

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
BEFORE THE IOWA UTILITIES BOARD

IN RE:  ENCARTELE, INC.	DOCKET NO. TF-2019-0270
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**COMMENTS AND OBJECTION**

The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, files the following comments and objection to the proposed tariff filed August 28, 2019, by Encartele, Inc. (Encartele).

1. On June 13, 2017, the court issued its decision in *Global Tel\*Link v. FCC*, 866 F.3d 397 (D.C. Cir. 2017), invalidating the FCC’s efforts to secure just and reasonable rates for intrastate inmate calling services (ICS) because “the field of intrastate communication service remains the province of the states.”

2. On January 2, 2019, in Docket No. RMU-2017-0004, the Board directed all ICS providers in Iowa to file current tariffs for review and approval. The order stated: “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.”

3. On August 28, 2019, Encartele filed its proposed tariff.

4. With the exception of unsupported statements that Encartele “set the listed rates after determining the lowest rate at which the company could provide its services to the end user” and that the company “works with each correctional facility to ensure the rates are

consistent and never exorbitant,”<sup>1</sup> Encartele offers no justification or explanation for the rates in the proposed tariff.

5. For the reasons stated below, nearly all of the rates in the proposed tariff are unjust and unreasonable.

6. Proposed tariff section 4.4.1(B) Option 1 sets forth a proposed rate for prepaid non-local intrastate calls of \$.50 per minute. This proposed rate is 2.4 times the \$.21 per minute interim rate cap established by the FCC for prepaid interstate calls. 47 C.F.R. § 64.6030.

7. Proposed tariff section 4.4.1(B) Option 2 sets forth a proposed rate for prepaid non-local intrastate calls “at a 20 percent discount off standard institutional collect rates and charges.” The proposed tariff does not specify any “*standard*” collect call rates and charges. Instead, proposed tariff section 4.3.1 sets forth numerous *different* rates and charges for collect calls, thus rendering the reference to a standard rate ambiguous. Encartele advises that it “contracts only with correctional facilities to provide services to inmates,”<sup>2</sup> and it submits no proposed tariff for any collect (or other) calls in any other setting, so it presumably has no standard rate for collect calls in any other setting. As explained below, Encartele’s rates for collect inmate calls are unjust and reasonable. A rate that is discounted 20 percent from an unjust and reasonable rate can be and in these instances is still unjust and unreasonable. The proposed collect call rate under proposed tariff section 4.3.1 Plan B, for example, is \$3.95 per call plus \$.69 per minute. After a 20 percent discount, the corresponding proposed rate for a prepaid call would be \$3.16 per call plus \$.55 per minute—\$11.41 for a 15-minute prepaid non-local intrastate call. That figure is 3.6 times the \$3.15 interstate maximum. For a one-minute prepaid non-local intrastate call, the proposed rate, \$3.71, is 17.7 times the \$.21 interstate

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<sup>1</sup> Motion for Reconsideration, filed Aug. 28, 2019, Attachment A, Response to Question 4.

<sup>2</sup> Motion for Reconsideration, filed Aug. 28, 2019, Attachment A, Response to Question 2.

maximum. Proposed tariff section 4.4.1(B) Option 2 provides for further discounts, depending on the amount deposited into an inmate's phone account—up to a 40 percent discount for a deposit of \$500—but these discounts similarly do not make the resulting rates just and reasonable.

8. Proposed tariff section 4.4.1(A) sets forth a proposed rate for prepaid local calls that is discounted 20 percent from the “corresponding” charge for a local collect call. Again, the proposed tariff does not specify what the corresponding collect call charge is, and again, there are numerous different charges for local collect calls set forth in proposed tariff section 4.3.1. Proposed tariff section 4.3.1 Plan C has per minute collect call charges as high as \$.90 per minute. After a 20 percent discount, a corresponding proposed rate for prepaid calls would be \$.72 per minute. That figure is 3.4 times the \$.21 interstate maximum. Proposed tariff section 4.3.1 Plan B sets forth a proposed flat rate for a collect local call of \$2.76. At a 20 percent discount, a corresponding prepaid rate would be \$2.21. For a one-minute call, that charge is 10.5 times the \$.21 interstate maximum.

9. Proposed tariff section 4.3.1 Plan A sets forth a proposed rate of \$2.90 per call plus \$.30 per minute for non-local intrastate collect calls—\$7.40 for a 15-minute call. By comparison, the interim rate cap established by the FCC for interstate collect calls is \$.25 per minute—\$3.75 for a 15-minute call. 47 C.F.R. § 64.6030. The Encartele proposed \$7.40 rate for a 15-minute non-local intrastate collect call is 97 percent higher than the \$3.75 interstate maximum. For a one-minute non-local intrastate collect call, the EnCartele proposed rate, \$3.20, is 12.8 times the \$.25 interstate maximum.

10. Proposed tariff section 4.3.1 Plan A sets forth a proposed rate of \$1.75 per call for local collect calls. For a one-minute local collect call, this \$1.75 proposed rate is seven times the \$.25 interstate maximum.

11. Proposed tariff section 4.3.1 Plan B sets forth a proposed rate of \$3.95 per call plus \$.69 per minute for nonlocal intrastate collect calls—\$14.30 for a 15-minute call. This proposed rate is 3.8 times the \$3.75 interstate maximum. For a one-minute non-local intrastate collect call, the EnCartele proposed rate, \$4.64, is 18.6 times the \$.25 interstate maximum.

12. Proposed tariff section 4.3.1 Plan B sets forth a proposed rate of \$2.76 for a local collect call. For a one-minute local collect call, this proposed rate is eleven times the \$.25 interstate maximum.

13. Proposed tariff section 4.3.1 Plan C sets forth the following options for a “flat” per minute rate for intrastate collect calls:

- A     \$.22
- B     \$.30
- C     \$.31
- D     \$.40
- E     \$.49
- F     \$.50
- G     \$.55
- H     \$.60
- I     \$.70
- J     \$.75
- K     \$.80
- L     \$.85
- M     \$.90

With the exception of Option A, all of these Options exceed the \$.25 interstate maximum.

Option M is 3.6 times the interstate maximum.

14. Although Encartele claims “there are no ancillary charges as all calls are charged on per minute or flat rate,”<sup>3</sup> the proposed tariff in fact includes multiple per call ancillary charges, as high as \$3.95, as detailed above. These charges are not allowed for interstate calls. 47 C.F.R. § 64.6000(a). As illustrated above, they are unjust and unreasonable, most especially for short calls.

15. 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*).

16. 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).

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<sup>3</sup> Motion for Reconsideration, filed Aug. 28, 2019, Attachment A, Response to Question 6.

17. 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.

18. 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).

19. Despite the apparent consensus among FCC commissioners and *GlobalTel* 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.

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

WHEREFORE, OCA objects to the above-referenced rates in the proposed tariff because they are unjust and unreasonable.

Respectfully submitted,

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