

PRISON POLICY INITIATIVE

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August 12, 2015

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

Re: WC Docket No. 12-375

Eliminating commissions is not essential to comprehensive prison phone regulation, and it may not be practicable to eliminate all of the varied and evolving forms that such payments take.

Dear Ms. Dortch,

The purpose of this letter is to provide additional evidence, primarily based on our research into Securus' campaign contributions, as to why eliminating commissions is not essential to comprehensive prison phone regulation.

The Prison Policy Initiative agrees with the Commission's conclusion that the current market dysfunction in the prison and jail communications industry is largely the product of the commission system. But, in our view, now that this market dysfunction exists, eliminating commissions is not likely to restore order to this market.

In fact, increasing evidence suggests that formal percentage-based commissions are but a piece of the entire kickback pie. In August 2013, we presented evidence of jurisdictions that accepted, in lieu of traditional commissions, tens of thousands of dollars per month in "administrative fees", and one county that — barred from the state from demanding a commission — instead disguised a 50% commission as "rent" payments. We also noted Telmate's complaints that facilities were increasingly demanding goods and services such as free 'booking' calls, computers for staff or law libraries, etc.¹ At that time, we urged you to "ban commissions in all of their forms."

However, when the big three providers urged the FCC to ban commissions in 2014, we found that puzzling and began to look deeper. We discovered that just as the sheriffs' claims of significant costs providing ICS services were largely

¹Prison Policy Initiative, Comment re WC Docket No. 12-375 (August 1, 2013), available at <http://apps.fcc.gov/ecfs/document/view?id=7520935168>

without merit², the companies' request for commission relief was a political move rather than a sincere concern about market structure. As we wrote in January 2015:

This commission monster was constructed by the prison and jail telephone industry which now wants the FCC to ride in, slay the beast, and bear the brunt of the facilities' anger. We urge the FCC to decline this unnecessary request for heroism. In our view, the FCC's existing ruling, prohibiting the industry from treating commissions as a cost that can be passed on to consumers, is sufficient here.³

Newly discovered evidence confirms the wisdom of this latter approach. We are currently investigating how the prison phone industry is pressured to support the sheriffs' preferred charities and trade associations, and we have begun looking into the industry's campaign contributions.

For example, from 2012–2014 Securus was one of the largest contributors to the Sacramento County California Sheriff with three annual gifts of \$10,000. (See Exhibits.) While we would not be surprised to see Securus cement its relationships with its current partners via such payments; Sacramento County is currently served by competitor ICSolutions. That may change very soon, however, as the contract is currently up for renewal and new bids were due on July 22.

In our view and analysis, the Commission has the authority to broadly define commissions and regulate most if not all of these payments in their various permutations and ever-changing disguises (with the possible exception of the campaign contributions). But we see no benefit to the FCC engaging in a protracted game of whack-a-mole when the Commission can instead reduce the influence of all of these market-distorting payments simply by putting in place a very low ceiling for rates and fees.

Focusing on the total cost to the consumer is clearly within the Commission's mandate. Rate reform would have obvious benefits, and comprehensive reform of the ancillary fees charged to consumers would shift the fee portion of the company's monopoly profits into the light where the facilities can best police them.

If rates and fees are reasonable, there will simply be less money floating around to subvert the prison and jail telecommunications market with outsized commissions, demands for unrelated services, demands for the support of "charities," and requests for campaign contributions. To be clear, after our years of research, we don't see a huge problem with Securus and its competitors choosing to share — or not share — a portion of their profits with the facilities.

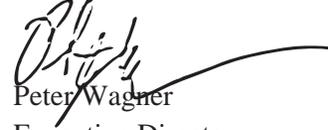
² Prison Policy Initiative, Comment re WC Docket No. 12-375, "Reply to comments of local government officials" (January 27, 2015), available at <http://apps.fcc.gov/ecfs/document/view?id=60001016967>

³ Prison Policy Initiative, Comment re WC Docket No. 12-375 (January 12, 2015), available at <http://apps.fcc.gov/ecfs/document/view?id=60001013016>

All we care about is that those profits — and the entire cost to the families — be reasonable.⁴

Rather than embark on a protracted campaign to weed out concealed kickbacks in the industry, we urge the FCC to continue focusing on lowering the rates and fees through caps and other direct regulation.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Wagner", with a long horizontal flourish extending to the right.

Peter Wagner
Executive Director

⁴ For my analysis of Securus' unprecedented profits, see my June 19, 2015 article "Uncovering Securus' profits" at <http://www.prisonpolicy.org/blog/2015/06/19/securus-profits/>.