

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE: LEGACY LONG DISTANCE INTERNATIONAL, INC.	DOCKET NO. TF-2019-0035
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COMMENTS AND OBJECTION

The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, submits the following comments and objection in response to the proposed tariff filed by Legacy Long Distance International, Inc. (Legacy), on April 1, 2019:

1. Sections 4.1 through 4.16 of the proposed tariff set forth a series of rates for intrastate inmate calls, with per minute charges as high as \$1.15 per minute. These sections and sections 3.16 through 3.18 include provisions with minimum call duration of five or six minutes. These provisions result in charges as high as \$5.75 for a one-minute call and \$17.25 for a 15-minute call. Section 4.2.2 includes 3-minute billing increments. There is a series of surcharges and other fees.

2. By comparison, the interim rate cap established by the FCC for an interstate inmate call is, in the case of a prepaid call, \$.21 per minute, and, in the case of a collect call, \$.25 per minute. 47 C.F.R. § 64.6030. Thus, the maximum rate for a 15-minute interstate call is, in the case of a prepaid call, \$3.15, and, in the case of a collect call, \$3.75.

3. The Legacy proposed rates for a 15-minute intrastate call are, in the case of a prepaid call, as much as 5.5 times as high as the interstate maximum, and, in the case of a collect call, as much times as 4.6 times as high as the interstate maximum. The Legacy proposed rates for a one-minute intrastate call are, in the case of a prepaid call, as much as 27 times as high as

the interstate maximum, and, in the case of a collect call, as much as 23 times as high as the interstate maximum, prior to surcharges or other fees.

4. Legacy has offered no justification for the rates set forth in the proposed tariff.

5. With several exceptions, OCA objects to the rates set forth in the proposed tariff, as unjust and unreasonable, and requests that they be investigated and disapproved. OCA does not object to the proposed rates set forth in section 4.8.A option 7 or the proposed rates for Locations 9, 11, 15 and 16 shown on pages 31–34. At Location 16, the rate is \$.15 per minute.

6. The argument for meaningful oversight and restraint of the rates for inmate calling service (ICS) is compelling. The FCC and a federal appeals court have described such rates as “prohibitive,” “egregious,” “excessive,” “unaffordable,” “extraordinarily high,” and “absent regulatory intervention, . . . likely to rise.” *In the Matter of Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 15-136, 30 F.C.C.R. 12763 (FCC 2015) (*FCC ICS Order 2015*) ¶ 1; *Global Tel*Link v. FCC*, 866 F.3d 397, 404 (D.C. Cir. 2017) (*Global Tel*).

7. As explained by the court, excessive rates for inmate calling deter communication between inmates and their families, with substantial and damaging social consequences. Inmates’ families may be forced to choose between putting food on the table or paying hundreds of dollars each month to keep in touch. When incarcerated parents lack regular contact with their children, those children—2.7 million of them nationwide—have higher rates of truancy, depression and poor school performance. Barriers to communication from high inmate calling rates interfere with inmates’ ability to consult with their attorneys, impede family contact that can make prisons and jails safer spaces, and foster recidivism. *Id.* at 405 (quoting FCC).

8. As further explained by the court, inmate calling services are “a prime example of market failure.” Inmates and their families cannot choose for themselves the inmate calling provider on whose services they rely to communicate. Instead, correctional facilities each have a single provider of inmate calling services. And very often, correctional authorities award that monopoly franchise based principally on what portion of inmate calling service revenues a provider will share with the facility—*i.e.*, on the payment of “site commissions.” Accordingly, inmate calling providers compete to offer the highest commission payments, which they recover through correspondingly higher end-user rates. If inmates and their families wish to speak by telephone, they have no choice but to pay the resulting rates. *Id.* at 404. While an individual jail may be able to elect a contract that produces a just and reasonable rate for the inmates and the inmates’ families, any such election belongs to the jail, not to the inmate or the inmate’s family, and is of no help to the inmate or the inmate’s family in the case of a jail that makes a different election.

9. It is especially appropriate that oversight of inmate calling service rates occur at the state level, because approximately eighty percent of inmate calls are intrastate calls. *FCC Order 2015*, ¶ 7. The FCC does not have jurisdiction over intrastate calls. *Global Tel* at 408–12. The state does. In Iowa, that jurisdiction is vested in the Board. Iowa Code § 476.91 (2019); *Equal Access Corp. v. Utilities Bd.*, 510 N.W.2d 147 (Iowa 1993).

10. Despite the apparent consensus among FCC commissioners and *Global Tel* reviewing judges regarding the prohibitive charges, the damaging consequences and the market failures, a solution has long been elusive. On a divided vote, the *Global Tel* court disapproved in certain respects the FCC’s approach to establishing just and reasonable rates and

remanded to the FCC for further proceedings. OCA is not aware of any FCC order to date on the subject subsequent to the court's decision.

11. The burden of proof in establishing the justness and reasonableness of the proposed rates rests with Legacy. *See* Iowa Code §§ 476.4(1), 476.8(2) (2019).

12. OCA suggests that the Board establish a procedural schedule under which Legacy is first required to come forward with evidence supporting its proposed rates, with sufficient time following such submission for other parties, including OCA, to take discovery, with an evidentiary hearing.

WHEREFORE, with the exceptions noted above, OCA objects to the rates set forth in the tariff proposed by Legacy on the ground they are not just and reasonable and urges that the proposed rates be investigated and disapproved. OCA suggests a procedural schedule in accordance with the discussion above.

Respectfully submitted,

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