Baldwin County Commission

Work Session Meeting Agenda
Monday, October 18, 2021
8:30 AM

Baldwin County Foley Satellite Courthouse
Large Meeting Hall
201 East Section Avenue
Foley, Alabama 36535

Regular Meeting Agenda
Tuesday, October 19, 2021
8:30 AM

Baldwin County Fairhope Satellite Courthouse
County Commission Meeting Chambers – 2nd Floor
1100 Fairhope Avenue
Fairhope, Alabama 36532

District 1 – Commissioner James E. Ball
District 2 – Commissioner Joe Davis, III
District 3 – Commissioner Billie Jo Underwood
District 4 – Commissioner Charles F. Gruber
Wayne A. Dyess, County Administrator

Public hearings commence at 8:30 AM.

All individuals wishing to speak must fill out a speaking request form. Speakers are asked to limit comments to 3 minutes. Groups are asked to select a spokesperson to speak on behalf of the group with time allotted to the spokesperson being limited to 5 minutes.

Supporting documentation for the agenda can be viewed in the File ID link of each item. Revisions to agenda items or supporting documentation made after the initial publication are denoted by an asterisk.

The public may submit comments or questions to the County Commissioners by email or by telephone at 251.937.0264.

Dist. 1 - jeb.ball@baldwincountyal.gov
Dist. 2 - joe.davis@baldwincountyal.gov
Dist. 3 - bunderwood@baldwincountyal.gov
Dist. 4 - cgruber@baldwincountyal.gov

WELCOME BY CHAIRMAN, INVOCATION AND PLEDGE OF ALLEGIANCE

A ADOPTION OF MINUTES

October 5, 2021, Regular Meeting

B ACTION ITEMS

BA ADMINISTRATION

BA1 *City of Fairhope - Annexation Notification **22-0077**

BA2 City of Fairhope - Annexation Notification **22-0105**

BA3 Revision of County Take Home Vehicle List - October 2021 **22-0091**

BC ARCHIVES AND HISTORY

BC1 Resolution #2022-011 - Appropriation from the Historic Parks Fund to Bicentennial Park for the Christmas at Bicentennial Park Event December 17-18, 2021 **22-0109**

BE BUDGET/PURCHASING

BE1 Amendment to Contract for Competitive Bid #WG20-28 - Provision of Installation, Service and Operation of Inmate Telephone and Video Visitation Services for the Baldwin County Sheriff's Office **22-0116**

BE2	Competitive Bid #WG21-46 - Provision of Alternate Daily Cover Material for the Baldwin County Commission	**22-0086**
BE3	Competitive Bid #WG21-47 - Provision of Bituminous Materials for the Baldwin County Commission	**22-0110**
BE4	Competitive Bid #WG21-48A - Provision of Labor and Equipment for Asphalt Placement for the Baldwin County Commission	**22-0071**
BE5	Competitive Bid #WG22-01 - On-Call Fiber Optic Installation and Repair Services for the Baldwin County Commission	**22-0072**
BE6	Competitive Bid #WG22-02 - Provision of Police Vehicle Equipment (Brake Rotors/Pads) for the Baldwin County Commission	**22-0081**
BE7	Competitive Bid #WG22-03 - Provision of Fire Protection Services (Extinguishers) for the Baldwin County Commission	**22-0083**
BE8	Competitive Bid #WG22-04 - Annual Rental of Portable Toilets for the Baldwin County Commission	**22-0084**
BE9	Quotes for Prescribed Burn of 77 Acres within Bon Secour Dredge Site, Bon Secour, Alabama, for the Baldwin County Commission	**22-0097**
BE10	Request of Proposals (RFP) for Baldwin County Emergency Management Software	**22-0080**
BH	**COMMUNICATIONS/INFORMATION SYSTEMS (CIS)**	
BH1	Microsoft Volume Licensing Agreement	**22-0064**
BJ	**ELECTED OFFICIALS**	
BJ1	Renewal Amendment to IncomeWorks Software License Agreement	**22-0048**
BL	**ENVIRONMENTAL MANAGEMENT**	
BL1	Amendment to Lease Agreement with Mullek Farms for Farmland at Magnolia Landfill	**22-0011**
BL2	*Approval of Renewal Application for Certificate of Exception from Garbage Pick-Up	**22-0112**
BL3	Baldwin County Solid Waste Uncollectible Residential Accounts - October 2021	**22-0061**
BL4	Resolution #2022-010 - Fiscal Year 2022 Solid Waste Budget Adjustment	**22-0108**
BM	**FINANCE AND ACCOUNTING**	

BM1	Allocation of American Rescue Plan Act (ARPA) Funds	**22-0076**
BM2	Association of County Commissions of Alabama (ACCA) Workers' Compensation Longevity Bonus	**22-0094**
BN	**HIGHWAY**	
BN1	Alabama Gulf Coast Recovery Council, State Expenditure Plan #11 - Lillian Park Beach Habitat and Shoreline Protection Project - Permission to Advertise for Professional Services for Engineering/Environmental Services for Design	**22-0073**
BN2	County Road 20 Extension from South Hickory Street to County Road 65 - Engineering and Survey Services Fee Increase	**22-0095**
BN3	County Road 99 Shoulder Widening from County Road 91 to Carrier Drive - Resolution #2022-006 and Preliminary Engineering/Construction Funding Agreement	**22-0090**
BN4	Funding Agreements with Alabama Department of Transportation for Preliminary Engineering and Construction of Austin Road Extension Project	**22-0089**
BN5	Goodwyn, Mills & Cawood, Inc. - Standard On-Call Contract for Professional Services - Consent to Assignment of Contract	**22-0115**
BN6	Request for Qualifications (RFQ) for an Investment Grade Traffic Study for the Baldwin Beach Express II from Interstate 10 to Interstate 65	**22-0104**
BN7	Resolution #2022-012 - Fiscal Year 2021 Year End Budget Amendment	**22-0114**
BN8	Speed Limits on Various Roads	**22-0069**
BQ	**PERSONNEL**	
BQ1	Coroner's Office - Position Changes	**22-0099**
BQ2	Highway Department (Foley) - Promotion of Employee	**22-0100**
BQ3	Parks Department - Employment of Two (2) Landscape Technician I Positions	**22-0101**
BQ4	Planning and Zoning Department - Employment of One (1) Planning Technician Position	**22-0102**
BR	**PLANNING AND ZONING**	
BR1	Baldwin County Planning and Zoning Commission - Board Appointment(s)	**22-0113**

C PRESENTATIONS

CA GENERAL

CA1 Resolution #2022-005 in Recognition of Judge Julian B. “Buddy” Brackin, Jr.’s Retirement **22-0066**

D PUBLIC HEARINGS

DA ADMINISTRATION

DA1 Case No. LV-21003 - Alcohol License Application for Dolgencorp LLC d/b/a Dollar General Store #22287 (Whitehouse Fork, Bay Minette) **22-0030**

DA2 Case No. LV-21005 - Alcohol License Application for Tawana Jean Brantley d/b/a Boatyard Bait and Tackle **22-0078**

E COMMITTEE REPORTS

EA FINANCE/ADMINISTRATION DIVISION

EA1 Payment of Bills **22-0107**

EA2 Notification of Interim Payments Approved by Clerk/Treasurer as Allowed Under Policy 8.1 **22-0106**

F DISCUSSION ITEMS

G COMMISSIONER REQUESTS

H ADDENDA

HA1 Annual Leave Rollover **22-0111**

HA2 Request for Leave of Absence - Probate Office **22-0124**

HA3 Competitive Bid #WG22-05 - Purchase of One (1) New 2021 Ford Expedition XLT 4X4 or Equivalent for the Baldwin County Commission **22-0131**

HA4 Baldwin County Solid Waste Gas-to-Energy Project Located at Magnolia Sanitary Landfill **22-0133**

HA5 Request for Mileage Reimbursement **22-0134**

HA6 National Association of Realtors Level 2 Smart Growth Grant Request **22-0135**

I ADMINISTRATIVE REPORT

J COUNTY ATTORNEY'S REPORT

K PUBLIC COMMENTS

L PRESS QUESTIONS

M COMMISSIONER COMMENTS

N ADJOURNMENT

Baldwin County Commission

Agenda Action Form

File #: 22-0077, **Version:** 2 **Item #:** BA1

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: Replacement
From: Wayne Dyess, County Administrator
Submitted by: Michelle Howard, Commission Executive Assistant

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ITEM TITLE
*City of Fairhope - Annexation Notification

STAFF RECOMMENDATION
Authorize placement of the City of Fairhope's Annexation Ordinance No. 1726, annexing property into the corporate limits of the City of Fairhope, Alabama, into the minutes of the October 19, 2021, Baldwin County Commission meeting with proper notification to the following departments/organizations:

Baldwin County Commission Departments
Baldwin County Commission
Building Inspection Department
Communications/Information Systems Department
Environmental Management/Solid Waste Department
Highway Department
Planning and Zoning Department

Elected Officials
Baldwin County Revenue Commission
Baldwin County Sheriff's Office

Other Agencies
Board of Registrars Office
Emergency 911
South Alabama Regional Planning Commission

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: Reason for replacement item: Staff Recommendation revised to remove Fairhope's Annexation Ordinance No. 1725 due to a scrivener's error in the documents submitted by the City of

Fairhope. The City of Fairhope will resubmit the corrected documents to the County. The City of Fairhope has submitted a copy of Ordinance No. 1726, an ordinance for annexation of certain properties into the corporate limits of the City of Fairhope, Alabama, to be made part of the record of the Baldwin County Commission regular meeting on October 19, 2021.

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Commission Administration

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Administration - Mail correspondence to:

The Honorable Sherry Sullivan, Mayor
City of Fairhope
Attention: Lisa Hanks, City Clerk
Post Office Drawer 429
Fairhope, Alabama 36533

Memo to various departments/organizations

Additional instructions/notes: N/A

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From: Lisa A. Hanks, MMC <Lisa.Hanks@fairhopeal.gov>
Sent: Monday, September 20, 2021 2:07 PM
To: Lisa A. Hanks, MMC <Lisa.Hanks@fairhopeal.gov>
Subject: Ordinance No. 1725 and No. 1726 - Annexations of segments of Main Street and Nelson Drive

This message has originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Attached please find Ordinance No. 1725 and No. 1726 - Annexations of segments of Main Street and Nelson Drive. These will be published on September 29, 2021 and still need to be recorded.

Thank you,

Lisa A. Hanks, MMC City Clerk
City of Fairhope
P. O. Drawer 429 Fairhope, AL 36533 251-928-2136
251-990-0107 (Fax)

BALDWIN COUNTY, ALABAMA
HARRY D'OLIVE, JR. PROBATE JUDGE
Filed/cert. 9/24/2021 3:51 PM
TOTAL $ 28.00
6 Pages

1946515

ORDINANCE NO. 1726

AN ORDINANCE TO APPROVE THE ANNEXATION OF TERRITORY WITHIN THE CITY LIMITS OF THE CITY OF FAIRHOPE, ALABAMA (BALDWIN COUNTY COMMISSION)

WHEREAS, Main Street, also known as County Road 98 Scenic Route, from State Highway 104 north approximately 1,200 feet (hereinafter "Main Street"), is a road or road segment inside the corporate limit of the City of Fairhope; and

WHEREAS, Main Street includes all improvements within the right-of-way such as, but not limited to, the road, drainage structures, signs, trails, sidewalks, etc.; and

WHEREAS, an accurate description of Main Street, together with a map thereof showing its relationship to the corporate limits of the City of Fairhope, is attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, the portion of Main Street that is not already the responsibility of the City of Fairhope has been County-maintained for a period of at least one (1) year prior to the effective date of this instrument; and

WHEREAS, Main Street is located within the City of Fairhope but responsibility is vested in the County; and

WHEREAS, the City of Fairhope desires to annex and assume responsibility for Main Street, to the extent it is not already maintaining portions thereof, in order to facilitate the orderly development and maintenance of this area and its corporate limits; and

WHEREAS, in order to accomplish the City of Fairhope's desire to annex and assume responsibility for Main Street in accordance with *Code of Alabama*, §11-49-80(b), (c) and (d), the Baldwin County Commission passed a resolution on August 3, 2021, authorizing the annexation and transfer of responsibility for Main Street to the City of Fairhope, a copy of which is attached hereto as Exhibit "B"; and

WHEREAS, said resolution did petition the City of Fairhope for annexation and contained the signature of the owner of the described territory and a map of Main Street showing its relationship to the corporate limits of the City of Fairhope; and

WHEREAS, the City Council of the City of Fairhope has determined that it is in the public interest that Main Street be annexed into the City of Fairhope and that all legal requirements for annexing Main Street have been met pursuant to *Code of Alabama*, §§11-42-20 to 24.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF FAIRHOPE, ALABAMA, AS FOLLOWS:

Section 1. The City Council of the City of Fairhope, Alabama, finds and declares as the legislative body thereof that it is in the best interest of the citizens of the City, and the citizens of the affected area, to annex and bring the territory described herein as Main Street into the corporate limits of the City of Fairhope, and to assume responsibility for those portions of Main Street, if any, that are already within the corporate limits of the City of Fairhope pursuant to *Code of Alabama*, §§11-49-80(b), (c) and (d), and 11-42-20 to 24.

Section 2. The boundary lines of the City of Fairhope, Alabama, be, and the same are hereby altered or rearranged so as to include all of the territory heretofore encompassed by the corporate limits of the City of Fairhope, Alabama, and in addition thereto the following described territory, to-wit:

A part of the Southwest Quarter of Section 5, Township 6 South, Range 2 East and part of Grant Section 8, Township 6 South, Range 2 East, Baldwin County, Alabama and being more fully described as follows:

It is the intent to convey unto the City of Fairhope, Alabama, any and all right and title to that portion of the right-of-way owned and maintained by Baldwin County along Main Street, also known as County Road 98 Scenic Route, formerly known as U. S. Highway 98, State Route 42 and State Route 104, beginning at the current west right-of-way line of State Route 104 running north approximately 1,200 feet. Including all improvements within the right-of-way such as, but not limited to the road, drainage structures, signs, trails, sidewalks, etc. Said right-of-way being quitclaimed is part of property conveyed in Deed Book 24 at page 619 and Deed Book 65 at page 106. It is also the intent to convey any and all prescriptive right-of-way that Baldwin County, Alabama may own.

Subject to any reservations, restrictions, exceptions, and encumbrances of record.

Section 3. The territory described in this ordinance shall become a part of and lie within the corporate limits of the City of Fairhope, Alabama, upon publication of this ordinance.

Section 4. To the extent that portions of Main Street, if any, are already within the corporate limits of the City of Fairhope, but responsibility is vested in the County, the City of Fairhope hereby assumes responsibility of said portions of Main Street pursuant to *Code of Alabama*, §11-49-80(b), in addition to their annexation or re-annexation as described herein. In accordance with *Code of Alabama*, §11-49-81, the City of Fairhope's assumption of responsibility for Main Street is in exchange for the County agreeing that it shall resurface, one time, Main Street from State Highway 104 north approximately 1,200 feet with a minimum one and a half inch (1.5") overlay.

The Baldwin County Commission and the City of Fairhope respectively acknowledge and agree that this one-time resurfacing has been scheduled to occur as soon as possible as consideration for this transfer, and may be completed prior to the transfer of maintenance. The Baldwin County Commission and the City of Fairhope agree that said consideration is a reasonable charge for being relieved of the burden of the control, management, supervision, repair, maintenance, and improvement of the road described herein.

Section 5. This ordinance shall be published as provided by law, and a certified copy of the same, together with a certified copy of the resolution and petition of the Baldwin County Commission, shall be filed with the Probate Judge of Baldwin County, Alabama.

Section 6. If any part, section or subdivision of this ordinance shall be held to be illegal, invalid, or unenforceable for any reason, such holding shall not be construed to invalidate or impair the remaining provisions of this ordinance, which shall continue in full force and effect notwithstanding such holding.

ADOPTED THIS THE 13TH DAY OF SEPTEMBER, 2021

JACK BURRELL
Council President

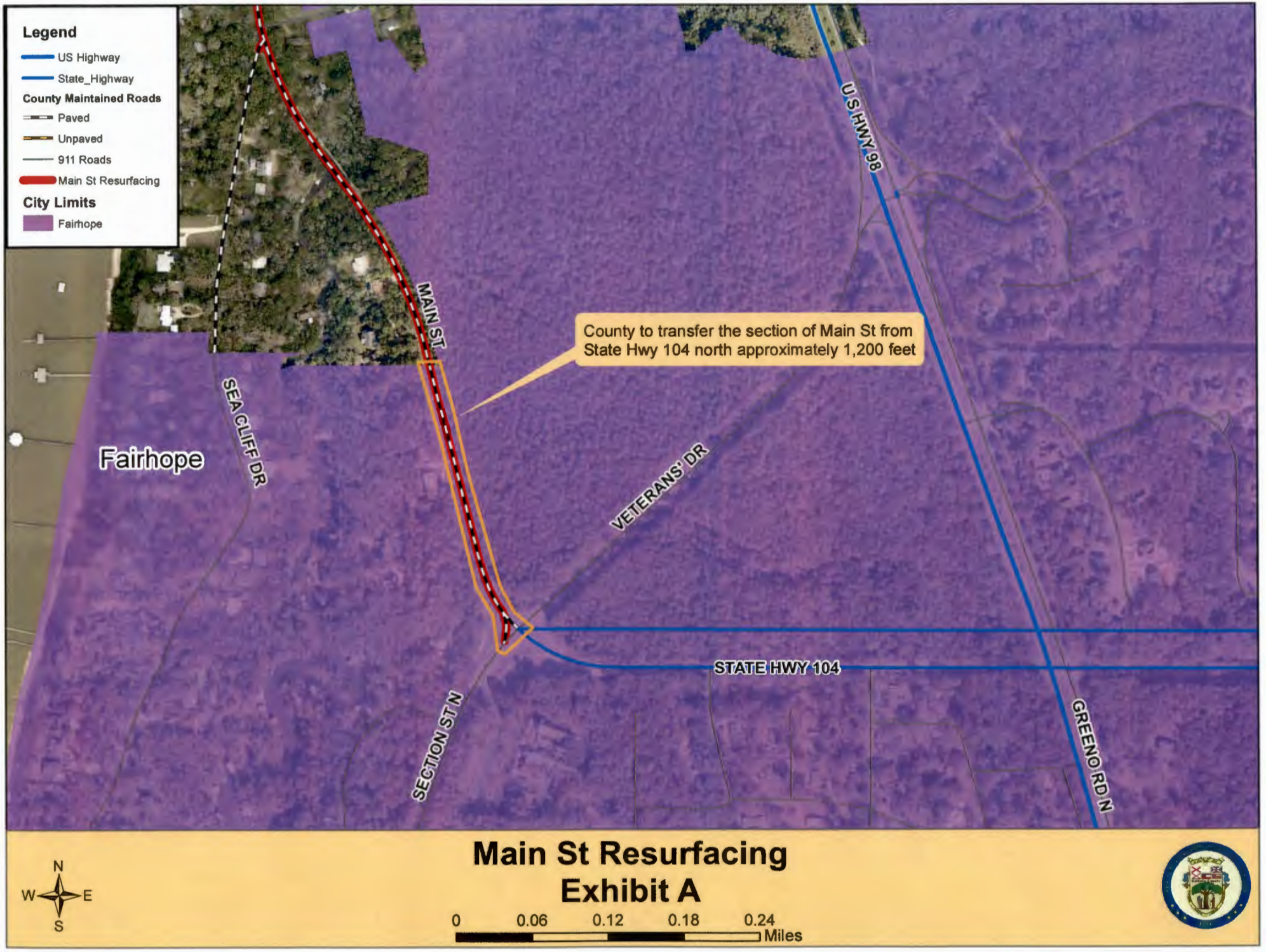
Attest:

LISA A. HANKS, MMC
City Clerk

ADOPTED THIS THE 13TH DAY OF SEPTEMBER, 2021

SHERRY SULLIVAN
Mayor

Ord. No. 1726 Published in FAIRHOPE COURIER on Wednesday, September 22, 2021
City Clerk



Main St Resurfacing
Exhibit A

RESOLUTION NO. 2021-107

RESOLUTION OF THE COUNTY COMMISSION OF BALDWIN COUNTY, ALABAMA, AUTHORIZING ANNEXATION AND TRANSFER OF RESPONSIBILITY FOR A PORTION OF MAIN STREET FROM BALDWIN COUNTY TO THE CITY OF FAIRHOPE

WHEREAS, Main Street, also known as County Road 98 Scenic Route, from State Highway 104 north approximately 1,200 feet (hereinafter "Main Street"), is a road or road segment inside or abutting the corporate limits of the City of Fairhope; and

WHEREAS, Main Street includes all improvements within the right-of-way such as, but not limited to, the road, drainage structures, signs, trails, sidewalks, etc.; and

WHEREAS, an accurate description of Main Street is attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, the portion of Main Street that is not already the responsibility of the City of Fairhope has been County maintained for a period of one (1) year prior to the effective date of this instrument; and

WHEREAS, Main Street is located within the City of Fairhope but responsibility is vested in the County; and

WHEREAS, in order to clarify and simplify the City of Fairhope's assumption of responsibility for Main Street in accordance with *Code of Alabama*, §11-49-80(b), (c) and (d), the Baldwin County Commission is submitting its consent and petition to the City of Fairhope to annex Main Street and assume the responsibility thereof; and

WHEREAS, the City of Fairhope desires to assume responsibility for Main Street, to the extent it is not already maintaining portions thereof, in order to facilitate the orderly development and maintenance of this area and its corporate limits.

NOW, THEREFORE, BE IT RESOLVED by the Baldwin County Commission as follows:

Section 1. That Baldwin County hereby consents to and petitions for the annexation of Main Street by the City of Fairhope pursuant to *Code of Alabama*, §11-49-80(c), and (d) and §11-42-20 to 24.

Section 2. To the extent that portions of Main Street, if any, are already located within the corporate limits of City of Fairhope, but responsibility is vested in the County, the Baldwin County Commission hereby consents to the assumption of responsibility of said portion or portions of Main Street by the City of Fairhope, pursuant to *Code of Alabama*, §11-49-80(b), in addition to

their annexation or re-annexation as described herein. In accordance with *Code of Alabama*, §11-49-81, the City of Fairhope's assumption of responsibility for Main Street is in exchange for the County agreeing that it shall resurface, one time, Main Street from State Highway 104 north approximately 1,200 feet with a minimum one and a half inch (1.5") overlay. The Baldwin County Commission and the City of Fairhope respectively acknowledge and agree that this one time resurfacing has been scheduled to occur as soon as possible as consideration for this transfer, and may be completed prior to the transfer of maintenance.

Section 3. The Baldwin County Commission and the City of Fairhope agree that said consideration is a reasonable charge.

Section 4. If any part, section or subdivision of this resolution shall be held to be illegal, invalid, or unenforceable for any reason, such holding shall not be construed to invalidate or impair the remaining provisions of this resolution, which shall continue in full force and effect notwithstanding such holding.

ADOPTED and **APPROVED** by the County Commission of Baldwin County, Alabama, on the 3rd day of August, 2021.

BALDWIN COUNTY COMMISSION

By: _____
JOE DAVIS, III
Its: Chairman

ATTEST:

_____
WAYNE DYESS
County Administrator

Baldwin County Commission

Agenda Action Form

File #: 22-0077, **Version:** 1 **Item #:** BA1

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wayne Dyess, County Administrator
Submitted by: Michelle Howard, Commission Executive Assistant

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ITEM TITLE
City of Fairhope - Annexation Notification

STAFF RECOMMENDATION
Authorize placement of the City of Fairhope's Annexation Ordinance No. 1725, and Annexation Ordinance No. 1726, annexing property into the corporate limits of the City of Fairhope, Alabama, into the minutes of the October 19, 2021, Baldwin County Commission meeting with proper notification to the following departments/organizations:

Baldwin County Commission Departments
Baldwin County Commission
Building Inspection Department
Communications/Information Systems Department
Environmental Management/Solid Waste Department
Highway Department
Planning and Zoning Department

Elected Officials
Baldwin County Revenue Commission
Baldwin County Sheriff's Office

Other Agencies
Board of Registrars Office
Emergency 911
South Alabama Regional Planning Commission

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: The City of Fairhope has submitted a copy of Ordinance No. 1725 and Ordinance No. 1726, an ordinance for annexation of certain properties into the corporate limits of the City of

Fairhope, Alabama, to be made part of the record of the Baldwin County Commission regular meeting on October 19, 2021.

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Commission Administration

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Administration - Mail correspondence to:

The Honorable Sherry Sullivan, Mayor
City of Fairhope
Attention: Lisa Hanks, City Clerk
Post Office Drawer 429
Fairhope, Alabama 36533

Memo to various departments/organizations
Additional instructions/notes: N/A

From: Lisa A. Hanks, MMC <Lisa.Hanks@fairhopeal.gov>
Sent: Monday, September 20, 2021 2:07 PM
To: Lisa A. Hanks, MMC <Lisa.Hanks@fairhopeal.gov>
Subject: Ordinance No. 1725 and No. 1726 - Annexations of segments of Main Street and Nelson Drive

This message has originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Attached please find Ordinance No. 1725 and No. 1726 - Annexations of segments of Main Street and Nelson Drive. These will be published on September 29, 2021 and still need to be recorded.

Thank you,

Lisa A. Hanks, MMC City Clerk
City of Fairhope
P. O. Drawer 429 Fairhope, AL 36533 251-928-2136
251-990-0107 (Fax)

BALDWIN COUNTY, ALABAMA
HARRY D'OLIVE, JR. PROBATE JUDGE
Filed/cert. 9/24/2021 3:49 PM
TOTAL $ 28.00
6 Pages

1946514

ORDINANCE NO. 1725

AN ORDINANCE TO APPROVE THE ANNEXATION OF TERRITORY WITHIN THE CITY LIMITS OF THE CITY OF FAIRHOPE, ALABAMA (BALDWIN COUNTY COMMISSION)

WHEREAS, Nelson Drive, from Scenic Highway 98 east approximately 525 feet (hereinafter "Nelson Drive"), is a road or road segment inside the corporate limit of the City of Fairhope; and

WHEREAS, Nelson Drive includes all improvements within the right-of-way such as, but not limited to, the road, drainage structures, signs, trails, sidewalks, etc.; and

WHEREAS, an accurate description of Nelson Drive, together with a map thereof showing their relationship to the corporate limits of the City of Fairhope, is attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, the portion of Nelson Drive that is not already the responsibility of the City of Fairhope has been County-maintained for a period of at least one (1) year prior to the effective date of this instrument; and

WHEREAS, Nelson Drive is located within the City of Fairhope but responsibility is vested in the County; and

WHEREAS, the City of Fairhope desires to annex and assume responsibility for Nelson Drive, to the extent it is not already maintaining portions thereof, in order to facilitate the orderly development and maintenance of this area and its corporate limits; and

WHEREAS, in order to accomplish the City of Fairhope's desire to annex and assume responsibility for Nelson Drive in accordance with *Code of Alabama*, §11-49-80(b), (c) and (d), the Baldwin County Commission passed a resolution on August 3, 2021, authorizing the annexation and transfer of responsibility for Nelson Drive to the City of Fairhope, a copy of which is attached hereto as Exhibit "B"; and

WHEREAS, said resolution did petition the City of Fairhope for annexation and contained the signature of the owner of the described territory and a map of Nelson Drive showing their relationship to the corporate limits of the City of Fairhope; and

WHEREAS, the City Council of the City of Fairhope has determined that it is in the public interest that Nelson Drive be annexed into the City of Fairhope and that all legal requirements for annexing Nelson Drive have been met pursuant to *Code of Alabama*, §§11-42-20 to 24.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF FAIRHOPE, ALABAMA, AS FOLLOWS:

Section 1. The City Council of the City of Fairhope, Alabama, finds and declares as the legislative body thereof that it is in the best interest of the citizens of the City, and the citizens of the affected area, to annex and bring the territory described herein as Nelson Drive into the corporate limits of the City of Fairhope, and to assume responsibility for those portions of Nelson Drive, if any, that are already within the corporate limits of the City of Fairhope pursuant to *Code of Alabama*, §§11-49-80(b), (c) and (d), and 11-42-20 to 24.

Section 2. The boundary lines of the City of Fairhope, Alabama, be, and the same are hereby altered or rearranged so as to include all of the territory heretofore encompassed by the corporate limits of the City of Fairhope, Alabama, and in addition thereto the following described territory, to-wit:

A part of the Northwest Quarter of the Southwest Quarter of Section 19, Township 6 South, Range 2 East, Baldwin County, Alabama and being more fully described as follows:

It is the intent of this document to convey unto the City of Fairhope, Alabama, any and all right and title to that portion of the right-of-way owned and maintained by Baldwin County along Nelson Drive, beginning at the east right-of-way line of Scenic Highway 98 also known as County Road 98 Scenic Route, ALT U. S. Highway 98 and South Mobile Street, and formerly known as U. S. Highway 98, and running easterly approximately 525 feet. Including all improvements within the right-of-way such as, but not limited to the road, drainage structures, signs, trails, sidewalks, etc. Said right-of-way being quitclaimed is part of property conveyed in Baldwin County Probate Court Case No. 9449, Real Property Book 17 page 792, Real Property Book 18 page 121 and corrected by Instrument Number 991083 and part of Real Property Book 13 page 771. It is also the intent to convey any and all prescriptive right-of-way that Baldwin County, Alabama may own. (See attached Exhibit "A")

Subject to any reservations, restrictions, exceptions, and encumbrances of record.

Section 3. The territory described in this ordinance shall become a part of and lie within the corporate limits of the City of Fairhope, Alabama, upon publication of this ordinance.

Section 4. To the extent that portions of Nelson Drive, if any, are already within the corporate limits of the City of Fairhope, but responsibility is vested in the County, the City of Fairhope hereby assumes responsibility of said portions of Nelson Drive pursuant to *Code of Alabama*, §11-49-80(b), in addition to their annexation or re-annexation as described herein. In accordance with *Code of Alabama*, §11-49-81, the City of Fairhope's assumption of responsibility for Nelson Drive is in exchange for the County agreeing that it shall resurface, one time, Nelson Drive from Scenic Highway 98 east approximately 525 feet with a minimum one and a half inch (1.5") overlay.

The Baldwin County Commission and the City of Foley respectively acknowledge and agree that this one-time resurfacing has been scheduled to occur as soon as possible as consideration for this transfer, and may be completed prior to the transfer of maintenance. The Baldwin County Commission and the City of Fairhope agree that said consideration is a reasonable charge for being relieved of the burden of the control, management, supervision, repair, maintenance and improvement of the road described herein.

Section 5. This ordinance shall be published as provided by law, and a certified copy of the same, together with a certified copy of the resolution and petition of the Baldwin County Commission, shall be filed with the Probate Judge of Baldwin County, Alabama.

Section 6. If any part, section or subdivision of this ordinance shall be held to be illegal, invalid, or unenforceable for any reason, such holding shall not be construed to invalidate or impair the remaining provisions of this ordinance, which shall continue in full force and effect notwithstanding such holding.

ADOPTED THIS THE 13TH DAY OF SEPTEMBER, 2021

JACK BURRELL
Council President

Attest:

LISA A. HANKS, MMC
City Clerk

ADOPTED THIS THE 13TH DAY OF SEPTEMBER, 2021

SHERRY SULLIVAN
Mayor

Ord. No. 1725 Published in FAIRHOPE COURIER on Wednesday, September 22, 2021
City Clerk



Baldwin County Highway Department

Nelson Drive ROW Acceptance - Exhibit "A" Map

RESOLUTION NO. 2021-108

RESOLUTION OF THE COUNTY COMMISSION OF BALDWIN COUNTY, ALABAMA, AUTHORIZING ANNEXATION AND TRANSFER OF RESPONSIBILITY FOR A PORTION OF NELSON DRIVE FROM BALDWIN COUNTY TO THE CITY OF FAIRHOPE

WHEREAS, Nelson Drive, from Scenic Highway 98 east approximately 525 feet (hereinafter "Nelson Drive"), is a road or road segment inside or abutting the corporate limits of the City of Fairhope; and

WHEREAS, Nelson Drive includes all improvements within the right-of-way such as, but not limited to, the road, drainage structures, signs, trails, sidewalks, etc.; and

WHEREAS, an accurate description of Nelson Drive is attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, the portion of Nelson Drive that is not already the responsibility of the City of Fairhope has been County maintained for a period of one (1) year prior to the effective date of this instrument; and

WHEREAS, Nelson Drive is located within the City of Fairhope but responsibility is vested in the County; and

WHEREAS, in order to clarify and simplify the City of Fairhope's assumption of responsibility for Nelson Drive in accordance with *Code of Alabama*, §11-49-80(b), (c) and (d), the Baldwin County Commission is submitting its consent and petition to the City of Fairhope to annex Nelson Drive and assume the responsibility thereof; and

WHEREAS, the City of Fairhope desires to assume responsibility for Nelson Drive, to the extent it is not already maintaining portions thereof, in order to facilitate the orderly development and maintenance of this area and its corporate limits.

NOW, THEREFORE, BE IT RESOLVED by the Baldwin County Commission as follows:

Section 1. That Baldwin County hereby consents to and petitions for the annexation of Nelson Drive by the City of Fairhope pursuant to *Code of Alabama*, §11-49-80(c), and (d) and §11-42-20 to 24.

Section 2. To the extent that portions of Nelson Drive, if any, are already located within the corporate limits of City of Fairhope, but responsibility is vested in the County, the Baldwin County Commission hereby consents to the assumption of responsibility of said portion or portions of Nelson Drive by the City of Fairhope, pursuant to *Code of Alabama*, §11-49-80(b),

in addition to their annexation or re-annexation as described herein. In accordance with *Code of Alabama*, §11-49-81, the City of Fairhope's assumption of responsibility for Nelson Drive is in exchange for the County agreeing that it shall resurface, one time, Nelson Drive from Scenic Highway 98 east approximately 525 feet with a minimum one and a half inch (1.5") overlay. The Baldwin County Commission and the City of Fairhope respectively acknowledge and agree that this one time resurfacing has been scheduled to occur as soon as possible as consideration for this transfer, and may be completed prior to the transfer of maintenance.

Section 3. The Baldwin County Commission and the City of Fairhope agree that said consideration is a reasonable charge.

Section 4. If any part, section or subdivision of this resolution shall be held to be illegal, invalid, or unenforceable for any reason, such holding shall not be construed to invalidate or impair the remaining provisions of this resolution, which shall continue in full force and effect notwithstanding such holding.

ADOPTED and **APPROVED** by the County Commission of Baldwin County, Alabama, on the 3rd day of August, 2021.

BALDWIN COUNTY COMMISSION

By: _____
JOE DAVIS, III
Its: Chairman

ATTEST:

_____
WAYNE DYESS
County Administrator

BALDWIN COUNTY, ALABAMA
HARRY D'OLIVE, JR. PROBATE JUDGE
Filed/cert. 9/24/2021 3:51 PM
TOTAL $ 28.00
6 Pages

1946515

ORDINANCE NO. 1726

AN ORDINANCE TO APPROVE THE ANNEXATION OF TERRITORY WITHIN THE CITY LIMITS OF THE CITY OF FAIRHOPE, ALABAMA (BALDWIN COUNTY COMMISSION)

WHEREAS, Main Street, also known as County Road 98 Scenic Route, from State Highway 104 north approximately 1,200 feet (hereinafter "Main Street"), is a road or road segment inside the corporate limit of the City of Fairhope; and

WHEREAS, Main Street includes all improvements within the right-of-way such as, but not limited to, the road, drainage structures, signs, trails, sidewalks, etc.; and

WHEREAS, an accurate description of Main Street, together with a map thereof showing its relationship to the corporate limits of the City of Fairhope, is attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, the portion of Main Street that is not already the responsibility of the City of Fairhope has been County-maintained for a period of at least one (1) year prior to the effective date of this instrument; and

WHEREAS, Main Street is located within the City of Fairhope but responsibility is vested in the County; and

WHEREAS, the City of Fairhope desires to annex and assume responsibility for Main Street, to the extent it is not already maintaining portions thereof, in order to facilitate the orderly development and maintenance of this area and its corporate limits; and

WHEREAS, in order to accomplish the City of Fairhope's desire to annex and assume responsibility for Main Street in accordance with *Code of Alabama*, §11-49-80(b), (c) and (d), the Baldwin County Commission passed a resolution on August 3, 2021, authorizing the annexation and transfer of responsibility for Main Street to the City of Fairhope, a copy of which is attached hereto as Exhibit "B"; and

WHEREAS, said resolution did petition the City of Fairhope for annexation and contained the signature of the owner of the described territory and a map of Main Street showing its relationship to the corporate limits of the City of Fairhope; and

WHEREAS, the City Council of the City of Fairhope has determined that it is in the public interest that Main Street be annexed into the City of Fairhope and that all legal requirements for annexing Main Street have been met pursuant to *Code of Alabama*, §§11-42-20 to 24.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF FAIRHOPE, ALABAMA, AS FOLLOWS:

Section 1. The City Council of the City of Fairhope, Alabama, finds and declares as the legislative body thereof that it is in the best interest of the citizens of the City, and the citizens of the affected area, to annex and bring the territory described herein as Main Street into the corporate limits of the City of Fairhope, and to assume responsibility for those portions of Main Street, if any, that are already within the corporate limits of the City of Fairhope pursuant to *Code of Alabama*, §§11-49-80(b), (c) and (d), and 11-42-20 to 24.

Section 2. The boundary lines of the City of Fairhope, Alabama, be, and the same are hereby altered or rearranged so as to include all of the territory heretofore encompassed by the corporate limits of the City of Fairhope, Alabama, and in addition thereto the following described territory, to-wit:

A part of the Southwest Quarter of Section 5, Township 6 South, Range 2 East and part of Grant Section 8, Township 6 South, Range 2 East, Baldwin County, Alabama and being more fully described as follows:

It is the intent to convey unto the City of Fairhope, Alabama, any and all right and title to that portion of the right-of-way owned and maintained by Baldwin County along Main Street, also known as County Road 98 Scenic Route, formerly known as U. S. Highway 98, State Route 42 and State Route 104, beginning at the current west right-of-way line of State Route 104 running north approximately 1,200 feet. Including all improvements within the right-of-way such as, but not limited to the road, drainage structures, signs, trails, sidewalks, etc. Said right-of-way being quitclaimed is part of property conveyed in Deed Book 24 at page 619 and Deed Book 65 at page 106. It is also the intent to convey any and all prescriptive right-of-way that Baldwin County, Alabama may own.

Subject to any reservations, restrictions, exceptions, and encumbrances of record.

Section 3. The territory described in this ordinance shall become a part of and lie within the corporate limits of the City of Fairhope, Alabama, upon publication of this ordinance.

Section 4. To the extent that portions of Main Street, if any, are already within the corporate limits of the City of Fairhope, but responsibility is vested in the County, the City of Fairhope hereby assumes responsibility of said portions of Main Street pursuant to *Code of Alabama*, §11-49-80(b), in addition to their annexation or re-annexation as described herein. In accordance with *Code of Alabama*, §11-49-81, the City of Fairhope's assumption of responsibility for Main Street is in exchange for the County agreeing that it shall resurface, one time, Main Street from State Highway 104 north approximately 1,200 feet with a minimum one and a half inch (1.5") overlay.

The Baldwin County Commission and the City of Fairhope respectively acknowledge and agree that this one-time resurfacing has been scheduled to occur as soon as possible as consideration for this transfer, and may be completed prior to the transfer of maintenance. The Baldwin County Commission and the City of Fairhope agree that said consideration is a reasonable charge for being relieved of the burden of the control, management, supervision, repair, maintenance, and improvement of the road described herein.

Section 5. This ordinance shall be published as provided by law, and a certified copy of the same, together with a certified copy of the resolution and petition of the Baldwin County Commission, shall be filed with the Probate Judge of Baldwin County, Alabama.

Section 6. If any part, section or subdivision of this ordinance shall be held to be illegal, invalid, or unenforceable for any reason, such holding shall not be construed to invalidate or impair the remaining provisions of this ordinance, which shall continue in full force and effect notwithstanding such holding.

ADOPTED THIS THE 13TH DAY OF SEPTEMBER, 2021

JACK BURRELL
Council President

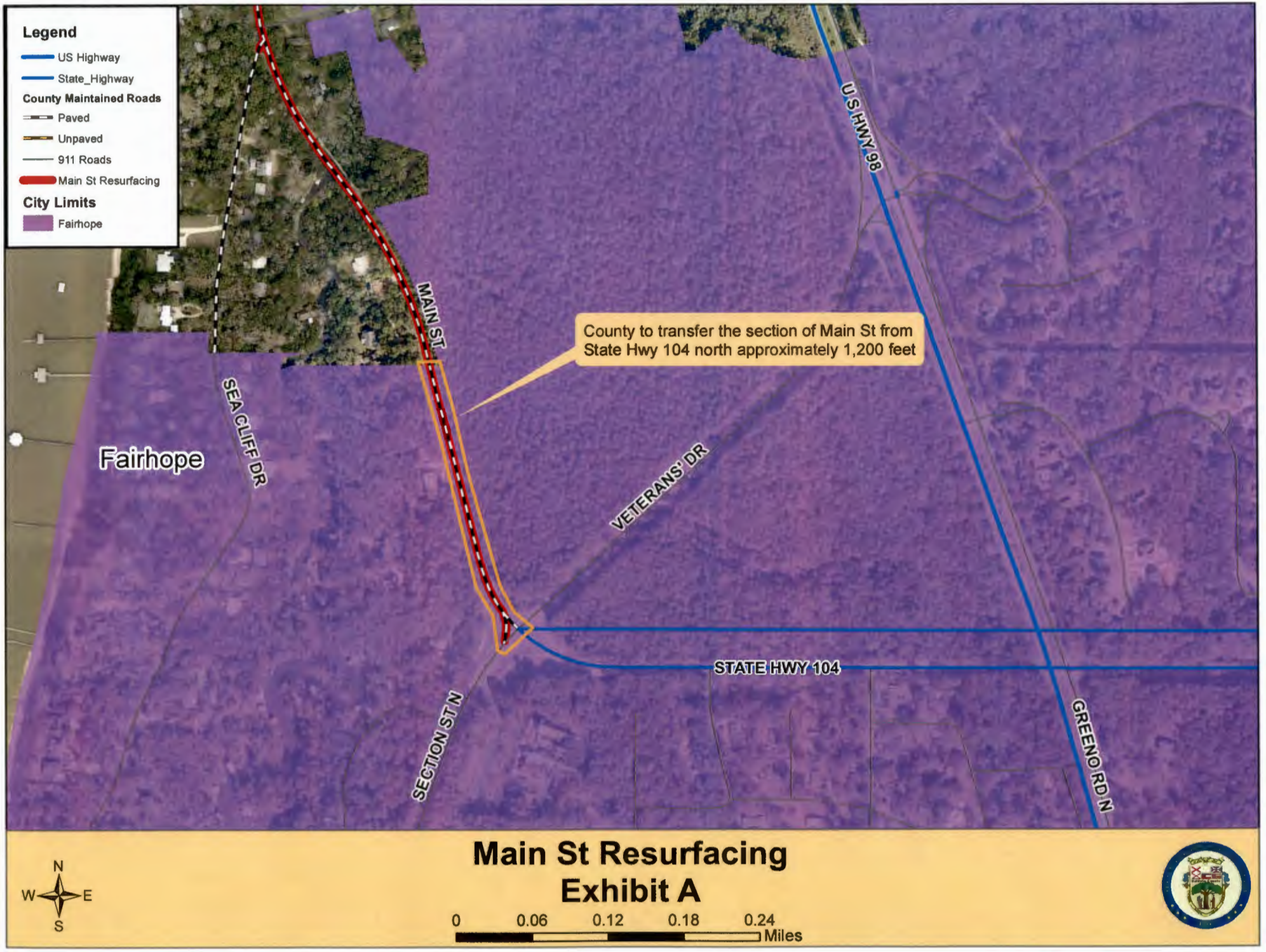
Attest:

LISA A. HANKS, MMC
City Clerk

ADOPTED THIS THE 13TH DAY OF SEPTEMBER, 2021

SHERRY SULLIVAN
Mayor

Ord. No. 1726 Published in FAIRHOPE COURIER on Wednesday, September 22, 2021
City Clerk



Main St Resurfacing
Exhibit A

RESOLUTION NO. 2021-107

RESOLUTION OF THE COUNTY COMMISSION OF BALDWIN COUNTY, ALABAMA, AUTHORIZING ANNEXATION AND TRANSFER OF RESPONSIBILITY FOR A PORTION OF MAIN STREET FROM BALDWIN COUNTY TO THE CITY OF FAIRHOPE

WHEREAS, Main Street, also known as County Road 98 Scenic Route, from State Highway 104 north approximately 1,200 feet (hereinafter "Main Street"), is a road or road segment inside or abutting the corporate limits of the City of Fairhope; and

WHEREAS, Main Street includes all improvements within the right-of-way such as, but not limited to, the road, drainage structures, signs, trails, sidewalks, etc.; and

WHEREAS, an accurate description of Main Street is attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, the portion of Main Street that is not already the responsibility of the City of Fairhope has been County maintained for a period of one (1) year prior to the effective date of this instrument; and

WHEREAS, Main Street is located within the City of Fairhope but responsibility is vested in the County; and

WHEREAS, in order to clarify and simplify the City of Fairhope's assumption of responsibility for Main Street in accordance with *Code of Alabama*, §11-49-80(b), (c) and (d), the Baldwin County Commission is submitting its consent and petition to the City of Fairhope to annex Main Street and assume the responsibility thereof; and

WHEREAS, the City of Fairhope desires to assume responsibility for Main Street, to the extent it is not already maintaining portions thereof, in order to facilitate the orderly development and maintenance of this area and its corporate limits.

NOW, THEREFORE, BE IT RESOLVED by the Baldwin County Commission as follows:

Section 1. That Baldwin County hereby consents to and petitions for the annexation of Main Street by the City of Fairhope pursuant to *Code of Alabama*, §11-49-80(c), and (d) and §11-42-20 to 24.

Section 2. To the extent that portions of Main Street, if any, are already located within the corporate limits of City of Fairhope, but responsibility is vested in the County, the Baldwin County Commission hereby consents to the assumption of responsibility of said portion or portions of Main Street by the City of Fairhope, pursuant to *Code of Alabama*, §11-49-80(b), in addition to

their annexation or re-annexation as described herein. In accordance with *Code of Alabama*, §11-49-81, the City of Fairhope's assumption of responsibility for Main Street is in exchange for the County agreeing that it shall resurface, one time, Main Street from State Highway 104 north approximately 1,200 feet with a minimum one and a half inch (1.5") overlay. The Baldwin County Commission and the City of Fairhope respectively acknowledge and agree that this one time resurfacing has been scheduled to occur as soon as possible as consideration for this transfer, and may be completed prior to the transfer of maintenance.

Section 3. The Baldwin County Commission and the City of Fairhope agree that said consideration is a reasonable charge.

Section 4. If any part, section or subdivision of this resolution shall be held to be illegal, invalid, or unenforceable for any reason, such holding shall not be construed to invalidate or impair the remaining provisions of this resolution, which shall continue in full force and effect notwithstanding such holding.

ADOPTED and **APPROVED** by the County Commission of Baldwin County, Alabama, on the 3rd day of August, 2021.

BALDWIN COUNTY COMMISSION

By: _____
JOE DAVIS, III
Its: Chairman

ATTEST:

_____
WAYNE DYESS
County Administrator

Baldwin County Commission

Agenda Action Form

File #: 22-0105, **Version:** 1 **Item #:** BA2

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wayne Dyess, County Administrator
Submitted by: Michelle Howard, Commission Executive Assistant

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ITEM TITLE
City of Fairhope - Annexation Notification

STAFF RECOMMENDATION
Authorize placement of the City of Fairhope's Annexation Ordinance No. 1728, an Ordinance Amending Ordinance No. 1253 known as the Zoning Ordinance, annexing property into the corporate limits of the City of Fairhope, Alabama, into the minutes of the October 19, 2021, Baldwin County Commission meeting with proper notification to the following departments/organizations:

Baldwin County Commission Departments
Baldwin County Commission
Building Inspection Department
Communications/Information Systems Department
Environmental Management/Solid Waste Department
Highway Department
Planning and Zoning Department

Elected Officials
Baldwin County Revenue Commission
Baldwin County Sheriff's Office

Other Agencies
Board of Registrars Office
Emergency 911
South Alabama Regional Planning Commission

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: The City of Fairhope has submitted a copy of Ordinance No. 1728, an ordinance for annexation of certain properties into the corporate limits of the City of Fairhope, Alabama, to be made

part of the record of the Baldwin County Commission regular meeting on October 19, 2021.

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Commission Administration

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Administration - Mail correspondence to:

The Honorable Sherry Sullivan, Mayor
City of Fairhope
Attention: Lisa Hanks, City Clerk
Post Office Drawer 429
Fairhope, Alabama 36533

Memo to various departments/organizations

Additional instructions/notes: N/A

Carjetta L. Crook

Sent: Wednesday, October 13, 2021 10:43 AM
Subject: FW: Ordinance No. 1728 - Ordinance to amend Ordinance No. 1253 and zone Silverhill Enterprises, LLC property east and west of Highway 181 to PUD concurrent with annexation - Harvest Green PUD
Attachments: Ordinance No. 1728 - Ordinance to amend Ordinance No. 1253 and zone Silverhill Enterprises, LLC property east and west of Highway 181 to PUD concurrent with annexation - Harvest Green PUD.pdf

Importance: High

From: Lisa A. Hanks, MMC <Lisa.Hanks@fairhopeal.gov>
Sent: Thursday, September 30, 2021 10:22 AM
To: Lisa A. Hanks, MMC <Lisa.Hanks@fairhopeal.gov>
Subject: Ordinance No. 1728 - Ordinance to amend Ordinance No. 1253 and zone Silverhill Enterprises, LLC property east and west of Highway 181 to PUD concurrent with annexation - Harvest Green PUD

This message has originated from an **External Source**. Please use proper judgment and caution when opening attachments, clicking links, or responding to this email.

Attached please find Ordinance No. 1728 - Ordinance to amend Ordinance No. 1253 and zone Silverhill Enterprises, LLC property east and west of Highway 181 to PUD concurrent with annexation - Harvest Green PUD.

Thank you and have a great day.

Lisa A. Hanks, MMC
City Clerk
City of Fairhope
P. O. Drawer 429
Fairhope, AL 36533
251-928-2136
251-990-0107 (Fax)

ORDINANCE NO. 1728

AN ORDINANCE AMENDING ORDINANCE NO. 1253 KNOWN AS THE ZONING ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIRHOPE, ALABAMA as follows:

The ordinance known as the Zoning Ordinance (No. 1253), adopted 27 June 2005, together with the Zoning Map of the City of Fairhope, be and the same hereby is changed and altered in respect to that certain property described below:

After the appropriate public notice and hearing of the Planning Commission of the City of Fairhope, Alabama has forwarded a **favorable** recommendation,

The property of Silverhill Enterprises, LLC, generally located east and west of Highway 181 near The Waters Subdivision, Fairhope, Alabama.

HARVEST GREEN PUD

PPIN # 17737, 17735, 77776

Legal Description: (Case number ZC 21.10)

WEST:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 3, TOWNSHIP 6 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA AND RUN THENCE NORTH 89 DEGREES 54 MINUTES 29 SECONDS WEST, ALONG THE NORTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 3, A DISTANCE OF 56.31 FEET TO A 1/2" CAPPED REBAR (SE CIVIL) ON THE WEST RIGHT-OF-WAY OF ALABAMA HIGHWAY 181 FOR THE POINT OF BEGINNING: THENCE, DEPARTING SAID RIGHT-OF-WAY, CONTINUE NORTH 89 DEGREES 54 MINUTES 29 SECONDS WEST, ALONG THE NORTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 3, A DISTANCE OF 2600.01 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE NORTH 89 DEGREES 05 MINUTES 03 SECONDS WEST, A DISTANCE OF 113.47 FEET TO A 1/2" REBAR; THENCE RUN SOUTH 00 DEGREES 25 MINUTES 01 SECONDS WEST, ALONG A WIRE FENCE, A DISTANCE OF 1327.96 FEET TO A POINT (POINT FALLS IN POND) ON THE SOUTH LINE OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3; THENCE RUN SOUTH 89 DEGREES 57 MINUTES 29 SECONDS EAST, ALONG THE SOUTH LINE OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER, A DISTANCE OF 120.88 FEET TO A 3" OPEN END PIPE; THENCE RUN SOUTH 89 DEGREES 56 MINUTES 40 SECONDS EAST, ALONG THE SOUTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER, A DISTANCE OF 2609.57 FEET TO A 1/2" REBAR ON THE WEST RIGHT-OF-WAY OF SAID ALABAMA HIGHWAY 181; THENCE RUN NORTH 00 DEGREES 25 MINUTES 39 SECONDS EAST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 530.36 FEET TO A 6"X6" ALDOT (ALABAMA DEPARTMENT OF TRANSPORTATION) CONCRETE MONUMENT; THENCE RUN NORTH 03 DEGREES 16 MINUTES 32 SECONDS WEST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 140.59 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTHERLY, ALONG SAID RIGHT-OF-WAY, ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 7729.44 FEET, AN ARC LENGTH OF 161.60 FEET, (CHORD BEARS NORTH 01 DEGREES 28 MINUTES 24 SECONDS WEST, A DISTANCE OF 161.60 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 52 DEGREES 30 MINUTES 22 SECONDS WEST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 31.80 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTHERLY, ALONG SAID RIGHT-OF-WAY, ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 7754.44 FEET, AN ARC LENGTH OF 81.12 FEET, (CHORD BEARS NORTH 00 DEGREES 28 MINUTES 54 SECONDS WEST, A DISTANCE OF 81.12 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 22 DEGREES 43 MINUTES 51 SECONDS EAST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 65.03 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 00 DEGREES 17 MINUTES 33 SECONDS EAST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 331.86 FEET TO THE POINT OF BEGINNING. TRACT CONTAINS 82.77 ACRES, MORE OR LESS.

EAST:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 2, TOWNSHIP 6 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA AND RUN THENCE SOUTH 89 DEGREES 39 MINUTES 20 SECONDS EAST, ALONG THE NORTH LINE OF SAID SECTION 2, A DISTANCE OF 133.72 FEET TO A 1/2" CAPPED REBAR (SE CIVIL) ON THE EAST RIGHT-OF-WAY OF ALABAMA HIGHWAY 181 FOR THE POINT OF BEGINNING: THENCE DEPARTING SAID RIGHT-OF-WAY, CONTINUE SOUTH 89 DEGREES 39 MINUTES 20 SECONDS EAST, ALONG THE NORTH LINE OF SAID SECTION 2, A DISTANCE OF 1193.19 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE RUN SOUTH 00 DEGREES 15 MINUTES 02 SECONDS WEST, ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 1323.34 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE RUN SOUTH 89 DEGREES 42 MINUTES 26 SECONDS EAST, ALONG THE NORTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 1329.67 FEET TO A 1/2" CAPPED REBAR (LS #19254); THENCE RUN SOUTH 00 DEGREES 17 MINUTES 01 SECONDS WEST, ALONG THE EAST LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 1322.14 FEET TO A 1/2" CAPPED REBAR (LS #19254); THENCE RUN NORTH 89 DEGREES 49 MINUTES 40 SECONDS WEST, ALONG THE SOUTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 1330.30 FEET TO A 1/2" CAPPED REBAR AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 2; CONTINUE THENCE NORTH 89 DEGREES 49 MINUTES 40 SECONDS WEST, ALONG THE SOUTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 1079.73 FEET TO A 1/2 CAPPED REBAR (SE CIVIL) AT THE SOUTHEAST CORNER OF LANDS HERETOFORE CONVEYED TO THE STATE OF ALABAMA IN THAT WARRANTY DEED, RECORDED AT INSTRUMENT 1316996, PROBATE RECORDS, BALDWIN COUNTY, ALABAMA; THENCE, DEPARTING THE SOUTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 2, RUN NORTH 00 DEGREES 09 MINUTES 44 SECONDS EAST, ALONG THE EAST LINE OF SAID STATE OF ALABAMA LANDS, A DISTANCE OF 242.59 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE RUN NORTH 89 DEGREES 45 MINUTES 31 SECONDS WEST, ALONG THE NORTH LINE OF SAID STATE OF ALABAMA LANDS, A DISTANCE OF 63.45 FEET TO A 1/2" CAPPED REBAR (SE CIVIL) ON THE EAST RIGHT-OF-WAY OF SAID ALABAMA HIGHWAY 181; THENCE RUN NORTH 00 DEGREES 17 MINUTES 29 SECONDS EAST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 970.84 FEET TO A 1/2" CAPPED REBAR (SE CIVIL) TO THE SOUTHWEST CORNER OF SAID STATE OF ALABAMA LANDS; THENCE, DEPARTING SAID RIGHT-OF-WAY, RUN SOUTH 89 DEGREES 37 MINUTES 20 SECONDS EAST, ALONG THE SOUTH LINE OF SAID STATE OF ALABAMA LANDS, A DISTANCE OF 76.49 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE RUN NORTH 00 DEGREES 29 MINUTES 14 SECONDS EAST, ALONG SAID STATE OF ALABAMA LANDS, A DISTANCE OF 113.96 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE RUN NORTH 89 DEGREES 42 MINUTES 26 SECONDS WEST, A DISTANCE OF 76.69 FEET TO A 1/2" CAPPED REBAR (SE CIVIL) ON THE EAST RIGHT-OF-WAY OF SAID ALABAMA HIGHWAY 181; THENCE RUN NORTH 00 DEGREES 03 MINUTES 35 SECONDS WEST, ALONG THE EAST RIGHT-OF-WAY OF SAID ALABAMA HIGHWAY 181, A DISTANCE OF 4.81 FEET TO A 6"X6" ALDOT (ALABAMA DEPARTMENT OF TRANSPORTATION) CONCRETE MONUMENT; THENCE RUN NORTH 05 DEGREES 15 MINUTES 51 SECONDS WEST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 273.24 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 02 DEGREES 09 MINUTES 28 SECONDS WEST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 261.14 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 09 DEGREES 55 MINUTES 11 SECONDS EAST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 143.91 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE RUN NORTHERLY, ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 7509.44 FEET, AN ARC LENGTH OF 312.96 FEET, (CHORD BEARS NORTH 00 DEGREES 54 MINUTES 06 SECONDS WEST, A DISTANCE OF 312.94 FEET) TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 11 DEGREES 46 MINUTES 10 SECONDS WEST, A DISTANCE OF 143.90 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 00 DEGREES 17 MINUTES 32 SECONDS EAST, A DISTANCE OF 191.26 FEET TO THE POINT OF BEGINNING. TRACT CONTAINS 110.25 ACRES, MORE OR LESS.

1. **That,** attached as "Exhibit A" is an approved site plan. The property must develop in substantial conformance with the approved site plan and supporting documents. Any substantial deviation from the attached site plan, as determined by the Director of Planning, will require re-approval by the Planning Commission and the City Council of the City of Fairhope, Alabama, as a PUD amendment.

2. **That,** attached as "Exhibit B" is an approved Master Development Plan (MDP). The property must develop in substantial conformance with the approved MDP. Any substantial deviation from the attached MDP, as determined by the Director of Planning, will require re-approval by the Planning Commission and the City Council of the City of Fairhope, Alabama, as a PUD amendment.

3. **That,** the following development regulations shall govern:

Overall Development:

Lots: There shall be 376 lots total.

Use: In general, the project is described as a mixed-use residential community. However, there is no commercial uses proposed. The uses are specifically described within the Site Plan and Master Development Plan that include:

375	Single Family Residential Lots
1	Parcel reserved for future Fire Station

Dimension Standards: Dimensional standards shall follow the layout on the approved site plan.

Density: 1.93 / AC

Sidewalks and Street Trees: All sidewalks and street trees shall be installed prior to submission of Final Plat Approval.

Drainage and Detention: Drainage and detention shall meet the Stormwater Standards in the Fairhope Subdivision Regulations.

Buffers: Buffers shall meet the applicable requirements of all City of Fairhope Regulations.

Single Family Residential Development:

Lots: There shall be 375 single family residential lots.

Use: Lots shall be single family residential.

Setbacks: As shown on "Exhibit A".

Principle Structure Lot Coverage: As shown in the Master Development Plan.

Building Height: Maximum building height shall not exceed 35' for 100' wide lots.
Maximum building heigh shall not exceed 30' for all others.

Lot Size: Lot size as shown on "Exhibit A".

The property is hereby initially zoned Planned Unit Development (PUD) concurrent with annexation into the City of Fairhope. This property shall hereafter be lawful to construct on such property any structures permitted by Ordinance No. 1253 and to use said premises for any use permitted or building sought to be erected on said property shall be in compliance with the building laws of the City of Fairhope and that any structure shall be approved by the Building Official of the City of Fairhope and that any structure be erected only in compliance with such laws, including the requirements of Ordinance No. 1253.

Severability Clause - if any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

Effective Date – This ordinance shall take effect immediately upon its due adoption and publication as required by law.

Adopted and approved this 27th day of September, 2021.

By: _____
Jack Burrell, Council President

Attest:

By: _____
Lisa A. Hanks. MMC
City Clerk

Adopted and approved this 27th day of September, 2021.

By: _____
Sherry Sullivan, Mayor

Revised 06/2006

CITY OF FAIRHOPE
P.O. DRAWER 429
FAIRHOPE, AL 36533
251/928-2136

PETITION FOR ANNEXATION

STATE OF ALABAMA)(
COUNTY OF BALDWIN)(

We, the undersigned PETITIONER(S), owner(s) of the lands in fee simple described in the attached EXHIBIT A, such property being without the Corporate Limits of the City of Fairhope, Alabama, but being contiguous to the said Corporate Limits; and such property not lying within the corporate limits or police jurisdiction of any other municipality, do, by these presents, hereby petition the City of Fairhope, a municipal corporation, that said property be annexed into the City of Fairhope, Alabama.

The subject land is delineated on the map attached hereto as EXHIBIT B.

This petition is filed under authority of Section 11-42-21, Code of Alabama, 1975, as amended.

This petition is for R-1 Zoning

X **The condition of the Petition is that zoning be established as** Planned Unit Development **Concurrent with Annexation.**
(Zoning Request)

Is this property colony property _____ **Yes** _X_ **No. If this property is colony property the Fairhope Single Tax Office must sign as a petitioner.**

Only parcel 05-46-01-02-0-000-001.5(is colony property.

Signature of Petitioner (for Fairhope Single Tax)	Print petitioner's name (for Fairhope Single Tax)
Signature of Petitioner (for Silverhill Enterprises, L.L.C.) 5/21/21	Print petitioner's name (for Silverhill Enterprises L.L.C.) ERIC GUSTAFSON
Signature of Petitioner	Print petitioner's name

Physical Address of property being annexed: ST HWY 181

Petitioner's Current Physical Address:	Petitioner's Current Mailing Address:
112 Bay Circle Drive	336 Fairhope Avenue
Holland, MI 49424	Fairhope, AL 36532
(tel) 616-403-1191	(tel) 251-928-8162

Telephone Number(s): _____
Home Work

County Tax Parcel Number: 05-46-01-02-0-000-001.508 05-46-01-02-0-000-002.000
05-46-02-03-0-000-001.000

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Revised 06/2006

U.S JUSTICE DEPARTMENT INFORMATION

Size of property (acres or square feet) 193.03 Acres

If property is occupied, give number of housing units 1 Residence

Number of Persons residing in each unit, and their race 1

If property is unoccupied, give proposed use Mixed Use Residential

If property is being developed as a subdivision, give subdivision name

Fairhope Farms, A Planned Unit Development

Number of lots within proposed subdivision 375 Units

I, Jeanne Bishop a Notary Public in and for said State and County, hereby certify that Eric Gustafson whose name(s) is/are signed to the forgoing Petition and who is/are known to me, this day appeared before me and, being first duly sworn, acknowledge that he/she/they have voluntarily executed this Petition on this day same bears date.

Given under my Hand and Seal this 21st day of May, 2021.

(Seal)

Jeanne Bishop
Notary Public

My commission expires 08/11/2024

I, Jennifer Evans Sanford a Notary Public in and for said State and County, hereby certify that Lee Turner whose name(s) is/are signed to the forgoing Petition and who is/are known to me, this day appeared before me and, being first duly sworn, acknowledge that he/she/they have voluntarily executed this Petition on this day same bears date.

Given under my Hand and Seal this 25th day of May, 2021.

(Seal)

Notary Public

JENNIFER EVANS SANFORD
My Commission Expires
July 29, 2023

My commission expires _____

I, _____ a Notary Public in and for said State and County, hereby certify that _____ whose name(s) is/are signed to the forgoing Petition and who is/are known to me, this day appeared before me and, being first duly sworn, acknowledge that he/she/they have voluntarily executed this Petition on this day same bears date.

Given under my Hand and Seal this _____ day of _____, 20____,

(Seal)

_____
Notary Public

My commission expires _____

Backroom:Users:mray:Library:Mail:POP-info%hermdon.cc@p#87E59.net:INBOX.mbox:FW_ Forms for the we.mimeattach:Petition for annex.doc

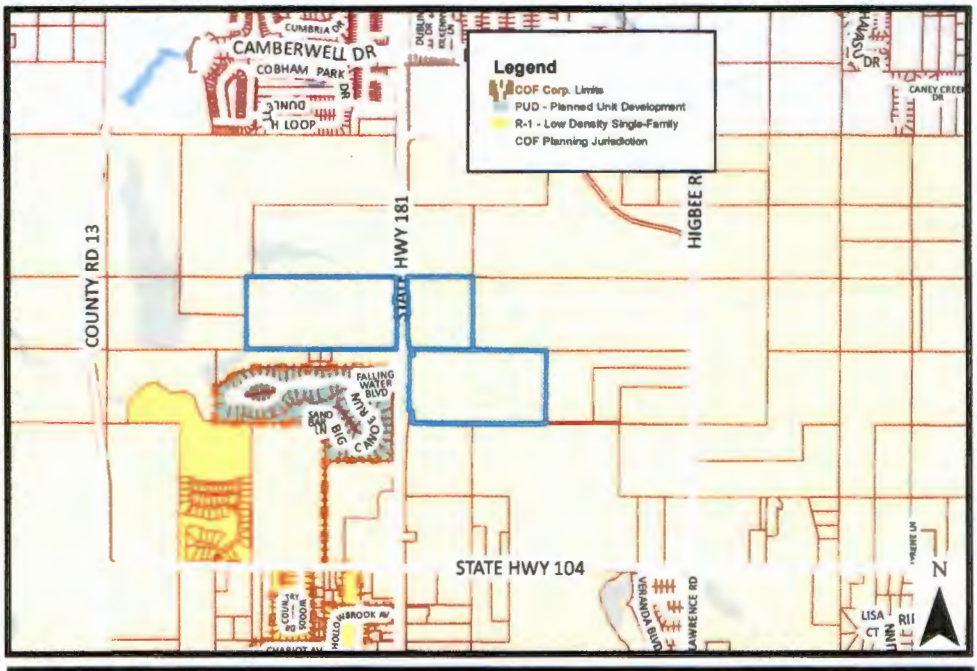
City of Fairhope
City Council

September 13, 2021

Planning Commission unanimously (9 Ayes-0 Nays) voted to recommend approval of ZC 21.10

ZC 21.10 - Harvest Green







Project Name:
Harvest Green

Site Data:
193.03 acres

Project Type:
Conditional Annexation to Planned Unit Development

Jurisdiction:
Fairhope Planning Jurisdiction

Zoning District:
Baldwin County RA

PPIN Number:
17737, 17735, and 77776

General Location:
East and west of HWY 181 near the Waters Subdivision

Surveyor of Record:

Engineer of Record:
S.E. Civil, LLC

Owner / Developer:
Silverhill Enterprises, LLC

School District:
Fairhope East Elementary, Middle and High Schools

Recommendation:
Approved w/ Conditions

Prepared by:
Hunter Simmons

Harvest Green

A Planned Unit Development

S.E. Civil Engineering & Surveying

OWNER
SILVERHILL ENTERPRISES
112 BAY CIRCLE DRIVE
HOLLAND, MI 49424
(Parcel 05-46-01-02-0-000-001.508 is leased from Fairhope Single Tax)

DEVELOPER:
TERRACORE DEVELOPMENT SERVICES, LLC
29891 WOODROW LANE, SUITE 300
SPANISH FORT AL 36527

SITE DATA

TOTAL AREA: 193.03 AC
CURRENT ZONING: RA (County)
PROPOSED ZONING: P.U.D.
MAX BLDG HEIGHT: 30 FT
MAX BLDG HEIGHT (100s): 35 FT
MAX COVERAGE:
(PRINCIPAL STRUCT) 40% (see table)
MINIMUM HOUSE: 1,600 SF
LIN. FT. STREETS: 19,612 LF
TOTAL LOTS: 375
DENSITY: 1.93 / AC.
MINIMUM LOT: 7,200 SF
SMALLEST LOT: 7,200 SF
LARGEST SF LOT: 17,800 SF
AVG LOT: 8,997 SF
COMMON AREAS: 92.49 AC (48%)
REQ'D GREENSPACE: 28.96 AC (15%)
PROVIDED: 49.93 AC (25.87%)

LAND USE PERCENTAGES

Single Fam. Lots	77.46 Ac	40%
ROWs	23.08 Ac	12%
Wetlands	6.57 Ac	3.5%
Ponds	10.55 Ac	5.5%
Greenspace	49.93 Ac	26%
Other Open Space	25.44 Ac	13%
TOTAL	193.03 Ac	100%

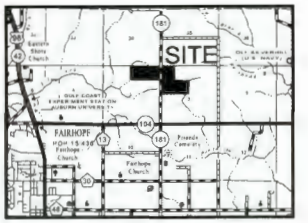
UTILITY PROVIDERS

WATER SERVICE: CITY OF FAIRHOPE
SEWER SERVICE: CITY OF FAIRHOPE (West)
BCSS (East)
ELECTRIC SERVICE: RIVIERA UTILITIES
TELEPHONE SERVICE: AT&T

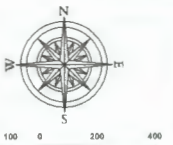
REQUIRED SETBACKS & COVERAGES:

Greenspace Summary

Total Site Area	193.03 Ac
(-) R/W, Ponds, Wetlands	-44.81 Ac.
Area for G.S. Calculation	148.22 Ac
375 lots / 152.83 Ac.	2.53 /Ac
Greenspace Req'd.	15% (28.86 Ac)
Greenspace Open	39.38 Ac.
Greenspace (Lake) (30%)	10.55 Ac
Total Greenspace	49.93 Ac. (25.87%)



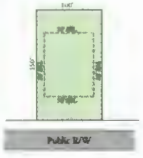
VICINITY MAP
1" = 1 MILE



PARCEL NUMBERS:
05-46-02-03-0-000-001.000
05-46-01-02-0-000-002.000
05-46-01-02-0-000-001.508 (FST)

Summary- West

Total Acres	82.77 AC±
Useable Uplands	77.8 AC±
100'x150'	42
82'x143'	50
56'x140'	56
Total Lots	148
Streets	7,892 LF
Req'd. Greenspace	15% (12.42 Ac.)
Provided	24.9% (19.54 Ac.)



Typical Lot



Typical Lot



Typical Lot



P.U.D. NOTES:

1. See Attached Boundary Survey for Legal Description (Sht 2 of 4).
2. All proposed ROWs to be Public and a minimum of 50 feet in width
3. All sidewalks shown shall be a minimum of 5 feet in width and subject to Fairhope Requirements regarding A.D.A. Compliance.
4. Lot numbering shown is for depicting counts for different Lot Sizes. Actual Lot Numbering will be sequential at Preliminary Plat.

Summary - East

Total Acres	110.26 Ac±
Useable Uplands	108.1 Ac +/-
75' x 140'	105
62' x 140'	55
52' x 140'	67
Total Lots	227
Streets	11,720 l.f.
Req'd. Greenspace	15% (16.54 Ac.)
Provided	27.6% (30.39 Ac.)



Typical Lot



Typical Lot



Typical Lot

MASTER PLAN
SHT 1 OF 4

City of Fairhope
City Council

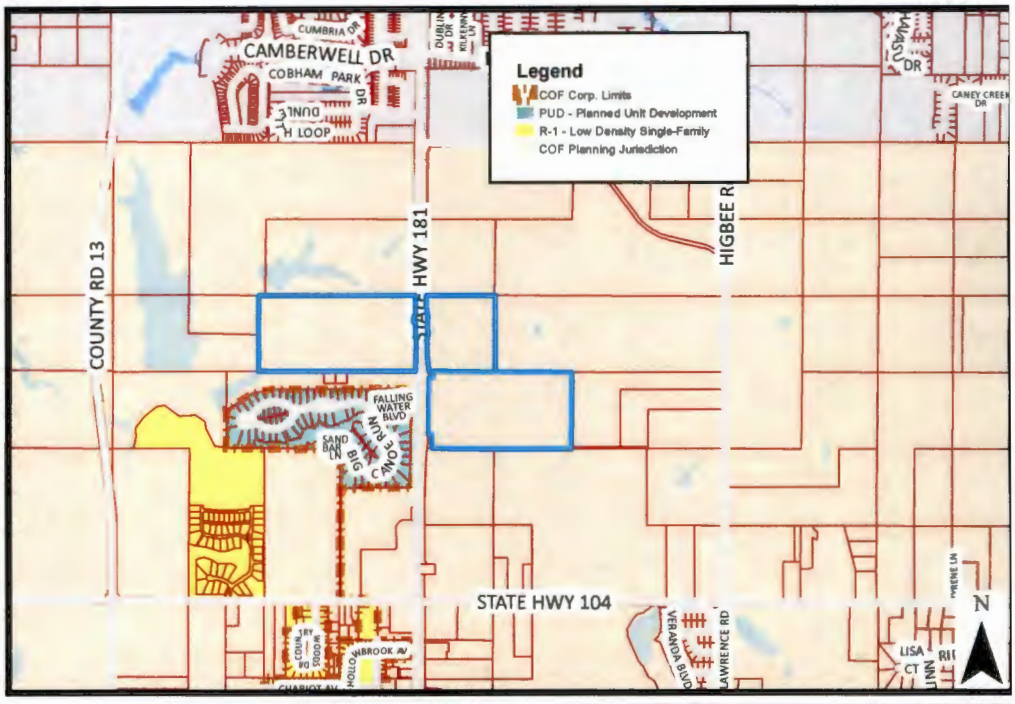
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ZC 21.10 - Harvest Green



Project Name:
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East and west of HWY 181 near the Waters Subdivision
Surveyor of Record:
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S.E. Civil, LLC
Owner / Developer:
Silverhill Enterprises, LLC
School District:
Fairhope East Elementary, Middle and High Schools
Recommendation:
Approved w/ Conditions
Prepared by:
Hunter Simmons





Summary of Request:

The applicant, Silverhill Enterprises, LLC, requests conditional annexation with rezoning to a Planned Unit Development (PUD). The property is approximately 193.03 acres and is located on the east and west side of HWY 181 north of The Waters subdivision. The Developer is Terracore Development Services, LLC. David Diel, with S.E. Civil, represents the applicant.

The applicant describes the project as a mixed-use residential community comprised of 375 Single Family Lots. For clarification, since mixed-use in Fairhope parlance implies commercial use, there is no commercial uses proposed within this PUD. All internal streets will be dedicated to the City of Fairhope.



A lot on the eastern side of HWY 181 will be dedicated to the City of Fairhope for a future fire station as illustrated in the image above.



Lots and Homes

The applicant plans to have all lots ready to build by November 2023. Six years is projected for complete build out. Harvest Green is divided by HWY 181. The two portions are referenced as Harvest Green West and Harvest Green East.



Figure 1: Harvest Green West

Harvest Green West consists of 148 total lots. In general, these are larger lots than those proposed in Harvest Green East. The largest lots are located along the southern boundary adjacent to existing single-family homes. 23 home plans were provided as part of the Master Development Plan, each with alternative elevations to provide variety in housing. Home plans shown for Harvest Green West are from Truland Homes. A few examples are shown below.




ELEVATION A


ELEVATION A


ELEVATION A


ELEVATION A

Harvest Green West does not provide road connectivity outside of this development, but it is worth noting that the property directly north contains a large pond as illustrated on the aerial below, and the south is one large residential parcel. An easement could be required to the south.



Harvest Green East



Figure 2: Harvest Green East

Harvest Green East consists of 227 total lots. The largest lots are located along the southern boundary adjacent to existing single-family homes. 28 home plans were provided as part of the Master Development Plan, each with alternative elevations to provide variety in housing. Home plans shown for Harvest Green East are from D.R. Horton and Express by D.R. Horton. A few examples are shown below.













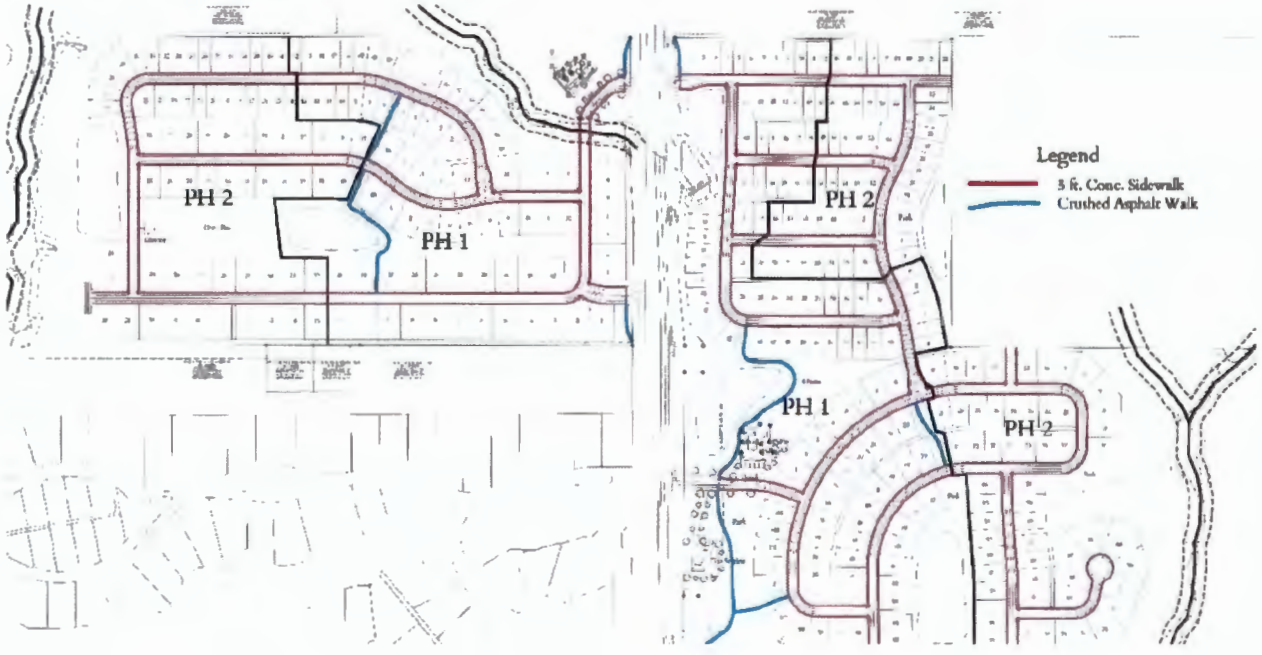
Harvest Green East provides connectivity to adjacent undeveloped properties.

Greenspace/Landscape Plans

The project proposes 49.93 acres of greenspace, or 25.87% of the total site. 15% greenspace is required. Amenities include two swimming pools, two playgrounds, a multi-purpose court, an exercise area, and other areas listed as "park".

A pedestrian circulation plan was provided and shown below that includes 5' sidewalks, as well as crushed asphalt walkways. Sidewalk access along HWY 181 is difficult due to wetland crossings. The applicant has provided a combination of crushed asphalt walkways and sidewalks to provide pedestrian connectivity along HWY 181. A public easement will be required at preliminary plat to ensure public access to those portions outside of ROWs.

Staff would like the applicant to consider providing public easements through stream buffers in the hopes of provided a future trail system.



Landscape plans were provided illustrating street trees and minimal other landscape. Landscape plans will be further reviewed during preliminary plat process. Traffic calming islands were added on the site plan but are not included on landscape plans. Landscape plans will also need to define park areas more clearly.

All ponds illustrated on plans are wet ponds.

Per the Engineer's calculations, there are 44.81 acres of wetlands on the site. Our subdivision regulations require 30' buffers around wetlands and 50' buffers around streams. Staff appreciates the proposed layout as most parkland and greenspace are sited near required buffers that increase protection of sensitive ecologies.

Utilities
Based on the application, Water, Sewer and Gas for Harvest Green West, and water and gas for Harvest Green East will be supplied by Fairhope Utilities. BCSS will provide sewer for Harvest Green East. Riviera will provide power and AT&T will provide telecommunications.

Comments:
Not all questions will be answered in this review. Traffic, detailed drainage plans, electrical, and sewer services will need to be reviewed in full during preliminary plats reviews. If the PUD is approved, each phase – four in total – will each have a preliminary and final plat application. Each phase will be subject to the codes and regulations of the City of Fairhope. During that review, staff, as well as the Planning Commission will provide a critical review of those technical systems.

Of note, on July 26, 2021, a Bill sponsored by Senator Elliot went into effect that removes the applicability of City Ordinances on developments outside the city limits of Fairhope. Those ordinances include, but are not limited to, the wetlands protection ordinance, the red soil and clay ordinance, and the sign ordinance. Staff agrees with the common sentiment that farmland should be preserved, but development is a reality along the Hwy 181 corridor, and we appreciate a development willing to annex into the City and develop to our standards.

It is also worth noting that the property is currently zoned Agriculture by Baldwin County. Staff was informed that agriculturally zoned property can be rezoned to RSF-1 administratively by Baldwin County. Baldwin County RSF-1 requires 30,000 s.f. lots, but nothing prevents an applicant from applying for a denser development, or a development that does not meet the intentions of the City of Fairhope Comprehensive Plan, nor our codes and regulations. With the overall density proposed, because the proposed residential PUD meets the intentions of Fairhope's comprehensive plan, and because a PUD dictates an exact site plan, staff recommends approval of Harvest Green.

Criteria – The application shall be reviewed based on the following criteria:
(1) Compliance with the Comprehensive Plan;
Response:
Per the Applicant:

This property and the most of surrounding properties are recommended for Residential use by the "Preferred Land Use Plan" as outlined in the 2015 Comprehensive Plan. An area along our east side is recommended for a Park, where we have provided Open Space on our plan, immediately adjacent to the St. Michaels Catholic School. Our development is ideally located between a Village Node and a Business Node on the Preferred Plan, and is in harmony with the Comprehensive Plan.

Staff believes the proposed use is not in conflict with the comprehensive plan.

(2) Compliance with the standards, goals, and intent of this ordinance;
Response:
The purpose of the PUD District is intended to encourage opportunities for development innovation tailored to a particular site, which while clearly furthering the goals of the comprehensive plan, could not explicitly be established by generally applicable standards or guidelines.

Some of the lot sizes proposed within the PUD are not provided in existing standards. In this case, a site plan driven PUD provides a clear definition of what Harvest Green will become.

(3) The character of the surrounding property, including any pending development activity;
Response: With the widening of HWY 181, we are seeing many developments pop up along the corridor. Fairhope has long desired to keep commercial development near the intersections of major roads. The subject property falls between those intersections, or nodes, as they are referred to in our Comprehensive Plan. A residential development fits within the vision of our comprehensive plan. Both pedestrian and vehicular connectivity are provided for within the proposed plan, including connectivity to the adjacent Rockwell Apartments south of Harvest Green East, which is also on this month's Planning Commission agenda.

(4) Adequacy of public infrastructure to support the proposed development;
Response: Availability letters have been provided. There will likely be aide to construction costs for some utilities, but those will be reviewed during corresponding subdivision cases.

(5) Impacts on natural resources, including existing conditions and ongoing post-development conditions;
Response: Most of the current site is farmland. As previously stated, approximately 44 acres of wetlands are onsite and are protected per City of Fairhope wetlands ordinances. Wetland delineation and other requirements will be provided during preliminary plat to confirm design details.

(6) Compliance with other laws and regulations of the City;
Response: At the time of development all applicable laws of the City will be applied.

(7) Compliance with other applicable laws and regulations of other jurisdictions;
Response: At the time of development all applicable laws of the City will be applied.

(8) Impacts on adjacent property including noise, traffic, visible intrusions, potential physical impacts, and property values; and,
Response: Staff does not anticipate any significant issues relating to these criteria. A traffic study shall be required for all applications that will generate an average daily traffic (ADT) count of 1,000 trips or more, or which will generate 50 trips or more during any peak hour period and will be a requirement during the preliminary plat review.

Recommendation:

Staff recommends Case: ZC 21.10 *Harvest Green PUD* from R-1 to PUD be **Approved with the following conditions:**

1. A traffic study shall be provided that includes all traffic generated by Harvest Green with the first application for preliminary plat. Please begin communications with ALDOT ASAP.
2. Fairhope utilities provided availability letters, but final plans and aid to construction costs will need to be coordinated with the respective supervisors.
3. Landscape plans shall be revised to include traffic calming islands.
4. If approved by the City Council, two (2) printed and bound copies of the Master Development Plan for the Harvest Green PUD shall be provided to the City.

APPLICATION FOR ZONING DISTRICT CHANGE

Property Owner / Leaseholder Information

Name: Silverhill Enterprises, LLC Phone Number: _____
Street Address: 112 Bay Circle Dr
City: Holland State: MI Zip: 49424

Applicant / Agent Information

If different from above.
Notarized letter from property owner is required if an agent is used for representation.

Name: David Diehl PLS Phone Number: (251)990-6566
Street Address: 880 Holcomb Blvd Suite 2F
City: Fairhope State: AL Zip: 36532

Current Zoning of Property: R-1
Proposed Zoning/Use of the Property: Planned Unit Development
Property Address: _____
Parcel Number: 05-46-01-02-0-000-001.508 / 05-46-01-02-0-000-002.000
Property Legal Description: see attached 05-46-02-03-0-000-001.000
Reason for Zoning Change: To allow for a development of a 375 Lot single family subdivision

Property Map Attached	(YES)	NO
Metes and Bounds Description Attached	(YES)	NO
Names and Address of all Real Property Owners within 300 Feet of Above Described Property Attached.	(YES)	NO

Character of Improvements to the Property and Approximate Construction Date: Existing site is undeveloped farmland. Proposed residential neighborhood to be constructed once approvals are granted.

Zoning Fee Calculation:
Reference: Ordinance 1269

I certify that I am the property owner/leaseholder of the above described property and hereby submit this application to the City for review. *If property is owned by Fairhope Single Tax Corp. an authorized Single Tax representative shall sign this application.

ERIC GUSTAFSON — Property Owner/Leaseholder Printed Name

Signature — 5/21/21

Date — 5/25/2021

Fairhope Single Tax Corp. (If Applicable)

S.E. Civil Engineering & Surveying

Harves

A Planned U

REQUIRED SETBA

OWNER
SILVERHILL ENTERPRISES
112 BAY CIRCLE DRIVE
HOLLAND, MI 49424
(Parcel 05-46-01-02-0-000-001.506 is leased from Fairhope Single Tax)

DEVELOPER:
TERRACORE DEVELOPMENT SERVICES, LLC
29891 WOODROW LANE, SUITE 300
SPANISH FORT AL 36527

SITE DATA

TOTAL AREA: 193.03 AC
CURRENT ZONING: RA (County)
PROPOSED ZONING: P.U.D.
MAX BLDG HEIGHT: 30 FT
MAX BLDG HEIGHT (100s): 35 FT
MAX COVERAGE:
(PRINCIPAL STRUCT) 40% (see table)
MINIMUM HOUSE: 1,600 SF
LIN. FT. STREETS: 19,983 LF
TOTAL LOTS: 375
DENSITY: 1.93 / AC.
MINIMUM LOT: 7,200 SF
SMALLEST LOT: 7,200 SF
LARGEST SF LOT: 17,800 SF
AVG LOT: 8,997 SF
COMMON AREAS: 92.49 AC (48%)
REQ'D GREENSPACE: 28.96 AC (15%)
PROVIDED: 49.93 AC (25.87%)

LAND USE PERCENTAGES

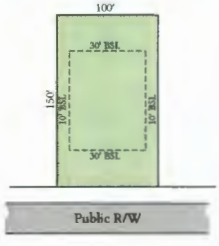
Single Fam. Lots	77.46 Ac	40%
ROWs	23.08 Ac	12%
Wetlands	6.57 Ac	3.5%
Ponds	10.55 Ac	5.5%
Greenspace	49.93 Ac	26%
Other Open Space	25.44 Ac	13%
TOTAL	193.03 Ac	100%

UTILITY PROVIDERS

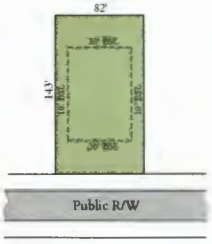
WATER SERVICE: CITY OF FAIRHOPE
SEWER SERVICE: CITY OF FAIRHOPE (West)
BCSS (East)
ELECTRIC SERVICE: BALDWIN EMC
TELEPHONE SERVICE: AT&T

Summary- West

Total Acres	82.77 AC±
Useable Uplands	77.8 AC±
100'x150'	42
82'x143'	50
56'x140'	56
Total Lots	148
Streets	8,263 LF
Req'd. Greenspace	15% (12.42 Ac.)
Provided	24.9% (19.54 Ac.)



Typical Lot



Typical Lot



Typical Lot





Harvest Green

A Planned Unit Development
Master Development Plan



Developed by:

TERRACORE
DEVELOPMENT SERVICES

29892 Woodrow Lane, Suite 300
Spanish Fort, AL 36527

Site Map

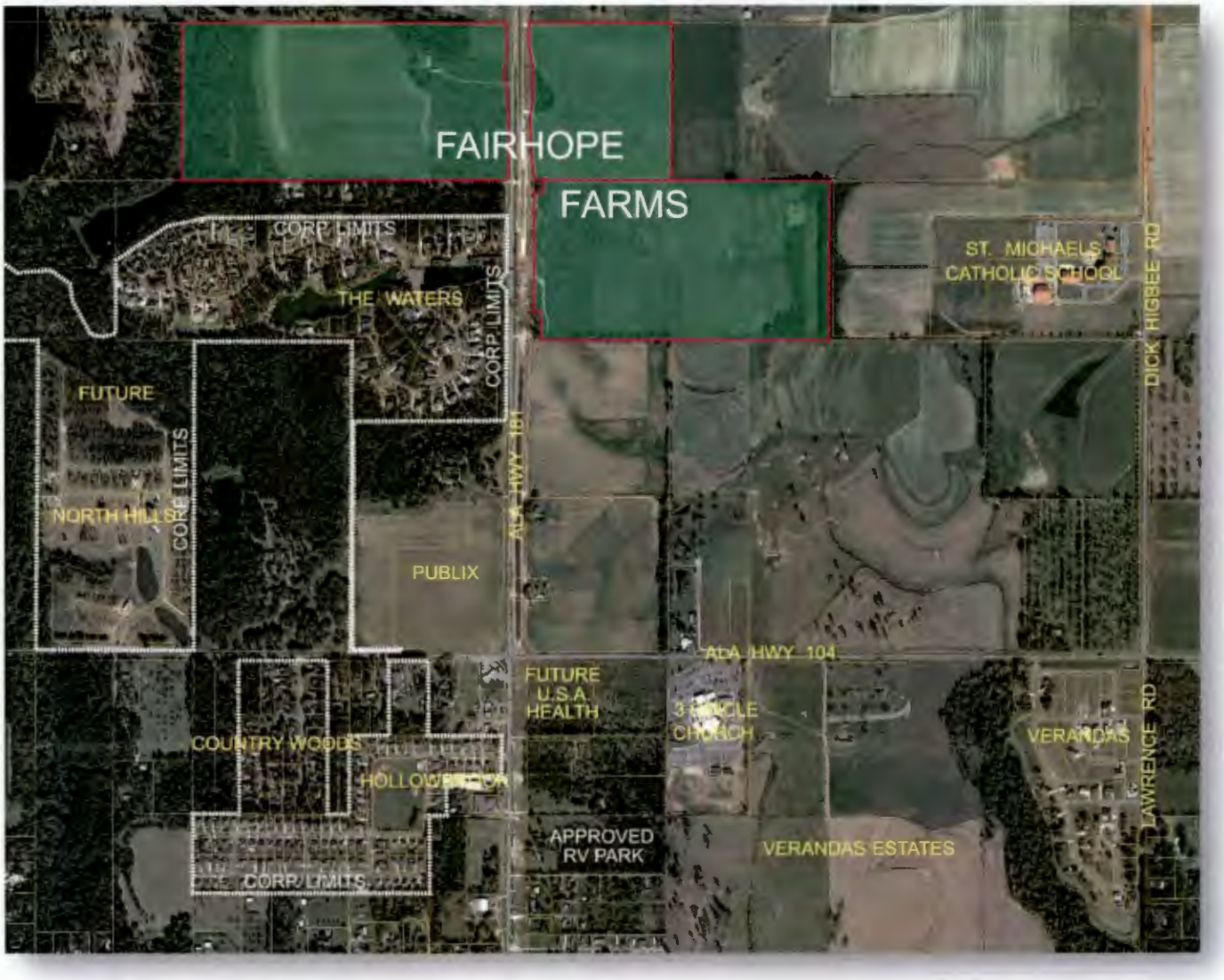


FIGURE 2A

Overall Summary

Harvest Green is a proposed Mixed-Use residential community located on the West and East sides of Alabama Highway 181 near The Waters subdivision. It will consist of 375 Single Family Lots on 193 Acres for a density of 1.94 units per acre. All lots will be accessed by proposed standard streets that will be dedicated to The City of Fairhope. A Parcel on the east side of the development will be dedicated to the City for use as a Fire Station.

Project Legal Description

WEST:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 3, TOWNSHIP 6 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA AND RUN THENCE NORTH 89 DEGREES 54 MINUTES 29 SECONDS WEST, ALONG THE NORTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 3, A DISTANCE OF 56.31 FEET TO A 1/2" CAPPED REBAR (SE CIVIL) ON THE WEST RIGHT-OF-WAY OF ALABAMA HIGHWAY 181 FOR THE POINT OF BEGINNING: THENCE, DEPARTING SAID RIGHT-OF-WAY, CONTINUE NORTH 89 DEGREES 54 MINUTES 29 SECONDS WEST, ALONG THE NORTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 3, A DISTANCE OF 2600.01 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE NORTH 89 DEGREES 05 MINUTES 03 SECONDS WEST, A DISTANCE OF 113.47 FEET TO A 1/2" REBAR; THENCE RUN SOUTH 00 DEGREES 25 MINUTES 01 SECONDS WEST, ALONG A WIRE FENCE, A DISTANCE OF 1327.96 FEET TO A POINT (POINT FALLS IN POND) ON THE SOUTH LINE OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3; THENCE RUN SOUTH 89 DEGREES 57 MINUTES 29 SECONDS EAST, ALONG THE SOUTH LINE OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER, A DISTANCE OF 120.88 FEET TO A 3" OPEN END PIPE; THENCE RUN SOUTH 89 DEGREES 56 MINUTES 40 SECONDS EAST, ALONG THE SOUTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER, A DISTANCE OF 2609.57 FEET TO A 1/2" REBAR ON THE WEST RIGHT-OF-WAY OF SAID ALABAMA HIGHWAY 181; THENCE RUN NORTH 00 DEGREES 25 MINUTES 39 SECONDS EAST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 530.36 FEET TO A 6"X6" ALDOT (ALABAMA DEPARTMENT OF TRANSPORTATION) CONCRETE MONUMENT; THENCE RUN NORTH 03 DEGREES 16 MINUTES 32 SECONDS WEST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 140.59 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTHERLY, ALONG SAID RIGHT-OF-WAY, ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 7729.44 FEET, AN ARC LENGTH OF 161.60 FEET, (CHORD BEARS NORTH 01 DEGREES 28 MINUTES 24 SECONDS WEST, A DISTANCE OF 161.60 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 52 DEGREES 30 MINUTES 22 SECONDS WEST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 31.80 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTHERLY, ALONG SAID RIGHT-OF-WAY, ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 7754.44 FEET, AN ARC LENGTH OF 81.12 FEET, (CHORD BEARS NORTH 00 DEGREES 28 MINUTES 54 SECONDS WEST, A DISTANCE OF 81.12 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 22 DEGREES 43 MINUTES 51 SECONDS EAST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 65.03 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 00 DEGREES 17 MINUTES 33 SECONDS EAST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 331.86 FEET TO THE POINT OF BEGINNING. TRACT CONTAINS 82.77 ACRES, MORE OR LESS.

EAST:

COMMENCE AT THE NORTHWEST CORNER OF SECTION 2, TOWNSHIP 6 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA AND RUN THENCE SOUTH 89 DEGREES 39 MINUTES 20 SECONDS EAST, ALONG THE NORTH LINE OF SAID SECTION 2, A DISTANCE OF 133.72 FEET TO A 1/2" CAPPED REBAR (SE CIVIL) ON THE EAST RIGHT-OF-WAY OF ALABAMA HIGHWAY 181 FOR THE POINT OF BEGINNING: THENCE DEPARTING SAID RIGHT-OF-WAY, CONTINUE SOUTH 89 DEGREES 39 MINUTES 20 SECONDS EAST, ALONG THE NORTH LINE OF SAID SECTION 2, A DISTANCE OF 1193.19 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE RUN SOUTH 00 DEGREES 15 MINUTES 02 SECONDS WEST, ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 1323.34 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE RUN SOUTH 89 DEGREES 42 MINUTES 26 SECONDS EAST, ALONG THE NORTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 1329.67 FEET TO A 1/2" CAPPED REBAR (LS #19254); THENCE RUN SOUTH 00 DEGREES 17 MINUTES 01 SECONDS WEST, ALONG THE EAST LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 1322.14 FEET TO A

1/2" CAPPED REBAR (LS #19254); THENCE RUN NORTH 89 DEGREES 49 MINUTES 40 SECONDS WEST, ALONG THE SOUTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 1330.30 FEET TO A 1/2" CAPPED REBAR AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 2; CONTINUE THENCE NORTH 89 DEGREES 49 MINUTES 40 SECONDS WEST, ALONG THE SOUTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 1079.73 FEET TO A 1/2 CAPPED REBAR (SE CIVIL) AT THE SOUTHEAST CORNER OF LANDS HERETOFORE CONVEYED TO THE STATE OF ALABAMA IN THAT WARRANTY DEED, RECORDED AT INSTRUMENT 1316996, PROBATE RECORDS, BALDWIN COUNTY, ALABAMA; THENCE, DEPARTING THE SOUTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 2, RUN NORTH 00 DEGREES 09 MINUTES 44 SECONDS EAST, ALONG THE EAST LINE OF SAID STATE OF ALABAMA LANDS, A DISTANCE OF 242.59 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE RUN NORTH 89 DEGREES 45 MINUTES 31 SECONDS WEST, ALONG THE NORTH LINE OF SAID STATE OF ALABAMA LANDS, A DISTANCE OF 63.45 FEET TO A 1/2" CAPPED REBAR (SE CIVIL) ON THE EAST RIGHT-OF-WAY OF SAID ALABAMA HIGHWAY 181; THENCE RUN NORTH 00 DEGREES 17 MINUTES 29 SECONDS EAST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 970.84 FEET TO A 1/2" CAPPED REBAR (SE CIVIL) TO THE SOUTHWEST CORNER OF SAID STATE OF ALABAMA LANDS; THENCE, DEPARTING SAID RIGHT-OF-WAY, RUN SOUTH 89 DEGREES 37 MINUTES 20 SECONDS EAST, ALONG THE SOUTH LINE OF SAID STATE OF ALABAMA LANDS, A DISTANCE OF 76.49 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE RUN NORTH 00 DEGREES 29 MINUTES 14 SECONDS EAST, ALONG SAID STATE OF ALABAMA LANDS, A DISTANCE OF 113.96 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE RUN NORTH 89 DEGREES 42 MINUTES 26 SECONDS WEST, A DISTANCE OF 76.69 FEET TO A 1/2" CAPPED REBAR (SE CIVIL) ON THE EAST RIGHT-OF-WAY OF SAID ALABAMA HIGHWAY 181; THENCE RUN NORTH 00 DEGREES 03 MINUTES 35 SECONDS WEST, ALONG THE EAST RIGHT-OF-WAY OF SAID ALABAMA HIGHWAY 181, A DISTANCE OF 4.81 FEET TO A 6"X6" ALDOT (ALABAMA DEPARTMENT OF TRANSPORTATION) CONCRETE MONUMENT; THENCE RUN NORTH 05 DEGREES 15 MINUTES 51 SECONDS WEST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 273.24 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 02 DEGREES 09 MINUTES 28 SECONDS WEST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 261.14 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 09 DEGREES 55 MINUTES 11 SECONDS EAST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 143.91 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE RUN NORTHERLY, ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 7509.44 FEET, AN ARC LENGTH OF 312.96 FEET, (CHORD BEARS NORTH 00 DEGREES 54 MINUTES 06 SECONDS WEST, A DISTANCE OF 312.94 FEET) TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 11 DEGREES 46 MINUTES 10 SECONDS WEST, A DISTANCE OF 143.90 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 00 DEGREES 17 MINUTES 32 SECONDS EAST, A DISTANCE OF 191.26 FEET TO THE POINT OF BEGINNING. TRACT CONTAINS 110.25 ACRES, MORE OR LESS.

Ownership/Developer

The property is currently owned by:
Silverhill Enterprises, LLC
112 Bay Circle Drive
Holland, MI 49424

The property is being developed by:
Terracore Development Services, LLC
29892 Woodrow Lane, Suite 300
Spanish Fort, AL 36527

The property will be conveyed to developer upon approval of Preliminary Plat and Plans.

Neighborhood Character

Within one mile of the Harvest Green development, you will find a number of uses: Single Family Residential (R-1 and PUD), A Publix Site under construction, the proposed USA Health Facility, a corner gas station / convenience store, and a range of other commercial and office uses. In addition, in our immediate area, there are a number of commercial uses and a multi-family use, all which fall outside of the Corporate Limits of the City of Fairhope, in Baldwin County's District 14, which elected not to enact zoning. The proposed mixed residential development proposed with our Harvest Green plan is a suitable use considering these surrounding uses.

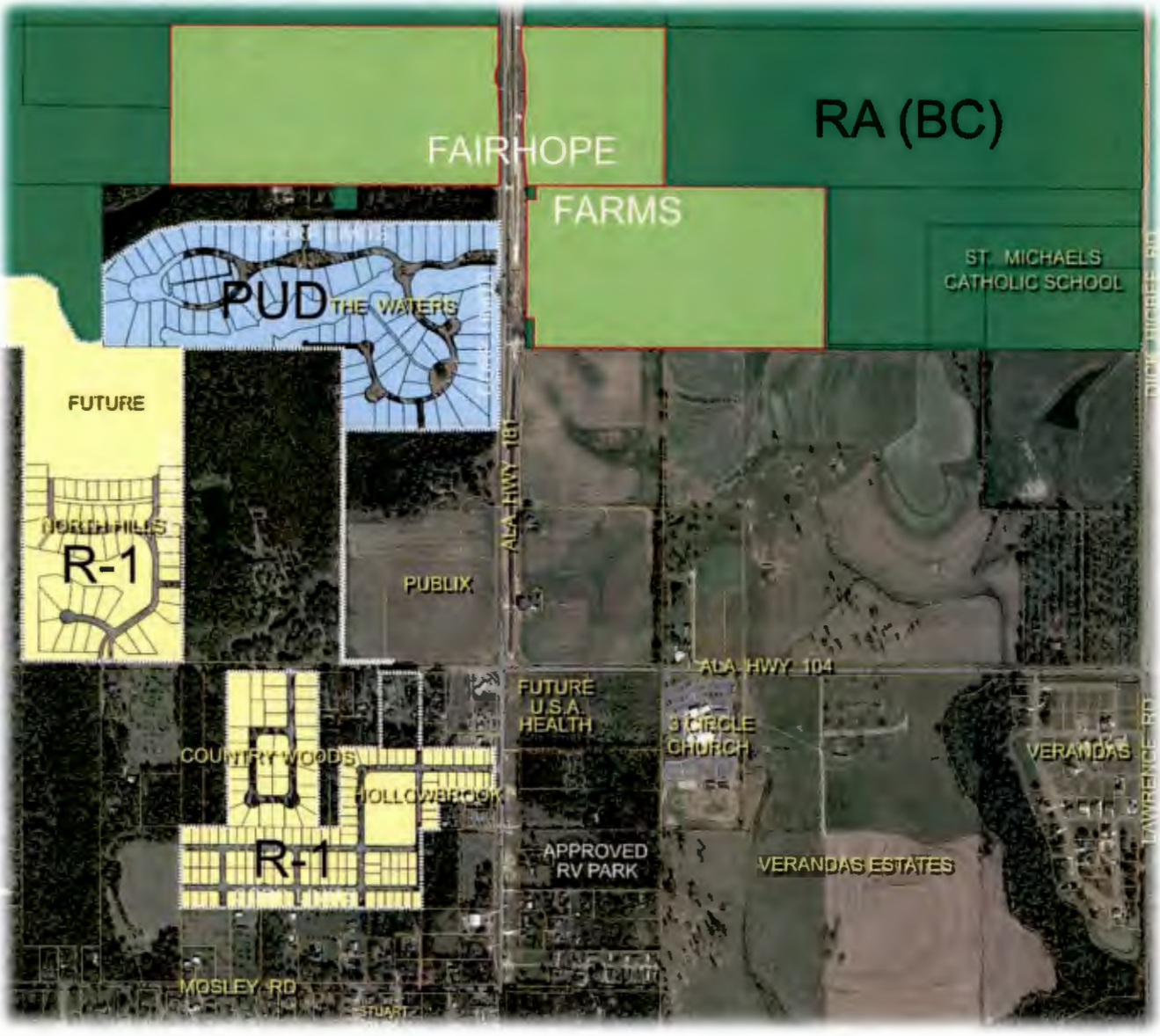


FIGURE 5A

Relative Density

With an overall concept similar to Firethorne and Old Battles Village, the proposed single family lots in Harvest Green consist of lots ranging from 52 feet wide to 100 feet wide. Similarly, the lots withing one mile of Harvest Green range from 50 feet wide to 100 foot wide, with neighborhoods ranging in density from 1.0 to 2.27 units per acre and an average density of 1.7 units per acre. Our proposed density is 1.9 units per acre which is in keeping with the overall trend of the area.

Area Neighborhoods

North Hills	Acreage	Lots	Density
Phase 1	47.47	48	1.01
Phase 2	49.3	64	1.30
TOTAL	**96.77**	**112**	**1.16**

The Waters	Acreage	Lots	Density
Phase 1	92.8	93	1.00
TOTAL	**92.8**	**93**	**1.00**

Oldfield	Acreage	Lots	Density
Phase 1	83.04	151	1.82
Phase 2A	18.63	30	1.61
Phase 2B	34.56	76	2.20
Phase 3A	14.16	40	2.82
Phase 3B	25.77	90	3.49
Phase 4	17.38	53	3.05
TOTAL	**193.54**	**440**	**2.27**

Dunmore	Acreage	Lots	Density
Phase 1	95.01	151	1.59
Phase 2A	6.63	26	3.92
Phase 2B	10.47	28	2.67
Phase 2C	25.1	47	1.87
TOTAL	**137.21**	**252**	**1.84**

Cumulative Totals	**520.3**	**897**	**1.72**

FIGURE 6A

Comprehensive Plan

This property and the most of surrounding properties are recommended for Residential use by the "Preferred Land Use Plan" as outlined in the 2015 Comprehensive Plan. An area along our east side is recommended for a Park, where we have provided Open Space on our plan, immediately adjacent to the St. Michaels Catholic School. Our development is ideally located between a Village Node and a Business Node on the Preferred Plan, and is in harmony with the Comprehensive Plan.

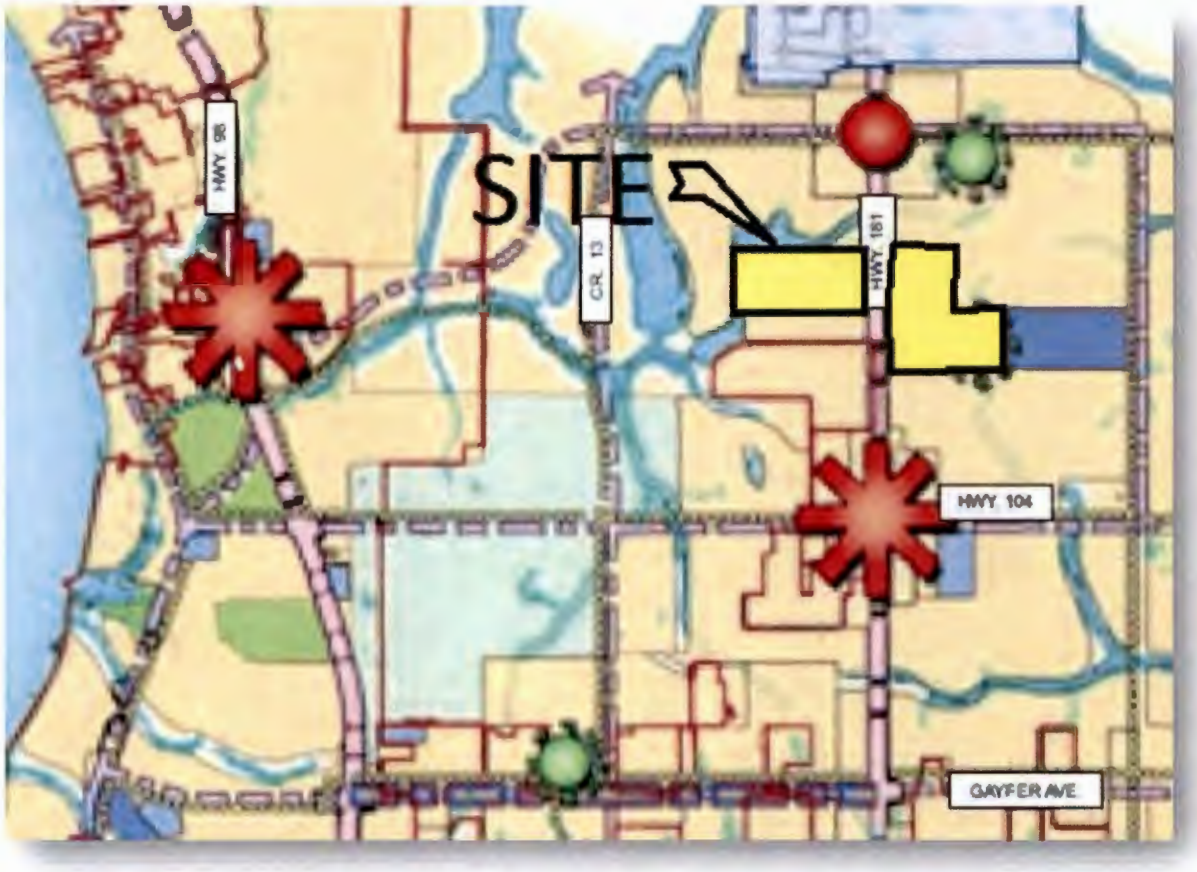


FIGURE 7A

Preferred Comprehensive Plan

Development Timeline

Developer hopes to obtain approvals for Planned Unit Development by September, and Preliminary Plat for Phase One by November 2021. Phase One will consist of approximately half the development, and will have an estimated construction completion time of 12 months, with anticipated build-ready lots by November 2022. Phase Two will follow with lots ready to build by November 2023. A five to six year build out is projected.

Home Ownership

Homes will be privately owned with no anticipated leasing. However, should an owner choose to lease their property, a one (1) year minimum lease, in writing, is required. Only residential use is permitted on each property. No commercial activities of any kind whatsoever shall be conducted in any Home, any other building located on a Lot, or any portion of any Lot; provided, however, that (a) an Owner may conduct a business entirely within his Home so long as (i) such business uses only ten percent (10%) of the total square footage of such Home, (ii) such business does not result in parking of additional vehicles on the Subdivision streets or Common Areas, (iii) such business is secondary to the use of the Lot for residential purposes, (iv) such business shall not violate any applicable zoning ordinances, and (v) such business does not create a nuisance or unreasonably interfere with any other Owner, Home, or Lot, and (b) Builders shall have the right to use a House as a "model home" and to operate a sales office from such model home with the prior written approval of the Architectural Review Committee.

Land Use

100% of the single family lots will be privately owned, single family residential. The Common Areas will remain private and will be solely for the use and enjoyment of the Harvest Green residents. Maintenance of the Common Areas shall be the responsibility of the Home Owners Association. Streets within the single family section will be constructed to City Standards and will be dedicated to the City upon final inspection and acceptance. A one-half acre parcel along the east side of Highway 181 will be dedicated to the City for a much needed Fire Station.

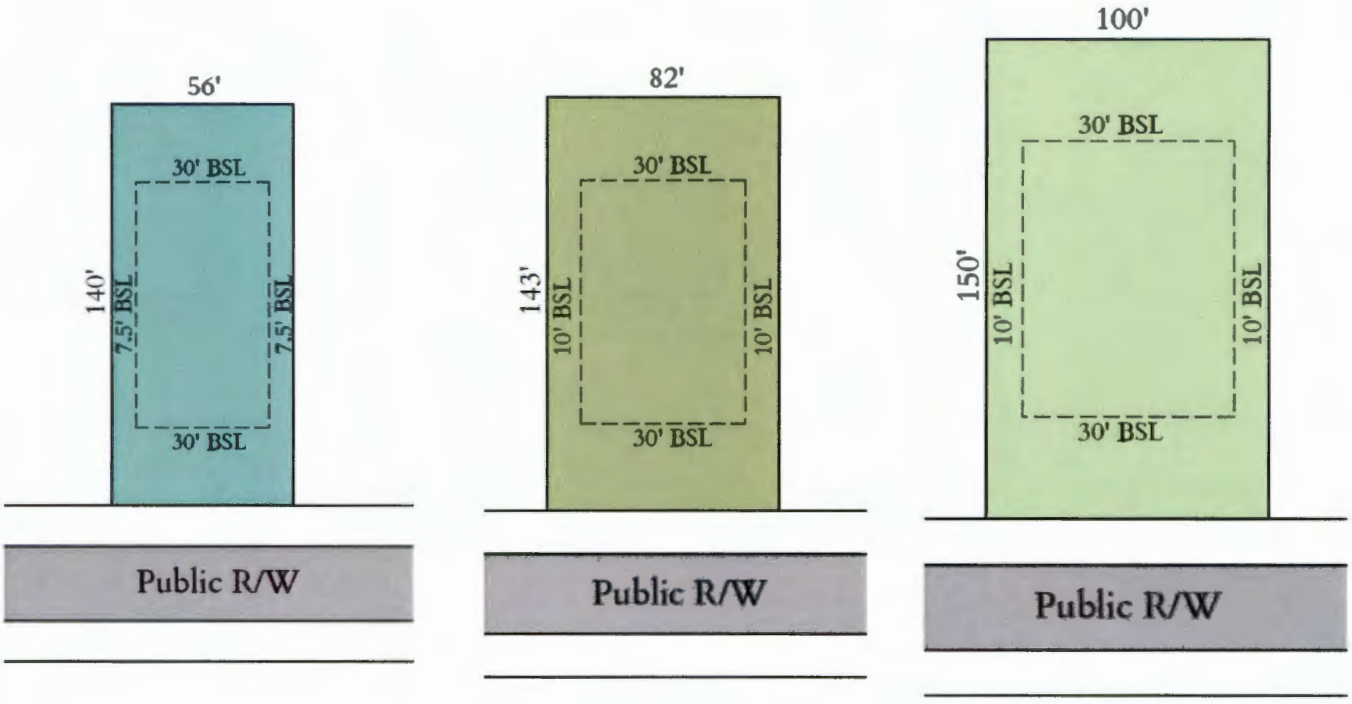
Lots

Typical lots in Harvest Green will range from 52 feet wide to 100 feet wide. Building Setbacks, minimum square footage, and maximum buildable area are listed in the chart below:

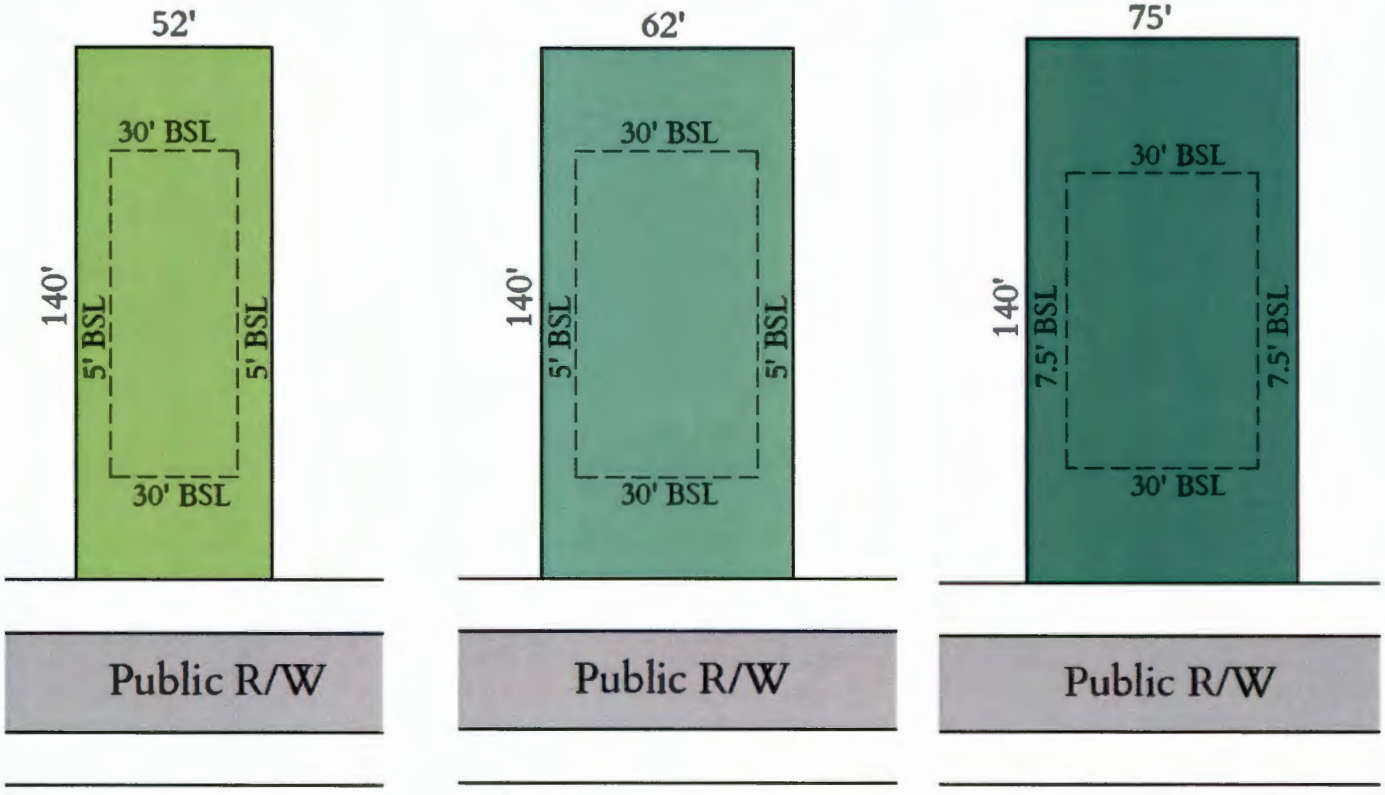
Lot		Min	Building Setbacks				Max. Bldg	Max. Bldg
Width	Depth	Sq Ft	Front	Rear	Side	Side Street	Area %	Area Sq Ft
52	140	7280	30	30	5	20	35%	2548
56	140	7840	30	30	7.5	20	40%	3136
62	140	8680	30	30	5	20	35%	3038
75	140	10500	30	30	7.5	20	37%	3885
82	143	11726	30	30	10	20	37%	4339
100	150	15000	30	30	10	20	40%	6000

FIGURE 8A

Typical Lots in Harvest Green West:



Typical Lots in Harvest Green East:



Greenspace

The site will have 49.93 acres of greenspace, or 25.87% of total site. This exceeds the 15 % required based on Greenspace Density Calculations as shown on our plan.

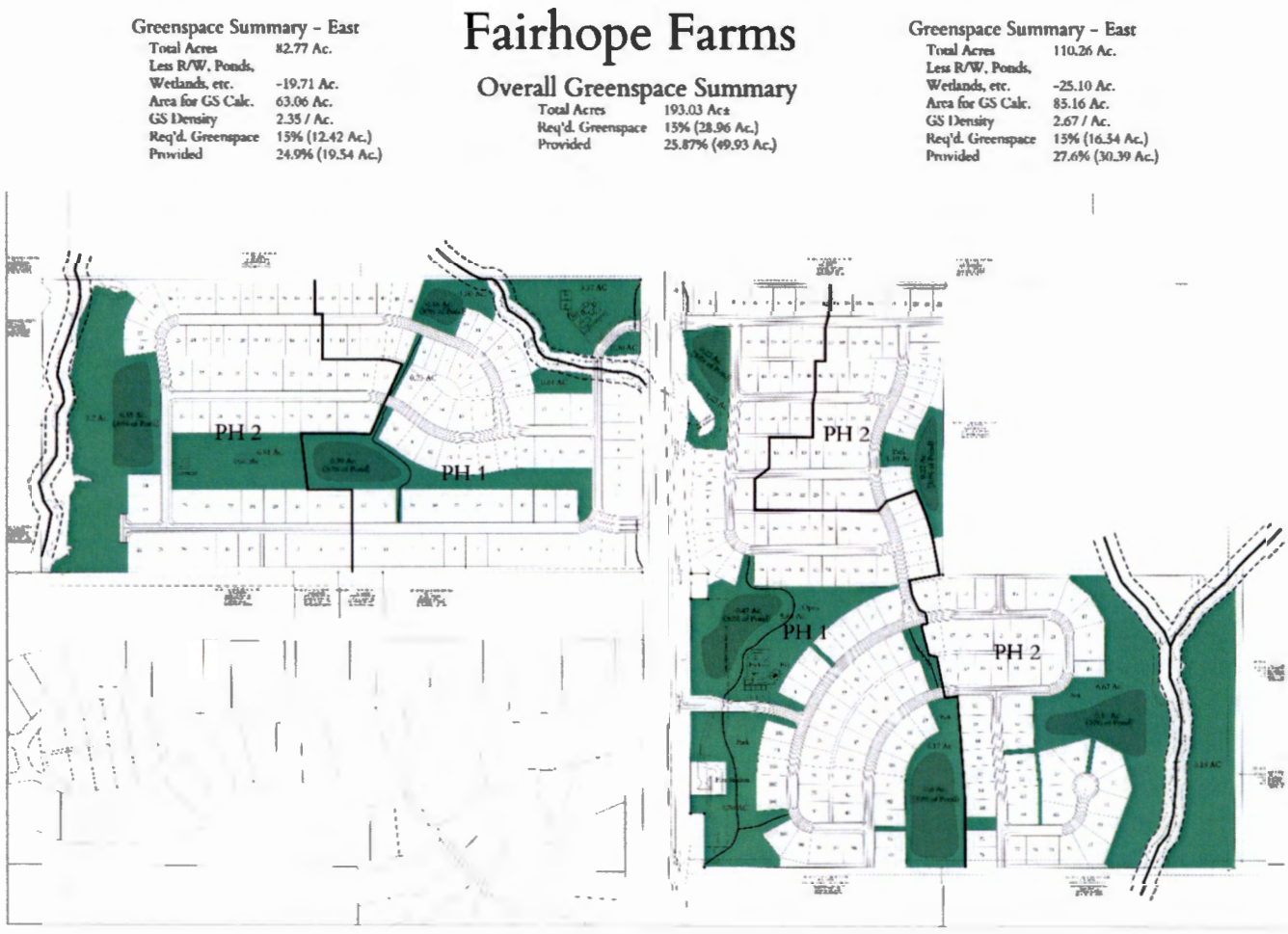
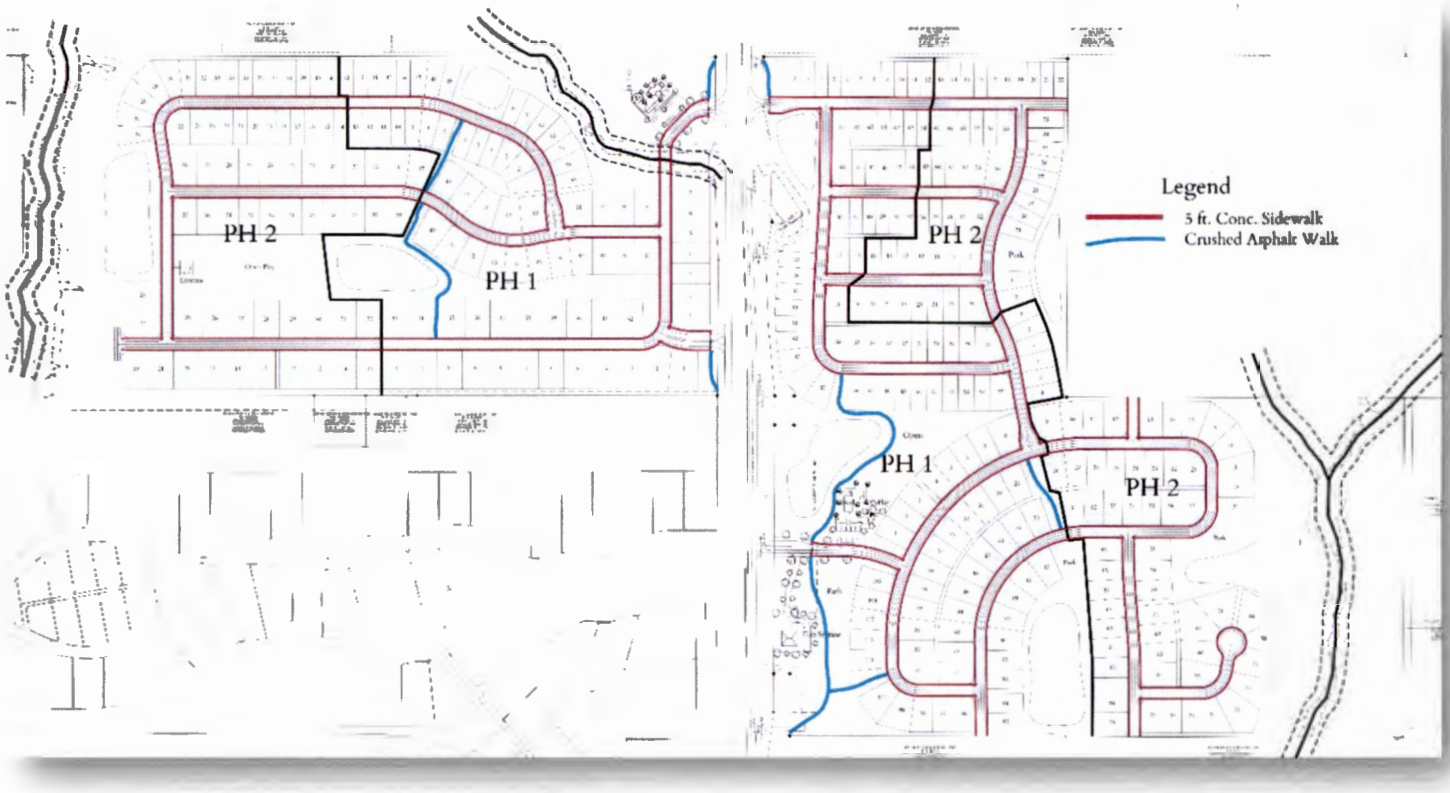


FIGURE 10A

Utilities
Based on conversations with Fairhope Utilities, they will provide Water, Sewer and Gas services for Harvest Green West, and Water and Gas for Harvest Green East. Baldwin County Sewer Service will provide Sewer to Harvest Green East. Riviera will provide Power and AT&T will provide telecommunications for the entire development.

Pedestrian Circulation
Sidewalks, 5 feet wide, will be constructed on both sides of all streets. A crushed asphalt trail system for accessing Open Space will be constructed as shown below. An interior pedestrian access is provided along Highway 181 using a combination of trails and street-side walkways.



Lighting
Streetlights will be standard Acorn style lights, 18 feet high, at a maximum of 300 foot spacing along sidewalks.

Accessory Structures / Equipment
Accessory structures will be permitted as per standard residential zoning regulations regarding location, percentage of coverage, and setbacks from property lines. Exterior AC units and generators (if elected) will be screened from street by landscaping.

Fencing
Fencing will not be constructed with initial construction. Individual Owners may elect to install fencing. Walls or fences constructed or erected on any Lot shall be of ornamental iron, wood, black painted metal or masonry construction. No wall or fence shall be constructed from the front property line to the rear corners of the House. No fences may be constructed without the prior written approval of the Architectural Control Committee.

Typical Homes

Single Family Houses
Maximum building height will be 30 feet as per standard City of Fairhope requirements for all lots except the 100 foot lots, which will have a maximum building height of 35 feet. Maximum lot coverage by principal structure will range from 33% to 40% based on relative requirements in the Fairhope Zoning Ordinance (see Figure 8A). Sample house plans and elevations are included as Appendix A to provide an overall sense of the quality of the homes proposed. These house plans, elevations, and materials may be slightly modified to ensure uniqueness of each home in the neighborhood. Exterior materials will consist of brick, hardie board, wood and vinyl eaves. Driveways will be concrete. Minimum house size will be 1600 square feet with a 2 car garage as outlined in the attached Draft covenants.

Parking
Parking will be provided for each residence with construction of the homes. A minimum of 3 spaces shall be provided for each residence including driveways and garages.

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APPENDIXES

A1 Typical Homes – Harvest Green West

A2 Typical Homes – Harvest Green East

B Landscape Plans

C Restrictive Covenants

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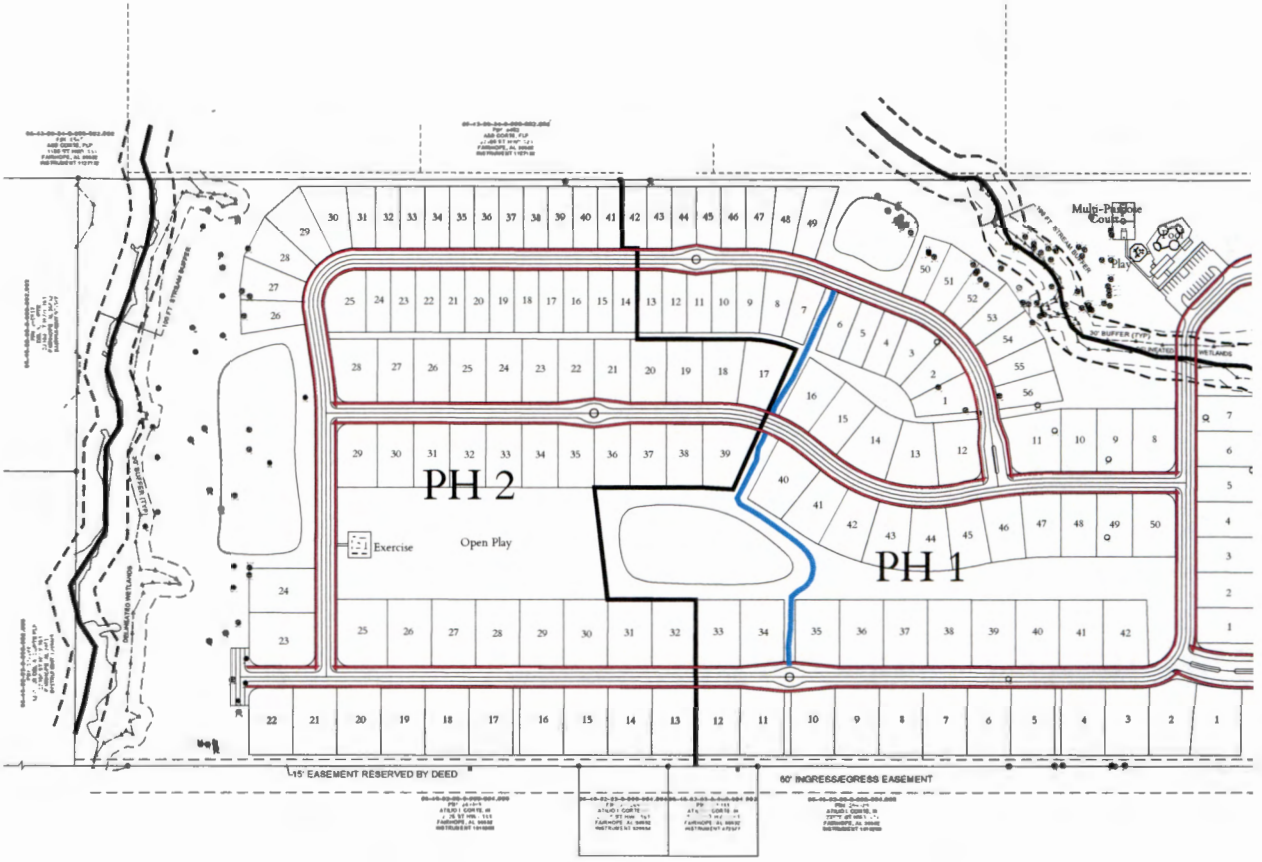
ATTACHMENTS

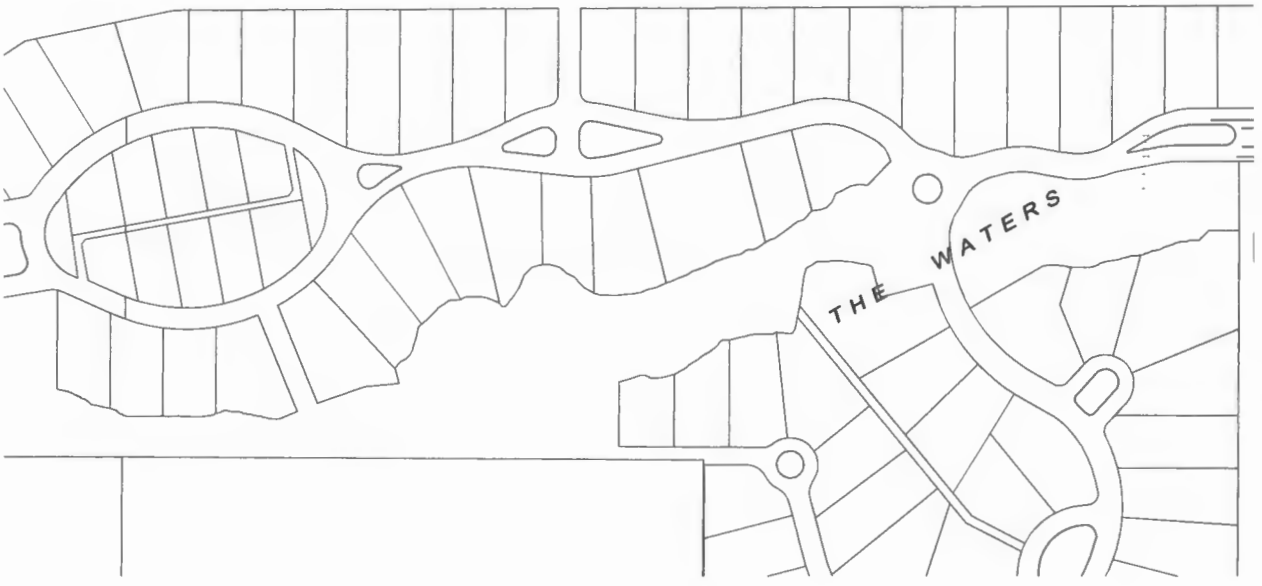
Sht 1 of 4 PUD Master Plan
Sht 2 of 4 Boundary Survey
Sht 3 of 4 Pedestrian Plan
Sht 4 of 4 Greenspace Plan

S.E. Civil Engineering & Surveying

Harvest

PEDESTRI





S.E. Civil
Engineering
& Surveying

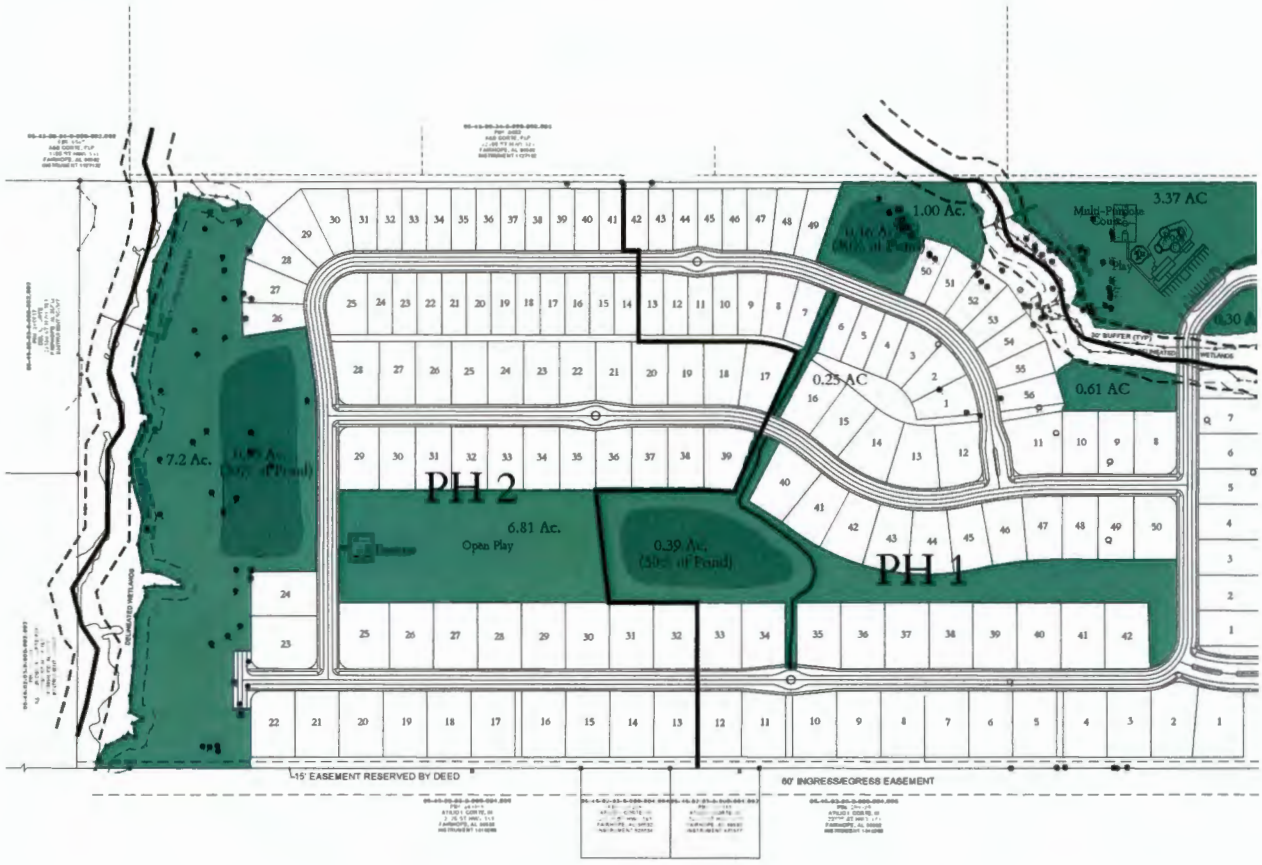
Greenspace Summary - West

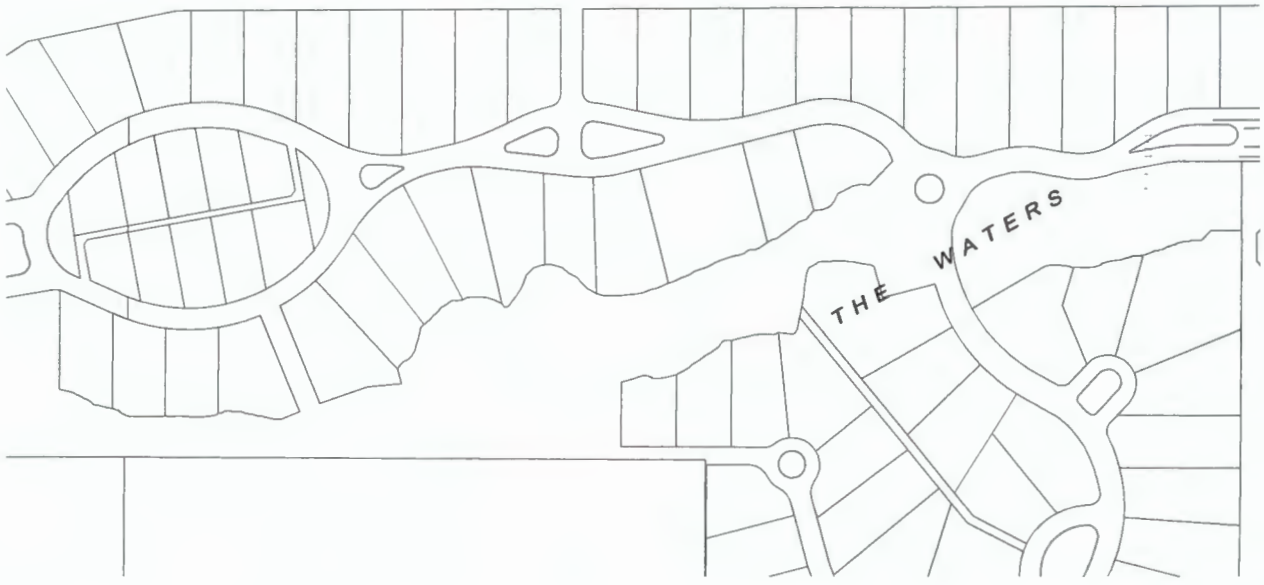
Total Acres	82.77 Ac.
Less R/W, Ponds, Wetlands, etc.	-19.71 Ac.
Area for GS Calc.	63.06 Ac.
GS Density	2.35 / Ac.
Req'd. Greenspace	15% (12.42 Ac.)
Provided	24.9% (19.54 Ac.)

Harvest

Overall Green

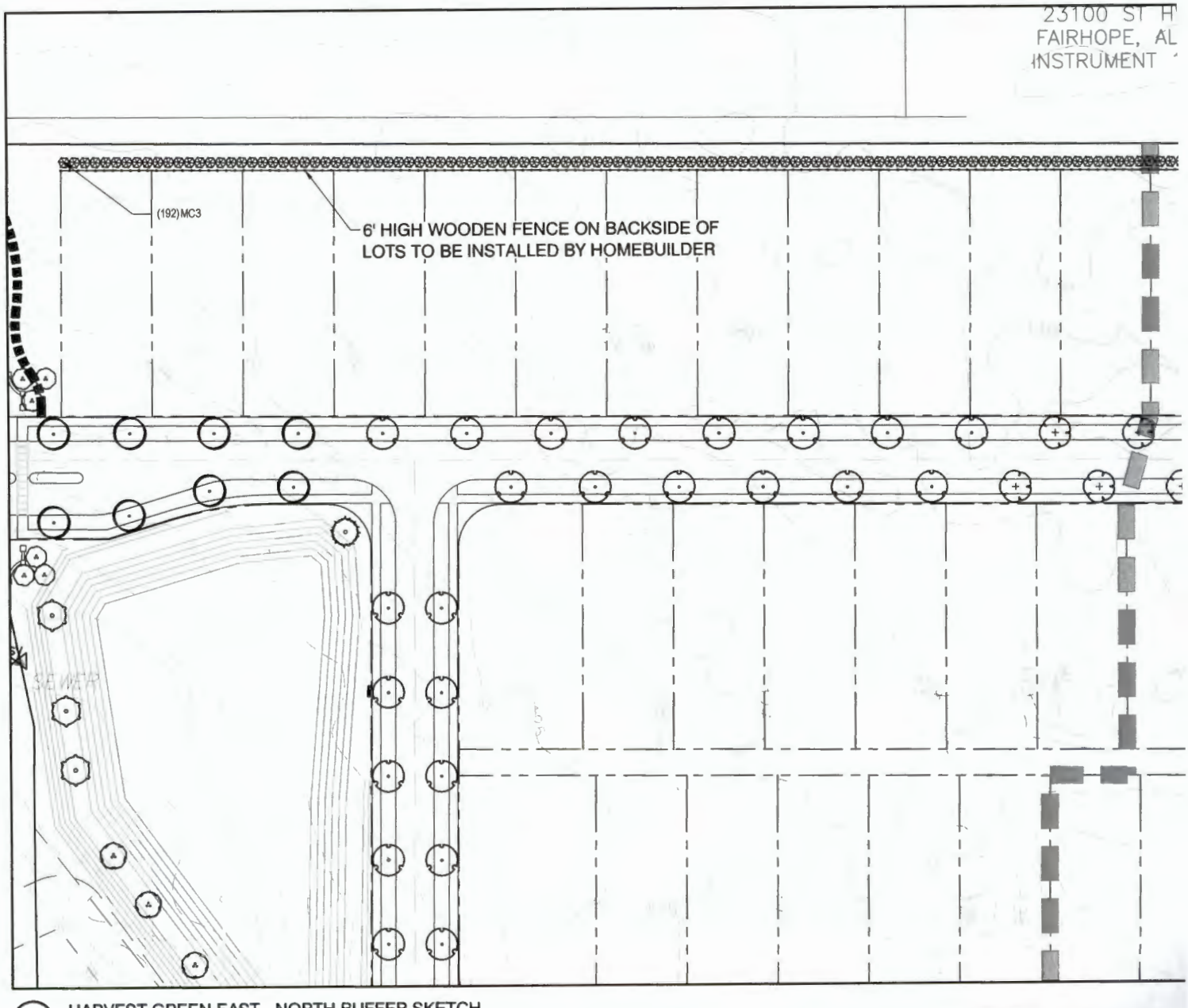
Total Acres
Req'd. Greenspa
Provided





PLANT SCHEDULE EAST NORTH BUFFER

SHRUBS	CODE	BOTANICAL / COMMON NAME	CONT	QTY
⬡	MC3	Myrica cerifera / Common Wax Myrtle Shrub form, full to ground	3 gal	192



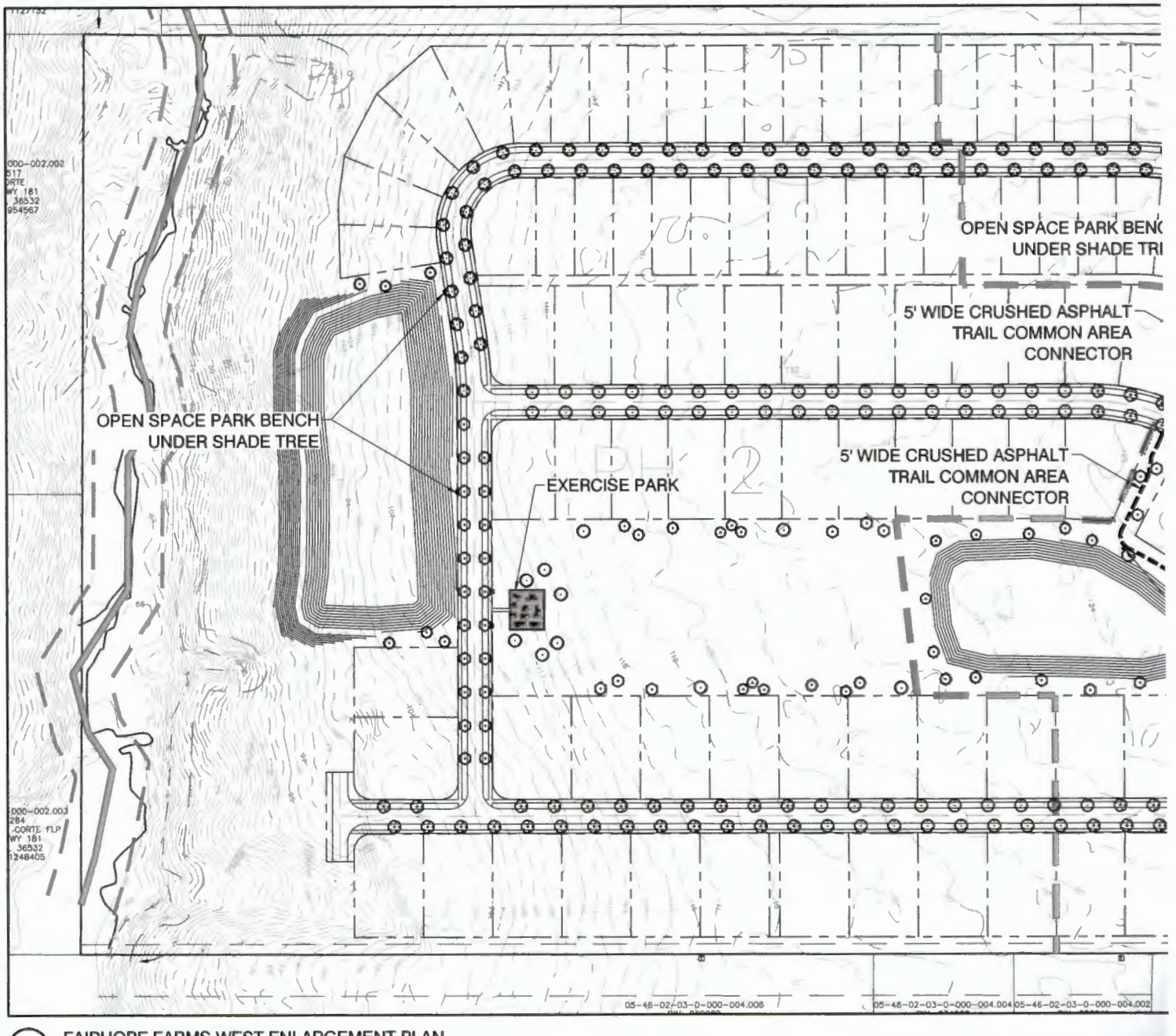
1 HARVEST GREEN EAST - NORTH BUFFER SKETCH
Scale: 1"= 40'

PLANT SCHEDULE FAIRHOPE FARMS WEST

TREES	CODE	QTY	BOTANICAL NAME	COMMON NAME	CONT	CAL	HT	REMARKS
	BH	18	BETULA NIGRA	RIVER BIRCH	15 GAL		8'-10'	MINIMUM 3 TRUNKS, FULL HEAD
	LN	18	LAGERSTROEMIA INDICA 'NATCHEZ'	'NATCHEZ' CRAPE MYRTLE	30 GAL		8'-10'	MINIMUM 3 TRUNKS; FULL HEAD
	LT	36	LIRIODENDRON TULIPIFERA	TULIP TREE	15 GAL	1.5" - 2"	10'-12'	FULL HEAD, SPECIMEN QUALITY
	CW	3	MAGNOLIA GRANDIFLORA 'CLAUDIA WANNAMAKER'	CLAUDIA W. MAGNOLIA	30 GAL		8'-10'	FULL TO GROUND
	QN	91	QUERCUS NUTTALLII	NUTTALL OAK	15 GAL	1.5" - 2"	10'-12'	FULL HEAD, SPECIMEN QUALITY
	QS	126	QUERCUS SHUMARDII	SHUMARD RED OAK	15 GAL	1.5" - 2"	10'-12'	FULL HEAD, SPECIMEN QUALITY
	QV	64	QUERCUS VIRGINIANA	SOUTHERN LIVE OAK	15 GAL	1.5" - 2"	10'-12'	FULL HEAD, SPECIMEN QUALITY
	TD	25	TAXODIUM DISTICHUM	BALD CYPRESS	15 GAL	1.5" - 2"	10'-12'	FULL HEAD, SPECIMEN QUALITY
	CP2	35	ULMUS AMERICANA 'FLORIDANA'	FLORIDA ELM	15 GAL	1.5" - 2"	10'-12'	FULL HEAD, SPECIMEN QUALITY

PALM TREES	CODE	QTY	BOTANICAL NAME	COMMON NAME	CONT	CAL	HT	REMARKS
	SP	14	SABAL PALMETTO	SABAL PALM	FG		14-16' H	CLEAR-TRUNK HEIGHT NOTED

SHRUBS	CODE	QTY	BOTANICAL NAME	COMMON NAME	CONT	HT	W	SPACING	REMARKS
	SB	142	VIBURNUM ODORATISSIMUM	SWEET VIBURNUM	3 GAL			60" o.c.	



1 FAIRHOPE FARMS WEST ENLARGEMENT PLAN

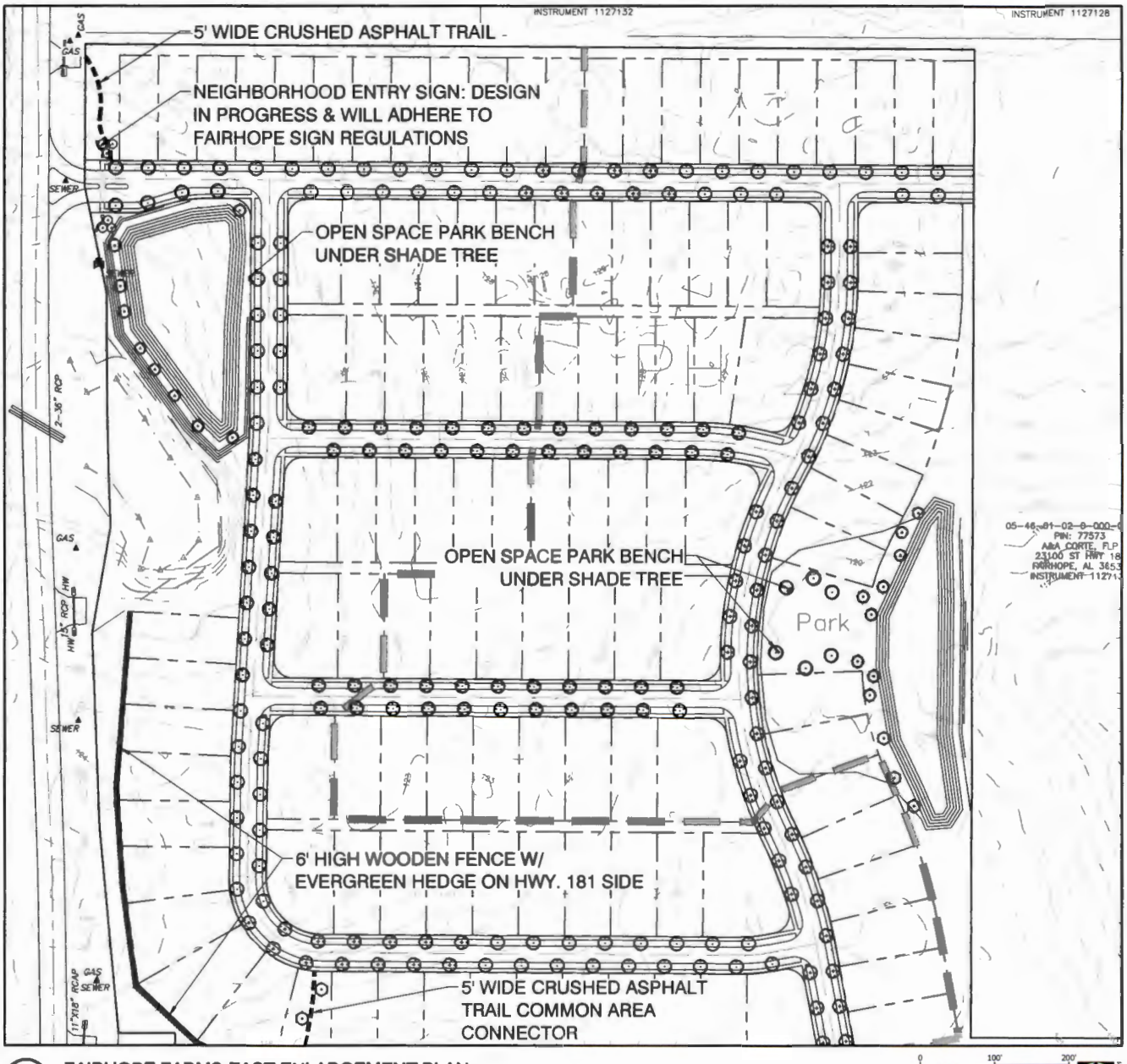
Scale: 1"= 100'

PLANT SCHEDULE FAIRHOPE FARMS EAST

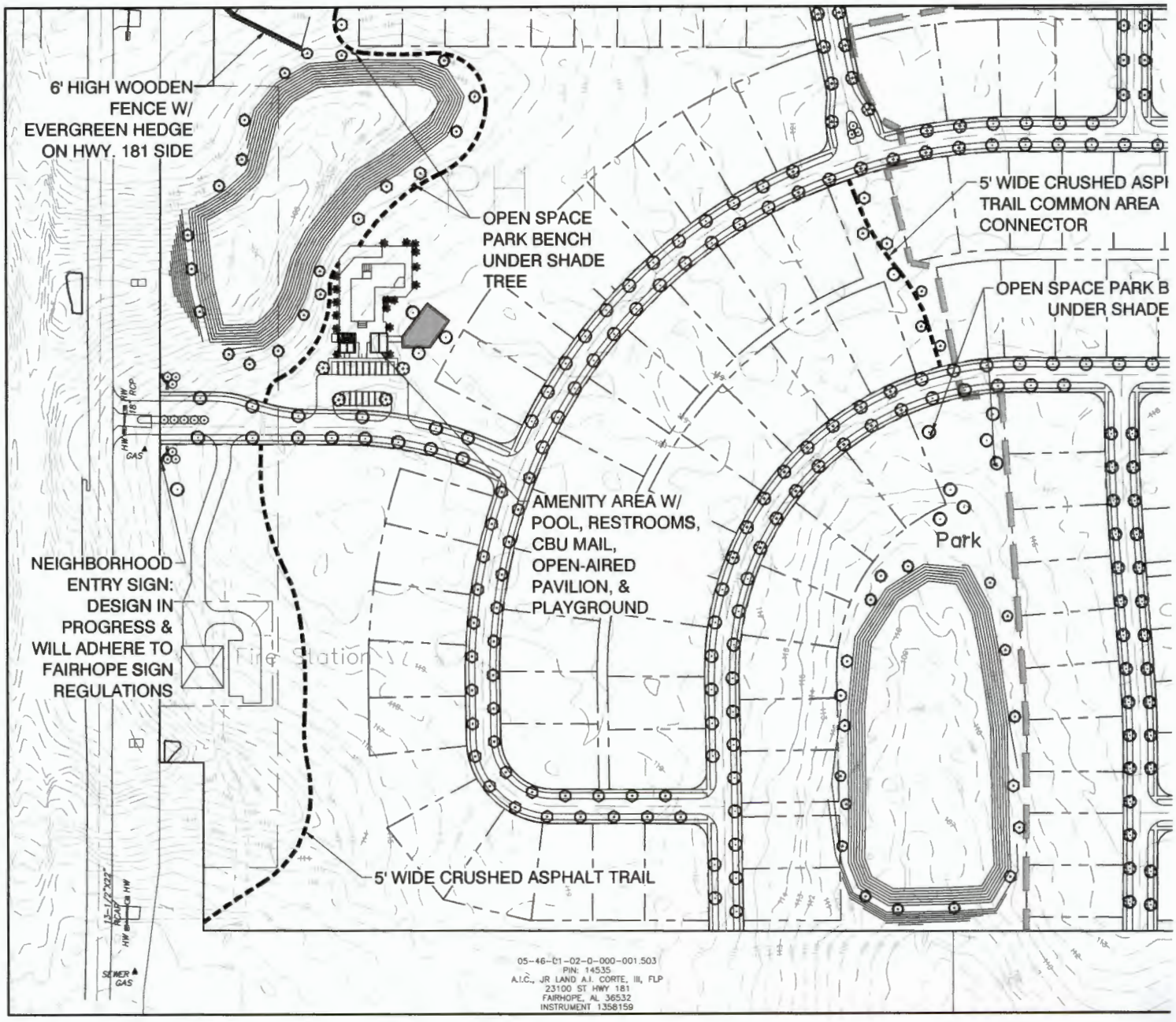
TREES	CODE	QTY	BOTANICAL NAME	COMMON NAME	CONT	CAL	HT	REMARKS
	BH	27	BETULA NIGRA	RIVER BIRCH	15 GAL		8'-10'	MINIMUM 3 TRUNKS, FULL HEAD
	LN	20	LAGERSTROEMIA INDICA 'NATCHEZ'	'NATCHEZ' CRAPE MYRTLE	30 GAL		8'-10'	MINIMUM 3 TRUNKS; FULL HEAD
	LT	89	LIRIODENDRON TULIPIFERA	TULIP TREE	15 GAL	1.5" - 2"	10'-12'	FULL HEAD, SPECIMEN QUALITY
	QN	110	QUERCUS NUTTALLII	NUTTALL OAK	15 GAL	1.5" - 2"	10'-12'	FULL HEAD, SPECIMEN QUALITY
	QS	141	QUERCUS SHUMARDII	SHUMARD RED OAK	15 GAL	1.5" - 2"	10'-12'	FULL HEAD, SPECIMEN QUALITY
	QV	40	QUERCUS VIRGINIANA	SOUTHERN LIVE OAK	15 GAL	1.5" - 2"	10'-12'	FULL HEAD, SPECIMEN QUALITY
	TD	32	TAXODIUM DISTICHUM	BALD CYPRESS	15 GAL	1.5" - 2"	10'-12'	FULL HEAD, SPECIMEN QUALITY
	CP2	99	ULMUS AMERICANA 'FLORIDANA'	FLORIDA ELM	15 GAL	1.5" - 2"	10'-12'	FULL HEAD, SPECIMEN QUALITY

PALM TREES	CODE	QTY	BOTANICAL NAME	COMMON NAME	CONT	CAL	HT	REMARKS
	SP	17	SABAL PALMETTO	SABAL PALM	FG		14-16' H	CLEAR-TRUNK HEIGHT NOTED

SHRUBS	CODE	QTY	BOTANICAL NAME	COMMON NAME	CONT	HT	W	SPACING	REMARKS
	SB	148	VIBURNUM ODORATISSIMUM	SWEET VIBURNUM	3 GAL			60" o.c.	

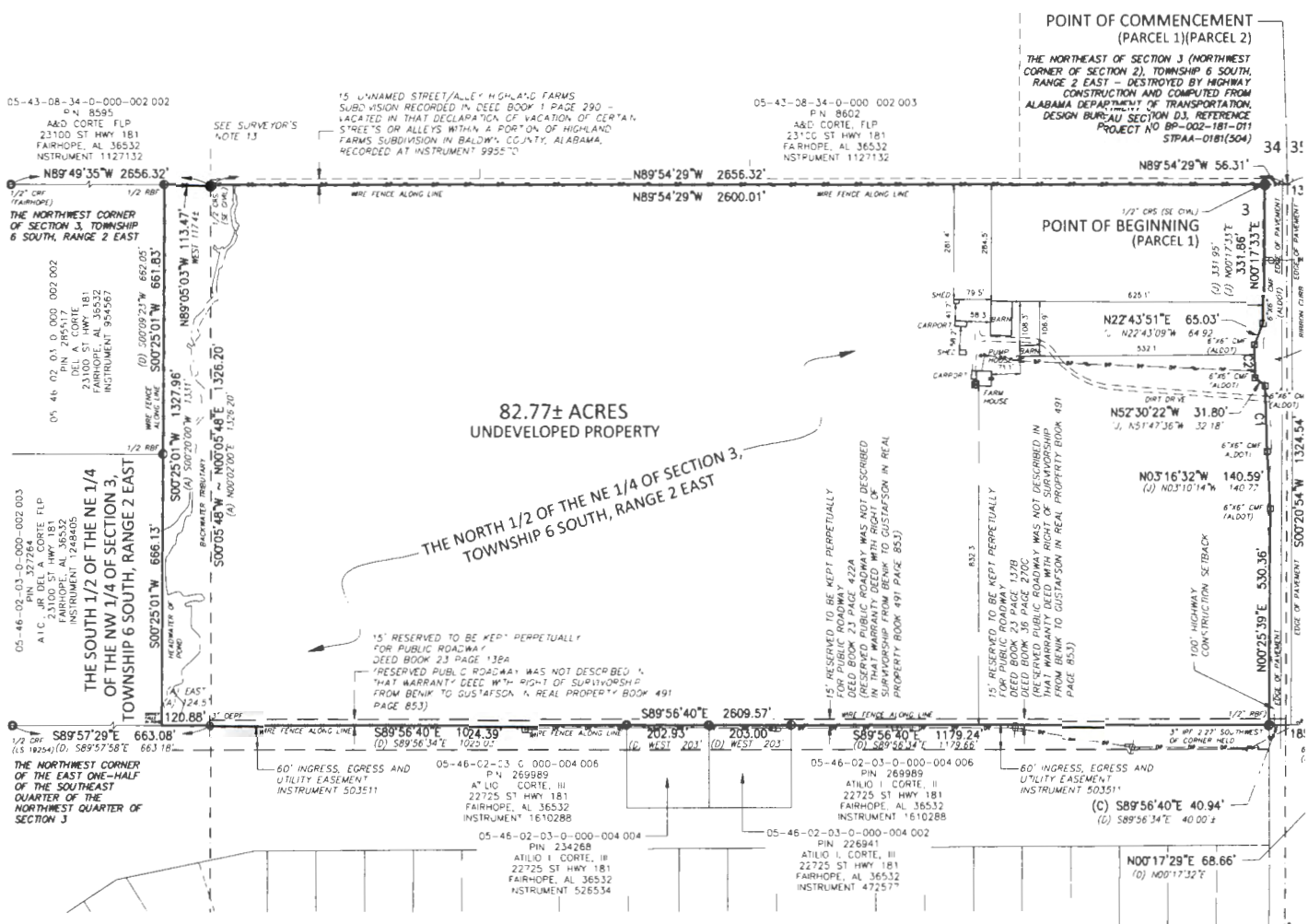


1 **FAIRHOPE FARMS EAST ENLARGEMENT PLAN**
Scale: 1"= 100'



1 FAIRHOPE FARMS EAST ENLARGEMENT PLAN

Scale: 1"= 100'



PROPERTY ADDRESS:

22855 STATE HIGHWAY 181
FAIRHOPE, ALABAMA 36532

LEGAL DESCRIPTIONS:

PARCEL 1

COMMENCE AT THE NORTHEAST CORNER OF SECTION 3, TOWNSHIP 6 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA AND RUN THENCE NORTH 89 DEGREES 54 MINUTES 29 SECONDS WEST, ALONG THE NORTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 3, A DISTANCE OF 56.31 FEET TO A 1/2" CAPPED REBAR (SE CIVIL) ON THE WEST RIGHT-OF-WAY OF ALABAMA HIGHWAY 181 FOR THE POINT OF BEGINNING; THENCE, DEPARTING SAID RIGHT-OF-WAY, CONTINUE NORTH 89 DEGREES 54 MINUTES 29 SECONDS WEST, ALONG THE NORTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SAID SECTION 3, A DISTANCE OF 2600.01 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE NORTH 89 DEGREES 05 MINUTES 03 SECONDS WEST, A DISTANCE OF 113.47 FEET TO A 1/2" REBAR; THENCE RUN SOUTH 00 DEGREES 25 MINUTES 01 SECONDS WEST, ALONG A WIRE FENCE, A DISTANCE OF 1327.96 FEET TO A POINT (POINT FALLS IN POND) ON THE SOUTH LINE OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 3; THENCE RUN SOUTH 89 DEGREES 57 MINUTES 29 SECONDS EAST, ALONG THE SOUTH LINE OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER, A DISTANCE OF 120.88 FEET TO A 3" OPEN END PIPE; THENCE RUN SOUTH 89 DEGREES 56 MINUTES 40 SECONDS EAST, ALONG THE SOUTH LINE OF THE NORTH HALF OF THE NORTHEAST QUARTER, A DISTANCE OF 2609.57 FEET TO A 1/2" REBAR ON THE WEST RIGHT-OF-WAY OF SAID ALABAMA HIGHWAY 181; THENCE RUN NORTH 00 DEGREES 25 MINUTES 39 SECONDS EAST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 530.36 FEET TO A 6"X6" ALDOT (ALABAMA DEPARTMENT OF TRANSPORTATION) CONCRETE MONUMENT; THENCE RUN NORTH 03 DEGREES 16 MINUTES 32 SECONDS WEST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 140.59 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTHERLY, ALONG SAID RIGHT-OF-WAY, ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 7729.44 FEET, AN ARC LENGTH OF 161.60 FEET, (CHORD BEARS NORTH 01 DEGREES 28 MINUTES 24 SECONDS WEST, A DISTANCE OF 161.60 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 52 DEGREES 30 MINUTES 22 SECONDS WEST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 31.80 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTHERLY, ALONG SAID RIGHT-OF-WAY, ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 7754.44 FEET, AN ARC LENGTH OF 81.12 FEET, (CHORD BEARS NORTH 00 DEGREES 28 MINUTES 54 SECONDS WEST, A DISTANCE OF 81.12 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 22 DEGREES 43 MINUTES 51 SECONDS EAST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 65.03 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 00 DEGREES 17 MINUTES 33 SECONDS EAST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 331.86 FEET TO THE POINT OF BEGINNING. TRACT CONTAINS 82.77 ACRES, MORE OR LESS.

PARCEL 2

COMMENCE AT THE NORTHWEST CORNER OF SECTION 2, TOWNSHIP 6 SOUTH, RANGE 2 EAST, BALDWIN COUNTY, ALABAMA AND RUN THENCE SOUTH 89 DEGREES 39 MINUTES 20 SECONDS EAST, ALONG THE NORTH LINE OF SAID SECTION 2, A DISTANCE OF 133.72 FEET TO A 1/2" CAPPED REBAR (SE CIVIL) ON THE EAST RIGHT-OF-WAY OF ALABAMA HIGHWAY 181 FOR THE POINT OF BEGINNING; THENCE DEPARTING SAID RIGHT-OF-WAY, CONTINUE SOUTH 89 DEGREES 39 MINUTES 20 SECONDS EAST, ALONG THE NORTH LINE OF SAID SECTION 2, A DISTANCE OF 1193.19 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE RUN SOUTH 00 DEGREES 15 MINUTES 02 SECONDS WEST, ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 1323.34 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE RUN SOUTH 89 DEGREES 42 MINUTES 26 SECONDS EAST, ALONG THE NORTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 1329.67 FEET TO A 1/2" CAPPED REBAR (LS #19254); THENCE RUN SOUTH 00 DEGREES 17 MINUTES 01 SECONDS WEST, ALONG THE EAST LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 1322.14 FEET TO A 1/2" CAPPED REBAR (LS #19254); THENCE RUN NORTH 89 DEGREES 49 MINUTES 40 SECONDS WEST, ALONG THE SOUTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 1330.30 FEET TO A 1/2" CAPPED REBAR AT THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 2, CONTINUE THENCE NORTH 89 DEGREES 49 MINUTES 40 SECONDS WEST ALONG THE SOUTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 2, A DISTANCE OF 1079.73 FEET TO A 1/2 CAPPED REBAR (SE CIVIL) AT THE SOUTHEAST CORNER OF LANDS HERETOFORE CONVEYED TO THE STATE OF ALABAMA IN THAT WARRANTY DEED, RECORDED AT INSTRUMENT 1316996, PROBATE RECORDS, BALDWIN COUNTY, ALABAMA; THENCE, DEPARTING THE SOUTH LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION 2, RUN NORTH 00 DEGREES 09 MINUTES 44 SECONDS EAST, ALONG THE EAST LINE OF SAID STATE OF ALABAMA LANDS, A DISTANCE OF 242.59 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE RUN NORTH 89 DEGREES 45 MINUTES 31 SECONDS WEST, ALONG THE NORTH LINE OF SAID STATE OF ALABAMA LANDS, A DISTANCE OF 63.45 FEET TO A 1/2" CAPPED REBAR (SE CIVIL) ON THE EAST RIGHT-OF-WAY OF SAID ALABAMA HIGHWAY 181; THENCE RUN NORTH 00 DEGREES 17 MINUTES 29 SECONDS EAST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 970.84 FEET TO A 1/2" CAPPED REBAR (SE CIVIL) TO THE SOUTHWEST CORNER OF SAID STATE OF ALABAMA LANDS; THENCE, DEPARTING SAID RIGHT-OF-WAY, RUN SOUTH 89 DEGREES 37 MINUTES 20 SECONDS EAST, ALONG THE SOUTH LINE OF SAID STATE OF ALABAMA LANDS, A DISTANCE OF 113.96 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE RUN NORTH 89 DEGREES 42 MINUTES 26 SECONDS WEST, A DISTANCE OF 76.69 FEET TO A 1/2" CAPPED REBAR (SE CIVIL) ON THE EAST RIGHT-OF-WAY OF SAID ALABAMA HIGHWAY 181; THENCE RUN NORTH 00 DEGREES 03 MINUTES 35 SECONDS WEST, ALONG THE EAST RIGHT OF WAY OF SAID ALABAMA HIGHWAY 181, A DISTANCE OF 4.81 FEET TO A 6"X6" ALDOT (ALABAMA DEPARTMENT OF TRANSPORTATION) CONCRETE MONUMENT; THENCE RUN NORTH 05 DEGREES 15 MINUTES 51 SECONDS WEST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 273.24 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 02 DEGREES 09 MINUTES 28 SECONDS WEST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 261.14 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 09 DEGREES 55 MINUTES 11 SECONDS EAST, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 143.91 FEET TO A 1/2" CAPPED REBAR (SE CIVIL); THENCE RUN NORTHERLY, ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 7509.44 FEET, AN ARC LENGTH OF 312.96 FEET, (CHORD BEARS NORTH 00 DEGREES 54 MINUTES 06 SECONDS WEST, A DISTANCE OF 312.94 FEET) TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 11 DEGREES 46 MINUTES 10 SECONDS WEST, A DISTANCE OF 143.90 FEET TO A 6"X6" ALDOT CONCRETE MONUMENT; THENCE RUN NORTH 00 DEGREES 17 MINUTES 32 SECONDS EAST, A DISTANCE OF 191.26 FEET TO THE POINT OF BEGINNING. TRACT CONTAINS 110.25 ACRES, MORE OR LESS.

LEGEND:

- AC = AIR CONDITIONER
- FH = FIRE HYDRANT
- SV = SEWER VALVE
- GV = GAS VALVE
- GR = GAS REGULATOR
- GW = GUY WIRE
- UP = UTILITY POLE
- UM = UTILITY MARKER
- CMF = CONCRETE MONUMENT FOUND
- IPF = IRON PIN FOUND
- RBF = REBAR FOUND
- CRF = CAPPED REBAR FOUND
- OEPF = OPEN END IRON PIPE FOUND
- CRS = CAPPED REBAR SET (SE CIVIL)
- (A) = PURCHASE AGREEMENT BEARING AND DISTANCE
- (D) = RECORD DEED BEARING AND DISTANCE
- (J) = CONSENT JUDGEMENT FOR CONDEMNATION BEARING AND DISTANCE
- (P) = PLAT BEARING AND DISTANCE (CORTE SUBDIVISION, SLIDE 253-D)
- AL = ARC LENGTH
- BSL = BUILDING SETBACK LINE
- CB = CHORD BEARING
- CD = CHORD DISTANCE
- FLP = FAMILY LIMITED PARTNERSHIP
- LS = PROFESSIONAL LAND SURVEYOR
- RCAP = REINFORCED CONCRETE ARCH PIPE
- RCP = REINFORCED CONCRETE PIPE
- HW = HEADWALL
- POST & WIRE FENCE
- OVERHEAD POWER LINE
- GAS

FLOOD STATEMEN

PROPERTY LIES IN FLOOD
NUMBER 015000, PANEL

SURVEYOR'S NOTI

1. THERE WAS NO ATTEM
2. THE LINES REPRESENT NOT SURVEYED UNLES
3. SURVEY WAS CONDUC
4. BEARINGS AND DISTAN ALABAMA WEST ZONE
5. THE UTILITY NFORMAT
6. THIS SURVEY HAS BEE STATE OF ALABAMA, E
7. THERE WERE NO PARKIN ON PROPERTY
8. THERE WAS NO EVIDEN EXCEPT IN THE AREA
9. THERE ARE NO APPAR
10. THERE ARE NO APPAR
11. A 2" GAS MAIN MAY E AND PARCEL TWO AS

Revised 06/2006

CITY OF FAIRHOPE
P.O. DRAWER 429
FAIRHOPE, AL 36533
251/928-2136

PETITION FOR ANNEXATION

STATE OF ALABAMA)(
COUNTY OF BALDWIN)(

We, the undersigned PETITIONER(S), owner(s) of the lands in fee simple described in the attached EXHIBIT A, such property being without the Corporate Limits of the City of Fairhope, Alabama, but being contiguous to the said Corporate Limits; and such property not lying within the corporate limits or police jurisdiction of any other municipality, do, by these presents, hereby petition the City of Fairhope, a municipal corporation, that said property be annexed into the City of Fairhope, Alabama.

The subject land is delineated on the map attached hereto as EXHIBIT B.

This petition is filed under authority of Section 11-42-21, Code of Alabama, 1975, as amended.

This petition is for R-1 Zoning

X **The condition of the Petition is that zoning be established as** Planned Unit Development **Concurrent with Annexation.** **(Zoning Request)**

Is this property colony property _____ **Yes** _X_ **No. If this property is colony property the Fairhope Single Tax Office must sign as a petitioner.**

Only parcel 05-46-01-02-0-000-001.5(is colony property.

Signature of Petitioner (for Fairhope Single Tax)

Print petitioner's name (for Fairhope Single Tax) Lee Tedder

Signature of Petitioner (for Silverhill Enterprises, L.L.C.) 5/21/21

Print petitioner's name (for Silverhill Enterprises L.L.C.) ERIC GUSTAFSON

Signature of Petitioner

Print petitioner's name

Physical Address of property being annexed: ST HWY 181

Petitioner's Current Physical Address:
112 Bay Circle Drive
Holland, MI 49424

(tel) 616-403-1191

Petitioner's Current Mailing Address:
336 Fairhope Avenue
Fairhope, AL 36532

(tel) 251-928-8162

Telephone Number(s): _____
Home Work

County Tax Parcel Number: 05-46-01-02-0-000-001.508 05-46-01-02-0-000-002.000 05-46-02-03-0-000-001.000

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Revised 06/2006

U.S JUSTICE DEPARTMENT INFORMATION

Size of property (acres or square feet) 193.03 Acres

If property is occupied, give number of housing units 1 Residence

Number of Persons residing in each unit, and their race 1

If property is unoccupied, give proposed use Mixed Use Residential

If property is being developed as a subdivision, give subdivision name

Fairhope Farms, A Planned Unit Development

Number of lots within proposed subdivision 375 Units

I, Jeanne Bishop a Notary Public in and for said State and County, hereby certify that Eric Gustafson whose name(s) is/are signed to the forgoing Petition and who is/are known to me, this day appeared before me and, being first duly sworn, acknowledge that he/she/they have voluntarily executed this Petition on this day same bears date.

Given under my Hand and Seal this 21st day of May, 2021.

(Seal)

Jeanne Bishop
Notary Public

My commission expires 08/11/2024

I, Jennifer Evans Sanford a Notary Public in and for said State and County, hereby certify that Lee Turner whose name(s) is/are signed to the forgoing Petition and who is/are known to me, this day appeared before me and, being first duly sworn, acknowledge that he/she/they have voluntarily executed this Petition on this day same bears date.

Given under my Hand and Seal this 25th day of May, 2021.

(Seal)

Notary Public

JENNIFER EVANS SANFORD
My Commission Expires
July 29, 2023

My commission expires _____

I, _____ a Notary Public in and for said State and County, hereby certify that _____ whose name(s) is/are signed to the forgoing Petition and who is/are known to me, this day appeared before me and, being first duly sworn, acknowledge that he/she/they have voluntarily executed this Petition on this day same bears date.

Given under my Hand and Seal this _____ day of _____, 20____,

(Seal)

_____
Notary Public

My commission expires _____

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Sherry Sullivan
Mayor

Council Members
Kevin G. Boone
Robert A. Brown
Jack Burrell, ACMO
Jimmy Conyers
Corey Martin

Lisa A. Hanks, MMC
City Clerk
Kimberly Creech
City Treasurer

May 6, 2021

Civil Engineering
Mr. Larry Smith, PE
880 Holcomb Blvd, Suite 2F
Fairhope, AL 36532

Dear Mr. Smith,

Regarding your availability request for the proposed Hwy 181 Development.

Water: Is available with main extensions. Capacity is not an issue through the City of Fairhope.

Sewer: Is available with sewer main extensions. Upgrades to existing lift station to meet capacity of development may be required through the City of Fairhope.

Gas: PPIN 17737 would be a state bore and high pressure under Hwy 181 so it will most definitely depend on gas usage and a cost involved.
PPIN 17735 gas is available through the City of Fairhope.
PPIN 77776 gas is available through the City of Fairhope.

Sincerely,
City of Fairhope, AL

Jason Langley, Superintendent, Water and Wastewater Department

Terry Holman, Superintendent, Gas Department

161 North Section Street
P.O. Drawer 429
Fairhope, Alabama 36533
251-928-2136
251-928-6776 Fax
www.fairhopeal.gov
printed on recycled paper

BCSS
BALDWIN COUNTY SEWER SERVICE
clean and simple

May 11, 2021

S.E. Civil Engineering & Surveying
Larry Smith, PE
880 Holcomb Blvd., Ste 2F
Fairhope, AL 36532
251-990-6566 phone
www.secivil.pro

Re: Fairhope Farms East PIN 17735 & 77776

Dear Mr. Smith,

At your request, this letter is to verify that Baldwin County Sewer Service LLC (BCSS) has the capacity and capability to serve the proposed development Fairhope Farms East at PIN 17735 & 77776. Baldwin County Sewer Service LLC is willing and able to provide sewer service to the above referenced property, subject to applicant paying all fees required for this service. This development may require a road bore and/or a line extension which will be at the developers expense. A $50.00 per lot review fee will be due to have preconstruction plans reviewed and a $1500.00 impact fee per lot will need to be paid to Baldwin County Service LLC before a new subdivision plat is signed. This letter is valid for a period of two years from the date of issue. This letter is not to be used to obtain a building permit. Any development that has not paid the necessary fees before this letter expires will need to contact BCSS and request a re-issuance of their willing and able letter.
**A franchise fee may apply in franchise areas.*

The wastewater will be treated at our Summerdale Treatment Plant.

Sincerely,

Angela Foley
Baldwin County Sewer Service, LLC
(251) 971-3022
angela@baldwincountysewer.com

RIVIERA UTILITIES
413 E Laurel Avenue, P.O. Drawer 2050, Foley, AL 36536
Phone (251) 943-5001 Fax (251) 970-4181

5/6/2021

Larry Smith, PE
S.E. Civil
880 Holcomb Blvd, Suite 2F
Fairhope, AL 36532

RE: PPIN 17737 – 149 lots, 17735 & 77776 – 225 lots

This letter is to confirm that Riviera Utilities is currently able to provide Electric service to the proposed development, located at on SR 181.

Riviera Utilities requires a 10' easement along all side property lines and a 15' easement along all front and rear property lines. Please ensure all property plats reflect the easements.

Upon final design, Riviera Utilities will provide estimates for service fees and system installation requirements to meet all Riviera specifications. Please contact the following Riviera employees concerning costs and requirements.

Name	Department	Email
Scott Sligh	Electric	ssligh@rivierautilities

If you have any questions or comments, contact Riviera Utilities at 251-943-5001.

Thank you,

James Wallace

Baldwin County Commission

Agenda Action Form

File #: 22-0091, **Version:** 1 **Item #:** BA3

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wayne Dyess, County Administrator
Submitted by: Victoria Key, Administrative Support Specialist

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ITEM TITLE
Revision of County Take Home Vehicle List - October 2021

STAFF RECOMMENDATION
Approve the attached revised "County Take Home Vehicle List - October 2021"

The total number of Baldwin County Commission departmental staff driving public taxpayer owned county vehicles is 203.

BACKGROUND INFORMATION

Previous Commission action/date:
June 15, 2021 - Last revision to the Take Home Vehicle List approved by the Commission.

Background: Staff has received a request from Eddie Harper, Building Official, to revise the Take Home Vehicle List as follows:

Add:
George Fralic, Building Inspector III
Michael "Dalton" Hart, Building Inspector III

Remove:
Robert "Rob" Madison, Building Inspector III

By approving the revised list, staff will be able to provide to the Clerk Treasurer, an accurate list of employees for tax purposes.

General Background:
Baldwin County Commission Policy #2.9, provides that in December of each year, the County Administrator shall present a current list of employees who drive County owned vehicles assigned to the Baldwin County Commission. The County Administrator has collected data on all vehicles assigned to Department Directors, Elected Officials and Staff. These vehicles are further defined by the number of vehicles driven home (and by whom) for the Baldwin County Commission to review

and approve. If changes occur during the year, staff brings the revised list to the Baldwin County Commission to review and approve.

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Victoria Key, Administrative Support Specialist - Email approved list to Cian Harrison, Clerk Treasurer, cc: Administration Staff.

Action required (list contact persons/addresses if documents are to be mailed or emailed):
N/A

Additional instructions/notes: N/A

County Take Home Vehicle List - October 2021

County Commission

Vehicle Description	Employee	Round Trip (Estimated)	Reason for Need to Drive Vehicle Home
Building Maintenance			
2018 Ford F-150	Junius Long	5	Must respond to after hours call-outs.
Animal Shelter			
2011 Ford F-250	Shealyn Flowers	12	On Call Animal Control Officer
2011 Ford F-150	Sarah Jaresh	18	On Call Animal Control Officer
2019 Ford F-250	Michael Dorman	12	On Call Animal Control Officer
2019 Ford F-250	Gina Jones	75	On Call Animal Control Officer
EMA			
2011 Ford F-250	Zachary Hood	30	Allows a more timely response to schedule events during and after regular business hours, as well as traveling to any location in the County during an emergency.
2014 Ford Expedition	Michael Purner	14	Mike functions as Call of Duty Officer one week each month and also is subject to 24/7 call out per job description. It is imperative to reduce the amount of response time to command scene, have the appropriate equipment available and ready, and may
2015 Chevrolet Tahoe	Scott Wallace	50	Allows a more timely response to schedule events during and after regular business hours, as well as traveling to any location in the County during an emergency.

County Take Home Vehicle List - October 2021

County Commission

Vehicle Description	Employee	Round Trip (Estimated)	Reason for Need to Drive Vehicle Home
Any/ All EMA Vehicles, as available	Danon Smith	20	For Use Only when On Call

Highway

2018 Ford F150 Crew Cab 4x4	Johnny Jackson	24	Direct from home allows a more timely response to afterhours call out in a reliable, available County vehicle that can transverse rough terrain as is often necessary, and that has appropriate items needed-subject to call out for a variety of matters, such as employee accident, the weather affecting a road/bridge etc.-County vehicle has County Highway Department radio for sometimes critically important communication. Also used for after hour weekend appointments.
2016 Ford F-150 4x4	Frank Lundy	54	Same as Above
2015 Ford F-150 4x4	Joey Nunnally	20	Same as Above
2018 Ford F-150 Crew Cab 4x4	Randy Black	20	Same as Above
2018 Ford F150 Crew Cab 4x4	Adam Harville	110	Same as Above
2019 Ford F-150 Crew Cab 4x4	Kevin Carroll	46	Same as Above
2019 Ford F-150 Crew Cab 4x4	Pete Peterson	38	Same as Above

County Take Home Vehicle List - October 2021

County Commission

Vehicle Description	Employee	Round Trip (Estimated)	Reason for Need to Drive Vehicle Home
2019 Ford F-150 Crew Cab 4x4	Tyler Mitchell	35	Same as Above
2018 Ford F-150 Crew Cab	Dustin Thweatt	15	Same as Above
Parks			
2019 Ford F-150 Crew Cab 4x4	Madison Steele	68	Direct from home allows a more timely response to afterhours call out in a reliable, available County vehicle that can transverse rough terrain as is often necessary, and that has appropriate items needed-subject to call out for a variety of matters, such as employee accident, the weather affecting a road/bridge etc.
Building Department			
2020 Ford F-150	Eddie Harper	40	Building Official is on call 24/7 for emergency purposes. We are required to approve entry into any structures that may be damaged due to storms, fires and accidents at all hours. The Building official also attends after hours meetings with various organizations in all areas of the County, i.e. (Home Builders and Realtor associations). Duties also include being available at 3 offices located in Foley, Fairhope and Bay Minette. Building Official will also serve as back up inspector for all 3 offices as needed.
2017 Ford F-150	Frederick "Freddy" Holman	12	The Building Department is implementing online permit inspection software which can be accessed via any mobile device. Inspectors will be able to view their daily inspection assignments and construction plans from their iPads. Direct from home allows a more timely response to job sites especially since most of our inspectors live in the inspection territories that they are assigned to.

County Take Home Vehicle List - October 2021

County Commission

Vehicle Description	Employee	Round Trip (Estimated)	Reason for Need to Drive Vehicle Home
2019 Ford F-150	Murray Authement	20	
			Same as Above
2017 Ford F-150	Ashley Anderson	54	Same as Above
2007 Ford F-150	Christopher "Jason" Byrd	30	Same as Above
2020 Ford F-150	Michael "Dalton" Hart	12	Same as Above
2016 Ford F-150	George Fralic	20	Same as Above
2016 Ford F-150	Michael Morris	22	Same as Above
Solid Waste			
2016 Ford F-250	JT Qualls	45	A take home County vehicle allows timely response to afterhours call-out in a reliable available vehicle that can traverse through rough terrain and carries appropriate tool. Call-outs sometimes occur on weekends or holidays and the vehicle makes it possible to get to any maintenance emergency quickly. Mr. Qualls is a first responder for Magnolia Landfill emergencies and security issues. He is also responsible for Magnolia Landfill's Methane Gas System that has to be maintained in an operating capacity at all times.

County Take Home Vehicle List - October 2021

County Commission

Vehicle Description	Employee	Round Trip (Estimated)	Reason for Need to Drive Vehicle Home
2020 Ford F-150	David Deyton	25	A take home County vehicle allows timely response to afterhours call-out in a reliable available vehicle that can traverse through rough terrain and carries appropriate tool. Call-outs sometimes occur on weekends or holidays and the vehicle makes it possible to get to any maintenance emergency quickly. Mr. Deyton is a Landfill Supervisor for Magnolia Landfill emergencies and security issues. He is also responsible for Magnolia Landfill's Methane Gas System that has to be maintained in an operating capacity at all times.
2020 Chevy Silverado	Sherman Boutwell	82	A take home County vehicle allows timely response to afterhours call-out in a reliable available vehicle that can traverse through rough terrain and carries appropriate tool. Call-outs sometimes occur on weekends or holidays and the vehicle makes it possible to get to any maintenance emergency quickly. Mr. Boutwell is the Collections Supervisor and responds to all collection emergencies throughout the County and stays for repairs if any garbage truck breaks down.
2018 Chevy Silverado	Charlie Stanford	10	A take home County vehicle allows timely response to afterhours call-out in a reliable available vehicle that can traverse through rough terrain and carries appropriate tool. Call-outs sometimes occur on weekends or holidays and the vehicle makes it possible to any maintenance emergency quickly. Mr. Stanford is the Collections Supervisor and responds to all collection emergencies throughout the County and stays for repairs if any garbage truck breaks down.

County Take Home Vehicle List - October 2021

County Commission

Vehicle Description	Employee	Round Trip (Estimated)	Reason for Need to Drive Vehicle Home
2017 Chevy Silverado	Randall Aaron	25	A take home County vehicle allows timely response to afterhours call-out in a reliable available vehicle that can traverse through rough terrain and carries appropriate tool. Call-outs sometimes occur on weekends or holidays and the vehicle makes it possible to any maintenance emergency quickly. Mr. Aaron is the Collections Supervisor and responds to all collection emergencies throughout the County and stays for repairs if any garbage truck breaks down.
2020 Chevy Silverado	Wesley Pate	46	A take home County vehicle allows timely response to afterhours call-out in a reliable available vehicle that can traverse through rough terrain and carries appropriate tools. Call-outs sometimes occur on weekends or holidays and the vehicle makes it possible to get to any maintenance emergency quickly. Mr. Pate is a Landfill Gas Technician for Magnolia Landfill and is responsible for Magnolia Landfill's Methane Gas System that has to be maintained in an operating capacity at all times.
2018 Chevy Silverado	Ed Fox	26	Mr. Fox is the Development & Environmental Assistant Director. A take home vehicle allows a timely response to Solid Waste situations that could arise day or night.
2020 Chevy Tahoe	Terri Graham	5	Ms. Graham is the Development & Environmental Director. A take home vehicle allows a timely response to Solid Waste situations that could arise day or night.

County Take Home Vehicle List - October 2021

County Commission

Vehicle Description	Employee	Round Trip (Estimated)	Reason for Need to Drive Vehicle Home

Other Elected Officials

Department:	# of Vehicles Driven Home:	Vehicle Description:	Employee:
County Commissioners	2	2015 Ford F-150 4X4 2020 Chevy Tahoe	Commissioner Charles Gruber Commissioner Billie Jo Underwood
Coroner	1	2015 Ford F-150 4X4	Coroner Brian Pierce
Probate Office	2	2020 Ford Expedition 2012 Chevy Tahoe	Judge Harry D'Olive Dean Mott Chief Clerk
Sheriff	163	See below	
Sheriff			
	142 Sworn Officers 5 Support Personnel 5 Jail Support 5 Admin Personnel 6 Jail Personnel		

Complete Total Number of Vehicles Driven Home: 203

Baldwin County Commission

Agenda Action Form

File #: 22-0109, **Version:** 1 **Item #:** BC1

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wayne Dyess, County Administrator, Felisha Anderson, Director/County Archivist, Wanda Gautney, Purchasing Director
Submitted by: Felisha Anderson, Director/County Archivist

ITEM TITLE
Resolution #2022-011 - Appropriation from the Historic Parks Fund to Bicentennial Park for the Christmas at Bicentennial Park Event December 17-18, 2021

STAFF RECOMMENDATION
Take the following action:

1) Adopt Resolution #2022-011 authorizing an appropriation of $23,400.00 from the Historic Parks Funds to Bicentennial Park for the Christmas at Bicentennial Park Event December 17-18, 2021, with said appropriation/expenditure to include:

$10,400.00 - underground electrical outlets
$5,500.00 - Power Productions to provide production, lighting, sound, stage, and 24' movie screen
$7,500.00 - other event supplies and expenses; and

2) Approve the Building Maintenance Department to provide all electrical work associated to the electrical outlets.

BACKGROUND INFORMATION

Previous Commission action/date: BCC Regular Meeting - February 2, 2021

Background: Baldwin County Commission during its regularly scheduled meeting approved the Baldwin County Department of Archives and History staff to host an on-site, off-site, and non-standard hours events to include Christmas at Baldwin County Bicentennial Park on Friday and Saturday, December 17 and 18, 2021, from 5:00 p.m. to 9:00 p.m.

Effective October 1, 2019, Act #2019-338 allows for expenditures for historic sites in Baldwin County as follows: At least ten percent shall be expended for the Historic Blakeley Authority and up to two (2) percent shall be expended for other historic sites in Baldwin County for the preservation, restoration, and interpretation of the site.

The full cost of the electrical outlets is $20,793.78. To offset some of the cost, we have secured a corporate sponsor to cover half of the cost of the electrical outlets in the amount of $10,396.89.

Outreach projects hosted by the Department of Archives and History are to engage residents and visitors in educational programs and community activities that educate, inspire, and entertain.

FINANCIAL IMPACT

Total cost of recommendation: $23,400.00

$10,400.00 - Underground electrical outlets

$5,500.00 - Power Productions for production, lighting, sound, stage, and 24’ movie screen

$7,500.00 - Other event supplies and expenses

Budget line item(s) to be used: TBD

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Archives Department, Maintenance and Parks Departments, Purchasing

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Administration to mail correspondence to Felisha Anderson
Cc: Wayne Dyess
Wanda Gautney
Junius Long
Derrick Crocker
Madison Steele
Cliff Milton
Cian Harrison
Ron Cink

Additional instructions/notes: N/A

STATE OF ALABAMA)
COUNTY OF BALDWIN)

RESOLUTION #2022-011
OF THE
BALDWIN COUNTY COMMISSION

PROVIDING FOR AN APPROPRIATION FROM THE "HISTORIC PARKS FUND" AS AUTHORIZED BY SECTION 45-2-244.183 OF THE CODE OF ALABAMA (1975).

WHEREAS, Act 2019-338 amended Section 45-2-244.183 on May 23, 2019, effective October 1, 2019, authorizing the county governing body of Baldwin County, Alabama, to appropriate and expend not more than two percent (2%) of the privilege license tax allocated for historic sites to other historic sites from a separate county fund as required by the aforementioned Local Act of the Legislature of Alabama, with the fund being entitled the "Historic Parks Fund" by the county governing body of Baldwin County, Alabama; and

COMES NOW, this honorable county governing body, pursuant to the authority as set forth by the aforementioned Local Act of the Legislature of Alabama, desiring to appropriate and expend $23,400.00, from the "Historic Parks Fund," in Baldwin County Fiscal Year 2021-2022, to Baldwin County Bicentennial Park towards the coast of the Christmas at Bicentennial Park event at Bicentennial Park event on December 17-18, 2021, with said appropriate/expenditure being used to offset the costs incurred for services provided related to site preparation and event services, with said appropriation/expenditure, in the judgment of this honorable county governing body, being worthy and in the best interest of the county and benefitting public historic preservation purposes for the citizens of Baldwin County, Alabama; now therefore

BE IT RESOLVED BY THE BALDWIN COUNTY COMMISSION, IN REGULAR SESSION ASSEMBLED, that this honorable county governing body, pursuant to the authority as set forth by the aforementioned Local Act of the Legislature of Alabama, hereby appropriates and expends $23,400.00 from the "Historic Parks Fund," in Baldwin County Fiscal Year 2021-2022, to the Baldwin County Bicentennial Park towards the cost of the Christmas at Bicentennial Park event at Bicentennial Park on December 17-18, 2021, with said appropriation/expenditure being used to offset the event services, with said appropriate/expenditure, in the judgment of this honorable county governing body, being worthy and in the best interest of the County and benefiting public historic preservation purposes for the citizens of Baldwin County, Alabama.

DONE, under the Seal of Baldwin County, Alabama, as affixed on this the 19th day of October 2021.

_____
Commissioner Joe Davis, III, Chairman
Baldwin County Commission

ATTEST:

_____
Wayne Dyess
County Administrator

Industrial Electrical Supply
PO Box 2673
Orange Beach, AL 36561
251-625-1130 Fax: 251-625-1131
http://ies-sales.com
contact@ies-sales.com

Quote #:	14874
Quote Date:	9/23/2021
Page:	1
Customer #:	195

Quoted To:
NORTH BALDWIN UTILITIES
25 HAND AVENUE
BAY MINETTE, AL 36507

Valid Through: 10/7/2021

Phone: 251-753-6952 | Cust PO: | Terms:
Reference: CHRISTMAS | Ship Via: | Salesperson: TANNER

Stock Code	Description	Quantity	Price	Extended
EL9041	1" 90 SCH40 ELBOW	36	8.24	296.64
PVCTA100	1" PVC TERMINAL ADAPTER	36	0.30	10.80
MWE13X	13X 1-IN STEEL LOCKNUT	36	0.13	4.68
PVC2H100	1" PVC STRAP 2 HOLE	36	0.31	11.16
THHN6STRBLK	#6 THHN CU BLACK	3,000	0.93	2,790.00
THHN6STRRED	#6 THHN CU RED	3,000	0.93	2,790.00
THHN6STRWHT	#6 THHN CU WHITE	3,000	0.93	2,790.00
THHN10STRGRN	#10 THHN CU WIRE GREEN	3,000	0.34	1,020.00
CHBR612L125RP	BR612L125RP LDCTR 125A MLO 3R	18	64.00	1,152.00
CHBR120	BR120 SP-120/240V-20A CB	72	4.60	331.20
P&S2097 TRWRW	20A 125V SELF-TEST TR WR GFCI RCPT WHT	72	18.70	1,346.40
P&S2097 TRW	20A 125V SELF-TEST TR GFCI RCPT WHT	72	15.40	1,108.80
PVCFSE050	1/2" FSE 1G PVC BOX	72	6.30	453.60
PVCFSS050	1/2" FSS 1G PVC BOX	72	6.75	486.00
SESMM400	IN USE WEATHER PROOF RECPT CVR	144	6.50	936.00
NBSTEK10X1	10 X 1 TEK SCREW HEX HED	2	9.50	19.00
F4PEZP1	1 GAL. WIRE LUBE	5	14.75	73.75
F4P-ROPE-BUCKET	6500' JET LINE, ROPE BUCKET	1	30.00	30.00
PVC050	1/2" SCH 40 PVC PIPE	100	0.90	90.00
PVCTA050	1/2" PVC TERM ADAPTER SCH 40	72	0.15	10.80
MWE11X	11X 1/2 STEEL LOCKNUT	72	0.06	4.32
PVCQTCEMENT	BT QUART CEMENT	10	5.15	51.50
PVCCP100	1" PVC CPLG	78	0.21	16.38
CHBR260	BR260 2P-120/240V-60A CB	3	10.25	30.75
THHN12SOLRED	#12 THHN SOLID RED CU 2500' REEL	500	0.22	110.00
THHN12SOLBLK	#12 SOLID BLACK CU WIRE 2500' REELS	500	0.22	110.00
THHN12SOLWHT	#12 SOLID WHITE CU WIRE 2500' REEL	500	0.22	110.00
THHN12SOLGRN	#12 THHN SOLID GREEN CU 2500' REEL	500	0.22	110.00
PVC100	1" SCH 40 PVC CONDUIT	2,500	1.80	4,500.00



Industrial Electrical Supply
PO Box 2673
Orange Beach, AL 36561
251-625-1130 Fax: 251-625-1131
http://ies-sales.com
contact@ies-sales.com

Quote #:	**14874**
Quote Date:	9/23/2021
Page:	2
Customer #:	195

Quoted To:
NORTH BALDWIN UTILITIES
25 HAND AVENUE
BAY MINETTE, AL 36507

Valid Through: 10/7/2021

Phone: 251-753-6952	Cust PO:	Terms:
Reference: CHRISTMAS	Ship Via:	Salesperson: TANNER

Stock Code	Description	Quantity	Price	Extended

SubTotal:	20,793.78
Tax:	0.00
Shipping:	0.00
Total:	20,793.78

PLEASE REMIT TO:
INDUSTRIAL ELECTRICAL SUPPLY, LLC
PO BOX 2673
ORANGE BEACH, AL 36561

INVOICE

Power Productions

INVOICE # 21100701
DATE: SEPT. 20,2021

25935 Friendship Rd, Daphne, AL 36526
251-625-2801 Fax 251-625-2802
www.powerproductions.tv

TO

Baldwin County Commission
Decembe 17/18 ,21
Christmas Festival

SALESPERSON	JOB	PAYMENT TERMS	DUE DATE
JP	Christmas Festival	Net 30	

QTY	DESCRIPTION	UNIT PRICE	LINE TOTAL
2	Festival Sound System w/ Line Array Speakers	$1,500	$3,000
8	4 x 8 decks of Staging	$	$
4	Technicians	250	$1,000
2	Outdoor 24' inflatable screen	$300	$600
4	Laser Projectors	$250	$1,000
2	Small Movie Sound System	$250	$500
	TOTAL		$6100
	Discount $600		-$600
		SUBTOTAL	$5,500
		SALES TAX	N/A
		TOTAL	$5,500

Baldwin County Commission

Agenda Action Form

File #: 22-0116, **Version:** 1 **Item #:** BE1

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wanda Gautney, Purchasing Director/Sheriff Hoss Mack/Chief Deputy Anthony Lowery, Major Steve Arthur/Connie Dudgeon, Sheriff's Finance Director
Submitted by: Wanda Gautney, Purchasing Director

ITEM TITLE
Amendment to Contract for Competitive Bid #WG20-28 - Provision of Installation, Service and Operation of Inmate Telephone and Video Visitation Services for the Baldwin County Sheriff's Office

STAFF RECOMMENDATION
Approve the attached Amendment #1 to the original Agreement which was executed on October 6, 2021, between Baldwin County Commission and Global Tel*Link Corporation for Competitive Bid #WG20-28 - Provision of Installation, Service and Operation of the Inmate Telephone and Video Visitation Services for the Baldwin County Sheriff's Office to be in compliance with the Federal Communications Commission (FCC) Order that was released May 24, 2021, which mandates certain rate caps for inmate telephone services and authorize the Chairman to execute the Amendment.

BACKGROUND INFORMATION

Previous Commission action/date:
04/21/2020 meeting: 1) Approved the specifications and authorized the Purchasing Director to place a competitive bid for the Provision of Installation, Service and Operation of the Inmate Telephone and Video Visitation Services for the Baldwin County Sheriff's Office; and 2) Further, authorized the Chairman/Purchasing Division Commissioner for the Baldwin County Commission to approve any necessary addendums or clarifications if required after the bid is advertised.

08/04/2020 meeting: Award the bid to the bidder providing the highest total cost recovery rate percentage, Global Tel*Link Corporation, as follows for the Inmate Telephone and Video Visitation Services and authorize the Chairman to execute all necessary documents contingent upon the County Attorney approval.

Total Cost Recovery Rate Percentage to County
Option 1
88% Cost Recovery Rate for Inmate Phone Calls
$150,000.00 One-Time Signing Bonus
$550,000.00 Minimum Annual Guarantee

50% Cost Recovery Rate for Inmate Video Visitation
Installation Time: Installation will be completed within 60 days after work begins

Background: The Sheriff's Office is requesting that the Commission approve the attached Amendment #1 to the current Contract that was executed on October 6, 2020, with Global Tel*Link Corporation for the Provision of Installation, Service and Operation of the Inmate Telephone and Video Visitation Services for the Baldwin County Sheriff's Office. The Federal Communications Commission (FCC) released an Order - WC Docket No. 12-375 on May 24, 2021, which mandated certain rate caps for inmate telephone services and ancillary service charges. It reduced the rate for calls from $0.25 to $0.21 per minute of use on Interstate and Intrastate collect, debit, or Prepaid/Advance Pay calls. The Amendment takes effect October 26, 2021.

FINANCIAL IMPACT

Total cost of recommendation: Revenue

Budget line item(s) to be used: Sheriff's Office

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
Yes

Reviewed/approved by: Brad Hicks, County Attorney

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: 10/19/2021

Individual(s) responsible for follow up: Wanda Gautney, Purchasing Director

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Letter to Vendor

Additional instructions/notes: N/A

powered by Legistar™

AMENDMENT # 1 TO MASTER SERVICES AGREEMENT

This Amendment # 1 ("Amendment") takes effect October 26, 2021 or the effective date of the FCC Order (as defined below), whichever is later ("Effective Date"), and amends and revises that certain **Master Services Agreement**, dated October 6, 2020, the "Agreement"), by and between Global Tel*Link Corporation with an address of 3120 Fairview Park Drive, Suite 300, Falls Church, Virginia 22042 (the "Company"), and Baldwin County Commission, with an address of 312 Courthouse Square, Suite 12, Bay Minette, Alabama 36507 (the "Premises Provider") (Company and Premises Provider collectively, the "Parties" and each a "Party"). All capitalized terms not defined herein shall have the definitions set forth in the Agreement.

WHEREAS, the Federal Communications Commission ("FCC") issued its Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking in WC Docket No. 12-375 on May 24, 2021 ("FCC Order"), which mandated certain rate caps for inmate telephone services and ancillary service charges, and other requirements; and

WHEREAS, the Parties have agreed to amend the Agreement in order to, among other things, implement the FCC Order as further provided below.

NOW, THEREFORE, in consideration of the promises and covenants set forth in this Amendment, and for good and valuable consideration, the sufficiency of which is acknowledged by the Parties' signatures, the Parties agree as follows:

1. Effective October 26, 2021 or the effective date of the FCC Order, whichever is later, the rates and charges for international, interstate, and intrastate inmate telephone service ("ITS") calls and associated ancillary service charges set forth in the Agreement shall be deemed revised without further action by the Parties, and shall be implemented, as follows:

   Inmate Telephone Services.

   Interstate ITS calls, whether made using a collect, debit, or prepaid/AdvancePay™ format: $**0.21** per minute of use.

   Intrastate ITS calls, whether made using a collect, debit, or prepaid/AdvancePay™ format: $**0.21** per minute of use.

   International ITS calls, whether made using a debit or prepaid/AdvancePay™ format: The Interstate ITS rate set forth above plus the applicable call termination rate for the destination country as published on the Company's website, which may be updated every 3 months in accordance with the FCC Order.

   No per call, per connection, or flat-rate calling charges shall apply to international or interstate ITS per minute of use calls.

   The ITS rates set forth above are exclusive of taxes and other amounts collected by the Company on behalf of, or paid to, third parties, including but not limited to payments in

support of statutory or regulatory programs mandated by governmental or quasi-governmental authorities, such as the Federal Universal Service Fee, and any costs incurred by the Company in connection with such programs.

Transaction Fees for Inmate Telephone Services. The Company may charge certain Transaction Fees in accordance with the following amounts:

Fee for automated payments (includes payments by interactive voice response, web, or kiosk)	$3.00 per use
Fee for payment using live operator	$5.95 per use
Paper bill/statement fee	$2.00 per use
Fee for use of third-party money transmitter (*e.g*. MoneyGram, Western Union, credit card processing, transfers from third-party commissary accounts)	The exact fee from the third-party provider passed through directly to customer with no markup

Single-Call and Related Billing Arrangements for Inmate Telephone Services shall remain same**.** Company may permit consumers to purchase ITS on a collect call basis through third-party billing arrangements that allow consumers to pay for a single ITS call using such methods as their debit or credit card, billing the cost of a single ITS call to their mobile phone account, or another arrangement. When a consumer chooses to pay for a single ITS call using such a method, the charge shall be any applicable transaction fee and other charges allowed by law.

2. The commission payable to the Premises Provider under the Agreement shall remain **eighty-eight percent (88%)** of the Gross Revenue billed or prepaid for inmate telephone calls covered by this Agreement. Gross Revenue shall mean all revenue generated by every completed inmate call that is accepted by an end user and billed via a local exchange carrier or prepaid to Company. Gross Revenue does not include: (i) taxes and tax-related surcharges; (ii) credits; (iii) account and other transaction fees; and (iv) any amount Company collects for, or pays to, third parties, including but not limited to payments in support of statutory or regulatory programs mandated by governmental or quasi-governmental authorities, such as the Federal Universal Service Fee, and any costs incurred by Company in connection with such programs. Commission payments shall be paid monthly. All commission payments shall be considered final and binding upon the Premise Provider unless written objection is received by the Company within sixty (60) days of receipt of commission payment by the Premise Provider.

3. The Video Visitation Services (VVS) Commissions shall remain the same. Company shall pay Premises Provider a **50% commission** every month on gross payments collected for revenue generating video visits ("Video Revenue"). Video Revenue does not include taxes, fees and other charges collected on behalf of Local, State, Federal or other governmental

agencies. If Premises Provider terminates the Agreement for any reason other than breach by Company, Premises Provider will pay Company within thirty (30) days following termination the Expenditure less any Content Revenue collected by Company. Commission payments shall be completed monthly, and all commission payments shall be final and binding upon Premises Provider unless written objection is received by Company within sixty (60) days of receipt of commission payment by Premises Provider.

4. Company MAG will remain the same, Company will provide Premises Provider with a minimum annual guarantee of $550,000.00 ("MAG") per year during the initial term of the Agreement based on the Average Daily Population (ADP) of 620. At the end of each year during the Term and any Renewal Term, a true-up will be calculated based on all commissions paid to the Premises Provider, and should those commissions be less than the MAG, the Company agrees to pay the difference to the Premises Provider. The Parties agree that the annual MAG shall apply to all revenue and be prorated based on the annual ADP of each year during the Term and any Renewal Term. Company paid Premise Provider a one-time signing bonus of $150,000.00 upon full execution of the Agreement. If the Agreement is terminated early, the Premises Provider agrees to reimburse the Company the prorated amount of the signing bonus. For example, if the Premise Provider terminates early, they shall reimburse the Company $4,166.66 for each remaining month.

In the event of any inconsistencies between the terms and conditions contained in the Agreement and the terms and conditions contained herein, the terms and conditions contained herein shall control. Except as set forth in this Amendment, the Agreement remains in full force and effect, without modification or amendment, and is hereby ratified and confirmed. This Amendment may be executed in multiple counterparts, each of which shall be an original, and all of which shall be one and the same contract. Original signatures transmitted by facsimile or electronic mail shall be effective to create such counterparts. Each person whose signature appears below warrants and represents that they have the requisite authority to execute this Amendment on behalf of the entity for which they are signing.

IN WITNESS WHEREOF, the foregoing Amendment has been executed by the Parties as of the latest date listed below.

Company **Global Tel*Link Corporation**	**Premises Provider** **Baldwin County Commission**
By:_____	By:_____
Name: Janna Peters	Name:_____
Title: Director of Contracts and Procurement	Title:_____
Date:_____	Date:_____

GLOBAL TEL*LINK CORPORATION
12021 Sunset Hills Road, Suite 100
Reston, Virginia 20190
Telephone: 703-955-3910 Fax: 703-435-0980 Web: http://www.gtl.net

MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is made by and between **Global Tel*Link Corporation,** an Idaho corporation ("Company") on behalf of itself and its subsidiaries and Affiliates (as defined in the attached Terms and Conditions), and the **Baldwin County Sheriff's Office**, acting by and through the **Baldwin County Commission,** with an address of 312 Courthouse Square Suite 12 Bay Minette, AL 36507 (the "Premises Provider") (Company and Premises Provider collectively, the "Parties" and each a "Party"). This Agreement is binding upon execution of the named Parties as of the last date signed by the Parties ("Effective Date").

1. **Services.** This Agreement applies to the supply, installation, management, operation, and maintenance of equipment and services at Premises Provider locations, whether existing, newly installed, or renovated ("Facilities") as listed and described in each of the attached Service Schedules (collectively, the "Services"). Each Service listed in the Service Schedules contains specific terms and conditions which shall be incorporated by reference into this Agreement. The Service Schedules indicated below are incorporated into this Agreement:

   X Inmate Telephone Service
   X Enhanced Services – Video Visitation

2. **Service Schedules.** Any Affiliate may provide services in its own name under a Service Schedule which shall then be considered a separate, but associated, contract incorporating this Agreement and the attached Terms and Conditions; provided, however, that Company is responsible for its Affiliates' performance pursuant to the applicable Service Schedule. The Affiliate listed in a Service Schedule is only responsible for the performance of the Services set forth in that Service Schedule.

3. **Term.** This Agreement shall be in effect for three (3) years, commencing from the Effective Date ("Term"). Unless either Party notifies the other in writing of its intention not to renew this Agreement at least ninety (90) days from the end of the original or any renewal term, this Agreement shall automatically renew for additional one (1) year terms (each a "Renewal Term").

4. **MAG and Signing Bonus.** Company will provide Premises Provider with a minimum annual guarantee of $550,000.00 ("MAG") per year during the initial term of the Agreement based on the Average Daily Population (ADP) of 620. At the end of each year during the Term and any Renewal Term, a true-up will be calculated based on all commissions paid to the Premises Provider, and should those commissions be less than the MAG, the Company agrees to pay the difference to the Premises Provider. The Parties agree that the annual MAG shall be prorated based on the annual ADP of each year during the Term and any Renewal Term. Further, Company agrees to pay Premise Provider a one-time signing bonus of $150,000.00 that shall be paid to the Premise Provider upon full execution of the Agreement. If the Agreement is terminated early, the Premises Provider agrees to reimburse the Company the prorated amount of the signing bonus. For example, if the Premise Provider terminates early, they shall reimburse the Company $4,166.66 for each remaining month..

5. **Entire Agreement.** This Agreement consists of the attached Terms and Conditions, all Service Schedules appended hereto, and the Company's international, interstate, and intrastate tariffs and published rates, terms, and conditions (collectively, "Tariffs") that may govern the Services, which are incorporated by reference into the Agreement. This Agreement constitutes the entire agreement between Premises Provider and the Company and supersedes all other agreements between the Parties pertaining to the subject matter hereof. Company may modify the Tariffs and/or required website disclosures from time to time, and any modification will be binding on the Parties upon notice of such revision. If a conflict arises, the order of precedence is: (i) Tariffs and or website disclosures to the extent they are required to take precedence by law; and (ii) this Agreement. In the event of a conflict or inconsistency between the terms set forth in the Agreement including the Terms and Conditions and a Service Schedule, the terms of the Service Schedule shall control.

6. **Notices.** Any notice, demand, request, approval or other communication (a "notice") which, under the terms of this Agreement or by law, must or may be given by either Party, must be in writing and delivered personally or by a recognized commercial overnight mail carrier to a Party at the address provided below. Notices, including notice of change of contact information, are effective upon delivery.

To Company:
Global Tel*Link Corporation
3120 Fairview Park Drive
Falls Church, VA 22042
Phone: (703) 955-3911
ATTN: Legal Department

To Premises Provider:
Baldwin County Commission
312 Courthouse Square Suite 12
Bay Minette, AL 36507
Phone: (251) 937-0264
ATTN: Billie Jo Underwood (Chairman)

7. This Agreement may be executed in multiple counterparts, each of which shall be an original, and all of which shall be one and the same contract.

IN WITNESS WHEREOF, the foregoing Agreement has been executed by the Parties hereto, as of the latest date listed below.

Company

Global Tel*Link Corporation
on behalf of itself and its Affiliates

Signature

Name: Alicia Freeman
Title: VP, Contracts & Procurement
Date: 9/24/20

Premises Provider

Baldwin County Commission

Signature

Name: Billie Jo Underwood
Title: Chairman
Date: 10/6/2020

Attest:

Signature
Name: Wayne Dyess
Title: County Administrator
Date: 10/6/2020

GTL CONFIDENTIAL

Terms and Conditions

The following Terms and Conditions shall apply to the provision and use of Services provided by the Company pursuant to this Agreement.

1. **Title.** Except as specifically indicated in a Service Schedule, title to all equipment provided under this Agreement ("Equipment") shall be and shall at all times remain in the Company. Except as specifically indicated in a Service Schedule, all software, documentation, and other intellectual property (collective the "IP") supplied or made available through this Agreement is being provided on a term license only, as long as this Agreement is in effect, and shall not constitute a sale of that IP. Nothing in this Agreement or through Company's performance hereunder shall constitute a transfer of right, title, or interest in or to the IP, which are retained by Company and its licensors.

During the term of this Agreement, Company grants Premises Provider a non-exclusive, non-transferable, license to use the IP solely for accessing the Services supplied by Company in the manner contemplated by this Agreement. Premises Provider shall not: (a) make available or distribute all or part of the IP to any third party by assignment, sublicense or by any other means; (b) copy, adapt, reverse engineer, decompile, disassemble, or modify, in whole or in part, any of the IP; or (c) use the IP to operate in or as a time-sharing, outsourcing, or service bureau environment, or in any way allow third party access to the IP. The use of software is supplied in object code only, and nothing herein shall be construed as granting any license whatsoever to the underlying source code that is used to generate the software, or creating an implied license in any IP.

2. **Relocation.** Equipment shall not be disconnected or moved by Premises Provider from the location in which it is installed. By written agreement of the Parties, installed Equipment may be relocated by the Company.

3. **Further Assurances.** During the term of this Agreement, including any renewal period(s) and extensions, Premises Provider agrees:

(a) To reasonably protect the Equipment against willful abuse and promptly report any damage, Services failure or hazardous conditions to the Company. Premises Provider shall not, and shall not allow any third party to, tamper with or otherwise modify the Services or equipment supplied by Company under this Agreement or associated software, or connect the equipment or Services or associated software to any hardware or software that is not provided by Company.

(b) To provide, at its expense, necessary power and power source, and provide suitable space, accessible to the users.

(c) To permit reasonable access to its respective Facilities without charge or prejudice to Company employees or representatives, patrons, or consignees, including permit Company authorized personnel access to the equipment, information, data, data communication services, and communication lines required for the installation, operation, and/or maintenance of the Services contemplated herein at such times and for such purposes as reasonably necessary or appropriate to permit Company to perform its obligations.

(d) To not allow any products or services that compete with those supplied by Company pursuant to this Agreement, during the term of the Agreement to be, or to remain, installed at the Premises Provider facility. Company will have the exclusive right to provide the Services at the Premises Provider facility under this Agreement, which includes all Services set forth in the attached Service Schedules, and those other inmate communication, educational or entertainment products and services sought by Premises Provider during the term of the Agreement that can be delivered through the Equipment or Services, at no additional cost to the Premises Provider, whether the products or services are for inmates located at Premises Provider facilities or at third-party facilities, provided, however, that the Company may elect to not exercise this exclusive right.

4. **Confidentiality.** From the date this Agreement is signed by both parties until three (3) years after the expiration or earlier termination of the Agreement, the Parties shall keep confidential the terms of this Agreement and of the response of Company to any solicitation that led to this Agreement. Each party shall also keep confidential any information it learns about the other's business or operations during its performance under this Agreement. The parties may make disclosures to employees, shareholders, agents, attorneys and accountants (collectively, "Agents") as required to perform their obligations hereunder, or in connection with a merger or the sale of all or substantially all assets of a Party, provided, however, that the Parties shall cause all Agents and third parties to honor the provisions of this Section. The Parties may also make disclosures as required by law as long as, before any disclosure, the Party subject to the disclosure requirement promptly notifies the other Party of the requirement and allows the other party the opportunity to oppose the disclosure. Neither party shall be obligated to keep confidential the other's information to the extent it was known to that party prior to the date of this Agreement without any obligation or request for confidentiality, is or becomes publicly known through no wrongful act of the party, is rightfully received from a third party who has no confidentiality obligation with respect to the information, or is developed independently by the party (and this can be verified).

5. **Indemnification and Limitation of Liability.** Each Party shall indemnify the other from any loss, cost, damage, expense, or liability to the extent resulting from, or arising out of, claims by a third party relating to a breach of a Party of its obligations under this Agreement, except to the extent such loss, cost, damage, expense, or liability arises from the negligence or fault of the other Party; provided further, however, that the Company shall not be liable for

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interruption of telephone or other communication services arising from any cause.

(a) EXCEPT AS OTHERWISE EXPRESSLY STATED IN THE AGREEMENT, THE SERVICES SUPPLIED UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY AND ITS LICENSORS AND SUPPLIERS, AND THEIR RESPECTIVE AFFILIATES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS, LACK OF VIRUSES, AND ANY WARRANTY REGARDING THE SECURITY OR RELIABILITY OF EQUIPMENT OR SERVICES. COMPANY DOES NOT WARRANT THAT SERVICES SHALL BE UNINTERRUPTED, ERROR FREE, OR THAT ALL ERRORS MAY BE CORRECTED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL COMPANY OR ITS SUPPLIERS OR LICENSORS, OR THEIR RESPECTIVE AFFILIATES BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF REVENUE OR PROFITS, OR FOR BUSINESS INTERRUPTION RELATING TO OR ARISING OUT OF THE SERVICES, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHERMORE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY AND ITS SUPPLIERS WILL NOT BE RESPONSIBLE FOR ANY PHYSICAL HARM OR OTHER INJURY, WHETHER FORESEEN OR UNFORESEEN, ARISING OUT OF THE USE OF EQUIPMENT, PRODUCTS, ACCESSORIES OR SERVICES SUPPLIED UNDER THIS AGREEMENT. PREMISES PROVIDER IS SOLELY RESPONSIBLE FOR KEEPING TELEPHONE AND HEADSET CORDS AWAY FROM THOSE WHO PRESENT A RISK TO THEMSELVES OR OTHERS. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

(b) Monitoring and Recording. Premises Provider agrees that Company has no responsibility to advise Premises Provider with respect to any law, regulation, or guideline that may govern or control any recording or monitoring capabilities supplied to Premises Provider by Company under the Agreement, or compliance therewith. Premises Provider has its own legal counsel to advise it concerning any and all such law, regulation, or guideline, and compliance therewith, and makes its own determination on when and how to use the monitoring and recording capabilities supplied through this Agreement. Company disclaims any responsibility to provide, and in fact has not provided, Premises Provider any legal advice concerning such applicable law, regulation, or guideline, or compliance therewith. Premises Provider shall be solely responsible for any liability, costs and expenses relating to any claims made against Company arising out of failure of Premises Provider (or the Company at the direction of the Premises Provider) to comply with such law, regulation or guideline. Premises Provider acknowledges that all communication detail records ("DRs") and recordings contained in the Equipment Company provides to Premises Provider under this Agreement are the exclusive property of the Premises Provider for the term of this Agreement and any resulting extensions of this Agreement; provided, however, that Company shall have the right to use the DRs and recordings to respond to legal requests, to provide the Services under this Agreement, and for other lawful business purposes.

6. **Risk of Loss.** The Company and its insurers, if any, shall relieve Premises Provider of all risks of loss or damage to the Equipment during the periods of transportation, installation and operation of the Equipment. However, Premises Provider shall be responsible for loss or damage to Equipment in its possession caused by fault or negligence of Premises Provider or its employees.

7. **Default.** In the event any Party shall be in breach or default of any material terms, conditions, or covenants of this Agreement and such breach or default shall continue for a period of thirty (30) days after the giving of written notice thereof to the breaching Party, then in addition to all other rights and remedies of law or equity or otherwise, the offended Party shall have the right to cancel this Agreement without liability.

8. **Governing Law.** To the maximum extent permitted by applicable law, the provisions of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Alabama, without regard to principles of conflicts of law. Venue for any action arising hereunder shall be in Baldwin County, Alabama.

9. **Assignment.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective permitted successors and assigns, including but not limited, to any new administration or head of Premises Provider. Neither Party shall assign any right and/or obligation under this Agreement without the other Party's prior written consent, which shall not be unreasonably withheld or delayed; provided, however, Company shall have the right to assign some or all its rights and/or obligations under this Agreement at any time to any entity that controls, is controlled by or is under common control with Company (each an "Affiliate") without the consent of the Premises Provider; provided, further, Company shall remain liable for any failure of any Affiliate to perform any assigned obligations. For the avoidance of doubt, a merger involving (i) Company or (ii) a sale of Company or substantially all of Company's assets shall not constitute an assignment requiring consent of Premises Provider for purposes of this Agreement.

10. **Independent Contractor.** The Company acknowledges that it is an independent contractor and that nothing contained in this Agreement or the relationship of

the Parties is intended to or shall create a partnership or joint venture or agency relationship of any kind between the Parties. This Agreement shall not be constructed as a contract of agency or employment. Company shall be solely responsible and liable for compliance with all laws, rules and regulations and payment of all wages, unemployment, social security and other payroll taxes relating to Company's employees including contribution from such persons, when required by law.

11. Solicitation. The Premises Provider acknowledges that no officer or employee of the Company has been employed, induced, or directed by Premises Provider to solicit or secure this Agreement with the Company upon agreement, offer, understanding, or implication involving any form of remuneration whatsoever. Premises Provider agrees, in the event of an allegation of substance (the determination of which shall be solely made by the Company) that there has been a violation hereof, Premises Provider shall cooperate in every reasonable manner with the Company in establishing whether the allegation is true. Notwithstanding any provisions of this Agreement to the contrary, if a violation of this provision is found to have occurred and is deemed material by the Company, the Company may terminate this Agreement.

12. Force Majeure. Neither Party to this Agreement shall be responsible or liable to the other for delays or inability to act or perform their obligations under this Agreement due to circumstances, events or acts of others beyond their reasonable control, including, but not limited to, acts of God, fire, pandemics, flood, storm, hurricane, tornado, riots, supply chain delays, theft of equipment, or changes in regulatory rules or regulations affecting the ability of either Party to reasonably carry out its obligations under this Agreement.

13. Survival. Upon the expiration or earlier termination of the term of this Agreement, the Parties shall have no further obligations to each other, except as specifically provided in a written agreement, duly executed by the Parties, and except that Premises Provider shall allow Company a reasonable opportunity to collect and remove Company Equipment from Premises Provider facilities. Notwithstanding the foregoing, all sections needed to enforce a Party's rights under this Agreement shall survive the expiration or earlier termination of the Agreement, and neither Party shall be released from any liability arising from any breach or violation by that Party of the terms of this Agreement prior to the expiration or termination.

14. Amendment. No course of dealing between the Parties, their employees, agents or representatives, shall vary any of the terms hereof. This Agreement may be modified, amended, or supplemented only by a written agreement executed by the Parties.

15. Severability. Each Party will comply with all applicable federal, state, and local laws, regulations and rules concerning the performance of the Agreement. If any provision of this Agreement is found to be illegal, invalid or unenforceable, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

16. No Waiver. No delay or failure by either Party in exercising any right under this Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right. Failure to enforce any right under this Agreement shall not be deemed a waiver of future enforcement of that or any other right.

17. No Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their successors and permitted assigns and nothing herein expressed or implied shall give or be constructed to give to any other person or entity any legal or equitable rights hereunder.

18. Taxes and Fees. Payment of any taxes or fees levied upon or as a result of this Agreement, or the Services delivered pursuant hereto, shall be the obligation of Company. Taxes and fees include all sales, use, gross receipts, excise and other local, state and federal taxes, fees, charges and surcharges.

19. Change-of-Law. Any rule, regulation, or other change mandated by any federal, state, or local authority which may interfere with or adversely affect Company's rights, obligations, or intended benefit under the Agreement shall entitle Company to, at its option, renegotiate or, in the event that Company and Premises Provider are unable to agree upon new terms, to terminate the Agreement.

20. Interpretation. The headings used in this Agreement are for convenience only and are not intended to be used as an aid to interpretation.

21. Authority. Each Party warrants and represents that the Party has the unrestricted right and requisite authority to enter into, deliver and perform under this Agreement.

Inmate Telephone Service
Service Schedule

This Service Schedule applies only to inmate telephone service ("ITS"). Where "Company" is used in this Service Schedule, it shall mean Global Tel*Link Corporation. Additional terms and conditions applicable to ITS are set forth in Tariffs or on Company's website, which may be modified from time to time.

1. **Equipment and Features.**

Telephones and Workstations		
Workstations	Inmate Phones	Platform
1	51	ICMv

GTL Base Features
365 Day On-Line Recording Storage
Password Protected Web based User Interface
Live Monitoring
Call Detail Reporting Tools
CD Burning Tools
Number Management
Blocked Access to Toll-Free Numbers
PREA Support
24X7 Technical Support
Collect, Prepaid, and Optional Debt Calling
Hot Alert
Audit Tools
TDD/TTY Capability
Call Prompts in English and Spanish

The term "Equipment" in this Service Schedule includes the items listed in this Section 1 of this Schedule and related equipment, including guard posts, concrete pads, mast poles, and site preparation. Guard posts, concrete pads, enclosures, pedestals, bumper pads, or other property of Company installed by Company shall remain in all respects that of Company. Company reserves the right to remove or relocate Equipment which is subjected to recurring vandalism or insufficient traffic and/or revenue to warrant the continuation of Service. Company shall not exercise such a right of removal or relocation unreasonably. Company shall notify Premises Provider in writing of its intention to remove or relocate Equipment prior to such action. Upon removal of Equipment by the Company, Company shall restore said premises to its original condition, ordinary wear and tear excepted; however, Company shall not be liable for holes placed in walls, pillars, or floors or other conditions on the premises which resulted from the proper installation of Equipment. Premises Provider shall not, and shall not allow any third party to,make alterations or attachments to the Equipment.

2. **Inmate Telephone Services.**
Company shall be responsible for: (a) furnishing, installing, repairing and servicing the Equipment; (b) the establishment (if and to the extent required of Company by law) and compliance with all Tariffs and rules, regulations, orders and policies of federal and state regulatory authorities applicable to the automated inmate telephone system Services provided by Company; (c) the establishment and maintenance of all billing and payment arrangements with the local and interexchange carriers; (d) the processing of all telephone call records; (e) the performance (alone or through others) of all validation, billing, outclearing and collection services; and (f) the handling of all billing and other inquiries, fraud control, and all other Services essential to the performance of Company's obligations under this Agreement. Company reserves the right to control unbillables, bad debt and fraud.

Company does not furnish, maintain or provide consumables for peripheral equipment associated with the inmate telephone system. Consumables consist of items such as printer paper, cassette tapes, or compact disks.

3. **Compensation.**
Remuneration shall be **eighty-eight percent (88%)** of the Gross Revenue billed or prepaid for inmate telephone calls covered by this Agreement. Gross Revenue shall mean all revenue generated by every completed inmate call that is accepted by an end user and billed via a local exchange carrier or prepaid to Company. Gross Revenue does not include: (i) taxes and tax-related surcharges; (ii) credits; (iii) account and other transaction fees; (; and (iv) any amount Company collects for, or pays to, third parties, including but not limited to payments in support of statutory or regulatory programs mandated by governmental or quasi-governmental authorities, such as the Federal Universal Service Fee, and any costs incurred by Company in connection with such programs. Commission payments shall be paid monthly. All commission payments shall be considered final and binding upon the Premise Provider unless written objection is received by the Company within sixty (60) days of receipt of commission payment by the Premise Provider.

Commission payments will be delivered to the address listed in this Section, which may be changed by Premise Provider from time to time upon notice to Company in accordance with terms of the notice provision of this Agreement.

Baldwin County Sheriff's Office
111 East 4th Street
Bay Minette, AL 36507
Attn: Connie Dudgeon (Director of Finance)

4. **Rates and Charges for Inmate Telephone Services.** The per-minute-of-use call rate shall not exceed the maximum rates authorized by the state's telecommunication regulatory authority ("PUC") and the Federal Communications Commission ("FCC").

   a) Local, Intrastate and Interstate ITS calls made using a collect format: $0.25 per minute of use.
   b) Local, Intrastate and Interstate ITS calls, whether made using a debit, prepaid/AdvancePay™ format: $0.21 per minute of use.
   c) International ITS calls, whether made using a debit, prepaid/AdvancePay™ format: Rates published on the Company website.

   No per call, per connection, or flat-rate calling charges shall apply to international, interstate, and intrastate ITS per minute of use calls. The rates charged are exclusive of taxes, and other amounts collected by Company on behalf of, or paid to, third parties, including but not limited to payments in support of statutory or regulatory programs mandated by governmental or quasi-governmental authorities, such as the Federal Universal Service Fee, and any costs incurred by Company in connection with such programs.

5. **Transaction Fees for Inmate Telephone Services.** Company may charge certain Transaction Fees in accordance with the following amounts:

Fee for automated payments (includes payments by interactive voice response, web, or kiosk)	$3.00 per use
Fee for payment using live operator	$5.95 per use
Paper bill/statement fee	$2.00 per use
Fee for use of third-party money transmitter (*e.g.*, MoneyGram, Western Union, credit card processing, transfers from third-party commissary accounts)	The exact fee from the third-party provider passed through directly to customer with no markup

6. **Single-Call and Related Billing Arrangements for Inmate Telephone Services.** Company may permit consumers to purchase ITS on a collect call basis through third-party billing arrangements that allow consumers to pay for a single ITS call using such methods as their debit or credit card, billing the cost of a single ITS call to their mobile phone account, or another arrangement. When a consumer chooses to pay for a single ITS call using such a method, the charge shall be any applicable transaction fee and other charges allowed by law.

Enhanced Services
Video Visitation Service Schedule

1. **Applicability.** This Service Schedule applies only to video visitation services. Where "Company" is used in this Service Schedule, it shall mean GTL Enhanced Services, LLC.

2. **Definitions.** Capitalized terms used and not otherwise defined shall have the meaning set forth in the Agreement.

   "Enhanced Services" means enhanced communications, information services, educational, and entertainment products.

   "Video Visitation Service or System" ("VVS") means an Enhanced Service that permits face-to-face visits, on-site video visits, or remote video visits using a platform to facilitate inmate communications with family, friends, and attorneys.

   "Video Visitation Unit" means the hardware and equipment installed at Premises Provider Locations (as defined below) that provides access to Video Visitation Services.

3. **Deployment Locations.** VVS will be deployed at the locations listed in the table below, as may be altered by agreement of the parties (individually "Location" and collectively "Locations"). Company reserves the right to terminate the VVS at any Location and all Locations if equipment is subjected to recurring vandalism or there is insufficient revenue to warrant the continuation of the VVS at such Location(s), including the failure by Company to recover the Expenditure (as defined below) for VVS within twenty-four (24) months following the deployment of Enhanced Service at the Locations.

Baldwin County Corrections Center (200 Hand Avenue Bay Minette, AL 36507)

4. **Company Provided Equipment, Services and Cabling.** Company will supply equipment, hardware, circuits, and cabling to deploy VVS at the Locations at no cost to Premises Provider. Company will retain all right, title, and interest in and to all equipment (including any associated hardware and software), and services supplied. Cabling will become the property of Premises Provider upon the expiration of the Agreement. Upon termination of VVS in any Location(s), provide Company a reasonable opportunity to collect all Video Visitation Units and associated equipment and hardware (except cabling).

5. **Support and Maintenance.** Company will provide all support and maintenance services for the VVS, subject to the limitations described herein. Company will respond promptly to all support requests. Premises Provider acknowledges that the resolution of certain hardware and software events will be subject to supply chain lead times, and that Video Visitation Units will not be available while being repaired or maintained. Premises Provider will permit Company authorized personnel access to the equipment, information, data, data communication services, and communication lines required for the installation, operation, and/or maintenance of the VVS, at such times and for such purposes as reasonably necessary or appropriate to permit Company to perform its obligations herein.

6. **Video Visitation Services.** Company shall be responsible for: (a) furnishing, installing, repairing and servicing the VVS equipment listed below; (b) the performance (alone or through others) of all validation, billing, outclearing and collection services; and (c) the handling of all billing and other inquiries, fraud control, and all other services essential to the performance of Company's obligations hereunder. Company reserves the right to control unbillables, bad debt and fraud. Premises Provider and Company shall use best efforts to promote video visitation, including: (a) make video visitation available for at least 12 hours a day every day, without inmate session limitations except in connection with disciplinary action; (b) allow Company to promote the use of video visitation through, among others, the distribution of promotional material at Premises Provider Facility locations,

IVR recordings, the Web, and press releases; (c) allow Company to have promotional pricing to make video visitation an attractive alternative.

7. **VVS Software.** Company shall deploy a hosted application server in Company video visitation data center. Company's VVS software provides the following functionalities for visitation scheduling: (a) unlimited number of user licenses for scheduling software; (b) facility registration and scheduling; (c) public web-based registration and scheduling; (d) multilingual web interface (English, Spanish); and (e) professional web-based registration and scheduling. The VVS software allows Premises Provider to (a) manage public and professional visits; (b) manage non-contact and contact visits; (c) manage on premises video visitation and remote video visitation; (d) establish set schedules for non-contact visits, contact visits, on premises video visits, and remote video visits; (e) have officer check in for all on premises visits; and (f) have officer video check-in prior to remote video visitation start. Premises Provider may configure the VVS software for staff access privileges, visitation restrictions for inmates and visitors, and scheduling and confliots. The VVS software may be integrated with Premises Provider's Jail Management System (or "JMS") for one-way data transfers; provided, however, Company shall not be responsible for any charges that may be assessed for the interface or its maintenance by Premises Provider's JMS provider. Premises Provider may use the VVS software for live monitoring and recording with sixty (60) day recording storage, and may create certain data reports based on the data available via the VVS software.

8. **VVS Hardware.** Company will provide the following hardware and equipment for use with VVS:

   27 Inmate Units (26 Fixed & 1 Mobile)
   7 Visitor Units

9. **VVS Rates.**

On-Premises video visits beyond free visits required by law shall be $0.25 per minute for the duration of the visit.

Remote video visits shall be charged in accordance with the table below. There shall be 10 and 25 minute visits allowed.

Visit Duration	Charge to Visiting Party
10 minutes	$2.50
25 minutes	$6.25

10. **VVS Commissions.** Company shall pay Premises Provider a **50%** commission every month on gross payments collected for revenue generating video visits ("Video Revenue"). Video Revenue does not include taxes, fees and other charges collected on behalf of Local, State, Federal or other governmental agencies. If Premises Provider terminates the Agreement for any reason other than breach by Company, Premises Provider will pay Company within thirty (30) days following termination the Expenditure less any Content Revenue collected by Company. Commission payments shall be completed monthly, and all commission payments shall be final and binding upon Premises Provider unless written objection is received by Company within sixty (60) days of receipt of commission payment by Premises Provider.

11. **Additional Terms**
    a. Monitoring and Recording. Premises Provider agrees that Company has no responsibility to advise Premises Provider with respect to any law, regulation, or guideline that may govern or control video communication recordation or monitoring by Premises Provider or compliance therewith. Premises Provider has its own legal counsel to advise it concerning any and all such law, regulation, or guideline, and compliance therewith, and makes its own determination on when and how to use the video monitoring and recording capabilities supplied through this Agreement. Company disclaims any responsibility to provide, and in fact has not provided, Premises Provider any legal advice concerning such applicable law, regulation, or guideline, or compliance therewith. Premises Provider shall be solely responsible for any liability, costs and expenses relating to any claims made against Company or its affiliates arising out of failure of Premises Provider (or

Company at the direction of Premises Provider) to comply with such law, regulation or guideline. Premises Provider acknowledges that all video communication detail records and recordings (DRs) in connection with VVS are the exclusive property of Premises Provider for the term of this Agreement and any resulting extensions of this Agreement; provided, however, Company shall have the right to use the DRs and recordings to respond to legal requests, to provide the services under this Agreement, and for other lawful business purposes.

b. Exclusivity and Right of First Refusal. Premises Provider will not allow any products or services that compete with those supplied by Company during the term of the Agreement to be, or to remain, installed at any Premises Provider facilities, including present and future Premises Provider locations. Company will have the exclusive right to provide the products and services implemented at Premises Provider facilities through the VVS, and otherwise through the Agreement, and those other inmate communication, educational or entertainment products or services sought by Premises Provider during the term of the Agreement, including any products or services that may be delivered through VVS, whether the products or services are for inmates located at a Premises Provider facilities or at third-party facilities; provided, however, that Company may choose to not exercise this exclusive right. Company will also have the exclusive right to provide Premises Provider the products and services delivered under the Agreement for the period after its termination if Company matches the material financial and services conditions of a bona fide offer of any third party to provide these products and services, or any portion thereof, that Premises Provider is prepared to accept. Premises Provider will provide Company with the terms of such third-party offer in writing and no less than ten (10) business days to exercise its rights herein. Upon exercise by Company, the Agreement will renew with the modified financial and services terms for the extended period contemplated by the third-party offer.

12. **Limitation of Liability**. COMPANY AND ITS AFFILIATES AND SUPPLIERS SHALL IN NO WAY BE RESPONSIBLE, OR LIABLE FOR, ANY PHYSICAL HARM OR OTHER INJURY, FORESEEN OR UNFORESEEN, IN THE USE OF THE VIDEO VISITATION UNITS, OR RELATED ACCESSORIES. PREMISES PROVIDER IS SOLELY RESPONSIBLE FOR KEEPING CORDS AWAY FROM THOSE WHO PRESENT RISK TO THEMSELVES OR OTHERS.

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

In the Matter of	)	
	)	
Rates for Interstate Inmate Calling Services	)	WC Docket No. 12-375
	)	

THIRD REPORT AND ORDER, ORDER ON RECONSIDERATION, AND FIFTH FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: May 20, 2021 **Released: May 24, 2021**

Comment Date: 30 days after date of publication in the Federal Register
Reply Comment Date: 60 days after date of publication in the Federal Register

By the Commission: Acting Chairwoman Rosenworcel and Commissioners Carr and Starks issuing separate statements.

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I. INTRODUCTION

1. Unlike virtually everyone else in the United States, incarcerated people have no choice in their telephone service provider. Instead, their only option typically is to use a service provider chosen by the correctional facility, and once chosen, that service provider typically operates on a monopoly basis. Egregiously high rates and charges and associated unreasonable practices for the most basic and essential communications capability—telephone service—impedes incarcerated peoples' ability to stay connected with family and loved ones, clergy, and counsel, and financially burdens incarcerated people and their loved ones. Never have such connections been as vital as they are now, as many correctional facilities have eliminated in-person visitation in response to the COVID-19 pandemic.

2. In August 2020, the Commission unanimously adopted a *Notice* proposing to reduce interstate rates and, for the first time, to cap international rates. Today, we move forward as proposed, lowering interstate rates and charges for the vast majority of incarcerated people, limiting international rates for the first time, and making other reforms to our rules.

3. Specifically, the Report and Order:

- Lowers the interstate interim rate caps of $0.21 per minute for debit and prepaid calls from prisons and jails with 1,000 or more incarcerated people to new lower interim caps of $0.12 per minute for prisons and $0.14 per minute for larger jails.

- Reforms the current treatment of site commission payments to permit recovery only of the portions of such payments related specifically to calling services and requires them to be separately listed on bills.
    - Where site commission payments are mandated by federal, state, or local law, providers may pass these payments through to consumers, without any markup, as an additional component of the new interim interstate per-minute rate caps.
    - Where site commission payments result from contractual obligations or negotiations with providers, providers may recover from consumers no more than the $0.02 per minute for prisons and $0.02 per minute for larger jails, as proposed in the *2020 ICS Notice*.
    - Therefore, consistent with the proposal in the *2020 ICS Notice*, the maximum total interstate rate caps are $0.14 per minute for prisons and $0.16 per minute for jails with 1,000 or more incarcerated people.
- Eliminates the current interim interstate collect calling rate cap of $0.25 per minute resulting in a single uniform interim interstate maximum rate cap of $0.21 per minute for all calls for all facilities, consistent with the proposal in the *2020 ICS Notice*.
- Caps, for the first time, international calling rates at the applicable total interstate rate cap, plus the amount paid by the calling services provider to its underlying wholesale carriers for completing international calls, consistent with the *2020 ICS Notice*.
- Reforms the ancillary service third-party transaction fee caps for (1) calls that are billed on a single per-call basis, and (2) charges for transferring or processing third-party financial transactions, as proposed in the *2020 ICS Notice*.
- Adopts a new mandatory data collection to obtain more uniform cost data based on consistent prescribed allocation methodologies to determine reasonable permanent cost-based rate caps for facilities of all sizes, as suggested in the *2020 ICS Notice*.
- Reaffirms providers' obligations regarding functionally equivalent access for incarcerated people with disabilities, consistent with the *2020 ICS Notice* and federal law.

4. Next, we adopt an Order on Reconsideration denying GTL's petition for reconsideration of the *2020 ICS Order on Remand*, and reiterate that the jurisdictional nature of a telephone call for purposes of charging consumers depends on the physical location of the originating and terminating endpoints of the call. To the extent the endpoints of any particular call could be either intrastate or interstate and such endpoints are not known or easily knowable, consistent with our precedent, rates or charges for such calls may not exceed any applicable federally prescribed rates or charges.

5. Finally, we adopt a Fifth Further Notice of Proposed Rulemaking to obtain evidence necessary to make further progress toward accomplishing the critical work that remains. To that end, the Further Notice seeks more detailed comments from stakeholders, including but not limited to, about the provision of communications services to incarcerated people with hearing and speech disabilities; the methodology to be employed in setting permanent interstate and international rate caps; general reform of the treatment of site commission payments in connection with interstate and international calls; the adoption of an on-going periodic cost data collection to ensure rates are just and reasonable; and additional reforms to our ancillary service charges rules.

6. We expect today's actions to have immediate meaningful and positive impacts on the ability of incarcerated people and their loved ones to satisfy our universal, basic need to communicate.[1]

[1] Although we use various terminology throughout this item to refer to the intended beneficiaries of our actions herein, unless context specifically indicates otherwise, these beneficiaries are broadly defined as the people placing (continued….)

II. BACKGROUND

7. Access to affordable communications services is critical for everyone in the United States, including incarcerated members of our society. Studies have long shown that incarcerated people who have regular contact with family members are more likely to succeed after release and have lower recidivism rates. Because correctional facilities generally grant exclusive rights to service providers, incarcerated people must purchase service from "locational monopolies" and subsequently face rates far higher than those charged to other Americans.

A. Statutory Background

8. The Communications Act of 1934, as amended (Communications Act or Act) divides regulatory authority over interstate, intrastate, and international communications services between the Commission and the states.[2] Section 2(a) of the Act empowers the Commission to regulate "interstate and foreign communication by wire or radio."[3] This regulatory authority includes ensuring that "[a]ll charges, practices, classifications, and regulations for and in connection with" interstate or international communications services are "just and reasonable" in accordance with section 201(b) of the Act.[4] Section 201(b) also provides that "[t]he Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out" these provisions.[5]

9. Section 2(b) of the Act preserves states' jurisdiction over "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service."[6] The Commission is thus "generally forbidden from entering the field of intrastate communication service, which remains the province of the states."[7] Stated differently, section 2(b) "erects a presumption against the Commission's assertion of regulatory authority over intrastate communications."[8]

10. Section 276 of the Act directs the Commission to prescribe regulations that ensure that payphone service providers, including inmate calling services providers, "are fairly compensated for each and every completed intrastate and interstate call using their payphone."[9] Although the Telecommunications Act of 1996 (1996 Act) amended the Act and "chang[ed] the FCC's authority with respect to some intrastate activities,"[10] with respect to section 276, the U.S. Court of Appeals for the District of Columbia Circuit has held that "the strictures of [section 2(b)] remain in force."[11]

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and receiving inmate calling services (ICS) calls, whether they are incarcerated people, members of their family, or other loved ones and friends. We also may refer to them, generally, as consumers.

[2] *E.g.*, *Global Tel*Link v.* FCC, 866 F.3d 397, 402 (D.C. Cir. 2017) (*GTL v. FCC* or *GTL*).

[3] 47 U.S.C. § 152(a).

[4] 47 U.S.C. § 201(b).

[5] *Id.*

[6] 47 U.S.C. § 152(b).

[7] *GTL v. FCC*, 866 F.3d at 403 (quoting *New England Pub. Commc'ns Council, Inc. v. FCC*, 334 F.3d 69, 75 (D.C. Cir. 2003) (citing 47 U.S.C. § 152(b)).

[8] *Id.* at 403, 409; *see also id.* at 403 ("This is 'not only a substantive jurisdictional limitation on the FCC's power, but also a rule of statutory construction' in interpreting the Act's provisions." (quoting *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 373 (1986) (*Louisiana Public Service Commission*))).

[9] 47 U.S.C. § 276(b)(1)(A); *see also id.* § 276(d) (defining "payphone service" to include "the provision of inmate telephone service in correctional institutions, and any ancillary services"). The statute explicitly exempts telecommunications relay service calls for hearing disabled individuals from the requirement that providers must be compensated for "each and every" completed call. *Id.* § 276(b)(1)(A).

[10] *GTL v. FCC*, 866 F.3d at 403.

[11] *Id.*

Accordingly, that court concluded that section 276 does not authorize the Commission to determine "just and reasonable" rates for intrastate calls, and that the Commission's authority under that provision to ensure that providers "are fairly compensated" both for intrastate and interstate calls does not extend to establishing rate caps on intrastate services.[12]

B. History of Commission Proceedings Prior to 2020

11. In 2003, Martha Wright and her fellow petitioners, current and former incarcerated people and their relatives and legal counsel (Wright Petitioners), filed a petition seeking a rulemaking to address "excessive" inmate calling services rates.[13] The petition sought to prohibit exclusive inmate calling services contracts and collect-call-only restrictions in correctional facilities.[14] In 2007, the Wright Petitioners filed an alternative petition for rulemaking in which they emphasized the urgency of the need for Commission action due to "exorbitant" inmate calling services rates.[15] The Wright Petitioners proposed benchmark rates for interstate long distance inmate calling services calls and reiterated their request that providers offer debit calling as an alternative option to collect calling.[16] The Commission sought and received comment on both petitions.[17]

12. In 2012, the Commission commenced an inmate calling services rulemaking proceeding by releasing the *2012 ICS Notice* seeking comment on, among other matters, the proposals in the Wright Petitioners' petitions and whether to establish rate caps for interstate inmate calling services calls.[18]

13. In the *2013 ICS Order*, in light of record evidence that rates for calling services used by incarcerated people greatly exceeded the reasonable costs of providing those services, the Commission adopted interim interstate rate caps of $0.21 per minute for debit and prepaid calls and $0.25 per minute for collect calls.[19] In the First Mandatory Data Collection, the Commission required all inmate calling

[12] *Id.* at 409-12. Judge Pillard dissented from this view, finding permissible the Commission's contrary interpretation of the meaning of "fairly compensated" in section 276. *Id.* at 419-23 (Pillard, J., dissenting).

[13] Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking by Martha Wright et al., CC Docket No. 96-128, at 1 (filed Nov. 3, 2003), https://ecfsapi.fcc.gov/file/6515782164.pdf.

[14] *Id.* at 3.

[15] Petitioners' Alternative Rulemaking Proposal by Martha Wright et al., CC Docket No. 96-128, at 2 (filed Feb. 28, 2007), https://ecfsapi.fcc.gov/file/6518908681.pdf.

[16] *Id.* at 5, 10.

[17] *Comment Sought on Alternative Rulemaking Proposal Regarding Issues Related to Inmate Calling Services*, CC Docket No. 96-128, Public Notice, 22 FCC Rcd 4229 (WCB 2007); *Petition for Rulemaking Filed Regarding Issues Related to Inmate Calling Services*; *Pleading Cycle Established*, CC Docket No. 96-128, Public Notice, DA 03-4027, 2003 FCC LEXIS 7261 (WCB 2003).

[18] *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Notice of Proposed Rulemaking, 27 FCC Rcd 16629, 16629-30, 16636, paras. 1, 17 (2012) (*2012 ICS Notice*).

[19] These interim interstate rate caps were first adopted in 2013, *Rates for Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107, 14111, para. 5 (2013) (*2013 ICS Order*), were readopted in 2015, *Rates for Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12770, para. 9 tbl. 1 (2015) (*2015 ICS Order* or *2015 ICS Notice*), and remain in effect as a result of the vacatur, by the D.C. Circuit, of the permanent rate caps adopted in the *2015 ICS Order*. *GTL v. FCC*, 866 F.3d at 404. Under the Commission's rules, "Debit Calling" means "a presubscription or comparable service which allows an Inmate, or someone acting on an Inmate's behalf, to fund an account set up [through] a Provider that can be used to pay for Inmate Calling Services calls originated by the Inmate." 47 CFR § 64.6000(g). "Prepaid Calling" means "a presubscription or comparable service in which a Consumer, other than an Inmate, funds an account set up [through] a Provider of Inmate Calling Services. Funds from the account can then be used to pay for Inmate Calling Services, including calls that originate with an Inmate." *Id.* § 64.6000(p). "Collect Calling" means "an arrangement whereby the called (continued….)

services providers to submit data on their underlying costs so that the agency could develop permanent rate caps.[20] In the *2014 ICS Notice*, the Commission sought comment on reforming charges for services ancillary to the provision of inmate calling services and on establishing rate caps for both interstate and intrastate calls.[21]

14. The Commission adopted a comprehensive framework for interstate and intrastate inmate calling services in the *2015 ICS Order*, including limits on ancillary service charges[22] and permanent rate caps for interstate and intrastate inmate calling services calls in light of "egregiously high" rates for inmate calling services calls.[23] The Commission set tiered rate caps of $0.11 per minute for prisons; $0.14 per minute for jails with average daily populations of 1,000 or more; $0.16 per minute for jails with average daily populations of 350 to 999; and $0.22 per minute for jails having average daily populations of less than 350.[24] The Commission calculated these rate caps using industry-wide average costs based on data from the First Mandatory Data Collection and stated that this approach would allow providers to "recover average costs at each and every tier."[25] The Commission also readopted the interim interstate rate caps it had adopted in 2013, and extended them to intrastate calls, pending the effectiveness of the new rate caps, and sought comment on whether and how to reform rates for international inmate calling

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party takes affirmative action clearly indicating that it will pay the charges associated with a call originating from an Inmate Telephone." *Id.* § 64.6000(d).

[20] *2013 ICS Order*, 28 FCC Rcd at 14111-12, paras. 5, 7.

[21] *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Further Notice of Proposed Rulemaking, 29 FCC Rcd 13170, 13179, para. 19 (2014) (*2014 ICS Notice*). Ancillary service charges are fees that providers assess on calling services used by incarcerated people that are not included in the per-minute rates assessed for individual calls. 47 CFR § 64.6000(a).

[22] *2015 ICS Order*, 30 FCC Rcd at 12838-39, paras. 144-45. Because of continued growth in the number and dollar amount of ancillary service charges that inflated the effective price paid for inmate calling services, the Commission limited permissible ancillary service charges to only five types and capped the charges for each: (1) Fees for Single-Call and Related Services—billing arrangements whereby an incarcerated person's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the inmate calling services provider or does not want to establish an account; (2) Automated Payment Fees—credit card payment, debit card payment, and bill processing fees, including fees for payments made by interactive voice response, web, or kiosk; (3) Third-Party Financial Transaction Fees—the exact fees, with no markup, that providers of calling services used by incarcerated people are charged by third parties to transfer money or process financial transactions to facilitate a consumer's ability to make account payments via a third party; (4) Live Agent Fees—fees associated with the optional use of a live operator to complete inmate calling services transactions; and (5) Paper Bill/Statement Fees—fees associated with providing customers of inmate calling services an optional paper billing statement. 47 CFR §§ 64.6000(a), 64.6020.

[23] The Commission relied on sections 201(b) and 276 of the Act to adopt rate caps for both interstate and intrastate inmate calling services. *2015 ICS Order*, 30 FCC Rcd at 12768, 12813-18, paras. 7, 106-16.

[24] *Id.* at 12775, para. 22.

[25] *Id.* at 12790, para. 52 & n.170. The Commission did not include site commission payments in its permanent rate caps, finding these payments were not costs reasonably related to the provision of inmate calling services. *See 2015 ICS Order*, 30 FCC Rcd at 12818-19, paras. 117-18; *see also 2013 ICS Order*, 28 FCC Rcd at 14124-25, paras. 33-34 (describing site commissions as "payments made from [inmate calling services] providers to correctional facilities and related state authorities" and recognizing that such payments "can take the form of a percentage of gross revenue, a signing bonus, a monthly fixed amount, yearly fixed amount, or in-kind contributions"); *Implementation of Pay Telephone Reclassification & Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Order on Remand and Notice of Proposed Rulemaking, 17 FCC Rcd 3248, 3262, para. 38 (2002) (*2002 Pay Telephone Order*) (describing site commissions as "location rents that are negotiable by contract with the facility owners and represent an apportionment of profits between the facility owners and the providers of the inmate payphone service").

services calls.[26] At the same time, the Commission adopted a Second Mandatory Data Collection to identify trends in the market and form the basis for further reform as well as an annual filing obligation requiring providers to report information on their current operations, including their interstate, intrastate, and international rates as well as their ancillary service charges.[27]

15. In the *2016 ICS Reconsideration Order*, the Commission reconsidered its decision to entirely exclude site commission payments from its 2015 permanent rate caps.[28] The Commission increased those permanent rate caps to account for claims that certain correctional facility costs reflected in site commission payments are directly and reasonably related to the provision of inmate calling services.[29] The Commission set the revised rate caps at $0.13 per minute for prisons; $0.19 per minute for jails with average daily populations of 1,000 or more; $0.21 per minute for jails with average daily populations of 350 to 999; and $0.31 per minute for jails with average daily populations of less than 350.[30]

C. Judicial Actions

16. In January 2014, in response to providers' petitions for review of the *2013 ICS Order*, the D.C. Circuit stayed the application of certain portions of the *2013 ICS Order* but allowed the Commission's interim rate caps to remain in effect.[31] Later that year, the court held the petitions for review in abeyance while the Commission proceeded to set permanent rates.[32] In March 2016, in response to providers' petitions for review of the *2015 ICS Order*, the D.C. Circuit stayed the application of the *2015 ICS Order*'s permanent rate caps and ancillary service charge caps for Single Call Services[33] while the appeal was pending.[34] Later that month, the court stayed the application of the Commission's interim rate caps to intrastate inmate calling services.[35] In November 2016, the D.C. Circuit also stayed the *2016 ICS Reconsideration Order*, pending the outcome of the challenge to the *2015 ICS Order*.[36]

17. In 2017, in *GTL v. FCC*, the D.C. Circuit vacated the permanent rate caps adopted in the *2015 ICS Order*.[37] First, the panel majority held that the Commission lacked the statutory authority to cap intrastate calling services rates.[38] The court explained that the Commission's authority over intrastate

[26] *2015 ICS Order*, 30 FCC Rcd at 12769, 12771, paras. 9, 11; *see also Wireline Competition Bureau Addresses Applicable Rates for Inmate Calling Services and Effective Dates for Provisions of the Inmate Calling Services Second Report and Order*, WC Docket No. 12-375, Public Notice, 31 FCC Rcd 2026, 2026-28 (WCB 2016).

[27] *2015 ICS Order*, 30 FCC Rcd at 12862, 12891-92, paras. 198, 266-67.

[28] *See Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order on Reconsideration, 31 FCC Rcd 9300 (2016) (*2016 ICS Reconsideration Order*).

[29] *See generally id.* at 9307, para. 12.

[30] *Id.*

[31] *Securus Techs., Inc. v. FCC*, No. 13-1280, 2014 U.S. App. LEXIS 13669, at *3 (D.C. Cir. Jan. 13, 2014).

[32] *GTL v. FCC*, 866 F.3d at 405 (citing *Securus Techs., Inc. v. FCC*, No. 13-1280, 2014 U.S. App. LEXIS 25157, at *3 (D.C. Cir. Dec. 16, 2014)).

[33] Single-Call Services mean "billing arrangements whereby an Inmate's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the Provider of Inmate Calling Services or does not want to establish an account." 47 CFR § 64.6000(a)(2).

[34] *GTL v. FCC*, 866 F.3d at 405 (citing *GTL v. FCC*, No. 15-1461 (D.C. Cir. Mar. 7, 2016)).

[35] *Id.* at 405-06 (citing *GTL v. FCC*, No. 15-1461 (D.C. Cir. Mar. 23, 2016)).

[36] *Id.* at 406 (citing *Securus Techs., Inc. v. FCC*, No. 16-1321, 2016 U.S. App. LEXIS 24370, at *4 (D.C. Cir. Nov. 2, 2016)).

[37] *Id.*at 402, 415.

[38] *Id.* at 408-12.

calls is, except as otherwise provided by Congress, limited by section 2(b) of the Act and nothing in section 276 of the Act overcomes this limitation.[39] In particular, section 276 "merely directs the Commission to 'ensure that all providers [of calling services to incarcerated people] are fairly compensated' for their inter- and intrastate calls,"[40] and it "is not a 'general grant of jurisdiction' over intrastate ratemaking."[41] The court noted that it "need not decide the precise parameters of the Commission's authority under § 276."[42]

18. Second, the D.C. Circuit concluded that the "Commission's categorical exclusion of site commissions[43] from the calculus used to set [inmate calling services] rate caps defie[d] reasoned decision making because site commissions obviously are costs of doing business incurred by [inmate calling services] providers."[44] The court noted that some site commissions were "mandated by state statute," while others were "required by state correctional institutions" and were thus also a "condition of doing business."[45] The court directed the Commission to "assess on remand which portions of site commissions might be directly related to the provision of [inmate calling services] and therefore legitimate, and which are not."[46] The court did not reach the providers' remaining arguments "that the exclusion of site commissions denies [them] fair compensation under [section] 276 and violates the Takings Clause of the Constitution because it forces providers to provide services below cost." Instead, the court stated that the Commission should address these issues on remand when revisiting the categorical exclusion of site commissions.[47]

19. Third, the D.C. Circuit held that the Commission's use of industry-wide averages in setting rate caps was arbitrary and capricious because it lacked justification in the record and was not supported by reasoned decision making.[48] More specifically, the court found the Commission's use of a weighted average per-minute cost to be "patently unreasonable" given that such an approach made calls with above-average costs unprofitable and thus did "not fulfill the mandate of § 276 that 'each and every'" call be fairly compensated.[49] Additionally, the court found that the *2015 ICS Order* "advance[d] an efficiency argument—that the larger providers can become profitable under the rate caps if they operate more efficiently—based on data from the two smallest firms," which "represent[ed] less than one

[39] *See GTL v. FCC*, 866 F.3d at 409-12.

[40] *Id.* at 409 (quoting 47 U.S.C. § 276(b)(1)(A)).

[41] *Id.* at 412 (internal citation omitted).

[42] *Id.*

[43] *See* 47 CFR § 64.6000 (defining site commissions as "any form of monetary payment, in-kind payment, gift, exchange of services or goods, fee, technology allowance, or product that a Provider of Inmate Calling Services or affiliate of a Provider of Inmate Calling Services may pay, give, donate, or otherwise provide to an entity that operates a correctional institution, an entity with which the Provider of Inmate Calling Services enters into an agreement to provide Inmate Calling Services, a governmental agency that oversees a correctional facility, the city, county, or state where a facility is located, or an agent of any such facility").

[44] *GTL v. FCC*, 866 F.3d at 413.

[45] *Id.*

[46] *Id.* at 414.

[47] *Id.* Judge Pillard dissented from this view, noting that site commissions are not legitimate simply because a state demands them. *Id.* at 424 (Pillard, J., dissenting).

[48] *GTL v. FCC*, 866 F.3d at 402, 415. Judge Pillard also dissented on this point, noting that the Commission has "wide discretion" under section 201 of the Act to decide "which costs to take into account and to use industry-wide averages that do not necessarily compensate 'each and every' call." *Id.* at 424-25 (Pillard, J., dissenting).

[49] *Id.* at 414 (internal citation omitted).

percent of the industry," and that the *Order* did not account for conflicting record data.[50] The court therefore vacated this portion of the *2015 ICS Order*.[51]

20. Finally, the court remanded the ancillary service charge caps.[52] The court held that the Commission "had no authority to impose ancillary fee caps with respect to intrastate calls."[53] Because the court could not "discern from the record whether ancillary fees can be segregated between interstate and intrastate calls," it remanded the issue so the Commission could determine whether it could segregate ancillary fee caps on interstate calls (which are permissible) and on intrastate calls (which are impermissible).[54] The court also vacated the video visitation annual reporting requirements adopted in the *2015 ICS Order*.[55]

21. In December 2017, after it issued the *GTL v. FCC* opinion, the D.C. Circuit in *Securus v. FCC* ordered the *2016 ICS Reconsideration Order* "summarily vacated insofar as it purports to set rate caps on inmate calling service" because the revised rate caps in that *2016 Order* were "premised on the same legal framework and mathematical methodology" rejected by the court in *GTL v. FCC*.[56] The court remanded "the remaining provisions" of that *Order* to the Commission "for further consideration . . . in light of the disposition of this case and other related cases."[57] As a result of the D.C. Circuit's decisions in *GTL* and *Securus*, the interim rate caps that the Commission adopted in 2013 ($0.21 per minute for debit/prepaid calls and $0.25 per minute for collect calls) remain in effect for interstate inmate calling services calls.

D. 2020 Rates and Charges Reform Efforts

22. *2020 ICS Order on Remand and Notice*. In February 2020, the Wireline Competition Bureau (Bureau or WCB) issued a public notice seeking to refresh the record on ancillary service charges in light of the D.C. Circuit's remand in *GTL v. FCC*.[58] In the *Ancillary Services Refresh Public Notice*, the Bureau sought comment on "whether each permitted [inmate calling services] ancillary service charge may be segregated between interstate and intrastate calls and, if so, how."[59] The Bureau also defined jurisdictionally mixed services as "'[s]ervices that are capable of communications both between intrastate end points and between interstate end points'" and sought comment on, among other issues, how the

[50] *Id.* at 415 (internal citation omitted).

[51] *Id.* at 417.

[52] *GTL v. FCC*, 866 F.3d at 402, 415. The D.C. Circuit held that "the Order's imposition of ancillary fee caps in connection with interstate calls is justified" given the Commission's "plenary authority to regulate interstate rates under § 201(b), including 'practices . . . for and in connection with' interstate calls." *Id.* at 415.

[53] *Id.* at 415.

[54] *Id.*

[55] *Id.* at 402.

[56] *Securus Techs., Inc. v. FCC*, No. 16-1321, 2017 U.S. App. LEXIS 26360, at *4-5 (D.C. Cir. Dec. 21, 2017) (*2017 Securus*).

[57] *Id.* at *5.

[58] *Wireline Competition Bureau Seeks to Refresh the Record on Ancillary Service Charges Related to Inmate Calling Services*, WC Docket No. 12-375, Public Notice, 35 FCC Rcd 189, 189 (WCB 2020) (*Ancillary Services Refresh Public Notice*). This Public Notice was published in the Federal Register. FCC, Wireline Competition Bureau Seeks to Refresh the Record on Ancillary Service Charges Related to Inmate Calling Services, 85 Fed. Reg. 9444 (Feb. 19, 2020).

[59] *Ancillary Services Refresh Public Notice*, 35 FCC Rcd at 190. The Bureau also sought comment on any steps the Commission should take to ensure, consistent with the D.C. Circuit's opinion, that providers of interstate inmate calling services do not circumvent or frustrate the Commission's ancillary service charge rules. *Ancillary Services Refresh Public Notice*, 35 FCC Rcd at 191.

Commission should proceed if any permitted ancillary service is "jurisdictionally mixed" and cannot be segregated between interstate and intrastate calls.[60]

23. In August 2020, the Commission adopted the *2020 ICS Order on Remand* and *2020 ICS Notice*.[61] The Commission responded to the court's remands and took action to comprehensively reform inmate calling services rates and charges.[62] First, the Commission addressed the D.C. Circuit's directive that the Commission consider whether ancillary service charges—separate fees that are not included in the per-minute rates assessed for individual inmate calling services calls—can be segregated into interstate and intrastate components for the purpose of excluding the intrastate components from the reach of our rules.[63] The Commission found that ancillary service charges generally are jurisdictionally mixed[64] and cannot be practicably segregated between the interstate and intrastate jurisdictions except in the limited number of cases where, at the time a charge is imposed and the consumer accepts the charge, the call to which the service is ancillary is clearly an intrastate call.[65] As a result, the Commission concluded that inmate calling services providers are generally prohibited from imposing any ancillary service charges other than those permitted by the Commission's rules, and providers are generally prohibited from imposing charges in excess of our applicable ancillary service fee caps.[66]

24. Second, the Commission proposed rate reform of the inmate calling services within its jurisdiction.[67] As a result of the D.C. Circuit's decisions, the interim interstate rate caps of $0.21 per minute for debit and prepaid calls and $0.25 per minute for collect calls that the Commission adopted in 2013 remain in effect today.[68] Commission staff performed extensive analyses of the data it collected in the Second Mandatory Data Collection[69] as well as the data in the April 1, 2020, annual reports. Based on

[60] *Id.* at 190.

[61] *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485 (2020) (*2020 ICS Order on Remand* or *August 2020 ICS Notice* or *2020 ICS Notice*).

[62] *2020 ICS Order on Remand*, 35 FCC Rcd at 8485, para. 2.

[63] *GTL v. FCC*, 866 F.3d at 415.

[64] *Ancillary Services Refresh Public Notice*, 35 FCC Rcd at 190 (quoting *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22413, para. 17 (2004) (*Vonage Order*)).

[65] *2020 ICS Order on Remand*, 35 FCC Rcd at 8495, para. 28.

[66] *Id.*

[67] *Id.* at 8486, para. 3.

[68] *2013 ICS Order*, 28 FCC Rcd at 14111, para. 5 (adopting interim rate caps); *2015 ICS Order*, 30 FCC Rcd at 12768, 12813-18, paras. 7, 106-16 (adopting permanent rate caps); *2016 ICS Reconsideration Order*, 31 FCC Rcd at 9307, para. 12 (revising permanent rate caps); *GTL v. FCC*, 866 F.3d at 415 (vacating permanent rate caps); *2017 Securus*, at *4-5 (vacating revised rate caps).

[69] In the *2015 ICS Order*, the Commission directed that the Second Mandatory Data Collection be conducted "two years from publication of Office of Management and Budget (OMB) approval of the information collection." *2015 ICS Order*, 30 FCC Rcd at 12862, para. 198. The Commission received OMB approval in January 2017, and Federal Register publication occurred on March 1, 2017. FCC, Rates for Interstate Inmate Calling Services; Correction, 82 Fed. Reg. 12922 (Mar. 8, 2017), *correcting* FCC, Rates for Interstate Inmate Calling Services, 82 Fed. Reg. 12182 (Mar. 1, 2017). Accordingly, on March 1, 2019, inmate calling services providers submitted their responses to the Second Mandatory Data Collection. *See Wireline Competition Bureau Reminds Providers of Inmate Calling Services of the March 1, 2019 Deadline for Data Collection Responses*, WC Docket No. 12-375, Public Notice, 34 FCC Rcd 515 (WCB 2019) (*2019 Data Collection Public Notice*). WCB and the Office of Economics and Analytics (OEA) undertook a comprehensive analysis of the Second Mandatory Data Collection responses, and conducted multiple follow-up discussions with providers to supplement and clarify their responses, in order to conduct the data analysis upon which the proposals in the August 2020 ICS Notice are based. *See, e.g.*,

(continued….)

that analysis, the Commission proposed to lower the interstate rate caps to $0.14 per minute for debit, prepaid, and collect calls from prisons and $0.16 per minute for debit, prepaid, and collect calls from jails. In so doing, the Commission used a methodology that addresses the flaws underlying the Commission's 2015 and 2016 rate caps (which used industry-wide averages to set rate caps) and that is consistent with the mandate in section 276 of the Act that inmate calling services providers be fairly compensated for each and every completed interstate call.[70] The Commission also proposed to adopt a waiver process that would permit providers to seek waivers of the proposed rate caps on a facility-by-facility or contract basis if the rate caps would prevent a provider from recovering the costs of providing interstate inmate calling services at a facility or facilities covered by a contract.[71] The *2020 ICS Notice* also proposed "to adopt a rate cap formula for international inmate calling services calls that permits a provider to charge a rate up to the sum of the inmate calling services provider's per-minute interstate rate cap for that correctional facility plus the amount that the provider must pay its underlying international service provider for that call on a per-minute basis (without a markup)."[72] The Commission explained that this cap "would enable inmate calling services providers to account for widely varying costs," be consistent with the "just and reasonable' standard in section 201(b) of the Act, and comport with the "fair compensation" provision of section 276 of the Act.[73]

25. In response to the *2020 ICS Notice*, the Commission received over 90 comments and reply comments and 9 economic studies. Filers included providers of calling services to incarcerated people, public interest groups and advocates for the incarcerated, telecommunications companies, organizations representing individuals who are deaf or hard of hearing, and providers of telecommunications relay service.

26. *Intrastate Rate Reform Efforts*. By April 1 of each year, inmate calling services providers file annual reports with the Commission that include rates, ancillary service charges, and site commissions. In an effort to compare interstate inmate calling services rate levels with intrastate rate levels, Commission staff analyzed the intrastate rate data submitted as part of the providers' April 1, 2020, annual reports. Commission staff's review revealed that intrastate rates for debit or prepaid calls exceed interstate rates in 45 states, with 33 states allowing rates that are at least double the Commission's interstate cap and 27 states allowing "first-minute" charges that can be more than 25 times that of the first minute of an interstate call.[74] For example, one provider reported a first-minute intrastate rate of $5.34

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Letter from Chérie R. Kiser, Counsel for GTL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed May 19, 2020) (GTL Amended Description and Justification) (amending GTL's Second Mandatory Data Collection response "to address questions raised by Commission staff"); Letter from Sharon R. Warren, Consultant to Crown Correctional Telephone, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed May 5, 2020); Letter from Sharon R. Warren, Consultant to Network Communications International Corp., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed May 5, 2020) (explaining Network Communications International Corp.'s amendment to its Mandatory Data Collection responses in response to questions raised by Commission staff); Letter from Marcus W. Trathen, Counsel to Pay Tel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed Apr. 28, 2020) (Pay Tel Amended and Supplemental Second Mandatory Data Collection Response) (amending Pay Tel's Second Mandatory Data Collection response and noting questions raised by Commission staff).

[70] The Commission's methodology included a proposed 10% reduction in GTL's costs to account, in part, for seemingly substantially overstated costs. *2020 ICS Notice*, 35 FCC Rcd at 8517-20, paras. 92-98.

[71] *Id.* at 8523-24, paras. 108-11.

[72] *Id.* at 8530, para. 124.

[73] *2020 ICS Notice*, 35 FCC Rcd at 8530, 8532, paras. 124, 130.

[74] Letter from Ajit V. Pai, Chairman, FCC, to Brandon Presley, President, NARUC (July 20, 2020), https://docs.fcc.gov/public/attachments/DOC-365619A1.pdf; *see also* Letter from Brandon Presley, President, NARUC, and Ajit V. Pai, Chairman, FCC, to The Honorable Andrew Cuomo, Governor, State of New York, and Chair, National Governors Association, and The Honorable Asa Hutchinson, Governor, State of Arkansas, and Vice (continued….)

and additional per-minute intrastate rates of $1.39 while reporting the per-minute interstate rate of $0.21 for the same correctional facility. Similarly, another provider reported a first-minute intrastate rate of $6.50 and an additional per-minute intrastate rate of $1.25 while reporting the per-minute interstate rate of $0.25 for the same correctional facility. Further, Commission staff identified instances in which a 15-minute intrastate debit or prepaid call costs as much as $24.80—almost seven times more than the maximum $3.15 that an interstate call of the same duration would cost.

27. In light of these data, in September 2020, former Chairman Pai and Brandon Presley, then president of the National Association of Regulatory Utility Commissioners (NARUC), jointly sent a letter to the co-chairs of the National Governors Association urging state governments to take action to reduce intrastate rates and related fees.[75] At least one state has enacted a law to reduce intrastate inmate calling services rates and fees,[76] at least one state commenced a regulatory proceeding aimed at reducing intrastate inmate calling services rates and fees,[77] and several states are considering legislation.[78]

III. THIRD REPORT AND ORDER

28. In this Third Report and Order, we take several important steps to provide significant financial relief to incarcerated people and their families, all substantially consistent with the *August 2020 ICS Notice*, except where the record evidence requires us to take a more conservative approach. We take these actions now in light of the exigent circumstances facing incarcerated people as they continue to deal with hardships related to the COVID-19 pandemic. First, we reform per-minute inmate calling services rates on an interim basis, capping interstate rates at $0.12 per minute for prisons and $0.14 per minute for larger jails. Second, we reform the current treatment of site commissions by adopting two distinct interim site commission-related rate components reflecting the different types of site commissions: site commission payments that providers are obligated to pay under formally codified laws or regulations; and payments that providers agree, by contract, to make. Third, we cap international calling rates for the first time. These and other reforms adopted here will enable consumers—incarcerated people and their families—to obtain essential communications capability at just and reasonable rates while we remain faithful to our obligations under section 276 of the Act.

29. The reforms we adopt today reflect our findings, as detailed below, regarding the monopoly power that each calling service provider has over the individual correctional facilities it serves; the numerous negative impacts the providers' exercise of that market power has had on incarcerated

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Chair, National Governors Association (Sept. 22, 2020), https://docs.fcc.gov/public/attachments/DOC-367049A1.pdf (Sept. 22, 2020, Letter to National Governors Association).

[75] Sept. 22, 2020, Letter to National Governors Association.

[76] An Act Concerning the Fee Charged for a Phone Call by an Inmate in a Correctional Facility; And for Other Purposes, 2021 Arkansas Laws Act 702 (S.B. 550) (Apr. 13, 2021) (capping the cost per minute for inmate calling services calls and limiting the types of permitted ancillary services that providers may charge).

[77] *See, e.g.*, Public Utilities Commission of the State of California, Order Instituting Rulemaking to Consider Regulating Telecommunications Services Used by Incarcerated People, Rulemaking 20-10-002 (Oct. 19, 2020).

[78] *See, e.g.*, S.B. 387, 81st (2021) Sess. (Nev. 2021) (directing the Public Utilities Commission of Nevada to regulate suppliers of inmate calling services and adopt rate caps and certain limitations on charges for inmate calling services); H.B. 1201, 73rd Gen. Assemb., 1st Reg. Sess. (Colo. 2021) (requiring the Public Utilities Commission to establish maximum per-minute rates for telephone calls made to or from correctional facilities); S.B. 303, 67th Reg. Sess. (Mont. 2021) (decreasing the cap on intrastate fees to $0.05 per minute from the current $0.10 per minute); H.B. 219, 2021 Gen. Sess. (Utah 2021) (imposing limits on the rate an incarcerated person may be charged for telephone use which must be lesser of the corresponding rate set by the FCC and the rate established by the Utah Department of Corrections); S.B. 1776, 55th Leg., 1st Reg. Sess. (Ariz. 2021) (prohibiting the Department of Corrections from entering a contract or agreement for inmate telephone services that allows the department to receive excess revenue); H.B. 1484, Ind. Gen. Ass., 2021 Sess. (Ind. 2021) (requiring intrastate inmate calling services rates to adhere to the caps for comparable interstate rates set by the Federal Communications Commission).

people, their families and communities, and society as a whole; and the substantial record evidence of the need for at least interim reforms to our rate caps and related regulations. In these circumstances, to the extent the record permits, we exercise our authority under section 201(b) of the Act to "prescribe such rules and regulations as may be necessary" to ensure that "[a]ll charges [and] practices . . . for and in connection with [interstate and international] communication service" by wire or radio are 'just and reasonable.'"[79] This provision provides the Commission with ample authority to regulate the interstate and international rates and the practices of providers of calling services for incarcerated people, including setting interim rate caps for interstate and international calls given that providers have monopoly power in the facilities they serve.[80]

30. Although the record makes clear that the current interim rate caps for calling service to prisons and larger jails are unreasonably high, limitations in the reported data —arising in significant part from shortcomings in certain providers' responses to the Second Mandatory Data Collection—make us wary of establishing permanent rate caps based on the current record.[81] Nor does the record allow us to reasonably set permanent or even new interim interstate rate caps for jails with less than 1,000 average daily population, adjust our caps on ancillary service fees beyond the new cap on fees for single-call services and third-party financial transaction fees, or ensure that incarcerated people with disabilities have any greater access to functionally equivalent communications capabilities than they have today. We therefore institute a Mandatory Data Collection to provide the Commission and interested parties with more complete and accurate data regarding the costs of providing inmate calling services. We anticipate that those data, in combination with the record developed in response to the attached Fifth Further Notice of Proposed Rulemaking, will enable us to take these important steps in the near future. We also delegate authority to the Consumer and Governmental Affairs Bureau (CGB) to undertake a separate data collection related to service providers' costs and other key aspects of their provision of telecommunications relay services (TRS) and other assistive technologies if necessary to help us resolve the critically important disability access issues we explore in the Further Notice.

A. Unique Marketplace for Telephone Services Provided to Incarcerated People

31. The Commission has previously determined that providers of telephone services to incarcerated people have monopoly power in the facilities they serve.[82] We reaffirm this long-established finding, one that applies equally not only to the rates and charges for calling services provided to

[79] 47 U.S.C. § 201(b).

[80] The Commission has previously exerted jurisdiction over rates where it found it necessary to constrain monopoly power exercised by competitive LECs. *See Access Charge Reform et al.*, CC Docket No. 96-262, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108, 9162, para. 119 (2004) ("[A]n [interexchange carrier] may have no choice but to accept traffic from an intermediate competitive LEC chosen by the originating or terminating carrier and it is necessary to constrain the ability of competitive LECs to exercise this monopoly power.").

[81] We also decline to consider ICSolutions' proposal that we forbear from the requirement that calling services providers contribute to the Universal Service Fund. Letter from Tim McAteer, President, Inmate Calling Solutions, LLC (d/b/a ICSolutions), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 8 (filed May 12, 2021) (ICSolutions May 12, 2021 *Ex Parte*). The Commission has already addressed forbearance from universal service contribution obligations in the inmate calling services context in a separate proceeding, *see Petition of Network Communications International Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) from Application of Contribution Obligations on Inmate Calling Services*; *Securus Technologies, LLC, Request for Waiver of Section 54.706 of the Commission's Rules*, WC Docket No. 19-232, Order, 35 FCC Rcd 8348 (2020), and we decline to revisit that matter in this proceeding.

[82] *See 2002 Pay Telephone Order*, 17 FCC Rcd at 3252-53, para. 10; *see also GTL v. FCC*, 866 F.3d at 404 ("Winning [inmate calling services] providers thus operate locational monopolies with a captive consumer base of inmates . . . .").

incarcerated people, including ancillary services, but also to providers' practices associated with their provision of calling services.[83]

32. The record demonstrates, as the Commission previously found and reiterated in the *August 2020 ICS Notice*, that incarcerated people have no choice in the selection of their calling services provider.[84] The authorities responsible for prisons or jails typically negotiate with the providers of inmate calling services and make their selection without input from the incarcerated people who will use the service.[85] Once the facility makes its choice—often resulting in contracts with providers lasting several years into the future—incarcerated people in such facilities have no means to switch to another provider, even if the chosen provider raises rates, imposes additional fees, adopts unreasonable terms and conditions for use of the service, or offers inferior service.[86] On the contrary, correctional authorities exercise near total control over how incarcerated people are able to communicate with the outside world.[87] This control extends to control over visitation rights, the use of traditional mail and courier services, and the ability to use any form of electronic communication.[88] Indeed, the only way an incarcerated person

[83] Indeed, ICSolutions requests that the Commission investigate providers' compliance with the interim rate caps, in addition to other instances of asserted noncompliance. *See* ICSolutions May 12, 2021 *Ex Parte* at 6-8 (requesting, *inter alia*, that we depose providers' chief executives, undertake enforcement actions against noncompliant providers, and revise rules to allow for easy detection of noncompliance). While this rulemaking proceeding is the wrong vehicle to address ICSolution's first two concerns, we welcome suggestions on how to revise our rules to better detect noncompliance, which we seek as part of the Further Notice, below. *Infra* Part VI.C.

[84] *See, e.g.*, *2002 Pay Telephone Order*, 17 FCC Rcd at 3253, para. 12 (finding that "neither the inmates who initiate the call nor the individuals who bear the cost of inmate calls—most often the inmates' families—have a choice among providers"); *2020 ICS Notice*, 35 FCC Rcd at 8520-21, para. 100 (acknowledging that incarcerated people are unable to choose an inmate calling services provider "other than the provider the correctional facility selects"); *see also, e.g.*, National Association of State Utility Consumer Advocates Comments at 1 (NASUCA Comments); Wright Petitioners et al. Comments (Public Interest Parties Comments) Appx. A, Coleman Bazelon et al., The Brattle Group, Brattle Report at 8 (Public Interest Parties Brattle Report). For these consumers, the relevant market is the incarcerating facility.

[85] Prison Legal News, *The Price to Call Home: State-Sanctioned Monopolization in the Prison Phone Industry* (Oct. 2012), https://www.prisonlegalnews.org/news/2012/oct/15/the-price-to-call-home-state-sanctioned-monopolization-in-the-prison-phone-industry/ (explaining that a "government entity has an incentive to select the highest bidder and that the actual consumers have no input in the bidding process"); Prison Phone Justice, *About* (Mar. 18, 2019), https://www.prisonphonejustice.org/about/ ("Prisoners—quite literally a captive market—are forced to rely upon monopolistic, predatory operators chosen for them by state agencies.") (emphasis omitted).

[86] ASL Services Holdings, LLC dba GlobalVRS Reply at 2-3 (GlobalVRS Reply) (acknowledging that one of the restrictions on incarcerated people is their inability to choose a service provider); Human Rights Defense Center Comments at 2 (asserting that the inmate calling services providers "exploit their captive market"); *2020 ICS Notice*, 35 FCC Rcd at 8521, para. 100 (explaining that by requiring the incarcerated person to use the provider selected by the correctional facility, the facility effectively creates a monopoly for inmate calling services within a prison or jail); *see also GTL v. FCC*, 866 F.3d at 404; Securus Technologies, LLC, Comments at 27 (Securus Comments) (recognizing that "correctional facilities generally choose a single [inmate calling services provider] for each facility").

[87] *See* Pay Tel Reply, Exh. A, Letter from Marcus W. Trathen, Counsel to Pay Tel, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, Exh. B at 6-7 (filed July 3, 2013) (Pay Tel July 3, 2013, *Ex Parte*) (describing the limits on the pre-approved numbers that the incarcerated person may call and on the number of calls the person may make); GTL Comments at 33 (acknowledging "correctional facility-imposed limits on access to telephones and associated limits on call lengths"); Securus Comments at 9 (describing a service for correctional facilities to use to verify that the number being called is in a "Personal Allowed Number List" and to enforce time limits).

[88] *See, e.g.*, 18 U.S.C. § 1791 (pursuant to the Cell Phone Contraband Act of 2010, it is a crime for someone in a federal prison to possess a cell phone); GlobalVRS Reply at 3 (acknowledging that one of the restrictions on incarcerated people is limited access to real time text); Federal Bureau of Prisons, *Stay in Touch*, https://www.bop.gov/inmates/communications.jsp (last visited May 17, 2021) (restricting whom the inmate may

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may legally communicate with the outside world is with the explicit permission of the correctional authority. Therefore, no competitive forces within the facility constrain providers from charging rates that far exceed the costs such providers incur in offering service.[89]

33. Some commenters argue the market for inmate calling services is competitive because providers of those services bid against each other to win contracts with correctional facilities.[90] GTL, in particular, makes much of this claim.[91] Because correctional officials typically allow only one provider to serve any given facility, however, there are no competitive constraints on a provider's rates once it has entered into a contract to serve a particular facility.[92] The Commission has observed that "because the bidder who charges the highest rates can afford to offer the confinement facilities the largest location commissions, the competitive bidding process may result in higher rates."[93] Thus, even if there is "competition" in the bidding market as some providers assert, it is not the type of competition the Commission recognizes as having an ability to "exert downward pressure on rates for consumers."[94]

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email and how long the messages may be, precluding attachments, and specifying that the messages will be screened for content, while also requiring the incarcerated person to use a service that does not provide access to the Internet but relays emails to and from the Internet); Contra Costa County, California, *Outgoing Inmate Mail*, https://www.contracosta.ca.gov/DocumentCenter/View/379/OUTGOING-INMATE-MAIL (last visited May 17, 2021) (explaining that indigent incarcerated people may send no more than two non-legal letters per week); Contra Costa County, California, *Visiting Rules and Regulations*, https://www.contracosta.ca.gov/DocumentCenter/View/382/Visting-Rules-and-Regulations-2?bidId= (last visited May 17, 2021) (listing restrictions on visitation including requiring the visitor to follow a strict dress code and to not bring a purse or cell phone, and stating that the individual facility determines the number of visitors allowed at one time); Federal Bureau of Prisons, *Correspondence* at 2 (Apr. 5, 2011), https://www.bop.gov/policy/progstat/5265_014.pdf ("The Warden or designee must give prior approval for an inmate to receive or send a package.").

[89] *See 2020 ICS Notice*, 35 FCC Rcd at 8520-21, para. 100; *2016 ICS Reconsideration Order*, 31 FCC Rcd at 9304, para. 7; *see also United States v. Microsoft Corp.*, 253 F.3d 34, 51 (D.C. Cir. 2001) (*United States v. Microsoft*) (explaining that direct evidence of monopoly power is evidence that a firm "can profitably raise prices substantially above the competitive level"); *cf. AT&T Corp. v. FCC*, 292 F.3d 808, 809 (D.C. Cir. 2002) (*AT&T v. FCC*).

[90] *See, e.g.*, Securus Comments Attach. C, Harold Furchtgott-Roth, Report on the Economic Aspects of the Federal Communications Commission's Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking in WC Docket 12-375, at 12 (Securus Furchtgott-Roth Report); GTL Reply Attach., Paul E. Godek, Economists Incorporated, Supplemental Report in Support of Comments of Global Tel*Link Corporation Regarding the FCC's Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking at 6-7 (GTL Godek Reply Report); Pay Tel Reply Attach., Reply Report of Don J. Wood at 6 (Pay Tel Wood Reply Report).

[91] GTL Comments Attach., Paul E. Godek, Economists Incorporated, Report in Support of Comments of GTL Regarding the FCC's Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking at 10 (GTL Godek Report); Letter from Chérie R. Kiser, Counsel for GTL and Its Subsidiaries, Cahill Gordon & Reindel LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, Attach., Paul E. Godek, Economists Incorporated, Second Supplemental Report in Support of Comments of Global Tel*Link Corporation Regarding the FCC's Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking at 3, 7 (filed Apr. 26, 2021) (GTL Apr. 26, 2021 *Ex Parte* Godek Report).

[92] Some experts representing inmate calling services providers recognize this to be the case. *See* Pay Tel Comments Attach., Expert Report of Don J. Wood at 6 n.7 (Pay Tel Wood Report).

[93] *2002 Pay Telephone Order*, 17 FCC Rcd at 3253, para. 12.

[94] *Id.*; *2013 ICS Order*, 28 FCC Rcd at 14129, para. 41 (reaffirming finding); *see also AT&T v. FCC*, 292 F.3d at 809 (citation omitted) (recognizing that competitive local exchange carriers (LECs) "possess a 'series of bottleneck monopolies over access to each individual end user'" even though each competitive LEC has a "small market share").

B. Impact on Consumers and Society

34. The Commission has long recognized the far-ranging consequences that high calling rates inflict on incarcerated people, their families, and society as a whole.[95] The record in this proceeding confirms that excessive telephone rates continue to impose an unreasonable burden on the ability of incarcerated people—one of the most economically disadvantaged segments of our population—to maintain vital connections with the outside world.[96] And reduced prison visitation as a result of the COVID-19 pandemic has made these consequences even more dire, exacerbating the urgent need for inmate calling rate reform.[97]

35. A national survey identified the cost of phone calls as the primary barrier preventing incarcerated people from keeping in touch with loved ones.[98] As one commenter sums it up: "A sentence to jail or prison should not include the additional punishment of being cut off from family, friends, legal assistance, and community resources."[99] Studies confirm that incarcerated people who have regular contact with family members are more likely to succeed after release and have lower recidivism rates because they are able to maintain vital support networks.[100]

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[95] *E.g.*, *2013 ICS Order*, 28 FCC Rcd at 14130, para. 42 (finding excessive rates "impose an unreasonable burden" on families of incarcerated people and discourage communication between incarcerated people and their support network); *2020 ICS Order on Remand*, 35 FCC Rcd at 8487, para. 5 ("Unconscionably high [inmate calling services] rates inflict significant economic, social, and emotional harms impacting some of the most vulnerable members of society."); *2014 ICS Notice*, 29 FCC Rcd at 13181, para. 23 (acknowledging that the level of site commission payments "has potentially life-altering impacts on prisoners and their families").

[96] MediaJustice et al. Comments at 2 (MediaJustice Comments) ("The economic burden [of inmate calling services] on already low-income people is intense . . . ."); Prisoners' Legal Services et al. Comments at 3 (Prisoners' Legal Services Comments) (arguing that even with the proposed rate reductions, inmate calling services charges "will continue to place a tremendous burden on low-income parents and children or spouses who need to speak several times a day, especially during the pandemic") (emphasis in original); Multicultural Media, Telecom and Internet Council et al. Reply at 2 (Multicultural Media et al. Reply) (explaining that "a disproportionate number of incarcerated people are racial minorities from low-income families"); Letter from Jesse Hahnel, Executive Director, National Center for Youth Law, to Marlene Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed Apr. 21, 2021) (National Center for Youth Law Apr. 21, 2021 *Ex Parte*) (emphasizing the importance of calling services for incarcerated youth and explaining that the vast majority of incarcerated youth come from low-income families who are the least able to pay for these vital calls); Letter from Cheryl A. Leanza, Policy Advisor, United Church of Christ, Office of Communication Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2-3 (filed May 14, 2021) (Impacted People May 14, 2021 *Ex Parte*) (discussing the deleterious impacts wrought by "the high costs of incarceration," including high interstate telephone rates).

[97] Human Rights Defense Center Comments at 2; Leadership Conference on Civil and Human Rights et al. Reply at 1 (Leadership Conference Reply).

[98] San Francisco Financial Justice Project Comments at 1-2 (citation omitted) (Financial Justice Project Comments).

[99] Verizon Comments at 3.

[100] *See, e.g.*, *2015 ICS Order*, 30 FCC Rcd at 12766-67, para. 3 & n.13 (citing research and explaining that "family contact during incarceration reduces recidivism and allows inmates to be more present parents for the 2.7 million children who suffer when an incarcerated parent cannot afford to keep in touch"); Worth Rises, Request for Emergency Action and Relief, WC Docket No. 12-375, at 4 (filed Apr. 7, 2020), https://ecfsapi.fcc.gov/file/10407148512696/Worth%20Rises%20-%20Emergency%20Request%20(12-375).pdf (maintaining that "lack of communication [between incarcerated people and their families] disrupts the real connections needed for successful reentry into society"); Letter from Cheryl A. Leanza, Policy Advisor, United Church of Christ, Office of Communication Inc. et al., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2-3 (July 29, 2020) (Public Interest Parties July 29, 2020 *Ex Parte*) (explaining that "family contact has consistently been shown to lower recidivism"); National Center for Youth Law Apr. 21, 2021 *Ex Parte* at 2-3 (discussing the benefits of interactions with family members for incarcerated youth); Impacted People May 14, 2021 *Ex Parte* at 3 (explaining that "[s]tudy after study from within state prisons to international prisons, all over the world, have shown that close

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36. The high cost of calling services causes damaging consequences not only for incarcerated people but also for their families. The record suggests that as many as 34% of families go into debt to keep in touch with an incarcerated family member.[101] Some low-income families are forced "to choose between calling an incarcerated family member and buying essential food and medicines."[102] Rate reform will reduce these financial burdens and also promote increased communication[103] which preserves essential family ties, allowing incarcerated people "to parent their children and connect with their spouses, helping families stay intact," and decreasing the trauma suffered by children whose parents have been incarcerated.[104]

37. The benefits of lowering inmate calling services rates also ripple throughout communities and society in other tangible and intangible ways.[105] For example, making communications less costly and easier to use for incarcerated people promotes their ability to plan for housing, employment, and successful integration into communities once released from prison.[106] In financial terms, increased communication helps reduce repeated incarceration, which benefits society by saving millions of dollars in incarceration-related costs annually.[107] Additionally, the record shows that the ability to communicate regularly with families "reduces foster placement of children of incarcerated people, which result[s] in measurable savings to society of tens of millions of dollars per year."[108]

38. The COVID-19 pandemic has intensified the need to reform inmate calling services rates. Even before the pandemic, it could be impractical, costly, and time-prohibitive for family members to make regular visits to those in prisons often located hundreds of miles away.[109] But as a result of the

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and frequent contact with family and loved ones helps lower recidivism and it increases reentry success"); Letter from John Koufos, National Director of Reentry Initiatives, Right On Crime, to Jessica Rosenworcel, Acting Chairwoman, Brendan Carr, Commissioner, Geoffrey Starks, Commissioner, and Nathan Simington, Commissioner, FCC, WC Docket No. 12-375, at 1 (filed May 13, 2021) (Right On Crime *Ex Parte*) (asserting that lowering calling costs will enable greater and sustained communications with family, "positive social networks, mentors, and faith leaders" which, as studies have shown, "empowers incarcerated individuals to overcome criminogenic thinking and pursue good citizenship during and after incarceration").

[101] Ella Baker Center for Human Rights et al., *Who Pays? The True Cost of Incarceration on Families* at 16 (Sept. 2015), http://whopaysreport.org/who-pays-full-report/; *see also* Impacted People May 14, 2021 *Ex Parte* at 2-3 (providing examples of how high interstate rates make it difficult or impossible for family members of incarcerated people to maintain communication and often force them to sacrifice their own health and wellbeing just to make a telephone call).

[102] Multicultural Media et al. Reply at 3.

[103] Financial Justice Project Comments at 1 (identifying a 41% increase in call volume overnight when San Francisco County made calls free); Worth Rises Comments at 11 (explaining that when New York City made calls from correctional facilities free in May 2019, the call volume increased by 40%). *But see* GTL Comments at ii (arguing that lower rates may not lead to an increase in call volume).

[104] *See* Verizon Comments at 3; Prisoners' Legal Services Comments at 1; Public Interest Parties Comments at 2; Public Interest Parties Reply at 2; Episcopal Church and United States Conference of Catholic Bishops Reply at 1 (Episcopal Church Reply); MediaJustice Comments at 1; Prisoners' Legal Services Comments Attach. 1, Massachusetts Prison and Jail Phone Rates Reform Background Sheet at 1 (Prisoners' Legal Services Massachusetts Background Sheet); Right On Crime *Ex Parte* at 2.

[105] Worth Rises Comments at 10; *see* Episcopal Church Reply at 2.

[106] Prisoners' Legal Services Massachusetts Background Sheet at 1.

[107] *2013 ICS Order*, 28 FCC Rcd at 14130-31, para. 43.

[108] Public Interest Parties Comments at 2.

[109] Multicultural Media et al. Reply at 3.

pandemic, most jails and prisons have prohibited or severely limited in-person visitation.[110] Thus, telephone calls have become even more of "an essential lifeline for connection"—adding to the exigency and importance of the reforms that we adopt today.[111]

C. Interim Interstate Rate Cap Components

39. In the *2020 ICS Notice*, the Commission proposed to adopt permanent interstate rate caps of $0.14 per minute for all calls from prisons and $0.16 per minute for all calls from jails.[112] These proposed caps included an allowance of $0.02 per minute added to provider-related rate caps of $0.12 and $0.14 per minute, respectively, to account for the costs correctional facilities incur that are reasonably related to the provision of inmate calling services.[113] The proposed rate caps generated extensive debate in the record, with providers contending that the available data do not justify any reduction in the existing interstate rate caps of $0.21 per minute for debit and prepaid calls, and public interest groups suggesting even lower rates than those the Commission proposed.[114]

40. After carefully considering the record, including data from the Second Mandatory Data Collection and commenting parties' analyses of those data, and refining our analysis based on record feedback, we take the following actions. First, as proposed in the *August 2020 Notice*, we eliminate a separate rate cap for all collect calls. Second, we adopt new interim provider-related interstate rate caps of $0.12 per minute for calling services provided to incarcerated people in prisons and $0.14 per minute for calling services provided to incarcerated people in larger jails, as proposed in the *August 2020 Notice*.[115] We refrain from adopting new interim rate caps for jails with average daily populations below 1,000, which remain subject to the interstate total per-minute rate cap of $0.21. Next, we adopt new interim facility-related rate caps associated with site commission payments. Together, these rate cap components result in new lower total interstate rate caps that will remain interim in status, pending a further data collection which we also adopt today in order to facilitate our adoption of permanent interstate rate caps.

41. Consistent with the *2020 ICS Notice*, the new interim interstate rate cap components will apply to all calls that a provider identifies as interstate as well as to all calls that the provider cannot definitively identify as intrastate, as determined through the application of the Commission's traditional end-to-end jurisdictional analysis, which we affirm in the companion Order on Reconsideration we adopt

[110] Public Interest Parties Comments at 2.

[111] *See* Episcopal Church Reply at 2; Worth Rises Reply at 1.

[112] *2020 ICS Order on Remand*, 35 FCC Rcd at 8486, para. 3.

[113] *2020 ICS Notice*, 35 FCC Rcd at 8520, para. 99.

[114] *See, e.g.*, GTL Comments at 4 (arguing that the existing rate cap system should be left in place); Pay Tel Comments at 15-19 (arguing that the Commission's rate cap proposal does not account for variances of costs incurred by providing inmate calling services at facilities of different sizes); Prisoners' Legal Services Comments at 3 (advocating for lower interstate rate caps than the Commission proposed); Public Interest Parties Comments at 6-9 (recommending the Commission lower the proposed rate caps); Securus Comments at 49 (stating the proposed rate caps are insufficient to allow providers to recover all of their costs); Worth Rises Comments at 1, 4 (finding that the Commission's reliance on self-reported data has artificially inflated the proposed rate caps, and proposing rate caps be set to $0.05 for both jails and prisons); Right On Crime *Ex Parte* at 1 (supporting the proposed rate caps). Although collect calls are subject to a separate rate cap of $0.25 per minute under the existing interim interstate caps, as discussed below, the parties agree that there is no longer a need to maintain this distinction. *Infra* Part III.C.1.

[115] As we explain below, and in recognition of the concerns raised by various commenters, we do not establish new interim rate caps for jails having average daily populations below 1,000. Those facilities remain subject to the maximum total per-minute rate cap of $0.21. *See 2013 ICS Order*, 28 FCC Rcd at 14147, para. 73 (setting interim rate caps of $0.21 for debit and prepaid calling and of $0.25 for collect calls); *infra* Part III.C.1.

today.[116] Under this analysis, the jurisdictional nature of a call "depends on the physical location of the endpoints of the call and not on whether the area code or NXX prefix of the telephone number, or the billing address of the credit card associated with the account, are associated with a particular state."[117] Thus, to the extent that a provider cannot determine that the physical endpoints of a call are within the same state, that provider must not exceed our new interim interstate rate caps for that call.[118]

1. Eliminating Separate Rate Caps for Collect Calls

42. Consistent with the proposal in the *2020 ICS Notice*, we eliminate the separate interim rate cap that has applied to interstate collect calls since 2013.[119] The record overwhelmingly supports this action, which recognizes the limited role that collect calls play in today's inmate calling services marketplace and the relatively small, if any, difference in cost between collect and non-collect inmate calling services calls.

43. Under the interim rate caps the Commission first adopted in 2013, interstate debit and prepaid calls are capped at $0.21 per minute, while interstate collect calls are capped at $0.25 per minute.[120] In the *2015 ICS Order*, the Commission adopted a two-year phasedown for collect calls, after which rate caps for those calls were to be the same as those of debit and prepaid calls.[121] The Commission found that the number of collect calls had dropped significantly over the preceding few years and predicted that the number of collect calls "will most likely be at a nominal level in two years."[122] Although this phasedown was vacated by the D.C. Circuit in *GTL* as part of that court's larger vacatur of the *2015 ICS Order*, the court did not criticize the Commission's phasedown of collect calls.[123]

44. In the *2020 ICS Notice*, the Commission proposed to eliminate the distinct rate cap for collect calls, given "the absence of any data demonstrating a material difference in the costs of providing

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[116] *See 2020 ICS Notice*, 35 FCC Rcd at 8510, para. 70; *infra* Part IV; *see also* GTL Comments at 14-15; Securus Comments at 39. Securus asks that we forbear from enforcing the end-to-end analysis reflected in the Enforcement Bureau's November 2020 Enforcement Advisory to per-minute interstate rates. *See* Securus Comments at 39; *Enforcement Bureau Reminds Providers of Inmate Calling Services that They Are Responsible for Complying with the Commission's Rules Relating to Those Services*, Enforcement Advisory, WC Docket No. 12-375, 35 FCC Rcd 12999 (EB 2020) (Enforcement Advisory). We decline to do so at this time. As we explain in the Order on Reconsideration, the end-to-end analysis is, and has been, the generally applicable jurisdictional standard for determining the jurisdiction of a telephone call in the absence of an express Commission determination that some other method is permissible. As the Commission has never expressly permitted another method of jurisdictional classification for inmate calling services calls, the end-to-end analysis continues to apply to those calls. *See infra* Part IV.

[117] *See, e.g., 2020 ICS Notice*, 35 FCC Rcd at 8503, para. 53; *Vonage Order*, 19 FCC Rcd at 22413, para. 17.

[118] The use of physical endpoints for determining the appropriate rate cap for a call, including related ancillary services charges, does not, however, preclude the use of telephone number or other proxies, where permitted by the Commission or state or local authorities, in determining the appropriate taxing jurisdiction for such calls. Letter from Michael H. Pryor, Counsel for Securus, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 4 (filed May 13, 2021) (Securus May 13, 2021 *Ex Parte*). It similarly has no bearing on the use of permissible proxies or other good faith estimates for federal or state Universal Service Fund contributions or similar regulatory fees or assessments for jurisdictionally indeterminant calling services. *See* Letter from Marcus W. Trathen, Counsel for Pay Tel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2-3 (filed May 12, 2021) (Pay Tel May 12, 2021 *Ex Parte*).

[119] *See 2020 ICS Notice*, 35 FCC Rcd at 8510, para. 72.

[120] 47 CFR § 64.6030.

[121] *See 2015 ICS Order*, 30 FCC Rcd at 12805-08, paras. 84-92.

[122] *Id.* at 12805-06, paras. 86-87, 89.

[123] *See GTL v. FCC*, 866 F.3d at 414-15.

these different types of calls."[124] Commenters overwhelmingly support this proposal, with both providers and public interest groups agreeing that there is no longer any need for a separate rate cap for collect calls.[125] Both Securus and GTL point out that collect call volumes continue to decline.[126] And commenters agree that there are no longer significant cost differences between collect calls and debit or prepaid calls.[127] Indeed, the record provides no support for a separate rate cap for collect calls, and comments make clear that eliminating the "collect-only" rate cap will benefit all stakeholders by making it easier for providers to administer, and for consumers to understand, rate caps for interstate and international calls.[128]

45. We find that the lack of cost disparity in providing prepaid, debit, or collect calling services, coupled with the low and ever-diminishing demand for collect calls and the benefits to all stakeholders from having a single cap for all calls from a facility, support ending the distinction between prepaid, debit, and collect calling rates.[129] We therefore eliminate the separate interim cap for interstate collect calls for jails with average daily populations below 1,000 that remain subject to the 2013 interim rate caps. As a result of this change, all interstate calls from jails with average daily populations below 1,000 will be subject to a single, uniform, interim rate cap of $0.21 per minute. All interstate calls from prisons and larger jails will be subject to the new uniform interim rate caps we adopt today for each type of facility, without regard to whether the interstate calls are collect, debit, or prepaid, as those terms are defined in our rules.

2. Setting a Threshold of 1,000 Average Daily Population for Larger Jails

46. We adopt an average daily population threshold of 1,000 or greater to differentiate larger jails from smaller jails and apply our new interim provider-related and facility-related rate caps to larger jails, while leaving jails with average daily populations below 1,000 subject to the existing total interim rate cap of $0.21 per minute for all interstate calls. This larger jail threshold is aligned with the approach the Commission adopted in 2015, when it likewise used an average daily population of 1,000 to distinguish between rate cap tiers.[130] As one commenter points out, many of the cost analyses in the record segment jails by reference to the same 1,000 average daily population figure,[131] a fact that supports our decision to set the average daily population threshold at 1,000 here. Numerous commenters have

[124] *2020 ICS Notice*, 35 FCC Rcd at 8510, para. 72.

[125] GTL Comments at 11; Securus Comments at 35; Public Interest Parties Comments at 9-10.

[126] *See* GTL Comments at 11 (pointing out that "use of collect calls is declining"); Securus Comments at 39-40 (discussing "the decline in volume of traditional collect calling"); *see also 2020 ICS Notice*, 35 FCC Rcd at 8510, para. 72 (recognizing that "collect calling is no longer a popular method of inmate calling, and data show that the number of collect calls is small and has been declining").

[127] Public Interest Parties Comments at 9 ("[T]he data in the record [do] not show different costs based on the type of call—prepaid/debit and collect calls all show the same cost structure."); Securus Comments at 39-40 ("[T]here is no significant cost difference" between collect and debit/prepaid calls.); *see also* GTL Comments at 11 (stating that the cost differences between prepaid/debit and collects calls "are minimal").

[128] *See* GTL Comments at 11; Public Interest Parties Comments at 9.

[129] *See* Securus Comments at 35 ("[T]he distinction between collect calls and prepaid/debit calls . . . no longer adds value to consumers nor drives meaningful cost implications for providers.").

[130] In the *2015 ICS Order*, the Commission adopted 1,000 average daily population as the larger jail size threshold. *2015 ICS Order*, 30 FCC Rcd at 12785-86, paras. 44, 46 (adopting rate tiers based on the following average daily populations for jails: 0-349, 350-999, and 1,000 and greater, and noting that WCB had determined different potential contract size numbers for jails which include 1-99, 100-349, 350-999, and 1,000 average daily population and greater, and that the U.S. Department of Justice's Bureau of Justice Statistics collected jail data based on the following facility sizes: 0-49; 50-99; 100-249; 250-499; 500-999; and 1,000 or greater).

[131] *See, e.g.*, Pay Tel Comments at 17.

advanced the 1,000 average daily population figure to segment their own data analyses and resultant proposals, and none have criticized this cutoff as irrational or unduly difficult to administer.[132]

47. Our decision to exclude jails having average daily populations below 1,000 from the new interim caps is based on record evidence suggesting that providers incur higher costs per minute for jails with average daily populations below 1,000 than for larger jails. Securus asserts that "small jails are more expensive to serve than larger jails."[133] Securus points to its cost study showing "a strong and consistent relationship between cost and facility size."[134] Pay Tel also broadly argues that inmate calling services "costs vary substantially based on facility size."[135] More specifically, Pay Tel explains that its "experiences regarding its costs of providing ICS" demonstrate that costs increase "in terms of jail" average daily population, providing further evidence that providers incur greater costs to serve smaller jails.[136] We agree with these commenters that, based on the current record, providers appear to incur somewhat higher costs in serving jails with average daily populations less than 1,000 than larger jails and we find this evidence credible and sufficient to support a cutoff of 1,000 average daily population for distinguishing larger jails from those with average daily populations below 1,000 for purposes of applying our new interim rate caps.

48. The data before us preclude any specific determination of the extent to which the costs of providing calling services vary with jail size, and we therefore disagree with the Public Interest Parties' assertion that "size does not impact costs,"[137] at least on the basis of this record.[138] Given this, we take a

[132] *See* National Sheriffs' Association Comments at 7; Pay Tel Comments at 2, 13, 16-17; Securus Comments at 40; Securus Comments Attach. B, Robert O. Fisher et al., FTI Consulting, Inc., Inmate Calling Services Cost Analysis for Securus at 1, 13, 17-21 (Securus Cost Study); NCIC Inmate Communications Reply at 3 (NCIC Reply) (citing National Sheriffs' Association Comments at 7); National Sheriffs' Association Reply at 2; Pay Tel Reply at 11; Pay Tel Wood Reply Report at 17-19. *But see* Letter from Andrea Fenster, Staff Attorney, Prison Policy Initiative, to Marlene H. Dortch, Secretary, FCC, WC-Docket No. 12-375, at 3 (filed May 13, 2021) (Prison Policy Initiative May 13, 2021 *Ex Parte*) (requesting the Commission to "lower the threshold for the ADP required to be considered a large jail" but providing no data to support the request). Although some commenters have argued that turnover may provide a more accurate indicator of costs, we have not received turnover rate data in the record and must work with the data provided. *See* Pay Tel Reply at 8. However, we find that the cost data available from jails with average daily populations less than 1,000, including turnover and admission rates, deserves further investigation, and specifically seek such data in the Further Notice we issue today accompanying this Report and Order. *See infra* Part VI.B.2. One commenter has requested "more clarity" to determine when a jail meets the 1,000 average daily population threshold, in part because any jail's average daily population fluctuates over time. Letter from Cheryl A. Leanza, Policy Advisor, United Church of Christ, Office of Communication Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1 (filed May 14, 2021) (UCC May 14, 2021 *Ex Parte*). Providers shall calculate average daily population in accordance with section 64.6000 of our rules, which specifies that average daily population means "the sum of all inmates in a facility for each day of the preceding calendar year, divided by the number of days in the year." 47 CFR § 64.6000.

[133] Securus Comments at 40; *see also* Letter from Glenn S. Richards and Lee G. Petro, Counsel for NCIC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1 (filed May 12, 2021) (NCIC May 12, 2021 *Ex Parte*).

[134] *Id.*

[135] Pay Tel Comments at 15.

[136] *Id.* at 15-17 & Exh. B at 7; Pay Tel Comments, WC Docket No. 12-375, at 11-25, 32-37 (filed Jan. 12, 2015) (explaining that "not only does it cost more to provide [inmate calling services] in jails than in prisons, but also that it costs more to provide [inmate calling services] in smaller jails than larger ones").

[137] Public Interest Parties Reply Appx. A, Coleman Bazelon et al., Brattle Group, Brattle Report at 5 (Public Interest Parties Brattle Reply Report).

[138] For example, the Second Mandatory Data Collection did not collect data on turnover rates so we cannot determine how that variable affects providers' or facilities' costs.

bifurcated approach with regard to our new interim rate caps for jails. First, because we are convinced that providers' costs of serving larger jails are likely below the industry average for all jails,[139] we use the available data to set interim provider-related rate caps for larger jails. These interim caps are separate from those we set for prisons. Second, because the available data do not allow us to quantify the extent to which providers' cost of serving jails with average daily populations below 1,000 exceed the industry average,[140] we defer further rate cap setting with respect to these jails until such time as we are able to gather and analyze additional cost information.[141] On the record before us, we find it reasonable and appropriate to exclude these jails from the new interim rate caps we adopt today for interstate calls.[142]

3. Accounting for Provider Costs

49. *Deciding to Adopt Separate Interim Interstate Provider-Related Rate Caps for Prisons and Larger Jails*. In the *2020 ICS Notice*, the Commission found that the reported data showed greater variations from mean costs for jails than for prisons (and therefore a greater standard deviation from the mean for jails than for prisons).[143] These greater variations from mean costs were one reason that led the Commission to propose a higher interstate rate cap for jails than for prisons.[144] After analyzing the record, consistent with the proposal in the *2020 ICS Notice*, we adopt separate interim interstate provider-related rate caps for prisons and larger jails.

50. As set forth in Appendix F, our refined analysis suggests that it costs service providers approximately 22% more to provide calling services in jails than in prisons.[145] That analysis also shows greater variations from mean costs for jails.[146] At least one commenter provides credible evidence that providers generally incur higher costs to serve jails than prisons and therefore "support[s] the Commission's proposal to establish separate rate ceilings for prisons and jails."[147] Pay Tel agrees that the evidence demonstrates greater costs per minute for jails than prisons, and explains that its examination of the reported costs of three of the six providers that serve both types of facilities shows that the costs of serving jails are roughly 40% higher.[148]

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[139] *See* Securus Comments at 40.

[140] *See generally* Appx. E, *infra* (discussing the difficulties posed by the data in calculating the prison and jail cost differential).

[141] In today's Further Notice, we seek detailed information on provider costs associated with serving jails with average daily populations below 1,000.

[142] As explained in Part III.C.2 above, we also use the 1,000 average daily population threshold to distinguish larger jails for purposes of the facility-related rate component.

[143] *2020 ICS Notice*, 35 FCC Rcd at 8514, paras. 74, 84. A mean is the arithmetic average of numbers in a distribution. A standard deviation is a measure of dispersion calculated as the square root of the average of the squared differences from the mean. *See* G. Udny Yule & M.G. Kendall, An Introduction to the Theory of Statistics 105, 126 (14th ed. 3rd Impression) (1958), https://archive.org/details/in.ernet.dli.2015.233345/page/n6/mode/2up.

[144] *2020 ICS Notice*, 35 FCC Rcd at 8514, paras. 74, 84.

[145] *See* Appx. F (describing the results of the refined "double-selection Lasso" analysis which suggest a 22% difference in cost between facility types); *see also* Appx. G, Table 5 (analyzing contract-level cost differences and finding that providers' costs of serving larger jails appear 25% higher than their costs of serving prisons). Securus Cost Study at 1, 17.

[146] Appx. E, *infra*.

[147] Securus Comments at 40 (highlighting that "jails are more expensive to serve than prisons, and that small jails are more expensive to serve than large jails"). Securus also concludes that, for jails, costs per minute decrease as facility size increases, and that costs per minute for prisons are lower than for jails. Securus Cost Study at 1, 17.

[148] *See* Pay Tel Reply at 7; Pay Tel Wood Reply Report at 11-13.

51. Not all commenters agree with drawing a distinction between prisons and jails. The Public Interest Parties point out that some providers have argued that there are no real cost differences between serving prisons and jails and therefore there is no basis for a separate, higher cap for jails.[149] They urge that we move towards a unitary rate structure that would "eliminate the multi-tier rate structure for jails" and create a "unified rate cap for prisons and jails."[150] Although the record indicates that some jails bear the characteristics we otherwise associate with prisons, on this record we are not persuaded that these situations are the norm, and we find that, overall, the evidence suggests higher provider costs at jails than prisons. At the same time, we reject the notion that we should delay any action until the Commission collects more detailed cost data.[151] We have sufficient record evidence now to set interim rate caps for prisons and larger jails, consistent with our obligations and authority under the Act.[152] We therefore find it appropriate to set different interstate provider-related rate caps for prisons than for jails on an interim basis.[153]

52. *Methodology*. As with any exercise in cost-based ratemaking, setting reasonable interim interstate provider-related rate caps for inmate calling services requires a determination of the costs providers incur in providing those services. Traditionally, agencies have set regulated rates through company-specific cost-of-service studies that measure the regulated firms' total cost of providing the regulated service using the firms' accounting data.[154] Regulators often establish rules that specify how costs, including those arising from affiliate transactions, are to be accounted for, apportioned between the firms' regulated operations and nonregulated operations, and assigned to, or allocated among, different jurisdictions and services.[155]

53. The Commission's approach toward regulating inmate calling services rates has been less prescriptive. The Commission, to date, has not adopted accounting rules for calling service providers. Nor has it specified complex rules for directly assigning or allocating a provider's and its affiliates' costs between their calling services operations and nonregulated operations, or assigning or allocating a provider's calling services costs to or among the providers' contracts or facilities. And it did not require calling service providers to submit cost of service studies requiring each provider to show in detail each step of its costing process.

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[149] Public Interest Parties Comments at 9-10 (citing *2015 ICS Order*, 30 FCC Rcd at 12778, para. 29); Worth Rises Comments at 5 (explaining that "there are many jail systems with remarkably similar profiles to existing prisons systems, including size, geography, and security needs" and that providers should therefore not have a higher rate cap "merely for serving jails").

[150] Public Interest Parties Comments at 9-10; *see also* Worth Rises Comments at 4 (asking the Commission to lower rate caps for prisons and jails to no more than $0.05 per minute).

[151] *See, e.g.*, Pay Tel Comments at 4 (suggesting that the data on which the Commission relied are unsuitable for ratemaking); Securus Comments at 2 (explaining that Securus is "concerned that the Commission has not received from all providers adequate data in the comparable sets necessary to appropriately evaluate cost structure").

[152] 47 U.S.C. § 201.

[153] We do not, however, distinguish between prisons and larger jails for purposes of our facility-related rate component designed to recover portions of contractually prescribed site commission payments. As explained in Part III.C.4 below, there is record support that the same facility-related allowance for prisons and larger jails is appropriate and we proceed that way on an interim basis. To the extent that the record developed in response to today's Further Notice reveals that we should distinguish between prisons and larger jails, we will revisit that at such time as we develop permanent rate caps.

[154] The costs of service include operating expenses (e.g., operating, maintenance and repair, and administrative expenses), depreciation expenses (the loss of value of the firm's assets over time due to wear and tear and obsolescence), cost of capital (the cost incurred to finance the firm's assets with debt and equity), and income and other tax expenses.

[155] *See, e.g.*, 47 CFR pts. 32, 36, 68, 69.

54. Instead, the Commission has relied on data obtained through Mandatory Data Collections to set reasonable cost-based rate caps for inmate calling services. The Second Mandatory Data Collection, in particular, required every calling service provider to submit detailed information regarding its operations, costs, and revenues, including: (1) lists of its inmate calling services contracts and the correctional facilities to which they apply; (2) the average daily populations, number of calls annually, and minutes of use annually at each of those facilities; (3) the direct costs of providing inmate calling services on a total company basis and at each of those facilities; and (4) the indirect costs of providing inmate calling services on a total company basis.[156] Providers were required to provide information about costs in several steps. First, providers had to identify which of their and their corporate affiliates' total costs were directly attributable to inmate calling services and which were directly attributable to other operations. Providers were then required to allocate the remainder of their costs and their affiliates' total costs—the costs identified as indirect costs or overhead—between inmate calling services and other, nonregulated, operations. Providers were then required to allocate the inmate calling services portion of their direct costs to specific facilities but were not required to allocate their indirect costs to specific facilities.[157]

55. In the *2020 ICS Notice*, the Commission proposed to use data from the Second Mandatory Data Collection, as compiled into a database by Commission staff, to calculate the costs each provider incurs in providing inmate calling services under each of its contracts for prisons and jails separately.[158] The Commission proposed to calculate the mean (or arithmetical average) of those costs, add one standard deviation to that mean, and use the resulting sum to determine the provider cost portions of the interstate rate caps.[159] The Commission reasoned that this "mean contract costs per minute . . . plus one standard deviation" methodology would allow the vast majority of providers to recover at least their reported costs under each of their contracts.[160]

56. *Reliance on Data from the Second Mandatory Data Collection.* As proposed in the *2020 ICS Notice*, our interim rate cap methodology begins with the calculation of mean contract costs paid per minute in the provision of calling services to incarcerated people.[161] To perform this calculation, we rely on the 2018 data submitted in response to the Second Mandatory Data Collection, as supplemented and clarified by the providers in response to follow-up discussions with Commission staff, as the Commission proposed in the *2020 ICS Notice*.[162] This approach reflects both the robustness and the limitations of the data submitted in response to the Second Mandatory Data Collection. On the one hand, those data provide an unprecedented wealth of information about the inmate calling services industry and individual calling service providers. The reported information allows us to perform sophisticated analyses that help us estimate the providers' actual costs of providing interstate inmate calling services.[163]

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[156] *See* Inmate Calling Services Mandatory Data Collection, WC Docket No. 12-375, General Instructions, https://docs.fcc.gov/public/attachments/DOC-343708A3.docx (Second Mandatory Data Collection Instructions); Appx. E, *infra*. Direct costs are costs that are "completely attributable" to a particular service such as inmate calling services. Second Mandatory Data Collection Instructions at 3. Indirect costs are all costs related to a service other than direct costs and include "overhead, depreciation, or other costs that are allocated among different products or services." *Id.* Determining a company's indirect costs requires a calculation: subtracting the company's indirect costs from its total costs.

[157] *2019 Data Collection Public Notice*; Second Mandatory Data Collection Instructions at 10-11.

[158] *2020 ICS Notice*, 35 FCC Rcd at 8513, para. 83.

[159] *Id.*

[160] *Id.* at 8513, 8514-15, paras. 83, 87.

[161] *2020 ICS Notice*, 35 FCC Rcd at 8511, para. 78.

[162] *Id.* at 8512, para. 78 n.196.

[163] *See* Appendices E-H, *infra*.

57. On the other hand, as the Commission explained in the *2020 ICS Notice*, the collected data have certain limitations. First, although the Commission had sought facility-level data in the Second Mandatory Data Collection, in many instances, providers reported data only at the contract level, reflecting the fact that "many providers assess their inmate calling services operations on a contract-by-contract basis, although many contracts include multiple correctional facilities."[164] Given the lack of facility-level data, the Commission proposed to analyze the information on a contract, rather than a facility, basis and sought comment on this approach.[165] Second, the Commission recognized that some providers had interpreted different steps in the cost reporting instructions for the Second Mandatory Data Collection in different ways.[166] The Commission sought comment on the submitted data and asked commenters to identify other data issues for consideration.[167]

58. The Public Interest Parties argue that the 2018 data "provide more than sufficient evidence to support immediate rate reform."[168] We agree. As the Public Interest Parties' expert asserts, variations in internal cost records among providers affect how costs are reported, not the overall level of costs.[169] In other words, the lack of uniformity in cost data reporting need not result in further delay in our rate reform efforts.[170] Further, as explained in Appendix E, providers' reports of call minutes and revenues are likely to be accurate down to the level of the contract. All providers bill on a per-minute basis, and revenue tracking, and thus reported revenues, are also likely to be reliable because providers are incentivized to accurately track them.[171] Accordingly, we find the reported minutes of use and revenue data to be reliable and suitable for setting interim interstate rate caps.

59. Certain providers argue that the 2018 cost data from the Second Mandatory Data Collection are unsuitable for setting new rate caps. Securus, for example, contends that the Commission should not rely on the 2018 data because providers did not report their costs using a consistent methodology.[172] In particular, Securus emphasizes that because providers were not required to, and did not, disclose how they calculated their direct costs or how they allocated indirect costs between regulated and nonregulated services, "each company's measure of 'costs' is unique to itself and inconsistent with that of every other company."[173] Pay Tel and its outside consultant highlight "numerous inconsistencies in the manner in which costs were reported" which, they argue, make the data unsuitable for cost-based ratemaking.[174] Pay Tel's outside consultant points to providers' differing understandings of how to report direct and indirect costs and the accuracy of reported direct costs based on the chosen allocator for those costs.[175] For its part, GTL finds it unsurprising that "there are differences in the data among [inmate

[164] *2020 ICS Notice*, 35 FCC Rcd at 8512, paras. 78-79.

[165] *Id.* para. 79.

[166] *Id.* at 8512, para. 80.

[167] *Id.*

[168] Public Interest Parties Reply at 3.

[169] Public Interest Parties Brattle Reply Report at 3.

[170] *Id.*

[171] *See generally* Appx. E, *infra*.

[172] Securus Comments at 11-16.

[173] *Id.* at 13.

[174] Pay Tel Comments at 4; Pay Tel Wood Report at 7-11.

[175] Pay Tel Wood Report at 8-9 (explaining that while some providers track direct costs through, for example, costs associated with equipment, telecommunications facilities, sales, or ongoing product support at specific facilities, others track such costs using allocators like the number of phones or shares of minutes or revenues that "have a more tenuous connection" to a specific location or contract).

calling services] providers given the different reporting methodolog[ies] because no uniform accounting is required or necessary."[176] GTL also notes that calling service providers are not subject to Part 32 accounting rules or any other uniform system of accounts.[177] We do not find these concerns sufficient to justify abandoning any reforms at this time, and find that "variations in internal cost records and lack of a common methodology" do not preclude us from lowering egregiously high interstate rates now on an interim basis while waiting to obtain more reliable and consistent cost data.[178] In sum, the 2018 data from the Second Mandatory Data Collection are the best data available upon which we may, and do, reasonably rely here.[179]

60. The limitations in the cost data identified in the record do, however, warrant a departure from the approach the Commission proposed in the *2020 ICS Notice*. That approach was premised on the Commission's ability to calculate providers' collective mean contract costs of providing inmate calling services to prisons and jails with a high degree of accuracy. Based on that premise, the Commission proposed relying on single measures of the industry-mean costs of providing calling services to permanently cap the interstate rates for prisons and jails, respectively.[180]

61. After carefully considering the record, including providers' criticisms of the approach proposed in the *2020 ICS Notice*, we take a different approach than the one the Commission originally proposed and rely on the costs providers reported in response to the Second Mandatory Data Collection to develop separate zones, or ranges, of cost-based rates for prisons and larger jails from which we select the respective interim interstate provider-related rate caps.[181] First, the costs, as reported in response to the Second Mandatory Data Collection, allow us to calculate ceilings—or upper bounds—above which any interstate rate caps for prisons and larger jails would be unreasonably high. Second, we adjust the reported data to correct for outliers and contracts with reported costs that are significantly higher than other providers. These adjusted data allow us to calculate floors—or lower bounds—below which any interstate rate caps for prisons and larger jails could be perceived as unreasonably low on the current record. These upper and lower bounds thus establish zones of reasonableness from which we select the interim interstate provider-related rate caps.

62. The approach we take here is fully consistent with judicial precedent and a logical outgrowth from the approach proposed in the *2020 ICS Notice*. Courts widely recognize that an agency may reasonably rely on the best available data where perfect information is unavailable.[182] Indeed, the

[176] GTL Reply at 6.

[177] *Id.*; Pay Tel Wood Report at 6 ("There are no Part 32 accounting rules and no Uniform System of Accounts that apply to how . . . books and records are kept or how categories of cost are reported.").

[178] Public Interest Parties Reply at 4-5.

[179] *See, e.g., FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1160 (2021) (*Prometheus*) (explaining that "while the FCC did not have perfect empirical or statistical data" it "made a reasonable predictive judgment based on the evidence it had" in concluding that certain media ownership rules no longer served the public interest); *Am. Pub. Gas Ass'n v. Federal Power Comm'n*, 567 F.2d 1016, 1046 (D.C. Cir. 1977) (*American Public Gas v. FPC*) (concluding that the Federal Power Commission's choice "to use the best available data, and to make whatever adjustments appeared necessary and feasible" in a gas rate proceeding was not unreasonable); *see also MCI Telecomms. Corp. v. FCC*, 627 F.2d 322, 340-42 (D.C. Cir. 1980) (*MCI v. FCC*) (explaining that years-long ratemaking delays resulting from a desire to obtain better or perfect data undermine the Commission's credibility and the requirement of just and reasonable rates under the Act).

[180] *2020 ICS Notice*, 35 FCC Rcd at 8513-15, paras. 83-89.

[181] *See infra* paras. 81-92.

[182] *American Public Gas v. FPC*, 567 F.2d at 1044 (holding that the Federal Power Commission's reliance on unverified data supplied by the American Gas Association was not unreasonable and articulating the "best available data" rule: "[T]he Commission's choice to use the best available data, and to make whatever adjustments appeared necessary and feasible, is within its competence. Courts cannot fairly demand the perfect at the expense of the (continued….)

Supreme Court has recognized that the available data may not always settle a particular issue and that in such cases an agency must use its judgment to move from the facts in the record to a policy conclusion.[183] Here, we apply our judgment to the record before us and reach results that rationally connect "the facts found and the choice[s] made."[184] Importantly, by setting lower bounds that adjust for anomalies in the reported data, we minimize our reliance on data that we find inaccurate or unreliable.[185]

63. We recognize, of course, that our reliance on imperfect data is not ideal, but a lack of perfect data is not fatal to agency action. The D.C. Circuit has held that an agency's decision should be upheld when from "among alternatives all of which are to some extent infirm because of a lack of concrete data, [the agency] has gone to great lengths to assemble the available facts, reveal its own doubts, refine its approach, and reach a temporary conclusion."[186] Here, we have undertaken a robust analysis of all the data in the record and fully accounted for why the rate methodology we employ is reasonable, despite some providers' failure to meaningfully respond to Commission data requests and inaccuracies in their reported data. In the process, we explain our misgivings about reliance on certain data and lay out our rationale for adopting these rate caps as an interim step, with a commitment going forward to collect further data to be used to set permanent rate caps.

64. GTL and Pay Tel claim that the absence of the Commission's underlying work papers limits their "ability to comment on the methodology" proposed in the *2020 ICS Notice* and prevents them from determining whether the adjustments to the data proposed in that *Notice* are appropriate.[187] We find these assertions to be meritless. The record in this proceeding contradicts these views, as do the comments GTL and Pay Tel themselves offer concerning the Commission's methodology and treatment of data.[188] Contrary to these providers' claims, the database on which the calculations in the *2020 ICS Notice* relied was made available to interested parties in this proceeding, subject to the terms of a

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achievable."); *see also Prometheus*, 141 S. Ct. at 1159-60; *MCI v. FCC*, 627 F.2d at 340-42 (explaining that "[t]he best must not become the enemy of the good, as it does when the FCC delays making any determination").

[183] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co*. 463 U.S. 29, 52 (1983) (*State Farm*).

[184] *State Farm*, 463 U.S. at 43 (citing *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).

[185] *See District Hosp. Partners, L.P. v. Burwell*, 786 F.3d 46, 56-57 (D.C. Cir. 2015) (recognizing that "agencies do *not* have free rein to use inaccurate data; instead each agency must "'examine *the relevant data* and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made'") (emphasis in original) (quoting *State Farm*, 463 U.S. at 43); *Kennecott v. EPA*, 780 F.2d 445, 458 (4th Cir. 1985) (concluding that an "agency can reject data it reasonably believes to be unreliable") (citation omitted); *Citizens Telecomms. Co. of Minnesota v. FCC*, 901 F.3d 991, 1014 (8th Cir. 2018) (*Citizens*) (explaining that "the FCC was not unreasonable in declining to use the limited data at hand when it had doubts about the reliability of that data").

[186] *Nat'l Ass'n of Regulatory Utility Commissioners v. FCC*, 737 F.2d 1095, 1141-42 (D.C Cir. 1984) (*NARUC*); *see also Prometheus*, 141 S. Ct. at 1159 (highlighting that the Commission had "acknowledged the gaps in the data" it relied on in evaluating the continuing need for certain media ownership rules).

[187] GTL Comments at 9 n.34 (stating that "[t]he Commission has not provided its underlying work papers or other data supporting its analysis, which limits GTL's ability to comment on the methodology used by the Commission to determine its proposed rate caps"); Pay Tel Comments at i, 5 n.15 (claiming that by withholding work papers, the Commission has rendered the data set irreconcilable).

[188] *2020 ICS Notice*, 35 FCC Rcd at 8511-17, paras. 78-91; GTL Comments at 21 (objecting to the Commission's adjustment of GTL's data due to GTL's use of revenue as a cost allocator); Pay Tel Wood Report at 19-25 (critiquing the Commission's cost allocation methodology); Pay Tel Wood Reply Report at 4-5 (summarizing comments on the record and the expert's own report discussing and critiquing the Commission's cost allocation methodology).

protective order;[189] and the record reflects that at least two parties have been able to replicate the Commission's rate cap analysis on their own, on the basis of the data available to them.[190] The Commission made the underlying data available and specified its analytical approach. We are not required to do more.

65. *Allocation of Indirect Costs Based on Minutes of Use.* Consistent with the approach proposed in the *2020 ICS Notice*, our rate cap methodology relies on providers' collective mean contract costs per paid minute of use, plus one standard deviation.[191] Because the instructions for the Second Mandatory Data Collection did not require providers to allocate their indirect costs (including their overhead costs) of providing inmate calling services among contracts,[192] we need to adopt a mechanism for allocating those costs. In the *2020 ICS Notice*, the Commission proposed allocating the providers' indirect costs of providing inmate calling services among contracts based solely on relative minutes of use, a method that apportions a provider's indirect costs among its individual calling services contracts in proportion with each contract's share of the total minutes of use reported by that provider.[193] The Commission sought comment on this proposal and on whether a different allocator would more effectively capture how costs are caused.[194] We adopt the proposed minute of use method of allocation for our new interim rate caps as one of only two reasonable allocation methods based on the current record.

66. Parties disagree whether minutes of use provides an appropriate method for allocating indirect costs, with some comments pointing out its shortcomings and others supporting its use.[195] Although several parties argue that minutes of use does not provide an appropriate allocation method,[196] our independent analysis shows that, while imperfect, minutes of use provides the most reasonable allocator given the data before us. Specifically, after examining seven potential allocators—minutes of use, average daily population, number of calls, revenue, contracts, facilities, and direct costs—for allocating providers' indirect costs among contracts, we find minutes of use both reasonable and

[189] *Wireline Competition Bureau and Office of Economics and Analytics Make Inmate Calling Services Database Available to Eligible Individuals Pursuant to Protective Order*, WC Docket No. 12-375, Public Notice, 35 FCC Rcd 10456 (2020); *see also* GTL Godek Report at 12-14 (using the Commission's dataset to discuss differences in the inmate calling services provider-submitted data). We also refer to this inmate calling services database as the "dataset."

[190] *See* Public Interest Parties Brattle Report at 10; Securus Comments Attach. D, FTI Consulting, Inc., Declaration of Robert O. Fisher, Brian F. Pitkin & Steven E. Turner at 6 (Securus FTI Report) (observing that Securus's expert could replicate all of the Commission's data tables within a reasonable degree of variance).

[191] *2020 ICS Notice*, 35 FCC Rcd at 8513-15, paras. 83-89.

[192] Second Mandatory Data Collection Instructions at 6-11. These overheads include costs attributable to inmate calling services and to particular contracts, but not reported as such by the provider. *See id.*

[193] *2020 ICS Notice*, 35 FCC Rcd at 8513, para. 81.

[194] *Id.*

[195] *See, e.g.*, GTL Comments at 21 (arguing that revenue is an appropriate cost allocation method for inmate calling services); Pay Tel Wood Report at 10 (arguing that minutes of use and the Commission's methodology "creates the appearance that costs vary less among locations/contracts than they actually do"); Securus Comments at 41 (asserting that "[i]t is to be expected that allocating indirect costs based on minutes of use will result in relatively uniform costs per minute, particularly when several providers indicated very little direct cost instead of attributing most of their cost as indirect"); Free Press Comments at 4 (supporting the Commission's longstanding position that revenue should not be used for cost allocation purposes); Public Interest Parties Reply at 4 (supporting the Commission's use of minutes of use as the cost allocator").

[196] *E.g.*, GTL Comments at 21; Pay Tel Wood Report at 10; Securus Comments at 41.

preferable to each potential alternative.[197] Although none of these allocators fully capture the reasons for which providers incur inmate calling services costs, minutes of use constitutes the best available allocator under the circumstances because it produces plausible per-minute rates while ensuring that most calling services contracts would remain commercially viable, even assuming the accuracy of providers' reported costs.

67. We calculated the per-minute caps that would apply under each potential allocator to compare the allocators.[198] We find that only minutes of use ($0.149) and number of calls ($0.208) produce results below the current cap for prepaid and debit calls. In contrast, the implied per-minute rate caps for the revenue ($0.333), direct costs ($2.417), average daily population ($11.114), facilities ($303.685), and contracts ($318.636) allocators all suggest that interstate inmate calling services rate caps are presently unreasonably low, a proposition that not even any of the providers has tried to argue. This disparity is one of the reasons we find that minutes of use and number of calls are the only plausible allocators among the available alternatives.[199]

68. Understanding that there is an element of circularity in using a minutes-based cost allocator when setting per-minute rate caps,[200] we further evaluated whether each potential allocator produces per-minute costs that are consistent with the rates currently set by providers. Specifically, we calculated the percentage of contracts for which the provider reported per-minute revenues that are greater than the per-minute costs allocated to each contract under each allocator.[201] Minutes of use yielded a higher percentage of viable contracts than did any other cost allocator.[202] This confirms that minutes of use is the allocator that is most consistent with provider cost recovery, as it is illogical to assume that providers are entering into a significant number of contracts that are not commercially viable (i.e., that do not allow providers to recover their costs).[203] We therefore find minutes of use preferable to number of calls and use it in our provider-related rate caps calculations.[204]

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[197] *2020 ICS Notice*, 35 FCC Rcd at 8513, para. 82 (rejecting allocations based upon contracts and facilities); *2020 ICS Notice*, 35 FCC Rcd at 8559-60, Appx. E; Appx. E, *infra* Part B.

[198] *See* Appx. E, *infra* Table 3. We refer to these per-minute caps as "implied rate caps." Our calculations employed the mean contract costs per minute plus one standard deviation methodology proposed in the *2020 ICS Notice*. For simplicity, we performed these calculations collectively for all facilities, rather than separately for different types or sizes of facilities. Appx. E, *infra* Table 3.

[199] We recognize, as Securus and Pay Tel point out, allocating indirect costs based on minutes of use results in relatively uniform costs per minute in comparison to the other allocation methods. Securus Comments at 41; Pay Tel Wood Report at 20. We also agree that this relative uniformity will necessarily result in a lower standard deviation from the mean for a minutes of use allocator than for any alternative method. Securus Comments at 41; Pay Tel Wood Report at 20 (implying that the Commission chose minutes of use "to minimize the standard deviation"), and the standard deviation we calculate for minutes of use ($0.056) is significantly lower than those for each of the other potential allocators. *See* Appx. E, *infra* Table 3 (showing standard deviations ranging from $0.056 for minutes to $300.136 for contracts). But the implied rate caps for revenue ($0.220 = $0164 + $0.056) and direct costs ($0.284 = $0228 + $0.0506) would exceed current interstate rate levels if the standard deviation for those allocators were reduced to $0.056, and the implied rate caps for average daily population ($0.789), facilities ($16.485), and contracts ($18.499) would exceed those levels even without any standard deviation component.

[200] *See* Appx. E, *infra*; Securus FTI Report at 16-17.

[201] *See* Appx. E, *infra* Table 4.

[202] Minutes of use yielded 87.3% of contracts with per-minute provider revenues greater than their per-minute allocated costs. The next closest allocators are direct costs at 81.6% and number of calls at 81.3%. *See* Appx. E, *infra* Table 4.

[203] *See* Appx. E, *infra*.

[204] The comparison of our per-minute cap to per-minute revenues is not subject to the objection that using a per-minute allocator will produce relatively uniform costs per minute in comparison to the other allocation methods.

69. We recognize that our choice of allocator is affected, in part, by our decision to continue to require providers to charge per-minute rates for inmate calling services.[205] But changing that rate structure would likely impose significant burdens on providers, and we find no basis for requiring such a change in connection with our adoption of new interim rate caps. We also cannot meaningfully assess, on the record before us, how different rate structures would affect incarcerated persons and their families. We therefore defer action on alternative rate structures—under which calling services consumers might be charged a predetermined monthly fee for unlimited calls, for example—pending the development of a more complete record in response to the Further Notice.[206]

70. Some commenters contend that the available data preclude us from allocating providers' costs with sufficient precision to support any changes in interstate rate caps.[207] Pay Tel emphasizes that "the observed inability of many [inmate calling services] providers to track and assign direct costs" results in high levels of indirect costs to be allocated, which makes providers' costs appear more "homogenous" across locations and contracts than is actually the case.[208] Securus's outside experts are particularly critical of using minutes of use as the only allocator, arguing that "the majority of [providers'] costs, which include connectivity to the facilities, developing and implementing the call platform, on-site equipment and SG&A [(selling, general, and administrative expenses)], do not vary by the number of minutes."[209]

71. We find that such issues do not require us to postpone reforming our interstate rate caps pending the availability of better data that might allow us to allocate providers' indirect costs in a more cost-causative manner.[210] We find that the better course is to adopt interim interstate provider-related rate caps for prisons and larger jails now, using the available data, while requiring that providers submit more accurate, consistent, and disaggregated data that will allow us to set permanent interstate provider-related rate caps for all correctional facilities that more closely reflect providers' costs of serving individual correctional facilities. As the D.C. Circuit has explained, "[w]here existing methodology or research in a

[205] Pay Tel Wood Report at 20 (noting "the ubiquity of call minute pricing supports the development of rate caps on a per-[minute-of-use (MOU)] basis, and therefore supports the calculation of costs on a per-MOU basis"); Securus FTI Report at 13-16 (arguing in favor of allocating costs by calls). We also reject most of the cost allocators for additional reasons that are not subject to the objection that using a per-minute allocator will produce relatively uniform costs per minute in comparison to the other allocation methods. For example, use of the facility and direct cost allocator would require throwing out substantial amounts of data, while the remaining data would include egregious flaws, making any resulting cost allocation arbitrary. *See* Appx. E, *infra* Part E. This critique applies to a more limited extent to average daily population, but it would still be a poor choice relative to the alternatives of call minutes or number of calls. *See* Appx. E, *infra* Part E. Another example is our exclusion of the revenue allocator. *See* Appx. E, *infra* Part E.

[206] *See* Securus May 13, 2021 *Ex Parte* at 1-2 (requesting that the Commission waive the prohibition against the offering of flat-rate calling plans in section 64.6090 of our rules, 47 CFR § 64.6090, to allow calling services providers to establish pilot programs to give families the option of subscribing to such plans); *infra* Part VI; Appx. E, *infra* Part E. This reasoning again is not subject to the objection that using a per-minute allocator will produce relatively uniform costs per minute in comparison to the other allocation methods.

[207] Pay Tel Comments at 4-8 (arguing the dataset is unreliable for the purposes of reasoned ratemaking); Securus Comments at 10-15 (arguing that given the inherent flaws with the dataset, the Commission should not rely on it in establishing rate caps); Securus FTI Report at 24-25 (asserting that setting rate caps based on a dataset that is not a normal distribution is inappropriate); GTL Comments at 20 (stating there are inconsistencies in reporting the data including differing allocation methods).

[208] Pay Tel Wood Report at 22. We agree there is some merit in these observations, particularly that the collected data appears to obscure cost differences between prisons and jails.

[209] Securus FTI Report at 15.

[210] We are not required to pursue "the perfect at the expense of the achievable." *American Public Gas v. FPC*, 567 F.2d at 1046 (internal quotation marks and citation omitted).

new area of regulation is deficient, the agency necessarily enjoys broad discretion to attempt to formulate a solution to the best of its ability on the basis of available information."[211] Consistent with this principle, we choose "to use the best available data, and to make whatever adjustments appear[] necessary and feasible" to ensure that interstate inmate calling services rates are just and reasonable.[212]

72. We independently reject the "use of direct costs to allocate indirect costs" and related approaches at this time.[213] Pointing to its own cost-tracking processes, Pay Tel argues that allocating indirect costs based on directly attributable costs would be "not only reasonable and consistent with prior Commission conclusions" but also "consistent with how [inmate calling services] providers incur costs."[214] Although we agree that allocating indirect costs based on directly attributable costs could yield reasonable results when providers have properly identified their directly attributable costs, the data from many of the providers fall far short of that mark. Indeed, allocation by direct costs would require us to ignore all data submitted by the two providers that reported no direct costs.[215] Similarly, this approach also would allocate essentially all of GTL's costs on the basis of bad debt, a measure that bears little, if any, relationship to the reasons GTL incurs costs in its provision of inmate calling services.[216] Accordingly, we find allocating indirect costs based on direct costs would provide less reliable results than allocating indirect costs based on minutes of use. We likewise reject the use of facilities to allocate costs, as providers often failed to report costs for individual facilities where multiple facilities were supplied under a single contract. In light of the drawbacks to these approaches, we have a higher degree of confidence in providers' reported minutes of use by contract.

73. We similarly decline at this time to divide indirect costs into "shared costs" and "common costs" and develop separate allocators for each set of costs, as Securus suggests, because the available data do not allow us to make such granular distinctions.[217] We likewise reject any allocation key based on percentages of total company revenue.[218] The Commission has long disclaimed this allocation methodology because it fails to provide a reliable method for determining costs, given that "revenues

[211] *Am. Pub. Commc'ns Council v. FCC*, 215 F.3d 51, 56 (D.C. Cir. 2000) (*American Public Communications*) (upholding Commission action that had relied on disputed cost data) (internal citations omitted); *see also NARUC*, 737 F.2d at 1131-42 (finding that an agency had not acted arbitrarily or capriciously when it has made "rational choices from among alternatives all of which are to some extent infirm because of a lack of concrete data, and has gone to great lengths to assemble the available facts, reveal its own doubts, refine its approach, and reach a temporary conclusion"); Public Interest Parties Brattle Reply Report at 15.

[212] *See American Public Gas v. FPC*, 567 F.2d at 1044-46 (upholding an agency's decision to rely on the best available data in setting rates for new natural gas).

[213] Securus Comments at 15, 41 (suggesting that providers should be required to follow a standard cost-causation modeling methodology to attribute costs to specific products and, where not possible, allocate those costs across products in a cost-causative matter); Pay Tel Wood Report at 21, 26 (maintaining that using direct costs to allocate indirect costs is "reasonable and consistent with prior Commission conclusions").

[214] Pay Tel Wood Report at 21.

[215] The providers that did not report direct costs are {[ ]}. *See* Appx. E, *infra* Part F.

[216] Alone among providers, GTL reported a bad debt expense as their only identifiable direct cost. The evidence supports no relationship between bad debt expense and cost causation, and the bad debt expense amounts only to {[ ]}, making any related assumptions even more speculative. *See* Appx. E, *infra* Part E.

[217] The available data do not allow us to analyze or allocate costs on the basis that Securus suggests. What Securus identifies as "common costs" most closely tracks the "indirect costs" reported in the Second Mandatory Data Collection. Second Mandatory Data Collection Instructions at 3 (defining "indirect costs" to mean "any cost related to a service that is not completely attributable to that service (e.g., overhead, depreciation, or other costs that are allocated among different products or services)").

[218] GTL Comments at 21 (defending its use of revenues to allocate costs).

measure only the ability of an activity to bear costs, and not the amount of resources used by the activity."[219]

74. *Accurate Analysis Compels Adjustments to GTL's Reported Cost Data.* As the Commission recognized in the *2020 ICS Notice*, the critical question posed by our reliance on the available data is how to address the various issues reflected in the cost data reported by GTL, the largest provider of inmate calling services, with an estimated market share approaching 50%.[220] We find that GTL's cost data does not reflect its actual costs of providing inmate calling services and may overstate those costs.[221] Given GTL's market share, including GTL's cost data as reported in our calculations for the entire industry, significantly affects the results.[222] We conclude that we must make certain adjustments to GTL's reported data if we are to arrive at a more accurate estimate of industry costs.[223]

75. On a company-wide basis, GTL's reported unit costs, which do not rely on cost allocation,[224] are higher than those of all but one (much smaller) provider, and are nearly {[ ]} the average of all the other providers excluding GTL.[225] These results are inconsistent with the record evidence establishing that providers are able to achieve significant economies of scale.[226] As the largest inmate calling services provider, GTL should be better enabled to spread its fixed costs over a relatively large portfolio of contracts relative to other providers, especially because GTL serves a higher proportion of larger facilities than other providers. Instead, taking GTL's reported costs at face value would imply that it does not achieve economies of scale.[227] GTL's unit costs are also high when compared with the

[219] *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities*, CC Docket No. 86-111, Report and Order, 2 FCC Rcd 1298, 1318, para. 160 (1987) (internal quotation marks omitted); *see 2020 ICS Notice*, 35 FCC Rcd at 8513, para. 82 (discussing flaws with allocating costs by revenue).

[220] *2020 ICS Notice*, 35 FCC Rcd at 8513, 8517-19, paras. 82, 92-96. One estimate from 2017 placed GTL's market share between 46% and 52.9% before it acquired Telmate, a company whose market share was between 1.9% and 3.1%. *See* Peter Wagner, Prison Policy Initiative, *Prison Phone Giant GTL Gets Bigger, Again* (Aug. 28, 2017), https://www.prisonpolicy.org/blog/2017/08/28/merger. Our internal analysis suggests GTL's share is around {[ ]}. *See 2020 ICS Notice*, 35 FCC Rcd at 8518, para. 94 n.226; *infra* Part VI.G.

[221] *See 2020 ICS Notice*, 35 FCC Rcd at 8518, para. 94 n.228 (explaining that GTL "is a reasonably effective competitor, which in turn suggests it is not a high cost provider, and therefore, its reported costs are likely significantly overstated").

[222] *See generally* Appx. E, *infra* Table 2.

[223] Courts have upheld the Commission's exclusion or substitution of flawed or inadequate data when the Commission has explained the evidence and demonstrated a rational connection between the facts found and the choice made, as we do here. *See, e.g.*, *State Farm*, 463 U.S. at 52; *American Public Communications*, 215 F.3d at 55 (upholding the Commission's decision to exclude data on the basis of reliability); *see also Citizens*, 901 F.3d at 1014 (explaining that "the FCC was not unreasonable in declining to use the limited data at hand when it had doubts about the reliability of that data").

[224] Unit costs are measured as the quotient of reported total costs and reported minutes.

[225] *See* Appx. E, *infra* Table 2 (noting that GTL's reported unit costs are {[ ]}, while unit costs for the industry average excluding GTL are {[ ]}). This remains true for GTL's allocated costs per minute for prisons or larger jails—both are higher than nearly all other providers' allocated costs, regardless of facility type. Despite being the largest provider, and commanding a disproportionate share of the larger contracts, GTL reports an average contract per-minute cost of {[ ]}, approximately {[ ]} times larger than its nearest peers in size, Securus and CenturyLink, and more than {[ ]} times larger than the average contract per-minute costs of the next largest provider, ICSolutions. Staff analysis of the Second Mandatory Data Collection; *see also* Appx. G, *infra* Figure 1.

[226] *See, e.g.*, Securus Cost Study at 21 (recognizing that as a larger provider, it experiences economies of scale not available to smaller providers, such as greater purchasing power and the ability to share common costs among a large number of products and services).

[227] The record does not provide any explanation why GTL might incur higher inmate calling services costs than the rest of the industry.

providers that are most like it. GTL's unit costs are nearly {[ ]} times those of Securus, the second-largest provider, nearly {[ ]} times those of CenturyLink, and nearly {[ ]} times those of ICSolutions.[228] Of equal concern, GTL uniquely reports large losses across all inmate calling services operations, totaling nearly {[ ]} of GTL's reported costs.[229] GTL's total revenues are {[ ]} less than its reported costs, suggesting that GTL operates these facilities at a cumulative loss—a result contradicted by GTL's longevity in the market and the depth of its market presence.[230]

76. GTL's accounting practices also require adjustment to its data. Unlike every other provider, GTL reported "bad debt expense" as its only cost directly related to the provision of inmate calling services, though it almost certainly incurs other costs that are causally related to providing inmate calling services.[231] As Pay Tel's expert explains, GTL's reported direct costs "represent only 0.01% of its Total [inmate calling services] costs, effectively reporting a cost structure that is 0% direct and 100% indirect."[232] Compounding this problem, GTL allocated its indirect costs between its inmate calling services operations and its other operations based on the percentages of total company revenue each operation generated, which fails to reflect the purposes for which GTL incurs costs.[233]

77. Considering the impact that this cost data provided by the market's largest provider would have on its analysis, the Commission has repeatedly tried to obtain more accurate and complete data from GTL.[234] These efforts began with several calls between staff and GTL representatives that sought to obtain a fuller explanation of the composition of the data provided by GTL in response to the Second Mandatory Data Collection. Following from these efforts, on July 15, 2020, before the release of the *2020 ICS Order on Remand*, the Wireline Competition Bureau directed GTL to provide "additional documents and information regarding GTL's operations, costs, revenues, and cost allocation procedures" to supplement GTL's previously filed submissions, and to enable the Commission "to make a full and meaningful evaluation of GTL's cost data and methodology."[235] This directive encompassed 14 separate categories of additional information.[236] GTL's response, however, provided little additional information that would enable us to determine the costs it actually incurs in providing calling services to incarcerated people. Instead, GTL objected to the requests on multiple grounds, routinely asserting that the Bureau sought information that GTL cannot provide and arguing that it does not maintain records that would

[228] *See* Appx. E, *infra* Table 2. Securus's reported unit costs are {[ ]}; CenturyLink's reported unit costs are {[ ]}; and ICSolutions' reported unit costs are {[ ]}.

[229] *See* Appx. E, *infra* Part D (discussing reported costs and revenues).

[230] GTL is the only provider which records making a loss. *See* Appx. E, *infra* Part F. *See generally* GTL Amended Description and Justification.

[231] *2020 ICS Notice*, 35 FCC Rcd at 8519, para. 95; Securus Comments at 12; *see also* Public Interest Parties Brattle Reply Report at 13; *2020 ICS Notice*, 35 FCC Rcd at 8516-17, paras. 92-93; GTL Amended Description and Justification at 9.

[232] Pay Tel Wood Report at 8-9.

[233] *2020 ICS Notice*, 35 FCC Rcd at 8512-13, 8518-20, paras. 80-82, 94-98; *see also* Public Interest Parties Brattle Report at 6-7 (arguing that GTL's approach will overstate inmate calling services costs).

[234] Letter from Chérie R. Kiser, Counsel to GTL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed May 13, 2021) (GTL May 13, 2021 *Ex Parte*) (acknowledging these repeated efforts).

[235] Letter from Kris Anne Monteith, Chief, Wireline Competition Bureau, to Chérie R. Kiser, Counsel for GTL and Its Subsidiaries, Cahill Gordon & Reindel LLP, 35 FCC Rcd 7028, 7028 (WCB July 15, 2020) (GTL Letter). This followed up on the Bureau's prior efforts to obtain additional information from GTL. *See* GTL Amended Description and Justification (amending GTL's Second Mandatory Data Collection response "to address questions raised by Commission staff"); *see also* GTL Letter, 35 FCC Rcd at 7028.

[236] GTL Letter, 35 FCC Rcd at 7029-34.

allow it to respond.[237] Without the requested information, and in light of the issues we describe above, we are unable to take GTL's reported costs at face value in our analyses.[238] We therefore adjust GTL's reported cost data with data that more accurately reflect the underlying characteristics of the prisons and larger jails that GTL serves.[239] Specifically, as we explain below, in establishing the lower bounds of our zones of reasonableness we use a generally accepted statistical tool—the *k*-nearest neighbor method—to replace the data reported for each prison and larger jail contract served by GTL with the weighted average of the data for the three most comparable (i.e., nearest neighbor) contracts served by other providers.[240]

78. *Ancillary Service Costs.* In the *2020 ICS Notice*, the Commission observed that its proposed rate cap calculations did not account for revenues earned from certain ancillary services even though providers reported the costs of these services as inmate calling services costs in their responses to the Mandatory Data Collection.[241] The Commission sought comment on whether it should exclude the costs of these services from its rate cap calculations.[242]

79. Based on the record before us, we find that there is no reliable way to exclude ancillary service costs from our provider-related rate cap calculations at this time. Accordingly, those costs will remain as a part of the industry costs that we use in our calculations of those interim rate caps. The instructions for the Second Mandatory Data Collection required certain ancillary service revenues to be reported separately, but providers were not required to report their ancillary service costs separately from other inmate calling services costs.[243] Further, providers were not required to separately report costs relating to any specific ancillary service,[244] and no commenter has suggested a way of identifying the providers' ancillary service costs.[245] As a result, we cannot isolate with any degree of accuracy the costs providers incur in providing ancillary services from their overall cost data.

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[237] These objections included, *inter alia*, that the Bureau's requests lacked relevance, placed an undue burden on GTL, and were overbroad. *See* Letter from Chérie R. Kiser, Counsel for GTL and Its Subsidiaries, Cahill Gordon & Reindel LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed Sept. 14, 2020) (GTL Sept. 14, 2020, Letter). GTL Sept. 14, 2020, Letter at 1-33, Attach., Documents - GTL Response to Request #14; *see also* GTL May 13, 2021 *Ex Parte* at 2 (asserting that GTL provided the Commission with "the best information available based on how it conducts its business," but not addressing how that information might allow us to determine its actual costs of providing calling services to incarcerated people).

[238] Two commenters share our concerns and urge that we adjust GTL's data. *See, e.g.*, Free Press Comments at 4 (supporting the Commission's proposed discount for GTL's claimed capital costs, even though it appears that the 10% discount is not enough and that the Commission should identify other ways GTL's costs are inflated and consider expanding the discount to account for them); Public Interest Parties Comments at 5 (arguing that the proposed 10% reduction to GTL's data is necessary but is not sufficient to account for the inconsistencies in GTL's reporting). Although we recognize that GTL has not been required to keep, or indeed kept, accounting records that would enable it to isolate the costs it incurs in providing calling services to incarcerated individuals, *see* GTL May 13, 2021 *Ex Parte* at 1-2, those facts do not require that we accept GTL's reported costs at face value.

[239] *See American Public Communications*, 215 F.3d at 56 (upholding Commission action which relied on disputed cost data, stating that "we cannot require an agency to enter precise predictive judgments on all questions as to which neither its staff nor interested commenters have been able to supply certainty").

[240] We describe this method in greater detail and show its application to GTL's data in Appendix G, *infra*.

[241] *2020 ICS Notice*, 35 FCC Rcd at 8515-16, para. 90.

[242] *Id.*

[243] Second Mandatory Data Collection Instructions at 9-10 (requiring the reporting of automated payment fee revenues and paper bill/state fee revenues separately, for example).

[244] *See generally id.*

[245] The Public Interest Parties argue that we should deduct all revenues from ancillary services from the costs that go into our per-minute rate cap calculations. Public Interest Parties Brattle Report at 8-9. We decline to take this step (continued….)

80. We recognize that this approach will result in interim interstate rate caps that allow for the recovery of costs incurred in the provision of ancillary services that calling services consumers already pay for through separate charges and fees, a result that substantially increases the likelihood that our interim caps are too high. We intend to collect detailed data on ancillary services costs from each inmate calling services provider in our next data collection and to use those data to set permanent provider-related rate caps that eliminate this problem.[246]

81. *Implementing the Zone of Reasonableness Approach*. We determine the levels of the interim interstate provider-related rate caps using a zone of reasonableness approach. In the *2020 ICS Notice*, the Commission proposed to set separate caps for prisons and all jails at the mean contract costs per paid minute plus one standard deviation, as calculated separately for each of those two categories of facilities.[247] After considering the record, including comments that make clear that limitations in the available data make it impossible for us to estimate true mean contract costs per paid minute with any degree of precision,[248] we find that a zone of reasonableness approach is particularly well-suited to our task because it will allow us to use different measures of mean contract costs per paid minute to establish separate ranges of rates—one for prisons and another for larger jails—from which we can select just and reasonable interim provider-related rate caps.[249]

82. It is well-established that rates are lawful if they fall within a zone of reasonableness.[250] Precedent also teaches that we are "free, within the limitations imposed by pertinent constitutional and statutory commands, to devise methods of regulation capable of equitably reconciling diverse and competing interests."[251] A zone of reasonableness approach allows us to reconcile, to the extent possible on the record before us, the providers' and their customers' competing concerns regarding the rates incarcerated people and those they call pay to communicate. We therefore rely on a zone of

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because doing so would lower the rate caps equally for all providers and therefore disproportionately affect those providers having the lowest ancillary service revenues.

[246] *See infra* Part III.H.3 (instituting an additional data collection).

[247] *2020 ICS Notice*, 35 FCC Rcd at 8514, para. 84 (discussing cost variations between prisons and jails and seeking comment on this approach).

[248] *See, e.g.*, GTL Comments at 20 (stating there are inconsistencies in the data); Pay Tel Comments at 4-8 (arguing the dataset is unreliable for the purposes of reasoned ratemaking); Public Interest Parties Comments at 4-9 (discussing deficiencies in the data); Pay Tel Reply at 5-7; Securus Comments at 10-13 (identifying issues with the submitted data); Securus FTI Report at 24-25 (finding the dataset non-representative), 30 (stating that the cost data lead to misleading conclusions); *see also 2020 ICS Notice*, 35 FCC Rcd at 8511-13, paras. 78-82 (highlighting shortcomings in providers' Second Mandatory Data Collection responses).

[249] As a result of our new approach, which differs from the approach proposed in the *2020 ICS Notice*, we find that comments critical of the data analysis, including proposed adjustments to data, underlying the rate caps proposed in the *2020 ICS Notice* are now moot. *See, e.g.*, Securus Comments at 20-23 (arguing that the Commission's proposed goodwill adjustment is unjustified); Securus Furchtgott-Roth Report at 15-22 (opining on the impropriety of excluding goodwill from costs); Pay Tel Wood Report at 13-17 (suggesting that the Commission's underlying analysis did not produce reliable results); Public Interest Parties Comments at 6-9 (discussing methodological flaws in the Commission's calculations).

[250] *See, e.g., Verizon v. FCC*, 535 U.S. 467, 487-88 (2002); *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 767 (1968) (*Permian Basin*); *NARUC*, 737 F.2d at 1141 (explaining that when "a figure selected by the agency reflects its informed discretion, and is neither patently unreasonable nor 'a dictate of unbridled whim,' then the agency's decision adequately satisfies the standard of review"); *FPC v. Nat. Gas Pipeline Co.*, 315 U.S. 575, 585 (1942) (*Natural Gas Pipeline*) (describing a "zone of reasonableness" within which the agency is free to fix a rate).

[251] *Permian Basin*, 390 U.S. at 767; *see Natural Gas Pipeline*, 315 U.S. at 586 (explaining that ratemaking involves the making of "pragmatic adjustments"); *see also FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 602-03 (1944) (*Hope Natural Gas*) (describing the ratemaking process and the balancing of interests).

reasonableness approach to set rates in this instance, which helps avoid giving undue weight to the assumptions that would lead to either unduly high or unduly low per-minute rate caps.

83. Given the available data, any upper and lower bounds based on those data are necessarily estimates. We find it likely that our estimates overstate providers' inmate calling services costs. All providers have an incentive to overstate their costs in their responses to the Commission's data collections, as this would lead to higher interstate rate caps, thus resulting in both higher revenues and higher profits. In addition, imprecisions in the instructions for the Second Mandatory Data Collection regarding fundamental steps in the costing process, such as how providers should make sure that their costs of providing inmate calling services exclude all costs properly assignable to their non-inmate calling services operations, enabled providers to inflate their reported costs. We find that this combination of incentives and reporting latitude almost certainly resulted in some overstatement of the providers' costs of providing inmate calling services.[252] Additionally, because the instructions for the Second Mandatory Data Collection did not require providers to separate the costs they incur in providing ancillary services from their total inmate calling services costs, our bounds include ancillary services costs for which providers separately recover fees and charges under our rules. Each of these factors skews the cost data upwards, resulting in upper and lower bounds that are likely higher than any bounds based on more accurate data.

84. Our zone of reasonableness approach involves three distinct steps. We begin by using data that providers submitted in response to the Second Mandatory Data Collection to establish upper bounds of potentially reasonable interstate provider-related rate caps for prisons and larger jails, respectively. Because the data we use in setting the upper bounds significantly overstate the providers' actual mean contract costs per minute of providing inmate calling services beyond the general factors we have just discussed, we then make reasonable, conservative adjustments to the reported data and use those data to establish the lower bounds of our zones of reasonableness.[253] Finally, we rely on our analysis of the record evidence and on our agency expertise to pick, from within those zones, reasonable interim interstate provider-related rate caps for prisons and larger jails.[254]

85. *Determining Upper Bounds for the Zones of Reasonableness.* We find that the method proposed in the *2020 ICS Notice*, taking the sum of the mean contract costs per minute plus one standard deviation relative to that mean, provides a reasonable method for determining the upper bounds of the zones of reasonableness for prisons and for larger jails.[255] Under this approach, using the data submitted by all 12 providers, the mean contract cost per minute for prisons is $0.092, and the standard deviation

[252] *See* Second Mandatory Data Collection Instructions at 7-11; *2020 ICS Notice*, 35 FCC Rcd at 8513, para. 82 (discussing inmate calling services providers that used relative revenues to allocate their indirect costs among contracts).

[253] We describe these adjustments fully in Appendix G, *infra*.

[254] We reiterate that while our zone of reasonableness methodology relies on contract-level data, we apply our interim rate caps to individual prisons and jails having average daily populations of 1,000 or more. For these jails, the data derived from a contract-level analysis likely overestimates actual costs. This is because the analysis incorporates jails having average daily populations lower than 1,000 (which we would expect to have higher per-minute costs than larger jails) when such facilities are encompassed by the same contract. We are comfortable with this approach for purposes of determining an interim rate cap for jails having average daily populations of 1,000 or more as it errs on the side of being conservative, while also being consistent with providers' understanding that the average daily population threshold is applied on a per-facility basis. *See* Securus May 13, 2021 *Ex Parte* at 1, 5.

[255] One standard deviation from the mean of a normal distribution accounts for approximately 68% of the data, with half of the remaining 32% being above the mean and half below the mean, thus creating an additional buffer that makes it more likely that a provider will be able to recover its costs for any particular contract or facility. *See* Appx. E, *infra*; *2020 ICS Notice*, 35 FCC Rcd at 8513-14, para. 83 (describing the method of calculation); *see also* Public Interest Parties Brattle Report at 11 ("In the FCC rates, 62% of the contracts have costs lower than the mean. Using the mean plus one standard metric, 93% get reimbursed at a rate higher than their per-minute costs.").

relative to this mean is $0.041 per minute, resulting in a mean plus one standard deviation of $0.133 per minute.[256] Similarly, the mean contract cost per minute for larger jails is $0.100, and the standard deviation from that mean is $0.118 per minute, making the mean plus one standard deviation $0.218 per minute.[257]

86. We find that these upper bounds overstate, by a wide margin, the providers' actual costs of providing interstate inmate calling services for two reasons beyond the general effects we recounted above. First, at least two providers, GTL and Securus, calculated the return component of their costs using the prices their current owners paid to purchase the companies, rather than the amounts that they and the prior owners had invested in property used to provide interstate inmate calling services.[258] Use of those purchase prices to calculate GTL's and Securus's costs is inconsistent with the well-established principle that the purchase prices of companies that possess market power "are not a reliable or reasonable basis for ratemaking."[259] Instead, the return component of GTL's and Securus's costs is properly calculated using the original cost of the property they use to provide inmate calling services at the point that property was first dedicated to public use through its use in the provision of inmate calling services.[260] And, contrary to GTL's argument,[261] the Commission has long held that payphone calling providers, including inmate calling services providers, possess monopoly power when (as is the case with GTL and

[256] We calculate these statistics for prisons after removing the cost-per-minute outlier related to GTL's contract for {[ ]}. By comparison, the mean cost per minute for prisons based on the data for the 12 responding providers including this outlier is $0.149, and the standard deviation is $0.658 per minute, resulting in the mean plus one standard deviation being $0.807 per minute. Appendix E explains why we exclude the {[ ]} contract. Appx. E, *infra* Part B.

[257] *See* Appx. E, *infra* Part E (discussing and reviewing the calculation of the mean and standard deviation for larger jails).

[258] Securus Cost Study at 12; *2020 ICS Notice*, 35 FCC Rcd at 8517, para. 92 (explaining that GTL calculates the return component of costs by using "the invested capital of GTL") (citing GTL Amended Description and Justification at 10); *see also Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1175 (D.C. Cir. 1984) (recognizing that regulated rates are "calculated to generate a reasonable return on the *original cost*" of property dedicated to public use) (emphasis in original). Under rate-of-return ratemaking, a company's cost of service equals a return component (i.e., allowed rate of return times the company's rate base) plus the expenses the company incurs in providing the regulated service. The use of the sale prices of a company as what amounts to its rate base absent a showing specifically justifying that practice is inconsistent with fundamental ratemaking principles. *See Amendment of Part 65 of the Commission's Rules to Prescribe Components of the Rate Base and Net Income of Dominant Carriers*, CC Docket No. 86-497, Order on Reconsideration, 4 FCC Rcd 1697, 1703, para. 58 (1989) (*Rate Base Reconsideration Order*); *American Tel. and Tel. Co*., Docket No. 19129, Phase II Final Decision and Order, 64 F.C.C.2d 1, 39-40, paras. 116-20 (1977) (*AT&T Phase II Order*) (rejecting AT&T's attempt to earn a return on "the amount of investment capital" its investors had provided to AT&T, rather than on AT&T's prudent investment in property used and useful in the provision of service to the public).

[259] *Implementation of Sections of the Cable Television Consumer Protection & Competition Act of 1992: Rate Regulation*, CS Docket No. 94-28, Second Report and Order, First Order on Reconsideration, and Further Notice of Proposed Rulemaking, 11 FCC Rcd 2220, 2244, para. 52 (1996); *see, e.g., Illinois Bell Tel. Co. v. FCC*, 911 F.2d 776 (D.C. Cir. 1990); *see also* Public Interest Parties Reply at 7-9 (arguing that the inclusion of GTL's invested capital when calculating rates is inconsistent with the principle that the purchase prices of companies possessing market power are not a reliable or reasonable basis for ratemaking).

[260] *See Rate Base Reconsideration Order*, 4 FCC Rcd at 1703, para. 58; *see also Louisiana Public Service Commission*, 476 U.S. at 355, 365 ("The total amount that a carrier is entitled to charge for services, its 'revenue requirement,' is the sum of:" (a) its current operating expenses, including taxes and depreciation expenses;" plus (b) "a return on its investment 'rate base.' The original cost of a given item of equipment enters the rate base when that item enters service.").

[261] GTL Comments at 18-19; *see also* Securus Furchtgott-Roth Report at 16-18.

Securus) they have obtained the exclusive right to provide calling services to correctional facilities.[262] We reiterate that finding and, to eliminate any possible doubt, apply it to the purchase prices that GTL and Securus used in calculating the return component of their costs.

87. Second, and more significantly, these upper bounds incorporate GTL's costs as reported, even though (1) GTL admits that it lacks the accounting records that it would need to determine its actual costs of providing inmate calling services and (2) GTL's reported costs far exceed those reported by other providers serving comparable facilities.[263] Despite these shortcomings, the data from the providers' Second Mandatory Data Collection responses provide the best available data for determining the upper bounds of the zones of reasonableness.[264] We therefore use $0.133 per minute as the upper bound for determining a reasonable interstate provider-related rate cap for prisons and $0.218 per minute as the upper bound for determining a reasonable interstate provider-related rate cap for larger jails. In establishing these upper bounds, we are well aware that the industry's actual mean contract costs of providing inmate calling services plus one standard deviation are significantly lower.

88. *Determining Lower Bounds for the Zones of Reasonableness.* We find the approach we use to determine the upper bounds of the zones of reasonableness—relying on data from the Second Mandatory Data Collection and calculating the mean cost per minute plus one standard deviation relative to that mean separately for prisons and larger jails—provides an appropriate starting point for determining the lower bounds of the zones. Because of the shortcomings in the providers' reported data, we adjust those data using generally accepted statistical tools to remove outlier contracts and to replace GTL's reported data with data derived from contracts comparable to those GTL serves.[265] Under this approach, the mean cost per minute for prisons is $0.052, the standard deviation relative to that mean is $0.012, and the mean plus one standard deviation is $0.064 per minute. Similarly, the mean cost per minute for larger jails is $0.065, the standard deviation from that mean is $0.015, and the mean plus one standard deviation is $0.080 per minute.[266] These numbers—$0.064 per minute and $0.080 per minute—constitute the lower bounds of our zones of reasonableness for prisons and larger jails, respectively.

89. The construction of the lower bound begins by removing three outlying observations that skew the data and that would otherwise render the mean and standard deviation to be less precise measures of the data's central tendency.[267] These three outlier contracts report costs of {[ ]} per minute for larger jails in Williamson, Texas, San Luis, Arizona, and West Texas, Texas, respectively.[268] To put these cost levels in context, {[ ]} per minute is the highest cost per minute for

[262] *See 2002 Pay Telephone Order*, 17 FCC Rcd at 3252-53, para. 10; *supra* Part III.C; *see also GTL v. FCC*, 866 F.3d at 404 (discussing winning bidders' "locational monopolies").

[263] *See* Appx. G, *infra* Part B (indicating that GTL's average per-minute reported costs for prisons and larger jails are about {[ ]} as high as those of all other providers); GTL Sept. 14, 2020, Letter *passim*.

[264] *NARUC*, 737 F.2d at 1141-42 (upholding the Commission's ratemaking action when a lack of concrete data rendered alternative options "to some extent infirm"); *MCI v. FCC*, 627 F.2d at 340-42 (stating that "[t]he best must not become the enemy of the good," when holding that a lengthy delay caused by the Commission awaiting perfect data was unreasonable).

[265] The related assumptions and adjustments are described at greater length below, and in Appendix G, *infra*, (reviewing the data and concluding that these adjustments are reasonable); *see also* Public Interest Parties Brattle Report at 14.

[266] *See* Appx. G, *infra* (discussing and reviewing the calculations of the mean and standard deviation of the adjusted contract cost data for prisons and larger jails).

[267] The central tendency of a distribution refers to the degree to which data is clustered around a central value, frequently measured by the mean, median, or mode. In general, the data's dispersion (as measured by the standard deviation) and central tendency are the main properties defining a distribution.

[268] The outliers we address here were identified using the Grubbs method, a statistical approach we describe at length in Appendix G, *infra*.

any contract regardless of facility type or size, and {[ ]} and {[ ]} per minute are approximately three times and twice as large as the cost per minute for the next highest larger jail contract. Excluding these three outliers, costs per minute for larger jail contracts range from $0.03 to $0.17.[269] Nothing in the record supports using such extreme costs to set provider-related rate caps. Further, these contracts would remain outliers, even under alternative methods of outlier identification proposed in the record.[270]

90. Next, we substitute reasonable surrogates for GTL's reported cost data to address significant and unresolved issues with those data, as identified in the *2020 ICS Notice* and discussed more fully in this Report and Order.[271] These issues remain unresolved—and incurable on the record before us—because GTL failed to provide meaningful cost data in its Second Mandatory Data Collection response or in its response to the Bureau's July 15, 2020, Letter, or to suggest any alternative means of assisting the Commission in its efforts to estimate GTL's costs of providing inmate calling services. We find that the best way to address this situation is to adjust GTL's reported contract-level cost data using the *k*-nearest neighbor method.[272] Specifically, we replace the cost-per-paid-minute data reported for each prison and larger jail contract served by GTL with the weighted average of the data for the three most comparable (i.e., nearest neighbor) contracts served by other providers. To determine a contract's "neighbors," we compare its average daily population, total inmate calling services minutes, total commissions paid, and facility type to all other contracts in our dataset.[273] This approach reasonably preserves the non-cost information GTL reported for the prisons and larger jails it serves, while reducing the likelihood that the cost data for those facilities are overstated to a significant extent. We find that this approach, in combination with the removal of outlier observations as described above, provides a reasonable method for determining the lower bounds of the zones of reasonableness.

91. In the *2020 ICS Notice*, the Commission proposed to reduce GTL's reported costs by 10% in order to address its data reporting issues, an approach we now abandon in light of convincing opposition in the record.[274] Instead, we rely on the *k*-nearest neighbor method, rather than alternative

[269] *See, e.g.*, Appx. G, *infra* Part A (reviewing these observations and the magnitude by which they differ from the rest of the dataset). As we describe in Appendix E, a single observation from a prison contract reports a cost per minute of {[ ]}, which we conclude is clearly erroneous and omit in entirety. Appx. E, *infra* Part B.

[270] *See, e.g.*, Securus Comments at 14 (identifying an alternative method using 1.5 times the interquartile range of the dataset to identify outliers, which would also identify and exclude these observations); Securus Cost Study at 14-16 (discussing the use of 1.5 times the interquartile range to exclude outliers); *see also* Appx. E, *infra* (identifying several additional reasons why these contracts are considered outliers).

[271] *2020 ICS Notice*, 35 FCC Rcd at 8518-20, paras. 94-98; *see Boroughs of Ellwood City, Grove City, New Wilmington, Wampum, & Zelienople, Pa. v. FERC*, 731 F.2d 959, 965 (D.C. Cir. 1984) (declining to disturb the agency's interim decision to proceed with establishing a uniform method of calculating rate base elements despite a temporary sacrifice in accuracy). As we recount above, GTL's only reported direct costs for inmate calling services are bad debt costs, although it certainly incurs other direct costs that are causally related to providing inmate calling services. Additionally, GTL's reported total costs per minute are much higher than most other providers' reported total costs per minute, contrary to our expectation of economies of scale. In fact, GTL's total revenues per minute from prisons are less than its allocated costs per minute, the only provider for which this is true. *See generally* Appx. G, *infra*.

[272] *See American Public Communications*, 215 F.3d at 56 (upholding Commission action that relied on disputed cost data, stating that "we cannot require an agency to enter precise predictive judgments on all questions as to which neither its staff nor interested commenters have been able to supply certainty"). We describe this method in greater detail and show its application to GTL's data in Appendix G, *infra*.

[273] *See* Appx. G, *infra* (discussing the *k*-nearest neighbor approach).

[274] *See 2020 ICS Notice*, 35 FCC Rcd at 8517-18, para. 93. Commenters addressing this proposal were nearly unanimous in rejecting it. Some commenters observe that a 10% decrease would fail to resolve all of the issues presented by GTL's reported data, while others argue this approach suffers fundamental methodological flaws of its own. *See, e.g.*, GTL Godek Report at 20 (contending that the proposed 10% discount lacks an economic basis); (continued….)

methods for addressing the deficiencies in GTL's reported data, because we find it provides the best approach for setting the lower bounds of the zones of reasonableness. In particular, although the Winsor method also would provide a reasonable method for replacing GTL's data with surrogate data, that method would simply replace GTL's outlier data with the next-highest observation, as opposed to the multifactor comparison provided by our adopted approach.[275] In other words, the Winsor method would adjust costs downward to the next-highest observation without consideration of whether the contract with the next highest costs is similar in any other dimensions, such as minutes of use or average daily population. We find the *k*-nearest neighbor method's reliance on three comparable contracts makes it a superior tool for addressing the dataset before us because it identifies a greater degree of similarity between observations.

92. We also considered removing all of GTL's data from our lower bound calculations, an approach on which the Commission sought comment in the *2020 ICS Notice*.[276] We find this approach too sweeping, however, because it would exclude all of GTL's prisons and larger jails from our analysis. GTL's Second Mandatory Data Collection response includes extensive non-cost information on these facilities, regarding matters such as average daily population and paid minutes of use, that depict the inmate calling services operations of roughly {[ ]} of all prisons and larger jails, or roughly {[ ]} of the reported average daily population for those facilities. Excluding this information from our analysis would create a significantly incomplete picture of the industry, resulting in considerably less accurate estimates of industrywide mean contract costs.[277] Additionally, the remaining contract information from GTL's data provides necessary distinguishing characteristics that informed our selection of the nearest neighboring contracts.

93. *Determining Interim Interstate Provider-Related Rate Caps for Prisons and Larger Jails.* The upper bound of the zone of reasonableness for the provider-related rate cap for prisons is $0.133 per minute and the lower bound is $0.0643 per minute. For larger jails, the upper bound is $0.218 per minute and the lower bound is $0.0802 per minute. Based on our analysis of the available information, we find that $0.12 per minute will provide a reasonable interim interstate provider-related rate cap for prisons and that $0.14 per minute will provide a reasonable interim interstate provider-related rate cap for larger jails. Significantly, our analysis confirms that these interim interstate rate caps will allow most, if not all, providers to recover their costs (as reported in their responses to the Second Mandatory Data Collection and allocated among their contracts as described above) of providing interstate calling services to incarcerated people.[278] And, because those fully distributed costs likely overstate the actual costs of providing inmate calling services under any particular contract, we find it unlikely that any provider will be unable to recover its actual costs of providing interstate inmate calling services under any contract. To the extent that there are some small number of situations where a provider cannot recover its actual costs of providing interstate inmate calling services under our interim caps, we adopt a waiver process that will allow us to grant relief from those caps if we find such relief is warranted based on our analysis of data

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Public Interest Parties Comments at 5 (describing the reduction as "necessary but not sufficient"); Securus Comments at 20, 22-23 (criticizing the proposal for conflating financial data with accounting data); Securus Furchtgott-Roth Report at 17-21; Worth Rises Comments at 3-4 (arguing that a 10% decrease was inadequate to resolve all the flaws in GTL's reported data).

[275] Public Interest Parties Brattle Report at 14 n.70 (describing winsorization as "a technique where the outlier values are substituted with the highest value in the distribution without outliers," and citing Bonifacio Llamazares, *An Analysis of Winsorized Weighted Means*, 28 Group Decision and Negotiation 907-33 (2019)).

[276] *See 2020 ICS Notice*, 35 FCC Rcd at 8518, para. 94 (recognizing that GTL appeared to overstate its inmate calling services costs).

[277] *See* Appx. G, *infra*.

[278] *See* Appx. E, *infra* Part F (showing that under the interim caps, providers will recover their fully distributed reported costs for approximately {[} of prison contracts and {[ ]} of larger jail contracts).

that allows us to more accurately and precisely identify that provider's cost of providing interstate inmate calling services than can be achieved using the data currently before us.

94. A provider-related rate cap component of $0.12 per minute for prisons is $0.02 above the midpoint between the upper and lower bounds of the zone of reasonableness (approximately $0.10). The providers' incentives to overstate costs provide a compelling reason to set the rate cap significantly below that upper bound. We find that removal of outliers as reflected in the lower bound number based on our statistical approach to be appropriate as a general matter, given the need to measure the central tendency of the data as accurately as possible. We are reluctant to give this adjustment too much weight at this time, however, because we do not know the precise reason why these outlier estimates are so high. Although we also find the adjustment to GTL's costs to be fully justified, we are reluctant to place too much weight on this adjustment because this is an empirical approximation relying on the consistency and validity of the contract data reported by all other firms. After closely examining the imperfect data reported by providers that have an incentive to overstate their costs, and after developing the calculation of both of the upper and lower bounds, we find that an interim provider-related rate component of $0.12 per minute for prisons will allow providers to recover their actual costs of providing inmate calling services at those facilities, a conservative choice thereby ensuring that the providers will receive reasonable compensation for their services.

95. Likewise, we find that an interim rate cap of $0.14 per minute for larger jails will enable providers to recover their costs of providing interstate inmate calling services. In selecting this value, we assign significant weight to the result from the cost study conducted by Securus's outside consultant. This estimate, suggesting that Securus's cost of serving larger jails is at most {[ ]} per minute, is based on highly disaggregated cost data and a relatively sophisticated set of cost allocation procedures tailored specifically to the business of providing inmate calling services and appears to be consistent with cost-causation principles.[279] This number is the maximum per-minute cost estimate among the estimates Securus's consultant developed for Securus's larger jails, and we find that it provides a cushion large enough for providers to earn at least a normal risk-adjusted rate of return. Further, because there are relatively few providers for larger jails, as compared to the larger number of both large and small providers that serve jails with average daily populations less than 1,000, we would expect a small variance in the true per-minute costs of providing inmate calling services at larger jails, relative to the overall variance. A rate cap of $0.14 per minute provides an even larger cushion, further ensuring that providers will have the opportunity to recover actual costs.

96. A provider-related rate cap component of $0.14 per minute for larger jails is just below the midpoint between the upper and lower bounds of the zone of reasonableness (approximately $0.15), but still well above the lower bound of approximately $0.08. As with prisons, the providers' incentives to overstate their costs provide a compelling reason to set a rate cap significantly below the upper bound. We again are reluctant to place too much weight on the GTL data adjustment for the reasons discussed regarding prisons. After closely examining the data, we find that an interim provider-related rate component of $0.14 per minute for larger jails will enable the majority of providers to recover their actual costs of providing inmate calling services at those facilities. Further, we note that this $0.02 differential between the rates we select for prisons and larger jails approximates the 22% cost differential shown in the record.[280]

97. As we describe in Appendix E, we find that setting the provider-related rate component at these levels for prisons and larger jails will allow providers at substantially all facilities to recover their

[279] Securus Cost Study at 1 fig. 1 (identifying the maximum per-minute cost for Securus jails with average daily populations over 1,000 as {[ ]}).

[280] *See, e.g.*, Appx. E, *infra*.

reported costs.[281] The responses to the Second Mandatory Data Collection provide data for 129 prisons and 182 larger jails.[282] Following the process outlined in Appendix E, we find that 66 prisons and 15 larger jails reported per-minute costs above the respective interim provider-related rate caps.[283] Looking at these outliers more closely, however, reveals that all but three of these facilities (66 prisons and 12 larger jails) are served by GTL, which lacked the records to accurately determine its costs of providing calling services to incarcerated people.[284] This alone creates doubt as to whether these facilities should be viewed as legitimate outliers, rather than simply illustrations of the issues we observe throughout GTL's reported data.[285] The remaining facilities (three larger jails) all exhibit per-minute costs that exceed their per-minute revenues, suggesting that the actual costs of providing inmate calling services to them are lower than our estimates.[286] Finally, we reiterate that to the extent the actual costs of serving a facility exceed the applicable interim rate cap, a provider may request a waiver using the process set forth in this Report and Order.[287]

98. The record supports these interim rate cap choices. The cost study presented by Securus's outside consultant estimates that Securus incurs maximum per-minute costs of {[ ]} to serve prisons and {[ ]} to serve larger jails, exclusive of site commissions.[288] Although we find that these figures are overstated to the extent they calculate the return component of Securus's costs using the prices its current owners paid to purchase the company,[289] the study's cost estimates suggest that interim provider-related rates caps of $0.12 for prisons and $0.14 for larger jails will provide a cushion large enough for the providers at those facilities to earn at least a normal risk-adjusted rate of return on their capital investment in providing inmate calling services.[290] Although we do not agree with every aspect of this study, we find that a number of factors support its credibility and that it therefore provides valuable supporting evidence that the rate caps we choose here provide an adequate interim allowance for differences among providers and markets, relative to the average inmate calling services costs reflected in the data filed in response to the Second Mandatory Data Collection.[291]

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[281] Analysis of contract revenues and underlying contract characteristics also suggests a significant majority of these contracts would be viable at our proposed caps. *See generally* Appx. E, *infra*.

[282] *See generally id.* (reporting the number of facilities of different types reflected in the data).

[283] *See generally id. See also* Securus Comments at 20 (arguing that "the Commission should calculate how many facilities will have contract costs above rate caps and explain why they will not be fully compensated").

[284] *See* Appx. G, *infra*; *supra* paras. 88-89.

[285] Repeating this analysis after adjusting GTL's cost data using the *k*-nearest neighbor approach used to set the lower bound shows that all of GTL's facilities would have per-minute costs below the interim interstate provider-related rate caps. *See* Appx. G, *infra*.

[286] *See, e.g.*, Appx. E, *infra*.

[287] As indicated in the *2020 ICS Notice*, "the Commission has permitted inmate calling services providers to file a petition for a waiver if it believed it could not recover its costs under the Commission-adopted rate caps." *2020 ICS Notice*, 35 FCC Rcd at 8523-24, para. 108 (citing *2013 ICS Order*, 28 FCC Rcd at 14153, para. 82); *see 2015 ICS Order*, 30 FCC Rcd at 12871, para. 219. We refine our waiver procedure today. *Infra* Part III.C.5.

[288] *See* Securus Cost Study at 2-4 (discussing source materials and methodologies); Appx. E, *infra* Part F (same).

[289] *See* Securus May 13, 2021 *Ex Parte* at 3; Appx. E, *infra* Part F.

[290] As the {[ ]} per minute cost has been specifically developed for providers at these largest jails, and there are relatively few of these providers, we would not expect there to be a big variance in the true per-minute costs of providing inmate calling services at these jails. *See generally* Securus Cost Study at 17, fig. 8; Appx. E, *infra* Part E (observing that, using a simple average methodology, Securus calculated costs plus a standard deviation of {[ ]} for its prisons and {[ ]} for its larger jails).

[291] *See generally* Appx. E, *infra* Part E (discussing the abundant rationale in favor of credibility).

99. Our analysis of the mean per-minute revenues from prisons and larger jails further corroborates our choices. As discussed in Appendix E, our revenue analysis indicates that it will be commercially viable for providers to serve the vast majority of prisons and larger jails under the provider-related rate caps we adopt today.[292] For example, as the Appendix illustrates, approximately 74% of prisons and 65% of larger jails have reported per-minute revenues net of site commissions under those interim caps.[293] Because profit-maximizing firms are unlikely to bid for contracts at which they will operate at a loss, this suggests the interim interstate caps will not undermine providers' profitability.[294] And a large portion of the remaining prisons and larger jails—those with per-minute revenues that are higher than $0.12 and $0.14 per minute, respectively—have allocated per-minute costs less than the applicable interim provider-elated rate caps, which likewise suggests they will remain profitable under those caps.[295] In total, therefore, our interim rate caps will allow approximately 81% of all prison contracts and approximately 96% of all larger jail contracts to cover the costs the providers reported in response to the Second Mandatory Data Collection.[296] These percentages would be even higher if we were to exclude the providers' costs of providing ancillary services and otherwise rely on the providers' actual, rather than reported, costs.[297] These percentages are also higher if we allow for the increased call minutes that will likely result because our new interim caps will, by lowering prices, increase call volumes.[298] And these cost recovery figures ignore that all costs are likely overstated, such that there is further reason to believe these percentages would be even higher in practice.

4. Accounting for Correctional Facility Costs

100. Based on the record, we adopt additional new interim[299] rate cap components (the facility-related rate components) reflecting two different types of site commission payments[300]—those required under codified law or regulations and those payments prescribed under negotiated contracts—made to correctional facilities.[301] The *2020 ICS Notice* proposed to permit providers to recover an additional

[292] *See generally* Appx. E, *infra* Part F (reviewing the revenue analysis).

[293] Revenues net of site commissions are reported revenues minus reported site commission payments.

[294] We expect these revenues to cover costs of service below $0.12 per-minute for prisons and $0.14 per minute for larger jails, because higher costs would make such contracts unprofitable, and providers would have no reason to voluntarily accept such terms. *See* Appx. E, *infra* Part F.

[295] *See* Appx. E, *infra* Part F (concluding that 89% of the larger jails that present high revenues (greater than $0.14 per minute) have allocated per-minute costs of less than $0.14, and that 27% of high-revenue prisons (greater than $0.12 per minute) have allocated per-minute costs of less than $0.12).

[296] *See generally* Appx. E, *infra.*

[297] *See* Appx. E, *infra* (observing that "our revenue analysis includes revenues from automated billing and paper billing fees, our cap only applies to per call fees" and that "providers can earn additional revenues through these fees").

[298] See Appx. E, *infra* Part F.

[299] At the outset, and as explained in greater detail in this section, we emphasize that the facility-related rate components are interim reforms reflecting the limitations of the record before us and the current regulatory backdrop. *See* Letter from Gregory R. Capobianco, Counsel for the Wright Petitioners, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 3 (filed May 14, 2021) (Wright Petitioners May 14, 2021 *Ex Parte*) (requesting that the Commission emphasize the interim nature of these reforms).

[300] *See* 47 CFR § 64.6000(t) (defining site commissions). Site commission payments are payments made by calling services providers to correctional facilities and broadly encompass any form of monetary payment, in-kind payment requirement, gift, exchange of services or goods, fee, technology allowance, product or the like. They can be expressed in a variety of ways, including as per-call or per-minute charges, a percentage of revenue, or a flat fee. *2015 ICS Order*, 30 FCC Rcd at 12818, para. 117 & n.371.

[301] *See, e.g.*, *GTL v. FCC*, 866 F.3d at 413 (explaining that site commissions can be "mandated by state statute" or "required by state correctional institutions as a condition of doing business with [inmate calling services]

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$0.02 per minute for all types and sizes of facilities to account for the costs correctional facilities incur that are directly related to the provision of inmate calling services.[302] We adopt a modified version of that proposal based on record evidence that $0.02 per minute for every facility may not permit recovery of all legitimate facility costs related to inmate calling services, and may not be required at others.[303] For the time being, we decline to adopt defined facility-related rate components for jails with average daily populations below 1,000. Instead, for prisons and larger jails only, we adopt two distinct interim site commission-related rate components reflecting different types of site commissions: site commission payments that providers are obligated to pay under laws or regulations[304] and payments that providers agree, by contract, to make.

101. First, with regard to the former type of site commission, we adopt an interim legally mandated facility rate component that reflects payments that providers make to correctional facilities pursuant to law or regulation that operates independently of the contracting process between correctional institutions and providers.[305] These mandatory payments take varied forms, including per-call charges[306]

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providers"); GTL Godek Reply Report at 8 (highlighting that site commissions are "determined by the facilities or by regulations"); GTL Apr. 26, 2021 *Ex Parte* Godek Report at 6 (commenting that site commissions "are determined by one or more of the following conditions: they can be a) set or constrained by regulation, b) set by the facility at some level or within some range, and c) determined as part of the competitive bidding process established by the facility").

[302] *2020 ICS Notice*, 35 FCC Rcd at 8520-23, paras. 99-107.

[303] *See, e.g.*, Sheriffs' Association Comments at 2 (cautioning that a one-size-fits-all approach may not allow for consideration of the "many variables" associated with the cost of providing inmate calling services); National Sheriffs' Association Comments at 1 (highlighting that the proposed $0.02 allowance "does not accurately capture the costs for smaller jails"); Securus Comments at 33 (emphasizing that "a 'one-size-fits-all' allowance for site commissions does not apply to the varying needs of each agency for site commissions"); Pay Tel Reply at 11 (explaining that the Commission's proposed $0.02 "flat" recovery across all facilities is at odds with the Commission's prior conclusions regarding the impact of facility size on costs).

[304] In referring to "law or regulation" we mean state statutes and laws and regulations that are adopted pursuant to state administrative procedure statutes where there is notice and an opportunity for public comment such as by a state public utility commission or similar regulatory body with jurisdiction to establish inmate calling rates, terms and conditions. We specifically do not intend to include "regulations" for which no formal administrative process occurred prior to adoption and we also do not intend to include contractual negotiations that are merely approved or endorsed by state or local law. *See* Prison Policy Initiative May 13, 2021 *Ex Parte* at 2-3; Wright Petitioners May 14, 2021 *Ex Parte* at 4. This approach to defining what are, by default, laws or regulations requiring site commission payments guards against the risk of abuse from a broader definition, given evidence that state and local correctional facilities might themselves be able to create so-called 'rules' or 'regulations' outside of formal process—simply by exercising their discretion regarding site commission payments in a different manner—and thereby evade the analytical differences underlying this distinction in our interim rules. *See* Prison Policy Initiative May 13, 2021 *Ex Parte* at 2-3; *see also* Letter from Cheryl A. Leanza, Policy Advisor, United Church of Christ, Office of Communication Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1(filed May 12, 2021) (UCC May 12, 2021 *Ex Parte*) (expressing concern that the Commission's distinction between legally mandated and contractually required site commission payments could be subject to gamesmanship); Wright Petitioners May 14, 2021 *Ex Parte* at 4 (explaining that legally mandated site commission payments may "create incentives for providers to lobby state and local governments to enact statutes that establish unreasonable or open-ended site commissions"). To the extent that a scenario arises that falls outside our definition that a provider or correctional institution believes should be treated as a qualifying law or regulation, it is free to seek a waiver where the Commission can conduct a careful case-by-case review to ensure no evasion or abuse is occurring.

[305] *See, e.g.*, GTL Comments at 28-30 (providing examples of state site commission requirements); Securus Comments at 32-33 (contrasting jurisdictions prohibiting site commissions with those that require them).

[306] *See, e.g.*, Tenn. Code Ann. § 41-7-104 (West 2013) (requiring a fee of $0.10 for each completed inmate calling services call). Securus argues that this statute is a "general fee provision" that should be treated as a mandatory tax or fee rather than a site commission subject to our interim reforms here. Securus May 13, 2021 *Ex Parte* at 5. As (continued….)

or prescribed revenue percentages,[307] and may be imposed on calling service providers by state governments through statutes or regulations. Given the "mandatory" nature of these payments, for the purpose of the interim actions we take herein and based solely on the current record, we recognize them as a cost that providers must incur to provide calling services, consistent with section 276's fair compensation provision.[308] For now, providers may recover the costs of these payments, without any markup, as a separate component of the total permissible interstate and international rate caps we adopt today.[309]

102. As with other reforms in this Report and Order, we emphasize that our adoption of a legally mandated facility rate component is an interim reform that is aimed to balance the need to achieve immediate rate relief in light of the history of this proceeding, the record before us, and the exigent circumstances presented by the COVID-19 pandemic, consistent with the strictures of the D.C. Circuit's decision in *GTL v. FCC*. We conclude, for purposes of this interim reform, that adopting a legally mandated facility rate component is consistent with the fair compensation mandate of section 276.[310] We lack the evidence, however, to determine on a permanent basis whether and what portion of these payments are "legitimately" related to the cost of providing the service. We leave such determinations to our forthcoming action on the Further Notice accompanying this Report and Order.

103. Next, we adopt a contractually prescribed facility rate component that permits providers to recover, as a component of their total per-minute interstate and international calling rates for prisons and larger jails, that portion of such site commission payments that we determine for the purpose of this interim action is reasonably related to the facility's cost of enabling inmate calling services at that facility. Site commission payments prescribed under negotiated contracts impose contractual obligations on the provider and, in our judgment, on the current record, reflect not only correctional officials' discretion as to whether to request site commission payments as part of requests for proposals,[311] and if so in what form and amount,[312] but also providers' voluntary decisions to offer payments to facilities that are mutually beneficial[313] in the course of the bidding and subsequent contracting process.[314] Providers may recover up

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explained above, providers are free to seek a waiver if they believe that a law or regulation should not be treated as a legally mandated site commission but we do not have sufficient information to make particular factual determinations in this Report and Order about any particular state mandated payment. We do confirm that our interim rate reforms do not include Mandatory Taxes or Fees as defined in the Commission's rules. *See* 47 CFR §§ 64.6000(t), 64.6070.

[307] *See, e.g.*, Tex. Gov't Code Ann. § 495.027(a) (West 2021) (requiring a commission amounting to 40% of gross revenue).

[308] *GTL v. FCC*, 866 F.3d at 413.

[309] In no event, however, can the total rate cap exceed $0.21 per minute. *See infra* para. 105.

[310] *See* Wright Petitioners May 14, 2021 *Ex Parte* at 4.

[311] *See* GTL Godek Report at 21 (highlighting that "site commissions . . . are determined through the various competitive processes used in the award of [inmate calling services] contracts"); Pay Tel Comments at 10 (explaining that "facilities generally impose these . . . required costs on [inmate calling services] providers as a condition precedent to the providers' ability to offer [inmate calling services] that flows through the site-commission-imposing correctional facility"); Securus Comments at 26-27.

[312] *See, e.g.*, Wis. Stat. Ann. § 301.105 (West 2020) ("The department shall collect moneys for commissions from telephone companies for contracts to provide telephone services to inmates."); Or. Rev. Stat. Ann. § 169.681 (West 2020) (limiting site commission fees to $0.05 per minute or less).

[313] *See, e.g.*, Agreement for the Installation, Configuration and Maintenance of an Inmate Telephone System Between Department of Correction, City of New York, and Securus at 14, 19, paras. 3.51, 9.7 (July 16, 2014), https://www.prisonphonejustice.org/media/publications/2019_Amended_NYC_Securus_Contract.pdf (Securus-New York City Contract) (City of New York contract with Securus, providing for a revenue share model of 81.1% with minimum $5 million guarantee in exchange for Securus's exclusive right to serve the City's correctional facilities
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to $0.02 per minute to account for these facility costs. Where a law or regulation merely allows a correctional facility to collect site commissions, requires a correctional facility to collect some amount of site commission payment but does not prescribe any specific amount, or is not subject to state administrative procedural requirements, site commissions would also fall into the category of a site commission payment prescribed by contract, because the correctional facilities and providers can negotiate, in their discretion, regarding how much the providers will pay in site commissions.

104. To promote increased transparency regarding the total rates charged to consumers of inmate calling services, we require providers to clearly label a legally mandated facility rate component or a contractually prescribed facility rate component, as applicable, in the rates and charges portion of an calling services consumer's bill, including disclosing the source of such provider's obligation to pay that facility-related rate component.[315]

105. Finally, to avoid any confusion, we reiterate that nothing in this section, or any other section of this Report and Order, is intended to result in a higher permissible *total* rate cap for any interstate call from any size facility than the $0.21 that existed for interstate debit and prepaid calls before today and that continues to apply to all providers for all types of calls from jail facilities with average daily populations below 1,000.[316] During the eight-year period that providers have been subject to the $0.21 rate cap for all facilities, they have had the ability to avail themselves of a waiver process if they deemed that rate cap to be insufficient to enable them to recover their inmate calling services costs. With the exception of a single temporary waiver request relating specifically to the interim rate caps dating back to 2014, no other provider has sought a waiver of the $0.21 interstate rate cap claiming that cap fails to permit recovery of that provider's costs at any size facility.[317] The absence of further waiver requests

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not only for interstate and intrastate phone calls but also for "messaging," "email," and all other "existing and future inmate related communications"). This contract was subsequently amended (Amendment 3, executed May 1, 2019) to exclude all revenue-share payments, among other changes, resulting from changes in the applicable local law. *See* New York City Council, Local Law No. 2018/144 (codified at N.Y.C. Admin. Code § 9-154 (West 2021)).

[314] The fact that a state law specifically permits certain correctional facilities to recover site commissions from providers but does not mandate such payments does not change the nature of these discretionary payments. *See, e.g.*, Or. Rev. Stat. Ann. § 169.681 (West 2020) (limiting site commission fees to $0.05 per minute or less); Securus Comments at 28 (describing Cal. Penal Code § 4025(d) (West 2021) which specifically allows sheriffs to receive commission payments from inmate calling services providers); *see also, e.g.*, Response of GTL to Request for Information and Documents Regarding GTL's Inmate Calling Services Costs, WC Docket No. 12-375, Attach., Documents – GTL Response to Request #14 (filed Sept. 14, 2020) (GTL Sept. 14, 2020 Response) {[

]}.GTL Sept. 14, 2020 Response Attach., Documents – GTL Response to Request #14, {[

]}.

[315] Providers that make no site commission payments (and thus are not permitted to pass any facility-related rate component on to consumers) are not required to include a facility-related rate component line item on end user bills.

[316] *See supra* Part III.C.1.

[317] *See Rates for Interstate Inmate Calling Services*; *Pay Tel Communications, Inc.'s Petition for Waiver of Interim Interstate ICS Rates*, WC Docket No. 12-375, Order, 29 FCC Rcd 1302 (WCB 2014). We note that Securus filed a general "me too" waiver request in 2014 asking the Commission to extend Pay Tel's limited waiver to all other providers serving the same size jails. *See Rates for Interstate Inmate Calling Services*; *Securus Technologies, Inc., Petition to Expand Pay Tel Waiver*; *Securus Technologies, Inc., Petition for Leave to Add Fee for Voice Biometrics Technology*, WC Docket No. 12-375, Order, 29 FCC Rcd 5973 (WCB 2014) (*Securus Waiver Order*). The Commission denied Securus's waiver request without prejudice as Securus failed to make an adequate showing for a waiver to be granted, and also failed to provide sufficient, or any, cost and revenue data to support its claims.
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over the past eight years leads us to conclude that $0.21 is sufficient for providers to recover their costs, including any costs related to site commission payments. Thus, no provider may assess a provider-related rate component and facility-related rate component that, added together, results in a total interstate rate for any interstate call from any size facility of more than $0.21. Operationally, providers remain free to impose the legally mandated facility rate component at the level specified by the relevant statute or rule. If the resulting cumulative total rate exceeds $0.21 per minute, providers would need to charge a lower provider-related rate. Based on our understanding and awareness of the various state statutes or rules that underlie legally mandated facility rate components, we do not expect this to occur, however. Nevertheless, providers that cannot cover their inmate calling services costs under the $0.21 per minute total maximum rate cap may seek a waiver of our interim rate caps.

106. As with the provider-related rate caps we adopt today, our decision to allow a $0.02 additive for contractual site commissions and the full pass-through of legally mandated site commissions pursuant to section 276 up to the $0.21 cap are interim steps that we adopt in light of the history of this proceeding, the available record, and the exigent circumstances caused by the COVID-19 pandemic, including the related decision by many prisons and jails to prohibit in-person visitation. Nothing in today's decision limits our ability, on a more complete record and with sufficient notice, to reconsider this treatment of site commission payments, and indeed we seek detailed comment in the attached Further Notice on site commissions, including what portion of all site commission payments, if any, actually represent "legitimate costs" connected to inmate calling services.[318]

107. *Background*. The Commission has historically described site commission payments as "a division of locational monopoly profit."[319] Over the past five years, however, the Commission has recognized that site commissions may not always exclusively compensate correctional facilities "for the transfer of their market power over inmate calling services to the inmate calling services provider;" in some instances, site commission payments may serve in part to compensate correctional facilities for costs that the facilities "reasonably incur in the provision of inmate calling services."[320] Although the Commission and the D.C. Circuit each have recognized the distinction between portions of these payments,[321] we agree with commenters, particularly on this record, that it is "difficult to disentangle

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Securus Waiver Order, 29 FCC Rcd at 5978, para. 12. In addition, a handful of other waiver requests relating to other sections of the inmate calling services rules have also been filed but these waivers typically related to timeframes within which new regulations associated with ancillary services reforms became effective. *See, e.g.*, GTL Petition for Waiver of Deadline to Implement Rule 64.6110 for Prisons, WC Docket No. 12-375 (filed Jan. 5, 2016), https://ecfsapi.fcc.gov/file/60001400604.pdf; GTL Petition for Waiver of Deadline to Implement Rule 64.6100(a) for Prisons, WC Docket No. 12-375 (filed Jan. 8, 2016), https://ecfsapi.fcc.gov/file/60001402728.pdf; GTL Petition for Waiver of Deadline to Implement Rules 64.6080 and 64.6090 for Jails, WC Docket No. 12-375 (filed June 1, 2016), https://ecfsapi.fcc.gov/file/60002090309.pdf.

[318] *See* UCC May 12, 2021 *Ex Parte* (expressing concern that the Commission's decision could constrain its ability to address matters in the Further Notice); *see also* UCC May 14, 2021 *Ex Parte* at 2 (explaining that no portion of site commissions are legitimate because none are related to the provision of calling services, and asking the Commission to preempt commissions that would cause rates to exceed caps).

[319] *See, e.g., Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Third Report and Order, and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545, 2562 para. 37 (1999) (*1999 Pay Telephone Order*); Public Interest Parties Comments at 7 n.36; Letter from Cheryl A. Leanza, Policy Advisor, United Church of Christ, Office of Communication Inc. & Al Kramer, Senior Fellow, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1-2 (filed Mar. 31, 2021) (UCC and Public Knowledge Mar. 31, 2021 *Ex Parte*) (highlighting that the Commission "rejected that these locational payments could be treated as costs" in the *1999 Pay Telephone Order*).

[320] *See, e.g., 2020 ICS Notice*, 35 FCC Rcd at 8520, para. 100; *see also* Public Interest Parties Comments at 7 n.36.

[321] *GTL v. FCC*, 866 F.3d at 414 ("We also leave it to the Commission to assess on remand which portions of site commissions might be directly related to the provision of [inmate calling services] and therefore legitimate, and (continued….)

which part of the site commission payment goes towards reasonable costs and which portion is due to the transfer of market power."[322]

108. Although the Commission declined to permit the recovery of any portion of site commission payments to account for facility-related costs in the *2015 ICS Order*,[323] the Commission explained that record evidence suggested that if "facilities incurred any legitimate costs in connection with [inmate calling services], those costs would likely amount to no more than one or two cents per billable minute."[324] In 2016, when the Commission reconsidered its decision to categorically exclude site commissions in the *2015 ICS Order*, it concluded that some facilities likely incur costs directly related to the provision of inmate calling services that may amount to more than one or two cents a minute.[325] The Commission therefore increased the rate caps it had adopted in the *2015 ICS Order* to "better ensure that providers are able to receive fair compensation for their services" by adopting an additive to the 2015 rate caps that differed among facility size.[326] The data and other evidence supporting the 2016 facility-cost additives suggested that per-minute facility costs associated with inmate calling services were higher in smaller facilities than in larger ones, so the Commission adopted a tiered framework for site commission payments based on facilities' average daily populations.[327] These rate tiers mirrored the tiers the Commission had used to establish the permanent rate caps adopted in the *2015 ICS Order*.[328]

109. The D.C. Circuit's 2017 vacatur of the *2015 ICS Order* rate caps in *GTL v. FCC*, based in part on the finding that the Commission's decision to categorically exclude site commission payments from those rate caps was arbitrary and capricious,[329] led the Commission to ask questions in the *2020 ICS Notice* aimed at determining "which portions of site commissions might be directly related to the provision of inmate calling services and therefore legitimate, and which are not."[330] The *2020 ICS Notice* proposed a $0.02 per minute additive based on staff "analysis of the costs correctional facilities incur that are directly related to providing inmate calling services and that the facilities recover from calling service providers as reflected by comparing provider cost data for facilities with and without site commissions."[331] The Commission sought comment on its analysis, including whether it should vary the allowance for site commission payments based on a facility's average daily population.[332] It also sought

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which are not."); *2013 ICS Order*, 28 FCC Rcd at 14135-36, para. 54 n.203 ("Although it is clear that site commissions are a revenue stream to the correctional facility, we cannot foreclose the possibility that some portion of payments from [inmate calling services] providers to some correctional facilities may, in certain circumstances, reimburse correctional facilities for their costs of providing [inmate calling services]").

[322] Public Interest Parties Brattle Reply Report at 14.

[323] *2015 ICS Order*, 30 FCC Rcd at 12835, para. 139 (leaving the issue of site commissions "to [inmate calling services] providers and facilities to negotiate the amount of any payments from the providers to the facilities, provided that those payments do not drive the provider's rates above the applicable rate cap").

[324] *Id.*

[325] *2016 ICS Reconsideration Order*, 31 FCC Rcd at 9309, para. 17.

[326] *Id.* at 9307, para. 12.

[327] *Id.* at 9307, 9311, paras. 12, 22.

[328] *2015 ICS Order*, 30 FCC Rcd at 12787, para. 48.

[329] *GTL v. FCC*, 866 F.3d at 417. Because the revised rate caps adopted on reconsideration in 2016 to provide for the recovery of site commission costs were based on the same methodology the court had vacated in *GTL v. FCC*, the D.C. Circuit also vacated and remanded the *2016 ICS Reconsideration Order*. *2017 Securus*, 2017 U.S. App. LEXIS 26360, at *4-5.

[330] *2020 ICS Notice*, 35 FCC Rcd 8522, para. 103.

[331] *2020 ICS Notice*, 35 FCC Rcd at 8522, para. 103; *see also id.* at 8572, Appx. H.

[332] *Id.* at 8522, para. 103.

comment on whether a $0.02 per minute allowance would be adequate to cover the costs that jails with average daily populations less than 1,000 incur in connection with the provision of interstate and international inmate calling services.[333] The Commission asked correctional facilities to "provide detailed information concerning the specific costs they incur in connection with the provision of inmate calling services."[334]

110. *Full Recovery of Site Commissions Is Not Required*. Some providers argue that the Commission must allow for full recovery of all site commission payments because inmate calling services providers "are required to pay site commissions and have no say in the elimination or substantial reduction of such commissions."[335] We disagree.

111. The D.C. Circuit held that, because the Commission acknowledged that some portion of some providers' site commission payments might represent "legitimate" costs of providing inmate calling services, the Commission could not reasonably "categorically exclude[] site commissions and then set the rate caps at below cost."[336] "Ignoring costs that the Commission acknowledges to be legitimate," the court explained, "is implausible."[337] But the court left it to the Commission to determine "*which portions* of site commissions *might be directly related to the provision of ICS and therefore legitimate*, and which are not."[338]

112. Under section 201(b), the Commission has a duty to ensure that "charges" and "practices" "for and in connection with" interstate and international telecommunications services—including inmate calling services—are not "unjust or unreasonable."[339] As explained, incarcerated people and the people they call have no choice in their telephone service provider.[340] Instead, each correctional facility has a single provider of inmate calling services that operates as a monopolist within that facility. And very often, correctional authorities award the monopoly franchise for inmate calling services based in part on what portion of inmate calling services revenues a provider has offered to share with the facility.[341] Without effective regulation, providers bidding for a facility's monopoly franchise compete to offer the highest site commission payments, which they then recover through correspondingly higher rates charged to incarcerated people and their families.

113. As discussed in greater detail below, in view of these market dynamics, and based on the record, we reject the claim that any and all site commission payments that a provider might elect to offer a correctional facility in the course of contract negotiations for the facility's monopoly franchise are "real, required costs [forced] on [inmate calling services] providers as a condition precedent to the providers' ability to offer [inmate calling services]."[342] That claim is at odds with well-established principles of

[333] *Id.* para. 104.

[334] *Id.* paras. 103-04.

[335] Securus Comments at 29; *see* GTL Comments at 30; Pay Tel Comments at 8-9.

[336] *GTL v. FCC*, 866 F.3d at 413 (internal quotation marks omitted).

[337] *Id.*

[338] *Id.* at 414 (emphasis added); *see also* UCC and Public Knowledge Mar. 31, 2021 *Ex Parte* at 5 (explaining that the D.C. Circuit's remand "left it open to the Commission, based on a reasoned analysis, to conclude that no portion of the site commissions are part of the legitimate cost of providing the service if that is what the record reveals").

[339] 47 U.S.C. § 201(b).

[340] *See supra* Part III.A.

[341] *See, e.g.*, Human Rights Defense Center Comments at 2 (highlighting that calling service providers "surrendered larger and larger shares of their billed phone rates as kickbacks to the detention facilities that offered them monopoly contracts").

[342] Pay Tel Comments at 10; *see also* GTL Reply at 11 (claiming that site commissions are "a condition of doing business").

ratemaking.[343] And the providers' position has no limiting principle. Under their logic, incarcerated people and the people with whom they communicate by telephone may be forced to pay rates for the calling services they use that cover items wholly unrelated to those services.[344] This cannot be reconciled with our statutory duty to ensure that incarcerated people and the people with whom they speak are charged "just and reasonable" rates for inmate calling services.[345]

114. Neither *GTL v. FCC* nor section 276 of the Act compels a different conclusion. As we have observed, and as the court acknowledged in *GTL v. FCC*, the Commission is entitled "to assess on remand which portions of site commissions might be directly related to the provision of [inmate calling services] and therefore legitimate, and which are not."[346] And "fair" compensation for providers of

[343] *See, e.g., NARUC v. FERC*, 475 F.3d 1277, 1280 (D.C. Cir. 2007) ("[A] common test for the lawfulness of rates is their connection to the reasonably-incurred costs of providing the regulated service."); *NAACP v. FPC*, 425 U.S. 662, 666-69 (1976) (holding that the Federal Power Commission's statutory authority to "establish 'just and reasonable' rates" gave the agency 'ample authority' to prevent a regulatee from charging consumers for "unnecessary or illegitimate costs" that the regulatee might incur through "racially discriminatory employment practices"); *see also infra* paras. 116-33 (discussing contractually prescribed and legally mandated site commissions in the context of the longstanding section 201(b) framework recognizing that just and reasonable rates are focused on recovering prudently incurred investments and expenses that are used and useful in the provision of the regulated services).

[344] *See, e.g.*, Human Rights Defense Center Comments at 3 (explaining that "no one really knows how much these . . . companies spend in kickbacks, criminal bribes, campaign donations, lobbying and other expenses to secure these contracts"); Peter Wagner & Alexi Jones, Prison Policy Initiative, *On Kickbacks and Commissions in the Prison and Jail Phone Market* (Feb. 11 2019), https://www.prisonpolicy.org/blog/2019/02/11/kickbacks-and-commissions/ (Prison Policy Initiative Site Commissions Briefing) (referencing campaign contributions and payments to "influential sheriff-led associations"); *2015 ICS Order*, 30 FCC Rcd at 12825, para. 127 (explaining that site commissions "fund a wide and disparate range of activities, including general governmental or correctional activities unrelated to the costs of providing [inmate calling services] by either the provider or the facility").

[345] The claim that any and all site commission payments are costs reasonably related to the provision of interstate and international inmate calling services is particularly implausible with respect to future contracts. At least where site commissions are not required under formally codified laws or regulations, providers of inmate calling services cannot reasonably contend that they are bound to offer, or agree to pay, site commissions that are uneconomical for them on a going forward basis. The record before us suggests that if, in the wake of this Report and Order, providers of inmate calling services should offer to pay site commissions at levels higher than they can recover through interstate and international inmate calling services rates, that is because they expect to profit from obtaining the franchise at a given facility in other ways (e.g., by recovering the cost of the site commission payments they offer through intrastate inmate calling services rates or through revenue generated by providing other, nonregulated services). *See, e.g.*, Public Interest Parties July 29, 2020 *Ex Parte* at 5 (discussing the bundling of products and services); Prison Policy Initiative Site Commissions Briefing (alleging that providers make money by "bundling other profitable services into the contract, and sharing none of this additional revenue with the facilities"); Letter from Stephen Raher, Pro Bono Counsel, Prison Policy Initiative, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1-2 (filed Mar. 23, 2021) (Prison Policy Initiative Mar. 23, 2021 *Ex Parte*) (providing evidence that inmate calling services providers bundle voice service with other nonregulated services). Even with respect to existing contracts, we disagree that any and all site commissions that a provider has agreed to pay are costs reasonably related to the provision of interstate and international inmate calling services. As we discuss above, *see supra* Part II, the Commission's proceeding on how to regulate rates for interstate inmate calling services has been underway for many years. Throughout this period, providers have understood that the Commission might seek to bar the recovery of some or all site commissions through interstate rates. *See 2014 ICS Notice*, 29 FCC Rcd at 13187, para. 37. Under the circumstances, whatever the providers offered to pay, they offered at their own risk. *See infra* paras. 118-22.

[346] *GTL v. FCC*, 866 F.3d at 414; *see also id.* at 425 (Pillard, J., dissenting) (highlighting that "the majority invites the FCC to determine whether 'some portions of site commissions' are illegitimate and non-compensable"). Due to the D.C. Circuit's remand on the issue of site commissions, we decline NCIC's recommendation that the Commission simply "not disturb site commissions." *See* Letter from Glenn S. Richards & Lee G. Petro, Counsel for NCIC, to Marlene Dortch, Secretary, FCC, WC Docket No. 12-375, at 1 (filed Apr. 22, 2021). To leave the issue of (continued….)

inmate calling services, under section 276, does not mean that providers must be able to recover, through rates for interstate and international inmate calling services, revenue-sharing payments that they agree voluntarily to make to encourage a correctional facility to select them as the monopoly franchise holder for inmate calling services (both interstate/international and intrastate) and often other nonregulated services, too.[347]

115. On the present record, we cannot conclude that Commission precedent requires, at least based on current law and policy, that we treat all site commissions *solely* as a division of locational monopoly profits none of which are recoverable through rates, as the United Church of Christ and Public Knowledge urge.[348] The United Church of Christ and Public Knowledge rely on the Commission's conclusion in the *1999 Pay Telephone Order* that site commissions "should be treated as a form of profit rather than a cost."[349] As explained above, while the Commission has *historically* viewed site commissions as a division of monopoly profits, it took a different view in later decisions.[350] For example, in the *1999 Pay Telephone Order* the Commission reasoned that site commission payments are not costs because the ability to offer a site commission payment occurs "only when a particular payphone location generates a number of calls that exceeds the break-even number of calls" thereby producing "additional profit" that can be paid to the location owner.[351] The *1999 Pay Telephone Order* also expressed confidence that providers reasonably could expect there to be locations where they would be allowed to operate payphones without paying locational rent.[352] On the current record, we are not persuaded that we can apply those conclusions regarding locational rents from the traditional payphone context at the time of the *1999 Pay Telephone Order* to site commission payments in the inmate calling service context today given their tension with the Commission's views regarding the recoverability of certain correctional facility costs in the *2016 ICS Reconsideration Order*,[353] as well as the D.C. Circuit's rejection of the categorical exclusion of site commission payments from recovery in inmate calling service rates at issue in *GTL v. FCC*.[354] Thus, while we conclude that full recovery of site commissions is not required, we

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site commissions untouched by our actions today would be contrary to our mandate to ensure just and reasonable rates under section 201(b) of the Act.

[347] *See 2002 Pay Telephone Order*, 17 FCC Rcd at 3255-56, para. 18 (explaining that compensation is fair if each call "recovers at least its incremental costs, and no one service [(e.g., interstate calling services)] recovers more than its stand-alone cost"); UCC and Public Knowledge Mar. 31, 2021 *Ex Parte* at 7 ("There was no intent that the Commission make sure that every particular call was compensated at or above its cost."); c*f.* Public Interest Parties Reply at 13 (explaining that the allowance for site commissions "allows for a reasonable *portion* of the cost of a site commission to be compensated on a per-call basis" under section 276 of the Act) (emphasis added).

[348] UCC and Public Knowledge Mar. 31, 2021 *Ex Parte* at 1-2; *see also* Letter from Cheryl A. Leanza, Policy Advisor, UCC, Office of Communication Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1 (filed Apr. 26, 2021) (UCC Apr. 26, 2021 *Ex Parte*) (arguing that "site commission payments are not mandated by either federal law or court precedent and that, in fact, the FCC precedent requires the opposite").

[349] UCC and Public Knowledge Mar. 31, 2021 *Ex Parte* at 1-2; *1999 Pay Telephone Order*, 14 FCC Rcd at 2562, para. 37 n.72.

[350] *See supra* para. 107. UCC and Public Knowledge also argue that we cannot "treat the costs of communications providers for incarcerated people differently from the costs of communications providers via payphones when the economic incentives and factual circumstances are nearly identical and both are governed by the same statute." UCC and Public Knowledge Mar. 31, 2021 *Ex Parte* at 2. As the Commission has recognized since 2002, however, calling services for the incarcerated are "are economically different than other payphone services." *2002 Pay Telephone Order*, 17 FCC Rcd at 3253, para. 12. Our actions here reflect a reasonable approach to responding to *GTL v. FCC* and Commission precedent in the inmate calling services context in light of the current record.

[351] *1999 Pay Telephone Order*, 14 FCC Rcd at 2562, para. 37 n.72.

[352] *Id.* at 2615-16, para. 156.

[353] *2016 ICS Reconsideration Order*, 31 FCC Rcd at 9307, para. 12.

cannot conclude on the current record, and in light of the current legal treatment of site commissions, that no recovery of site commissions is justified.[355]

116. *Legally Mandated vs. Contractually Prescribed Site Commission Requirements.* On the record now before us and in light of section 276, we see a meaningful difference between site commission payments in an amount that is prescribed under formally codified laws or regulations and other site commission payments that ultimately are embodied in contracts with correctional facilities or systems.

117. In *GTL v. FCC*, the D.C. Circuit rejected the FCC's categorical exclusion of site commission payments from costs to be recovered through inmate calling services rates in the regulations under review.[356] In significant part, the D.C. Circuit reasoned:

> The FCC's suggestion that site commissions "have nothing to do with the provision of [inmate calling services]," Order, 30 FCC Rcd. at 12822 (internal quotation marks omitted), makes no sense in light of the undisputed record in this case. In some instances, commissions are mandated by state statute, Rates for Interstate Inmate Calling Services, 27 FCC Rcd. 16629, 16643 (2012), and in other instances commissions are required by state correctional institutions as a condition of doing business with [inmate calling services] providers, 17 FCC Rcd. at 3252-53. "If agreeing to pay site commissions is a condition precedent to [inmate calling services] providers offering their services, those commissions are 'related to the provision of [inmate calling services].'" Joint Br. for Pet'rs at 21. And it does not matter that the states may use the commissions for purposes unrelated to the activities of correctional facilities. The [inmate calling services] providers who are required to pay the site commissions as a condition of doing business have no control over the funds once they are paid. None of the other reasons offered by the Commission to justify the categorical exclusion of site commissions passes muster.[357]

As we have already discussed when explaining why the Commission is not required under *GTL* to allow the full recovery of any and all site commissions, as some providers contend,[358] the court's statements rejecting "the categorical exclusion of site commissions" from the rate analysis in the *2015 ICS Order* must be interpreted in the context of the court's express recognition that it is "[up] to the Commission to assess on remand which portions of site commissions might be directly related to the provision of [inmate calling services] and therefore legitimate, and which are not."[359] In light of that recognition, we read the analysis excerpted above as turning on the particularities of the *2015 ICS Order* and its underlying record.[360] We now revisit and revise both our understanding and expectations regarding the operation of the inmate calling services marketplace and our approach to evaluating what nexus to interstate and

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[354] *GTL v. FCC*, 866 F.3d at 413.

[355] For this reason, and on the record before us, we disagree with the Public Interest Parties insofar as they suggest that it may be reasonable to fully exclude site commission payments. *See* Public Interest Parties Reply at 7; Public Interest Parties Brattle Report at 14; *see also* GTL Reply at 10 (arguing that the Public Interest Parties' position on the full exclusion of site commission payments conflicts with section 276 of the Act).

[356] *GTL v. FCC*, 866 F.3d at 412-14.

[357] *Id.* at 413.

[358] *See supra* paras. 110-15.

[359] *GTL v. FCC*, 866 F.3d at 414.

[360] *2015 ICS Order*, 30 FCC Rcd at 12824-26, para. 127 (cited in *GTL v. FCC*, 866 F.3d at 413).

international inmate calling services is required for a cost to warrant recovery through the rates for those services. The predicates for our actions regarding site commission payments in this Report and Order thus differ materially from the predicates underlying the D.C. Circuit's analysis in *GTL v. FCC*.

118. *More Nuanced Understanding of the Inmate Calling Services Marketplace.* With respect to the inmate calling services marketplace, rather than the two basic scenarios of site commission payments identified by the D.C. Circuit in *GTL v. FCC* based on prior Commission decisions, we identify three conceptual scenarios where site commission payments can arise.

119. First, site commission payments at a specified level sometimes are mandated by state statute or regulation that operate independently of the inmate calling contracting process.[361] Although some parties have advocated that the Commission preempt or otherwise prohibit the payment of site commissions mandated by state law, the Commission has not yet taken that step.[362] Consequently, as the law stands today and consistent with section 276, it is reasonable to conclude that neither correctional institutions nor providers can avoid the need for site commission payments in this scenario.[363]

120. Second, there can be situations where the correctional institution's request for proposal, or the like, asks bidders to agree to pay site commissions at a specified level.[364] While facilities may include a site commission component in the request for proposal's description along with other bid "requirements," we understand that most, if not all, requests for proposals include some form of an "exception" provision that enables bidding providers to explain why they are deviating from the request for proposal's bidding specifications or requirements, and that gives the issuer the discretion to accept such bids nonetheless.[365] In this scenario, unlike in scenario one, a correctional institution is under no

[361] *See, e.g.*, *GTL v. FCC*, 866 F.3d at 413; *2012 ICS Notice*, 27 FCC Rcd at 16643, para. 38; Tenn. Code Ann. § 41-7-104 (West 2013) (requiring a fee of $0.10 for each completed inmate calling services call); Tex. Gov't Code Ann. § 495.027(a) (West 2021) (requiring a commission amounting to 40% of gross revenue). As discussed above, some laws permit—but do not require—correctional institutions to collect site commissions, and others require site commission payments but do not specify any particular level. *See supra* notes 305-307. We do not consider those to fall within category one—instead, they fall within category two and/or three (depending on how the correctional institution approaches the request for proposal process).

[362] *2016 Reconsideration Order*, 31 FCC Rcd at 9319-20, paras. 35-38.

[363] As explained above, on the current record and based on current law, we only find that such site commissions satisfy the requirement for fair compensation to providers under section 276 and leave for another day a complete analysis under section 201.

[364] *See, e.g.*, Request for Proposals for Inmate Telephone System and Services, Los Angeles County Sheriff's Department, Bid No. RFP 388-SH, Appx. C, Telephone Rates and Payment Schedule at 1-2 (Dec. 31, 2009), http://shq.lasdnews.net/shq/contracts/388-SH/Bulletin_1.pdf (requiring a Minimum Annual Guarantee of $15,000,000 for the Sheriff's department, $59,000 for the probation department, and a county commission rate of a minimum of 53% of total billable amounts for each year of the agreement).

[365] *See, e.g.*, Request for Proposal, Addendum No. 1, Inmate Telephone & Video Visitation Services, County of Fresno, at 7 (July 24, 2014), http://www2.co.fresno.ca.us/0440/BidDocuments/915-5281/915-5281%20Add%201.pdf (stating that the county wants the current commission rate of 56%, but "would consider a different rate if services/hardware levels are increased"); Request for Proposal, Comprehensive Inmate Communications Services, Alabama Department of Corrections, RFP 2018-05, at 70, 75 (Nov. 27, 2018), http://doc.state.al.us/images/RFP/RFP%202015-05%20Final.pdf (explaining that the Alabama Department of Corrections "currently receives an average monthly . . . revenue share of between $300,000.00 and $350,000.00," that the award may be made on the basis of cost alone or on the basis of quality alone, and that bids may be rejected in the best interest of the state); *see also* Request for Proposal (RFP) No. 1790-16474 for Corrections Communication System, Office of the Chief Procurement Officer, Cook County Government, at 17, 27, paras. 6.1, 8.17 (June 23, 2017), https://www.prisonphonejustice.org/2017/IL/il-cook-county-rfp-2017/ (an example of a general exception provision providing discretion by the reviewers to consider bids that do not contain all the requirements and providing for an explanation of exceptions to specifications and general conditions). While we do not have comprehensive visibility into the requirements of all requests for proposals industry wide, the presence of the "exception" language in each of (continued….)

legal compulsion to insist upon receiving site commission payments, or payments at a particular level. If no provider accedes to the institution's request for such payments, the institution will be constrained to entertain noncompliant offers if it wants the individuals in its custody to have access to interstate and international calling services. Given the well-documented benefits, for communities and correctional institutions alike, in allowing incarcerated people access to calling services, we do not anticipate that correctional facilities would forgo making such calling services available merely because providers decline to pay site commissions at the facilities' desired levels.[366] We therefore anticipate that correctional institutions will not formally insist on site commission payments above the level required to cover the institutions' own costs if the alternative is to go without inmate calling services (and all the other services typically offered by providers) at the facility. To the extent that providers nonetheless offer site commissions above that level, we regard that as a marketplace choice different in kind from the scenario where site commissions at a given level are required by a statute or rule. Thus, if providers offer site commissions at levels that are not recoverable under the Commission's interstate and international rate caps, we believe that they do so as a matter of their own business judgment. Consequently, we do not regard site commissions under the second scenario as a condition precedent of doing business at correctional institutions.

121. Third, in other situations, no state law compels site commission payments and the correctional institution soliciting bids does not request any specific payment (even if it indicates that offers to pay site commissions will influence bid selection).[367] On the current record, we conclude that

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the foregoing examples persuades us that such language is likely to be representative of requests for proposals generally.

[366] Such restrictions or denials based on a lack of site commission payments above and beyond the level needed for correctional institutions to recover any costs they incur in making inmate calling services available also could have legal implications that make them unlikely. *See, e.g.*, *Johnson v. California*, 207 F.3d 650, 656 (9th Cir. 2000) ("Although prisoners have a First Amendment right to telephone access, this right is subject to reasonable limitations arising from the legitimate penological and administrative interests of the prison system."); *Washington v. Reno*, 35 F.3d 1093, 1100 (6th Cir. 1994) (finding that "federal court opinions have previously held that persons incarcerated in penal institutions retain their First Amendment rights to communicate with family and friends, and have recognized that 'there is no legitimate governmental purpose to be attained by not allowing reasonable access to the telephone," although "an inmate 'has no right to unlimited telephone use'") (internal citations omitted); *Benzel v. Grammer*, 869 F.2d 1105, 1108 (8th Cir. 1989) ("Although in some instances prison inmates may have a right to use the telephone for communication with relatives and friends, prison officials may restrict that right in a reasonable manner, 'subject to rational limitations in the face of legitimate security interest[s] of the penal institution.'") (internal citations omitted). *But see, e.g.*, *Arsberry v. Illinois*, 244 F.3d 558, 564-65 (7th Cir. 2001) ("Not to allow [prisoners] access to a telephone might be questionable on other grounds, but to suppose that it 'would infringe the First Amendment would be doctrinaire in the extreme.'") (internal citations omitted).

[367] *E.g.*, Request for Proposal # 2019-016, Inmate Telephone Services, Union County Government, 36 (due Oct. 16, 2018), https://www.unioncountync.gov/application/files/4315/3737/2144/2019-016_Inmate_Telephone_Services_RFP_FINAL.pdf (While providing blank spaces for the commission percentage, the request for proposal warns: "Failure to state commissions as a percentage of gross revenue, using only rates and fees that are compliant with all pertinent regulations, will cause Proposer's proposal to be deemed non-compliant and ineligible for contract award."); Request for Proposal, Offender/Client/Resident Phone/Kiosk/Debit-Credit Card System, 88 (due Sept. 10, 2018), https://www.bidnet.com/bneattachments?/525586332.pdf (While not providing a specific amount for the commission, the request for proposal provides: "The State reserves the right to negotiate commission with the Successful Respondent.") (emphasis added); Request for Proposal, Incarcerated Individual Communications Systems (IICS), Iowa Telecommunications and Technology Commission, RFP 19-000, at 11, 27, 37, Attach. 4 at 60 (due Feb. 24, 2020), https://bidopportunities.iowa.gov/Home/GetBidOpportunityDocument/cebe908e-8e04-4831-b3fa-5cef01140258 (explaining that the "current phone system is not a commission based service," that "the current vendor is paid a fixed monthly cost," and that the bidder can suggest a percentage, so that the inmate calling services provider would collect the funds and pay a commission, if the bidder elects to operate that way).

whether a provider would have "a realistic chance of winning a contract"[368] without a site commission payment turns not on any inherent feature of the provision of inmate calling services, but on competing bidders' discretionary business decisions informed by a range of regulatory and marketplace considerations that could affect those entities' judgments about which strategies will prove more or less profitable.[369] Indeed, it is increasingly clear that when providers offer site commission payments as part of their bids, they do so to gain a benefit for themselves, rather than to satisfy a formal precondition of access to a correctional facility.[370] For one, Securus reports that "it has made commission-free offers a standard offering and attempted to renegotiate contracts with many of its correctional facility partners."[371] In addition, a number of jurisdictions have limited or entirely eliminated site commission payments.[372] This undercuts the view that, from the correctional institution's perspective, site commission payments are inherently necessary to allow a provider access to its facilities.[373]

122. Accordingly, with respect to scenarios two and three, we reject any claim that site commission payments are somehow 'required' or determined by the correctional institution: we find on this record that providers offer such payments voluntarily, in their own business judgment.[374] Whereas some commenters attempt to analogize site commissions of this kind to payments that landowners demand in exchange for granting access to rights-of-way or the like,[375] we conclude that, at most, inmate calling providers appear concerned about a collective action problem that makes providers, as a group, reluctant to limit or omit site commission payments in their bids for fear that competitors fail to do so,

[368] *2002 Pay Telephone Order*, 17 FCC Rcd at 3252, para. 10; *see also, e.g.*, *2020 ICS Order on Remand*, 35 FCC Rcd at 8491-92, para. 16 (discussing Commission precedent and describing "site commissions" as "payments made by inmate calling services providers to correctional facilities or state authorities that are often required to win the contract for provision of service to a given facility").

[369] *See 2015 ICS Order*, 30 FCC Rcd at 12836, para. 142 (explaining that providers "are in the best position to decide whether to bid to offer service subject to the contours of the request for proposal" and that there is no obligation "to submit bids or to do so at rates that would be insufficient to meet the costs of serving the facility").

[370] *See GTL v. FCC*, 866 F.3d at 416 (noting petitioners—calling service providers, state and local correctional authorities, and correctional facility organizations—argued that "site commissions are 'incentive payments designed to influence a correctional authority's selection of its monopoly service provider'").

[371] Securus Comments at 30.

[372] *See, e.g.*, Prisoners' Legal Services Comments at 5-6 (identifying three Massachusetts counties that eliminated site commissions); Worth Rises Comments at 11 (discussing New York City, N.Y., Code § 9-154, which requires New York City to provide domestic inmate calling services at no cost to incarcerated people or the receiving parties and prevents the city from receiving revenue from inmate calling services); *2015 ICS Order*, 30 FCC Rcd at 12787-88, para. 49 (discussing actions in Ohio, West Virginia, and New Jersey).

[373] Indeed, in San Francisco, incarcerated people and their loved ones pay nothing for their telephone calls—including for site commissions—while the city and GTL have agreed that payment under the contract will not exceed $1,590,616 for the initial term of three years. *See* Agreement between the City and County of San Francisco and GTL, Contract ID 1000017882 at 3, § 3.3.1 (Aug. 1, 2020), https://sfgov.org/financialjustice/sites/default/files/2020-08/GTL%20Contract%20No.%2017882%20-%20FINAL%20SIGNED%2007.30.2020_0.pdf. As one commenter has explained, the "innovative cost structure" embodied in this contract "better reflects the cost of service paid by the vendor to provide access to phones in all county jails." Financial Justice Project Comments at 2. While we do not know whether there is some portion of the overall contract that goes to facility costs, the limitation on the overall payment under the contract undercuts the notion that correctional facilities view site commissions as required in all circumstances. Further, and most importantly, the fact that incarcerated people in San Francisco still have access to calling services strongly suggests that facilities do not require these types of payments to continue to allow calling services.

[374] *See, e.g.*, NCIC Comments at 5; Pay Tel Comments at 10-11; Securus Comments at 25-30; GTL Godek Reply Report at 8, para. 20.

[375] *See, e.g.*, Securus Comments at 29-30.

and that correctional institutions will select competitors that do offer site commissions (or offer higher site commissions) instead. A collective action problem of that kind is not sufficient to require that we allow full recovery of site commission payments through end-user rates.

123. *Interim Revisions in the Approach to Evaluating Cost Recovery*. In light of *GTL v. FCC* and the record before us, we consider which costs reflected in site commission payments are so related to the provision of inmate calling services that they should be recoverable at the present time and on the current record in light of section 276[376] under relevant precedent.[377] Modifying our approach to cost recovery in this manner on this interim basis accounts for the *GTL v. FCC* decision and the legal approach the Commission set out in the *2020 ICS Notice*.

124. Prior to the *GTL v. FCC* decision, the Commission evaluated cost recovery in a manner that sought to effectuate its theory of legal authority, which relied on the combination of sections 201(b) and 276(b)(1) of the Act.[378] The Commission described its general approach to inmate calling services cost recovery in the *2013 ICS Order*, which "conclude[d] that only costs that are reasonably and directly related to the provision of [inmate calling services], including a reasonable share of common costs, are recoverable through [inmate calling services] rates consistent with sections 201(b) and 276(b)(1)."[379] Beyond discussing illustrative examples, the Commission did not otherwise elaborate on the framework for evaluating what costs would or would not be recoverable. Applying that approach in the order under review in *GTL v. FCC*, the Commission concluded that "the site commissions [inmate calling services] providers pay to some correctional facilities are not reasonably related to the provision of [inmate calling services] and should not be considered in determining fair compensation for [inmate calling services] calls," going on to quote one party as stating "that site commissions often 'have nothing to do with the provision' of [inmate calling services]."[380]

125. In light of the *GTL v. FCC* decision, it is necessary to update and more thoroughly explain our approach to evaluating cost recovery for purposes of these interim reforms. In the *2020 ICS Notice*, the Commission did not propose revisiting whether section 276(b)(1) represented a grant of regulatory authority for the Commission to prevent excessive inmate calling services rates.[381] Rather, the Commission properly proceeded based on its authority under section 201(b).[382] In the specific context of whether and to what extent site commission payments should be recoverable costs in interstate and

[376] *See* Wright Petitioners May 14, 2021 *Ex Parte* at 4. As we explain below, the section 276 requirement for fair compensation does not mean a provider is entitled to recover the total "cost" it claims it incurs in connection with each and every separate inmate calling services call. *Infra* Part III.E.

[377] We thus reject as inapposite attempts to rely by analogy on what the Commission has done in other contexts under different statutory schemes. *See, e.g.*, *Implementation of Sections of the Cable Television and Consumer Protection and Competition Act of 1992*; *Rate Regulation*, MM Docket No. 92-266, First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking, 9 FCC Rcd 1164, 1217, 1219-20, paras. 98, 101-02 (1993) (*1993 Cable Television Consumer Protections Act Order*) (explaining how the evaluation of recovery of the cost of franchise flows from the requirements of the Cable Act of 1992); *see also 1993 Cable Television Consumer Protections Act Order*, 9 FCC Rcd at 1211-12, para. 90 (rejecting telephone company arguments that the approach to cost recovery for cable operators should be the same as that used for common carriers subject to price cap regulation).

[378] *See, e.g.*, *2013 ICS Order*, 28 FCC Rcd at 14133-37, paras. 50-53, 55.

[379] *2013 ICS Order*, 28 FCC Rcd at 14134-35, para. 53.

[380] *2015 ICS Order*, 30 FCC Rcd at 12821-22, para. 123 (quoting Letter from Andrew D. Lipman, Morgan, Lewis, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 9 (filed Apr. 8, 2015)).

[381] *2020 ICS Notice*, 35 FCC Rcd at 8525-26, paras. 112-15 (discussing the role of section 276 in the Commission's analysis).

[382] *See, e.g.*, *2020 ICS Order on Remand*, 35 FCC Rcd at 8486-87, paras. 4, 6; *2020 ICS Notice*, 35 FCC Rcd at 8509, 8529-30, paras. 68, 123-24.

international inmate calling services rates, the Commission sought comment on whether particular approaches would "result in unjust and unreasonably high rates for incarcerated people and their loved ones to stay connected,"[383] consistent with the "just and reasonable" standard in section 201(b) of the Act.[384]

126. Given the focus in the *2020 ICS Notice* on applying our section 201(b) authority, it makes sense to evaluate cost recovery—otherwise described as an evaluation of whether the costs are directly and reasonably related to the provision of inmate calling services—under the longstanding principles the Commission has relied upon when implementing section 201(b) in the past.[385] Under this framework, just and reasonable rates are focused on recovering prudently incurred investments and expenses that are "used and useful" in the provision of the regulated service for which rates are being set.[386] In applying this framework, the Commission considers whether the investment or expense "promotes customer benefits, or is primarily for the benefit of the carrier."[387] The Commission not only has applied this in the context of carriers operating under rate-of-return regulation, but rates set on that basis also were used as the foundation for price caps.[388]

127. *Contractually Prescribed Site Commission Payments*. Given the regulatory backdrop and the state of the record here, we recognize that contractually prescribed site commission payments that simply compensate a correctional institution for the costs (if any) an institution incurs to enable interstate and international inmate calling services to be made available to its incarcerated people, can, on an interim basis and in light of the current regulatory backdrop,[389] be considered a prudent expense the provider incurs, at least as long as the Commission continues to permit providers of interstate and international inmate calling services to continue to make site commission payments. In *GTL* the court faulted the Commission's "categorical exclusion of site commissions from the calculus used to set [inmate calling services] rate caps,"[390] and even the *2016 ICS Reconsideration Order* found that "it is reasonable for [correctional] facilities to expect providers to compensate them for those costs[]" the

[383] *2020 ICS Notice*, 35 FCC Rcd at 8520, para. 101.

[384] 47 U.S.C. § 201(b).

[385] To be clear, we rely on both sections 201 and 276 for our authority to regulate site commissions. As the D.C. Circuit explained in *GTL v. FCC*, these two sections serve different purposes, with section 201 directing the Commission to ensure that interstate rates are just and reasonable and section 276 directing the Commission to ensure providers are fairly compensated. *See GTL v. FCC*, 866 F.3d at 409; Wright Petitioners May 14, 2021 *Ex Parte* at 4. These statutory provisions, while not coterminous, permit us to regulate site commission payments by examining whether such payments are prudently incurred under section 201 and whether such payments provide fair compensation.

[386] *See, e.g.*, *Sandwich Isles Communications, Inc.*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 577, 580, para. 7 (2019) (*Sandwich Isles Reconsideration Order*) (discussing the standard and citing precedent such as *AT&T Phase II Order*, 64 F.C.C.2d at 38, paras. 111-13 and *AT&T Communications Revisions to Tariff F.C.C. Nos. 1, 2, 11, 13, and 14 Application for Review*, CC Docket No. 87-611, Memorandum Opinion and Order, 5 FCC Rcd 5693, 5695, para. 17 (1990) (*1990 AT&T Tariff Investigation Order*)).

[387] *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Notice of Proposed Rulemaking, 22 FCC Rcd 17989, 17997 n.47 (2007); *see also, e.g.*, *1990 AT&T Tariff Investigation Order*, 5 FCC Rcd at 5695, para. 17.

[388] *See, e.g.*, *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6816, 6823, paras. 246, 301 (1990) (*LEC Price Cap Order*); *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Report and Order and Second Further Notice of Proposed Rulemaking, 4 FCC Rcd 2873, 3092, para. 436 (1989).

[389] *See* Wright Petitioners May 14, 2021 *Ex Parte* at 3.

[390] *GTL v. FCC*, 866 F.3d at 413.

facilities incur to enable the provision of inmate calling services.[391] Against that backdrop, the record here does not persuade us to reach a contrary conclusion in our analysis under section 201(b). In light of the regulatory backdrop and current state of the record, we likewise find that contractually prescribed site commission payments that simply compensate a correctional institution for costs an institution incurs to enable access for incarcerated people to interstate and international inmate calling services can, at least at this time, be considered used and useful in the provision of interstate and international inmate calling services. In the *2016 ICS Reconsideration Order* the Commission found that "some facilities likely incur costs that are directly related to the provision of [inmate calling services],"[392] and determined that "it is reasonable for those facilities to expect [inmate calling services] providers to compensate them for those costs . . . [as] a legitimate cost of [inmate calling services] that should be accounted for in [the] rate cap calculations."[393] The current record here again does not persuade us to reach a contrary conclusion in our analysis under section 201(b). While a different record might persuade us to reach a different conclusion in the future, under this record we will treat such payments as prudently incurred expenses used and useful in the provision of interstate and international inmate calling services.

128. By contrast, we find that contractually prescribed site commission payments do not warrant recovery insofar as they exceed the level needed to compensate a correctional institution for the costs (if any) an institution incurs to enable interstate and international inmate calling services to be made available to its incarcerated people. First, we conclude that such expenses are not prudently incurred. Under Commission precedent, expenses are imprudent if they are excessive.[394] We find that to be the case here. As demonstrated by our marketplace analysis above, we are not persuaded that a correctional institution would decline to make inmate calling services available to its incarcerated people absent contractually prescribed site commission payments above and beyond any amount necessary to recover the institution's costs to enable inmate calling services to be provided to its incarcerated people. That alone persuades us that such payments are excessive. Separately, we also conclude that the imprudence of such expenses is confirmed by the ongoing regulatory scrutiny and questions about recovery through interstate inmate calling services rates that have surrounded site commission payments since the *2012 ICS Notice*. This further bolsters our conclusion that such site commission payments are imprudent.

129. As an independent, alternative basis for rejecting recovery through interstate and international inmate calling services rates, we find that contractually prescribed site commission payments, insofar as they exceed the level needed to compensate a correctional institution for the costs (if any) an institution incurs to enable interstate and international inmate calling services to be made available to its incarcerated people, are not used and useful in the provision of interstate and international inmate calling services. The used and useful concept is designed, in part, based on the principle that regulated entities "must be compensated for the use of their property in providing service to the public."[395]

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[391] *2016 ICS Reconsideration Order*, 31 FCC Rcd at 9307, para. 12.

[392] *Id.*

[393] *Id.*

[394] *See, e.g.*, *Sandwich Isles Reconsideration Order*, 34 FCC Rcd at 580, para. 7; *1990 AT&T Tariff Investigation Order*, 5 FCC Rcd at 5695, para. 17; *AT&T Phase II Order*, 64 F.C.C.2d at 38, para. 112.

[395] *AT&T Phase II Order*, 64 F.C.C.2d at 38, para. 112. We do not view site commission payments—whatever their origin—as involving the use of provider property and investment in a manner analogous to the circumstances addressed in our provider-based rate caps. As a result, even for those site commission payments that we find recoverable through interstate and international inmate calling services rate caps under our interim rules, we are not persuaded that we should allow more than a pass-through and instead should go further and provide for providers to make a profit on those site commission payments. Viewed one way, the site commission payments that we find permissible to recover are akin to exogenous costs—"costs that are triggered by administrative, legislative or judicial action beyond the control of the carriers"—which, in the event of cost increases, result in upward adjustment of price caps without guaranteeing carriers profit on those exogenous costs. *LEC Price Cap Order*, 5 FCC Rcd at 6807, para. 166. Our permitted recovery of certain site commission payments through interstate and international (continued….)

"Equally central to the used and useful concept, however, is the equitable principle that the ratepayers may not fairly be forced to pay a return except on investment which can be shown directly to benefit them."[396] And it is that element of the used and useful analysis that we find dispositive here. Under our marketplace analysis of contractually prescribed site commission payments, we are unpersuaded that site commission payments above the level needed to compensate a correctional institution for costs the institution reasonably incurs to make interstate and international inmate calling services available are required to ensure that incarcerated people have access to those services. Instead, we conclude that such payments are a means (sometimes the sole or at least primary means) by which a given provider seeks to overcome its competitors to become the exclusive provider of multiple services, including nonregulated services, at a correctional facility. And the record does not reveal that correctional institutions, in contracting with providers that offer comparatively higher contractually prescribed site commission payments, are somehow benefitting customers of interstate and international inmate calling services as compared to the selection of some other provider. Rather, we conclude here that given the anomalous nature of the inmate calling services marketplace, the primary benefits flow to the chosen provider—which overcame its competitors and now has the exclusive ability to serve the correctional facility—and the correctional facility itself (or the state or local government more generally), which can avail itself of the revenue stream such site commission payments provide, all to the detriment of interstate and international inmate calling services customers.

130. Where site commissions of a particular level are not required under formally codified laws or rules external to the contracting process, providers of inmate calling services cannot reasonably contend that they are bound to offer, or agree to pay, site commissions above the level for which recovery is permitted going forward under the Commission's rules. In this way, to the extent providers' concerns stem from a collective action problem in the marketplace, the Commission's rules could help address that issue. The record before us further suggests that if, in the wake of this Report and Order, providers of inmate calling services should offer to pay site commissions at levels higher than they can recover through interstate and international inmate calling services rates, that is because they expect to profit from obtaining the franchise at a given facility in other ways—e.g., by recovering the cost of the site commission payments they offer through intrastate inmate calling services rates or through revenue generated by providing other, nonregulated services.[397] While our analysis might have particular force in the case of newly entered or renewed contracts, even with respect to existing contracts the analysis above justifies our refusal to set rates in a way designed to recover contractually prescribed site commission

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inmate calling services charges could be viewed as an analogous adjustment to the rate cap we set for the provider-specific costs. Independently of that precedent, we separately justify our decision as a matter of the flexibility provided by the "just and reasonable" framework of section 201(b) of the Act under the particular circumstances here. Specifically, we find it likely that setting providers' interstate and international rates in a manner that provides for a profit on the providers' site commission payments is likely to exacerbate the already-perverse incentives of providers and correctional institutions (as well as state or local governments mandating site commission payments at specified levels) to increase the magnitude of site commission payments to the ultimate detriment of customers of interstate and international inmate calling services. By contrast, we are not persuaded that allowing more than a pass-through of the site commission expenses that we find prudently incurred and used and useful here is necessary to ensure the continued economic viability of the provision of interstate and international inmate calling services. Thus, we conclude that our approach adequately accounts for the use of providers' property in the provision of interstate and international inmate calling services balanced with the equitable interest of customers of interstate and international inmate calling services.

[396] *AT&T Phase II Order*, 64 F.C.C.2d at 38, para. 113.

[397] *See, e.g.,* Public Interest Parties July 29, 2020 *Ex Parte* at 5 (discussing the bundling of products and services); Prison Policy Initiative Site Commissions Briefing (alleging that providers make money by "bundling other profitable services into the contract, and sharing none of this additional revenue with the facilities"); Prison Policy Initiative Mar. 23, 2021 *Ex Parte* at 1-2.

payments above the level needed for a correctional institution to recover its costs of making inmate calling services available to its incarcerated people.

131. *Legally Mandated Site Commission Payments*. We next conduct the cost recovery analysis for scenario one (referred to for convenience as "legally mandated site commission payments"). Our analysis begins the same as for contractually prescribed site commission payments. For the same reasons explained above in that context and given the regulatory backdrop, we assume on the record here and for purposes of this interim reform that legally mandated site commission payments simply compensate a correctional institution for the actual costs (if any) an institution incurs to enable interstate and international inmate calling services to be made available to its incarcerated people and are at least plausibly a prudent expense that is used and useful in the provision of interstate and international inmate calling services.

132. Our analyses of contractually prescribed and legally mandated site commission payments part ways, on the record before us, when it comes to site commission payments insofar as they exceed the level that simply compensates a correctional institution for any costs the institution incurs to enable interstate and international inmate calling services to be made available to its incarcerated people—at least up to the level of the site commission payment specified by law or rule.[398] We assume on this record that making legally mandated site commission payments at the level required by the relevant statute or regulation is a prudent expense, as we see no evidence that either the provider or the correctional institution could agree to a lower amount (or no site commissions at all) based on the current record and current law.[399]

133. For purposes of the interim reforms we make today, we find legally mandated site commission payments at the level required by the relevant statute or rule to be used and useful in the provision of interstate and international inmate calling services at least as long as the Commission continues to permit providers of interstate and international inmate calling services to continue to make these site commission payments. We emphasize that this is a close question, however, and reiterate that the record we develop in response to today's Further Notice may persuade us to reach a different conclusion when we address site commissions on a permanent basis.[400] In a state that has codified a requirement that providers of inmate calling services pay site commissions at a specified level, as allowed by current federal policy but an open question in the attached Further Notice, facilities have no immediate ability to entertain offers from providers that wish to supply a facility without paying the site commission demanded. And absent further legislative process to amend the governing statute, facilities would appear to have to forgo making interstate and international inmate calling services available if they cannot collect the legally mandated site commission payments. Additionally, by agreeing to pay site commissions that are required by statute, providers do not obtain any benefit or leverage over competing providers. For this reason, too, legally mandated site commissions do not, in our judgment, reflect the independent business judgment of service providers, based on the current treatment of site commissions.[401] For these reasons,

[398] We are not aware of situations where a statute or regulation external to the contracting process requires a specific site commission and the provider nonetheless pays a site commission even higher than such level. Should such a situation occur, we would find such expenses both imprudent and not used and useful for the same reasons discussed in connection with contractually prescribed site commission payments, discussed above. *See supra* paras. 127-30.

[399] We do not determine at this time to what extent this expense may impact our ability to ensure just and reasonable interstate rates under the section 201 analysis as a whole, as evaluated based on a different record in the future. And we have not determined, even on this record, that this expense reflects the actual costs associated with the provision of inmate calling services, separate and apart from the legal compulsion for facilities to collect it.

[400] *See, e.g.*, UCC and Public Knowledge Mar. 31, 2021 *Ex Parte* at 4 (highlighting Judge Pillard's position in dissent in *GTL v. FCC* that simply because a state requires certain site commissions does not make them legitimate costs of providing inmate calling services).

[401] While formally distinct from our prudence and used and useful analysis, we take comfort that our conclusion today with respect to legally mandated site commission payments is unlikely to cause long-term harm. For one, we

(continued….)

taking into account the court's vacatur in *GTL*, we permit providers of inmate calling services to recover through interstate and international rates—as a line item distinct from the generally applicable interim interstate and international provider-related rate cap component—any site commissions that they pay pursuant to formally codified law or regulation so long as the total per-minute rate that users pay does not exceed the $0.21 cap, which remains, as it has since 2013, the highest permissible rate for interstate debit and prepaid calls,[402] and by this Report and Order, the highest permissible rate for collect calls too.[403]

134. *Determining the Appropriate Contractually Prescribed Facility Rate Component.* We permit providers of prisons and larger jails to recover no more than $0.02 per minute over and above the otherwise applicable provider-related rate cap to account for site commissions actually paid but not required by formally codified law or regulation. The total rate charged for interstate inmate calling services is also bound by the overall upper limit of $0.21 per minute that has been effective since 2013.

135. We reach our decision to adopt a $0.02 per-minute facility-related rate component for prisons and larger jails on two separate and independent bases.[404] First, this allowance is based on estimates of the portion of site commissions that are legitimately related to inmate calling services based on the methodology first described in Appendix H of the *2020 ICS Notice* but since updated with corrected cost data consistent with the record.[405] As the Public Interest Parties' expert suggests, that methodology reflects the Commission's "reasonable attempt" in light of "data limitations on site commissions" to compare per-minute costs for facilities that are paid site commissions and those that are not as a way to "isolate the gap in costs that could be covered by site commission payments."[406] This methodology, derived from cost and site commission data that providers reported in response to the

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only adopt interim rules here, and if subsequent events or additional arguments or evidence come forward justifying a different outcome, we can revisit our decision at that time. In addition, on balance we find legally mandated site commission payments less pernicious than contractually prescribed site commission payments. The legislative process is transparent, and laws are enacted by elected officials who are accountable to their constituents. At least as an interim matter, while we collect additional information on this subject in today's Further Notice, we take comfort in the legislative process as a potential check on the ability of providers and governmental authorities to impose unjust and unreasonable rates for interstate and international inmate calling services.

[402] *See supra* para. 105. Operationally, providers remain free to impose a legally mandated site commission facility charge at the level specified by the relevant statute or regulation, consistent with the analysis above. If their resulting cumulative rate otherwise would exceed the current $0.21 per minute rate cap, they would need to charge a lower provider-related rate to stay within that rate cap under our rules. As explained above, *supra* para. 105, providers have been operating under the $0.21 per minute rate cap since 2013, and despite the opportunity to justify a waiver of that cap, no provider has done so. Consequently, we decline to presume, for purposes of establishing new rules, that aggregate interstate and international inmate calling services charges above that level will be justified, although, as before, a waiver process is available if a provider seeks to make that case.

[403] *See supra* Part III.C.1.

[404] *Supra* Part III.C.3.

[405] *See* Appx. E, *infra* (updating cost data from that used in the *2020 ICS Notice* consistent with the record). We continue to rely on this methodology because it most conservatively estimates the site commission allowance by rounding up and applying the same rate to jails and prisons to "ensure we do not harm unusual prison contracts." *See 2020 ICS Notice*, 35 FCC Rcd at 8572, Appx. H, para. 2; Public Interest Parties Brattle Report at 9. The Public Interest Parties' expert replicated the Commission's initial analysis and concluded the proposed $0.02 facility-cost allowance estimate is "reasonable" given the difficulty of disaggregating the portion of site commission payments directly attributable to inmate calling services from the portion that is due to the transfer of market power. *See* Public Interest Parties Brattle Reply Report at 14. Because the Commission's initial analysis, like our updated analysis, continues to be based on imperfect cost data that are not sufficiently disaggregated so as to reflect potential differences in costs for smaller jail facilities as commenters claim, we limit our actions here to only prisons and larger jails as well.

[406] Public Interest Parties Brattle Reply Report at 14.

Second Mandatory Data Collection, incorporated no correctional facility-provided cost data. Thus, the Commission's proposed methodology reflected its reasoned judgment as to the best estimation of legitimate facility costs related to inmate calling services in the absence of cost data from correctional facilities themselves. The Public Interest Parties agree that the proposed $0.02 allowance for all facilities "strikes an appropriate balance between the statutory mandates that [inmate calling services] providers receive fair compensation and that [inmate calling services] rates are just, reasonable and promote access to [inmate calling services] by incarcerated people and their families and support networks."[407] They explain that the site commission allowance is not designed to necessarily compensate providers for the entirety of all site commission payments,[408] pointing out that would be inconsistent with the *GTL* decision, which recognized as "legitimate" only those site commissions that are "directly related to the provision of [inmate calling services]."[409]

136. Our updated site commission analysis in Appendix H reflects even lower potential estimates for legitimate facility costs related to inmate calling services. As explained above, the record convinces us that adjustments and corrections to the cost data underlying the *2020 ICS Notice* proposals were necessary for determining the provider-related rate component,[410] and we updated our site commission analysis using these revised cost data. This updated analysis supports a facility-related rate component of less than the $0.02 allowance we originally calculated.[411] However, we are unwilling to reduce the $0.02 allowance at this time, especially on an interim basis, given record opposition to that allowance on the basis that it is too low, was not based on facility-provided cost data, and relied on cost data aggregated for the most part at the contract level rather than facility level where size variations would likely be reflected.[412] And, as discussed below, we have independent record data that supports the $0.02 allowance.

137. Several commenters oppose the $0.02 allowance as too low for two primary reasons.[413] First, providers criticize the Commission's methodology for estimating reasonable facility costs in the *2020 ICS Notice* insofar as this methodology "fails to consider whether any characteristics *other* than facility costs might affect whether a particular contract pays a site commission."[414] Second, the National Sheriffs' Association and others argue that $0.02 per minute is inappropriate for smaller jails,[415] and claim that adopting a uniform $0.02 per-minute allowance for all facilities conflicts with the approach the

[407] Public Interest Parties Reply at 10.

[408] *Id*.

[409] *GTL v. FCC*, 866 F.3d at 414.

[410] *See supra* Part III.C.3.

[411] Indeed, these updated data show that prison contracts without site commissions had per-minute allocated costs which were on average $0.008 higher than prison contracts that required the payment of site commissions, whereas the gap for jails was $0.004. *See* Appx. H, *infra*.

[412] *See, e.g.*, GTL Comments at 26; Pay Tel Comments at 11-12; Securus Comments at 33.

[413] GTL Comments at 26-27; Pay Tel Comments at 11; Securus Comments at 31-34; *see also* California State Sheriffs' Association Comments at 1-2; National Sheriffs' Association Comments at 7-8; GTL Apr. 26, 2021 *Ex Parte* Godek Report at 4-6.

[414] GTL Comments at 28 (arguing that state law and correctional facility policy account for variances in site commission payments); Securus Comments at 32 (suggesting that state law can have an effect on whether site commissions are paid) (emphasis in original).

[415] California State Sheriffs' Association Comments at 1-2; National Sheriffs' Association Comments at 7; Pay Tel Comments at 12-13; National Sheriffs' Association Reply at 2; NCIC Reply at 3 (explaining that the proposed $0.02 allowance for jails "may fail to adequately remunerate smaller jails").

Commission took in the *2016 ICS Order*, which adopted additive amounts to the rate caps to account for site commissions based on facility size.[416]

138. We agree that the *2020 ICS Notice* methodology resulted in a proposed facility-related rate component that does not distinguish between different types of site commission payments and that may not sufficiently reflect that smaller correctional facilities might face higher facility costs related to inmate calling services than the initially calculated $0.02. We therefore depart from our initial proposal to apply a specific uniform facility cost allowance cap to *all* facilities for *all* types of site commissions in two ways to address these criticisms.

139. First, we distinguish between the two distinct types of site commission payments and permit providers, when serving prisons and larger jails, to recover each in a distinct manner. For payments required under codified law or regulation, as explained above, we permit recovery of the full commission amount, without markup, provided that the total interstate rate charged for interstate inmate calling services at those facilities does not exceed the $0.21 per-minute rate that represents the highest interstate rate cap currently in effect for debit and prepaid calls for any size correctional facilities. Second, for contractually prescribed site commission payments, we adopt a $0.02 cap on recovery through interstate rates but limit its applicability solely to prisons and larger jails.

140. We limit the applicability of the $0.02 cap for recovery of contractually prescribed site commission payments to prisons and larger jails, in response to criticism that this value would not be sufficient to recover the alleged higher facility-related costs incurred by jails with average daily populations below 1,000. Likewise, we do not adopt a separate legally mandated rate component for these facilities. Instead, inmate calling services for jails with average daily populations below 1,000 will remain subject only to the single, aggregate $0.21 per-minute total rate cap. We agree that the cost data methodology underlying the calculation of the contractually prescribed facility rate component may have masked facility size cost variations due to the aggregated nature of those data. Given that these data obscure cost differences at the level of provider contracts, it is likely to be even harder to identify the variation, among jail contracts of different sizes, in costs that are in some cases incurred by providers and in other cases incurred by incarceration authorities.[417] Thus, our decision to limit adopting a facility-related rate component to only prisons and larger jails on this interim basis, as we do for the provider-related rate component, and to refrain from changing the current interim rate cap of $0.21 for jails with average daily populations less than 1,000, should address the concern raised in the record about facility size variations in facility-related costs for jails with average daily populations less than 1,000.

141. In addition to comparing providers' cost data with and without site commissions to determine a conservative estimate of facilities cost from data that was provided solely by providers and not facilities, the second and separate basis for reaching a decision to adopt $0.02, as the contractually prescribed facility-related rate component for contractually prescribed site commissions applicable in prisons and larger jails, is record data and information reintroduced by Pay Tel and the National Sheriffs' Association that independently supports a $0.02 allowance for correctional facility costs at these size facilities.[418] The Commission has previously relied on these data, and thus we conclude they are largely credible insofar as they come from the National Sheriffs' Association, "which, as an organization representing sheriffs, is well situated to understand and estimate the costs that facilities face to provide [inmate calling services]."[419] Indeed, in the *2015 ICS Order*, while declining to establish any additional

[416] Pay Tel Comments at 12.

[417] *See supra* Part III.C.2.

[418] National Sheriffs' Association Comments at 7 (referring to the 2015 cost survey); Pay Tel Comments at 12 (referring to data submitted by the National Sheriffs' Association); National Sheriffs' Association Comments, WC Docket No. 12-375, at 3 (filed Jan. 12, 2015) (National Sheriffs' Association Jan. 12, 2015, Comments).

[419] *2016 ICS Reconsideration Order*, 31 FCC Rcd at 9316, para. 28.

rate component to reflect facility costs related to inmate calling services, the Commission, in referring to record evidence at that time that included this same National Sheriffs' Association data, stated "[w]e note, however, that evidence submitted . . . indicates that if facilities incurred any legitimate costs in connection with [inmate calling services], those costs would likely amount to no more than *one or two cents* per billable minute."[420]

142. Some commenters contend that the numbers contained in these data support a $0.02 allowance for prisons and larger jail facilities,[421] while also lending support for the argument advanced by other commenters that facility-related inmate calling services costs are higher for jails with fewer incarcerated people[422] and that such costs decrease with an increase in facility size.[423] According to these data, facilities with average daily populations of 1,000 and more can have site commission costs as low as $0.003 per minute, which is up to 85% less than the $0.02 allowance we adopt here.[424] One reason commenters assert that jails with average daily populations of less than 1,000 may have higher site commission costs is that they have higher weekly inmate-turnover rates and shorter lengths of stay than larger jails. This higher turnover causes such jails to incur much greater costs, including costs related to "setting up an account, funding an account, closing an account . . . administering account funds after an inmate's release" or "enrolling inmates for voice biometrics."[425] "On average, jails with an [average daily population] of 2,500 or more inmates held inmates about twice as long (34 days) as jails with an [average daily population] of less than 100 inmates (15 days)."[426] Other commenters have found similar cost differentials between larger jails and jails with fewer incarcerated people, regardless of the data sets they rely upon.[427] Some of this cost difference can likewise be attributed to "differences in officer, supervisor and other employee hours spent on various duties; the compensation rates for officers, supervisors and other employees; and differences in minutes of use."[428] While we recognize that the data in the National Sheriffs' Association survey are more than five years old, they are the best data available from correctional facility representatives regarding their estimated costs related to inmate calling services that

[420] *2015 ICS Order*, 30 FCC Rcd at 12835, para. 139 (emphasis added).

[421] *See* National Sheriffs' Association Comments at 8 (supporting a $0.02 rate for jails with average daily populations of 2,500 or greater); National Sheriffs' Association Reply at 2 (implying that the proposed $0.02 figure could be sufficient for larger jails); Pay Tel Reply at 11 (showing the site commission allowances adopted in the *2016 ICS Reconsideration Order*, which were based, in part, on the National Sheriffs' Association data).

[422] National Sheriffs' Association Jan. 12, 2015, Comments, Exh. A, NSA Member Data Summary – ADP 1-99 at 1 (providing survey results showing that jails with fewer incarcerated people have higher costs than larger jails).

[423] *See, e.g.*, National Sheriffs' Association Comments at 9 (explaining that jails with fewer incarcerated people have higher turnover rates than larger jails and thus less time to recover the costs of processing newly incarcerated people).

[424] National Sheriffs' Association Jan. 12, 2015, Comments, Exh. A, NSA Member Data Summary – ADP 1,000+ at 1.

[425] National Sheriffs' Association Comments at 7 n.6 (identifying various inmate calling services tasks performed at jails); Pay Tel Reply at 8-9 (noting the costs to release incarcerated people as well, such as costs involved in "closing an account, and administering account funds after an inmate's release").

[426] U.S. Department of Justice, Bureau of Justice Statistics, 2018 Jail Report at 8 (Mar. 2020), https://www.bjs.gov/content/pub/pdf/ji18.pdf; *see* Pay Tel Wood Reply Report at 13 (asserting that turnover "directly drives many of the costs incurred by both [inmate calling services] providers and the operators of confinement facilities"). Further, the record suggests that this trend continues as jail size falls even further; e.g., jails with average daily populations below 50 have an "average time in jail of 11.2 days." National Sheriffs' Association Comments at 9.

[427] *See* Pay Tel Comments at 17 (observing an average cost per minute of $0.102 for jails of 1-99 average daily population, compared to an average cost per minute of $0.060 for jails of over 1,000 average daily population).

[428] National Sheriffs' Association Comments at 9. In the Further Notice we adopt today, we seek comment on the effect of turnover on facility costs. *See infra* Part VI.B.3.

correctional facilities incur. Although the Commission asked correctional facilities to provide detailed information about their specific costs, nothing more current was submitted.[429] Nevertheless, we find the survey results for facilities with average daily populations greater than or equal to 1,000 largely sufficient to support our interim $0.02 allowance for prisons and larger jail facilities in the absence of more current data.

143. We are concerned, however, that some of the facilities included in the National Sheriffs' Association survey report an exceedingly high number of hours of correctional facility officials' time compared to most other reporting facilities.[430] For example, one facility with an average daily population of approximately 1,500 reports approximately 694 total hours per week on inmate calling services-related activities, roughly 400 hours more than the next highest facility with an equal or lower average daily population. Given a total of 168 hours in a week (seven days per week x 24 hours per day), this equates to more than 17 full-time 40-hour-a-week correctional facility personnel (or four full-time personnel working 24 hours a day every day) devoting all their time to inmate calling services. We do not find these data credible when comparing them to data of similarly sized reporting facilities *that have no incentive* to under-report their hours or costs. For example, more than 80% of the larger jails having the same or less average daily populations as the facility reporting 694 hours report total hours spent on inmate calling services at fewer than 250 total hours a week and, of those facilities, roughly half spend fewer than 100 hours a week on inmate calling services-related activities.[431] Indeed the majority of facilities between 1,000 and 1,500 average daily population report average total costs per minute less than $0.02. Nevertheless, in the absence of any other facility-provided data for purposes of our interim rate caps, we conclude that reliance on these data best balances our objectives to ensure just and reasonable rates under section 201 of the Act with the requirement to ensure fair compensation under section 276 of the Act. We therefore conclude that a $0.02 allowance for the contractually prescribed facility rate component is reasonable for this interim step based on this record until more updated facility-related data are submitted into the record.

144. In adopting the $0.02 allowance, we decline the Public Interest Parties' suggestion that we round the $0.02 figure down to $0.01 based on the analysis done for the *2020 ICS Notice*.[432] The Public Interest Parties' experts argue that the rounding adjustment is appropriate given typical rounding conventions.[433] In the *2020 ICS Notice*, the Commission calculated the difference in mean costs per minute for contracts with and without site commissions, which came out to $0.013.[434] The Commission explained that it rounded this figure upward "to allow for individual contracts for which this matters more than the average contract."[435] Our revised calculations reflect even lower numbers as we have noted, yet we see no reason to adjust our proposed conservative approach here for this interim solution, particularly in light of the reintroduction of the National Sheriffs' Association facility-related data. To the extent that there are contracts covered by the new interim rate caps that we adopt today where the facility-related costs to provide inmate calling services are higher than our even lower revised calculations or the previously calculated $0.013, particularly in light of the fact that National Sheriffs' Association prefers a

[429] *2020 ICS Notice*, 35 FCC Rcd at 8522, para. 103.

[430] *See* National Sheriffs' Association Jan. 12, 2015, Comments, Exh. A, NSA Member Data Summary – ADP 1,000+ at 1 (showing at line 15, Provider ID 148 having an average daily population of 1,525 and an average reported cost per minute of $0.176).

[431] The remaining facilities of the same or smaller average daily populations report total hours less than 300, well less than half the amount of time claimed by the facility reporting 694 hours.

[432] Public Interest Parties Comments at 8; Public Interest Parties Reply at 10.

[433] Public Interest Parties Brattle Report at 19.

[434] *2020 ICS Notice*, 35 FCC Rcd at 8572, Appx. H, para. 2.

[435] *Id.*

higher rate for larger jails,[436] we maintain the more conservative $0.02 rate cap component as our interim contractually prescribed facility rate component at this time.

145. The Public Interest Parties also raise concerns about "double counting costs"[437] in both the provider-related and facility-related rate cap components. As they explain, "[t]he base rate (i.e., the mean plus one standard deviation) is calculated based on the full data set which includes observations of contracts that pay commissions and those that do not."[438] Facilities that do not require site commissions "already incorporate the unobserved or unreported costs that this adjustment is intended to account for."[439] Site commission payments have been removed from the calculation to determine the new lower provider-related interim rates we adopt today. Unlike the Commission's proposal in the *2020 ICS Notice* where all providers would have been able to recover the $0.02 rate component for all facilities regardless of whether site commissions were actually paid, under our rules adopted today providers that do not pay site commission payments may not assess the separate facility-related rate components on inmate calling services customers. We find that this addresses the potential double-counting concern raised by the Public Interest Parties. We also reject the arguments of Prisoners' Legal Services of Massachusetts that "[t]here is no need or justification for a two cent markup on telephone rates."[440] These commenters highlight that "[i]n three of six recently negotiated Massachusetts county contracts, the sheriffs voluntarily eliminated their commissions."[441] While eliminating site commission payments related to interstate and international inmate calling services altogether may be a laudable objective, on the record before us and taking into account the D.C. Circuit's decision in *GTL*, we decline to do so at this time.[442]

146. We also reject the National Sheriffs' Association's request that we establish a rate component of $0.05 for facilities having average daily populations between 350 and 2,499.[443] The National Sheriffs' Association's proposal covers a much greater range of jail facilities than we have determined we can reasonably address based on the current record; accordingly, we decline to adopt its proposal. We are not confident that the data we currently have can reasonably estimate legitimate facility-related costs for smaller facilities.[444] And our interim rate components will cover facilities with average daily populations of 1,000 or more—i.e., facilities that the National Sheriffs' Association's survey data suggest can accommodate less than the $0.02 per minute we adopt as an interim measure.[445]

147. Some providers oppose our calculated $0.02 number because it is lower than their average site commission payments across all their contracts.[446] We find their arguments unpersuasive and contrary to law. For example, GTL argues that its site commissions average is {[ ]} per minute and that the site commissions for {[ ]} of its jail contracts exceed the Commission's proposed rate cap.[447] Securus explains that in 2018 and 2019, the company incurred approximately {[ ]} million in

[436] National Sheriffs' Association Comments at 8 (seeking $0.05 for jails between 350-2,499 average daily population).

[437] Public Interest Parties Reply at 10.

[438] Public Interest Parties Brattle Report at 15.

[439] *Id.*

[440] Prisoners' Legal Services Comments at 5.

[441] *Id.*

[442] *See GTL v. FCC*, 866 F.3d at 414.

[443] National Sheriffs' Association Comments at 8

[444] *Supra* Part III.C.2.

[445] *See supra* Part III.C.2.

[446] *See* GTL Comments at 26-27; Securus Cost Study at 13.

[447] GTL Comments at 26-27.

site commission expenses, of which roughly {[ ]} was associated with inmate calling services.[448] Securus also highlights that site commissions paid over the same period increased with facility size, ranging from {[ ]} per minute for the facilities with the fewest incarcerated people to {[ ]} per minute for the largest facilities.[449] The problem with both GTL's and Securus's claims is that their figures are based on *total* site commissions paid, and fail to isolate or otherwise account for only those portions of payments related to reasonable facility-related costs of providing inmate calling services. In other words, their calculations vastly overstate legitimate facility-related costs because they include the full site commission payments, under the mistaken view that they should be permitted to recover the entire amount of site commission payments from incarcerated people or the loved ones they call. We agree with the Public Interest Parties that such analysis "includes site commission payments that compensate correctional facilities for the transfer of market power from the facility to the [inmate calling services] provider that should not reasonably be included in the cost base."[450] Given the failure to isolate inmate calling services-related costs from the site commission figures provided by GTL and Securus, we are not persuaded that they represent reasonable allowances for inmate calling services-related facility costs. Furthermore, these figures include site commission payments that would fall into the category of the legally mandated facility rate component that we separately adopt today that permits providers to recover these site commission payments in a manner other than through the $0.02 contractually prescribed facility-related rate component. To rely on the Securus or GTL averages to arrive at a facility-related rate component for prisons and larger jails would necessarily result in double recovery with respect to many of these payments.

148. *Security and Surveillance Costs*. We cannot determine, based on the current record, whether security and surveillance costs that correctional facilities claim to incur in providing inmate calling services are "legitimate" inmate calling services costs that should be recoverable through interstate and international calling rates. The *2020 ICS Notice* sought comment on this issue,[451] and the record is mixed. Several commenters support the exclusion of security and surveillance costs from the base of recoverable inmate calling services costs under section 276, arguing that these tasks are "not related to the provision of communication service and provide no benefit to consumers."[452] As Worth Rises explains, security and surveillance services "used in a prison or jail reflect policy decisions made by administrators that differ dramatically from one state or county to another and even one facility to another" and are "generally not responsive to any local, state, or federal law requirements, and are thus incredibly varied."[453] And the United Church of Christ and Public Knowledge argue that costs associated with monitoring, call blocking, and enrolling incarcerated people in voice biometrics systems are security costs not related to "communications functions."[454] GTL and the National Sheriffs' Association argue that

[448] Securus Cost Study at 13.

[449] *Id.* Securus's figures run counter to the claims of other commenters and correctional facility evidence showing that facility costs per calling minute tend to decrease as facility size increases. *See* National Sheriffs' Association Comments at 7-8; Pay Tel Comments at 13; Pay Tel Reply at 10; National Sheriffs' Association Jan. 12, 2015, Comments, Exh. A (showing costs for facilities of different sizes).

[450] Public Interest Parties Brattle Reply Report at 15; *see also* National Sheriffs' Association Comments at 6 (recognizing that "at least some portion of commission payments are not locational rents").

[451] *2020 ICS Notice*, 35 FCC Rcd at 8523, para. 107.

[452] MediaJustice Comments at 2 ("The Commission should not incorporate the cost of security and surveillance in rates."); Worth Rises Comments at 8; Public Interest Parties Reply at 9 ("Constant observation of incarcerated people is a core function of jail and prison facilities, not a function specific only to [inmate calling services].").

[453] Letter from Bianca Tylek, Founder and Executive Director, Worth Rises, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed Mar. 24, 2021) (Worth Rises Mar. 24, 2021 *Ex Parte*).

[454] UCC and Public Knowledge Mar. 31, 2021 *Ex Parte* at 3; UCC Apr. 26, 2021 *Ex Parte* at 1 (highlighting that security services "are separate from the services provided to two people communicating with each other" and should not be treated as "mandatory elements of the rate").

"correctional facilities incur administrative and security costs to provide incarcerated people with access to [inmate calling services]" and that these costs should be recovered through calling rates.[455] The data provided by the National Sheriffs' Association suggest that correctional facilities do include security and surveillance costs that they assert could reasonably be related to providing calling services.[456] These data and descriptions also suggest a troubling and apparent duplication of some of the same security functions claimed by providers in their costs.[457] The National Sheriffs' Association also asserts that the data suggest that it is possible to arrive at a per-minute cost to perform these duties.[458]

149. We are skeptical of these data given the wide unexplained variations that appear across some of the facilities. At the same time, we recognize that the data upon which the National Sheriffs' Association relies are self-reported costs purportedly incurred in relation to inmate calling services.[459] Those data do not suggest a methodology that would permit the Commission to verify or otherwise isolate legitimate telephone calling-related security and surveillance costs, such as costs associated with court-ordered wiretapping activity, from general security and surveillance costs in correctional facilities that would exist regardless of inmate calling services. As Worth Rises emphasizes, isolating and thus being able to quantify calling-related security and surveillance costs is an important step in determining how, if at all, such costs should be recovered through rates.[460]

150. On the present record, however, commenters have not provided the Commission with any plausible method for doing so, much less a methodology for determining recoverable security and surveillance costs, if any, versus non-recoverable costs. In the absence of an ability to distinguish or quantify security cost duplication at this time, we seek comment on this issue in the Further Notice so we can continue to evaluate whether and, if so, how to exclude these costs from interstate and international inmate calling services rates.[461]

151. *Takings*. In *GTL v. FCC*, the D.C. Circuit directed that the Commission address on remand whether "the exclusion of site commissions . . . violates the Takings Clause of the Constitution because it forces providers to provide services below cost."[462] Consistent with that directive, the *2020 ICS Notice* sought comment on the takings issue with respect to site commission payment cost recovery.[463] The Commission indicated it did not believe that there were any potential taking concerns arising from the rate cap proposals in the *2020 ICS Notice*.[464] We find that the Takings Clause is not

[455] GTL Comments at 28; National Sheriffs' Association Comments at 3 (listing various security and administrative functions).

[456] National Sheriffs' Association Jan. 12, 2015, Comments at 3 (listing various security responsibilities related to the provision of inmate calling services including call monitoring and responding to "system alerts").

[457] National Sheriffs' Association Comments at 4 ("It is clear that Sheriffs and jails perform some of the same functions that [inmate calling services] providers perform in some cases and, presumably, whose cost were included in the cost studies filed with the Commission.").

[458] *Id.* (explaining that data obtained from a cost survey (that the National Sheriffs' Association provided in 2015) were used to calculate the "per minute cost to perform duties associated with [inmate calling services] for each jail").

[459] National Sheriffs' Association Jan. 12, 2015, Comments at 4 nn.4-5.

[460] *Cf.* Worth Rises Comments at 9 (suggesting that isolating security and surveillance costs would facilitate greater visibility into provider rate structures and bids).

[461] *See infra* Part VI.B.3.

[462] *See 2020 ICS Notice*, 35 FCC Rcd at 8522, para. 105 n.254 (citing *GTL v. FCC*, 866 F.3d at 414); *see also* U.S. Const. amend. V ("[P]rivate property [shall not] be taken for public use, without just compensation.").

[463] *See 2020 ICS Notice*, 35 FCC Rcd at 8523, para. 105.

[464] *See id.*

implicated by the actions we take today in adopting separate and distinct facility-related rate components that providers may recover.

152. As an initial matter, the interim rate cap reforms we adopt in this Report and Order with respect to site commission payments are based on a cautious, data-driven approach to lowering total interstate rate caps, carefully balancing the needs of providers to receive fair compensation while ensuring just and reasonable rates and practices. The D.C. Circuit's concern about takings due to the categorical exclusion of any portion of site commission payments in the *2015 ICS Order* is obviated by our two-part facility-related rate component mechanism.

153. As the Supreme Court has recognized, the "guiding principle has been that the Constitution protects utilities from being limited to a charge for their properly serving the public which is so 'unjust' as to be confiscatory."[465] As a general matter, "[r]ates which enable [a] company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risk assumed certainly cannot be condemned as invalid, even though they might produce only a meager return on the so called 'fair value' rate base."[466] In making this evaluation, "it is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unreasonable, judicial inquiry . . . is at an end. The fact that the method employed to reach that result may contain infirmities is not then important."[467] Whether a given rate is confiscatory "will depend to some extent on what is a fair rate of return given the risks under a particular rate-setting system, and on the amount of capital upon which the investors are entitled to earn that return."[468] In evaluating the "total effect" of a rate on a company, courts do not consider the profitability of a company's nonregulated lines of business.[469] Carriers face a "heavy burden" to prevail on a takings claim and must demonstrate that a rate "threatens [the carrier's] financial integrity or otherwise impedes [its] ability to attract capital."[470]

154. Considered in their totality, our interim per-minute provider-related rate caps and allowances for site commissions do not threaten providers' financial integrity such that they could be considered confiscatory. The rate caps and site commission allowances are based on data supplied by providers and, as applicable to site commissions, correctional facilities. Neither correctional facilities nor providers have incentives to understate their costs in the context of a rate proceeding, lest the Commission adopts rates that are below cost. Indeed, the manner in which these cost data were collected gave "providers every incentive to represent their [inmate calling services] costs fully, and possibly, in some

[465] *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989) (*Duquesne Light*).

[466] *Hope Natural Gas*, 320 U.S. at 605; *see also, e.g.*, *Verizon v. FCC*, 535 U.S. at 524 (A rate is "so unjust as to be confiscatory" where it "threaten[s] an incumbent's financial integrity." (quoting *Duquesne Light*, 488 U.S. at 307 (internal quotation marks omitted))); *Ill. Bell Tel. Co. v. FCC*, 988 F.2d 1254, 1263 (D.C. Cir. 1993) (*1993 Illinois Bell*) (rejecting a takings claim where "[t]here simply has been no demonstration that the FCC's rate base policy threatens the financial integrity of the [service providers] or otherwise impedes their ability to attract capital").

[467] *Hope Natural Gas*, 320 U.S. at 602.

[468] *Duquesne Light*, 488 U.S. at 310.

[469] *See, e.g.*, *Brooks-Scanlon Co. v. R.R. Comm'n*, 251 U.S. 396, 399 (1920) (A company cannot "be compelled to spend" revenues from its unregulated sawmill and lumber business "to maintain a [rate-regulated] railroad" that regularly operates at a loss.); *Mich. Bell Tel. Co. v. Engler*, 257 F.3d 587, 594 (6th Cir. 2001) (The rate freeze mandated by state law did "not include any provisions which adequately safeguard against imposition of confiscatory rates," and the carriers were "not required to subsidize their [rate] regulated services with income from rates . . . deemed to be competitive, or with revenues generated from unregulated services.").

[470] *Hope Natural Gas*, 320 U.S. at 602; *1993 Illinois Bell*, 988 F.2d at 1263; *see also Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 437 (5th Cir. 1999) (stating that to succeed on a takings claim, a party must demonstrate that the losses caused by the regulation in question "are so significant that the 'net effect' is confiscatory").

instances, even to overstate these costs."[471] Thus, there is no reason to believe that the data understate the actual costs of providing interstate and international inmate calling services.

155. Further, as the Commission observed in 2015, "[t]he offering of [inmate calling services] is voluntary on the part of the [inmate calling services] providers, who are in the best position to decide whether to bid to offer service subject to the contours of the request for proposal. There is no obligation on the part of the [inmate calling services] provider to submit bids or to do so at rates that would be insufficient to meet the costs of serving the facility or that result in unfair compensation."[472] And unlike the rate caps adopted in 2015, our new interim rate framework includes an explicit allowance for site commission payments. Considering these circumstances, we conclude that the "total effect" of our interim rate regime is not confiscatory and reject arguments that the reforms adopted here will result in unconstitutional takings.[473]

156. Our actions also do not constitute a *per se* taking as they do not involve the permanent condemnation of physical property.[474] Nor do our actions represent a regulatory taking.[475] The Supreme Court has stated that in evaluating regulatory takings, three factors are particularly significant: (1) the economic impact of the government action on the property owner; (2) the degree of interference with the property owner's investment-backed expectations; and (3) the "character" of the government action.[476] None of these factors suggest a regulatory taking here.

157. First, the interim steps we take with respect to inmate calling services rates including site commission payments are unlikely to have adverse economic impacts on providers. Providers have a waiver mechanism available to them should they find that in limited instances, the rate cap components do not cover the legitimate costs of providing inmate calling services. And, as explained above, the Supreme Court has long recognized, when a regulated entity's rates "enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed," the company has no valid claim to compensation under the Takings Clause, even if the current scheme of regulated rates yields "only a meager return" compared to alternative rate-setting approaches.[477]

158. Second, these interim actions do not improperly impinge on providers' reasonable investment-backed expectations. The Commission has long been examining how to address inmate calling services rates and charges and has taken incremental steps to address areas of concern as they arise.[478] Various proposals, especially those targeting rate reform, have been raised and extensively debated in the record. Given this background, we are not persuaded that any reasonable investment-backed expectations can be viewed as having been upset or impinged by our actions here.[479]

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[471] *2015 ICS Order*, 30 FCC Rcd at 12799, para. 73.

[472] *Id.* at 12836, para. 142.

[473] GTL Comments at 30; Securus Comments at 31.

[474] *Loretto v. Teleprompter Manhattan City Corp.*, 458 U.S. 419, 427 (1982) ("When faced with a constitutional challenge to a permanent physical occupation of real property, this Court has invariably found a taking."); *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 322 (2002) ("When the government physically takes possession of an interest in property for some public purpose, it has a categorial duty to compensate the former owner.").

[475] GTL Comments at 31 n.157.

[476] *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978) (*Penn Central*).

[477] *Hope Natural Gas Co.*, 320 U.S. at 605.

[478] *See generally 2013 ICS Order*; *2015 ICS Order*; *2020 ICS Order on Remand; 2020 ICS Notice*.

[479] *See, e.g., Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, MB Docket No. 07-51, Report and Order and Further Notice of Proposed Rulemaking, 22 (continued….)

159. Third, our actions today substantially advance the legitimate governmental interest in protecting incarcerated people, and the familial and other support systems upon which they rely through telephone service, from unjust and unreasonable interstate and international inmate calling services rates and charges. This is an interest that Congress has required the Commission to protect.[480] Thus, our actions do not compel a physical invasion of providers' property, but merely "adjust[] the benefits and burdens of economic life to promote the common good" by ensuring that providers are fairly compensated while also directly protecting the interests of ratepayers and, indirectly, the broader public.[481]

160. *Recovering Facility-Related Rate Components on Consumers' Bills*. Having adopted the two aforementioned distinct facility-related rate components today to account for payments required under codified law and our reasonable estimate of legitimate correctional facility costs, we also find it necessary to ensure increased transparency in the rates and charges imposed upon incarcerated people and their loved ones for interstate and international inmate calling services. Under our interim rules, we adopt different caps on the facility-related rate component of interstate and international inmate calling services depending on the circumstances that led to the site commission payment. In contrast to someone's status as an inmate of a prison versus a jail, or of a jail of a particular size—for which we also have differing rate caps—we find it less likely that customers of interstate and international inmate calling services will know the circumstances that led to a given provider's site commission payment. Absent information separately breaking out the facility-related rate component of the service charge, and some identifier tying the charge to the relevant category under the Commission's rules, customers will be substantially less able to evaluate their bills and monitor whether they are receiving the protections of Commission rate caps to which they are entitled. To this end, we exercise our authority to require providers choosing to recover the facility-related rate components in their total interstate or international inmate calling services rates to include those rate components separately on inmate calling services bills.[482] The facility-related rate components on such bills should contain the source of the obligation underlying that component, the amount of the component on a per unit basis, and the total interstate or international rate component resulting from the facility-related rate component charged for interstate or international calls and reflected on bills. We provide more detailed guidance on the mechanics of implementing these requirements later in this section.

161. The Commission has previously found that it has the jurisdiction to "regulate the manner in which a carrier bills and collects for its own interstate offerings, because such billing is an integral part of that carrier's communications service."[483] In the *2013 ICS Order*, the Commission used this authority

(Continued from previous page)
FCC Rcd 20235, 20263, para. 58 (2007) (concluding that there was no interference with investment-backed expectations as "exclusivity clauses in [multiple dwelling unit (MDU)] contracts have been under active scrutiny for over a decade"); *Connolly v. Pension Ben. Guaranty Corp.*, 475 U.S. 211, 226-27 (1986) (declining to find interference with investment-backed expectations where the subjects of regulation had been of "legislative concern" for years).

[480] 47 U.S.C. § 201(b).

[481] *Penn Central*, 438 U.S. at 124.

[482] We believe that the requirements we adopt advance truthfulness and accuracy in billing, consistent with the Commission's existing Truth-In-Billing rules. 47 CFR §§ 64.2400-64.2401. To the extent that the requirements of these rules differ from the requirements of our Truth-In-Billing rules with respect to the detail and specifications required or otherwise, we make clear that these more specific billing requirements for the facility-related component of interstate and international inmate calling services charges are controlling over the more general Truth-In-Billing rules to the extent of any divergence—but only to that extent. Providers thus must treat our interstate and international inmate calling services disclosure requirements as controlling within their self-described scope and otherwise comply with the more general Truth-In-Billing rules.

[483] *Truth-In-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 7492, 7507, para. 25 (1999).

to address billing-related call blocking, explaining that "the Commission and the courts have routinely indicated that billing and collection services provided by a common carrier for its own customers are subject to Title II" of the Act.[484] And, in adopting ancillary service charge rules in the *2015 ICS Order*, the Commission reaffirmed its jurisdiction to regulate the manner in which providers bill and collect charges associated with inmate calling services.[485] Because these facility-related rate components concern the "manner" in which calling service providers bill for their interstate and international services, we conclude that we have the necessary authority to require implementation as specified herein.

162. The strong public interest in facilitating greater transparency with respect to site commission payments likewise justifies the disclosure of facility-related rate component information. Given that incarcerated people and their loved ones ultimately bear the burden of these payments through the total per-minute rates charged by providers, there is a strong interest in transparency regarding the charges that incarcerated people and their families bear. Absent our requirements we find a substantial risk that billing information will lack the detail about correctional facility-related charges necessary for consumers to ensure they are receiving the protections of our rate caps in that regard.

163. Calling service providers in this proceeding have similarly encouraged us to account for the effect of state law in assessing site commission payments. GTL explains that there are "significant variances in site commission requirements," some of which are driven by state law.[486] And Securus points to variations in state laws governing site commissions that "might affect whether a particular contract pays a site commission."[487] Securus expressly encourages us to treat site commissions "separate and distinct from the provider base rate."[488] Securus highlights that "[t]his would allow the Commission to set a lower rate ceiling based on non-commission costs, and would increase public transparency of [inmate calling services] provider costs."[489] We agree. By accounting for legally mandated and contractually prescribed site commissions separately, we are better able to account for certain variances in site commission costs and increase transparency to end users with respect to what portion of their total interstate and international rates relate to site commission payments.[490]

164. Our treatment of correctional facility-related costs as a separate and distinct rate component from the lower provider-related interim rate caps we adopt is consistent with *GTL v. FCC*. While the D.C. Circuit rejected the "categorical exclusion" of site commission costs from "the calculation used to set [inmate calling services] rate caps,"[491] nothing in the court's decision dictates how we implement recovery of such costs. The facility-related rate components we adopt herein merely disaggregate correctional facility-related costs from provider-related costs and direct providers to recover these costs through separate interim rate components.

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[484] *2013 ICS Order*, 28 FCC Rcd at 14168, para. 114 (citations omitted).

[485] *2015 ICS Order*, 30 FCC Rcd at 12860, para. 194.

[486] GTL Comments at 28.

[487] Securus Comments at 32.

[488] *Id.* at 35. Pay Tel also supports "the adoption of a specific rate element intended to offset facility costs as a reasonable means of compensating facilities for cost incurred." Pay Tel Comments at 14.

[489] Securus Comments at 35.

[490] We also decline NCIC's request that rather than permit site commission allowances as an additive to the provider-related rate components, we instead require providers to make these payments "from their revenue generated at the new caps." Letter from Glenn S. Richards and Lee G. Petro, Counsel for NCIC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 3 (filed May 13, 2021) (NCIC May 13, 2021 Supplemental *Ex Parte*). We are unable, on the record before us and for purposes of the interim reforms we make today, to take this step.

[491] *GTL v. FCC*, 866 F.3d 413.

165. *Mechanics of the Legally Mandated Facility Rate Component*. For providers subject to site commission payments required under codified laws or regulations, we permit providers to pass through to consumers this cost of providing inmate calling services, without any markup, capped at the maximum total interstate rate cap currently in effect for debit and prepaid calls from any size correctional facilities.[492] We agree, for present purposes, that site commissions prescribed under formally codified laws are meaningfully distinguishable from contractually negotiated site commission payments.[493] At least on the current record, while we collect additional information through today's Further Notice, we consider it prudent to regard site commissions of this type as reasonably related to the provision of inmate calling services.

166. Consistent with our transparency objectives, providers shall: (1) specify the state statute, law, or regulation adopted pursuant to state administrative procedure statutes where there is notice and an opportunity for public comment that operates independently of the contracting process between correctional institutions and providers giving rise to the mandatory nature of the obligation to pay; (2) disclose the amount of the payment on the applicable per-unit basis, e.g., per-call or per-minute if based on a revenue percentage; and (3) identify the total amount of this facility rate component charged for the interstate and international calls on the bill. For example, a provider serving a local jail in Tennessee is required to collect $0.10 for each completed telephone call.[494] In issuing an inmate calling services customer bill, that provider must clearly label[495] the legally mandated facility-related rate component, specify section 41-7-104 of the Tennessee Code as the relevant statutory code section giving rise to the obligation, specify the amount as $0.10 per call, and include a line item indicating the total charge to the customer resulting from multiplying the $0.10 per call charge by the number of interstate and international calls. Similarly, for a statutory obligation to remit a percentage of gross revenue, like the 40% reflected in the Texas code,[496] we require a provider to identify the Texas code section, specify that it requires an additional 40% charge on top of the applicable per-minute interstate or international provider-related rate component, and include a line item reflecting how much of the total interstate and international rate charges are attributable to the mandatory 40% charge. We recognize the possibility that not all mandatory site commission payments may be easily expressed as a percentage of revenue or easily converted to a per-call or per-minute rate. Under these circumstances, providers must use their best judgment to comply with our billing-related disclosure obligations to reflect the legally mandated rate component in the manner we prescribe for interstate and international calls on their inmate calling services customer bills. We direct the Bureau staff to assist with questions that may arise on a case-by-case basis should providers encounter difficulty implementing our billing transparency requirements.

167. *Mechanics of the Contractually Prescribed Facility Rate Component*. Providers subject to contractually prescribed site commissions pursuant to contract with correctional facilities or agencies may charge up to $0.02 per minute to recover those discretionary payments.[497] Similar to the

[492] Providers may never charge a total rate for interstate calls that exceed $0.21, the highest interstate rate cap permissible as a result of today's actions. As we indicated, nothing we do today increases any interstate calling rate above the $0.21 rate cap in effect prior to today for prepaid and debit calls from all sizes and types of facilities. *Supra* Part II.

[493] *See supra* paras. 116-22.

[494] Tenn. Code Ann. § 41-7-104 (West 2020).

[495] Providers are not required to use the terms "legally mandated facility rate component" or "contractually prescribed facility rate component," but may do so if they choose. Other terms may be appropriate as long as providers clearly label the facility-related rate components.

[496] Tex. Gov't Code Ann. § 495.027 (West 2021).

[497] Should a provider's total contractually prescribed site commission payment obligation result in a lower per-minute rate than $0.02 per minute of use, that provider's contractually prescribed facility rate component would be limited to the actual amount of its per-minute site commission payment up to a maximum of $0.02. An illustration may prove helpful. If the provider charges $0.12 per minute for a call from a larger jail and the correctional facility

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requirements for our legally mandated rate component, should providers decide to recover this discretionary amount from their interstate or international calling customers, they must clearly label the rate component on their bill and indicate that this rate component is required by the correctional facility per contract. They must also show this rate component charge as an additional (up to $0.02, as applicable) per minute rate component on top of the applicable provider-related per-minute rate component, and then compute the total amount attributable to the $0.02 rate component charged to the end user for that call, determined by multiplying $0.02 by the number of interstate and international minutes reflected on that bill.[498]

168. Finally, NCIC Inmate Communications (NCIC) asks us to clarify that our $0.02 allowance "does not prohibit the payment of additional site commissions should the inmate calling services provider and correctional facility so negotiate."[499] We confirm that the $0.02 figure does not prevent or prohibit the payment of additional site commissions amounts to correctional facilities should the calling services provider and the facility enter into a contract resulting in the provider making per-minute payments to the facility higher than $0.02. All we do here is limit the providers' ability to recover these commissions to $0.02.[500] Our recognition here that existing site commission payment obligations may contain legitimate facility-related costs is not an invitation for correctional facilities not currently incorporating these discretionary payments into their bidding and contracting process to do so in the future. Indeed, in the Further Notice, we seek comment on whether providers should be prohibited from entering into any correctional facility contract that requires the payment of site commission payments with respect to interstate and international inmate calling services pursuant to our authority under section 201(b) of the Act.[501]

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imposes a 10% site commission payment obligation on all gross revenue, the provider would be required to pay the correctional facility $0.012 (an amount lower than $0.02). In such a case the provider is *only* able to charge a contractually prescribed facility rate component of $0.012 rather than the full $0.02 amount. For this reason, providers must calculate any contractually prescribed facility rate component to three decimal points for all intermediate calculations occurring before the total amount of such charges related to interstate and international calling are determined.

[498] To the extent providers believe they are unable to recover their costs through the interstate and international rate components we adopt today, they may seek waivers through the waiver process we also adopt today. ICSolutions requests that we require providers to list in-kind commissions on consumer bills because "differential treatment based on the form of commissions distinguishing monetary from all other forms will lead to gold-plating and limitations on competition." ICSolutions May 12, 2021 *Ex Parte* at 1. We decline to do so. Instead, consistent with the Commission's broad definition of site commissions in section 64.6000(t), we make clear that the $0.02 allowance for the contractually prescribed facility rate component reflects *any* type of site commission or compensation, whether monetary or in-kind, that is required to be paid in this situation. Our focus on consumer transparency here means that consumers need to know what they are paying to cover any type of consideration that the provider is paying, giving, donating, or otherwise providing to the facility. *See* 47 CFR § 64.6000(t).

[499] NCIC Comments at 4.

[500] Consequently, we reject NCIC's assertion that the $0.02 allowance could raise Tenth Amendment concerns "by infringing on a state's right to require or permit site commissions." NCIC Comments at 5. With respect to state prescribed statutory or legal obligations, we allow recovery for such mandatory site commission payments as described herein, leaving states free to require them as they wish. As the Public Interest Parties correctly highlight, our actions do not "affect a state's ability to require or permit site commissions." Public Interest Parties Reply at 14.

[501] 47 U.S.C. § 201; *infra* Part VI.B.3.

5. Waiver Process for Outliers

169. We readopt and modify the waiver process applicable to calling service providers and codify this process in our inmate calling services rules.[502] The *2020 ICS Notice* proposed to adopt a modified waiver process to better enable the Commission to understand why circumstances associated with a provider's particular facility or contract differ from those at other similar facilities it serves, and from other facilities within the same contract, if applicable.[503] The record, while not robust on this issue, generally supports our proposed waiver process modifications. For instance, GTL agrees with the Commission's proposal to apply the waiver process on a facility-by-facility basis rather than at the holding company level as required under the present rules.[504] Significantly, no commenter opposes the proposed waiver process modifications.[505]

170. A waiver process provides an important safety valve for providers that may face unusually high costs in providing interstate or international inmate calling services at a particular facility or under a particular contract that are otherwise not recoverable through the per-minute charges for those services and through ancillary service fees associated with those services. Such a process helps us ensure that providers' rates for interstate and international inmate calling services and ancillary services are not unreasonably low within the meaning of section 201(b) of the Act and also is essential to our ability to ensure that providers are fairly compensated for each and every completed call, as section 276(b)(1)(A) of the Act requires.[506] Accordingly, we establish a modified waiver process requiring providers of inmate calling services that seek waivers of our interstate or international rate or ancillary fee caps to do so on a facility-by-facility or contract basis, consistent with the Commission's proposal in the *2020 ICS Notice*.[507] We similarly modify our waiver process to specifically permit providers to seek waivers of the international rate caps we adopt in this Report and Order.[508] The Commission has previously delegated authority to the Bureau to review and rule on petitions for waiver of its caps for inmate calling services,[509] and we reaffirm that delegation of authority today.

171. Throughout the course of this proceeding, various parties have argued that reductions in inmate calling services rates would threaten their financial viability, imperiling their ability to provide service,[510] and risking degraded or lower quality service.[511] We find that these claims are best handled on

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[502] *See 2013 ICS Order*, 28 FCC Rcd at 14153, para. 82. The Commission reaffirmed its waiver process for inmate calling services providers in the *2015 ICS Order*. *2015 ICS Order*, 30 FCC Rcd at 12871, para. 219; *see also* 47 CFR § 1.3. These portions of the *2015 ICS Order* were left unaltered by the *GTL v. FCC* court's 2017 vacatur. *See GTL v. FCC*, 866 F.3d 397 *passim*.

[503] *2020 ICS Notice*, 35 FCC Rcd at 8524, para. 110.

[504] GTL Comments at 5 n.13.

[505] *See, e.g., id.* at 5 n.13, 34 n.171; Public Interest Parties Comments at 11-12.

[506] 47 U.S.C. §§ 201(b), 276(b)(1)(A).

[507] *2020 ICS Notice*, 35 FCC Rcd at 8523-24, paras. 108-11; *see also 2013 ICS Order*, 28 FCC Rcd at 14154, para. 84 (requiring providers to request waivers on a holding company basis).

[508] *2020 ICS Notice*, 35 FCC Rcd at 8532, para. 129; *see also* GTL Comments at 34 n.171.

[509] *See 2015 ICS Order*, 30 FCC Rcd at 12868, para. 212; *2013 ICS Order*, 28 FCC Rcd at 14154, para. 84.

[510] *See, e.g.*, GTL Comments at 13 (recognizing that providers "will require time to determine whether they can continue to provide [inmate calling services] under the new rate caps at a particular correctional facility"). To the extent any provider desires to cease serving a facility or facilities because it determines that it is no longer an economically attractive business operation, correctional facilities and incarcerated people need not fear an abrupt disruption or cessation of service, as some providers suggest could occur. If an inmate calling services provider seeks to discontinue offering service at any facility, it would first need to obtain authority from this Commission pursuant to section 214 of the Act, a provision which serves to ensure that customers of any telecommunications services provider have alternative service options available to them prior to the carrier discontinuing its service at

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a case-by-case basis through a waiver process that focuses on the costs the provider incurs in providing interstate and international inmate calling services, and any associated ancillary services, at an individual facility or under a specific contract. We find these levels of analysis to be the most appropriate because they permit the evaluation of detailed information about individualized circumstances that are best measured at those disaggregated levels of operations, unlike our prior waiver process which was based at the holding company level.[512] This approach also recognizes that in some instances the circumstances at a particular facility may prevent the provider from recovering its costs of providing interstate and international inmate calling services and associated ancillary services under our rate and ancillary service fee caps, while in other instances circumstances applicable to all facilities covered by a contract may prevent such cost recovery.

172. As with all waiver requests, the petitioner bears the burden of proof to show that good cause exists to support the request.[513] Any inmate calling services provider filing a petition for waiver must clearly demonstrate that good cause exists for waiving our rate or fee caps at a given facility or group of facilities, or under a particular contract, and that strict compliance with our rate or fee caps would be inconsistent with the public interest.[514] We do not expect the Bureau to grant waiver requests routinely. Rather, we expect the Bureau to subject any waiver requests to a rigorous review.[515] Relief would be granted only in those circumstances in which the petitioner can demonstrate that adhering to our rate or fee caps would prevent it from recovering its costs of providing interstate inmate calling services at a particular facility or group of facilities, or pursuant to a particular contract. Moreover, we agree with

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any facility. 47 U.S.C. § 214; *see also* 47 CFR § 63.71; *Comments Invited on Section 214 Application(s) to Discontinue Domestic Non-Dominant Carrier Telecommunications and/or Interconnected VoIP Services*, WC Docket No. 20-52 et al., Public Notice, 35 FCC Rcd 12045 (WCB 2020) (citing 47 CFR § 63.71); Application of Legacy Long Distance International, Inc., WC Docket No. 20-52 (filed Feb. 18, 2020), https://ecfsapi.fcc.gov/file/1021706369350/FCC%20Legacy%20Discontinuance%20Application%20IXC%20and%20OSP%202020%20as%20Filed.pdf (seeking authorization to discontinue interexchange services in all 50 states, and including customer notices that explain how to obtain a new service provider). Moreover, based on the contractual arrangements between the relevant correctional facility and provider, the inmate calling services contract would likely be transferred to another provider to ensure continuity of service for the incarcerated people residing in the facility in question, a transfer which also would require prior approval from the Commission pursuant to section 214 of the Act. *See, e.g.*, *Section 214 Applications Granted*, WC Docket No. 20-207 et al., Public Notice, 35 FCC Rcd 13089 (WCB IB 2020) (granting application for the transfer of the jail contracts of Legacy Long Distance International, Inc. d/b/a Legacy Inmate Communications to Network Communications International Corp. d/b/a NCIC Inmate Communications, an existing inmate calling services provider, thereby ensuring the continuity of service to the correctional facility customers); *see* 47 U.S.C. § 214; 47 CFR §§ 63.03-63.04.

[511] *See, e.g.*, Securus Comments at 43.

[512] *See* Securus Comments, WC Docket No. 12-375, at iii, 40-41 (filed Jan. 12, 2015) (asserting that requiring waiver petitions to be evaluated at the holding company level would be far too onerous and suggesting that the Commission allow providers to seek waivers on a site-by-site basis).

[513] 47 CFR § 1.3 ("Any provision of the rules may be waived by the Commission . . . on petition if good cause therefor is shown.").

[514] *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (recognizing that the Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest).

[515] *See, e.g.*, *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17840, para. 540 (2011) (*USF/ICC Transformation Order*), *pets. for review denied sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

commenters that suggest that the interim rate reform adopted in this Report and Order should minimize the need for providers to avail themselves of the Commission's waiver process.[516]

173. Petitions for waiver must include a specific explanation of why the waiver standard is met in the particular case. Conclusory assertions that reductions in interstate or international rates, or associated ancillary service fees, will harm the provider or make it difficult for the provider to expand its service offerings will not be sufficient. We agree with commenters that providers requesting a waiver of our inmate calling services rules should provide a detailed explanation of their claims, as well as a comparative analysis of the reasons the provider cannot recover its costs when similar facilities or contracts served by the provider do.[517] In addition, waiver petitions must include all required financial data and other information needed to verify the carrier's assertions. Failure to provide the information listed below will be grounds for dismissal without prejudice. Furthermore, the petitioner must provide any additional information requested by Commission staff needed to evaluate the waiver request during the course of its review.[518] This additional information may include information regarding the provider's facilities or contracts that have characteristics similar to those for which waiver is sought, the provider's interstate and international rates, and the provider's associated ancillary service charges, at or below our caps. Petitions for waiver must include, at a minimum, the following information:

- The provider's total company costs, including the nonrecurring costs of the assets it uses to provide inmate calling services and its recurring operating expenses for these services at the correctional facility or under the contract;
- The methods the provider used to identify its direct costs of providing interstate and international inmate calling services, to allocate its indirect costs between its inmate calling services and other operations, and to assign its direct costs to and allocate its indirect costs among its inmate calling services contracts and correctional facilities;
- The provider's demand for interstate and international inmate calling services at the correctional facility or at each correctional facility covered by the contract;
- The revenue or other compensation the provider receives from the provision of interstate and international inmate calling services, including the allowable portion of any permissible ancillary services fees attributable to interstate and international inmate calling services, at the correctional facility or at each correctional facility covered by the contract;
- A complete and unredacted copy of the contract for the correctional facility or correctional facilities, and any amendments to such contract;
- Copies of the initial request for proposals and any amendments thereto, the provider's bid in response to that request, and responses to any amendments (or a statement that the provider no longer has access to those documents because they were executed prior to the effective date of the waiver rules adopted in this Report and Order);
- A written explanation of how and why the circumstances associated with that correctional facility or contract differ from the circumstances at similar correctional facilities the

[516] GTL Comments at 5 n.13; *see also* Public Interest Parties Comments at 12-13 (arguing "that there should be no need for the Commission to routinely grant [inmate calling services] rate cap waivers because the FNPRM already addresses outliers through its mean plus one standard deviation approach, and because the record shows that the vast majority of [inmate calling services] rates will remain below the caps proposed").

[517] Free Press Comments at 6.

[518] This requirement is consistent with prior Commission inmate calling services waiver requirements. *2013 ICS Order*, 28 FCC Rcd at 14154, para. 84; *2015 ICS Order*, 30 FCC Rcd at 12868, para. 212.

provider serves, and from other correctional facilities covered by the same contract, if applicable; and

- An attestation from a company officer with knowledge of the underlying information that all of the information the provider submits in support of its waiver request is complete and correct.

174. We decline to adopt Free Press's request that a provider's waiver request should terminate upon a showing either that facility costs have declined or that its revenue has increased, and that we should "require periodic updates on cost and revenue data to make these determinations."[519] Requiring a provider to provide updated and detailed cost and revenue data and analyses on an ongoing basis, beyond its initial detailed cost and data submissions, would be unnecessarily burdensome. Any waiver request filed with the Commission will be rigorously scrutinized and, if granted, time limited as appropriate, based on the circumstances of each particular request. Additionally, we view our waiver process as sufficiently narrow and rigorous to filter spurious waiver claims, and thus sufficiently addresses those commenters' requests that any potential grant of a waiver of our inmate calling services rules be as narrowly tailored as possible.[520]

175. Consistent with our past waiver process for inmate calling services, we delegate to the Bureau the authority to approve or deny all or part of any petition for waiver of our inmate calling services rules.[521] Such petitions will be placed on public notice, and interested parties will be provided an opportunity for comments and reply comments. The Bureau will endeavor to complete its review of any such petitions within 90 days of the provider's submission of all information necessary to justify such a waiver, including any information requested by the Bureau subsequent to receiving the waiver request.

D. Interim International Rate Caps

176. Today we adopt, for the first time, interim rate caps on international inmate calling services calls, as proposed in the *2020 ICS Notice*. In that *Notice*, the Commission proposed to "adopt a rate cap formula that permits a provider to charge an international inmate calling services rate up to the sum of the provider's per-minute interstate rate cap for that correctional facility *plus* the amount that the provider must pay its underlying international service provider for that call on a per-minute basis."[522] A diverse group of industry stakeholders strongly support the Commission's proposal to cap international calling rates.[523]

177. The record before us is replete with evidence that Commission action to address international inmate calling services rates is long overdue.[524] Although international calling minutes from

[519] Free Press Comments at 6.

[520] *Id.*; Leadership Conference Reply at 3.

[521] *See 2013 ICS Order*, 28 FCC Rcd at 14154, para. 84; *2015 ICS Order*, 30 FCC Rcd at 12868, para. 212.

[522] *2020 ICS Notice*, 35 FCC Rcd at 8509, para. 68 (emphasis in original).

[523] MediaJustice Comments at 2; Prisoners' Legal Services Comments at 6; Verizon Comments at 2; Episcopal Church Reply at 2; Leadership Conference Reply at 1-2. *See generally* Public Interest Parties Comments at 10 (supporting the capping of international rates at interstate levels); Securus Comments at 45-46 (requesting the amount added to the interstate rate be based on an average amount paid to the underlying carrier rather than what the underlying carrier charges on a call-by-call basis); GTL Reply at 16 n.72 (supporting Securus's solution).

[524] *See, e.g.*, Wright Petitioners, D.C. Prisoners' Legal Services Project, and Citizens United for Rehabilitation of Errants Reply, WC Docket No. 12-375, at 16 (filed Feb. 8, 2016); Letter from Karina Wilkinson & Alix Nguefack, New Jersey Advocates for Immigrant Detainees, & Rebecca Hufstader and Alina Das, New York University School of Law Immigrant Rights Clinic, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 3-4 (filed June 30, 2015); Human Rights Defense Center Reply, WC Docket No. 12-375, at 11-12 (filed Feb. 8, 2016) (requesting that the Commission implement rate caps that are just and reasonable after it "has reviewed sufficient cost data for international calls"); GTL Comments at 34; Securus Comments at iv.

correctional facilities represent only a fraction of all calling minutes from such facilities, for those incarcerated people who rely on international calling to stay connected with their loved ones abroad, current international calling rates present a heavy financial burden.[525] The *2020 ICS Notice* recognized that international rates are "exceedingly high in some correctional facilities, some as high as $45 for a 15-minute call."[526] Record evidence provides additional examples of extremely high international calling rates.[527]

178. Providers and public interest advocates alike broadly support Commission adoption of international rate caps.[528] Notably, the record explains that providers have entered into contracts that limit international rates in certain states. In 2016, New Jersey, for example, prohibited state correctional authorities from contracting for international rates higher than $0.25 per minute.[529] And in 2018, Illinois negotiated a contract with Securus capping international calls at $0.23 per minute.[530] We applaud these state efforts to address excessive international calling rates through the states' contracting authority, which complements our action today setting long-overdue rate caps for international calling services.

179. *Calculating International Rate Caps*. In the *2020 ICS Notice*, the Commission proposed to adopt a rate cap formula for international inmate calling services calls that would allow a provider to "charge a rate up to the sum of the inmate calling services provider's per-minute interstate rate cap for that correctional facility plus the amount that the provider must pay its underlying international service provider for that call on a per-minute basis (without a markup)."[531] Although some commenters support the proposed methodology for calculating the international rate caps,[532] we acknowledge Securus's argument regarding the administrative difficulty of practically implementing the Commission's proposal for international rate caps.[533]

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[525] *2020 ICS Notice*, 35 FCC Rcd at 8531-32, paras. 126-27.

[526] *Id.* n.306 (noting some per-minute international rates ranging from $0.50 per minute to $1.50 per minute); *see, e.g.*, Los Angeles County Sheriff's Department Comments, WC Docket No. 12-375, at 4-5 (filed Jan. 19, 2016) (Los Angeles County Sheriff's Department Jan. 19, 2016 Comments) (reporting that while a 15-minute phone call to Mexico costs $8.00, a 15-minute call to Canada costs $5.00, and that the rates charged for calls to certain European and Asian countries can total $19.25 for 15 minutes); Margaret Bick Express Comments, WC Docket No. 12-375, at 1 (filed Feb. 1, 2016) (explaining that a 15-minute call from California to Canada costs $0.75 a minute, for a total of $11.25); *see also* GTL Supplement to Annual Report, WC Docket No. 12-375, Attach. (filed Dec. 23, 2020) (Tab I. International ICS Rates, reporting certain international rates on the higher per-minute range of $1.89 per minute ($28.35 per 15-minute call) up to as high as $4.50 per minute ($67.50 per 15-minute call)).

[527] *See, e.g.*, Prisoners' Legal Services Comments at 6 (reporting that rates for international calls in Massachusetts "vary from 21 cents per minute up to nearly 54 cents per minute, with most jails providing calls for 50 cents per minute").

[528] *See, e.g.*, GTL Comments at 34; Securus Comments at 45; Verizon Comments at 2; Public Interest Parties Comments at 10; MediaJustice Comments at 2; Prisoners' Legal Services Comments at 6-7; Wright Petitioners May 14, 2021 *Ex Parte* at 3; Right On Crime *Ex Parte* at 1.

[529] Prisoners' Legal Services Comments at 6 (citing the session law that has been codified at N.J. Stat. Ann. § 30:4-8.12 (West 2021)). N.J. Stat. Ann. § 30:4-8.12 also provides that international rates remain subject to the Commission's rules and regulations. N.J. Stat. Ann. § 30:4-8.12 (West 2021).

[530] Worth Rises Comments at 12.

[531] *2020 ICS Notice*, 35 FCC Rcd at 8530, para. 124.

[532] MediaJustice Comments at 2; Prisoners' Legal Services Comments at 6; Verizon Comments at 2; Episcopal Church Reply at 2; Leadership Conference Reply at 1-2.

[533] Securus Comments at 46 (explaining that "[i]nternational caps that are tied to the rates charged by underlying providers for each individual call would be very difficult for Securus (and likely other [inmate calling services] providers) to implement on a real-time, call-by-call basis").

180. According to Securus, the rate structures used by underlying international providers outside the United States can vary based on the destination.[534] While the average cost that Securus pays for international calls is around $0.09 a minute, in some countries the international termination rates are significantly higher than $0.09.[535] To handle the fluctuating costs of international calls, Securus, like many telecommunications service providers, has implemented a "least cost routing system" for completing its inmate calling services customers' international calls that relies on continually updated "rate decks" containing thousands of entries for international rates.[536] When an international call is made, Securus will steer the call through the route having the lowest rate at that time.[537] When rates change or the route is no longer available, Securus must find an alternative route with the next lowest rate to terminate the calls.[538] Securus states that this constant flux of different underlying international carriers charging Securus different wholesale rates makes it impractical for Securus—and, likely, other providers—to charge customers "based on the actual cost of terminating each individual call."[539]

181. Securus, therefore, proposes a methodology to account for this constant variation in international rates to the same overseas destination. Under Securus's proposal, the per-minute international rate cap applicable to each "international destination" would be based on the Commission's applicable total per-minute interstate rate cap for that facility, plus the average per-minute amount paid by the provider to its underlying wholesale international carriers to terminate international calls to the same "international destination" over the preceding calendar quarter.[540] Under this proposal, providers would be required to determine this average per-minute amount paid for calls to each international destination for each calendar quarter, and then adjust their maximum international per-minute rate caps based on such determination within one month of the end of each calendar quarter.[541] The record supports Securus's proposal as being more administratively efficient than the Commission's proposal.[542]

182. Securus presents a convincing argument that compliance with international rate caps on a call-by-call basis, where the rates charged by underlying international carriers are constantly fluctuating, would be "impractical."[543] Moreover, this methodology takes into account not only the highest but also the lowest wholesale rate for international calls to the same destination over a reasonable period of time, benefiting incarcerated people by having a consistent, predictable international calling rate for every three-month period to the country or countries they need to call. No party has objected to this proposal, provided that we make clear that providers may not mark up any charge for international termination

[534] *Id.*

[535] *Id.*; *see also* GTL Comments at 35 (noting that international mobile termination rates are "substantially higher than termination rates on fixed-line networks") (citation omitted).

[536] Securus Comments at 46-47.

[537] *Id.* at 46.

[538] *Id.* at 46-47.

[539] *Id.* at 47.

[540] *Id.*; *see also id.* at 46 (observing that "rate structures used by providers outside of the United States are dramatically different depending on the destination country, or even between regions within a destination country"). We define "international destination" as meaning the rate zone in which an international call terminates. For countries that have a single rate zone, "international destination" means the country in which an international call terminates.

[541] Securus Comments at 47.

[542] *See* GTL Reply at 16 n.72. GTL initially supported the Commission's original proposal, but, in its reply comments, it supported Securus's proposal as being more efficient. *Id.*

[543] Securus Comments at 47.

before passing it through to consumers.[544] Accordingly, we adopt Securus's approach for interim international rate caps, subject to a no mark-up requirement.[545] This methodology will enable providers to recover the higher costs of international calling.[546] And incarcerated people will enjoy reasonable and more affordable international calling rates, allowing them to better communicate with family and friends abroad.

183. To ensure that any international call termination charges are transparent to consumers, we require that providers disclose, as a separate line item on their calling services bills, any such international charges that they pass through to consumers.[547] Providers shall also clearly, accurately, and conspicuously disclose those charges on their websites or in another reasonable manner readily available to consumers.[548] Providers shall retain documentation supporting any charges for international termination that they pass through to consumers and provide such documentation, including any applicable contracts, to the Commission upon request.[549] We find that these transparency requirements will not be particularly burdensome because providers need to calculate international termination charges to set their rates and need to retain records for financial auditing purposes. And, in any case, the strong public interest in facilitating greater transparency with respect to calling services' rates outweighs the limited burden on providers. Absent these requirements, we find a substantial risk that consumers will lack sufficient information about international calling rates, which may be subject to change every quarter given the prescribed method of determining the wholesale provider rate component.

184. *Alternative Proposals*. On the record before us, we decline the Public Interest Parties' request that we cap international inmate calling services rates at a level no higher than our applicable interstate rate caps.[550] The Public Interest Parties note that some providers reported no international costs but did report international minutes and revenue from the calls, which "suggests that international costs are already included in their total costs, and thus accounted for in the interstate rates."[551] According to the Public Interest Parties, the Commission will double count those costs if it allows providers to recover the costs of international calls separately.[552] While some small degree of double counting may have occurred through failure to separately report international costs in response to the Second Mandatory Data Collection, the record indicates that some providers did include separate costs for international calls in their responses.[553] Regardless, the method we are adopting recognizes that international calling does cost

[544] *See* Wright Petitioners May 14, 2021 *Ex Parte* at 3 (pointing out that the overall interim international rate cap already includes a sufficient return).

[545] Because the interstate rate caps adopted today are interim rate caps pending our collection of new, more uniform, cost data, and because our international rate caps include our applicable interim interstate rate cap component for each facility, these international rate caps are similarly interim in nature.

[546] In the unlikely scenario where an inmate calling services provider is unable to fully recover its international calling costs, such provider may avail itself of the waiver process we adopt in this Report and Order. *See supra* Part III.C.5.

[547] The Commission has jurisdiction to regulate "the manner in which a carrier bills and collects for its own interstate offerings." *Truth-In-Billing and Billing Format*, 14 FCC Rcd at 7507, para. 25; *2013 ICS Order*, 28 FCC Rcd at 14168, para. 114; *2015 ICS Order*, 30 FCC Rcd at 12860, para. 194; *see also* UCC May 14, 2021 *Ex Parte* at 1; Wright Petitioners May 14, 2021 *Ex Parte* at 3.

[548] 47 CFR § 64.6110; Wright Petitioners May 14, 2021 *Ex Parte* at 3.

[549] Wright Petitioners May 14, 2021 *Ex Parte* at 3.

[550] Public Interest Parties Comments at 10.

[551] *Id.*

[552] *Id.*

[553] *E.g.*, Letter from Stephanie A. Joyce, Counsel, Securus, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, Attach., Description and Justification for Securus's Mandatory Data Collection Report at 3 (filed Jul. 22, (continued….)

more than domestic calling and that providers are entitled to recover these extra costs through the method we adopt. We will continue to monitor international calling rates in providers' annual reports and collect more uniform data on international costs at the same time we undertake our data collection for interstate costs. Should those data reflect double counting, we will adjust our permanent international rate caps accordingly.[554] We also decline the proposal of the Human Rights Defense Center, which asserts that "$.05 per minute is more than adequate compensation for companies that provide all Inmate Calling Services (ICS) services, locally, interstate, intrastate and internationally."[555] The Human Rights Defense center provides insufficient support and basis for this proposal, in light of our obligations under section 276 of the Act.

E. Consistency with Section 276 of the Act

185. Section 276(b)(1)(A) of the Act requires the Commission to "ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call."[556] We conclude, consistent with the Commission's proposal in the *2020 ICS Notice*,[557] that the interim rate caps we adopt in this Report and Order fully satisfy this mandate. In the vast majority of, if not all, cases, these rate caps will allow providers to generate sufficient revenue from each interstate and international call—including any ancillary service fees attributable to that call—(1) to recover the direct costs of that call; and (2) to make a reasonable contribution to the provider's indirect costs related to inmate calling services.[558] To the extent there are legitimate but rare anomalous cases in which a provider cannot recoup such costs under the new rate caps, the provider may seek a waiver of those caps, to the extent necessary to ensure that it is fairly compensated, as required by the Act.

186. As the Commission observed in the *2020 ICS Notice*, this approach recognizes that calling services contracts often apply to multiple facilities and that providers do not expect each call to make the same contribution toward indirect costs.[559] The record confirms that "because the industry norm is to bid for one contract for multiple facilities and then offer a single interstate rate across facilities irrespective of cost differentials that may exist among facilities under the contract, it would be impossible to reach a methodology that would allow a direct, one-to-one recovery of costs."[560] Indeed, providers acknowledge that they do not presently keep the type of accounting records that would allow them to measure the costs of individual calls.[561] And, although the Mandatory Data Collection that we adopt in

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2019) (Securus's Mandatory Data Collection Description and Justification) (noting that Securus provided international cost data).

[554] *See generally infra* Part III.H.3 (instituting the Mandatory Data Collection).

[555] Human Rights Defense Center Comments at 1.

[556] 47 U.S.C. § 276.

[557] *2020 ICS Notice*, 35 FCC Rcd at 8525, para. 112.

[558] *See* Public Interest Parties Comments at 11 (advocating that this approach with adjustments provides fair compensation). *But see* GTL Comments at 32 ("Setting interstate rate caps 'that generate sufficient revenue for such calls (including any ancillary fees attributable to those calls) that (1) allow the provider to recover from those calls the direct costs of that call and (2) reasonably contribute to the provider's indirect costs related to inmate calling services' does not satisfy the demands of Section 276.").

[559] *2020 ICS Notice*, 35 FCC Rcd at 8525, para. 112.

[560] Public Interest Parties Comments at 11. No parties challenged this conclusion or commented otherwise.

[561] *See, e.g.*, GTL Sept. 14, 2020, Letter at 32 (asserting that GTL cannot attribute its inmate calling services costs to a specific correctional facility or contract); GTL Amended Description and Justification at 8-9 (same assertion); {[
]}; Description and Justification for Talton Communication, Inc.'s Mandatory Data Collection Report, WC Docket No. 12-375, at 1 (filed Mar. 1, 2019) (noting that its direct costs of providing inmate calling services are available in an aggregate form and are not separately reported by facility); CenturyLink
(continued….)

this Report and Order will result in far more granular cost data than currently are available, the resulting data will necessarily rely on allocations of indirect costs among contracts and facilities and thus will fall far short of allowing a provider to directly assign all its inmate calling services costs to individual calls.

187. We find that the interim rate caps we adopt today are consistent with both section 276 of the Act and the D.C Circuit's decision in *GTL v. FCC*. In that decision, the court rejected the Commission's "averaging calculus" in the *2015 ICS Order*, which set tiered rate caps using industry-wide average costs derived from cost data submitted by providers.[562] The court explained that the Commission erred in setting rate caps using industry-average costs because calls with above-average costs would be "unprofitable," in contravention of the "mandate of § 276 that 'each and every' inter- and intrastate call be fairly compensated."[563] The court found the Commission's reliance on industry-average costs unreasonable because, even disregarding site commissions, the proposed caps were "below average costs documented by numerous [inmate calling services] providers and would deny cost recovery for a substantial percentage of all inmate calls."[564]

188. GTL argues that our new interim rate caps fail to address the court's criticism of the Commission's prior rate caps, because they "will not, in *all* cases, cover the costs of providing service."[565] This argument ignores an important distinction between the rate cap methodology that was before the court in *GTL v. FCC* and the methodology we use in this Report and Order. Instead of setting rate caps at industry-wide average costs, our methodology begins by looking at industry-wide average costs but does not stop there. Instead, we adjust those mean costs upward by one standard deviation and use the results to establish zones of reasonableness from which we select separate provider cost components for prisons and larger jails. We then add an additional amount to account for the portion of site commission payments that we conservatively estimate is related specifically to inmate calling services.[566] Our approach therefore incorporates assumptions and actions that lean toward over-recovery of costs. We estimate that revenues from the capped per minute charges for individual interstate and international calls—along with the revenues from related ancillary service fees—will enable all providers to recover their actual costs of providing interstate and international inmate calling services, but provide a process for unusual cases where we might be mistaken. Thus, contrary to GTL's assertion,[567] our interim rate caps, coupled with our new waiver process, "account for the real differences in costs among [inmate

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Description and Justification, WC Docket No. 12-375, at 5 (filed Mar. 1, 2019) (indicating that cost data are reported at the correctional system level rather than at the individual correctional facility level).

[562] *GTL v. FCC*, 866 F.3d at 414.

[563] *Id.* (quoting *American Public Communications*, 215 F.3d at 54, 57-58).

[564] *GTL v. FCC*, 866 F.3d at 414.

[565] GTL Comments at 9, 32 (emphasis added); *see also, e.g.*, Pay Tel Comments at 3 ("[T]he *Further Notice* now proposes new interstate rate caps based again on industry average data—this time the 2018 data each [inmate calling services] provider was required to provide to the FCC—without taking into account any other data or evidence in the substantial record in this proceeding . . . .").

[566] *See* Public Interest Parties Comments at 11. As detailed in Part III.C.4, we adopt a modified version of the site commission proposal in the *2020 ICS Notice* based on record evidence that $0.02 per minute for every facility may not permit recovery of all legitimate facility costs related to inmate calling services and may not account for site commission payments required under codified law. We permit full recovery of site commission payments required under codified law and up to $0.02 per minute for contractually prescribed site commission payments. At the same time, we also explain above that full recovery of site commissions is not required under *GTL v. FCC* or section 276 of the Act. We therefore disagree with commenters asserting that section 276 requires full recovery of site commission payments in order to comply with section 276. *See, e.g.*, Pay Tel Comments at i, 8-9; Securus Comments at 49. Our interim approach permits recovery of the portion of site commission payments that we estimate are directly related to the provision of inmate calling services. Nothing more is required.

[567] *See* GTL Comments at 32.

calling services] providers and ensure[] providers with higher costs receive fair compensation" in a manner consistent with section 276(b)(1)(A).[568]

189. "Fair compensation" under section 276(b)(1)(A) does not mean that each and every completed call must make the same contribution to a provider's indirect costs. Nor does it mean a provider is entitled to recover the total "cost" it claims it incurs in connection with each and every separate inmate calling services call.[569] Instead, compensation is fair if the price for each service or group of services "recovers at least its incremental costs, and no one service [e.g., interstate calling service] recovers more than its stand-alone cost."[570] The record indicates that, subject to one anomalous possible outlier contract, the rate cap methodology we adopt today will allow every provider of calling services for incarcerated people to charge a price that recovers its direct costs (i.e., costs that are directly attributable to producing all of the inmate calls under a given contract) and contributes to recovery of its indirect costs.[571] Indeed, we demonstrate that virtually all contracts, except those that reflect the issues we have discussed regarding GTL, impacted by the rate caps this Report and Order imposes are commercially viable under conservative assumptions. That is, we expect they should be able to cover the contracts' direct charges and make a commercially sound contribution to costs shared across the contracts sufficient to ensure each provider's viability.[572]

190. As the Commission recognized in the *2002 Pay Telephone Order*, the "lion's share of payphone costs are those that are 'shared' or 'common' to all services," and there are "no logical or economic rules that assign these common costs to 'each and every call.'"[573] As a result, "a wide range of compensation amounts may be considered 'fair.'"[574] Here, contrary to the assertions of certain providers,[575] we adopt conservative interim rate caps that fall squarely within the zones of

[568] *Id.*

[569] *See id.* at 9, 32; UCC and Public Knowledge Mar. 31, 2021 *Ex Parte* at 6-7 (illustrating through legislative history that Congress used the "each and every call" language to ensure that payphone providers would be compensated for all categories of calls, such as "dial around calls," but did not intend that language "to ensure that any single call taken on its own was fully compensatory").

[570] *2002 Pay Telephone Order*, 17 FCC Rcd at 3255-56, para. 18. *GTL v. FCC* did not disturb this long-standing Commission precedent. *GTL v. FCC*, 866 F.3d at 412-14. Economists generally agree that the price for each product (or group of products) is compensatory if it at least recovers its incremental costs but is an inefficiently high price if it recovers more than its standalone costs. *See generally Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 and 95-185, First Report and Order, 11 FCC Rcd 15499, 15847-48, 14854, paras. 682, 698 (1996) (setting prices that recover incremental costs and explaining that prices should not exceed standalone costs). 47 CFR § 51.505 (b)-(c); Gerald R. Faulhaber, *Cross-Subsidization: Pricing in Public Enterprises*, 65 Am. Econ. Rev. 966-77 (1975), https://www.jstor.org/stable/1806633. Our rate caps are consistent with these principles.

[571] The one exception is an apparent anomalous contract for which that contract's indirect costs were reported by{[ ]} *after* the release of the *2020 ICS Notice*. The per-minute cost we calculate for this contract is the single highest per-minute cost of all jail contracts and more than double the per-minute cost for the second highest jail contract. To the extent this contract possesses such unusual characteristics that the provider's costs are indeed legitimately this high, this is precisely the type of contract the waiver process we adopt today is meant to address.

[572] Appx. E, *infra* Part F (showing that under the interim caps, providers will recover most of their reported costs).

[573] *2002 Pay Telephone Order*, 17 FCC Rcd at 3255-56, paras. 16, 18.

[574] *Id.* at 3255, para. 16 (citing *1999 Pay Telephone Order*, 14 FCC Rcd at 2570, para. 56).

[575] *See* Pay Tel Comments at 4, 8 (asserting problems with the Commission's proposed rate cap methodology that "reflect a false assumption that location costs are far more homogenous than they actually are"); GTL Reply at 8-9.

reasonableness,[576] as well as an allowance for site commissions reflected by our new facility-related rate component that is supported by our analysis that reflects the variations in correctional facility costs, thus providing for fair compensation under the statute.

191. Providers fail to acknowledge that a wide range of compensation amounts may be considered fair, arguing generally that the Commission must adopt rate caps that enable them to recover their total costs "for each and every completed . . . interstate call."[577] In effect, providers argue that a rate-setting methodology that does "not, in all cases, cover the costs of providing service" fails to satisfy section 276.[578] We disagree. First, GTL's reliance on *Illinois Public Telecommunications Assoc. v. FCC* for support is misplaced because totally different circumstances—resulting in "no compensation for coinless calls made from inmate phones"—were before the court in that case.[579] The *Illinois Public Telecommunications* court's rejection of a "no compensation" regime where providers received zero compensation for calls simply does not create a mandate that we adopt any particular compensation methodology, much less the methodology the providers urge.

192. Second, our rate cap methodology here differs materially from the methodology vacated in *GTL v. FCC*.[580] There, the court found that the record "include[d] two economic analyses, both concluding that the [*2015 ICS*] *Order's* rate caps are below cost for a substantial number of [inmate calling services] calls even after excluding site commissions" and that "[t]he [2015] *Order* does not challenge these studies or their conclusions."[581] As a result, the court held that "the use of industry-average cost data *as proposed in the Order*" could not be upheld because "it lacks justification in the record and is not supported by reasoned decisionmaking."[582] Our methodology in this Report and Order, by contrast: (1) is designed to ensure that the costs of the vast majority of, if not all, calls are recovered; (2) includes a site commission allowance; (3) is based on a rigorous analysis of data submitted into the record by providers responding to a Commission data collection; and (4) as a backstop, provides the opportunity for providers to obtain a waiver if they can show that one is needed to ensure that they receive fair compensation, consistent with the statute.

[576] *See Verizon v. FCC*, 535 U.S. 467, 487-88 (2002) (noting that historically, "calculating a rate base and then allowing a fair rate of return on it was a sensible way to identify a range of rates that would be just and reasonable for both investors and ratepayers").

[577] *See* Pay Tel Comments at 10 ("Section 276 requires the Commission to set [inmate calling services] rates at a level sufficient to fairly compensate [inmate calling services] providers for the costs incurred for each and every call."); GTL Comments at 32 ("The statutory language is clear that providers must be fairly compensated 'for each and every' call."); Securus Comments at 11 (arguing that "to the extent calls with above-average costs in each tier are unprofitable the proposed caps do not fulfill the mandate of § 276 that 'each and every' inter- and intrastate call be fairly compensated"); Pay Tel Wood Report at 3 (explaining that "for all locations whose costs exceed the average, the [inmate calling services] provider would not be able to charge a rate sufficient to recover its costs to serve that location"); Securus Furchtgott-Roth Report at 15 ("Actual costs for facilities including site commissions are likely substantially higher than presented in the [*2020 ICS Notice*]. Thus, the approach presented in the [*2020 ICS Notice*] fails to meet the 'each and every' standard of Section 276.").

[578] *See* GTL Comments at 32; Securus Comments 11.

[579] *Ill. Public Telecom. Assoc. v. FCC*, 117 F.3d 555, 566 (D.C. Cir. 1997) (*Illinois Public Telecommunications*); GTL Comments at 32; UCC and Public Knowledge Mar. 31, 2021 *Ex Parte* at 7 n.2 (explaining that the court in *Illinois Public Telecommunications* "was addressing the fact that the Commission had eliminated *a whole category of calls*" which is "precisely the issue" Congress was trying to address, namely the "exclusion of a category of calls from compensation, not the rate for each call") (emphasis in original).

[580] *See GTL v. FCC*, 866 F.3d at 402.

[581] *Id.* at 414.

[582] *Id.* at 402.

193. But for the extraordinary case, providers will recover their costs under the new interim rate caps we adopt. Providers that continue to claim they will be unable to recover their costs of interstate or international inmate calling services under the interim rate caps we adopt today will be able to seek a waiver of those caps in accordance with the procedures set forth in this Report and Order. Any such waiver requests will be analyzed and resolved based on more comprehensive, current, and disaggregated cost data regarding that provider's cost of providing inmate calling services at the particular facility or facilities at issue.[583] The combination of our carefully considered interim rate caps and our revised waiver process afford all providers the opportunity to recover fair compensation for each and every completed interstate and international inmate calling services call consistent with section 276(b)(1)(A).

F. Cost-Benefit Analysis of Revised Interstate Rate Caps

194. Although our actions in this Report and Order are not dependent on our analysis of the relative costs and benefits of the revised interim interstate rate caps, we find that the benefits of our actions far exceed the costs. The benefits of lowering inmate calling services rates sweep broadly, affecting incarcerated people, their families and loved ones, and society at large.[584] Although important and substantial, these benefits do not lend themselves to ready quantification. As one commenter aptly explains, increased communication and ties to the outside world are important for "maintaining inmate mental health."[585] The formerly incarcerated can face myriad obstacles on reentry, including "limited occupational and educational experience and training to prepare them for employment, drug and alcohol addictions, mental and physical health problems, strained family relations, and limited opportunities due to the stigma of a criminal record."[586] Lower telephone rates will likely lead to increased communication by incarcerated people which, in turn, can help mitigate some of these issues by, for example, allowing incarcerated people to maintain family relationships and make plans for post-release housing or employment.[587]

195. Lower rates, and the resulting increase in calls, can also lead to improvements in the health and well-being of the families of incarcerated people. In particular, children of incarcerated parents are much more likely to suffer from behavioral problems, poor educational attainment, physical health problems, substance abuse, and adult incarceration.[588] Studies show that contact with incarcerated

[583] *See* Pay Tel Comments at 7. We reject Securus's suggestion that, for purposes of assessing compliance with section 276 of the Act, we should calculate the return component of a provider's costs using the price its current owners paid to purchase the provider. *See* Securus Furchtgott-Roth Report at 16-18. Instead, we conclude that we should calculate that component for purposes of assessing compliance with section 276 using the same rate base that we use in assessing compliance with section 201(b)—the original cost of the property used to provide inmate calling services at the particular facility or facilities. *See supra* Part III.C.3.

[584] Verizon Comments at 3 (explaining that maintaining connections "yields important benefits to us all").

[585] *See, e.g.*, Public Interest Parties Brattle Report at 2 (citing Kelle Barrick et al., *Reentering Women: The Impact of Social Ties on Long-Term Recidivism*, 94 Prison Journal 279 (2014)); Impacted People May 14, 2021 *Ex Parte* at 3 (explaining that "keeping families in contact during incarceration is critical to the mental wellbeing of people behind bars and those that love them").

[586] *Reentering Women: The Impact of Social Ties on Long-Term Recidivism*, *supra* note , at 281.

[587] *See, e.g.*, Prisoners' Legal Services Massachusetts Background Sheet at 1; Letter from Chérie R. Kiser, Counsel to GTL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed Apr. 16, 2021) (identifying the importance of "improving the odds of finding adequate housing and employment post release").

[588] *See, e.g.*, Eric Martin, *Hidden Consequences: The Impact of Incarceration on Dependent Children*, 278 Nat'l Inst. Just. J. 10-16 (2017), https://www.ojp.gov/pdffiles1/nij/250349.pdf; Kristin Turney & Rebecca Goodsell, *Parental Incarceration and Children's Wellbeing*, 28 Future Children 147-68 (2018), https://www.jstor.org/stable/26641551?mag=what-should-we-do-about-our-aging-prison-population&seq=1.

parents can help mitigate these harmful effects.[589] One study, for example, demonstrated that a child's chances of dropping out of school or being suspended decreased if the child had increased contact with an incarcerated parent.[590] As Verizon explains, "[p]reserving family ties allows incarcerated people to parent their children and connect with their spouses, helping families stay intact. Supporting strong families, in turn, makes our communities safer."[591] We agree.

196. Our actions will benefit incarcerated people, their families, and society in ways that cannot easily be reduced to monetary values but that standing alone support our actions. That being said, an analysis of the quantifiable benefits of our actions today shows that they far exceed the costs. In the *2020 ICS Notice*, the Commission estimated that implementing the proposed changes would cost $6 million.[592] These estimated implementation costs included one-time administrative, contract-revision, and billing-system costs.[593] We now find that $6 million is a reasonable estimate for the costs of implementing the changes we adopt today. These costs are only a relatively small fraction of the $32 million in quantifiable benefits that we now estimate our actions will bring and pale in comparison to the qualitative benefits today's changes will confer on incarcerated people, their communities, and society as a whole.[594] Our estimate of $32 million in benefits is the sum of: (1) a gain of $9 million from inmate calling services users making more calls at lower rates (which is an increase of $2 million as compared with the Commission's previous estimate of $7 million);[595] and (2) $23 million in benefits to society due to reduced recidivism, crime, and foster-child care costs that improved access to communications will bring.[596]

197. *Expected Quantitative Benefits of Expanded Call Volumes.* In the *2020 ICS Notice*, the Commission calculated benefits based on a forecast of the increase in the number of calls that would occur if the Commission adopted the proposed rate caps. The Commission used estimates of current call minutes at prices above the proposed rate caps, the price decline on those call minutes implied by the proposed rate caps, and the responsiveness of demand to the changes in price.[597] Using 2018 call volume

[589] *See, e.g.*, Julie Poehlmann et al., *Children's Contact with Their Incarcerated Parents*, 65 Am. Psych. 575 (2010), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4229080/.

[590] Ashton D. Trice & JoAnne Brewster, *The Effects of Maternal Incarceration on Adolescent Children*, 19 J. Police Crim. Psych. 27-25 (2004), https://link-springer-com.fcc.idm.oclc.org/article/10.1007/BF02802572.

[591] Verizon Comments at 3.

[592] *2020 ICS Notice*, 35 FCC Rcd at 8528, para. 119.

[593] *Id.* These costs included costs associated with changing the rate for debit/prepaid calls at jails with average daily populations less than 1,000.

[594] In the *2020 ICS Notice*, the Commission estimated benefits of $30 million, including a benefit of $7 million due to expanded call volumes plus at least $23 million for reduced recidivism, which would reduce prison operating costs, foster care costs, and crime. *Id.* at 8526, para. 116.

[595] *Id.* GTL suggests that it "*may not* be the case" that revised interstate rate caps will result in increased call volume. GTL Comments at 33 (emphasis added). GTL posits that this is because interstate calls are "only a small part of all" inmate calling services calling and that "incarcerated individuals are not entitled to unfettered access to telephonic communications." GTL Comments at 33. We find GTL's arguments to be speculative and unsupported. We therefore reject these arguments in favor of the more data-driven approach we take here.

[596] As the Commission has explained, rate reform will promote increased communication between incarcerated persons and their loved ones. *See* Report and Order, *supra* Part I (highlighting the benefits of increased communication). This additional communication will help preserve essential family ties, allowing children to stay in touch with an incarcerated parent, which, in turn, will make communities safer. *See, e.g.*, Verizon Comments at 3. Being able to maintain communication also will help incarcerated persons plan for successful integration back into their communities upon release by providing a vital avenue to explore housing and employment opportunities. Prisoners' Legal Services Massachusetts Background Sheet at 1.

[597] *2020 ICS Notice*, 35 FCC Rcd at 8526-28, paras. 116-18.

data, the Commission estimated that approximately 592 million interstate prepaid and debit minutes and 3.3 million interstate collect minutes originated from prisons at rates above the proposed caps.[598] Those data also showed that approximately 453 million interstate prepaid and debit minutes and 2 million interstate collect minutes were made from jails at rates above the proposed caps.[599] In computing benefits, the Commission relied on a lower-end interstate calling estimate of demand price elasticity of 0.2,[600] and estimated annual benefits of approximately $1 million, or a present value over ten years of approximately $7 million.[601]

198. Our estimation methodology remains essentially the same as in the *2020 ICS Notice*, with two exceptions. First, leaving intact the $0.21 per minute rate for interstate debit and prepaid calls from jails with average daily populations less than 1,000 excludes some call volume from the lower cap, lowering impacted call volumes.[602] Second, our estimate of inmate calling services price elasticity has been revised upward to 0.3. With these changes, we estimate an annual welfare gain of $1.3 million, or a present value of $9 million from reduced inmate calling services rates.[603]

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[598] *Id.* at 8526, para. 117.

[599] To determine these numbers, the Commission used rate information from the 2019 Annual Reports and call volume data (interstate minutes) from the Second Mandatory Data Collection responses. We consider each of the following call types: interstate debit and prepaid calls for prisons and larger jails only; and interstate collect calls for prisons, larger jails, and jails with average daily populations less than 1,000. For each of these call types, we adjusted the reports for minutes downward by dropping the minutes recorded in nine states—Alaska, Delaware, Hawaii, Maryland, New Mexico, Texas, Vermont, Washington, and West Virginia. We did this because each of these states has important contracts with rates below the caps we are adopting, and the rates under those contracts will only be affected by our actions if they are required to reduce their site commissions. This adjustment means our benefit estimates are likely substantially understated.

[600] *2020 ICS Notice*, 35 FCC Rcd at 8526-28, para. 118 & n.280. Following common convention, we express own-price elasticities as positive numbers. An elasticity of 0.2 means that for each percentage point drop in rates, interstate inmate calling services demand would increase by 0.2%. Our analysis is based on pre-COVID-19 data and makes no adjustments for the COVID-19 pandemic. However, if post-COVID-19, there is an increased reliance on telecommunications, and acceptance by correctional authorities of such use, our estimates would be understated.

[601] The present value of a 10-year annuity of $1 million at a 7% discount rate is approximately $7 million. *See* OMB, Circular A-4, Regulatory Analysis, 33-34 (Sept. 17, 2003), https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-4.pdf. The Office of Management and Budget recommends using discount rates of 7% and 3%. Erring on the side of understatement, we use the 7% rate.

[602] Prior to our actions today, the interim interstate rate caps for all interstate calls were $0.21 per minute for debit and prepaid calls and $0.25 per minute for collect calls. The new interim provider-related rate caps we adopt today plus an allowance of $0.02 for contractually prescribed facility rate components adopted in this Report and Order result in the following five price declines from these rates (assuming all calls include the $0.02 allowance and no legally mandated site commission payment results in an allowance higher than $0.02 per minute, both of which will not be the case given that some facilities charge no site commissions and thus no facility cost allowance is permitted and some legally mandated site commission payments may exceed $0.02 per minute): for prison debit and prepaid calls, 33% (= ($0.21 - $0.14) / $0.21); for prison collect calls, 44% (= ($0.25 - $0.14) / $0.25); for jail debit and prepaid calls, for jails with average daily populations of 1,000 or more, 24% (= ($0.21 - $0.16) / $0.21), with no change for jails with average daily populations less than 1,000; and for jail collect calls, for jails with average daily populations of 1,000 or more, 36% (= ($0.25 - $0.16) / $0.25), and for jails with average daily populations less than 1,000, 16% (= ($0.25 - $0.21) / $0.25). We cut these price changes in half to allow for contracts with rates below the current caps. (This is equivalent to assuming prices are evenly distributed around the midpoint between current caps and our new caps.)

[603] We calculate the increase in surplus due to lower call prices separately for: debit and prepaid calls from prisons; collect calls from prisons; debit and prepaid calls from jails with average daily populations of 1,000 or more; collect calls from jails with average daily populations of 1,000 or more; and collect calls from jails having average daily populations less than 1,000. The calculated surpluses equal one half of the product of three items: minutes for each of the five call types; the demand elasticity estimate (0.3); and, respectively for each of the five call types, half the

(continued….)

199. *Inmate Calling Service Demand Elasticity*. When prices fall, quantity demanded increases. Demand elasticity is a measure of the sensitivity of quantity changes to changes in prices.[604] In the *2020 ICS Notice*, the Commission relied on demand elasticity estimated for voice telecommunications generally and chose a conservative estimate from these of 0.2.[605] However, the record provides five pieces of direct evidence of the demand elasticity for inmate calling services, three of which are quite recent. These estimates, three of which are approximately 0.4 and two of which are approximately 0.3, lead us to conservatively conclude inmate calling services have a demand elasticity of at least 0.3.[606]

200. First, a 57.5% drop in calling rates in New York state in 2007 resulted in an increase in call volumes of 36%, suggesting a demand elasticity of 0.38.[607] Second, 2018 data from the New York City contract suggests a demand elasticity of 0.37.[608] Third, in 2019, in San Francisco, when calls became

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price decline from the earlier cap to the new interim cap. This is the area of the surplus triangle generated by an assumed price fall of one half the difference between our current caps and the new interim caps if demand and supply are linear and the final price represents costs. If the final price is still above costs, as is likely given our conservative assumptions, the surplus gain would be greater. Nonlinearities of both demand and supply have ambiguous impacts, so linearity is a good approximation in the absence of further information. We obtain an increase in surplus of $1.7 million, and then calculate the present value of a 10-year annuity of $1.7 million at a 7% discount rate to be approximately $12 million. *See supra* note 589.

[604] For small changes, demand elasticity is the ratio of the percentage change in quantity to the percentage change in price, holding other things constant. However, for larger changes, again holding other things constant, demand elasticity is better estimated by the ratio of (1) the percentage change between the original quantity and the quantity midway between the original quantity and final quantity to (2) the percentage change between the original price and the price midway between the original price and the final price. This is because, due to the simple mathematics of percentage changes, for a large change in quantity or price, the elasticity of demand as measured by the simpler ratio can be materially different than the measure that would obtain if the change was reversed: a change from 1 to 0.80 is a 20% decline, but a rise from a 0.80 price to 1.00 is a 25% rise. University of Minnesota, Principles of Economics, § 5.1 The Price Elasticity of Demand, https://open.lib.umn.edu/principleseconomics/chapter/5-1-the-price-elasticity-of-demand/ (last visited Apr. 22, 2021) ("This measure of elasticity, which is based on percentage changes relative to the average value of each variable between two points, is called arc elasticity. The arc elasticity method has the advantage that it yields the same elasticity whether we go from point A to point B or from point B to point A.") (emphasis omitted).

[605] *2020 ICS Notice*, 35 FCC Rcd at 8527-28, para. 118 & n.280.

[606] For the first three of our estimates we do not have sufficient data to ensure we are holding all other things constant, and for the fourth, from Securus's consultant FTI, we cannot verify FTI's approach. Thus, all these estimates should be viewed as approximate. To avoid overstating benefits, we use the lower bound of these estimates rounded to the first decimal place.

[607] Martha Wright et al. Comments, WC Docket No. 12-375, Exh. C at 14 (filed Mar. 25, 2013). The 0.38 elasticity calculation is as follows. We normalize or change the units in which quantity and price are denominated, so the initial quantity is 100 and the initial price is $100. Using the quantity increase of 36% and price decline of 57.5%, we can determine the new quantity and price in these new normalized units. Normalization works because the arc elasticity calculation depends on the change between quantities and prices and therefore yields the same measure regardless of the units used to measure quantity and price. A quantity increase of 36% implies a new quantity of 136 (= 100 * (1 + 36%)). A price decrease of 57.5% implies a new price of 42.5 (= 100 * (1 – 57.5%)). The quantity change using the midpoint formula is 30.5% (= (136 – 100) / ((100 + 136) / 2)). The price change using the midpoint formula is 80.7% (= (100 – 42.5) / ((100 + 42.5) / 2)). Thus, the elasticity is 0.38 (= 30.5% / 80.7%).

[608] Worth Rises Comments at 11 ("[T]he city . . . renegotiated the price of its calls with Securus from $0.50 for the first minute and $0.05 for every additional minute to $0.03 per minute across the board. The legislation went into effect in May 2019, saved families nearly $10 million annually, and increased call times by almost 40% overnight."). We estimate the elasticity based on the price of a 15-minute phone call, the price of which dropped from $1.20 = ($0.50 + (14 * $0.05)) to $0.45 = (15 * $0.03). Normalizing the initial quantity to 100 implies a new quantity of approximately 140 (= 100 * (1 + 40%)). The quantity change in the midpoint formula is 33.3% (= (140
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free, call volumes rose 81%, suggesting an elasticity of 0.29.[609] Fourth, two estimates are calculated using evidence submitted by Securus. Securus's consultant FTI estimates price and quantity movements from the rate reduction seen in 2014 due to the Commission's earlier action. FTI's estimates suggest a demand elasticity of 0.31 and evidence from a recent pilot program conducted by Securus suggests an elasticity of 0.36.[610] In both the New York City and San Francisco cases, our elasticity estimate is derived from a price decrease in which the initial price was closer to our current caps than will be the case for most of the contracts we discuss. Economic theory suggests that the demand elasticity for contracts with prices above our caps will be greater than the New York City or San Francisco estimates.[611]

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– 100) / ((100 + 140) / 2)); the price change in the midpoint formula is 90.9% (= ($1.20 - $0.45) / (($1.20 + $0.45) / 2)); therefore, the elasticity is 0.37 (= 33.3% / 90.9%).

[609] *Id.* ("In 2019, San Francisco became the second city to make jail calls free to incarcerated people . . . ."); Financial Justice Project Comments at 1 ("Compared to this time last year, incarcerated people are spending 81 percent more time in communication with their families."). The elasticity of 0.29 is derived as follows: Normalizing the initial San Francisco quantity to 100 and price to $100 implies the new quantity is 181, and the new price is zero. Thus, the quantity change in the midpoint formula is 57.7% (= (181 - 100) / ((100 + 181) / 2)); the price change in the midpoint formula is 200% (= (100 - 0) / ((100 + 0) / 2)); and the elasticity is 0.29 (= 57.7% / 200%).

[610] FTI initially used regression analysis to estimate an elasticity of 1.25 for interstate calling for large facilities. Securus Comments Attach., FTI Consulting, Inc., Report on Price Elasticity of Demand for Interstate Inmate Calling Services on Behalf of Securus Technologies, Inc., WC Docket No. 12-375, at 16 (filed Jan. 12, 2015) ("The actual cross-section price elasticity of demand in 2013 was . . . -1.25 for large facilities . . . ."). However, FTI was concerned the regression model did not account for a range of factors, the two most important of which were substitution from intrastate/local inmate calling services to interstate inmate calling services, said to increase call volumes by 28.3%, and unexplained Securus initiatives, said to increase call volumes by 14.9%. After making adjustments to control for the impact of these factors, FTI estimates that a 38.2% fall in interstate prices increased demand by 15.5%. *Id.* at 21 ("Specifically, the analysis we performed shows that the FCC's interim rate caps result in an increase in interstate minutes of only 15.5% while reducing interstate rates by 38.2%."). From these measures the elasticity calculation is as follows. Normalizing the initial quantity and price to 100 implies the price fell to 61.8 (= 100 * (1 - 38.2%)) and the quantity rose to 115.5 (= (100 * (1 + 15.5%))). The midpoint formulas are 47.2% (= (100 - 61.8) / ((100 + 61.8) / 2)) for price; and 14.4% (= (115.5 - 100) / ((100 + 115.5) / 2)) for quantity. Thus, the elasticity is 0.31 (= 14.4% / 47.2%). Securus reported a 27% increase in call length and a 50% reduction in per-minute costs under six pilot programs that gave incarcerated persons and their families "the option of paying a flat rate for a set number of calls per month." Securus May 13, 2021 *Ex Parte* at 2. From this information, we estimate an elasticity of 0.36. Normalizing the initial quantity and price to 100 implies a new quantity of 127 (= 100 * (1 + 27%)) and a new price of 50 (= 100 * (1 - 50.0%)). The quantity change in the midpoint formula is 23.8% (= (127 - 100) / ((100 + 127) / 2)); the price change in the midpoint formula is 66.7% (= (100 - 50) / ((100 + 50) / 2)); therefore, the elasticity is 0.36 (= 23.8% / 66.7%). Securus only mentions call length. If there was an additional increase in frequency of calls, not accounted for in the provided measure, then this elasticity measure is underestimated.

[611] In general, demand elasticity changes at different points along the good's demand curve, generally rising with price. (This is most easily seen for a linear demand curve. For small changes, demand elasticity is defined as the product of the demand curve's slope and the ratio of price to quantity. When demand is linear, its slope is constant, thus any change in elasticity is determined by how the ratio of price to quantity changes, and this ratio always rises with price, since a rising price implies a falling quantity. For realistic nonlinear curves, for which quantity demanded is finite at a zero price and for which a price exists at which quantity demanded is zero, this relationship will hold at low and high prices; as price approaches zero, elasticity also approaches zero, while as price approaches the point at which quantity demanded is zero, elasticity becomes large.) Both the New York City and San Francisco cases considered price changes that happened along a portion of the demand curve where price was less than our rate caps. Therefore, these estimates were taken over a portion of the demand curve where elasticity was likely smaller than it is for the contracts with current rates above our caps. In addition, economic theory predicts that a good has higher elasticity if it accounts for more of a consumer's overall budget. Every estimate for inmate calling elasticity that the Commission has seen has been below 1. This implies that incarcerated people residing in facilities with
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201. We also expect lower rates for calling services to yield additional benefits by reducing recidivism and crime and the need for child foster care. Several commenters point to the link between affordable inmate calling, improved mental health, and lower recidivism. According to the Episcopal Church and the United States Conference of Catholic Bishops, "studies have shown that phone communication between families and their loved ones in prison and its associated mental health benefits make incarcerated people less likely to recidivate."[612] Citing the California Department of Corrections, GTL also emphasizes the recidivism-reducing effect that affordable inmate calling services can have by helping incarcerated people prepare for life after confinement.[613] In the *2020 ICS Notice*, the Commission estimated that the benefits from reduced recidivism would exceed $23 million over ten years.[614] That estimate and the underlying reasoning continue to apply here. Although we cannot pinpoint how much increased telephone contact would reduce recidivism among incarcerated people, we estimate that even if our reforms resulted in only 100 fewer people being incarcerated due to recidivism, that would yield savings of approximately $3.3 million per year, or more than $23 million over 10 years in present value terms.[615] Other savings would also be realized through reduced crime,[616] and fewer children being placed in foster homes.[617] The potential scale of fiscal saving—in addition to the immense social benefits—is suggested by the fact that, on average, state and local governments incur administrative and maintenance costs of $25,782 per foster placement.[618]

202. *Costs of Reducing Rates for Interstate Inmate Calling Services Calls*. We find most credible the cost estimate used in the *2020 ICS Notice*, where the Commission estimated that the costs of reducing rates for interstate inmate calling services calls would amount to approximately $6 million.[619] Approximately 3,000 calling services contracts will need to be revised based on the rules we adopt today, and a smaller number of administrative documents may need to be filed to incorporate lower interstate and international rates.[620] We estimate that these changes would require approximately 25 hours of work per contract. We use a $70 per hour labor cost to implement billing system changes, adjust contracts, and

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higher calling rates end up spending more on calling services overall—even after accounting for differences in minutes purchased—than incarcerated people in facilities with lower calling rates. It follows that because incarcerated people in facilities with prices above our caps spend more on inmate calling than incarcerated people in New York City and San Francisco did, these incarcerated people will have a higher demand elasticity than incarcerated people in New York City and San Francisco. For further explanation on what affects demand elasticity, see University of Minnesota, Principles of Economics, § 5.1 The Price Elasticity of Demand, *supra* note 605.

[612] Episcopal Church Reply at 2.

[613] GTL Comments at 2 nn.3-4.

[614] *2020 ICS Notice*, 35 FCC Rcd at 8527-28, para. 118.

[615] *Id.* at 8526-28, para. 118 & nn.283-84.

[616] Council of Economic Advisors, Returns on Investments in Recidivism-Reducing Programs, at 3 (May 2018), https://trumpwhitehouse.archives.gov/wp-content/uploads/2018/05/Returns-on-Investments-in-Recidivism-Reducing-Programs.pdf.

[617] U.S. Government Accountability Office, Child Welfare: More Information and Collaboration Could Promote Ties Between Foster Care Children and Their Incarcerated Parents, at 11 (Sept. 2011), https://www.gao.gov/assets/590/585386.pdf.

[618] Nicholas Zill, *Better Prospects, Lower Costs: The Case for Increasing Foster Care Adoption*, at 3 (May 2011), https://web.archive.org/web/20151005185803/https:/www.adoptioncouncil.org/images/stories/NCFA_ADOPTION_ADVOCATE_NO35.pdf.

[619] *2020 ICS Notice*, 35 FCC Rcd at 8528, para. 119. We continue to assume smaller jails incur costs for all calls.

[620] *Id.*

to make any necessary website changes.[621] The estimated cost of these actions is $5,139,750 (= 2,937 (number of contracts) * 25 (hours of work per contract) * $70 per hour), which we round up to $6 million to be conservative.

203. GTL argues that the Commission's estimate that it would take 25 hours of work per contract to revise calling services contracts is unrealistically low.[622] According to GTL, its recent experience renegotiating contracts and implementing new rates in 2013 and 2015 indicates that the costs of such renegotiations are much higher than what the Commission estimated.[623] GTL, however, did not provide any specific data about the costs it incurred and did not explain the methodology it used to arrive at its cost estimates. Accordingly, we cannot reasonably assess the merits of GTL's objection, much less rely on its filings to provide a different estimate. As a result, we find that the Commission's earlier estimate that our reforms would cost providers approximately $6 million continues to provide the best information for us to use in conducting our cost-benefit analysis.

204. *Anticipated Effect on Inmate Calling Services Investment.* Our new rate caps will give inmate calling services providers the opportunity for full cost recovery and a normal profit. This full cost recovery includes operating costs, common costs, a return on capital investment, and capital replacement. By adopting the new interim rate caps, the Commission seeks to lower the price of interstate and international inmate calling services closer to the costs companies incur in providing the services. GTL argues that we risk discouraging investment by ignoring components of providers' total costs, particularly capital costs, and setting inmate calling services rates too low.[624] Securus claims that "the proposed caps would not allow Securus to recover its costs at many jail facilities," and that the Commission has not accounted for "the potential negative outcomes of degraded or lower quality service at some facilities if providers are not able to fully recover all of their costs."[625] We disagree with both providers. The rate caps adopted in this Report and Order will allow every provider of calling services for incarcerated people to charge a price that recovers its direct costs—namely the costs directly attributable to producing all of the calls under a given contract—and that contributes to the recovery of the provider's indirect costs. With rates set to exceed estimated per-minute costs, including an allowance for the cost of capital, a provider should generate sufficient revenue to more than cover its total operating costs, thereby avoiding any disincentive to invest. As a fail-safe, however, our Report and Order also allows providers unable to recover their costs under the interim rate caps adopted herein to seek waivers of those caps.

205. Under our new policy, lower rates will enable more frequent inmate calling at lower prices. Incarcerated people and their families will enjoy added consumer surplus, measured by the difference between the lower price and their willingness to pay for the increased call volume. Some of

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[621] We use an hourly wage of $46 for this work. We examined several potential wage costs. For example, in 2020, the median hourly wage for computer programmers was $45.98, and for accountants and auditors, it was $39.26. We chose the higher of these because of the specialized technical nature of the work. *See* Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wage Statistics, https://www.bls.gov/oes/. This rate does not include non-wage compensation. To capture this, we mark up wage compensation by 46%. In March 2020, hourly wages for the civilian workforce averaged $25.91, and hourly benefits averaged $11.82, yielding a 46% markup on wages. *See* U.S. Department of Labor, Bureau of Labor Statistics, Employer Costs for Employee Compensation News Release (June 18, 2020), https://www.bls.gov/news.release/archives/ecec_06182020.htm. Using this 46% markup on the $46 hourly wage, we obtain an hourly rate of $67.16 (= $46 x 1.46), which we round up to $70.

[622] GTL Comments at 33.

[623] *Id.* at 34.

[624] GTL Godek Report at 2, 14; GTL Godek Reply Report at 5. FTI notes that "[t]he capital return is an important and sizable cost [inmate calling services] providers must recover through the prices of their services to ensure sufficient profitability to encourage investments in their business." Securus FTI Report at 8.

[625] Securus Comments at 10, 43.

the producer surplus, measured by the difference between the lower price and service providers' marginal costs, will be transferred from providers to incarcerated people and their loved ones, thereby reducing provider profits. As discussed above, surplus gains may come from other sources besides provider profits. Any addition to consumer surplus that did not exist previously as provider profit is a net economic gain. Neither gain will come at the expense of provider investment. And, as noted above, lower calling rates will facilitate increased communication between incarcerated people and their loved ones, which will benefit all incarcerated persons and their families by fostering essential family ties and also allowing incarcerated people to plan for successful reentry upon release.[626]

G. Disability Access

206. The Commission is committed to using all of its authority to ensure that incarcerated people with speech and hearing disabilities have access to functionally equivalent telecommunication services to communicate with their families, loved ones, and other critical support systems. We specifically "acknowledge the injustice facing the scores of incarcerated people with disabilities who lack access to functionally equivalent communications."[627] In the *2020 ICS Notice*, the Commission asked for comment on the needs of incarcerated people with communication disabilities.[628] The response was voluminous.[629] Commenters' concerns generally fall into two categories. First, commenters allege that some providers are not following the Commission's rules for the provision of TRS and complain about egregiously high rates and the lack of necessary equipment at correctional facilities.[630] We remind providers that they are obligated to comply with our existing inmate calling services and related rules, including rules requiring that incarcerated people be provided access to certain forms of TRS, rate caps for calls using a text telephone (TTY) device, rules prohibiting charges for TRS-to-voice or voice-to-TTY calls, and rules requiring annual reporting of the number of TTY-based calls and any complaints.[631] In addition, like other communications service providers, inmate calling services providers must ensure that the services and equipment provided for use by incarcerated people are accessible and usable by incarcerated people with disabilities (subject to achievability),[632] including when legacy telephone services are discontinued and replaced with advanced services such as Voice over Internet Protocol (VoIP).[633]

[626] *See, e.g., supra* paras. 194-96.

[627] Letter from Blake E. Reid, Counsel to Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed Mar. 24, 2021) (Accessibility Coalition Mar. 24, 2021 *Ex Parte*); *see also* Impacted People May 14, 2021 *Ex Parte* at 1-2 (providing examples of the "significant burdens" faced by deaf and disabled incarcerated people).

[628] *2020 ICS Notice*, 35 FCC Rcd at 8534, para. 136. As we did in the *2015 ICS Order*, we use "disabilities" to include individuals who are deaf or hard of hearing, as well as those who are deafblind or have speech disabilities who also have policy concerns that are similar to those incarcerated people who are deaf or hard of hearing. *2015 ICS Order*, 30 FCC Rcd at 12874-75, para. 226.

[629] The Commission received 17 substantive responses in the comment cycle, and 68 express comments.

[630] *See, e.g.,* HEARD et al. Comments at 16-18 (Accessibility Coalition Comments).

[631] *See* 47 U.S.C. §§ 225, 276; 47 CFR §§ 64.603, 64.1330(b), 64.6040, 64.6060; *2015 ICS Order*, 30 FCC Rcd at 12874-75, para. 226.

[632] *See* 47 U.S.C. §§ 255, 617; 47 CFR pts. 6, 7, 14.

[633] *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128, 1185-86, para. 153 (2017).

207. Second, several commenters argue that TTY is an outdated mode of communication for individuals with disabilities.[634] We agree that given the changes in telecommunications technologies in the past decades, TTYs have become little used because of the widespread transition to Internet Protocol-based services.[635] We also understand that TTYs may not be suitable for individuals who, for example, use American Sign Language as their primary mode of communication.[636] To fill the void and to better serve incarcerated people with disabilities, commenters advocate that the Commission require providers to offer other types of functionally equivalent telecommunication services.[637] We intend to address these concerns in the near future in a manner that best meets the needs of incarcerated persons who are deaf, hard of hearing, deafblind, or have a speech disability, consistent with our jurisdiction and legal authority. Accordingly, we seek detailed comment to further explore this issue in the accompanying Further Notice.[638]

208. Public interest groups also urge the Commission to coordinate with the Department of Justice (DOJ).[639] Through the Federal Bureau of Prisons, DOJ administers federal correctional facilities. In addition, DOJ has authority to adopt disability access regulations applicable to federal, state, and local government entities, including correctional authorities, under section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act (ADA).[640] We agree that such coordination would be beneficial in assisting the Commission with addressing issues such as those raised in the record and in the Further Notice.[641] We therefore direct CGB to make all efforts to coordinate with DOJ to ensure that incarcerated people with communications disabilities have access to communications "in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services."[642]

H. Other Issues

1. Ancillary Fee Cap for Single-Call Services and Third-Party Transaction Fees

209. We revise our rules for single-call services and third-party financial transaction fees to establish a uniform cap for both types of ancillary service fees for or in connection with interstate or international use of inmate calling services. Providers may no longer simply pass through third-party

[634] *See, e.g.*, Accessibility Coalition Comments at v, 9-12 (explaining that TTYs "in many cases no longer even work as a result of the years-long Internet Protocol (IP) transition" and overall use has dropped by over 80% in the past 11 years); Accessibility Coalition Reply at 3 (explaining that "TTYs are not operational and no longer provide functional equivalence"); Convo Reply at 1 (describing difficulties incarcerated individuals may have when they request videophones and VRS); Impacted People May 14, 2021 *Ex Parte* at 2 (explaining that "most prisons provide no telecommunications for deaf/disabled people, while others tend to only offer antiquated TTY," which is "an outdated telecommunications service"); *see also 2015 ICS Order*, 30 FCC Rcd at 12876, para. 229.

[635] *See, e.g.*, Accessibility Coalition Comments at v; Accessibility Coalition Reply at 3; Convo Reply at 1.

[636] *E.g.*, Leadership Conference Reply at 2; *see* Richard Ray Reply at 4-5.

[637] *See, e.g.*, Accessibility Coalition Comments at 3; Convo Reply at 1.

[638] *Infra* Part VI.A.

[639] Accessibility Coalition Comments at 19; Accessibility Coalition Mar. 24, 2021 *Ex Parte* at 2; Richard Ray Reply at 1; ZP Better Together, LLC, Reply at 4 (ZP Reply). The Federal Bureau of Prisons is part of the Department of Justice (DOJ).

[640] *See* 29 U.S.C. § 794; 42 U.S.C. § 12131 *et seq.*; 28 CFR pt. 41 (regulations implementing the Rehabilitation Act of 1973); 28 CFR pt. 35 (regulations implementing Title II of the ADA).

[641] *See infra* Part VI.A.

[642] 47 U.S.C. § 225.

financial transaction fees, including those related to single-call services, to calling services consumers.[643] The Commission sought comment in the *2020 ICS Notice* on whether its ancillary services fee caps, generally, should be lowered or otherwise modified.[644] It also sought comment on what limits, if any, should be placed on third-party transaction fees that providers may pass on to consumers, including those related to single-call services.[645] Record evidence provided by the Prison Policy Initiative explains that Western Union, one of the most prominent third-party money transfer services used in this context,[646] charges $6.95 to send money to GTL, the largest inmate calling services provider.[647] We therefore modify our rules to limit the charges a provider may pass on to incarcerated people or their friends and family for third-party financial transaction fees associated with single-call services[648] or for third-party money transfer service fees to $6.95 per transaction on an interim basis.[649] These modifications are warranted to close loopholes in our rules.[650] We also clarify that no third-party transaction fee may be charged when a third party is not involved directly in a particular transaction, e.g., in the case of an automated payment where the consumer uses a credit card to fund or create an account.[651]

210. In adopting the $6.95 interim cap for third-party transactions fees, including those appropriately charged for single-call services, we decline to adopt at this time NCIC's proposal to cap

[643] *See* 47 CFR § 64.6020(b)(2), (b)(5) (permitting a pass-through to consumers of the exact fees, with no markup that result from these transactions prior to today's action).

[644] *2020 ICS Notice*, 35 FCC Rcd at 8532, para. 131.

[645] *2020 ICS Order on Remand*, 35 FCC Rcd at 8488, para. 9; *2020 ICS Notice*, 35 FCC Rcd at 8532, para. 131. Single-call services are collect calls by incarcerated people that "are billed through third-party billing entities on a call-by-call basis to parties whose carriers do not bill collect calls." *2015 ICS Order*, 30 FCC Rcd at 12854, para. 82; *see also 2020 ICS Order on Remand*, 35 FCC Rcd at 8532, para. 12. Specifically, the Commission defined single-call services as "billing arrangements whereby an Inmate's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the Provider of Inmate Calling Services or does not want to establish an account." *2015 ICS Order*, 30 FCC Rcd at 12920, Appx. A, 47 CFR § 64.6000(a)(2).

[646] *See, e.g.*, *2015 ICS Order*, 30 FCC Rcd at 12850, para. 171 (identifying Western Union and MoneyGram as third-party money transfer service providers); Wright Petitioners et al. Comments, WC Docket No. 12-375, at 17 (filed Mar. 20, 2020) (explaining that since "many [inmate calling services] customers do not have bank accounts, they often use money transmitters *such as Western Union or Money Gram* to remit funds to prepay an [inmate calling services] account") (emphasis added).

[647] Letter from Andrea Fenster, Staff Attorney, Prison Policy Initiative, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1 (filed Feb. 25, 2021) (Prison Policy Initiative Feb. 25, 2021 *Ex Parte*) (highlighting "inexplicably high third-party financial transaction fees" charged by GTL despite the fact that "Western Union charges consumers $6.95 to send payments to GTL"); Public Interest Parties July 29, 2020 *Ex Parte* Attach. at 8 (highlighting that Western Union charges $6.95 to send a $25 payment to GTL).

[648] 47 CFR § 64.6020(b)(2).

[649] 47 CFR § 64.6020(b)(5).

[650] *2015 ICS Order*, 30 FCC Rcd at 12769, para. 9 (citing "a disturbing trend in which ancillary service charges increased exponentially and unfairly, to the detriment of incarcerated [people] and their families and in contravention of the statute," the Commission limited the types and amounts of ancillary service charges that a provider may pass on to incarcerated people and their friends and family); *see also* Prison Policy Initiative Comments, WC Docket No. 12-375, at 1 (filed Jan. 19, 2016) (Prison Policy Initiative Jan. 19, 2016, Comments) (explaining how third parties charge consumers high fees to send money and then share profits with inmate calling services providers); Letter from Tim McAteer, President, Inmate Calling Solutions, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, Attach. 1 at 3-4 (filed Oct. 15, 2015) (arguing that "the loophole of allowing third-party financial transaction fees as a pass-through cost with no further restrictions or rate caps" allows providers to "outsource payment services to third parties who are not restricted to such caps, thereby allowing [inmate calling services] providers to charge fees above the caps").

[651] ICSolutions May 12, 2021 *Ex Parte* at 4-5.

these fees at the $3.00 cap for automated payment fees or the $5.95 cap for live agent fees, as applicable, pending further input on this proposal, which we seek in today's Further Notice.[652] We do not have sufficient evidence to adopt this proposal at this time, especially considering the data provided by the Prison Policy Initiative, which supports a higher rate ($6.95) than the highest rate NCIC's proposal would allow ($5.95). We encourage all interested parties to comment further on the NCIC proposal. At this time, however, we conclude that the number provided by the Prison Policy Initiative is a reasonable interim step that reduces excessively high third-party fees embedded in the total fees for single-call services and other third-party transactions.[653]

211. *Single-Call Services*. In the *2015 ICS Order*, the Commission first adopted rules for single-call and related services, one of five permissible ancillary service charges that providers were allowed to assess on their customers in connection with inmate calling services.[654] The Commission found that providers were using single-call services "in a manner to inflate charges,"[655] and limited fees for single-call and related services to the exact transaction fee charged by the third party that bills for the call, "with no markup, plus the adopted, per-minute rate."[656] Because the D.C. Circuit stayed the rule on March 7, 2016, it never became effective;[657] and the Commission reinstated it in the *2020 ICS Order on Remand* without revision.[658]

212. In reinstating the single-call services rule, the Commission noted evidence in the record suggesting that certain providers may have entered into revenue-sharing arrangements with third parties in connection with single-call services that indirectly result in mark-up of fees charged by third-party processing companies and thus serve to circumvent the Commission's cap on pass-through fees for single-call services.[659] This evidence included, for example, a then recent report prepared by the Prison Policy Initiative detailing the way some providers use these revenue-sharing arrangements with third parties, like Western Union and MoneyGram, to circumvent the caps on the fees they may charge for single-call services.[660] The third-party financial provider charges the inmate calling services provider as much as $12 to send it a payment in connection with a single-call service or to fund an account. The inmate calling services provider then passes this fee on to the family of the incarcerated person who placed the call, and the two companies split the $12 fee, each getting $6. Some providers freely admit

[652] NCIC Comments at 3; Letter from Lee G. Petro, Counsel to NCIC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1-2 (filed July 28, 2020) (NCIC July 28, 2020 *Ex Parte*); *see also* NCIC May 12, 2021 *Ex Parte* at 1; NCIC May 13, 2021 Supplemental *Ex Parte* at 1-2. For the same reasons, we decline the proposal of ICSolutions, at this time, to limit third-party fees to the $5.95 live agent fee or the $3.00 automated payment fee. ICSolutions May 12, 2021 *Ex Parte* at 5.

[653] Prison Policy Initiative Feb. 25, 2021 *Ex Parte* at 1.

[654] *2015 ICS Order*, 30 FCC Rcd at 12769, para. 9.

[655] *Id.* at 12854, para. 182.

[656] 47 CFR § 64.6020(b)(2); *2015 ICS Order*, 30 FCC Rcd at 12857, para. 186. The "third-party transaction" referred to in section 64.6020(b)(2) for single-call services is the same type of "third-party financial transaction" referred to in section 64.6020(b)(5). *See 2015 ICS Order*, 30 FCC Rcd at 12846, para. 163 tbl. 4.

[657] *2020 ICS Order on Remand*, 35 FCC Rcd at 8490, para. 12.

[658] *Id.* at 8495, para. 27 n.86, 8497, para. 34 n.101.

[659] *Id.* at 8502, para. 50; *see also* NCIC July 28, 2020 *Ex Parte* at 1-2 & Exh. A.

[660] Public Interest Parties July 29, 2020 *Ex Parte* Attach. at 8.

that they engage in these revenue-sharing schemes.[661] Other providers have asked the Commission to address this practice and preclude it.[662]

213. These "egregiously-high third-party transaction fees" are unconnected to legitimate costs of inmate calling services.[663] We, therefore, revise the single-call service rule and limit the third-party transaction fees providers may pass on with respect to single-call services to $6.95 per transaction.[664] There is support in this record for this proposal.[665] The Commission has previously found single-call services to be among "the most expensive ways to make a phone call."[666] And record evidence suggests some providers still may steer families of incarcerated people to these more expensive calls.[667] Revising the rule applicable to single-call services in this way will ensure that consumers of inmate calling services, who may be unaware of or confused by other available calling options, are protected from unjust and unreasonable charges and practices when seeking to remain in contact with incarcerated friends or family, particularly when they are initially incarcerated and this immediate single-call method of communication is even more critical.[668]

214. *Third-Party Financial Transaction Fees*. For the same reasons we limit the third-party transaction fee associated with single-call services, we revise the rule pertaining to third-party financial transaction fees in connection with funding accounts directly with the inmate calling services provider that may be set up on behalf of incarcerated people by their friends and family or by the incarcerated people themselves.[669] The same revenue-sharing practices that lead us to revise the single-call services rule are implicated in connection with the third-party financial transaction fees rule.[670]

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[661] *E.g.*, *id.* (explaining that Amtel has "admitted . . . that it receives a portion of Western Union's fees" which Western Union calls "'revenue share'" and "'referral fee'").

[662] *See, e.g.*, NCIC July 28, 2020 *Ex Parte* at 1-2 & Exh. A.

[663] *Id.* at 1.

[664] We decline the suggestion of ICSolutions to delete the reference to single-call services from section 64.6020 of our rules and move it to a definition in section 64.6000. ICSolutions May 12, 2021 *Ex Parte* at 6. Section 64.6000 already contains a definition for this ancillary service charge. More broadly, however, ICSolutions appears to envision removing fees for single-call services from the list of permitted ancillary service charges. We decline to do so at this time, but we seek comment on this proposal in the Further Notice.

[665] Prison Policy Initiative Feb. 25, 2021 *Ex Parte* at 2; Public Interest Parties July 29, 2020 *Ex Parte* Attach. at 8. We decline NCIC's request to clarify that the fee cap for single call services "will continue to be $3.00" or to prohibit transaction fees on all single calls. NCIC May 13, 2021 Supplemental *Ex Parte* at 2. Nothing in the Commission's rules today provides for a $3.00 fee cap for single call services. *See* 47 CFR § 64.6020(b)(2). And we decline at this time to prohibit transaction fees for single calls pending further record development on this issue through today's Further Notice.

[666] *2015 ICS Order*, 30 FCC Rcd at 12855, para. 183; *see also* NCIC Comments at 2.

[667] *See* Public Interest Parties July 29, 2020 *Ex Parte* at 3 & Attach. at 9. The Commission previously noted "concerns that providers may be using consumer disclosures as an opportunity to funnel end users into more expensive service options, such as those that may require consumers to pay fees to third parties." *2015 ICS Order*, 30 FCC Rcd at 12896, para. 279 n.974.

[668] *See 2015 ICS Order*, 30 FCC Rcd at 12854-55, para. 182; NCIC Comments at 2-3.

[669] Although the *2020 ICS Notice* referred to "third-party transaction fees," the third-party financial transaction fee described in section 64.6020(b)(5) is the same as the third-party transaction fee referred to in the rule pertaining to single-call services. *See 2015 ICS Order*, 30 FCC Rcd at 12846, para. 163 tbl. 4; *see also 2015 ICS Order*, 30 FCC Rcd at 12857, para. 187 ("Accordingly, for single-call and related services, the Commission will allow [inmate calling services] providers to charge end users for each single call in a manner consistent with our approach to third-party financial transaction fees—i.e., [inmate calling services] providers may charge the amount of the third-party financial transaction (with no markup) added to a per-minute rate no higher than the applicable rate cap."). Of course, as we state, where no third party is involved in a call, no third-party fees may be charged. *See* 47 CFR

(continued….)

215. The Commission sought comment in the *2015 ICS Notice* on a variety of issues relating to revenue-sharing, including how the Commission can "ensure that these revenue sharing arrangements are not used to circumvent our rules prohibiting markups on third-party fees."[671] In the *2020 ICS Notice*, the Commission sought further comment on the use of revenue-sharing arrangements and whether the Commission should clarify the third-party financial transaction fee rule.[672] CenturyLink previously contended that the rule governing third-party financial transaction fees already implicitly prohibits providers from recovering higher fees from consumers as a result of revenue-sharing agreements.[673] In the *2020 ICS Notice*, the Commission stated that "[m]arking up third-party fees, whether directly or indirectly, is prohibited."[674]

216. Yet the record in this proceeding continues to suggest that the same types of revenue-sharing agreements that lead to indirect markups of third-party transaction fees for single-call services similarly lead to mark-ups of third-party financial transaction fees.[675] Such practices serve to circumvent, either directly or indirectly, the limits placed by the Commission on ancillary service charges and lead to unjust and unreasonable charges. We thus revise our rules relating to third-party financial transaction fees and limit the fees that a provider can pass through to a calling services consumer to $6.95. We clarify that we do not prohibit providers from entering into revenue-sharing agreements with third parties,[676] despite at least one commenter proposal to do just that.[677] But providers may not pass on fees exceeding $6.95 per transaction—whether or not they are associated with such agreements—to incarcerated people and their families.

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§§ 64.6000(2), (5) (referring specifically to third parties); Prison Policy Initiative May 13, 2021 *Ex Parte* at 2 (discussing how third parties are involved in single call and third-party financial transaction fees).

[670] *2020 ICS Notice*, 35 FCC Rcd at 8516, para. 91; *2015 ICS Notice*, 30 FCC Rcd at 12915, para. 326; Pay Tel Comments, WC Docket No. 12-375, at 16 (filed Jan. 19, 2016) (Pay Tel Jan. 19, 2016, Comments); CenturyLink Comments, WC Docket No. 12-375, at 12-13 (filed Jan. 19, 2016) (CenturyLink Jan. 19, 2016, Comments); Prison Policy Initiative Jan. 19, 2016, Comments at 2-4; Human Rights Defense Center Comments, WC Docket No. 12-375, at 10 (filed Jan. 19, 2016) (Human Rights Defense Center Jan. 19, 2016, Comments) (agreeing with the comment submitted by the Prison Policy Initiative).

[671] *2015 ICS Notice*, 30 FCC Rcd at 12915, para. 326.

[672] *See 2020 ICS Notice*, 35 FCC Rcd at 8517, para. 91 ("We seek comment on any additional modifications to the language in our *current* ancillary services rules that may be necessary to clarify what providers are permitted and not permitted to do with respect to ancillary services charges.") (emphasis added).

[673] CenturyLink Jan. 19, 2016, Comments at 12-13 ("Simply put, if an arrangement between an [inmate calling services] provider and a third party results in a higher cost to an end-user than would otherwise be charged by that third party directly (a 'base' cost), a markup has occurred. In other words, there is a markup regardless of whether it is the result of an explicit fee on top of the base cost, or whether a revenue-sharing agreement drives the cost above this base cost.").

[674] *2020 ICS Notice*, 35 FCC Rcd at 8516, para. 91.

[675] *See* Pay Tel Jan. 19, 2016, Comments at 16; CenturyLink Jan. 19, 2016, Comments at 12-13; Prison Policy Initiative Jan. 19. 2016, Comments at 2-4; Human Rights Defense Center Jan. 19, 2016, Comments at 10; Public Interest Parties Comments at 13-15.

[676] *See* GTL Reply at 35-37.

[677] *See* Public Interest Parties Comments at 14-15 ("With respect to third-party transaction fees charged to customers by [inmate calling services] providers, the Commission should require proof (by way of copies of contracts with third-party vendors, as many states now demand) that there is no revenue-sharing arrangement between the provider and the vendor.").

2. Effect on State Regulation

217. As the Commission explained in the *2020 ICS Order on Remand*, where the Commission has jurisdiction under section 201(b) of the Act to regulate rates, charges, and practices of interstate communications services, "the impossibility exception extends that authority to the intrastate portion of jurisdictionally mixed services 'where it is impossible or impractical to separate the service's intrastate from interstate components' and state regulation of the intrastate component would interfere with valid federal rules applicable to the interstate component."[678] Consistent with that explanation and prior cases, we exercise our authority under the Supremacy Clause of the U.S. Constitution to preempt state regulation of jurisdictionally mixed services but only to the extent that such regulation conflicts with federal law.[679] Thus, state laws imposed on inmate calling services providers that do not conflict with those laws or rules adopted by the Commission are permissible. The interim reforms we adopt in this Report and Order apply to interstate and international inmate calling services rates and certain ancillary services charges imposed for or in connection with interstate or international inmate calling services.[680] To the extent that a call has interstate as well as intrastate components, the federal requirements will operate as ceilings limiting potential state action.[681] To the extent a state allows or requires providers to impose or charge per-minute rates or fees for the affected ancillary services higher than the caps imposed by our rules, that state law or requirement is preempted except where a call or ancillary service fee is purely intrastate in nature, as the Commission did in the *2020 ICS Notice*.[682] To the extent that state law allows or requires providers to impose rates or fees lower than those in our rules, that state law or requirement is specifically not preempted by our actions here.[683]

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[678] *2020 ICS Order on Remand*, 35 FCC Rcd at 8496, para. 31 (citing *Vonage Order*, 19 FCC Rcd at 22413, para. 17).

[679] *See* U.S. Const. art. VI; *see also, e.g.*, *Vonage Order*, 19 FCC Rcd at 22418, para. 23 n.86; *Qwest Corp. v Minnesota Pub. Utils. Comm'n*, 380 F.3d 367, 372 (8th Cir. 2004) (explaining that "[t]he FCC has authority to preempt state regulation of telecommunications where it is not possible to separate the interstate and intrastate aspects of a communications service, and where the Commission concludes that federal regulation is necessary to further a valid federal regulatory objective"); *Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corporation*, Memorandum Opinion and Order, 7 FCC Rcd 1619, 1622-23, paras. 17-22 (1992) (using preemption under the Supremacy Clause for a Georgia voice mail regulation of a jurisdictionally mixed service). To be clear, state regulation of jurisdictionally mixed services would not conflict with federal law if state regulation required rates at or below the federal rate caps. In such cases, the provider would need to comply with the lowest rate cap to comply with both federal and state requirements for jurisdictionally indeterminant services. *See, e.g.*, Pay Tel May 12, 2021 *Ex Parte* at 1; Securus May 13, 2021 *Ex Parte* at 4.

[680] *See supra* Parts III.C-D, H.1, 3.

[681] *See 2015 ICS Order*, 30 FCC Rcd at 12864, para. 205; *USF/ICC Transformation Order*, 26 FCC Rcd at 17935, para. 801; *see also* Letter from Andrew D. Lipman, Morgan, Lewis & Bockius, LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 1-2 (filed July 23, 2015).

[682] In connection with ancillary service charges, we remind providers that "[t]o the extent a state allows or requires an inmate calling services provider to impose fees for ancillary services other than those permitted by our rules, or to charge fees higher than the caps imposed by our rules, that state law or requirement is preempted except where such ancillary services are provided only in connection with intrastate inmate calling services." *2020 ICS Order on Remand*, 35 FCC Rcd at 8501, para. 47. Should a state allow or require providers to impose fees for ancillary service charges lower than those in the Commission's rules, that state law or requirement is not preempted. *Id.*

[683] For example, we are aware that certain states have begun efforts to examine inmate calling services rates and charges subject to their jurisdiction. *See, e.g.*, An Act Concerning the Fee Charged for a Phone Call by an Inmate in a Correctional Facility; And for Other Purposes, 2021 Arkansas Laws Act 702 (S.B. 550) (Apr. 13, 2021) (capping the cost per minute for inmate calling services calls and limiting the types of permitted ancillary services that providers may charge); S.B. 387, 81st (2021) Sess. (Nev. 2021) (directing the Public Utilities Commission of Nevada to regulate suppliers of inmate calling services and adopt rate caps and certain limitations on charges for inmate calling services); H.B. 1201, 73rd Gen. Assemb., 1st Reg. Sess. (Colo. 2021) (requiring the Public Utilities (continued….)

3. Additional Data Collection

218. We adopt a new data collection obligation to collect, in a more consistent and directed manner, the data and information necessary to respond to the various criticisms in the record about the imperfections and inconsistencies in the data from the Second Mandatory Data Collection. The *2020 ICS Notice* sought comment on whether and how the Commission should proceed with respect to any new data collection.[684] We agree with commenters that a new collection must state more precisely what data we seek and how a provider should approximate or derive the type of data we request if it does not keep its records in such a manner. This is an essential prerequisite to adopting permanent interstate rate caps for both provider-related and facility-related costs.[685] Accordingly, we delegate authority to WCB and the Office of Economics and Analytics (OEA) to implement a Mandatory Data Collection, including determining and describing the types of information required related to providers' operations, costs, demand, and revenues, consistent with the directives in this section. In addition, we delegate authority to CGB to undertake, if necessary, a separate data collection related to inmate calling services providers' costs and other key aspects of their provision of TRS and other assistive technologies, in conjunction with the disability access issues we explore in the accompanying Further Notice.[686]

219. *Background.* The Commission has conducted two mandatory data collections related to inmate calling services in the past eight years—the 2013 First Mandatory Data Collection[687] and the 2015

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Commission to establish maximum per-minute rates for telephone calls made to or from correctional facilities; S.B. 303, 67th Reg. Sess. (Mont. 2021) (transmitted to the Governor for signature on May 4, 2021) (requiring an interim study of telecommunications contracts, fees, and commissary costs); 2021 Utah Laws Ch. 142 (West) (imposing limits on the rates an incarcerated person may be charged for telephone use, which must be lesser of the corresponding rate set by the Federal Communications Commission and the rate established by the Utah Department of Corrections); S.B. 1776, 55th Leg., 1st Reg. Sess. (Ariz. 2021) (prohibiting the Department of Corrections from entering a contract or agreement for inmate telephone services that allows the department to receive excess revenue); H.B. 1484, Ind. Gen. Ass., 2021 Sess. (Ind. 2021) (requiring intrastate inmate calling services rates to adhere to the caps for comparable interstate rates set by the Federal Communications Commission). We applaud these state initiatives, which appear consistent with our own efforts in this proceeding. The fact that we are also examining inmate calling services rates and charges involving jurisdictionally mixed services in no way precludes the states from also adopting rules governing such services so long as the states' rules are not inconsistent with or conflict with federal law or policy. Order Instituting Rulemaking, California Public Utilities Commission, Rulemaking 20-10-002 (Oct. 19, 2020), https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M348/K902/348902674.PDF (an on-going rulemaking by the California Public Utilities Commission which is considering ways to ensure incarcerated people and their families have access to intrastate telecommunication service at just and reasonable rates); Motion of the Prison Policy Initiative, Inc., to Compel GTL to Respond to Data Requests, California Public Utilities Commission, Rulemaking 20-10-002, at 2-5 (filed Mar. 18, 2021), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M372/K332/372332177.PDF (seeking, among other things, documents that GTL declined to provide concerning its payment processing costs, and rebutting GTL's concern about the mixed jurisdiction of some ancillary services); Response of GTL (U 5680 C) to the Motion of the Prison Policy Initiative, Inc., to Compel, California Public Utilities Commission, Rulemaking 20-10-002, at 1-2, 5 (filed Mar. 29, 2021), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M374/K627/374627002.PDF (challenging the request for information about payment processing costs as beyond the California Commission's jurisdiction, and contrary to a confidentiality agreement GTL signed with Prison Policy Initiative, Inc.); Administrative Law Judge's Ruling Denying Prison Policy Initiative's Motion to Compel GTL to Respond to Data Requests, California Public Utilities Commission, Rulemaking 20-10-001, at 1 (Apr. 27, 2021), https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M379/K999/379999772.PDF (denying Prison Policy Initiative's Motion to Compel but recommending that Prison Policy Initiative narrow its requests before resubmitting the Motion).

[684] *2020 ICS Notice*, 35 FCC Rcd at 8532-33, paras. 132-33.

[685] *See, e.g.*, Pay Tel Wood Reply Report at 7-11.

[686] *Infra* Part VI.A.

[687] *2013 ICS Order*, 28 FCC Rcd at 14172, paras. 124-26 (requiring providers to submit detailed cost information that subsequently formed the basis for the rate-cap calculations in the *2015 ICS Order*). The 2013 collection

(continued….)

Second Mandatory Data Collection.[688] To allow for consistent data reporting, the Commission directed WCB in both collections to develop a template for providers to use when submitting their data and to furnish providers with further instructions to implement the collection.[689] The Commission also directed WCB to review the providers' submissions and delegated to WCB the authority to require providers to submit additional data as necessary to perform its review.[690]

220. In response to the *2020 ICS Notice* seeking comment on whether the Commission should collect additional data and, if so, what data it should collect,[691] several parties support additional data collection.[692] GTL, however, suggests that the Commission should avoid the burden of an additional data collection, asserting that there is no reason to believe that providers will report their costs differently than they have in the past.[693] GTL argues that the Commission should allow the market to adjust to any rules adopted as a result of the *2020 ICS Notice* before imposing additional reporting requirements.[694] GTL also suggests that relying on the Annual Reports that inmate calling services providers file pursuant to section 64.6000 of the Commission's rules would provide a less burdensome way of obtaining data and a better measure of rates in the marketplace.[695]

221. *Mandatory Data Collection.* We conclude that a Mandatory Data Collection is essential to enable us to adopt permanent interstate and international rate caps that more accurately reflect providers' costs than the interim rate caps we adopt in this Report and Order. Such a data collection is also needed to enable us to evaluate and, if warranted, revise the current ancillary service charge caps.

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required providers to report actual and forecasted costs, separately for jails and prisons and at a holding company level; specific categories of costs, including telecom costs, equipment costs, security costs, and other specified costs; and information on site commissions, minutes of use, number of calls, number of facilities, and information on charges for ancillary services. *2013 ICS Order*, 28 FCC Rcd at 14172-73, paras. 124-26.

[688] *2015 ICS Order*, 30 FCC Rcd at 12862, paras. 197-98 (requiring providers to report, among other information, the location of each facility they served, the classification of each facility (i.e., jail or prison), average daily population of the facility, number of calls by method of payment, minutes of use by method of payment, revenue, and site commissions at a facility level, as well as total inmate calling services costs, direct costs, revenues, and site commissions at the company level). These data form the basis for the interim rates caps we adopt herein.

[689] *Id.* at 12863, para. 200; *2013 ICS Order*, 28 FCC Rcd at 14173, para. 26.

[690] *2015 ICS Order*, 30 FCC Rcd at 12863, para. 200; *2013 ICS Order*, 28 FCC Rcd at 14173, para. 26. For example, staff analysis of responses to the Second Mandatory Data Collection revealed numerous deficiencies and areas requiring clarification. WCB and OEA conducted multiple follow-up discussions with providers to supplement and clarify their responses resulting in direction to several providers to amend their submissions and respond to questions from staff. *See, e.g.*, Pay Tel Amended and Supplemental Second Mandatory Data Collection Response (amending Pay Tel's Second Mandatory Data Collection response and noting questions raised by Commission staff).

[691] *2020 ICS Notice*, 35 FCC Rcd at 8532-33, para. 132. The Commission also sought comment on, among other things, whether providers should be required to update their responses to an additional data collection on a periodic basis. *Id.* at 8532, para. 132. We discuss this issue below. *See infra* Part VI.E.

[692] *See* Free Press Comments at 2-3 (welcoming efforts to challenge and scrutinize the current data through additional data collections); MediaJustice Comments at 2; Securus Comments at 15; Public Interest Parties Reply at 2-3 (supporting a future data collection to remedy the deficiencies revealed in the Second Mandatory Data Collection).

[693] *E.g.*, GTL Comments at 36; GTL Reply at 21. GTL points out that providers are not subject to the Part 32 accounting rules. GTL Reply at 21.

[694] GTL Comments at 36.

[695] GTL Reply at 22; *see* 47 CFR § 64.6060 (requiring each inmate calling services provider to file an Annual Report setting forth the provider's current inmate calling services rates and ancillary service charges, among other information).

Because of the adverse impact that unreasonably high rates and ancillary services charges have on incarcerated people and those family and loved ones they call, we believe that the benefits of conducting a third collection far outweigh any burden on providers. Moreover, providers have long been on notice of the types of cost information we intend to collect and will have ample time to consider how best to prepare to respond. We delegate to WCB and OEA authority to implement this new data collection. We direct them to develop a template and instructions for the collection to collect the information we need to protect consumers against unjust and unreasonable rates and ancillary services charges for interstate and international inmate calling services and to aid our continuing review of this unique inmate calling services marketplace[696] that one provider quite aptly describes as "nuanced and multilayered."[697]

222. Contrary to GTL's assertion,[698] an additional data collection is warranted, particularly considering the deficiencies of its own and other providers' responses to the Second Mandatory Data Collection. We are not persuaded by GTL's concern about the timing of an additional collection,[699] as the potential benefits from expediting further reform far outweigh any burdens the collection may place on providers. Our cost-benefit analysis shows substantial benefits are gained from lowering interstate and international inmate calling services rates towards costs. If, as appears likely, the interim price caps put in place today are still significantly above costs, then bringing rates down to costs will bring substantial further benefits. Finally, while the Annual Reports contain useful and relevant marketplace information on providers' rates and charges, we disagree with the contention that the Annual Reports provide sufficient data to establish just and reasonable interstate inmate calling services rates.[700] As the Public Interest Parties explain, the Annual Reports only include information on rates and charges and not the type of cost data required to set cost-based rates.[701]

223. *Details of Data Collection.* In the *2020 ICS Notice*, the Commission sought comment on whether it should consider other types of data that would more fully capture industry costs beyond the detailed and comprehensive data it had already collected.[702] Securus asserts that the Commission should require providers to follow a standard cost-causation modeling methodology to attribute costs to specific products, and, where that is not feasible, properly allocate costs across the products in a cost-causative manner, to the extent possible.[703] The Public Interest Parties contend that, among other things, the Commission should collect granular data with detailed components of direct and indirect costs, operations, and revenues, in addition to collecting costs at the facility level.[704] In addition, they assert that the Commission should standardize a methodology for allocating indirect costs.[705] The Public Interest Parties maintain that future data collections should require the submission of the costs of ancillary services and should be audited by an independent third party prior to submission to the Commission.[706]

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[696] *2015 ICS Order*, 30 FCC Rcd 12862, paras. 197-98.

[697] Securus Comments at 3.

[698] GTL Reply at 21-22 (arguing that an additional data collection is unnecessary because "[t]here is no reason to believe . . . that [inmate calling services] providers will report their costs any differently than they did previously").

[699] GTL Comments at 36.

[700] *Id.* at 22.

[701] *See, e.g.*, Public Interest Parties Comments at 15-16.

[702] *2020 ICS Notice*, 35 FCC Rcd at 8512-13, para. 80.

[703] Securus Comments at 15. Securus contends that cost drivers should be incorporated into the cost attribution analysis, such as time-tracking by software developers, IT support tickets, and physical inventory of computing hardware. *Id.*

[704] Public Interest Parties Comments at 16.

[705] *Id.*

[706] *Id.*

They also assert that the Commission should collect data on marketplace trends, such as bulk purchasing at fixed monthly rates.[707]

224. Securus asks that we provide more specific instructions on how to measure direct and indirect costs and contends that each company should be required to provide detailed work papers showing how it complied with the Commission's instructions.[708] Pay Tel supports modifications to forms, instructions, and guidance governing future data collections as necessary "to avoid the same or similar dataset issues currently presented."[709] Pay Tel asserts that detailed instructions would guide providers when completing the data collection form, including by clearly and expressly defining terms that are crucial to the collection process. Pay Tel claims that many of the issues with the current dataset appear to have arisen due to differing provider interpretations of instructions and terms, and that the Commission should minimize the potential for such differing interpretations as much as possible.[710]

225. We direct WCB and OEA to consider all of the foregoing suggestions in designing the Mandatory Data Collection including considering whether to collect data for multiple years. They should also incorporate lessons learned from the two prior data collections to ensure that we collect, to the extent possible, uniform cost, demand, and revenue data from each provider.

226. To ensure that we have sufficient information to meaningfully evaluate each provider's operations, cost data, and methodology, we direct WCB and OEA to collect, at a minimum, information designed to enable us to:

- Quantify the relative financial importance of the different products and services in each provider's business portfolio, including revenues from products supplied by any corporate affiliates, and ensure that the provider's inmate calling services are not being used to subsidize the provider's, or any corporate affiliate's, other products or services;
- Quantify the relative financial importance of services, including revenues from each transmission service and ancillary service, included within the provider's inmate calling services operations;
- Measure the demand for the provider's inmate calling services (e.g., in terms of paid and unpaid total minutes of use or completed calls);
- Calculate the provider's gross investment (gross book value of an asset, i.e., prior to subtracting accumulated depreciation or amortization), accumulated depreciation or amortization, deferred state and federal income taxes, and net investment (net book value of an asset, i.e., after subtracting accumulated depreciation or amortization) in tangible assets, identifiable intangible assets, and goodwill, including, but not limited to, the extent to which such intangible assets and goodwill were created internally as opposed to being generated through company acquisitions or asset purchases;
- Calculate the provider's recurring capital costs for depreciation and amortization, state and federal income tax, and interest, each disaggregated among appropriate categories,

[707] Public Interest Parties Comments at 17. The Public Interest Parties further argue that the Commission should require certification of the submitted cost data by the chief executive officer, chief financial officer, or other senior executive of the provider, as required for the Annual Reports. *Id.* In addition, they assert that the Commission should take enforcement action against any parties violating the Commission's rules well in advance of any future data collection. *Id.*

[708] Securus Comments at 15.

[709] Pay Tel Reply at 17.

[710] *Id.* at 17-18.

and its weighted average cost of capital, including capital structure, cost of debt, cost of preferred stock, and cost of equity;

- Calculate the provider's recurring operating expenses, at a minimum for maintenance and repair; billing, collection, and customer care; general and administrative; other overhead; taxes other than income tax; and bad debt, each disaggregated among appropriate categories;
- Ensure that the provider has directly assigned to its inmate calling services operations, and to its other operations, the investments and expenses that are directly attributable to those operations, as may be prescribed by WCB and OEA;
- Ensure that the provider has allocated to its inmate calling services operations, and to its other operations, common investments and expenses (i.e., investment and expenses that are not directly assignable to inmate calling services or to any single non-inmate calling services line of business);
- Ensure that the provider has directly assigned to specific contracts or facilities investments and expenses directly attributable to inmate calling services to the extent feasible;
- Ensure that the provider has allocated any remaining unassigned inmate calling services and common investment and expenses to specific contracts or facilities using reasonable, cost-causative methods;
- Ensure that the provider has directly assigned any site commission payments to, or allocated any such payments between, its inmate calling services and its other operations using reasonable, cost-causative methods; and
- Ensure that the provider has followed any required instructions regarding the foregoing.[711]

227. We also delegate to WCB and OEA the authority to require providers to submit any additional information that they deem necessary to help the Commission formulate permanent rate caps or to revise our rules governing ancillary service charges. WCB and OEA shall have the authority to require each provider to fully explain and justify each step of its costing process and, where they deem it appropriate, to specify the methodology the provider shall use in any or all of those steps. WCB and OEA also shall have the authority to require any provider to clarify and supplement its response to this data collection where appropriate to enable the Commission to make a full and meaningful evaluation of the company's cost, demand, and revenue data and costing methodology. Each provider shall keep all records necessary to implement this collection, and all providers shall make such records available to the Commission upon request.

228. *Timeframes for Data Collection*. We direct the template and instructions for the data collection to be completed for submission to the Office of Management and Budget (OMB) not later than 90 days after this Report and Order becomes effective. We also direct WCB to require providers to respond within 120 days after WCB announces in a Public Notice that OMB has approved the new data collection, such announcement to occur no later than seven business days after receipt of OMB's approval. WCB may, however, grant an extension of the 120-day response deadline for good cause.

229. *Potential CGB Data Collection.* We separately delegate authority to CGB to undertake a separate data collection related to inmate calling services providers' costs and other key aspects of their provision of TRS and other assistive technologies should CGB determine such a data collection is

[711] *See* GTL Letter, 35 FCC Rcd at 7031-34; Securus Comments at 15; Securus Cost Study; Wright Petitioners May 14, 2021 *Ex Parte* at 2-3.

necessary to assist the Commission's consideration of the record obtained with respect to assistive technologies for incarcerated people pursuant to our accompanying Further Notice.[712] To the extent CGB undertakes such data collection, we delegate to it the authority to require providers to submit any additional information that it deems necessary to assist the Commission's consideration of reforms in this area. CGB shall also have the authority to require any provider to clarify and supplement its response to such data collection where appropriate.

4. Effective Dates

230. Our actions in this Report and Order, including our new interim interstate and international rate caps, will take effect 90 days after notice of them is published in the Federal Register, except that the delegations of authority in Part III.H.3 shall take effect upon such publication, and the rules and requirements that require approval from OMB under the Paperwork Reduction Act shall be effective on the date specified in a notice published in the Federal Register announcing OMB approval. This 90-day timeframe is the same transition timeframe the Commission proposed in the *2020 ICS Notice*, and this period matches the timeframe the Commission adopted when providers first became subject to the current interim caps.[713] We received varying proposals for effective dates in response our proposed 90-day timeframe. Certain commenters argue for an effective date of 30 days after publication in the Federal Register, on the basis that providers have been on notice of the pending changes for some time and that any further delay will only add to the costs that incarcerated people and their families will bear.[714] Other commenters propose an effective date beyond 90 days or advocate for a staggered approach that would allow more transition time for jails, arguing that this additional time is necessary to make billing system changes or to renegotiate contracts among private parties.[715]

231. We conclude that a 90-day timeframe for implementing the new interim provider-related and facility-related rate caps and other changes that do not require OMB approval strikes a reasonable balance between the competing interests. On the one hand, a rapid timeframe would help alleviate the burden of unreasonably high interstate and international rates on incarcerated people and those they call,[716] a burden that the ongoing COVID-19 global pandemic has exacerbated.[717] On the other hand, the record shows that providers and correctional officials will need more than 30 days to execute any contractual amendments necessary to implement the new interstate and international rate caps and otherwise adapt to those caps.[718] Parties seeking a longer transition period rely primarily on the

[712] *Infra* Part VI.A.

[713] *2020 ICS Notice*, 35 FCC Rcd at 8511, para. 77; *see also 2013 ICS Order*, 28 FCC Rcd at 14147, paras. 72-73; *2015 ICS Order*, 30 FCC Rcd at 12884, para. 251 ("The record does not indicate that providers experienced difficulties implementing the rate caps within 90 days after the *2013* [*ICS*] *Order*'s publication in the Federal Register.").

[714] Free Press Comments at 5; Public Interest Parties Comments at 18-20.

[715] *See* California State Sheriffs' Association Comments at 2; GTL Comments at 4, 16-17 (advocating for a 90-day timeframe for prisons and a six-month timeframe for jails); National Sheriffs' Association Reply at 3-4 (seeking a one-year transition for jails); GTL May 13, 2021 *Ex Parte* at 3 (contending that the changes to the provider-related and facility-related rates caps and the new disclosure requirements for consumer bills seeking should not take effect until after OMB approves those disclosure requirements).

[716] Free Press Comments at 5 (citing an example of an inmate calling services provider voluntarily lowering its rates in less than 90 days' time); *see also* Public Interest Parties Reply at 19-20.

[717] *See* Public Interest Parties Comments at 2-3 (recognizing that restrictions on in-person visitations as a result of the pandemic have only increased the difficulty for incarcerated people to communicate with friends, family, and loved ones); *see also* Verizon Comments at 2-3. *But see* Federal Bureau of Prisons, BOP Modified Operations (updated Nov. 25, 2020), https://www.bop.gov/coronavirus/covid19_status.jsp (reinstating in-person visits subject to conditions and limitations due to the COVID-19 pandemic).

[718] GTL Comments at 12 (noting that the COVID-19 pandemic may delay county board meetings); National

(continued….)

difficulties jails with average daily populations less than 1,000 may encounter in implementing relatively sweeping changes to the rate cap structure.[719] The only rate cap change applicable to those jails, however, will be to reduce the per-minute charges for interstate collect calls from $0.25 per minute to $0.21 per minute. Further, as the Commission recognized in the *2020 ICS Notice*, 90 days after publication in the Federal Register appears to have been sufficient for implementation of the rate cap changes adopted in the *2013 ICS Order*.[720] In view of the foregoing considerations, we find that a 90-day transition period after publication in the Federal Register appropriately balances the need for expedited reform with the difficulties of adapting to our new rules.[721]

232. We find good cause for having our delegations of authority to WCB, OEA, and CGB take effect immediately upon publication of notice of them in the Federal Register. Making the delegations effective at that time will enable WCB and OEA to move as expeditiously as practicable toward finalizing the Mandatory Data collection and thereby reduce the time it will take us to set permanent rate caps for interstate and international inmate calling services and, if appropriate, revise the current ancillary service fee caps. Similarly, making the delegation to CGB effective upon publication in the Federal Register will enable CGB to move forward with any data collection as soon as practicable once it receives comments on the Further Notice. Given the importance of these areas to incarcerated people, including those with communication disabilities, any unnecessary delay in these initiatives would be inconsistent with the public interest.

5. Rule Revisions

233. We make two non-substantive changes to our inmate calling services rules. First, we amend section 64.6000(g) of our rules to fix a typographical error. Currently, this section erroneously uses the word "though" instead of "through" in defining "Debit Calling"[722] whereas a parallel definition for "Prepaid Calling" correctly uses "through."[723] We therefore change "though" to "through" in section 64.6000(g). Second, we remove the last sentence of section 64.6000(c) of our rules. That sentence references section 64.6010, which previously was removed and reserved for future use.[724]

234. We find good cause to make these revisions without notice and comment. The Administrative Procedure Act permits agencies to issue rule changes without notice and comment "when the agency for good cause finds (and incorporates the finding and a brief statement of the reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest."[725] We find good cause here because the rule changes are editorial and non-

(Continued from previous page)
Sheriffs' Association Reply at 7 (quoting GTL Comments at 12).

[719] GTL Comments at 13, 14 n.52; National Sheriffs' Association Reply at 3-4; *2015 ICS Order*, 30 FCC Rcd at 12886-87, para. 256.

[720] *2020 ICS Notice*, 35 FCC Rcd at 8511, para. 77 & n.195.

[721] We reject GTL's request that we defer the effective date of the changes to the provider-related and facility-related rate cap components (which do not require OMB approval) until after OMB approves the new disclosure requirements affecting how providers bill consumers for calling services. *See* GTL May 13, 2021 *Ex Parte* at 3. GTL makes no showing as to why it cannot implement the changes to the rate caps components within 90 days after publication of notice of them in the Federal Register or why implementing them at a later date would be fair to calling services consumers. *See id.* We note, however, any provider that wishes to avoid separate implementation dates is free to voluntarily implement the new disclosure requirements prior to their being approved by OMB.

[722] 47 CFR § 64.6000(g).

[723] 47 CFR § 64.6000(p).

[724] *2020 ICS Order on Remand*, 35 FCC Rcd at 8508, 8539, para. 63, Appx. A.

[725] *See* 5 U.S.C. § 553(b)(3)(B).

substantive.[726] The rule changes correct a typographical error and conform our rules to previous rule amendments. The Commission need not seek comment on rule changes to "ensure consistency in terminology and cross references across various rules or to correct inadvertent failures to make conforming changes when prior rule amendments occurred."[727]

IV. ORDER ON RECONSIDERATION

235. We deny the GTL Petition[728] in full on the merits and, independently, dismiss that petition as procedurally defective, insofar as it relies on arguments the Commission already considered and rejected in the underlying order.[729] GTL seeks reconsideration of a single sentence from the *2020 ICS Order on Remand* reiterating that "the jurisdictional nature of a call depends on the physical location of the endpoints of the call and not on whether the area code or NXX prefix of the telephone number . . . associated with the account, are associated with a particular state."[730] GTL claims that this sentence (1) ignores telecommunications carriers' historical reliance on NPA-NXX codes to classify calls as interstate or intrastate; (2) unfairly singles out providers of calling services for incarcerated people; (3) presents implementation issues; (4) potentially compromises state programs funded by assessments on intrastate revenues; and (5) promulgates a new rule without notice and an opportunity to comment.[731] We find each of these claims to be without merit and affirm the Commission's continued use of the traditional end-to-end jurisdictional analysis relied upon in the *2020 ICS Order on Remand.*

A. Background

236. Last year, the Commission responded to the D.C. Circuit's directive that it consider whether ancillary service charges can be segregated into interstate and intrastate components to exclude the intrastate components from the reach of the Commission's rules.[732] The Bureau issued the *Ancillary Services Refresh Public Notice* seeking to refresh the record in light of the D.C. Circuit's remand.[733] Based on the record developed in response to that public notice, the Commission found that "ancillary service charges generally cannot be practically segregated between the interstate and intrastate jurisdiction except in the limited number of cases where, at the time a charge is imposed and the consumer accepts the charge, the call to which the service is ancillary is a clearly intrastate-only call."[734]

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[726] *See, e.g.*, *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, Second Report and Order and Order on Reconsideration, 35 FCC Rcd 6793, 6824, para. 62 (2020) (concluding that notice and comment are not required for "editorial and non-substantive" rule changes).

[727] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Order, 33 FCC Rcd 5660, 5688-89, para. 63 (2018) (finding notice and comment unnecessary for non-substantive changes to the Commission's rules).

[728] Petition for Reconsideration of GTL, WC Docket No. 12-375 (filed Nov. 23, 2020), https://ecfsapi.fcc.gov/file/1123843514310/GTL Petition for Reconsideration (11-23-20).pdf (GTL Petition).

[729] 47 CFR § 1.429(l)(3) (stating that a petition for reconsideration that relies "on arguments that have been fully considered and rejected by the Commission within the same proceeding" "plainly do not warrant consideration by the Commission"). The Commission considered and rejected GTL's arguments regarding so-called Commission "precedent" purporting to establish a general policy of reliance on NPA-NXX as a proxy for jurisdiction and whether the Commission's statement required prior notice and an opportunity to comment. *2020 ICS Order on Remand*, 35 FCC Rcd at 8504-06, paras. 54-58.

[730] *2020 ICS Order on Remand*, 35 FCC Rcd at 8503, para. 53 (citation omitted); GTL Petition at 3.

[731] *See, e.g.*, GTL Petition at ii-iii, 4. The "NPA-NXX" code "correspond[s] to the area code and first three digits of a telephone number." *Federal-State Joint Board on Universal Services et al.*, CC Docket No. 96-45 et al., Further Notice of Proposed Rulemaking, 12 FCC Rcd 18514, 18538, para. 51 n.105 (1997).

[732] *2020 ICS Order on Remand*, 35 FCC Rcd at 8486, para. 2.

[733] *See Ancillary Services Refresh Public Notice*, 35 FCC Rcd at 189-92.

[734] *2020 ICS Order on Remand*, 35 FCC Rcd at 8495, para. 28.

Thus, the Commission concluded that providers are generally prohibited from imposing ancillary service charges, other than those explicitly permitted by the Commission's rules, and are also generally prohibited from imposing ancillary service charges in excess of the permitted ancillary service fee caps in the Commission's rules.[735]

237. In the *2020 ICS Order on Remand*, the Commission addressed record debate about the jurisdictional classification methodology for certain inmate calling services calls and the ancillary services provided in connection with those calls by reminding providers that "the jurisdictional nature of a call depends on the physical locations of the endpoints of the call," rather than on the area codes or NXX prefixes of the telephone numbers used to make and receive the call.[736] GTL and Securus objected to this approach, asserting that relying on a call's endpoints was inconsistent with prior Commission decisions and with providers' practice of using NPA-NXX codes as proxies for jurisdiction.[737] GTL and Securus also claimed that the Commission's clarification regarding how carriers are to determine the jurisdictional nature of a call required prior notice and an opportunity to comment.[738] In addition, NCIC questioned "the FCC's determination that [inmate calling services] providers will be able to determine the location of the terminating point of an [inmate calling services] wireless call—and thus determine whether the call is intrastate or interstate in nature."[739]

238. In response to these objections, the Commission explained that although it has allowed the use of proxies to determine the jurisdictional nature of certain calls, it has done so only in specific contexts "typically related to carrier-to-carrier matters or payment of fees owed" and that it "never adopted a general policy allowing the broad use of such proxies."[740] The Commission distinguished the so-called "precedent" cited by GTL and Securus, explaining that none of those decisions established actual Commission policy or practice regarding the use of jurisdictional proxies and that the examples provided "relate specifically to carrier-to-carrier arrangements involving intercarrier compensation or applicable federal fees due between carriers and the Commission, not to using a proxy for charging a customer a higher or different rate than it would otherwise be subject to based on whether the customer's call is interstate or intrastate."[741] The Commission, therefore, rejected GTL's and Securus's argument that application of the end-to-end analysis required prior notice and an opportunity to comment, explaining that it was merely clarifying "the long-established standard that inmate calling services providers must apply in classifying calls for purposes of charging customers the appropriate rates and charges."[742] The

[735] *Id.*; 47 CFR §§ 64.6000(u), 64.6020.

[736] *2020 ICS Order on Remand*, 35 FCC Rcd at 8503, para. 53.

[737] GTL and Securus raised these objections in *ex parte* filings during the public circulation period of the *2020 ICS Order on Remand* but before the Commission adopted that *Order* on August 6, 2020. Letter from Chérie R. Kiser, Counsel for GTL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 3-4 & nn.11-14 & 16 (filed July 30, 2020) (GTL July 30, 2020 *Ex Parte*) (citing various state and federal authorities); Letter from Dennis J. Reinhold, Senior Vice President and General Counsel, Securus, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 n.3 (filed July 30, 2020) (Securus July 30, 2020 *Ex Parte*) (citing various Commission actions relating to jurisdictional proxies for intercarrier compensation and revenue reporting purposes); *see* FCC, *Reforming Rates and Charges for Inmate Calling Services* (Jul. 16, 2020), https://www.fcc.gov/document/reforming-rates-and-charges-inmate-calling-services (releasing the draft text of the *2020 ICS Order on Remand*, thereby commencing the public circulation period); *see also 2020 ICS Order on Remand*, 35 FCC Rcd at 8504, 8506, paras. 54, 58.

[738] *See* GTL July 30, 2020 *Ex Parte* at 2 (suggesting that the Commission's clarification was a new requirement); Securus July 30, 2020 *Ex Parte* at 3 (explaining that "[t]he Commission should follow the process for a new rulemaking to address this significant policy change").

[739] NCIC July 28, 2020 *Ex Parte* at 2-3.

[740] *2020 ICS Order on Remand*, 35 FCC Rcd at 8505, para. 54.

[741] *Id.* at 8505-06, paras. 54-55.

[742] *Id.* at 8506, para. 58.

Commission further explained that the Bureau's public notice seeking to refresh the record on ancillary service charges in light of the D.C. Circuit's remand provided "notice of, and a full opportunity to comment on, the jurisdictional status of inmate calling services calls" because the public notice sought comment on how to proceed if ancillary services were "jurisdictionally mixed" and defined jurisdictionally mixed services as those that are "capable of communications both between intrastate end points and between interstate end points."[743]

239. In November 2020, GTL filed a petition seeking reconsideration of the application of the end-to-end jurisdictional analysis in the *2020 ICS Order on Remand*.[744] The Bureau released a Public Notice announcing the filing of GTL's Petition and establishing deadlines for oppositions and replies to the Petition.[745] The Bureau received comments from Pay Tel[746] and replies from NCIC and GTL.[747]

B. Discussion

240. *Standard of Review*. Any interested party may file a petition for reconsideration of a final action in a rulemaking proceeding.[748] Reconsideration "may be appropriate when the petitioner demonstrates that the original order contains a material error or omission, or raises additional facts that were not known or did not exist until after the petitioner's last opportunity to present such matters."[749] Petitions for reconsideration that do not warrant consideration by the Commission include those that: "[f]ail to identify any material error, omission, or reason warranting reconsideration; [r]ely on facts or arguments which have not been previously presented to the Commission . . . ; [r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding;" or "[r]elate to matters outside the scope of the order for which reconsideration is sought."[750] The Commission may consider facts or arguments not previously presented if: (1) they "relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission;"[751] (2) they were "unknown to petitioner until after [their] last opportunity to present them to the Commission, and [the petitioner] could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity;"[752] or (3) "[t]he Commission determines that consideration of the facts or arguments relied on is required in the public interest."[753]

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[743] *Id.* (internal quotation marks and citation omitted); *Ancillary Services Refresh Public Notice*, 35 FCC Rcd at 190. The *Ancillary Services Refresh Public Notice* was published in the Federal Register on February 19, 2020. FCC, Wireline Competition Bureau Seeks to Refresh the Record on Ancillary Service Charges Related to Inmate Calling Services, 85 Fed. Reg. 9444 (Feb. 19, 2020).

[744] *See generally* GTL Petition.

[745] *Petition for Reconsideration of the 2020 Inmate Calling Services Report and Order on Remand*, WC Docket No. 12-375, Public Notice, 35 FCC Rcd 14088, 14088-89 (WCB 2020).

[746] Pay Tel Comments in Response to GTL's Petition for Reconsideration, WC Docket No. 12-375 (filed Jan. 11, 2021) (Pay Tel Reconsideration Comments).

[747] NCIC Reply in Response to GTL's Petition for Reconsideration, WC Docket No. 12-375 (filed Jan. 21, 2021) (NCIC Reconsideration Reply); GTL Reply in Response to GTL's Petition for Reconsideration, WC Docket No. 12-375 (filed Jan. 21, 2021) (GTL Reconsideration Reply).

[748] 47 CFR § 1.429(a).

[749] *Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 et al., Order on Reconsideration, 27 FCC Rcd 898, 901, para. 8 (2012); *see* 47 CFR § 1.429(b).

[750] 47 CFR § 1.429(l)(1)-(3), (5).

[751] 47 CFR § 1.429(b)(1).

[752] 47 CFR § 1.429(b)(2).

[753] 47 CFR § 1.429(b)(3).

1. GTL's Substantive Arguments Against the End-to-End Analysis Do Not Warrant Reconsideration

241. GTL's Petition provides no new substantive facts or arguments that justify reconsideration of the Commission's application of the end-to-end jurisdictional analysis to calling services for incarcerated people. Although GTL cites various documents it claims establish a general Commission policy on the use of jurisdictional proxies for classifying interstate and intrastate calls, none of the cited documents establish such a policy, especially in the provision of inmate calling services.[754] We are also unpersuaded by GTL's arguments regarding the possible discriminatory treatment of providers of these calling services, its reliance on third parties to make jurisdictional determinations, or its unsubstantiated claims about the effects our jurisdictional analysis may have on state programs.[755]

242. GTL first argues that the end-to-end analysis ignores what it claims is the industry custom and practice of using NPA-NXX codes to determine whether a call is interstate or intrastate.[756] GTL asserts that the "Commission's prior statements have recognized that using NPA-NXX *is* an appropriate industry standard for determining whether a call is interstate or intrastate."[757] In this regard, GTL emphasizes the 2003 *Starpower Damages Order*.[758] For its part, NCIC argues that the Commission's "precedent" has been "correctly cited by GTL," and that the Commission should "continue to follow that precedent" in the context of calling services for incarcerated people.[759]

243. We disagree. We reaffirm the Commission's prior conclusion that not one of the decisions cited in GTL's Petition adopted a general policy allowing broad use of jurisdictional proxies, such as NPA-NXX codes.[760] Those decisions primarily concern the use of jurisdictional proxies to determine the appropriate rating between and among various types of service providers routing calls originating from one NPA-NXX code to a terminating NPA-NXX code and vice versa. None of them allow for the use of jurisdictional proxies in the context of inmate calling services for which consumers may be charged different rates based on whether a call is classified as interstate or intrastate. Instead, the decisions GTL cites merely reflect that the Commission "has allowed carriers to use proxies for determining the jurisdictional nature of calls in specific contexts, typically related to carrier-to-carrier matters or payment of fees owed."[761]

244. At bottom, GTL requests that we engraft into our inmate calling services rules a jurisdictional proxy—relying on NPA-NXX codes for all telephone calls from incarcerated people to a called party regardless of the called parties' service provider of choice—that the Commission has never suggested might be used in determining the jurisdictional classification of an inmate calling services call. We thus are not persuaded that GTL's approach reflects a reasonable interpretation of our existing rules.

245. GTL seizes on certain language in the *Starpower Damages Order* that, GTL claims, establishes a "historical" or "consistent" use of NPA-NXX codes.[762] Contrary to GTL's assertions, however, the *Starpower* decision did not announce a general policy permitting the use of jurisdictional

[754] *E.g.*, GTL Petition at 4-6.

[755] *E.g.*, *id.* at 6, 10, 12.

[756] *Id.* at 4.

[757] *Id.* (emphasis in original).

[758] *See* GTL Petition at 5; *Starpower Communications, LLC v. Verizon South Inc.*, File No. EB-00-MD-19, Memorandum Opinion and Order, 18 FCC Rcd 23625 (2003) (*Starpower Damages Order* or *Starpower*).

[759] NCIC Reconsideration Reply at 2.

[760] *2020 ICS Order on Remand*, 35 FCC Rcd at 8504, paras. 54.

[761] *Id.* at 8504-05, paras. 54-55.

[762] *See* GTL Petition at 5.

proxies. Rather, *Starpower* was narrowly concerned with an intercarrier compensation dispute, the resolution of which hinged on the treatment of traffic under a Verizon tariff. In the liability phase of the proceeding, Starpower obtained an order from the Commission obligating Verizon to pay reciprocal compensation under an interconnection agreement "for whatever calls Verizon South bills to its own customers as local calls under the Tariff, regardless of whether a call is jurisdictionally interstate."[763] In the damages phase, Verizon argued that, under its tariff definition, the physical location of the called parties, and not the telephone numbers, determined whether service was "local."[764] But the Commission concluded that Verizon rated and billed ISP-bound traffic under its tariff by looking to the telephone numbers of the parties to a call and not the parties' physical locations.[765] The Commission held that since Verizon treated ISP-bound calls as "local under the Tariff," Verizon was obligated to pay reciprocal compensation under the interconnection agreement.[766] Thus, although *Starpower* contains passing references to the use of NPA-NXX to determine the jurisdictional nature of certain traffic, the decision ultimately turned on the Commission's interpretation of Verizon's tariff and Verizon's own practices in applying that tariff. Accordingly, *Starpower* does not establish any Commission or industry-wide policy on the use of jurisdictional proxies.[767]

246. In any event, it is simply not reasonable or reliable now, nor has it been for many years, to assume that a called party is physically located in the geographic area (rate center) of the switch to which the party's NPA-NXX code is native. Before Congress adopted the 1996 Act, when incumbent LECs controlled 99% of the local voice marketplace,[768] one could reasonably assume that a called party was physically located in the geographic area associated with a particular NPA-NXX, as NPA-NXX codes were associated only with a particular incumbent's rate center. Since that time, however, number porting[769] between and among competing wireline LECs,[770] wireless carriers,[771] and fixed and nomadic

[763] *Starpower Damages Order*, 18 FCC Rcd at 23627, para. 5 (citing *Starpower Communications, LLC v. Verizon South Inc.*, File No. EB-00-MD-19, Memorandum Opinion and Order, 17 FCC Rcd 6873, 6892-94, paras. 44-46, 49 (2002)).

[764] *Id.* at 23630-31, para. 12.

[765] *Id.* at 23631, para. 13.

[766] *Id.*

[767] The fact that *Starpower* involved Internet service provider-bound traffic—i.e., traffic to another type of service provider, which at the time was a separate unsettled jurisdictional issue, rather than an end user telephone subscriber—alone, makes this case entirely inapposite.

[768] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Notice of Proposed Rulemaking, 11 FCC Rcd 14171, 14174-75, para. 6 (1996).

[769] In the 1996 Act, Congress included the requirement that each LEC "provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." 47 U.S.C. § 251(b)(2); 47 U.S.C. § 153(30) (Supp. II 1997) (defining "number portability" as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another"). This definition now appears in section 3(37) of the Act. 47 U.S.C. § 153(37); *see also* 47 CFR § 52.21(m). The number portability rules subsequently adopted by the Commission, as modified over time, limit number porting between wireline incumbents and wireline competitors to ports within the same rate center. *E.g.*, *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8447, para. 181 (1996) (*First Number Portability Order*) (declining, at the time, to require location portability).

[770] With respect to wireline-to-wireless porting, the Commission requires wireline carriers to port to requesting wireless carriers "where the requesting wireless carrier's 'coverage area' overlaps the geographic location in which the customer's wireline number is provisioned, provided that the porting-in carrier maintains the number's [NPA-NXX] original rate center designation following the port." *See Telephone Number Portability*; *CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, 23706, para. 22 (2003). In other words, when the (continued….)

VoIP providers[772] has rendered NPA-NXX codes an all-too-frequently unreliable means to determine whether a called party is physically located within a particular state when it receives and answers a given call.[773]

247. Today, consumers increasingly rely on nomadic VoIP and mobile voice services for telephone service.[774] Nomadic interconnected VoIP services are provided as over-the-top applications and are not associated with any specific geographic location.[775] Subscribers to these services can readily move to other rate centers throughout the country while retaining their telephone numbers.[776] And nearly

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wireline number is ported to the wireless carrier's customer, the original rate center designation is maintained for routing and rating purposes by other service providers.

[771] A wireless carrier may only port a number to a wireline carrier if the number is associated with the rate center of the wireline carrier where the customer is located. *See id.* at 23706, para. 22.

[772] Nomadic VoIP "is usually a VoIP phone installed in a portable computer which can be taken with the subscriber" so that "[c]alls can be made from anywhere in the world." *IP-Enabled Services et al.*, WC Docket No. 04-36 et al., Order and Public Notice Seeking Comment, 22 FCC Rcd 18319, 18322, para. 6 n.19 (CGB 2007). By comparison, fixed VoIP is not movable. "The [fixed] service is provided by a cable company, for example, where the telephone does not leave the residence." APCO International, *NG9-1-1 VoIP and SIP Trunking*, https://www.apcointl.org/resources/ng911/voip-and-sip-trunking/ (last visited Apr. 4, 2021).

[773] The Commission began its work implementing the 1996 Act's number portability requirement with its 1996 *First Number Portability Order*, in which it adopted an initial set of rules governing wireline-to-wireline, wireless-to-wireless, and wireline-to-wireless number portability obligations. *First Number Portability Order*, 11 FCC Rcd at 8355, 8357, 8393, paras. 3-4, 8, 77; *see also Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, 7273, paras. 60-61 (1997) (clarifying that licensed commercial mobile radio service (CMRS) providers, such as cell phone companies, must be allowed to make a request for deployment of number portability); 47 CFR § 52.23(b)(2)(i) (1997). It required that LECs in the 100 largest Metropolitan Statistical Areas (MSAs) begin implementing a long-term number portability methodology on a phased deployment schedule, and that CMRS providers be able to port numbers by the wireline carriers' deadline to complete number portability implementation and to support network-wide roaming thereafter. *First Number Portability Order*, 11 FCC Rcd at 8355, 8393, 8439-40, paras. 3-4, 77, 165-66. The Commission also established LEC number portability implementation obligations outside of the 100 largest MSAs. *First Number Portability Order*, 11 FCC Rcd at 8395, para. 82. Subsequently, in 2007, the Commission extended local number portability obligations to interconnected VoIP providers, both fixed and nomadic. *See Telephone Number Requirements for IP-Enabled Services Providers et al.*, WC Docket No. 07-243 et al., Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531, 19532, para. 1 (2007). In 2015, the Commission opened direct access to numbering resources to interconnected VoIP providers. *See generally Numbering Policies for Modern Communications et al.*, WC Docket No. 13-97 et al., Report and Order, 30 FCC Rcd 6839, 6840, para. 2 (2015) (*VoIP Direct Access to Numbers Order*).

[774] *See, e.g., Communications Marketplace Report* et al., GN Docket No. 18-231 et al., Report, 33 FCC Rcd 12558, 12668-69, paras. 205-07 (2018).

[775] *VoIP Direct Access to Numbers Order*, 30 FCC Rcd at 6848-49, para. 21. "In this way, nomadic interconnected VoIP service is similar to mobile service, but distinct from fixed telephony service." *Id.* n.67. "Over-the-top" VoIP providers are VoIP providers that are not facilities-based; *AT&T Inc. and BellSouth Corporation, Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5712, para. 92 n.266 (2007). The consumer of an over-the-top VoIP service "uses an independent data service over a broadband connection." *Communications Marketplace Report*, GN Docket No. 20-60, 2020 Communications Marketplace Report, FCC 20-188, 2020 WL 8025117, at *54, para. 149 (2020) (*2020 Communications Marketplace Report*). The Commission's December 2019 FCC Form 477 data reflected 12.9 million over-the-top VoIP subscriptions in the United States at that time. *2020 Communications Marketplace Report* at *54, para. 149.

[776] *See generally* Number Portability Administration Center, *How LNP Works*, https://numberportability.com/about-us/how-lnp-works/ (last visited Apr. 4, 2021).

half of all assigned telephone numbers are associated with wireless phones,[777] which is unsurprising given that the majority of households in the United States no longer subscribe to a landline service.[778] The *combination* of the Commission's number portability orders and the significant technological changes to the communications marketplace means that NPA-NXX codes reflected in telephone numbers are often subject to movement across state lines, on a permanent, nomadic, or mobile basis, making them unreliable as a geographic indicator of endpoints for a given call.[779]

248. GTL next complains that our confirmation of the end-to-end analysis inappropriately "singles out [inmate calling services] providers," and that the Commission "cannot target particular classes of telecommunications service providers in its rulemaking when the legal basis for it (and the criticisms that undergird it) are of universal applicability."[780] This complaint is completely without merit. The Commission has not singled out inmate calling services providers for disparate treatment. The end-to-end analysis is, and remains, the generally applicable, default standard for all telecommunications carriers—not just inmate calling services providers—for determining the jurisdictional classification of a telephone call. In addition, inmate calling services providers *are* unlike other telecommunications carriers. Calling service providers have a captive consumer base at each correctional facility they serve for which they rarely, if ever, offer all-distance calling plans with uniform rates and charges for intrastate and interstate calls as do most, if not all, other telecommunications services providers. Indeed, inmate calling services providers typically have a myriad of different rates and charges applicable to different jurisdictional call types (i.e., intraLATA intrastate, interLATA intrastate, intraLATA interstate, and interLATA interstate).[781] Calling service providers continue to charge incarcerated people (or their

[777] FCC, Numbering Resource Utilization in the United States: Status as of December 31, 2018 at 9 tbl. 1 (IAD OEA 2020), https://docs.fcc.gov/public/attachments/DOC-367592A1.pdf (calculated by dividing Mobile Wireless Assigned numbers by All Reporting Carriers' Assigned numbers).

[778] *2020 Communications Marketplace Report* at *53, para. 148; Stephen J. Blumberg & Julian V. Luke, National Center for Health Statistics, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2019, at 5-6, tbls. 1-2 (2020), https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless202009-508.pdf; *see also* Stephen J. Blumberg & Julian V. Luke, National Center for Health Statistics, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2014, at 5 tbl. 1 (2015), https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201506.pdf (showing 54% of households were wireless-only).

[779] As the foregoing analysis suggests, *only* where the calling party (here, the incarcerated person) and the called party each have wireline telephone numbers, can an inmate calling services provider reasonably and reliably determine the jurisdictional nature of a call between those parties based on the NPA-NXX codes of the originating and terminating telephone numbers. *See* Securus May 13, 2021 *Ex Parte* at 4 (requesting that the Commission confirm that the use of NPA-NXX is appropriate for wireline calls). That is the case because our rules require the NPA-NXX of a wireline telephone subscriber to necessarily physically remain within the particular rate center from which each wireline telephone number originated. Unlike for wireless voice service and nomadic VoIP service, our number porting rules do not permit telephone numbers of wireline subscribers to port across rate center boundaries. 47 CFR §§ 52.21(m), 52.23(b), (h), 52.31, 52.34.

[780] GTL Petition at 7.

[781] *See, e.g.*, GTL, Oklahoma Interexchange Telecommunications Tariff No. 1, 1st Rev. Page 10 (Mar.18, 2016), 4th Rev. Page 28 (June 20, 2016), §§ 1, 4.3, https://www.gtl.net/documents/global-tel-link/GTL-Oklahoma-Tariff-(6-20-16).pdf (defining an interstate call as originating in one state and terminating in another state, and setting different rate categories for local, intraLATA, and interLATA service); Pay Tel, Florida Inmate Telecommunications Services Tariff No. 2, Original Page 33, §§ 4.1.4-4.1.6 (Feb. 1, 2013), https://www.paytel.com/pdf/tariff-fl.pdf (providing different rate categories for local, "Intra-State/IntraLATA" and "Intra-State/InterLATA" collect calls); Securus, Rate Schedule Applying to Intrastate Services Between Points in the State of Arkansas, Page 4 (May 7, 2020), https://securustechnologies.tech/wp-content/uploads/2020/05/AR-Securus-Price-List-5-7-20-Current.pdf (providing different rate categories for local, intraLATA and interLATA basic collect calls). And while providers have not explained in detail what their resale arrangements with underlying telecommunications carriers

(continued….)

families) different rates and charges purportedly based on differences in costs to serve these different call types, even though those rates are based on fictional determinations that have nothing to do with actual geographic endpoints, except in the case of wireline-to-wireline calls.

249. As explained above, the generally accepted method of determining the jurisdictional nature of any given call is by an end-to-end analysis. Thus, contrary to the providers' claims, jurisdictional proxies are the exception, not the rule. It is only "[w]here the Commission has found it difficult to apply an end-to-end approach for jurisdictional purposes, [that] it has proposed or adopted proxy or allocation mechanisms to approximate the end-to-end result."[782] In the *Vonage Order*, for example, the Commission expressly declined to adopt the use of proxies for determining whether a call was jurisdictionally intrastate or interstate or to address the conflict between federal and state regulatory regimes. Indeed, GTL itself recognized the general applicability of the end-to-end analysis in its comments on the *Ancillary Services Refresh Public Notice*, explaining that "[t]he *jurisdictional nature of calls themselves is easily classified* as either interstate or intrastate *based on the call's points of origination and termination*. This accords with *the Commission's traditional end-to-end analysis for determining jurisdictional boundaries* 'beginning with the end point at the inception of a communication to the end point at its completion.'"[783] GTL fails to explain how the application of the Commission's long-established approach for determining the appropriate jurisdiction of a call unfairly singles out providers of calling services for incarcerated people given that, by GTL's own admission, the Commission generally applies this "traditional" analysis to all telecommunications providers.[784]

250. Because an NPA-NXX code frequently fails to provide any indication of the actual physical location of a called party (unless it is known that the called party is a wireline telephone subscriber), it generally cannot be relied upon to determine the jurisdictional nature of a call.[785] As the Commission stated in the *2020 ICS Order on Remand*, to do so would undercut interstate callers' federal protection from unjust and unreasonable interstate charges and practices.[786]

251. GTL also alleges, through reliance on decades-old discussions of rating based on NPA-NXX and industry guides,[787] that there are technical barriers that prevent providers of calling services for

(Continued from previous page)
entail, it is our understanding that providers typically pay a flat rate for all minutes of use (except for international calling) regardless of the jurisdictional nature of the call.

[782] *Vonage Order*, 19 FCC Rcd at 22421, para. 26 n.98. *See generally id.* at 22419-23, paras. 25-29. The Commission subsequently adopted permissible proxies for determining what portion of such jurisdictionally indeterminate VoIP services to attribute to the interstate jurisdiction for Universal Service Fund (USF) payment purposes, but such proxies did not pertain to classifying the underlying calls as either interstate or intrastate for purposes of billing consumers different rates for telephone calls. *Universal Service Contribution Methodology et al.*, WC Docket No. 06-122 et al., Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7544, para. 52 (2006) (allowing interconnected VoIP providers to use an interim safe harbor, actual interstate revenues, or traffic studies to report and contribute to the USF based on their interstate and international end-user revenues).

[783] GTL Comments, WC Docket No. 12-375, at 4 (filed Mar. 20, 2020) (GTL Mar. 20, 2020, Comments) (emphasis added) (citation omitted).

[784] *See Petition for Declaratory Ruling that pulver.com's Free World Dialup Is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, 19 FCC Rcd 3307, 3320-21, para. 21 & n.76 (2004) (referring to the Commission's traditional use of its "end-to-end analysis," and citing *Bell Atlantic Telephone Cos. v. FCC*, 206 F.3d 1, 3 (D.C. Cir. 2000) (*Bell Atlantic v. FCC*) ("The end-to-end analysis . . . is one that [the Commission] has traditionally used to determine whether a call is within its interstate jurisdiction.")) (emphasis omitted).

[785] *2020 ICS Order on Remand*, 35 FCC Rcd at 8503, para. 53 n.143; *see also Vonage Order*, 19 FCC Rcd at 22418-24, paras. 23-32.

[786] *2020 ICS Order on Remand*, 35 FCC Rcd at 8503-04, para. 53; *see also* 47 U.S.C. § 201(b).

[787] *See* GTL Petition at 10 & nn.41-43; GTL Reply at 25-31.

incarcerated people from applying the traditional end-to-end analysis.[788] These allegations arise from the fact that providers rely on third parties to classify the jurisdiction of calls. As GTL explains it, calls from correctional facilities, whether to wireline, wireless, or VoIP numbers, "are handed off to unaffiliated third-party telecommunications service providers that route them across the public switched telephone network to their appropriate termination point, based on the called number's entry in the Local Exchange Routing Guide."[789] GTL concludes that "[g]iven indicia that classification determinations have, for decades, been under the control of entities over which many providers exercise no authority, critical logistical and financial questions present themselves, such as the costs attendant upon [inmate calling services] providers should they be required to design, deploy, and implement an alternative call classification system."[790]

252. We find these arguments unpersuasive. The Commission's rules specify that providers of inmate calling services are currently prohibited from charging more than $0.21 per minute for interstate Debit Calling, Prepaid Calling, or Prepaid Collect Calling and prior to today's accompanying Report and Order more than $0.25 per minute for interstate Collect Calling.[791] Our interpretation of the term "interstate" in our rule accords not only with the use of that terminology in the Communications Act,[792] but also with the Commission's traditional approach to defining jurisdiction.[793] It is the *provider's* responsibility to "appropriately comply[] with this most basic regulatory obligation of telecommunications service providers with respect to their customers—determining the proper

[788] GTL Petition at 8-12; GTL Reconsideration Reply at 2-3 (arguing that inmate calling services providers "lack the technological capacity and administrative infrastructure" to implement the end-to-end analysis).

[789] GTL Petition at 10. The Local Exchange Routing Guide (LERG) is "an industry guide generally used by carriers in their network planning and engineering and numbering administration. It contains information regarding all North American central offices and end offices." *Implementation of the National Suicide Hotline Improvement Act of 2018*, WC Docket No. 18-336, Notice of Proposed Rulemaking, 34 FCC Rcd 12562, 12576, para. 34 n.131 (2019). GTL adds that "[inmate calling services] providers assess charges on inmate calls by purchasing access to third-party databases that classify them as intrastate, interstate, or international" and that these databases do not provide the "actual geographical location associated with a particular device or service." GTL Petition at 10; *see also* GTL Reply at 23-35 (explaining certain technical limitations faced by inmate calling services providers in determining the physical location of every call). Relatedly, Securus explains that these third parties use "telephone numbers or, since the advent of local number portability, the Local Routing Number . . . as a proxy for . . . jurisdiction," and lack "the information needed to apply the end-to-end analysis." Securus Comments at 37. The Local Routing Number is a "telephone number assigned in the local number portability database for the purposes of routing a call to a telephone number that has been ported. When a call is made to a number that has been ported, the routing path for the call is established based on the L[ocal] R[outing] N[umber] rather than on the dialed number." *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17899-900, para. 724 n.1254 (2011) (citing Travis Russell, Signaling System #7 640 (5th ed. 2006)).

[790] GTL Petition at 11.

[791] 47 CFR § 64.6030. The current rule language tracks the language adopted in 2013 but adds the term "interstate." *2013 ICS Order*, 28 FCC Rcd at 14196, Appx. A (adopting the rule without the word "interstate," which states: "No provider shall charge a rate for Collect Calling in excess of $0.25 per minute, or a rate for Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of $0.21 per minute."). The term "interstate" was added to section 64.6030 of the Commission's rules as a non-substantive change to reflect a D.C. Circuit decision that the Commission's regulation of inmate calling services rates could extend no further than the extent of its authority over interstate (and international) calls. *2020 ICS Order on Remand*, 35 FCC Rcd at 8508-09, paras. 63-64. The fact that the addition of "interstate" was a non-substantive change to reflect a court decision limiting the Commission's inmate calling services rate regulations to the limit of the Commission's authority further reinforces the reasonableness of interpreting "interstate" consistent with the Commission's historical jurisdictional approach.

[792] *See infra* note 822 (discussing 47 U.S.C. § 153(28)).

[793] *See supra* para. 249.

jurisdiction of a call when charging its customers the correct and lawful rates for those calls using the end-to-end analysis."[794] Providers did not express any concerns about their ability to determine the jurisdiction of any given call when the Commission's adopted "interim rate caps . . . for *interstate* [inmate calling services]" in 2013.[795] Nor did they express such concerns in the following years, as those interim rate caps continued to apply. Indeed, despite GTL's claims here, it and other providers use the Commission's historical approach when defining the terms "interstate" and "intrastate" in at least some of their tariffs and price lists.[796] It is unclear why GTL, or any provider, would base its rates on the geographic locations of the parties to a call if the service provider could not, in fact, determine where the parties are located at the time of the call. The record also provides no indication that the third parties upon which GTL and others claim they rely for determining the jurisdiction of their calls could not accurately determine whether a consumer is making calls between NPA-NXX codes assigned to wireline, wireless, or nomadic VoIP numbers to determine whether those calls are subject to the Commission's interstate rate caps without relying on another methodology to determine the actual endpoints of the call.

253. Further, many of the guides and brochures to which GTL cites in this regard relate predominantly to call *routing* rather than rating. For example, GTL cites to the iconectiv brochure "Route It Right Every Time with LERG OnLine."[797] That brochure contains precisely two references to rating, neither of which relate to the billing of end-user customers.[798] GTL also points to an iconectiv Catalog of Products and Services, but that document is similarly unhelpful for GTL.[799] Finally, the iconectiv catalog to which GTL cites notes that the Telecom Routing Administration's products "are a mainstay in supporting the various offerings of service providers . . . and, bottom line, in ensuring calls placed by their

[794] *2020 ICS Order on Remand*, 35 FCC Rcd at 8506, para. 57.

[795] *2013 ICS Order*, 28 FCC Rcd at 14147, para. 73 (emphasis added).

[796] *See, e.g.*, GTL, Oklahoma Interexchange Telecommunications Tariff No. 1, 1st Rev. Page 10, § 1 (Mar. 18, 2016), https://www.gtl.net/documents/global-tel-link/GTL-Oklahoma-Tariff-(6-20-16).pdf (defining an interstate call to mean a call "originated in one state and terminated within the bounds of another state," and defining an intrastate call to be a call which "originated and terminated within the boundaries of the State of Oklahoma, regardless of whether such call is routed across state boundaries prior to reaching its termination point"); GTL, California Price List No. 1, Preliminary Statement, Original Sheet 4 (Oct. 13, 2009), https://www.gtl.net/documents/global-tel-link/GTL-California-Price-List-(10-26-17).pdf (explaining that the price list provides rates for "intrastate resale common carrier communications . . . between locations within the State of California"); Pay Tel, Florida Inmate Telecommunications Services Tariff No. 2, Original Page 21, § 3.1 (Feb. 1, 2013), https://www.paytel.com/pdf/tariff-fl.pdf (providing that service under the tariff is "intrastate voice telecommunications service between points in the State of Florida"); Securus, PSC MD Intrastate Institutional Telecommunications Services Tariff No. 1, Original Page 1 (Mar. 11, 2020), https://securustechnologies.tech/wp-content/uploads/2020/04/MD-STI-Tariff-LLC-Name-Chg_031120-Current.pdf (describing the tariff as being applicable to services "[b]etween [p]oints within the State of Maryland"); *see also* Securus, *Rates*, https://securustech.net/rates/index.html (last visited Apr. 3, 2021) ("In-state (Intrastate) calls are calls within the same state."); Pay Tel, Pa. PUC Reseller Interexchange Toll Carrier IXC Tariff No. 1, Original Page 23 (Apr. 22, 2010), https://www.paytel.com/pdf/tariff-pa.pdf ("Service provided under this tariff is intrastate voice telecommunications service between points in the State of Pennsylvania."); Pay Tel, Interstate & International Inmate Telecommunications Services Rates, Terms & Conditions, Original Page 19 (Jan. 4, 2021), https://www.paytel.com/pdf/tariff-all.pdf (describing "interstate voice telecommunications service between states in the United States and international locations"); Securus, *FCC Fact Sheet*, https://securustech.net/fcc-fact-sheet/index.html (last visited Apr. 3, 2021) ("'[I]nterstate' rates for incarcerated individual calling services . . . appl[y] to calls originating in one state and terminating in another state.").

[797] GTL Reply at 30 n.144.

[798] iconectiv, Product Brochure, *Route It Right Every Time with LERG OnLine* at 3 (July 2019), https://iconectiv.com/sites/default/files/2019-11/TruOps_TRA_LERGOnLineBrochure.pdf.

[799] GTL Reply at 30 n.140.

customers and through their network complete without any problems."[800] In other words, the Telecom Routing Administration provides data that supports the *routing* of calls. Nowhere in that catalog does it state that providers should rely solely on NPA-NXX codes for rating calls to end users.[801] But even if it did, that would have no bearing on inmate calling services providers' obligations to charge incarcerated people and those whom they call lawful rates.

254. To the extent that the technical issues raised by GTL make it impracticable or impossible to determine whether a call is interstate or intrastate based on the geographical endpoints of the call, we do not require providers of calling services for incarcerated people to redesign or deploy other call classification systems.[802] Instead, we reaffirm that providers must charge a rate at or below the applicable interstate cap for that call.[803] As the Commission explained in the *2020 ICS Order on Remand*, "where the Commission has jurisdiction under section 201(b) of the Act to regulate rates, charges, and practices of interstate communications services, the impossibility exception extends that authority to the intrastate portion of jurisdictionally mixed services 'where it is impossible or impractical to separate the service's intrastate from interstate components' and state regulation of the intrastate component would interfere with valid federal rules applicable to the interstate component."[804] There is no dispute that the Commission has jurisdiction over providers' interstate rates, and GTL does not dispute the Commission's

[800] iconectiv, Catalog of Products and Services, *TruOps Telecom Routing Administration* at 4 (Oct. 2020), https://trainfo.iconectiv.com/sites/microsites/files/2020-10/tra_catalog_Final_10.20.2020.pdf (TRA Catalog).

[801] We also disagree with GTL's characterization of the Local Exchange Routing Guide as requiring the use of NPA-NXXs for determining the jurisdictional nature of a call. GTL Petition at 11; GTL Reconsideration Reply at 2. Once again, GTL conflates the relationship of an NPA-NXX code to that code's original rate center designation, reflected in the Local Exchange Routing Guide for *routing* purposes, with using the same rate center information to determine whether the terminating call to that NPA-NXX code is jurisdictionally intrastate or interstate. The original rate center designation of an NPA-NXX number has no bearing on where calls to that number actually terminate when the called party is a customer of a wireless or nomadic VoIP provider, at a minimum.

[802] GTL Petition at 11.

[803] Report and Order, *supra* Parts III.C.3, III.H.2; *see also 2020 ICS Order on Remand*, 35 FCC Rcd at 8503-04, para. 53. Pay Tel complains that today's Order "effectively classif[ies] all [inmate calling services] calls as jurisdictionally 'interstate.'" *See* Pay Tel May 12, 2021 *Ex Parte* at 1. Pay Tel asserts that, as a consequence, consumers will face significant rate increases due to assessment of federal Universal Service Fund charges on all calls, in addition to a host of other concomitant consequences. *See id.* at 2-3, Attach., Supplemental Report of Don J. Wood at 1-3. We find such concerns misplaced. Under our end-to-end analysis, charges for a call that is jurisdictionally indeterminant may not exceed the applicable interim interstate rate cap, but where a state has a lower rate cap in place for intrastate calls, charges for a call of indeterminate nature must comply with the lower state rate cap. We also disagree that there would necessarily be a significant impact on Universal Service Fund assessments as Pay Tel and Securus allege. Pay Tel May 12, 2021 *Ex Parte* at 2-3; Securus May 13, 2021 *Ex Parte* at 4. First, we do not reclassify any calls as interstate calls; and second providers may continue to use whatever proxy or good faith determination of interstate revenue for purposes of universal service contributions that they have used in the past for this traffic. *See* 2021 Telecommunications Reporting Worksheet Instructions (FCC Form 499-A), at 38-41 (2021 FCC Form 499-A Instructions) (permitting FCC Form 499-A filers to use good faith estimates, safe harbors, or traffic studies if they cannot determine actual intrastate, interstate, and international revenues from corporate books of account). Our actions today go only to the question of the appropriate jurisdictional treatment for purposes of determining the rates providers may charge for telephone calls to consumers. Our actions neither limit the ability of providers to avail themselves of applicable proxies or safe harbors used for purposes of Universal Service Fund reporting nor suggest that providers have been incorrectly complying with the Commission's universal service contribution rules. *See, e.g.*, 2021 FCC Form 499-A Instructions at 39-40 (providing safe harbors for purposes of reporting interstate revenues). Finally, we take this opportunity to remind providers that they are permitted but not required to pass through universal service charges to their end users. *See* 47 CFR § 54.712.

[804] *2020 ICS Order on Remand*, 35 FCC Rcd at 8496, para. 31 (citing *Vonage Order*, 19 FCC Rcd at 22413, para. 17).

authority to regulate jurisdictionally indeterminate services.[805] Accordingly, to the extent that GTL and other providers find it impossible or impracticable to determine the actual endpoints, hence the actual jurisdictional nature of a call, they must treat that call as jurisdictionally indeterminate and must charge a rate at or below the applicable interstate cap.

255. We reject GTL's argument that the Commission's application of the end-to-end analysis violates the jurisdictional limitation in section 221(b) of the Act.[806] That section has been narrowly interpreted to "enable state commissions to regulate local exchange service in metropolitan areas . . . which extend across state boundaries."[807] Section 221(b), which refers to "telephone exchange service"[808] says nothing about payphone service, which is separately defined in section 276 of the Act.[809] Indeed, the statute recognizes and treats payphone service separately from exchange service in section 276(a), which prevents Bell operating company-owned payphones from receiving subsidies "from . . . telephone exchange service operations."[810] The Commission has previously recognized this distinction, explaining that although states traditionally regulated payphones, including by setting local rates, that role was "in the context of LECs providing local payphone service as part of their regulated service."[811] By disallowing LEC payphones from receiving subsidies from their basic exchange service, the Commission emphasized that section 276 "greatly changes the way in which states set local coin rates."[812] In sum, the Act treats the exchange service in section 221(b) separate from payphone service in section 276, and the courts have narrowly interpreted section 221(b) to apply only to a state's ability to regulate local exchange service. We are therefore unpersuaded by GTL's argument that the Commission violated section 221(b) or acted in a manner precluded by the implementation of that provision by reiterating that

[805] GTL Petition at 3 ("GTL does not dispute the Commission's authority to regulate jurisdictionally mixed services according to the well-established 'impossibility doctrine'").

[806] *Id.* at 13; 47 U.S.C. § 221(b) (providing that the Commission does not, in general, have jurisdiction over the "charges, classifications, practices, services, facilities, or regulations for or in connection with . . . telephone exchange service . . . even though a portion of such exchange service constitutes interstate or foreign communication, in any case where such matters are subject to regulation by a State commission or by local governmental authority").

[807] *N.C. Utils. Comm'n v. FCC*, 552 F.2d 1036, 1045 (4th Cir. 1977) (*North Carolina II*); *see also N.C. Utils. Comm'n v. FCC*, 537 F.2d 787, 795 (4th Cir. 1976) (*North Carolina I*) (explaining that section 221(b) of the Act means that "a local carrier that serves a single multi-state exchange area is assured whatever degree of freedom from federal regulation section 2(b) provides for uni-state carriers and intrastate telephone business generally"); *Computer & Commc'ns Indus. Ass'n v. FCC*, 693 F.2d 198, 216 (D.C. Cir. 1982) (adopting the interpretation of section 221(b) of the Act from *North Carolina I* and *North Carolina II*, and explaining that "[t]he Fourth Circuit found on the basis of the legislative history that this provision was merely intended to preserve state regulation of local exchanges that happened to overlap state lines"); *Application of Access Charges to the Origination and Termination of Interstate, IntraLATA Services and Corridor Services*, Memorandum Opinion and Order, 1985 FCC LEXIS 3510, at *8 (1985) (explaining that if interstate, intraLATA service "is *exchange service* subject to state regulation," it is exempt from the Commission's jurisdiction under section 221(b) of the Act) (emphasis added).

[808] "Telephone exchange service" is broadly defined as "service within a telephone exchange" or "comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service." 47 U.S.C. § 153(54).

[809] 47 U.S.C. § 276(d) (defining payphone service as "the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services").

[810] *Id.* § 276(a)(1).

[811] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 et al.*, CC Docket No. 96-128 et al., Report and Order, 11 FCC Rcd 20541, 20571, para. 58 (1996) (*First Payphone Order*).

[812] *Id.*

providers of calling services for incarcerated people must charge their end users for interstate and intrastate calls based on the physical endpoints of the call.

256. We are also unpersuaded by GTL's claim that our jurisdictional analysis might have some "potential impact" on state communications programs that depend on assessments of intrastate revenues or that we are somehow limiting the ability of state commissions to use NPA-NXX as a jurisdictional proxy.[813] GTL provides no evidence that applying an end-to-end analysis for purposes of complying with the federal interstate rate cap for inmate calling services charges would either interfere with state authority to use NPA-NXX as a proxy for determining which calls are within their jurisdiction or would somehow result in the "reclassification of all telecommunications traffic that relies on NPA-NXX . . . as interstate."[814] We do not disturb state and local laws or regulations that use NPA-NXX or other proxies to determine, for example, the application of state fees and taxes.[815] The end-to-end jurisdictional analysis that we reaffirm today only affects what calling providers may charge incarcerated people and their loved ones for jurisdictionally indeterminant telephone calls, and as we have indicated above, continued compliance with applicable state and local laws that are not in conflict with federal law remain unaffected.

2. GTL's Procedural Arguments Do Not Warrant Reconsideration

257. We reject GTL's claim that the Commission needed to provide additional notice and an additional opportunity for comment before it clarified in the *2020 ICS Order on Remand* that providers must use the geographical endpoints of a call rather than the area code or NXX prefix of the call's recipient to determine whether the call is interstate or intrastate.[816] GTL mischaracterizes the Commission's clarification as a "new and unprecedented [r]ule" and a "serious departure from prior practice."[817] On the contrary, after identifying confusion and debate in the record,[818] the Commission "remind[ed]" and "clarifie[d]" for providers the end-to-end analysis it "has traditionally used to determine whether a call is within its interstate jurisdiction" to ensure that providers of calling services for incarcerated people do not "circumvent or frustrate [the Commission's] ancillary service charge rules."[819] Providers of calling services for incarcerated people have been on notice since the Commission adopted interstate rate caps in 2013 that they could not charge more than the capped amounts for interstate calls.[820] By interpreting the rate cap rule as requiring that inmate calling services calls be classified based on their

[813] GTL Petition at 15-16; GTL Reconsideration Reply at 4; *see also* Securus Comments at 38-39 (arguing that the end-to-end analysis "will directly impact state and local authorities, particularly those which rely upon the collection of commissions from consumer pricing structures," and will result in lower tax revenues for state legislatures and public utility commissions).

[814] GTL Petition at 15.

[815] Securus May 13, 2021 *Ex Parte* at 4.

[816] *See generally* GTL Petition. We reject this claim on procedural grounds insofar as the Commission considered and responded to these arguments in the *2020 ICS Order on Remand*, 35 FCC Rcd at 8502-04, paras. 52-54. We also reject it on substantive grounds as discussed herein.

[817] GTL Petition at iii, 3.

[818] *2020 ICS Order on Remand*, 35 FCC Rcd at 8502-03, para. 52; *see also* GTL Mar. 20, 2020, Comments at 4 (arguing that the "jurisdictional nature of calls themselves is easily classified as either interstate or intrastate based on the call's points of origin and termination"); Pay Tel Comments, WC Docket No. 12-375, at 17 (filed Mar. 20, 2020) (explaining that the ancillary service charge rules constitute "reasonable regulation of charges tied to jurisdictionally mixed services that are incapable of segregation").

[819] *See, e.g.*, *Bell Atlantic v. FCC*, 206 F.3d at 3 (emphasis omitted); *Ancillary Services Refresh Public Notice*, 35 FCC Rcd at 190.

[820] *2013 ICS Order*, 28 FCC Rcd at 14147, para. 73 ("We adopt interim rate caps to place an upper limit on rates providers may charge for *interstate* [inmate calling services].") (emphasis added).

endpoints, the Commission applied the ordinary meaning of the term "interstate" as that term is defined in the Communications Act.[821] There has been no new legislative rule that would have required notice and an opportunity to comment. The Commission's reminder clearly served the purpose of an interpretive rule.[822]

258. In essence, GTL contends that "interstate" as used in the Commission's inmate calling services rules had a different meaning than "interstate" as used in the Communications Act and therefore that it could classify as intrastate a call that originates in one state and terminates in another state based solely on NPA-NXX codes.[823] GTL's claim is unavailing and has no bearing on the question of whether the Commission was required to provide additional notice and an additional opportunity to comment prior to clarifying that "interstate" as used in the inmate calling services rules continues to have the same meaning as "interstate" as used in the Communications Act and historical Commission usage of the term.

259. In any event, the *Ancillary Services Refresh Public Notice* fully apprised all interested parties that the Commission would be considering how it should proceed in the event an ancillary service could not "be segregated between interstate and intrastate calls."[824] That public notice also invited comment on what additional steps the Commission should take to ensure that providers of interstate inmate calling services do not circumvent or frustrate the Commission's ancillary service charge rules.[825] GTL claims that the *Ancillary Services Refresh Public Notice* was insufficient to inform stakeholders that the Commission might reexamine "the methodology used to determine whether a call or charge is interstate or intrastate."[826] But the *Public Notice* made clear that the Commission would be considering when an ancillary service is interstate, which necessarily involves a determination whether the calls in

[821] The Communications Act defines "interstate communication" or "interstate transmission" as:

> [C]ommunication or transmission (A) from any State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia, (B) from or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or (C) between points within the United States but through a foreign country; but shall not, with respect to the provisions of subchapter II of this chapter (other than second 223 of this title), include wire or radio communication between points in the same State, Territory, or possession of the United States, or the District of Columbia, through any place outside thereof, if such communication is regulated by a State commission.

47 U.S.C. § 153(28).

[822] The Administrative Procedure Act (APA) exempts interpretive rules from the procedural requirements of notice and comment rulemaking. 5 U.S.C. § 553(b)(A). An interpretive rule is a clarification or explanation of existing laws or regulations rather than a substantive modification in or adoption of new regulations. *See, e.g.*, *Continental Oil Co. v. Burns*, 317 F. Supp. 194, 197-98 (D. Del. 1970) (finding that the rule at issue was interpretive and therefore not subject to the APA's notice and opportunity for comment provisions, and explaining that "[e]xpressing an agency's view of the definition of a term used in a statute or regulation is uniformly held to be interpretative"); *see also PDR Network, LLC v. Carlton & Harris Chiropractic, Inc.*, 139 S. Ct. 2051, 2052 (2019) (explaining that a legislative rule "is issued by an agency pursuant to statutory authority and has the force and effect of law" while an interpretive rule "simply advises the public of the agency's construction of the statutes and rules it administers and lacks the force and effect of law" (internal quotation marks and alterations omitted)).

[823] GTL Petition at 4 (arguing that the "governing test for determining how the Commission's rules apply . . . is the call classification methodology utilizing NPA-NXX and related network information that has long been the industry standard").

[824] *Ancillary Services Refresh Public Notice*, 35 FCC Rcd at 190.

[825] *Id.* at 191.

[826] GTL Petition at 17.

connection with that service are interstate.[827] And, when the record revealed that certain providers were using NPA-NXX codes, rather than endpoints, to classify calls as interstate or intrastate, the Commission properly clarified, consistent with the text of the Act and long-standing precedent, that using the geographic endpoints was the proper method to determine call jurisdiction.[828] Thus, the Commission's clarification that providers must use an end-to-end analysis in classifying calls as interstate or intrastate was, at the very least, a logical outgrowth of the *Ancillary Services Refresh Public Notice*. Indeed, absent such clarification, the Commission could not have responded fully to the D.C. Circuit's directive to ascertain on remand whether ancillary service charges could be segregated between interstate and intrastate components.

260. For the reasons stated herein, we deny GTL's petition on the merits and dismiss it as procedurally defective.

V. SEVERABILITY

261. All of the rules and policies that are adopted in this Third Report and Order and Order on Reconsideration are designed to ensure that rates for inmate calling services are just and reasonable while also fulfilling our obligations under sections 201(b) and 276 of the Act.[829] Each of the separate reforms we undertake here serves a particular function toward these goals. Therefore, it is our intent that each of the rules and policies adopted herein shall be severable. If any of the rules or policies is declared invalid or unenforceable for any reason, the remaining rules shall remain in full force and effect.

VI. FIFTH FURTHER NOTICE OF PROPOSED RULEMAKING

262. In this Fifth Further Notice, we seek further evidence and comments from stakeholders to consider additional reforms to inmate calling services rates, services, and practices within our jurisdiction, including permanent rate caps. To that end, we seek comment on the provision of functionally equivalent communications services to incarcerated people with hearing and speech disabilities, the methodology for establishing permanent rate caps, further reforms to the treatment of site commission payments, including at jails with average daily populations less than 1,000, and revisions to our ancillary service charge rules, among other matters.

A. Disability Access

263. While there are barriers to telecommunications access for incarcerated people, the obstacles are much larger for those who are deaf, hard of hearing, or deafblind, or who have a speech disability.[830] Because functionally equivalent means of communication with the outside world are often unavailable to incarcerated people with communication disabilities, they are effectively trapped in a "prison within a prison."[831] The ability to make telephone calls is not just important to maintain familial

[827] For this reason, we also reject Pay Tel's assertion that the *Ancillary Services Refresh Public Notice* did not contemplate an evaluation of the jurisdictional classification of inmate calling services calls. Pay Tel Reconsideration Comments at 2.

[828] *2020 ICS Order on Remand*, 35 FCC Rcd at 8502-04, paras. 52-53.

[829] 47 U.S.C. §§ 201(b), 276.

[830] We refer to this class of people generally as incarcerated people with communication disabilities. *Cf. 2015 ICS Order*, 30 FCC Rcd 12874-75, para. 226. *See also* UCC Apr. 26, 2021 *Ex Parte* at 1 (emphasizing the "very long wait that incarcerated people with disabilities have faced awaiting Commission action"); Impacted People May 14, 2021 *Ex Parte* at 2 (highlighting that "[d]eaf incarcerated people face significant burdens in communication as compared to hearing people").

[831] Accessibility Coalition Comments at 2 (citing Sara Novic, *Deaf Prisoners Are Trapped in Frightening Isolation*, CNN (June 21, 2018), https://www.cnn.com/2018/06/21/opinions/aclu-georgia-deaf-abuse-lawsuit-novic). Accessibility Coalition also cites Talila A. Lewis, *In Georgia, Imprisoned Deaf and Disabled People Don't Stand a Chance*, ACLU (June 20, 2018), https://www.aclu.org/blog/disability-rights/disability-rights-and-criminal-legal-system/georgia-imprisoned-deaf-and ("'At every stage—arrest, interrogation, trial, sentencing, prison, and parole— (continued….)

and intimate relationships necessary for successful rehabilitation, but also crucial to allow for communication with legal representatives and medical professionals.[832]

1. Background

264. The Commission first sought comment in 2012 on access to inmate calling services for incarcerated people with communication disabilities.[833] In 2015, the Commission affirmed the obligation of inmate calling services providers, as common carriers, to provide incarcerated people access to "mandatory" forms of TRS—TTY-based TRS and speech-to-speech relay service (STS).[834] The Commission also amended its rules to prohibit inmate calling services providers from levying or collecting any charge for TRS calls. For TTY-to-TTY calls, which require substantially longer time than voice calls, the Commission limited permissible charges to 25% of the applicable per-minute voice rate.[835]

265. The Commission recognized in the *2015 ICS Order* that other, more advanced forms of TRS, many of which use the Internet, had been developed and recognized as eligible for TRS Fund support.[836] For example, video relay service (VRS) makes use of video communications technology to allow individuals whose primary language is American Sign Language (ASL) to communicate in ASL.[837]

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deaf people are more susceptible to going to prison more often, staying longer, suffering more, and returning to prison faster. Deaf people with other marginalized identities—including those who are LGBTQ and come from communities of color—fare even worse.'").

[832] *See 2013 ICS Order*, 28 FCC Rcd at 14109, para. 2 (citing research showing that family contact is associated with lower recidivism rates); ZP Reply at 5 (citing research showing that telecommunications can be a critical link between incarcerated people and can lower post-release recidivism rates); Accessibility Coalition Comments at 5-6 (suggesting that the inability of incarnated individuals with communication disabilities to contact legal representatives is a violation of their constitutional right to access to the courts).

[833] *See 2012 ICS Notice*, 27 FCC Rcd at 16644, para. 42.

[834] *2015 ICS Order*, 30 FCC Rcd at 12875, para. 227. TRS are "telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, or deaf-blind or has a speech disability to engage in communication by wire or radio . . . in a manner that is functionally equivalent to the ability of a hearing person who does not have a speech disability to communicate using voice communication services." 47 U.S.C. § 225(a)(3); 47 CFR § 64.601(a)(42). TTY-based TRS allows an individual with a communication disability to communicate by telephone with another party, such as a hearing individual, by using a text telephone (TTY) device to send text to a communications assistant (CA) over a circuit-switched telephone network. To connect a hearing individual as the other party to the call, the CA establishes a separate voice service link with the hearing party and converts the TTY user's text to speech. The CA listens to the hearing party's voice response and converts that speech to text for the TTY user. *Telecommunications Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, 5142, para. 2 (2000) (*2000 TRS Order*). A TTY is "[a] machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system." 47 CFR § 64.601(a)(43); *see also* Gallaudet University Technology Access Program (Gallaudet TAP), TTY Basic (June 30, 1998), https://tap.gallaudet.edu/Text/TTYBasics.html. STS "allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person." 47 CFR § 64.601(a)(40); *see also 2020 TRS Order*, 15 FCC Rcd at 5148-51, paras. 14-20 (describing STS and adopting regulations for providing it).

[835] *2015 ICS Order*, 30 FCC Rcd at 12879-80, paras. 237-38.

[836] *Id.* at 12876, para. 229.

[837] VRS is a form of TRS that "allows people with hearing and speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the [communication assistant] to view and interpret the party's signed conversation and relay the conversation back and forth with a voice caller." 47 CFR § 64.601(a)(50); *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Disabilities*, CG Docket No. 03-123, Declaratory Ruling and Further Notice of Proposed Rulemaking, 21 FCC Rcd 5442, 5447, para. 11 (2006) (*2006 VRS Declaratory Ruling*) (describing VRS); *2000 TRS* (continued….)

Internet Protocol Captioned Telephone Service (IP CTS) and its non-Internet counterpart, Captioned Telephone Service (CTS), allow a person who is hard of hearing to participate in direct voice communications while receiving captions of the other party's voice—thereby eliminating much of the delay inherent in more traditional forms of TRS.[838] And IP Relay enhances traditional text-based relay by making use of the faster transmission speeds offered by the Internet.[839] Today, among people with communication disabilities, there is far more demand for these forms of TRS than for TTY-based TRS and STS.[840]

266. The Commission also "agree[d] with commenters that limiting all inmates with communication disabilities to one form of TRS, particularly what many view as an outdated form of TRS that relies on TTY usage, may result in communication that is not functionally equivalent to the ability of

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Order, 15 FCC Rcd at 5154, para. 26 (concluding that VRS is necessary to provide many people with TRS that is functionally equivalent to voice communications).

[838] IP CTS is a form of TRS "that permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an Internet Protocol-enabled device via the Internet to simultaneously listen to the other party and read captions of what the other party is saying." 47 CFR § 64.601(a)(22); *see also Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Internet-based Captioned Telephone Service*, CG Docket Nos. 03-123 and 13-24, Declaratory Ruling, 22 FCC Rcd 379, 379, para. 1 (2007) (*2007 IP CTS Declaratory Ruling*) (approving IP CTS as a type of TRS eligible for compensation from the TRS Fund). The term "CTS" refers to a telephone captioning service, offered in state TRS programs, that functions similarly to IP CTS but without using the Internet for the delivery of captions. *See Telecommunications Relay Services, and Speech-to-Speech Services for Individuals with Speech and Hearing Disabilities*, CC Docket No. 98-67, Declaratory Ruling, 18 FCC Rcd 16121 (2003).

[839] IP Relay is a form of TRS that "permits an individual with a hearing or a speech disability to communicate in text using an Internet Protocol-enabled device via the [I]nternet." 47 CFR § 64.601(a)(23); *see also Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Petition for Clarification of WorldCom, Inc.*, CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779, 7781-82, paras. 8-9 (2002) (describing how IP Relay works and the benefits of using this service). For deafblind consumers, IP Relay service is often the sole or primary means of communicating via telephone. *See Telecommunications Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *Structure and Practices of the Video Relay Service Program*, CG Docket Nos. 03-123 and 10-51, Order, 31 FCC Rcd 7246, 7250-52, paras. 14, 18-19 (CGB 2016).

[840] In its annual TRS usage projections for TRS Fund Year 2020-21, the TRS Fund administrator projected that interstate usage of TTY-based TRS from July 2020 through April 2021 would total 1,361,038 minutes, and interstate usage of STS for the same period would be 141,313 minutes. *See* Rolka Loube, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 and 10-51, Exh. 2 (filed May 1, 2020) (2020 TRS Fund Report), https://ecfsapi.fcc.gov/file/105013048227177/2020%20Annual%20TRS%20Fund%20Report.pdf. Taking account of likely intrastate usage, total usage of TTY-based TRS in this period will not exceed 6 million minutes, and total usage of STS will not exceed 500,000 minutes. *See* 2020 TRS Fund Report, Exh. 1-1 (showing total conversation minutes of 4,417,105 for intrastate TTY-based TRS and 264,912 for intrastate STS). Although these statistics are for calendar year 2019, an earlier period, TTY-based TRS usage has been declining over time, and STS usage has not increased significantly in recent years. Therefore, the corresponding intrastate usage statistics for TRS Fund Year 2020-21 are likely to be lower (in the case of TTY-based TRS) or not substantially higher (in the case of STS) than these totals. By contrast, projected usage of VRS for the same period is 140,575,160 minutes (about 23 times the usage of TTY-based TRS) and projected usage of IP CTS is 542,340,606 minutes (about 90 times the usage of TTY-based TRS). *Id*. Exh. 2; *see also Misuse of Internet Protocol (IP) Captioned Telephone Services*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Dockets No. 13-24, 03-123, Report and Order, Declaratory Ruling, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 33 FCC Rcd 5800, 5801, para. 1 (2018) (*2018 IP CTS Order* or *2018 IP CTS Notice*) (noting that IP CTS represents almost 80% of the total minutes compensated by the Commission's Interstate TRS Fund).

a hearing individual to communicate by telephone."[841] However, noting that the newer forms of TRS (other than STS) are not "mandatory" for common carriers to provide, the Commission declined to require calling service providers to make them available. Instead, it "strongly encourage[d] correctional facilities to work with [inmate calling services] providers to offer these other forms of TRS,"[842] and to "comply with obligations that may exist under other federal laws, including Title II of the ADA**,** which require the provision of services to inmates with disabilities that are as effective as those provided to other inmates."[843] The Commission stated it would "monitor the implementation and access to TRS in correctional institutions and may take additional action if inmates with communications disabilities continue to lack access to functionally equivalent service."[844]

267. In the *2015 ICS Notice*, the Commission sought comment on the accessibility implications of the increasing availability to incarcerated people of video calling and video visitation services.[845] Recognizing that video calling could enable incarcerated sign language users to access and use VRS, as well as communicate directly with other sign language users, the Commission sought comment on the bandwidths and broadband speeds currently used for video visitation, the interoperability of video visitation systems with VRS, the prevalence of VRS access in correctional institutions, and the steps that should be taken to ensure that charges for video calling services offered to deaf incarcerated people are just and reasonable.[846] In the *2020 ICS Notice*, the Commission sought comment more broadly on the needs of incarcerated people with communication disabilities, including whether they have adequate access to TRS, whether additional forms of TRS should be made available by inmate calling services providers, and what the Commission can do to facilitate such access.[847] In response to the *2015 ICS Notice* and *2020 ICS Notice*, the Commission has received information describing the lack of functionally equivalent access to telecommunications services for incarcerated people with communication disabilities.[848] As a result of these limitations, the Accessibility Coalition asserts, many

[841] *2015 ICS Order*, 30 FCC Rcd at 12876, para. 229; *see also id*. at 12877, para. 230 ("Access to more advanced forms of TRS, including VRS, IP Relay, CTS, and IP CTS**,** may be necessary to ensure equally effective telephone services for these inmates.").

[842] *Id.* at 12876, para. 229.

[843] *Id*. at 12877, para. 230.

[844] *Id.*

[845] *2015 ICS Notice*, 30 FCC Rcd at 12907, para. 307.

[846] *Id.* at 12907-08, para. 307.

[847] *2020 ICS Notice*, 35 FCC Rcd at 8534, para. 136.

[848] *See, e.g.*, HEARD Comments, WC Docket No 12-375 (filed Jan. 19, 2016); Barry C. Taylor Comments, WC Docket No 12-375 (filed Jan. 19, 2016) (filed on behalf of Equip for Equality) (Equip for Equality Jan. 19, 2016, Comments); Mark McWilliams Comments, WC Docket No. 12-375 (filed Dec. 18, 2015) (filed on behalf of Michigan Protection & Advocacy Service, Inc.); Diane Smith Howard Comments, WC Docket No. 12-375 (filed Dec. 18, 2015) (filed on behalf of the National Disability Rights Network and the National Association of the Deaf) (NDRN/NAD Dec. 18, 2015, Comments); Accessibility Coalition Comments; Sorenson Communications, LLC, and CaptionCall, LLC, Comments (Sorenson Comments); GTL Comments; Accessibility Coalition Reply; Arizona Commission for the Deaf and Hard of Hearing Reply (ACDHH Reply); GlobalVRS Reply; ClearCaptions, LLC, Reply (ClearCaptions Reply); Convo Reply; Hamilton Reply; MEZMO Corp. dba InnoCaption Reply; Richard Ray Reply; Right on Crime *Ex Parte* at 2 (supporting improve access for people with communications disabilities); ZP Reply. The Commission has also received several individual comments urging it to require more access to communications in correctional facilities and sharing personal experiences with disability access to telecommunications in correctional facilities. *See, e.g.*, Jennifer Jacobs Comments, WC Docket No. 12-375 (filed Jan. 19, 2016) (asking for VRS in all correctional facilities); J. Marchak Comments, WC Docket No 12-375 (filed Jan. 19, 2016) (a deaf fiancé of a deaf incarcerated person explaining financial and emotional hardship with having only 2 or 3 minutes of actual conversation in a 15-minute call using a TTY); Nia Ocansey Comments, WC Docket No. 12-375, at 1 (filed Nov. 23, 2020) (stating that deaf incarcerated people often "can't even communicate with

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incarcerated people with communication disabilities have been unable to stay in contact with their loved ones.[849]

2. Making Modern Forms of TRS Available

268. In light of the comments filed in response to the *2020 ICS Notice*, as well as other evidence, we propose to amend the Commission's rules to require that inmate calling services providers provide access, wherever feasible, to all forms of TRS that are eligible for TRS Fund support—including (in addition to TTY-based TRS and STS) CTS (a non-Internet-based telephone captioning service) and the three forms of Internet-based TRS: VRS, IP CTS, and IP Relay.[850]

269. As the Commission has recognized, "functional equivalence" is an evolving standard for the level of communications access that TRS must provide.[851] The current record confirms the Commission's initial assessment in the *2015 ICS Order*[852] that TTY-based TRS and STS may be insufficient by themselves to ensure functionally equivalent communication for people with communication disabilities. As explained above, among the general population of people with communication disabilities, TTY-based TRS and STS are currently the *least* frequently used forms of relay service.[853] TTY-based TRS is little used today because it is based on an obsolete technology, which is very slow and cumbersome compared with current Internet technology.[854] Further, given the availability of VRS, limiting sign-language users to TTY-based TRS unnecessarily precludes them from communicating in their primary language.[855] Similarly, for individuals who are hard of hearing, captioned telephone services such as CTS and IP CTS frequently provide far more efficient and effective means of

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other [incarcerated people] so are automatically, in a sense, subjected to de facto solitary confinement, a cruel and unusual punishment").

[849] Accessibility Coalition Comments at 2-3; *see also* Convo Reply at 1.

[850] In proposing that inmate calling services providers offer access to all forms of TRS, we do not contemplate that providers would necessarily provide TRS directly. They would only need to ensure that incarcerated people with hearing and speech disabilities can be connected to an existing, authorized provider of the appropriate form of TRS.

[851] "Functional equivalence is, by nature, a continuing goal that requires periodic reassessment. The ever-increasing availability of new services and the development of new technologies continually challenge us to determine what specific services and performance standards are necessary to ensure that TRS is functionally equivalent to voice telephone service." *2000 TRS Order*, 15 FCC Rcd at 5143, para. 4.

[852] *2015 ICS Order*, 30 FCC Rcd at 12876-77, paras. 229-30.

[853] *Supra* note 841.

[854] *See Transition from TTY to Real-Time Text Technology*; *Petition for Rulemaking to Update the Commission's Rules for Access to Support the Transition from TTY to Real-Time Text Technology*; *Petition for Waiver of Rules Requiring Support for TTY Technology*, CG Docket No. 16-145, GN Docket No. 15-178, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 13568, 13574-75, para. 8 (2016) (*2016 RTT Order*); *see also* Richard Ray Reply at 5, 9 (explaining that most TTYs are limited to transmitting text over telephone lines at a rate of 30-60 words per minute, while people generally speak at a rate of between 180 and 240 words per minute and that TRS calls using TTY may take even longer than direct TTY calls because communication assistants wait until the TTY user types two or three sentences at a time before relaying); NDRN/NAD Dec. 18, 2015, Comments at 3-4 (stating that "the conversation between the VRS user and the CA flows much more quickly than with a text-based TRS call," and citing https://www.fcc.gov/consumers/guides/video-relay-services); Sorenson Comments at 4 (describing how "[o]n an IP CTS call, both parties to the call speak freely").

[855] NDRN/NAD Dec. 18, 2015, Comments at 3 (For people who are deaf or hard of hearing and for whom ASL is the primary language, "[v]ideophones, not TTYs, are the functional equivalent of telephones."); ACDHH Reply at 1.

communication than TTY-based TRS. Further, current transitions to modern IP-based networks have adversely affected the quality and utility of TTY-based communication.[856]

270. Although the Commission has not mandated the provision of the more advanced forms of TRS by state TRS programs or common carriers,[857] their "non-mandatory" status does not reflect a lower level of need for these forms of TRS.[858] As noted above, among the general population of people with communication disabilities, there is far more demand for "non-mandatory" than "mandatory" relay services. Further, the comments submitted in response to the *2015 ICS Notice* and *2020 ICS Notice* persuade us that access to commonly used, widely available relay services such as VRS and IP CTS is equally or more important for incarcerated people with communication disabilities than it is for the general population.[859] Further, incarcerated people—unlike the general population—have no ability to

[856] *2016 RTT Order*, 31 FCC Rcd at 13570, para. 3. In the *2016 RTT Order*, the Commission recognized the limitations of TTY technology in an IP environment, and adopted rules to facilitate a transition from TTY technology to real-time text (RTT) as a reliable and interoperable universal text solution over wireless IP-enabled networks for people who are deaf, hard of hearing, deafblind, or have a speech disability. *Id*. at 13574, para. 8 (describing the significant challenges with using TTY technology on IP-based networks, including susceptibility to packet loss, compression techniques that distort TTY tones, and echo or other noises that result from the transmission of the Baudot character string used by TTYs).

[857] *See 2015 ICS Order*, 30 FCC Rcd at 12876, para. 229.

[858] These forms of TRS are "non-mandatory" only in the limited sense that the Commission does not require that they be included in the offerings of Commission-certified state TRS programs (and, in the event that a state does not have a certified TRS program, does not require common carriers in that state to make their own arrangements to provide such relay services). *See generally* 47 U.S.C. § 225(c); 47 CFR § 64.603 (requiring common carriers to provide TRS, including STS, either directly or through a state TRS program); *2000 TRS Order*, 15 FCC Rcd at 5143, 5149, paras. 3, 15 (explaining that "the law gives states a strong role by considering carriers to be in compliance with this obligation if they operate in a state that has a relay program certified as compliant by this Commission," and requiring common carriers to provide STS); *2007 IP CTS Declaratory Ruling*, 22 FCC Rcd at 381, para. 4 n.14 ("The Commission made STS a mandatory service so that all states with a certified state TRS program must offer this service."). Instead, Internet-based TRS are made available by TRS providers operating on a nationwide basis and certified by the Commission. However, *support* for *all* forms of TRS is mandatory for all carriers and VoIP service providers, which must support the provision of these services through mandatory contributions to the TRS Fund. 47 CFR § 64.604(c)(5)(ii), (iii)(A)-(C).

[859] *See* Accessibility Coalition Comments at 7-12 (asserting that incarcerated people with communication disabilities often have access only to TTYs that do not work reliably because their correctional facilities have IP-enabled networks and not analog networks, and that TTY and TTY-based relay are especially ineffective for many incarcerated people with communication disabilities whose primary language is not English); *id*. at 13 (asserting that VRS and IP CTS can "dramatically improve the accessibility of phone calls" for incarcerated people with communication disabilities, explaining that VRS allows for a quicker and more natural conversation for ASL and that IP CTS and other modern texting services can "facilitate multimodal communications for those who do not sign but can read or voice for themselves"); Equip for Equality Jan. 19, 2016, Comments at 1 (highlighting the importance of incarcerated ASL users communicating in their primary language, especially for those with "a lower level of education"); Sorenson Comments at 2, 4 ("TTY has been largely supplanted by better forms of TRS that are easier to use and are much more functionally equivalent to hearing use of a telephone." Sorenson remarks that IP CTS and VRS allow both parties to the call to sign or speak freely and to perceive nuances that otherwise would have been missed on TTY-based TRS calls.); ACDHH Reply at 1 (commenting that IP CTS is a more common form of TRS used by hard of hearing individuals, and that many deaf and hard of hearing incarcerated people may not be familiar with "antiquated" technologies such as TTYs, having never used them before); GlobalVRS Reply at 2-3 (arguing that limiting deaf incarcerated people whose primary language is ASL to TTY services leads to further isolation from family and friends); Richard Ray Reply at 11 ("[I]nmates who are deaf, deafblind, and hard-of-hearing who sign, require VRS to be able to contact their hearing associates outside of the correctional center in a manner comparable to hearing inmates contacting hearing associates over a standard telephone."); ZP Reply at 3 (stating that providing video communication services, including VRS, has "had a tremendously positive impact on [incarcerated people], their families, and ultimately the community" and that "[a] federal mandate for all such persons to have access to video communication, including VRS, would ensure that the significant benefits of

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connect to a suitable form of TRS on their own. Therefore, to fulfill the statutory TRS mandate with respect to this subset of people with communication disabilities, it appears to be incumbent on the Commission to take additional steps in this proceeding to ensure that they can access those relay services needed for functionally equivalent communication, regardless of the "mandatory" or "non-mandatory" status of such services as provided in other contexts. We seek comment on this analysis.

271. *Legal Authority*. As a threshold matter, we seek comment on the extent of our statutory authority to require inmate calling services providers to provide access to TRS. Section 225 of the Act directs the Commission to "ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to [individuals with communications disabilities] in the United States,"[860] and incarcerated people are not excluded from this mandate.[861] To this end, section 225 expressly provides the Commission with authority over common carriers providing intrastate as well as interstate communications services, including the authority to require carriers to provide access to TRS "to the extent possible."[862] Does section 225 authorize the Commission to require that inmate calling services providers provide access to appropriate forms of TRS, as well as to regulate the manner in which such access is provided?

272. As alternative sources of authority, section 255 of the Act requires providers of telecommunications services to ensure that their services are "accessible to and usable by individuals with disabilities 'if readily achievable.'"[863] Similarly, section 716 of the Act requires providers of advanced communications services (including VoIP services) to ensure that such services are accessible to and usable by individuals with disabilities "unless [these requirements] are not achievable," prohibits such providers from installing "network features, functions, or capabilities that impede accessibility or usability," and authorizes the Commission to adopt implementing regulations.[864] We seek comment on the extent to which, independently of section 225, these provisions authorize the Commission to require inmate calling services providers to provide access to appropriate forms of TRS.

273. As noted earlier in the accompanying Report and Order, correctional authorities "exercise near total control over how incarcerated people are able to communicate with the outside world."[865] In general, the Communications Act does not provide us with authority to regulate the actions of correctional authorities (except to the extent that they also act as communications service providers or other entities subject to our authority). As a practical matter, therefore, our ability to compel an inmate calling services provider to make additional forms of TRS available in a particular facility may depend, for example, on whether the correctional institution agrees—or is required by other applicable law—to make suitable communications devices and network access available to incarcerated people with disabilities, or to permit a service provider to do so. We seek comment on the extent to which Title II of the ADA or other

(Continued from previous page)
modern telephone communications reach all people with disabilities who are incarcerated"). As explained above, *supra* note 841, in the general population, VRS is projected to be used approximately 23 times as much, and IP CTS is projected to be used 90 times as much, as TTY-based TRS.

[860] 47 U.S.C. § 225(b)(1).

[861] *See id.* (identifying an underlying goal of section 225 is to carry out the purpose of 47 U.S.C. § 151 "to make available to *all* individuals in the United States a rapid, efficient nationwide communication service") (emphasis added).

[862] 47 U.S.C. § 225(b)(1)-(2). Section 225 also expressly requires common carriers to "provide in compliance with the regulations prescribed under this section, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers." *Id.* § 225(c).

[863] *Id.* § 255(c).

[864] 47 U.S.C. § 617(b)(1), (d)-(e).

[865] Report and Order, *supra* Part III.A.

federal or state laws require such access.[866] We also stress that, although the obligations of inmate calling service providers under any rules we adopt may be limited to measures that are "feasible" in the circumstances of a particular correctional facility, we do not propose to preempt other requirements under state or federal law, whether applicable to service providers or correctional authorities, which may expand the scope of access to TRS that would otherwise be deemed "possible" under section 225.

274. *Benefits and Costs*. To supplement the current record, we seek further comment on the benefits and costs of requiring that providers of inmate calling services provide access to all authorized forms of TRS. First, to establish a baseline, we seek additional, specific information on the extent to which VRS, IP Relay, IP CTS, and CTS are currently being made available in correctional facilities. According to comments on the *2020 ICS Notice*, VRS and IP CTS already have been made available in some correctional facilities.[867] ZP Better Together, LLC, a certified VRS provider, notes that a number of state facilities that allow video visitations also have added VRS and point-to-point video communications for those with accessibility needs.[868] Where available, how are Internet-based relay services and CTS provided? Do correctional facilities make arrangements directly with TRS Fund-supported TRS providers to provide these services, or are they accessed through an inmate calling services provider? What kinds of devices are used to access these forms of TRS, and how and by which entities are they provided? Similarly, how is broadband Internet access provided to the facility—by arrangement with an inmate calling services provider or some other entity? Where access to additional forms of TRS has been made available, what operational or other challenges were encountered, and how were they addressed?

275. Second, we seek additional comment on the benefits of making VRS, IP CTS, IP Relay, and CTS available in correctional facilities where they are *not* currently available. As noted above, the record to date strongly suggests that TTY-based TRS and STS, by themselves, are insufficient to ensure that incarcerated people with communications disabilities have access to functionally equivalent communications. We seek additional, specific information on how and to what extent each of the other TRS-Fund supported relay services would enhance communications for incarcerated people with communications disabilities. Where available, what specific benefits do these services offer that TTY-based TRS and STS cannot? What communications limitations of TTY-based TRS and STS would be remedied by providing modern relay services? For example, how would access to additional forms of TRS improve communications access for incarcerated people who are deafblind? Should each of these relay services—VRS, IP CTS, IP Relay, and CTS—be available, or would a combination of some of them collectively provide adequate access to telecommunications for incarcerated people with communication

[866] *See, e.g.*, 42 U.S.C. § 12131 *et seq.* (ADA Title II, prohibiting disability discrimination in all services, programs, and activities provided to the public by state and local governments); 29 U.S.C. § 794 (Rehabilitation Act of 1973, prohibiting disability discrimination in programs that, for example, receive federal funds); *Zemedagegehu v. Arlington County Sheriff Elizabeth F. Arthur et al*., No. 1:15cv57 (JCC/MSN), 2015 WL 1930539, at *1-2, *16 (E.D. Va. Apr. 28, 2015) (denying a motion to dismiss an ADA Title II complaint against a correctional facility for, among other things, providing a TTY, but not a videophone). The *Zemedagegehu* case ultimately led to a settlement agreement between the correctional facility and the U.S. Department of Justice. Department of Justice, *Settlement Agreement between the United States of America and Elizabeth F. Arthur, in Her Official Capacity as the Arlington County Sheriff*, DJ # 204-79-325 (Nov. 17, 2016), https://www.ada.gov/arlington_co_sheriff_sa.html; *see also* NDRN/NAD Dec. 18, 2015, Comments at 5. Access to telecommunications for incarcerated people with disabilities may also involve issues of constitutional rights. *See, e.g.*, *Heyer v. U.S. Bureau of Prisons*, 849 F.3d 202, 218 (4th Cir. 2017) (reversing the district court's grant of summary judgment in favor of the correctional facility regarding the plaintiff's claim that being given access to a TTY, rather than a videophone as requested, violated his First Amendment rights).

[867] ZP Reply at 1-2 (stating that ZP, a certified VRS provider, currently provides VRS in correctional facilities across the country); Hamilton Reply at 3 (explaining how Hamilton, a certified IP CTS provider, works with correctional facilities and calling service providers to have IP CTS available).

[868] ZP Reply at 2.

disabilities? Would the provision of modern relay services also benefit the people that incarcerated people with communication disabilities want to call?

276. As part of our assessment of the potential benefits of making other forms of TRS available, we also seek comment on the extent to which, as a practical matter, TTY-based TRS is actually available and usable in correctional facilities. To what extent is access to TTY-based TRS subject to more restrictions (e.g., physical access, limited hours, dependence on correctional staff) than telephone access? For example, to what extent are TTY devices incorporated into the telephones used by the general incarcerated population, or are TTY devices available only upon request? We also seek comment on the extent to which the TTYs available at correctional facilities are actually functional and capable of making calls. Are TTYs adequately maintained?[869] Further, in light of the incompatibilities between TTYs and IP networks, we seek comment on the extent to which correctional facilities have upgraded to IP-enabled voice service. For those that have upgraded, how do correctional facilities ensure that incarcerated people with communication disabilities are able to use TTYs successfully? Do incarcerated people with disabilities wishing to use TTY-based TRS encounter difficulties navigating inmate calling services (e.g., accessing the system to complete steps require to make an outgoing call)? What kinds of difficulties are encountered by individuals eligible to use STS? To what extent could such difficulties in using TTY-based TRS and STS be overcome by providing access to other forms of TRS?

277. Third, what security or other issues do inmate calling services providers and correctional facilities face that could be affected by the provision of VRS, IP CTS, IP Relay, and CTS, and how could such issues be effectively addressed? The Commission has recognized that security is a significant concern for inmate calling services generally.[870] However, service providers and correctional facilities have developed methods for effectively monitoring, recording, and administering inmate calls, and some commenters have stated that these solutions are applicable or adaptable to the TRS context.[871] Is there evidence that security issues are more challenging for TRS than for inmate calling services in general, and if so, why? What specific security issues are raised by incarcerated people's access to TRS? Are there specific concerns with respect to VRS, given its use of video? How have security concerns been addressed with respect to TTY-based TRS and STS, and in facilities where VRS is currently available? What measures are available to address such security concerns with respect to other forms of TRS?

278. Fourth, what additional costs would be incurred—and by which entities—in providing access to VRS, IP CTS, IP Relay, and CTS, respectively, for incarcerated people? For example, would inmate calling services providers or other entities incur costs associated with upgrading or modifying existing technology configurations, operations, or associated network infrastructure?[872] To what extent would additional broadband services be needed for transmission and completion of TRS calls, what costs

[869] *See* Accessibility Coalition Comments at 15 n.63, 19-20.

[870] *See, e.g.*, *2013 ICS Order*, 28 FCC Rcd at 14138, para. 58 (recognizing that inmate calling services systems include important security features); *2015 ICS Order*, 30 FCC Rcd at 12775, para. 21 (noting the need to balance the Communication Act requirements, the unique security needs of inmate calling service, and the requirement that calling service providers receive fair compensation); *see also* Securus Comments at 3-4 ("ICS is an inherently different service to provide than traditional consumer outbound calling services due to the extensive user verification and facility-specific security requirements of correctional facilities (e.g., costs associated with the logging, monitoring and retention of calls), facility-specific infrastructure installation requirements, a vast variety of facility sizes and unique requirements . . . .").

[871] *See, e.g.*, ZP Reply at 2-3 (highlighting the capability of inmate calling services providers to administer, monitor, and record VRS and point-to-point calls); ClearCaptions Reply at 3 (discussing potential concerns with IP CTS equipment and software used for calls in incarceration facilities); Richard Ray Reply at 13-14 (suggesting monitoring and recording solutions for video-based communications in the incarceration context, and methods to keep the Internet connection needed for video-based communication secure).

[872] *See, e.g.*, NDRN/NAD Dec. 18, 2015, Comments at 6 (cautioning that video visitation devices "are typically not compatible with VRS or videophones").

would be involved, and which entity would incur such costs—the correctional institution or the inmate calling services provider? To what extent would additional costs be incurred by TRS providers to provide relay services in correctional facilities? Would it be necessary to provide training to correctional facilities personnel regarding modern TRS, and which entity would incur such costs? To what extent would additional costs be incurred, and by which entity, in ensuring that the provision of VRS, IP CTS, IP Relay, and CTS is secure? We seek detailed estimates of the costs described above and how they would be incurred—including discussion of the actual costs incurred in those instances where access to some of these forms of TRS is already being provided.

279. We also seek comment on how the various costs attributable to the provision of TRS access should be recovered. Which, if any, of the additional costs that may be incurred by TRS providers should be treated as eligible for TRS Fund support? To the extent that costs are incurred by inmate calling services providers, to what extent should they be recoverable in generally applicable inmate calling services charges that are subject to Commission regulation?[873]

280. *Feasibility, TRS Equipment, and Internet Access*. As noted above, our proposed expansion of inmate calling services providers' obligations to provide access to TRS is necessarily conditional on the extent to which associated communications capabilities, such as Internet access and suitable user devices, can be made available in a particular correctional facility. We cannot compel providers to provide access to all forms of TRS in those facilities where it is not feasible to do so.[874] We seek comment on how to determine feasibility in this context and how potential limitations on the availability of Internet service and user devices could be addressed and overcome. In order to access relay services, certain hardware is necessary.[875] To access TTY-based relay, a TTY is necessary. For CTS, a telephone with a display suitable for captioning, and compatible with the applicable state-program captioning service, is required. For Internet-based forms of TRS, broadband Internet access is required, as well as appropriate devices. Various devices may be used for IP CTS, such as a caption-displaying telephone compatible with an IP CTS provider's service, a personal computer, a laptop, a tablet, or a smartphone. IP Relay, similarly, may be accessed using a personal computer, a laptop, a tablet, or a smartphone. Finally, VRS requires a device with a screen and a video camera, such as a standalone videophone, a personal computer, a laptop, a tablet, or a smartphone. Internet-based services (IP Relay, IP CTS, and VRS) also require certain software that is available from TRS providers. With respect to VRS, the Commission requires that any user devices and associated software distributed by a VRS provider must be interoperable and usable with all VRS providers' services.[876]

281. As a threshold matter, we seek comment on the extent to which broadband Internet access, as well as the various user devices described above, are currently made available in correctional facilities for use by incarcerated people. To what extent are broadband Internet access services currently available for use by incarcerated people, and could such services be used to support access to Internet-based TRS? For example, the record indicates that remote video visitation, where available, is often

[873] As discussed below, the Communications Act restricts the extent to which parties to a TRS call may be charged for TRS access.

[874] *See generally* 47 U.S.C. § 225(b)(1) (requiring the Commission to ensure that TRS is available "to the extent possible").

[875] We note that people who are deafblind may need devices that have refreshable Braille output or text enlarging capabilities.

[876] 47 CFR § 64.621 (requiring that VRS providers enable users to make and receive calls through any VRS provider, to choose a different default service provider without changing the access technology used to place calls, and to make point-to-point calls to any other VRS user, even if the calling and called parties are registered with different providers).

provided by an inmate calling service provider.[877] Where an inmate calling service provider or affiliated company is providing video visitation using broadband Internet access, is it feasible for the provider to also use such broadband service to provide access to VRS or other forms of Internet-based TRS? To what extent are off-the-shelf user devices suitable for Internet access, such as personal computers, laptops, tablets, smartphones, or specialized videophones, available to incarcerated people? For VRS, to what extent are video-capable versions of such devices available?[878] To what extent do correctional facilities place restrictions on people with disabilities' access to the Internet and Internet-capable devices (e.g., physical access, limited hours, dependence on correctional staff) that are not imposed on the use of telephones by hearing people? We also seek comment on any security issues specific to certain types of equipment that may be used to access TRS. Are such security issues more easily or effectively addressed with certain kinds of video-capable user devices than with others?

282. To what extent is the provision of broadband Internet access or TRS-compatible user devices (other than TTYs) by a correctional facility required by the ADA or other laws?[879] To the extent that such access services and devices are *not* otherwise available, should the Commission require inmate calling services providers to provide Internet access service or user devices? We also note that TRS providers frequently distribute suitable user devices to TRS users, although our rules do not permit recovery of device-related costs from the TRS Fund.[880] Should we make TRS Fund support available for

[877] *See* Prison Policy Initiative, *Screening Out Family Time: The For-Profit Video Visitation Industry in Prisons and Jails* (Jan. 2015), https://www.prisonpolicy.org/visitation/report.html (providing data showing that video visitation services are often provided by inmate calling services providers and bundled with telephone services in contracts with correctional institutions), *cited in* CuWAV, LLC, Comments, WC Docket No. 12-375, at 1 (filed Dec. 16, 2015); Prison Policy Initiative Jan. 19, 2016, Comments at 2 ("Most video visitation providers are the same companies that have long been providing phone services to prisons and jails: ICSolutions, Renovo (which is owned by GTL), Securus, and Telmate.") (emphasis omitted); *see also* Brian Dolinar Comments, WC Docket No. 12-375, at 2 (filed Jan. 19, 2016) (filed on behalf of Illinois Campaign for Prison Phone Justice) (At certain facilities in Illinois, video visitation is provided by an inmate calling services provider and bundled with inmate calling services.); Los Angeles County Sheriff's Department Jan. 19, 2016 Comments at 2-3 (stating that its contracted video visitation provider was acquired by an inmate calling services provider); Wright Petitioners et al. Comments, WC Docket No. 12-375, at 3 (filed Jan. 19, 2016) (stating that "the pace of consolidation within the prison-industrial complex has accelerated in recent years, resulting in attempts by [inmate calling services] providers to serve all aspects of the correctional authorities' needs at the facility," including video visitation).

[878] *Cf.* NDRN/NAD Dec. 18, 2015, Comments at 6 (cautioning that video visitation devices "are typically not compatible with VRS or videophones").

[879] Federal prisons and other facilities receiving federal funds are subject to section 504 of the Rehabilitation Act of 1973, *e.g.*, 29 U.S.C. § 794(a), and implementing regulations. *E.g.*, 28 CFR pt. 41. State and local correctional facilities are subject to Title II of the ADA, 42 U.S.C. § 12131 *et seq.*, and implementing regulations adopted by the Department of Justice. *2015 ICS Order*, 30 FCC Rcd at 12874, para. 225 n.807; *e.g.*, 28 CFR § 35.152 (rules specifically applicable to correctional facilities). For example, public entities must "furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity." 28 CFR § 35.160(b)(1). Such "auxiliary aids and services" include "qualified interpreters on-site or through video remote interpreting (VRI) services; . . . real-time computer-aided transcription services; . . . telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing." 28 CFR § 35.104. We invite parties to comment on the extent to which this or other applicable ADA regulations mandate the availability to incarcerated people of appropriate equipment for accessing TRS.

[880] *See, e.g.*, *2006 VRS Declaratory Ruling*, 21 FCC Rcd at 5447, 5457-58, paras. 15, 38; *Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for*

(continued….)

the provision of these items by a certified TRS provider to an incarcerated person, as an exception to the cost-recovery prohibition? We seek comment on the merits, costs, and benefits of these alternatives, and whether we have statutory authority to adopt each of them.

283. To what extent do these feasibility issues implicate the agreements between calling service providers and correctional facilities, and how should the Commission treat such contractual issues in defining providers' obligations? For example, an inmate calling services provider may claim that access to a particular form of TRS is infeasible at a particular facility because the correctional authority has withheld permission for incarcerated people to use that form of TRS—or has withheld permission for the inmate calling services provider or TRS provider to provide Internet access or suitable user devices. How should the Commission evaluate such possible defenses? For example, should we require the inmate calling services provider to provide written evidence that the necessary permissions were withheld? Should we require providers to make a good faith effort to secure necessary permissions, and how should a sufficient effort be defined? Should we require the provider to show that it assured the correctional authority of its willingness to abide by reasonable use limitations and security restrictions? If there is sufficient evidence of infeasibility of access to some form of TRS due to the policy of the correctional authority, are there any steps that the Commission could take to encourage the facility to alter its practice? We invite commenters to discuss the Commission's legal authority for any measures advocated in this regard.

3. Application of Existing TRS Rules

284. We seek comment on whether any modifications of our existing TRS rules may be appropriate in conjunction with expanded TRS access for incarcerated people. In general, the rules governing Internet-based forms of TRS are more complex than those applicable to TTY-based TRS. For example, to prevent waste, fraud, and abuse and allow the collection of data on TRS usage, our rules require that people using VRS, IP Relay, or IP CTS be registered with a TRS provider and that such providers submit information on users registered for VRS and IP CTS to a central User Registration Database (User Database).[881] VRS providers, however, may register videophones maintained by businesses, organizations, government agencies, or other entities and designated for use in private or restricted areas as "enterprise videophones."[882] In lieu of individual registration, should we also permit such enterprise device registration for equipment used by incarcerated people to access IP Relay and IP CTS? Should the information and documents collected by TRS providers for purposes of such enterprise or individual user registration be the same, or different from, the information and documents currently required by our rules?[883] Are additional safeguards necessary for the provision of certain relay services in

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Individuals with Hearing and Speech Disabilities, CG Docket Nos. 10-51 and 03-123, Report and Order and Order, 32 FCC Rcd 5891, 5897, para. 12 (2017).

[881] 47 CFR § 64.611.

[882] *Id.* § 64.601(a)(16) (defining "enterprise videophone"); *id.* § 64.611(a)(6) (providing for registration of enterprise videophones). The VRS provider must "obtain a written certification from the individual responsible for the videophone, attesting that the individual understands the functions of the videophone[,] that the cost of VRS calls made on the videophone is financed by the federally regulated Interstate TRS Fund," and that the institution "will make reasonable efforts to ensure that only persons with a hearing or speech disability are permitted to use the phone for VRS." *Id.* § 64.611(a)(6)(ii)(A). In addition, the VRS provider must collect and submit to the User Database the following information: (1) the VRS provider's name; (2) the telephone number assigned to the videophone; (3) the name and physical address of the institution (and the Registered Location of the phone, if different from the physical address); (4) the type of location where the videophone is placed within the institution; (5) the date of initiation of service to the videophone; (6) the name of the individual responsible for the videophone, confirmation that the provider has obtained the certification described above, and the date the certification was obtained; and (7) whether the device is assigned to a hearing individual who knows sign language. *Id.* § 64.611(a)(6)(iii).

[883] *See, e.g.*, 47 CFR § 64.611(a)(3)-(4), (6) (listing the registration information to be collected by VRS providers).

the inmate calling services context, to prevent waste, fraud, and abuse?[884] What steps should be taken to ensure that compliance with user registration rules or other TRS rules does not create a significant delay for telecommunication access for incarcerated people with disabilities?

285. Should incarcerated people be able to select the TRS provider they wish to use, or should the TRS provider be selected by the inmate calling services provider serving a facility (or by the facility itself)? Should a TRS provider be required to identify inmate calling services calls in their claims for TRS Fund compensation, or to submit additional or different information to the TRS Fund administrator regarding TRS calls involving incarcerated people?[885] To assist the Commission in evaluating the level of service incarcerated people are receiving, and the effectiveness and efficiency of such service, should we require TRS providers to report annually on the provision of TRS to incarcerated people? What kinds of information should be included in such reports—e.g., identification of the correctional facilities served, the number and type of devices provided at each facility, and the number of minutes handled per facility?

286. Are any changes in the Commission's TRS confidentiality rules necessary to address the security concerns of correctional facilities? For example, section 64.604(a) states:

> Except as authorized by section 705 of the Communications Act, 47 U.S.C. 605, CAs [(communications assistants)] are prohibited from disclosing the content of any relayed conversation regardless of content, and with a limited exception for STS CAs, from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law.[886]

This rule, which the Commission has recognized as fundamental to ensuring that TRS is "functionally equivalent" to voice communications and maintaining the trust of TRS users in the TRS program,[887] applies to TRS providers and their CAs but does not expressly impose obligations on other parties, such as an inmate calling services provider that does not employ CAs and is only providing a communications link to an authorized TRS provider. We tentatively conclude that the existing rule does not prohibit an inmate calling services provider or correctional facility from monitoring the transmissions sent and received between an incarcerated person and the TRS provider's CA, in the same way as they monitor other inmate calls, provided that the TRS provider and CA are not directly facilitating such monitoring. We seek comment on this tentative conclusion. We also seek comment on whether such monitoring that does not require affirmative steps by the TRS provider or CA is sufficient to ensure that a facility's security needs are protected as effectively as for other inmate calls.[888] To the extent that monitoring permitted by the current rule is insufficient to protect institutional security, we seek comment on whether

[884] *See 2018 IP CTS Notice*, 33 FCC Rcd at 5854-57, paras. 117-22 (proposing to require that, when registering users for IP CTS, a TRS provider should obtain a certification of eligibility from a third-party professional).

[885] *See* 47 CFR § 64.604(c)(5)(D) (specifying information that TRS providers must submit to the TRS Fund administrator with requests for TRS Fund compensation).

[886] *Id.* § 64.604(a)(2)(i).

[887] *See* 47 U.S.C. § 225(d)(1)(F) (requiring the Commission to adopt a rule "prohibit[ing] relay operators from disclosing the content of any relayed conversation and from keeping records of the content of any such conversation beyond the duration of the call"); *2000 TRS Order*, 15 FCC Rcd at 5163-64, paras. 53-54 (recognizing that confidentiality is essential to relay service).

[888] We note that, by monitoring transmissions to and from the incarcerated user's device, without involving the TRS provider, the inmate calling services provider or facility would have access to the entire content of the incarcerated person's conversation with the other party to the call. That is, the inmate calling services provider or facility could monitor the incarcerated person's communication directly, and could monitor the speech of the other party as conveyed in text or ASL video by the TRS CA.

there are ways to narrowly address such security needs in order to avoid eroding the legitimate privacy interests of TRS users.

287. We seek comment on whether any other modifications to our TRS rules are necessary to address the special circumstances that characterize inmate calling services. For example, what, if any, changes are needed in the TRS rules governing the types of calls TRS providers must handle (47 CFR § 64.604(a)(3)), the TRS Numbering Directory (47 CFR §§ 64.613, 64.615(a)(1)-(2)), change of default TRS provider (47 CFR § 64.630-64.636), and TRS customer proprietary network information (47 CFR § 64.5101-64.5111)? In the inmate calling services context, should any of the rules under part 64, subpart F, that currently apply to TRS providers be applicable to inmate calling services providers as well—and if so, which rules?

4. Charges for TRS Calls

288. *Prohibition of Provider Charges for TTY-Based TRS Calls*. In 2015, the Commission amended its rules to state that "No [inmate calling services] Provider shall levy or collect any charge or fee for TRS-to-voice or voice-to-TTY calls."[889] Notwithstanding this rule, some commenters allege that some calling service providers are imposing fees on the receiving end of TTY-based TRS calls placed by incarcerated people.[890] In addition, at least one commenter suggests that incarcerated people with disabilities may be subject to charges for using or accessing the TTY or telephone devices needed to make TRS calls.[891] To prevent circumvention of the rule, advocates and VRS providers have requested that the Commission clarify that it does not allow either party to be charged for a TRS call, or for access to equipment when used to place or receive a TRS call.[892] We seek additional comment and information on whether, and to what extent, such practices have continued after section 64.6040(b) of the rules became effective, and by which entities—inmate calling services providers or correctional institutions—such charges are being imposed.

289. We note that, by its terms, section 64.6040(b) prohibits *any* charge for TRS calling, regardless of the person on whom such a charge might be assessed, or whether such a charge is formally applied to the service itself or to a device used to access the service.[893] Nonetheless, to more effectively deter the charging practices described above, we propose to amend the rule to expressly prohibit inmate calling services providers from levying or collecting any charge on *any* party to a TRS call subject to this

[889] 47 CFR § 64.6040(b); *2015 ICS Order*, 30 FCC Rcd at 12923, Appx. A (adoption of the rule section).

[890] Accessibility Coalition Comments at 17-18.

[891] Letter from Blake E. Reid, Counsel to Telecommunications for the Deaf and Hard of Hearing (TDI), to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, CG Docket Nos. 10-51, and 03-123, at 2-3 (filed Feb. 4, 2021) (citing a memorandum by an inmate calling service provider arguing that incarcerated deaf and hard of hearing individuals can be charged to access VRS equipment to make calls, as well as the provider's webpage encouraging this practice).

[892] Accessibility Coalition Comments at 17-18; ZP Reply at 7.

[893] Prior to the adoption of section 64.6040, other provisions of our rules might have been read to suggest that inmate calling services providers were free to charge the called party for TRS calls. Specifically, in the payphone provisions of our rules, adopted more than 20 years ago, section 64.1330(b) states that "[e]ach state must ensure that access to dialtone, emergency calls, and telecommunications relay service calls for the hearing disabled is available from all payphones at no charge to the *caller*." 47 CFR § 64.1330(b) (emphasis added); *First Payphone Order*, 11 FCC Rcd at 20721, Appx. D (adopting the rule section). Similarly, section 64.1300(c) states that "[t]he [payphone] compensation obligation set forth herein shall not apply to . . . *calls by hearing disabled persons* to a telecommunications relay service." 47 CFR § 64.1300(c) (emphasis added). However, we see no basis for inferring that the Commission, in adopting section 64.6040, intended an unstated qualification that similarly limits its application to the assessment of charges on the initiator of a call. In any event, our proposed amendment would put to rest any conceivable doubt that inmate calling services providers are prohibited from charging other parties to a TRS call.

rule, regardless of whether the party is the caller or the recipient and whether the party is an incarcerated person or is communicating with such individual, and regardless of whether the charge is formally assessed on the service itself or on the use of a device needed to make the call. We seek comment on this proposal, including its costs and benefits. We also seek comment on our legal authority in this regard, including section 225 of the Act, which the Commission relied upon in the *2013 ICS Order*,[894] as well as the interplay with section 276 of the Act.[895]

290. *Provider Charges for Other Forms of TRS*. In light of our proposal above to expand the kinds of relay services that incarcerated people are able to access, we also propose to amend section 64.6040 to prohibit inmate calling service providers from charging for other forms of TRS to which an inmate calling services provider provides access. We seek comment on the costs, benefits, and statutory authority for this proposal.

291. To the extent that incarcerated people currently have access to forms of TRS not currently covered by the ban on TRS charges, we seek comment on the extent to which callers or called parties are currently being charged for such TRS calls, and whether such charges are assessed by the inmate calling services provider, the correctional facility, the TRS provider, or another entity. Are the same charges assessed for all types of TRS calls allowed at a given correctional facility, or only some? If certain charges are only being assessed for some types of TRS, which types are being assessed? If charges are imposed on either party for relay calls, what justification, if any, is proffered for imposing such charges? Are incarcerated people with communication disabilities being charged to access equipment needed to make relay calls? If so, how are they being charged (e.g., per use, or per minute), and how much are they being charged? Are there any comparable charges for the use of telephones in correctional facilities? Which entities impose charges for the use of relay equipment in correctional facilities, and what justification, if any, is proffered for such charges? Where charges are *not* imposed for calls involving such additional forms of TRS, how are costs attributable to such calls currently being recovered, and how should they be recovered?

292. To the extent that the Commission has discretion to permit calling service providers to assess charges for non-TTY TRS, to what extent should such charges be allowed? Should the Commission allow charges for some forms of TRS and not others? For example, while VRS cannot be used for video communication unless the user knows sign language, CTS and IP CTS have no similar inherent barriers to use—and consequently are more susceptible to abuse by ineligible users.[896] Could requiring the free provision of CTS and IP CTS create an undesirable incentive for ineligible incarcerated people to place calls using such relay services, simply to avoid the applicable charges for using non-TRS inmate calling services? Are correctional facilities able to effectively mitigate such risks? Should any allowed charges be calibrated, like TTY-to-TTY calls, to take into account that VRS, IP Relay, IP CTS, or CTS calls, like TTY-to-TTY calls, are of longer duration than "functionally equivalent" calls using "voice communications services"? On this point, we invite commenters to submit evidence regarding the relative duration of various kinds of TRS calls and voice calls.

293. *Correctional Institution Charges*. Regarding charges for the use of relay services (whether TTY-based or modern) or related user devices or access services that are imposed directly by a correctional facility, rather than by an inmate calling services provider, we seek comment on whether we have authority to regulate or prohibit such charges, either directly or indirectly, the source of any such authority, and how any such rules should be structured. We also seek comment on the legality of such charges under other laws, including other titles of the ADA.

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[894] *2013 ICS Order*, 28 FCC Rcd at 14159-60, para. 95.

[895] *See, e.g.*, *2015 ICS Order*, 30 FCC Rcd at 12879, para. 236 (observing that "[t]he *2013* [*ICS*] *Order*, . . . did not address the relevance of section 276 to [inmate calling services] provider charges for TRS calls" and going on to consider the role of section 276).

[896] *See generally 2018 IP CTS Order*, 32 FCC Rcd at 5805, para. 9.

5. Direct Video Communication by Incarcerated People with Communication Disabilities

294. *Availability of Direct Communication.* Many incarcerated people with communication disabilities have family and loved ones who also have communication disabilities.[897] Communication with these people requires direct communication without TRS. This is a particular concern for incarcerated persons who are deaf and whose primary language is ASL. For these individuals, direct communication in their primary language requires direct video communication.[898] To facilitate direct communication among ASL users, the Commission has long required VRS providers to handle point-to-point calls between a registered VRS user and another ASL user with an assigned VRS telephone number.[899] Further, the record indicates that the number of correctional facilities that allow some form of direct video communication by incarcerated people has grown in recent years.[900]

295. Because of the key role of video communications for ASL users, because VRS providers are already set up to provide direct video service in conjunction with VRS, and because the equipment and Internet connection needed for VRS is also sufficient for direct video, we propose to require that, wherever inmate calling services providers provide access to VRS, they also provide access to direct video service, through a VRS provider or by another effective method. We seek comment on this proposal, including its costs and benefits and relevant sources of statutory authority. We invite commenters to provide additional information on specific benefits that direct video communication provides, beyond those offered by VRS. In terms of benefits, costs, and feasibility, what are the differences between video visitations, which some facilities currently allow, and direct video communications using VRS provider networks?[901] Is one form of direct video communication generally more available than the other? What are the security concerns, and related costs, with providing direct video communication in ASL using broadband Internet in correctional facilities? How can such concerns be effectively addressed to increase the availability of direct video communication to incarcerated people with disabilities?

296. With respect to direct *text-based* communication for incarcerated people with disabilities, the record is insufficient for us to formulate a proposed rule. What kinds of direct text-based communication services—such as SMS messaging and real-time text—are currently available to incarcerated people with disabilities, and to what extent? Do direct text communications raise security concerns, and if so, how can they be addressed to enable increased availability of text communication to incarcerated people with communication disabilities?

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[897] *See, e.g.*, *Structure and Practices of the Video Relay Service Program et al.*, CG Docket Nos. 10-51 and 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618, 8683, para. 164 (2013) (noting that "upwards of 80-90 percent of all calls made by ASL users on the VRS network are point-to-point" calls between two or more persons with disabilities eligible for VRS).

[898] *See* Impacted People May 14, 2021 *Ex Parte* at 1-3 (describing meetings where individuals who were incarcerated or had incarcerated family members explained the importance of direct video communication to prevent isolation and the insufficiency of alternatives where both parties use ASL to communicate with each other).

[899] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*; *E911 Requirements for IP-Enabled Service Providers*, CG Docket No. 03-123, CC Docket No. 98-67, WC Docket No. 05-196, Second Report and Order and Order on Reconsideration, 24 FCC Rcd 791, 820-22, paras. 65-68 (2008) (requiring VRS providers to facilitate direct video calling between VRS users); *see also Structure and Practices of the Video Relay Service Program*; *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket Nos. 10-51 and 03-123, Report and Order, Notice of Inquiry, Further Notice of Proposed Rulemaking, and Order, 32 FCC Rcd 2436, 2452-55, paras. 38-45 (2017) (amending rules to provide for issuance of VRS telephone numbers to hearing ASL users for direct video calling with VRS users).

[900] *See* Richard Ray Reply at 15.

[901] *See* GTL Comments at 2 ("Video visitation" is one of the GTL's "diverse suite of offerings.").

297. *Charges for Direct Communication*. Our current rules limit the rates charged by inmate calling services providers for TTY-to-TTY calls to no more than 25% of the rates they charge for traditional inmate calling services.[902] We invite comment on whether and how to expand the scope of this rule to include charges for other types of direct communications.

298. First, we seek additional information on current charging practices for other types of direct communications by incarcerated people with communication disabilities. With respect to direct video communication that is currently available in correctional facilities, are incarcerated people being charged for such calls, and if so, how much? Are different charges currently applied to point-to-point videophone calls by sign-language-using individuals with communication disabilities than for video visitation by other incarcerated people? How do charges for direct video communication and video visitation compare with charges for voice telephone calls? Regarding direct text services for incarcerated people with communication disabilities, are there charges for such services? If so, what are the rates? Are there differences in how much incarcerated people with communication disabilities are charged to engage in direct text communication and how much other incarcerated people are charged for similar services?

299. We invite comment on whether the Commission should impose limits on the charges that may be assessed for direct video communications by ASL users, as well as the costs and benefits and our statutory authority for regulating such charges. Are such limits justified by fairness and nondiscrimination considerations, such as those underlying the TTY-pricing rule?[903] For example, should we require that an inmate calling services provider's charges for direct video communication by an incarcerated ASL user should be no greater than the provider's charges for a voice call of equivalent duration? Are similar limits needed and appropriate for direct text communication by people with communication disabilities?

6. Accessibility-Related Reporting

300. As a part of the Commission's Annual Reporting and Certification Requirement, inmate calling services providers are required to submit certain information related to accessibility: (1) "[t]he number of TTY-based Inmate Calling Services calls provided per facility during the reporting period"; (2) "[t]he number of dropped calls the . . . provider experienced with TTY-based calls"; and (3) "[t]he number of complaints that the . . . provider received related to[,] e.g., dropped calls, [or] poor call quality[,] and the number of incidents of each by TTY and TRS users."[904] In the *2015 ICS Order*, the Commission concluded that tracking TTY-based calls would not be overly burdensome because: (1) TTY-based TRS calls make up only a small portion of inmate calling services calls; and (2) the need for specialized equipment or calling a designated TRS number (such as 711), or both, makes tracking easier.[905] The Commission also found the burdens of reporting TTY-based calls to be far outweighed by the benefits of greater transparency and heightened accountability on the part of inmate calling services providers.[906] In the same order, the Commission established a safe harbor, allowing inmate calling services providers to avoid TRS-related reporting obligations if: (1) the provider operates in a facility that allows additional forms of TRS beyond those already mandated by the Commission, or (2) the provider has not received any complaints related to TRS calls.[907] Although the TRS-related reporting may not be

[902] 47 CFR § 64.6040; *2015 ICS Order*, 30 FCC Rcd at 12880, para. 238.

[903] *See 2015 ICS Order*, 30 FCC Rcd at 12880, para. 237-38.

[904] 47 CFR § 64.6060. Inmate calling services providers must submit annual reporting and certifications forms to the Commission by April 1 of each year. Required information to submit include international, interstate, and intrastate inmate calling services rates and ancillary service charges. *Id.*

[905] *2015 ICS Order*, 30 FCC Rcd at 12882, para. 245.

[906] *2015 ICS Order*, 30 FCC Rcd at 12882-83, para. 245.

[907] *Id.* at 12883, para. 246.

required under this safe harbor, the provider would need to provide a certification from an officer of the company stating which prong(s) of the safe harbor the provider has met.[908] This safe harbor was adopted to help encourage correctional facilities to adopt more modern forms of TRS.[909] Accessibility Coalition requests that the Commission expand the reporting requirement to foster accountability on the part of inmate calling services providers, and to eliminate the safe harbor.[910] Generally, GTL is opposed to additional data collection on the basis it would create an administrative burden.[911]

301. Given our proposal to expand the types of TRS that inmate calling services providers are required to provide, we seek comment on whether to expand the inmate calling services providers' reporting requirements to include all other accessibility-related calls. What are the benefits or burdens, including on small entities, of imposing these additional requirements? Has our safe harbor, in fact, driven more correctional facilities to adopt forms of TRS other than TTY-based TRS and STS? If the reporting requirements are expanded to include other types of TRS, should the safe harbor be modified so that inmate calling services providers can avoid TRS-related reporting obligations only if they have not received complaints related to TRS calls? Alternatively, should the Commission eliminate the safe harbor and require all inmate calling services providers to report the required information?

B. Permanently Capping Provider- and Facility-Related Rate Components

1. Overall Methodology

302. We seek comment on what methodology we should use to permanently cap provider-related rate components for interstate and international inmate calling services. In the Report and Order we adopt today, we use data from the Second Mandatory Data Collection to establish zones of reasonableness from which we select separate interim provider-related rate caps for prisons and larger jails. Although those data are more than sufficient to support the interim rate caps, we recognize that more disaggregated, consistent and uniformly reported data will be needed for us to set permanent rate caps for interstate and international inmate calling services that more accurately reflect the cost of providing inmate calling services, including to jails with average daily populations less than 1,000. Accordingly, we establish another Mandatory Data Collection to enable us to obtain those data.

303. We seek comment on how we should use the data from the Mandatory Data Collection in establishing permanent provider-related rate caps for interstate and international inmate calling services. Should we use those data to calculate industry-wide mean contract costs per paid minute of use, and the associated standard deviation, in the provision of calling services to incarcerated persons? Should we, instead, analyze costs at the facility level, which seems necessary to capture potential differences in costs associated with smaller facilities? If so, how would we do that if providers keep their costs only on a contract basis? Does that fact suggest that, for any particular contract, so long as the permanent rate caps enable the provider to recover the contract costs for interstate and international services without regard to the different facilities comprising the contract, the caps would be consistent with the fair compensation provision of section 276 of the Act? Or should we use an alternative methodology and, if so, what methodology should we use?

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[908] *Id.*

[909] *Id.*

[910] Accessibility Coalition Comments at 18; Accessibility Coalition Reply at 4-5. Specifically, they ask to include the functionality and status of accessible equipment in correctional facilities in the reporting requirements. At this time, we do not propose a rule on reporting of accessible equipment by inmate calling services providers, pending further information and analysis regarding the current availability of such equipment and the role of inmate calling services providers in providing such equipment.

[911] *See* GTL Comments at ii (asking the Commission to "avoid burdening [inmate calling services] providers with additional data collections when the Commission already receives annual data from [inmate calling services] providers").

304. We also seek comment on whether we should employ a zone of reasonableness approach in establishing permanent rate caps. If so, should we establish separate zones of reasonableness for prisons, larger jails, and jails with average daily populations less than 1,000? Or should we use different groupings of facilities? Precisely how should we establish the upper and lower bounds of the zones of reasonableness for each group of facilities? Should we follow the approach set forth in the Appendices to the Report and Order in developing the database that we use to set any upper and lower bounds? If not, what alternative approach should we take? What other steps, if any, should we take to make sure that any upper and lower bounds reflect the costs of providing interstate and international inmate calling services? And what criteria should we use in picking interstate rate caps from within those zones? How should we determine permanent rate caps if we do not use a zone of reasonableness approach? Should we set the caps at our best estimates of industry-wide mean costs per paid minute of use plus one standard deviation or should we use another methodology? And, if so, what methodology should we use?

305. Our rules preclude providers from imposing on consumers of interstate inmate calling services any charges other than per-minute usage charges and the permissible ancillary services fees.[912] We invite comment on whether we should consider alternative rate structures, such as one under which an incarcerated person would have a specified—or unlimited—number of monthly minutes of use for a predetermined monthly charge.[913] Should providers be permitted to offer different options of rate structures as long as one of their options would ensure that all consumers of inmate calling services have the ability to choose a plan subject to the Commission's prescribed rate caps?[914] Would such an optional rate structure benefit incarcerated persons and their families?[915] Or would a different alternative rate structure be preferable?[916] Securus requests that the Commission adopt a waiver from per minute requirements to allow ICS providers to establish alternative rate-based pilot programs to allow families the option of utilizing a flat rate plan.[917] Securus also requests that we adopt a presumption in favor of granting such waiver requests upon a showing that the alternative rate plan would result in a lower effective rate than the interim provider-related per minute rate caps.[918] We seek comment on whether we should adopt such a waiver process, including the presumption Securus seeks. What incremental costs, if any, would providers incur to develop an alternative rate structure and implement it on an ongoing basis? We ask interested parties to address the relative merits of different rate structures and their impact on calling services consumers and providers.

[912] 47 CFR §§ 64.6020, 64.6030, 64.6080, 64.6090.

[913] *See* Securus May 13, 2021 *Ex Parte* at 1-2 (describing the potential benefits of optional calling plans allowing incarcerated people to make a set number of interstate and intrastate calls monthly for a predetermined flat rate). Instead of the more traditional per-minute rate approach, some cities and providers are moving towards alternative rate structures including free calling plans for incarcerated people and their families. Worth Rises Comments at 11; Securus May 13, 2021 *Ex Parte* at 1-2. These cities sometimes even preclude providers from bidding on a per-minute basis and instead require them to bid on the entire contract or a per phone line lease. Worth Rises Comments at 11.

[914] *E.g.*, Securus Comments at 47-48 (asking that the Commission to permit providers to offer alternative calling plans including plans allowing the purchase of blocks of minutes in advance or unlimited calling minutes to reflect the developments in the inmate calling services marketplace); Securus May 13, 2021 *Ex Parte* at 1-2.

[915] For example, incarcerated people and their families enjoy free telephone calling in New York City and San Francisco for calls made from jails. Worth Rises Comments at 11.

[916] Financial Justice Project Comments at 1 (noting a sharp increase in call volumes since introducing a free call plan for county jails).

[917] Securus May 13, 2021 *Ex Parte* at 2.

[918] *Id*. at 2-3.

2. Provision of Service to Jails with Average Daily Populations Below 1,000

306. In the *2020 ICS Notice*, the Commission sought comment on its proposal to adopt a single interstate rate cap for prisons and a single interstate rate cap for jails.[919] The Commission asked, however, whether there are differences in providers' costs to serve different types of facilities, and, if so, how it should take those differences into account in setting interstate rate caps for different types of facilities.[920] We now seek to expand the record on these matters.

307. The available data do not make clear how, if at all, jail size affects the costs providers incur in providing inmate calling services. Securus asserts that jail size is a "critical cost factor" in providing calling services to incarcerated people,[921] identifying jails with average daily populations less than 1,000 as being the most costly to serve.[922] The National Sheriffs' Association, for example, contends that there are a number of factors that result in jails with fewer incarcerated people having higher costs per minute, noting that jails are typically operated by local jurisdictions that are under the authority of the county government or an elected sheriff, and that jails lack the economies of scope and scale of federal or state prisons.[923] The National Sheriffs' Association's 2015 survey shows, in general, that jails with larger average daily populations have lower per-minute costs than jails with average daily populations less than 1,000,[924] but even if this is the case, would the fact that the jails themselves may have higher costs make providers' costs to provide service at jails with fewer incarcerated people any higher? Pay Tel's outside consultant argues that "some locations, particularly small jails, have characteristics that make them more costly for an [inmate calling services] provider to serve, and that the higher level of costs precludes any ability to pay site commissions."[925] Is this the case for other providers as well? High turnover rates may play a role, as Pay Tel explains, because "the cost of establishing service or 'selling' to a new customer is greater than the cost of continuing to service or maintain an existing customer."[926] But to the extent providers are able to recover the cost of account setup and funding through ancillary service fees, how does setting up new accounts for newly incarcerated people differ in any material way from funding existing accounts?

308. We seek comment on the particular factors that result in higher costs of serving jails having average daily populations below 1,000 and ask commenters to address how we should take those factors into account in setting permanent interstate rate caps using data from the upcoming Mandatory Data Collection. Are there characteristics that are consistent across all jails with average daily populations less than 1,000 and that contribute to making those facilities more costly to serve on a per-minute basis? What factors affect providers' costs of serving these jails? Are the characteristics that make it more costly to serve these jails related to size, geography, state or local law, or other factors? Does the length of the average incarcerated person's stay influence providers' costs of serving jails having average daily populations below 1,000 and, if so, how? What one-time costs, if any, do providers incur when first offering service to a newly incarcerated person that differ from the costs of the services permitted under our ancillary services rules? What is the effect of turnover of incarcerated people in jails with average daily populations less than 1,000 on a provider's cost to serve that jail? Finally, are there other cost categories, such as account setup, customer service, or refund processing, that the Commission

[919] *2020 ICS Notice*, 35 FCC Rcd at 8511, para. 75.

[920] *Id*.

[921] Securus Comments at 10.

[922] *See* National Sheriffs' Association Reply at 2; Pay Tel Reply at 13-15; *see also* Pay Tel Wood Report at 24.

[923] National Sheriffs' Association Comments at 8.

[924] *Id.* at 7-8.

[925] Pay Tel Wood Report at 24.

[926] Pay Tel July 3, 2013, *Ex Parte* at 2.

should consider in determining appropriate rate caps for jails having average daily populations below 1,000? Commenters are asked to share any additional information that may be relevant for the Commission to consider in establishing new permanent rate caps for jails with average daily populations less than 1,000 vis-à-vis larger jails.

309. We also seek comment on how our methodology for setting permanent interstate rate caps can quantify the factors that make jails with average daily populations less than 1,000 more costly to serve than prisons and larger jails. What steps should we take to distinguish the direct costs of serving these jails from the direct costs of serving prisons and larger jails? How can we ensure that jails with average daily populations less than 1,000 are allocated an appropriate proportion of providers' common costs? Should we use a combination of allocation methods to apportion those costs among facilities and, if so, what allocation methods should we use?

310. Finally, we seek comment whether the current definition of the average daily population sufficiently addresses fluctuations in jail populations and variations in how correctional facilities determine average daily populations. Currently, our rules define the average daily population as "the sum of all inmates in a facility for each day of the preceding calendar year, divided by the number of days in the year."[927] However, the record suggests that average daily populations may fluctuate, and "[v]arious states and localities track these numbers differently."[928] Should we modify the definition and if so, how? What other steps, if any, should we take to ensure that average daily populations are determined on a consistent basis for all correctional facilities?

3. Correctional Facility Costs

311. In the Report and Order we adopt today, we reform, on an interim basis, the current treatment of site commission payments related to inmate calling services for prisons and larger jails based on the record before us.[929] We permit recovery of payments or portions of site commission payments mandated by federal, state or local law or regulation (legally mandated) and those resulting from contractual obligations imposed by correctional facilities or agencies (contractually prescribed). For legally mandated site commission payments, we permit providers to pass through these payments to consumers, without any markup, up to a maximum total interstate rate of $0.21 per minute. For contractually prescribed payments, we adopt a new interim rate component of up to $0.02 per minute for both prisons and larger jails.[930] We refrain from including jails with average daily populations less than 1,000 from today's interim rate cap reforms because we find the record information insufficient to reasonably consider such reforms, including for discretionary site commission payments, at this time. We seek comment to supplement the record to account for this fact, specifically with respect to facility costs reflected in site commission payments. We seek broad comment on potential site commission reforms with respect to all correctional facilities. ICSolutions requests that we require in-kind site commission payments to be explicitly stated on consumer bills.[931] We seek comment on this request. Would such a requirement be administratively difficult and confusing to consumers? We also seek more targeted data and detailed information that would better enable us to undertake further reforms in how providers recover site commission payments going forward, especially for jails with average daily populations less

[927] *See* 47 CFR § 64.6000(c).

[928] UCC May 14, 2021 *Ex Parte* at 1.

[929] We use the term "larger jails" to refer to facilities with average daily populations greater than or equal to 1,000.

[930] *Supra* Part III.C.4.

[931] ICSolutions May 12, 2021 *Ex Parte* at 1.

than 1,000,[932] if permitted at all, that are legitimately related to, and necessary for, the provision of inmate calling services.[933]

312. In *GTL v. FCC*, the court left it to the Commission to determine "*which portions* of site commissions *might be directly related to the provision of ICS and therefore legitimate*, and which are not."[934] As the Commission explained in the *2020 ICS Notice*, site commissions have two components: compensating facilities for the costs they incur in providing inmate calling services and compensating the facilities for the transfer of market power over inmate calling services from the facilities to the providers.[935] Prior to the *2016 ICS Reconsideration Order*, the Commission viewed these payments solely as an apportionment of profits between providers and correctional facility owners even though it recognized some portion of site commission payments may be attributable to legitimate facility costs.[936] In the *2016 Reconsideration Order*, the Commission recognized that "some facilities likely incur costs that are directly related to the provision of [inmate calling services]," and determined that "it is reasonable for those facilities to expect [inmate calling services] providers to compensate them for those costs . . . [a]s a legitimate cost of [inmate calling services]."[937] But, as the Public Interest Parties' expert explains, it is "difficult to disentangle which part of the site commission payment goes towards reasonable costs and which portion is due to the transfer of market power."[938] Even the National Sheriffs' Association acknowledges that some portion of site commission payments are "locational rents," while other parts may be attributable to other factors.[939] How and where should the Commission draw the line between legitimate and illegitimate portions of site commissions? We seek comment on the specific costs that we should consider to be legitimate for recovery through site commission allowances as the Commission moves from the interim steps we take today to a more permanent policy. Specifically, what costs are directly related to, and necessary for, the provision of inmate calling services?[940] What costs are too attenuated or indirect to be directly related to the provision of inmate calling services? Commenters should be as specific as possible in describing specific costs or cost categories. If commenters identify categories of costs that they believe are directly related to the provision of inmate calling services, those commenters should identify with specificity what those costs cover and why they would not be incurred but for the fact that inmate calling services are provided at that facility.

313. *Methodology to Estimate Costs*. We also seek comment on other methodologies to estimate correctional facility costs directly related to the provision of inmate calling services and whether and how the Commission should consider accounting for legitimate facility costs related to inmate calling in the future. Should we continue to permit recovery through an additive per-minute rate component like the interim $0.02 rate component we adopt today for larger jails and prisons? Should we consider some other method of recovery such as a flat fee per billing period or on a per-call basis? We seek comment, generally, on any other factors that we should consider in determining legitimate facility-related costs to enable inmate calling services and whether those costs are reflected in site commission payments or

[932] Although in some places we use the term "smaller jails" to refer to facilities with average daily populations less than 1,000, that usage is not meant to imply that such jails are small in any absolute sense.

[933] *See, e.g.*, Worth Rises Mar. 24, 2021 *Ex Parte* at 3.

[934] *GTL v. FCC*, 866 F.3d at 414 (emphasis added).

[935] *2020 ICS Notice*, 35 FCC Rcd at 8520, para. 100.

[936] *See, e.g.*, *2016 ICS Reconsideration Order*, 31 FCC Rcd at 9307, para. 12.

[937] *Id.*

[938] Public Interest Parties Brattle Reply Report at 14.

[939] National Sheriffs' Association Comments at 6.

[940] UCC and Public Knowledge Mar. 31, 2021 *Ex Parte* at 5 (explaining that "[a]s long as the FCC carefully reviews costs that are proposed to be included and determines which of those costs are 'directly related' to communications service provision, it will have fulfilled its obligations under *GTL*").

recovered by facilities in some other way, and whether it is appropriate to even permit providers to recover those costs from end users of inmate calling services. If they are recovered through other means, how best can the Commission account for that fact so as to ensure there is no double recovery at the expense of incarcerated people and their families?

314. Given the difficulties and complexities evidenced in accounting for and isolating what portion of site commission payments may be related to legitimate facility costs for enabling inmate calling, should we simply consider prohibiting providers from entering into any contract requiring the payment of contractually prescribed site commissions for interstate and international calling services? Would such a prohibition be the best way to ensure incarcerated people and their families do not bear a financial burden that is unrelated to costs necessary to provide their calling services? We believe section 201(b) of the Act provides sufficient authority for us to prohibit such payments. Do commenters agree? What other legal authority do we have to make this determination? Would restricting such payments ensure that providers recover fair compensation pursuant to section 276 of the Act? Would prohibiting such payments eliminate the incentive for facilities to select providers that pay the highest site commissions, even if those providers do not offer the best service or lowest rates?[941] Would prohibiting such payments encourage facilities to allow multiple providers of inmate calling services to serve a given facility, instead of awarding monopoly franchises? Does permitting providers to recover any portion of site commission payments through interstate and international rates decrease incentives of providers to negotiate with facilities to lower or eliminate such payments altogether? We seek comment on whether contractually prescribed site commissions are commonly paid on intrastate calls. If so, will the ability to charge site commissions on intrastate calls render ineffective any Commission efforts to encourage correctional facilities to prioritize the selection of providers with the best service or lowest rates, rather than those which pay the highest site commission?

315. We seek comment on legally mandated site commission payments. As Judge Pillard explained in her dissent in *GTL v. FCC* and as the United Church of Christ and Public Knowledge emphasize, "the fact that a state may demand them does not make site commissions a legitimate cost of providing calling services."[942] Do commenters agree? Why or why not? If there is a legal requirement to pay site commissions in a state, on what basis could we say that this legal requirement is not recoverable through interstate inmate calling services rates? Should we preempt state or local laws that impose these payments on interstate and international calling services because they interfere with federal policy and our statutory duty to consumers of inmate calling service that their interstate rates be just and reasonable?[943] What effect would such a prohibition have on inmate calling services? How do these various possible approaches comport with sections 201(b) and 276 of the Act, and cases interpreting those provisions, including *GTL v. FCC*? Would preventing providers from paying site commissions (or certain types of site commissions) comport with principles of federalism? Should the Commission consider continuing to allow the payment of site commissions but prohibit the recovery of any portion of site commissions in interstate and international rates?

316. *Facility Costs for Jails with Average Daily Populations Less Than 1,000*. Several commenters responding to the *2020 ICS Notice* argue that a $0.02 rate component is inadequate for

[941] *See, e.g.*, GTL Godek Report at 21 (explaining that "site commissions . . . are determined through the various competitive processes used in the award of [inmate calling services] contracts"); *GTL v. FCC*, 866 F.3d at 404 ("In awarding contracts to providers, correctional facilities usually give considerable weight to which provider offers the highest site commission . . . ."); *see also James v .GTL*, 2018 WL 3727371, at *2 (D.N.J. 2018) ("Indeed, GTL's [Chief Financial Officer,] Stephen Yow, agreed that site commissions were probably the most important feature of [inmate calling] service[s] agreements.") (citations omitted).

[942] *GTL v. FCC*, 866 F.3d at 424 (Pillard, J. dissenting); UCC and Public Knowledge Mar. 31, 2021 *Ex Parte* at 4.

[943] *See* UCC May 12, 2021 *Ex Parte* (highlighting that "the Commission often preempts legislative state or local action"); UCC May 14, 2021 *Ex Parte* (requesting that the Commission "preempt commissions which would cause rates to exceed the caps set by the FCC").

smaller jails to recover their costs related to inmate calling services. They point to the National Sheriffs' Association 2015 cost survey to support the claim that "the per minute cost incurred by the vast majority of Sheriffs and jails for security and administrative duties associated with [inmate calling services] greatly exceeds $0.02 per minute."[944] Pay Tel contends that a uniform $0.02 allowance for all size facilities is at odds with the Commission's tiered treatment of site commissions in the *2016 Reconsideration Order*, which adopted higher allowances for smaller facilities, based on a finding that those facilities incur higher per-minute costs than larger facilities.[945] Here, commenters suggest that legitimate facility costs related to inmate calling services may indeed be higher for smaller facilities.[946] Unfortunately, they did not provide sufficient evidence to enable us to quantify any such costs.

317. We seek that comment now. While the National Sheriffs' Association points us to its 2015 survey for evidence that correctional facility costs for smaller facilities are higher, the survey data for jails with fewer incarcerated people varied far too widely to comfortably estimate any values that would withstand scrutiny today. This is particularly the case when even the National Sheriffs' Association itself explains that "each individual jail facility has its own per minute cost because of differences in officer, supervisor and other employee hours spent on various duties; the compensation rates for officer, supervisors and other employees; and differences in minutes of use,"[947] and states that in some cases, jails with similar average daily populations have "significantly different cost per minute."[948] We understand there are many potential variables that impact facilities' cost of enabling inmate calling services inmate calling services in addition to size.[949] We seek detailed comment on those variables, including jail funding sources that may come from state or local government budgets to offset these costs.

318. We seek comment on what costs, if any, jails with average daily populations less than 1,000 incur related to the provision of inmate calling services that prisons and larger jails may not incur. If costs are indeed higher, either in an absolute sense or on a per-unit basis, at jails with average daily populations less than 1,000, what are the characteristics that make those facilities more costly to serve? Are these characteristics related to geography, state or local law, or other factors, and if so, how should we account for that in our facility-rate component analysis? Are there particular factors or characteristics that are consistent across all jails with average daily populations less than 1,000? We encourage commenters, especially correctional facilities and agencies, to provide detailed descriptions and analyses of the cost drivers for jails with average daily populations less than 1,000.

319. We also seek comment on the effect of turnover of incarcerated people in jails with average daily populations less than 1,000. The National Sheriffs' Association explains that jails "contain people who have been arrested and not convicted and, as a result they experience a much greater number of admissions and higher turnover."[950] Pay Tel's outside consultant points to data previously submitted by Pay Tel estimating that the average weekly turnover is 62.2% for jails compared with 1.01% for prisons.[951] According to Pay Tel, this turnover impacts both provider and facility costs.[952] While these

[944] National Sheriffs' Association Comments at 7; National Sheriffs' Association Reply at 2-3; *see also* NCIC Reply at 1.

[945] Pay Tel Comments at 12; National Sheriffs' Association Comments at 9 (jails with larger average daily populations have lower per-minute costs); *see also 2016 ICS Reconsideration Order*, 31 FCC Rcd at 9315, para. 27.

[946] Securus Cost Study at 17; *see also* Securus Comments at 33 (asserting that "commissions in large part are impacted by facility size and differ between county jail facilities and prisons").

[947] National Sheriffs' Association Comments at 9.

[948] *Id.*

[949] California State Sheriffs' Association Comments at 1-2.

[950] National Sheriffs' Association Reply at 2; *see also* National Sheriffs' Association Comments at 9 (explaining that "smaller jails have a much higher weekly turnover rate than larger jails").

[951] Pay Tel Wood Reply Report at 13.

turnover costs might lead to increased costs for the provider due to, for example, larger numbers of account setups and larger quantities of called numbers to be vetted,[953] do they similarly increase costs for the facility? If so, how and by how much, and how is that related specifically to inmate calling services? The National Sheriffs' Association explains that the relatively shorter stays in jails with fewer incarcerated people leave correctional facilities with less time to recover their costs from incarcerated people which, in turn, leads to higher "per inmate cost" in these jails."[954] We seek detailed comment and analysis on the relationship between turnover and correctional facilities' costs, but more specifically, between turnover and inmate calling service costs. For example, if an intake process requires certain tasks associated with newly incarcerated people, including explaining the availability of inmate calling services, we see no reason why any portion of the costs of that intake process should be included as a legitimate facility cost related to inmate calling. This is because intake procedures are not specific to the provision of inmate calling services. Facilities incur costs related to these procedures regardless of whether the correctional facility staff explain the availability of inmate calling services. We also seek data regarding turnover rates and legitimate facility costs unique to jails with average daily populations less than 1,000, if any. We also seek specific information and comment on how we avoid duplication in cost recovery for inmate calling services-related costs that both facilities and providers say they incur for the same functions. Commenters should be specific in identifying cost categories and providing supporting data for each category.

320. Pay Tel, which "serves many small facilities," indicates that it has experienced increases in site commissions over the last four years, but there is no indication that these increases are attributable to legitimate facility costs related to inmate calling services.[955] What accounts for these increases and why should incarcerated people and their families bear the burdens of these costs when other services are provided to incarcerated people for which they need not pay any fee or rate? Is there any evidence such increases have any relationship to inmate calling services at all except that they are being extracted from an inmate calling services provider? Do these increases reflect other market dynamics, such as providers offering increasingly larger site commissions? Have other providers that serve smaller facilities observed a similar trend? Is this increase attributable to smaller facilities undertaking a greater share of administrative and security tasks that calling providers would ordinarily perform for larger facilities?[956] Are these increases observed at all jails with average daily populations less than 1,000 or only at the jails with the fewest people? Conversely, have other providers experienced a decrease in site commissions at smaller facilities in recent years? If so, what has caused this decrease? We encourage commenters to submit current data and detailed analyses of these increases or decreases and to what they are attributable to enable the Commission to better understand cost causation at these smaller facilities. We also seek comment on whether providers have sought to pay lower site commissions in connection with inmate calling services and whether such attempts have been rebuffed or successful.

321. Some commenters advocate for a tiered jail structure based on average daily population, with the jails with the fewest incarcerated people receiving the largest per-minute facility-related cost recovery.[957] We seek comment on whether we should adopt separate tiers that distinguish between jails

(Continued from previous page)
[952] *Id.*

[953] *Id.* (explaining that these tasks "increase the costs to an [inmate calling services] provider to serve the facility because it is a jail rather than a prison with the same [average daily population]").

[954] National Sheriffs' Association Comments at 9.

[955] Pay Tel Comments at 13.

[956] *See* Pay Tel Reply at 9 (explaining that small and mid-sized facilities perform certain administrative and security tasks that calling service providers generally perform).

[957] Pay Tel Comments at 12; Pay Tel Reply at 11-12; National Sheriffs' Association Comments at 9; National Sheriffs' Association Reply at 1.

with average daily populations of less than 350 and somewhat larger jails (e.g., those with average daily populations of 350 to 999). If so, what tiers should we adopt? The Commission previously adopted site commission allowances for tiers that reflected three categories of incarcerated people (i.e., jails with average daily populations below 350; medium-sized jails with average daily populations of 350 to 999; and larger jails). Should we adopt these same tiers or different sizes or number of tiers? If so why? Or would a single tier covering all jails with average daily populations below 1,000 be more appropriate? Alternatively, should we conclude, as certain commenters suggest, that a uniform facility-related allowance is the most appropriate if any such allowance is permitted? Commenters arguing that we should adopt different site commission rate components based on jail size should provide data and supporting analysis for any proposals submitted.[958]

322. *Facility Costs for Prisons and Larger Jails*. We also seek comment on whether we should further reduce or eliminate the $0.02 rate component allowance for contractually prescribed site commissions for prisons, larger jails, or both. We seek comment on the same questions we pose for jails with average daily populations less than 1,000 regarding what factors impact a facility's legitimate costs to enable inmate calling services. Should we consider different tier sizes for larger jails? For example, the National Sheriffs' Association proposes categorizing the largest jails as those with average daily populations exceeding 2,500.[959] What would be the basis for different-sized tiers for prisons and larger jails? Are there material differences in unit costs that facilities reasonably incur as sizes increase? As explained above in connection with jails with average daily populations less than 1,000, there is record evidence suggesting that small facilities incur higher costs due to turnover of the incarcerated population.[960] Are larger jails and prisons similarly affected by turnover rates? If not, what effect, if any, does turnover have at larger facilities? As we do for jails with average daily populations less than 1,000, we ask commenters to provide data on turnover rates for prisons and larger jails.

323. *Security and Surveillance*. Several commenters argue that facilities' security and surveillance costs should not be recovered through inmate calling services rates as these tasks are "not related to the provision of communication service and provide no benefit to consumers."[961] Others argue that these costs should be recovered through providers' calling rates because correctional facilities incur them to provide incarcerated people with access to inmate calling services.[962] In the survey data the National Sheriffs' Association provided, facilities reported often hundreds of hours a week on security and related administrative functions associated with inmate calling.[963] How can we ensure that these

[958] Pay Tel and the National Sheriffs' Association ask us to consider the data that are already in the record. Pay Tel Comments at 11-13; Pay Tel Reply at 7; *see* National Sheriffs' Association Comments at 7-8. But Pay Tel's representation that it has seen upticks in site commission costs at some of the smaller facilities it serves suggests that the landscape has changed since those data became part of the record in this proceeding. Pay Tel Comments at 13. We therefore request renewed data and analysis regarding reasonable inmate calling services costs at facilities with average daily populations between 0 and 999.

[959] National Sheriffs' Association Comments at 8.

[960] *See, e.g.,* Pay Tel Wood Reply Report at 13.

[961] Worth Rises Comments at 8; MediaJustice Comments 2 ("The Commission should not incorporate the cost of security and surveillance in rates."); Public Interest Parties Reply at 9 ("Constant observation of incarcerated people is a core function of jail and prison facilities, not a function specific only to [inmate calling services]."); UCC and Public Knowledge Mar. 31, 2021 *Ex Parte* at 3 (arguing that simply because a facility "contracts for security and monitoring services with the same provider that it chooses for the provision of the underlying communications service . . . does not mean that it has become a communications provider entitled to pass on those costs to telephone consumers"); UCC Apr. 26, 2021 *Ex Parte* at 1 (explaining that "security services are not regulated telecommunications services").

[962] GTL Comments at 28; National Sheriffs' Association Comments at 3 (listing various security and administrative functions).

[963] National Sheriffs' Association Jan. 12, 2015, Comments, Exh. A.

functions are not normal security functions a facility already incurs?[964] How can we determine to what extent some of these security-related costs are for services that should more appropriately be deemed to be general security services that are added on to inmate calling services but not actually necessary to the provision of the calling service itself? In other words, we seek to determine if inmate calling service providers are providing two different services to facilities when it comes to these so-called security and surveillance costs: (1) a communication service that enables incarcerated people to make telephone calls; and (2) a separate security service that aids the facility's general security efforts but would more appropriately be paid for directly by the facility rather than by the users of the communications service who receive no benefit from these security features that are unnecessary to enable them to use the calling service.[965] We also note that the functions described by the National Sheriffs' Association appear to duplicate many of the same security functions for which providers reported costs.[966] What types of security and surveillance functions, if any, are appropriately and directly related to inmate calling? For example, ICSolutions suggests that a basic phone system requires security related to identifying the incarcerated individual placing a call, restricting who that individual can and cannot call, providing the called party with the ability to accept, reject, or block the caller, and providing the facility with the ability to monitor and record calls.[967] ICSolutions suggests that anything more than this is not required for secure calling and that additional products are "gold-plated offerings."[968] What functions should be disallowed as too attenuated to claim as legitimate costs? What methodology would permit the Commission to verify or otherwise isolate telephone calling-related security and surveillance costs from general security and surveillance costs in correctional facilities? Worth Rises cautions that isolating and thus being able to quantify calling-related security and surveillance costs is an important step in determining how, if at all, such costs should be recovered through rates.[969] We seek comment on how to isolate and quantify these from general security and surveillance costs.

324. *Obtaining Correctional Facility Cost Data*. Several commenters discuss the difficulty in determining facilities' actual costs related to the provision of inmate calling services from examining providers' reported costs.[970] For example, GTL asserts that correctional facilities "are in the best position

[964] *See* Worth Rises Mar. 24, 2021 *Ex Parte* at 2 (arguing that security and surveillance services "are a cost of operating prisons and jails, not providing communication service—no different than the security and surveillance of mail or visit rooms," and further explaining that the "presence or absence of security and surveillance services does not actually prevent or enable communication"); UCC and Public Knowledge Mar. 31, 2021 *Ex Parte* at 3 (explaining that "[t]he very services considered in the [*2016 ICS Reconsideration Order*]—monitoring costs, blocking and unblocking numbers and enrolling [incarcerated people] in voice biometrics services—are security costs that are part of carceral functions, not communications functions").

[965] Worth Rises Mar. 24, 2021 *Ex Parte* at 1-3.

[966] *Compare* National Sheriffs' Association Jan. 12, 2015, Comments at 2-3 (asserting that costs for security and administrative duties performed by facility staff should be recovered through rates consumers pay for inmate calling services) *with* Prisoners' Legal Services Comments Attach. 1, at 13 n.15 (explaining that the costs of certain security features that Securus provides in Essex County, Massachusetts—Automated Information Services, Investigator Pro, Threads, and "Guarded Exchange" call monitoring—are subtracted from the 50% site commission).

[967] ICSolutions May 12, 2021 *Ex Parte* at 1-2. This is consistent with the position of Worth Rises, which argues that providers "have routinely introduced new security and surveillance services that are not required by procuring agencies." *See* Worth Rises Mar. 24, 2021 *Ex Parte* at 2. The United Church of Christ, however, disagrees with ICSolutions's assertions about "what is considered a minimum necessary service for the consumer, as opposed to the carceral facility." UCC May 14, 2021 *Ex Parte* at 2.

[968] *Id.* at 2.

[969] *Cf.* Worth Rises Comments at 9 (suggesting that isolating security and surveillance costs would facilitate greater visibility into provider rate structures and bids).

[970] Securus Comments at 31-32 (claiming it "has not analyzed the costs that correctional facilities incur directly related to [inmate calling services]").

to provide information regarding their costs related to [inmate calling services]," which fall into several generic categories, namely "administrative security, monitoring investigative, maintenance, and staffing."[971] The National Sheriffs' Association again points to its 2015 survey as the most recent data available about correctional facility costs as reported by correctional officials.[972] Are the data from the National Sheriffs' Association survey accurate today regarding the functions and related costs that jails legitimately incur in connection with inmate calling services? We invite the National Sheriffs' Association and others to provide updated data and analysis in this regard. We also seek comment more broadly on how we can obtain reliable data on correctional facility costs. Are there specific questions we could ask of providers or other stakeholders that would elicit data appropriate to establish a permanent allowance for recovering legitimate facility-related costs that are included in site commission payments? Should we condition any rate element for correctional facility costs on the provision of reliable correctional facility cost data provided to us by the facilities themselves?[973] Or should we specify a default rate cap, similar to the $0.02 per minute that we adopt on an interim basis in the accompanying Report and Order, and disallow recovery of any amount above that default rate cap absent the provision of reliable facility cost data that supports a higher rate cap?

C. Revising Ancillary Service Charges Rules

325. We seek comment on our current rules for permitted ancillary service charges, and whether we should revisit the rules and the level of charges. Ancillary service charges are fees that providers of calling services for incarcerated people assess on calling services consumers[974] that are not included in the per-minute rates assessed for individual calls.[975] Currently, the Commission allows five types of ancillary service charges in connection with interstate or international inmate calling services:

(1) Fees for Single-Call and Related Services;

(2) Automated Payment Fees;

(3) Third-Party Financial Transaction Fees;

(4) Live Agent Fees; and

(5) Paper Bill/Statement Fees.[976]

326. The Commission has explained that these charges are unchecked by market forces because incarcerated people and their families must either incur them when making a call or forego contact with their loved ones.[977] Ancillary charges have in the past drawn Commission scrutiny and reform because they were excessive and not cost-justified.[978] The record reflects concerns that consumers may still be overpaying ancillary service charges in various ways.[979] We seek comment on these

[971] GTL Comments at 28.

[972] National Sheriffs' Association Jan. 12, 2015, Comments at 4; National Sheriffs' Association Comments at 7.

[973] *See, e.g.*, UCC and Public Knowledge Mar. 31, 2021 *Ex Parte* at 4 (arguing that facilities seeking to recover their costs through inmate calling services rates should provide data to the Commission).

[974] *See* 47 CFR § 64.6000(e) (defining "Consumer" as "the party paying a Provider of Inmate Calling Services").

[975] *See id.* § 64.6000(a).

[976] *Id.*

[977] *2015 ICS Order*, 30 FCC Rcd at 12838, para. 144.

[978] *Id.* at 12845, para. 161.

[979] Public Interest Parties Comments at 12; NASUCA Comments at 3-4.

concerns. Certain providers argue that we need not consider making any changes our ancillary service charge cap rules.[980] Do commenters agree? Why or why not?

327. The record suggests that some providers of inmate calling services may impose "duplicate transaction costs" on the same payments, such as charging both an automated payment fee and a third-party financial transaction fee also covering credit/debit card processing fees, for example, when a consumer makes an automated payment to fund its account with the services provider.[981] There appears to be some confusion among industry stakeholders regarding the relationship between the automated payment fee and third-party transaction fees as they relate to credit card processing fees.[982] In connection with automated payment fees, the Commission has suggested that credit card processing fees that providers incur are already included in the automated payment fee, which is capped at $3.00.[983] At the same time, the Commission referred to "credit card processing fees" in its discussion of third-party financial transaction fees in the *2015 ICS Order*.[984] We seek comment on whether the credit card processing fees encompassed in the automated payment fee are the same credit card processing fees referred to in the third-party financial transaction fee. If they are the same, then permitting providers to charge both an automated payment fee and a credit card processing fee when consumers use a credit or debit card to make an automated payment would, indeed, seem to allow for double recovery. And if credit or debit card companies or other third parties are also charging the consumer a fee for using a credit or debit card to fund their account,[985] permitting the services provider to double recover would mean the consumer might potentially be paying for the same processing fees *three* times. Do commenters agree? Alternatively, is the credit card processing embedded in the automated payment fee related to providers' costs of allowing credit card and debit card payments in the facilities they serve separate and apart from any other fees providers might incur from the third-party financial institution for enabling such payments when third parties are involved in the transaction?[986] Are the "credit card processing fees" charged by

[980] *See, e.g.*, GTL Reply at 4, 35; Pay Tel Reply at i, 16-17; Securus Comments at 42-43.

[981] NASUCA Comments at 3; Public Interest Parties Comments at 14 (noting that GTL's "combined fee" practice was under investigation by the Iowa Utilities Board); Letter from Andrea Fenster, Staff Attorney, Prison Policy Initiative, to Marlene Dortch, Secretary, FCC, WC Docket No. 12-375, at 1 (filed Mar. 23, 2021) (Prison Policy Initiative Mar. 23, 2021 Informal Complaints *Ex Parte*) (providing copies of five informal complaints alleging that certain inmate calling services providers charge an automated payment fee and also pass through credit or debit card processing costs on the same transaction).

[982] *See* Letter from David Springe, Executive Director, National Association of State Utility Consumer Advocates, to Marlene Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed Apr. 2, 2021) (NASUCA Apr. 2, 2021 *Ex Parte*) (asking whether an inmate calling services provider can "add a payment card processing fee in addition to the $3.00 automated payment fee in cases where the consumer deals directly with the [inmate calling services] provider to make the deposit and does not go to a third-party money transfer service such as Western Union or MoneyGram"). *See generally* Prison Policy Initiative Mar. 23, 2021 Informal Complaints *Ex Parte*.

[983] 47 CFR § 64.6000(a)(1) (defining "Automated Payment Fees" as credit card payment, debit card payment, and bill processing fees, including fees for payments made by interactive voice response (IVR), web, or kiosk); *see also 2015 ICS Order*, 30 FCC Rcd at 12848, para. 169 (rejecting arguments that credit card processing costs more than $3.00).

[984] *See 2015 ICS Order*, 30 FCC Rcd at 12770, 12846, 12849, paras. 9, 163, 170 n.612.

[985] *See, e.g.*, Prison Policy Initiative Jan. 19, 2016, Comments at 1-2 (suggesting that third-party fees are charged to consumers as opposed to the inmate calling services provider).

[986] *See 2015 ICS Order*, 30 FCC Rcd at 12847, para. 167 (explaining that the charge for the automated payment fee "ensures that [inmate calling services] providers can recoup the costs of offering these services"); Letter from Lance J.M. Steinhart, Attorney for Combined Public Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (Apr. 21, 2021) (CPC Informal Complaint Response) (explaining "CPC incurs costs associated with the kiosks used to deposit funds by the consumer" and that "the automated payment fee of $3.00 is to offset these costs which include the maintenance, technology support, software updates, and a call center to handle complaint and refunds"); Letter from Chérie R. Kiser, Counsel for GTL, to Marlene H. Dortch, Secretary, (continued….)

third parties, such as Western Union, Money Gram, or credit card companies, fees associated solely with transferring *cash* from a consumer's credit card to an incarcerated person's calling account? If so, are those fees passed on to the services provider, or the consumer requesting the cash transfer, or both?[987] If a third-party transaction fee can only be passed on by the provider to the consumer when a third party is directly involved in the transaction with the provider (as opposed to indirectly when the consumer uses its credit or debit card to fund an account or pay a bill using an automated method), when would it be the case that a third-party financial transaction fee is incurred by the provider that could appropriately be passed on to the consumer? We seek comment on how we should amend our rules to clarify when providers may pass through separate third-party financial transaction fees and when they may not.[988]

328. Alternatively, we seek comment on whether our rules clearly prohibit services providers from charging an automated payment fee and a third-party financial transaction fee for the same transaction in spite of some providers' apparent confusion.[989] The Prison Policy Initiative argues that "the Commission's record overwhelmingly indicates that carriers should not be allowed to double-dip by charging an automated payment fee and passing through third-party fees on the same transaction."[990] Do commenters agree? As discussed above, if the credit card processing costs associated with the automated payment fee are different than the credit card processing costs inherent in the fee associated with the third-party financial transaction fee, how are providers double-dipping? CPC argues that there is no double-dipping associated with charging an automated payment fee and a third-party financial transaction fee for the same transaction.[991] And GTL asserts that "[t]he rationale for and purpose of Automated Payment Fees and Third-Party Financial Transaction Fees are therefore distinct; the former cannot substitute for or subsume the latter."[992] Do commenters agree with this assertion? Why or why not? Can commenters point us to specific evidence of other forms of double-dipping in the record? Are there other costs embedded in the automated payment and third-party transaction fees that could lead to double recovery? If there is no overlap between the costs recovered in the automated payment fee and the third-party financial transaction fee, on what basis would we say that providers cannot charge both for the same transaction provided that the charges are at or below the applicable caps?

329. Similar to our inquiry above, should we specifically prohibit providers from charging a live agent fee and a third-party financial transaction fee in the same transaction, if no third party is directly involved when the consumer provides the agent with credit or debit card information? The Prison Policy Initiative alleges that at least one provider may be charging "an automated-payment or live-agent fee *and* passing through its credit- or debit-card processing costs."[993] They point to tariff language that appears to couple live agent fees with third-party transaction fees.[994] In the *2015 ICS Order*, the Commission explained that "interaction with a live operator to complete [inmate calling services]

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FCC, WC Docket No. 12-375, Attach. (Response of GTL to Informal Complaint) at 2-5 (filed Apr. 23, 2021) (GTL Apr. 23, 2021 *Ex Parte*) (emphasizing the automated payment fee and the third-party financial transaction fee are separate fees and that the Commission has treated them as such).

[987] *See, e.g.*, 47 CFR § 64.6000(a)(5) (referring specifically to charges by third parties).

[988] NASUCA Apr. 2, 2021 *Ex Parte* at 2.

[989] *See, e.g.*, CPC Informal Complaint Response at 1-2 (alleging that there is no prohibition on charging an automated payment fee and a third-party financial transaction fee in the same transaction provided that the fee caps for each are met).

[990] Prison Policy Initiative Mar. 23, 2021, Informal Complaints *Ex Parte* at 2.

[991] *See* CPC Informal Complaint Response at 2.

[992] GTL Apr. 23, 2021 *Ex Parte* Attach. at 4.

[993] Prison Policy Initiative Mar. 23, 2021 Informal Complaints *Ex Parte* Attach. 4 at 2 (emphasis in original).

[994] *Id.* Attach. 4, Exh. 1.

transactions may add to the costs of providing ICS" recognizing that providers incur costs associated with use of a live operator.[995] But it is unclear from the current record whether third-party costs are involved with all or even some such live agent transactions, or whether such costs are already included in the live agent fee. For example, if the provider uses its own live agents,[996] do such agents ever engage in three-way calls with third parties, such as Western Union or MoneyGram to transfer money to effectuate the transaction? If so, would it be the provider or the consumer that would incur the third-party transaction fee imposed by Western Union or MoneyGram for transferring the money? Even if there were third parties involved, the Commission has been clear that the fee for use of a live agent applies "regardless of the number of tasks completed in the call."[997] Does this suggest that there should be no other fees passed through to the consumer in connection with the use of a live operator? Why or why not? ICSolutions characterizes third-party fees, automated payment fees, and live agent fees as fees related to funding accounts and suggests that we should amend our rules to prevent providers from charging more than one of these types of fees per funding event.[998] Do commenters support this proposal? Why or why not?

330. Finally, we seek comment on how we can ensure that third parties are involved when third-party financial transaction fees are charged. The Commission has explained that the third-party financial transaction fees necessarily must involve third parties.[999] The Prison Policy Initiative suggests that certain fees characterized as third-party financial transaction fees may not actually involve third parties.[1000] In the case of GTL, for example, the Prison Policy Initiative explains that "the customer makes a payment via GTL's website, thus making only two parties to the transaction."[1001] The Prison Policy Initiative acknowledges that "other entities may participate behind the scenes (such as the customer's card issuer and GTL's acquiring bank), but these entities are not directly third parties to the transaction; they are merely agents of the payor and payee."[1002] Should we amend our rules to require calling service providers to specify the third party involved in the transaction whose fees are being passed through to the consumer? Why or why not? Should we define a third party in our rules as a company that is not related to the calling services provider as ICSolutions suggests?[1003] How should we define "not related" for purposes of such a rule?

331. The record also reveals that "15 states now explicitly exclude any automated payment (or deposit) fees from being charged to end users because the costs of automated payments are already factored into the [inmate calling services] provider's direct or indirect costs of providing service."[1004] What is the basis for these states' decisions to exclude these types of fees? Do providers already include these costs in the cost of providing inmate calling services? To the extent providers claim that it costs

[995] *2015 ICS Order*, 30 FCC Rcd at 12848, para. 168.

[996] Prison Policy Initiative Mar. 23, 2021 Informal Complaints *Ex Parte* Attach. 4 at 2 (explaining that the "Commission's explanation of the live-agent fee expresses an intent to allow a fee up to $5.95 to cover all expenses related to processing transactions through a carrier's customer service agents").

[997] *2015 ICS Order*, 30 FCC Rcd at 12848, para. 168.

[998] ICSolutions May 12, 2021 *Ex Parte* at 5.

[999] *See, e.g., 2015 ICS Order*, 30 FCC Rcd at 12850, para. 171 ("Therefore, as discussed in more detail below, we require that [inmate calling services] providers pass through to their end users, with no additional markup, the money transfer or third-party financial transaction fees they are *charged by such third parties*.") (emphasis added); 47 CFR § 64.6000(a)(5).

[1000] Prison Policy Initiative Mar. 23, 2021 Informal Complaints *Ex Parte* Attach. 1 at 2-3.

[1001] *Id.*

[1002] *Id.* Attach. 1 at 3-4.

[1003] ICSolutions May 12, 2021 *Ex Parte* at 5.

[1004] Public Interest Parties Comments at 13.

more to serve smaller facilities because higher turnover rates result in opening proportionately more new accounts, does this confirm that providers consider the processing of automated payments (necessary to establish a new account) as a cost included in their general inmate calling services accounts? We seek comment on whether we should similarly prohibit providers from charging automated payment fees. Should we instead reduce such fees to account for the third-party charges embedded in those fees? If so, what would be the appropriate cap?

332. In the Report and Order, we adopt an interim cap of $6.95 for fees related to single-call services and third-party financial transaction fees based on data provided by the Prison Policy Initiative and acknowledged by other public interest advocates that providers were circumventing the "pass through without markup" rule previously in place.[1005] NCIC has proposed that we cap the third-party financial transaction fee associated with single-call services at the $3.00 cap for automated payment fees or the $5.95 cap for live agent fees, as applicable.[1006] And ICSolutions similarly suggests that we cap third-party fees at the $5.95 live agent fee cap or the $3.00 automated fee cap.[1007] As we explain in the Report and Order, however, the record does not contain sufficient evidence to adopt these proposals at this time. We seek comment on these proposals here. Why would it be reasonable to tie fees for single-call services and/or third-party transaction fees to the caps for automated payment or live agent fees? What is the relationship between these fees? Should we consider adopting two separate caps on third-party financial transaction fees, one for money transfer companies like Western Union and a separate one for credit card companies? Given the evidence provided by the Prison Policy Initiative suggesting that one of the more prevalent money transmitter services charges more than NCIC's proposed caps, on what basis would we adopt NCIC's lower caps? In the absence of a revenue-sharing agreement, do these third parties legitimately charge more than NCIC's proposed caps, and if so, do providers—due to the volume of business conducted with these money transfer companies—have an ability to negotiate lower fees?

333. Relatedly, we remain concerned about the adverse effect of revenue-sharing arrangements between calling service providers and third-party financial institutions. In the *2020 ICS Order on Remand*, the Commission cited evidence that inmate calling services providers have "entered into revenue-sharing arrangements with third-party processing companies such as Western Union and MoneyGram where a third-party processing company shares its revenues generated from processing transactions for an inmate calling services provider[s]' customers."[1008] While the Commission sought additional evidence that providers were using revenue-sharing or other arrangements to indirectly mark up ancillary service charge fees, we received relatively little responsive comment. We therefore seek renewed comment on how revenue sharing arrangements work in the context of ancillary service charges, including concrete evidence of these arrangements. There is evidence in the record that revenue sharing can run from the third party to the calling services provider whereby the third-party provider charges the consumer a fee, which the third party then shares with the providers.[1009] The record also suggests that providers may charge the incarcerated person inflated fees and then split the resulting revenue with third parties.[1010] Is one scenario more prevalent than the other? How do commenters suggest that we detect these types of practices? Will our adoption of a specific monetary cap—instead of permitting the pass-through of any third-party financial transaction fee—mitigate this issue, or could it still occur even under our adopted caps? Should we adopt a rule disallowing the revenue-sharing arrangements with respect to

[1005] *See supra* Part III.H.1.

[1006] NCIC Comments at 3; NCIC July 28, 2020 *Ex Parte* at 1-2; NCIC May 12, 2021 *Ex Parte* at 2; NCIC May 13, 2021 Supplemental *Ex Parte* at 1-2.

[1007] ICSolutions May 12, 2021 *Ex Parte* at 5.

[1008] *2020 ICS Order on Remand*, 35 FCC Rcd at 8516, para. 91.

[1009] *See, e.g.*, Prison Policy Initiative Jan. 19, 2016, Comments at 1-2 (suggesting that third-party fees are charged by the financial institution to the consumer and then split with the inmate calling services provider).

[1010] *See, e.g.*, *2015 ICS Order*, 30 FCC Rcd at 12850, para. 171.

interstate or international inmate calls or accounts altogether? If so, how should we ensure compliance with such a rule?

334. Certain parties point out that the Commission's present ancillary services charge caps are based on cost data that are over six years old and assert that all ancillary service charge caps should be immediately reduced by 10%.[1011] These commenters argue that the caps should also be adjusted in the future based on more current cost data.[1012] We seek comment on these proposals. We note that the Mandatory Data Collection that we authorize in the accompanying Report and Order will collect cost data on our permissible ancillary service charges. Should we adjust our ancillary service charge caps based on the new data collection we will receive from the upcoming Mandatory Data Collection? What factors should we consider in evaluating that cost data for ancillary service charges in connection with interstate and international inmate calling services?

335. We ask commenters to address specific factors that we should consider in evaluating the cost data to ensure we address and account for anomalies that may distort our analysis. We encourage participation, and seek input, from our state public utility commission or similar state regulatory agency colleagues having jurisdiction over inmate calling services based on their expertise setting appropriate ancillary service charge caps.

336. Should we consider revising our ancillary service charge caps on a standard periodic basis? If so, how frequently should we revise those caps and what process should the Commission follow? Commenters should provide the reasoning and justification for their responses. For example, how should we balance related benefits and burdens to all relevant stakeholders and serve the public interest in determining how frequently to update ancillary service charge caps to enable the Commission to continually maintain interstate and international rates and charges that are just and reasonable and provide fair compensation to providers? How frequently should we require providers to file updated ancillary charges cost data to make this possible?

337. We also seek comment generally on any other matters related to ancillary services that we should consider in reforming our ancillary service charges rules. For example, record evidence suggests that certain providers fail to close accounts and issue refunds to families of incarcerated people when they are released.[1013] It appears that some state authorities, such as the Alabama Public Service Commission, have addressed this problem.[1014] We are concerned that any unused funds are not refunded to the account holder and invite comment on this issue. Should we adopt a rule requiring automatic refunds after a certain period of inactivity? If so, what timeframe would be appropriate? Should the timeframe vary based on the size and type of facility? If we require these refunds, how should such refunds be made? Is this issue sufficiently related to setting up an account and making automatic payments that we can address it in our existing ancillary services charges rules, or should we adopt a separate rule to address this issue? We also seek comment on whether we should add a rule relating to account setup fees to prohibit charging separate fees for establishing an account.[1015] Do providers assess separate fees for account setup? We also seek comment on the issue of dropped calls as it relates to ancillary service charges. Should we amend our rules to prevent providers from assessing the same ancillary service charge in cases where calls are dropped after a call is successfully connected? For example, should providers be permitted to charge a fee for single-call services if a consumer makes a call

[1011] Public Interest Parties Comments at 12. *But see, e.g.*, GTL Reply at 22 (asserting "the Commission can utilize the data it currently receives to ensure [inmate calling services] providers' . . . ancillary service charges are just and reasonable").

[1012] *See, e.g.*, Public Interest Parties Reply at 16.

[1013] NASUCA Comments at 3.

[1014] *Id.*

[1015] *See* ICSolutions May 12, 2021 *Ex Parte* at 6.

that is dropped and then must make another call to finish the conversation? Why or why not? If not, how should we amend our ancillary service charge rules to prevent this? Are there other issues regarding dropped calls in the ancillary services context that we should be aware of? More broadly, are there other practices in which providers engage that we should also consider addressing in the context of our ancillary services rules? If so, we ask commenters to describe such practices in detail and discuss how best we should address them. Finally, we seek comment on whether fees for single-call services are "already covered under the other fees applicable to all calls" as ICSolutions alleges.[1016] Do commenters agree with this assertion? If so, how are these fees embedded in the other permitted ancillary service charges? Should we consider eliminating fees for single-call services as a permissible ancillary service charge?[1017] Why or why not and on what basis would we do so? Relatedly, should we reduce the cap on fees for single calls as the Prison Policy Initiative asks?[1018] If so, what would be an appropriate cap?

D. Refining International Rate Methodology to Prevent Double Counting

338. In the Report and Order, we adopt interim rate caps for international inmate calling services based on a formula that permits a provider to charge a rate up to the sum of the provider's per-minute interstate rate cap for a particular correctional facility plus the amount that the provider must pay its underlying international service provider for that call on a per-minute basis. The interim rate caps for international calls will benefit incarcerated people by lowering the rates for most of their international calls, while allowing providers to recover their costs for those calls. Nonetheless, we are concerned that our new interim rate caps for international calls may be based on an overestimation of the costs providers actually incur in providing international inmate calling services.

339. In particular, we are concerned by the Public Interest Parties' assertion that the interim rate caps for international calls that we set today may be double counting providers' costs for international calls because such costs are already included in their overall inmate calling services costs that we use to set interim interstate rate caps. As the Public Interest Parties explain, "some [inmate calling services] providers reported zero international costs but positive international minutes and revenues [which] suggests that international costs are already included in their total costs, and thus accounted for in the interstate rates."[1019]

340. We seek comment on this assertion. Do the data reflect such double counting? Is some degree of double counting a natural consequence of the way providers reported their costs associated with international calls as part of their total costs associated with inmate calling services?[1020] We anticipate that in the upcoming Mandatory Data Collection, WCB and OEA will require calling service providers to report separately the amounts they pay international service providers for international calls. Will this eliminate the double counting of international inmate calling services costs, to the extent it exists? If not, how should we address this issue if providers do not ordinarily track international call costs separately? What allocation method should providers use to reliably separate their international costs from their interstate costs? We further ask what types of costs should legitimately be considered as additional costs

[1016] *Id.* NCIC and ICSolutions also mistakenly assume that fees for single-call services are capped at either the $5.95 live agent fee or the $3.00 automated payment fees, but the Commission's rules do not establish these caps in connection with fees for single-call services. NCIC May 13, 2021 Supplemental *Ex Parte* at 1-2; ICSolutions May 12, 2021 *Ex Parte* at 6.

[1017] *See* ICSolutions May 12, 2021 *Ex Parte* at 6.

[1018] Prison Policy Initiative May 13, 2021 *Ex Parte* at 1-2.

[1019] Public Interest Parties Comments at 10 (asking the Commission not to double count the costs associated with international calls that are already accounted for in the Commission's interstate rate caps).

[1020] Despite Public Interest Parties' concerns, the record indicates that some providers separately reported international calling costs in their responses. *E.g.*, Securus's Mandatory Data Collection Description and Justification at 3 (noting that Securus provided international cost data).

associated with international calls. Do those additional costs include only the charges imposed by international carriers?

341. We also ask commenters to consider other ways in which we could reform international rates on a permanent basis to ensure they are just and reasonable. For example, there is evidence in the record that in addition to varying by country/rate zone, international rates also vary depending on whether the call terminates on a mobile or fixed-line network.[1021] Should we address this type of rate variation in setting permanent rate caps for international calls, and if so, how? Are there other types of international voice communications that could be provided to incarcerated people that would result in significantly reduced financial burdens for international calling to their family and loved ones abroad? Should we require providers to work with facilities to enable alternatives to traditional types of voice communications that would be less expensive? Are there any other issues we should take into account in setting permanent rate caps for international inmate calling services?

E. Recurring Mandatory Data Collection

342. We seek comment on whether we should conduct cost data collections on a more routine, periodic basis than we have since the First and Second Mandatory Data Collections in 2012 and 2019. In the *2020 ICS Notice*, the Commission sought comment on whether, in the event that it adopted a new data collection, it should require providers to update their responses to that collection periodically.[1022] The Commission invited comment on the relative benefits and burdens of a periodic data collection versus another one-time data collection. The Commission also asked how frequently it should collect the relevant data, inquiring whether a biennial or triennial collection covering multiple years would balance the benefits and burdens better than an annual collection.[1023]

343. In the Report and Order, we institute a Third Mandatory Data Collection. GTL asserts that data filed in the Annual Reports are sufficient to evaluate calling service providers' rates, but we disagree.[1024] Instead, we agree with the Public Interest Parties who explain that the Annual Reports only include information on rates and charges and not the type of cost data required to establish and ensure continued cost-based rates.[1025] We seek comment on whether the Third Mandatory Data Collection should be required to be updated within a specific future timeframe to enable us to evaluate the reasonableness of providers' interstate and international rates on a regular basis. The Public Interest Parties assert that, to further refine rate caps in the future, the Commission should institute a "routine, periodic data collection with clear, structured questions, commit to reviewing that data through scheduled ratemaking proceedings, and adjust [inmate calling services] rates accordingly."[1026] The Public Interest Parties contend that we should first establish an annual data collection to ensure it has sufficient and updated information to reevaluate rate caps, and then establish a triennial rate review process to evaluate the prior two years' cost data to determine whether interstate rates for inmate calling services and ancillary service charge caps should be lowered. According to the Public Interest Parties, a three-year review cycle would strike the appropriate balance between the need for the Commission to fulfill its statutory mandate and the administrative burdens to providers.[1027] Free Press supports conducting routine future data collections and implementing a biennial or triennial review process to evaluate rates based on

[1021] *See* GTL Comments at 34-35.

[1022] *2020 ICS Notice*, 35 FCC Rcd at 8532-33, para. 132.

[1023] *Id.*

[1024] GTL Reply at 22.

[1025] *See, e.g.*, Public Interest Parties Comments at 15-16.

[1026] Public Interest Parties Comments at 15; *see also* Leadership Conference Comments at 3 (supporting a regular data collection).

[1027] Public Interest Parties Comments at 15.

those data collections.[1028] Free Press asserts that a periodic collection will provide the Commission with the opportunity to conduct trend analysis on costs, revenues, and prices charged over time, and that it may give providers an incentive to collect more uniform and consistent data over time.[1029] We seek comment on these proposals or alternative proposals that similarly enable us to monitor costs and revenue for the purpose of continuing to lower our rate caps.

344. We recognize that the periodic collection and assessment of cost data could yield valuable information but are conscious of potential burdens on providers. If we were to adopt a periodic collection, how could we best structure the collection in order to maximize its benefits, while at the same time reducing administrative burdens on providers? Would a triennial review, as described by the Public Interest Parties, be the ideal structure? What are the relative benefits and burdens of conducting a triennial review versus a biennial review, or some other type of review?

345. We invite comment on how providers should maintain their records in the event we require a periodic collection, such as a triennial review? Should we impose specific recordkeeping requirements on providers of inmate calling services? What would be the type of recordkeeping requirements necessary for a biennial or triennial review, as opposed to a one-time collection? Is there a relatively small but precisely defined set of investment and expense accounts that we could establish relative to providers' inmate calling service assets and labor activities or categories of assets and labor activities to facilitate consistent data reporting among all providers? If so, what specific accounts should be included in the prescribed set of accounts?[1030] Should a portion of revenues from ancillary services be netted out of the inmate calling service costs to the extent that costs are incurred for assets or labor shared among inmate calling services and ancillary services if the full amount of these shared costs is reported as inmate calling service costs? If so, how should it be calculated? We believe our authority under sections 201 and 220 of the Act permits us to impose certain recordkeeping obligations on providers for the purpose of ensuring just and reasonable rates.[1031] Do commenters agree? What other authority does the Commission have to adopt such requirements should they be necessary? How can we ensure that providers comply with any recordkeeping requirements? Are there other requirements associated with a periodic collection, as opposed to a one-time data collection, that we should consider?

346. Alternatively, should we require providers to comply with an annual or biennial certification obligation attesting to the fact that no substantial change in costs has occurred that would warrant a change in rates? Would such a certification in conjunction with providers' annual reporting obligation on rates provide us sufficient basis to avoid periodic data collection on a more routine basis? We seek comment on this alternative and any others that stakeholders may propose.

F. Revisions to the Commission's Definition of "Jail"

347. We propose to amend section 64.6000(m) of our rules to clarify the definition of "Jail" in several ways. These amendments would apply equally to the definition of "Prison" because our rules explain that "Prisons" include "*facilities that would otherwise fall under the definition of a Jail* but in which the majority of inmates are post-conviction or are committed to confinement for sentences of longer than one year."[1032] First, we propose to modify the definition of "Jail" in section 64.6000(m) of our rules to include facilities operated by the Federal Bureau of Prisons (BOP) and Immigration and

[1028] Free Press Comments at 2, 6-8.

[1029] *Id.* at 7-8.

[1030] Securus considers its cost study "to be a comprehensive view" of its cost structures and encourages "the Commission to consider similar data collection from other providers"). Securus Comments at 2-3; Securus Cost Study. Should we use this cost study as a model for future mandatory data collections, especially in regard to the cost categories and methodologies set forth therein? Why or why not?

[1031] 47 U.S.C. §§ 201, 220.

[1032] 47 CFR § 64.6000(r) (emphasis added).

Customs Enforcement (ICE), whether directly or by contract with third parties.[1033] Second, we propose to add "juvenile detention facilities" and "secure mental health facilities" to that definition. We seek comment on these proposals, which are consistent with the *2015 ICS Order* and are meant to prevent potential confusion as to the application of our rules.

348. In the *2015 ICS Order*, the Commission explained that the rate caps adopted in that order were meant to apply to "jails, prisons and immigration detention facilities, secure mental health facilities and juvenile detention facilities."[1034] The Commission further explained that the general term "Jail" was meant to include facilities operated by local, state, or federal law enforcement agencies and "city, county or regional facilities that have contracted with a private company to manage day-to-day operations; privately-owned and operated facilities primarily engaged in housing city, county or regional inmates; and facilities used to detain individuals pursuant to a contract with ICE and facilities operated by ICE."[1035] But the codified rule only includes "facilities used to detain individuals *pursuant to a contract*" with ICE, and does not explicitly include facilities operated directly by ICE.[1036] Similarly, while the BOP is a "federal law enforcement agency" such that BOP facilities fall within the purview of our rules, the codified rule does not explicitly distinguish between facilities operated by the BOP and those operated under a contract with the BOP. We therefore propose to explicitly list ICE and BOP facilities, whether operated directly by the relevant law enforcement agency or by contract, in the definition of "Jail." We find these proposed changes to 64.6000(m) of our rules to be clarifying in nature given the Commission's stated intent in 2015 to include all facilities directly operated by law enforcement agencies and those operated pursuant to a contract with a third party. We seek comment on this analysis. We also seek comment on whether there are other types of correctional facilities that should be explicitly added to our codified definitions of "Jail" or "Prison."

349. We also propose to list "juvenile detention facilities" and "secure mental health facilities" within the definition of "Jail" in section 64.6000(m). In the *2015 ICS Order*, the Commission concluded that providing inmate calling services in these facilities was "more akin to providing service to jail facilities" and instructed that "[t]o the extent that juvenile detention facilities and secure mental health facilities operate outside of jail or prison institutions" they would be subject to the rate caps applicable to jails.[1037] However, the codified definition of "Jail" does not include the phrases "juvenile detention facilities" or "secure mental health facilities."[1038] We therefore propose to add these terms to the definition of "Jail" in section 64.6000(m) and seek comment on this proposal.

G. Characteristics of the Bidding Market

350. We have already determined that inmate calling services providers have market power at the facility level once they win a contract.[1039] However, some providers claim that they win contracts through a competitive bidding process, and thus, that the market or markets to supply inmate calling

[1033] *Id.* § 64.6000(m).

[1034] *2015 ICS Order*, 30 FCC Rcd at 12775, para. 20.

[1035] *Id.* at 12783, para. 39.

[1036] *Id.*

[1037] *Id.* at 12785, para. 43.

[1038] As relevant to juvenile facilities, the National Center for Youth Law explains that it is "unclear which rate cap will apply to juvenile facilities, many of which are not described by the proposed definitions of 'jail' or 'prison.'" National Center for Youth Law Apr. 21, 2021 *Ex Parte* at 1.

[1039] *Supra* Part III.C.4; *2013 ICS Order*, 28 FCC Rcd at 14129-30, para. 39-41 (discussing how competition among inmate calling services providers may actually increase rates); *see also United States v. Microsoft*, 253 F.3d at 58 (finding that a firm's ability to set prices "without considering rival's prices" is "something a firm without a monopoly would have been unable to do").

services are competitive.[1040] To assess this claim, and its relevance to permanent rate caps, we seek comment on the characteristics of the bidding market. We propose to define every contract or request for proposal as a market in which calling service providers participate based on our understanding that providers generally make contract-by-contract decisions about whether or not to bid on a particular request for proposal, and they do not bid on all open requests for proposals.[1041] We seek comment on these proposed bidding market boundaries or whether there are other boundaries we should consider.

351. We also seek comment on the extent of competition in these bidding markets. What share of providers' contracts are won through a competitive bidding process? Does this vary across providers? Does the number of bidders vary from request for proposal to request for proposal, and if so, what determines bidders' decisions to compete? Does the number of bidders vary depending on the type and size of facility? Do large providers have a competitive advantage in bidding for certain contracts, such as contracts for state prisons, or large or multiple facility contracts? Are there providers who cannot compete for such contracts at all? Are some providers unable to bid beyond certain geographies because of logistical difficulties or difficulties associated with meeting different governmental requirements? Are some providers uninterested in certain requests for proposals (e.g., those for the jails with the fewest people)? What are the implications of these answers for competition for different requests for proposals? Should we consider prisons, larger jails, and contracts for multiple facilities to be in separate market segments? Are there other potential market segments we should consider? It is common, in measuring market power in bidding markets, to analyze bids across many requests for proposals to determine the impact of the number and identity of bidders on contract prices.[1042] Should the Commission collect data to enable such analysis?

352. We seek to understand how correctional authorities select a winning bid. To what extent do correctional authorities evaluate inmate calling service bids based on costs (both to incarcerated people and to the facility), quality of service, or other factors? What is the relevance of site commissions? Do calling service providers compete on the basis of site commissions? If so, how? Are providers aware of site commissions offered by other providers in the bidding process? If not, how do they determine the level of the site commission to offer to ensure that they remain competitive? Assuming no site commission is legally mandated, can a provider win a bid if it offers no site commission to the facility? We have observed differences in criteria for awarding contracts among various requests for proposals that we have reviewed. Is this seeming heterogeneity in the criteria used by authorities when selecting a winning bid typical? If so, is this heterogeneity more pronounced in some jurisdictions or jail types than in others?

353. We understand that once a local correctional authority awards the contract to a particular provider, it is locked into a multi-year contract, typically with options to renew that avoid the need for further competitive bidding to serve the facility after the expiration of the initial term.[1043] Is there a typical contract length, and if so, does this vary across prisons and jails or by contract size? Are there

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[1040] *See* GTL Godek Report at 10; Securus Furchtgott-Roth Report at 10-12. *But cf.* U.S. Department of Justice, Horizontal Merger Guidelines § 6.2 (Aug. 19, 2010) (Horizontal Merger Guidelines), https://www.justice.gov/sites/default/files/atr/legacy/2010/08/19/hmg-2010.pdf; Paul Klemperer, *Bidding Markets*, 2005, 3 J. Competition L. & Econ. 1, 1 (2007) (Klemperer), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=776524 ("The existence of a 'bidding market' is commonly cited as a reason to tolerate the creation or maintenance of highly concentrated markets. We discuss three erroneous arguments to that effect . . . .").

[1041] *See 2020 ICS Notice*, 35 FCC Rcd at 8525-26, para. 115.

[1042] In the context of a merger, the U.S. Department of Justice and Federal Trade Commission recommend examining "the frequency or probability with which, prior to the merger, one of the merging sellers had been the runner-up when the other won the business." Horizontal Merger Guidelines § 6.2; *see also* Klemperer at 10-12.

[1043] Prisoners' Legal Services Comments at 5 (describing contracts with Securus that were renewed for seven additional years to 2028 with no competitive bids).

typical timeframes for options to renew? Does exercising options to renew lead to contract amendments that also avoid competitive bidding to effectuate contractual changes?[1044] Is contract length ever a dimension along which provider's bids are compared, in addition to criteria pre-specified in the request for proposal? Do correctional authorities give more weight to some criteria than others, and if so, which ones? How easy or difficult is it to modify the terms of the contract or terminate it during the contract term if the correctional authority is dissatisfied with the provider's rates, site commissions, terms, or quality of service? How common is it for a contract to be extended by correctional authorities, and does this occurrence vary as between prisons or jails, or by contract size?

354. The Commission has found that the inmate calling services industry is highly concentrated, and that GTL possesses the largest market share, controlling {[ ]} of the market as measured by paid minutes.[1045] Another provider, Securus, controls {[ ]} of the market, which means these two firms collectively control {[ ]} of the market.[1046] The record also shows high industry concentration as measured by the Herfindahl-Hirschman Index (HHI).[1047] We seek comment on these findings. Are these shares still accurate? Does a large industry share, together with entry barriers and other market characteristics, give the two largest inmate calling services providers a degree of market power in bidding for certain or all requests for proposals?

355. We seek comment on barriers to entering the inmate calling services markets, both generally and in terms of bidding on a particular request for proposal. What impediments do potential providers face when considering entering the inmate calling services market? We also seek comment on actual entry into the market in the past. How many firms have entered or exited the inmate calling services market in the past twenty years? What barriers does a provider face once it enters the market? What services, other than inmate calling services, must be offered, at a minimum, by a provider in order to successfully participate in the bidding market given record evidence of service bundling required by many facilities when issuing requests for proposals?[1048]

356. We also understand that providers frequently provide multiple nonregulated services at the facilities where they provide inmate calling services, including commissary services, access to email and the Internet, video services, video visitation and calling, and access to tablets. Do correctional authorities sometimes or typically require that the same company bundle some or all of these services? If so, are there any exceptions to this (i.e., do correctional authorities enter into separate contracts for certain services with different providers), and how common is this? What other services outside of telephone communications do providers competitively bid on at the same facility? Are providers more likely to win bids if they offer other services at the same facility? Have calling service providers used their market power, to the extent they have such power, in the communications services market to affect bidding for other services? We ask whether the Commission should consider any additional aspects of the bidding market and invite parties to submit alternative evidence in the record.

[1044] *Id.* at 4 (describing a change in a contract at renewal in 2019 from a 76.2% site commission to a flat yearly payment of $2.5 million).

[1045] *See 2020 ICS Notice*, 35 FCC Rcd at 8518, para. 94 n.226.

[1046] *See id.* Concentration remains high when measured by revenues or average daily population.

[1047] *See* Public Interest Parties Brattle Report at 10-11; *see also* U.S. Department of Justice, *Herfindahl-Hirschman Index* (July 21, 2018), https://www.justice.gov/atr/herfindahl-hirschman-index; Horizontal Merger Guidelines § 5.3. *But see* GTL Apr. 26, 2021 *Ex Parte* Godek Report at 7 (contending that "[t]he fact that the service at issue [inmate calling services] is currently supplied by a concentrated group of providers, when viewed under the static paradigm of [DOJ's Horizontal Merger Guidelines], does not justify regulation").

[1048] Prison Policy Initiative Mar. 23, 2021 *Ex Parte* at 1-2 (providing evidence of the "prevalence of bundling" which "shows that inmate communications services . . . carriers are increasingly expected to provide regulated and unregulated services under a single contract").

357. If we do find that some providers possess market power in the bidding market, should we act to make it easier for small providers to compete? Would doing so better ensure just and reasonable rates? For example, should the Commission prohibit dominant providers from including certain terms and conditions in their contracts with correctional authorities? In many instances, won contracts are not publicly available. Would requiring the contracts to be made publicly available make bidding more competitive? We seek comment on potential ways to even the playing field among large and small providers in the bidding market, and on whether doing so would lower interstate rates paid by incarcerated people and their families. We also seek comment on whether such regulations would result in supporting providers that are currently not as successful in winning contracts with correctional facilities in spite of continuing to bid for contracts.

358. We also seek comment on the optimal regulatory regime for inmate calling services. If we find that certain providers possess market power in the bidding market, should we classify those providers as dominant carriers? In the past, the Commission imposed rate-of-return regulation on providers with market power. Would this type of regulation be appropriate in the event that market power in the bidding market is found to exist? If not, what type of regulatory regime would promote regulatory certainty and permit us to ensure that inmate calling services rates and charges are just and reasonable? What other type of regulatory framework would be appropriate to achieve our objectives if we determine that some or all inmate calling service providers should be considered dominant carriers? What are the relative costs and benefits of the alternative approaches? Finally, we welcome comments by all stakeholders on appropriate alternative frameworks and ideas that will promote increased transparency and just and reasonable inmate calling services rates and charges for incarcerated people.

VII. PROCEDURAL MATTERS

359. *Filing of Comments and Replies*. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System. *See* FCC, Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (May 1, 1998).[1049]

360. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: https://www.fcc.gov/ecfs/.

361. Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

362. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

363. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

[1049] The Protective Order issued in this proceeding permits parties to designate certain material as confidential. *Rates for Inmate Calling Services*, WC Docket No. 12-375, Order, 28 FCC Rcd 16954 (WCB 2013); *see also Rates for Inmate Calling Services*, WC Docket No. 12-375, Order, 35 FCC Rcd 9267 (WCB 2020) (clarifying non-confidential treatment for certain information). Filings which contain confidential information should be appropriately redacted, and filed pursuant to the procedure described therein.

364. Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.[1050]

365. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.49 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. We also strongly encourage parties to track the organization set forth in the Fifth Further Notice of Proposed Rulemaking in order to facilitate our internal review process.

366. *People with Disabilities*. We ask that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

367. *Ex Parte Presentations.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.[1051] Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).

368. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in the prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with section 1.1206(b) of the Commission's rules.[1052] Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

369. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Third Report and Order and Order on Reconsideration to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

370. *Supplemental Final Regulatory Flexibility Act Analysis*. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1053] the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) relating to the Third Report and Order and Order on Reconsideration.[1054] The FRFA is set forth in Appendix C.

[1050] *See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OS 2020).

[1051] 47 CFR § 1.1200 *et seq*.

[1052] 47 CFR § 1.1206(b).

[1053] *See* 5 U.S.C. § 603.

[1054] *See* 5 U.S.C. § 604. The RFA, *see* 5 U.S.C. §§ 601-12, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

371. *Initial Regulatory Flexibility Act Analysis*. As required by the RFA,[1055] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the Fifth Further Notice of Proposed Rulemaking. The IRFA is set forth in Appendix D. The Commission requests written public comments on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in the Fifth Further Notice of Proposed Rulemaking. The Commission will send a copy of the Fifth Further Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[1056] In addition, the Fifth Further Notice of Proposed Rulemaking and the IRFA (or summaries thereof) will be published in the Federal Register.[1057]

372. *Final Paperwork Reduction Act Analysis.* The Third Report and Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198; *see* 44 U.S.C. § 3506(4), we previously sought comment on how the Commission will further reduce the information collection burden for small business concerns with fewer than 25 employees.[1058]

373. The Order on Reconsideration does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. Therefore, it does not contain any new or modified information collection burdens for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

374. *Initial Paperwork Reduction Act Analysis*. The Fifth Further Notice of Proposed Rulemaking contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites OMB, the general public, and other Federal agencies to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

VIII. ORDERING CLAUSES

375. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201(b), 218, 220, 225, 255, 276, 403, and 617, this Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking ARE ADOPTED.

376. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 201(b), 218, 220, 225, 255, 276, 403, and 716, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201(b), 218, 220, 225, 255, 276, 403, and 617, the Petition for Reconsideration, filed November 23, 2020, by Global Tel*Link Corp. IS DENIED IN FULL and DISMISSED IN PART as described herein.

377. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i)-(j), 201(b), 218, 220, 225, 255, 276, 403, and 716, of the Communications Act of 1934, as amended,

[1055] *See* 5 U.S.C. § 603.

[1056] *See* 5 U.S.C. § 603(a).

[1057] *Id.*

[1058] *2020 ICS Order on Remand*, 35 FCC Rcd at 8536-37, para. 146.

47 U.S.C. §§ 151, 152, 154(i)-(j), 201(b), 218, 220, 225, 255, 276, 403, and 617, this Third Report and Order, including the amendments to sections 64.6000, 64.6020. and 64.6030, of the Commission's rules, SHALL BE EFFECTIVE ninety (90) days after publication in the Federal Register, except that the delegations of authority to the Wireline Competition Bureau, the Office of Economics and Analytics, and the Consumer and Governmental Affairs Bureau SHALL BE EFFECTIVE upon publication in the Federal Register. Sections 64.6110and 64.6120 contain new or modified information collection requirements that require review by OMB under the PRA. The Commission directs the Wireline Competition Bureau to announce the effective date for those information collections in a document published in the Federal Register after the Commission receives OMB approval, and directs the Wireline Competition Bureau to cause sections 64.6110 and 64.6120 to be revised accordingly.

378. IT IS FURTHER ORDERED that, pursuant to applicable procedures set forth in sections 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments on this Fifth Further Notice of Proposed Rulemaking on or before 30 days after publication of a summary of this Fifth Further Notice of Proposed Rulemaking in the Federal Register and reply comments on or before 60 days after publication of a summary of this Fifth Further Notice of Proposed Rulemaking in the Federal Register.

379. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis and the Supplemental Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

For the reasons set forth above, the Federal Communications Commission amends Part 64, subpart FF of Title 47 of the Code of Federal Regulations as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

The authority citation for part 64 is amended to read as follows:

Authority: 47 U.S.C. §§ 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

1. Amend § 64.6000 by revising paragraphs (c) and (g) and adding new paragraphs (v), (w), and (x) to read as follows:

§ 64.6000 Definitions.

As used in this subpart:

* * * * *

(c) *Average Daily Population (ADP)* means the sum of all Inmates in a facility for each day of the preceding calendar year, divided by the number of days in the year.

* * * * *

(g) *Debit Calling* means a presubscription or comparable service which allows an Inmate, or someone acting on an Inmate's behalf, to fund an account set up through a Provider that can be used to pay for Inmate Calling Services calls originated by the Inmate;

* * * * *

(v) *Provider-Related Rate Component* means the interim per-minute rate specified in either § 64.6030(b) or § 64.6030(c) that Providers at Jails with Average Daily Populations of 1,000 or more Inmates and all Prisons may charge for interstate Collect Calling, Debit Calling, Prepaid Calling, or Prepaid Collect Calling.

(w) *Facility-Related Rate Component* means either the Legally Mandated Facility Rate Component or the Contractually Prescribed Facility Rate Component identified in § 64.6030(d).

(x) *International Destination* means the rate zone in which an international call terminates. For countries that have a single rate zone, *International Destination* means the county in which an international call terminates.

2. Amend § 64.6020(b) by revising paragraphs (2) and (5) to read as follows:

§ 64.6020 Ancillary Service Charge.

* * * * *

(b) * * *

(2) For Single-Call and Related Services— $6.95 per transaction, plus the adopted, per-minute rate;

* * *

(5) For Third-Party Financial Transaction Fees—$6.95 per transaction.

3. Amend § 64.6030 by revising it to read as follows:

§ 64.6030 Inmate Calling Services interim rate caps.

(a) For all Jails with Average Daily Populations of less than 1,000 Inmates, no Provider shall charge a rate for interstate Collect Calling, Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of $0.21 per minute.

(b) For all Jails with Average Daily Populations of Inmates of 1,000 or greater, no Provider shall charge a Provider-Related Rate Component for interstate Collect Calling, Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of $0.14 per minute.

(c) For all Prisons, no Provider shall charge a Provider-Related Rate Component for interstate Collect Calling, Debit Calling, Prepaid Calling, or Prepaid Collect Calling in excess of $0.12 per minute.

(d) For all Jails with Average Daily Populations of Inmates of 1,000 or greater, and for all Prisons, Providers may recover the applicable Facility-Related Rate Component as follows:

(1) Providers subject to an obligation to pay Site Commissions by state statutes or laws and regulations that are adopted pursuant to state administrative procedure statutes where there is notice and an opportunity for public comment such as by a state public utility commission or similar regulatory body with jurisdiction to establish inmate calling services rates, terms, and conditions and that operate independently of the contracting process between Correctional Institutions and Providers, may recover the full amount of such payments through the Legally Mandated Facility Rate Component subject to the limitation that the total rate (Provider-Related Rate Component plus Facility-Related Rate Component) does not exceed $0.21 per minute.

(2) Providers that pay Site Commissions pursuant to a contract with the Jail or Prison may recover up to $0.02 per minute through the Contractually Prescribed Facility Rate Component except where the Provider's total Contractually Prescribed Facility Rate Component results in a lower per-minute rate than $0.02 per minute of use. In that case, the Provider's Contractually Prescribed Facility Rate Component is limited to the actual amount of its per-minute Site Commission payment up to a maximum of $0.02 per minute. Providers shall calculate their Contractually Prescribed Facility Rate Component to three decimal places.

(e) No Provider shall charge, in any Prison or Jail it serves, a per-minute rate for an International Call in excess of the applicable interstate rate cap set forth in paragraphs (a), (b), (c), and (d) plus the average amount that the provider paid its underlying international service providers for calls to the International Destination of that call, on a per-minute basis. A Provider shall determine the average amount paid for calls to each International Destination for each calendar quarter and shall adjust its maximum rates based on such determination within one month of the end of each calendar quarter.

4. Amend § 64.6110 by making the current rule paragraph (a), amending paragraph (a) to add the last sentence as set forth below, and adding paragraphs (b), (c), and (d) as follows:

§ 64.6110 Consumer disclosure of Inmate Calling Services rates.

(a) Providers must clearly, accurately, and conspicuously disclose their interstate, intrastate, and international rates and Ancillary Service Charges to consumers on their Web sites or in another reasonable manner readily available to consumers. In connection with international rates, providers shall also separately disclose the rate component for terminating calls to each country where that provider terminates International Calls.

(b) Providers must clearly label the Facility-Related Rate Component (either the Legally Mandated Facility Rate Component or the Contractually Prescribed Facility Rate Component) identified in § 64.6030(d) as a separate line item on Consumer bills for the recovery of permissible facility-related costs contained in Site Commission payments. To be clearly labeled, the Facility-Related Rate Component shall:

(1) Identify the Provider's obligation to pay a Site Commission as either imposed by state statutes or laws or regulations that are adopted pursuant to state administrative procedure statutes where there is notice and an opportunity for public comment that operates independently of the contracting process between Correctional Institutions and Providers or subject to a contract with the Correctional Facility;

(2) Where the Site Commission is imposed by state statute, or law or regulation adopted pursuant to state administrative procedure statutes where there is notice and an opportunity for public comment and that operates independently of the contracting process between Correctional Institutions and Providers, specify the relevant statute, law or regulation.

(3) Identify the amount of the Site Commission payment, expressed as a per-minute or per-call charge, a percentage of revenue, or a flat fee; and

(4) Identify the amount charged to the Consumer for the call or calls on the bill.

(c) Providers must clearly label all charges for International Calls in § 64.6030(e) as a separate line item on Consumer bills. To be clearly labeled, providers must identify the amount charged to the Consumer for the International Call, including the costs paid by the provider to its underlying international providers to terminate the International Call to the international destination of the call.

(d) *Compliance Date*. Paragraphs (a), (b), and (c) of this section contain new or modified information collection requirements adopted in FCC 21-60. Compliance with these information collection requirements will not be required until after approval by the Office of Management and Budget. Providers will be required to comply with these information collection requirements immediately upon publication by the Commission of a document in the Federal Register announcing Office of Management and Budget approval and revising this paragraph accordingly.

5. Add § 64.6120 to read as follows:

§ 64.6120 Waiver process.

(a) A Provider may seek a waiver of the interim rate caps established in section 64.6030 and the Ancillary Service Charge fee caps on a Correctional Facility or contract basis if the interstate or international rate caps or Ancillary Service Charge fee caps prevent the Provider from recovering the costs of providing interstate or international Inmate Calling Services at a Correctional Facility or at the Correctional Facilities covered by a contract.

(b) At a minimum, a Provider seeking such a waiver is required to submit:

(1) The Provider's total company costs, including the nonrecurring costs of the assets it uses to provide Inmate Calling Services, and its recurring operating expenses for these services at the Correctional Facility or under the contract;

(2) The methods the provider used to identify its direct costs of providing interstate and international Inmate Calling Services, to allocate its indirect costs between its Inmate Calling Services and other operations, and to assign its direct costs to and allocate its indirect costs among its Inmate Calling Services contracts and Correctional Facilities;

(3) The Provider's demand for interstate and international Inmate Calling Services at the Correctional Facility or at each Correctional Facility covered by the contract;

(4) The revenue or other compensation the Provider receives from the provision interstate and international Inmate Calling Services, including the allowable portion of any permissible Ancillary Service Charges attributable to interstate or international inmate calling services, at the Correctional Facility or at each Correctional Facility covered by the contract;

(5) A complete and unredacted copy of the contract for the Correctional Facility or Correctional Facilities, and any amendments to such contract;

(6) Copies of the initial request for proposals and any amendments thereto, the Provider's bid in response to that request, and responses to any amendments (or a statement that the Provider no longer has access to those documents because they were executed prior to the effective date of this rule);

(7) A written explanation of how and why the circumstances associated with that Correctional Facility or contract differ from the circumstances at similar Correctional Facilities the Provider serves, and from other Correctional Facilities covered by the same contract, if applicable; and

(8) An attestation from a company officer with knowledge of the underlying information that all of the information the provider submits in support of its waiver request is complete and correct.

(c) A Provider seeking a waiver pursuant to section 64.6120(a) must provide any additional information requested by the Commission during the course of its review.

(d) *Compliance Date*. Paragraphs (a), (b), and (c) of this section contain new or modified information collection requirements adopted in FCC 21-60. Compliance with these information collection requirements will not be required until after approval by the Office of Management and Budget. Providers will be required to comply with these information collection requirements immediately upon publication by the Commission of a document in the Federal Register announcing Office of Management and Budget approval and revising this paragraph accordingly.

APPENDIX B

Proposed Rules

For the reasons set forth above, the Federal Communications Commission proposes to amend Part 64, subpart FF of Title 47 of the Code of Federal Regulations as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is amended to read as follows:

Authority: 47 U.S.C. §§ 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

2. Amend § 64.6000 by revising paragraph (m) and adding new paragraphs (y), (z), and (aa) to read as follows:

§ 64.6000 Definitions.

* * * * *

(m) * * *

* * *

(3) Post-conviction and awaiting transfer to another facility. The term also includes city, county, or regional facilities that have contracted with a private company to manage day-to-day operations; privately-owned and operated facilities primarily engaged in housing city, county or regional Inmates; ~~and~~ facilities used to detain individuals operated directly by the Federal Bureau of Prisons or U.S. Immigration and Customs Enforcement, or pursuant to a contract with those agencies; juvenile detention centers; and secure mental health facilities; ~~pursuant to a contract with U.S Immigration and Customs Enforcement~~

* * * * *

(y) *Incarcerated person with a communication disability* means an incarcerated individual who is deaf, hard of hearing, or deafblind, or has a speech disability.

(z) *Telecommunications relay services (TRS)* and other TRS-related terms used in this subpart are defined in 47 CFR § 64.601.

(aa) *TRS Fund* means the Telecommunications Relay Services Fund described in 47 CFR § 64.604(c)(5)(iii).

3. Amend § 64.6040 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 64.6040 Communications Access for Incarcerated People with Communication Disabilities.

* * * * *

(b) No Provider shall levy or collect any charge or fee on or from any party to a TRS call to or from an incarcerated person, including any charge for the use of a device or transmission service when used to access TRS from a correctional facility.

(c) A Provider shall provide access for incarcerated people with communication disabilities to any form

of TRS that is eligible for TRS Fund support.

(d) A Provider shall provide access to direct video service for incarcerated people eligible to access video relay service (VRS).

4. Amend § 64.6060 by revising paragraphs (a)(5), and (6) to read as follows:

§ 64.6060 Annual reporting and certification requirement.

(a) * * *

(5) The number of calls provided per facility, and the number of dropped calls per facility, during the reporting period in each of the following categories:

(i) TTY-to-TTY Inmate Calling Services calls;

(ii) Direct video calls placed or received by ASL users;

(iii) TRS calls, broken down by each form of TRS that can be accessed from the facility; and

(6) The number of complaints that the reporting Provider received related to dropped calls and poor call quality, respectively, in each of the categories set forth in paragraph (a)(5).

* * * * *

APPENDIX C

Supplemental Final Regulatory Flexibility Analysis

A. Need for, and Objectives of, the 2021 Third Report and Order and Order on Reconsideration

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Second Further Notice of Proposed Rulemaking in the Commission's Inmate Calling Services proceeding.[2] The Commission sought written public comment on the proposals in that *Notice*, including comment on the IRFA.[3] The Commission did not receive comments directed toward the IRFA. Thereafter, the Commission issued a Final Regulatory Flexibility Analysis (FRFA) conforming to the RFA.[4] This Supplemental FRFA supplements that FRFA to reflect the actions taken in the Third Report and Order and Order on Reconsideration and conforms to the RFA.[5]

2. The Third Report and Order adopts lower per-minute interim interstate provider-related rate caps of $0.12 per minute for prisons and $0.14 per minute for larger jails, respectively, until the Commission completes its evaluation of a new mandatory data collection and adopts permanent rate caps. Next, it reforms the current treatment of site commission payments by adopting facility-related rate components to permit recovery only of the portions of such payments estimated, on the present record, to be directly related to inmate calling services and requires them to be separately listed on bills, if charged. Where site commission payments are mandated pursuant to state statute, or law or regulation and adopted pursuant to state administrative procedure statutes where there is notice and an opportunity for public comment that operate independently of the contracting process between correctional institutions and providers (the Legally Mandated facility rate component), providers may pass these payments through to consumers, without any markup, as an additional component of the new interim interstate per-minute rate cap. Where site commission payments result from contractual obligations reflecting negotiations between providers and correctional facilities arising from the bidding and subsequent contracting process (the Contractually Prescribed facility rate component), providers may recover up to $0.02 per minute to account for these costs at prisons and larger jails. To promote increased transparency, the Third Report and Order requires providers to clearly label a Legally Mandated or Contractually Prescribed facility rate component, as applicable, in the rates and charges portion of a consumer's bill, including disclosing the source of such provider's obligation to pay that facility-related rate component. Next, the Third Report and Order eliminates the current interim interstate collect calling rate cap, resulting in a single uniform interim interstate maximum rate cap of $0.21 per minute for calls from jails with average daily populations below 1,000. The Third Report and Order emphasizes that the sum of the provider-related and facility-related rate components for prisons and larger jails may not result in a higher permissible total rate cap for any interstate call from any size facility than the $0.21 per minute cap that existed for interstate debit and prepaid calls before today and that continues to apply to all providers for all types of calls from jails with average daily populations below 1,000. The Third Report and Order also caps

[1] *See* 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-602, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Further Notice of Proposed Rulemaking, 29 FCC Rcd at 13170 (2014) (*2014 ICS Notice*).

[3] *See id.* at 13235, Appx. para. 2.

[4] *Rates for Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12944-49 (2015) (*2015 ICS Order* or *2015 ICS Notice*).

[5] *See* 5 U.S.C. § 604.

international inmate calling services rates for the first time, adopts a new mandatory data collection to obtain more uniform cost data based on consistent allocation methodologies to determine fair permanent cost-based rates for facilities of all sizes, and reforms the ancillary service charge rules, capping third-party transaction fees related to calls that are billed on a per-call basis and related to transferring or processing financial transactions. Finally, the Third Report and Order reaffirms providers' current obligations regarding functionally equivalent access for incarcerated people with hearing and speech disabilities.

3. Regarding access to inmate calling services by people who are deaf, hard of hearing or deafblind, or have speech disabilities, the Third Report and Order reminds providers that they are obligated to comply with the existing inmate calling services and related rules, including rules requiring that incarcerated people be provided access to certain forms of telecommunications relay service (TRS), rate caps for calls using a text telephone (TTY) device, rules prohibiting charges for TRS-to-voice or voice-to-TTY calls, and rules requiring annual reporting of the number of TTY-based calls and any complaints.[6] In addition, inmate calling services providers must ensure that the services and equipment provided for use by incarcerated people are accessible and usable by incarcerated people with communication disabilities (subject to achievability),[7] including when legacy telephone services are discontinued and replaced with advanced services such as Voice over Internet Protocol (VoIP).[8]

4. Finally, the Order on Reconsideration denies a Petition for Reconsideration of the *2020 ICS Order on Remand* and reiterates that the jurisdictional nature of an inmate calling services telephone call depends on the physical location of the originating and terminating endpoints of the call.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

6. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

7. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.[9] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[10] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[11] A "small business concern" is one

[6] *See* 47 U.S.C. §§ 225, 276; 47 CFR §§ 64.603, 64.1330(b), 64.6040, 64.6060; *2015 ICS Order*, 30 FCC Rcd at 12874-75, para. 226.

[7] *See* 47 U.S.C. §§ 255, 617; 47 CFR pts. 6, 7, 14.

[8] *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128, 1185-86, para. 153 (2017).

[9] 5 U.S.C. § 604(a)(3).

[10] 5 U.S.C. § 601(6).

[11] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity (continued….)

which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[12]

8. *Small Businesses.* Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.[13]

9. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry."[14] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[15] U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.[16] Of this total, 3,083 operated with fewer than 1,000 employees.[17] Thus, under this size standard, the majority of firms in this industry can be considered small.

10. *Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers.[18] Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[19] U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated for the entire year.[20] Of that total, 3,083 operated with fewer than 1,000 employees.[21] Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

11. *Incumbent Local Exchange Carriers (incumbent LECs*). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services.

(Continued from previous page)
for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[12] 15 U.S.C. § 632.

[13] *See* SBA, Office of Advocacy, "Frequently Asked Questions," available at http://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf (last visited June 22, 2020).

[14] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[15] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[16] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false.

[17] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[18] *See 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," supra* note 14.

[19] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[20] *See 2012 Economic Census of the United States, supra* note 16.

[21] *See 2012 Economic Census of the United States, supra* note 16. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

The closest applicable NAICS Code category is Wired Telecommunications Carriers.[22] Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[23] U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year.[24] Of this total, 3,083 operated with fewer than 1,000 employees.[25] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.[26] Of this total, an estimated 1,006 have 1,500 or fewer employees.[27] Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

12. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[28] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[29] The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

13. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers[30] and under that size standard, such a business is small if it has 1,500 or fewer employees.[31] U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year.[32] Of that number, 3,083 operated with fewer than 1,000 employees.[33] Based on these data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either

[22] *See 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," supra* note 14.

[23] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[24] *See 2012 Economic Census of the United States, supra* note 16.

[25] *See 2012 Economic Census of the United States, supra* note 16. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[26] *See* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at tbl. 5.3 (Sept. 2010), https://docs.fcc.gov/public/attachments/DOC-301823A1.pdf (2010 Trends in Telephone Service Report).

[27] *Id.*

[28] 5 U.S.C. § 601(3).

[29] *See* Letter from Jere W. Glover, Chief Counsel to Advocacy, SBA, to William E. Kennard, Chairman, FCC (filed May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 632(a); *see also* 5 U.S.C. § 601(2). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. *See* 13 CFR § 121.102(b).

[30] *See 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," supra* note 14.

[31] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[32] *See 2012 Economic Census of the United States, supra* note 16.

[33] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

competitive local exchange services or competitive access provider services.[34] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.[35] In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[36] Also, 72 carriers have reported that they are Other Local Service Providers.[37] Of this total, 70 have 1,500 or fewer employees.[38] Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.[39]

14. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers.[40] The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[41] U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year.[42] Of that number, 3,083 operated with fewer than 1,000 employees.[43] According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[44] Of this total, an estimated 317 have 1,500 or fewer employees.[45] Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

15. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[46] According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.[47] Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.[48] Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by the Commission's action.

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[34] *See* 2010 Trends in Telephone Service Report at tbl. 5.3.

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

[40] *See 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," supra* note 14.

[41] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[42] *See 2012 Economic Census of the United States, supra* note 16.

[43] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[44] *See* 2010 Trends in Telephone Service Report at tbl. 5.3.

[45] *Id.*

[46] *See* 13 CFR § 121.101, NAICS Code 517911.

[47] *See* 2010 Trends in Telephone Service Report at tbl. 5.3.

[48] *See id.*

16. *Toll Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[49] According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.[50] Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.[51] Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by the Commission's action.

17. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[52] According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[53] Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.[54] Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the Commission's action.

18. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers, a group that includes inmate calling services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[55] According to Commission data,[56] 535 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 531 have 1,500 or fewer employees and four have more than 1,5000 employees.[57] Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the Commission's action.

19. *TRS Providers.* TRS can be included within the broad economic category of All Other Telecommunications. Ten providers currently receive compensation from the TRS Fund for providing at least one form of TRS: ASL Services Holdings, LLC (GlobalVRS); Clarity Products, LLC (Clarity); ClearCaptions, LLC (ClearCaptions); Convo Communications, LLC (Convo); Hamilton Relay, Inc. (Hamilton); MachineGenius, Inc. (MachineGenius); MEZMO Corp. (InnoCaption); Sorenson Communications, Inc. (Sorenson); Sprint Corporation (Sprint); and ZP Better Together, LLC (ZP Better Together).

20. *All Other Telecommunications.* The **"**All Other Telecommunications" category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[58] This industry also

[49] *See* 13 CFR § 121.101, NAICS Code 517911.

[50] *See* 2010 Trends in Telephone Service Report at tbl. 5.3.

[51] *See id.*

[52] *See* 13 CFR § 121.101, NAICS Code 517110.

[53] *See* 2010 Trends in Telephone Service Report at tbl. 5.3.

[54] *See id.*

[55] *See* 13 CFR § 121.101, NAICS Code 517110

[56] *See* 2010 Trends in Telephone Service Report at tbl. 5.3.

[57] *See id.*

[58] *See* U.S. Census Bureau, 2017 NAICS Definitions, NAICS Code "517919 All Other Telecommunications", https://www.census.gov/naics/?input=517919&year=2017&details=517919.

includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.[59] Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[60] The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of $35 million or less.[61] For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.[62] Of those firms, a total of 1,400 had annual receipts less than $25 million and 15 firms had annual receipts of $25 million to $49,999,999.[63] Thus, the Commission estimates that the majority of "All Other Telecommunications" firms potentially affected by our action can be considered small. Under this category and the associated small business size standard, a majority of the ten TRS providers can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

21. The Third Report and Order requires providers to examine site commission payments in order to recover only the portions of such payments estimated to be directly related to inmate calling services and to separately list these charges on consumers' bills. Providers must determine whether a site commission payment is either (1) mandated pursuant to state statute, law or regulation adopted pursuant to state administrative procedure statutes where there is notice and an opportunity for public comment and that operates independently of the contracting process between correctional institutions and providers (the Legally Mandated facility rate component), or (2) results from contractual obligations reflecting negotiations between providers and correctional facilities arising from the bidding and subsequent contracting process (the Contractually Prescribed facility rate component). For Legally Mandated site commission payments, providers may pass these payments through to consumers without any markup, as an additional component of the new interim interstate per-minute rate cap. For Contractually Prescribed site commission payments, providers may recover an amount up to $0.02 per minute to account for these costs. To promote increased transparency, the Third Report and Order requires providers to clearly label a Legally Mandated or Contractually Prescribed facility rate component, as applicable, in the rates and charges portion of a consumer's bill, including disclosing the source of such provider's obligation to pay that facility-related rate component.

22. The Third Report and Order adopts a waiver process for providers if they can show that the applicable total rate per minute and ancillary service charge caps do not permit them to recover their costs of providing interstate and international calling services as well as minimum requirements for such a showing. It also adopts a new mandatory data collection to obtain more uniform cost data based on consistent prescribed allocation methodologies to determine fair permanent cost-based rates for facilities of all sizes.

23. The Order on Reconsideration confirms that providers must properly identify the physical location of the originating and terminating endpoints of the call in order to determine the jurisdictional nature of the call. To the extent those services are interstate, international, or jurisdictionally mixed, the

[59] *Id.*

[60] *Id.*

[61] *See* 13 CFR § 121.201, NAICS code 517919.

[62] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517919, https://data.census.gov/cedsci/table?q=EC1251&hidePreview=true&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&lastDisplayedRow=28#.

[63] *Id.*

provider must comply with interim interstate and international inmate calling services caps or limits adopted by the Commission.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

24. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[64]

25. The Commission's rate caps differentiate between prisons, larger jails, and jails with average daily populations below 1,000 to account for differences in costs incurred by providers servicing these different facility types. The Commission adopts new interim interstate provider-related rate caps for prisons and larger jails and for collect calls from jails with average daily populations below 1,000. The Commission believes these actions properly recognize that, in comparison to prisons and larger jails, jails with average daily populations below 1,000 may be relatively high-cost facilities for providers to serve. The Commission also adopts rate caps for international calls originating from facilities of any size.

26. The Commission adopts new interim interstate facility-related rate components for prisons and larger jails to allow providers to recover portions of site commission payments estimated to be directly related to the provision of inmate calling services and to separately list these charges on consumers' bills. Providers must determine whether a site commission payment is either (1) mandated pursuant to state statute, or law or regulation and adopted pursuant to state administrative procedure statutes where there is notice and an opportunity for public comment that operates independently of the contracting process between correctional institutions and providers (Legally Mandated facility rate component), or (2) results from contractual obligations reflecting negotiations between providers and correctional facilities arising from the bidding and subsequent contracting process (the Contractually Prescribed facility rate component). For Legally Mandated site commission payments, providers may pass these payments through to consumers without any markup, as an additional component of the new interim interstate per-minute rate cap. For Contractually Prescribed site commission payments, providers may recover an amount up to $0.02 per minute to account for these costs. To promote increased transparency, the Third Report and Order requires providers to clearly label a Legally Mandated or Contractually Prescribed facility rate component, as applicable, in the rates and charges portion of a consumer's bill, including disclosing the source of such provider's obligation to pay that facility-related rate component.

27. The Commission recognizes that it cannot foreclose the possibility that in certain limited instances, the interim rate caps may not be sufficient for certain providers to recover their costs of providing interstate and international inmate calling services. To minimize the burden on providers, the Commission adopts a waiver process that allows providers to seek relief from its rules at the facility or contract level if they can demonstrate that they are unable to recover their legitimate inmate calling services-related costs at that facility or for that contract. The Commission will review submitted waivers and potentially raise each applicable rate cap to a level that enables the provider to recover the costs of providing inmate calling services at that facility. This waiver opportunity should benefit any inmate calling services providers that may be small businesses and that are unable to recover their interstate and international costs under the new interim rate caps.

[64] 5 U.S.C. § 603(c)(1)-(4).

G. Report to Congress

28. The Commission will send a copy of the Third Report and Order and Order on Reconsideration, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[65] In addition, the Commission will send a copy of the Third Report and Order and Order on Reconsideration, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Third Report and Order and Order on Reconsideration, and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.[66]

[65] 5 U.S.C. § 801(a)(1)(A).

[66] *See id.* § 604(b).

APPENDIX D

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Fifth Further Notice of Proposed Rulemaking (Notice). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of this Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the Notice and the IRFA (or summaries thereof) will be published in the Federal Register.[3]

1. Need for, and Objectives of, the Proposed Rules

2. In the Notice, the Commission seeks more detailed evidence and comments from industry stakeholders to consider further reforms to inmate calling services rates within its jurisdiction, including permanent interstate and international rate caps. The Commission seeks to ensure that functionally equivalent access is provided to people who are deaf, hard of hearing or deafblind, or have speech disabilities. The TTY-based telecommunications relay service (TRS) and speech-to-speech relay service (STS)—the only relay services for which inmate calling services providers currently are required to provide access under the Commission's rules—are insufficient to meet the range of needs of incarcerated people with communication disabilities using today's networks. The Commission seeks comment on requiring inmate calling services providers to make available newer forms of TRS, such as Captioned Telephone Service (CTS) (a non-Internet-based telephone captioning service), and the three forms of Internet-based TRS: video relay service (VRS), IP Captioned Telephone Service (IP CTS), and IP Relay (a text-based relay service using IP). The Commission seeks comment on whether to modify the existing TRS rules for application to the provision of such services at correctional facilities. The Commission seeks comment on whether to expand the scope of the rule prohibiting charges for TRS provided at correctional facilities. Further, the Commission seeks comment on whether to require inmate calling services providers to provide access to direct video communication for incarcerated people with communication disabilities. Finally, the Commission seeks comment on whether new TRS services provided to incarcerated people with communication disabilities should be included in the existing accessibility-related reports.

3. The Commission seeks comment on what methodology it should use to permanently cap provider-related rate components for interstate and international inmate calling services. It seeks comment on the provision of communications services to jails with average daily populations below 1,000 and on further reforms to the treatment of site commission payments in connection with interstate and international inmate calling services, including at jails with average daily populations below 1,000. Next, the Commission seeks comments on revisions to its ancillary service charge rules and refining its international rate methodology to prevent double counting of international call costs that are already included in the providers' overall inmate calling services cost. The Commission also seeks comment on the need to adopt an on-going periodic cost data collection to ensure interstate and international calling services rates are just and reasonable and on revisions to the Commission's definition of "jail" to clarify the term to include certain types of facilities. Finally, the Commission seeks comment on the

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. § 603(a).

[3] *Id*.

characteristics of the bidding market in order for the Commission to assess some providers' claims that they win contracts through a competitive bidding process and thus the inmate calling services market is competitive.

2. Legal Basis

4. The legal basis for any action that may be taken pursuant to the Further Notice is contained in sections 1, 2, 4(i)-(j), 201(b), 218, 220, 276, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i)-(j), 201(b), 218, 220, 276, and 403.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[4] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[5] A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[6]

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein.[7] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[8] These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.[9]

7. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[10] The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.[11] Nationwide, for tax year 2018, there

[4] *See* 5 U.S.C. § 601(6).

[5] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[6] *See* 15 U.S.C. § 632.

[7] *See* 5 U.S.C. § 601(3)-(6).

[8] *See* SBA, Office of Advocacy, "What's New With Small Business," https://cdn.advocacy.sba.gov/wp-content/uploads/2019/09/23172859/Whats-New-With-Small-Business-2019.pdf (June 2020).

[9] *Id*.

[10] 5 U.S.C. § 601(4).

[11] The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number small organizations in this small entity description. S*ee* Annual Electronic Filing Requirement for Small Exempt Organizations—Form 990-N (e-Postcard), "Who must file," https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

were approximately 571,709 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.[12]

8. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[13] U.S. Census Bureau data from the 2017 Census of Governments[14] indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.[15] Of this number there were 36,931 general purpose governments (county[16], municipal and town or township[17]) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts[18] with enrollment populations of less than 50,000.[19] Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of "small governmental jurisdictions."[20]

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[12] *See* Exempt Organizations Business Master File Extract (EO BMF), "CSV Files by Region," https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-eo-bmf. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for Region 1-Northeast Area (76,886), Region 2-Mid-Atlantic and Great Lakes Areas (221,121), and Region 3-Gulf Coast and Pacific Coast Areas (273,702) which includes the continental U.S., Alaska, and Hawaii. These data do not include information for Puerto Rico.

[13] 5 U.S.C. § 601(5).

[14] *See* 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with "2" and "7." *See generally* Census of Governments, https://www.census.gov/programs-surveys/cog/about.html.

[15] *See* U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts); *see also* Table 2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

[16] *See* U.S. Census Bureau, 2017 Census of Governments - Organization, Table 5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

[17] *See* U.S. Census Bureau, 2017 Census of Governments - Organization, Table 6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

[18] *See* U.S. Census Bureau, 2017 Census of Governments - Organization, Table 10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html. There were 12,040 independent school districts with enrollment populations less than 50,000. *See generally* Table 4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

[19] While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

[20] This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

9. *Wired Telecommunications Carriers*. The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry."[21] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[22] U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year.[23] Of this total, 3,083 operated with fewer than 1,000 employees.[24] Thus, under this size standard, the majority of firms in this industry can be considered small.

10. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers.[25] Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[26] U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated for the entire year.[27] Of that total, 3,083 operated with fewer than 1,000 employees.[28] Thus under this category and the associated size standard, the Commission estimates that the majority of local exchange carriers are small entities.

11. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers.[29] Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[30] U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year.[31] Of this total, 3,083 operated with fewer than 1,000 employees.[32] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to

[21] *See* U.S. Census Bureau, *2017 NAICS Definition, "517311 Wired Telecommunications Carriers,"* https://www.census.gov/naics/?input=517311&year=2017&details=517311.

[22] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[23] *See* U.S. Census Bureau, *2012 Economic Census of the United States*, Table ID: EC1251SSSZ5, *Information: Subject Series - Estab & Firm Size: Employment Size of Firms for the U.S.: 2012*, NAICS Code 517110, https://data.census.gov/cedsci/table?text=EC1251SSSZ5&n=517110&tid=ECNSIZE2012.EC1251SSSZ5&hidePreview=false.

[24] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[25] *See 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," supra* note 21.

[26] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[27] *See 2012 Economic Census of the United States, supra* note 23.

[28] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[29] *See 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," supra* note 21.

[30] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[31] *See 2012 Economic Census of the United States, supra* note 23.

[32] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.[33] Of this total, an estimated 1,006 have 1,500 or fewer employees.[34] Thus, using the SBA's size standard the majority of incumbent LECs can be considered small entities.

12. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field" of operation.[35] The SBA's Office of Advocacy contents that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[36]

13. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers[37] and under that size standard, such a business is small if it has 1,500 or fewer employees.[38] U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year.[39] Of that number, 3,083 operated with fewer than 1,000 employees.[40] Based on these data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[41] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.[42] In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[43] Also, 72 carriers have reported that they are Other Local Service Providers.[44] Of this total, 70 have 1,500 or fewer employees.[45] Consequently, based on internally researched FCC data, the Commission estimates that

[33] *See* Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at tbl. 5.3 (Sept. 2010), https://docs.fcc.gov/public/attachments/DOC-301823A1.pdf (2010 Trends in Telephone Service Report).

[34] *Id.*

[35] 5 U.S.C. § 601(4).

[36] *See* Letter from Jere W. Glover, Chief Counsel to Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. § 601(4). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. *See* 13 CFR § 121.102(b).

[37] *See 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," supra* note 21.

[38] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[39] *See 2012 Economic Census of the United States, supra* note 23.

[40] *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[41] *See* 2010 Trends in Telephone Service Report at tbl. 5.3.

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *Id.*

most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.[46]

14. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers.[47] The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[48] U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year.[49] Of that number, 3,083 operated with fewer than 1,000 employees.[50] According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[51] Of this total, an estimated 317 have 1,500 or fewer employees.[52] Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

15. *Local Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.[53] Under that size standard, such a business is small if it has 1,500 or fewer employees.[54] Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities.

16. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[55] According to Commission data, 881 carriers have reported that they are engaged in the provisions of toll resale services.[56] Of this total, an estimated 857 have 1,500 or fewer employees and 24

[46] We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

[47] *See 2017 NAICS Definition, "517311 Wired Telecommunications Carriers," supra* note 21.

[48] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[49] *See 2012 Economic Census of the United States, supra* note 23.

[50] *Id*. The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard.

[51] *See* 2010 Trends in Telephone Service Report at tbl. 5.3.

[52] *Id*.

[53] *See* U.S. Census Bureau, 2017 NAICS Definitions, NAICS Code "517919 All Other Telecommunications", https://www.census.gov/naics/?input=517919&year=2017&details=517919.

[54] 13 CFR § 121.201 (NAICS Code 517911).

[55] *See* 13 CFR § 121.201, NAICS Code 517911 (previously 517310).

[56] *See* 2010 Trends in Telephone Service Report at tbl. 5.3.

have more than 1,500 employees.[57] Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by our action.

17. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS code is for Wired Telecommunications Carriers.[58] The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[59] According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[60] Of this total, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.[61] Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by our action.

18. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers, a group that includes inmate calling services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[62] According to Commission data,[63] 535 carriers have reported that they are engaged in the provision of payphone services. Of this total, an estimated 531 have 1,500 or fewer employees and four have more than 1,500 employees.[64] Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

19. *TRS Providers.* TRS can be included within the broad economic category of All Other Telecommunications. Ten providers currently receive compensation from the TRS Fund for providing at least one form of TRS: ASL Services Holdings, LLC (GlobalVRS); Clarity Products, LLC (Clarity); ClearCaptions, LLC (ClearCaptions); Convo Communications, LLC (Convo); Hamilton Relay, Inc. (Hamilton); MachineGenius, Inc. (MachineGenius); MEZMO Corp. (InnoCaption); Sorenson Communications, Inc. (Sorenson); Sprint Corporation (Sprint); and ZP Better Together, LLC (ZP Better Together).

20. *All Other Telecommunications.* The **"**All Other Telecommunications" category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.[65] This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems.[66] Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also

[57] *See id.*

[58] *See* 13 CFR § 121.201, NAICS Code 517311 (previously 517110).

[59] *See id.*

[60] *See* 2010 Trends in Telephone Service Report at tbl. 5.3.

[61] *See id.*

[62] *See* 13 CFR § 121.201, NAICS code 517311 (previously 517110).

[63] *See* 2010 Trends in Telephone Service Report at Table 5.3.

[64] *See id.*

[65] *See* U.S. Census Bureau, 2017 NAICS Definitions, NAICS Code "517919 All Other Telecommunications", https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517919&search=2017+NAICS+Search&search=2017.

[66] *Id.*

included in this industry.[67] The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of $35 million or less.[68] For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year.[69] Of those firms, a total of 1,400 had annual receipts less than $25 million and 15 firms had annual receipts of $25 million to $49,999,999.[70] Thus, the Commission estimates that the majority of "All Other Telecommunications" firms potentially affected by our action can be considered small. TRS can be included within the broad economic census category of All Other Telecommunications. Under this category and the associated small business size standard, a majority of the ten TRS providers can be considered small.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

21. *Compliance with Caps on Permanent Per-Minute Rate, and Ancillary Service Charges.* In the Further Notice, the Commission seeks comments on further reform of inmate calling services, including permanent rate caps on interstate and international telephone services and on revising ancillary service charges rules. To the extent that permanent rate caps are lower than the interim interstate and international rate caps or they apply to all types of facilities (including jails with average daily populations below 1,000), providers (including any smaller entities) must comply with the new rate caps. Likewise, providers of all sizes must comply with any new caps or limits on permissible ancillary service charges.

22. *Compliance with Requirements to Provide Access to Additional Telecommunications Relay Services*. In the Further Notice, the Commission seeks comment on requiring inmate calling services providers to provide access to several additional TRS and direct video communications services, and whether such services should be provided at no charge. If such rules are adopted, they would apply to inmate calling service providers of all sizes.

23. *Recordkeeping, Reporting, and Certification*. The Further Notice seeks comments on adopting an on-going periodic cost data collection to ensure calling services rates are just and reasonable. It also seeks comments on revising the Commission's definition of "jail" to include certain types of facilities. To the extent the Commission imposes a new periodic cost data collection and clarifies the term "jail" to include certain types of facilities, providers of all sizes must maintain and report their cost data in accordance with the Commission's rules. Similarly, if the Commission imposes expanded data collection or other new rules specific to services provided to incarcerated people with communication disabilities, the data collection and other rules will be applicable to inmate calling services providers of all sizes. However, some providers may opt to not make the data filings based on the "safe harbor" applicable to entities, basically, that offer more than the mandatory TRS services or that have had no complaints, provided that the safe harbor is expanded and not eliminated entirely.

5. Steps Taken to Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

24. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into

[67] *Id.*

[68] *See* 13 CFR § 121.201, NAICS code 517919.

[69] U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC1251SSSZ4, Information: Subject Series - Estab and Firm Size: Receipts Size of Firms for the United States: 2012, NAICS code 517919, https://data.census.gov/cedsci/table?q=EC1251&hidePreview=true&table=EC1251SSSZ5&tid=ECNSIZE2012.EC1251SSSZ5&lastDisplayedRow=28#.

[70] *Id.*

account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.[71] We will consider all of these factors when we receive substantive comment from the public and potentially affected entities.

25. The Commission seeks comment on differences in costs between prisons, larger jails, and jails with average daily populations below 1,000 to account for differences in costs incurred by providers servicing these different facility types and sizes. To that end, the Commission seeks comment on provisioning of inmate calling services to small jails and different correctional facility costs involving different facility sizes. The Commission also seeks comment on employing separate zones of reasonableness in establishing permanent rate caps for prisons, larger jails, and jails with average daily populations below 1,000 to ensure that even small providers serving jails, which may be smaller, higher-cost facilities, and larger prisons, which often benefit from economies of scale, can recover their legitimate inmate calling services-related costs.

26. The Commission also seeks comment on whether it should revise its ancillary service charge caps on a standard periodic basis and if so, how frequently we should do so while balancing related benefits and burdens to all relevant stakeholders and serve the public interest and ensuring that the interstate and international rates are just and reasonable and provide fair compensation to providers.

27. The Commission asks whether its proposed periodic data collection would impose unreasonable burdens and costs. The Commission also seeks comment on how to structure the data collection in order to maximize its benefits, while at the same time reducing the administrative burdens on providers by asking, for example, how frequently we should require the cost data collection to occur and whether we should allow a certification of no substantial change in lieu of a full data collection to alleviate burdens on providers.

28. Given the Commission's long-standing finding that every provider has a monopoly in the facilities it serves, the Commission seeks comment on whether calling services providers have market power in bidding for calling services contracts. The Commission also asks for comment on what kind of regulation would be appropriate in the event that market power in the bidding market is found to exist.

29. Regarding the provision of functionally equivalent access to people who are deaf, hard of hearing or deafblind, or have speech disabilities, the Commission does not expect that the implementation of new forms of TRS or direct video communication would have much impact on small providers of inmate calling services. The TRS itself is provided by other entities. Small inmate calling services providers would need to provide access to that TRS, which may require special equipment (such as videophones) and appropriate billing and security features. The data obtained from providing these additional services may be additional data that would be required for annual accessibility-related reports. The Commission seeks comment on the impact of expanded reporting requirements on small entities, including the modification or elimination of the safe harbor for entities that have had no TRS-related complaints.

30. The Commission will consider the economic impact on small entities, as identified in comments filed in response to the Further Notice and this IRFA, in reaching its final conclusions and promulgating rules in this proceeding.

6. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

31. None.

[71] 5 U.S.C. § 603(c)(1)-(4).

APPENDIX E

Analysis of Responses to the Second Mandatory Data Collection

A. Introduction

1. We determine the interim interstate provider-related rate caps by developing separate zones of reasonableness based on data submitted by inmate calling services providers in response to the Second Mandatory Data Collection.[1] The goal of our approach is to estimate the mean contract cost per paid minute while taking into account providers' costs of providing inmate calling services as reported in response to the Second Mandatory Data Collection as well as the limitations of those data and concerns raised by stakeholders.[2] We establish the bounds of the zones using a variety of standard data and economic methods. Our overall approach is described in this Introduction, with additional details and our results discussed in the remainder of this Appendix and the Appendices that follow.

2. We begin by collecting certain cost and revenue data related to inmate calling services from providers through the Commission's Second Mandatory Data Collection. Next, following a standard approach to data cleaning, we then review the responses to the Second Mandatory Data Collection to identify submissions with duplicative, missing, or anomalous data. We then fix or remove these observations as appropriate,[3] and create new variables that will be used in our analysis.[4] At the core of our initial analysis and creation of new variables is the selection of a suitable mechanism to allocate reported indirect costs.[5] Allocating indirect costs is critical to ensuring that our estimates capture the providers' actual costs associated with providing inmate calling services to the greatest possible extent. These steps result in a dataset that serves as the basis for the remainder of our analyses. Data cleaning and cost allocation play a critical role in ensuring appropriate evaluation of the data and lead to results that better reflect the realities of the inmate calling services market.

3. Using this dataset, we first estimate the upper bounds of the zones of reasonableness by calculating, for both prisons and larger jails, the mean per-minute contract costs plus one standard

[1] In this Appendix, we frequently refer to inmate calling services providers by short names or acronyms. These providers are: ATN, Inc. (ATN); CenturyLink Public Communications, Inc. (CenturyLink); Correct Solutions, LLC (Correct); Combined Public Communications (CPC); Crown Correctional Telephone, Inc. (Crown); Global Tel*Link Corporation (GTL); ICSolutions, LLC (ICSolutions); Legacy Long Distance International, Inc. (Legacy); NCIC Inmate Communications (NCIC); Pay Tel Communications, Inc. (Pay Tel); Prodigy Solutions, Inc. (Prodigy); and Securus Technologies, LLC (Securus).

[2] Report and Order, *supra* Part III.C.3; *e.g.*, Pay Tel Comments at 4; Pay Tel Comments Attach., Expert Report of Don J. Wood at 7-11 (Pay Tel Wood Report) (flagging providers' differing understandings of how to report direct and indirect costs and the accuracy of reported direct costs); Securus Comments at 11-16 (asserting that providers did not report their costs using a consistent methodology); GTL Reply at 6 (remarking that providers use different reporting methodologies and that no uniform accounting is required). *But see* Wright Petitioners et al. Reply at 3 (Public Interest Parties Reply) (arguing that the data "provide more than sufficient evidence to support immediate rate reform").

[3] *See generally* Heiko Müller & Johann-Christoph Freytag, Problems, Methods, and Challenges in Comprehensive Data Cleansing (2003), http://www.dbis.informatik.hu-berlin.de/fileadmin/research/papers/techreports/2003-hub_ib_164-mueller.pdf.

[4] Created variables include, for example, facility size categories and rurality (based on geocoding). These new variables are based on information submitted in the Second Mandatory Data Collection and described in greater detail below.

[5] *See infra* Part E (explaining our conclusion that minutes of use are the best allocator considering the available information and limitations of the Second Mandatory Data Collection).

deviation.[6] Incorporating a standard deviation into each upper bound recognizes that providers' costs vary but places a limit on how much costs may differ among providers.[7] We recognize, however, that per-minute costs may be affected by the particular characteristics of a facility or contract, such as size or location. With statistical modeling, we can identify how well various reported characteristics predict the per-minute costs of a contract.[8] The results of this analysis can inform which characteristics, if any, may influence our approach to setting interim rates.[9]

4. To estimate the lower bound of each zone of reasonableness, we compare results from standard statistical tests to identify outliers within the dataset.[10] An outlier is a value within the data that "lies an abnormal distance from other values."[11] After removing the outliers, we find there are still contracts that have reported per-minute costs that are significantly higher than other providers. To bring these contracts into alignment with comparable contracts, we employ a statistical method that replaces the cost information for the abnormally high-cost contracts with cost information from contracts that have similar characteristics.[12] We use these adjusted data to calculate the mean per-minute cost plus one standard deviation. From between the upper and lower bounds, we then select interim interstate provider-related rate caps for prisons and larger jails in accord with our analysis. We conclude our analysis by testing whether these interim rate caps will allow providers to recover the costs of providing calling services to incarcerated people. In the remainder of this Appendix, we describe the Second Mandatory Data Collection in greater detail, specific steps taken to clean the data, and initial data analysis to allocate indirect costs and explore the data. In addition, we select an appropriate cost allocator and assess the commercial viability of contracts under the new interim interstate provider-related rate caps.

5. *Collecting Inmate Calling Services Data*. Our efforts to reform inmate calling services rates begin with collecting the cost, revenue, and other data reported by providers. The Commission initiated the Second Mandatory Data Collection in order to obtain more comprehensive and detailed data about inmate calling services providers, with the goal of setting more accurate cost-based rates. This effort included seeking cost data at the level of the contract and seeking information on cost components such as credit card processing fees, payments to affiliates, and the direct costs for collect calls. Further, the Second Mandatory Data Collection was unprecedented in how it disaggregates minutes, calls, site commissions, and revenues.[13] These data, coupled with key attributes, such as average daily population (ADP), facility type (prison or jail), and facility locations, provide a detailed view of the inmate calling services industry.

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[6] *See* Report and Order, *supra* Part III.C.3.

[7] Under a normal distribution, 68% of providers would fall within one standard deviation of the mean. *See* National Institute of Standards and Technology and SEMATECH, e-Handbook of Statistical Methods: 1.3.5.1. Measures of Scale (Oct. 30, 2013), https://www.itl.nist.gov/div898/handbook/index.htm (e-Handbook of Statistical Methods).

[8] *See* Appx. F, *infra* (describing sensitivity testing using a lasso analysis method).

[9] *See* Appx. F, *infra* (noting that our estimates indicate "the costs of providing inmate calling services are approximately 22% greater in jails than in prisons").

[10] *See* Appx. F, *infra*. *See generally* Victoria J. Hodge & Jim Austin, *A Survey of Outlier Detection Methodologies*, 22 A.I. Rev. 85-126 (2004) (providing an overview of commonly used outlier detection methods).

[11] *See* e-Handbook of Statistical Methods, *supra* note 7, at 7.1.6.

[12] *See* Appx. G, *infra* (describing use of a *k*-nearest neighbor matching algorithm).

[13] Unlike past collections, providers reported both paid and unpaid minutes, and reported breakdowns of minutes and calls by payment type (debit/prepaid and collect calls) and by regulatory jurisdiction. Providers also reported site commissions in fixed and variable components, and disaggregated revenues between inmate calling services revenues and ancillary service revenues. *See generally* Inmate Calling Services Mandatory Data Collection, WC Docket No. 12-375, General Instructions, https://docs.fcc.gov/public/attachments/DOC-343708A3.docx.

6. Appropriate use of these data, however, requires awareness of the data's flaws.[14] Two difficulties stand out. First, different providers record and interpret costs differently. This makes it impossible to ensure an apples-to-apples comparison among providers.[15] Second, providers have strong incentives to overstate costs because higher costs will increase any rate caps the Commission bases upon those costs, resulting in higher prices.[16] In fact, these two difficulties may be the reason why the data do not support two widely believed stylized facts: that providers' prison costs per minute are generally lower than their jail costs per minute; and that providers' unit costs tend to rise as the size of a correctional institution falls.[17] Consequently, averaging reported costs, as allocated between prison and jail contracts, shows prisons to be more expensive to serve on a per-minute basis than jails.[18]

7. However, careful analysis can identify such biases, and correct for them (*see* Appendix G).[19] Separately, we find other aspects of the reported data are less likely to be distorted. Providers' reports of call minutes (i.e., minutes of use) and revenues are likely to be accurate down to the level of the contract. Call minutes are almost universally billed,[20] as are calls when the first minute is priced differently to the second, requiring auditable accounting. Revenue tracking, and thus reported revenues, are also likely to be reliable. Calling service providers have strong incentives to accurately track revenues. First, they must do so in order to make revenue-based site commission payments, which occur in a large majority of contracts.[21] Second, tracking revenues at the contract level is necessary to determine whether a contract is profitable. Revenue reports are particularly valuable for the Commission's analysis because they provide an upper bound for contract costs that can be used to verify the accuracy of chosen cost allocation approaches. Accordingly, we find reported minutes of use and revenues to be reliable, and we use them in setting the interim interstate provider-related rate caps.

[14] *See* Report and Order, *supra* Part III.C.3 (explaining our reliance on the Second Mandatory Data Collection); *see also* Wright Petitioners, Prison Policy Initiative, and Public Knowledge Comments Appx. A, Coleman Bazelon et al., The Brattle Group, Brattle Report at 1 (Public Interest Parties Brattle Report).

[15] *See* GTL Comments Attach., Paul E. Godek, Economists Incorporated, Report in Support of Comments of GTL Regarding the FCC's Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking at 11-14; Pay Tel Wood Report at 8-9 (stating that "[s]ome providers included site commissions in their reported direct cost, but others treated them as an indirect cost" and "the accuracy of each provider's reported estimate of direct costs is likely to vary"); Public Interest Parties Brattle Report at 7 (noting for direct and indirect costs "there are certain costs that should not be included [and] there may be potential overstatement of costs"); Securus Comments at 12.

[16] *See* Free Press Comments at 2; Public Interest Parties Brattle Report at 5; Public Interest Parties Comments at 4. *But see* Pay Tel Reply Attach., Reply Report of Don J. Wood at 8.

[17] Securus Comments Attach. D, FTI Consulting, Inc., Declaration of Robert O. Fisher, Brian F. Pitkin & Steven E. Turner, at 23-24 (Securus FTI Report).

[18] Securus Comments at 40; Appx. G, *infra*.

[19] A similar distortion can occur if different providers have different approaches to reporting their costs. One provider's costs could, through the averaging process, overstate the costs of contracts of a certain type and understate the costs of others. However, averaging over all providers would reduce such distortions to the extent they were not systematic. *See generally* Public Interest Parties Brattle Report at 16; Public Interest Parties Reply Appx. A, Coleman Bazelon et al., Brattle Group, Brattle Report at 16 (Public Interest Parties Brattle Reply Report).

[20] For roughly 72% of contracts (2,100 of 2,900), providers report paid minutes which account for 90% or more of their total reported minutes, according to staff analysis of the Second Mandatory Data Collection responses.

[21] For roughly 86% of contracts (2,488 of 2,900), providers report variable site commissions (both legally compelled and negotiated), according to staff analysis of the Second Mandatory Data Collection responses. *See, e.g.*, Revised Description and Justification for GTL's Mandatory Data Collection Report, WC Docket No. 12-375, at 15 (filed May 19, 2020) (redacted for public inspection) (GTL Revised Description and Justification) (noting that "[t]he vast majority of GTL's site commission payment requirements are variable commissions").

B. Fundamentals of the Second Mandatory Data Collection

8. *Description of Data Collection*. The Second Mandatory Data Collection was adopted with the goal of enabling the Commission to identify trends in the market and provide information necessary to adopt further reforms. Providers offering inmate calling services were required to submit five years of information, covering calendar years 2014 to 2018. Providers filed their responses to the data collection in March 2019. Commission staff then "undertook a comprehensive analysis of the . . . responses and conducted multiple follow-up discussions with . . . providers to supplement and clarify their responses."[22] In addition, staff relied on providers' April 1, 2020, annual reports to further inform the analysis and results set forth in the *2020 ICS Notice*.[23]

9. Information requested by the Commission in the Second Mandatory Data Collection included company and affiliate information, total costs and revenues, and facility-level information. Filers were required to indicate the portion of total costs directly attributable to the provision of inmate calling services and allocate indirect costs, such as general overheads, between inmate calling services and other operations.[24] In total, 13 providers of inmate calling services submitted data to the Commission (*see* Table 1).[25] The collected data included information on numerous characteristics of the providers' contracts, such as:

- Whether the contract was for a prison or a jail;
- The average daily incarcerated population (average daily population) of all the facilities covered by the contract;
- The total number of calls made annually under the contract, broken out by paid and unpaid, with paid calls further broken out by debit, prepaid, and collect;
- Total call minutes; call minutes broken out by paid and unpaid; interstate, intrastate, and international; and prepaid, debit, and collect calls;
- Inmate calling services revenues, broken out by prepaid, debit, and collect;
- Automated payment revenues and paper bill or statement revenues, earned under the contract (live operator revenues were not collected);
- Site commissions paid to facility operators under the contract; and
- Each provider's inmate calling services costs in total, exclusive of site commissions.

10. *Description of Initial Data Cleaning.* In our review of the responses to the Second Mandatory Data Collection, we identify submissions with incomplete or invalid data, duplicative information, and contracts that are not comparable to others because of unique characteristics. We exclude these contracts where they cannot be used (e.g., where missing data would not allow us to make relevant calculations) or where the contracts do not have paid minutes, and so are unaffected by changes to the interstate rate caps.[26] As the Wright Petitioners, Prison Policy Initiative, and Public Knowledge

[22] *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485, 8493-94, para. 22 (2020) (*2020 ICS Order on Remand* or *August 2020 ICS Notice or 2020 ICS Notice*).

[23] *Id.* at 8493-94, para. 25.

[24] *See* Inmate Calling Services Mandatory Data Collection, WC Docket No. 12-375, General Instructions at 6, https://docs.fcc.gov/public/attachments/DOC-343708A3.docx (Second Mandatory Data Collection Instructions).

[25] The 13th provider, Talton, is excluded from Table 1 for the reasons discussed below.

[26] Public Interest Parties Brattle Report at 12-13 (discussing removal of outliers).

(Public Interest Parties) recognize, "data cleaning to ensure comparability of costs" is important.[27] In response to commenters' emphasis on data consistency,[28] we further review the responses to the Second Mandatory Data Collection and identify additional contracts that should be excluded from our analysis. Specifically, we remove an additional 35 contracts beyond the contracts removed from the results presented in the *2020 ICS Notice*. The contracts removed from the *2020 ICS Notice* analysis included three contracts "not comparable to the average correctional facility" and contracts reporting zero minutes.[29] In addition to removing these contracts, we remove contracts with negative or zero total revenue. Other than the adjustments noted below, we accepted the filers' data and related information "as provided" (i.e., without any modifications).

11. *Removing Contracts with Invalid or Incomplete Data*. For the calculations presented in this Appendix, we exclude a total of 467 contracts from the Second Mandatory Data Collection data. First, we remove 424 contracts where a provider reported either zero paid minutes or zero total minutes, 416 of which reported neither paid nor total minutes. Of the remaining eight contracts reporting either zero paid minutes or zero total minutes, two appear to be contracts for juvenile services and the provider may not charge for calls ({[ ]} in Texas and {[ ]} in Florida), and six report zero paid minutes, but report a range of total minutes from four to 97. As a practical matter, contracts that provide free inmate calling services will not be affected by the interim rate caps adopted in the Report and Order, and zero-minute contracts frustrate attempts to calculate per-minute rates or revenues. We find these reasons sufficient to exclude such contracts from our analysis. Second, we remove 10 contracts where a provider reported direct costs less than $0. By contrast, we did not delete contracts for which no direct costs were reported. Finally, we exclude 31 contracts where the total revenue net of site commissions is less than or equal to $0. We find that contracts that report negative direct costs and or negative revenues are implausible, and likewise indicative of some error in reporting.

12. *Excluding an Anomalous Contract.* We exclude a long-standing, so presumably viable, contract between GTL and the {[ ]}, because it has an unusual preponderance of free calls,[30] and at face value suggests GTL's per-minute costs on this contract for both paid and unpaid minutes are as low as {[ ]}.[31] Inclusion of this contract distorts the cost allocation procedure, raising the mean per-minute cost for prisons by approximately {[ ]} (from {[ ]} to {[ ]}), and increasing the standard deviation from $0.041 to $0.658. This occurs because we

[27] *Id.* at 12.

[28] Commenters express concern with instances where provider responses to the Second Mandatory Data Collection report zero values. *See, e.g.*, Securus Comments Attach. B, Robert O. Fisher et al., FTI Consulting, Inc., Inmate Calling Services Cost Analysis for Securus at 17 (Securus Cost Study) (noting instances where providers "reported zero or near zero direct cost"); Securus Comments at 12 (stating that 90 contracts reported average daily populations of zero). We do not remove these contracts because we find it appropriate to classify them as smaller jail contracts based on the reported paid minutes of use. *See infra* para. 20.

[29] *See 2020 ICS Notice*, 35 FCC Rcd at 8556, Appx. E at paras. 3-4; *see also infra* paras. 11-15.

[30] In 2018, GTL provided {[ ]} free minutes, earning revenues on only {[ ]} minutes, or {[ ]} of all minutes on this contract. Thus, free minutes constitute {[ ]} of all minutes on this contract. In contrast, the share of paid minutes for all contracts excluding this one is 3.3%. Consistent with this {[ ]} share of free minutes, it appears that the state requires the provision of at least two free 10-minute calls to each incarcerated juvenile per week. Juvenile Justice Monitoring Unit, State of Maryland, Fourth Quarter Report and 2017 Annual Review, at 18, 22 ("two weekly phone calls to which youth are entitled"), 26 ("DJS policy limits youth in detention and committed placement centers to two ten minute phone calls a week."), 33, 38, 42, 50, 54, 58 (Mar. 2018), https://www.marylandattorneygeneral.gov/JJM%20Documents/17_Quarter4.pdf.

[31] This equals the quotient of GTL's total revenues under the contract and total minutes supplied. GTL also paid {[ ]} on the contract, which also is somewhat unusual. In 2018, only 31% of all prison contracts were commission-free.

estimate the per-minute costs by dividing a contract's allocated cost by paid minutes. Because this contract bears so few paid minutes, we calculate a per-minute cost of {[ ]}.[32] This is implausible on its face,[33] and becomes more implausible in light of the reported revenues associated with the contract. GTL only reports earning {[ ]} per paid minute on this contract, an amount that is less than {[ ]} the per-minute allocated cost. This is also substantially lower than the rate GTL earned per all minutes on its contract with the {[ ]}, or {[ ]} per minute.

13. *Eliminating Double Reporting and Excluding Federally Managed Facilities*. In discussions with calling service providers, we learned that several had included site commissions as part of their total inmate calling services costs and a subset of those had also reported site commissions as part of their direct inmate calling services costs. Because we are interested in the cost of providing the underlying telecommunications service, we do not include site commission payments in our measures of providers' costs. We also discovered a double reporting of site commission payments for {[ ]} contracts that both {[ ]} and {[ ]} reported serving. In their responses to the Second Mandatory Data Collection, it appears that {[ ]} reported its share of the site commission while {[} reported the site commission for the entire contract. In these cases, we have removed the site commission payments reported by {[ ]} and consider {[ ]}'s reported payment to represent the site commissions for the entire contract.

14. We also excluded two contracts that are not comparable to the average correctional facility because they are managed by Immigration and Customs Enforcement (ICE) and the Federal Bureau of Prisons (BOP). This is because significant elements of inmate calling services in these federal institutions are managed by the incarceration authority and not the reporting provider.[34] The ICE contract was the only contract held by Talton, so dropping this contract eliminated Talton from our dataset thus resulting in our reliance on data from 12 providers. Before dropping the BOP contract, we allocated a share of GTL's costs reported at the level of the firm (as opposed to the contract) to the BOP contract as described below. Excluding these contracts produces a dataset of 2,900 contracts, accounting for 2.2 million incarcerated people and 7.8 billion paid minutes.

15. Our dataset of 2,900 contracts gives an unprecedented view into providers' costs, revenues, and call minutes.[35] By excluding incomplete and anomalous contracts, we substantially improve the comparability of the information submitted by providers. However, providers may have overstated their costs or reported costs differently than other providers. We address these issues in Appendix G by excluding outliers and replacing the cost information for abnormally high costs with that of comparable contracts.

[32] If per-minute costs were calculated using total minutes instead of paid minutes, the per-minute costs would be {[ ]}.

[33] By way of comparison, this is {[ ]} times higher than the next nearest allocated cost, {[ ]} times higher than the average allocated cost for prisons, and {[ ]} times higher than the {[ ]} per-minute costs we calculate for GTL's contract with the {[ ]}.

[34] *See* Description and Justification for Talton Communication, Inc.'s Mandatory Data Collection Report, WC Docket No. 12-375, at 1 (filed Mar. 1, 2019) (stating that Talton "does not bill or collect revenues nor do we incur the cost of service"); *see also* GTL, FCC Form 2301(a) – Inmate Calling Services Annual Report, WC Docket No. 12-375, Tab I.a Narrative (3), Row 102 (filed Apr. 1, 2020) (confidential version) (GTL Annual Report) ({[ ]}).

[35] Today, CenturyLink's former inmate calling services operations are part of ICSolutions, but we kept those operations separate in our analysis.

C. Initial Data Analysis

16. After cleaning the reported data, we make a number of basic analytical observations to aid our analysis. First, it is important to understand the different levels of granularity in reported costs. This leads us to conduct our analysis at the contract level. Next, we divide the reported data into several tiers, and examine prisons, larger jails, and jails with average daily populations less than 1,000 separately. We also conduct a geographic analysis to analyze the effects of rurality on reported costs. Finally, we observe that disparate treatment of ancillary services costs and revenues requires some attention in order to ensure we are comparing commensurate quantities. Taken together, these steps form a predicate around which may then offer further, deeper analysis of the resultant costs. We review these steps below.

17. *Granularity of Reported Costs.* In the Second Mandatory Data Collection, costs are effectively reported at two levels, that of the inmate calling services provider—total costs—and that of the contract. Contract costs are costs that the provider attributes to a specific contract, including any proportion of overheads the provider elects to allocate.[36] The difference between a provider's total costs and the sum of all costs reported at the contract level is unallocated costs, and these represent costs that have not been attributed to a particular contract. While providers generally reported at least some inmate calling services costs at the level of the contract, and more rarely at the level of the facility, each did this differently. Providers took different approaches in how they reported these costs. For example, bad debt is the only cost GTL reports at the level of the contract. Thus, for GTL, a range of other contract-specific costs are recorded at the level of the firm only. By contrast, another provider allocates some of its costs, most likely including overheads, to the contract according to the contract's share of phones installed. Still other providers allocate all of their overheads using a revenue allocator.

18. *Unit of Analysis*. Our analysis is conducted primarily at the contract level. This approach is consistent with our view that the contract is the basic unit of supply for inmate calling services. That is, providers bid on contracts, rather than facilities (though in many instances the contract is for a single facility). This approach is also consistent with how the data were submitted, reflecting the underlying reality that providers are focused on contracts as a whole and not elements of the contracts. The Commission requested information to be submitted for each correctional facility where a provider offers inmate calling services, and some key variables—for example, the quantity of calls and minutes of use—were reported by facility. However, even though over 90% of contracts were reported as representing a single facility, most filers do not maintain all of the data we requested by facility in the ordinary course of their business. As a result, in some instances, contracts were reported that covered multiple facilities without any breakout for those facilities.[37] In other cases, some facility-level data were not reported. Examples of the latter include average daily populations and credit card processing costs. In any event, because the Second Mandatory Data Collection instructions had required providers to cross-reference their contracts with the facilities they covered,[38] we were able to group facilities by contract, which facilitated our ability to conduct our analysis at the contract level.

[36] In this Appendix, unless otherwise specified, we use "overheads" to refer to costs incurred to provide a service, but which are also incurred to provide other services, and so cannot be directly attributed to any of those services. The canonical example is a chief executive officer's salary. Another example is the cost of a provider's platform and associated software used to provide inmate calling services across all of the provider's contracts. That cost cannot be directly attributed to any particular contract. Instead, it is incurred whether or not one, several, or perhaps even most of the contracts are served.

[37] For example, contracts with the {[ ]} and {[ ]} were reported as single facilities, with average daily populations of {[ ]} and {[ ]}, respectively.

[38] *See* Second Mandatory Data Collection Instructions at 8 (stating that each entry should be submitted with a "Unique Identifier For Contract . . . for purpose[s] of referencing and identifying that particular contract").

19. *Separation into Tiers*. We separate contracts into three distinct categories for analysis: contracts for prisons, contracts for jails with average daily populations of less than 1,000, and contracts for jails with average daily populations of 1,000 or more (larger jails). Average daily population was not reported for three of the 129 prison contracts and 81 of the 2,771 jail contracts. The average paid minutes across these 81 jail contracts is 54,895 paid minutes. Since the average paid minutes for these contracts are lower than the average paid minutes reported for jails with average daily populations less than 1,000, we categorize these 81 jail contracts as contracts for jails with fewer incarcerated people for the purposes of our analysis.[39]

20. Average daily population of 1,000 serves as a natural breakpoint in the data in two key respects. A natural break in a dataset is an approach to classifying data into ranges based on the similarity of the observations within a class, in this case, facility size (i.e., average daily population).[40] First, in terms of cost differentials, jails with average daily populations less than 1,000 are more likely than larger jails to exhibit higher per-minute costs.[41] For instance, contracts for jails with fewer people exceed a cost threshold of $0.16 per minute at more than twice the rate of contracts for larger jails.[42] Second, as shown in Figure 1 below, visualizing the distribution of the average daily population data for jails shows a shift in the shape of the data around an average daily population of 1,000, with a much more substantial density of observations below 1,000 as compared to above.[43] This density is driven by large numbers of contracts with low average daily populations. Specifically, approximately 48% of all jail contracts report average daily populations of less than 100, and approximately 93% of all jail contracts report average daily populations of less than 1,000. We then look at the 95th percentile value because it is often used to identify the tail of a distribution (i.e., the values in the distribution that are farthest from the mean).[44] Across all 2,771 jail contracts, the 95th percentile of average daily population is 1,165. Put differently, 95% of the jail contracts have average daily populations of less than 1,165, and 5% of jail contracts report an average daily population of 1,165 or greater. Since average daily population is an annualized estimate based on one year of data,[45] we find it reasonable to round to the nearest order of magnitude and remain consistent with other analyses that use 1,000 or more as a category.[46] We include jails with average daily populations less than 1,000 in our total dataset of 2,900 contracts for purposes of analyzing the various possible allocation methodologies and to ensure our analysis is sufficiently comprehensive. But, because we do not adopt a new interstate interim rate cap for debit and prepaid calls from jails with average daily populations less than 1,000, we do not provide summary statistics or otherwise analyze such facilities in this Appendix.

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[39] Average paid minutes for a smaller jail is 634,774, and average paid minutes for a larger jail is 9,274,594.

[40] *See* Axis Maps, The Basics of Data Classification, https://www.axismaps.com/guide/data-classification (last visited Mar. 25, 2021) (describing various classification methods, including natural breaks).

[41] *See* Report and Order, *supra* Part III.C.2 (discussing record evidence of the cost differences between large and smaller jails).

[42] Of the 2,589 smaller jail contracts, 132 contracts have an average per-minute cost above $0.16, and of the 182 larger jail contracts, four have an average per-minute cost above $0.16. Staff analysis of Second Mandatory Data Collection.

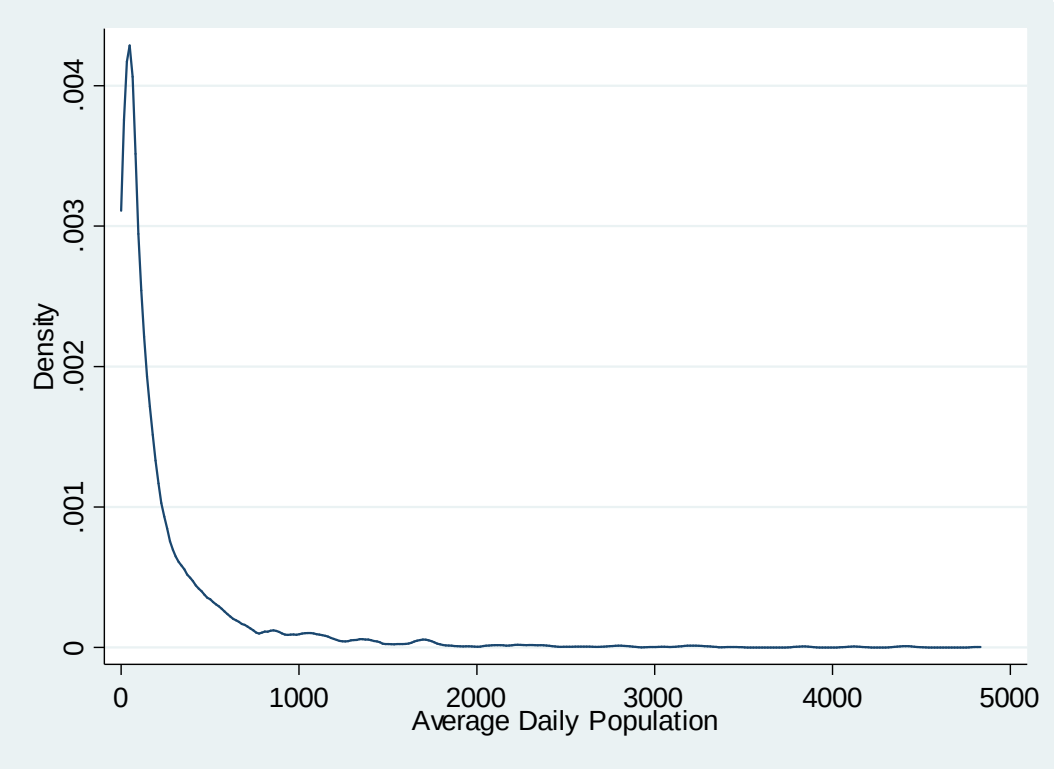
[43] Distribution of average daily population was visualized by plotting the results of a kernel density estimate.

[44] *See* e-Handbook of Statistical Methods, *supra* note 7, at 1.3.5.1 - Measures of Location.

[45] *See* Second Mandatory Data Collection Instructions at 2; *see also* National Sheriffs' Association Comments at 7 (stating that "[s]maller jails had higher weekly inmate-turnover rates and shorter lengths of stay than larger jails").

[46] *See, e.g.*, *Rates for Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12786, para. 46 (2015); Securus Cost Study at 17 (showing lower per-minute total average costs for average daily populations of 1,000 or more compared to categories with lower average daily populations).

Figure 1 – Density of Average Daily Population for Jails[47]



21. *Geographic Analysis.* Rurality is an additional characteristic of correctional facilities that may affect the costs of provisioning inmate calling services. For example, jails and prisons in more rural areas of the country may be required to pay a higher rate for access to the public switched telephone network and these costs should be recoverable. Similarly, it is possible other costs, such as those for maintenance visits or installations, may be higher in rural areas. Detailed geographic information was not requested as part of the Second Mandatory Data Collection; however, the Commission did request that providers submit the street address for each facility reported. We geocoded these addresses to determine the Census Block in which each facility is located.[48] This allows us to test, for example, whether the costs of providing inmate calling services tend to be higher for facilities in blocks defined as rural by the U.S. Census Bureau.[49]

22. We applied three processes to ultimately geocode 3,784 or 88% of the 4,319 filed facilities. We first used ArcMap software version 10.8 to geocode 3,321 or 77% of the 4,319 filed

[47] For the purposes of this Figure, we visualize only jail contracts with average daily populations less than 5,000.

[48] Geocoding is a process of associating longitude and latitude coordinates to a facility's address to conduct geographic analyses. *See* ArcGIS Desktop, *What Is Geocoding?*, https://desktop.arcgis.com/en/arcmap/latest/manage-data/geocoding/what-is-geocoding.htm (last visited Apr. 14, 2021).

[49] "'Rural' encompasses all population, housing, and territory not included within an urban area." "Urban areas" are "Urbanized Areas (UAs) of 50,000 or more people"; and "Urban Clusters (UCs) of at least 2,500 and less than 50,000 people." U.S. Census Bureau, Urban and Rural (Dec. 7, 2020), https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html. "Census blocks provide the 'building blocks' for measuring population density and delineating each urban area." U.S. Census Bureau, 2010 Census Urban Area FAQs, https://www2.census.gov/geo/pdfs/reference/ua/2010ua_faqs.pdf (last visited Mar. 31, 2021).

facilities.[50] We then took a random sample of 170, or 17%, of the 998 addresses we were unable to geocode, and where possible, corrected them manually. We were able to geocode 164 of these 170 addresses. Finally, we developed a Python script to clean up the remaining addresses—which we then manually checked—and were able to geocode 299 additional facilities this way. In instances of contracts with multiple facilities, we were unable to geocode the relevant facilities where a filer only provided a single address.[51] In some instances, a mailing address was reported.[52] If this was different from the facility's physical address and the address correction process did not detect this error, then the mailing address was used.

23. *Matching Ancillary Costs and Revenues*. The Second Mandatory Data Collection also collected data on the revenues generated from ancillary service charges, which are separate from inmate calling services revenues. Such charges have their own matching costs, which may be separately accounted for by providers.[53] For example, ancillary services revenues from passthrough fees can be matched to separately reported costs. Thus, because revenues and costs for passthrough fees are separately reported, they can be readily compared.

24. In other cases, the costs of ancillary services may not be separately reported, but instead may be included by providers as the costs of supplying inmate calling services. In such cases, we cannot be sure appropriate matching occurs. Because it is important to compare commensurate costs and revenues when assessing service profitability, we must take steps to control for these circumstances. For example, for some analyses, we add the revenues for two ancillary services—automated payments, and paper billing and statements—to inmate calling services revenues in order to compare commensurate revenues to costs.[54] The revenues earned on these ancillary services do not have separate matching cost reports, although the costs of these services are ordinarily included in the providers' inmate calling costs. Indeed, total billing costs, including automated payments and paper billing costs, are typically considered as costs of the billed service.[55] Matching like to like therefore requires including revenues from these ancillary services in with inmate calling services revenues. Providers may also have reported some or all of their live agent services costs as inmate calling services costs, given no other category in which to include them. However, since this is less clear, we made no adjustment to account for live agent services revenues.

25. Lastly, accounting for the costs and revenues of shared services also poses difficulties that may lead us to understate inmate calling services' profitability. This possibility arises because providers may have allocated the costs of shared services to inmate calling services but are unable to allocate the related revenues accordingly. As an example, consider a payment account that incarcerated persons must set up to purchase inmate calling services as well as commissary services, tablet access, and other services. Providers may have allocated some or all the costs of the payment system to inmate calling services. At the same time, if there are usage fees associated with the payment account, such as fees charged to set up the account or to deposit money, then the provider should not have reported these in

[50] We used the geocoding database ArcGIS StreetMap Premium North America (2020 Release 1).

[51] *See, e.g.*, GTL Revised Description and Justification at 11.

[52] *Id.*

[53] Providers should not have reported costs for lines of business such as video visitation services as part of inmate calling services costs, and thus we do not have to account for these services.

[54] In some instances, our analyses of the ability of providers to recover their costs at our new interim interstate rate caps do not account for these ancillary services fee revenues. In those cases, our results therefore overstate the percentage of contracts under which the provider would be unable to recover its reported costs under those rate caps.

[55] GTL Revised Description and Justification at 8 (GTL considers inmate calling services costs to include "costs associated with billing for all GTL services (including paper billing and single call fees among others)" and "credit card and other payment processing costs and call center/live operator support costs.").

their inmate calling services nor ancillary services fee revenues, notwithstanding that the revenues are in part generated due to demand for inmate calling services.[56]

26. Recognition of these nuances regarding the reported data and their limitations allows us to offer some basic observations about inmate calling providers and the overall industry.

D. Summary Statistics

27. After taking the aforementioned steps, we find it useful to summarize aspects of the data here. The final dataset used in our analyses contains information on 2,900 contracts that are reported by 12 providers. Table 1 shows, for each provider and the industry, the number of contracts by facility type and in total, the number of facilities covered under those contracts, and the aggregated average daily population of those facilities.

Table 1 – Inmate Calling Services Providers Ranked by Number of Contracts

Provider	Prison Contracts	Jail Contracts	Total Contracts	Facilities	ADP
{[					]}
{[					]}
{[					]}
{[					]}
{[					]}
{[					]}
{[					]}
{[					]}
{[					]}
{[					]}
{[					]}
{[					]}
Industry	**129**	**2,771**	**2,900**	**3,628**	**2,238,732**

28. Table 1 suggests that the provision of inmate calling services is very concentrated, with two providers reporting servicing more than {[ ]} of all incarcerated people. Prison contract supply is more concentrated than that of jails, with only six of the 12 providers reporting prison contracts. Of the 129 prison contracts, {[ ]}, and 86% were held by the top three providers

[56] GTL Revised Description and Justification at 14 (noting that at certain facilities, automatic payment fees are assessed for services beyond inmate calling services because "GTL cannot distinguish between [automated payment fees] for automated payments to [inmate calling services] and [automated payment fees] for automated payments to other non-[inmate calling services] services").

combined.[57] For jails, the largest provider, {[ ]} of the contracts, and the top three providers combined held 59% of all jail contracts.[58]

29. Table 2 presents each provider and the number of contracts it serves, lists the average daily population and total quantity of paid minutes delivered under those contracts, and provides the overall per-minute costs and per-minute revenues reported by each provider.

[57] Other measures also show high concentration for prisons. The largest provider covers 45% of reported average daily populations, and the top three cover 96%. The same numbers for total minutes are 51% and 96%, and for provider revenues including automated payment fees and paper bill fees are 55% and 95%.

[58] Other measures also show high concentration for jails. The largest provider covers 34% of reported average daily populations, and the top three cover 74%. The same numbers for total minutes are 37% and 79%, and for provider revenues including automated payment fees and paper bill fees are 37% and 80%.

Table 2 – Selected Statistics of Responding Providers

Provider	# of Contracts	ADP	ADP (% of Total)	Paid Minutes (millions)	Paid Minutes (% of Total)	Per-Paid Minute Cost ($)	Per-Paid Minute Revenue ($)
ATN	{[						]}
CenturyLink	{[						]}
Correct	{[						]}
CPC	{[						]}
Crown	{[						]}
GTL	{[						]}
ICSolutions	{[						]}
Legacy	{[						]}
NCIC	{[						]}
Pay Tel	{[						]}
Prodigy	{[						]}
Securus	{[						]}
Industry	**2,900**	**2,238,732**	**100.0**	**7,790**	**100.0**	**0.092**	**0.096**
Industry (Excluding GTL)	**{[**						**]}**

Notes: Average daily population was reported for only 2,816 out of 2,900 contracts. Per-paid-minute costs equal reported total costs, excluding site commissions, divided by paid minutes. Per-paid minute revenues equal all reported calling revenues, including for automated payment and paper billing services, divided by paid minutes.

30. Two noteworthy observations are offered by the foregoing table. First, because of the highly concentrated nature of supply, the data submitted by a few providers have a disproportionate effect on the total revenues and costs reported by the industry. For example, exclusion of GTL—see the last row—lowers the average cost per paid minute by nearly {[ ]}. Second,

GTL uniquely reports making losses on inmate calling services (with a per-paid minute cost of {[ ]} compared to a per-paid minute revenue of {[ ]}), and that loss is {[ ]}, being {[ ]} of its reported costs. However, GTL's revenues likely represent an upper bound for its economic costs, given GTL's long-standing operation in the industry. In that case, its per-minute costs would be no more than {[ ]}.

E. Determining the Appropriate Cost Allocator

31. *Introduction.* Traditionally, under cost-based regulation, regulators set rates for a regulated firm based on a cost-of-service study. A cost-of-service study measures a firm's total cost of providing regulated services using the firm's accounting data.[59] As part of this study, all of the firm's costs are directly assigned to or allocated among different jurisdictions and services. The results are referred to as fully distributed, or fully allocated, costs. Regulators typically establish a uniform system of accounts (USOA) and rules that specify how costs, are to be assigned or allocated, and these costs, direct assignments, and allocations are reflected in the cost-of-service study in accordance with these accounts and rules. For example, the Commission's USOA for rate-of-return incumbent local exchange carriers—a distinct set of carriers not at issue here—is set forth in Part 32 of the Commission's rules.[60] Part 32 requires rate-of-return incumbent local exchange carriers to disaggregate company-wide cost data into 80 different accounts, including 49 balance sheet accounts, eight revenue accounts, 15 expense accounts, and eight other income accounts.[61] The Commission's rules for separating regulated costs from nonregulated costs are set forth in Part 64 of the Commission's rules.[62] Under these rules, the company-wide costs booked to Part 32 accounts are directly assigned to either regulated or nonregulated activities as feasible. The remaining costs are grouped into homogenous cost categories and then allocated based on the hierarchy of (1) direct analysis; (2) indirect, cost-causative links to another cost category for which direct assignment or attribution based on direct analysis is possible; or (3) a general allocator that reflects the ratio of all expenses directly assigned or attributed to regulated and nonregulated activities.[63]

32. In contrast to the traditional approach to cost-based ratemaking for industries that have a long history of rate regulation, our overall approach here is a relatively simple one that reduces the reporting burden on the industry but limits the degree to which a precise accounting of costs can be reflected in new interim provider-related rate caps. The Commission did not create a uniform system of accounts or a detailed set of cost accounting requirements for inmate calling services. Nor did it specify any complex set of rules for assigning or allocating inmate calling services costs to rate-regulated inmate calling services, nonregulated inmate calling services, and non-inmate calling services. The Commission also did not require providers to do a detailed cost-of-service study, although the FTI study of Securus's costs demonstrates the possibility of doing such a study in a credible way even without a detailed USOA or specific set of cost allocation rules.[64] Securus gave FTI access to a highly disaggregated and

[59] The cost of doing business includes operating expenses (e.g., operating, maintenance and repair, and administrative expenses), depreciation expense (the loss of value of the firm's assets over time due to wear and tear and obsolescence), cost of capital (the cost incurred to finance the firm's assets with debt and equity capital), and income and other tax expenses.

[60] 47 CFR pt. 32.

[61] *Id.*

[62] 47 CFR § 64.901.

[63] *Id.* The Commission's Part 36 rules set forth procedures for separating between intrastate and interstate jurisdictions the costs assigned or allocated to regulated activities under Part 64. 47 CFR pts. 36, 64. The Commission's Part 69 rules set forth procedures for assigning to or allocating among different categories of interstate access services the costs assigned or allocated to regulated interstate services under Part 36. 47 CFR pts. 36, 69.

[64] *See generally* Securus Cost Study.

comprehensive set of accounting data. As a result, FTI was able to distinguish among many different types of costs, develop more than 90 different cost allocators, and use these allocators to assign and allocate those different types of costs to inmate calling services subject to our rate caps or to services not subject to our rate caps, including services provided to prisons and jails (e.g., advanced and investigative services), and other non-inmate calling services to estimate Securus's fully distributed cost of providing inmate calling services.[65]

33. Providers, in response to the Second Mandatory Data Collection, aggregated various types of costs of supplying inmate calling services and reported a single number for each contract that reflects the aggregation of these costs. Any remaining costs not reported at the contract level were reported at the level of the firm.[66] Costs that are not directly attributable to a contract and costs reported at the level of the provider, rather than contract, create a challenge: we need to allocate the various types of overhead costs among all of a provider's contacts as part of developing a cost-based rate cap, but the aggregation of these costs limits us to a single allocation using a single one-size-fits-all allocator. The fact that some providers have categorized inmate calling services costs that almost certainly are attributable to a contract as overhead costs, rather than direct costs, and vice versa, further complicates the cost allocation problem. Different allocators for overhead costs produce materially different allocations and we must choose the one that allocates these costs the best.

34. To cap per-minute rates, we seek to identify commercially viable rates—rates which would cover the true direct costs of any contract and provide enough contribution to recover total costs across all contracts.[67] Given providers' accounting systems are designed to run their businesses, and that providers bid for contracts, for the purposes of analyzing various possible allocators we accept their reports of costs, overstatement and miscategorization issues aside, as being largely accurate. That leaves us with the need to identify rates which recover costs reported at the level of the contract ("reported direct costs") and make appropriate contributions to the difference between reported total costs and the sum of the providers' reported direct costs ("reported overheads"). One approach to this is to allocate reported overheads to contracts using a cost allocator, and to then determine a per-minute rate that would cover most contracts' fully allocated costs.

35. Our analysis leads us to choose total minutes as the cost allocator. We begin by explaining the cost allocation problem, then show that the best cost allocator of seven considered is call minutes. Lastly, we explain the record provides us with little support to cap prices on a basis other than a per-minute price cap, such as a per-call or per-person per-period price cap.

36. *Compensatory Rates and Cost Allocation*. Putting aside the difficulties of interfirm comparisons, there is no clear rule for identifying a price for inmate calling services that covers costs directly attributable to a contract and makes a contribution to the recovery of any remaining costs not directly attributable to inmate calling services supplied under the contract, such that total costs are recovered. Under broadly accepted economic principles, where a firm provides a service under multiple contracts, prices for the service provided under each contract are compensatory if three conditions are met: (1) the price at least covers the contract's direct costs for inmate calling services, meaning recovery of the costs attributable to supplying these services under the contract; (2) the price does not recover more than the cost of providing inmate calling services on a standalone basis under the contract (i.e., the costs that would be incurred if these services alone were supplied under the contract, and no other contract were

[65] *See* Securus Cost Study at 3-4, 19-21.

[66] Costs directly attributable to the contract were not always allocated to the contract. For example, the only direct costs GTL reported at the contract level were those for bad debts, when many other costs would be contract specific. The reverse was also true. Costs that are not directly attributable to the contract level were sometimes reported as such. For example, CenturyLink allocated all of its costs down to the contract level.

[67] If a provider is unable to recover its costs for a specific contract, it may seek a waiver. Report and Order, *supra* Part III.C.5 (setting forth a waiver process for outliers).

supplied);[68] and (3) prices overall recover the firm's total costs, meaning recovery of the direct costs for inmate calling services under each contract and the reported costs that are not attributable to any one contract but were allocated to inmate calling services.[69] However, since many prices are consistent with these conditions, they fail to provide full guidance for price setting.

37. Cost allocation is a standard, if imperfect, procedure used by regulators to develop cost-based prices for different services or customer groups where not all of a regulated firm's costs are attributable to a single service or customer group.[70] Following a similar approach here, we identify a method to allocate providers' reported overheads to contracts, as these are the costs that providers did not attribute to contracts, and apply that method. The resulting cost allocation is then used to determine a cost-based price that would allow the provider to recover its contracts' reported direct costs while making a sufficient contribution to reported overheads such that total costs for all the contracts would be covered. We consider seven approaches to allocating overheads, the six cost allocators analyzed in the *2020 ICS* Notice—call minutes (i.e., minutes of use), number of calls, average daily population, revenues, contracts, and facilities—and, at the suggestion of commenters, direct costs.[71] To do this, we must identify the unit of sale for the service to be regulated and choose a cost allocator.

38. In developing these allocators, we allocate reported overheads to contracts, calculate the mean per-minute cost of a contract, the standard deviation relative to that mean, and then add the mean to the standard deviation following the approach in the *2020 ICS Notice*.[72] We calculate a per-minute cost of a contract for each possible allocator by allocating reported overheads among each provider's contracts in proportion to the contracts' shares of the provider's total minutes, calls, average daily population, etc., and then divide the total cost of each contract by its quantity of paid minutes. Paid minutes are used as the divisor because those are the minutes that providers rely on to recover their costs. We use total minutes to allocate reported overhead costs rather than paid minutes, because costs are incurred to build sufficient capacity to provide all minutes, regardless of whether the minutes generate revenue. These results are reported in Table 3.

[68] Thus, for example, any costs shared among all the contracts would be attributable to the one contract.

[69] *See* 47 CFR § 51.505(b)-(c); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*; *Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket Nos. 96-98 and 95-185, First Report and Order, 11 FCC Rcd 15499, 15847-48, 15854, paras. 682, 698 (1996); Gerald R. Faulhaber, *Cross-Subsidization: Pricing in Public Enterprises*, 65 Am. Econ. Rev. 966-77 (1975).

[70] Leonardo R. Giacchino & Jonathan A. Lesser, Principles of Utility Corporate Finance 144-46 (2011).

[71] Report and Order, *supra* Part III.C.3; Securus Comments at 15, 41; Pay Tel Wood Report at 21, 26.

[72] *2020 ICS Notice*, 35 FCC Rcd at 8558, Appx. E (cost allocation).

Table 3 – Means, Standard Deviations, and Implied Rate Caps Using Various Cost Allocators

Cost Allocator	Total Contracts	Mean	Standard Deviation	Implied Rate Cap (Mean + Std. Dev.)
Minutes	2,900	$0.093	$0.056	$0.149
Number of Calls	2,900	$0.116	$0.092	$0.208
ADP	2,804	$0.789	$10.325	$11.114
Revenue	2,900	$0.164	$0.170	$0.333
Contracts	2,900	$18.499	$300.136	$318.636
Facilities	2,900	$16.485	$287.199	$303.685
Direct Costs	2,125	$0.228	$2.189	$2.417

39. *Choosing Minutes of Use as a Cost Allocator*. In determining the appropriate allocator, we recognize concerns that if we were to prefer the per-minute cost allocator due to the low variance in the resulting per-minute costs, there would be an element of circular reasoning in our decision.[73] We select the cost per-minute allocator over the six other alternatives based on a range of reasons.[74] Three primary reasons are not subject to the circularity critique: data trustworthiness, availability of data, and consistency with reported revenues. Table 4 compares the seven cost allocators:

[73] Securus FTI Report at 16-17; *see also* Pay Tel Wood Reply Report at 14-16.

[74] The primary aim of a cost allocator is to find a reasonable way of attributing costs, in this case to contracts, that either cannot be directly attributed, such as true overheads, or that, while conceptually could be attributed to a specific contract, cannot be attributed based on how the providers' accounts are kept. Such an allocator must be likely to reflect cost causation and result in rates that demand can bear. *See, e.g.*, David Heald, *Contrasting Approaches to the 'Problem' of Cross Subsidy*, 7 Management Accounting Research 53, 55-57, 68 (1996), http://davidheald.com/publications/contrast.pdf.

Table 4 – Cost Allocator Rate Cap, Implied Anomalous Contracts, and Total Contracts

Cost Allocator	Implied Rate Cap (Mean per-minute allocated cost + 1 standard deviation)	Contracts with per-minute allocated costs greater than implied rate cap		Contracts with per-minute provider revenues greater than their per-minute allocated costs		Total Contracts
		Number	Percent	Number	Percent	Number
Minutes	$0.149	196	6.8	2,532	87.3	2,900
Number of Calls	$0.208	245	8.4	2,358	81.3	2,900
ADP	$11.114	28	1.0	2,150	76.7	2,804
Revenue	$0.333	254	8.8	2,290	79	2,900
Contracts	$318.636	23	0.8	907	31.3	2,900
Facilities	$303.685	20	0.7	1,000	34.5	2,900
Direct Costs	$2.417	12	0.6	1,735	81.6	2,125

Notes: The implied rate cap for each allocator is the sum of the mean of contract costs and 1 standard deviation of the contract cost distribution, as set forth in Table 3. The number of contracts with per-minute allocated cost greater than implied rate cap is calculated for each cost allocator by counting the contracts with a cost allocation that exceeds the implied rate cap. The corresponding percent column represents this number as a share over the number of contracts for which a cost allocation could be calculated (contract totals are reported in the last column). Per-minute provider revenues equal contract revenues from calling rates, plus automated payment fees and paper billing fees, less commissions divided by paid minutes. The number of contracts with per-minute provider revenues greater than their per-minute allocated cost is calculated by counting the contracts with per-minute revenues that exceed the contract's allocated costs. The corresponding percent column represents this number as a share over the number of contracts for which a cost allocation could be calculated.

40. In Table 4, the second column reports the rate cap implied by each respective allocator. Only two of the potential allocators—minutes of use and number of calls—produce results below the current cap of $0.021 per minute for prepaid and debit calls. In contrast, the implied rate caps for revenue, direct costs, average daily population, facilities, and contracts all suggest that interstate inmate calling services rates are presently unreasonably low. This disparity is one of the reasons we find that minutes of use and number of calls are the only plausible allocators among the available alternatives.

41. In Table 4, the third and fourth columns (under the title "Contracts with per-minute allocated costs greater than implied rate cap") report the number and percentage of contracts that would not recover the costs allocated to them if prices were set to the implied rate cap. Lower numbers in these columns indicate that the cost allocator minimizes the number of contracts with allocated costs above the cap.

42. In Table 4, the fifth and sixth columns (under the title "Contracts with per-minute provider revenues greater than their per-minute allocated costs") provide a measure of the extent the cost allocator is consistent with prices currently set by providers. These two columns, respectively, report the number and percentage of contracts that earn revenues that are greater than the allocated per-minute costs. If the cost allocation is consistent with commercial cost recovery in an industry found to be in need of rate regulation and otherwise thought to be in solid shape financially, then revenues from the contracts recorded in these columns would recover direct costs and contribute to the recovery of overhead costs, as these contracts are commercially viable. Thus, a cost allocator that is compensatory, if not overly so, would have numbers close to the total contract number, or 100%, in these columns. The smaller the entries in these columns are, the less plausible the cost allocator is.

43. While no allocator is likely to pass these tests perfectly, the call minute cost allocator is the standout performer. The call minute cost allocator has the highest percentage, 87.3%, of contracts

with revenues greater than their per-minute allocated cost (i.e., the greatest percentage of contracts that appear to recover direct costs and contribute to overhead cost recovery) consistent with actual commercial revenue recovery in a financially solid industry. Thus, it produces results most consistent with what is required to make a contract commercially viable.

44. The call minute cost allocator also has the lower implied rate cap error rate, 6.8%, of the two plausible cost allocators, the other two being the number of calls. Simultaneously, it produces the lowest implied rate cap, $0.149, among all allocators. Thus, it is least likely to overcompensate providers, and, among plausible allocators, most likely to allow cost recovery.

45. The only other allocator to come close to producing results consistent with what we learn from observed contract revenues, and not appearing to over-compensate providers, is the number of calls allocator. There, the percentage of contracts with observed per-minute revenues greater than per-minute allocated costs is 81.3%—a percentage that is lower than that for the call minute allocator. The number of calls allocator has the second-lowest implied rate cap (behind the call minute cost allocator) at $0.208, with 8.4% of contracts with per-minute allocated costs that would exceed this rate cap. These values indicate that the call minute cost allocator is a superior choice to the number of calls allocator.

46. Use of an average daily population allocator requires dropping 96 contracts, and providers in many instances had difficulties accurately reporting this number.[75] While these facts alone are perhaps insufficient to eliminate average daily population as a cost allocator, they cast some doubt on its relative usefulness. Further, the average daily population allocator implies that only about three-fourths of all contracts recover their allocated cost at actual commercial rates, 10% points lower than the same number for the call minute allocator. The average daily population allocator also has an implied rate cap of $11.114. No credible contract in our data earns this much.[76] Further, if the allocator correctly assigns costs, then 28 or 1% of contacts earning $11.114 in revenues per minute implausibly would fail to recover costs. Based primarily on the commercial cost recovery mistake rate and implausibly high implied rate cap, we conclude that average daily population is an unreasonable allocator.

47. Although a revenue cost allocation key may be used for certain accounting purposes, a revenue key is inappropriate for regulatory purposes because revenue is not a cost driver. While costs can be expected to increase with quantity sold, revenues do not always increase with quantity sold, and this can lead to perverse effects.[77] The exercise of market power can result in higher revenues than would be earned in a competitive market. In that circumstance, holding other things constant, a revenue allocator

[75] *See, e.g.*, Securus Cost Study at 11.

[76] There is an {[ ]} contract {[ ]} with per-minute revenues of $12.20. That contract has an average daily population of zero and only one reported paid minute in 2018. If the data recorded for that contract are not in error, then the contract is too unusual to be a good comparator. The next highest is an {[ ]} contract for the {[ ]}. It has an average daily population of 64, paid minutes of 3,335 or 52 minutes per incarcerated person per year, and per-minute revenues of $8.99, followed by an {[ ]} contract {[ ]}, which has an average daily population of 754, paid minutes of 1,272, or 1.7 minutes per incarcerated person per year, and per-minute revenues of $1.50. {[ ]} contract has the highest per-minute revenues of larger jails, at $1.35. Its average daily population is 1,128, with 130,781 paid minutes, for 116 minutes per incarcerated person per year. In contrast, the minutes per average daily incarcerated person for smaller jails is 3,671 and for all jails, 3,705. Thus, the {[ ]} contracts appear peculiar with minutes per incarcerated person per year that are several orders of magnitude less than the smaller jail ratio.

[77] For example, in general quantity sold increases as price falls. Starting from a price where no sales are made, revenues also increase as prices fall. However, at some point as prices fall, revenues also begin to fall: the revenue gain from new sales made at the lower price is smaller than the revenue loss incurred due to the lower price as applied to all purchases that would have been made at the higher price. In that circumstance, holding other things constant, a revenue cost allocator would allocate less cost to a contract with a greater sales volume, contrary to cost causation. This also means a revenue allocator might reinforce monopoly prices.

would allocate more costs to monopolized services than competitive ones.[78] In addition, the revenue allocator scores worse than the call minute cost allocator on all of our performance measures. Most significantly, it produces a rate cap that is more than twice the call minute rate cap, while simultaneously indicating a higher percentage of contracts would not cover their costs at that rate cap. Given these concerns, we eliminate revenue as a cost allocator.

48. The contracts cost allocator has the lowest percentage of contracts with per-minute provider revenues greater than their per-minute allocated cost, 31.3%, a percentage that is about one third of the call minute cost allocator percentage, and that is inconsistent with actual commercial rates. In addition, the contracts cost allocator implied rate cap of $318.63 is disconnected from reality, being an order of magnitude higher than the highest per-minute revenues earned on any contract. For both these reasons, we conclude that contracts are an unreasonable cost allocator.

49. The facility data are poor with many providers failing to report the number of facilities under their contracts. In addition, a facility allocator has nearly the same problems as the contract allocator. Given these concerns, we eliminate facilities as a cost allocator.

50. We eliminate direct costs as an allocator due to the lack of availability of data and concerns about the trustworthiness of the data. Because direct costs were not reported for certain contracts, we have to drop 775, or more than a quarter, of our observations. This artificially increases the amount of indirect costs allocated to the remaining contracts. In addition, many providers took markedly different approaches to recording direct costs, meaning the direct cost allocator treats different providers very differently. For example, GTL only reports bad debt as direct costs,[79] essentially rendering any allocation based on direct costs meaningless for an additional {[ ]} of all contracts, which cover nearly {[ ]} of incarcerated people. Further, the direct cost allocator allocates overhead costs such that 81.6% of the contracts have provider per-minute revenues from actual commercial rates that are greater than their per-minute allocated cost, a share lower than that of the per-minute allocator.[80] It also produces an implied rate cap of $2.417, an implausibly high cap given only two contracts currently earn per-minute revenues greater than this. Such a rate cap would unnecessarily allow substantial margins for most contracts. We eliminate this allocator based on these concerns.

51. We conclude that a call-minute cost allocator remains the most reasonable choice for setting per-minute inmate calling services rate caps.[81] A call minute cost allocator has the highest percentage of the contracts with provider per-minute revenues from actual commercial rates that are greater than their per-minute allocated cost, thus representing the allocator that most closely hews to commercial cost recovery as seen in supply. Consistent with this, its implied rate cap appears unlikely to significantly overcompensate providers on an interim basis, while ensuring commercial viability for most contracts.[82]

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[78] *Supra* note 73; Free Press Comments at 4 (stating that "[i]n rejecting the use of proportional revenue in lieu of costs, the Commission correctly concluded 'that using revenues to allocate costs is [] circular' and 'a revenue-based allocator tends to "lock in" the historical pricing decisions of providers rather than drive rates toward actual costs'"). We do not need to determine whether "[a]llocating costs based on revenue is a commonly-used accounting tool in business." GTL Comments at 21. What is relevant here is that it is inappropriate for the purpose of setting rates for the reasons we give.

[79] *2020 ICS Notice*, 35 FCC Rcd at 8519, para. 95.

[80] The relative shares rather than absolute number of contracts must be compared because to develop the direct cost allocator requires dropping 876 observations for which no direct costs were reported.

[81] *See* Report and Order, *supra* Part III.C.3; *2020 ICS Notice*, 35 FCC Rcd at 8513, paras. 81-82; *see also* Public Interest Parties Brattle Report at 7.

[82] *Infra* Part F.

52. *Subcontracts*. Some providers subcontract some or all of their contracts to a second provider.[83] This raises the question of how to deal with overhead costs in the case of subcontractors. We take an approach that may double count some overhead costs, as we cannot identify what fraction of the subcontractors' overhead costs are captured in what they charge the prime contractor.

53. The reporting of costs for shared contracts varies by provider. Where the prime contractor only reported the cost of supplying the broadband connection on its contracts, while the subcontractor reported the costs of servicing the facilities (installation, maintenance, etc.), we aggregated their costs. Because the reported costs represent the provision of different services, we do not believe these contracts have costs that were double counted. Other providers operating as prime contractors reported all costs (including subcontractors' costs). Where the prime contractor's associated subcontractor did not file reports on the subcontracts, we used the costs as reported by the prime contractor. However, where the associated subcontractors reported their costs, we removed their direct costs to avoid counting them twice.

54. The subcontracting filers were also the main inmate calling services suppliers on other contracts, raising the question of how to avoid double counting the allocation we made for overhead costs for their subcontracts. Leaning toward overstating costs, a shared contract is allocated the overhead of both providers that report the contract. The two observations were then aggregated into one and placed under the name of the firm that is the primary contract holder.

55. Inclusion of the overhead costs reported by the subcontractors overstates the cost recovering rate if, as is likely, they charge a markup over their direct costs. The markup would be part of the prime contractor's reported expenses, and to avoid double counting, we would need to remove the markup from our calculations. We cannot determine the amount of this markup, however. One approach would be to assume the markup matched our overhead cost allocation. In that case, the overhead costs of a subcontractor that are allocated to a subcontract would not be counted as they would be captured in the prime contractor's costs. However, if the markup exceeded this amount, we would still be double counting costs, while if the markup was less than this amount, then we would be understating costs. Table 5 shows the impact of this adjustment.

[83] In 2018, of CenturyLink's { } calling services contracts, we have data on {[ ]} which were subcontracted. CenturyLink has {[ ]} subcontracts with {[ ]}, but {[ ]} did not report data for these contracts), and a {[ ]} contract has no reported subcontractor. If we were to remove all subcontractor overhead costs allocated to CenturyLink's contracts, the average per-minute cost of CenturyLink's contracts would decrease from {[ ]}. If we removed only half of the overhead, this would result in an average per-minute cost of {[ ]}. While Crown employed NCIC as a subcontractor for all of its {[ ]} contracts, the providers' data descriptions and justifications suggest there was no double counting. *See* Description and Justification for Crown's Mandatory Data Collection Report, WC Docket No. 12-375, at 1 (filed Mar. 1, 2019) (stating that "All [inmate calling services] Direct Costs are strictly associated with the cost of the broadband facilities required to connect the inmate telephone system via IP to NCIC's Inmate Phone System.").

Table 5 – Cost Allocator Rate Cap, Implied Anomalous Contracts, and Total Contracts Adjusted to Avoid Double Counting of Subcontractor Overheads

Cost Allocator	Implied Rate Cap (Mean per-minute allocated cost + 1 standard deviation)	Contracts with per-minute allocated cost greater than implied rate cap		Contracts with per minute provider revenues greater than their per-minute allocated cost		Total Contracts
		Number	Percent	Number	Percent	Number
Minutes	$0.149	194	6.7	2,540	87.6	2,900
Calls	$0.208	244	8.4	2,360	81.4	2,900
ADP	$11.114	28	1.0	2,157	76.9	2,804
Revenue	$0.334	250	8.6	2,304	79.4	2,900
Contracts	$318.635	23	0.8	915	31.6	2,900
Facilities	$303.684	20	0.7	1,009	34.8	2,900
Direct Costs	$2.417	12	0.6	1,735	81.6	2,125

56. Table 5, when compared with Table 4, shows the impact of assuming that the markup matches our overhead cost calculation on the implied rate caps of the seven possible cost allocators to be small. Specifically, for the per-minute cost allocator, the implied rate remains the same, the number of contracts with a per-minute allocated cost greater than the implied rate cap decreases from 196 to 194, and the percentage of contracts where the per-minute revenues are greater than per-minute allocated costs increases from 87.3% to 87.6%. This analysis of the adjusted data reinforces our finding above that a call minute cost allocator remains the most reasonable choice for setting per-minute inmate calling services rate caps.

57. *Rejecting Alternative Allocation Approaches Proposed in the Record*. With sufficient record evidence, we would simultaneously identify the unit of sale for the service to price and choose a cost allocator. Commenters explain with some merit that when considering allocators other than costs per minute, we should not rule out those allocators by considering only the implied cost-per-minute estimates those allocators produce.[84] Instead, we also should examine the costs and implied prices using the cost allocator as the unit of account. For example, if we allocate costs by average daily population, we should not divide these by minutes, producing a per-minute rate, to consider whether an average daily population allocator is sensible. Instead, we should consider the resulting distribution of costs per incarcerated person per day. The chief line of reasoning for focusing on cost expressed in the same unit of account as the allocator is that to do otherwise mathematically favors the chosen unit of account. A per-minute cost allocator can be expected to produce per-minute costs with less variance than, for example, an average daily population allocator with costs also expressed per minute. The reverse also holds. An average daily population allocator can be expected to produce per person costs with less variance than if costs are allocated per person and then expressed per minute.

58. We do not dispute the accuracy of this critique. However, the record provides no real guidance as to how we would regulate prices using a call, average daily population, revenue, contract, facility cost, or direct cost allocator. For example, minimizing the variance of cost estimates for a call

[84] *See* Securus FTI Report at 17 fig. 9 (showing a cost per allocation key comparison, using costs per minute, per average daily population, and per call as the units of account).

allocator would require estimating per-call costs, not per-minute costs. This would result in a cap on call prices of $11.10,[85] regardless of whether the call lasted a minute or an hour. Thus, a 30-second call, say, to reach voice mail, could be charged $11.10, the same charge as would apply for a 30-minute call or even an hour-long call. However, there is essentially no discussion of the implications of taking such an approach in the record. Additionally, a per-call price of $11.10 does not result in a per-minute rate of less than our current prepaid cap of $0.21 until the 53rd minute of the call ($11.10 / 53 = $0.209 per minute). This alone is sufficient to rule out this approach.

59. Allocating costs using average daily population, and then applying a per-person cap set to the contract mean plus one standard deviation would result in a cap of $437.38 per person per year.[86] Operationalizing an average daily population allocator to minimize variance would require setting per-person per-period charges for two reasons. First, it would be inequitable to charge the many people who can spend only a few hours or days incarcerated the same as what is charged someone who spends much longer. Second, since average daily population is not the same as the number of people who are admitted to a facility in a year, an annual rate applied to people who are incarcerated for shorter periods would grossly over recover costs.[87] Thus, a cap would have to be applied for a relatively short time period. A daily cap would be equal to $1.20 (= $437.38 / 365.25) per person, and would apply day in and day out, whether the incarcerated person made any calls that day or not. This would make calling cheaper for those with high demand, but more expensive for those with low demand.[88] The record provides almost no support for any of this.

60. The record provides even less guidance as to how we would regulate prices if a revenue, contract, facility, or direct cost allocator were used, but a per-minute rate cap was not set. Price cannot be set per dollar of revenue or per contract or per facility or per dollar of direct cost without specifying some unit relevant to an incarcerated person. The only approach with a solid basis in the record is a per-minute rate.

61. *Applying the Per-Minute Allocator*. We define our upper bound as the mean plus one standard deviation of per-minute contract costs, separately for prisons and larger jails. For prisons, the upper bound is $0.133, and for larger jails, the upper bound is $0.218. These estimates rely on providers' reported costs in the Second Mandatory Data Collection, with minimal corrections for anomalies[89] and indirect costs allocated among each provider's contracts using a per-minute cost allocator.[90] Including one standard deviation in the upper bound recognizes that providers' costs vary. We present the upper bound estimates in Table 6 below.

[85] Across all contracts, the mean per-call rate is $2.754, with a standard deviation of $8.341, which sum to $11.095. A 15-minute call would cost $ 0.74 per minute.

[86] Across all contracts, the mean per-average daily population rate is $281.159, with a standard deviation of $156.220, which sum to $437.379.

[87] Consider a jail with an average daily population of 10. The $437.38 cap is intended to bring annual revenues of $4,373.80. But if the jail houses ten new people every two weeks, and each new group of ten also brings in annual revenues of $4,373.80, then the total revenues for the year will be 26 times that amount. The problem is avoided by charging each person a fraction of the $437.38 where that fraction equals the fraction of the year they are incarcerated.

[88] If incarcerated persons were allowed to opt out on a daily basis, the daily charge would have to be increased to ensure cost recovery for providers. For example, if everyone were to opt out for 50% of their days, then the rate would have to double. However, the record provides no basis that could be used to determine the appropriate rate if occasional opting out were allowed.

[89] *Supra* Part C.

[90] *Supra* para. 51.

Table 6 – Upper Bound Estimates

	Contracts	Mean	Std. Dev.	Mean+1 Std. Dev.	Mean+2 Std. Dev.
Larger Jails	182	0.100	0.118	0.218	0.336
Prisons	129	0.092	0.041	0.133	0.174

62. We find these upper bounds likely overstate providers' inmate calling services costs for several reasons. First, providers have some incentive to overstate their costs because higher costs would lead to higher interstate rate caps and higher profits. Second, a lack of specificity in the Instructions for the Second Mandatory Data Collection, particularly those related to how providers should account for indirect costs, permitted providers to inflate reported costs further. These factors shift costs upward, resulting in higher upper bounds than would result with more accurate data. These costs are further overstated because of our treatment of costs shared between contractors and subcontractors.[91]

F. Assessing and Ensuring the Commercial Viability Under the New Interim Interstate Provider-Related Rate Caps

63. In the Report and Order, we set new interim interstate provider-related rate caps of $0.12 per minute for prisons and $0.14 per minute for larger jails, respectively. To help evaluate the reasonableness of those caps, we consider the commercial viability of contracts under the selected interim rate caps compared to revenues reported by providers in the Second Mandatory Data Collection.

64. We first compare revenues and costs by provider in 2018, and then consider what would happen to revenues under interim provider-related rate caps of $0.12 per minute for prisons and $0.14 per minute for larger jails.[92] In the first instance, we take a straightforward, but simplistic approach using minutes of use as our allocator. We hold call minutes, automated payment revenues, and paper billing revenues constant and project that those new interim caps would allow providers to recover their allocated costs for 71% of their prison contracts and 99% of their contracts for larger jails. To test the robustness of this analysis, we then determine the percentage of prison, and separately larger jail, contracts for which the new interim caps would allow providers to recover the revenues they earned in 2018. We find the percentages to be 74% for prisons and 65% for larger jails. Our examination of the remaining contracts shows that they, on average, have lower per-minute costs than the contracts under which providers would recover their 2018 revenues, and thus all of the contracts are also likely to be viable under our new interim rate caps. Lastly, recognizing that revenues in 2018 represent an upper bound on costs, and allowing call volumes to expand because our new interim caps will lower prices to incarcerated persons (leading to more call minutes), we find that 77% of prison and 73% of larger jail contracts are projected to recover costs consistent with the revenues earned on each contract in 2018. Each of these estimates, except for our estimate that all contracts will be viable under the new interim rate caps, are conservative.

65. *Comparing Reported Revenues and Costs*. Table 7 shows the following for each provider and for the industry as a whole: inmate calling revenues, which include amounts collected to pay site commissions; automated payment revenues; paper billing and account revenues; the sum of the preceding three types of revenues; inmate calling services costs, which for this purpose include site commissions; and profits defined as the difference between those summed revenues and inmate calling costs. Thus, profit nets out site commissions. Again, only {[ ]} fails to recover its reported costs, incurring a surprisingly large {[ ]} loss of {[ ]} million on its inmate calling services operations, even when its revenues from ancillary service charges are included in its revenue total. That {[ ]} reports losses despite being the winning bidder on {[ ]} contracts, the industry's largest provider

[91] *Supra* paras. 52-56 (discussing the treatment of subcontracts).

[92] *See* Report and Order, *supra* Part III.C.3 (explaining our choice of interim interstate rate caps).

by most measures, and one of the industry's most sophisticated providers, suggests {[ ]} revenues may be a more accurate estimate of its costs than are its reported costs.

Table 7 – Inmate Calling Services Revenues and Costs Inclusive of Site Commissions by Provider in 2018 (in $ thousands)

Provider	ICS Revenues	APF Revenues	PBF Revenues	Total Revenues	Total Costs	Profits
ATN	{[					]}
CenturyLink	{[					]}
Correct	{[					]}
CPC	{[					]}
Crown	{[					]}
GTL	{[					]}
ICSolutions	{[					]}
Legacy	{[					]}
NCIC	{[					]}
Pay Tel	{[					]}
Prodigy	{[					]}
Securus	{[					]}
Industry	**1,093,192**	**115,757**	**410**	**1,209,359**	**1,181,611**	**27,748**

Notes: "APF" means automated payment fee, and "PBF" means paper billing fee.

66. Table 8 shows the following for each provider, and across all providers, split by prisons and larger jails: number of contracts; contract shares; the contract mean for total revenues per paid minute (that is, the mean for the sum of inmate calling revenues, including amounts collected to pay site commissions, plus automated payment revenues and paper billing revenues, all divided by paid minutes for each of the 2,900 contracts); the contract mean of costs per paid minute, again including site commissions; the contract difference per paid minute between the preceding (profit), which nets out site commissions; and the contract mean of direct costs per paid minute, excluding site commissions. In 2018, for prisons, both {[ ]} and {[ ]} on average incurred losses (i.e., had per-minute costs exceeding their per-minute revenues); and, for larger jails, only {[ ]} on average incurred such losses. This may be due, in part, to these providers bidding overly aggressively for some contracts and to our cost allocation approach being unable to reliably allocate indirect costs for as many as 12.7% of contracts, due to limitations of the reported cost data.[93] Additionally, at least three of the direct cost per-minute entries are misleading: two carriers, {[ ]} and {[ ]}, report zero direct costs, while GTL only reports bad debt as a direct cost. These three providers almost certainly have substantially larger direct costs and hence substantially larger direct costs per minute.

[93] *Supra* Part E, Table 4, second-to-last column, top row (12.7% = 100% - 87.3%).

Table 8 – Inmate Calling Services Per-Minute Revenues and Costs Inclusive of Site Commissions by Provider and Facility Type in 2018

Firm	Type	# of Contracts	Percent Share of Contracts	Average Per-Minute Revenues ($)	Average Per-Minute Costs ($)	Average Per-Minute Profits ($)	Average Per-Minute Direct Costs ($)
ATN	Larger Jail	{[					]}
CenturyLink	Larger Jail	{[					]}
Correct	Larger Jail	{[					]}
CPC	Larger Jail	{[					]}
GTL	Larger Jail	{[					]}
ICSolutions	Larger Jail	{[					]}
Legacy	Larger Jail	{[					]}
NCIC	Larger Jail	{[					]}
Pay Tel	Larger Jail	{[					]}
Securus	Larger Jail	{[					]}
Industry	Larger Jail	**182**	**100**	**0.247**	**0.218**	**0.029**	**0.026**
CenturyLink	Prison	{[					]}
GTL	Prison	{[					]}
ICSolutions	Prison	{[					]}
Legacy	Prison	{[					]}
NCIC	Prison	{[					]}
Securus	Prison	{[					]}
Industry	**Prison**	**129**	**100**	**0.148**	**0.137**	**0.011**	**0.010**

Notes: Direct costs are costs, excluding site commissions, recorded at the contract level in the Second Mandatory Data Collection responses. Averages are calculated across contracts.

67. *Recovery of Allocated Costs Under the New Interim Provider-Related Rate Caps*. We estimate the inmate calling services revenues that providers would have earned in 2018 under our new interim caps, assuming no change in minute volumes. Table 9 presents the number and percentage of contracts for which these estimated inmate calling services revenues would exceed allocated costs or would exceed reported direct costs, first excluding automated payment and paper billing revenues, and second including these revenues (referred to as ancillary revenues in the table).[94] On this basis, we find that providers would recover their allocated costs under 71% of prison contracts. All of the other {[ ]} prison contracts are contracts {[ ]} held in 2018. Based on its reported costs, {[ ]} would incur per-minute losses ranging from {[ ]} to {[ ]} with a median loss of {[ ]} per minute.[95] Providers would recover their allocated costs under 99% of larger jail contracts. The other 1% (or two contracts) were contracts {[ ]} and {[ ]} held in 2018. Based on their reported costs, these providers would incur per-minute losses of {[ ]} and {[ ]}, respectively.[96] The 71% and 99%

[94] The number of {[ ]} and GTL contracts that cover direct costs as reported in the third-to-last and last columns are overstated because {[ ]} did not record any direct costs, and GTL only recorded bad debt.

[95] If automated payment and paper billing fees are excluded, {[ ]} contracts would have per-minute costs above the $0.12 interim cap, ranging from {[ ]} to {[ ]}. Of these contracts, all held by {[ ]}, {[ ]} have per-minute revenues of less than $0.12.

[96] If automated payment and paper billing fees are excluded, {[ ]} contracts would have per-minute costs above the $0.14 interim cap, ranging from {[ ]} to {[ ]}. Of these {[ ]} contracts, {[ ]} were allocated per-

(continued….)

figures are likely underestimates for several reasons: many providers' reported costs may be overstated; the full range of ancillary fees that contribute toward recovering inmate calling services costs may not be reported, while some costs associated with these may be included in inmate calling services costs; some contracts where subcontracting occurs likely double count costs; and minutes of use may over-allocate costs to certain contracts.[97]

Table 9 – Number and Percentage of Contracts for Which Specified Revenue Estimates Cover Specified Costs

Firm	Facility Type	Contracts	Allocated Costs Covered by ICS Revenues Without Ancillary Revenues		Direct Costs Covered by ICS Revenues Without Ancillary Revenues		Allocated Costs Covered by ICS Revenues and Ancillary Revenues		Direct Costs Covered by ICS Revenues and Ancillary Revenues	
		#	#	%	#	%	#	%	#	%
ATN	Larger Jail	{[								]}
CenturyLink	Larger Jail	{[								]}
Correct	Larger Jail	{[								]}
CPC	Larger Jail	{[								]}
GTL	Larger Jail	{[								]}
ICSolutions	Larger Jail	{[								]}
Legacy	Larger Jail	{[								]}
NCIC	Larger Jail	{[								]}
Pay Tel	Larger Jail	{[								]}
Securus	Larger Jail	{[								]}
Industry	Larger Jail	182	167	92	179	98	180	99	182	100
CenturyLink	Prison	{[								]}
GTL	Prison	{[								]}
ICSolutions	Prison	{[								]}
Legacy	Prison	{[								]}
NCIC	Prison	{[								]}
Securus	Prison	{[								]}
Industry	Prison	129	63	49	129	100	91	71	129	100

Notes: In this Table, allocated costs are the costs allocated to a contract using the per-minute cost allocator, direct costs are costs recorded at the contract level in the Second Mandatory Data Collection responses, and ancillary revenues are revenues from automated payment and paper billing fees.

68. *Contracts with Per-Minute Revenues Under the New Interim Caps*. The preceding analysis relied on our cost allocation to conservatively determine the fraction of contracts that are viable under our new interim interstate provider-related rate caps. However, the cost allocation approach in some instances is not perfect. For example, the cost allocation approach suggests that 12.7% of current

(Continued from previous page)
minute costs below {[ ]}. All {[ ]} contracts with per-minute costs above {[ ]} reported revenues below their allocated costs.

[97] Revenues from automated payment fees and paper billing fees alone covered the costs of five, or 3%, of larger jail contracts in 2018. The importance of these revenues is shown in Table 9 when comparing total costs covered by project revenues with and without ancillary revenues, as the overall industry costs covered increases from 92% (without) to 99% (with).

contracts are loss-making, implausibly implying providers in all those cases made mistaken bids.[98] An alternative approach to determining the fraction of our contracts that are viable under our new interim caps is to examine the fraction of contracts that would recover at least the same revenues as they would in 2018. We find 74% of prison contracts and 65% of larger jail contracts satisfy this condition. And, when we examine the remaining contracts, we find they are on average likely to have lower costs than the contracts that would recover at least the same revenues, and thus are also likely to be viable. Separately, comparing revenues of the remaining contracts to allocated costs suggests 81% of prison and 96% of larger jail contracts cover costs.

69. *Prison Contracts with Revenues Under the New Interim Caps*. Revenue analysis shows that the bulk of prisons likely would be commercially viable at rates capped at $0.12 per minute (i.e., the contracts have per-minute costs less than the cap after allowing for a possible $0.02 per minute site commission allowance). In 2018, approximately 74% of prisons had per-minute revenues net of commissions of less than $0.12 per minute (hereinafter "low per-minute revenue prisons").[99] Our new interim caps should not impact these contracts. Further, these contracts, with rare exceptions, should be commercially viable. If that were not the case, providers would not have voluntarily accepted such contracts. That result is all the more probable since providers may supplement their call revenues through automated payment and paper billing fees not accounted for in capping rates received by providers at $0.12 per minute.[100] The remaining 26% of prisons have revenues, net of commissions, that are greater than or equal to $0.12 per minute (hereinafter "high per-minute revenue prisons"). Thus, our new interim caps will potentially affect cost recovery for these prisons.

70. Table 10 compares high and low per-minute revenue prison contracts. For both sets of prison contracts, the Table gives the mean value for seven contract characteristics, as well the p-value from a two-sided difference in means statistical test—with a lower p-value indicating a lower likelihood that the difference in the two means is due to random error.[101] Apart from the variables Total Revenue Per Minute and Revenue Minus Commission Per Minute, each of the variables included is likely to be related to a contract's costs. The difference in means between the two groups for the five plausible cost-determining variables is not statistically significant at the 95% confidence level, except for minutes, which should cause the low per-minute revenue contracts to have higher, not lower, costs. The similarities along cost-determinative characteristics suggest that to the extent that a $0.12 per-minute rate cap is viable for low per-minute revenue prisons, it should also be viable for high per-minute revenue prisons.[102]

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[98] *Supra* note 93.

[99] Staff analysis of Second Mandatory Data Collection.

[100] While our revenue analysis includes revenues from automated payment and paper billing fees, our rate caps only apply to calling fees. Thus, providers can earn additional revenues through automated payment and paper billing fees.

[101] For example, a p-value of 0.05 says that if the two means were the result of samples from two identical populations, that outcome would only be observed in 5% of cases. David Jean Biau, Brigitte M. Jolles, & Raphaël Porcher, *P Value and the Theory of Hypothesis Testing: An Explanation for New Researchers*, 468 Clinical Othopaedics and Related Research 885-92 (2010), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2816758/?report=classic.

[102] Commissions per minute may be a proxy for differences in contract regulatory environments—for example, correctional authorities that seek high site commissions may have other common characteristics that influence costs, including other services they require under an inmate calling services contract. We place less weight on the facility data given that the providers acknowledged they had limited abilities to accurately report such data. Revenues per minute and revenues net of commission per minute are statistically higher for the high per-minute revenue contracts since we defined the groups by whether they had lower or higher per-minute revenues. In any case, revenues do not, independent of minutes, cause costs, and we control for minutes.

Table 10 – Mean Characteristics for Prison Contracts by Revenue Type

	High Per-Minute Revenue Contracts	Low Per-Minute Revenue Contracts	P-Value for Two-Sided Difference in Means Test
Total Revenue Per Minute	$ 0.24	$ 0.12	0.00
Commission Per Minute	$ 0.04	$ 0.05	0.54
Revenue Minus Commission Per Minute	$ 0.20	$ 0.07	0.00
Facilities Per Contract	1.91	5.39	0.21
Average Daily Population	6,665	12,018	0.20
Contract Includes Urban Facilities	0.32	0.49	0.09
Minutes	15,482,499	41,681,215	0.05
Observations	34	95	

71. An alternative method to analyze whether a $0.12 per minute cap for prisons is commercially viable is to consider the per-minute cost allocation associated with the high per-minute revenue prison contracts. As before, 74% of prisons could be expected to recover costs since their revenues are already below $0.12. Of the remaining 26%, which we labeled high per-minute revenue prisons, 27% have allocated per-minute costs below $0.12.[103] This suggests that 81% (= 74% + (26% * 27%)) of all prison contracts could cover their costs with a rate of $0.12. To the extent that the providers' unaudited costs are overstated,[104] or that unit costs will fall as reduced rates expand call volumes, this number would be higher.

72. *Contracts for Larger Jails with Revenues Under the New Interim Caps*. Revenue analysis shows the bulk of larger jail contracts are likely to have per-minute costs less than our interim cap of $0.14 per minute and would therefore be commercially viable at that capped rate. In 2018, approximately 65% of contracts for larger jails had per-minute revenues net of commissions of less than $0.14 per minute (hereinafter "low per-minute revenue jails").[105] Our new interim caps should not impact these contracts. Further, these contracts, with rare exceptions, should be commercially viable. If that were not the case, providers would not have voluntarily accepted such contracts. That result is all the more probable since providers may supplement their call revenues through automated payment and paper billing fees not accounted for in capping rates at $0.14 per minute. The remaining 35% of larger jails have revenues, net of commissions, which are greater than or equal to $0.14 per minute (hereinafter "high per-minute revenue jails").[106]

73. We find that cost-determinative characteristics for high per-minute revenue jails are similar to those for low per-minute revenue jails. This implies a $0.14 per minute rate cap would ensure the vast majority of contracts for larger jails are viable. Table 11 compares cost-determinative characteristics between high and low per-minute contracts. A lower p-value indicates a lower likelihood that the difference in the two means is due to random error. The difference in means between the two

[103] Of all the high per-minute revenue prisons, nine contracts had costs less than $0.12 per minute and 25 contracts had costs greater than or equal to $0.12 per minute.

[104] *Supra* para. 61.

[105] Staff analysis of Second Mandatory Data Collection.

[106] Staff analysis of Second Mandatory Data Collection.

groups for the listed plausible cost-determinative variables are not statistically different at the 95% confidence level.

Table 11 – Mean Characteristics for Larger Jail Contracts by Revenue Type

	High Per-Minute Revenue Contract	Low Per-Minute Revenue Contract	P-Value for Two-Sided Difference in Means Test
Total Revenue Per Minute	$ 0.34	$ 0.19	0.00
Commission Per Minute	$ 0.13	$ 0.11	0.26
Revenue Minus Commission Per Minute	$ 0.22	$ 0.08	0.00
Facilities Per Contract	1.88	1.85	0.94
Average Daily Population	2,215	2,447	0.60
Contract Includes Urban Facilities	0.84	0.85	0.95
Minutes	7,883,827	10,895,979	0.06
Observations	64	118	

74. An alternative method to analyze whether a $0.14 per minute cap for larger jails is commercially viable is to consider the per-minute cost allocation associated with the high per-minute revenue contracts. Doing this suggests at least 96% of contracts for larger jails would likely recover their costs at a rate cap of $0.14 per minute. As before, 65% of contracts for low per-minute revenue jails could be expected to recover costs since their revenues are already below $0.14. Of the remaining 35%, 89% have allocated per-minute costs less than $0.14.[107] This suggests that 96% (= 65% + (35% * 89%)) of all larger jail contracts could cover their costs with a rate of $0.14. Again, to the extent that the providers' unaudited costs are overstated, or that unit costs will fall as reduced rates expand call volumes, this number would be higher. For example, 47% of the contracts for low per-minute revenue jails have allocated costs in excess of their revenues per minute, indicating that allocated costs are an imperfect measure.

75. *Contract Viability Allowing for Call Volume Adjustment.* Our previous revenue analysis showed that 74% of prison and 65% of larger jail contracts are already operating under our new interim caps according to reported data.[108] Since these contracts were likely to have been commercially viable prior to this Report and Order, they should still be so after our new interim caps take effect. Further, some of the remaining contracts would still be commercially viable under the new interim rate caps, because lower prices will lead incarcerated persons to increase time spent on the telephone, which in this industry will reduce per-minute costs. We conservatively estimate that when the increase in demand due to lower end-user prices is accounted for, 77% of prison and 73% of larger jail contracts will earn per-minute revenues that cover their implied costs. These estimates take no account of the various factors discussed above that imply an even higher percentage of contracts would be commercially viable.[109]

[107] Of all the high per-minute revenue jails, 57 had costs less than $0.14 per minute, and 7 had costs greater than or equal to $0.14 per minute.

[108] *See supra* paras. 69 (prisons), 72 (larger jails).

[109] For example, these numbers are understated to the extent that: (i) the providers' revenues are an overstatement of (continued….)

76. To obtain these estimates, we use inmate calling service revenues plus revenues for automated payment and paper billing fees net of site commissions divided by paid minutes as a proxy for contract rates. We then assume that each prison and larger jail contract with rates as just defined above our new caps recovers, through those rates, its direct costs and makes any necessary contribution to overheads to account for costs associated with the provision of inmate calling services, but earns no more than that. This is conservative, as providers could earn more than that, but are unlikely to systematically earn less than that, since that would imply they are overall making losses. However, even making this "break-even" assumption, our new interim caps could still allow providers to recover their costs under these contracts. This is because our new caps will lead to increased inmate calling, allowing providers to spread relatively high fixed costs over more minutes.[110]

77. For example, consider a hypothetical larger jail inmate calling services contract, voluntarily entered into, that charges incarcerated people $0.25 per minute with a $0.10 per minute site commission. Assume further that this results in 1,000 calling minutes. The provider would earn $150 (= ($0.25 - $0.10) * 1,000) in revenue and, given the contract's voluntary nature, the contract would presumably be commercially viable. Now suppose the provider lowered rates to be consistent with our new interim caps, charging $0.16, with the provider receiving $0.14 and with $0.02 for site commissions. Suppose further, at the lower price of $0.16 per minute, incarcerated people increase their calling minutes from 1,000 to 1,132 total minutes.[111] This would generate revenues for the provider of $158.48 (= 1,132 * $0.14) compared with the revenues of $150 earned at a $0.25 per minute rate with $0.10 per minute in site commission payments. If, at the same time, each additional minute costs the provider $0.01, and the provider was originally breaking even, then the provider's costs would rise from $150 to $151.32 (= $150 + (132 * $0.01)), implying per-minute costs of approximately $0.134 (= $151.32 / 1,132), less than the original per-minute costs of $0.15 (= $150 / 1,000). Thus, the provider would earn $7.16 (= $158.48 - $151.32) more than in the original situation.[112]

(Continued from previous page)
their costs; (ii) our elasticity estimates are understated; and (iii) estimates of the cost of an additional minute are overstated. *See, e.g.*, supra para. 62. Relatedly, GTL also argues that any reduced rates faced by incarcerated people as a result of the Commission's proposed caps would not lead to increased call volume. *See* Letter from Chérie R. Kiser, Counsel for GTL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, Attach., Paul E. Godek, Economists Incorporated, Second Supplemental Report in Support of Comments of Global Tel*Link Corporation Regarding the FCC's Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking at 8-9 (filed Apr. 26, 2021). We are unconvinced, and the record suggests otherwise. GTL has itself refuted this position in other submissions. *See* Letter from Chérie R. Kiser, Counsel for GTL, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed Apr. 19, 2021) (explaining how much call volumes increased when calls were provided for free). While incarceration authorities sometimes place tight restrictions on call frequency and length, there is ample evidence in the record that lower prices result in greater call minutes, because high prices do more to discourage calling than these restrictions do. *See* Report and Order, supra para. 200 notes 607-10 (collecting examples of providers lowering their rates and experiencing increases in call volumes). Further, economic theory echoes the record evidence, and predicts that providers will increase output when a price cap lowers their rates as long as the additional revenue exceeds any corresponding increase in costs. Here, not only do current per-minute rates exceed per-minute costs, but they exceed the per-minute costs of supplying additional minutes by a wide margin; thus, a rational provider will find it profitable to increase its output.

[110] Inmate calling services have high fixed costs (e.g., installation of secure telephone equipment), and low additional costs for each minute of inmate telephone use. *See, e.g.*, Public Interest Parties Brattle Reply Report at 5 (stating that "[t]he data reflect that a large part of the expenses are overhead and fixed costs that have a weak connection to facility size").

[111] This assumes a demand elasticity of 0.3, as we provide in the following paragraph. Thus, a 44% (= 0.25 - 0.16 / (0.25 + 0.16) / 2) decline in price leads to 13.2% (= 44% * 0.3) increase in call minutes.

[112] If supply for this contract were competitive, then the provider winning the bid for this contract would require a price of just below $0.154 per minute (= $0.02 + ($151.32 / 1,132)).

78. In connection with the preceding example, we estimated the call-minute volumes that would result for each contract that in 2018 had per-minute revenues greater than those allowed under our new caps, assuming a demand elasticity of 0.3.[113] Using those projected call volumes, and assuming a generous additional or incremental per-minute cost of $0.01,[114] we found 77% of prison and 73% of larger jail contracts would recover as much as they had at the lower 2018 volumes plus enough to cover their additional per-minute costs. Thus, a material majority of contracts would be able to recover their costs under our new interim rate caps. Given that the estimates presented here are based on the upper bound of costs for a contract, that we leaned toward understating demand responsiveness, the true share of contracts that are cost-covering is likely larger.

[113] This is the low end of the inmate calling services elasticities found in our record. *See* Report and Order, *supra* Part III.F.

[114] Many direct costs are independent of the need to carry additional call minutes. For example, the cost of each additional telephone installed at a facility would be a direct cost of the facility and is independent of how many call minutes originate from that telephone. Thus, the cost of $0.01 per additional minute assumed here is therefore a very conservative estimate of the cost of an additional call minute. For example, {[ ]} operated two contracts at rates of $0.009 and $0.0119—suggesting that under these rates the provider can cover the marginal cost of a minute of calling as well as cover their fixed costs. Worth Rises Comments at 12. Similarly, six contracts in the Second Mandatory Data Collection report providers earning per-minute rates net of site commissions of less than $0.01, including the {[ ]} contract for the {[ ]}. Indeed, the cost of an additional minute may be *de minimis*, with the cost of both originating and terminating a call being near zero. On termination costs, *see Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17908, para. 746 & n.1309 (2011), *pets. for review denied sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). On origination costs, *see 8YY Access Charge Reform*, WC Docket No. 18-156, Report and Order, 35 FCC Rcd 11594, 11640, para. 103 (2020) ("[B]ill-and-keep [for 8YY originating traffic] will move prices closer to being cost-reflective.").

APPENDIX F

Sensitivity Testing: Additional Statistical Analysis of Cost Data

1. We analyze inmate calling services providers' responses to the Second Mandatory Data Collection to determine whether certain characteristics of inmate calling services contracts can be shown to have a meaningful association with contract costs on a per-minute basis, as reported by the providers.[1] The Commission previously performed this analysis in Appendix F of the *2020 ICS Notice*.[2] That analysis found that provider identity and the state a facility is located in were by far the most important predictors of a contract's per-minute costs. It also found that other facility and contract variables, such as the average daily populations of the facilities covered by the contract, the type of those facilities (prison or jail), and the rurality of the facilities, had virtually no additional predictive power. In comments submitted to the Commission, the finding that per-minute costs were not significantly impacted by facility size and type was criticized.[3] This Appendix repeats the analysis from Appendix F of the *2020 ICS Notice* using updated data.

2. To perform our analysis, we use a recognized statistical method named least absolute shrinkage and selection operator (Lasso) to identify which, if any, variables serve as accurate predictors of per-minute contract costs for calling services.[4] This method identifies predictors of an outcome variable—in our case the logarithm of costs per minute—by trading off the goodness of fit against the complexity of the model, as measured by the number of predictors. As used here, the Lasso model seeks to identify factors that are predictive of an inmate calling service provider's costs per minute, balancing a number of competing considerations. Lasso is especially useful in situations like this where many variables, and interactions among those variables, can potentially predict outcomes.[5] In our Lasso model, we find the main predictors of costs per minute to be provider identity and the state where the contract's facilities are located. We also find that facility type (whether the facility is a prison or jail) is a predictor of costs per minute, although not as strong as provider identity and state. Finally, we find that a wide range of other variables have less, or essentially no, predictive power.

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[1] In this Appendix, we frequently refer to inmate calling services providers by short names or acronyms. These providers are: ATN, Inc. (ATN); CenturyLink Public Communications, Inc. (CenturyLink); Correct Solutions, LLC (Correct); Combined Public Communications (CPC); Crown Correctional Telephone, Inc. (Crown); Global Tel*Link Corporation (GTL); ICSolutions, LLC (ICSolutions); Legacy Long Distance International, Inc. (Legacy); NCIC Inmate Communications (NCIC); Pay Tel Communications, Inc. (Pay Tel); Prodigy Solutions, Inc. (Prodigy); and Securus Technologies, LLC (Securus).

[2] *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485, 8566, Appx. F (2020) (*2020 ICS Order on Remand* or *August 2020 ICS Notice or 2020 ICS Notice*).

[3] *See, e.g.*, National Sheriffs' Association Comments at 7; Pay Tel Comments at 15; Securus Comments Attach. D, FTI Consulting, Inc., Declaration of Robert O. Fisher, Brian F. Pitkin & Steven E. Turner at 20, 23 (Securus FTI Report); National Sheriffs' Association Reply at 2-3.

[4] *See* Robert Tibshirani, *Regression Shrinkage and Selection via the Lasso*, 58 J. Royal Stat. Soc'y, Series B (methodological) 267 (1996), https://www.jstor.org/stable/2346178.

[5] Given that we are interested in determining the potential cost effects of many categorical variables as well as their interactions with one another, the overall number of potential variables is extremely large, and estimating the effects of all variables on costs via more traditional methods (such as linear regression) is infeasible. See Bruce E. Hansen, Econometrics 911 (March 11, 2021) (unpublished manuscript), https://www.ssc.wisc.edu/~bhansen/econometrics/Econometrics.pdf (discussing in Chapter 29, Section 3, how Lasso models can address the problem of high dimensional regression, for which other more traditional methods are inadequate).

3. We choose the inmate calling services contract as the unit of observation for our analysis for two reasons. First, providers bid for contracts rather than separately bidding for each individual facility, which indicates that commercial decisions are made at the contract level. Second, many contracts cover more than one facility, but several providers did not report data on those facilities separately, which precludes any meaningful analysis at the facility level.[6] We focus on the logarithm of costs per minute as the dependent variable—i.e., we seek to evaluate what factors are predictive of an inmate calling service provider's costs per minute. The contract variables that we consider in our analysis are as follows:

- The identity of the inmate calling services provider;
- The state(s) in which the correctional facilities covered by a contract are located;
- The Census division(s) and region(s) in which the facilities covered by a contract are located;
- The type of facility (prison or jail);
- An indicator for joint contracts (i.e., contracts for which an inmate calling services provider subcontracts with another inmate calling services provider);
- Contract average daily population;
- Contract average daily population bins (average daily population ≤ 25; average daily population ≤ 50; average daily population ≤ 100; average daily population ≤ 250; average daily population ≤ 500; average daily population ≤ 1,000; average daily population ≤ 5,000);
- Rurality of the facilities covered by the contract (rural, if all the facilities covered by the contract are located in a census block designated by the Bureau of Census as rural; urban, if all facilities are located in a census block not designated as rural; or mixed, if the contract covers facilities in census blocks designated as both rural and not rural); and
- Various combinations (i.e., multiplicative interactions) among the above variables.

4. *Lasso and Costs per Minute*. The Lasso results indicate economically significant differences in costs per minute across different providers and states. The provider identity and state variables retained by Lasso as predictors of cost explain approximately 67% of the variation in costs across contracts. Provider identity is an especially meaningful predictor of costs; a Lasso model with it alone explains over 60% of the variation in costs across contracts. The differences in costs measured by the provider identity variable may reflect systematic differences in costs across providers, but they are more likely indicative of systematic differences in the way costs are calculated and reported to us by providers.[7] The differences in cost measured by the state variables may reflect statewide differences in costs arising from different regulatory frameworks or other state-specific factors. Lasso results also indicate differences in costs per minute by facility type (prison or jail), rurality, and region. However, these variables are not economically significant: when retained as predictors by Lasso, these variables explain less than 1% of the variation in costs that are explained by the provider identity and state variables alone.

5. A group of contracts representing a significant fraction—about 11%—of observations contained insufficient information to ascertain the rurality of facilities included in those contracts.[8] As a

[6] *See* Appx. E, *supra* Part C (discussing reasons for making contract level the unit of analysis). As in Appendix E, jails with average daily populations of less than 1,000 are included in our totals to ensure that our sensitivity analysis is comprehensive among our total dataset of 2,900 contracts. But, because we do not address jails with average daily populations of less than 1,000 in the Report and Order for purposes of arriving at revised interim rate caps based on the Second Mandatory Data Collection, we do not include any results based on such jails in this Appendix.

[7] *See* Report and Order, *supra* Part III.C.3 (discussing differences in provider interpretation of the cost reporting instructions, and variations in the cost allocation methodologies used).

[8] *See* Appx. E, *supra* Part C (discussing the geocoding process).

result, in our baseline model that includes all contracts, we interpret the effect of the rurality variables as differences from the contracts for which we do not have rurality information. To ensure that this is a sound approach, we use a sample selection model to confirm that the factors that may be associated with a contract not having sufficient rurality information are not significantly correlated with costs.[9] We also conduct our analysis using only the contracts that contain rurality information and obtain Lasso results that are similar to the results we obtain with our baseline model.

6. We also explore the differences in the costs reported by the top three providers by size using a double-selection Lasso model.[10] We focus on GTL, ICSolutions, and Securus because these firms' costs explain the bulk of industry costs. These providers supply 58% of all inmate calling services contracts, and cover approximately 78% of all incarcerated people as measured by average daily population.[11] These three firms are also more suitable for making cross-firm comparisons because they do not subcontract the provision of inmate calling services to a third party, and because they are the largest three of the five providers that serve prisons, covering 111—or 86%—of all prison contracts.[12] The results illustrate how high GTL's reported costs are relative to those of its nearest peers, showing GTL's costs to be —all other things being equal—{[ ]} greater than the costs reported by Securus and {[ ]} greater than the costs reported by ICSolutions. These cost differences are statistically significant at confidence levels greater than 99%.[13]

7. The results of the double-selection Lasso model also indicate that—all other things being equal—the costs of providing inmate calling services are approximately 22% greater in jails than in prisons; this difference is statistically significant at confidence levels greater than 99%.[14]

8. The Lasso model allows us to consider how a wide array of variables affect a contract's per-minute cost. However, the limitations of the available data may cause the Lasso model to understate the impact of certain variables. For example, because reported costs vary greatly across providers, Lasso may be under-ascribing importance to other variables such as size and type of facility. Commenters

[9] We estimate a Heckman sample selection model where selection is for observations that contain rurality information. The dependent variable and controls in this model were chosen to be the same as the ones in Lasso. We find that the coefficient on the inverse Mills ratio is not significant at reasonable levels of significance (p-value is 0.21), allaying potential concerns about sample selectivity. *See generally* James J. Heckman, *Sample Selection Bias as a Specification Error*, 47 Econometrica 153 (1979), https://www.jstor.org/stable/1912352.

[10] *See generally* Alexandre Belloni, Victor Chernozhukov, & Christian Hansen, *Inference on Treatment Effects After Selection Among High-Dimensional Controls*, 81 Rev. Econ. Stud. 608 (2014), https://www.jstor.org/stable/43551575. Double-selection Lasso is a method of statistical inference that selects control variables in two stages: the first stage runs a Lasso regressing the dependent variable on a set of common controls; the second stage regresses the explanatory variables of interest on the same set of common controls. A simple Lasso only selects predictors, without the possibility of statistical inference afforded by double selection.

[11] *See* Appx. E, *supra* Part D, Table 1 (staff calculations of Second Mandatory Data Collection). These shares may in fact represent an understatement of their industry share because, for example, CenturyLink, a large provider when judged by average daily population, subcontracts almost all of its contracts to ICSolutions, and, in the case of the large Texas Department of Corrections contract, to Securus.

[12] Of the remaining prison providers, CenturyLink supplies {[ ]} prison contracts, Legacy supplies {[ ]}, and NCIC supplies {[ ]}.

[13] When the sample is restricted to the contracts with no missing rurality information, GTL's costs are—all other things being equal—approximately {[ ]} greater than the costs reported by Securus, and {[ ]} greater than the costs reported by ICSolutions.

[14] For the sample restricted to contracts with complete rurality information, this estimate is approximately 21% and significant at the 99% level of confidence.

criticized the Commission's analysis of reported costs in the *2020 ICS Notice*.[15] In addition to critiquing the shortcomings of the data used, commenters disagreed with the notion that costs were similar across facility type and size. Some commenters argued that prisons should be expected to have lower per-unit costs than jails, and that larger jails should have lower per-unit costs than jails with average daily populations less than 1,000.[16] Given the concerns that differences in provider data filing practices impede the Lasso's ability to capture the significance of other variables, as well as the economic rationale for the presence of economies of scale in this market, we find these arguments to be persuasive.[17] We perform additional analyses to investigate differences in cross-provider costs in Appendix G. The approach we use there attempts to address provider-level cost differences that obscure the relationship between variables such as facility size and a contract's cost.

[15] *See, e.g.*, GTL Comments Attach., Paul E. Godek, Economists Incorporated, Report in Support of Comments of GTL Regarding the FCC's Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking at 14-15.

[16] *See, e.g.*, National Sheriffs' Association Comments at 7; Pay Tel Comments at 15; Securus FTI Report at 20, 23; National Sheriffs' Association Reply at 2-3.

[17] *See* Report and Order, *supra* Part III.C.3; Securus Comments Attach. B, Robert O. Fisher et al., FTI Consulting, Inc., Inmate Calling Services Cost Analysis for Securus at 21 (recognizing that Securus benefits from economies of scale not available to smaller providers).

APPENDIX G

Lower Bound Analysis

1. Given deficiencies of the cost data submitted by providers, the removal of invalid, incomplete, and otherwise anomalous contracts performed in Appendix E is a necessary step towards determining accurate per-minute costs.[1] Using those data, we then develop the upper bounds of the zones of reasonableness for the interim interstate provider-related rate caps based on a mean plus one standard deviation approach.[2] However, the upper bounds overstate true per-minute costs by substantial margins. In addition to generally applicable grounds for overstatement,[3] each upper bound's construction includes a number of contracts that we identify as statistical outliers, and includes all GTL contract costs as reported, despite abundant indicia that GTL's reported costs are both unreliable as a measure of GTL's actual costs of providing inmate calling services and significantly higher than its true costs.[4]

2. In the following analysis, we make further adjustments to the submitted cost data using generally accepted statistical and econometric techniques. We begin by performing an analysis of statistical outliers to determine whether certain remaining contracts in our data are well outside of the mean of per-minute costs and remove those observations revealed to be outliers by the use of these metrics. Next, we perform a cost adjustment of GTL's reported per-minute contract costs, using reliable information reported for GTL's own contracts as well as the contract information of other inmate calling services providers to identify surrogate observations to use instead of GTL's reported per-minute costs. The results of this analysis allow us to derive lower bounds of per-minute contract costs for prisons and larger jails.[5]

1. Analysis of Outliers

3. As we review in detail in Appendix E, we perform an initial round of data cleaning on the contract-level dataset derived from the Second Mandatory Data Collection by removing contracts with invalid or incomplete data, excluding anomalous contracts, and making additional data adjustments.[6] We now turn to outlier detection and removal. Using conservative thresholds for both parametric and non-parametric outlier detection techniques (that is, techniques that rely on normality assumptions about the distribution of the cost data versus techniques that do not), we find and remove the data points that are

[1] *See* Appx. E, *supra* Part B. In this Appendix, we frequently refer to inmate calling services providers by short names or acronyms. These providers are: ATN, Inc. (ATN); CenturyLink Public Communications, Inc. (CenturyLink); Correct Solutions, LLC (Correct); Combined Public Communications (CPC); Crown Correctional Telephone, Inc. (Crown); Global Tel*Link Corporation (GTL); ICSolutions, LLC (ICSolutions); Legacy Long Distance International, Inc. (Legacy); NCIC Inmate Communications (NCIC); Pay Tel Communications, Inc. (Pay Tel); Prodigy Solutions, Inc. (Prodigy); and Securus Technologies, LLC (Securus).

[2] Report and Order, *supra* Part III.C.3.

[3] *See* Report and Order, *supra* Part III.C.3.

[4] *See* Appx. E, *supra* Part D (discussing GTL's cost data and suggesting it is the only provider making a loss on calling services); *see also* Appx. E, *supra* Part E (indicating that GTL reported only bad debt as direct costs); Report and Order, *supra* Part III.C.3 (incentives to overstate costs).

[5] They additionally allow us to address concerns raised in the record regarding expected differences in contract costs across facilities of different types and sizes. *See* Appx. F, *supra*.

[6] *See* Report and Order, *supra* Part III.C.3 (discussing the steps taken to calculate the upper bound); *see also* Appx. E, *supra* Part B. The final dataset contains 2,900 contract-level observations and is the starting point for the outlier analysis presented here.

well outside of the central tendency of the distribution of per-minute costs as measured by the mean and standard deviation.[7]

4. We first employ two closely related parametric techniques: the Grubbs test and the modified Thompson Tau test.[8] Both tests detect the largest absolute deviations from the mean divided by the standard deviation. For each approach, if the data point with the largest deviation is above a critical threshold then it is considered an outlier and removed. Both tests continue to iterate through the dataset, recalculating the test statistic and comparing it to the critical value until they no longer detect any outlying observations.[9]

5. We perform this analysis on the average cost per minute[10] for each contract, and separately for prisons, larger jails, and jails with average daily populations of less than 1,000.[11] To be as conservative as possible, we choose the confidence level for the critical value to be 99%. The Thompson Tau test identifies 98 total outliers: 94 jails with average daily populations of less than 1,000, 3 larger jails, and 1 prison. The Grubbs test identifies 25 total outliers: 22 jails with average daily populations less than 1,000 and three larger jails.

6. Both the Grubbs and Thompson Tau tests assume that each observation is drawn from a normal distribution, and that outlier observations are those that would not typically occur from the same data generating process.[12] To ensure our outlier results are robust to normality assumptions, we also employ a well-known non-parametric approach to outlier detection: the box plot. This approach does not rely on the assumption of normality and instead uses only the mean, median, and quartiles of the data. A box plot defines outlier observations as those that are more than 1.5 times the interquartile range from the

[7] *See generally* Victoria J. Hodge & Jim Austin, *A Survey of Outlier Detection Methodologies*, 22 A.I. Rev. 85-126 (2004) (providing an overview of commonly used outlier detection methods).

[8] *See generally* Frank E. Grubbs, *Sample Criteria for Testing Outlying Observations*, 21 Annals Mathematical Stat. 27 (1950); *see also* Frank E. Grubbs, *Procedures for Detecting Outlying Observations in Samples*, 11 Technometrics 1–21 (1969); William R. Thompson, *On a Criterion for the Rejection of Observations and the Distribution of the Ratio of Deviation to Sample Standard Deviation*, 6 Annals Mathematical Stat. 214 (1935).

[9] The critical regions for the Grubbs and Thompson Tau tests are similar but are based on a different version of the Student's t test statistic. For the Grubbs test, the Student's t is based on N-2 degrees of freedom and a tail value equal to $\alpha/2N$. For the Thompson Tau test, the Student's t is based on N-2 degrees of freedom and a tail value of $\alpha/2$. This difference results in the Thompson Tau test always calculating a lower test statistic than the Grubbs, leading to the detection of more outliers at a given confidence level but also a higher likelihood of false positives.

[10] S*ee* Appx. E, *supra* Part E. The contract-level cost per minute is defined as: (contract direct costs + contract allocated overhead costs) / (contract total paid minutes).

[11] *See* Appx. E, *supra* Part C. Larger jails have average daily populations greater than or equal to 1,000. As in Appendix E, jails with average daily populations of less than 1,000 are included in our totals to ensure that our outlier detection and removal is comprehensive among our total dataset of 2,900 contracts. But, because we do not address such jails in the Report and Order for purposes of arriving at interim provider-related rate caps based on the Second Mandatory Data Collection, our discussion of them in this Appendix is limited.

[12] However, if the true data-generating process leads to a right-skewed distribution, then observations identified as outliers under an assumption of normality may in fact be legitimate data points. In a right-skewed distribution, the mean is greater than the median. *See generally* Eberly College of Science, Pennsylvania State University, § 2.2.4.1 Skewness & Central Tendency, https://online.stat.psu.edu/stat200/lesson/2/2.2/2.2.4/2.2.4.1 (last visited Mar. 28, 2021). *See Sample Criteria for Testing Outlying Observations*, *supra* note 8, at 27-30; *Procedures for Detecting Outlying Observations in Samples*, *supra* note 8, at 1-3; *On a Criterion for the Rejection of Observations and the Distribution of the Ratio of Deviation to Sample Standard Deviation*, *supra* note 8, at 214-16 (providing discussions of the statistical definition of an outlying observation and normality assumptions regarding the distribution of the population of interest).

upper or lower quartiles of the per-minute cost data (the upper and lower bounds).[13] The procedure identifies a total of 52 observations above the upper bound: 49 jails with average daily populations less than 1,000 and 3 larger jails.

7. The Grubbs, Thompson Tau, and box plot approaches identify the same overlapping set of contracts as outliers, but with increasing restriction based on the technique. Specifically, there is no outlier identified by Grubbs that is not also an outlier for Thompson Tau and the box plot. Similarly, there is no outlier identified by the box plot that is not also an outlier for Thompson Tau. Though Thompson Tau appears to be least conservative and Grubbs most conservative, what is important is that all three approaches lead to the identification of the same nested set of outlier observations. To retain as much data as possible, and to be as conservative with our analysis as possible, we exclude from the contracts data only those 25 observations identified by Grubbs as being outliers.

8. The results of the outlier analysis are presented in Tables 1, 2, and 3 below. Table 1 lists the outlier observations for each firm and facility type, while Table 2 presents the full list of contracts identified as outliers. Finally, Table 3 presents the summary statistics of per-minute costs for the group of outlier contracts.

Table 1 – Outlier Observations by Firm and Facility Type (# of Contracts)

	ATN	Correct	Crown	GTL	Pay Tel	Securus	Total
Smaller Jails	2	5	4	2	6	3	22
Larger Jails	0	3	0	0	0	0	3
Total	2	8	4	2	6	3	25

[13] These bounds are referred to as "Tukey's fences." *See generally* John W. Tukey, Exploratory Data Analysis 43 (1977).

Table 2 – Contracts Classified as Outliers

Firm	Contract Identifier	Facility Type	ADP	CPM	RPM
Correct	Williamson	Larger Jail	{[		]}
Correct	San Luis	Larger Jail	{[		]}
Correct	West Texas	Larger Jail	{[		]}
ATN	{[ ]}	Smaller Jail	{[		]}
ATN	{[ ]}	Smaller Jail	{[		]}
Correct	Morgan City	Smaller Jail	{[		]}
Correct	Little River	Smaller Jail	{[		]}
Correct	Rolling Plains	Smaller Jail	{[		]}
Correct	Wise	Smaller Jail	{[		]}
Correct	Livingston WR	Smaller Jail	{[		]}
Crown	Graham County Jail (NCIC - Crown)	Smaller Jail	{[		]}
Crown	Thayer County Jail (NCIC - Crown)	Smaller Jail	{[		]}
Crown	Pawnee County Jail (NCIC - Crown)	Smaller Jail	{[		]}
Crown	Phillips County Jail (NCIC - Crown)	Smaller Jail	{[		]}
GTL	{[ ]}	Smaller Jail	{[		]}
GTL	{[ ]}	Smaller Jail	{[		]}
Pay Tel	{[ ]}	Smaller Jail	{[		]}
Pay Tel	{[ ]}	Smaller Jail	{[		]}
Pay Tel	{[ ]}	Smaller Jail	{[		]}
Pay Tel	{[ ]}	Smaller Jail	{[		]}
Pay Tel	{[ ]}	Smaller Jail	{[		]}
Pay Tel	{[ ]}	Smaller Jail	{[		]}
Securus	{[ ]}	Smaller Jail	{[		]}
Securus	{[ ]}	Smaller Jail	{[		]}
Securus	{[ ]}	Smaller Jail	{[		]}

Notes: "ADP" is the average daily population covered by the contract; "CPM" is a contract's average cost per minute; and "RPM" is a contract's average revenue per minute, net of any commissions paid.

Table 3 – Outlier Analysis Summary Statistics

	# of Contracts	Mean ($)	Median ($)	Std. Dev. ($)	Minimum ($)	Maximum ($)
Smaller Jails	22	0.410	0.359	0.128	0.283	0.734
Larger Jails	3	0.782	0.512	0.656	0.303	1.529
Total	25	0.455	0.370	0.255	0.283	1.529

9. Our outlier procedure identifies and removes a total of 25 observations (22 jails with average daily populations less than 1,000, and 3 larger jails). This amounts to 1.6% of observations of larger jails and 0.8% of observations of jails with average daily populations less than 1,000. The outlier procedure removes three contracts for larger jails operated by Correct. The remaining 22 observations are all jails with average daily populations less than 1,000 whose per-minute costs also fall outside of the bounds of all three outlier detection methods.

10. It is evident that the outlier contracts have average per-minute costs that are significantly above the norm. All of the larger jails have revenues per minute below their per-minute costs, suggesting

the cost data are unreliable in these cases. Of the jails with average daily populations less than 1,000, 11 have per-minute revenues that are less, and in some cases substantially less, than their per-minute costs, again suggesting that their costs are unlikely to be valid. The remaining outliers also have per-minute costs that are well outside of the central tendency of the data, adding further validity to the Grubbs procedure.

1. GTL Data Adjustment

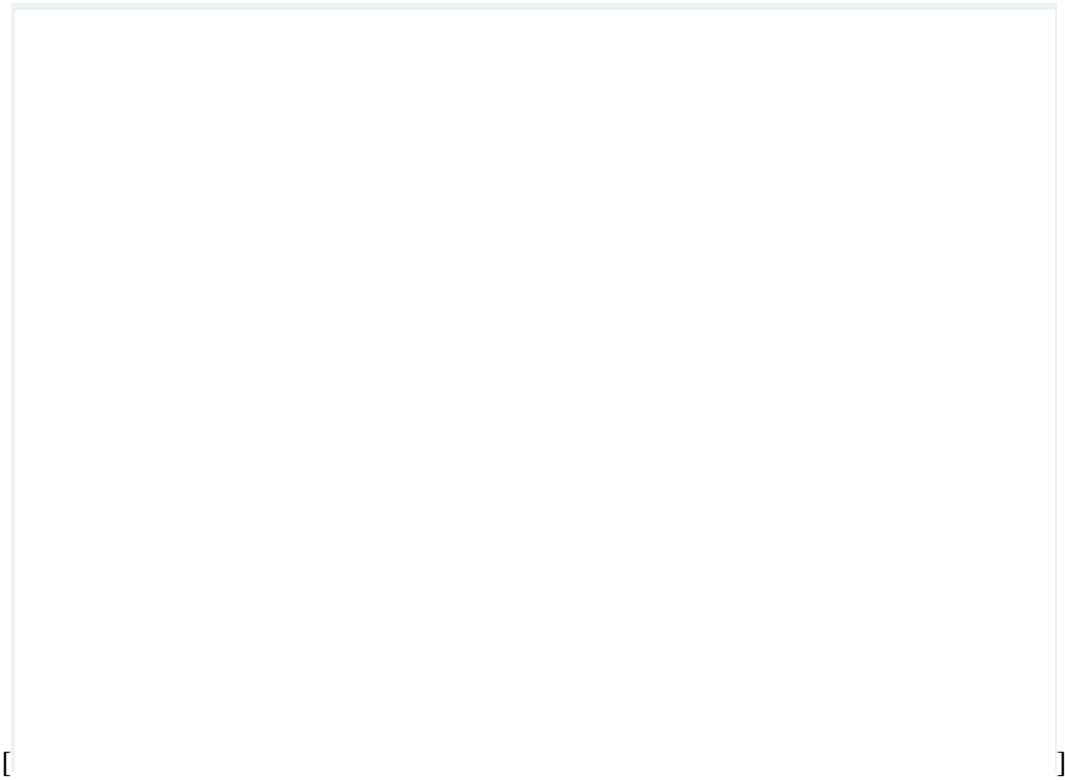
11. Though we believe the contract-level cost data to be improved after removing the outlier observations, we find the costs reported by certain contracts that are not identified as outliers to be outside of what is reasonable given comparable contracts in the data. Specifically, GTL's per-minute costs for its prison contracts, as calculated using the data GTL reported, are significantly higher than per-minute costs calculated based on data submitted by providers operating similarly sized facilities. Likewise, both GTL and {[ ]} are high-cost providers for larger jails.[14] However, {[ ]} only has two such contracts while GTL has 62. As such, while {[ ]}'s inconsistent larger jail contracts should be explored, they do not have nearly as significant an effect on overall costs per minute as do GTL's contracts.[15]

12. To illustrate the large discrepancy between GTL's per-minute costs for prison and larger jail contracts and those of all other providers, we present the histograms in Figure 1 below. Rather than a normal distribution of per-minute costs across contracts, the histograms appear bimodal due to GTL's costs. GTL's average per-minute costs for prisons and larger jails are about {[ ]} as large as those of all other providers. In fact, for prisons, GTL's least costly contract is still higher than any other provider's most costly contract.

[14] {[ ]}'s average costs per minute for larger jails drop to a lower level after the removal of the three larger jail contracts in the outlier analysis.

[15] GTL, {[ ]}, and {[ ]} are also the highest-cost providers of inmate calling services for smaller jails, but those contracts are not the primary focus of this analysis.

Figure 1 – Cost per Minute (CPM) Distributions for Prisons and Larger Jails

{[]}

Notes: "CPM" is the cost per minute. Dark red areas are where the Non-GTL and GTL bars overlap.

13. Given the large discrepancy between GTL's costs and those of all other providers, we find it implausible that GTL's actual cost of providing inmate calling services to prisons and larger jails is as high as its reported data suggest. Therefore, in order to address GTL's costs, we implement a *k*-nearest neighbor matching algorithm to match each GTL contract to multiple other contracts by non-GTL providers based on similar contract characteristics. More formally, the multivariate *k*-nearest neighbor regression is a non-parametric method that uses the Euclidian distance between continuous variables to determine the "closeness" of observations.[16] It is a well-established approach to data imputation issues, where missing or unreliable observations need to be replaced with plausible values from the same dataset.[17] We implement the *k*-nearest neighbor approach to find contracts similar to GTL's and then adjust GTL's per-minute costs based on the per-minute costs of those other contracts.[18]

[16] *See generally* Evelyn Fix & J.L. Hodges, Jr., *Discriminatory Analysis - Nonparametric Discrimination: Consistency Properties*, 57 Int'l Stat. Rev. 238-47 (1989) (reprint); T.M. Cover & P.E. Hart, *Nearest Neighbor Pattern Classification*, 13 IEEE Trans. Inform. Theory 21 (1967).

[17] *See* R. Malarvizhi & Antony Selvadoss Thanamani, *K-Nearest Neighbor in Missing Data Imputation*, 5 Int'l J. Eng'g Rsch. & Dev. 05, 07 (2012); Lorenzo Beretta & Alessandro Santaniello, *Nearest Neighbor Imputation Algorithms: A Critical Evaluation*, 16 BMC Med. Informatics and Decision Making 197 (2016), https://bmcmedinformdecismak.biomedcentral.com/track/pdf/10.1186/s12911-016-0318-z.pdf.

[18] In their attempt to address outliers, the report of The Brattle Group utilizes a data censoring technique known as winsorization to replace all per-minute cost observations above $0.50 with the next highest values in the cost distribution. Wright Petitioners, Prison Policy Initiative, and Public Knowledge Comments Appx. A, Coleman Bazelon et al., The Brattle Group, Brattle Report at 14. We believe a combination of outlier removal and cost adjustment using *k*-nearest neighbor regression to be an improvement over winsorization. Whereas winsorization replaces a set percentage (or number) of observations above a predetermined threshold, the Grubbs procedure relies on the variation in the data to determine observations likely drawn from a different population distribution.

(continued….)

14. We perform the analysis with $k = 3$. That is, we find the three nearest neighbors to each GTL contract. The matching is done on the following variables:[19] average daily population, total inmate calling services minutes of use, total commissions paid, and facility type.[20] Matching was done on these four variables, as economic rationale and comments submitted to the Commission argue that each of the four is important in determining a contract's cost of provision.[21] We create two adjusted per-minute costs for GTL. The first takes a weighted average cost per minute of each nearest neighbor, weighted by each neighbor's inverse distance from GTL.[22] The second approach is more conservative and relies on the maximum cost per minute of all nearest neighbors.[23] Table 4 presents summary statistics for GTL's original per-minute costs for non-outlier prison and larger jail contracts, as well as the weighted and maximum costs per minute that result from the nearest neighbor matching algorithm.

(Continued from previous page)
Likewise, *k*-nearest neighbor relies on a multivariate measure of the "closeness" of contracts to determine the adjustment to GTL observations, making fewer assumptions and utilizing more information in the contracts.

[19] We have also performed the analysis with the addition of other variables such as revenues, geography, and rurality, and obtained similar results. In the case of encoded categorical variables such as geography, we forced the algorithm to make a match to ensure that the distance measure was not attempting to minimize distance between unrelated states/regions based on how they were coded in the dataset. Though the resulting adjusted per-minute costs were largely unchanged, this is not our preferred specification as forcing a match on any given dimension will invariably weaken the match on the other covariates. Additionally, while our Lasso analysis set forth in Appendix F pointed to provider identity as the dominant predictor of a contract's per minute costs, we do not match on provider identity. The Commission finds no economic rationale for why certain providers should have higher costs than their competitors for comparable facilities, nor do comments filed with the Commission make this argument. Furthermore, as explained in Appendix F, the importance attributed to provider identity by the Lasso model is most likely the result of asymmetric provider data filing practices, rather than actual differences in costs of provision.

[20] A neighbor to a specific GTL contract is the contract that is closest to the GTL contract along these dimensions. For example, if a GTL contract had an average daily population of 100, 15,000 total minutes, and paid $3,000 in site commissions, then another contract with an average daily population of 110, 16,000 total minutes, and paid site commissions of $3,400 would be a nearer neighbor than a third contract with an average daily population of 600, 100,000 minutes, and paid site commissions of $18,000.

[21] Numerous commentators argued that average daily population and facility type are important to a contract's per minute costs. *See, e.g.*, Pay Tel Comments at 15-17; Securus Comments at 40, National Sheriffs' Association at 2, 8-9. Total minutes of use is included because inmate calling contracts have high fixed costs. *See, e.g.*, Wright Petitioners, Prison Policy Initiative, and Public Knowledge Reply Appx. A, Coleman Bazelon et al., Brattle Group, Brattle Report at 5 (stating that "[t]he data reflect that a large part of the expenses are overhead and fixed costs"). As such, a contract's per minute costs will depend in part on minutes of use, as higher minutes of use allow fixed costs to be spread across more minutes, reducing a contract's per minute costs. Total commissions paid is included because, as first concluded in the *2020 ICS Notice*, site commissions may represent negotiations between providers and facility authorities in which providers agree to incur additional costs related to the provision of inmate calling services in exchange for not having to pay site commissions. *See Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485, 8572, Appx. H, para. 2 (2020) (*2020 ICS Order on Remand* or *August 2020 ICS Notice or 2020 ICS Notice*).

[22] That is, of the three nearest neighbors, we put more weight on the neighbors that are more similar to GTL according to the Euclidian distance measure. *See generally* N.S. Altman, *An Introduction to Kernel and Nearest-Neighbor Nonparametric Regression*, 46 Am. Statistician 175 (1992) (discussing k-nearest neighbor approaches to curve-fitting and data interpolation).

[23] We have run the matching on various values of *k* and find the results are robust to the choice of *k*. Even at $k = 6$, we obtain reasonable results for the maximum per-minute cost of the six nearest neighbors. Though as expected, when adding more neighbors, the maximum per-minute cost of the new group of neighbors continues to increase. As this is not a classification analysis, there is no methodology or metric for choosing the optimal *k*. However, we find $k = 3$ to be reasonable. Our choice is further supported by the use of $k = 3$ in the existing literature. *See Nearest Neighbor Imputation Algorithms: A Critical Evaluation*, *supra* note 17, at 204.

Table 4 – GTL Matching Summary Statistics

Pre-Matching						
	# of Contracts	Mean ($)	Median ($)	Std. Dev. ($)	Minimum ($)	Maximum ($)
Larger Jails	{[					]}
Prisons	{[					]}
Post-Matching Weighted						
	# of Contracts	Mean ($)	Median ($)	Std. Dev. ($)	Minimum ($)	Maximum ($)
Larger Jails	{[					]}
Prisons	{[					]}
Post-Matching Maximum						
	# of Contracts	Mean ($)	Median ($)	Std. Dev. ($)	Minimum ($)	Maximum ($)
Larger Jails	{[					]}
Prisons	{[					]}

15. Prior to the adjustment, GTL's per-minute costs are both high compared to other providers and essentially flat across facility types. There is no statistically significant difference in per-minute costs between GTL's larger jails and prisons. This is highly unusual, as we would expect firms to exhibit economies of scale by spreading their fixed costs over more call minutes, thereby reducing their per-minute costs on larger contracts.[24] For example, {[

]} After performing the *k*-nearest neighbor adjustment, GTL costs also exhibit economies of scale, and the difference in per-minute costs between GTL prisons and larger jails is statistically significant at the 1% level.

16. We can now estimate the effect that the GTL cost adjustment has on the overall distribution of per-minute costs in our contract-level data. Table 5 presents the average per-minute costs across all non-outlier prison and larger jail contracts after adjusting GTL costs.

Table 5 – All Contracts Post-Matching Summary Statistics

Post-Matching Weighted						
	# of Contracts	Mean ($)	Median ($)	Std. Dev. ($)	Minimum ($)	Maximum ($)
Larger Jails	{[					]}
Prisons	{[					]}
Post-Matching Maximum						
	# of Contracts	Mean ($)	Median ($)	Std. Dev. ($)	Minimum ($)	Maximum ($)
Larger Jails	{[					]}
Prisons	{[					]}

[24] For comparison, the average larger jail contract has 9.3 million minutes of use while the average prison contract has 34.6 million minutes of use.

17. Even when using the conservative approach of replacing GTL's per-minute costs with the highest costs of the three nearest neighbors, the overall per-minute cost of prisons and larger jails drops substantially. This is unsurprising as not only are GTL's costs high, but GTL also operates {[ ]} prison contracts and {[ ]} larger jail contracts. With the adjusted GTL observations, the full contracts data now indicate a decreasing per-minute cost of operating larger facilities. The reason is twofold: first, because GTL has a larger market share in the provision of inmate calling services for prisons than for larger jails, even a uniform reduction in its costs per minute across facility types would exert greater downward pressure on the average costs of prisons compared to larger jails; and second, because other firms do exhibit returns to scale, the results of the nearest neighbor matching procedure highlight this important aspect of the data. Hence our procedure adjusts GTL per-minute costs for each facility type to reflect this market reality.

18. Finally, to better visualize the GTL data adjustment, we present overlaid histograms of GTL and non-GTL per-minute costs for prison and larger jail contracts after performing the *k*-nearest neighbor matching procedure in Figures 2 and 3.[25] {[ ]}

Figure 2 – CPM Distributions for Prisons with *k*-Nearest Neighbor Matching

{[ ]}

Notes: "CPM" is the cost per minute. Dark red areas are where the Non-GTL and GTL bars overlap.

[25] These are overlaid histograms rather than stacked bar charts. Therefore, the dark red color represents the intersection of GTL and non-GTL contracts, and the total number of contracts at any cost bin is the sum of the GTL and non-GTL bars.

Figure 3 – CPM Distributions for Larger Jails with *k*-Nearest Neighbor Matching

{[ ]}

Notes: "CPM" is the cost per minute. Dark red areas are where the Non-GTL and GTL bars overlap.

2. Analysis of GTL "Neighborhoods"

19. To further examine our nearest neighbor results, we explore the matches for each of GTL's {[ ]} non-outlier contracts. Aside from our choice of contract characteristics on which to perform the matching, the approach is non-parametric and relies only on the data to find the nearest neighbors of each observation. Nevertheless, we want to understand whether a single firm is dominant in our matches or if there is variation in the neighbors found.[26] In Table 6 below, we present the total number and percentage of time that each firm matches with a GTL contract, categorized by type of facility.[27]

[26] Even if the matches are overwhelmingly to a single firm, the legitimacy of the procedure is not in doubt as it is only a reflection of the data. However, the results would be less robust if an argument could be made for that firm also having unreliable cost data.

[27] We note that within our total dataset of 2,900 contract observations, GTL's smaller jail contracts only matched with other providers' smaller jail contracts.

Table 6 – Provider Matches to GTL by Facility Type

	Smaller Jail		Larger Jail		Prison		Overall	
	# of Matches	Percent	# of Matches	Percent	# of Matches	Percent	# of Matches	Percent
Securus	{[							]}
ICSolutions	{[							]}
CPC	{[							]}
NCIC	{[							]}
Legacy	{[							]}
Pay Tel	{[							]}
CenturyLink	{[							]}
Correct	{[							]}
ATN	{[							]}
Crown	{[							]}
Prodigy	{[							]}

20. The numbers in parentheses represent the percentage of all non-outlier and non-GTL contracts that each firm has, thereby allowing for a comparison of the frequency of nearest neighbor matches to the overall frequency in the data. Unsurprisingly, given the large market share of each, Securus is a frequent match to GTL. Of the {[ ]} GTL contracts included in our analysis, {[ ]} of them (19.7%) include zero Securus contracts in their neighborhood;[28] {[ ]} (34.8%) include one Securus contract in their neighborhood; {[ ]} (29.4%) include two Securus contracts in their neighborhood; and {[ ]} (16.1%) include three Securus contracts in their neighborhood. On average, a GTL contract's neighborhood is comprised of {[ ]} (47.3%) Securus contracts. As Securus comprises roughly 40% of all non-GTL contracts in our data, the results are reasonable and suggest that Securus does not have an outsized influence on our matching relative to its size in the market. After Securus, the providers whose contracts constitute the largest number of neighbors to GTL contracts are ICSolutions, CPC, and NCIC, with the average neighborhood consisting of {[ ]} contracts from each provider, respectively.

21. That no firm plays an outsized role in the nearest neighbor matching holds across the different types of facilities. {[

[28] By neighborhood, we refer to the set of three matched contracts for each GTL contract.

]} In general, the smallest firms in the market tend to be under-represented in the matching, likely because scale economies make the bigger players look more similar along multiple dimensions of a contract, even within a particular facility type.

22. The results of this analysis indicate that GTL is being matched to every other firm in our data at least some of the time. Though its nearest neighbors are usually other large providers, that is in no way surprising. The variation in the match data supports the validity of the results, while shedding additional light on the contracts that look closest to GTL's for the purposes of our data adjustment procedure.

3. Determining Lower Bound for Interim Rate Caps

23. With confidence that our outlier and GTL data adjustment procedures are valid and robust to a variety of assumptions, we can now construct the lower bounds for the zones of reasonableness. As with the upper bound approach, we define our lower bound as the mean plus one standard deviation of per-minute contract costs, separately for prisons and larger jails. These estimates rely on the full contract-level data excluding the identified outliers and replacing the original GTL cost data with the per-minute cost estimates derived from the nearest neighbor adjustment procedure. We present the lower bound estimates in Table 7 below.

Table 7 – Lower Bound Estimates

Lower Bound – Weighted GTL Adjustment					
	# of Contracts	**Mean ($)**	**Std. Dev. ($)**	**Mean+1 Std. Dev. ($)**	**Mean+2 Std. Dev. ($)**
Larger Jails	179	0.065	0.015	0.080	0.095
Prisons	129	0.052	0.012	0.064	0.076
Lower Bound – Maximum GTL Adjustment					
	# of Contracts	**Mean ($)**	**Std. Dev. ($)**	**Mean+1 Std. Dev. ($)**	**Mean+2 Std. Dev. ($)**
Larger Jails	179	0.070	0.019	0.089	0.108
Prisons	129	0.058	0.015	0.073	0.088

24. As with our previous results, we present lower bound estimates derived from a weighted average GTL adjustment as well as more conservative estimates based on the maximum of GTL's nearest neighbors. As both approaches are valid, we select the weighted average results as our estimates of the lower bound for the zone of reasonableness. For prisons, the lower bound is $0.064, and for larger jails, the lower bound is $0.08. These are the most plausible, lowest estimates of per-minute interim rate caps across all contracts in our data.

4. Maximum GTL Costs Support the New Interim Provider-Related Rate Caps

25. We have established the lower bounds of the zones of reasonableness as being $0.064 for prisons and $0.080 for larger jails based on an analysis that removes outlier observations and adjusts unreliable GTL per-minute cost data. Given GTL's size and presence in the inmate calling services market, we now determine the maximum per-minute costs that GTL could hypothetically incur that would still support our interim provider-related rate caps. That is, we ask what GTL's highest average per-minute costs would need to be, separately for its prison and larger jail contacts, such that the overall per-minute cost plus one standard deviation across all calling services contracts would be no higher than $0.12 per minute for prisons and $0.14 per minute for larger jails. We refer to this as the critical cost threshold for GTL, as it is the cost that must be exceeded for our provider-related rate caps to no longer be supported by the analysis.

26. To determine GTL's critical cost threshold, we present a critical cost analysis to support our new interim provider-related rate caps of $0.12 per minute for prisons and $0.14 per minute for larger jails.[29] The analysis calculates GTL's threshold per-minute costs that would bring the overall average cost per minute across all calling services contracts, plus a buffer, to $0.12 per minute and $0.14 per minute for prisons and larger jails, respectively. We examine a buffer of both one and two standard deviations from the mean. A buffer of one standard deviation reflects our approach to rate-setting, while a two standard deviation buffer is an even more conservative assumption because it requires per-minute costs to be even lower in order to remain under the interim rate caps. As such, GTL's threshold per-minute cost derived from this analysis will ensure that our rate caps are set at a level that allows the majority of firms to recover their costs.

27. We rely on the per-minute cost data from the contract-level dataset described in Appendix E after removing the 25 identified outliers. To determine the critical cost thresholds, we optimize over the set of GTL prison and larger jail contracts to find the cost per minute that sets the overall cost per minute plus a buffer across all prison contracts to $0.12 and across all larger jail contracts to $0.14. We perform four constrained optimizations: two each for prisons and larger jails with two different buffers (1 and 2 standard deviations). We present the results in Table 8.

Table 8 – GTL Critical Cost Thresholds ($)

Facility Type	Per-Minute Rate Cap	1 Std. Dev. Buffer	2 Std. Dev. Buffer
Prison	0.120	0.117	0.094
Larger Jail	0.140	0.153	0.117

28. Even with a large buffer of two standard deviations from the mean (which would allow the vast majority of firms to recover costs with certainty), GTL's average per-minute costs for prisons and larger jails need only be at or below $0.094 per minute and $0.117 per minute, respectively. These thresholds are still $0.041 per minute and $0.053 per minute higher than the average per-minute costs of all non-GTL prison and larger jail contracts. Furthermore, after applying a conservative *k*-nearest neighbor matching algorithm that sets GTL's contract costs to the maximum of its three neighbors, GTL's per-minute costs are $0.063 and $0.078 for prisons and larger jails, respectively. These cost estimates are well below the threshold values necessary to support the interim rate caps. As such, with reasonable high-end estimates of GTL's costs, our analysis indicates that the interim rate caps would allow nearly all firms to recover their costs of providing inmate calling services as reported in response to the Second Mandatory Data Collection.

[29] *See* Report and Order, *supra* Part III.C.3.

APPENDIX H

Analysis of Site Commission Payments

1. We permit a $0.02 per minute interim allowance for reasonable correctional facility costs for prisons and larger jails where site commission payments are part of a negotiated contract.[1] We base our decision on two separate and independent grounds. First, this allowance is based on estimates of the portion of site commission payments that are legitimately related to inmate calling services based on the approach set forth in Appendix H of the *2020 ICS Notice*, which we have updated below with corrected cost data consistent with the record.[2] Second, this allowance is based on record evidence reintroduced by Pay Tel and the National Sheriffs' Association supporting a $0.02 allowance.[3]

2. To improve comparability between contracts that do and do not involve payment of a site commission, we removed invalid, incomplete, and anomalous contracts from the cost data submitted by providers in response to the Second Mandatory Data Collection using the process described in Appendix E. The resulting data do not specify the costs, if any, that correctional facilities incur that are directly related to the provision of inmate calling services.[4] In the absence of direct information on the level of those costs, we estimate the costs correctional facilities incur by comparing the relative costs per minute to providers for contracts with and without site commissions, as shown in Table 1. As the Commission concluded in the *2020 ICS Notice*,[5] we continue to find that it is reasonable that the higher costs per minute for contracts without site commissions reflect, at least in part, give-and-take negotiations in which providers agree to incur additional costs related to the provision of inmate calling services in exchange for not having to pay site commissions.[6] In the context of Contractually Prescribed site commission payments, facilities may seek that providers pay a site commission as part of a request for proposal.[7] In other cases, a correctional facility may not seek a site commission payment but may indicate that offers to make such payments will be a factor in the bid evaluation process. In either case, bidders' choices about

[1] *See* Report and Order, *supra* Part III.C.4 (establishing the rate and explaining that site commissions are payments from inmate calling services providers to correctional facilities). In this Appendix, we frequently refer to inmate calling services providers by short names or acronyms. These providers are: ATN, Inc. (ATN); CenturyLink Public Communications, Inc. (CenturyLink); Correct Solutions, LLC (Correct); Combined Public Communications (CPC); Crown Correctional Telephone, Inc. (Crown); Global Tel*Link Corporation (GTL); ICSolutions, LLC (ICSolutions); Legacy Long Distance International, Inc. (Legacy); NCIC Inmate Communications (NCIC); Pay Tel Communications, Inc. (Pay Tel); Prodigy Solutions, Inc. (Prodigy); and Securus Technologies, LLC (Securus).

[2] *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking, 35 FCC Rcd 8485, 8572, Appx. H (2020) (*2020 ICS Order on Remand* or *August 2020 ICS Notice or 2020 ICS Notice*).

[3] Report and Order, *supra* Part III.C.4; National Sheriffs' Association Comments at 7 (referring to their 2015 cost survey); Pay Tel Comments at 12 (referring to data submitted by the National Sheriffs' Association); Wright Petitioners, Prison Policy Initiative, and Public Knowledge Reply at 10; National Sheriffs' Association Comments, WC Docket No. 12-375, at 3 (filed Jan. 12, 2015) (listing administrative services provided by, and duties of, facility officers to support inmate calling services).

[4] *See* Appx. E, *supra* Part B (describing the Second Mandatory Data Collection, initial data cleaning, and reported site commissions).

[5] *2020 ICS Notice*, 35 FCC Rcd at 8572, Appx. H, para. 2.

[6] *See* Report and Order, *supra* Part III.C.4 (explaining that Securus's and GTL's data in support of higher site commission allowances "fail[s] to isolate or otherwise account for only those portions of payments related to reasonable facility-related costs of providing inmate calling services").

[7] *See* Report and Order, *supra* Part III.C.4 (explaining the different conceptual scenarios in which site commission payments can arise).

whether to offer a site commission payment and at what level are informed by their discretionary business decisions about which strategies are more or less profitable to pursue.[8] Consequently, it is reasonable to conclude that providers and correctional facilities have at least some give-and-take during the negotiation process, which, at least in part, contributes to higher costs for contracts that do not provide for site commission payments compared to similarly situated providers operating under contracts that do provide for such payments.

Table 1 – Site Commissions and Per-Minute Costs

Facility Type	Site Commission	Mean ($)	Std. Dev. ($)	Mean + Std. Dev. ($)	Number of Contracts		
					Below	Above	Total
Larger Jails	No Commission Paid	0.100	0.042	0.142	11	1	12
	Commission Paid	0.100	0.121	0.221	167	3	170
	All Larger Jails	0.100	0.118	0.218	179	3	182
All Jails	No Commission Paid	0.097	0.061	0.158	260	13	273
	Commission Paid	0.093	0.056	0.150	2,325	173	2,498
	All Jails	0.093	0.057	0.150	2,583	188	2,771
Prisons	No Commission Paid	0.097	0.038	0.135	38	2	40
	Commission Paid	0.089	0.042	0.131	82	7	89
	All Prisons	0.092	0.041	0.133	120	9	129
All Facilities	No Commission Paid	0.097	0.059	0.155	298	15	313
	Commission Paid	0.093	0.056	0.149	2,408	179	2,587
	All Facilities	0.093	0.056	0.150	2,708	192	2,900

3. The bottom three rows of Table 1 (for All Facilities) show a $0.004 difference in mean costs per minute between contracts without site commissions ($0.097) and contracts with site commissions ($0.093). The difference in mean costs per minute between contracts without site commissions and contracts with site commissions is $0.008 for prisons ($0.097 - $0.089) and $0.004 for jails ($0.097 - $0.093). For larger jails, there is no difference in mean costs per minute between contracts without site commissions and contracts with site commissions ($0.10 - $0.10).

4. These differences between mean costs per minute for contracts that do and do not provide for payment of site commissions are lower than the estimates from the *2020 ICS Notice*.[9] However, the Second Mandatory Data Collection did not require the reporting of data on the costs, if any, that facilities incur that are directly related to the provision of calling services for incarcerated people. Because the absence of such data prevents us from more accurately determining the portion of site commissions directly related to the provision of inmate calling services, we decline to reduce the $0.02 allowance at this time.

[8] *See* Report and Order, *supra* Part III.C.4.

[9] *2020 ICS Notice*, 35 FCC Rcd at 8572, Appx. H.

STATEMENT OF
ACTING CHAIRWOMAN JESSICA ROSENWORCEL

Re: *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking (May 20, 2021).

With today's action the Federal Communications Commission takes a step forward to address the high cost that incarcerated people and their families pay for phone service. Let me be clear: This is not the last action we will take because there is more that needs to be done. I know the road to phone justice has been too hard and taken too long.

But also I believe every step counts. Because this is not just an issue of markets and rates; it is a broader issue of social justice. Consider that across the country 2.7 million children have at least one parent who is incarcerated. In many cases, those who are incarcerated are separated from their families by hundreds of miles and their kin may not have the time and means to make regular visits. Phone calls are the only way these families can stay connected. But when a single call can cost as much as most of us pay for an unlimited monthly plan, the financial burden of staying in touch can be too much to bear. This harms the families and children of the incarcerated. But it goes beyond that. It harms all of us because we know that regular contact with family members reduces recidivism.

Now consider the pandemic. It has touched every corner of American life. But the incarcerated have been hit especially hard. According to one analysis, nearly 400,000 have been sickened by this cruel virus. Nearly 2,700 have died. But that's not all. The dangers of COVID-19 have led many prisons and jails to stop in-person visitation. That makes simple phone calls more important than ever.

So today we provide relief to incarcerated people and their families. Recognizing the exigent circumstances caused by the pandemic, we lower interim interstate rates for prisons and the largest jails. This means that interstate rates will fall by more than a third for the vast majority of those who are incarcerated. For the first time ever, we cap international rates. No longer will providers be able to charge an immigrant 25 dollars to make a three-minute call to his or her family abroad. We eliminate the outdated surcharge for collect calls. And we make it clear that providers must give incarcerated people with disabilities functionally equivalent communications services.

But again, this is only a step forward. We include a rulemaking so we can clear the way for further reforms. We will collect better data for all facilities. We will take a hard look at whether site commissions that providers pay prisons or jails should be permitted at all. We will investigate whether the current ancillary service charges for placing a single call or for using a credit card are just and reasonable, as required by the Communications Act. And we will press harder on ensuring functionally equivalent access for incarcerated people with disabilities.

There is more we can do. Because as a matter of social justice we are not yet where we need to be. But we wouldn't even be here now without two women who got this effort started and put us on the road we are on today.

There is Martha Wright. It was nearly two decades ago that Martha Wright petitioned this agency to rein in the unconscionably high rates paid to call incarcerated people. She did this because it was personal. She was a grandmother who wanted to keep in touch with her grandson. She passed away several years ago but her legacy lives on.

There is also my former colleague and former Acting Chairwoman Mignon Clyburn. When others were presented with the petition from Martha Wright, they looked away. It was uncomfortable. It was a cause too hard, a proceeding too rough, and the legal issues too thorny. But she saw a wrong that we needed to make right. She called on this agency to act. And her efforts and her moral compass led us to where we are now.

So we will continue to press on in their honor and on behalf of the millions of families who deserve the ability to simply keep in touch with their loved ones who are incarcerated. We also praise those in Congress who have long championed legislation to fix this problem. That includes Senator Tammy Duckworth and Congressman Bobby Rush, who deserve special note for their efforts to extend our jurisdiction to cover the high cost of intrastate calls.

Finally, I want to thank the professional staff of this agency, many of whom have worked for years to address these matters. They include Irina Asoskov, Susan Bahr, Allison Baker, Larry Barnes, Peter Bean, Michelle Berlove, Kimberley Bradley, Justin Faulb, Amy Goodman, William Kehoe, Minsoo Kim, Albert Lewis, Rhonda Lien, Kris Monteith, Katherine Morehead, Terri Natoli, Erik Raven-Hansen, Sherry Ross, Marvin Sacks, Simon Solemani, and Gil Strobel of the Wireline Competition Bureau; Bob Aldrich, Diane Burstein, Eliot Greenwald, Debra Patkin, and Patrick Webre of the Consumer and Governmental Affairs Bureau; Peter Alexander, Connor Altman, Mark Azic, Tavi Carare, Paula Cech, Keaton Cobble, Stacy Jordan, Susan Lee, Steven Kauffman, Ying Ke, Eugene Kiselev, Dick Kwiatkowski, Giulia McHenry, Amy Nathan, Eric Ralph, Daniel Shiman, Emily Talaga, Shane Taylor, Mack Wachala, and Geoff Waldau of the Office of Economics and Analytics; and Sarah Citrin, Michelle Ellison, Valerie Hill, Jake Lewis, Marcus Maher, Rick Mallen, Linda Oliver, Joel Rabinovitz, and Bill Richardson of the Office of General Counsel.

STATEMENT OF
COMMISSIONER BRENDAN CARR

Re: *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking (May 20, 2021).

I recently heard from several families who had experienced firsthand the difficulties of maintaining contact with their incarcerated loved ones. I also heard from formerly incarcerated individuals who underscored the decline in mental and emotional health that can result from a lack of external communications. Beyond that, studies have repeatedly shown that increased communication between incarcerated people and their families, friends, and other outside resources helps reduce recidivism rates. And the COVID-19 pandemic has put even greater emphasis on these inmate calling services, as in-person visits have been severely limited. The FCC has a critical role in promoting just and reasonable rates for inmate calling services. So I am pleased that we are acting on our 2020 proposal to make these calling services more affordable.

I am also pleased that we are seeking comment on the availability of functionally equivalent communications services for incarcerated people with hearing or speech loss. It is critically important these individuals have equal and affordable access to communication services that will allow them to interact with family, friends, and other important resources, such as attorneys and medical professionals. As we move forward in this proceeding, I am also interested in additional comment on the role that site commissions play in the rates for inmate calling services and whether the Commission can and should do more to address those charges, which can add to the cost of providing services inside correctional facilities.

I want to recognize the staff of the Wireline Competition Bureau who have worked hard on these important issues. You have my thanks, and the item has my support.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking (May 20, 2021).

One of the hard life lessons that the COVID-19 pandemic has taught us is how crucial it is to be able to connect with loved ones both near and far, even when you're unable to see them in person. That reality has been felt deeply by the more than two million incarcerated individuals throughout the United States. As prisons and jails across this nation temporarily ceased visitation to help stop the spread of the novel coronavirus, incarcerated people became solely dependent on Inmate Calling Services (ICS) to remain connected to those outside the walls of correctional facilities. For many incarcerated individuals, the price to connect with their loved ones, no matter how frequent or infrequent, is far too costly. But the price to remain unconnected is just as costly because there is an increased risk of recidivism, deteriorating mental health, and lost connections with children which impact incarcerated individuals, their families, and society as a whole.

As we continue to hear resounding calls for equity and justice for our most marginalized communities, the Order before us today serves as a reminder that our long-standing fight for prison phone justice continues. The lowering of interstate rate caps at prisons and large jails is a step in the right direction. These interstate rate caps and additional reforms are being set on an *interim* basis and because of that I am hopeful there will be opportunities to further meet the Commission's obligation of ensuring there truly are *just and reasonable* charges made to incarcerated individuals and their loved ones who are using ICS services to remain connected. It is imperative that we obtain accurate data and clearly establish the costs of running a correctional facility versus the true costs of running a communications service.

I was pleased to see the Acting Chair's office accept my change to ensure that international call termination charges are transparent to consumers. Transparency is an important part of ensuring incarcerated individuals and their families and friends are charged reasonable rates, including during international calls.

As noted in this Order, there are additional challenges that incarcerated individuals with disabilities face in their quest to remain connected as they are often subject to what disability-rights advocates have called a "prison within a prison."[1] With today's action, we reaffirm ICS providers' obligations to ensure services and equipment are accessible and usable by incarcerated people with disabilities. I am also pleased to see the robust Further Notice that seeks comment on the provision of functionally equivalent communications services to incarcerated people with hearing and speech disabilities.

We are here today, as we have been with many moments in history concerning justice in this country, because of a path paved by Black women including Martha Wright and former FCC Commissioner Mignon Clyburn who have long led the way in the fight against exorbitant ICS rates. We are also here today because of the efforts of prison phone justice advocates and disability rights advocates who have played an integral role in this process and will continue to work with us on permanent relief solutions.

Thank you also to the Commission's staff for your hard work on this Order and for continuing to make an impact in the lives of incarcerated individuals and their loved ones.

[1] Sara Novic, *Deaf prisoners are trapped in frightening isolation*, CNN (June 21, 2018), https://www.cnn.com/2018/06/21/opinions/aclu-georgia-deaf-abuse-lawsuit-novic.

Baldwin County Commission

Agenda Action Form

File #: 22-0086, **Version:** 1 **Item #:** BE2

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wanda Gautney, Purchasing Director/Terri Graham, Solid Waste Director/Ed Fox, Landfill Manager
Submitted by: Wanda Gautney, Purchasing Director

ITEM TITLE
Competitive Bid #WG21-46 - Provision of Alternate Daily Cover Material for the Baldwin County Commission

STAFF RECOMMENDATION
Award the bid for the Provision of Alternate Daily Cover Materials to the lowest bidder, **LSC Environmental Products, LLC,** as follows:

Product: VerDac Landfill Cover Pellets
Amount Bid: $18.50 per 50 lb. bag
Delivery Time: 10 - 14 days

BACKGROUND INFORMATION

Previous Commission action/date:
9/07/2021 meeting: 1) Approved the specifications and authorized the Purchasing Director to place a competitive bid for the Provision of Alternate Daily Cover Material; and 2) Further, authorized the Chairman/Purchasing Division Commissioner for the Baldwin County Commission to approve any necessary addendums or clarifications if required after the bid is advertised.

Background: Bids opened in the Purchasing Conference Room on October 1, 2021, at 1:30 P.M. Two (2) bids were received. Staff recommends the Commission award the bid to the lowest bidder, LSC Environmental Products, LLC. Bid Tabulation attached for review.

FINANCIAL IMPACT

Total cost of recommendation: Estimated $22,000.00 per year

Budget line item(s) to be used: 51054300.52190

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: 10/19/2021

Individual(s) responsible for follow up: Wanda Gautney, Purchasing Director

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Mail Bids

Additional instructions/notes: N/A

COMPETITIVE BID #WG21-46 BID TABULATION
Provision of Alternate Daily Cover Material

LSC Environmental Products, LLC - Bid #1	
Product:	VerDac Landfill Cover Pellets
Amount Bid per 50 lb. Bag:	**$18.50**
Delivery time:	10 - 14 days
Bid Bond:	Yes
Exceptions:	None

Evans and Company Inc.	
Product:	Profile Bio Cover
Amount Bid per 50 lb. Bag:	**$26.50**
Delivery time:	3 days
Bid Bond:	Yes
Exceptions:	None

Baldwin County Commission

Agenda Action Form

File #: 22-0110, **Version:** 1 **Item #:** BE3

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wanda Gautney, Purchasing Director/Joey Nunnally, County Engineer/Tyler Mitchell, Construction Manager/Frank Lundy, Maintenance Engineer
Submitted by: Wanda Gautney, Purchasing Director

ITEM TITLE
Competitive Bid #WG21-47 - Provision of Bituminous Materials for the Baldwin County Commission

STAFF RECOMMENDATION
Award the bid for the Provision of Bituminous Materials for the Baldwin County Commission for each category of headings to **Mobile Asphalt Company, LLC, H.O. Weaver & Sons, Inc. and Advanced Asphalt Products, LLC** as per the attached Award Listings.

BACKGROUND INFORMATION

Previous Commission action/date:
09/07/2021 meeting: 1) Approved the specifications for the Provision of Bituminous Materials and authorized the Purchasing Director to place a competitive bid; and 2) Further, authorized the Chairman/Purchasing Division Commissioner for the Baldwin County Commission to approve any necessary addendums or clarifications if required after the bid was advertised.

Background: Bids were opened in the Purchasing Conference Room on September 28, 2020, at 1:30 P.M. Three (3) bids were received. Award recommendations are based on transportation cost and supply location for “picked-up” materials and are based on low bid for “delivered” materials. Bid Tabulations and Award Listings are attached. 2020 Pricing is also attached for Commission review.

FINANCIAL IMPACT

Total cost of recommendation: Variable

Budget line item(s) to be used: Various Highway Budgets

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: 10/19/2021

Individual(s) responsible for follow up: Wanda Gautney, Purchasing Director

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Letter to Bidders

Additional instructions/notes: N/A

COMPETITIVE BID #WG21-47 AWARD LISTING
BITUMINOUS MATERIALS AREA 100
Delivered Prices Only
Effective October 20, 2021 through October 20, 2022

DESCRIPTION	Mobile Asphalt Co. Delivered		Hosea O. Weaver Delivered		Advanced Asphalt Products LLC Delivered	
BC-723	PRIME	$59.50	SECONDARY	$60.50		No Bid
424A-280	PRIME	$71.35	SECONDARY	$71.50		No Bid
424A-281	SECONDARY	$71.80	PRIME	$67.50		No Bid
424A-336	PRIME	$64.75	SECONDARY	$69.50		No Bid
424A-340	SECONDARY	$64.45	PRIME	$63.50		No Bid
424A-341	SECONDARY	$64.45	PRIME	$61.50		No Bid
424A-360	SECONDARY	$64.45	PRIME	$63.50		No Bid
424A-361	SECONDARY	$64.45	PRIME	$61.50		No Bid
424A-293	SECONDARY	$59.35		$55.50		No Bid
424B-635	SECONDARY	$59.75	PRIME	$59.00		No Bid
424B-636	SECONDARY	$59.35	PRIME	$55.50		No Bid
424B-637	SECONDARY	$59.35	PRIME	$55.50		No Bid
424B-651	SECONDARY	$59.35	PRIME	$55.50		No Bid
424B-663	SECONDARY	$59.35	PRIME	$55.50		No Bid
424B-648	SECONDARY	$59.35	PRIME	$55.50		No Bid
Recycle Asphalt (RAP)		No Bid		No Bid		No Bid
Cold Mix Asphalt - 50 lb bag	SECONDARY	$40.00		No Bid	PRIME	$13.50

***MAC supply location is Bay Minette/Saraland**
Cold Mix Asphalt will be shipped by Vendor to Baldwin County
***WEAVER supply location is Cut Off Road Mobile & Atmore - Woods Rd**
424B-648 - Superpave Bituminous Concrete upper Binder Layer, widening, 1 1/2" maximum Aggregate Size Mix
ESAL Range A/B
Advanced Asphalt Products LLC
Jasper Plant - 25601 Highway 69, Jasper, AL 35504
Variations to Bid: Cold Mix Asphalt (Bulk Load) $110.00 Per Ton - Delivered (Minimum Load Size 29 Tons)
Cold Mix Asphalt (Bulk Load) $70.00 Per Ton F.O.B. - Picked up at Jasper Plant

COMPETITIVE BID #WG21-47 AWARD LISTING
BITUMINOUS MATERIALS AREA 200
Delivered Prices Only
Effective October 20, 2021 through October 20, 2022

DESCRIPTION	Mobile Asphalt Co. Delivered		Hosea O. Weaver Delivered		Advanced Asphalt Products LLC Delivered	
BC-723	PRIME	$58.50	SECONDARY	$58.50		No Bid
424A-280	PRIME	$69.35		$69.50		No Bid
424A-281	SECONDARY	$67.20	PRIME	$65.50		No Bid
424A-336	PRIME	$62.30	SECONDARY	$67.50		No Bid
424A-340	PRIME	$61.00	SECONDARY	$61.50		No Bid
424A-341	PRIME	$58.10	SECONDARY	$59.50		No Bid
424A-360	PRIME	$61.00	SECONDARY	$61.50		No Bid
424A-361	PRIME	$58.10	SECONDARY	$59.50		No Bid
424A-293	SECONDARY	$55.50	PRIME	$53.50		
424B-635	SECONDARY	$57.75	PRIME	$57.00		No Bid
424B-636	SECONDARY	$55.50	PRIME	$53.50		No Bid
424B-637	SECONDARY	$55.50	PRIME	$53.50		No Bid
424B-651	SECONDARY	$55.50	PRIME	$53.50		No Bid
424B-663	SECONDARY	$55.50	PRIME	$53.50		No Bid
424B-648	SECONDARY	$55.50	PRIME	$53.50		No Bid
Recycle Asphalt (RAP)		No Bid		No Bid		No Bid
Cold Mix Asphalt - 50 lb bag	SECONDARY	$40.00		No Bid	PRIME	$13.50

***MAC supply location is Bay Minette/Saraland**
Cold Mix Asphalt will be shipped by Vendor to Baldwin County
***WEAVER supply location is Cut Off Road Mobile**
424B-648 - Superpave Bituminous Concrete upper Binder Layer, widening, 1 1/2" maximum Aggregate Size Mix
ESAL Range A/B
Advanced Asphalt Products LLC
Jasper Plant - 25601 Highway 69, Jasper, AL 35504
Variations to Bid: Cold Mix Asphalt (Bulk Load) $110.00 Per Ton - Delivered (Minimum Load Size 29 Tons)
Cold Mix Asphalt (Bulk Load) $70.00 Per Ton F.O.B. - Picked up at Jasper Plant

COMPETITIVE BID #WG21-47 AWARD LISTING
BITUMINOUS MATERIALS AREA 300
Delivered Prices Only
Effective October 20, 2021 through October 20, 2022

DESCRIPTION	Mobile Asphalt Co. Delivered		Hosea O. Weaver Delivered		Advanced Asphalt Products LLC Delivered	
BC-723	PRIME	$62.00	SECONDARY	$63.00		No Bid
424A-280	SECONDARY	$74.80	PRIME	$74.00		No Bid
424A-281	SECONDARY	$75.35	PRIME	$70.00		No Bid
424A-336	PRIME	$68.30	SECONDARY	$72.00		No Bid
424A-340	SECONDARY	$66.55	PRIME	$66.00		No Bid
424A-341	SECONDARY	$66.55	PRIME	$64.00		No Bid
424A-360	SECONDARY	$66.55	PRIME	$66.00		No Bid
424A-361	SECONDARY	$66.55	PRIME	$64.00		No Bid
424A-293	SECONDARY	$62.45	PRIME	$58.00		No Bid
424B-635	SECONDARY	$62.55	PRIME	$61.50		No Bid
424B-636	SECONDARY	$62.45	PRIME	$58.00		No Bid
424B-637	SECONDARY	$62.45	PRIME	$58.00		No Bid
424B-651	SECONDARY	$62.45	PRIME	$58.00		No Bid
424B-663	SECONDARY	$62.45	PRIME	$58.00		No Bid
424B-648	SECONDARY	$62.45	PRIME	$58.60		No Bid
Recycle Asphalt (RAP)		No Bid		No Bid		No Bid
Cold Mix Asphalt - 50 lb bag	SECONDARY	$40.00		No Bid	PRIME	$13.50

***MAC supply location is Foley**
Cold Mix Asphalt will be shipped by Vendor to Baldwin County
***WEAVER supply location is Bay Bridge Cut Off Road Mobile**
424B-648 - Superpave Bituminous Concrete upper Binder Layer, widening, 1 1/2" maximum Aggregate Size Mix
ESAL Range A/B
Advanced Asphalt Products LLC
Jasper Plant - 25601 Highway 69, Jasper, AL 35504
Variations to Bid: Cold Mix Asphalt (Bulk Load) $110.00 Per Ton - Delivered (Minimum Load Size 29 Tons)
Cold Mix Asphalt (Bulk Load) $70.00 Per Ton F.O.B. - Picked up at Jasper Plant

COMPETITIVE BID #WG21-47 AWARD LISTING
BITUMINOUS MATERIALS
Area 100
Picked Up Prices Based on Facility Location Only
Effective October 20, 2021 through October 20, 2022

PRIME
SECONDARY

DESCRIPTION		Mobile Asphalt Co. Bay Minette	Saraland	Foley	Hosea O. Weaver Cut off Rd.Mobile		Advanced Asphalt Products LLC
BC-723	PRIME	$55.00	$55.00	$58.00	SECONDARY	$53.00	No Bid
424A-280	PRIME	$66.50	$66.50	$70.00	SECONDARY	$65.00	No Bid
424A-281	PRIME	$66.50	$66.50	$71.00	SECONDARY	$60.00	No Bid
424A-336	PRIME	$60.00	$60.00	$64.15		$63.00	No Bid
424A-340	PRIME	$60.00	$60.00	$63.60	SECONDARY	$60.00	No Bid
424A-341	PRIME	$60.00	$60.00	$63.60	SECONDARY	$56.00	No Bid
424A-360	PRIME	$60.00	$60.00	$63.60	SECONDARY	$60.00	No Bid
424A-361	PRIME	$60.00	$60.00	$63.60	SECONDARY	$56.00	No Bid
424A-293	PRIME	$55.00	$55.00	$58.30	SECONDARY	$50.00	No Bid
424B-635	PRIME	$55.00	$55.00	$58.60	SECONDARY	$54.00	No Bid
424B-636	PRIME	$55.00	$55.00	$58.30	SECONDARY	$50.00	No Bid
424B-637	PRIME	$55.00	$55.00	$58.30	SECONDARY	$50.00	No Bid
424B-651	PRIME	$55.00	$55.00	$58.30	SECONDARY	$50.00	No Bid
424B-663	PRIME	$55.00	$55.00	$58.30	SECONDARY	$50.00	No Bid
424B-648B					PRIME	$50.00	No Bid
Recycle Asphalt (RAP)		PRIME $20.00	$20.00	$25.00	SECONDARY	$20.00	No Bid
Cold Mix Asphalt - 50 lb bag		FOB Theodore $30.00	PRIME			No Bid	SECONDARY $12.50

MAC plant locations:
Bay Minette - 43385 Nicholsville Rd.
Saraland - 1370 Hwy 43 S.
Foley - 21650 Doc McDuffie Rd.
Cold Mix Asphalt will be shipped by Vendor to Baldwin County
424B-648 - Superpave Bituminous Concrete upper Binder Layer, widening, 1 1/2" maximum Aggregate Size Mix ESAL Range A/B
H. O. Weaver plant locations:
Mobile - Bay Bridge Cut Off Road
Atmore - Woods Road
Advanced Asphalt Products LLC
Jasper Plant - 25601 Highway 69, Jasper, AL 35504
Variations to Bid: Cold Mix Asphalt (Bulk Load) $110.00 Per Ton - Delivered (Minimum Load Size 29 Tons)
Cold Mix Asphalt (Bulk Load) $70.00 Per Ton F.O.B. - Picked up at Jasper Plant

COMPETITIVE BID #WG21-47 AWARD LISTING
BITUMINOUS MATERIALS
Area 200
Picked Up Prices Based on Facility Location Only
Effective October 20, 2021 through October 20, 2022

DESCRIPTION		Mobile Asphalt Co. Bay Minette	Saraland	Foley	Hosea O. Weaver Cut off Rd.Mobile		Advanced Asphalt Products LLC
BC-723	SECONDARY	$55.00	$55.00	$58.00		$53.00	No Bid
424A-280		$66.50	$66.50	$70.00	SECONDARY	$65.00	
424A-281	SECONDARY	$66.50	$66.50	$71.00		$60.00	No Bid
424A-336		$60.00	$60.00	Secondary $64.15		$63.00	No Bid
424A-340		$60.00	$60.00	Secondary $63.60		$60.00	No Bid
424A-341	SECONDARY	$60.00	$60.00	$63.60		$56.00	No Bid
424A-360		$60.00	$60.00	Secondary $63.60		$60.00	No Bid
424A-361	SECONDARY	$60.00	$60.00	$63.60		$56.00	No Bid
424A-293	SECONDARY	$55.00	$55.00	$58.30		$50.00	No Bid
424B-635		$55.00	$55.00	$58.60		$54.00	No Bid
424B-636	SECONDARY	$55.00	$55.00	$58.30		$50.00	No Bid
424B-637	SECONDARY	$55.00	$55.00	$58.30		$50.00	No Bid
424B-651	SECONDARY	$55.00	$55.00	$58.30		$50.00	No Bid
424B-663	SECONDARY	$55.00	$55.00	$58.30		$50.00	No Bid
424B-648B		PRIME				$50.00	No Bid
Recycle Asphalt (RAP)		$20.00	$20.00	$25.00	SECONDARY	$20.00	No Bid
Cold Mix Asphalt - 50 lb bag		FOB Theodore $30.00	PRIME			No Bid	SECONDARY $12.50

MAC plant locations:
Bay Minette - 43385 Nicholsville Rd.
Saraland - 1370 Hwy 43 S.
Foley - 21650 Doc McDuffie Rd.
Cold Mix Asphalt will be shipped by Vendor to Baldwin County
424B-648 - Superpave Bituminous Concrete upper Binder Layer, widening, 1 1/2" maximum Aggregate Size Mix ESAL Range A/B
H. O. Weaver plant locations:
Mobile - Bay Bridge Cut Off Road
Atmore - Woods Road
Advanced Asphalt Products LLC
Jasper Plant - 25601 Highway 69, Jasper, AL 35504
Variations to Bid: Cold Mix Asphalt (Bulk Load) $110.00 Per Ton - Delivered (Minimum Load Size 29 Tons)
Cold Mix Asphalt (Bulk Load) $70.00 Per Ton F.O.B. - Picked up at Jasper Plant

COMPETITIVE BID #WG21-47 AWARD LISTING
BITUMINOUS MATERIALS
Area 300
Picked Up Prices Based on Facility Location Only
Effective October 20, 2021 through October 20, 2022

PRIME
SECONDARY

DESCRIPTION	Mobile Asphalt Co. Bay Minette	Saraland	Foley	Hosea O. Weaver Cut off Rd.Mobile		Advanced Asphalt Products LLC
BC-723	$55.00	$55.00	PRIME $58.00	SECONDARY	$53.00	No Bid
424A-280 SECONDARY	$66.50	$66.50	PRIME $70.00		$65.00	No Bid
424A-281	$66.50	$66.50	PRIME $71.00	SECONDARY	$60.00	No Bid
424A-336 SECONDARY	$60.00	$60.00	PRIME $64.15		$63.00	No Bid
424A-340 SECONDARY	$60.00	$60.00	PRIME $63.60		$60.00	No Bid
424A-341	$60.00	$60.00	PRIME $63.60	SECONDARY	$56.00	No Bid
~~424A-360 SECONDARY~~	~~$60.00~~	~~$60.00~~	~~PRIME $63.60~~		$60.00	No Bid
424A-361	$60.00	$60.00	PRIME $63.60	SECONDARY	$56.00	No Bid
424A-293	$55.00	$55.00	PRIME $58.30	SECONDARY	$50.00	No Bid
424B-635 SECONDARY	$55.00	$55.00	PRIME $58.60		$54.00	No Bid
424B-636	$55.00	$55.00	PRIME $58.30	SECONDARY	$50.00	No Bid
424B-637	$55.00	$55.00	PRIME $58.30	SECONDARY	$50.00	No Bid
424B-651	$55.00	$55.00	PRIME $58.30	SECONDARY	$50.00	No Bid
424B-663	$55.00	$55.00	PRIME $58.30	SECONDARY	$50.00	No Bid
424B-648B				PRIME	$50.00	No Bid
Recycle Asphalt (RAP)	SECONDARY $20.00	$20.00	PRIME $25.00		$20.00	No Bid
Cold Mix Asphalt - 50 lb bag	FOB Theodore $30.00 PRIME				No Bid	SECONDARY $12.50

MAC plant locations:
Bay Minette - 43385 Nicholsville Rd.
Saraland - 1370 Hwy 43 S.
Foley - 21650 Doc McDuffie Rd.
Cold Mix Asphalt will be shipped by Vendor to Baldwin County
424B-648 - Superpave Bituminous Concrete upper Binder Layer, widening, 1 1/2" maximum Aggregate Size Mix ESAL Range A/B
H. O. Weaver plant locations:
Mobile - Bay Bridge Cut Off Road
Atmore - Woods Road
Advanced Asphalt Products LLC
Jasper Plant - 25601 Highway 69, Jasper, AL 35504
Variations to Bid: Cold Mix Asphalt (Bulk Load) $110.00 Per Ton - Delivered (Minimum Load Size 29 Tons)
Cold Mix Asphalt (Bulk Load) $70.00 Per Ton F.O.B. - Picked up at Jasper Plant

COMPETITIVE BID #WG21-47 Bid Tabulation
BITUMINOUS MATERIALS AREA 100
Delivered Prices Only

DESCRIPTION	Mobile Asphalt Co. Delivered	Hosea O. Weaver Delivered	Advanced Asphalt Products LLC Delivered
BC-723	$59.50	$60.50	No Bid
424A-280	$71.35	$71.50	No Bid
424A-281	$71.80	$67.50	No Bid
424A-336	$64.75	$69.50	No Bid
424A-340	$64.45	$63.50	No Bid
424A-341	$64.45	$61.50	No Bid
424A-360	$64.45	$63.50	No Bid
424A-361	$64.45	$61.50	No Bid
424A-293	$59.35	$55.50	No Bid
424B-635	$59.75	$59.00	No Bid
424B-636	$59.35	$55.50	No Bid
424B-637	$59.35	$55.50	No Bid
424B-651	$59.35	$55.50	No Bid
424B-663	$59.35	$55.50	No Bid
424B-648	$59.35	$55.50	No Bid
Recycle Asphalt (RAP)	No Bid	No Bid	No Bid
Cold Mix Asphalt - 50 lb bag	$40.00	No Bid	$13.50

***MAC supply location is Bay Minette/Saraland**
Cold Mix Asphalt will be shipped by Vendor to Baldwin County
***WEAVER supply location is Cut Off Road Mobile & Atmore - Woods Rd**
424B-648 - Superpave Bituminous Concrete upper Binder Layer, widening, 1 1/2" maximum Aggregate Size Mix ESAL Range A/B
Advanced Asphalt Products LLC
Jasper Plant - 25601 Highway 69, Jasper, AL 35504
Variations to Bid: Cold Mix Asphalt (Bulk Load) $110.00 Per Ton - Delivered (Minimum Load Size 29 Tons)
Cold Mix Asphalt (Bulk Load) $70.00 Per Ton F.O.B. - Picked up at Jasper Plant

COMPETITIVE BID #WG21-47 Bid Tabulation
BITUMINOUS MATERIALS AREA 200
Delivered Prices Only

DESCRIPTION	Mobile Asphalt Co. Delivered	Hosea O. Weaver Delivered	Advanced Asphalt Products LLC Delivered
BC-723	$58.50	$58.50	No Bid
424A-280	$69.35	$69.50	No Bid
424A-281	$67.20	$65.50	No Bid
424A-336	$62.30	$67.50	No Bid
424A-340	$61.00	$61.50	No Bid
424A-341	$58.10	$59.50	No Bid
424A-360	$61.00	$61.50	No Bid
424A-361	$58.10	$59.50	No Bid
424A-293	$55.50	$53.50	
424B-635	$57.75	$57.00	No Bid
424B-636	$55.50	$53.50	No Bid
424B-637	$55.50	$53.50	No Bid
424B-651	$55.50	$53.50	No Bid
424B-663	$55.50	$53.50	No Bid
424B-648	$55.50	$53.50	No Bid
Recycle Asphalt (RAP)	No Bid	No Bid	No Bid
Cold Mix Asphalt - 50 lb bag	$40.00	No Bid	$13.50

***MAC supply location is Bay Minette/Saraland**
Cold Mix Asphalt will be shipped by Vendor to Baldwin County
***WEAVER supply location is Cut Off Road Mobile**
424B-648 - Superpave Bituminous Concrete upper Binder Layer, widening, 1 1/2" maximum Aggregate Size Mix ESAL Range A/B
Advanced Asphalt Products LLC
Jasper Plant - 25601 Highway 69, Jasper, AL 35504
Variations to Bid: Cold Mix Asphalt (Bulk Load) $110.00 Per Ton - Delivered (Minimum Load Size 29 Tons)
Cold Mix Asphalt (Bulk Load) $70.00 Per Ton F.O.B. - Picked up at Jasper Plant

COMPETITIVE BID #WG21-47 Bid Tabulation
BITUMINOUS MATERIALS AREA 300
Delivered Prices Only

DESCRIPTION	Mobile Asphalt Co. Delivered	Hosea O. Weaver Delivered	Advanced Asphalt Products LLC Delivered
BC-723	$62.00	$63.00	No Bid
424A-280	$74.80	$74.00	No Bid
424A-281	$75.35	$70.00	No Bid
424A-336	$68.30	$72.00	No Bid
424A-340	$66.55	$66.00	No Bid
424A-341	$66.55	$64.00	No Bid
424A-360	$66.55	$66.00	No Bid
424A-361	$66.55	$64.00	No Bid
424A-293	$62.45	$58.00	No Bid
424B-635	$62.55	$61.50	No Bid
424B-636	$62.45	$58.00	No Bid
424B-637	$62.45	$58.00	No Bid
424B-651	$62.45	$58.00	No Bid
424B-663	$62.45	$58.00	No Bid
424B-648	$62.45	$58.60	No Bid
Recycle Asphalt (RAP)	No Bid	No Bid	No Bid
Cold Mix Asphalt - 50 lb bag	$40.00	No Bid	$13.50

***MAC supply location is Foley**
Cold Mix Asphalt will be shipped by Vendor to Baldwin County
***WEAVER supply location is Bay Bridge Cut Off Road Mobile**
424B-648 - Superpave Bituminous Concrete upper Binder Layer, widening, 1 1/2" maximum Aggregate Size Mix ESAL Range A/B
Advanced Asphalt Products LLC
Jasper Plant - 25601 Highway 69, Jasper, AL 35504
Variations to Bid: Cold Mix Asphalt (Bulk Load) $110.00 Per Ton - Delivered (Minimum Load Size 29 Tons)
Cold Mix Asphalt (Bulk Load) $70.00 Per Ton F.O.B. - Picked up at Jasper Plant

COMPETITIVE BID #WG21-47 Bid Tabulation
BITUMINOUS MATERIALS
Area 100, 200, 300
Picked Up Prices Based on Facility Location Only

DESCRIPTION	Mobile Asphalt Co. Bay Minette	Saraland	Foley	Hosea O. Weaver Cut off Rd.Mobile	Advanced Asphalt Products LLC
BC-723	$55.00	$55.00	$58.00	$53.00	No Bid
424A-280	$66.50	$66.50	$70.00	$65.00	No Bid
424A-281	$66.50	$66.50	$71.00	$60.00	No Bid
424A-336	$60.00	$60.00	$64.15	$63.00	No Bid
424A-340	$60.00	$60.00	$63.60	$60.00	No Bid
424A-341	$60.00	$60.00	$63.60	$56.00	No Bid
424A-360	$60.00	$60.00	$63.60	$60.00	No Bid
424A-361	$60.00	$60.00	$63.60	$56.00	No Bid
424A-293	$55.00	$55.00	$58.30	$50.00	No Bid
424B-635	$55.00	$55.00	$58.60	$54.00	No Bid
424B-636	$55.00	$55.00	$58.30	$50.00	No Bid
424B-637	$55.00	$55.00	$58.30	$50.00	No Bid
424B-651	$55.00	$55.00	$58.30	$50.00	No Bid
424B-663	$55.00	$55.00	$58.30	$50.00	No Bid
424B-648B				$50.00	No Bid
Recycle Asphalt (RAP)	$20.00	$20.00	$25.00	$20.00	No Bid
Cold Mix Asphalt - 50 lb bag	FOB Theodore $30.00			No Bid	$12.50

MAC plant locations:
Bay Minette - 43385 Nicholsville Rd.
Saraland - 1370 Hwy 43 S.
Foley - 21650 Doc McDuffie Rd.
Cold Mix Asphalt will be shipped by Vendor to Baldwin County
424B-648 - Superpave Bituminous Concrete upper Binder Layer, widening, 1 1/2" maximum Aggregate Size Mix ESAL Range A/B

H. O. Weaver plant locations:
Mobile - Bay Bridge Cut Off Road
Atmore - Woods Road

Advanced Asphalt Products LLC
Jasper Plant - 25601 Highway 69, Jasper, AL 35504
Variations to Bid: Cold Mix Asphalt (Bulk Load) $110.00 Per Ton - Delivered (Minimum Load Size 29 Tons)
Cold Mix Asphalt (Bulk Load) $70.00 Per Ton F.O.B. - Picked up at Jasper Plant

FY 2020/2021 Award Listing

Competitive Bid #WG20-48 Award Listing
Bituminous Materials & Hot Bituminous Plant Mix
Effective 10/20/2020 to 10/20/2021

AREA 100 Delivered Prices Only

Description of Item	Delivered	Bidder	
BC-723	$53.40	MAC	Prime
BC-723	$55.90	WEAVER	Secondary
424A-280	$62.90	MAC	Prime
424A-280	$65.30	WEAVER	Secondary
424A-281	$61.70	WEAVER	Prime
424A-281	$62.80	MAC	Secondary
424A-336	$56.05	MAC	Prime
424A-336	$62.10	WEAVER	Secondary
424A-340	$56.05	MAC	Prime
424A-340	$58.15	WEAVER	Secondary
424A-341	$55.20	WEAVER	Prime
424A-341	$55.60	MAC	Secondary
424A-360	$56.05	MAC	Prime
424A-360	$58.15	WEAVER	Secondary
424A-361	$55.20	WEAVER	Prime
424A-361	$55.60	MAC	Secondary
424B-293	$50.75	WEAVER	Prime
424B-293	$51.90	MAC	Secondary
424B-635	$52.90	MAC	Prime
424B-635	$53.50	WEAVER	Secondary
424B-636	$50.75	WEAVER	Prime
424B-636	$51.90	MAC	Secondary
424B-637	$50.75	WEAVER	Prime
424B-637	$51.90	MAC	Secondary
424B-651	$50.75	WEAVER	Prime
424B-651	$51.90	MAC	Secondary
424B-663	$50.75	WEAVER	Prime
424B-663	$51.90	MAC	Secondary
424B-648	$51.90	MAC	Prime
424B-648	No Bid	WEAVER	Secondary

MAC supply location Bay Minette/Saraland
Weaver supply location is Cut Off Road, Mobile/Woods Road, Atmore
Advanced Asphalt Products supply location is Jasper, Alabama

Cold-Mix 50 LB BAG Delivered	Prime	$13.50	AAP
	Secondary	$30.00	MAC
Recylce Asphalt (RAP) Delivered	Prime	No Bid	
	Secondary	No Bid	

*If the supplier cannot deliver the amount of material needed on the day of the order, the County at their sole discretion may choose to pickup or have delivered material from the nearest facility most convenient to the job site, whether it is the Prime or Secondary vendor, at the pickup or delivered price. By doing so the County will not violate the Bid Specifications. This in no way relieves the bidder from delivering materials to the County.

Competitive Bid #WG20-48 Award Listing
Bituminous Materials & Hot Bituminous Plant Mix
Effective 10/20/2020 to 10/20/2021

AREA 200 Delivered Prices Only

Description of Item	Delivered	Bidder	
BC-723	$52.65	MAC	Prime
BC-723	$53.90	WEAVER	Secondary
424A-280	$62.15	MAC	Prime
424A-280	$63.30	WEAVER	Secondary
424A-281	$59.70	WEAVER	Prime
424A-281	$62.05	MAC	Secondary
424A-336	$55.30	MAC	Prime
424A-336	$60.00	WEAVER	Secondary
424A-340	$55.30	MAC	Prime
424A-340	$56.15	WEAVER	Secondary
424A-341	$53.20	WEAVER	Prime
424A-341	$54.60	MAC	Secondary
424A-360	$55.30	MAC	Prime
424A-360	$56.15	WEAVER	Secondary
424A-361	$53.20	WEAVER	Prime
424A-361	$54.60	MAC	Secondary
424B-293	$48.75	WEAVER	Prime
424B-293	$50.90	MAC	Secondary
424B-635	$51.50	WEAVER	Prime
424B-635	$52.15	MAC	Secondary
424B-636	$48.75	WEAVER	Prime
424B-636	$50.90	MAC	Secondary
424B-637	$48.75	WEAVER	Prime
424B-637	$50.90	MAC	Secondary
424B-651	$48.75	WEAVER	Prime
424B-651	$50.90	MAC	Secondary
424B-663	$48.75	WEAVER	Prime
424B-663	$50.90	MAC	Secondary
424B-648	$50.90	MAC	Prime
424B-648	No Bid	WEAVER	Secondary

MAC supply location Bay Minette/Saraland
Weaver supply location is Cut Off Road, Mobile/Woods Road, Atmore
Advanced Asphalt Products supply location is Jasper, Alabama

Cold-Mix 50 LB BAG Delivered	Prime	$13.50	AAP
	Secondary	$30.00	MAC
Recylce Asphalt (RAP) Delivered	Prime	No Bid	
	Secondary	No Bid	

*If the supplier cannot deliver the amount of material needed on the day of the order, the County at their sole discretion may choose to pickup or have delivered material from the nearest facility most convenient to the job site, whether it is the Prime or Secondary vendor, at the pickup or delivered price. By doing so the County will not violate the Bid Specifications. This in no way relieves the bidder from delivering materials to the County.

Competitive Bid #WG20-48 Award Listing
Bituminous Materials & Hot Bituminous Plant Mix
Effective 10/20/2020 to 10/20/2021

AREA 300 Delivered Prices Only

Description of Item	Delivered	Bidder	
BC-723	$57.20	MAC	Prime
BC-723	$58.40	WEAVER	Secondary
424A-280	$67.80	WEAVER	Prime
424A-280	$69.35	MAC	Secondary
424A-281	$64.20	WEAVER	Prime
424A-281	$66.95	MAC	Secondary
424A-336	$62.00	MAC	Prime
424A-336	$64.60	WEAVER	Secondary
424A-340	$60.49	MAC	Prime
424A-340	$60.65	WEAVER	Secondary
424A-341	$57.70	WEAVER	Prime
424A-341	$58.70	MAC	Secondary
424A-360	$60.49	MAC	Prime
424A-360	$60.65	WEAVER	Secondary
424A-361	$57.70	WEAVER	Prime
424A-361	$58.70	MAC	Secondary
424B-293	$53.25	WEAVER	Prime
424B-293	$55.30	MAC	Secondary
424B-635	$56.00	WEAVER	Prime
424B-635	$56.50	MAC	Secondary
424B-636	$53.25	WEAVER	Prime
424B-636	$55.30	MAC	Secondary
424B-637	$53.25	WEAVER	Prime
424B-637	$55.30	MAC	Secondary
424B-651	$53.25	WEAVER	Prime
424B-651	$55.30	MAC	Secondary
424B-663	$53.25	WEAVER	Prime
424B-663	$55.30	MAC	Secondary
424B-648	$55.30	MAC	Prime
424B-648	No Bid	WEAVER	Secondary

MAC supply location Bay Minette/Saraland
Weaver supply location is Cut Off Road, Mobile/Woods Road, Atmore
Advanced Asphalt Products supply location is Jasper, Alabama

Cold-Mix 50 LB BAG Delivered	Prime	$13.50	AAP
	Secondary	$30.00	MAC
Recylce Asphalt (RAP) Delivered	Prime	No Bid	
	Secondary	No Bid	

*If the supplier cannot deliver the amount of material needed on the day of the order, the County at their sole discretion may choose to pickup or have delivered material from the nearest facility most convenient to the job site, whether it is the Prime or Secondary vendor, at the pickup or delivered price. By doing so the County will not violate the Bid Specifications. This in no way relieves the bidder from delivering materials to the County.

COMPETITIVE BID #WG20-48 Award Listing
Bituminous Materials & Hot Bituminous Plant Mix
Effective 10/20/2020 to 10/20/2021

AREA 100 Picked Up Prices Based on Facility Location Only

DESCRIPTION	Mobile Asphalt Co. Bay Minette	Saraland	Foley	Hosea O. Weaver Mobile/Atmore	Advanced Asphalt Products, LLC Jasper, Alabama
	PRIME		SECONDARY		
BC-723	$49.70		$53.50		
424A-280	$59.20		$65.65		
424A-281	$59.10		$63.25		
424A-336	$52.35		$58.30		
424A-340	$51.95		$56.80		
424A-341	$51.90		$55.75		
424A-360	$51.95		$56.80		
424A-361	$51.90		$55.75		
424B-293	$47.70		$51.60		
424B-635	$48.95		$52.80		
424B-636	$47.70		$51.60		
424B-637	$47.70		$51.60		
424B-651	$47.70		$51.60		
424B-663	$47.70		$51.60		
Recycle Asphalt (RAP)	$20.00		$20.00		
Cold Mix Asphalt - 50 lb bag	FOB Theodore $20.00		FOB Theodore $20.00		

MAC plant locations:
Bay Minette - 43382 Nicholsville Road
Saraland - 1370 Hwy 43 S.
Foley - 21650 Doc McDuffie Road

H. O. Weaver plant locations:
Mobile - Bay Bridge Cut Off Road
Atmore - Woods Road

Advanced Asphalt Products, LLC
Jasper, Alabama

Prime pricing in Red
Secondary pricing in Black

The Baldwin County Highway Department recommends above Prime and Secondary pricing based on bid amount and factoring in equipment/labor costs associated with picking up mix from plant locations while considering possible traffic delays.

COMPETITIVE BID #WG20-48 Award Listing
Bituminous Materials & Hot Bituminous Plant Mix
Effective 10/20/2020 to 10/20/2021

AREA 200 Picked Up Prices Based on Facility Location Only

DESCRIPTION	Mobile Asphalt Co. Bay Minette	Saraland	Foley	Hosea O. Weaver Mobile/Atmore	Advanced Asphalt Products, LLC Jasper, Alabama
	PRIME		SECONDARY		
BC-723	$49.70		$53.50		
424A-280	$59.20		$65.65		
424A-281	$59.10		$63.25		
424A-336	$52.35		$58.30		
424A-340	$51.95		$56.80		
424A-341	$51.90		$55.75		
424A-360	$51.95		$56.80		
424A-361	$51.90		$55.75		
424B-293	$47.70		$51.60		
424B-635	$48.95		$52.80		
424B-636	$47.70		$51.60		
424B-637	$47.70		$51.60		
424B-651	$47.70		$51.60		
424B-663	$47.70		$51.60		
Recycle Asphalt (RAP)	$20.00		$20.00		
Cold Mix Asphalt - 50 lb bag	FOB Theodore $20.00		FOB Theodore $20.00		

MAC plant locations:
Bay Minette - 43382 Nicholsville Road
Saraland - 1370 Hwy 43 S.
Foley - 21650 Doc McDuffie Road

H. O. Weaver plant locations:
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Advanced Asphalt Products, LLC
Jasper, Alabama

Prime pricing in Red
Secondary pricing in Black

The Baldwin County Highway Department recommends above Prime and Secondary pricing based on bid amount and factoring in equipment/labor costs associated with picking up mix from plant locations while considering possible traffic delays.

COMPETITIVE BID #WG20-48 Award Listing
Bituminous Materials & Hot Bituminous Plant Mix
Effective 10/20/2020 to 10/20/2021

AREA 300 Picked Up Prices Based on Facility Location Only

DESCRIPTION	Mobile Asphalt Co. Bay Minette	Saraland	Foley	Hosea O. Weaver Mobile/Atmore	Advanced Asphalt Products, LLC Jasper, Alabama
	SECONDARY		PRIME		
BC-723	$49.70		$53.50		
424A-280	$59.20		$65.65		
424A-281	$59.10		$63.25		
424A-336	$52.35		$58.30		
424A-340	$51.95		$56.80		
424A-341	$51.90		$55.75		
424A-360	$51.95		$56.80		
424A-361	$51.90		$55.75		
424B-293	$47.70		$51.60		
424B-635	$48.95		$52.80		
424B-636	$47.70		$51.60		
424B-637	$47.70		$51.60		
424B-651	$47.70		$51.60		
424B-663	$47.70		$51.60		
Recycle Asphalt (RAP)	$20.00		$20.00		
	FOB Theodore		FOB Theodore		
Cold Mix Asphalt - 50 lb bag	$20.00		$20.00		

MAC plant locations:
Bay Minette - 43382 Nicholsville Road
Saraland - 1370 Hwy 43 S.
Foley - 21650 Doc McDuffie Road

H. O. Weaver plant locations:
Mobile - Bay Bridge Cut Off Road
Atmore - Woods Road

Advanced Asphalt Products, LLC
Jasper, Alabama

Prime pricing in Red
Secondary pricing in Black

The Baldwin County Highway Department recommends above Prime and Secondary pricing based on bid amount and factoring in equipment/labor costs associated with picking up mix from plant locations while considering possible traffic delays.

Baldwin County Commission

Agenda Action Form

File #: 22-0071, **Version:** 1 **Item #:** BE4

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wanda Gautney, Purchasing Director/Joey Nunnally, County Engineer/Frank Lundy, Operations Manager/Tyler Mitchell, Construction Manager
Submitted by: Wanda Gautney, Purchasing Director

ITEM TITLE
Competitive Bid #WG21-48A - Provision of Labor and Equipment for Asphalt Placement for the Baldwin County Commission

STAFF RECOMMENDATION
Take the following actions:

1) Authorize the Purchasing Director to **re-bid** for the Provision of Labor and Equipment for Asphalt Placement; and

2) Further, authorize the Chairman/Purchasing Division Commissioner for the Baldwin County Commission to approve any necessary addendums or clarifications if required after the bid is advertised.

BACKGROUND INFORMATION

Previous Commission action/date:
02/17/2021 meeting: 1) Approved the specifications and authorized the Purchasing Director to place a competitive bid for the provision of Labor and Equipment for Asphalt Placement; and 2) Further, authorized the Chairman/Purchasing Division Commissioner for the Baldwin County Commission to approve any necessary addendums or clarifications if required after the bid was advertised.

Background: Bids were set to open in the Purchasing Conference Room on September 29, 2021, at 2:00 P.M. No bids were received. Staff recommends the Commission authorize the Purchasing Director to re-bid for the Provision of Labor and Equipment for Asphalt Placement.

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: 10/19/2021

Individual(s) responsible for follow up: Wanda Gautney, Purchasing Director

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Mail bids

Additional instructions/notes: N/A

BID #WG21-48A SPECIFICATIONS
QC/QA procedures for use on all Baldwin County Projects

Definitions

County Engineer:	The engineer appointed by the Baldwin County Commission.
Supplier:	The company that is supplying the bituminous concrete for the project.
Contractor:	The crew that is responsible for planing or micro-milling the existing pavement surface and/or laying and compacting mix on the roadway.

1) QUALITY CONTROL.

a) Supplier shall have on site a Level II Asphalt Technician anytime they are producing mix for Baldwin County.

b) QC/QA TESTING

i) Sampling shall be performed in accordance with the sampling plan as stated in this specification. Samples will be randomly selected and obtained by the Supplier or Baldwin County Highway Department and its affiliates. QC/QA samples shall be obtained at the project site but Baldwin County Highway Department reserves the right to sample outside the sampling plan. A large enough sample shall be obtained so that it can be split between the Supplier, Baldwin County Highway Department or its affiliates. Samples shall be tested for Air Voids, Liquid Asphalt Binder Content, Gradation, VMA, Effective AC Content, Dust/Asphalt Ratio, Stability, Flow, and Tensile Strength Ratio (TSR) as per table 3.

TABLE 3

Test Required	Test Method (Random Number)	Sampling Frequency * * (100% Pay)	Tolerances
Asphalt Content ++++	AASHTO T308 ALDOT 354	Supplier per 500 tons BCHD per Lot	+/- .34
Maximum Specific Gravity	AASHTO T209	Supplier per 500 tons BCHD per Lot	N/A

Mixture Gradation****	AASHTO T 308	Supplier per 500 tons BCHD per Lot	+/- 7.0 % for the #4 and above +/- 4.0 %, #8 to #100 +/- 2.00 % for the #200
Dust/Asphalt Ratio***	ALDOT 371	Supplier per 500 tons BCHD per Lot	0.90 to 1.80
Air Void Content & VMA++	ALDOT 353, 307	Supplier per 500 tons BCHD per Lot	+/- 1.06%, 16.0 to 18.5
Marshall Stability and Flow ++		Supplier per 500 tons BCHD per Lot	1600, 8-18
Tensile Strength Ratio	ALDOT 361	Supplier & BCHD First 1000 tons and Every 10,000 ton thereafter	Minimum .80

Each individual Maximum Theoretical Specific Gravity (MTSG) shall be used to calculate Air Voids.

** Baldwin County Highway Department reserves the right to change sampling frequency; or sample outside the sample plan if it deems necessary. At least one sample shall be obtained from every project with tonnage less than 500.

*** If the Dust/Asphalt is out on two consecutive tests, production shall cease until proper plant adjustments are made.

**** If the test results are out of specification tolerance on two consecutive tests for the same size sieve, production shall cease until proper plant adjustments are made.

**** Mix shall have a minimum of 3% retained on the 3/8" sieve, No Exceptions. Gradation tolerance of +/- 7% will not apply on the maximum control point unless the JMF is set at 90%; tolerance will extend to but not exceed 97% on the 3/8" sieve.

++ The sample shall be one set of three Marshall samples+++.

++++ Under AASHTO T 308, if an ignition furnace is used, mixture calibration shall be used.

2) ADJUSTMENT PERIOD (Test Strip).
   a) During start-up operations, an adjustment period (test strip) as described below shall be required when producing a new job mix formula. The purpose of the adjustment period will be to permit the Supplier to adjust his production process and for Supplier QC personnel and Baldwin County Highway Department QA personnel to calibrate and coordinate their testing procedures. The Supplier has the option of running a test strip or waiving the test strip, if the proposed job mix formula has been produced satisfactorily on previous Baldwin County Highway Department projects. The waiver of a test strip shall be in writing to the County Engineer prior to any production and placement of the previously produced job mix design. The Supplier assumes the risk of milling and relaying unacceptable mix with no additional compensation if the test strip is not utilized.

   b) A test strip of not more than 300 tons shall be produced. Production shall stop until the Supplier has completed one liquid asphalt binder content, one air void content, and gradation. The test results for AC and Air Voids shall meet the requirements in Table 5, 100% pay in the 1 Test column.

   c) For LOT Pay Factor purposes a LOT shall be defined as a single Baldwin County Highway Department project, multiple Baldwin County Highway Department projects (Completed in one day) or one day's production not to exceed 1000 tons. For testing purposes, a lot shall be defined as 1000 tons (+- 200 tons). QC/QA testing shall run independent to the Pay Factor LOT when tonnages on one or more Baldwin County Highway Department projects do not exceed 1000 tons. An ongoing tonnage total shall be maintained at each individual plant supplying mix to Baldwin County Highway Department and sampling shall be performed every 500 tons with a minimum of one test per project. When two tests have been completed, along with referee samples if necessary, Pay Factors shall be calculated and applied to tonnage produced on that day. The County Engineer will round a testing increment or a LOT, if necessary, to the nearest truckload of material.

3) ACCEPTANCE OR REJECTION.
   a) The recommendation of the County Engineer and decision of the Baldwin County Commission will be final as to the acceptance, rejection, or acceptance at an adjusted payment of each LOT. Upon completion of a LOT (2^{nd} test and/or any referee test completed) pay factors shall be calculated and applied only to the mix produced in that day's production. Rejected LOTS could be removed at no cost to the Department and replaced at Baldwin County Highway Department unit price.

   b) The act of sampling shall be the responsibility of the Supplier utilizing the following sample plan. Suppliers shall use the random number method to determine sampling location in the testing increment. If any deviation from the sampling plan occurs Baldwin County Highway Department reserves the right to sample an Independent Verification Sample (IVS) (outside of the scope of the sampling plan) at any time. Any Supplier test sampled from outside the sampling could be rejected and replace with the results of the IVS and used for pay factor computation.

c) The Supplier shall sample the mixture and split it into three equal samples large enough to run the test required in this specification: The Supplier's primary QC sample (PQCS), Baldwin County Highway Department primary QA sample (PQAS) and a Referee Sample (RS). The portions of mixture for the Baldwin County Highway Department and referee sample shall be bagged, labeled, and stored for testing (max 60 days) if required. Bagged samples shall have the following bag appropriate information accompanying the sample: Date Sampled, Ton Sampled, Truck Sampled, Random Number, Sequential Test Number (STN), Project/Road Name, Mix Type, Baldwin County Highway Department Primary Sample or Referee Sample, copy of the Scale Ticket, and a copy of Suppliers tests results. Baldwin County Highway Department testing increment shall consist of two primary QA samples, split with the primary QC samples, which will represent 1000 tons of mix. Both the QA sample and referee samples will be stored in a dry location by the Supplier for a period of no longer than 14 days and may be disposed of prior to the 14 days if comparison sample results, pay factors and referee issues have been resolved. Baldwin County Highway Department will randomly select one of the two samples stored for testing. Samples will be tested in an ALDOT certified independent lab and results will be compared to the Supplier results for comparison compliance.

d) If the Supplier's primary QC sample and the Baldwin County Highway Department primary QA sample do not compare within the Acceptable Tolerances listed in Table 4 then the referee sample will be tested at the Suppliers Lab. The referee sample shall be tested jointly by the Supplier and Baldwin County Highway Department's representative, and the results shall be used to calculate the pay factor for the lot. All results are final once the referee sample has been tested.

e) For testing purposes, the PQCS shall be run in the Supplier's lab and Baldwin County Highway Department reserves the right to run the PQAS in an ALDOT approved independent lab or the Suppliers lab. During the adjustment period (Test Strip) the Baldwin County Highway Department will test its PQAS along with the Suppliers PQCS in the Suppliers lab. Also, in the case where the results of the PQCS and the results of the PQAS do not compare the Referee Sample will be tested jointly in the Suppliers lab.

TABLE 4

COMPARISON OF BCHD AND SUPPLIER TESTING

TEST ACCEPTABLE TOLERANCES

ASPHALT CONTENT	± 0.30 %
AIR VOIDS	± 0.50 %

ACCEPTANCE SCHEDULE OF PAYMENT FOR ASPHALT PLANT MIX CHARACTERISTICS.

TABLE 5

ACCEPTANCE SCHEDULE OF PAYMENT FOR ASPHALT PLANT MIX CHARACTERISTICS

Arithmetic Average of the Absolute Values of Deviations of the LOT Acceptance Tests from Job Mix Formula Values

Asphalt Content*

LOT Pay Factor ->	1.00	0.98	0.95	0.90	0.80*
1 Test -	0.00-0.62	0.63-0.68	0.69-0.75	0.76-0.88	Over 0.88
2 Tests -	0.00-0.44	0.45-0.48	0.49-0.53	0.54-0.62	Over 0.62

Voids in Total Mix (Lab. Compacted Samples) *

LOT Pay Factor ->	1.00	0.98	0.95	0.90	0.80*
1 Test -	0.00-2.50	2.51-2.70	2.71-3.00	3.01-3.5	Over 3.5

2 Tests -	0.00-1.77	1.78-1.91	1.92-2.12	2.13-2.47	Over 2.47

* If approved by the Baldwin County Commission as recommended by the County Engineer, the Supplier may accept the indicated LOT partial payment. The Baldwin County Commission and/or County Engineer may require removal and replacement. If the LOT pay factor is greater than 0.80, the Supplier has the option to remove at no cost to the Department and to replace at contract unit bid price rather than accepting the reduced LOT payment. The only time the 1 Test row will be used is in the test strip and at the end of the annual contract if the second sample cannot be obtained due to low tonnage.

The lowest Pay Factor of the two criteria shall be applied to the LOT (for pay purposes as defined above).

BID #WG21-48A SPECIFICATIONS
ALDOT BITUMINOUS PLANT MIX 424

Bituminous Plant Mix shall be in accordance with applicable portions of Section 410, Section 804 and Section 424 of the Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, and any ALDOT Special Provisions which may supersede this publication.

Prospective Bidders should bid in accordance with the Alabama Department of Transportation Specifications which includes **Section 109.03 (e)** regarding Bituminous Material Price Adjustments. This Section in effect allows that the Base Bid provided in the bid can be adjusted in accordance with the "Asphalt Index" as reported by ALDOT each month.

All Asphalt Index adjustment calculations shall be provided by the Vendor with each invoice. No invoice will be paid without these calculations.

Test reports shall be furnished daily with the delivery of materials, or as directed by County Engineer.

CONTRACT PERIOD
The bid award will be for 12 months beginning on date of award.

BID #WG21-48A SPECIFICATIONS
BALDWIN COUNTY BITUMINOUS PLANT MIX 723

The work under this Section covers the general requirements that are applicable to all types of hot and warm mix asphalt pavements of the plant mix type. Deviations from these general requirements will be indicated in the specific requirements noted in the following sections of these specifications. If the County Engineer determines there is insufficient Asphalt Cement coating on the aggregate or a lack of sufficient blending of RAP particles with the virgin aggregate because of the high percentage of RAP allowed in this specification and the inherent low temperatures used to produce WMA; the County Engineer may require a new Job Mix Formula (JMF) with a maximum of 20% RAP.

All ALDOT guidelines and polices shall apply to this mix except where noted below.

The ALDOT Standard Specification for Highway Construction shall apply except where noted below

BC 723 Materials

1) **RECYCLED ASPHALT PLANT MIX (RAP) AND RECLAIMED ASPHALT SHINGLES (RAS).**

   a) **ALLOWABLE USAGE OF RAP AND RAS**

      i) The Supplier shall have the option to use RAP and RAS (Reclaimed Asphalt Shingles) in accordance with the requirements given. The total amount of RAP and RAS shall not exceed 35%.
      ii) The Supplier shall have the option to use any ratio of RAP (Recycled Asphalt Pavement) to virgin material from 0% to 35%.
      iii) RAS shall be limited to 5 % of the total aggregate content when the RAS is consumer waste (from roofing materials) and shall be limited to 5 % of the total aggregate content when the RAS is manufacturing waste.

2) **BLEND OF AGGREGATES**.

   a) **GRADATIONS FOR BLEND OF AGGREGATES**

      i) The coarse and fine aggregates, mineral filler, and recycled material shall be combined in a total blend that will produce an acceptable job mix within the gradation limits determined by the maximum and minimum control points shown in the following table.

TABLE 1

Job Mix Formula (JMF) Parameters

Sieve Size	% Passing By Weight
1/2" {12.5 mm}	100% *
3/8" {9.5 mm}	90% - 97% **
No. 4 {4.75 mm}	61% - 84%
No. 8 {2.36 mm}	41% - 64%
No. 16 {1.18 mm}	32% - 45%

No. 30 {600 mm}	21% - 39%
No. 50 {300 mm}	10% - 28%
No. 100 {150 mm}	6% - 20%
No. 200 {75 µm}	4% - 12%

Notes:
Mix shall be 100% passing the ½" sieve, No Exception,
** Mix shall have a minimum of 3% retained on the 3/8" sieve, No Exceptions. Gradation tolerance of +/- 7% will not apply on the maximum control point unless the JMF is set at 90%; tolerance will extend to 97%

3) **MIX PROPERTIES**

a) **AIR VOIDS (Va)**

i) The design air voids for this mix shall be 5.00%.

b) **VOIDS IN MINERAL AGGREGATE (VMA)**

i) The job mix shall be designed to produce a minimum VMA of 16.0 and a maximum of 18.5.

c) **LIQUID ASPHALT BINDER CONTENT (Pb)**

i) The job mix shall be designed at a minimum Liquid Asphalt Binder Content (Pb) of 5.80% and a maximum Liquid Asphalt Binder Content (Pb) of 7.50%. (Baldwin County has the right to lower the grade of virgin asphalt binder content if needed)

d) **DUST PROPORTION**

i) The ratio of the percent by weight {mass} of aggregate passing the No. 200 sieve to the effective asphalt content expressed as percent by weight {mass} of the total mix shall be between 0.9 and 1.80 for this mix. These ratio limits apply to both the design and production phases. Effective asphalt content is that asphalt cement not absorbed into the aggregate pore structure and is determined according to Section 4.09 of the Asphalt Institute's, MS-2, *Mix Design Methods for Asphalt Concrete*.

e) **RESISTANCE TO MOISTURE INDUCED DAMAGE**

i) All mixes shall be designed and produced to have a tensile strength ratio (TSR) of at least 0.80 when compacted according to ALDOT-307 at seven percent air voids and tested in accordance with AASHTO T 283 as modified by ALDOT-361. If either TSR fails in production (Suppliers or Baldwin County Highway Department

representatives) another TSR will be run out of the referee sample, jointly by the Supplier and Baldwin County Highway Department representatives in the Suppliers lab. If that TSR fails the Baldwin County Commission and/or County Engineer shall determine whether the Supplier shall remove the tonnage in the lot at no cost to Baldwin County Highway Department or leave it in place at a pay reduction.

4) **DESIGN PROCEDURES**

a) The 50 Blow Marshall Mix Design Method shall be used for this mix. The minimum Marshall Stability shall be 1600 and the flow values shall be 8 to 18.

Prospective Bidders should bid in accordance with the Alabama Department of Transportation Specifications which includes **Section 109.03 (e)** regarding Bituminous Material Price Adjustments. This Section in effect allows that the Base Bid provided in the bid can be adjusted in accordance with the "Asphalt Index" as reported by ALDOT each month.

All Asphalt Index adjustment calculations shall be provided by the Vendor with each invoice. No invoice will be paid without these calculations.

Test reports shall be furnished daily with the delivery of materials, or as directed by County Engineer.

CONTRACT PERIOD
The bid award will be for 12 months beginning on date of award.

BID #WG21-48A SPECIFICATIONS
Planing (408A) and Micro-Milling (408B) Existing Pavement

Planing and Micro-Milling shall be in accordance with applicable portions of Section 408 of the Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, and any ALDOT Special Provisions which may supersede this publication.

CONTRACT PERIOD
The bid award will be for 12 months beginning on date of award.

Bid WG21-47 shall be used in conjunction with bid WG21-48A. Awarded bidder(s) of each bid shall work together to accomplish scope of work as directed by Baldwin County.

OPTION 1
For OPTION 1, the contractor shall begin work within 14 calendar days of issuance of Notice to Proceed, unless otherwise directed in writing by the County. If the contractor does not or cannot start work within 14 calendar days, the County

reserves the option, at their sole discretion, to use the Secondary Vendor to perform the work, by doing so the County will not violate Bid Specifications. This in no way relieves the bidder from performing work as needed for the County.

All costs and expenses related to the contractor's failure to begin work on time, including without limitation mobilization costs, shall be borne solely by the contractor and the County shall not be responsible or liable for any such costs or expenses.

OPTION 2

For OPTION 2, the contractor shall begin work within 7 calendar days of issuance of Notice to Proceed, unless otherwise directed in writing by the County. If the contractor does not or cannot start work within 7 calendar days, the County reserves the option, at their sole discretion, to use the Secondary Vendor to perform the work, by doing so the County will not violate Bid Specifications. This in no way relieves the bidder from performing work as needed for the County.

All costs and expenses related to the contractor's failure to begin work on time, including without limitation mobilization costs, shall be borne solely by the contractor and the County shall not be responsible or liable for any such costs or expenses.

BID #WG21-48A RESPONSE FORM

Provision of Labor and Equipment for Asphalt Placement and/or Planing or Micro-Milling Existing Pavement

Date:_____

Out of State _____ or _____ If yes, Registration Number _____
Yes No

Company Name: _____

Address:_____

Company Rep: _____

(Rep. Name Typed or Printed)

Position: _____

Phone:_____

Fax: _____

Financing through another agency beside yourself ____ or __x__
Yes No

If yes, must attach a copy of the financing agreement and all conditions to this response form.

_____
Financing Agency Authorized Signature

PAVING BID (OPTION 1)

1. Price per ton to place hot plant mix on a prepared roadway base (dirt or gravel) surface. Price to include all labor and equipment (including traffic control) required to clean roadway, spread, and compact the asphalt material in place in compliance with the applicable section of the ALDOT specifications, and specifications regarding testing contained herein.

BC-723 Baldwin County Bituminous plant mix

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-336 Superpave Bituminous Concrete Wearing Surface Layer, 3/8" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-340 Superpave Bituminous Concrete Wearing Surface Layer, 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-341 Superpave Bituminous Concrete Wearing Surface Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-635 Superpave Bituminous Concrete Upper Binder Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-636 Superpave Bituminous Concrete Upper Binder Layer, 1" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B 637 Superpave Bituminous Concrete Upper Binder Layer, 1 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton

1001 tons & above	$ _____	Per Ton

PAVING BID (OPTION 1)

2. Price per ton, including tack coat, to place hot plant mix on an existing paved roadway surface (ditch section). Price to include all labor and equipment (including traffic control) required to clean and prepare roadway (including clipping), spread and compact the asphalt material in place in compliance with the applicable section of the ALDOT specifications, and specifications regarding testing contained herein.

BC-723 Baldwin County Bituminous plant mix

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-336 Superpave Bituminous Concrete Wearing Surface Layer, 3/8" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-340 Superpave Bituminous Concrete Wearing Surface Layer, 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton

151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-341 Superpave Bituminous Concrete Wearing Surface Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-635 Superpave Bituminous Concrete Upper Binder Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-636 Superpave Bituminous Concrete Upper Binder Layer, 1" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B 637 Superpave Bituminous Concrete Upper Binder Layer, 1 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$	Per Ton

51-150 tons	$	Per Ton
151-500 tons	$	Per Ton
501-1000 tons	$	Per Ton
1001 tons & above	$	Per Ton

PAVING BID (OPTION 1)

3. Price per ton, including tack coat, to place hot plant mix on an existing paved roadway surface (Curb Section). Price to include all labor and equipment (including traffic control) required to clean and prepare roadway, spread and compact the asphalt material in place in compliance with the applicable section of the ALDOT specifications, and specifications regarding testing contained herein.

BC-723 Baldwin County Bituminous plant mix

0-50 tons	$	Per Ton
51-150 tons	$	Per Ton
151-500 tons	$	Per Ton
501-1000 tons	$	Per Ton
1001 tons & above	$	Per Ton

424A-336 Superpave Bituminous Concrete Wearing Surface Layer, 3/8" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$	Per Ton
51-150 tons	$	Per Ton
151-500 tons	$	Per Ton
501-1000 tons	$	Per Ton
1001 tons & above	$	Per Ton

424A-340 Superpave Bituminous Concrete Wearing Surface Layer, 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$	Per Ton

51-150 tons	$	Per Ton
151-500 tons	$	Per Ton
501-1000 tons	$	Per Ton
1001 tons & above	$	Per Ton

424A-341 Superpave Bituminous Concrete Wearing Surface Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$	Per Ton
51-150 tons	$	Per Ton
151-500 tons	$	Per Ton
501-1000 tons	$	Per Ton
1001 tons & above	$	Per Ton

424B-635 Superpave Bituminous Concrete Upper Binder Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$	Per Ton
51-150 tons	$	Per Ton
151-500 tons	$	Per Ton
501-1000 tons	$	Per Ton
1001 tons & above	$	Per Ton

424B-636 Superpave Bituminous Concrete Upper Binder Layer, 1" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$	Per Ton
51-150 tons	$	Per Ton
151-500 tons	$	Per Ton
501-1000 tons	$	Per Ton
1001 tons & above	$	Per Ton

424B-637 Superpave Bituminous Concrete Upper Binder Layer, 1 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

PAVING BID (OPTION 1)

4. Price per ton to widen an existing paved roadway at the width and rate requested by the Baldwin County Highway Department. Price to include all labor and equipment (including traffic control) required to notch out edge of pavement, clean roadway, spread and compact the asphalt material in place in compliance with the applicable section of the ALDOT specifications, and specifications regarding testing contained herein.

BC-723 Baldwin County Bituminous plant mix

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-336 Superpave Bituminous Concrete Wearing Surface Layer, 3/8" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-340 Superpave Bituminous Concrete Wearing Surface Layer, 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$	Per Ton

51-150 tons	$	Per Ton
151-500 tons	$	Per Ton
501-1000 tons	$	Per Ton
1001 tons & above	$	Per Ton

424A-341 Superpave Bituminous Concrete Wearing Surface Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$	Per Ton
51-150 tons	$	Per Ton
151-500 tons	$	Per Ton
501-1000 tons	$	Per Ton
1001 tons & above	$	Per Ton

424B-635 Superpave Bituminous Concrete Upper Binder Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$	Per Ton
51-150 tons	$	Per Ton
151-500 tons	$	Per Ton
501-1000 tons	$	Per Ton
1001 tons & above	$	Per Ton

424B-636 Superpave Bituminous Concrete Upper Binder Layer, 1" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$	Per Ton
51-150 tons	$	Per Ton
151-500 tons	$	Per Ton
501-1000 tons	$	Per Ton
1001 tons & above	$	Per Ton

424B-637 Superpave Bituminous Concrete Upper Binder Layer, 1 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

PAVING BID (OPTION 1)

5. Price per ton, including tack coat, to perform spot leveling on an existing paved roadway surface at rate specified by the Baldwin County Highway Department. Price to include all labor and equipment (including traffic control) required to clean roadway, spread and compact the asphalt material in place in compliance with the applicable section of the ALDOT specifications, and specifications regarding testing contained herein.

BC-723 Baldwin County Bituminous plant mix

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-336 Superpave Bituminous Concrete Wearing Surface Layer, 3/8" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-340 Superpave Bituminous Concrete Wearing Surface Layer, 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-341 Superpave Bituminous Concrete Wearing Surface Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-635 Superpave Bituminous Concrete Upper Binder Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-636 Superpave Bituminous Concrete Upper Binder Layer, 1" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-637 Superpave Bituminous Concrete Upper Binder Layer, 1 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

PAVING BID (OPTION 1)

6. Price per square yard to perform planning or micro-milling on an existing paved roadway surface at a depth specified by the Baldwin County Highway Department. Price to include all labor and equipment (including mobilization and traffic control) required to plane or micro-mill pavement surface and clean up and dispose of millings from roadway in compliance with the applicable section of the ALDOT specifications. **Minimum quantity of planing or micro-milling is 250 square yards.**

408A Planing Existing Pavement

Approximately 0.00” Thru 1.00” Thick	$ _____	Per Square Yard
Approximately 1.10” Thru 2.00” Thick	$ _____	Per Square Yard
Approximately 2.10” Thru 3.00” Thick	$ _____	Per Square Yard
Approximately 3.10” Thru 4.00” Thick	$ _____	Per Square Yard
Approximately 4.10” Thru 5.00” Thick	$ _____	Per Square Yard
Approximately 5.10” Thru 6.00” Thick	$ _____	Per Square Yard

408B Micro-Milling Existing Pavement

Approximately 0.00” Thru 1.00” Thick	$ _____	Per Square Yard
Approximately 1.10” Thru 2.00” Thick	$ _____	Per Square Yard

PAVING BID (OPTION 2)

1. Price per ton to place hot plant mix on a prepared roadway base (dirt or gravel) surface. Price to include all labor and equipment (including traffic control) required to clean roadway, spread, and compact the asphalt material in place in compliance with the applicable section of the ALDOT specifications, and specifications regarding testing contained herein.

BC-723 Baldwin County Bituminous plant mix

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-336 Superpave Bituminous Concrete Wearing Surface Layer, 3/8" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-340 Superpave Bituminous Concrete Wearing Surface Layer, 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-341 Superpave Bituminous Concrete Wearing Surface Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-635 Superpave Bituminous Concrete Upper Binder Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-636 Superpave Bituminous Concrete Upper Binder Layer, 1" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B 637 Superpave Bituminous Concrete Upper Binder Layer, 1 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton

1001 tons & above $ _____ Per Ton

PAVING BID (OPTION 2)

2. Price per ton, including tack coat, to place hot plant mix on an existing paved roadway surface (ditch section). Price to include all labor and equipment (including traffic control) required to clean and prepare roadway (including clipping), spread and compact the asphalt material in place in compliance with the applicable section of the ALDOT specifications, and specifications regarding testing contained herein.

BC-723 Baldwin County Bituminous plant mix

0-50 tons $ _____ Per Ton
51-150 tons $ _____ Per Ton
151-500 tons $ _____ Per Ton
501-1000 tons $ _____ Per Ton
1001 tons & above $ _____ Per Ton

424A-336 Superpave Bituminous Concrete Wearing Surface Layer, 3/8" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons $ _____ Per Ton
51-150 tons $ _____ Per Ton
151-500 tons $ _____ Per Ton
501-1000 tons $ _____ Per Ton
1001 tons & above $ _____ Per Ton

424A-340 Superpave Bituminous Concrete Wearing Surface Layer, 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons $ _____ Per Ton
51-150 tons $ _____ Per Ton
151-500 tons $ _____ Per Ton

501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-341 Superpave Bituminous Concrete Wearing Surface Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-635 Superpave Bituminous Concrete Upper Binder Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-636 Superpave Bituminous Concrete Upper Binder Layer, 1" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B 637 Superpave Bituminous Concrete Upper Binder Layer, 1 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton

151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

PAVING BID (OPTION 2)

3. Price per ton, including tack coat, to place hot plant mix on an existing paved roadway surface (Curb Section). Price to include all labor and equipment (including traffic control) required to clean and prepare roadway, spread and compact the asphalt material in place in compliance with the applicable section of the ALDOT specifications, and specifications regarding testing contained herein.

BC-723 Baldwin County Bituminous plant mix

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-336 Superpave Bituminous Concrete Wearing Surface Layer, 3/8" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-340 Superpave Bituminous Concrete Wearing Surface Layer, 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton

151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-341 Superpave Bituminous Concrete Wearing Surface Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-635 Superpave Bituminous Concrete Upper Binder Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-636 Superpave Bituminous Concrete Upper Binder Layer, 1" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-637 Superpave Bituminous Concrete Upper Binder Layer, 1 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$	Per Ton

51-150 tons	$	Per Ton
151-500 tons	$	Per Ton
501-1000 tons	$	Per Ton
1001 tons & above	$	Per Ton

PAVING BID (OPTION 2)

4. Price per ton to widen an existing paved roadway at the width and rate requested by the Baldwin County Highway Department. Price to include all labor and equipment (including traffic control) required to notch out edge of pavement, clean roadway, spread and compact the asphalt material in place in compliance with the applicable section of the ALDOT specifications, and specifications regarding testing contained herein.

BC-723 Baldwin County Bituminous plant mix

0-50 tons	$	Per Ton
51-150 tons	$	Per Ton
151-500 tons	$	Per Ton
501-1000 tons	$	Per Ton
1001 tons & above	$	Per Ton

424A-336 Superpave Bituminous Concrete Wearing Surface Layer, 3/8" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$	Per Ton
51-150 tons	$	Per Ton
151-500 tons	$	Per Ton
501-1000 tons	$	Per Ton
1001 tons & above	$	Per Ton

424A-340 Superpave Bituminous Concrete Wearing Surface Layer, 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-341 Superpave Bituminous Concrete Wearing Surface Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-635 Superpave Bituminous Concrete Upper Binder Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-636 Superpave Bituminous Concrete Upper Binder Layer, 1" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-637 Superpave Bituminous Concrete Upper Binder Layer, 1 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

PAVING BID (OPTION 2)

5. Price per ton, including tack coat, to perform spot leveling on an existing paved roadway surface at rate specified by the Baldwin County Highway Department. Price to include all labor and equipment (including traffic control) required to clean roadway, spread and compact the asphalt material in place in compliance with the applicable section of the ALDOT specifications, and specifications regarding testing contained herein.

BC-723 Baldwin County Bituminous plant mix

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-336 Superpave Bituminous Concrete Wearing Surface Layer, 3/8" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-340 Superpave Bituminous Concrete Wearing Surface Layer, 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424A-341 Superpave Bituminous Concrete Wearing Surface Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-635 Superpave Bituminous Concrete Upper Binder Layer, 3/4" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

424B-636 Superpave Bituminous Concrete Upper Binder Layer, 1" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton

1001 tons & above	$ _____	Per Ton

424B-637 Superpave Bituminous Concrete Upper Binder Layer, 1 1/2" Maximum Aggregate Size Mix, ESAL Range A/B

0-50 tons	$ _____	Per Ton
51-150 tons	$ _____	Per Ton
151-500 tons	$ _____	Per Ton
501-1000 tons	$ _____	Per Ton
1001 tons & above	$ _____	Per Ton

PAVING BID (OPTION 2)

6. Price per square yard to perform planning or micro-milling on an existing paved roadway surface at a depth specified by the Baldwin County Highway Department. Price to include all labor and equipment (including mobilization and traffic control) required to plane or micro-mill pavement surface and clean up and dispose of millings from roadway in compliance with the applicable section of the ALDOT specifications. **Minimum quantity of planing or micro-milling is <u>250 square yards</u>.**

408A Planing Existing Pavement

Approximately 0.00” Thru 1.00” Thick	$ _____	Per Square Yard
Approximately 1.10” Thru 2.00” Thick	$ _____	Per Square Yard
Approximately 2.10” Thru 3.00” Thick	$ _____	Per Square Yard
Approximately 3.10” Thru 4.00” Thick	$ _____	Per Square Yard
Approximately 4.10” Thru 5.00” Thick	$ _____	Per Square Yard
Approximately 5.10” Thru 6.00” Thick	$ _____	Per Square Yard

408B Micro-Milling Existing Pavement

Approximately 0.00” Thru 1.00” Thick	$ _____	Per Square Yard
Approximately 1.10” Thru 2.00” Thick	$ _____	Per Square Yard

Baldwin County Commission

Agenda Action Form

File #: 22-0072, **Version:** 1 **Item #:** BE5

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wanda Gautney, Purchasing Director/Brian Peacock, CIS Director/Adam Scarborough, Assistant CIS Director
Submitted by: Wanda Gautney, Purchasing Director

ITEM TITLE
Competitive Bid #WG22-01 - On-Call Fiber Optic Installation and Repair Services for the Baldwin County Commission

STAFF RECOMMENDATION
Take the following actions:

1) Approve the specifications and authorize the Purchasing Director to place a competitive bid for an On-Call Fiber Optic Installation and Repair Services; and

2) Further, authorize the Chairman/Purchasing Division Commissioner for the Baldwin County Commission to approve any necessary addendums or clarifications if required after the bid is advertised.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: This is an annual bid. Staff recommends the Commission approve the specifications and authorize the Purchasing Director to place a competitive bid for an On-Call Fiber Optic Installation and Repair Services for the County to use at various locations when new fiber is installed, or repairs that are needed.

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?

N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: 10/19/2021

Individual(s) responsible for follow up: Wanda Gautney, Purchasing Director

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Mail Bids

Additional instructions/notes: N/A

BID #WG22-01 INSTRUCTIONS TO BIDDERS

PREPARATION OF BIDS

Forms furnished, or copies thereof shall be used and strict compliance with requirement of the invitation, these instructions and the general specifications for the project are necessary. Special care should be exercised in the preparation of bids. Bidders must make their own estimates of the facilities and difficulties attending the proposed contract, including local conditions uncertainty of weather, quantities and all other contingencies. All designations and prices shall be fully and clearly set forth. The proper blank spaces in the bid and quantity forms shall be suitably filled in.

LABOR AND MATERIALS NOT TO BE FURNISHED BY BALDWIN COUNTY, ALABAMA

The County Commission of Baldwin County, Alabama, will not furnish any labor, materials or supplies unless specifically provided in the Contract.

BIDS FOR ALL OR PART

The County reserves the right of awarding the contract in whole or in part, according to the best interest of the County.

RESPONSE SUBMISSIONS

The bidder should submit a minimum of **three (3) copies** of the **Bid Response** and all other requested information.

DEFINITION

Bidder. Any individual, firm or corporation submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.

Contractor. The individual, firm or corporation, the Party of the First Part to the Contract, that has entered a Contract awarded him by the Owner for any work covered by these Specifications, acting directly or through his agents or employees.

County. Baldwin County Commission

BIDDER QUALIFICATIONS

The County may make such investigations as they deem necessary to determine the ability of the bidders to furnish all materials, and the bidder shall furnish to the County all such information and data for this purpose as the County may request. The County reserves the right to reject any bid if the evidence submitted, or investigation of such bidder, fails to satisfy the County that such bidder is properly qualified to carry out the obligations of the contract and to furnish all materials contemplated therein. Conditional bids will not be accepted.

SIGNATURE TO BIDS

Each bid must give the full business address of the Bidder and be signed by him with his usual signature. Bids by partnerships must furnish the full names of all partners and must be signed with the partnership name by one of the members of the partnership or by an authorized representative, followed by the signature and designation of the person signing. Bids by Corporations must be signed with the legal name of the corporation, followed by the name of the State of Incorporation and by the signature of the president, secretary or other person authorized to bind it in the matter. The name of each person shall be typed or printed below with signature. A bid by a person who affixes to his signature the work “President”, “Secretary”, “Agent”, or other designation without disclosing his

principal may be held to the bid of the individual signing. When requested by the County Commission of Baldwin County, Alabama satisfactory evidence of the authority of the office signing on behalf of the corporation shall be furnished.

CORRECTIONS
Erasures or other changes in the bids must be explained or noted over the signature of the bidder.

LAWS AND REGULATIONS
The bidder's attention is directed to the fact that all applicable state laws, municipal ordinances, and rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

The Contractor, at his own expense, shall procure all permits and licenses, pay all charges, royalties and fees, and give all notices necessary and incident to the due and lawful prosecution of the work.

WITHDRAWAL OF BIDS
Bids may be withdrawn on written or telegraphic requests received from bidders prior to the time fixed for opening. Negligence on the part of the Bidder in preparing the bid confers no right for the withdrawal of the bid after it has been opened.

REJECTION OF BIDS
Baldwin County reserves the right to reject any and all bids and to waive any informality in bids received whenever such rejection or waiver is in the interest of the County.

CONTRACT
The Bidder to whom award is made, must when requested, enter into written contract on the standard form as set out herein, with satisfactory security in the amount required, within the period specified, or, if no period is specified, within fifteen (15) days after the required forms are presented to him for signature.

3 originals	Contract
1 original	Certificate of Insurance certifying compliance with all insurance requirements specified in the bid

CONTRACT PERIOD
It is the intent of the Baldwin County Commission to award this contract for a twelve (12) calendar month period. However, the Baldwin County Commission may, at their option and in agreement with the Successful Bidder, renew the contract for up to two (2) additional years (2022 and 2023), in twelve (12) month increments. The Baldwin County Commission will, in writing, notify the Contractor thirty (30) days prior to expiration of the 2021 contract with its intend to extend the contract. The prices for 2021 shall also apply to the extension period(s).

COLLUSION
If there is any reason for believing that collusion exists among the Bidders, any or all Proposals may be rejected, and those participating in such collusion may be barred from submitting bids on the same or other work with the County.

POWER OF ATTORNEY
Attorneys-in-fact who sign bid bonds must file with each bond a certified and effectively dated copy of their power of attorney.

TRAFFIC CONTROL, SAFETY ITEMS

Contractor shall erect all warning signs, and provide the appropriate personnel, if required, and all other items required to safely handle traffic through work area. Traffic Control Devices shall be provided by the Contractor. Safety of the public and workers shall be the first priority of the contractor at all times. Contractor will adhere to all established city, county, state and Federal OSHA safety issues. Those issues include traffic control, the wearing and use of safety equipment, and safe excavation practices.

The contractor shall comply with the Department of Labor Safety and Health Regulations for construction promulgated under the Occupational Safety and Health Act to 1970 (PL-596) and under Section 107 of the Contract Work House and Safety Standard Act (PL91-54).

The Contractor alone shall be responsible for the safety, efficiency and adequacy of his plant, appliances, and methods, and for any damages which may result from their failure or their improper construction, maintenance or operations.

CONTRACTORS LICENSE

Bidder(s) must have Contractor's License issued by the Alabama State Licensing Board for General Contractors under the provision of Title 34, Chapter 8, Code of Alabama. Bidder(s) shall submit a copy of license.

COMPENSATION INSURANCE

Contractor shall procure and shall maintain during the life of this contract Workmen's Compensation Insurance for all his employees to be engaged in work on the project under his contract, and, in case of any such work sublet, the Contractor shall require the Subcontractor similarly, to provide Workmen's compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In case a class of employees engaged in hazardous work on the project under this contract is not protected under the Workmen's Compensation Statute, the Contractor shall provide and shall cause each Subcontractor to provide adequate employer's general liability insurance for the protection of such of his employees as are not otherwise protected. The Baldwin County Commission, its Departments and its employees shall be named as additional insured.

CONTRACTOR'S PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

Prior to performing services pursuant to this Contract, BUYER shall carry, with insurers satisfactory to COUNTY, throughout the term of hereof, Auto Liability Insurance, including owned, hired and non-owned vehicles, with limits of not less than $1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; Commercial General Liability Insurance, including all contractual liability hereunder, with limits not less than $1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; and Worker's Compensation Insurance, meeting the statutory limits of the State of Alabama and Employer's Liability Insurance fully covering all employees and supervisors participating in the work at the subject property site. All liability insurance shall name the County as an additional insured. Prior to commencing operations hereunder, a Certificate of Insurance evidencing such coverage, satisfactory to County, shall be furnished to County, which shall specifically state that such insurance shall provide for at least ten (10) days' notice to County in the event of cancellation, termination or any change in such insurance policies. The workers compensation certificate shall bear an endorsement clearly evidencing a

waiver of the right of subrogation against County and County Representatives. Should BUYER fail to furnish current evidence upon demand of any insurance required hereunder, or in the event of cancellation, termination or change in any such insurance, County may, at its option, suspend this Contract until insurance is obtained, terminate this Contract immediately without further action, or hold BUYER in material default and pursue any and all remedies available.

The Contractor agrees to maintain such coverage as is required in this section for a period of one (1) year from the date of completion of the work pursuant to the Contract or at the date of the final payments made by the Contractor to the County, whichever occurs first.

COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE

The contractor agrees to carry a Comprehensive Automobile Liability Policy providing bodily injury liability on an occurrence basis and providing property damage liability on an accident basis. This policy shall protect the Contractor against all liability arising out of the use of automobiles, both private, passenger and commercial, regardless of whether such vehicles shall be owned by the Contractor, owned by others or hired. Limits of liability for Comprehensive Automobile Liability Insurance shall be $500,000. Combined single limit bodily injury and property damage each occurrence. The Baldwin County Commission, its departments and its employees shall be named as additional insured.

COUNTY'S PROTECTIVE LIABILITY INSURANCE

The Contractor shall at his expense provide County's protective liability policies issued in the names of the County and its departments covering their liability for operation of the Contractor. These policies shall provide limits of liability in the amount of $500,000.00 per occurrence bodily injury and property damage, $1,000,000.00 aggregate.

SUBCONTRACTOR'S PUBLIC LIABILITY & PROPERTY DAMAGE INSURANCE

The Contractor shall require each of his Subcontractors to produce and maintain during the life of his subcontract, Subcontractor's Public Liability and Property Damage Insurance of the type specified in the above paragraph hereof, in amounts approved by the County.

Three (3) executed copies of each subsequent endorsement affecting the coverage of policies and of each cancellation shall be forwarded to the County.

INDEMNITY AND HOLD HARMLESS PROVISION

To the fullest extend allowed by law, the contractor shall at all times indemnify and save harmless the County and its Departments, their officers and employees, against all liability, claim of liability, loss, cost or damage, including, death, and loss of services, on account of any injury to persons or property, occurring from any cause whatsoever in the construction work involved in the contract, and will at his expense defend on behalf of the County and its departments, their officers and employees, either or all, any suit brought against them or any of the, arising from any such cause.

The obligations of the Contractor under this Paragraph shall not extend to the liability of the departments, its agents or employees arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give direction or instruction by the county's departments, its agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

CANCELLATION CLAUSE

The County or Contractor reserves the right to terminate the contract prior to the end of the period indicated upon thirty (30) day's written notice, with or without cause.

DEFAULT OF CONTRACT

If the Contractor fails to begin the work under Contract within the time specified, or fails to perform the Work with sufficient workers, equipment, or materials to insure its prompt completion, or performs the Work unsuitably, or neglects or refuses to remove materials or perform anew such work as shall be rejected as defective and unsuitable, or discontinues the prosecution of the Work, or from any other cause whatsoever does not carry on the Work in an acceptable manner, or becomes insolvent or is adjudicated as bankrupt, or commits any act of bankruptcy or insolvency, or allows any final judgment to stand against him unsatisfied for a period of ten (10) days, the County may give notice in writing by registered mail to the Contractor and the Surety of such delay, neglect, or default. If within ten (10) days after such notice the Contractor does not proceed to remedy the fault specified in said notice, or the Surety does not proceed to take over the work for completion, the County shall have full power and authority, without impairing the obligation of the Contract or the Contract Bonds, to take over the completion of the Work; to appropriate or use any or all material and equipment on the ground that may be suitable and acceptable; to enter into agreements with others for the completion of the Contract according to the terms and provisions thereof; or to use such other methods as in its opinion may be required for the completion of the contract. The Contractor and his Surety shall be liable for all costs and expenses incurred by the County, in completing the Work and also for all liquidated damages in conformity with the terms of the Contract. In case the sum of such expense and such liquidated damages exceeds the sum, which would have been payable under the Contract, the Contractor and his Surety shall be liable and shall pay to the County the amount of such excess. Notice to the Contractor shall be deemed to be served when delivered to the person in charge of any office used by the Contractor his representative at or near the work or by registered mail addressed to the Contractor at his last known place of business.

COORDINATION WITH BALDWIN COUNTY COMMISSION

The Contact person for the Baldwin County Commission will be Mr. Adam Scarborough, 251-580-1870.

SPECIFICATIONS

The Baldwin County Commission desires to establish a price agreement with a qualified firm to provide fiber optic installation and repair services:

- Splicing of single and multi-mode fiber optic cable via fusion splicing.
- Termination of single mode and multi-mode fiber optic cable using factory made terminations via fusion splicing.
- Handmade terminations of single and multi-mode fiber optic cable.
- Installation of fiber optic cable inside plant and outside plant.
- Installation of splicing enclosures and related equipment, inside and outside plant.
- Power meter testing
- OTDR testing
- Documentation of installation and splicing test results.
- Respond to emergency call for testing and repair of fiber.

PART ONE: GENERAL REQUIREMENTS

Construction Performance and Payment Bonds: If a job order is issued in excess of twenty-five thousand dollars ($25,000), the following bonds or security shall be delivered to the Baldwin County Commission Purchasing Director and shall become binding on the parties upon the execution of Construction Agreement. If a Contractor fails to deliver the required performance and payment bonds, the Contractor will not be authorized to perform the work specified in the job order and the County will seek qualified Contractors to perform the work identified in the job order.

The performance bond, executed by a surety company authorized to do business in the State of Alabama, in an amount equal to one hundred percent of the price specified in the Construction Agreement; and a payment bond, executed by a surety company authorized to do business in the State of Alabama, in an amount equal to one hundred percent of the price specified in the Construction Purchase Order, for the protection of all persons supply labor and material to the Contractor of its subcontractors for the performance of the work provided for in the Construction Agreement.

Safety and Control: The Contractor is fully responsible to provide adequate barriers and protection when performing work related to the bid specifications. The Contractor will provide employees with adequate and appropriate personal protective equipment and will be responsible for controlling the area of construction. The Contractor will maintain all equipment in good, safe working conditions.

Clean-Up: Contractor will be responsible for all associated clean up during and after construction. At the end of each workday, Contractor will perform clean-up necessary to keep the job site in a safe and orderly fashion. Contractor will be responsible for all costs associated with project debris.

PART TWO: LABOR

Labor Pricing: Labor costs will include all contractor overhead, profit, mileage, the cost of tools, taxes, insurance and fees necessary to perform the work.

PART THREE: MATERIALS AND INSTALLATION

Materials: Contractor shall submit billing for materials, based cost-plus rate in the bid price. Any unused, billed materials will become the property of the Baldwin County Commission, unless otherwise agreed to in the job order.

The County requires that the Contractor utilize the highest quality materials at the best obtainable price and readily available for the Job Order.

The County reserves the right to supply and/or all materials required for use on the project.

When billing, the Contractor shall provide copies of invoices showing the materials purchased for the Job Order. Payment for materials will be based on actual Contractor pricing as supported by actual invoices.

Contractors Warranty: Contractor shall provide a One-Year Labor and Materials warranty, beginning from the date of final payment for each project. Materials warranty will be limited to new materials installed as part of the work. Material warranties will not apply to reused materials or parts.

Manufacturer's Warranty: When available, the Contractor will provide extended manufacturer's warranties for materials installed under this agreement.

PART FOUR: JOB ORDER EXECUTION

Procedure for job order execution:

1. The County Department shall develop and provide the Contractor:
    a. Scope of Work
    b. Project Schedule
    c. Schedule site visit with Contractor

2. Contractor shall provide a Job Order Proposal within five (5) workdays of County Department notification or as otherwise determined during site visit.

3. Upon Department acceptance of Job Order Proposal, County Department will initiate actions for the issuance of a purchase order and will request the Contractor execute the necessary performance and material payment bonds for job orders in excess of $25,000 as required herein.

4. A Purchase Order will serve as Contractors notice to proceed.

5. Construction time will begin within five (5) working days, after receipt of the Purchase Order.

6. Contractor may only submit progress payments up to 95% of the total project cost, until final completion is achieved.

7. Contractor is required to pull all permitting required for Job Order.

8. **Emergencies:** Exception to #1 and #2 will be emergency situations as determined by the County Department. In these situations, a Job Order Proposal will be submitted to the County Department within 72 hours of emergency site visit. Response time on emergency: Site visit within 12 hours of notification, work to begin immediately thereafter.

PART FIVE: JOB ORDER CLOSE OUT

1. When the Contractor determines that work is substantially complete (95%) a request to the County Department for a Project Close-Out Inspection.

2. County Department will perform inspection within five (5) workdays and develop a "Punch List" of items that need correcting.

3. The two parties agree that the "Punch List" is part of the scope of work.

4. Contractor will immediately take steps to complete the "Punch List" items within five (5) workdays of receipt of "Punch List".

5. Upon completion of "Punch List", the Contractor will request final inspection and submit the final request for payment. Upon verification of all work completed, the County Department will process the final request for payment. Net 30 days after Receipt of invoice.

6. Upon Job completion, contractor will provide County CIS Department an electronic file type (.pdf) of as-built drawings for any new installations as well as repairs performed to existing fiber.

PART SIX: AWARD

The Contract will be awarded to the lowest responsible Bidder complying with conditions of the invitation for bids, provided his/her bid is reasonable and it is in the interest of Baldwin County to accept it. The Bidder to whom the award is made will be notified at the earliest possible date.

BID #WG22-01 RESPONSE FORM
On-Call Fiber Optic Network Installation & Repair Services
1 of 3

Date:_____

Out of State _____ or _____ If yes, _____
Yes No Registration Number

Alabama Contractors License No. _____

Company Name:_____

Address:_____

_____

Company Rep_____

_____
(Rep. Name Typed or Printed)

Position:_____

Phone:_____

Fax:_____

Financing through another agency beside yourself ____ or __x__
Yes No
If yes, must attach a copy of the financing agreement and all conditions to this response from.

_____
Financing Agency Authorized Signature

BID #WG22-01 RESPONSE FORM
On-Call Fiber Optic Network Installation & Repair Services
2 of 3

TO BE COMPLETED AND SUBMITTED WITH BID

1) List Jurisdictions, trade categories, and corresponding license numbers in which your organization is legally qualified to do business on this project.

2) List all projects performed in the past three years that are of equal or greater size/scope as this proposed Baldwin County project. Please provide contact person and phone numbers for references.

3) Attach a list of key personnel and a description of their experience. List the key personnel you will assign to this project.

4) Describe the resources you have in place or plan to put in place to fulfill the obligations of this contract.

5) Include any pertinent documentation to substantiate competence and financial responsibility.

6) When organized?

7) Permanent main office address.

8) How many years have you been engaged in the contracting business under your present firm or trade name?

9) Have you ever failed to complete any work awarded to you? If so, where and why?

10) List your major equipment available for this contract.

BID #WG22-01 RESPONSE FORM
On-Call Fiber Optic Network Installation & Repair Services
3 of 3

Bid Prices

Item #	Item	Unit	Unit Price
001	Fusion Splice	Each	
002	Hand Termination	Each	
003	Power Meter Testing	Each	
004	OTDR Testing	Each	

Hourly cost for repair or new installation work:

Weekdays M-F $_____hr.

Evenings $_____hr. Evenings begin at:_____

Weekends $_____hr. Weekends begin at:_____

Holidays $_____hr.

List Holidays

Materials – Cost Plus Rate: _____

State of Alabama)
County of Baldwin)

CONTRACT FOR PROFESSIONAL AND CONSTRUCTION SERVICES

This Contract for **Professional and Construction** Services is made and entered into by and between the County of Baldwin (hereinafter called "COUNTY") acting by and through its governing body, the Baldwin County Commission and PROVIDER**,** (hereinafter referred to as "PROVIDER").

WITNESSETH:

Whereas,

Whereas,

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the sufficiency of which being hereby acknowledged, PROVIDER and COUNTY do hereby agree as follows:

I. Definitions. The following terms shall have the following meanings:

A. COUNTY: Baldwin County, Alabama

B. COMMISSION: Baldwin County Commission

C. PROVIDER:

II. Obligations Generally. The COUNTY hereby retains, and the PROVIDER agrees to perform for the COUNTY, those professional and construction services as hereinafter set forth. This document shall serve as the binding contract for the services of PROVIDER. PROVIDER shall immediately commence performance of the services outlined herein upon full execution of this Contract. All work shall be commenced and completed in a timely manner as, and at the times, herein set out.

III. Recitals Included. The above recitals and statements are incorporated as part of this Contract and shall have the effect and enforceability as all other provisions herein.

IV. Professional Qualifications. For the purpose of this Contract, the PROVIDER represents and warrants to the COUNTY that it possesses the professional, technical, and administrative personnel with the specific experience and training necessary to provide the professional services required herein.

V. No Prohibited Exclusive Franchise. The COUNTY neither perceives nor intends, by this Contract, a granting of an exclusive franchise or violation of Art. I, Section 22 of the Alabama Constitution.

VI. Representation/Warranty of Certifications, Etc. PROVIDER represents and warrants that PROVIDER is presently certified, licensed and otherwise permitted under all necessary and applicable laws and regulations to perform the services herein, and that PROVIDER shall renew, maintain, and otherwise ensure that all such certifications, licenses, and permits are current and valid, without interruption, for and through completion of the services. The representation and warranty aforesaid is a material inducement to the COUNTY in entering this Contract, and the parties agree that the breach thereof shall be deemed material at the County's option.

VII. Legal Compliance. PROVIDER shall at all times comply with all applicable Federal, State, local and municipal laws and regulations.

VIII. Independent Contractor. PROVIDER acknowledges that it is an independent contractor, and PROVIDER shall at all times remain as such in performing the services under this Contract. PROVIDER is not an employee, servant, partner, or agent of the COUNTY and has no authority, whether express or implied, to contract for or bind the COUNTY in any manner. The parties agree that PROVIDER shall be solely responsible for and shall have full and unqualified control over developing and implementing its own means and methods, as it deems necessary and appropriate in providing the aforementioned services, and that the COUNTY's interests herein are expressly limited to the results of said services. PROVIDER is not entitled to unemployment insurance benefits, and PROVIDER is responsible for and obligated to pay any and all federal and state income tax on any monies paid pursuant to this Contract.

IX. No Agency Created. It is neither the express nor the implied intent of PROVIDER or COUNTY to create an agency relationship pursuant to this Contract. Therefore, the PROVIDER does not in any manner act on behalf of COUNTY and the creation of such a relationship is prohibited and void.

X. Unenforceable Provisions. If any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

XI. Entire Agreement. This Contract represents the entire and integrated agreement between COUNTY and PROVIDER and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended only by written instrument signed by all parties.

XII. Failure to Strictly Enforce Performance. The failure of the COUNTY to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Contract shall not constitute, and shall never be asserted by PROVIDER as constituting, a default or be construed as a waiver or relinquishment of the right of the COUNTY to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

XIII. Assignment. This Contract or any interest herein shall not be assigned transferred or otherwise encumbered by PROVIDER without the prior written consent of the COUNTY, which may be withheld or granted in the sole discretion of the COUNTY.

XIV. Ownership of Documents/Work. The COUNTY shall be the owner of all copyright or other intellectual property rights in reports, documents and deliverables produced and paid for under this Contract, and to the extent permitted by Alabama law, any such material may be reproduced and reused at the discretion of the COUNTY without payment of further consideration. PROVIDER shall not transfer, disclose, or otherwise use such information for any purpose other than in performance of the services hereunder, without the COUNTY's prior written consent, which may be withheld or granted in the sole discretion of the COUNTY.

XV. Notice. Notice required herein shall be in writing, unless otherwise allowed, and said notice shall be deemed effective when received at the following addresses:

PROVIDER:

COUNTY: Baldwin County Commission
c/o Chairman
312 Courthouse Square
Suite 12
Bay Minette, AL 36507

XVI. Services to be Rendered. PROVIDER is retained by the COUNTY as a professionally-qualified **contractor**. The general scope of work for the services shall include all the terms and Conditions of **"Competitive Bid #WG22-01"**, the same being expressly incorporated herein by reference, and without limitation will encompass:

"All provision and conditions and/or specifications listed/stated in Competitive Bid #WG22-01 named, On-Call Fiber Optic Network-Installation and Repair Services for the Baldwin County Commission".

A. PROVIDER will provide ongoing communications with COUNTY regarding this service, including updates, emails etc. as requested. Additionally, PROVIDER will meet with COUNTY as needed or requested.

B. PROVIDER is responsible for the professional quality, technical accuracy, timely completion and coordination of all services furnished by or in relation to this Contract.

C. PROVIDER represents and warrants that its services shall be performed within the limits and standards provided by the COUNTY, in a manner consistent with the level of care and skill ordinarily exercised by similar providers under similar circumstances at the time the services are performed.

XVII. General Responsibilities of the COUNTY.

A. The COUNTY shall provide reasonable notice to PROVIDER whenever the COUNTY actually observes or otherwise actually becomes aware of any development that affects the scope or time of PROVIDER's services hereunder or any defect or nonconformance in the work of PROVIDER.

B. The COUNTY shall pay to PROVIDER the compensation as, and subject to the terms set out below.

XVIII. Termination of Services. The COUNTY may terminate this contract, with or without cause or reason, by giving thirty (30) days written notice of such to the PROVIDER. Upon receipt of such notices, PROVIDER shall discontinue its work to the extent specified in the notice.

In the event of termination, the COUNTY shall pay PROVIDER for all services satisfactorily rendered, and for any expenses deemed by COUNTY to be a reimbursable expense incurred pursuant to this Contract and prior to the date of termination.

XIX. Compensation Limited. The compensation to be paid to the PROVIDER shall be the full compensation for all work performed by PROVIDER under this Contract. Any and all additional expenditures or expenses of PROVIDER, not listed in full within this Contract, shall not be considered as a part of this Contract and shall not be demanded by PROVIDER or paid by COUNTY.

XX. Direct Expenses. Compensation to PROVIDER for work shall be **$_____**. Said compensation shall be all inclusive, including without limitation, reimbursement of all cost, incidentals and operating expense associated with those directly engaged in performance of the requested services

XXI. Method of Payment. PROVIDER shall submit invoices to the COUNTY for payment for work performed. Such invoice shall be accompanied by a detailed account of compensation to be paid PROVIDER.

Payment shall be made by the COUNTY within thirty (30) days of the approval of the invoice submitted by the PROVIDER. The COUNTY agrees to review and approve invoices submitted for payment in a timely manner.

XXII. Effective and Termination Dates. This Contract shall be effective for twelve (12) months and commence immediately upon the same date as full execution, with an option to issue two (2) twelve (12) month contracts, or extend the first contract until such time that a new contract can be bid and awarded. And additional contract or extensions will be at the same prices, terms and conditions. Any successive contract(s) must have the written approval of both the County and the Provider no later than thirty (30) days prior to the expiration of the original contract. [Nothing herein stated shall prohibit the parties from otherwise terminating this Contract according to the provisions herein.]

XXIII. Force Majeure. The Parties hereto shall incur no liability to the other if performance becomes impossible or impracticable by reason of an event or effect that the parties could neither have anticipated nor controlled. This

allowance shall include both an act of nature and acts of third parties. Any costs that would otherwise be incurred and/or necessitated by the provisions herein shall be alleviated for either party by such event or effect.

XXIV. Indemnification. Provider shall indemnify, defend and hold County, and its Commissioners, affiliates, employees, agents, and representatives (collectively "County") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs, and expenses including, without limitations, attorneys' fees, and costs, for any and all personal injury (including death) and property damage of any kind or nature whatsoever, incurred by, asserted against, or imposed upon County, as a result of or in any manner related to provision of services hereunder, or any act or omission, by Provider. Contractor shall provide the COUNTY with proof of general liability coverage including the COUNTY as an additional insured. This indemnification shall survive the expiration or termination of this Contract.

XXV. Number of Originals. This Contract shall be executed with three (3) originals, each of which are equally valid as an original.

XXVI: Governing Law: This Contract in all respects, including without limitation its formation, validity, construction, enforceability and available remedies, shall be governed by the laws of the State of Alabama, without regard to Alabama conflict of law principles.

XXVII: Insurance: Prior to performing services pursuant to this Contract, Provider shall carry, with insurers satisfactory to County, throughout the term of hereof, Auto Liability Insurance, including owned, hired and non-owned vehicles, with limits of not less than $1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; Commercial General Liability Insurance, including all contractual liability hereunder, with limits not less than $1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; and Worker's Compensation Insurance, meeting the statutory limits of the State of Alabama and Employer's Liability Insurance fully covering all employees and supervisors participating in the work at the subject property site. All liability insurance shall name the County as an additional insured. Prior to commencing operations hereunder, a Certificate of Insurance evidencing such coverage, satisfactory to County, shall be furnished to County, which shall specifically state that such insurance shall provide for at least ten (10) days' notice to County in the event of cancellation, termination or any change in such insurance policies. The workers compensation certificate shall bear an endorsement clearly evidencing a waiver of the right of subrogation against County and County Representatives. Should Provider fail to furnish current evidence upon demand of any insurance required

hereunder, or in the event of cancellation, termination or change in any such insurance, County may, at its option, suspend this Contract until insurance is obtained, terminate this Contract immediately without further action, or hold Provider in material default and pursue any and all remedies available.

XXVIII: Surety: As a material inducement for the County to enter this Agreement, any and all bond and/or surety guarantees required by the County in reference to the Project shall be in a form acceptable to the County and shall, without limitation, meet the following requirements:

(a) Acceptance of Surety. The bond and/or surety document must be reviewed by, and be acceptable to, County staff and approved by the County Commission. In the event that such document is not in an acceptable form at any time prior to or during the effectiveness of this Contract, the services and/or work described in this Contract shall either not commence or immediately cease, depending on the situation. Any project delay that is attributable to the County's acceptance, or non-acceptance, of the bond and/or surety document form shall in no way be consider as a delay caused by the County, and the Contractor and/or Provider waives all rights to claim that any such delay was the fault of the County.

(b) Value of Surety. The bond and/or surety guarantee shall be of an amount equal to or greater than 100 percent of the total cost identified in the bid response.

(c) Term of Surety. Any bond and/or surety guarantees required by the County must be valid at all times during the life of this Contract. Notwithstanding anything written or implied herein to the contrary, in no event shall the bond and/or surety document lapse, terminate, expire, or otherwise become invalid prior to the County, or the County's authorized agent, providing a written Notice to the Provider/Contractor that the Project is in fact completed in all respects. Said Notice from the County or its authorized agent shall not be provided until the County, in its sole discretion, is satisfied that the Project is complete in all respects.

(d) Scope of the Surety. The terms and provisions of any bond and/or surety guarantee provided as part of this Project shall in all respects, without limitation, be consistent and in agreement with, the provisions of this Contract. In the event that the bond and/or surety guarantee is in conflict with this Contract, this Contract shall govern. Neither this section nor this provision limits the duties of the Provider/Contractor to satisfy all of the requirements in this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the last day of execution by the COUNTY as written below.

COUNTY

_____/_____
JOE DAVIS, III Chairman /Date

ATTEST:

_____/_____
WAYNE DYESS /Date
County Administrator

State of Alabama)

County of Baldwin)

I, _____ , a Notary Public in and for said County, in said State, hereby certify that, Joe Davis, III, whose name as Chairman of Baldwin County Commission, and Wayne Dyess, whose name as County Administrator, are known to me, acknowledged before me on this day that, being informed of the contents of the Contract for Professional and Construction Services, they, as such officers and with full authority, executed same knowingly and with full authority to do so on behalf of said Commission.

GIVEN under my hand and seal on this the _____ day of _____, 2021.

_____
Notary Public
My Commission Expires

SIGNATURE PAGE AND NOTARY PAGE TO FOLLOW

PROVIDER:

Insert Name

_____/_____
By _____/Date
Its _____

State of Alabama)

County of Baldwin)

I, _____, Notary Public in and for said County and State, hereby certify that _____ as _____ of_____, whose name is signed to the foregoing in that capacity, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing, he executed the same voluntarily on the day the same bears date for and as an act of said_____.

GIVEN under my hand and seal on this the _____ day of _____, 2021.

_____
Notary Public
My Commission Expires

Baldwin County Commission

Agenda Action Form

File #: 22-0081, **Version:** 1 **Item #:** BE6

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wanda Gautney, Purchasing Director/Chief Deputy, Anthony Lowery/Troy Bookout. Sheriff's Department
Submitted by: Wanda Gautney, Purchasing Director

ITEM TITLE
Competitive Bid #WG22-02 - Provision of Police Vehicle Equipment (Brake Rotors/Pads) for the Baldwin County Commission

STAFF RECOMMENDATION
Take the following actions:

1) Approve the specifications and authorize the Purchasing Director to place a competitive bid for the Provision of Police Vehicle Equipment (Brake Rotors/Pads) for the Baldwin County Commission; and

2) Further, authorize the Chairman/Purchasing Division Commissioner for the Baldwin County Commission to approve any necessary addendums or clarifications if required after the bid is advertised.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: This is an annual bid for the Baldwin County Sheriff's Department. Staff recommends the Commission approve the specifications and authorize the Purchasing Director to place a competitive bid.

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: 10/19/2021

Individual(s) responsible for follow up: Wanda Gautney, Purchasing Director

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Wanda Gautney, Purchasing Director

Additional instructions/notes: N/A

BID #WG22-02 SPECIFICATIONS

These specifications shall be construed as minimum. Should manufacturer's current published data or specifications exceed these, such standards shall be considered minimum and furnished. All integral parts not specifically mentioned in the scope of these specifications that are necessary to provide a complete working unit shall be furnished.

Bidder shall give a Unit price as indicated on the Bid Response Form. The price shall include all applicable charges, destination charges, delivery charges, etc.

The use of specific names and numbers in the specifications is not intended to restrict the bidder or any seller or manufacturers but is solely for the purpose of indicating the type, size and quality of equipment considered best adapted to Baldwin County.

AWARD

The bid will be awarded to the lowest responsible bidder complying with the conditions of the bid invitation provided that said bid is reasonable and is in the best interest of Baldwin County. **Prices bid shall be firm for a twelve (12) month period beginning on the day of the award. It is the County's intent to award the bid to one vendor.**

BID RESPONSE FORM:

Each supplier should use the Response Form provided for their bid. All warranties and exceptions are to be attached to the back of the Response Form. The bid Guarantee should be attached to the front of the Response Form. **All exceptions must be listed and attached to the bid response form.**

A BID GUARANTEE OF $500.00 SHALL BE INCLUDED WITH THE BID

WARRANTY:

Bidders shall submit a copy of the manufacturer's standard warranty along with a complete explanation of the warranty with their bid.

DELIVERY

Delivery shall be made within **thirty (30)** days after receipt of order. Lead time shall be designated on the Bid Response Form. Delivery shall be to the Baldwin County Sheriff's Support Services division, 18185 Raymond Fell Drive, Robertsdale, AL., 36567. Delivery shall be set up with T. Bookout at (251) 972-8590 or M. Brown at (251) 972-7576.

2012 thru 2020 Chevrolet Police Tahoe PPV, 2016 thru 2021 Ford F-150 Police Responder and 2016 thru 2021 Ford Explorer PPV. In addition, 2021 - 2022 Chevrolet Tahoe PPV brake pads and rotors (both front and rear).

Front Rotors: Factory OEM Equipment or equivalent to PPV package.

Front Pads: Wagner Severe Duty for Police Pursuit Vehicles or equivalent.

Rear Rotors: Factory OEM Equipment or Equivalent to PPV package.

Rear Pads: Wagner Severe Duty for Police Pursuit Vehicles or equivalent

BID #WG22-02 RESPONSE FORM
Provision of Police Vehicle Equipment (Brake Rotors/Pads)

Date: _____

Out of State _____ or _____ If yes, _____
Yes No Registration Number

Company Name: _____

Address: _____

_____

_____

Company Rep. _____
(Rep. Name Typed or Printed)

Position: _____

Email address: _____

Phone: _____

Fax: _____

Financing through another agency beside yourself _____ or _____
Yes No
If yes, must attach a copy of the financing agreement and all conditions to this response form.

_____
Financing Agency Authorized Signature

_____

Brochures showing the equipment offered shall be attached to this Response Form.
All exceptions must be listed and attached to the bid response form.

A BID GUARANTEE OF $500.00 SHALL BE INCLUDED WITH THE BID

BID #WG22-02 RESPONSE FORM
Provision of Sheriff's Office Vehicle Equipment (Brake Rotors/Pads)

Front Rotors: Factory OEM Equipment or equivalent to PPV package

Model: _____

Amount Bid: $_____ each

Front Pads: Wagner Severe Duty for Police Pursuit Vehicles or equivalent

Model: _____

Amount Bid: $_____ each

Rear Rotors: Factory OEM Equipment or Equivalent to PPV package

Model: _____

Amount Bid: $_____ each

Rear Pads: Wagner Severe Duty for Police Pursuit Vehicles or equivalent

Model: _____

Amount Bid: $_____ each

Baldwin County Commission

Agenda Action Form

File #: 22-0083, **Version:** 1 **Item #:** BE7

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wanda Gautney, Purchasing Director/Junius Long, Facilities Coordinator
Submitted by: Wanda Gautney, Purchasing Director

ITEM TITLE
Competitive Bid #WG22-03 - Provision of Fire Protection Services (Extinguishers) for the Baldwin County Commission

STAFF RECOMMENDATION
Take the following actions:

1) Approve the specifications for the Provision of Fire Protection Services (Extinguishers) and authorize the Purchasing Director to place a competitive bid; and

2) Further, authorize the Chairman/Purchasing Division Commissioner for the Baldwin County Commission to approve any necessary addendums for clarifications if required after the bid is advertised.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: This is an annual bid. Staff recommends the Commission approve the specifications and authorize the Purchasing Director to place a competitive bid.

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: 10/19/2021

Individual(s) responsible for follow up: Wanda Gautney, Purchasing Director

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Mail Bids

Additional instructions/notes: N/A

BID #WG22-03 SPECIFICATIONS

These specifications shall be construed as minimum. All integral parts not specifically mentioned in the scope of these specifications that are necessary to provide a complete working unit shall be furnished.

Bidder shall give unit prices as indicated on the Bid Response Form, prices shall be firm for the period in which the bid is in effect. **The price shall include all applicable charges, to include but not limited to installation, materials for recharging of extinguisher to include O rings, pull pins, valve stems and gauges, labor, travel, etc.**

It is the intent of the Baldwin County Commission to award this contract for twenty-four (24) calendar month period to begin on November 22, 2021. However, the Baldwin County Commission may, at their option and in agreement with the Successful Bidder, renew the contract for up to one (1) additional year (2023). The Baldwin County Commission will, in writing, notify the Contractor thirty (30) days prior to expiration of the 2021 contract with its intent to extend the contract. The Contractor shall respond in writing to the Baldwin County Purchasing Director stating it will or will not agree to the contract extension. The said response shall be made to the Baldwin County Purchasing Director within ten (10) calendar days of receipt of the Commission's intent to extend letter. The prices for 2021 shall also apply to the extension period(s).

The Bidder is responsible for checking to see how many extinguishers are in each building.

The use of specific names and numbers in the specifications is not intended to restrict the bidder or any seller or manufacturer's but is solely for the purpose of indicating the type, size and quality of equipment considered best adapted to Baldwin County.

SCOPE OF WORK

The successful bidder will provide all labor and materials to perform inspection of all fire extinguishers located within County Buildings. The inspection cost shall be given as indicated on the Bid Response Form.

Heavy equipment, buses, or any type of wheeled unit carrying a extinguisher will be available at its home location for inspection or recharge maintenance. The Awarded bidder shall call the Baldwin County Maintenance Department or the Baldwin County Sheriff's Maintenance Department a minimum of two (2) days prior to arrival to inspect and must have a maintenance person with them at all times. The Awarded Bidder is responsible for setting appointments with the home location. All extinguishers shall be tagged and dated in the same month as the inspection for each building.

The bidder will be responsible for making sure all extinguishers are fully charged. Unit cost shall be given as indicated on the Bid Response Form. All five (5) year fire extinguishers shall be repaired on site or a loaned extinguisher put in place until the extinguisher is repaired or replaced.

The bidder shall be responsible for providing new extinguisher upon request. Unit cost shall be given as indicated on the Bid Response Form.

The bidder shall be responsible for recharging all types of units owned by Baldwin County. Unit cost shall be given as indicated on the Bid Response Form. **This cost should include all applicable charges for O rings, pull pins, valve stems and gauges.**

The bidder shall be responsible for annual maintenance on hand held, wheeled units, annual conductivity test for carbon dioxide units. Unit cost shall be given as indicated on the Bid Response Form.

Inspection fees for any new buildings added during the year will be negotiated with the awarded bidder.

The Baldwin Correction Centers Fire Extinguishers will require monthly inspections and must be tagged monthly. This is the only Baldwin County facility that will be inspected each month. Inspection fee shall be given as indicated on the Bid Response Form.

COORDINATION WITH BALDWIN COUNTY COMMISSION

The contact person for the Baldwin County Commission will be Mr. Junius Long at (251)580-2531. The contact person for the Baldwin County Correction Center will be Mr. Bobby Ealum (251)654-8371.

BID #WG22-03 RESPONSE FORM
Page 1 of 6
Fire Extinguisher Service

Date:_____

Out of State _____ or _____ If yes, _____
Yes No Registration Number

Company Name:_____

Address:_____

_____

Company Rep_____

_____
(Rep. Name Typed or Printed)

Position:_____

Phone:_____

Fax:_____

Financing through another agency beside yourself ____ or XX___
Yes No
If yes, must attach a copy of the financing agreement and all conditions to this response form.

_____
Financing Agency Authorized Signature

BID #WG22-03 RESPONSE FORM

Fire Extinguisher Service
Inspection Cost Per Visit:

BAY MINETTE OFFICES

Bay Minette Courthouse $_____
1 Courthouse Square, Bay Minette , AL

Bay Minette Administration Bldg $_____
322 Courthouse Square, Bay Minette, AL

Bay Minette Annex I Building $_____
312 Courthouse Square, Bay Minette, AL

Bay Minette Annex II Building $_____
175 Courthouse Square, Bay Minette, AL

Bay Minette Annex III Building $_____
257 Hand Ave., Bay Minette, AL

Bay Minette Annex IV Building $_____
105 W. 3rd St., Bay Minette, AL

Bay Minette Annex V Building (All Bldg.)
1705 Hwy 31 South, Bay Minette, AL $_____

Bay Minette Board of Education (2 Bldgs)
2600 N. Hand Ave., Bay Minette, AL $___

Baldwin County Sheriff's Office Bldg.
310 Hand Ave., Bay Minette, AL $_____

Baldwin County Correction Center
200 Hand Ave., Bay Minette, AL $_____

Baldwin County Sheriff's Maintenance Shop
210 Rail Road St., Bay Minette, AL $_____

Baldwin County Sheriff's Garage
1400 Moran St. Bay Minette, AL $_____

Bay Minette Annex VI Building $_____
212 Courthouse Square, Bay Minette, AL

Judge of Probate Office Building $_____
220 Courthouse Square, Bay Minette, AL

Bay Minette Archives Building $_____
305 East Second Street, Bay Minette, AL

Symbol Health Clinic Building $_____
324 Courthouse Square, Bay Minette, AL

Byrne Street Building $_____
302 Byrne Street, Bay Minette, AL

Council On Aging (Vaughn) $_____
55810 Canaan Rd, Stockton, AL

Bay Minette Maintenance Building
107 South St., Bay Minette, AL $_____

Bay Minette Highway Department
203 Dickman Rd., Bay Minette, AL $____

Juvenile Detention Center $_____
43405 Nicholsville Rd., Bay Minette, AL

BM Transfer Station (Bldg. Only) $_____
43205 Nicholsville Rd., Bay Minette, AL

Mill Creek (Sheriff's) Training Facility
15950 Mosley Rd., Stapleton, AL $_____

Baldwin County Level II Shelter
207 N. White Ave., Bay Minette, AL $___

Baldwin County District Attorney's Office
101 Hand Ave., Bay Minette, AL $_____

BRATS Annex Bldg.
104 E. 5th Street, Bay Minette, AL $____

BID #WG22-03 RESPONSE FORM

Fire Extinguisher Service
Inspection Cost Per Visit:

Legislative Delegation (Complex-3 offices)
203 E. Oak St., Bay Minette, AL $_____

Baldwin County Megasite (Pavilion)
49780 Rabun Rd., Bay Minette, AL $____

Baldwin County Sheriff's Support Services
111 East 4th St., Bay Minette, AL $_____

Baldwin County Community Corrections
119 W. 2nd St., Bay Minette, AL $_____

Bicentennial Park (All Buildings)
51233 Hwy 225, Bay Minette, AL $_____

Voting Machine Building
203 Dickman Rd., Bay Minette, AL $____

LOXLEY

Ellisville Community Center (Loxley)
14090 Co. Rd 66, Loxley, AL $_____

McBride C & D Landfill (Loxley)
14200 Co. Rd. 64, Loxley, AL $_____

ROBERTSDALE

BRATS
18100 Co. Rd 54, Robertsdale, AL $_____

Robertsdale Sheriff Office
18126 Co. Rd 54, Robertsdale, AL $_____

Emergency Mgmt (R'dale) (2-Buildings)
23100 McAuliffe Dr., Robertsdale, AL $_____

Robertsdale Central Annex
22251 Palmer St., Robertsdale, AL $____

Robertsdale Central Annex II (All of Building)
22070 Hwy 59 South, Robertsdale, AL $_____

Coroner's Office
18126B Co. Rd 54, Robertsdale, AL $____

Robertsdale Sheriff Storage Facility
18126 Co. Rd 54, Robertsdale, AL $_____

State of Alabama Health Dept. (R'dale)
23280 Gilbert Dr., Robertsdale, AL $____

Robertsdale Coliseum & Fairgrounds
19477 Fairground Rd, Robertsdale, AL $_____

Robertsdale Sheriff Maintenance Shop $_
18185 Raymond Fell Drive, Robertsdale,

Robertsdale Ft. Jones
18185 Raymond Fell Drive, Robertsdale, AL $_____

Sheriff Metal Storage Building
18155 Raymond Fell Drive, Robertsdale, AL $_____

Symbol Health Clinic $_____
22259A Palmer St., Robertsdale, AL

Eastfork Inert Landfill $_____
17971 Catus Ct., Elberta, AL 36530

BID #WG22-03 RESPONSE FORM

Fire Extinguisher Service
Inspection Cost Per Visit:

FAIRHOPE

Fairhope Courthouse
1100 Fairhope Ave., Fairhope, AL $_____

Fairhope BRATS Hub
20531 Bishop Rd., Fairhope, AL $_____

CRO/State Probation
20555 Bishop Road, Fairhope, AL $_____

Fairhope BRATS Hub
918 Fairhope Ave., Fairhope, AL $_____

SILVERHILL

Silverhill Highway Dept. (All Bldgs.)
22220 West Blvd., Silverhill, AL $_____

Silverhill Highway Construction Bldg.
22220 West Blvd., Silverhill, AL $_____

SUMMERDALE

Magnolia Landfill (All Buildings)
15093 Landfill Dr., Summerdale, AL $_____

Animal Shelter @ Magnolia Landfill
15240 Co. Rd. 49, Summerdale, AL $____

FOLEY

Foley Courthouse $_____
201 East Section Ave., Foley, AL

Building Maintenance Dept. $_____
1013 North Juniper Street, Foley, AL
(old Foley Hwy Building)

Building Maintenance Building
201 East Section Ave. Foley, AL $_____

Foley Highway (New Site)
20764 Co. Rd 24, Foley, AL $_____

BID #WG22-03 RESPONSE FORM

Fire Extinguisher Service

Inspection Cost Per Year

2.5 lb ABC		
2.5 lb ABC 6-Yr		
5 lb ABC		
5 lb ABC 6-yr		
10 lb ABC		
10 lb ABC - 6yr		
20 lb ABC		
20lb 6 yr		
K Type		

Cost P/Charge Extinguisher Units:

2.5 lb ABC		
2.5 lb ABC 6-Yr		
5 lb ABC		
5 lb ABC 6-yr		
10 lb ABC		
10 lb ABC - 6yr		
20 lb ABC		
20lb 6 yr		
K Type		
2.5 lb. BC		
5 lb BC		
5 lb Co2		
10 lb BC		
20 lb BC		
10 lb Co2		
15 lb Co2		
20 lb Co2		
50 lb Co2		
50lb ABC		
150 lb ABC		
2.5 gallon K		
6 liter K Class		
50lb Wheel Unit		
150 lb Wheel Unit		
11 lb Halotron		

BID #WG22-03 RESPONSE FORM

Fire Extinguisher Service

Cost of Purchasing New Units:		
2.5 lb ABC w/ Vehicle Bracket		
5 lb ABC w/Wall Hanger		
10 lb ABC w/Wall Hanger		
20 lb ABC w/Wall Hanger		
50 lb ABC Wheel Unit		
125 lb ABC Wheel Unit		
150 lb BC Wheel Unit		
5 lb Co2 w/Wall Hanger		
10 lb Co2 w/Wall Hanger		
15 lb Co2 w/Wall Hanger		
20 lb Co2 w/Wall Hanger		
50 lb Co2 Wheel Unit		
100 lb Co @ Wheel Unit		
2.5 lb Halotron w/Vehicle Bracket		
5 lb Halotron w/ Wall Hanger		
11 lb Halotron w/Wall Hanger		
15.5 Halotran w/Wall Hanger		
6 liter K-Class w/Wall Hanger		
2.5 gal K-Class w/Wall Hanger		
2.5 Gallon Water		
4.75 Clean Guard		
9lb Clean Guard		
13lb Clean Guard		

Baldwin County Commission

Agenda Action Form

File #: 22-0084, **Version:** 1 **Item #:** BE8

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wanda Gautney, Purchasing Director/Madison Steele, Parks Director
Submitted by: Wanda Gautney, Purchasing Director

ITEM TITLE
Competitive Bid #WG22-04 - Annual Rental of Portable Toilets for the Baldwin County Commission

STAFF RECOMMENDATION
Take the following actions:

1) Approve the specifications and authorize the Purchasing Director to place a competitive bid for the Annual Rental of Portable Toilets; and

2) Further, authorize the Chairman/Purchasing Division Commissioner for the Baldwin County Commission to approve any necessary addendums or clarifications if required after the bid is advertised.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: This is an annual bid. Staff recommends the Commission approve the specifications and authorize Purchasing Director to place a competitive bid for the Annual Rental of Portable Toilets.

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: 10/19/2021

Individual(s) responsible for follow up: Wanda Gautney, Purchasing Director

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Mail Bids

Additional instructions/notes: N/A

BID #WG22-04 SPECIFICATIONS

GENERAL

It is the intent and purpose of this bid to enter into a contract to establish firm prices for materials supplies and services for the contract period shown. Delivery shall be made or services provided as needed throughout the contract period, or as required by the specifications. County will issue individual purchase orders for each department and location participating in this contract. Vendor must provide separate itemized billing for each unit services.

CONTRACT PERIOD

It is the intent of the Baldwin County Commission to award this contract for a twelve (12) month period. However, the Baldwin County Commission may, at their option and in agreement with the Successful Bidder, renew the contract for up to two (2) additional years (2022 and 2023), in twelve (12) month increments. The Baldwin County Commission will, in writing, notify the Contractor thirty (30) days prior to expiration of the 2021 contract with its intend to extend the contract. The prices for 2021 shall also apply to the extension period(s).

The County does not anticipate utilization of a long, formal written contract document to bind the County and the successful bidder. **The County will issue purchase orders to the successful bidder as service is required.** The successful bidder acknowledges by acceptance of the County purchase orders for awarded service that the bidder is bound to the terms, conditions and requirements as stated in this document.

Successful bidder shall not assign this contract to any other party without prior written approval of the Baldwin County Commission. Contract shall not be assigned to an unsuccessful bidder who was rejected because he was not a responsive or responsible bidder.

The contract shall become effective the date noted on the Notification of Award letter, which will be mailed to the successful vendor.

The County should be invoiced every 30 days for the rental of the portable toilets. The County's standard payment terms are net 30 days from acceptance. The County will not consider any bids requiring C. O. D. payments.

Any questions concerning these specifications should be addressed to the Purchasing Director, at 251-580-2520, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

County reserves the right to modify service on an as needed basis: Units may be deleted or added; pickup frequency increased or decreased. County makes no guarantee as to the exact number of units, pickups, or locations to be covered under this contract. Rate bid is to include all rental rate, service, dumping fees, state mandated fees for disposal of waste, initial delivery and removal of the unit and any and all other items of cost not mentioned, but are considered customary for such service. The County will not pay any additional charges during the term of this contract.

Delivery does not constitute acceptance. All toilets delivered to the County as a result of an award of this contract are subject to inspection and testing. Items that do not meet specifications will be rejected and returned to the vendor at vendor's expense. Failure to reject upon receipt, however, does not relieve the vendor of this liability. If tests subsequent to delivery reveal a failure to meet specifications, the vendor shall be deemed to have breached his contract.

Any bid that imposes a service fee or any other type of fee on any order not exceeding a minimum order quantity or minimum purchase order dollar amount, will be determined a non-responsive bid and will not be considered for award.

Failure to adhere to any or all terms, conditions and specifications as set forth in the contract may result in the immediate termination of the contract. Should termination occur, the holder of the contract may be declared a non-responsible vendor.

The County reserves the right to cancel the contract, in whole or part, and seek new bids at any time the County determines that the service being supplied is not satisfactory and unacceptable.

All bidders shall be required to demonstrate to the satisfaction of the County that they have adequate financial resources, experienced personnel, equipment and expertise to perform the services required. No contract will be awarded to any bidder who, as determined by the County, has an unsatisfactory performance record or inadequate experience or who lacks the necessary capital, organization, personnel and equipment to conduct and complete the collection, hauling and disposal services in strict accordance with the specifications.

Bids may be solicited for any product included in this contract where an immediate/emergency need exists, including large quantities. The decision of the Purchasing Manager as to what constitutes a biddable situation shall be final and shall not be construed as a breach of contract.

Each bidder shall fully acquaint itself with conditions relating to the scope and restrictions attending the work to be done under the contract. Bidders shall thoroughly examine and be familiar with the specifications.

The bidders shall obtain all information concerning the conditions which may affect their work.

Any quantity reference in the bid specifications are estimates only, and do not represent a commitment on the part of the Baldwin County Commission to any level of billing activity. It is understood and agreed that the agreement shall cover the actual quantities ordered during the contract period.

PREPARATION OF BIDS

Forms furnished, or copies thereof shall be used and strict compliance with requirement of the invitation, these instructions and the general specifications for the project are necessary. Special care should be exercised in the preparation of bids. Failure or omission of any bidder to receive or examine any form, instrument, addendum or other document, or to acquaint itself with existing conditions, shall in no way relieve it of any obligations with respect to this proposal or to the contract. The County shall make all such documents available to the bidders.

BIDS FOR ALL OR PART

The County reserves the right of awarding the contract in whole or in part, according to the best interest of the County.

BIDDERS QUALIFICATIONS

The County may make such investigations as they deem necessary to determine the ability of the bidders to furnish all materials, and the bidder shall furnish to the County all such information and data for this purpose as the County may request. The County reserves the right to reject any

bid if the evidence submitted, or investigation of such bidder, fails to satisfy the County that such bidder is properly qualified to carry out the obligations of the contract and to furnish all materials contemplated therein. Conditional bids will not be accepted.

LAWS AND REGULATIONS

The bidder's attention is directed to the fact that all applicable state laws, municipal ordinances, and rules and regulations of all authorities having jurisdiction shall apply to the contract throughout, and they will be deemed to be included in the contract the same as though herein written out in full.

COMPENSATION INSURANCE

The Contractor shall procure and shall maintain during the life of this contract Workmen's Compensation Insurance for all of his employees to be engaged in work on the project under his contract, and, in case of any such work sublet, the Contractor shall require the Subcontractor similarly to provide Workmen's compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In case of a class of employees engaged in hazardous work on the project under this contract is not protected under the Workmen's Compensation Statute, the Contractor shall provide and shall cause each Subcontractor to provide adequate employer's general liability insurance for the protection of such of his employees as are not otherwise protected. The Baldwin County Commission, its Departments and its employees shall be named as additional insured.

CONTRACTOR'S PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

The Contractor shall procure and shall maintain during the life of this contract a Comprehensive Liability Policy providing bodily injury and property damage coverage on an occurrence basis including damages arising from blasting explosion or collapse, mechanical equipment digging in streets or highways, and including completed operations, independent contractors and contractual general liability, with limits not less than $1,000,000.00, combined single limit, for bodily injury and property damage liability for each occurrence, plus $1,000,000.00 personal and advertising injury. The Baldwin County Commission, its Departments and its employees shall be named as additional insured.

The Contractor agrees to maintain such coverage as is required in this section for a period of one (1) year from the date of acceptance of the work by the County or at the date of the final amounts owed the Contractor by the County, whichever occurs first.

COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE

The contractor agrees to carry a Comprehensive Automobile Liability Policy providing bodily injury liability on an occurrence basis and providing property damage liability on an accident basis. This policy shall protect the Contractor against all liability arising out of the use of automobiles, both private, passenger and commercial, regardless of whether such vehicles shall be owned by the Contractor, owned by others or hired. Limits of liability for Comprehensive Automobile Liability Insurance shall be $1,000,000, combined single limit, for bodily injury and

property damage each occurrence. The Baldwin County Commission, its departments and its employees shall be names as additional insured.

COUNTY'S PROTECTIVE LIABILITY INSURANCE

The Contractor shall at his expense provide County's protective Liability policies issued in the names of the County and its departments covering their liability for operation of the Contractor. These policies shall provide limits of liability in the amount of $1,000,000.00 each occurrence bodily injury and property damage, $1,000,000.00 aggregate.
Such policies shall name the Baldwin County Commission as an additional insured and shall contain an endorsement providing that the County will be given written notice not less than thirty (30) days prior to cancellation or change of coverage provided by said policies. Certificate of insurance must be presented to the County within 10 days of notice of award and prior to commencement of any work. Insurance shall be through companies authorized to do business in the State of Alabama.

INDEMNITY AND HOLD HARMLESS PROVISION

To the fullest extend allowed by law, Contractor shall indemnify, defend and hold County and its Commissioners, affiliates, employees, agents, and representatives (collectively "County") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs, and expenses including, without limitations, attorneys' fees, and costs, for any and all personal injury (including death) and property damage of any kind or nature whatsoever, incurred by, asserted against, or imposed upon County, as a result of or in any manner related to provision of services hereunder, or any act or omission, by Contractor. Contractor shall provide the County with proof of general liability coverage including the County as an additional insured. This indemnification shall survive the expiration or termination of this agreement.

SERVICE REQUIREMENTS

Successful bidder shall meet with a representative from the County to discuss their current needs and determine the most efficient way to fill their needs: number of units needed; frequency of pickup service; best location for placement of portable toilet(s); best time to empty toilets, etc. Vendor shall provide written document containing names, telephone numbers, fax numbers, and email address to contact when (not if) problems arise. The document should clearly indicate who to contact based on the given situation. Company must guarantee a call back within two hours, during normal working hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, if no one is available at the time the call is placed.

Units are to be placed at any location listed on purchase orders in Baldwin County issued by the County Commission. **Unit(s) shall be delivered within 72 hours after receipt of purchase order number.**

Units are to be cleaned and serviced to the satisfaction of the County on a regular daily or weekly basis that is selected for each site. The County may request additional cleaning and servicing, if necessary.

Specifications
Polyehtylene Cabanas, or equal.

Minimum Size
7'2" high - 46" wide, 49" depth – weight – 300 lbs.-
Gallon capacity – 60.

Handicap units must meet ADA standards and will be placed as required by the Baldwin County Commission.

Self-closing door with privacy latch on inside. Units must be in near to new condition and must meet State Health Department requirements. County will reserve the right to refuse any units it deems unacceptable in appearance or condition. The vendor will be responsible to obtain any and all permits or licenses.

The County currently has a need for approximately 20 units which will be located at various locations across Baldwin County as listed below:

Location
Cliff's Landing, 7500 Cliff's Landing Rd., Bay Minette, AL
Marlow Park/Ferry Dock Honey Road, Summerdale, AL
Perdido Bay Park, 12100 County Rd. 99, Lillian, AL
Latham Park, Carter Rd., Tensaw, AL
Mullet Point Park, County Rd. 1, Point Clear, AL
Bicentennial Park, 51233 St. Hwy 225, Bay Minette, AL
Live Oak Landing, 8700 Live Oak Rd., Bay Minette, AL
Viewpoint Park Boat Ramp, End of County Rd. 1
Boat Ramp, Lost River Road, Seminole, AL
Mary Ann Nelson Park, Mary Ann Beach & County Rd. l, Fairhope, AL
Bohemian Park, County Rd. 48, Fairhope, AL
Vaughn Community Center, County Rd. 21, Stockton, AL
Fort Mims Park, Tensaw, AL
Josephine Park, 28693 Josephine Drive, Josephine, AL
Lillian Boat Launch, Lillian, AL
Magnolia Landfill, 15140 County Rd. 49, Summerdale, AL
McBride Landfill, 14200 County Rd. 64, Loxley, AL
Transfer Station, 42901 Nicholsville Rd., Bay Minette, AL
Old Brady Road Dirt Pit, 21381 Old Brady Rd., Robertsdale, AL
Eastfork Landfill, 17917 CC Rd., Elberta, AL

And any new locations as required by the Baldwin County Commission

BID WG22-04 RESPONSE FORM
Rental of Portable Toilets

Date: _____

Out of State _____ or _____ If yes, _____
Yes No Registration Number

Company Name: _____

Address: _____

_____

Company Rep: _____
(Rep. Name Typed or Printed)

Position: _____

Phone: _____

Fax: _____

Description	
Price Per Unit/Week (Including Servicing and Cleaning)	$
Handicap/Price Per Unit/Week (Including Servicing and Cleaning)	$
Price Per Unit for Additional Cleaning/Per Week (If Required)	$

Baldwin County Commission

Agenda Action Form

File #: 22-0097, **Version:** 1 **Item #:** BE9

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wanda Gautney, Purchasing Director/Joey Nunnally, County Engineer/Seth Peterson, Pre-Construction Manager
Submitted by: Wanda Gautney, Purchasing Director

ITEM TITLE
Quotes for Prescribed Burn of 77 Acres within Bon Secour Dredge Site, Bon Secour, Alabama, for the Baldwin County Commission

STAFF RECOMMENDATION
Award the quote to Wildlife Solutions, Inc., in the amount of $9,548.00 for the Prescribed Burn of 77 Acres within Bon Secour Dredge Site, Bon Secour, Alabama, and authorize the Chairman to execute the Public Works Contract and Certificate of Compliance. (This Contract shall be effective from November 1, 2021, through April 30, 2022.)

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: Staff solicited quotes for a prescribed burn of 77 acres within Bon Secour Dredge Site. This proposed burn is intended to reduce the fuel loads within the site and to keep vegetation from becoming difficult to maintain. Only one (1) quote was received. The quote was received from Wildlife Solutions, Inc., in the amount of $9,548.00. Recommend the Commission approve the quote and authorize the Chairman to execute the Public Works Contract and Certificate of Compliance.

FINANCIAL IMPACT

Total cost of recommendation: $9,548.00

Budget line item(s) to be used: HW22125-4CONTRCN-4CONTR SRV-4CONT111

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
Standard Public Works Contract

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: 10/19/2021

Individual(s) responsible for follow up: Wanda Gautney, Purchasing Director

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Letter to Vendor

Additional instructions/notes: N/A

Bid Response Form

Contractor: Wildlife Solutions Inc

Address: PO Box 1735

Fairhope, AL 36533

Signature: [signature] Date: 9/30/2021

Contact Person: JJ McCool or Angi Chancellor

Contact Phone Number: 251-654-6778 Email: admin@wildlifesolutionsinc.com

Item	Qty.	Unit	Unit Cost	Total Bid
Prescribe burn 77 acres & establish fire lines	77	Acre	$124.00	$9548.00

Quotes must be submitted to the Baldwin County Purchasing Director, Wanda Gautney, no later than **10:30 A.M., Thursday, September 30, 2021.** The physical address is 257 Hand Avenue, Bay Minette, Alabama, 36507. The mailing address is 312 Courthouse Square, Suite 15, Bay Minette, Alabama, 36507. Email is an approved method of sending quotes, but please confirm receipt of the quote. Emails shall be sent to (wgautney@baldwincountyal.gov)

State of Alabama)
County of Baldwin)

CONTRACT FOR PUBLIC WORKS SERVICES

This Contract for **Professional and Construction** Services is made and entered into by and between the County of Baldwin (hereinafter called "COUNTY") acting by and through its governing body, the Baldwin County Commission, and Wildlife Solutions, Inc., (hereinafter referred to as "PROVIDER").

WITNESSETH:

Whereas, the Baldwin County Commission staff obtained quotes to implement a Prescribed Burn of 77 acres within the Bon Secour Dredge Site, Bon Secour, Alabama; and

Whereas, PROVIDER presented the quote to the COUNTY. Therefore, COUNTY wishes to retain PROVIDER, and PROVIDER wishes to provide those services hereinafter set out under the following terms and conditions.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the sufficiency of which being hereby acknowledged, PROVIDER and COUNTY do hereby agree as follows:

I. Definitions. The following terms shall have the following meanings:

A. COUNTY: Baldwin County, Alabama

B. COMMISSION: Baldwin County Commission

C. PROVIDER: Wildlife Solutions, Inc.

II. Obligations Generally. The COUNTY hereby retains, and the PROVIDER agrees to perform for the COUNTY, those public works services as hereinafter set forth. This document shall serve as the binding contract for the services of PROVIDER. PROVIDER shall immediately commence performance of the services outlined herein upon full execution of this Contract. All work shall be commenced and completed in a timely manner as, and at the times, herein set out.

III. Recitals Included. The above recitals and statements are incorporated as part of this Contract and shall have the effect and enforceability as all other provisions herein.

IV. Professional Qualifications. For the purpose of this Contract, the PROVIDER represents and warrants to the COUNTY that it possesses the professional, technical, and administrative personnel with the specific experience and training necessary to provide the professional services required herein.

V. No Prohibited Exclusive Franchise. The COUNTY neither perceives nor intends, by this Contract, a granting of an exclusive franchise or violation of Art. I, Section 22 of the Alabama Constitution.

VI. Representation/Warranty of Certifications, Etc. PROVIDER represents and warrants that PROVIDER is presently certified, licensed and otherwise permitted under all necessary and applicable laws and regulations to perform the services herein, and that PROVIDER shall renew, maintain, and otherwise ensure that all such certifications, licenses, and permits are current and valid, without interruption, for and through completion of the services. The representation and warranty aforesaid is a material inducement to the COUNTY in entering this Contract, and the parties agree that the breach thereof shall be deemed material at the County's option.

VII. Legal Compliance. PROVIDER shall at all times comply with all applicable Federal, State, local and municipal laws and regulations.

VIII. Independent Contractor. PROVIDER acknowledges that it is an independent contractor, and PROVIDER shall at all times remain as such in performing the services under this Contract. PROVIDER is not an employee, servant, partner, or agent of the COUNTY and has no authority, whether express or implied, to contract for or bind the COUNTY in any manner. The parties agree that PROVIDER shall be solely responsible for and shall have full and unqualified control over developing and implementing its own means and methods, as it deems necessary and appropriate in providing the aforementioned services, and that the COUNTY's interests herein are expressly limited to the results of said services. PROVIDER is not entitled to unemployment insurance benefits, and PROVIDER is responsible for and obligated to pay any and all federal and state income tax on any monies paid pursuant to this Contract.

IX. No Agency Created. It is neither the express nor the implied intent of PROVIDER or COUNTY to create an agency relationship pursuant to this Contract. Therefore, the PROVIDER does not in any manner act on behalf of COUNTY and the creation of such a relationship is prohibited and void.

X. Unenforceable Provisions. If any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

XI. Entire Agreement. This Contract represents the entire and integrated agreement between COUNTY and PROVIDER and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended only by written instrument signed by all parties.

XII. Failure to Strictly Enforce Performance. The failure of the COUNTY to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Contract shall not constitute, and shall never be asserted by PROVIDER as constituting, a default or be construed as a waiver or relinquishment of the right of the COUNTY to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

XIII. Assignment. This Contract or any interest herein shall not be assigned transferred or otherwise encumbered by PROVIDER without the prior written consent of the COUNTY, which may be withheld or granted in the sole discretion of the COUNTY.

XIV. Ownership of Documents/Work. The COUNTY shall be the owner of all copyright or other intellectual property rights in reports, documents and deliverables produced and paid for under this Contract, and to the extent permitted by Alabama law, any such material may be reproduced and reused at the discretion of the COUNTY without payment of further consideration. PROVIDER shall not transfer, disclose, or otherwise use such information for any purpose other than in performance of the services hereunder, without the COUNTY's prior written consent, which may be withheld or granted in the sole discretion of the COUNTY.

XV. Notice. Notice required herein shall be in writing, unless otherwise allowed, and said notice shall be deemed effective when received at the following addresses:

PROVIDER: Wildlife Solutions, Inc.
P. O. Box 1735
Fairhope, AL 36533
ATTN: J. J. McCool

COUNTY: Baldwin County Commission
c/o Chairman
312 Courthouse Square
Suite 12
Bay Minette, AL 36507

XVI. Services to be Rendered. PROVIDER is retained by the COUNTY as a professionally qualified **contractor**. The general scope of work for the services shall include all the terms and Conditions of the **"Attachment A,"** the same being expressly incorporated herein by reference, and without limitation will encompass:

"Quotes for the Prescribed Burn of 77 acres within the Bon Secour Dredge Site, Bon Secour, Alabama, for the Baldwin County Commission described in Attachment A".

A. PROVIDER will provide ongoing communications with COUNTY regarding this service, including updates, emails and etc. as requested. Additionally, PROVIDER will meet with COUNTY as needed or requested.

B. PROVIDER is responsible for the professional quality, technical accuracy, timely completion and coordination of all services furnished by or in relation to this Contract.

C. PROVIDER represents and warrants that its services shall be performed within the limits and standards provided by the COUNTY, in a manner consistent with the level of care and skill ordinarily exercised by similar providers under similar circumstances at the time the services are performed.

XVII. General Responsibilities of the COUNTY.

A. The COUNTY shall provide reasonable notice to PROVIDER whenever the COUNTY actually observes or otherwise actually becomes aware of any development that affects the scope or time of PROVIDER's services hereunder or any defect or nonconformance in the work of PROVIDER.

B. The COUNTY shall pay to PROVIDER the compensation as, and subject to the terms set out below.

XVIII. Termination of Services. The COUNTY or PROVIDER may terminate this Contract, with or without cause or reason, by giving ten (10) days written notice of such to the other party. Upon receipt of such notices, PROVIDER shall discontinue its work to the extent specified in the notice.

In the event of termination, the COUNTY shall pay PROVIDER for all services satisfactorily rendered, and for any expenses deemed by COUNTY to be a reimbursable expense incurred pursuant to this Contract and prior to the date of termination.

XIX. Compensation Limited. The compensation to be paid to the PROVIDER shall be the full compensation for all work performed by PROVIDER under this Contract. Any and all additional expenditures or expenses of PROVIDER, not listed in full within this Contract, shall not be considered as a part of this Contract and shall not be demanded by PROVIDER or paid by COUNTY.

XX. Direct Expenses. Compensation to PROVIDER for work shall be **$9,548.00.** Said compensation shall be all inclusive, including without limitation, reimbursement of all cost, incidentals and operating expense associated with those directly engaged in performance of the requested services

XXI. Method of Payment. PROVIDER shall submit invoices to the COUNTY for payment for work performed. Such invoice shall be accompanied by a detailed account of compensation to be paid PROVIDER.

Payment shall be made by the COUNTY within thirty (30) days of the approval of the invoice submitted by the PROVIDER. The COUNTY agrees to review and approve invoices submitted for payment in a timely manner.

XXII. Effective and Termination Dates. This Contract shall be effective upon full execution with work beginning on November 1, 2021 and shall terminate upon either the expiration date of April 30, 2022, or upon written notification thereof received by either party within the required ten (10) day period. Nothing herein stated shall prohibit the parties from otherwise terminating this Contract according to the provisions herein.]

XXIII. Force Majeure. The Parties hereto shall incur no liability to the other if performance becomes impossible or impracticable by reason of an event or effect that the parties could neither have anticipated nor controlled. This allowance shall include both an act of nature and acts of third parties. Any costs that would otherwise be incurred and/or necessitated by the provisions herein shall be alleviated for either party by such event or effect.

XXIV. Indemnification. To the fullest extent allowed by law, Provider shall indemnify, defend and hold County, and its Commissioners, affiliates, employees, agents, and representatives (collectively "County") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs, and expenses including, without limitations, attorneys' fees, and costs, for any and all personal injury (including death) and property damage of any kind or nature whatsoever, incurred by, asserted against, or imposed upon County, as a result of or in any manner related to provision of services hereunder, or any act or omission, by Provider. Contractor shall provide the COUNTY with proof of general liability coverage including the COUNTY as an additional insured. This indemnification shall survive the expiration or termination of this Contract.

XXV. Number of Originals. This Contract shall be executed with three (3) originals, each of which are equally valid as an original.

XXVI: Governing Law: This Contract in all respects, including without limitation its formation, validity, construction, enforceability and available remedies, shall be governed by the laws of the State of Alabama, without regard to Alabama conflict of law principles.

XXVII: Insurance: Prior to performing services pursuant to this Contract, Provider shall carry, with insurers satisfactory to County, throughout the term of hereof, Auto Liability Insurance, including owned, hired and non-owned vehicles, with limits of not less than $1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; Commercial General Liability Insurance, including all contractual liability hereunder, with limits not less than $1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; and Worker's Compensation Insurance, meeting the statutory limits of the State of Alabama and Employer's Liability Insurance fully covering all employees and supervisors participating in the work at the subject property site. All liability insurance shall name the County as an additional insured. Prior to commencing operations hereunder, a Certificate of Insurance evidencing such coverage, satisfactory to County, shall be furnished to County, which shall specifically state that such insurance shall provide for at least ten (10) days' notice to County in the event of cancellation, termination or any change in such insurance policies. The worker's compensation certificate shall bear an endorsement clearly evidencing a waiver of the right of subrogation against County and County Representatives. Should Provider fail to furnish current evidence upon demand of any insurance required hereunder, or in the event of cancellation, termination or change in any such insurance, County may, at its option, suspend this Contract until insurance is obtained, terminate this Contract immediately without further action, or hold Provider in material default and pursue any and all remedies available.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the last day of execution by the COUNTY as written below.

COUNTY		ATTEST:	
JOE DAVIS, III, Chairman	/Date	WAYNE DYESS, County Administrator	/Date

State of Alabama)

County of Baldwin)

I, _____, a Notary Public in and for said County, in said State, hereby certify that, Joe Davis, III, whose name as Chairman of Baldwin County Commission, and Wayne Dyess, whose name as County Administrator, are known to me, acknowledged before me on this day that, being informed of the contents of the Contract for Professional and Construction Services, they, as such officers and with full authority, executed same knowingly and with full authority to do so on behalf of said Commission.

GIVEN under my hand and seal on this the _____ day of _____, 2021.

_____
Notary Public
My Commission Expires

SIGNATURE PAGE AND NOTARY PAGE TO FOLLOW

PROVIDER:

Wildlife Solutions, Inc.

_____/_____
By _____/Date
Its _____

State of Alabama)

County of Baldwin)

I, _____, Notary Public in and for said County and State, hereby certify that _____ as _____of Wildlife Solutions, Inc., whose name is signed to the foregoing in that capacity, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Contract for Professional and Construction Services, he executed the same voluntarily on the day the same bears date for and as an act of said Wildlife Solutions, Inc.

GIVEN under my hand and seal on this the _____ day of _____, 2021.

_____
Notary Public
My Commission Expires

"ATTACHMENT A"

Bid Response Form

Contractor: Wildlife Solutions Inc

Address: PO Box 1735

Fairhope, AL 36533

Signature: _____ Date: 9/30/2021

Contact Person: JJ McCool or Angi Chancellor

Contact Phone Number: 251-654-6778 Email: admin@wildlifesolutionsinc.com

Item	Qty.	Unit	Unit Cost	Total Bid
Prescribe burn 77 acres & establish fire lines	77	Acre	$124.00	$9548.00

Quotes must be submitted to the Baldwin County Purchasing Director, Wanda Gautney, no later than **10:30 A.M., Thursday, September 30, 2021.** The physical address is 257 Hand Avenue, Bay Minette, Alabama, 36507. The mailing address is 312 Courthouse Square, Suite 15, Bay Minette, Alabama, 36507. Email is an approved method of sending quotes, but please confirm receipt of the quote. Emails shall be sent to (wgautney@baldwincountyal.gov)

STATE OF ALABAMA

CERTIFICATE OF COMPLIANCE FOR PUBLIC WORKS PROJECT

BALDWIN COUNTY

THE UNDERSIGNED hereby certifies that the following described final Contract(s) and/or bond(s) to be awarded is let in compliance with Title 39, Code of Alabama, 1975, and all other applicable provisions of law, to-wit:

"Quotes for the Prescribed Burn of 77 acres within Bon Secour Dredge Site, Bon Secour, Alabama, for the Baldwin County Commission."

IN WITNESS WHEREOF, this Certification is executed this the _____ day of _____, 2021.

BALDWIN COUNTY COMMISSION

By:_____
As Its Chairman

ATTEST:

By:_____
As Its County Administrator

Baldwin County Commission

Agenda Action Form

File #: 22-0080, **Version:** 1 **Item #:** BE10

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wanda Gautney, Purchasing Director/Zach Hood, EMA Director/Brian Peacock/ CIS Director
Submitted by: Wanda Gautney, Purchasing Director

ITEM TITLE
Request of Proposals (RFP) for Baldwin County Emergency Management Software

STAFF RECOMMENDATION
Approve the attached Request for Proposals (RFP) for the purchase and implementation of Baldwin County Emergency Management Software and authorize the Purchasing Director to advertise the RFP.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: The Commission approved in the FY 21/22 budget the purchase and implementation of Emergency Management Software for managing communications and coordinating activities between teams during an emergency. This software will enhance connections between responders in the field and their command center.
Staff recommends the Commission authorize the Purchasing Director to advertise the RFP.

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?

N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: 10/19/2021

Individual(s) responsible for follow up: Wanda Gautney, Purchasing Director

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Advertise RFP

Additional instructions/notes: N/A

BALDWIN COUNTY
REQUEST FOR PROPOSALS (RFPs)
EMERGENCY MANAGEMENT SOFTWARE

Baldwin County Commission is soliciting proposals for an emergency management software solution. This software will be utilized during emergency activation by county employees.

SUBMISSION PROCEDURES, REQUIREMENTS

One (1) original and three (3) copies of the proposal must be received by the County prior to **3:00 P.M., (Central Standard Time) on Friday, November 19, 2021.** All copies of the proposal must be under sealed cover and plainly marked. **No emailed or faxed proposals will be accepted**. Proposals should be delivered or mailed to:

Wanda Gautney, Purchasing Director
312 Courthouse Square, Suite 15 (mailing address)
257 Hand Avenue (physical address)
Bay Minette, AL 36507
Phone: (251) 580-2520

INQUIRIES AND QUESTIONS

Inquiries and questions should be submitted by email only to Wanda Gautney, Purchasing Director, at wgautney@baldwincountyal.gov no later than **3:00 P. M., Central Standard Time, on Friday, November 12, 2021.**

SCOPE OF SERVICES

PURPOSE

Baldwin County is seeking proposals from qualified vendors to provide emergency management software. The County does not currently have emergency management software.

OBJECTIVE

The County's objective is to obtain a software system that provides an integrated solution for employees to utilize during emergency activation. The County desires a single vendor who provides all services, including software, installation, training, and any other services as required. The proposed software must be capable of satisfying the increasing information demands of Baldwin County through incremental upgrades and expansion. The new system would provide a solution to manage all operations during emergencies.

At this time the County is focusing mainly on a cloud base hosted solution.

SYSTEM REQUIREMENTS

Vendor should strive to meet the below listed requirements. If vendor cannot meet said requirements, written documentation describing why should be submitted. If vendor has an alternative solution to one of the requirements, please provide documentation in writing.

The vendor should meet the following:

- Pre-Planning to Recovery
- Generate IAP and workflow
- Internal and external Collaboration (with email integration and robust group chat)
- Archive Material – Clean
- Ability to track multiple incidents
- Reference Library
- Cloud Based with offline data collection capabilities
- Mapping integration with the County existing GIS mapping including Arc GIS online
- Weather information able to be added to dashboard
- ICS/ IAP builder Internalized – Drop down Menus
- Integrated check-in and check-out – Role specific (API Format) Timesheet
- Maintenance Data and Storage
- Document Storage and Retrieval
- Sit/Stat Board
- Built in checklist – Stays on screen and viewed by all
- Staffing Calculator?
- Task Management/Assignments – In lieu of paper/email requests
- Robust reporting/Document Retrieval and Archive
- Damage Assessment Tools – Windshield Survey
- Logistics Management – Request to Fulfillment
- Dedicated Mobile App with full features
- Watch Log for Pre-EOC Activation – Watch Officer would be assigned to enter pertinent information (Email/text notifications of new alerts and/or activation)
- Shelter Status/Tracking – COVID Packages for tracing
- Internal mass notification system
- No HTML coding, (point and click configurable)- No code configuration of tools and dashboards
- Two-way email, SMS and phone notifications
- Form, Workflow, and Dashboard building
- Road Closure status
- Shelter Status
- Mission Tracking
- After Action Reporting
- Battle Rhythm

COUNTY NETWORK/HARDWARE INFORMATION

The vendor should take the County's network into consideration when proposing software and licensing. If there are any requirements involving the County's data network, it is the vendor's responsibility to make this clear in the proposal.

The County's data network supports nearly 1200 users with data and voice services. The network consists of redundant security, switching and routing managed internally.

PROJECT MANAGEMENT AND IMPLEMENTATION

a. The County will provide a designated project manager and expects the vendor to do the same. Please include project manager resumes. Project managers cannot be software trainers.

b. Include a preliminary implementation schedule for all applications, including the required time for system and application training, and program testing.

MAINTENANCE AND SUPPORT

a. Please describe all support services for system.
b. Provide information about periodic system enhancements and updates.

TRAINING AND EDUCATION

System training is key to system selection and implementation. System administrator training, as well as user training, should employ a train-the-trainer approach. User training manuals/documentation should provide screen shots/steps that are clear and easy to understand for the end user.

REFERENCES

Provide references for a minimum of three (3) completed government installations that use the proposed system in a comparable computing environment. The information should include agency name, address, contact name, telephone number and date of installation.

COST PROPOSAL

Please provide all costs for the proposed system, including:

- Software licensing
- Implementation
- Project management
- Training
- Annual maintenance

- Licensing, support and maintenance cost projected out for five years
- Total cost of ownership analysis over this period of time
- Cost to cover 100 users. Unlimited of the 100 users may be administrators
- Two-way integration into Alabama EMA's WebEOC system
- 24/7 support

TERMS AND CONDITIONS

The County reserves the right to modify the scope of the work for this project at any time.

The County reserves the right to accept proposals on individual items listed, on group items, or on the proposal as a whole; to reject any and all bid proposals; to waive any informality in the bids; and to accept the bid proposal that appears to be in the best interest of the County.

PRIME VENDOR RESPONSIBLITIES

Vendor will assume responsibility for delivery of services and application performance, regardless of whether or not the Vendor subcontracts any of these items and services. The Vendor will be the sole point of contact regarding contractual matters, including performance of services and the payment of any and all charges resulting from contract obligations. Vendor will be totally responsible for all obligations outlined under this RFP.

HOLD HARMLESS PROVISION

The vendor shall at all times indemnify and save harmless the County and its Departments, their County Commissioners, officers and employees, against all liability, claim of liability, loss, cost or damage, including death, and loss of services, on account of any injury to persons or property, occurring from any cause whatsoever in the work involved in the contract, and will at his expense defend on behalf of the County and its departments, their officers and employees, either or all, any suit brought against them or any of the arising from any such cause.

SERVICE PROVIDER QUALIFICATIONS

All bidders, to the best of their knowledge and belief, must be in, and remain in compliance with all applicable Federal, Alabama State, County and municipal laws, regulations, resolutions and ordinances. In particular and without limitation, all bidders must be licensed and permitted in accordance with The Code of Alabama Title 10, concerning corporations doing business within Alabama, Title 34, dealing with licensing for businesses, Title 40, concerning licenses and taxation, unless otherwise exempt. All bidders should be prepared to timely submit to the County non-confidential evidence or documentation demonstrating that the fact they are presently licensed and permitted under Alabama law. Such non-confidential evidence or documentation is encouraged to be submitted with the Bid Package.

All vendors, contractors and grantee are required to comply with the Alabama Immigration Law under Sections 31-13-9 (a) and (b) of the Code of Alabama. Forms and documents will be

included with award documents. Information and forms can be found on the Baldwin County Commission's Purchasing website under E-Verify at www.baldwincountyal.gov

All vendors must provide proof of proper certification of authority, and any required registration, to transact business in this State, in order to perform work for the Baldwin County Commission. Bidder's Registration Number shall be provided on the Bid Response Form. The phone number for the Alabama Secretary of State is (334) 242-5324, Corporate Division.

CONTRACTORS AND SUBCONTRACTORS INSURANCE

The Contractor shall not commence work under this contract until all the required insurance has been obtained. Such insurance has not been approved by the County, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until the insurance required of the Subcontractor has been so obtained and approved.

CONPENSATION INSURANCE

The Contractor shall procure and shall maintain during the life of this contract Workmen's Compensation Insurance for all of his employees to be engaged in work on the project under his Contract, and, in case of any such work sublet, the Contractor shall require the Subcontractor similarly to provide Workmen's compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractor's Workmen's Compensation Insurance. In case a class of employees engaged in hazardous work on the project under this contract is not protected under the Workmen's Compensation Statute, the Contractor shall provide and shall cause each Subcontractor to provide adequate employer's general liability insurance for the protection of such of his employees as are not otherwise protected. The Baldwin County Commission, its Departments and its employees shall be named as additional insured.

CONTRACTOR'S PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE

The Contractor shall procure and shall maintain during the life of this contract a Comprehensive Liability Policy providing bodily injury and property damage coverage on an occurrence basis including damages arising from blasting explosion or collapse, mechanical equipment digging in streets or highways, and including completed operations, independent contractors and contractual general liability. Insurance shall be contractual general liability $500,000.00 per occurrence bodily injury and property damage; $5,000 per person medical payments or medical expense; $500,000.00 per occurrence bodily injury and property damage; $5,000 per person medical payments or medical expense; $500,000.00 personal and advertising injury; $50,000.00 fire damage (any one firm); $1,000,000.00. The Baldwin County Commission, its' Departments and its employees shall be named as additional insured.

VENDOR PROPOSAL RESPONSE FORM

Date:_____

Out of State _____ or _____ If yes, _____
Yes No Registration Number

Company Submitting Proposal: _____

Address: _____

_____

Contact Person: _____

Office Telephone: _____

Email: _____

Implementation Fee Initial Cost: _____

Training Cost: _____

Additional Anticipated Costs (Please explain in Detail):

_____

Reoccurring Annual Support Cost: _____

Printed name & title of person submitting proposal:

_____

Signature of person submitting proposal:

_____

State of Alabama)
County of Baldwin)

CONTRACT FOR PROFESSIONAL SERVICES

This Contract for **Professional Services** is made and entered into by and between the County of Baldwin (hereinafter called "COUNTY") acting by and through its governing body, the Baldwin County Commission and PROVIDER, (hereinafter referred to as "PROVIDER").

WITNESSETH:

Whereas,

Whereas,

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the sufficiency of which being hereby acknowledged, PROVIDER and COUNTY do hereby agree as follows:

I. Definitions. The following terms shall have the following meanings:

A. COUNTY: Baldwin County, Alabama

B. COMMISSION: Baldwin County Commission

C. PROVIDER:

II. Obligations Generally. The COUNTY hereby retains, and the PROVIDER agrees to perform for the COUNTY, those professional services as hereinafter set forth. This document shall serve as the binding contract for the services of PROVIDER. PROVIDER shall immediately commence performance of the services outlined herein upon full execution of this Contract. All work shall be commenced and completed in a timely manner as, and at the times, herein set out.

III. Recitals Included. The above recitals and statements are incorporated as part of this Contract and shall have the effect and enforceability as all other provisions herein.

IV. Professional Qualifications. For the purpose of this Contract, the PROVIDER represents and warrants to the COUNTY that it possesses the professional, technical, and administrative personnel with the specific experience and training necessary to provide the professional services required herein.

V. No Prohibited Exclusive Franchise. The COUNTY neither perceives nor intends, by this Contract, a granting of an exclusive franchise or violation of Art. I, Section 22 of the Alabama Constitution.

VI. Representation/Warranty of Certifications, Etc. PROVIDER represents and warrants that PROVIDER is presently certified, licensed and otherwise permitted under all necessary and applicable laws and regulations to perform the services herein, and that PROVIDER shall renew, maintain, and otherwise ensure that all such certifications, licenses, and permits are current and valid, without interruption, for and through completion of the services. The representation and warranty aforesaid is a material inducement to the COUNTY in entering this Contract, and the parties agree that the breach thereof shall be deemed material at the County's option.

VII. Legal Compliance. PROVIDER shall at all times comply with all applicable federal, State, local and municipal laws and regulations.

VIII. Independent Contractor. PROVIDER acknowledges that it is an independent contractor, and PROVIDER shall at all times remain as such in performing the services under this Contract. PROVIDER is not an employee, servant, partner, or agent of the COUNTY and has no authority, whether express or implied, to contract for or bind the COUNTY in any manner. The parties agree that PROVIDER shall be solely responsible for and shall have full and unqualified control over developing and implementing its own means and methods, as it deems necessary and appropriate in providing the aforementioned services, and that the COUNTY's interests herein are expressly limited to the results of said services. PROVIDER is not entitled to unemployment insurance benefits, and PROVIDER is responsible for and obligated to pay any and all federal and state income tax on any monies paid pursuant to this Contract.

IX. No Agency Created. It is neither the express nor the implied intent of PROVIDER or COUNTY to create an agency relationship pursuant to this Contract. Therefore, the PROVIDER does not in any manner act on behalf of COUNTY, and the creation of such a relationship is prohibited and void.

X. Unenforceable Provisions. If any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

XI. Entire Agreement. This Contract represents the entire and integrated agreement between COUNTY and PROVIDER and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended only by written instrument signed by all parties.

XII. Failure to Strictly Enforce Performance. The failure of the COUNTY to insist upon the strict performance of any of the terms, covenants, agreements, and conditions of this Contract shall not constitute, and shall never be asserted by PROVIDER as constituting, a default or be construed as a waiver or relinquishment of the right of the COUNTY to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

XIII. Assignment. This Contract or any interest herein shall not be assigned transferred or otherwise encumbered by PROVIDER without the prior written consent of the COUNTY, which may be withheld or granted in the sole discretion of the COUNTY.

XIV. Ownership of Documents/Work. The COUNTY shall be the owner of all copyright or other intellectual property rights in reports, documents and deliverables produced and paid for under this Contract, and to the extent permitted by Alabama law, any such material may be reproduced and reused at the discretion of the COUNTY without payment of further consideration. PROVIDER shall not transfer, disclose, or otherwise use such information for any purpose other than in performance of the services hereunder, without the COUNTY's prior written consent, which may be withheld or granted in the sole discretion of the COUNTY.

XV. Notice. Notice required herein shall be in writing, unless otherwise allowed, and said notice shall be deemed effective when received at the following addresses:

PROVIDER: _____
_____
_____

COUNTY: Baldwin County Commission
c/o Chairman
312 Courthouse Square
Suite 12
Bay Minette, AL 36507

XVI. Services to be Rendered. PROVIDER is retained by the COUNTY as a professionally qualified **contractor**. The general scope of work for the services shall include all the terms and Conditions of **"Request for Proposals,"** the same being expressly incorporated herein by reference, and without limitation will encompass:

"All provision and conditions and/or specifications listed/stated in the Request for Proposals for Baldwin County Emergency Management Software."

A. PROVIDER will provide ongoing communications with COUNTY regarding this service, including updates, emails and etc. as requested. Additionally, PROVIDER will meet with COUNTY as needed or requested.

B. PROVIDER is responsible for the professional quality, technical accuracy, timely completion and coordination of all services furnished by or in relation to this Contract.

C. PROVIDER represents and warrants that its services shall be performed within the limits and standards provided by the COUNTY, in a manner consistent with the level of care and skill ordinarily exercised by similar providers under similar circumstances at the time the services are performed.

XVII. General Responsibilities of the COUNTY.

A. The COUNTY shall provide reasonable notice to PROVIDER whenever the COUNTY actually observes or otherwise actually becomes aware of any development that affects the scope or time of PROVIDER's services hereunder or any defect or nonconformance in the work of PROVIDER.

B. The COUNTY shall pay to PROVIDER the compensation as, and subject to the terms set out below.

XVIII. Termination of Services. The COUNTY or PROVIDER may terminate this contract, with or without cause or reason, by giving ten (10) days written notice of such to the other party. Upon receipt of such notices, PROVIDER shall discontinue its work to the extent specified in the notice.

In the event of termination, the COUNTY shall pay PROVIDER for all services satisfactorily rendered, and for any expenses deemed by COUNTY to be a reimbursable expense incurred pursuant to this Contract and prior to the date of termination.

XIX. Compensation Limited. The compensation to be paid to the PROVIDER shall be the full compensation for all work performed by PROVIDER under this Contract. Any and all additional expenditures or expenses of PROVIDER, not listed in full within this Contract, shall not be considered as a part of this Contract and shall not be demanded by PROVIDER or paid by COUNTY.

XX. Direct Expenses. Compensation to PROVIDER for work shall be **$ _____**. Said compensation shall be all inclusive, including without limitation, reimbursement of all cost, incidentals and operating expense associated with those directly engaged in performance of the requested services

XXI. Method of Payment. PROVIDER shall submit invoices to the COUNTY for payment for work performed. Such invoice shall be accompanied by a detailed account of compensation to be paid PROVIDER.

Payment shall be made by the COUNTY within thirty (30) days of the approval of the invoice submitted by the PROVIDER. The COUNTY agrees to review and approve invoices submitted for payment in a timely manner.

XXII. Effective and Termination Dates. This Contract shall be effective for six (6) months and commence immediately upon the same date as its full execution and same shall terminate upon both the expiration of six (6) months or either by giving ten (10) days written notice of such to the other party. [Nothing herein stated shall prohibit the parties from otherwise terminating this Contract according to the provisions herein.]

XXIII. Force Majeure. The Parties hereto shall incur no liability to the other if performance becomes impossible or impracticable by reason of an event or effect that the parties could neither have anticipated nor controlled. This allowance shall include both an act of nature and acts of third parties. Any costs that would otherwise be incurred and/or necessitated by the provisions herein shall be alleviated for either party by such event or effect.

XXIV. Indemnification. PROVIDER shall indemnify, defend and hold County, and its Commissioners, affiliates, employees, agents, and representatives (collectively referred to in this Section XXIV as "COUNTY") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs, and expenses including, without limitations, attorneys' fees, and costs, for any and all personal injury (including death) and property damage of any kind or nature whatsoever, incurred by, asserted against, or imposed upon COUNTY, as a result of or in any manner related to provision of services hereunder, or any act or omission, by PROVIDER. PROVIDER shall provide the COUNTY with proof of general liability coverage including the COUNTY as an additional insured. This indemnification shall survive the expiration or termination of this Contract.

XXV. Number of Originals. This Contract shall be executed with three (3) originals, each of which are equally valid as an original.

XXVI: Governing Law: This Contract in all respects, including without limitation its formation, validity, construction, enforceability and available remedies, shall be governed by the laws of the State of Alabama, without regard to Alabama conflict of law principles.

XXVII: Insurance: Prior to performing services pursuant to this Contract, Provider shall carry, with insurers satisfactory to County, throughout the term of hereof, Auto Liability Insurance, including owned, hired and non-owned vehicles, with limits of not less than $1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; Commercial General Liability Insurance, including all contractual liability hereunder, with limits not less than $1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; and

Worker's Compensation Insurance, meeting the statutory limits of the State of Alabama and Employer's Liability Insurance fully covering all employees and supervisors participating in the work at the subject property site. All liability insurance shall name the County as an additional insured. Prior to commencing operations hereunder, a Certificate of Insurance evidencing such coverage, satisfactory to County, shall be furnished to County, which shall specifically state that such insurance shall provide for at least ten (10) days' notice to County in the event of cancellation, termination or any change in such insurance policies. The workers compensation certificate shall bear an endorsement clearly evidencing a waiver of the right of subrogation against County and County Representatives. Should Provider fail to furnish current evidence upon demand of any insurance required hereunder, or in the event of cancellation, termination or change in any such insurance, County may, at its option, suspend this Contract until insurance is obtained, terminate this Contract immediately without further action, or hold Provider in material default and pursue any and all remedies available.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the last day of execution by the COUNTY as written below.

COUNTY

_____/_____
JOE DAVIS, III, Chairman /Date

ATTEST:

_____/_____
WAYNE DYESS, /Date
County Administrator

State of Alabama)
County of Baldwin)

I, _____, a Notary Public in and for said County, in said State, hereby certify that, Joe Davis, III, whose name as Chairman of Baldwin County Commission, and Wayne Dyess, whose name as County Administrator, are known to me, acknowledged before me on this day that, being informed of the contents of the Contract for Professional Services, they, as such officers and with full authority, executed same knowingly and with full authority to do so on behalf of said Commission.

GIVEN under my hand and seal on this the _____ day of _____, 2021.

_____
Notary Public
My Commission Expires

SIGNATURE AND NOTARY PAGE TO FOLLOW

PROVIDER:

Insert Provider Name

_____/_____
By _____/Date
Its _____

State of Alabama)
County of _____)

I, _____, Notary Public in and for said County and State, hereby certify that _____ as _____ of_____, whose name is signed to the foregoing in that capacity, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing, he executed the same voluntarily on the day the same bears date for and as an act of said_____.

GIVEN under my hand and seal on this the _____ day of _____, 2021.

_____
Notary Public
My Commission Expires

Baldwin County Commission

Agenda Action Form

File #: 22-0064, **Version:** 1 **Item #:** BH1

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Brian Peacock, CIS Director
Submitted by: Susan Kilby-Aaron, Business Manager

ITEM TITLE
Microsoft Volume Licensing Agreement

STAFF RECOMMENDATION
Approve the Microsoft Volume Licensing Agreement between the Baldwin County Commission and Microsoft and authorize the Chairman to execute any related documents.

This Agreement is effective October 1, 2021, and will expire on September 30, 2024.

BACKGROUND INFORMATION

Previous Commission action/date: 10/02/2018

Background: This Volume Licensing Enrollment is an Enterprise Agreement for 1082 qualified users along with hardware license needed to support Baldwin County Commission's infrastructure.

FINANCIAL IMPACT

Total cost of recommendation: $463,374.56 (Total Cost for Year 1)

Budget line item(s) to be used: 10051965.52351 To be allocated among various departments depending on user count for FY2022.

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
Yes

Reviewed/approved by: Brad Hicks, County Attorney, reviewed/approved October 7, 2021.

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Administration staff to send signed documentation to Software House International (SHI).

SHI: Submit documentation to Microsoft for full execution. Susan Kilby to follow up with Administration staff.

Action required (list contact persons/addresses if documents are to be mailed or emailed): Signed documentation sent to:

Software House International Corporation (SHI)
Attn: Mr. Bret Santucci
290 Davidson Ave
Somerset, New Jersey 08873

SHI, our solutions partner, will then submit to Microsoft for full execution.

Additional instructions/notes: N/A

Microsoft Volume Licensing

Enterprise Enrollment State and Local

Enterprise Enrollment number *(Microsoft to complete)*	69051527
Previous Enrollment number *(Reseller to complete)*	48223233
Framework ID *(if applicable)*	

This Enrollment must be attached to a signature form to be valid.

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) the Product Terms, (5) the Online Services Terms, (6) any Supplemental Contact Information Form, Previous Agreement/Enrollment form, and other forms that may be required, and (7) any order submitted under this Enrollment. This Enrollment may only be entered into under a 2011 or later Enterprise Agreement. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

All terms used but not defined are located at http://www.microsoft.com/licensing/contracts. In the event of any conflict the terms of this Agreement control.

Effective date. If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to "anniversary date" refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

Term. The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. The renewal term will expire 36 full calendar months after the effective date of the renewal term.

Terms and Conditions

1. Definitions.

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

"Additional Product" means any Product identified as such in the Product Terms and chosen by Enrolled Affiliate under this Enrollment.

"Community" means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer's regulatory requirements.

Physically Submitted

Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Expiration Date" means the date upon which the Enrollment expires.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

"Reseller" means an entity authorized by Microsoft to resell Licenses under this program and engaged by an Enrolled Affiliate to provide pre- and post-transaction assistance related to this agreement;

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

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"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site and updated from time to time. The Use Rights include the Product-Specific License Terms, the License Model terms, the Universal License Terms, the Data Protection Terms, and the Other Legal Terms. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product.

"Volume Licensing Site" means http://www.microsoft.com/licensing/contracts or a successor site.

2. Order requirements.

a. Minimum order requirements. Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.

(i) Enterprise commitment. Enrolled Affiliate must order enough Licenses to cover all Qualified Users or Qualified Devices, depending on the License Type, with one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services (as long as all Qualified Devices not covered by a License are only used by users covered with a user License).

(ii) Enterprise Online Services only. If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 250 Subscription Licenses for Enterprise Online Services**.**

b. Additional Products. Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.

c. Use Rights for Enterprise Products. For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to Enrolled Affiliate's use of that Product during that term.

d. Country of usage. Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.

e. Resellers. Enrolled Affiliate must choose and maintain a Reseller authorized in the United States. Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders must be submitted to the Reseller who will transmit the order to Microsoft. The Reseller and Enrolled Affiliate determine pricing and payment terms as between them, and Microsoft will invoice the Reseller based on those terms. Throughout this Agreement the term "price" refers to reference price. Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.

f. Adding Products.

(i) Adding new Products not previously ordered. New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.

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(ii) Adding Licenses for previously ordered Products. Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product Terms or (2) included as part of other Licenses.

g. True-up requirements. Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.

(i) Enterprise Products. For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.

(ii) Additional Products. For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.

(iii) Online Services. For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may place a reservation order for the additional Licenses prior to use and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses ordered but not yet invoiced to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retrospectively to the month in which they were ordered.

(iv) Subscription License reductions. Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis if permitted in the Product Terms, as follows:

1) For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices and Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses do not count towards this total count.

2) For Enterprise Online Services that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.

3) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.

Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

(v) Update statement. An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative.

(vi) True-up order period. The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate

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may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

(vii) Late true-up order. If the true-up order or update statement is not received when due, Microsoft will invoice Reseller for all Reserved Licenses not previously invoiced and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).

h. Step-up Licenses. For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

(i) For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.

(ii) If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.

i. Clerical errors. Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.

j. Verifying compliance. Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

3. Pricing.

a. Price Levels. For both the initial and any renewal term Enrolled Affiliate's Price Level for all Products ordered under this Enrollment will be Level "D" throughout the term of the Enrollment.

b. Setting Prices. Enrolled Affiliate's prices for each Product or Service will be established by its Reseller. Except for Online Services designated in the Product Terms as being exempt from fixed pricing, As long as Enrolled Affiliate continues to qualify for the same price level, Microsoft's prices for Resellers for each Product or Service ordered will be fixed throughout the applicable initial or renewal Enrollment term. Microsoft's prices to Resellers are reestablished at the beginning of the renewal term.

4. Payment terms.

For the initial or renewal order, Microsoft will invoice Enrolled Affiliate's Reseller in three equal annual installments. The first installment will be invoiced upon Microsoft's acceptance of this Enrollment and remaining installments will be invoiced on each subsequent Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

5. End of Enrollment term and termination.

a. General. At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.

b. Renewal option. At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing this Enrollment for one additional 36-month term or by signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. Microsoft will not unreasonably reject any renewal.

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Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at renewal.

c. If Enrolled Affiliate elects not to renew.

(i) Software Assurance. If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring a new License with Software Assurance.

(ii) Online Services eligible for an Extended Term. For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.

1) Extended Term. Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month ("Extended Term") is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price as of the Expiration Date plus a 3% administrative fee for up to one year. If Enrolled Affiliate wants an Extended Term, Enrolled Affiliate must submit a request to Microsoft at least 30 days prior to the Expiration Date.

2) Cancellation during Extended Term. At any time during the first year of the Extended Term, Enrolled Affiliate may terminate the Extended Term by submitting a notice of cancellation to Microsoft for each Online Service. Thereafter, either party may terminate the Extended Term by providing the other with a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received or issued the notice.

(iii) Subscription Licenses and Online Services not eligible for an Extended Term. If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate's Enterprise must discontinue use. Microsoft may request written certification to verify compliance.

d. Termination for cause. Any termination for cause of this Enrollment will be subject to the "Termination for cause" section of the Agreement. In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise that uses Government Community Cloud Services fails to meet and maintain the conditions of membership in the definition of Community.

e. Early termination. Any early termination of this Enrollment will be subject to the "Early Termination" Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, or if Microsoft terminates an Online Service for regulatory reasons, Microsoft will issue Reseller a credit for any amount paid in advance for the period after termination.

6. Government Community Cloud.

a. Community requirements. If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Enrolled Affiliate's license(s) for Government Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.

b. All terms and conditions applicable to non-Government Community Cloud Services also apply

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to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights, Product Terms, and this Enrollment.

c. Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.

d. **Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:

(i) Government Community Cloud Services will be offered only within the United States.

(ii) Additional European Terms, as set forth in the Use Rights, will not apply.

(iii) References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

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Enrollment Details

1. Enrolled Affiliate's Enterprise.

a. Identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:

☒ Enrolled Affiliate only

☐ Enrolled Affiliate and all Affiliates

☐ Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be included if fewer than all Affiliates are to be included in the Enterprise):

☐ Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

b. Please indicate whether the Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: Exclude future Affiliates

2. Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at https://www.microsoft.com/licensing/servicecenter.

a. **Primary contact.** This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

Name of entity (must be legal entity name)* Baldwin County Commission
Contact name* **First** Brian **Last** Peacock
Contact email address* bpeacock@baldwincountyal.gov
Street address* 312 Courthouse Square,, Suite 13
City* Bay Minette
State* AL
Postal code* 36507-4809-
(Please provide the zip + 4, e.g. xxxxx-xxxx)
Country* United States
Phone* 251-580-2598
Tax ID
** indicates required fields*

b. **Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized to order Reserved Licenses for eligible Online Servies, including adding or reassigning Licenses and stepping-up prior to a true-up order.

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☐ Same as primary contact (default if no information is provided below, even if the box is not checked).

Contact name* First Susan **Last** Kilby
Contact email address* skilby@baldwincountyal.gov
Street address* 312 Courthouse Square,, Suite 13
City* Bay Minette
State* AL
Postal code* 36507-4809-
(Please provide the zip + 4, e.g. xxxxx-xxxx)
Country* United States
Phone* 251-580-2574
Language preference. Choose the language for notices. English
☐ This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.
** indicates required fields*

c. Online Services Manager. This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses and step-up prior to a true-up order.

Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

Contact name*: First Susan **Last** Kilby
Contact email address* skilby@baldwincountyal.gov
Phone* 251-580-2574
☐ This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.
** indicates required fields*

d. Reseller information. Reseller contact for this Enrollment is:

Reseller company name* SHI International Corp.
Street address (PO boxes will not be accepted)* 290 Davidson Ave
City* Somerset
State* NJ
Postal code* 08873-4145
Country* United States
Contact name* Victoria Stepka
Phone* 888-764-8888
Contact email address* MSTeam@SHI.com
** indicates required fields*

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

Signature* _____

Printed name*
Printed title*
Date*

** indicates required fields*

Changing a Reseller. If Microsoft or the Reseller chooses to discontinue doing business with each other, Enrolled Affiliate must choose a replacement Reseller. If Enrolled Affiliate or the Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the

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other party using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*

(i) Additional notices contact
(ii) Software Assurance manager
(iii) Subscriptions manager
(iv) Customer Support Manager (CSM) contact

3. Financing elections.

Is a purchase under this Enrollment being financed through MS Financing? ☐ Yes, ☒ No.

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft.

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Microsoft Volume Licensing

Previous Enrollment(s)/Agreement(s) Form

Entity Name: Baldwin County Commission
Contract that this form is attached to: State Local Government

For the purposes of this form, "entity" can mean the signing entity, Customer, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

Please provide a description of the previous Enrollment(s), Agreement(s), Purchasing Account(s), and/or Affiliate Registration(s) being renewed or consolidated into the new contract identified above.

a. Entity may select below any previous contract(s) from which to transfer MSDN subscribers to this new contract. Entity shall ensure that each MSDN subscriber transferred is either properly licensed under the new contract or is removed.

b. Entity may select below only one previous contract from which to transfer the Software Assurance (SA) Benefit contact details, i.e., benefits contact (*not* the SA manager) and the program codes, to this new contract.

c. An Open License cannot be used to transfer either the SA Benefit details or MSDN subscribers.

d. The date of the earliest expiring Enrollment/Agreement that contains SA or Online Services will be the effective date of the new contract (or SA coverage period for Select Plus).

e. Please insert the number of the earliest expiring Enrollment/Agreement with SA or Online Services in the appropriate fields of the new contract.

Enrollment/Agreement/ Purchasing Account/Affiliate Registration Description	Enrollment/Agreement/ Purchasing Account/Affiliate Registration Public Customer Number	Transfer SA Benefit Contact	Transfer MSDN Subscribers
Standard Enrollment	48223233	X	X

Microsoft Volume Licensing

Program Signature Form

MBA/MBSA number	
Agreement number	01E73377

7-XQ5VUZ4ZA

Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Number or Code
Enterprise Enrollment (Indirect)	X20-10635
Enterprise Amendment	M97 (NEW)
Product Selection Form	1119203.006_PSF

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer
Name of Entity (must be legal entity name)* Baldwin County Commission
Signature* _____
Printed First and Last Name*
Printed Title
Signature Date*
Tax ID

** indicates required field*

Microsoft Affiliate
Microsoft Corporation
Signature _____
Printed First and Last Name
Printed Title
Signature Date (date Microsoft Affiliate countersigns)
Agreement Effective Date (may be different than Microsoft's signature date)

Optional 2nd Customer signature or Outsourcer signature (if applicable)

Customer
Name of Entity (must be legal entity name)*
Signature* _____
Printed First and Last Name*
Printed Title
Signature Date*

** indicates required field*

Outsourcer
Name of Entity (must be legal entity name)*
Signature* _____
Printed First and Last Name*
Printed Title
Signature Date*

** indicates required field*

If Customer requires additional contacts or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Corporation
Dept. 551, Volume Licensing
6880 Sierra Center Parkway
Reno, Nevada 89511
USA

Pricing Proposal
Quotation #: 21016082
Created On: Sep-17-2021
Valid Until: Oct-17-2021

BALDWIN COUNTY COMMISSION

Matt Fail
175 Courthouse Square Bay
Minette
AL
36507
Phone: (251) 580-1823
Fax:
Email: Mfail@baldwincountyal.gov

Inside Account Manager

Bret Santucci
290 Davidson Avenue
Somerset, NJ 08873
Phone: 800-543-0432
Fax: 732-868-6055
Email: Bret_Santucci@shi.com

All Prices are in US Dollar (USD)

	Product	Qty	Your Price	Total
1	Azure Monetary Commitment Provision - GOV Microsoft - Part#: J5U-00004 Contract Name: NASPO Software VAR Contract #: ADSPO16-130651 Subcontract #: MA 999 17000000198 Coverage Term: Oct-01-2021 – Sep-30-2022 **Note:** Annual Payment 1 of 3	1	$0.00	$0.00
2	CISSteDCCore ALNG SA MVL 2Lic CoreLic Microsoft - Part#: 9GS-00135 Contract Name: NASPO Software VAR Contract #: ADSPO16-130651 Subcontract #: MA 999 17000000198 Coverage Term: Oct-01-2021 – Sep-30-2022 **Note:** Annual Payment 1 of 3	64	$166.24	$10,639.36
3	CISSteStdCore ALNG SA MVL 2Lic CoreLic Microsoft - Part#: 9GA-00313 Contract Name: NASPO Software VAR Contract #: ADSPO16-130651 Subcontract #: MA 999 17000000198 Coverage Term: Oct-01-2021 – Sep-30-2022 **Note:** Annual Payment 1 of 3	312	$33.90	$10,576.80
4	Defender for O365 Plan 1 GCC SubVL Per User Microsoft - Part#: 3GU-00001 Contract Name: NASPO Software VAR Contract #: ADSPO16-130651 Subcontract #: MA 999 17000000198 Coverage Term: Oct-01-2021 – Sep-30-2022 **Note:** Annual Payment 1 of 3	1154	$18.23	$21,037.42
5	M365 E3 GCC Unified ShrdSvr ALNG SubsVL MVL PerUsr Microsoft - Part#: AAD-34704 Contract Name: NASPO Software VAR Contract #: ADSPO16-130651 Subcontract #: MA 999 17000000198 Coverage Term: Oct-01-2021 – Sep-30-2022	1082	$349.12	$377,747.84

Note: Annual Payment 1 of 3

6	M365 F3 GCC Unified ShrdSvr ALNG SubsVL MVL PerUsr Microsoft - Part#: AAD-63092 Contract Name: NASPO Software VAR Contract #: ADSPO16-130651 Subcontract #: MA 999 17000000198 Coverage Term: Oct-01-2021 – Sep-30-2022 **Note:** Annual Payment 1 of 3	72	$83.00	$5,976.00
7	ExchOnlnArchGCC ShrdSvr ALNG SubsVL MVL PerUsr Microsoft - Part#: 4ES-00001 Contract Name: NASPO Software VAR Contract #: ADSPO16-130651 Subcontract #: MA 999 17000000198 Coverage Term: Oct-01-2021 – Sep-30-2022 **Note:** Annual Payment 1 of 3	72	$25.76	$1,854.72
8	SQLSvrEntCore ALNG SA MVL 2Lic CoreLic Microsoft - Part#: 7JQ-00343 Contract Name: NASPO Software VAR Contract #: ADSPO16-130651 Subcontract #: MA 999 17000000198 Coverage Term: Oct-01-2021 – Sep-30-2022 **Note:** Annual Payment 1 of 3	4	$2,248.34	$8,993.36
9	SQLSvrStdCore ALNG SA MVL 2Lic CoreLic Microsoft - Part#: 7NQ-00292 Contract Name: NASPO Software VAR Contract #: ADSPO16-130651 Subcontract #: MA 999 17000000198 Coverage Term: Oct-01-2021 – Sep-30-2022 **Note:** Annual Payment 1 of 3	28	$586.33	$16,417.24
10	VisioPlan2GCC ShrdSvr ALNG SubsVL MVL PerUsr Microsoft - Part#: P3U-00001 Contract Name: NASPO Software VAR Contract #: ADSPO16-130651 Subcontract #: MA 999 17000000198 Coverage Term: Oct-01-2021 – Sep-30-2022 **Note:** Annual Payment 1 of 3	14	$136.34	$1,908.76
11	VSEntSubMSDN ALNG SA MVL Microsoft - Part#: MX3-00117 Contract Name: NASPO Software VAR Contract #: ADSPO16-130651 Subcontract #: MA 999 17000000198 Coverage Term: Oct-01-2021 – Sep-30-2022 **Note:** Annual Payment 1 of 3	5	$1,072.28	$5,361.40
12	VSProSubMSDN ALNG SA MVL Microsoft - Part#: 77D-00111 Contract Name: NASPO Software VAR Contract #: ADSPO16-130651 Subcontract #: MA 999 17000000198 Coverage Term: Oct-01-2021 – Sep-30-2022 **Note:** Annual Payment 1 of 3	2	$307.08	$614.16
13	WinRmtDsktpSrvcsCAL ALNG SA MVL DvcCAL Microsoft - Part#: 6VC-01253 Contract Name: NASPO Software VAR Contract #: ADSPO16-130651	125	$17.98	$2,247.50

Subcontract #: MA 999 17000000198
Coverage Term: Oct-01-2021 – Sep-30-2022
Note: Annual Payment 1 of 3

Subtotal	$463,374.56
Total	$463,374.56

Additional Comments

Hardware items on this quote may be updated to reflect changes due to industry wide constraints and fluctuations.

The products offered under this proposal are resold in accordance with the terms and conditions of the Contract referenced under that applicable line item.

Baldwin County Commission

Agenda Action Form

File #: 22-0048, **Version:** 1 **Item #:** BJ1

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Teddy J. Faust, Revenue Commissioner
Submitted by: Susan Hill, Chief Administrative Assistant

ITEM TITLE
Renewal Amendment to IncomeWorks Software License Agreement

STAFF RECOMMENDATION
Approve the Renewal Amendment to IncomeWorks License Agreement between Assessment Advisors, LLC and Baldwin County Commission, to provide the Baldwin County Revenue Commission with an income based local-market-specific commercial real estate evaluation model designed specifically to bring consistency and equity to the assessment of commercial, industrial, lodging, multi-family, office, and retail properties.

This Agreement shall be for a term of one (1) year, to commence on January 1, 2022, and terminate on December 31, 2022, per Renewal Amendment. The renewal fee of $29,000.00 was invoiced to Licensee on September 23, 2021. Payment received in October 2021 will ensure release of both “2020” and “2021” data years during December 2021.

BACKGROUND INFORMATION

Previous Commission action/date: October 1, 2019

Background: The Commission has approved an annual Software License Agreement with Assessment Advisors, LLC since 2013.

IncomeWorks is a product and a process that collects and analyzes local lease practices and data, which can be customized for Baldwin County, Alabama. This allows the income approach to be utilized in valuing income producing properties. The initial Agreement, between Assessment Advisors, LLC and the Baldwin County Commission was approved on April 16, 2013, and has continued on an annual basis, until Revenue Commission opted out of renewal during 2020.

FINANCIAL IMPACT

Total cost of recommendation: $29,000.00

Budget line item(s) to be used: 12051810.52350

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
Yes

Reviewed/approved by: Brad Hicks, County Attorney - 09/30/2021

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? No

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: 2021 License Fee to be paid (Invoice #2169) following approval.

Individual(s) responsible for follow up: Accounting: Pay $29,000.00 2021 License Fee

Action required (list contact persons/addresses if documents are to be mailed or emailed):

Administration Staff: Get Renewal Amendment to IncomeWorks Software License Agreement, fully executed by the Chairman and mail to:

Linda Pedalino, MAI, Co-Founder & President
Assessment Advisors, LLC
736 N. Western Avenue, #393
Lake Forest, Illinois 60045

cc: Walt Lindsey, Chief Appraiser
Teddy J. Faust, Jr., Revenue Commissioner

Additional instructions/notes:

RENEWAL AMENDMENT TO INCOMEWORKS SOFTWARE LICENSE AGREEMENT

Assessment Advisors, LLC and Baldwin County, Alabama, by and through the Baldwin County Commission ("Licensee") hereby agree to amend Section 7 and Section 8a of the IncomeWorks Software License Agreement ("Agreement"), effective May 1, 2013, as follows:

1. Notwithstanding anything contrary in the Agreement, Licensee will renew the Agreement as set forth in this Amendment.

2. This Amendment constitutes renewal of the Agreement for a one year term, for the period of January 1, 2022 to December 31, 2022.

3. Data Years for this Special Renewal: IncomeWorks 2021 (results as-of October 1, 2021) and IncomeWorks 2020 (results as-of October 1, 2020).

4. IncomeWorks includes modeling for select Commercial, Industrial, Lodging, Multifamily, Office, and Retail properties. Along with "Property Summary" (view all inputs) and "Save Report" (save, view, print in PDF), pricing includes: Edit Basic Information & Rankings & Economic Indicators, Personal Property (multifamily and lodging), Separate Components, Compare to Cost, Obsolescence Analyzer, Tax Factor, Expense Breakdown, Discounted Cash Flow, Change, Update, Export, and MAI email consulting.

5. Licensee will pay Assessment Advisors a special discounted license fee for the one year renewal term set forth above, of Twenty-Nine Thousand Dollars [$29,000] detailed as follows:

Base Annual License Fee	$ 29,000	*For the "2021 release" data year*
Base Annual License Fee	+ 29,000	*For the "2020 release" data year*
Subtotal for 2 Data years	$ 58,000	
Special One-Time Discount	− 29,000	*If renewal fee is paid by December 31, 2021*
IncomeWorks 2021 Renewal Fee	$ 29,000	

6. The renewal fee will be invoiced to the Licensee on or around October 1, 2021 to allow time for payment processing. Assessment Advisors will commence work when payment is received. Payment received in October 2021 will ensure release of both "2020" and "2021" data years during December 2021. Upon payment arrival, IncomeWorks will be reactivated for Baldwin County, giving Authorized Users access to all previously purchased data years and all previously saved reports plus support, training, and consulting.

7. On the release date for IncomeWorks 2021 and IncomeWorks 2020 (during December 2021, if payment is received in October 2021) Assessment Advisors will email notification to Licensee's Authorized Users.

8. Future renewals:

   - Beginning in 2022, Assessment Advisors will charge Licensee a Maintenance Year Fee of $5,000 which will keep IncomeWorks accessible to users along with all features, support, training, and consulting; however, no new data will be provided as-of 10/1/22. The Maintenance Fee will be billed on or after October 1, 2022 and must be paid before December 31, 2022 to keep IncomeWorks active.
   - In September 2023, the Base Data Year fee of $29,000 will be charged for IncomeWorks 2023 (results as-of 10/1/23), which must be paid before December 31, 2023 to keep IncomeWorks active.
   - Future renewals will follow the same "every other year" schedule, alternating between the base data year and the maintenance year, with payments due on December 31 of the applicable year.
   - Licensee may decline to renew for any year by non-payment of the applicable fee by December 31 of the applicable year.
   - Should Licensee desire data for a Maintenance Year, the regular yearly license fee of $29,000 will be charged with consideration to $5,000 if paid as applicable.

9. No other changes are made to the License Agreement and all other terms and conditions of the License Agreement remain in full force and effect.

ACCEPTED AND AGREED:

Assessment Advisors

Assessment Advisors, LLC
736 N. Western Avenue, #393
Lake Forest, IL 60045

By:_____

Linda Pedalino, MAI
Co-Founder & President

Date:_____

Licensee

_____
Name of Licensee

_____
Street Address

_____
City, ST, zip

By: _____

Print Name: _____

Title: _____

Date: _____

Baldwin County Commission

Agenda Action Form

File #: 22-0011, **Version:** 1 **Item #:** BL1

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Terri Graham, Development and Environmental Director
Submitted by: Allison Owens, Chief Administrative Assistant

ITEM TITLE
Amendment to Lease Agreement with Mullek Farms for Farmland at Magnolia Landfill

STAFF RECOMMENDATION
Approve the Amendment to Lease Agreement of County Property at Magnolia Landfill for Farmland between the Baldwin County Commission and Mr. Timothy Mullek, Mr. Joseph Mullek, and Mr. Michael Mullek, d/b/a Mullek Farms, which reduces the amount of land subject to the Lease Agreement by fifteen (15) acres and reduces the rental payment from $4,125.00 annually to $3,000 .00 annually.

The Amendment to the Lease Agreement does not affect the three (3) year term of the Lease Agreement which commenced on May 2, 2020, and expires on May 1, 2023, unless terminated as set forth in the Lease Agreement.

BACKGROUND INFORMATION

Previous Commission action/date: April 21, 2020

Background: During its April 21, 2020, Regular meeting, the Baldwin County Commission approved the Lease Agreement of County Property at Magnolia Landfill for Farmland between Baldwin County Commission and Mr. Timothy Mullek, Mr. Joseph Mullek, and Mr. Michael Mullek, d/b/a Mullek Farms, which allows Mr. Timothy Mullek, Mr. Joseph Mullek and Mr. Michael Mullek to lease approximately 55 acres more or less of County property at Magnolia Landfill for farmland, at a lease price of $75.00 per acre annually.

Baldwin County Commission owns approximately 800 acres of property at the Magnolia Landfill. The Baldwin County Commission has had a lease agreement with Mullek Farms since 1999 for an area located on the east side of the landfill property near Lillie Lane.

FINANCIAL IMPACT

Total cost of recommendation: $3,000.00

Budget line item(s) to be used: 51047210

If this is not a budgeted expenditure, does the recommendation create a need for funding?
No

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
Yes

Reviewed/approved by: Approved by Brad Hicks, County Attorney

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Terri Graham, Development and Environmental Director, to follow up with Mr. Joseph Mullek

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Administration staff to send lease agreement between Baldwin County Commission and Mullek Farms to the address listed below for execution by Mr. Timothy Mullek, Mr. Joseph Mullek, and Mr. Michael Mullek. Chairman should execute lease when returned with the above-mentioned signatures.

Mail correspondence to the following:
Mullek Farms
Attention: Joseph Mullek
25368 County Road 83
Robertsdale, AL 35667

Additional instructions/notes: Administration staff: append fully executed Amendment to Lease

Agreement to original Lease Agreement and upload to BCAP.

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STATE OF ALABAMA)
BALDWIN COUNTY)

AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT TO LEASE AGREEMENT ("Amendment") is made this the _____ day of _____, 2021 between the BALDWIN COUNTY COMMISSION, hereinafter called "LESSOR", and TIMOTHY MULLEK, JOSEPH MULLEK, and MICHAEL MULLEK, d/b/a MULLEK FARMS, hereinafter called "LESSEE."

WHEREAS, LESSOR and LESSEE entered into a Lease Agreement on or about May 2, 2020; and

WHEREAS, LESSOR and LESSEE wish to reduce the amount of land leased under the Lease Agreement by fifteen (15) acres; and

WHEREAS, LESSOR and LESSEE wish to reduce the amount of the annual advance lump sum rental payment from $4,1250.00 to $3,000.00; and

WHEREAS, pursuant to numbered paragraph seventeen (17) of the Lease Agreement, the parties hereto wish to amend that Lease Agreement to reflect these modifications;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, LESSOR and LESSEE hereby agree:

1. That the Lease Agreement entered into on or about May 2, 2020, is amended pursuant to numbered paragraph seventeen (17) of that Lease Agreement.
2. That the amount of land subject to the Lease Agreement is reduced by fifteen (15) acres, with such acres identified on the map attached hereto as **Exhibit 1**.
3. That, corresponding to the acreage reduction, the amount of the annual advance lump sum rental payment described in numbered paragraph two (2) is reduced to $3,000.00.
4. That this Amendment shall take effect on October 5, 2021.
5. That all other provisions of the Lease Agreement shall remain unchanged.

IN WITNESS WHEREOF, the undersigned LESSOR and LESSEE have hereunto signed and sealed this instrument as of the day and year first above written.

LESSOR
BALDWIN COUNTY COMMISSION
312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507

BY:_____/_____
Joe Davis, III /Date
Chairman

ATTEST:

BY:_____/_____
Wayne Dyess /Date
County Administrator

LESSEE:
MULLEK FARMS
25368 County Road 83
Robertsdale, Alabama 36567

_____/_____
TIMOTHY MULLEK /Date

_____/_____
JOSEPH MULLEK /Date

_____/_____
MICHAEL MULLEK /Date

***NOTARY PAGE TO FOLLOW**

STATE OF ALABAMA)

COUNTY OF BALDWIN)

I, _____, a Notary Public, in and for said County in said State, do hereby certify that Joe Davis, III, as Chairman of the Baldwin County Commission, and Wayne Dyess, as County Administrator of the Baldwin County Commission, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this date, that being informed of the contents of said instrument, they voluntarily executed the same on the day the same bears date.

GIVEN under my hand and seal this the _____ day of _____, 2021.

_____
Notary Public
My Commission Expires:_____

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, _____, a Notary Public, within and County and State, hereby certify that TIMOTHY MULLEK, JOSEPH MULLEK, and MICHAEL MULLEK, d/b/a MULLEK FARMS, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal on this the ____day of _____, 2021.

_____
NOTARY PUBLIC
My Commission Expires: _____


EXHIBIT "A"
Mullek Farms Lease
LILLIE LN
1345.83 Feet
532 Feet
376 Feet
4.592 Acres
376 Feet
532 Feet
660.0 Feet
660.0 Feet
20.4 Acres
1350.34 Feet
05-55-02-10-0-000-007.000
BALDWIN COUNTY ALABAMA
312 COURTHOUSE SQUARE
BAY MINETTE, AL 36507
78.2 Acres
1961.93 Feet
57.8 Acres
55 Acres in Mullek Farms Lease
1974.34 Feet
Remove From Lease
15 Acres
1355.22 Feet
Roads
Bay Area RC Society
Excluded 20.4 Acres
Farm Lease 57.8 Acres
Parcels
0 100 200 400
Feet
BALDWIN COUNTY COMMISSION
GEOGRAPHIC INFORMATION SYSTEMS

COUNTY COMMISSION
BALDWIN COUNTY

312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507
(251) 937-0264 Main
(251) 580-2500 Fax

www.baldwincountyal.gov

Anu Gary
Administrative Services Manager
agary@baldwincountyal.gov
(251) 580-2564

Monica English
Assistant Administrative Services Manager
mtaylor@baldwincountyal.gov
(251) 580-1696

June 4, 2020

Mr. Joseph Mullek
Mullek Farms
25368 County Road 83
Robertsdale, Alabama 36567

RE: Mullek Farms - Lease Agreement

Dear Mr. Mullek:

Please find enclosed a **fully executed copy** of the *Lease Agreement* approved during the April 21, 2020, Baldwin County Commission meeting, between Mr. Timothy Mullek, Mr. Joseph Mullek and Mr. Michael Mullek, d/b/a Mullek Farms and the Baldwin County Commission, which will allow Mr. Timothy Mullek, Mr. Joseph Mullek and Mr. Michael Mullek to lease approximately fifty-five (55) acres more or less of County property at Magnolia Landfill, for farmland, at a lease price of $75.00 per acre. The *Lease Agreement* shall be for the term of May 2, 2020, to May 1, 2023, unless sooner terminated as set forth by the *Lease Agreement*.

If you have any questions or need further assistance, please do not hesitate to contact Terri Graham, Development and Environmental Director, at (251) 972-6878.

Sincerely,

Monica English

MONICA ENGLISH
Assistant Administrative Services Manger
Baldwin County Commission

ME/vk Item GL3

cc: Terri Graham
Allison Owens

ENCLOSURE(S)

STATE OF ALABAMA)
BALDWIN COUNTY)

LEASE AGREEMENT

WHEREAS, this Lease Agreement is made and entered into by and between the BALDWIN COUNTY COMMISSION, hereinafter called "LESSOR", and TIMOTHY MULLEK, JOSEPH MULLEK, and MICHAEL MULLEK, d/b/a MULLEK FARMS, hereinafter called "LESSEE"; and

WHEREAS, the parties hereto have previously contracted to lease this same property in question and for the same purposes; and

WHEREAS, said previously executed Lease Agreement is due to be terminated and renewed by the execution of a new Lease Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, LESSORS do hereby DEMISE and LEASE to LESSEE, and LESSEE does hereby LEASE from LESSOR for the limited purpose of farms, the following described property situated in Baldwin County, Alabama, to-wit:

PARCEL ID # 05-55-02-10-0-000-007.000

Commencing at the Northwest corner of Section 10, Township 7 South, Range 3 East, Baldwin County, Alabama; run thence North 89 degrees 42 minutes 27 seconds East, 2661.16 feet to a point; thence run South 00 degrees 14 minutes 05 seconds East, 2652.16 feet to a 4-inch diameter concrete monument with a 1/2-inch diameter capped steel rod for the point of beginning; thence run North 89 degrees 34 minutes 14 seconds East, 1345.83 feet to a capped steel rod (#18393); thence run South 00 degrees 13 minutes 10 seconds East, 2634.24 feet to a capped steel rod; thence run South 89 degrees 27 minutes 19 seconds West, 1355.22 feet to an old fence post; thence run North 00 degrees 09 minutes 20 seconds West, 1509.75 feet to a concrete monument; thence run North 00 degrees 10 minutes

18 seconds East, 1127.28 feet to the point of beginning,

SUBJECT TO AND EXCLUDING a portion of the above described property, which is more particularly described as follows, to-wit: Commencing at the Northwest corner of Section 10, Township 7 South, Range 3 East, Baldwin County, Alabama; run thence North 89 degrees 42 minutes 27 seconds East, 2661.16 feet to a point; thence run South 00 degrees 14 minutes 05 seconds East, 2652.16 feet to a 4-inch diameter concrete monument with a 1/2-inch diameter capped steel rod for the point of beginning; thence run North 89 degrees 34 minutes 14 seconds East, 1345.83 feet to a capped steel rod (#18393); thence run South 00 degrees 13 minutes 10 seconds East, 660.0 feet to a capped steel rod; thence run South 89 degrees 34 minutes 19 seconds West, 1350.34 feet to a capped steel rod; thence run North 00 degrees 10 minutes 18 seconds East, 660.0 feet to the point of beginning.

and;

1. **TERM**: The term of this Lease Agreement shall be from May 2, 2020 to May 1, 2023, unless sooner terminated. This Lease Agreement may be terminated by either party and for any reason with a forty-five (45) day written notification to the other party.

2. **CONSIDERATION/PAYMENTS**: The consideration for this Lease Agreement shall be Seventy-Five Dollars ($75.00) per acre of identified cultivatable land (see Exhibit A) for the three-year lease term period. There being approximately fifty-five (55.00) acres hereby leased, the annual rental payment shall be Four Thousand One Hundred Twenty-Five Dollars ($4,125.00). The rental payment shall be payable in an annual advance lump sum payment of Four Thousand One Hundred Twenty-Five Dollars ($4,125.00). All lease payments shall be made payable to LESSOR with lawful funds of The United States of America at the following address: Baldwin County Commission,

Attention: Baldwin County Solid Waste, 15140 County Road 49, Summerdale, Alabama 36580.

3. **USAGE**: For and during the term of this Lease Agreement, LESSEE agrees to plant and farm on all suitable land located on the herein leased property such crops as the LESSEE desires and to use the said property for farm purposes and pasture only during the term of said Lease Agreement. LESSEE warrants and guarantees that it shall do nothing to encumber, lien or otherwise adversely affect the title to the real property. Notwithstanding anything herein written or implied by this Lease Agreement, nothing shall prevent the LESSOR from accessing and utilizing the subject property for any purpose whatsoever to include, without limitation, storage.

4. **ADDITIONALLY, RESERVED RIGHTS**: This Lease Agreement is entered into between the parties, subject to the terms and conditions of any oil, gas and mineral lease now in force and effect on the said property or any such oil, gas and mineral lease entered into by the LESSOR in the future during the term of this Lease Agreement.

5. **LIABILITY**: LESSOR shall not be responsible or liable for any work performed by the LESSEE, its agents, servants or employees during the term of the said Lease Agreement and LESSOR shall not be responsible or liable to any person for any accident or injury incurred by the reason of the LESSEE's farming operation on said property. The LESSEE hereby indemnifies and holds the LESSOR harmless from any and all liability for any property damage and/or personal injury which may occur at any time upon the leased premises or as a result of the activities of the LESSEE on the leased premises. Said indemnification shall include any and all court costs and/or attorney's fees incurred by the LESSOR in defense of any claim made against it which may be based upon any occurrence on the leased premises or action of the LESSEE in the usage of said leased premises.

6. **HUNTING WAIVER**: LESSEE hereby waives any and all rights and privileges of hunting on said property. Said rights and privileges are reserved by LESSOR.

7. **COUNTY IMPROVEMENTS**: LESSEE agrees and covenants that LESSOR, as the owner of said property, has any and all rights to improve, at any time, said property including, but not limited to, recreational capital improvements, and that LESSEE will not dissent and/or disagree with any and all improvements made by LESSOR. LESSEE shall have the right and authority to protect and control its interests in the said property and to keep trespassers therefrom.

8. **TRESSPASSERS**: LESSEE agrees and covenants to cultivate the farm during the term hereof in an efficient, economic and husband like manner and to employ all modern methods of farming as are customarily practiced in the area.

9. **DUTY OF CARE AND PRESERVATION**: LESSEE agrees to operate the leased premises with care and not to permit waste of the said property nor destroy or remove without the consent of the owner any improvements on said property.

10. **DUTY NOT TO REMOVE**: LESSEE shall not sell or remove from the leased premises any sand, gravel, rock, oil, coal, or other minerals, or any lumber, posts or wood.

11. **RIGHT OF ENTRY**: LESSOR or its authorized representatives shall have the right, at any reasonable time, to enter on the premises for any purpose to include but not limited to making any major repairs, alterations or improvements, and any other activity or action allowed by Alabama law.

12. **NO AGENCY**: This Lease Agreement shall not give rise to the creation of an agency relationship or a partnership relation between the parties hereto, and none of the parties shall have the authority to bind the others without written consent.

13. **NO ASSIGNMENT**: LESSEE may not assign this Lease Agreement or sublease or encumber any portion of the farm leased hereunder without the prior written consent of the LESSOR. Any attempt at assignment, sublease or other transfer, in violation of the provisions of this Lease Agreement, shall at the option of the LESSOR be void.

14. **BINDING**: This Lease Agreement shall be binding on the LESSOR's successors and assigns.

15. **TAXES**: LESSOR agrees to pay all taxes levied and assessed against the premises.

16. **DEFAULT**: If LESSEE fails to carry out any provision of this Lease Agreement, LESSOR shall have the right to terminate the Lease Agreement on ten (10) days written notice of their intention to do so, and LESSOR shall have the right to proceed by all legal means to obtain possession of the leased premises. LESSEE agrees that if LESSOR employs an attorney to represent it in order to obtain possession of the leased premises, that it will pay a reasonable attorney's fee and court costs in connection therewith to include but not limited to fees and costs associated with LESSEE's failure to surrender properly, quietly and peaceably.

17. **ENTIRE UNDERSTANDING**: This Lease Agreement shall constitute the entire understanding of the parties hereto with respect to the subject matter hereof, and no amendment, modification, or alternation of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

18. **ACTS OF GOD**: Neither LESSOR nor LESSEE shall be required to perform any term, condition, or covenant of this Lease Agreement so long as performance is delayed or prevented by acts of God, drought, floods, material or labor restrictions by any governmental authority and any other cause not reasonably within the control of either party, and which, by the exercise of due diligence, LESSOR or LESSEE is unable, wholly or in part, to prevent or overcome.

19. **NON-WAIVER OF DEFAULT**: The failure of the LESSOR to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Lease Agreement shall not constitute or be construed as a waiver or relinquishment of the right of the LESSOR to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

IN WITNESS WHEREOF, the undersigned LESSOR and LESSEE have hereunto signed and sealed this instrument as of the day and year first above written.

LESSOR
BALDWIN COUNTY COMMISSION
312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507

BY: Billie Jo Underwood / 6/2/2020
BILLIE JO UNDERWOOD /Date
Chairman

ATTEST:

BY: _____ / 6/2/2020
WAYNE DYESS /Date
County Administrator

LESSEE:
MULLEK FARMS
25368 County Road 83
Robertsdale, Alabama 36567

Timothy Mullek 4-24-20
TIMOTHY MULLEK /Date

Joseph Mullek 4/24-20
JOSEPH MULLEK /Date

Michael J. Mullek 4-24-2020
MICHAEL MULLEK /Date

***NOTARY PAGE TO FOLLOW**

STATE OF ALABAMA)

COUNTY OF BALDWIN)

I, Monica English, a Notary Public, in and for said County in said State, do hereby certify that Billie Jo Underwood, as Chairman of the Baldwin County Commission, and Wayne Dyess, as County Administrator of the Baldwin County Commission, whose names are signed to the foregoing instrument and who are known to me, acknowledged before me on this date, that being informed of the contents of said instrument, they voluntarily executed the same on the day the same bears date.

GIVEN under my hand and seal this the 2nd day of June, 2020.

Monica English
Notary Public
My Commission Expires:

My Commission Expires:
May 5, 2024

STATE OF ALABAMA)
COUNTY OF BALDWIN)

I, Allison M. Owens, a Notary Public, within and County and State, hereby certify that TIMOTHY MULLEK, JOSEPH MULLEK, and MICHAEL MULLEK, d/b/a MULLEK FARMS, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

GIVEN under my hand and seal on this the 24th day of April, 2020.

Allison M. Owens
NOTARY PUBLIC
My Commission Expires: 07/29/2020

ALLISON M OWENS
My Commission Expires
July 29, 2020


EXHIBIT "A"
Mullek Farms Lease
LILLIE LN
1345.83 Feet
532 Feet
376 Feet
4.592 Acres
376 Feet
532 Feet
660.0 Feet
660.0 Feet
20.4 Acres
1350.34 Feet
05-55-02-10-0-000-007.000
BALDWIN COUNTY ALABAMA
312 COURTHOUSE SQUARE
BAY MINETTE, AL 36507
78.2 Acres
1961.93 Feet
57.8 Acres
55 Acres in Mullek Farms Lease
1974.24 Feet
1355.22 Feet
Roads
Bay Area RC Society
Excluded 20.4 Acres
Farm Lease 57.8 Acres
Parcels
0 100 200 400
Feet
BALDWIN COUNTY COMMISSION
GEOGRAPHIC INFORMATION SYSTEMS

Baldwin County Commission

Agenda Action Form

File #: 22-0112, **Version:** 1 **Item #:** BL2

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Terri Graham, Development and Environmental Director
Submitted by: Allison Owens, Chief Administrative Assistant

ITEM TITLE
Approval of Renewal Application for Certificate of Exception from Garbage Pick-Up

STAFF RECOMMENDATION
Take the following action:

As authorized by Section 22-27-3 of the Code of Alabama 1975, and without limitation, approve the Renewal Application for Certificate of Exception from Garbage Pick-up as permitted by, and applicable to, as follows:

Approve for a period not to exceed one (1) year commencing September 21, 2021:

Bruce Armstead
39910 Bertha Cleveland Road South
Bay Minette, Alabama 36507
(Application Receipt No. 1571)

BACKGROUND INFORMATION

Previous Commission action/date: October 20, 2020, BCC Regular Meeting

Background: APPLICATION FORTHCOMING FROM STAFF Mr. Bruce Armstead, of 39910 Bertha Cleveland Road South, Bay Minette, Alabama, a resident of unincorporated Baldwin County, has requested approval to haul his own household solid waste from his residence to the Baldwin County Transfer Station located in Bay Minette, Alabama.

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Terri Graham, Development and Environmental Director, to follow up with:

Ms. Camilla English, Environmental Supervisor
Baldwin County Health Department
Post Office Box 369
Robertsdale, Alabama 36567
Email: camilla.english@adph.state.al.us

Action required (list contact persons/addresses if documents are to be mailed or emailed):
N/A

Additional instructions/notes: N/A

Receipt/Current Invoice

Date	Client Number	Gross Charge	Net Charge	Credits	Amount Paid	Current Balance
09/21/2021	120	10.00	10.00		10.00	0.00

Previous Balance: 0.00

Name of Client: Bruce Armstead

Transaction Category: ENV

Received from Payer: BRUCE ARMSTEAD

Notes: GARBAGE EXCEPTION PERMIT

Baldwin County Health Department

312 Courthouse Square, Ste 29

Bay Minette, AL 36507

(251) 937-6935 Phone

(251) 580-4767 Fax

Next Appointment (Date) _____

Receipt Date: 9/21/2021

DPH-A-101-Rev. 11/2008

Receipt Number: **1571**

SERVICE CODE	NET CHARGES
643	10.00

Patient/Client Copy

APPLICATION FOR CERTIFICATE OF EXCEPTION PERMIT

For Department Use Only

Code 643

ALABAMA DEPARTMENT
OF PUBLIC HEALTH

_____ County Health Dept.
_____ Co. Health Dept. I.D. No.
9/21/21 Date Received
_____ Date Permit Issued

To Be Completed And Signed By The Applicant

Name of Applicant Bruce Armstead (Please Type or Print) Phone No. 251-490-3982

Address 39910 Bertha Cleveland Rd Bay Minette, Ala (Please Type or Print) # Persons Living at Residence 2

Directions To Property: Off of state highway 225, turn down Bertha Cleveland Rd and come all the way to the end of pavement and veer to the left and come all the way to the end of road.

Is house-to-house pickup service available to you? X Yes ___ No

Is a roadside container available to you? X Yes ___ No

Select the option you desire and sign:

OPTION NO. 1

X I will store my garbage in a fly-tight container and transport my own garbage and refuse to a:

__ Sanitary Landfill Bay Minette Transfer Station (Name and Location)
__ Roadside Container _____ (Location)
__ Other _____ (Describe)

or other health department approved public site at least once per week. I will transport my solid wastes in such a manner as not to litter the highway or create a public health hazard, and only during the set hours when the sanitary landfill or other approved site is open. I agree to furnish to the County Health Department weekly receipts (where required) secured from the sanitary landfill operator as evidence of proper disposal upon request.

Date 14-Oct-21

Signed Bruce Armstead

Baldwin County Commission

Agenda Action Form

File #: 22-0061, **Version:** 1 **Item #:** BL3

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Terri Graham, Development and Environmental Director
Suzanne Doughty, Senior Accountant
Submitted by: Suzanne Doughty, Senior Accountant

ITEM TITLE
Baldwin County Solid Waste Uncollectible Residential Accounts - October 2021

STAFF RECOMMENDATION
Approve the attached uncollectible residential garbage accounts list for write-offs in the amount of $895.00.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background:
The accounts listed in the attached spreadsheet all have balances that are uncollectible. All accounts listed have been thoroughly reviewed by Baldwin County Solid Waste Deputy, Solid Waste Officers and/or the Senior Accountant. All accounts have undergone the following procedure as prescribed for by both State Law and County Commission resolution (where forwarding address is verifiable and within Baldwin County):

1. Notice of delinquency provided. Statement contains “Past Due” watermark.

2. If account is not brought current by the first week of the following billing month, a Notice of Show Cause Hearing is mailed immediately.

3. If account remains delinquent after subsequent attempts to collect, a delinquency letter is sent via the District Attorney’s office.

4. When deemed appropriate, house visits or do not pick-up service orders will be implemented.

5. If account remains delinquent after all attempts to collect (noted above) have been exhausted, the account holder, where appropriate, is referred to the District Attorney for possible criminal prosecution

FINANCIAL IMPACT

Total cost of recommendation: $895.00

Budget line item(s) to be used: 511.14990 Allowance for uncollectible accounts

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Solid Waste Collection Administration and Finance and Accounting Department

Action required (list contact persons/addresses if documents are to be mailed or emailed):
N/A

Additional instructions/notes: N/A

Baldwin County Solid Waste
Residential Uncollectible Accounts
October 2021

BillToName	BillToCity	BillToState	Reason	Service Fees	Late Fees	BalanceTotal	DA Letter	Cert SC	Summons
Britt, Kimberly	Stockton	AL	Unable to Locate	$ 36.00	$ -	$36.00	X	X	
Downer, Keith	Yukon	OK	Out of State	$ 18.00	$ -	$18.00		X	
Fletcher, Dwain R.	Indianapolis	IN	Out of State	$ 54.00	$ -	$54.00	X	X	
Foran, Michelle	Loxley	AL	Unable to Locate	$ 18.00	$ -	$18.00		X	
Gibbs, Kailey	Orlando	FL	Out of State	$ 22.00	$ -	$22.00	X		
Johnson, Robert Lee Jr.	Daphne	AL	Unable to Locate	$ 132.00	$ -	$132.00	X	X	
Keeney, Kimberly	Robertsdale	AL	Unable to Locate	$ 4.00	$ -	$4.00		X	
Maurer, Ashley and Jonathan	Anna	IL	Out of State	$ 126.00	$ -	$126.00	X	X	
McLeod, Kenneth D. Jr.	Foley	AL	Deceased - DOD: 06/16/2021	$ 118.00	$ -	$118.00			
Myers, Sandra	Mobile	AL	Out of County	$ 96.00	$ -	$96.00	X	X	
Nix, Christopher	Birmingham	AL	Out of County	$ 64.00	$ -	$64.00	X	X	
Peterson, Albert	Point Clear	AL	Deceased - DOD: 08/02/2021	$ 128.00	$ -	$128.00			
Porter, Breanna	Robertsdale	AL	Unable to Locate	$ 31.00	$ -	$31.00	X	X	
Srofe, Chad	Goodlettsville	TN	Out of State	$ 48.00	$ -	$48.00	X	X	
						$ 895.00			

Baldwin County Commission

Agenda Action Form

File #: 22-0108, **Version:** 1 **Item #:** BL4

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Terri Graham, Development and Environmental Director
Submitted by: Suzanne Doughty, Senior Accountant

ITEM TITLE
Resolution #2022-010 - Fiscal Year 2022 Solid Waste Budget Adjustment

STAFF RECOMMENDATION
1) Adopt Resolution #2022-010 which amends the Fiscal Year 2022 Budget approved during the September 21, 2021, Baldwin County Commission meeting per Resolution #2021-128, to authorize additional funding of $100,000 for Fund 511 capital expenditures.

2) Create an additional cost center for Fund 511 - Garbage Collection to allow for more accurate tracking of maintenance shop expenses which are currently budgeted and recorded in totality to Fund 510.54370 Equipment Maintenance. Further, authorize the reclassification of fifty percent (50%) of the approved Fiscal Year 2022 Fund 510.54370 budget to the newly created 511 cost center and applicable object codes.

BACKGROUND INFORMATION

Previous Commission action/date: September 21, 2021

Background: The Baldwin County Commission adopted the Fiscal Year 2022 Budget on September 21, 2021, per Resolution #2021-128. Included in the approved Decision Item list for FY22 was the purchase of five (5), thirty-three (33 yd) ASL garbage trucks for the estimated total of $900,000.00. Per the current quotes, an additional $100,000.00 is necessary to complete the capital purchase of the five (5) garbage trucks.

Historically, Solid Waste Maintenance Shop expenses have been recorded to Fund 510 - Landfill with fifty percent (50%) cost allocation appropriated to Fund 511 - 54800 Garbage Collections. With the change to MUNIS a more efficient solution for recording the costs is a separation between funds, which will allow more effective tracking, recording and allocation of expenses based on actual usage of equipment maintenance shop resources.

FINANCIAL IMPACT

Total cost of recommendation: $100,000.00

Budget line item(s) to be used: 511.54800 55240

If this is not a budgeted expenditure, does the recommendation create a need for funding?
Yes. Funding for capital equipment proprietary funds is provided by fund balance reserves.

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Budgeting, Finance and Accounting, Solid Waste

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Budgeting - Post adjustment entry, Finance and Accounting - create new Fund 511 Cost Center and applicable object codes.

Additional instructions/notes: N/A

STATE OF ALABAMA)

COUNTY OF BALDWIN)

RESOLUTION #2022-010
OF THE
BALDWIN COUNTY COMMISSION

BE IT RESOLVED, BY THE BALDWIN COUNTY COMMISSION, IN REGULAR SESSION ASSEMBLED, that we hereby amend the Baldwin County Fiscal Year 2022 Budget and that the following estimates of revenues and expenses, as related thereto, are hereby adopted and those revenues and expenses are appropriated as follows:

Account	**Description**	**Debit**	**Credit**
51154800 55240	Garbage Collection – Capital Expenditures	100,000	
51135000	Garbage Collection – Fund Balance		100,000

DONE, under the Seal of Baldwin County, Alabama, as affixed on this the 19th day of October 2021.

_____
Commissioner Joe Davis III, Chairman

ATTEST:

_____
Ronald J. Cink, Budget Director

Baldwin County Commission

Agenda Action Form

File #: 22-0076, **Version:** 1 **Item #:** BM1

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Cian Harrison, Clerk/Treasurer
Submitted by: Katrina Taylor, Grants Coordinator

ITEM TITLE
Allocation of American Rescue Plan Act (ARPA) Funds

STAFF RECOMMENDATION
Based on the Grants Committee recommendation, approve the allocation of American Rescue Plan Act (ARPA) funds for air-surface hospital grade disinfectant backpack foggers:

Baldwin County Commission Facilities	$141,898.20
Baldwin County Sheriff's Office Facilities	$37,872.50
Total Cost:	$179,770.70

BACKGROUND INFORMATION

Previous Commission action/date: August 3, 2021 - Last action taken

Background:
August 3, 2031, BCC Regular Meeting - Approved the allocation of the following ARPA project:

Boros Road Bowl	Est:	$1,122,256.00
10% Contingency	Est:	$112,225.00
10% Administrative Costs	Est:	$112,225.00
	Total Estimated Cost:	$1,346,706.00

July 6, 2021, BCC Regular Meeting - Approved the allocation of the following ARPA project:

Magnolia Landfill Recycling Facility	Est:	$5,500,000.00
10% Contingency	Est:	$550,000.00
10% Administrative Costs	Est:	$550,000.00
	Total Estimated Cost:	$6,600,000.00

June 15, 2021, BCC Regular Meeting - Approved the allocation of the following ARPA projects:

COA Main Office COVID Upgrades	Est:	$11,875.00
Baldwin Together Case Manager	Est:	$25,000.00
Tyler Technologies Software Training	Est:	$28,000.00
Countywide Touchless Bathroom Equipment	Est:	$80,459.00
Set aside for Nonprofits	Est:	$100,000.00
Ionizer in Buildings	Est:	$175,000.00
Document Library	Est:	$285,000.00
BCSO Hazard Pay and Law Enforcement	Est:	$400,000.00
Motorola Projects (2)	Est:	$469,181.00
10% Contingency	Est:	$157,451.50
10% Administrative Costs	Est:	$157,451.50
Total Estimated Cost:		$1,889,418.00

FINANCIAL IMPACT

Total cost of recommendation: $179,770.70

Budget line item(s) to be used: N/A - to be funded using American Rescue Plan Funds

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Katrina Taylor - enter project in Munis

Action required (list contact persons/addresses if documents are to be mailed or emailed): N/A

Additional instructions/notes: N/A

Account #: 237 037 524 542 ATTN: Larry Griffiths

purus thinking.

CleanStrike LLC

Sales Office
4914 W. Genesee St.
Camillus, NY 13031
315/487-6005
ATTN: Purus

Prepared by: Cook, Jackson
Purusthinking65@gmail.com
205-777-9097

Backpack Fogger		$10,995.00	12	$131,940.00
Extra Backpack Battery		$450.00	12	$5,400.00
Industrial Standup Fogger		$10,995.00		$0.00
Surface Testing		$2,697.00		$0.00
Surface Testing Swabs (100)		$310.00		$0.00
Purus Air Quality Equipment		$2,975.00		$0.00
Covid Surface Tests		$275.00		$0.00
Purus Air Quality Testing		$279.00		$0.00
Freight- not to exceed				$ 2,400.00

Product Model (Solution)	Item #	Pricing (Per Gallon)	Qty	Sub Total
Purus HOCL 500	Pur-Hypo-500	$59.95	36	$2,158.20
			Sub Total	#REF!

Sub Total	$141,898.20
+ Sales Tax	NONE
Total Price	**$141,898.20**

(pricing as of 06/02/21) (Shipping & Delivery Fee not included)

purus thinking

CleanStrike LLC

Sales Office
4914 W. Genesee St.
Camillus, NY 13031
315/487-6005
ATTN: Purus

Prepared by: Cook, Jackson
Purusthinking65@gmail.com
205-777-9097

Backpack Fogger		$10,995.00	3	$32,985.00
Extra Backpack Battery		$450.00	3	$1,350.00
Industrial Standup Fogger		$10,995.00		$0.00
Surface Testing		$2,697.00		$0.00
Surface Testing Swabs (100)		$310.00		$0.00
Purus Air Quality Equipment		$2,975.00		$0.00
Covid Surface Tests		$275.00		$0.00
Purus Air Quality Testing		$279.00		$0.00
Freight- not to exceed				$ 900.00

Product Model (Solution)	Item #	Pricing (Per Gallon)	Qty	Sub Total
Purus HOCL 500	Pur-Hypo-500	$59.95	44	$2,637.80
			Sub Total	#REF!

Sub Total	$37,872.80
+ Sales Tax	NONE
Total Price	$37,872.80

(pricing as of 06/02/21) (Shipping & Delivery Fee not included)

Baldwin County Commission

Agenda Action Form

File #: 22-0094, **Version:** 1 **Item #:** BM2

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Cian Harrison, Clerk/ Treasurer
Submitted by: Makayla Shiver, Staff Accountant

ITEM TITLE
Association of County Commissions of Alabama (ACCA) Workers' Compensation Longevity Bonus

STAFF RECOMMENDATION
Related to the Association of County Commissions of Alabama Worker's Compensation Self-Insurance Fund (ACCA WCSIF) Member Longevity Bonus, take the following actions:

1) Adopt and authorize the Chairman to execute Resolution #2022-008 for the 2024 Workers' Compensation Longevity Bonus; and

2) Authorize the Chairman to execute any related correspondence and/or instruments.

BACKGROUND INFORMATION

Previous Commission action/date: 10/2/2018

Background: Each year the Board of Trustees of the ACCA Workers' Compensation Self-Insurers Fund evaluates the overall financial condition of the program and considers a refund of investment earning to each participant.

To be eligible for what is called the 2024 Longevity Bonus, a county commission must elect to continue its participation in the Workers' Comp Fund through at least September 30, 2024. All counties participate in the Workers' Compensation Program through a one-year contract that automatically renews unless cancelled by the county within time frames set-out by the contract. The 2024 Longevity Bonus program will not void or repeal this contract but will only be a commitment not to exercise your ability to withdraw for at least the next three years.

By agreeing to be a participant for at least the next three years, counties are expressing their long-term commitment to the program and, in exchange, the trustees are providing a return of a portion of this year's estimated premium-contribution as evidence of their commitment to provide further improvements in the next three years.

Counties adopting and returning the resolution to ACCA prior to December 1, 2021, will be eligible for the one-time distribution. The payment will be made following the remittance of premium-contributions by all county workers' comp fund members. The payment is anticipated to be paid on April 1, 2022

The ACCA General Liability Fund paid Baldwin County Commission Longevity Bonuses as seen below:
FY2011: $ 86,261.00
FY2014: $ 193,233.48
FY2017: $ 139,514.25
FY2019: $ 195,859.62

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: Fund.47850

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: Must be submitted to the ACCA WCSIF prior to December 1, 2021

Individual(s) responsible for follow up: Cian Harrison and Makayla Shiver, Finance and Accounting

Action required (list contact persons/addresses if documents are to be mailed or emailed):

Please return signed resolution to Makayla Shiver in Finance and Accounting to be returned to ACCA WCSIF.

Additional instructions/notes: N/A

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RESOLUTION # 2022-008
Baldwin County Commission

WHEREAS, Baldwin County is a member of the Association of County Commissions of Alabama Workers' Compensation Self-Insurers Fund ("the Fund") on Oct. 1, 2021; and

WHEREAS, the County's participation in the Fund has been a significant benefit to the County since becoming a member; and

WHEREAS, the representation and service provided by the Fund continues to be in the best interest of Baldwin County and its officials and employees; and

WHEREAS, the Fund is providing a 2024 Longevity Bonus to those County participants who remain active members of the Fund through at least Sept. 30, 2024; and

WHEREAS, Baldwin County would benefit by voluntarily agreeing to extend its contracted annual participation in the Fund for a three-year period concluding on Sept. 30, 2024, at which time the provisions of the existing contract between Baldwin County and the Fund will remain in force unless altered as provided therein.

NOW, THEREFORE, BE IT RESOLVED by the Baldwin County Commission that it renews its participation in the Fund through Sept. 30, 2024, and hereby directs its Chair to immediately provide the original signed copy of this resolution to the Fund.

AND, BE IT FURTHER RESOLVED, by the Baldwin County Commission that, should it voluntarily withdraw from the Fund prior to Sept. 30, 2024, it agrees to return the 2024 Longevity Bonus provided by the Fund, plus five (5) percent annual interest.

Adopted this the _____ day of _____ 2021.

_____

County Commission Chairperson

Baldwin County Commission

Agenda Action Form

File #: 22-0073, **Version:** 1 **Item #:** BN1

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wanda Gautney, Purchasing Director
Joey Nunnally, P.E., County Engineer
Seth Peterson, P.E., Pre-Construction Manager
Submitted by: John Sedlack, Design Tech III

ITEM TITLE
Alabama Gulf Coast Recovery Council, State Expenditure Plan #11 - Lillian Park Beach Habitat and Shoreline Protection Project - Permission to Advertise for Professional Services for Engineering/Environmental Services for Design

STAFF RECOMMENDATION
Approve the Purchasing Department and Highway Department to develop and advertise a “Request for Qualifications” (RFQ) for design services for the Lillian Park Beach Habitat and Shoreline Protection Project.

BACKGROUND INFORMATION

Previous Commission action/date:
April 6, 2021:
The Commission approved the Contract with Neel-Schaffer, Inc., for Engineering/Environmental Services for a Coastal Processes Study for the Lillian Park Beach Habitat and Shoreline Protection project in the amount of $116,614.00 and authorized the Chairman to execute the Contract.

December 15, 2020:
The Commission authorized the Chairman to execute a letter to the Alabama Department of Conservation and Natural Resources (ADCNR) requesting the transfer of funds from the Construction phase to the Coastal Processes Study phase of the Lillian Park Beach Habitat and Shoreline Protection project.

September 22, 2020:
The Commission authorized staff to begin negotiations with Neel-Schaffer, Inc., so that a final recommendation for award can be made to the Baldwin County Commission for Engineering/Environmental Services for a Coastal Processes Study for the Lillian Park Beach Habitat and Shoreline Protection project.

June 2,2020:
The Commission approved a Subaward Grant Agreement for State Expenditure Plan #11 - Lillian Park Beach Habitat and Shoreline Protection; and approved the Purchasing Department and Highway Department to Develop a “Request for Qualifications” (RFQ) for a Coastal Processes Study and place an advertisement for submissions.

December 19,2017:
The Commission authorized the Highway Department to submit a grant application for the following projects:

New Stream-Gaging Station on Fish River at County Road 32
Lillian Park Beach Habitat and Shoreline Protection Longevity, Stability & Work Quality Improvements
Bon Secour Dredge Material Disposal Area (DMDA)

and authorized the Chairman to execute any project related documents.

Background:
Baldwin County has been awarded a Resources and Ecosystem Sustainability, Tourist Opportunities and Revived Economies of the Gulf Coast States Act of 2012 (Restore Act) Grant in the amount of $621,460.00 for the Lillian Park Beach Habitat and Shoreline Protection project. The Coastal Processes Study has been performed and a recommendation for repair has been chosen. An RFQ for Professional Services for Engineering/Environmental Services for Design is the next phase of this project.

FINANCIAL IMPACT

Total cost of recommendation: TBD

Budget line item(s) to be used: HW16069000.1PRECN.1CONTRSRV.1CONTRACT

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up:
Purchasing Director and Highway Department to prepare an RFQ for Design Services.

Purchasing Director to place an advertisement for submissions once the RFQ is finalized.

Action required (list contact persons/addresses if documents are to be mailed or emailed):
N/A

Additional instructions/notes: N/A

Lillian Shoreline Restoration

Date: 10/1/2020



Baldwin County Commission

Agenda Action Form

File #: 22-0095, **Version:** 1 **Item #:** BN2

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Joey Nunnally, P.E., County Engineer
Submitted by: John Sedlack, Design Tech III

ITEM TITLE
County Road 20 Extension from South Hickory Street to County Road 65 - Engineering and Survey Services Fee Increase

STAFF RECOMMENDATION
Approve a fee increase of $137,500.00 for additional design services performed by TTL, Inc. for the County Road 20 Extension from South Hickory Street to County Road 65.

BACKGROUND INFORMATION

Previous Commission action/date:
March 2, 2021: The Commission waived Baldwin County Commission Policy #9.10 - Engineering, Environmental Monitoring and Surveying Services and approved on-call consultant TTL, Inc., to perform design services for the County Road 20 Extension Project with design fees not to exceed $250,000.00.

September 22, 2020: The Commission adopted Resolution #2020-127 and approved the FY 2021 Budget allocating $535,000.00 for Design and Right-of-Way for the County Road 20 Extension Project.

Background:
Traffic studies performed on S. Hickory Street and County Road 65 recommend that a traffic signal be installed at the intersection of County Road 20 and S. Hickory Street and a roundabout be installed at the intersection of County Road 20 and County Road 65. The design for these intersection improvements will be added to the in-progress County Road 20 extension design.

FINANCIAL IMPACT

Total cost of recommendation: $137,500.00

Budget line item(s) to be used: HW21101000.1PRECN.1CONTR SRV.1CONTRACT

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up:
Highway Department staff will issue a “Notice to Proceed” to TTL. Inc.

Action required (list contact persons/addresses if documents are to be mailed or emailed):
N/A

Additional instructions/notes: N/A

TTL Inc.
2743-B Gunter Park Drive W.
Montgomery, AL 36109

September 20, 2021

Mr. Joey Nunnally, P.E.
Baldwin County Engineer

Attn: Seth Peterson, P.E.
Pre-Construction Manager

Baldwin County Commission
Office of County Engineer
Central Annex II (3rd & 4th Floors)
22070 Highway 59
Robertsdale, AL 36567

Subject: Fee Proposal for Extra Work for Construction Plans
Extend CR 20 from Hickory Street South to CR-65
Baldwin County

Dear Mr. Peterson:

Baldwin County has directed TTL to design a roundabout at the CR-65/CR-20 intersection and a traffic signal with appropriate turn lanes at the CR-20/South Hickory Street intersection. Additional work is needed to include these items into the final plan assembly. Attached is the scope and fee proposal to perform the additional work for survey (see Wattier attached letter), perform the geotechnical and environmental work and produce the roadway plans for the above referenced project.

The related scopes of work are attached.

Item	Description	Cost Estimate
1.	Extra Survey (Wattier)	$9,800
2.	TTL Rdwy Design/Traffic Signal	$120,000
3.	TTL Geotechnical and Material Report	$1,500
4.	TTL Environmental Services	$6,200
	TOTALS	**$137,500**

Thank you for this consideration and if you have any questions let us know.

Sincerely,

Mack Taylor

Mack Taylor, P.E.
Vice President - Transportation Alabama

c: File

TTL Inc.
2743-B Gunter Park Drive W.
Montgomery, AL 36109

Extend CR-20 from Hickory Street South to CR-65
Baldwin County, Alabama

Scope of Services

Surveying

TTL will provide the extra surveying services as specified in the Wattier Surveying proposal letter dated September 7, 2021.

TTL Roadway Design and Plan Production

TTL will incorporate the design of the roundabout at the intersection of CR-20/CR-65 and the traffic signal and required turn lanes at the intersection of CR-20/South Hickory Street into the roadway plans. The anticipated plan assembly sheets affected include:

- Title, Index to Sheets
- Geometric Layout
- Typical Sections
- Project Note Sheets
- Summary of Quantities
- Summary of Quantity Box Sheet
- Plan and Profile
- Roundabout Layout Sheets
- Paving Layout
- Signing and Striping
- Traffic Signal Plans
- Erosion and Sediment Control
- Drainage Sections and Details
- Utility Sheets
- Traffic Control
- Cross Sections and Earthwork Calculation Sheet

TTL Bridge Geotechnical, Materials Report and Soil Survey

TTL will incorporate the required roadway buildup for the roundabout at CR-20/CR-65 intersection and the turn lanes at CR-20/South Hickory Street intersection into the Materials Report.

TTL Environmental Services

TTL will perform the following environmental work as listed below for the extra area needed for designing the roundabout at CR-20/CR-65 and the extra area associated with adding the required turn lanes at CR-20/South Hickory Street:

Waters of the U.S. Delineation

TTL will conduct a delineation of jurisdictional waters of the U.S. (WOTUS) within the site according to methods found in the USACE Wetland Delineation Manual (1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic Gulf Coastal Plain v. 2.0 (dated November 2010). Jurisdictional streams will be identified using the North Carolina Division of Water Quality, Methodology for Identification of Intermittent and Perennial Streams and Their Origins, Version 4.11, dated September 1, 2010.

The delineation will include the following:

- Review of topographic maps, aerial images, U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) Maps and Natural Resources Conservation Service (NRCS) Soil Survey Maps.
- Delineate the wetland and upland boundary and streams using flagging marked with "Wetland Delineation" or standard stream flagging.
- Prepare wetland and stream data forms.
- Map the boundaries of wetlands and the centerlines of streams using a Trimble Geo7x global positioning system (GPS) set to sub-meter accuracy.
- Observe drainage and connectivity to jurisdictional on-site and off-site wetlands, streams, or other waters of the U.S.

Prior to initiating fieldwork, TTL requests a georeferenced .dxf, .shp, or .kmz file of the property boundary or area of interest. Without this file TTL will not be able to accurately determine the extent of identified features within the project boundaries.

TTL also requires that the client secure access to the entire property to be reviewed. Through authorization of this proposal, TTL assumes that appropriate access has been obtained by Baldwin County. Please notify TTL in writing if there are any particular site access requirements (gate keys, check-in requirements, etc). Should TTL not be granted complete site access at one time, additional mobilizations may be required to complete the field activities.

Following the wetland and stream delineation, TTL will prepare a WOTUS Report (Report). The Report will include USACE Wetland Data Sheets, Stream Data Sheets, and a map of the jurisdictional features that can be used for USACE jurisdictional determination. Upon request, a .dxf or .shp file of the delineated features can be provided.

Jurisdictional Determination

TTL will not request a jurisdictional determination without first obtaining permission from the County. Upon approval, TTL will submit the Report along with the appropriate Jurisdictional Determination Form to the USACE and request a determination. The USACE may require a site visit to verify on-site aquatic features. TTL will coordinate with the USACE to schedule a site visit and accompany the USACE during the site visit. Modifications to the Report resulting from the USACE site visit will be incorporated into the revised report (if necessary) and resubmitted to the USACE for a final determination.

If the USACE is not engaged regarding a jurisdictional determination, TTL is neither responsible for the final determination of jurisdictional features within the review corridor, nor responsible for violations associated with unauthorized activities that may occur within areas that may be deemed jurisdictional by the USACE.

Threatened and Endangered Species Habitat Assessment

Concurrent with the WOTUS delineation field work, TTL will evaluate and document existing habitats within the review area with regard to the potential for protected species within the project area. Following the completion of field work, TTL will prepare and submit a letter to the USFWS requesting comment regarding the potential impact to threatened and/or endangered species. The letter will include a brief description of the project, a description of the current onsite environments, federally listed species for the project area, and select site photographs. TTL will respond to questions and comments the USFWS may have as needed. *Should the USFWS require additional assessment(s) of the property, TTL will submit a separate proposal for this service.*

Section 106 Coordination (Cultural & Historical Resources)

TTL will subcontract with TerraXplorations, Inc (TerraX) to complete a Phase I Cultural Resource Survey. The Phase I Cultural Resources Survey will include background research and fieldwork to evaluate the project site for potential for culturally sensitive artifacts. A report of findings will be prepared and submitted fully describing the conduct, results, and recommendations of the survey. The components of the study will comply with the standards set by the AHC. *Should the AHC or the USACE require additional assessment of the property, TTL will submit a separate proposal for this service.*

WATTIER SURVEYING, INC.

PROFESSIONAL LAND SURVEYORS

September 7, 2021

Mr. Joel Wampol, PE
TTL, Inc.
22 Inverness Center Parkway #140
Hoover, AL 35242

RE: CR-20 between CR 65 and Hickory Street South; Baldwin County
Additional Survey

Dear Joel

Thank you for the opportunity to provide a proposal for the above referenced project. We have reviewed the project information and propose the following scope of work and fee.

Scope of Work:

The limits of our original project survey will be expanded to include the additional roadway lengths and widths as shown on the 2 attached marked-up maps. A Right-of-Way survey of the additional roadway will be provided in accordance with the requirements of the original survey. A Topographic Survey of the additional roadway and specified widths will also be provided in accordance with the requirements of the original survey.

The additional survey data will be added to the original survey and provided in dgn format along with a dtm for inroads, and will be delivered within 15 working days of NTP

Fee: $9,8000

Let me know if you have any questions.

Sincerely
WATTIER SURVEYING, INC.

Mark A. Wattier

Mark A. Wattier - PLS
President

4318 Downtowner Loop North, Suite H; Mobile AL 36609
(251) 342-2640

Extend survey 300' Get 50' from ROW limit

Limits of Exist survey Approx 430' from CL

Widen survey to 50' from Exist ROW Each side

18"HDP
INV(N)=57.12
INV(S)=57.21

18" HDPE

4"SL-35"

105+00

BL CR-65

"ROAD WORK NEXT MILE"

CR-65

PRES ROW

PRES ROW

STA 50+00.00 CR-20=
STA 102+00.00 CR-65

+15

BL-1

STOP

CONCRETE

NON CONC

IN PL 44"x27" RCAP (REMOVE)

44"x27"RCAP
INV(N)=55.45
INV(S)=55.26

BEGIN WORK
STA 49+50.00

THE S.W. CORNER OF SECTION 6, T-
& THE N.W. CORNER OF SECTION 7,
BALDWIN COUNTY, ALABA
NAIL & DISK SET IN ASPHALT AT 1
OF A NAIL PREVIOUSLY FOUND AS
BOUNDARY SURVEY BY DEWBERRY
GEORGE D. GIBSON, III, DATED 1(

Survey limits 300' from CL ROAD

150' WIDE

300'

150' WIDE

100+00

Widen survey in corner Clip A 11 #le

Widen Exist survey to be 50' from Exist ROW Each side

End of Exist survey Approx 300' from CL

Extend survey 500' Get 50' from ROW Each side

LEGEND

- SURVEY CONTROL POINT
- UTILITY POLE W/ANCHOR
- LIGHT POLE
- GUY POLE W/ANCHOR
- ELECTRIC TRANSFORMER/VAULT
- FIRE HYDRANT
- WATER VALVE
- NATURAL GAS VALVE
- NATURAL GAS MARKER
- COMMUNICATION MARKER
- COMMUNICATION PEDESTAL
- COMMUNICATION VAULT
- UNKNOWN VALVE
- MAILBOX
- FLAG POLE
- SIGN
- OVERHEAD UTILITIES
- WATER LINE
- NATURAL GAS LINE
- UNDERGROUND COMMUNICATION
- STORM DRAIN PIPE
- WIRE FENCE
- PIPE RAIL FENCE
- WOOD RAIL FENCE
- TREE LINE
- RIP RAP
- LIVE OAK TREE
- OAK TREE
- PINE TREE
- PECAN TREE
- MAGNOLIA TREE
- CYPRESS TREE
- POPLAR TREE
- MAPLE TREE
- HICKORY TREE
- CEDAR TREE
- POPCORN TREE
- UNKNOWN TREE
- PALM TREE

Extend survey 600' 50' from exist ROW each side

Exist survey 300' from CL

Widen survey 50' from exist ROW

Widen survey 30' from exist ROW

Extend survey 350'

Widen survey 30' from exist ROW

Exist survey 300' from CL

Widen survey to 50' from exist ROW

Exist survey 300' from CL

Extend survey 750' 50' from exist ROW each side

105+00

102+00

95+00

00+00

BL SOUTH HICKORY STREET

SOUTH HICKORY STREET

PRES ROW

05-61-03-06-0-000-008.000
ABBOTT, STEPHEN P
18803 CROCKER LANE
FOLEY, AL 36535
INSTR. NO. 1488782

STA 103+42.56 CR-20=
STA 100+00.00 SOUTH HICKORY STREET

THE S.E. CORNER OF SECTION 6, T-8-S, R-4-E & THE N.E. CORNER OF SECTION 7, T-8-S, R-4-E BALDWIN COUNTY, ALABAMA; RAILROAD SPIKE FOUND

SECTION 6 T8HP 8S RGE 4E

SECTION 7 T8HP 8S RGE 4E

N89°57'07"E

COMMON AREA 1
DETENTION POND
05-61-03-07-0-000-002.029
MAJESTIC MANOR LLC
302 A STEINER ROAD
LAFAYETTE, LA 70508
INST. NO. 1664508

MANOR SUBDIVISION
DE 2734-B

DWELLING

GRAVEL

ASPHALT

CAPPED REBAR

APPARENT JUNCTION BOX NOT ACCESSIBLE

IN PL WOOD FENCE (RETAIN)

IN PL AIDC WIRE FENCE (RETAIN)

NOTES

1. THE PROPERTY DESCRIBED HEREON IS SHOWN ON THE FEMA FLOOD INSURANCE RATE MAP NO. 01003C0927 M, DATED 04/19/19, AND IS SHOWN TO BE IN FLOOD ZONE "X-UNSHADED".
2. ELEVATIONS SHOWN HEREON ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88) AND WERE ESTABLISHED ON-SITE VIA RTK GPS OBSERVATIONS
3. HORIZONTAL COORDINATES SHOWN HEREON ARE REFERENCED TO STATE PLANE COORDINATES, ALABAMA WEST ZONE, NAD 83 AND WERE ESTABLISHED ON-SITE VIA RTK GPS OBSERVATIONS
4. UNDERGROUND UTILITIES SHOWN HEREON WERE ESTABLISHED BY FIELD MEASUREMENTS OF MARKINGS PLACED ON THE GROUND BY VARIOUS UTILITY COMPANIES IN RESPONSE TO LINE LOCATE TICKET NUMBER 210700779 & 210700800 OR AS SHOWN ON AS-BUILT DRAWINGS PROVIDED BY UTILITY COMPANIES

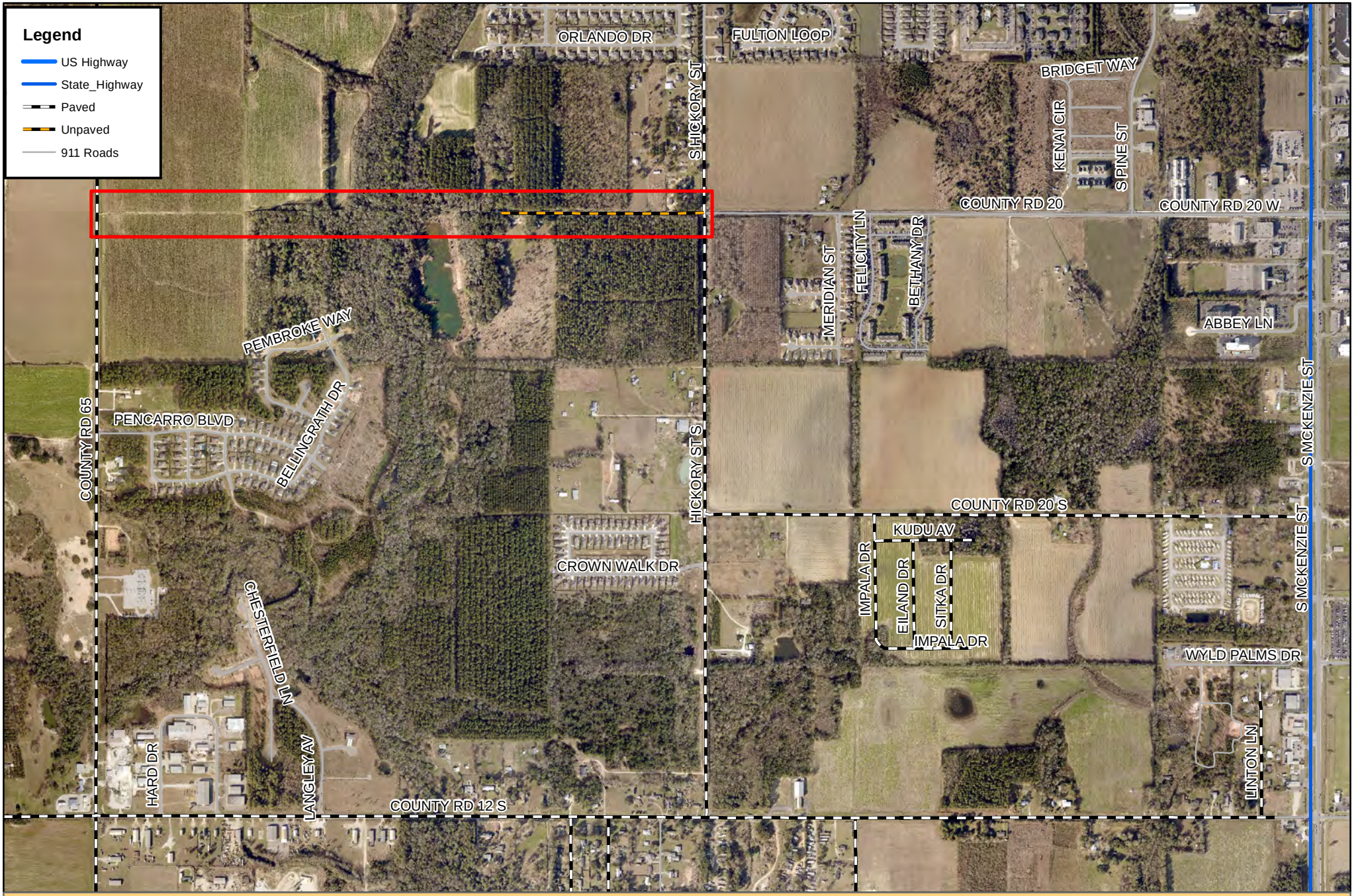
UTILITIES LISTED ON ALICALL TICKET:

BALDWIN COUNTY EMC

GULF TELEPHONE

HARBOR COMMUNICATIONS

RIVIERA UTILITIES



Extend CR 20 from South Hickory Street to CR-65

N
W E
S

0 0.1 0.2 0.3 0.4
Miles

Baldwin County Commission

Agenda Action Form

File #: 22-0090, **Version:** 1 **Item #:** BN3

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Joey Nunnally, P.E., County Engineer
Seth Peterson, P.E., Pre-Construction Manager
Submitted by: John Sedlack, Design Tech III

ITEM TITLE
County Road 99 Shoulder Widening from County Road 91 to Carrier Drive - Resolution #2022-006 and Preliminary Engineering/Construction Funding Agreement

STAFF RECOMMENDATION
Adopt Resolution #2022-006 and authorize the Chairman to execute an agreement between the Baldwin County Commission and the Alabama Department of Transportation for the funding of Preliminary Engineering, Construction and Construction Engineering Inspection for the County Road 99 Shoulder Widening from County Road 91 to Carrier Drive.

This agreement shall be effective upon full execution and shall be in effect until the project has been completed and reimbursements are complete. This agreement may be terminated by either party upon delivery of a thirty (30) day notice of termination.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background:
The Florida-Alabama Transportation Planning Organization has allocated funding for shoulder widening on County Road 99 in the Lillian Community. The resolution and agreement cover the Preliminary Engineering, Utility, Construction and Construction Inspection phase of the project.

FINANCIAL IMPACT

Total cost of recommendation: The estimated cost for this project is $672,841.25 with $538,273.00 coming from Florida-Alabama Transportation Planning Organization funds and $134,568.25 coming from Baldwin County.

Budget line item(s) to be used:

HW22126.1PRECN.1CONTR SRV.1CONTRACT $18,750.00
HW22126.4CONTRCN.4CONTR SRV.4CONT111 $115,818.25

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
No - Standard Alabama Department of Transportation Funding Agreement

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up:
Administration Staff prepare correspondence, have the Commission sign the resolution and agreement and return to Highway Department (John Sedlack) for submittal to the Alabama Department of Transportation.

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Mail correspondence contact: (cover Letter only, no envelope needed)

Mr. Thomas W. Goodman, Jr., P.E.
Local Transportation Engineer - Mobile
ALDOT, Southwest Region Office
1701 I-65 Service Road North
Mobile, Alabama 36618

Additional instructions/notes: N/A

PRELIMINARY ENGINEERING
AND
CONSTRUCTION
AGREEMENT
FOR A
FEDERAL AID
PROJECT

BETWEEN THE STATE OF ALABAMA
AND THE
BALDWIN COUNTY COMMISSION

Add Paved Shoulders on CR-99

Project No. STPLL-0215( )
CPMS Ref# 100063634 and 100063640

PART ONE (1): INTRODUCTION

This Agreement is made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as the STATE; and the Baldwin County Commission, Alabama, [redacted] hereinafter referred to as the COUNTY.

WHEREAS, the STATE and the COUNTY desire to cooperate in the addition of paved shoulder on CR-99 from CR-91 to Carrier Drive; Project# STPLL-0215( );
CPMS Ref# 100063634 and 100063640.

NOW, THEREFORE, it is mutually agreed between the STATE and the COUNTY as follows:

PART TWO (2): FUNDING PROVISIONS

A. **Project Funding:** The STATE will not be liable for Federal Aid Funds in any amount. The project will be limited to $538,273.00 Federal funds unless the Lillian/Pensacola Area Metropolitan Planning Organization agrees, subject to the approval of the STATE, to reprogram the allocated Federal funds for the Lillian/Pensacola Area sufficient to pay 80% of the project cost. In the event of an underrun in project costs, the amount of Federal Aid funds will be the amount stated below, or 80% of eligible project costs, whichever is less.

B. The estimated cost and participation by the various parties is as follows:

PRELIMINARY ENGINEERING

FUNDING SOURCE	ESTIMATED COSTS
FA STP Funds (Lillian/Pensacola Area Dedicated)	$ 75,000.00
County Funds	$ 18,750.00
TOTAL	$ 93,750.00

CONSTRUCTION

FUNDING SOURCE	ESTIMATED COSTS
FA STP Funds (Lillian/Pensacola Area Dedicated)	$ 463,273.00
County Funds	$ 115,818.25
TOTAL (Incl CE&I)	$ 579,091.25

It is further understood that this is a cost reimbursement program and no federal funds will be provided to the COUNTY prior to accomplishment of the work for which it is requested. Furthermore, no federal funds will be reimbursed for work performed prior to project authorization.

Any cost incurred by the COUNTY relating to this project which is determined to be ineligible for reimbursement by the Federal Highway Administration (FHWA), or in excess of the limiting amounts previously stated, will not be an eligible cost to the project and will be borne and paid by the COUNTY.

C. **Time Limit:** This project will commence upon written authorization to proceed from the STATE directed to the COUNTY.

The approved allocation of funds for projects containing Industrial Access funds shall lapse if a contract has not been awarded for construction of the project within (12) months of the date of the funding approval by the Industrial Access Road and Bridge Corporation Board, and the approved allocation shall be returned to the IARB for re-allocation. A time extension may be approved by the IARB upon formal request by the applicant.

The approved allocation of funds for projects containing Federal Transportation Alternatives Set-Aside funds may lapse if a project has not been authorized by FHWA within (24) months of the date of the funding approval by the Governor, and the approved allocation shall be returned to the STATE for re-allocation. A time extension may be approved by the STATE upon formal request by the applicant. Failure to meet other project milestones, as set forth in the TAP Guidelines, may result in an approved allocation being returned to the STATE.

PART THREE (3): PROJECT SERVICES

A. The COUNTY will furnish all Right-of-Way for the project. Associated Right-of-Way acquisition costs will not be an eligible cost as part of this Agreement. The Right-of-Way acquisition phase is hereby defined as the appraisal fees, appraisal review fees and the cost of acquisition incurred.

All work accomplished under the provisions of this Agreement will be accomplished on property owned by or which will be acquired by the COUNTY in accordance with applicable Federal and state laws, regulations, and procedures. Any exceptions to this requirement must be approved by the STATE in writing prior to incurring costs for which reimbursement is requested by the COUNTY. In cases where property is leased, or easements obtained, the terms of the lease or easement will not be less than the expected life of the improvements.

Acquisition of real property by the COUNTY as a part of this project will conform to and be in accordance with the provisions of the Federal Uniform Relocation Assistance & Real Property Acquisition Policies Act (49 CFR 24, Subpart B), all federal environmental laws, and all other applicable state and federal laws.

Any property or property interests acquired shall be in the name of the COUNTY with any condemnation or other legal proceedings being performed by the COUNTY.

The COUNTY shall follow all Federal regulations related to the Management, Leasing, and Disposal of Right-of-Way, uneconomic remnants and excess Right-of-Way as found in CFR 23 § 710 Subpart D. Proceeds for Leases and Disposals shall be credited to the Project or to the Title 23 Collector Account.

No change in use or ownership of real property acquired or improved with funds provided under the terms of this Agreement will be permitted without prior written approval from the STATE or FHWA. The STATE or FHWA will be credited on a prorata share, as provided in Part Two, Section B, any revenues received by the COUNTY from the sale or lease of property.

B. The COUNTY will relocate any utilities in conflict with the project improvements in accordance with applicable Federal and State laws, regulations, and procedures. Associated Utility costs will be an eligible cost as part of this Agreement.

C. The COUNTY will make the Survey, perform the Design, complete the Plans and furnish all Preliminary Engineering for the project with COUNTY forces or with a consultant approved by the STATE. Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs will be an eligible cost as part of this Agreement.

If any Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs are an eligible cost to the project, the COUNTY will develop and submit to the STATE a project budget for approval. This budget will be in such form and detail as may be required by the STATE. At a minimum, all major work activities will be described, and an estimated cost and source of funds will be indicated for each activity. A signature line will be provided for approval by the Region Engineer and date of such approval. All costs for which the COUNTY seeks reimbursement must be included in a budget approved by the STATE in order to be considered for reimbursement. Budget adjustments may be necessary and may be allowed, subject to the approval of the STATE in writing, in order to successfully carry out the project. However, under no circumstances will the COUNTY be reimbursed for expenditures over and beyond the amount approved by the STATE.

The COUNTY will undertake the project in accordance with this Agreement, plans approved by the STATE and the requirements, and provisions, including the documents relating thereto, developed by the COUNTY and approved by the STATE. The plans, including the documents relating thereto, are of record in the Alabama Department of Transportation and are hereby incorporated in and made a part of this Agreement by reference. It is understood by the COUNTY that failure of the COUNTY to carry out the project in accordance with this Agreement and approved plans, including documents related thereto, may result in the loss of federal or state funding and the refund of any federal or state funds previously received on the project.

Projects containing Industrial Access funds or State funds, with no Federal funds involved, shall have completed original plans furnished to the STATE in accordance with the Guidelines for Operations for ***Procedures for Processing State and Industrial Access Funded County and City Projects***, and attached hereto as a part of this Agreement prior to the COUNTY letting the contract.

D. The COUNTY will furnish all construction engineering for the project with COUNTY forces or with a consultant approved by the STATE as part of the cost of the project. Construction Engineering & Inspection cost are not to exceed 15%, without prior approval by the State. Associated Construction Engineering & Inspection costs will be an eligible cost as part of this Agreement.

E. The STATE will furnish the necessary inspection and testing of materials when needed as part of the cost of the project. The COUNTY may request the use of an approved third-party materials inspection and testing provider, as approved by the STATE.

PART FOUR (4): CONTRACT PROVISIONS

A. The COUNTY shall not proceed with any project work covered under the provisions of this Agreement until the STATE issues written authorization to the COUNTY to proceed.

B. Associated Construction cost will be an eligible cost as part of this Agreement.

For projects let to contract by the STATE, the STATE will be responsible for advertisement and receipt of bids and the award of the Contract. Following the receipt of bids and prior to the award of the Contract, the STATE will invoice the COUNTY for its pro rata share of the estimated cost as reflected by the bid of the successful bidder plus Engineering & Inspection and Indirect Costs (if applicable). The COUNTY shall pay this amount to the STATE no later than 30 days after the date bids are opened. Failure to do so may lead to the rejection of the bid.

For projects let to contract by the COUNTY, the COUNTY shall comply with all Federal and State laws, rules, regulations and procedures applicable to the advertisement, receipt of bids, and the award of the contract. The COUNTY will, when authorized by the STATE, solicit bids and make awards for construction and/or services pursuant to this Agreement. The COUNTY shall not solicit bids until the entire bid package (plans, specifications, estimates, etc.) has been reviewed and approved by the STATE. Following receipt of bids, the COUNTY will provide all bids to the STATE with a recommendation for award. The COUNTY shall not award the contract until it has received written approval from the STATE.

The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be in accordance with applicable Federal and State laws, rules, regulations, and procedures, including state competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity.

C. If necessary, the COUNTY will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR) (Code Chapter 335-6-12) for this project without cost to the State or this project. The COUNTY will be the permittee of record with ADEM for the permit. The COUNTY and the contractor will be responsible for compliance with the permit and the State will have no obligation regarding the permit. The COUNTY will furnish the State (Region) a copy of the permit prior to any work being performed by the contractor.

The COUNTY will secure all permits and licenses of every nature and description applicable to the project in any manner; conform to and comply with the requirements of any such permit or license; and comply with each and every requirement of any and all agencies, and of any and all lawful authorities having jurisdiction or requirements applicable to the project or to the project activities.

D. The COUNTY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition, on this project and will ensure that work associated on this project meets the standards of the Alabama Department of Transportation, and the project will be built in accordance with the approved plans.

E. The COUNTY shall be responsible at all times for all of the work performed under this Agreement and, as provided in Ala. Code § 11-93-2 (1975), the COUNTY shall indemnify and hold harmless the State of Alabama, The Alabama Department of Transportation, its officers, officials, agents, servants, and employees.

For all claims not subject to Ala. Code § 11-93-2 (1975), the COUNTY shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against any and all damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of, connected with, or related to the (1) work performed under this Agreement, (2) the provision of any services or expenditure of funds required,

authorized, or undertaken by the COUNTY pursuant to the terms of this Agreement, or (3) misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the COUNTY, its officers, officials, agents, servants, and employees.

F. The COUNTY will be obligated for the payment of damages occasioned to private property, public utilities or the general public caused by the legal liability (in accordance with Alabama and/or Federal law) of the COUNTY, its agents, servants, employees or facilities.

G. Upon completion and acceptance of this project by the State, the COUNTY will assume full ownership and responsibility for the portion of the project work on COUNTY right-of-way and maintain the project in accordance with applicable State law and comply with the Department's Local Road Maintenance Certification Policy.

PART FIVE (5): ACCOUNTING PROVISIONS

A. The COUNTY will, when appropriate, submit reimbursement invoices to the STATE for work performed in carrying out the terms of this Agreement. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the Region Engineer for payment. The COUNTY may invoice the STATE not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, and unpaid, and the invoice will be notarized. Invoices for any work performed under the terms of this Agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE of the work. Any invoices submitted after this twelve-month period will not be eligible for payment.

B. The COUNTY will not assign any portion of the work to be performed under this Agreement or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement, without the prior written approval of the STATE.

C. The COUNTY will establish and maintain a cost accounting system that must be adequate and acceptable to the STATE as determined by the auditor of the STATE.

All charges to the Project will be supported by properly executed invoices, contracts, or vouchers, as applicable, evidencing in proper detail the nature and propriety of the charges in accordance with the requirements of the STATE. All checks, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to the project will be clearly identified, readily accessible and to the maximum extent feasible, kept separate and apart from all other such documents.

The COUNTY will report to the STATE the progress of the project in such manner as the STATE may require. The COUNTY will also provide the STATE any information requested by the STATE regarding the project. The COUNTY will submit to the STATE financial statements, data, records, contracts and other documents and items of any respect related to the project as may be requested by the STATE.

The COUNTY will permit the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, to inspect, at any time, vehicles and equipment utilized or used in performance of the project and any and all data and records which in any way relate to the project or to the accomplishment of the project. The COUNTY will also permit the above noted persons to audit the books, records and accounts pertaining to the project at any and all times, and the COUNTY will give its full cooperation to those persons or their authorized representatives, as applicable.

The COUNTY will comply with all audit requirements set forth in the 2 CFR Part 200 requirements, or the most current version of those requirements under federal law.

D. The COUNTY will retain all books, records, and other documents relative to this Agreement for a minimum of three (3) years after project termination, expiration of Federal interest, or close out, and the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to and the right to examine any of said materials at all reasonable times during said period.

E. Any user fee or charge to the public for access to any property or services provided through the funds made available under this Agreement, if not prohibited by a Federal, State or local law, must be applied for the maintenance and long-term upkeep of the project authorized by this agreement.

F. An audit report must be filed with the Department of Examiners of Public Accounts, upon receipt by the COUNTY, for any audit performed on this project in accordance with Act No. 94-414.

PART SIX (6): MISCELLANEOUS PROVISIONS

A. By entering into this Agreement, the COUNTY is not an agent of the STATE, its officers, employees, agents or assigns. The COUNTY is an independent entity from the STATE, and nothing in this Agreement creates an agency relationship between the parties.

B. It is agreed that the terms and commitments contained in this Agreement shall not constitute a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment 26. It is further agreed that, if any provision of this Agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may be enacted during the term of this Agreement, then the conflicting provision in this agreement shall be deemed null and void.

C. By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

D. No member, officer, or employee of the COUNTY, during their tenure of employment and for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds, profits, or benefits therefrom.

E. The terms of this Agreement may be modified by revision of this Agreement duly executed by the parties hereto.

F. This Agreement may be terminated by either party upon the delivery of a thirty (30) day notice of termination.

G. Nothing shall be construed under the terms of this Agreement that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.

H. **Exhibits A, E, H, M, and N** are hereby attached to and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by those officers, officials and persons duly authorized to execute same, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the Governor of Alabama.

ATTEST:

Baldwin County, Alabama

By: _____ **By:** _____

County Administrator (Signature) **As Chairman (Signature)**

_____ _____

Type Name of County Administrator **Type Name of Chairman**

(AFFIX SEAL)

This agreement has been legally reviewed and approved as to form and content.

By: _____

William F. Patty,
Chief Counsel

RECOMMENDED FOR APPROVAL:

_____ _____

Matthew J. Ericksen, P.E. **Bradley B. Lindsey, P.E.**
Southwest Region Engineer **State Local Transportation Engineer**

_____

Edward N. Austin, P. E.
Chief Engineer
STATE OF ALABAMA, ACTING BY AND THROUGH
THE ALABAMA DEPARTMENT OF TRANSPORTATION

_____

John R. Cooper, Transportation Director

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY EXECUTED AND SIGNED BY THE GOVERNOR ON THIS _____DAY OF _____, 20_____.

_____

KAY IVEY
GOVERNOR, STATE OF ALABAMA

RESOLUTION NUMBER 2022-006

BE IT RESOLVED by the Baldwin County Commission as follows:

That the County enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation, relating to a project for:

Addition of paved shoulder on CR-99 from CR-91 to Carrier Drive; Project# STPLL-0215( ); CPMS Ref# 100063634 and 100063640.

A copy of the agreement has been submitted to the Commission, and the Commission hereby approves the agreement. The Commission hereby authorizes and directs that the agreement be executed in the name of the County, by the Chairman for and on its behalf and attested by the County Administrator and the official seal of the County shall be affixed thereto.

BE IT FURTHER RESOLVED that, upon the completion of the execution of the agreement by all parties, a copy of such agreement be kept on file by the County.

I, the undersigned qualified and acting County Administrator of Baldwin County, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the County named therein, at a regular meeting of such Commission held on the _____day of _____, 20____ , and that such resolution is on file in the County Administrator's Office.

ATTESTED:

_____ _____

County Administrator Chairman

_____day of _____, 20_____, and that such resolution is of record in the office of the County Administrator.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the County on this_____day of _____, 20_____ .

_____

County Administrator

(AFFIX SEAL)

EXHIBIT A

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN FEDERAL-AID PROGRAM

Policy. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.

DBE Obligation. The recipient of funds under the terms of this AGREEMENT agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. The recipient shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to see that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. Department of Transportation assisted contracts.

Failure of the recipient of funds under the terms of this AGREEMENT, or failure of its subcontractor (if a subcontractor is authorized) to carry out the DBE requirements of this AGREEMENT shall constitute a breach of contract, and may result in termination of the contract by the STATE, or such other remedy may be undertaken by the STATE as it deems appropriate.

EXHIBIT E

TERMINATION OR ABANDONMENT

a. The STATE has the right to abandon the work or to amend its project at any time, and such action on its part shall in no event be deemed a breach of contract.

b. The STATE has the right to terminate this AGREEMENT at its sole discretion without cause and make settlement with the COUNTY upon an equitable basis. The value of the work performed by the COUNTY prior to the termination of this AGREEMENT shall be determined. In determining the value of the work performed, the STATE shall consider the following:

   1. The ratio of the amount of work performed by the COUNTY prior to the termination of the AGREEMENT to the total amount of work contemplated by this AGREEMENT less any payments previously made.

   2. The amount of the expense to which the COUNTY is put in performing the work to be terminated in proportion to the amount of expense to which the COUNTY would have been put had he been allowed to complete the total work contemplated by the AGREEMENT, less any payments previously made. In determining the value of the work performed by the COUNTY prior to the termination, no consideration will be given to profit, which the COUNTY might have made on the uncompleted portion of the work. If the termination is brought about as a result of unsatisfactory performance on the part of the COUNTY, the value of the work performed by the COUNTY prior to termination shall be fixed solely on the ratio of the amount of such work to the total amount of work contemplated by this AGREEMENT.

CONTROVERSY

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive of all parties.

CONTRACT BINDING ON SUCCESSORS AND ASSIGNS

a. This contract shall be binding upon the successors and assigns of the respective parties hereto.

b. Should the AGREEMENT be terminated due to default by COUNTY, such termination shall be in accordance with applicable Federal Acquisition Regulations.

EQUAL RIGHTS PROVISIONS

During the performance of this contract, the COUNTY for itself, its assignees and successors in interest agrees as follows:

a. **Compliance with Regulations**

The COUNTY will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assigned programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, as amended by 23 CFR 710-405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.,* 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.),* (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.),* as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.),* (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

b. **Nondiscrimination**

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the COUNTY agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The COUNTY will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices where the contract covers a program set forth in Appendix B of the Regulations.

The COUNTY will comply with all provisions of Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

c. **Solicitations**

In all solicitations either by competitive bidding or negotiation made by the COUNTY for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier or lessor shall be notified by the COUNTY of the COUNTY'S obligation under this contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex or national origin.

d. **Information and Reports**

The COUNTY will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books,

records, accounts, other sources of information and its facilities as may be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a COUNTY is in the exclusive possession of another who fails or refuses to furnish this information, the COUNTY shall so certify to the STATE, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance**

In the event of the COUNTY'S noncompliance with the nondiscrimination provisions provided for herein, the STATE shall impose such contract sanctions as it may determine to be appropriate, including but not limited to,

1. withholding of payments to the COUNTY under contract until the COUNTY complies, and/or
2. cancellation, termination or suspension of the contract, in whole or in part.

f. **Incorporation of Provisions**

The COUNTY will include the foregoing provisions a. through f. in every subcontract, including procurements of materials and leases of equipment, unless excepted by the Regulations, orders or instructions issued pursuant thereto. The COUNTY will take such action with respect to any subcontract, procurement, or lease as the STATE may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a COUNTY becomes involved in, or is threatened with, litigation with subcontractors, suppliers, or lessor as a result of such direction, the COUNTY may request the STATE to enter into such litigation to protect the interest of the STATE.

g. **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit laws at 49 U.S.C. § 5332, the COUNTY agrees to comply with all applicable equal employment requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

The COUNTY agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the COUNTY agrees to comply with any implementing requirements FTA may issue.

2. Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the COUNTY agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the COUNTY agrees to comply with any implementing requirements FTA may issue.

3. Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the COUNTY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

COST PRINCIPLES

The STATE'S cost principles for use in determining the allowability of any item of cost, both direct and indirect, in this AGREEMENT, shall be the applicable provisions of Volume I, Federal Acquisition Regulations, Parts 30 and 31. The COUNTY shall maintain costs and supporting documentation in accordance with the Federal Acquisition Regulations, Parts 30 and 31 and other Regulations referenced with these Parts where applicable. The COUNTY shall gain an understanding of these documents and regulations. The applicable provisions of the above referenced regulations documents are hereby incorporated by reference herein as if fully set forth.

EXECUTORY CLAUSE AND NON-MERIT SYSTEM STATUS

a. The COUNTY specifically agrees that this AGREEMENT shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the STATE beyond the moneys available for this purpose.

b. The COUNTY, in accordance with the status of COUNTY as an independent contractor, covenants and agrees that the conduct of COUNTY will be consistent with such status, that COUNTY will neither hold COUNTY out as, or claim to be, an officer or employee of the STATE by reason hereof, and that COUNTY will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE under the merit system or any other law of Alabama, including but not limited to workmen's compensation coverage, or retirement membership or credit or any Federal employment law. This paragraph also applies in like manner to the employees of COUNTY.

COUNTYS' CERTIFICATIONS

The COUNTY by acceptance of this contract certifies that the rates or composition of cost noted in Article IV - PAYMENTS are based on the current actual hourly rates paid to employees, estimated non- salary direct cost based on historical prices, the latest available audited indirect cost rate, and estimated cost of reimbursements to employees for travel (mileage, per diem, and meal allowance) based on the current policy of the COUNTY. The COUNTY agrees that mileage reimbursements for use of company vehicles is based on the lesser of the approved rate allowed by the General Services Administration of the United States Government or the reimbursement policies of the COUNTY at the time of execution of the AGREEMENT. The COUNTY agrees that no mileage reimbursement will be allowed for the purpose of commuting to and from work or for personal use of a vehicle. The COUNTY agrees that the per diem rate will be limited to the rate allowed by the STATE at the time of execution of the AGREEMENT. The COUNTY agrees that a meal allowance shall be limited to COUNTY employees while in travel status only and only when used in lieu of a per diem rate.

The COUNTY shall submit detailed certified labor rates as requested, and in a timely manner, to the External Audits Section of the Finance and Audits Bureau of The Alabama Department of Transportation. The COUNTY agrees that material differences between rates submitted with a proposal and rates provided as certified for the same proposal are subject to adjustment and reimbursement.

EXHIBIT M

CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U.S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this AGREEMENT shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.

b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

The STATE and COUNTY acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, COUNTY, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The COUNTY agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

STATE OF ALABAMA
DEPARTMENT OF TRANSPORTATION
GUIDELINES FOR OPERATION

SUBJECT: PROCEDURES FOR PROCESSING STATE AND INDUSTRIAL ACCESS FUNDED COUNTY AND CITY PROJECTS

No work can be performed and no contracts can be let prior to having a fully executed project agreement, submittal of project plans to Region and notification from the Region that advertisement for bids can be made, or, in the case of force account projects, work can begin.

A project agreement will be prepared and furnished to the County/City upon receipt of grant award letter signed by the Director or Governor. The Region will prepare and submit a F-7A Budget Allotment request upon receipt of a project funding agreement at the time it is submitted to the County/City for their execution.

The County/City will submit plans prepared and signed by a registered professional engineer showing work to be performed. Plans must match the project agreement description. It is not necessary for the Region to perform an in-depth review of plans. The County/City will submit a certification signed by a Registered Professional Engineer stating that the plans have been prepared so that all items included in the plans meet ALDOT specifications. The County/City will include a letter certifying that the County/City owns all right-of-way on which the project is to be constructed.

Upon receipt of the executed agreement, the executed F-7A, final plans from the County/City, and right-of-way certification, the Region may notify the County/City to proceed with advertising the project for letting or proceed with work in the case of a force account project.

In the case where a County/City is using an inplace annual bid, the County/City will furnish the Region a copy of their bid and this bid price will be used for reimbursement.

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Rev. 10/2017

Where the County/City is letting a contract locally, the County/City will furnish to the Region the three lowest bids with their recommendation for award. The Region will review the bids, and, if in order, advise the County/City to proceed with award of the contract to the lowest responsible bidder. The County's/City's estimate for reimbursement will be based on the bid prices concurred in by the State and supported with documentation that the contractor has been paid for work performed (copy of cancelled check).

A certification will be submitted with County/City final estimate stating that the project was constructed in accordance with final plans submitted to the State and with the specifications, supplemental specifications, and special provisions which were shown on the plans or with the State's latest specifications which were applicable at the time of plan approval.

The County/City will notify the Region when the project is complete and the Region will perform a final ride-through to determine whether the project was completed in substantial compliance with original final plans. Final acceptance will be made by the Region with a copy of the letter furnished to the Bureau of Local Transportation.

All required test reports, weight tickets, material receipts and other project documentation required by the specifications, applicable supplemental specifications, and special provisions will be retained by the County/City for a period of three (3) years following receipt of final payment and made available for audit by the State upon request. If an audit is performed and proper documentation is not available to verify quantities and compliance with specifications, the County/City will refund the project cost to the State or do whatever is necessary to correct the project at their cost.

All County/City Industrial Access or State funded projects let to contract by the State will follow normal project procedures and comply with all current plan processing requirements.

RECOMMENDED FOR APPROVAL: _____

BUREAU CHIEF/REGION ENGINEER

APPROVAL: _____

CHIEF ENGINEER

APPROVAL: _____ NOVEMBER 1, 2017

TRANSPORTATION DIRECTOR **DATE**

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Rev. 10/2017



Baldwin County Highway Department

CR 99 Shoulder Widening

Baldwin County Commission

Agenda Action Form

File #: 22-0089, **Version:** 1 **Item #:** BN4

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Joey Nunnally, P.E., County Engineer
Seth Peterson, P.E., Pre-Construction Manager
Submitted by: John Sedlack, Design Tech III

ITEM TITLE
Funding Agreements with Alabama Department of Transportation for Preliminary Engineering and Construction of Austin Road Extension Project

STAFF RECOMMENDATION
Take the following actions:

1) Adopt Resolution #2022-009 and authorize the Chairman to execute an agreement between the Baldwin County Commission and the Alabama Department of Transportation for the funding of Preliminary Engineering, Right-of-Way Acquisition and Utility Relocation for the Austin Road Extension Project; and

2) Adopt Resolution #2022-007 and authorize the Chairman to execute an agreement between the Baldwin County Commission and the Alabama Department of Transportation for the funding of Construction and Construction Engineering Inspection for the Austin Road Extension Project.

These agreements shall be effective upon full execution and shall be in effect until the project has been completed and reimbursements are complete. These agreements may be terminated by either party upon delivery of a thirty (30) day notice of termination.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background:
The Eastern Shore MPO has approved federal funds to construct a new road (extend Austin/Corte Road) from County Road 13 to Friendship Road near Daphne. There has been significant residential and commercial growth in the area and the proposed new road will alleviate congestion associated with the development.

FINANCIAL IMPACT

Total cost of recommendation:
The estimated cost for Preliminary Engineering, Right-of-Way Acquisition and Utility Relocation is $487,500.00 with the Eastern Shore MPO providing 80% ($390,000.00) and Baldwin County providing the remaining 20% (97,500.00).

The estimated cost for Construction and Construction Engineering Inspection is $1,406,250.00 with the Eastern Shore MPO providing 65% ($914,062.50) and Baldwin County providing the remaining 35% (492,187.50).

Budget line item(s) to be used:

HW22029.1PRECN.1CONTR SRV.1CONT111	$22,500.00
HW22029.2ROW.2ACQ.2PURCHASE	$60,000.00
HW22029.3UTILITY.3CONTR SRV.3CONTRACT	$15,000.00
HW22029.4CONTRCN.4CONTR SRV.4CONT111	$492,187.50.

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
No - Standard Alabama Department of Transportation Funding Agreement

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up:
Administration Staff prepare correspondence, have the Commission sign the resolutions and agreements and return to Highway Department (John Sedlack) for submittal to the Alabama

Department of Transportation.

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Mail correspondence contact: (cover letter only, no envelope needed)

Mr. Thomas W. Goodman, Jr., P.E.
Local Transportation Engineer - Mobile
ALDOT, Southwest Region Office
1701 I-65 Service Road North
Mobile, Alabama 36618

Additional instructions/notes: N/A

PRELIMINARY ENGINEERING,
RIGHT-OF-WAY ACQUISITION,
AND
UTILITY RELOCATION,
AGREEMENT
FOR A
FEDERAL AID
PROJECT

BETWEEN THE STATE OF ALABAMA
AND THE
BALDWIN COUNTY COMMISSION

Future Austin Road Extension

Project No. STPOA-0221( )
CPMS Ref# 100074041, 100074043,
And 100074042

PART ONE (1): INTRODUCTION

This Agreement is made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as the STATE; and the Baldwin County Commission, Alabama [redacted] hereinafter referred to as the COUNTY.

WHEREAS, the STATE and the COUNTY desire to cooperate in the grade, drain, base, and pave the future Austin Road (currently Glover Lane) extension from Friendship Road to CR-13; Project# STPOA-0221( ); CPMS Ref# 100074041, 100074043, and 100074042.

NOW, THEREFORE, it is mutually agreed between the STATE and the COUNTY as follows:

PART TWO (2): FUNDING PROVISIONS

A. **Project Funding:** The STATE will not be liable for Federal Aid Funds in any amount. The project will be limited to $390,000.00 Federal funds unless the Eastern Shores Area Metropolitan Planning Organization agrees, subject to the approval of the STATE, to reprogram the allocated Federal funds for the Eastern Shores Area sufficient to pay 80% of the project cost. In the event of an underrun in project costs, the amount of Federal Aid funds will be the amount stated below, or 80% of eligible project costs, whichever is less.

B. The estimated cost and participation by the various parties is as follows:

PRELIMINARY ENGINEERING

FUNDING SOURCE	ESTIMATED COSTS
FA STP Funds (Eastern Shores Area Dedicated)	$ 90,000.00
County Funds	$ 22,500.00
TOTAL (Incl Indirect Cost)	$ 112,500.00

RIGHT-OF-WAY

FUNDING SOURCE	ESTIMATED COSTS
FA STP Funds (Eastern Shores Area Dedicated)	$ 240,000.00
County Funds	$ 60,000.00
TOTAL (Incl Indirect Cost)	$ 300,000.00

UTILITY

FUNDING SOURCE	ESTIMATED COSTS
FA STP Funds (Eastern Shores Area Dedicated)	$ 60,000.00
County Funds	$ 15,000.00
TOTAL (Incl CE&I & Indirect Cost)	$ 75,000.00

It is further understood that this is a cost reimbursement program and no federal funds will be provided to the COUNTY prior to accomplishment of the work for which it is requested. Furthermore, no federal funds will be reimbursed for work performed prior to project authorization.

Any cost incurred by the COUNTY relating to this project which is determined to be ineligible for reimbursement by the Federal Highway Administration (FHWA), or in excess of the limiting amounts previously stated, will not be an eligible cost to the project and will be borne and paid by the COUNTY.

C. **Time Limit:** This project will commence upon written authorization to proceed from the STATE directed to the COUNTY.

The approved allocation of funds for projects containing Industrial Access funds shall lapse if a contract has not been awarded for construction of the project within (12) months of the date of the funding approval by the Industrial Access Road and Bridge Corporation Board, and the approved allocation shall be returned to the IARB for re-allocation. A time extension may be approved by the IARB upon formal request by the applicant.

The approved allocation of funds for projects containing Federal Transportation Alternatives Set-Aside funds may lapse if a project has not been authorized by FHWA within (24) months of the date of the funding approval by the Governor, and the approved allocation shall be returned to the STATE for re-allocation. A time extension may be approved by the STATE upon formal request by the applicant. Failure to meet other project milestones, as set forth in the TAP Guidelines, may result in an approved allocation being returned to the STATE.

PART THREE (3): PROJECT SERVICES

A. The COUNTY will furnish all Right-of-Way for the project. Associated Right-of-Way acquisition costs will be an eligible cost as part of this Agreement. The Right-of-Way acquisition phase is hereby defined as the appraisal fees, appraisal review fees and the cost of acquisition incurred.

All work accomplished under the provisions of this Agreement will be accomplished on property owned by or which will be acquired by the COUNTY in accordance with applicable Federal and state laws, regulations, and procedures. Any exceptions to this requirement must be approved by the STATE in writing prior to incurring costs for which reimbursement is requested by the COUNTY. In cases where property is leased, or easements obtained, the terms of the lease or easement will not be less than the expected life of the improvements.

Acquisition of real property by the COUNTY as a part of this project will conform to and be in accordance with the provisions of the Federal Uniform Relocation Assistance & Real Property Acquisition Policies Act (49 CFR 24, Subpart B), all federal environmental laws, and all other applicable state and federal laws.

Any property or property interests acquired shall be in the name of the COUNTY with any condemnation or other legal proceedings being performed by the COUNTY.

The COUNTY shall follow all Federal regulations related to the Management, Leasing, and Disposal of Right-of-Way, uneconomic remnants and excess Right-of-Way as found in CFR 23 § 710 Subpart D. Proceeds for Leases and Disposals shall be credited to the Project or to the Title 23 Collector Account.

No change in use or ownership of real property acquired or improved with funds provided under the terms of this Agreement will be permitted without prior written approval from the STATE or FHWA. The STATE or FHWA will be credited on a prorata share, as provided in Part Two, Section B, any revenues received by the COUNTY from the sale or lease of property.

B. The COUNTY will relocate any utilities in conflict with the project improvements in accordance with applicable Federal and State laws, regulations, and procedures. Associated Utility costs will be an eligible cost as part of this Agreement.

C. The COUNTY will make the Survey, perform the Design, complete the Plans and furnish all Preliminary Engineering for the project with COUNTY forces or with a consultant approved by the STATE. Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs will be an eligible cost as part of this Agreement.

If any Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs are an eligible cost to the project, the COUNTY will develop and submit to the STATE a project budget for approval. This budget will be in such form and detail as may be required by the STATE. At a minimum, all major work activities will be described, and an estimated cost and source of funds will be indicated for each activity. A signature line will be provided for approval by the Region Engineer and date of such approval. All costs for which the COUNTY seeks reimbursement must be included in a budget approved by the STATE in order to be considered for reimbursement. Budget adjustments may be necessary and may be allowed, subject to the approval of the STATE in writing, in order to successfully carry out the project. However, under no circumstances will the COUNTY be reimbursed for expenditures over and beyond the amount approved by the STATE.

The COUNTY will undertake the project in accordance with this Agreement, plans approved by the STATE and the requirements, and provisions, including the documents relating thereto, developed by the COUNTY and approved by the STATE. The plans, including the documents relating thereto, are of record in the Alabama Department of Transportation and are hereby incorporated in and made a part of this Agreement by reference. It is understood by the COUNTY that failure of the COUNTY to carry out the project in accordance with this Agreement and approved plans, including documents

related thereto, may result in the loss of federal or state funding and the refund of any federal or state funds previously received on the project.

Projects containing Industrial Access funds or State funds, with no Federal funds involved, shall have completed original plans furnished to the STATE in accordance with the Guidelines for Operations for ***Procedures for Processing State and Industrial Access Funded County and City Projects***, and attached hereto as a part of this Agreement prior to the COUNTY letting the contract.

D. The COUNTY will furnish all construction engineering for the project with COUNTY forces or with a consultant approved by the STATE as part of the cost of the project. Construction Engineering & Inspection cost are not to exceed 15%, without prior approval by the State. Associated Construction Engineering & Inspection costs will be an eligible cost as part of this Agreement.

E. The STATE will furnish the necessary inspection and testing of materials when needed as part of the cost of the project. The COUNTY may request the use of an approved third-party materials inspection and testing provider, as approved by the STATE.

PART FOUR (4): CONTRACT PROVISIONS

A. The COUNTY shall not proceed with any project work covered under the provisions of this Agreement until the STATE issues written authorization to the COUNTY to proceed.

B. Associated Construction cost will not be an eligible cost as part of this Agreement.

For projects let to contract by the STATE, the STATE will be responsible for advertisement and receipt of bids and the award of the Contract. Following the receipt of bids and prior to the award of the Contract, the STATE will invoice the COUNTY for its pro rata share of the estimated cost as reflected by the bid of the successful bidder plus Engineering & Inspection and Indirect Costs (if applicable). The COUNTY shall pay this amount to the STATE no later than 30 days after the date bids are opened. Failure to do so may lead to the rejection of the bid.

For projects let to contract by the COUNTY, the COUNTY shall comply with all Federal and State laws, rules, regulations and procedures applicable to the advertisement, receipt of bids, and the award of the contract. The COUNTY will, when authorized by the STATE, solicit bids and make awards for construction and/or services pursuant to this Agreement. The COUNTY shall not solicit bids until the entire bid package (plans, specifications, estimates, etc.) has been reviewed and approved by the STATE. Following receipt of bids, the COUNTY will provide all bids to the STATE with a recommendation for award. The COUNTY shall not award the contract until it has received written approval from the STATE.

The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be in accordance with applicable Federal and State laws, rules, regulations, and procedures, including state competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity.

C. If necessary, the COUNTY will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR) (Code Chapter 335-6-12) for this project without cost to the State or this project. The COUNTY will be the permittee of record with ADEM for the permit. The COUNTY and the contractor will be responsible for compliance with the permit and the State will have no obligation regarding the permit. The COUNTY will furnish the State (Region) a copy of the permit prior to any work being performed by the contractor.

The COUNTY will secure all permits and licenses of every nature and description applicable to the project in any manner; conform to and comply with the requirements of any such permit or license; and comply with each and every requirement of any and all

agencies, and of any and all lawful authorities having jurisdiction or requirements applicable to the project or to the project activities.

D. The COUNTY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition, on this project and will ensure that work associated on this project meets the standards of the Alabama Department of Transportation, and the project will be built in accordance with the approved plans.

E. The COUNTY shall be responsible at all times for all of the work performed under this Agreement and, as provided in Ala. Code § 11-93-2 (1975), the COUNTY shall indemnify and hold harmless the State of Alabama, The Alabama Department of Transportation, its officers, officials, agents, servants, and employees.

For all claims not subject to Ala. Code § 11-93-2 (1975), the COUNTY shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against any and all damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of, connected with, or related to the (1) work performed under this Agreement, (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the COUNTY pursuant to the terms of this Agreement, or (3) misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the COUNTY, its officers, officials, agents, servants, and employees.

F. The COUNTY will be obligated for the payment of damages occasioned to private property, public utilities or the general public caused by the legal liability (in accordance with Alabama and/or Federal law) of the COUNTY, its agents, servants, employees or facilities.

G. Upon completion and acceptance of this project by the State, the COUNTY will assume full ownership and responsibility for the portion of the project work on COUNTY right-of-way and maintain the project in accordance with applicable State law and comply with the Department's Local Road Maintenance Certification Policy.

PART FIVE (5): ACCOUNTING PROVISIONS

A. The COUNTY will, when appropriate, submit reimbursement invoices to the STATE for work performed in carrying out the terms of this Agreement. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the Region Engineer for payment. The COUNTY may invoice the STATE not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, and unpaid, and the invoice will be notarized. Invoices for any work performed under the terms of this Agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE of the work. Any invoices submitted after this twelve-month period will not be eligible for payment.

B. The COUNTY will not assign any portion of the work to be performed under this Agreement or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement, without the prior written approval of the STATE.

C. The COUNTY will establish and maintain a cost accounting system that must be adequate and acceptable to the STATE as determined by the auditor of the STATE.

All charges to the Project will be supported by properly executed invoices, contracts, or vouchers, as applicable, evidencing in proper detail the nature and propriety of the charges in accordance with the requirements of the STATE. All checks, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part

to the project will be clearly identified, readily accessible and to the maximum extent feasible, kept separate and apart from all other such documents.

The COUNTY will report to the STATE the progress of the project in such manner as the STATE may require. The COUNTY will also provide the STATE any information requested by the STATE regarding the project. The COUNTY will submit to the STATE financial statements, data, records, contracts and other documents and items of any respect related to the project as may be requested by the STATE.

The COUNTY will permit the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, to inspect, at any time, vehicles and equipment utilized or used in performance of the project and any and all data and records which in any way relate to the project or to the accomplishment of the project. The COUNTY will also permit the above noted persons to audit the books, records and accounts pertaining to the project at any and all times, and the COUNTY will give its full cooperation to those persons or their authorized representatives, as applicable.

The COUNTY will comply with all audit requirements set forth in the 2 CFR Part 200 requirements, or the most current version of those requirements under federal law.

D. The COUNTY will retain all books, records, and other documents relative to this Agreement for a minimum of three (3) years after project termination, expiration of Federal interest, or close out, and the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to and the right to examine any of said materials at all reasonable times during said period.

E. Any user fee or charge to the public for access to any property or services provided through the funds made available under this Agreement, if not prohibited by a Federal, State or local law, must be applied for the maintenance and long-term upkeep of the project authorized by this agreement.

F. An audit report must be filed with the Department of Examiners of Public Accounts, upon receipt by the COUNTY, for any audit performed on this project in accordance with Act No. 94-414.

PART SIX (6): MISCELLANEOUS PROVISIONS

A. By entering into this Agreement, the COUNTY is not an agent of the STATE, its officers, employees, agents or assigns. The COUNTY is an independent entity from the STATE, and nothing in this Agreement creates an agency relationship between the parties.

B. It is agreed that the terms and commitments contained in this Agreement shall not constitute a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment 26. It is further agreed that, if any provision of this Agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may be enacted during the term of this Agreement, then the conflicting provision in this agreement shall be deemed null and void.

C. By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

D. No member, officer, or employee of the COUNTY, during their tenure of employment and for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds, profits, or benefits therefrom.

E. The terms of this Agreement may be modified by revision of this Agreement duly executed by the parties hereto.

F. This Agreement may be terminated by either party upon the delivery of a thirty (30) day notice of termination.

G. Nothing shall be construed under the terms of this Agreement that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.

H. **Exhibits A, E, H, M, and N** are hereby attached to and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by those officers, officials and persons duly authorized to execute same, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the Governor of Alabama.

ATTEST:

Baldwin County, Alabama

By: _____ **By:** _____

County Administrator (Signature) **As Chairman (Signature)**

_____ _____

Type Name of County Administrator **Type Name of Chairman**

(AFFIX SEAL)

This agreement has been legally reviewed and approved as to form and content.

By: _____

William F. Patty,
Chief Counsel

RECOMMENDED FOR APPROVAL:

_____ _____

Matthew J. Ericksen, P.E. **Bradley B. Lindsey, P.E.**
Southwest Region Engineer **State Local Transportation Engineer**

_____

Edward N. Austin, P. E.
Chief Engineer
STATE OF ALABAMA, ACTING BY AND THROUGH
THE ALABAMA DEPARTMENT OF TRANSPORTATION

_____

John R. Cooper, Transportation Director

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY EXECUTED AND SIGNED BY THE GOVERNOR ON THIS _____DAY OF _____, 20_____.

_____

KAY IVEY
GOVERNOR, STATE OF ALABAMA

RESOLUTION NUMBER 2022-009

BE IT RESOLVED by the Baldwin County Commission as follows:

That the County enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation, relating to a project for:

Grade, drain, base, and pave the future Austin Road (currently Glover Lane) extension from Friendship Road to CR-13; Project# STPOA-0221( ); CPMS Ref# 100074041, 100074043, and 100074042.

A copy of the agreement has been submitted to the Commission, and the Commission hereby approves the agreement. The Commission hereby authorizes and directs that the agreement be executed in the name of the County, by the Chairman for and on its behalf and attested by the County Administrator and the official seal of the County shall be affixed thereto.

BE IT FURTHER RESOLVED that, upon the completion of the execution of the agreement by all parties, a copy of such agreement be kept on file by the County.

I, the undersigned qualified and acting County Administrator of Baldwin County, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the County named therein, at a regular meeting of such Commission held on the _____day of _____, 20____ , and that such resolution is on file in the County Administrator's Office.

ATTESTED:

_____ _____

County Administrator Chairman

_____day of _____, 20_____, and that such resolution is of record in the office of the County Administrator.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the County on this_____day of _____, 20_____ .

_____

County Administrator

(AFFIX SEAL)

EXHIBIT A

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN FEDERAL-AID PROGRAM

Policy. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.

DBE Obligation. The recipient of funds under the terms of this AGREEMENT agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. The recipient shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to see that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. Department of Transportation assisted contracts.

Failure of the recipient of funds under the terms of this AGREEMENT, or failure of its subcontractor (if a subcontractor is authorized) to carry out the DBE requirements of this AGREEMENT shall constitute a breach of contract, and may result in termination of the contract by the STATE, or such other remedy may be undertaken by the STATE as it deems appropriate.

EXHIBIT E

TERMINATION OR ABANDONMENT

a. The STATE has the right to abandon the work or to amend its project at any time, and such action on its part shall in no event be deemed a breach of contract.

b. The STATE has the right to terminate this AGREEMENT at its sole discretion without cause and make settlement with the COUNTY upon an equitable basis. The value of the work performed by the COUNTY prior to the termination of this AGREEMENT shall be determined. In determining the value of the work performed, the STATE shall consider the following:

1. The ratio of the amount of work performed by the COUNTY prior to the termination of the AGREEMENT to the total amount of work contemplated by this AGREEMENT less any payments previously made.

2. The amount of the expense to which the COUNTY is put in performing the work to be terminated in proportion to the amount of expense to which the COUNTY would have been put had he been allowed to complete the total work contemplated by the AGREEMENT, less any payments previously made. In determining the value of the work performed by the COUNTY prior to the termination, no consideration will be given to profit, which the COUNTY might have made on the uncompleted portion of the work. If the termination is brought about as a result of unsatisfactory performance on the part of the COUNTY, the value of the work performed by the COUNTY prior to termination shall be fixed solely on the ratio of the amount of such work to the total amount of work contemplated by this AGREEMENT.

CONTROVERSY

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive of all parties.

CONTRACT BINDING ON SUCCESSORS AND ASSIGNS

a. This contract shall be binding upon the successors and assigns of the respective parties hereto.

b. Should the AGREEMENT be terminated due to default by COUNTY, such termination shall be in accordance with applicable Federal Acquisition Regulations.

EQUAL RIGHTS PROVISIONS

During the performance of this contract, the COUNTY for itself, its assignees and successors in interest agrees as follows:

a. **Compliance with Regulations**

The COUNTY will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assigned programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, as amended by 23 CFR 710-405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.,* 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.),* (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.),* as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.),* (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

b. **Nondiscrimination**

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the COUNTY agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The COUNTY will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices where the contract covers a program set forth in Appendix B of the Regulations.

The COUNTY will comply with all provisions of Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

c. **Solicitations**

In all solicitations either by competitive bidding or negotiation made by the COUNTY for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier or lessor shall be notified by the COUNTY of the COUNTY'S obligation under this contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex or national origin.

d. **Information and Reports**

The COUNTY will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books,

records, accounts, other sources of information and its facilities as may be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a COUNTY is in the exclusive possession of another who fails or refuses to furnish this information, the COUNTY shall so certify to the STATE, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance**

In the event of the COUNTY'S noncompliance with the nondiscrimination provisions provided for herein, the STATE shall impose such contract sanctions as it may determine to be appropriate, including but not limited to,

1. withholding of payments to the COUNTY under contract until the COUNTY complies, and/or
2. cancellation, termination or suspension of the contract, in whole or in part.

f. **Incorporation of Provisions**

The COUNTY will include the foregoing provisions a. through f. in every subcontract, including procurements of materials and leases of equipment, unless excepted by the Regulations, orders or instructions issued pursuant thereto. The COUNTY will take such action with respect to any subcontract, procurement, or lease as the STATE may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a COUNTY becomes involved in, or is threatened with, litigation with subcontractors, suppliers, or lessor as a result of such direction, the COUNTY may request the STATE to enter into such litigation to protect the interest of the STATE.

g. **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit laws at 49 U.S.C. § 5332, the COUNTY agrees to comply with all applicable equal employment requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

The COUNTY agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the COUNTY agrees to comply with any implementing requirements FTA may issue.

2. Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the COUNTY agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the COUNTY agrees to comply with any implementing requirements FTA may issue.

3. Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the COUNTY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

COST PRINCIPLES

The STATE'S cost principles for use in determining the allowability of any item of cost, both direct and indirect, in this AGREEMENT, shall be the applicable provisions of Volume I, Federal Acquisition Regulations, Parts 30 and 31. The COUNTY shall maintain costs and supporting documentation in accordance with the Federal Acquisition Regulations, Parts 30 and 31 and other Regulations referenced with these Parts where applicable. The COUNTY shall gain an understanding of these documents and regulations. The applicable provisions of the above referenced regulations documents are hereby incorporated by reference herein as if fully set forth.

EXECUTORY CLAUSE AND NON-MERIT SYSTEM STATUS

a. The COUNTY specifically agrees that this AGREEMENT shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the STATE beyond the moneys available for this purpose.

b. The COUNTY, in accordance with the status of COUNTY as an independent contractor, covenants and agrees that the conduct of COUNTY will be consistent with such status, that COUNTY will neither hold COUNTY out as, or claim to be, an officer or employee of the STATE by reason hereof, and that COUNTY will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE under the merit system or any other law of Alabama, including but not limited to workmen's compensation coverage, or retirement membership or credit or any Federal employment law. This paragraph also applies in like manner to the employees of COUNTY.

COUNTYS' CERTIFICATIONS

The COUNTY by acceptance of this contract certifies that the rates or composition of cost noted in Article IV - PAYMENTS are based on the current actual hourly rates paid to employees, estimated non- salary direct cost based on historical prices, the latest available audited indirect cost rate, and estimated cost of reimbursements to employees for travel (mileage, per diem, and meal allowance) based on the current policy of the COUNTY. The COUNTY agrees that mileage reimbursements for use of company vehicles is based on the lesser of the approved rate allowed by the General Services Administration of the United States Government or the reimbursement policies of the COUNTY at the time of execution of the AGREEMENT. The COUNTY agrees that no mileage reimbursement will be allowed for the purpose of commuting to and from work or for personal use of a vehicle. The COUNTY agrees that the per diem rate will be limited to the rate allowed by the STATE at the time of execution of the AGREEMENT. The COUNTY agrees that a meal allowance shall be limited to COUNTY employees while in travel status only and only when used in lieu of a per diem rate.

The COUNTY shall submit detailed certified labor rates as requested, and in a timely manner, to the External Audits Section of the Finance and Audits Bureau of The Alabama Department of Transportation. The COUNTY agrees that material differences between rates submitted with a proposal and rates provided as certified for the same proposal are subject to adjustment and reimbursement.

EXHIBIT M

CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U.S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this AGREEMENT shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.

b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

The STATE and COUNTY acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, COUNTY, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The COUNTY agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

STATE OF ALABAMA
DEPARTMENT OF TRANSPORTATION
GUIDELINES FOR OPERATION

SUBJECT: PROCEDURES FOR PROCESSING STATE AND INDUSTRIAL ACCESS FUNDED COUNTY AND CITY PROJECTS

No work can be performed and no contracts can be let prior to having a fully executed project agreement, submittal of project plans to Region and notification from the Region that advertisement for bids can be made, or, in the case of force account projects, work can begin.

A project agreement will be prepared and furnished to the County/City upon receipt of grant award letter signed by the Director or Governor. The Region will prepare and submit a F-7A Budget Allotment request upon receipt of a project funding agreement at the time it is submitted to the County/City for their execution.

The County/City will submit plans prepared and signed by a registered professional engineer showing work to be performed. Plans must match the project agreement description. It is not necessary for the Region to perform an in-depth review of plans. The County/City will submit a certification signed by a Registered Professional Engineer stating that the plans have been prepared so that all items included in the plans meet ALDOT specifications. The County/City will include a letter certifying that the County/City owns all right-of-way on which the project is to be constructed.

Upon receipt of the executed agreement, the executed F-7A, final plans from the County/City, and right-of-way certification, the Region may notify the County/City to proceed with advertising the project for letting or proceed with work in the case of a force account project.

In the case where a County/City is using an inplace annual bid, the County/City will furnish the Region a copy of their bid and this bid price will be used for reimbursement.

1-20

Rev. 10/2017

Where the County/City is letting a contract locally, the County/City will furnish to the Region the three lowest bids with their recommendation for award. The Region will review the bids, and, if in order, advise the County/City to proceed with award of the contract to the lowest responsible bidder. The County's/City's estimate for reimbursement will be based on the bid prices concurred in by the State and supported with documentation that the contractor has been paid for work performed (copy of cancelled check).

A certification will be submitted with County/City final estimate stating that the project was constructed in accordance with final plans submitted to the State and with the specifications, supplemental specifications, and special provisions which were shown on the plans or with the State's latest specifications which were applicable at the time of plan approval.

The County/City will notify the Region when the project is complete and the Region will perform a final ride-through to determine whether the project was completed in substantial compliance with original final plans. Final acceptance will be made by the Region with a copy of the letter furnished to the Bureau of Local Transportation.

All required test reports, weight tickets, material receipts and other project documentation required by the specifications, applicable supplemental specifications, and special provisions will be retained by the County/City for a period of three (3) years following receipt of final payment and made available for audit by the State upon request. If an audit is performed and proper documentation is not available to verify quantities and compliance with specifications, the County/City will refund the project cost to the State or do whatever is necessary to correct the project at their cost.

All County/City Industrial Access or State funded projects let to contract by the State will follow normal project procedures and comply with all current plan processing requirements.

RECOMMENDED FOR APPROVAL: _____

BUREAU CHIEF/REGION ENGINEER

APPROVAL: _____

CHIEF ENGINEER

APPROVAL: _____ NOVEMBER 1, 2017

TRANSPORTATION DIRECTOR **DATE**

1-20

Rev. 10/2017

CONSTRUCTION
AGREEMENT
FOR A
FEDERAL AID
PROJECT

BETWEEN THE STATE OF ALABAMA
AND THE
BALDWIN COUNTY COMMISSION

Future Austin Road Extension

Project No. STPOA-0221( )
CPMS Ref# 100074044

PART ONE (1): INTRODUCTION

This Agreement is made and entered into by and between the State of Alabama (acting by and through the Alabama Department of Transportation), hereinafter referred to as the STATE; and the Baldwin County Commission, Alabama, [redacted] hereinafter referred to as the COUNTY.

WHEREAS, the STATE and the COUNTY desire to cooperate in the grade, drain, base, and pave the future Austin Road (currently Glover Lane) extension from Friendship Road to CR-13; Project# STPOA-0221( ); CPMS Ref# 100074044.

NOW, THEREFORE, it is mutually agreed between the STATE and the COUNTY as follows:

PART TWO (2): FUNDING PROVISIONS

A. **Project Funding:** The STATE will not be liable for Federal Aid Funds in any amount. The project will be limited to $914,062.50 Federal funds unless the Eastern Shores Area Metropolitan Planning Organization agrees, subject to the approval of the STATE, to reprogram the allocated Federal funds for the Eastern Shores Area sufficient to pay their pro rata share of the project cost. In the event of an underrun in construction costs, the amount of Federal Aid funds will be based on the proportional Federal Aid to the total project as let cost, up to 80%.

B. The estimated cost and participation by the various parties is as follows:

CONSTRUCTION

FUNDING SOURCE	ESTIMATED COSTS
FA STP Funds (Eastern Shores Area Dedicated)	$ 914,062.50
County Funds	$ 492,187.50
TOTAL (Incl E&I & Indirect Cost)	$ 1,406,250.00

It is further understood that this is a cost reimbursement program and no federal funds will be provided to the COUNTY prior to accomplishment of the work for which it is requested. Furthermore, no federal funds will be reimbursed for work performed prior to project authorization.

Any cost incurred by the COUNTY relating to this project which is determined to be ineligible for reimbursement by the Federal Highway Administration (FHWA), or in excess of the limiting amounts previously stated, will not be an eligible cost to the project and will be borne and paid by the COUNTY.

C. **Time Limit:** This project will commence upon written authorization to proceed from the STATE directed to the COUNTY.

The approved allocation of funds for projects containing Industrial Access funds shall lapse if a contract has not been awarded for construction of the project within (12) months of the date of the funding approval by the Industrial Access Road and Bridge Corporation Board, and the approved allocation shall be returned to the IARB for re-allocation. A time extension may be approved by the IARB upon formal request by the applicant.

The approved allocation of funds for projects containing Federal Transportation Alternatives Set-Aside funds may lapse if a project has not been authorized by FHWA within (24) months of the date of the funding approval by the Governor, and the approved allocation shall be returned to the STATE for re-allocation. A time extension may be approved by the STATE upon formal request by the applicant. Failure to meet other project milestones, as set forth in the TAP Guidelines, may result in an approved allocation being returned to the STATE.

PART THREE (3): PROJECT SERVICES

A. The COUNTY will furnish all Right-of-Way for the project. Associated Right-of-Way acquisition costs will not be an eligible cost as part of this Agreement. The Right-of-Way acquisition phase is hereby defined as the appraisal fees, appraisal review fees and the cost of acquisition incurred.

All work accomplished under the provisions of this Agreement will be accomplished on property owned by or which will be acquired by the COUNTY in accordance with applicable Federal and state laws, regulations, and procedures. Any exceptions to this requirement must be approved by the STATE in writing prior to incurring costs for which reimbursement is requested by the COUNTY. In cases where property is leased, or easements obtained, the terms of the lease or easement will not be less than the expected life of the improvements.

Acquisition of real property by the COUNTY as a part of this project will conform to and be in accordance with the provisions of the Federal Uniform Relocation Assistance & Real Property Acquisition Policies Act (49 CFR 24, Subpart B), all federal environmental laws, and all other applicable state and federal laws.

Any property or property interests acquired shall be in the name of the COUNTY with any condemnation or other legal proceedings being performed by the COUNTY.

The COUNTY shall follow all Federal regulations related to the Management, Leasing, and Disposal of Right-of-Way, uneconomic remnants and excess Right-of-Way as found in CFR 23 § 710 Subpart D. Proceeds for Leases and Disposals shall be credited to the Project or to the Title 23 Collector Account.

No change in use or ownership of real property acquired or improved with funds provided under the terms of this Agreement will be permitted without prior written approval from the STATE or FHWA. The STATE or FHWA will be credited on a prorata share, as provided in Part Two, Section B, any revenues received by the COUNTY from the sale or lease of property.

B. The COUNTY will relocate any utilities in conflict with the project improvements in accordance with applicable Federal and State laws, regulations, and procedures. Associated Utility costs will not be an eligible cost as part of this Agreement.

C. The COUNTY will make the Survey, perform the Design, complete the Plans and furnish all Preliminary Engineering for the project with COUNTY forces or with a consultant approved by the STATE. Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs will not be an eligible cost as part of this Agreement.

If any Associated Survey, Design, Plan Preparation, and Preliminary Engineering costs are an eligible cost to the project, the COUNTY will develop and submit to the STATE a project budget for approval. This budget will be in such form and detail as may be required by the STATE. At a minimum, all major work activities will be described, and an estimated cost and source of funds will be indicated for each activity. A signature line will be provided for approval by the Region Engineer and date of such approval. All costs for which the COUNTY seeks reimbursement must be included in a budget approved by the STATE in order to be considered for reimbursement. Budget adjustments may be necessary and may be allowed, subject to the approval of the STATE in writing, in order to successfully carry out the project. However, under no circumstances will the COUNTY be reimbursed for expenditures over and beyond the amount approved by the STATE.

The COUNTY will undertake the project in accordance with this Agreement, plans approved by the STATE and the requirements, and provisions, including the documents relating thereto, developed by the COUNTY and approved by the STATE. The plans, including the documents relating thereto, are of record in the Alabama Department of Transportation and are hereby incorporated in and made a part of this Agreement by reference. It is understood by the COUNTY that failure of the COUNTY to carry out the project in accordance with this Agreement and approved plans, including documents related thereto, may result in the loss of federal or state funding and the refund of any federal or state funds previously received on the project.

Projects containing Industrial Access funds or State funds, with no Federal funds involved, shall have completed original plans furnished to the STATE in accordance with the Guidelines for Operations for ***Procedures for Processing State and Industrial Access Funded County and City Projects***, and attached hereto as a part of this Agreement prior to the COUNTY letting the contract.

D. The COUNTY will furnish all construction engineering for the project with COUNTY forces or with a consultant approved by the STATE as part of the cost of the project. Construction Engineering & Inspection cost are not to exceed 15%, without prior approval by the State. Associated Construction Engineering & Inspection costs will be an eligible cost as part of this Agreement.

E. The STATE will furnish the necessary inspection and testing of materials when needed as part of the cost of the project. The COUNTY may request the use of an approved third-party materials inspection and testing provider, as approved by the STATE.

PART FOUR (4): CONTRACT PROVISIONS

A. The COUNTY shall not proceed with any project work covered under the provisions of this Agreement until the STATE issues written authorization to the COUNTY to proceed.

B. Associated Construction cost will be an eligible cost as part of this Agreement.

For projects let to contract by the STATE, the STATE will be responsible for advertisement and receipt of bids and the award of the Contract. Following the receipt of bids and prior to the award of the Contract, the STATE will invoice the COUNTY for its pro rata share of the estimated cost as reflected by the bid of the successful bidder plus Engineering & Inspection and Indirect Costs (if applicable). The COUNTY shall pay this amount to the STATE no later than 30 days after the date bids are opened. Failure to do so may lead to the rejection of the bid.

For projects let to contract by the COUNTY, the COUNTY shall comply with all Federal and State laws, rules, regulations and procedures applicable to the advertisement, receipt of bids, and the award of the contract. The COUNTY will, when authorized by the STATE, solicit bids and make awards for construction and/or services pursuant to this Agreement. The COUNTY shall not solicit bids until the entire bid package (plans, specifications, estimates, etc.) has been reviewed and approved by the STATE. Following receipt of bids, the COUNTY will provide all bids to the STATE with a recommendation for award. The COUNTY shall not award the contract until it has received written approval from the STATE.

The purchase of project equipment and/or services financed in whole or in part pursuant to this Agreement will be in accordance with applicable Federal and State laws, rules, regulations, and procedures, including state competitive bidding requirements applicable to counties and municipalities in the State of Alabama when the purchase is made by any such entity.

C. If necessary, the COUNTY will file an Alabama Department of Environmental Management (ADEM) National Pollutant Discharge Elimination System (NPDES) Notice of Registration (NOR) (Code Chapter 335-6-12) for this project without cost to the State or this project. The COUNTY will be the permittee of record with ADEM for the permit. The COUNTY and the contractor will be responsible for compliance with the permit and the State will have no obligation regarding the permit. The COUNTY will furnish the State (Region) a copy of the permit prior to any work being performed by the contractor.

   The COUNTY will secure all permits and licenses of every nature and description applicable to the project in any manner; conform to and comply with the requirements of any such permit or license; and comply with each and every requirement of any and all agencies, and of any and all lawful authorities having jurisdiction or requirements applicable to the project or to the project activities.

D. The COUNTY will comply with the Alabama Department of Transportation Standard Specifications for Highway Construction, Latest Edition, on this project and will ensure that work associated on this project meets the standards of the Alabama Department of Transportation, and the project will be built in accordance with the approved plans.

E. The COUNTY shall be responsible at all times for all of the work performed under this Agreement and, as provided in Ala. Code § 11-93-2 (1975), the COUNTY shall indemnify and hold harmless the State of Alabama, The Alabama Department of Transportation, its officers, officials, agents, servants, and employees.

   For all claims not subject to Ala. Code § 11-93-2 (1975), the COUNTY shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, its officers, officials, agents, servants, and employees from and against any and all damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of, connected with, or related to the (1) work performed under this Agreement, (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the COUNTY pursuant to the terms of this Agreement, or (3) misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the COUNTY, its officers, officials, agents, servants, and employees.

F. The COUNTY will be obligated for the payment of damages occasioned to private property, public utilities or the general public caused by the legal liability (in accordance with Alabama and/or Federal law) of the COUNTY, its agents, servants, employees or facilities.

G. Upon completion and acceptance of this project by the State, the COUNTY will assume full ownership and responsibility for the portion of the project work on COUNTY right-of-way and maintain the project in accordance with applicable State law and comply with the Department's Local Road Maintenance Certification Policy.

PART FIVE (5): ACCOUNTING PROVISIONS

A. The COUNTY will, when appropriate, submit reimbursement invoices to the STATE for work performed in carrying out the terms of this Agreement. Requests for reimbursement will be made on forms provided by the STATE and will be submitted through the Region Engineer for payment. The COUNTY may invoice the STATE not more often than once per month for the funds due for work performed under this Agreement. Invoices for payment will be submitted in accordance with state law and will indicate that the payment is due, true, correct, and unpaid, and the invoice will be notarized. Invoices for any work performed under the terms of this Agreement will be submitted within twelve (12) months after the completion and acceptance by the STATE of the work. Any invoices submitted after this twelve-month period will not be eligible for payment.

B. The COUNTY will not assign any portion of the work to be performed under this Agreement or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement, without the prior written approval of the STATE.

C. The COUNTY will establish and maintain a cost accounting system that must be adequate and acceptable to the STATE as determined by the auditor of the STATE.

All charges to the Project will be supported by properly executed invoices, contracts, or vouchers, as applicable, evidencing in proper detail the nature and propriety of the charges in accordance with the requirements of the STATE. All checks, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to the project will be clearly identified, readily accessible and to the maximum extent feasible, kept separate and apart from all other such documents.

The COUNTY will report to the STATE the progress of the project in such manner as the STATE may require. The COUNTY will also provide the STATE any information requested by the STATE regarding the project. The COUNTY will submit to the STATE financial statements, data, records, contracts and other documents and items of any respect related to the project as may be requested by the STATE.

The COUNTY will permit the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, to inspect, at any time, vehicles and equipment utilized or used in performance of the project and any and all data and records which in any way relate to the project or to the accomplishment of the project. The COUNTY will also permit the above noted persons to audit the books, records and accounts pertaining to the project at any and all times, and the COUNTY will give its full cooperation to those persons or their authorized representatives, as applicable.

The COUNTY will comply with all audit requirements set forth in the 2 CFR Part 200 requirements, or the most current version of those requirements under federal law.

D. The COUNTY will retain all books, records, and other documents relative to this Agreement for a minimum of three (3) years after project termination, expiration of Federal interest, or close out, and the STATE, the Comptroller General of the United States, and the Secretary of the USDOT, or either of them or their respective authorized representatives, will have full access to and the right to examine any of said materials at all reasonable times during said period.

E. Any user fee or charge to the public for access to any property or services provided through the funds made available under this Agreement, if not prohibited by a Federal, State or local law, must be applied for the maintenance and long-term upkeep of the project authorized by this agreement.

F. An audit report must be filed with the Department of Examiners of Public Accounts, upon receipt by the COUNTY, for any audit performed on this project in accordance with Act No. 94-414.

PART SIX (6): MISCELLANEOUS PROVISIONS

A. By entering into this Agreement, the COUNTY is not an agent of the STATE, its officers, employees, agents or assigns. The COUNTY is an independent entity from the STATE, and nothing in this Agreement creates an agency relationship between the parties.

B. It is agreed that the terms and commitments contained in this Agreement shall not constitute a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment 26. It is further agreed that, if any provision of this Agreement shall contravene any statute or Constitutional provision or amendment, either now in effect or which may be enacted during the term of this Agreement, then the conflicting provision in this agreement shall be deemed null and void.

C. By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate Federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

D. No member, officer, or employee of the COUNTY, during their tenure of employment and for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds, profits, or benefits therefrom.

E. The terms of this Agreement may be modified by revision of this Agreement duly executed by the parties hereto.

F. This Agreement may be terminated by either party upon the delivery of a thirty (30) day notice of termination.

G. Nothing shall be construed under the terms of this Agreement that shall cause any conflict with Section 23-1-63, Code of Alabama, 1975.

H. **Exhibits A, E, H, M, and N** are hereby attached to and made a part of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by those officers, officials and persons duly authorized to execute same, and the Agreement is deemed to be dated and to be effective on the date hereinafter stated as the date of its approval by the Governor of Alabama.

ATTEST:

Baldwin County, Alabama

By: _____ **By:** _____

County Administrator (Signature) **As Chairman (Signature)**

_____ _____

Type Name of County Administrator **Type Name of Chairman**

(AFFIX SEAL)

This agreement has been legally reviewed and approved as to form and content.

By: _____

William F. Patty,
Chief Counsel

RECOMMENDED FOR APPROVAL:

_____ _____

Matthew J. Ericksen, P.E. **Bradley B. Lindsey, P.E.**
Southwest Region Engineer **State Local Transportation Engineer**

_____

Edward N. Austin, P. E.
Chief Engineer
STATE OF ALABAMA, ACTING BY AND THROUGH
THE ALABAMA DEPARTMENT OF TRANSPORTATION

_____

John R. Cooper, Transportation Director

THE WITHIN AND FOREGOING AGREEMENT IS HEREBY EXECUTED AND SIGNED BY THE GOVERNOR ON THIS _____DAY OF _____, 20_____.

_____

KAY IVEY
GOVERNOR, STATE OF ALABAMA

RESOLUTION NUMBER 2022-007

BE IT RESOLVED by the Baldwin County Commission as follows:

That the County enter into an agreement with the State of Alabama, acting by and through the Alabama Department of Transportation, relating to a project for:

Grade, drain, base, and pave the future Austin Road (currently Glover Lane) extension from Friendship Road to CR-13; Project# STPOA-0221( ); CPMS Ref# 100074044.

A copy of the agreement has been submitted to the Commission, and the Commission hereby approves the agreement. The Commission hereby authorizes and directs that the agreement be executed in the name of the County, by the Chairman for and on its behalf and attested by the County Administrator and the official seal of the County shall be affixed thereto.

BE IT FURTHER RESOLVED that, upon the completion of the execution of the agreement by all parties, a copy of such agreement be kept on file by the County.

I, the undersigned qualified and acting County Administrator of Baldwin County, Alabama, do hereby certify that the above and foregoing is a true copy of a resolution lawfully passed and adopted by the County named therein, at a regular meeting of such Commission held on the _____day of _____, 20____ , and that such resolution is on file in the County Administrator's Office.

ATTESTED:

_____ _____

County Administrator Chairman

_____day of _____, 20_____, and that such resolution is of record in the office of the County Administrator.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the County on this_____day of _____, 20_____ .

_____

County Administrator

(AFFIX SEAL)

EXHIBIT A

PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN FEDERAL-AID PROGRAM

Policy. It is the policy of the U.S. Department of Transportation that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently, the DBE requirements of 49 CFR Part 26 apply to this AGREEMENT.

DBE Obligation. The recipient of funds under the terms of this AGREEMENT agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. The recipient shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to see that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts and shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S. Department of Transportation assisted contracts.

Failure of the recipient of funds under the terms of this AGREEMENT, or failure of its subcontractor (if a subcontractor is authorized) to carry out the DBE requirements of this AGREEMENT shall constitute a breach of contract, and may result in termination of the contract by the STATE, or such other remedy may be undertaken by the STATE as it deems appropriate.

EXHIBIT E

TERMINATION OR ABANDONMENT

a. The STATE has the right to abandon the work or to amend its project at any time, and such action on its part shall in no event be deemed a breach of contract.

b. The STATE has the right to terminate this AGREEMENT at its sole discretion without cause and make settlement with the COUNTY upon an equitable basis. The value of the work performed by the COUNTY prior to the termination of this AGREEMENT shall be determined. In determining the value of the work performed, the STATE shall consider the following:

   1. The ratio of the amount of work performed by the COUNTY prior to the termination of the AGREEMENT to the total amount of work contemplated by this AGREEMENT less any payments previously made.

   2. The amount of the expense to which the COUNTY is put in performing the work to be terminated in proportion to the amount of expense to which the COUNTY would have been put had he been allowed to complete the total work contemplated by the AGREEMENT, less any payments previously made. In determining the value of the work performed by the COUNTY prior to the termination, no consideration will be given to profit, which the COUNTY might have made on the uncompleted portion of the work. If the termination is brought about as a result of unsatisfactory performance on the part of the COUNTY, the value of the work performed by the COUNTY prior to termination shall be fixed solely on the ratio of the amount of such work to the total amount of work contemplated by this AGREEMENT.

CONTROVERSY

In any controversy concerning contract terms, or on a question of fact in connection with the work covered by this project, including compensation for such work, the decision of the Transportation Director regarding the matter in issue or dispute shall be final and conclusive of all parties.

CONTRACT BINDING ON SUCCESSORS AND ASSIGNS

a. This contract shall be binding upon the successors and assigns of the respective parties hereto.

b. Should the AGREEMENT be terminated due to default by COUNTY, such termination shall be in accordance with applicable Federal Acquisition Regulations.

EQUAL RIGHTS PROVISIONS

During the performance of this contract, the COUNTY for itself, its assignees and successors in interest agrees as follows:

a. **Compliance with Regulations**

The COUNTY will comply with the Regulations of the Department of Transportation relative to nondiscrimination in federally-assigned programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, as amended by 23 CFR 710-405(b), hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.,* 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.),* (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.),* as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.),* (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;

- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

b. **Nondiscrimination**

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the COUNTY agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The COUNTY will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices where the contract covers a program set forth in Appendix B of the Regulations.

The COUNTY will comply with all provisions of Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.

c. **Solicitations**

In all solicitations either by competitive bidding or negotiation made by the COUNTY for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor, supplier or lessor shall be notified by the COUNTY of the COUNTY'S obligation under this contract and the Regulations relative to nondiscrimination on the ground of race, color, religion, sex or national origin.

d. **Information and Reports**

The COUNTY will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and will permit access to its books,

records, accounts, other sources of information and its facilities as may be determined by the STATE or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a COUNTY is in the exclusive possession of another who fails or refuses to furnish this information, the COUNTY shall so certify to the STATE, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance**

In the event of the COUNTY'S noncompliance with the nondiscrimination provisions provided for herein, the STATE shall impose such contract sanctions as it may determine to be appropriate, including but not limited to,

1. withholding of payments to the COUNTY under contract until the COUNTY complies, and/or
2. cancellation, termination or suspension of the contract, in whole or in part.

f. **Incorporation of Provisions**

The COUNTY will include the foregoing provisions a. through f. in every subcontract, including procurements of materials and leases of equipment, unless excepted by the Regulations, orders or instructions issued pursuant thereto. The COUNTY will take such action with respect to any subcontract, procurement, or lease as the STATE may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a COUNTY becomes involved in, or is threatened with, litigation with subcontractors, suppliers, or lessor as a result of such direction, the COUNTY may request the STATE to enter into such litigation to protect the interest of the STATE.

g. **Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit laws at 49 U.S.C. § 5332, the COUNTY agrees to comply with all applicable equal employment requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

The COUNTY agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the COUNTY agrees to comply with any implementing requirements FTA may issue.

2. Age – In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the COUNTY agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the COUNTY agrees to comply with any implementing requirements FTA may issue.

3. Disabilities – In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the COUNTY agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

COST PRINCIPLES

The STATE'S cost principles for use in determining the allowability of any item of cost, both direct and indirect, in this AGREEMENT, shall be the applicable provisions of Volume I, Federal Acquisition Regulations, Parts 30 and 31. The COUNTY shall maintain costs and supporting documentation in accordance with the Federal Acquisition Regulations, Parts 30 and 31 and other Regulations referenced with these Parts where applicable. The COUNTY shall gain an understanding of these documents and regulations. The applicable provisions of the above referenced regulations documents are hereby incorporated by reference herein as if fully set forth.

EXECUTORY CLAUSE AND NON-MERIT SYSTEM STATUS

a. The COUNTY specifically agrees that this AGREEMENT shall be deemed executory only to the extent of moneys available, and no liability shall be incurred by the STATE beyond the moneys available for this purpose.

b. The COUNTY, in accordance with the status of COUNTY as an independent contractor, covenants and agrees that the conduct of COUNTY will be consistent with such status, that COUNTY will neither hold COUNTY out as, or claim to be, an officer or employee of the STATE by reason hereof, and that COUNTY will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the STATE under the merit system or any other law of Alabama, including but not limited to workmen's compensation coverage, or retirement membership or credit or any Federal employment law. This paragraph also applies in like manner to the employees of COUNTY.

COUNTYS' CERTIFICATIONS

The COUNTY by acceptance of this contract certifies that the rates or composition of cost noted in Article IV - PAYMENTS are based on the current actual hourly rates paid to employees, estimated non- salary direct cost based on historical prices, the latest available audited indirect cost rate, and estimated cost of reimbursements to employees for travel (mileage, per diem, and meal allowance) based on the current policy of the COUNTY. The COUNTY agrees that mileage reimbursements for use of company vehicles is based on the lesser of the approved rate allowed by the General Services Administration of the United States Government or the reimbursement policies of the COUNTY at the time of execution of the AGREEMENT. The COUNTY agrees that no mileage reimbursement will be allowed for the purpose of commuting to and from work or for personal use of a vehicle. The COUNTY agrees that the per diem rate will be limited to the rate allowed by the STATE at the time of execution of the AGREEMENT. The COUNTY agrees that a meal allowance shall be limited to COUNTY employees while in travel status only and only when used in lieu of a per diem rate.

The COUNTY shall submit detailed certified labor rates as requested, and in a timely manner, to the External Audits Section of the Finance and Audits Bureau of The Alabama Department of Transportation. The COUNTY agrees that material differences between rates submitted with a proposal and rates provided as certified for the same proposal are subject to adjustment and reimbursement.

EXHIBIT M

CERTIFICATION FOR FEDERAL-AID CONTRACTS: LOBBYING

This certification is applicable to the instrument to which it is attached whether attached directly or indirectly with other attachments to such instrument.

The prospective participant/recipient, by causing the signing of and the submission of this Federal contract, grant, loan, cooperative AGREEMENT, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, and the person signing same for and on behalf of the prospective participant/recipient each respectively certify that to the best of the knowledge and belief of the prospective participant or recipient and of the person signing for and on behalf of the prospective participant/recipient, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the prospective participant/recipient or the person signing on behalf of the prospective participant/recipient as mentioned above, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or other instrument as might be applicable under Section 1352, Title 31, U. S. Code, the prospective participant/recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant/recipient also agrees by submitting this Federal contract, grant, loan, cooperative agreement or other instrument as might be applicable under Section 1352, Title 31, U.S. Code, that the prospective participant/recipient shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

EXHIBIT N

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this AGREEMENT shall contravene any statute or Constitutional provision of amendment, either now in effect or which may, during the course of this AGREEMENT, be enacted, then the conflicting provision in the AGREEMENT shall be deemed null and void.

When considering settlement of controversies arising from or related to the work covered by this AGREEMENT, the parties may agree to use appropriate forms of non-binding alternative dispute resolution.

TERMINATION DUE TO INSUFFICIENT FUNDS

a. If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.

b. In the event of proration of the fund from which payment under this AGREEMENT is to be made, agreement will be subject to termination.

NO GOVERNMENT OBLIGATION TO THIRD PARTY CONTRACTORS

The STATE and COUNTY acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations of or liabilities to the STATE, COUNTY, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The COUNTY agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided to FHWA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

STATE OF ALABAMA
DEPARTMENT OF TRANSPORTATION
GUIDELINES FOR OPERATION

SUBJECT: PROCEDURES FOR PROCESSING STATE AND INDUSTRIAL ACCESS FUNDED COUNTY AND CITY PROJECTS

No work can be performed and no contracts can be let prior to having a fully executed project agreement, submittal of project plans to Region and notification from the Region that advertisement for bids can be made, or, in the case of force account projects, work can begin.

A project agreement will be prepared and furnished to the County/City upon receipt of grant award letter signed by the Director or Governor. The Region will prepare and submit a F-7A Budget Allotment request upon receipt of a project funding agreement at the time it is submitted to the County/City for their execution.

The County/City will submit plans prepared and signed by a registered professional engineer showing work to be performed. Plans must match the project agreement description. It is not necessary for the Region to perform an in-depth review of plans. The County/City will submit a certification signed by a Registered Professional Engineer stating that the plans have been prepared so that all items included in the plans meet ALDOT specifications. The County/City will include a letter certifying that the County/City owns all right-of-way on which the project is to be constructed.

Upon receipt of the executed agreement, the executed F-7A, final plans from the County/City, and right-of-way certification, the Region may notify the County/City to proceed with advertising the project for letting or proceed with work in the case of a force account project.

In the case where a County/City is using an inplace annual bid, the County/City will furnish the Region a copy of their bid and this bid price will be used for reimbursement.

1-20

Rev. 10/2017

Where the County/City is letting a contract locally, the County/City will furnish to the Region the three lowest bids with their recommendation for award. The Region will review the bids, and, if in order, advise the County/City to proceed with award of the contract to the lowest responsible bidder. The County's/City's estimate for reimbursement will be based on the bid prices concurred in by the State and supported with documentation that the contractor has been paid for work performed (copy of cancelled check).

A certification will be submitted with County/City final estimate stating that the project was constructed in accordance with final plans submitted to the State and with the specifications, supplemental specifications, and special provisions which were shown on the plans or with the State's latest specifications which were applicable at the time of plan approval.

The County/City will notify the Region when the project is complete and the Region will perform a final ride-through to determine whether the project was completed in substantial compliance with original final plans. Final acceptance will be made by the Region with a copy of the letter furnished to the Bureau of Local Transportation.

All required test reports, weight tickets, material receipts and other project documentation required by the specifications, applicable supplemental specifications, and special provisions will be retained by the County/City for a period of three (3) years following receipt of final payment and made available for audit by the State upon request. If an audit is performed and proper documentation is not available to verify quantities and compliance with specifications, the County/City will refund the project cost to the State or do whatever is necessary to correct the project at their cost.

All County/City Industrial Access or State funded projects let to contract by the State will follow normal project procedures and comply with all current plan processing requirements.

RECOMMENDED FOR APPROVAL: _____

BUREAU CHIEF/REGION ENGINEER

APPROVAL: _____

CHIEF ENGINEER

APPROVAL: _____ NOVEMBER 1, 2017

TRANSPORTATION DIRECTOR **DATE**

1-20

Rev. 10/2017

AUSTIN RD EXTENSION
FROM FRIENDSHIP RD TO COUNTY RD 13



Baldwin County Commission

Agenda Action Form

File #: 22-0115, **Version:** 1 **Item #:** BN5

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Joey Nunnally, P.E., County Engineer
Seth Peterson, P.E., Pre-Construction Manager
Submitted by: Lisa Sangster, Administrative Support Specialist IV

ITEM TITLE
Goodwyn, Mills & Cawood, Inc. - Standard On-Call Contract for Professional Services - Consent to Assignment of Contract

STAFF RECOMMENDATION
Approve the Chairman to execute the Consent to Assignment of Contract document consenting to the assignment of all rights and obligations under the current Standard On-Call Contract with Goodwyn, Mills & Cawood, Inc., to Goodwyn Mills Cawood, LLC.

BACKGROUND INFORMATION

Previous Commission action/date:
May 5, 2020 - The Baldwin County Commission, based on Policy #9.10, approved the Standard On-Call Contract for engineering and related services that are estimated less than or equal to $100,000.00 and budgeted in the current fiscal-year budget with Goodwyn, Mills & Cawood, Inc.

Background: Goodwyn, Mills & Cawood, Inc. (GMC, Inc.) is in the process of transitioning operations to Goodwyn Mills Cawood, LLC (GMC, LLC). As part of that transition, they are requesting that Baldwin County consent to the assignment of all rights and obligations under the current Standard On-Call Contract for Professional Services from GMC, Inc., to GMC, LLC, provided that GMC, LLC, shall assume all of GMC, Inc.'s rights and obligations under the contract.

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
Yes

Reviewed/approved by: Finley Reeves (County Attorney's Office) approved 9/18/2021 - los

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Administration Staff prepare correspondence and have Chairman execute two (2) original agreements. Send one original agreement to GMC, LLC.

Action required (list contact persons/addresses if documents are to be mailed or emailed):

Contact:

Goodwyn Mills Cawood, LLC
Attn: Jeffrey Brewer
Chief Executive Officer
2039 Main Street
Daphne, Alabama 36526

Additional instructions/notes: N/A

CONSENT TO
ASSIGNMENT OF CONTRACT

Baldwin County, Alabama ("Client") and Goodwyn, Mills & Cawood, Inc., an Alabama corporation ("GMC, Inc."), entered into a contract for the Project known as Master On-Call Contract for Professional Services (the "Contract"). Client has been informed that GMC, Inc. is transitioning operations to Goodwyn Mills Cawood, LLC, an Alabama limited liability company ("GMC, LLC"). Client hereby consents to GMC, Inc's assignment of GMC, Inc.'s rights and obligations under the Contract to GMC, LLC, all effective as of and subject to the date of this Consent; provided that GMC, LLC shall assume all of GMC, Inc.'s rights and obligations under the Contract. GMC, Inc. will remain covered by professional liability insurance for at least three years after the effective date of this Consent.

DATED: 9/29, 2021

Goodwyn Mills and Cawood Inc.

By: _____
Jeffrey Brewer,
Chief Executive Office

Baldwin County, Alabama

By: _____
Name: _____
Title: _____

Goodwyn Mills Cawood, LLC

By: _____
Jeffrey Brewer,
Chief Executive Office

COUNTY COMMISSION

BALDWIN COUNTY
312 Courthouse Square, Suite 12
BAY MINETTE, ALABAMA 36507
(251) 937-0264
Fax (251) 580-2500
www.baldwincountyal.gov

MEMBERS
DISTRICT 1. JAMES E. BALL
2. JOE DAVIS, III
3. BILLIE JO UNDERWOOD
4. CHARLES F. GRUBER

May 5, 2020

Goodwyn, Mills & Cawood, Inc.
Post Office Box 1127
Daphne, Alabama 36526

RE: Standard On-Call Contracts for Engineering and Related Services

Dear Sir or Madam:

The Baldwin County Commission, during its regularly scheduled meeting held on May 5, 2020, and based on Policy #9.10, approved the *Standard On-Call Contract* for engineering and related services that are estimated less than or equal to $100,000.00 and budgeted in the current fiscal-year budget.

The *Contract* shall be effective upon full execution and shall terminate upon thirty-six (36) months or thirty (30) days written notice, with or without cause or reason, by either party.

Enclosed is a **fully executed <u>original</u>** *Contract* for your file.

If you have any questions or need further assistance, please do not hesitate to contact me at (251) 972-8515 or Joey Nunnally, County Engineer, at (251) 937-0371.

Sincerely,

Billie Jo Underwood

BILLIE JO UNDERWOOD, Chairman
Baldwin County Commission

BJU/mnm Item GN3

cc: Joey Nunnally
Lisa Sangster (Original Contract)

ENCLOSURE(S)

State of Alabama)
County of Baldwin)

MASTER ON CALL CONTRACT FOR PROFESSIONAL SERVICES

This Master On Call Contract for Professional Services (hereinafter "Contract") is made and entered into by and between the Baldwin County, Alabama, acting by and through its governing body, the Baldwin County Commission (hereinafter "COUNTY" or "COMMISSION"), and Goodwn, Mills & Cawood, Inc., a professional engineering firm qualified to do business in the state of Alabama (hereinafter "PROVIDER").

WITNESSETH:

Whereas, COUNTY, pursuant to Alabama law, is continuously involved in numerous projects relating to the design, construction, improvement, maintenance, and/or repair of public roads and bridges throughout Baldwin County, Alabama; and

Whereas, PROVIDER is staffed with licensed professional engineers who have specialized expertise and training in the provision of surveying and engineering services, including, without limitation, survey, design, right of way map and deed preparation, geotechnical and material testing, construction engineering, inspection, maintenance, improvement and/or repair, relating to public roads and bridges ("Services"); and

Whereas, by Baldwin County Policy #9.10, the Baldwin County Commission has delegated to the Baldwin County Engineer the authority to select and retain the services of qualified professional engineering firms to provide Services in relation to any COUNTY public road or bridge project, if the expense of PROVIDER's Services is less than one-hundred thousand dollars ($100,000.00), and if such Services are otherwise subject to a global contract between COUNTY and PROVIDER which sets out the terms and conditions of the parties' relationship; and

Whereas, the parties now wish to enter into this Master On Call Contract for Professional Services, thereby authorizing the Baldwin County Engineer to retain the services of PROVIDER, from time to time, subject to the terms and conditions of this Contract.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the sufficiency of which is hereby acknowledged, PROVIDER and COUNTY agree as follows:

I. Scope of Work Agreement: Unless otherwise agreed between PROVIDER and County Engineer and executed in writing, "scope of work agreement" shall mean and include the cumulative exchange of communications and acknowledgments between PROVIDER and County Engineer by which they set out and agree

to the terms, conditions and details of Services for any discrete, independent project, and shall for each such project include a scope of work prepared by County Engineer, PROVIDER's acceptance thereof together with a fee proposal, and County Engineer's acceptance thereof by way of a notice to proceed.

II. Obligations Generally. The COUNTY hereby retains PROVIDER to provide, and the PROVIDER agrees to perform for the COUNTY, all Services as the Baldwin County Engineer may from time to time authorize and retain by separate, independent scope of work agreements issued pursuant and subject to this Contract. Each scope of work agreement shall be subject to this Contract and shall be governed in all respects by the terms and conditions herein. Each respective scope of work agreement, together with this document, shall serve as an independent, binding contract. PROVIDER shall immediately commence performance of the Services outlined herein upon full execution of this Contract and as directed in respective scope of work agreements. All work shall be commenced and completed in a timely manner as set out herein and as set out in each respective scope of work agreement. Nothing in this Contract shall be construed as granting PROVIDER any right or guarantee to be selected or retained to provide Services to the COUNTY.

III. Recitals Included. The above recitals and statements are incorporated as part of this Contract and shall have the same effect and enforceability as all other provisions herein.

IV. Professional Qualifications. For the purpose of this Contract, the PROVIDER represents to the COUNTY that it possesses the professional, technical and administrative personnel with the specific experience and training necessary to provide the Services described in this Contract and future scope of work agreements, if any.

V. No Exclusive Agreement or Franchise. By executing this Contract, the COUNTY does not in any way grant PROVIDER an exclusive agreement for Services or an exclusive franchise. PROVIDER expressly acknowledges and agrees that the COUNTY may enter into agreements with other providers as deemed necessary by the COUNTY in its sole discretion.

VI. Representation of Certifications, Etc. PROVIDER represents that PROVIDER is presently registered, certified, licensed and otherwise permitted under all necessary and applicable laws and regulations to perform the services herein and as may be

authorized in any and all scope of work agreements. PROVIDER further represents that it shall renew, maintain and otherwise ensure that all such registrations, certifications, licenses, and permits are current and valid, without interruption, for and through completion of all Services.

VII. Legal Compliance. PROVIDER shall at all times comply with all applicable federal, state, and local laws, rules and regulations.

VIII. Independent Contractor. PROVIDER acknowledges that it is an independent contractor, and PROVIDER shall at all times remain as such in performing Services under this Contract and respective scope of work agreements. PROVIDER is not an employee, servant, partner, or agent of the COUNTY and has no authority, express or implied, to contract for or bind the COUNTY in any manner. The parties agree that PROVIDER shall be solely responsible for, and shall have full and unqualified control over, developing and implementing its own means and methods as it deems necessary and appropriate in providing Services, and that the COUNTY's interests herein are expressly limited to the results of PROVIDER's Services. PROVIDER is not entitled to unemployment insurance benefits or any other benefits offered by the COUNTY, and PROVIDER is responsible for and obligated to pay any and all federal and state income tax on any monies paid pursuant to this Contract and respective scope of work agreements.

IX. Unenforceable Provisions. If any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

X. Entire Agreement. This Contract, together with respective scope of work agreements, represents the entire and integrated agreement between COUNTY and PROVIDER and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract, and respective scope of work agreements, may be amended only by written instrument signed by authorized parties.

XI. Failure to Strictly Enforce Performance. The failure of the COUNTY to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Contract or any

respective scope of work agreement shall not constitute, and shall never be asserted by PROVIDER as constituting, a default or be construed as a waiver or relinquishment of the right of the COUNTY to thereafter enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

XII. Assignment. Neither this Contract nor any respective scope of work agreement, nor any interest therein, shall be assigned, transferred or otherwise encumbered by PROVIDER without the prior written consent of the COUNTY, which may be withheld or granted in the sole discretion of the COUNTY. Without limitation, the parties acknowledge and agree that PROVIDER shall not assign, subcontract or otherwise delegate any part, discipline or aspect of PROVIDER's obligations hereunder, or in any respective scope of work agreement, without obtaining COUNTY's prior written approval, including COUNTY's approval of the entity to which such assignment, subcontract or delegation would be made.

XIII. Ownership of Documents/Work. The COUNTY shall be the owner of all copyright or other intellectual property rights in reports, documents and deliverables produced and paid for under this Contract or respective scope of work agreements, and to the extent permitted by Alabama law, any such material may be reproduced and reused at the discretion of the COUNTY without payment of further consideration. PROVIDER shall not transfer, disclose or otherwise use such information for any purpose other than in performance of the services hereunder, without the COUNTY's prior written consent, which may be withheld or granted in the sole discretion of the COUNTY. PROVIDER agrees to provide any releases or further assurances required by the COUNTY to evidence the rights granted by this section XIV. Any reuse or modification of such documents for purposes other than those intended by the PROVIDER in its Scope of Services shall be at the COUNTY's sole risk and without liability to the PROVIDER.

XIV. Notice. Notice required herein shall be in writing, unless otherwise allowed, and said notice shall be deemed effective when received at the following addresses:

PROVIDER: Goodwyn, Mills & Cawood, Inc.
P.O. Box 1127
Daphne, Alabama 36526

COUNTY: Baldwin County Commission
c/o Chairman
312 Courthouse Square
Suite 12
Bay Minette, Alabama 36507

XV. Services to be Rendered. PROVIDER is retained by the COUNTY as a professionally-qualified engineer. The general scope of work for the Services shall include those set out in each scope of work agreement as the same may be made from time to time during the term of this Contract. Each scope of work agreement made hereunder shall be subject to this Contract. The parties acknowledge and agree that each scope of work agreement shall be deemed and treated as a separate and independent agreement between the parties, subject to the terms and conditions of this Contract.

PROVIDER will provide ongoing communications with COUNTY regarding Services, including updates, emails, calls and reports. as requested. Additionally, PROVIDER will meet with COUNTY as needed or requested.

PROVIDER is responsible for the professional quality, technical accuracy, timely completion and coordination of all Services furnished by or in relation to this Contract and respective scope of work agreements.

PROVIDER shall use MicroStation and Inroads software for project design unless otherwise specified in the scope of work agreement.

PROVIDER represents and warrants that its Services shall be performed within the limits, standards and requirements provided by the COUNTY, in a manner consistent with the level of care and skill ordinarily exercised by similar providers under similar circumstances at the time the services are performed.

XVI. General Responsibilities of the COUNTY.

A. The COUNTY shall pay to PROVIDER compensation subject to the terms set out herein and in accordance with the respective scope of work agreements.

B. The COUNTY shall make available to PROVIDER all information, materials and accommodations within COUNTY's control, as reasonably necessary to

PROVIDER's performance hereunder. Without limitation, COUNTY shall make available to PROVIDER relevant GIS data owned by COUNTY, pursuant to the Terms and Conditions governing PROVIDER's use of such data as set forth in Exhibit A, subject to any additional requirements deemed necessary by the County Engineer.

XVII. Termination of Services. The COUNTY or PROVIDER may terminate this Contract, or any and all scope of work agreements executed hereunder, with or without cause or reason, by giving thirty (30) days written notice of such to the other party. Upon receipt of such notices, PROVIDER shall discontinue its respective work to the extent specified in the notice.

In the event of termination, the COUNTY shall pay PROVIDER for Services satisfactorily rendered, and the COUNTY shall pay for any expenses deemed by COUNTY to be a reimbursable expense incurred pursuant to this Contract and respective scope of work agreement prior to the date of termination.

XVIII. Compensation Limited. The compensation to be paid to the PROVIDER shall be as provided in this Contract and each respective scope of work agreement, and such compensation shall be the full compensation for all work performed by PROVIDER. Any and all additional expenditures or expenses of PROVIDER not listed in full within this Contract or respective scope of work agreement shall not be considered as a part of this Contract or scope of work agreement, and shall not be demanded by PROVIDER or paid by COUNTY. Provided, however, that penalties and/or incentives may be provided for in respective scope of work agreements at the discretion of the County Engineer, and provided further that any such incentive shall not cause total compensation to PROVIDER under any scope of work agreement to exceed the $100,000.00 limitation imposed pursuant to Baldwin County Policy #9.10.

XIX. Direct Expenses. Said compensation shall be all inclusive, including without limitation, reimbursement of all cost, incidentals and operating expense associated with those directly engaged in performance of the requested services.

XX. Method of Payment. PROVIDER shall submit invoices to the COUNTY for payment for work performed. Such invoice shall be accompanied by a detailed account of compensation to be paid PROVIDER.

Payment shall be made by the COUNTY within sixty (60) days of the approval of the invoice submitted by the PROVIDER. The COUNTY agrees to review and approve invoices submitted for payment in a timely manner.

XXI. Effective and Termination Dates. This Contract shall be effective and commence immediately upon the same date as its full execution, and the same shall terminate upon the earlier of (i) the expiration of thirty-six (36) months or (ii) a written notification of termination as set forth above. Provided, however, that any scope of work agreement properly executed within the term of this Contract shall remain valid and effective pursuant to the terms of such scope of work agreement if the time for performance of such scope of work agreement does not exceed thirty-six (36) months and so long as such scope of work agreement is not otherwise terminated by either party as provided for herein.

XXII. Force Majeure. The Parties hereto shall incur no liability to the other if performance becomes impossible or impracticable by reason of an event or effect that the parties could neither have anticipated nor controlled. Any costs that would otherwise be incurred and/or necessitated by the provisions herein shall be alleviated for either party by such event or effect.

XXIII. Indemnification and Insurance. PROVIDER shall indemnify and hold the COUNTY and its commissioners, officers, directors, employees, representatives and agents (collectively herein, "COUNTY") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs and expenses including, without limitation, reasonable attorneys' fees and costs, for any and all personal injury (including death), property damage or any other damage or injury of any kind or nature whatsoever, incurred by, asserted against, or imposed upon COUNTY, to the extent caused by the negligent acts, errors or omissions, wanton conduct, recklessness or intentional wrongful acts of the PROVIDER arising from or related to this Contract, the respective scope of work agreements, or the services to be provided thereunder. This indemnification shall survive the termination or expiration of this Contract. Further, PROVIDER shall have and maintain throughout the term of this Contract, and all such scope of work agreements, adequate professional liability insurance and general liability insurance in such amounts as may be determined by the County Engineer. Except as otherwise required or modified in writing by the County Engineer or in a scope of work agreement, the minimum insurance requirements shall be as set forth in the attached Exhibit B.

XXIV. Governing Law and Forum. This Contract and respective scope of work agreements, in all respects, including, without limitation, formation, validity, construction, enforceability and available remedies, shall be governed by the laws of the State of Alabama, without regard to Alabama conflict of law principles. Any dispute relating between the parties shall be litigated in the Circuit Court of Baldwin County, Alabama.

XXV. Number of Originals. This Contract shall be executed with three originals, each of which are equally valid as an original.

IN WITNESS WHEREOF, the parties hereto, by and through their duly authorized representatives, have executed this Contract on the last day of execution by the COUNTY as written below.

COUNTY

Billie Jo Underwood 5/5/2020

BILLIE JO UNDERWOOD /Date
Chairman

ATTEST:

5/5/2020

WAYNE DYESS /Date
County Administrator

State of Alabama)
County of Baldwin)

I, Barbara Simo Pate, Notary Public in and for said County, in said State, hereby certify that Billie Jo Underwood, whose name as Chairman of the Baldwin County Commission, and Wayne Dyess, whose name as County Administrator of the Baldwin County Commission, are known to me, acknowledged before me on this day that, being informed of the contents of this Contract, they, as such officers and with full authority, executed same voluntarily on behalf of said Commission.

Given under my hand and official seal, this the 5 day of May, 2020.

Barbara Simo Pate

Notary Public, Baldwin (County) County, Alabama (State)

My Commission Expires: _____

My Commission Expires: November 6, 2023

PROVIDER

GOODWYN, MILLS & CAWOOD, INC.

BY: _____, 4/28/20
AS ITS: Vice President /Date

State of Alabama)
County of Baldwin)

I, Barbara LeGault Garner, Notary Public in and for said County, in said State, hereby certify that Wheeler Crook, whose name as Vice-President, Engineering of Goodwyn, Mills & Cawood, Inc., a Corporation, is known to me, acknowledged before me on this day that being informed of the contents of this Contract, he/she, as such officer and with full authority, executed same voluntarily on behalf of said Goodwyn, Mills & Cawood, Inc..

Given under my hand and official seal, this the 28th day of April, 2020.

BARBARA LEGAULT GARNER MY COMMISSION EXPIRES APRIL 3, 2022 NOTARY PUBLIC STATE OF ALABAMA

_____

Notary Public, Baldwin (County) County, Alabama (State)

My Commission Expires: STATE OF NOTARY PUBLIC ALABAMA BARBARA LEGAULT GARNER My Commission Expires April 3, 2022

Exhibit "A"

Terms and Conditions of Data Use

1. Subject to any applicable license agreements, the COUNTY agrees to provide PROVIDER its digital GIS files of Baldwin County to include color orthophotography, 1-foot contours, parcel data with ownership information, and other data as needed for portions of Locators required on a project by project basis. The use of the data will be provided at no charge, but other charges may apply as the situation warrants for support, programming, etc.

2. The parties acknowledge and agree that the COUNTY has a proprietary interest in the digital data provided to PROVIDER under this agreement. Consequently, it is agreed by and between the parties that PROVIDER and any of its contractors and subcontractors shall not sell, distribute, reveal or communicate in any fashion to third parties any information coming to it as a result of this agreement without the express written consent of the COUNTY. This clause shall not be construed to prevent PROVIDER from making and distributing maps, brochures etc., which are derived from data from COUNTY pursuant to this agreement.

3. Any information or content contained either within COUNTY's internet mapping viewer or within this digital data distributed by the COUNTY is derived from a variety of public and private sources considered to be dependable, but the accuracy, completeness and currency thereof is not guaranteed. The COUNTY makes no warranties, expressed or implied, as to the accuracy, completeness, currency, reliability, or suitability for any particular purpose of such information or data contained in or generated from the COUNTY Geographic Database or otherwise. Additionally, the COUNTY or any agent, servant or employee thereof assumes no liability associated with the use of this data, and assumes no responsibility to maintain it in any manner or form.

4. PROVIDER agrees that all materials publicizing or resulting from GIS Data provided for by the Agreement shall contain an acknowledgement of the COUNTY's assistance with said acknowledgement of support made through the use of the following or comparable footnote: "This activity was supported by the Baldwin County Commission."

5. Digital data will be provided in ArcView shape files and *.tif and *.jpg image formats.

6. GIS data provided to PROVIDER are in Alabama State Plane West, NAD83, FIPSZONE 0102. Vertical datasets are in the NAVD88 datum. Units are US Survey Feet.

7. PROVIDER agrees that if the project is terminated, then the "master" GIS dataset will be removed and destroyed. PROVIDER may continue to use any value added data that resides on its network that has been incorporated into their business applications after the termination of the agreement.

8. It is understood and agreed by the parties that all proprietary restrictions pertaining to the Digital GIS Data contained herein shall survive the termination of the Contract.

Exhibit "B"

Insurance Requirements

The PROVIDER, at its sole expense, shall obtain and maintain in full force the following insurance to protect the PROVIDER and the COUNTY at limits and coverages specified below. These limits and coverages specified are the minimum to be maintained and are not intended to represent the correct insurance needed to fully and adequately protect the PROVIDER. The requirements shown for "large projects" are for those projects whose cost are greater than or equal to $50,000. The requirements shown for "small projects" are for those with cost less than $50,000.

All insurance will be provided by insurers licensed to conduct business in the State of Alabama and shall have a minimum A.M. Best rating of A- VII and must be acceptable to the Baldwin County Commission, Baldwin County, Alabama. Self-insured plans and/or group funds not having an A.M. Best rating must be submitted to the COUNTY for prior approval.

No work shall be performed until proof of compliance with the insurance requirements has been received by the COUNTY.

(a) Worker's Compensation and Employers Liability

Part One: Statutory Benefits as required by the State of Alabama

Part Two: Employers Liability

	Large Projects	Small Projects
Each Accident	$1,000,000	$500,000
Each Employee	$1,000,000	$500,000
Policy Limit	$1,000,000	$500,000

	Large Projects	Small Projects
Bodily Injury by accident (Each Accident)	$1,000,000	$500,000
Bodily Injury by disease (Aggregate)	$1,000,000	$500,000

(b) Commercial General Liability

Coverage on an Occurrence form with a combined single limit (Bodily Injury and Property Damage combined) as follows:

	Large Projects	Small Projects
Each Occurrence	$1,000,000	$500,000
Personal and Advertising Injury	$1,000,000	$500,000
Products/completed Operation Aggregate	$2,000,000	$500,000
General Aggregate	$2,000,000	$500,000

- Coverage to include:
  - Premises and operations
  - Personal Injury and Advertising Injury
  - Independent Consultants
  - Blanket Contractual Liability
  - Broad Form Property Damage

- The PROVIDER shall name the COUNTY, and its commissioners, officers, directors, employees, representatives and agents as additional insureds for claims arising out of the PROVIDER and/or any Sub-Provider's work. The naming of the additional insureds does not obligate the additional insureds to pay any premiums due.

- Aggregate limits to be on a "per project" basis or an Owners and PROVIDERs Protective Liability Policy shall be provided in the name of Baldwin County Commission, Baldwin County, Alabama. The PROVIDER and Sub-Providers. Limits shall be the same as the above Commercial General Liability.

(c) Automobile Liability

Covering all Owned, Non-Owned, and Hired vehicles with a Combined single limit (bodily injury and property damage combined) of $1,000,000 each accident for **large** projects and $500,000 for **small** projects. The policy shall name the COUNTY, and its commissioners, officers, directors, employees, representatives and agents, as an Additional Insured.

Professional Liability

Coverage for professional liability shall be in the amount of $1,000,000.00 for all "large projects" when construction costs are greater than or equal to $50,000.00. For "small projects" which are projects with construction costs less than $50,000.00, the PROVIDER shall provide proof of $250,000.00 of liability coverage.

Waiver of Subrogation

The Workers Compensation Policy shall contain a Waiver of Subrogation in favor of the Baldwin County Commission, Baldwin County, Alabama.

Certificate of Insurance

A Certificate of Insurance evidencing the above minimum requirements must be provided to and accepted by the COUNTY prior to commencement of any work on the contract. Each policy shall be endorsed to provide thirty (30) days written notice of cancellation to the Baldwin County Commission, Baldwin County, Alabama.

Baldwin County Commission

Agenda Action Form

File #: 22-0104, **Version:** 1 **Item #:** BN6

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wanda Gautney, Purchasing Director
Joey Nunnally, P.E., County Engineer
Seth Peterson, P.E., Pre-Construction Manager
Submitted by: Stacy Appleton, Design Technician III

ITEM TITLE
Request for Qualifications (RFQ) for an Investment Grade Traffic Study for the Baldwin Beach Express II from Interstate 10 to Interstate 65

STAFF RECOMMENDATION
Approve the Purchasing Department and Highway Department to develop and advertise a “Request for Qualifications” (RFQ) for design services for an investment grade traffic study for the Baldwin Beach Express II from Interstate 10 to Interstate 65.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: An investment grade traffic study is needed to determine the feasibility of the proposed route connecting Interstate 10 to Interstate 65 through data collection and analysis, traffic forecasting, financial / economic feasibility, preliminary costs, and other tasks.

FINANCIAL IMPACT

Total cost of recommendation: TBD

Budget line item(s) to be used: HW22034.1PRECN.1CONTRSRV.1CONTRACT

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? Yes

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

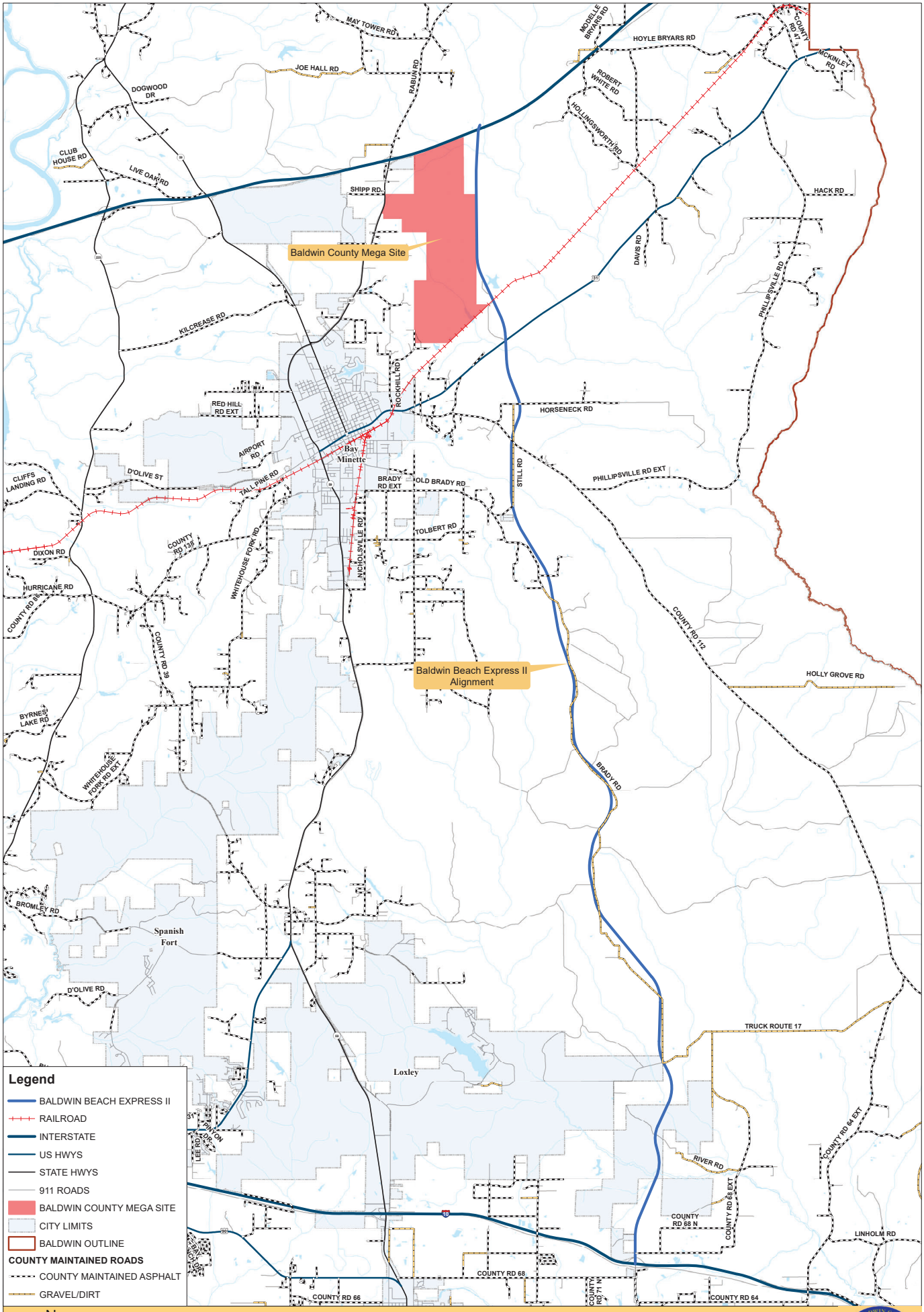
For time-sensitive follow up, select deadline date for follow up: 10/19/2021

Individual(s) responsible for follow up: Purchasing Director and Highway Department to prepare an RFQ for Traffic Study.

Purchasing Director will place an advertisement for submissions when the RFQ is finalized.

Action required (list contact persons/addresses if documents are to be mailed or emailed):
N/A

Additional instructions/notes: N/A



Baldwin Beach Express II

Baldwin County Commission

Agenda Action Form

File #: 22-0114, **Version:** 1 **Item #:** BN7

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Ron J. Cink, Budget Director
Joey Nunnally, P.E., County Engineer
Beth Burnett, Highway Chief Accountant
Submitted by: Lisa Sangster, Administrative Support Specialist IV

ITEM TITLE
Resolution #2022-012 - Fiscal Year 2021 Year End Budget Amendment

STAFF RECOMMENDATION
Adopt Resolution #2022-012 amending the Fiscal Year 2021 Budget (Resolution #2020-126 and #2020-127, adopted September 15, 2020) to authorize the movement of budget funds in various accounts within Highway Fund 111.

BACKGROUND INFORMATION

Previous Commission action/date: September 15, 2020 - Fiscal Year 2021 Budget approved.

Background: The Highway Department is requesting reallocation of funds from department house accounts to specified projects and reallocation of unused FY 21 capital funds for the purchase of a HP Wide Format Printer.

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
The entries being made will move budget amounts within Highway Fund 111.

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Ron Cink, Budget Director

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Upon Commission approval, Ron Cink will enter the Budget Amendment Resolution.

Additional instructions/notes: N/A

STATE OF ALABAMA)

COUNTY OF BALDWIN)

RESOLUTION #2022-012
OF THE
BALDWIN COUNTY COMMISSION

BE IT RESOLVED, BY THE BALDWIN COUNTY COMMISSION, IN REGULAR SESSION ASSEMBLED, that we hereby amend the Baldwin County Fiscal Year 2021 Budget and that the following estimates of revenues and expenses, as related thereto, are hereby adopted and those revenues and expenses are appropriated as follows:

Account	**Description**	**Debit**	**Credit**
11153111.52130	Materials and Other Supplies		$50,000.00
11153112.52130	Materials and Other Supplies		$50,000.00
11153000.55916	HW22122 - Subdivision Sidewalk & Curb Repair	$100,000.00	
11153120.51500	Contract Services		$129,000.00
11153000.55914	HW19222000 - CR 13 & CR 32 Roundabout	$129,000.00	
11153135.52020	Traffic Control Devices		$260,000.00
11153000.55914	HW22024 - CR 65 @ CR 12 S - Light	$130,000.00	
11153000.55914	HW22025 - CR 65 @ CR 26 - Light	$130,000.00	
11153135.52022	Paint		$53,000.00
11153000.55916	HW22120 - Strip Patch Multiple Roads	$53,000.00	
111.61812	Trans In Sales Tx Hwy 2017 447		$100,000.00
11153000.55916	HW22123 - Sidewalk - Jimmy Faulkner Dr	$100,000.00	
11153600.54060	Right of Way Acquisition		$100,000.00
11153000.55908	HW21177000 - Boros Rd at Cheryl Ln	$100,000.00	
11153600.51500	Contract Services		$46,000.00
11153600.51650	Engineering Services		$18,000.00
11153000.55912	HW21101000 - CR 20 - Extend	$64,000.00	
11153111.55600	Capital Outlay Const Equip		$39,000.00
11153100.55240	Capital Outlay Imp - HP Wide Format Printer	$39,000.00	

DONE, under the Seal of Baldwin County, Alabama, as affixed on this the 19th day of October 2021.

_____
Commissioner Joe Davis, III, Chairman

ATTEST:

_____
Wayne Dyess, County Administrator

Baldwin County Commission

Agenda Action Form

File #: 22-0069, **Version:** 1 **Item #:** BN8

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Joey Nunnally, P.E., County Engineer
Frank Lundy, P.E., Operations Manager
Submitted by: Troy A. Smith, Engineering Tech II

ITEM TITLE
Speed Limits on Various Roads

STAFF RECOMMENDATION
Take the following actions:

1) Establish speed limits on the following roads:

- Page Lane from Quail Lane to End of Maintenance - 20 MPH
- County Road 38 S from County Road 38 to the Baldwin Beach Express - 45 MPH
- Brown Lane from County Road 38 to End of Maintenance - 35 MPH
- Piney Woods Road from Cook Road to Maywood Lane - 15 MPH
- Maywood Lane from Piney Woods Road to Cook Road - 15 MPH
- Cortez Street from State Highway 180 to Beach Boulevard - 25 MPH
- Kennedy Road from Bon Secour Highway to End of Maintenance - 45 MPH
- Hurricane Road from State Highway 225 to County Road 86 - 45 MPH
- County Rd 86 from Hurricane Road to End of Maintenance - 45 MPH
- County Road 71 from County Road 62 N to Coopers Cemetery Road - 45 MPH
- South Boulevard from County Road 55 to West Boulevard - 35 MPH

2) Adjust the speed limit on the following road:

- Scenic Highway 98 from Nelson Drive to Battles Road - Lower from 40 MPH to 35 MPH

3) Create a 25 MPH School Zone on St. Michael Way for St. Michael Catholic High School.

BACKGROUND INFORMATION

Previous Commission action/date:

Background:

Piney Woods Road, Maywood Lane, and South Boulevard are recent dirt road paving projects and are currently unposted roads.

Page Lane, County Road 38 S, Brown Lane, Kennedy Road, Cortez Street, Hurricane Road, County Road 86, and County Road 71 are all currently unposted roads.

Scenic Highway 98 requires adjusting to promote consistencies with the current speed limits as vehicles transition from the Fairhope city limits to the county-maintained portion of Scenic Highway 98.

The school zone speed for St. Michael High School will be a regulatory speed limit for specific times during the school day. The Alabama Department of Transportation standard for school zone speeds is no more than 15 MPH below the posted regulatory speed limit. St. Michael Way is currently posted at 35 MPH.

An engineering study was performed for each road and the recommended speeds are appropriate relative to the length and geometry of each road. A letter of notification will be sent to each police jurisdiction for the above roads.

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Administration Staff; Traffic Operations Manager

Action required (list contact persons/addresses if documents are to be mailed or emailed): Administration staff to prepare letters of notification to Frank Lundy, Tyler Mitchell, Pete Peterson, Troy Smith, Silverhill Police Department, Fairhope Police Department, Alabama Law Enforcement Agency (ALEA) and Baldwin County Sheriff's Office.

CONTACTS:

Sgt John Bogle
Alabama Law Enforcement Agency
3402 Demotropolis Road
Mobile, Alabama 36693

Chief Stephanie Hollinghead
Fairhope Police Department
161 North Section Street
Fairhope, Alabama 36532

Chief Kenny Hempfleng
Silverhill Police Department
Post Office Box 309
Silverhill, Alabama 36576

Sheriff Hoss Mack
Baldwin County Sheriff's Office
310 Hand Avenue
Bay Minette, Alabama 36507

cc: Frank Lundy, Tyler Mitchell, Pete Peterson, Troy Smith

Additional instructions/notes: N/A



Speed Limit on Page Lane

N
W E
S

0 0.035 0.07 0.105 0.14
Miles

Baldwin County Highway Department
Speed Limit Change Checklist

Location: Page Lane
Functional Classification: Local / Rural (Dirt Road)
Current Posted Limit: N/A MPH ***Proposed Limit***: 20 MPH

Reason for Speed Limit Change:
Page Lane is an unposted dirt road. The regulatory speed limit for dirt roads, by statute, is 35 mph. That speed is too high for the length of this road (0.17 miles)

Latest Traffic Data:

Date traffic counters set out: 8/23/21 Length of Count: 48 hrs Hrs
ADT: 101
85th percentile: 18 MPH Average: 12 MPH
Pace: 6-15 MPH
Percentage of Vehicle in Pace: 46.0 %
Percentage of Commercial Vehicles: 0 %

Roadway Geometry:
Are there any sight-distance issues? NO
If yes, explain:
None

Is the Clear Zone in compliance within established County standards? yes

Does the geometry of the roadway meet established County standards: yes

Method used to determine compliance:
Ball Bank (CARS): _____ Survey: _____ Visual: ✓

Roadway width: 18'
Roadway length: 0.17 miles

Density: Heavy: ____ Moderate: ____ Light: ✓

Accident data (previous three years): N/A
Total number of accidents: _____
Total number of fatality accidents: _____
Total number of injury accidents: _____
Total number of property damage only accidents: _____

Signage:
Are there any existing advisory speed limit signs: NO
Advisory Speed: None
Locations: None

If posted at proposed speed, will there be any required advisory speed limit signs? NO Advisory Speed: None
If yes, location:
None

Is the road in the Police Jurisdiction of a municipality? NO
Has the municipality been advised of the proposed change? N/A

Recommendation to Baldwin County Commission:
Establish a 20 mpH speed limit, as disussed.

Signature: Troy Smith
Date: 9/30/21



Speed Limits on County Rd 38S and Brown Ln

Baldwin County Highway Department
Speed Limit Change Checklist

Location: County Rd 385
Functional Classification: Local / Rural
Current Posted Limit: N/A MPH ***Proposed Limit:*** 45 MPH

Reason for Speed Limit Change:
Road is Currently not posted.

Latest Traffic Data:

Date traffic counters set out: 9/1/21 Length of Count: 72 Hrs
ADT: 147
85th percentile: 48 MPH Average: 38 MPH
Pace: 36-45 MPH
Percentage of Vehicle in Pace: 43.7 %
Percentage of Commercial Vehicles: 7.7 %

Roadway Geometry:
Are there any sight-distance issues? NO
If yes, explain:
None

Is the Clear Zone in compliance within established County standards? yes

Does the geometry of the roadway meet established County standards: yes

Method used to determine compliance:
Ball Bank (CARS): _____ Survey: _____ Visual: ✓

Roadway width: 20'
Roadway length: 1.5 miles

Density: Heavy: ____ Moderate: ____ Light: ✓

Accident data (previous three years): N/A
Total number of accidents: _____
Total number of fatality accidents: _____
Total number of injury accidents: _____
Total number of property damage only accidents: _____

Signage:
Are there any existing advisory speed limit signs: yes
Advisory Speed: 15 mph
Locations: 3 curves along middle section of the road.

If posted at proposed speed, will there be any required advisory speed limit signs? NO Advisory Speed: none additional
If yes, location:
none additional.

Is the road in the Police Jurisdiction of a municipality? NO
Has the municipality been advised of the proposed change? N/A

Recommendation to Baldwin County Commission:
Establish a speed limit of 45 mph as recommended.

Signature: Troy Smith
Date: 9/30/21

Baldwin County Highway Department
Speed Limit Change Checklist

Location: Brown Lane
Functional Classification: Local / Rural
Current Posted Limit: N/A MPH ***Proposed Limit:*** 35 MPH

Reason for Speed Limit Change:
Road is currently not posted.

Latest Traffic Data:

Date traffic counters set out: 9/1/21 Length of Count: 72 Hrs
ADT: 83
85th percentile: 35 MPH Average: 29 MPH
Pace: 26-35 MPH
Percentage of Vehicle in Pace: 54.5 %
Percentage of Commercial Vehicles: 1.2 %

Roadway Geometry:
Are there any sight-distance issues? NO
If yes, explain:
None

Is the Clear Zone in compliance within established County standards? yes

Does the geometry of the roadway meet established County standards: yes

Method used to determine compliance:
Ball Bank (CARS): _____ Survey: _____ Visual: ✓

Roadway width: 20'
Roadway length: 0.38 miles

Density: Heavy: ____ Moderate: ____ Light: ✓

Accident data (previous three years): N/A
Total number of accidents: _____
Total number of fatality accidents: _____
Total number of injury accidents: _____
Total number of property damage only accidents: _____

Signage:
Are there any existing advisory speed limit signs: NO
Advisory Speed: None
Locations: None

If posted at proposed speed, will there be any required advisory speed limit signs? NO Advisory Speed: None
If yes, location:
None

Is the road in the Police Jurisdiction of a municipality? NO
Has the municipality been advised of the proposed change? N/A

Recommendation to Baldwin County Commission:
Establish speed limit of 35 as recommended.

Signature: Troy Smith
Date: 9/30/21



Speed Limits on Piney Woods Rd and Maywood Ln

Baldwin County Highway Department
Speed Limit Change Checklist

Location: Piney Woods Rd.
Functional Classification: local/Rural
Current Posted Limit: N/A MPH ***Proposed Limit:*** 15 MPH

Reason for Speed Limit Change:
Piney Woods Rd is a recent dirt road paving project. It is currently not posted.

Latest Traffic Data:

Date traffic counters set out: 9/7/21 Length of Count: 7 day ~~Hrs~~
ADT: 64
85th percentile: 21 MPH Average: 15 MPH
Pace: 16-25 MPH
Percentage of Vehicle in Pace: 55.4 %
Percentage of Commercial Vehicles: 0 %

Roadway Geometry:
Are there any sight-distance issues? NO
If yes, explain:
None

Is the Clear Zone in compliance within established County standards? yes

Does the geometry of the roadway meet established County standards: yes

Method used to determine compliance:
Ball Bank (CARS): _____ Survey: _____ Visual: ✓

Roadway width: 19'
Roadway length: 0.44 miles

Density: Heavy: ____ Moderate: ____ Light: ✓

Accident data (previous three years): N/A
Total number of accidents: _____
Total number of fatality accidents: _____
Total number of injury accidents: _____
Total number of property damage only accidents: _____

Signage:
Are there any existing advisory speed limit signs: NO
Advisory Speed: None
Locations: None

If posted at proposed speed, will there be any required advisory speed limit signs? NO Advisory Speed: None
If yes, location:
None

Is the road in the Police Jurisdiction of a municipality? NO
Has the municipality been advised of the proposed change? N/A

Recommendation to Baldwin County Commission:
Establish a speed limit of 15 mph, as recommended.

Signature: Troy Smith
Date: 9/30/21

Baldwin County Highway Department
Speed Limit Change Checklist

Location: maywood Lane
Functional Classification: local / Rural
Current Posted Limit: N/A MPH ***Proposed Limit:*** 15 MPH

Reason for Speed Limit Change:
maywood Lane is a recent dirt road paving project and is currently not posted.

Latest Traffic Data:

Date traffic counters set out: 9/7/21 Length of Count: 7 day ~~Hrs~~
ADT: 64
85th percentile: 21 MPH Average: 15 MPH
Pace: 16-25 MPH
Percentage of Vehicle in Pace: 55.4 %
Percentage of Commercial Vehicles: 0 %

Roadway Geometry:
Are there any sight-distance issues? NO
If yes, explain:
None

Is the Clear Zone in compliance within established County standards? yes

Does the geometry of the roadway meet established County standards: yes

Method used to determine compliance:
Ball Bank (CARS): _____ Survey: _____ Visual: ✓

Roadway width: 18'
Roadway length: 0.10 miles

Density: Heavy: ____ Moderate: ____ Light: ✓

Accident data (previous three years): N/A
Total number of accidents: _____
Total number of fatality accidents: _____
Total number of injury accidents: _____
Total number of property damage only accidents: _____

Signage:
Are there any existing advisory speed limit signs: NO
Advisory Speed: None
Locations: None

If posted at proposed speed, will there be any required advisory speed limit signs? NO Advisory Speed: None
If yes, location:
None

Is the road in the Police Jurisdiction of a municipality? NO
Has the municipality been advised of the proposed change? N/A

Recommendation to Baldwin County Commission:
Establish a speed limit OF 15 mPH, as recommended

Signature: Troy Smith
Date: 9/30/21



Speed Limit on Cortez Street

Baldwin County Highway Department
Speed Limit Change Checklist

Location: Cortez St.
Functional Classification: local / Rural
Current Posted Limit: N/A MPH ***Proposed Limit:*** 25 MPH

Reason for Speed Limit Change:
Cortez St. is currently unposted.

Latest Traffic Data:

Date traffic counters set out: 9/21/21 Length of Count: 48 Hrs
ADT: 441
85th percentile: 30 MPH Average: 25 MPH
Pace: 21-30 MPH
Percentage of Vehicle in Pace: 64.4 %
Percentage of Commercial Vehicles: 0 %

Roadway Geometry:
Are there any sight-distance issues? NO
If yes, explain:
None

Is the Clear Zone in compliance within established County standards? Yes

Does the geometry of the roadway meet established County standards: Yes

Method used to determine compliance:
Ball Bank (CARS): _____ Survey: _____ Visual: ✓

Roadway width: 20'
Roadway length: 0.20 miles

Density: Heavy: ____ Moderate: ____ Light: ✓

Accident data (previous three years): N/A
Total number of accidents: _____
Total number of fatality accidents: _____
Total number of injury accidents: _____
Total number of property damage only accidents: _____

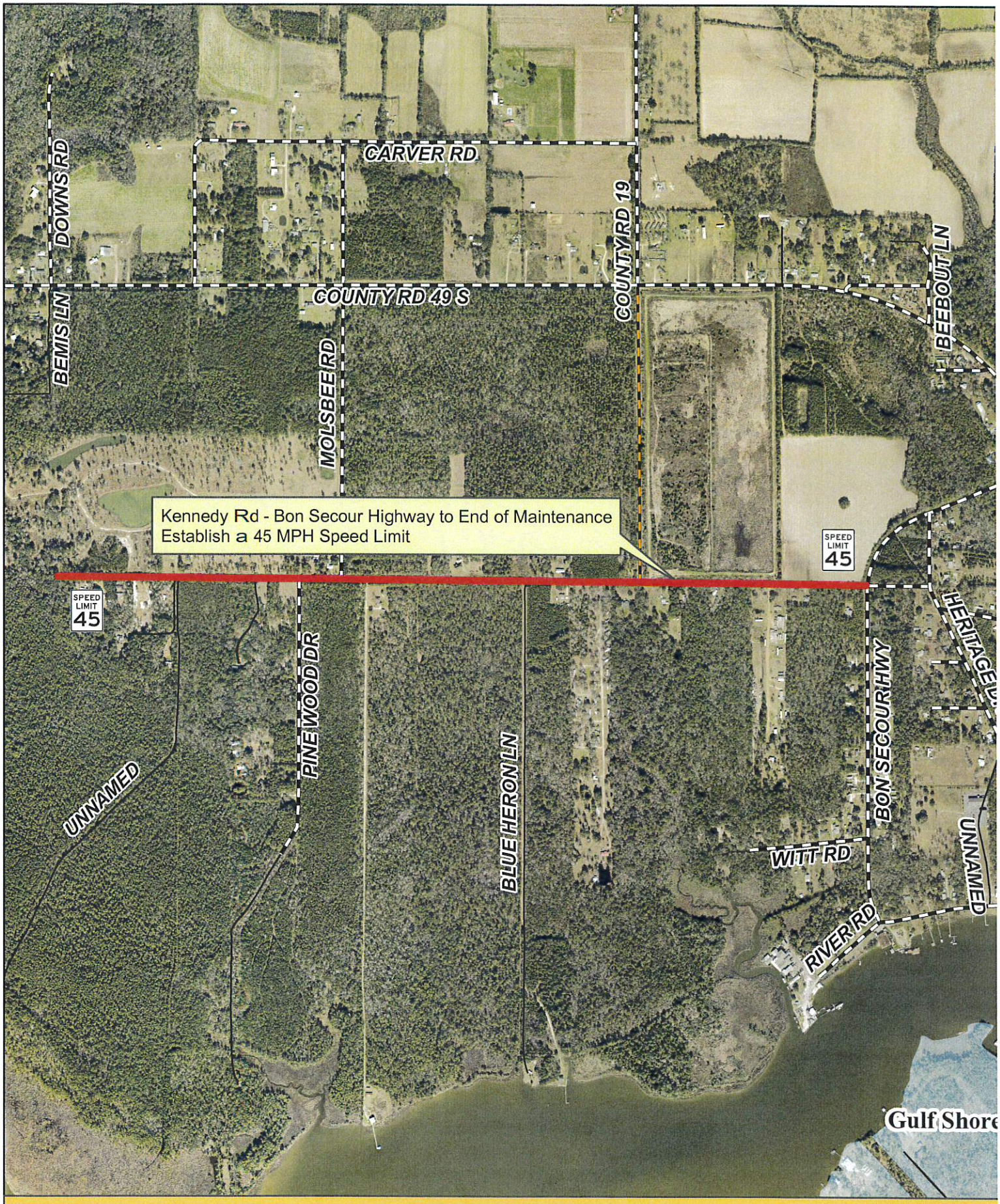
Signage:
Are there any existing advisory speed limit signs: NO
Advisory Speed: None
Locations: None

If posted at proposed speed, will there be any required advisory speed limit signs? NO Advisory Speed: None
If yes, location:
None

Is the road in the Police Jurisdiction of a municipality? NO
Has the municipality been advised of the proposed change? N/A

Recommendation to Baldwin County Commission:
Establish a 25 mph speed limit, as recommended

Signature: Troy Smith
Date: 9/30/21



Speed Limit on Kennedy Road

N
W E
S

0 0.1 0.2 0.3 0.4
Miles

Baldwin County Highway Department
Speed Limit Change Checklist

Location: Kennedy Rd (Bon Secour Hwy to E0 m)
Functional Classification: Local / Rural
Current Posted Limit: N/A MPH ***Proposed Limit:*** 45 MPH

Reason for Speed Limit Change:
This road is previously unposted.

Latest Traffic Data:

Date traffic counters set out: 9/21/21 Length of Count: 48 Hrs
ADT: 219
85th percentile: 48 MPH Average: 36 MPH
Pace: 41-50 MPH
Percentage of Vehicle in Pace: 36.2 %
Percentage of Commercial Vehicles: 1.0 %

Roadway Geometry:
Are there any sight-distance issues? NO
If yes, explain:
None

Is the Clear Zone in compliance within established County standards? yes

Does the geometry of the roadway meet established County standards: yes

Method used to determine compliance:
Ball Bank (CARS): _____ Survey: _____ Visual: ✓

Roadway width: 22'
Roadway length: 1.4 miles

Density: Heavy: ____ Moderate: ____ Light: ✓

Accident data (previous three years): N/A
Total number of accidents: _____
Total number of fatality accidents: _____
Total number of injury accidents: _____
Total number of property damage only accidents: _____

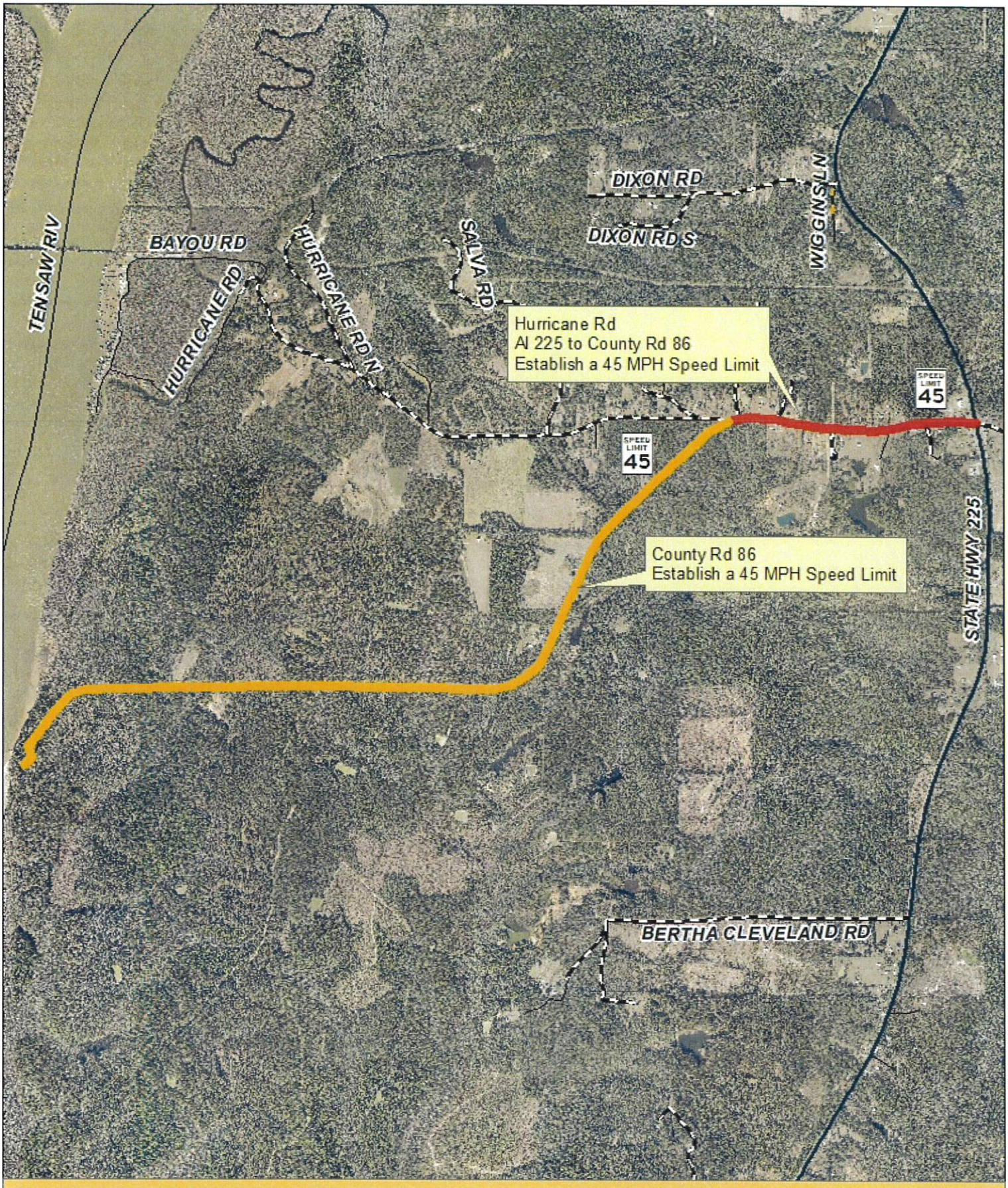
Signage:
Are there any existing advisory speed limit signs: NO
Advisory Speed: None
Locations: None

If posted at proposed speed, will there be any required advisory speed limit signs? NO Advisory Speed: None
If yes, location:
None

Is the road in the Police Jurisdiction of a municipality? NO
Has the municipality been advised of the proposed change? N/A

Recommendation to Baldwin County Commission:
Establish a speed limit of 45 mph as recommended.

Signature: Troy Smith
Date: 9/30/21



Speed Limits on Hurricane Rd and County Rd 86

Baldwin County Highway Department
Speed Limit Change Checklist

Location: Hurricane Rd (AL 225 to CR 86)
Functional Classification: local / Rural
Current Posted Limit: N/A MPH ***Proposed Limit:*** 45 MPH

Reason for Speed Limit Change:
This section of Hurricane Rd is currently unposted.

Latest Traffic Data:

Date traffic counters set out: 9/22/21 Length of Count: 48 Hrs
ADT: 840
85th percentile: 52 MPH Average: 44 MPH
Pace: 41-50 MPH
Percentage of Vehicle in Pace: 54.2 %
Percentage of Commercial Vehicles: 1.4 %

Roadway Geometry:
Are there any sight-distance issues? NO
If yes, explain:
None

Is the Clear Zone in compliance within established County standards? yes

Does the geometry of the roadway meet established County standards: yes

Method used to determine compliance:
Ball Bank (CARS): _____ Survey: _____ Visual: ✓

Roadway width: 22'
Roadway length: 0.78 miles

Density: Heavy: ____ Moderate: ✓ Light: ____

Accident data (previous three years): N/A
Total number of accidents: _____
Total number of fatality accidents: _____
Total number of injury accidents: _____
Total number of property damage only accidents: _____

Signage:
Are there any existing advisory speed limit signs: NO
Advisory Speed: None
Locations: None

If posted at proposed speed, will there be any required advisory speed limit signs? NO Advisory Speed: None
If yes, location:
None

Is the road in the Police Jurisdiction of a municipality? NO
Has the municipality been advised of the proposed change? N/A

Recommendation to Baldwin County Commission:
Establish a 45 mpH speed Limit as recommended.

Signature: Troy Smith
Date: 9/30/21

Baldwin County Highway Department
Speed Limit Change Checklist

Location: County Rd 86 (Hurricane rd to EOM)
Functional Classification: local / Rural
Current Posted Limit: N/A MPH ***Proposed Limit:*** 45 MPH

Reason for Speed Limit Change:
County Rd 86 is currently unposted.

Latest Traffic Data:

Date traffic counters set out: 9/23/21 Length of Count: 48 Hrs
ADT: 47
85th percentile: 48 MPH Average: 32 MPH
Pace: 36-45 MPH
Percentage of Vehicle in Pace: 23.4 %
Percentage of Commercial Vehicles: 0 %

Roadway Geometry:
Are there any sight-distance issues? NO
If yes, explain:
None

Is the Clear Zone in compliance within established County standards? yes

Does the geometry of the roadway meet established County standards: yes

Method used to determine compliance:
Ball Bank (CARS): _____ Survey: _____ Visual: ✓

Roadway width: 20'
Roadway length: 2.8 miles

Density: Heavy: ____ Moderate: ____ Light: ✓

Accident data (previous three years): N/A
Total number of accidents: _____
Total number of fatality accidents: _____
Total number of injury accidents: _____
Total number of property damage only accidents: _____

Signage:
Are there any existing advisory speed limit signs: NO
Advisory Speed: None
Locations: None

If posted at proposed speed, will there be any required advisory speed limit signs? NO Advisory Speed: None
If yes, location:
None

Is the road in the Police Jurisdiction of a municipality? NO
Has the municipality been advised of the proposed change? N/A

Recommendation to Baldwin County Commission:
Establish a 45 mph speed limit, as recommended

Signature: Troy Smith
Date: 9/30/21



Speed Limit on County Rd 71
(County Rd 62N to Coopers Cemetery Rd)

Baldwin County Highway Department
Speed Limit Change Checklist

Location: County Rd 71 (CR62 N to Coopers Cem. Rd)
Functional Classification: local / Rural
Current Posted Limit: N/A MPH ***Proposed Limit:*** 45 MPH

Reason for Speed Limit Change:
This section of County Rd 71 is currently unposted.

Latest Traffic Data:

Date traffic counters set out: 9/20/21 Length of Count: 48 Hrs
ADT: 624
85th percentile: 43 MPH Average: 37 MPH
Pace: 36-45 MPH
Percentage of Vehicle in Pace: 54.3 %
Percentage of Commercial Vehicles: 1.5 %

Roadway Geometry:
Are there any sight-distance issues? NO
If yes, explain:
None

Is the Clear Zone in compliance within established County standards? Yes

Does the geometry of the roadway meet established County standards: Yes

Method used to determine compliance:
Ball Bank (CARS): _____ Survey: _____ Visual: ✓

Roadway width: 22'
Roadway length: 0.50 miles

Density: Heavy: ____ Moderate: ____ Light: ✓

Accident data (previous three years): N/A
Total number of accidents: ____
Total number of fatality accidents: ____
Total number of injury accidents: ____
Total number of property damage only accidents: ____

Signage:
Are there any existing advisory speed limit signs: NO
Advisory Speed: None
Locations: None

If posted at proposed speed, will there be any required advisory speed limit signs? NO Advisory Speed: None
If yes, location:
None

Is the road in the Police Jurisdiction of a municipality? NO
Has the municipality been advised of the proposed change? N/A

Recommendation to Baldwin County Commission:
Establish a 45 mPH speed limit, as recommended.

Signature: Troy Smith
Date: 9/30/21



Speed Limit on South Blvd (County Rd 55 to West Blvd)

Baldwin County Highway Department
Speed Limit Change Checklist

Location: South Blvd. (County Rd 55 to West Blvd)
Functional Classification: local/Rural
Current Posted Limit: N/A MPH ***Proposed Limit***: 35 MPH

Reason for Speed Limit Change:
South Blvd is a recent Dirt Road paving project and needs an established speed limit.

Latest Traffic Data:

Date traffic counters set out: 9/21/21 Length of Count: 48 Hrs
ADT: 246
85th percentile: 42 MPH Average: 32 MPH
Pace: 31-40 MPH
Percentage of Vehicle in Pace: 45.4 %
Percentage of Commercial Vehicles: 2.2 %

Roadway Geometry:
Are there any sight-distance issues? NO
If yes, explain:
None

Is the Clear Zone in compliance within established County standards? yes

Does the geometry of the roadway meet established County standards: yes

Method used to determine compliance:
Ball Bank (CARS): _____ Survey: _____ Visual: ✓

Roadway width: 22'
Roadway length: 0.5 miles

Density: Heavy: ____ Moderate: ____ Light: ✓

Accident data (previous three years): N/A
Total number of accidents: _____
Total number of fatality accidents: _____
Total number of injury accidents: _____
Total number of property damage only accidents: _____

Signage:
Are there any existing advisory speed limit signs: NO
Advisory Speed: None
Locations: None

If posted at proposed speed, will there be any required advisory speed limit signs? NO Advisory Speed: None
If yes, location:
None

Is the road in the Police Jurisdiction of a municipality? yes (Silverhill)
Has the municipality been advised of the proposed change? yes

Recommendation to Baldwin County Commission:
Establish a 35 mph speed limit as recommended

Signature: Troy Smith
Date: 9/30/21



Speed Limit on Scenic 98

Baldwin County Highway Department
Speed Limit Change Checklist

Location: Scenic 98 (Nelson Dr to Battles Rd)
Functional Classification: Minor Arteral
Current Posted Limit: 40 MPH ***Proposed Limit***: 35 MPH

Reason for Speed Limit Change:
Change is to facilitate a smoother and correct transition from Fairhope city limits to County maintained sections of Scenic 98.

Latest Traffic Data: No traffic study conducted

Date traffic counters set out: _____ Length of Count:_____Hrs
ADT: _____
85th percentile: _____MPH Average:_____MPH
Pace: _____MPH
Percentage of Vehicle in Pace: _____%
Percentage of Commercial Vehicles:_____%

Roadway Geometry:
Are there any sight-distance issues? No
If yes, explain:
None

Is the Clear Zone in compliance within established County standards? yes

Does the geometry of the roadway meet established County standards: yes

Method used to determine compliance:
Ball Bank (CARS): _____ Survey: _____Visual: ✓

Roadway width: 24'
Roadway length: 1.1 miles

Density: Heavy: ____ Moderate: ✓ Light: ____

Accident data (previous three years): N/A
Total number of accidents: _____
Total number of fatality accidents: _____
Total number of injury accidents: _____
Total number of property damage only accidents: _____

Signage:
Are there any existing advisory speed limit signs: NO
Advisory Speed: None
Locations: None

If posted at proposed speed, will there be any required advisory speed limit signs? NO Advisory Speed: None
If yes, location:
None

Is the road in the Police Jurisdiction of a municipality? yes (Fairhope)
Has the municipality been advised of the proposed change? yes

Recommendation to Baldwin County Commission:
Lower the speed limit on this section of Scenic 98 as recommended.

Signature: Troy Smith
Date: 9/30/21



St. Michael School Zone

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W E
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Miles

Baldwin County Commission

Agenda Action Form

File #: 22-0099, **Version:** 1 **Item #:** BQ1

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Dr. Brian Pierce, Coroner
Deidra Hanak, Personnel Director
Submitted by: Deidra Hanak, Personnel Director

ITEM TITLE
Coroner's Office - Position Changes

STAFF RECOMMENDATION
Take the following actions:

1) Approve the creation of an appointed Chief Deputy Coroner position (PID #TBD) at grade S312; and

2) Approve the appointment of Troy Dyess to fill the appointed Chief Deputy Coroner position (PID #TBD) at grade S312 ($42,286.40 annually); and

3) Approve the creation of an Administrative Support Specialist I position (PID #TBD) at a grade 306; and

4) Approve the position description for the Chief Deputy Coroner position; and

5) Approve the organizational chart for the Coroner's Office.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: Code of Alabama 11-5-34 states "The coroner of each county is authorized to appoint such deputy coroners as are needed, with the approval of the county commission. Any appointment shall be in writing and shall be filed in the office of the coroner and the office of the judge of probate."

With the steady increase in the number of Coroner cases in Baldwin County coupled with a functional population of approximately 400,000, a growing staff, to include new staff and interns who will need time in a training program; the Coroner’s Office is positioning to meet these demands. In addition, several large projects including the design of an overall case management system, equipment

upgrades, as well as the ever-increasing complexity of investigation the Chief Deputy Position requires a significant amount of time allocation and proper compensation for the dedication and time needed to complete the job in a professional manner.

The Coroner respectfully requests that the above recommendations are approved.

FINANCIAL IMPACT

Total cost of recommendation: $72,654.40 - budgeted

Budget line item(s) to be used: 10052400.51130

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Personnel - Implement Changes

Action required (list contact persons/addresses if documents are to be mailed or emailed):
N/A

Additional instructions/notes: N/A

POSITION DESCRIPTION

Title: Chief Deputy Coroner

Department: Coroner's Office

Job Analysis: October 2021

Note: Statements included in this description are intended to reflect in general the duties and responsibilities of this classification and are not to be interpreted as being all inclusive. The employee may be assigned other duties that are not specifically included.

Relationships

Reports To: Coroner

Subordinate Staff: Coroner's Office employees in absence of the Coroner

Internal Contacts: General Public, Public Officers, and Co-workers

Status: Appointed/Exempt (S312)

Job Summary

The Chief Deputy Coroner works at the discretion of the Coroner. The Chief Deputy will assist in overseeing operations of the Coroner's Office and serve as Command Staff in the absence of the Coroner.

Job Domains

1. Direct medical record review, report writing, and training of Deputy Coroners.
2. Sign cremation permits and death certificates in the absence of the Coroner.
3. Addresses community groups, schools, and other audiences about the functions of the office, as directed.
4. Assist in budget preparation and/or management.
5. Implement, oversee, and improve agency platform, software, or case management systems.
6. Competent and well versed in the duties and responsibilities of the Deputy Coroners.
7. Any other duties as assigned by the Coroner.

Knowledge, Skills, and Abilities

(Any item with an asterisk will be taught on the job)

1. Must have basic computer skills for data entry and using Microsoft Word.
2. Knowledge of death investigation protocol, procedures, and standards and the legal/policy requirements for the processing of evidence.
3. Knowledge of related accreditation and certification requirements.
4. Knowledge of cameras and photographic procedures.

5. Knowledge of the procedures involved in detecting, analyzing, and interpreting signs and symptoms of trauma and other physical conditions.
6. Skills in the planning, carrying out, and documentation of investigations.
7. Skill in identifying traumatic wounds.
8. Interpret and comply with laws and regulations governing investigation.
9. Establish and maintain cooperative work relationships with a variety of individuals and agencies.
10. Ability to be available for irregular shift work and shift rotations necessary to provide service 24 hours a day, 365 days a year, including weekends and holidays.
11. Ability to operate on a scheduled 24 hour, on call basis.
12. Ability to understand medical/forensic information and terminology.
13. Ability to understand and follow complex detailed technical instructions.
14. Ability to write reports containing technical information.
15. Ability to communicate technical information to non-technical personnel.
16. Ability to maintain quality, safety, and infection control standards.
17. Ability to investigate and analyze information and draw conclusions.
18. Ability to search records, interview individuals, develop case histories, interpret findings, and draw persuasive conclusions from that evidence.
19. Ability to maintain emotional stability to cope with human suffering, emergencies, and other stressors.
20. Ability to establish and maintain effective working relationships with family members, medical officials, representatives of law enforcement and court systems.
21. Ability to read, write, speak, understand, and communicate in English to perform the duties of this position.
22. Ability to make oral presentations before various groups, including giving testimony in hearings and court cases.
23. Run analytical reports, interpret reports, and provide valuable feedback for performance improvement.
24. Implement new or existing systems such as software, case management or other procedural processes.
25. Improve systems for efficiency.

Physical Characteristics

1. Must have acceptable eyesight to perform investigator duties.
2. Must have appropriate oral communications skills to effectively use, telephone, radio, and in public contacts.
3. Must be able to sit, stand, or travel for long periods of time.
4. Must be able to negotiate up and down stairs and on rough and/or uneven terrain.
5. Must be able to travel to and from various work sites by car.
6. Must be able to bend, stoop, stretch, twist, reach, kneel, crawl, squat, climb, and balance.
7. Must be able to lift, carry, drag, or push an average body weight of 100 to 200 lbs. or more, both alone and with help.
8. Must be able to climb ladders or stairs or climb up to and down from higher levels using unconventional methods.
9. Must be able to work in hazardous or dangerous work area situations.
10. Must have fine and gross motor skills; hand dexterity; full use of fingers, hands, and arms; and good grip strength to perform investigative duties.

11. Must be capable of working under stressful conditions.
12. Must have good cognitive skills and awareness of work accuracy.
13. Must have the ability to concentrate on more than one task at a time, and to make independent decisions.

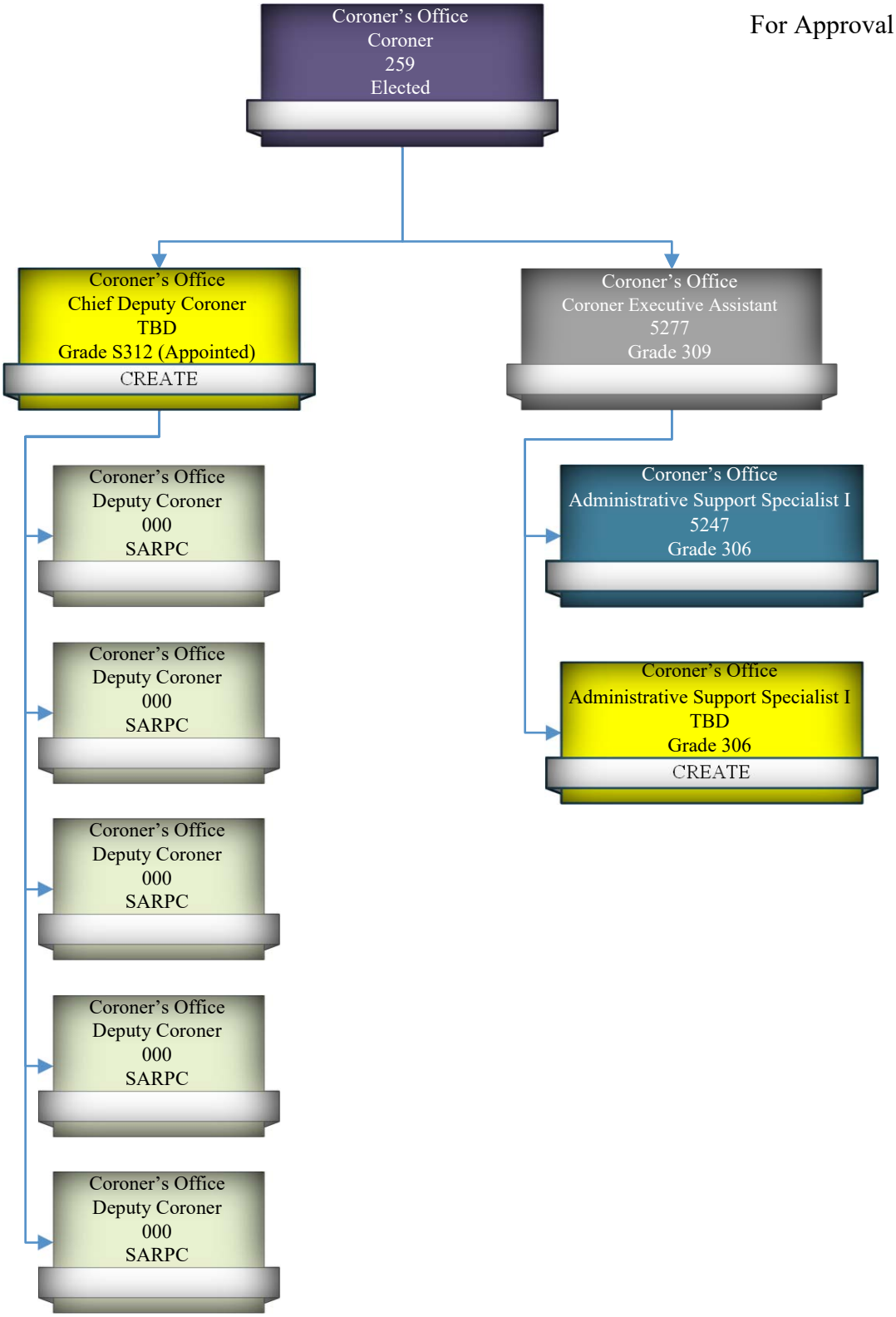
Other Characteristics

1. Must dress appropriately and professionally and be prepared for all types of weather.
2. Must participate in written knowledge evaluation.
3. Must sign confidentiality waiver.
4. Must pass criminal/driving background check.
5. Must commit to the call schedule on a monthly basis.
6. Per Alabama statues- Must be at least 25 years old and a resident of Baldwin County for at least one year prior to appointment.

Minimum Qualifications

1. Possession of valid driver's license and be insurable by the County's insurance standards.
2. Possession of or ability to obtain within two (2) years from date of appointment, a Medicolegal Death Investigator Certification from ABMDI.
3. Any combination of forensic experience and training that would likely provide the required knowledge and ability is qualifying.
4. Professional certification or licensure in one of the following fields is preferred: ABMDI (American Board of Medicolegal Death Investigators), law enforcement, nursing, radiology, EMT/Paramedic, or any forensic concentration OR Bachelor's Degree in Medical Science, Criminal Justice, or Forensic Science

For Approval 10/19/2021



Baldwin County Commission

Agenda Action Form

File #: 22-0100, **Version:** 1 **Item #:** BQ2

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Joey Nunnally, County Engineer
Deidra Hanak, Personnel Director
Submitted by: Deidra Hanak, Personnel Director

ITEM TITLE
Highway Department (Foley) - Promotion of Employee

STAFF RECOMMENDATION
Approve the promotion of Robert Barnett from the Operator Technician Trainee position (PID #5494), grade 304 ($13.38 per hour / $27,830.40 annually) to fill the open Operator Technician I position (PID #5434) at a grade 307 ($15.48 per hour / $32,198.403 annually) to be effective no sooner than October 25, 2021.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: The Operator Technician I position was vacated due to the promotion of the previous employee. The County Engineer respectfully requests that the above recommendation is approved.

FINANCIAL IMPACT

Total cost of recommendation: $32,198.40 - budgeted

Budget line item(s) to be used: 11153113.51130

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Personnel - Implement Changes

Action required (list contact persons/addresses if documents are to be mailed or emailed): N/A

Additional instructions/notes: N/A

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Baldwin County Commission

Agenda Action Form

File #: 22-0101, **Version:** 1 **Item #:** BQ3

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wayne Dyess, County Administrator
Madison Steele, Horticulturist
Deidra Hanak, Personnel Director
Submitted by: Deidra Hanak, Personnel Director

ITEM TITLE
Parks Department - Employment of Two (2) Landscape Technician I Positions

STAFF RECOMMENDATION
Take the following actions:

1) Approve the employment of Hunter Long to fill the open Landscape Technician I position (PID #531) grade 306 ($14.75 per hour / $30,680.00 annually); and

2) Approve the employment of Joseph Walz to fill the open Landscape Technician I position (PID #5633) grade 306 ($14.75 per hour / $30,680.00 annually).

These actions will be effective no sooner than October 25, 2021.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: One Landscape Technician I position was vacated due to the promotion of the previous employee and one position was newly created in the FY21/22 budget cycle. The County Administrator respectfully requests that the above recommendations are approved.

FINANCIAL IMPACT

Total cost of recommendation: $61,360.00 - budgeted

Budget line item(s) to be used: 14457200.51130

If this is not a budgeted expenditure, does the recommendation create a need for funding?

N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Personnel - Implement Changes

Action required (list contact persons/addresses if documents are to be mailed or emailed):
N/A

Additional instructions/notes: N/A

Baldwin County Commission

Agenda Action Form

File #: 22-0102, **Version:** 1 **Item #:** BQ4

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Matthew Brown, Planning Director
Deidra Hanak, Personnel Director
Submitted by: Deidra Hanak, Personnel Director

ITEM TITLE
Planning and Zoning Department - Employment of One (1) Planning Technician Position

STAFF RECOMMENDATION
Approve the employment of Robert Brown to fill the open Planning Technician position (PID #5608) at a grade 309 ($17.08 per hour / $35,526.40 annually) to be effective no sooner than October 25, 2021.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: The Planning Technician positions was newly created in July 2021. The Planning Director respectfully requests that the above recommendation is approved.

FINANCIAL IMPACT

Total cost of recommendation: $35,526.40 - annually

Budget line item(s) to be used: 10052730.51130

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Personnel - Implement Changes

Action required (list contact persons/addresses if documents are to be mailed or emailed): N/A

Additional instructions/notes: N/A

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Baldwin County Commission

Agenda Action Form

File #: 22-0113, **Version:** 1 **Item #:** BR1

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Matthew Brown, Planning Director
Submitted by: DJ Hart, Planning Technician

ITEM TITLE
Baldwin County Planning and Zoning Commission - Board Appointment(s)

STAFF RECOMMENDATION
As relates to the Baldwin County Planning and Zoning Commission, take the following actions:

1) Reappoint Mr. Plumer Tonsmeire as a regular member of the Board (BCC District 2 nominee) for a four (4) year term, said term to commence on October 21, 2021, and expire on October 21, 2025.

2) Reappoint Mr. Brandon Bias as a regular member of the Board (BCC District 2 nominee) for a four (4) year term, said term to commence on November 1, 2021, and expire on November 1, 2025.

BACKGROUND INFORMATION

Previous Commission action/date: 9/7/2021

Background: The Baldwin County Planning and Zoning Commission was created by Baldwin County Local Legislative Act, specifically Act No. 91-719 (1991), as amended by Act. No 93-668 (1993), as amended by Act No. 98-665 (1998), as amended by Act No. 2006-609 (2006), as amended by Act No. 2010-719 (2010). The aforementioned Alabama laws are codified at Section 45-2-261 through 45-2-261.18 of the Code of Alabama 1975.

Section 45-2-261.01 of the Code of Alabama 1975 provides that the Planning and Zoning Commission shall be composed as a board of nine (9) regular members and other temporary members appointed by the Baldwin County Commission. All regular members shall be qualified electors and actual residents of Baldwin County; one (1) and only one (1) regular member may be a qualified elector who resides in the corporate limits of a Baldwin County municipality. All regular members shall serve a term of four (4) years each except when filing a vacant place seat (which shall be for the balance of the unexpired term). All temporary members shall serve a one-time term of three (3) years each and represent, respectively and singularly, a new Planning (Zoning) district which elects to come within the planning and zoning authority of the Baldwin County Commission. A temporary member shall be a qualified elector from the new Planning (Zoning) District. In the event

any vacancy, such vacancy shall be filled by appointment of the Baldwin County Commission.

All members of the Planning and Zoning Commission shall serve without compensation and no member shall be a county officer or employee.

Furthermore, Section 45-2-261.40 of the Code of Alabama 1975 authorizes the Baldwin County Commission to appoint real estate agents or other persons in the field of real estate to the Planning and Zoning Commission; however, such number shall not exceed three (3) members.

The Planning Staff respectfully requests the reappointment of Mr. Tonsmeire and Mr. Bias to their respective 4-year terms.

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: County Commission Office

Action required (list contact persons/addresses if documents are to be mailed or emailed):

Send Reappointment Letters to:

Mr. Plumer Tonsmeire
17200-C Scenic Highway 98
Fairhope, Alabama 36532

Mr. Brandon Bias
9102 Parliament Circle
Daphne, Alabama 36526

CC:
Matthew Brown, Planning Director
DJ Hart, Planning Technician

Additional instructions/notes: N/A

BALDWIN COUNTY PLANNING AND ZONING COMMISSION

General Board Information:
Appointed by Baldwin County Commission.
Nine (9) regular members and circumstance-driven number of temporary one-time members.
Term of each "regular" member is four (4) years.
Term of a "temporary one-time" member is three (3) years.
All "regular" members must be qualified electors and actual residents of Baldwin County, Alabama.
Only one (1) regular member may reside in a city or town limits (i.e. live in a municipality).
All "temporary one-time" members must be a qualified elector of Baldwin County, Alabama, from the applicable Planning District said citizen represents.
Only three (3) members (of the total membership) may be real estate agents or persons in the field of real estate.
All vacancies filled by appointment of Baldwin County Commission.
All members serve without compensation but are eligible reasonable and necessary expenses.
No member shall be a county officer or employee.
Statutory Authority: Act No. 91-719, as amended by Act No. 93-668, as amended by Act No. 98-665, as amended by Act No. 2006-609, as amended by Act No. 2010-719.
Other Statutory Authority: Act No. 84-499, as amended by Act No. 2010-719 - Baldwin County Commission may appoint real estate agents or other persons in the field of real estate to the Baldwin County Planning and Zoning Commission, such number shall not to exceed 3 members (regardless of status as a "regular" or "temporary one-time" member) of the Baldwin County Planning and Zoning Commission.

BCC DISTRICT	MEMBERS	APPOINTED/REAPPOINTED	TERM OF OFFICE	EXP. DATE
At-Large BCC District Nominee	Daniel Nance 101 Pinetop Circle East Fairhope, AL 36532 QUALIFIED ELECTOR OF BALDWIN COUNTY ACTUAL RESIDENT OF BALDWIN COUNTY RESIDES IN THE CITY LIMITS OF FAIRHOPE NOT A COUNTY OFFICER OR EMPLOYEE NO REAL ESTATE LICENSE/NOT INVOLVED IN REAL ESTATE	Reappointed 11/06/2018 term to commence 11/17/2018	4 years	11/17/2022
BCC District 1 Nominee	Steven Pumphrey Post Office Box 62 Silverhill, AL 36576 QUALIFIED ELECTOR OF BALDWIN COUNTY ACTUAL RESIDENT OF BALDWIN COUNTY RESIDES IN UNINCORPORATED BALDWIN COUNTY NOT A COUNTY OFFICER OR EMPLOYEE	Appointed 12/15/2020 for a pro-rata reduced term to fill the place seat and unexpired term formerly held by Nancy Mackey 12/15/2020 Accepted the resignation of Nancy Mackey dated 08/25/2020 and thanked her for her prior civic service	4 years	10/07/2023
BCC District 1 Nominee	Jason M. Padgett 53689 Highway 59 Stockton, AL 36579 QUALIFIED ELECTOR OF BALDWIN COUNTY ACTUAL RESIDENT OF BALDWIN COUNTY RESIDES IN UNINCORPORATED BALDWIN COUNTY NOT A COUNTY OFFICER OR EMPLOYEE NO REAL ESTATE LICENSE/NOT INVOLVED IN REAL ESTATE	Appointed 07/07/2020 for a pro-rata reduced term to fill the place seat and unexpired term formerly held by Arthur Oken 07/07/2020 Accepted the resignation of Arthur Oken dated 02/28/2020 and thanked him for his prior civic service	4 years	07/17/2022
BCC District 2 Nominee	Brandon Bias 9102 Parliament Circle Daphne, AL 36526 QUALIFIED ELECTOR OF BALDWIN COUNTY ACTUAL RESIDENT OF BALDWIN COUNTY RESIDES IN UNINCORPORATED BALDWIN COUNTY NOT A COUNTY OFFICER OR EMPLOYEE NO REAL ESTATE LICENSE/NOT INVOLVED IN REAL ESTATE	Appointed 08/07/2018 for a pro-rata reduced term to fill the place seat and unexpired term formerly held by Cassie Boatwright 02/19/2019 Administrative correction: Changed Brandon Bias' placement from BCC District Nominee 1 to 2	4 years	11/01/2021

BALDWIN COUNTY PLANNING AND ZONING COMMISSION – Cont.

BCC DISTRICT	MEMBERS	APPOINTED/REAPPOINTED	TERM OF OFFICE	EXP. DATE
BCC District 2 Nominee	Plumer Tonsmeire 17200-C Scenic Highway 98 Fairhope, AL 36532 QUALIFIED ELECTOR OF BALDWIN COUNTY ACTUAL RESIDENT OF BALDWIN COUNTY RESIDES IN UNINCORPORATED BALDWIN COUNTY NOT A COUNTY OFFICER OR EMPLOYEE NO REAL ESTATE LICENSE/NOT INVOLVED IN REAL ESTATE	Appointed 09/03/2019 for a pro-rata reduced term, to fill the place-seat and unexpired term formerly held by Doug Thomas 09/3/2019 Accepted the resignation of Doug Thomas, dated 7/8/2019 and thanked him for his prior civic service	4 years	10/21/2021
BCC District 2 Nominee (Temporary One-time Member)	William (Bill) Booher 17472 Stillwood Lane Fairhope, AL 36532 Mailing Address: P.O. Box 647 Point Clear, AL 36564 QUALIFIED ELECTOR OF BALDWIN COUNTY ACTUAL RESIDENT OF BALDWIN COUNTY RESIDES IN UNINCORPORATED BALDWIN COUNTY NOT A COUNTY OFFICER OR EMPLOYEE NO REAL ESTATE LICENSE/NOT INVOLVED IN REAL ESTATE	Appointed 07/06/2021 as a temporary one-time member to fill the place seat for the new Planning District 19.	3 years	07/06/2024
BCC District 3 Nominee	Robert Davis 17138 County Road 34 South Summerdale, AL 36580 QUALIFIED ELECTOR OF BALDWIN COUNTY ACTUAL RESIDENT OF BALDWIN COUNTY RESIDES IN UNINCORPORATED BALDWIN COUNTY NOT A COUNTY OFFICER OR EMPLOYEE NO REAL ESTATE LICENSE/NOT INVOLVED IN REAL ESTATE	Appointed 08/20/2019 to fill the place seat and expired term formerly held by Marvin Dewane Hayes, for a pro-rata reduced term 08/20/2019 Thanked Marvin Dewane Hayes for his prior civic service	4 years	06/30/2023
BCC District 3 Nominee	Michael Mullek 24024 Rawls Road Robertsdale, AL 36567 QUALIFIED ELECTOR OF BALDWIN COUNTY ACTUAL RESIDENT OF BALDWIN COUNTY RESIDES IN UNINCORPORATED BALDWIN COUNTY NOT A COUNTY OFFICER OR EMPLOYEE NO REAL ESTATE LICENSE/NOT INVOLVED IN REAL ESTATE	Appointed 03/02/2021 for pro-rata reduced term, to fill the place seat and unexpired term formerly held by Robert S. Davis, Jr. 03/02/2021 Accepted the resignation of Robert S. (Sam) Davis, Jr., dated 02/03/2021 and thanked Mr. Davis for his prior civic service	4 years	03/01/2022
BCC District 4 Nominee	Ernest Anthony Church, Jr. 5601 State Highway 180 #4 Gulf Shores, AL 36542 QUALIFIED ELECTOR OF BALDWIN COUNTY ACTUAL RESIDENT OF BALDWIN COUNTY RESIDES IN UNINCORPORATED BALDWIN COUNTY NOT A COUNTY OFFICER OR EMPLOYEE NO REAL ESTATE LICENSE/NOT INVOLVED IN REAL ESTATE	Appointed 09/07/2021 for a pro-rata reduced term, to fill the place seat and unexpired formerly held by Bonnie Lowry 09/07/2021 Accepted the resignation of Bonnie Lowry dated 08/24/2021 and thanked Ms. Lowry for her prior civic service	4 years	11/16/2021
BCC District 4 Nominee	David Gregory (Greg) Seibert 24147 Seibert Road Elberta, Alabama 36530 QUALIFIED ELECTOR OF BALDWIN COUNTY ACTUAL RESIDENT OF BALDWIN COUNTY RESIDES IN UNINCORPORATED BALDWIN COUNTY NOT A COUNTY OFFICER OR EMPLOYEE NO REAL ESTATE LICENSE/NOT INVOLVED IN REAL ESTATE	Appointed 04/06/2021 for pro-rata reduced term to fill the place seat and unexpired term formerly held by Kevin Murphy 04/06/2021 Accepted the resignation of Kevin Murphy, effective 02/02/2021 and thanked Mr. Murphy for his prior civic service	4 years	12/02/2021
	STAFF MEMBERS	**APPOINTED/REAPPOINTED**	**TERM OF OFFICE**	**EXP. DATE**
Staff Member	Matthew Brown, Planning Director Planning Department 22251 Palmer Street Robertsdale, Alabama 36576		Term of employment as Planning Director	

REVISED: 09/07/2021 vak

Baldwin County Commission

Agenda Action Form

File #: 22-0066, **Version:** 1 **Item #:** CA1

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wayne Dyess, County Administrator
Submitted by: Keri Green, Commission Executive Assistant

ITEM TITLE
Resolution #2022-005 in Recognition of Judge Julian B. “Buddy” Brackin, Jr.’s Retirement

STAFF RECOMMENDATION
Adopt Resolution #2022-005 which commends Judge Julian B. “Buddy” Brackin, Jr., for 31 years of service to the citizens of the City of Orange Beach and his years of distinguished public service.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: N/A

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: N/A

Action required (list contact persons/addresses if documents are to be mailed or emailed): N/A

Additional instructions/notes: N/A

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BALDWIN COUNTY COMMISSION
BALDWIN COUNTY, ALABAMA

RESOLUTION

COMMENDING JUDGE JULIAN B. "BUDDY" BRACKIN, JR., FOR 31 YEARS OF SERVICE TO THE CITIZENS OF THE CITY OF ORANGE BEACH AND HIS YEARS OF DISTINGUISHED PUBLIC SERVICE.

WHEREAS, Judge Julian B. "Buddy" Brackin, Jr., grew up in Faunsdale, Alabama, in Marengo County, and was a graduate of Thomaston High School in 1968, attended the Marion Military Institute and graduated from Troy University in 1972; and

WHEREAS, he thereafter attended the University of Alabama School of Law obtaining his Doctor of Jurisprudence in 1976, as well as his Master's Degree in Public Administration and was admitted to the Alabama Bar on September 29, 1976, and began employment with the Alabama Attorney General's Office; and

WHEREAS, he relocated to Baldwin County, Alabama, and in 1986, formed his law firm, Julian B. Brackin, P.C., which later became Brackin, McGriff and Johnson, P.C.; and

WHEREAS, in 1994 was named the second-ever Municipal Judge for the City of Orange Beach, after serving for three years as an acting judge, and continued to hold the official position for another 28 years, and has also served previously as the Municipal Judge for the Town of Elberta for 18 years and the Town of Summerdale for seven years and has continued to serve as Municipal Judge for the City of Robertsdale for 42 years; and

WHEREAS, it is an honor to extend highest commendations to Judge Brackin for serving on the judicial bench for 31 years for the City of Orange Beach; therefore

BE IT RESOLVED, BY THE BALDWIN COUNTY COMMISSION, IN REGULAR SESSION ASSEMBLED, that the Baldwin County Commission commends and congratulates Municipal Judge Julian B. "Buddy" Brackin, Jr., on his 31 years of service to the City of Orange Beach and years of service across the municipalities of Baldwin County, Alabama, and this resolution hereby serves as a tribute to him with utmost gratitude and admiration, along with sincere best wishes for continued success and happiness during his retirement from the Municipal Judgeship of the City of Orange Beach; and

BE IT FURTHER RESOLVED, that a copy of this resolution, recorded in the official minutes of this honorable county governing body and embodied as *Resolution #2022-005 of the Baldwin County Commission*, be conveyed to Judge Julian B. "Buddy" Brackin, Jr., in sincere praise and appreciation of his service to the municipalities of Baldwin County, Alabama.

IN WITNESS, WHEREOF, we have hereunto set our hands and caused the Seal of Baldwin County, Alabama, to be affixed on this the 19th day of October 2021.

Commissioner Joe Davis, III Chairman	Commissioner James E. Ball Vice Chairman
Commissioner Billie Jo Underwood	Commissioner Charles F. Gruber

Baldwin County Commission

Agenda Action Form

File #: 22-0030, **Version:** 1 **Item #:** DA1

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wayne Dyess, County Administrator
Submitted by: Carjetta Crook, Administrative Support Specialist IV

ITEM TITLE
Case No. LV-21003 - Alcohol License Application for Dolgencorp LLC d/b/a Dollar General Store #22287 (Whitehouse Fork, Bay Minette)

STAFF RECOMMENDATION
Consider the 050-Retail Beer (Off Premises Only) and 070-Retail Table Wine (Off Premises Only) alcohol license application for Dolgencorp LLC d/b/a Dollar General Store #22287, located at 8471 Whitehouse Fork Road Ext, Bay Minette, Alabama 36507, and approve the issuance of said license by the Alabama Alcoholic Beverage Control (ABC) Board, if the public hearing does not reveal a legitimate reason to deny the application.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: Staff has verified the applicant has a current business license, all sales tax requirements have been satisfied, and the Baldwin County Sheriff's Office does not oppose the issuance of the license.

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? Yes

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Commission Administration Staff

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Send correspondence to:

State of Alabama ABC Board
c/o Ms. Rose Moore
2715 Gunter Park Drive, West
Montgomery, Alabama 36109
Via email only: rose.moore@abc.alabama.gov

cc:
Applicant: Tracy Grubisic (via email only - tbrubisi@dollargeneral.com)
Sheriff Huey Hoss Mack
Terrie Watson
Sharon Hunt
Susanne Davis
Joe Ryan
Celena Boykin
Matthew Brown
Kipp Kyzar, Baldwin County Health Department

Additional instructions/notes: N/A

From:	Carjetta L. Crook
To:	tgrubisi@dollargeneral.com
Cc:	Anu Gary; April Wallace; Barbara Pate; Carjetta L. Crook; Celena Boykin; Kristen Rawson; Matthew Brown; Orie King; Rose Moore; Victoria Key; Vincent Ramer; Wayne Dyess
Subject:	Public Hearing Date for ABC License Case No. LV - 21003 - Dolgencorp, LLC d/b/a Dollar General Store #22287
Date:	Thursday, September 9, 2021 1:48:56 PM
Attachments:	Legal Notice Gulf Coast News - 20180206 Revision.pdf image001.png

Good afternoon,

Please see below the instructions for advertising your Public Hearing.

It is important that you contact the newspaper in a timely manner to meet the deadline schedule.

INSTRUCTIONS FOR ADVERTISING YOUR PUBLIC HEARING:

1. VERIFY THAT ALL INFORMATION LISTED BELOW IS CORRECT.
2. PRINT OUT THIS EMAIL AND THE ATTACHED LEGAL NOTICE FORM.
3. FILL OUT THE FORM AND TAKE THE EMAIL AND THE COMPLETED FORMS WITH YOU TO THE GULF COAST NEWSPAPERS, LOCATED AT 901 MCKENZIE STREET, FOLEY, ALABAMA. TEL (251) 943-2151.
4. THE ADVERTISEMENT(S) MUST BE PUBLISHED AS FOLLOWS: ONCE PER WEEK FOR THREE (3) CONSECUTIVE WEEKS PRIOR TO PUBLIC HEARING DATE

Via Email Only: Tracy Grubisic tgrubisi@dollargeneral.com

Case Number:	**LV-21003 – Dolgencorp, LLC d/b/a Dollar General Store #22287**
Location:	8471 Whitehouse Fork Road Ext, Bay Minette, Alabama 36507
License Type:	050 – RETAIL BEER – (OFF PREMISES ONLY) 070 – RETAIL TABLE WINE - (OFF PREMISES ONLY)
Public Hearing Date:	**October 19, 2021**

A **Public Hearing** has been established before the Baldwin County Commission for the above referenced License Application(s) on **October 19, 2021** at **8:30 AM** in the 2nd Floor Chambers of the Baldwin County Fairhope Satellite Courthouse, located at 1100 Fairhope Avenue, Fairhope, Alabama 36532.

If you have questions regarding this public hearing, please contact the Baldwin County Administration Department (Bay Minette Commission Office) at 251-937-0264.

You must obtain and provide an original proof of publication affidavit from the newspaper office to the County Commission Administration Office in Bay Minette on

or before the public hearing date. A copy of the affidavit is not sufficient and could delay your application process. Please be aware that you (or an authorized representative) must appear in person for the public hearing.

Carjetta L. Crook
Administrative Support Specialist IV
Baldwin County Commission
Phone: (251) 937-0267 ext. 2267
Fax: (251) 580-2500
Email: Carjetta.Crook@baldwincountyal.gov

BALDWIN COUNTY, ALABAMA

PLANNING AND ZONING DEPARTMENT

Main Office - 251.580.1655
22251 Palmer St., Robertsdale, AL 36567

Foley Office - 251.972.8523
201 East Section Ave., Foley, AL 36535

ZONING VERIFICATION REQUEST

Case #: ZV21-000144

This zoning verification is for informational purposes only.
Specific uses for the zoning classification should be verified through the
Baldwin County Zoning Ordinance and associated maps
or through consultation with the Planning and Zoning staff.

Applicant

Tracy Grubisic DBA Dollar General Store #22287
100 Mission Ridge
Goodlettsville TN 37072

Site Information

Parcel ID Number: 05-29-05-16-0-000-004.000
Physical Address (E-911): 8471 WHITEHOUSE FORK RD EXT BAY MINETTE, AL 36507

Project Information

Applicant's Description of Proposed Use: Retail General Merchandise

Staff Review

City Limits: Unincorporated Baldwin County
Extra Terratorial Jurisdiction (ETJ):
Building Permit Jurisdiction: Baldwin County
Zoning Status: Zoned
Planning District: 04
Zoning Classification: B-3 General Business District
Fire District: Crossroads 78
Verification Status: Completed
Date of Verification: 04/19/2021
Planner's Comments:

Reviewed By: Brenda Brock, Administrative Support Specialist

Brenda Brock

BALDWIN COUNTY COMMISSION

CONSENT FOR INSPECTION

I, Steven Deckard, LLC Manager, the owner or authorized agent for the owner of the premises located at 8471 Whitehouse Fork Rd Ext, Bay Minette, AL 36507

_____,

do hereby consent to the inspection of said premises and the posting of a public notice sign, by an employee of the Baldwin County Planning Department, Baldwin County, Alabama, in conjunction with application for an alcohol license, without further notice. I understand that the public signs are the property of the Baldwin County Commission and are only to be removed by an employee of the Baldwin County Commission.

Dated this 3 day of August, 2021.

_____ 615-855-4000

Signature of Owner or Authorized Agent Telephone number

STATE OF ALABAMA

22287

CONTROL NO.
1611474

BALDWIN COUNTY

LICENSE NO.
2110132

ACCOUNT NO.
73611

ISSUED TO:
DOLGENCORP LLC DBA DOLLAR GENERAL STORE #22287
LLC, DOLGENCORP
100 MISSION RDG
ATTN TAX DEPT
GOODLETTSVILLE, TN 37072

LICENSE YEAR
2020-2021

1/2 Year

DATE ISSUED		
04	27	2021
MO.	DAY	YR.

LICENSE TYPE	
STORE LICENSE	
CHAIN STORE LICENSE	
OCCUPATIONAL LICENSE	X

BUSINESS LOCATION:
8471 WHITEHOUSE FK RD EXT
BAY MINETTE, AL 36507

EXPIRES
September 30, 2021
RENEW IN OCTOBER

RL:
U63 - #1611474 - T1 - P556762 - M1

SECTION	BUSINESS TYPE	License Amount	FEE	PENALTY	CITATION	INTEREST	TOTAL
0144	PLAYING CARDS	1.50	1.00	0.00	0.00	0.00	2.50
0148	RADIOS	2.25	1.00	0.00	0.00	0.00	3.25
0044	ADDING MACHINES, CALCULATING MACHINES, ETC	75.00	1.00	0.00	0.00	0.00	76.00
0161	SPECTACLES OR EYEGLASSES	3.75	1.00	0.00	0.00	0.00	4.75
069A	CEREAL BEVERAGES, SOFT DRINKS - RETAILERS (sealed containers)	1.88	1.00	0.00	0.00	0.00	2.88
0097	ELECTRIC REFRIGERATORS, ELECTRIC/GAS HEATERS, ETC	3.75	1.00	0.00	0.00	0.00	4.75
0134	NEWSSTANDS	3.75	1.00	0.00	0.00	0.00	4.75
0053	AUTOMOBILE ACCESSORY DEALERS	3.75	1.00	0.00	0.00	0.00	4.75
0072	CIGARS, CIGARETTES, CHEROOTS, ETC - RETAILERS	1.50	1.00	0.00	0.00	0.00	2.50

	TOTAL	106.13
	MAIL FEE	1.00
	TOTAL WITH MAIL FEE	107.13

TRANSFER OF LICENSE
Evidence having been adduced before me that a bona fide sale of the business licensed by this certificate has been made by licensee, this license is transferred to said purchaser.

Name of Purchaser

Issuing Authority

Kathleen D. Baxter
State Comptroller

Vernon Barnett
Commissioner of Revenue

HARRY D'OLIVE JR
Issuing Authority

2021 - 2110132
4/27/2021 11:43:09 AM
U63 - #1611474
T1 - P556762 - M1

DOLGENCORP LLC
LLC, DOLGENCORP
100 MISSION RDG ATTN TAX DEPT
GOODLETTSVILLE, TN 37072

OFFICE OF SHERIFF

BALDWIN COUNTY, ALABAMA
SHERIFF HUEY HOSS MACK

310 Hand Avenue
Bay Minette, Alabama 36507
(251) 937-0210
Fax (251) 580-1687

TO: Baldwin County Commission

FROM: Anthony Lowery,
Chief Deputy

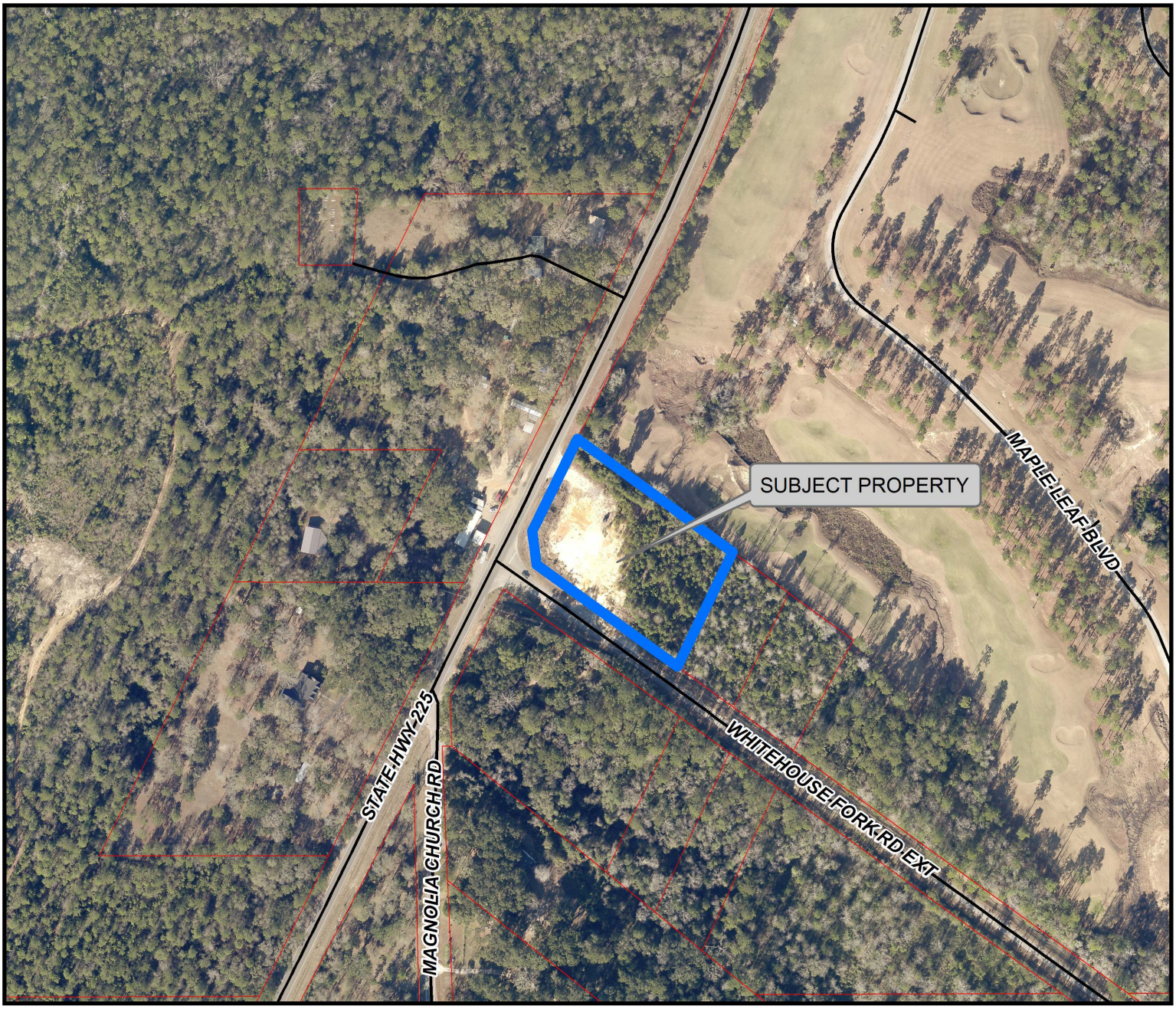
Date: August 31, 2021

Subject: Alcoholic Beverage License
Dolgencorp LLC
D.B.A Dollar General Store 22287
Location: 8471 Whitehouse Fork Rd. EXT Bay Minette, AL 36507
Mailing: 100 Mission Ridge Goodlettsville, TN 37072

APPLICANT: Steven Deckard, Emily Taylor, and Bethany Malakelis.

Based on information provided to the Baldwin County Sheriff's Office in the above referenced license application we do not oppose issuance of the license.

AL/BL



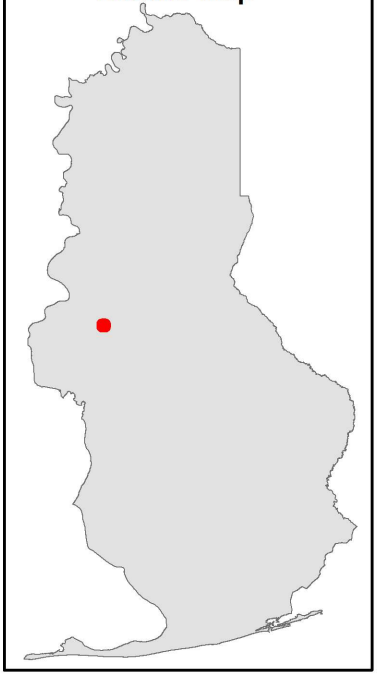
BALDWIN COUNTY COMMISSION
PLANNING AND ZONING DEPARTMENT

DOLGENCORP, LLC dba DOLLAR GENERAL STORE #22787
8471 WHITEHOUSE FORK ROAD EXT., BAY MINETTE, AL 36507

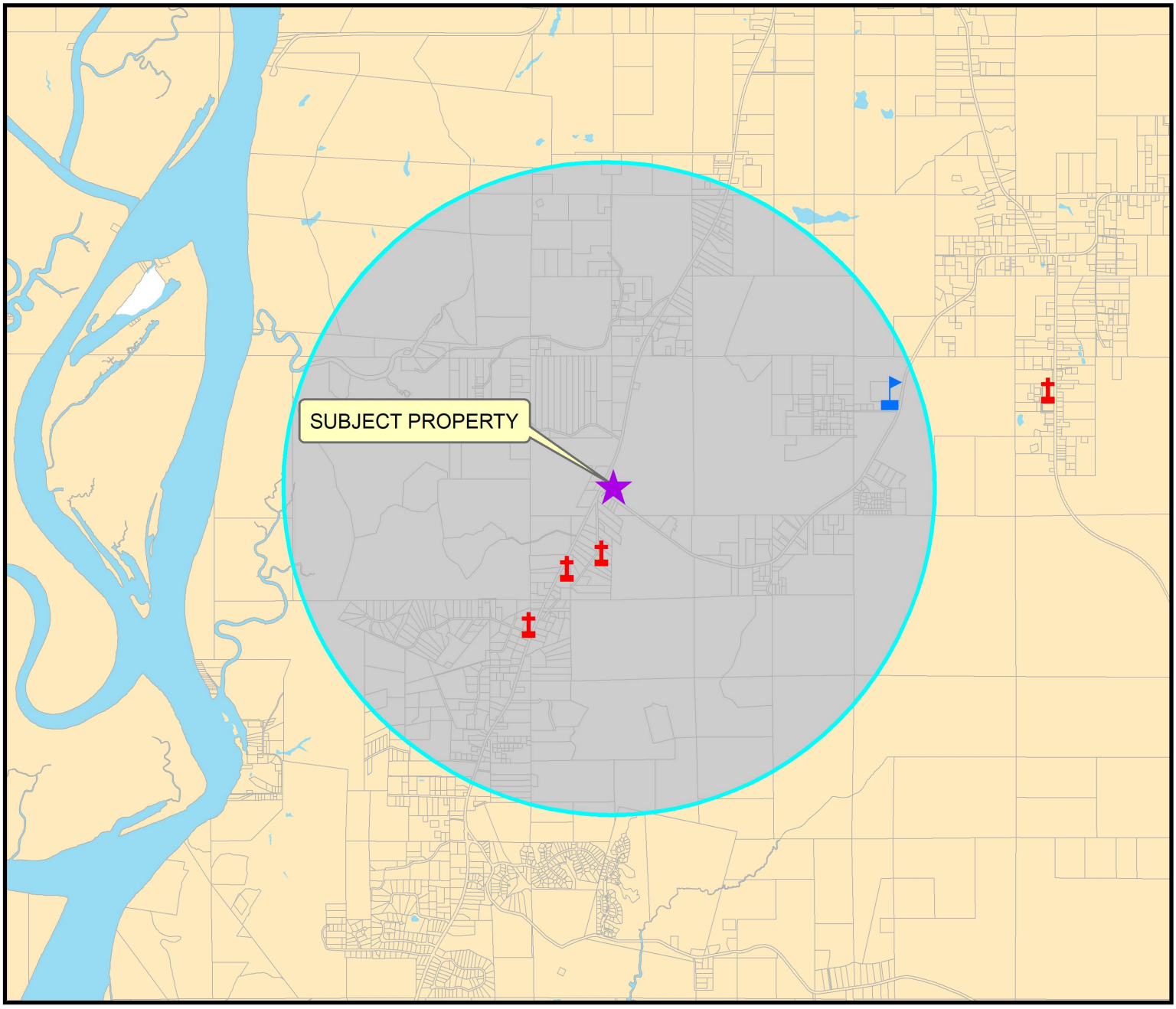
0 205 410 820 Feet

- Place of Worship
- School Locations
- 911 STREETS
- Parcels

Locator Map



The information contained in this representation of digital data distributed by the Baldwin County Commission's Planning and Zoning Department is derived from a variety of public and private sources and is considered to be dependable. However, the accuracy, completeness, and currency thereof are not guaranteed. The Baldwin County Commission makes no warranties, expressed or implied, as to the accuracy, completeness, currency, reliability, or suitability of information or data contained in or generated from the County Geographic Database for any particular purpose. Additionally, the Baldwin County Commission or any agent, servant, or employee thereof assume no liability associated with the use of this data, and assume no responsibility to maintain it in any matter or form. For more information concerning this map call 251.580.1655.



BALDWIN COUNTY COMMISSION
PLANNING AND ZONING DEPARTMENT

DOLGENCORP, LLC dba DOLLAR GENERAL STORE #22787
8471 WHITEHOUSE FORK ROAD EXT., BAY MINETTE, AL 36507
ABC LICENSE

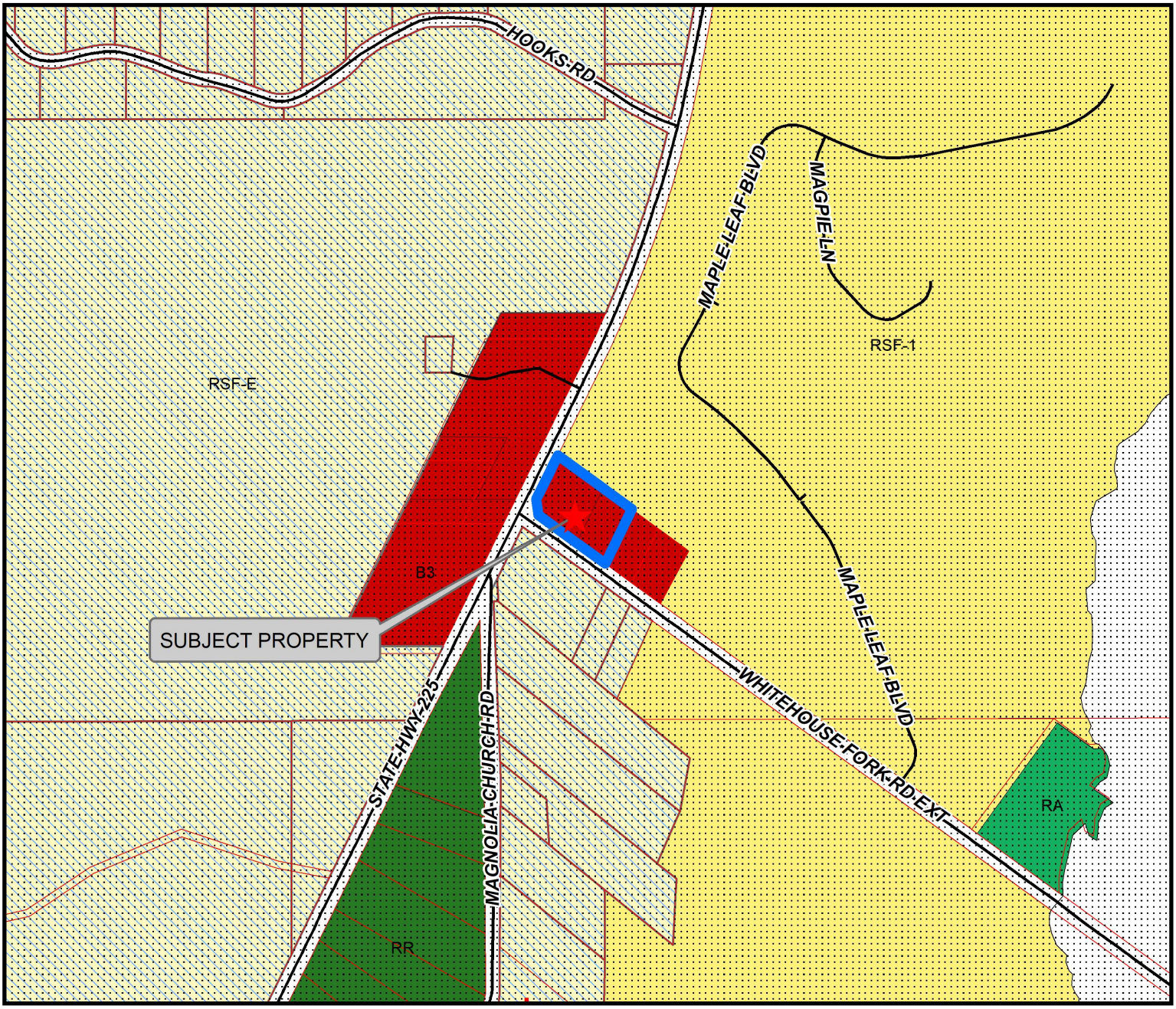
Place of Worship
School Locations
Parcels
911 STREETS
2-Mile Buffer
Water

0 0.75 1.5 3 Miles

Locator Map



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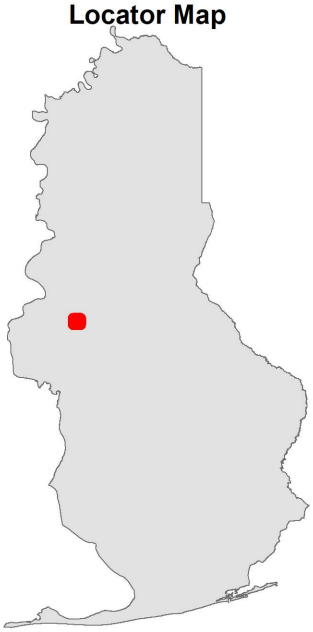


BALDWIN COUNTY COMMISSION
PLANNING AND ZONING DEPARTMENT

DOLGENCORP, LLC dba DOLLAR GENERAL STORE #22787
8471 WHITEHOUSE FORK ROAD EXT., BAY MINETTE, AL 36507

0 340 680 1,360 Feet

Locator Map



- Place of Worship
- School Locations
- Unincorporated Baldwin County
- 911 STREETS
- Water
- City Limits
- Parcels
- Rural District (RR)
- Rural Agricultural District (RA)
- Conservation Resource District (CR)
- Residential Single Family Estate District (RSF-E)
- Residential Single Family District (RSF-1)
- Residential Single Family District (RSF-2)
- Residential Single Family District (RSF-3)
- Residential Single Family District (RSF-4)
- Residential Two Family District (RTF-4)
- Residential Single Family District (RSF-6)
- Residential Two Family District (RTF-6)
- Residential Multiple Family District (RMF-6)
- Residential Manufactured Housing Park District (RMH)
- Marine Recreation District (MR)
- Outdoor Recreation District (OR)
- Tourist Resort District (TR)
- Professional Business District (B-1)
- Neighborhood Business District (B-2)
- General Business District (B-3)
- Major Commercial District (B-4)
- Light Industrial District (M-1)
- General Industrial District (M-2)

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September 14, 2021



Scott Harris, M.D., M.P.H. • State Health Officer

Baldwin County Health Department

Date: August 18, 2021

To Whom It May Concern:

Name of Establishment: Dollar General Store #22287
Address: 8471 Whitehouse Ford Road EXT
Bay Minette, AL 36507

Name of Operator: Victoria Southern – Store Manager

The establishment listed above will only:

- Serve bottle or can beverages to the public.

This establishment will not:

- Use or cut any garnishes for the public.
- Use utensils or equipment that must be washed, rinsed or sanitized.
- Use ice: Specifically: No scooping, bagging or selling ice to the public.

We understand and agree that by operating in this limited capacity mentioned above we will not be required to obtain a food permit from the Baldwin County Health Department. However, if we elect to operate outside these requirements, we would contact the Baldwin County Health Department to obtain the proper permit.

Kipp Kyzar
Baldwin County Health Department
P.O. Drawer 369
Robertsdale, AL. 36567

GULF COAST MEDIA
A DIVISION OF OPC NEWS, LLC
PO BOX 1677 • SUMTER, SC 29150

FOLEY 251.943.2151
The Courier – The Islander
The Onlooker
The Baldwin Times

LEGAL REP -
251-345-6805

RECEIVED
OCT 07 2021
BY: BP

PROOF OF PUBLICATION
STATE OF ALABAMA • BALDWIN COUNTY

Before me, the undersigned authority in and for said County, in said State, personally appeared April M. Perry who, by me duly sworn, deposes and says that: she is the Legal Representative of the following newspaper listed below, a newspaper of GENERAL CIRCULATION, PUBLISHED and PRINTED in Baldwin County, Alabama, and that there was published in The Courier, The Islander, The Onlooker, & or The Baldwin Times in the issue/s of:

09/17/2021, 09/24/2021, 10/01/2021

a legal notice, a copy of which is hereto attached. The sum charged by the Newspaper for said publication does not exceed the lowest classified rate paid by commercial customers for an advertisement of similar size and frequency in the same newspaper(s) in which the public notice appeared.

There are no agreements between the Newspaper and the officer or attorney charged with the duty of placing the attached legal advertising notices whereby any advantage, gain or profit accrued to said officer or attorney.

X April M. Perry
April M. Perry, Legal Ad Representative

X Amber Kimbler
Amber Kimbler, Notary Public
Baldwin County, Alabama
My commission expires April 10, 2022

AMBER KIMBLER
My Commission Expires
April 10, 2022

Sworn and subscribed to on 10/01/2021.

DOLLAR GENERAL STORE #22287 - LE

Acct#: 1002214

Ad#: 329021

LL: Store #22287

Amount of Ad: $145.00

Legal File# LL: Store #2228

LEGAL NOTICE

NOTICE OF PENDING APPLICATION FOR APPROVAL OF ISSUANCE OF ALCOHOLIC LICENSE

Notice is hereby given that Steven Deckard has requested that the Baldwin County Commission approve the issuance of a 050-Retail Beer (Off Premises Only) & 070- Retail Table Wine (Off Premises Only) alcoholic beverage license(s) by the Alabama Alcoholic Beverage Control (ABC) Board and that the 19th day of October, 2021 at 8:30 o'clock AM has been set for the public hearing thereof at the 2nd Floor Chambers of the Baldwin County Fairhope Satellite Courthouse, as located at 1100 Fairhope Avenue, Fairhope, Alabama 36532.

The name and exact location of the business being Dolgencorp, LLC dba Dollar General Store #22287 located at 8471 Whitehouse Fork Road, Ext, Bay Minette, Alabama 36507.

At the public hearing, any interested person may appear at said time and place to be heard either in support of or in opposition to the granting by the Baldwin County Commission of such approval.
September 17-24;
October 1, 2021

Baldwin County Commission

Agenda Action Form

File #: 22-0078, **Version:** 1 **Item #:** DA2

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Wayne Dyess, County Administrator
Submitted by: Kristen M. Rawson, Assistant Administrative Services Manager

---

ITEM TITLE
Case No. LV-21005 - Alcohol License Application for Tawana Jean Brantley d/b/a Boatyard Bait and Tackle

STAFF RECOMMENDATION
Consider the transfer application of 050 - Retail Beer (Off Premises Only) license from Kathleen Marie Lundy d/b/a Boatyard Bait and Tackle, to Tawana Jean Brantley d/b/a Boatyard Bait and Tackle, located at 10775 Boatyard Road, Stockton, Alabama 36579 and approve the issuance of said license by the Alabama Alcoholic Beverage Control (ABC) Board, if the public hearing does not reveal a legitimate reason to deny the application.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: Staff has verified the applicant has a current business license, all sales tax requirements have been satisfied, Health Department Food Permit is not required, and the Baldwin County Sheriff's Office does not oppose the issuance of this license

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? Yes

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Commission Administration Staff

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Send correspondence to:

State of Alabama ABC Board
c/o Ms. Rose Moore
2715 Gunter Park Drive, West
Montgomery, Alabama 36109
Via email only: rose.moore@abc.alabama.gov

cc:
Applicant: Tawana Jean Brantley (via email only - TJB05PRB@YAHOO.COM)
Sheriff Huey Hoss Mack
Terrie Watson
Sharon Hunt
Susanne Spears (Davis)
Joe Ryan
Celena Boykin
Matthew Brown
Kipp Kyzar, Baldwin County Health Department

Additional instructions/notes: N/A

Kristen Rawson

From: Kristen Rawson
Sent: Monday, September 13, 2021 4:45 PM
To: 'tawana brantley'
Cc: Anu Gary; 'April Wallace'; Barbara Pate; Carjetta L. Crook; 'Celena Boykin'; Kristen Rawson; Matthew Brown; Orie King; 'Rose Moore'; Victoria Key; Vincent Ramer; Wayne Dyess
Subject: Public Hearing Date for ABC License Case No. LV - 21005 - Boatyard Bait and Tackle
Attachments: Legal Notice Gulf Coast News - FAIRHOPE 20180206 Revision.pdf

Good afternoon,

Please see below the instructions for advertising your Public Hearing.

It is important that you contact the newspaper in a timely manner to meet the deadline schedule.

INSTRUCTIONS FOR ADVERTISING YOUR PUBLIC HEARING:

1. VERIFY THAT ALL INFORMATION LISTED BELOW IS CORRECT.
2. PRINT OUT THIS EMAIL AND THE ATTACHED LEGAL NOTICE FORM.
3. FILL OUT THE FORM AND TAKE THE EMAIL AND THE COMPLETED FORMS WITH YOU TO THE GULF COAST NEWSPAPERS, LOCATED AT 901 MCKENZIE STREET, FOLEY, ALABAMA. TEL (251) 943-2151.
4. THE ADVERTISEMENT(S) MUST BE PUBLISHED AS FOLLOWS: ONCE PER WEEK FOR THREE (3) CONSECUTIVE WEEKS PRIOR TO PUBLIC HEARING DATE

Via Email Only: Tawana Jean Brantley: TJB05PRB@YAHOO.COM

Case Number:	**LV-21005 – Boatyard Bait and Tackle**
Location:	10775 Boatyard Road, Stockton, Alabama 36579
License Type:	050 – RETAIL BEER – (OFF PREMISES ONLY)
Public Hearing Date:	**October 19, 2021**

A **Public Hearing** has been established before the Baldwin County Commission for the above referenced License Application(s) on **October 19, 2021** at **8:30 AM** in the 2nd Floor Chambers of the Baldwin County Fairhope Satellite Courthouse, located at 1100 Fairhope Avenue, Fairhope, Alabama 36532.

If you have questions regarding this public hearing, please contact the Baldwin County Administration Department (Bay Minette Commission Office) at 251-937-0264.

You must obtain and provide an original proof of publication affidavit from the newspaper office to the County Commission Administration Office in Bay Minette on or before the public hearing date. A copy of the affidavit is not sufficient and could delay your application process. Please be aware that you (or an authorized representative) must appear in person for the public hearing.

Kristen M. Rawson
Assistant Administrative Services Manager
Baldwin County Commission
312 Courthouse Square, Suite 12
Bay Minette, AL 36507
(251) 580-1696 office

BALDWIN COUNTY, ALABAMA

PLANNING AND ZONING DEPARTMENT

Main Office - 251.580.1655
22251 Palmer St., Robertsdale, AL 36567

Foley Office - 251.972.8523
201 East Section Ave., Foley, AL 36535

ZONING VERIFICATION REQUEST

Case #: ZV21-000263

This zoning verification is for informational purposes only.
Specific uses for the zoning classification should be verified through the
Baldwin County Zoning Ordinance and associated maps
or through consultation with the Planning and Zoning staff.

Applicant

Tawana Brantley DBA Boatyard Bait and Tackle
10775 Boatyard Road
Stockton AL 36579

Site Information

Parcel ID Number: 05-05-06-45-0-000-005.002
Physical Address (E-911): 10775 BOATYARD RD STOCKTON, AL 36579

Project Information

Applicant's Description of Proposed Use: Applying for a liquor license. Beer retail off premises and tobacco.

Staff Review

City Limits: Unincorporated Baldwin County
Extra Terratorial Jurisdiction (ETJ): Unincorporated Baldwin County
Building Permit Jurisdiction: Baldwin County
Zoning Status: Un-Zoned
Planning District: 01: County zoning has not been instituted
Zoning Classification: N/A
Fire District: Tensaw 90
Verification Status: Completed
Date of Verification: 08/05/2021
Planner's Comments:

Reviewed By: Brenda Brock, Administrative Support Specialist

Brenda Brock

BALDWIN COUNTY COMMISSION

CONSENT FOR INSPECTION

I, Tawana Jean Brantley, the owner or authorized agent for the owner of the premises located at 10775 Boatyard Road, Stockton, AL 36579,

do hereby consent to the inspection of said premises and the posting of a public notice sign, by an employee of the Baldwin County Planning Department, Baldwin County, Alabama, in conjunction with application for an alcohol license, without further notice. I understand that the public signs are the property of the Baldwin County Commission and are only to be removed by an employee of the Baldwin County Commission.

Dated this 3rd day of Sept, 2021.

Tawana Jean Brantley — (251) 363-3922

Signature of Owner or Authorized Agent — Telephone number

notary: Toni Sanders exp. 9/9/22

TONI SANDERS NOTARY PUBLIC STATE AT LARGE ALABAMA

B.C.C. ADMINISTRATION – Establishment of Public Hearings for Alcoholic Beverage Licenses

STATE OF ALABAMA

CONTROL NO.
1858325

ACCOUNT NO.
74245

BALDWIN COUNTY

LICENSE NO.
2200564

ISSUED TO:
BOATYARD BAIT AND TACKLE
BRANTLEY, TAWANA JEAN
160 FOXWOOD CT
FLOMATON, AL 36441

LICENSE YEAR
2021-2022

DATE ISSUED		
10	12	2021
MO.	DAY	YR.

LICENSE TYPE	
STORE LICENSE	X
CHAIN STORE LICENSE	
OCCUPATIONAL LICENSE	X

BUSINESS LOCATION:
10775 BOATYARD RD
STOCKTON, AL 36579

EXPIRES
September 30, 2022
RENEW IN OCTOBER

RL:
U21 - #1858325 - T2 - P693879 - M2

SECTION	BUSINESS TYPE	License Amount	FEE	PENALTY	CITATION	INTEREST	TOTAL
315A	STORE LICENSE	1.00	1.00	0.00	0.00	0.00	2.00
069A	CEREAL BEVERAGES, SOFT DRINKS - RETAILERS (sealed containers)	3.75	1.00	0.00	0.00	0.00	4.75
0072	CIGARS, CIGARETTES, CHEROOTS, ETC - RETAILERS	3.00	1.00	0.00	0.00	0.00	4.00
0106	GASOLINE STATIONS AND PUMPS (1 add'l pumps)	7.50	1.00	0.00	0.00	0.00	8.50

TRANSFER OF LICENSE

Evidence having been produced before me that a bona fide sale of the business licensed by this certificate has been made by licensee, this license is transferred to said purchaser.

Tawana Jean Brantley
Name of Purchaser

Issuing Authority

Kathleen D. Baxter
State Comptroller

Vernon Barnett
Commissioner of Revenue

HARRY D'OLIVE JR
Issuing Authority

	TOTAL	19.25
	MAIL FEE	0.00
	TOTAL WITH MAIL FEE	19.25

2022 - 2200564
10/12/2021 8:29:57 AM
U21 - #1858325
T2 - P693879 - M2

BOATYARD BAIT AND TACKLE
BRANTLEY, TAWANA JEAN
160 FOXWOOD CT
FLOMATON, AL 36441

OFFICE OF SHERIFF

BALDWIN COUNTY, ALABAMA
SHERIFF HUEY HOSS MACK

310 Hand Avenue
Bay Minette, Alabama 36507
(251) 937-0210
Fax (251) 580-1687

TO: Baldwin County Commission

FROM: Anthony Lowery,
Chief Deputy

Date: September 13, 2021

Subject: Alcoholic Beverage License
Boatyard Bait and Tackle LLC
D.B.A Boatyard Bait and Tackle
Location: 10775 Boatyard Rd. Stockton, AL 36579
Mailing: 10775 Boatyard Rd. Stockton, AL 36579

APPLICANT: Tawana Jean Brantley

Based on information provided to the Baldwin County Sheriff's Office in the above referenced license application we do not oppose issuance of the license.

AL/BL

Scott Harris, M.D., M.P.H. • State Health Officer

Baldwin County Health Department

Date: September 10, 2021

To Whom It May Concern:

Name of Establishment: Boatyard Bait & Tackle
Address: 10775 Boatyard Rd.
Stockton, AL. 36579

Name of Operator: **Tawana Brantley**

The establishment listed above will only:

- Serve bottle or can beverages to the public.

This establishment will not:

- Use or cut any garnishes for the public.
- Use utensils or equipment that must be washed, rinsed or sanitized.
- Use ice: Specifically: No scooping, bagging or selling ice to the public.

We understand and agree that by operating in this limited capacity mentioned above we will not be required to obtain a food permit from the Baldwin County Health Department. However, if we elect to operate outside these requirements, we would contact the Baldwin County Health Department to obtain the proper permit.

Kipp Kyzar
Baldwin County Health Department
P.O. Drawer 369
Robertsdale, AL. 36567



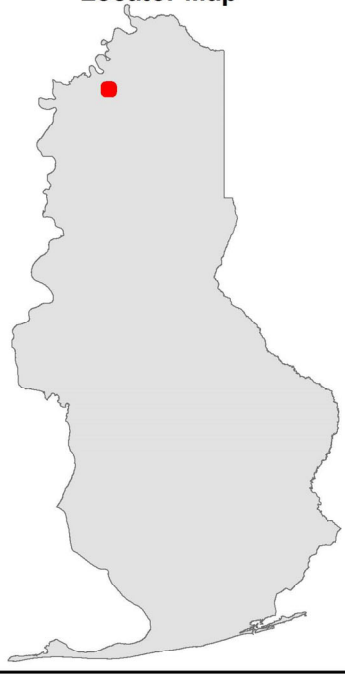
BALDWIN COUNTY COMMISSION
PLANNING AND ZONING DEPARTMENT

LV-21005 BOATYARD BAIT AND TACKLE
10775 BOATYARD ROAD, STOCKTON, AL 36579
ABC LICENSE

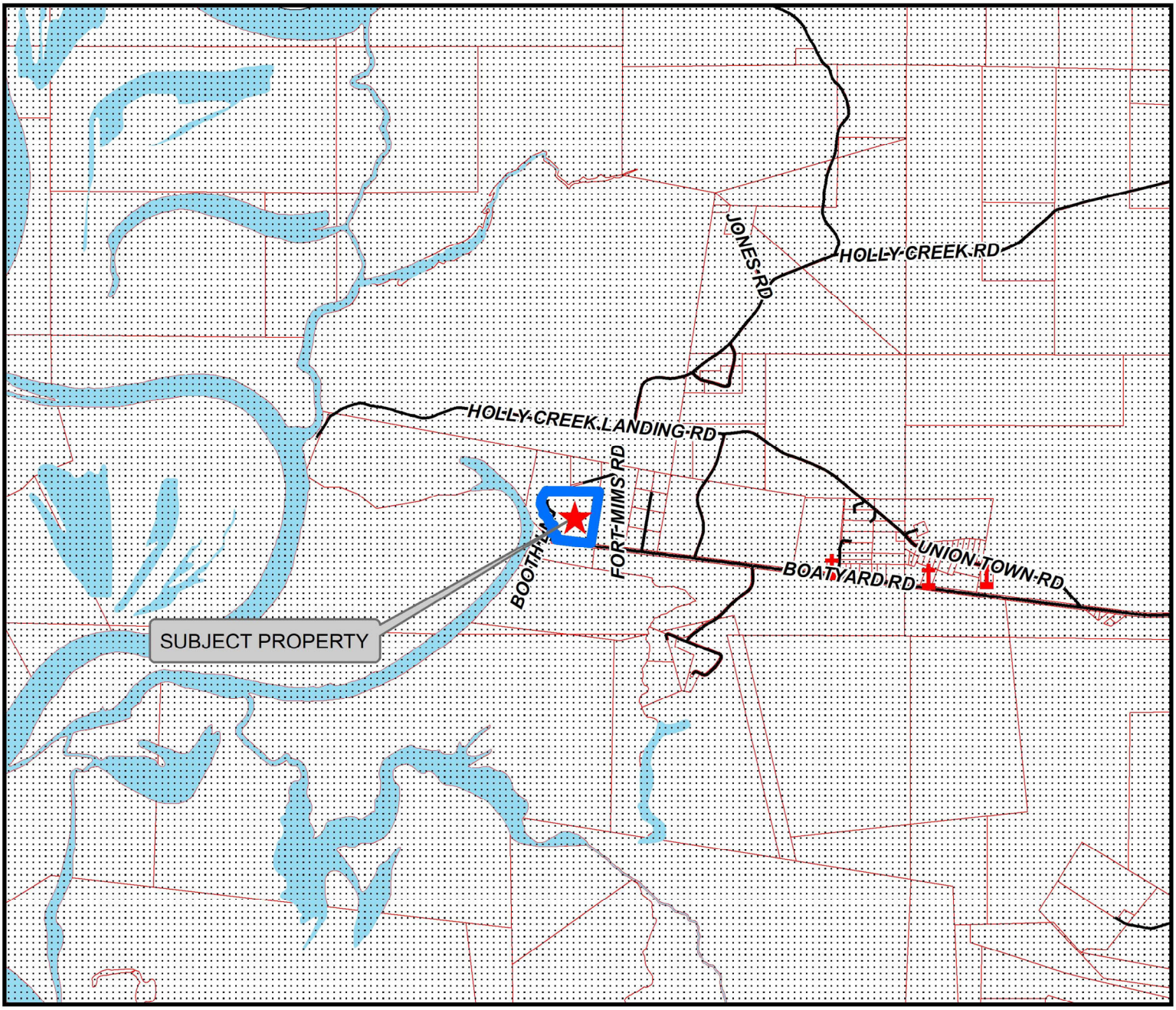
0 300 600 1,200 Feet

- Place of Worship
- School Locations
- 911 STREETS
- Parcels

Locator Map



The information contained in this representation of digital data distributed by the Baldwin County Commission's Planning and Zoning Department is derived from a variety of public and private sources and is considered to be dependable. However, the accuracy, completeness, and currency thereof are not guaranteed. The Baldwin County Commission makes no warranties, expressed or implied, as to the accuracy, completeness, currency, reliability, or suitability of information or data contained in or generated from the County Geographic Database for any particular purpose. Additionally, the Baldwin County Commission or any agent, servant, or employee thereof assume no liability associated with the use of this data, and assume no responsibility to maintain it in any matter or form. For more information concerning this map call 251.580.1655.



BALDWIN COUNTY COMMISSION
PLANNING AND ZONING DEPARTMENT

LV-21005 BOATYARD BAIT AND TACKLE
10775 BOATYARD ROAD, STOCKTON, AL 36579
ABC LICENSE

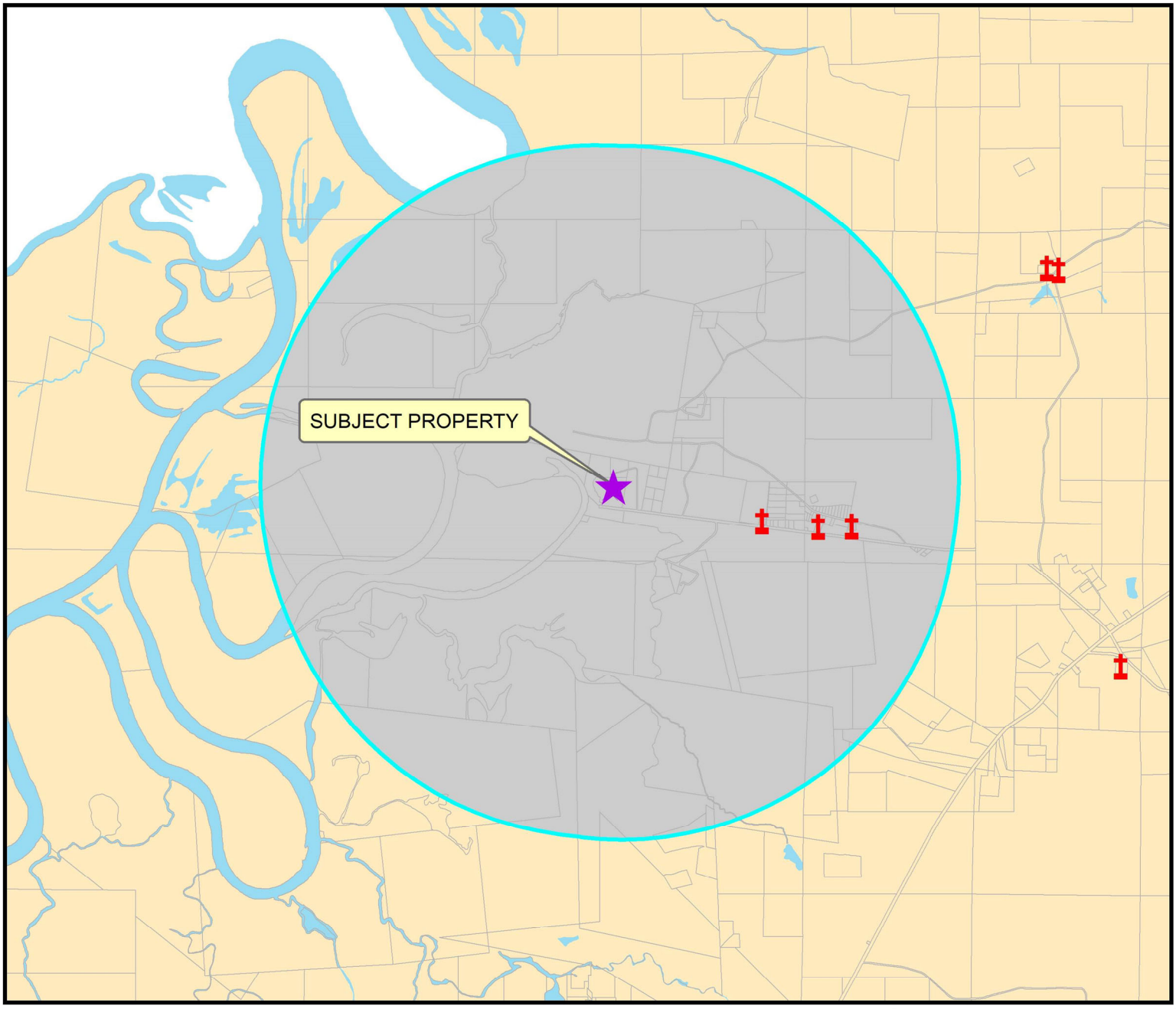
0 1,500 3,000 6,000 Feet

- Place of Worship
- School Locations
- Unincorporated Baldwin County
- 911 STREETS
- Water
- City Limits
- Parcels
- Rural District (RR)
- Rural Agricultural District (RA)
- Conservation Resource District (CR)
- Residential Single Family Estate District (RSF-E)
- Residential Single Family District (RSF-1)
- Residential Single Family District (RSF-2)
- Residential Single Family District (RSF-3)
- Residential Single Family District (RSF-4)
- Residential Two Family District (RTF-4)
- Residential Single Family District (RSF-6)
- Residential Two Family District (RTF-6)
- Residential Multiple Family District (RMF-6)
- Residential Manufactured Housing Park District (RMH)
- Marine Recreation District (MR)
- Outdoor Recreation District (OR)
- Tourist Resort District (TR)
- Professional Business District (B-1)
- Neighborhood Business District (B-2)
- General Business District (B-3)
- Major Commercial District (B-4)
- Light Industrial District (M-1)
- General Industrial District (M-2)

Locator Map



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BALDWIN COUNTY COMMISSION
PLANNING AND ZONING DEPARTMENT

LV-21005 BOATYARD BAIT AND TACKLE
10775 BOATYARD ROAD, STOCKTON, AL 36579
ABC LICENSE

Place of Worship
School Locations
Parcels
911 STREETS
2-Mile Buffer
Water

0 0.5 1 2 Miles

Locator Map



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September 14
BAIT SHOP
BEER & ICE
WORMS·MINNOWS·TACKLE·LIES!
ICE COLD
OPEN
WELCOME
WARNING
Security Cameras In Use
BUSINESS HOURS
ICE
Coca-Cola
ALCOHOL BEVERAGE
LICENSE APPLIED FOR
Case Number
LV-21005
For Information Contact
Baldwin County Commission
Administration Department
(251) 937-0264

GULF COAST MEDIA
A DIVISION OF OPC NEWS, LLC
PO BOX 1677 • SUMTER, SC 29150

FOLEY 251.943.2151
The Courier – The Islander
The Onlooker
The Baldwin Times

LEGAL REP -
251-345-6805

RECEIVED
OCT 07 2021
BY: BP

PROOF OF PUBLICATION
STATE OF ALABAMA • BALDWIN COUNTY

Before me, the undersigned authority in and for said County, in said State, personally appeared April M. Perry who, by me duly sworn, deposes and says that: she is the Legal Representative of the following newspaper listed below, a newspaper of GENERAL CIRCULATION, PUBLISHED and PRINTED in Baldwin County, Alabama, and that there was published in The Courier, The Islander, The Onlooker, & or The Baldwin Times in the issue/s of:

09/22/2021, 09/29/2021, 10/06/2021

a legal notice, a copy of which is hereto attached. The sum charged by the Newspaper for said publication does not exceed the lowest classified rate paid by commercial customers for an advertisement of similar size and frequency in the same newspaper(s) in which the public notice appeared.

There are no agreements between the Newspaper and the officer or attorney charged with the duty of placing the attached legal advertising notices whereby any advantage, gain or profit accrued to said officer or attorney.

X April M. Perry
April M. Perry, Legal Ad Representative

X Amber Kimbler
Amber Kimbler, Notary Public
Baldwin County, Alabama
My commission expires April 10, 2022

AMBER KIMBLER
My Commission Expires
April 10, 2022

Sworn and subscribed to on 10/06/2021.

BOATYARD BAIT & TACKLE - LEGAL

Acct#: 1002223

Ad#: 329081

LL: Boatyard Bait/Pd Visa App#125671048767255

Amount of Ad: $145.00

Legal File# LL: Boatyard Ba

LEGAL NOTICE

NOTICE OF PENDING APPLICATION FOR APPROVAL OF ISSUANCE OF ALCOHOLIC LICENSE

Notice is hereby given that Tawana Jean Brantley has requested that the Baldwin County Commission approve the issuance of a 050-Retail Beer (Off Premises Only) alcoholic beverage license(s) by the Alabama Alcoholic Beverage Control (ABC) Board and that the 19th day of October, 2021 at 8:30 o'clock AM has been set for the public hearing thereof at the 2nd Floor Chambers of the Baldwin County Fairhope Satellite Courthouse, as located at 1100 Fairhope Avenue, Fairhope, Alabama 36532.

The name and exact location of the business being Tawana Jean Brantley DBA Boatyard Bait and Tackle located at 10775 Boatyard Road, Stockton, Alabama 36579.

At the public hearing, any interested person may appear at said time and place to be heard either in support of or in opposition to the granting by the Baldwin County Commission of such approval.
September 22-29;
October 6, 2021

Baldwin County Commission

Agenda Action Form

File #: 22-0107, **Version:** 1 **Item #:** EA1

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Cian Harrison, Clerk/Treasurer
Dana Austin, Accounting Manager
Submitted by: Robin Benson, Accounts Payable Supervisor

ITEM TITLE
Payment of Bills

STAFF RECOMMENDATION
Pay bills totaling $3,997,369.48 (three million, nine hundred ninety-seven thousand, three hundred sixty-nine dollars and forty-eight cents) with the exception of those vendors Commissioners requested to be pulled, which are listed in the Baldwin County Accounts Payable Payments.

Of this amount, $343,135.37 (three hundred forty-three thousand, one hundred thirty-five dollars and thirty-seven cents) is payable to the Baldwin County Board of Education and $21,208.12 (twenty-one thousand, two hundred eight dollars and twelve cents) is payable to the Gulf Shores Board of Education for their portion of the County Sales and Use Tax.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: N/A

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: N/A

Action required (list contact persons/addresses if documents are to be mailed or emailed): N/A

Additional instructions/notes: N/A

A/P Vendors Exceeding $20,000
Commission Meeting: October 19, 2021

Vendor Name		Brief Description
Baldwin County Board of Education	297,921.79	Sales Tax
	45,213.58	Use Tax
	4,070.00	Resident's Meals; Sept 2021
Gulf Shores Board of Education	18,108.52	Sales Tax
	3,099.60	Use Tax
Regions Bank Corp Trust	69,562.50	2012 Warrant; Sept 2021
	136,890.62	2013 Warrant; Sept 2021
	36,563.34	2014 Warrant; Sept 2021
	219,208.34	2015 Warrant; Sept 2021
	210,470.83	2020 Warrant; Sept 2021
	91,949.05	2020B Warrant; Sept 2021
Motorola Solutions, Inc.	582,000.04	Motorola Solutions-Annual Renewal FY22
	(768.20)	Microphone; Sheriff's
Thompson Tractor	477,391.00	Sourcewell 032119 CAT D6 WHA; Solid Waste
	30,930.53	Repair and Maintenance
Double AA Construction Co., LLC	253,650.00	Contract Services
QCHC	145,333.33	Medical Services; Oct 2021
	8,000.00	Medical Services FY22; Oct 2021
Davison Oil Company, Inc.	152,838.02	Fuel
District Attorney's Office	81,645.00	DA Appropriations 1Q FY22
	882.19	Sales Tax; Act 23017-447
North Baldwin Infirmary	73,964.00	Medical; Sheriff's
Jade Consulting, LLC	32,330.00	Contract Services; Hwy
	18,600.00	Contract Services; Parks
E-J Builders	42,717.00	Repair and Maintenance Bldgs; Solid Waste
South Alabama Regional	39,171.91	Temporary Labor
Clean Strike, LLC	37,872.80	Grant, Jail;Sheriff's
Volkert, Inc.	35,941.99	Contract Services; Hwy
City of Daphne	32,024.00	Contract Services; MPO
Mobile Asphalt Co., LLC	30,669.34	Road Building Materials
Assessment Advisors, LLC	29,000.00	2021 Software License Renewal Fee
Creek Clean, LLC	26,800.00	Contract Services; Solid Waste
McGriff Tire Co., Inc.	26,469.52	Tires
Delta Computers Systems, Inc.	21,815.02	Computer Support Services
Vulcan Materials	20,875.12	Road Building Materials
TOTAL	3,333,210.78	

Baldwin County Commission
Accounts Payable Payments
October 19, 2021

	Vendor Summary	Totals
1	A & M PORTABLES INC	4,593.00
2	AARON MEDIA SERVICES	3,000.00
3	AARON THOMLEY	276.00
4	ADAMS AND REESE LLP	6,000.00
5	ALABAMA ASSN OF CIRCUIT JUDGES	1,250.00
6	ALABAMA AUTO SERVICE CENTERS INC	8,348.20
7	ALABAMA CHAPTER OF THE IAAO	500.00
8	ALABAMA COASTAL RADIOLOGY PC	670.03
9	ALABAMA DISTRICT JUDGES ASSN	500.00
10	ALABAMA PIPE & SUPPLY CO INC	18,619.60
11	ALABAMA SHERIFF'S ASSN	5,790.00
12	ANDERSON CRANE AND BRIDGE TECHNOLOGIES	14,900.00
13	ANDREW'S DIESEL & AUTOMOTIVE REPAIR	225.28
14	ASSESSMENT ADVISORS LLC	29,000.00
15	ASSN OF ALABAMA TAX ADMINISTRATOR	750.00
16	ASSN OF COUNTY COMMISSIONERS	17,923.50
17	AUTO ZONE	348.39
18	BABETTE DIXON DVM	714.00
19	BALDWIN CNTY BOARD OF EDUCATION	347,205.37
20	BALDWIN CNTY ECONOMIC DEVELOPMENT	3,030.32
21	BALDWIN CNTY LIBRARY COOPERATIVE INC	958.74
22	BALDWIN CNTY PROBATE COURT	250.00
23	BALDWIN CNTY SOLID WASTE	504.12
24	BALDWIN TRACTOR & EQUIPMENT CO	1,996.86
25	BALDWIN YOUTH SERVICES	2,271.91
26	BALL BALL MATTHEWS & NOVAK, P.A.	18,127.20
27	BAY AREA PRINTING & GRAPHIC SOLUTIONS	768.00
28	BAY IMAGES	132.50
29	BAY MINETTE ANIMAL CLINIC	12.00
30	BAY MINETTE BUILDING SUPPLY	60.39
31	BAY MINETTE POSTMASTER	165.00
32	BAY SIDE RUBBER & PRODUCTS	676.47
33	BAY WINDOWS	45.00
34	BB&T-CREATIVE PAYMENT SOLUTIONS	161.10
35	BEARD EQUIPMENT - MOBILE	1,414.87
36	BEARD EQUIPMENT - POWERPLAN	8,355.86
37	BEHAVIORAL HEALTH SYSTEMS INC	1,203.89
38	BETTY JEAN DRYDEN	20.72
39	BLACKBOX NETWORK SERVICES	19,808.17
40	BRENDA WALZ	107.04
41	BRINK'S INCORPORATED	194.36
42	BUILDERS HARDWARE & SUPPLY CO.	366.77
43	CAPITAL ONE	2,670.21
44	CASCADE ENGINEERING INC	2,679.00
45	CAVCO, INC.	379.21

Baldwin County Commission
Accounts Payable Payments
October 19, 2021

	Vendor Summary	Totals
46	CDG ENGINEERS AND ASSOCIATES	4,656.49
47	CDW - GOVERNMENT, INC	10,774.61
48	CENTRAL RESTAURANT PRODUCTS	30.31
49	CERTIFIED LABORATORIES DIVISION	2,978.70
50	CHARM-TEX INC	1,099.00
51	CHUCK STEVENS AUTO INC	1,733.83
52	CHUCK STEVENS CHEVROLET OF BAY MINETTE	582.16
53	CINTAS CORPORATION NO 2	3,855.58
54	CINTAS FIRST AID & SAFETY	183.92
55	CITY ELECTRIC SUPPLY - C.E.S.	214.90
56	CITY OF DAPHNE	32,024.00
57	CLEAN STRIKE, LLC.	37,872.80
58	CNTY REVENUE OFFICERS ASSN OF ALABAMA	160.00
59	COASTAL ALABAMA COMMUNITY COLLEGE	5,509.80
60	COASTAL BRT, LLC	3,575.00
61	COASTAL INDUSTRIAL SUPPLY	650.00
62	COBLENTZ EQUIPMENT & PARTS CO	4,393.16
63	COCA COLA BOTTLING CO CONSOLIDATED	110.00
64	COMPLETE DKI	1,644.00
65	CONVERGE ONE INC	9,365.50
66	COPY PRODUCTS COMPANY	1,303.99
67	CORPORATE BILLING	800.82
68	CORPORATE BILLING INC	6,340.08
69	CREEK CLEAN, LLC	26,800.00
70	CULLIGAN WATER SYSTEMS OF MOBILE	267.00
71	CYNTHIA LEGER	37.41
72	DADE PAPER & BAG CO	6,940.29
73	DANNY'S HYDRAULICS	438.20
74	DATATRUST TECHNOLOGIES AND CONSULTANTS	13,842.50
75	DAVID B PIMPERL	1,275.00
76	DAVISON OIL COMPANY INC	152,838.02
77	DEAN MOTT	53.24
78	DEANNA VICICH COX	2,100.00
79	DEBORAH HOMAN	60.00
80	DELTA COMPUTER SYSTEMS INC	21,815.02
81	DELTA FLOORING INC	11,865.00
82	DENISE GRAY	160.00
83	DENNISE WOLSTENHOLME, COURT REPORTER	1,200.00
84	DISTRICT ATTORNEY'S OFFICE	82,527.19
85	DOERING TIRE INC	68.19
86	DOUBLE AA CONSTRUCTION CO LLC	253,650.00
87	E-J BUILDERS	42,717.00
88	ELECTION SYSTEM & SOFTWARE INC	17,866.44
89	EMPIRE TRUCK SALES INC	370.38
90	EMPLOYMENT SCREENING SERVICES INC	530.00

Baldwin County Commission
Accounts Payable Payments
October 19, 2021

	Vendor Summary	Totals
91	EVANS & COMPANY	11,515.00
92	EXPRESS OIL CHANGE	498.76
93	EXPRESS OIL CHANGE -DAPHNE	56.94
94	FAIRFIELD CHAIR COMPANY	1,301.63
95	FEDEX	414.21
96	FERGUSON ENTERPRISES INC	6,798.56
97	FLEETPRIDE	4,860.08
98	FLORES & ASSOCIATES	1,174.30
99	GALL'S LLC	9,768.55
100	GEOCON ENGINEERING & MATERIAL TESTING IN	4,343.00
101	GILMORE SERVICES	39.52
102	GPS INSIGHT, LLC	124.75
103	GRAESTONE AGGREGATES, LLC	3,357.55
104	GRAYBAR ELECTRIC CO INC	71.73
105	GULF CITY BODY & TRAILER WORKS, INC	954.97
106	GULF COAST BUILDING SUPPLY & HARDWARE	248.96
107	GULF COAST COMMERCIAL MULTIPLE LISTING	135.00
108	GULF SHORES BOARD OF EDUCATION	21,208.12
109	GULF STATES DISTRIBUTORS	3,086.00
110	HEATHER ANN PLATO	229.82
111	HEAVY DUTY LIFT & EQUIPMENT INC	695.00
112	HI-LINE	1,374.19
113	HILL'S PET NUTRITION INC	846.06
114	HOLLAND'S PAINT & BODY	1,889.50
115	HOSEA O WEAVER & SON INC	8,518.06
116	HUNTER EQUIPMENT GULF COAST	374.00
117	HUNTER SECURITY INC	1,448.74
118	INDUSTRIAL BOILER & MECHANICAL COMPANY	3,535.43
119	INDUSTRIAL/ORGANIZATIONAL SOLUTIONS INC	211.00
120	INFIRMARY OCCUPATIONAL HEALTH PC	406.00
121	INTERNATIONAL ASSN OF EMERGENCY MGRS	195.00
122	INTERSTATE BILLING SERVICE INC	6,655.38
123	JADE CONSULTING LLC	50,930.00
124	JAMES P NIX JR	4,133.33
125	JANI KING OF MOBILE	783.91
126	JENNIFER WELCH	60.00
127	JOHNSON, JAMES B	7,758.77
128	JUBILEE ACE HOME CENTER	83.08
129	JUBILEE LOCK & KEY LLC	140.00
130	KAREN A JONES	60.00
131	KATRINA TAYLOR	28.56
132	KEET CONSULTING SERVICES LLC	9,550.00
133	KENDEL HENDERSON	199.92
134	KENTWOOD SPRING WATER	69.86
135	KENWORTH OF MOBILE INC	1,306.93

Baldwin County Commission
Accounts Payable Payments
October 19, 2021

	Vendor Summary	Totals
136	KEYPORT WAREHOUSING INC	360.00
137	KINGS III OF AMERICA INC	283.71
138	KNOX PEST CONTROL	495.00
139	L A SHOWERS & GLASS LLC	1,250.00
140	LABORATORY CORP OF AMERICA HOLDINGS	823.25
141	LIFESTAR ALTERNATIVE TRANSPOORT SVC, LLC	4,600.00
142	LISA A. HOBART, LLC	2,000.00
143	LORI WADDLE	20.22
144	LOWE'S - DAPHNE	2,013.85
145	LOWE'S - FOLEY	1,857.12
146	LOXLEY CWC GENERAL FUND	1,245.00
147	LYLE MACHINERY CO	2,212.35
148	MATTHEW BENDER	306.31
149	McGRIFF TIRE CO INC	26,469.52
150	MCPHERSON OIL CO INC/DBA FUELMAN	3,192.15
151	MED-TRANS CORPORATION	6,052.49
152	MICHAEL BAKER INTERNATIONAL, INC.	6,249.25
153	MINGLEDORFF'S INC	255.14
154	MOBILE ASPHALT CO LLC	30,669.34
155	MOBILE INFIRMARY ASSOCIATION	7,180.93
156	MOTOROLA SOLUTIONS INC	581,231.84
157	MWI ANIMAL HEALTH	5,765.06
158	NEEL-SCHAFFER INC	1,500.00
159	NEW DAIRY OPCO, LLC DBA BORDEN DAIRY	190.81
160	NORTH BALDWIN INFIRMARY	73,964.00
161	NORTH BALDWIN LITERACY COUNCIL	239.68
162	NOTARY PUBLIC UNDERWRITERS	1,048.00
163	OEC	495.91
164	ONETIME-REFUND	2,599.63
165	OPC NEWS, LLC	6,620.38
166	O'REILLY AUTO PARTS	2,457.55
167	OTIS ELEVATOR CO	3,420.00
168	PAMELA M PUGH	160.00
169	PAM'S EMBROIDERY & SEWING	343.00
170	PEACHES'N CLEAN	219.95
171	PEREGRINE SERVICES INC	4,171.85
172	PINNACLE NETWORX	1,925.00
173	POWER SYSTEMS OF MS	8,090.00
174	PRO-CHEM INC	1,517.94
175	PROVETLOGIC, LLC	1,380.00
176	QCHC INC	153,333.33
177	QUADIENT LEASING USA, INC	919.86
178	QUICK BUILDINGS MODULAR, LLC	585.00
179	QUICK CAPTION INC	350.00
180	RACINE'S FEED GARDEN & SUPPLY INC	1,079.00

Baldwin County Commission
Accounts Payable Payments
October 19, 2021

	Vendor Summary	Totals
181	RDA SERVICE COMPANY	4,208.06
182	REGIONS BANK CORP TRUST	764,644.68
183	REHM ANIMAL CLINIC AT TIMBER RUM	446.24
184	REPUBLIC SERVICES #986	1,209.00
185	ROBERTSDALE AUTO PARTS INC	3,990.14
186	ROBERTSDALE POSTMASTER	364.00
187	ROBERTSDALE POWER EQUIPMENT	29.74
188	ROBERTSON INSURANCE AGENCY INC	170.00
189	S & S SPRINKLER CO LLC	2,555.00
190	SAIN ASSOCIATES INC	2,347.63
191	SALLY MORGAN LUDKE	164.20
192	SAM'S CLUB DIRECT	125.00
193	SANDY SANSING FORD	452.25
194	SERVICEMASTER ACTION CLEANING	3,296.90
195	SHANNA BONNER	21.05
196	SHARPS MD OF ALABAMA	1,350.00
197	SHERWIN WILLIAMS	394.96
198	SITEONE LANDSCAPE SUPPLY HOLDING, LLC	1,061.11
199	SMITH INDUSTRIAL SERVICE	944.47
200	SOFTWARE HOUSE INT dba SHI	3,890.96
201	SOUTH ALABAMA REGIONAL	39,171.91
202	SOUTH BALDWIN LITERACY COUNCIL	239.68
203	SOUTHERN TIRE MART	7,331.69
204	SPARTIN SERVICES GRO	680.00
205	STAPLES CONTRACT & COMMERCIAL INC	16,973.93
206	STEELFUSION CLINICAL TOXICOLOGY LAB, LLC	700.00
207	STOCKTON EQUIPMENT CO	64.15
208	STONE CROSBY PC	11,854.22
209	SUBURBAN PROPANE	401.62
210	SWEAT TIRE - BAY MINETTE	2,452.03
211	SWEAT TIRE - ROBERTSDALE	45.00
212	TAYLOR CONCRETE & CONSTRUCTION LLC	2,200.00
213	TERMINIX SERVICE	357.00
214	THE GALLERY	225.00
215	THE PARTS HOUSE	9,250.60
216	THE PRINT SHOP	3,325.00
217	THOMPSON ENGINEERING	14,095.17
218	THOMPSON TRACTOR CO	508,321.53
219	TIMOTHY J WARRINER	4,227.00
220	TONY'S TOWING INC	1,526.25
221	TOWER EQUITIES LLC	2,000.00
222	TRACTOR & EQUIPMENT	4,197.27
223	TRANE-MOBILE PARTS CENTER	2,348.03
224	TRANSITIONAL CARE, LLC	150.00
225	TRANSUNION RISK & ALTERNATIVE	395.50

Baldwin County Commission
Accounts Payable Payments
October 19, 2021

	Vendor Summary	Totals
226	TRUCK EQUIPMENT SALES INC	6,128.15
227	TSA INC	2,256.00
228	TWO-WAY COMMUNICATIONS INC	18,734.67
229	TYLER TECHNOLOGIES, INC.	14,700.00
230	ULINE INC	5,917.01
231	UNIVERSITY OF NORTH ALABAMA	472.00
232	USA HEALTH PHYSICIAN	109.16
233	VALLEY VET SUPPLY	777.93
234	VICTORIA KEY	31.53
235	VOLKERT INC	35,941.99
236	VULCAN MATERIALS CO	20,875.12
237	VULCAN SIGNS	174.12
238	W H THOMAS OIL CO INC	2,991.50
239	W W GRAINGER	19,913.34
240	WALTER CURTIS CO LLC	92.00
241	WALTERS CONTROLS INC	608.00
242	WARREN D TAYLOR	85.30
243	WESCO - FOLEY	225.22
244	WESCO GAS & WELDING SUPPLY	14.08
245	WESCO RECEIVABLES CORP	3,202.15
246	WEST GROUP PAYMENT CENTER	1,415.78
247	WILEY SERVICES	17,932.00
248	WILLIAMS SCOTSMAN INC	1,964.53
249	WITTICHEN SUPPLY - DAPHNE	84.66
250	WITTICHEN SUPPLY - FOLEY	68.20
251	WM CORPORATE SERVICES, INC	1,307.70
252	WRIGHTS MOTOR PARTS INC	313.17
	Grand Total	**3,997,369.48**

INVOICE ENTRY PROOF LIST

CLERK: RBENSON BATCH: 1383 NEW INVOICES

VENDOR	REMIT NAME	DOCUMENT / INVOICE	PO	CHECK RUN	NET AMOUNT	EXCEEDS PO BY	PO BALANCE	CHK/WIRE
APPROVED PAID INVOICES								
191564	00000 JAMES P NIX JR	17280 OCT 2021		M101921A	4,133.33	.00	.00	9206046
CASH 999	2022/01	INV 10/10/2021	SEP-CHK: N	DISC: .00		10051600 51190	4,133.33	1099:
ACCT 10010	DEPT 555	DUE 10/19/2021	DESC:SUPERNUMERARY; OCT 2021					
4095	00000 JOHNSON, JAMES B	17281 OCT 2021		M101921A	7,758.77	.00	.00	9206047
CASH 999	2022/01	INV 10/10/2021	SEP-CHK: N	DISC: .00		10052100 51190	7,758.77	1099:
ACCT 10010	DEPT 555	DUE 10/19/2021	DESC:RETIREMENT; OCT 2021					
123781	00000 REGIONS BANK COR	17282 10012021; 2012		M101921A	69,562.50	.00	.00	9206048
CASH 999	2022/01	INV 10/10/2021	SEP-CHK: N	DISC: .00		304 11500	69,562.50	1099:
ACCT 10010	DEPT 555	DUE 10/19/2021	DESC:2012 WARRANTS; OCT 2021					
123781	00000 REGIONS BANK COR	17283 10012021; 2013		M101921A	136,890.62	.00	.00	9206049
CASH 999	2022/01	INV 10/10/2021	SEP-CHK: N	DISC: .00		304 11500	136,890.62	1099:
ACCT 10010	DEPT 555	DUE 10/19/2021	DESC:2013 WARRANTS; OCT 2021					
123781	00000 REGIONS BANK COR	17284 10012021; 2014		M101921A	36,563.34	.00	.00	9206050
CASH 999	2022/01	INV 10/10/2021	SEP-CHK: N	DISC: .00		304 11500	36,563.34	1099:
ACCT 10010	DEPT 555	DUE 10/19/2021	DESC:2014 WARRANTS; OCT 2021					
123781	00000 REGIONS BANK COR	17285 10012021; 2015		M101921A	219,208.34	.00	.00	9206051
CASH 999	2022/01	INV 10/10/2021	SEP-CHK: N	DISC: .00		304 11500	219,208.34	1099:
ACCT 10010	DEPT 555	DUE 10/19/2021	DESC:2015 WARRANTS; OCT 2021					
123781	00000 REGIONS BANK COR	17286 10012021; 2020		M101921A	210,470.83	.00	.00	9206052
CASH 999	2022/01	INV 10/10/2021	SEP-CHK: N	DISC: .00		304 11500	210,470.83	1099:
ACCT 10010	DEPT 555	DUE 10/19/2021	DESC:2020 WARRANT; OCT 2021					
123781	00000 REGIONS BANK COR	17287 10012021; 2020B		M101921A	91,949.05	.00	.00	9206053
CASH 999	2022/01	INV 10/10/2021	SEP-CHK: N	DISC: .00		304 11500	91,949.05	1099:
ACCT 10010	DEPT 555	DUE 10/19/2021	DESC:2020B WARRANT; OCT 2021					

INVOICE ENTRY PROOF LIST

CLERK: RBENSON BATCH: 1383 NEW INVOICES

VENDOR	REMIT	NAME	DOCUMENT INVOICE	PO	CHECK RUN	NET AMOUNT	EXCEEDS PO BY	PO BALANCE	CHK/WIRE
8		APPROVED PAID INVOICES		TOTAL		776,536.78			
8		INVOICE(S)		REPORT POST TOTAL		776,536.78			

Baldwin County, AL

INVOICE ENTRY PROOF LIST

CLERK: RBENSON BATCH: 1390 NEW INVOICES

VENDOR	REMIT NAME	DOCUMENT INVOICE	PO	CHECK RUN	NET AMOUNT	EXCEEDS PO BY	PO BALANCE	CHK/WIRE
APPROVED PAID INVOICES								
14116	00000 BALDWIN CNTY BOA	17319 93021		BE101921	4,070.00	.00	.00	9206054
CASH 999	2021/12	INV 09/30/2021	SEP-CHK: N	DISC: .00		10552610 52180	4,070.00	1099:
ACCT 10010	DEPT 555	DUE 10/19/2021	DESC:RESIDENT'S MEALS; SEPT 2021					
14116	00000 BALDWIN CNTY BOA	17320 10112021		BE101921	343,135.37	.00	.00	9206055
CASH 999	2021/12	INV 09/30/2021	SEP-CHK: N	DISC: .00		100 23100	297,921.79	1099:
ACCT 10010	DEPT 555	DUE 10/19/2021	DESC:SALES/USE TAX			100 23101	45,213.58	1099:
2 APPROVED PAID INVOICES			TOTAL		347,205.37			
2 INVOICE(S)			REPORT POST TOTAL		347,205.37			

Baldwin County, AL

INVOICE ENTRY PROOF LIST

CLERK: RBENSON BATCH: 1392 NEW INVOICES

VENDOR	REMIT NAME	DOCUMENT INVOICE	PO	CHECK RUN	NET AMOUNT	EXCEEDS PO BY	PO BALANCE	CHK/WIRE
APPROVED PAID INVOICES								
191392	00000 GULF SHORES BOAR	17321 10112021		GS101921	21,208.12	.00	.00	9206056
CASH 999	2021/12	INV 10/11/2021	SEP-CHK: N	DISC: .00		100 23110	18,108.52	1099:
ACCT 10010	DEPT 555	DUE 10/19/2021	DESC:SALES/USE TAX			100 23111	3,099.60	1099:
1 APPROVED PAID INVOICES				TOTAL	21,208.12			
1 INVOICE(S)				REPORT POST TOTAL	21,208.12			

Baldwin County, AL

AP CHECK RECONCILIATION REGISTER

FOR CASH ACCOUNT: 999 10010

FOR: Uncleared

CHECK #	CHECK DATE	TYPE	VENDOR	NAME	UNCLEARED	CLEARED	BATCH	CLEAR DATE
242780	10/19/2021	PRINTED	010448	A & M PORTABLES INC	4,593.00			
242781	10/19/2021	PRINTED	188659	AARON MEDIA SERVICES	3,000.00			
242782	10/19/2021	PRINTED	157294	ADAMS AND REESE LLP	6,000.00			
242783	10/19/2021	PRINTED	130948	ALABAMA ASSN OF CIRCUIT J	1,250.00			
242784	10/19/2021	PRINTED	010045	ALABAMA AUTO SERVICE CENT	8,348.20			
242785	10/19/2021	PRINTED	192814	ALABAMA CHAPTER OF THE IA	500.00			
242786	10/19/2021	PRINTED	181921	ALABAMA COASTAL RADIOLOGY	670.03			
242787	10/19/2021	PRINTED	153710	ALABAMA DISTRICT JUDGES A	500.00			
242788	10/19/2021	PRINTED	083660	ALABAMA PIPE & SUPPLY CO	18,619.60			
242789	10/19/2021	PRINTED	010039	ALABAMA SHERIFF'S ASSN	5,790.00			
242790	10/19/2021	PRINTED	001969	ANDERSON CRANE AND BRIDGE	14,900.00			
242791	10/19/2021	PRINTED	184603	ANDREW'S DIESEL & AUTOMOT	225.28			
242792	10/19/2021	PRINTED	181864	ASSESSMENT ADVISORS LLC	29,000.00			
242793	10/19/2021	PRINTED	085534	ASSN OF ALABAMA TAX ADMIN	750.00			
242794	10/19/2021	PRINTED	010044	ASSN OF COUNTY COMMISSION	225.00			
242795	10/19/2021	PRINTED	010044	ASSN OF COUNTY COMMISSION	187.50			
242796	10/19/2021	PRINTED	010044	ASSN OF COUNTY COMMISSION	17,511.00			
242797	10/19/2021	PRINTED	185252	AUTO ZONE - ROBERTSDALE	348.39			
242798	10/19/2021	PRINTED	190161	BABETTE DIXON DVM	714.00			
242799	10/19/2021	PRINTED	014553	BALDWIN CNTY ECONOMIC DEV	3,030.32			
242800	10/19/2021	PRINTED	014101	BALDWIN CNTY LIBRARY COOP	958.74			
242801	10/19/2021	PRINTED	148777	BALDWIN CNTY PROBATE COUR	25.00			
242802	10/19/2021	PRINTED	148777	BALDWIN CNTY PROBATE COUR	25.00			
242803	10/19/2021	PRINTED	148777	BALDWIN CNTY PROBATE COUR	25.00			
242804	10/19/2021	PRINTED	148777	BALDWIN CNTY PROBATE COUR	25.00			
242805	10/19/2021	PRINTED	148777	BALDWIN CNTY PROBATE COUR	25.00			
242806	10/19/2021	PRINTED	148777	BALDWIN CNTY PROBATE COUR	25.00			
242807	10/19/2021	PRINTED	148777	BALDWIN CNTY PROBATE COUR	25.00			
242808	10/19/2021	PRINTED	148777	BALDWIN CNTY PROBATE COUR	25.00			
242809	10/19/2021	PRINTED	148777	BALDWIN CNTY PROBATE COUR	25.00			
242810	10/19/2021	PRINTED	148777	BALDWIN CNTY PROBATE COUR	25.00			
242811	10/19/2021	PRINTED	105048	BALDWIN CNTY SOLID WASTE	504.12			
242812	10/19/2021	PRINTED	098597	BALDWIN TRACTOR & EQUIPME	1,996.86			
242813	10/19/2021	PRINTED	014132	BALDWIN YOUTH SERVICES	2,271.91			
242814	10/19/2021	PRINTED	192053	BALL BALL MATTHEWS & NOVA	18,127.20			
242815	10/19/2021	PRINTED	113603	BAY AREA PRINTING & GRAPH	768.00			
242816	10/19/2021	PRINTED	014444	BAY IMAGES	12.50			
242817	10/19/2021	PRINTED	191953	BAY IMAGES	120.00			
242818	10/19/2021	PRINTED	014018	BAY MINETTE ANIMAL CLINIC	12.00			
242819	10/19/2021	PRINTED	014029	BAY MINETTE BUILDING SUPP	60.39			
242820	10/19/2021	PRINTED	048004	BAY MINETTE POSTMASTER	165.00			
242821	10/19/2021	PRINTED	054050	BAY SIDE RUBBER & PRODUCT	676.47			
242822	10/19/2021	PRINTED	095468	BAY WINDOWS	45.00			
242823	10/19/2021	PRINTED	182097	BB&T-CREATIVE PAYMENT SOL	161.10			
242824	10/19/2021	PRINTED	185645	BEARD EQUIPMENT - MOBILE	1,414.87			
242825	10/19/2021	PRINTED	014075	BEARD EQUIPMENT - POWERPL	8,355.86			
242826	10/19/2021	PRINTED	079396	BEHAVIORAL HEALTH SYSTEMS	1,203.89			
242827	10/19/2021	PRINTED	119204	BLACKBOX NETWORK SERVICES	19,808.17			
242828	10/19/2021	PRINTED	189781	SHANNA BONNER	21.05			
242829	10/19/2021	PRINTED	001867	NEW DAIRY OPCO, LLC DBA B	190.81			
242830	10/19/2021	PRINTED	101717	BRINK'S INCORPORATED	194.36			
242831	10/19/2021	PRINTED	014011	BUILDERS HARDWARE & SUPPL	366.77			

AP CHECK RECONCILIATION REGISTER

FOR CASH ACCOUNT: 999 10010

FOR: Uncleared

CHECK #	CHECK DATE	TYPE	VENDOR	NAME	UNCLEARED	CLEARED	BATCH	CLEAR DATE
242832	10/19/2021	PRINTED	183314	CASCADE ENGINEERING INC	2,679.00			
242833	10/19/2021	PRINTED	001858	CAVCO, INC.	379.21			
242834	10/19/2021	PRINTED	107511	CDG ENGINEERS AND ASSOCIA	4,656.49			
242835	10/19/2021	PRINTED	102875	CDW - GOVERNMENT, INC	10,774.61			
242836	10/19/2021	PRINTED	078799	CENTRAL RESTAURANT PRODUC	30.31			
242837	10/19/2021	PRINTED	180354	CERTIFIED LABORATORIES DI	2,978.70			
242838	10/19/2021	PRINTED	116898	CHARM-TEX INC	1,099.00			
242839	10/19/2021	PRINTED	094060	CHUCK STEVENS AUTO INC	1,733.83			
242840	10/19/2021	PRINTED	180505	CHUCK STEVENS CHEVROLET O	582.16			
242841	10/19/2021	PRINTED	105435	CINTAS FIRST AID & SAFETY	4.88			
242842	10/19/2021	PRINTED	105435	CINTAS FIRST AID & SAFETY	4.88			
242843	10/19/2021	PRINTED	105435	CINTAS FIRST AID & SAFETY	56.65			
242844	10/19/2021	PRINTED	105435	CINTAS FIRST AID & SAFETY	13.65			
242845	10/19/2021	PRINTED	105435	CINTAS FIRST AID & SAFETY	90.21			
242846	10/19/2021	PRINTED	105435	CINTAS FIRST AID & SAFETY	13.65			
242847	10/19/2021	PRINTED	187695	CINTAS CORPORATION NO 2	3,855.58			
242848	10/19/2021	PRINTED	107086	CITY ELECTRIC SUPPLY - C.	214.90			
242849	10/19/2021	PRINTED	019267	CITY OF DAPHNE	32,024.00			
242850	10/19/2021	PRINTED	001972	CLEAN STRIKE, LLC.	37,872.80			
242851	10/19/2021	PRINTED	096962	CNTY REVENUE OFFICERS ASS	160.00			
242852	10/19/2021	PRINTED	025040	COASTAL ALABAMA COMMUNITY	5,509.80			
242853	10/19/2021	PRINTED	192695	COASTAL BRT, LLC	3,575.00			
242854	10/19/2021	PRINTED	182244	COASTAL INDUSTRIAL SUPPLY	650.00			
242855	10/19/2021	PRINTED	181306	COBLENTZ EQUIPMENT & PART	4,393.16			
242856	10/19/2021	PRINTED	097682	COCA COLA BOTTLING CO CON	110.00			
242857	10/19/2021	PRINTED	192410	COMPLETE DKI	1,644.00			
242858	10/19/2021	PRINTED	191106	CONVERGE ONE INC	9,365.50			
242859	10/19/2021	PRINTED	181821	COPY PRODUCTS COMPANY	1,303.99			
242860	10/19/2021	PRINTED	192569	CREEK CLEAN, LLC	26,800.00			
242861	10/19/2021	PRINTED	086609	CULLIGAN WATER SYSTEMS OF	267.00			
242862	10/19/2021	PRINTED	115852	DADE PAPER & BAG CO	6,940.29			
242863	10/19/2021	PRINTED	064821	DANNY'S HYDRAULICS	438.20			
242864	10/19/2021	PRINTED	180853	DATATRUST TECHNOLOGIES AN	13,842.50			
242865	10/19/2021	PRINTED	187807	DAVID B PIMPERL	1,275.00			
242866	10/19/2021	PRINTED	021179	DAVISON OIL COMPANY INC	152,838.02			
242867	10/19/2021	PRINTED	189811	DEAN MOTT	53.24			
242868	10/19/2021	PRINTED	180834	DEANNA VICICH COX	2,100.00			
242869	10/19/2021	PRINTED	021252	DELTA COMPUTER SYSTEMS IN	21,815.02			
242870	10/19/2021	PRINTED	113161	DELTA FLOORING INC	11,865.00			
242871	10/19/2021	PRINTED	191743	DENNISE WOLSTENHOLME, COU	1,200.00			
242872	10/19/2021	PRINTED	021127	DISTRICT ATTORNEY'S OFFIC	81,645.00			
242873	10/19/2021	PRINTED	021127	DISTRICT ATTORNEY'S OFFIC	882.19			
242874	10/19/2021	PRINTED	021030	DOERING TIRE INC	68.19			
242875	10/19/2021	PRINTED	152776	DOUBLE AA CONSTRUCTION CO	253,650.00			
242876	10/19/2021	PRINTED	182875	BETTY JEAN DRYDEN	20.72			
242877	10/19/2021	PRINTED	021100	E-J BUILDERS	42,717.00			
242878	10/19/2021	PRINTED	051005	ELECTION SYSTEM & SOFTWAR	17,866.44			
242879	10/19/2021	PRINTED	062623	EMPIRE TRUCK SALES INC	370.38			
242880	10/19/2021	PRINTED	104310	EMPLOYMENT SCREENING SERV	530.00			
242881	10/19/2021	PRINTED	043932	EVANS & COMPANY	11,515.00			
242882	10/19/2021	PRINTED	109073	EXPRESS OIL CHANGE -DAPHN	56.94			
242883	10/19/2021	PRINTED	126261	EXPRESS OIL CHANGE	361.50			

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CHECK #	CHECK DATE	TYPE	VENDOR	NAME	UNCLEARED	CLEARED	BATCH	CLEAR DATE
242884	10/19/2021	PRINTED	094932	EXPRESS OIL CHANGE	137.26			
242885	10/19/2021	PRINTED	189456	FAIRFIELD CHAIR COMPANY	1,301.63			
242886	10/19/2021	PRINTED	041646	FEDEX	273.99			
242887	10/19/2021	PRINTED	041646	FEDEX	42.75			
242888	10/19/2021	PRINTED	041646	FEDEX	5.49			
242889	10/19/2021	PRINTED	041646	FEDEX	91.98			
242890	10/19/2021	PRINTED	142551	FERGUSON ENTERPRISES INC	6,798.56			
242891	10/19/2021	PRINTED	095071	FLEETPRIDE	4,860.08			
242892	10/19/2021	PRINTED	188242	FLORES & ASSOCIATES	1,174.30			
242893	10/19/2021	PRINTED	027263	GALL'S LLC	9,768.55			
242894	10/19/2021	PRINTED	182991	GEOCON ENGINEERING & MATE	4,343.00			
242895	10/19/2021	PRINTED	185711	GILMORE SERVICES	39.52			
242896	10/19/2021	PRINTED	191704	GPS INSIGHT, LLC	124.75			
242897	10/19/2021	PRINTED	186138	GRAESTONE AGGREGATES, LLC	3,357.55			
242898	10/19/2021	PRINTED	102701	DENISE GRAY	160.00			
242899	10/19/2021	PRINTED	027012	GRAYBAR ELECTRIC CO INC -	71.73			
242900	10/19/2021	PRINTED	185973	GULF CITY BODY & TRAILER	954.97			
242901	10/19/2021	PRINTED	181424	GULF COAST BUILDING SUPPL	248.96			
242902	10/19/2021	PRINTED	187222	GULF COAST COMMERCIAL MUL	135.00			
242903	10/19/2021	PRINTED	027022	OPC NEWS, LLC	4,006.80			
242904	10/19/2021	PRINTED	027022	OPC NEWS, LLC	2,613.58			
242905	10/19/2021	PRINTED	027242	CORPORATE BILLING INC	6,340.08			
242906	10/19/2021	PRINTED	027181	GULF STATES DISTRIBUTORS	3,086.00			
242907	10/19/2021	PRINTED	156777	HEAVY DUTY LIFT & EQUIPME	695.00			
242908	10/19/2021	PRINTED	183951	KENDEL HENDERSON	199.92			
242909	10/19/2021	PRINTED	120432	HI-LINE	1,374.19			
242910	10/19/2021	PRINTED	188391	HILL'S PET NUTRITION INC	846.06			
242911	10/19/2021	PRINTED	185351	HOLLAND'S PAINT & BODY	1,889.50			
242912	10/19/2021	PRINTED	143327	DEBORAH HOMAN	60.00			
242913	10/19/2021	PRINTED	032045	HOSEA O WEAVER & SON INC	8,518.06			
242914	10/19/2021	PRINTED	175978	HUNTER EQUIPMENT GULF COA	374.00			
242915	10/19/2021	PRINTED	032419	HUNTER SECURITY INC	1,448.74			
242916	10/19/2021	PRINTED	187049	INDUSTRIAL BOILER & MECHA	3,535.43			
242917	10/19/2021	PRINTED	139782	INDUSTRIAL/ORGANIZATIONAL	211.00			
242918	10/19/2021	PRINTED	099320	INFIRMARY OCCUPATIONAL HE	406.00			
242919	10/19/2021	PRINTED	072821	INTERNATIONAL ASSN OF EME	195.00			
242920	10/19/2021	PRINTED	175986	JADE CONSULTING LLC	50,930.00			
242921	10/19/2021	PRINTED	087767	JANI KING OF MOBILE	783.91			
242922	10/19/2021	PRINTED	065154	KAREN A JONES	60.00			
242923	10/19/2021	PRINTED	036251	JUBILEE ACE HOME CENTER	83.08			
242924	10/19/2021	PRINTED	187277	JUBILEE LOCK & KEY LLC	140.00			
242925	10/19/2021	PRINTED	107220	KEET CONSULTING SERVICES	9,550.00			
242926	10/19/2021	PRINTED	039466	KENTWOOD SPRING WATER	8.00			
242927	10/19/2021	PRINTED	039466	KENTWOOD SPRING WATER	61.86			
242928	10/19/2021	PRINTED	095783	KENWORTH OF MOBILE INC	1,306.93			
242929	10/19/2021	PRINTED	095783	CORPORATE BILLING	800.82			
242930	10/19/2021	PRINTED	187957	VICTORIA KEY	31.53			
242931	10/19/2021	PRINTED	192791	KEYPORT WAREHOUSING INC	360.00			
242932	10/19/2021	PRINTED	160995	KINGS III OF AMERICA INC	283.71			
242933	10/19/2021	PRINTED	068321	KNOX PEST CONTROL	495.00			
242934	10/19/2021	PRINTED	181474	L A SHOWERS & GLASS LLC	1,250.00			
242935	10/19/2021	PRINTED	127597	LABORATORY CORP OF AMERIC	823.25			

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242936	10/19/2021	PRINTED	193240	CYNTHIA LEGER	37.41			
242937	10/19/2021	PRINTED	192692	LIFESTAR ALTERNATIVE TRAN	4,600.00			
242938	10/19/2021	PRINTED	001925	LISA A. HOBART, LLC	2,000.00			
242939	10/19/2021	PRINTED	136872	LOWE'S - DAPHNE	2,013.85			
242940	10/19/2021	PRINTED	087716	LOWE'S - FOLEY	1,857.12			
242941	10/19/2021	PRINTED	144784	LOXLEY CWC GENERAL FUND	1,245.00			
242942	10/19/2021	PRINTED	188753	SALLY MORGAN LUDKE	164.20			
242943	10/19/2021	PRINTED	172718	LYLE MACHINERY CO - MOBIL	2,212.35			
242944	10/19/2021	PRINTED	099514	MATTHEW BENDER	306.31			
242945	10/19/2021	PRINTED	149690	McGRIFF TIRE CO INC	26,469.52			
242946	10/19/2021	PRINTED	098634	MCPHERSON OIL CO INC/DBA	3,192.15			
242947	10/19/2021	PRINTED	192715	MED-TRANS CORPORATION	6,052.49			
242948	10/19/2021	PRINTED	001918	MICHAEL BAKER INTERNATION	6,249.25			
242949	10/19/2021	PRINTED	161138	MINGLEDORFF'S INC	255.14			
242950	10/19/2021	PRINTED	040589	MOBILE ASPHALT CO LLC	30,669.34			
242951	10/19/2021	PRINTED	089519	MOBILE INFIRMARY ASSOCIAT	7,180.93			
242952	10/19/2021	PRINTED	180154	MOTOROLA SOLUTIONS INC	581,231.84			
242953	10/19/2021	PRINTED	187817	MWI ANIMAL HEALTH	5,765.06			
242954	10/19/2021	PRINTED	165673	NEEL-SCHAFFER INC	1,500.00			
242955	10/19/2021	PRINTED	040026	NORTH BALDWIN INFIRMARY	73,964.00			
242956	10/19/2021	PRINTED	040739	NORTH BALDWIN LITERACY CO	239.68			
242957	10/19/2021	PRINTED	040569	NOTARY PUBLIC UNDERWRITER	119.50			
242958	10/19/2021	PRINTED	040569	NOTARY PUBLIC UNDERWRITER	119.50			
242959	10/19/2021	PRINTED	040569	NOTARY PUBLIC UNDERWRITER	119.50			
242960	10/19/2021	PRINTED	040569	NOTARY PUBLIC UNDERWRITER	119.50			
242961	10/19/2021	PRINTED	040569	NOTARY PUBLIC UNDERWRITER	76.00			
242962	10/19/2021	PRINTED	040569	NOTARY PUBLIC UNDERWRITER	104.50			
242963	10/19/2021	PRINTED	040569	NOTARY PUBLIC UNDERWRITER	104.50			
242964	10/19/2021	PRINTED	040569	NOTARY PUBLIC UNDERWRITER	104.50			
242965	10/19/2021	PRINTED	040569	NOTARY PUBLIC UNDERWRITER	104.50			
242966	10/19/2021	PRINTED	040569	NOTARY PUBLIC UNDERWRITER	76.00			
242967	10/19/2021	PRINTED	181574	O'REILLY AUTO PARTS	2,457.55			
242968	10/19/2021	PRINTED	043003	OEC	495.91			
242969	10/19/2021	PRINTED	999990	AARON & CHERYL HOBBS	42.00			
242970	10/19/2021	PRINTED	999990	ADAM BURROUGHS	30.00			
242971	10/19/2021	PRINTED	999990	ADAM S THOMAS	30.00			
242972	10/19/2021	PRINTED	999990	ALICE HAMMOND	30.00			
242973	10/19/2021	PRINTED	999990	ALL SOUTH SUBCONTRACTORS	7.92			
242974	10/19/2021	PRINTED	999990	BEN MURPHY COMPANY	22.32			
242975	10/19/2021	PRINTED	999990	BILLIE O ARGO	30.00			
242976	10/19/2021	PRINTED	999990	BRANDI & DOUGLAS BOHANNON	30.00			
242977	10/19/2021	PRINTED	999990	BRUCE CANTRELL	37.00			
242978	10/19/2021	PRINTED	999990	C V CHANDLER	30.00			
242979	10/19/2021	PRINTED	999990	CARL STRANGE	126.00			
242980	10/19/2021	PRINTED	999990	CASSITY BROTHERS CONSTRUC	16.64			
242981	10/19/2021	PRINTED	999990	CONSTANCE C BREITHOFF	50.00			
242982	10/19/2021	PRINTED	999990	DANA CARSON JR	30.00			
242983	10/19/2021	PRINTED	999990	DAVID DAVIDSON	168.00			
242984	10/19/2021	PRINTED	999990	DEBRA O'CONNOR	30.00			
242985	10/19/2021	PRINTED	999990	DIANA & MARK ANDERSON	120.00			
242986	10/19/2021	PRINTED	999990	EDDIE DOGGETTE	30.00			
242987	10/19/2021	PRINTED	999990	ERIK M NORRELL	21.00			

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242988	10/19/2021	PRINTED	999990	ESTATE OF BEVERLY LANDES	30.00			
242989	10/19/2021	PRINTED	999990	ESTATE OF CARROL JERNIGAN	16.00			
242990	10/19/2021	PRINTED	999990	FRANKLIN LITTLE	30.00			
242991	10/19/2021	PRINTED	999990	GOODRICH BANK OF AMERICA	342.90			
242992	10/19/2021	PRINTED	999990	HOFFRENS LANDSCAPE	7.30			
242993	10/19/2021	PRINTED	999990	HUUG W SMIT	30.00			
242994	10/19/2021	PRINTED	999990	J MIKE & SHARON MEGEHEE	42.00			
242995	10/19/2021	PRINTED	999990	JACK BROOME	32.00			
242996	10/19/2021	PRINTED	999990	JAMES & JANE WOOD	32.00			
242997	10/19/2021	PRINTED	999990	JAMES & PATRICIA VOGEL	16.00			
242998	10/19/2021	PRINTED	999990	JAMES W GOODWN	46.00			
242999	10/19/2021	PRINTED	999990	JANE WALKER	30.00			
243000	10/19/2021	PRINTED	999990	JEANETTE L WEBER	16.00			
243001	10/19/2021	PRINTED	999990	KAREN & LARRY GANEY	21.00			
243002	10/19/2021	PRINTED	999990	KAREN WARD	30.00			
243003	10/19/2021	PRINTED	999990	KEITH & KIMBERLY RICHARDS	16.00			
243004	10/19/2021	PRINTED	999990	KENNETH WHITE	30.00			
243005	10/19/2021	PRINTED	999990	MANDY BARBER	32.00			
243006	10/19/2021	PRINTED	999990	MARCIA & ERNEST JONES	16.00			
243007	10/19/2021	PRINTED	999990	MARGUARITE WILLIAMS	21.00			
243008	10/19/2021	PRINTED	999990	MARSHA MILLER	69.00			
243009	10/19/2021	PRINTED	999990	MARTHA RAINEY	16.00			
243010	10/19/2021	PRINTED	999990	MELVIN STOKES	30.00			
243011	10/19/2021	PRINTED	999990	MONTY REYNOLDS	30.00			
243012	10/19/2021	PRINTED	999990	NIDEC MOTOR CORPORATION	43.49			
243013	10/19/2021	PRINTED	999990	OTERO JUAN	42.00			
243014	10/19/2021	PRINTED	999990	PALFINGER USA, LLC	52.81			
243015	10/19/2021	PRINTED	999990	R&S PAVING & GRADING INC	19.80			
243016	10/19/2021	PRINTED	999990	REED & AMBER HAWKINS	21.00			
243017	10/19/2021	PRINTED	999990	REGINA VINO	21.00			
243018	10/19/2021	PRINTED	999990	RICHARD O MITCHELL	22.00			
243019	10/19/2021	PRINTED	999990	ROBERTA ODEN	30.00			
243020	10/19/2021	PRINTED	999990	ROGER FEDRO	16.00			
243021	10/19/2021	PRINTED	999990	RONALD JONES	16.00			
243022	10/19/2021	PRINTED	999990	SHANA M BASS	30.00			
243023	10/19/2021	PRINTED	999990	SHERRY STURMA	32.00			
243024	10/19/2021	PRINTED	999990	SONYA DOLAN	30.00			
243025	10/19/2021	PRINTED	999990	STRICKLAND CONSTRUCTION I	65.00			
243026	10/19/2021	PRINTED	999990	TERYN WILKS	30.00			
243027	10/19/2021	PRINTED	999990	THOMAS & MARYANN GIBSON	30.00			
243028	10/19/2021	PRINTED	999990	THOMAS N FUSSELL	30.00			
243029	10/19/2021	PRINTED	999990	TODD L BROWN	52.45			
243030	10/19/2021	PRINTED	999990	TROY POLLARD	30.00			
243031	10/19/2021	PRINTED	999990	WESLEY NELSON	32.00			
243032	10/19/2021	PRINTED	999990	WESTON THOMPSON	30.00			
243033	10/19/2021	PRINTED	999990	WILLIAM F ATKINS	16.00			
243034	10/19/2021	PRINTED	999990	WILLIAM MCDANAL	16.00			
243035	10/19/2021	PRINTED	999990	ZACHARY SMALLEY	30.00			
243036	10/19/2021	PRINTED	155037	OTIS ELEVATOR CO	3,420.00			
243037	10/19/2021	PRINTED	174713	PAM'S EMBROIDERY & SEWING	343.00			
243038	10/19/2021	PRINTED	074317	PEACHES'N CLEAN	219.95			
243039	10/19/2021	PRINTED	121216	PEREGRINE SERVICES INC	4,171.85			

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243040	10/19/2021	PRINTED	156363	PINNACLE NETWORX	1,925.00			
243041	10/19/2021	PRINTED	093809	HEATHER ANN PLATO	229.82			
243042	10/19/2021	PRINTED	185084	POWER SYSTEMS OF MS	8,090.00			
243043	10/19/2021	PRINTED	048258	PRO-CHEM INC	1,517.94			
243044	10/19/2021	PRINTED	187738	PROVETLOGIC, LLC	1,380.00			
243045	10/19/2021	PRINTED	182050	PAMELA M PUGH	160.00			
243046	10/19/2021	PRINTED	186326	QCHC INC	153,333.33			
243047	10/19/2021	PRINTED	191947	QUADIENT LEASING USA, INC	919.86			
243048	10/19/2021	PRINTED	192749	QUICK BUILDINGS MODULAR,	585.00			
243049	10/19/2021	PRINTED	180557	QUICK CAPTION INC	350.00			
243050	10/19/2021	PRINTED	097199	RACINE'S FEED GARDEN & SU	1,079.00			
243051	10/19/2021	PRINTED	081752	RDA SERVICE COMPANY	4,208.06			
243052	10/19/2021	PRINTED	108898	REHM ANIMAL CLINIC AT TIM	446.24			
243053	10/19/2021	PRINTED	183649	REPUBLIC SERVICES #986	1,209.00			
243054	10/19/2021	PRINTED	051009	ROBERTSDALE AUTO PARTS IN	3,990.14			
243055	10/19/2021	PRINTED	048182	ROBERTSDALE POSTMASTER	364.00			
243056	10/19/2021	PRINTED	051040	ROBERTSDALE POWER EQUIPME	29.74			
243057	10/19/2021	PRINTED	051029	ROBERTSON INSURANCE AGENC	170.00			
243058	10/19/2021	PRINTED	114420	INTERSTATE BILLING SERVIC	6,655.38			
243059	10/19/2021	PRINTED	148224	S & S SPRINKLER CO LLC	2,555.00			
243060	10/19/2021	PRINTED	183761	SAIN ASSOCIATES INC	2,347.63			
243061	10/19/2021	PRINTED	128354	SAM'S CLUB DIRECT	125.00			
243062	10/19/2021	PRINTED	181284	SANDY SANSING FORD	452.25			
243063	10/19/2021	PRINTED	056733	SERVICEMASTER ACTION CLEA	3,296.90			
243064	10/19/2021	PRINTED	192751	SHARPS MD OF ALABAMA	1,350.00			
243065	10/19/2021	PRINTED	136207	SHERWIN WILLIAMS - SPANIS	394.96			
243066	10/19/2021	PRINTED	185002	SITEONE LANDSCAPE SUPPLY	1,061.11			
243067	10/19/2021	PRINTED	054622	SMITH INDUSTRIAL SERVICE	944.47			
243068	10/19/2021	PRINTED	123300	SOFTWARE HOUSE INT dba SH	3,890.96			
243069	10/19/2021	PRINTED	054037	SOUTH ALABAMA REGIONAL	39,171.91			
243070	10/19/2021	PRINTED	054683	SOUTH BALDWIN LITERACY CO	239.68			
243071	10/19/2021	PRINTED	190650	SOUTHERN TIRE MART	7,331.69			
243072	10/19/2021	PRINTED	001912	SPARTIN SERVICES GRO	680.00			
243073	10/19/2021	PRINTED	185594	STAPLES CONTRACT & COMMER	16,973.93			
243074	10/19/2021	PRINTED	192752	STEELFUSION CLINICAL TOXI	700.00			
243075	10/19/2021	PRINTED	147125	STOCKTON EQUIPMENT CO	64.15			
243076	10/19/2021	PRINTED	065091	STONE CROSBY PC	11,854.22			
243077	10/19/2021	PRINTED	181899	SUBURBAN PROPANE	401.62			
243078	10/19/2021	PRINTED	162616	SWEAT TIRE - BAY MINETTE	2,452.03			
243079	10/19/2021	PRINTED	054042	SWEAT TIRE - ROBERTSDALE	45.00			
243080	10/19/2021	PRINTED	186545	TAYLOR CONCRETE & CONSTRU	2,200.00			
243081	10/19/2021	PRINTED	187812	KATRINA TAYLOR	28.56			
243082	10/19/2021	PRINTED	057002	TERMINIX SERVICE	357.00			
243083	10/19/2021	PRINTED	057053	THE GALLERY	225.00			
243084	10/19/2021	PRINTED	191271	THE PARTS HOUSE	9,250.60			
243085	10/19/2021	PRINTED	184294	THE PRINT SHOP	3,325.00			
243086	10/19/2021	PRINTED	189294	AARON THOMLEY	276.00			
243087	10/19/2021	PRINTED	123908	THOMPSON ENGINEERING	14,095.17			
243088	10/19/2021	PRINTED	057071	THOMPSON TRACTOR CO	508,321.53			
243089	10/19/2021	PRINTED	142501	TIMOTHY J WARRINER	4,227.00			
243090	10/19/2021	PRINTED	057327	TONY'S TOWING INC	1,526.25			
243091	10/19/2021	PRINTED	188839	TOWER EQUITIES LLC	2,000.00			

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243092	10/19/2021	PRINTED	057038	TRACTOR & EQUIPMENT - MOB	4,197.27			
243093	10/19/2021	PRINTED	158123	TRANE-MOBILE PARTS CENTER	2,348.03			
243094	10/19/2021	PRINTED	001981	TRANSITIONAL CARE, LLC	150.00			
243095	10/19/2021	PRINTED	183743	TRANSUNION RISK & ALTERNA	395.50			
243096	10/19/2021	PRINTED	057039	TRUCK EQUIPMENT SALES INC	6,128.15			
243097	10/19/2021	PRINTED	166975	TSA INC	2,256.00			
243098	10/19/2021	PRINTED	057304	TWO-WAY COMMUNICATIONS IN	18,734.67			
243099	10/19/2021	PRINTED	190884	TYLER TECHNOLOGIES, INC.	14,700.00			
243100	10/19/2021	PRINTED	112416	ULINE INC	5,917.01			
243101	10/19/2021	PRINTED	067555	UNIVERSITY OF NORTH ALABA	472.00			
243102	10/19/2021	PRINTED	001845	USA HEALTH PHYSICIAN	109.16			
243103	10/19/2021	PRINTED	191952	VALLEY VET SUPPLY	777.93			
243104	10/19/2021	PRINTED	066295	VOLKERT INC	35,941.99			
243105	10/19/2021	PRINTED	065201	VULCAN MATERIALS CO	20,875.12			
243106	10/19/2021	PRINTED	065007	VULCAN SIGNS	174.12			
243107	10/19/2021	PRINTED	169455	W H THOMAS OIL CO INC	2,991.50			
243108	10/19/2021	PRINTED	084216	W W GRAINGER	19,913.34			
243109	10/19/2021	PRINTED	192796	LORI WADDLE	20.22			
243110	10/19/2021	PRINTED	085307	CAPITAL ONE	2,670.21			
243111	10/19/2021	PRINTED	151503	WALTER CURTIS CO LLC	92.00			
243112	10/19/2021	PRINTED	066396	WALTERS CONTROLS INC	608.00			
243113	10/19/2021	PRINTED	118519	BRENDA WALZ	107.04			
243114	10/19/2021	PRINTED	180948	WARREN D TAYLOR	85.30			
243115	10/19/2021	PRINTED	184840	JENNIFER WELCH	60.00			
243116	10/19/2021	PRINTED	181290	WESCO - FOLEY	225.22			
243117	10/19/2021	PRINTED	066024	WESCO RECEIVABLES CORP	3,202.15			
243118	10/19/2021	PRINTED	180377	WESCO GAS & WELDING SUPPL	14.08			
243119	10/19/2021	PRINTED	066029	WEST GROUP PAYMENT CENTER	1,004.07			
243120	10/19/2021	PRINTED	066029	WEST GROUP PAYMENT CENTER	170.17			
243121	10/19/2021	PRINTED	066029	WEST GROUP PAYMENT CENTER	241.54			
243122	10/19/2021	PRINTED	180091	WILEY SERVICES	17,932.00			
243123	10/19/2021	PRINTED	080670	WILLIAMS SCOTSMAN INC	1,964.53			
243124	10/19/2021	PRINTED	184892	WITTICHEN SUPPLY - DAPHNE	84.66			
243125	10/19/2021	PRINTED	113371	WITTICHEN SUPPLY - FOLEY	68.20			
243126	10/19/2021	PRINTED	066357	WM CORPORATE SERVICES, IN	1,307.70			
243127	10/19/2021	PRINTED	066006	WRIGHTS MOTOR PARTS INC	313.17			
		348 CHECKS		CASH ACCOUNT TOTAL	2,852,419.21			.00

Baldwin County Commission

Agenda Action Form

File #: 22-0106, **Version:** 1 **Item #:** EA2

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: New
From: Cian Harrison, Clerk/Treasurer
Dana Austin, Accounting Manager
Submitted by: Robin Benson, Accounts Payable Supervisor

ITEM TITLE
Notification of Interim Payments Approved by Clerk/Treasurer as Allowed Under Policy 8.1

STAFF RECOMMENDATION
Make the attached interim payments made by the Clerk/Treasurer totaling $4,528,611.32 (four million, five hundred twenty-eight thousand, six hundred eleven dollars and thirty-two cents) a part of the minutes.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: N/A

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: N/A

Action required (list contact persons/addresses if documents are to be mailed or emailed): N/A

Additional instructions/notes: N/A

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Baldwin County Commission
Interim Payments
October 19, 2021

Vendor Summary	Totals	Brief Description
ALABAMA CHILD SUPPORT PAYMENT CENTER	2,421.20	Payroll
ASA B HOLLOWELL	2,204.09	Land Redemptions
AT&T	1,028.02	Telephone
AT&T MOBILITY	453.21	Telephone
BACIK GROUP, LLC	12,875.00	Contract Services
BALDWIN CNTY COMMISSION - BOOTS	55.00	Payroll
BALDWIN CNTY COMMISSION - DENTAL 790	12,775.50	Payroll
BALDWIN CNTY COMMISSION - HEALTH	281,033.50	Payroll
BALDWIN CNTY SHERIFF'S OFFICE	1,082,161.20	Payroll
BALDWIN COUNTY SEWER SERVICE LLC	1,507.29	Utilities
BALDWIN EMC	6,064.21	Utilities
BAY MINETTE LAND CO	1,000.00	Lease: Sept 2021
BAY MINETTE POSTMASTER	265.00	Permit 7; BOR
BLUE CROSS & BLUE SHIELD OF AL	441,581.37	Payroll
BLUE LION MANAGEMENT LLC	746.84	Land Redemptions
BRIAN JOSEPH PENN	382.24	Land Redemptions
CANOPY INVESTMENT COMPANY LLC	201.34	Land Redemptions
CBO PROPERTIES, LLC	125.64	Land Redemptions
CHARLES FRANK HARRIS III	177.47	Land Redemptions
CITY OF FAIRHOPE-UTILITIES	12,979.18	Utilities
CITY OF ROBERTSDALE	33,767.00	Utilities
COMMUNITY ACTION AGENCY	15,424.00	October 2021 Baldwin Together
CRAFT TRAINING FUND	1,844.00	CICT Fees; Sept 2021
DANIEL O'BRIEN	282.92	Payroll
DEPARTMENT OF CHILDREN AND FAMILY SVC	193.84	Payroll
EKKLESIA HOLDING COMPANY, LLC	2,248.97	Land Redemptions
FINLEY PROPERTIES, LLC	2,088.67	Land Redemptions
FITZGERALD CONSTRUCTION, LLC	54,391.30	Contract Services
FLEXIBLE BENEFITS	9,114.46	Payroll
FRONTIER COMMUNICATIONS OF THE SOUTH INC	14.70	Telephone
GUARDIAN TAX AL LLC	674.59	Land Redemptions
HOUSING RENTALS	443,767.81	Housing Rentals
IRS-TAX PAYMENT	315,063.91	Payroll
JODY L WISE CIRCUIT CLERK	50.00	Payroll
KEITH PANALE TRIMEW	792.58	Land Redemptions
LORD & SON CONSTRUCTION, INC.	127,285.75	Contract Services
MCELHENNEY CONSTRUCTION CO LLC	658,457.00	Contract Services
MERCURY FUNDING, LLC	1,607.93	Land Redemptions
MISTY & JASON PRESNALL	55.14	Land Redemptions
MOTOROLA SOLUTIONS CREDIT CO LLC	210,887.34	FY20 LEASE
NATIONWIDE RETIREMENT SOLUTIONS	12,555.00	Payroll
NORTH BALDWIN INFIRMARY	19,252.27	Resolution 2017-089 Indigent Care
NORTH BALDWIN UTILITIES	4,165.96	Utilities
OLDE TOWNE, LLC	1,235.52	Land Redemptions
PERDIDO BAY WATER, SEWER, FIRE	18.72	Utilities
POPE CONTRACTING INC	21,844.66	Contract Services
PRESCOTT, GLENDA TYLER	1,963.88	Land Redemptions
RETIREMENT SYSTEMS OF AL	153,302.03	Payroll
RIVIERA UTILITIES	13,747.50	Utilities
RYNO	868.10	Monthly Pay Flow Fee
SOUTH BALDWIN REGIONAL MEDICAL CENTER	19,252.28	Resolution 2017-089 Indigent Care
SOUTHERN LINC WIRELESS	1,098.89	Telephone
THOMAS HOSPITAL	19,252.28	Resolution 2017-089 Indigent Care
TRUSTMARK NATIONAL BANK	36,598.76	2021-A LOC Qtrly Interest
UNITI FIBER	7,744.28	Telephone
VERIZON WIRELESS	29,379.98	Telephone
WAYNE L AND SHON TERES ROSS	1,752.00	ROW Tract 3; Hwy
WHARTON-SMITH, INC.	446,530.00	Contract Services
Grand Total	**4,528,611.32**	

Baldwin County, AL

PRELIMINARY ACCOUNTS PAYABLE WARRANT REPORT

Detail Invoice List

CHECK RUN: I092721A 09/27/2021
DUE DATE: 09/27/2021

CASH ACCOUNT: 999 10010 Treasury Pooled Cash

VENDOR		REMIT	PO	TYPE	DUE DATE	INVOICE	AMOUNT	DOCUMENT	VOUCHER	CHECK
1941	TRUSTMARK NATIONAL BA	0000		INV	09/24/2021	9302021		16222		
	ACCOUNT DETAIL					**LINE AMOUNT**				
	1 30410304 56220		Debt Svc	DebtsvcInt		36,598.76				
							36,598.76			
						CHECK TOTAL	**36,598.76**			

1 INVOICES WARRANT TOTAL 36,598.76 36,598.76

Baldwin County, AL

AP CHECK RECONCILIATION REGISTER

FOR CASH ACCOUNT: 999 10010 FOR: Uncleared

CHECK #	CHECK DATE	TYPE	VENDOR	NAME	UNCLEARED	CLEARED	BATCH	CLEAR DATE
9206027	09/28/2021	WIRE	014125	BLUE CROSS & BLUE SHIELD	-36,839.53			
9206028	09/28/2021	WIRE	014125	BLUE CROSS & BLUE SHIELD	111,780.07			
			2 CHECKS	CASH ACCOUNT TOTAL	74,940.54	.00		

INVOICE ENTRY PROOF LIST

CLERK: RBENSON BATCH: 1261 NEW INVOICES

VENDOR	REMIT	NAME	DOCUMENT INVOICE	PO	CHECK RUN	NET AMOUNT	EXCEEDS PO BY	PO BALANCE	CHK/WIRE
APPROVED PAID INVOICES									
182668	00000	RYNO CONSULTING	16275 8495		M092821A	868.10	.00	.00	9206029
CASH 511	2021/12	INV 09/28/2021	SEP-CHK: N	DISC: .00		51154801 51500		868.10	1099:
ACCT 11000	DEPT 555	DUE 09/28/2021	DESC:MONTHLY PAY FLOW FEE						
1 APPROVED PAID INVOICES				TOTAL		868.10			
1 INVOICE(S)				REPORT POST TOTAL		868.10			

Baldwin County, AL

AP CHECK RECONCILIATION REGISTER

FOR CASH ACCOUNT: 999 10010 FOR: Uncleared

CHECK #	CHECK DATE	TYPE	VENDOR	NAME	UNCLEARED	CLEARED	BATCH	CLEAR DATE
9206030	09/28/2021	WIRE	014125	BLUE CROSS & BLUE SHIELD	42,590.13			
9206031	09/28/2021	WIRE	014125	BLUE CROSS & BLUE SHIELD	-19,922.38			
			2 CHECKS	CASH ACCOUNT TOTAL	22,667.75	.00		

Baldwin County, AL

AP CHECK RECONCILIATION REGISTER

FOR CASH ACCOUNT: 999 10010

FOR: Uncleared

CHECK #	CHECK DATE	TYPE	VENDOR	NAME	UNCLEARED	CLEARED	BATCH	CLEAR DATE
242653	09/29/2021	PRINTED	999996	BRYAN LUCAS	12,000.00			
242654	09/29/2021	PRINTED	999996	CHENEICIA KIMBLE	5,450.00			
242655	09/29/2021	PRINTED	999996	CYNTHIA HUDSON	5,250.00			
242656	09/29/2021	PRINTED	999996	LIINAMARIA LESLIE	4,450.00			
242657	09/29/2021	PRINTED	999995	DRF APARTMENTS LLC	4,727.78			
242658	09/29/2021	PRINTED	999995	GARY R. ICKES	2,289.45			
242659	09/29/2021	PRINTED	999995	GLENDALE APARTMENTS, LTD	5,297.00			
242660	09/29/2021	PRINTED	999995	HENRY L. PHILLIPS	14,000.00			
242661	09/29/2021	PRINTED	999995	JOSEPH M. THOMPSON, JR	5,100.00			
242662	09/29/2021	PRINTED	999995	KERRY M. WALLACE	2,400.00			
242663	09/29/2021	PRINTED	999995	MARK BRENIZER	16,434.00			
242664	09/29/2021	PRINTED	999995	ROBERT COOK	3,040.00			
242665	09/29/2021	PRINTED	999995	SLOCUM PROPERTIES	7,800.00			
242666	09/29/2021	PRINTED	999995	STEVEN GOMEZ	4,850.00			
242667	09/29/2021	PRINTED	999995	VON ELECTRIC, LLC	4,650.00			
	15 CHECKS			CASH ACCOUNT TOTAL	97,738.23	.00		

Baldwin County, AL

AP CHECK RECONCILIATION REGISTER

FOR CASH ACCOUNT: 999 10010

FOR: Uncleared

CHECK #	CHECK DATE	TYPE	VENDOR	NAME	UNCLEARED	CLEARED	BATCH	CLEAR DATE
242668	09/29/2021	PRINTED	014005	BALDWIN EMC	317.00			
242669	09/29/2021	PRINTED	184444	BLUE LION MANAGEMENT LLC	746.84			
242670	09/29/2021	PRINTED	190500	BRIAN JOSEPH PENN	382.24			
242671	09/29/2021	PRINTED	187158	CANOPY INVESTMENT COMPANY	201.34			
242672	09/29/2021	PRINTED	192640	CHARLES FRANK HARRIS III	177.47			
242673	09/29/2021	PRINTED	019021	CITY OF FAIRHOPE-UTILITIE	12,979.18			
242674	09/29/2021	PRINTED	192571	COMMUNITY ACTION AGENCY	15,424.00			
242675	09/29/2021	PRINTED	181969	EKKLESIA HOLDING COMPANY,	2,248.97			
242676	09/29/2021	PRINTED	054257	FRONTIER COMMUNICATIONS O	14.70			
242677	09/29/2021	PRINTED	186426	GUARDIAN TAX AL LLC	674.59			
242678	09/29/2021	PRINTED	165236	MISTY & JASON PRESNALL	55.14			
242679	09/29/2021	PRINTED	040026	NORTH BALDWIN INFIRMARY	19,252.27			
242680	09/29/2021	PRINTED	019003	NORTH BALDWIN UTILITIES	4,165.96			
242681	09/29/2021	PRINTED	192299	OLDE TOWNE, LLC	1,235.52			
242682	09/29/2021	PRINTED	048268	POPE CONTRACTING INC	21,844.66			
242683	09/29/2021	PRINTED	051003	RIVIERA UTILITIES	9,513.78			
242684	09/29/2021	PRINTED	098394	SOUTH BALDWIN REGIONAL ME	19,252.28			
242685	09/29/2021	PRINTED	062367	SOUTHERN LINC WIRELESS	348.68			
242686	09/29/2021	PRINTED	057316	THOMAS HOSPITAL	19,252.28			
	19 CHECKS			CASH ACCOUNT TOTAL	128,086.90	.00		

Baldwin County, AL

AP CHECK RECONCILIATION REGISTER

FOR CASH ACCOUNT: 999 10010

FOR: Uncleared

CHECK #	CHECK DATE	TYPE	VENDOR NAME	UNCLEARED	CLEARED	BATCH	CLEAR DATE
242687	09/29/2021	PRINTED	999995 DAYS INN & SUITES-FOLEY	2,973.69			
		1 CHECKS	CASH ACCOUNT TOTAL	2,973.69	.00		

Baldwin County, AL

AP CHECK RECONCILIATION REGISTER

FOR CASH ACCOUNT: 999 10010 FOR: Uncleared

CHECK #	CHECK DATE	TYPE	VENDOR	NAME	UNCLEARED	CLEARED	BATCH	CLEAR DATE
9209032	09/29/2021	WIRE	014125	BLUE CROSS & BLUE SHIELD	36,839.53			
		1 CHECKS		CASH ACCOUNT TOTAL	36,839.53	.00		

INVOICE ENTRY PROOF LIST

CLERK: RBENSON BATCH: 1276 NEW INVOICES

VENDOR	REMIT NAME	DOCUMENT INVOICE	PO	CHECK RUN	NET AMOUNT	EXCEEDS PO BY	PO BALANCE	CHK/WIRE
APPROVED PAID INVOICES								
10	00000 BALDWIN CNTY SHE	16357 9302021		M093021A	872,827.46	.00	.00	9206036
CASH 999	2021/12	INV 09/30/2021	SEP-CHK: N	DISC: .00		10052100 52910	297,572.81	1099:
ACCT 10010	DEPT 555	DUE 09/30/2021	DESC:SHERIFF'S PAYROLL 10/01/21			10052200 52910	151,715.54	1099:
						708 22797	11,263.48	1099:
						10052100 52910	278,429.76	1099:
						10052200 52910	121,947.33	1099:
						708 22797	11,898.54	1099:
1 APPROVED PAID INVOICES			TOTAL		872,827.46			
1 INVOICE(S)			REPORT POST TOTAL		872,827.46			

AP CHECK RECONCILIATION REGISTER

FOR CASH ACCOUNT: 999 10010 FOR: Uncleared

CHECK #	CHECK DATE	TYPE	VENDOR	NAME	UNCLEARED	CLEARED	BATCH	CLEAR DATE
242688	10/01/2021	PRINTED	094828	ALABAMA CHILD SUPPORT PAY	2,421.20			
242689	10/01/2021	PRINTED	180373	BALDWIN CNTY COMMISSION -	12,775.50			
242690	10/01/2021	PRINTED	186456	BALDWIN CNTY COMMISSION -	281,033.50			
242691	10/01/2021	PRINTED	188062	BALDWIN CNTY COMMISSION -	55.00			
242692	10/01/2021	PRINTED	184047	DANIEL O'BRIEN	282.92			
242693	10/01/2021	PRINTED	189015	DEPARTMENT OF CHILDREN AN	193.84			
242694	10/01/2021	PRINTED	000717	FLEXIBLE BENEFITS	9,114.46			
242695	10/01/2021	PRINTED	112221	JODY L WISE CIRCUIT CLERK	50.00			
242696	10/01/2021	PRINTED	040627	NATIONWIDE RETIREMENT SOL	12,555.00			
		9 CHECKS		CASH ACCOUNT TOTAL	318,481.42	.00		

Baldwin County, AL

AP CHECK RECONCILIATION REGISTER

FOR CASH ACCOUNT: 999 10010 FOR: Uncleared

CHECK #	CHECK DATE	TYPE	VENDOR	NAME	UNCLEARED	CLEARED	BATCH	CLEAR DATE
9206033	10/01/2021	WIRE	051059	RETIREMENT SYSTEMS OF AL	153,302.03			
		1 CHECKS		CASH ACCOUNT TOTAL	153,302.03	.00		

Baldwin County, AL

AP CHECK RECONCILIATION REGISTER

FOR CASH ACCOUNT: 999 10010

FOR: Uncleared

CHECK #	CHECK DATE	TYPE	VENDOR	NAME	UNCLEARED	CLEARED	BATCH	CLEAR DATE
9206034	10/01/2021	WIRE	054188	IRS-TAX PAYMENT	236,535.70			
		1 CHECKS		CASH ACCOUNT TOTAL	236,535.70	.00		

Baldwin County, AL

PRELIMINARY ACCOUNTS PAYABLE WARRANT REPORT

Detail Invoice List

CHECK RUN: I100421A 10/04/2021
DUE DATE: 10/04/2021

CASH ACCOUNT: 999 10010 Treasury Pooled Cash

VENDOR		REMIT	PO	TYPE	DUE DATE	INVOICE	AMOUNT	DOCUMENT	VOUCHER	CHECK
187044	MOTOROLA SOLUTIONS CR	0000		INV	10/04/2021	30413; 2020 LEASE		16514		
	ACCOUNT DETAIL					**LINE AMOUNT**				
	1 30410304 56211		Debt Svc	LsePurchPr		184,345.43				
	2 30410304 56221		Debt Svc	LsePurcPr		26,541.91				
							210,887.34			
						CHECK TOTAL	**210,887.34**			

1 INVOICES **WARRANT TOTAL** **210,887.34** **210,887.34**

Baldwin County, AL

AP CHECK RECONCILIATION REGISTER

FOR CASH ACCOUNT: 999 10010 FOR: Uncleared

CHECK #	CHECK DATE	TYPE	VENDOR	NAME	UNCLEARED	CLEARED	BATCH	CLEAR DATE
9206037	10/05/2021	WIRE	014125	BLUE CROSS & BLUE SHIELD	73,923.94			
		1 CHECKS		CASH ACCOUNT TOTAL	73,923.94	.00		

INVOICE ENTRY PROOF LIST

CLERK: Lisa.Hacker BATCH: 1306 NEW INVOICES

VENDOR	REMIT NAME	DOCUMENT INVOICE	PO	CHECK RUN	NET AMOUNT	EXCEEDS PO BY	PO BALANCE	CHK/WIRE
APPROVED PAID INVOICES								
14125	00000 BLUE CROSS & BLU	16620 42257 999 9/27-10/1		M100521L	233,209.61	.00	.00	9206038
CASH 999	2022/01	INV 10/05/2021	SEP-CHK: N	DISC: .00				
ACCT 10010	DEPT 555	DUE 10/05/2021	DESC:BCC WEEKLY CLAIMS 9/27-10/1/21			79010790 51203	1,256.60	1099:
						79010790 51203	4,042.58	1099:
						79010790 51203	188.00	1099:
						79010790 51203	311.00	1099:
						79010790 51522	695.78	1099:
						79010790 51201	220,543.18	1099:
						79010790 51201	5,608.11	1099:
						79010790 51201	15.00	1099:
						79010790 51201	549.36	1099:
1 APPROVED PAID INVOICES			TOTAL		233,209.61			
1 INVOICE(S)			REPORT POST TOTAL		233,209.61			

SHERIFF'S LONGEVITY & TAXES; B#1316 MP#9206041

CLERK: RBENSON BATCH: 1316 NEW INVOICES

VENDOR	REMIT NAME	DOCUMENT INVOICE	PO	CHECK RUN	NET AMOUNT	EXCEEDS PO BY	PO BALANCE	CHK/WIRE
APPROVED PAID INVOICES								
10 00000	BALDWIN CNTY SHE	16651 10052021		M100521A	209,333.74	.00	.00	9206041
CASH 999	2022/01	INV 10/05/2021	SEP-CHK: N	DISC: .00		10052100 52910	30,616.46	1099:
ACCT 10010	DEPT 555	DUE 10/05/2021	DESC:SHERIFF'S LONGEVITY AND TAXES; 10/08/21			10052200 52910	12,273.06	1099:
						708 22797	1,026.36	1099:
						10052100 52910	112,108.29	1099:
						10052200 52910	49,643.84	1099:
						708 22797	3,665.73	1099:
1 APPROVED PAID INVOICES			TOTAL		209,333.74			
1 INVOICE(S)			REPORT POST TOTAL		209,333.74			

Baldwin County, AL

PRELIMINARY ACCOUNTS PAYABLE WARRANT REPORT

Detail Invoice List

CHECK RUN: I100621A 10/06/2021
DUE DATE: 10/06/2021

CASH ACCOUNT: 999 10010 Treasury Pooled Cash

VENDOR		REMIT	PO	TYPE	DUE DATE	INVOICE	AMOUNT	DOCUMENT	VOUCHER	CHECK
1980	WAYNE L AND SHON TERE	0000		INV	10/06/2021	10042021		16652		
	ACCOUNT DETAIL					**LINE AMOUNT**				
	1 11153000 55906		Hwy Misc	DirtRdPrj		1,752.00				
							1,752.00			
						CHECK TOTAL	**1,752.00**			

1 INVOICES **WARRANT TOTAL** **1,752.00** **1,752.00**

AP CHECK RECONCILIATION REGISTER

FOR CASH ACCOUNT: 999 10010

FOR: Uncleared

CHECK #	CHECK DATE	TYPE	VENDOR	NAME	UNCLEARED	CLEARED	BATCH	CLEAR DATE
242702	10/06/2021	PRINTED	999996	GARY FULLER	10,100.00			
242703	10/06/2021	PRINTED	999996	KARLA HUGHEN	4,200.00			
242704	10/06/2021	PRINTED	999996	KAYLA SIMPKINS	5,776.81			
242705	10/06/2021	PRINTED	999996	MARIE CLOY	4,250.00			
242706	10/06/2021	PRINTED	999996	MICHELLE COOK	2,100.00			
242707	10/06/2021	PRINTED	999996	PHILLIP ROGERS	3,000.00			
242708	10/06/2021	PRINTED	999996	REBECCA HILLMAN	9,550.00			
242709	10/06/2021	PRINTED	999995	BRETT W. COKER	14,600.00			
242710	10/06/2021	PRINTED	999995	BRIAN M. KINCAID	8,700.00			
242711	10/06/2021	PRINTED	999995	EGP PROPERTY, LLC	5,015.00			
242712	10/06/2021	PRINTED	999995	EVELYN ANDERSON	5,980.00			
242713	10/06/2021	PRINTED	999995	FRANCIS MCQUADE	4,900.00			
242714	10/06/2021	PRINTED	999995	HARRY YOST	6,750.00			
242715	10/06/2021	PRINTED	999995	JOANNE & DANIEL BURRAGE	10,130.00			
242716	10/06/2021	PRINTED	999995	JUBILEE RIDGE, LLC	6,422.50			
242717	10/06/2021	PRINTED	999995	MELESSA EARLENE CROWE	5,965.00			
242718	10/06/2021	PRINTED	999995	PODIUM PROPERTY MANAGEMEN	11,325.00			
242719	10/06/2021	PRINTED	999995	RELIANT PROPERTIES, LLC	4,000.00			
242720	10/06/2021	PRINTED	999995	RELIANT PROPERTIES, LLC	6,030.00			
242721	10/06/2021	PRINTED	999995	SCARLETTHOMES, LLC	5,250.00			
242722	10/06/2021	PRINTED	999995	SLOCUM PROPERTIES	5,900.00			
242723	10/06/2021	PRINTED	999995	SWEET BAMA HOME, LLC	6,525.00			
242724	10/06/2021	PRINTED	999995	TANIA L. LAZZARI	7,950.00			
242725	10/06/2021	PRINTED	999995	TYLER MONTANA JUL PRESCOT	4,730.00			
242726	10/06/2021	PRINTED	999995	VALLEY RV & MH PARK	1,635.00			
242727	10/06/2021	PRINTED	999995	WNY HOLDINGS	5,825.00			
		26 CHECKS		CASH ACCOUNT TOTAL	166,609.31	.00		

Baldwin County, AL

AP CHECK RECONCILIATION REGISTER

FOR CASH ACCOUNT: 999 10010

FOR: Uncleared

CHECK #	CHECK DATE	TYPE	VENDOR	NAME	UNCLEARED	CLEARED	BATCH	CLEAR DATE
242728	10/06/2021	PRINTED	999995	GULF SHORES BALDWIN COUNT	7,610.00			
242729	10/06/2021	PRINTED	999995	GULF SHORES BALDWIN COUNT	7,968.93			
		2 CHECKS		CASH ACCOUNT TOTAL	15,578.93	.00		

AP CHECK RECONCILIATION REGISTER

FOR CASH ACCOUNT: 999 10010 FOR: Uncleared

CHECK #	CHECK DATE	TYPE	VENDOR	NAME	UNCLEARED	CLEARED	BATCH	CLEAR DATE
242730	10/07/2021	PRINTED	157622	ASA B HOLLOWELL	2,204.09			
242731	10/07/2021	PRINTED	054017	AT&T	883.92			
242732	10/07/2021	PRINTED	063589	AT&T	57.40			
242733	10/07/2021	PRINTED	063589	AT&T	86.70			
242734	10/07/2021	PRINTED	014397	AT&T MOBILITY	410.98			
242735	10/07/2021	PRINTED	014397	AT&T MOBILITY	42.23			
242736	10/07/2021	PRINTED	001933	BACIK GROUP, LLC	12,875.00			
242737	10/07/2021	PRINTED	097691	BALDWIN COUNTY SEWER SERV	1,507.29			
242738	10/07/2021	PRINTED	014005	BALDWIN EMC	5,747.21			
242739	10/07/2021	PRINTED	150287	BAY MINETTE LAND CO	1,000.00			
242740	10/07/2021	PRINTED	048004	BAY MINETTE POSTMASTER	265.00			
242741	10/07/2021	PRINTED	192239	CBO PROPERTIES, LLC	125.64			
242742	10/07/2021	PRINTED	019031	CITY OF ROBERTSDALE	33,767.00			
242743	10/07/2021	PRINTED	186412	CRAFT TRAINING FUND	1,844.00			
242744	10/07/2021	PRINTED	192256	FINLEY PROPERTIES, LLC	2,088.67			
242745	10/07/2021	PRINTED	193079	KEITH PANALE TRIMEW	792.58			
242746	10/07/2021	PRINTED	001950	LORD & SON CONSTRUCTION,	127,285.75			
242747	10/07/2021	PRINTED	185518	MCELHENNEY CONSTRUCTION C	658,457.00			
242748	10/07/2021	PRINTED	165235	MERCURY FUNDING, LLC	1,607.93			
242749	10/07/2021	PRINTED	048197	PERDIDO BAY WATER, SEWER,	18.72			
242750	10/07/2021	PRINTED	192260	PRESCOTT, GLENDA TYLER	1,963.88			
242751	10/07/2021	PRINTED	051003	RIVIERA UTILITIES	4,233.72			
242752	10/07/2021	PRINTED	062367	SOUTHERN LINC WIRELESS	750.21			
242753	10/07/2021	PRINTED	145701	UNITI FIBER	7,744.28			
242754	10/07/2021	PRINTED	152240	VERIZON WIRELESS	1,917.07			
242755	10/07/2021	PRINTED	152240	VERIZON WIRELESS	3,923.74			
242756	10/07/2021	PRINTED	152240	VERIZON WIRELESS	23,539.17			
242757	10/07/2021	PRINTED	001915	WHARTON-SMITH, INC.	446,530.00			
		28 CHECKS		CASH ACCOUNT TOTAL	1,341,669.18		.00	

Baldwin County, AL

AP CHECK RECONCILIATION REGISTER

FOR CASH ACCOUNT: 999 10010 FOR: Uncleared

CHECK #	CHECK DATE	TYPE	VENDOR	NAME	UNCLEARED	CLEARED	BATCH	CLEAR DATE
9206040	10/08/2021	WIRE	054188	IRS-TAX PAYMENT	78,528.21			
		1 CHECKS		CASH ACCOUNT TOTAL	78,528.21	.00		

Baldwin County, AL

PRELIMINARY ACCOUNTS PAYABLE WARRANT REPORT

Detail Invoice List

CHECK RUN: J100721A 10/07/2021
DUE DATE: 10/07/2021

CASH ACCOUNT: 999 10010 Treasury Pooled Cash										
VENDOR		REMIT	PO	TYPE	DUE DATE	INVOICE	AMOUNT	DOCUMENT	VOUCHER	CHECK
1929	FITZGERALD CONSTRUCTI	0000	20214058	INV	10/07/2021	#5;ARA 100 HMF BLDG		16865		
	ACCOUNT DETAIL					LINE AMOUNT				
	1 11153111 55240		HWY A100	CapImpr		54,391.30				
							54,391.30			
						CHECK TOTAL	54,391.30			
1 INVOICES			WARRANT TOTAL			54,391.30	54,391.30			

AP CHECK RECONCILIATION REGISTER

FOR CASH ACCOUNT: 999 10010 FOR: Uncleared

CHECK #	CHECK DATE	TYPE	VENDOR	NAME	UNCLEARED	CLEARED	BATCH	CLEAR DATE
242765	10/08/2021	PRINTED	999996	DANIELLE PILCHER	6,845.00			
242766	10/08/2021	PRINTED	999996	DAVID ZIMMERMAN	15,850.00			
242767	10/08/2021	PRINTED	999996	JUDITH HOLDER	13,050.00			
242768	10/08/2021	PRINTED	999995	AUDUBON PARK 344, LLC	5,032.00			
242769	10/08/2021	PRINTED	999995	AVIA J. GRAHAM	18,590.00			
242770	10/08/2021	PRINTED	999995	BELFOREST APARMENTS, LLC	7,950.00			
242771	10/08/2021	PRINTED	999995	CWEAT, LLC	9,600.00			
242772	10/08/2021	PRINTED	999995	CYPRESS VILLAGE RENTAL	36,233.65			
242773	10/08/2021	PRINTED	999995	JOY MCCOMBS	2,800.00			
242774	10/08/2021	PRINTED	999995	JUSTIN KIHANO REAL ESTATE	4,600.00			
242775	10/08/2021	PRINTED	999995	LUNA BEACH PROPERTIES, LL	9,050.00			
242776	10/08/2021	PRINTED	999995	PALLADIAN DAPHNE APARTMEN	5,277.00			
242777	10/08/2021	PRINTED	999995	PODIUM PROPERTY MANAGEMEN	15,415.00			
242778	10/08/2021	PRINTED	999995	SEVILLA PLACE APARTMENTS,	5,925.00			
242779	10/08/2021	PRINTED	999995	WNY HOLDINGS	4,650.00			
		15 CHECKS		CASH ACCOUNT TOTAL	160,867.65	.00		

Baldwin County Commission

Agenda Action Form

File #: 22-0111, **Version:** 1 **Item #:** HA1

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: Addendum
From: Deidra Hanak, Personnel Director
Submitted by: Deidra Hanak, Personnel Director

ITEM TITLE
Annual Leave Rollover

STAFF RECOMMENDATION
Approve a one-time waiver of the following Baldwin County Employee Handbook Policy, Section IV.A. regarding the maximum amount of annual leave an employee can rollover, applicable to the 2021 calendar year only. The waiver will allow employees to move annual leave hours from calendar year 2021, to sick leave in calendar year 2022.

"Employees may take annual leave in the year it was earned, or may carry it over for use in later years. However, there is a limit to the amount of annual leave that may accrue.

Years of Service	Maximum Accrued Hours	(2 x annual rate)
0 - 5	192 hours	(24 days)
6 -10	240 hours	(30 days)
11 - 15	336 hours	(42 days)
Over 15	384 hours	(48 days)

If an employee earns annual leave in excess of the maximum amount listed on the table, the excess amount will be forfeited if not taken by the last full pay period in the calendar year. The amount of leave at the end of the pay period shall be no more than two (2) years of total accrued time. Employees must consider the time accrued for the last full pay period of the calendar to be included in leave that must be taken."

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: Due to Hurricane Sally recovery efforts and previous COVID-19 restrictions during 2020/2021, staff requests that the excess amount of annual leave that is allowed to rollover per year, be rolled into sick leave for the 2022 calendar year.

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: N/A

Action required (list contact persons/addresses if documents are to be mailed or emailed):
N/A

Additional instructions/notes: N/A

Baldwin County Commission

Agenda Action Form

File #: 22-0124, **Version:** 1 **Item #:** HA2

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: Addendum
From: Harry D'Olive, Probate Judge
Deidra Hanak, Personnel Director
Submitted by: Deidra Hanak, Personnel Director

ITEM TITLE
Request for Leave of Absence - Probate Office

STAFF RECOMMENDATION
At the request of the Probate Judge, approve a Leave of Absence for employee #145816 beginning October 20, 2021, for up to a 3-month period as outlined in the Baldwin County Employee Handbook, Section IV.I. "If an employee exhausts all of his or her annual, sick and FMLA leave and still needs additional time off for personal or health reasons, he or she may apply for an unpaid leave of absence for a period of up to three (3) months. The request for leave must be given to the employee's supervisor and Appointed Department Head at least thirty (30) days prior to the start of the requested leave date unless the leave is an emergency. Any request for leave of absences must be approved or denied by the County Commission."

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: N/A

FINANCIAL IMPACT

Total cost of recommendation: N/A

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Personnel - Implement

Action required (list contact persons/addresses if documents are to be mailed or emailed):
N/A

Additional instructions/notes: N/A

Baldwin County Commission

Agenda Action Form

File #: 22-0131, **Version:** 1 **Item #:** HA3

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: Addendum
From: Wanda Gautney, Purchasing Director
Submitted by: Wanda Gautney, Purchasing Director

ITEM TITLE
Competitive Bid #WG22-05 - Purchase of One (1) New 2021 Ford Expedition XLT 4X4 or Equivalent for the Baldwin County Commission

STAFF RECOMMENDATION
Award the bid to the lowest bidder, **Johnson Ford, Inc.,** for the purchase of One (1) New Ford Expedition XLT 4x4 for the District 1 Commissioner of the Baldwin County Commission as follows:

Make/Model: 2021 Ford Expedition XLT 4x4
Amount Bid: $62,425.00
Delivery Time: Immediately

BACKGROUND INFORMATION

Previous Commission action/date:
10/05/2021 meeting: 1) Approved the specifications and authorized the Purchasing Director to place a competitive bid for the purchase of one (1) New 2021 Ford Expedition XLT 4x4 or equivalent for District 1 Commissioner; and 2) Further, authorized the Chairman/Purchasing Division Commissioner for the Baldwin County Commission to approve any necessary addendums or clarifications if required after the bid is advertised.

Background: Bids were opened in the Purchasing Conference Room on October 15, 2021, at 1:30 P.M. One (1) bid was received. Staff recommends the Commission award the bid to Johnson Ford Inc., for the purchase of One (1) New Ford Expedition XLT 4x4 for the Baldwin County Commission.

FINANCIAL IMPACT

Total cost of recommendation: $62,425.00

Budget line item(s) to be used: 10051100.55500

If this is not a budgeted expenditure, does the recommendation create a need for funding?
$55,000.00 was budgeted in the FY21/22 budget, the remaining $12,425.00 needed will come from General Fund Contingent.

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: 10/19/2021

Individual(s) responsible for follow up: Wanda Gautney, Purchasing Director

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Letter to Bidder

Additional instructions/notes: N/A

Baldwin County Commission

Agenda Action Form

File #: 22-0133, **Version:** 1 **Item #:** HA4

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: Addendum
From: Terri Graham, Development and Environmental Director; Wanda Gautney, Purchasing Director
Submitted by: Allison Owens, Chief Administrative Assistant

ITEM TITLE
Baldwin County Solid Waste Gas-to-Energy Project Located at Magnolia Sanitary Landfill

STAFF RECOMMENDATION
Authorize the Chairman to execute the following agreements:

1) Landlord's Release and Waiver Agreement between the Baldwin County Commission (landlord) and West Town Bank & Trust (lender); and

2) Memorandum of Lease between the Baldwin County Commission and AEP Renewable Fuels, LLC.

The aforementioned agreement titled Landlord's Release and Waiver Agreement will waive certain landlord rights in favor of the lender on the project and the Memo of Lease will summarize the terms of the lease for the Baldwin County Judge of Probate Recording Documentation.

BACKGROUND INFORMATION

Previous Commission action/date: See below.

08/03/2021 BCC Regular Meeting: Authorized the execution of the Baldwin County Solid Waste Landfill Gas-to-Energy project located at the Magnolia Sanitary Landfill.
Assignment, Assumption and Amendment of Landfill Gas Rights Agreement between Baldwin County Commission and AEP Renewable Fuels, LLC; and
Assignment, Assumption and Amendment of Ground Lease Agreement between Baldwin County Commission and AEP Renewable Fuels, LLC.
The aforementioned agreements allow the effective date to be extended for ninety (90) days to November 17, 2021, and limited assignments by the assignor and assignee

02/02/2021 BCC Regular Meeting: Authorized the execution of the Landfill Gas Rights Agreement and the Ground Lease Agreement between Baldwin County Commission and AEP Renewable Fuels,

LLC for the Baldwin County Solid Waste Landfill Gas-to-Energy project located at the Magnolia Sanitary Landfill along with the Letter of Effectiveness or Written Modification for both the Landfill Gas Rights Agreement and the Ground Lease Agreement. Both Agreements to commence on February 2, 2021, and be effective for fifteen (15) years from the Commercial Operations Date, with an option to extend for additional five (5) year period.

10/15/2019 meeting: Authorized staff to begin negotiations with AEP Renewable Fuels, LLC, so that a final recommendation for award can be made to the Baldwin County Commission for the Baldwin County Solid Waste Landfill Gas-to-Energy project located at the Magnolia Sanitary Landfill.

07/16/2019 meeting: Authorized the Purchasing Director to solicit a Request for Proposals (RFP) for Developing a Baldwin County Solid Waste Landfill Gas-to-Energy project.

FINANCIAL IMPACT

Total cost of recommendation: Revenue to the County

Budget line item(s) to be used: Magnolia Landfill - TBD

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
Yes

Reviewed/approved by: Approved by Brad Hicks, County Attorney

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: 08/03/2021

Individual(s) responsible for follow up: Wanda Gautney, Purchasing Director

Action required (list contact persons/addresses if documents are to be mailed or emailed):
Executed Contract to Vendor:

AEP Renewable Fuels, LLC
Attn: Tony Erwin
1400 Buford Highway, Suite E-2
Buford, Georgia 30518

Additional instructions/notes: N/A

LANDLORD'S RELEASE AND WAIVER AGREEMENT

THIS LANDLORD'S RELEASE AND WAIVER AGREEMENT (this "**Agreement"**) is made effective as of [Date], by **BALDWIN COUNTY COMMISSION**, a political subdivision of the State of Alabama (the "**Landlord**"), in favor of **WEST TOWN BANK & TRUST**, an Illinois chartered bank (the "**Lender"**). Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Lease (as defined below).

BACKGROUND

A. Landlord is the owner of certain premises located at 151450 County Road 49, Summerdale, Alabama 36580 (the "**Leased Premises"**), which Leased Premises ~~are currently~~will be leased by Landlord to AEP Magnolia RNG, LLC, a Georgia limited liability company ("**Tenant"**), upon the occurrence of certain contingencies and pursuant to that certain Ground Lease, dated as of February 2, 2021, by and between Landlord and AEP Renewable Fuels, LLC, a Georgia limited liability company ("**Original Tenant**"), as amended and assigned to Tenant by Original Tenant pursuant to that certain Assignment, Assumption and Amendment of Ground Lease, dated as of August 3, 2021, and as evidenced by that certain [Memorandum of Lease], dated as of [Date] and recorded in the office of the [County Office] on as of [Date] (as it may be further amended, restated, supplemented or otherwise modified and in effect from time to time, collectively, the "**Lease**").

B. Lender and Tenant have entered into that certain Loan Agreement, dated as of August 30, 2021, and that certain Loan Agreement, dated as of August 30, 2021 (individually or collectively as the context may require, the "**Loan Agreement**"), in connection with which Lender has or will have a security interest in the Personal Property (as defined below).

C. Landlord has executed this Agreement upon the request of Lender and Tenant.

NOW, THEREFORE, for good and valuable consideration and intending to be legally bound hereby, Landlord hereby agrees as follows:

1. Until such time as all Obligations (as defined in the Loan Agreement) have been paid and performed in full, Landlord hereby waives, releases and relinquishes to Lender all right, title, interest, claim and lien which Landlord has or may in the future have, under any and all applicable laws, including statutory rights, in, to or against any assets and other personal property of Tenant, including without limitation, raw landfill gas blower, LFG chiller, NMOC removal system, H2S removal system, feed gas compressor, pressure swing adsorpotion system, product gas compressor, after cooler, total methane recovery unit, PSA passive guard beds, glycol dehydration unit, low pressure heat exchanger, second state dehydration exchangers, reheat exchanger, recycle compressor, LFG compressors, vacuum pumps, PSA vessels, equipment, machinery, trade fixtures, tenant improvements, furniture, fixtures, and books and records, whether now owned or hereafter acquired by Tenant or any other party other than Landlord, and located at any time on the Leased Premises (collectively, the "**Personal Property"**). Personal Property shall not include the below ground portions of the Processing Station (as that term is defined in the Lease), including foundations, if any. The Personal Property shall not be subject to levy, sale on distress or distraint for rent or any claim, lien or demand of any kind by Landlord until such

Obligations have been paid and performed in full. Provided, however, that pursuant to Section 7.A.(iii) of ~~the Lease~~that certain Landfill Gas Rights Agreement dated as of February 2, 2021 by and between Landlord and Tenant, this Agreement only waives Landlord's rights pertaining Obligations incurred for the initial construction of the Processing Station and the purchase of the initial equipment related thereto.

2. Landlord authorizes Lender, its attorneys, agents and employees to enter on the Leased Premises and to take possession of, remove or dispose of the Personal Property at any time.

3. Notwithstanding any term of the Lease or any amendments, modifications, extensions or renewals thereof, or any contrary intent that may be expressed by Tenant, or that may otherwise be implied by law, and regardless of the manner of affixation, the Personal Property is not and shall not be deemed a fixture or part of the real estate, but shall at all times be considered personal property. To the extent a court of competent jurisdiction determines that the Personal Property is a fixture, Lender shall have a first priority security interest in such fixture pursuant to the fixture filing in the Leasehold Mortgage (as defined below).

4. If an Event of Default (as defined in the Loan Agreement) occurs and is continuing, Tenant vacates the Leased Premises, voluntarily or involuntarily, the Lease is terminated, or Lender repossesses the Personal Property, Landlord agrees that Lender has the right to (i) pursuant to the terms of the Leasehold Mortgage, take possession of and succeed to all of Tenant's right, title and interest under the Lease, including the right to operate the Facility located on the Leased Premises in accordance with the terms of the Lease, and/or (ii) prepare the Personal Property for sale and/or conduct a sale or liquidation of such Personal Property on the Leased Premises and/or store the Personal Property on the Leased Premises for a reasonable period in connection therewith. Lender shall not be liable for rental storage charges under the Lease or otherwise; provided, that Lender agrees to pay the regular, non-accelerated rental payments due under the Lease (not including any past-due, additional or bonus rental) prorated for the number of days Lender keeps the Personal Property on the Leased Premises. Nothing herein or elsewhere shall be deemed to prevent or limit Lender, at its option, from abandoning any part of the Personal Property.

5. Landlord represents and warrants to Lender that:

5.1 Landlord is the sole owner of fee simple, marketable title to the Leased Premises.

5.2 Except for the Lease, Landlord has not assigned, conveyed, transferred, leased, encumbered or mortgaged its interest in the Lease or the Leased Premises and there are no encumbrances on Landlord's interest in any of the foregoing, including without limitation, any written or oral agricultural or hunting rights granted to third parties.

5.3 Landlord has not caused any construction, repairs, alterations, or improvements to be made to the Leased Premises nor has Landlord ordered any materials for the Leased Premises within the past 120 days.

5.4 A true and correct copy of the Lease with all amendments and modifications is attached hereto as Exhibit A.

5.5 The Lease represents the entire agreement between Landlord and Tenant and there are no terms, conditions or agreements between Landlord and Tenant regarding Landlord's or Tenant's rights in the Leased Premises other than as stated in the Lease.

5.6 All rent and other payments, if any, due under the Lease have been paid by Tenant through the date hereof.

5.7 The Initial Term of the Lease commenced on February 2, 2021, (the "Effective Date") and runs until February 2, 2036.

5.8 Landlord has not received notification of any other entity (other than Lender) claiming a security interest in the Personal Property.

5.9 Landlord confirms that there are no other leases including no oil and gas leases, timber deeds, crop leases or any other agreements, whether oral or written in effect with respect to the Leased Premises.

5.10 There is not pending any action, lawsuit, proceeding, inquiry or investigation against or affecting Landlord or the Leased Premises which would have any effect on Tenant's tenancy or the Lease.

5.11 Landlord has not received written notice that it is in violation of any governmental law or regulation applicable to its interest in the Leased Premises and its operation thereon, including, without limitation, any environmental laws and has no reason to believe that there are grounds for any claim of any such violation.

5.12 No actions, whether voluntary or involuntary, are pending or threatened against, or contemplated by, Landlord under any bankruptcy, insolvency, eminent domain, or similar laws of the United States or any state thereof.

5.13 Landlord understands and agrees that Lender is relying on the agreements, representations and warranties contained in this Agreement in extending, continuing or maintaining certain credit facilities to Tenant and its affiliates or in entering into certain contracts, documents and agreements with Tenant and its affiliates.

5.14 Landlord agrees that no future amendment of the Lease pertaining to Personal Property~~, restatement, supplement or other modification of the Lease~~ shall be effective without the prior written consent of Lender.

5.15 Landlord (and any person claiming by, through or under Landlord and any heir, executor, administrator, successor to or assign of Landlord) is not (and shall under no circumstances be deemed to be) a party to or third-party beneficiary of the arrangements between Lender and Tenant evidenced hereby or entitled to enforce or rely upon such arrangements.

5.16 The Landlord has entered into the Lease with Tenant. The Landlord acknowledges that the Tenant has granted or will grant to Lender a [Leasehold Mortgage, Security Agreement and Fixture Filing with Assignment of Rents and Leases] with respect to each Loan Agreement

(individually or collectively as the context may require, "**Leasehold Mortgage**") as security for the Obligations (as defined in the Loan Agreement).

5.17 The Landlord hereby consents to such Leasehold Mortgage and confirms that such Leasehold Mortgage is permissible under the Lease. To the extent that notice of this Leasehold Mortgage is required pursuant the Lease, the Landlord acknowledges that this Agreement constitutes such notice.

5.18 The Landlord certifies to the Lender that the Lease ~~is in~~will be in full force and effect upon the occurrence of certain contingencies, is the valid and binding obligation of the Landlord, and that no default currently exists under the Lease.

5.19 Landlord will notify the Lender at such time as Tenant breaches or defaults under the Lease or vacates the Leased Premises, and agrees to give the Lender written notice at least thirty (30) days prior to acceleration of sums due under the Lease or termination of the Lease in order to allow the Lender to cure such default, provided, that the Lender has no obligation to cure any such default. Landlord's failure to deliver such notice shall not result in any liability of Landlord to the Lender or the Tenant, but Landlord may not accelerate the sums due under the Lease or terminate the Lease without first having delivered such notice and afforded the Lender an opportunity to cure the default. Such notices must be in writing and will be effective upon receipt and may be sent to a party's address set forth below or to such other address as any party may give to the other for such purpose in accordance with this Agreement:

To the Lender: West Town Bank & Trust
Attn: Riddick Skinner, EVP
8450 Falls of Neuse Road, Suite 202
Raleigh, NC 27615

5.20 The Landlord agrees that it shall look solely to the Tenant for the prompt payment and performance of any covenants and provisions of the Lease (including without limitation all rent payable under the Lease) to be paid or performed by the Tenant, and that the Landlord shall accept performance from the Lender to the extent the Lender chooses to render performance of the Lease under the terms of this Agreement.

5.21 The Landlord agrees that any lien or encumbrance arising from any act or omission of the Landlord shall accrue only against the fee simple estate owned by the Landlord and not against any improvement erected by the Tenant and shall, in all cases, be subject and expressly subordinate to the Lease.

5.22 The Landlord agrees that any action taken by the Lender to exercise its remedies under the Loan Agreement and the other Loan Documents (as defined in the Loan Agreement) shall not constitute a default or event of default under the Lease, and the Lease shall continue in full force and effect following the exercise of such remedies. Any assignment of the membership interests in the Tenant shall constitute a permitted assignment under the Lease and the Lease shall continue in full force and effect following such assignment, without the requirement of any further documentation regarding such assignment between the Landlord and the Tenant.

5.23 To Landlord's knowledge, Tenant has not sublet any portion of the Leased Premises.

5.24 No sums are currently owed to Landlord by Tenant under the Lease.

6. This instrument shall be binding upon Landlord and its successors and assigns and shall inure to the benefit of Lender and its successors and assigns.

7. Any notice that may be given by Landlord hereunder shall be in writing and made to Lender, by hand delivery, overnight delivery via nationally recognized overnight delivery service, or registered or certified United States mail with return receipt and shall be deemed to have been given or made when delivered, or, if sent via United States mail, when receipt signed by the receiver, postage prepaid, addressed to the party at its address specified below (or at any other address that the party may hereafter specify to the other parties in writing):

West Town Bank & Trust
Attn: Riddick Skinner, EVP
8450 Falls of Neuse Road, Suite 202
Raleigh, NC 27615

8. This Agreement shall terminate upon the indefeasible payment in full of the Obligations (as defined in the Loan Agreement, excluding contingent indemnification and reimbursement obligations that, by their express terms, survive the repayment of the loans, interest, fees and other amounts owed under the Loan Agreement).

[SIGNATURE ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord has executed this Agreement effective the day and year first above written.

LANDLORD:

BALDWIN COUNTY COMMISSION, a political subdivision of the State of Alabama

By: _____
Name: _____
Title: _____

EXHIBIT A

Copy of Lease

See attached.

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Brodnan & Budd, LLC
999 Peachtree Street, NE, Suite 1105
Atlanta, Georgia 30309
Attn: Matthew P. Brodnan, Esq.

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "**Memorandum**") is made as of [Date] (the "**Effective Date**") by and between Baldwin County Commission, a political subdivision of the State of Alabama ("**Lessor**") and AEP Magnolia RNG, LLC, a Georgia limited liability company ("**Lessee**"). Such parties are collectively referred to herein as the "**Parties**" and individually as a "**Party**."

R E C I T A L S

A. Lessor and AEP Renewable Fuels, LLC, a Georgia limited company ("**Original Lessee**"), entered into that certain Ground Lease dated as of February 2, 2021, as amended and assigned to Lessee by Original Lessee pursuant to that certain Assignment, Assumption and Amendment of Ground Lease, dated as of August 3, 2021 and collectively referred to in this Memorandum as the "**Lease**". The Lease pertains to certain premises in the City of Summerdale, County of Baldwin, State of Alabama and depicted on Exhibit B attached hereto (the "**Leased Premises**"). The Leased Premises are a portion of the land legally described on Exhibit A attached hereto.

B. Lessor and Lessee desire to put third parties on notice of some of the terms and provisions of the Lease.

NOW THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **INCORPORATION OF TERMS.** All of the terms and provisions of the Lease are incorporated in this Memorandum by this reference with the same force and effect as of set forth in full in this Memorandum. Capitalized terms used in this Memorandum without definition will have the same meanings as set forth in the Lease. In the event of any inconsistency between the terms of this Memorandum and the Lease, the terms of the Lease will prevail as between Lessor and Lessee.

2. **LEASE OF PREMISES.** By this Memorandum and by the Lease, as of the Effective Date, Lessor hereby leases the Leased Premises to Lessee and Lessee leases the Leased Premises from Lessor.

3. **LEASE TERMS.** Among other things, the Lease provides the following:

3.1. Term. The Lease provides that the original term of the Lease will be approximately fifteen (15) years~~. [Add any extension options]~~, and that the Lease will, thereafter, automatically renew on a year-to-year basis unless Lessor or Lessee provides the other with written notice of termination of the Lease prior to the expiration of any renewal term; provided, however, that the Lease is coterminous with that certain Landfill Gas Rights Agreement dated as of February 2, 2021, by and between Lessor and Lessee, and shall be terminated or extended automatically in accordance with the termination or extension of the term of such Landfill Gas Right Agreement.

3.2. Use. Lessee is granted the right to use and occupy the Leased Premises for ~~any lawful use, including without limitation,~~ installing and operating ~~[contemplated use]~~a landfill natural gas processing facility and producing, storing and loading transportation fuels from landfill gas for sale to others.

3.3. Other Terms. The Lease contains other terms, as more fully set forth therein. In the event of a conflict between the terms of the Lease and the terms of this Memorandum of Lease, the terms of the Lease shall control

4. GENERAL. This Memorandum and the Lease shall be binding upon and inure to the benefit of the Parties and their respective transferees, successors and assigns. This Memorandum may be executed in counterparts, each of which, when taken together, will constitute one and the same instrument. All Exhibits attached to this Memorandum are incorporated herein by this reference.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK;
SIGNATURES BEGIN ON THE FOLLOING PAGE]

[Signature Page for Memorandum of Lease]

IN WITNESS WHEREOF, Lessor and Lessee have executed this Memorandum as of the day and year first above written.

LESSEE:	**LESSOR:**
AEP Magnolia RNG, LLC, a Georgia limited liability company	Baldwin County Commission, a political subdivision of the State of Alabama
By: _____ Name: Title:	By: _____ Name: Title:

ALL SIGNATURES TO BE NOTARIZED

EXHIBITS

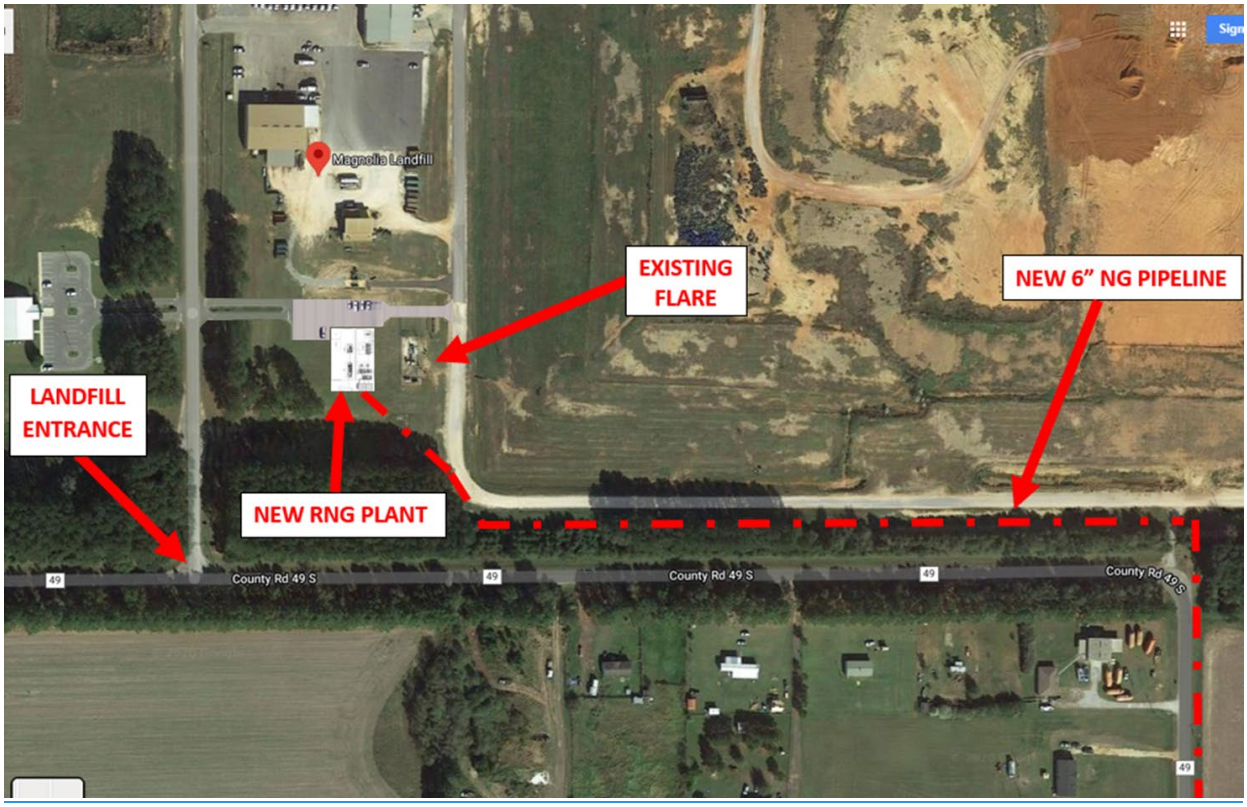
Exhibit A - Legal Description
Exhibit B - Site Plan

EXHIBIT A

DESCRIPTION OF THE LEASE PREMISES

COMMENCE AT A RAILROAD SPIKE AT THE SOUTHEAST CORNER OF SECTION 9, TOWNSHIP 7 SOUTH, RANGE 3 EAST AND RUN THENCE SOUTH 89 DEGREES 48 MINUTES 49 SECONDS WEST, ALONG THE SOUTH LINE OF SAID SECTION 9, A DISTANCE OF 1784.44 FEET; THENCE RUN NORTH 00 DEGREES 22 MINUTES 30 SECONDS WEST, A DISTANCE OF 325.00 FEET; THENCE RUN NORTH 89 DEGREES 48 MINUTES 49 SECONDS EAST, A DISTANCE OF 50.00 FEET TO A CAPPED REBAR (SE CIVIL) FOR THE POINT OF BEGINNING; THENCE CONTINUE NORTH 89 DEGREES 48 MINUTES 49 SECONDS EAST, A DISTANCE OF 275.00 FEET TO A CAPPED REBAR (SE CIVIL); THENCE RUN NORTH 00 DEGREES 22 MINUTES 30 SECONDS WEST, A DISTANCE OF 185.00 FEET TO A CAPPED REBAR (SE CIVIL); THENCE RUN NORTH 88 DEGREES 06 MINUTES 15 SECONDS WEST, A DISTANCE OF 275.22 FEET TO A CAPPED REBAR (SE CIVIL); THENCE RUN SOUTH 00 DEGREES 22 MINUTES 30 SECONDS EAST, A DISTANCE OF 195.00 FEET TO THE POINT OF BEGINNING. TRACT CONTAINS 1.20 ACRES, MORE OR LESS.

EXHIBIT B
SITE PLAN



ACKNOWLEDGMENT OF LESSOR

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 2021, before me, _____, Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT OF LESSEE

STATE OF_____)
) ss.
COUNTY OF _____)

On _____, 2021, before me, _____, Notary Public, personally appeared _____ and _____ who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument, the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Signature

(Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

Baldwin County Commission

Agenda Action Form

File #: 22-0134, **Version:** 1 **Item #:** HA5

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: Addendum
From: Cian Harrison, Clerk/Treasurer
Submitted by: Lisa Hacker, Assistant Accounts Payable Supervisor

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ITEM TITLE
Request for Mileage Reimbursement

STAFF RECOMMENDATION
Approve the Clerk/Treasurer to issue an interim check payable to Joseph Lee Davis, III, in the amount of $372.77 for mileage reimbursement for July/August 2021.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: N/A

FINANCIAL IMPACT

Total cost of recommendation: $372.77

Budget line item(s) to be used: 10051100.52620

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: N/A

Action required (list contact persons/addresses if documents are to be mailed or emailed): N/A

Additional instructions/notes: N/A

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Baldwin County

Agenda Action

File #: 22-0135, **Version:** 1 **Item #:** HA6

Meeting Type: BCC Regular Meeting
Meeting Date: 10/19/2021
Item Status: Addendum
From: Sherry-Lea Bloodworth Botop, Director of Public and Government Affairs
Submitted by: Katrina Taylor, Grants Coordinator

ITEM TITLE
National Association of Realtors Level 2 Smart Growth Grant Request

STAFF RECOMMENDATION
1) Confirm, ratify and approve the submittal of the grant application for the National Association of Realtors Level 2 Smart Growth Grant in the amount of $5,000.00, said funds to be used to reimburse Baldwin County Commission for expenses related to the DesignVision workshop.

(Grant application was submitted by Baldwin Realtors electronically prior to Commission approval due to time constraints and submission deadline.)

2) Accept the National Association of Realtors Level 2 Smart Growth Grant in the amount of $5,000.00 from Baldwin Realtors.

BACKGROUND INFORMATION

Previous Commission action/date: N/A

Background: The Level 2 Smart Growth Grant funds activities to engage in local land-use, growth and transportation issues with other stakeholders and elected officials which will have an impact on policies. These activities could include community planning and input sessions; development of a variety of growth and development plans, development of policies impacting growth, and studies and reports.

Description of the DesignVision process that will support Baldwin County:

DesignVision is a community visioning workshop held in partnership with Auburn University's Urban Studio. These workshops are two-day, community-oriented visioning charrettes that fit into the fall curriculum of the Urban Studio. This process involves approximately 20-25 pre-identified community stakeholders (students, Main Street Board Members, city officials, etc.), a design team of students and a design professional who serves as facilitator. During the first day of each workshop, the community participants take part in a physical walk of the focus area(s) site and nearby areas to help understand context and connectivity of the site. The group then meets in a common area where our facilitator leads the community participants and students in the design conversation through a look at

local history, community stories and small group activities. Ideas generated from the first day of the workshop are then fine-tuned by the team of students and facilitator the second day of Design Vision into drawings, renderings, and other ideas, which are presented to the community at the end of the second day in draft form. Students then take these draft materials and spend a few weeks fine tuning and further developing their ideas under the direction of their professors and the DesignVision facilitator. This process is meant to help architecture and planning students learn the ins and outs of working with community members, while fine tuning their design skills.

What are the benefits of DesignVision?

- An opportunity to engage community stakeholders in the planning and design process
- An introduction to and networking with Alabama design students and professionals who can help carry the ideas created during DesignVision moving forward
- Creation of an idea which can begin to rally a community together for future community development
- An introduction to DesignAlabama and its resources/partnerships
- A deliverable to the community will be a detailed report created by Urban Studio planning and design students

What are the costs associated with a Visioning Workshop?

- Provide lodging, meals, equipment, supplies for design team if necessary
- A commitment by the community to implement recommendations

FINANCIAL IMPACT

Total cost of recommendation: $5,000.00 in grant revenues

Budget line item(s) to be used: N/A

If this is not a budgeted expenditure, does the recommendation create a need for funding?
N/A

LEGAL IMPACT

Is legal review necessary for this staff recommendation and related documents?
N/A

Reviewed/approved by: N/A

Additional comments: N/A

ADVERTISING REQUIREMENTS

Is advertising required for this recommendation? N/A

If the proof of publication affidavit is not attached, list the reason: N/A

FOLLOW UP IMPLEMENTATION

File #: 22-0135, **Version:** 1 **Item #:** HA6

For time-sensitive follow up, select deadline date for follow up: N/A

Individual(s) responsible for follow up: Katrina Taylor: enter grant in Munis; Sherry-Lea Bloodworth Botop: submit final report

Action required (list contact persons/addresses if documents are to be mailed or emailed): cc: Ron Cink, Cian Harrison, Christie Davis, Katrina Taylor, Sherry-Lea Bloodworth Botop

Additional instructions/notes: N/A