

# PRISON POLICY INITIATIVE

PETER WAGNER

Executive Director

main: (413) 527-0845

direct: (413) 961-0002

[pwagner@prisonpolicy.org](mailto:pwagner@prisonpolicy.org)

69 Garfield Ave Floor 1,  
Easthampton MA 01027

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

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

January 13, 2014

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

Re: Reply Comment on WC 12-375

Dear Ms. Dortch:

In the Federal Communications Commission's August 9 2013 Report and Order and Further Notice of Proposed Rulemaking,<sup>1</sup> the commissioners ask for confirmation that ICS providers receive a portion of the payment fee charged by third-party payment services such as Western Union.<sup>2</sup> The issue of hidden profit in various "fees" charged by the industry and allied businesses was a major finding of our May 2013 report "Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry."<sup>3</sup>

Noting that Global Tel\*Link<sup>4</sup> continues to deny receiving kickbacks from Western Union and other payment processors, we wish to draw your attention to three pieces of evidence that such payments are being made that were not available at the time of our original report:

---

<sup>1</sup> *In re Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375 (Adopted August 9, 2013), available at <http://apps.fcc.gov/ecfs/document/view?id=7520945713>.

<sup>2</sup> Report and Order and Further Notice of Proposed Rulemaking, *In re Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375 at ¶ 168 (Adopted August 9, 2013). ("In the Order, we require charges for any services that are ancillary to the costs of providing ICS to be cost-based, and require ICS providers to submit cost data for these ancillary service charges as part of the mandatory data request. Here we seek comment on how the Commission can ensure, going forward, that ancillary charges are just, reasonable, and cost-based. For example, the record reflects that ICS providers typically use third parties to process debit and prepaid transactions, and there are concerns that the charges passed on to inmates or their called parties are not entirely cost-based. Is this accurate?")

<sup>3</sup> Drew Kukorowski, Peter Wagner, and Leah Sakala, *Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry* (May 8, 2013), available at <http://www.prisonpolicy.org/phones/pleasedeposit.html>

<sup>4</sup> "...ICS providers cannot control the fees established by third-parties for payment processing functions, such as Western Union or MoneyGram fees or the payment processing fees charged by credit card companies." (Global Tel\*Link Corporation, Comment, *In re Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375 (received December 20, 2013), available at <http://apps.fcc.gov/ecfs/document/view?id=7520964265>.)

1. The Alabama Public Service Commission reviewed the evidence in that state and concluded that:

“Money Transfer services (Western Union and MoneyGram) – Staff recognizes that these fees are set by these financial services but is also aware that agents hosting such services are paid a portion of the fee. Additionally merchants may negotiate the fee charged their customers.”<sup>5</sup>

2. NCIC has clearly demonstrated that it is possible for providers to control the fees charged by Western Union. After the publication of our report, NCIC reached out to us to assert that the company was not receiving a revenue share from Western Union. When we asked for an explanation for why Western Union was charging NCIC Customers a rate higher than that charged to customers of other companies, NCIC renegotiated its contract with Western Union and had the rate lowered to \$5.<sup>6</sup>
3. Customer Service of America (CSA), affiliated with AmTel, admits that it receives income from Western Union fees and then defends that income as necessary. CSA submitted a comment to the FCC on December 20, 2013 that appears to be responding not to the FCC but to the Alabama Public Service Commission, and makes this surprising admission:

“CSA respectfully does not agree with a prohibition of the Call Center receiving a portion of a payment from Western.... CSA representatives frequently have to make refunds for Western Union Quick Collect payments and **this portion of a processing fee helps to recover the associated refund expense.**”<sup>7</sup>

Notably, the Western Union fee for AmTel is \$9.95, meaning that the \$10.95 and \$11.95 fees charged by Western Union to Global Tel\*Link and Securus customers represent an even higher profit to those companies.

---

<sup>5</sup> Alabama Public Service Commission, Errata and Substitute Order Proposing Revised Inmate Phone Service Rules and Establishing a Comment Period, *Re: General Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Services*, Docket 15957 (October 7, 2013), available at [http://www.psc.state.al.us/Telecom/Engineering/documents/Sub\\_Ala\\_IC\\_S\\_Reform\\_Order.pdf](http://www.psc.state.al.us/Telecom/Engineering/documents/Sub_Ala_IC_S_Reform_Order.pdf)

<sup>6</sup> Prison Policy Initiative, *Our Report Leads Two Phone Companies to Clarify & Improve Policies* (May 28, 2013), available at <http://www.prisonpolicy.org/blog/2013/05/28/policies/>.

<sup>7</sup>(Emphasis added.) ATN, Inc. / AmTel Comments on Changes to Rules for Inmate Calling Services Docket #: 12-375, *In re Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375 (received December 20, 2013), available at <http://apps.fcc.gov/ecfs/document/view?id=7520964042>.

The exact extent to which a portion of the third-party fee is actually cost-based may still be up for debate, but the FCC can be confident that a portion of the fees charged by third parties such as Western Union for payments to certain providers is in fact being collected by ICS companies.

We recommend that the FCC adopt Alabama's approach to regulating fees and kickbacks from third party payment servicers:

“All ICS providers shall submit, for informational purposes to the Commission, the transaction fee charged their customers by Western Union and MoneyGram for ICS payments and will update this information as the fees change. Staff will compare fees submitted by all ICS providers and require justification from ICS providers for any observed anomalies.”<sup>8</sup>

Sincerely,



Peter Wagner

Executive Director



Aleks Kajstura

Legal Director

---

<sup>8</sup> Alabama Public Service Commission, Errata and Substitute Order Proposing Revised Inmate Phone Service Rules and Establishing a Comment Period, *Re: General Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Services*, Docket 15957 (October 7, 2013) at 17, available at [http://www.psc.state.al.us/Telecom/Engineering/documents/Sub\\_Ala\\_ICs\\_Reform\\_Order.pdf](http://www.psc.state.al.us/Telecom/Engineering/documents/Sub_Ala_ICs_Reform_Order.pdf)