

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

<p>IN RE:</p> <p>INQUIRY INTO REGULATORY REQUIREMENTS FOR ALTERNATIVE OPERATOR SERVICES COMPANIES</p>	<p>DOCKET NO. NOI-2019-0001</p>
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RESPONSE TO ORDER

The Office of Consumer Advocate (OCA), Iowa Department of Justice, appreciates the Board's efforts to evaluate the regulatory framework that applies to alternative operator services (AOS) companies, including inmate calling service (ICS) providers. OCA responds as follows to the questions asked in the Order Initiating Inquiry dated August 20, 2019.

- 1. Should all AOS companies' tariffs have consistent definitions for the services provided, identify the types of facilities where the service is offered, offer the same types of service, offer the same calling options, and contain the same requirements for billing and cancellation of service?**

OCA has no opinion on this question at this time.

- 2. What criteria or considerations should the Board use to determine whether rates charged by an AOS company are just and reasonable? This includes the basic rates and any ancillary rates.**

OCA recommends that proposed per minute rates for intrastate inmate calls in excess of the maximum per minute rates permitted for interstate inmate calls, as well as ancillary charges for intrastate inmate calls that are prohibited for interstate inmate calls, receive heightened scrutiny. OCA has not been objecting at this time to per minute rates that do not exceed the interstate maximum or ancillary fees permitted for interstate calls

OCA recommends an investigation of single payment call practices, including the potential for off-tariff single call payment revenue sharing arrangements between inmate calling service providers and third parties. Such arrangements can result in unjust and unreasonable charges for inmates and their families. The Board should require that charges to inmates and their families resulting from such arrangements be included in the tariffs. The Board should ensure that inmate calling service providers properly advise inmates and their families of less costly alternatives.

OCA looks forward to reviewing the recommendations of other stakeholders. OCA offers the following comments in support of OCA's recommendations.

Background. 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*).

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).

As 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.” 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 correctional facility 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 correctional facility, 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 correctional facility that makes a different election.

It is especially appropriate that oversight of inmate calling service rates occur at the state level, because approximately 80 percent of inmate calls are intrastate calls. *FCC Order 2015*, ¶ 7. The FCC does not have jurisdiction over intrastate calls. *Id.* 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).

Per minute rates. Federal regulations prohibit rates for interstate inmate calls at rates higher than \$.21 per minute for prepaid calls and \$.25 per minute for collect calls.

47 C.F.R. § 47.64.30. Several inmate calling service providers are proposing tariffs for intrastate inmate calls at higher rates:

- Reliance Telephone of Grand Forks, Inc. is proposing rates for prepaid intrastate calls as high as \$.50 per minute. This proposed rate is 2.4 times the interstate maximum. *See In re Reliance Telephone of Grand Forks, Inc.*, Docket No. TF-2019-0026.
- Prodigy Solutions, Inc. is proposing rates for intrastate calls of \$.31 per minute. This proposed rate is, in the case of a prepaid call, 48 percent higher than the interstate maximum, and, in the case of a collect call, 24 percent higher than the interstate maximum. *See In re Prodigy Solutions, Inc.*, Docket No. TF-2019-0032.
- Securus Technologies, Inc. is proposing rates for intrastate inmate calls as high as \$4.41 for the first minute and \$.74 for each additional minute. For a 15-minute call, these proposed rates are, in the case of a prepaid call, 4.5 times the interstate maximum, and, in the case of a collect call, 3.8 times the interstate maximum. For a one-minute call, these proposed rates are, in the case of a prepaid call, 21 times the interstate maximum, and, in the case of a collect call, 17.6 times the interstate maximum. *See In re Securus Technologies, Inc.*, Docket No. TF-2019-0033.
- Global Tel*Link and subsidiary Public Communications Services, Inc., are proposing rates for intrastate inmate calls of \$.30 per minute. This proposed rate is, in the case of a prepaid call, 43 percent higher than the interstate maximum, and, in the case of a collect call, 20 percent higher

than the interstate maximum. *See In re Global Tel*Link Corp. and Public Communications Services, Inc.*, Docket Nos. TF-2019-0039 and TF-2019-0040.

- Encartele, Inc., is proposing rates for intrastate inmate calls as high as \$.55 per minute for prepaid calls and \$.69 per minute for collect calls. This proposed rate is, in the case of a prepaid call, 2.6 times the interstate maximum and, in the case of a collect call, 2.8 times the interstate maximum. *See In re Encartele, Inc.*, Docket No. TF-2019-0270.

OCA has objected to these proposed rates as unjust and unreasonable. The burden of proof in establishing justness and reasonableness rests with the inmate calling service provider. *See Iowa Code §§ 476.4(1) (2019)*.

Ancillary charges. Federal regulations prohibit ancillary charges except those expressly permitted. 47 C.F.R. §§ 64.6000(a), 64.6020. Two inmate calling service providers are proposing ancillary charges for intrastate inmate calls that are prohibited for interstate inmate calls.

- Consolidated Telecom, Inc., is proposing a 5 percent “convenience fee for transfers from the inmate’s canteen/trust fund.” *See In re Consolidated Telecom, Inc.*, Docket No. TF-2019-0261.
- Encartele, Inc., is proposing per call charges as high as \$3.95. *See In re Encartele, Inc.*, Docket No. TF-2019-0270.

OCA has objected to these proposed ancillary charges as unjust and unreasonable.

Single payment services.

According to the FCC, single payment services are a growing part of the inmate calling service (ICS) market. *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, Nov. 5, 2015, ¶ 182. In one study, single payment calls accounted for 14 percent of the calls and 42 percent of the revenues. *Id.*, ¶ 185. These services are used to inflate the rates paid by ICS customers. *Id.*, Order Denying Stay Petitions, 31 F.C.C.R. 261 (Jan. 22, 2016), ¶ 53. The services are harmful to consumers, particularly those who are newly incarcerated and vulnerable. *Id.*, ¶ 73. The services cause substantial confusion. *Id.*, ¶ 53. Customers are often unaware that other payment options are available. *Id.*, Order on Reconsideration, FCC 16-102, 31 F.C.C.R. 9300 (Aug. 9, 2016), ¶ 41. One company describes the high-cost “single pay” option first and the low-cost or free option last. *Id.*, Order Denying Stay Petitions, n. 304.¹

OCA recommends an investigation of single payment call practices, including the potential for off-tariff single call payment revenue sharing arrangements between inmate calling service providers and third parties. The investigation should include the identity of any third parties, the amount of any charges to the inmate or the inmate’s family, and the nature and amount of any revenue sharing amounts received by the inmate calling service provider. The Board should require that charges to inmates and their families resulting from such arrangements be included in the tariffs and should ensure that inmate calling service providers properly advise inmates and their families of less costly alternatives.

¹ See also *In re Securus, Inc.*, Docket No. TF-2017-0041, Testimony of William Pope, Transcript of Proceedings held Nov. 28, 2017 at 78, lines 7-23.

- 3. Should an AOS company be allowed to offer rates and service for non-correctional facilities that are different from rates and services provided to correctional facilities?**

OCA has no objection to allowing a company to offer rates and services at non-correctional facilities that are different from rates and services at correctional facilities. OCA's objection is to the unjust and unreasonable rates for intrastate calls placed from correctional facilities. *See* response to question 2.

- 4. Should agreements between facilities, including state or local correctional facilities, and an AOS company also be filed with the Board, similar to the AOS tariff?**

Agreements between facilities, including state or local correctional facilities, and an AOS company should be provided when and as requested by the Board or, in accordance with the rules governing discovery, by OCA or other parties. OCA has no opinion at this time on whether the agreements should be filed as a matter of course.

- 5. Companies that are providing AOS service are requested to provide a description of that company's current corporate structure and affiliations and whether that company is a successor to a company that previously provided AOS service in Iowa.**

Not applicable.

- 6. What information regarding AOS service should be considered confidential and not available for public inspection?**

The statutes and rules authorizing parties to submit documents for confidential treatment and providing for Board resolution of disputed confidentiality claims when they arise, with the potential for judicial review if needed, properly address any confidentiality concerns that any party may have.

- 7. Are the Board's current registration and billing procedures understandable and are there any issues or questions about those procedures?**

The Board is in the process of updating its registration procedures as part of its

rulemaking Docket No. RMU-2018-0022. However, a new registration form implementing any rule changes has not been available for review. The rules regarding AOS companies proposed in RMU-2018-0022 (proposed rule 22.6) and the rules regarding registration (proposed rule 22.8) do not specifically address registration procedures for AOS companies. OCA recommends that the registration procedures proposed in the rulemaking docket include any procedures that are unique to AOS providers. With respect to a registration form, it would be helpful to have the form include a way by which AOS companies could identify the type of service they are providing, such as inmate calling services.

8. When would an AOS company select only one of the options on the current telecommunications registration form (Local Exchange Service; Interexchange Service; Data Transmission; Alternative Operator Services Only; Other) or a combination of options?

An AOS company would select “Alternative Operator Services Only” if it is providing only those services. However, if an AOS company provides services in tandem with AOS, such as local exchange service, it would select both of those options.

CONCLUSION

OCA supports this inquiry and looks forward to reviewing the responses of other stakeholders and to continuing to participate in this inquiry.

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

OFFICE OF CONSUMER ADVOCATE