

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** September 8, 2008

**TO:** Office of Commission Clerk (Cole)

**FROM:** Division of Regulatory Compliance (Curry, Kennedy) *RFKIC*  
Office of the General Counsel (Tan, Teitzman) *AT R*  
Division of Service, Safety & Consumer Assistance (Moses) *AMT*

**RE:** Docket No. 060614-TC – Compliance investigation of TCG Public Communications, Inc. for apparent violation of Section 364.183(1), F.S., Access to Company Records, and determination of amount and appropriate method for refunding overcharges for collect calls made from inmate pay telephones.

**AGENDA:** 09/16/08 – Regular Agenda – Proposed Agency Action for Issues 1, 2, and 3 - Initiation to Show Cause for Issue 4 – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Carter

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Portions of the recommendation are based on confidential material and access to the material is controlled.

**FILE NAME AND LOCATION:** S:\PSC\CMP\WP\060614.RCM.DOC

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### Executive Summary

This is a compliance investigation of TCG Public Communications, Inc. (TCG) for problems related to the provision of inmate pay telephone service in Dade County during the years 2001 through 2007. A significant number of inmates' phone calls were prematurely disconnected.

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Specifically, staff is recommending that TCG be held responsible for improper disconnection of inmate calls and dispose of refunds of up to \$6,290,450, plus interest. Staff is also recommending that TCG show cause why it should not be penalized \$1,000 per day for its apparent violation of Rule 25-24.515, Florida Administrative Code (F.A.C.), and Sections 364.183(1) and 364.604(2), Florida Statutes (F.S.), for a total period of 1,266 days, resulting in a penalty in the amount of \$1,266,000.

Rule 25-24.515 (22), F.A.C., requires that outgoing local and long distance calls from inmate facilities may not be terminated until after a minimum elapsed time of ten minutes. Section 364.183(1), F.S., provides that the Commission shall have access to all records of a telecommunications company that are reasonably necessary for the disposition of matters within the Commission's jurisdiction. Section 364.604(2), F.S., provides that a customer shall not be liable for any charges for telecommunications or information services that the customer did not order or that were not provided to the customer.

### **A Simple Case of Improper Charges**

Fundamentally, this is a simple case of improper charges. When an inmate places a call to a party, that party must take action to accept the call. The call is commonly referred to as a "collect call," for which the called party is billed. Call charges consist of a per-call surcharge, plus a flat-rate local charge or per-minute toll charge, depending on whether the call is local or intrastate toll. When a call is prematurely disconnected, the inmate must call the party again to continue the conversation. Then, the called party is again billed the per-call surcharge plus the flat-rate for a local call or the per-call surcharge and per-minute rate for an intrastate toll call. The net result was that the called party was billed multiple surcharges and/or multiple flat-rate charges for the extra calls made, when only one call could have sufficed.

TCG was the provider of pay telephone telecommunications service to inmates in the Dade-County Correctional Facilities. As of September 15, 2006, TCG is no longer registered as an active corporation with the Florida Department of State. Currently, Global Tel\*Link Corporation<sup>1</sup> (Global) has the contract to provide pay telephone services for the correctional facilities. Under this service, an inmate could place a call to non-prohibited numbers with the charges for the call being assessed to the called parties. The telecommunication facilities used to provide this service included software designed to automatically disconnect a call when it detected an attempt to add a third party to a permitted two-way call.

However, there was a major problem with this "third-party call detection" software. Due to either flaws in the third-party call detection software or the sensitivity settings used by the provider, or both, the software often disconnected calls where three-way calls were not being attempted. In these instances, the called party paid additional set-up charges when the inmate called back to complete the conversation. As will be addressed in the recommendation below, the amount of improper charges is substantial, amounting to almost \$6.3 million. Moreover, staff's investigation indicates that TCG knew about this problem, but did not correct it during the

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<sup>1</sup>TCG Public Communications, Inc. is wholly owned subsidiary of Global Tel\*Link Corporation, which was acquired from AT&T Communications of the Southern States, Inc. on June 2, 2005.

period in question. On the contrary, TCG continued to profit from these unjustified charges over a period of approximately seven years.

### **Legal Framework**

The legal framework supporting staff's recommendations is straightforward and based on three fundamental propositions. The first is that a provider of inmate telecommunication services is liable for financial damage to customers where permitted calls are disconnected by third-party call detection software when three-way calls were not attempted. There is no doubt that the three-way detection software used by the provider erroneously disconnected a significant number of two-way calls and that customers are entitled to refunds.

The second fundamental proposition is that when a provider knows, or should have known, that the three-way call detection software was improperly disconnecting two-way calls, it has an affirmative duty to fix the problem, not profit from it. The data collected by staff during this investigation establishes that TCG knew about the problem, profited from the problem, and violated its duty to fix it.

The third fundamental proposition is that TCG is the certificated entity that holds the contract with Dade County and is responsible for the refunds and is liable for penalties for knowingly violating Florida Statutes and Commission rules. Against this straightforward approach, Global argues that the Commission should target AT&T for the bulk of the refund (and presumably penalties) because most of the improper disconnections occurred under AT&T's ownership of TCG. In basic response, staff believes that TCG's responsibility as a corporate entity exists irrespective of the culpability of other involved certificated entities.

### **Case Background**

On March 18, 2004, staff received a customer complaint (Complaint No. 589024T) against TCG regarding the improper disconnection of inmate calls from a pay telephone within a correctional facility in Miami. According to the complaint, the inmate pay telephone system within the Miami-Dade Pretrial Detention Center was malfunctioning, which caused the inmate's calls to the complainant to disconnect prematurely. As a result, additional calls had to be made to complete the telephone conversation. This caused the complainant to incur as much as \$900 in additional surcharges during the period May 2003 to January 2004.

TCG is a certificated pay telephone service provider (PATS Certificate No. 7799), which provided inmate pay telephone services in Florida. When the complaint was filed, TCG operated and maintained the inmate pay telephone systems for Miami-Dade County and was a wholly owned subsidiary of AT&T Communications of the Southern States, Inc. (AT&T). AT&T responded to all of staff's inquiries on behalf of TCG and worked with staff to resolve the customer's complaint. On May 4, 2004, AT&T issued a one-time "educational" credit to the customer for \$30 as a resolution of this matter. The customer was dissatisfied with the

resolution, and the complaint was forwarded to the Commission's Case Review Team. At that time, technical staff began investigating the complaint.<sup>2</sup>

### **Staff Testing**

In June 2004, staff contacted Miami-Dade Corrections & Rehabilitation (MDCR) and requested access to the Miami-Dade Pretrial Detention Center (MDPDC) to test the inmate pay telephone system. In late July 2004, staff was granted access to the facility to conduct the tests. However, due to the approach and landfall of several hurricanes, staff was unable to conduct the tests until later.

On September 22, 2004, staff tested the pay telephone system at the MDPDC. Test calls were placed from the facility to analog test lines located within the Commission. All of the test calls were dropped, supporting the allegations of the customer's complaint. With the exception of one test call, staff received a recorded voice announcement stating "custom calling features are not allowed on this phone." There were no custom calling features on the phone.

Staff notified AT&T of the test results and requested that the company investigate and resolve the problem. On October 11, 2004, AT&T requested that staff repeat the test along with TCG's representatives. Staff repeated the test on October 27, 2004, along with TCG's representatives. TCG's representatives and staff made calls from the correctional facility to the analog test lines located at the Commission. The test results from the second test were similar to the results of the first test. A few weeks after the test was completed, AT&T informed staff that the three-way detection software caused the calls to prematurely disconnect. The purpose of the software was to block three-way call attempts at the Miami-Dade County Correctional facilities.

### **History of the Problem**

Beginning in 2003, the Miami-Dade Correctional Department began experiencing problems with call-forwarding fraud. Apparently, the inmates within the correctional facilities or possibly unincarcerated friends of inmates, would call an innocent third party and by deception get that person to activate a call feature that would forward their telephone calls to another number. When the victim of the scam would hang up, the inmate would dial that person's telephone number again and the calls would be automatically forwarded to the other number. The person at that number would then accept the collect call. As a result, the innocent third party would incur charges for the inmate's collect calls. The inmates also began contacting and harassing their victims, witnesses, and the Miami Dade Correctional Department's personnel. The local media even began reporting about the problem.<sup>3</sup> It is staff's opinion that the call-forwarding fraud is unrelated to the problem of dropped calls by the three-way detection system. For example, staff believes the inmate telephone system would not recognize when a called telephone number was programmed to forward the call to a second telephone number. Most likely, the system would only detect the ring tones and would or could not detect that the first phone was programmed to pass the call through to another number.

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<sup>2</sup>Complaint No. 589024T was resolved on April 12, 2005, after AT&T and the customer agreed to a settlement.

<sup>3</sup>Herald Staff, *Phone System Prickly at County Facility*, MIAMI HERALD, Feb. 25, 2004, at 7b.

In addition, the Miami-Dade Correctional Department has a policy that requires its inmate telephone providers to furnish equipment with the capability to block calls to certain telephone numbers. The numbers are usually blocked to prevent the inmates from contacting known associates as well as victims, judges, witnesses, and prosecutors. The Miami-Dade Correctional Department discovered that the inmates were avoiding the call block feature by having their called party utilize the three-way calling feature. To address the problem of elevated call harassment, the three-way detection software was adjusted to listen for sounds that suggest a three-way call attempt.

When the system detects a three-way call attempt, the call is immediately disconnected. The software has variable sensitivity settings; however, the settings are not precise.<sup>4</sup> Since the settings for the software are not precise, the equipment must be monitored and adjusted over time to maintain a setting that balances regular background noises with three-way call attempts. If the sensitivity level is set too high, the software will pick up background noises, such as breathing and custom calling features, and erroneously interpret them as a three-way call attempt and disconnect the call. The system also dropped calls that were not identified as three-way call attempts. In an article dated February 25, 2004, the Miami Herald reported that AT&T's National Marketing Manager for Corrections acknowledged that the current measures being taken to prevent inmate fraud made the system sensitive to other custom calling features. (Attachment B at 42-43)

### **AT&T (TCG) Response**

On November 18, 2004, AT&T informed staff that the calls from the correctional facility were prematurely disconnected due to the high sensitivity setting of the three-way detection software. The software's sensitivity setting was so high that it was interpreting regular background noises, such as the inmate or called party breathing, as three-way call attempts and, therefore, erroneously disconnecting the inmate's call.

AT&T further stated that, while it regretted the customer's experience, it had no control over the level of the sensitivity setting. According to AT&T, the Miami-Dade County Correctional Facility was solely responsible for determining at what level to set the sensitivity setting. However, on December 20, 2004, MDCR submitted a letter to staff that stated there was no contractual agreement with AT&T concerning the sensitivity settings. Furthermore, MDCR stated that AT&T requested to raise the sensitivity level settings for security purposes in October 2003. To date, all parties involved in staff's investigation have claimed that they were not responsible for setting the sensitivity levels for the three-way detection software.

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<sup>4</sup>Staff notes in 2002, the FCC requested comment regarding three-way calling, stating "[w]e also have been told of instances where the telephone calls are disconnected whenever there is a pause in conversation or after a given time period. This disconnect feature is in place to guard against three-way calling. Once disconnected, however, the inmate must call again resulting in a costly set-up charge. We seek comment on how pervasive this practice is and on solutions that would prevent three-way calling, but not result in premature disconnections. We seek comment on other inmate calling service practices that may serve legitimate security needs but have the unintended, and perhaps unnecessary, effect of increasing the costs incurred by inmates and their families." The FCC has not commented on this issue in subsequent orders. *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Remand and Notice of Proposed Rulemaking, issued February 21, 2002, ¶ 78.

To resolve the sensitivity level issue, AT&T later informed staff that the sensitivity levels at all Miami-Dade County correctional facilities would be set at 30% by February 1, 2005. On February 10, 2005, staff requested a copy of the contract between AT&T and MDCR. Staff also requested that AT&T identify the total number of dropped calls at the MDPDC and the amount of revenue that should be refunded to all affected customers. A portion of the contract was provided to staff. (Conf. Attachment A at 26-31)

### **Staff Follow-up Investigation**

Staff later contacted MDCR and requested access to retest the pay telephone system within the MDPDC. Staff revisited the correctional facility on June 28, 2005. The test results revealed that calls were still being dropped erroneously due to the three-way detection software. Staff again forwarded the results to AT&T and requested that the company resolve the matter by July 22, 2005. On July 12, 2005, AT&T requested an extension until August 11, 2005, to respond to staff. However, when staff contacted the company on August 9, 2005, to remind the company of its deadline to respond, staff was informed that the operational control of the inmate pay telephone system was sold to Global on June 2, 2005, making TCG a wholly owned subsidiary of Global. The parties did not formally notify the Commission of the transfer until August 4, 2005, and staff was not informed of AT&T's plan to sell TCG prior to staff's contact with AT&T on August 9, 2005.<sup>5</sup>

On August 19, 2005, staff requested that AT&T provide the amount of additional revenue that it collected as a result of the malfunctioning system and the total number of calls dropped by the three-way detection software. Staff also requested that Global resolve the problem with the inmate pay telephone system. On September 30, 2005, Global reported that 324,427 (17%) of the inmate calls made during the previous two years from the MDPDC were disconnected due to the three-way call detection software. On October 26, 2005, Global informed staff that the problem was resolved. Staff retested the inmate pay phone system at the MDPDC on December 22, 2005, and the results indicated that the problem may have been resolved. At a much later date (late 2007), staff received call detail records which were previously reported by the parties as no longer in existence. Staff's analysis of this data indicated that the problem of dropped calls continued. Staff was unable to ascertain if the company took any actions to mitigate the failure of the system to properly detect three-way calls. The call detail data obtained in late 2007 showed that there was no appreciable improvement in the system's performance.

One month prior to the retest discussed above, Global filed a petition with the Commission for a declaratory statement or, in the alternative, a waiver of Rule 25-24.515(22), F.A.C., to the extent that Global may disconnect calls prior to the ten minute rule requirement. The declaratory statement was granted by Order No. PSC-06-0116-FOF-TP. Further discussion of the petition for a declaratory statement is presented in the Staff Analysis in Issue 3.

After retesting the inmate pay telephone system in December 2005, staff continued its investigation. In 2006 and 2007, staff made several requests to AT&T and Global for additional information. Initially the companies were not forthcoming with providing the requested

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<sup>5</sup>By Order No. PSC-05-0977-PAA-TC, the Commission approved the transfer of assets from AT&T to Global and the Order became final and effective on November 7, 2005.

information. Staff requested copies of the contracts between TCG and MDCR (while under the ownership of both AT&T and Global). Staff also requested that the companies provide the total number of calls made from the inmate pay telephone system since the three-way detection software was installed, the total number of calls interrupted by the three-way detection software, and the total number of calls interrupted by Dual Tone Multi-Frequency (DTMF) detection (detection of a tone made when a button is pressed on the keypad at any time during the call). AT&T informed staff that it no longer had access to any records regarding TCG either before or after the company was transferred to Global. Therefore, AT&T could not provide staff with any information.

On February 10, 2006, Global contacted staff and requested assistance in obtaining the release of the contract information. Global also requested staff's assistance in obtaining data regarding the numbers of calls made and dropped from Securus Technologies, Inc. (Securus). Securus Technologies, Inc. is the parent company of Evercom Systems, Inc. (Evercom) and T-NETIX Telecommunication Systems, Inc. (T-NETIX). Global indicated to staff that it was in litigation with Securus or one of its affiliates and its ability to obtain data was strained. Staff sent a data request to Evercom whom staff believed handled the call processing platform at the MDPDC, serviced the pay telephones, and provided billing on behalf of AT&T and Global.<sup>6</sup>

In May 2006, T-NETIX supplied a response to staff's data request to Evercom, stating that it is the entity that provided service to TCG in the Miami-Dade detention facilities. Data provided by T-NETIX's response covered the period January 2001 through December 2006. Staff received a copy of the contract between TCG and T-NETIX as well as data regarding the number of calls made and the number of calls dropped as a result of detecting three-way call attempts or DTMF detection. Staff notes that the numbers provided by T-NETIX for calls made were defined as the numbers of calls attempted, not calls completed. This is important because the company calculated the percentages of calls dropped by the various detection methods using "call attempts" rather than "calls completed." The percentages of dropped calls were much lower than staff anticipated based on information previously supplied by the company in response to customer complaints. Call attempts are not completed calls; thus, comparing the number of dropped calls to the total number of call attempts is a meaningless comparison. Customers are not billed for call attempts, only completed calls.

On June 7, 2006, Global reported the estimated additional revenue collected from dropped calls at the MDPDC from September 2003 through December 2005 was \$847,925.60. Of this amount, AT&T collected \$749,759.30 prior to the transfer of TCG. The remaining \$98,166.30 was collected during the first three months after Global acquired TCG. (Attachment B at 44)

Throughout this entire investigation covering almost four years, staff was informed by representatives of AT&T, Global, TCG, T-NETIX, or Evercom, that call detail records did not

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<sup>6</sup>Evercom Systems, Inc., holder of PATS Certificate No. 5541, Evercom Systems Inc. d/b/a Correctional Billing Services, and T-NETIX Telecommunications Services, Inc. are wholly owned subsidiaries of H.I.G. Capital operating under the SECURUS Technologies, Inc. As a result of this consolidation, SECURUS is now the largest independent provider of collect, pre-paid, and debit calling services to local, county, state and private correctional facilities in the United States.

exist for calls placed by inmates from the Miami-Dade detention facilities. After TCG submitted a settlement offer on September 10, 2007, staff placed a call to Securus, parent company of T-Netix and Evercom, via a phone number obtained from Securus' website. The website indicated that Securus excels in maintaining records that can be quickly recovered and used by local, state, and federal authorities to assist in criminal investigations and prosecutorial actions. It was from this phone call staff learned that call detail records for the Miami-Dade detention facilities did exist for the time period covered by the investigation.

On October 25, 2007, staff submitted an informal data request to Evercom (subsidiary of Securus, not a party to this proceeding) for call detail records covering the period July 1, 2003 through June 30, 2004. The records were provided to staff on November 13, 2007. In a follow-up data request to Evercom, staff acquired all call detail records from the Miami-Dade inmate operations for the period 2001 through 2007. These records were analyzed and used by staff to develop the recommendations presented herein regarding refunds.

### **Staff Follow-up Testing**

On July 17 and 18, 2007, staff conducted a series of follow-up test calls at the MDPDC. On the first day of testing, fifteen test calls were made. Each call lasted a minimum of ten minutes. All fifteen calls remained connected for the entire ten minute test period. On two of the calls, after reaching the ten minute testing period, staff attempted to make a three-way call. Both of those calls were immediately terminated.

On the second day of testing, staff made ten 30-minute test calls. Four test calls were appropriately disconnected when staff attempted to make a three-way call or pressed a number button on the keypad. The remaining calls lasted the full duration of 30 minutes. During two of the test calls, a loud alarm was sounded in the background at the correctional facility; however, the sound did not cause the call to terminate.

The results from both days' test indicated that the three-way detection software appeared to be working properly. The system accurately identified all of the three-way call attempts and immediately terminated the calls. However, immediately after completing the test calls, staff learned that the three-way detection software that was tested on July 17 and 18, 2007, was not the same software system that had been previously tested. The new software system was installed on [REDACTED].

### **Related Civil Litigation**

Staff was contacted by a class action attorney during the week of March 5, 2007. A class action suit was filed on September 26, 2006, in the United States District Court, Southern District of Florida.<sup>7</sup> Upon review of the pleadings, staff understands that this is a consumer class action lawsuit against Evercom regarding persons who accepted collect calls from correctional facilities in Florida through telephone systems within the State of Florida. The court records are sealed, and staff has no further information regarding this action.

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<sup>7</sup>Kirsten Salb v. Evercom Systems, Inc., Case No. 06-20290-CIV-UNGARO-BENAGES/O'SULLIVAN



**Proposed Settlement Offer**

On September 10, 2007, TCG submitted a proposed settlement offer. For settlement purposes only, TCG recognized that there may have been some customers who received collect calls, that may have been terminated prematurely, from inmates within the Miami-Dade Correctional Department's facilities. To settle the matter, TCG proposed to make available a settlement pool of one hundred seventy-five thousand dollars (\$175,000) to all affected customers. TCG's proposed settlement offer is addressed in the recommendations that follow.

The Commission is vested with jurisdiction of these matters pursuant to Sections 364.03, 364.3375, 364.3376, 364.345(1), 364.285, and 364.604, Florida Statutes.

### Discussion of Issues

**Issue 1:** Is TCG the appropriate certificated entity to be held responsible for the improper disconnection of inmate calls caused by the Three-Way Call Detection software?

**Recommendation:** Yes, TCG is the appropriate certificated entity to be held responsible for the improper disconnection of inmate calls caused by the Three-Way Call Detection software. **(Tan)**

**Staff Analysis:** As reflected in the case background, TCG is a corporation that was a wholly owned subsidiary of AT&T. Global purchased operational control on June 2, 2005, and a transfer of control was acknowledged by the Commission on October 12, 2005.<sup>8</sup> Currently, TCG is a wholly owned subsidiary of Global.

Staff believes that TCG is the appropriate certificated entity responsible for the allegations raised in this docket. Staff does not dispute that TCG was originally owned by AT&T until June 2, 2005, when the transfer of control (TCG) occurred between AT&T and Global. Global, in its application for transfer of control of TCG stated that the transaction would be virtually transparent to its customers in Florida and would not affect the services provided. TCG also stated that they would continue to operate under its existing certificated name and subject to existing customer agreements. In fact, the employees of TCG that staff was working with, in relation to the current investigation prior to the transfer, remained the same.

In discussions with staff, Global has stated its position that the responsibility for the inappropriate conduct should not be borne solely by TCG during the period of ownership by Global, but rather shared by AT&T during their ownership. Staff disagrees with Global's argument that TCG, as the legally responsible certificate holder and a corporate entity recognized by the state of Florida, does not have the responsibility for its actions.<sup>9</sup> Staff notes that corporate restructuring does not relieve responsibility or liability for the corporation at large. Additionally, TCG was the company with whom the inmate pay telephone systems contract with Miami-Dade County Correctional Department was assigned.

Staff understands that Global believes its responsibility pertains only to potential penalties or refunds while the telecommunications services were under the operational control of Global. Global further believes the Commission should assign any penalties or refunds to AT&T for the conduct of TCG while under the ownership of AT&T. Global asserts that the basis for bifurcation is in the purchase agreement between AT&T and Global. In a June 7, 2006, email sent by Global to staff, Global notes that the purchase agreement between AT&T and Global excludes Global from certain liabilities as set forth in an "Excluded Accounts Payable" clause, which states:

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<sup>8</sup>Docket No. 050547-TC, In re: Request for acknowledgement of transfer of control of TCG Public Communications, Inc. holder of PATS Certificate No. 7799, to Global Tel\*Link Corporation, holder of PATS Certificate No. 3878.

<sup>9</sup>As noted in the Executive Summary, TCG is no longer registered as a corporation in Florida. However, at the time of TCG's transfer from AT&T to Global, TCG was actively registered with the Florida Secretary of State to conduct business in Florida.

The following liabilities and obligations of the Business to the extent such liabilities and obligations would have been required to be recorded on a balance sheet for the Business as of the Cut-Off time determined in accordance with GAAP: (i) all accounts payable and other obligations to make cash payments in respect of goods and services (expressly excluding amounts payable to T-Netix, Evercom (CBS) and Network PTS related to accounts receivable existing as of the Cut-Over Time that are "netted" against such accounts receivable consistent with past practice and the terms of the related contracts, but expressly including any amounts owed to ZPDI (Billing Concepts) in connection with the handling of the traffic related to the Consumer Receivable, even if such amounts are netted against related accounts receivable); (ii) all intercompany liabilities and obligations and (iii) all accrued commission, maintenance, telecommunications charges and other operating charges and expenses of the Business (excluding any impairment or contract loss reserves, whether identified or not). (Attachment B at 45-55)

Furthermore, Global's email asserts that the refund amounts are the obligation of AT&T as seller under the Agreement. Staff notes that Global would like the Commission to bifurcate the refunds and penalty, if assessed to TCG by the Commission, to be divided between Global's ownership and AT&T's ownership. Staff notes that adding AT&T for consideration of refunds and penalties is an option available to the Commission.

#### BIFURCATION OF DOCKET

The Commission may opt to bifurcate the assessment of refunds and penalties by periods of ownership. The Commission has the option to open a new docket to assess the proper refunds and penalties, if applicable, to AT&T. The Commission may in its discretion for purposes of clarity and to assess the factors involved with the refund issue find that AT&T should be a party to this docket, or a separate docket. Another option would be to consolidate the instant docket with a separate docket to address AT&T's period of ownership.

Nonetheless, staff believes it is appropriate to assess the refund and penalties to TCG as the certificated company in question. A certificated company is responsible to uphold the rules of this Commission and it is whom the Commission relies upon for answers. The question of whether or not Global may seek indemnification from AT&T under the parameters of the purchase agreement is a question between the companies that should be answered in civil court. Staff notes that a successor corporation may be held liable for its predecessor's debts and liabilities where the purchaser expressly or impliedly agrees to assume the debts of the seller. Fla Jur 2d, Business Relationships § 372.

Finding TCG responsible provides a level of certainty to the overall process of regulation. Staff notes further that Global has legal recourse to apportion any refunds and penalties that they

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believe are appropriate to AT&T as the previous owner. Staff recommends that any potential refunds and penalties should be assessed to TCG, as the certificated company in question.

**Issue 2:** Should the Commission accept TCG Public Communications, Inc.'s proposed settlement offer to make available a settlement pool in the amount of \$175,000 from which customers who were affected by the improper disconnection of inmate calls caused by the Three-Way Call Detection software may obtain a refund?

**Recommendation:** No, the Commission should not accept TCG Public Communications, Inc.'s proposed settlement offer to make available a settlement pool in the amount of \$175,000 from which customers who were affected by the improper disconnection of inmate calls caused by the Three-Way Call Detection software may obtain a refund. **(Curry, Kennedy, Moses, Tan)**

**Staff Analysis:** On September 10, 2007, staff received a proposed settlement offer from TCG. In the proposed settlement offer TCG recognizes, for settlement purposes only, that there may have been customers who received collect calls, that may have been terminated prematurely and not in violation of any of the prohibited three-way calling or fraudulent calling policies, from inmates within the Miami-Dade Correctional Department facilities. In order to grant consideration to these customers, TCG has proposed to make available a settlement pool in the amount of one hundred seventy-five thousand dollars (\$175,000) to address the early termination of calls.

TCG is aware that the Commission's preferred method of returning revenues to customers is by direct refund to the affected customers. However, according to TCG's settlement offer, there are no call detail records available reflecting the called party number and billed calls. Even if the call detail records were available, such records alone would not identify whether the calls were terminated in error. As a result, TCG believes it impossible to identify which calls may have been terminated early and which calls were terminated because the call was a three-way, fraudulent, or other prohibited call. Therefore, in this particular situation, issuing direct refunds to all affected customers is not feasible.

As part of the settlement offer, TCG would run notices in the local newspapers and other media outlets in Miami-Dade County providing information concerning the potential refund. The notices would run for 30 days starting within 60 days after the issuance of the Consummating Order making the Commission's decision final. Upon the conclusion of the public notice, customers seeking refunds would have 90 days to request a refund.

To obtain a refund, the customers would need to submit copies of their bills to TCG. The calls for which the customer is seeking a refund should be clearly indicated on the bill. For each call, the calling party's number must be one of the Miami-Dade Correctional Department pay telephones and it must be a collect call. If the calls are successive calls within two clock minutes of each other (within two minutes of the termination of the first call the return call is made from the same number to the same telephone number without any intervening calls), the customer would receive a refund of \$2.25 for each local call and \$1.75 for each return long distance call. The refund amount would include interest calculated in accordance with Rule 25-4.114(4), Florida Administrative Code.

If the customer does not have copies of the telephone bills, TCG would issue a default check in the amount of four dollars and fifty cents (\$4.50). All customers receiving a refund or a default check would also be required to sign a statement acknowledging that the calls for which

the customer requested refunds were not three-way, fraudulent, or otherwise prohibited calls. The checks issued to the customers would also include a statement that would release TCG, and its past and present corporate parents (AT&T and Global), subsidiaries, and affiliates from any claims associated with early call termination for collect calls from any of the Miami-Dade County Correctional Department facilities for the period of August 1, 2000, through September 10, 2007. Customers issued a refund would have 90 days to cash the check. After 90 days, the checks would be invalid.

TCG would submit a final report to the Commission within 90 days after the expiration of the refund checks. TCG would voluntarily contribute any amounts that remain in the settlement pool after the refunds have been issued to the Commission to be deposited into the State's General Revenue Fund. The voluntary contribution would be made within ninety (90) days after the company submits its final report to the Commission.

Staff generally agrees with TCG's assertion that the call detail records alone might not identify whether the calls were terminated in error. However, staff believes that the call detail records, consumer complaints, information about the relationship of dropped calls to the detection system's sensitivity settings, emails and other data provided by TCG, provide a strong foundation for determining the approximate number of calls that may have been terminated prematurely. In November 2007, Evercom provided staff the call detail records for the period 2001 to 2007.

While staff recognizes TCG's effort to resolve this matter, staff recommends that the Commission not accept TCG's proposed settlement offer. Staff believes that the amount of TCG's proposed refund represents a gross understatement of the financial harm experienced by the customers that accepted collect calls from inmates at the Miami-Dade detention facilities during the period of 2001 through 2007. Based on staff's analyses, the amount of improper charges that TCG's customers may have incurred amounts up to approximately \$6.3 million.

**Issue 3:** Should the Commission order TCG Public Communications, Inc. to dispose of refunds up to the maximum amount of \$6,290,450, plus interest, for the improper disconnection of inmate calls due to the implementation of the Three-Way Call Detection software?

**Recommendation:** Yes, the Commission should order TCG Public Communications, Inc. to dispose of refunds up to the maximum amount of \$6,290,450, plus interest, calculated in accordance with Rule 25-4.114, F.A.C., Refunds, for the improper disconnection of inmate calls due to the implementation of the Three-Way Call Detection software. TCG should remit the refund, plus interest, directly to the Florida Public Service Commission for deposit into the General Revenue Fund within 30 days of the issuance of the Consummating Order. (Curry, Kennedy, Moses, Tan)

**Staff Analysis:** Staff determined during the investigation that the three-way detection software was activated in the Miami-Dade Correctional Facilities in [REDACTED]. (Conf. Attachment A at 32) According to the internal company emails, [REDACTED]

[REDACTED] (Conf. Attachment A at 33-35)

[REDACTED] an inmate contacted a MDCR official through a three-way call attempt. As a result, on [REDACTED]. (Conf. Attachment A at 34)

The [REDACTED] through [REDACTED]

[REDACTED] At a sensitivity level [REDACTED] This was an [REDACTED]. (Conf. Attachment A at 34) After reviewing the [REDACTED]

[REDACTED] Staff believes that a direct correlation can be drawn from the number of calls dropped by the three-way detection software and the sensitivity level of the software, based on the company's test results.

On December 16, 2003, T-NETIX reported to TCG that the sensitivity level at the MDPDC was at [REDACTED].<sup>10</sup> (Conf. Attachment A at 36) T-NETIX is a subcontractor of TCG who maintains the three-way detection software. In an email dated December 22, 2003, [REDACTED] (Conf. Attachment A at 37) T-NETIX also reported that the sensitivity levels at the Metro West and Turner correctional facilities were at [REDACTED] and [REDACTED] respectively. (Conf. Attachment A at 36)

This caused numerous consumers to incur additional surcharges of \$2.25 per local call or \$1.75 for intrastate toll calls, for each call that had to be made to complete a telephone conversation. TCG even instructed [REDACTED]

<sup>10</sup> T-NETIX Telecommunications Services, Inc., holder of PATS Certificate No. 5102, is a wholly owned subsidiary of H.I.G. Capital operating under SECURUS Technologies, Inc.

[REDACTED]  
(Conf. Attachment A at 34)

In September 2006, staff requested records of the test results from the company's software efficiency tests that were conducted and monthly logs recording the sensitivity settings of the software system at each of the Miami-Dade Correctional Facilities. The company reported that no such records exist. Due to the company's inability to provide the requested information, staff was unable to determine at what setting, if any, the software worked most efficiently.

On September 22, 2004, when staff tested the pay telephone system at MDPDC, staff made four test calls. All four test calls were prematurely disconnected. During three of the test calls, the calls were dropped after staff received a recorded voice announcement that stated "custom calling features are not allowed on the phone." During the test calls, staff did not attempt to make a three-way call attempt, and the telephones that were used did not have any custom calling features.

Emails dated December 3, 2003, between TCG, T-NETIX, and MDCR indicated that [REDACTED] (Conf. Attachment A at 34) Another email from Securus also indicated that at [REDACTED]

[REDACTED] (Conf. Attachment A at 38) During the investigation, staff determined that the company had the ability to, and did, increase and decrease the sensitivity settings at will. In fact, staff determined that during certain periods of time the sensitivity settings at MDPDC were at higher levels prior to a pay telephone test that staff conducted in December 2005. (Conf. Attachment A at 36) Staff also determined that prior to the December 2005 tests, TCG's staff was instructed [REDACTED] (Conf. Attachment A at 39)

Apparently, TCG did not maintain records or logs of the detection system's sensitivity settings at any of the correctional facilities. However, as discussed above, TCG did provide information that indicates the percentage of disconnected calls that occur when the sensitivity settings are set too high. Because sensitivity settings were changed over time, staff could not use the percentages presented above as benchmarks for calculating customer refunds.

### **Preliminary Refund Discussions**

As late as August 30, 2007, staff met with representatives of TCG, AT&T, and T-NETIX to offer suggestions and a plan for resolving the overcharge issues for dropped calls. The only call detail records available to staff were those TCG provided in response to Complaint No. 589024T. The customer provided phone bills covering the period October 20, 2003, through January 25, 2004. The customer claimed that 173 of 310 calls (56%) during that period were dropped prematurely. Staff believed that some meaningful conclusions could be drawn from these records. Staff explained its findings to the representatives in an effort to move the investigation forward to a conclusion.



Staff explained that two staff persons independently reviewed the customer's phone bills and the call detail records supplied by TCG. Each staff person individually believed that the bills and call detail records clearly supported that 83 calls (27%) were dropped prematurely.

Using call detail records information such as that included in the table below, staff attempted to identify improperly dropped calls. Each call below originated from one telephone number and terminated to only one telephone number. Inmates were allowed 30 minute calls. As can be seen in this example, the first call terminated within two minutes of being placed; the second call terminated after one minute; while the third call lasted for twenty minutes. The software reported that the two and one-minute calls were terminated as normal hang-ups, not three-way disconnects. It is unlikely, however, that the inmate intentionally terminated two calls only to call back within one minute or less of each termination to the same telephone number.

This indicates that TCG's system prematurely disconnected calls that were not three-way call attempts. Staff believes that the first two calls were dropped prematurely due to a defect in TCG's detection system. This led to unwarranted customer charges. In this case, the customer was billed \$6.75 for the three calls shown. If the system worked properly, he would have been billed for one call at \$2.25.

Date	Time on Bill	Time on Call Detail Record	Call Duration (Minute)	Reason for Disconnect Reported by TCG
November 1, 2003	9:06	21:06:03	2	Inside Hangup
November 1, 2003	9:08	21:08:05	1	Inside Hangup
November 1, 2003	9:09	21:08:42	20	Inside Hangup

Even more troubling is that TCG's call detail records for this one customer showed that, out of 310 completed calls, 49 calls were labeled as being disconnected due to three-way call attempts (or DTMF). Inmates and their families were advised by the prison system that attempts to make three-way calls would be disconnected. Customers were aware that additional surcharges would be incurred for each new call. It seems very suspect, therefore, that the customer would have attempted such a high number of three-way calls.

If staff's estimate of 27% dropped calls were to be used as a benchmark for determining a refund for the entire period of 2001 to 2007, TCG would be subject to a refund of approximately \$8 million. The 27% estimate for the 2003/2004 period is lower than the percentage of dropped calls identified in the companies' December 3, 2003 email discussed above. At the time, staff did not have access to any of TCG's call detail records for 2001-2002 and 2005-2007. However, staff believed that if TCG's call detail records were available for 2001-2007, an analysis could be performed, and a reasonable refund estimate could be determined.

After presenting these observations, staff again expressed to the companies' representatives its interest in obtaining full and complete call detail records. However, representatives of each company assured staff that the call detail records were not available and did not exist.

**Call Detail Analysis and Refund Determination**

It is clear that TCG was fully aware of the software's propensity for error. TCG even acknowledged that there was a problem with the sensitivity setting. In an email dated December 22, 2003, TCG's management stated [REDACTED] (Conf. Attachment A at 37) In a letter dated November 18, 2004, AT&T, on behalf of TCG, stated that MDCR controlled the sensitivity settings. The company also stated that MDCR had requested the current sensitivity levels and that the only way to remedy the problem of dropped calls was to lower the settings. (Attachment B at 56) However, TCG did not lower the levels and still chose to operate the software at higher sensitivity levels that caused the software to malfunction.

MDCR subsequently denied that it was responsible for setting the sensitivity levels. (Attachment B at 57-58) In addition, an email exchange between MDCR and T-NETIX indicates that AT&T [REDACTED] (Conf. Attachment A at 40-41) As a result, numerous calls were improperly disconnected causing consumers to incur additional expenses. The company even acknowledged in its December 18, 2006 response to staff, and in its proposed settlement offer, that the settings of the software were not precise and that the equipment needed to be adjusted over time. Based on the information provided, staff believes that the software may not have been capable of accurately accomplishing the task for which it was designed.

On October 25, 2007, staff contacted Evercom and requested call detail records for all of the Miami-Dade correctional facilities for the period of July 1, 2003, through June 30, 2004. Staff later requested additional call detail records for 2001 through 2007. The company provided all of the requested information to staff.

After receiving the data, staff filtered the information to isolate all calls that were terminated within twenty-five minutes or less and a second call was placed to the same number within ten minutes or less for 2001 through 2007.<sup>11</sup> The total number of intrastate recalls during that time period and filtering was [REDACTED].

To obtain the refund amount, staff took the total number of filtered recalls, [REDACTED]

[REDACTED] The amount of the refund totaled \$6,290,450.

In addition, staff reviewed the call detail records for a five minute call back time and a two minute call back time. These time frames also looked at call backs with initial calls no longer than twenty-five minutes. Staff determined that for a five minute call back time the total refund amount would equal \$5,535,724. For a two minute call back the refund would equal \$3,688,950.

<sup>11</sup> Interstate calls were filtered from the call detail records. Out of the [REDACTED] remaining intrastate calls [REDACTED] calls to public defenders and 800 numbers were excluded and an additional [REDACTED] calls made with less than 10 digits were also excluded.

During staff's investigation, staff reviewed several patents regarding Three-Way Call Detection for Inmate pay telephones. In particular, U.S. Patent No. 6795540 states that it is a common industry estimate that 10% of all calls from prison are three-way call attempts. Using the 10% standard as legitimate three-way call attempts, without any other parameters, the refund would be \$8,856,653. This is calculated using all intrastate call backs to the same number, reduced by 10% and multiplied by \$[REDACTED].

Staff acknowledges that the three-way call detection system was created to solve a legitimate problem. However, staff believes the system instead created new problems, thereby failing to adequately address the initial problem. The company's responsibility under the Commission's rules and regulations is to protect the consumer from being harmed. Staff believes the three-way detection software was not effective and that the customers should be made whole.

Staff would prefer that TCG issue refunds directly to all affected customers. However, due to the nature of the inmate pay telephone business and the length of time that the company knowingly utilized the defective three-way detection software, staff believes that requiring the company to identify each customer and issue a separate refund may not be possible. Staff also believes that if TCG was able to identify each customer and issue a separate refund, requiring the company to do so would be extremely costly and time-consuming for TCG.

Staff recommends that the refund should be deposited into the State's General Revenue Fund. As an alternative, the Commission could consider ordering TCG to implement a rate reduction whereby TCG would reduce its surcharge for local and intrastate calls made from pay telephones within the Miami-Dade Correctional Facilities. Whether the refund is deposited into the General Revenue Fund or implemented in a form of a surcharge rate reduction, either way the actual customers that were overcharged will not benefit. TCG has indicated that if the Commission orders a refund, it would prefer to have it deposited in the General Revenue Fund.

Further, if the company was able to identify all affected customers, the company may not be able to locate all of the customers. As a result, customer refunds may be further delayed or some customers entitled to receive a refund may not receive a refund at all. Staff believes that it is not practical and would be costly for TCG to locate its customers to refund the surcharge over the established time period.<sup>12</sup> Staff recommends the refund amount be directly submitted to the Commission within 30 days of the issuance of the Consummating Order for deposit into the General Revenue Fund.

### **Declaratory Statement**

Global has argued that a Commission ruling on a declaratory statement in Order No. PSC-06-0116-FOF-TP releases the company from responsibility for the improper disconnection

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<sup>12</sup> In a previous docket involving Global, in which the company was unable to locate all of the overcharged customers and a prospective rate reduction was impractical due to the number of pay telephones operated, Global was allowed to pay the remaining refund amount to the Commission for deposit in the General Revenue Fund. Notice of Proposed Agency Action Order Approving Refund Proposal and Correcting Typographical Error, issued August 20, 1996, Docket No. 940984-TC, In Re: Application for certificate to provide pay telephone service by Global Tel\*Link Corporation.

of inmate calls caused by the Three-Way Call Detection software. On February 14, 2006, the Commission granted a ruling on a Declaratory Statement to Global Tel\*Link.<sup>13</sup> Global sought a determination as to whether the minimum ten minute call connection time required by Rule 25-24.515(22), F.A.C., is applicable when a confinement facility requests the company to terminate a call that is not authorized by the confinement facility. The Commission declared that based on the facts presented in the petition, Rule 25-24.515, F.A.C., does not require Global to connect out-going local and long distance calls for a minimum elapsed time of ten minutes when a confinement facility requests the company to terminate a call not authorized by the confinement facility. Rule 28-105.003, F.A.C., specifically states that a declaratory statement is a means for resolving a controversy or answering questions, or doubt concerning the applicability of statutory provisions, rules, or orders over which the agency has authority.<sup>14</sup>

The Order granting the declaratory statement clearly states that it does not relieve Global Tel\*Link of the responsibility of the three-way detection software which caused the improper disconnection of inmate calls. Therefore, staff believes that the Declaratory Statement granted in Order No. PSC-06-0116-FOF-TP is not controlling under the facts of this docket and does not release Global Tel\*Link or its subsidiaries from responsibility in the instant case.

### **Conclusion**

Based on the above, the Commission should order TCG Public Communications, Inc. to dispose of refunds up to the maximum amount of \$6,290,450, plus interest, calculated in accordance with Rule 25-4.114, F.A.C., Refunds, for the improper disconnection of inmate calls due to the implementation of the Three-Way Call Detection software. TCG should remit the refund, plus interest, directly to the Florida Public Service Commission for deposit into the General Revenue Fund within 30 days of the issuance of the Consummating Order.

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<sup>13</sup>See Order No. PSC-06-0116-FOF-TP, Order Granting Petition for Declaratory Statement, Docket No. 050892-TP, In Re: Petition for declaratory statement regarding applicability of Rule 25-24.515(22), F.A.C., or, in the alternative, petition for waiver of rule, by Global Tel\*Link Corporation.

<sup>14</sup>The declaratory statement was designed to alleviate any uncertainty as to the conflict between the discrepancy in Rule 25-24.515(22) and Rule 25-24.515(21) regarding the minimum elapsed time for a pay telephone call. However, the Commission clearly stated that this declaratory statement should not be construed to release Global from responsibility for premature disconnection. In fact, the declaratory statement specifically notes that Global is not relieved of responsibility for prematurely disconnecting a call due to technical glitches or other reasons.

**Issue 4:** Should the Commission order TCG Public Communications, Inc. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be penalized in the amount of \$1,266,000 for its apparent violation of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service, Section 364.183(1), Florida Statutes, Access to Company Records, and for its apparent violation of Section 364.604 (2), Florida Statutes, Billing Practices?

**Recommendation:** Yes, the Commission should order TCG Public Communications, Inc. to show cause in writing within 21 days of the issuance of the Commission's Order why it should not be penalized in the amount of \$1,266,000 for its apparent violation of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service, Section 364.183(1), Florida Statutes, Access to Company Records, and for its apparent violation of Section 364.604 (2), Florida Statutes, Billing Practices. The company's response should contain specific allegations of facts and law. If TCG fails to respond to the show cause order or request a hearing pursuant to Section 120.57, F.S., within the 21-day response period, the facts should be deemed admitted, the right to a hearing waived, and the penalty should be deemed assessed. If TCG pays the penalty it should be submitted to the Commission for deposit into the General Revenue Fund pursuant to Section 364.285, F.S. **(Curry, Kennedy, Moses, Tan)**

**Staff Analysis:**

**Rule 25-24.515, Florida Administrative Code**

Rule 25-24.515(21), Florida Administrative Code, states that providers serving confinement facilities shall provide for completion of all inmate calls allowed by the confinement facility. Rule 25-24.515(22), F.A.C., states that pay telephone stations located in confinement facilities shall not terminate outgoing local and long distance calls until after a minimum elapsed time of ten minutes. During the investigation, staff determined that TCG was aware that increasing the sensitivity level of the three-way detection software would cause calls to drop erroneously. The company was also aware that an increase in erroneous disconnections of calls would cause an increase in the number of complaints. As referenced previously, TCG sent emails stating continued use of high sensitivity levels would result in Commission involvement. However, the company still chose to increase the sensitivity levels. Staff also determined through emails and data requests, that the company had the ability to and did change the three-way detection software's sensitivity levels at its discretion. The company also eventually installed new software.

Since 2006, staff has compiled company emails, responses to data requests, and call detail records for TCG. Based on the information that staff reviewed, staff believes that the company manipulated the software, by increasing the sensitivity level, which ultimately resulted in an increase in revenue due to the charge associated with reinitiating a call. In December 2005, a couple of days before staff went to the MDPDC facility to conduct the pay telephone tests, a company employee sent an email requesting [REDACTED]

[REDACTED] (Conf. Attachment A at 39)

Staff believes that TCG's decision to increase the sensitivity level of the three-way detection device while knowing that such increases would cause the inmates calls to drop erroneously is a "willful violation" of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service.

Section 364.604(2), Florida Statutes

Section 364.604(2), F.S., protects the customer by providing that no customer shall be liable for telecommunication services that were not provided to the customer. When a customer received a pay telephone call placed by an inmate, the call is expected to last the intended duration. If a call is dropped because of no other reason than excessively high sensitivity levels of the three-way calling system and the call must be reconnected to continue the conversation, the customer is assessed the surcharge again. The customer did not intend to finish his conversation with two phone calls, but rather is left no option when the current call unexpectedly dropped.

TCG has indicated in its responses to staff's data requests that there is no log kept of the sensitivity levels in use at the Miami-Dade County facilities and there is no established individual who decides which level is used. Therefore, by its use of excessively high and arbitrarily assigned sensitivity levels, TCG violates the provision of Section 364.604(2), F.S., by charging customers for services that the customer was not provided in its original phone call.

Staff believes by arbitrarily using sensitivity settings that caused phone calls to drop excessively, TCG willfully and knowingly forced the customers to pay for initial phone calls in which they were denied the use of full phone calls as contemplated by the local and intraLATA surcharge. TCG did not take appropriate action to prevent these additional calls from being required in order for a simple phone call to be completed between the inmates and the paying customers.

Section 364.183(1), Florida Statutes

Section 364.183(1), Florida Statutes, provides the Commission access to records of telecommunications companies that are reasonably necessary for the disposition of matters within the Commission's jurisdiction. A customer complaint (Case No. 589024T) received on March 18, 2004, was the stimulus propelling this investigation. On May 18, 2004, the case was reassigned from a consumer analyst to the Process Review Team. Upon reassignment, technical staff became involved. Staff repeatedly attempted to obtain call detail records from TCG. Consistently, representatives of TCG (both AT&T and Global) and T-NETIX (who is not a party to this docket) advised staff that call detail records did not exist. This denial severely impeded staff's ability to proceed with its investigation. The delay also appears to have potentially cost consumers several million dollars.

In response to staff's data request to TCG, TCG (and related contract partners) provided staff data during this investigation. The data were relevant and helped staff in its investigation. Even so, the most important data was TCG's call detail records for inmates' calls at the Dade facilities. Staff requested these records as early as 2004 and it was not until late in 2007 that the

data were obtained. Staff believes that the call detail records were necessary to complete the investigation and result in a meaningful outcome.

On September 10, 2007, TCG submitted a settlement offer. TCG states there are no call detail records available and that even if call detail records were available, such records alone do not identify whether two successive calls to the same number were terminated as a three-way call prematurely in error.

After September 10, 2007, staff placed a call to Securus (in Texas) via a phone number obtained from Securus' website. From this phone call staff learned call detail records for the Miami-Dade detention facilities did exist. On October 25, 2007, staff submitted an informal data request to Evercom (subsidiary of Securus, not a party to this proceeding) for call detail records covering the period July 1, 2003 through June 30, 2004. Evercom states in its responses to staff's data requests that it is responding on behalf of T-NETIX.<sup>15</sup> The records were provided to staff on November 13, 2007. In a follow-up data request to Evercom, staff acquired all call detail records from the Miami-Dade inmate operations for the period 2001 through 2007.

Staff believes that TCG's denial of the availability of records is a "willful violation" of Section 364.183(1), Florida Statutes, Access to Company Records, in the sense intended by Section 364.285, Florida Statutes.

### **Penalty**

Pursuant to Section 364.285(1), Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each day a violation continues, if such entity is found to have *refused to comply with* or to have *willfully violated* any lawful rule or order of the Commission, or any provision of Chapter 364, Florida Statutes, or revoke any certificate issued by it for any such violation.

Section 364.285(1), Florida Statutes, however, does not define what it is to "willfully violate" a rule or order. Nevertheless, it appears plain that the intent of the statutory language is to penalize those who affirmatively act in opposition to a Commission order or rule. See, Florida State Racing Commission v. Ponce de Leon Trotting Association, 151 So.2d 633, 634 & n.4 (Fla. 1963); c.f., McKenzie Tank Lines, Inc. v. McCauley, 418 So.2d 1177, 1181 (Fla. 1<sup>st</sup> DCA 1982) (there must be an intentional commission of an act violative of a statute with knowledge that such an act is likely to result in serious injury) [citing Smit v. Geyer Detective Agency, Inc., 130 So.2d 882, 884 (Fla. 1961)]. Thus, a "willful violation of law" at least covers an act of purposefulness.

Therefore, TCG's decision to increase the sensitivity level of the three-way detection device while knowing that the increased sensitivity level would cause the inmates' calls to drop erroneously, as well as denying the existence of and denying staff access to call detail records

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<sup>15</sup>On April 6, 2007, T-NETIX filed an amended response to staff's informal data request stating, "While staff's request for information is addressed to Evercom Systems, Inc., Evercom Systems, Inc. does not provide service in the Dade County facilities at issue in this docket. T-NETIX Telecommunications Systems, Inc. is the entity that provides service."

meets the Commission's standard for a "refusal to comply" and a "willful violation" as contemplated by the Legislature when enacting section 364.285, Florida Statutes.

Pursuant to Section 364.285, Florida Statutes, the Commission is authorized to impose upon any entity subject to its jurisdiction a penalty of not more than \$25,000 for each day a violation continues if such entity is found to have *refused to comply with* or *to have willfully violated* any lawful rule or order of the Commission, or any provision of Chapter 364, Florida Statutes. Staff believes that TCG has willfully violated the Commission's rules by knowingly setting the sensitivity of the three-way detection software to levels that would cause the inmates' calls to drop erroneously and denying the existence of and denying staff access to call detail records, thus impeding this investigation.

Staff notes that this is a case of first impression and that the Commission may impose a penalty of up to \$25,000 per day each against TCG for its apparent violation of Rule 25-24.515, Florida Administrative Code, Section 364.183(1), Florida Statutes, and Section 364.604(2), Florida Statutes. The Commission has imposed penalties in the amount of \$1,000 per day in a previous docket.<sup>16</sup> Therefore, staff believes that the Commission should penalize TCG \$1,000 per day to be consistent with previous penalties.

Staff's calculations for the penalty assessment is based on 1,266 days (from [REDACTED] through [REDACTED]). Staff's basis for the number of days is reflected in internal company emails which indicated [REDACTED], as the earliest date that the company became aware of the situation up until the day that the company began using the new software system. Furthermore, upon review of the company's emails, staff believes that the company was clearly aware that: 1) problems with the sensitivity settings resulted in the improper disconnection of calls; 2) customers would be negatively impacted; and 3) this matter could potentially lead to a PSC investigation.

Staff believes it is clear that TCG was fully aware of the software's propensity for error. Additionally, upon recognition of the problem, the company failed to control or rectify the software situation. Staff believes the company had the opportunity and incentive to increase its revenue and in turn cause numerous consumers to incur additional expenses. Thus, staff believes that TCG's actions were an apparent willful violation of Rule 25-24.515, F.A.C. TCG also failed to provide the Commission with company records pursuant to Section 364.183(1), F.S., which significantly hindered staff's ability to investigate the magnitude of the problem. Finally, TCG billed for calls that the customer would not have had to pay for if the software had functioned as intended, which is in apparent violation of Section 364.604, F.S.

Therefore, staff recommends that the Commission order TCG Public Communications, Inc. to show cause why it should not be penalized in the amount of \$1,266,000, for its apparent violation of Rule 25-24.515, Florida Administrative Code, Pay Telephone Service, Section 364.183(1), Florida Statutes, Access to Company Records, and Section 364.604(2), Florida Statutes, Billing Practices.

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<sup>16</sup>Docket No. 910666-TI, In Re: Investigation into the billing practices of International Telecharge, Inc. and Peoples Telephone Company. Customers were overcharged for collect calls received from inmates at the correctional facilities in Florida, as well as public pay telephones.



**Issue 5:** Should this docket be closed?

**Recommendation:** If the Commission approves staff recommendations for Issues 1, 2, and 3 and no person whose substantial interests are affected by the Proposed Agency Action files a protest within 21 days of the issuance of the order, a Consummating Order will be issued. Upon issuance of the Consummating Order TCG should remit all refunds, with interest, to the Commission to be deposited in the General Revenue Fund within 30 days after the issuance of the Consummating Order.

If the Commission approves staff's recommendation for Issue 4 and TCG does not respond to the Show Cause Order, the penalty should be deemed assessed. If TCG pays the penalty it should be remitted to the Commission to be deposited into the General Revenue Fund pursuant to Section 364.285, F.S.

Upon payment of the refund and penalties this docket should be closed administratively.  
**(Tan, Teitzman)**

**Staff Analysis:** Staff recommends that the Commission take action as set forth in the above staff recommendation.


**REDACTED**

**CONFIDENTIAL ATTACHMENT A**

**Pages 26-41**

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Source: News & Business > Individual Publications > M > Miami Herald   
Terms: correctional and date(geq (02/25/04) and leq (02/25/04)) (Edit Search | Suggest Terms for My Search)

*ACTION LINE The Miami Herald February 25, 2004 Wednesday FINAL EDITION*

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**February 25, 2004 Wednesday FINAL EDITION**

**SECTION:** METRO & STATE; Pg. 7B

**LENGTH:** 783 words

**HEADLINE:** ACTION LINE

**BYLINE:** Herald Staff

**BODY:**  
PHONE SYSTEM PRICKLY

AT COUNTY FACILITY

\*Q: Local collect calls from the Turner Guilford Knight **Correctional Facility** in Miami-Dade cost \$2.25 per 30-minute call. It's a lot more if you're calling long distance.

The problem is that a recording says "custom calling features" aren't allowed during the call and that calls are being terminated well before 30 minutes. Yet families are being charged the full \$2.25. This can get quite costly.

I have mentioned the problem to those in charge, but they say they aren't responsible. My family has called the phone company and been told it's a "facility issue."

Venus Darling Hubbard,

inmate

\*A: You will be getting a hearing, according to Miami-Dade Corrections spokeswoman Janelle Hall.

In addition, Frances Gutierrez, AT&T's national marketing manager for corrections, said she would call the AT&T account executive for Miami-Dade County. Facility managers should be in touch with their AT&T account representative if dropped calls are widespread, Gutierrez said. If the system is too sensitive, adjustments can be made.

Your problem stems from other inmates making fraudulent, three-way calls in the past. As a result, corrections and the phone company have instituted measures to prevent them. Unfortunately, this makes the system sensitive to other custom-calling features.

If, after initiating a call, you attempt to use call waiting, call a cellphone, press any buttons on the phone, make a three-way call, transfer the call or are put on hold, you can wind up being disconnected. Even if you stop talking for any length of time, the call may be terminated.

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The person receiving the call should use caution not to press the number 5 while on the phone or the number will be blocked.

"I know it's frustrating," Hall said. "But that's the system. We had to reduce the fraudulent calls."

FYI

IF LOSING HEARING,

REPAIR DAMAGE NOW

\* Could the noise in your workplace damage your hearing?

According to the National Institute for Occupational Safety and Health, the answer is probably yes if you have to raise your voice to talk to someone an arm's length away. It's also damaging if your ears are ringing or sounds seem dull or flat after you leave a noisy area.

Short-term problems usually go away within a few minutes or hours. However, repeated exposure to loud noise can lead to permanent, incurable hearing loss or tinnitus.

If the source can't be eliminated, then you need to take steps to protect your hearing. Earplugs and earmuffs should be starters.

More information about the long-term effects of noise is online at [www.cdc.gov/niosh/topics/noise](http://www.cdc.gov/niosh/topics/noise).

ALERT

KIDS IN CAR CRASHES

OFTEN LACK RESTRAINTS

\* Parents and caregivers who drink and drive are responsible for a significant number of accidents that result in a child's death, according to research conducted by the National Center for Injury Prevention and Control, part of the Centers for Disease Control and Prevention.

Motor vehicle crashes are the leading cause of death for children ages 1 year and older, and one in four of these deaths involves a driver who has consumed alcohol. Of the 9,622 child passenger deaths between 1997 and 2002, 24 percent (2,335) involved an alcohol-impaired driver. The majority of those children - 68 percent - were passengers in the car of the driver who had been drinking. Sixty-eight percent of the drivers involved in the crashes survived, suggesting that many of the children might also have survived had they been properly restrained.

Families, the CDC says, should adopt a zero-tolerance policy on transporting children in vehicles if the driver has been drinking alcohol.

The CDC also calls for stricter enforcement of laws about driving under the influence and the use of safety belts. It should be a primary offense, as it is in Florida, to transport a child who isn't properly restrained, the CDC says. It also suggests that penalties for transporting unrestrained children should be increased.

Write Action Line,

**Billed Calls - AT&T**

<u>Surcharges</u>	<u>Minutes</u>	<u>Total</u>
\$335,459.25	\$0.00	\$335,459.25
\$1,818.25	\$2,139.90	\$3,958.15
\$131,573.75	\$186,209.10	<u>\$317,782.85</u>
	<b>AT&amp;T Total</b>	<b>\$657,200.25</b>

<u>Surcharges</u>	<u>Minutes</u>	<u>Total</u>
\$68,323.50	\$0.00	\$68,323.50
\$540.75	\$712.50	\$1,253.25
\$6,743.00	\$16,239.30	<u>\$22,982.30</u>
	<b>AT&amp;T Total</b>	<b>\$92,559.05</b>
	<b>AT&amp;T GrandTotal</b>	<b>\$749,759.30</b>

<u>Surcharges</u>	<u>Minutes</u>	<u>Total</u>
\$87,759.00	\$0.00	\$87,759.00
\$2,173.50	\$3,359.70	\$5,533.20
\$1,932.00	\$2,942.10	<u>\$4,874.10</u>
	<b>GTL Total</b>	<b>\$98,166.30</b>

PURCHASE AGREEMENT

PURCHASE AGREEMENT made as of the 17th day of February, 2005, by and between AT&T Corp., a New York corporation ("Seller"), and GTEL Holdings, Inc., a Delaware corporation ("Buyer").

WHEREAS, Seller and certain of its subsidiaries (such subsidiaries are collectively referred to as the "Selling Subsidiaries" and individually as a "Selling Subsidiary" and Seller and the Selling Subsidiaries are sometimes collectively referred to as the "Selling Companies" and individually as a "Selling Company") and the Payphone Subsidiaries (as defined below) are engaged, among other things, in the telecommunications payphone business in certain prisons, airports and other locations (the "Business");

WHEREAS, upon the terms and conditions set forth herein, the Selling Companies desire to sell and Buyer desires to purchase certain of the assets relating to the Business and all of the outstanding stock of the Payphone Subsidiaries, as specified herein, for the consideration described herein; and

WHEREAS, certain terms used in this Agreement are defined in Section 11.10 hereof and a glossary of the defined terms used herein appears in Section 11.11 hereof.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Purchase and Sale of the Assets and the Shares.

1.1 Purchase and Sale of the Assets and the Shares. Upon the terms and subject to the conditions set forth in this Agreement, at the closing (the "Closing") of the transactions contemplated hereby (the "Contemplated Transactions"), the Selling Companies shall sell, transfer, convey, assign and deliver to Buyer, and Buyer shall purchase and acquire from the Selling Companies (i) all of the assets of the Selling Companies used primarily in connection with the Business, as the same shall exist on the Closing Date (the "Assets") and (ii) all of the shares of capital stock of the Payphone Subsidiaries (collectively, the "Shares"); provided, however, that the Assets shall not include the Excluded Assets. Except to the extent the context otherwise requires, as used herein, the term "Assets" shall also include the assets of the Payphone Subsidiaries except to the extent that such assets would have been Excluded Assets if such assets had been assets of a Selling Company, in which case such assets shall be deemed Excluded Assets and shall be transferred at Closing to Seller. Without limiting the generality of the foregoing, the Assets shall include all of the Selling Companies' right, title and interest in and to all of the Assets, including the following:

(a) Fixtures, Furniture, Equipment, etc. All fixtures, furniture, furnishings, accessories, computers and peripheral devices, office and other equipment, vehicles and any

) replacement and spare parts for any such assets, including without limitation as set forth on Schedule 1.1(a);

(b) Supplies. All goods, supplies and other similar products and materials;

(c) Permits. All of the Selling Companies' rights under all Permits;

(d) Contracts. All of the Selling Companies' rights under all Contracts;

(e) Claims Against Third Parties. All claims against third parties, including, without limitation, rights under any Contracts, manufacturer's or vendor's warranties and insurance claims and proceeds;

(f) Prepaid Expenses, etc. All prepaid expenses and rentals;

(g) Accounts Receivable. All of the accounts receivable of the Business and existing as of the Cut-Over Time, including, without limitation the Consumer Receivable, but not including the Excluded Receivable;

(h) Inventory. All of the inventory;

(i) Books and Records. All books and records, including, to the extent permitted by Law the personnel and employment records for the Transitioned Employees;

(j) Sales or Use Tax Refunds. Any refund with respect to any sales or use Taxes paid by Buyer or any Payphone Subsidiary resulting from the sale of the Assets and the Shares to Buyer and the consummation of the Contemplated Transactions; and

(k) Goodwill. All goodwill of the Business.

1.2 Excluded Assets. Notwithstanding any other provision of this Agreement, the Selling Companies shall not sell, assign or transfer to Buyer, and Buyer shall not purchase from the Selling Companies any of, and the Payphone Subsidiaries shall transfer to Seller at Closing all of, the following assets (collectively, the "Excluded Assets"):

(a) This Agreement. All rights of Seller under this Agreement and any documents delivered or received in connection herewith;

(b) Corporate Records. All books, records and other assets of Seller and its subsidiaries (other than the Payphone Subsidiaries) relating to corporate level activities, corporate minute books, stock ledgers and other corporate books and records not relating primarily to the Business, the Assets or the Assumed Liabilities;

(c) Software and Intellectual Property. All Software and Intellectual Property except as expressly provided in the Intellectual Property Agreement;

(d) Cash and Cash Equivalents. Any cash, funds on deposit with financial institutions and in checking accounts, or other cash equivalents as of the Cut-Over Time (it being understood and agreed that any cash collected by the Business on the Closing Date shall be an Asset and not an Excluded Asset);

(e) Excluded Receivable. The accounts receivable of the Business that arose prior to July 1, 2004 relating to certain revenue streams from inmate traffic billed through outside billing agents and local exchange carriers that were sold in June 2004 to Evercom or T-Netix (collectively, the "Excluded Receivable"), it being understood that (i) such revenue was reflected in the income statements included in the Business Financial Statements for periods through June 30, 2004 and (ii) the Excluded Receivable is not included as an asset of the Business on the Most Recent Balance Sheet;

(f) Tax Refunds. Any federal, state or local Tax refunds due the Payphone Subsidiaries or the Selling Companies with respect to Taxes paid by the Payphone Subsidiaries or a Selling Company prior to the Closing (or by Seller after the Closing pursuant to Section 7.18) with respect to or relating to the operation of the Business through the Closing Date, but excluding any refund with respect to any sales or use Taxes paid by Buyer or any Payphone Subsidiary resulting from the sale of the Assets and the Shares to Buyer and the consummation of the Contemplated Transactions;

(g) Real Property. Title to any real property owned by any Selling Company and all buildings and other structures located on such real property; and

(h) Scheduled Assets. Any other assets described in Schedule 1.2 hereof.

2. Assumption of Liabilities.

2.1 Assumption of Liabilities by Buyer. At the Closing, Buyer shall, or shall cause one of the Payphone Subsidiaries to, assume from the Selling Companies and shall thereafter pay, perform, satisfy and discharge, or shall cause one of the Payphone Subsidiaries to pay, perform, satisfy and discharge, only the following obligations and liabilities (collectively, the "Assumed Liabilities"):

(a) Obligations Under Agreements. Subject to the limitations set forth in Section 7.7, the liabilities and obligations under the Contracts and Permits included in the Assets, including, without limitation, all insurance, indemnity and performance or other bond obligations of Seller relating to the Business as provided in Section 7.19, but excluding (i) the liabilities and obligations that are expressly retained by Seller pursuant to Section 2.2(a), 7.8, and 7.18 and (ii) the liabilities and obligations constituting the Excluded Accounts Payable and Accrued Expenses;

(b) Employee Obligations. The liabilities and obligations assumed by Buyer pursuant to Section 7.8 hereof;



(c) Business Liabilities. All liabilities and obligations arising prior to, on or after the Closing from or in connection with the Business or the Assets as a result of the conduct of the Business, including the obligation to make cash payments in respect of goods and services to the extent accrued by the Business after the Cut-Over Time, but excluding (i) the liabilities expressly retained by Seller pursuant to Sections 7.8, 7.18 and 7.21, (ii) the Excluded Accounts Payable and Accrued Expenses and (iii) the liabilities of Seller or any Selling Company under this Agreement;

(d) Patent Liabilities. The liabilities and obligations assumed by Buyer pursuant to Section 7.21; and

(e) Liabilities for Sales/Use Taxes. Any liabilities and obligations of the Selling Companies for sales or use Taxes resulting from the sale of the Assets and the Shares to Buyer and the consummation of the Contemplated Transactions.

2.2 Excluded Liabilities. Buyer is not assuming or agreeing to pay, perform, assume or discharge, or otherwise be responsible for, any liabilities, obligations or commitments of any Selling Company, fixed or contingent, known or unknown, whether arising before or after the Closing, other than the Assumed Liabilities, and all such liabilities, obligations, and commitments (collectively, the "Excluded Liabilities") shall remain the exclusive liabilities of the Selling Companies. To the extent the Payphone Subsidiaries have any liabilities that would not have been Assumed Liabilities if such liabilities had been liabilities of a Selling Company, then such liabilities shall be deemed "Excluded Liabilities" for all purposes of this Agreement and shall be transferred at Closing to, and assumed by, Seller. Seller shall pay, perform or otherwise discharge, or shall cause a Selling Company to pay, perform or otherwise discharge, as the same shall become due in accordance with their respective terms, all of the Excluded Liabilities. Without limiting the generality of the foregoing, the Excluded Liabilities include:

(a) Costs. Obligations in respect of costs or expenses incurred by the Selling Companies (at any time) or the Payphone Subsidiaries (prior to the Closing) in connection with the Contemplated Transactions;

(b) Tax Liabilities. The Taxes for which Seller is responsible pursuant to the first sentence of Section 7.18(a), including without limitation any liabilities for income Taxes payable in connection with the sale and purchase of the Assets and the Shares or the consummation of the Contemplated Transactions;

(c) Employee Obligations. Except as otherwise provided in Section 7.8 hereof, obligations to present or former employees of Seller or any of its subsidiaries or in connection with any employee benefit plans, including, without limitation, obligations with respect to compensation, benefits payable, severance or dismissal for service rendered through the Cut-Over Time or arising as a result of or in connection with the consummation of the Contemplated Transactions (either alone or in conjunction with another event, such as a termination of employment);

(d) Real Property. Any liabilities and obligations arising out of any owned or leased real property prior to the Cut-Over Time (and thereafter, the only liabilities arising out of any owned or leased real property that shall not be Excluded Liabilities shall be the liabilities of Buyer or the Payphone Subsidiaries accruing after the Cut-Over Time under the leases with respect to the leased facilities described in Section 7.23);

(e) Excluded Accounts Payable and Accrued Expenses. All Excluded Accounts Payable and Accrued Expenses;

(f) Patent Liabilities. The liabilities and obligations retained by Seller pursuant to Section 7.21; and

(g) Broker's Fees. Any obligation or liability incurred by Seller or its Affiliates to pay any fee or commission to any broker, finder, investment banker or other intermediary in connection with the transactions contemplated by this Agreement.

3. Consideration for Transfer of the Assets and the Shares.

3.1 Purchase Price. In consideration for the sale and transfer of the Assets and the Shares, on the terms and subject to the conditions set forth in this Agreement, Buyer agrees to pay Seller as follows:

(a) pay in cash by wire transfer of immediately available funds at Closing to an account designated by Seller prior to the Closing, (the "Closing Payment");

(b) pay in cash by wire transfer of immediately available funds on the Accounts Payable Date to an account designated by Seller prior thereto subject to adjustment as provided in Section 7.22 (the "Additional Payment", and together with the Closing Payment, the "Purchase Price"); and.

(c) assume the Assumed Liabilities.

3.2 Allocation of Purchase Price. The parties shall allocate the Purchase Price and Assumed Liabilities among the Assets (including the assets of the Payphone Subsidiaries) in accordance with Section 1060 of the Code and the regulations promulgated thereunder, with the understanding that such allocation will, to the extent consistent with the Code and such regulations, be based on the net book values of the assets of the Business prior to the write down of certain assets of the Business by Seller in connection with the impairment charge taken by Seller in 2004.

4. Closing. Upon the terms and conditions set forth herein, and subject to the provisions of Section 8 hereof, the Closing shall take place at the main offices of AT&T Corp., One AT&T Way, Bedminster, NJ at 10:00 a.m. local time on the second Business Day following the day on which all conditions to each party's obligation to close hereunder shall have been satisfied or waived. The parties agree that time is of the essence and will take all actions

reasonably necessary to effectuate the Closing at the earliest practicable date. The date upon which the Closing occurs is referred to herein as the "Closing Date" and the last moment on the day preceding the Closing Date is referred to herein as the "Cut-Over Time."

5. Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer, except as set forth in the Seller Disclosure Schedule, as follows:

5.1 Organization and Authority of the Selling Companies. Each of the Selling Companies is an entity duly organized, validly existing and in good standing under the Laws of its respective state of organization and has all requisite company power and lawful authority to carry on the Business as it is currently being conducted. Each of the Selling Companies is qualified to do business as a foreign entity in each jurisdiction in which the conduct of the Business or the ownership or leasing of the Assets or the ownership of the Shares makes such qualification necessary, except where the failure to be so qualified would not have a Material Adverse Effect.

5.2 Authorization. Seller has all requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements (collectively and together with those certain leases described more fully in Section 7.23, the "Transaction Agreements"), to consummate, and to cause the Selling Subsidiaries to consummate, the Contemplated Transactions and to perform fully its, and their, obligations hereunder and thereunder. The execution, delivery and performance of the Transaction Agreements by Seller and, to the extent they are parties thereto, the Selling Subsidiaries, and the consummation by the Selling Companies of the Contemplated Transactions have been duly authorized by all necessary corporate action, and no other board of directors, shareholder or other corporate proceeding is necessary to authorize the execution, delivery or performance of the Transaction Agreements or the consummation of the Contemplated Transactions. This Agreement constitutes, and the Ancillary Agreements when executed and delivered by Seller and, to the extent they are parties thereto, the Selling Subsidiaries, in accordance with the provisions hereof shall constitute, the valid and legally binding obligation of the Selling Companies, enforceable against them in accordance with their terms, subject to (i) bankruptcy, insolvency, reorganization, fraudulent conveyance or transfer, moratorium or similar Laws affecting creditors' rights generally; and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding at Law or in equity).

5.3 [Intentionally Omitted.]

5.4 Financial Statements. The unaudited statement of net assets of the Business as of December 31, 2003 and as of September 30, 2004 (the "Most Recent Balance Sheet") and the related statements of income of the Business for the year ended December 31, 2003 and for the nine months ended September 30, 2004 (such unaudited financial statements of the Business shall hereinafter collectively be referred to as the "Business Financial Statements") are attached as Schedule 5.4 hereto. Other than the absence of notes to financial statements or as set forth on Schedule 5.4, including the notes to the Business Financial Statements set forth on Schedule 5.4, the Business Financial Statements have been prepared in accordance with generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods covered thereby and

Docket No. 060614-TC  
Date: September 8, 2008

"Consumer Receivable" means the accounts receivable associated with revenue from AT&T Consumer Services (ACS) Prison Collect product arising from operator handled calls predominantly made from a prison payphone station that were billed to the customer that accepted the call either by ACS's own internal billing systems or by the Local Exchange Companies' on behalf of ACS.

"Contracts" means all contracts, commitments, agreements or arrangements, leases, licenses, notes, purchase and sale orders, letters of credit, instruments, obligations or commitments (i) to which one or more of the Selling Companies is a party and which relate primarily to the Business or (ii) to which a Payphone Subsidiary is a party.

"Environmental, Health and Safety Requirements" means all federal, state, local and foreign statutes, regulations, ordinances and other provisions having the force or effect of Law, all judicial and administrative orders and determinations, all contractual obligations and all common law concerning public health and safety, worker health and safety, and pollution or protection of the environment, including without limitation all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control, or cleanup of any hazardous materials, substances or wastes, chemical substances or mixtures, pesticides, pollutants, contaminants, toxic chemicals, petroleum products or byproducts, asbestos, polychlorinated biphenyls, noise or radiation, each as amended and as now or hereafter in effect.

"ERISA" means the Employee Retirement and Income Security Act of 1974, as amended.

"Excluded Accounts Payable and Accrued Expenses" means the following liabilities and obligations of the Business to the extent such liabilities and obligations would have been required to be recorded on a balance sheet for the Business as of the Cut-Over Time determined in accordance with GAAP: (i) all accounts payable and other obligations to make cash payments in respect of goods and services (expressly excluding amounts payable to T-Netix, Evercom (CBS) and Network PTS related to accounts receivable existing as of the Cut-Over Time that are "netted" against such accounts receivable consistent with past practice and the terms of the related contracts, but expressly including any amounts owed to ZPDI (Billing Concepts) in connection with the handling of the traffic related to the Consumer Receivable, even if such amounts are netted against related accounts receivable); (ii) all intercompany liabilities and obligations and (iii) all accrued commission, maintenance, telecommunications charges and other operating charges and expenses of the Business (excluding any impairment or contract loss reserves, whether identified or not).

"Governmental Authority" means any government or political subdivision thereof, whether federal, state, local or foreign, and any agency, department, division, court, tribunal or instrumentality of any such government or political subdivision.

"Intellectual Property" means all intellectual property which can be protected by Law anywhere in the world, including but not limited to patents, inventions for which a party reasonably believes patent protection may be available, trademarks, service marks, trade dress, copyrights (including, without limitation, the exclusive right to reproduce, distribute copies of, display and perform the copyrighted work and to prepare derivative works), trade secrets, know-how, specifications, mask-work rights, moral rights, author's rights, other intellectual property rights, internet domain names, and all registrations and applications therefore, and web sites and web pages and related items (and all intellectual property and proprietary rights incorporated therein), IP addresses, email addresses and other business, customer, financial or technical confidential information as may exist now hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the Laws of the United States or of any other state, country or jurisdiction.

"Laws" and "Law" means any and all laws of any nation or political subdivision thereof, including, without limitation, all federal, state, local, or foreign statutes, regulations, ordinances, orders, decrees, or any other laws or principles of common law, including, without limitation, those now or at any time hereafter in effect.

"Material Adverse Effect" or "Material Adverse Change" means any change or effect that is, or is reasonably likely to be, materially adverse to the business, results of operation, properties, financial condition, assets and liabilities, of the Business, taken as a whole (other than any change or effect relating (i) generally to the economy, (ii) to this Agreement and the Ancillary Agreements or the announcement thereof or the performance of any obligation thereunder or (iii) generally to companies operating in businesses similar to the Business).

"Payphone Subsidiaries" means, collectively, and "Payphone Subsidiary" means either of (i) TCG Payphones, Inc., a Delaware corporation, and TCG Public Communications, Inc., a Delaware corporation. The Payphone Subsidiaries are not Selling Companies.

"Permits" means all permits, licenses, franchises, approvals, qualifications, consents or orders of or other rights from, and filings with, or notifications to, all Governmental Authorities.

"Person" means and includes an individual, a limited liability company, a partnership, a joint venture, a corporation or trust, an unincorporated organization, a group or Governmental Authority.

"Reasonable Commuting Distance" means a distance that is fewer than 50 straight-line miles from the Employee's principal residence.

"Seller Benefit Plans" means (a) any "employee welfare benefit plan," as defined in Section 3(1) of ERISA or any "employee pension benefit plan," as defined in Section 3(2) of ERISA, which Seller or any of its affiliates sponsors or to which Seller or any of its affiliates contributes or is required to contribute, or under which Seller or any of its affiliates may incur any liability, and which covers an employee or former employee of Seller who is or was involved in

[Signature page to Purchase Agreement]

IN WITNESS WHEREOF, the undersigned have executed this Purchase Agreement as of  
the date first above written.

AT&T CORP.

By: Raymond E. Liguori

Name: Raymond E. Liguori

Title: Corporate Development Vice President

GTEL HOLDINGS, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Docket No. 060614-TC  
Date: September 8, 2008

[Signature page to Purchase Agreement]

IN WITNESS WHEREOF, the undersigned have executed this Purchase Agreement as of the date first above written.

AT&T CORP.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

GTEL HOLDINGS, INC.

By: 

Name: STEVEN C. ABEL

Title: VICE PRESIDENT

The following describes the provisions of the purchase agreement between AT&T and Global\*Tel that are applicable to responsibility for any refunds of telco charges made with respect to prematurely disconnected inmate calls at the Miami Dade Pretrial Detention Facility.

1. The relevant document is the Purchase Agreement, made as of February 17, 2005, by and between AT&T Corp. as Seller and GTEL Holdings, Inc. as Buyer. As permitted by Section 11.7 of the Agreement, the rights of Buyer under the Agreement were subsequently assigned to Global Tel\*Link Corporation.
2. The transaction under the Agreement closed on June 2, 2005.
3. Buyer bought certain of the assets of the "Business" and all of the stock of the two Payphone Subsidiaries. The "Payphone Subsidiaries" are TCG Payphones, Inc. and TCG Public Communications, Inc. The Business is the telecommunications payphone business in certain prisons, airports and other locations engaged in by the Seller and the Payphone Subsidiaries. (See Section 1.1 of the Agreement attached)
4. Buyer agreed to assume from Seller the liabilities of the Business (the "Assumed Liabilities"), with specified exceptions (the "Excluded Liabilities"). (See Sections 2.1(c) and 2.2 of the Agreement attached) Excluded Liabilities also include liabilities of the Payphone Subsidiaries that would not have been Assumed Liabilities if they were liabilities of Seller.
5. The Excluded Liabilities include the "Excluded Accounts Payable," as defined on page 40 of the Agreement (attached). Any obligation to refund the amounts in question before the Florida Public Service Commission constitute "Excluded Accounts Payable" under the Agreement because they are "telecommunications charges and other operating charges and expenses of the Business" that should have been accrued by AT&T on the balance sheet of the Business as of the "Cut-Over Time" (as that term is defined in Section 4 of the Agreement attached). Accordingly, the refund amounts are the obligation of AT&T as Seller under the Agreement.



Docket No. 060614-TC  
Date: September 8, 2008

11/18/04 16:19 AT&amp;T LAW DIV → FPSC

NO. 221 P002/004



Brian J. Musselwhite  
Assistant Vice-President - Florida  
Law and Government Affairs  
Southern Region

101 N. Monroe Street, Suite 700  
Tallahassee, FL 32301  
850-425-6313  
850-425-6361 (fax)

November 18, 2004

**BY FACSIMILE**

Mr. Clayton Lewis  
Engineer III  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Richard Breeder - Florida PSC Case No. 123388**

Dear Mr. Lewis:

This letter is in response to your request that AT&T perform test calls out of the Dade County Correctional Facility due to problems of premature call disconnects experienced by Mr. Richard Breeder. As you know, AT&T and its vendor, T-Netix, performed test calls with your office on October 27, 2004. The findings of these test calls, as well as the findings of additional test calls performed by AT&T and T-Netix, are attached to this letter. In addition, T-Netix, who is AT&T's underlying system provider, has provided its written findings in a letter dated November 16, 2004, to AT&T. I have attached this letter for your information.

The investigation revealed that due to the high 3-way sensitivity level requested by Dade County Corrections, the system, in some cases, picks up background noise that results in calls being prematurely disconnected. The high sensitivity level requested by the Dade County Correctional Facility is the result of complaints received by citizens and government officials who were the target of harassing calls. While AT&T regrets that customers are experiencing premature disconnects, the only way to remedy the situation is to lower the current 3-way sensitivity level requested by the correctional facility. The control of the sensitivity level rests with the Dade County Correctional Facility.

AT&T appreciates the opportunity to respond to your inquiry and we look forward to working with all interested parties to satisfactorily resolve this matter. Should you have any questions, please contact me at the number above.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Musselwhite", written over a large, stylized oval scribble.

Brian Musselwhite

Docket No. 060614-TC  
Date: September 8, 2008

Confirming my e-m address to send info

Page 1 of 2

**Adam Teitzman**

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**From:** Brown, Kim (MDCR) (786) 263-5853 [kbrown@miamidade.gov]  
**Sent:** Monday, December 20, 2004 3:07 PM  
**To:** Clayton Lewis  
**Cc:** Brophy, Frank (MDCR) (786) 263-5859; Don McDonald  
**Subject:** RE: CATS # 589024T - Richard Breeder

Good afternoon Clayton Lewis,  
Miami-Dade Corrections and AT&T do not have a contractual agreement regarding the 3-way sensitivity level, so there is no agreement we can supply.

We have requested that the level of the sensitivity be increased and decreased to protect our facility security and to address issues AT&T has brought to our attention. The current level has stopped the majority of the 3-way calls. AT&T was the initiator of this request dating back to 10/2003.

Thank you

*Kim Brown*  
*Miami-Dade Corrections & Rehabilitation Dept.*

-----Original Message-----

**From:** Clayton Lewis [mailto:CLewis@PSC.STATE.FL.US]  
**Sent:** Thursday, December 09, 2004 11:05 AM  
**To:** Brown, Kim (MDCR) (786) 263-5853  
**Cc:** Brophy, Frank (MDCR) (786) 263-5859; Don McDonald  
**Subject:** CATS # 589024T - Richard Breeder

Ms. Brown,

When can we expect a copy of the request/agreement between AT&T and MDCR concerning the 3-way sensitivity level?

Thank you,

Clayton Lewis  
Engineer Specialist III, FPSC  
(850) 413-6578  
(850) 413-6579 fax

---

**From:** Clayton Lewis  
**Sent:** Tuesday, November 23, 2004 2:18 PM  
**To:** 'Brown, Kim (MDCR) (786) 263-5853'  
**Cc:** Brophy, Frank (MDCR) (786) 263-5859; Don McDonald  
**Subject:** RE: Confirming my e-m address to send info

Good afternoon Ms. Brown,

Confirming my e-m address to send info

Page 2 of 2

Per your request, I have attached AT&T's response. It refers to a request by Dade County concerning the 3-way high sensitivity setting in use. May we obtain a copy of the request for our records?

Thank you

Clayton Lewis  
Engineer Specialist III, FPSC  
(850) 413-6578  
(850) 413-6579 fax

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**From:** Brown, Kim (MDCR) (786) 263-5853 [mailto:kbrown@miamidade.gov]  
**Sent:** Tuesday, November 23, 2004 2:00 PM  
**To:** Clayton Lewis  
**Cc:** Brophy, Frank (MDCR) (786) 263-5859  
**Subject:** Confirming my e-m address to send info

Good afternoon Mr. C. Lewis,

Per your message today, we would like to opportunity to read and respond to the information provided by AT&T.

Thank you.

*Kim Brown*  
*Miami-Dade Corrections & Rehabilitation Dept.*