

**EXHIBIT A**

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of                    )  
  )  
Rates for Interstate Inmate        )  
Calling Services                    )

WC Docket No. 12-375

**REPLY DECLARATION OF COLEMAN BAZELON**

Coleman Bazelon, being duly sworn, declares as follows:

**I. PURPOSE**

1. My name is Coleman Bazelon. Previously, I filed a Declaration in this Proceeding.<sup>1</sup> This Reply Declaration briefly reviews the major points of my original Declaration, noting relevant information filed by Commenters that pertain to that analysis. I also comment on the analysis submitted by Stephen Siwek of Economists Incorporated on behalf of Securus Technologies, Inc.<sup>2</sup>

**II. ANALYSIS FROM PREVIOUS DECLARATION**

2. In my original Declaration, I provided analysis supporting two propositions. The first was that a fair, just, and reasonable benchmark rate for prison calling services would be \$0.07 per minute for debit and collect calls, with no per call or set up fees.<sup>3</sup> The second was that any revenue lost by correctional facilities from reduced commissions would almost certainly be more

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<sup>1</sup> “Declaration of Coleman Bazelon,” Martha Wright, et al, D.C. Prisoners’ Legal Services Project, Inc., Cure, Prison Policy Initiative, and the Campaign for Prison Phone Justice, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 et al., WC Docket No. 12-375, March 25, 2013, Exhibit C. (Hereinafter, “Bazelon Declaration”)

<sup>2</sup> “Expert Report of Stephen E. Siwek,” On Behalf of Securus Technologies, Inc., WC Docket No. 12-375, March 25, 2013. (Hereinafter, “Siwek Report”)

<sup>3</sup> Bazelon Declaration, ¶ 26.

than made up for in lower prisoner costs as a result of reduced recidivism rates.<sup>4</sup> Here I briefly review these two findings and address additional information in the record that supports my original conclusions.

### **A \$0.07 PER MINUTE BENCHMARK RATE IS FAIR, JUST, AND REASONABLE**

3. Given market failures in the provision of prison phone services, competition in the industry does not lead to lower prices and better service for prisoners, but rather to higher prices and larger commissions for correctional institutions.<sup>5</sup> Consequently, setting a benchmark rate is a reasonable regulatory approach to assure fair, just, and reasonable rates are charged for prison phone services. Rather than establishing such a benchmark rate based on detailed, firm specific cost analysis, the rates should be based on the costs of competitively provided telecommunications services, with prison specific adjustments made where necessary. By basing the benchmark rate on competitively provided components, market forces assure the resulting rate meets the Communication Act's fair, just and reasonable standards.

4. My original analysis divided the proposed benchmark rate into three component parts.

- 1) The cost of commercially provided debit calling services,
- 2) the added prison specific costs above the costs of commercial debit calling services,  
and
- 3) additional billing and collection costs associated with collect calling.

5. The first component—the cost of providing debit calling services, including all switching, transport, billing and costs as well as profit—is well measured by commercially provided debit calling services offered to individuals. Those services are provided in a competitive market and meet the fair, just, and reasonable standard for rates. After reviewing

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<sup>4</sup> Bazon Declaration, ¶ 55.

<sup>5</sup> “Comments of Verizon and Verizon Wireless,” In the Matter of Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, March 25, 2013, p. 2.

retail rates, I estimated this component of the total cost of prison calling services was \$0.03 per minute.<sup>6</sup>

6. The second component—the added costs of providing debit calling services in a prison setting, including caller access restrictions and call monitoring, recording and storage costs—was estimated based on cost modeling of the services provided. I estimated a reasonable update of previous analysis in the record was a prison specific cost component of \$0.02 per minute.<sup>7</sup> Although portions of the required prison specific services can be found to be provided commercially—for example call monitoring, recording and storage services for call centers—no evidence was introduced in the record supporting market based estimates of these cost components. Should such evidence be introduced, it could further inform the estimate of the prison specific costs.

7. Although no market based estimates of these costs were introduced, some commenters did introduce evidence related to these costs. For example, NCIC submitted that storage costs were \$0.005 per call per month.<sup>8</sup> For a 15 minute call, this would be \$0.0003 (3 one-hundredths of a penny) per minute per month for storage.<sup>9</sup> Even 2 years of storage would add less than \$0.01 per minute to the cost of a call.<sup>10</sup> NCIC also submitted that its solution for biometric identification costs an average of \$0.10 per call.<sup>11</sup> On a per minute basis, this cost would also be less than \$0.01 per minute.<sup>12</sup> Overall, the specific cost data submitted in the record are consistent with my initial estimate of \$0.02 per minute for prison specific costs of providing prison calling services.

8. The third component of costs—additional billing and collections costs associated with collect calling, over and above the costs of debit calling—was also derived from industry data.

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<sup>6</sup> Bazelon Declaration, ¶ 19.

<sup>7</sup> Bazelon Declaration, ¶ 23.

<sup>8</sup> Network Communications International Corp., “Comments on Notice of Proposed Rulemaking,” In Re: Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, p. 6. (Hereinafter “NCIC Comments”)

<sup>9</sup>  $\$0.005/15 = \$0.0003$ .

<sup>10</sup>  $\$0.0003 \times 24 = \$0.0072$ .

<sup>11</sup> NCIC Comments, pp.6-7.

<sup>12</sup>  $\$0.10/15 = \$0.0066$ .

The estimate I provided in my original Declaration was \$0.02 per minute.<sup>13</sup> Whether or not the costs associated with collect calling are decreasing or not,<sup>14</sup> what is clear is that collect calling has become a much less important part of the prison payphone service mix.<sup>15</sup> Telmate reports that its collect calling is only 8% of its paid calling volume.<sup>16</sup> Pay Tel reports that 80% of inmate calls are placed to wireless phones.<sup>17</sup> This is consistent with higher debit calling rates because debit calls can more easily be made to wireless numbers. Collect calls to wireless numbers require third-party payment facilitators, suggesting payment issues for the ICS providers are reduced.<sup>18</sup>

9. My review of comments filed in this proceeding only reinforces the conclusion I came to in my original Declaration that a benchmark rate of \$0.07 per minute meets the fair, just, and reasonable standard set out in the Communications Act.

**A LOWER PRISON POPULATION WILL MAKE UP FOR ANY LOST REVENUE FROM  
REDUCED OR ELIMINATED COMMISSIONS**

10. In my initial Declaration, I noted it would only take a very small reduction in recidivism to result from the better family contacts that would be encouraged by lower prison calling rates to more than make up any revenues lost from reduced or eliminated commissions that penal institutions receive. In that analysis, I calculated that a one percent reduction in recidivism would be equivalent to about 2,800 fewer prisoners, nationwide.<sup>19</sup> At a little more than \$31,000 average per prisoner cost and an average term of incarceration of 3 years, the national savings

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<sup>13</sup> Bazelon Declaration, ¶ 25.

<sup>14</sup> At least one commenter pointed to some increased costs associated with billing and collecting collect calls. See, NCIC Comments, p. 5. However, some of the evidence provided was anecdotal and it was not clear how widely applicable it was.

<sup>15</sup> “Ten years ago, prepaid calling was very rare.” This implies the relative importance of collect calling has decreased. “Comments of Securus Technologies, Inc.,” Rates for Interstate Calling Services, WC Docket No. 12-375, p. 22.

<sup>16</sup> Comments of Telmate, LLC, In the Matter of Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, March 25, 2013, p. 15. (Hereinafter, “Telmate Comments”)

<sup>17</sup> “Comments of Pay Tel Communications, Inc.,” In the Matter of Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, p. 8.

<sup>18</sup> Bazelon Declaration, ¶ 24. Also, as an example, see the services provided by V-Connect. Available at: <http://www.myvconnect.com/index-2.aspx>.

<sup>19</sup> Bazelon Declaration, ¶ 48.

from a 1% reduction in incarceration rates would be about \$250 million, far more than the commissions collected by penal institutions.<sup>20</sup>

11. Concern over lost revenue was expressed in Comments filed by two State DOCs. In both cases, however, a very small reduction in the state's recidivism rate would more than make up for the lost revenue.

- The Mississippi Department of Corrections reports that the total commission it received in its fiscal year 2012 was \$1,651,805.<sup>21</sup> Mississippi's average annual prisoner costs of \$15,151<sup>22</sup> suggests that if lower prison calling rates in Mississippi resulted in just 112 fewer prisoners, the State of Mississippi would be no worse off financially. Based on a analysis from the 2004-2007 time frame, Mississippi released 8,428 prisoners in a year and 33.3% (or 2,807) returned to prison within 3 years.<sup>23</sup> This suggests that in Mississippi (a state with one of the lowest prisoner costs in the nation<sup>24</sup>) a reduction in recidivism of less than 4% would offset any lost revenues from reduced commissions from prisoner calling services.<sup>25</sup>
- The Louisiana Department of Public Safety & Corrections reports that for the 2012-2013 fiscal year they expect to receive \$3,817,051 in commissions.<sup>26</sup> Louisiana's average annual inmate cost was \$17,486 in Fiscal Year 2010.<sup>27</sup> This

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<sup>20</sup> Bazelon Declaration, ¶¶ 48 & 55.

<sup>21</sup> "Initial Comments of the Mississippi Department of Corrections," Commission Seeks Comment on Rates for Inmate Calling Services, WC Docket No. 12-375, February 14, 2013.

<sup>22</sup> The Mississippi DOC reports its daily prisoner costs at \$41.51. See, <http://www.mdoc.state.ms.us/Research%20and%20Statistics/OffenderCostPerday/Cost%20Per%20Inmate%20Day%20FY%202012.pdf>. This suggests annual costs of \$15,151.

<sup>23</sup> The PEW Center on the States, "State of Recidivism, The Revolving Door of America's Prisons" (April 2011), p. 10, available at [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing\\_and\\_corrections/State\\_Recidivism\\_Revolving\\_Door\\_America\\_Prisons%20.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/State_Recidivism_Revolving_Door_America_Prisons%20.pdf).

<sup>24</sup> <http://blogs.clarionledger.com/politics/2013/01/10/state-prison-population-continues-to-soar/>.

<sup>25</sup>  $112/2,807 = 0.0399$ .

<sup>26</sup> "Comment on Proposed Rule Making by the Louisiana Department of Public Safety & Corrections," Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, FCC 12-167, March 22, 2013, p. 3.

<sup>27</sup> Christian Henrichson & Ruth Delaney, "The Price of Prisons, What Incarceration Costs Taxpayers," VERA Institute of Justice (July 20, 2012), p. 10, available at:

suggests that if only 219 fewer prisoners returned to prison as a result of lower prison calling rates, there would be no net cost impact for the state.<sup>28</sup> Based on an analysis from the 2004-2007 timeframe, Louisiana released 13,391 prisoners in a year and 39.3% (or 5,263<sup>29</sup>) returned to prison within 3 years.<sup>30</sup> This suggests that if the recidivism rate dropped by about 4%, there would be no revenue impact on Louisiana.<sup>31</sup>

Mississippi has one of the highest calling rates and Louisiana's rate is still in the top two-thirds of calling rates<sup>32</sup> and receives relatively large amounts of revenue from calling commissions. In fact, these two states are the only two DOCs that filed comments in this proceeding, suggesting they have the greatest vested interest in keeping commissions at current levels. Nevertheless, a relatively small reduction in recidivism—on the order of 4%—would completely offset any lost revenues these states receive from commissions.

12. A reduction in recidivism of 4% based on increased family and community contacts as a result of lower prison calling rates seems modest. One commenter, the VERA Institute, reports a finding from Minnesota that receiving contact between prisoners and their families leads to a 13% reduction in recidivism rates.<sup>33</sup> A significant reduction in phone calling rates has historically led to a significant increase in prisoner calls. In my initial report I reported on the experience in New York where a 5-7.5% price decrease led to a 3-6% increase in calling.<sup>34</sup> Telemate reports that in one state, reducing its calling rates to \$0.12 per minute resulted in a

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[http://www.vera.org/sites/default/files/resources/downloads/Price\\_of\\_Prisons\\_updated\\_version\\_072512.pdf](http://www.vera.org/sites/default/files/resources/downloads/Price_of_Prisons_updated_version_072512.pdf)

<sup>28</sup>  $\$3,817,051/\$17,486 = 218.29$ .

<sup>29</sup>  $13,391 \times 0.393 = 5262.663$ .

<sup>30</sup> The PEW Center on the States, "State of Recidivism, The Revolving Door of America's Prisons" (April 2011), p. 10, available at:

[http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing\\_and\\_corrections/State\\_Recidivism\\_Revolving\\_Door\\_America\\_Prisons%20.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/State_Recidivism_Revolving_Door_America_Prisons%20.pdf).

<sup>31</sup>  $219/5,263 = .0416$ .

<sup>32</sup> Bazelon Declaration, Table 2.

<sup>33</sup> VERA Institute of Justice, In the Matter of Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, March 14, 2013, p. 4.

<sup>34</sup> Bazelon Declaration, ¶ 44.

233% increase in call volumes.<sup>35</sup> Such significant increases in call volumes indicate the amount of increased family and community contact that can be expected from reduced prison calling rates. States with higher prison phone rates currently can expect to see greater increases in calling volumes from calling rate reductions, suggesting they will see the biggest increases in family contact and, therefore, benefit the most in reduced recidivism rates.

### III. SIWEK ANALYSIS

13. Stephen Siwek of Economists Incorporated submitted an Expert Report on behalf of Securus Technologies, Inc.<sup>36</sup> His assignment from Securus was to “present cost and traffic data from sites that Securus served in 2012.”<sup>37</sup> Instead of providing cost and traffic data for all of Securus’ facilities, Mr. Siwek provides data for the state DOCs served by Securus and a sample of 10 facilities in each of a high, medium and low volume grouping of facilities. The presentation of the data in the 4 groupings is less transparent than simply presenting all of the data and summary statistics based on the entire population of facilities where Securus provides calling services. Nevertheless, the vast majority of Securus’ business is in the DOC and “High 10” facilities and the statistics about these facilities are most informative.

14. The data seem to have some anomalies that raise questions (unanswered by Mr. Siwek.) For example, the variation in the cost data by category raises questions about how costs change with facility size, but without more information about the sample Mr. Siwek chose to present, it is not possible to assess how those costs change with facility size or whether there is a threshold size of a facility where costs begin to decline. Perhaps more puzzling is the data reported on margins in his Table 7 b. There Mr. Siwek reports margins of -16.3% and -83.3% for the “Medium 10” and “Low 10” categories, respectively. This suggests that Securus loses money on these facilities—a -83.3% margin suggests Securus receives \$0.5455 in revenue for every \$1 in costs it incurs.

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<sup>35</sup> Telmate Comments, p. 13.

<sup>36</sup> Siwek Report.

<sup>37</sup> Siwek Report, ¶ 1.5.



15. Nevertheless, the information provided by Mr. Siwek about the majority of Securus' business in the DOC and "High 10" categories confirms that ICS providers such as Securus earn remarkably high profits.

- For the DOC category of facilities, Mr. Siwek reports an average gross margin<sup>38</sup> of 19.8%,<sup>39</sup> suggesting that Securus keeps one in 5 dollars in revenue it takes in from state DOCs. He also reports that for this category commissions are 59.3% of costs.<sup>40</sup> This suggests that for state DOCs commissions are 47.6% of revenues.<sup>41</sup> Treating commissions as a pass through from prisoners to institutions and focusing on Securus' business operations, the above information indicates that Securus keeps 37.8% of its non-commission revenue.<sup>42</sup> Put another way, of the revenue unrelated to commissions, Securus keeps almost \$2 of every \$5 collected.
- For the "High 10" category of facilities, Mr. Siwek reports that the average gross margin of 22.2%,<sup>43</sup> suggesting that Securus again keeps one in 5 dollars in revenue it takes in from facilities in the "High 10" category. He also reports that for this category commissions are 75.4% of costs.<sup>44</sup> This suggests that for this category commissions are 58.7% of revenues.<sup>45</sup> Treating commissions as a pass through from prisoners to institutions and focusing on Securus' business operations, the above information indicates that Securus keeps 53.8% of its non-commission revenue.<sup>46</sup> Put another way, of the revenue unrelated to commissions, Securus keeps more than half of the revenue collected.

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<sup>38</sup> Mr. Siwek appears to include cost items in his calculation of gross margin, including items such as billing, that usually are not included in a gross margin, but fall under net income. A properly calculated gross margin would be even higher than those discussed here.

<sup>39</sup> Siwek Report, Table 7a.

<sup>40</sup> Siwek Report, Table 5.

<sup>41</sup>  $(1-19.8\%) \times 59.3\% = 47.6\%$ .

<sup>42</sup>  $19.8\% / (1-47.6\%) = 37.8\%$ .

<sup>43</sup> Siwek Report, Table 7b.

<sup>44</sup> Siwek Report, Table 5.

<sup>45</sup>  $(1-22.2\%) \times 75.4\% = 58.7\%$ .

<sup>46</sup>  $22.2\% / (1-58.7\%) = 53.8\%$ .

16. For these two categories of facilities reported by Mr. Siwek which account for the vast majority of Securus' business, if Securus no longer had to collect and pay commissions, its profits would still be (before accounting for increased sales induced by the lower commission-free rates) between about 40% and 50% of its revenue from providing prison payphone services. This is clearly a market that is not enjoying the disciplining effects of competition.

Respectfully submitted,

By: 

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