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December 19, 2014

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW,
Room TW-A325
Washington, DC 20554

RE: WC Docket No. 12-375 (Rates for Interstate Inmate Calling Services)

Dear Secretary Dortch:

Consolidated Telecom, Inc. (CTEL)[1] herewith submits comments to the FCC in response to the *Second Further Notice of Proposed Rulemaking*, WC Docket No. 12-375. It is respectfully submitted that there is little true competition in the ICS industry, which is dominated by two or three companies who are the primary providers of ICS in the United States and represent 85% of the industry revenue.[2] The dominant carriers' practices have had significant impact on the abuses which the FCC is now trying to address. There must be a sufficiently broad perspective of all of the factors which drive inmate calling rates to realistically achieve the stated goal of a competitive industry, from which market forces can drive rates to competitive levels.

The FCC has concluded that "[e]xcessive rates are primarily caused by the widespread use of site commission payments"[3] and that "site commission are the chief criterion many correctional institutions use to select the ICS provider for their facilities." If this is correct, then this widespread practice was largely created and utilized by those companies which enjoy most of this business, i.e., the self proclaimed market leaders in ICS. In other words, the FCC has found that these market

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1 CTEL is a provider of telecom services to county jails and juvenile detention centers in the United States.

2 See correspondence dated September 15, 2014 to the FCC from GTL, Securus, and Telmate.

3 *In the Matter of Rates for Interstate Inmate Calling Services*, FCC 14-158 at 2 (F.C.C. Oct. 22, 2014).

leaders established their contracts and market share chiefly by site commissions, as well as other in-kind payments and services to correctional facilities. Now that these companies dominate the market, they forwarded a so-called "consensus proposal" on September 15, 2014, which contains a discussion that site commissions should correlate to the correctional facilities' administrative and security costs, and per minute rate caps should be increased to account for these payments as a cost to provide ICS.[4] It would appear that the "consensus," at least of the three companies who dominate the market, is to largely or completely eliminate the device by which the FCC has concluded they relied upon to established their market dominance.[5]

This begs the following questions:

1) How could small companies possibly compete with the companies who control 85% of the revenue from this industry? (i.e., how will the Commissions's rules promote competition to ensure that ICS rates are just and reasonable?); and,

2) How will the market leaders replace their reduced revenue resulting from capped rates?

The answers to both lie in the analysis and conclusions of the Alabama Public Service Commission, which is possibly leading all states in a pro-active effort to reform inmate calling rates. The FCC acknowledged that "[t]he Alabama PSC articulated an alternative perspective on the cause of increased site commissions, stating that 'the proliferation of excessive ancillary fees, not call rates, is the most significant contributor toward escalating site commission offerings.' In other words, certain ICS providers were generating so much revenue from ancillary fees that they could afford to pay exorbitant site commissions without necessarily raising the direct call rates. In its July 7, 2014 order adopting revised inmate phone service rules, the Alabama PSC commented on the dynamic in several states where site commissions were eliminated and the cost of inmate calls supposedly went down. "However, rates and site commissions are only a portion of the service price borne by customers. . . **Usage charges in conjunction with ancillary charges comprise the total price for ICS. . . revenue shortfalls from the application of disproportionately low usage rates can just**

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[4] Securus has elsewhere suggested that site commissions must be eliminated entirely. See *Id.* at p. 14, including footnote 100.

[5] CTEL was never contacted to be part of any consensus and never provided the so-called consensus proposal by its authors to gauge CTEL's agreement or opposition with same. For the record, CTEL, as an inmate calling service provider, disagrees with the so-called consensus proposal, which does not reflect CTEL's views on these issues.

as easily be counterbalanced by bloated ICS ancillary charges to the same extent that such charges are used by providers to compensate for facility site commission payments."[6]

The Commission's rules define ancillary charges as charges to consumers which are not included in the charges assessed for individual calls.[7] To reduce the cost to inmates and their families, one must address all charges assessed to these consumers. Reducing direct individual call costs, but allowing ancillary charges, may keep the actual out-of-pocket expense the same or allow them to actually increase.

The issue of ancillary costs speaks directly to why the market leaders would now agree to the elimination of site commissions, which allowed them to become market leaders in the first place. Eliminating site commissions, in connection with rate caps and an essentially symbolic reduction of some ancillary charges, will make it much more difficult for smaller ICS providers to compete. This is because the ancillary charges which the so-called consensus proposal seeks to retain include some of the most lucrative elements of certain ICS providers, which smaller providers do not have the power to similarly negotiate.

Ancillary fees were researched and discussed in detail in a report by the Prison Policy Initiative released in March 2013.[8] This report includes the following information:

> While previous research has documented the unjustifiably high calling rates in the prison phone industry, this report is the first to address in depth the many fees prison phone customers must pay. **We find that meaningful regulation of the prison phone industry must stem from a comprehensive analysis of the customers' whole bills, rather than limiting the discussion to addressing the high per-minute calling rates alone.** This report finds that fees have an enormous impact on prison phone bills, making up 38% of the $1 billion annual price of calling home. This report details the fees that prison phone companies charge for "services" such as:
> • accepting customers' money (deposit fees of up to $10/deposit)

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[6] *Re: Generic Proc. Considering the Promulgation of Tel. R. Governing Inmate Phone Serv.*, 15957 at 14 (Ala.P.S.C. July 7, 2014).

[7] *In the Matter of Rates for Interstate Inmate Calling Services, supra* at 4, fn. 15; 47 C.F.R. § 64.6000.

[8] *Please Deposit all of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry*, Prison Policy Initiative Report, May 2013, attached as Appendix A.

- holding on to customers' money (monthly account fees as high as $12)
- closing customers' accounts (refund fees of up to $10)

This report reveals that these fees are but the tip of the iceberg, though, as many other charges are far less transparent.

The increase in commission payments is directly related to another significant burden for the people who pay prison phone bills: fees, which can easily double the cost of a single telephone call, and can add 50% to the phone bills charged to the families that receive more frequent calls. **In the decade since the original Wright Petition was filed, prison phone companies have trumpeted that they are reducing the cost to consumers by gradually shifting from collect calls to a prepaid call system. An examination of the fees charged for pre-paid calls disproves that conclusion, however, and raises serious concerns that capping the rates for calls but leaving the industry free to set their own fees would not in fact bring relief to consumers facing high bills.**

One of the reasons that fees are so profitable to prison phone companies is that fee income is exempt from the phone companies' commission responsibilities, as the major phone providers have illustrated in their FCC filings. Pay-Tel explained, for example, that "commissions are only paid on call revenue - not on fees, which are collected for the benefit of the ICS [Inmate Calling Service] providers alone." Securus further points out how the fees help to compensate for the expense of the commissions, saying that, "[t]he significance of site commissions to the company can also be seen in the amount of ICS revenue that Securus must earn in order to pay for these costs." And Global Tel*Link tells correctional facilities upfront in its contract bids that, for the purposes of determining net profits after the loss of the commissions, the payment fees are "cost recovery in nature and are not considered revenue.". . . By tacking on additional fees, the prison phone industry has created a new profit source that is safely out of reach of the commission system.

To be sure, businesses in many industries incur some processing costs by accepting credit or debit cards in person, via the internet, or over the telephone. Businesses usually respond by setting minimum purchase levels for a take out food order, charging a slightly higher rate per gallon of gasoline, or by simply writing it off as the cost of doing business. But this section of **the report suggests that prison telephone companies may be approaching the question from the other end: providing telephone services in order to make money by charging extra fees.** Indeed, because the commission system reduces the potential for corporate profit

from the telephone calls, fees that should be no more than supplemental income are turned into a central source of profit.

Prison phone companies' relationships with payment companies also offer opportunities to rake in revenue from high charges that disproportionately burden low-income families that do not have bank accounts. **Western Union fees, for example, vary from $5.95 to $11.95 for no apparent reason other than to act as a stealth profit center for the phone companies.** The differences between the charges are initially confusing, but informative upon investigation. **Four observations each suggest that Western Union is sharing a portion of its fees with the prison phone companies:**

- Western Union is consistently charging consumers far more to send payments to the prison telephone industry than it does for payments elsewhere. The fee to send payments to most other companies ranges from $1.50-$3.00.
- There is tremendous diversity in how much the Western Union charges. Western Union charges only $5.50-$6.00 to send payments to Pay-Tel, ICSolutions, and Legacy, although both ICSolutions and Legacy charge an additional fee to accept the payment from Western Union. Three prison telephone companies demonstrated that it is possible for a prison phone company to negotiate a lower fee from Western Union.
- Of the three companies where the fee charged by Western Union is relatively low, two companies charge an additional payment fee that entirely erases the savings to the customer.
- **Western Union charges the customers of Global Tel*Link and Securus — the prison phone market leaders — the highest rates. It strains all credible belief to think that Global Tel*Link, a company that brags in its most recent FCC filing that, as "one of the largest providers in the market, it has economies of scale and efficiency that enable [it] to pay high commissions ...[and simultaneously] charge lower rates," somehow lacks sufficient negotiating power to ensure that Western Union does not force Global Tel*Link customers to pay higher-than-average fees.**

The Prison Policy Initiative responded to the FCC's request for confirmation that ICS providers receive a portion of the payment fee charged by third-party payment services such as Western Union in correspondence dated January 13, 2014.[9] This letter stated that the "FCC can be confident that a portion of the fees charged by third parties such as Western Union for payments to certain providers is in fact being collected by ICS companies."

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[9] Attached as Appendix B.

Therefore, the parties to the so-called consensus proposal previously justified high ancillary fees as necessary revenue to pay high site commissions. Yet those companies are now proposing a complete elimination or significant reduction of site commissions, while seeking to still charge most of their ancillary fees. They go so for as to suggest that regulation of ancillary fees for transactions other than the provision of ICS is beyond the scope of the Commission's jurisdiction. They propose to continue to charge: transaction or deposit fees, money transfer fees (in addition to the amounts charged by third party providers such as Western Union), validation fees, and convenience or premium payment options. The fees they propose can be eliminated include a number of items which sound like taxes (eg. state and federal regulatory cost recovery fees), which the Prison Policy Initiative Report characterized as "fees under the guise of taxes."

The FCC has received comments from a number of prison associations expressing concerns about the elimination of site commissions. The correctional facility perspective must not be overlooked based upon the fundamental reason this process is taking place - there seems to be no dispute that an incarcerated inmate's ability to communicate with loved ones directly correlates with several important societal values, including reduced recidivism. However, this communication is not a constitutional right but a privilege, and comes with actual costs to the facility.

The Charlevoix County, Michigan, Sheriff's Office filed comments in this matter on December 10, 2014, stating that just a few of the costs it incurs in offering inmate phone services to its inmates include: maintaining phones and monitoring maintenance, bandwidth costs for offering and administering inmate phone platform, storing of calls that are used for court, live alert transmission costs to call investigator, three-way call detection verification by staff, prosecuting or disciplining inmates for crimes committed while using the inmate phones and visitation phones, visitation phones (which use the same recording and security features as the inmate phones), indigent calling, and many more.

The Oregon Department of Corrections filed comments in this matter on December 11, 2014, stating that, like all programs and services, there is a cost to providing inmate phone services. The correctional facilities' costs relate to security that must be in place at all times to monitor activities and behaviors while ICS are being used. When issues of concern are identified or observed, there may be investigations, reviews, and/or disciplinary actions that become necessary. **It is imperative that the cost of these services does not impede these individuals' ability to receive this necessary support.**

County Judge David L. Anderson, Panola County Courthouse, Carthage, Texas, filed comments on December 8, 2014 sharing his concern that the potential elimination of commission payments, a vital part of their budget, would jeopardize their ability to ensure inmates have unlimited

use of the inmate telephones which are provided as a privilege. These comments urged the FCC to consider mirroring the overall regulation recently implemented in Alabama.

Even prior to the most recent *Second Further Notice* released October 2014, the Colorado Jail Association submitted comments on February 3, 2014, in which it pointed out that a "one-size-fits-all" solution cannot appropriately address the varying needs of the different types of facilities affected by this Commission's rulemaking. There must be flexibility for facilities based on variables such as character, size and inmate population. These comments discussed the great differences between jails and prisons, and their quite different populations, calling patterns and budgetary realities.

CTEL, as a provider primarily to county jails and juvenile detention centers, provides service to the institutions which can least afford to lose site commissions and still provide high quality ICS. If site commissions are eliminated or reduced, and providing effective ICS comes at a net operating loss, correctional facilities may be forced to discontinue providing calling services. While vitally important to society, inmate calling is nonetheless a privilege and not a constitutional right. The ironic result would be no services, as opposed to services at lower prices, obviously contrary to the goals the FCC is attempting to achieve.

Site commissions have been singled out as the primary driver of the per call cost of inmate calling. This is a dangerous oversimplification. The actual cost of a call is the sum of the direct call charges plus all additional charges. The Alabama PSC wrote that "[u]sage charges in conjunction with ancillary charges comprise the total price for ICS." It is of no consequence to an inmate, or his/her family, if a per minute calling rate is low, yet the process necessary to establish an account, deposit money, or remit a payment is high. Every dollar expended in the process must be accounted for to properly understand ICS providers' cost and revenue balance. Every dollar expended by an inmate or his family in the ICS process must be accounted for to effectively reform rates for inmate calling services.

To achieve a competitive industry, which would drive down rates through free market forces, there must be a level playing field between all ICS providers in their ability to both retain current contracts and competitively compete for new business. Capping rates seems inevitable and will lead to lower direct usage charges. Completely eliminating site commissions would seem an unnecessary device to lower rates, because rates will be capped in any event. Completely eliminating or significantly reducing site commissions will place an undue burden on correctional facilities, which incur actual expenses for the administration and security of providing inmate calling services. Imposing a blanket elimination, or reduction, of site commissions will unfairly prejudice the smaller facilities, such as county jails and juvenile detention centers, ultimately to the detriment of their inmates' access to calling services.

Allowing ancillary rates to remain unregulated, including some imposed by third parties such as Western Union but which have been reported to create additional revenue to ICS providers, will result in the actual cost to the consumer remaining high. Additionally, the self proclaimed market leaders, who have established their position through excessive site commissions, will be rewarded by being able to dictate the terms of their compensation through their market power and their unregulated ancillary fees, thereby maintaining potentially higher net revenues if site commissions are reduced or eliminated. This would allow these companies to offer lower "rates" to undercut all competition, and retain profits through ancillary fees. As reported by the Prison Policy Initiative, their business model is "providing telephone services in order to make money by charging extra fees."

In conclusion, capping usage rates and reducing or eliminating site commissions cannot be reasonably expected to achieve the goal of a reduction in the real price of inmate calling if ancillary charges remain unregulated and unchecked. These steps would not promote competition and allow market forces to drive rates to competitive levels. Rather, they would accomplish the opposite result of strengthening the position of the companies which dominate the market at this time, allow predatory pricing at artificially low usage rates (underwritten by ancillary fees), which may ultimately create an effective monopoly among just two or three providers. Correctional facilities incur costs in the provision of services which are not uniform across the industry. If commissions are eliminated or reduced such that they do not offset facility costs, many facilities will have no option but to reduce or discontinue services, all to the detriment of the inmates and the FCC goals of facilitating effective outside communication.

Sincerely,

Jerry Jacobs, President
Consolidated Telecom, Inc.

cc: Leon L. Nowalsky, Esq.

Appendix A

Please Deposit all of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry

Prison Policy Initiative Report
May 2013

PLEASE DEPOSIT ALL OF YOUR MONEY:

KICKBACKS, RATES, AND HIDDEN FEES IN THE JAIL PHONE INDUSTRY

DREW KUKOROWSKI, PETER WAGNER & LEAH SAKALA

PRISON POLICY INITIATIVE

MAY 2013

ACKNOWLEDGEMENTS

We dedicate this report to the memory of Jon E. Yount and the thousands of incarcerated men and women who have struggled to bring public attention and oversight to the prison telephone industry. We are grateful to Rebecca Young and Michael Fellows for suggesting this report's focus on jails and fees. We thank our individual donors who supported this project with their generosity, allowing us to seize the opportunity to produce this report on a short timeline. This report could never have been completed without the invaluable assistance of Prison Policy Initiative Legal Director Aleks Kajstura. We thank Sadie Gold-Shapiro, our work study Research Associate, for finding the CenturyLink discussion of dropped calls, and Bob Machuga for designing the report cover. We are grateful to our colleagues who shared their expertise with us for this report, including Neelum Arya, Alex Friedmann, Sonia Kowal, Lynnsey Lafayette, Lee Petro, and Bonnie Tenneriello. And finally, we thank the *New York Times* editorial board for coming up with, in an August 31, 2005 editorial, the title of our report.

ABOUT THE AUTHORS

Drew Kukorowski is an attorney and author of the *The Price to Call Home: State-Sanctioned Monopolization in the Prison Phone Industry* (2012). He studied law at the University of North Carolina, earned a M.A. in moral and political philosophy from Tufts University, and studied economics and philosophy as an undergraduate at the University of Maryland at College Park. He is licensed to practice law in Maryland and North Carolina.

Peter Wagner is an attorney and Executive Director of the Prison Policy Initiative. His publications include *Importing Constituents: Prisoners and Political Clout in New York* (2002); *The Prison Index: Taking the Pulse of the Crime Control Industry (2003);* and *Breaking the Census: Redistricting in an Era of Mass Incarceration,* 38 William Mitchell L. Rev. 1241 (2012).

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ABOUT THE PRISON POLICY INITIATIVE

The non-profit, non-partisan Prison Policy Initiative was founded in 2001 to demonstrate how the American system of incarceration negatively impacts everyone, not just incarcerated people. The Easthampton, Massachusetts based organization is most famous for its work documenting how mass incarceration skews our democracy via "prison gerrymandering". Other projects have included groundbreaking reports about sentencing enhancement zones and jail mail restrictions, and online resources that give activists, journalists and policymakers the tools they need to participate in setting effective criminal justice policy.

FOR MORE INFORMATION

For more information, including copies of this report and links to additional resources, see http://www.prisonpolicy.org/phones/ .

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EXECUTIVE SUMMARY

At a time when the cost of a phone call is approaching zero, one population is forced to pay astronomical sums to stay in touch: the families of incarcerated people. For a child to speak with her incarcerated parent, a family member or friend is forced to pay almost $1 per minute, plus a long list of other fees that easily double the total cost of the call. Faced with phone bills that can total hundreds of dollars, many families have to choose between paying for calls and paying for basic living expenses.

Social science research shows that strong community ties are one of the best predictors of success after release from prison or jail, but the prison telephone market threatens those ties because it is uniquely structured to create a counter-productive cycle of exploitation: prison systems and local jails award the monopoly contracts to the phone company that will charge the highest rates and share the largest portion of the profits. The prisons and jails get their commissions, the phone industry gets the fees, and the families get the hefty bills.

While previous research has documented the unjustifiably high calling rates in the prison phone industry, this report is the first to address in depth the many fees prison phone customers must pay. We find that meaningful regulation of the prison phone industry must stem from a comprehensive analysis of the customers' whole bills, rather than limiting the discussion to addressing the high per-minute calling rates alone.

This report finds that fees have an enormous impact on prison phone bills, making up 38% of the $1 billion annual price of calling home. This report details the fees that prison phone companies charge for "services" such as:

- accepting customers' money (deposit fees of up to $10/deposit)
- holding on to customers' money (monthly account fees as high as $12)
- closing customers' accounts (refund fees of up to $10)

This report reveals that these fees are but the tip of the iceberg, though, as many other charges are far less transparent. For example, some companies operate "single call programs" that charge customers who do not have preexisting accounts up to $14.99 to receive a single call from a prison or jail. Some companies have hidden profit-sharing agreements with payment processors such as Western Union, which are not disclosed to the correctional systems that award contracts. Other companies give their fees government-sounding names, even though the fees are not required by the government and may not even be paid to the government.

Unlike in most industries, bad customer service is a key source of revenue for prison phone companies. For example, most of the industry finds it economically advantageous to use poorly calibrated security systems to drop phone calls and trigger additional connection charges. Other companies show no hesitation to triple the cost of a call made to a local cellphone by charging consumers the more expensive long distance rate.

Previous research has generally focused on the price to call home from state and federal prisons, but we find that limiting the scope to prisons only significantly understates the sheer number of families that must bear the burden of exorbitant phone bills. This report expands the discussion to also include the families and friends of the more than 12 million people who cycle through 3,000 local jails across the country every year. To our knowledge, almost no local jails refuse commission payments in order to make calling home more feasible.

Because the opportunities for consumer exploitation in this broken marketplace are almost endless, regulation by the Federal Communications Commission (FCC) is the only permanent, nationwide solution that would remove the inherent conflicts of interest between the facilities that award monopoly contracts, the companies that execute them, and the families that pay the price.

The FCC should craft a regulatory solution that is based on a comprehensive view of the prison phone industry, taking into account each of the components that contribute to customers' high bills, including fees.

The report urges the Federal Communications Commission to:

1. Impose reasonable rate and fee caps that apply to all prison and jail telephone calls;
2. Ban commission payments in all prison and jail telephone contracts on the grounds that such payments necessarily lead to inflated calling rates and incentivize pernicious fee-collecting practices;
3. Ban all illegitimate fees in the prison and jail phone industry; and

4. Audit legitimate fee collection by prison phone companies to ensure compliance with FCC policy.

Additionally, the report recommends that state and local contracting authorities take measures of their own to rein in the cost of phone calls from jails and prisons.

County sheriffs, county contracting authorities, and other state prison systems should:

1. Refuse to accept commissions from telephone companies;

2. If commissions will be accepted, ask the companies hard questions about how their fees are determined before awarding a contract to ensure that fees are fairly assessed and that income that should be subject to the commissions is not hidden as a "fee";

3. Refuse to contract with any company that is not fully transparent about how fees and commissions are calculated.

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FOREWORD

After we wrote "The Price to Call Home: State-Sanctioned Monopolization In The Prison Phone Industry," our report about the exorbitant rates charged for phone calls from state prisons, we received some helpful feedback from an unexpected source: criminal defense attorneys.

In our first report on the prison phone industry, we focused on the three companies that dominate the market for calls from state prisons, and addressed the perverse conflicts of interests inherent in the preparation and writing of these contracts. We showed how contracts are awarded not to the telephone company that charges the lowest rates or best service, but to the company that offers to share the largest portion of the call revenue with the prison system. This drives up the cost of a call, serves as a stealth government tax, and removes any incentive for state prison systems to advocate for lowering the phone bills of the families, friends, and attorneys who need to receive calls from incarcerated people.

The defense attorneys we spoke to, however, pointed out that calling rates from county jails are often even higher than those from state prisons. They described shocking billing practices that cause the actual call charges to be far higher than the nominal published rates. Upon investigation, we learned that these were not isolated examples, but rather the tip of an iceberg that we aim to expose in this report.

We felt it particularly important to produce this report now, as a growing number of states are banning commissions and the Federal Communications Commission is considering a proposal to cap the rates charged for phone calls from correctional facilities. The telephone companies filed their original objections and concerns,[1] and a reply period closed in late April.

We urge state regulators, local contracting authorities, and the Federal Communications Commission to take a comprehensive view of the prison telephone industry. Capping the calling rates is essential; but leaving the fee structure untouched would allow the dominant companies in the industry to, with the stroke of a pen, instantly restore their monopoly profits at the consumers' expense.

Peter Wagner
Executive Director
Prison Policy Initiative
May 8, 2013

INTRODUCTION

Making it harder for incarcerated people to stay in touch with people outside prison and jail harms incarcerated people, their families and communities, and society at large. Affordable phone calls are directly related to the safety and well-being of all communities because communication reduces the likelihood that incarcerated people will commit another offense after their release.[2] This uncontroversial proposition has been endorsed by Congress,[3] the American Bar Association,[4] the American Correctional Association,[5] the federal Bureau of Prisons,[6] state legislatures,[7] and state regulatory agencies.[8] Unfortunately, opportunities for government and private profit from prison telephone calls are clouding out this common-sense principle, and communities are suffering to fill the phone industry's coffers.

Speaking to each other over the phone is a lifeline for incarcerated people and their families,[9] but maintaining such a relationship is almost impossible when the cost of phone calls is outrageously high. Table 1 illustrates that a brief 15-minute phone call from a prison or jail often costs more than $17[10] — a disturbing anomaly in the era of unlimited long-distance plans for only $52.99 a month.[11] The bills for prison phone calls are not borne by incarcerated persons;[12] almost all calls emanating from correctional facilities are either collect calls or are pre-paid by family members on the outside who have set up an account with a private telephone company.

Several unique and deliberate features of the prison phone industry* lead to these prices. First, each prison system or local jail enters into an exclusive contract with a telephone company, granting that telephone company a monopoly in the state prisons or at the local jail.[13] Second, in all but a few locations, the telephone companies are contractually obligated to pay a large portion of the revenue collected back to the correctional facility, thereby increasing the per-minute calling rates.[14] Such kickbacks are known as "commissions."[15] Third, in order to collect revenue to make up the money lost to commissions, prison telephone companies add hefty charges through multitudes of extra fees that often nearly double the price of a call. These fees — the vast majority of which do not exist in the ordinary telephone market — drive the telephone bills charged to people with incarcerated loved ones to astronomical levels.

Company	Surcharge (per call)	Per minute	Total for 15 minute call
AmTel	not disclosed	not disclosed	not disclosed
Global Tel*Link	$4.95	$0.89	$18.30
ICSolutions	$4.99	$0.89	$18.34
Infinity	$3.95	$0.89	$17.30
Lattice	$3.95	$0.89	$17.30
Legacy	$4.99	$0.89	$18.34
NCIC	$3.95	$0.89	$17.30
Pay Tel	$3.00	$0.85	$15.75
Securus	$4.99	$0.89	$18.34
Telmate	not disclosed	not disclosed	not disclosed
Turnkey Corrections	not disclosed	not disclosed	not disclosed

Table 1. Highest Interstate Rates disclosed in tariffs filed by the prison telephone companies with the FCC or with state regulators. Despite FCC requirements to publish rates on their websites, we were not able to locate the filings for three companies. Sources: See endnote 10 and exhibits 8, 34-37, 39-40, 42-44.

While the push to bring down the cost of staying in touch has been an ongoing struggle for decades,[16] some policymakers have realized that the price to call home need not be so staggering. Indeed, several states have attempted to bring down prison telephone charges. For example, eight states and the District of Columbia do not accept commission payments in telephone service contracts for certain correctional facilities.[17]

Notable limitations and deficiencies in these welcomed reforms persist, though. For example, California phased out commission payments to its state prison system, but the legislation did not affect local jails, as evidenced by the 56% commission in Contra Costa County and the 72% commission in the Solano County's contract.[18] Furthermore, as the New Mexico Public Regulatory Commission has noted, state legislatures and regulatory agencies are limited to reining in exorbitant phone costs only in their own states. Finally, a proliferation of new fees charged by phone companies is impeding efforts to reduce phone bills. National rate caps will be ineffective at protecting consumers when the industry is free to create additional fees out of thin air.

Fortunately, the one entity with the ability and technical expertise to address this problem — the Federal

* This report is the first to include an in-depth analysis of the companies that concentrate on one corner of the correctional telephone market: local jails. But for simplicity's sake, this report will continue to use the term "prison phone industry" as a generic term to encompass these companies. Separate from that phrase, we'll use the criminal justice terms of art "prison", "jail", and "correctional facility" where that specificity is relevant.

Communications Commission — is seriously considering bringing much-needed and much-called for reform to the prison telephone industry.[19] This report illuminates the interconnected array of rates and fees charged by the exploitative prison telephone industry, illustrating why comprehensive reform is necessary to provide relief to the people who are forced to pay exorbitant prison phone bills.

THE PRISON PHONE MARKET IS BROKEN

The current structure of the prison phone market guarantees exorbitant phone bills. In an ordinary market for goods or services, consumers have the freedom to select the best seller. In the prison phone market, though, state and local government entities grant monopolies to telephone companies by entering into exclusive contracts.[24] The actual consumers of the telephone service — the families of incarcerated persons — have no input on the contracts or ability to take their business elsewhere. As Commissioner Ajit Pai of the Federal Communications Commission (FCC) explained, "choice and competition are not hallmarks of life behind bars. Inmates cannot choose among multiple carriers for lower rates. Instead, prison administrators select the service provider, and their incentives do not necessarily align with those who are incarcerated."[25] Indeed, consumers' interests are often disregarded by the telephone companies.[26] This abuse is further exacerbated by the fact that incarcerated people and their families lack comparable substitute methods of communication.[27] State-granted monopolies coupled with no comparable alternative forms of communication necessarily create a prime opportunity for exorbitant prices.

Commission payments are an inherent component of nearly all prison phone contracts, magnifying the price of prison phone service. State prison systems and local jails generally award contracts to the telephone company that promises the highest commission payments, with little regard for the corresponding increase in the rate charged to the consumer.[28] Consequently, high commission payments lead to high per-minute calling rates.[29]

Commissions also contribute to a second and more camouflaged consequence: fees. As Securus, the second largest prison telephone company, suggests, phone companies design their revenue structure to compensate for the revenue loss caused by commissions.[30] Because telephone companies pay up to 84% of call revenue back to the correctional facility or Department of Correction,[31] they consequently impose exorbitant additional fees to recoup this revenue. While the fees carry a variety of official-sounding names, all drastically increase the cost of talking on the phone with someone in prison or jail. Therefore, merely examining the per-minute calling rates leads to an incomplete understanding of the source of prison phone service revenue. The FCC must look at the whole picture in order to create regulations that lead to a well-functioning market that controls the total costs that consumers pay for calls from prisons and jails.

WHAT IS THE WRIGHT PETITION?

In 2000, a group of plaintiffs brought a class action lawsuit against the Corrections Corporation of America and several prison phone companies, alleging that the prison phone agreements between the parties violated, among other things, federal anti-trust law. The federal district court in Washington, D.C. referred the case to the Federal Communications Commission (FCC), stating that the FCC was the appropriate government body to address the concerns raised in the lawsuit.[20] The plaintiffs then petitioned the FCC to enact regulations that would introduce competition to the prison phone market in the hopes of lowering prison phone rates by breaking up the monopolistic industry.[21] The petition to the FCC came to be known as the Wright Petition, after original named plaintiff Martha Wright. In 2007, and after several years of little movement from the FCC, the plaintiffs amended their request, asking the FCC to impose price caps of $0.20 - $0.25 per minute for interstate long-distance rates.[22]

In late December 2012, the FCC published a Notice of Proposed Rulemaking (NPRM) regarding the Wright Petition.[23] In sum, this Notice sought more information concerning the prison and jail telephone industries from the companies that provide such service. The public and involved parties submitted initial comments during the first 60 day comment period, and then had 30 additional days to submit reply comments. The final reply comment period ended on April 22, 2013. The FCC must now decide how to proceed.

BRINGING JAILS INTO FOCUS

While most discussions about the need for federal regulation of the prison phone industry have focused on state prisons, the fact that a vast number of people pass through jail systems every year makes it essential to consider how the prison phone industry impacts this population as well. Broadening discussions about the prison phone industry to also include the impact on jails makes it clear that the number of people victimized by high telephone rates and fees is far higher than previously understood. (For simplicity, we will continue to use the phrase "prison phone industry" to refer to the companies in this market, even if they also service jails and other kinds of correctional institutions. In this contextual section only we'll use the terms 'prisons' and 'jails' separately as technical criminal justice terms.)

Prisons and jails are conceptually and operationally distinct, with different management and oversight systems. A single national cap on rates and fees as proposed by the Wright Petition would benefit all of these facilities, although for different reasons. As a general introductory matter, it is important to consider the range of different incarcerated populations that must call loved ones on the outside.

Prisons are generally run by the state or federal government and hold people who have been convicted and are serving sentences for more "serious" crimes.[32] There are 1.6 million people in state or federal prison, serving an average sentence of 28 months in state prison and 32.9 months in federal prison.[33] About 669,000 people are admitted to prison every year.[34]

Local jails, on the other hand, process a larger number of people and hold them for a shorter period of time. About 60% of the jail population is awaiting trial, and is comprised of people who are either detained because they have just been arrested and have not yet raised bail, or because they are unable to raise bail and are being detained until their trial.[35] Less than 40% of people in jail have been convicted, the vast majority of which serve less than a year.[36] While the population of state and federal prisons is more in flux than the public and most policymakers assume, the turnover in local jails is even higher.[37] On any given day, there are approximately 735,000 people in 3,283 local jails.[38] According to the Bureau of Justice Statistics, almost 12 million people cycle through the jail system each year.[39]

Finally, while some evidence suggests that rates (if not fees) for telephone calls from state prisons are dropping, it is becoming clearer that both rates and fees in jails are rising, making jails the new frontier for telephone profits.[44]

WHY DOES THE NATIONAL SHERIFFS' ASSOCIATION OPPOSE PRISON PHONE REGULATION?

The National Sheriffs' Association, the leading non-corporate voice opposing prison phone regulation, is self-described as "a nonprofit organization dedicated to raising the level of professionalism among sheriffs, their deputies, and others in the field of criminal justice and public safety so that they may perform their jobs in the best possible manner and better serve the people of their cities, counties or jurisdictions."[40]

In its capacity as "the one voice of the nation's sheriffs in Washington D.C.," the National Sheriffs' Association has made opposing prison phone industry regulation a top priority. Indeed, multiple years of the Association's annual reports highlight the lack of progress towards federal prison phone regulation as one of the Association's selected top lobbying victories of the year.[41] For example, the organization proudly highlights efforts in 2009 to "block harmful measures … including … attempts to change the existing inmate telephone system."[42]

Aside from protecting the income from the phone kickbacks, the Sheriff's Association has another reason to support the prison phone industry's fight against FCC regulation: protecting corporate sponsorships. Leading prison phone companies are some of the top donors to the National Sheriffs' Association. Global Tel*Link, Pay-Tel Communications, and the Keefe Group (the parent of ICSolutions,which handles CenturyLink's prison phone business) are all "platinum" corporate partners and Securus is a "gold partner."[43]

It is essential for the FCC to step in and regulate the growing costs of calls from jails because every year a vast number of people pass through local jails with decentralized administration and limited oversight. Given the sheer number of distinct local jail systems around the country, the federal government is the only agency that can provide effective oversight of the facilities' contracts with phone providers.[45]

COMMISSIONS DRIVE COSTS

There is no longer any doubt that the commission system drives the high bills that the family members and friends of incarcerated people must pay to stay in touch, and the problem is only getting worse. Market leader Global Tel*Link admits, "as a general trend, that the size of commissions have increased substantially"[48] over the last decade. The highest commission we know of is in Baldwin County, Alabama, where ICSolutions agreed to pay 84.1% back to the county, guaranteeing an average commission of "$55.00 per inmate per month."[49] Calls from this jail cost $0.89 a minute plus a $3.95 connection charge, which is less than the maximum reported in state tariffs for this company as shown in Table 1, suggesting that some counties receive an even higher commission.

CenturyLink provides the FCC with two anecdotes from Michigan and South Carolina that show how eliminating commissions led to an immediate drop in the rates: "The reason for these outcomes is straightforward. In order to cover the significant up-front and ongoing fixed costs incurred in these contracts, higher calling rates were necessary when the payment of site commissions was required by the facilities."[50] In turn, these higher calling rates deter family communication.[51]

LOCAL JAILS SHOULD FOLLOW STATE PRISONS BY REFUSING COMMISSION PAYMENTS

To our knowledge, eight state prison systems and only one local jail — in Dane County, Wisconsin — refuse commission payments in order to make their calling rates more affordable. All local jails and state prison systems should follow their lead.

In 2007, Dane County Commissioners voted to ban the kickbacks that brought in nearly $1 million per year. County Supervisor Dave de Felice explained the county was "addicted to this money." Recognizing the inherent conflict of interest, he stated, "We've lost our moral compass and direction for a million bucks a year." [46]

Several state prison systems around the country (California, Nebraska, New Mexico, Missouri, Michigan, Rhode Island, South Carolina, and New York) and the District of Columbia have also already banned commission payments in their phone contracts without jeopardizing public safety, the operation of their facilities, or the continued existence of a phone system.

Many sheriffs and state Department of Corrections officials argue that commission revenue is warranted because the money is used to pay for programs related to rehabilitation and care. But the choice of expenditure does not justify the method of revenue collection. Paying for rehabilitation and basic needs is one of the core costs of incarcerating people,[47] not an "extra" charge for local governments to transfer to the families of incarcerated persons via exploitative telephone bills.

Finally, to the extent that money from the phone bills is kicked back to the local government or jail, these bills are effectively an additional government tax levied upon the families of incarcerated persons. If a local government wishes to impose such a tax, it should do so through the ordinary legislative channels — not by stealthily colluding with private telephone companies.

While the prison phone companies like Global Tel*Link complain in their Wright Petition filings that "correctional facility customers routinely refer to rates in the same breath as commissions,"[52] our review of the correctional facilities' requests for proposals and the resulting contracts across the country reveal that the commission payment is the only term that is seriously negotiated.

For example, Gwinnett County, Georgia selected Global Tel*Link's Offer #1 over the company's very similar Offer #4, which differed only in a slightly lower commission and far lower phone charges. Before making a final decision, the County requested Global Tel*Link's last and final offer, and the company then sweetened the deal by increasing the commission in Offer #1 to 65%.[53] (See Table 2.)

	Surcharge	Per minute	Cost for 15 minute collect call	Commission	Commission income
Offer 1	$4.84	$0.89	$18.19	64%	$11.64
Offer 4	$2.00	$0.15	$4.25	58%	$2.47
Final Offer (Contract)	$4.84	$0.89	$18.19	65%	$11.82

*Table 2. Global Tel*Link offers and final contract with Gwinnett County, Georgia. Source: Exhibit 3.*

We found many similar examples of commissions driving the decision to award contracts to the detriment of other factors, including:

- St. Louis County, Missouri, awarded the contract to ICSolutions because the company gave the county the highest commission, 73.1%. In the county's scoring system used to weight multiple factors and pick the winning bid, the commission was clearly the most important factor. Under the 100 point scoring system, the company with the highest commission was awarded 30 points. By contrast, having the lowest cost to the public was worth no more than 10 points and the company with the greatest "experience and viability" could be awarded up to only 20 points.[54]

- Macomb County, Michigan received bids from 6 companies for three- and five-year contracts. Of the twelve combinations, the county chose the combination that gave them the highest commission: 78.5%. The county asked about "additional fees charged" in the request for proposals, but this was not a visible factor in the decision.[55]

Kickbacks increasingly include other complex payments-in-kind beyond a percentage share of the call charges that, like cash commission payments, come at the expense of the people who pay for calls. Telmate's Wright Petition filing, for example, says that "financial commission payments are but a small portion of the services, equipment and benefits … required by correctional systems from their ICS [Inmate Calling Services] partners."[56]

Examples of additional services prison phone companies can be contractually obligated to provide include:

- Unrelated computer equipment. All 5 of Global Tel*Link's offers to Gwinnett County, Georgia mentioned above include "Two (2) new laptop computers"[57]

- "Free" phone calls. Some contracts, particularly those with local jails, require the phone companies to provide some phone calls at no charge to certain individuals. Telmate says that "free calls alone comprise a hefty 21% of all call minutes and 30% of calls from county correctional facilities." In county facilities, these free calls would predominantly if not exclusively be a part of jail procedures related to booking. These calls should be subsidized by state and local governments, not prison phone companies that must then compensate for the lost income by overcharging for all other calls.

As market-leader Global Tel*Link aptly stated: "Put simply, there is no free lunch."[58] The kickbacks, via explicit commissions and payments-in-kind, are driving up the costs for the phone companies and, as a result, for consumers.

TACKING ON FEES TO RECOUP THE COMMISSION REVENUE

The increase in commission payments is directly related to another significant burden for the people who pay prison phone bills: fees, which can easily double the cost of a single telephone call, and can add 50% to the phone bills charged to the families that receive more frequent calls.[59]

In the decade since the original Wright Petition was filed, prison phone companies have trumpeted that they are reducing the cost to consumers by gradually shifting from collect calls to a prepaid call system. An examination of the fees charged for pre-paid calls disproves that conclusion, however, and raises serious concerns that capping the *rates* for calls but leaving the industry free to set their own *fees* would not in fact bring relief to consumers facing high *bills*.

One of the reasons that fees are so profitable to prison phone companies is that fee income is exempt from the phone companies' commission responsibilities, as the major phone providers have illustrated in their FCC filings. Pay-Tel explained, for example, that "commissions are only paid on call revenue — not on fees, which are collected for the benefit of the ICS [Inmate Calling Service] providers alone."[60] Securus further points out how the fees help to compensate for the expense of the commissions, saying that, "[t]he significance of site commissions to the company can also be seen in the amount of ICS revenue that Securus must earn in order to pay for these costs."[61] And Global Tel*Link tells correctional facilities upfront in its contract bids that, for the purposes of determining net profits after the loss of the commissions, the payment fees are "cost recovery in nature and are not considered revenue."[62] While the industry disputes without evidence the Wright Petitioners' calculations of the true cost of providing telephone services from a prison,[63] it remains a simple mathematical fact that when the commissions consume the majority of the cost of a phone call, there is comparatively little room for telephone company profit.[64] By tacking on additional fees, the prison phone industry has created a new profit source that is safely out of reach of the commission system.

To be sure, businesses in many industries incur some processing costs by accepting credit or debit cards in person, via the internet, or over the telephone.[65] Businesses usually respond by setting minimum purchase levels for a take out food order, charging a slightly higher rate per gallon of gasoline, or by simply writing it off as the cost of doing business. But this section of the report suggests that prison telephone companies may be approaching the question from the other end: providing telephone services in order to make money by charging extra fees. Indeed, because the commission system reduces the potential for corporate profit from the telephone calls, fees that should be no more than supplemental income are turned into a central source of profit.

Previous discussions about prison phone industry regulation have briefly mentioned the "ancillary" fees[66] that often appear on phone bills, but the wide range of fees and the sheer volume of the charges merit individual treatment. This section provides an overview of the industry's hidden fees, covering prepayment fees, refund fees, account fees, and single-call fees.

Profiting on prepayment

The prison phone industry wastes no time in subjecting the consumer to a barrage of fees. After charging initial fees to open accounts,[67] the prison telephone industry charges additional fees for the simple "service" of accepting the customer's money. As the following table illustrates, these fees can be substantial regardless of whether the transactions take place via the internet, the telephone, or Western Union. (See Table 3.) The companies charge up to $9.50 to pay over the internet, up to $10 to pay by phone and up to $12.45 to pay via Western Union.

			Western Union	
Company	**Website**	**Phone**	**Western Union Fee**	**Additional Phone Company Fee**
AmTel	$6.95	$10.00	$9.95	$0
Global Tel*Link	$4.75-$9.50	$4.75 (automated), $9.50 (live operator)	$10.95	$0
ICSolutions	Up to $6.95	$4.79-$8.95	$5.50	As high as $6.95
Infinity Networks	$4.95	$4.95	not offered	
Lattice	not offered	$10.00	$9.95	$0
Legacy	$1.50	$1.50	$6.00	As high as $3.95
NCIC	not offered	Up to $6.75	$9.95	$0
Pay Tel	$3.00	$3.00 (automated), $5.95 (live operator)	$5.95	$0
Securus	$7.95	$7.95	$11.95	$0
Telmate	As high as $5 + 30.5%	We were quoted higher fees than website payments, but lower taxes.	not offered	
Turnkey Corrections	$8.00	$8.00	not offered	

Table 3. Payment charges by method. Sources: Exhibit 26. For Telmate, see the discussion surrounding Table 7 and Table 8.

Many prison phone companies have designed their systems and rules to maximize the collection of fees. TurnKey Corrections, AmTel, and ICSolutions structured their payment systems to maximize the number of small payments made with a fixed high "convenience" fee. TurnKey will accept up to $400 in a one-month period, but only allows individual deposits of up to $150, each with an $8 deposit fee.[68] Similarly, AmTel will accept up to $250 per week, but charges $6.95-$10.00 to make a maximum individual payment of up to $100,[69] and ICSolutions will accept $275 per month, but charges $6.95 to make a payment of up to $50.[70] TurnKey makes it clear that it intends to facilitate frequent

small payments with accompanying high fees by asking the purchaser, during the online payment process to "Please enter today's amount," followed by an advertisement for a TurnKey smartphone money deposit app that encourages even more on-the-go payment fee generation.[71]

Prison phone companies' relationships with payment companies also offer opportunities to rake in revenue from high charges that disproportionately burden low-income families that do not have bank accounts.[72] Western Union fees, for example, vary from $5.95 to $11.95 for no apparent reason other than to act as a stealth profit center for the phone companies. The differences between the charges are initially confusing, but informative upon investigation. Four observations each suggest that Western Union is sharing a portion of its fees with the prison phone companies:

- Western Union is consistently charging consumers far more to send payments to the prison telephone industry than it does for payments elsewhere. The fee to send payments to most other companies ranges from $1.50-$3.00.[73]

- There is tremendous diversity in how much the Western Union charges. Western Union charges only $5.50-$6.00 to send payments to Pay-Tel, ICSolutions, and Legacy, although both ICSolutions and Legacy charge an additional fee to accept the payment from Western Union. Three prison telephone companies demonstrated that it is possible for a prison phone company to negotiate a lower fee from Western Union.

- Of the three companies where the fee charged by Western Union is relatively low, two companies charge an additional payment fee that entirely erases the savings to the customer.[74]

- Western Union charges the customers of Global Tel*Link and Securus — the prison phone market leaders — the highest rates. It strains all credible belief to think that Global Tel*Link, a company that brags in its most recent FCC filing that, as "one of the largest providers in the market, it has economies of scale and efficiency that enable [it] to pay high commissions … [and simultaneously] charge lower rates,"[75] somehow lacks sufficient negotiating power to ensure that Western Union does not force Global Tel*Link customers to pay higher-than-average fees.[76]

Finally, prepayment fees are a significant burden on consumers even where they are not permitted. Massachusetts provides a prime example where Global Tel*Link conceded that the payment fees are intertwined with the rates: payment fees are prohibited by Global Tel*Link's contract with the Massachusetts Department of Correction, but the phone company's computer system couldn't waive the fees for just Massachusetts, so the company cut the rates by an equivalent amount. Massachusetts valued the cost of the deposit fees at 19%.[77]

Profiting on calls that are never made

When someone is released from prison or jail, families welcome the chance to reconnect. But this event is a chance for prison telephone company profiteers to celebrate as well by either seizing the balance left over in a phone account or charging customers hefty fees to recoup their own money.

As Table 4 shows, the charge to refund money can be as much as $10, and prison phone companies have a wide range of policies about if, how, and when a customer can claim his or her funds. While a few companies claim that money can be left in an account indefinitely, most seize the funds within a few months after release.[78] Generally speaking, the larger companies have the most restrictive policies. Depending on the source, Telmate either charges the highest refund fee ($10), or bars refunds as a matter of policy, and Global

Company	Fee	Time before balance is forfeit
AmTel	$0 if balance is over $5, otherwise no refund	12 Months
Global Tel* Link	$5.00	90 Days
ICSolutions	$2.99	6 Months, unless otherwise required by state law.
Infinity Networks	$5.00	12 Months
Lattice	$0, if balance is over $5.00	6 Months
Legacy	$0 to withdraw, $5.00 charge to close the account officially.	12 Months
NCIC	$2.00-6.75, plus $10/ month inactive account fee	3 Months
Pay Tel	$0	Never, automatic refund after 6 months
Securus	$4.95 (no refund if account balance is less than $4.95)	180 Days
Telmate	"processing fee of $10 may apply"	Never/After 60 days, can call and get get the money back in the form of a check 6-8 weeks. Before then, can get the credit card or prepaid card.
Turnkey Corrections	n/a	On release. "There is no cash value for the inmate upon release"

Table 4. Refund policies, For sources, see Exhibit 27. (Telmate provides very contradictory information on refund policies.)

Tel*Link has one of the shortest deadlines to claim unused funds before they are seized.[79]

Immigration detainees pay particularly high price for these refund policies, as detained immigrants are often transferred between facilities and funds for telephone use in one facility will not work if the second facility uses a different company. Community Initiatives for Visiting Immigrants in Confinement (CIVIC) aptly discusses this problem in its Wright Petition Comments to the FCC.[80]

Making money on holding customers' money

The prison phone industry's embrace of prepaid calling means that the phone companies enjoy the convenience of not having to worry that their low-income customers may not be able to pay their bills. While paying interest or a giving a discount might be an appropriate way to thank consumers for paying in advance, the industry instead charges additional fees on top of the high telephone rates simply for keeping the prepaid account open.

Table 5 summarizes a sampling of the monthly charges disclosed by the prison telephone industry in official filings, which can add more than $12 to the final monthly bill. These charges are clearly not the entire universe of recurring account fees. For example, Infinity charges "up to $1.99/month" if one or more wireless numbers are added to the account. Infinity's wireless number fee is not disclosed in the published tariffs, but rather is revealed only after a customer creates an account with the company. Similarly, Global Tel*Link reveals on its website — but not in the tariffs we reviewed — that it charges $2.50 for each paper statement.[81]

Making fast money on emergency calls

The prison telephone industry has found a new way to offer expensive collect calls to vulnerable consumers in difficult situations without relying on the recipients' phone companies to process collect call payments: charging expensive single call fees.

Before such a call can be connected, the recipient must first agree to either have a $9.99 to $14.99 "premium message" charged to their cellphone, or to pay that amount by credit or debit card.[82]

Such "single call programs"[83] are particularly attractive to jails — facilities that generally process a high volume of individuals who are detained for only a brief period of time while making arrangements to secure bail or bond. Single call programs are also often used when an incarcerated person needs to call someone who may not already have a prepaid

Company	Fee	Amount
AmTel	LEC Billing Cost Recovery Fee	$2.49/month
	Direct Billing Cost Recovery Fee	$1.50/month
	Printed Statement Fee	$1.50/month
Global Tel* Link	Federal Regulatory Cost Recovery Fee	$3.49/month for collect calls, up to 8%/call for prepaid calls
	Public Telephone Surcharge	$0.50/call
	Single Bill Fee	$3.49/month
	Validation Surcharge	4% of base rate/call
ICSolutions	Bill Statement Fee	Up to $2.49/month
	Federal Cost Recovery Surcharge	3.2%/call
Infinity Networks	Public Telephone Surcharge	$0.50/call
	Single Bill Statement Fee	$2.95/month
	Regulatory Assessment Fee	$1.95/month
	Wireless Administration Fee	$1.99/month
Lattice	Bill Statement Fee	$2.95/month
	Federal Cost Recovery Surcharge	6.1%/call
Legacy	Bill Statement Fee	$2.50/month
	Carrier Cost Recovery Fee	$1.95 or 2.50/month
	Network infrastructure Fee	$2.50/month
	Non Subscriber Fee	$0.00-7.50/call
	Payphone Surcharge	$0.56/call
	Premise Impose Fee	$3.00/call
	Prepaid Wireless Fee	$9.99/call for calls lasting 15 min or less, additional fee for longer calls
	Regulatory Compliance Fee	$1.95/month
NCIC	Billing Cost Recovery Fee	$2.95/month
	Regulatory Cost Recovery Fee	$0.95 plus 10% of the price of the call, excluding taxes and fees, not to exceed $3.50 per call.
	Federal USF Cost Recovery Fee	$0.15 plus 17% of the current Federal Universal Service Fund Surcharge, excluding taxes and fees.
	Regulatory Assessment Fee	$1.99/month
Pay Tel	Bill Processing Fee	$2.45/month
Securus	Bill Processing Charge	$1.49/month
	Billing Statement Fee	$3.49/month
	Federal Regulatory Recovery Fee	$3.49/month
	USF Administrative Fee	$1.00/month
	Wireless Administration Fee	Up to $2.99/month
Telmate	Bill Statement Fee	$2.95/month
	Carrier Cost Recovery Fee	$2.50 at 1st and 5th call
	Regulatory Assessment Fee	$0.99 at 1st and 5th call

Table 5. Charges disclosed in tariffs filed by the prison telephone companies with the FCC or with state regulators. Sources: See Exhibit 48.

account, or someone whose phone provider does not already have a billing relationship with the prison phone company.[84]

Determining the prevalence of these "single call" programs is difficult because they were not disclosed in any of the tariffs that we reviewed on phone service provider websites. That omission may be standard in the industry, as neither of the two places where the practice received the most public attention — Securus's program in Chicago[85] and Telmate's in Alabama[86] — are disclosed in the relevant state tariffs. In any event, it is well established that the practice of "single call fees" is common in the industry, as one company observes in their most recent FCC filing that "many" prison phone companies operate such programs.[87]

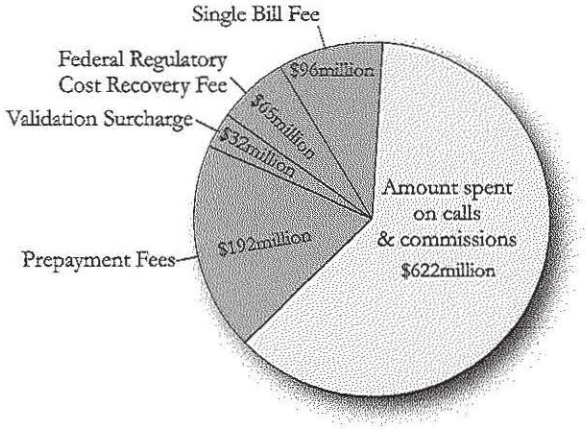
National: 38 cents on every prison phone dollar may be going to fees

The kickbacks, high rates and hidden fees in the prison phone industry add up to real expenses for consumers, who are primarily concentrated in the low-income communities that can least afford such expenses.

	Annual amount
Prepaid prison phone market (90% of $1.2 billion prison phone market according to *Bloomberg BusinessWeek*)	$1,008,000,000
Prepayment fees (19%)	$191,520,000
Amount left after payments	$816,480,000
Call fees	
Validation Surcharge (4%)	$32,659,200
Federal Regulatory Cost Recovery Fee (8%)	$65,318,400
Monthly charges	
$3.49 Single bill charges for 2.3 million incarcerated people, per year	$96,324,000
Amount left for calls (and commissions) after all fees	$622,178,400

*Table 6. Estimates of the amount of fees collected by the prison phone industry by applying the fees charged by Global Tel*Link to the entire market. Sources: see endnote 88.*

Fees consume 38% of the $1 billion spent each year on calls from correctional facilities



Applying the fees charged by industry-leader Global Tel*Link to the national market, in Table 6 we produce the first ever estimate of the amount that the families of incarcerated people spend on phone fees every year: $386 million.[88]

That's 38 cents on the dollar that could be going to actual phone calls or other important needs that instead lines the corporate pockets of the prison phone industry.

CLOUDING TRANSPARENCY TO MAXIMIZE REVENUE FROM DISEMPOWERED CONSUMERS

Beyond charging high rates and fees, there are a number of practices that the prison telephone industry uses to maximize profits while discouraging oversight and informed consumer consent. Some practices might be illegal and many are unethical, but all are good for the corporate bottom line. Here we review three such practices: collecting fees under the guise of taxes, using allegations of prohibited three-way calls as a revenue source, and arbitrarily charging more for calls made to cellphones.

Collecting fees under the guise of taxes

While preparing the tables about deposit fees and recurring fees, we discovered two disturbing phone company practices. First, many of the company fees charged to consumers are given misleading official-sounding names, and second, that Telmate's practice of collecting fees on deposits raises a series of questions about the true purpose of these fees.

As shown in account fees section above, all prison telephone companies charge fees for having accounts. Many of these fees are disguised by official-sounding names, but the majority (if not all) do not appear to be actually required by the government. (See Table 7.)

To be sure, some of these fees represent real assessments made by the federal government. None, however, are required to be passed on to consumers. "Although not required to do so by the government," the FCC notes on its website, "many carriers choose to pass their contribution costs [to the Universal Service Fund] on to their customers in the form of a line item."[89] Other companies, including some companies in the prison phone industry, clearly choose to absorb this particular government assessment and write it off as a cost of doing business. Many of the other fees, based on their titles and justifications described in Exhibit 26, could be summarized as "the legal costs of complying with the law."

Fee	Cost
Carrier Cost Recovery Fee	$1.95/month, $2.50/month or $2.50 at 1st and 5th call
Federal Cost Recovery Surcharge	3.2%/call,6.1%/call
Federal Regulatory Cost Recovery Fee	$3.49/month for collect calls, up to 8%/call for prepaid calls
Federal Regulatory Recovery Fee	$3.49/month
Federal USF Cost Recovery Fee	$0.15 plus 17% of the current Federal Universal Service Fund Surcharge, excluding taxes and fees.
Network Infrastructure Fee	$2.50/month
Regulatory Assessment Fee	$1.95/month, $1.99/month, $0.99 at 1st and 5th call
Regulatory Cost Recovery Fee	$0.95 plus 10% of the price of the call,
USF Administrative Fee	$1.00/month
Validation Surcharge	4% of base rate/call
Wireless Administration Fee	$1.99/month

Table 7. Some of the fees with official sounding names from Table 5 Tariffed Account Fees. For a detailed list of each fee by company and the rationale offered by each company for the fee, see Exhibit 48.

We note that no company outside of the monopoly context would tell consumers that simply complying with the law carries an extra charge.

Ideally, the FCC will choose to regulate all of these fees. But, at a minimum, the FCC could start by auditing Universal Service Fund recovery fees collection to ensure that consumers are not paying the companies more than the companies are paying to the Universal Service Fund.

The fact that Telmate collects these charges as part of the *prepayment* process, however, requires additional comment. Telmate combines these fees with the deposit charge, and then, on the receipts given to consumers, claims that the entire fee is of a regulatory or tax nature. There is no disclosure of the individual "local, county, state and federal surcharges and regulatory assessments." Because Telmate considers prepayment non-refundable, government agencies should question whether the collected "taxes" are turned over to the government when unused balances are forfeited to Telmate.[90]

Ironically, Telmate provides an ideal case study of the importance of fee transparency: The company's website offers a handy calculator for the fees added to a $20 deposit to each facility they serve, but when we put all of the different fees together in a list, we were left with even *more* questions about the nature of these fees. Table 8 contains a sampling of the jurisdictions that contract with Telmate for telephone service (and, in some cases, for the occasionally parallel business of providing inmate commissary management), a list of the fees and taxes charged, and then our calculation of the effective fee percentage on a $20 payment.

It immediately becomes clear that the fees are a substantial portion of every payment, but four additional factors each independently suggest that these are arbitrary company fees and not mandatory government taxes:

- Telmate already charges for some of these fees on a monthly basis (Carrier Cost Recovery Fee $2.50-$5/month, and a Regulatory Assessment Fee of $0.99-$1.98/month), which raises concern that the company may be collecting these arbitrary fees twice: once on deposit in advance, and then again each month. (See Table 5 for Telmate's monthly fees.)

- On the receipt page that appears after making a payment, Telmate lists the entire charge as "Regulatory Fees," and then in an asterisk says, "Fees include local, county, state and federal surcharges, as well as mandatory regulatory assessments." Telmate does this even if the deposit fee is the majority of the assessment.[91]

- The discrepancies between counties in the same state suggest that the "taxes" are negotiated profit, not government fees. For example, people making deposits in Fillmore County, Nebraska are charged "local, county, state and federal surcharges, as well as mandatory regulatory assessments" of 8%, but in Buffalo County, Nebraska, it's 30.5%. The difference could be that Buffalo County (population 46,690) taxes phone calls more aggressively than almost any other locality serviced by Telmate, but the more likely explanation is that deposit fees were negotiated down to $0.50 in Buffalo but Fillmore County has the more typical deposit charge of $5.95.

- Telmate gave us different rate and "tax" quotes on two occasions, but the overall charge came out to the exact same amount. When we called Telmate to inquire about the charges to make a payment by credit card over the phone to Fayette County, Texas, we were quoted a different fee and a different "tax" that

Deposit	Fee	"Taxes"	Total Additional Charge
$20 via phone	$6.40	$4.70	$11.10
$20 via website	$5.00	$6.10	$11.10
$40 via phone	$7.80	$9.40	$17.20
$40 via website	$5.00	$12.20	$17.20

Table 9. Telmate deposit and "tax" fee quotes by payment method. While there is no conceivable reason why the "taxes" would vary by payment method,it is worth noting that the total costs come out the same regardless of payment method. Source: Exhibit 49.

State	Facility	Deposit Type	Flat fee	Percentage fee	Fee charged on $20 deposit	Effective percentage added to $20 payment
AL	Albertville PD	prepaid calls	$0	29.5%	$5.89	29.45%
AL	Arab Police Department	prepaid calls	$0.50	32.5%	$6.99	34.95%
AL	Boaz City	prepaid calls	$0.50	29.5%	$6.39	31.95%
AZ	Santa Cruz County Jail	prepaid calls	$5.95	9.0%	$7.75	38.75%
CA	Carl F Bryan Juvenile Hall (Nevada Co) CA	prepaid calls	$4.95	9.0%	$6.75	33.75%
CA	Fremont Detention Facility CA	prepaid calls	$5.95	8.8%	$7.70	38.50%
CA	Nevada County CA	prepaid calls	$4.95	9.0%	$6.75	33.75%
CO	Douglas County	prepaid calls	$6.95	9.0%	$8.75	43.75%
CO	Yuma County Jail CO	prepaid calls	$5.95	9.0%	$7.75	38.75%
GA	Miller County Jail GA	prepaid calls	$0.50	32.5%	$7.00	35.00%
GA	North Georgia Detention Center	detainee calls	$0.50	7.0%	$1.90	9.50%
GA	Seminole County, GA	prepaid calls	$0.50	32.5%	$7.00	35.00%
FL	Broward, FL	detainee calls	$0.50	7.0%	$1.90	9.50%
FL	Krome, FL	detainee calls	$0.50	7.0%	$1.90	9.50%
ID	3B Juvenile Detention Center ID	prepaid calls	$5.95	9.0%	$7.75	38.75%
ID	Ada County Jail ID	prepaid calls	$5.95	9.0%	$7.75	38.75%
ID	Caribou County ID	prepaid calls	$5.95	9.0%	$7.75	38.75%
IN	Hamilton, IN	prepaid calls	$5.95	9.0%	$7.75	38.75%
IN	Hamilton County CC	prepaid calls	$0.50	30.5%	$6.60	33.00%
IN	Whitley County Jail IN	prepaid calls	$5.95	8.0%	$7.55	37.75%
IN	Whitley County Jail IN	trust	$5.95	9.0%	$7.75	38.75%
KY	Carter County Detention Center KY	prepaid calls	$5.95	9.0%	$7.75	38.75%
KY	Carter County Detention Center KY	trust	$5.95	9.0%	$7.75	38.75%
KY	Jessamine County Detention Center KY	prepaid calls	$5.95	9.0%	$7.75	38.75%
KY	Lewis County Detention Center KY	prepaid calls	$5.95	9.0%	$7.75	38.75%
KY	Lewis County Detention Center KY	trust	$5.95	9.0%	$7.75	38.75%
MT	Dawson Correctional Facility (County)	prepaid calls	$5.95	8.5%	$7.65	38.25%
MT	Dawson Correctional Facility (State)	prepaid calls	$0.00	0.0%	$0.00	0.00%
MT	Gallatin County, Mt	prepaid calls	$5.95	5.0%	$6.95	34.75%
MT	Montana State Prison	prepaid calls	$0.00	0.0%	$0.00	0.00%
MO	Greene County Jail MO	trust	$1.00	7.0%	$2.40	12.00%
MO	Wentzville Police Dept MO	prepaid calls	$5.95	8.5%	$7.65	38.25%
NE	Buffalo County, NE	prepaid calls	$0.50	30.5%	$6.60	33.00%
NE	Buffalo County, NE	trust	$5.99	9.0%	$7.79	38.95%
NE	Fillmore County NE	prepaid calls	$5.95	8.0%	$7.55	37.75%
NE	Sarpy County Jail NE	prepaid calls	$0.50	32.5%	$7.00	35.00%
NV	Nye County, NV	prepaid calls	$0.50	30.5%	$6.60	33.00%
NV	Nye County, NV	trust	$5.99	9.0%	$7.79	38.95%
NJ	Elizabeth, NJ	detainee calls	$0.50	7.0%	$1.90	9.50%
NM	Otero	detainee calls	$0.50	7.0%	$1.90	9.50%
NY	Buffalo	detainee calls	$0.50	7.0%	$1.90	9.50%
OK	Beckham County OK	prepaid calls	$0.50	29.5%	$6.40	32.00%
OK	Delaware County Jail	prepaid calls	$2.00	5.0%	$3.00	15.00%
OK	Delaware County Jail	trust	$2.00	5.0%	$3.00	15.00%
OR	Baker County, OR	prepaid calls	$4.95	9.0%	$6.75	33.75%
OR	Baker County, OR	trust	$5.99	9.0%	$7.79	38.95%
OR	Coos County Jail OR	prepaid calls	$4.95	0.0%	$4.95	24.75%
OR	Curry County Jail OR	prepaid calls	$1.95	5.0%	$2.95	14.75%
OR	Curry County Jail OR	trust	$2.95	5.0%	$3.95	19.75%
OR	Deschutes County Adult Jail OR	prepaid calls	$5.95	9.0%	$7.75	38.75%
OR	Deschutes County Adult Jail OR	trust	$5.95	9.0%	$7.75	38.75%
SC	Chester County Detention Center SC	prepaid calls	$5.95	9.0%	$7.75	38.75%
TX	Aransas	prepaid calls	$0.50	33.5%	$7.20	36.00%
TX	Aransas	trust	$2.00	10.0%	$4.00	20.00%
TX	Austin County TX	prepaid calls	$0.35	33.5%	$7.05	35.25%
TX	Bandera, TX	prepaid calls	$0.50	30.5%	$6.60	33.00%
TX	El Paso	detainee calls	$0.50	7.0%	$1.90	9.50%
TX	Fayette County	prepaid calls	$5.00	30.5%	$11.10	55.50%
UT	Uintah County, UT	prepaid calls	$5.95	9.0%	$7.75	38.75%
UT	Sanpete County, UT	prepaid calls	$5.95	8.0%	$7.55	37.75%
UT	Sanpete County, UT	trust	$4.95	9.0%	$6.75	33.75%
UT	Sevier County Jail UT	prepaid calls	$5.95	20.0%	$9.95	49.75%
WA	Chelan County WA	prepaid calls	$5.95	8.5%	$7.65	38.25%
WA	Chelan County WA	trust	$5.95	9.0%	$7.75	38.75%
WA	Skagit County, WA	prepaid calls	$4.95	9.0%	$6.75	33.75%
WA	Thurston County Corrections WA	prepaid calls	$0.50	30.5%	$6.60	33.00%
WY	Albany County, WY	prepaid calls	$5.95	9.0%	$7.75	38.75%
WY	Sheridan County WY	prepaid calls	$5.95	8.5%	$7.65	38.25%

Table 8. A sampling of the fees charged by Telmate to process payments made on their website, along with a calculation of the effective fee added to each $20 payment. In general, Telmate charges a higher deposit fee when the "local, county, state and federal surcharges, as well as mandatory regulatory assessments" are lower, and a lower deposit fee when the "local, county, state and federal surcharges, as well as mandatory regulatory assessments" are higher. But there are exceptions at both extremes, such as high flat fees and high percentage charges in the Sevier County (Utah) Jail and low flat fees and no percentage charge in Coos County Oregon, or no fees and no surcharge at Dawson Correctional Facility in Montana. Source: Exhibit 50.

produced exactly the same charge. Rather than the fixed $5 fee of the website, we were quoted $6.40 for a $20 payment, and $7.80 for a $40 payment. We were quoted a tax of $4.70 or $9.40, respectively, for these payments, which comes to 23.5%, less than the 30.5% "local, county, state and federal surcharges, as well as mandatory regulatory assessments" charged on the website. (See Table 9.)

Gleaning revenue from faulty "features" and bad customer service

Monopoly contracts allow phone companies to find ways to turn poor service into direct profit. One example is the misuse of legitimate facility security rules banning unapproved 3-way conferencing[92] as an excuse to drop calls, and require customers to pay new connection fee to call back and resume the conversation. Prison phone companies hotly dispute the implication that they deliberately drop calls to increase revenue, but the companies cannot credibly claim that their self-interest is in making sure that the security procedures are not triggered inappropriately.

This controversy is a quintessential illustration of the misaligned incentives in the prison telephone market: The prison systems contractually require certain security procedures, and the phone company implements them. Even assuming that phone companies never maliciously drop calls just to generate a new connection fee, there is simply no incentive under the contracts to take any action to minimize — or even monitor — mistaken detections of three way calls.[93]

Indeed, the record reflects that the industry is prioritizing its interests and that of the correctional facilities over the people who pay the bills:

- In Florida, the prison telephone companies refused to cooperate with an investigation of alleged improper dropping of calls. Facing a potential in $6 million in refunds and $1.3 million in fines, the companies hid documents and delayed proceedings for years. This case was ultimately settled for $1.25 million in exchange for not "finding any guilt or liability on the part of TCG or GTL [Global Tel*Link]..."[94]

- In Pennsylvania, T-Netix, now owned by Securus,[95] failed to make any effort to refund multiple connection charges or even investigate inmate complaints[96] when their system disconnected calls based on ordinary background noises such as "squeals of ... young children,"[97] or "cymbals being hit in the background,"[98] as well as normal call circumstances such as using a cordless phone[99] or having static on the line.[100]

- Telmate goes a step further by turning violations of prison rules against three-way calling and call forwarding into a revenue source. When the system detects a three-way call, it is flagged for review, and if the company determines that the recipient engaged in a three-way call, the account is charged a $25 fee that translates into direct profit for Telmate.[101]

Global Tel*Link's solution to the problem of dropped calls is to blame the consumer. Global Tel*Link's advice on how to avoid the problem is unreasonable and contradictory both in their formal submission to the FCC in response to the Wright Petition and in a brochure available to customers. The FCC submission states:

> "To avoid dropped calls, GTL advises its customers that call recipients should use landline telephones and, if they must use wireless telephones, to avoid talking in areas with prevalent background noise."[102]

The brochure to customers demands:

> "DON'T stop the conversation for any length of time, even short pauses may result in disconnection"[103]

Such admonitions are unreasonable and impractical. For example, consider the near-universal practice of setting a phone down in order to retrieve another person to speak to the caller. Now imagine a child picking up the phone, talking to his or her incarcerated parent, and then setting the phone down for a brief amount of time while he or she brings a sibling or other parent to the phone. This completely benign action can easily trigger the prison phone companies' three-way detection system, thereby ending the call and forcing the family to pay reconnect fees.

On the other hand, there is evidence that one telephone company and some prison systems follow a guideline that is both more ethical and more conducive to a secure facility: flagging — but not dropping — calls. We note that CenturyLink reports that "[b]ecause of the potential for mistakes, all but one of CenturyLink's customers requires flagging the call record within the database, but not disconnecting the call in progress."[104] Notably, CenturyLink's single client that requires disconnection upon detection of a

3. Refuse to contract with any company that is not fully transparent about how fees and commissions are calculated.

On a national level, the broken and inefficient prison phone market is in dire need of comprehensive federal regulation. In our view, eliminating the commission system and instituting proper oversight is the only way to ensure that, as the Pennsylvania Public Utility Commission demanded, the prison phone industry treat the people paying the bills as their actual customers.[120] Until the FCC acts, we can be sure that the industry will continue to look solely to their partners in contract and in profit — the jails and state prison systems — for approval.

The Federal Communications Commission should not wait any longer to bring its institutional expertise and regulatory power to bear on this industry.

The Federal Communications Commission should:

1. Impose reasonable rate and fee caps on all prison and jail telephone calls;

2. Ban commission payments in all prison and jail telephone contracts on the grounds that such payments necessarily lead to inflated calling rates and incentivize pernicious fee-collecting practices;

3. Ban all illegitimate fees in the prison and jail phone industry; and

4. Audit legitimate fee collection by prison and jail phone companies to ensure compliance with FCC policy.

We urge the Federal Communications Commission to take a comprehensive view of the prison telephone industry and regulate both the rates and the fees. Capping the rates is essential to protecting consumers; but the FCC must not allow the industry to compensate for lost monopoly profits by creating new fees.

Appendix B

Correspondence dated January 13, 2014 from
Prison Policy Initiative to
Marlene Dortch, Secretary, FCC

PRISON POLICY INITIATIVE

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January 13, 2014

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Reply Comment on WC 12-375

Dear Ms. Dortch:

In the Federal Communications Commission's August 9 2013 Report and Order and Further Notice of Proposed Rulemaking,[1] the commissioners ask for confirmation that ICS providers receive a portion of the payment fee charged by third-party payment services such as Western Union.[2] The issue of hidden profit in various "fees" charged by the industry and allied businesses was a major finding of our May 2013 report "Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry."[3]

Noting that Global Tel*Link[4] continues to deny receiving kickbacks from Western Union and other payment processors, we wish to draw your attention to three pieces of evidence that such payments are being made that were not available at the time of our original report:

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[1] *In re Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375 (Adopted August 9, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7520945713.

[2] Report and Order and Further Notice of Proposed Rulemaking, *In re Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375 at ¶ 168 (Adopted August 9, 2013). ("In the Order, we require charges for any services that are ancillary to the costs of providing ICS to be cost-based, and require ICS providers to submit cost data for these ancillary service charges as part of the mandatory data request. Here we seek comment on how the Commission can ensure, going forward, that ancillary charges are just, reasonable, and cost-based. For example, the record reflects that ICS providers typically use third parties to process debit and prepaid transactions, and there are concerns that the charges passed on to inmates or their called parties are not entirely cost-based. Is this accurate?")

[3] Drew Kukorowski, Peter Wagner, and Leah Sakala, Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry (May 8, 2013), available at http://www.prisonpolicy.org/phones/pleasedeposit.html

[4] "...ICS providers cannot control the fees established by third-parties for payment processing functions, such as Western Union or MoneyGram fees or the payment processing fees charged by credit card companies." (Global Tel*Link Corporation, Comment, *In re Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375 (received December 20, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7520964265.)

1. The Alabama Public Service Commission reviewed the evidence in that state and concluded that:

> "Money Transfer services (Western Union and MoneyGram) – Staff recognizes that these fees are set by these financial services but is also aware that agents hosting such services are paid a portion of the fee. Additionally merchants may negotiate the fee charged their customers."[5]

2. NCIC has clearly demonstrated that it is possible for providers to control the fees charged by Western Union. After the publication of our report, NCIC reached out to us to assert that the company was not receiving a revenue share from Western Union. When we asked for an explanation for why Western Union was charging NCIC Customers a rate higher than that charged to customers of other companies, NCIC renegotiated its contract with Western Union and had the rate lowered to $5.[6]

3. Customer Service of America (CSA), affiliated with AmTel, admits that it receives income from Western Union fees and then defends that income as necessary. CSA submitted a comment to the FCC on December 20, 1013 that appears to be responding not to the FCC but to the Alabama Public Service Commission, and makes this surprising admission:

> "CSA respectfully does not agree with a prohibition of the Call Center receiving a portion of a payment from Western.... CSA representatives frequently have to make refunds for Western Union Quick Collect payments and **this portion of a processing fee helps to recover the associated refund expense.**"[7]

Notably, the Western Union fee for AmTel is $9.95, meaning that the $10.95 and $11.95 fees charged by Western Union to Global Tel*Link and Securus customers represent an even higher profit to those companies.

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[5] Alabama Public Service Commission, Errata and Substitute Order Proposing Revised Inmate Phone Service Rules and Establishing a Comment Period, *Re: General Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Services*, Docket 15957 (October 7, 2013), available at http://www.psc.state.al.us/Telecom/Engineering/documents/Sub_Ala_ICS_Reform_Order.pdf

[6] Prison Policy Initiative, *Our Report Leads Two Phone Companies to Clarify & Improve Policies* (May 28, 2013), available at http://www.prisonpolicy.org/blog/2013/05/28/policies/.

[7] (Emphasis added.) ATN, Inc. / AmTel Comments on Changes to Rules for Inmate Calling Services Docket #: 12-375, *In re Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375 (received December 20, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7520964042.

The exact extent to which a portion of the third-party fee is actually cost-based may still be up for debate, but the FCC can be confident that a portion of the fees charged by third parties such as Western Union for payments to certain providers is in fact being collected by ICS companies.

We recommend that the FCC adopt Alabama's approach to regulating fees and kickbacks from third party payment servicers:

> "All ICS providers shall submit, for informational purposes to the Commission, the transaction fee charged their customers by Western Union and MoneyGram for ICS payments and will update this information as the fees change. Staff will compare fees submitted by all ICS providers and require justification from ICS providers for any observed anomalies."[8]

Sincerely,

Peter Wagner
Executive Director

Aleks Kajstura
Legal Director

[8] Alabama Public Service Commission, Errata and Substitute Order Proposing Revised Inmate Phone Service Rules and Establishing a Comment Period, *Re: General Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Services*, Docket 15957 (October 7, 2013) at 17, available at http://www.psc.state.al.us/Telecom/Engineering/documents/Sub_Ala_ICS_Reform_Order.pdf