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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

GARDEN STATE BAR ASSOCIATION, CRYSTAL GIBSON, SHERIN MAKAR, LORI MONTEIRO, the PRISON INITIATIVE PROJECT of the CENTER FOR ACTION RESEARCH, the NEW JERSEY ADVOCATES FOR IMMIGRANT DETAINEES, the NEW JERSEY INSTITUTE for SOCIAL JUSTICE, PAULINE NDZIE, JEAN ROSS, and RHONDA WILLIAMS WHETSONE,	)	No.
Petitioners	)	

PETITION SEEKING RULEMAKING AND ORDER REGULATING RATES CHARGED BY GLOBAL TEL*LINK AND SECURUS FOR PHONE CALLS FROM NEW JERSEY CORRECTIONAL FACILITIES

TO THE HONORABLE COMMISSIONERS OF THE BOARD OF PUBLIC UTILITIES:

Introductory Statement

Families across New Jersey pay exorbitant phone rates in order to maintain communication with loved ones incarcerated in state and county prisons and jails. The Federal Communications Commission has recognized the importance of regulating interstate phone rates in correctional institutions, but without further state action these measures are not enough to protect New Jersey families who rely on intrastate calls to stay connected with loved ones in New Jersey jails and state prisons.

The Board of Public Utilities (BPU) has the power and the duty to require inmate calling service (ICS) providers operating in the state to charge "just and reasonable rates." It is within the BPU's jurisdiction and statutory mandate to regulate these alternate operator services (AOS) providers. Swift action by the BPU will provide much needed relief to impoverished families of New Jersey's incarcerated persons.

Petitioners—whose declarations are appended and referenced herein—are individuals and family members who have been directly affected by the exploitative phone rates that these service providers charge, as well as organizations that serve the affected community. They seek this action by the BPU in light of the hardship these rates have caused them. Until the BPU acts, too many family and community members in New Jersey will be forced to pay as much as $8.50 for a fifteen-minute intrastate call, while a call of the same length from state prisons in neighboring New York cost less than a dollar.[1]

As this petition will describe, the high phone rates lead to numerous negative effects for the most vulnerable families across the state. The high phone rates forced upon the families of incarcerated persons lead to decreased communication with family members, forcing parents, spouses, and children to go weeks or months at a time without speaking to their loved ones.

[1] Chart of Current Phone Rates in New Jersey Prisons and Jails Ex. K; Notice to Friends and Family of New York State Inmates Ex. S; *infra* Part I.B.

Decreased communication in turn leads to other negative unintended consequences, including higher rates of recidivism and interference with access to justice. The high rates affect the family members of people incarcerated in prison and jails as well as thousands of people without convictions who are held while awaiting trial. High telephone rates also impose unfair costs on immigrant detainees held in New Jersey county jails who must navigate the immigration system without the right to counsel. Largely, the burden of exploitive telephone rates in prisons and jails falls disproportionately on African American and Latino families across New Jersey. The unconscionable impact of these high phone rates must be remedied.

The FCC recognized the costs imposed on families and communities by these unreasonably high rates when, on August 9, 2013, they brought interstate rates to levels that are just, reasonable, and fair to all people.[2] Other states have accordingly acted to cap their prison phone rates at just and reasonable levels. New Jersey – and the BPU – should follow this national trend.

I. Petitioners

1. The Garden State Bar Association (GSBA) was created in 1975 to assist African-Americans and other minorities in becoming an effective part of the judicial system in New Jersey. Their mission is to improve the administration of justice, support initiatives to improve the economic condition of all individuals, to support initiatives designed to improve economic conditions of all individuals, and work to eliminate discrimination based on race and ethnicity. Exorbitant telephone rates impede their members' ability to interact with their clients.

2. Crystal Gibson is a resident of Newark, New Jersey. Ms. Gibson is a thirty-seven year-old single mother and unionized demolition worker. Her fiancé was incarcerated in several facilities from 2011 to August 2013 and she paid $200 to $300 a month so that her and her child could stay in touch with him. Ms. Gibson felt that the prison was

[2] *See* 47 U.S.C. § 201(b) (2012); 47 U.S.C. § 276 (2012); Rates for Interstate Inmate Calling Services, 78 Fed. Reg. at 67,958; Press Release, Fed. Commc'ns Comm'n, FCC Bars High Rates for Long Distance Phone Calls in Jails and Prisons Nationwide (Aug. 9, 2013), *available at* http://www.fcc.gov/document/fcc-reduces-high-long-distance-calling-rates-paid-inmates.

extorting people "on the outside" living in poverty and often without education for the mistakes of those "on the inside."

3. Sherin Makar has been a resident of Jersey City, New Jersey for the past 28 years. Mr. Maker is a native of Egypt who was held in immigration detention for approximately three years before receiving relief under the Convention Against Torture. During this time, he was detained in several facilities with contracts to hold immigrant detainees, including Essex County Correctional Facility, Middlesex Adult Corrections Center, Hudson County Correctional Center, and Monmouth County Correctional Institution. Mr. Makar frequently had to choose between paying for calls to his sister to help fight his case and paying for food through commissary.

4. Lori Monteiro is a resident of Belleville, New Jersey. Her boyfriend is currently incarcerated in Southern State Penitentiary. Ms. Monteiro spends an average of $50 a week to receive calls from her boyfriend, partially because of a 19% surcharge from Global Tel*Link.

5. The New Jersey Advocates for Immigrant Detainees is a coalition of member organizations, many of which visit and otherwise support people in immigration detention in New Jersey. Members often hear from the immigrants they work with about the struggles they experience as a result of high phone rates, and attempt to ameliorate those struggles by, among other things, providing supplies for detained immigrants to write letters to their loved ones.

6. The New Jersey Institute for Social Justice (NJISJ) is a Newark-based urban research and advocacy organization dedicated to the advancement of New Jersey's urban areas and residents. NJISJ has provided reentry employment services to over one thousand formerly incarcerated individuals, whose reintegration into civil society was often made more difficult by the attenuation of relationships with friends and family during incarceration due to high phone rates.

7. Pauline Ndzie is an immigrant from Cameroon who has lived in New Jersey for twenty-four years. She was held in immigrant detention at Hudson County Jail for five months. Because of a conflict between the jail's visiting hours and her three U.S. citizen children's school hours, Ms. Ndzie could usually only stay in touch with them via phone calls. Because these calls were frequently dropped, Ms. Ndzie ended up spending up to $25 on a single phone call a week.

8. Jean Ross lives in Princeton, New Jersey and does pro bono administrative advocacy and litigation on behalf of New Jersey residents who are incarcerated and their families through the Prison Initiative Project (PIP), which is part of the Center for Action Research. Ms. Ross donates approximately $10,000 each year to PIP, of which $100 to $250 each month goes to calls from prisons. People often call her in great distress, and she cannot spend as much time talking to them as they need because it is too expensive.

9. Rhonda Williams Whetsone is a resident of Newark, New Jersey who lives with her husband, five children, and disabled mother. Her brother Ronald has been incarcerated in Northern State Prison in Trenton, New Jersey for ten years. Because of the high cost of these calls, she and her mother are only able to speak to her brother once a month.

II. Background

A. FCC Rulemaking on Interstate ICS Rates

10. In 2003, Martha Wright and several families of prisoners petitioned the Federal Communications Commission (FCC) to address the lack of competition in the prison telephone industry that resulted in families of prisoners paying exorbitant rates for phone calls.[3] In 2007, the petitioners filed an alternate proposal requesting that the FCC address these rates and fees directly.[4]

[3] *Id.* at 67,957.
[4] *Id.*

11. After 10 years, the FCC adopted an Order on August 9, 2013 to bring prison phone rates into compliance with the Communications Act, which requires that phone rates be just, reasonable, and fair to all people.[5] The FCC limited its order to interstate rates because of their concern that the states, and not the FCC, had jurisdiction over intrastate rates.[6] In order to make phone rates just, reasonable, and fair the FCC set an interim safe harbor rate of $0.12 per minute for interstate debit and prepaid calls and $0.14 for interstate collect calls.[7] The Order required companies to justify rates above those safe harbors to the FCC, and to keep rates below the interim hard cap of $0.21 per minute and $0.25 per minute, respectively.[8]

12. Prison phone companies, led by Securus and Global Tel*Link, are appealing the FCC's Order by challenging the FCC's authority to regulate these rates at the federal level and asserting that the Order is arbitrary and capricious.[9] The U.S. Court of Appeals for the D.C. Circuit recently granted a stay with regard to the safe harbor rates and the requirement that rates be cost-justified, but allowed the implementation of the hard caps to go forward.[10] Securus and Global Tel*Link simultaneously argue that the FCC's regulation intrudes upon the authority of state and local governments and urge state-level regulators to defer to the FCC to address the problem of unfair and unreasonable rates.[11]

13. While the New Jersey State Department of Corrections laudably responded to the FCC Order by eliminating commissions and reducing its rates for intrastate as well as interstate calls, the new state rates remain higher than the safe harbor rates specified by

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[5] *See* 47 U.S.C. § 201(b) (2012); 47 U.S.C. § 276 (2012); Rates for Interstate Inmate Calling Services, 78 Fed. Reg. at 67,958; Press Release, Fed. Commc'ns Comm'n, FCC Bars High Rates for Long Distance Phone Calls in Jails and Prisons Nationwide (Aug. 9, 2013), *available at* http://www.fcc.gov/document/fcc-reduces-high-long-distance-calling-rates-paid-inmates.

[6] *See* Rates for Interstate Inmate Calling Services, 78 Fed. Reg. 68,005, 68,007 (proposed Nov. 13, 2013) (to be codified at 47 C.F.R. pt. 64).

[7] Rates for Interstate Inmate Calling Services, 78 Fed. Reg. at 67,962.

[8] *Id.*

[9] Petitioner's Statement of Issues To Be Raised at 2–3, Ariz. Dep't of Corrs. v. Fed. Commc'ns Comm'n, No. 14-1006 (D.C. Cir. Feb. 6, 2014) (explaining issues raised in lawsuit consolidated with challenges by Securus and Global Tel*Link to the FCC's Order on interstate inmate calling rates).

[10] Order on Motions for Stay, Securus Tech, Inc. v. Fed. Commc'ns Comm'n, No. 13-1280 (D.C. Cir. Nov. 13, 2014).

[11] *See* Petitioner's Statement of Issues to be Raised, *supra* note 9; Motion of Securus Tech. to Hold Proceedings in Abeyance, Mass Dep't of Telecomms. & Cable Docket No. 11-16 (Oct. 18, 2013).

the FCC for interstate calls.[12] Moreover, the intrastate rates from county jails, and the commissions associated with those rates, have not changed.[13] As described below, most intrastate rates from county jails thus continue to exceed both the safe harbor and hard cap rates specified by the FCC for interstate calls.

14. Phone companies have also sought to compensate for lost profits resulting from the FCC's regulation of interstate rates. Global Tel*Link offered this option to Bergen County in its letter informing the county of the need to lower interstate rates to comply with the FCC's hard caps.[14] The only available route to compensate for such lost profits would be to increase the rates and commission on intrastate calls. Without regulatory action on intrastate rates, New Jersey families could spend even more than the high prices detailed below for calls with loved ones in New Jersey county jails.

B. New Jersey Phone Rates and Commissions

15. Correctional facilities in New Jersey include 13 correctional facilities operated by the New Jersey Department of Corrections, 22 county correctional facilities, 11 county juvenile detention centers, a psychiatric Forensic Center, and 4 private correctional facilities.[15]

16. Upon information and belief, two companies operate in New Jersey state prisons and county jails: Global Tel*Link and Securus. All state facilities and many county jails in

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[12] *See Notice of Award: Inmate/Resident Telephone Control Service*, N.J. DEP'T OF TREASURY, DIV. OF PURCHASE & PROP. (last visited Mar. 21, 2014), http://www.state.nj.us/treasury/purchase/noa/contracts/t1934_05-x-32533.shtml.
[13] N.J. Dept. of Corr. Renewal Addendum, Contract 61618, Exhibit A: County Rate/Commission Matrix Options (Feb. 11, 2014) [hereinafter County Price Matrix] Ex. L.
[14] Letter from Timothy Miller, Reg'l Sales Manager, Global Tel*Link, to Phil Lisk, IT Dir., Bergen Cnty. Sheriff's Office (Feb, 25, 2014) Ex. O.
[15] MARIE VANNOSTRAND, NEW JERSEY JAIL POPULATION ANALYSIS 2 (2013), *available at* http://www.drugpolicy.org/sites/default/files/New_Jersey_Jail_Population_Analysis_March_2013.pdf; *Frequently Asked Questions*, N.J. DEP'T OF CORRS. (last visited Mar. 21, 2014), http://www.state.nj.us/corrections/pages/FAQ.html; *Ann Klein Forensic Center*, DEP'T OF HUMAN SERVS., DIV. OF MENTAL HEALTH SERVS. (last visited Mar. 30, 2014), http://www.state.nj.us/humanservices/dmhs/oshm/akfc/. This is not an exhaustive list of the correctional facilities in New Jersey. In other contexts, the BPU defines a correctional facility as "an institution, including a prison, jail, or detention center . . . which is dedicated to the treatment, rehabilitation or confinement of criminal offenders." N.J. ADMIN. CODE § 14:10-1.2 (2013). In its Order regulating phone rates from correctional facilities, the FCC defined a correctional facilities as including prisons, jails, and immigration detention facilities. Rates for Interstate Inmate Calling Services, 78 Fed. Reg. at 67,958.

New Jersey utilize Global Tel*Link to provide phone services, either through New Jersey State Contract No. 61618 (the state contract) or independently.[16] The state contract sets the phone rates and commission payment for state facilities and offers six options for phone rates and commission payments for counties to select.[17]

17. Commission payments are kickbacks that the counties receive from the phone companies for their business. Higher phone rates provide for higher commission payments, which create "reverse competition." This means that facilities are incentivized to choose the option that puts the most strain on incarcerated persons and their families, the captive market.

18. The state Department of Corrections contract provides a flat rate of 17 cents per minute for intra- and interstate calls. While this rate reflects a recent decrease simultaneous with the state's decision to stop accepting commissions from its inmate calling service (ICS) provider, Global Tel*Link, it remains higher than the "safe harbor rate" of 12 or 14 cents per minute recently set by the FCC as a rate that is presumptively fair and reasonable for interstate calls.[18] It is also significantly higher than the rate of 5 cents per minute that is available from New York state prisons.[19]

19. Most counties choose to select an option from the "County Price Matrix" offered to them through the state contract. Four counties—Bergen, Cape May, Passaic, and Salem—have negotiated contracts with phone companies independently.[20]

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[16] *See* County Price Matrix, *supra* note 13 (showing the options available to counties that opt into the state's contract with GTL); Bergen Cnty. Inmate Telephone Services Agreement with Inmate Telephone, Inc. (Oct. 2, 2008) [hereinafter Bergen Contract] Ex. N (documenting Bergen County's independent contract with a wholly owned subsidiary of GTL); *Notice of Award: Inmate/Resident Telephone Control Service*, *supra* note 12 (showing the State Department of Corrections' contract with GTL).

[17] *See* County Price Matrix, *supra* note 13.

[18] *See* Rates for Interstate Inmate Calling Services, 78 Fed. Reg. 67,964; *Notice of Award: Inmate/Resident Telephone Control Service*, *supra* note 16.

[19] *See* Notice to Friends and Family of New York State Inmates, *supra* note 1.

[20] Bergen Contract, *supra* note 16; Cape May Cnty. Contract with Securus Tech. (Mar. 26, 2013) Ex. P; Resolution Exercising the One-Year Option Contract Renewal with Securus Technologies, Inc. for Inmate Telephone and Jail Management Software for the Passaic County Jail (Feb. 26, 2013) (on file with the New York University Immigrant Rights Clinic); Salem Cnty. Inmate Telephone Service Contract with Securus Tech. (Dec. 7, 2011) (on file with the New York University Immigrant Rights Clinic).

20. Counties have variable rates for intrastate rates (including local, intraLATA, and interLATA rates) and all counties collect commissions on these calls.[21] The current state contract does not allow counties to eliminate commissions all together, though the state has done so.[22] Commissions create perverse incentives by encouraging the governments contracting with phone companies to choose high rates that allow the companies to pay high commissions rather than low rates that benefit consumers.[23]

21. For example, seven counties, including Middlesex, Monmouth, and Hudson Counties chose the option which allows them to collect a 55% commission payment. Essex County collects 54% commission. Bergen County, which has an independent contract with GTL, collects 60.5% commission. Note that every facility has declined to opt into the two state contract options which offer lower per-minute rates. One of these offers people in prison non-local intrastate calls for $0.10 per minute with a $1 surcharge and would give facilities a 15% commission payment, while the other offers non-local intrastate calls for $0.15 per minute with $1.25 surcharge and would provide facilities a 35% commission payment.[24]

22. These costs can impose a significant burden on New Jersey families. For example, petitioner Pauline Ndzie struggled to afford one call a week to her children in Newark while she was held in immigration detention in Hudson County Jail. She reports that her calls frequently dropped, causing her to pay an additional per-call surcharge and spend up to $25 on a fifteen-minute call.

23. The companies operating in the county and state facilities also charge various ancillary fees attached to the creation, maintenance, and closing of accounts and other related activities. For example, petitioner Lori Monteiro, a resident of Belleville, spends $50 a

[21] IntraLATA calls are within the same area code, and InterLATA calls are to a different area code within the state.
[22] *See* County Price Matrix, *supra* note 13.
[23] *See supra* ¶ 7.
[24] *See* County Price Matrix, *supra* note 13.

week to stay in touch with her partner in Southern State Penitentiary. She reports that GTL takes a 19% surcharge each time she adds money to her account.[25]

24. Essex County Correctional Facility has capacity for 800 immigrant detainees from Newark Immigration and Customs Enforcement (ICE) custody.[26] Essex County's contract with ICE prohibits the county from accepting commission on calls made by these detainees, yet Essex County has knowingly refused to comply with this provision by eliminating commissions.[27] Petitioner New Jersey Advocates for Immigrant Detainees has received numerous complaints about the high phone rates from immigrants held in Essex County Correctional Facility and other county jails in New Jersey that contract with ICE.

25. The chart below and Exhibit I contain data gathered by the New Jersey Advocates for Immigrant Detainees and LatinoJustice PRLDEF through the Open Public Records Act reflecting the phone rates in New Jersey state prisons and county jails. The data demonstrates how much a fifteen minute phone call costs from various New Jersey prisons and jails. This cost includes the price per minute as well as any initial per-call surcharge. These prices are not cost-based and a price cap would not harm phone companies' ability to return a reasonable profit.[28] Additionally, more reasonable calls will lead to increased use of phone services, which would increase billable phone minutes.[29]

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[25] Declaration of Lori Monteiro Ex. C, at ¶ 2.
[26] SEMUTEH FREEMAN & LAUREN MAJOR, NYU LAW IMMIGRANT RIGHTS CLINIC, IMMIGRATION INCARCERATION 17 (2012), *available at* http://www.afsc.org/sites/afsc.civicactions.net/files/documents/ImmigrationIncarceration2012.pdf.
[27] *Intergovernmental Service Agreement Between the U.S. Department of Homeland Security U.S. Immigration and Customs Enforcement Office of Enforcement and Removal Operations and Essex County* art. 24.D (on file with the New York University Law School Immigrant Rights Clinic; Letter from Alfaro Ortiz, Dir., Essex Cnty. Dep't of Corrs., to N.J. Advocates for Immigrant Detainees (Jan. 4, 2013) Ex. R.
[28] *See* Rates for Interstate Inmate Calling Services, 78 Fed. Reg. at 67,964 (establishing 12 and 14 cents per minute as conservative estimates of cost-based rates).
[29] *See id.*

New Jersey State and Selected County Phone Rates and Commissions

NJ Prison or County Jail Operator[30]	Commission[31]	Distance[32]	Current Cost of 15 Minute Call
Cape May	70.1%	In-State	$4.25
Bergen	60.5%	Intra LATA (in area code)	$4.80 (debit) $4.95 (collect)
		Inter LATA (out of area code)	$7.30 (debit) $7.50 (collect)
Atlantic, Burlington, Hunterdon, Mercer, Ocean, Union, & Warren	56%	Intra LATA	$5.50
		Inter LATA	$8.50
Hudson, Camden, Cumberland, Middlesex, Monmouth, Morris & Somerset	55%	Intra LATA	$4.75
		Inter LATA	$7.75
Essex & Sussex	54%	Intra LATA	$4.00 (debit) $4.20 (collect)
		Inter LATA	$5.50 (debit) $5.70 (collect)
Gloucester	53%	In-State	$4.50
Passaic & Salem	Passaic: 53% Salem: 50%	In-State	$4.25
State of NJ	none	Flat Rate	$2.85

26. Compare these rates to the FCC's determination that a fair and reasonable rate for a fifteen-minute *interstate* call is $1.80 for debit and $2.10 for collect.[33] A fifteen-minute call from any New York State Prison costs $0.72.[34] New York required its State Department of Corrections to negotiate a contract with the lowest possible rate and to eliminate commissions from prison phone contracts in 2007.[35] Alabama's charges are similarly lower—petitioner Sherin Makar reported that he paid less to speak with his family in New Jersey while incarcerated in Alabama than he did from a county jail in state.

[30] Jails in Bergen, Essex, and Hudson Counties currently have capacity for 194, 800, and 450 ICE detainees respectively. They hold those detainees in addition to people in criminal custody.
[31] Phone companies agree, as part of their contracts with counties to operate in their jails, to pay a commission. The commission is a percentage of the company's revenue from calls from that jail, which the company pays to the county.
[32] Intra LATA rates are for non-local calls within an area code, that is, those with a different prefix number but the same area code. Inter LATA rates are for intrastate calls in a different area code.
[33] *Id.*
[34] Notice to Friends and Family of New York State Inmates, *supra* note 1.
[35] *Id.*

C. Statutory Authority to Provide Relief

27. While the FCC has capped interstate rates from prisons and jails across the country, it is the prerogative of the New Jersey BPU to regulate rates within the state of New Jersey. BPU regulation would complement the steps taken by the FCC and avoid the current anomalous situation where a fifteen-minute intrastate call from some New Jersey county jails is $5.35 more expensive than an interstate call of the same length from the same jail.[36]

28. While the Legislature has deregulated some telecommunications services in New Jersey, the BPU retains the authority to regulate the rates charged by Securus, Global Tel*Link, and any other ICS provider operating in the state because these companies are alternate operator services (AOS) providers.[37]

29. An AOS provider is "a carrier that leases lines from a [local exchange carrier] and/or an [interexchange carrier], and uses the leased lines and its own operators to provide operator-assisted services for intrastate calls."[38] In 1995 the Legislature recognized that "where a captive market exists for competitive telecommunications services, market conditions are not always able to protect the public interest."[39] For this reason, the Legislature gave the BPU express authority to regulate AOS rates.[40] In doing so, the Legislature recognized the necessity of rate regulation to protect against gouging by AOS providers who provided pay phones at places like hotels and hospitals, and paid commissions to those locations,

30. Upon information and belief, ICS providers like Securus and Global Tel*Link provide operator-assisted services that allow consumers to either make collect calls or to pay for their calls using a debit account. These companies are not facilities-based but rather lease lines and/or use internet protocol (IP) technology.

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[36] *See* County Price Matrix, *supra* note 13.
[37] *See* N.J.SA. § 48:2-21.23.
[38] N.J.A.C. § 14:10-1.2.
[39] N.J. S.A. § 48:2-21.22.
[40] *Id.* § 48:2-21.22–23.

31. The market structure of the prison and jail phone industry illustrates the problem the New Jersey Legislature sought to address when it gave the BPU the authority to regulate AOS providers in 1995. People held in prisons and jails in New Jersey are the quintessential captive market. Every correctional facility in the State allows only one company to provide telephone services. Therefore, users must choose between paying that company's rates or forgoing communication with their families and loved ones.[41]

32. Additionally, phone companies pay commissions to counties in order to operate in their correctional facilities.[42] This creates the exact type of reverse competition that the Legislature believed undermined its decision to deregulate competitive telecommunications services.[43]

33. Reverse competition exists when the entity that contracts with a phone company – in this case county governments – receives a share of the profit rather than offering the lowest possible cost to the consumer.[44] Instead of providing the lowest prices for users, county governments are incentivized to select the highest calling rates to collect the greatest amount of commission.[45] In allowing the BPU to regulate AOS providers, the New Jersey Legislature sought to minimize the negative impact of reverse competition on the consumers..[46]

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[41] *See* Letter from Alfaro Ortiz, *supra* note 27 ("All detainees and inmates, as well as those outside the facility, are made aware of all costs associated with services provided at the facility and have free choice whether to avail themselves of these services.").

[42] For example, seven counties receive a 56% commission on intrastate calls and seven more receive 55% commission. Bergen County receives 60.5% commission on intrastate calls. *See supra* text accompanying notes 30–32.

[43] *See* N.J.S.A. § 48:2-21.22 (identifying the payment of commissions to host sites as a hallmark of AOS providers).

[44] *See* Rates for Interstate Inmate Caling Services, 78 Fed. Reg. at 67,961.

[45] *See* Verizon Comment on WC Docket No. 12-375 at 2 ("[T]he competition for the contract tends to revolve around the commission percentage that the bidder is willing to pay the DOC.").

[46] *See id.*

34. In 2013, the Legislature reaffirmed its commitment to BPU regulation of AOS providers. A. 4159, which took effect on January 17, 2014, ***requires*** (rather than simply allows) the BPU to regulate not only AOS rates but also the terms and conditions of their service.[47]

35. Currently, AOS rates are capped at $5.25 for a five-minute call and $1.15 for each additional minute.[48] However, those caps have not been revisited since 2008. At least in the context of ICS providers, these caps are far higher than necessary to reflect the cost of providing the relevant service. For example, the FCC determined that in light of provider costs, $0.60 or $0.70 is a presumptively reasonable rate for a five-minute call.[49]

36. Despite this finding, New Jersey families pay vastly disparate rates depending on whether their family member is incarcerated in a state or county facility.[50] The existing caps do not provide sufficient protection for consumers from arbitrarily high rates in county jails - due to commissions - and therefore regulatory intervention is necessary to address this market failure.

37. Alternatively, if the BPU does not determine that ICS providers are AOS providers, it still has the authority to regulate their rates. The BPU should determine that the inmate calling services that Securus and Global Tel*Link provide are not competitive and therefore should be subject to rate regulation.[51]

38. Currently, there are not enough competitors in the ICS market in New Jersey to make these services offered at a competitive price.[52] On information and belief, only two ICS

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[47] P.L. 2013, c. 278.
[48] N.J.A.. § 14:10-6.4; Board of Public Utilities, Alternate Operator Services Maximum Rates (2008), *available at* http://www.bpu.state.nj.us/bpu/pdf/telecopdfs/njac_rates.pdf.
[49] Rates for Interstate Inmate Calling Services, 78 Fed. Reg. at 67,964.
[50] *See supra* Section I.B..
[51] *See* N.J.S.A. § 48:2-21.19.
[52] *See In re Bell-Atlantic New Jersey, Inc.*, 776 A.2d 926, 934 (N.J. Super. Ct. App. Div. 2001) (noting that the BPU looked to existence of a sufficient number of competitors to determine whether a service was competitive and finding that an industry with "several competitors" was sufficiently competitive).

companies operate in New Jersey, which is too few to constitute a competitive market.[53] Even more importantly, each correctional facility only contracts with a single provider, and therefore there is no competition at all for any given consumer's business. It can certainly not be said that "like or substitute . . . services are readily available" to customers.[54]

39. The competition that does exist during the bidding process for a contract does not serve the function the Legislature intended when it found that in some markets competition obviates the need for utility regulation.[55] The "consumers" of these contracts are the government entities that operate correctional facilities. These entities do not pay the rates charged for the phone services but rather, in most cases, receive a share of the phone companies' profits. Therefore, this competition drives rates up, rather than down, and should not be considered competition within the meaning of N.J.S.A. § 48:2-21.16.

40. For example, New Jersey counties have the opportunity to "opt-in" to the state Department of Corrections' contract with Global Tel*Link and select from six separate options on the County Price Matrix.[56] No county has chosen either option 5 or 6, which provide the lowest rates. Clearly, the competition that exists in this market is insufficient to "protect the public interest."[57] Therefore, the BPU should reclassify telephone services from prisons and jails as uncompetitive pursuant to N.J.S.A. § 48:2-21.19 and assume the authority to regulate their rates.

III. Discussion

A. Intrastate Phone Rates From New Jersey Prisons and Jails Do Not Reflect the Cost of Providing the Service

[53] *Cf. In the Matter of the Board Investigation Regarding the Reclassification of Incumbent Local Exchange Carrier (ILEC) Services as Competitive*, No. TX07110873, 2008 WL 87385686, at * (N.J. Bd. Reg. Com. Aug. 20, 2008) (finding evidence of sufficient competition when over 100 competitors existed).
[54] *See id.*
[55] N.J.S.A. § 48:2-21.16.
[56] *See* County Price Matrix, *supra* note 13.
[57] *See* N.J.S.A. § 48:2-21.16.

41. Intrastate prison and jail phone rates in New Jersey far exceed the costs to the phone companies of providing the service, even when compared to the cost of providing long distance calls. A 2007 cost study surveying seven ICS providers found that the cost of interstate debit calls averaged $0.16 per minute (or $2.40 for a fifteen-minute call) and the cost of interstate collect calls averaged $0.25 per minute (or $3.75 for a fifteen-minute call).[58] In 2012, Securus, one of the phone companies that operates in New Jersey, reported that the average cost of an interstate call was $0.12 ($1.80 for a fifteen-minute call) per minute *with commission* and only $0.04 ($0.60 for a fifteen-minute call) per minute *without commission.*[59]

42. Based on the higher prices phone companies normally charge for out of state calls, the costs to the companies of placing an intrastate call are presumably lower or the same as interstate costs. Yet incarcerated people, immigrant detainees, and their loved ones pay up to $8.50 for a fifteen-minute intrastate call.[60] In the New Jersey counties that contract with Securus, a fifteen minute local call (which is the smallest billing increment) costs $4.25—far exceeding the company's self-reported costs for interstate calls to anywhere in the country.[61] The costs of providing inmate calling services cannot justify the exorbitant rates that providers charge consumers.

43. Technological advances are decreasing costs to ICS providers. The move to Internet Protocol (IP) technology, the use of automated operator systems, and decreasing telecommunications costs all allow phone companies to reduce the costs of calls from correctional facilities.[62] Video conferencing and other internet-based communication systems could be available at increasingly low costs.[63] Only site commissions, a major driver of ICS costs, have increased over the last ten years.[64]

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[58] Rates for Interstate Inmate Calling Services, 78 Fed. Reg. at 67,959
[59] *Id.*
[60] *See* Chart of Current Rates in New Jersey Prisons and Jails Ex. K.
[61] *Id.*
[62] Rates for Interstate Inmate Calling Services, 78 Fed. Reg. at 67,960.
[63] *See id.* ("As one smaller ICS provider stated, '[g]iven modern-day technology, the costs for providing secure phone and video services to correctional facilities are low (and are getting lower).'").
[64] *Id.*

44. New York barred its Department of Corrections from receiving commissions in excess of the cost of operating its phone system. The Department is required to provide the lowest possible cost to the user when contracting with an ICS provider.[65] As a result, the cost of calls from New York state prisons is $0.048 per minute, or $0.72 for a fifteen-minute call.[66]

B. People in County Jails Are Subject to Especially Egregious Phone Rates

45. As described in Section I.B above, phone rates from county jails vary dramatically and are far higher than rates from state prisons. On any given day, facilities within the New Jersey County Jail System house about 15,000 people.[67] Three privately-run facilities also hold people in the custody of the New Jersey County Jail System and State Corrections System.[68] Delaney Hall in Newark has 1,196 beds, Albert "Bo" Robinson Treatment Center in Trenton has 900 beds, and Logan Hall in Newark has 644 beds.[69] These people face the inexplicable result of paying up to $5.65 more for a fifteen-minute call than they would if they were housed in a state prison.[70]

46. This disparity is especially shocking given that only 16% of the county jail population has been convicted and sentenced for a crime.[71] In contrast, 73.3% of the county jail population has not been convicted and is merely awaiting trial.[72]

47. Individuals awaiting trial in Municipal Court remain in county jails for an average of 89 days.[73] The vast majority of the pretrial population remains in custody an average of 189 days while their grand jury is pending, 314 days while their trial is pending, and 324 while their sentence is pending.[74] Despite not having been convicted of a crime,

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[65] N.Y. Corr. L. § 623.
[66] Notice to Friends and Families of New York State Inmates, *supra* note 1
[67] VANNOSTRAND, *supra* note 15, at 2.
[68] *Id.*
[69] *Id.*
[70] *See* Chart of Current Rates in New Jersey Prisons and Jails Ex. K.
[71] VANNOSTRAND, *supra* note 15, at 11.
[72] *Id.*
[73] VANNOSTRAND, *supra* note 15, at 11.
[74] *Id.* at 12.

individuals awaiting trial spend significant time in county jails, where they and their families confront unjustifiably high phone rates.

C. High Phone Rates Lead to Increased Recidivism and Interfere with Access to Justice

48. High intrastate phone rates are especially problematic because decreased contact between families and their incarcerated loved ones can have detrimental effects. A 2003 review of ten studies from the 1980s and 1990s found that "stronger ties between inmates and families and close friends during incarceration led to better postrelease outcomes. Prisoners who experienced more family contact . . . experienced lower recidivism rates and greater post release success."[75] Another researcher reported that the "family ties-lower recidivism relationship has been consistent across study populations, different periods of time, and different methodological procedures."[76] Similarly, a report in 2006 observed a "remarkably consistent association" over 50 years "between family contact during incarceration and lower recidivism rates."[77]

49. Decreased communication between a child and an incarcerated parent can also be detrimental for the child, who may feel alienated or abandoned. In 2007, fifty-two percent of people held in state custody nationwide had children under the age of 18.[78]

50. For example, Petitioner Pauline Ndzie could only afford to call her three young children once a week while she was detained, which was especially troubling because visiting hours at Hudson County Jail conflicted with school hours.[79] Petitioner Crystal Gibson could barely afford Christmas gifts for her six-year-old child because of the cost of

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[75] Christy A. Visher & Jeremy Travis, *Transitions From Prison to Community: Understanding Individual Pathways*, 29 ANN. REV. SOC. 89, 100 (2003).
[76] Creasie Finney Hairston, *Family Ties During Imprisonment: Important to Whom and for What?*, 19 J. SOC. & SOC. WELFARE 87, (1991).
[77] Rebecca L. Naser & Christy A. Visher, *Family Members' Experiences with Incarceration and Reentry*, 7 W. CRIMINOLOGY REV. 20, 21 (2006).
[78] LAUREN E. GLAZE & LAURA M. MARUSCHAK, BUREAU OF JUST. STATS., PARENTS IN PRISON AND THEIR MINOR CHILDREN 1 (2008), *available at* http://www.bjs.gov/content/pub/pdf/pptmc.pdf.
[79] Declaration of Pauline Ndzie Ex. D, at ¶¶ 3–4.

calling her fiancé, and her child suffered from not being able to speak to his father figure.[80]

51. Studies also note the benefits that increased contact with loved ones has on incarcerated individuals: incarcerated who keep in touch with their families are less likely to pose problems to correctional staff and other inmates.[81] High phone rates diminish these cost-saving benefits.

52. High rates can also have a detrimental impact on access to justice for persons in the midst of their criminal court cases. For example, petitioner Jean Ross, an attorney who represents many incarcerated persons with the Prisoner Initiative Project, spends $100-$250 per month on contact with her clients.[82] The high cost of phone calls makes it difficult for her to be available to her clients, and she often has to limit the time she spends on the phone with them, even when they are struggling with difficult issues.[83]
53. By straining the ability of attorneys to interact with their clients, excessively high telephone rates undermine low income individuals' access to justice.

D. High Phone Rates Impose Additional Hardships on Immigrant Detainees

54. Immigrant detainees are particularly vulnerable to the high cost of prison phone rates. They are so vulnerable that the Newark Field Office of Immigration and Customs Enforcement (ICE) included in their contract with Essex County a stipulation that immigrant detainees not be charged for commissions. Essex County has ignored this provision.[84]

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[80] Declaration of Crystal Gibson Ex. A, at ¶¶ 5–6.
[81] U.S. DEP'T OF JUSTICE, OFFICE OF THE INSPECTOR GEN., CRIMINAL CALLS: A REVIEW OF THE BUREAU OF PRISONS' MANAGEMENT OF INMATE TELEPHONE PRIVILEGES, Ch. II n.6 (1999), *available at* http://www.usdoj.gov/oig/special/9908/.
[82] Declaration of Jean Ross Ex. E, at ¶ 6.
[83] *Id.* at ¶ 8.
[84] *See supra* note 27 and accompanying text.

55. New Jersey has approximately 2,200 beds for immigrant detainees in private and county correctional facilities. Essex County's contract with Newark ICE provides 800 beds in the Essex County Correctional Facility and an additional 450 beds in the privately-run Delaney Hall.[85] Hudson County contracts with ICE's New York field office to provide 450 beds, while Bergen County provides 194 beds.[86] Elizabeth Detention Center, which is owned by the Corrections Corporation of America (CCA), can house 300 immigrants facing immigration proceedings in New Jersey.[87]

56. Unlike individuals who are held on criminal charges, people facing immigration charges are considered "civil" detainees, and may be held without bail, and can be incarcerated with no clear endpoint to their detention.[88] In November and December 2012, detainees in New Jersey spent an average of 62 days in detention.[89] Among states with at least 250 individuals leaving ICE custody, detainees in New Jersey had spent the fifth longest average number of days in detention.[90] Seven percent of detainees were detained for over six months (180 days).[91] Given how easy it is for them to be brought into the detention system and how difficult it may be to get out, it is particularly important for immigrant detainees to keep in touch with their families and the outside world.

57. The especially high phone rates in the county jails that house detainees also impact immigrants' abilities to pursue their legal cases. Since immigrants in deportation proceedings do not have a right to government-appointed counsel, many immigrant

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[85] FREEMAN & MAJOR, *supra* note 26, at 11.
[86] LINDSAY CURCIO ET. AL., DETENTION WATCH NETWORK, EXPOSE & CLOSE: HUDSON COUNTY JAIL, NEW JERSEY 2 (2012), *available at* http://www.detentionwatchnetwork.org/sites/detentionwatchnetwork.org/files/ExposeClose/Expose-Hudson11-13.pdf; Monsy Alvarado, *More Immigrant Detainees To Be Housed in Bergen Lockup*, THE BERGEN RECORD (May 4, 2013), http://www.northjersey.com/news/206069191_More_immigrant_detainees_to_be_housed_in_Bergen_lockup.html.
[87] Immigration and Customs Enforcement and Corr. Corp. of America, Contract for Comprehensive Secure Detention Services, Elizabeth, NJ (March 3, 2010) (on file with NYU Immigrant Rights Clinic).
[88] *See* 8 U.S.C. § 1226(a) (providing authority to detain potentially any noncitizen); § 1226(c)(2); *Demore v. Kim*, 538 U.S. 510, 532 (2003) (Kennedy, J., concurring) (holding that detention of noncitizens may be continued for an indeterminate length of time so long as it is not "unreasonable" or "unjustified").
[89] TRANSACTIONAL RECORDS ACCESS CLEARINGHOUSE, SYRACUSE UNIV., LEGAL NONCITIZENS RECEIVE LONGEST ICE DETENTION (2013), *available at* http://trac.syr.edu/immigration/reports/321/.
[90] *Id.*
[91] *Id.*

detainees represent themselves *pro se*. In fact, as of 2011, 83% of detained immigrants were unrepresented.[92]

58. Frequently, lawful permanent residents may be eligible for cancellation of removal, a discretionary form of relief from deportation that requires the immigration judge to determine the immigrant's good moral character and the hardship their deportation would cause to her family.[93] To support this type of application, a detainee would need access to reasonable intrastate phone rates in order to contact family, friends, employers, and schools within the state. This contact allows a detainee to gather documentation of the positive equities of her case to present to the immigration judge. The currently prohibitive intrastate phone rates prevent detainees from meaningful access to their records and evidence.

59. Petitioner Sherin Makar, for example, faced immigration detention for three years while he navigated the immigration system seeking refuge from persecution and torture. Mr. Makar reports that without the help of a pastor who raised money to support his case, he would not have been able to reach his immigration lawyer by phone and would likely have faced deportation to Egypt.[94]

E. High Phone Rates Disproportionately Impact African American and Latino Families in New Jersey.

60. In total, the state Department of Corrections (DOC) houses 22,000 inmates in its eight adult male correctional facilities, three youth facilities, and one women's facility.[95] The median sentence incarcerated individuals face in DOC facilities is six years, and 46% are

[92] *Improving Efficiency and Ensuring Justice in the Immigration Court System: Hearing Before the Senate Committee on the Judiciary*, 112th Cong. 1 (2011) (testimony of the American Immigration Lawyers Assoc.), *available at* http://www.aila.org/content/default.aspx?docid=38020.
[93] 8 U.S.C. § 1229(b).
[94] Declaration of Sherin Makar Ex. B, at ¶¶ 2, 6.
[95] *Frequently Asked Questions*, *supra* note 15.

serving sentences of one to five years.[96] As of January 2012, 61% of people housed in DOC facilities were African American, 22% were White, and 16% were Latino.[97]

61. While the state Department of Corrections did renegotiate its contract with Global Tel*Link in February 2014 and eliminated commissions, the loved ones of people incarcerated in state-operated facilities still pay $2.55 for a fifteen-minute call, in addition to other ancillary charges levied by the phone company in order to maintain the necessary account to receive those calls.[98] As the statistics above illustrate, New Jersey African American and Latino families pay an unfair share of these high costs.

62. The families of people housed in New Jersey county jails pay the highest intrastate phone rates, as high as $8.50, described above. This applies even to the families of the 73.3% of persons in these jails who have not been convicted. As of October 2012, 71% of these people were either African American or Latino.[99] One justification that counties provide for some of these rates is budget balancing, but this is done at the expense of the most vulnerable minority New Jersey residents.

63. Petitioner Rhonda Williams, who is African American, describes how she and her mother only speak to her brother once a month because of high rates.[100] Neither has seen her brother in two years because her mother is physically disabled.[101] Their family carries the heavy burden of the exorbitant rates with each passing year and feels exploited by the phone companies.

64. Without action, the BPU will leave New Jersey families, especially those from impoverished African American and Latino communities, vulnerable to exploitation and corporate price gouging.

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[96] *Id.*
[97] *Id.*
[98] *See supra* Section I.B.
[99] VANNOSTRAND, *supra* note 15, at 9.
[100] Declaration of Rhonda Williams, Ex. G, at ¶ 4.
[101] *Id.* at ¶ 3.

IV. Relief Sought

65. Petitioners request that the BPU exercises its jurisdiction to limit the rates, terms, and conditions imposed by intrastate ICS providers to "just and reasonable rates", not to exceed $0.05 per minute, for incarcerated people, detainees, and their families in both state and county prisons and jails.[102]

66. Petitioners request that the BPU hold regional public hearings to gather further public input on this proposal. The BPU should take into account the existence of technology and the rates available in other states when setting just and reasonable rates that reflect the costs of providing phone services in New Jersey prisons and jails. Just and reasonable rates should not exceed the approximate rate for all calls from neighboring state prisons.[103]

Date:

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[102] *See* N.J.S.A. § 48:2-21(b).
[103] Notice to Friends and Family of New York State Inmates, *supra* note 1.

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