

SB 679

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THE STATE SENATE
Monday, February 26, 2007

Senate Bill No. 679
As Amended

SENATE BILL NO. 679 - By: CORN of the Senate and TIBBS of the House.

[prisons and jails - limiting the cost for certain
communication services - codification - effective date]

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 650 of Title 57, unless there is
created a duplication in numbering, reads as follows:

A. It is the intent of the Legislature to offer fairly priced
services for necessary communication between inmates, their
families, and legal counsel.

B. The cost of local and long distance telephone,
telecommunication and computer services and equipment available for
use by, or provided to, any person held in the custody of any jail,
halfway house, community correctional facility, prison or other
correctional facility, whether owned or operated by any private
entity, public trust, governmental agency, political subdivision of
this state or this state, shall be not more than the market rate
charged for comparable residential services and equipment available
within the geographic area of such facility. Such services and

1 equipment shall be contracted on the basis of the lowest cost to
2 users at the beginning of each fiscal year as provided in this act.

3 C. Except for rates authorized or regulated by law for
4 telephone, telecommunication and communication service providers, it
5 is unlawful for any person, private or governmental entity,
6 organization, public trust or political subdivision of this state to
7 receive any profit, commission, revenue or funds above the
8 residential market rate for telephone, telecommunication or computer
9 services or equipment for communication between persons when one
10 person is held in any facility specified in subsection A of this
11 section. Any violation of this provision shall be a felony, upon
12 conviction, punishable by a fine not to exceed One Hundred Thousand
13 Dollars (\$100,000.00), or by imprisonment in the custody of the
14 Department of Corrections for a term not more than two (2) years, or
15 by both such fine and imprisonment. Each violation shall constitute
16 a separate offense.

17 D. As used in this act, "telephone, telecommunication and
18 computer services and equipment" means any connection, system,
19 network, device or means of communicating to another person in a
20 separate location utilizing telephones, computers, cell phones,
21 pagers, cameras, land lines, electrical or electronic devices,
22 wireless systems, satellite systems, or any connection generated via
23 any electrical or electronic means, any computer system, computer

1 network, the worldwide web or any software, electrical, electronic
2 or computer link capabilities, any automatic router, or any other
3 communication methods or devices, and includes, but is not limited
4 to, all billing and accounting systems relating to such services and
5 equipment, including, but not limited to, collect billing, direct
6 billing, automatic billing, debit cards or accounts, prepaid cards
7 or accounts, or any other system of monitoring costs and expenses
8 for services and equipment.

9 SECTION 2. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 650.1 of Title 57, unless there
11 is created a duplication in numbering, reads as follows:

12 No person, private or governmental entity, organization, public
13 trust or political subdivision of this state shall receive any
14 telephone, telecommunication or computer services or equipment for
15 private or personal use at below market rate from any contract
16 provider of any service or equipment specified in this act. A
17 violation shall be a felony, upon conviction, punishable by a fine
18 in an amount not to exceed Twenty-five Thousand Dollars
19 (\$25,000.00), or by imprisonment in the county jail for a term not
20 more than one (1) year, or by both such fine and imprisonment.

21 SECTION 3. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 650.2 of Title 57, unless there
23 is created a duplication in numbering, reads as follows:

1 The Department of Corrections is authorized to develop a
2 statewide no cost or debit or prepaid communication system for
3 persons held in the custody of any jail, halfway house, community
4 correctional facility, prison or other correctional facility,
5 whether owned or operated by any private entity, public trust,
6 governmental agency, political subdivision of this state or this
7 state, to facilitate necessary local and long distance
8 communications between the person held in custody and his or her
9 family, legal counsel, and other appropriate contacts. In the event
10 a no cost or debit or prepaid communication system is implemented,
11 any provision relating to contracts for telephone, telecommunication
12 or computer services and equipment specified in this act shall not
13 apply to the geographic area utilizing such no cost or debit or
14 prepaid communication system. No debit or prepaid communication
15 system authorized by this section shall charge any person held in
16 the custody of any jail, halfway house, community correctional
17 facility, prison or other correctional facility, whether owned or
18 operated by any private entity, public trust, governmental agency,
19 political subdivision of this state or this state, any rate above
20 the residential market rate charged for comparable services or
21 equipment.

1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 650.3 of Title 57, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The Department of Corrections is required to negotiate
5 contracts for local and long distance telephone, telecommunication
6 and computer services and equipment for persons held in the custody
7 of any jail, halfway house, community correctional facility, prison
8 or other correctional facility, whether owned or operated by any
9 private entity, public trust, governmental agency, political
10 subdivision of this state or this state, on the basis of offering
11 the lowest cost and best service to all users within the
12 geographical residential market rate for each facility.

13 B. The Department of Corrections is hereby directed to contract
14 at the beginning of each fiscal year for telephone,
15 telecommunication and computer services and equipment for persons
16 held in the custody of any jail, halfway house, community
17 correctional facility, prison or other correctional facility,
18 whether owned or operated by any private entity, public trust,
19 governmental agency, political subdivision of this state or this
20 state, pursuant to the provisions of this act. The contracts
21 authorized by this act shall be exempt from the provisions of the
22 Oklahoma Central Purchasing Act.

1 C. The Department shall maintain a comprehensive file of all
2 telephone, telecommunication and computer service and equipment
3 providers operating within the geographical area of each facility
4 specified in this act, who have expressed an interest in and are
5 capable of providing services necessary to meet the communication
6 needs of this act. Additional service providers may be added at any
7 time prior to approving a contract for services and equipment. The
8 provider file shall include, but not be limited to:

9 1. A completed application form, including the name of the
10 contact person, mailing address, and other information required by
11 the Department;

12 2. A list of past contracts for services or equipment, if any;
13 and

14 3. A rate structure, including current residential market rates
15 and any additional fees or costs for equipment.

16 D. The Department may solicit telephone, telecommunication and
17 computer service and equipment providers from the public and private
18 sector to meet the needs of this act. If there is only one service
19 provider in the geographic area, the Department shall contract with
20 the available service provider without soliciting additional
21 providers; provided, however, this shall not prohibit any other
22 service provider from requesting to be notified or allowed to
23 express interest in providing contract services to the area not

1 currently served by such provider. In such case, the Department
2 shall analyze the capability of the out-of-area service provider to
3 adequately provide services before selecting a contract provider.

4 E. Each year the Department shall notify all telephone,
5 telecommunication and computer service and equipment providers in
6 the file of intent to contract for services in a specific geographic
7 area. The notice shall contain the description of the services and
8 equipment and other pertinent data to meet the needs of this act.
9 The notice shall be mailed at least thirty (30) days prior to
10 selecting a contractor. Providers must respond to the notice for
11 contract services by submitting a letter of interest to the
12 Department as specified in the notice. The Department shall select
13 the provider whose qualifications and rates best meet the needs of
14 the geographic area and the lowest cost and best service
15 requirements of this act. The Department shall submit the contract
16 with a fully disclosed rate schedule to the Board of Corrections for
17 approval. The Board may consult with any person from any agency,
18 organization, political subdivision, public trust or entity affected
19 by the contract before approving the contract. When a contract is
20 approved by the Board, the contract shall be executed by the
21 Department and awarded to the approved provider. Services shall be
22 delivered without interruption. All contracts shall provide for

1 continuing maintenance of equipment and other service agreements
2 required by the department and specified in the contract.

3 F. Contracts shall be entered into for a period specified in
4 the contract, subject to annual review and rate negotiation to keep
5 within market rates or below. No contract awarded shall encumber
6 any funds beyond the amount available for a fiscal year. The
7 Department shall not be authorized to contract for any services or
8 equipment that encumbers any funds belonging to, or creates any
9 liability for, any person, agency, political subdivision,
10 organization or entity other than the Department. Priority in
11 awarding contracts shall be given to those service providers who
12 have previously had a contract for services to the facility;
13 provided, such services were effectively delivered, and unless
14 another service provider can provide services at a lower cost.

15 G. Nothing in this act shall authorize the expenditure of state
16 funds without legislative approval and appropriations in advance of
17 such expenditure.

18 H. Nothing in this act shall be construed to be price or rate
19 fixing or any regulation contrary to any other provision of law on
20 telephone, telecommunication or communication service providers or
21 equipment.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 650.4 of Title 57, unless there
3 is created a duplication in numbering, reads as follows:
4 Every jail, halfway house, community correctional facility,
5 prison or other correctional facility, whether owned or operated by
6 any private entity, public trust, governmental agency, political
7 subdivision of this state or this state shall permit the Department
8 of Corrections to contract for telephone, telecommunication and
9 computer services and equipment for such facility as provided in
10 this act, and shall further agree to allow the approved contract
11 provider access to install, operate and maintain equipment and
12 services within such facility as specified in the contract
13 provisions. Every entity receiving contract services and equipment
14 specified in this act shall participate in the selection and
15 approval of the contract provider based upon previous contracts and
16 communication with the Department of Corrections and the Board of
17 Corrections in the selection and approval process specified in this
18 act. Failure of any entity specified in this act to permit the
19 Department to contract for required services or to allow access by
20 the approved contract provider to deliver services and equipment as
21 contracted and specified in this act, shall be a misdemeanor on a
22 first offense, and a felony upon any second or subsequent offense.
23 Any elected official convicted of a violation of this section, shall

1 be removed from office for failure to provide fair and adequate
2 services to persons held in custody. Upon any third violation, if
3 the violator is a county jail, the Department of Corrections shall
4 be prohibited from reimbursing the county jail or sheriff pursuant
5 to Section 38 of Title 57 of the Oklahoma Statutes or Section 991a-
6 4.1 of Title 22 of the Oklahoma Statutes, or continuing any contract
7 for services for state inmates, until there is compliance with the
8 provisions of this act, and, if the violator is a private prison
9 contractor, the Department of Corrections shall be prohibited from
10 continuing any contract for services for state inmates or other
11 services, until there is compliance with the provisions of this act.

12 SECTION 6. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 650.5 of Title 57, unless there
14 is created a duplication in numbering, reads as follows:

15 Every state and local agency, private organization, public trust
16 and political subdivision of this state receiving any revenue from
17 inmate telephone contract services on the effective date of this
18 act, which revenue is interrupted due to the enactment of this act,
19 may submit a detailed verified accounting of such revenue sources,
20 amounts and uses to the Legislature within six (6) months of the
21 effective date of this act. The accounting report must be submitted
22 in writing signed by the preparer to the President Pro Tempore of
23 the Senate and the Speaker of the House of Representatives. The

1 Legislature shall disburse grant funds to affected entities
2 reporting interrupted revenue sources from previous inmate telephone
3 contracts. Such grant funds are intended to offset significant
4 revenues lost as a result of the enactment of this act; provided,
5 such lost revenues must be deemed by the Legislature to be critical
6 to the purposes of the agencies and organizations operating in this
7 state. All grant funds are subject to fiscal year appropriations.
8 Reports of lost revenue from inmate telephone contracts may be
9 resubmitted each year with updated information on the use of any
10 grant funds provided by the Legislature in the previous year.

11 SECTION 7. AMENDATORY 74 O.S. 2001, Section 85.12, as
12 last amended by Section 1, Chapter 80, O.S.L. 2006 (74 O.S. Supp.
13 2006, Section 85.12), is amended to read as follows:

14 Section 85.12 A. The provisions of this section shall not be
15 construed to affect any law relating to fiscal or accounting
16 procedure except as they may be directly in conflict herewith; and
17 all claims, warrants, and bonds shall be examined, inspected, and
18 approved as now provided by law.

19 B. Except as otherwise provided by this section, the
20 acquisitions specified in this subsection shall be made in
21 compliance with Section 85.39 of this title but are not subject to
22 other provisions of The Oklahoma Central Purchasing Act:

1 1. Food and other products produced by state institutions and
2 agencies;

3 2. The printing or duplication of publications or forms of
4 whatsoever kind or character by state agencies if the work is
5 performed upon their own equipment by their own employees. Pursuant
6 to this paragraph, the state agency may only use equipment owned or
7 leased by the agency and may only utilize that equipment for
8 printing services required by the agency in performing duties
9 imposed upon the agency or functions authorized to be performed by
10 the agency. Any use of the equipment by the agency pursuant to an
11 agreement or contract with any other entity resulting in delivery of
12 intermediate or finished products to the entity purchasing or using
13 the products shall be subject to the provisions of The Oklahoma
14 Central Purchasing Act;

15 3. Department of Transportation and Transportation Commission
16 contractual services or right-of-way purchases; contracts awarded
17 pursuant to bids let by the Transportation Commission for the
18 maintenance or construction of streets, roads, highways, bridges,
19 underpasses, or any other transportation facilities under the
20 control of the Department of Transportation, the acquisitions of
21 equipment or materials accruing to the Department of Transportation
22 required in Federal-Aid contracts; and contracts for public service
23 type announcements initiated by the Department of Transportation;

1 but not contractual services for advertising or public relations or
2 employment services;

3 4. Utility services where rates therefor are regulated by a
4 state or federal regulatory commission, or by municipal ordinance,
5 or by an Indian Tribal Council for use by the Department of
6 Corrections only;

7 5. Acquisitions by the University Hospitals Authority. The
8 Authority shall develop standards for the acquisition of products
9 and services and may elect to utilize the Purchasing Division. The
10 standards shall foster economy and short response time and shall
11 include appropriate safeguards and record-keeping requirements to
12 ensure appropriate competition and economical and efficient
13 purchasing;

14 6. Contracts for custom harvesting by the Department of
15 Corrections for the Department or its institutions;

16 7. Contracts with private prison contractors which are subject
17 to the contracting procedures of Section 561 of Title 57 of the
18 Oklahoma Statutes;

19 8. Acquisitions by the Oklahoma Municipal Power Authority;

20 9. Acquisitions by the Grand River Dam Authority;

21 10. Acquisitions by rural water, sewer, gas, or solid waste
22 management districts created pursuant to the Rural Water, Sewer, Gas
23 and Solid Waste Management Districts Act;

1 11. Acquisitions by the Oklahoma Ordnance Works Authority, the
2 Northeast Oklahoma Public Facilities Authority, or the Midwestern
3 Oklahoma Development Authority;

4 12. Contracts entered into by the Oklahoma Industrial Finance
5 Authority for the services of an appraiser or for acquisition of
6 insurance when the Authority's Board of Directors determines that an
7 emergency exists, and contracts for the services of legal counsel
8 when approved by the Attorney General;

9 13. Expenditure of monies appropriated to the State Board of
10 Education for Local and State Supported Financial Support of Public
11 Schools, except monies allocated therefrom for the Administrative
12 and Support Functions of the State Department of Education;

13 14. Expenditure of monies appropriated to the State Department
14 of Rehabilitation Services for educational programs or educational
15 materials for the Oklahoma School for the Blind and the Oklahoma
16 School for the Deaf;

17 15. Contracts entered into by the Oklahoma Department of Career
18 and Technology Education for the development, revision, or updating
19 of vocational curriculum materials, and contracts entered into by
20 the Oklahoma Department of Career and Technology Education for
21 training and supportive services that address the needs of new or
22 expanding industries;

1 16. Contracts entered into by the Oklahoma Center for the
2 Advancement of Science and Technology for professional services;

3 17. Contracts entered into by the Oklahoma Department of
4 Commerce pursuant to the provisions of Section 5066.4 of this title;

5 18. Acquisitions made by the Oklahoma Historical Society from
6 monies used to administer the White Hair Memorial;

7 19. Acquisitions available to an agency through a General
8 Services Administration (GSA) contract or other federal contract if
9 the acquisition is on current statewide contract and the terms of
10 the GSA or other federal contract, as determined by the State
11 Purchasing Director, are more favorable to the agency than the terms
12 of a statewide contract for the same products;

13 20. Purchases of pharmaceuticals available through a multistate
14 or multigovernmental contract if such pharmaceuticals are or have
15 been on state contract within the last fiscal year, and the terms of
16 such contract are more favorable to the state or agency than the
17 terms of a state contract for the same products, as determined by
18 the State Purchasing Director. The state entity designated by law,
19 as specified in Section 1010.3 of Title 56 of the Oklahoma Statutes,
20 shall participate in the purchase of pharmaceuticals available
21 through such contracts;

22 21. Contracts for managed health care services entered into by
23 the state entity designated by law or the Department of Human

1 Services, as specified in paragraph 1 of subsection A of Section
2 1010.3 of Title 56 of the Oklahoma Statutes;

3 22. Acquisitions by the Forestry Service of the Oklahoma
4 Department of Agriculture, Food, and Forestry as authorized by the
5 federal General Services Administration through a General Services
6 Administration contract or other federal contract if the
7 acquisitions are not on current statewide contract or the terms of
8 the federal contract are more favorable to the agency than the terms
9 of a statewide contract for the same products;

10 23. Acquisitions of clothing for clients of the Department of
11 Human Services and acquisitions of food for group homes operated by
12 the Department of Human Services;

13 24. Acquisitions by the Oklahoma Energy Resources Board;

14 25. Acquisitions of clothing for juveniles in the custody of
15 the Office of Juvenile Affairs and acquisitions of food for group
16 homes operated by the Office of Juvenile Affairs;

17 26. State contracts for flexible benefits plans pursuant to the
18 Oklahoma State Employees Benefits Act, Section 1361 et seq. of this
19 title;

20 27. Acquisitions by the Department of Securities to
21 investigate, initiate, or pursue administrative, civil, or criminal
22 proceedings involving potential violations of the acts under the
23 Department's jurisdiction;

1 28. Acquisitions by the Native America Cultural and Educational
2 Authority and acquisitions by the Oklahoma Department of Commerce to
3 assist the Native American Cultural and Educational Authority
4 pursuant to Section 5017 of this title;

5 29. Acquisitions for resale in and through canteens operated
6 pursuant to Section 537 of Title 57 of the Oklahoma Statutes;

7 30. Acquisitions by the Oklahoma Boll Weevil Eradication
8 Organization for employment and personnel services, and for
9 acquiring sprayers, blowers, traps, and attractants related to the
10 eradication of boll weevils in this state or as part of a national
11 or regional boll weevil eradication program;

12 31. Contracts entered into by the Oklahoma Indigent Defense
13 System for expert services pursuant to the provisions of subsection
14 D of Section 1355.4 of Title 22 of the Oklahoma Statutes;

15 32. Acquisitions by the Oklahoma Correctional Industries and
16 the Agri-Services programs of the Department of Corrections of raw
17 materials, component parts and other products, any equipment
18 excluding vehicles, and any services excluding computer consultant
19 services used to produce goods or services for resale and for the
20 production of agricultural products; ~~and~~

21 33. Contracts entered into by the Department of Human Services
22 for provision of supported living services to members of the
23 plaintiff class in *Homeward Bound, Inc., et. al., v. The Hissom*

1 Memorial Center, et. al., Case Number 85-C-437-E, United States
2 District Court for the Northern District of Oklahoma; and

3 34. Contracts entered into by the Department of Corrections for
4 telephone, telecommunication and computer services and equipment for
5 correctional facilities, jails and private prisons pursuant to the
6 provisions of this act.

7 C. Pursuant to the terms of a contract the State Purchasing
8 Director enters into or awards, a state agency, common school,
9 municipality, rural fire protection district, county officer, or any
10 program contract, purchase, acquisition or expenditure that is not
11 subject to the provisions of The Oklahoma Central Purchasing Act,
12 may, unless acting pursuant to a contract with the state that
13 specifies otherwise, make use of statewide contracts and the
14 services of the Purchasing Division and the State Purchasing
15 Director. Any political subdivision or rural fire protection
16 district may designate the State Purchasing Director as its agent
17 for any acquisition from a statewide contract or otherwise available
18 to the state.

19 D. The State Purchasing Director shall make periodic audits of
20 the purchasing procedures of the Oklahoma Ordnance Works Authority,
21 the Northeast Oklahoma Public Facilities Authority, the University
22 Hospitals Authority, and the Midwestern Oklahoma Development
23 Authority to ensure that the procedures are being followed.

1 SECTION 8. This act shall become effective January 1, 2008.
2 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-21-07 - DO
3 PASS, As Amended and Coauthored.