

PRISON POLICY INITIATIVE

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August 1, 2013

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

Dear Ms. Dortch:

As the Commission considers regulating the unreasonable rates present in the prison and jail phone industry pursuant to your Notice of Proposed Rulemaking, *In re Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, we urge you to craft effective regulation by taking a comprehensive view of the commission system.¹

The evidence you have heard shows that the system of commission payments to states, counties, and municipalities is the main driver of high rates. In contrast with a normal market, these governments often select the highest bidder for phone contracts, because the higher rates mean higher commissions. As a result, the prison telephone market offers its services at prices that are well-above ordinary rates for non-incarcerated persons.

And as you know, some states and at least one county have already started banning commissions in an effort to stem the high rates. However, our review has found that an overly narrow concept of commissions leaves some glaring loopholes that make these efforts far less effective than originally expected. We would like to share the examples of Dane County, Wisconsin and the State of California to illustrate the possible result of a too-narrow view of commissions: Commissions can instantly be rebranded as “administrative fees” with no actual change.

In 2007, the County Commissioners of Dane County, Wisconsin voted to ban the commissions 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 that commissions created, he stated, “We’ve lost our moral compass and direction for a million bucks a

¹ This letter delves deeper into the issues explored in our first report, “The Price To Call Home: State-Sanctioned Monopolization In The Prison Phone Industry” which covered the corrupting role of the commission system, and our second report “Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry” which discussed how the commission system supports the proliferation of hidden fees that can double the price of a call. (Both reports are in your docket and available at <http://www.prisonpolicy.org/phones/>)

year.”² The addiction metaphor turned out to be truer than Supervisor de Felice imagined, because when the contract was up in 2009, the County specified that it “shall receive no commission from phone service revenue” yet it required ICSolutions to pay an annual “administrative fee” of \$476,000 in monthly increments.³

The California Department of Corrections & Rehabilitation also banned commissions and now collects an “Administration Fee” of \$66,666.66 per month.⁴

We note that the rebranding of commissions as “fees” is already present even in jurisdictions that have not banned formal percentage-based commissions. Other examples we’ve seen includes Berkshire County, Massachusetts which collects an “annual technology fee” to be paid in monthly installments.⁵ And while Worcester County, Massachusetts collects a percentage commission, they also get monthly installments amounting to \$50,000 annually “for Technology”.⁶

We also discovered a shockingly creative attempt to subvert state regulation banning commissions in New Mexico’s Doña Ana County. The county is currently seeking proposals for a phone contract that would include a payment of \$30 per square foot of office and equipment space.⁷ By the other figures made available in their RFP, it is clear that the county is seeking an effective commission of over 50%.⁸ And for context, we note that this monthly square foot “rent” is 7.5 times higher than that charged in Manhattan’s Empire State Building.⁹

² 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.

³ County of Dane, Purchase of Services Agreement No. 10056, Schedule B – Phone Administration, signed December 10, 2009. In the most recent contracts the “administrative fee” is now up to \$551,000 and set to increase by another 4% next year County of Dane, Addendum of Agreement No. 10056A, signed April 10, 2013.

⁴ State of California, California Technology Agency, Agreement Number OTP 11-126805, Signed April 13, 2012.

⁵ Berkshire Sheriff’s Department contract with Securus, signed July 13, 2012.

⁶ Worcester Sheriff’s Department contract with Securus, signed December 1, 2012.

⁷ Doña Ana County Request for Proposal (RFP) DAC 13-0062, at § 1.1, available at <http://donaanacounty.org/bids/registered-vendor/130062> (online registration required).

⁸ The contract specifies that “Payments will be calculated as follows: 10 square feet multiplied by the total amount of phones (i.e. 106 X 10sqf), plus 152 square feet of office space for the full time call system manager, multiplied by \$30.00, equals total monthly payment.” The County is requesting up to 131 phones, so that would mean a monthly payment of \$43,860.

To calculate that payment as a percentage commission we use the county’s call volume for the last 12 months, 446,380 calls, and generously assume every call is 15 minutes long (the current call duration limit according to RFP Addendum #1) at \$0.15 per minute (the maximum allowed under the new rate cap). That means gross revenue of \$83,696.25 excluding connection charges and other fees. So the \$43,860 “rent” payment amounts to a 52.4% commission.

⁹ For ease of comparison to the monthly rate in the Doña Ana contract, all New York annual rates were divided by 12 to produce the monthly rates presented here. Office space is available in the Empire State Building for \$4/month per square foot. See 2010 listing by Heather Rae Hatton, video listing available at <http://www.youtube.com/watch?v=UQzscCqvKGU&list=TL0ivtIn6XhtI>, where annual rates per square foot are given at minute 0:39.

Also compare with rates ranging from \$4-10 a square foot per month for other “prestige Manhattan office space” discussed in *Manhattan Tenants Pay Top Office Rents for Midtown South* by David M. Levitt,

Other counties in New Mexico have a history of skirting the state's ban on commissions through similar incentives and payments,¹⁰ and the California Department of Corrections & Rehabilitation receives a valuable Managed Access System to control unauthorized cell phone use in addition to their monthly allegedly non-commission "administrative fee".¹¹ But creative demands for commission-alternatives are not limited to places that ban the typical percentage commissions.

What may have started as an exploitation of regulatory loopholes is now clearly a trend. As Telmate notes: "[C]ommissions are no longer confined merely to a portion of the carrier's revenues.... These include free 'booking' calls, live deposit acceptance, automated inmate grievance and other IVR systems, voice biometrics, commissary ordering, managed cell phone access, storage of recorded inmate calls, and in some instances computing equipment for corrections staff as well as law libraries or religious services. The volume of such non-financial consideration has likewise been increasing...."¹²

We urge you to take an expansive view of the commission system when crafting your regulatory response to this broken market. And we draw your attention to the remarks of Jason Marks, the former Commissioner of the New Mexico Public Regulation Commission who noted that the companies continued to exert a "wild west" attitude after that state banned formal commissions: "New Mexico's experience was that restricting state facilities from taking cash kickbacks, done by statute in the early 2000s, was a good step, but did not entirely solve the problem [because] inducements to facilities could take other forms."¹³

We strongly urge you to ban commissions in all of their forms.

Sincerely,



Peter Wagner

Bloomberg, May 21, 2012, available at <http://www.bloomberg.com/news/2012-05-21/manhattan-tenants-pay-top-office-rents-for-midtown-south.html>.

¹⁰ "[T]hings like charging rent for the wall space for the equipment, discounted calling cards that they give to the facilities that then resell them, and get the money that way, computer equipment that appears to be part of the contract because these are IT services, but they will get a bunch of PCs for the offices...." Remarks of Jason Marks before the Federal Communications Commission, Workshop on Reforming Inmate Calling Services Rates, July 10, 2013 Transcript pp.184-185, available at <http://transition.fcc.gov/files/documents/ics-workshop-transcript-07102013.pdf>. See also examples such as "a \$950,000 incentive for 'cable and wiring', or "\$50,000 for an undefined 'one-time technology grant'" in the Santa Fe Reporter, *Dialing Out: Report says prison phone companies still gouging families*, by Dave Maass, January 28, 2009, available at <http://www.sfreporter.com/santafe/article-4271-dialing-out.html>.

¹¹ Comments of State of California Department of Corrections and Rehabilitation Before the Federal Communications Commission, In the Matter of Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, available at <http://apps.fcc.gov/ecfs/document/view?id=7022134811>

¹² Comments of Telmate, LLC, Before the Federal Communications Commission, In the Matter of Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, p. 15, available at <http://apps.fcc.gov/ecfs/document/view?id=7022134863>.

¹³ Jason Marks, summary statement, Federal Communications Workshop on Reforming Inmate Calling Services Rates, available at <http://apps.fcc.gov/ecfs/document/view?id=7520931056>.

Executive Director

A handwritten signature in black ink that reads "Aleks Kajstura". The signature is written in a cursive style with a prominent initial 'A' and a long, sweeping tail on the 'u'.

Aleks Kajstura
Legal Director