

PRISON POLICY INITIATIVE

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January 19, 2016

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

Comment Re: Second Report and Order and Third Further Notice of Proposed Rulemaking ¶¶ 324-326 – the new regulations leave a loophole for unjust profit-sharing via Western Union and MoneyGram

Dear Ms. Dortch:

We commend the Federal Communications Commission on its powerful 2015 regulation of phone rates and fees. We write to draw the FCC's attention to a disconnect between the new regulations and how third party financial transaction fees operate and urge the Commission to close the loophole it inadvertently created.

We salute the FCC's order and the attempts to comprehensively deal with creative ways that the companies have attempted to undermine accountability and transparently. We note that the FCC is, in this regard, protecting both the incarcerated people and their families AND the facilities. As the FCC knows, facilities lose money when non-commissionable fees consume funds that families would otherwise spend on commissionable calls.

We wanted to respond to the request for comments in paragraphs 324-326 and address what we see as a significant oversight in paragraphs 170-175 of the order related to fees charged for third party payment services.

We are deeply concerned that the definition of "Third-Party Financial Transaction Fees" in §64.6000(a)(5) does not apply as intended to Western Union and MoneyGram fees according to ¶¶ 170-175 of the order. The definition is: "the exact fees, with no markup, that Providers of Inmate Calling Services are charged by third parties to transfer money or process financial transactions to facilitate a Consumer's ability to make account payments via a third party."

Unfortunately, this fee is not charged by Western Union and MoneyGram to the providers, but is charged by Western Union and MoneyGram to consumers.¹

¹ We note that §64.6020(a) prohibiting ancillary charges not on the approved list would prohibit ICSolutions and Legacy from charging consumers additional fees to receive payments to their accounts

The current definition of “Third-Party Financial Transaction Fees” allows the unjust and unreasonable practices of Global Tel*Link , Lattice and Securus to continue like this:

1. A Customer wants to send \$50 to Securus and goes to a Western Union outlet.
2. Western Union takes the \$50 and charges customer a \$11.95 fee for the service, or \$61.95 total.
3. Western Union sends Securus \$50 to put in the customers account and Western Union quietly shares a portion of the \$11.95 fee with Securus.

Key evidence

1. There is no logical explanation for why Western Union and Money Gram charge the customers of the largest providers more than the smaller providers. The larger providers like Global Tel*Link and Securus have far more negotiating power than the smaller companies that have renounced kickbacks.

As of December 28, 2015, Western Union and MoneyGram quoted us the following prices to send \$25 cash to each of these companies²:

	<u>MoneyGram</u>	<u>Western Union</u>
Amtel	\$9.95	n/a
Global Tel*Link	n/a	\$10.95
Infinity	\$6.99	n/a
Lattice	n/a	\$9.95
NCIC	\$4.99	\$6.50
Paytel	\$5.95	\$6.50
Securus	\$10.99	\$11.95
Telmate	\$6.99	n/a

2. Many of the smaller companies not only have lower fees at MoneyGram/Western Union, the smaller companies have demonstrated just how easy it is to get lower prices for consumers. After our *Please Deposit All Your Money* report accused NCIC of receiving a profit share from Western

via Western Union and MoneyGram as described in our *Please Deposit All Your Money Report*. In 2013, ICSolution charged \$6.95 and Legacy charged \$3.95 to receive payments from Western Union. This was separate from the \$5.50 and \$6.00 (respectively) charges by Western Union. See Table 3, *Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry* (2013), available at <http://www.prisonpolicy.org/phones/pleasedeposit.html>

² We did not locate the price for AmTel until January 12, 2006 when we discovered that the company is listed as CUSTOMER SVC OF AMERICA. Some companies, including IC Solutions, could not be found in the Western Union or Money Gram systems. Because IC Solutions claims on their website to accept payments via Western Union, we therefore are unsure whether the blanks in the table reflect some ICS companies not using some payment providers, or if it is a temporary or long-standing problem with that payment provider's system. However, it seems reasonable to assume that the blanks in the table reflect that that payment method is not important to that particular ICS provider.

Union, NCIC was able to quickly get Western Union to lower the fee charged to NCIC customers.³

3. On the other hand, Customer Service of America (CSA), affiliated with AmTel, who had a \$9.95 charge at Western Union 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, 2013 that makes this surprising admission:

“CSA respectfully does not agree with a prohibition of the Call Center receiving a portion of a payment from Western Union.... 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.”⁴

And see also this statement by a Western Union Representative to AmTel regarding AmTel’s desire for Western Union to lower their fee to comply with the Alabama order while also preserving access to part of Western Union’s fee revenue: “We had an internal discussion and **at the \$5.95 fee we will not be able to provide you with a revenue share.**”⁵

4. Other providers not receiving this kickback agree that these kickbacks exist. As the FCC’s 2015 order summarized:

ICSolutions, for example, states that, despite the Commission’s cap on third-party financial transaction fees, providers and vendors have an incentive to enter into fee-sharing arrangements with financial services companies, “thereby complying with the pass-through cost component, but still unnecessarily increasing consumers’ cost.” ICSolutions urges the Commission to address this practice by imposing limits on the fees third-party financial companies can charge end users in an effort to prevent “secondary fee-sharing arrangements” between these companies and ICS providers that can “unnecessarily increase the cost of financial transactions to consumers.” Similarly, CenturyLink asserts that ICS providers can “divert transactions to certain third party processors, claiming high fees charged by the third party.” CenturyLink states that, by using a third-party payment processor, an ICS provider can inflate ancillary fees through a revenue-sharing agreement that adds a “direct or indirect markup” to ancillary services. CenturyLink argues that providers should be “permitted to use such services but not permitted

³ Peter Wagner, *Our report leads two phone companies to clarify & improve policies*, May 28, 2013, available at <http://www.prisonpolicy.org/blog/2013/05/28/policies/>

⁴ (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>.

⁵ (Emphasis added.) Email from Olga Rombach, Western Union National Account Executive to Karen Doss Harbison of AmTel, *Re: FCC*, September 3, 2014, attached.

to enter into arrangements that add a direct markup or indirect markup though a revenue sharing arrangement.”⁶

5. Securus has demonstrated that that company can get lower Western Union and MoneyGram prices for consumers that do not include a profit share. As our suggestion, Dallas County Texas asked all of the bidders for its new phone contract about Western Union and MoneyGram pricing and profit sharing. Securus told the county that:

“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.”⁷

Recommendations:

The FCC should follow the lead of Alabama’s Public Service Commission:

“1. ICS providers shall submit to the Commission's Utility Services Division the payment transfer fees charged its customers by third-party payment transfer services.

“2. For any third-party payment transfer fees that exceed \$5.95, the provider shall submit a sworn affidavit signed by the provider’s Owner, President, or Chief Executive Officer and notarized, affirming that the ICS provider, its parent company, nor any subsidiary/affiliate of the provider or its parent company receives no portion of the revenue charged the provider’s customers by the listed third-party payment transfer services.

“3. For any payment transfer fee that exceeds \$5.95, the ICS provider shall also provide to the Commission a copy of the provider’s contract with the third-party payment transfer service and shall justify to the Commission in writing, signed by the provider’s Owner, President, or Chief Executive Officer, why it is unable to arrange for payment transfer services at fees that do not exceed \$5.95.”⁸

This imminently workable recommendation would end the unjust and unreasonable abuse of consumers via hidden fees embedded within Western Union and MoneyGram fees.

⁶ Federal Communication Commission, *Second Report and Order and Third Further Notice of Proposed Rulemaking*, ¶325, November 5, 2015, WC Docket No. 12-375, available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-136A1.pdf

⁷ Securus, *Additional Questions: Step 3 Best and Final Offer for Dallas County, Texas*, available as Exhibit 1 to Prison Policy Initiative’s *Comments re Second Further Notice of Proposed Rulemaking §III (C): The urgent need for reforms to ancillary charges*, January 12, 2015, WC Docket No. 12-375; Exhibit 1 is available at <http://static.prisonpolicy.org/phones/exhibits/fees/Exhibit1.pdf>

⁸ Alabama Public Service Commission, §8.19 *Further Order Adopting Revised Inmate Phone Service Rules*, Docket 15957, December 9, 2014.

Sincerely,

A handwritten signature in black ink, appearing to read 'PW' with a stylized flourish.

Peter Wagner
Executive Director

A handwritten signature in black ink, clearly legible as 'Aleks Kajstura'.

Aleks Kajstura
Legal Director

A handwritten signature in black ink, appearing to read 'Chandra' with a long horizontal stroke extending to the right.

Chandra Bozelko
Researcher

Ivette Vera

From: Karen Doss Harbison <kdoss@atni.net>
Sent: Wednesday, October 01, 2014 12:47 PM
To: 'Olga Rombach'; board@atni.net
Subject: RE: FCC

Olga,

We are working closely with the AL PSC and will be filing a rebuttal to the recent proposal sent to the FCC. The October date in AL has now been pushed to November. It's my understanding the FCC has put the order on the fast-track so we should be getting back with you soon. In the interim we will keep everything as it is.

Thanks,

Karen

From: Olga Rombach [mailto:Olga.Rombach@westernunion.com]
Sent: Tuesday, September 30, 2014 8:29 PM
To: Karen Doss Harbison; board@atni.net
Subject: RE: FCC

Hello,

Have you made a decision on how you want to proceed?

Olga Rombach
National Account Executive
Global Consumer Financial Services*
17387 SW 20th Ct
Miramar, FL 33029
954-447-9585 Office
954-647-7164 Cell
olgarombach@westernunion.com
<http://foundation.westernunion.com/>



moving money for better

From: Karen Doss Harbison [mailto:kdoss@atni.net]
Sent: Thursday, September 04, 2014 9:17 AM
To: board@atni.net
Cc: Olga Rombach
Subject: FW: FCC

Please see the below and reply with your response.

Thanks,

Karen

From: Olga Rombach [<mailto:Olga.Rombach@westernunion.com>]

Sent: Wednesday, September 3, 2014 12:51 PM

To: Karen Doss Harbison

Subject: RE: FCC

Karen,

Have you had a chance to discuss this option with the board? We had an internal discussion and at the \$5.95 fee we will not be able to provide you with revenue share. As it is we will already be lowering our fee by \$4.00, this is revenue that we have to write off. We can work with you to establish a second code city just for AL. I know that this may come into effect with other states but I think we can cross that bridge if and when it happens. Please let me know your thoughts so that we can take the next step. Thank you.

Olga Rombach
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<http://foundation.westernunion.com/>



moving money for better

From: Olga Rombach

Sent: Wednesday, August 27, 2014 1:17 PM

To: 'kdoss@atni.net'

Subject: Re: FCC

Ok just to clarify as I may be asked the same question.

Olga Rombach
National Account Executive
Western Union
17387 SW 20 CT
Miramar, FL 33029
954-447-9585

From: Karen Doss Harbison [<mailto:kdoss@atni.net>]

Sent: Wednesday, August 27, 2014 01:08 PM Eastern Standard Time

To: Olga Rombach

Cc: Marie Kitson <mkitson@myphoneaccount.com>; 'Alex Westberry' <akwestberry@gmail.com>; 'Michael Layland' <michael@atni.net>

Subject: RE: FCC

Olga,

Thanks. I need to check with the Board to make sure everyone is in agreement before I answer your question. We will have a response back to you as soon as possible. However, because of what is going on with the FCC and we have heard that other states will be following AL's lead, we probably will have the same lower fee everywhere.

Thanks again,

Karen

From: Olga Rombach [<mailto:Olga.Rombach@westernunion.com>]

Sent: Wednesday, August 27, 2014 11:00 AM

To: kdoss@atni.net

Subject: FCC

Karen,

I received your letter and will be working with marketing to see what we can do. Does the ruling only affect your contracts in AL? Meaning can we reduce the fee for the AL accounts only and keep the existing fee for the other states? I'm just trying to make sure I fully understand. Please let me know.

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