

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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REQUEST FOR LEAVE TO FILE ADDITIONAL COMMENTS

The Office of Consumer Advocate (OCA), Iowa Department of Justice, requests leave to file these additional comments in reply to newly public argument advanced by Securus Technologies, Inc. (Securus) in its filing dated December 17, 2019.¹ OCA also requests that the attached article from the December 15, 2019 issue of *The Gazette* be included in the record.

According to Securus, an inmate calling service (ICS) provider has “two basic options” to set its rates: (1) “looking at the specific costs associated with providing ICS in each specific correctional facility . . .”; and (2) “averaging all of [the ICS provider’s] costs across all its Iowa correctional facility customers . . .” Securus at 10. The problem with Securus’s option 1 is that it potentially requires a full-blown rate case for each facility. Adopting option 1 would pose a daunting challenge. At best, it would

¹The Securus filing dated December 17, 2019, appears to be identical to the Securus filing dated September 19, 2019, except that, at pages 10 and 11, Securus no longer seeks confidential treatment for, and hence makes public, the three initial paragraphs of Securus’s 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. In its reply comments filed October 4, 2019, at 5, OCA supported the objection of the Prison Policy Initiative 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. OCA urged that the application for confidential treatment be denied and that Securus be given the option of filing its comments publicly or not having them considered.

delay the already long overdue establishment of just and reasonable rates for ICS services.

Securus argues that the cost averaging of Securus's option 2: (1) ignores differences in costs among facilities of different sizes; (2) requires larger facilities to subsidize smaller facilities; (3) limits the flexibility of the ICS provider to charge lower rates for larger facilities; and (4) makes the ICS provider's rate structure dependent on retaining a suitable number of larger facilities. Securus at 10. All of these asserted concerns relate to the size of the facility. For intrastate calls, the answer to these concerns, if the facts support them, may be for the Board to do what the FCC proposed to do in its Order on Reconsideration: approve different rates for different size facilities.²

Under the majority's decision in *Global Tel*Link v. FCC*, 866 F.3d 397, 408-12 (2017), the FCC lacks the authority to regulate intrastate ICS rates under a just and reasonable standard. The court's judgment is based on the presumption of 47 U.S.C. § 152(b) against the FCC's assertion of regulatory authority over intrastate communications and on the limitation to interstate services of the FCC's traditional ratemaking powers, utilizing the just and reasonable standard, under 47 U.S.C. § 201.

By contrast, as the Board has recognized, the Board has the authority to regulate intrastate ICS rates under a just and reasonable standard.³ This authority includes "wide

²*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), ¶ 3. As OCA has previously observed, the FCC's Order on Reconsideration was not before the court in the *Global Tel* case. For interstate calls, the matter is again before the FCC on remand from the court. OCA is not aware of any FCC order on the matter subsequent to the court's decision.

³Order Initiating Inquiry, Aug. 20, 2019, at 7 (question 2); *In re Rule Making regarding Inmate Calling Rate Caps*, Docket No. RMU-2017-0004, Order Terminating Rule Making, Jan. 2, 2019, at 6, and Order Requiring Tariff Filing, Mar. 14, 2019, at 2; *see* Iowa Code §§ 476.91, 476.1(3)(b), 476.3(1), 476.4(1), 476.8(1), 476.95(3)(g) (2019).

discretion . . . to take into account and to use industry-wide averages” *Id.* at 424-26 (Pillard, J., dissenting in part and concurring in part). This authority similarly includes wide discretion to consider the costs associated with providing ICS services in different size facilities and to formulate general policy and rules based on the facts as presented—and thus to avoid the unwieldy burden of a full-blown rate case for each facility.

OCA continues to suggest that the Board 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 established interim per minute rate caps for interstate ICS (\$.21 for prepaid calls and \$.25 for collect calls). *See* OCA Reply, Oct. 4, 2019, at 1-2. Higher proposed rates, including higher proposed rates that vary based on the size of a correctional facility, and the facts that support or oppose such higher proposed rates, could then be considered as necessary in individual tariff dockets.

CONCLUSION

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

Mark R. Schuling
Consumer Advocate

/s/ Craig Graziano
Craig Graziano
Attorney

/s/ Jennifer L. Johnson
Jennifer L. Johnson
Attorney

1375 E. Court Avenue
Des Moines, Iowa 50319-0063
Telephone: (515) 725-7200
E-mail: IowaOCA@oca.iowa.gov

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Jailed father's cost to call son: 74 cents a minute

Iowa regulators reviewing rates for jailhouse calls

By Erin Jordan, The Gazette

Henry Pinegar loves jigsaw puzzles, fishing and superheroes — especially the Hulk. The 4-year-old also loves to

talk with his dad on the phone or a video call, which is like FaceTime.

When Henry's dad, William Pinegar, was serving a felony sentence at the Anamosa State Penitentiary, the father and son talked every day — maintaining family connections that experts say will help

Pinegar when he's released.

But now Pinegar, 40, has been moved to the Bremer County Jail, in Waverly, where it costs nearly \$1 a minute for phone calls — almost nine times what he was paying in prison — and Pinegar's family can afford to talk with him only a few times a week.

"How do I tell our 4-year-old son 'Daddy loves you. He just can't call?'" asked Skylar Pinegar, 25, of Des Moines. "My husband is my son's favorite person, so this time is very hard on him."

JAIL PHONE COSTS VARY

The Gazette surveyed 12

Eastern Iowa county jails in May about how much inmates and their families pay per minute for in-state calls. The highest rate in the area was in Bremer County, where inmates pay \$3.74 for the first minute of an in-state

► **CALLS, PAGE 7A**

Calls/Jailhouse rates place burden on struggling family

► FROM PAGE 1A

call, followed by 74 cents a minute after, which results in a 15-minute phone call costing \$14.10.

The cheapest inmate phone calls among the 12 counties The Gazette contacted were 20 cents a minute, or \$3 for a 15-minute in-state call, in Linn, Iowa, Benton and Tama counties.

Inmates in county jails often pay more for phone calls than state or federal prisoners because each county negotiates separate contracts with private service providers.

The Iowa Utilities Board in January launched a review of whether county jail phone rates are just and reasonable. That investigation expanded in August to broader questions for jail phone service providers. No date has been set yet for the board to consider these questions — despite urging from families and law enforcement officers.

“The contract dictates the rates that are charged to the inmates and there is nothing we can do about it until there is a ruling by the government and Securus is forced to change the rates,” Bremer County Sheriff Dan Pickett wrote in an email about his jail’s service provider, Securus Technologies, based in Dallas.

In a statement, Securus said the cost of providing the technology in a correctional facility is “substantial” but that it



Henry Pinegar, 4, cries while talking Saturday with his father, William Pinegar, using an app-based system for communicating with inmates at the Bremer County Jail, along with his mother, Skylar Pinegar. (KC McGinnis photos/Freelance)

had reduced call rates by 30 percent in three years.

“Rates are set by contract with individual correctional agencies, including Bremer County, which houses less than 40 individuals. We will continue to work with all our customers to make our services more accessible while continuing to protect public safety,” the statement said.

The 10 percent of the profits that Bremer County gets back from Securus goes into an inmate fund that can be used only for inmate needs, such as new exercise equipment. Pickett said some county jails have lower phone rates, but charge more for commissary items, such as snacks or coffee.

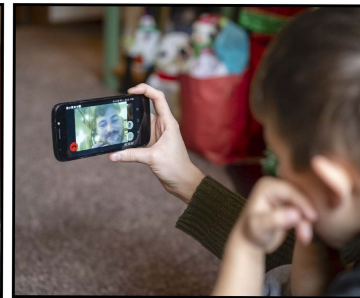
COSTS LIMIT CONTACT

But the inmate phone rates in Bremer County were an unpleasant surprise for the Pinegars.

When William Pinegar was being held at the Anamosa State Penitentiary, phone rates were 11 cents a minute — the rate at all nine Iowa prison facilities. That means a 15-minute call would cost \$1.65.

But then Pinegar was transferred last month to Bremer County while awaiting transfer to a federal prison to serve a sentence there for a felony conviction.

Besides the rates for a phone call, a 20-minute video call runs \$13.90.



Using an app-based system for communicating with inmates at the Bremer County Jail, Skylar Pinegar of Des Moines on Saturday calls her husband, William Pinegar, along with their 4-year-old son, Henry Pinegar, from their home in Des Moines. Bremer County has the most expensive inmate phone costs of all county jails in the state, with a 15-minute phone call costing \$14.90, and an often glitchy 20-minute web visit costing \$13.90.

Pinegar has been told it may be after the holidays before he gets moved to a federal facility, where phone calls probably will be cheaper.

Skylar Pinegar, a home health aide who takes care of elderly patients, said putting money in her husband’s phone account has become a lot more expensive, which is difficult right before Christmas.

“I know they are doing their time,” she said of people who are incarcerated. “I just feel like the family is getting punished, too. It’s not possible for low-income people or anybody really.”

She usually gets off work at 3:30 p.m., picks up Henry from preschool and then goes home to make dinner. If there’s

money in William Pinegar’s account, the family talks a few times a week.

They share details about each other’s days and, in one video chat Skylar caught on camera, make silly faces. The conversations are good for Henry and Skylar, but also help William get through his days behind bars, his wife said.

“He gets super depressed when he can’t call home,” she said.

Criminal justice reformers have been fighting high prison phone costs, arguing the fees disproportionately tax the poor and increase recidivism because inmates have a harder time staying connected with their families. Pinegar is expected to be in prison several more years.

The Prison Policy Initiative, a prisoner advocacy group in Northampton, Mass., has said the Iowa Utilities Board should cap inmate phone rates, and counties should avoid taking a cut of the profits to keep rates down.

“It’s frequently children who pay the price when jails set phone rates that make it impossible for families to stay in touch,” said Wanda Bertram, the group’s spokeswoman. “Most state prisons have already lowered their phone rates, recognizing that high costs do significant harm to families. Jails should do the same.”

Comments: (319) 339-3157;
erin.jordan@thegazette.com