

**STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD**

IN RE: RELIANCE TELEPHONE OF GRAND FORKS, INC.	DOCKET NO. TF-2019-0026
IN RE: PRODIGY SOLUTIONS, INC.	DOCKET NO. TF-2019-0032
IN RE: SECURUS TECHNOLOGIES, INC.	DOCKET NO. TF-2019-0033
IN RE: LEGACY LONG DISTANCE INTERNATIONAL, INC.	DOCKET NO. TF-2019-0035
IN RE: GLOBAL TEL*LINK	DOCKET NO. TF-2019-0039
IN RE: PUBLIC COMMUNICATIONS SERVICES, INC.	DOCKET NO. TF-2019-0040

COMMENTS OF PRISON POLICY INITIATIVE

Pursuant to the Iowa Utilities Board’s May 1, 2019 Order Docketing Tariffs for Further Review, Cancelling Certain Registration and Tariffs, and Granting Intervention (the “Order”), Prison Policy Initiative (“PPI”) respectfully submits the following comments. The Board docketed the above-captioned tariffs “so the Board could review the terms, conditions, and rates being charged for inmate calling services to determine if those rates, terms, and conditions are just and reasonable.” Order at 3. PPI provides the following information to assist the Board in

conducting this review, and respectfully suggests additional steps that the Board should take to address unfair and unjust practices in the inmate calling service (“ICS”) industry.

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I. Introduction

Under Iowa law, charges by telecommunications carriers must be “reasonable and just.” I.C.A. § 476.8(1). By this standard, inmate calling rates deserve special scrutiny, because the market for these services currently skews towards injustice. Nationally, the average cost of a 15-minute call from jail is \$5.74, even as the average cost of a similar phone call to a non-incarcerated person is approaching zero. Calls from Iowa jails are even more expensive — the 13th most expensive in the nation.

Intrastate calling charges deserve the most scrutiny. While the FCC approved regulations in 2013 that capped interstate calling charges from correctional facilities at 21 cents a minute, it did not cap the cost of intrastate calls, which comprise the majority of all calls made from jails. The cost of these calls frequently forces families across the country to pay several hundred dollars per month in telephone charges – typically to the same telecommunications carriers that serve Iowa jails, and whose tariffs are currently under review by the Board.

II. Site Commissions Lead to Unreasonably High Rates

Under Iowa law charges by telecommunications carriers must be “reasonable and just.” I.C.A. § 476.8(1). The burden of proof is on the carrier to prove that its rates are reasonable and that “no unreasonable profit is made.” I.C.A. §§ 476.4(1), 476.8(2).

Any discussion of ICS rates must begin with an examination of commissions or other consideration paid by carriers to the facilities that award monopoly ICS contracts.¹ The FCC has concluded that such site commissions “appear to be a particularly significant contributor to high rates.” *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking [hereinafter “First Report &

¹ See Peter Wagner & Alexi Jones, “On kickbacks and commissions in the prison and jail phone market,” Prison Policy Initiative Blog (Feb. 11, 2019), <https://www.prisonpolicy.org/blog/2019/02/11/kickbacks-and-commissions/>.

Order”] ¶ 38, 28 FCC Rcd. 14107, 14127 (Sept. 26, 2013). PPI urges the Board to unequivocally rule that site-commission payments should not be recovered through telecommunications rates.

When determining reasonable and just rates, Iowa law requires the Board to “consider *all factors* relating to value.” I.C.A. § 476.8(1) (emphasis added). Carriers and correctional facilities typically attempt to rationalize treating site commissions as recoverable expenses because government agencies sometimes use commission revenue for productive purposes. Even in cases where this is true, it does not mean that commissions are reasonably related to the provision of communications services. *See Iowa Planners Network v. Iowa State Commerce Comm.*, 373 N.W.2d 106, 109 (Iowa 1985) (under rate-of-return regulation, property may only be included in a carrier’s rate base if it is “reasonably necessary to furnish the service”); First Report & Order ¶ 57, 28 FCC Rcd. at 14138 (“The [Communications] Act does not provide a mechanism for funding social welfare programs or other costs unrelated to the provision of ICS, no matter how successful or worthy.”). In empowering the Board to make a determination of just and reasonable rates based on *all factors* relating to value, the Iowa General Assembly determined that “as a regulatory administrative agency, [the IUB] was free to legislatively use its expert judgment.” *Davenport Water Co. v. Iowa State Commerce Comm.*, 190 N.W.2d 583, 599 (Iowa 1971). The Board should exercise its judgment to set ICS rates without regard to site-commission payments.

A. Evidence Concerning Site Commissions and ICS Carrier Costs in Iowa

To assess whether a carrier’s rates are “reasonable and just,” it is critical to understand the actual cost of providing ICS service while also generating a reasonable profit to the carrier. In this section, we provide an estimate of this actual cost, which we calculated through an analysis of carrier bids. We also use the same analysis to estimate how commissions to correctional facilities impact calling rates.

The actual cost of providing ICS service while *also* generating a reasonable carrier profit is probably between 3.3¢ and 5.6¢ per minute. As evidence, we point to the bids of three

companies in response to a request for proposals issued by Polk County in 2017.² We can use the proposed commissions to extrapolate apparent carrier costs; moreover, because the winning bidder (Securus) proposed two alternative rate/commission packages, we can use these alternative models to estimate how commissions impact calling rates. The two options that Securus proposed to Polk County are as follows:

	Option A	Option B
Rates for all call types	21¢/min	15¢/min
Commission	90%	85%

Table 1. Securus Response to Polk County FRP #: 146-1718, p. 45.³

However, because Securus does not pay commissions on interstate calls,⁴ the revenue for out-of-state calls is distributed very differently than for in-state calls as seen in Table 2:

	Option A	Option B
Cost to consumer	21¢/min	15¢/min
In-state call income to county	18.9¢/min	12.75¢/min
In-state call income to Securus	2.1¢/min	2.25¢/min
Out-of-state call income to county	0	0
Out-of-state call income to Securus	21¢/min	15¢/min

Table 2. This table simply calculates how income per minute is distributed by applying the commission rates to in-state and out-of-state call rates from Table 1. The key findings are that under either Option, Securus makes about the same income for in-state calls and the county makes nothing on out-of-state calls. There are only two real differences between the two options: 1. The cost to the consumer and 2. The scale of Securus’ unreasonable profit on interstate calling.

Table 2 also provides a helpful illustration of how bidders set rates: carriers start with the amount of income they want to receive per minute—in this case a little over 2¢ a minute on in-state calls—and then determine what commission would allow them to win the contract; and then

² This analysis assumes that ancillary fees subject to the FCC's caps are not a source of material profits. Despite the passage of time since the FCC’s ruling and new efficiencies, this remains a reasonable assumption for the purposes of these calculations.

³ In one part of its RFP Securus states that “commission [will be paid] on all Local and Instate calls.” Securus RFP at 45. In a different section of the same document, Securus states commissions will also be paid on interstate calls. *Id.* at 47 and 49. We assume that pages 47 and 49 are in error because to our knowledge paying commissions on interstate calls is never Securus’ practice. In any event, the final contract states that “Notwithstanding anything to the contrary contained in this agreement, no commission will be paid on revenues earned through the completion of interstate calls of any type.” Master Services Agreement A002954 between Polk County Sheriff’s Office and Securus Technologies, at 7.

⁴ *Ibid.*

propose a rate that allows the provider to meet their income goal. Other companies that pay commissions on out-of-state calls would use a similar process.

Polk County selected Option B for its contract, and we can use the monthly minutes of use in the commission reports⁵ to extrapolate how the income is being distributed:

Item	Amount	Source
Cost to consumer	15¢/min	Contract
Total revenue	\$93,793.59	April 2019 Commission report
Commission on in-state calls	85%	Contract
Percentage of calls that are in-state	81.3%	Analysis of April 2019 Commission report: (443,295+74,700+19,523)/661,275
Consumer cost for in-state calls, April 2019	\$76,254.19	Total revenue times the call volume that is in-state
Consumer cost for out of state calls, April 2019	\$17,539.40	Total revenue times the call volume that is not in-state
In-state call income to county	\$64,816.06	Consumer cost for in-state calls times the commission
In-state call income to Securus	\$11,438.13	Consumer cost for in-state calls times 15% not paid as commission
Out-of-state call income to county	\$0	Securus does not pay commissions on these calls.
Out-of-state call income to Securus	\$17,539.40	This is the full consumer cost for out-of-state calls, because Securus does not pay a commission on these calls.
Total call income to county	\$64,816.06	Sum of the county's in-state call income and the \$0 it receives on out-of-state calls
Total call income to Securus	\$28,977.53	Sum of the Securus' in-state call income and all revenue it receives on out-of-state calls
Number of minutes billed for in-state calls	508,361	In-state revenue divided by the cost to the consumer. (We did not just use the number reported in the commission reports because it appears that for some reason 5.4% of in-state calls are not being billed.)
Number of minutes billed for out-of-state calls	116,929	Out-of-state revenue divided by the cost to the consumer. (We did not just use the number reported in the commission reports because it appears that for some reason 4.1% of in-state calls are not being billed.)
Number of minutes billed	625,291	Total revenue divided by the per minute cost to the consumer. (We did not just use the number reported in the commission reports because it appears that for some reason 4-5% of calls are not being billed.)
Income to county per minute of use	\$0.1037	Total income to county divided by number of minutes billed
Income to Securus per minute of use	\$0.0463	Total income to Securus divided by number of minutes billed
Effective commission	69%	Income to county per minute of use divided by the \$0.15 cost to the consumer.

Table 3. We combine the contract and the monthly commission reports to deduce that Securus bid, in terms of its desired income, 4.6 cents a minute. (This analysis does not include the 0.27% of call volume that is international in nature because it added more complexity but does not materially change the outcome.)

⁵ The April 2019 Commission Report, which we received via an open records request, is archived at https://www.prisonpolicy.org/phones/exhibits/042019_commission_report_polk_ia.pdf

By this analysis, Securus' cost and desired profit of 4.63¢/minute is similar to that of the two other bidders for the Polk County contract, GTL/Telmate at 5.46¢/minute and Legacy at \$3.33¢/minute:

	Securus	GTL	Legacy
Rate	15¢	21¢	18¢
Effective commission	69%	74%	81.5%
Income to county	10.37¢	15.54¢	14.67¢
Income to provider	4.63¢	5.46¢	3.33¢

Table 4. Proposed rates and commissions in unsuccessful bids by GTL and Legacy to displace incumbent Securus for the Polk County contract. Each company's proposals included a proposed rate and proposed commission, and the income distribution was calculated by the Prison Policy Initiative for this comment letter (The GTL and Legacy commissions are from those company's proposals, the effective Securus commission was calculated in table 3 to account for the fact that Securus does not pay commissions on interstate calls.)

These data indicate that these three providers would have been happy to win the contract and provide the service in exchange for keeping between 3.3¢ and 5.5¢ per minute to use to cover both their costs and what those companies considered an acceptable profit. Whether this “acceptable” profit is reasonable for purposes of Iowa Code § 476.8 is an entirely separate factual inquiry; but these figures are evidence that it is possible for companies to serve a jurisdiction like Polk County for considerably less than the rates that they have submitted for review and approval by the Board.

B. Evidence Does Not Support the Contention that Facility Size Materially Impacts Carrier Costs

Securus and some other providers frequently argue that that facility size is a driver of costs. This a red herring that seeks to focus attention on a factor that is immaterial in contrast with the impact of site commissions. To illustrate this conclusion, we charted the cost of a fifteen-minute call from 76 correctional facilities in Iowa and found no correlation between facility size and phone rates. In fact if you look at the bottom left corner of the graph, you find several small facilities with low rates. Therefore, it is clearly possible to have reasonable rates in facilities of all sizes.

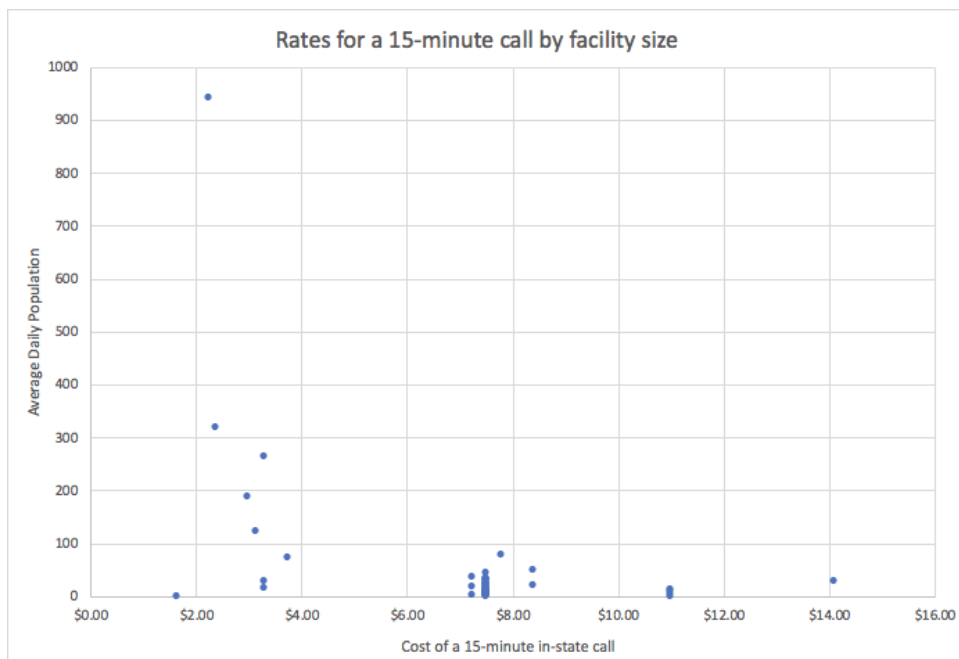


Figure 1. Graph showing the rates and average daily population of 76 correctional facilities in Iowa. The cluster of jails that charge \$7.50 represent the 54 Reliance jails, which all have populations under 100 people and all charge \$7.50 for a 15 minute phone call. The average daily population data was collected from the 2013 Census of Jails and the rates data was manually collected from phone providers’ websites.

III. Objections to Specific Tariffs

Having addressed general pricing distortions in the ICS industry, we turn now to PPI’s objections to specific carriers’ tariff filings.

A. Securus Technologies

Securus serves about fourteen facilities in Iowa. Not only does Securus often charge unreasonably high rates, but the company’s call routing practices and other exploitative policies unnecessarily raise consumer costs, and likely undermine FCC regulations as well. Given Securus’ documented history of ethically questionable behavior—including enabling illegal cell phone tracking and misleading the FCC⁶—we contend that Securus’ filing merits special attention.

⁶ In particular, see Federal Communications Commission, FCC Fines Securus \$1.7m, Resolving Investigation over Submitting Misleading Information to Agency, October 30, 2017, available at <https://docs.fcc.gov/public/attachments/DOC-347500A1.pdf>

1. Unreasonably High Rates

There are two problems with Securus’ rates: the total cost of calls is too high, and the cost of the first minute of use is uniquely unreasonable. To begin, Securus frequently charges substantially more—on average 2.5 times as much—for in-state calls than for out-of-state calls (see Table 5).

Facility	15 minute cost, in-state calls (2018)	15 minute cost, out-of-state calls (2018)	How many times higher in-state calls are compared to out-of-state calls
Appanoose County Jail	\$7.50	\$3.15	2.4 times
Audubon County Jail	\$11.00	\$3.15	3.5 times
Bremer County Sheriff	\$14.10	\$3.15	4.5 times
Cass County Jail	\$3.30	\$3.15	1.05 times
Clarke County Jail	\$7.25	\$3.15	2.3 times
Crawford County Jail	\$11.00	\$3.15	3.5 times
Mahaska County Jail	\$8.40	\$3.15	2.7 times
Marion County Jail	\$7.25	\$3.15	2.3 times
Mitchell County Jail	\$7.25	\$3.15	2.3 times
Pocahontas County Jail	\$11.00	\$3.15	3.5 times
Polk County	\$2.25	\$2.25	same
Story County Jail and Booking	\$3.75	\$3.15	1.2 times
Wapello County Jail	\$7.80	\$3.15	2.5 times
Webster County Jail	\$8.40	\$3.15	2.7 times

Table 5. Comparing in-state and out-of-state costs of a 15 minute phone call from all Iowa county jails served by Securus. Despite the shorter distance (and that the calls are going to fellow Iowans), in-state calls cost far more. All of the in-state calls were calculated using Securus’ online rate calculator using the phone number for the governor’s office (515-281-5211) as an example.

In addition, Securus’ practice of charging 8, 15 or even 16 times more for the first minute of a call is not supported by the cost of providing the service. This first-minute pricing does closely resemble the practice—prohibited by the FCC—of charging a flat rate for calls regardless of length. See 47 C.F.R. § 64.6090. It is also particularly exploitative in the context of the families of incarcerated people who have little control over when a loved one may call. For these families, a simple negative answer from a sibling to the question “Can I talk to Mom?” can cost almost as much as a fifteen-minute conversation (see Table 6).

	First minute cost	Subsequent minute cost	How much more expensive is the first minute than subsequent minutes?
Appanoose County Jail	\$4.00	\$0.25	16 times
Audubon County Jail	\$4.00	\$0.50	8 times
Bremer County Sheriff's Dept	\$3.74	\$0.74	5.05 times
Cass County Jail	\$0.22	\$0.22	same
Clarke County Jail	\$3.75	\$0.25	15 times
Crawford County Jail	\$4.00	\$0.50	8 times
Mahaska County Jail	\$3.92	\$0.32	12.25 times
Marion County Jail	\$3.75	\$0.25	15 times
Mitchell County Jail	\$3.75	\$0.25	15 times
Monona County Sheriff's Dept	\$4.00	\$0.50	8 times
Pocahontas County Jail	\$4.00	\$0.50	8 times
Polk County	\$0.15	\$0.15	same
Story County Jail	\$0.25	\$0.25	same
Wapello County Jail	\$3.88	\$0.28	13.86 times
Webster County Jail	\$3.92	\$0.32	12.25 times

Table 6. This table show that Securus charges — in most Iowa counties — far more for the first minute of a call than for subsequent minutes. (Data source: Our survey of rates conducted for State of Phone Justice, collecting the cost of calls from each Securus facility to the Governor’s office, 515-281-5211.

2. Apparent Inaccuracies

Securus’ tariff describes sixteen anonymous numbered locations and purports to describe the rates for each contracted facility. Unfortunately, based on our review of the rates posted on Securus’ website, we believe that the rates for about a third of these locations to be incorrect.

Below is a description of our findings attempting to verify Securus’ tariffed rates with the prepaid rates we collected through Securus’ website:

Tariff Location	Corresponding County (according to rates listed on Securus’ website)
Location 1	Unknown
Location 2	Appanoose County Jail
Location 3	Unknown
Location 4	Unknown
Location 5	Unknown
Locations 6, 7, 8, and 13	Those 4 tariff locations probably match some combination of these 7 counties: Audubon County Jail, Crawford County Jail, Pocahontas County Jail, Monona County Jail, Clarke County, Marion County, and Mitchell County). (InterLATA rates listed in tariffs correspond to rates listed for Audubon County Jail, Crawford County Jail, Pocahontas County Jail, Monona County Jail. IntraLATA rates listed in tariffs correspond to rates listed for Clarke County, Marion County, and Mitchell County)
Location 9	Story County Jail
Location 10	Bremer County Jail
Location 11	Cass County
Location 12	This one location match rates listed for both Mahaska County Jail and Webster County Jail.
Location 14	Wapello County
Location 15	Unknown
Location 16	Polk County Jail
Not listed	As listed above, it is unclear what rates in the tariffs the following counties correspond to: Audubon County Jail, Crawford County Jail, Pocahontas County Jail, Monona County Jail, Clarke County, Marion County, Mitchell County, Mahaska County Jail, and Webster County Jail

Table 7. Our manual comparison of which tariffed locations fully match rates for listed in the rate quote section of Securus’ website.

3. Single-Call Pricing and Ancillary Fees

Finally, PPI calls the Board's attention to problems regarding possibly untariffed and certainly exploitative practices around "single calls" and WesternUnion/MoneyGram payments. Securus, like some other providers, offers a variety of "convenience" options that do not add much in the way of convenience but that are unnecessarily expensive. Securus appears to be particularly aggressively in steering consumers to use "single-call" products.

There are two types of single-call products that warrant scrutiny. The first is nominally covered by Securus' filed tariff but is structured in a way that unreasonably increases consumer costs. When an incarcerated person calls someone who does not have an account with the incumbent ICS carrier, the call recipient has to create and fund an account before the call is connected.⁷ Single-call products (which are marketed under various brand names) are an alternative to establishing an account, and are designed so that someone can pay for the call *and* the \$3.00 credit card fee in one transaction. For a one-time call, this could be a slight improvement over the status quo where someone deposits more money than needed for that one call and then must seek a refund; but when carriers steer customers to use these products for multiple calls, the consumer is ultimately forced to pay the credit card charge for each and every call—an unnecessary and easily avoidable expense. To the extent that a carrier encourages consumers to use single-call products by withholding or obscuring information that demonstrates the disadvantageous costs associated with such products, the carrier is likely engaging in a deceptive practice in violation of Iowa Code § 714D.3.

Based on our analysis of single-call voice prompts and our review of commission reports, Securus appears to be aggressively steering consumers to its single-call products.⁸ For the

⁷ In some situations, a recipient may also be able to accept a collect call, but PPI understands that this is frequently not an option because local exchange carriers are often reluctant to establish a collect-call billing arrangement with ICS carriers.

⁸ See, for example, Appendix 1, which is the transcript of the Securus voice prompts for a January 2019 call from the Fulton County (Atlanta, Georgia) Jail to an in-state number not associated with a Securus account. Note that the first option is to pay for the call individually and at no point do the prompts explain why one should fund an account. For an economic analysis, see our FCC comment letter of January 12,

purpose of oversight, the Board, using the authority granted by Iowa Code § 476.9, should require ICS carriers to submit ongoing reports detailing how often these calling services are used and how much revenue these products generate.

The second type of single-call product is typically not mentioned in tariffs because it is routed through a “third-party” that either contracts with, or is a controlled affiliate of, the carrier. While Securus has told the Board that it is phasing these calls out,⁹ this product is particularly worrisome because it is even more expensive: \$14.99 for a fixed-length call if paid via a credit card and \$9.99 if paid via a premium text message.¹⁰ Additionally, tracking these calls is extremely difficult. Because these call types are not tariffed, and not always mentioned in the contracts, regulators and facilities frequently have no way to know the extent to which consumers knowingly or unknowingly elect to use this service. Defense attorneys and other groups that work regularly with incarcerated people tend to have established accounts, so they will not receive these calls. For advocates like PPI, the only way to find these calls is to purchase new cellphone numbers that are not in the phone company’s system and then try to find incarcerated people who will make a test phone call. Given the churn through jails, this citizen-oversight job is extremely difficult. Fortunately, the Board can detect and regulate these calls through a very simple enforcement mechanism: require companies to include in their tariffs the rates for any call types that are handled by third-parties.¹¹

2015 at https://www.prisonpolicy.org/phones/letters_with_exhibits.html#singlecall and footnote 10, *supra*.

⁹ Securus may be phasing this product out. *In re Rulemaking Regarding Inmate Calling Rate Caps*, IUB Dkt. No. RMU-2017-0004, Hrg. Transcript (Jul. 10, 2018), at 39:15-19 (“We are currently in the process of phasing that out. Basically, we expect to be using the Securus AdvanceConnect single call probably by the time the Board makes a decision with regard to this rule.”). We have seen some evidence of Securus phasing out these \$14.99 3CI phone calls; but also seen recent evidence of these calls continuing; so Securus should be required to clarify.

¹⁰ See our January 19, 2016 Comment Letter to the FCC at <https://ecfsapi.fcc.gov/file/60001408495.pdf> for a summary of how these calls work and the concerns raised by Securus’ competitors, correctional facilities and other regulators.

¹¹ This requirement seems obvious, but Securus in particular has claimed that it is not responsible for the calls of its subcontractor 3C Interactive (aka 3CI). The Prison Policy Initiative responded with evidence that Securus in fact owns or controls 3C Interactive; but the fundamental principle that the companies must be responsible for the calls that it arranges stands. For more on this, see the March 10, 2016

Finally, Securus has another profitable and exploitative fee that is not disclosed in the tariff: fees associated with payments made to Securus via WesternUnion or MoneyGram. These fees are apparently set by Securus, and Securus apparently receives part of that fee income.¹² These payment services are popular among low-income people who are the least likely to have traditional bank and credit card accounts¹³ and are disproportionately likely to have incarcerated loved ones.

MoneyGram charges \$11.99 on payments to Securus, with a portion going back to Securus; and Western Union charges \$11.95, with a portion going back to Securus. Western Union calls this a “revenue share” and a “referral fee.” By contrast, GTL, ICSolutions, NCIC, and Paytel do not receive a portion of the payment processors’ fee; and the fees are all in the range of \$4.99-\$6.95.¹⁴ These fees are nominally imposed by a third party, but because such payment arrangements must be established pursuant to agreements between the carrier and the payment-processor, the carrier must know (or be in a position to know) the fees charged by the payment processors (who are, after all, acting as agents of the carrier). Accordingly, such fees should be disclosed in the tariffs regardless of who the nominal payee is. Further, to the extent that the carrier receives a portion of any fees charged by a payment processor, such revenue represents additional compensation for the carrier beyond what they have collected through rates

comment letter of the Prison Policy Initiative “Further proof of Securus’ ownership interest in 3CInteractive, including clarification on the location of an exhibit, and support for CenturyLink’s proposed definition of ‘financial interest’” at <https://ecfsapi.fcc.gov/file/60001530811.pdf>

¹² Securus has not, to our knowledge, ever admitted that it sets and receives income from this fee. But that is the only logical explanation of the data, one of its smaller competitors with a similar fee (Amtel) has admitted it to be true, and when required by Alabama to say under oath that it was not receiving income from this fee, Securus instead choose to stop taking payments via WesternUnion in Alabama. For an overview and the results of our company-by-company survey, see the money transfer section of our *State of Phone Justice* report at

https://www.prisonpolicy.org/phones/state_of_phone_justice.html#moneytransfer

¹³ See generally, Fed. Deposit Ins. Corp., *2017 National Survey of Unbanked and Underbanked Households* (Oct. 2018) (finding that 25.2% of U.S. households (84.8 million people) were unbanked or underbanked in 2017), available at <https://www.fdic.gov/householdsurvey/2017/2017report.pdf>.

¹⁴ See our survey results in the *State of Phone Justice* table at

https://www.prisonpolicy.org/phones/state_of_phone_justice.html#westernunion_table

reviewed and approved by the Board. PPI therefore contends that the Board should prohibit ICS carriers from receiving a revenue share from third-party payment processor.

B. Reliance Telephone of Grand Forks

Reliance serves about fifty-four jails in Iowa with facility populations ranging from two to forty-three people, with an average jail population of twelve. Reliance's filed tariff describes two rate structures, direct bill and prepaid. Reliance Tariff §§ 4.1 – 4.2 Both are problematic from the perspective of both clarity and reasonableness. First, Reliance discloses a product called "direct billed" calls,¹⁵ with rates of \$0.25 for local calls and an unusually high \$0.40 for intrastate calls. *Id.* § 4.1. The tariff is silent on "direct billed" interstate calls, but Reliance's website at <https://www.reliancetelephone.com/fandf> says they are \$0.21/minute plus \$0.04 for the Universal Service fund.

Reliance also discloses "prepaid card rates"¹⁶ with two rate structures (both of which are significantly higher than predominant ICS rates), Plan A at \$0.50/min and Plan B at \$0.40 a minute.¹⁷ Reliance Tariff § 4.2. In summary, all of Reliance's in-state rates are unreasonably high and are almost twice what Reliance charges for calls that cross state lines.

PPI also has concerns about ancillary fees charged by Reliance. The filed tariff discloses ancillary fees which purport to comply with the FCC's caps on ancillary fees of \$3 for automated payments and \$5.95 for payments via a live agent. *Id.* § 4.3. However, PPI research suggests that Reliance charges a 3.3% credit card processing fee on top of the \$3 fee, which contravenes the FCC cap of \$3 and contradicts Reliance's tariff (see Figure 2).

¹⁵ We note that the Reliance website uses different terminology, calling these calls "collect," but the rates appear to match.

¹⁶ We have seen other documents from Reliance which suggest that the different rates are associated with different site-commission structures, but we are unsure how Reliance's commissions currently work. These prepaid calling cards appear to be the majority of Reliance's business.

¹⁷ Based on the evidence PPI has gathered, it appears that all Iowa counties that have contracted with Reliance are using the higher Plan A rate, as we were unable to find evidence that any Reliance facilities in Iowa are under the \$0.40/minute Plan B rate.

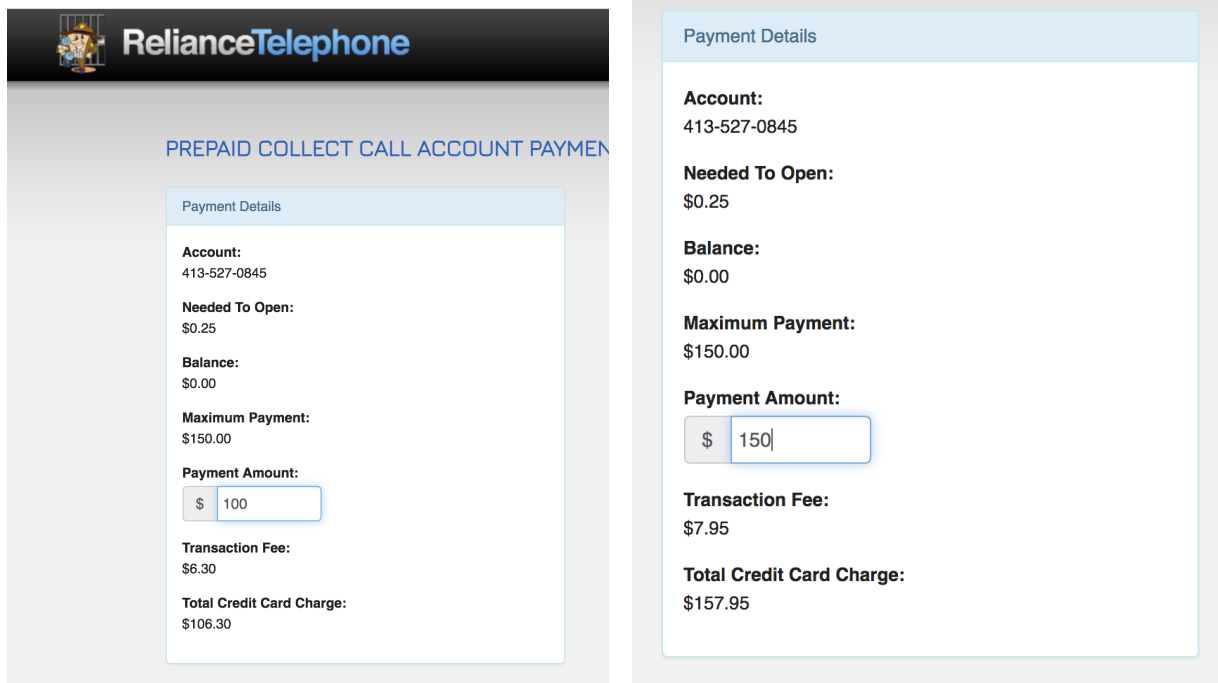


Figure 2: As seen in these two screenshots from Reliance’s website for different payment amounts taken on May 8, 2019, Reliance charges 3.3% extra for deposits above and beyond the \$3.00 charge listed in its tariff (and beyond the maximum \$3.00 charge allowed by the Federal Communications Commission.) We believe that Reliance also charges this improper 3.3% fee for deposits via Live Agents.

Finally, Reliance uses another profitable and exploitative fee that is not disclosed in the tariff: fees on payments made to Reliance via MoneyGram. These fees are apparently set by Reliance, and Reliance apparently receives part of that fee income. MoneyGram charges at least \$7.95 for payments to Reliance, more than to most other vendors, so a portion likely goes back to Reliance.¹⁸ PPI opposes these fees for the same reasons stated *supra*, with respect to similar fees collected on behalf of Securus.

C. Prodigy Solutions

Prodigy Solutions discloses collect and prepaid rates of \$0.31 per minute. Prodigy Tariff §§ 4.2 – 4.3. The tariff makes no distinction between intra- and interstate calling rates, thus to

¹⁸ See *infra*, note 12 and accompanying text. Although Western Union uses the phrases “revenue share” and “referral fee” to describe this type of arrangement, we do not know what terminology MoneyGram uses. Reliance apparently does not accept payments via Western Union. See <https://www.reliancetelephone.com/fandf> for the \$7.95 MoneyGram price.

the extent that Prodigy is charging \$0.31 per minute for interstate calls, the company appears to be charging rates in excess of the maximum allowed under federal law.

Publicly available evidence indicates that Prodigy serves the nine Iowa counties of Benton County, Cedar County, Cerro Gordo County, Dallas County, Des Moines County, Iowa County, Louisa County, Madison County, and Tama County. We could not confirm Prodigy's rates because to our knowledge Prodigy does not publish its rates online. We object to the rates disclosed in the tariff as unreasonably high.

D. Global Tel*Link and Public Communications Services

Public Communications Service is a wholly owned subsidiary of Global Tel*Link Corporation¹⁹, and both companies filed substantially identical tariffs; thus, for the purposes of this comment, we are treating the two companies together as GTL. GTL currently serves three or potentially four facilities in Iowa.²⁰ GTL's filed tariffs disclose an unreasonably high rate of \$0.30 per minute. GTL Tariff §§ 3.4.1 and 3.5.2.

GTL's tariffs also contain an unusual provision regarding its contracts with correctional facilities. After noting that GTL provides ICS service via facility-issued contracts, the tariffs state "These contracts may dictate rates less than or equal to (but not higher than) the rates set out herein." *Id.* § 3.4.1.²¹ Although PPI supports any efforts to lower ICS rates, this provision in GTL's tariff clearly contravenes Iowa statute and the filed-rate doctrine. I.C.A. § 476.5 ("No public utility subject to rate regulation shall directly or indirectly charge a greater *or less* compensation for its services than that prescribed in its tariffs" (emphasis added)); *Teleconnect*

¹⁹ See GTL's website at <https://www.gtl.net/pcs/> where it explains that GTL has owned PCS since November 2010.

²⁰ GTL's website lists three Iowa facilities: Black Hawk County Jail, Scott County, Iowa DHS-Eldora Training School for Boys. Additionally, Johnson County's website says its jail is served by GTL, but that county is not listed on GTL's website nor that of any other known provider. Accordingly, PPI assumes that Johnson County contracts with GTL, but we have no current way to know what rates are charged in that jurisdiction.

²¹ PPI is unaware of any Iowa facility where GTL charges \$0.30 per minute. Rather, we have identified rates of \$0.22/minute (Black Hawk County Jail), \$0.11/minute (Iowa DHS-Eldora Training School for Boys) and \$0.16/minute (Scott County Jail). PPI suspects that GTL/PCS serves Johnson County but we are unable to confirm that fact or determine that rate from GTL's website.

Co. v. US West Comm'cns, 508 N.W.2d 644, 647 (Iowa 1993) (under the filed-rate doctrine, the terms of an approved tariff are binding and “any contract or agreement to provide a tariffed service on terms other than those set forth in the tariff is void”). Furthermore, GTL’s apparent willingness to charge less than its tariffed rate suggests that the lower contract rates are adequately profitable and therefore the \$0.30 per minute rate contained in the tariffs is neither just nor reasonable.

E. Legacy Long Distance International

After conferring with Legacy’s staff, PPI understands that Legacy does not currently offer service in Iowa, and is open to revising their rates downward in the event that the company does reenter the Iowa market. Accordingly, we object to Legacy’s tariff on a precautionary basis only.

IV. The Board Should Take Modest But Necessary Steps to Reform ICS Rates and Practices

For the reasons discussed herein, the Board should rule that commissions are not a legitimate cost of providing telecommunications service. ICS carriers that are required to seek Board approval of rates under Iowa Code § 476.91 should be required to recalculate their rates in each facility to charge no more than the amount charged as of this comment deadline of May 13, 2019, less the per-minute value of any commission.²² Recognizing both that the providers are free to share their reasonable profits anyway they wish—including by making reduced commission payments to the facilities that award them monopoly contracts—and that commission payments are the key cause of the dysfunction in the jail telephone market, the Board should require all tariffs to disclose any consideration (regardless of label) paid or payable to the facility in relation to an ICS contract.

²² Most commissions are paid on a percentage basis and this calculation is straightforward. Where commissions take other forms — including lump sum payments, goods and services, and minimum guarantees where the minimum volume is not met, the providers must explain how they apportioned the costs. To the degree that signing bonuses and other lump sum payments were paid in advance, the providers are of course free to attempt to claw back those unreasonable profits from facilities.

Given the abuse that has historically occurred under the guise of third-party payment fees,²³ the Board should use its broad authority under Iowa Code § 476.8 to require all providers to disclose in their tariffs all fees levied by third-party processors who collect payments on behalf of the carrier. This approach has been required by the Alabama Public Service Commission, which also imposes the following procedure for any payment-related fee in excess of \$5.95:

A petition for waiver from the requirement to arrange payment transfer fees of no more than \$5.95. The petition for waiver shall include the following:

A detailed explanation of why the provider is unable to arrange with Western Union/MoneyGram for payment transfer fees of \$5.95 or less for its customers.

A sworn affidavit signed by the ICS Provider CEO or President affirming that the ICS provider receives no portion of the revenue charged the provider's customers by the applicable payment transfer services.

Identification of the payment transfer fee(s) charged the provider's customers by Western Union/MoneyGram and the additional services the provider receives from Western Union/MoneyGram for assessing payment transfer fees that are higher than the fees charged the customers of other ICS providers. (¶ 8.26 Inmate Phone Service Rules, Alabama Public Service Commission, December 9, 2014 Order (updated version thru June 12, 2015), *Generic Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Service*, Docket 15957, available at

<http://www.psc.alabama.gov/Telecom/Engineering/documents/Dec%202014%20Order%2015957%20updated%20thru%206-12-2015.pdf>)

With respect to the rates and practices of specific carriers, PPI would urge the Board to take the following actions.

A. Securus

The Board should not approve Securus' tariff until the company:

1. Eliminates the disparity between the rates in the company's tariff and those published on its website.

²³ See *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking ¶ 144, 30 FCC Rcd. 12763, 12838 (Nov. 5, 2015) ("ICS providers have the ability and incentive to continue to increase [ancillary fees] unchecked by competitive forces.").

2. Files a new tariff that does not: (i) contain first-minute rates that are higher than subsequent minutes, or (ii) charge more for intrastate calls than for interstate calls.
3. Files a new tariff that discloses the names of companies and the rates charged for any call types that Securus outsources to a third party.
4. Agrees to file quarterly reports detailing the percentage of calls in each Iowa facility that are made through their “single call” products like Instant Pay, PayNow, or Text2Connect where by consumers pay a credit card (or text message) charge plus the cost of the call for each call.
5. Files a sworn affidavit certifying that it does not receive any consideration from WesternUnion and MoneyGram.

B. Reliance

The Board should not approve Reliance’s tariff until the company:

1. Eliminates the disparity between the rates in the company’s tariff and those published on its website.
2. Files a new tariff that: (i) does not charge more for intrastate calls than for interstate calls, and (ii) accurately describes the company’s ancillary fee charges and/or brings their ancillary fees into alignment with applicable FCC caps.
3. Files a sworn affidavit certifying that it does not receive any consideration from MoneyGram.

PPI further suggests that the Board should enter an order requiring Reliance to refund the improper 3.3% “credit card processing fee” to all Iowa consumers who have that charge.

C. Prodigy

PPI respectfully suggests that the Board should not approve Prodigy’s tariff until the company has produced evidence sufficient to satisfy its burden of justifying its high rates of \$0.31/minute.

D. GTL

PPI contends that GTL's tariffs are facially defective because they state that actual rates may be varied by contract, in violation of Iowa Code § 476.5. For this reason, the Board should not approve GTL's tariffs until they are amended to reflect the actual rates charged by the carrier.

E. Legacy

Because Legacy does not currently operate in Iowa, the Board should cancel Legacy's registration (without prejudice), as it did with Value-Added Communications and DSI-ITI. *See* Order at 4.

V. Conclusion

PPI commends the Board for taking the critically important step of reviewing the monopoly rates imposed on Iowans by ICS carriers. PPI encourages the Board to achieve meaningful reform by enforcing the legal requirement of just and reasonable rates through the steps suggested herein.

Dated: May 13, 2019

Respectfully submitted,

PRISON POLICY INITIATIVE, INC.

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Appendix 1. Transcript of an instate "single call" from the Fulton County (Georgia) Jail, January 2019.

- Automated Voice: 00:00 Hello. The collect call from [redacted], an inmate at Fulton County Jail.
- Automated Voice: 00:09 Our records show you do not have an account or enough funds to complete this call. To pay for just this call using your credit or debit card, please press one. To decline this call, press four. If you would like to permanently block your number from receiving calls from this facility, press six. If you do not want to connect this call but would like to fund an account to pay for future calls, please hang up and dial 800-844-6591.
- Automated Voice: 00:38 To pay for just this call using your credit or debit card, please press one. To decline this call, press four. If you would like to permanently - *[Pressed 1]*
- Automated Voice: 00:47 This call will cost 18 cents per minute.
- Automated Voice: 00:50 Plus any applicable federal, state, and local taxes. Plus a one- time transaction fee of three dollars.
- Automated Voice: 00:56 You will only be charged the per minute rate for the amount of time you were on the phone. If you do not want to connect this call but would like to fund an account to pay for future calls, please hang up and dial 800-844-6591.
- Automated Voice: 01:20 We currently accept Visa or MasterCard. Please enter a valid 16-digit credit or debit card number now [redacted]. Please enter your card expiration date by entering the two-digit month followed by the two digit year. [Redacted]. You entered [redacted]. If this is correct, please press one. If this is not- *[Pressed 1]*
- Automated Voice: 01:56 Please enter the three digit CVV code printed on a back of the credit or debit card. Please enter the five digit billing zip code associated with a credit or debit card [redacted]. You entered [redacted]. If this is correct, please press one. If this is- *[Pressed 1]*
- Automated Voice: 02:18 All right. Please hold while I process your payment.
- Automated Voice: 02:22 Your payment has been approved. Please hold while the person you are calling is entering information to pay for this call.
- Automated Voice: 02:30 This call is subject to recording and monitoring. To continue, press one. To disconnect, press two. Thank you for using Securus. You may start the conversation now.