February 7, 2024

Via regulations.gov
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW, Suite CC-5610 (Annex B)
Washington, DC 20580

Re: Unfair or Deceptive Fees NPRM, R207011 – Comments Concerning Junk Fees Affecting Justice-Involved People

The National Consumer Law Center (NCLC), on behalf of its low-income clients, the Prison Policy Initiative (PPI), and advocate Stephen Raher[1] are pleased to submit these comments in response to the Federal Trade Commission's (FTC or Commission) Notice of Proposed Rulemaking (NPRM) to promulgate a trade regulation rule entitled "Rule on Unfair or Deceptive Fees," R207011 (Proposed Rule).[2]

We do not think there are any disputed issues of fact for this Proposed Rule. However, if the Commission conducts hearings regarding these rules, we wish to participate in those hearings and engage in cross-examination.

We thank the FTC for proposing a rule that is industry neutral and therefore would apply to private companies that sell consumer goods or services to or for the benefit of incarcerated people and their families. Our comments focus on these companies, which provide a variety of goods and services (as discussed in Section I, below). For the sake of consistency, we refer to this industry as "correctional consumer services" (CCS), while generally referring to the companies providing CCS as "Vendors."

Our comments discuss junk fees affecting justice-involved people. These fees are common in the CCS sector, and they cause particular harm to consumers who are already economically marginalized and are disproportionately people of color. After providing an overview of the junk fees in the CCS industry, these comments respond to the FTC's questions on topics that were not already addressed in the February 8, 2023 comments that NCLC, PPI, and twenty-seven other organizations submitted regarding junk fees impacting justice-involved people, in response to the Commission's Advanced Notice of Proposed Rulemaking (ANPR) in this rulemaking.[3]

[1] These comments were drafted by NCLC attorneys Caroline Cohn, Ariel Nelson, Chi Chi Wu, and April Kuehnhoff; attorney Stephen Raher; and PPI communications director Mike Wessler.
[2] Trade Regulation Rule on Unfair or Deceptive Fees, 84 Fed. Reg. 77420 (proposed Nov. 9, 2023) (to be codified at 15 C.F.R. pt. 464), https://www.federalregister.gov/documents/2023/11/09/2023-24234/trade-regulation-rule-on-unfair-or-deceptive-fees.
[3] FTC–2022–0069–6088; Nat'l Consumer L. Ctr., et al., Comments in Response to FTC ANPR, R207011 (Feb 8, 2023), https://www.nclc.org/wp-content/uploads/2023/02/Unfair-or-Deceptive-Fees-ANPR-R207011_NCLC-et-al.pdf.

As described in greater detail below, we support the FTC's overall approach to regulating junk fees and also provide recommendations on how to strengthen the Proposed Rule. As with the recommendations that NCLC offers in the rental housing context, we urge the FTC to:

- Promulgate a final rule that applies to correctional services junk fees.
- Prohibit hidden, misleading, and excessive fees while also:
    - Clarifying that Businesses[4] may not impose fees—whether they are mandatory or optional—that provide little or no value to the consumer in exchange for the change.
    - Clarifying that vague descriptions of fees that are not understandable to a reasonable consumer violate the rule.
- State that "Ancillary Good or Service" includes fees that are charged by a third-party company but are part of the same transaction.
- Define fees as "mandatory" if they are not reasonably avoidable or if a reasonable consumer would expect that the good or service is included with the purchase or is part of the transaction.
- Require itemization of all mandatory fees and, if applicable, require Businesses to state which fees are one-time fees and which are ongoing monthly fees.
- Require that any fees that may not be encompassed by the Total Price and therefore are not disclosed under Section 464.2(a) be disclosed under Section 464.3(b) and itemized.
    - State that where additional costs that are excluded from the Total Price are variable, the Business must disclose the existence of such costs and any formula or method for their calculation.
- Explicitly prohibit misrepresentations regarding any amount included in the Total Price as well as any other fee or charge the consumer may pay.
- State that "before the consumer consents to pay" means before the consumer agrees to "make any payment" that is part of the transaction, including application fees.
- Issue the final rule as quickly as possible and also commit to issuing Advisory Opinions and Staff Interpretations to address any need for subsequent clarification.

We make additional recommendations, including specific changes to the proposed rule text, throughout these comments. Finally, our comments include six appendices containing data that PPI has compiled regarding fees for several of the correctional services we discuss in these comments.

[4] Any capitalized terms used herein that are not expressly defined are assigned the definitions from the Proposed Rule, 88 Fed. Reg. 77483-84.

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I. The FTC Should Promulgate a Final Rule That Protects Justice-Involved People from Hidden, Misleading, and Excessive Junk Fees in the Corrections Industry

A. Many Vulnerable Consumers are Dependent on Goods and Services Sold in Correctional Settings

The market for CCS is vast and impacts a large number of consumers. As of March 2023, PPI estimated that nearly 2 million people are incarcerated in the United States, including over one million in state prisons, over 500,000 in local jails, and over 200,000 in federal prisons and jails.[5] Vendors extract money not only from these incarcerated people but also from their families and other loved ones, whose numbers are more difficult to quantify but certainly greatly expand this 2 million figure. Vendors also reap profits from people recently released from incarceration, as well as those who have been arrested but not yet incarcerated, further enlarging the universe of consumers who rely on CCS.

These consumers are particularly vulnerable to the largely unchecked economic power of Vendors. For one thing, incarcerated people have especially limited financial resources: the median income among people *entering* prison is 41 percent less than the national average,[6] and people have virtually no ability to earn meaningful wages while they are incarcerated.[7] People *leaving* incarceration are even worse off financially.[8] Second, the financial cost of supporting incarcerated family members tends to fall disproportionately on people of color, and Black women in particular, raising important equity considerations.[9] Third, as discussed in detail in our comments responding to the ANPR, governments have the ability to award private companies monopoly contracts for essential services impacting justice-involved people, and frequently do so.[10] As we explain in our other comments, and as other federal agencies have highlighted, these monopolies often harm consumers.[11] Furthermore, oligopolistic dynamics characterize the

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[5] Wendy Sawyer & Peter Wagner, Prison Policy Initiative, Mass Incarceration: The Whole Pie 2023 (2023), https://www.prisonpolicy.org/reports/pie2023.html (the remaining fraction are held in juvenile correctional facilities, immigration detention facilities, and Indian country jails, military prisons, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories).

[6] Bernadette Rabuy & Daniel Kopf, Prison Policy Initiative, Prisons of Poverty: Uncovering the Pre-Incarceration Incomes of the Imprisoned (2015), https://www.prisonpolicy.org/reports/income.html ("We found that, in 2014 dollars, incarcerated people had a median annual income of $19,185 prior to their incarceration, which is 41% less than nonincarcerated people of similar ages.").

[7] Wendy Sawyer, *How Much Do Incarcerated People Earn in Each State?*, Prison Policy Initiative (Apr. 10, 2017), https://www.prisonpolicy.org/blog/2017/04/10/wages/. (showing average hourly wages of 14¢ to 63¢ for typical prison jobs).

[8] *See, e.g.*, Terry-Ann Craigie et al., Brennan Ctr. for Just., Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality, 6 (2020), https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal?ref=honeysucklemag.com (finding that "[o]n average, formerly imprisoned people earn nearly half a million dollars less over their careers than they might have otherwise," that "[t]hese losses are borne disproportionately by people already living in poverty," and that "they help perpetuate it").

[9] Saneta deVuono-powell, et al., Ella Baker Center for Human Rights, Who Pays? The True Cost of Incarceration on Families 9 (2015), https://ellabakercenter.org/who-pays-the-true-cost-of-incarceration-on-families/.

[10] Nat'l Consumer L. Ctr., et al., Comments in Response to FTC ANPR, R207011 (Feb 8, 2023), https://www.nclc.org/wp-content/uploads/2023/02/Unfair-or-Deceptive-Fees-ANPR-R207011_NCLC-et-al.pdf.

[11] *See, e.g.*,, Consumer Fin. Prot. Bureau, Justice-Involved Individuals and the Consumer Financial Marketplace 3 (2022), https://www.consumerfinance.gov/data-research/research-reports/justice-involved-individuals-consumer-

corrections sector more broadly, rendering consumers even more vulnerable to abusive practices.[12]

B. Junk Fees Pervade this Market

As discussed in our comments in response to the ANPR, Vendors impose hidden, misleading, excessive, and unavoidable fees on justice-involved people from the time a person is arrested, through their period of incarceration, continuing after their release, and everywhere in between. To protect this large, vulnerable population, it is critical that the FTC promulgate a final rule that encompasses the CCS industry. We summarize these fees affecting justice-involved people briefly below, and we discuss them in more detail where relevant throughout these comments.

Pre-Detention:

- *Commercial bail*. Commercial bail companies commonly levy fees for various (often ambiguous) expenses, beyond the bond premium itself. Furthermore, many bail agents allow the consumer to pay for the bond premium in installments, often in return for charging financing fees and costs, the terms and cost of which are often murky.[13]

- *Post-arrest/pretrial diversion programs*. Post-arrest diversion programs typically allow—at the state's discretion—selected individuals to avoid criminal charges if they follow a prescribed program of treatment, restitution, or community service. Jurisdictions often outsource pretrial diversion programs to private companies that charge exorbitant costs to participate, in addition to myriad ancillary fees.[14]

During Detention:

- *Money-transfers*.[15] Although correctional facilities are supposed to provide a basic level of subsistence to people who are incarcerated, incarcerated people's loved ones often must pick up the slack by sending in money for basic necessities such as hygiene products, food, and

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financial-marketplace/ (explaining that fairness, transparency, and competition "seldom appear in the markets for products and services that capitalize off the criminal justice system, where firms may enter into exclusive relationships with government actors, rather than competing on the basis of consumer choices").

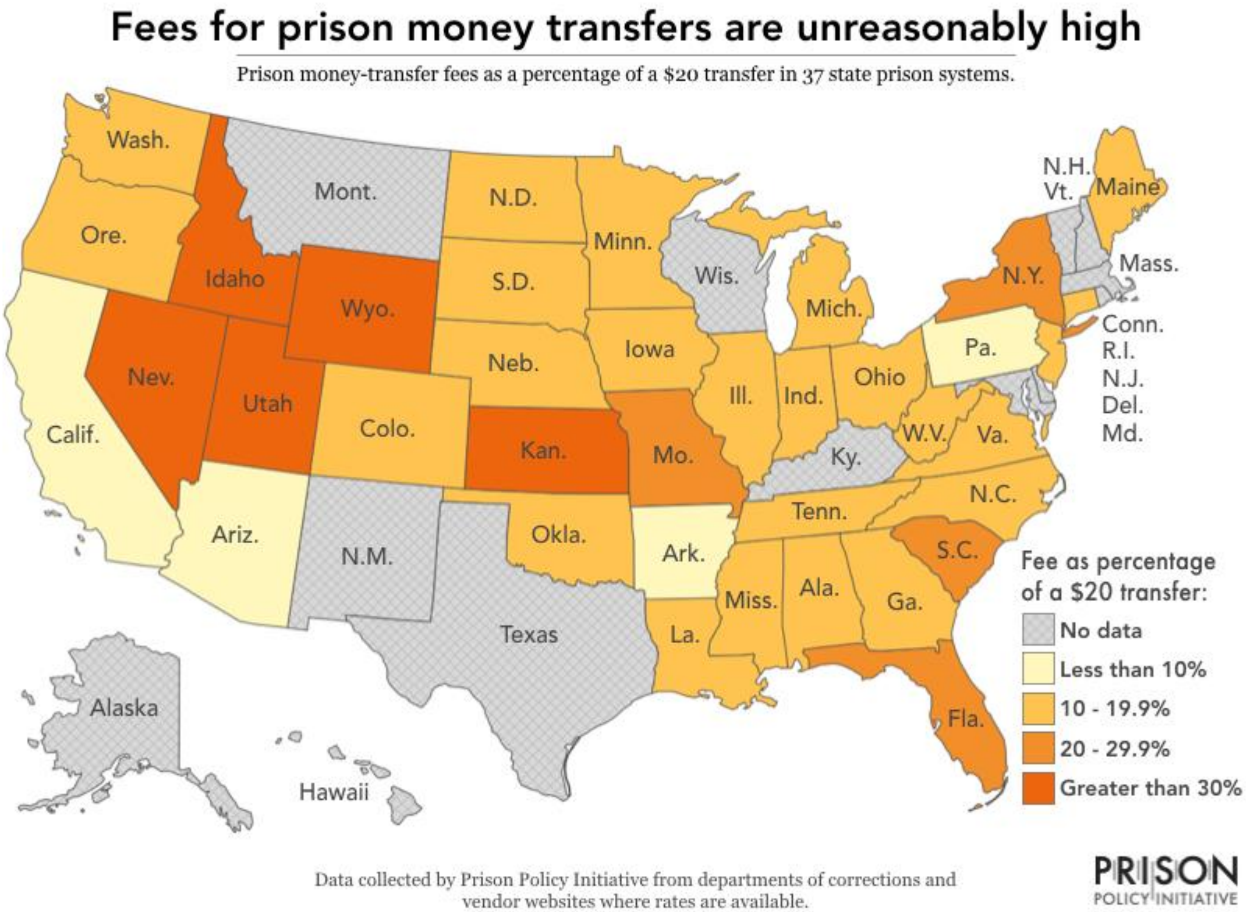
[12] Nat'l Consumer L. Ctr., et al., Comments in Response to FTC ANPR, R207011 (Feb 8, 2023), 16–17, https://www.nclc.org/wp-content/uploads/2023/02/Unfair-or-Deceptive-Fees-ANPR-R207011_NCLC-et-al.pdf.

[13] Brian Highsmith, Nat'l Consumer L. Ctr., *Commercialized (In)justice: Consumer Abuses in the Bail and Corrections Industry* 26 (2019), available at https://www.nclc.org/wp-content/uploads/2022/09/report-commercialized-injustice.pdf (internal citations omitted).

[14] *Id.* at 27–28 (citing Rebecca Burns, *Diversion Programs Say They Offer a Path Away from Court, but Critics Say the Tolls Are Hefty*, ProPublica Illinois (Nov. 13, 2018), available at https://www.propublica.org/article/diversion-programs-illinois-criminal-justice-system-bounceback-correctivesolutions#:~:text=Illinois%20Reporting%20Project-,Diversion%20Programs%20Say%20They%20Offer%20a%20Path%20Away%20From%20Court,ways%20they%20might%20not%20otherwise); Consumer Fin. Prot. Bureau, Justice-Involved Individuals and the Consumer Financial Marketplace 6–9 (2022), https://www.consumerfinance.gov/data-research/research-reports/justice-involved-individuals-consumer-financial-marketplace/.

[15] The map below shows the results of PPI's survey of all fifty state departments of corrections' fees for money-transfer services. This map is also available at https://www.prisonpolicy.org/blog/2021/11/09/moneytransfers/.

paper from the commissary.[16] The private companies that handle these money transfers charge outrageous and often hidden fees.[17]



- *Electronic Messaging*.[18] Unlike in the free world, where there is no incremental cost for each email you send or receive, with prison-based electronic messaging services, there is almost

[16] Incarcerated people obtain many necessities of life at the commissary, a retail outlet that is often operated by a for-profit contractor. Commissary is where people can buy necessary hygiene products and over-the-counter medications; purchase basic supplies like paper, batteries, and small appliances; and supplement the low-quality, too-small, and possibly spoiled or rotten food served in the cafeteria. Ariel Nelson & Stephen Raher, *Captive Consumers: How government agencies and private companies trap and profit off incarcerated people and their loved ones*, Inquest (Mar. 19, 2022), https://inquest.org/captive-consumers/; Tommaso Bardelli, et al., *"You Need Money to Live in Prison": Everyday Strategies of Survival in the American Neoliberal Prison*, 121 South Atlantic Quarterly 838 (Oct. 2022).

[17] Appendix A is a table showing the results of PPI's survey of all fifty state departments of corrections' money-transfer services, including the fees they charge. *See also* Stephen Raher & Tiana Herring, Prison Policy Initiative, Show me the money: Tracking the companies that have a lock on sending funds to incarcerated people (2021), https://www.prisonpolicy.org/blog/2021/11/09/moneytransfers/.

[18] The map below shows the results of the Prison Policy Initiative's (PPI) survey of all fifty state departments of corrections' electronic-messaging vendors and per-message prices. This map is also available at https://www.prisonpolicy.org/reports/emessaging.html.

always a fee. Various ancillary fees can also significantly increase out-of-pocket costs for consumers, and these fees are often not disclosed until the time of purchase.[19]

- *Tablets*. Tablet computers have become increasingly popular in correctional facilities nationwide. Many tablet companies charge users a *per-minute* fee to read e-books, send messages, or listen to music; others charge for costly subscriptions and ambiguous "infrastructure fees."[20]

<u>After Release</u>:

- *Release cards*. Upon leaving custody, people often have money left in their inmate trust account[21]—whether from accumulated earnings; support from family; or, in the case of a

[19] Appendix C is a table showing the results of the PPI's survey of all fifty state departments of corrections' electronic-messaging vendors and per-message prices. *See also* Mike Wessler, Prison Policy Initiative, SMH: The Rapid & Unregulated Growth of E-Messaging in Prisons (2023), https://www.prisonpolicy.org/reports/emessaging.html.

[20] Appendix D is a table showing the findings from PPI's analysis of eight contracts between state departments of corrections and tablet providers. *See also* Mack Finkel & Wanda Bertram, Prison Policy Initiative, More States Are Signing Harmful "Free Prison Tablet" Contracts, (2019; updated 2021), https://www.prisonpolicy.org/blog/2019/03/07/free-tablets/

[21] As PPI has explained, "trust account" is a term of art in the correctional sector, referring to a pooled bank account that holds funds for incarcerated people whose individual balances are sometimes treated as subaccounts. The term "trust" is used because the correctional facility typically holds the account as trustee, for the benefit of the individual beneficiaries (or subaccount holders). *See, e.g.*, Wanda Bertram, *The CFPB's Enforcement Order Against Prison*

short-term jail stay, a return of whatever cash they had in their possession when arrested. Released people often receive their money in the form of a prepaid debit card, known as a "release card."[22] Fees associated with release cards are often outrageous, with the card provider charging people for things like having an account, using the account, not using the account, and seeking customer service.[23] The CFPB has already taken enforcement against one release-card provider, JPay, for charging illegal fees.[24]

Before, After, or In Lieu of Detention:

- *Private probation*. Several states allow counties and municipalities to contract with private companies to administer their probation systems for misdemeanor and lower offenses. Under these arrangements, the government extends an exclusive contract to a particular supervision company, which is then allowed to enforce probation requirements against people ordered to probation. The prices for their supervision "services" often vary widely, even within the same state, and consumers are also often deceived about the costs involved.[25]

- *Electronic monitoring*. Electronic device monitoring (e-monitoring) has become increasingly common for people during the pretrial period or while they are on parole or probation. It can also be used in lieu of detention. As of 2022, the number of adults subject to electronic monitoring (across both the civil immigration and criminal legal systems) was estimated to be nearly half a million.[26] It is often administered by private companies, and the vast majority

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Profiteer JPay, Explained, Prison Policy Initiative, n.1 (Oct. 28, 2021), https://www.prisonpolicy.org/blog/2021/10/28/cfpb-jpay/#lf-fnref:1.

[22] Stephen Raher, *Insufficient Funds: How Prison and Jail "Release Cards" Perpetuate the Cycle of Poverty*, Prison Policy Initiative (May 3, 2022), https://www.prisonpolicy.org/blog/2022/05/03/releasecards/; *see also* Worth Rises, The Prison Industry: How It Started. How It Works. How It Harms 59, 62–63, https://static1.squarespace.com/static/58e127cb1b10e31ed45b20f4/t/621682209bb0457a2d6d5cfa/1645642294912/The+Prison+Industry+How+It+Started+How+It+Works+and+How+It+Harms+December+2020.pdf.

[23] Appendix B is a table showing the results of PPI's analysis of fee disclosures that release-card companies filed with the CFPB. *See also* Stephen Raher, *Insufficient Funds: How Prison and Jail "Release Cards" Perpetuate the Cycle of Poverty*, Prison Policy Initiative (May 3, 2022), https://www.prisonpolicy.org/blog/2022/05/03/releasecards.

[24] Press Release, Consumer Fin. Prot. Bureau, CFPB Penalizes JPay for Siphoning Taxpayer-Funded Benefits Intended to Help People Re-enter Society After Incarceration (Oct. 19, 2021), https://www.consumerfinance.gov/about-us/newsroom/cfpb-penalizes-jpay-for-siphoning-taxpayer-funded-benefits-intended-to-help-people-re-enter-society-after-incarceration/#:~:text=The%20order%20also%20requires%20the,said%20CFPB%20Director%20Rohit%20Chopra.

[25] Highsmith, Nat'l Consumer L. Ctr., *Commercialized (In)justice: Consumer Abuses in the Bail and Corrections Industry* 30–31 (2019), available at https://www.nclc.org/wp-content/uploads/2022/09/report-commercialized-injustice.pdf (citing Sarah Stillman, *Get Out of Jail, Inc.*, The New Yorker (June 23, 2014), https://www.newyorker.com/magazine/2014/06/23/get-out-of-jail-inc.; Interview with Komala Ramachandra, Senior Researcher, Human Rights Watch (Feb. 15, 2019); and Human Rights Watch, Profiting from Probation: America's "Offender-funded" Probation Industry (2014), https://www.hrw.org/sites/default/files/reports/us0214_ForUpload_0.pdf).

[26] Jess Zhang, Jacob Kang-Brown, & Ari Kotler, Vera Inst. of Justice, People on Electronic Monitoring (2024), https://www.vera.org/downloads/publications/Vera-People-On-Electronic-Monitoring-FINAL-120423.pdf.

of states allow fees to be charged for costs associated with it, which can include installation and monitoring fees.[27]

II. The Proposed Rule's Focus on Transparency and Disclosure Will Fail to Address Many of the Junk Fees that Affect Justice-Involved People

We strongly urge the FTC to promulgate a final rule that, like the Proposed Rule, covers private companies that sell goods and services to consumers in correctional settings. Nevertheless, it bears emphasizing that the Proposed Rule, as currently drafted, would *not* address many of the junk fees plaguing this market. Although deceptiveness is a problem in correctional contexts, it is not the primary problem. Rather, the primary harm is that private companies charge excessive fees for essential services to captive consumers with no alternatives.

As discussed at length in our comments in response to the ANPR, private companies often hold a monopoly for a particular service within a given correctional facility. In a typical contract procurement process, private companies compete with one another for an exclusive contract to provide services in a given correctional facility (sometimes by offering to make kickback payments). This secures for the company what is, in many cases, a literally "captive market." Companies can then aggressively inflate their prices and charge excessive fees without fear of competition. Indeed, as the Commission has itself noted, "[c]onsumers may be forced to pay junk fees because they have no way to avoid or opt out of them;" for example, if they are "dealing with a company with a monopoly or exclusive rights that can extract fees because there is no competing option."[28] Companies providing commercial bail, private probation, electronic monitoring, and pretrial diversion programs also frequently hold monopolies. The consumers' lack of bargaining power is starkest in this context: if the consumer does not agree to the proffered terms, the alternative is incarceration.

Given these monopolistic conditions, even if a company were to clearly disclose all fees upfront, this would not "facilitate price comparisons by consumers, increase competition among sellers, [or] put downward pressure on prices,"[29] as the FTC intends, because there is no comparison to be made or competition to be had. The oligopolistic nature of the corrections macroeconomy exacerbates this problem. Correctional facilities have little choice in deciding which company to award contracts to, thereby further limiting competition and hindering the ameliorative potential of the Proposed Rule in this context.[30]

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[27] Fines & Fees Justice Center, Electronic Monitoring Fees: A 50-State Survey of the Costs Assessed to People on E-Supervision 1, 4, 18–19 (2022), https://finesandfeesjusticecenter.org/content/uploads/2022/09/FFJC-Electronic-Monitoring-Fees-Survey-2022.pdf.

[28] Fed. Trade Comm'n, "Federal Trade Commission Explores Rule Cracking Down on Junk Fees" (Oct. 20, 2022), https://www.ftc.gov/news-events/news/press-releases/2022/10/federal-trade-commission-explores-rule-cracking-down-junk-fees.

[29] Proposed Rule at 77447–48.

[30] As explained in our comments in response to the ANPR, the two companies that dominate the correctional phone market—Securus Technologies and ViaPath Technologies (formerly called Global Tel*Link, or GTL)—have acquired numerous other companies providing services in the corrections market. For example, Aventiv Technologies is now the corporate parent of Securus, JPay, and AllPaid, whose combined correctional products and services span products and services including communications, security, entertainment, education, parole and probation payments, tablets, money transfers, and prepaid cards for people leaving incarceration. As one example of how this oligopoly manifests in the context of a particular correctional service, Securus/JPay and GTL/ViaPath hold

Thus, if the Commission issued a final rule identical to the Proposed Rule as currently drafted, it would not adequately address many of the junk fees impacting justice-involved people. As discussed below, prohibitions on excessive fees and fees that provide little or no value to consumers are also essential for alleviating the primary financial harms affecting consumers in the CCS market.

III. Answers to General Questions: We Support the Broad Coverage of the Proposed Rule but Urge the FTC to Also Prohibit Excessive Fees

The FTC is considering a rule that would prohibit most businesses operating in the United States, including CCS Vendors, from "misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees."[31] We respond to the following general questions about the Proposed Rule:

A. Q1: Should the Commission finalize the Proposed Rule as a final rule? Why or why not? How, if at all, should the Commission change the Proposed Rule in promulgating a final rule?

We urge the FTC to promulgate a final rule that applies to junk fees charged by CCS Vendors and prohibits both hidden and misleading fees, as set out in Sections 464.2 and 464.3 of the Proposed Rule. The FTC should also generally prohibit excessive fees.

The Consumer Financial Protection Bureau (CFPB) has emphasized that "transparen[cy] . . . seldom appear[s] in the markets for products and services that capitalize off the criminal justice system, where firms may enter into exclusive relationships with government actors, rather than competing on the basis of consumer choices."[32] An FTC rule prohibiting hidden fees is necessary to ensure transparency in the CCS market.

Although disclosure is essential, a rule mandating disclosure alone would not curb many of the widespread unfair and abusive junk fees practices occurring in the market for correctional services. For example:

- Disclosure alone would not prevent release-card issuers from charging fees with unclear purposes, such as "declined-purchase" fees that do not appear to correspond to any cost incurred by the Vendor.
- Nor would disclosure alone prevent electronic messaging companies from charging ambiguous "maintenance fees."

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more than 80 percent of e-messaging contracts in state prisons. Nat'l Consumer L. Ctr., et al., Comments in Response to FTC ANPR, R207011 (Feb 8, 2023), at 10, https://www.nclc.org/wp-content/uploads/2023/02/Unfair-or-Deceptive-Fees-ANPR-R207011_NCLC-et-al.pdf (citing Aventiv Technologies, Securus Technologies Realigns Business Units, Diversifies Product Offerings Under New Corporate Parent: Aventiv Technologies (Oct. 10, 2019), https://www.aventiv.com/securus-technologies-realigns-business-units-diversifies-product-offerings-under-new-corporate-parent-aventiv-technologies/).

[31] 84 Fed. Reg. at 77420 ("Summary").

[32] Consumer Fin. Prot. Bureau, Justice-Involved Individuals and the Consumer Financial Marketplace 3 (2022), https://www.consumerfinance.gov/data-research/research-reports/justice-involved-individuals-consumer-financial-marketplace/.

- Disclosure alone would also not prevent companies from charging fees that far exceed the actual cost of providing a particular service, such as the excessive fees money-transfer companies charge. Whereas free-world money-transfer services often provide *free* transfers from bank accounts, or transfers from a credit or debit card for 3 percent or less, correctional money-transfer service providers typically charge a fee of about 20 percent.[33] The latter fees appear to far exceed the actual cost of providing the service.

Furthermore, as discussed in Part II above, disclosure alone is insufficient given the sizable power imbalance between consumers and businesses in this market, which is the result of monopolies that particular companies hold within particular facilities as well as the oligopolistic nature of the market more broadly.

To address these harms, the FTC should finalize a rule that not only prohibits hidden and misleading fees but also excessive fees, as discussed in more detail below in response to the FTC's specific questions. It is especially critical to prohibit excessive fees in sectors where competition is nonexistent or weak, such as services that justice-involved people have no other choice but to use. While competition might arguably moderate excessive fees in some industries, it simply does not exist in the CCS context.

Additionally, the FTC should adopt Section 465.4 of the Proposed Rule, which appropriately recognizes the role that states should play in reining in junk fees. States may be better able to quickly tailor laws or regulations to address the specific types of junk fees that emerge in their jurisdiction. States also could give consumers a private right of action to enforce those laws or regulations. If, as proposed Section 465.4 provides, a State wishes to provide greater protection than afforded by the Commission's rules, States should be allowed to provide such relief.

B. Q3: Would the Proposed Rule, if promulgated, benefit consumers and competition? Provide all available data and evidence that supports your answer, such as empirical data, statistics, consumer-perception studies, and consumer complaints.

With respect to the CCS market, the Proposed Rule would benefit consumers. Although it would not entirely eliminate the junk fees that plague this space, it would constitute an important step forward by addressing lack of transparency. We have evidence that transparency issues arise with respect to multiple corrections-related services provided by Vendors, including but not limited those discussed below in Part 1. In Part 2, we address the arguments, sometimes made by Vendors, that fees benefit consumers.

1. The Proposed Rule would provide some benefits to consumers with respect to CCS junk fees

Companies providing private probation, electronic messaging, and money-transfer services to justice-involved people often charge hidden fees that could be remedied by the Proposed Rule.

[33] *See* Stephen Raher & Tiana Herring, Prison Policy Initiative, Show me the money: Tracking the companies that have a lock on sending funds to incarcerated people (2021), https://www.prisonpolicy.org/blog/2021/11/09/moneytransfers/; *see also* Appendices A and B.

Perhaps the most egregious types of hidden fees affecting justice-involved people that the Proposed Rule would help address are fees charged by private probation companies. Common charges for these private programs include those for drug testing, rehabilitative courses, and other treatment programs. The prices for their supervision "services" often vary widely, even within the same state, and are billed to consumers with little clarity or explanation. Indeed, companies have argued that their fee schedules are trade secrets and have refused to publish them at all on that basis.[34] A requirement that these companies disclose their total costs upfront would enable people to know whether such a program would drive them into debt. The Proposed Rule would also enable more public scrutiny of this aspect of the criminal legal system.

Electronic messaging is another fee-laden service where consumers are poised to receive some benefits under the Proposed Rule. Vendors often disclose fees only at the time of purchase. As the FTC explains, this practice can prevent consumers from knowing the true cost of their purchase until they have already invested substantial time and energy, can cause them to spend more than they expected or wanted to, and can force honest businesses to compete on an unfair playing field.[35] More specifically, the facility contracts or the Vendors' publicly available terms and conditions often fail to mention these fees. One messaging provider—InmateCanteen.com, operated by Turnkey Corrections—includes "conditions of use" that explain that it "charges a processing fee for each payment instruction processed" and it "reserves the right to change the amount of the processing fee *at any time, without notice to users*."[36] Of course, in instances where incarcerated people and those corresponding with them have access to only one messaging provider, the Proposed Rule will be less helpful. But it can provide benefits in instances where consumers have a choice between Vendors or may choose not to use the service at all, based on the cost.

Finally, a review of the CFPB's complaints database going back to 2020 revealed several complaints regarding hidden fees charged for correctional money-transfer services. One consumer encountered hidden processing fees charged by the company JPay, and reported that JPay failed to notify them of the total cost of the transaction before processing it:

> I have a friend who is incarcerated and who sends mail occasionally to my residence. I went in through JPay to refund him for the stamps that he has recently used and will use, because obviously he can't afford it on his own due to the wages paid within the penal system. I entered {$20.00}. The system ran the payment for {$200.00} and charged a {$4.00} processing fee. Their system never notified me prior to charging the fee. Moreover, there was no notification asking me to confirm the dollar amount prior to processing. This is completely atypical for payment

[34] Highsmith, Nat'l Consumer L. Ctr., *Commercialized (In)justice: Consumer Abuses in the Bail and Corrections Industry* 30–31 (2019), available at https://www.nclc.org/wp-content/uploads/2022/09/report-commercialized-injustice.pdf (citing Sarah Stillman, *Get Out of Jail, Inc.*, The New Yorker (June 23, 2014), https://www.newyorker.com/magazine/2014/06/23/get-out-of-jail-inc.; Interview with Komala Ramachandra, Senior Researcher, Human Rights Watch (Feb. 15, 2019); and Human Rights Watch, Profiting from Probation: America's "Offender-funded" Probation Industry (2014), https://www.hrw.org/sites/default/files/reports/us0214_ForUpload_0.pdf).

[35] 87 Fed. Reg. at 67422.

[36] Inmate Canteen, "Terms of Service" (last updated Mar. 30, 2022; last visited Jan. 29, 2024), available at https://team3.inmatecanteen.com/#/policies (emphasis added).

> processing. . . . I'm sure they believe they can get away with the behavior because most incarcerated individuals and their families have limited education and do not understand consumer protection at all[.][37]

The Proposed Rule would prevent consumers from being surprised by processing fees like the one this consumer encountered.[38]

2. Junk fees in this market do not benefit consumers

Junk fees in this market clearly do not benefit consumers. CCS Vendors sometimes try to justify charging exorbitant fees by asserting that they go towards site commissions paid to correctional facilities, which are in turn used to fund programs for incarcerated people. Therefore, they argue, the fees they charge ultimately benefit incarcerated consumers.

Not all Vendor fees actually produce site-commission revenue for correctional facilities, but even in cases where facilities do receive commissions on fees, the benefit to consumers is illusory. As the Federal Communications Commission (FCC) has found, site commissions are frequently used for purposes completely unrelated to the welfare of incarcerated people. The FCC explained: "[w]hile the record indicates that site commission payments *sometimes* fund inmate health and welfare programs, . . . such payments are also used for non-inmate needs, including employee salaries and benefits, equipment, building renewal funds, states' general revenue funds, and personnel training."[39] In the instances when some site commission money is supposed to be allocated toward "Inmate Welfare Funds," the amount that directly benefits incarcerated people may be minimal.[40] Based on its findings, and despite the arguments of the private telecommunications companies, the FCC mandated that "site commission payments . . . may not be passed on to inmates and their friends and families"[41] and "encourage[d] more states to eliminate" them.[42] The careful factfinding and reasoning of the FCC in its decision makes clear that any alleged benefits of site commissions and the excessive fees that fund them may have to consumers are not outweighed by the substantial harms they impose.

Moreover, even if fees that help fund site commissions *did* go fully toward "inmate welfare funds" (which they do not), these fees could not be said to benefit consumers. Rather, they merely function as a regressive tax on our country's poorest and most vulnerable residents, forcing them to subsidize their own incarceration.

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[37] Excerpt of CFPB Complaint No. 6352773.

[38] Another issue that consumers repeatedly raised in their complaints to the CFPB was that credit card companies often treat money-transfer payments to incarcerated people as "cash advances," which come with large fees. *See* CFPB Complaint Nos. 4048641, 5042141, 5064862, 6598050, and 7177618.

[39] In the Matter of Rates for Interstate Inmate Calling Servs., 28 F.C.C. Rcd. 14107, 14125 (2013) (emphasis added).

[40] *Id.* at 14110 n.13 ("Petitioners point out that in Orange County, California, the Inmate Welfare Fund had a budget of $5,016,429 in 2010, and of that amount 74% were used for staff salaries, 0.8% was used for the actual services, supplies, and training for inmate education programs, and 0.06% as used for services, supplies, and training for inmate reentry programs.").

[41] *Id.* at 14111–12.

[42] *Id.* at 14173.

IV. Answers to Questions about Definitions: All Provisions of the Rule Should Apply to the CCS Industry

We respond to the following questions about definitions in the Proposed Rule:

A. Q12: Should the proposed definition for "Business" exclude certain businesses, and if so, why?

The definition for "Business" should not exclude certain businesses. We urge the FTC to adopt a broad and inclusive definition, ensuring that the final rule covers CCS Vendors. As discussed in detail in our comments in response to the ANPR, this market is rife with hidden, unavoidable, vague, and excessive junk fees that burden people who are already economically marginalized. The FTC should not create an exception for this industry in the final rule.

Moreover, with this rule, the FTC would simply be clarifying the FTC Act, which is broadly applicable. The rule would simply establish a basic floor for most Businesses by requiring that Businesses communicate the true price of the good or service provided and not mislead consumers.

B. Q10: Are the proposed definitions clear? Should any changes be made to any definitions? Are additional definitions needed?

The FTC should clarify that "Ancillary Good or Service" includes fees that are charged by a third-party, but which are part of the same transaction. It would follow that because Total Price "means the maximum total of all fees or charges a consumer must pay for a good or service *and any mandatory Ancillary Good or Service*," a Business would be required to include any mandatory fees charged by a third-party company that are part of the same transaction in the Total Price.

C. Q11: Should the scope of any of the proposed definitions be expanded or narrowed, and if so, how and why?

As discussed above in response to FTC Question 12 (Part III.A), the FTC should not narrow any definitions such that the corrections industry or junk fees affecting justice-involved people are excluded from coverage under the rule.

D. Q14: Should a new definition of "Covered Business" be added to narrow the Businesses covered by specific requirements of the rule, in particular the preventative requirements in § 464.2(b)? If so, how should "Covered Businesses" be defined?

> (a) Should the definition of "Covered Business" be limited to businesses in the live-event ticketing and/or short-term lodging industries?
>
> . . .
>
> (c) Should a definition of "Covered Business" exclude businesses to the extent that they offer or advertise credit, lease, or savings products, or to the extent that they extend credit

or leases or provide savings products to consumers? In the alternative, should the definition exclude certain of these businesses or products from only certain provisions? If so, specifically, which businesses and products, which provisions of the Proposed Rule, and why and how, or why not?

No, the FTC should not add a new definition of "Covered Business" to narrow the "Businesses" covered by specific requirements of the rule. To the extent that the FTC does add a definition that excludes certain businesses from coverage under the rule, it should not limit coverage to the live-event ticketing and short-term lodging industries. Nor should any definition of Covered Business exclude businesses that offer credit, lease, or savings products from any provisions of the rule. For the reasons discussed above, the CCS industry should be subject to all requirements of the rule.

E. Q19: Does the proposed definition of Total Price provide sufficient clarity for industries that "all fees or charges a consumer must pay for a good or service and any mandatory Ancillary Good or Service" includes (1) all fees or charges that are not reasonably avoidable and (2) all fees or charges for goods or services that a reasonable consumer would expect to be included with the purchase?

How the definition of Total Price would apply to certain junk fees in the corrections context is not clear. For example, many fees that may vary based on usage are mandatory, though the exact amount that a consumer would be required to pay is not necessarily knowable up front. Additionally, certain fees become mandatory for only some people.

For example, release-card companies charge "purchase fees" for each purchase made, "periodic maintenance fees" for the existence of the account, and several other mandatory ancillary fees (e.g., declined purchase fees and account closure fees). Similarly, with regard to electronic messaging services, some companies charge a mandatory monthly fee for the existence of the account, a fee for each message sent, and a "convenience fee" each time money is deposited onto the account.[43]

The FTC should clarify that, to the extent that certain fees are de facto "excluded from the Total Price" even though they are fees that consumers "must pay" and would otherwise be required to be disclosed as part of the Total Price, they must be disclosed under Section 464.3(b). In other words, Businesses must disclose all fees, either under Section 464.2(a) as part of the Total Price or under Section 464.3(b) because they are "any amount a consumer may pay that is excluded from the Total Price."

Additionally, to provide clarity around what kinds of industry-specific fees must be disclosed as part of the Total Price, we urge the Commission to commit to issuing Advisory Opinions or Informal Staff Opinions, as described in Part VII below.

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[43] *See, e.g.*, Inmate Canteen, "Terms of Service" (last updated Mar. 30, 2022; last visited Jan. 25, 2024), https://team3.inmatecanteen.com/#/policies; *see also* Raher, Prison Policy Initiative, You've Got Mail: The Promise of Cyber Communication in Prisons and the Need for Regulation (2016), https://www.prisonpolicy.org/messaging/report.html.

V. Answers to Questions about the Prohibition on Hidden Fees: The Rule Should Require Itemization and Prohibit (1) Fees that Provide Little or No Value to the Consumer and (2) Excessive Fees

We respond to the following questions about the prohibition on hidden fees:

A. Q*20*: *Section 464.2(a) of the Proposed Rule states, "[i]t is an unfair and deceptive practice and a violation of this part for any Business to offer, display, or advertise an amount a consumer may pay without Clearly and Conspicuously disclosing the Total Price." Is this prohibition clear and understandable? Is this prohibition ambiguous in any way? How, if at all, should this prohibition be improved?*

We urge the FTC to address any ambiguity in this prohibition by requiring itemization of mandatory fees, including the separate listing of one-time fees and recurring fees, as discussed immediately below in our response to FTC Question 22 (Part V.B).

We also flag that other federal statutes and regulations contain disclosure requirements—such as the Electronic Funds Transfer Act and Regulation E,[44] which apply to release cards and money-transfer services. We do not believe Businesses would be unable to comply with the disclosure requirements contained both in the Proposed Rule and in other federal statutes and regulations. The Commission, however, should examine these laws carefully to ensure there is no conflict or confusion.

B. Q22: Should the Proposed Rule address the itemization of fees and charges that make up the "Total Price?" If so, how should the Proposed Rule address itemization and why?

The Proposed Rule should require itemization of all fees and charges that make up the "Total Price." Itemization is necessary in the CCS context to clarify the often opaque charges, for the sake of consumers and regulators alike. For example, in the money-transfer context, companies often charge a single fee for making the transfer. But it is unclear what exactly that fee goes toward and whether it is reasonable. Fees for money-transfer services to people who are incarcerated are often significantly higher than those charged to people who are not, the latter of which commonly range from a high of 3 percent to *free*.[45] When asked, correctional money-transfer companies have claimed that increased "security costs" account for this difference. But without itemization, it is challenging to vet this claim. Is the reason for the increased cost truly "security"—which arguably is important whether or not the recipient of the transfer is incarcerated, and which arguably is even *easier*[46] in the closed carceral universes in which these

[44] 5 U.S.C. § 1693 *et seq.*

[45] As noted in Part III.A above, the average correctional money-transfer fee is around 20 percent of the principal amount in 26 states that issue monopoly contracts; the highest fees observed were 37 percent. By comparison, services like Venmo, CashApp, Paypal, and Zelle often provide *free* automated clearing house ("ACH") transfers from bank accounts (correctional money-transfer companies do not offer an ACH option), and they offer transfers from a credit or debit card either for free or for a typical fee of 3 percent or less.

[46] Whereas a service like Venmo must facilitate transfers between two large groups of customers (senders and recipients) and manage the resulting complexities that can arise in either group (from errors or disputes), a

companies operate? Or is the real reason that the cost is much higher simply because the companies can get away with it, due to the aforementioned monopolies and existence of a captive consumer base?

The Commission should add a subsection (1) after Section 464.2(a) that requires Businesses to:

- Separately identify and quantify all mandatory fees.
- If applicable, state which fees are one-time fees and which are recurring (e.g., weekly or monthly) fees.
    - Any one-time fees must be listed together and appear under the header: "One-time fees."
    - Any recurring fees must be listed together and appear under the header: "Recurring fees."

In addition, we urge the Commission to commit to issuing Advisory Opinions or Informal Staff Opinions that include examples of how Businesses can comply with any itemization requirement.

C. Q23: By requiring mandatory fees to be included in the Total Price, does the requirement in 464.2(a) effectively eliminate fees that provide little or no value to the consumer in exchange for the charge? Why or why not? Are there any such fees that would not be eliminated by the Proposed Rule?

The requirement in Section 464.2(a) will not effectively eliminate fees charged by private companies operating in the CCS market that provide little or no value to the consumer in exchange for the charge. As drafted, Section 464.2(a) would allow Vendors to still charge junk fees, as long as the business includes those junk fees in the Total Price. And because these companies frequently have monopolies over a particular consumer base (*see* Part II, above), they likely would continue to so impose such fees without fear of an adverse market response. These fees are not tied to the actual cost of providing the service but rather set to maximize profits, and consumers pay them because they have no competing option.

The following fees charged by Vendors are examples of fees that provide little or no value to consumers:

- *Release-card purchase fees.* Although card issuers do incur some costs to process payment transactions, they are already compensated for these costs through "interchange fees," which are fees the merchant's bank pays to the card issuer's bank. Collecting fee revenue from cardholders for processing purchase transactions thus appears to be a form of double recovery for the company. Put another way, because companies are already compensated for the service of processing purchases, consumers receive no value in return for paying these fees.

- *Release-card periodic maintenance fees.* Because interchange fees compensate card issuers for the cost of processing transactions, periodic account maintenance fees also seem to be

correctional money-transfer service has only one recipient to deal with under any given contract (the correctional agency that awarded the contract).

unnecessary fees that provide no value to the consumers. Release-card companies already enjoy interest-free use of unspent cardholder funds sitting in their accounts, so it is not clear why cardholders should pay a fee for the mere existence of their account.

- *Electronic-messaging maintenance fees.* Similar to periodic maintenance fees charged in the release-card context, some electronic messaging companies charge their incarcerated users monthly fees, notwithstanding that they are already compensated for the costs of providing their service through fees charged for every message sent.[47] These monthly fees appear to provide no additional value to consumers and are just an opportunity for rent seeking by the companies.

- *Release-card declined-purchase fees.* Many release-card companies charge fees for declined transactions, with an average fee amount of 62¢.[48] No available evidence indicates that companies incur any costs when a transaction is declined. Accordingly, these fees appear to be merely for generating profit at the expense of already economically marginalized consumers, providing no benefit to these consumers in return.

It is very unlikely that the Proposed Rule's prohibition on hidden fees would eliminate these fees; and indeed, many companies already disclose these fees. To provide greater consumer benefit, the FTC should make clear that the Proposed Rule's prohibition on misleading fees would cover such fees, as we propose in the following section.

D. Q24: Should the Proposed Rule explicitly prohibit fees that provide little or no value to the consumer in exchange for the charge? Why or why not? Should such a rule apply to optional fees? Why or why not? What should the Commission consider in determining if a fee provides little or no value to the consumer?

The Proposed Rule should explicitly prohibit all fees—both mandatory and optional—that provide little or no value to the consumer in exchange for the charge. The Proposed Rule should do so because, as discussed in the section immediately above, many such fees will not be eliminated by the rule as currently written.

The prohibition on misleading fees in Section 464.3 may already prohibit some such fees. For example, by charging a consumer a "declined-purchase fee," when no available evidence indicates that release-card companies incur any costs when a transaction is declined, the company would misrepresent the nature and purpose of the fee. The Commission should clarify and make explicit that these practices would violate the rule, both through the text of the rule itself and by committing to issue Advisory Opinions or Staff Interpretations upon request to interpret the final rule.

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[47] Inmate Canteen, "Terms of Service" (last updated Mar. 30, 2022; last visited Jan. 29, 2024), available at https://team3.inmatecanteen.com/#/policies (stating "[a]ccounts will be subject to a $1.00 charge per month").

[48] Using records in the CFPB's prepaid product agreements database (the "Database"), PPI collected fee disclosures for all active prepaid cards that: (1) were marked with the product-type code "prison release," or (2) were associated with known release-card issuers, marketers, or program managers. Using these parameters, PPI examined documents for forty-eight active release cards issued by five different financial institutions. *See* Appendix B.

E. Q25: Should the Proposed Rule prohibit fees that are excessive? Why or why not? How would such a rule define excessive fees?

The rule should prohibit excessive fees and also explicitly prohibit fees that significantly exceed the cost of providing a good or service. As detailed in our comments in response to the ANPR, many private companies operating in the corrections space charge fees that appear to significantly exceed the cost to the company of providing that service and could be considered excessive in amount.

For example, providers of electronic messaging services for people who are incarcerated charge up to 50¢ per message, a price that is likely set with an eye toward the cost of the most similar competing product: a single-piece first-class letter.[49] Indeed, one of the largest providers, JPay, expressly admits to setting rates in relation to postage prices, and refers to prepaid message credits as "stamps."[50] Postage rates are legally required to cover the U.S. Postal Service's direct and indirect costs of delivering first-class mail.[51] However, the U.S. Postal Service's costs have absolutely no relevance to the cost of providing electronic messaging services in correctional facilities. Moreover, electronic messaging services typically take advantage of hardware that is already installed for other purposes (e.g., commissary ordering or video calls), and the costs to operate a closed electronic messaging network are likely quite low.[52] In fact, the cost to the Vendor to send a message should be nearly nothing, as it requires no paper or staff labor from the company, and there are many other ways companies make up the cost of providing the tablets these messages are often sent through.[53] Thus, charging up to 50¢ per message is excessive.

As another example, release cards issued by Central Bank of Kansas City (and managed by Numi Financial) charge a $9.95 fee for closing an account and receiving a check. The same issuer allows cardholders to transfer their remaining balance via ACH for no fee at all, suggesting that it does not cost the company much (or anything) to close the account. Thus, charging nearly $10 for a check payment that costs 68¢ (the current postage for a one-ounce first-class letter) plus the de minimis cost of printing a check seems excessive.

Some of the most excessive fees occur in the context of money-transfer services. As noted in Part III.A above, whereas free-world money-transfer services often provide *free* transfers from bank accounts, or transfers from a credit- or debit-card for 3 percent or less, correctional money-transfer service providers typically charge a fee of about 20 percent. The fees charged by

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[49] Mike Wessler, Prison Policy Initiative, SMH: The Rapid & Unregulated Growth of E-Messaging in Prisons (2023), https://www.prisonpolicy.org/reports/emessaging.html; *see also* Stephen Raher, Prison Policy Initiative, You've Got Mail: The Promise of Cyber Communication in Prisons and the Need for Regulation (2016), https://www.prisonpolicy.org/messaging/report.html.

[50] JPay, "Inmate Services: Email" (last accessed Jan. 26, 2023), https://www.jpay.com/pemessages.aspx (explaining that "each email requires a 'Stamp,' often available at more affordable rates than traditional postage"); *see also* JPay, "Buying Stamps" (last accessed Jan. 29, 2024), https://www.jpay.com/jpayhelp/Content/products%20and%20services/Email/Buying%20stamps.htm.

[51] Raher, Prison Policy Initiative, You've Got Mail: The Promise of Cyber Communication in Prisons and the Need for Regulation (2016), https://www.prisonpolicy.org/messaging/report.html (citing 39 U.S.C. § 3622(c)(2)).

[52] *Id.*

[53] Wanda Bertram & Peter Wagner, *How to Spot the Hidden Costs in a "No-Cost" Tablet Contract: There's No Such Thing as a Free Lunch—or a Free Tablet*, Prison Policy Initiative (July 24, 2018), https://www.prisonpolicy.org/blog/2018/07/24/no-cost-contract/.

Vendors appear to far exceed the actual cost of providing the service. Multiple consumers have submitted complaints to the CFPB regarding excessive fees for money-transfers to their incarcerated loved ones. One California consumer, for example, reported:

> There is a service called JPAY for sending commissary money and messages to XXXX. They charge {$9.00} for each money transfer by credit card. They also charge a fee to send an email to a XXXX. These exorbitant fees are just plain greedy exploitation of XXXX's families.[54]

A South Carolina consumer reported similarly egregious fees for JPay money transfers:

> Between XXXX, 2020 up to the present time, I have been making deposits between {$25.00} and {$100.00}, at least bi-weekly to a JPay account in the State of Florida XXXX XXXX XXXX System. . . . We are . . . charged {$11.00} as a service charge to deposit {$100.00} into an account. There are also deductions for JPay that are deducted from purchases made by the inmate and a weekly service charge to maintain the account.[55]

In determining whether a fee provides little or no value to the consumer, the Commission should consider:

- whether the fee is reasonable and proportional to the cost of the good or service provided by the covered entity;
- the reason for which the covered entity charges the fee; and
- the degree of available consumer choice for the good or service, including whether there are viable alternatives available that provide the consumer with the opportunity to avoid an excessive fee.

Finally, we note that the prohibition on misleading fees in Section 464.3 already prohibits some excessive fees to the extent that the Business has misrepresented the nature and purpose of those fees. As discussed below in Part VII, the Commission should clarify that this is the case by committing to issuing Advisory Opinions or Informal Staff Opinions.

VI. Answers to Questions about the Prohibition on Misleading Fees: The Rule Should Prohibit Businesses from Misrepresenting the Nature and Purpose of All Fees, Including Vague Descriptions of Charges

We respond to the following questions about the prohibition on misleading fees:

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[54] Excerpt of CFPB Complaint No. 4652341.
[55] Excerpt of CFPB Complaint No. 3985691.

A. *Q26: Section 464.3(a) of the Proposed Rule states, "[i]t is an unfair and deceptive practice and a violation of this part for any Business to misrepresent the nature and purpose of any amount a consumer may pay, including the refundability of such fees and the identity of any good or service for which fees are charged." Is this prohibition clear and understandable? Is this prohibition ambiguous in any way? How, if at all, should this prohibition be improved?*

The FTC should clarify that descriptions of fees that are not understandable to a reasonable consumer misrepresent the nature and purpose of such fees, including if the disclosure misrepresents the identity of any good or service for which fees are charged. For example, in the CCS context, the unspecified "convenience fees" charged by certain electronic messaging Vendors,[56] the "administrative fees" charged by certain private pretrial diversion companies,[57] and the large "infrastructure fees" charged by certain tablet Vendors[58] would violate this prohibition.

The FTC should also clarify that a Business misrepresents the nature and purpose of a fee in violation of Section 464.3(a) if they inform a consumer that they must pay a certain amount for a particular stated purpose, but then the true cost to the company is less than the amount stated and charged. For example, a release-card company that charges a $9.95 account-closure fee, as is the case with a card managed by Numi Financial, misrepresents the nature and purpose of that fee if the costs of closing the account are much lower (as seems to be the case).[59] Likewise, if a release-card issuer charges "purchase fees" even though the issuer's costs are already covered through interchange fees, this would constitute a misrepresentation of the identity of the service for the which the fee was charged.

The FTC should provide guidance and examples explaining the circumstances under which vague and excessive fees are prohibited through issuing Advisory Opinions or Informal Staff Opinions.

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[56] Raher, Prison Policy Initiative, You've Got Mail: The Promise of Cyber Communication in Prisons and the Need for Regulation (2016), https://www.prisonpolicy.org/messaging/report.html (noting that InmateCanteen.com *requires* users to make advance deposits, which at the time of PPI's study were subject to a flat $8.95 "convenience fee").

[57] Highsmith, Nat'l Consumer L. Ctr., *Commercialized (In)justice: Consumer Abuses in the Bail and Corrections Industry* 27–28 (2019), available at https://www.nclc.org/wp-content/uploads/2022/09/report-commercialized-injustice.pdf (28 (citing Rebecca Burns, *Diversion Programs Say They Offer a Path Away from Court, but Critics Say the Tolls Are Hefty*, ProPublica Illinois (Nov. 13, 2018), https://www.propublica.org/article/diversion-programs-illinois-criminal-justice-system-bounceback-correctivesolutions#:~:text=Illinois%20Reporting%20Project-,Diversion%20Programs%20Say%20They%20Offer%20a%20Path%20Away%20From%20Court,ways%20they%20might%20not%20otherwise).

[58] Mack Finkel & Wanda Bertram, *More States Are Signing Harmful "Free Prison Tablet" Contracts*, Prison Policy Initiative (Mar. 7, 2019; updated Mar. 28, 2021), available at https://www.prisonpolicy.org/blog/2019/03/07/free-tablets/.

[59] *See* Appendix B; *see also* Stephen Raher, *Insufficient Funds: How Prison and Jail "Release Cards" Perpetuate the Cycle of Poverty*, Prison Policy Initiative (May 3, 2022),

1. ***Q26(a): Does § 464.3(a)'s provision prohibiting misrepresentations regarding "the nature and purpose of any amount a consumer may pay" provide sufficient clarity that it includes any amount included in the Total Price if that amount is also itemized separately from the Total Price?***

Yes, the provision prohibiting misrepresentations regarding "the nature and purpose of any amount a consumer may pay" clearly includes any amount included in the Total Price if that amount is itemized separately. To the extent the provision is not clear, we urge the Commission to commit to issuing Advisory Opinions or Informal Staff Opinions as described in Part VII below.

2. ***Q26(b): Does § 464.3(a)'s provision prohibiting misrepresentations regarding "the nature and purpose of any amount a consumer may pay" provide sufficient clarity that it includes any amount excluded from the Total Price such as Shipping Charges, Government Charges, optional charges, voluntary gratuities, and invitations to tip?***

No, this provision is not clear. The FTC should explicitly state that Section 464.3(a) prohibits misrepresentations regarding any amount included in the Total Price as well as any other fee or charge the consumer may pay, such as Shipping Charges, Government Charges, fines, penalties, optional charges, voluntary gratuities, and invitations to tip.

We recommend that the Commission modify the provision so that it reads:

> It is an unfair and deceptive practice and a violation of this part for any Business to misrepresent the nature and purpose of any amount included in the Total Price and any other fee, charge, or other amount the consumer may pay, including but not limited to Shipping Charges, Government Charges, fines, penalties, optional charges, voluntary gratuities, and invitations to tip. Violations of this part include misrepresenting the refundability of fees and the identity of any good or service for which fees are charged.

In addition to implementing these changes, we urge the Commission to commit to issuing Advisory Opinions or Informal Staff Opinions as described in Part VII below.

B. Q27: Section 464.3(b) of the Proposed Rule states, "[a] Business must disclose Clearly and Conspicuously before the consumer consents to pay the nature and purpose of any amount a consumer may pay that is excluded from the Total Price, including the refundability of such fees and the identity of any good or service for which fees are charged." Is this prohibition clear and understandable? Is this prohibition ambiguous in any way? How, if at all, should this prohibition be improved?

The FTC should ensure that this provision requires an itemized disclosure of any amounts that a consumer may pay, such as optional fees, that may be excluded from the Total Price. We discuss the specifics of this itemized disclosure below in response to FTC Question 27(b) (Part VI.B.2).

Additionally, the FTC should clarify that any fees that may not be encompassed by the Total Price and therefore are not disclosed under Section 464.2(a) must be disclosed under Section 464.3(b). In other words, as discussed in response to FTC Question 22 (Part V.B), Businesses should be required to disclose and itemize all fees, either under Section 464.2(a) as part of the Total Price or under Section 464.3(b) because they are "any amount a consumer may pay that is excluded from the Total Price."

Finally, consistent with the response to FTC Question 26 (Part VI.A), the FTC should clarify that vague descriptions of fees that are not understandable to a reasonable consumer misrepresent the nature and purpose of such fees for purposes of Section 464.3

1. ***Q27(a): Section 464.3(b) of the Proposed Rule requires certain disclosures "before the consumer consents to pay." Should the Proposed Rule instead require Businesses to disclose Clearly and Conspicuously the nature and purpose of any amount a consumer may pay that is excluded from the Total Price "before the consumer consents to pay and before obtaining a consumer's billing information"?***

The FTC should ensure that consumers receive as much notice as possible of the existence of certain mandatory fees, even if the amount they will owe is not knowable until usage occurs or if they will owe the fees only under certain circumstances, meaning that such fees may be de facto excluded from the Total Price.

For example, release-card companies often charge purchase fees, declined-purchase fees, periodic maintenance fees, and customer service fees.[60] Although a card issuer may not be able to quantify such fees and include them in the Total Price (because the fees vary based on account usage), the issuer should still be able to disclose the existence of such fees in advertisements and certainly must disclose their existence before a consumer consents to pay any amount to the company.

Similarly, tablet companies often market tablets as being "free" and describe them as a "gift" to incarcerated people.[61] But while the tablet hardware may itself be free, costly fees are charged to use it. Many tablet providers, for example, charge users a *per-minute* fee to read e-books, send messages, or listen to music.[62] (In some cases, these costly options are being used to replace free

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[60] Highsmith, Nat'l Consumer L. Ctr., *Commercialized (In)justice: Consumer Abuses in the Bail and Corrections Industry* 27–28 (2019), available at https://www.nclc.org/wp-content/uploads/2022/09/report-commercialized-injustice.pdf at (citing Rebecca Burns, *Diversion Programs Say They Offer a Path Away from Court, but Critics Say the Tolls Are Hefty*, ProPublica Illinois (Nov. 13, 2018), https://www.propublica.org/article/diversion-programs-illinois-criminal-justice-system-bounceback-correctivesolutions#:~:text=Illinois%20Reporting%20Project-,Diversion%20Programs%20Say%20They%20Offer%20a%20Path%20Away%20From%20Court,ways%20they%20might%20not%20otherwise).

[61] *See, e.g.*, Mack Finkel & Wanda Bertram, *More States Are Signing Harmful "Free Prison Tablet" Contracts*, Prison Policy Initiative (Mar. 7, 2019; updated Mar. 28, 2021), https://www.prisonpolicy.org/blog/2019/03/07/free-tablets/; Wanda Bertram & Peter Wagner, *How to Spot the Hidden Costs in a "No-Cost" Tablet Contract: There's No Such Thing as a Free Lunch—or a Free Tablet*, Prison Policy Initiative (July 24, 2018), https://www.prisonpolicy.org/blog/2018/07/24/no-cost-contract/.

[62] Nelson & Raher, *Captive Consumers: How government agencies and private companies trap and profit off incarcerated people and their loved ones*, Inquest (Mar. 19, 2022), https://inquest.org/captive-consumers/; Mack

ones.[63]) Once again, although these costs could not be quantified and included in the Total Price because of usage variability, the tablet Vendor should still be able to disclose the existence of such fees in advertisements and before a consumer consents to pay any amount to the company.

To address circumstances like these, the FTC should clarify that "before the consumer consents to pay" means before the consumer agrees to "make any payment" that is part of the transaction (this clarification to the provision's text is reflected below in response to FTC Question 27(b) (Part VI.B.2). A Business would comply with this requirement by including the information in any offer, display, or advertisement or by disclosing the information before the consumer makes any payment. Complying with such a requirement should not be too onerous, especially when compared to the collective benefit that consumers will receive.

2. ***Q27(b): Section 464.3(b) of the Proposed Rule requires disclosures regarding "the nature and purpose of any amount a consumer may pay that is excluded from the Total Price." Does this provision provide sufficient clarity that it includes Shipping Charges, Government Charges, optional charges, voluntary gratuities, and invitations to tip?***

This provision should require Businesses to provide an itemized disclosure of any amounts that a consumer may pay that are excluded from the Total Price. This exclusion may be because these amounts are truly optional fees. Or mandatory amounts may be de facto excluded from the Total Price because, as discussed above in response to FTC Question 19 (Part IV.E), the exact amount of these charges is not knowable up front because it depends on certain conditions being met or varies based on usage. To ensure the Proposed Rule is clear as to what kinds of charges must be disclosed (and as to the timing of disclosure, as discussed above in response to FTC Question 27(a) (Part VI.B.1), we suggest the following edits to Section 464.3(b):

> A Business must disclose Clearly and Conspicuously before the consumer consents to make any payment the nature, purpose, and amount of any costs that a consumer may pay that are excluded from the Total Price, such as Shipping Charges, Government Charges, fines, penalties, optional charges, charges incurred if certain criteria or conditions are met, voluntary gratuities, and invitations to tip. Where the additional costs are variable, the Business must disclose the existence of such costs. The Business's disclosure must include~~including~~ the refundability of such fees and the identity of any good or service for which fees are charged.

These proposed changes clarify that, in the CCS industry, fees that become mandatory if certain conditions are met (e.g., in the context of release cards, purchase fees, declined-purchase fees, periodic maintenance fees, and account closure fees) and fees that vary based on usage (e.g., the amount of time that a particular application on a tablet is used) must be disclosed and itemized.

Finkel & Wanda Bertram, *More States Are Signing Harmful "Free Prison Tablet" Contracts*, Prison Policy Initiative (Mar. 7, 2019; updated Mar. 28, 2021), https://www.prisonpolicy.org/blog/2019/03/07/free-tablets/.

[63] As we noted in our comments responding to the ANPR, Pennsylvania correctional facilities ended book donations to incarcerated people in favor of pricy e-books, many of which were lifted directly from a free online library, and one large Florida jail even took away Bibles, replacing them with low-quality e-Bibles on tablets.

VII. The FTC Should State That It Will Be Issuing Advisory Opinions or Staff Interpretations Upon Request to Interpret the Final Rule

The Proposed Rule is relatively concise, consisting of general standards with broad applicability. It will cover a range of businesses. There will likely be questions of its application with respect to specific fees or circumstances. We recommend that the FTC address this possibility by including a discussion in the Statement of Basis and Purpose stating that it will answer such questions with formal FTC Advisory Opinions or Informal Staff Opinion Letters.

There is certainly precedent for both types of issuances. The FTC issued four formal Advisory Opinions under the Fair Debt Collection Practices Act prior to the Dodd-Frank Act amendments, and one formal Advisory Opinion interpreting the Holder Rule. The FTC staff has issued hundreds of informal staff opinion letters over the decades interpreting the Credit Practices Rule, as well as the Fair Credit Reporting Act before it was amended by Dodd-Frank to transfer authority to the CFPB.

The Proposed Rule primarily regulates junk fees by using disclosure mechanisms. In our experience, disclosure regimes sometimes require clarification or refinement with respect to specific fees or circumstances. For example, Regulation Z (Truth in Lending) and its Official Staff Interpretations include numerous provisions that deal with specific issues, circumstances, and fees.

We recommend that the FTC explicitly acknowledge its willingness to address issues of specific application through the use of formal Advisory Opinions or Informal Staff Opinion Letters. Such a commitment could be made in the Statement of Basis and Purpose. As the FTC knows, the Statement of Basis and Purpose is a key component required for any final FTC trade regulation rule and will be examined closely by a court in any potential legal challenge. Explaining in the Statement how the FTC will deal with issues of specific application might allay any concerns on the part of industry or the courts that the rule does not provide specific enough guidance.

VIII. Conclusion

To help protect justice-involved people and their families from hidden, misleading, and excessive fees, we urge the Commission to adopt a final rule that applies to the CCS industry and that is clarified and strengthened in the ways we outline above. If you have any questions about these comments, please contact Caroline Cohn at ccohn@nclc.org or 617-534-8010.

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)
Prison Policy Initiative
Stephen Raher

IX. Appendices

APPENDIX A: Money-Transfer Fees Table

APPENDIX B: Release-Card Fees Table

APPENDIX C: Electronic-Messaging Fees Table

APPENDIX D: Tablets Fees Table

APPENDIX A

This table shows the results of the Prison Policy Initiative's survey of all fifty state departments of corrections' money-transfer services. The table shows which companies (if any) hold the contract(s) to provide money-transfer services for the system, as well as information about their fees. Each agency name links to its policy. This table is also available at https://www.prisonpolicy.org/blog/2021/11/09/moneytransfers/.

Agency with link to policy	Money-Transfer Vendor(s)	Type of Vendor & Status of Competition	Mailed Payments Allowed?	Fee(s) for a $20 online transfer	Fee(s) as percentage of amount transferred
Alabama Department of Corrections	Access Corrections	Monopoly	Yes	$2.95	15%
Alaska Department of Corrections	None–DOC accepts mailed payments only	N/A – handled in-house	Required (no online option)	N/A	
Arizona Department of Corrections Rehabilitation & Reentry	Securus (JPay), GTL, Keefe	Multiple options	No	$0.95 (Keefe)/ $0.95 (JPay)/ $1.00 (GTL)	5% (all options)
Arkansas Department of Corrections	In-house solution powered by Information Network of Arkansas (https://ina.arkansas.gov/); Access Corrections	Multiple options (including in-house)	Yes	$2.00 (in-house)/ $1.75 (Access Corr)	10% (in-house)/ 9% (Access)
California Department of Corrections & Rehabilitation	Securus (JPay), GTL, Access Corrections	Multiple options	Yes	$1.95 (JPay)/ $3.95 (GTL)/ $3.50 (Access)	10% (JPay)/ 20% (GTL)/ 18% (Access)
Colorado Department of Corrections	Securus (JPay), GTL, Western Union	Multiple options	No	$3.70 (JPay)/ $2.75 (GTL)/ $3.95 (WU)	19% (JPay)/ 14% (GTL)/ 20% (WU)
Connecticut Department of Correction	Securus (JPay), GTL (Touch Pay), Western Union	Multiple options	Yes	$2.95 (JPay)/ $3.95 (WU)/ Touchpay unverifiable	15% (JPay)/ 20% (WU)
Delaware Department of Correction	DOC operates in-house	N/A – handled in-house	Required (no online option)	N/A	
Florida Department of Corrections	Securus (JPay)	Monopoly	Yes	$4.95	25%
Georgia Department of Corrections	Securus (JPay)	Monopoly	Yes	$3.50	18%
Hawaii Department of Public Safety		N/A – handled in-house	Required (no online option)	N/A	
Idaho Department of Correction	Access Corrections	Monopoly	Yes	$7.45	37%

Agency with link to policy	Money-Transfer Vendor(s)	Type of Vendor & Status of Competition	Mailed Payments Allowed?	Fee(s) for a $20 online transfer	Fee(s) as percentage of amount transferred
Illinois Department of Corrections	Securus (JPay), GTL, Western Union	Multiple options	Yes	$6.95 (JPay)/ $3.50 (GTL)/ $3.95 (WU)	35% (JPay)/ 18% (GTL)/ 20% (WU)
Indiana Department of Correction	GTL	Monopoly	Yes	$2.20	11%
Iowa Department of Corrections	Securus (JPay), Access Corrections, Western Union	Multiple options	Yes	$3.95 (JPay)/ $6.49(Access)/ $3.95 (WU)	20% (JPay)/ 32% (Access)/ 20% (WU)
Kansas Department of Corrections	Securus (JPay), Access Corrections	Multiple options	Yes	$6.70 (JPay)/ $6.70 (Access)	34% (JPay)/ 34% (Access)
Kentucky Department of Corrections	Access Corrections	Monopoly	Yes	Data not available	
Louisiana Department of Public Safety & Corrections	Securus (JPay)	Monopoly	Yes	$3.50	18%
Maine Department of Corrections	DOC operates in-house	N/A – handled in-house	Yes	$2.40	12%
Maryland Department of Public Safety & Correctional Services	GTL	Monopoly	Yes	Data not available	
Massachusetts Department of Correction	Access Corrections	Monopoly	Yes	Data not available	
Michigan Department of Corrections	GTL	Monopoly	Yes	$3.95	20%
Minnesota Department of Corrections	Securus (JPay)	Monopoly	Yes	$3.95	20%
Mississippi Department of Corrections	Premier Services (Cashless Systems, Inc.)	Monopoly	No	$3.35	17%
Missouri Department of Corrections	Securus (JPay)	Monopoly	Yes	$3.99	20%
Montana Department of Corrections	DOC operates in-house	N/A – handled in-house	Yes	N/A	
Nebraska Department of Correctional Services	Securus (JPay)	Monopoly	Unclear	$3.95	20%
Nevada Department of Corrections	Access Corrections	Monopoly	Yes	$6.95	35%
New Hampshire Department of Corrections	GTL	Monopoly	Yes	Data not available	
New Jersey Department of Corrections	Securus (JPay)	Monopoly	Yes	$2.95	15%
New Mexico Corrections Department		N/A – handled in-house	Required (no online option)	N/A	

Agency with link to policy	Money-Transfer Vendor(s)	Type of Vendor & Status of Competition	Mailed Payments Allowed?	Fee(s) for a $20 online transfer	Fee(s) as percentage of amount transferred
New York Department of Corrections & Community Supervision	Securus (JPay)	Monopoly	Yes	$3.99	20%
North Carolina Department of Public Safety	Securus (JPay)	Monopoly	Yes	$3.45	17%
North Dakota Department of Corrections & Rehabilitation	Securus (JPay)	Monopoly	Yes	$3.90	20%
Ohio Department of Rehabilitation & Correction	GTL	Monopoly	Yes	$3.50	18%
Oklahoma Department of Corrections	Securus (JPay)	Monopoly	Yes	$3.95	20%
Oregon Department of Corrections	Securus (JPay), ICSolutions/Access Corrections	Multiple options	Yes	$3.95 (JPay)/ $5.95 (ICS/Access)	20% (JPay)/ 30% (ICS/Access)
Pennsylvania Department of Corrections	Securus (JPay)	Monopoly	Yes	$1.75	9%
Rhode Island Department of Corrections	Access Corrections	Monopoly	Yes	Data not available	
South Carolina Department of Corrections	GTL	Monopoly	Yes	$4.00	20%
South Dakota Department of Corrections	JailATM	Monopoly	Yes	$3.25	16%
Tennessee Department of Correction	Securus (JPay)	Monopoly	Yes	$3.90	20%
Texas Department of Criminal Justice	Securus (JPay), GTL (TouchPay), Access Corrections, America's Cash Express, eCommDirect (state-operated)	Multiple options	Yes	Data not available	
Utah Department of Corrections	Access Corrections	Monopoly	Yes	$6.95	35%
Vermont Department of Corrections	Access Corrections	Monopoly	Yes	Data not available	
Virginia Department of Corrections	Securus (JPay)	Monopoly	Yes	$2.95	15%
Washington Department of Corrections	Securus (JPay), Western Union	Multiple options	Yes	$3.95 (JPay)/ $3.95 (WU)	20% (both)

Agency with link to policy	Money-Transfer Vendor(s)	Type of Vendor & Status of Competition	Mailed Payments Allowed?	Fee(s) for a $20 online transfer	Fee(s) as percentage of amount transferred
West Virginia Division of Corrections and Rehabilitation	GTL, JailATM	Multiple options	No	$2.75 (GTL)/ JailATM unavailable	
Wisconsin Department of Corrections	Access Corrections	Monopoly	Yes	Data not available	
Wyoming Department of Corrections	Access Corrections	Monopoly	Unclear	$5.95	30%

APPENDIX B

This table shows the results of the Prison Policy Initiative's (PPI) analysis of fee disclosures that release-card companies had filed with the CFPB. PPI collected fee disclosures for all active prepaid cards that: (1) were marked with the product-type code "prison release," or (2) were associated with known release-card issuers, marketers, or program managers. Using these parameters, PPI examined documents for forty-eight active release cards issued by five different financial institutions. This table is also available at https://www.prisonpolicy.org/blog/2022/05/03/releasecards/.

				Account Maintenance Fees			Transaction Fees		ATM Fees			Inactivity Fees and Policies			Other Information	
CFPB Database ID	Issuer	Program Manager	Correctional Agency	Weekly Fee	Monthly Fee	Grace Period	Purchase Fee	Declined Purchase	Balance Inquiry	Withdrawal	Declined Transaction	Inactivity Fees and Policies	Inactivity Period	Fee to Refund/Close Account	Miscellaneous Fees	Effective Date of Cardholder Agreement
C 10 AF Legacy (158574)	Axiom Bank	Rapid Financial		2.50		3 days	—	—	1.50	2.95	2.95	—		—	card replacement (2.99)	1/10/20
C 10 Legacy AF ALDOC (158575)	Axiom Bank	Rapid Financial	Alabama DOC	1.50		5 days	—	—	1.50	2.75	2.75	—		—	card replacement (2.99)	1/10/20
C 11 AF ALDOC WR1 (158576)	Axiom Bank	Rapid Financial	Alabama DOC	—	—	—	—	—	1.50	2.95	2.95	2.00/week	90 days	—	card replacement (2.99)	1/10/20
C 12 AF WR NMF (158577)	Axiom Bank	Rapid Financial		—	—	—	—	—	1.50	2.95	2.95	2.00/week	90 days	—	card replacement (2.99)	1/10/20
C 13 AF AL DOC (158578)	Axiom Bank	Rapid Financial	Alabama DOC	1.50		5 days	—	—	1.50	2.75	2.75	—		—	card replacement (2.99)	1/10/20
C 14 Legacy AF (158579)	Axiom Bank	Rapid Financial		2.50		3 days	—	—	1.50	2.95	2.95	—		—	card replacement (2.99)	1/10/20
C 15 NV DOC (158580)	Axiom Bank	Rapid Financial	Nevada DOC	1.50		3 days after activiation (or 90 days after issuance, if not activated)	—	—	1.50	2.75	2.75	—		—	card replacement (2.99)	1/10/20
C 18 IA DOC (158581)	Axiom Bank	Rapid Financial	Iowa DOC	—	—	—	—	—	1.50	2.95	2.95	2.00/week	180 days	—	card replacement (2.99)	1/10/20
C 20 GEO Legacy (158582)	Axiom Bank	Rapid Financial	GEO Group	—	—	—	—	—	—	—	—	2.00/week	180 days	—	—	1/10/20
C 22 CADDO PARISH WR (158583)	Axiom Bank	Rapid Financial	Caddo Parish (LA)	2.00		3 days	—	—	1.50	no ATM usage allowed		—		—	card replacement (2.99)	1/10/20
C 40 RP (158584)	Axiom Bank	Rapid Financial		2.50		3 days	—	—	1.50	2.95	2.95	—		—	card replacement (2.99)	1/10/20
C 45 Legacy RP (158585)	Axiom Bank	Rapid Financial		2.50		3 days	—	—	1.50	2.95	2.95	—		—	card replacement (2.99)	1/10/20
Elan Prepaid (44557)	US Bank	—	Nebraska DOCS	—	—	—	—	—	1.00 (out of network only)	1.25 (out of network only)	—	2.00/mo	270 days	not disclosed	Card replacement (5.00, or 10.00 for expedited), int'l (vars)	10/12/21
Elan Prepaid (44555)	US Bank	—	Arkansas DOC; Hampden County		2.00	none listed	—	—	0.50 (out of network only)	0.99 (out of network only)	—	—		not disclosed	Card replacement (5.00), bank withdrawal (3.00)	10/12/21
ND-Department of Corrections (46984)	Comerica	—	North Dakota DOC	—	—	—	—	—	—	1.25 (out of network only)	—	2.00/mo	12 months		Expedited card replacement ($10)	4/1/19
Prestige Prepaid Mastercard version 1B (199643)	Central Bank of Kansas City	Numi Financial		2.50		3 days	—	0.50	1.00	2.95	1.00	—		9.95		4/6/20
Prestige Prepaid Mastercard version 1C (199644)	Central Bank of Kansas City	Numi Financial		2.50		3 days	—	0.50	1.00	2.95	1.00	—		9.95		4/6/20
Prestige Prepaid Mastercard version 1CNO (199645)	Central Bank of Kansas City	Numi Financial		2.50		3 days	—	—	1.00	2.95	1.00	—		9.95		9/24/20

Prestige Prepaid Mastercard version 3B (199646)	Central Bank of Kansas City	Numi Financial		2.50		3 days	0.95 (PIN only)	0.50	1.00 (out of network only)	—	1.00	—		9.95		4/6/20
Prestige Prepaid Mastercard version 4B (199647)	Central Bank of Kansas City	Numi Financial		2.50		7 days	—	0.50	1.00	—	1.00	—		9.95		4/6/20
Prestige Prepaid Mastercard version 6B (199648)	Central Bank of Kansas City	Numi Financial		2.50		2 years	1.00 (PIN only)	0.50	1.00	2.95	1.00	—		9.95		4/6/20
Prestige Prepaid Mastercard version 7B (199649)	Central Bank of Kansas City	Numi Financial			5.95	5 days	—	0.50	1.00	2.95	1.00	—		9.95		4/6/20
Prestige Prepaid Mastercard version 7C (199650)	Central Bank of Kansas City	Numi Financial			5.95	5 days	—	0.50	1.00	2.95	1.00	—		9.95		4/6/20
Prestige Prepaid Mastercard version 7CNO (199651)	Central Bank of Kansas City	Numi Financial			5.95	5 days	—	—	1.00	2.95	1.00	—		9.95		4/6/20
Prestige Prepaid Mastercard version 7D (199652)	Central Bank of Kansas City	Numi Financial			5.95	15 days	—	0.50	1.00	2.95	1.00	—		9.95		4/6/20
Prestige Prepaid Mastercard version DOC1 (199653)	Central Bank of Kansas City	Numi Financial		—	—	—	—	—	—	—	—	—		—		4/6/20
Prestige Prepaid Mastercard version DOC2 (199654)	Central Bank of Kansas City	Numi Financial			2.50	60 days	—	—	1.00 (out of network only)	—	1.00	—		—		4/6/20
Prestige Prepaid Mastercard version DOC3 (199655)	Central Bank of Kansas City	Numi Financial			5.95	5 days	—	0.50	1.00	2.95	1.00	—		9.95		4/6/20
Prestige Prepaid Mastercard version DOC4 (199656)	Central Bank of Kansas City	Numi Financial		—	—	—	—	0.50	1.00 (out of network only)	—	0.95	3.00/mo	180 days	9.95		11/17/20
Prestige Prepaid Mastercard version DOC5 (199657)	Central Bank of Kansas City	Numi Financial			5.95	60 days	—	0.50	1.00 (out of network only)	—	0.95	—		9.95		4/6/20
Prestige Prepaid Mastercard version FSPA (199658)	Central Bank of Kansas City	Numi Financial		—	—	—	—	0.50	—	—	0.95	1.95/mo	180 days	—		4/6/20
Prestige Prepaid Mastercard version SPA (199659)	Central Bank of Kansas City	Numi Financial			4.95	30 days	—	0.50	1.00 (out of network only)	2.95 (out of network only)	0.95	—		9.95		4/6/20

Prestige Prepaid Mastercard version SPA15 (199660)	Central Bank of Kansas City	Numi Financial			5.95	15 days	—	0.50	1.00 (out of network only)	—	0.95	—		9.95		4/6/20
Prestige Prepaid Mastercard version WKA (199661)	Central Bank of Kansas City	Numi Financial		2.50		3 days	0.45 (PIN only)	0.50	1.00	2.95	1.00	—		9.95		4/6/20
JPay California (46811)	Metropolitan Commercial Bank	Praxell, Inc.	California		3.00	7 days	Unknown	1.00	—	Unknown	1.00	—		Unknown	4 other types of fees noted on short form disclosure	2/9/21
JPay Colorado (46828)	Metropolitan Commercial Bank	Praxell, Inc.	Colorado		0.50	7 days	0.70	0.50	0.50	2.00	0.50	2.99/mo	90 days	Unknown	Phone cust serv. ($1); 5 other types of fees noted on short-form disclosure	2/9/21
JPay Florida (46829)	Metropolitan Commercial Bank	Praxell, Inc.	Florida; New York work release; Tennessee work release	—	—	—	—	—	—	—	—	—		—		2/9/21
JPay Georgia (46830)	Metropolitan Commercial Bank	Praxell, Inc.	Georgia, Arizona, Lousiana	—	—	—	—	—	—	—	—	3.00/mo	90 days	—		2/9/21
JPay Kentucky (46832)	Metropolitan Commercial Bank	Praxell, Inc.	Kentucky	Unknown	—		—	0.50	0.50	2.00	0.50	2.99/mo	90 days	Unknown	7 other types of fees noted on short-form disclosure	2/9/21
JPay Milwaukee (46834)	Metropolitan Commercial Bank	Praxell, Inc.	Milwaukee, WI	—	6.00	7 days	—	0.50	—	—	0.50	—		Unknown	5 other types of fees noted on short form disclosure	4/1/21
JPay Missouri (46839)	Metropolitan Commercial Bank	Praxell, Inc.	Missouri	Unknown	—		—	1.95	1.50	—	Unknown	2.99/mo	90 days	Unknown	Card replacement ($5); 5 other types of fees noted on short-form disclosure	2/10/21
JPay MN (46840)	Metropolitan Commercial Bank	Praxell, Inc.	Indiana, Tennessee	—	2.00	7 days	0.70	1.00	—	2.00	1.00	2.99/mo	90 days	Unknown	6 other types of fees noted on short-form disclosure	2/24/21
JPay New Jersey (46835)	Metropolitan Commercial Bank	Praxell, Inc.	New Jersey	2.00	—	7 days	—	—	—	—	—	—		—	Card replacement ($5)	2/24/21
JPay New York (46836)	Metropolitan Commercial Bank	Praxell, Inc.	New York	—	2.00	7 days	0.50	1.00	0.50	2.00	0.70	—		Unknown	8 other types of fees noted on short-form disclosure	4/10/21
JPay New York 2 (188075)	Metropolitan Commercial Bank	Praxell, Inc.		Unknown	—	7 days	—	0.50	0.50	—	0.70	2.99/mo	90 days	Unknown	9 other types of fees noted on short-form disclosure	4/10/21
JPay Ohio (46837)	Metropolitan Commercial Bank	Praxell, Inc.	Ohio	—	1.00	7 days	—	Unknown	0.50	—	0.50	3.00/mo	90 days	Unknown	Card replacement ($8); 5 other types of fees noted on short-form disclosure	4/1/21
JPay Oklahoma (46838)	Metropolitan Commercial Bank	Praxell, Inc.	Oklahoma, North Carolina	—	6.00	7 days	—	Unknown	—	—	Unknown	—		Unknown	Card activation ($3); card replacement ($6); 3 other types of fees noted on short-form disclosure.	2/24/21
JPay (TN, IN, VA) (46841)	Metropolitan Commercial Bank	Praxell, Inc.	Tennessee, Indiana, Virginia	—	0.50	30 days	0.70	0.50	0.50	2.00	0.50	2.99/mo	90 days	9.95	Phone cust serv. ($1), card replacement ($5)	6/16/20

Disclosure concerning JPay data: With one exception, JPay has not uploaded long-form fee disclosures, thus, it is impossible to know the full range of fees. In addition, many of the fees JPay used to charge are now prohibited under the terms of the consent order entered in Admin. Proc. 2021-CFPB-0006. This table includes any fees listed in JPay's short-form disclosures, even though this information is likely out of date. If information in the CFPB database clearly establishes that a particular fee is not charged for a JPay release card, that fee is denoted as "–" otherwise, if a fee could possibly be listed on the (unfiled) long-form disclosure, it is denoted as "Unknown". JPay's entries in the CFPB database also consistently fail to list the correctional agencies where any given card is used. When the database includes older (superseded) account agreements that do identify correctional agencies where cards were issued, we have listed those agencies here.

APPENDIX C

This table shows the results of the Prison Policy Initiative's survey of all fifty state departments of corrections' (DOC) electronic-messaging vendors and per-message prices. This table is also available at https://www.prisonpolicy.org/reports/emessaging.html. On the website, each state name links to its DOC's policy.

State ⇕	Vendor ⇕	Lowest per-message price ⇕	Highest per-message price ⇕	Notes ⇕
Alabama	Securus/JPay	Unknown	Unknown	
Alaska	Access Corrections	0.35	0.50	
Arizona	Securus/JPay	0.25	0.25	
Arkansas	Securus/JPay	0.50	0.50	
California	GTL/ViaPath	0.05	0.05	Incarcerated people in California prisons receive 20 free messages per week.
Colorado	Securus/Jpay (inbound only) - GTL/ViaPath (two-way)	0.31	0.36	Price listed is for Securus/Jpay. Price not known for GTL/ViaPath messaging
Connecticut	Securus/JPay	0.00	0.00	
Delaware	GTL/ViaPath	0.25	0.25	
Florida	Securus/JPay	0.39	0.39	
Georgia	Securus/JPay	0.30	0.30	
Hawaii	N/A - no electronic messaging	N/A	N/A	
Idaho	Securus/JPay	0.30	0.40	
Illinois	GTL/ViaPath	0.15	0.15	
Indiana	GTL/ViaPath	0.27	0.27	
Iowa	CorrLinks	0.25	0.25	
Kansas	GTL/ViaPath	0.25	0.25	
Kentucky	Securus/JPay	0.44	0.44	
Louisiana	Securus/JPay	0.25	0.30	
Maine	N/A - no electronic messaging	N/A	N/A	
Maryland	N/A - no electronic messaging	N/A	N/A	
Massachusetts	CorrLinks	0.25	0.25	
Michigan	Securus/JPay	0.20	0.25	
Minnesota	Securus/JPay	0.40	0.40	
Mississippi	N/A - no electronic messaging	N/A	N/A	
Missouri	Securus/JPay	0.25	0.25	
Montana	Edovo (as subcontractor)	0.31	0.33	

Nebraska	GTL/ViaPath	0.25	0.25	
Nevada	CorrLinks	0.30	0.30	Only inbound e-messaging is available.
New Hampshire	GTL/ViaPath	0.40	0.40	
New Jersey	Securus/JPay	0.35	0.35	
New Mexico	N/A - no electronic messaging	N/A	N/A	
New York	Securus/JPay	0.15	0.20	
North Carolina	GTL/ViaPath	0.25	0.25	Based on feedback to this piece, we updated the price of messaging in North Carolina on 4/3/23
North Dakota	Securus/JPay	0.23	0.40	
Ohio	Securus/JPay	0.20	0.30	
Oklahoma	Securus/Jpay	0.25	0.25	
Oregon	GTL/ViaPath	0.25	0.25	
Pennsylvania	GTL/ViaPath	0.25	0.25	
Rhode Island	N/A - no electronic messaging	N/A	N/A	
South Carolina	GTL/ViaPath	0.25	0.25	
South Dakota	GTL/ViaPath	0.25	0.25	
Tennessee	Securus/JPay	0.40	0.40	
Texas	Securus/JPay	0.42	0.47	
Utah	N/A - no electronic messaging	N/A	N/A	
Vermont	GTL/ViaPath	0.25	0.25	
Virginia	Securus/JPay	0.25	0.39	
Washington	Securus/JPay	0.17	0.33	
West Virginia	GTL/ViaPath	Unknown	Unknown	
Wisconsin	CorrLinks	0.10	0.10	
Wyoming	American Prison Data Systems	Unknown	Unknown	
Federal Bureau of Prisons	CorrLinks	Per minute pricing from incarcerated people. Free for non-incarcerated people.		

APPENDIX D

This table shows the findings from the Prison Policy Initiative's analysis of eight contracts between state departments of corrections and tablet providers. Contracts are listed from oldest to newest. In this table, "Active since" denotes the date that installation of tablet equipment in the correctional facility began. This table is also available at https://www.prisonpolicy.org/blog/2019/03/07/free-tablets/. On the website, each contract name links to the contract.

Contract	Active since	Does the DOC receive a portion of tablet revenue?	Can the provider cancel the service for reasons related to profitability?	Are the terms of use subject to DOC approval?	Will the provider replace broken tablets?	Example of service charges on tablets
Colorado DOC and GTL	August 2015 (suspended in 2018)	Yes. DOC earns a flat payment of $800,000 per year.	Yes. GTL can cancel the service if there is insufficient tablet revenue, or if more than 10 tablets in any one housing unit need to be repaired.	No, DOC does not have to approve the Terms and Conditions.	GTL has discretion to determine whether damage was "willful," and does not have to replace willfully damaged tablets. GTL also does not have to replace more than 5 (or 5%, whatever is greater) tablets in a housing unit every year.	A digital music subscription costs $19.99 per month.
Missouri DOC and JPay	March 2017	Yes, DOC earns a 20% commission on songs, albums, movies, ebooks, and games.	Yes. JPay can cancel the service if there is insufficient revenue.	No. Terms of use not mentioned in contract (and therefore likely not subject to DOC oversight.)	Unclear.	A subscription to NewsStand, an app that allows one to read the news, costs $5.95 per month.
Vermont DOC and GTL**	April 2017	Yes. The contract specfies that the DOC receives 32% of commissary sales, but it is unclear what percent of tablet media sales are paid to the DOC.	Unclear. The contract does not specify revenue metrics as cause for termination.	Tablet usage tracking/monitoring is required in the contract, and the state determines what limited number of functions are provided, but the contract does not specify terms of use.	Unspecified. The contract indicates that GTL will provide the state with their company repair procedure policy.	1 week of streaming music: $7.99; 30 day access to game center: $5.99

New York DOCCS and JPay	August 2017	No.	No, contract does not specify circumstances in which service can be canceled.	No. Terms of use not mentioned in contract (and therefore likely not subject to DOC oversight.)	Unclear.	Sending an email requires paid "stamps" starting at $0.35 (emails can require several stamps, depending on length).
South Dakota DOC and GTL	March 2018	Yes. DOC earns a 50% commission on electronic messages and 24.2% on most types of phone calls.	Yes. GTL can cancel the service if there is insufficient revenue or if equipment is "subjected to recurring vandalism."	No, DOC does not have to approve the Terms and Conditions.	GTL has discretion to determine whether damage was "willful," and does not have to replace willfully damaged tablets.	A 14-day digital music subscription costs $14.99, including a $9 "infrastructure charge."
Indiana DOC and GTL	July 2018	Yes, DOC earns a 10% commission on purchased content (not including phone or video calls made on tablets).	Yes. GTL can cancel service in housing units where 10 or 10% of tablets are damaged in a year.	Yes, DOC must approve the Terms and Conditions.	GTL has discretion to determine whether damage was "willful," and does not have to replace willfully damaged tablets. GTL does not have to replace tablets more than once for any given incarcerated person, nor does it have to replace more than 5 or 5% of tablets in a housing unit every year.	A 30-day subscription to "unlimited podcasts" costs $9.99.
Delaware DOC and GTL (pilot program)	October 2018	No.	Yes. GTL can cancel the service if too many tablets are damaged.	Yes, DOC must approve Terms and Conditions.	Unclear.	Reading e-books, sending messages, or accessing music, movies, or games costs $0.05 per minute.

Maine DOC and Edovo	December 2018	No.	No, contract does not specify circumstances in which service can be canceled.	Yes, DOC must approve Terms and Conditions and Privacy Policy.	The facility has discretion to determine whether they or Edovo will replace damaged tablets. Edovo does not have to replace more than 5% of tablets for free every year.	Sending more than 10 electronic messages per month costs between $10 and $50, depending on the number of messages one wishes to send.
South Carolina DOC and GTL	January 2019	No.	No, contract does not specify circumstances in which service can be canceled.	No. Terms of use not mentioned in contract (and therefore likely not subject to DOC oversight).	GTL is required to repair or replace damaged tablets or equipment, regardless of the cause of damage or loss.	Sending electronic messages costs $0.25 per message.
Connecticut DOC and JPay	April 2019	Yes, commissions to the DOC include 10%-35% revenue for replacement technology, purchases of external hardware accessories, and fees for emails, songs/music, news subscriptions, etc; and 50% of printing fees.	No, contract does not specify circumstances in which service can be canceled.	Yes, user agreement (including privacy and ownership provisions) is specified in contract, but unclear whether terms must be approved by DOC.	Jpay will "repair and/or replace any broken or damaged Tablets and Kiosks as directed and authorized by the Department." Any tablet that is "intentionally damaged or destroyed" must be replaced at cost to the DOC. Unclear who decides if a tablet was intentionally damaged.	Audiobooks are available for $0.99-19.99 each. News subscriptions are $4.99 a month. Each email is $0.30.

West Virginia DCR and GTL	October 2019	Yes, the WVDCR receives a 5% commission on all gross revenue.	Yes. GTL can cancel the service if there is insufficient revenue.	No. Terms of use not mentioned in contract (and therefore likely not subject to DOC oversight).	Unclear, but contract states that GTL "will in no way be responsible, or liable for… the safety, efficacy, or use of the tablets… Tablets are provided 'as is' without warranty of any kind."	Reading e-books, sending messages, or accessing music, movies, or games costs $0.05 per minute.
California DCR and GTL	December 2020	Yes. DOC earns a flat payment of $200,000 per year, which it says is "to cover the State contract management responsibilities and services."	Unclear.	No mention of Terms and Conditions.	"The state shall provide reasonable measures against loss by pilferage or destruction. The vendor shall be responsible for any expenses required for the repair of the equipment."	A video call costs $0.20 per minute, or $6 for a 30-minute call.

** While news reports state that each person in Vermont prisons is receiving a tablet, Vermont's contract with GTL (which originally provided for kiosks, with the option for the state to request tablets) is less clear. According to the contract, tablets will be provided to up to 90% of people in each "living unit" in Vermont prisons. (See page 36 of the contract.)