

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

**COMMENTS OF PRISON POLICY INITIATIVE**

In response to the Iowa Utilities Board's order of August 20, 2019, initiating the above-captioned proceeding (the "August 20 Order"), the Prison Policy Initiative ("PPI") respectfully submits the following comments regarding pressing issues in the inmate calling services ("ICS") industry.

**I. The Record Shows That Prices and Practices in the ICS Market are Unjust and Unreasonable**

The Iowa Utilities Board ("Board") commenced this proceeding after developing a detailed record in various tariff proceedings<sup>1</sup> concerning prices and practices in the ICS industry. As PPI has explained in comments filed in these earlier proceedings, evidence indicates that some carriers charge unreasonable rates (as high as \$14.10 for a 15-minute intrastate call from an Iowa jail), even though high rates do not appear to be correlated with facility size or even the size of site-commission payments. Accordingly, PPI believes that the current record is sufficient to establish that certain ICS carriers charge supracompetitive rates simply to reap the benefits of their monopolist positions.

The best way for the Board to determine perfect maximum ICS rates would be through a formal collection and review of carrier costs. The possibility of a more informal inquiry has been hindered by a refusal of most carriers to provide comprehensive and accurate cost data.

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<sup>1</sup> See *In re Reliance Tel. of Grand Forks*, Dkt. No. TF-2019-0026; *In re Inmate Calling Solutions*, Dkt. No. TF-2019-0030; *In re Combined Public Comm'cns*, Dkt. No. TF-2019-0031; *In re Prodigy Solutions*, Dkt. No. TF-2019-0032; *In re Securus Tech.*, Dkt. No. TF-2019-0033; *In re Correct Solutions*, Dkt. No. TF-2019-0034; *In re Legacy Long Distance Int'l*, Dkt. No. TF-2019-0035; *In re Pay-Tel Comm'cns*, Dkt. No. TF-2019-0036; *In re Network Comm'cns Int'l*, Dkt. No. TF-2019-0037; *In re Global Tel\*Link*, Dkt. No. TF-2019-0039; *In re Pub. Comm'cns Servs.*, Dkt. No. TF-2019-0040; *In re Encartele, Inc.*, Dkt. No. TF-2019-0270.

Even the handful of carriers who have voluntarily come forward with cost data have relied inappropriately on average expenses rather than providing actual facility-level costs and revenues.<sup>2</sup> As PPI noted in our comments filed on July 8, 2019 (the “July Comments”<sup>3</sup>), several carriers have produced little data or have redacted all information from the public versions of their filings. July Comments at 8-14. Pursuant to 199 Iowa Administrative Code § 1.9(6)(d), PPI requested that the Board deny three carriers’ requests for confidentiality; however, the Board has not yet ruled on these requests.

In the absence of a comprehensive data collection, PPI contends that the safe-harbor model set forth in our July Comments is the most efficient way to ensure just and reasonable ICS rates in Iowa. In support of this proposal, PPI submits these comments, which begin by responding to the Board’s questions concerning the current regulatory framework for ICS carriers. We then discuss how PPI’s proposed safe-harbor model would work, and what other steps the Board can take to address problems in the ICS industry.

## **II. The Existing Regulatory Framework Allows the Board to Effectively Address Problems in Iowa’s ICS Market**

As the Board is aware, the Federal Communications Commission (“FCC”) spent years reviewing ICS rates and practices, and issued final rules in 2015. *See In the Matter of Rates for Interstate Inmate Calling Services*, WC Dkt. No. 12-375, Second Report & Order and Third Further Notice of Proposed Rulemaking [hereinafter, “Second Report & Order”], 30 FCC Rcd. 12763 (Nov. 5, 2015). Unfortunately for ICS ratepayers, the FCC’s attempt to cap intrastate rates was invalidated on jurisdictional grounds. Fortunately for Iowans, the Board has clear authority to address rates within the Hawkeye State.

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<sup>2</sup> Reliance Telephone of Grand Forks filed financial information in Dkt. No. TF-2019-0026, but as PPI explained in its comments of July 8, 2019, Reliance’s figures are flawed because they do not specify total annual revenue, and expenses are reported based on average facility-level costs that are obviously inapplicable to a significant number of facilities that contract with Reliance. In addition, last year, Securus filed comments in a different proceeding, which included information on the company’s alleged costs; however, these figures rely on average per-minute costs, and all numbers were redacted from the publicly docketed version. *See In re Rule Making Regarding Inmate Calling Rate Caps*, IUB Dkt. No. RMU-2017-0004, Comments of Securus Tech. Regarding Rule Making, tbl. 1 (May 29, 2018).

<sup>3</sup> Filed in Dkt. Nos. TF-2019-0026, -0032, -0033, -0035, -0039, and -0040.

**A. The History of AOS Regulation Shows that the Board Has the Power to Act**

ICS providers operating in Iowa are subject to regulation as alternative operator services (“AOS”) companies. Iowa Code § 476.91. An AOS company is a type of telecommunications service provider<sup>4</sup> defined as an entity that “receives more than half of its intrastate telecommunications services revenues from calls placed by end-user customers from telephones other than ordinary residence or business telephones,” and which “provide[s] operator assistance, either through live or automated intervention, on calls placed from other than ordinary residence or business telephones.” *Id.* § 476.91(1)(a); *see also In re Equal Access Corp. d.b.a. Inmate Phone Sys.*, IUB Dkt. No. FCU-90-5, Proposed Decision and Order (Feb. 6, 1991) (ICS carrier provided operator assistance even though calling systems were entirely automated).

Notably, even though the Iowa General Assembly has chosen to deregulate substantial segments of the wireline telephone industry, AOS companies are conspicuously exempt from this legislative policy of forbearance. As relevant to this proceeding, two statutory provisions illustrate the unique power the Board has to regulate ICS providers in Iowa. First, the general deregulatory carve-out found in the AOS statute subjects all AOS-provided intrastate telecommunications service to the jurisdiction of the Board, “[n]otwithstanding any finding by the board that a service or facility is subject to competition and should be deregulated.” Iowa Code § 476.91(2). This same statute requires AOS carriers to render service “pursuant to tariffs approved by the board.” *Id.* Under other provisions of Iowa law, a carrier that files a tariff with the Board bears the burden of establishing that its tariffed rates and terms of service are reasonable. Iowa Code § 476.4(1).

The second notable way in which the Iowa legislature has unambiguously kept AOS companies under regulatory supervision can be found in the statute addressing voice over internet protocol (“VoIP”) communications service. Although Iowa, like many jurisdictions, has

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<sup>4</sup> *See In re Service Supplied by Telephone Utilities*, IUB Dkt. No. RMU-2018-0022, Order Requesting Comments on Draft Adopted and Filed Notice (Aug. 19, 2019) (clarifying that AOS companies are “telecommunications service providers” for purpose of the proposed amended chapter 22, Iowa Administrative Code).

chosen to exempt VoIP service from many existing regulatory requirements, the statute expressly *retains* regulation of VoIP service offered by AOS companies. Iowa Code § 476.95(g).

As the Board previously noted in a 2013 proceeding, AOS companies used to exist in significant ways outside of prisons and jails. *In re Inquiry into the Appropriate Scope of Telecommunications Regulation*, IUB Dkt. No. NOI-2013-0001, Order Initiating Inquiry, at 8-9 (Jan. 11, 2013). As a “classic example,” the Board described AOS companies that provide wireline service to a hotel, and thus “the hotel customers [are] effectively captive customers of the hotel’s telecommunications service provider.” *Id.* at 9. Regulatory oversight of AOS companies was originally necessary because “[s]ome service providers (and hotels) took advantage of that situation by implementing unreasonable rates for calls from the customer’s hotel room.” *Id.* The Board noted that wireless telephone service has made regulatory oversight of AOS providers “less necessary,” *with one notable exception*: AOS companies operating in prisons and jails. *Id.*

The 2013 proceeding culminated with a staff report analyzing the current state of telecom regulation in Iowa (the “Staff Report”<sup>5</sup>). The Staff Report noted that ICS rates and practices were a “timely topic” that was being discussed at that time by the FCC and utilities commissions in several states. Staff Report at 46. The staff’s ultimate recommendation (which was effectively implemented by the Board, through inaction) was to keep current AOS regulations in place until the “FCC takes final action on ICS.” *Id.*

In the intervening years, the only final action taken by the FCC was issuance of the 2015 ICS rules that were partially vacated by the Court of Appeals for the D.C. Circuit in *Global Tel\*Link v. FCC*, 866 F.3d 397 (D.C. Cir. 2017). Notably, in vacating the FCC’s rate caps on intrastate ICS calls, the court relied on the presumption against FCC authority over intrastate communications, as codified in § 152(b) of the Communications Act. *Global Tel\*Link*, 866 F.3d at 409 (citing 47 U.S.C. § 152(b)). It is well established that § 152 reflects a congressional

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<sup>5</sup> Appended to *In re Inquiry into the Appropriate Scope of Telecommunications Regulation*, IUB Dkt. No. NOI-2013-0001, Order Closing Docket (Oct. 18, 2013).

policy favoring a dual federal/state regulatory system over wireline service that accommodated state oversight of intrastate communications. *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 370 (1986). Thus, as relevant here, the court has given states a green light to regulate intrastate ICS rates, particularly those states like Iowa that provide utilities commissions with clear statutory authority.

ICS companies have collected billions of dollars in revenue since the Board last considered ICS rate regulation in 2013.<sup>6</sup> The Board is empowered to address unreasonable rates for intrastate Iowa calls, and it should use the powers conferred by Iowa law. Although the Board references the possibility of federal legislation on this topic (*see* August 20 Order at 3), there is no indication that Congress will act any time soon, thus the ball is squarely in the Board's court.

**B. There is an Acute Need to Act Promptly in Regards to Intrastate ICS Rates**

An extensive record exists documenting high prices and unfair practices in the ICS industry.<sup>7</sup> Under Iowa law, the Board has an affirmative duty to review intrastate ICS rates and ensure they are just and reasonable. Iowa Code § 476.8. This duty holds true notwithstanding Iowa's general policy of telecommunications deregulation. Indeed, even current FCC Chairman Ajit Pai, who is a prominent advocate of reduced regulation, has acknowledged the need for government intervention in the ICS market. Although Pai dissented from the FCC's ICS rate caps, he made clear that he agreed that the ICS industry represented a failed market:

I believe that the government should usually stay its hand in economic matters and allow the price of goods and services to respond to consumer choice and competition. But sometimes the market fails. And when it does, government intervention carefully tailored to address that market failure is appropriate. The provision of inmate calling services (ICS) is one such market. . . . [W]e cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable.

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<sup>6</sup> See Peter Wagner & Bernadette Rabuy, "Following the Money of Mass Incarceration" (Jan. 25, 2017), <https://www.prisonpolicy.org/reports/money.html> (estimating total ICS revenue of \$1.3 billion annually).

<sup>7</sup> In addition to PPI's July Comments and our comments of May 13, 2019 (filed in the same six proceedings listed above in note 3), we would direct the Board to the Conditional Objections (Apr. 17, 2019) and Reply Comments (Jul. 8, 2019) filed by the Office of the Consumer Advocate in the same proceedings. In addition, the Board may draw on information from the FCC proceeding, WC Dkt. No. 12-375, and several years' worth of research available at PPI's website, <https://www.prisonpolicy.org/phones/>.

*In the Matter of Rates for Interstate Inmate Calling Services*, WC Dkt. No. 12-375, Report & Order and Further Notice of Proposed Rulemaking, Dissenting Statement of Comm’r Ajit Pai [hereinafter, “Pai Dissent”], 28 FCC Rcd. 14107, 14217 (Sept. 26, 2013).

The reason why direct price regulation is still necessary in the ICS sector is largely self-evident. Modern deregulation of telecommunications (as well as other formerly regulated industries) is based on the central tenet that customers can procure service via “ordinary contractual relations” from “multiple competing providers.” Joseph D. Kearney & Thomas W. Merrill, *The Great Transformation of Regulated Industries Law*, 98 Columbia L. Rev. 1323, 1363 (1998). This is obviously not possible in the ICS context. *See* Pai Dissent, 28 FCC Rcd. at 14217 (“Inmates cannot choose their carrier, and carriers do not compete with each other for an inmate’s calls.”). Accordingly, the record here is clear: there is a need for ICS reform, direct rate regulation is the only reasonable response, and the Board has the legal authority and obligation to act.

### **III. PPI Reiterates its Previous Proposal for A Safe-Harbor Model of Rate Regulation**

In PPI’s July Comments, we proposed a model of rate regulation under which the Board would establish safe harbor rates of 21¢ per minute for debit calls and 25¢ for collect calls. July Comments at 5-7. ICS tariffs charging rates within the safe harbor would be approved on a no-look basis, while carriers seeking to charge rates in excess of the safe harbor would be required to provide detailed financial data to justify their rates. PPI continues to believe that this model would effectively address unreasonable rates while minimizing the administrative burden on carriers and the Board. In addition, as discussed in the previous section, PPI’s proposal can be implemented under the existing regulatory framework for ICS carriers operating in Iowa.

#### **A. The Record Indicates that Most Carriers Can Earn a Reasonable Rate of Return Charging Rates within the Safe Harbor Levels**

Regulated entities are entitled to earn a fair rate of return in light of the carrier’s reasonable and necessary expenses. This general principle is entirely consistent with the mandate of Iowa Code § 476.8. *See generally Davenport Water Co. v. Iowa State Commerce*

*Comm'n.*, 190 N.W.2d 583 (Iowa 1971). After reviewing ICS carrier expense data, the FCC determined that appropriate industrywide rate caps were 21¢ per minute for debit calling, and 25¢ for collect. *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking ¶ 73, 28 FCC Rcd. 14107, 14147 (Sept. 26, 2013).<sup>8</sup>

As ICS carriers are quick to point out, the D.C. Circuit invalidated the interstate rate caps because the FCC calculated the caps based on industry-wide average costs. *Global Tel\*Link*, 866 F.3d at 414-415. As relevant here, these concerns are misplaced for two reasons. First, the court's ruling was based on the lower final rate caps issued in 2015. Second, concerns about the ability of high-cost carriers to earn a reasonable rate of return are adequately addressed in PPI's proposal: most carriers will likely be able to earn a fair return by charging rates within the safe harbor, and those that cannot are able to charge higher rates upon a showing that their reasonable costs require rates in excess of the safe-harbor levels.

Based on our knowledge of rates (sourced from data produced in this proceeding and obtained through open records requests), we believe that the rates in 24 counties — which account for 72% of people confined in Iowa jails — would be below the proposed safe harbor rate of 21¢ per minute if existing rates were adjusted to eliminate site-commission payments.

In addition, the Board can draw on the experiences of other jurisdictions: since the FCC capped the cost of debit interstate calls at 21¢ per minute, forty-two states prison systems and at least 733 jail systems have, either voluntarily or as a result of state law, set their in-state debit rates at 21¢ per minute or less.<sup>9</sup>

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<sup>8</sup> These rate caps were promulgated as interim rate caps, codified as 47 C.F.R. § 64.6030. Because the Court of Appeals stayed and ultimately vacated later, final, rate caps, the interim caps are now the governing law as to interstate ICS rates.

<sup>9</sup> As of early 2019, the rates of the state prison systems of California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming ranged between less than a penny per minute to 21¢ per minute. Peter Wagner & Alexi Jones, *State of Phone Justice: Local jails, state prisons and*



**B. Any Carrier That Seeks to Exceed the Safe-Harbor Rates Must be Subject to Meaningful Regulatory Scrutiny**

While the safe-harbor model provides a safety valve for carriers with high expenses, consumers will only be protected from unreasonable rates to the extent that the Board conducts a meaningful and searching review of tariffs that seek to charge rates in excess of PPI’s proposed 21¢/25¢ safe harbor.

As an initial matter, it is impossible to know how many carriers (if any) will file such tariffs, but there is reason to believe that the number may be quite small. Even if high-rate carriers believe that their current expenses require rates in excess of 21¢ per minute for debit calls, they may discover that lower rates result in higher call volumes, thus making up for reductions in per-minute charges. The high price elasticity of ICS service has been noted in the FCC’s rulemaking.<sup>10</sup> In any event, whenever a carrier seeks to charge rates in excess of the safe-harbor level, the Board must be attuned to specific issues that may arise when reviewing alleged expenses. Outlined below are some of the more common issues that PPI expects the Board may confront.

Site commissions. In our May 13, 2019 comments, PPI provided the Board with evidence regarding the impact of site commissions on Iowa ICS ratepayers (*see* pp. 3-7). We would briefly reiterate the paramount role that site commissions play in driving up ICS rates. Carriers that charge rates within the safe harbor would be able to negotiate any commission structure that meets the needs of the carrier and the contracting facility. But for those that seek

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*private phone providers*, appx. tbl. 1 (Feb. 2019), [https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice.html#appendixtable1](https://www.prisonpolicy.org/phones/state_of_phone_justice.html#appendixtable1). Rates of 2,055 county jails that had publicly accessible rates as of late 2018 reveal 733 jail systems that have in-state rates at or below our proposed safe harbor level. *Id.*, appx. tbl. 2, [https://www.prisonpolicy.org/phones/appendix\\_table\\_2.html](https://www.prisonpolicy.org/phones/appendix_table_2.html).

<sup>10</sup> *See e.g. In the Matter of Rates for Interstate ICS*, WC Dkt. No. 12-375, Network Comm’cns Int’l. Corp. Opp. to Petition for Partial Reconsideration, at 4 (Mar. 23, 2016), available at <https://ecfsapi.fcc.gov/file/60001550439.pdf> (providing evidence from “approximately eighteen jails” that reduced per-minute rates resulted in call-volume increases of 50-300%); Ex Parte Communication from Praeses LLC, WC Dkt. No. 12-375 (Oct. 13, 2015), available at <https://ecfsapi.fcc.gov/file/60001329135.pdf> (summarizing study results finding that since the FCC imposed interim rate caps in 2013, interstate ICS call volume increased 76% and total interstate revenue increased 12%); Letter from Lee G. Petro to FCC (Jul. 18, 2013), available at <https://ecfsapi.fcc.gov/file/7520931454.pdf> (providing Florida bid documents from Securus, GTL, and CenturyLink, in which all three carriers predict that a blended rate of approximately 9¢-10¢ per minute would result in call-volume growth of 30-41%).



to exceed the safe-harbor rates, the Board should consider commissions to be profit-sharing between carriers and facilities, rather than a cost of providing telecommunications service. *See* Second Report & Order ¶ 124, 30 FCC Rcd. at 12822 (“While we continue to view [site-commission] payments as an apportionment of profit, and therefore irrelevant to the costs we consider in setting rate caps for ICS, we do not prohibit ICS providers from paying site commissions.” (citations omitted)). At the very least, the Board should not allow carriers charging rates above the safe harbor to recover site-commission payments absent specific credible evidence of the facility’s actual costs that are reasonably and directly related to the provision of telecommunications service. *Id.* ¶ 139, 30 FCC Rcd. at 12835 (“[E]vidence submitted in the record . . . indicates that if facilities incurred any legitimate costs in connection with ICS, those costs would likely amount to no more than one or two cents per billable minute.”).

The Iowa legislature has granted the Board the necessary authority to examine facility ICS costs because correctional facilities that contract with ICS carriers easily meet the definition of a “contracting entity” under the AOS statute. Iowa Code § 476.91(1)(b) (“Contracting entity” means an entity providing telephones other than ordinary residence or business telephones for use by end-user customers which has contracted with an alternative operator services company to provide telecommunications services to those telephones”).<sup>11</sup> Meanwhile, the Board is empowered (and, in fact, required) to “adopt and enforce requirements for the provision of services by alternative operator services companies *and contracting entities*.” Iowa Code § 476.91(3) (emphasis added). Therefore, the Board may ensure that correctional facilities are not using unreasonable AOS rates to fund non-communications related programs. Under PPI’s proposed model, the Board would only need to make such an inquiry in connection with facilities that charge rates in excess of the safe-harbor levels.

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<sup>11</sup> Notably, the term “end-user customer” is defined as a “person who places a local or toll call.” Iowa Code § 476.91(1)(c). Thus, the end-user customer is a customer of the AOS company, not necessarily of the contracting entity. It is therefore of no consequence that, under normal usage, an incarcerated caller is not a “customer” of the correctional facility in which she is confined.

Disguised site commissions. In response to increasing public opposition to site commissions, the ICS industry has developed new labels that attempt to disguise such consideration as other types of payments.<sup>12</sup> Accordingly, the Board must obtain and examine any type of transfers from carriers (and their affiliates) to correctional facilities (or related entities).

Bundling and cross-subsidies. Larger ICS companies, such as GTL and Securus, increasingly rely on contracts that bundle multiple services, such as telephone, video visitation, and computer tablets.<sup>13</sup> To the extent that any carrier seeks approval for rates above the safe harbor in relation to a bundled contract, the Board must ensure that shared costs are properly allocated between regulated and unregulated service. For example, if a carrier incurs costs to install customer-premises equipment that is used both for telephone service and video visitation, those network costs must not be disproportionately (let alone entirely) allocated to telephone ratepayers.

Vendor kickbacks or “revenue sharing.” PPI has previously informed the Board of apparent arrangements between carriers and third-party payment processors, under which carriers receive a share of fees levied on customers by the payment processor. *See* PPI May 13 Comment, at 13. PPI renews its earlier suggestion that this practice be prohibited. In addition to a general prohibition, any carrier seeking approval of above-safe-harbor rates should be required to certify that it receives no compensation through such an arrangement.

Expenses related to ancillary fees. PPI encourages the Board to adopt the FCC’s limitations on ancillary fees. *See below*, at 11. Regardless of whether the Board follows this

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<sup>12</sup> Peter Wagner & Alexi Jones, “On kickbacks and commissions in the prison and jail phone market,” Prison Policy Initiative blog (Feb. 11, 2019), <https://www.prisonpolicy.org/blog/2019/02/11/kickbacks-and-commissions/> (describing de facto site commissions labeled as signing bonuses, administrative fees, technology licenses, equipment purchase or lease payments, or donations to related associations or political campaigns).

<sup>13</sup> For an overview of the problem of bundling, see the January 19, 2016 comment letter of the Prison Policy Initiative to the Federal Communications Commission at <https://ecfsapi.fcc.gov/file/60001408351.pdf>. And in Iowa, based on our review of just some of the contracts in Iowa, we know that the Securus’ telephone contracts with Bremer, Crawford, Polk and Webster counties are bundled with non-telephone services like video visitation, voice messaging, and PREA compliance programming, and from studying Reliance’s website we know that almost all of its telephone contracts are bundled with a text-messaging service where consumers pay \$0.09 to send and receive text messages up to 160 characters and \$4.00 per month to rent a texting device.

course of action, it must pay close attention to how costs associated with ancillary fees are accounted for when a carrier presents its overall costs in connection with a tariff filing. Federal regulations currently allow ancillary fees (with respect to interstate calls) only for the following services: automated payments, live agent assistance, and paper bills. 47 C.F.R. § 64.6020. In addition, a carrier may pass through certain specified third-party charges. 47 C.F.R. § 64.6020(b)(2) and (5). If a carrier does choose to levy such fees, then as a matter of basic fairness, the carriers' related expenses (i.e., the third-party fees or the cost of providing automated payments, live assistance, or paper bills) must be subtracted from the general expenses submitted in support of a tariff. Failing to ensure such adjustment would allow a carrier to recover its costs twice—once through ancillary fees, and again through per-minute rates.

Private equity monitoring fees. In the case of any ICS carrier that is owned by a private equity firm,<sup>14</sup> the Board should ensure that the carrier's expenses do not include payments to the parent company in the form of monitoring fees or other purported expenses that are actually disguised dividends.<sup>15</sup>

#### **IV. Additional Ways in Which the Board Can Address Unfair Practices**

As we explain above, unreasonable per-minute rates are the most prominent injustice and should be the Board's priority. In addition to lowering rates, there are at least three additional, simple, steps that the Board can take to address ICS terms and practices that are unfair to consumers.

Adopt the FCC's rule regarding ancillary service charges. Federal regulations define an ancillary service charge as "any charge Consumers may be assess [sic] for the use of Inmate Calling services that are not included in the per-minute charges assessed for individual calls." 47 C.F.R. § 64.6000(a). The same rules allow five specific ancillary service charges, which are

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<sup>14</sup> Most obviously, this includes GTL and Securus, which are owned by American Securities and Platinum Equity, respectively.

<sup>15</sup> See generally Eileen Appelbaum & Rosemary Batt, "Fees, Fees and More Fees: How Private Equity Abuses its Limited Partners and U.S. Taxpayers," at 26-29, Ctr. for Econ. & Policy Research (May 2016), available at <http://cepr.net/images/stories/reports/private-equity-fees-2016-05.pdf>.

capped at specified amounts, and prohibit imposition of any other types of fees. 47 C.F.R. § 64.6020. The D.C. Circuit upheld these restrictions as to interstate calls, but invalidated them as to intrastate calls on jurisdictional grounds. *Global Tel\*Link*, 866 F.3d at 415. The federal restrictions were adopted after the FCC developed an extensive record indicating that “absent reform, ICS providers have the ability and incentive to continue to increase [ancillary service] charges unchecked by competitive forces.” Second Report & Order ¶ 144, 30 FCC Rcd. at 12838. This finding has not been overturned or vacated by any court. The Board can protect consumers and simplify carriers’ regulatory compliance by adopting the FCC’s ancillary fee rules and applying them to intrastate Iowa calls.

Payment processors. Some providers appear to accept payments via third-party companies not to increase consumer convenience, but rather as a hidden source of profits. To address these deceptive practices, all carriers should be required to list in their tariffs any third-party payment processors (such as WesternUnion, MoneyGram, and PayNearMe) that handle payments on behalf of that carrier. This disclosure should specify the amounts charged to customers by those third-party companies. If the fee charged by any of the payment processors is more than \$5.95, the carrier should be required to provide a complete copy of the agreement between the carrier and the payment processor, along with an explanation (signed by the provider’s owner, president, or chief executive officer) of why the company is unable to arrange for the payment transfer services to charge fees that do not exceed \$5.95.<sup>16</sup>

Unclaimed funds and customer refunds. Customer-refund and inactive-account policies can create a considerable source of unearned profit for less reputable providers. The Board can easily address this problem by adopting the FCC’s rule on ancillary fees (see above), which would disallow abusive practices such as “inactivity” or “maintenance” fees. To further

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<sup>16</sup> This language is based on the rule the Alabama Public Services Commission. *See In re Generic Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Service*, Dkt. 15957, Further Order Adopting Revised Inmate Phone Service Rules, ¶ 8.26 (Ala. Pub. Serv. Comm’n, Dec. 9, 2014, updated Jun. 12, 2015), available at <http://www.psc.alabama.gov/Telecom/Engineering/documents/Dec%202014%20Order%2015957%20updated%20t%20hru%206-12-2015.pdf>.

empower ICS consumers, we also suggest two simple rules in the interest of transparency. First, the Board should require that all AOS companies describe their refund and unclaimed-fund policies in their tariffs, including how the carrier complies with chapter 556 of the Iowa Code. Second, the Board should require carriers to annually report the aggregate amount of funds they have turned over to the Treasurer that year pursuant to Iowa Code § 556.13(1). This will allow interested parties to monitor carrier compliance with applicable law.

**V. Conclusion**

For the above reasons, we urge the Board to establish a no-look safe harbor rate of 21¢ per minute for debit calls and 25¢ per minute for collect calls. For carriers that seek to exceed these safe harbors, the Board should require carriers to justification based on facility-level cost data that does not include commission payments. In addition to establishing a system of rate regulation, the Board should take simple steps to address the unfair terms and practices of some carriers.

Dated: September 19, 2019

Respectfully submitted,

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