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January 12, 2015

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

Re: WC 12-375

Comments re: Second Further Notice of Proposed Rulemaking ¶¶ 98-102, single call programs

Dear Ms. Dortch:

The Prison Policy Initiative supports the FCC's efforts seeking to address the abusive ancillary fees embedded within "Single Call" programs.

Introduction

These programs are marketed under a litany of names such as PayNow™, Text2Connect™, Collect2Card™, Collect2Phone™, QuickConnect™, Mobile Pay™, and others, but the problems with all of these "single call" programs are the same:

- 1) Their pricing is exploitative. The price charged to consumers is predominantly an ancillary fee, and as the FCC has previously found, citing CenturyLink, "[a]ncillary fees are the chief source of consumer abuse and allow circumvention of rate caps."¹
- 2) Further, precisely because these single calls are structured primarily as a fee, the commissions on these calls are very low, leaving the facilities with far less revenue than they expect.

The goal of this comment is to build upon the record developed by the Prison Policy Initiative in our *Please Deposit All of Your Money* report² and the extremely extensive investigation conducted by the Alabama Public Service Commission for their historic order. The commission concluded that:

"...single payment services may be purposely diverted to third-party payment processors where exorbitant unregulated rates are charged by the provider and

¹ Second Further Notice of Proposed Rulemaking, ¶83

² Drew Kukorowski, Peter Wagner and Leah Sakala *Please Deposit All of Your Money: Kickbacks, Rates and Hidden Fees in the Jail Phone Industry* at:
<http://www.prisonpolicy.org/phones/pleasedeposit.html#emergency>

the revenues associated therewith are purposely concealed not only from regulators but from the facility served by the provider.”³

In addition to agreement from the Prison Policy Initiative and the Human Rights Defense Center, Alabama’s conclusion is further supported by the \$50-billion telecommunications company CenturyLink (who is also a major player in the prison and jail phone market), which warned that allowing single-call programs:

“has the potential to completely undermine what the [Alabama] Further Order otherwise seeks to accomplish through its caps on rates and caps or prohibitions on other fees and surcharges.”⁴

In this comment we will describe these “single call” programs. We will describe how they work and are marketed, as well as their harmful effect on three distinct stakeholder groups: regulators, families and facilities. We will conclude with some recommendations.

Overview

“Single call” programs are this industry’s next evolutionary step deeper into the pockets of the poorest families in this nation.

Traditionally, the only way to receive a phone call from a prison and jail was to accept an expensive collect call. Over the last decade, the market has transitioned to “prepaid” and “debit” systems which despite the different names all work by requiring you – or the incarcerated person with funds send from the outside — to set up an account and pay in advance. The companies said it would be cheaper than collect calling,⁵ but due the hidden fees it actually wasn’t.

The companies claim that they were motivated to move away from the collect calling system because billing for collect calls had become difficult. Some customers wouldn’t or couldn’t pay the outrageous charges. And increasingly, some local phone carriers — and many of the mobile phone companies — started refusing to transmit collect calls on to their customers. Getting the customer to pay in advance was the immediate solution to the billing problem, and it furthered a growing interest of the industry: maximizing the amount of customer money that the industry could keep for itself. Why share a large collect billing fee with the local phone company when you can charge a large credit card fee and keep the funds for yourself?

Moving to prepaid systems no doubt increased company income, but at the same time a contrary trend was pulling in the other direction: commissions. The companies compete for business by promising to pay ever-larger sums of money to win the monopoly contracts for each correctional department. So the companies started taking back a stake, in large part by tacking on new fees that come off the top, before the facility gets their cut. The inmate call service NCIC explains: “Many providers... realized that they could bypass certain state phone rate caps by adding transaction

³ Alabama Public Service Commission, §6.35 *Further Order Adopting Revised Inmate Phone Service Rules*, Docket 15957, December 9, 2014.

⁴ Alabama Public Service Commission, §6.25 *Further Order Adopting Revised Inmate Phone Service Rules*, Docket 15957, December 9, 2014.

⁵See Federal Communications Commission, ¶30 and n.112, *Report and Order and Further Notice of Proposed Rulemaking*, Docket WC 12-375, adopted August 9, 2013.

fees. The hidden fees allowed the inmate phone providers to increase the commissions on the rates of the calls while holding back the fees as new profit.”⁶

Single call programs represent the next evolutionary step forward for this industry in their battle to secure ever-more of the customers’ money. Single call programs are a new product where fees constitute almost the entirety of the charge to the customer, shielding this revenue from the now-ballooned commission system.

For families and facilities: It’s all about the fees

For families, fees are another financial burden.

For facilities, fees represent consumer funds that aren’t available for commission revenue.

Traditional Global Tel*Link account



Collect2Card™ from Global Tel*Link



*Our report, Please Deposit All Your Money found that 38% of every dollar consumers spend with a typical Global Tel*Link account goes to fees for having, funding and closing their account. That’s a \$400million/year outrage. But with Global Tel*Link’s Collect2Card™ program, it’s even worse: 88% of the cost of each \$14.99 call goes to “fees”. (We’d like to do a similar analysis of Global Tel*Link’s Collect2Phone™ service, but to our knowledge neither Global Tel*Link nor its competitors offer a breakdown of “cost” vs. “fees” for calls charged as premium text messages.)*

In fact, at the time of our *Please Deposit All Your Money* report in 2013, these calls generally did not pay commissions at all.⁷ Now, as you have read above, that appears to have shifted, although the commissions paid on these calls are a mere pittance compared to other calls types.

These calls have become very common. Just one of the products, PayNow™ from Securus, is in 2,000 facilities.⁸ Our conservative estimate is that there are 16 million “single calls” a year costing families \$183 million.⁹

⁶ NCIC Inmate Phone Services, *NCIC Inmate Phone Service - FCC Informational Video*, available at <https://www.youtube.com/watch?v=S3iB0p49oZ8>

⁷ Drew Kukorowski, Peter Wagner and Leah Sakala, n.86, *Please Deposit All of Your Money: Kickbacks, Rates and Hidden Fees in the Jail Phone Industry* at: http://www.prisonpolicy.org/phones/pleasedeposit.html#_ftn86, citing Telmate, p.11, Comment Letter to Alabama Public Service Commission Docket 15957 filed January 4, 2012, available at http://www.prisonpolicy.org/phones/Exhibit_16.pdf

⁸ Securus, PayNow website, home page, <http://www.1tel.com/index.php>, also attached as Exhibit 1.

⁹ We calculated usage rates for the number of calls per type per incarcerated person per year for Genesee County, Michigan, Fulton County Georgia and Shawnee County, Kansas by reviewing commissions reports for those counties. We found that Shawnee County had the lowest usage, with 7.44 PayNow™ and 19.83 Text2Collect™ calls per incarcerated person per year, so we multiplied that figure by the prices

Each company has their own version of these products, but they are all expensive for the consumer, bad for the facilities, and very good for these companies' bottom lines. As a sampling of the problem, here is what we found:

| Company | Product | Payment method | Consumer Cost | Offered breakdown | Facility Commission | Company income |
|-----------------|----------------|----------------------|-----------------------|--|---------------------|----------------|
| Securus | PayNow™ | Credit/debit card | \$14.99 | \$1.80 for the call, \$13.19 transaction fee, charged separately) | \$1.60 | \$13.39 |
| Securus | Text2Connect™ | Premium text message | \$9.99 | none | \$0.30 | \$9.69 |
| Global Tel*Link | Collect2Card™ | Credit/debit card | \$14.99 | \$1.80 for the call, \$13.19 transaction fee, charged separately) | \$1.60 | \$13.39 |
| Global Tel*Link | Collect2Phone™ | Premium text message | \$9.99 | none | \$0.30 | \$9.69 |
| Telmate | QuickConnect™ | Credit/debit card | Unknown | Either \$6.67 plus "credit card and handling fees" or \$0.16/min plus credit card and convenience fees to be determined after the call is process. ¹⁰ | \$1.60 | unknown |
| Telmate | Mobile Pay™ | Premium text message | unknown ¹¹ | none | unknown | unknown |

A sampling of single call programs and their rates. Note that sometimes the rate is even explicitly split into two separate charges, one for the "call fee" and one for the "transaction fee". Sourcing: For Securus PayNow™ pricing, see Exhibit 1, and for the commission see Exhibits 3, 4, 5 and 6. For Text2Connect™ pricing, see Alabama Public Service Commission, §6.30 Further Order Adopting Revised Inmate Phone Service Rules, Docket 15957, December 9, 2014, and for commissions, see Exhibits 3, 4, 5 and 6. For Collect2Card™ pricing, see Exhibit 7, and for the commissions, see Exhibit 9. For Collect2Phone™ pricing, see Exhibit 8, and for the commissions, see Exhibit 9. For the QuickConnect™ commission, see Exhibit 10, page 50. For other Telmate notes, see appropriate footnotes.

for these services and the total jail population in the country. Given Securus' dominance of the jail market, this methodology seemed the most reasonable, but given the usage variation we saw, is very likely a serious underestimate.

¹⁰ The automated customer service line quoted, for calls from an undetermined facility to (413) 527-0845 a cost of \$6.67 plus "credit card and handling charges". When we spoke with "David" at customer service, we were told that the cost for a call from the Oregon State Penitentiary — a facility we picked at random but which may not be representative because of the lower prices at that facility — would be \$0.16/minute plus "credit card and convenience charges" **but, shockingly, David told us that Telmate could not tell me the total cost of the call before processing the charges.** However, and far more positive, customer service made it very clear that the cheapest way to pay for calls was to pay in advance through an account.

¹¹ The Alabama order and other documents refer to this product, but on January 12, 2015 "David" at customer service said we couldn't bill to cell phones for calls from Oregon State Penitentiary. It is possible that this service no longer exists — or it not available from Oregon State Penitentiary — and it's certainly true that, to "David" and Telmate's credit, customer service was actively trying to steer me away from paying for calls via expensive single call programs.

Harmful to families

The predatory practices inherent in the single call programs are so self-evident that our treatment of this topic will be brief, but that does not make the issue any less important. Single Call programs, justified as a “convenience option”, are the most traumatic and most expensive way to receive a phone call, and the industry makes little pretense of promoting alternatives.

The phone companies structure these calls to maximize their customers’ fear and concern about a loved one, creating desperate consumers from whom the companies can extract hefty sums in a moment of panic.

Alex Friedman, Associate Director at the Human Rights Defense Center, describes receiving one of these calls from a client:

“She called me, and when I picked up the phone the automated system told me I was receiving a free call from somebody in jail. And she said, ‘I’m locked up. I’m in such-and-such-a jail. I’m scared. I need help. Can you please...,’ and then she was cut off, and an automated system kicked in and informed me that if I wanted to continue that free call, I could conveniently pay \$14.95 on my credit card or open a prepaid account.”¹²

Friedman then asks “Now, what parent or other family member getting a 10-second free call from a loved one in jail wouldn’t pay to get them back on the line to find out what was happening to them, and to try to help them?”¹³

These programs, far from being a convenience, border on extortion. And rather than being an equal option presented among lower-cost methods of completing the same call, they are typically offered in a vacuum, as the only means of talking to a loved one calling you in distress.¹⁴

Harmful to the facilities

It’s no surprise that single call programs are bad for families but the harm doesn’t stop there. Single call programs, like ancillary fees, are particular bad for facilities, because they allow the companies to shift a large volume of calls to low- or no-commission billing categories.

Phone companies use single call programs to obscure the true cost of calls to customers and present an inflated view of commissions to facilities, as ICSolutions described in their RFP response for Baldwin County, Alabama:

“Some providers may define certain calls as special call types, outside the scope of traditional collect, prepaid, or debit calling. For these calls the vendor may charge higher rates and pay lower commissions than the traditional calling options which were disclosed in the RFP response. This practice may result in consumers

¹² Workshop on Reforming Inmate Calling Services Rates, July 10, 2013. Full transcript available at <http://www.fcc.gov/events/workshop-reforming-inmate-calling-services-rates>

¹³ Workshop on Reforming Inmate Calling Services Rates, July 10, 2013. Full transcript available at <http://www.fcc.gov/events/workshop-reforming-inmate-calling-services-rates>

¹⁴ See Alabama Public Service Commission, §6.33 *Further Order Adopting Revised Inmate Phone Service Rules*, Docket 15957, December 9, 2014.

paying higher prices for phone calls and facilities receiving lower commission dollars.

“For example: In a recent bid for another Inmate Telephone Services contract for a County facility (in August 2012), it was revealed through public bid documents that the current vendor had instituted two types of “promotional calls,” which were not commissioned at the same rate as traditional Collect, Prepaid Collect, and Debit calling. While the prices for these call types were either \$9.99 per call or \$14.99 per call, the County received commissions of only 3% on the \$9.99 calls and 10.7% on the \$14.99 calls. These calls accounted for more than 25% of the total calls from this County’s facilities.

“This means the current phone vendor is collecting more than 90% of the revenue from over a quarter of the phone calls placed from this facility!

“Because such a large portion of the call traffic was moved to the lower-commission-rate call categories, the County was missing out on a great deal of commission revenue. In fact, had the County received its regular commission rate on these calls, they may have received upwards of an additional \$135,000 in annual commissions. This example was a single facility with approximately 575 beds – just slightly smaller than Baldwin County.

“The practices described above may result in an inflated-looking commission rate percentage that might look good in a proposal, but in real life may mean less actual revenue for the Agency, as these higher proposed commissions may not be paid on other calling options.”¹⁵

Our review of three recent RFPs and contracts between Securus and Genesee County, Michigan¹⁶ and Shawnee County, Kansas¹⁷, supports ICSolutions’ warnings and illustrates the extent of the discrepancy: The effective commission for a Text2Connect™ charge is 3% (\$0.30 “bonus payment” on a \$9.99 charge), and the effective commission on a PayNow™ charge is 10.7% (\$1.60 “bonus payment” on a \$14.99 charge).

Furthermore, the high cost of these calls appears not to be disclosed to the facilities. For example, in Genesee County, Michigan, nowhere in the contract nor the RFP, totaling 284 pages,¹⁸ did Securus disclose the \$9.99 Text2Connect™ and \$14.99 PayNow™ price tags. It is unconscionable that these products —likely the fastest growing in market— are being presented to facilities without disclosing the exorbitant prices.

Securus claims it has created a new billing mechanism that will increase both total usage by an unspecified amount and the boost new account creation (which pays a traditional commission) by “upwards of” 15%.¹⁹ But what Securus is actually doing is

¹⁵ See ICSolutions November 14, 2012 response to Baldwin County, Alabama RFP, in Exhibit 12.

¹⁶ See Exhibits 3 and 4.

¹⁷ See Exhibits 5 and 6.

¹⁸ See Exhibits 3 and 4.

¹⁹ See Securus, An RFP Solution Presented to Genesee County, MI RFP # 12-001 Inmate Telephone System, March 29, 2012, page numbered 150.

steering calls²⁰ to a new billing setup that, for PayNow™, costs at least 4 times what the FCC has allowed²¹ and which pays in Genesee County, for example, an effective commission rate that is 5-7 times smaller than the commission on regular calls.²² For Text2Connect™, the calls are about 3 times as expensive as the FCC has allowed, and the commissions are 13-18 times smaller than on typical calls. This kind of innovation might be great for Securus, but it's the last thing the facilities —or families—need.

These figures should raise the alarm for facilities. In its sales pitch, Securus claims it provides the “best overall commission package – revenues that go beyond percentage”.²³

While the Prison Policy Initiative has long urged facilities to look beyond simple commission percentages to see how hidden fees tax families and reduce the revenue to the facility,²⁴ single call programs add new exigency to that ask. Our analysis of Securus’ services in Genesee, Michigan, show how single call programs are used to take more money from families while giving less money to facilities:

| | Number of calls | Consumer cost per call | Securus income per call | Facility income per call |
|---------------|------------------------|-------------------------------|--------------------------------|---------------------------------|
| Regular calls | 6,288 | \$7.03 | \$3.16 | \$3.87 |
| Pay Now™ | 886 | \$14.99 | \$13.39 | \$1.60 |
| Text2Connect™ | 2,109 | \$9.99 | \$9.69 | \$0.30 |

*Breakdown of Securus’ charges, commissions and income by call type in Genesee County, Michigan April 2013.*²⁵

²⁰ One customer, for example, was pitched to use PayNow when they contacted Securus about having trouble with their website while attempting to set up a prepaid account. See Exhibit 13, with complaints to the Better Business Bureau about Securus Single call products. And as the complaints in the exhibit show, other customers also trip into the single call programs, even when attempting to use prepaid accounts.

²¹ The total cost of a 15minute PayNow™ call amounts to a per-minute rate of \$1.00, which is \$0.75-\$0.79 higher than allowed under the FCC’s rate caps. Even though the company claims the call costs \$1.80 and the remaining \$13.19 is a fee, that fee is more analogous to a connection charge than any transaction fee and should therefore be included in the regulatory per-minute calculations. The cost of a true transaction fee is at least spread out over several calls, whereas this fee recurs with each new call placed.

²² For the sliding scale commission for regular phone calls of 55% to 75% in Genesee County, MI, see the Exhibit 4, page 18.

²³ See Exhibit 14, the executive summary to Securus’s response to an RFP in Wayne County, MI.

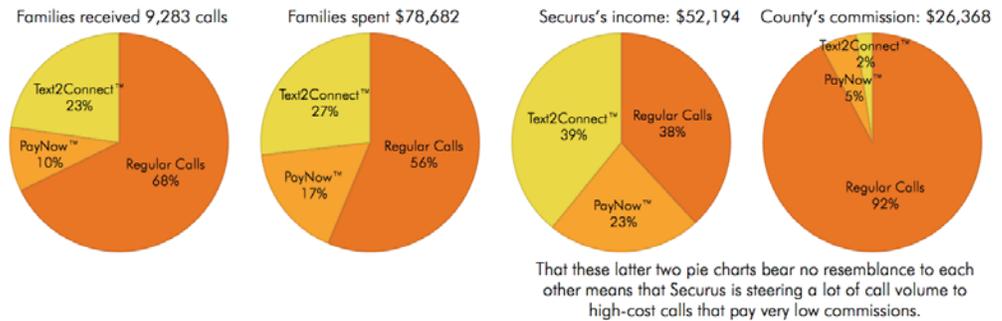
²⁴ Drew Kukorowski, Peter Wagner and Leah Sakala *Please Deposit All of Your Money: Kickbacks, Rates and Hidden Fees in the Jail Phone Industry* at: <http://www.prisonpolicy.org/phones/pleasedeposit.html>

²⁵ See Exhibit 11, Genesee MI Securus Commission Statement April 2013, for the original source. The total revenue for PayNow™ and Text2Connect™ were not provided to the county by Securus, but simple multiplication of the call prices (\$14.99 and \$9.99) fills in the gap on those figures. For Securus’ income for each call type, we simply subtracted the known commissions from the now-known total revenue for each call type.

This leads to stark results such as:

Single call programs steer consumers to high-cost low-commission calls

An analysis of phone expenditures in Genesee County, Mich. in April 2013



These charts show four views of three types of calls in Genesee County, Michigan: by volume, by the cost to families, by where Securus makes its money and where the County earned its commission.

The first two pie charts are somewhat similar, but show that families are paying disproportionately more for the PayNow™ and Text2Connect™ calls compared to regular calls. The third pie chart shows that Securus' income doesn't match the call volume, because the PayNow™ and Text2Connect™ calls are the most profitable to the company. The fourth pie chart makes clear that PayNow™ and Text2Connect™ is not just bad for families, it is bad for the facilities too.

Harmful to the efforts of federal and state regulators

These programs are harmful to the efforts of federal and state regulators for the simple reason that the companies *claim* that these programs are exempt from the regulation. In fact, by setting the prices of these products higher than the \$3.15-\$3.75 allowed by the FCC for a 15-minute interstate call, these companies boldly declare that they intend to skirt the FCC's regulation of this marketplace.

We will defer to the Wright Petitioners for the legal arguments, but we wish to point out that single call programs warrant the Commission's careful review because they may account for as much as 40% of the revenue,²⁶ they are clearly growing,²⁷ and the providers are claiming these programs are not subject to FCC or state regulation.

As the Alabama Public Service Commission put it: "When the average inmate call revenue for single payment services is \$0.85/min compared to \$0.24/min for inmate collect, debit, and prepaid service, there exists an incentive to conceal such revenue and shield it from regulation in the same manner other inmate calls are regulated."²⁸

²⁶ Vincent Townsend, President, PayTel, pp. 153-154, FCC Transcript of Workshop on Further reform of Inmate Services, July 9, 2014, available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-328596A1.pdf

²⁷ These calls are also clearly growing in direct response to existing efforts to regulate this market. See Darrell Baker, Director, Utility Services, Alabama Public Service Commission, p.155, FCC Transcript of Workshop on Further reform of Inmate Services, July 9, 2014, available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-328596A1.pdf

²⁸ Alabama Public Service Commission, §6.35 *Further Order Adopting Revised Inmate Phone Service Rules*, Docket 15957, December 9, 2014.

Securus exemplifies the companies' regulation dodge by justifying their charge of \$14.99 for a PayNow call as a \$1.80 "call fee" and a \$13.19 transaction fee.²⁹ And then Securus attempts to explain away the fee as a necessary cost, blaming outside vendors for the high price. Securus tells the Alabama Public Services Commission:

"Securus itself does not provide the third-party call processing Text2Connect or Pay Now services. Instead, such services are provided by 3CInteractive ('3CI')."³⁰

Securus then goes on to accuse the Alabama Commission of "attempting to interfere with the contracts of **outside** vendors like 3CI..."³¹

While companies should not be allowed to skirt legal requirements by merely by contracting with third parties, it is extremely relevant to note just how feeble Securus' protestations are. How much influence does Securus have over vendors like 3CI? Securus is not merely a major business partner of 3CI, but **Securus actually owns 3CI**,³² and had done so for about a year prior to filing their complaints with Alabama.

Recommendations:

The Federal Communications Commission should ban single call programs, as suggested by CenturyLink to the Alabama Public Service Commission. Banning these calls outright closes off the potential for further abuses in this system and would be much easier to enforce.

In the alternative, the Commission should follow Alabama's approach and restrict the price of single call programs to a reasonable deposit fee plus a reasonable capped call fee. In Alabama that often results in a \$6 cap on most of these types of calls.³³

Sincerely,



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²⁹ Securus, PayNow website, "Pricing" page, available at <http://www.1tel.com/pricing.php>, and Exhibit 1

³⁰ Alabama Public Service Commission, §6.24 *Further Order Adopting Revised Inmate Phone Service Rules*, Docket 15957, December 9, 2014.

³¹ Emphasis added. Alabama Public Service Commission, §6.24 *Further Order Adopting Revised Inmate Phone Service Rules*, Docket 15957, December 9, 2014.

³² See North Sky Capital, Q2 2013 Investment Update, Exhibit 2.

³³ The one exception is if the credit card payment for the single call transaction is made through a live agent, then the resulting cap is \$8.95. See Alabama Public Service Commission, Appendix B, *Further Order Adopting Revised Inmate Phone Service Rules*, Docket 15957, December 9, 2014.