REDACTED--FOR PUBLIC INSPECTION

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September 12, 2022

Marlene Dortch, Secretary
Federal Communications Commission
45 L St., NE
Washington, DC 20554
VIA ECFS ONLY

Re: Rates for Interstate Inmate Calling Services, WC Dkt. No. 12-375
Ex parte filing: Draft Fourth Report & Order and Sixth FNPRM

Dear Ms. Dortch:

Pursuant to § 1.206(b)(1) of the Commission's rules of practice and procedure, the Prison Policy Initiative ("PPI") submits the following *ex parte* filing as part of the above-captioned proceeding.

PPI thanks the Commission for releasing a draft Fourth Report & Order and Sixth Further Notice of Proposed Rulemaking (the "Draft")[1] on September 8, 2022 and soliciting public comment thereon. We submit the following comments related to three issues implicated by the Draft.

I. The Commission Should Take More Forceful Interim Steps to Address the Problem of Double Dipping

As PPI has noted on previous occasions, several inmate calling services ("ICS") carriers engage in an unfair practice of charging multiple ancillary fees for a single payment transaction. Specifically, these carriers charge an automated payment fee (under 47 C.F.R. § 64.6020(b)(1)) and "pass through" alleged payment-card processing costs (under 47 C.F.R. § 64.6020(b)(5)).

The Draft alludes to this practice of double dipping by posing additional questions as part of the further notice of proposed rulemaking.[2] PPI urges the Commission to take more immediate action, based on the evidence set forth below.

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[1] FCC-CIRC2209-02, available at https://docs.fcc.gov/public/attachments/DOC-387025A1.pdf.

[2] Draft ¶¶ 136-137.

PPI has identified six carriers that engage in double dipping: Combined Public Communications, Encartele, Global Tel*Link, Prodigy Solutions, Securus Technologies, and Reliance Telephone of Grand Forks.[3] In an effort to quantify the financial harm imposed on ICS consumers as a result of double dipping, PPI examined these six carriers' 2021 annual reports (Form 2301(a)) to gauge the respective companies' revenue from the two types of redundant fees. The results of our analysis are set forth herein.

Table 1. Summary of Double-Dipping Revenue (2021)

	Automated payment fee ("APF") revenue	Estimated pass-through fee revenue	Pass-through revenue as % of APF revenue
CPC	[redacted]	[redacted]	[redacted]
GTL	[redacted]	[redacted]	[redacted]
Prodigy	[redacted]	[redacted]	[redacted]
Securus	[redacted]	[redacted]	[redacted]
		Average	21%

Methodological Notes

1. CPC: The company reports the total number of times it has charged the APF in two categories: (a) instances of charging only a flat $3 APF, and (b) instances of charging a $3 APF plus a "2.5% processing fee." To calculate the company's total APF revenue, we multiplied the total fee instances in both categories by $3. To estimate the company's pass-through processing-fee revenue, we used a hypothetical payment amount of $25 for each instance in category "b" and multiplied the aggregate amount of those hypothetical payments by 2.5%.

2. GTL: Evidence previously entered into the record by NCIC and PPI indicates that GTL adds a 3% "pass-through" fee to payments, attributable to alleged payment-card processing costs. We estimated the company's total APF revenue by multiplying $3 by the number of times GTL reports charging the APF. We esimated the company's pass-through processing-fee revenue using a hypothetical payment amount of $25 for each time the APF was charged and multiplying the aggregate amount of those hypothetical payments by 3%.

3. Prodigy: PPI performed test transactions with Prodigy and determined that the company charges a 3.3% pass-through fee attributable to payment-card processing costs. We estimated the company's total pass-through processing fee revenue in the same manner described above for GTL, but using Prodigy's rate of 3.3%.

4. Securus: The company reports ancillary fees on Form 2301(a) differently from other carriers. Securus categorizes ancillary fees both by the FCC's categories (listed in 47 CFR § 64.6020) and by codes that appear to correspond to the payment chanel. We calculated Securus's APF revenue as $3 multiplied by the total number of transactions using payment-chanel codes "Web," IVR," and "TEXTPAY." Unlike other double-dipping carriers, Securus charges a flat pass-through fee for card-processing (not a percentage of the payment amount), so we calculated the company's pass-through revenue by multiplying the actual amount of the fee (either 40¢ or 60¢, as specified by Securus) by the number of times it was charged.

[3] *See* PPI Notice of *Ex Parte* Presentation at 2, n.6 (Jun. 14, 2022). In addition, NCIC Inmate Communications has provided evidence indicating that a seventh company—City Tele Coin—also engages in double dipping. *See* NCIC *Ex Parte* Filing at 5-6 (Jul. 15, 2022). PPI has not independently verified City Tele Coin's practice.

As we have previously explained, Encartele and Reliance Telephone have filed 2021 annual reports that inadequately disclose ancillary-fee revenue in derogation of the instructions for Form 2301(a).[4] Thus, we are only able to quantify the effects of double-dipping with respect to the remaining four carriers.

Table 1 shows the total amount of revenue that the four companies report collecting in 2021 as a result of automated-payment fees, along with our best estimate of each company's revenue from "passing through" their alleged card processing costs. The final column of the table measures each company's estimated card-processing-fee revenue as a percentage of the total automated-payment fee revenue.

As shown above, these four companies collect substantial sums through the automated payment fee. Then, *on top* of that revenue, the companies reap additional "pass through" fees equal, on average, to 21% of the automated-payment-fee revenue. This represents a substantial double-recovery that is not justified by any evidence available in the public record.

One of the most telling data points comes from Securus. As we have previously noted, when the Commission originally set a $3 cap on automated payment fees, Securus objected by arguing a higher cap was necessary to account for payment-card processing costs.[5] The Commission rejected Securus's argument and set the cap at $3.[6] This record strongly indicates that the automated-payment fee is designed to recover carriers' payment-card processing costs. Perhaps because its argument was rejected by the Commission, Securus was *not* among the carriers who immediately engaged in double-dipping following implementation of the Commission's Second Report & Order. Instead, Securus waited until March 9, 2020 to start charging duplicative payment fees.[7] When it began this practice, Securus chose a different model than other carriers—instead of charging a percentage of the transaction amount as a third-party financial transaction fee, Securus "passed through" a flat fee of 60¢, which the company describes as "the average cost incurred by Securus for processing payment card transactions by its third-party payment card processors."[8] Securus further states that it lowered this fee from 60¢ to 40¢ on January 5, 2021.[9]

As table 1 shows, Securus's modified form of double-dipping [redacted]

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[4] PPI *Ex Parte* Submission re Ancillary Fee Reform at 5-6 (Jul. 15, 2022).

[5] *Rates for Interstate Inmate Calling Services*, WC Dkt. 12-375, Second Report & Order and Third Further Notice of Proposed Rulemaking ¶ 167, 30 FCC Rcd. 12763, 12848 (Nov. 5, 2015)

[6] *Id.*

[7] Securus Response to Third MDC, FCC Form 2302(a), appx A at 30 (Jun. 30, 2022).

[8] *Id.*

[9] *Id.*

[redacted] This observation, combined with the fact that several prominent ICS carriers do not double-dip at all (companies including ICSolutions, NCIC, and Pay Tel), provides strong probative evidence that carriers can recover the cost of processing payments without layering a percentage fee on top of a $3 automated payment fee. Given the substantial amount of money that consumers have lost as a result of double dipping (as illustrated in table 1), we believe that that record supports immediate interim relief while the Commission analyzes the information obtained as part of the third mandatory data collection.

PPI thus urges the Commission to modify the Draft to prohibit double-dipping on an interim basis; alternatively, if the Commission does not impose an absolute ban, it should at least cap third-party transaction fees at 40¢ for any transaction that is also subject to an automated-payment fee.

II. The Sixth FNPRM Should Invite Comments on the Commission's Jurisdiction over General ICS Video Calling

In our reply comments concerning the Commission's Fifth Further Notice of Proposed Rulemaking, PPI provided a comprehensive analysis establishing the Commission's jurisdiction over video-calling rates and practices in the ICS market.[10] Ample evidence suggests that high rates and poor service quality remain a problem plaguing many ICS video-calling services.

The Draft commendably addresses critically important issues concerning video communications services for disabled customers, yet it contains no discussion of general video-calling outside the context of disability access.

Because regulation of general ICS video calling services would require legal argument and development of an evidentiary record, PPI encourages the Commission to avoid unnecessary delay and begin this process as soon as possible. Specifically, we respectfully suggest that the Sixth FNPRM be amended to solicit comments on the Commission's jurisdiction over general ICS video-calling.

III. The Draft's Proposed Reforms Concerning Prepaid Accounts and Ancillary Fees Provided Much-Needed Relief

The Draft contains new rules that would protect consumer funds held by ICS carriers in "prepaid accounts"[11] and lower the allowable ancillary fees for single-call services and

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[10] PPI Reply Comments re Fifth FNPRM at 7-24 (Dec. 17, 2022).
[11] Draft ¶¶ 67-76.

third-party financial transactions.[12] PPI applauds the Commission for taking these important steps. The reforms proposed in the Draft take a reasonable approach that will protect ICS consumers from some common forms of financial exploitation. We wholeheartedly support adoption of these provisions as currently drafted.

IV. Conclusion

Release of a tentative draft opinion is an important practice that promotes transparency and public involvement in the Commission's policymaking process. We are grateful for the opportunity to provide these comments.

While the Draft as currently written takes important steps, we believe it could be strengthened by including more forceful action to prohibit or curtail double-dipping and by beginning the process to regulate video calling.

Sincerely,

Stephen Raher

Stephen Raher
General Counsel

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[12] *Id.* ¶¶ 77-83.