

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE:	
INMATE CALLING SOLUTIONS, LLC	DOCKET NO. TF-2019-0030
PRODIGY SOLUTIONS, INC.	DOCKET NO. TF-2019-0032
NETWORK COMMUNICATIONS INTERNATIONAL CORP d/b/a NCIC INMATE COMMUNICATIONS	DOCKET NO. TF-2019-0037
ENCARTELE, INC.	DOCKET NO. TF-2019-0270
INQUIRY INTO REGULATORY REQUIREMENTS FOR ALTERNATIVE OPERATOR SERVICES COMPANIES	DOCKET NO. NOI-2019-0001

**ADDITIONAL AUTHORITY IN SUPPORT OF RESISTANCE TO
APPLICATIONS FOR CONFIDENTIAL TREATMENT**

The Office of Consumer Advocate, Iowa Department of Justice, draws the Board's attention to the Order issued September 1, 2020, by the Federal Communications Commission (FCC), in WC Docket No. 12-375, *In the Matter of Rates for Interstate Inmate Calling Services*, as further support for its Resistance to Application for Confidential Treatment filed in each of the above tariff dockets. A copy of the FCC Order is attached.

In each of the above tariff dockets, the inmate calling service (ICS) provider has sought confidential treatment of the identity of the Iowa correctional facilities that have contracted with the ICS provider. In each case, OCA has resisted the application for confidential treatment. In the attached FCC Order, the FCC has denied the requests of seven ICS providers to treat the facility names shown in their FCC annual reports as confidential.

The Order states:

6. The . . . facility names . . . information included in the providers' Annual Reports is not entitled to confidential treatment. Accordingly, we deny any pending requests seeking confidential treatment of such information. . . .

7. Under the Protective Order, confidential information is, among other things, "information that is not otherwise available from publicly available sources." However, much, if not all, of the information regarding . . . facility names . . . is publicly available. Some providers that have requested confidentiality as to their . . . facility names post that information on their websites, undercutting any claim of confidentiality. Other providers that have not requested confidential treatment of facility. . . information in their annual reports also publicly post that information on their websites, further undercutting confidentiality claims of other providers. In addition, many facilities publicly post information about the providers serving those facilities. . . . Compounding matters further, state and local governments often reveal information about . . . facility names as part of their public procurement process or otherwise do not take the view that such information is confidential under state law or local open records law. . . . Such publicly-available or obligated to be publicly-available information can hardly meet the definition of "Confidential Information" in the Protective Order.

8. We also find that there is a strong public interest in making providers' rates and charges at the facilities each serve publicly available and that this public interest outweighs any hypothetical competitive harms that might ensue from the disclosure of the facilities particular providers serve or the rates they charge at those facilities. As the Commission has recognized, "transparency in rates, terms, and fees will . . . ensure that consumers are informed of their choices" as to the telecommunications services they will use at a given facility. Additionally, making this information available to the public in providers' annual reports gives all interested parties—incarcerated individuals, their friends and families, states, providers, and public interest advocates—the opportunity to review the data independently and ensure its accuracy.

9. The inmate calling service providers that have requested that the Commission treat facility names . . . as confidential have provided no meaningful justification as to why disclosure would be detrimental to them. Nor have they reconciled the fact that much of the information designated as confidential is already publicly available or is required to be made publicly available under the Commission's rules. Absent any such justification, we are unpersuaded that this information should be treated confidentially.

The fact that the facility names are provided in the FCC annual reports also supports OCA's suggestion that they be provided in the Iowa annual reports.

WHEREFORE, OCA reiterates its requests that the applications for confidential treatment in each of the above tariff dockets be denied.

Respectfully submitted,

Jennifer C. Easler
Consumer Advocate

/s/ Craig F. Graziano
Craig F. Graziano
Attorney

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

OFFICE OF CONSUMER ADVOCATE

Federal Communications Commission

DA 20-1006

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Rates for Interstate Inmate Calling Services) WC Docket No. 12-375
)

ORDER

Adopted: September 1, 2020

Released: September 1, 2020

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) partially denies requests for confidential treatment filed pursuant to the *Protective Order* in this proceeding by certain inmate calling services providers in connection with their 2019 Annual Reports that were due April 1, 2020, covering calendar year 2019 (2019 Annual Reports).¹ Specifically, the Bureau denies requests to treat facility names, inmate calling services rates, the amounts of ancillary service charges, and average daily population as confidential.² The Commission's rules require providers of inmate calling services to make their rates and charges available to consumers³ and much of the information regarding rates, charges, facility names, and average daily population is already available to the public through individual facility and provider websites, state or local public procurement processes, or state open records laws. Given the public availability of much of this information and the Commission's rules requiring the disclosure of much of this information, the Bureau denies all pending requests for confidential treatment of such information. We further find that there is a strong public interest in transparency surrounding rates, charges, terms, and fees for inmate calling services, and we find no persuasive reason for protecting information on average daily population from public disclosure. Accordingly, the Bureau denies all pending requests for confidential treatment of such information.

II. BACKGROUND

2. *The Protective Order.* The *Protective Order* in this proceeding permits parties to designate certain information as confidential.⁴ By designating documents and information as confidential, the submitting party is "deemed to have submitted a request that the material not be made routinely available for public inspection under the Commission's rules."⁵ The *Protective Order* defines "Confidential Information" to be "information that is not otherwise available from publicly available

¹ *Rates for Inmate Calling Services*, WC Docket No. 12-375, Order, 28 FCC Rcd 16954 (WCB 2013) (*Protective Order*); 47 CFR § 0.459; 47 CFR § 64.6060; *Wireline Competition Bureau Announces OMB Renewal of Information Collection Concerning Inmate Calling Services*, WC Docket No. 12-375, Public Notice, 35 FCC Rcd 1456 (WCB 2020).

² See generally *Instructions for Completing the Inmate Calling Services Annual Reporting Form (FCC Form 2301(a))* (Feb. 2020), <https://docs.fcc.gov/public/attachments/DOC-362551A2.docx>.

³ See 47 CFR §§ 64.6110; 42.10.

⁴ *Protective Order*, 28 FCC Rcd at 16955, para. 3.

⁵ *Protective Order*, 28 FCC Rcd at 16955, para. 3 (citing 47 CFR §§ 0.459(a), 0.459(a)(3)).

sources and that is subject to protection under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Commission’s implementing rules.”⁶

3. *The Commission’s Rules Requiring Public Availability of Rates.* Section 64.6110 of the Commission’s rules requires providers of inmate calling services to “clearly, accurately, and conspicuously disclose their interstate, intrastate, and international rates and Ancillary Service Charges to consumers on their Web sites or in another reasonable manner readily available to consumers.”⁷ In addition, section 42.10 of the Commission’s rules requires nondominant interexchange carriers to “make available to any member of the public, in at least one location, during regular business hours, information concerning its current rates, terms and conditions for all of its international and interstate, domestic, interexchange services.”⁸ The information must be made available “in an easy to understand format and in a timely manner.”⁹ Carriers that have a website must make their rate and service information available on their websites and must update that information regularly.¹⁰

4. *Public Notice.* On March 12, 2019, the Bureau released a Public Notice reminding providers of the standards set forth in section 0.459(b) of the Commission’s rules.¹¹ The Bureau specifically noted the staff’s concerns about redaction of rates, ancillary service charges, and average daily population in providers’ annual reports. Because the Commission’s rules require public disclosure of inmate calling services (ICS) rates and ancillary service charges to consumers, the Bureau requested “compelling justification” for protection of such information.¹² Noting that the average daily population is publicly available for some facilities and that such information “is not directly related to the provisioning of ICS and does not appear to be competitively sensitive,” the Bureau stated that “absent additional contextual information, average daily population is not entitled to confidential treatment.”¹³

5. *Inmate Calling Services Provider Requests.* Seven inmate calling services providers requested confidential treatment of facility names and/or rate and charge information listed in their 2019 Annual Reports. Correct Solutions, LLC (Correct Solutions) and ATN, Inc. (ATN) requested confidential treatment for the name and location of the facilities they serve and of the rates they charge.¹⁴ Combined

⁶ *Protective Order*, 28 FCC Rcd at 16954, para. 2. Broadly, under the FOIA and the Commission’s implementing rules, the following records are not routinely available for public inspection: records pertaining to national defense or foreign policy; materials related solely to the internal personnel rules and practices of the Commission; materials exempted from disclosure by statute; trade secrets and commercial or financial information; interagency and intra-agency memoranda or letters; personnel, medical and similar files, disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and records compiled for law enforcement purposes. See 47 CFR § 0.457; see also 5 U.S.C. § 552(b).

⁷ 47 CFR § 64.6110. This disclosure requirement is not limited to a “Consumer” as defined at 47 CFR § 64.6000 (“Consumer means the party paying a Provider of Inmate Calling Services”) but applies to consumers, generally. See *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763, 12893-98, paras. 274-288 (2015) (*2015 ICS Order*).

⁸ 47 CFR § 42.10(a).

⁹ 47 CFR § 42.10(a).

¹⁰ 47 CFR § 42.10(b).

¹¹ See *Wireline Competition Bureau Reminds Providers of Inmate Calling Services of the April 1, 2019 Deadline for Annual Reports and Certifications*, WC Docket No. 12-375, Public Notice, 34 FCC Rcd 1292 (WCB 2019) (*Public Notice*).

¹² *Public Notice*, 34 FCC Rcd at 1293.

¹³ *Public Notice*, 34 FCC Rcd at 1293.

¹⁴ Annual Report of Correct Solutions, LLC, for 2019, WC Docket No. 12-375 (filed Mar. 30, 2020) (Tab II. ICS Rates) (Correct Solutions Annual Report); Annual Report of ATN, Inc., for 2019, WC Docket No. 12-375 (filed

Public Communications, LLC (Combined), NCIC and Pay Tel Communications, Inc. requested confidential treatment of the names of the facilities they serve, but not of the rates they charge.¹⁵ Global Tel*Link Corporation and Inmate Calling Solutions, LLC requested confidential treatment of the narrative descriptions they provided of the rates they charged during the reporting period that differed from the rates they listed as their maximum rates charged.¹⁶ In contrast, five providers submitted annual reports but did not seek confidential treatment of either the facilities they serve or of the rates they charge. Two providers, ATN and Correct Solutions, sought confidential treatment of amounts of ancillary service charges assessed.¹⁷ No other providers sought confidential treatment for such information. Finally, three providers, ATN, CenturyLink Public Communications, Inc. (CenturyLink) and Correct Solutions sought confidential treatment of the average daily population while the remaining inmate calling services providers did not.¹⁸

III. DISCUSSION

6. The rate, charge, facility names, and average daily population information included in providers' Annual Reports is not entitled to confidential treatment. Accordingly, we deny any pending requests seeking confidential treatment of such information. The Commission's rules require clear and conspicuous disclosure of rates and charges.¹⁹ Thus, any claim that this information is confidential is inconsistent with the Commission's rules. Further, the Commission has previously cautioned providers against seeking confidentiality for rates, ancillary service charges, and average daily population.²⁰

7. Under the *Protective Order*, confidential information is, among other things, "information that is not otherwise available from publicly available sources."²¹ However, much, if not all, of the information regarding rates, charges, facility names, and average daily population is publicly available. Some providers that have requested confidentiality as to their rates, charges, or facility names post that information on their websites, undercutting any claim of confidentiality.²² Other providers that

(Continued from previous page) _____

Apr. 1, 2020) (Tab II. ICS Rates) (ATN Annual Report). Crown Correctional Telephone did not report rate, facility name, or average daily population information in its annual report, but claims that its data are reported by Network Communications International Corp (NCIC). See Annual Report of Crown Correctional Telephone, Inc. for 2019, WC Docket No. 12-375 (filed Mar. 31, 2020) (Tab II(a)). As NCIC sought confidential treatment of facility names, the Bureau denies NCIC's request as to facility names and, to the extent that Crown sought to protect that information we also deny that request.

¹⁵ Annual Report of Combined Public Communications, Inc., for 2019, WC Docket No. 12-375 (filed Mar. 31, 2020) (Tab II. ICS Rates); Annual Report of Network Communications International Corp, for 2019, WC Docket No. 12-375 (filed May 13, 2020) (Tab II. ICS Rates); Annual Report of Pay Tel Communications, Inc., for 2019, WC Docket No. 12-375 (filed Apr. 13, 2020) (Tab II. ICS Rates).

¹⁶ Annual Report of Global Tel*Link Corporation, for 2019, WC Docket No. 12-375 (filed Apr. 1, 2020) (Tab II(a) – Narrative Description); Annual Report of Inmate Calling Solutions, LLC, for 2019, WC Docket No. 12-375 (filed Mar. 31, 2020) (Tab II(a) – Narrative Description).

¹⁷ ATN Annual Report (Tab III. Ancillary Service Charges); Correct Solutions Annual Report (Tab III. Ancillary Service Charges).

¹⁸ ATN Annual Report (Tab II. ICS Rates); Correct Solutions Annual Report (Tab II. ICS Rates); Annual Report of CenturyLink Public Communications, Inc., for 2019, WC Docket No. 12-375 (filed Apr. 1, 2020) (Tab II. ICS Rates).

¹⁹ See 47 CFR §§ 64.6110;42.10.

²⁰ See *Public Notice*, 34 FCC Rcd at 1293.

²¹ See *Protective Order*, 28 FCC Rcd at 16954, para. 2.

²² NCIC, for example, posts its interstate, intrastate, and some international rates on its website by facility, fatally undermining its attempts to have the same information treated confidentially in the context of its Annual Report.

(continued....)

Federal Communications Commission

have not requested confidential treatment of facility or rate information in their annual reports also publicly post that information on their websites, further undercutting confidentiality claims of other providers.²³ In addition, many facilities publicly post information about the providers serving those facilities, the rates those providers charge, or average daily population statistics.²⁴ Compounding matters further, state and local governments often reveal information about rates, charges, and facility names as part of their public procurement process or otherwise do not take the view that such information is confidential under state or local open records laws.²⁵ To the extent the rates and charges providers charge at each respective facility they serve is not currently available on their websites, the Commission's rules require that information to be made available "in another reasonable manner readily available to consumers."²⁶ Such publicly-available or obligated to be publicly-available information can hardly meet the definition of "Confidential Information" in the *Protective Order*.²⁷

8. We also find that there is a strong public interest in making providers' rates and charges at the facilities each serve publicly available and that this public interest outweighs any hypothetical competitive harms that might ensue from the disclosure of the facilities particular providers serve or the rates they charge at those facilities. As the Commission has recognized, "transparency in rates, terms, and fees will . . . ensure that consumers are informed of their choices" as to the telecommunications services

(Continued from previous page)

NCIC, Inmate Phone Service, <https://www.ncic.com/jails> (last visited Aug. 27, 2020). Similarly, Correct Solutions displays facility names, facility identification numbers, and phone numbers for its facilities. Correct Solutions Group, Facilities, <https://www.regentpay.com/facilities> (last visited Aug. 28, 2020).

²³ For example, Securus Technologies, LLC allows users on its website to browse the facilities it serves by state and determine the services offered in those facilities while CenturyLink also provides rate and facility information on its website. Securus Technologies, Facilities We Serve, <https://securustech.online/#/facilities-we-serve> (last visited Aug. 28, 2020); CenturyLink, Friends and Family – How to Stay Connected, <https://www.centurylinkcorrections.com/friends-and-family.html> (last visited Aug. 28, 2020).

²⁴ For example, the Calloway County Jail in Murray, Kentucky posts rates that Combined charges for calls from that facility. Calloway County Jail, Inmate Services, http://www.callowaycountyjail.com/inmate_services.html (last visited Aug. 27, 2020). The White County Sheriff's Office in Searcy, Arkansas displays the name of the provider. White County Sheriff's Office, Staying in touch with inmates, <https://wcco.cc/index.php/inmate-info> (last visited Aug. 28, 2020). And the Tallapoosa County Alabama jail posts average daily population statistics while the Tennessee Department of Correction provides detailed monthly reports showing jail populations on the last day of each month in the state. See Tallapoosa County Alabama, Jail, <http://www.tallaco.com/content.asp?id=74101> (last visited Aug. 31, 2020); Tennessee Department of Correction, Jail Summary Reports, <https://www.tn.gov/correction/statistics-and-information/jail-summary-reports.html> (last visited Aug. 31, 2020). Facilities that do not have a dedicated website and post only general contact information on their websites readily provide the name of their inmate calling services provider to any member of the public that calls and inquires.

²⁵ See, e.g. Letter from Jim McDonnell, Sheriff, Los Angeles County, and Calvin Remington, Interim Chief Probation Officer, Los Angeles County, to the Honorable Board of Supervisors, Los Angeles County (June 8, 2016), <http://file.lacounty.gov/SDSInter/bos/supdocs/104632.pdf> (providing notice of approval of an amendment to Los Angeles County's contract with GTL and amending the rates and ancillary service charges under the contract); Alameda County, California, Proprietary and Confidential Information, <https://www.acgov.org/gsa/departments/purchasing/policy/proprietary.htm> (last visited Aug. 31, 2020) (explaining that certain information in bid responses, including pricing information, is not considered confidential under the California Public Records Act).

²⁶ See 47 CFR § 64.6110. Failure to publicly disclose the required information is subject to Commission enforcement action. See *2015 ICS Order*, 30 FCC Rcd at 12896, para. 279 (explaining that "each failure to disclose all charges to consumers is counted as individual violation . . .").

²⁷ *Protective Order*, 28 FCC Rcd at 16954, para. 2 (defining "Confidential Information" in part to mean information that is not otherwise available from public sources).

Federal Communications Commission

they will use at a given facility.²⁸ Additionally, making this information available to the public in providers' annual reports gives all interested parties—incarcerated individuals, their friends and families, states, providers, and public interest advocates—the opportunity to review the data independently and ensure its accuracy.

9. The inmate calling services providers that have requested that the Commission treat facility names, rates, charges, and average daily population as confidential have provided no meaningful justification as to why disclosure would be detrimental to them.²⁹ Nor have they reconciled the fact that much of the information designated as confidential is already publicly available or is required to be made publicly available under the Commission's rules. Absent any such justification, we are unpersuaded that this information should be treated confidentially.

IV. PROCEDURAL MATTERS

10. Pursuant to section 0.459(g) of the Commission's rules, any provider whose request for confidentiality as to facility names, inmate calling services rates, the amounts of ancillary service charges, or average daily population is denied herein may file an application for the review by the Commission within ten business days.³⁰ The materials will be accorded confidential treatment until the Commission acts on any timely applications for review of the Bureau's denial of the confidentiality requests.³¹

V. ORDERING CLAUSE

11. Accordingly, IT IS ORDERED that, pursuant to Section 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(j), and through the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.921, and section 0.459 of the Commission's rules, 47 CFR § 0.459, the requests for confidential treatment of facility names, inmate calling services rates, amounts of ancillary service charges, and/or average daily population in the 2019 Annual Reports filed by Correct Solutions, LLC, ATN, Inc., Combined Public Communications, LLC, CenturyLink Public Communications, Inc., Network Communications International Corp, Pay Tel Communications, Inc., Global Tel*Link Corporation, and Inmate Calling Solutions, LLC are hereby DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief

²⁸ 2015 ICS Order, 30 FCC Rcd at 12895, para. 278.

²⁹ See 47 CFR § 0.459(b) (requiring requesting parties to provide an "explanation of the degree to which the information is commercial or financial . . . [or] concerns a service that is subject to competition" or an "explanation of how the disclosure of the information could result in substantial competitive harm"). By contrast, providers' justifications of their requests for confidential treatment of this information generally consisted of conclusory statements. See, e.g., Letter from John E. Benedict, Vice President – Federal Regulatory Affairs & Regulatory Counsel, CenturyLink Public Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (filed Apr. 1, 2020) (concluding that release of information designated as confidential would cause competitive harm "by allowing . . . competitors to become aware of sensitive proprietary information . . .").

³⁰ 47 CFR § 0.459(g). This 10-business day period begins to run from a telephonic notice provided to the parties that their request for confidential treatment has been denied. *Id.*

³¹ 47 CFR § 0.459(g).

Federal Communications Commission

DA 20-1006

Wireline Competition Bureau