

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE: INQUIRY INTO REGULATORY REQUIREMENTS FOR ALTERNATIVE OPERATOR SERVICES COMPANIES	DOCKET NO. NOI-2019-0001
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REPLY COMMENTS

The Office of Consumer Advocate (OCA), Iowa Department of Justice, files these comments in reply to certain of the comments filed by the Iowa State Sheriffs & Deputies Association (ISSDA), the National Communications International Corp. (NCIC), the State of Iowa, the Iowa Office of Ombudsman, the Human Rights Defense Counsel, Securus Technologies, Inc. (Securus), Legacy Long Distance International, Inc., Global Tel*Link Corp. and Public Communications. Inc. (GlobalTel), the Prison Policy Initiative (PPI), Pay-Tel Communications, Inc. (Pay-Tel), and the Winneshiek County Sheriff's Office. OCA takes no position at this time on issues raised by other parties but not addressed in these reply comments. All of these comments concern the rates for intrastate inmate calling services (ICS) in Iowa.

I. The Board should establish a policy and practice of approving, subject to complaint and investigation, proposed per minute rates for intrastate ICS that do not exceed the FCC's interim rate caps for interstate ICS.

The PPI suggests a "safe harbor" under which proposed tariffs with per minute rates at or below the maximum per minute rates permitted for interstate ICS—\$.21 for prepaid calls and \$.25 for collect calls—would be approved on a no-look basis, while providers proposing higher rates would need to prove their proposed rates are just and

reasonable. OCA supports this suggestion in concept but has a concern that use of the words “safe harbor” could tend in practice to operate as a rate floor. The FCC’s rate caps are intended to “serve as an upper limit on ICS charges.” *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Order on Reconsideration, FCC 16-102, 31 F.C.C.R. 9300 (Aug. 9, 2016) ¶ 1 & n. 111. The FCC “expect[s] that, in many instances, providers and facilities will agree on rates that fall far below the permitted maximums” and anticipates that rates will continue to decline. *Id.* at ¶¶ 1. 4. & n. 111.¹ Rather than adopt a “safe harbor,” the Board could more simply establish a policy and practice of approving, subject to complaint and investigation, proposed per minute rates for intrastate ICS that do not exceed the \$.21/\$.25 threshold. ICS providers proposing higher rates would need to prove their proposed rates are just and reasonable.

II. The Board should prohibit ancillary fees, including per call charges, for intrastate ICS, other than ancillary fees permitted for interstate ICS.

No commenter offers a persuasive reason in support of ancillary fees, including per call charges, other than ancillary fees permitted for interstate ICS. The Board should adopt rules on ancillary fees for intrastate calls that parallel the FCC’s rules on ancillary fees for interstate calls. *See* 42 C.F.R. §§ 64.6000(a), 64.6020; PayTel at 1 (“Given the

¹ The costs of providing ICS have been declining, for reasons including increasing movement to Internet protocols, centralized application of security measures, decreasing capital costs for on-site equipment, increased use of prepaid and debit calling, and inter-carrier compensation reforms that reduce the cost of transport and certain long distance charges. *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-113, 28 F.C.C.R. 14107 (Sept. 26, 2013) ¶¶ 29-31. In earlier proceedings in Iowa, there was testimony that a hypothetical ICS provider with 100 phones in a correctional facility, which prior to IP conversion might have needed 100 separate phone lines at a probable cost of about \$21 each or \$2100 total per month, might, following conversion, need only a single DSL or cable line, at a cost of about \$120 per month. *In re Securus Technologies, Inc.*, Docket No. TF-2017-0041, Pre-Filed Reply Testimony of William Pope, Oct. 27, 2017 at 8, ll. 10-21.

exhaustive evaluation made by the FCC to reach these conclusions, it makes sense to mirror those regulations for these services within the state of Iowa”).

III. Comments seeking to justify high rates for ICS are not persuasive.

OCA agrees with the ISSDA that high calling costs from Iowa jails put unnecessary stress and burdens on the inmates and their families and limit their ability to stay in contact. High phone costs are counterproductive because research has demonstrated that family contact during incarceration decreases recidivism. Inmates want and need just and reasonable rates for phone calls.

In a portion of its comments that Securus does not allege to be confidential, Securus asserts that modern ICS utilizes a calling platform with “comprehensive tools for allowing facilities to control access, manage inmate use of service, monitor communications, and conduct investigations,” together with features including “the ability to search for information relevant to facilities’ investigatory needs, which may be directed toward preventing the commission of crimes, intercepting contraband, or cooperating with other law enforcement agencies.” Securus at 3-4. Correctional facilities certainly have security and investigatory needs. But the costs associated with meeting these needs cannot justly and reasonably be funded through inmate calling service rates.

In a portion of its comments that Securus does not allege to be confidential, Securus references research and development, a total of 213 ICS-related patents, and a “comprehensive portfolio of best-in-call technology,” stating that some correctional facilities prefer “the leading technologies.” Securus at 6. It is not just or reasonable to expect that inmates and their families will pay for the most expensive alternatives.

Again, the ICS provider is in a position to extract monopoly rents from the inmates and the inmates' families. Completing phone calls is not sophisticated. As explained above, newer IP technology has reduced the cost. Another ICS provider has given testimony in Iowa that the FCC's interim rate caps provide it with sufficient revenues to cover its costs, pay a competitive commission and still earn a fair profit. *In re Securus Technologies, Inc.*, Docket No. TF-2017-0041, Pre-Filed Reply Testimony of William Pope, Oct. 27, 2017 at 4, ll. 1-15. *See United Tel. Co. v. Iowa State Commerce Commission*, 257 N.W.2d 466, 476 (Iowa 1977) (“If . . . policies [elected by management] do not fairly indicate a reasonable and prudent business expense, *which the consuming public may reasonably be required to bear*, following the required hearing and review procedures, then . . . regulatory intervention is required”) (emphasis added); *National Association of Regulatory Utility Commissioners v. FERC*, 475 F.3d 1277, 1280 (D.C. Cir. 2007) (agency is not “weaponless against conduct that might encourage or cloak the running up of unreasonable costs”).

Securus's argument is inconsistent with a proposal that Securus, jointly with the two other largest providers of ICS (GlobalTel and Telmate), put forward to the FCC in 2014. That proposal urged the FCC to adopt rate caps of \$.20 per minute for prepaid and debit calls and \$.24 per minute for collect calls, with no per-call or connection charge. *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 15-136, 30 F.C.C.R. 12763 (Nov. 5, 2015) ¶¶ 76, 101, 158, and n. 313. Such a proposal could not have been put forward if substantially higher rates were needed to cover legitimate costs and allow a reasonable return.

IV. The Board should reject unjustified confidentiality claims.

OCA supports the PPI's objection, filed September 19, 2019, to Securus's application for confidential treatment of its entire response to the Board's request for comment on the criteria or considerations the Board should use in determining whether rates are just and reasonable. Having reviewed the assertedly confidential portion of the Securus's response, OCA has found nothing that would qualify as a trade secret or would otherwise justify confidential treatment.

As the authorities cited by the PPI show, the Iowa Open Records Law, Iowa Code chapter 22, with narrowly construed exceptions, requires that the public's business—including this inquiry with serious ramifications for many Iowans—be conducted in public. Securus's application for confidential treatment should be denied, and Securus should be given the option of filing its comments publicly or not having them considered.

For like reasons, OCA opposes GlobalTel's suggestion that a list of customers served by an ICS provider and information concerning the site commissions should be held in confidence. GlobalTel at 11. The contracting entities are public correctional facilities, themselves subject to the Open Records Law. Information regarding the identity of a correctional facility's ICS provider and the amount of the site commissions should be a matter of public record. GlobalTel offers no appropriate justification why this information should be held in confidence.

The Board should also consider requiring the ICS providers, on an annual basis, to identify the correctional facilities at which they have a contract. Such a requirement would help the Board and OCA maintain an awareness of the status of the contracts. This reporting could be made a part of the annual report for ICS providers.

V. The Board should develop a sample tariff for intrastate ICS.

NCIC suggests that the Board develop a sample tariff for ICS providers. NCIC at 1. OCA supports this suggestion. A sample tariff would assist providers in preparing their tariff submissions and could reduce Board staff and OCA review time.

CONCLUSION

OCA supports this inquiry and looks forward to continuing to participate in it.

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