

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE:

ENCARTELE, INC.

DOCKET NO. TF-2019-0270

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 revised proposed tariff filed October 2, 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 a proposed tariff.

4. On September 5, 2019, OCA filed its Comments and Objection to the originally proposed tariff.

5. On October 2, 2019, Encartele filed a revised proposed tariff that addressed various items that required clarification, revision, or deletion.

6. Revised proposed tariff sections 4.3 and 4.4 set forth a proposed rate for collect and prepaid calls of \$.31 per minute.

7. 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.

8. The Encartele proposed rate for an intrastate call 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.

9. With the exception of unsupported statements in an earlier filing 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,”¹ Encartele offers no justification or explanation for the rates set forth in the revised proposed tariff.

10. OCA objects to the rates set forth in the proposed tariff, as unjust and unreasonable, and requests that they be investigated and disapproved.

11. 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*).

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

12. 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).

13. 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.

14. 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. *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).

15. 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.

16. 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 on the ground they are not just and reasonable and urges that the proposed rates be investigated and disapproved.

Respectfully submitted,

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