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September 15, 2005

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**BY FEDERAL EXPRESS**

Public Utilities Commission of Ohio
Attention: Docketing Division
180 East Broad Street
Columbus, Ohio 43215-3793

**Re: Case No. 04-1785-TP-ORD**

Dear Ladies and Gentlemen:

Enclosed for filing are an original and ten (10) copies of the Joint Application For Rehearing Of Evercom Systems, Inc. And T-NETIX Telecommunications Services, Inc. in the referenced case.

An extra copy of the Joint Application is enclosed to be stamped "filed" or "received" and returned in the enclosed self-addressed, postage prepaid envelope.

If there are any questions on this matter, please contact the undersigned counsel.

Respectfully submitted,

Paul C. Besozzi

PCB:tmc

Enclosures

cc: Service List

**BEFORE THE**

**PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
|---|---|---|
| **In the Matter of the Commission's Review of the Rules and Regulations Pertaining to Alternative Operator Services, Including Services to Secured Inmate Facilities.** | ) | **Case No. 04-1785-TP-ORD** |

**JOINT APPLICATION FOR REHEARING BY EVERCOM SYSTEMS, INC. AND T-NETIX TELECOMMUNICATIONS SERVICES, INC.**

**Evercom Systems, Inc.** and **T-NETIX Telecommunications Services, Inc.** (collectively, "E&T"), acting through counsel and in accordance with Section 4903-10 of the Ohio Revised Code and Section 4901-1-35 of the Ohio Administrative Code, hereby file their Joint Application for Rehearing with respect to the Commission's Finding And Order issued August 17, 2005 in this Case ("Order"). In support of this Joint Application, E&T set out the following:

## I. BACKGROUND

E&T, as major providers of inmate operator services ("IOS") in Ohio, already have been active participants in this proceeding, having submitted both initial and reply comments in response to the original Staff recommendation.[1] Indeed, the Order makes reference to those submissions. Therefore, E&T have the right to submit this application for rehearing under the terms of the relevant statutory and regulatory provisions.

## II. PROCEDURAL HISTORY AND OVERVIEW

The Commission's Entry stated, in part:

[1] The original Staff recommendation contained in the Commission's December 8, 2004 Entry in this Case ("Entry" is hereinafter referred to as the "Staff Proposal."

"The Commission deems it appropriate to conduct such a review at this time with the goal of determining whether existing rules and regulations on this subject should in whole or in part, remain unchanged, be amended, or perhaps be rescinded. Among the questions that the Commission expressly intends to explore in this docket is whether it remains appropriate, in today's regulatory and competitive environment, to continue imposing rate caps on AOS providers in their provision of such services. *The specific purpose of this particular entry, as will be explained below, is to afford interested persons or entities an opportunity to file initial and/or reply comments in response to a preliminary recommendation by the Commission's staff in this case....*" Entry, at p.1 (emphasis supplied).

The Staff's Proposals with respect to IOS rules were set forth in 4901:1-6-23(E) and included, in part:

1. The requirement that maximum rates may not exceed those established by contract for state correctional facilities, if lower than the AOS rate caps;
2. Provision of rate quotes upon request for all components of the call, to the called party;
3. Contract language requirements concerning compliance with established requirements and restrictions pertaining to IOS;
4. Requirement that additional surcharges requested by an "IOS customer" (correctional facility) may not be levied by the IOS provider on the end user; and
5. The requirement to provide information to the Staff, upon request, concerning the IOS provider's operations, including but not limited to customer lists and call records.

Rule 4901:1-6-23(D) set forth the Staff Proposal for Alternative Operator Service ("AOS") providers, which included, in part:

1. Maximum rates of $0.45 per minute and $2.75 per call;

2. Provision of rate quotes, upon request, for all components of the call by the end user or billed party;
3. Posting requirements;
4. Contract language requirements concerning compliance with established requirements and restrictions pertaining to IOS;
5. Requirement that surcharges imposed by an "AOS customer" (payphone provider, hotel, etc.) be billed by the AOS customer; and
6. The requirement to provide information to the staff, upon request, concerning the AOS provider's operations, including but not limited to customer lists and call records.

E&T and various other parties submitted comments and reply comments on the Staff's Proposal. The Commission then issued the Order, which proposed several rules that were brand new to this proceeding, which no intervenor or other Ohio carrier had seen before, and which, if adopted, would, E&T respectfully submit, depart from standard industry practice, and would require substantial investment to implement. Moreover, no party has had an opportunity to provide comment, and no evidence has been requested or taken on these proposed rules. Parties find themselves at the rehearing phase of the proceeding with new issues before them.

In addition, the Order does not specifically address several issues that were the subject of substantial comment and reply comment. Instead, the Order stated that:

> "If there were arguments or positions presented in the comments or reply comments submitted of record in this case that are neither addressed in this finding and order nor incorporated into the rules being adopted today, these arguments and positions have been rejected. (Order, at p. 7, paragraph 11.)"

As noted above, the Commission originally sought comments directed solely to the Staff's Proposal. It did not invite comments at that time on any other issues. Indeed, based on

the Commission's original solicitation, it could be reasonably inferred that the Commission intended to request further comments at a later date. This, however, has not been done.

## III. E&T'S SPECIFIC REHEARING REQUESTS

E&T's application for rehearing focuses on the revised IOS rules, contained principally in Section 4901:1-6-23(D) of the rules adopted by the Order ("Rules").

### 1. Section 4901:1-6-23(D)(3) appears to contain conflicting language regarding rate quote requirements and should be clarified to allow rate quotes upon request.

The Staff Proposal required rate quotes be provided upon request by the called party. Proposed rule 4901:1-6-23(E)(3) stated in part:

> "Upon request of the called party, and at no additional charge, the IOS provider must quote the actual intrastate price list rates. After such notification and rate disclosure (if requested), the IOS provider must allow..."

But the Rules issued by the Commission appear to require both an upfront rate quote and to allow the end user to request a rate quote. Rule 4901:1-6-23(D)(3) states in part:

> "All IOS providers must furnish, on all intrastate IOS calls, at the beginning of the call before the end user incurs any charges, *immediate and full rate disclosures* that quote the actual intrastate price lists rates for all components of the call. Where the operator service on an IOS call is automated, the end user must, before being given a chance to accept the charges for the call, be provided an opportunity to, either by *simply remaining on the line or by dialing no more than two digits* in response to a prompt, be supplied with a rate quote applicable to the call.[2] (emphasis supplied)

The first sentence clearly requires up front rate quotes without request. However, the second sentence clearly contemplates a request. Today, all IOS calls are automated. The industry standard method by which an end user obtains a rate quote, if desired, is to remain on the line or dial no more than two digits. Thus the second sentence of the Rule allows the end

[2] The next statement in the rule addresses live operator IOS calls and rate quote requirements. At one time, live operators were occasionally used for international IOS calls, but this practice has long since ceased. Security requirements preclude inmate access to live operators. For this reason, the rule language regarding live operators as a practical matter is not applicable to IOS providers.

user to exercise the option to obtain a rate quote. If the end user does not simply remain on the line or dial for a rate quote, but instead hits the required digit to accept the call, then no rate quote is provided. E&T urge the Commission to clarify this language to make it clear that rate quotes are to be provided if requested in order to avoid the industry confusion that is sure to ensue by such conflicting language. The following reasons further support such a change:

a. Inmates often make numerous calls to the same number, usually to family. Family members receiving the calls typically do not want to have to hear the same rate quote each time the inmate calls home, which can be up to three to five times a day.

b. Further, if the Commission also elects to retain the additional announcement information concerning billing methods and customer complaint contact information (further discussed below), this will add another 20-30 seconds to the current announcements, which already take 30-35 seconds. This will result in consumer frustration and complaints regarding overly long messages, particularly if called parties must listen to the entire message on every call, and do not have the option to accept or reject the call when they choose. In addition, the further delay in connecting, or terminating, the call means additional costs for the IOS provider.

**2. Eliminate Section 4901:1-6-23(D)(8) which requires redundant and time-consuming information to be added into the initial announcement of each call.**

Section 4901:1-6-23(D)(8) of the Rule requires IOS providers to add to the initial announcement what is termed "consumer safeguards" be provided to end users on each and every call, without the end user's request and apparently with no opportunity to "opt out."

> "On all intrastate IOS calls, the IOS provider must disclose at the beginning of the call before the end user incurs any charges, the methods by which all charges will be collected and the method by which complaints concerning these charges and collections can be resolved."

No potentially affected telecommunications carrier has been provided an opportunity to review or provide comment on these new "consumer safeguards." E&T is strongly opposed to this additional requirement in the preliminary announcement, and respectfully disagrees that such information will be considered an additional safeguard by the consuming public for a number of reasons.

a. First, the requirement to state how charges would be collected would be meaningless. IOS calls are all either collect or prepaid. On collect calls, existing messages already provide that information, and the end user must positively accept the charges before a call will even be completed. On prepaid collect calls, the end user already knows how charges are handled because he/she has set up an account with the IOS provider. To require an additional statement would be confusing to end users. Thus, Existing industry practices already provide this information and a general statement about how charges are collected would be costly to implement for Ohio calls only, and would provide no useful additional information to the end user.

b. Second, the requirement to provide information on methods of complaint resolution is also redundant and could be extremely time-consuming. Ohio Administrative Code Section 4901:1-5-15 already requires local exchange carrier bills to include "the billing telecommunications provider's name, toll free telephone number(s), and e-mail address and/or website, if applicable, for subscriber inquiries about the bill." In addition, Federal rules, specifically 47 CFR §64.2401, set forth bill detail requirements, including the requirement that toll-free customer service numbers be provided with third party charges on local exchange carrier bills. Customer service contact information is also posted on carrier websites. Existing Ohio and Federal rules

already require this information, and hence long standing industry practice ensures that end users are provided with the necessary and desired customer service information at the time and in the place where it is most likely to be needed. Providing identical information in the initial recorded announcement, along with the rest of the message, would be time-consuming, expensive, inconvenient, redundant, and therefore, unnecessary.

c. Third, recorded announcements now typically take about 30-35 seconds, and include the name of the IOS provider, the name of the facility from which the call is being placed, a statement that the call may be recorded, as well as a statement that a rate quote is available and instructions on accessing that information. The caller is generally then asked, via the automated operator, whether he/she wishes to accept the call, and must press the required digit before the call is connected. The additional announcement information required in Section 4901:1-6-23(D)(8) will take approximately 20 to 30 additional seconds. Thus the elapsed time the caller must spend on the phone before placing a call could be doubled. The additional announcements add no appreciable protection for the consumer. E&T request that the Commission reconsider and eliminate the additional announcement requirement as set forth in Section 4901-1-6-23(D)(8). If the Commission declines to eliminate (D)(8), then in the alternative, E&T respectfully request that the Commission add a provision to its rules that would allow end users to affirmatively "opt out" of the announcement, if desired.

If the Commission is inclined to require some method for a called party to inquire about payment or complaint issues, the IOS provider could be required to provide a customer service number as part of the announcement. This would avoid the problem of unduly lengthening the

announcement and allow them to contact an informed customer service representative to address the issue.

### 3. There Is No Justification For Having Different AOS and IOS Usage Charges

In the Rule, the Commission properly discarded the idea of tying IOS rates to those contained in the ODRC contract. But it then arbitrarily determined that AOS usage rates should be 25% higher (i.e., $.09 per minute) than IOS usage rates.

There was no notice or opportunity for input by the IOS industry, and no reasoning other than the assertion that lower usage rates "most closely approximate those that already widely prevail in the state, and will keep IOS providers on a level playing field." Order, at p. 6.

No actual rate information was requested by the Commission to evaluate prior to making this decision. No party was aware that the Commission even intended to take this step. Indeed, the initial proposed rules called for continuing to maintain IOS rates caps at the same levels as AOS, but with the added requirement that they also not exceed the ODRC rates if those were lower.

E&T respectfully objects to this departure from even rudimentary analysis and due process prior to reaching a decision. Even with only the information provided in comments and reply comments, the Commission could not possibly conclude that inmate services are less costly to provide than traditional AOS services. In the absence of compelling evidence otherwise, which does not exist in this record, the only appropriate thing to do would be to apply the same logic for the change in AOS rates to IOS rates as well. There is ample evidence in the record supporting that approach.

No party, even those advocating lower rates overall, suggested that IOS rates should be below AOS rates. Information was provided in E&T's initial comments setting forth the responsibilities and costs IOS providers must support, which are distinct from and in addition to

those of AOS providers, including "security, monitoring, recording and blocking and ancillary functions at confinement facilities...the level of uncollectible charges (i.e., bad debt) associate with IOS operations at these locations is significantly higher." (E&T Joint Comments, p. 4-5)

E&T's initial comments also note on p. 5:

> "The irony of the Staff proposal is that it seeks to cap the admittedly higher cost IOS service providers at a rate below the conventional AOS cap. As the Staff is well aware, other AOS providers do not bear many of the special costs borne by IOS providers. Yet it is the latter that are not being capped at a lower rate... ."

E&T's reply comments also stated at p. 2:

> "There is no justification for a separate rate cap for IOS providers, tied to a statewide contract that does not reflect the circumstances of the many other local and municipal confinement facilities affected. There should be one rate cap regime for all AOS providers, including IOS. The overall rate caps proposed by the Staff are acceptable to E&T."

The ODRC stated in its initial comments, in the context of a request for clarification that the term surcharges as used in the rule should be clarified to exclude call set-up fees, "The Commission should be aware that IOS providers incur significant additional costs in meeting the complex security requirements imposed by correctional administrators. Set up fees are a means to recover those costs." (ODRC comments at I. B).

In its initial comments, AT&T noted (at paragraph 6) that:

> "The Commission has stated that an operator rate of $2.75 and 45 cents per minute is an acceptable rate for an operator call...There has been no showing made demonstrating that a higher rate ceiling is appropriate for an ordinary operator call as compared to an inmate call, even though the costs of serving the inmate call may be far greater. Therefore, the Commission has no lawful basis upon which to make such a distinction." In its reply comments, AT&T recommends that the Commission adopt the same deregulatory approach as the FCC and eliminate rate caps, but in the alternative, AT&T recommends that the Commission should retain the original proposed rate for IOS services, but eliminate the tie into the ODRC rates."

Also, the County Commissioners of Ohio ("CCAO") recommend that IOS rates not be tied to the rates in the state contract, but instead "recommend that the PUCO only adopt staff's recommendation of a uniform $0.45 per minute-of-use rate cap for all types of calls, along with the maximum operator-assisted rate at $2.75 per call." CCAO Comments, at p.3.

The Commission has long held IOS rates at the same level as AOS rates, on the basis that the services were similar. There is no record evidence to support a conclusion that IOS rates should be less than AOS rates, and numerous comments supplied, despite the confines set forth in the Commission's instructions in its initial Entry, that IOS costs are at least as much, and demonstrably higher than, AOS costs. For these reasons, E&T request that the Commission reverse its decision to impose a lower cap on IOS usage rates and conform the two.

**4. Modify Rule 4901:1-6-23(D)(7) to recognize the sensitivity of certain data and IOS providers' and other agencies' responsibilities to protect sensitive customer information**

Rule 4901:1-6-23(D)(7) requires each IOS provider to provide, upon Commission or staff request, "information concerning its operations, including but not limited to, customer lists and call records." On its face, this requirement appears fairly standard. However, there is a particular problem with this rule as it applies to the IOS industry, and which is therefore of serious concern to IOS providers, correctional facilities and related government agencies. This requirement was widely addressed in both initial and in reply comments. However, the Commission did not modify the rule, nor did it even address it in its Order, thereby, according to the terms of the Order, "these arguments and positions have been rejected." E&T respectfully submit that this issue is a matter of law as well as the physical safety of ratepayers, and should not be peremptorily rejected by the Commission without comment.

Because of the nature of the services that both IOS providers and agencies such as ODRC and the Ohio Department of Youth Services (ODYS) provide, they have a huge responsibility to

protect any information in their possession that could identify an individual. Since most IOS end users are family members or close associates of inmates, there is a justified concern with keeping contact information secure so that it is not inadvertently provided to an individual who could inflict harm or the threat of harm on any other individual. For that reason, IOS providers should not and do not release identifying information to a third party without a court-issued subpoena. Indeed, at least two states have passed laws requiring all telecommunications carriers to prepare and submit Family Violence Shelter Address and Location Confidentiality Plans to the respective regulatory commissions for approval and periodic review. These plans must set forth all established internal systems and personnel training to prevent the release of any information that could jeopardize an individual's safety.

Because of the dangers inherent in releasing certain types of customer information, a number of parties saw fit to provide initial comments on this particular rule, and still others supported those initial comments in their replies.

In initial comments, the ODRC stated at II.C:

> "This rule provision needs to be subject to Ohio's and other applicable public records laws. ODRC may disclose to its IOS provider, presently MCI, information that ODRC treats as not subject to public disclosure or as confidential under Ohio or other applicable law. Title to that information and all related materials and documentation that ODRC discloses to MCI remains with ODRC. MCI has contractually agreed to treat such confidential information as not subject to public disclosure. Under the contract, MCI could be liable for the disclosure of such information."

In its initial comments, MCI also addressed this issue at page 7:

> "…. the Commission should be aware that MCI's IOS contracts, particularly its contract with the …ODRC, have confidentiality provisions that limit the dissemination of certain information deemed to be proprietary under the terms of the contract. If the Commission asked MCI to divulge this confidential information, at a minimum MCI would have to notify the ODRC and seek protective treatment from the Commission…. Nonetheless, MCI recommends that the rule contain an acknowledgement that information deemed to be confidential

> by the IOS provider and/or third parties will be afforded proprietary treatment. The Commission should also be aware that there may be some confidential information that MCI simply cannot provide without possible contractual exposure."

Finally, the ODYS expressed in its initial comments substantially the same concerns as the ODRC and MCI. ODYS also noted that:

> "ORC 5139.05(D) provides that 'records maintained by the department of youth services pertaining to the children in its custody shall be accessible only to department employees, except by the consent of the department, upon the order of the judge of a court of record, or as provided in (D)(1) and (2) of this section. These records shall not be considered "public records," as defined in section 149.43 of the Revised Code." ODYS Comments, at pp. 2-3.

In reply comments, both E&T and SBC Ohio echoed the initial commenters' concerns and endorsed the proposed rule language modification. No party disagreed with or objected to the commenters' recommendations. This issue is particularly serious because the new rules specifically require IOS providers to produce, among other things, "customer lists." E&T requests that the Commission eliminate from the rule language the reference to "customer lists" or in the alternative, qualify the language in the rule to acknowledge the existence of state and other laws to which regulated entities are subject, as well as contractual responsibilities designed to protect individuals from physical and/or emotional harm.

**5. Allow Reasonable Surcharges**

Section 4901:1-6-23(D)(4) proscribes any end-user surcharges in addition to those charges set forth in the IOS provider's commission-approved tariff. The Rule then goes on to specifically recite a number of types of charges that are not permitted, including charges that are requested to be imposed by the confinement facility itself.

E&T strongly believes the Commission should reconsider this restriction in light of the fact that (a) barring all such surcharges may prevent the provision of additional, more advanced services the cost of which cannot be recovered through rate-capped rates; as a result, inmates and

end users in Ohio may never receive these services and (b) such surcharges may be used to cover increased costs that other carriers are permitted to pass on to their end-user customers.

With respect to the advanced services category, E&T is legitimately concerned that a plan to provide such services to inmates and end-user customers in Ohio who want them could be deterred or prevented. If E&T were not permitted to impose any additional charge for providing such special services to those who want them, then E&T may not be able to offer them in Ohio. In E&T's view it is not fair and equitable to impose these costs on all IOS users through general rates. In doing so, inmates and end users who make no use of the service would be paying for it. Moreover, with rates capped, at below AOS rates, there is little or no "room" for E&T to recover costs for these special services through general rates.

That problem is compounded by the second category mentioned above, the prime example of which are billing costs, a growing cost burden on IOS providers. Inmate collect calls are either billed through an end-user's local exchange company ("LEC"), as a convenience to the end-user, or as prepaid calls. There are no presubscribed accounts or contracts for service between the end-user and the IOS provider. While incumbent LECs ("ILECs") traditionally have agreed to include IOS and long distance companies' call charges on an end-users' local phone bills, the ILECs charge IOS providers for this service and these costs have risen substantially in the last few years. Although many long distance companies have been passing on this cost to their long distance customers through a line item on their telephone bill in the form of a billing cost recovery charge, IOS providers have been absorbing all of these expenses. However, as these costs have continued to rise, IOS providers in many other states have been forced to begin passing these costs on to end users who select this billing option.

In light of the foregoing, E&T respectfully request that the Commission reconsider its decision to adopt a Rule imposing a blanket restriction on surcharges. Subject to the Commission's review through the tariffing process, the imposition of a reasonable surcharge to recover the costs associated with providing enhanced technologies or bills to those who choose to continue to pay through the ILEC billing process should be permitted.

## IV. CONCLUSION

E&T recommends that the Rule be revised in a number of respects. The IOS rate disclosure requirement must be clarified to make clear that it is triggered on request. The supplemental announcement requirement of Subsection (D)(8) should be eliminated as redundant and time consuming. The differential between AOS and IOS usage rates should be eliminated as unjustified. The Rule must recognize the sensitivity of customer information and existing contractual and legal restrictions on its dissemination. Reasonable surcharges should be permitted to permit the deployment of advanced services or to cover increasing costs associated with ILEC billing.

For all of the foregoing reasons, E&T respectfully submit that the Commission should modify the proposed provisions applicable to IOS providers as reflected above.

Respectfully Submitted,

**EVERCOM SYSTEMS, INC and T-NETIX TELECOMMUNICATIONS SERVICES, INC.**

By: _____

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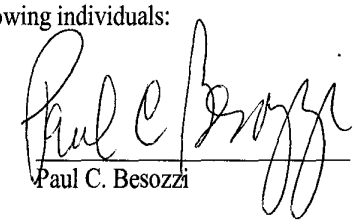
Dated: September 15, 2005

## CERTIFICATE OF SERVICE

I, Paul C. Besozzi, an attorney with the law firm of Patton Boggs, LLP, do hereby certify that on this 15th day of September 2005, I did serve, by first class U.S. mail, postage prepaid, a copy of the foregoing "Joint Application For Rehearing Of Evercom Systems, Inc. and T-Netix Telecommunications Services, Inc.," on the following individuals:



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