

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE: ENCARTELE, INC.

DOCKET NO. TF-2019-0270

**PRISON POLICY INITIATIVE’S RESPONSE TO
ENCARTELE’S MOTION OF APRIL 29, 2021**

On March 11, 2021, the Board ordered Encartele, Inc. to provide additional information about its pass-through transaction fees, including “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.”¹ In response to this order, Encartele provided evidence indicating that it includes extraneous expenses (specifically: credit card chargebacks) in the amounts it passes through to customers as transactional fees.² Prison Policy Initiative (“PPI”), having previously been granted intervenor status in this proceeding, filed comments highlighting the problems with Encartele’s practice.³ Then, on April 29, 2021, Encartele filed a “Response to PPI Comments and Motion for Board Relief” (the “Motion”), which consists predominantly of emotional accusations and supposition concerning PPI’s subjective motives.

Because this proceeding is limited to the application and enforcement of Iowa telecommunications law, PPI will not squander the Board’s resources by litigating any of the irrelevant accusations in Encartele’s Motion. However, because Encartele styled its filing as a motion, PPI files this response (pursuant to 199 IAC § 7.12) for the purpose of identifying material deficiencies in the Motion and correcting two factual inaccuracies.

I. The Board Should Strike Encartele’s Motion Because it Violates the Board’s Rules of Procedure

Encartele’s Motion is submitted and signed by Dana Hoyle, who identifies herself as a “regulatory consultant.” Encartele organized as a Nebraska corporation.⁴ Under the Board’s

¹ [Order](#) (Mar. 11, 2021) at 4.

² [Filing of Ordered Tariff Revisions](#) (Apr. 9, 2021).

³ [Prison Policy Initiative’s Comments Regarding Encartele’s Response to Board Order Dated March 11, 2021](#) (Apr. 12, 2021)

⁴ Motion at 4.

rules of procedure, a corporation must be represented by either an officer, employee, or attorney.⁵ Encartele's public filings do not identify Ms. Hoyle as an officer.⁶ Ms. Hoyle's own publicity materials describe her as an "independent consultant" to various telecom companies,⁷ and she is not admitted to practice law in either Iowa or Texas (her apparent state of residence).⁸ Accordingly, PPI suggests that the Board strike the Motion.

II. Encartele Inaccurately Characterizes PPI's Participation in this Proceeding

The Motion accuses PPI of conducting a "smear campaign,"⁹ apparently based on nothing more than PPI's exercise of its constitutional right to petition for government action.¹⁰ Our organization's interest in this proceeding is clearly and accurately set forth in PPI's petition for intervention, which has been part of the record for over twenty months.¹¹ Simply because PPI and Encartele disagree about certain legal issues does not mean anyone is trying to "smear" Encartele. As noted above, PPI will not respond to the irrelevant hyperbole sprinkled throughout the Motion. There are, however, two factual errors that we will briefly address.

First, the Motion inaccurately characterizes the Declaration of Andrea L. Fenster that is appended to PPI's Supplemental Comments Regarding Encartele's Proposed Tariff (Revised), filed on November 13, 2020.¹² In the Motion, Encartele falsely states that "Ms. Fenster visited Encartele's website and asserts that she purchased services from Encartele."¹³ No such statement appears in the Fenster Declaration. In actuality, Ms. Fenster testified that she visited the website "for the purpose of initiating a prepayment for inmate calling service" and that she "initiated" (but did not complete) "a deposit via Encartele's website."¹⁴ The screenshots

⁵ 199 IAC § 7.4(8)(b).

⁶ See <https://www.nebraska.gov/sos/corp/corpsearch.cgi?acct-number=10063322>.

⁷ See Dana Hoyle, LinkedIn profile, available at <https://www.linkedin.com/in/accordingtohoyle/>.

⁸ See attorney search features at <https://www.iacourtcommissions.org/icc/SearchLawyer.do> (Iowa) and https://www.texasbar.com/AM/Template.cfm?Section=Find_A_Lawyer&Template=/CustomSource/MemberDirectory/Search_Form_Client_Main.cfm (Texas).

⁹ Motion at 4.

¹⁰ See *Bond v. Cedar Rapids Television Co.*, 518 N.W.2d 352, 354-355 (Iowa 1994) (applying the federal *Noerr-Pennington* doctrine as a matter of Iowa law).

¹¹ [PPI's Objection to Proposed Tariff, Request for Docketing, and Petition for Intervention](#) (Aug. 30, 2019).

¹² See [Supplemental Comments of PPI](#) (Nov. 13, 2020).

¹³ Motion at 2.

¹⁴ Fenster Decl. ¶¶ 2 and 5.

included in the declaration further corroborate this testimony, showing that Ms. Fenster began the process of making a prepayment. No screenshots of a completed transaction are shown, Ms. Fenster does not make any allegation that she completed the purchase, and the lack of a completed purchase is irrelevant to the merits of the question currently pending before the Board (i.e., Encartele's 5% pass-through transaction fee). PPI filed the Fenster Declaration because we believe that Encartele's pricing mechanism is, compared to other ICS carriers, complicated and difficult to understand.¹⁵ Because Encartele's pricing is so unusual, it can only be fully understood by seeing what an actual customer sees when making a prepayment, which requires creation of a customer account.¹⁶ PPI initiated the payment transaction in order to provide a factual demonstration that could assist the Board and staff in understanding the questions raised in this proceeding. Aside from mischaracterizing Ms. Fenster's statements about the completion of the transaction, Encartele does not claim that any information in the declaration is inaccurate, and PPI is aware of no such inaccuracies.

The second inaccuracy in the Motion is Encartele's accusation that PPI is deploying "invasive tactics used to gain insight into Encartele's confidential financials and confidential business plans."¹⁷ PPI has not sought Encartele's confidential information via any tactics, invasive or otherwise. Nor does PPI have any particular interest in accessing any of Encartele's confidential records. If Encartele believes that it needs to disclose confidential information to defend itself in this proceeding, it can provide such information to the Board and seek confidentiality protections. In the meantime, the company's speculation about PPI's intentions is neither accurate, relevant, nor constructive.

III. Encartele's Request for Attorney Fees Should be Summarily Denied

The motion includes a request that "the Board [o]rder that PPI should pay for all additional legal fees incurred by Encartele from this time forward until the conclusion of this

¹⁵ Unlike most phone carriers, Encartele denominates phone calls in data units instead of minutes, like most phone carriers. See Fenster Decl. ¶¶ 6-7.

¹⁶ See Fenster Decl. ¶ 3.

¹⁷ Motion at 5.

matter.”¹⁸ This request is baseless and should be denied without further hearing or discussion. Iowa, like all states in this country, follows the “American rule” with respect to attorney fees.¹⁹ Under this doctrine, a party is not liable for an opponent’s legal fees unless required by statute or contract.²⁰ Encartele cites no statute or contract that would allow the Board to grant this request, and PPI is not aware of any authority that would allow the Board to grant this request. Encartele’s request is therefore without merit.

IV. The Bombastic Arguments Contained in the Motion Simply Highlight Encartele’s Failure to Address the Real Issue of Chargebacks

Having addressed the material contents of the Motion, PPI takes this opportunity to note that Encartele has still failed to address the actual question pending before the Board. The Board ordered Encartele to provide information about its unusually high transactional fees. Encartele responded without providing concrete evidence, but did admit that its 5% fee includes chargeback recoveries. PPI provided extensive detail about why this practice is inappropriate, and requested a technical conference so that the Board could obtain greater clarity about this situation. PPI encourages the Board to look past the distractions raised in Encartele’s Motion and schedule a technical conference to address this matter.

Dated: May 5, 2021

Respectfully submitted,

PRISON POLICY INITIATIVE, INC.

/s/ Peter Wagner

By Peter Wagner, Executive Director
MA Bar No. 662207, *admitted pro hac vice*
69 Garfield Ave., 1st Floor
Easthampton, MA 01027
(413) 527-0845
pwagner@prisonpolicy.org

¹⁸ Motion at 5.

¹⁹ *Thornton v. Am. Interstate Ins. Co.*, 897 N.W.2d 445, 474 (Iowa 2017).

²⁰ *Id.*