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).

Leah Sakala is a Policy Analyst at the Prison Policy Initiative. She is a graduate of Smith College, where she majored in American Studies and Public Policy. She authored *Return to Sender: Postcard-only Mail Policies in Jail* (2013) and co-authored *Reaching Too Far, Coming Up Short: How Large Sentencing Enhancement Zones Miss the Mark* (2009).

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/ .

PRISON
POLICY INITIATIVE

PO Box 127 Northampton MA 01061
http://www.prisonpolicy.org

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.

TABLE OF CONTENTS

FOREWORD 1

INTRODUCTION 2

THE PRISON PHONE MARKET IS BROKEN 3

BRINGING JAILS INTO FOCUS 4

COMMISSIONS DRIVE COSTS 5

TACKING ON FEES TO RECOUP THE COMMISSION REVENUE 6
- Profiting on prepayment
- Profiting on calls that are never made
- Making money on holding customers' money
- Making fast money on emergency calls
- National: 38 cents on every prison phone dollar may be going to fees

CLOUDING TRANSPARENCY TO MAXIMIZE REVENUE FROM DISEMPOWERED CONSUMERS 10
- Collecting fees under the guise of taxes
- Gleaning revenue from faulty "features" and bad customer service
- Charging the highest rates for calls to mobile phones

LACK OF REGULATORY OVERSIGHT 14

RECOMMENDATIONS 15

APPENDIX 17
- Questions for sheriffs and contracting authorities to ask of bidders for phone contracts

TABLE OF EXHIBITS 19

ENDNOTES 21

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 country, 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]

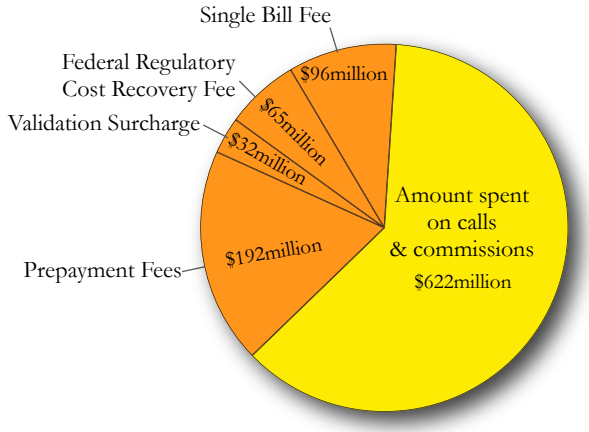
National: 38 cents on every prison phone dollar may be going to fees

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 footnote 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 offical-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

three-way call *does not* charge a connection fee, so there is no risk of inappropriate costs or profits.[105]

As long as the prison phone industry can rake in a profit from providing poor service to consumers, the phone companies have no incentive even to monitor the quality of their service, let alone compensate consumers for undue disruptions and the accompanying charges. While we expect the phone contracts to require the companies to provide security staff with recordings of suspected three way calls,[106] dropping calls should not be allowed to serve as an unaccountable revenue source.[107] Perhaps the Pennsylvania Public Utility Commission said it best in the Y*ount v. T-Netix* case previously cited:

> "We are troubled that T-Netix did not regard the inmates as customers, even when their calls were paid for using the inmates' prepaid accounts…
>
> While the erroneous disconnections themselves are difficult for the inmates, the fact that T-Netix has done little or nothing to investigate complains or to make refunds, when appropriate, is unacceptable."[108]

Charging the highest rates for calls to mobile phones

Some of the prison phone companies glean extra profit by charging high out-of-state rates for calls to any cell phone, rather than charging cheaper applicable in-state or local rates. This practice can double or triple the cost of a call.

For example, the nation's 5th largest cell phone company,[109] MetroPCS, filed a comment with the FCC reporting that "at least one ICS provider attempted to impose a surcharge on phone calls that inmates made to wireless phone numbers in an overly-broad and ill-conceived attempt to charge out-of-state call recipients higher fees."[110]

The "one ICS provider" MetroPCS was referring to was industry giant Global Tel*Link, and, while the company apparently postponed the rate increase,[111] our investigation found that at least one company currently profits from charging high rates for calls to cell phones: ICSolutions.

In its published tariffs for Arkansas, Illinois, Indiana, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Ohio, Rhode Island, South Carolina and Wyoming, ICSolutions states that it "reserves the right to rate calls terminating to wireless numbers at the applicable intraLATA [long distance] toll rate."[112] An examination of the commission reports to

	Connect charge	Per minute cost	Average talk time	Average charge	Commission income
Local Prepaid	$2.20	$0	12 minutes	$2.20	$1.06
Local Prepaid call charged at Long Distance rate	$3.00	$0.40	9 minutes	$6.60	$3.17

Table 10. Comparison of the cost of local prepaid call from the Ramsey County Minnesota jail with the same call to a local cellphone that is then charged as if it were long distance. Source: See endnote 111.

	Difference between local and long distance rate	calls & minutes	Monthly consumer cost	Monthly commission income
Difference in connect charge, per call	$0.80 connect fee	1,823 calls	$1,458.40	$700.03
Difference in per minute charge	$0.40 per minute	16,386 minutes	$6,554.40	$3,146.11
Total			$8,012.80	**$3,846.14**

Table 11: Rerating calls means additional monthly income for ICSolutions and additional commission income for Ramsey County, Minnesota. Source: Exhibit 51 and endnote 111.

Ramsey County, Minnesota show that the company is exercising this "right" to arbitrarily re-rate calls at great cost to consumers. The company's monthly commission report to Ramsey County shows 1,823 expensive "Intra-cell" minutes in December 2012, but the origin as local calls is confirmed by their presence in the "Total Local Prepaid" row of the same report. These "Intra-cell" calls were local in nature but were charged at the higher rate.[113]

We calculate that the practice costs customers in Ramsey County, Minnesota $8,013 per month, or $96,153 per year.[114] (See Table 11.) As the contracting authority, the county would be the obvious party to hold the phone company accountable for creating this unnecessary cost to consumers. However, the county is unlikely to object because the practice directly translates into more than $46,000 a year in additional commission revenue.

LACK OF REGULATORY OVERSIGHT

There is neither a central registry of the prison telephone industry's participants nor of official sanctions against the companies, allowing abusive consumer treatment to go unnoticed and unaddressed. For example, while producing the fee tables earlier in this report (Tables 1, 3, 4 and 5), we found it impossible to find rates filed by CenturyLink, a

Company	Tariff available on website?
AmTel	Yes
CenturyLink	No
Global Tel*Link	Yes
ICSolutions	Yes
Infinity Networks	Yes
Lattice	Yes
Legacy	Yes
NCIC	Yes
Pay Tel	Yes
Securus	Yes
Telmate	No
Turnkey Corrections	No

Table 12: Not all prison phone companies make their rate tariffs available on their website as required by FCC Rule 47 C.F.R. 42.10 (b).

company we previously identified as having enough contracts to make it the third-largest player in the state prison market.[115] It turns out that CenturyLink subcontracts most of its prison telephone business to ICSolutions, and another portion to Securus. (Both subcontractor companies are unrelated to CenturyLink.)[116]

CenturyLink's failure to disclose its subcontractor relationships should give the FCC pause when evaluating CenturyLink's claims that the prison telephone industry is a "high fixed costs" business,[117] as the profit margins on these contracts must be high enough that other companies are willing to do the actual work and share the profits with CenturyLink.

This industry has problems with transparency on a very basic level, such as complying with existing FCC requirements. For example, we were unable to find tariff filings for three companies on their websites, (See Table 12.) as required by FCC Rule 47 C.F.R. 42.10(b), which states:

> [A] nondominant IXC [interexchange carrier] that maintains an Internet website shall make such rate and service information specified in paragraph (a) of this section available on-line at its Internet website in a timely and easily accessible manner, and shall update this information regularly.

The lack of consistent federal oversight of this industry means that even when systemic industry problems come to light in particular states,[118] they will continue to be unknown to both consumers and policymakers and remain unsolved nationwide.

This lack of transparency further burdens consumers who seek to make informed decisions between the limited options given by their assigned prison telephone provider. Our experience producing the tables in this report mirrored that reported by CIVIC in their Wright Petition filing[119]: many companies are reluctant to share rate and fee information with consumers prior to accepting the consumers' money. CIVIC staff talked to Global Tel*Link six times before they could receive fee information. We had similar experiences when we researched the refund policies, and repeated phone calls to the phone companies were met with different information about charges, deadlines, required minimums and the form that repayment could take. The lawyers and the policy analyst who prepared this report repeatedly received vague and contradictory answers from phone company customer service representatives. We can give the prison phone companies the benefit of the doubt that their intent is not to deter requests for refunds, but the logical result of inconsistent explanations will be to discourage consumers from claiming their money.

RECOMMENDATIONS

Exorbitant prices for telephone service in the prison phone industry are caused by the monopolistic nature of phone service, the prevalence of commissions, and prison phone companies' ability to bring in additional revenue by tacking on arbitrary fees. Until the Federal Communications Commission enacts comprehensive regulations governing this unique and exploitative industry, incarcerated persons, their families, and the public at large will continue to suffer, while a few telecommunications companies, prisons, and jails rake in the profits.

We note that some individual state prison systems have made considerable progress to rein in the cost of a call home from prison, and we believe that local governments should choose to join that trend.

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

1. Refuse to accept commissions from contracts with prison telephone companies. (See sidebar on page 5, "Local jails should follow state prisons by refusing commission payments.")

2. If commissions will be accepted, before awarding a contract, ask the prison telephone companies hard questions about how their fees are determined to ensure that fees are fairly assessed and that income that should be subject to the commissions is not hidden as a "fee." (See suggested questions to ask in the Appendix on page 17.)

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:

QUESTIONS FOR SHERIFFS AND CONTRACTING AUTHORITIES TO ASK OF BIDDERS FOR PHONE CONTRACTS WITH A CORRECTIONAL FACILITY

This appendix suggests questions that sheriffs or contracting authorities should ask bidders on correctional facility telephone contracts to ensure that the county is aware of the fees being charged by the vendor, therefore enabling the county to evaluate fees along with the rates, and to ensure the county is properly compensated for any revenue-generating consumer fees that are charged by the vendor.

Fees charged and defining commissions

What fees do you charge pre-paid account holders and collect call recipients? Please identify any fees charged for account set-up, account funding, per-call or per-month charges, and any fees or limitations on refunds or closing accounts.

Are commissions to be paid on these fees? If no, why not?

Are the fees a revenue source for your company or are they cost-recovery in nature?

If fees are cost-recovery in nature, please describe your efforts to control those costs and the resulting fees.

Fees/Commissions for "Single-Call" and similar programs

If your bid includes a "single-call" system that allows a single call to be accepted without requiring a preexisting account, please disclose the charges for such calls by payment method (text message, credit/debit card, etc.).

Please describe whether commissions are to be paid on this fee.

Please describe your efforts to keep these charges to the consumer as low as possible.

Western Union and money transfer services

Do you accept payments via Western Union, MoneyGram or similar money transfer services?

If so, please list the fees charged by those companies to send payments to your company.

Please include a statement confirming that you do not have a revenue sharing agreement with Western Union, MoneyGram or similar companies, or include a statement disclosing the amount of the revenue share and clarification as to whether this revenue is subject to the commission.

Please provide a statement as to whether or not you have attempted to encourage Western Union, MoneyGram and similar companies to lower their fees on payments sent to your company, and listing the results of that effort.

Pre-payment of taxes?

Are any of your pre-payment fees related to the payment of taxes to local, state, or federal authorities?

If so, please describe in detail how you calculated the amount to be charged during the pre-payment process. Please also describe if and how taxes are paid if deposited funds are not used to make calls.

Monthly and per call charges not covered by commission

For any monthly and per-call charges not subject to a commission, please describe how you determined the amount to charge callers and account holders.

Please disclose whether or not you would be willing to offer a report at the end of each contract year that lists both the amount generated from each of these fees or taxes under the contract, and the cash payments made to federal, state or local authorities or to other telecommunications companies that are directly related to the disclosed fee or tax.

Unclaimed funds and refunds:

When a person is released from custody or transferred to another facility that does not contract with your company for telephone services, can he or she get a refund of his or her pre-paid account funds? Is there a charge imposed or a deadline to request a refund?

Please describe how you treat funds that are not refunded. Are they turned over to the state unclaimed funds program? If no, are commissions to be paid on that money?

Are you willing to provide monthly reports on the disposition of unclaimed funds?

Minimizing unnecessary connection charges:
Three-way calling and call forwarding can be a security problem, but "false positives" that improperly disconnect calls can raise the cost to consumers by requiring a new call to be placed with a new connection charge. Does your bid include technology to detect three-way or forwarded calls?

If so, does your bid include a connection charge?

If yes, does your technology give the correctional facility the choice to determine, as a matter of policy, whether such calls should be automatically disconnected, or merely flagged for review by security staff?

If the correctional facility wishes to have the calls automatically disconnected, does your technology give the correctional facility the choice to prohibit that number from being immediately redialed? Please note that this question inquires about the policy and security flexibility that your technology will give our correctional facility and is not a question about the accuracy of your technology.

Charging fair prices to mobile phones
Please detail your procedure for connecting to mobile phones: If someone at the correctional facility calls a local number that happens to be a cellphone, under your bid, will he or she be charged different rate than if he or she were to call a local landline?

If so, to further educate the county about the destinations of calls from its facilities, would you agree to separately disclose the number calls to cell phone and landlines, and the aggregate number of minutes of such calls in your monthly commission reports?

Publication of tariffs
Please include a statement that if you are awarded this contract, your interstate phone tariffs will be published on your website as required by the FCC.

TABLE OF EXHIBITS

All exhibits cited in *Please Deposit All of Your Money* are available at http://www.prisonpolicy.org/phones/exhibits.html

Exhibit	Title
1	Petition of the Recipients of Collect Calls from Prisoners at Correctional institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of Such Calls - Before the Commonwealth of Massachusetts Department of Telecommunications and Cable
2	ICSolutions Inmate Telephone Services Agreement with Baldwin County, Alabama
3	Global Tel*Link Contract and Response to RFP, RP034-11 for Gwinnett County, Georgia
4	St. Louis County, Missouri - Inmate Telephone Service Selection Criteria
5	Macomb County, Michigan - RFP, Bid Table, and Contract
6	A Phone Bill of the Prison Policy Initiative
7	Excerpts - Telmate's response to RFP RP034-11 for an Inmate Phone System in Gwinnett County, Georgia
8	NCIC Interstate Tariff
9	Global Tel*Link Web FAQ
10	AmTel Website - Payment Options
11	Turnkey Corrections Online Deposit Form for an Inmate Canteen Account in Beltrami County, Minnesota
12	ICSolutions Online Payment Form - Western Union
13	Legacy Online Payment Form - Western Union
14	Western Union bill pay web interface for a selected range of companies
15	Examples of Global Tel*Link's 19% rate
16	Comments Regarding the Generic Proceeding considering the Promulgation of Telephone Rules Governing inmate Telephone Services for Telmate, LLC - Before the Alabama Public Service Commission (Docket No. 15957)
17	Collection of News Stories from WBEZ
18	Staff Memorandum - State of Florida Public Service Commission
19	Order Accepting Settlement Offer - Before the Florida Public Service Commission
20	History of Securus, Securus Webpage
21	Oregon Department of Corrections Web FAQ
22	Global Tel*Link Advance Pay Brochure
23	Excerpts - ICSolutions Tariffs for Multiple States
24	Georgia Public Service Commission, In Re Application of Legacy - Order
25	California Public utilities Commission - Order Instituting Investigation
26	Sources for Table 3 (Payment Fees)
27	Sources for Table 4 - Refund Policies
28	Order Regarding the Generic Proceeding considering the Promulgation of Telephone Rules Governing inmate Telephone Services for Telmate, LLC - Before the Alabama Public Service Commission (Docket No. 15957)
29	Global Tel* Link Contract with Solano County, California
30	Online Chat with Western Union Representative
31	ICSolutions Web Payment Form
32	NCIC - Online Chat with Western Union Representative
33	Securus - Online Chat with Western Union Representative
34	AmTel Alabama Tariff
35	Global Tel*Link Interstate Tariff
36	ICSolutions Interstate Tariff
37	Infinity Networks Interstate Tariff
38	Infinity Networks - Online Account Wireless Fee Charges
39	Lattice Interstate Tariff
40	Legacy Interstate Tariff
41	Rates and Tariffs - NCIC Website
42	Pay Tel Interstate Tariff
43	Securus Interstate Tariff
44	Telmate Alabama Tariff
45	Telmate Web FAQ
46	Telmate Web Payment Form
47	ICSolutions Maximum Individual Transaction and Monthly Charge Amounts
48	Memo - Phone Fees and Justifications

49 Sources for Table 9 - Telmate deposit and "tax" fee quotes by payment method.
50 Telmate WebPhone call deposit interface and charge confirmation page for multiple jurisdictions
51 Addendum 1 to RFP-SHRF4070-12 for an Inmate Telephone System in Ramsey County, Minnesota
52 Telmate Web Inmate Phone Calls interface and charge confirmation page for Fillmore County, NE
53 Telmate Web Trust Fund interface and charge confirmation page for Chelan County, WA
54 Corporate Partners - National Sheriffs' Association website

ENDNOTES

[1] One notable exception merits public notice: Verizon. Representatives of Verizon/Verizon Wireless filed a must-read comment with the FCC in which they speak as former participants in the prison telephone industry, and as a company that truly understands the importance of communication to a well-functioning society. In their filing, they call on the FCC to regulate the prison phone industry, noting the inherent corruption of the current system: "In other words, the calling rates that the bidders will charge the collect call recipients of the inmates appear to be irrelevant to the process of selecting a provider; the bidder with the lowest calling rates is simply not more likely to win the contract." Verizon's filing makes it clear that the company rejects some prison phone companies' arguments that the commissions are justified because a portion of the funds are used for rehabilitation purposes: "Verizon understands that DOCs may use commissions to fund beneficial inmate services that may not otherwise receive funding. But forcing inmates's families to fund these programs through their calling rates is not the answer. Because higher rates necessarily reduce inmates's telephone communications with their families and thus impede the well-recognized societal benefits resulting from such communications, other funding sources should be pursued." *Comments of Verizon and Verizon Wireless*, In re Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022134584.

[2] See Nancy G. La Vigne, Rebecca L. Naser, Lisa E. Brooks, & Jennifer L. Castro, *Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners' Family Relationships*, 21 Journal of Contemporary Criminal Justice 314, at 316 (2005). The humane benefits of permitting family members to stay in touch with one another should not be understated, either.

[3] 42 U.S.C. § 17501(b)(6).

[4] A.B.A., Crim. Jus. Sec., Report With Recommendation to the A.B.A. House of Delegates 2 (2005), available at http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_policy_am05115b.authcheckdam.pdf. Many thanks to Ben Iddings for bringing this resource to our attention.

[5] American Correctional Association, *Public Correctional Policies*, "Public Correctional Policy on Adult/Juvenile Offender Access to Telephones 2001-1 (amended 2011)" at 76, available at https://www.aca.org/government/policyresolution/PDFs/Public_Correctional_Policies.pdf . This Policy Statement was unanimously adopted in 2001, and was amended and endorsed in 2006 and 2011.

[6] 28 C.F.R. § 540.100(a).

[7] See, e.g., N.Y. Corr. Law § 623, Legislative Findings and Intent.

[8] New Mexico Public Regulation Commission, Resolution No. 12-0925 (Sept. 25, 2012).

[9] See Nancy G. La Vigne, Rebecca L. Naser, Lisa E. Brooks, & Jennifer L. Castro, *Examining the Effect of Incarceration and In-Prison Family Contact on Prisoners' Family Relationships*, 21 Journal of Contemporary Criminal Justice 314, at 323 (2005) (explaining that the price of phone calls was one of most significant barriers to family contact during incarceration). Note also that literacy rates for incarcerated persons are lower than those for the general population, and correctional facilities tend to impose restrictions on incoming and outgoing mail. These facts make talking on the phone one of the most effective way to maintain a family relationship. See Elizabeth Greenberg, Eric Dunleavy, Mark Kutner, & Sheida White, U.S. Dept. of Education Statistics, Literacy Behind Bars: Results from the 2003 National Assessment of Adult Literacy Prison Survey, at 29 (2007), available at http://nces.ed.gov/pubs2007/2007473.pdf (literacy rates for incarcerated persons); Leah Sakala, Prison Policy Initiative, *Return-to-Sender: Postcard-Only Mail Policies in Jail* (2013) available at http://www.prisonpolicy.org/postcards/report.html (discussing the rise of restrictive mail policies in local jails).

[10] Table 1 contains, with the exception of Legacy and NCIC, the highest interstate rates we could identify in official state or FCC filings, all of which are preserved in Exhibits 8, 34-37, 39-40, and 42-44. Legacy's published rates were much higher, and a phone call from Peter Wagner to Raphael of Legacy Regulatory Affairs revealed on May 3, 2013 that many of the entries are incorrect, so we excluded some contracts from consideration in the table. We were told that Contract 5, for example, does not charge the "billing fee" per-call but rather per-bill, and that the "premise impose fee" implies that the contract is for a payphone, not a correctional facility. Further, the Legacy representative said that the "connect live/connect auto" options were not consistent with the choices in Legacy's correctional facility contracts. For that reason, we excluded several contracts with listed surcharges as high of $9.66 plus "premise impose" fees of up to $3.00 from the table.

Similarly, an interview with William Pope, president of NCIC by Peter Wagner on May 6, 2013 revealed several errors in the NCIC tariff (Exhibit 8), including old rates from payphone businesses, and four rates where the per-minute and surcharges were reversed resulting an apparent but incorrect $4.00/minute rate. Mr. Pope told Peter Wagner that the tariffs would be corrected.

Researchers following in our footsteps should note that the tariffs require certain rates to be disclosed, but they do not require the identification of the contracting parties using those rates.

[11] See, e.g., Verizon, available at http://www22.verizon.com/home/phone/#callingplans (unlimited local and long-distance plan for $52.99 per month).

[12] Some prisons allow incarcerated people to earn a nominal income through work programs, but wages are exceedingly low. For example, the federal prison system pays some of the highest wages of between $0.23 to $1.15 per hour. See *Work Programs*, Federal Bureau of Prisons, available at http://www.bop.gov/inmate_programs/work_prgms.jsp. Some state prisons do not pay wages at all.

[13] Federal Communications Commission, *Notice of Proposed Rulemaking*, at ¶ 5, In re Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, (released Dec. 28, 2012), available at http://www.fcc.gov/document/rates-interstate-inmate-calling-services. In technical terms, this is called a "location monopoly." See also Paul R. Zimmerman & Susan M.V. Flaherty, *Location Monopolies and Prison Phone Rates*, 47 Quarterly Review of Economics and Finance 261, at 262 (2007).

[14] See Federal Communications Commission, *Notice of Proposed Rulemaking*, at ¶ 5, In re Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, (released Dec. 28, 2012), available at http://www.fcc.gov/document/rates-interstate-inmate-calling-services. See also Ben Iddings, *The Big Disconnect: Will Anyone Answer the Call to Lower Excessive Prisoner Telephone Rates?*, 8 N.C. Journal of Law & Technology 159, at 175-76 (2006).

[15] See Ben Iddings, *The Big Disconnect: Will Anyone Answer the Call to Lower Excessive Prisoner Telephone Rates?*, 8 N.C. Journal of Law & Technology 159, at 162 (2006).

[16] See Iddings. at 172-3.

[17] See John E Dannenberg, *Nationwide PLN Survey Examines Prison Phone Contracts, Kickbacks*, 22 Prison Legal News 1, at 7 (2011).

[18] See Community Initiatives for Visiting Immigrants in Confinement (CIVIC), *Public Comment*, In re Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375, submitted March 21, 2013, http://apps.fcc.gov/ecfs/document/view?id=7022134848 and Exhibit 29, *Global Tel*Link Contract* with Solano County, California.

[19] Federal Communications Commission, *Notice of Proposed Rulemaking*, In re Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, (released Dec. 28, 2012) available at http://www.fcc.gov/document/rates-interstate-inmate-calling-services.

[20] Martha Wright, et al. v. Corrections Corporation of America, et al., Civil Action No. 00-293 (GK) (D.D.C. filed Aug. 22, 2001).

[21] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Petition of Martha Wright et al. for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking*, CC Docket No. 96-128 (filed Nov. 3, 2003) (First Wright Petition).

[22] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Petitioners' Alternative Rulemaking Proposal*, CC Docket No. 96-128 (filed Mar. 1, 2007) (Alternative Wright Petition).

[23] Federal Communications Commission, *Notice of Proposed Rulemaking*, In re Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, (released Dec. 28, 2012), available at http://www.fcc.gov/document/rates-interstate-inmate-calling-services.

[24] Federal Communications Commission, *Notice of Proposed Rulemaking*, at ¶ 5, In re Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, (released Dec. 28, 2012), available at http://www.fcc.gov/document/rates-interstate-inmate-calling-services; see also Paul R. Zimmerman & Susan M.V. Flaherty, *Location Monopolies and Prison Phone Rates*, 47 Quarterly Review of Economics and Finance 261, at 262 (2007); Ben Iddings, *The Big Disconnect: Will Anyone Answer the Call to Lower Excessive Prisoner Telephone Rates?*, 8 N.C. Journal of Law & Technology 159, at 161.

[25] *Statement of Commissioner Ajit Pai*, In re Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, available at http://apps.fcc.gov/ecfs/document/view?id=7022093349.

[26] See Jon E. Yount, AC-8297 et. al. v. T-Netix, Inc. and T-Netix Telecommunications, Inc., Penn. Public Utility Commission, Docket No. C-20042655, *Opinion and Order*.

[27] See Paul R. Zimmerman & Susan M.V. Flaherty, *Location Monopolies and Prison Phone Rates*, 47 Quarterly Review of Economics and Finance 261, at 262 (2007).

[28] Federal Communications Commission, *Notice of Proposed Rulemaking*, at ¶ 5, In re Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, (released Dec. 28, 2012), available at http://www.fcc.gov/document/rates-interstate-inmate-calling-services.

[29] *Comments of Global Tel*Link Corporation*, at 11-12, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022134767.

[30] *Expert Report of Stephen E. Siwek, On Behalf of Securus Technologies, Inc.*, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022134786.

[31] Exhibit 2, *ICSolutions Inmate Telephone Services Agreement* with Baldwin County, Alabama.

[32] The definitional issues vary by state, but usually the line for prisons is drawn at the offenses being "felonies" or the time sentenced being at least a year. Often, however, these are the same thing.

[33] Bureau of Justice Statistics, US Department of Justice, *Prisoners in 2011* (Dec. 2012), available at http://www.bjs.gov/content/pub/pdf/p11.pdf; *Sourcebook of Criminal Justice Statistics*, Table 6.0027.2009, available at: http://www.albany.edu/sourcebook/pdf/t600272009.pdf; *Sourcebook of Criminal Justice Statistics*, Table 6.58.2003, available at: http://www.albany.edu/sourcebook/pdf/t6582003.pdf.

[34] Bureau of Justice Statistics, US Department of Justice, *Prisoners in 2011* (Dec. 2012), available at http://www.bjs.gov/content/pub/pdf/p11.pdf.

[35] Bureau of Justice Statistics, US Department of Justice, *Jail Inmates at Midyear 2011 – Statistical Tables* (April 2012), available at http://www.bjs.gov/content/pub/pdf/jim11st.pdf.

[36] *Sourcebook of Criminal Justice Statistics* Table 6.17.2011, available at http://www.albany.edu/sourcebook/pdf/t6172011.pdf. The definitional issues vary by state, but usually the line for jails is drawn at the offenses being "misdemeanors" or the time sentenced being less than a year. Often, however, these are the same thing.

[37] Forty two percent of the state and federal prison population changes in a year (In 2011 there were 668,800 admissions out of 1,598,780 people incarcerated in state or federal prisons), while the jail population turns over about 16 times each year. Bureau of Justice Statistics, US Department of Justice, *Prisoners in 2011* (December 2012), available at: http://bjs.gov/content/pub/pdf/p11.pdf and Bureau of Justice Statistics, US Department of Justice, *Jail Inmates at Midyear 2011 – Statistical Tables* at 3 (April 2012), available at http://www.bjs.gov/content/pub/pdf/jim11st.pdf.

[38] Bureau of Justice Statistics, US Department of Justice, *Jails at Midyear 2011 – Statistical Tables*, available at http://www.bjs.gov/content/pub/pdf/jim11st.pdf; Bureau of Justice Statistics, US Department of Justice, *Census of Jail Facilities, 2006* (December 2011), available at http://bjs.gov/content/pub/pdf/cjf06.pdf.

[39] "Local jails admitted an estimated 11.8 million persons during the 12 months ending midyear 2011, down from 12.9 million persons admitted during the same period in 2010 and 13.6 million in 2008. The number of persons admitted in 2011 was about 16 times the size of the inmate population (735,601) at midyear 2011." (Bureau of Justice Statistics, US Department of Justice, *Jail Inmates at Midyear 2011 – Statistical Tables*, at 3 (April 2012), available at http://www.bjs.gov/content/pub/pdf/jim11st.pdf .) The Bureau of Justice Statistics defines "admissions" as "Persons are officially booked and housed in jails by formal legal document and the authority of the courts or some other official agency. Jail admissions include persons sentenced to weekend programs and who are booked into the facility for the first time. Excluded from jail admissions are inmates re-entering the facility after an escape, work release, medical appointment or treatment facility appointment, and bail and court appearances." (*Id.* at 13.)

[40] National Sheriff's Association, *History of NSA*, available at http://www.sheriffs.org/content/history-nsa

[41] National Sheriffs Association, *Annual Report 2007*, at 4, available at http://www.sheriffs.org/sites/default/files/tb/AR_2007_final.pdf; National Sheriffs Association, *Annual Report 2008* at 5, available at http://www.sheriffs.org/sites/default/files/tb/AR_2008.pdf; National Sheriffs Association, *Annual Report 2009* at 6, available at http://www.sheriffs.org/sites/default/files/tb/AR_2009.pdf. The National Sheriffs' Association also includes the issue on the "NSA's Position on Key Legislation" document in multiple years. See e.g, *NSA's Position on Key Legislation, 11th Congress, 2nd Session* (2010), available at http://www.sheriffs.org/sites/default/files/tb/legislative/NSAPositiononKeyLegislation10-5-10.pdf and *NSA's Position on Key Legislation, 11th Congress, 1st Session* (2009), available at http://www.sheriffs.org/sites/default/files/tb/legislative/NSA_Position_on_Key_Legislation_12-1-09.doc .

[42] National Sheriffs Association, *Annual Report 2009* at 6, available at http://www.sheriffs.org/sites/default/files/tb/AR_2009.pdf .

[43] Exhibit 54, *Corporate Partners*, National Sheriffs' Association website, available at http://www.sheriffs.org/content/corporate-partners .

[44] Exhibit 1, *Petition of the Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of Such Calls*, at 27-29 and Appendix IV, Before the Commonwealth of Massachusetts Department of Telecommunications and Cable, (Aug.31, 2009) (showing that not only are the surcharges at Massachusetts jails higher than those at the Massachusetts prisons, but the surcharges at the jails are higher than the vast majority of those charged by any company in any other state's prisons – Minnesota and Arkansas state prisons have highest surcharges in the nation, and those are equal to the surcharges in Massachusetts jails).

[45] For example, consider the phenomenon described by CIVIC in its public comment in a current FCC proceeding (*Public Comment*, In re Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375, submitted March 21, 2013, http://apps.fcc.gov/ecfs/document/view?id=7022134848). CIVIC notes that while California phased out commissions in the state prison prison system, the legislation only applied to the state prisons. As a consequence, persons incarcerated in local and private facilities continued to pay high rates. The effectiveness of California's progressive prison phone legislation has further been undermined as more people are funneled out of the state prisons and into local jails as a result of the over-crowding crisis in California's state prisons.

[46] Wisconsin County Bans Profiteering in Jail Phone Contracts, *Prison Legal News*, July 2008, available at https://www.prisonlegalnews.org/19901_displayArticle.aspx and citing *The Capital Times*; Dane County, WI Ordinance Amend. No. 12, 2007-2008.

[47] See *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (Supreme Court holding that deliberate indifference to the serious medical needs of incarcerated persons violates the Eighth Amendment.)

[48] *Comments of Global Tel*Link Corporation*, at 10, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022134767; see also *Comments of Telmate*, at 7, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022134863

[49] Exhibit 2, *ICSolutions Inmate Telephone Services Agreement* with Baldwin County, Alabama.

[50] *Comments of CenturyLink*, at 15 In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022134781 .

[51] See New York State, Department of Corrections and Community Supervision, *Inmate collect call phone rates reduced again* (December 13, 2007) available at: http://www.doccs.ny.gov/PressRel/2007/phoneratereduction.html. (Press release from New York prison system explaining that after prison phone rate reduction call volumes increased by 36%.) CenturyLink finds no connection between call volumes and rates in local jails because of "short-term detention inmate calls principally being more necessary than discretionary -- e.g., securing bonding and defense preparation." (*Comments of CenturyLink*, at 11, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022134781 .
We believe the FCC should find this admission of the necessary basis of the calls relevant to their deliberations of what "reasonable charges" as required by 47 U.S.C. § 151 mean in this context. See also *Comments of Telmate,* at 12 available at http://apps.fcc.gov/ecfs/document/view?id=7022134863.

[52] *Comments of Global Tel*Link Corporation*, at 13-14, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022134767

[53] Exhibit 3, *Annual Service Provider Contract: Provision of inmate Coinless Phone Equipment at the Gwinnett County Comprehensive Correctional Complex*, at 1-16. The cost of a 15 minute call and the commission income were calculated by the Prison Policy Initiative from the offers and contracts.

[54] Exhibit 4, *Selection Criteria for an Inmate Telephone Service* for St. Louis County, Missouri

[55] Exhibit 5, *RFP, Bid Table, and Contract* for Macomb County, Michigan

[56] *Comments of Telmate*, at 3-4, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022134863

[57] Exhibit 3, *Annual Service Provider Contract: Provision of inmate Coinless Phone Equipment at the Gwinnett County Comprehensive Correctional Complex*, at 6.

[58] *Comments of Global Tel*Link Corporation*, at 24, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022134767

[59] A vivid example, albeit in the collect call context, is Prison Policy Initiative's phone bill for March 2013, where a single nine-minute collect call from a correctional facility on December 28, 2012 resulted in a charge of $5.57 in fees on top of the $11.96 for the actual call. Fees raised the total cost to us to $17.53, or $1.95 a minute. See Exhibit 6, *Prison Policy Initiative Phone Bill.*

[60] *Comments of Pay Tel Communications, Inc.*, at 16, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022134799

[61] *Expert Report of Stephen E. Siwek, On Behalf of Securus Technologies, Inc.*, at ¶4.8, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022134786 .

[62] Exhibit 3, *Global Tel*Link contract and response to RFP, RP034-11* for Gwinnett County, Georgia, Exhibit A, GTL's Proposed Account Transaction and Cost Recovery Fees (page unnumbered).

[63] We note that Global Tel*Link charges $.05 a minute with no connection charge for local and long distance service in New York, pursuant to a state law that directs the prison system to ban kickbacks and requires that "the lowest possible cost to the user shall be emphasized." N.Y. Corr. Law § 623.

[64] On the other hand, thanks in part to the fees, we note that the industry isn't struggling. Telmate told Gwinnett County Georgia that, "[f]inancially, our company is extremely stable and has been growing steadily, without debt." Telmate reported unrestricted cash of $7 million, and reported a 24% profit: income of $5.8 million on revenues of $26.6 million. Exhibit 7, *Telmate's response to RFP, RP034-11* for Gwinnett County, Georgia.

[65] There is also a processing cost to handling paper checks, but neither PayTel (according to their website at http://www.paytel.com/paymentoptions.html) nor Global Tel*Link (according to their Proposal to Gwinnett County, Exhibit 3) charge a fee to pay via a paper check. However, Global Tel*Link's website at https://www.offenderconnect.com/help/help.jsp#TypesofPayments (Exhibit 9) reports that payments under $30 may be subject to a $5 fee. We did not actively investigate the procedures for handling paper checks.

[66] E.g., *Comments of Martha Wright, et al.*, The D.C. Prisoners' Legal Services Project, Inc., Citizens United for Rehabilitation of Errants, Prison Policy Initiative, and The Campaign for Prison Phone Justice, at 24-25, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013).

[67] For example, NCIC charges $4.95-$6.75 to establish a pre-paid account. (Exhibit 8, *NCIC Interstate Tariff* at 54.10.1 (Feb. 22, 2013).)

[68] Elsewhere on their site they say the monthly limit is $500, but $400 is cited in more places.

[69] Exhibit 10, Amtel, *Payment Options*, http://www.myphoneaccount.com/PaymentOptions.cfm.

[70] See Exhibit 4, *Selection Criteria for An Inmate Telephone Service* for St. Louis County, Missouri, at unnumbered page 6, containing notes from a presentation by ICSolutions and noting the maximum deposit amount of $50. For the maximum amount that can be spent per month, see Exhibit 47, *ICSolutions Maximum Individual Transaction and Monthly Charge Amounts.*

[71] See Exhibit 11, Turnkey Corrections, *Inmate Canteen, online deposit form*.

[72] For a discussion about the 1 in 4 U.S. households that do not keep bank accounts, see Halah Touryalai, *Who needs banks? Number of Americans Without Bank Accounts Rises*, Forbes, September 17, 2012, available at: http://www.forbes.com/sites/halahtouryalai/2012/09/17/who-needs-banks-number-of-americans-without-bank-accounts-rises/

[73] Using the Western Union "Pay Bills" interface (available at: https://wumt.westernunion.com/WUCOMWEB/shoppingAreaAction.do?method=load&nextSecurePage=Y&prop14=us_hmp_sendmoney_smonestimateprice), we checked the fees charged by Western Union to pay phone and electric bills to an assortment of companies. While one company we checked had no fee for the bill pay, the majority were between $1.50 and $3.00. See Exhibit 14, Western Union, *Bill pay web interface*.

[74] See Exhibit 12, *ICSolutions, Online Payment Form*; Exhibit 13, *Legacy, Online Payment Form*.

[75] *Comments of Global Tel*Link Corporation*, at 13, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022134767

[76] We remind the reader that, for the purposes of determining net profits — which are subject to commission payments — Global Tel*Link declares in its bids that the payment fees are "cost recovery in nature and are not considered revenue," and explicitly says that Western Union, not Global Tel*Link, charges a fee to send payment via Western Union. (Exhibit 3, at 5 (pages unnumbered), *Global Tel*Link contract and response to RFP, RP034-11* for Gwinnett County, Georgia.) If the FCC fails to immediately cap these fees, we suggest that contracting authorities ask Global Tel*Link during the Request for Proposals process whether Global Tel*Link's contracts with Western Union include revenue sharing or other similar arrangements, and, as a result, whether the commission calculations should be adjusted.

[77] Exhibit 1, *Petition of the Recipients of Collect Calls from Prisoners at Correctional institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of Such Calls*, at 22-23, before the Commonwealth of Massachusetts Department of Telecommunications and Cable, Exhibit 3 (Massachusetts Department of Correction, Re: Advance Pay Program Calling Rates, (June 4, 2007)), (Aug.31, 2009), available at http://www.mass.gov/ocabr/docs/dtc/dockets/11-16/inlpet83109.pdf. See also Exhibit 15.

[78] If the FCC hasn't banned these fees by August 2013 when law students are picking topics for law review notes, we suggest an article that does a 50 state review of whether state unclaimed funds laws apply in this circumstance. That article would be most powerful if it also collected information about whether the phone companies are in fact turning assets over under these laws.

[79] See Table 4. NCIC also has a shorter deadline than most companies and separately charges $10/month once an account becomes inactive. (See Exhibit 8 at Original Page 50.) Contrast those facts with these two statements from pages 8-9 of their March 25 2013 filing in In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 at http://apps.fcc.gov/ecfs/comment/view?id=6017169660: "NCIC has experienced, first hand, if the inmate has the funds to make telephone calls, whether it is inmate debit, commissary or pre-paid collect, they will utilize the available balances. NCIC rarely experiences dropped call complaints, but as part of our common practice, we credit back all or part of the dropped call, which allows the inmate to make a subsequent call with the same funds. NCIC maintains extremely low pre-paid collect account fees, in order to maximize the usage of the account balance for actual telephone calls…. NCIC feels very strongly that the FCC could proactively and immediately help to reduce rates by as much as 17% for the inmates by exempting inmate calling revenues from the Universal Service Fund contribution. Studies document that incarcerated individuals generally come from the lowest income families, so exemption from the Federal Universal Service Fund tax would substantially decrease their costs of calling and improve billing and collections for providing these services."

[80] Community Initiatives for Visiting Immigrants in Confinement (CIVIC), *Public Comment*, In re Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375, submitted March 21, 2013, http://apps.fcc.gov/ecfs/document/view?id=7022134848.

[81] Exhibit 9, *Help – Frequently Asked Questions*, https://www.offenderconnect.com/help/help.jsp.

[82] Exhibit 16, *Comments Regarding the Generic Proceeding considering the Promulgation of Telephone Rules Governing inmate Telephone Services for Telmate, LLC*, Before the Alabama Public Service Commission, Docket no. 15957 (Jan. 4, 2013), available at https://www.pscpublicaccess.alabama.gov/pscpublicaccess/ViewFile.aspx?Id=8286aadf-335d-4137-805a-0306d58ee84f ; Exhibit 17, Collection of news stories from WEBZ.

[83] We decided to use the term "single call fees" to describe this phenomenon. We caution those who are doing follow-up research that the terms used for this particular product vary.

[84] *Comments of CenturyLink*, at 17, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022134781.

[85] See Exhibit 17, Collection of news stories from WBEZ.

[86] See Exhibit 28, November 6, 2012 *Order* for Alabama Public Service Commission Docket 15957 (discusses concerns about $9.99 charges to AT&T cellphone customers accepting inmate calls and recommends that the Commission seek comments "regarding the "practice of entering into arrangements with intermediaries and/or other telecommunication providers that result in IPS [Inmate Phone Service] customers being billed for charges that exceed those authorized" by the Commission); and Exhibit 16, *Telmate Comment Letter* for Docket 15957 filed January 4, 2012, at 11 (Telmate responded to the call for comments with a letter focused on other issues raised in the Order and did not directly address the single call charges, but the final page of the companies submission includes an explanation of the "text collect" system that results in the single call charges).

[87] *Comments of CenturyLink*, at 17, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022134781.

[88] Bloomberg BusinessWeek has estimated that the prison phone industry does $1.2 billion in business every year. (Todd Shields, Prison Phones Prove Captive Market for Private Equity, Bloomberg BusinessWeek (October 4, 2012), available at http://www.businessweek.com/news/2012-10-04/prison-phones-prove-captive-market-for-private-equity.) Considering the speed at which pre-paid accounts are overtaking collect calls, we estimate that 90% of the market is now in pre-paid accounts. We then applied Global Tel*Link's fee structure (as described in Tables 3 and 5) to the revenue generated by pre-paid calls made from U.S. correctional facilities in a year to produce Table 6. One assumption — that there are 2.3 million monthly fees being charged, one for each person in state or federal prison on any given day — may be a significant undercount, because often several people will be in touch with the same incarcerated person and each will require his or her own account with the accompanying separate monthly fees. We note that the industry is in a prime position to supplant some of our assumptions with better data, but so far the industry in general, and Global Tel*Link in particular, has refused to provide the FCC with even more basic data (see, for example, *Reply Comments of Martha Wright, et al., The D.C. Prisoners' Legal Services Project, Inc., Citizens United for Rehabilitation of Errants, Prison Policy Initiative, and The Campaign for Prison Phone Justice*, at 8-9, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (April 22, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022289796).

[89] Consumer and Governmental Affairs Bureau, Federal Communications Commission, *Sample Wireline Phone Bill*, available at http://transition.fcc.gov/cgb/phonebills/samplePhonebill.html.

[90] Although these fees are outside of the commission system, we were surprised to discover no evidence of a contracting authority auditing these fees charged against payments actually made to regulatory agencies. If the FCC fails to regulate these fees, future contracting authorities may wish to ask Telmate if it pays the "local, county, state, and federal surcharges and regulatory assessments" when an incarcerated person is released, the calls never made, and the unused funds forfeit.

[91] In Fillmore County Nebraska, Telmate charges a flat fee of $5.95 for each deposit, plus 8%. On a $20 deposit, the total "regulatory fee" is $7.55, even though the majority of that "regulatory fee" is actually a deposit fee. See Exhibit 52. We note that Telmate also claims a similar "regulatory fee" on inmate trust deposits. See Exhibit 53, Telmate, *Trust Fund web interface*.

[92] See e.g. 103 CMR 482.06(3)(b), (Code of Massachusetts Regulations), available at http://www.mass.gov/eopss/docs/doc/policies/482.pdf.

[93] The *Yount v. T-Netix* decision (Penn. Public Utility Commission, Docket No. C-20042655) includes a discussion of the fact that repeated disconnects for attempted three-way calling were reported to the Department of Corrections for disciplinary proceedings against the incarcerated person. When the system malfunctions, this could improperly impact parole decisions, but it also illustrates the general point: If a single attempted three-way call was a security problem for the institution, the contracts would prohibit such calls from being re-dialed and the call would immediately be flagged for review. Instead, broken systems for detecting three way calls are tolerated because the two parties with legal standing to the contract — the prison and the phone company — benefit financially from that failure.

[94] Exhibit 18, State of Florida Public Service Commission, *Staff Memorandum*, Re: Docket No. 060614-TC - Compliance investigation of TCG Public Communications, Inc. for apparent violation of Section 364.183(1), F.S., Access to Company Records, and determination of amount and appropriate method for refunding overcharges for collect calls made from inmate pay telephones, Sept. 8, 2008, available at http://www.psc.state.fl.us/library/FILINGS/08/08284-08/08284-08.pdf; Exhibit 19, In re: Compliance investigation of TCG Public Communications, Inc. for apparent violation of Section 364.183(1), F .S., Access to Company Records, and determination of amount and appropriate method for refunding overcharges for collect calls made from inmate pay telephones, *Order Accepting Settlement Offer*, Before the Florida Public Service Commission, Docket No. 060614-TC (Aug. 31, 2009) available at http://floridapsc.org/library/FILINGS/09/08975-09/08975-09.pdf.

The companies obstructed the investigation by hiding documents, as the Commission staff explained, "[t]hroughout this entire investigation covering almost four years, staff was informed by representatives of AT&T, Global, TCG, T-NETIX, or Evercom, that call detail records did not exist for calls placed by inmates from the Miami-Dade detention facilities." And that "representatives of each company assured staff that the call detail records were not available and did not exist." "At a much later date (late 2007), staff received call detail records which were previously reported by the parties as no longer in existence." *Staff Memorandum*, at 6-8, 17.

[95] Exhibit 20, *History of Securus*, available at http://www.securustech.net/history.asp.

[96] Yount v. T-Netix, at 12, Pennsylvania Public Utility Commission, Docket No. C-20042655, *Opinion and Order*, (May. 1, 2008)

[97] Yount v. T-Netix, at 55, Pennsylvania Public Utility Commission, Docket No. C-20042655, *Initial Decision*, (Jan. 19, 2007).

[98] *Id.* at 58

[99] *Id.* at 61

[100] *Id.* at 57

[101] Exhibit 21, Oregon Department of Corrections, *FAQ*, available at http://www.oregon.gov/DOC/GENSVC/pages/faq-its.aspx.

[102] *Comments of Global Tel*Link Corporation*, at 30, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022134767.

[103] Exhibit 22, Global Tel*Link, *Advance Pay Brochure*, available at http://www.gtl.net/documents/GTL_AdvPay_Eng.pdf

[104] "The FCC asks for comment concerning inmates incurring multiple per-call charges when calls are dropped after a pause in the inmate's conversation. (NPRM at 16642-43 ¶ 19.) In such situations, dropped calls likely result from the operation of a feature intended to detect attempts to initiate three-way conference calls. Three-way conference calls are prohibited by facilities for security reasons. Three-way conference call detection features use algorithms that analyze a variety of data points (including prolonged periods of silence in a conversation) to flag suspicious activities. The algorithms are capable of mistakenly flagging benign activities and dropping calls. Because of the potential for such mistakes, all but one of CenturyLink's customers requires flagging the call record within the database, but not disconnecting the call in progress. CenturyLink's single customer that does require immediate termination of the call is a state correctional system with per-minute-only calling rates." (*Comments of CenturyLink*, at 7 n.16, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022134781)

[105] *Id.*

[106] We note that Telmate's website describes a number of advanced security features, including the ability to flag suspect in-process calls and automatically route them to the mobile phone of a correctional officer. See *Investigator Tools* at http://www.telmate.com/product/investigator-tools/. If Telmate and other vendors can offer something that complicated, they could also develop a rate structure that doesn't breed distrust.

[107] If the FCC hasn't restructured this market by the fall, an enterprising public policy or criminal justice graduate student could do an interesting 50 state investigation of the apparent disconnect between the security needs of the correctional facility and financial needs of the phone company. How often are phone calls limited in a way that does not advance security interests but does maximize phone company revenue? We discovered in an interview that Telmate, as a matter of policy, limits phone calls to 15 minutes but does not prohibit a second immediate call to that number. It would be useful for the FCC to know, of the states where a connection fee is charged, how many of those states limit the maximum call length to a time shorter than the amount of time someone is allowed to call a given number in a day.

[108] Yount v. T-Netix, at 12, Pennsylvania Public Utility Commission, Docket No. C-20042655, *Opinion and Order*, (May. 1, 2008). See also Peter Wagner, *In Memory of Jon E. Yount*, (1938-2012) for a discussion of how the prison system retaliated against Mr. Yount for bringing the commission system to public light at http://www.prisonersofthecensus.org/news/2012/05/22/jon-e-yount/.

[109] MetroPCS, *Investor Relations*, available at http://investor.metropcs.com/phoenix.zhtml?c=177745&p=irol-IRHome.

[110] *Comments of MetroPCS Communications Inc.*, at 3, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/comment/view?id=6017169649.

[111] MetroPCS discloses that GTL did withdraw or postpone the rates in response to criticism from the industry, citing "E.g., In the Matter of Tariff Filing by Global Tel*Link Corporation to Update Check Sheet and Add Wireless Termination Surcharge Language, *Comments in Objection*, New York State Public Service Commission, Matter No. 11-00513 (filed Apr. 21, 2011); In the Matter of Global Tel*Link Corporation Tariff Revision for Georgia Tariff No. 4 to Add Wireless Termination Surcharge Language, *Complaint and Petition to Cancel Tariff*, Georgia Public Service Commission, Docket No. 33710-U (filed May 11, 2011)". (*Comments of MetroPCS Communications Inc.*, at 3 n.7, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/comment/view?id=6017169649.)

[112] Exhibit 23, Excerpts of tariffs filed by ICSolutions in Arkansas, Illinois, Indiana, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Ohio, Rhode Island, South Carolina and Wyoming.

[113] Addendum 1, Attachment A to Exhibit 51 lists the monthly commission report for December 2012 from ICSolutions for Ramsey County, Minnesota. The "Total Local Prepaid" calls were 9,964. Subtracting the 8,141 "Local PrePaid" calls leaves exactly 1,823. The only place that number appears in the column describing the number of calls is for the row labeled "Intra Cell PrePaid." These calls were therefore local in origin but arbitrarily rerated to the more expensive rate. For the comparison with the lower cost of local calls to landlines, we used the the connect and per minute charges from Exhibit 23, *ICSolutions' Minnesota Tariff*. Average talk time in Table 10 was calculated from the number of minutes and number of calls listed in Exhibit 51's December 2012 report.

[114] This calculation does not address the evidence presented in the previous table that calls are getting shorter as they become more expensive, and instead focuses on the calls as they currently exist. Charging the higher rates does appear to be shortening the length of calls, but because local calls do not have a per-minute cost, the fact that the calls are being shortened does not change our calculation of the fiscal cost to Ramsey County families from the rerating practice.

[115] Drew Kukorowski, *The Price to Call Home: State-Sanctioned monopolization in the Prison phone Industry*, at § 2, available at http://www.prisonpolicy.org/phones/report.html.

[116] See for example, the Kansas Department of Corrections webpage about the phone system at http://www.doc.ks.gov/facilities/inmate-communications/inmate-telephone and the Securus announcement of a Texas contract at http://www.securustech.net/press_listing.asp?press_id=65.

[117] See *Comments of CenturyLink*, at 7, In the Matter of Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375 (March 25, 2013), available at http://apps.fcc.gov/ecfs/document/view?id=7022134781.

[118] Exhibit 24, In Re: Application of Legacy Long Distance International, Inc. For a certificate to Provide Intrastate Interexchange Alternative Operator Service in the State of Georgia, Legacy Long Distance International Inc.'s Application For a Certificate of Authority to Provide Competitive Local Exchange Service, Legacy Long Distance International, Inc.'s Application For a certificate of Authority to Provide Institutional Telecommunications Services, *Order Adopting Consent Agreement*, Before the Georgia Public Service Commission Docket Nos. 8076, 28152, 30554 (April 21, 2011), available at http://facts.psc.state.ga.us/Public/GetDocument.aspx?ID=135607. While investigating Legacy for unauthorized charges and tariff non-compliance, the staff at the California Public Utility Commission discovered that when asked, the company had failed to disclose numerous regulatory sanctions. The Commission's "[s]taff discovered that in fact Legacy had been sanctioned, investigated, penalized, had its tariff cancelled, and had its public utility registration or corporate charter revoked, in 16 other states."(Exhibit 25, *Order Instituting Investigation* on the Commission's Own Motion into the Billing Practices and Conduct of Legacy Long Distance International, Inc. (Legacy) to Determine if Legacy Violated the Law, Rules, and Regulations Governing the Manner in which California Consumers are Billed for Phone Services, at 21 of Attachment B, Before the Public Utilities Commission of the State of California, Proceeding No. I. 10-06-013 (June 24, 2010), available at http://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=412254).

[119] See Community Initiatives for Visiting Immigrants in Confinement (CIVIC), *Public Comment*, In re Rates for Interstate Inmate Calling Services, Before the Federal Communications Commission, WC Docket No. 12-375, submitted March 21, 2013, http://apps.fcc.gov/ecfs/document/view?id=7022134848.

[120] See discussion of *Yount* above.