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January 19, 2016

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

Comment Re: Second Report and Order and Third Further Notice of Proposed Rulemaking ¶ 306 – Loophole on the horizon: The regulatory harms of phone companies bundling telecommunications services with prison financial services in one contract.

Dear Ms. Dortch:

We commend the Federal Communications Commission on its powerful 2015 regulation of phone rates and fees. We write to draw the FCC's attention to one way we expect the industry's largest players to use their dominance of prison financial services¹ to attempt to undermine the Commission's very important cap on deposit fees² in the prison telephone market.

As you well know, the prison telephone market is a unique and backwards market. The end consumers of telephone services (incarcerated people and their families) are powerless in choosing the vendor; which is instead selected by the correctional facility. The correctional facilities do not represent the consumers; in fact because the facilities get a portion of the revenue generated, the interests of the facilities and vendors are typically aligned in opposition to the end consumers who pay the bills. It is only the narrow context of *fees* — as opposed to rates — where the industry's foray into prison banking aligns the interests of both the families and the facilities. As our

¹ "Prison financial services" is not, to our knowledge, a term of art. We use it as an umbrella term to refer to the commissary, trust and other systems that allow people to receive and spend money for daily expenses while incarcerated as well as the money transfer systems that allow friends and family to send money to incarcerated people. Given the low to non-existent wages in prisons and jails, virtually all of the money spent by incarcerated people originates from friends and family on the outside. Abuses in the market are too many and varied to list here, but our research has shown that adaptation of new exploitative "services" can be swift. For example, release cards (issued on behalf of jails or prisons that owe money to people who are released from the facility) are a relatively new phenomenon, they are being adapted by an increasing number of agencies and often carry complicated and exorbitant fees. See [Proposed Amendments to Regulation E: Curb exploitation of people released from custody](#), March 2015, available at: <http://www.prisonpolicy.org/releasecards/>

²47 C.F.R §64.6020 (b)

previous submissions³ and your orders have documented, unnecessarily high fees hurt the families paying for the calls, and also hurt the facilities because non-commissionable fees consume funds that families would otherwise spend on commissionable calls.

We don't currently have a developed legal opinion as to whether the FCC has jurisdiction over the industry's ability to bundle regulated with non-regulated services together in order to subvert your deposit fee limits, but we wanted to raise the concern publicly because we know the companies are already thinking about this possible loophole. We believe the FCC, the public, the facilities and other government agencies would benefit from examining the inmate prison financial services tunnel being dug beneath the FCC's otherwise very strong regulations.

47 C.F.R §64.6020 ostensibly prohibits phone companies from charging unreasonable deposit fees, but many companies are already poised to shift the account-funding process to enable them to charge unlimited fees through related transactions. The following hypothetical scenario illustrates how it's done:

Vendor A says, "Fine, we'll eliminate deposit fees because we will no longer take deposits. Instead we'll require phone time to be purchased in the commissary. From now on, deposits to the prison financial services systems (which we also control, and which are currently outside of the FCC's regulations), will have a \$30 fee. Facilities, don't look at the deposit fee; just focus on our 100% commission on the phone calls."

This hypothetical scenario is on our doorstep because all of the major players already own commissary, money transfer, or other prison financial services.

- Securus owns JPay.⁴
- Global Tel*Link owns Touchpay⁵
- ICSolutions shares a corporate parent with the prison commissary behemoth Keefe Commissary Network.⁶
- Telmate provides commissary/trust account services in many of its facilities, including the Oregon Department of Corrections.

Telmate already boasts of their kiosks intricately interconnecting prison financial services with commissary and phone accounts:

"The Telmate kiosk offers friends & family a convenient, accessible and localized option to add funds to any inmate account by allowing them to make

³See generally, *Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry* by Drew Kukorowski, Peter Wagner and Leah Sakala

May 8, 2013, available at <http://www.prisonpolicy.org/phones/pleasedeposit.html>. See also *The prison phone industry's new business model: Fee Harvesting*, by Peter Wagner, June 18, 2015, available at <http://www.prisonpolicy.org/blog/2015/06/18/feeharvesting/>

⁴ See "Securus Technologies, Inc. to Acquire JPay Inc." April 14, 2015 <http://www.prnewswire.com/news-releases/securus-technologies-inc-to-acquire-jpay-inc-300065531.html>

⁵ See "GTL Acquires Leading Payment Services Company TouchPay" Feb 5, 2015 <http://www.gtl.net/gtl-acquires-leading-payment-services-company-touchpay/>

⁶ See the "companies" page for the Keefe Group at <http://keefegroup.com/companies-101>

deposits to inmate prepaid accounts from any Telmate kiosk in any facility we service. When our kiosks are integrated with commissary systems, friends & family may also use them to deposit money into an inmate trust fund.....”⁷

This deposit fee loophole is just the tip of the iceberg represented by trend of the large companies bundling regulated and unregulated services together into multi-service contracts.

These companies pitch the benefits of integration, but the resulting decrease in choice is bad for consumers, bad for facilities, and bad for the FCC’s important efforts to bring lasting order to the prison communications market.

When different vendors sell competing products, everyone benefits. For example, when the Georgia Department of Corrections’ phone vendor was charging too much for a phone call, families could use the then-cheaper video visitation system offered by JPay instead. But as these independent services like JPay are gobbled up by the big phone companies and offered in bundled contracts, consumer choice suffers in the short term as the literally captive consumers and their loved ones are deprived of choices.

And in the long term, bundled contracts decrease competition. We’ve repeatedly seen that the smaller companies are providing the innovation. For example, the designs of the HomeWAV and Turnkey video visitation systems are much better than that of Securus et. al. And it is the smaller phone companies that were the first to find ways to lower their fees to the benefit of both families and facilities. These smaller companies have been pushing the bigger companies to be more competitive within these specialties.

Currently, there are several dozen companies in the phone market, about 25 in video visitation⁸ and about 10 in the electronic messaging market.⁹ But as discussed above, there are just 4 significant companies that own both prison phone and prison financial services. By allowing companies to continue to bundle telecommunications and prison financial services together, the FCC will ensure that smaller companies cease winning contracts and therefore cease to push the technology forward.

Bundling harms competition in other ways. Once existing bundled contracts come up for renewal and the RFP lists what features the contracting authority values – often

⁷ Telmate website, *Deposit Options* page, available at <http://www.telmate.com/products/deposit-options/> (visited Jan.19, 2016).

⁸ The dominant video visitation companies are Global Tel*Link/Renovo, HomeWAV, ICSolutions and VizVox, Securus/JPay, Telmate, and TurnKey Corrections, but there are many other companies in this space. We believe that the following companies also provide video visitation in some form: Black Creek, City Tele Coin Company, CTC Communications Company, Edge Access, Encartele, InnoVisit, IP Web Visitor, iWebVisit.com, Lattice, Legacy, Montgomery Technology Inc., Primonics TeleCorrections, ScotlandYard Security Services, Sprint Communications and Kinko's, Strike Industries, Tech Friends, and VuGate. Not included in the above list are companies that we discovered were one of multiple parties in video visitation contracts but do not appear to be the company providing the video visitation service. Some of these listed companies are primarily responsible for *building and maintaining* systems that are largely *managed and owned by the correctional facilities*; but other companies listed manage and maintain ownership of the video visitation systems used in correctional facilities.

⁹ Prison Policy Initiative’s Comment to the FCC, *Comment Re: Second Report and Order and Third Further Notice of Proposed Rulemaking ¶ 306 – You’ve Got Mail: The promise of cyber communication in prisons and need for regulation*, January 12, 2015.

using the existing contract as a baseline– the existing vendor will have multiple legs up over the competition because in addition to indirectly defining the scope of the RFP, the existing vendor will have relationships with the government in multiple arenas and competitors will have relationships in none. In contrast, if different services are kept unbundled, each separate service would provide a separate opportunity for each incumbent company. Allowing just one bundled provider to serve an entire facility or state correctional system will itself become a barrier to entry.

To recap, allowing bundling of regulated and unregulated services together:

1. Reduces the number of competitors who can provide telephone service within all-in-one contracts.
2. Reduces the number of competitors who can effectively compete for specific contracts and renewals.
3. Provides a direct path for the industry to immediately subvert your critical caps on deposit fees.

For these reasons, we urge the FCC to consider whether it can explicitly prohibit the bundling of regulated services with any services that the contracting parties consider to be unregulated, and require phone service providers to certify their compliance annually, listing the services they provide under each contract.

Sincerely,



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