



ALJ/CF1/mef 4/2/2021

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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to  
Consider Regulating  
Telecommunications Services Used  
by Incarcerated People.

Rulemaking 20-10-002

**ADMINISTRATIVE LAW JUDGE'S RULING PROVIDING  
STAFF INTERIM RATE RELIEF PROPOSAL FOR COMMENT**

**Summary**

This ruling provides the Communications Division Staff Proposal on Interim Rate Relief for Inmate Calling Services for party comment. Parties are requested to file opening comments no later than April 30, 2021 and reply comments no later than May 5, 2021. Parties shall address the questions contained in this ruling in their comments.

**1. Questions Regarding Staff  
Interim Rate Relief Proposal**

The Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo) issued on January 12, 2021 included in scope the question of whether the California Public Utilities Commission (Commission) should provide immediate interim relief to meet the inmate communication service needs of incarcerated people and their families at just and reasonable rates, including those with communication abilities.<sup>1</sup> The Scoping Memo also asked if the Commission should use the Federal Communication Commission's (FCC's) regulations over

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<sup>1</sup> Assigned Commissioner's Scoping Memo, January 12, 2021 at 25.

interstate and international calls to inform the Commission's approach to intrastate inmate communication services and, if so, should the Commission use some elements of FCC orders but not others as models for ensuring just and reasonable, and affordable, inmate communication services rates in California?

A Communications Division Staff Proposal on Interim Rate Relief for Inmate Calling Services is included in this ruling as Attachment 1. In addition to providing general comment, parties shall respond to the following questions (in this order) in their comments:

1. The Staff Proposal relies on the definition of inmate communication services provided in the Scoping Memo.<sup>2</sup> Does the Staff Proposal appropriately define inmate communication services for purposes of the Interim Rate Relief Proposal?
2. Do parties agree with the Staff Proposal's finding that current intrastate inmate calling service rates in California are unreasonable?
3. Do parties agree with the Staff Proposal's finding that current intrastate inmate calling services are provided on a monopoly basis?
4. Do parties agree with the Staff Proposal's finding that the current intrastate inmate calling service market is demonstrative of market power abuse?
5. Do parties agree with the Staff Proposal's finding that regulation of intrastate inmate calling services is warranted for the Commission to ensure that such rates are just and reasonable?
6. Do parties agree with the Staff Proposal's recommendation for the Commission to adopt the FCC's interim rate caps of \$0.21 per minute for debit and prepaid calls and \$0.25 per

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<sup>2</sup> *Id.* at 23-24.

minute for collect calls for intrastate calling services on an interim basis?

7. Do parties agree with Staff's proposal that if the FCC further lowers its interstate rate caps in FCC WC Docket No. 12-375 (FCC-20-111), the Commission should modify any adopted interim intrastate inmate calling service rates to reflect the FCC's updated rates?
8. Do parties agree with the Staff Proposal's recommendation for the Commission to cap ancillary service charges for intrastate inmate calling services, using the FCC's adopted interim caps as the model?
9. Do parties agree with the Staff Proposal's recommendation that the Commission prohibit carriers from charging any other intrastate calling service fees or ancillary service fees not specified in the Staff Proposal's summary of FCC interstate ancillary service charge caps?
10. Should the Commission adopt Staff's Interim Proposal for Rate Relief for Inmate Calling Services? Why or why not?
11. Do parties agree with the Staff Proposal's recommendation that the Commission direct carriers to implement the proposed rates within 30 days of adoption?
12. Is the Commission's current citation process (Resolution T-17601) and enforcement authority (Public Utilities Code Sections 701, 2101, 2107) sufficient to ensure compliance with the Staff Proposal?

**IT IS RULED** that:

1. Parties shall file and serve opening comments on the Staff Proposal contained in Attachment 1 no later than April 30, 2021 and reply comments no later than May 5, 2021.

2. Party comments shall address the questions included in this ruling in the order the questions are provided.

Dated April 2, 2021, at San Francisco, California.

/s/ CATHLEEN A. FOGEL

Cathleen A. Fogel  
Administrative Law Judge

# ATTACHMENT 1

## **STAFF PROPOSAL**

### **Interim Rate Relief for Inmate Calling Services**

The California Public Utilities Commission (CPUC) Communications Division Staff (Staff) proposes that the Commission apply the Federal Communications Commission's (FCC's) interstate inmate calling service rates to intrastate communications services utilized by inmates detained in California<sup>1</sup> until the CPUC adopts permanent rates at the conclusion of Rulemaking (R.) 20-10-002.

#### **INTERIM RELIEF IS NECESSARY**

Staff recommends the CPUC take immediate action to institute interim rate relief. Staff finds the intrastate per-minute-of-use rates and ancillary service rates being charged to inmates in California to be unreasonable.

#### **RATES ARE UNREASONABLE**

Staff collected inmate calling service data from carriers providing inmate calling services in California. The carriers furnished this information in response to a data request sent to over 800 licensed and registered service providers in California. Six companies<sup>2</sup> responded to the data request indicating that they provide inmate calling services. Staff assumes these six companies represent the total number of inmate calling service providers in California as these same companies are participating in the FCC's inmate calling service proceeding.<sup>3</sup> The data provided in response to the data request shows that intrastate per-minute rates are as high as \$1.75 per minute and connection fees or first minute rates are as high as \$3.60 per minute. (See Attachment A). A 15-minute intrastate phone call in California can cost the caller as much as \$26.25 in per-minute charges only, excluding any other transaction fees.

#### **MONOPOLY SERVICE**

Intrastate inmate calling services are offered on a monopoly basis; Staff was unable to identify any instance in which an inmate or any person communicating with an inmate has a choice of service provider. Accordingly, inmate calling services providers are the sole providers within any given detention center. Inmates are a captive customer class who have no choice in service provider, and therefore, must pay exorbitant communication service rates or forego communication with family or friends.

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<sup>1</sup> As described in the January 12, 2021 Assigned Commissioner's Scoping Memo and Ruling at 23 - 24, we define "inmate communication services" as applying to any local, state, or federal correctional or detention facility type operated in California housing adults and/or juveniles, and including but not limited to city and county jails, federal and state prisons, correctional facilities, juvenile detention facilities, holding centers, camps, psychiatric hospitals, immigration detention centers, military jails and tribal jails. See also footnote 11.

<sup>2</sup> Securus Technologies, LLC, Global Tel\*Link Corporation, Inmate Calling Solutions, LLC, Legacy Inmate Communications, Network Communications International Corporation, and Pay Tel Communications, Inc.

<sup>3</sup> WC Docket No.12-375.

Pursuant to Public Utilities (Pub. Util.) Code Sections 451 and 454(a), the Commission has a duty to ensure that the rates charged for all utility services, including those provided to inmates, are just and reasonable. Any unjust or unreasonable charge demanded or received by a utility is unlawful.<sup>4</sup> The CPUC has traditionally regulated the rates of utility monopolies such as the incumbent local exchange carriers (ILECs), who were given exclusive franchise service territories. Regulation of rates for these monopolies continues where competition is prohibited or does not otherwise exist.<sup>5</sup> The CPUC regulates monopoly utilities providing telecommunications, water, gas, and electricity to ensure that the rates these utilities charge are just and reasonable. Inmate calling service providers similarly operate monopolies and are charging inmates and their families unreasonable rates, which is unlawful. Therefore, the CPUC should regulate inmate calling service rates unless or until such time that inmates have competitive choice in their communications services, or at least on an interim basis, until the CPUC concludes the current proceeding.

#### PROPOSAL FOR INTERIM RELIEF

Despite having lessened regulation of communications service providers, the CPUC retained its authority to investigate market power abuses.<sup>6</sup> Staff finds that the inmate calling service market demonstrates market power abuse. Inmates and their families are being charged unreasonable rates with no viable alternative. The FCC similarly determined that the inmate calling service market is a prime example of market failure.<sup>7</sup> Therefore, regulation of inmate calling service rates is warranted and the CPUC must ensure that the intrastate rates inmate calling service providers charge are just and reasonable.

CD Staff recommends the CPUC adopt the FCC's inmate calling service rates as intrastate calling service rates for those services utilized by inmates detained in California until the CPUC adopts permanent rates at conclusion of R.20-10-002.

The FCC's interim interstate rate caps of \$0.21 per minute for debit and prepaid calls and \$0.25 per minute for collect calls adopted in 2013 remain in effect today.

The FCC is currently addressing inmate calling service rates and charges in WC Docket No.12-375. On August 7, 2020, the FCC issued FCC-20-111.<sup>8</sup> In FCC-20-111, the FCC proposes to lower its interstate rate caps to \$0.14 per minute for debit, prepaid, and collect calls from prisons, and \$0.16 per minute for debit, prepaid, and collect calls from jails. If the FCC further lowers its rates for inmate calling service, the CPUC's interim rates should be modified to reflect those new rates.

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<sup>4</sup> Pub. Util. Code Section 451.

<sup>5</sup> See D.07-09-018, pp.43-44.

<sup>6</sup> See D.06-08-030, Conclusion of Law 32.

<sup>7</sup> FCC 20-111, *Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking* (Fourth NPRM) (August 7, 2020), ¶2.

<sup>8</sup> The Fourth NPRM responds to the Appellate Court's remands and acts to comprehensively reform inmate calling service rates and charges.

## IMPACT OF INTERIM RATES ON PER MINUTE OF USE RATES

In response to the data request, carriers have reported offering inmate calling services to 349 facilities<sup>9</sup> in California. Based on this data, staff estimates that 186 facilities and over 46,000 inmates would see immediate rate reductions from the interim rates, as they have rates that exceed \$0.21 per minute (See Attachment A).

Under staff's proposal, the price for a 15-minute phone call would be reduced from as much as \$26.25 to a range of \$3.15-\$3.75.

## FCC RATES ARE NOT APPROPRIATE FOR LONG TERM

Staff finds the FCC rates to be unreasonable for long term intrastate rates. Traditionally, telecommunications service usage is predominantly intrastate in nature— 70-80 percent of all calls are often considered intrastate. Therefore, due to the percentage of usage, intrastate rates have a far greater impact on ones' regular and ongoing communication. It is also well understood that intrastate services are less costly to provide than interstate services. Therefore, it is reasonable to assume that intrastate rates should be lower than interstate rates. Staff therefore assumes that any just and reasonable permanent rates adopted in R.20-10-002 should be lower than the FCC's rates proposed here to be used only on an interim basis.

## ANCILLARY SERVICES

The FCC generally prohibits providers from imposing any ancillary service charges in connection with inmate calling services other than those specified in its rules, and generally prohibits providers from imposing charges in excess of the FCC's applicable ancillary service fee caps. The FCC has adopted interim rate caps for the following services<sup>10</sup> or charges and Staff recommends the CPUC adopt these rate caps on an interim basis:

- Single-Call Service (collect) (and related service): Where no prepaid or debit inmate calling services account has been established, the FCC precludes inmate calling service providers from charging more than the exact fee the third-party charges for these transactions, with no markup.
- Automated Payment Fees: The FCC limits these fees to a maximum of \$3.00 per use.
- Third-Party Financial Transaction Fees: The FCC limits the amount of third-party fees that an inmate calling service provider can pass on to consumers to the exact third-party fees, with no markup.
- Live agent fee: The FCC caps single live operator interaction at \$5.95 per interaction.
- Paper bill fee: The FCC caps fees for paper bills at \$2.00 per statement.
- Mandatory Pass-Through Government Taxes and Fees: The FCC prohibits markups on either category of charges.

<sup>9</sup> Represents 349 unique addresses identified in the data request by the six carriers.

<sup>10</sup> Fourth NPRM.



Staff also recommends that the CPUC prohibit carriers from charging any other service fees or ancillary service fees not specified above. Although not exhaustive, Staff has developed a list from the data requests of other services and charges being assessed in connection with inmate calling services (see Attachment B). This list shows the extent of the various charges carriers currently provide and indicates that the “per-minute-of-use charges” are only a portion of the fees inmates are subject to. For example, some inmate calling service providers are charging a Transaction Processing Fee and a Prepaid Refund Processing Fee, both of which Staff recommends the CPUC prohibit. Most of these charges are not imposed in any other segment of the telecommunications market in California.

#### OTHER INMATE COMMUNICATION SERVICES

At this time, Staff does not recommend that interim relief include rates for other communications services, such as text or video communication.<sup>11</sup> Staff does not have the necessary relative pricing data to determine the reasonableness of these and other non-voice communication service rates at this time. However, Staff recommends that any adopted permanent rates and regulations include these other services.

#### TIMELINE FOR IMPLEMENTATION OF INTERIM RATES

Staff recommends the CPUC adopt interim rates as soon as is practically possible. Further, Staff recommends that the CPUC direct carriers to implement the new rates within 30 days of adoption, and order that these interim rates remain in effect until the CPUC adopts permanent rates at the conclusion of R.20-10-002.

#### COMPLIANCE

Staff recommends that the CPUC require carriers to file a Notice of Compliance<sup>12</sup> with the Communications Division within 30 days of the interim rates being adopted. This Notice should include the following:

1. Attestation that the interim rates have been implemented at any and all facilities served by the carrier in California.
2. Copies of or links to carrier webpages where the interim intrastate rates are presented for facilities located in California.
3. Copies of notices provided to facilities of the interim calling rates.
4. Copies of notices to inmates of the interim calling rates.

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<sup>11</sup> Other inmate communication services may include but not be limited to inmate messaging, inmate video messaging, remote video visitation, in-person video visitation, voicemail, tablet use for messaging, photo sharing, music or video entertainment or internet access.

<sup>12</sup> [CPUC Communication Division Compliance and Report Filing Cover Sheet](#)

**Attachment A**  
**Data Request Summary of Information**

The chart below is a brief summary of information collected through the Communications Division data request.

<b><u>Inmate Calling Service Provision in California</u></b>	
Total facilities	349
Total inmate population	159,572
Facilities with rates over \$0.21 per minute	186
Population affected by interim rates	46,649
<b>Calling Service Rates</b>	
Highest per minute rate	\$1.75
Highest 1st minute rate	\$3.60
<b>Ancillary Charges</b>	
Highest single call-rate	\$3.00
Highest automated payment charge	\$3.00
Highest third-party fee	\$6.95
Highest live agent fee	\$5.95
Highest paper bill fee	\$2.49

**Attachment B**  
**Other Inmate Calling Service Fees and Charges**

Below is a list of other fees and charges identified as included in inmate calling service contracts.

Carrier access fee  
Cost recovery fee  
Billing statement fee  
Surcharge (non government)  
Close out fee  
Percent transaction fees  
Connect Charge  
1st Minute fee  
One-time Friends and Family Prepaid Collect Account Set-Up Fee  
Prepaid Collect Account Replenish Fee  
State Cost Recovery Fee  
Location Validation Fee  
Transaction Processing Fee  
Prepaid refund processing fee  
Western Union Debit Refund Processing Fee  
Minimum funding amount of \$25  
Account setup fee  
Securus refund fee  
Securus funding transaction fee  
Minimum funding amount  
Kiosk deposit fee  
Percent charge for Western Union fee  
Release debit card fee  
Pre-paid collect service  
Walk in, internet money transfer fee  
Web transaction fee  
Bail deposit credit, cash and live operator fee  
Wireless administration fee.  
Inmate transfer fee

**(END OF ATTACHMENT 1)**