

January 12, 2015

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

Re: WC 12-375

Comments re Second Further Notice of Proposed Rulemaking §III (C): The urgent need for reforms to ancillary charges

Dear Ms. Dortch:

The Prison Policy Initiative commends the Federal Communications Commission for its stated intent to regulate not just the high per minute *rates*, but the high ancillary *fees* in the prison and jail phone industry.

Overview: fees are excessive and pervasive

Regulating fees is not merely *supplementary* but rather a necessary piece of any meaningful rate regulation. In a normal market, people pay a price for a product and then, rarely, and generally rather incidentally, pay a small additional fee for some part of the service or transaction. For example, Amazon.com charges a shipping fee for small purchases, and gas stations can encourage customers to pay with cash by charging a small fee to use a credit card at the pump.

Normally such fees are, by their very nature, “ancillary”. The Oxford English Dictionary defines “ancillary” as: “Subservient, subordinate, ministering (to).”¹ But the fees currently charged by some players in this industry have long-passed the point where “ancillary” is an accurately descriptive term. As we explained in our report, *Please Deposit All of Your Money: Kickbacks, Rates and Hidden Fees in the Jail Phone Industry*:

[P]rison telephone companies may be ... 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.²

¹ Available at <http://www.oed.com/view/Entry/7258>

² Available at <http://www.prisonpolicy.org/phones/pleasedeposit.html#sec5>

Indeed, in 20 months since our report was released, the Commission has seen a consensus develop acknowledging the fact that unregulated fees are a fundamental problem:³

- CenturyLink: “[T]he Commission should prohibit all or all but a very narrow class of ancillary fees. Ancillary fees are the chief source of consumer abuse and allow circumvention of rate caps.”
- PayTel: “you ought to get rid of all of them except the fees where the consumer makes a choice.”
- NCIC: “[a]lthough telecom companies don’t normally welcome a regulation, we see the need for the FCC and state regulators to set a standard rate and fee structure.”

Fees are clearly an important and integral part of regulating the cost of calls from prisons and jails.

In our report, we estimated 38% of the money families spend on prison and jail phone calls is eaten up by fees. The redacted mandatory data collection from Global Tel*Link⁴ offers some more clues on the scope of this pilfering, including fees that we didn’t address in our report:

- In 2012, Global Tel*Link charged the 377,528 residents of 37 states and Puerto Rico \$5 each to close their accounts, for \$1.9 million in fee revenue.⁵
- In 2012, Global Tel*Link charged somewhere between \$22 million and \$98 million in credit card fees on 10.9 million transactions. Given that Global Tel*Link has a \$25 minimum payment, that’s at least \$271 million dollars in credit card transactions.

Are these fees optional? No

The phone companies continue to argue that some of these fees are “convenience” fees for “premium options” and therefore should not be banned or significantly reined in.

Like many phone companies, JPay, the leading provider of payment services for correctional facilities, funnels its customers toward using the more expensive fee-driven payment methods. The company advertises the delays and “accidents” that may befall payment methods processed by JPay for free. Their advertising clearly indicates that the only reasonable methods to use are the ones that require high transaction fees:

³ Second Further Notice of Proposed Rulemaking, ¶83

⁴ Available at <http://apps.fcc.gov/ecfs/document/view?id=7521805461>

⁵ The states where Global Tel*Link reported charging a refund fee are: AL, AR, AZ, CA, CO, FL, GA, IA, IN, KS, LA, MA, MD, MI, MN, MO, MS, MT, NC, NE, NJ, NV, NY, OH, OK, OR, PA, PR, RI, SC, TN, TX, UT, VA, VT, WA, WI. Notably, they did not disclose the amount of the fee, so the redacted figure may be higher or lower than \$1.9 million if the charge varies.

Whatever your reason. There's a better way.



"My money order got lost."



"My money order showed up 4 days late."



"My money order is a nightmare to complete."



"My money order was rejected."

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This JPay information card distributed at Bland Correctional Center in Virginia and other prisons by JPay Inc was published in Daniel Wagner's (no relation) Center for Public Integrity article "Prison bankers cash in on captive customers" on September 30, 2014 at: <http://www.publicintegrity.org/2014/09/30/15761/prison-bankers-cash-captive-customers>.

Furthermore, in jails, where folks might be detained for just a few days and calls are necessary to arrange release, sending phone funds by check via post is not actually, in practice, an option. The only method of payment that will work in that short timeframe is a card payment; it is a necessity, not a convenience. For anyone in this situation the "premium" option is the only option.

Are these fees excessive? Yes

Even if credit card transaction fees were a "convenience" or "premium" option, the fees are too high. As the FCC is well-aware, the fees charged by the companies are incredibly high for the customers.⁶ In their proposal, Global Tel*Link, Securus and Telmate claim that the fees simply reflect their cost, and therefore should not be lowered:

"The fee associated with these premium payment options reflects that ICS providers incur additional costs for providing consumers with such options."⁷

This is blatantly untrue. We know that Global Tel*Link and Securus can process credit card transactions for less money, because they do. These same companies charge no transaction fees when the same families use their video visitation services:

	Phone deposit	Video visitation payment
Securus	\$7.95	\$0
Global	\$4.75-\$9.50 (19%)	\$0
Tel*Link/Renovo⁸		

⁶ We will not go into detail once again here since our tables in *Please Deposit* serve as a handy reference: <http://www.prisonpolicy.org/phones/pleasedeposit.html>

⁷ Global Tel*Link, Securus, and Telmate's consensus proposal, available at <http://apps.fcc.gov/ecfs/document/view?id=7522655940>

Similarly, the companies' claims that lower rates are impossible is further thrown into question by Securus's claims about fees for payments made through Western Union. Securus opposed Alabama's recent regulation of third party payment transfer fees, claiming:

“Securus has negotiated in good faith for a national contract with both Western Union and MoneyGram that Securus cannot adjust for a single jurisdiction like Alabama.”⁹

But that comment came on the heels of the company renegotiating the same fee for Dallas County, where Securus explained:

“Securus has negotiated the Western Union and MoneyGram fees for Dallas County... We have been able to reduce fees for Dallas County from \$11.95 and \$9.95 down to \$5.95.”¹⁰

Whether the companies are flatly lying, or simply just unaware of what they're capable of, the Commission should not feel constrained by their protestations.

Conclusion:

Fees need to be strictly regulated in order to achieve meaningful and enforceable regulation over the cost of prison and jail phone services. The companies have already proven adept at charging higher fees where their ability to reap revenue through rates has been diminished through commissions. If the FCC fails to fully control fees, the overall cost of prison phone service will remain excessively high.

Sincerely,



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⁸ Most of Global Tel*Link's video visitation business is served by Renovo, a company that Global Tel*Link recently purchased.

⁹ Alabama Public Service Commission, § 8.08, *Further Order Adopting Revised Inmate Phone Service Rules*, Docket 15957, December 9, 2014.

¹⁰ Securus, *Additional Questions: Step 3 Best and Final Offer for Dallas County, Texas*, (Exhibit 1)