

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
BEFORE THE IOWA UTILITIES BOARD

IN RE:

LEGACY LONG DISTANCE  
INTERNATIONAL, INC.

DOCKET NO. TF-2019-0035

**THE PRISON POLICY INITIATIVE'S OBJECTION TO PROPOSED TARIFF,  
REQUEST FOR DOCKETING, AND PETITION FOR INTERVENTION**

The Prison Policy Initiative, Inc. (“PPI”) hereby submits the following objection and request for docketing pursuant to 199 IAC 26.5(3), and petitions the Iowa Utilities Board (“IUB”) for an order permitting it to intervene in any related proceedings pursuant to 199 IAC 7.13(1). In support thereof, PPI states as follows:

1. PPI is a nonprofit organization that uses data analysis to demonstrate how the American system of incarceration negatively impacts everyone, not just incarcerated people. It publishes its findings and takes on selected legal campaigns in order to create a fairer justice system through policy change. PPI has published three landmark reports on exploitation and dysfunction in the prison and jail telephone market, and provided testimony and over two dozen written briefings to the FCC in support of stronger regulations in the correctional phone market.

2. The above-captioned tariff filing impacts end-users who are incarcerated in Iowa correctional facilities, and who therefore have limited access to information and methods of correspondence. The tariff filed by Legacy Long Distance International, Inc. (“Legacy”) includes rates that are economically burdensome for incarcerated Iowans, yet these end users are highly unlikely to have received notice of Legacy’s filing, and therefore cannot meaningfully assert their rights under 199 IAC 26.5(3).

3. As an advocate for the rights of incarcerated people, including those in Iowa, PPI has standing to object to the proposed tariff on behalf of affected customers. *See In re MCC Telephony of Iowa*, IUB Dkt. TF-2004-537, Order Approving Tariff & Issuing Certificate (Mar. 14, 2005) (recognizing organizational standing for purposes of objecting to proposed tariff); *see*

*also In re Midwest Power*, IUB Dkt. No. E-21043, Decision & Order Granting Franchise (Mar. 9, 1993) (“[S]tanding is not a requirement for a proceeding before an administrative agency. . . . [A]gencies have greater flexibility than courts to adapt their procedures so they can accommodate broad public participation without undermining fairness or efficiency.”).

4. Legacy is an alternative operator services (“AOS”) company as defined in Iowa Code § 476.91(1)(a), and is the type of carrier referred to by the Federal Communications Commission (“FCC”) as an inmate communications service (“ICS”) provider. *See generally, In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking [hereinafter “FCC Report & Order”], 30 FCC Rcd. 12763 (Nov. 5, 2015).

5. Legacy appears to have filed the present tariff in response to the IUB’s Order Terminating Rule Making in *In re Rule Making Regarding Inmate Calling Rate Caps (199 IAC Chapter 22)*, IUB Dkt. No. RMU-2017-0004 (Jan. 2, 2019), which ordered “all telecommunications companies subject to rate regulation . . . that provide inmate calling services in Iowa to file current tariffs with the Utilities Board for review.” *Id* at 6.

6. Legacy’s rates in the tariff range up to \$1.15 per minute, plus an array of ancillary fees that could add upwards of \$10 to the cost of a local call. The tariff also contains troublesome billing provisions such as single-call rates and billing in 3-minute increments.. Tariff §§ 4.1 - 5.3.

7. After conferring with Legacy’s staff, PPI understands that Legacy does not currently offer service in Iowa, and is open to revising their rates downward in the event that the company does enter the Iowa market. Accordingly, PPI files this objection on a precautionary basis.

8. The FCC, after examining confidential ICS carrier financial data, concluded that most carriers’ costs were low enough that carriers could earn reasonable profits while charging end-user rates of 11¢ per minute. FCC Report & Order ¶ 58, 30 FCC Rcd. at 12792.

Acknowledging the impact of facility size on economies of scale, the FCC allowed slightly

higher rates, up to 22¢ per minute, for small jails. *Id.* ¶¶ 46, 48, 30 FCC Rcd. at 12786-87. Although the D.C. Circuit subsequently vacated the FCC’s rate caps on jurisdictional and methodological grounds, it did not overturn the Commission’s factfinding concerning carrier costs. *See generally, Global Tel\*Link v. FCC*, 866 F.3d 937 (D.C. Cir. 2017). The FCC findings regarding costs, combined with Legacy’s statutory burden of proof, require a more detailed examination of Legacy’s rates.

9. When ordering AOS companies to file tariffs, the IUB noted that “[a] comprehensive review of the tariffs, subject to complaint and investigation, will help ensure compliance with the applicable statutes and rules while allowing the Board to consider whether the rates are reasonable.” *Rule Making Regarding Inmate Calling*, at 6. Given the prior findings of the FCC concerning ICS carrier costs, the rates proposed by Legacy appear to be unreasonably high. In order to fully effectuate the IUB’s directive, interested parties must have the opportunity to view the carrier’s cost data (subject to appropriate confidentiality provisions, if necessary) in order to determine whether Reliance’s rates comply with the statutory requirement of reasonableness.

#### **Appearance**

10. PPI files this objection and petition by and through Peter Wagner, pursuant to 199 IAC 7.4(8)(b). Mr. Wagner is an employee of PPI and a member in good standing of the bar of Massachusetts.

11. Because Mr. Wagner is both an attorney and an employee of PPI, it appears that he is not required to request admission *pro hac vice* under 199 IAC 7.4(8)(a); nonetheless, to the extent that IUB requires compliance with the *pro hac vice* procedure, PPI is prepared to comply.

#### **Request for Docketing**

12. Iowa Code § 476.91(2) requires that all intrastate telecommunications services provided by an AOS company to end-user customers must be rendered pursuant to tariffs approved by the IUB.

13. Iowa Code § 476.6(4) provides that after a utility files an application for a new or changed rate, the IUB, prior to the expiration of 30 days, shall docket the case as a formal proceeding and set a schedule unless the new or changed rate is approved by the IUB. *See also Equal Access Corp. v. Utilities Board*, 510 N.W.2d 147, 150 (Iowa 1993) (ICA § 476.91 grants IUB authority to approve AOS tariffs and otherwise set rates charged by such companies).

14. A carrier that files a tariff must charge rates that are reasonable and just. ICA § 476.8(1). The burden of proof is on the carrier to prove that its rates are reasonable and that “no unreasonable profit is made.” ICA §§ 476.4(1), 476.8(2).

15. For the reasons stated above, the rates in Legacy’s proposed tariff appear to be unjust and unreasonably high.

#### **Petition for Intervention**

16. As explained previously, PPI appears in this proceeding in a representative capacity to advocate for the rights of incarcerated end-users and their family members. The interests of these customers are too frequently unrepresented when correctional facilities negotiate communications contracts with ICS carriers. *See e.g., Equal Access Corp.*, 510 N.W.2d 147, 150 (Iowa 1993) (“There was substantial evidence that [the ICS carrier]’s rates were excessive, yet the prison authorities did not, and probably could not, intervene because the parties affected were the ultimate recipients of the calls, not the inmates.”); *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking ¶ 40, 28 FCC Rcd. 14107, 14128-14129 (Sept. 26, 2013) (“While the process of awarding contracts to provide ICS may include competitive bidding, such competition in many instances benefits correctional facilities, not necessarily ICS consumers— inmates and their family and friends who pay the ICS rates, who are not parties to the agreements, and whose interest in just and reasonable rates is not necessarily represented in bidding or negotiation.”).

17. Since 2013, PPI has been using data analysis and legal advocacy to secure fairer phone rates for incarcerated consumers and their families. Given its track record of research and

regulatory advocacy, PPI is confident that it can help ensure that the IUB's tariff review is meaningful and effective.

18. The customer base that would pay Legacy's proposed rates is made up exclusively of incarcerated people and their friends and families. Accordingly, the unique interests of this constituency should be taken into account when the IUB considers the proposed tariff. PPI is well situated to represent the interests of end-users, and therefore seeks permission to intervene in any further proceedings concerning Legacy's proposed tariff, pursuant to 199 IAC 7.13(1).

For the reasons set forth above, PPI respectfully petitions the IUB to: (1) docket Legacy's propose tariff for further investigation, and (2) enter an order permitting PPI's intervention in any further proceedings concerning such tariff.

Dated: April 22, 2019

Respectfully submitted,

**PRISON POLICY INITIATIVE, INC.**

/s/ Peter Wagner

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