



enforcement rights, because he is neither a party to the DOC Contract nor an intended third-party beneficiary.

## **I. FACTUAL BACKGROUND**

Consolidated entered into the DOC Contract in 2002, pursuant to which Consolidated provides telephone equipment, telephone service, and the means to manage and record inmate calls from Illinois Department of Corrections prisons. (*See* DOC Contract, attached hereto as Exhibit A, at §§ 3.1, 3.4.)<sup>1</sup> As noted in the DOC Contract, “the primary intent of the Service is to establish management of Inmate telephone privileges as an effective management tool for the Department of Corrections.” (*Id.* at § 4.1.1; *see also Id.* at §§ 3.3 and 4.1.4.4 (describing the special equipment and security controls that Consolidated provides in order to monitor inmate call data.)) The DOC Contract provides that the State, not the inmates, have control over the use of the phone system, including when or if the phones will be operable. (*Id.* at §§ 4.3.7; 4.3.8; and 4.4.7.)

As part of the State’s efforts to prevent abuse of the phone system, all of the inmates’ telephone calls are collect calls, and it is therefore the recipients of the inmates’ calls who are the account holders of funds applied to telephone calls. (*Id.*, at §§ 4.2.6 and 4.2.10.) The call recipients pay for the calls, and they, not the inmates, are the parties with whom Consolidated has a business relationship.

In addition to the DOC Contract, the Tariff sets forth the terms of service that Consolidated is to provide. The Tariff, like the DOC Contract, emphasizes that the inmates are not the account holders to whom Consolidated is providing phone service. Section 3.5.1

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<sup>1</sup> In ruling on a motion to dismiss, it is appropriate to consider the complete copy of any document referenced in the complaint. *See Perkaus v. Chicago Catholic High Sch. Athletic League*, 140 Ill. App. 3d 127, 134 (1st Dist. 1986) (holding that where plaintiff alleged that defendant had failed to meet its contractual obligation, it was “entirely appropriate” for defendants to attach the contract to their motion to dismiss). Mr. Miller repeatedly alleges that Consolidated violated various contractual provisions. (Compl., at 1, 4.)

of the Tariff provides that the service “permits inmates to place operator station *collect calls* from pre-subscribed authorized institutional phones in a Prison Administration controlled environment.” (*See* Tariff, attached hereto as Exhibit B, at § 3.5 (emphasis added).)<sup>2</sup> Despite the fact that he only placed collect calls, Mr. Miller is seeking “costs” related to the calls he alleges were terminated early. (Compl., at 4.) He also seeks an order directing Consolidated “to correct the violations cited” in the Tariff and the DOC Contract. (*Id.* at 4.)<sup>3</sup> Specifically, Mr. Miller alleges that Consolidated failed to properly maintain the telephone equipment at Logan pursuant to the DOC Contract. (*Id.* at 3, 4.) He further alleges that the Department of Corrections failed to report the alleged problems with the equipment “as required by [Consolidated’s] contract with [the State].” (*Id.*, at 2-4.) Mr. Miller is essentially asking the

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<sup>2</sup> The Tariff also provides for Prepaid Collect Calling Services in Section 3.6(A). With a prepaid account, Consolidated is notified by parties who receive collect calls from the inmates, usually their family members, that the called party wishes to establish an account. All of the inmates’ calls are still collect calls. The only difference is that payment for the call is debited from an account that the called party has set up in advance. Even if the inmate sends money to a called party, the called party is the account holder and the party that owns the funds associated with a particular phone number. The Tariff emphasizes, “The Company does not engage in direct monetary transactions with the inmate.” (*Id.*, at § 3.6.) Section 3.6(B) of the Tariff is not applicable to these proceedings because it is not available to inmates in Illinois state correctional facilities.

<sup>3</sup> Mr. Miller cites to six sections of the Tariff, none of which are really even possible for Consolidated to “violate,” because they are just general descriptions about the nature of Consolidated’s business and the services it provides. Nowhere does Mr. Miller allege how any of these provisions was allegedly violated. For example, Mr. Miller cites to § 2.1 “Undertaking of the Company,” which merely explains how Consolidated provides the services in accordance with the terms of the Tariff “and pursuant to contracts with the correctional institutions.” Similarly, he cites § 2.2.4 which notes that services provided by Consolidated are available to inmates “in accordance with facility-authorized programs.” *See also* § 2.12 (“Services to inmates...are provided pursuant to contract between [Consolidated] and the Correctional Institution.”). Section 3.1, titled “General” is an introductory description of the service and rates. Section 2.13 explains generally how a “Customer,” defined separately from “Inmate,” may refer billing disputes to Consolidated. Finally, Section 3.3.2 provides that there is no billing applied for incomplete calls, but nowhere does Mr. Miller allege that he was billed for a call that could not be completed. If anyone has any claim that a provision of the tariff has been violated, it is the recipient of Mr. Miller’s collect calls, not Mr. Miller.

Commission to enforce the terms of the DOC Contract between Consolidated and Mr. Miller's jailer, the State. (*Id.* at 4.)

## II. ARGUMENT

### A. MR. MILLER LACKS STANDING TO SEEK REPARATIONS.

Mr. Miller is not the customer with whom Consolidated has a business relationship and is therefore not the proper party to seek reparations. As set forth above, all of the inmates' calls are collect calls that are paid for by the call recipients. (Ex. A, at §§ 4.2.6 and 4.2.10.) As a result, Mr. Miller lacks standing to complain that, in exchange for rates paid, he is receiving inadequate telephone service. If one of Mr. Miller's calls is terminated early, while that may be an inconvenience to him, he is not afforded a remedy under the Tariff because he is not the party paying for the service. Mr. Miller refers to "Plaintiff's account" as having been debited (Compl., at 2), but any funds used to pay for the collect calls belong to the call recipients. Even if Mr. Miller gives money to his family members, with the intention that they use it to pay for telephone calls, the call recipient is Consolidated's customer, and the call recipient is the party who may seek reparations.

Moreover, the fact that Mr. Miller uses the telephones at Logan does not mean he has any cause of action. It is well-settled in Illinois that inmates do not have a right to unlimited phone use. *Murillo v. Page*, 294 Ill. App. 3d 860, 865 (5th Dist. 1998); *Young v. Lane*, No. C 5929, 1987 WL 10299, at \*3 (N.D. Ill. Apr. 30, 1997) (holding same); *Carter v. O'Sullivan*, 924 F. Supp. 903, 909 (C.D. Ill. 1996) ("Prisons are not required to provide and prisoners cannot expect to receive the services of a good hotel.") Prison officials have a right to control telephone use for penological reasons and are not obligated to guarantee uninterrupted telephone access to inmates. *See generally*, *Murillo*, 294 Ill. App. 3d at 865; *Pope v. Hightower*, 101 F.3d 1382, 1385 (11th Cir. 1996); *Benzel v. Grammer*, 869 F.2d 1105, 1108

(8th Cir.), *cert. denied*, 493 U.S. 895 (1989); *Strandberg v. City of Helena*, 791 F.2d 744, 747 (9th Cir. 1986).

**B. MR. MILLER ALSO LACKS STANDING TO ENFORCE THE DOC CONTRACT BETWEEN CONSOLIDATED AND THE STATE.**

Mr. Miller complains that Consolidated and the State have not complied with the terms of the DOC Contract. In support of his claims, Mr. Miller points to provisions in the DOC Contract that Consolidated has allegedly violated that relate to the telephone services Consolidated provides to the correctional facilities. (Compl., at 4.) He also claims that Consolidated has “violated” various sections of the Tariff, but the sections that he cites merely identify the fact that Consolidated is to provide telephone service pursuant to the DOC Contract. (*Id.* at 4, and *supra*, n.3.) Therefore, aside from the reimbursement for dropped calls (that he is not entitled to), Mr. Miller is simply asking the Commission to enforce the DOC Contract, and he lacks the requisite standing to do so.

It is well-settled in Illinois that third parties to a contract “are permitted to enforce the contract if and only if the parties made clear in the contract an intention that they be permitted to do so.” *See A.E.I. Music Network, Inc. v. Bus. Computers, Inc.* 290 F.3d 952, 955 (7th Cir. 2002) (applying Illinois law). Mr. Miller has not identified any provision in the DOC Contract showing a clear intention by the parties that the inmates be allowed enforcement rights. Without such a showing, he therefore does not have standing to sue. *Ball Corp v. Bohlin Bldg. Corp.*, 187 Ill App.3d 175, 177 (1st Dist. 1989) (holding that liability to a third party “must affirmatively appear from the contract’s language”); *Hall-Moten v. Smith*, No. 05 C 5510, 2009 WL 1033361, at \*8 (N.D. Ill. Apr. 17, 2009) (inmate plaintiff lacked standing to enforce a contract between medical service provider and State of Illinois where plaintiff failed to identify “any contractual language demonstrating the intent of the parties” to directly benefit plaintiff); *Ritz v. Lake Cty.*, No. 08 C 5026, 2010 WL 2025392, at \*7 (N.D. Ill.) (granting motion to dismiss inmate’s complaint because the parties’ intention to benefit

third-party inmates did not “affirmatively appear from the language of the contract and the circumstances surrounding its execution.”)

This general standing principle is particularly important in the prison context because of the penological concerns that could arise if inmates suddenly had standing to sue over the State’s contracts. Generally speaking, “third party beneficiaries of a government contract are assumed to be merely incidental.” *Bergman v. Water Reclamation Dist. Of Greater Chicago*, 274 Ill. App. 3d 686, 688-89 (1st Dist. 1995). This is because, since every member of the public is intended to benefit at least indirectly from these contracts, allowing third parties enforcement rights would expose a private party, seeking to contract with the government, to significant liability. *See generally Sisney v. State*, 754 N.W.2d 639, 644 (S.D. 2008) (holding that third party inmate lacked standing to sue under contract between food service provider and the state because “it is generally held that inmates lack standing to enforce public contracts”). Here, there are very strong policy reasons why an inmate should not have authority to enforce the State’s contract for a communications system that provides unique security safeguards to correctional facilities. *See generally, Murillo v. Page*, 294 Ill. App. 3d 860, 865 (5th Dist. 1998) (upholding restrictions on inmate’s phone use “because of the legitimate security interests of a penal institution”); *Pope v. Hightower*, 101 F. 3d 1382, 1385 (11th Cir. 1996) (holding same); *Arney v. Simmons*, 26 F. Supp.2d 1288, 1293-94 (D. Kan. 1998); *Benzel v. Grammer*, 869 F.2d 1105, 1108 (8th Cir.), *cert. denied*, 493 U.S. 895 (1989).

Moreover, much of the relief that Mr. Miller seeks requires a coordinated effort between Consolidated and the State. The infrastructure of the Logan Correctional Center is old, and the parties to the DOC Contract are working together on an ongoing basis to address interruptions to telephone service and to overcome challenges associated with maintaining modern telephone equipment in an outdated facility. Mr. Miller asks the Commission to order *Consolidated* to correct the problems he complains of, but the relief he seeks is not

solely within Consolidated's control. Examining the infrastructure at Logan to determine why some calls may be terminating early, or identifying how many telephones are needed requires a significant amount of time and expense on the part of the Illinois Department of Corrections, and at a minimum requires the State's coordination and support for Consolidated to effectuate. Similarly, Mr. Miller asks for an order directing Consolidated to respond to service interruptions in a particular manner. (*Id.* at 3, 4.) While it is in Consolidated's own interest to provide good service, Consolidated has neither the authority nor the ability to address all of these concerns acting alone. These requests are dependent on coordination with the State and the State has a legitimate penological interest in controlling when and where vendors such as Consolidated have access to different areas of Logan Correctional Center. The purpose of the Commission is not to oversee the contractual obligations of the Illinois Department of Corrections, and that is essentially what Mr. Miller is asking the Commission to do.

Finally, this issue has been resolved in favor of Consolidated in another jurisdiction. Another inmate at Logan, Jamal Shehadeh, brought nearly identical claims against Consolidated in the Circuit Court of Coles County, Illinois. Consolidated moved to dismiss Mr. Shehadeh's complaint on grounds that the inmates lack standing to sue under the DOC Contract, and the court granted Consolidated's motion. Mr. Miller is now asking the Commission for the same relief<sup>4</sup> – an order directing Consolidated and the Department of

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<sup>4</sup> Mr. Shehadeh has also filed a complaint with the ICC raising the same allegations against Consolidated. Mr. Miller's claims are not only the same as those raised by Mr. Shehadeh in the Coles County litigation and Mr. Shehadeh's ICC complaint, but it appears that Mr. Miller is using a complaint modeled after the one that Mr. Shehadeh filed with the ICC. In fact, in January 2012, Mr. Shehadeh sent a letter to Consolidated threatening negative publicity for the company if his demands were not met. He further threatened to rile up "the hundreds of offenders . . . at Logan who have nothing better to do than file complaints with the ICC." A copy of the letter is attached hereto as Exhibit C. Within weeks of receiving Mr. Shehadeh's letter, four additional inmates, including Mr. Miller, filed complaints with the ICC. This only further highlights the strong policy reasons for not allowing the inmates to enforce contracts that the Department of Corrections enters into with third parties such as Consolidated.

Corrections to enforce the terms of the DOC Contract to which he is not a party. For the reasons discussed above, Mr. Miller's Complaint should be dismissed.

Dated: March 29, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lisa M. Natter", written over a horizontal line.

Charles H.R. Peters

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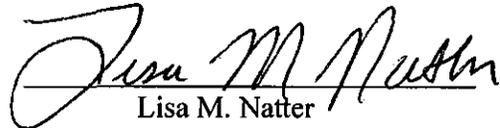
**CERTIFICATE OF SERVICE**

I hereby certify that on March 29, 2012, I caused the foregoing Notice of Filing and the document(s) referred to therein to be served by Federal Express on:

James Paul Miller  
Logan Correctional Center  
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And by email on:

Judge Janis Von Qualen  
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Lisa M. Natter