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Public Utilities Commission of Nevada
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BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Rulemaking to Amend, Adopt, and/or Repeal
Regulations in Accordance with Senate Bill
387 (2021)

Docket No. 21-12013

OPENING COMMENTS OF PRISON POLICY INITIATIVE

Pursuant to the Notice of Rulemaking, Notice of Request for Comments, and Notice of Workshop filed in the above-referenced proceeding on December 29, 2021 (the “Notice”), Prison Policy Initiative (“PPI”) respectfully submits the following comments concerning implementation of Senate Bill 387.¹ We encourage the Public Utilities Commission (the “Commission” or “PUC”) to take several simple steps to protect users of telecommunications services in prisons and jails.

I. Introduction

PPI is a nonprofit organization that uses data analysis to demonstrate how the American system of incarceration negatively impacts society. We publish research and policy proposals on selected campaigns where we believe our work can create a fairer justice system through legal and policy change. Our organization has produced several landmark reports on exploitation and dysfunction in the prison and jail telecommunications market, and we have participated in numerous regulatory proceedings before the Federal Communications Commission (“FCC”)² and state utility agencies (including the utility boards of California, Iowa, and New Mexico).

In 2013 (after nearly a decade of inaction), the FCC took steps to address unconscionably high rates and fees in the inmate calling service (“ICS”)³ market. After a federal court

¹ PPI appears by and through its undersigned general counsel, pursuant to Nev. Admin. Code § 703.510(3). The undersigned is admitted to practice law in the states of Oregon and Washington.

² PPI’s latest FCC filings related to correctional telecommunications can be found at <https://www.prisonpolicy.org/phones/#RecentBriefings>.

³ Some jurisdictions, most notably California, refer to telecommunications service in prisons and jails as “incarcerated person’s calling services.” See *Order Instituting Rulemaking to Consider Regulating Telecommunications Services used by Incarcerated People*, Dkt. R.20-10-002, Decision Adopting Interim

invalidated the FCC’s first attempt to regulate intrastate ICS rates, then-chairman Ajit Pai wrote to all fifty state utility commissions, asking them to address the “unacceptable state of affairs” in intrastate ICS rates.⁴

In 2021, Senator Dallas Harris sponsored Senate Bill 387, which provides for regulation of intrastate ICS in Nevada (a power that had been taken away from the PUC in 2007). The bill was signed by Governor Sisolak in June 2021 and is the genesis of the above-captioned proceeding.⁵ Senate Bill 387 directs the Commission to examine not only rates and fees for ICS, but also “terms and conditions” under which ICS is offered.⁶ One of the leading motivations behind Senate Bill 387 was to address unreasonable ICS rates generally, and disparities between inter- and intrastate rates in particular. While state utility commissions can and should do more to address high ICS rates, inter- and intrastate rates have significantly aligned with each other in the past year, due in part to the FCC’s ruling on “jurisdictionally indeterminate” calls.⁷

PPI recently collected voice calling rates for Nevada correctional facilities based on publicly available information. The results, shown in table 1, indicate that most, if not all, carriers are now charging uniform inter- and intrastate rates in Nevada. Intrastate rates are generally at or below the comparable FCC rate cap for interstate ICS calls.⁸

Rate Relief for Incarcerated Person’s Calling Services at 19 (Aug. 23, 2021). Because Nevada law (like the FCC) uses the phrase “inmate calling services,” PPI will use that terminology in this filing.

⁴ Letter from Hon. Ajit Pai (Jul. 20, 2020).

⁵ 2021 Nev. Stat. ch. 302 (SB 387, 81st reg. sess.).

⁶ SB 302 § 4(2)(a).

⁷ *See Rates for Interstate Inmate Calling Services, WC Dkt. 12-375, Report & Order on Remand and Fourth Further Notice of Proposed Rulemaking* ¶ 53, 35 FCC Rcd. 8485, 8503 (released Aug. 7, 2020) (ruling that ICS carriers must classify call jurisdiction based on the physical endpoints of the call; if the physical location of the callers cannot be determined, the call is “jurisdictionally indeterminate” and subject to the FCC’s caps on interstate rates and ancillary fees). The FCC has clarified that states may set lower caps on jurisdictionally indeterminate calls. *See* note 9, below.

⁸ Table 1 shows one facility (Owyhee Detention Center) charging rates in excess of current FCC rate caps. These rates, however, were reported in the carrier’s annual report from calendar year 2020, and have likely changed in the intervening months.

Table 1. Current ICS Rates in Nevada Correctional Facilities

Facility	Carrier	Intrastate Rate	Different Interstate Rate?	Source
Carson City Jail	ICSolutions	0.21	No	Carrier website
Churchill County Jail	Securus	0.21	No	Carrier website
Clark County Jail	Securus	0.16	No	Carrier website
Douglas County Jail	Securus	0.21	No	Carrier website
Elko County Jail	ICSolutions	0.21	No	Carrier website
Esmeralda County Jail	NCIC	0.20	No	2020 FCC annual report
Eureka County Jail	Encartele	unknown*		
Henderson Det. Ctr.	Securus	0.21	No	Carrier website
Humboldt County Jail	Securus	0.21	No	Carrier website
Lander County Jail	Encartele	unknown*		
Las Vegas City Corr. Ctr.	Securus	0.21	No	Carrier website
Lincoln County Jail	Securus	0.21	No	Carrier website
Lyon County Jail	Securus	0.21	No	Carrier website
Mesquite City Police Dept	Encartele	unknown*	No	
Mineral County Jail	Securus	0.21	No	Carrier website
N. Las Vegas Police Dept	Securus	0.21	No	Carrier website
Nevada Dept. of Corr.	Securus	0.11	No	Carrier website
Nev. S. Det. Ctr (CCA)	ICSolutions	0.11	No	Carrier website
Nye County Jail	CPC	0.21	Yes (0.20)	2020 FCC annual report
Owyhee Det. Ctr (BIA)	NCIC	0.22	Yes (0.25)	2020 FCC annual report
Pershing County Jail	HomeWAV	unknown†		
Storey County Jail	T.W. Vending	unknown†		
Washoe County Jail	NCIC	0.14	No	2020 FCC annual report
White Pine County Jail	Securus	0.21	No	Carrier website

* Encartele’s per-minute rate cannot be calculated because the company only denominates its rates as dollars per megabyte of data. See section III, below, for additional information.

† Neither HomeWAV, LLC nor TW Vending, Inc. (d.b.a. Turnkey Corrections) publish rates on their respective websites, nor has either company filed a mandatory annual report with the FCC for the past three years. Jail staff in Pershing and Storey Counties were unable to provide rate information over the phone.

PPI encourages the Commission to gather relevant information that would enable it to set intrastate rate caps lower than the comparable FCC interstate caps.⁹ As discussed below, we also believe that there are other important matters that the Commission should address in addition to the issue of per-minute rates.

⁹ The FCC has expressly allowed states to set lower rates on intrastate and jurisdictionally indeterminate calls. *See Rates for Interstate Inmate Calling Services*, WC Dkt. 12-375, Third Report and Order, Order on Reconsideration & Fifth Further Notice of Proposed Rulemaking ¶ 217, 36 FCC Rcd. 9519, 9617 (released May 24, 2021).

II. The Commission Should Act to Prevent the Forfeiture of Consumer Prepaid Funds

Nearly all ICS carriers allow customers to prepay for calls by establishing a prepaid (or “debit”) account with the carrier. Many carriers also seize funds from customer prepaid accounts when there has not been account activity for a certain period of time. Stated forfeiture policies for the ICS carriers that currently operate in Nevada are shown in table 2.

Table 2. ICS Carrier Prepaid Fund Forfeiture Policies

Carrier	Inactivity Period	Policy Language	Source
CPC	no policy found	n/a	n/a
Encartele	none	Encartele appears to treat prepayments as advance "purchases" of data. The company's terms state that "For data that is purchased and not used, Encartele allows you to sell back your data at the price then in effect. If you agree to sell back your unused data at the price then in effect, funds will be paid via check sent to you in the mail."	<u>Terms of Service</u>
HomeWAV	unclear	No inactivity policy found. Customer website states "All refunds are subject to a \$7.50 processing fee. Refunds are at the discretion of HomeWAV."	<u>Refund Request form</u>
ICSolutions	6 months	"Prepaid Account phone services expire six months from the date of your last purchase (funding) to the account, unless otherwise required by state law. In other words, if you do not fund the account for a period of six months, you will forfeit any funds remaining the account."	<u>Frequently Asked Question #13</u>
NCIC	unknown	NCIC's website states that "available minutes balance never expires," but it is not clear whether customers can obtain a refund of unused prepaid funds.	<u>Terms and Conditions</u>
Securus	180 days	"AdvanceConnect account holders have 180 days from the date of the last call received on the AdvanceConnect account to request a refund of any unused balance."	<u>AdvanceConnect Terms and Conditions</u>
T.W. Vending	no policy found	n/a	n/a

As reflected in table 2, some carriers seize customer funds after 180 days or 6 months of inactivity. Others have ambiguous inactivity policies, or have stated non-expiration policies that may not actually allow consumers to obtain refunds. Only one company (Encartele) has a policy

that unambiguously provides for customer refunds (albeit through a cumbersome process of mailed checks).

Prepaid customer funds are interest-free working capital that ICS carriers may use for any purpose. Seizing funds based on account inactivity has no economic justification is are functionally indistinguishable from an inactivity fee. Section 5(c) of Senate Bill 387 gives the Commission the authority to regulate ICS fees. Accordingly, PPI urges the Commission to issue rules preventing forfeiture of customer prepaid accounts and requiring carriers to handle such funds in accordance with Nevada’s unclaimed property law, chapter 120A, Nevada Revised Statutes. PPI’s proposed regulatory language is shown as Proposal 1 in Appendix A, attached hereto.

III. The Commission Should Require All Carriers to Denominate Voice-Calling Rates in Cents Per Minute

As noted in table 1, three Nevada correctional facilities are served by Encartele, Inc., a small company that sometimes operates under the brand name “CidNet.” Encartele is unique

Figure 1. Encartele’s Prepayment/Data Purchase Form

Purchase Data

① Amount ② Payment ③ Terms ④ Confirm

Please run the Audio/Video test before purchasing data for Video. [Click Here to run the test.](#)

Our services are based on the amount of data transmitted. A standard video visitation transmits approximately 1.4 MB for every minute. A standard voice call transmits approximately 0.66 MB for every minute. A standard message uses 0.33 MB. Enter the MB of data you wish to purchase, then click Next.

Data Calculator

Voice Minutes	<input type="text" value="30"/>	
Video Minutes	<input type="text" value="30"/>	76 MB
Standard Messages	<input type="text" value="45"/>	\$22.80

All data can be used for all of our services. The calculator above is to help determine how much data you want to purchase, it does not limit you to only using the data for a particular service.

Megabytes to Purchase

MB

Next >

among ICS carriers in that the company does not publish rates denominated in cents (or dollars) per minute, but instead forces customers to prepay for megabytes of data that can then be used for phone calls. A true and correct version of the customer-facing prepayment screen from Encartele’s website (<https://customer.cidnet.net/>) is shown above as figure 1.

Telecommunications customers are accustomed to evaluating prices in cents per minute. Furthermore, Senate Bill 387 requires the PUC to ensure that prices for ICS calls in Nevada do not exceed comparable rate caps prescribed by the FCC for interstate ICS calls.¹⁰ The FCC’s caps are denominated in cents per minute, not per megabyte of data.¹¹ Encartele’s practice of denominating rates in megabytes instead of call-minutes serves no legitimate purpose and serves only to confuse consumers and create needless complexities for regulators. PPI encourages the Commission to require all Nevada ICS carriers to denominate their voice-calling rates in cents per minute. Proposed regulatory language appears as Proposal 2 in Appendix A, attached hereto.

IV. The Commission Should Adopt the FCC’s Ancillary Fee Definitions But Should Protect Nevada Consumers from Unjust Double-Dipping

Several ICS carriers, including Encartele and CPC (both of which operate in Nevada) engage in a troublesome practice of charging automated payment fees while also passing through their alleged payment-card processing costs to consumers.¹² PPI believes this practice of double dipping is entirely unjustified and constitutes the newest iteration of the rent-seeking game of “whack-a-mole” that carriers have been perpetuating for decades. We are hopeful that the FCC will close this loophole soon, but the PUC need not wait—it can act immediately to cease this bad-faith practice.

The fundamental problem of double dipping is that carriers are recouping payment-card processing costs twice over. In 2015, the FCC cut back on unreasonable ancillary fees, but allowed carriers to charge automated payment fees up to \$3, with the understanding that that

¹⁰ SB 302 § 5(1)(a).

¹¹ 47 C.F.R. § 64.6030.

¹² See *Rates for Interstate Inmate Calling Services*, WC Dkt. 12-375, Ex Parte Submission of PPI (Mar. 23, 2021).

amount would allow carriers to recoup the costs of accepting payments via credit and debit cards.¹³ When carriers impose the \$3 fee allowed under 47 C.F.R. § 64.6020(b)(1) while also making customers pay the carrier's card-processing costs under § 64.6020(b)(5), this constitutes an unreasonable charge, unjust enrichment, and circumvention of the FCC's stated purpose in promulgating ICS rules.

PPI believes that ICSolutions has come forward with the best solution to this problem: a rule that prohibits carriers from charging more than one type of funding fee per transaction.¹⁴ We urge the Commission to enact this rule in substantially the same form as is set forth in Proposal 3 in Appendix A, attached hereto.

V. Conclusion

PPI encourages the Commission to collect data in support of imposing intrastate rate caps at a level that would provide meaningful financial relief to Nevadans. In addition, the Commission can act immediately to provide the additional protections specified herein in Appendix A. PPI looks forward to participating in the workshop scheduled for March 17, 2022.

Respectfully submitted this 23rd day of February 2022.

PRISON POLICY INITIATIVE

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¹³ *Rates for Interstate Inmate Calling Services*, WC Dkt. No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking ¶ 167, 30 FCC Rcd. 12763, 12848 (released Nov. 5, 2015).

¹⁴ *Rates for Interstate Inmate Calling Services*, WC Dkt. No. 12-375, Ex Parte Submission of ICSolutions at 3-6 (May 12, 2021).

Appendix A – Proposed Rules

Proposal 1. Customer Prepaid Account Balances

1. Definitions. For purposes of this section, the following terms have the meanings provided:

(a) “account holder” means a customer that prepays for inmate calling service.

(b) “activity” means any action that results in an increase or decrease to the balance of a prepaid account.

(c) “prepaid account” means the balance of any money remitted by a customer to an inmate calling service supplier to pay for future calls originating in Nevada correctional facilities, net of deductions for any lawful charges incurred by the account holder.

2. Prepaid accounts are deemed to be refunds owed to a utility subscriber for purposes of Nevada Revised Statute § 120A.500(1)(I).

3. If a prepaid account has not been subject to any activity for six months, the inmate calling service supplier shall refund the balance of the prepaid account to the account holder. If an inmate calling service supplier is unable to locate the account holder or otherwise effectuate a refund within eighteen months of the most recent date of activity, the supplier shall deliver the balance of the prepaid account to the State Treasurer, or its agent, for administration under the terms of the Uniform Unclaimed Property Act, Nevada Revised Statute § 120A.010, *et seq.*

Proposal 2. Inmate Calling Service Rates

All inmate calling service suppliers that provide service in Nevada shall publish voice-calling rates denominated in the consumer’s cost (in U.S. dollars) per minute of calling.

Proposal 3. Funding Fees

1. Definition. For purposes of this section, “funding fee” means an “automated-payment fee,” a “live-agent fee,” or a “third-party financial transaction fee,” as those terms are defined in 47 C.F.R. § 64.6020(b)(1), (3), and (5), respectively.

2. Redundant fees prohibited. No inmate calling service supplier may charge a Nevada customer more than one type of funding fee for any single payment transaction.