

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298

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**Agenda ID #24031**  
**Ratesetting**

## TO PARTIES OF RECORD IN RULEMAKING 20-10-002:

This is the proposed decision of Administrative Law Judge Robert Haga. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's March 19, 2026, Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE

Michelle Cooke  
Chief Administrative Law Judge

MLC: asf  
Attachment

ALJ/RWH/asf

## **PROPOSED DECISION**

Agenda ID #24031  
Ratesetting

Decision **PROPOSED DECISION OF ALJ HAGA (Mailed 2/10/2026)**

### **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

### **DECISION ADOPTING RATE RELIEF FOR INCARCERATED PERSONS CALLING SERVICES**

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**DECISION ADOPTING RATE RELIEF FOR  
INCARCERATED PERSONS CALLING SERVICES****Summary**

This decision adopts caps on intrastate rates for incarcerated persons calling services (IPCS) of four- and one-half cents (\$0.045) per minute for debit, prepaid calls and collect calls. It maintains the prohibition against imposing single-call, paper bill, live agent, and automated payment fees in association with intrastate and jurisdictionally mixed IPCS and requires the pass through, with no markup, of third-party financial transaction fees, up to a limit of \$6.95 per transaction. It allows the pass through, with no markup, of government taxes and fees for intrastate and jurisdictionally mixed IPCS. It also maintains a prohibition on the imposition of any type of ancillary fee or service fee not explicitly approved in this decision. This decision applies to all telephone corporations providing intrastate IPCS in the State of California.

This decision directs telephone corporations providing intrastate IPCS to implement the adopted rate cap and ancillary fee requirements, submit a Notice of Compliance, and submit a Rate Compliance Report within 90 days of issuance of this decision. It directs telephone corporations providing intrastate IPCS to provide a Plan for notification to all current and prospective customers and account holders, draft notices of the adopted ancillary fee requirements, terms and conditions, refund policies and customer service contacts for websites, bill inserts, and marketing materials to the California Public Utilities Commission (Commission) for review no later than 60 days from Commission issuance of this decision. The notices must provide service-related information in English, Spanish, and any other languages prevalent in incarceration facilities served by

the provider. This decision directs telephone corporations providing intrastate IPCS not explicitly defined in this decision and any new IPCS provider in California to take similar steps within 45 days of executing a contract to provide IPCS in California.

This proceeding is closed.

## 1. **Background**

The California Public Utilities Commission (Commission) opened Rulemaking (R.) 20-10-002 to *Consider Regulating Telecommunications Services Used by Incarcerated People* on October 8, 2020. The purpose of this rulemaking is to ensure that incarcerated people in California pay just and reasonable rates for intrastate calling services, under just and reasonable terms and conditions. As discussed in the Order Instituting Rulemaking (OIR), previous studies of incarcerated persons calling service (IPCS) rates found high and widely differing rates charged in California.<sup>1</sup> Egregiously high rates and fees and associated practices impede incarcerated persons' ability to communicate with loved ones and financially burdens incarcerated persons and their families.

The criminal justice system places an undue financial burden on low-income families and communities of color who face disproportionate rates of incarceration through costs imposed on incarcerated people and their families as part of being in prison or in jail. We have previously discussed our finding that as many as 34 percent of families go into debt to stay in contact with an incarcerated family member and the cost of maintaining contact with incarcerated persons falls to families and disproportionately on low-income

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<sup>1</sup> We use the term "incarcerated persons" throughout this decision in place of the term "inmates," used in the OIR.

women of color, and noted that a 2015 study found that incarcerated people had a median annual income of less than \$20,000 prior to their incarceration. However, incarcerated people who have regular contact with family members are more likely to succeed after release and have lower recidivism rates because they maintain vital support networks.<sup>2</sup>

IPCS in California are generally provided by private communications companies under contract with the entity that oversees or owns the correctional or detention facility.<sup>3</sup> While incarceration facilities may be owned or operated, either in whole part, by a private company, the facilities still are ultimately governed under contract with federal, state, county, or city government entities.<sup>4</sup>

Some 354 federal, state, and local correctional and detention facilities exist in California, detaining or incarcerating some 172,543 – 183,011 persons.<sup>5</sup> Commission Staff have identified the following total number of correctional facilities in California and total incarcerated population in California:

**Table 1: Summary of California Incarceration Facilities<sup>6</sup>**

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<sup>2</sup> *Id.*; WC Docket No. 12-375, *Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking* (FCC Third Order) at ¶¶ 35 -36.

<sup>3</sup> Public Advocates Office (Cal Advocates), *Comments on Order Instituting Rulemaking* at 2.

<sup>4</sup> *Id.*

<sup>5</sup> The 172,543 figure is based on a Commission Staff data request to IPCS providers (December 2020). Adjusting this figure based on information posed online by incarceration facilities results in an adjusted figure of approximately 183,011 incarcerated persons in California, as of May 2021. The number of incarceration facilities currently operated also fluctuates, as facilities open and close. For simplicity, this decision uses the 172,543 average daily population throughout.

<sup>6</sup> The Staff December 2020 data request instructed IPCS providers to identify the governing authority for each facility as state, local, or federal. The governing authority is the entity responsible for the operation of the incarcerated in the facility.

Governing Authority	Approximate Number of facilities	Estimated Average Daily Population of Incarcerated <sup>7</sup>
Federal	12	12,342
State	89	94,553
County/Local	249	76,978
Total	354	183,011

The Federal Bureau of Prisons operates federal prisons and detention centers as well as federal immigrant detention facilities and military prisons.<sup>8</sup> The State of California incarcerates individuals in state prisons, correctional facilities, vocational institutions, medical facilities, four juvenile facilities, and approximately 43 “Conservation Camps.”<sup>9</sup> The California Department of Corrections and Rehabilitation (CDCR) oversees these state facilities and provides calling services to people who are incarcerated through a single statewide contract currently held by the IPCS provider Global Tel\*Link (GTL).<sup>10</sup>

California counties operate county jails for adults, including court holding facilities, temporary holding facilities and long-term jails.<sup>11</sup> California counties

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<sup>7</sup> Average Daily Population for some federal facilities were obtained from the Federal Bureau of Prisons, accessed October 24, 2025, at <https://www.bop.gov/>.

<sup>8</sup> Federal Bureau of Prisons locations accessed December 28, 2020 at <https://www.bop.gov/locations/list.jsp#>. (See Scoping Memo for list of facilities.)

<sup>9</sup> Cal Advocates, comments on Order Instituting Rulemaking at 3, citing California Department of Corrections and Rehabilitation “Facility Locator,” (accessed October 22, 2020, and December 28, 2020). <https://www.cdcr.ca.gov/facility-locator/>. Conservation camps house incarcerated people who serve as a source of labor to support the state’s response to emergencies such as fires, floods, and other natural or manmade disasters.

<sup>10</sup> Cal Advocates, Comments on Staff Proposal at 4; (See also CDCR Contract ID C5610009, available at: [LPA Contract Details \(ca.gov\)](https://www.ca.gov/lpa/contract-details).)

<sup>11</sup> See, Public Policy Institute of California, “California’s County Jails: Fact Sheet February 2025” February 2025, available at <https://www.ppic.org/publication/californias-county-jails/>.

also manage approximately 70 juvenile detention centers and camps.<sup>12</sup> California cities also sometimes operate jails or holding facilities. Fifty-eight county sheriffs and probation chiefs negotiate their contracts independently with IPCS providers.<sup>13</sup>

This rulemaking builds on work by the Federal Communications Commission (FCC) to regulate interstate incarcerated persons communication services. In 2012, the FCC opened a rulemaking *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375. The FCC did so to address concerns regarding a lack of competition in the incarcerated persons communication services market, which they said resulted in “locational monopolies” serving a “captive consumer base of inmates.”<sup>14</sup> The 2012 FCC rulemaking resulted in a 2013 *Report and Order and Further notice of Proposed Rulemaking* (2013 Order) adopting interim interstate IPCS rate caps of \$0.21 per minute for debit and prepaid calls and \$0.25 per minute for collect calls.<sup>15</sup>

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<sup>12</sup> Board of State and Community Corrections, data and research, accessed December 28, 2020, at [https://www.bscc.ca.gov/m\\_dataresearch/](https://www.bscc.ca.gov/m_dataresearch/).

<sup>13</sup> Root and Rebound, Comments on OIR at 6.

<sup>14</sup> Prison Policy Institute, Comments on OIR, citing First Report & Order ¶¶ 39-41, 28 FCC Rcd. at 14128-30; *Global Tel\*Link v. FCC*, 866 F.3d 307, 404 (D.C. Cir. 2017) (*GTL v. FCC*, 866 F.3d) (“Once a long-term, exclusive contract bid is awarded to an [inmate calling service] ICS provider, competition ceases for the duration of the contract and subsequent contract renewals. Winning ICS providers thus operate locational monopolies with a captive consumer base of inmates and the need to pay high site commissions.”); and, *Id.* at 111, 28 FCC Rcd. at 14217 (Ajit Pai, dissenting) (“[W]e cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable”).

<sup>15</sup> See FCC Third Order at ¶ 13. The rate caps ordered by the FCC are also summarized in a FCC Consumer Guide “Inmate Telephone Service,” accessed January 5, 2021, and available at [https://www.fcc.gov/sites/default/files/inmate\\_telephone\\_service.pdf](https://www.fcc.gov/sites/default/files/inmate_telephone_service.pdf).

In 2015, the FCC approved its *Second Report and Order and Third Further Notice of Proposed Rulemaking* (2015 Order). In this, the FCC stated that “there is little dispute that the [IPCS] market is a prime example of market failure.”<sup>16</sup> Among other things, the FCC’s 2015 Order imposed or updated fee caps on both interstate and intrastate inmate communication rates and ancillary fees.<sup>17</sup>

In 2017, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) struck down the portion of the 2015 FCC Order that attempted to impose intrastate rate caps as beyond the FCC’s statutory authority.<sup>18</sup> The D.C. Circuit also vacated the FCC’s 2015 rate caps, but the ancillary service fee caps adopted in 2015 remained in place.<sup>19</sup> The FCC estimates that roughly 20 percent of IPCS calls nationally are interstate calls and 80 percent are intrastate calls.<sup>20</sup>

In California, Senator Holly Mitchell introduced Senate Bill (SB) 555 on February 22, 2019, to cap rates for telephone communication services for incarcerated people at five cents (\$0.05) per minute and cap rates for video communications services at twenty-five cents (\$0.25) per minute. The bill proposed to prohibit several types of ancillary fees, require any “site commissions” paid by IPCS providers to be used solely for the benefit of incarcerated people, and require counties to award contracts to providers

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<sup>16</sup> 2015 Order ¶¶ 3 (Nov. 5, 2015).

<sup>17</sup> *Ibid.*

<sup>18</sup> *GTL v. FCC*, 866 F.3d at 412.

<sup>19</sup> FCC Third Order at ¶ 14.

<sup>20</sup> *FCC Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking* (FCC 2020 Order on Remand) at ¶ 26.

offering the lowest cost for quality services.<sup>21</sup> Penal Code 4025 authorizes sheriffs' departments to place commissions collected from IPCS providers in an inmate welfare fund that is to be used "primarily" for the benefit of incarcerated people.<sup>22</sup>

While Governor Newsom vetoed SB 555 in late 2020, the Governor's veto message said that he "strongly support[ed] the goals of the bill" but feared reductions to the inmate welfare fund would have the "unintended consequence of reducing important rehabilitative and educational programs for individuals in custody."<sup>23</sup>

In mid-2020 the FCC asked state regulatory commissions, via the National Association of Regulatory Utility Commissioners (NARUC), to act on intrastate inmate communication services rates to enable more affordable communications for the incarcerated and their families.<sup>24</sup> Shortly thereafter, NARUC asked state utility commissions to review the rates and terms under which telecommunications services are provided to incarcerated people "and act, where appropriate."<sup>25</sup> On October 8, 2020, the Commission opened R.20-10-002.

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<sup>21</sup> Section 3(f)(1) of SB 555 defines "commission or other payment" as any payments made to provide an incentive for the procurement of contracts, but does not include grants and other payments that do not increase the cost of telephone calls or communications or information services billed to consumers."

<sup>22</sup> SB 555, Section 1(b)(3).

<sup>23</sup> Office of the Governor, SB 555 Veto Message, September 30, 2020, available as of this writing at: <https://www.gov.ca.gov/wp-content/uploads/2020/09/SB-555.pdf>.

<sup>24</sup> Letter from Ajit Pai to Brandon Presley (July 20, 2020), available as of this writing at: <https://docs.fcc.gov/public/attachments/DOC-365619A1.pdf>.

<sup>25</sup> Nat'l Ass'n of Reg. Util. Comm'rs, NARUC Urges Members to Review Inmate Calling Rates (July 23, 2020), available as of this writing at <https://pubs.naruc.org/pub/DC1DC83B-155D-0A36-31FB-0EDC020E33F1>.

On March 1, 2021, the CDCR announced it had negotiated a statewide contract with the IPCS provider GTL to provide intrastate IPCS rates at the price of \$0.025 per minute to 90 state-run facilities, effective through 2026.<sup>26</sup>

On May 24, 2021, the FCC adopted a *Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking* (FCC Third Order). The FCC's Third Order:

- Lowers interstate interim rate caps to new interim caps for all calls of \$0.12 per minute for prisons and \$0.14 per minute for jails with populations of 1,000 or more;
- For prisons and larger jails, reforms treatment of site commission payments, allowing (1) revenue collection of an additional \$0.02 per minute for site commission payments that are reasonably related to the facility's cost of enabling IPCS and where these result from contractual obligations or negotiations; and, (2) the pass-through without markup of any site commission payments required under codified law or regulations up to a total rate cap of \$0.21 per minute;<sup>27</sup>

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<sup>26</sup> Cal Advocates, Comments on Staff Proposal at 4; TURN, Comments on Staff Proposal at 12; *See also* State of California, Department of Technology, Statewide Technology Procurement, Department of Corrections and Rehabilitation and Global Tel\*Link Corporation, Agreement Number C5610009, Exhibit Tab 3 (Dec. 31, 2020) (\$0.025 per minute); California Department of Corrections and Rehabilitation, "California Department of Corrections and Rehabilitation Announces Reduced Cost of Telephone Calls for Incarcerated Population," News Release (Mar. 1, 2021) <https://www.cdcr.ca.gov/news/2021/03/01/california-department-of-corrections-and-rehabilitation-announces-reduced-cost-of-telephone-calls-for-incarcerated-population/>. CDCR contract available here:

[https://caleprocure.ca.gov/PSRelay/ZZ\\_PO.ZZ\\_CTR\\_SUP\\_CMP.GBL?Page=ZZ\\_CTR\\_SUP\\_PG&Action=U&SETID=STATE&CNTRCT\\_ID=C5610009](https://caleprocure.ca.gov/PSRelay/ZZ_PO.ZZ_CTR_SUP_CMP.GBL?Page=ZZ_CTR_SUP_PG&Action=U&SETID=STATE&CNTRCT_ID=C5610009)

<sup>27</sup> FCC Third Order at ¶¶ 100 – 168; *See also* FCC Third Order, footnote 304, which defines "law or regulation" as "state statutes and laws and regulations that are adopted pursuant to state administrative procedure statutes *where there is notice and an opportunity for public comment* such as by a state public utility commission or similar regulatory body with jurisdiction to establish inmate calling rates, terms and conditions" (emphasis added). FCC Third Order at ¶ 133 also

*Footnote continued on next page.*

- For jails with populations less than 1,000, retains the per-minute rate cap of \$0.21 per minute adopted in 2013 for all calls, and prohibits collection of revenues beyond that level for site commissions;
- Reforms ancillary service charge rules for third-party financial transaction and single-call fees by capping allowable pass-through charges at \$6.95 per transaction;<sup>28</sup>
- Reaffirms that the jurisdictional nature of a telephone call for purposes of charging consumers depends on the physical location of the originating and terminating endpoints of the call;
- Updates the waiver application process to apply to an individual facility or under a specific contract;<sup>29</sup>
- Caps international calling rates;
- Adopts a new mandatory data collection to gather data to set permanent rates; and,
- Reaffirm providers' obligations regarding access for incarcerated people with disabilities.<sup>30</sup>

On August 19, 2021, the Commission adopted an interim intrastate IPCS rate cap of seven cents per minute (\$0.07/minute) for debit, prepaid calls, and collect calls.<sup>31</sup> The Commission also capped all ancillary fees associated with the provision of intrastate and jurisdictionally mixed IPCS.<sup>32</sup>

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requires mandated site commissions to be indicated as a line item distinct from the applicable per-minute rate component.

<sup>28</sup> FCC Third Order at ¶¶ 209 – 216.

<sup>29</sup> FCC Third Order at ¶ 171.

<sup>30</sup> FCC Third Order (May 24, 2021).

<sup>31</sup> Decision (D.) 21-08-037, OP 2, at 115.

<sup>32</sup> See, *id.*, OP 3 at 115-116 (prohibited the imposition of any single-call, paper bill, live agent, and/or automated payment fees; limits the collection of third-party financial transaction fees to

*Footnote continued on next page.*

On August 24, 2021, the assigned ALJ issued a Ruling setting a prehearing conference (PHC) to help the Commission determine what issues should be addressed in Phase II of this proceeding, along with the appropriate organization and timing for this phase of the proceeding. Prehearing conference statements were submitted by The Utility Reform Network (TURN), Securus Technologies, LLC (Securus), Californians for Jail and Prison Phone Justice Coalition, The Public Advocates Office at the California Public Utilities Commission (Cal Advocates), the Center for Accessible Technology (CforAT), the Prison Policy Initiative, Inc. (PPI), and Global Tel\*Link Corporation (GTL).

On September 13, 2021, the Assigned Commissioner and ALJ issued a Ruling finding that GTL had not shown that Cal Advocates lacks authority to propound discovery related to GTL's video calling services, nor had GTL overcome the presumption in favor of allowing liberal discovery and ordered GTL to provide complete and full responses to outstanding data requests.

On September 17, 2021, the assigned ALJ issued a ruling directing TURN to convene Meet and Confer discussions with all interested parties and submit proposals on two topics discussed at the September 15, 2021, prehearing conference. On October 12, 2021, TURN submitted a draft workshop prioritization and potential schedule and a protective order proposal after hosting a meet and confer on October 4, 2021. TURN requested party feedback after the meet and confer by October 7, 2021, and included brief statements submitted by parties regarding the two topics in its filing. Securus, GTL, TURN,

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pass through of the exact fee only, with no markup, excluding any credit card charges, up to a cap of \$6.95 per transaction; limits the collection of government-mandated taxes and fees to the pass through of the exact fee only, with no markup; and prohibits the imposition of any other type of ancillary service fee or service charge not explicitly approved by the CPUC).

and CforAT filed comments on TURN’s proposals and parties’ statements on October 18, 2021.

On November 29, 2021, the assigned Commissioner issued a Phase II Scoping Memo and Ruling Extending Statutory Deadline. The Ruling noted Decision (D.)21-08-037 defined intrastate IPCs as including (but not limited to) voice and interconnective voice over internet protocol (VoIP) calling, including voice and VoIP voice communications services servicing people with disabilities.<sup>33</sup> The Ruling sought briefs on questions related to “video calling and related services” which it defined as: (1) video calling services, including remote video calling services and in-person video calling services; (2) written electronic communication services, including texting (SMS) services, private messaging services, and email services; and (3) entertainment services such as photo sharing, music or video entertainment and/or internet access services. The Ruling noted that the Commission would provide an opportunity later for parties to comment on the appropriate methodology and/or data sources the Commission should use to adopt permanent voice-only IPCS rate caps or ancillary fee requirements. Further, the Ruling noted we would also consider adoption of any interim or permanent video calling and related services rate caps and/or ancillary fee regulations. The Ruling set forth plans to conduct workshops related to cost structures and affordability of IPCS (noting our intent to incorporate the metrics and methodologies adopted in D.20-07-032).<sup>34</sup>

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<sup>33</sup> Phase II Scoping Memo and Ruling, November 29, 2021, at 3-4, *citing*, D.21-08-037 at 17-18, in D.19-08-025 at 9-10 and in D.20-09-012 at 31-41; *see also*, Pub. Util. Code §§ 216, 234, and 701.

<sup>34</sup> Phase II Scoping Memo at 6-8, *citing*, Pub. Util. Code § 709(a) and § 871.5(a), and D.20-07-032 (in Order Instituting Rulemaking to Establish a Framework and Processes for Assessing the Affordability of Utility Service, R.18-7-006).

Opening Briefs on video calling and related services were filed on January 28, 2022, by Network Communications International Corporation, d/b/a NCIC Inmate Communications (NCIC), Californians for Jail and Prison Phone Justice Coalition (CJPPJC), Securus, the Small LECs (Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Co., Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company, and Winterhaven Telephone Company), Joint Intervenors (Cal Advocates, TURN, PPI, and CforAT), and Global Tel Link Corporation dba ViaPath Technologies (GTC or ViaPath)

A February 24, 2022, Ruling granted USTelecom – The Broadband Association (USTelecom) party status.

Reply Briefs on video calling and related services were filed on February 28, 2022, by Joint Intervenors, CJPPJC, Securus, USTelecom, GTC, and NCIC.

A Status Conference was held on April 28, 2022, to discuss potential questions for testimony and briefing regarding video calling and related services, additional questions regarding video services for the disabled, and timing for developing the record for permanent voice-only calling services costs. A May 20, 2022, Assigned Commissioner Ruling amended the Phase II scope and schedule and directed testimony. The Ruling set forth additional specific questions for parties to brief regarding prohibiting bundling of voice-only and video calling services to incarcerated persons, as well as directing testimony from IPCS providers regarding the bundling of video calling and voice-only communications services in a single contract, video calling service rates, the use

of video calling services by incarcerated adults and minors, and the network structure of telephone and video calling services provided by IPCS providers.

A May 31, 2022, Ruling by the assigned ALJ scheduled a June 16, 2022, Workshop to explain the Commission's secure file transfer protocol (FTP) system which allows parties to securely exchange confidential information.

A June 22, 2022, Ruling by the assigned ALJ directed IPCS providers to submit to all contracts for provision of such services in California, including video calling services, to the Commission by July 26, 2022.

On July 19, 2022, NCIC submitted a Brief addressing the Amended Phase II Scoping Memo. On July 20, 2022, NCIC submitted a Supplemental Brief to provide a substantive response to question 4.3(3) and verification of the information by NCIC's President. For ease of reference, the complete brief is resubmitted with this new information.

On August 5, 2022, the assigned ALJ issued a Ruling directing GTC, Securus, and Inmate Calling Solutions, LLC d/b/a ICSolutions (ICSolutions) to resubmit testimony in response to the May 20, 2022, Assigned Commissioner's Ruling. The Ruling noted that NCIC's Brief and Supplemental Brief appears to be complete and included a certification under penalty of perjury signed by its President. The Ruling directed the other IPCS parties to include clear and detailed explanations, pursuant to the requirements of GO 66-D, for each instance of a claim of confidential information.

Securus filed a motion on August 15, 2022, for leave to seal the record as to confidential information included in Attachment A of the testimony of Russell Roberts.

TURN filed a motion on September 19, 2022, for leave to seal the record as to information that NCIC has designated as confidential that is referenced in intervenor testimony exhibit 5.

On October 10, 2022, the assigned ALJ issued a Ruling clarifying that the proceeding schedule inadvertently omitted a due date for intervenor reply testimony. The Ruling directed any intervenor seeking to submit reply testimony to submit a motion to adjust the schedule no later than October 24, 2022.

On October 24, 2022, TURN submitted a motion seeking to adjust the proceeding schedule to permit intervenor reply testimony to be served before November 18, 2022, thirty days after service providers served reply testimony. TURN further proposed adjusting subsequent dates in the schedule to reflect the adjustment for intervenor reply testimony. On October 31, 2022, Securus submitted a response to TURN's motion to adjust the proceeding schedule that stated it did not oppose the request to submit reply testimony, provided such testimony is limited to issues in the Phase II Scoping Memo, and issues raised in the reply testimony of IPCS providers. On November 8, 2022, the assigned ALJ issued a Ruling updating the procedural schedule to permit intervenor parties and Cal Advocates the ability to serve reply testimony within 30-days of the ruling, and updating the remaining schedule to reflect this change.

On January 23, 2023, the Joint Parties (TURN, Cal Advocates, CforAT, NCIC, GTC, and Securus) submitted a Statement on Stipulated and Disputed Facts and Need for Hearing. While the parties were not able to agree on any stipulated facts, the Joint Intervenors (CforAT, Cal Advocates, and TURN) "tentatively" agreed that hearings are not necessary, and the IPCS providers

stated that there is no need for evidentiary hearings because the issues to be decided are legal and policy in nature.

On January 25, 2023, GTC submitted a motion to strike portions of opening testimony of CforAT, TURN, and Cal Advocates, as well as portions of reply testimony of TURN and Cal Advocates. GTC also moved to strike a portion of its reply testimony that pertained to a part of the testimony served by CforAT that it is seeking to strike. GTC argues that the intervenor testimony is beyond the matters currently under consideration in this phase of the proceeding. On February 6, 2023, Securus submitted a response supporting GTC's motion to strike. On February 9, 2023, the Joint Intervenors submitted a response to the motion to strike claiming the motion to strike contains vague and unsubstantiated claims that the testimony is out outside the scope of this phase of the proceeding. Further, Joint Intervenors argue that the portions of testimony GTC is moving to strike are relevant in this phase of the proceeding and within its scope.

CforAT submitted a motion on February 9, 2023, for official notice of The Court of Appeals of the State of California, Second District's opinion *Securus Technologies, LLC, v. Public Utilities Commission*, No. B320207 (Feb. 1, 2022) (*Securus Opinion*) which affirmed the Commission's first decision in this proceeding, D.21-08-037.<sup>35</sup>

On July 22, 2024, the FCC released a Report and Order, Order on Reconsideration, Clarification and Waiver and Further Notice of Proposed

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<sup>35</sup> *Securus Tech. v. PUC*, 88 Cal. App. 5th 787, 305 Cal. Rptr. 3d 153 (Cal. Ct. App. 2023). We take official notice of all decisional, constitutional, and public statutory laws of this state and of the United States relevant to and as noted herein. *See*, Rule 13.10, Cal. Ev. Code §451(a).

Rulemaking (FCC 2024 Order) to implement the requirements of the Martha Wright-Reed Just and Reasonable Communications Act of 2022. Among other things, the FCC 2024 Order lowered the voice calling cap to between \$0.06 and \$0.12 per minute and created interim video calling caps between \$0.16 and \$0.25 per minute depending on the size of the facility. The FCC 2024 Order also prohibited providers from imposing any separate ancillary service charges on IPCS consumers, prohibited IPCS providers from making site commission payments, and allowed alternate pricing plans for IPCS that comply with the established rate caps.

On June 30, 2025, the Chief of the FCC's Wireline Competition Bureau issued an Order extending the deadlines for IPCS providers to comply with certain rules, including the rate caps, adopted in the FCC 2024 Order. TURN submitted a motion on July 30, 2025, which it amended on July 31, 2025, for official notice of the FCC's June 30, 2025, Waiver Order.<sup>36</sup>

On October 28, 2025, the FCC adopted a Report and Order on Reconsideration, and Further Notice of Proposed Rulemaking (October 2025 FCC Report and Order) to revise the methodology used to calculate its IPCS rate caps and make other changes to the IPCS framework it adopted in the FCC 2024 Order. Specifically, the FCC (1) reconsidered the use of unbilled minutes in calculating the IPCS rate caps, (2) adopted an additional size tier for extremely small jails, (3) included safety and security costs in the revised rate caps, and (4) adopting a separate rate additive for all rate tiers of up to \$0.02 per minute that may be charged on top of the revised per-minute rate caps. The

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<sup>36</sup> See *infra*, fn. 49.

modifications to the FCC's rate cap setting methodology and rate structure results in the voice calling cap increasing to between \$0.11 and \$0.19 per minute and the interim video calling caps increasing to between \$0.25 and \$0.44 per minute depending on the size of the facility.

### **1.1. Staff Proposal on Permanent Rates for Incarcerated Persons Calling Services**

On September 30, 2024, the assigned ALJ issued a Ruling seeking comments on a proposal of the Communications Division Staff (Staff Proposal or Proposal) to establish permanent rates for incarcerated persons calling services. The ruling noted that on September 29, 2002, Senate Bill (SB) 1008 (2022) was signed into law and provided for functional voice communications services free of charge to those incarcerated in a state prison, or a state, county, or city youth residential placement or detention center. The Department of Corrections and Rehabilitation covers the cost and has discretion on needs of each facility. The ruling also reviewed the schedule adjustments and the statement of stipulated facts and disputed facts that noted no party saw reason for evidentiary hearings at that time based on testimony submitted. The ruling noted that after reviewing the testimony served and the data submitted related to the cost of providing IPCS and related ancillary services the Staff proposal was developed to recommend a permanent intrastate rate price cap for debit, prepaid, and collect calls, and would keep the ancillary fee caps permanent. The Staff Proposal also recommends a process for periodic adjustments as well as a mechanism for individual providers to seek adjustments specific to their circumstances. Parties were directed to respond to specific issues and describe any specific changes to the recommendations in the Staff Proposal that are necessary to fulfill the Commission's statutory obligations and provide details that would be useful to

inform the Commission regarding adoption of permanent IPCS rates and fee requirements.

### **1.2. Staff Proposal on Permanent Rates for IPCS**

The Staff Proposal summarized D.21-08-037 adopting interim calling rates for IPCS of \$0.07 per minute for debit, prepaid, and collect calls.<sup>37</sup> The Proposal also reviewed how D.21-08-037 capped all ancillary fees for intrastate and jurisdictionally mixed IPCS, specifically prohibiting the imposition of any single-call, paper bill, live agent, and/or automated payment fees; limiting the collection of third-party financial transaction fees to pass through of the exact fee, with no markup, and excluding any credit card charges, up to a cap of \$6.95 per transaction. Further, the Proposal explained that D.21-08-037 also limited the collection of government-mandated taxes and fees to the pass through of the exact fee, with no markup; and prohibited the imposition of any other type of ancillary service fee or service charge not explicitly approved by the Commission.<sup>38</sup>

The Commission adopted the \$0.07 per minute rate cap based on (1) the CDCR capping intrastate IPCS rates in California prisons at \$0.025 per minute through 2026,<sup>39</sup> (2) the Federal Communication Commission's (FCC) determination that it costs service providers no more than 25 percent more to provide IPCS to jails with a population greater than 1,000 as compared to

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<sup>37</sup> D.21-08-037 at OP 2.

<sup>38</sup> *Id.* at OP 3.

<sup>39</sup> *Id.* at p.51, *citing* Cal Advocates Comments on Staff Proposal at 7.

prisons,<sup>40</sup> (3) the fact that other states had rates well below \$0.05 per minute,<sup>41</sup> (4) the addition of \$0.02 per minute to allow the maintenance of site commission funds for California counties, and (5) the finding that costs to provide intrastate IPCS did not change based on the size of the facility.<sup>42</sup>

Further, during the pendency of this proceeding California enacted SB 1008 (2022) which requires CDCR to provide voice communications free to the person initiating and the person receiving the communication, subject to its operational discretion.<sup>43</sup> As SB 1008 does not govern facilities outside the jurisdiction of CDCR, such as federal prisons or local jails, the Proposal identified a continuing need to address communication affordability and accessibility in non-CDCR facilities. Thus, the Proposal set out a framework for a sustainable rate structure and cap on ancillary fees that would ensure equitable access to affordable communication services for all incarcerated individuals and their families in California.

The Staff Proposal is based on basic economic theory regarding the conflicting interest of providers seeking profit maximization and the imperative for fairness and accessibility for incarcerated individuals. The Proposal noted that in monopoly and oligopolistic markets, such as those the Commission has identified in this proceeding, where cost to the consumer is much higher than the

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<sup>40</sup> D.21-08-037 at 52, *citing* Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking (FCC 2024 IPCS Order), WC Docket No. 12-375, at ¶ 148. See also, Report and Order on Reconsideration and Further Notice of Proposed Rulemaking, (FCC 2025 IPCS Reconsideration Order), WC Docket No. 12-375, at ¶¶ 20-26.

<sup>41</sup> D.21-08-037 at 52-53, *citing* state sources in New Jersey, Illinois, Texas, and New York.

<sup>42</sup> D.21-08-037 at 54-56.

<sup>43</sup> SB 1008, Stats. 2022, Ch. 827, Section 2 (*hereinafter* SB 1008).

cost of service, regulatory intervention is needed to ensure just and reasonable rates. The recommendation for a permanent intrastate rate cap for debit, prepaid, and collect calls of \$0.45 per minute is based on the consideration of: (1) the affordability of high site commissions; (2) the lack of provider cost data and expenses; and (3) the lack of reasonable evidence or complaints of hardship from providers or carceral facilities on the impact of the interim calling rates.

Staff reviewed contracts submitted by IPCS providers pursuant to the protective order in this case and noted the “extremely high” site commissions and sign-on bonuses ranging up to millions of dollars. Staff noted that site commissions can run as high as 85% of IPCS costs. The Staff Proposal recommends keeping the site commission cap at \$0.02 per minute consistent with the findings in D.21-08-037 that IPCS providers have used site commissions in their determination of their rates.

The Proposal noted that the Commission has repeatedly encouraged IPCS providers to provide cost data during Phase II of this proceeding to add to the information it has received, including the CDCR contract, and actions of the California Legislature and similar actions in other states to make IPCS calling free in many circumstances.<sup>44</sup> The Proposal stated that IPCS providers failed to present any data to justify a higher permanent calling rate. Accordingly, staff proposed setting the permanent calling rate at \$0.045, a rate it deems just and reasonable. The Proposal states that the proposed rate is designed to promote the safety, health, comfort and convenience of communication services provided to incarcerated persons while ensuring providers can adequately furnish and

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<sup>44</sup> Staff Report at 2-3, 7. *See, e.g.*, SB 1008.

maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities.<sup>45</sup> The Proposal states the proposed permanent rate is designed to achieve a social optimum price that incorporates the costs and expenses of IPCS providers.

The Staff Proposal reviewed how no information or complaints were registered from IPCS providers or carceral facilities regarding the interim rates. There has been no showing that the interim rates have affected carriers' profits or ability to provide adequate service. The Staff Proposal identified the \$0.025 per minute rate that CDCR contracted with GTL to provide service as evidence that rates lower than the interim rate were feasible in the market.<sup>46</sup> Accordingly, the Staff Proposal identified the interim rate as too high and proposed reducing it based on the CDCR contract, free IPCS calling in other states, and the inflated costs of site commissions. Based on the information presented, staff recommended reducing the interim rate from \$0.07 per minute to \$0.045 per minute.<sup>47</sup> Staff further recommended that IPCS providers that required a higher rate could file a rate case with the Commission to have its individual circumstances reviewed.<sup>48</sup>

In calculating the new rate, the Staff Proposal decoupled site commission costs from the per-minute rate. Staff evaluated several rates adopted by the FCC

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<sup>45</sup> See, Pub. Util. Code § 451.

<sup>46</sup> Staff Report at 7, *citing* California Department of Corrections and Rehabilitation Announces Reduced Cost of Telephone Calls for Incarcerated Population (available at <https://www.cdcr.ca.gov/news/2021/03/01/california-department-of-corrections-and-rehabilitation-announces-reduced-cost-of-telephone-calls-for-incarcerated-population/> (Website last visited 10/31/2025)).

<sup>47</sup> Staff Report at 2, 5-8.

<sup>48</sup> Staff Report at 2, 7, 11.

to illustrate that the provision of site commissions greatly increase the rates of IPCS.<sup>49</sup> Staff found that site commissions can be as high as 85% of IPCS costs, without including the cost of sign-on bonuses.<sup>50</sup> Staff identified that without site commissions, the actual cost of calls ranged from \$0.02 to \$0.17 per minute. Staff identified the lower end of this range, \$0.02 per minute, as a price point that exists today without reported issues or exits from the industry. Therefore, staff believed a \$0.045 per minute price cap is reasonable based on a \$0.025 per minute service cost coupled with a site commission cap of \$0.02 per minute.<sup>51</sup>

The Staff Proposal recommended continuing the rules capping ancillary fees and prohibiting charges without prior Commission approval. Staff further recommended that any allowable ancillary fees be charged as a fixed fee and not based on a percentage of the total amount. Staff explained how fees and charges can significantly increase the final cost of a short call,<sup>52</sup> and saw no compelling reason why they should not be capped. Staff also invited consideration of implementing a monthly rate structure in place of per minute rates noting that is how other communication services are priced and that it would provide more predictability and be more efficient for families that pay for IPCS. Staff noted,

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<sup>49</sup> See, FCC WC Docket No. 23-62 and WC Docket No. 12-375. We take official notice of all of the FCC decisions in those dockets, including the Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking adopted on October 28, 2025 (October 2025 FCC Report and Order).

<sup>50</sup> Staff Report at 7 (staff also found site commissions as low as 30% of IPCS costs, highlighting the variability in costs under the current structure).

<sup>51</sup> Staff Report at 8.

<sup>52</sup> Staff Report at 8, *citing* Federal Register, Vol. 87, No. 236, 75496 (2022), FCC Decision in Rates for interstate Inmate Calling Services in WC Docket No. 12-375.

however, that any monthly rate structure should not be allowed to conflict with the SB 1008 requirements for free voice calling within state-run institutions.<sup>53</sup>

The Staff Proposal also set forth a process to allow adjustments to the \$0.045 per minute rate cap in a manner similar to traditional price cap regulation. Staff proposed to allow providers to file a Tier 2 advice letter (AL) based on the CPI and appropriate X factor by November 15 for implementation the following year. Staff proposed an X factor of 0.5% for years when the CPI is at or below 3.0%, and an X factor of 0.75% for years when the CI is above 3.0%.<sup>54</sup>

Staff recommended that should IPCS providers seek to charge more than the \$0.045 per minute rate cap, that they file an application for a formal rate case to demonstrate that a higher rate is needed to cover the cost of providing reliable IPCS. Staff outlined the general requirements for filing such a rate case and noted that interim relief may be granted through our normal processes.<sup>55</sup>

Finally, staff recommended the Commission require IPCS providers to file a compliance notice with the Communications Division within 45 days of adoption of permanent rates. The notice would include: (1) attestation of contract addendums that the permanent calling rates and ancillary fees have been implemented at all facilities served by the provider in California consistent with SB 1008; (2) copies or links to provider webpages where the permanent calling rates and ancillary fees are presented for facilities located in California; (3) copies of notices provided to facilities of the permanent calling rates and ancillary fees; and (4) copies of notices to incarcerated persons of the permanent calling rates

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<sup>53</sup> Staff Report at 8-9.

<sup>54</sup> Staff Proposal at 10-11.

<sup>55</sup> Staff Proposal at 11.

and ancillary fees. Staff also sought permission to impose penalties on a ministerial basis, which will be determined in a resolution after this decision.

### **1.3. Comments on Staff Proposal on Permanent Rates for IPCS**

The September 30, 2024, Ruling sought comments from Parties on the Staff Proposal for a recommended permanent intrastate rate price cap for debit, prepaid, and collect calls, and whether the ancillary fee caps should be permanent. Parties were directed to comment on the recommendation for a process for periodic adjustments as well as a mechanism for individual providers to seek adjustments specific to their circumstances. Parties were directed to respond to six specific sets of questions:

1. Should the Commission adopt permanent rate caps and/or ancillary fee regulations for voice-only IPCS in California incarceration facilities? What are the unique needs or equity populations that the Commission should consider when doing so?
2. What methodology should the Commission use to develop any permanent voice-only rate caps or ancillary fee requirements and/or any related services rate caps and/or ancillary fee regulations?
3. What types of data should the Commission consider when developing permanent rate caps or ancillary fee requirements for voice-only IPCS and/or ancillary fee requirements? Can, and if so, how can the Commission ensure that self-reported cost data is accurate? What format(s) should the Commission require for reporting of cost data?
4. Should the Commission assess and ensure the affordability of IPCS to the incarcerated and their families in addition to ensuring that the incarcerated and their families have access to just and reasonable IPCS rates?

5. Should the Commission consider alternative IPCS rate options or programs? How might alternative IPCS rate options or programs be structured? What oversight would be necessary? Is it feasible or necessary for the Commission to introduce mechanisms to foster competition between providers within incarceration facilities?
6. Should the Commission permit rate adjustments above the permanent rate if one is adopted? If so, what process/procedures should the Commission adopt?

The ruling noted that after consideration of comments and reply comments on the Staff Proposal a proposed decision would be issued.

#### **1.3.1. Opening Comments on Staff Proposal of Cal Advocates**

Cal Advocates argues the Commission should 1) Adopt a rate cap of \$0.035 cents per minute for Voice-Only calls, which is based on cost of service; 2) Adopt the Staff Proposal's methodology but exclude site commissions; 3) Require IPCS providers to submit a Tier 3 advice letter to request a rate higher than the proposed rate cap; 4) Ensure rates are based on cost of service to ensure they are just and reasonable; and 5) Apply the \$0.035 per minute rate cap to all jails, prisons, and juvenile detention centers of all sizes and locations not covered by SB 1008.<sup>56</sup>

Cal Advocates encourages the Commission to implement a permanent rate cap to lessen the financial hardship all incarcerated individuals and their families experience in their efforts to maintain their relationships. Cal Advocates calls for a \$0.035 per minute rate cap, noting the CDCR rate and similar rate caps in other states, as well as a finding that two-thirds of incarcerated people reported an

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<sup>56</sup> Cal Advocates Opening Comments at 2-8.

annual income below \$12,000 before arrest.<sup>57</sup> Further, Cal Advocates argues that the CDCR rate of \$0.025 per minute should be used as a cost of service ceiling because it demonstrates that an IPCS provider can offer this rate without risking financial insolvency. Cal Advocates also calls for prohibiting IPCS providers from charging separate ancillary service fees. Cal Advocates states that such an approach streamlines billing, simplifies payment processes, and promotes consumer transparency.<sup>58</sup>

Cal Advocates notes that IPCS providers chose not to provide data to support their claims that the interim rates have affected carriers' profitability such that they would not provide communication services. They point out that the IPCS providers had the opportunity to file cost data to back up these and similar claims to augment the record on this proceeding but opted not to do so.<sup>59</sup>

Cal Advocates believes the Commission should not adopt the Staff Proposal of a \$0.045 rate cap which includes a site commission adder of \$0.02 per minute, as a recent FCC Order (FCC 2024 Order) prohibits commissions and expressly preempts any state or local laws and regulations requiring such payments.<sup>60</sup> Instead, Cal Advocates proposes a \$0.035 rate cap for voice calls

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<sup>57</sup> Cal Advocates Opening Comments at 3, *citing*, Low-Cost Phone Calls Benefit Incarcerated People, Their Families, and Criminal Legal Institutions, Urban Institute: <https://www.urban.org/urban-wire/low-cost-phone-calls-benefit-incarcerated-people-their-families-and-criminal-legal> (last accessed on October 21, 2024).

<sup>58</sup> Cal Advocates Opening Comments at 4.

<sup>59</sup> Cal Advocates Opening Comments at 5.

<sup>60</sup> Cal Advocates Opening Comments at 5, *citing*, Report and Order, Order and Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking (released on July 22, 2024, in WC Dockets Nos. 23-62 and 12-375). Cf. October 2025 FCC Report and Order (adopting a \$0.02 additive based on used and useful correctional facility costs in the upper bounds of the zones of reasonableness).

which closely aligns with the FCC analysis of expenses for voice-only calls.<sup>61</sup> Cal Advocates believes that in so doing the Commission should also adopt a process to allow IPCS providers to request a higher rate in the event that the cost cap does not cover the actual cost of service, and recommends that such requests be made through a Tier 3 advice letter which will provide actual cost data to support the IPCS provider's request.<sup>62</sup>

Cal Advocates reiterates that SB 1008 only provides free voice calls to incarcerated persons in state prisons and all juvenile detention facilities, and it does not include federal prisons or local jails. Therefore, Cal Advocates states it is necessary to adopt its proposed \$0.035 rate to ensure rates for voice calls in other California incarceration facilities are based on cost of service. Cal Advocates argues its proposed rate is based on the cost of service inferred from the GTL contract and meets the requirements of the Martha Wright-Reed Just and Reasonable Communications Act of 2022's.<sup>63</sup>

### **1.3.2. Opening Comments on Staff Proposal of Joint Consumers**

TURN and CforAT jointly submitted comments as the "Joint Consumers" that "generally support" the Staff Proposal. Joint Consumers call for the Commission to refresh the record to account for recent action by the FCC, particularly its 2024 Order which sets new rates and provides instructions for states. Joint Consumers claim the FCC's actions reaffirm and continue existing policy of allowing state regulators to set lower (but not higher) price caps for

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<sup>61</sup> Cal Advocates Opening Comments at 6.

<sup>62</sup> Cal Advocates Opening Comments at 7.

<sup>63</sup> Cal Advocates Opening Comments at 7.

intrastate IPCS.<sup>64</sup> Further, Joint Consumers state that the FCC's actions do not limit the Commission's ability to consider further aspects of IPCS beyond voice-calling rate caps in parallel with the FCC's ongoing efforts.<sup>65</sup>

Joint Consumers provide an overview of the FCC's 2024 Order claiming it: (1) provides that the Commission may cap intrastate IPCS voice calls at a lower rate than the FCC; (2) creates new rate caps on voice calling (which apply to intra- and interstate IPCS calls) creating different caps for prisons and jails of various sizes; (3) prohibits ancillary fees billed in addition to the federal rate caps; and (4) prohibits all IPCS providers from paying site commissions of any kind.<sup>66</sup>

Joint Consumers suggest the Commission modify three aspects of the Staff Proposal in light of the FCC 2024 Order including: (1) implement the \$0.045 per minute rate cap on an interim basis and collect more data to determine if that rate cap should apply to correctional facilities of all sizes;<sup>67</sup> (2) adopt the same methodology to allow recovery of ancillary fees through the per-minute rate cap to avoid federal preemption;<sup>68</sup> and (3) prohibit the pass-through of facility costs and reject the Staff Proposal recommendation to allow \$0.02 per minute for those facility costs.<sup>69</sup>

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<sup>64</sup> Joint Consumers Opening Comments at 1, 4, *citing*, FCC 2024 Order at ¶¶ 236-237.

<sup>65</sup> Joint Consumers Opening Comments at 3.

<sup>66</sup> Joint Consumers Opening Comments at 4-5. Cf. October 2025 FCC Report and Order.

<sup>67</sup> Joint Consumers Opening Comments 6-9.

<sup>68</sup> Joint Consumers Opening Comments 9-10 (Joint Consumers state ancillary services may include automated payment and billing functions, third-party financial transaction fees, live agent fees, paper bill/statement fees and related service fees.).

<sup>69</sup> Joint Consumers Opening Comments at 10-11.

While acknowledging that issues related to equitable access for incarcerated persons with disabilities is an issue slated to be considered in a subsequent phase of the proceeding, the Joint Consumers suggest the Staff Proposal should further develop its Environmental and Social Justice Action Plan analysis.<sup>70</sup>

Joint Consumers also call for the Commission to continue to collect all contracts and contract data, including for facilities covered by SB 1008, and make clear to all providers that such data collection will continue in the future.<sup>71</sup> They noted that in developing the interim rate caps the Staff Proposal observed that IPCS providers have had ample opportunity to file in the record of this proceeding detailed or summary cost data but have declined to do so. Joint Consumers agree the Staff Proposal would benefit from more documentation and cost-based analysis to support its methodology and should further supplement its underlying data by requiring additional, ongoing data collection. Joint Consumers suggest that once rate caps are set providers should not be allowed to request an increase in rates or rate caps unless they have provided additional information to show how the current caps do not allow for just and reasonable rates and fair compensation for their services.<sup>72</sup> Joint Consumers call for future data collections to include the same data submitted in response to the most recent FCC mandatory data collection, as well as any future rounds of mandatory data collection at the FCC.<sup>73</sup>

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<sup>70</sup> Joint Consumers Opening Comments at 13-15.

<sup>71</sup> Joint Consumers Opening Comments at 17.

<sup>72</sup> Joint Consumers Opening Comments at 15-16.

<sup>73</sup> Joint Consumers Opening Comments at 17-18.

Joint Consumers urge the Commission to begin collecting information regarding service quality as part of any new or supplemental data collection so it can develop service quality standards and a framework for enforcement of those standards.<sup>74</sup>

Joint Consumers also recommend the Commission begin conducting an affordability analysis of IPCS rate caps and the rates charged by providers to incarcerated persons and their families as part of its analysis of whether the rates charges for these services are just and reasonable.<sup>75</sup> Joint Consumers point out the Commission has previously found that making calls more affordable supports successful reentry and reduces recidivism, and that such results will result in savings to taxpayers.<sup>76</sup> Joint Consumers thus urge expansion of the Staff Proposal to discuss how the proposal will ensure affordability or apply specific metrics or measures from the Commission's Affordability Rulemaking.<sup>77</sup> At this point, Joint Consumers believe it would be more efficient and effective for Staff to conduct an affordability analysis and amend its proposal to incorporate the Commission's affordability metrics and to conduct a bill impact analysis.<sup>78</sup> Alternatively, Joint Consumers propose staff hold a workshop to discuss these matters and the application of the Commission's affordability metrics and other relevant affordability data and calculations.<sup>79</sup>

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<sup>74</sup> Joint Consumers Opening Comments at 18-19.

<sup>75</sup> Joint Consumers Opening Comments at 19.

<sup>76</sup> Joint Consumers Opening Comments at 19-20, *citing* D.21-08-037 at 57, and SB 1008, Chapter 827 at Section 1, subsection (d).

<sup>77</sup> Joint Consumers Opening Comments 21.

<sup>78</sup> Joint Consumers Opening Comments at 21

<sup>79</sup> Joint Consumers Opening Comments at 21-22.

Joint Consumers encourage the Commission to gather additional information regarding alternative IPCS rate options. They note that IPCS providers have begun to consider whether to offer alternative pricing arrangements under the FCC's new rules and that additional information is needed to evaluate and compare the impact of any alternative pricing.<sup>80</sup>

Joint Consumers specifically recommend the Commission evaluate how alternative rate options would interact with SB 1008. They agree that there is a need to address communication affordability and accessibility for individuals incarcerated in facilities not covered by SB 1008. Joint Consumers recommend the collection of contracts, costs, and service quality information, as well as the calling programs and privileges offered to incarcerated persons, at both facilities covered by SB 1008 and other facilities where calls are offered to end users at no charge. They also seek to have the Commission examine how implementation of SB 1008 may have impacted call volume and service quality compared to facilities charging end users for the services. Stating the arbitrary implementation of free calling policies raise equity concerns, Joint Consumers claim that eliminating the cost to end users in a localized monopoly does not address the potential inequitable impact on those end users, and the Commission should develop service quality standards for IPCS to ensure second-class service is not provided.<sup>81</sup>

Joint Consumers also recommend exploring how the Commission's public purpose programs, such as LifeLine, could be a model to reduce the costs of communication for incarcerated individuals and their families. Further, the

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<sup>80</sup> Joint Consumers Opening Comments at 22.

<sup>81</sup> Joint Consumers Opening Comments at 23-24.

Commission should consider expanding or adapting the existing programs to account for additional charges or unique rate structures related to IPCS.<sup>82</sup>

Joint Consumers note that the Commission has previously found that the IPCS market can be properly characterized as “consisting of two markets or two sets of consumers: providers ‘compete’ for the right to provide IPCS to the incarcerated, except that [requests for proposal] may be awarded to the highest not the lowest bidder” and also found that because of the requests for proposal (RFP) process, “[i]ncarceration facilities are limiting access to the provision of calling services to a single IPCS provider, and thus ‘market competition’ in any sense of the word does not exist for incarcerated users.” Therefore, the Joint Consumers encourage the Commission to explore whether there is competition between the providers at the RFP stage and what opportunities may exist within the bidding process to benefit the facilities, taxpayers, and the incarcerated persons and their families.<sup>83</sup>

Joint Consumers note the lack of analysis in the Staff Proposal related to the provisioning of IPCS and encourage the Commission to require IPCS providers to submit copies of their responses to RFPs and corresponding RFPs to the Commission by a Tier 1 advice letter within 30 day of submitting the RFP, with protections for any confidential information as justified by the providers under the Commission’s rules.<sup>84</sup> In addition, Joint Consumers recommend the Commission explore a proposal in which open access networks serve carceral facilities. The open access networks could be owned by the facilities or by a

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<sup>82</sup> Joint Consumers Opening Comments at 24.

<sup>83</sup> Joint Consumers Opening Comments at 24-25, *citing* D.21-08-037 at 34-35.

<sup>84</sup> Joint Consumers Opening Comments at 25-26.

single provider and would offer competing services and applications by IPCS providers permitted to use those networks. The Joint Consumers note that there are many examples of off-the-shelf applications being used for the provision of IPCS, and they encourage the Commission to further explore an open access network to provision IPCS in a future workshop.<sup>85</sup>

Finally, Joint Consumers encourage the Commission to adopt a transparent and data-driven procedure to allow rate adjustments for the rate caps. They do not support the automatic rate cap increase adjustment mechanism in the Staff Proposal but do support requiring IPCS providers to submit a formal request to increase the rate caps or rates charged to the end user incarcerated customer or their families. Joint Consumers propose to modify the rate adjustment mechanism to: (1) require a Tier 2 Advice letter with a rate schedule, including rates for voice, related services, and terms and condition. Joint Consumers would also have the rate schedules include a breakdown of any costs related to provisioning, ancillary services, and facilities costs; (2) any revisions up to the rate cap should be made through a Tier 2 Advice letter that is served on the service list of this proceeding and all other relevant service lists, and rates may be reduced through a Tier 1 Advice letter; (3) any application to revise rates above the rate caps would not be a “formal general rate case application” and would not initiate a formal rate case cycle for any IPCS providers; and (4) any request for a rate increase, whether by Tier 2 Advice Letter or by Application, must include the data described in the Staff Proposal, including capital and operations cost and expense data, audited financial statements, relevant contracts

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<sup>85</sup> Joint Consumers Opening Comments at 26-27.

with carceral facilities and other data, as well as testimony demonstrating why the current rates are insufficient to cover the costs of provisioning service, and an affordability analysis and bill impact analysis.<sup>86</sup>

Joint Consumers point out that it would be unusual for the Commission to adopt an automatic adjustment process. They highlight that other instances where similar processes have been adopted the Commission has reviewed complex factors with safeguards for end-user rates and required the filing of detailed analysis to justify the adjustment. Without such safeguards the Commission should reject the Staff Proposal's recommendation related to automatic adjustments and instead adopt the advice letter and application process with the adjustments they recommend.<sup>87</sup>

### **1.3.3. Opening Comments on Staff Proposal of Network Communications International Corporation**

Network Communications International Corporation (NCIC) does not support any further reduction from the \$0.07 per minute interim rate cap.<sup>88</sup> NCIC states that the Staff Proposal is based on outdated information and ignores the opening testimony provided by IPCS providers in response to both the Phase II Scoping Memo and the Amended Phase II Scoping Memo released on May 20, 2022.<sup>89</sup> NCIC therefore believes that the review and adoption of the Staff Proposal is premature.

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<sup>86</sup> Joint Consumers Opening Comments at 27-29.

<sup>87</sup> Joint Consumers Opening Comments at 29-31.

<sup>88</sup> NCIC Opening Comments at 5.

<sup>89</sup> NCIC Opening Comments at 1.

NCIC states that after an initial status conference on April 28, 2022, a ruling amending the scope of Phase II revised the proceeding schedule and required IPCS providers to submit testimony on a number of new questions and submit copies of all California IPCS contracts by July 26, 2022. An updated procedural schedule was subsequently issued that revised the timing for the submission of reply testimony, a Joint Party Statement regarding stipulated and disputed facts, and scheduled a Status Conference for January 30, 2023, to be held following the submittal of Joint Parties Statement on January 23, 2023. NCIC states that the next steps which were to occur after the January 30, 2023 Status Conference never happened. Moreover, the parties were not advised on any matters except for the extension of the Commission's deadline to resolve the proceeding, and that the proceeding has been dormant since January 23, 2023.<sup>90</sup>

NCIC states that D.21-08-037 encouraged the IPCS providers to submit cost data, but the ALJ and the Commission staff failed to provide any guidance on how this information should be provided, the deadline for such submission, or the framework for delivering cost data. In contrast, IPCS providers have participated in several data collections conducted by the FCC, which involved the FCC staff developing templates for submitting the cost data and providing IPCS providers and interested parties with the opportunity to provide comments on the templates.<sup>91</sup>

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<sup>90</sup> NCIC Opening Comments at 3-5.

<sup>91</sup> NCIC Opening Comments at 5.

NCIC notes that the Commission adopted the \$0.07 rate cap as an interim measure without conducting an evidentiary hearing, and that rate has now been in place for more than three years.<sup>92</sup>

NCIC argues that the Commission must have a legally sufficient economic basis for establishing a permanent rate cap, which requires the establishment of a process to collect and then analyze cost data from IPCS providers. For this NCIC suggests the Commission should use a methodology that considers the IPCS providers' costs incurred to provide service at correctional facilities in California, promoting the methodology taken by the FCC to adopt rate caps based on the population size of the correctional facility instead of using a statewide prison contract as it did to establish an interim benchmark of the costs of providing IPCS at a reasonable rate. NCIC notes that the FCC established different rate caps depending on the correctional facility's average daily population, which acknowledges that the costs to provide service to smaller jails are higher than large jails and statewide prison systems. A good first step for this would be to review the templates developed by the FCC for collecting data,<sup>93</sup> which would allow the Commission to closely review IPCS provider's cost data so it can fully understand the unique services that are provided in small jails.<sup>94</sup>

NCIC argues that the Commission should adopt rates based on the size (expressed in average daily population) of the facility - noting that the FCC's cost data is based on average daily population - and permit rate adjustments

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<sup>92</sup> NCIC Opening Comments at 7.

<sup>93</sup> NCIC Opening Comments at 5-6.

<sup>94</sup> NCIC Opening Comments at 9.

above the permanent rate if an IPCS provider can demonstrate that its cost to provide service at a particular facility is higher than the rate cap.<sup>95</sup>

Finally, regarding the Staff Proposal's recommendation that the Commission adopt a \$0.045 per minute permanent rate cap to apply for all voice-only IPCS originating from jails, prisons, and juvenile detention centers of all sizes, NCIC states it has no economic basis.<sup>96</sup> As for the Staff Proposal's statement that IPCS providers have failed to furnish any data to substantiate the necessity for a higher permanent calling rate, NCIC points out that the Commission has not ruled on the collection of cost data proposed in the Phase II Scoping Memo, nor has a template or methodology been adopted to review IPCS provider cost data.<sup>97</sup>

#### **1.3.4. Opening Comments on Staff Proposal of Securus Technologies, LLC**

Securus begins its comments by pointing out that the federal Martha Wright-Reed Act has substantially altered the landscape for regulating the IPCS industry, including intrastate rates, specifically requiring that rate caps be set at levels that must ensure both fair compensation and just and reasonable rates. Any rate caps or affordability benchmarks that do not comply with those criteria are preempted by the Martha Wright-Reed Act.<sup>98</sup>

Securus states that the Commission has not asserted jurisdiction over non-interconnected VoIP service, nor has it thoroughly reviewed the issue of

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<sup>95</sup> NCIC Opening Comments at 10.

<sup>96</sup> NCIC Opening Comments at 10.

<sup>97</sup> NCIC Opening Comments at 11.

<sup>98</sup> Securus Opening Comments at 2.

jurisdiction in this proceeding, instead focusing jurisdictional issues solely on video calling and related services such as texting and entertainment services. While the Phase II Scoping Ruling scheduled the issuance of a Proposed Decision (PD) specifically on the issue of jurisdiction over video calling and related services, no such PD has been issued to date in this proceeding, nor has it sought input on the jurisdictional issue concerning voice-only IPCS.<sup>99</sup> Further, the Commission has not asserted authority over non-interconnected providers.<sup>100</sup>

Securus argues that the Commission must determine and understand the cost of providing IPCS and the variance of such costs across different facilities, as well as the future regulatory frameworks, and that absent any collection of actual costs and corresponding cost-based analysis the Commission is engaging in a form of unauthorized ratemaking. Conclusions about site commissions, ancillary fees, and connection charges should be based on cost data from California's IPCS providers, otherwise the Commission risks imposing arbitrary and capricious rates that violate the Constitutional rights of IPCS providers.<sup>101</sup> Securus notes that the new federal IPCS regulatory framework, beginning in January 2025, will change future cost structures, including prohibiting the collection of site commissions.<sup>102</sup>

Securus takes issue with the absence of any notion of fair return on investment in the Commission's articulation of its ratemaking objectives, pointing out that a balance between fair return and affordable rates is lost as

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<sup>99</sup> Securus Opening Comments at 3-4.

<sup>100</sup> Securus Opening Comments at 5.

<sup>101</sup> Securus Opening Comments at 6.

<sup>102</sup> Securus Opening Comments at 7.

Commission staff throws all weight on an unquantified concept of “affordability,” with staff appearing to conflate a fair return with profit maximization with its primary objective being to establish a rate that optimizes social benefits, thereby transcending mere considerations of the costs and expenses of doing business.<sup>103</sup>

As to determining a rate cap, Securus supports tiering based on the size of the average daily population served at the facilities reflecting the cost difference due to differing economies of scale in serving facilities of different sizes and opposes the prohibition or limitation of ancillary fees.<sup>104</sup>

Securus states that California’s IPCS providers have already collected and submitted cost data to the FCC in the FCC’s proceedings analyzing similar questions and issues posed in this proceeding and requests that the Commission consider collecting the same data, which should be sufficient for the Commission to consider data on the cost, including a reasonable return on investment, that IPCS providers incur.<sup>105</sup> Noting that the Staff Proposal’s rate cap is not based on any cost data and its assertion that IPCS providers have failed to furnish any data to substantiate the necessity for a higher permanent calling rate, Securus points out that the Commission has offered no process to enter this data into the record of this proceeding despite promising to do so in its initial and subsequent scoping rulings. Further, no Cost Structures workshops were convened despite the Phase II Scoping Memo’s statement they would be,<sup>106</sup> and therefore IPCS

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<sup>103</sup> Securus Opening Comments at 7-8.

<sup>104</sup> Securus Opening Comments at 8.

<sup>105</sup> Securus Opening Comments at 9.

<sup>106</sup> Securus Opening Comments at 9-10.

providers are not at fault for not submitting their cost data earlier in the Phase II process. Securus reiterates its request that the Commission provide such a template to permit providers to submit cost data to analyze the data using a consistent and uniform framework.<sup>107</sup>

Stating that the Staff Proposal concludes that the actual cost to call is “no more than \$0.02 per minute,” predicated on a site commission cost of 85%, staff then arbitrarily caps the calling rate price cap at \$0.045, based on the lowest possible actual call cost of \$0.02 per minute,<sup>108</sup> using a rationale which is not based in any reasonable return analysis.<sup>109</sup> Staff invokes a concept of “Social optimum price” that has not been introduced or defined in any previous part of this proceeding, resulting in a rate cap which is arbitrary and capricious.<sup>110</sup> Further, staff’s use of benchmarking all California voice-only IPCS against GTL’s contract rate with the CDCR is arbitrary because it fails to take into account the economies of scale available to larger IPCS providers like GTL which serves large prison populations with average daily population exceeding 1,000, noting that per-minute costs to provide IPCS to prisons are less than that for jails, especially small jails.<sup>111</sup>

While Securus agrees in principle that a mechanism should be adopted to account for future changes in costs if the Commission adopts permanent rate caps, it asserts that the specific proposal for utilizing the consumer price index

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<sup>107</sup> Securus Opening Comments at 12.

<sup>108</sup> Securus Opening Comments at 15.

<sup>109</sup> Securus Opening Comments at 15-16.

<sup>110</sup> Securus Opening Comments at 17.

<sup>111</sup> Securus Opening Comments at 18-19.

(CPI) for telecommunications services to be offset by an “X” factor is flawed because the CPI for telecommunications service is based on costs for commercial services, not the unique costs incurred in providing communication services in carceral settings, and thus the proposed inflation factor does not capture relevant costs.<sup>112</sup>

Finally, Securus argues that the Staff Proposal fails to establish a reasonable rate of return, and without such a benchmark there is no standard of review for any waivers or adjustments of the rate cap; the Staff Proposal also implies that IPCS providers’ reasonable rate of return is zero (*i.e.*, to provide the service at cost), and Securus argues that such a standard would not only be unreasonable, but confiscatory.<sup>113</sup>

### **1.3.5. Opening Comments on Staff Proposal of Global Tel Link Corporation dba Viapath Technologies**

ViaPath states that the Staff Proposal does not provide the appropriate framework for the adoption of permanent voice IPCS rates based on the Staff Proposal. ViaPath raises five primary objections:

1. Consideration of the Staff Proposal is premature;
2. The Staff Proposal is fundamentally flawed and should not be used as the basis for adoption of permanent voice IPCS rate caps;
3. The Commission should retain the interim rate caps or adopt the FCC’s new rate cap regime for permanent voice IPCS rate caps;

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<sup>112</sup> Securus Opening Comments at 25.

<sup>113</sup> Securus Opening Comments at 25-26.

4. The Commission should adopt a reasonable transition period for implementation of any rate changes; and
5. The Commission must ensure all California IPCS providers are subject to the same rules.<sup>114</sup>

As to the premature nature of the Staff Proposal, ViaPath points out the 2021 Scoping Memo in this proceeding determined evidentiary hearings may be necessary due to potential contested issues of material fact regarding cost and revenue structures for IPCS, which would be identified in testimony submitted after a thorough discovery period and any related workshop(s). Further, that Scoping Memo confirmed the Commission would provide an opportunity later in Phase II for parties to comment on questions regarding the appropriate methodology(s) and/or data sources the Commission should use to inform its adoption of permanent voice-only IPCS rate caps or ancillary fee requirements.<sup>115</sup>

That 2021 Scoping Memo also contemplated convening a “Cost Structures workshop” to examine the costs of providing IPCS at the facility level after a robust discovery period during which parties and staff would first examine IPCS provider cost data. To this end, the parties subsequently submitted legal briefs on the jurisdictional issues outlined in that Scoping Memo. In May 2022 the Assigned Commissioner amended the scope of Phase II to request testimony from IPCS providers and other parties on various policy questions, to which testimony and various motions were filed.<sup>116</sup>

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<sup>114</sup> ViaPath Opening Comments at 2-3.

<sup>115</sup> ViaPath Opening Comments at 3-4.

<sup>116</sup> ViaPath Opening Comments at 2-3.

ViaPath states that to date no further action has been taken by the Commission in response to the legal briefs on the jurisdictional issues, the related testimony on the policy questions, or the pending motions related to the policy question testimony - nor has any testimony, nor briefing, nor "robust discovery period" regarding permanent voice-only IPCS rates occurred. Consequently, ViaPath states it would be arbitrary, capricious, and an abuse of discretion for the Commission to adopt the Staff Proposal at this juncture.<sup>117</sup>

Viapath argues that the Staff Proposal is fundamentally flawed because it inappropriately relies on ViaPath's contract with the CDCR to assess the structure, rates, and costs of the entire California intrastate IPCS market. Given the CDCR's large state prison system, which houses half of California's incarcerated persons, the contract is not representative of the hundreds of other correctional facilities in California and so it cannot and should not be used as evidence of the appropriate rate caps for all California correctional facilities. ViaPath notes that the state prison system is not representative of California's correctional facilities generally as the overwhelming majority of those facilities are county and city jails, each with unique and varied needs that require specifically tailored technology and services.<sup>118</sup>

Further, costs vary based on facility size, which the FCC has acknowledged by retaining higher rate caps for smaller facilities, and the security and advanced communications needs of each correctional facility vary dramatically depending upon numerous interrelated variables. ViaPath argues that a uniform set of statewide IPCS rate caps ignores this complex interplay

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<sup>117</sup> ViaPath Opening Comments at 5.

<sup>118</sup> ViaPath Opening Comments at 6.

between functionality, affordability, and institutional security. Given the above, ViaPath's argument continues that it is unreasonable for the Staff Proposal to conclude that a one-size-fits-all rate regime is economically or technically viable for all facilities in California, adding that the Staff Proposal does not provide any basis for its failure to address this reality of the IPCS market, nor does it offer any evidence of which contracts it uses to reach its figures on site commissions.<sup>119</sup>

As for the Staff Proposal's assertion that the interim rate caps have not affected the IPCS market in California, ViaPath notes that both CenturyLink and Legacy Inmate Communications have exited the IPCS market entirely, including California, and that Pay Tel Communications has exited the California market specifically because California's interim decision rendered it impossible for Pay Tel to continue providing service in California.<sup>120</sup>

ViaPath recommends that if the Commission seeks to adopt permanent voice IPCS rate caps without conducting the due process and analysis contemplated in the 2021 Scoping Memo, it should adopt the existing interim rate caps as permanent voice rate caps or rely on the FCC voice rate caps adopted in the FCC 2024 Order. ViaPath notes that Order provides that should an IPCS provider claim that a state or local requirement leads to unfair compensation, that provider may seek appropriate relief in the relevant state or locality or from the FCC by submitting a petition for preemption.<sup>121</sup>

While the Staff Proposal recommends a 45-day deadline for implementation of its proposed rate changes, ViaPath notes that the FCC's 2024

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<sup>119</sup> ViaPath Opening Comments at 7-8.

<sup>120</sup> ViaPath Opening Comments at 9-10.

<sup>121</sup> ViaPath Opening Comments at 10, footnote 35, *citing* FCC 2024 Order at ¶ 239.

Order found a longer transition period was needed, especially for smaller jails, and adopted a staggered implementation process to give the parties to existing contracts at least five months to amend their contracts to account for its reforms.<sup>122</sup> Pointing out that the Staff Proposal ignores the fact that, under the terms of its contracts with correctional facilities, an IPCS provider generally cannot impose new rates on a unilateral basis and must engage in active renegotiations with the counterparties to such agreements, ViaPath cites the California State Sheriff's Association observation that 90 days is the minimum for this process given the multiple administrative burdens it imposes on contractual signatories.<sup>123</sup>

Finally, noting that the federal Martha Wright-Reed Act applies to all IPCS providers, and that while the Commission has determined that certain IPCS providers relying on non-interconnected VoIP service to provide IPCS are not subject to the Commission's jurisdiction, ViaPath states that the Staff Proposal does not address ways to ensure all IPCS providers operating in California are subject to the same set of rules regardless of the technology used to provide the service. ViaPath closes by arguing that without further clarification from the Commission on the applicability of its IPCS rules, some IPCS providers operating in California will only be required to adhere to the FCC's rate cap regime and not to California's lower interim rate caps or any permanent California rate caps adopted in the future, and urges the Commission to resolve the conflict between its rules and the FCC's rules.<sup>124</sup>

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<sup>122</sup> ViaPath Opening Comments at 13.

<sup>123</sup> ViaPath Opening Comments at 14.

<sup>124</sup> ViaPath Opening Comments at 14-16.

### **1.3.6. Reply Comments on Staff Proposal of Joint Consumers**

Joint Consumers highlight the flaws that pervade most of the providers' arguments, those being (1) it is unnecessary for the Commission to relitigate issues it has already addressed in this proceeding and that pervade most of the providers' arguments, (2) the IPCS providers point to exceptional scenarios or extremely unlikely scenarios as justification for rejecting the Staff Proposal in its entirety, and (3) the IPCS providers attempt to use their failure to present evidence, despite the Commission's repeated requests that they do so, to argue that the Commission may not set rates for IPCS.<sup>125</sup>

Joint Consumers assert that Securus and GTL incorrectly attempt to argue that the Commission has limited jurisdiction over IPCS services by claiming that their services qualify as non-interconnected, which Joint Consumers argue are flawed because they assume an inaccurate and self-serving definition of "non-interconnected," and asserting further that the Commission has jurisdiction to set rates for those services.<sup>126</sup>

Joint Consumers argue that it is unclear what "non-interconnected" VoIP is to providers, noting that when the Commission issued the proposed decision for its interim rate caps, providers did not raise concerns about the regulation of non-interconnected VoIP IPCS at that time, nor did they describe their services as non-interconnected, nor raise the issue of D.21-08-037's applicability to non-interconnected VoIP.<sup>127</sup>

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<sup>125</sup> Reply Comments of Joint Consumers at 1-2.

<sup>126</sup> Reply Comments of Joint Consumers at 3.

<sup>127</sup> Reply Comments of Joint Consumers at 4.

Joint Consumers state that the Commission can exercise jurisdiction over providers' VoIP services, noting that it has confirmed its general authority over VoIP technology and that the California Constitution gives the Commission jurisdiction over "private corporations" that transmit "telephone and telegraph messages." Joint Consumers argue that the Commission has found that all VoIP providers are telephone corporations under the Public Utilities Code, including fixed interconnected VoIP, and that Commission's police powers further support its jurisdiction over VoIP IPCS even if a non-interconnected or nomadic classification or other issue would otherwise limit its jurisdiction. In addition, the Martha Wright Reed Act revised Section 276 to incorporate advanced communications services and the 2024 FCC Order clarified that it exercises jurisdiction over non-interconnected VoIP.<sup>128</sup>

Lastly, even if the providers' VoIP services are "non-interconnected," Joint Consumers assert that the language of D.21-08-037 which sets interim rate caps leaves ample room for the Commission to extend its jurisdiction to non-interconnected VoIP IPCS and should be read as being applicable to non-interconnected VoIP IPCS.<sup>129</sup>

Responding to the IPCS providers' argument that the proposed permanent rate cap is too low or is not supported by the data available to the Commission, and that the lack of opposition or complaints in the record regarding interim rates is not sufficient to justify the proposed rate caps, Joint Consumers contend

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<sup>128</sup> Reply Comments of Joint Consumers at 5-7.

<sup>129</sup> Reply Comments of Joint Consumers at 8.

that the providers overstate their case by selectively citing portions of the record without necessary context.<sup>130</sup>

Joint Consumers assert that the Commission can establish permanent lower rates as the current record justifies setting further, lower rate caps even though the IPCS providers have failed to furnish detailed cost data over the past two years. Noting that all IPCS providers who filed opening comments opposed the imposition of lower rate caps and pointing out that most do so without providing evidence, Joint Consumers point out the Court of Appeal decision which notes that providers cannot attack rate caps as being unsupported by evidence if the providers have “not tendered a reasonable excuse for [their] failure to submit cost data for the PUC’s consideration.”<sup>131</sup>

Addressing the petitioners’ use of the GTL contract being used as a relevant data point, Joint Consumers believe the Commission should collect a broader range of evidence as both the FCC and the California courts have acknowledged that IPCS rate caps can be set based on a variety of evidence and the Commission must take care to gather provider cost data that accurately captures revenues and expenses attributable to unregulated services offered in tandem with regulated IPCS.<sup>132</sup>

As to the methodology employed when developing a rate-cap methodology and applying the same to the underlying data, Joint Consumers assert the Commission enjoys wide latitude in so doing.<sup>133</sup> Joint Consumers state

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<sup>130</sup> Reply Comments of Joint Consumers at 8-9.

<sup>131</sup> Reply Comments of Joint Consumers at 9-10, *citing Securus Tech. v. PUC* at 804.

<sup>132</sup> Reply Comments of Joint Consumers at 11-12.

<sup>133</sup> Reply Comments of Joint Consumers at 12-13.

that the FCC has concluded that section 3(b)(1) of the Martha Wright-Reed Act is persuasive that compensation need not be evaluated on a provider-by-provider basis, and therefore the Commission should take the same approach under state law.<sup>134</sup>

Joint Consumers disagree with the providers' arguments suggesting that the Commission's interim rates have detrimentally impacted the state's IPCS marketplace and therefore the Commission should not rely on the data and analysis underlying the interim rates in consideration of the permanent rates. Responding to previous comments submitted on the topic of providers having exited the California IPCS market, Joint Consumers report that (1) Pay Tel's exit from California concerned a lone contract, (2) CenturyLink received FCC approval to transfer a large portion of its IPCS contracts, which included facilities in thirteen states but not California (before the Commission set interim rate caps in California), and that (3) Legacy Inmate Communications held over seventy contracts with correctional facilities in multiple states and sought to exit the IPCS market in all the states it served at the same time, not just in California. Therefore, the Commission should not consider these market exits evidence of a pervasive negative impact on the California IPCS market stemming from the Commission's rate caps.<sup>135</sup>

Joint Consumers urge the Commission to use the full record developed in this proceeding and implement California-specific data collection and

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<sup>134</sup> Reply Comments of Joint Consumers at 12-13.

<sup>135</sup> Reply Comments of Joint Consumers at 18-20.

supplement the record with data and analysis from the FCC's 2024 Order, along with other data elements.<sup>136</sup>

With respect to the IPCS industry arguments suggesting that the Commission has not sought cost information to support the development of permanent rate caps, Joint Consumers point out that IPCS parties had two years to provide updated cost data. Further, some even recognized that data in their prior production is now out of date. In addition, counsel for these parties have years, if not decades, experience practicing before the Commission and are aware of the process for submitting information to the Commission. Therefore, the Commission should continue to collect information through alternative means, including the FCC's mandatory data collection.<sup>137</sup>

On the topic of affordability in assessing just and reasonable rates and the industry argument made that the Affordability rulemaking (R.18-07-006) may not be applicable in the context of IPCS which serves a population whose daily living costs are covered by the taxpayers, Joint Consumers ask the Commission to reject this assertion as it ignores the economic reality of the other half of IPCS ratepayers, which are the family and friends of incarcerated people who are paying for their own costs of living. Joint Consumers reiterate support for the Commission to conduct an affordability analysis and to apply the existing affordability frameworks in R.18-07-006 with any necessary revisions or modifications.<sup>138</sup>

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<sup>136</sup> Reply Comments of Joint Consumers at 21.

<sup>137</sup> Reply Comments of Joint Consumers at 21-23.

<sup>138</sup> Reply Comments of Joint Consumers at 23-24.

Joint Consumers argue that the Commission should gather additional information in the record to allow the Commission to evaluate and compare the impact of any alternative proposals effectively, recommending that the Commission should exercise close oversight over the development of alternative rate plans, particularly monthly subscription plans; they also urge the Commission to ensure that any alternative pricing structures offered by IPCS providers in California are just and reasonable and result in fair and affordable rates for incarcerated individuals and their families.<sup>139</sup>

Finally, Joint Consumers express concern regarding the ambiguities surrounding the Commission's proposed "CPI" and "X" factors in the Staff Proposal's proposed automatic adjustment process. They state that any necessary rate adjustments should be considered through a Tier 2 advice letter or application process, believing such mechanisms are better suited than the waiver mechanism proposed by Securus.<sup>140</sup>

### **1.3.7. Reply Comments on Staff Proposal of Network Communications International Corporation**

NCIC continues to urge the Commission to reject the Staff Proposal and establish an updated schedule that includes the collection and analysis of IPCS cost data before the Commission adopts permanent IPCS caps.<sup>141</sup> NCIC argues that the record in the proceeding is outdated and incomplete and that its long

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<sup>139</sup> Reply Comments of Joint Consumers at 24-25.

<sup>140</sup> Reply Comments of Joint Consumers at 27-28.

<sup>141</sup> Reply Comments of NCIC at 1-2.

dormancy led to a Staff Proposal unsupported by necessary data which must be rejected by the Commission if it's to meet previously-stated objectives.<sup>142</sup>

NCIC concludes that the Commission should reject the Staff Proposal and issue a new procedural schedule that results in the adoption of just, reasonable, and fair rates in California.<sup>143</sup>

### **1.3.8. Reply Comments on Staff Proposal of Securus Technologies, LLC**

Securus states that the Commission has not exerted regulatory authority over non-interconnected VoIP, and that the Commission cannot compel compliance by entities over which it lacks jurisdiction.<sup>144</sup> And in D.24-02-013, the CPUC noted its abstention from asserting authority over non-interconnected VoIP in the context of incarcerated persons calling services, which has applicable precedential value in the current rulemaking. Moreover, the FCC yields authority over non-interconnected VoIP IPCS and has exerted its oversight in this area through its own rate cap regime applicable to interstate and intrastate calls, and consequently any attempts by the Commission to derive a set of rate caps that are lower than the FCC's must be backed by cost-based analysis that accounts for fair compensation for all providers, incorporates industry cost data across carceral facilities of different sizes, and reflects unique cost characteristics in the state.<sup>145</sup>

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<sup>142</sup> Reply Comments of NCIC at 2-4.

<sup>143</sup> Reply Comments of NCIC at 6.

<sup>144</sup> Reply Comments of Securus at 1.

<sup>145</sup> Reply Comments of Securus at 2-3.

Securus points out that numerous parties in this proceeding on both sides have identified a need for additional process and discovery to further build out the record on cost data, and suggests that the Commission's next procedural step in this rulemaking should be to pick up where it left off by collecting cost data and holding workshops to resolve any ambiguity with the cost data as discussed during the April 28, 2022 Status Conference. These data collection efforts should focus on information that is pertinent to setting permanent California voice IPCS rates, with the caveat that data from other states and cost data from non-IPCS services are beyond the scope of the Commission's current pursuit. Further, the Commission should not expend resources at this juncture to collect service quality information, as any data pertaining to service quality should be sought in Phase III, consistent with the CPUC's Amended Scoping Ruling.<sup>146</sup>

Securus takes issue with assertions by others that IPCS providers had failed to furnish any data to substantiate the necessity for a higher permanent calling rate, pointing out that Commission staff have failed to provide guidance and direction regarding the submission of cost data.<sup>147</sup>

Securus asserts that there are major flaws in the Staff Proposal's methodology and that the Commission should reject any proposal to modify the methodology to propose even lower permanent rate caps.<sup>148</sup> The Staff's proposed permanent rate cap is not based upon any actual cost data and the data points underlying the proposed cap are outdated, and utilizes a wholly novel methodology which bypasses any analysis of cost data and ultimately derives a

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<sup>146</sup> Reply Comments of Securus at 3-4.

<sup>147</sup> Reply Comments of Securus at 4-5.

<sup>148</sup> Reply Comments of Securus at 5.

cost of service range that is an incorrect approximation because of the ambiguous terms in the rate cap formula.<sup>149</sup>

Securus states there are three accounting errors in the Staff Proposal: (1) in using various FCC rate caps as a starting point, Staff is applying a uniform site commission percentage on an apples and oranges basis, (2) Staff then applies its site commission percentage to FCC rate caps that already treat site commissions very differently, and (3) as a result, the Staff Proposal's analysis significantly overstates the site commission cost components of these rate caps and correspondingly understates the actual cost of service, which in turn, impairs the rate cap calculation. In so doing, the Proposal ignores the FCC's consideration of site commission costs when setting rate caps and whether and to what degree site commissions were (or were not) included in the calculation of FCC rate caps.<sup>150</sup>

Securus takes issue with the Proposal's adoption of a rate that reflects the highest-identified site commission of 85% is arbitrary and capricious, arguing it lacks a rational basis and fails to justify its findings on site commissions and fails to reconcile the 85% benchmark with the 2021 FCC rate caps.<sup>151</sup>

As for the GTL-CDCR contract used by Staff as a baseline for a rate cap across all California carceral facilities, Securus argues this contract is not a reasonable proxy for the economically feasible floor because the contract (1) was a renewal, was not a new contract, (2) bundled voice with non-voice services, (3) reflects an anomalous economy of scale, (4) had a lengthy duration, and notes

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<sup>149</sup> Reply Comments of Securus at 5-6.

<sup>150</sup> Reply Comments of Securus at 6-7.

<sup>151</sup> Reply Comments of Securus at 8.

that (5) the State Prison System is not representative of county- and city-operated jails. Further, Securus argues that no single contract can serve as a proxy for all carceral facilities because the specifics of each contract can dictate different economically feasible price structures, and they offer different mixes of services which enable variable pricing of different components. And importantly, the GTL-CDCR contract represents over half of California's total incarcerated population, in which over 30 state prison facilities all hold over 1,000 average daily population, the highest FCC tier.<sup>152</sup>

Securus believes that any permanent rate cap should be tiered in accordance with the size of the incarcerated population served, measured by average daily population, pointing out that carceral facilities of different sizes have unique challenges and cost drivers, and a permanent rate cap should reflect this distinction. Securus supports the adoption of a tiered structure, which is more reflective of the experience of service providers and the end users, and could encourage competition to provide higher quality and more advanced IPCS in smaller facilities.<sup>153</sup>

Securus argues the proposed rate cap of \$0.045 per minute is too low, has no economic basis, is derived arbitrarily through the unsupported presumption that an 85% ratio for site commission is a reasonable factor for permanent rate caps, and is not data-driven and fails to account for the variation in size of carceral facilities and their corresponding economies of scale. Moreover, the Staff Proposal fails to consider altogether whether its proposed rate cap will result in

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<sup>152</sup> Reply Comments of Securus at 8-10.

<sup>153</sup> Reply Comments of Securus at 11.

fair compensation for all providers, as required by the Martha Wright-Reed Act.<sup>154</sup>

Regarding the Commission's three affordability metrics which were first developed in D.20-07-032 to measure the relative affordability of essential utility services - Hours at Minimum Wage, Socioeconomic Vulnerability Index, and the Affordability Ratio - Securus asserts that each measures the relative affordability of an essential level of utility service through factors that are not relevant to incarcerated persons.<sup>155</sup> As for the argument that services that are "free" to the end user could be employed, Securus suggests it may be informative for the Commission to consider how a public purpose program (PPP) could be an alternative regulatory lever for controlling the affordability of voice-only IPCS while noting that any expansion or revision of the funds that are supported by the PPP surcharge would require legislative action to amend the Public Utilities Code.<sup>156</sup>

On the issue of a mechanism for waivers and rate cap adjustments, Securus states that a Tier 2 advice letter is sufficient to the task. Securus states that Commission staff can administer ad hoc requests for exemptions from the established rate cap through a Tier 2 advice letter process. Securus notes that a Tier 3 advice letter process would be overly burdensome and complicated for what should be a straightforward review by staff.<sup>157</sup>

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<sup>154</sup> Reply Comments of Securus at 12-13.

<sup>155</sup> Reply Comments of Securus at 14-15.

<sup>156</sup> Reply Comments of Securus at 15.

<sup>157</sup> Reply Comments of Securus at 16.

Finally, as to the transition period for IPCS rate caps, Securus suggests the Commission grant at least 180 days.<sup>158</sup>

### **1.3.9. Reply Comments on Staff Proposal of Viapath**

ViaPath asserts that more data and analysis are needed before the Commission moves forward with the adoption of permanent voice IPCS rate caps or further consideration of the Staff Proposal as the Proposal is devoid of any significant analysis or reasoned basis for its conclusions.<sup>159</sup> Citing the record that the Commission specifically found that “solid rate and/or cost data must inform Commission adoption of permanent IPCS regulations,” ViaPath points out that there has been no testimony, no briefing, and no robust discovery period regarding IPCS provider costs or how those costs translate into permanent voice IPCS rate caps, and that under those circumstances adoption of the Staff Proposal would amount to the Commission engaging in a form of unauthorized ratemaking by setting permanent rate caps absent any collection of actual costs and corresponding cost-based analysis.<sup>160</sup>

On the issue of introducing mechanisms to foster competition between providers in incarceration facilities, ViaPath states that calls to do this ignore the well-established principle that the unique security needs of correctional facilities necessitate a single provider for each type of communications service offered in the facility.<sup>161</sup> ViaPath adds that multiple vendors would increase the risk of a

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<sup>158</sup> Reply Comments of Securus at 17.

<sup>159</sup> Reply Comments of Viapath at 2.

<sup>160</sup> Reply Comments of Viapath at 3-4.

<sup>161</sup> Reply Comments of Viapath at 5.

breach in security; if multiple IPCS providers were operating within a single correctional facility, with each running its own systems, software, and recording procedures, no one provider would be responsible for security procedures in the facility,<sup>162</sup> and that the record developed before the FCC demonstrates that intra-facility competition is unworkable.<sup>163</sup>

Further, ViaPath argues that mandating competition is not necessary to spur the development of competition in the IPCS market because it is already highly competitive given that IPCS contracts are awarded pursuant to a formal competitive bidding process in which several IPCS providers participate.<sup>164</sup>

Stating that the record supports use of a streamlined process to make future adjustments to the rate caps as needed, ViaPath recommends the Commission utilize the waiver process adopted by the FCC as a model rather than the formal general rate case approach discussed in the Staff Proposal, adding that the FCC's process is similar to the Commission's Tier 2 advice letter process, which would be a better procedural vehicle to address rate cap adjustments than a formal general rate case as suggested by the Staff Proposal.<sup>165</sup> ViaPath also supports periodic adjustments to the Commission's rate caps based on inflation as recommended by the Staff Proposal.<sup>166</sup>

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<sup>162</sup> Reply Comments of Viapath at 6.

<sup>163</sup> Reply Comments of Viapath at 7.

<sup>164</sup> Reply Comments of Viapath at 7-8.

<sup>165</sup> Reply Comments of Viapath at 9.

<sup>166</sup> Reply Comments of Viapath at 9-10.

## 2. Jurisdiction

The California Constitution and the Public Utilities Code provide the Commission authority over public utilities, including telephone corporations.<sup>167</sup> The Public Utilities Code defines “telephone corporations” as “every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state”<sup>168</sup> and, in turn, defines “a telephone line” to include “all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.”<sup>169</sup>

The Commission has authority to ensure that all rates charged by a public utility are “just and reasonable” by requiring a “showing before the [C]ommission that the ... rate is justified.”<sup>170</sup> In its consideration of rates, the Commission has the authority to determine what is just and reasonable, and to disallow costs not found to be just and reasonable.<sup>171</sup> The Commission has plenary authority to carry out this mandate.<sup>172</sup> Additionally, as some of the providers of IPCS in

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<sup>167</sup> Cal. Const., art. XII, §§3, 6; Pub. Util. Code §216(b) (“Whenever any ... telephone corporation ... performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that ... telephone corporation ... is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.”).

<sup>168</sup> Pub. Util. Code §234(a).

<sup>169</sup> Pub. Util. Code §233.

<sup>170</sup> Pub. Util. Code §§451, 454(a).

<sup>171</sup> Pub. Util. Code §728.

<sup>172</sup> Pub. Util. Code §701.

California hold Certificates of Public Convenience and Necessity (CPCNs) and the Commission has the statutory authority to grant and revoke CPCNs, to condition the grant of CPCNs, and to regulate CPCN holders.<sup>173</sup>

This Commission has promoted market competition to achieve just and reasonable telecommunication rates for competitive local exchange carriers, which IPCS is properly considered,<sup>174</sup> but we have also consistently recognized the need to regulate the rates of monopoly services.<sup>175</sup> In D.06-08-030 we adopted a Uniform Regulatory Framework (URF) providing for the gradual elimination of rate regulation for most incumbent local exchange carriers, and included competitive local exchange carriers in the definition of "URF-Carrier."<sup>176</sup> However, D.06-08-030 expressly noted that the Commission "retains the authority and firm resolve, should it see evidence of market power abuses, to reopen this proceeding and promptly investigate any such abuses."<sup>177</sup> D.06-08-030 defines "market power" as "the ability of a company to sustain prices at levels above those a market would produce by restraining the supply of voice services to the market."<sup>178</sup>

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<sup>173</sup> Pub. Util. Code §§1001-1013.

<sup>174</sup> See, e.g., D.01-02-02 OPs 5 & 6. See also, 47 C.F.R. §51.903(a) ("A Competitive local exchange carrier is any local exchange carrier, as defined in §51.5, that is not an incumbent local exchange carrier."). The Commission has previously defined carriers in similar categories, including a competitive local carrier and a nondominant interexchange carrier. See, e.g., D.04-05-049, D.06-06-017.

<sup>175</sup> See, e.g., D.94-09-065 56 CPUC.2d 117, 152; D.89-10-031, 33 CPUC.2d 43, 125-128; D.21-08-037.

<sup>176</sup> D.06-08-030, OP 13. See also, D.07-09-019 Appendix A (Telecommunications Industry Rules), Rule 1.14.

<sup>177</sup> D.06-08-030 at 156-157, Conclusion of Law 32.

<sup>178</sup> Id. at 52, Findings of Fact 27.

The Commission includes within its general authority Voice over Internet Protocol (VoIP) technology. In D.19-08-025, we deemed VoIP providers to be “telephone corporations” pursuant to Public Utilities Code Section 234 and “public utilities” subject to the Commission’s authority. VoIP providers are thus subject to the Commission’s authority under Public Utilities Code Section 451 to ensure that customers receive safe and reliable service at just and reasonable rates, as “VoIP providers clearly fit within the plain language of the definition of a public utility ‘telephone corporation’.”<sup>179</sup> D.20-09-12, which modifies D.19-08-025, and denies the applications for rehearing, and provides extensive discussion supporting its findings and conclusions, including upholding our finding that VoIP providers are telephone corporations and public utilities and as such subject to our jurisdiction and requirement to ensure just and reasonable rates.<sup>180</sup>

Further, in D.21-08-037, the Commission established its ratemaking authority over all telephone corporations providing ICPS services, “including via VoIP technology.”<sup>181</sup> While some parties claim that the Commission lacks authority over non-interconnected VoIP providers, whether the ICPS providers utilize non-interconnected or interconnected VoIP to provide ICPS services has no bearing on the Commission’s jurisdiction over ICPS providers in this proceeding. The Martha Wright Reed Act redefined ICPS in such a way that removed distinctions between interconnected VoIP and non-interconnected VoIP in a carceral setting. The Martha Wright Reed Act also redefined “advanced communications services” to include, among other things, “interconnected VoIP

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<sup>179</sup> D.19-08-025 at 9-10, *citing* Pub. Util. Code §§ 216, 234, 701; at 32, and Conclusion of Law 6.

<sup>180</sup> D.20-09-012 at 31-41. No party timely challenged D.20-09-012.

<sup>181</sup> D.21-08-037 at 15-18, Conclusions of Law 1-3.

service,” “non-interconnected VoIP service” and “any audio or video communications service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used.”<sup>182</sup> The act included all of these services in a new definition of “payphone services.”<sup>183</sup>

In the 2024 FCC Order, the FCC recognized its authority over this new definition of “payphone services,” and more specifically, over all IPCS services, regardless of the technology used.<sup>184</sup> The FCC also redefined “IPCS” to include, among other things, interconnected VoIP, non-interconnected VoIP, and “any audio or video communications service used by Incarcerated People for the purpose of communicating with individuals outside the Facility where the Incarcerated Person is held, regardless of the technology used . . .”<sup>185</sup> Thus, for purposes of regulating IPCS, federal law and the FCC recognize no difference in jurisdiction between IPCS provided via interconnected VoIP or non-interconnected VoIP; all such services are IPCS and payphone services, subject to FCC authority.

Similarly, in light of the Martha Wright Reed Act, for the purposes of regulating IPCS as provided in this rulemaking, the Commission need not recognize any distinctions between interconnected VoIP or non-interconnected

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<sup>182</sup> 47 U.S.C. § 153(1)(A)-(B), (D)-(E). The Communications Act’s definitions of “interconnected VoIP service,” and “non-interconnected VoIP service” are set forth in 47 U.S.C. §§ 153(25) and 153(36).

<sup>183</sup> 47 U.S.C. § 276(d).

<sup>184</sup> 2024 FCC Order at ¶¶ 90, 91.

<sup>185</sup> 47 U.S.C. § 64.6000.

VoIP services; all of these services are IPCS and payphone services subject to Commission regulation.

### **3. Issues Before the Commission**

When we opened this proceeding in 2020, we identified a number of issues related to communication services for incarcerated individuals. Since that time, many of those issues have been satisfactorily addressed through the implementation of our Phase I decision, D.21-08-037, action by the California Legislature, SB 1008, and action at the federal level by the FCC and the Martha Wright-Reed Just and Reasonable Communications Act of 2022. Because of these actions we do not see a need to take further action at this time to address rates, fees, or service quality of video and related services, whether we should require IPCS providers to bifurcate contracts providing voice-only calling services and video calling services. Upon consideration of the record developed in this proceeding we believe no further action is needed at this time. Therefore, while the Commission may decide to open a rulemaking in the future to consider among other things video calling rates paid by incarcerated people in California, we will not be setting video calling rates in this proceeding. Further, we have determined upon consideration of all the comments and briefs submitted that our existing service quality requirements that apply to all communication providers in California are sufficient to fulfill the requirements of SB 1008, and we do not need to take additional action specifically applicable to IPCS providers.

The issue we do have to resolve in this decision is the establishment of a final rate cap for IPCS voice services in California, as well as the process for how that rate cap can be adjusted in the future.

#### **4. Regulatory Framework for IPCS Providers**

This Decision closes Rulemaking (R.) 20-10-002 by adopting a permanent, just, and reasonable intrastate per-minute rate cap for IPCS and establishing a permanent regulatory framework for ancillary fees and rate adjustments.

We find that the current interim rate of \$0.07 per minute is no longer justified given the evidence on actual cost of service and the intent of recent state legislation. Therefore, we adopt a permanent intrastate rate cap of \$0.045 per minute for all debit, prepaid, and collect voice-only IPCS calls originating from facilities not covered by SB 1008. This rate cap applies uniformly to all jails, county facilities, and federal facilities in California, regardless of size.

Furthermore, we maintain the site commission cap of \$0.02 per minute in keeping with the consumer protection intent of state policy. This site commission cap is included in the \$0.045 per minute intrastate rate cap and will help ensure fair compensation for all providers, and the reasonableness of the rates charged to incarcerated individuals and their families. Ancillary fees, with the exception of unavoidable, fixed third-party financial transaction charges, are permanently capped at zero. IPCS providers are directed to file a compliance Advice Letter within 90 days.

Finally, we agree with commenters that it is unnecessary for the Commission to relitigate issues we have already addressed in this proceeding. The legal issues raised in this proceeding were resolved by D.21-08-037, and we resolve the last remaining factual issue with this decision.

##### **4.1. Permanent Intrastate Voice-Only IPCS Rate Cap**

The permanent intrastate voice-only IPCS rate cap is set at \$0.045 per minute is based on allowing \$0.02 per minute for site commissions, and an actual

call cost component of \$0.025 per minute. We weighed many factors in adopting this figure and upon consideration of all the comments and briefs submitted we are persuaded that a \$0.045 per minute cap is fair to IPCS providers and establishes a charge that is just and reasonable. We see no reason to differentiate from the CDCR's contract with Global Tel\*Link, which sets a rate of \$0.025 per minute for the state's largest carceral system, and to allow a site commission charge of up to \$0.02 per minute.

Further, this rate cap was first calculated in D.21-08-037 and is based on (1) the CDCR capping intrastate IPCS rates in California prisons at \$0.025 per minute through 2026,<sup>186</sup> (2) the Federal Communication Commission's (FCC) determination that it costs service providers no more than 25 percent more to provide IPCS to jails with a population greater than 1,000 as compared to prisons,<sup>187</sup> (3) the fact that other states had rates well below \$0.05 per minute,<sup>188</sup> (4) the addition of \$0.02 per minute to allow the maintenance of site commission funds for California counties, and (5) the finding that costs to provide intrastate IPCS did not change based on the size of the facility.<sup>189</sup>

We understand the arguments that the rate should be higher and tiered based on facility size (Average Daily Population, or ADP) to account for differing

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<sup>186</sup> D.21-08-037 at p.51, *citing* Cal Advocates Comments on Staff Proposal at 7.

<sup>187</sup> D.21-08-037 at 52, *citing* Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking (FCC 2024 IPCS Order), WC Docket No. 12-375, at ¶ 148. See also, Report and Order on Reconsideration and Further Notice of Proposed Rulemaking, (FCC 2025 IPCS Reconsideration Order), WC Docket No. 12-375, at ¶¶ 20-26.

<sup>188</sup> D.21-08-037 at 52-53, *citing* state sources in New Jersey, Illinois, Texas, and New York.

<sup>189</sup> D.21-08-037 at 54-56.

economies of scale.<sup>190</sup> However, in D.21-08-037, we found that costs to provide intrastate IPCS did not change based on the size of the facility enough to justify significant tiering, and no party submitted the detailed, California-specific cost data necessary to substantiate a tiered system or a higher uniform rate.<sup>191</sup> As Joint Consumers correctly point out, providers cannot claim the rate is unsupported by evidence when they failed to submit cost data despite repeated requests. Further, the IPCS providers never explain why they did not submit the same data they submitted to the FCC to the Commission, either when it was submitted to the FCC or in response to the Staff Proposal, or with any other response where we sought input during this proceeding. In other words, there was ample opportunity and encouragement for the providers to submit cost data. While we need not take an adverse inference that the absence of evidence would be damaging to their position to reach our conclusion, it would be a fair inference to make in this case. Finally, we note that one data point we did review was the information the FCC published as part of its proceedings and find it to be consistent with our findings regarding the cost structure that informs our conclusions regarding a just and reasonable rate cap. As the FCC Orders establish maximum rate ceilings, not entitlement rates, and expressly contemplate state adoption of lower intrastate caps, we find the adoption of a \$0.045 per minute rate cap wholly consistent with the FCC's actions.

Cal Advocates proposes a rate of \$0.035 per minute, citing numerous states that have set rates "well below" \$0.05 per minute, and that some jails have

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<sup>190</sup> See, e.g. FCC 2025 IPCS Reconsideration Order at ¶19.

<sup>191</sup> Cf. FCC 2025 IPCS Reconsideration Order at fn.44.

negotiated rates as low as one or two cents per minute. Cal Advocates would also not include the \$0.02 per minute for site commissions.

On balance, we are persuaded that a \$0.045 rate that includes \$0.02 for site commissions is supported by the record as a rate that ensures fair compensation and provides a reasonable charge to consumers. Therefore, we adopt a permanent intrastate voice-only IPCS rate cap of \$0.045 per minute. This uniform rate minimizes complexity for customers and reflects a reasoned, cost-based approach plus a reasonable margin, applying to all facilities not covered by SB 1008.

#### **4.2. Site Commission Costs**

In opening this proceeding, we were determined to correct the market failure that has allowed for unregulated telecommunication services to operate as *de facto* monopolies in local and state correctional facilities. The Legislature, through the Keep Families Connected Act, SB 1008, furthered the core public policy goal to reduce the financial burden on families to maintain contact with incarcerated loved ones, thereby improving rehabilitation outcomes. Site commissions—payments from the IPCS provider to the facility, often ranging up to 85% of IPCS costs—directly undermine this goal by inflating the rates charged to end-users.

The Staff Proposal included a \$0.02 adder for site commissions, consistent with our decision in D.21-08-037 and FCC decisions. This issue was resolved in D.21-08-037 and we are not persuaded by the arguments put forth by service providers to change that finding. While Cal Advocates and Joint Consumers argue that carceral facility costs directly related to the provisioning of IPCS should be recovered from the General Fund or other sources, we are not

convinced that we should include no site commission costs in determining the IPCS rate cap. No party has presented us with a better calculation of reasonable site commission costs. Therefore, we shall continue to add an additional \$0.02 to account for site commissions to the \$0.025 per minute rate to calculate the \$0.045 per minute rate cap.

#### **4.3. Ancillary Fees and Charges**

The Commission found in D.21-08-037 that ancillary fees – such as connection fees, monthly minimum fees, or fees for funding accounts – can drastically increase the real loaded rate of a call (e.g., from \$0.07/min to \$0.47/min). Therefore, in D.21-08-037, for all ancillary service fees associated with the provision of intrastate and jurisdictionally mixed incarcerated persons calling services in California, the Commission: (a) prohibited the imposition of any single-call, paper bill, live agent, and/or automated payment fees; (b) limited the collection of third-party financial transaction fees to the pass through of the exact fee only, with no markup, and excluding any credit card charges, up to a cap of \$6.95 per transaction; (c) limited the collection of government-mandated taxes and fees to the pass through of the exact fee only, with no markup; and, (d) prohibited the imposition of any other type of ancillary service fee or service charge not explicitly approved.

Ancillary fees charged in connection with IPCS calls were previously found not just or reasonable.<sup>192</sup> Since that determination, no party has provided data to demonstrate such charges are just and reasonable. Therefore, this Decision affirms the policy set in D.21-08-037 and makes permanent the

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<sup>192</sup> D.21-08-037 at 72-80.

prohibition on all ancillary service fees and charges associated with intrastate and jurisdictionally mixed IPCS, with the following limited exceptions:

- Third-Party Financial Transaction Fees: We allow a pass-through of actual, fixed-amount fees incurred for third-party financial transactions (e.g., credit card processing fees). These charges must be fixed, not percentage-based, and are capped at a maximum of \$3.00 per transaction. This is a significant reduction from the FCC's cap of \$6.95 and is intended to incentivize providers to secure lower-cost payment processing options.
- Collection of government-mandated taxes and fees: We allow a pass-through of the exact fee only, with no markup.

#### **4.4. Mechanism for Future Rate Adjustments**

Staff recommended an annual adjustment based on CPI minus an X-factor via a Tier 2 Advice Letter (AL). The IPCS providers and Joint Consumers agree that a full General Rate Case application is too burdensome for small, reasonable adjustments.

We adopt a streamlined process for future rate changes:

- Rate Reductions: IPCS providers may decrease their rates below the permanent cap via a Tier 1 AL (effective immediately upon filing).
- Rate Increases/Adjustments: Any request to increase rates above the current rate cap must be filed via a Tier 2 AL. This AL must be accompanied by actual, detailed cost data, including internal financial statements and operating expenses, to substantiate the need for a higher rate. The Commission's Communications Division (CD) will administer this review.

We do not adopt the proposed CPI-based automatic adjustment mechanism at this time, as the "X factor" and its application require further

analysis and the Commission prefers to maintain direct oversight of any rate increase.

#### **4.5. Timeline for Implementation**

The Staff proposed a 45-day deadline. IPCS providers and the California State Sheriff's Association suggested 90 to 180 days to accommodate contract renegotiations. While we encourage swift action, we recognize that IPCS providers cannot unilaterally impose new rates and require time to amend contracts with the facilities they serve.

We grant IPCS providers 90 calendar days from the effective date of this Decision to fully implement the new permanent rate cap of \$0.045 per minute and the prohibition on site commissions and ancillary fees.

##### **4.5.1. Compliance and Notification**

We direct all telephone corporations providing IPCS to submit a Rate Compliance Report to the Commission's Director of the Communications Division at [cddirector@cpuc.ca.gov](mailto:cddirector@cpuc.ca.gov) no later than 90 days from issuance of this decision. Each IPCS provider's Rate Compliance Report must include a revenue breakdown of billed interstate and intrastate minutes of use, and a revenue breakdown of billed ancillary interstate and intrastate fees over a period of thirty days.

We direct all telephone corporations providing IPCS to provide a Plan for Notification to all current and prospective customers and account holders and draft notices of the adopted ancillary fee requirements, terms and conditions, refund policies and customer service contacts for websites, bill inserts, and marketing materials to the Commission for review no later than 60 days from issuance of this decision. The Plan and draft notices shall include disclosures of

fee schedules and service-related information in English, Spanish and any other languages prevalent in incarceration facilities.

All IPCS providers operating in California as defined here must comply with the requirements of this decision. IPCS providers not explicitly identified in this decision and any new IPCS provider to California must provide a Notice of Compliance to the Commission no later than 45 days after executing a contract to provide IPCS in California, and must provide a Plan for Notification, draft notices of the adopted rates, terms and conditions, refund policies and customer service contacts for websites, bill inserts, and marketing materials to the Commission for review no later than 30 days after executing a contract to provide IPCS in California. The Plan and notices shall include disclosures of fee schedules and service-related information in English, Spanish and any other languages prevalent in incarceration facilities.

Such IPCS providers must also submit a Rate Compliance Report to the Commission's Director of the Communications Division no later than 45 days from executing a contract to provide IPCS in California. Each IPCS provider's Rate Compliance Report must include a revenue breakdown of billed interstate and intrastate minutes of use, and a revenue breakdown of billed ancillary interstate and intrastate fees over a period of thirty days.

## **5. Summary of Public Comment**

Rule 1.18 allows any member of the public to submit written comment in any Commission proceeding using the "Public Comment" tab of the online Docket Card for that proceeding on the Commission's website. Rule 1.18(b) requires that relevant written comment submitted in a proceeding be summarized in the final decision issued in that proceeding.

Three public comments were submitted since the last decision in this proceeding and the mailing of this proposed decision. Two of the comments complained about the high cost of phone calls from prisons and jails in California. The third summarized comments that the California State Sheriff's Association (CSSA) were unable to file in response to the Staff Proposal. The CSSA urged the Commission to reject the Staff Proposal. The CSSA explained that the revenue generated from IPCS providers was deposited in inmate welfare funds that provide many services to incarcerated individuals and urged the Commission not to reduce those services by capping the rates that are charged to incarcerated individuals and their families. CSSA also called for the Commission to consider the size of the jail, the number of incarcerated housed therein, and geography to reject a one-size-fits-all approach. Finally, the CSSA sought an implementation period longer than the proposed forty-five day period in the Staff Proposal.

## **6. Procedural Matters**

This decision affirms all rulings made by the Administrative Law Judge and assigned Commissioner in this proceeding. All motions not ruled on are deemed denied.

## **7. Comments on Proposed Decision**

The proposed decision of ALJ Robert Haga in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_ by \_\_\_\_\_.

**8. Assignment of Proceeding**

Darcie L. Houck is the assigned Commissioner and Robert Haga is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. Virtually all incarceration facilities in California utilize one telephone corporation to provide voice IPCS, such that incarcerated persons and their families in California have no viable alternative service provider.
2. Prior to the Commission's adoption of D.21-08-037, intrastate per minute rates charged by IPCS providers were as high as \$1.75 per minute and connection fees or first minute rates were as high as \$3.60 per minute.
3. Prior to D.21-08-037, a 15-minute intrastate phone call in California could cost as much as \$26.25, excluding any other transaction fees.
4. Prior to D.21-08-037, average and maximum pre-paid call per minute rates varied widely between federal prisons, state prisons, county jails and local jails in California.
5. D.21-08-037 documented the unreasonable and unjust rates charged to people incarcerated in county jails, local jails, and federal prisons.
6. The CDCR has successfully contracted for intrastate IPCS voice-only rates at \$0.025 per minute for the state prison system.
7. A uniform intrastate IPCS rate cap of \$0.045 per minute is sufficient to cover the documented cost of service plus a reasonable margin for providers.
8. No party provided data justifying the significantly higher rates for county or city jails or summarizing costs to provide security functions.

9. IPCS providers have failed to submit detailed, California-specific cost data necessary to justify a higher rate cap or a tiered rate structure based on facility size.

10. IPCS providers have not tendered a reasonable excuse for their failure to submit cost data for the Commission's consideration.

11. Site commissions inflate rates and impose an undue financial burden on incarcerated persons and their families, undermining the public policy goals of the Commission and SB 1008.

12. Allowing a \$0.02 per-minute calling rate cap for site commissions protects incarcerated persons and their families from unreasonable charges.

13. The October 2025 FCC Report and Order maintained its prohibition on site commissions and added a rate additive of up to \$0.02 per minute separate from its rate caps.

14. Ancillary fees substantially increase the cost of service and are not necessary for the provision of basic voice-only IPCS.

15. A 90-day implementation period is necessary and reasonable to allow IPCS providers time to renegotiate contracts with carceral facilities and update billing systems.

### **Conclusions of Law**

1. The permanent intrastate voice-only IPCS rate cap of \$0.045 per minute is just and reasonable as required by the Public Utilities Code.

2. It is reasonable and within the Commission's jurisdiction to prohibit site commissions to protect consumers from excessive rates.

3. It is reasonable to permanently cap all ancillary fees at zero, except for unavoidable, fixed third-party financial transaction fees.

4. In light of the Martha Wright Reed Act, for the purposes of regulating IPCS as provided in this rulemaking, the Commission need not recognize any distinctions between interconnected VoIP or non-interconnected VoIP services; all of these services are IPCS and payphone services subject to Commission regulation.

5. The Tier 2 Advice Letter process is the appropriate mechanism for IPCS providers to seek future rate increases above the established cap.

6. The rate cap and fee prohibitions adopted herein should apply to all IPCS providers of intrastate voice-only IPCS in California.

7. Our existing service quality requirements that apply to all communication providers in California are sufficient to fulfill the requirements of SB 1008, and we do not need to take additional action specifically applicable to IPCS providers.

8. The August 15, 2022, motion of Securus for leave to seal the record as to confidential information included in Attachment A of the testimony of Russell Roberts should be granted.

9. The September 19, 2022, motion of TURN for leave to seal the record as to information that NCIC has designated as confidential that is referenced in intervenor testimony exhibit 5 should be granted.

10. The January 23, 2023, Joint Parties Statement confirmed parties' joint and reply testimony contain sufficient information on which the Commission can base a decision.

11. This proceeding should be closed.

**O R D E R****IT IS ORDERED** that:

1. A permanent intrastate Incarcerated Persons Calling Services rate cap of \$0.045 per minute for debit, prepaid, and collect voice-only calls is adopted for all correctional facilities in California not covered by Senate Bill 1008 (2022).
2. All Incarcerated Persons Calling Services providers are permanently prohibited from paying or recovering site commissions, sign-on bonuses, or similar payments from the rates charged to end-users (incarcerated persons and their families).
3. All ancillary fees associated with intrastate and jurisdictionally mixed Incarcerated Persons Calling Services are permanently capped at zero, with the sole exception of third-party financial transaction fees, which are capped at a maximum of \$3.00 per transaction and must be fixed, not percentage based.
4. Incarcerated Persons Calling Services providers may request a rate increase above the permanent rate cap by filing a Tier 2 Advice Letter with the Communications Division, supported by comprehensive actual cost data.
5. Incarcerated Persons Calling Services providers may file a Tier 1 Advice Letter to reduce their rates below the permanent rate cap.
6. Incarcerated Persons Calling Services providers shall implement the new permanent rate cap and fee structure within 90 calendar days of the effective date of this Decision.
7. Within 90 calendar days of the effective date of this Decision, each Incarcerated Persons Calling Services provider shall file a Compliance Notice with the Communications Division, attesting to the implementation of the

permanent rates and fee caps at all California facilities they serve, including copies of notices provided to facilities and incarcerated persons.

8. Incarcerated Persons Calling Services (IPCS) providers not explicitly identified in this decision and any new IPCS provider to California must provide a Notice of Compliance to the Commission no later than 45 days after executing a contract to provide IPCS in California, and must provide a Plan for Notification, draft notices of the adopted rates, terms and conditions, refund policies and customer service contacts for websites, bill inserts, and marketing materials to the Commission for review no later than 30 days after executing a contract to provide IPCS in California.

9. The August 15, 2022, motion of Securus Technologies LLC for leave to seal the record as to confidential information included in Attachment A of the testimony of Russell Roberts is granted.

10. The September 19, 2022, motion of The Utility Reform Network for leave to seal the record as to information that Network Communications International Corporation has designated as confidential that is referenced in intervenor testimony exhibit 5 is granted.

11. Rulemaking R.20-10-002 is closed.

This order is effective today.

Dated \_\_\_\_\_, at Sacramento, California