BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

FILED
05/13/26
04:44 PM
R2010002

Order Instituting Rulemaking to Consider Regulating Telecommunications Services Used by Incarcerated People.	Rulemaking 20-10-002

SECURUS TECHNOLOGIES, LLC's APPLICATION FOR REHEARING OF D.26-04-004 (PUBLIC VERSION)

Thaila K. Sundaresan
David Huang
DAVIS WRIGHT TREMAINE LLP
50 California Street, 23rd Floor
San Francisco, CA 94111
Tel. (415) 276-6500
Fax. (415) 276-6599
Email: thailasundaresan@dwt.com
Email: davidhuang@dwt.com

Attorneys for Securus Technologies, LLC

Dated: May 13, 2026

TABLE OF CONTENTS

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

SECURUS TECHNOLOGIES, LLC's APPLICATION FOR REHEARING OF D.26-04-004 (PUBLIC VERSION)

Pursuant to Rule 16.1 of the California Public Utilities Commission's (the "Commission") Rules of Practice and Procedure, Securus Technologies, LLC ("Securus") respectfully submits this Application for Rehearing of Decision 26-04-004 issued on April 13, 2026 (the "Decision" or D.26-04-004).

I. INTRODUCTION

Rehearing is warranted because the Commission's adoption of permanent intrastate incarcerated persons calling services ("IPCS") rate caps in Decision 26-04-004 rests on a series of fundamental legal, procedural, and evidentiary errors that independently and collectively render the Decision unlawful.

First, the Commission exceeded its jurisdiction by asserting authority and imposing requirements over services it has never regulated under California law, including non-interconnected VoIP and video calling services. The Decision disregarded the Commission's own precedent distinguishing interconnected from non-interconnected VoIP, improperly relied on federal law to erase statutory jurisdictional limits imposed by the California Legislature, and directed staff to collect data relating to video calling services that indisputably fall outside the Commission's regulatory authority.

Second, the Decision adopted permanent statewide IPCS rate caps without the findings required by law and without substantial evidence in light of the whole record. The Commission relied on outdated benchmarks and assumptions drawn from an interim decision issued five years earlier—while simultaneously acknowledging that those interim rates were adopted without "good cost data." At the same time, the Commission ignored or mischaracterized Securus's cost data—the only California-specific cost evidence in the record—refused to look at data submitted to the Federal Communications Commission ("FCC") to which the Commission had access, and reached conclusions about cost recovery, feasibility, and facility-size cost differences that cannot be reconciled with the evidentiary record.

Third, the Commission failed to proceed in the manner required by law and abused its discretion by departing from the procedural framework it consistently represented would govern Phase II of R.20-10-002. Throughout this proceeding, the Commission promised that permanent rates would be informed by cost-collection workshops, guidance, and evidentiary development. None of those steps occurred. Instead, the Commission faulted providers for failing to submit cost data that the Commission never requested and for which the Commission never established procedures, and adopted permanent rates without notice, workshops, or hearings. Moreover, the Decision also erroneously fails to approve Securus's motion for confidential treatment of its filed cost data, despite the Commission's own acknowledgement that cost data is sensitive enough to warrant a Protective Order in order to permit parties' access to this information.

Finally, the Decision violates constitutional and statutory limits on ratemaking. The permanent $0.045 rate cap (only $0.025 of which is recoverable by providers) is confiscatory, fails the "just and reasonable" standard of the Public Utilities Code, unlawfully impairs existing contracts, and conflicts with the federal IPCS compensation framework adopted pursuant to the

Martha Wright-Reed ("MWR") Act. The Decision's internal inconsistencies and its reliance on a procedurally deficient Tier 2 advice letter ("AL") process further underscore the absence of a lawful and durable ratemaking determination.

For these reasons, and as detailed below, the Commission should grant rehearing and vacate or materially modify D.26-04-004. At a minimum, the Commission should reopen Phase II for the limited purpose of conducting the cost-based proceedings it repeatedly promised and adopting any permanent IPCS rate structure on a record capable of withstanding judicial review.

II. BACKGROUND

This rulemaking has proceeded in multiple phases over several years, during which the Commission repeatedly represented that permanent intrastate IPCS rate caps would be developed only after the creation of a cost-based evidentiary record. The Decision challenged here departs from that framework.

A. *Phase I and the Adoption of Interim Rate Caps in D.21-08-037*

Phase I culminated in Decision 21-08-037, which adopted ***interim*** intrastate IPCS rate caps while expressly deferring ***permanent*** ratemaking to a later phase. In D.21-08-037, the Commission established an interim rate cap of $0.07 per minute for debit, prepaid, and collect IPCS calls.[1] The Commission emphasized that these rates were "interim only" and were adopted "where we do not have good cost data," expressly acknowledging the absence of a California-specific cost record.[2] The Commission adopted interim relief in part due to the COVID-19 pandemic; many public commenters explained that pandemic-related restrictions on in-person

[1] D.21-08-037 at 2, 59-60, 115 (OP 2).

[2] *Id.* at 51, 58–59.

visitation had sharply increased incarcerated persons' reliance on IPCS and warranted temporary rate relief pending fuller record development.[3]

D.21-08-037 also permitted the pass-through of third-party financial transaction fees and applicable government taxes and fees, while prohibiting IPCS providers from imposing any ancillary or service fees not expressly approved by the Commission.[4] Critically, the Commission explained that "[t]hese rate caps and ancillary fee requirements will remain in effect until the Commission adopts a subsequent decision in this proceeding."[5] The Commission further confirmed that interim relief did not resolve permanent ratemaking issues by stressing that "[t]his proceeding remains open."[6] Taken together, the Commission made clear that permanent intrastate IPCS rates were not being set in Phase I and would instead be addressed in later phases of the proceeding following additional development of the record.[7]

B. *Judicial Review of D.21-08-037 and the Importance of Promised Phase II Proceedings*

Securus applied for rehearing of D.21-08-037, which the Commission denied.[8] Securus then challenged the Decision via a writ of review in the Court of Appeal. The Court upheld the Commission's adoption of interim rates, but did so in material reliance on the Commission's representations regarding future proceedings.[9] That conclusion rested on the premise, which was

[3] *Id.* at 12.

[4] *Id.* at 72–74.

[5] *Id.* at 3.

[6] *Id.*

[7] *Id.*

[8] *See* D.22-04-038.

[9] *Securus Technologies, LLC v. Pub. Util. Comm'n,* 88 Cal. App. 5th 787, 796, 799, 802 (2023).

shared by the Commission at that time, that Phase II would provide the procedural vehicle for cost discovery and evidentiary development.[10]

Specifically, the Court held that evidentiary hearings were not required for the adoption of interim rates, in part because the Commission had scheduled Phase II proceedings to "resolve contested issues of material fact."[11] The Court likewise rejected Securus's argument that the Commission acted arbitrarily by adopting interim rates without considering IPCS cost data, reasoning that Securus had not voluntarily offered such evidence at that stage of the proceeding.[12]

C. *Phase II Scoping and the Commission's Repeated Commitments to Cost-Based Ratemaking*

The Assigned Commissioner's Phase II Scoping Memo made clear that Phase II would be the forum for developing a cost based evidentiary record to inform permanent IPCS ratemaking. The Scoping Memo expressly identified as central Phase II issues "[w]hat methodology should the Commission use to develop any permanent voice only rate caps" and "[w]hat types of data should the Commission consider when developing permanent rate caps," including whether and how the Commission could ensure the accuracy of self-reported cost data.[13] In doing so, the Commission represented that permanent rates would follow the development and evaluation of IPCS cost data, not precede it.

To build that record, the Assigned Commissioner expressly agreed that workshops were necessary "to help build the record in this proceeding," and specifically committed to convening a Cost Structures workshop focused on IPCS providers' costs and revenues.[14] Rather than deferring

[10] *Id.* at 801-02.

[11] *Id.* at 796.

[12] *Id.* at 803-04.

[13] Phase II Scoping Memo at 11–12.

[14] *Id.* at 5.

cost discussions, the Assigned Commissioner stated a preference to hold the workshop "relatively early in Phase II to inform subsequent guidance on precisely how IPCS providers should submit cost data in response to discovery requests," emphasizing that "[t]aking this additional step early on will help ensure that analysis of the submitted data yields practical insights."[15] The Scoping Memo explained that the workshop would "focus on cost and revenue related questions," that "IPCS providers shall be the main presenters," and that the Commission expected advance submissions "to facilitate productive discussions."[16]

The Scoping Memo further underscored that "solid rate and/or cost data must inform Commission adoption of permanent IPCS regulations," and expressly sequenced other issues "until after such time as we have developed a robust record on costs and rates."[17] Consistent with that sequencing, the Assigned Commissioner confirmed that Phase II could involve contested factual issues regarding IPCS "cost and revenue structures," and therefore reiterated that "[e]videntiary hearings may be needed," to be scheduled after discovery and related workshops.[18] These representations collectively conveyed a clear procedural commitment that permanent intrastate IPCS rates would be adopted only after the Commission developed, tested, and evaluated a robust, cost-based evidentiary record.

D. *The Promised Cost-Structure Workshop Never Occurred*

Despite these express commitments, the promised cost structure workshop never occurred. The Assigned Commissioner determined that the workshop would take place in Q1 2022, but no

[15] *Id.*

[16] *Id.*

[17] *Id.* at 7.

[18] *Id.* at 12.

workshop was convened, no guidance or reporting template was issued, and no ruling directed providers to submit cost data by a date certain or in any specified format.[19]

Even so, as late as April 2022, the Commission continued to represent that cost data collection would remain part of Phase II and that permanent rates would be developed through additional record development.[20]

E. *Subsequent Rulings Did Not Abandon Cost Collection*

When the Commission amended the scope of Phase II in May 2022, it expanded the list of issues to be addressed but did not remove cost methodology, cost data, or permanent ratemaking from the Phase II scope.[21] At no point did the Commission state that it was abandoning the effort to develop a cost-based record for permanent IPCS rates.

F. *Congress Passed the MWR Act, and the FCC Adopted Intrastate IPCS Rate Caps*

While Phase II remained pending, Congress enacted the Martha Wright-Reed Act.[22] In the MWR Act, Congress directed the FCC to "promulgate any regulations necessary" to "establish a compensation plan to ensure that all payphone service providers are fairly compensated, and all rates and charges are just and reasonable, for completed intrastate and interstate communications."[23] The MWR Act for the first time gave the FCC express authority to cap

[19] *Id.* at 5.

[20] ALJ's Ruling Setting Status Conference and Providing Proposed Questions for Testimony and Additional Briefing (Apr. 14, 2022) at 8 ("At the status conference, we will discuss the potential timing and steps needed to develop the record to consider permanent voice-only communication service rates and fees.").

[21] *See* Assigned Commissioner's Ruling Amending Phase II Scope and Schedule and Directing Testimony (May 20, 2022).

[22] MWR Act, Pub. L. No. 117-338, 136 Stat. 6156.

[23] MWR Act § 3(a); 47 U.S.C. § 276(b)(1)(A).

intrastate rates. Congress directed the FCC to adopt new regulations no later than 24 months after the MWR Act's enactment.[24]

In response, the FCC issued a notice of proposed rulemaking[25] and its staff issued a mandatory data collection order requiring IPCS providers to submit detailed information on their costs.[26] Securus and more than 10 other IPCS providers submitted extensive cost and other data in response to that order.

In July 2024, the FCC released its *2024 IPCS Order*.[27] There, the FCC set new interstate and intrastate rate caps for audio IPCS, broken out by facility size, ranging from $0.06 per minute at "large jails" (1,000 or more incarcerated persons) to $0.12 per minute at "very small jails" (0-99 incarcerated persons).[28] The FCC also concluded that states were not categorically preempted from setting lower rate caps for intrastate voice calls, noting that states could justify lower rates if they were based on "cost data and market conditions unique to that particular state" and fell "within [the FCC's] zone of reasonableness."[29] The FCC also barred and preempted payment of site commissions.[30]

---

[24] MWR Act § 3(a).

[25] *See* Notice of Proposed Rulemaking and Order, *Incarcerated People's Communications Services*, 38 FCC Rcd 2669 (2023).

[26] *See* Order, Incarcerated People's Communications Services, 38 FCC Rcd 6625 (Wireline Comp. Bur. & Off. of Econ. & Analytics 2023) ("*2023 Data Collection Order*").

[27] Report and Order, Order on Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking, *Incarcerated People's Communications Services*, WC Docket Nos. 23-62, 12-375, FCC 24-75 (rel. July 22, 2024; modif. Aug. 26, 2024 and Oct. 2, 2024) ("*2024 IPCS Order*").

[28] *See 2024 IPCS Order* at ¶ 4.

[29] *Id.* at ¶¶ 236-237.

[30] *Id.* at ¶ 245.

G. *The Staff Proposal and Securus's Voluntary Cost Submission*

On September 30, 2024, despite never having developed a cost-based records, Commission staff issued a proposal advocating a $0.045 per-minute ***permanent*** intrastate voice IPCS rate cap, including $0.02 per minute for site commission costs.[31] This rate cap left only $0.025 per minute for IPCS providers to recover all operating and capital costs, including a reasonable return on investment.

Securus and other parties filed opening comments on the staff proposal, in which they explained (among other things) that staff had advanced a permanent rate cap without analyzing IPCS costs.[32] To attempt to partially cure the Commission's failure to develop a complete cost record, Securus voluntarily submitted its own cost data under seal derived from the data for 2019–2022 that it submitted as part of the FCC's Mandatory Data Collection submissions. Securus's data was disaggregated by FCC-prescribed average daily population ("ADP") tiers.[33] Parties, including Securus, thereafter filed reply comments reiterating the necessity of a developing a full record of IPCS costs that would support a cost-driven framework for permanent rate setting.[34]

H. *The FCC Set New Rate Caps in Its 2025 IPCS Order*

In June 2025, the FCC staff pointed to evidence of "ongoing implementation challenges" and "risks to safety and security" that had "greatly exceed[ed] what the [FCC] considered or

[31] *See* Staff Proposal on *Permanent Rates for Incarcerated Persons Calling Service* ("Staff Proposal") (Aug. 1, 2024).

[32] *See* Securus Comments on Staff Proposal at 10-11; ViaPath Comments on Staff Proposal at 3-6; NCIC Comments on Staff Proposal at 2-8.

[33] Securus Comments on Staff Proposal (Oct. 29, 2024) at 13 and Confidential Appendix A.

[34] Securus Reply Comments at 1; ViaPath Reply Comments at 5; NCIC Reply Comments at 5.

anticipated when it adopted the *2024 IPCS Order*."[35] It therefore waived the compliance deadlines for the *2024 IPCS Order*'s rate caps, while it "continue[d] to reevaluate its IPCS rules."[36]

Then, in November 2025, the FCC issued its *2025 IPCS Order*.[37] There, the FCC set new rate caps for audio IPCS, ranging from $0.08 per minute at large jails to $0.17 at extremely small jails (0-49 incarcerated persons).[38] The FCC also adopted a uniform $0.02 "rate additive" to account "for the costs correctional facilities incur in allowing access to IPCS."[39] Thus, the *2025 IPCS Order*'s "effective rate caps" range from $0.10 at large jails to $0.19 at extremely small jails.[40] The FCC carried over the preemption rulings in the *2024 IPCS Order*.

I. *Commission's Proposed Decision and Adoption of D.26-04-004*

On February 10, 2026, the Commission issued a proposed decision ("PD") adopting a ***permanent*** $0.045 intrastate voice IPCS rate cap. Parties filed opening comments on March 2, 2026, including Securus's comments identifying numerous legal, procedural, and evidentiary defects.[41] Securus explained that "[r]ather than grounding its conclusions in actual cost data, the PD is founded only on assumptions, reverse-engineered benchmarks, and selective outdated and incomplete federal materials—while disregarding contrary relevant federal findings, recent [FCC] orders, and unrebutted evidence demonstrating material cost differences across facilities and

[35] Order at ¶ 1, *Incarcerated People's Communications Services*, WC Docket Nos., 23-62 & 12-375, DA 25-565 (rel. June 30, 2025).

[36] *Id.*

[37] Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Incarcerated People's Communications Services*, WC Docket Nos. 23-62, 12-375, FCC 25-75 (rel. Nov. 6, 2025) ("*2025 IPCS Order*").

[38] *See 2025 IPCS Order* ¶ 8.

[39] *Id.* ¶ 37.

[40] *See id.* ¶ 8.

[41] Securus Comments on PD (Mar. 2, 2026).

providers."[42] Securus also pointed out that that the Commission reneged on its commitment to "establish a process for the submission and evaluation of cost data, including workshops, templates, and guidance to inform permanent ratemaking."[43] Securus and other parties filed reply comments on March 9, 2026.[44]

On March 16, 2026, the Commission issued a revised PD that, for the first time, acknowledged Securus's cost submission but summarily concluded—without analysis—that it was "not persuaded that the data submitted by Securus shows significant differences between facility size on a per minute basis," notwithstanding that Securus's data showed precisely such differences.[45] The revised PD also cited the January 23, 2023 Joint Statement on Stipulated and Disputed Facts and Need for Hearings as justification for not holding evidentiary hearings.[46] The stipulated and disputed facts addressed in the Joint Statement related only to the specific topics identified for testimony in the May 20, 2022 Assigned Commissioner's Ruling—such as the bundling of video and voice services, video calling rates and usage, and network structure—and *did not concern the cost of providing voice-only IPCS*.[47] Therefore, at no point did Securus or other providers waive their right to a hearing for purposes of rate setting requirements. Moreover, even aside from the absence of any agreement to forgo hearings on cost issues, the Commission

[42] *Id.* at 1.

[43] *Id.*

[44] *See* Securus Reply Comments on PD (Mar. 9, 2026); Network Communications International Corp Reply Comments on PD (Mar. 9, 2026); The Utility Reform Network Reply Comments on PD (Mar. 9, 2026); Center for Accessible Technology Reply Comments on tPD (Mar. 9, 2026); ViaPath Reply Comments on PD (Mar. 9, 2026).

[45] Revised PD at 74.

[46] *Id.* at 87.

[47] *See* Assigned Commissioner's Ruling (May 20, 2022).

never established a methodology for collecting or vetting IPCS cost data, nor did it ever state that it was abandoning that step.

On April 2, 2026, the Commission issued a second revised PD adding language directing staff to collect additional information regarding video IPCS rates.[48]

On April 9, 2026, the Commission adopted D.26-04-004. Among other things, the Decision found that there was "ample opportunity and encouragement for the providers to submit cost data,"[49] adopted a $0.045 per-minute rate cap ($0.02 per-minute of which was for site commissions and not to compensate IPCS providers),[50] permanently eliminated ancillary fees except unavoidable third-party financial transaction fees and government-mandated taxes and fees,[51] found that no party provided data justifying higher rates for county or city jails or summarizing security-related costs,[52] and concluded, without prior notice, that existing service quality requirements are sufficient to satisfy Senate Bill 1008.[53]

The Decision was adopted and thereafter issued on April 13, 2026, triggering the thirty-day clock to file an application for hearing by May 13, 2026.[54] Securus's rehearing application is timely filed.

III. STANDARD OF REVIEW

An application for rehearing serves a critical and well-established function in the Commission's decisional process. Its purpose is to alert the Commission to legal, procedural, and

[48] PD (Rev. 2) at 71 (Apr. 2, 2026).

[49] D.26-04-004 at 62 (FOF 12).

[50] *Id.* at 75 (FOF 7).

[51] *Id.* at 77 (OP 3).

[52] *Id.* at 75 (FOF 8).

[53] *Id.* at 76 (COL 7).

[54] *See* Pub. Util. Code § 1731(b)(1).

evidentiary errors in a decision while the Commission retains jurisdiction to correct those errors expeditiously and avoid unnecessary judicial intervention.

Consistent with that purpose, Rule 16.1 of the Commission's Rules of Practice and Procedure requires a party seeking rehearing to "set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful or erroneous." An application for rehearing is therefore the procedural vehicle through which parties must clearly identify legal error, failure to follow required procedures, lack of evidentiary support, or constitutional infirmities in a Commission decision in order to preserve those issues for further review.[55]

The Commission has long recognized that the analysis of whether a decision is "unlawful or erroneous" under Rule 16.1 substantially mirrors the standards a reviewing court would apply on appeal.[56] Because the Decision at issue adopts permanent intrastate rates, it is a ratesetting decision subject to review under Public Utilities Code section 1757(a). Section 1757 provides that, following rehearing, a reviewing court shall determine whether the Commission has committed reversible error on one or more specified grounds. Those same grounds define the scope of error the Commission must address on rehearing.

Under section 1757(a), a Commission decision must be reversed or modified if the Commission: (1) acted without, or in excess of, its jurisdiction (2) failed to proceed in the manner required by law; (3) issued findings that do not support the decision; (4) made findings not supported by substantial evidence in light of the whole record; (5) abused its discretion; or (6)

[55] *See* Pub. Util. Code § 1732; *see also S. Cal Edison Co. v. Pub. Util. Comm'n*, 140 Cal. App. 4th 1085, 1096 (2006).

[56] *Id.*

violated any right of the petitioner under the United States Constitution or the California Constitution.[57]

The California Supreme Court recently confirmed in *Center for Biological Diversity, Inc. v. Public Utilities Commission*, No. S283614 (Cal. Aug. 7, 2025), that courts no longer apply the "uniquely deferential" standard of *Greyhound Lines, Inc. v. Public Utilities Commission*, 68 Cal. 2d 406 (1968), to the Commission's statutory interpretations. The reviewing court applies its independent judgment to the meaning of section 451, section 728, section 1705, and other operative provisions of the Public Utilities Code. Review of constitutional questions remains independent.[58] The combined effect of *Center for Biological Diversity* and the recalibrated "manner required by law" prong of section 1757(a)(2) is that the substantive grounds for rehearing set forth below carry materially greater appellate force than they would have under the prior deferential gloss.

IV. THE COMMISSION EXCEEDED ITS JURISDICTION

The Commission improperly assumes jurisdiction over non-interconnected VoIP and video calling service. The Commission expressly recognized its jurisdictional limitations over non-interconnected VoIP in prior decisions, and the Decision erroneously relies on federal law to erase jurisdictional boundaries that remain binding under California law. Additionally, the Commission's directive to its staff to collect video calling data exceeds the Commission's

[57] *See* Pub. Util. Code § 1757(a)(1)-(6).

[58] *Pacific Tel. & Tel. Co. v. Pub. Util. Comm'n*, 62 Cal. 2d 634, 646 (1965); *Ponderosa Tel. Co. v. Pub. Util. Comm'n*, 36 Cal. App. 5th 999, 1013-14 (2019).); s*ee* also Pub. Util. Code § 1760 ("In any proceeding wherein the validity of any order or decision is challenged on the ground that it violates any right of petitioner under the Constitution of the United States, the Supreme Court shall exercise an independent judgment on the law and the facts, and the findings or conclusions of the commission material to the determination of the constitutional question shall not be final.").

jurisdictional authority, given that the Commission does not regulate video calling services and the Commission has not determined in this or other proceedings that it has jurisdiction over video calling services.

A. *No Existing Legal Authority Confers Jurisdiction Over Non-Interconnected VoIP to the Commission*

IPCS providers, including Securus, offer outbound-only, IP-based voice services originating from correctional facilities. Securus understands that such one-way voice services are commonplace throughout the industry, given carceral facilities' need to limit incarcerated persons to making calls (not receiving them) for legitimate security and public safety purposes.[59] Under the Commission's own definition of interconnected VoIP service,[60] such one-way, IP-based voice services are *non-interconnected* VoIP. [61] The Decision's assertion of jurisdiction over non-interconnected VoIP represents an unexplained and unlawful departure from settled Commission policy and exceeds the Commission's authority.

1. The Commission Has No Jurisdiction over Non-Interconnected VoIP

By regulating the rates for non-interconnected VoIP services, the Commission asserts jurisdiction over them, notwithstanding contrary Commission precedent and the absence of statutory authority under California law. To justify its authority to set the rates of IP-based IPCS, the Decision relies on Public Utilities Code Section 451, and broadly asserts that "VoIP providers

[59] Correctional agencies typically restrict outbound calling to preapproved numbers in order to prevent outbound calls that intimidate potential witnesses, jurors, and judges, or otherwise advance illegal activity.

[60] "For purposes of Section 285, the term "interconnected VoIP service" has the same meaning as Section 9.3 of Title 47 of the Code of Federal Regulations." D.24-11-003 at 7.

[61] *See* D.24-02-013 at 4. *Compare* 47 C.F.R. § 9.3 "(1) An interconnected Voice over Internet Protocol (VoIP) service is a service that: (i) Enables real-time, *two-way voice communications*" (emphasis added) *with* 47 U.S.C. § 153(36) (defining non-Interconnected VoIP service as one that, in part, provides *one-way* communication and does not include any Interconnected VoIP service.).

clearly fit within the plain language of the definition of a public utility 'telephone corporation'."[62] The Decision points out that, in D.20-09-012, the Commission upheld the finding that VoIP providers are "telephone corporations" and "public utilities" are under the Commission's jurisdiction.[63] However, it ignores that the "VoIP providers" addressed in that definition were offering two-way — that is, *interconnected* — VoIP.[64]

The Commission's orders have long recognized that the defining characteristic of interconnected VoIP is the "ability to both originate a call to and terminate a call from the [Public Switched Telephone Network ("PSTN")]." In plain terms, it is the ability to "make and receive phone calls."[65] Indeed, in Phase 1 of this proceeding, the Commission limited its interim rate relief as applying to "voice and *interconnected* VoIP calling," underscoring that non-interconnected VoIP is outside those rules. [66] The Decision's sudden expansion of jurisdiction therefore contradicts not only Commission precedent, but the Commission's own framing of its authority earlier in this rulemaking.

That contradiction is confirmed by the Commission's recent jurisdictional holdings in other proceedings. In February 2024, the Commission dismissed on jurisdictional grounds an application of Smart Communications ("Smart") requesting registration as an Interexchange Carrier Telephone Corporation pursuant to Public Utilities Code Section 1013.[67] In dismissing the application, the Commission explained that it "regulates interconnected VoIP service as a

[62] Decision at 56-57.

[63] Decision at 57.

[64] *See* D.24-11-003 at 7 ("Senate Bill (SB) 1161 (Ch. 733, Stats. 2012), added Section 239 to define *interconnected* VoIP service.") (emphasis added).

[65] D.24-11-003 at 18.

[66] *See* D.21-08-037 at 21.

[67] *See* D.24-02-013 at 6 (COL 1).

telephone company" and that it "has not, to this date, asserted authority over non-interconnected VoIP providers," such as Smart.[68] Nine months later, the Commission adopted new licensing and market entry requirements for *interconnected* VoIP service providers in California and affirmed the Commission's jurisdiction over *interconnected* VoIP.[69] The Commission has been unequivocal in its position that it has regulatory authority over *interconnected* VoIP, and this position has been consistently maintained in the Commission's rulemaking activity.[70] The Commission cannot plausibly maintain that non-interconnected VoIP lies outside its jurisdiction in one proceeding and within the scope of its jurisdiction in another proceeding dealing with the same IPCS industry without legal justification.

2. The Martha Wright Reed Act Does Not Annul The Commission's Jurisdictional Distinctions Between Interconnected and Non-Interconnected VoIP

The Decision's faulty jurisdictional assertions over non-interconnected VoIP is further compounded by its conclusion that the MWR Act eliminates all meaningful jurisdictional distinctions between interconnected and non-interconnected VoIP. That conclusion is legally untenable.

The MWR Act is a federal law that revised the FCC's authority to regulate the cost of inmate calling services. Notably, this federal statute expands *federal* authority over IPCS under the Communications Act. It did not amend the California Public Utilities Code, did not expand the jurisdictional authority of state public utility commissions granted to them by state legislatures,

---

[68] *Id.* at 4.

[69] *See* D.24-11-003 at 17-19.

[70] *See e.g.,* D.25-09-031 at 206 (COL 33) (finding that the Commission should establish a service quality framework for *interconnected* VoIP service) (emphasis added) and R.22-08-008, *Assigned Commissioner's Amended Scoping Memo and Ruling* (Apr. 3, 2025) at 3-5 (scoping Phase 2 issues addressing technical and implementation issues in the application of the new regulatory framework for *interconnected* VoIP service generally, or nomadic-only *interconnected* VoIP service providers) .

nor did it override jurisdictional determinations previously made by the Commission. Thus, the Decision's reliance on the MWR Act to confer the Commission jurisdiction over non-interconnected VoIP IPCS is wholly inappropriate and not supported by law.

As the Decision recognizes, the Commission has jurisdiction over voice communications providers in the state to the extent they are "telephone corporations."[71] As applied to VoIP, the Commission has consistently asserted jurisdiction over interconnected VoIP and declined jurisdiction over *non-interconnected* VoIP.[72] The Decision offers no statutory basis for abandoning that distinction. Instead, it asserts without any legal support that because the MWR Act does not make distinctions between interconnected VoIP and non-interconnected VoIP, the Commission may similarly disregard that distinction for state jurisdictional purposes.[73] That logic is fundamentally flawed. Federal silence on state jurisdiction does not expand state authority, and a federal statute cannot be used as a vehicle to rewrite the Commission's own jurisdictional precedents or the limits imposed by California law. The Decision's reliance on the MWR Act to justify an assertion of jurisdiction the Commission has disclaimed is therefore error as a matter of law.

[71] Decision at 55 ("The California Constitution and the Public Utilities Code provide the Commission authority over public utilities, including telephone corporations.") (citing Cal. Const., art. XII §§ 3, 6 and Pub. Util. Code § 216(b)).

[72] *Compare* D.24-11-003 at 18-19 (articulating the basis for categorizing interconnected VoIP service providers as "telephone corporations") *with* D.24-02-013 at 4 ("The Commission regulates interconnected VoIP as a telephone company. The Commission *has not*, to this date, asserted authority over *non-interconnected VoIP* providers.") (emphasis added).

[73] Decision at 58 ("Similarly, in light of the [MWR] 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. . .").

B. *The Commission Does Not Have Authority Over Video Calling Services*

The Decision further exceeds the Commission's jurisdiction by directing the Commission to track video call rates and the percentage of IPCS calls that are video calls. The Commission has no authority to regulate video communications, which are information services outside the scope of the Commission's jurisdiction.[74] Notably, providers of video calling services are not telephone corporations or otherwise public utilities subject to the Commission's jurisdiction.

Although a video call may include an audio component, that audio is inseparable from the simultaneous transmission of video and data. The service is not a voice telephony service and cannot be disaggregated into a regulated "telephone" component without fundamentally mischaracterizing the nature of the service. Given its lack of regulatory authority over video calling services, the Commission has no reasonable basis for concluding that it should collect data relating to the cost of video calls or their frequency of use by IPCS users.[75] By directing staff to collect information concerning video IPCS rates and usage, the Decision ventures beyond the Commission's statutory authority and into a field reserved to federal regulation of information services. That jurisdictional overreach requires rehearing and correction.

V. THE DECISION IS NOT SUPPORTED BY RELEVANT FINDINGS

The Decision's orders pertaining to the permanent voice IPCS rate cap, site commission costs, and ancillary charges are based on findings made in the Commission's decision adopting ***interim*** caps on intrastate rates for IPCS, D.21-08-037. The Decision's reliance on factual findings

---

[74] *See* D.13-12-005 ("It is well-established that internet service is classified for state and federal regulatory purposes as an 'information' service and that the state commissions such as the California Public Utilities Commission do not have jurisdiction over information services even if the providers also provide 'communications services' that are subject to state regulation.") (internal citations omitted).

[75] *See United States v. Morton Salt Co.,* 338 U.S. 632, 652 (1950) (finding that an agency may compel information only if the demand is within its lawful authority, not too indefinite, and "the information sought is reasonably relevant" to the inquiry.).

from five years ago supporting the interim rate cap is inappropriate because these findings are outdated, inaccurate, and otherwise irrelevant to California's voice IPCS marketplace today. The Decision also incorrectly states that the $0.045-per-minute rate cap was "first calculated in D.21-08-037," further undermining its reliance on purported factual findings from D.21-08-037 to justify that rate cap.[76]

The Decision asserts that the $0.045-per-minute rate cap is based on the same findings the Commission made in 2021 to support the interim rate cap:[77]

a) The California Department of Corrections and Rehabilitation's ("CDCR") December 2020 contract with Global Tel*Link ("CDCR-GTL Contract"), which encompasses the state's largest carceral system, sets a rate of $0.025 per minute, and which the Commission "see[s] no reason to differentiate" from the permanent voice IPCS rate cap.
b) The FCC found in its 2021 order that, nationwide, the cost of providing IPCS to jails with a population greater than 1,000 is up to 25% higher than the cost of serving prisons.
c) Other states, and at least one city and at least one county in other states, had IPCS voice call rates that fell below $0.05 per minute.
d) The $0.045 rate cap includes a $0.02 "adder" for site commissions.
e) The cost of providing intrastate IPCS did not change based on the size of the facility.

However, as detailed in Securus's opening comments on the PD, none of these findings provides a rational or persuasive basis for the Commission's adoption of a $0.045 permanent intrastate voice-only IPCS rate cap (only $0.025 of which goes to IPCS providers). Moreover, in D.21-08-037, the Commission had acknowledged that it was adopting an interim rate cap without "good cost data" and that the "correctness" of rates set by a regulatory commission can only be known once the rates are implemented and monitored over time, which it intended to do.[78] And in upholding D.21-08-037, the Court of Appeal relied in part on the Commission's representation

[76] Decision at 61 ("Further, this rate cap was first calculated in D.21-08-037 . . .").

[77] Decision at 61.

[78] D.21-08-037 at 58.

that evidentiary hearings would be held in Phase II of the proceeding (*i.e.,* after the interim rate cap was set).[79] The Commission's recycling of its analysis from its decision adopting the *interim* voice IPCS rate cap demonstrates that there are no novel factual findings that would support a permanent rate cap that is lower than the interim rate cap.

A. *The CDCR-Global Tel*Link Contract Is An Inappropriate Benchmark for the Commission's Permanent Intrastate IPCS Rate Cap*

The Decision's continued reliance on the CDCR-Global Tel*Link contract as an anchor for permanent rate design is among its most consequential and least supported choices. Most notably, this is an outdated 2020 contract that never even went into effect because it did not meet the complete terms of the CDCR's request for proposal.[80] Moreover, the contract reflects a unique procurement for the state's largest prison system and is not representative of the diverse set of county and city jails subject to the Commission's permanent cap. As Securus previously explained, the CDCR contract covers the largest facilities in the state all of which have ADP of well over 1,000,[81] reflects extraordinary economies of scale and scope that are unattainable at smaller carceral facilities,[82] bundles voice with non-voice services that may not be universally

[79] *Securus Technologies, LLC v. Public Utilities Commission* (2023) 88 Cal.App.5th 787, 803; *see also id.* at 802 (finding that evidentiary hearing is not required under Public Utilities Code section 728 when the Commission is imposing "*temporary* restrictions on rates while considering whether and how to regulate them long term.") (emphasis added).

[80] Securus Application for Rehearing of D.21-08-037, Ex. A, p. 9 (granting Securus's Petition for Writ of Mandate to the Superior Court of California to set aside the CDCR-GTL Contract).

[81] *See* Securus Comments on Staff Proposal at 18; Securus Reply Comments on Staff Proposal at 10.

[82] *See* Securus Comments on Staff Proposal at 18; Securus Reply Comments on Staff Proposal at 9, 10, and 13.

offered by all IPCS providers or offered to carceral facilities,[83] and is a renewal contract[84] under which the substantial, up-front capital costs of deploying network equipment and telephones to individual facilities have likely already been recovered.

While the Decision recognizes that "the Proposal identified a continuing need to address communication affordability and accessibility in *non-CDCR facilities*,"[85] the Decision nevertheless determines that the permanent rate cap for non-CDCR facilities should track CDCR's rate of $0.025 per minute. The CDCR-GTL Contract represents over half of California's total incarcerated population and the over 30 state prisons all hold over 1,000 ADP, the highest FCC IPCS facility population tier.[86] Importantly, that means that the cost to provide service to small, medium, or large jails in the state, which are the main targets of the Commission's permanent rate cap, were never considered in deriving the $0.025 per minute benchmark. Put simply, the CDCR-GTL Contract standard is not representative of county or city jails, smaller facilities, and smaller providers. Therefore, at a minimum, the Commission's rationale does not provide a lawful basis for a permanent statewide cap for non-CDCR facilities. But it also cannot support a permanent statewide cap even for CDCR facilities for the reasons set forth above.

[83] *See* Viapath Comments on Staff Proposal at 6 ("Voice IPCS is only one aspect of the complete solution that the CDCR requires under the contract. The contract includes many other services such as email, video messaging, movie and music streaming, e-books, and the supply of the required technology and hardware to enable use of these services. . ."); Securus Reply Comments on Staff Proposal at 9-10; TURN and CforAT Comments on Staff Proposal at 7-8.

[84] *See* Securus Reply Comments on Staff Proposal at 9.

[85] Decision at 18 (emphasis added).

[86] *See* Securus Reply Comments on Staff Proposal on Permanent IPCS Rates at 10.

B. *The FCC's 2021 Cost Comparison of Large Jails and Prisons Does Not Justify Basing an Intrastate Voice IPCS Rate Cap on the CDCR-GTL Contract*

The Decision also relies on an asserted FCC finding that "costs for jails with populations over 1,000 are up to 25% higher than the cost of serving prisons.[87] The Commission ignores that, in the same Order, the FCC unequivocally disagreed with the assertion that "size does not impact costs" and found that "providers incur higher costs per minute for jails with ADPs below 1,000 than for larger jails."[88] The FCC's 2024 and 2025 orders are consistent with that conclusion, with each setting higher rate caps for smaller facilities.[89] Moreover, the Decision erroneously concludes without any analysis or explanation that a 25% difference in the cost of providing IPCS to large jails versus prisons does not at minimum justify a tiered rate cap distinguishing large jails and prisons.

Even if it were reasonable for the Commission to find that cost differences of 25% between large jails and prisons are negligible, which it is not, the Decision does not apply the 25% differential. It sets the IPCS provider cost-recovery rate at the CDCR-GTL rate of $0.025, not 25% higher. It is nonsensical to justify a rate on a factor that is not applied. Moreover,the finding does not support the application of the permanent rate cap to medium and smaller jails, which constitute a majority of carceral facilities in California. The mere assertion that it costs 25% more to provide

[87] *See id.* at n.189 (citing D.21-08-037 at 52, citing Third Report and Order, FCC 21-60, at ¶ 148 [sic]) (correct citation: Third Report and Order, FCC 21-60, at n.145).

[88] *Rates for Interstate Inmate Calling* Services, WC Docket No. 12-375, Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking, FCC 21-60 ¶¶ 47 and 48 (2021).

[89] *See 2025 IPCS Order* at ¶ 21 ("Given the significant number of [small] jails and their distinct cost structures, and given their generally more rural nature, we find it necessary to further refine our rate cap tiers to better capture the variability among small jails generally and within the very small jail tier specifically to more accurately reflect providers' costs and ensure they are fairly compensated.") and ¶ 22 ("As a general matter, we agree with commenters that as ADP decreases, per-minute or per capita costs for the provision of IPCS increase for the provider."); *see also 2024 IPCS Order* at ¶ 148 ("The record nearly uniformly supports maintaining a rate cap structure that distinguishes among jails based on facility size.").

IPCS to large jails than to prisons does not challenge that it is more expensive per IPCS minute or per capita to provide IPCS to a facility with an even lower ADP because the fixed costs are spread across a smaller user base.[90] And furthermore, this assertion does not challenge that the Commission should adopt a higher or a tiered rate based on the actual cost of providing IPCS, especially in light of findings at the federal level that IPCS rate caps (including $0.02 for facility costs) should range between $0.10 for large jails and $0.19 for extremely small jails.[91] Those rate caps not only vary substantially by jail size, but also are all substantially higher than the $0.045 rate the Commission set for all jails statewide.

C. *Out of State Examples of Low Voice Call Rates Do Not Support the $0.045 Per Minute Rate Cap*

The Decision's reliance on isolated out-of-state examples of low per-minute rate caps fares no better.[92] Select rates from other states—many of which date back to five years ago—do not constitute evidence of reasonable costs for California's county and city jails today. Additionally, these rates were cited by the Commission in 2021 to support the notion that "$0.05 is a reasonable 'base rate' to use to identify the appropriate interim per-minute rate;" thus, they lack any evidentiary value to support a $0.025 base rate.

The out-of-state examples cited in the Decision also likely reflect unique circumstances, including state-run systems, large facilities, public subsidies or legacy contracts. They are apples-to-oranges examples that do not demonstrate that similarly low rates are feasible—or lawful—for smaller, locally operated facilities in California. The fact that the New Jersey Department of Corrections posted a $0.044 per minute rate in May 2021 or that the Illinois Department of

[90] *See 2025 IPCS Order* at ¶ 22.

[91] *See id.* at ¶ 8.

[92] Decision at n.190.

Corrections posted a $0.009 per minute rate in May 2021 should have no bearing on what the Commission should impose as a permanent intrastate voice IPCS rate cap today that would bind the providers of IPCS to lower ADP carceral facilities run by non-state level agencies in California. In addition, the New Jersey and Illinois examples are not relevant to the Commission's consideration of the permanent rate cap, given that CDCR, the operator of California's largest prison facilities, has been required to provide voice communications for free to incarcerated people since 2022. Similarly, 2021 rates in Dallas County jails and New York City jails are also not relevant, as these facilities could be located in less costly to serve areas with substantial jail populations that can support a lower per minute call rate and are not accurate proxies for lower ADP carceral facilities.

D. *The Commission's $0.02 Site Commission Adder Conflicts with Federal Law and Distorts the Rate Cap*

The Decision's finding that the $0.045 per minute permanent rate cap is supported by the Commission's designation of a $0.02 per minute set-aside for site commissions is misguided. When the Commission determined that the $0.07 per minute interim rate cap included a $0.02 per minute set-aside for site commission payments, it did so to mirror the FCC's approach for jails with ADPs greater than 1,000, per the FCC's Third Order.[93]

However, since the adoption of the Commission's interim IPCS rate cap, the FCC has ***prohibited*** site commissions through its 2025 Order.[94] Therefore, a permanent IPCS rate cap cannot lawfully incorporate a pre-set site commission value, and is preempted by the FCC's 2025

[93] *See* D.21-08-037 at 54.

[94] Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, *Incarcerated People's Communications Services*, WC Docket Nos. 23-62, 12-375, FCC 25-75 (rel. Nov. 6, 2025) ("*2025 IPCS Order*") at App. A (promulgating 47 C.F.R. § 64.6015, which is a prohibition against site commissions); *see id.* ¶ 130 (setting the date on which "compliance [with the new regulations] shall be required).

Order. Federal law overrides state law when state law is in actual conflict with federal law.[95] Conflict preemption exists when state law frustrates the accomplishment and execution of the objective of federal law or interferes with methods Congress selected to achieve those objectives.[96]

Finally, the Decision internally contradicts itself regarding the recovery of site commissions. On one hand, Conclusion of Law ("COL") 1, Ordering Paragraph ("OP") 1, and Finding of Fact ("FOF") 14 authorize $0.02 per minute in site-commission-equivalent recovery within the rate cap. On the other, OP 2 and COL 2 permanently prohibit providers from "paying or recovering site commissions, sign-on bonuses, or similar payments from the rates charged to end-users." Moreover, while FOF 15 acknowledges that the FCC's October 2025 Order maintained its prohibition on site commissions and added a rate additive of up to $0.02 per minute separate from its rate caps, the Decision provides no explanation to reconcile this finding with its statements relating to site commissions or its position that "audio safety and security functions" corresponding to the delivery of IPCS should be excluded from the calculation of the rate cap,[97] and effectively, be deemed a non-recoverable cost. Internal inconsistency on this scale constitutes an independent abuse of discretion under section 1757(a)(5) and a failure to proceed in the manner required by law under section 1757(a)(2).

E. *Facility Size Affects the Cost of Providing IPCS*

Finally, the Decision's reliance on the assertion that "costs to provide intrastate IPCS did not change based on the size of the facility" is misplaced and unsupported.[98] That proposition is

[95] *See Qwest Corp. v. Arizona Corp. Com'n*, 567 F.3d 1109, 1118 (9th Cir. 2009) (citing *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995)).

[96] *Id.* (citing *Int'l Paper Co. v. Ouellette*, 479 U.S. 481 (1987)).

[97] *See* Decision at 71.

[98] Decision at 61.

not a finding based on Phase II record development, but a carryover from D.21-08-037, where the Commission merely stated that the then-existing record did not persuade it one way or the other on whether costs vary by facility size.[99] That statement reflected an evidentiary gap—not an affirmative conclusion—and was made in the context of adopting an expressly *interim* rate cap without a developed cost record.

That interim conclusion rested in part on the Commission's rejection of Pay Tel's argument that it is more costly to serve facilities with ADPs below 1,000.[100] Critically, the Commission did not reject Pay Tel's argument on the merits; it rejected it because Pay Tel relied on cost data from the FCC's 2016 Order, which had been vacated.[101] The Commission has now transformed that procedural rejection—based on outdated data—into a substantive finding that facility size does not affect costs, without developing new evidence and without reconsidering the issue in light of current cost information.

That approach is especially untenable given the broad consensus that has long governed the industry. Industry providers, consumer advocates, and the FCC have all concluded that IPCS costs vary materially by facility size, with per-minute and per-capita costs increasing as ADP decreases.[102] As the FCC has recently reaffirmed, "as ADP decreases, per-minute or per-capita

---

[99] D.21-08-037 at 55.

[100] *Id.*

[101] *Id.*

[102] *See supra,* note 32; *see* 2024 IPCS Order ¶ 148 ("The record nearly uniformly supports maintaining a rate cap structure that distinguishes among jails based on facility size"), ¶ 156 ("ADP continues to be the most practical metric for determining the size of correctional facilities for the purposes of applying our rate caps."), and n.520 (reciting past FCC orders setting rate cap tiers based on facility type and size based on ADP); *see also Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act, Rates for Interstate Inmate Calling Services*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 25-75 ¶ 20 (2025) ("FCC 25-75") ("The Martha Wright-Reed Act directs the Commission to ensure just and reasonable rates and consider costs associated with 'small, medium, and large facilities' or 'other characteristics.' In the *2024 IPCS*

costs for the provision of IPCS *increase for the provider*."[103] That is why the FCC, in both its 2024 and 2025 orders, set rate caps that increase as facility size decreases. The Decision cites no record evidence developed in this proceeding to support the opposite conclusion, despite Securus's cost data showing an inverse relationship between ADP per-minute and per-capita costs. By relying on an outdated, record-limited statement from an interim decision to justify a permanent statewide rate cap, the Commission substitutes assumption for analysis and fails to make the relevant findings required by law.

VI. THE COMMISSION'S FINDINGS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE IN LIGHT OF THE WHOLE RECORD, INCLUDING SECURUS'S COST RECORDS

Under Public Utilities Code section 1757(a)(4), a Commission decision must be vacated or modified if its findings are not supported by "substantial evidence in light of the whole record." This standard requires more than selective citation or inference; it requires that the Commission meaningfully grapple with the evidence before it and explain how that evidence supports its conclusions. Here, multiple key findings in the Decision—especially those purporting to justify a uniform $0.045 intrastate IPCS rate cap—lack substantial evidentiary support and rest instead on demonstrably false premises and ignored record evidence.

A. *The $0.045 Rate Cap Is Untethered to Any Cost Record*

As Securus and other providers explained throughout Phase II, the Commission never implemented the process it repeatedly promised—through the Phase II Scoping Memo and subsequent rulings—for the systematic collection of cost data, including cost-structure workshops, discovery, guidance, or standardized reporting templates. Without such a process, the Commission

Order, the Commission interpreted this language as a mandate to analyze the cost characteristics of different-sized facilities.").

[103] FCC 25-75 ¶ 22 (emphasis added).

could not lawfully determine providers' costs, let alone whether a permanent rate cap allows recovery of those costs plus a reasonable return.

Nevertheless, in FOF 7, the Commission found that "[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."[104] That finding is untenable on its face. A conclusion about whether a rate covers the "cost of service plus a reasonable margin" necessarily presupposes that the Commission collected, evaluated, and relied upon cost-of-service evidence from IPCS providers. The Commission did not do so.

Notwithstanding the Commission's failure to establish a cost-collection framework, Securus submitted cost data into the record—the only documented costs submitted in the record. On October 29, 2024, Securus confidentially submitted cost data derived from its FCC mandatory data collection submissions, disaggregated by the FCC-prescribed ADP tiers.[105] That data shows that Securus's cost of providing voice IPCS ***exceeds $0.045 per minute across every ADP tier***, including large facilities. It bears repeating that although the overall proposed rate cap is $0.045, only $0.025 is available to recover IPCS providers' cost of service. In other words, the PD's permanent voice-only IPCS rate cannot recover Securus's actual cost of service, contrary to the statutory directive that providers be "fairly compensated."[106]

The Decision does not dispute this evidence, explain why it is unreliable, or reconcile it with FOF 7. Instead, the Commission simply proceeds as though no such cost data exists. A

[104] D.26-04-004 at 58, 75 (FOF 7).

[105] *See* Securus Comments on Staff Proposal, Confidential Appendix A (Oct. 29, 2024); Securus Comments on the PD at 6.

[106] 47 U.S.C. § 276(b)(1)(A).

finding that a rate cap is sufficient to cover providers' costs, while ignoring unrebutted evidence showing the opposite, is not supported by substantial evidence.

The Commission's error is underscored by footnote 194 of the Decision, which asserts—without analysis—that the $0.025 rate cap is economically feasible for IPCS providers.[107] Securus's cost data demonstrate precisely the opposite. Indeed, ***of the more than forty California facilities Securus operates, not one can provide voice IPCS at a per-minute cost at or below $0.025.***[108] To the contrary, Securus's facilities operate at per-minute costs ***nearly double the adopted cap***, ***and in many cases higher,*** once required security, monitoring, and operational costs are accounted for.[109] Footnote 194's conclusory assertion of economic feasibility is thus squarely contradicted by the only provider cost data in the record.

In addition, the Decision improperly dismisses critical cost categories Securus included in its aggregated cost calculations by asserting that those categories reflect "broader operational platform costs rather than the incremental telecommunication cost of providing voice calling."[110] That distinction is fundamentally flawed in the IPCS context. IPCS is not analogous to residential or retail voice service. Audio safety and security functionalities such as call monitoring, recording, alerting, and investigative tools, are not optional or ancillary features "bolted on" to a basic voice product. They are integrated features of IPCS and the defining characteristics that distinguish IPCS from other telephony services. These capabilities are legally and contractually required, operationally inseparable from voice calling in carceral environments, and integral to the provision of IPCS itself. That is precisely why, in its 2025 Order, the FCC adopted IPCS rate caps explicitly

[107] D.26-04-004 at 66 n.194.

[108] *See* Securus Comments on Staff Proposal at 13, 20-21; Confidential Appendix A.

[109] Securus Comments on the PD at 6; Confidential Appendix A.

[110] Decision at 71.

designed to allow providers to recover the costs of mandatory safety and security functionalities—recognizing that those capabilities are inherent to, and inseparable from, the provision of IPCS voice service.[111] By contrast, excluding those same cost categories from the intrastate per-minute rate analysis ignores the service model the FCC found persuasive and further demonstrates that the Commission's rate cap is untethered from the actual cost of providing IPCS**.** At a minimum, the Commission should have identified the issue of recovery of safety and security costs for notice, comment, or workshop before categorically excluding such costs in a revised PD.

B. *The Commission Had Access to Cost Data, Yet Ignored It*

The absence of substantial evidence is compounded by the Commission's incorrect assertion, in FOF 8, that "[n]o party provided data justifying significantly higher rates for county or city jails or summarizing costs to provide security functions."[112] The Commission provided no analysis, reasoning, or rationale for that conclusion.

Moreover, that statement is factually incorrect, as Securus provided precisely such data.[113] As noted above, Securus submitted cost data reflecting its costs of service, disaggregated by ADP tiers consistent with the FCC's rate-setting framework. That data necessarily captured differences in cost structures across facility sizes, including county and city jails, and included costs associated with security and monitoring functions integral to IPCS.

Moreover, the record reflects that Commission staff had access to all the cost data that IPCS providers submitted to the FCC pursuant to that agency's mandatory data collections, under an executed protective order. As Securus previously explained, Commission staff obtained access

---

[111] *2025 IPCS Order* at ¶ 29.

[112] D.26-04-004 at 59, FOF 8.

[113] See Securus Comments on Staff Proposal, Confidential Appendix A (Oct. 29, 2024); Securus Comments on the PD at 6.

to the FCC's IPCS cost database, covering multiple years of industry cost information, and executed the FCC's confidentiality acknowledgments permitting such access.[114] In light of that access, the Commission's claim that no cost data were available is false. A finding that no party provided relevant cost data cannot constitute substantial evidence where the record demonstrates that such data were both submitted by Securus and available to Commission staff through the FCC process.

C. *The Commission Mischaracterized the Record Regarding California-Specific Cost Data*

The evidentiary deficiencies are further illustrated by FOF 11, which states that "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."[115] Securus is an IPCS provider. And it submitted California-specific cost data that both justified a higher rate cap and a tiered rate cap structure. FOF 11 is thus false. The Decision does not engage with that submission or explain why it purportedly fails to qualify as "California-specific" cost data.

In addition, in its opening comments on the PD, Securus expressly requested that the Commission take notice of the FCC's interim interstate IPCS rate caps, which are based on analysis of actual provider cost data. Those caps are $0.11 per minute for jails and $0.10 per minute for large prisons (ADP 1,000+), ***more than double*** the Commission's proposed permanent intrastate rate cap.[116] The FCC's interim rate cap for extremely small jails (ADP 0–49) is $0.17 per minute, ***more than four times*** the Commission's adopted rate. When removing the Commission's designation of a $0.02 per minute set-aside for site commissions—which the FCC expressly

[114] See Securus Opening Comments on Staff Proposal at 13; WC Docket No. 12-375, Revised ICS Database Recipient Acknowledgment (July 26, 2021).

[115] D.26-04-004 at 60, 75 (FOF 11).

[116] *See 2025 IPCS Order* at ¶ 8; *see also* Securus Comments on PD at 10–12.

prohibited in its 2024 FCC Order[117]—the disparity between the FCC rate cap and proposed CPUC rate cap is even more stark, as seen below.

Facility Type	FCC Interim Rate Cap	Proposed CPUC Rate Cap	CPUC Rate Cap Minus Facility Cost Adder	FCC Rate Compared to CPUC Net Rate
Extremely Small Jails (ADP 0-49)	$0.17	$0.045	$0.025	6.8x higher
Very Small Jails (ADP 50-99)	$0.13	$0.045	$0.025	5.2x higher
Small Jails (ADP 100-349)	$0.11	$0.045	$0.025	4.4x higher
Medium Jails (ADP 350-999)	$0.10	$0.045	$0.025	4x higher
Large Jails (ADP 1000+)	$0.08	$0.045	$0.025	3.2x higher
Prisons (any ADP)	$0.09	$0.045	$0.025	3.6x higher

The Decision acknowledges that it reviewed information published by the FCC but asserts, without explanation, that the FCC information is "consistent with our findings regarding the cost structure" informing the Decision.[118] That conclusory assertion is wildly wrong, as the table above illustrates. The CPUC's uniform, $0.025 rate cap (plus $0.02 in site commissions) is not consistent with the FCC's rate caps (the lowest of which is $0.08 plus $0.02 in facility costs) or the rate structure (where the rate cap, but note the facility cost adder, increases as ADP decreases). There is no consistency with the FCC's current rate caps and rate structure. Indeed, once the common $0.02 facility cost adder is removed, the FCC's interim rate caps leave IPCS providers with substantially higher rate caps than the FCC found would allow cost recovery—nearly seven times higher for extremely small jails ($0.17 versus $0.025), and more than three times higher for the largest jails ($0.08 versus $0.025). The Decision's rate cap is below the FCC's lower bound of

[117] *See 2024 IPCS Order* at ¶ 245.

[118] D.26-04-004 at 62.

the zone of reasonableness, which by definition means the rate is confiscatory. Those stark disparities underscore that the Commission's uniform $0.025 rate cap bears no rational relationship to the FCC's cost-based analysis and further confirm that the Decision's finding of "consistency" lacks substantial evidentiary support. The Commission's findings are not supported by substantial evidence.

D. *The Commission Erroneously Faulted Providers for Failing to Submit Cost Data*

Parties repeatedly explained—both in opening comments and reply comments on the PD—that the Commission never followed through on its express commitments in the Phase II Scoping Memo to establish guidelines regarding what cost data should be submitted, in what format, and through what procedural mechanism. Providers have repeatedly asserted their reasonable reliance on the Commission's representations, to which the Commission refuses to respond.[119] It is arbitrary to fault providers for failing to comply with data-submission requirements that the Commission never established.

Against that backdrop, FOF 12 claims that "IPCS providers have not tendered a reasonable excuse for their failure to submit cost data for the Commission's consideration."[120] That finding disregards the undisputed procedural history of this proceeding.

In any event, the premise of FOF 12 is incorrect as applied to Securus. Despite the absence of Commission guidance, Securus submitted cost data seventeen months ago and Commission staff had access to additional provider cost data through the FCC process. And, as noted above, the Commission had access to the data all IPCS providers submitted to the FCC through that same

[119] Securus Comments on the PD at 1-3; ViaPath Comments on the PD at 1-3; NCIC Comments on the PD at 1-5; Securus Reply Comments on the PD at 1; Viapath Reply Comments on the PD at 1-3; NCIC Reply Comments on the PD at 1-4.

[120] D.26-04-004 at 61, 75 (FOF 12).

process. The finding that providers failed to submit cost data and lacked a reasonable excuse for doing so cannot be squared with the record.

FOF 11 and FOF 12 are also infirm because they draw an unwarranted negative inference against IPCS providers from a perceived failure to submit cost data. The California Supreme Court has held that such a negative inference can attach only where a party "fails to produce evidence that would *naturally* have been produced" that is, evidence as to which "in the nature of things his client is the only source from which that evidence may be secured."[121] The predicate fails on this record. First, Securus voluntarily submitted Confidential Appendix A on October 29, 2024, tendering the very category of evidence the Commission deemed missing; voluntary tender is the antithesis of suppression. Second, Commission staff had equal access to the cost data through the FCC database under an executed confidentiality acknowledgment, so Securus was not "the only source" of the evidence.[122] Third, no Commission rule or order required submission of the data in any particular form or on any particular schedule, so there was no culpable non-compliance to support the inference. FOF 11 and FOF 12 therefore rest on unsupported adverse inferences.

E. *The Commission's Finding Regarding Facility-Size Cost Differences Is Unsupported*

Finally, the Commission finds in FOF 10 that "[t]he data submitted by Securus does not show significant differences between facility size on a per minute basis."[123] But that is exactly what it shows. Specifically, Securus's aggregated cost data show per-minute costs declining materially as facility size increases—from approximately **[BEGIN CONFIDENTIAL]** [redacted]

[121] *Williamson v. Superior Court* (1978) 21 Cal.3d 829, 836, fn. 2 (italics in original); *see also Cedars-Sinai Medical Center v. Superior Court* (1998) 18 Cal.4th 1, 11–12; CACI No. 204 (2025).

[122] *Williamson, supra* note 121, 21 Cal.3d at 836, fn. 2.

[123] D.26-04-004 at 59, 75 (FOF 10).

[redacted].[124] **[END CONFIDENTIAL]** Those differences reflect a spread of roughly **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** and demonstrate clear economies of scale tied directly to facility size.[125] The Decision does not explain how it reached the opposite conclusion.

By contrast, the FCC found that the data that Securus and other IPCS providers submitted does show such differences. This is why the FCC adopted interim rate caps that vary materially by facility type and size—from approximately $0.08 per minute for large jails to $0.17 per minute for extremely small jails, excluding the FCC's $0.02 rate additive.[126] The difference between the low and high ends of the FCC's cost-based caps—approximately $0.08 per minute, or more than 50 percent—shows the FCC's finding that facility size materially affects IPCS costs. The Commission offers no explanation for rejecting both Securus's facility-specific data and the FCC's cost-based tiering. FOF 10 therefore also fails substantial-evidence review.

VII. THE COMMISSION FAILED TO PROCEED IN A MANNER REQUIRED BY LAW AND ABUSED ITS DISCRETION BY DETERMINING THE RECORD WAS ADEQUATE

A. *The Commission Erroneously Adopts Permanent Rate Caps Without a Cost Record*

The Commission failed to proceed in the manner required by law and abused its discretion by determining the record was adequate and adopted permanent intrastate IPCS rate caps without conducting workshops, discovery, evidentiary development, and further briefing on the cost of providing IPCS it repeatedly committed to undertake in Phase II. This was not a minor procedural

[124] *See* Securus Comments on Staff Proposal, Confidential Appendix A (Oct. 29, 2024).

[125] *Id.*

[126] *See* 2025 IPCS Order at ¶ 8.

deviation, but a wholesale abandonment of the Phase II ratemaking framework the Commission itself established and on which the parties reasonably relied.

From the outset of Phase II, the Commission made clear that permanent rate caps would be informed by actual cost data. The Commission has repeatedly represented that in Phase II of the proceeding, it would collect cost data from providers to inform the adoption of a permanent rate cap.[127] At the start of Phase II in this proceeding, ALJ Fogel determined that it would be appropriate to take comment on the methodology to develop permanent rates before finalizing how the cost data would be collected. That direction was expressly affirmed in the Assigned Commissioner's Phase II Scoping Memo, which stated unequivocally that "a solid rate and/or cost data must inform Commission adoption of permanent IPCS regulations."[128] The Commission also repeatedly represented that it would first establish a cost collection process, including a cost structures workshop and guidance on submission methodology, before expecting providers to file cost information.[129] A cost structures workshop to "inform subsequent guidance on precisely how IPCS providers should submit cost data in response to discovery requests," as well as a ruling setting forth expectations for providers in this workshop were also planned.[130] The Phase II

[127] *See, e.g.,* D.21-08-037 at 57 ("We encourage IPCS providers to provide cost data in Phase II of this proceeding as we consider adopting a more permanent rate cap."); D.22-04-038 at 23 ("The proceeding here was categorized as ratesetting an divided into two phases, with evidentiary hearings set for Phase II.")

[128] Phase II Scoping Memo at 7.

[129] The Commission stated at the beginning of this proceeding that it would assess cost data and even described the process that it would undertake. *See* Assigned Commissioner's Phase II Scoping Memo and Ruling Extending Statutory Deadline ("Phase II Scoping Memo") (Nov. 29, 2021) ("[A]nticipate providing an opportunity later in Phase II for parties to comment on questions regarding the methodology(s) and/or data sources the Commission should use to inform [its] adoption of permanent voice-only IPCS rate caps . . . .").

[130] Phase II Scoping Memo at 5.

Scoping Memo also listed, in relevant part, the following issues for the Commission's consideration in Phase II:

- What methodology should the Commission use to develop any permanent voice-only rate caps or ancillary fee requirements and/or any interim or permanent video calling and related services rate caps and/or ancillary fee regulations?"

- "What types of data should the Commission consider when developing permanent rate caps or ancillary fee requirements for voice-only IPCS and/or any interim or permanent video calling and related services rate caps 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?"

- "Should the CPUC 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?"

Ultimately, neither the workshop nor any corresponding ruling setting forth workshop expectations ever occurred. Even as late as April 2022, the Commission still maintained that cost data collection would be part of Phase II of this proceeding.[131] And when the Phase II scope was amended in May 2022, the Commission expanded the scope to include additional issues without removing cost methodology or cost data from the Phase II scope.

Despite this procedural history, Commission staff issued a proposal in September 2024 advocating for a ***permanent*** rate cap of $0.045 *without* having conducted any Commission-driven cost collection or analysis. The Ruling issuing the staff proposal contained no instructions, standards, or methodology for submitting cost data.[132] Faced with a proposal to adopt permanent rates without a cost record, Securus voluntarily submitted its own cost data in an attempt to spur the Commission to conduct this data collection.

---

[131] *See E-mail Ruling Providing Final Status Conference Agenda and Instructions* (Apr. 26, 2022).

[132] *See* ALJ Ruling Requesting Comments on Staff Proposal (Sep. 30, 2024), *Staff Proposal Permanent Rates for incarcerated Persons Calling Services Rulemaking 20-10-002*, R.20-10-002.

The Decision nevertheless criticizes IPCS providers for failing to submit cost data through a process that the Commission itself promised, but never implemented.[133] That posture is legally untenable. A regulated party cannot be faulted for failing to comply with a data-submission regime that never existed; nor should such party be required to guess what information the Commission may find useful in a ratemaking proceeding. Through these omissions, the Commission deprived parties of an opportunity to put forth key data to inform a reasonable permanent IPCS rate cap and withheld from these parties an opportunity to meaningfully and fully participate in the Commission's rulemaking process. That deprivation violates basic principles of administrative due process and constitutes a failure to proceed in the manner required by law.

B. *The $0.045 Permanent Rate Cap Is Not Just and Reasonable Under Public Utilities Code Sections 451 and 728*

The Decision deprives IPCS providers of a rate that satisfies the minimum requirements of Public Utilities Code sections 451 and 728. Section 451 requires that all rates be "just and reasonable;" and Section 728 directs the Commission, "after a hearing," to determine "the just, reasonable, or sufficient rates." The California Supreme Court has long applied the federal end-result test of *FPC v. Hope Natural Gas Co.*[134] and *Bluefield Water Works & Improvement Co. v. Public Service Commission*[135] to inform the California just-and-reasonable standard. Rates that are not "sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service" are "unjust, unreasonable, and confiscatory."[136] To satisfy

[133] *See* Decision at 61, 75 (Findings of Fact 11).

[134] *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602–03, 605 (1944),

[135] *Pacific Tel. & Tel. Co. v. Public Util. Comm'n*, 62 Cal. 2d 634, 647 (1965).

[136] *Bluefield Water Works & Improvement Co. v. Public Service Commission*, 262 U.S. 679, 690 (1923).

section 451, rates must "enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed."[137]

The Decision does not satisfy the requirements under sections 451 and 728. COL 1 asserts that the $0.045 per-minute cap is "just and reasonable as required by the Public Utilities Code." FOF 7 asserts that the cap—which is actually $0.025— is "sufficient to cover the documented cost of service plus a reasonable margin for providers." Both are conclusory and unsupported. The Decision identifies no "documented cost of service" of the California IPCS providers subject to the rate cap. Although Securus submitted IPCS cost data, the Decision cursorily dismisses this data as inflated due to the inclusion of audio safety and security costs and makes no finding about whether the Securus data is representative of California IPCS providers generally.[138] The Decision also identifies no "reasonable margin" that the cap purportedly provides; and the Decision makes no rate-of-return finding, no cost-of-capital finding, no rate-base finding, and no operating-expense recovery finding. The five-factor methodology recited by the Decision on page 61 does not establish the cost-coverage or margin-sufficiency that section 451 requires. The Decision's acknowledgment at page 62 that "it would be a fair inference to make" that the absence of provider evidence damages the providers' position cannot supply the affirmative cost determination the just-and-reasonable standard requires; an adverse inference is not a substitute for the affirmative determination of cost coverage. The only allocated California-specific cost record before the Commission, which is Securus's Confidential Appendix A, demonstrates that the cost of providing voice IPCS exceeds $0.025 per minute across every FCC-prescribed ADP tier.[139] The Decision

[137] *Hope Natural Gas*, *supra* note 134 at 605.

[138] Decision at 71.

[139] Securus Comments on Staff Proposal at 22, 26, and Confidential Appendix A.

rejects the Appendix A allocation on methodological grounds (Decision at 71–72) without supplying any substitute IPCS provider cost value upon which it bases the $0.025 voice IPCS rate cap for provider cost recovery.

The federal "fair compensation" standard confirms the section 451 defect. The MWR Act amended 47 U.S.C. § 276(b)(1)(A) to require that IPCS rates be both "just and reasonable" and provide "fair compensation" to providers. The FCC determined in the 2025 IPCS Order that audio rate caps in the range of $0.08 to $0.17 per minute across facility tiers, plus a separate $0.02 per-minute facility additive, are required for fair compensation on the basis of the FCC's industry-wide mandatory cost data collection, which resulted in an effective rate cap between $0.10 to $0.19. The FCC's determination is the operative federal cost-based benchmark for IPCS ratemaking. California's $0.045 cap, which is effectively $0.025 after the OP 2 prohibition offsets the $0.02 site-commission allowance, is roughly one-quarter to one-eighth of the federal floor, *with no California-specific cost analysis to justify the deviation*. A state cap set materially below the federal cost-based fair-compensation floor on a record without comparative cost analysis cannot satisfy the section 451 just-and-reasonable standard.

C. *The Tier 2 Advice Letter Mechanism for Future Rate Adjustments Is Insufficient.*

The Decision's invalid rate caps cannot be saved by deferring to a future Advice Letter ("AL") process that might permit individual providers to obtain higher rates. But the process for IPCS providers to be held to a rate cap higher than $0.045 is also deficient without a clear standard of review of such ALs. The Tier 2 AL is a ministerial process. It is designed for staff to apply facts to clear standards established by statute, Commission regulations, or Commission orders. The Decision's Tier 2 AL process for future requests by IPCS providers to increase their voice IPCS

rates above the $0.045 cap supplies no articulable standard for ministerial staff application.[140] The directive that the filing be "supported by comprehensive actual cost data" is not a standard—it is a mere list of documents without instructions on how to interpret or weigh the information in said documents. This list supplies no allocation methodology, return-on-equity benchmark, cost-of-capital benchmark, or submission timeline. As such, Communications Division staff cannot apply a standard that does not exist; and forcing staff to make a rate determination without a prescribed formula or roadmap forces them to make a discretionary (non-ministerial) decision regarding regulated rates that only the full Commission is statutorily authorized to undertake.[141]

D. *The Decision Erroneously Denies Securus's Motion for Leave to File Under Seal Confidential Appendix A to Opening Comments on Administrative Law Judge's Ruling Requesting Comments on Staff Proposal ("Confidentiality Motion")*

The Commission improperly denies Securus's October 29, 2024 Confidentiality Motion by withholding a ruling on this motion in the Decision. The Confidentiality Motion sought the Commission's confidential treatment of Securus's cost data for its California-based facilities and explanatory materials. The Decision resolves only two motions for leave to seal the record—Securus's August 15, 2022 motion and The Utility Reform Network's September 19, 2022 motion—and notes that "[a]ll motions not ruled on are deemed denied."[142] The Decision provides no explanation for the denial of the Confidentiality Motion, despite the fact that the Confidentiality Motion seeks the Commission's confidential treatment of Securus's sensitive cost data—the exact type of IPCS provider data that the Commission recognized would require parties in this proceeding to enter into a protective order in order to access.[143] The Confidentiality Motion

[140] *See* Decision at 64-65 and 77 (Ordering Paragraph 4).

[141] *See* Pub. Uti. Code Sections 451, 454(a), and 728.

[142] Decision at 67 and 78 (Ordering Paragraphs 9 and 10).

[143] *See E-mail Ruling Directing Preparation and Submittal of Proposals* (Sep. 17, 2021), R.20-10-002.

provided ample legal basis for the confidential treatment of Securus's cost data, and the Decision's denial of this motion without any explanation is arbitrary and capricious, and at odds with Public Utilities Code Section 583 and legal authorities protecting trade secret information.[144]

VIII. THE RATE CAP REQUIREMENT IN D.26-04-004 IMPOSES CONFISCATORY RATES, EFFECTS AN UNCONSTITUTIONAL TAKING, AND IS PREEMPTED BY FEDERAL LAW

The Decision's imposition of a uniform, permanent $0.045 intrastate IPCS rate cap violates Securus's constitutional rights under the Contracts Clause, Takings Clauses, and Supremacy Clause of the United States and California Constitutions.[145] These constitutional infirmities independently require rehearing and correction under Public Utilities Code section 1757(a)(6).

A. The Decision Substantially Impairs Existing IPCS Contracts in Violation of the Contracts Clause

The Contracts Clause prohibits states from passing laws that substantially impair existing contractual obligations unless the impairment is reasonable and necessary to serve an important public purpose.[146] The analysis proceeds in three steps: (1) whether the state law substantially impairs a contractual relationship; (2) whether the state has a significant and legitimate public purpose; and (3) whether the adjustment of the contractual rights is reasonable and appropriately tailored to that purpose.[147]

---

[144] *See* Cal. Evid. Code § 1060 (protecting against disclosure of trade secrets); U.S.C. § 522(b)(4) (excluding trade secrets from the general disclosure requirements applicable to federal agencies); 47 C.F.R. § 0.457(d)(1) (recognizing that the FCC is not required to disclose trade secrets under 5 U.S.C. § 522(b)(4)); Cal. Civ. Code § 3426.1(d); Cal. Gov. Code § 7922.000; *see also* D.20-12-021 at 33 ("If an agency wishes to maintain confidentiality of any records, the agency must find that, on the facts of the particular case, 'the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.'" (citing Cal. Gov. Code § 7922.000)).

[145] U.S. Const., art. I, § 10; U.S. Const., amend. V; Cal. Const., art. I, § 19.

[146] *U.S. Trust Co. of New York v. New Jersey,* 431 U.S. 1, 23 (1977); *Energy Reserves Group, Inc. v. Kansas Power & Light Co.,* 459 U.S. 400, 411–413 (1983).

[147] *Energy Reserves*, *supra* note 147 at 411–412.

1. *The Decision Causes a Substantial Impairment of Existing Contracts*

There is no dispute that Securus operates under long-term contracts with state and local correctional facilities that allocate financial risk, define pricing assumptions, and rely on negotiated compensation structures in effect at the time of contracting. By imposing a uniform, mandatory $0.045 rate cap untethered to actual costs and applicable to all facilities regardless of size, security requirements, or contract terms, the Decision nullifies core economic provisions of those existing contracts and dramatically alters the parties' bargained-for expectations.

Although parties operating in regulated industries cannot claim absolute immunity from regulatory change, the Supreme Court has been clear that regulation does not eliminate Contracts Clause protection.[148] Rather, the relevant inquiry is whether the impairment was foreseeable in scope and kind.[149] Here, while some degree of rate regulation may have been foreseeable, a permanent, confiscatory, one-size-fits-all rate cap adopted without a cost record and contrary to federal cost-based benchmarks was not.

Indeed, the Commission itself repeatedly represented during Phase II that permanent rate caps would be supported by cost-collection workshops, discovery, and California-specific cost analysis. Providers reasonably relied on those representations. A regulatory action that contradicts explicit procedural assurances and retroactively destroys the economic viability of existing contracts constitutes a severe and substantial impairment under the Contracts Clause.[150]

---

[148] *Allied Structural Steel Co. v. Spannaus,* 438 U.S. 234, 244–246 (1978).

[149] *Energy Reserves*, *supra* note 147 at 416.

[150] *U.S. Trust*, *supra* note 147 at 19–20.

2. *The Impairment Is Not Reasonable or Necessarily Tailored to Serve a Legitimate Public Purpose*

Even assuming the Commission seeks to advance the important public purpose of affordability for incarcerated persons and their families, the Contracts Clause requires that the impairment be reasonable and necessary to achieve that purpose.[151] Measures that are overly broad, indiscriminate, or unsupported by evidence do not satisfy this standard.

The Decision fails this test. The Commission imposed a rigid, uniform rate cap without developing a cost record, without tiering by facility size, and without considering less-impairing alternatives—such as cost-based tiering or targeted affordability mechanisms—that both Securus and other parties urged throughout the proceeding. Where a state could have achieved its objectives through less drastic modifications of the contractual relationships, the impairment is unconstitutional.[152] The Decision's blanket override of existing contracts is neither necessary nor narrowly tailored and therefore violates the Contracts Clause.

B. *The Rate Cap Is Confiscatory and Amounts to an Unlawful Taking*

Independently, the Decision effects a taking by imposing confiscatory rates that deny Securus a reasonable opportunity to recover its costs or earn a fair return on investment. It is well settled that rate regulation violates the Takings Clause if it is "so unjust as to destroy the value of the property" for all practical purposes.[153]

A regulated utility is entitled to a rate structure that is sufficient to maintain its financial integrity, attract capital, and compensate investors for the risks assumed.[154] Although the

---

[151] *Energy Reserves*, *supra* note 147 at 412; *U.S. Trust*, *supra* note 147 at 29–31.

[152] *U.S. Trust*, 431 U.S. 1,29-30 (finding that the determination of necessity is based on whether a less drastic modification would have achieved the agency's purpose.).

[153] *Duquesne Light Co. v. Barasch,* 488 U.S. 299, 307 (1989).

[154] *Bluefield,* 262 U.S. 679 (1923); *Hope Natural Gas, supra* note 134 at 603.

Commission has discretion in ratemaking, it may not set rates so unreasonably low as to be confiscatory.[155]

The burden rests on the utility to demonstrate confiscation, but that burden is met where the record shows that the adopted rates are below the utility's cost of service and threaten its financial viability.[156] Here, Securus's cost-per-minute data that it submitted to the Commission demonstrates that its actual cost of service substantially exceeds the PD's $0.045 rate cap. Across all jail size tiers, Securus's costs range from approximately **[BEGIN CONFIDENTIAL]** [redacted] **[END CONFIDENTIAL]** per minute even before accounting for any return.[157] Notably, even in the largest facilities—where economies of scale are greatest—Securus's costs remain approximately **[BEGIN CONFIDENTIAL]** [redacted] **END CONFIDENTIAL]** per minute, or double the PD's proposed cap.[158] These record-based figures confirm that the proposed rate is untethered from actual costs and would require Securus to provide service at well below its demonstrated cost of service across every facility tier.

Taken together, these features ensure that the adopted rates are not merely low, but confiscatory. Further evidence of its confiscatory nature is that the rate cap is below the lower bound of reasonableness adopted by the FCC based on industry-wide average costs. By depriving Securus of a reasonable opportunity to recover its costs or earn a fair return, the Decision threatens

[155] *Duquesne Light*, *supra* note 154 at 307.

[156] *See Hope Natural Gas, supra*, note 134 at 603.

[157] *See* Securus Comments on Staff Proposal, Confidential Appendix A (Oct. 29, 2024).

[158] *Id.*

Securus's financial integrity and ability to raise capital—precisely the outcome the Takings Clause forbids.[159]

C. *The Decision is Preempted by Federal Law*

Finally, the Decision is independently unlawful because it conflicts with, and is therefore preempted by, the federal IPCS regulatory framework. Although the FCC has concluded that intrastate IPCS rate caps set below the FCC's interim federal caps are not categorically prohibited, it made clear that any such state-level rates must be grounded in cost data and market conditions unique to that state. Specifically, the FCC explained that it "expect[s] that states setting intrastate rate caps will look at cost data and market conditions unique to that particular state," and expected that a state's intrastate rate cap that "is lower than the Commission's specified rate caps" would still "fall within th[e] zone" of reasonableness the FCC adopted.[160]

None of those conditions is satisfied here. The Commission did not develop or rely on California-specific cost data through any structured process, did not meaningfully evaluate state-specific market conditions. The Commission's rate cap of $0.025 for IPCS providers (plus $0.02 in facilities costs) is substantially below the lower bounds of the zones of reasonableness the FCC calculated for the non-facility costs at prisons ($0.086) and jails ($0.079 to $0.163) before the addition of $0.02 in facility costs.[161] The Commission's rate caps thus fall far outside what the

---

[159] *See, Hope Natural Gas*, *supra*, note 134 at 603 ("[T]he return to the equity owner should be … sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital."); *Railroad Com. of California v. Pacific Gas & Electric Co*., 302 U.S. 388, 401; D.10-10-036 at 5 ("Merely asserting in general language that regulation is confiscatory is insufficient; the facts relied on must specifically demonstrate that the rates or cost allocation necessarily deny plaintiff just compensation and deprive it of its property.").

[160] Incarcerated People's Communications Services; Implementation of the Martha Wright-Reed Act, FCC 24-75, ¶ 236 (2024).

[161] *Incarcerated People's Communications Services;* Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services, Report and Order and Further Notice of Proposed Rulemaking, FCC 25-75, WC Docket Nos. 23-62 & 12-375, ¶ 70 (rel. Nov. 6, 2025). The Commission's

FCC said in its 2024 Order states could do. Moreover, the FCC has expressly preempted site commission payments, making the PD's continued payment of site commissions unlawful.[162]

The Decision stands as an obstacle to the accomplishment of Congress's objectives under the MWR Act and the FCC's orders implementing that Act and is therefore preempted under the Supremacy Clause.

IX. REQUEST FOR RELIEF

The Decision's adoption of a permanent, uniform intrastate IPCS rate cap is unsupported by relevant findings or substantial evidence, contrary to governing state and federal law, and constitutionally infirm. At a minimum, the Commission should rescind those portions of the Decision that impose the $0.045 per-minute rate cap, rest on unsupported findings regarding cost recovery and fair compensation, or resolve issues beyond the scope of Phase II.

To cure these defects, the Commission should reopen Phase II for the limited purpose of conducting a comprehensive, data-driven cost analysis sufficient to derive a lawful permanent rate structure that reflects the actual cost of providing voice IPCS across facilities of different sizes and characteristics. Granting this relief will allow the Commission to correct legal error, fulfill its procedural commitments, and adopt a durable regulatory framework consistent with statutory and constitutional requirements. Finally, the Commission should reverse its improper denial of Securus's October 29, 2024 Confidentiality Motion by making a ruling in the Decision that the Motion should be granted.

$0.025 rate cap is also below the lower bounds of the zones of reasonableness the FCC calculated in its since superseded 2024 Order, which set lower bounds (that did not include any recovery of facility costs) of $0.049 for prisons and $0.047 to $0.109 for jails. *Incarcerated People's Communications Services*; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services, Report and Order, Order on Reconsideration, Clarification & Waiver, and Further Notice of Proposed Rulemaking, FCC 24-75, WC Docket Nos. 23-62 & 12-375, ¶ 207 (rel. July 22, 2024).

[162] See 2024 IPCS Order ¶ 245.

Taken together, Securus respectfully requests that the Commission grant rehearing and vacate or materially modify D.26-04-004.

Respectfully submitted,

/s/

Thaila K. Sundaresan
David Huang
DAVIS WRIGHT TREMAINE LLP
50 California Street, 23rd Floor
San Francisco, CA 94111
Tel. (415) 276-6500
Fax. (415) 276-6599
Email: thailasundaresan@dwt.com
Email: davidhuang@dwt.com

Attorneys for Securus Technologies, LLC

Dated: May 13, 2026