (two 1-yr terms)	48
Dukes (MA)	Securus	6/11/2012	60	Automatic renewal (one 60-month term)	120
Wayne (NY)	GTL	9/11/2006	60	Original option terms have expired; contract appears to have been extended through mutual consent. [†]	180
Greene (NY)	GTL	6/8/2009	60	Automatic renewal (unlimited 1-year terms)	156
Oneida (NY)	GTL	6/15/2009	36	Automatic renewal (unlimited 1-year terms)	156
Nassau (NY)	GTL	1/14/2010	36	Original option terms have expired; contract appears to have been extended through mutual consent. [†]	140
Warren (NY)	GTL	2/2/2010	Unknown	Automatic renewal (unlimited 1-year terms)	144
Rensselaer (NY)	GTL	3/4/2010	36	Original option terms have expired; contract appears to have been extended through mutual consent. [†]	138
Orange (NY)	GTL	2/2/2011	60	Original option terms have expired; contract appears to have been extended through mutual consent. [†]	127
Sullivan (NY)	GTL	5/27/2011	60	Automatic renewal (unlimited 1-year terms)	132
Otsego (NY)	GTL	12/20/2011	60	Automatic renewal (unlimited 1-year terms)	120
Montgomery (NY)	GTL	4/13/2012	60	Automatic renewal (unlimited 1-year terms)	120
Jefferson (NY)	GTL	10/10/2012	60	Automatic renewal (unlimited 1-year terms)	108
Herkimer (NY)	GTL	10/24/2014	60	Automatic renewal (unlimited 1-year terms)	96
Schenectady (NY)	GTL	8/14/2015	60	Automatic renewal (unlimited 1-year terms)	84
Dutchess (NY)	GTL	9/29/2015	60	Automatic renewal (unlimited 1-year terms)	60
Columbia (NY)	GTL	12/29/2017	36	Automatic renewal (unlimited 1-year terms)	48
Westchester (NY)	GTL	11/9/2018	32	Renewal option (2 yr)	56
Cortland (NY)	GTL	2/2015	60	Automatic renewal (unlimited 1-year terms)	75
Allegany (NY)	GTL	2009	60	Original contract not provided, but county states that initial contract began in 2009, and was a 5-year contract that expired in 2014 and has been renewed every year. Contract length listed here is approximate	144
Juneau (WI)	Securus	2/7/2013	60	Automatic renewal (unlimited 1-year terms)	108
Vernon (WI)	Securus	5/27/2016	60	No specification of renewal terms; contract appears to have been extended through mutual consent. [†]	63
Wood (WI)	Securus	6/6/2016	60	No specification of renewal terms; contract appears to have been extended through mutual consent. [†]	63
Barron (WI)	Securus	4/27/2018	36	Automatic renewal (two 1-yr terms)	48
Averages			52		104

Notes

[†] Extended contract duration calculated as original contract date through September 2021.

Table 3. Contracts still in initial term

County (State)	Carrier	Contract date	Length of initial contract (months)
Ventura (CA)	Securus	3/13/2018	60
Santa Barbara (CA)	Telmate/GTL	8/16/2018	36
Hampden (MA)	ICSolutions	10/1/2018	35
Plymouth (MA)	Securus	11/8/2018	60
Essex (MA)	Securus	9/2/2019	102
Worcester (MA)	Securus	10/2/2019	101
Norfolk (MA)	Securus	2/1/2020	37
Franklin (MA)	Securus	4/3/2020	94
Barnstable (MA)	Securus	5/14/2020	93
Berkshire (MA)	Securus	6/22/2020	92
Middlesex (MA)	Securus	7/21/2020	59
Bristol (MA)	Securus	8/6/2020	90
Hampshire (MA)	ICSolutions	11/13/2020	36
Chautauqua (NY)	GTL	5/31/2013	120
Livingston (NY)	GTL	10/8/2018	60
Ontario (NY)	Securus	10/26/2018	60
Albany (NY)	Securus	2/11/2019	36
Onondaga (NY)	ICSolutions	2/25/2019	34
Putnam (NY)	GTL	4/26/2019	60
Orleans (NY)	ICSolutions	6/1/2019	35
Schoharie (NY)	GTL	2/11/2020	60
Monroe (NY)	Securus	5/1/2020	59
Essex (NY)	GTL	7/1/2020	36
Rusk (WI)	Securus	9/12/2016	60
Lincoln (WI)	Securus	3/29/2019	60
Brown (WI)	Securus	6/15/2020	60
Dunn (WI)	ICSolutions	12/8/2020	60
Average			63