

PRISON POLICY INITIATIVE

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January 12, 2015

Re: WC Docket No. 12-375

Comments re Second Further Notice of Proposed Rulemaking ¶¶ 15-16, 30, 38, 40, 92, 96, 103, 106, 110, on certain aspects of the “Joint Provider Reform Proposal”

Dear Ms. Dortch:

On September 15, three of the industry’s largest participants — notably not the large CenturyLink nor any of the small but more cooperative players — made a “consensus” proposal with the following “inextricably-linked components”:

- Capping interstate and intrastate rates at \$.20/\$.24 per minute.
- Ending commissions to correctional facilities
- Restricting ancillary fees the providers may charge

Then, in your Second Further Notice of Proposed Rulemaking you asked for comments on various aspects of the joint provider proposal. Here we reply to a few of the questions and recommend that this proposal be rejected because the rates and fees it proposes are too high, and these industry participants – many of whom have long refused to share basic information about their costs and pricing, do not even feign to justify the figures they propose.

As you have heard from our colleagues at the Human Rights Defense Center “state prison systems that have eliminated commissions provide ICS services at some of the lowest rates in the nation, including New Mexico (\$.043/min. for collect and debit calls); New York (\$.048/min. for all types of calls); Rhode Island (\$.046/minute for intrastate collect and prepaid calls); and South Carolina (\$.05/min. for prepaid and debit calls, plus \$.066/min. for collect calls).”¹ A proposal that requires the elimination of commissions to achieve a rate of \$.20/\$.24 per minute therefore, leaves an unreasonable profit to be extracted from the families of incarcerated people in violation of the “reasonable charges” requirement of 47 U.S.C. § 151.

However, we think this proposal deserves further comment for what it discloses, albeit indirectly, about how this industry operates. In particular, we welcome the long-delayed agreement of these three companies with our argument that commissions are at the root of this market dysfunction, but we disagree that direct FCC action to end commissions is necessary.

¹ HRDC’s *Comment for WC Docket No. 12-375* (Sept. 18, 2014), available at <http://apps.fcc.gov/ecfs/document/view?id=7522900728>

FCC need not ban commissions outright

While the three companies submitting this proposal differed on how they wanted you to provide commission relief, they reported consensus that “Reducing ICS providers’ site commission payments to FCC-prescribed admin-support amounts is fundamental to the proposed rate caps and fee reductions under this proposal.”

The three companies now apparently agree with our previous reports that the commission system – which to date has been the primary basis on which facilities choose one commodity vendor over another – is the cause of this market dysfunction. The prisons and jails demand every higher commissions – approaching, if not passing, 100% of the call revenue – and the companies respond by raising prices and tacking on additional and unnecessary fees not subject to the commissions. This always been an arrangement that is bad for the people making and paying for the phone calls, but now the commission system is creating headaches for the industry itself:

- The industry created a class of correctional facilities that is now politically invested in the status quo, and
- The industry created a whole new for-profit industry — dominated by Praeses, Inc. — to ensure that the industry pays the maximum possible commissions.

This commission monster was constructed by the prison and jail telephone industry which now wants the FCC to ride in, slay the beast, and bear the brunt of the facilities’ anger. We urge the FCC to decline this unnecessary request for heroism. In our view, the FCC’s existing ruling, prohibiting the industry from treating commissions as a cost that can be passed on to consumers, is sufficient here.

To be clear, on this one small matter we disagree with some of our colleagues in the movement for telephone justice: While the Prison Policy Initiative has concluded that commissions are at the root of the current market dysfunction, we do not think it matters whether the companies choose to share a portion of their *reasonable* profits back with the facilities. In our view, it only matters that the rates and fees charged be reasonable.

The proposed fees are too high

The proposal puts funding fees at unreasonably high levels. Many companies already routinely charge (much) lower fees. These three companies have some of the highest fees,² and they propose to convert those extremely high fees into the official norm. Furthermore, by claiming credit card payments as “premium services”, and charging a supplementary fee for using Western Union the phone companies leave no low cost option for anyone who is just arrested and entering jail and needs to pay for the service quicker than it takes to mail a check. By itself, this critical aspect of the proposal’s “inextricably-linked components” should make it clear that this proposal is

² See the “profiting on prepayment” section of our report *Please Deposit All of Your Money: Kickbacks, Rates and Hidden Fees in the Jail Phone Industry* at: <http://www.prisonpolicy.org/phones/pleasedeposit.html#prepay>

not an attempt at compromise but an attempt to reorient the rest of the market around the practices of these three companies.

The companies' failure to compromise is further highlighted by the fact that the proposed fees are, in most cases, actually higher than their current fees.³

What is significant about this proposal, however, is that it concedes that fees are the inevitable and exploitative outcome of the previously-unregulated commission system. The three companies argue that capping commissions would "dramatically alter the economic landscape of the ICS industry, making it possible for providers to forgo many fees and cap others." As we've repeatedly argued, starting with our May 2013 report *Please Deposit All of Your Money: Kickbacks, Rates and Hidden Fees in the Jail Phone Industry* fees are an essential part of the total cost to the consumer for telecommunications services. It is for that reason that the FCC must take action to immediately rein in ancillary fees.

The proposal shows that fees need to be more transparent

The joint providers proposal advocates for more disclosure of fees, and in doing so, highlights just how opaque fees currently are. As you know, we have authored the nation's most comprehensive report about fees in this industry.⁴ But even we were unaware of some of the fees⁵ disclosed in the joint provider proposal.

Additionally, the companies are finally seeking to disclose a kickback on third party payments. By proposing to charge a \$2.50 fee to accept payments for Western Union, Global Tel*Link and Securus are essentially admitting that the \$10.95 and \$11.95 fee charged by Western Union for payments to those two companies already contains a still-hidden payment to the phone company.

On the positive side, the joint provider proposal includes a number of significant recommendations that would increase transparency in fees. Failing the immediate *unilateral* adoption of these obvious transparency proposals by the companies themselves, the FCC should consider requiring, in its next order, the disclosure and publication requirements suggested in the joint provider proposal.

Unaddressed issues in the provider's proposal

While other parties have pointed out numerous deficiencies in the joint proposal, we wish to add two more:

- While the three providers propose to eliminate refund fees⁶ they do not mention the far more lucrative practice of seizing customer's unclaimed

³ See Table 5 in Pay Tel's January 7, 2015 Ex Parte Presentation, available at <http://apps.fcc.gov/ecfs/document/view?id=60001012236>

⁴ Drew Kukorowski, Peter Wagner and Leah Sakala, *Please Deposit All of Your Money: Kickbacks, Rates and Hidden Fees in the Jail Phone Industry*, May 2013 available at <http://www.prisonpolicy.org/phones/pleasedeposit.html>

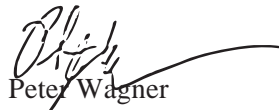
⁵ For example, the "account services fee", "location validation fee", and the "technology fee".

⁶ For refunds, Global Tel*Link charges \$5, Telmate says it "may" charge \$10, and Securus told the FCC that refunds fees are "restrictive and unwarranted" but so has far refused to remove a \$5 refund fee from

funds. As we discussed in *Please Deposit All of Your Money*⁷ and will explain further in a separate comment, refund fees are just the tip of the iceberg. The ICS companies seize customers' account balances so systematically that it amounts to a surcharge on services and cannot be decoupled from rate and fee regulation.

- The three providers propose to rebrand their existing exploitative single call programs as a “premium payment option”. As we explain in a separate submission, these programs are the most expensive for consumers, generate the least revenue for the facilities and — of course — generate the most revenue for the providers. Needless to say, while the companies make what sounds like a generous offer to cap — for three years — the rates for these calls, they don't share the cost of those calls with the FCC in their submission. In fact, as we'll explain in a separate submission, the providers rarely if ever tell the facilities the cost of these calls. In our view, **any “reform” of this industry that allows a single phone call to continue to cost \$9.99 or \$14.99 is no reform at all.**

Sincerely,



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its tariffs, raising questions about whether that company is in fact charging some customers a fee the company considers unwarranted.

⁷ For more on refund fees, see the “Profiting on calls that are never made” section of *Please Deposit All of Your Money: Kickbacks, Rates and Hidden Fees in the Jail Phone Industry* available at http://www.prisonpolicy.org/phones/pleasedeposit.html#_ftnref77.