

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE:

ENCARTELE, INC.

DOCKET NO. TF-2019-0270

**PRISON POLICY INITIATIVE’S COMMENTS REGARDING
ENCARTELE’S RESPONSE TO BOARD ORDER DATED MARCH 11, 2021**

Pursuant to the Board’s order of March 11, 2021, Encartele, Inc. filed a revised tariff and supporting comments in the above-captioned proceeding on April 9, 2021. The Prison Policy Initiative, Inc. (“PPI”) and the Office of Consumer Advocate had previously voiced concern about Encartele’s “pass through” of payment-related fees equal to 5% of the principal amount of the transaction.¹ In response, the Board ordered Encartele to “provide additional information on how the 5% fee is calculated, on what basis it is charged, and why this fee is substantially higher than the fee charged by other inmate calling service providers.”²

Instead of providing concrete, verifiable evidence, Encartele chose to respond to the Board’s order with the following statement: “Encartele does confirm that the ‘passthrough’ rate (approximately 5%) is actually less than the extraneous expenses incurred by Encartele for credit card processing cost, *including chargebacks*.”³ In this response, Encartele admits to including payment-card chargebacks in the amounts that it collects from consumers under the category of “pass-through” ancillary fees. As explained below, Encartele’s practice is highly inappropriate as a matter of law, fact, and policy.

I. Payment-Card Chargebacks Represent Either Uncollectible Debt or Penalties for Merchant Error

Chargebacks occur when a payment-card sales transaction submitted by a merchant is subsequently reversed, with the amount of the transaction deducted from the merchant’s

¹ See [PPI Comments](#) (Nov. 13, 2020); [PPI Comments](#) (Feb. 12, 2021).

² [Order](#) (Mar. 11, 2021) at 4.

³ [Encartele Comments](#) (Apr. 9, 2021), at 2 (emphasis added).

settlement account. Chargebacks can result from a variety of causes, with both Visa and MasterCard classifying chargebacks by reference to the following four categories:

1. Fraud chargebacks cover payments that were processed with a counterfeit or stolen card, or the cardholder has other reason to believe that they did not authorize the transaction charged to their account.⁴
2. Improper authorization occurs when a payment is submitted to the network out of compliance with established procedures for obtaining preauthorization.⁵
3. Processing or “point-of-interaction” errors occur when a card is inappropriately charged due to administrative error on the merchant’s part. These types of chargebacks include double-charging, incorrect transaction amounts, erroneous transaction codes, late-submitted transactions, and charges in an inappropriate currency.⁶
4. Customer disputes entail transactions where the customer alleges that the purchased goods or services were not requested, not delivered, suffered from a defect, or there was another type of breach of the parties’ agreement.⁷

No type of payment-card chargeback is appropriately passed through as a third-party transactional fee.

For purposes of regulatory accounting, these four chargeback categories can be further sorted into two conceptual categories. Fraud and improper authorization codes are most properly understood as uncollectible debt, in that the amount of the chargeback represents a sale for which the merchant has provided the bargained-for goods or services, but credit policies cause the payment-card network to reverse the charges. On the other hand, chargebacks attributable to processing errors or customer disputes both relate to some kind of error (either willful or negligent) on the merchant’s part. With this background in mind, it becomes clear that Encartele’s practice of passing its chargeback expenses through to customers is inappropriate.

II. There is No Legal Basis for Passing Through Chargeback Expenses to Customers

The fees contained in Encartele’s Iowa tariff mirror federal regulations governing ancillary fees charged by inmate calling service (“ICS”) carriers.⁸ As relevant here, ICS carriers

⁴ [Dispute Management Guidelines for Visa Merchants](#) at 25-29 (2018) [hereinafter *Visa Chargeback Guide*]; [MasterCard Chargeback Guide](#) at 259-322 (Feb. 23, 2021).

⁵ *Visa Chargeback Guide* at 30-32, *MasterCard Chargeback Guide* at 216-232.

⁶ *Visa Chargeback Guide* at 33-40, *MasterCard Chargeback Guide* at 322-345.

⁷ *Visa Chargeback Guide* at 41-52, *MasterCard Chargeback Guide* at 232-259.

⁸ [Encartele Effective Tariff No. 3](#) § 4.3.2; see 47 C.F.R. § 64.6020.

may pass through third-party financial transaction fees, provided that the amount passed through represents “the exact fees, with no markup *that result from the transaction.*”⁹ In other words, carriers may pass through transactional expenses, but only those expenses that relate to the specific transaction entered into by the customer who pays the passed-through fees.

Contrast this legal requirement to the concept of a chargeback where a merchant is—by definition—unable to collect from the customer who initiated the underlying transaction. By adding its chargeback expenses to the amount it collects from *other* customers, Encartele is forcing paying customers to absorb the costs Encartele incurs as the result of unrelated transactions that have gone unpaid due to fraud, dispute, or other error. This practice clearly contravenes the requirements of federal law, which only allows pass through of payment-related costs that specifically relate to the individual transaction in question.

In addition, the Federal Communication Commission’s Uniform System of Accounts for Telecommunications Companies (“USOA”),¹⁰ while not binding, is instructive. The allowed ancillary fee for ICS pass-through transaction expenses is designed to cover certain costs of collecting revenue. Such collection costs are classified as a customer service expenses under USOA.¹¹ As noted above, chargebacks are attributable either to uncollectible accounts or some type of carrier error or misconduct, both of which are separately classified under the USOA.¹² This disparate accounting treatment provides further support for finding that Encartele is improperly passing through non-collection expenses under the label of transaction fees. The same logic applies when analyzing the language of Encartele’s tariff, which references “third-party transaction fees, including credit card processing fees.”¹³ This language is misleading as applied to chargebacks, since chargebacks are properly categorized as uncollectible debt or penalties, not a cost of processing the transaction to which the passed-through fees relate.

⁹ 47 C.F.R. § 64.6020(b)(5) (emphasis added).

¹⁰ 47 C.F.R. pt. 32.

¹¹ 47 C.F.R. § 32.6623(a)(3).

¹² Uncollectible accounts are separately classified under 47 C.F.R. § 32.5300. Chargebacks related to processing errors or customer disputes are analogous to fines and penalties, which are classified as nonoperating expenses under 47 C.F.R. § 32.7300(h)(4).

¹³ Tariff § 4.3.2.

III. The Board Should Schedule A Technical Conference to Address This Issue

Because Encartele's April 9 filing is strikingly devoid of factual detail, many questions remain concerning the nature and propriety of Encartele's practices vis-à-vis chargebacks. In the interest of narrowing the issues, PPI respectfully requests that the Board schedule a technical conference in this proceeding, where Encartele can provide clarifying information and interested parties can consider whether a motion for a rate investigation under 199 IAC § 26.7 is warranted.

Dated: April 12, 2021

Respectfully submitted,

PRISON POLICY INITIATIVE, INC.

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