

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of)	
Inmate Calling Solutions, LLC)	
d/b/a ICSolutions)	Case No. XE-2011-0065
for Waiver of Commission Rules)	
and Statutes)	

RESPONSE OF APPLICANT TO OPC OBJECTION AND REQUEST

COMES NOW Inmate Calling Solutions, LLC d/b/a ICSolutions ("Applicant" or "ICS"), by its undersigned counsel, and pursuant to 4 CSR 240-2.080 (15), and hereby responds to *Public Counsel's Objection to Waiver of Certain Rules and Request for Hearing* filed in this matter on September 17, 2010. ICSolutions strenuously opposes Public Counsel's request for a hearing and urges the Commission to forthwith grant the usual and typical waivers requested in this matter without hearing, as has been the usual custom and practice of the Commission.

1. Applicant Inmate Calling Solutions, LLC d/b/a ICSolutions (ICS) filed its *Application for Waiver of Commission Rules and Statutes* in this matter on September 3, 2010. By its Order Directing Filing of Staff Recommendation issued on September 7, 2010, the Commission directed its Staff to file a Staff Recommendation in this matter.

2. On September 17, 2010, The Office of the Public Counsel (OPC) filed *Public Counsel's Objection to Waiver of Certain Rules and Request for Hearing*. OPC specifically objects only to the requested waiver of the following four rule provisions:

- 4 CSR 240-33.040 (1-3) and (5-10) Billing and payment standards
- 4 CSR 240-33.045 Clear identification and placement of charges on bills
- 4 CSR 240-33.080 (1) Identify company name and toll-free number on bills
- 4 CSR 240-33.130 (1), (4) and (5) Operator service requirements

3. OPC quotes correctly from the Application in this matter, that “ICS provides automated operator assisted calling services for inmates and other incarcerated persons in correctional facilities in Missouri.” Applicant was certificated to provide interexchange and non-switched local exchange (dedicated private line) calling services in the State of Missouri effective May 2, 2004 pursuant to an order issued in Case No. XA-2004-0478. Applicant’s name change (fictitious name, or “d/b/a”) was recognized by the Commission in its *Order Recognizing Change of Corporate Name and Approving Tariff* issued on April 24, 2007 (effective May 5, 2007) in Case No. XN-2007-0376.

4. As a certificated non-switched local exchange telecommunications carrier, ICS is an “alternative local exchange company” under the definition in Section 386.020 (1), which states: “‘Alternative local exchange telecommunications company’, a local exchange telecommunications company certified by the commission to provide basic or nonbasic local telecommunications service or switched exchange access service, or any combination of such services, in a specific geographic area subsequent to December 31, 1995;”.

5. Under Section 392.245.5(8), RSMo, “... all alternative local exchange telecommunications companies shall not be required to comply with customer billing rules, network engineering and maintenance rules, and rules requiring the recording and submitting of service objectives or surveillance levels established by the commission ...” Section 392.420, RSMo, provides that “... for all existing alternative local exchange telecommunications companies, the commission shall waive, *at a minimum*, the application and enforcement of its quality of service and billing standards rules, as

well as the provisions of subsection 2 of section 392.210, subsection 1 of section 392.240, and sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340." (Emphasis added.)

6. Pursuant to these provisions, Applicant filed its Application in this case seeking a Commission Order waiving the applicability of the same rules and statutes that have been waived for numerous other telecommunications companies since the enactment of HB 1779 in 2008, believing the Application to be routine and non-controversial. See, for example, XE-2010-0339 (Global Crossing North American Networks, Inc.) and XE-2010-0341 (Global Crossing Telecommunications Inc.), orders issued June 21 and 22, 2010, respectively. See also, Case No. XE-2010-0247, (Global Tel*Link Corporation), *Order Granting Waivers* issued March 16, 2010; and Case No. CE-2009-0113 (Level 3 Communications LLC), order issued November 12, 2008.

7. In fact, these same rules were recently waived (without contest) for one of ICSolutions' major competitors for institutional telecommunications services, Global Tel*Link Corporation. See, Case No. XE-2010-0247, *Order Granting Waivers* issued March 16, 2010 (and effective the same day). As stated in the Global Tel*Link waiver application, "GTL currently provides managed inmate services in the State of Missouri." (*Application*, Paragraph 2, last sentence.) GTL and ICS are direct and frequent competitors for contracts with correctional facilities in Missouri and all other states.

8. It would be fundamentally unfair, prejudicial and discriminatory for ICSolutions to be denied the same waivers as were just granted to a major competitor, or to be dragged into a contested case proceeding to seek the same waivers that were

granted to Global Tel*Link in a non-contested proceeding (which took 18 days for the Commission to process).

9. Section 392.361.8, RSMo, states that intrastate operator and directory services “shall be deemed competitive on a statewide basis for all local exchange telecommunications companies.” It does not limit that competitive status to operator and directory services provided by *basic* local exchange carriers.

10. As Staff has recently and successfully argued, the PSC telecommunications rules that are waived under HB 1779 for Local Exchange Companies (LECs) should be waived for “interexchange carriers, which have been traditionally regulated less extensively than local exchange carriers have been regulated.” (Case No. XM-2011-0027, *Staff Motion to Dismiss*, paragraph 4, filed August 5, 2010.) The Commission agreed and issued its *Order Dismissing Application* in that case, for lack of jurisdiction, on September 8, 2010. (*Application of Tri-M Communications, Inc. d/b/a TMC Communications (“TMC”) and 5LINX Enterprises, Inc. (“5LINX”) for Approval of a Stock Purchase Agreement.*)

11. Section 386.020 (2), RSMo, defines “Alternative operator services company” as, “any certificated interexchange telecommunications company which receives more than forty percent of its annual Missouri intrastate telecommunications service revenues from the provision of operator services pursuant to operator services contracts with traffic aggregators;”. However, the only use of that term in the PSC Law appears to have been in Section 392.515, which was repealed by HB 1779 in 2008. That was the section that said that operator services were presumed reasonable if they were no higher than the rates charged by certificated interexchange carriers (IXCs) not

classified as alternative operator service companies. This part of the bill (HB 1779) was *not* directed at local exchange carriers, but is specific to alternative operator service (AOS) providers. By repealing 392.515, there is no longer any rate regulation of operator service providers, as a matter of law.

12. There is no statutory basis upon which OPC has based, or can base, its proposal to treat inmate or operator services providers differently than any other telecommunications company for purposes of qualification for waivers of Commission rules.

13. OPC's primary concern is that customers be provided with basic contact information for service providers, are informed about changes in advance and are billed according to minimum standards. (*Public Counsel's Objection to Waiver of Certain Rules and Request for Hearing*, page 3, Paragraph 6.) These concerns are addressed by the Truth-in-Billing rules of the Federal Communications Commission (FCC)¹, which will continue to apply to carrier bills even if the waivers opposed by the OPC are granted in this docket. Telephone bills are not typically separated by jurisdiction, meaning intrastate and interstate call charges, rates, taxes and fees all go on the same bill. So the federal requirement to, for example, put a toll-free customer service number on an invoice, has to be complied with whether or not a state rule exists. That is why it was logical for the Missouri General Assembly to have allowed waiver of these rules, because they are required anyway under federal rules.

14. Concerning the manner in which the ILEC bills for 3rd-party calls, the FCC's Truth-in-Billing rules apply to AT&T's ILEC billing practices. Since ICSolutions

¹ 47 CFR 64.2401.

does not direct-bill collect charges, but rather contracts either directly or indirectly with AT&T-Missouri to bill such calls in Missouri, then it is AT&T whose bill format should be of concern to OPC here. It cannot be ICSolutions' responsibility to make AT&T format its bills to conform to Missouri billing rules. That is in no way enforceable since ICS has no such authority. However, the FCC rules should alleviate OPC's concerns. The FCC rules would still apply to AT&T's billing practices.

15. OPC states that "[c]alls initiated in correctional institutions are not subject to the same competitive forces that have become common in the long distance and operator service markets." (Page 3, Paragraph 5.) OPC appears to argue that because institutional services are provided pursuant to specific security requirements of Missouri correctional facilities², i.e., access to alternative providers is prohibited, this leaves rate payers vulnerable. OPC also appears to argue that waiver of the rules in question would allow institutional services provider's billing practices to harm ratepayers.

"Without the benefit of competitive choice, the called party that may be billed for the call is particularly captive and vulnerable to carrier billing practices." (Page 3, Paragraph 5)

However, the billing rules at issue address a carrier's own billing practices and ICS does not bill directly for its services except in certain very limited situations. Moreover, IXC never issues bills to the end users that are the object of OPC's concerns as addressed in its Objection.³

² A summary description of inmate services is attached to this *Response* as **Appendix A**.

³ ICS offers direct billing only to public defenders, bail bondsmen, and law firms for the collect calls they receive from inmates in relation to their cases. These entities routinely accept calls from inmates, have a good payment history and, of necessity, a working relationship with institutional service providers, including ICS.

ICS respectfully suggests that OPC's concerns with respect to waiver of the billing rules would be more applicable to, and should be directed towards, those carriers who routinely issue bills for services and not those who do not.

16. ICS is entitled to the same rule waivers that are routinely granted to any other alternative local exchange telecommunications company or IXC by this Commission. ICS should not be singled out, in this routine application proceeding, for new or different requirements, or forced to go to hearing in order to obtain them when no other companies (including direct competitors) have had to do so.

17. It would be fundamentally unfair, prejudicial and discriminatory for ICSolutions to be denied the same waivers as were just granted to a major competitor (Global Tel*Link), or to be dragged into a contested case proceeding to seek the same waivers that were granted to Global Tel*Link in a non-contested proceeding (in Case No. XE-2010-0247) in March 2010. To the extent that OPC continues to believe that a gap in consumer protection is caused by the waiver of the rules at issue here, then ICS respectfully suggests that OPC request initiation of a generic or rulemaking proceeding as the appropriate forum to address such concerns, as opposed to a random attack on a single provider.

18. At a minimum, and in any event, the Commission should issue an order forthwith granting all waivers to ICS that have not been contested by OPC.

WHEREFORE, Inmate Calling Solutions, LLC d/b/a ICSolutions respectfully requests that the Commission overrule OPC's objections to certain waivers in this matter and deny its request for hearing, issue an Order granting waiver of the rules and statutes identified in its Application in this matter, grant a waiver of 4 CSR 240-4.020 (2) if deemed applicable, and grant such other and further relief to Inmate Calling Solutions, LLC d/b/a ICSolutions as the Commission deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been served electronically on the Office of Public Counsel at opcservice@ded.mo.gov and on the General Counsel's office at gencounsel@psc.mo.gov this 21st day of September 2010.

/s/ William D. Steinmeier

William D. Steinmeier

Appendix A

The highly specialized automated operator assisted service that ICS offers provides correctional and confinement institutions with sophisticated premises equipment that permits inmates to make outgoing, collect or prepaid calls without the assistance of a live operator. Contracts with correctional facility administrators require certain specific controls and restrictions that serve to reduce or eliminate fraudulent use of telephone systems. These restrictions also provide correctional facility management personnel with control over the use of the telecommunications services by inmates confined within. Telephone instruments are placed in detention areas such as cell blocks or day rooms. Each instrument is connected to a central control unit which restricts and controls calls placed by inmates. Systems and services are designed to allow inmates to remain in contact with family, friends and other associates while still providing facility management personnel with the necessary control over inmate communications.

Calls placed by inmates from the correctional or confinement facility are routed over the facilities of the local exchange carrier serving the facility and the provider's underlying long distance carrier. Calls are completed only to those called parties who specifically accept the call. A positive response from the called party is required before the connection is established and before any charges accrue.

In addition to call processing, other features required by correctional facility personnel include restrictive call blocking and screening. These features provide the correctional facility with the maximum degree of control over telecommunications services and help to minimize fraud. Call blocking prevents calls to directory assistance, "0-", 800 numbers, pay-per-call services, and emergency numbers (including 911) in order to reduce prank calls and fraudulent use of long distance services. Access to other interexchange carriers is also denied. Call screening serves to eliminate harassing or threatening calls to individuals such as judges, sheriffs, witnesses or jury members. These two features also allow the correctional facility to enforce telephone curfews (without manual intervention) by pre-setting the hours during which the system will process calls from a given telephone instrument.