

# PRISON POLICY INITIATIVE

(413) 527-0845

69 Garfield Ave Floor 1,

Easthampton, Mass. 01027

[www.prisonpolicy.org](http://www.prisonpolicy.org)

[www.prisonersofthecensus.org](http://www.prisonersofthecensus.org)

January 19, 2016

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

Comment Re: Comment Re: Second Report and Order and Third Further Notice of Proposed Rulemaking ¶¶ 147, 182-189, 291 – Single-Call loophole persists in new regulations

Dear Ms. Dortch:

While the Prison Policy Initiative supports the desire of the Federal Communications Commission to regulate the abusive “single call products” where providers charge \$9.99 to \$14.99 for a single telephone call, we do not believe the FCC’s approach taken in 47 C.F.R. § 64.6020(b)(2) will have the desired effect.

This rule, requires ICS providers to pass through, “the exact transaction fee charged by the third-party provider, with no markup, plus the adopted, per-minute rate.” Unfortunately, this is not how the Securus and Global Tel\*Link single-call services work.<sup>1</sup> Here, an allegedly “third party” company charges the consumer an unreasonable fee *set by the ICS provider* and then passes the unreasonable profits on to the ICS provider. As the Alabama Public Service Commission summarized “We essentially squeezed one portion of the balloon and providers responded by shifting revenue generation to other areas.”<sup>2</sup>

These single call programs are a bald-faced attempt by the leading providers to:

- undermine the FCC’s efforts,
- to fleece consumers and
- defraud the correctional facilities.

We urge the FCC to prohibit this unjust and unreasonable practice, or in the alternative, to cap the cost of a “single call” to the adopted per-minute rate plus the \$3 maximum fee for an automated payment.

---

<sup>1</sup> As we reported in our January 12, 2015 filing, information on the Telmate product – including its pricing – is impossible to collect. See also the experience of Robin Fussell, *Robin B Fussell Comment to FCC* June 17, 2015, WC Docket No. 12-375, available at <http://apps.fcc.gov/ecfs/document/view?id=60001088592>, and summarized in fn652 of the FCC’s 2015 order, available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-15-136A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-136A1.pdf).

<sup>2</sup> Alabama Public Service Commission *Ex Parte Presentation Response to Second Further Notice of Proposed Rulemaking*, (p.2) January 16, 2015, WC Docket No. 12-375 available at: <http://apps.fcc.gov/ecfs/document/view?id=60001014141>

This comment letter will:

1. Explain how these services work, why they were created, and estimate that these programs cost consumers almost \$200 million a year.
2. Explain how facilities are being short-changed by providers who steer consumers to this unjust and unreasonable service.
3. Explains that this service, at least as used by Securus and Global Tel\*Link, is not a third-party service at all, but a service that is controlled and owned by Securus.
4. Recap the objections of CenturyLink, Combined Public Communications, ICSolutions, NCIC, and PayTel as well as the Wright Petitioners, Human Rights Defense Center, and the Alabama Public Services Commission to the unjust and unreasonable practice of charging \$9.99 to \$14.99 for a single telephone call.
5. Make recommendations on the most efficient remedy

### **Overview**

The industry, and Securus in particular, have developed the single most expensive way to receive a telephone call from a prison or jail, pitched it to facilities as a “convenience” to consumers, and hidden the obscene profits generated by the arrangement in a “third-party” fee that they claim they don’t control.

In reality, “single call programs” are nothing more than this industry’s next evolutionary step deeper into the pockets of the poorest families in this nation.

These products were developed to overcome two challenges:

- A growing difficulty processing traditional collect calls.<sup>3</sup>
- To create new, sources of revenue that could be hidden from the facilities and the commission system.

---

<sup>3</sup> For a variety of reasons, traditional collect is fading away. ICS providers report that carrying a collect call requires them to take on the risk that the bill will not be paid, and they are required to have a contractual relationship with each local phone company or cell phone provider in the country. Further, a growing number of landline and cellphone companies were refusing to carry collect calls or perform those billing operations. (This problem is one of the reasons why the industry has embraced pre-paid debit calls rather than traditional collect.)

These “single calls” go by a variety of different brand names, but as will be explained later, the Securus and Global Tel\*Link versions are actually the same product:

<u>Company</u>	<u>Product</u>	<u>Payment method</u>	<u>Consumer Cost</u>
Securus	PayNow™	Credit/debit card	\$14.99
Securus	Text2Connect™	Premium text message	\$9.99
Global Tel*Link	Collect2Card™	Credit/debit card	\$14.99
Global Tel*Link	Collect2Phone™	Premium text message	\$9.99
Telmate	QuickConnect™	Credit/debit card	unknown <sup>4</sup>

We estimate that the largest of these programs, PayNow™ from Securus processes 16 million “single calls” a year costing families \$183 million.<sup>5</sup>

### **How single call programs harm facilities**

Single call program steer consumer money into non-commissionable fees, which leaves families with less money to spend on commissionable phone calls. These “single call” programs are the single most expensive way to pay for a call and the providers work to steer maximum volume to these products.<sup>6</sup>

The PayNow product from Securus provides a helpful example. The call is billed as two separate charges: a “transaction fee” of \$13.39 and a “call fee” of \$1.80. Securus

<sup>4</sup> Telmate does not publish this price, and as of January 2015 could not quote a price. [http://www.prisonpolicy.org/phones/letters\\_with\\_exhibits.html#singlecall](http://www.prisonpolicy.org/phones/letters_with_exhibits.html#singlecall) In February 2015, Telmate quoted a price of \$2.39 prior to call acceptance, but then charged \$11.33. Notably, as shown by Fussell’s credit card bill submitted with his letter, Telmate bills the consumer directly, or at least Telmate is credited with the billing. This is different than Global Tel\*Link and Securus which allow the “third-party” to do the billing. See *Robin B Fussell Comment to FCC* June 17, 2015, WC Docket No. 12-375, letter available at <http://apps.fcc.gov/ecfs/document/view?id=60001088592> and pdf of the bill is available at <http://apps.fcc.gov/ecfs/document/view?id=60001088664>

<sup>5</sup> For our calculations, sources, methodology and why this is likely a serious underestimate, see PPI’s *Comments re: Second Further Notice of Proposed Rulemaking ¶¶ 98-102, single call programs* (pp.3-4, fn9 and the accompanying exhibits) WC Docket No. 12-375, available at [http://www.prisonpolicy.org/phones/letters\\_with\\_exhibits.html#singlecall](http://www.prisonpolicy.org/phones/letters_with_exhibits.html#singlecall)

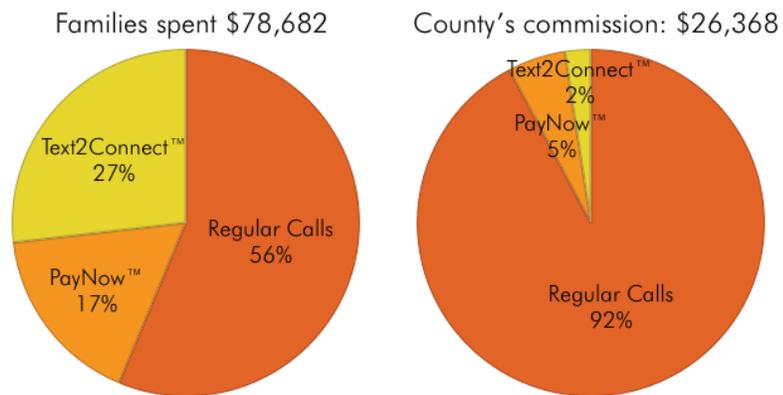
<sup>6</sup> One customer, for example, was pitched to use PayNow when they contacted Securus about having trouble with their website while attempting to set up a prepaid account. See Exhibit 13 of PPI’s January 12, 2015 *Comments re: Second Further Notice of Proposed Rulemaking ¶¶ 98-102, single call program*, which compiles complaints to the Better Business Bureau about Securus Single call products. And as the complaints in the exhibit show, other customers are also sucked into the single call programs, even when attempting to use prepaid accounts. Exhibit 13 is available at <http://static.prisonpolicy.org/phones/exhibits/singlecall/Exhibit13.pdf>.

pays a standard \$1.60 commission for each PayNow call. A Sheriff might consider that a generous commission, because it's 89% of the "price" of the call. With those figures, a sheriff could conclude that demanding a higher commission would be futile because Securus has to pay for the call *and* make a profit on the remaining 20 cents from the call fee.

But in reality, consumers are paying \$14.99 for that call, and the effective commission is under 11%. Securus' practice of steering call volume from lower-price higher-commission methods like prepaid debit to its higher-cost lower-commission single call products is devastating to the income of the facilities. See this comparison of call volume in Genesee County Michigan with the commission income in that County:

### Single call programs shortchange facilities

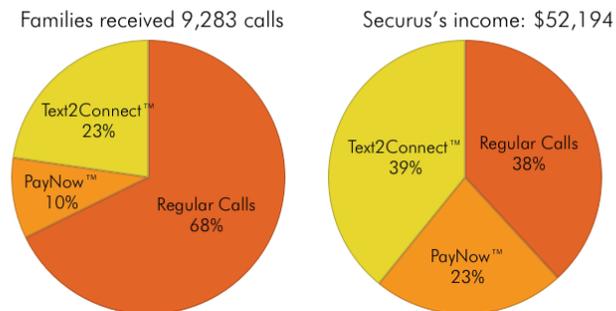
An analysis of phone expenditures in Genesee County, Mich. in April 2013



While the single calls are bad for facilities, they are uniquely profitable for the companies as is demonstrated in this comparison of call volumes to Securus' income:

### Single call programs are disproportionate source of Securus' income

An analysis of phone expenditures in Genesee County, Mich. in April 2013



ICSolutions summarized the problem eloquently:

Some providers may define certain calls as special call types, outside the scope of traditional collect, prepaid, or debit calling. For these calls the vendor may charge higher rates and pay lower commissions than the traditional calling options which were disclosed in the RFP response. This practice may result in consumers paying higher prices for phone calls and facilities receiving lower commission dollars.<sup>7</sup>

### **Single Call Programs are controlled by ICS Providers, not the “third parties”**

Securus attempts to explain away the fee as a necessary cost, blaming outside vendors for the high price. Securus tells the Alabama Public Services Commission:

“Securus itself does not provide the third-party call processing Text2Connect or Pay Now services. Instead, such services are provided by 3CInteractive (‘3CI’).”<sup>8</sup>

Securus then goes on to accuse the Alabama Commission of “attempting to interfere with the contracts of **outside** vendors like 3CI...”<sup>9</sup>

While companies should not be allowed to skirt legal requirements by merely by contracting with third parties, it is extremely relevant to note just how feeble Securus’ protestations are. How much influence does Securus have over vendors like 3CI? Securus is not merely a major business partner of 3CI, but **Securus actually owns 3CI**,<sup>10</sup> and had done so for about a year prior to filing their complaints with Alabama.

Further, Securus has purchased two of 3CI’s patents<sup>11</sup> for charging for collect calls via credit cards and premium text messages. Presumably that purchase is what Securus means that it “invested approximately \$40 million” to develop these products, but

<sup>7</sup> See ICSolutions November 14, 2012 response to Baldwin County, Alabama RFP, in Exhibit 12 of PPI’s January 12, 2015 *Comments re: Second Further Notice of Proposed Rulemaking ¶¶ 98-102, single call program*, WC Docket No. 12-375, Exhibit 12 is available at <http://static.prisonpolicy.org/phones/exhibits/singlecall/Exhibit12.pdf>.

<sup>8</sup> Alabama Public Service Commission, §6.24 *Further Order Adopting Revised Inmate Phone Service Rules*, Docket 15957, December 9, 2014.

<sup>9</sup> Emphasis added. Alabama Public Service Commission, §6.24 *Further Order Adopting Revised Inmate Phone Service Rules*, Docket 15957, December 9, 2014.

<sup>10</sup> See North Sky Capital, *Q2 2013 Investment Update*, available as Exhibit 2 to Prison Policy Initiative’s *Comments re: Second Further Notice of Proposed Rulemaking ¶¶ 98-102, single call*

programs, January 12, 2015, WC Docket No. 12-375; Exhibit 2 is available at <http://static.prisonpolicy.org/phones/exhibits/singlecall/Exhibit2.pdf>

<sup>11</sup> The history of the patents (9037110 and 8626118), is available at <http://patents.justia.com/patent/9037110#history> and <http://patents.justia.com/patent/8626118#history>, respectively. The inventors listed are all from 3CI. For a bit more background see Alabama Public Service Commission’s *Ex Parte Presentation Response to Second Further Notice of Proposed Rulemaking*, (p.17) January 16, 2015, WC Docket No. 12-375 available at: <http://apps.fcc.gov/ecfs/document/view?id=60001014141>

none of Securus’ protestations explain how it could possibly be true that Securus is powerless over the prices charged by 3CI.<sup>12</sup>

And what about Global Tel\*Link? Their product is literally identical to Securus’ because it is nothing more than a white label version of Securus 3CI product.

Neither Global Tel\*Link nor 3C Interactive are listed on the Collect2Phone (2fon.net) and Collect2Card (collect2card.com) websites. The contact address in the “terms and conditions” is a mailbox at a UPS Store in Boca Raton: 5030 Champion Blvd., Ste G6, PMB 413, Boca Raton, FL 33496

(By contrast, the same page on Securus’ PayNow website directs people to write or call “3C Interactive” at their official address: 750 Park of Commerce, Suite #400 Boca Raton, Florida 33487.)



*The only published contact information for Text2Connect, Collect2Card, Collect2Phone leads here. (Photo: Human Rights Defense Center)*



*The front lobby to the shared mailbox for Text2Connect, Collect2Card, Collect2Phone. We suspect that none of these “companies” are very serious about getting mail from consumers, because they failed to update the address on their website from Suite G6 to Suite G-11 when the UPS Store expanded about two and a half years ago. Suite G6, the old UPS Store location, is now a Toojay’s Deli. (Photo: Human Rights Defense Center)*

<sup>12</sup> See Securus’ best attempts to defend these unjust and unreasonable products in the following two comments to the FCC: *Reply to CenturyLink Notice of Ex Parte (May 14, 2015)*, May 19, 2015, WC Docket No. 12-375, available at <http://apps.fcc.gov/ecfs/document/view?id=60001048073> and *Reply to CenturyLink Notice of Ex Parte (Sept. 28, 2015)*, Oct 2, 2015, WC Docket No. 12-375, available at <http://apps.fcc.gov/ecfs/document/view?id=60001326170>

Even a casual review of the websites for Collect2Card, Collect2Phone, PayNow, Text2Connect reveals that the text on all four is basically identical, and a full linguistic analysis only serves to confirm the obvious. Our analyst summarized that “linguistic analysis revealed that all sites make use of singular language when describing the services provided. This both creates a distinction between the web sites, and creates an impression that each web site refers to a distinct company or entity.”<sup>13</sup>

Furthermore, the trademarks for Global Tel\*Link’s two products Collect2Card and Collect2Phone are owned by 3C Interactive, and all five domain names are registered, owned and controlled by 3C Interactive. Further, all 5 websites are hosted at the same IP address. All four services are being run by Securus’ 3C Interactive.

This level of collusion nullifies any phone companies’ claims that they have no hand in the fees charged for single calls.

### **How the companies justify \$9.99 and \$14.99 phone calls:**

Securus loudly defends the pricing as necessary and the product an important convenience:

“Text2Connect and PayNow are innovative, valuable additions to ICS. They enable immediate communication with friends, families, and attorneys. They save lives and prevent crimes. They require double acceptance by the called party/payor: once to accept the inmate’s call and once to accept the one-time charge”<sup>14</sup>

Global Tel\*Link, has, as far as well can tell, been largely failed to defend its single call scheme.

### **Other criticism of “single-call programs”**

Other providers are strongly critical of the practice:

CenturyLink:

Single pay options actually reduce inmate calling options and suppress the number of completed calls. This is because providers of “single pay” calling often fail to properly advise called parties of lower cost options at the time the call is received, and perform billing setup through potentially confusing one-way automated messaging systems. Consumers often select these programs not because they view them as a convenient alternative, but rather because they are unaware of other, often lower cost, payment options.<sup>15</sup>

<sup>13</sup> Andrew Taylor, Memo, *Re: Linguistic analysis*, January 15, 2016, attached.

<sup>14</sup> *Reply to CenturyLink Notice of Ex Parte (Sept. 28, 2015)*, Oct 2, 2015, WC Docket No. 12-375, available at <http://apps.fcc.gov/ecfs/document/view?id=60001326170>. See also *Reply to CenturyLink Notice of Ex Parte (May 14, 2015)*, May 19, 2015, WC Docket No. 12-375, available at <http://apps.fcc.gov/ecfs/document/view?id=60001048073>

<sup>15</sup> CenturyLink letter to FCC September 28, 2015 (pp. 1-3), WC Docket No. 12-375, available at <http://apps.fcc.gov/ecfs/document/view?id=60001325442>

## ICSolutions:

1) “Despite the current rate caps, several ICS providers are still charging as much as \$14.99 for interstate calls, more than \$11.00 over the current permissible rate cap for interstate calls.

“ICS providers should not be allowed to continue to provide these premium call types, but such call types will be permissible if the proposed rules pass with the loophole of allowing third-party financial transaction fees as pass-through cost with no further restrictions or rate caps.”<sup>16</sup>

2) “We believe consumers select these premium options **not because they want the convenience, but rather, they are unaware of the other lower cost payment options.** We have conducted test calls of each type of premium call at several correctional facilities.... In our testing we have found that as a first-time caller, we were offered **only** the premium calling option. There was no education on other calling options and we could find no way to select another payment option or to speak with a live agent. ...[I]t is reasonable to conclude that these called parties believe the premium option is the **only** option. And, therefore, they are not “choosing” the premium option because of its purported convenience. Rather, they use the premium option because they know of no other way they can talk to their loved ones.”<sup>17</sup>

## NCIC:

“‘Are such services an end run around the Commission’s rate caps?’ Absolutely! ... By using a third-party, who is neither incorporated nor certified to operate in a state, to bill Single Payment (Convenience) products allows ICS providers to bypass regulations, sales and franchise taxes, state and federal required fees and USF as well as hide revenue from commission payment requirements in a contract as they are not revenues billed by the ICS provider.”<sup>18</sup>

## PayTel:

“Certain ICS providers’ exorbitant charges for purportedly ‘convenient,’ ‘premium,’ ‘optional’ single-call programs are an end-run around the Commission’s rate caps and must be stopped in order to ensure just and reasonable rates for ICS end users.”<sup>19</sup>

<sup>16</sup> ICSolutions letter to FCC October 15, 2015 (Attachment 1, p.4), WC Docket No. 12-375, available at <http://apps.fcc.gov/ecfs/document/view?id=60001329584>

<sup>17</sup> *Comments of Inmate Calling Solutions to FCC* January 12, 2015 (p. 11-12) (emphasis in original), WC Docket No. 12-375, available at <http://apps.fcc.gov/ecfs/document/view?id=60001012777>

<sup>18</sup> *Comments of Network Communications International Corp. (NCIC)*, (p.26), WC Docket No. 12-375, available at <http://apps.fcc.gov/ecfs/document/view?id=60001012841>

<sup>19</sup> Pay Tel, *Second FNPRM Reply* (p. ii), WC Docket No. 12-375, available at <http://apps.fcc.gov/ecfs/document/view?id=60001016896>

Single call programs have been condemned by other commenters outside the industry including the Wright Petitioners, the Human Rights Defense Center, the Lancaster Department of Corrections and the Alabama Public Service Commission. These latter two we reprint here:

Lancaster County (Nebraska) Department of Corrections:

“We take the position that such calls create an opportunity for providers to circumvent the rate caps and that these calls are a source of revenue used to support excessive site commissions on other inmate calls. Despite assurances to the contrary, allowing such enormously profitable calls to continue in excess of the rate caps can only incentivize these providers to drive as many inmate calls as possible away from prepaid service toward this more profitable alternative.”<sup>20</sup>

Alabama Public Service Commission:

“...single payment services may be purposely diverted to third-party payment processors where exorbitant unregulated rates are charged by the provider and the revenues associated therewith are purposely concealed not only from regulators but from the facility served by the provider.”<sup>21</sup>

“As we demonstrated previously herein, single payment services allows Securus, GTL, and Telmate to divert inmate call traffic away from facilities and pay facilities a mere pittance in commissions while providing the illusion that the facilities are actually getting the site commissions promised them under contract from all calls generated from their facilities.”<sup>22</sup>

## **FCC Jurisdiction**

Alabama’s reasoning for the Public Service Commission’s regulatory jurisdiction over payments made via text message applies to the FCC just as well:

“The use of premium text messaging for single payment services in no way diminishes state commission regulatory jurisdiction for the inmate collect call. The text is not initiated by the inmate. Indeed, it is technically impossible for either the inmate or the ICS provider to conduct text message communications over wireline facilities with the intended wireless recipient of the collect call. Consequently, the ICS provider contracts with an independent third party, such as 3CI, to **communicate separately** with the intended wireless recipient

---

<sup>20</sup> Lancaster County Department of Corrections, *Rebuttal to September 15, 2014 - INMATE CALLING Vendor Proposal* (p.9), WC Docket No. 12-375, available at <http://apps.fcc.gov/ecfs/document/view?id=60001041168>

<sup>21</sup> Alabama Public Service Commission, §6.35 *Further Order Adopting Revised Inmate Phone Service Rules*, Docket 15957, December 9, 2014.

<sup>22</sup> Alabama Public Service Commission *Ex Parte Presentation Response to Second Further Notice of Proposed Rulemaking* (p. 12), WC Docket No. 12-375, available at <http://apps.fcc.gov/ecfs/document/view?id=60001014141>

of the collect call for the sole purpose of arranging a billing agreement between 3CI and the wireless customer.”<sup>23</sup>

### Recommendations

The FCC has clearly caught onto the industry’s dirtiest trick: charging consumers hidden fees. Some of these companies call themselves phone companies, but to them the phone service is little more than a gimmick to charge fees. In many cases, the hidden fees can easily equal or surpass the base cost of a call. We estimate that families pay at least \$386 million a year in charges like \$9.50 for a credit card payment or \$5 to receive a refund. But nothing exemplifies these unjust and unreasonable tactics as well as single call services. Securus and Global Tel\*Link quietly pocket tens of millions of dollars tacking on an abusive \$13.19 “single call” fee to 20 cent phone calls.

These “premium” and “convenience” products, as currently provided by Global Tel\*Link, Securus and Telmate, serve no legitimate public purpose and should be prohibited. As CenturyLink and others have demonstrated, calls to people who do not have accounts can simply be routed to automated systems that allow people to create an account.

Allowing the companies to invent puppet “third-parties” to undermine the FCC’s rate and fee regulations would moot large parts of the regulations. We urge the FCC to see through this charade.

The FCC should either ban the unjust, unreasonable and unnecessary “single call products”, or cap the cost at the level for a similar pre-paid call: the adopted per-minute rate plus the \$3 maximum fee for an automated payment. Either approach would eliminate all of the problems with these single call products as described in this comment.<sup>24</sup>

Sincerely,



Peter Wagner  
Executive Director  
pwagner@prisonpolicy.org

---

<sup>23</sup> Alabama Public Service Commission *Ex Parte Presentation Response to Second Further Notice of Proposed Rulemaking*, (p.21) January 16, 2015, WC Docket No. 12-375 available at: <http://apps.fcc.gov/ecfs/document/view?id=60001014141>

<sup>24</sup> If the FCC is concerned that it does not have enough information on the providers’ cost of accepting payment via text message, the FCC could follow Alabama’s approach in allowing providers to submit a request for a waiver of the payment processing cap for payments collected via text message. See Appendix B, *Further Order Adopting Revised Inmate Phone Service Rules*, Docket 15957, December 9, 2014.

A handwritten signature in black ink that reads "Aleks Kajstura". The script is cursive and fluid, with the first name "Aleks" and last name "Kajstura" written in a single continuous line.

Aleks Kajstura  
Legal Director  
akajstura@prisonpolicy.org

From: Andrew Taylor  
To: Peter Wagner  
Re: Linguistic analysis  
Date: January 15, 2016

As requested I have performed a linguistic analysis of the following websites: "Collect2Phone" "Text Collect" "Collect2Card" and "Pay Now." My initial comparison of the four websites (including all pages, terms, privacy policies, and otherwise available information) showed the "Collect2Phone" and "Text Collect" sites are nearly identical, with only a small difference in the terms and privacy policy under the section referring to "indemnification", present in the "Collect2Phone" terms. Similarly, the language of "Collect2Card" and "Pay Now" sites were nearly identical, with the only differences in text being a reference to Securus™ Technologies on the "Pay Now" site.

Furthermore, linguistic analysis revealed that all sites make use of singular language when describing the services provided. This both creates a distinction between the web sites, and creates an impression that each web site refers to a distinct company or entity. Given that the only reference to a "parent company" or similar term comes from the "Collect2Phone" terms, it is fair to speculate that the use of singular language was an intentional omission of any link between these sites, designed to create the impression that the sites were distinct.

Thank you, and please let me know if you need any additional information from me,

Andrew Taylor  
Research Analyst  
+61 0421 976 489