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060476-TL

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**Subject:** Docket No. 060476-TL  
**Attachments:** Supplemental Joint Comments of Evercom Systems, Inc. and T-Netix Telecommunications Services, Inc. 09.14.09.pdf

In accordance with the electronic filing procedures of the Florida Public Service Commission, the following filing is made:

- a. The name, address, telephone number and email for the person responsible for the filing is:

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- b. This filing is made in Docket No. 060476-TL, In re: Petition by BellSouth Telecommunications Inc. to Initiate Rulemaking to Amend Rules 25-24.630(1) and 25-24.516(1), Florida Administrative Code.

- c. The document is filed on behalf of E&T.

- d. The total pages in the document are 4 pages.

- e. The attached document is Supplemental Joint Comments of Evercom Systems, Inc. and T-Netix Telecommunications Services, Inc.

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DOCUMENT NUMBER - DATE

09494 SEP 14 8

FPSC-COMMISSION CLERK

9/14/2009

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition by BellSouth Telecommunications  
Inc. to Initiate Rulemaking to Amend  
Rules 25-24.630(1) and 25-24.516(1), Florida  
Administrative Code

Docket No. 060476-TL

Filed: September 14, 2009

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

Evercom Systems, Inc. and T-Netix Telecommunications Services, Inc. (collectively referred to herein as E&T) file these Supplemental Joint Comments<sup>1</sup> specifically addressing the issue of whether inmate telephone service is or is not a monopoly as well as addressing the fact that inmate telephone providers do indeed provide operator services.

Despite the contention of PayTel Communications to the contrary, the provision of inmate telephone services, including operator services, is not a monopoly service. In many respects, inmate telephone service is no different than telephone service for which a company contracts to conduct its business. While a particular employee of the company may have no choice of provider when using the company's telephone system, the telephone service provider does not have a monopoly. As E&T noted in their original comments, providers of inmate telephone services within correctional facilities compete vigorously for the right to provide telecommunications services within confinement institutions. The competitive solicitation process exerts market forces on the price paid for telecommunications services originating within a confinement facility and, thus, such services do not constitute a monopoly.

Further, inmate telephone service providers are providers of operator services. Section 364.02(11), Florida Statutes, states that operator service "includes, but is not limited to, billing or

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<sup>1</sup> E&T originally filed comments on August 26, 2009 and incorporates those comments herein.

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completion of third-party, person-to-person, collect, or calling card or credit card calls through the use of a live operator or automated equipment.” The Supreme Court of Florida has interpreted this definition as being “extremely broad” in nature. *BellSouth Telecommunications, Inc. v. Jacobs*, 834 So.2d 855, 859 (Fla. 2002) (“... it certainly is clear that the Legislature intended to draft the definition of ‘service’ contained in section 364.02(11) extremely broadly...”). Because inmate telephone service providers facilitate the completion of collect and calling card calls between inmates and third parties, inmate telephone service providers are providers of operator services, as defined by section 364.02(11).

Pay-Tel Communications suggests that the Legislature acted unknowingly when it divested the Public Service Commission of jurisdiction to regulate operator services, including inmate telephone providers. Such a contention is contrary to both fact and law. Both E & T and Global Tel\*Link were actively involved in the legislative process and retained lobbyists to represent their interests. The companies’ representatives had key discussions with legislative staff, incumbent local exchange companies, and the sponsors of the legislation regarding inmate telephone services. Finally, the Legislature is presumed to act with knowledge of existing law and any judicial construct of existing law when it enacts a new law. *Jetbroadband WV, LLC v. MasTec North America, Inc.* 13 So. 3<sup>rd</sup> 159 (3<sup>rd</sup> DCA 2009). This presumption has not been and cannot be rebutted, and as set forth above, inmate telephone service providers are clearly providers of operator services.

In addition, throughout this docket, and through the Commission’s history of rate cap regulation, it has always included confinement facilities under its general rate cap rules. See, rule 25-24.516, Florida Administrative Code, and has never suggested that such providers do not provide operator services. Further, there has been no suggestion that providers that are non-

inmate payphone providers, and who may or may not be registered as operator service providers, do not provide operator services, which are now no longer rate cap regulated.

For the reasons set forth above and in E&T's comments filed on August 26, 2009, the Commission does not have rulemaking authority to establish rate caps on calls made by inmates in confinement facilities.

s/Jon C. Moyle, Jr.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Comments of E&T was served via Electronic Mail and U.S. Mail this 14<sup>th</sup> day of September, 2009 to the following:

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