

Decision 21-08-037 August 19, 2021

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

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

Rulemaking 20-10-002

**DECISION ADOPTING INTERIM RATE RELIEF  
FOR INCARCERATED PERSON'S CALLING SERVICES**

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**APPENDIX A - REVISED STAFF PROPOSAL Interim Rate Relief for Inmate Calling Services**

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

**Summary**

This decision adopts interim caps on intrastate rates for incarcerated persons calling services (IPCS) of seven cents (\$0.07) per minute for debit, prepaid calls and collect calls. It prohibits the imposition of single-call, paper bill, live agent, and automated payment fees in association with intrastate and jurisdictionally mixed IPCS and requires the pass through, with no mark up, of third-party financial transaction fees, up to a limit of \$6.95 per transaction. It allows the pass through, with no mark up, of government taxes and fees for intrastate and jurisdictionally mixed IPCS. It prohibits the imposition of any other type of ancillary fee or service fee not explicitly approved in this decision. This decision applies to all telephone corporations providing intrastate IPCS in the State of California.

This decision directs telephone corporations providing intrastate IPCS to implement the adopted rate cap and ancillary fee requirements, submit a Notice of Compliance, and submit an Interim Rate Compliance Report within 45 days of issuance of this decision.<sup>1</sup> It directs telephone corporations providing intrastate IPCS to provide a Plan for Notification to all current and prospective customers and account holders, draft notices of the adopted ancillary fee requirements, terms and conditions, refund policies and customer service contacts for websites, bill inserts, and marketing materials to the California Public Utilities Commission (Commission) for review no later than 30 days from Commission issuance of this decision. The notices must provide service-related information

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<sup>1</sup> For simplicity, this decision frequently shortens the phrase “telephone corporations providing IPCS” to “IPCS providers,” but the phrases have identical meanings.

in English, Spanish and any other languages prevalent in incarceration facilities and must inform the incarcerated of methods to lodge service quality complaints with the Commission. This decision directs telephone corporations providing intrastate IPCS not explicitly identified in this decision to take similar steps within 45 days from executing a contract to provide IPCS in California.

These rate caps and ancillary fee requirements will remain in effect until the Commission adopts a subsequent decision in this proceeding.

This proceeding remains open.

## **1. Background**

The California Public Utilities Commission (Commission) opened Rulemaking (R.) 20-10-002 to *Consider Regulating Telecommunications Services Used by Incarcerated People* on October 8, 2020. The purpose of this rulemaking is to ensure that incarcerated people in California pay just and reasonable rates for intrastate calling services, under just and reasonable terms and conditions. As discussed in the Order Instituting Rulemaking (OIR), previous studies of incarcerated person's calling service (IPCS) rates found high and widely differing rates charged in California.<sup>2</sup> Egregiously high rates and fees and associated practices impede incarcerated person's ability to communicate with loved ones and financially burden incarcerated persons and their families.

The criminal justice system places an undue financial burden on low-income families and communities of color who face disproportionate rates of incarceration through costs imposed on incarcerated people and their families as part of being in prison or in jail. Studies show that as many as 34 percent of families go into debt to stay in contact with an incarcerated family member and

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<sup>2</sup> We use the term "incarcerated persons" throughout this decision in place of the term "inmates," used in the OIR.

the cost of maintaining contact with incarcerated persons falls to families and disproportionately on low-income women of color.<sup>3</sup> However, incarcerated people who have regular contact with family members are more likely to succeed after release and have lower recidivism rates because they maintain vital support networks.<sup>4</sup> A 2015 study found that incarcerated people had a median annual income of less than \$20,000 prior to their incarceration.<sup>5</sup>

IPCS in California are generally provided by private communications companies under contract with the entity that oversees or owns the correctional or detention facility.<sup>6</sup> While incarceration facilities may be owned or operated, either in whole part, by a private company, the facilities still are ultimately governed under contract with federal, state, county, or city government entities.<sup>7</sup>

Some 354 federal, state, and local correctional and detention facilities exist in California, detaining or incarcerating some 172,543 – 183,011 persons.<sup>8</sup>

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<sup>3</sup> Root and Rebound, Comments on Order Instituting Rulemaking at 3, citing, Saneta deVuonopowell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi. “Who Pays? The True Cost of Incarceration on Families.” Ella Baker Center for Human Rights, Forward Together, and Research Action Design. September 2015, available as of this writing at: <http://www.whopaysreport.org/who-paysfull-report/>.

<sup>4</sup> *Ibid*; WC Docket No. 12-375, *Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking* (FCC Third Order) at ¶¶ 35 -36.

<sup>5</sup> Root and Rebound, Comments on Order Instituting Rulemaking at 4, citing Bernadette Rabuy and Daniel Kopf. “Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned” Prison Policy Initiative. July 2015, available as of this writing at <https://www.prisonpolicy.org/reports/income.html>.

<sup>6</sup> Public Advocates Office (Cal Advocates), Comments on Order Instituting Rulemaking at 2.

<sup>7</sup> *Ibid*.

<sup>8</sup> The 172,543 figure is based on a Commission Staff data request to IPCS providers (December 2020). Adjusting this figure based on information posed online by incarceration facilities results in an adjusted figure of approximately 183,011 incarcerated persons in California, as of May 2021. The number of incarceration facilities currently operated also fluctuates, as facilities open and close. For simplicity, this decision uses the 172,543 average daily population throughout.

Commission Staff have identified the following total number of correctional facilities in California and total incarcerated population in California:

**Table 1: Summary of California Incarceration Facilities<sup>9</sup>**

Governing Authority	Approximate Number of facilities	Estimated Average Daily Population of Incarcerated <sup>10</sup>
Federal	16	11,480
State	89	94,553
County/Local	249	76,978
Total	354	183,011

The Federal Bureau of Prisons operates federal prisons and detention centers as well as federal immigrant detention facilities and military prisons.<sup>11</sup> The State of California incarcerates individuals in state prisons, correctional facilities, vocational institutions, medical facilities, four juvenile facilities, and approximately 43 “Conservation Camps.”<sup>12</sup> The California Department of Corrections and Rehabilitation (CDCR) oversees these state facilities and provides calling services to people who are incarcerated through a single statewide contract currently held by the IPCS provider Global Tel\*Link (GTL).<sup>13</sup>

<sup>9</sup> The Staff December 2020 data request instructed IPCS providers to identify the governing authority for each facility as state, local, or federal. The governing authority is the entity responsible for the operation of the incarcerated in the facility.

<sup>10</sup> Average Daily Population for some federal facilities were obtained from the Federal Bureau of Prisons, accessed June 24, 2021, at <https://www.bop.gov/>.

<sup>11</sup> Federal Bureau of Prisons locations accessed December 28, 2020 at <https://www.bop.gov/locations/list.jsp#>. (See Scoping Memo for list of facilities.)

<sup>12</sup> Cal Advocates, comments on Order Instituting Rulemaking at 3, citing California Department of Corrections and Rehabilitation “Facility Locator,” (accessed October 22, 2020, and December 28, 2020). <https://www.cdcr.ca.gov/facility-locator/>. Conservation camps house incarcerated people who serve as a source of labor to support the state’s response to emergencies such as fires, floods, and other natural or manmade disasters.

<sup>13</sup> Cal Advocates, Comments on Staff Proposal at 4; (See also CDCR Contract ID C5610009, available at: [LPA Contract Details \(ca.gov\)](#).)

California counties operate county jails for adults, including court holding facilities, temporary holding facilities and long-term jails.<sup>14</sup> California counties also manage approximately 70 juvenile detention centers and camps.<sup>15</sup> California cities also sometimes operate jails or holding facilities. Fifty-eight county sheriffs and probation chiefs negotiate their contracts independently with IPCS providers.<sup>16</sup>

This rulemaking builds on work by the Federal Communications Commission (FCC) to regulate interstate incarcerated person's communication services. In 2012, the FCC opened a rulemaking *In the Matter of Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375. The FCC did so to address concerns regarding a lack of competition in the incarcerated person's communication services market, which they said resulted in "locational monopolies" serving a "captive consumer base of inmates."<sup>17</sup> The 2012 FCC rulemaking resulted in a 2013 *Report and Order and Further notice of Proposed*

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<sup>14</sup> Public Policy Institute of California, "California County Jails: Just the Facts," October 2018, accessed December 28, 2020, at [https://www.ppic.org/wpcontent/uploads/JTF\\_CountyJailsJTF.pdf](https://www.ppic.org/wpcontent/uploads/JTF_CountyJailsJTF.pdf).

<sup>15</sup> Board of State and Community Corrections, data and research, accessed December 28, 2020, at [https://www.bscc.ca.gov/m\\_dataresearch/](https://www.bscc.ca.gov/m_dataresearch/).

<sup>16</sup> Root and Rebound, Comments on OIR at 6.

<sup>17</sup> Prison Policy Institute, Comments on OIR, citing First Report & Order ¶¶ 39-41, 28 FCC Rcd. at 14128-30; *Global Tel\*Link v. FCC*, 866 F.3d at 404 (*GTL v. FCC*, 866 F.3d) ("Once a long-term, exclusive contract bid is awarded to an [inmate calling service] ICS provider, competition ceases for the duration of the contract and subsequent contract renewals. Winning ICS providers thus operate locational monopolies with a captive consumer base of inmates and the need to pay high site commissions."); and, *Id.* at 111, 28 FCC Rcd. at 14217 (Ajit Pai, dissenting) ("[W]e cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable").

*Rulemaking* (2013 Order) adopting interim interstate IPCS rate caps of \$0.21 per minute for debit and prepaid calls and \$0.25 per minute for collect calls.<sup>18</sup>

In 2015, the FCC approved its *Second Report and Order and Third Further Notice of Proposed Rulemaking* (2015 Order). In this, the FCC stated that “there is little dispute that the [IPCS] market is a prime example of market failure.”<sup>19</sup> Among other things, the FCC’s 2015 Order imposed or updated fee caps on both interstate and intrastate inmate communication rates and ancillary fees.<sup>20</sup>

In 2017, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) struck down the portion of the 2015 FCC Order that attempted to impose intrastate rate caps as beyond the FCC’s statutory authority.<sup>21</sup> The D.C. Circuit also vacated the FCC’s 2015 rate caps, but the ancillary service fee caps adopted in 2015 remained in place.<sup>22</sup> The FCC estimates that roughly 20 percent of IPCS calls nationally are interstate calls and 80 percent are intrastate calls.<sup>23</sup>

In California, Senator Holly Mitchell introduced Senate Bill (SB) 555 on February 22, 2019, and the Legislature adopted SB 555 in September 2020. SB 555 capped rates for telephone communication services for incarcerated people at five cents (\$0.05) per minute and capped rates for video communications services at twenty-five cents (\$0.25) per minute. The bill prohibited several types of

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<sup>18</sup> See FCC Third Order at ¶ 13. The rate caps ordered by the FCC are also summarized in a FCC Consumer Guide “Inmate Telephone Service,” accessed January 5, 2021, and available at [https://www.fcc.gov/sites/default/files/inmate\\_telephone\\_service.pdf](https://www.fcc.gov/sites/default/files/inmate_telephone_service.pdf).

<sup>19</sup> 2015 Order ¶¶ 3 (Nov. 5, 2015).

<sup>20</sup> *Ibid.*

<sup>21</sup> *GTL v. FCC* 866 F.3d at 412.

<sup>22</sup> FCC Third Order at ¶ 14.

<sup>23</sup> *FCC Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking* (FCC 2020 Order on Remand) at ¶ 26.

ancillary fees, required any “site commissions” paid by IPCS providers to be used solely for the benefit of incarcerated people, and required counties to award contracts to providers offering the lowest cost for quality services.<sup>24</sup> Penal Code 4025 authorizes sheriffs’ departments to place commissions collected from IPCS providers in an inmate welfare fund that is to be used “primarily” for the benefit of incarcerated people.<sup>25</sup>

Governor Newsom vetoed SB 555 in late 2020. The Governor’s veto message said that he “strongly support[ed] the goals of the bill” but feared reductions to the inmate welfare fund would have the “unintended consequence of reducing important rehabilitative and educational programs for individuals in custody.”<sup>26</sup>

In response to the COVID-19 pandemic, the FCC in mid- 2020 asked the National Association of Regulatory Utility Commissioners (NARUC) and state regulatory commissions to act on intrastate inmate communication services rates to enable more affordable communications for the incarcerated and their families.<sup>27</sup> Shortly thereafter, NARUC asked state utility commissions to review the rates and terms under which telecommunications services are provided to

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<sup>24</sup> Section 3(f)(1) of SB 555 defines “commission or other payment” as any payments made to provide an incentive for the procurement of contracts, but does not include grants and other payments that do not increase the cost of telephone calls or communications or information services billed to consumers.”

<sup>25</sup> SB 555, Section 1(b)(3).

<sup>26</sup> Office of the Governor, SB 555 Veto Message, September 30, 2020, available as of this writing at: <https://www.gov.ca.gov/wp-content/uploads/2020/09/SB-555.pdf>.

<sup>27</sup> Letter from Ajit Pai to Brandon Presley (July 20, 2020), available as of this writing at: <https://docs.fcc.gov/public/attachments/DOC-365619A1.pdf>.

incarcerated people “and act, where appropriate.”<sup>28</sup> On October 8, 2020, the Commission opened R.20-10-002.

On March 1, 2021, the CCDR announced it had negotiated a statewide contract with the IPCS provider GTL to provide intrastate IPCS rates at the price of \$0.025 per minute to 90 state-run facilities, effective through 2026.<sup>29</sup>

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

- Lowers interstate interim rate caps to new interim caps for all calls of \$0.12 per minute for prisons and \$0.14 per minute for jails with populations of 1,000 or more;
- For prisons and larger jails, reforms treatment of site commission payments, allowing (1) revenue collection of an additional \$0.02 per minute for site commission payments that are reasonably related to the facility’s cost of enabling IPCS and where these result from contractual obligations or negotiations; and, (2) the pass-through without markup of any site commission payments

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<sup>28</sup> Nat’l Ass’n of Reg. Util. Comm’rs, NARUC Urges Members to Review Inmate Calling Rates (July 23, 2020), available as of this writing at <https://www.naruc.org/about-naruc/pressreleases/naruc-urges-members-to-review-inmate-calling-rates/>.

<sup>29</sup> Cal Advocates, Comments on Staff Proposal at 4; TURN, Comments on Staff Proposal at 12; See also State of California, Department of Technology, Statewide Technology Procurement, Department of Corrections and Rehabilitation and Global Tel\*Link Corporation, Agreement Number C5610009, Exhibit Tab 3 (Dec. 31, 2020) (\$0.025 per minute); California Department of Corrections and Rehabilitation, “California Department of Corrections and Rehabilitation Announces Reduced Cost of Telephone Calls for Incarcerated Population,” News Release (Mar. 1, 2021) <https://www.cdcr.ca.gov/news/2021/03/01/california-department-of-corrections-and-rehabilitation-announces-reduced-cost-of-telephone-calls-for-incarcerated-population/>. CDCR contract available here: [https://caleprocure.ca.gov/PSRelay/ZZ\\_PO.ZZ\\_CTR\\_SUP\\_CMP.GBL?Page=ZZ\\_CTR\\_SUP\\_P G&Action=U&SETID=STATE&CNTRCT\\_ID=C5610009](https://caleprocure.ca.gov/PSRelay/ZZ_PO.ZZ_CTR_SUP_CMP.GBL?Page=ZZ_CTR_SUP_P G&Action=U&SETID=STATE&CNTRCT_ID=C5610009)

- required under codified law or regulations up to a total rate cap of \$0.21 per minute;<sup>30</sup>
- For jails with populations less than 1,000, retains the per-minute rate cap of \$0.21 per minute adopted in 2013 for all calls, and prohibits collection of revenues beyond that level for site commissions;
  - Reforms ancillary service charge rules for third-party financial transaction and single-call fees by capping allowable pass-through charges at \$6.95 per transaction;<sup>31</sup>
  - Reaffirms that the jurisdictional nature of a telephone call for purposes of charging consumers depends on the physical location of the originating and terminating endpoints of the call;
  - Updates the waiver application process to apply to an individual facility or under a specific contract;<sup>32</sup>
  - Caps international calling rates;
  - Adopts a new mandatory data collection to gather data to set permanent rates; and,
  - Reaffirm providers' obligations regarding access for incarcerated people with disabilities.<sup>33</sup>

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<sup>30</sup> FCC Third Order at ¶¶ 100 – 168; *See also* FCC Third Order, footnote 304, which defines “law or regulation” as “state statutes and laws and regulations that are adopted pursuant to state administrative procedure statutes *where there is notice and an opportunity for public comment* such as by a state public utility commission or similar regulatory body with jurisdiction to establish inmate calling rates, terms and conditions” (emphasis added). FCC Third Order at ¶ 133 also requires mandated site commissions to be indicated as a line item distinct from the applicable per-minute rate component.

<sup>31</sup> FCC Third Order at ¶¶ 209 – 216.

<sup>32</sup> FCC Third Order at ¶ 171.

<sup>33</sup> FCC Third Order (May 24, 2021).

## 1.2 Procedural Background

On November 9, 2020, 16 parties filed opening comments on the OIR and on November 19, 2020, six parties filed reply comments.<sup>34</sup> The assigned Administrative Law Judge (ALJ) held a prehearing conference on December 10, 2020, to discuss the issues of law and fact, determine the need for hearing, set the schedule for resolving the matter, and address other matters. An *Assigned Commissioner's Scoping Memo and Ruling* (Scoping Memo) was issued on January 12, 2021. On April 2, 2021, the assigned ALJ issued a *Ruling Providing Staff Interim Rate Relief Proposal for Comment* (ALJ Ruling), containing a series of questions for parties to address in their comments on a Staff Interim Rate Relief Proposal (Staff Proposal).

On April 28, 2021, and April 29, 2021, the assigned ALJ held two remote Public Participation Hearings (PPHs). Over 600 people observed the two PPHs via live video stream, 120 people listened via telephone, and 85 individuals commented. Additionally, as of May 3, 2021, 203 individuals submitted

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<sup>34</sup> Parties filing opening comments on the OIR include the Californians for Jail and Prison Phone Justice Coalition (collectively, Justice Coalition, composed of five organizations, the Ella Baker Center for Human Rights, Friends Committee on Legislation of California, the San Francisco Financial Justice Project, Worth Rises, and the Young Women's Freedom Center), the Center for Accessible Technologies (CforAT), the Greenlining Institute, the Media Alliance, the Prison Policy Initiative, Inc., Cal Advocates, Root and Rebound, The Utility Reform Network (TURN), and the Youth Law Center. Communications services companies filing opening comments include Charter Fiberlink CA-CCO, LLC, Time Warner Cable Information Services (California), and Bright House Networks Information Services (California), LLC (Charter), Comcast Phone of California (Comcast), Cox California Telecom, LLC d/b/a Cox Communications, Global Tel\*Link Corporation (GTL), Inmate Calling Solutions, LLC d/b/a IC Solutions, Network Communications International Corp. d/b/a NCIC Inmate Communications, and Securus Technologies, LLC (Securus). Parties filing reply comments on the Order Instituting Rulemaking include Cal Advocates, Media Alliance, Prison Policy Institute, Inc., TURN, the Center for Accessible Technology, and AT&T Corporation (Pacific Bell Telephone Company d/b/a AT&T California, AT&T Corp., Teleport Communications America, LLC, and SBC Long Distance, LCC, d/b/a AT&T Long Distance).

comments on the public comment portal to R.20-10-002. Section 1.3 summarizes public comments provided during the PPHs and on the R.20-10-002 public comment portal.

On April 27, 2021, and April 30, 2021, 10 parties filed comments on the Staff Proposal.<sup>35</sup> On May 12, 2021, five parties filed reply comments.<sup>36</sup>

On May 4, 2021, the assigned ALJ issued a *Ruling Describing Process to Remove Most Telecommunications Carriers from Service List*. We discuss this and update the R.20-10-002 service list in section 9.

### **1.3 Public Comments Received**

#### **1.3.1. Public Comment Portal**

As of May 3, 2021, the R.20-10-002 public comment portal had received 203 written comments.<sup>37</sup> Of these, 197 commented on excessive rates, including 54 comments in support of free phone calls, and nine comments regarding IPCS customer service and dropped calls. While there were no comments from individuals describing themselves as currently incarcerated, there were two comments from formerly incarcerated persons. Commenters overwhelmingly describe the financial hardships of maintaining contact with their loved ones, especially during COVID-19 when in person visits are not possible, and urge the Commission take action to reduce rates and fees.

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<sup>35</sup> Parties filing opening comments included NCIC Inmate Communications, Securus, GTL, Pay Tel Communications Inc. (Pay Tel), MCI Communications Services LLC and MCI Metro Access Transmission Services Corp. (Verizon), the Justice Coalition, Pay Tel, TURN, Cal Advocates, PPI, and CforAT.

<sup>36</sup> Parties filing reply comments included Securus, TURN, Cal Advocates, PPI, CforAT, and the Justice Coalition.

<sup>37</sup> As of this writing, public comments posted to the docket card of R.20-10-002 can be viewed here: <https://apps.cpuc.ca.gov/apex/f?p=401:68:0::NO::>

### **1.3.1.1 Rates**

All but two commenters urge the Commission to lower and cap rates or make calling free.<sup>38</sup> There were no explicit comments supporting the Staff Proposal. Commenters spoke about the high IPCS costs. One commenter states that the "...financial burden is solely placed on family members."<sup>39</sup> Another states "...with connection fees, costs are \$150 per month...cost per minute is actually \$0.31."<sup>40</sup> Comments also address fees. "[T]he fee is \$7.95 for deposits up to \$25 and \$9.95 for \$25 and above."<sup>41</sup> Another commenter states "...please lower the cost of communications for incarcerated individuals, especially if they have not been convicted."<sup>42</sup> And "...fees are completely outrageous, then you add the connection fee, the per minute fee, add the time limit and families are being taken advantage of during some of the most difficult circumstances in their lives."<sup>43</sup> Another commenter says, "...eliminate all fees that are not the basic cost of a call."<sup>44</sup> There were comments in support of free calls, calling plans and pre-paid debit cards.

### **1.3.1.2 Service Quality**

Twelve commenters describe service quality issues such as dropped calls, and interruptions from prerecorded messages: "How do we correct the fact that once we get through for a collect call, that the phone from our end won't hang up

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<sup>38</sup> Comments submitted to public comment portal.

<sup>39</sup> Public comment on R.20-10-002 Public Comment Portal, March 26, 2021.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Id.*, April 28, 2021.

<sup>42</sup> *Id.*, April 21, 2021.

<sup>43</sup> *Id.* April 1, 2021.

<sup>44</sup> *Id.* April 29, 2021.

after connecting?”<sup>45</sup> And, “[w]hen the inmates have access to the phones, it is often difficult to hear them because of the poor manner in which much of the equipment is lackadaisically ‘maintained’ with no concern exercised by the institutions or the service providers.”<sup>46</sup> “These calls get disconnected all the time because of the awful signal. When a call is disconnected, that is a call spent.”<sup>47</sup> Another commenter describes that it is “[e]xtremely difficult for the elderly to navigate calls.”<sup>48</sup>

### **1.3.2 Public Participation Hearing Comments**

Eighty-five people provided comments during the PPHs held on April 28, 2021, and April 29, 2021. Most of the callers were friends and family of the incarcerated and advocates. Four commenters identified themselves as currently incarcerated, six commenters identified themselves as formerly incarcerated.

#### **1.3.2.1 Rates**

All PPH commenters support the Commission taking action to reduce rates, cap rates or make calling free. There were two comments in support of the Staff Proposal. One commenter spoke about calling her loved one, “...I have found I am spending two or three times the amount I spend on rent just to talk to him.”<sup>49</sup> Another said “...these phone calls that we get a day, they cost us an average of \$10 to \$12 a day for 30 minutes...definitely it’s money that we could be using for other things.”<sup>50</sup> Another caller said, “[a]ccess to reliable, affordable

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<sup>45</sup> *Id.*, April 28, 2021.

<sup>46</sup> *Id.*, April 29, 2021.

<sup>47</sup> *Id.* April 28, 2021.

<sup>48</sup> *Id.*, April 13, 2021.

<sup>49</sup> Reporter’s Transcript (RT) 188:12.

<sup>50</sup> RT 196: 11.

and consistent communication with family is critical in this pandemic for both the mental and physical health of incarcerated individuals and their families.”<sup>51</sup> A commenter spoke about paying over \$21,000 in fees over two years.<sup>52</sup> Commenters spoke about calls being dropped<sup>53</sup> after prepaying for a 15-minute call without getting refunds,<sup>54</sup> inadequate or no disclosures of fees,<sup>55</sup> and a lack of billing records.<sup>56</sup>

### **1.3.2.2 Service Quality**

PPH commenters made 15 comments related to service quality and billing. Commenters spoke about calls being dropped after prepaying for a 15-minute call with no refund, no or inadequate disclosures of fees, refund policies, and call-recording practices,<sup>57</sup> and a lack of billing records. Other comments described the difficulties of navigating the telephone prompts, stated that recorded messages played during calls interrupt and reduce call time, stated that technologies are inconsistent and not user friendly, stated that phones and equipment are out of order, and decried a lack of service quality protections.

## **2. Jurisdiction**

The California Constitution and the Public Utilities Code vest in the Commission regulatory authority over public utilities, including telephone

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<sup>51</sup> RT 206: 12.

<sup>52</sup> RT 239:24.

<sup>53</sup> RT 203:8.

<sup>54</sup> RT 73:15, 119:9-11, and 233:6-11.

<sup>55</sup> RT 230:4

<sup>56</sup> RT 100:16 – 26.

<sup>57</sup> RT 104:4 – 14.

corporations.<sup>58</sup> The Public Utilities Code defines “telephone corporations” as “every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state”<sup>59</sup> and, in turn, defines “a telephone line” to include “all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires.”<sup>60</sup>

The Commission has authority to ensure that all rates charged by a public utility are “just and reasonable” by requiring a “showing before the [C]ommission that the... rate is justified.”<sup>61</sup> In its consideration of rates, the Commission has the authority to determine what is just and reasonable, and to disallow costs not found to be just and reasonable.<sup>62</sup> The Commission has plenary authority to carry out this mandate.<sup>63</sup> Additionally, some of the providers of IPCS in California hold Certificates of Public Convenience and Necessity (CPCNs) and

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<sup>58</sup> Cal. Const., art. XII, §§ 3, 6; *see also* Pub. Util. Code, § 216, subd. (b) (“Whenever any . . . telephone corporation . . . performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation or payment whatsoever is received, that . . . telephone corporation . . . is a public utility subject to the jurisdiction, control, and regulation of the commission and the provisions of this part.”).

<sup>59</sup> Pub. Util. Code, § 234, subd. a.

<sup>60</sup> Pub. Util. Code, § 233.

<sup>61</sup> Pub. Util. Code §§ 451, 454, subd. a.

<sup>62</sup> Pub. Util. Code § 728.

<sup>63</sup> Pub. Util. Code, § 701. The Commission may not, of course, exercise its authority where preempted by federal law, *see* U.S. Const., art. VI, cl. 2, or where to do so would expressly contradict state law, *see* *Assembly v. Pub. Util. Com.* (1995) 12 Cal. 4th 90, 103.

the Commission has the statutory authority to grant and to revoke CPCNs, to condition the grant of CPCNs, and to regulate CPCN holders.<sup>64</sup>

This Commission has typically promoted market competition as a way to achieve just and reasonable telecommunications rates for competitive local exchange carriers, which IPCS is properly considered,<sup>65</sup> but we have also consistently recognized the need to regulate the rates of monopoly services.<sup>66</sup> In D.06-08-030, we adopted a Uniform Regulatory Framework (URF) providing for the gradual elimination of rate regulation for most incumbent local exchange carriers, and included competitive local exchange carriers in the definition of “URF-Carrier.”<sup>67</sup> However, Decision (D.) 06-08-030 states that the Commission “retains the authority and firm resolve, should it see evidence of market power abuses, to reopen this proceeding and promptly investigate any such abuses.”<sup>68</sup> D.06-08-030 defines “market power” as “the ability of a company to sustain prices at levels above those a market would produce by restraining the supply of voice services to the market.”<sup>69</sup>

Since the sunset of Public Utilities Code Section 710 in January 2020, the Commission has asserted its general authority over Voice over Internet

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<sup>64</sup> Pub. Util. Code, §§ 1001-1013.

<sup>65</sup> See D.01-02-025, Order ## 5, 6; D.04-05-049, Order # 3; D.06-06-017, Order ## 1, 3. See also 47 C.F.R. § 51.903(a). “A Competitive local exchange carrier is any local exchange carrier, as defined in § 51.5, that is not an incumbent local exchange carrier.” The Commission has previously defined carriers in similar categories, including a competitive local carrier and a nondominant interexchange carrier.

<sup>66</sup> See D.94-09-065, 1994 Cal. PUC LEXIS 681 at 50-51.

<sup>67</sup> D.06-08-030, Order 13. See also D.07-09-019, Appendix A (Telecommunications Industry Rules), Rule 1.14.

<sup>68</sup> *Id.* at Conclusion of Law 32.

<sup>69</sup> *Id.* at 52.

Protocol (VoIP) technology. In D.19-08-025, we deemed VoIP providers to be “telephone corporations” pursuant to Public Utilities Code Section 234 and “public utilities” subject to the Commission’s authority. We stated that “VoIP providers clearly fit within the plain language of the definition of a public utility ‘telephone corporation’” and as such are subject to the Commission’s authority under Public Utilities Code Section 451 to ensure that customers receive safe and reliable service at just and reasonable rates.<sup>70</sup> In D.20-09-012, the Commission upheld D.19-08-025 and provided extensive discussion supporting its findings and conclusions, including that VoIP providers are telephone corporations and public utilities and as such subject to our jurisdiction and requirement to ensure just and reasonable rates.<sup>71</sup>

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

This decision addresses the following Phase 1 issues identified in the Scoping Memo:

- a. How should the Commission define IPCS?
- b. Should the Commission examine the conditions of IPCS market competition in California?
- c. Should the Commission provide immediate interim relief to meet the IPCS needs of incarcerated people and their families at just and reasonable rates, including those with communication disabilities. If so, how?
- d. Should FCC regulations over interstate and international calls inform the Commission’s approach to intrastate IPCS? If so, how?

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<sup>70</sup> See D.19-08-025 at 9-10, citing Pub. Util. Code §§ 216, 234, 701 and *Id.* at 32 and Conclusion of Law 6.

<sup>71</sup> D.20-09-012 at 31- 41.

- e. Should the Commission use some elements of FCC orders but not others as models for ensuring just and reasonable, and affordable, IPCS rates in California?

**4. Defining “Incarcerated Persons Calling Services” for Purposes of this Decision**

The Scoping Memo provides a working definition of “incarcerated persons calling services” for the purposes of this proceeding.<sup>72</sup> The Scoping Memo also states that it seeks information on “all communication services under the Commission’s jurisdiction, including (but not limited to) voice calling, [VoIP] calling, video calling, texting, and all additional communications services serving people with disabilities.” The ALJ Ruling asked if the Staff Proposal appropriately defines IPCS for purposes of Staff’s Interim Rate Relief Proposal.

In their initial and Revised Staff Proposals, Staff state that their proposal is only addressing rates for voice communication services but did not further define this term.<sup>73</sup>

The Revised Staff Proposal (attached as Appendix A) notes that the FCC Third Order defines “jails” as a facility of a local, state, or federal law enforcement agency that is used primarily to hold individuals who are; (1) awaiting adjudication of criminal charges; (2) post-conviction and committed to confinement for sentences of one year or less; or (3) post-conviction and awaiting transfer to another facility. The proposal states that the term also includes city, county or regional facilities that have contracted with a private company to manage day-to-day operations; privately-owned and operated facilities primarily engaged in housing city, county, or regional incarcerated persons; and facilities used to detain individuals pursuant to a contract with U.S. Immigration and

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<sup>72</sup> Scoping Memo at 23.

<sup>73</sup> Revised Staff Proposal at 1, provided in Appendix A of this decision.

Customs Enforcement. The Revised Staff Proposal defines “prisons” as including facilities that would otherwise fall under the definition of a jail but in which most incarcerated persons are post-conviction or are committed to confinement for sentences of longer than one year.<sup>74</sup>

Staff’s Revised Proposal recommends the Commission adopt the FCC’s definition of prisons and jails for all detention facilities without explicitly or implicitly exempting any facility type. Staff recommend that facilities included in the Commission’s definition of “incarcerated person’s calling services” include any local, state, or federal correctional or detention facility type operated in California housing adults and/or juveniles, including but not limited to city and county jails, federal and state prisons, correctional facilities, juvenile detention facilities, holding centers, camps, psychiatric hospitals, immigration detention centers, military jails, and tribal jails.

This decision adopts Staff’s recommended approach.

#### **4.1 Party Comments**

Securus and GTL object to the Scoping Memo’s reference to video calling, text messaging, and other non-voice communication services as within the definition of incarcerated person’s calling services.<sup>75</sup>

NCIC Inmate Communications recommends the Commission clarify that voice communications as used in the Staff Proposals includes IPCS providers using VoIP-enabled technology.<sup>76</sup>

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<sup>74</sup> *Ruling Providing Staff Interim Rate Relief Proposal for Comment*, Attachment A, April 2, 2021 (Staff Proposal).

<sup>75</sup> Securus, Comments on Staff Proposal at 6; GTL Comments on Staff Proposal at 3.

<sup>76</sup> NCIC Inmate Communications Comments on Staff Proposal at 3.

## **4.2 Discussion**

The interim rate relief adopted in this decision applies to intrastate IPCS provided to any local, state, or federal correctional or detention facility type operated in California housing adults and/or juveniles, including but not limited to city and county jails, federal and state prisons, correctional facilities, juvenile detention facilities, holding centers, camps, psychiatric hospitals, immigration detention centers, military jails and tribal jails.

We define intrastate IPCS for purposes of this decision as including (but not limited to) voice and interconnected VoIP calling, including voice and VoIP voice communications services serving people with disabilities. As discussed above, IPCS providers providing such services are telephone corporations and public utilities and as such are subject to our jurisdiction and the requirement of Public Utilities Code Section 451 to ensure just and reasonable rates.

This decision does not address party comments regarding video calling, text messaging, and other non-voice communication services. We will review the definition of “incarcerated person’s calling services” adopted for purposes of this decision later in this proceeding.

## **5. The Record Indicates High and Widely Varying Rates for IPCS in California**

This section examines the results of Staff and Cal Advocate’s initial investigations into the prices charged for IPCS in California incarceration facilities. We find that IPCS providers charge widely varying and, in some cases, excessively high prices in California for the same services, resulting in unjust and unreasonable rates. Further, we find that IPCS providers operate locational monopolies and, whether individually or collaboratively with incarceration facilities, use their monopoly status within facilities to exercise market power. As such, in later sections of this decision we exercise the Commission’s authority

and jurisdiction over telephone corporations under Public Utilities Code Section 451 to regulate IPCS rates and fees.

This section begins by reviewing Staff and Cal Advocates' findings regarding IPCS prices in California. Next, we review parties' interpretations of these findings and conclude with our own discussion of their significance.

### **5.1 Staff Findings on IPCS Rates**

Based on its data request to over 800 licensed and registered calling service providers, the Staff Proposal identified six providers that serve the IPCS market in California, providing calling services to approximately 354 incarceration or detention facilities. The six providers identified by Staff are:

- Securus;
- GTL;
- IC Solutions;
- Legacy Inmate Communications;<sup>77</sup>
- NCIC Inmate Communications; and,
- Pay Tel.

Staff found that intrastate IPCS per-minute rates in California are as high as \$1.75 per minute and connection fees or first minute rates are as high as \$3.60 per minute. Staff also found that a 15-minute intrastate IPCS phone call in California can cost the caller as much as \$26.25 solely in per-minute charges, excluding any other transaction fees.

The initial Staff Proposal provided Staff's analysis of IPCS data. Staff's Revised Proposal (attached as Appendix 1 to this decision) updates Staff's initial proposal slightly, based on Staff's analysis of the impact of adopting the 2021

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<sup>77</sup> Legacy Inmate Communications is in the process of exiting the IPCS market.

FCC Third Order rate caps of \$0.14 per minute for jails and \$0.16 per minute for prisons:

**Table 2: Staff Summary of Findings<sup>78</sup>**

<b><u>Incarcerated Person’s Calling Service Provision in California</u></b>	
Approximate number of facilities	354
Estimated inmate population	172,543
Facilities with rates over \$0.21 per minute	186
Population affected by initial Staff Proposal	46,649
Facilities with rates over \$0.16 per minute	218
Population affected by Staff’s Revised Proposal	64,356
<b>Calling Service Rates</b>	
Highest per minute rate	\$1.75
Highest 1st minute rate	\$3.60
<b>Ancillary Charges</b>	
Highest single-call rate	\$3.00
Highest automated payment charge	\$3.00
Highest third-party fee	\$6.95
Highest live agent fee	\$5.95
Highest paper bill fee	\$2.49

Staff also identified the fees and charges included in IPCS service contracts showing the extent of the various charges carriers currently provide. Staff found that the per-minute charges summarized in Table 2 are only a portion of the fees incarcerated persons are subject to. Staff found that most of the fees intrastate IPCS providers are currently charging are not imposed in any other segment of the telecommunication market in California.<sup>79</sup>

As a result of these and other findings, the Staff Proposal concludes that intrastate IPCS providers are operating “monopolies and are charging inmates

<sup>78</sup> Staff Proposal, Attachment A; Revised Staff Proposal, provided in Appendix 1 to this decision, Attachment A.

<sup>79</sup> Staff Proposal, Attachment B.

and their families unreasonable rates, which is unlawful.”<sup>80</sup> Staff also assert that the IPCS market “demonstrates market power abuse:”<sup>81</sup>

Staff was unable to identify any instance in which an inmate or any person communicating with an [incarcerated person] has a choice of service provider. Accordingly, [incarcerated person’s] calling services providers are the sole providers within any given detention center. In[carcerated persons] are a captive customer class who have no choice in service provider, and therefore, must pay exorbitant communication service rates or forego communication with family or friends.<sup>82</sup>

Based on their research, Staff recommend that the Commission take immediate action to institute interim rate relief.

## **5.2 Cal Advocates’ Findings on IPCS Rates**

Cal Advocates presents a detailed analysis of intrastate IPCS rates in California to supplement Staff’s analysis. Cal Advocates bases its analysis on data request responses from four of California’s largest IPCS providers- Securus, GTL, IC Solutions, and NCIC Inmate Communications.<sup>83</sup>

Cal Advocates concludes that the average per-minute calling rates for intrastate IPCS in California vary significantly by incarceration facility type (prison, county, and local jails for example), with the highest rates often being two to three times more expensive than the state-wide average rate. We reproduce Cal Advocates’ summary findings in Figure 1 below:

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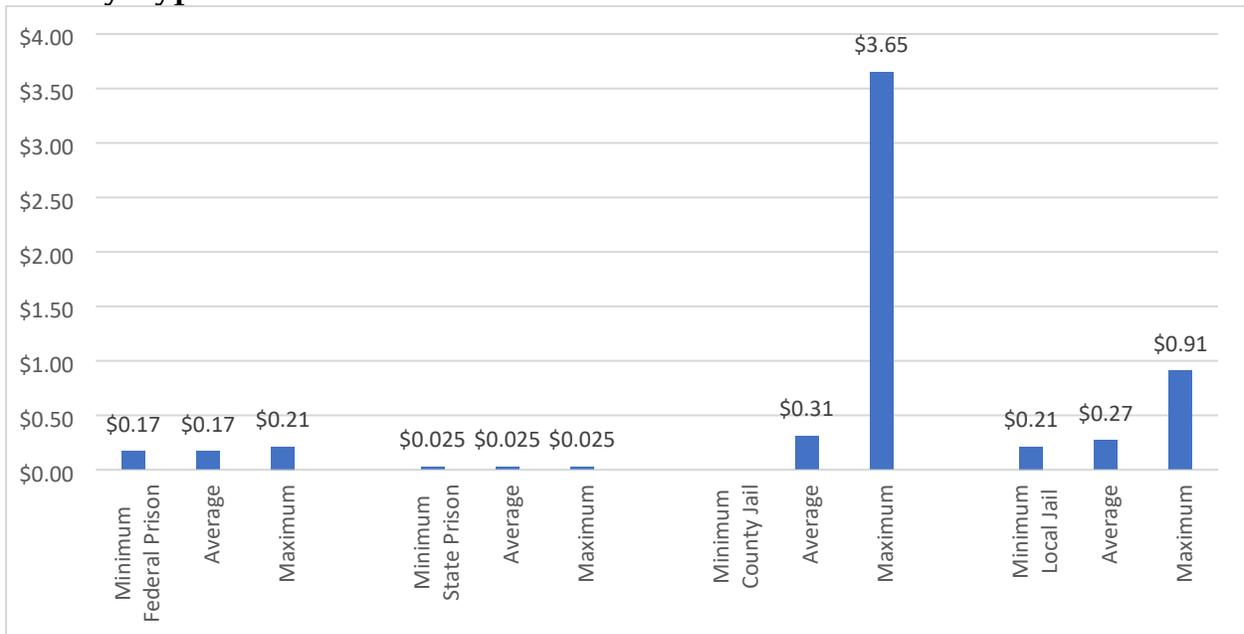
<sup>80</sup> Staff Proposal at 2.

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

<sup>83</sup> Cal Advocates, Comments on Staff Proposal at 6; figures provided by Cal Advocates are as of April 2021.

**Figure 1: California Intrastate IPCS Pre-Paid Call Per-Minute Rates by Facility Type<sup>84</sup>**



As illustrated in Figure 1, Cal Advocates indicates that:

- Intrastate IPCS rates in county jails are about 996 and 82.4 percent higher, respectively, than those in state and federal prisons in California.<sup>85</sup>
- Intrastate IPCS rates in local (city) jails are about 1,124 and 58.8 percent higher, respectively, than those in state and federal prisons in California.<sup>86</sup>
- Intrastate IPCS rates in federal prisons in California are, on average, 584 percent higher than the \$.025 per minute rate recently instated between the CDCR and GTL.<sup>87</sup>

<sup>84</sup> *Ibid.*

<sup>85</sup> Cal Advocates, Comments on Staff Proposal at 6, April 30, 2021.

<sup>86</sup> Cal Advocates, Comments on Staff Proposal at 6, April 30, 2021.

<sup>87</sup> *Ibid.*

Cal Advocates presents the following summary table:

**Table 3: Average Intrastate IPCS Pre-Paid Per-Minute Calling Rates by Facility Type Compared to State Prison IPCS Calling Rates<sup>88</sup>**

Facility Type	Intrastate IPCS Per-Minute Rate	Average \$ Greater than State Rate	Average Percent Greater than State Rate
State Prisons	\$0.025		
Federal Prisons	\$0.171	\$0.146	584%
County Jails	\$0.306	\$0.281	1124%
Local Jails	\$0.274	\$0.249	996%

Based on its analysis, Cal Advocates concludes that IPCS rates are “unreasonably high in both county and local jails in comparison with [IPCS] rates in both state and federal prisons.”<sup>89</sup>

**5.3. Parties Differ on the Cause and Significance of the High and Widely Varying IPCS Rates in California**

No party disputes Staff or Cal Advocates’ findings regarding IPCS prices in California. Where party comments differ is on the cause and significance of these prices. This section summarizes these opposing views.

**5.3.1 IPCS Provider Comments**

The basic contention of IPCS providers, led by Securus, is that high IPCS rates are just and reasonable if they reflect the actual costs of providing calling services within incarceration facilities. They allege that the costs of providing calling services within incarceration facilities are high because the facilities require additional security and monitoring features not required in commercial markets, and they require or allow the payment of site commissions.<sup>90</sup> The IPCS

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<sup>88</sup> *Ibid.*

<sup>89</sup> *Id.* at 6.

<sup>90</sup> *See* discussion in section 1 of this decision.

providers allege that smaller facilities cost more to serve because facilities have varied needs and providers cannot leverage economies of scale. The IPCS providers state that, taken together, this leads to higher costs and higher IPCS rates.

Securus proposes that, for purposes of adopting interim rate relief, the Commission should treat the FCC's adopted rate caps as benchmarks and allow providers to negotiate rates above these levels within a reasonable range or allow a waiver application process. Further, the Commission should examine providers' actual costs and IPCS market bidding dynamics before adopting any permanent rate caps according to Securus.<sup>91</sup>

The IPCS providers reject Staff's conclusion that the IPCS market in California is monopolistic and allows for the exercise of market power. Securus states that the existence of at least six IPCS providers in California competing through Request for Proposal (RFP) processes for IPCS contracts belies the conclusion that providers exercise monopoly power to unilaterally set rates.<sup>92</sup> Securus states that IPCS rates are "set in a collaborative manner with agency customers"<sup>93</sup> or "dictated" by the facilities.<sup>94</sup> Securus argues that "[t]he practice of utilizing a competitive bidding process to select a sole provider has in fact resulted in substantial rate reductions."<sup>95</sup>

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<sup>91</sup> Securus, Comments on Staff Proposal at 3-5, 8-9.

<sup>92</sup> *Id.* at 12.

<sup>93</sup> *Id.* at 14.

<sup>94</sup> *Id.* at 3.

<sup>95</sup> *Id.* at 14. Securus provides no summary data to bolster this claim but may be referring to its own statement that it has "invested in new technologies and infrastructure that have substantially reduced its reliance on third-party single-call services, saving an average of 30 percent in total costs of each call" (*Id.* at 2).

In comments on the proposed decision, Securus argues that data from the Prison Policy Initiative indicating that rates declined between 2018 and 2020 for 67 state systems reflects the existence of a competitive market.<sup>96</sup> GTL states that its actions to increase the affordability of calls and provide free calls reflect a competitive market.<sup>97</sup> Securus rejects the notion that it operates locational monopolies, stating that “[c]orrectional facilities are not locational monopolies and site commission payments are not locational rents or shared profits. Site commissions instead are ‘costs of doing business incurred by ICS providers.’”<sup>98</sup>

IPCS providers also argue that the IPCS market is not monopolistic because government bodies are “free to award contracts to multiple vendors” but decline to do so because awarding contracts to multiple providers would “increase infrastructure installation, redundant security capabilities, training of separate platforms, and increase amount to consumers.”<sup>99</sup> GTL asserts that it has recently improved the affordability of calls or provided free calls, which it states is the “very antithesis of ‘abuse.’”<sup>100</sup>

### **5.3.2 Other Party Comments**

Cal Advocates, TURN, CforAT, Prison Policy Institute, the Justice Coalition and two calling service provider parties, NCIC Inmate Communications and Verizon, agree with Staff’s conclusion that high and widely divergent IPCS rates and a lack of provider choice for incarcerated people indicates the existence of locational monopolies exercising market power.

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<sup>96</sup> Securus, Comments on Proposed Decision at 5.

<sup>97</sup> GTL, Comments on Proposed Decision at 7.

<sup>98</sup> Securus, Comments on Proposed Decision at 6, citing *Global Tel\*LinkvFCC*, 866 F.3d 397, 413 (D.C. Cir. 2017).

<sup>99</sup> *Id.* at 13.

<sup>100</sup> GTL, Comments on Staff Proposal at 15.

CforAT states that IPCS rates are “extra-competitive,” or higher than they would be in a competitive market.<sup>101</sup> CforAT describes work of the Federal Trade Commission and United States Department of Justice, which concludes that a market where there are no reasonably interchangeable substitutes for a product is a “monopoly market.”<sup>102</sup> Because there are no reasonably interchangeable substitutes and no ability for incarcerated persons to choose their IPCS provider or negotiate with multiple IPCS sellers, CforAT concludes the IPCS market in California functions as a monopoly.<sup>103</sup> CforAt argues that further indication of the absence of market competition in the IPCS market is the imposition of ancillary service fees that do not exist in the commercial market.<sup>104</sup>

Verizon states there are indicators of potential market power abuse in the high costs of intrastate IPCSs, including excessively high per-minute rates, the exclusive way IPCS are offered in jail site facilities, the manner in which fees are imposed for depositing monies into prepaid accounts, how fees are imposed to return unused funds, and the fact that only one company provides IPCS to all California state run facilities.<sup>105</sup>

TURN observes that the length of time that IPCS providers retain exclusive rights to provide IPCS at a given facility indicates the existence of market power: “[o]nce a long-term, exclusive contract bid is awarded to an I[P]CS provider,

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<sup>101</sup> CforAT, Comments on Staff Proposal at 3.

<sup>102</sup> *Id.* at 3-4. CforAT states that the Federal Trade Commission undertook work to identify the “relevant market” for a product, which it defined as all goods that are “reasonably interchangeable” with a product, meaning that consumers view the other products as substitutes for each other and would switch among those products in response to a change in price.

<sup>103</sup> *Id.* at 3-5.

<sup>104</sup> *Id.* at 4-5.

<sup>105</sup> Verizon, Comments on Staff Proposal at 3.

competition ceases for the duration of the contract and subsequent contract renewals.”<sup>106</sup> As observed by TURN, GTL has contracted for 20 years with CDCR to provide IPCS to state-run prisons.<sup>107</sup>

In reply comments, CforAT argues that the IPCS market effectively consists of two markets: one market for “the right to provide service to inmates in confinement facilities,”<sup>108</sup> and another for the IPCS services themselves, for which the incarcerated and their loved ones are the customers. CforAT states that because of this, incarcerated persons and their families are both direct and indirect customers of intrastate IPCS. Citing Securus’s opening comments that IPCS costs “are borne solely by the [IPCS] provider upfront in the process of installing the platform and then are *recouped over time through product usage*,” CforAT observes that incarcerated persons comprise Securus’s “sole form of revenue, making them direct purchasers of intrastate IPCS.”<sup>109</sup> CforAT further observes that both providers and incarceration facilities gain revenue from incarcerated persons and their families, undermining any conclusion that the facilities themselves comprise the “market.”<sup>110</sup> CforAT states that the United States Department of Justice, the Federal Trade Commission, and this

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<sup>106</sup> TURN, Comments on Staff Proposal at 5, citing *Global Tel\*Link v. Fed. Comm. Comm’n.*, 866 F.3d 397, 404 (D.C. Cir. 2017).

<sup>107</sup> TURN, Comments on Staff Proposal at 5.

<sup>108</sup> CforAT, Reply Comments on Staff Proposal at 5, citing Pay Tel, Comments on Staff Proposal at 2.

<sup>109</sup> CforAT, Reply Comments on Staff Proposal at 6, citing Securus, Comments on Staff Proposal at 3, emphasis added by CforAT.

<sup>110</sup> *Ibid.*

Commission have all rejected the notion that there can be “only one relevant market.”<sup>111</sup>

CforAT contends that although Securus and GTL state that IPCS services are more costly to provide than commercial calling services because of security requirements and commission fees, these parties “do not demonstrate any nexus between or provide any details regarding the costs of providing service to incarceration facilities and the rates that they ultimately charge.”<sup>112</sup> Because “there is no record provided to justify the high rates charged to customers, and no attempt to link the rates to the costs of providing service,” CforAT argues that the Commission should reject these providers’ claims that the intrastate IPCS rates they charge are reasonable.

#### **5.4 Discussion: High and Widely Varying IPCS Rates in California Reflect Locational Monopolies that Result in Unreasonable and Unjust Rates**

IPCS rates charged in California vary widely and are exorbitantly high, in some cases, resulting in unjust and unreasonable IPCS rates for incarcerated people and their families. As such, we exercise the Commission’s authority and jurisdiction over telephone corporations, including VoIP providers, under Public Utilities Code Section 451 to regulate IPCS rates and fees in California.

Neither Staff nor any party identified an instance in California where an incarcerated person has a choice of IPCS provider. Incarcerated people are

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<sup>111</sup> *Id.* at 5, citing U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, at 7 (August 19, 2010), available as of this writing at <http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf>; D.16-12-025 at p. 44; and, Joint Application for Approval Pursuant to Section 854(a) of Transfer of Control over Tracfone Wireless, Inc., In the Matter of the Joint Application of TracFone Wireless, Inc. (U4321C), America Movil, S.A.B. de C.V., and Verizon Communications, Inc. for Approval of Transfer of Control Over TracFone Wireless, Inc., A.20-11-001 (Nov. 5, 2020).

<sup>112</sup> *Id.* at 3.

effectively a captive customer class who have no choice in service provider and the end result is that there are no reasonably available substitutes for incarcerated persons and their families to choose from. This has resulted in highly unequal and in some cases exorbitant rates for IPCS across incarceration facilities and as compared to current commercial markets. Examining the IPCS rate data provided by Staff and Cal Advocates, we find it unreasonable and unjust that people incarcerated in county jails, local jails, and federal prisons in California pay between 584 percent and 1,124 percent more than people incarcerated in California state prison facilities to talk with their loved ones.

We are not persuaded by the IPCS providers' arguments that high rates, even exorbitantly high rates, are just and reasonable as long as they are based on costs, including site commission costs. First, as CforAT noted, IPCS providers had the opportunity to but did not file data summarizing the range of security or other costs to IPCS providers. IPCS providers had the opportunity to but did not link filed data on IPCS security costs to the rates they charge. IPCS providers had the opportunity to but did not file data justifying the significantly higher rates for county or city jails Cal Advocates identified.

Because the IPCS providers failed to file cost data to justify their claims, we preliminarily conclude that a significant portion of the higher IPCS rates charged in some incarceration facilities stem from revenue collected by providers to recoup commission payments. According to the FCC, where they exist, site commission payments are a significant factor contributing to high rates and can account for 20 – 88 percent of IPCS costs.<sup>113</sup> Because of the importance of site commission fees in the IPCS market, it is worth examining this issue in detail.

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<sup>113</sup> Securus, Comments on Staff Proposal at 15, citing 2013 Order at ¶ 34.

As discussed earlier, California Penal Code Section 4025(d) authorizes, but does not require, county sheriff's departments to collect funds, or "commissions," from IPCS providers and place these funds in an "inmate welfare fund" that is spent "primarily" for the benefit, education, and welfare of incarcerated persons.<sup>114</sup> Although the collection of site commissions is currently lawful, this does not absolve this Commission from our obligation to ensure access to just and reasonable calling service rates for incarcerated people and their families. County collections of site commissions pursuant to Penal Code Section 4025, if any, must be in accordance with IPCS providers' responsibility to provide just and reasonable calling rates for all incarcerated persons in the State of California, as required by Public Utilities Code Section 451. IPCS rates that are 584 percent to 1,124 percent higher than the \$0.025 per minute rate offered in the California state prison system are not just or reasonable and require our further attention.

The FCC has found a locational monopoly to exist when a location owner attempts to limit the entry of new competition to increase profitability and

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<sup>114</sup> Cal. Pen. Code, § 4025: "(a) The sheriff of each county may establish [an inmate welfare fund] ... (d) There shall be deposited in the inmate welfare fund any money, refund, rebate, or commission received from a telephone company or pay telephone provider when the money, refund, rebate, or commission is attributable to the use of pay telephones which are primarily used by inmates while incarcerated. (e) The money and property deposited in the inmate welfare fund shall be expended by the sheriff primarily for the benefit, education, and welfare of the inmates confined within the jail. Any funds that are not needed for the welfare of the inmates may be expended for the maintenance of county jail facilities. Maintenance of county jail facilities may include, but is not limited to, the salary and benefits of personnel used in the programs to benefit the inmates, including, but not limited to, education, drug and alcohol treatment, welfare, library, accounting, and other programs deemed appropriate by the sheriff. Inmate welfare funds shall not be used to pay required county expenses of confining inmates in a local detention system, such as meals, clothing, housing, or medical services or expenses, except that inmate welfare funds may be used to augment those required county expenses as determined by the sheriff to be in the best interests of inmates. An itemized report of these expenditures shall be submitted annually to the board of supervisors."

demand a share of the profits in the form of a locational rent or commission fee.<sup>115</sup> Incarceration facilities typically limit provision of IPCS within a facility to one provider and often collect commission fees for their own purposes pursuant to Penal Code 4025. Thus, we find that IPCS providers operate locational monopolies.

We find IPCS provider's arguments that they do not operate locational monopolies nor exercise market power unpersuasive for several reasons. First, although one party points to a single RFP indicating that a single incarceration facility may select more than one IPCS provider,<sup>116</sup> no data provided demonstrates that incarceration facilities have ever selected more than one IPCS provider to serve the same facility. In general no party disputes Staff's conclusion that incarcerated people are a captive customer class who have no choice in service provider.<sup>117</sup> Incarceration facilities are limiting access to the provision of calling services to a single ICPS provider, and thus "market competition," in any sense of the word, does not exist for incarcerated users.<sup>118</sup> No competitive forces within incarceration facilities constrain providers from charging rates that far exceed the costs such providers incur in offering service.<sup>119</sup> Incarcerated people must purchase communications services from the facility's

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<sup>115</sup> FCC Third Order at 31. See 2002 Pay Telephone Order, 17 FCC Rcd at 3252-53, para. 10; see also *GTL v. FCC*, 866 F.3d at 404 ("Winning [inmate calling services] providers thus operate locational monopolies with a captive consumer base of inmates . . .").

<sup>116</sup> *GTL*, Comments on Staff Proposal at 12.

<sup>117</sup> See D.19-05-023 at 17-19.

<sup>118</sup> See D.04-05-020 at 41.

<sup>119</sup> *Ibid.*

IPCS provider and face rates far higher than those charged to other Californians or forego the service.<sup>120</sup>

Competition for RFPs as described by Securus and GTL and the existence of at least six providers in California does not mean that the IPCS market is functioning to provide just and reasonable rates for the incarcerated. We reject arguments from Securus that rate declines in some state incarceration systems between 2018 and 2020 indicate the market is competitive.<sup>121</sup> IPCS rates could have declined for any number of reasons during this period, including efforts to forestall legislative or regulatory oversight, or other factors. We also reject GTL's assertion that its recent action to reduce rates and offer free calls is evidence of market competition for the same reasons.<sup>122</sup>

Additionally, as CforAT described, the IPCS market is properly thought of as consisting of two markets or two sets of consumers: providers "compete" for the right to provide IPCS to the incarcerated, except that RFPs may be awarded to the highest not the lowest bidder<sup>123</sup> We agree with Securus that the selection of a single IPCS provider per facility is not evidence of the exercise of market power per se; instead, once selected, the IPCS provider, as the operator of the

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<sup>120</sup> 14 FCC Rcd 2545, 2547, 2562; Implementation of Pay Telephone Reclassification & Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order on Remand and Notice of Proposed Rulemaking, 17 FCC Rcd 3248, 3262 ¶ 38, 3252-3253 ¶¶ 10, 12, (2002); *See also* GTL v. FCC 866 F. 3<sup>rd</sup> at 404; *See also* FCC Third Order at ¶¶ 7, 31, 107, 115, 147, 312.

<sup>121</sup> Securus, Comments on Proposed Decision at 5.

<sup>122</sup> GTL, Comments on Proposed Decision at 7.

<sup>123</sup> *See* FCC Third Order at ¶ 112. "Without effective regulation, providers bidding for a facility's monopoly franchise compete to offer the highest site commission payments, which they then recover through correspondingly higher rates charged to incarcerated people and their families."

locational monopoly, exercises the market power transferred to it by the incarceration facility.

We reject Securus’s statement in comments on the proposed decision that “[c]orrectional facilities are not locational monopolies and site commission payments are not locational rents or shared profits. Site commissions instead are ‘costs of doing business incurred by ICS providers.’”<sup>124</sup> In 2017 the D.C. Circuit vacated the FCC’s 2015 Order and directed the FCC to reconsider its categorical exclusion of site commission costs as discussed in that decision. The D.C. Circuit also directed the FCC to “assess on remand which portion of site commissions might be directly related to the provision of [IPCS] and therefore legitimate, and which are not.”<sup>125</sup>

The FCC addressed this D.C. Circuit direction in the 2021 FCC Third Order and determined that site commission payments by IPCS providers have two components. One component “compensate[s] correctional facilities for the cost they reasonably incur in the provision of inmate calling services, and [the other] compensate[s] those facilities for the transfer of their market power over inmate calling services to the inmate calling services provider.”<sup>126</sup> The FCC concluded that the first is “legitimate” cost of business<sup>127</sup> that should be accounted for in any rate cap, and the second is not:

To the extent that providers nonetheless offer site commissions above th[e] level [required to cover the institution’s own costs to provide IPCS], we regard that as a *marketplace choice* different in kind from the scenario where site commissions at a given level are

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<sup>124</sup> Securus, Comments on Proposed Decision at 6.

<sup>125</sup> *GTL v. FCC*, 866 F.3d at 414.

<sup>126</sup> FCC Third Order at 107.

<sup>127</sup> FCC Third Order at 127.

required by a statute or rule. Thus, if providers offer site commissions at levels that are not recoverable under the [FCC's] interstate and international rate caps, we believe that they do so as a matter of their own business judgment. Consequently, *we do not regard site commissions under the second scenario as a condition precedent of doing business at correctional institutions.*<sup>128</sup>

We intend to further examine IPCS bidding and contract conditions during Phase II of this proceeding. Preliminarily, however, we concur with the FCC that site commissions that are not required by statute do not constitute “costs of doing business” that are necessary for the provision of IPCS in jails and prisons. We discuss this issue further in section 6.3, below.

Our finding of the existence of locational monopolies and the exercise of market power in the provision of IPCS in California aligns with the FCC's recent findings on a national scale. As mentioned in section 1, the FCC has previously found IPCS providers operate “locational monopolies” serving a “captive consumer base of inmates.”<sup>129</sup> The FCC's Third Order, adopted May 24, 2021, similarly found that IPCS providers improperly exercise monopoly market power on a national basis:

The reforms we adopt today reflect our findings, as detailed below, regarding the monopoly power that each calling service provider has over the individual correctional facilities

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<sup>128</sup> FCC Third Order at 120, emphasis added.

<sup>129</sup> Prison Policy Institute, Comments on Order Instituting Rulemaking, citing First Report & Order ¶¶ 39-41, 28 FCC Rcd. at 14128-30; *GTL v. FCC*, 866 F.3d at 404 (“Once a long-term, exclusive contract bid is awarded to an ICS provider, competition ceases for the duration of the contract and subsequent contract renewals. Winning I[P]CS providers thus operate locational monopolies with a captive consumer base of inmates and the need to pay high site commissions.”); and, *Id.* at 111, 28 FCC Rcd. at 14217 (Ajit Pai, dissenting) (“[W]e cannot necessarily count on market competition to keep prices for inmate calling services just and reasonable.”). See also FCC Third Order at ¶ 7, “[b]ecause correctional facilities generally grant exclusive rights to service providers, incarcerated people must purchase service from ‘locational monopolies’ and subsequently face rates far higher than those charged to other Americans.”

it serves; the numerous negative impacts the providers' exercise of that market power has had on incarcerated people, their families and communities, and society as a whole...<sup>130</sup>

The Commission has previously determined that providers of telephone services to incarcerated people have monopoly power in the facilities they serve [footnote 81]. We reaffirm this long-established finding, one that applies equally not only to the rates and charges for calling services provided to incarcerated people, including ancillary services, but also to providers' practices associated with their provision of calling services... incarcerated people have no choice in the selection of their calling services provider [footnote 82]. The authorities responsible for prisons or jails typically negotiate with the providers of inmate calling services and make their selection without input from the incarcerated people who will use the service [footnote 83]. Once the facility makes its choice – often resulting in contracts with providers lasting several years into the future – incarcerated people in such facilities have no means to switch to another provider, even if the chosen provider raises rates, imposes additional fees, adopts unreasonable terms and conditions for use of the service, or offers inferior service [footnote 84]. On the contrary, correctional authorities exercise near total control over how incarcerated people are able to communicate with the outside world [footnote 85] .... [N]o competitive forces within the facility constrain providers from charging rates that far exceed the costs such providers incur in offering service [footnote 87].<sup>131</sup>

Because correctional officials typically allow only one provider to serve any given facility...there are no competitive constraints on a provider's rates once it has entered into a contract to serve a particular facility [footnote 90]. The Commission has observed that 'because the bidder who charges the highest rates can afford to offer the confinement facilities the largest location commissions, the

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<sup>130</sup> FCC Third Order at ¶ 29.

<sup>131</sup> FCC Third Order at ¶ 32.

competitive bidding process may result in higher rates’ [footnote 91]. Thus, even if there is ‘competition’ in the bidding market as some providers assert, it is not the type of competition the Commission recognizes as having an ability to ‘exert downward pressure on rates for consumers’” [footnote 92].<sup>132</sup>

Based on a careful review of the record in this proceeding and informed by the FCC’s actions, we conclude that IPCS providers in California operate as locational monopolies within incarceration facilities and exercise market power to charge unjust and unreasonable rates. We define “market power” in this case as the ability of a company to sustain prices at levels above those a competitive market would produce.<sup>133</sup> Pursuant to Public Utilities Code Section 451, this Commission is obligated to ensure access to communications services by all Californians, including the incarcerated, at just and reasonable rates.

The following sections discuss the Staff Proposal and parties’ proposals for the Commission to provide interim rate relief to the incarcerated while we continue to work to identify permanent just and reasonable IPCS rates in California.

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<sup>132</sup> FCC Third Order at ¶ 33.

<sup>133</sup> See also CforAT comments noting a slightly different but not incompatible definition of market power: “Market power is the ability of a seller to ‘raise price, reduce output, diminish innovation, or otherwise harm customers as a result of diminished competitive constraints or incentives.’” CforAT, Reply Comments on Proposed Decision at 3, citing U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines, p. 22 (August 19, 2010), available as of August 9, 2021 at <http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf>.

## **6. Providing Interim Rate Relief to IPCS Customers**

Rates and fees for IPCS in California are currently unregulated. Based on comments on the OIR and during the prehearing conference, the Scoping Memo included the following issues:

- Should the Commission provide immediate interim relief to meet the IPCS needs of incarcerated people and their families at just and reasonable rates, including those with communication disabilities? If so, how?
- Should FCC regulations over interstate and international calls inform the Commission's approach to intrastate IPCS? If so, how?
- Should the Commission use some elements of FCC orders but not others as models for ensuring just and reasonable, and affordable, IPCS rates in California?

The April 2021 ALJ Ruling then requested party comment on the following questions:

- Do parties agree with the Staff Proposal's recommendation for the Commission to adopt the FCC's interim rate caps of \$0.21 per minute for debit and prepaid calls and \$0.25 per minute for collect calls for intrastate calling services on an interim basis?
- Do parties agree with Staff's proposal that if the FCC further lowers its interstate rate caps, the Commission should modify any adopted interim intrastate IPCS rates to reflect the FCC's updated rates?
- Should the Commission adopt Staff's Interim Proposal for Rate Relief? Why or why not?

This section presents Staff and parties' proposed interim intrastate IPCS rate caps to provide immediate relief to incarcerated people and their families. It then reviews party comments on these proposals.

Based on careful review of the record in this proceeding, we adopt here an interim rate cap of seven cents (\$0.07) per minute for all intrastate IPCS calls in California. Adopting an interim rate cap of \$0.07 per minute provides immediate rate relief to approximately 171,000 incarcerated people located at 343 incarceration facilities in California.<sup>134</sup> This interim rate cap applies to all prisons and jails in California and will remain in effect until we adopt a permanent IPCS intrastate rate cap later in this proceeding.

### **6.1 Initial and Revised Staff Proposal for Interim Rate Relief**

Based on their review of IPCS data as summarized in Section 5, Staff assert that the intrastate per-minute-of-use rates and ancillary service rates being charged to incarcerated persons in California are unjust and unreasonable. To address this, the initial Staff Proposal recommends the Commission adopt the FCC's 2015 Order interstate IPCS rate caps of \$0.21 per minute for debit and prepaid calls and \$0.25 per minute for collect calls. The initial Staff Proposal further recommends the Commission adopt the FCC's 2021 rates when they become formally adopted.<sup>135</sup>

The Revised Staff Proposal recommends that the Commission immediately adopt the FCC's 2021 Third Order rate caps of \$0.14 per minute for debit, prepaid, and collect calls from prisons and \$0.16 per minute for debit, prepaid, and collect calls from jails. These proposed levels include an FCC allowance for revenue collection capped at \$0.02 per minute for site commission payments where these relate specifically to calling services and result from contractual

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<sup>134</sup> This is based on data requests received from IPCS providers in December 2020 and does not reflect any subsequent rate changes.

<sup>135</sup> Staff Proposal at 2.

obligations or negotiations between providers and facilities.<sup>136</sup> The Revised Proposal states that under the FCC's Third Order rates of \$0.14 per minute for jails and \$0.16 per minute for prisons, the price for a 15-minute intrastate IPCS phone call would be reduced from as much as \$26.25 to a range of \$2.10-\$2.40, excluding ancillary fees.<sup>137</sup> Over 64,000 incarcerated persons would see immediate rate reductions under Staff's Revised Proposal because 218 California incarceration facilities currently have rates greater than \$0.16 per minute.<sup>138</sup>

Staff recommends that the Commission adopt its Revised Proposal on an interim basis until the Commission takes more permanent action in this proceeding. Staff recommends that the Commission direct IPCS providers to implement the adopted rate caps and submit a Notice of Compliance no later than 30 days from Commission adoption of interim relief. Staff further recommends that the Commission not adopt the FCC's Third Order interim interstate rate caps as permanent intrastate rate caps because "intrastate services are generally less expensive to provide than interstate services."<sup>139</sup>

### **6.1.1 Party Comments**

Parties have widely divergent views on whether the Commission should adopt or reject Staff's Revised Proposal or adopt some other proposal. Cal Advocates, TURN, CforAT, Prison Policy Institute, the Justice Coalition, Verizon, and NCIC Inmate Communications broadly support Staff's proposal.

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<sup>136</sup> Revised Staff Proposal at 1 (attached as Appendix A). The initial Staff Proposal at 2 recommends that we adopt the FCC's 2021 rates when they become formally adopted, which occurred on May 24, 2021. *See also* FCC Third Order at ¶¶ 100 - 147 for a discussion of site commissions.

<sup>137</sup> Revised Staff Proposal at 4.

<sup>138</sup> Table 2, above. *See also* Revised Staff Proposal, Attachment A, in Appendix 1.

<sup>139</sup> Revised Staff Proposal at 2.

All non-provider parties, however, additionally recommend that the Commission adopt per-minute rate caps lower than proposed by Staff in either its initial or Revised Proposal.

Securus, GTL, and Pay Tel generally support Commission adoption of the FCC's 2013 Order rates of \$0.21 and \$0.25 per minute included in the initial Staff Proposal. However, these parties oppose Commission adoption of the FCC's Third Order rates of \$0.14 and \$0.16 per minute, as recommended in the Revised Staff Proposal.

The next two sections review party comments on the FCC's 2013 Order and 2021 Third Order rate caps.

#### **6.1.1.1 FCC 2013 Order Interim Rates of 21 and 25 Cents Per Minute**

Except for Securus and CforAT, parties broadly support Commission adoption of the FCC's 2013 Order interim rate caps of \$0.21 and \$0.25 per minute as interim intrastate IPCS rate caps in California, but non-provider parties also suggest the Commission should adopt much lower rate caps. CforAT opposes Commission adoption of the FCC's 2013 Order interim rate caps, stating that "Commission adoption of the Staff Proposal is preferable to a delay in imposing rate caps but does not make the FCC rates reasonable."<sup>140</sup>

Securus argues that the Commission should use the FCC's 2013 Order interim rates of \$0.21 and \$0.25 per minute rates as "benchmarks" but allow IPCS providers to recover reasonable costs for site commissions beyond those levels or institute a waiver application process.<sup>141</sup> Securus states that the FCC's 2013 Order interim rates exclude the costs of site commissions and are based on

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<sup>140</sup> CforAT, Comments on Staff Proposal at 7.

<sup>141</sup> Securus, Comments on Staff Proposal at 5.

average costs that do not account for cost variation based on facility size.

Securus argues that the Commission should allow for full recovery of all IPCS-related costs.<sup>142</sup>

Pay Tel supports adopting the FCC's 2013 Order interim rates in California, stating that it already charges the FCC's 2013 Order interim rates for intrastate IPCS in California. Pay Tel opposes any rate cap below this level.<sup>143</sup>

GTL supports Commission adoption of the FCC's 2013 Order rate caps as does NCIC Inmate Communications, who also urges adoption of the FCC's Third Order caps.<sup>144</sup>

#### **6.1.1.2 FCC Third Order Interim Rates of 14 and 16 Cents Per Minute**

In opening comments, NCIC Inmate Communications, Verizon, TURN, CforAT, the Prison Policy Initiative, and the Justice Coalition support Commission adoption of the FCC's Third Order interim rate caps when the FCC adopts these, as proposed in the initial Staff Proposal. NCIC Inmate Communications states this would provide consistency for incarcerated persons and their families.<sup>145</sup> The Prison Policy Institute supports Commission adoption of these rates on an interim basis "in the interest of speed and simplicity."<sup>146</sup>

Pay Tel opposes Commission adoption of the FCC's Third Order rate caps. Pay Tel questions the data and methodology the FCC used to develop the Third Order rates and states that these do not adequately account for the cost

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<sup>142</sup> *Ibid.*

<sup>143</sup> Pay Tel, Comments on Staff Proposal at 5-7.

<sup>144</sup> NCIC Inmate Communications, Comments on Staff Proposal at 4; GTL, Comments on Staff Proposal at 4.

<sup>145</sup> NCIC Inmate Communications, Comments on Staff Proposal at 4.

<sup>146</sup> Prison Policy Institute, Comments on Staff Proposal at 2.

differential of different size facilities.<sup>147</sup> Pay Tel states that jails have much higher turnover rates than prisons, and much shorter average length of stays for the incarcerated and contends that this results in higher costs for IPCS providers to set up and close call-service accounts for a more frequently rotating population of the incarcerated and fewer calling minutes over which to spread costs.<sup>148</sup> Pay Tel asserts that smaller facilities incur higher facility costs to administer and monitor IPCS calls for security purposes and use site commission funds for this purpose.<sup>149</sup> Pay Tel also contests Staff's assertion in both proposals that "intrastate services are generally less expensive to provide than interstate services."<sup>150</sup> Pay Tel states that "there is record evidence in the FCC's I[P]CS proceeding demonstrating that intrastate and interstate I[P]CS calls generally cost the same to deploy."<sup>151</sup>

Securus opposes Commission adoption of the FCC's Third Order rate caps of \$0.14 and \$0.16 per minute, stating, as does Pay Tel, that there are unresolved issues with the FCC's data and methodology. Securus asserts that the Third Order inadequately addresses site commissions because it leaves in place the 2013 Order rate cap of \$0.21 for smaller jails with average daily populations below 1,000 but prohibits upward adjustment of this cap to account for site

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<sup>147</sup> Pay Tel, Comments on Staff Proposal at 6.

<sup>148</sup> *Id.*, Exhibit A at 18.

<sup>149</sup> *Id.*, Exhibit B (May 8, 2015), ("Notice of Ex Parte Presentation") to Exhibit C at 3. Pay Tel cites to summary data on incarceration facility costs included in the FCC's 2016 Order, later vacated, to support this assertion, see *Id.*, Exhibit B (November 23, 2020, Comments of Pay Tel Communications, Inc., in FCC's WC Docket No. 12-375") at 12-13 and 16-17.

<sup>150</sup> Revised Staff Proposal at 2.

<sup>151</sup> Pay Tel, Comments on Staff Proposal at 8, referencing Comments of Pay Tel Communications, Inc., In re Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, at 9-15 (filed Dec. 20, 2013).

commissions, even if the commission is mandated by state or local law.<sup>152</sup>

Securus argues the Commission should directly assess IPCS provider costs and develop a unique rate proposal tailored to California's needs. If the Commission does adopt the FCC's Third Order interim rates, Securus requests that this occurs after the FCC regulations take effect or after removal of any stay on Third Order requirements.<sup>153</sup>

## **6.2 Party Proposals for an Interim Rate Cap of One to 11 Cents Per Minute**

All non-provider parties (Cal Advocates, TURN, CforAT, Prison Policy Institute, and the Justice Coalition) support Commission adoption of interim intrastate IPCS rate caps lower than those adopted by the FCC in either its 2013 Order or its 2021 Third Order. These parties offer several proposals for Commission consideration.

The Justice Coalition recommends that the Commission cap intrastate IPCS rates at a maximum of \$0.11 per minute as reflected in the FCC's 2015 permanent rates, adopted in the 2015 Order but later vacated by the D.C. Circuit.<sup>154</sup>

According to the Justice Coalition, the state of New Jersey adopted the FCC 2015 Order rates as its own intrastate IPCS rate cap in 2016.<sup>155</sup> The Justice Coalition

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<sup>152</sup> Securus, Reply Comments on Staff Proposal at 13. The FCC's Third Order at ¶¶ 100 - 120 identifies two classes of site commissions: those mandated by state or local law and those requested by a correctional facility in an RFP process or prescribed in a contract and authorized.

<sup>153</sup> Securus, Reply Comments on Staff Proposal at 15. Securus correctly observes that the courts have stayed the FCC's previous efforts to set interim rates and ultimately vacated the FCC's permanent rates adopted in 2015.

<sup>154</sup> *GTL v. FCC*, 866 F.3d at 402, 415-416.

<sup>155</sup> Justice Coalition, Comments on Staff Proposal at 6, citing Carly Sitrin. "Making Sure the Cost of Phone Calls from Prison Isn't Punishingly High." NJ Spotlight News. July 5, 2016. Available as of this writing at: <https://www.njspotlight.com/2016/07/16-06-30-making-sure-the-cost-of-phone-calls-from-prison-isn-t-punishingly-high/>.

recommends the Commission consider even lower rates, stating that “there are a range of rate caps that are defensible, ranging from \$0.009 per minute to \$0.11 per minute.”<sup>156</sup> The Justice Coalition states that prison and jail systems across the country are currently charging rates of \$0.009 per minute to \$0.03 per minute.<sup>157</sup> Commission adoption of a rate cap in this range would provide rate relief to all incarcerated persons and their families in California, observes the Justice Coalition, which none of the other proposals would accomplish. The Justice Coalition also identifies the CDCR rate of \$0.025 as a potential model in both its opening and reply comments.<sup>158</sup>

The Justice Coalition further recommends the Commission require IPCS providers to provide at least two free 15-minute calls per week to incarcerated people, noting that the CDCR provides two free calls per month, but that no standards in this area exist:

We heard from callers during the Public Participation Hearings last month that there is no standard among facilities with regards to the number and duration of free calls. We urge the Commission to use its authority to standardize this practice across the state and ensure that whether someone has access to free calls does not depend on the facility where they are incarcerated. This is especially important in light of the ongoing impacts of COVID-19 and the suspension of in-person visits for over a year in many facilities. Phone calls are people’s lifelines to staying in touch with their loved ones and support networks outside.<sup>159</sup>

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<sup>156</sup> Justice Coalition, Reply Comments on Staff Proposal at 3.

<sup>157</sup> *Ibid.* “In Illinois, prison phone calls run \$0.009 per minute. In Dallas County, jail phone calls run \$0.0119 per minute. In New York City, where jail phone calls are free to families, the City pays \$0.03 per minute.”

<sup>158</sup> Justice Coalition, Comments on Staff Proposal at 6; Justice Coalition, Reply Comments on Staff Proposal at 3.

<sup>159</sup> Justice Coalition, Reply Comments on Staff Proposal at 5.

CforAT and Cal Advocates provide similar recommendations regarding provision of free calls in their reply comments.<sup>160</sup>

TURN states that it is appropriate for the Commission to “move independently” from the FCC and act to approve lower rate caps than those adopted by the FCC in adopting rates for incarcerated persons and their families in California. In support of this, TURN observes that the FCC has clearly affirmed that states may adopt rate caps lower than those set by the FCC, and the D.C. Circuit explicitly removed FCC jurisdiction from dictating intrastate IPCS rates.<sup>161</sup>

TURN proposes the Commission adopt a cap based on reducing the FCC’s Third Order interstate rate caps by a percentage based on the logic that intrastate calls are less expensive to provide than interstate calls. TURN suggests there are ample California developments supporting a reduction of at least thirty percent as an appropriate amount, including the March 2021 CDCR and GTL state prison system contract for voice calling price of \$0.025 per minute.<sup>162</sup> Implementing TURN’s recommendations would result in intrastate IPCS rate cap of \$0.092 per minute for prisons and \$0.11 per minute for jails.

Cal Advocates calls intrastate IPCS rates “unreasonable and unaffordable” and recommends the Commission cap intrastate IPCS rates in California at \$0.05 per minute.<sup>163</sup> Cal Advocates states that adopting an interim intrastate IPCS rate

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<sup>160</sup> CforAT, Reply Comments on Staff Proposal at 7; Cal Advocates, Reply Comments on Staff Proposal at 3. These parties recommend the Commission require providers to provide a minimum of 15 minutes of free calling service each month.

<sup>161</sup> TURN, Comments on Staff Proposal at 11, citing *Global Tel\*Link v. FCC* 866 F.3<sup>rd</sup> at 408-413.

<sup>162</sup> TURN, Comments on Staff Proposal at 12. See also footnote 22 of this decision.

<sup>163</sup> Cal Advocates, Comments on Staff Proposal at 7.

cap of \$0.05 per minute would provide meaningful relief for incarcerated persons and their families while the Commission evaluates a more permanent option.

Cal Advocates justifies its proposal in several ways. First, it refers to SB 555, adopted by the California Legislature in September 2020 and vetoed by Governor Newsom later that month. Second, Cal Advocates observes that some California intrastate IPCS providers already offer rates below the \$0.05 per minute, including GTL, who as of March 2021 charges this rate to all 90 California state-run prison facilities. Third, Cal Advocates notes that 14 U.S. states now have average intrastate IPCS voice calling rates of \$0.05 cents per minute or less in prisons.<sup>164</sup> Fourth, Cal Advocates observes that the U.S. Congress has introduced legislation that would require the FCC to establish maximum rates and charges, including interim rate caps of \$0.04 per minute for debit or prepaid calling and \$0.05 per minute for collect calling.<sup>165</sup>

CforAT and the Justice Coalition support Cal Advocates' proposal for a \$0.05 per minute cap on intrastate IPCS rates. CforAT argues that, as the state with the most incarcerated people, IPCS providers in California should be able to leverage economies of scale to provide IPCS at lower cost than other smaller states.<sup>166</sup>

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<sup>164</sup> *Id.* at 9, citing State of Phone Justice: Local Jails, State Prisons, and Private Phone Providers, Peter Wagner and Alexi Jones, Prison Policy Initiative, February 2019, viewed 4/15/21. [https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice.html](https://www.prisonpolicy.org/phones/state_of_phone_justice.html). The 14 states are: Illinois, New Hampshire, West Virginia, Maryland, Mississippi, Virginia, New York, New Jersey, Minnesota, Missouri, Rhode Island, Delaware, Vermont, and Ohio.

<sup>165</sup> *Id.* at 11, citing the proposed Martha Wright Prison Phone Justice Act, <https://www.govtrack.us/congress/bills/116/hr6389/text> (accessed by Cal Advocates on April 21, 2021).

<sup>166</sup> Justice Coalition, Reply Comments on Staff Proposal at 4 "there is also a defensible record for a rate cap of \$0.05 per minute, based on comments filed with the FCC in Docket 12-375 in response to proposed rate caps of \$0.14 per minute for prisons and \$0.16 per minute for jails."

### **6.2.1 Provider Comments**

Securus opposes Cal Advocates' proposed \$0.05 per minute rate cap.<sup>167</sup> Securus argues that the variable rates among different correctional agencies identified by Cal Advocates result from variable costs that reflect the needs of the facility, the facility's population, location and other factors that affect costs.<sup>168</sup> Securus states that the FCC's Third Order recognizes that costs vary between differently sized facilities, which precludes a "one-size-fits-all" rate prescription.<sup>169</sup> Securus further contends that Cal Advocates' proposal fails to consider site commissions,<sup>170</sup> and that parties more generally "continue to erroneously compare I[P]CS rates to commercial telephone rates."<sup>171</sup>

GTL, Pay Tel and NCIC Communications do not comment on Cal Advocates' proposal.

### **6.2 Implementation Timeline**

The April 2021 ALJ Ruling asked parties to comment on the Staff's proposed implementation timeline of 30 days for any adopted interim rates.

Most provider parties request 90 days to implement any adopted rate caps, stating that additional time was needed to renegotiate contracts with facilities and provide required notice to the incarcerated. However, IPCS provider NCIC Inmate Communications supports the 30-day implementation timeline and states that "this should be enforced regardless of the timeline the current Inmate Telephone Agreement (*i.e.* the amount of time left on the current Agreement's

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<sup>167</sup> Securus, Reply Comments on Staff Proposal at 10.

<sup>168</sup> *Id.* at 4.

<sup>169</sup> *Ibid.*

<sup>170</sup> Securus, Reply Comments on Staff Proposal at 3.

<sup>171</sup> *Ibid.*

Initial Term or any Renewal Terms), to ensure consistency for incarcerated persons and their families).<sup>172</sup> All non-provider parties support a 30-day implementation timeline for any adopted rate caps.

### **6.3 Adopting an Interim Rate Cap of Seven Cents Per Minute**

Based on careful review of the record, we adopt an interim rate cap of seven cents (\$0.07) per minute for all intrastate IPCS calls in California. Adopting an interim rate cap of \$0.07 per minute provides immediate rate relief to approximately 171,000 incarcerated people located at 343 incarceration facilities in California. All telephone corporations that provide IPCS shall implement the \$0.07 per minute rate cap across each facility, contract and account that it serves in California no later than 45 days from Commission issuance of this decision. The interim rate cap applies to all prisons and jails in California and will remain in effect until we adopt a permanent IPCS intrastate rate cap later in this proceeding.

We base our adopted interim per-minute rate cap on the following reasoning and information. First, we take official notice that the CDCR capped intrastate IPCS rates in California prisons at \$0.025 per minute earlier this year, through 2026.<sup>173</sup> This provides an interim benchmark of the costs of providing IPCS at a reasonable rate. Notably, SB 81 (2007) phased out the collection of site commissions by California prisons over four years. The CDCR and GTL intrastate IPCS contract rate of \$0.025 per minute thus excludes site commission costs.

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<sup>172</sup> NCIC Inmate Communications, Comments on the Staff Proposal at 5.

<sup>173</sup> Cal. Evid. Code, § 452, subd. (h) (“Judicial notice may be taken of . . . [f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”).

Building on this fact, and using the best information before us, we reason that it is unlikely that it costs IPCS providers more than double the cost of providing call services to the California state prison system to provide IPCS to jails of all sizes.<sup>174</sup> The FCC's Third Order finds that it costs service providers approximately 22 - 25 percent more to provide IPCS to jails with a population greater than 1,000 as compared to prisons.<sup>175</sup> Increasing the \$0.025 rate achieved between CDCR and GTL by the 22 - 25 percent potential cost difference level identified by the FCC results in a rate of \$0.031, potentially, for larger jails. Doubling the \$0.025 per minute rate achieved in the California state prison system results in a potential rate of \$0.05 per minute for all jails. Notwithstanding the current exorbitant rates charged by some IPCS providers, a doubling of costs between relatively similar incarceration facility locations is a significant difference that a freely operating market could be expected to eliminate, or at least to significantly reduce.

Second, we concur with Cal Advocates and CforAT that California IPCS providers should be up to the challenge of matching or beating the \$0.05 average per minute rate achieved in other states' prison systems for incarceration facilities of all sizes. Other states are offering rates lower than their adopted caps: for instance, a 2016 New Jersey bill capped in-state call rates at \$0.11 per minute but the rate posted for calls by New Jersey Department of Corrections as of May 2021 is just \$0.044 per minute.<sup>176</sup> In Illinois, House Bill 6200 (effective

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<sup>174</sup> FCC Third Order at ¶ 148, summarizes the difficulty the FCC has had in identifying legitimate provider security costs, despite FCC efforts to collect data on interstate IPCS costs since 2012.

<sup>175</sup> FCC Third Order at ¶ 50, footnote 145.

<sup>176</sup> See [https://www.njleg.state.nj.us/2016/Bills/PL16/37\\_.PDF](https://www.njleg.state.nj.us/2016/Bills/PL16/37_.PDF). See also <https://www.state.nj.us/corrections/pages/OffenderInformation.html#Phone> (accessed June 17, 2021). <https://www.prisonphonejustice.org/2018/IL/securus-contract-2018-2021/>.

January 1, 2018) prohibited the state's corrections department from charging more than \$0.07 cents per minute for calls but as of May 2021, the Illinois Department of Corrections posted rates of \$0.009 per minute (effective July 1, 2018).<sup>177</sup> Further, as discussed by the Justice Coalition, as of April 2021, the rate for phone calls from jails in Dallas County, Texas is \$0.0119 per minute, and in New York City, where jail phone calls are free to families, the rate paid by the city is \$0.03 per minute.<sup>178</sup>

Thus, we conclude that \$0.05 is a reasonable "base rate" to use to identify an appropriate interim per-minute rate.

We are aware that some California counties currently rely on site commission funds for rehabilitative/educational and other purposes pursuant to Penal Code Section 4025.<sup>179</sup> We therefore arrive at our proposed \$0.07 per

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<sup>177</sup> See <http://publici.ucimc.org/2019/04/illinois-prison-phone-rates-are-lowest-following-grassroots-activism/> (available as of this writing).

<sup>178</sup> Justice Coalition, Reply Comments on Staff Proposal at 3; See also Dallas County TX- Securus contract - 2020 - 2025, available as of this writing at: <https://www.prisonphonejustice.org/2020/TX/tx-dallas-county-securus-contract-2020-2025/>.

<sup>179</sup> Legislative (Assembly Floor) analysis associated with SB 555 indicates that "[a]ccording to the San Bernardino County Sheriff's Department, 'The elimination of a commission for San Bernardino County Sheriff's Department would end approximately \$6 million revenue in inmate welfare fund (IWF) annually. This fund pays for over 25 Sheriff's Department staff, overhead, supplies and services as well as educational contracts from various institutions. The staff and contracts paid by the IWF sustain approximately 30 programs for the incarcerated population ranging from education classes, vocational classes, trauma therapy classes, job fairs and resource fairs just to name a few.'" Legislative (Assembly Appropriations) analysis of SB 555 states, "[i]n fiscal year 2017-2018, the Los Angeles County Sheriff's Department (LASD) reported it received just over \$15 million in payments from its communications provider and over \$20 million dollars from canteen sales. LASD further reported it spent \$37 million dollars from the inmate welfare fund on vocation and rehabilitative services over the past several years, including: \$5 million dollars for Healthright 360 services over the past eight years; and \$1.2 million dollars for inmate legal assistance over the past five years. San Diego County Sheriff's Department (SDSD) reported it had approximately \$7 million dollars in its inmate welfare fund during FY 2017-18 and 93% of those funds were generated by canteen and

minute cap by adding \$0.02 per minute to account for potential site commission payments. This mirrors the FCC's action in its Third Order, for jails with populations larger than 1,000.<sup>180</sup>

The FCC's Third Order retained a rate cap of \$0.21 per minute for facilities smaller than 1,000, based in part on its conclusion that it lacked sufficient data to conclude that the \$0.02 site commission level for facility IPCS costs was sufficient to address higher costs for smaller facilities.<sup>181</sup> However, we take a different approach here. The \$0.07 per minute interim rate provides a cushion beyond the \$0.05 per minute and lower rates achieved elsewhere, which reasonably provides an opportunity for IPCS providers and incarceration facilities to transition to our adopted rate cap. An interim intrastate IPCS rate cap of \$0.07 per minute imposes a cap nearly three times that recently instated by the CDCR. Adopting an interim statewide cap at this level results less wildly divergent rates for the incarcerated and their families in California and is reasonable.

We also do not follow Pay Tel's recommendation to consider a higher site commission adder for smaller facilities. Pay Tel serves the Siskiyou County Jail in California, which has an average daily population of approximately 68 persons in 2020 and did not provide data specific to this facility.<sup>182</sup> Although Pay Tel claims that facility costs to provide IPCS are higher with populations of less than 1000 incarcerated persons, Pay Tel appears to have relied on data from the FCC's 2016 Order, which was vacated. Pay Tel did not provide the source

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communications charges. SDSD also reported it used approximately 82% of all revenue for direct inmate services."

<sup>180</sup> FCC Third Order at ¶¶ 100, 105, 140 - 147.

<sup>181</sup> *Id.* at ¶ 146: "We are not confident that the data we currently have can reasonably estimate legitimate facility-related costs for smaller facilities."

<sup>182</sup> Pay Tel, Comments on Staff Proposal at 6.

data to support its claim and the record before us in this proceeding does not persuade us that the cost to facilities to provide intrastate IPCS either increases or decreases based on the size of the facility.

Although the FCC strictly limited eligible site commission payments to those reasonably related to the facility's cost of enabling IPCS and where these result from contractual obligations or negotiations, we do not so limit eligible site commission costs today.<sup>183</sup> We do not limit revenue collection within our per-minute cap of \$0.07 to only those costs related to a facility's costs to provide IPCS because we wish to allow a reasonable transition period or cushion for counties to identify other funding sources for cost centers currently funded through inmate welfare funds. Adopting a \$0.07 per minute interim intrastate IPCS rate balances this Commission's obligation to ensure just and reasonable rates with counties' authority pursuant to Penal Code Section 4025 to collect commission fees from IPCS providers and place them in an inmate welfare fund.

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<sup>183</sup> FCC Third Order at ¶ 126 discusses the FCC approach to determining just and reasonable rates by focusing on recovering "prudently incurred investments and expenses that are 'used and useful' in the provision of the regulated service for which rates are being set;" *Id.* at 127 "we likewise find that contractually prescribed site commission payments that simply compensate a correctional institution for costs an institution incurs to enable access for incarcerated people to interstate and international inmate calling services can, at least at this time, be considered used and useful in the provision of interstate and international inmate calling services." *Id.* at ¶ 128 "we find that contractually prescribed site commission payments do not warrant recovery insofar as they exceed the level needed to compensate a correctional institution for the costs (if any) an institution incurs to enable interstate and international inmate calling services to be made available to its incarcerated people;" *See also Id.* at ¶ 103. "Where a law or regulation merely allows a correctional facility to collect site commissions... site commissions would also fall into the category of site commission payments prescribed by contract, because the correctional facilities and providers can negotiate, in their discretion, regarding how much the providers will pay in site commissions."

However we clarify that, like the FCC, we do not view all site commission costs as essential or necessary costs to provide intrastate IPCS.<sup>184</sup> Like the FCC, we reason that, if collection of site commissions to support facility costs beyond those incurred to enable IPCS were prohibited, facilities would not stop providing IPCS to incarcerated people.<sup>185</sup> Communication between incarcerated people and their families, as well as with legal services, and other functions, is simply too essential to reduce recidivism and prepare the incarcerated for release. Thus, we will continue to review the question of site commissions as we adopt a permanent rate later in this proceeding.

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<sup>184</sup> See FCC Third Order at ¶¶ 120 regarding site commissions that not required by regulation or law: “we do not regard site commissions under the second scenario as a condition precedent of doing business at correctional institutions;” *Id.* at ¶ 122, “we reject any claim that site commission payments are somehow ‘required’ or determined by the correctional institution: we find on this record that providers offer such payments voluntarily, in their own business judgment.”

<sup>185</sup> *Id.* at ¶ 128, “...we are not persuaded that a correctional institution would decline to make inmate calling services available to its incarcerated people absent contractually prescribed site commission payments above and beyond any amount necessary to recover the institution’s costs to enable inmate calling services to be provided to its incarcerated people;” and *Id.* at ¶ 129 “Under our marketplace analysis of contractually prescribed site commission payments, we are unpersuaded that site commission payments above the level needed to compensate a correctional institution for costs the institution reasonably incurs to make interstate and international inmate calling services available are required to ensure that incarcerated people have access to those services. Instead, we conclude that such payments are a means (sometimes the sole or at least primary means) by which a given provider seeks to overcome its competitors to become the exclusive provider of multiple services, including nonregulated services, at a correctional facility. And the record does not reveal that correctional institutions, in contracting with providers that offer comparatively higher contractually prescribed site commission payments, are somehow benefitting customers of interstate and international inmate calling services as compared to the selection of some other provider. Rather, we conclude here that given the anomalous nature of the inmate calling services marketplace, the primary benefits flow to the chosen provider – which overcame its competitors and now has the exclusive ability to serve the correctional facility – and the correctional facility itself (or the state or local government more generally), which can avail itself of the revenue stream such site commission payments provide, all to the detriment of interstate and international inmate calling services customers.”

We decline to adopt the Staff Proposal today because the record supports adopting the \$0.07 per minute cap on an interim basis and doing so provides immediate relief to a greater number of the incarcerated and their families. A \$0.07 per minute cap yields a charge of \$1.05 for a 15-minute call as compared to \$2.10 and \$2.40 for the rates proposed by Staff. We decline to adopt the FCC's 2013 caps of \$0.21 and \$0.25 per minute for the same reasons.

In addition to providing immediate relief to the incarcerated and their families, lower IPCS rates and fees may contribute to reduced recidivism by the incarcerated by making calls more affordable. In turn, reductions in repeated incarcerations benefits society by saving millions of dollars in incarceration-related costs annually.<sup>186</sup> The ability to communicate with family may also help reduce foster placement of the children of incarcerated people, benefitting families, and providing cost savings to society at large.<sup>187</sup>

Securus and others argue that this Commission should wait to act to cap per minute rates beyond those adopted in the FCC's 2013 Order until we receive detailed cost data from providers. We disagree. First, IPCS providers have had ample opportunity to file in the record of this proceeding detailed or summary cost data but have declined to do so. Provision of cost information in response to discovery data requests does not constitute provision of cost information in the record of this proceeding. We encourage IPCS providers to provide cost data in Phase II of this proceeding as we consider adopting a more permanent rate cap.

Second, California statute and the courts provide this Commission with discretion to determine and set just and reasonable rates using a variety of

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<sup>186</sup> FCC Third Order at ¶ 37.

<sup>187</sup> *Ibid.*

methods.<sup>188</sup> The \$0.07 rate is based on the most reliable data before us pertinent to California, specifically, as discussed above, the CCDR rate of \$0.025 per minute, the FCC's finding that it costs IPCS providers approximately 22-25 percent more to provide IPCS to larger jails than to prisons, and the FCC's finding that a \$0.02 adder reasonably accounts for site commission costs solely related to providing IPCS.

Additionally, as the U.S. Supreme Court has recognized, a regulatory body's determination of future rates always involves an element of prediction:

Even monopolies must sell their services in a market where there is competition for the consumer's dollar and the price of a commodity affects its demand and use. This effect may be predicted or projected, but it can be known only from experience. The many detailed objections which the Company makes to the Commission's computations of probable yield would be answered by experience.<sup>189</sup>

In other words, to some degree, and particularly in this case where we do not have good cost data, the determination of the "correctness" of rates set by a regulatory commission can only be known "with experience," *i.e.*, over time, as the rate is implemented across facilities and providers. We use a reasoned and balanced approach to determine our adopted interim rate cap and will carefully monitor any resulting market changes to determine the effect.

We note that despite eight years of data collection on interstate IPCS rates, the FCC in its Third Order acknowledges that it has not yet been able to collect standardized and what it considers to be complete and accurate IPCS cost data

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<sup>188</sup> Pub. Util. Code § 701; *Wise v. Pacific Gas & Electric Co* (1991) 77 Cal.App.4<sup>th</sup> 287, 293; *See e.g., Re the Pacific Telephone and Telegraph Company Protestants* (1968) D. 74917 at 56; D. 84-06-095 at 38-40. Most recently, as observed by CforAT in comments, this Commission similarly sought data on comparable rates for Lifeline programs in other states and programs in D.20-10-006.

<sup>189</sup> *Market St. Ry. Co. v. Pub. Util. Com.* (1945) 324 U.S. 548, 569.

by IPCS providers. The reasons the FCC offers for this include the failure of GTL to submit data reflecting its actual costs,<sup>190</sup> the absence of a standardized approach for providers to allocate “indirect” and “direct” IPCS costs,<sup>191</sup> and providers’ failure to provide data as requested.<sup>192</sup> Deferring action to address current unjust and unreasonable IPCS rates until Commission staff are able to collect and analyze detailed cost data across 354 incarceration facilities is an unacceptable outcome for the incarcerated and their families and we decline to take this step.

We do not adopt the \$0.07 per minute rate cap as a benchmark above which parties may apply a higher rate up to a reasonable limit or allow for IPCS providers to apply for a waiver, as requested by Securus. Our goal in this phase of the proceeding is to establish an interim rate based on the record we have before us. Implementing a waiver process would likely cause unnecessary delay in implementing the interim rate we establish in this decision and would impede the provision of immediate relief for incarcerated persons and their loved ones. Instead, we will focus on adopting a permanent rate later in this proceeding.

Finally, we do not at this time take up the suggestion of several parties to require IPCS providers to provide incarcerated persons one free call per week or month. The Commission may consider this issue again later in the proceeding.

We choose a 45-day implementation timeline for our adopted rate cap because this is a reasonable period that allows for noticing and contract renegotiations, where required, while timely providing relief to the incarcerated and their families on an issue of longstanding importance.

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<sup>190</sup> FCC Third Order at ¶ 74.

<sup>191</sup> FCC Third Order at ¶ 65.

<sup>192</sup> FCC Third Order at ¶ 57.

We direct all telephone corporations providing intrastate IPCS as defined here to implement our adopted rate cap of \$0.07 per minute or less for intrastate IPCS calls across all of their intrastate IPCS contracts, accounts, and facilities in California no later than 45 days from Commission issuance of this decision. The rate caps shall be applied to any and all existing account balances as of the date of implementation, as well as any new account balances or new accounts opened after that date.

Additionally, we direct all telephone corporations providing intrastate IPCS in California to each submit a Notice of Compliance within 45 days of Commission issuance of this decision confirming implementation of our interim adopted intrastate IPCS rate cap of \$0.07 per minute or less across all of their intrastate IPCS contracts, accounts, and facilities in California, and including the following information:

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

We direct all telephone corporations providing IPCS to fully disclose the adopted rates on their websites, bills, and in marketing material by no later than 45 days from Commission issuance of this decision and to maintain information on the adopted rate clearly and prominently on their websites.

We direct all IPCS providers as defined in this decision to provide their draft notices of the adopted rates, terms and conditions, refund policies and customer service contacts for websites, bill inserts, and marketing materials to the Commission for review no later than 30 days from Commission issuance of this decision. All IPCS providers shall provide a Plan for Notification to all current and prospective customers and account holders to the Commission for review no later than 30 days from Commission issuance of this decision. The notices shall provide service-related information in English, Spanish and any other languages prevalent in incarceration facilities and shall inform the incarcerated of methods to lodge service quality complaints with the Commission as discussed in section 11 below.

Telephone corporations providing IPCS not explicitly identified in this decision must provide a Notice of Compliance to the Commission no later than 45 days after executing a contract to provide IPCS in California, and must provide draft notices of the adopted rates, terms and conditions, refund policies and customer service contacts for websites, bill inserts, and marketing materials to the Commission for review no later than 30 days after executing a contract to provide IPCS in California.

IPCS providers shall submit the required information via email to the Director of the Communications Division at [cddirector@cpuc.ca.gov](mailto:cddirector@cpuc.ca.gov).

All telephone corporations providing intrastate IPCS in California as defined here must comply with the requirements of this decision.

## **7. Providing Interim Relief from Ancillary Service Fees**

As with per-minute rates, the Commission does not currently regulate ancillary fees charged in connection with IPCS in California. However, the OIR

noted reports of high ancillary fees and this topic is included in the Scoping Memo. The April ALJ Ruling asked:

- Do parties agree with the Staff Proposal's recommendation for the Commission to cap ancillary service charges for intrastate inmate calling services, using the FCC's adopted interim caps as the model?
- Do parties agree with the Staff Proposal's recommendation that the Commission prohibit carriers from charging any other intrastate calling service fees or ancillary service fees not specified in the Staff Proposal's summary of FCC interstate ancillary service charge caps?

This section reviews Staff's proposal for interim relief from IPCS ancillary service fees, additional party proposals, and party comments and adopts several interim requirements for intrastate IPCS ancillary fees.

We prohibit the imposition of any automated payment fees, paper bill/statement fees, live agent fees, and single-call fees in association with intrastate and jurisdictionally mixed calls and require intrastate IPCS providers to directly pass through third-party financial transaction fees to consumers with no markup, and to cap these fees at a limit of \$6.95 per transaction. We restrict collection of mandatory government taxes and fees in association with intrastate and jurisdictionally mixed calls to pass through without markup and prohibit IPCS providers from charging any other ancillary service fees not identified and explicitly approved here. We require IPCS providers to implement our adopted ancillary fee requirements within 45 days of Commission issuance of this decision, to fully and clearly disclose the rates and fees adopted here on their websites, in billing, and in any marketing materials within 45 days, and to submit these materials and a Plan of Notification for Commission review within 30 days of issuance of this decision.

## 7.1 Staff Proposal

In its initial Staff Proposal, Staff recommends that the Commission cap ancillary service fees as the FCC did in its 2015 Order and prohibit carriers from charging any other ancillary service fees not specified.<sup>193</sup> Staff observe that the FCC capped several ancillary service fees and generally prohibits providers from imposing IPCS fees other than those specified in its rules. The FCC's 2015 Order adopted the following caps on interstate IPCS ancillary service fees:

- Automated payment fees: Limited to a maximum of \$3.00 per use;
- Paper bill fee: Caps fees for paper bills at \$2.00 per statement.
- Live agent fee: Caps single live operator interaction fees at \$5.95 per interaction.
- Mandatory pass-through government taxes and fees: Prohibits markups on either category of charges.
- Single-call and related services: Where no prepaid or debit inmate calling services account has been established, the FCC prohibits providers from charging more than the exact fee the third-party charges for these transactions, with no markup;
- Third-Party Financial Transaction Fees: Limits third-party fees that can be passed on to consumers to the exact fees, with no markup.

Staff's Revised Proposal recommends that the Commission prohibit single-call service fees instead of limiting charges to the exact third-party fees for those services with no markup, as done in the FCC's 2015 Order. The Revised Staff Proposal explains this recommendation as follows:

In written comments to the online portal, comments were submitted regarding fees, including the single-call service fee.

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<sup>193</sup> Staff Proposal at 3.

Most notable were those I[P]CS customers that provided examples of being charged the fee multiple times in an effort to complete a single 15-minute phone call. In more than one instance customers indicated being disconnected multiple times during their call and then being charged the single-call service fee each time they tried to reconnect. In these examples the single-call service fee of \$3.00 was likely charged at least three times and totaled \$9.00 or more.<sup>194</sup>

Staff recommends the Commission act on an interim basis until the Commission takes more permanent action later in this proceeding. Staff further recommends that a later phase of this proceeding:

...evaluate the relevance of all ancillary charges for I[P]CS by examining competitive telecommunications providers operating in the open market to determine if any of these I[P]CS ancillary charges are levied by competitive telecommunications providers. There is little reason to believe that the costs of a credit card transaction or speaking with a live agent are higher for an I[P]CS provider or any more reasonable to charge to incarcerated persons than the general public being serviced by other telecommunications corporations operating in the open market in California.<sup>195</sup>

## **7.2 Party Proposals**

Cal Advocates and TURN recommend the Commission go beyond the ancillary fees caps adopted by the FCC and recommended by Staff. These parties state there is no indication that the current FCC ancillary caps are based on costs of service. Instead, these parties contend that the FCC caps were adopted in 2015 based on a single state's data.<sup>196</sup>

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<sup>194</sup> Revised Staff Proposal at 2.

<sup>195</sup> *Ibid.*

<sup>196</sup> Cal Advocates, Comments on Staff Proposal at 15, citing 2015 Order at ¶ 156, indicating the caps were based on the Alabama Public Service Commission's approach.

### 7.2.1 Cal Advocates' Proposal

Cal Advocates recommends the Commission fully prohibit three types of fees – automated payment fees, paper bill/statement fees, and live agent fees – and strictly enforce the FCC's single-call and related services and third-party financial transaction fees.

We provide Cal Advocates' proposal alongside the FCC's 2015 Order ancillary fee requirements. We indicate updates to the FCC's 2015 ancillary fee requirements, as adopted in the Third Order, in italics:

**Table 4: Cal Advocates' Proposals for Ancillary Services Fees and FCC Current Rate Caps<sup>197</sup>**

Item No.	Ancillary Service Charge	FCC 2015 Order Rate Caps <sup>198</sup>	Cal Advocates' Proposed Rates
1	Automated payment fees	\$3.00 per use	This charge should be prohibited
2	Paper bill/statement fee	\$2.00 per use	This charge should be prohibited
3	Live agent fee	\$5.95 per use	This charge should be prohibited
4	Single-call and related services	IPCS providers pass through exact transaction fees charged by third-party providers, with no additional markup <i>up to a cap of \$6.95 per transaction</i> , plus the adopted, per-minute rate	In addition to adopting the FCC's requirements, the Commission should enforce this order through robust enforcement actions
5	Third-party financial transaction fees	IPCS providers pass through exact transaction fees charged by third-party providers, with no	In addition to adopting the FCC's requirements, the Commission should enforce this order through robust enforcement actions

<sup>197</sup> Cal Advocates, Comments on Staff Proposal at 16.

<sup>198</sup> 47 CFR §64.6020.

		additional markup, up to a cap of \$6.95 per transaction.	
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We provide the following overview of the rationale Cal Advocates included with its proposal:

**Prohibition of Automated Payment Fee:** As defined by the FCC, automated payment fees are charges by IPCS providers for various types of transactions, including “credit card payment, debit card payment, and bill processing fees, including fees for payments made by interactive voice response (IVR), web, or kiosk.”<sup>199</sup> These fees are incurred when people who are incarcerated or their families use a credit or debit card to fund their IPCS accounts for future calls.<sup>200</sup>

Cal Advocates observes that retail stores also process payments through debit/credit cards but do not charge customers automatic payment fees. This principle should apply to IPCS providers, Cal Advocates states. Cal Advocate states that fifteen state prison systems have eliminated automated payment/automated deposit fees entirely and that GTL does not currently impose this fee on incarcerated persons in multiple facilities in California.<sup>201</sup>

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<sup>199</sup> Cal Advocates, Comments on Staff Proposal at 16, citing FCC Title 47 of CFR § 64.6000(a)(1)

<sup>200</sup> *Ibid*, footnote 64. Cal Advocates states that IPCS accounts can generally “be accessed by people who are incarcerated as well as their friends and family who can add money to the account.”

<sup>201</sup> *Id.* at 15-16, citing Prison Policy Institute study, *Since You Asked: Can Correctional Facilities Negotiate Phone Contracts that Prohibit Deposit Fees? (Yes! Many Do.)*, Peter Wagner, Prison Policy Institute, November 20, 2020, viewed by Cal Advocates on 4/23/21; GTL response to Cal Advocates’ Data Request 03, Question 2.

**Prohibition of Paper Bill/ Statement Fee:** Paper Bill/Statement Fees are fees “associated with providing I[P]CS customers paper billing statements.”<sup>202</sup> Cal Advocates observes that customers outside of IPCS facilities receive paper bills or statements, such as utility bills or bank statements, without paying additional fees; further, many customers lack access to broadband service to access online statements. Individuals who are incarcerated and their families should also have the same option to receive paper bills or statements for free, Cal Advocates contends. Cal Advocates states that New Jersey has prohibited IPCS providers from imposing this fee since 2015.<sup>203</sup>

**Prohibition of Live Agent Fee:** Live Agent Fees are associated “with the optional use of a live operator to complete [Incarcerated Person’s] Calling Services transactions,”<sup>204</sup> including setting up an account, adding money to an account, or assisting with making a call.<sup>205</sup> Cal Advocates, as well as CforAt and Commission Staff, observe that telecommunications and other utilities provide customer service outside of IPCS facilities for free. Cal Advocates and others argue it is unreasonable for ICS providers to charge this fee.

**Robust Enforcement of Single-Call and Related Services Fees:** Single-Call and Related Services Fees are “billing arrangements whereby an [incarcerated person's] collect calls are billed through a third-party on a per-call basis, where the called party does not have an account with the Provider of [Incarcerated Person’s] Calling Services or does not want to establish an

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<sup>202</sup> *Ibid.*, citing FCC Title 47 of CFR § 64.6000(a)(4).

<sup>203</sup> *Ibid.*, citing 2015 Order, at 83, ¶ 162.

<sup>204</sup> *Ibid.*, citing FCC Title 47 of CFR § 64.6000(a)(3).

<sup>205</sup> *Ibid.*, citing FCC 2020 Order on Remand ¶ 42, FCC Rcd. 8485, 8500-01 (August 7, 2020).

account.”<sup>206</sup> The FCC’s Third Order requires an IPCS provider to pass through the transaction fee charged by the third-party provider, with no markup, to their customers, up to a limit of \$6.95.<sup>207</sup>

Cal Advocates states there are indications that IPCS providers “may have undisclosed contracts/agreements with third-party companies to inflate third-party transaction prices to their advantage.”<sup>208</sup> Cal Advocates recommends the Commission require IPCS providers to pass through the single-call fee with no additional markup, prohibit undisclosed deals that inflate third-party transaction prices, and enforce this requirement by adopting robust enforcement provisions in Phase II of this proceeding.

**Robust Enforcement of Third-Party Financial Transaction Fees:**

Third-party financial transaction fees are fees “charged by third parties to transfer money or process financial transactions to facilitate a Consumer's ability to make account payments via a third party,”<sup>209</sup> such as Western Union or Moneygram. People who are incarcerated and their families may not have bank accounts and sometimes pay their bills by money transfer via Western Union or Moneygram. The FCC’s Third Order requires IPCS providers to directly pass

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<sup>206</sup> *Id.* at 18, citing FCC Title 47 of the CFR Section 64.6000 (a)(2).

<sup>207</sup> *Ibid.*, citing FCC Title 47 of the CFR Section 64.6020 (b)(2).

<sup>208</sup> *Ibid.*, citing in *Ashley Albert, et. al., vs. Global Tel\*Link Corp.* “Plaintiffs alleged that in 2020, Securus and GTL implemented the “single-call” option. These single calls charged a high flat rate to accept a one-time collect call from people who are incarcerated. Plaintiffs further alleged that Securus and GTL were able to charge these high single-call prices by agreeing to eliminate competition between themselves and setting the same inflated single-call prices.” See <https://www.classaction.org/media/albert-et-al-v-global-tel-link-corp-et-al.pdf>.

<sup>209</sup> *Ibid.*, citing FCC Title 47 of the CFR Section 64.6000 (a)(5).

through these third-party financial transaction fees to consumers with no markup, up to a limit of \$6.95 per transaction.<sup>210</sup>

Cal Advocates states there are indications that “Western Union and MoneyGram collect a portion of this fee, which Western Union calls a ‘revenue share’ or ‘referral fee,’ on behalf of the I[P]CS providers.”<sup>211</sup> Cal Advocates therefore recommends the Commission require I[P]CS providers to pass through third-party financial transaction fees with no additional markup, prohibit revenue sharing deals, and enforce this requirement through robust enforcement provisions in Phase II of this proceeding.

### **7.2.2 TURN’s Proposal**

TURN urges the Commission to “move independently” from the FCC on ancillary service fees.<sup>212</sup> TURN recommends the Commission reduce the ancillary fee caps adopted by the FCC by 30 percent to account for the lower costs to provide intrastate services as compared to interstate services, particularly those related to call set up or connection. TURN recommends the Commission clarify that no other fees may be imposed or charged for any capped or prohibited services.<sup>213</sup> TURN states that:

Based on prior comments, public comment in the docket and numerous callers during the Public Participation Hearings, as discussed above, the Commission can and should acknowledge that the fees assessed on customers are creating hardship for Californian families. The 2013 FCC rate caps are

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<sup>210</sup> *Id.* at 19, citing FCC Title 47 of the CFR Section 64.6000 (b)(5).

<sup>211</sup> *Ibid.*, citing *Prison Policy Institute State of Phone Justice*, available as of this writing at [https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice.html](https://www.prisonpolicy.org/phones/state_of_phone_justice.html).

<sup>212</sup> TURN, Reply Comments on Staff Proposal at 15.

<sup>213</sup> TURN, Comments on Staff Proposal at 15; TURN, Reply Comments at 14.

too high to address these hardships and are several years old.<sup>214</sup>

### **7.3 Party Comments on Staff and Party Proposals**

NCIC Inmate Communications supports Staff's initial ancillary fee cap proposal but urges the Commission to go further in two ways. First NCIC Inmate Communications urges the Commission to clarify that "per-call transaction fees for single-payment calls will not be permitted. This was an error on the part of the FCC and this has been abused by providers charging between \$2.00 and \$13.10 for a transaction fee on a single-call."<sup>215</sup> NCIC Inmate Communications also states that the "FCC made an oversight when allowing providers to pass-through third-party transaction fees, such as Western Union's and MoneyGram's processing fees. They opened the door to allowing providers to pass through credit card billing costs, which has resulted in some providers adding an additional 5 percent fee on top of the transaction fees."<sup>216</sup>

In comments on the proposed decision, NCIC Inmate Communications states that third-party financial organizations are charging anywhere from three to five percent credit card transaction fees directly to family members, not IPCS providers, due to an FCC definitional oversight that allows "credit card charges" to be passed through as part of "financial transaction fees."<sup>217</sup> NCIC Inmate Communications urges the Commission to prohibit this. NCIC Inmate Communications also recommends that the Commission prohibit per-call

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<sup>214</sup> TURN, Reply Comments on Staff Proposal at 14.

<sup>215</sup> NCIC Inmate Communications, Comments on Staff Proposal at 4.

<sup>216</sup> *Ibid.*

<sup>217</sup> NCIC Inmate Communications, Comments on Proposed Decision at 4.

transaction fees of any type, including for single-payment calls.<sup>218</sup> NCIC did not comment on Cal Advocates' proposal.

Prison Policy Institute states that the Commission has jurisdiction to impose ancillary fees lower than those adopted by the FCC and, with TURN, observes that the FCC has affirmed this several times.<sup>219</sup> Prison Policy Institute recommends the Commission prohibit single-call products that "steer end-users to incur automated payment fees on a per-call basis."<sup>220</sup>

Prison Policy Institute discusses what it calls "loopholes" in the FCC ancillary service fee rules that allow "double-dipping," which it suggests the Commission should prohibit. Prison Policy Institute states that it has documented a provider charging both a \$3.00 automated payment fee and passing through their own payment-card processing fees.<sup>221</sup>

Pay Tel and Verizon support adopting the ancillary service caps adopted in the FCC's Third Order, with Verizon further urging the Commission to "find a long-term approach that prevents incarcerated individuals from paying fees that are not connected with legitimate calling costs."<sup>222</sup> CforAT observes that "[p]articipants at the Public Participation Hearings described significant confusion and bill shock regarding ancillary service fees."<sup>223</sup>

Securus and GTL support Staff's proposal to adopt the FCC's 2013 Order ancillary fee caps but argue that most ancillary service fees cannot be separated

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<sup>218</sup> NCIC Inmate Communications, Comments on Staff Proposal at 4.

<sup>219</sup> Prison Policy Institute, Comments on Staff Proposal at 4, citing the FCC Third Order at ¶ 218 and the FCC 2020 Order on Remand at ¶ 47; TURN, Comments on Staff Proposal at 16.

<sup>220</sup> Prison Policy Institute, *Id.* at 5.

<sup>221</sup> *Ibid.*

<sup>222</sup> Verizon, Comments on Staff Proposal at 5.

<sup>223</sup> CforAT, Comments on Staff Proposal at 8.

between interstate versus intrastate calls. These providers interpret this as meaning that authority over most IPCS service fees is “jurisdictionally mixed” and therefore subject to the FCC’s rules.<sup>224</sup>

GTL asserts that its billing systems “record and access ancillary service charges with respect to the underlying action... exclusive of how the deposited monies are ultimately used, i.e., for an interstate or intrastate call.”<sup>225</sup> GTL states that it can only definitely classify single-call and related service fees as “interstate” or “intrastate,” and therefore the Commission should adopt the FCC’s ancillary service caps.<sup>226</sup>

In reply comments, CforAT asserts that, contrary to the assertions of Securus and GTL, the Commission can apply existing methods other than the use of actual revenue data to determine the percentage of ancillary service fees that are intrastate.<sup>227</sup>

#### **7.4 Discussion: Prohibiting All Ancillary Service Fees Except for Third-Party Financial Transaction Fees and Government-Mandated Taxes and Fees**

We adopt interim caps and prohibitions on intrastate IPCS ancillary service fees in several ways. First, we prohibit the imposition of any automated payment fees, paper bill/statement fees, live agent fees, and single-call fees in association with intrastate and jurisdictionally mixed calls. Second, we require intrastate IPCS providers to directly pass through third-party financial transaction fees to consumers with no markup, and excluding any credit card

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<sup>224</sup> Securus, Comments on Staff Proposal at 19.

<sup>225</sup> GTL, Comments on Staff Proposal at 22.

<sup>226</sup> CforAT, Reply Comments on Staff Proposal at 8.

<sup>227</sup> CforAT, Reply Comments on Staff Proposal at 9, citing *MetroPCS v. Picker*, No.18-17382, slip op. at 10 (9th Cir. Aug. 14, 2020).

charges, and to cap these fees at a limit of \$6.95 per transaction. Third, we restrict collection of mandatory government taxes and fees in association with intrastate and jurisdictionally mixed calls to pass through without markup. Fourth, we prohibit IPCS providers from charging any other ancillary service fees not identified and explicitly approved here in association with any intrastate or jurisdictionally mixed IPCS call.

There are no indications that the current uncapped ancillary fees charged in connection with IPCS calls are just or reasonable. No party provided data on the record that demonstrating this. Prohibiting and capping intrastate ancillary fees on an interim basis provides immediate and significant relief to all incarcerated persons and their families and is reasonable based on the record in this proceeding. As noted by CforAT, this Commission heard significant confusion and customer complaints about IPCS ancillary fees during our April 28, 2021 and April 29, 2021 PPHs, making clear that the current ancillary fees are a major burden to families of the incarcerated as they strive to stay in communication with their loved ones.<sup>228</sup>

We adopt several of Cal Advocates' proposed requirements as opposed to those contained in the Staff Proposal because the record does not indicate why the incarcerated and their families should pay service fees not required in commercial calling services, including automated payment fees, paper bill/statement fees, and live operator fees. The costs for these services are included in most commercial calling rates and we have no record discussing why such costs should not be similarly included in intrastate IPCS calling rates.

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<sup>228</sup> See Section 1.3 of this decision.

We prohibit all per-call transaction fees for single-payment calls as recommended by Staff's Revised Proposal, NCIC Inmate Communications and other parties because of the indications of potential abuse of this fee as discussed above.

We require the pass-through with no markup, and excluding any credit card charges, of third-party financial transaction fees, up to a limit of \$6.95 per transaction, as adopted in the FCC's Third Order. The FCC adopted this limit based on indications that some providers were abusing the FCC's 2013 Order by collaborating with third parties to agree on higher third-party transaction fees for IPCS, some portion of which the third-party would return to the IPCS provider. We respond to NCIC Inmate Communication's comments on the proposed decision by modifying the definition of this fee to clarify that it excludes the pass-through of any credit card charges. Additionally, although TURN recommended reducing this and other fees by 30 percent, no party recommended prohibiting this fee. Therefore, we allow this fee but apply the same constraints as adopted in the FCC's Third Order.<sup>229</sup> This is reasonable given the other requirements adopted here.

To avoid potential abuse, we also specify that government-specified mandatory taxes or fees must be passed-through without markup.<sup>230</sup> Although the FCC allows markup of passed-through government mandatory taxes or fees if the markup is authorized by a local statute, rule, or regulation, we are not aware of instances where such markup is permitted in California and so prohibit this here.<sup>231</sup>

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<sup>229</sup> FCC Third Order at ¶¶ 209 – 210.

<sup>230</sup> 2020 Order on Remand at ¶ 14.

<sup>231</sup> *Id.* at ¶ 14, ¶ 61.

Although providers prefer that we cap ancillary fees as done in the FCC's 2015 Order, we concur with Cal Advocates, the Prison Policy Institute, TURN, and CforAT that this Commission has the authority to act independently of the FCC to regulate intrastate IPCS ancillary service fees.

As found by the FCC, ancillary service charges generally cannot be practically segregated between interstate and intrastate jurisdiction except in the limited number of cases where, at the time a charge is imposed and the consumer accepts the charge, the call to which the service is ancillary is clearly an interstate-only or an intrastate-only call.<sup>232</sup> For "jurisdictionally mixed" services where it is impossible or impractical to separate the service's intrastate from interstate components, the FCC has stated that state law or requirements that impose fees lower than the FCC are "specifically not preempted by [FCC] actions."<sup>233</sup> As the FCC states:

The interim reforms we adopt in this Report and Order apply to interstate and international inmate calling services rates and certain ancillary services charges imposed for or in connection with interstate or international inmate calling services [footnote 680 omitted]. To the extent that a call has interstate as well as intrastate components, the federal requirements will operate as ceilings limiting potential state action [footnote 681 omitted]. To the extent a state allows or requires providers to impose or charge per-minute rates or fees for the affected ancillary services higher than the caps imposed by our rules, that state law or requirement is preempted except where a call or ancillary service fee is purely intrastate in nature... [footnote 682 omitted]. *To the*

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<sup>232</sup> 2020 Order on Remand at ¶ 28.

<sup>233</sup> TURN, Reply Comments on Staff Proposal at 15, citing at FCC Third Order at 97, ¶ 218; 2020 Order on Remand, para. 47 (2020) (stating that "to the extent a state allows or requires an inmate calling services provider to impose fees lower than those contained in our rules, that state law or requirement is not preempted by our action here"); *See also* Third Order at ¶ 271, ¶ 254; 2020 Order on Remand at ¶ 217.

*extent that state law allows or requires providers to impose rates or fees lower than those in our rules, that state law or requirement is specifically not preempted by our actions here [footnote 683 omitted].*<sup>234</sup>

We conclude that the Commission is not preempted from imposing intrastate rates or fees lower than those adopted by the FCC, including with regards to calls with interstate and intrastate components, where federal requirements operate as ceilings. We find that ancillary service charges generally cannot be practically segregated between interstate and intrastate jurisdiction except where, at the time a charge is imposed and the consumer accepts the charge, the call to which the service is ancillary is a clearly interstate-only or an intrastate-only call. It is within this Commission's authority and jurisdiction to adopt lower ancillary fee caps than those adopted for interstate IPCS and to require IPCS providers to adhere to our adopted fee requirements for intrastate and jurisdictionally mixed ancillary services.

To our knowledge, and as stated by GTL, the only ancillary fee that can practicably be identified with a particular call is the single-call service fee, which we prohibit here in association with intrastate calls. Therefore, the only ancillary fees that IPCS providers operating in California may impose are the third-party financial transaction fee, with the restrictions adopted here, and single-call fees clearly associated with an interstate call. Our prohibition of automated payment fees, paper bill/statement fees, live agent fees, and single-call fees in association with intrastate and jurisdictionally mixed IPCS effectively "caps" these fees at zero (\$0.0) dollars and thus any imposition of these fees in association with jurisdictionally mixed IPCS services is prohibited.

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<sup>234</sup> FCC Third Order at ¶ 217.

Following the FCC, we define ancillary service charges as any charge consumers may be assessed for, or in connection with, IPCS that are not included in the per-minute charges assessed for such individual calls. Specifically:

- Automated payment fees: means credit card payment, debit card payment, and bill processing fees, including fees for payments made by interactive voice response, web, or kiosk;
- Single-call fees (and related services): means billing arrangements whereby an incarcerated person's collect calls are billed through a third-party on a per-call basis, where the called party does not have an account with the IPCS provider or does not want to establish an account;
- Live agent fee: means a fee associated with the optional use of a live operator to complete IPCS transactions;
- Paper bill/statement fee: means fees associated with providing customers of IPCS an optional paper billing statement;
- Third-party financial transaction fee: means the exact fees, with no markup, and excluding any credit card charges, up to a cap of \$6.95 per transaction, that IPCS providers are charged by third- parties to transfer money to an IPCS customer account; and,
- Mandatory government taxes or fee: means a government authorized, but discretionary, fee which an IPCS provider must remit to a federal, state, or local government, and which an IPCS provider is permitted, but not required, to pass through to consumers for or in connection with intrastate IPCS, with no markup.

As with our adopted rate cap, we choose a 45-day implementation timeline because this is a reasonable period that allows for contract renegotiations and noticing, where required, while timely providing relief to the incarcerated and their families on an issue of longstanding importance.

We direct all telephone corporations providing intrastate IPCS to implement our adopted rate ancillary fee requirements across all of their IPCS contracts, accounts, and facilities in California, no later than 45 days from Commission issuance of this decision. The ancillary fee requirements must be applied to any existing account balances as of the date of implementation, as well as any new account balances or new accounts opened after that date. Intrastate IPCS providers are prohibited from applying any other type of ancillary or service fee or charge other than those explicitly approved here.

We direct all telephone corporations providing intrastate IPCS to submit a Notice of Compliance within 45 days of Commission issuance of this decision confirming implementation of the interim ancillary fee requirements adopted here across all of their intrastate IPCS contracts, accounts, and facilities in California. The Notice of Compliance should be emailed to the Director of the Communications Division at [cddirector@cpuc.ca.gov](mailto:cddirector@cpuc.ca.gov), and must include the following information:

1. Attestation that the interim intrastate ancillary service fee requirements adopted here have been implemented at any and all facilities served by the carrier in California.
2. Copies of or links to carrier webpages where the interim intrastate ancillary service fee requirements adopted here are presented for facilities located in California.
3. Copies of notices provided to facilities of the interim intrastate ancillary service fee requirements adopted here.
4. Copies of notices to incarcerated people of the interim intrastate ancillary service fee requirements adopted here.

We direct all telephone corporations providing intrastate IPCS to fully disclose the adopted ancillary fee schedules on their websites, bills, and in marketing material by no later than 45 days from Commission issuance of this

decision and to maintain the adopted ancillary fee requirements clearly and prominently on their websites. Disclosures of fee schedules and all related notices shall provide service-related information in English, Spanish and any other languages prevalent in incarceration facilities and shall inform the incarcerated of methods to lodge service quality complaints with the Commission as discussed in section 11 below.

We direct all telephone corporations providing IPCS to submit an Interim Rate Compliance Report to the Commission's Director of the Communications Division at [cddirector@cpuc.ca.gov](mailto:cddirector@cpuc.ca.gov) no later than 45 days from Commission issuance of this decision and on a quarterly basis thereafter while the interim rates adopted here are in effect. Each IPCS provider's Interim Rate Compliance Report must include a revenue breakdown of billed interstate and intrastate minutes of use, and a revenue breakdown of billed ancillary interstate and intrastate fees over a period of thirty days.

We direct all telephone corporations providing IPCS to provide a Plan for Notification to all current and prospective customers and account holders and their draft notices of the adopted ancillary fee requirements, terms and conditions, refund policies and customer service contacts for websites, bill inserts, and marketing materials to the Commission for review no later than 30 days from Commission issuance of this decision. The Plan and draft notices shall include disclosures of fee schedules and service-related information in English, Spanish and any other languages prevalent in incarceration facilities and shall inform the incarcerated of methods to lodge service quality complaints with the Commission as discussed in section 11 below.

All IPCS providers operating in California as defined here must comply with the requirements of this decision. IPCS providers not explicitly identified in

this decision must provide a Notice of Compliance to the Commission no later than 45 days after executing a contract to provide IPCS in California, and must provide a Plan for Notification, draft notices of the adopted rates, terms and conditions, refund policies and customer service contacts for websites, bill inserts, and marketing materials to the Commission for review no later than 30 days after executing a contract to provide IPCS in California. The Plan and notices shall include disclosures of fee schedules and service-related information in English, Spanish and any other languages prevalent in incarceration facilities, and shall inform the incarcerated of methods to lodge service quality complaints with the Commission as discussed in section 11 below.

Such IPCS providers must also submit an Interim Rate Compliance Report to the Commission's Director of the Communications Division no later than 45 days from executing a contract to provide IPCS in California, and on a quarterly basis thereafter while the interim rates adopted here are in effect. Each IPCS provider's Interim Rate Compliance Report must include a revenue breakdown of billed interstate and intrastate minutes of use, and a revenue breakdown of billed ancillary interstate and intrastate fees over a period of thirty days.

As necessary, we will consider adjustments to our adopted interim ancillary fee requirements and interim rates as we consider adopting permanent requirements later in this proceeding.

## **8. Enforcement and Compliance Requirement**

The Commission and its Staff have enforcement authority to ensure compliance with this decision. Resolution T-17601 establishes a citation and enforcement program for California telecommunication providers. It authorizes the Commission's Communication Division to issue penalties to telecommunications providers for failure to submit filings, notices, reports, and

other items as directed in Commission resolutions, decisions, orders, and the Public Utilities Code. Penalties are \$1,000 for the first event, with each subsequent notice increasing the penalty amount by an additional \$200. Resolution T-17601 adopts noticing, appeal, and other provisions.<sup>235</sup>

The Commission additionally retains enforcement authority for non-compliance with its decisions, orders, and resolutions pursuant to Public Utilities Code Sections 701, 702, 2101, 2107, and 2108, amongst others.<sup>236</sup> Telecommunications enforcement actions outside of the citation program established in Resolution T-17601 occur primarily through issuance and adoption of resolutions.

With regards to compliance and enforcement, the April 2021 ALJ Ruling asked, “[i]s the Commission’s current citation process (Resolution T-17601) and enforcement authority (Public Utilities Code Sections 701, 2101, 2107) sufficient to ensure compliance with the Staff Proposal?”

This decision affirms Commission Staff’s authority to impose fines on telephone corporations for failure to comply with this decision, in a manner consistent with authority previously delegated to staff in Resolution T-17601 and as otherwise set forth below.

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<sup>235</sup> Resolution T-17601. *Approval of a Citation Program to Enforce Compliance by Telecommunications Carriers with the Commission’s Resolutions, Decisions, Orders, and the Public Utilities Code and Authorizes Staff to Issue Citations; Procedure for Appeals of Citations*. Issued June 22, 2018.

Available here:

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M216/K795/216795045.PDF>.

<sup>236</sup> Public Utilities Code Section 2107 states that any public utilities, including telephone corporations, that violates or fails to comply with any Commission order, in a case in which a penalty has not otherwise been provided, is subject to a penalty of not less than five hundred dollars (\$500), nor more than one hundred thousand dollars (\$100,000) for each offense. Section 2108 states that every violation of a Commission order, and in case of a continuing violation each day’s continuance thereof shall be considered a separate and distinct offense.

## 8.1 Party Comments

The Justice Coalition, Securus, and NCIC Inmate Communications comment that the Commission's existing citation process and enforcement authority is sufficient.

Cal Advocates states that the Commission's existing citation process and enforcement authority is not sufficient, and the Commission should revise Resolution T-17601 to identify specific violations related to IPCS interim rate relief and the amount of each penalty.<sup>237</sup> Cal Advocates recommends the Commission set a penalty of \$1,000 per violation per facility for an IPCS provider charging over an adopted rate cap or for collecting any unauthorized ancillary fees.<sup>238</sup> Cal Advocates further recommends the Commission clarify whether violations would be determined by Staff audits or based on consumer complaints.

Cal Advocates states that some IPCS providers may have been skirting the intent of the FCC's 2015 Order adopting ancillary service fees by cooperating to charge higher than normal single-call and third-party financial transaction fees (see section 7.3). As a result, Cal Advocates urges the Commission to vigorously enforce any single-call or third-party financial transaction fee requirements by adopting robust enforcement provisions in Phase II of this proceeding.<sup>239</sup> Cal Advocates argues the Commission should utilize Public Utilities Code Section 734 to require IPCS providers to make reparations for excess charges.

TURN supports consideration of Cal Advocates' proposals. GTL, the Prison Policy Initiative, Pay Tel, and Verizon did not respond to this question.

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<sup>237</sup> See Resolution T-17601 at pages 3-4, Appendix A, and Appendix C.

<sup>238</sup> Cal Advocates, Comments on Staff Proposal at 21.

<sup>239</sup> *Id.* at 18-19.

## **8.2 Enforcement Authorization for Instances of Non-Compliance**

We authorize the Commission's Communications Division to assess fines pursuant to Resolution T-17601 and Public Utilities Code Sections 2107 and 2108 for any IPCS provider's failure to comply with this decision.

In the case of non-compliance with this decision's requirement for submittal of Notices of Compliance, as well as the Plan for Notification to all current and prospective customers and account holders, draft notices of the adopted ancillary fee requirements, terms and conditions, refund policies and customer service contacts for websites, bill inserts, and marketing materials to the Commission discussed in Section 7.4, Staff shall refer to Resolution T-17601 for guidance.

In the case of non-compliance with this decision's rate and ancillary fee requirements, Staff shall develop a resolution proposing fines as authorized pursuant to Public Utilities Code Sections 2107 and 2108.

The record in this proceeding indicates instances of apparent circumvention of the intent of the FCC's interstate IPCS rate caps and ancillary fee requirements. Thus, it is useful to affirm Staff and this Commission's authority to enforce the interim rate caps and ancillary fee requirements adopted here. The Commission is intent on ensuring compliance with this decision and will investigate and act on any effort to circumvent the requirements adopted here. We may consider additional enforcement enhancements to ensure compliance with this decision later in this proceeding.

## **9. Commission Environmental and Social Justice Action Plan**

In 2015, people of color accounted for about 71 percent of people in jails and 79 percent of people in prisons in California, although people of color

comprise about 61 percent of California’s population. African Americans are particularly overrepresented in incarceration facilities in California. African Americans comprise just six percent of California’s population, but represent approximately 20 percent of people in jail and about 28 percent of people in prison.<sup>240</sup>

**Table 5: Race and Ethnicity in California Jails and Prisons<sup>241</sup>**

Ethnicity/ Race	Percent of Jail Population	Percent of Prison Population	Percent of State Population	Rate incarcerated per 100,000 ages 15-64 (jails)	Rate incarcerated per 100,000 ages 15-64 (prisons)
African American	20	28	6	901	2,224
Native American	1	1	1	461	1,033
Latinx	41	44	38	313	556
White	29	21	39	216	276
Asian/ Pacific Island	2	1	15	36	34

African American women are also overrepresented in California jails and prisons. Of the state’s 5,849 female prisoners in 2017, 26 percent were African American although only 6 percent of California’s adult female residents are. African American women are imprisoned at a rate of 171 per 100,000 – more than five times the imprisonment rate of white women, which is 30 per 100,000.

<sup>240</sup> Source: Incarceration Trends in California, Vera Institute of Justice (2019) <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-california.pdf> (accessed June 28, 2021).

<sup>241</sup> *Ibid.*

Imprisonment rates for Latinx women and women of other races are 38 and 14 per 100,000, respectively.<sup>242</sup>

As discussed in section 1, as much as 34 percent of families go into debt to stay in contact with an incarcerated family member and the cost of maintaining contact with incarcerated persons falls disproportionately on low-income women of color.<sup>243</sup> A 2015 study found that incarcerated people had a median annual income of less than \$20,000 prior to their incarceration.<sup>244</sup>

In 2018, the Commission adopted an *Environmental and Social Justice Action Plan* (ESJA Plan).<sup>245</sup> The Plan identifies Environmental and Social Justice (ESJ) communities as those where residents are predominantly communities of color or low-income, underrepresented in the policy setting or decision-making process, subject to a disproportionate impact from one or more environmental hazards, likely to experience disparate implementation of environmental regulations and socio-economic investments in their communities, and, as including the top 25 percent of disadvantaged communities in California,<sup>246</sup> all

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<sup>242</sup> Public Policy Institute of California, “Just the Facts,” California’s Prison Population <https://www.ppic.org/publication/californias-prison-population/> (accessed June 28, 2021).

<sup>243</sup> Root and Rebound, Comments on Order Instituting Rulemaking at 3, citing, Saneta deVuono-powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi. “Who Pays? The True Cost of Incarceration on Families.” Ella Baker Center for Human Rights, Forward Together, and Research Action Design. September 2015, available at: <http://www.whopaysreport.org/who-paysfull-report/> (accessed June 28, 2021).

<sup>244</sup> Root and Rebound, Comments on Order Instituting Rulemaking at 4, citing Bernadette Rabuy and Daniel Kopf. “Prisons of Poverty: Uncovering the pre-incarceration incomes of the imprisoned” Prison Policy Initiative. July 2015, available at <https://www.prisonpolicy.org/reports/income.html> (accessed June 28, 2021)

<sup>245</sup> California Public Utilities Commission Environmental and Social Justice Action Plan (Commission ESJA Plan). V. 1.0, February 21, 2019, available here: <https://www.cpuc.ca.gov/ESJactionplan/> (accessed June 28, 2021).

<sup>246</sup> As identified by Cal EPA’s CalEnviroScreen, available here: <https://oehha.ca.gov/calenviroscreen> (accessed June 28, 2021).

California Tribal lands, low-income households with household income below 80 percent of area median income, and, low-income census tracts with household incomes less than 80 percent area or state median income.<sup>247</sup>

The Commission's ESJA Plan is guided by the following definition of environmental and social justice:

Environmental and social justice seeks to come to terms with, and remedy, a history of unfair treatment of communities, predominantly communities of people of color and/ or low-income residents. These communities have been subjected to disproportionate impacts from one or more environmental hazards, socio-economic burdens, or both. Residents have been excluded in policy setting or decision-making processes and have lacked protections and benefits afforded to other communities by the implementation of environmental and other regulations, such as those enacted to control polluting activities.<sup>248</sup>

Goals 1, 3 and 6 of the ESJA Plan are relevant for this rulemaking:

Goal 1: Consistently integrate equity and access considerations throughout CPUC proceedings and other efforts.

Goal 3: Strive to improve access to high-quality water, communications, and transportation services for ESJ communities.

Goal 6: Enhance enforcement to ensure safety and consumer protection for ESJ communities.<sup>249</sup>

This decision advances the Commission's ESJA Plan goals by affirming the importance of just and reasonable rates for calling services for the incarcerated and their families, who are disproportionately represented by people of color in

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<sup>247</sup> *ESJA Plan* at 9.

<sup>248</sup> *Id.* at 6.

<sup>249</sup> *Id.* at 16-18.

California, particularly Black Californians. This decision affirms Commission enforcement authority to ensure compliance with this decision and indicates that subsequent decisions may enhance Staff enforcement authority, as needed. Subsequent decisions in this rulemaking will examine issues of service quality for the incarcerated and their families and work to mitigate or eliminate deficiencies.

#### **10. Streamlining the R.20-10-002 Service List**

The OIR for this proceeding listed as respondents all telephone corporations holding a CPCN approved by the Commission, including Competitive Local Carriers, Competitive Local Resellers, Local Exchange Carriers, Interexchange Carriers, and Interexchange Resellers. The OIR also named as respondents Digital Voice Service Registrants that do not require a CPCN. The Commission broadly identified respondents to this proceeding because we had not yet identified which telecommunications carriers operating in California were providing IPCS.

Pursuant to Rule 1.4(d) of the Commission's Rules of Practice and Procedure, all respondents are automatically designated as parties. As a result, as of May 4, 2021, some 842 entities were parties to this proceeding. However, a December 2020 Commission Staff data request identified only six providers of IPCS in California and as of May 4, 2021, only 14 parties had participated in the proceeding by filing a substantive pleading.

A large service list complicates service of proceeding documents to parties due to email size limits. Additionally, a number of companies not providing IPCS requested to be removed from the service list.

To address these issues, the assigned ALJ issued a *Ruling Describing Process to Remove Most Telecommunications Carriers from Service List* on May 4, 2021. The

ruling identified 39 entities that the assigned ALJ proposed would retain their party status. These included 14 active parties that had filed substantive pleadings, including four IPCS providers, five additional providers of IPCS as identified by Staff that had not as of that date filed substantive pleadings, and 20 telecommunications companies providing service to administrative centers of incarceration facilities but not to the incarcerated.

The ruling also identified four telecommunications providers that had indicated their interest in the proceeding but not filed substantive pleadings. The ruling indicated that the assigned ALJ would transfer these four entities to “information only” status unless they emailed the ALJ with a different request within 15 days. The ruling also indicated that any party not identified in the ruling would be removed from the service list unless it emailed the ALJ within 15 days.

#### **10.1 Transfer of Parties to “Information-Only” Status**

This decision updates the list of parties to R.20-10-002. No party contacted the assigned ALJ within 15 days of the ruling requesting to retain party status. However, the assigned ALJ received an emailed from a representative of several small Local Exchange Carriers that requested to remain on the service list in “information only” status. These parties also stated that the ruling had incorrectly indicated that some of them provide telecommunications to the administrative centers of some incarceration facilities, namely Calaveras Telephone Company, the Ponderosa Telephone Co., the Winterhaven Telephone Company, Happy Valley Telephone Company, and the Hornitos Telephone Company. However, we have been unable to independently verify this and thus retain these companies as parties for the time being. Additionally, the ruling

erred by not identifying Verizon as a party; Verizon filed a substantive pleading on April 30, 2021.

We direct the Commission's Process Office to move the following parties to information only status no later than 15 days from Commission issuance of this decision:

- Charter Fiberlink CA-CCO, LLC, Time Warner Cable Information Services (California), LLC, and Bright House Networks Information Services (California), LLC;
- Cox California Telecom, LLC;
- AT&T Corporation (collectively Pacific Bell Telephone Company d/b/a AT&T California, AT&T Corp., Teleport Communications America, LLC, and SBC Long Distance, LCC d/b/a AT&T Long Distance);
- Comcast Phone of California, LLC

## **10.2 Updated R.20-10-002 Service List**

We direct the Commission's Process Office to remove all parties not indicated below from the R.20-10-002 service list no later than 15 days from Commission issuance of this decision:

- Securus Technologies, LLC;
- Global Tel\*Link (GTL);
- Inmate Calling Solutions, LLC;
- NCIC Inmate Communications;
- Pay Tel Communications, Inc.;
- Legacy Inmate Communications, Inc.;
- Public Communications Services, Inc.;
- Telmate, LLC;
- Value-Added Communications, Inc.;
- Californians for Jail and Prison Phone Justice Coalition;
- Center for Accessible Technologies;

- Greenlining Institute;
- Media Alliance;
- Prison Policy Initiative, Inc.;
- Public Advocates Office;
- Returning Home Foundation;
- Root and Rebound;
- The Utility Reform Network;
- Youth Law Center;
- MCI Communications Services LLC and MCI Metro Access Transmission Services Corp. (Verizon);
- Inteltrace, Inc.;
- Southern California Edison;
- Frontier California Inc.;
- Citizens Telecommunications Company of California Inc.;
- Frontier Communications of the Southwest Inc.;
- Frontier Communications Online and Long Distance Inc.;
- Frontier Communications of America, Inc.;
- Cal-Ore Telephone Co.;
- Ducor Telephone Company;
- Foresthill Telephone Co.;
- Kerman Telephone Co.;
- Pinnacles Telephone Co.;
- Sierra Telephone Company, Inc.;
- The Siskiyou Telephone Company;
- Volcano Telephone Company;
- Calaveras Telephone Company;
- Ponderosa Telephone Co.;
- Winterhaven Telephone Company;

- Happy Valley Telephone Company; and,
- Hornitos Telephone Company.

#### **11. Comments on Proposed Decision**

The proposed decision of ALJ Cathleen A. Fogel in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code.

Comments allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure were filed on July 29, 2021 and August 2, 2021 by CforAT, NCIC Inmate Communications, the Justice Coalition, GTL, Securus, TURN, Cal Advocates, and Prison Policy Initiative and reply comments were filed on August 9, 2021 by Cal Advocates, CforAT, TURN, GTL, Securus, the Prison Policy Initiative, and the Justice Coalition.

We have in some instances modified the final decision in response to parties' comments, which we discuss below.

##### A. Claims that the \$0.07 rate Fails to Account for Varying Costs based on the Size, Characteristics and Needs of Incarceration Facilities

In comments on the proposed decision, Securus contends that the \$0.07 per minute rate is "principally based on the price offered by the largest provider to serve the state's entire prison system.... [and] fails to account for the fact, demonstrated in the record, that costs, and hence rates, vary significantly based on the size, characteristics and needs of the facility."<sup>250</sup> GTL makes similar claims that the decision ignores the different sizes, needs and costs of various facilities.<sup>251</sup>

We disagree with these comments. Section 6.3 above states that "it is unlikely that it costs IPCS providers more than double the cost of providing call

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<sup>250</sup> Securus, Comments on Proposed Decision at 3.

<sup>251</sup> GTL, Comments on Proposed Decision at 6 and 9.

services to the California state prison system to provide IPCS to jails *of all sizes*" (emphasis added). We agree that costs to provide IPCS to jails and prisons of varying sizes, populations and with different security needs may vary and our method of arriving at the \$0.07 per minute rate explicitly considers and accounts for this. GTL and Securus did not provide cost data on this topic.

B. Claims that the \$0.07 per Minute Rate Cap is Confiscatory and Constitutes a "Taking"

GTL contends in comments that the decision is "confiscatory," and "would violate the Takings Clause."<sup>252</sup> Securus contends that for providers serving smaller facilities, "the rate cap is below cost and confiscatory."<sup>253</sup>

GTL states that "[r]eview of whether a rate is confiscatory must be "viewed in its entirety" to look at the "total effect" on the regulated business [footnote omitted]. The [proposed decision] conducts no such evaluation [footnote omitted]. If it did, it would reflect that the proposed rate cap and ancillary service fee prohibitions/ limitations do not allow IPCS providers to recover their costs of providing IPCS, and certainly do not take into consideration the amounts and rates of site commissions IPCS providers currently are obliged to pay under binding contracts."<sup>254</sup> Securus makes similar assertions that the "interim rate cap does not enable Securus to recover its costs, including the costs of site commissions as required by *GTL v. FCC*, and is thus confiscatory."<sup>255</sup> GTL additionally asserts that the decision did not "consider whether the prohibitions/limitations on ancillary service fees would permit...

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<sup>252</sup> *Id.* at 13.

<sup>253</sup> Securus, Comments on Proposed Decision at 7.

<sup>254</sup> GTL, Comments on Proposed Decision at 13-14.

<sup>255</sup> Securus, Comments on Proposed Decision at 12.

recovery. The [proposed decision]’s treatment of ancillary service fees will not.”<sup>256</sup>

We disagree with these GTL and Securus assertions. First, this decision is based on the record before us. All IPCS provider parties to this proceeding have had the opportunity to file as part of the record cost data to back up these and similar claims, but they have not done so.<sup>257</sup> IPCS providers provision of data during discovery in response to data requests, to either Cal Advocates or this Commission’s Communication Division, is not part of the record<sup>258</sup> and as such we have no basis to corroborate these parties’ claims that the \$0.07 rate is confiscatory and constitutes a “taking.” Despite providers claims to the contrary, the rate data before us, provided by the Staff Proposal and non-provider parties’ comments, suggests that the \$0.07 rate is not confiscatory and does not constitute a taking.

While Securus cites to the case of *Ponderosa Tel. Co. v. Cal. Pub. Util. Comm*<sup>259</sup> to support its claim that the rate of \$0.07 is confiscatory, it fails to acknowledge that in that same case, the Court of Appeals states “[t]he burden is on petitioners to show the rate of return (or cost of capital) established by the [Commission] was clearly confiscatory. That is, there must be a clear showing

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<sup>256</sup> GTL, Comments on Proposed Decision at 11.

<sup>257</sup> Rule 10.1 of the Commission’s Rules of Practice and Procedure (Rules) provide for discovery from parties. However, to form part of the record of this proceeding, parties would have needed to append cost data to opening or reply comments on the Staff Proposal, with a request to file confidential data under seal pursuant to Rule 11.4. if needed, or to have filed a motion for leave to file evidence (Rule 13.6), exhibits (Rule 13.7), or prepared testimony (Rule 13.8), or to have filed a motion to hold evidentiary hearings (Rule 11.1).

<sup>258</sup> Securus, Comments on Proposed Decision at 12 notes that Securus produced to Cal Advocates a “comprehensive cost study” that it provided to the FCC.

<sup>259</sup> Securus, Opening Comments on Proposed Decision at 7, fn. 30, citing *Ponderosa Tel. Co. v. Cal. Pub. Util. Comm.* (2019) 36 Cal.App.5th 999, 1015.

the rate of return was ‘so “unjust” as to be confiscatory,’ such as by demonstrating the rate is so unreasonably low it will threaten the utility’s financial integrity by impeding the utility’s ability to raise future capital or adequately compensate current equity holders.”<sup>260</sup>

Additionally, there is a zone of reasonableness within which this Commission can establish a rate as long as it is higher than a confiscatory rate: “[a] rate of return lower than the utility asserts is necessary may nevertheless be reasonable or within a range of reasonableness, constitutionally speaking, if it is ‘higher than a confiscatory level.’”<sup>261</sup> “[M]erely asserting in general language that rates are confiscatory is not sufficient... [I]n order to invoke constitutional protection, the facts relied on must be specifically set forth and from them it must clearly appear that the rates would *necessarily* deny to plaintiff just compensation and deprive it of its property without due process of law.”<sup>262</sup> Thus, by failing to submit cost data to the record to demonstrate that the rate of \$0.07 is unreasonably low, Securus, GTL and the other ICPS provider parties have failed to meet the burden of proof required for us to consider modifying this interim rate. The ICPS provider parties are encouraged to provide such data in Phase II of this proceeding for our consideration in setting permanent rates.

Regarding Securus and GTL’s assertions that the \$0.07 per minute rate cap will not allow them to cover site commission costs, we similarly do not have data in the record of this proceeding to confirm or dispute this assertion. As discussed in section 5.4 above, we do not view site commission costs beyond the

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<sup>260</sup> *Ponderosa Tel. Co. v. Cal. Pub. Util. Comm.* (2019) 36 Cal.App.5th 999, 1019.

<sup>261</sup> *Ibid*, citing *Duquesne Light Co. v. Barasch* (1989) 488 U.S. 299, 308; *Fed. Power Com. v. Hope Natural Gas Co.* (1944) 320 U.S. 591, 585-586.

<sup>262</sup> *Pub. Serv. Com. of Montana v. Great Northern Utilities Co.* (1933) 289 U.S. 130, 136-137, (italics added.)

level necessary to contribute to facilities' actual costs to provide IPCS to the incarcerated as necessary for the provision of calling services. Nonetheless, we recognize that site commissions are components of the IPCS providers' existing contracts and have already included this consideration in setting the rate cap of \$0.07. We expect that the implementation time-period provided for here will allow IPCS providers to renegotiate contracts that currently provide for site commission payments that would exceed the \$0.07 per minute rate we adopt here. No IPCS provider contends in comments that it would be unable to accomplish this.

C. Claims that the \$0.07 Per Minute Rate Would Require Providers to Reduce Services to the Incarcerated and/or Transfer Certain Costs of Providing Services to Incarceration Facilities.

NCIC Inmate Communications contends that the \$0.07 per minute rate combined with the elimination of most ancillary service fees is "far below our cost of providing service" and will result in NCIC having to eliminating access to a live account representative, instead requiring family members to use its website for information and to maintain their accounts.<sup>263</sup> More generally, NCIC Inmate Communications asserts that "providers" will no longer be able to pay commissions, will have to pass on overhead costs such as bandwidth charges, maintenance, and installation costs to facilities, and will be forced to restrict the number of phones, available calling hours per day to encourage the incarcerated to use non-regulated services such as video calling, text messages and email.<sup>264</sup>

We are cognizant that our adopted \$0.07 per minute rate cap and ancillary fee requirements may result in changes to contracts and possibly services, but

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<sup>263</sup> NCIC Inmate Communications, Comments on Proposed Decision at 3.

<sup>264</sup> *Ibid.*

these comments do not persuade us to modify our approach. These assertions are speculative at this juncture and no data has been provided to support the assertion that the rate of \$0.07 and the ancillary fee provisions will require the changes NCIC Inmate Communications asserts.

Moreover, we find alarming NCIC Inmate Communications' comment that changes will be made to encourage the incarcerated to use non-regulated services. We are concerned that the IPCS providers will attempt to make voice communication inaccessible in order to force incarcerated persons and their loved ones to use more expensive communication services such as video calling. We strongly discourage the IPCS providers from taking such measures in order to circumvent the interim relief this decision provides. We will work with providers in Phase II of this proceeding to assess impacts on the industry and individual facilities as we move towards adopting a permanent rate cap.

D. Claims that the Decision is "Insufficiently Deferential" to Other Agencies and Branches of Government and Does Not Consider Impacts on Public Safety or the Incarcerated of Decreases in Site Commissions

GTL contends that the decision is "insufficiently deferential to the agencies and branches of government that are closer to and actively involved in considering how to balance the competing interests involved with site commissions and IPCS rates generally."<sup>265</sup> GTL contends that local administrators are best positioned to assess the need for site commissions and the legislature intends to revisit SB 555 in the coming legislative session. For these and other reasons, GTL recommends we decline to adopt the decision, because the "current regulatory regime, is functioning well to provide just and

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<sup>265</sup> GTL, Comments on Proposed Decision at 14.

reasonable rates.”<sup>266</sup> Securus similarly contends that Penal Code 4025 places no limits on the amount of site commissions that local authorities may seek, and this Commission has no authority to limit their discretion by capping their revenue source.<sup>267</sup>

As discussed throughout this decision, we disagree that the current regime is functioning to provide just and reasonable rates. We respect local government and the state legislature’s authority, and welcome further action or discussions with both. Nonetheless, we are obligated under Section 451 of the Public Utilities Code to ensure just and reasonable calling service rates for all Californians, including the incarcerated, and disagree that Penal Code 4025 limits our ability and obligation to ensure the provision of such rates to the incarcerated.

GTL also asserts that the decision does not consider potential impacts on the incarcerated from decreases in site commission fees that currently fund rehabilitation and educational programs, or on public safety, due to a rate cap that insufficiently considers varied local incarceration facility factors.<sup>268</sup> We disagree. Again, this decision is based on the record before us. Neither providers nor incarceration facilities provided data demonstrating that this decision would negatively impact these factors.

As stated earlier, we are obligated under Public Utilities Code Section 451 to ensure just and reasonable calling service rates for all Californians, including the incarcerated. This obligation does not allow us to defer the setting of reasonable rates in response to parties with a financial interest in the continuation of current rates. We expect that the ICPS providers and

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<sup>266</sup> *Id.* at 2-3.

<sup>267</sup> Securus, Comments on Proposed Decision at 11.

<sup>268</sup> *Id.* at 10.

incarceration facilities will make the necessary adjustments to ensure compliance with the \$0.07 rate cap we establish here.

We will consider modifications to the rate and fee schedules adopted in this interim decision in Phase II of this proceeding as we consider a more permanent rate cap.

E. Request to Establish A Waiver Process

Securus requests that we establish a waiver process similar to the FCC's waiver process "where the IPCS provider has the opportunity to demonstrate to the [Commission] that its reasonably-incurred costs to provide service at a facility exceed those rates."<sup>269</sup> GTL similarly asserts that a waiver process should be implemented.<sup>270</sup>

We decline to adopt a waiver process in this phase of the proceeding as our goal is to establish an interim rate based on the record we have before us. Implementing a waiver process would likely cause unnecessary delay in implementing the interim rate we establish in this decision and would impede the provision of immediate relief for incarcerated persons and their loved ones. We will consider implementing a waiver process in Phase II of this proceeding.

F. Claims that the Decision is Arbitrary and Capricious and Lacks Substantial Evidence

Securus alleges in its comments that the decision is arbitrary and capricious and lacks substantial evidence and that, "without explanation or justification," we take a different approach than the FCC.<sup>271</sup> GTL also argues that

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<sup>269</sup> Securus, Opening Comments on Proposed Decision at 1-2.

<sup>270</sup> GTL, Opening Comments on Proposed Decision at 12.

<sup>271</sup> Securus, Opening Comments on Proposed Decision at. 7-9.

the interim rate cap and limits on ancillary service charges are arbitrary and unworkable.<sup>272</sup>

We disagree with these assertions. As has been noted, “[a] party challenging a [Commission] finding for lack of substantial evidence must demonstrate that, based on the evidence before the [Commission], a reasonable person could not reach the same conclusion.”<sup>273</sup> Securus and GTL presented no evidence which persuades us that the rate cap of \$0.07 is not supported by the record before us.

As we discuss in Section 6.3 above, we decline to adopt the FCC’s interim rates as Staff proposed because the record in this proceeding demonstrates that a lower rate is more reasonable. We further explain that we utilize the rate of \$0.025 per minute established in the CDCR contract with GTL as a benchmark. We then double this rate to \$0.05 account for the cost to serve smaller facilities and add an additional \$0.02 to account for site commissions. The record before us supports adoption of this lower rate and provides immediate relief to incarcerated persons and their families while allowing IPCS providers to recover their reasonable costs related to the provision of IPCS services.

G. Request to Establish Complaint Reporting System or Require Providers in their Compliance Notices to Report if it Holds a CPCN

Prison Policy Initiative observes that Section 1013(a) of the Public Utilities Code requires telephone corporations that exert monopoly power to hold a

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<sup>272</sup> GTL, Opening Comments on Proposed Decision at 8-11.

<sup>273</sup> *Ponderosa Tel. Co. v. Cal. Pub. Util. Com.*, 36 Cal.App.5th 999, 1015 (2019) citing to *Pacific Gas & Elec. Co. v. Pub. Util. Com.* (2015) 237 Cal.App.4th 812, 838.

CPCN.<sup>274</sup> As a result, the Prison Policy Initiative requests that the Commission require IPCS providers to include in their Notice of Compliance either: (i) a certification that the company holds a valid CPCN and will maintain such certificate for as long as it provides intrastate IPCS in California, or (ii) a detailed explanation of any exemption the company claims from the requirements of Section 1001. The Prison Policy Institute also requests that the Commission direct Commission Staff to establish a complaint reporting system that customers would be notified of through the required Plan of Notification.<sup>275</sup>

We do not adopt the Prison Policy Initiative's first recommendation at this time as we intend to revisit the issue of CPCNs and classification of IPCS providers in Phase II of this proceeding. Additionally, while we concur with Prison Policy Initiative's recommendation that the Plan of Notification (and notifications themselves) inform the incarcerated of methods to lodge service quality complaints with the Commission, and require this in the final decision, we do not order Staff to establish a new complaint reporting system for this purpose. Instead, we provide the following information regarding the Commission's existing Consumer Affairs Branch.

Consumers can file complaints by phone or in writing with the Commission's Consumer Affairs Branch. To file a complaint via phone with the Commission's Consumer Affairs Branch, consumers must call 1-800-649-7570 from Monday – Friday, 8:30 a.m.-4:30 p.m. Representatives are available to assist in the language of their choice. Representatives can answer questions and,

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<sup>274</sup> Prison Policy Initiative, Comments on Proposed Decision at 1-2. Section 1013(a) states that “[t]elephone corporations that the Commission determines have monopoly power or market power in a relevant market or markets shall have a certificate of public convenience and necessity and shall not be eligible for designation as registered telephone corporations.”

<sup>275</sup> *Id.* at 2.

depending on the issue can contact their utility provider directly to facilitate problem resolution.

To file a complaint in writing there are three options:

1. Online at: <https://appsssl.cpuc.ca.gov/cpucapplication/>
2. By fax: 415-703-1158
3. Mail to:

California Public Utilities Commission  
Consumer Affairs Branch  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

Written complaints are evaluated and, if applicable, submitted to the utility as an Informal Complaint. For more information, please visit the CAB website at <https://www.cpuc.ca.gov/about-cpuc/divisions/news-and-public-information-office/consumer-affairs-branch>.

#### H. Claims that the Decision's Ancillary Service Requirements for Jurisdictionally Mixed Services are Preempted by FCC Regulations

Securus claims that the decision's prohibition of most jurisdictionally mixed ancillary service fees conflicts with FCC requirement in this area.<sup>276</sup> This claim is without merit. To advance its argument, Securus first mischaracterizes the FCC 2020 Order and then fails to acknowledge the FCC Third Order, which clarified parts of the FCC 2020 Order.<sup>277</sup>

There is no question that most providers can easily identify the end points of call and thus a call's jurisdictional nature, as discussed in the FCC 2020 Order:

... GTL argues that the "jurisdictional nature of calls themselves is easily classified as either interstate or intrastate based on the call's points of origin and termination," [footnote omitted] and Securus

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<sup>276</sup> Securus, Comments on Proposed Decision at 13.

<sup>277</sup> *Ibid*, citing the FCC 2020 Order at ¶ 53.

asserts that an inmate calling services provider knows the jurisdiction of a call because it is “from a known originating telephone number to a single, known terminating number.” [footnote omitted]<sup>278</sup> [and]... As Securus points out, “wireless carriers can determine the locations of their customers at the time of each call, so it is possible to establish the jurisdiction of each individual call.”<sup>279</sup>

However, in the rare cases when a provider cannot definitively determine the end points of a call, the FCC 2020 Order clarifies that the provider should treat the call as jurisdictionally mixed and thus subject to the FCC’s ancillary service requirements adopted for interstate calls at that time. Notably, the FCC provides this clarification out of a general concern for “attempts to exploit the dual regulatory environment and evade our rules.”<sup>280</sup>

As discussed in section 7.4, however, in the 2021 FCC Third Order, the FCC definitively states that for “jurisdictionally mixed” services where it is impossible or impractical to separate the service’s intrastate from interstate components, state law or requirements that impose fees lower than the FCC are “specifically not preempted by [FCC] actions.”<sup>281</sup> Thus, when the end-points of a call cannot be definitely determined, the call should be classified as jurisdictionally mixed, and the adopted ancillary service fee requirements adopted here apply. The FCC Third Order does not preempt the restrictions we adopt here for jurisdictionally mixed ancillary charges.

#### I. Commitment to Address Video Services in Phase II

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<sup>278</sup> FCC 2020 Order at ¶ 52.

<sup>279</sup> *Id.* at ¶ 53.

<sup>280</sup> *Id.* at ¶ 48.

<sup>281</sup> TURN, Reply Comments on Staff Proposal at 15, citing at FCC Third Order at 97, ¶ 218; 2020 Order on Remand, para. 47 (2020) (stating that “to the extent a state allows or requires an inmate calling services provider to impose fees lower than those contained in our rules, that state law or requirement is not preempted by our action here”); *See also* Third Order at ¶ 271, ¶ 254; 2020 Order on Remand at ¶ 217.

TURN and Cal Advocates request that the Commission state our commitment to address video services for incarcerated persons in Phase II of this proceeding. We intend to review video services in Phase II of this proceeding.

## **12. Assignment of Proceeding**

Martha Guzman Aceves is the assigned Commissioner and Cathleen A. Fogel is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. As of this decision, six telephone corporations provide intrastate IPCS to 354 incarceration and detention facilities in California – Securus, GTL, IC Solutions, Legacy Inmate Communications, NCIC Inmate Communications, and Pay Tel – serving an incarcerated population of over 172,000.
2. Intrastate per-minute rates charged by these six IPCS providers are as high as \$1.75 per minute and connection fees or first minute rates are as high as \$3.60 per minute.
3. A 15-minute intrastate phone call in California can cost the caller as much as \$26.25 solely in per-minute charges, excluding any other transaction fees.
4. Average and maximum pre-paid call per-minute rates vary widely between federal prisons, state prisons, county jails and local jails in California.
5. The CDCR announced a IPCS contract with GTL on March 1, 2021 with a rate of \$0.025 per minute.
6. As of April 2021, average and maximum call rates for federal prisons in California are \$0.17 and \$0.21 per minute (prepaid).
7. As of April 2021, average and maximum call rates for California county jails are \$0.31 and \$3.65 per minute (prepaid).
8. As of April 2021, average and maximum call rates for local (city) jails are \$0.27 and \$0.91 per minute (prepaid).

9. As of April 2021, average IPCS call rates in county and local jails are about 996 and 1,124 percent higher per minute, respectively, than the IPCS rate available in California state prisons.

10. As of April 2021, average IPCS call rates in county and local jails are about 82 and 59 percent higher per minute, respectively, than the IPCS rates available in federal prisons in California.

11. IPCS rates charged in California vary widely and are exorbitantly high, in some cases, resulting in unjust and unreasonable IPCS rates for incarcerated people and their families.

12. It is unreasonable and unjust that people incarcerated in county jails, local jails, and federal prisons in California pay between 584 percent and 1,124 percent more than people incarcerated in California state prison facilities to talk with their loved ones.

13. No party provided data justifying the significantly higher rates for county or city jails or summarizing costs to provide security functions.

14. Where they exist, site commission payments are a significant factor contributing to high rates and can account for 20 - 88 percent of IPCS costs.

15. A portion of high IPCS rates in California stem from revenue collected by providers to recoup commission payments.

16. Virtually all incarceration facilities in California utilize one telephone corporation to provide voice IPCS such that incarcerated persons and their families in California have no viable alternative.

17. The IPCS market consists of two markets and sets of consumers: providers that compete for the right to provide IPCS to the incarcerated, and the incarcerated and their families.

18. Once selected, IPCS providers, whether individually or collaboratively with incarceration facilities use their locational monopoly status within facilities to exercise market power.

19. The FCC's 2013 Order capped interstate IPCS rates at \$0.21 per minute for debit and prepaid calls and \$0.25 per minute for collect calls.

20. The FCC's 2021 Third Order lowers interstate IPCS rate caps to \$0.12 per minute for debit, prepaid, and collect calls from prisons, and \$0.14 per minute for all calls from jails with populations over 1,000; allows revenue collection of an additional \$0.02 per minute for site commission payments that are reasonably related to the facility's cost of enabling IPCS, if these result from contractual obligations or negotiations; and, allows the pass-through without markup of any site commission payments required under codified law or regulations up to a total rate of \$0.21 per minute.

21. The FCC's Third Order retains a per-minute rate cap of \$0.21 per minute for all calls from jails with populations less than 1,000.

22. The March 2021 CDCR contract of \$0.025 per minute provides a benchmark of the costs of providing intrastate IPCS at reasonable rates in prisons.

23. The FCC's Third Order indicates it costs service providers approximately 22 to 25 percent more to provide IPCS in jails with populations greater than 1,000 as compared to prisons.

24. As of April 2021, 14 U.S. states have average intrastate IPCS rates of \$0.05 or less in prisons.

25. As of April 2021, the rate for phone calls from prisons in Illinois is \$0.009 per minute, in Dallas County, Texas, the rate for phone calls from jails is \$0.0119

per minute, and in New York City, where jail phone calls are free to families, the rate paid by the city is \$0.03 per minute.

26. Some California counties currently use funds from site commissions for rehabilitative and educational purposes for the incarcerated and for unrelated purposes.

27. Adopting an interim intrastate IPCS rate of \$0.07 per minute balances this Commission's obligation to ensure just and reasonable rates for services offered by telephone corporations with counties' authority to collect site commission fees pursuant to Penal Code Section 4025.

28. Adopting an interim intrastate IPCS rate cap of \$0.07 per minute results in less wildly divergent IPCS rates for the incarcerated and their families across different facilities in California.

29. Adopting an interim rate cap of \$0.07 per minute provides a cushion for counties to identify other funding sources for cost centers currently funded through site commissions.

30. Adopting an interim rate cap of \$0.07 per minute results in immediate relief to approximately 171,000 incarcerated people located at 343 incarceration facilities in California, and their families.

31. Incarcerated people who have regular contact with family members are more likely to succeed after release and have lower recidivism rates because they maintain vital support networks.

32. Reduced recidivism benefits society by saving millions of dollars in incarceration-related costs annually.

33. The FCC's Third Order states that the FCC has not yet been able to collect standardized and accurate cost data from all telephone corporations providing IPCS.

34. The FCC has adopted interim caps on several ancillary fees as follows:

- a. Automated payment fees: These fees are limited to a maximum of \$3.00 per use;
- b. Paper bill fee: Paper bill fees are capped at \$2.00 per statement; and,
- c. Live agent fee: Single live operator interactions are capped at \$5.95 per interaction;
- d. Single-call service (collect) (and related service): Where no prepaid or debit inmate calling services account has been established, telephone corporations providing IPCS are precluded from charging more than the exact fee the third-party charges for these transactions up to a limit of \$6.95 per transaction, with no markup;
- e. Third-party financial transaction fees: The amount of third-party fees that an inmate calling service provider can pass on to consumers are limited to the exact third-party fees, with no markup, up to a limit of \$6.95 per transaction;
- f. Mandatory pass-through of government taxes and fees: Markups on either category of charges is prohibited unless the markup is authorized by a local statute, rule, or regulation.

35. We are not aware of instances where markup of mandatory pass-through of government taxes and fees is permitted in California.

36. Providers are currently imposing some 35 ancillary fees in connection with IPCS.

37. Most ancillary service fees and charges found in connection with the IPCS market are not imposed in any other segment of the telecommunications market in California.

38. Incarcerated persons and their loved ones have been charged multiple single-call service fees while attempting to complete a single 15-minute phone call.

39. Fifteen state prison systems have eliminated automated payment/automated deposit fees.

40. As of April 2021, GTL does not impose an automated payment/automated deposit fee on incarcerated persons in multiple facilities in California.

41. Customers not residing in incarceration facilities typically receive paper utility bills or bank statements without paying additional fees.

42. Many customers lack access to broadband service to access online statements.

43. Most telephone corporations and other utilities provide customer services for free, including services such as speaking with a live agent to set up an account, adding money to an account, or assisting with making a call.

44. Single-call service providers or third-party financial transaction companies have charged incarcerated people higher-than-typical fees for such services and then returned some portion of these higher fees to telephone corporations providing IPCS.

45. IPCS providers did not provide information or evidence to justify the imposition of ancillary service fees not required by commercial calling services on incarcerated persons and their families.

46. The ancillary fees assessed on IPCS customers create hardship for families and adopting the FCC's Third Order ancillary fee caps in California is insufficient to address these hardships.

47. Ancillary service charges generally cannot be practically segregated between interstate and intrastate jurisdiction except in the limited number of cases where, at the time a charge is imposed and the consumer accepts the charge, the call to which the service is ancillary is clearly an interstate-only or an intrastate-only call.

48. The only ancillary fee permitted by the FCC for interstate IPCS calls that can practicably be identified with a particular call is the single-call service fee.

49. Prohibiting automated payment fees, paper bill/statement fees, live agent fees, and single-call fees in association with intrastate and jurisdictionally mixed IPCS is equivalent to capping these fees at zero (\$0.0) dollars.

50. As of May 2021, there were over 800 parties, mostly telephone corporations, on the service list for this proceeding, but only a small number of parties had actively participated in the proceeding or provide IPCS.

51. A service list larger than 800 complicates service of proceeding documents to parties due to email size limits and is not necessary for this case.

52. It is reasonable to require IPC providers to provide customer notices and disclosures regarding adopted rate and ancillary service fee requirements in English, Spanish and other languages prevalent in incarceration facilities, and to inform the incarcerated of methods to lodge service quality complaints with the Commission.

53. IPCS providers had ample opportunity to file in the record of this proceeding detailed and/or summary cost data but have declined to do so.

### **Conclusions of Law**

1. The California Constitution and the Public Utilities Code vest in the Commission) regulatory authority over public utilities, including telephone corporations.

2. Public Utilities Code Sections 216, 233, 234, 451, 454(a) and 701 vest in the Commission the obligation to ensure that the rates, terms and conditions charged by telephone corporations to provide intrastate IPCS are just and reasonable.

3. Telephone corporations providing IPCS voice services, including via VoIP technologies, are public utilities subject to our jurisdiction.

4. Pursuant to Public Utilities Code Section 451, unjust or unreasonable charges demanded or received by utilities are unlawful.

5. For purposes of this decision, the Commission should define intrastate IPCS as voice calling services provided to any local, state, or federal correctional or detention facility type operated in California housing adults and/or juveniles, including but not limited to city and county jails, federal and state prisons, correctional facilities, juvenile detention facilities, holding centers, camps, psychiatric hospitals, immigration detention centers, military jails and tribal jails, including, but not limited to, voice and interconnected VoIP calling, and voice and VoIP communications services serving people with disabilities.

6. The Commission has the authority to investigate market power abuses on the part of public utilities and to regulate rates where monopolies exist or where competition is prohibited or does not otherwise exist.

7. Incarcerated people are a captive customer class with no alternative choice of IPCS service provider once a given facility has selected a single provider.

8. Providers of IPCS in California operate locational monopolies in the facilities they serve and exercise market power.

9. California Penal Code Section 4025(d) authorizes, but does not require, county sheriff's departments to collect site commissions from telephone corporations providing IPCS and to place these funds in an inmate welfare fund that is spent primarily for the benefit, education, and welfare of incarcerated persons.

10. The lawful collection of site commission funds pursuant to Penal Code Section 4025(d) does not absolve this Commission from its obligation to ensure access to just and reasonable calling service rates for incarcerated people and their families pursuant to Public Utilities Code Section 451.

11. County sheriff's departments' collections of site commission funds pursuant to Penal Code Section 4025, if any, must be in accordance with the provision of just and reasonable calling rates for incarcerated persons and their families pursuant to Public Utilities Code Section 451.

12. IPCS rates that are 584 percent to 1,124 percent higher than the \$0.025 per minute rate offered in state prisons in California are neither just nor reasonable.

13. The Commission should exercise its authority and jurisdiction over telephone corporations, including VoIP providers, to regulate intrastate IPCS rates and fees in California.

14. This Commission has the discretion to determine and set just and reasonable rates using a variety of methods.

15. It is reasonable to adopt a \$0.07 per minute cap on an interim basis.

16. The Commission should adopt an interim rate cap of seven cents (\$0.07) per minute for all intrastate IPCS voice calls in California.

17. The Communications Act of 1934, as amended, allocates jurisdiction over intrastate communications services to the states and jurisdiction over interstate and international communications services to the FCC.

18. The Commission is not preempted from imposing intrastate rates or fees lower than those adopted by the FCC, including with regards to calls with interstate and intrastate components, where federal requirements operate as ceilings.

19. Ancillary service fees other than the single-call service fee pertain to jurisdictionally mixed services because it is impossible or impractical to separate the service's intrastate from interstate components.

20. For jurisdictionally mixed ancillary services, FCC requirements do not preempt state law or regulations as long as the state requirements impose lower fees.

21. It is within this Commission's authority and jurisdiction to adopt lower ancillary fee caps than those adopted by the FCC for interstate IPCS and to require IPCS providers to adhere to our adopted caps in the case of all purely intrastate as well as all jurisdictionally mixed ancillary services.

22. Unregulated intrastate IPCS ancillary fees contribute to total IPCS charges that are unjust and unreasonable.

23. It is reasonable for the Commission to prohibit or cap ancillary fees imposed in association with intrastate and jurisdictionally mixed IPCS on an interim basis as follows:

- (a) Prohibit single-call service fees;
- (b) Prohibit automated payment/automated deposit fees;
- (c) Prohibit live agent fees;
- (d) Prohibit paper bill fees;
- (e) Limit third-party financial transaction fees to the pass through of the exact third-party fee, with no markup, and excluding any credit card charges, up to a cap of \$6.95 per transaction; and,
- (f) Prohibit the markup of any mandatory pass-through government taxes and fees.

24. The Commission should prohibit telephone corporations providing intrastate IPCS from imposing any IPCS ancillary service fees or charges greater than or other than those specified here, except for single-call fees imposed on interstate calls.

25. The Commission should require telephone corporations providing intrastate IPCS to implement the rate caps and ancillary fee requirements adopted here no later than 45 days from issuance of this decision.

26. The Commission should require each telephone corporation providing intrastate IPCS to submit via email to the Director of the Communications Division ([cddirector@cpuc.ca.gov](mailto:cddirector@cpuc.ca.gov)) within 45 days of Commission issuance of this decision a Notice of Compliance confirming implementation of the interim rate cap of \$0.07 per minute and the ancillary fee requirements adopted here across all of their intrastate IPCS contracts, accounts, and facilities in California, and including the following information:

- (a) Attestation that the interim ancillary service fee requirements adopted here have been implemented at any and all facilities served by the carrier in California.
- (b) Copies of or links to carrier webpages where the interim ancillary service fee requirements adopted here are presented for facilities located in California.
- (c) Copies of notices provided to facilities of the interim ancillary service fee requirements adopted here.
- (d) Copies of notices to incarcerated people of the interim ancillary service fee requirements adopted here.

27. The Commission should direct all telephone corporations providing intrastate IPCS to fully disclose the rate caps and ancillary fee requirements adopted here on their websites, bills, and in marketing material by no later than 45 days from Commission issuance of this decision, and to maintain information on the adopted rate clearly and prominently on their websites. The Commission should require that such notices and disclosures of fee schedules and services are provided in English, Spanish and any other languages prevalent in incarceration facilities, and should require that the notices inform the incarcerated of methods

to lodge service quality complaints with the Commission as discussed in section 11 of this decision.

28. The Commission should require all telephone corporations providing intrastate IPCS to submit an Interim Rate Compliance Report to the Commission's Director of the Communications Division at [cddirector@cpuc.ca.gov](mailto:cddirector@cpuc.ca.gov) no later than 45 days from Commission issuance of this decision, and on a quarterly basis thereafter while the interim rates adopted here are in effect, and should require that report include a revenue breakdown of billed interstate and intrastate minutes of use, and a revenue breakdown of billed ancillary interstate and intrastate fees over a period of thirty days.

29. The Commission should require all IPCS providers to provide a Plan for Notification to all current and prospective customers and account holder, their draft notices of the adopted rates, terms and conditions, refund policies and customer service contacts for websites, bill inserts, and marketing materials to the Commission Communications Director for review no later than 30 days from Commission issuance of this decision. These should include disclosures of fee schedules and service-related information in English, Spanish and other languages prevalent in incarceration facilities, and should inform the incarcerated of methods to lodge service quality complaints with the Commission as discussed in section 11 of this decision.

30. The Commission should affirm the authority of the Commission's Communications Division to assess fines for lack of compliance with this decision pursuant to Resolution T-17601 and Public Utilities Code Sections 2107 and 2108, referring, in the case of violations of this decision's requirement for submittal of draft and final Notices of Compliance and related materials, to Resolution T-17601 for guidance and, in the case of violations of this decision's

rate and ancillary fee requirements, should direct Staff to develop a resolution proposing fines pursuant to Public Utilities Code Sections 2107 and 2108.

31. The Commission should remove from the service list to R.20-10-002 telephone corporations that do not provide IPCS and parties that have not filed substantive pleadings, should retain as parties those entities listed in Section 9.2 of this decision, and should transfer from “party” to “information only” status those entities listed in section 9.1 of this decision.

32. Provision of cost information in response to discovery data requests does not constitute provision of cost information in the record of this proceeding.

## **O R D E R**

**IT IS ORDERED** that:

1. This decision applies to intrastate incarcerated person’s voice calling services provided to any local, state, or federal correctional or detention facility type operated in California housing adults and/or juveniles, including but not limited to city and county jails, federal and state prisons, correctional facilities, juvenile detention facilities, holding centers, camps, psychiatric hospitals, immigration detention centers, military jails and tribal jails, and including but not limited to voice and Voice Over Internet Protocol (VoIP) calling, and voice and VoIP voice communications services serving people with disabilities.

2. Interim caps on intrastate rates for incarcerated persons calling services in California of seven cents (\$0.07) per minute for debit, prepaid, and collect calls are adopted.

3. The following requirements for all ancillary service fees associated with the provision of intrastate and jurisdictionally mixed incarcerated person’s calling services in California are adopted: (a) imposition of any single-call, paper bill, live agent, and/or automated payment fees is prohibited; (b) collection of

third-party financial transaction fees is limited to the pass through of the exact fee only, with no mark up, and excluding any credit card charges, up to a cap of \$6.95 per transaction; (c) collection of government-mandated taxes and fees is limited to the pass through of the exact fee only, with no mark up; and, (c) imposition of any other type of ancillary service fee or service charge not explicitly approved here is prohibited.

4. No later than 45 days from Commission issuance of this decision, all telephone corporations providing intrastate incarcerated person's calling services (IPCS) as defined in this decision are:

- a. Directed to implement interim caps on intrastate rates for all IPCS calls of seven cents (\$0.07) per minute for debit, prepaid, and collect calls no later than 45 days from Commission issuance of this decision and to apply the rate cap to any existing account balances as of the date of implementation, as well as any new account balances or new accounts opened after that date;
- b. Prohibited from implementing any single-call, paper bill, live agent, and automated payment fees in association with the provision of intrastate and/or jurisdictionally mixed IPCS;
- c. Limited in the collection of third-party financial transaction fees to the pass through of the exact fee only, with no mark up, and excluding any credit card charges, up to a cap of \$6.95 per transaction;
- d. Limited in the collection of government-mandated taxes and fees to the pass through of the exact fee only, with no mark up;
- e. Prohibited from imposing any other type of ancillary fee or service charge not explicitly approved here;
- f. Directed to each email a Notice of Compliance to the Director of the Communications Division at [cddirector@cpuc.ca.gov](mailto:cddirector@cpuc.ca.gov) confirming implementation of the

interim rate cap of \$0.07 per minute and the ancillary fee requirements adopted here across all of their IPCS contracts, accounts, and facilities in California and including the following information:

- i. Attestation that the interim ancillary service fee requirements adopted here have been implemented at any and all facilities served by the carrier in California;
- ii. Copies of or links to carrier webpages where the interim ancillary service fee requirements adopted here are presented for facilities located in California;
- iii. Copies of notices provided to facilities of the interim ancillary service fee requirements adopted here;
- iv. Copies of notices to incarcerated people of the interim ancillary service fee requirements adopted here;
- g. Directed to fully disclose the rate caps and ancillary fee requirements adopted here on their websites, bills, and marketing material in English, Spanish and any other language prevalent in the incarceration facilities, including informing the incarcerated of methods to lodge service quality complaints with the Commission, and to maintain information on the adopted rate and ancillary fee requirements clearly and prominently on their websites; and,
- h. Directed to each email an Interim Rate Compliance Report (Report) to the Director of the Communications Division at [cddirector@cpuc.ca.gov](mailto:cddirector@cpuc.ca.gov), and on a quarterly basis thereafter while the interim rates adopted here are in effect, and include in the Report a revenue breakdown of billed interstate and intrastate minutes of use, and a revenue breakdown of billed ancillary interstate and intrastate fees over a period of thirty days.

5. All telephone corporations providing intrastate incarcerated person's calling services as defined in this decision are directed to email to the Director of the Communications Division at [cddirector@cpuc.ca.gov](mailto:cddirector@cpuc.ca.gov) a Plan for Notification to all current and prospective customers and account holders, draft notices

describing the adopted rates and ancillary fee requirements, terms and conditions, refund policies and customer service contacts for websites, bill inserts, and marketing materials for review no later than 30 days from Commission issuance of this decision, including fee schedules and service-related information in English, Spanish and other languages prevalent in incarceration facilities that include informing the incarcerated of methods to lodge service quality complaints as discussed in section 11 of this decision.

6. Telephone corporations providing intrastate incarcerated person's calling services (IPCS) not explicitly identified in this decision must email to the Director of the Communications Division at [cddirector@cpuc.ca.gov](mailto:cddirector@cpuc.ca.gov) a Notice of Compliance with this decision to the Commission no later than 45 days after executing a contract to provide IPCS in California, must maintain information on the adopted rate and ancillary fee requirements clearly and prominently on their websites in English, Spanish and other languages prevalent in the incarceration facility, including informing the incarcerated of methods to lodge service quality complaints with the Commission as discussed in section 11 of this decision, and must email to the Director of the Communications Division at [cddirector@cpuc.ca.gov](mailto:cddirector@cpuc.ca.gov) draft notices of the adopted rates, ancillary fee requirements, terms and conditions, refund policies and customer service contacts for websites, bill inserts, and marketing materials for review no later than 30 days after executing a contract to provide IPCS in California.

7. We authorize the California Public Utilities Commission's Communications Division to assess fines pursuant to Resolution T-17601 and Public Utilities Code Sections 2107 and 2108 for lack of compliance with this decision, referring, for violations of this decision's requirement for submittal of draft and final Notices of Compliance and related materials, to Resolution

T-17601, and, for violations of this decision's rate and ancillary fee requirements, Staff should develop a resolution proposing fines as authorized pursuant to Public Utilities Code Sections 2107 and 2108.

8. The Commission's Process Office shall move the following parties to Rulemaking 20-10-002 to "information only" status no later than 15 days from Commission issuance of this decision:

- a. Charter Fiberlink CA-CCO, LLC, Time Warner Cable Information Services (California), LLC, and Bright House Networks Information Services (California), LLC;
- b. Cox California Telecom, LLC;
- c. AT&T Corporation (collectively Pacific Bell Telephone Company d/b/a AT&T California, AT&T Corp., Teleport Communications America, LLC, and SBC Long Distance, LCC d/b/a AT&T Long Distance); and,
- d. Comcast Phone of California, LLC.

9. The Commission's Process Office shall remove all parties not indicated below or in Ordering Paragraph 8 from the Rulemaking 20-10-002 service list no later than 15 days from Commission issuance of this decision:

- a. Securus Technologies, LLC;
- b. Global Tel\*Link (GTL); Inmate Calling Solutions, LLC;
- c. NCIC Inmate Communications;
- d. Pay Tel Communications, Inc.;
- e. Legacy Inmate Communications, Inc.;
- f. Public Communications Services, Inc.;
- g. Telmate, LLC;
- h. Value-Added Communications, Inc.;
- i. Californians for Jail and Prison Phone Justice Coalition;
- j. Center for Accessible Technologies;
- k. Greenlining Institute;

- l. Media Alliance;
- m. Prison Policy Initiative, Inc.;
- n. Public Advocates Office;
- o. Returning Home Foundation;
- p. Root and Rebound;
- q. The Utility Reform Network;
- r. Youth Law Center;
- s. MCI Communications Services LLC and MCI Metro Access Transmission Services Corp. (Verizon);
- t. Inteltrace, Inc.;
- u. Southern California Edison;
- v. Frontier California Inc.;
- w. Citizens Telecommunications Company of California Inc.;
- x. Frontier Communications of the Southwest Inc.;
- y. Frontier Communications Online and Long Distance Inc.;
- z. Frontier Communications of America, Inc.;
  - aa. Cal-Ore Telephone Co.;
  - bb. Ducor Telephone Company;
  - cc. Foresthill Telephone Co.;
  - dd. Kerman Telephone Co.;
  - ee. Pinnacles Telephone Co.;
  - ff. Sierra Telephone Company, Inc.;
  - gg. The Siskiyou Telephone Company;
  - hh. Volcano Telephone Company;
  - ii. Calaveras Telephone Company;
  - jj. Ponderosa Telephone Co.;
  - kk. Winterhaven Telephone Company;
  - ll. Happy Valley Telephone Company; and,
  - mm. Hornitos Telephone Company.

10. Rulemaking 20-10-002 remains open.

This order is effective today.

Dated August 19, 2021, at San Francisco, California.

MARYBEL BATJER

President

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

DARCIE L. HOUCK

Commissioners

## APPENDIX A

### REVISED STAFF PROPOSAL Interim Rate Relief for Inmate Calling Services

The original Staff proposal recommending the California Public Utilities Commission (CPUC) apply the Federal Communications Commission's (FCC's) interstate inmate calling service<sup>1</sup> (ICS) rates to intrastate communications services utilized by incarcerated persons detained in California<sup>2</sup> until the CPUC adopts permanent rates at the conclusion of D.20-10-002 was issued on April 2, 2021.

Since that time, the CPUC has received comments from parties, held two Public Participation Hearings (PPHs) where it received numerous public comments, and the FCC has adopted<sup>3</sup> revised per minute rates for prisons and jails. In response to this input and new interstate service rates Staff has modified its proposal, most notably, to reflect the new FCC adopted per minute rates of \$0.14 for prisons and \$0.16 for jails.<sup>4</sup> Staff also eliminated the single-call service charge from the list of authorized ancillary service charges.

In written comments to the online portal, comments were submitted regarding fees, including the single-call service fee. Most notable were those ICS customers that provided examples of being charged a connection fee multiple times to complete a single 15-minute phone call. In more than one instance, commenters indicated being disconnected multiple times during their call and then being charged the single-call service fee each time they tried to reconnect. In these examples the single-call service fee of \$3.00 was likely charged at least three times and totaled \$9.00 or more.

The FCC also expressed concerns regarding ancillary service charges. Specifically, the FCC found that single-call services were used by providers to inflate charges, and noted evidence suggesting some providers are in revenue sharing agreements with third parties for single-call service, thus avoiding the FCC's cap on pass-through fees for single-call services.<sup>5</sup>

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<sup>1</sup> Staff recognizes the sensitivity in the use of the term 'inmate' in this Staff Proposal, however, we use the term to be consistent with FCC as the framework is adopted and use the term 'incarcerated' as appropriate.

<sup>2</sup> As described in the January 12, 2021 Assigned Commissioner's Scoping Memo and Ruling at 23 - 24, we define "inmate communication services" as applying to any local, state, or federal correctional or detention facility type operated in California housing adults and/or juveniles, including but not limited to city and county jails, federal and state prisons, correctional facilities, juvenile detention facilities, holding centers, camps, psychiatric hospitals, immigration detention centers, military jails and tribal jails." See also footnote 11. For purposes of this proposal, Staff is only addressing rates for voice-only communication services.

<sup>3</sup> FCC Third Report and Order, Order on Reconsideration, and Fifth Further Notice of Proposed Rulemaking (Fifth NPRM) (May 24, 2021).

<sup>4</sup> Federal Register, Vol. 85, No. 206 ¶ (Friday, October 23, 2020).

<sup>5</sup> *Fifth NPRM* ¶ 212, at page 96.

To protect ICS consumers from potential fee abuse, Staff recommends the prohibition of the single-call service fee as part of its interim relief proposal.

At the recent PPHs, the CPUC also heard from the public that an incarcerated person or family member is charged multiple ancillary fees such as a transaction fee, a single-call fee, and a live agent fee, etc. In the end, \$20 deposited into an account may only provide the caller with a few minutes of calling because most of their funds have been unreasonably consumed by “ancillary charges.”

Staff further recommends that the CPUC evaluate the relevance of all ancillary charges for ICS in the next phase of this proceeding by examining competitive telecommunications providers operating in the open market to determine if any of these ICS ancillary charges are levied by competitive telecommunications providers, or whether they are reasonably required for the provision of such services. There is little reason to believe that the costs of a credit card transaction or speaking with a live agent are higher for an ICS provider or any more reasonable to charge to incarcerated persons than the general public being serviced by other telecommunications corporations operating in the open market in California.

In the first Staff proposal we recommended the CPUC update interim rates if the FCC adopts new per minute of use ICS rates. On May 20, 2021, the FCC adopted new interim rate caps; we have therefore updated the Staff proposal to reflect these new rates. However, the FCC’s new interim order also included a separate and distinct rate for facilities of less than 1,000 incarcerated persons. This rate was not included in the original FCC framework and we do not recommend including this separate rate here. Staff does not find sufficient justification to further distinguish the rates charged at facilities in California nor has the FCC presented any compelling data that would cause us to believe that costs are more than 30 percent higher for these facilities.

With these limited modifications, Staff recommends the CPUC adopt Staff’s proposal and require carriers to implement it within 30 days of the CPUC’s decision to ensure those incarcerated in California receive immediate rate relief.

#### RATES ARE UNREASONABLE

Staff collected ICS data from carriers providing ICS in California. The carriers furnished this information in response to a data request sent to over 800 licensed and registered service providers in California. Six companies<sup>6</sup> responded to the data request indicating that they provide ICS. Staff considers these six companies to represent the total number of ICS providers in California as these same companies are participating in the FCC’s ICS proceeding.<sup>7</sup> The data provided in response to the data request shows that intrastate per-minute rates are as high as \$1.75 per minute and connection fees or first minute rates are as high as \$3.60 per minute. (See Attachment A). A 15-minute

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<sup>6</sup> Securus Technologies, LLC, Global Tel\*Link Corporation, Inmate Calling Solutions, LLC, Legacy Inmate Communications, Network Communications International Corporation, and Pay Tel Communications, Inc.

<sup>7</sup> WC Docket No.12-375.

intrastate phone call in California can cost the caller as much as \$26.25 in per-minute charges only, excluding any other transaction fees.

#### MONOPOLY SERVICE

There are two distinct markets for ICS; a market wherein providers bid on Requests For Proposals from facilities or jurisdictions to be the sole provider at the facility, and a market for the end user of the telecommunication services. Accordingly, ICS providers are the sole providers within any given detention center. Staff was unable to identify any instance in which an incarcerated person or any person communicating with an incarcerated person has a choice of service provider. Incarcerated persons are a captive customer class with no choice among multiple service providers, and therefore, must pay exorbitant communication service rates or forego communication with family or friends.

Pursuant to Public Utilities (Pub. Util.) Code Sections 451 and 454(a), the Commission has a duty to ensure that the rates charged for all utility services, including those provided to incarcerated persons, are just and reasonable. Any unjust or unreasonable charge demanded or received by a utility is unlawful.<sup>8</sup> The CPUC has traditionally regulated the rates of utility monopolies such as the incumbent local exchange carriers (ILECs), who were given exclusive franchise service territories. Regulation of rates for these monopolies continues where competition is prohibited or does not otherwise exist.<sup>9</sup> The CPUC regulates monopoly utilities providing telecommunications, water, gas, and electricity to ensure that the rates these utilities charge are just and reasonable. ICS providers similarly operate as monopolies and are charging incarcerated persons and their families unreasonable rates, which is unlawful.

Therefore, the CPUC should regulate ICS rates unless or until such time that incarcerated persons have competitive choice in their communications services, or at least on an interim basis, until the CPUC concludes the current proceeding.

#### PROPOSAL FOR INTERIM RELIEF

Despite having lessened regulation of communications service providers, the CPUC retained its authority to investigate market power abuses.<sup>10</sup> Staff finds that the ICS market demonstrates market power abuse. Incarcerated persons and their families are being charged unreasonable rates with no viable alternative. The FCC similarly determined that the ICS market is a prime example of market failure.<sup>11</sup> Therefore, regulation of ICS rates is warranted and the CPUC must ensure that the intrastate rates ICS providers charge are just and reasonable.

CD Staff recommends the CPUC adopt the FCC's ICS rates as intrastate calling service rates for those

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<sup>8</sup> Pub. Util. Code Section 451.

<sup>9</sup> See D.07-09-018, at 43-44.

<sup>10</sup> See D.06-08-030, Conclusion of Law 32.

<sup>11</sup> FCC 20-111, *Report and Order on Remand and Fourth Further Notice of Proposed Rulemaking* (2020 Order on Remand) (August 7, 2020), ¶ 2.

services utilized by incarcerated persons detained in California until the CPUC adopts permanent rates at conclusion of R.20-10-002.

The FCC is currently addressing ICS rates and charges in WC Docket No.12-375. On May 20, 2021, the FCC adopted new interim rate caps of \$0.14 per minute for prisons<sup>12</sup> and \$0.16 per minute for jails<sup>13</sup> with 1,000 or more incarcerated people for interstate calls. These FCC rates include a \$0.02 per minute allowance for site commissions where these result from contractual obligations or negotiations with incarceration facilities.<sup>14</sup> In the original Staff Proposal, staff indicated that if the FCC further lowers its rates for ICS, the CPUC's interim rates should be modified to reflect those new rates. Staff recommends the CPUC adopt the FCC rate caps of \$0.14 per minute for prisons and \$0.16 per minute for jails.<sup>15</sup> Staff does not recommend the CPUC adopt the interim rate cap of \$0.21 per minute for jails with an average daily population below 1,000 as there is no supporting data in the record for the assertion showing a cost differential between providing service to small and large facilities.

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

In response to the data request, carriers have reported offering ICS to approximately 354 facilities<sup>16</sup> in California. Based on this data, Staff estimates that 218 facilities and over 64,000 incarcerated persons would see immediate rate reductions from the interim rates, as they have rates that exceed \$0.16 per minute (See Attachment A).

Under Staff's proposal, the price for a 15-minute phone call would be reduced from as much as \$26.25 to a range of \$2.10-\$2.40.

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<sup>12</sup> FCC 64.60000 defines prisons as including facilities that would otherwise fall under the definition of a jail but in which the majority of inmates are post-conviction or are committed to confinement for sentences of longer than one year.

<sup>13</sup> FCC 64.60000 defines jails as a facility of a local, state, or federal law enforcement agency that is used primarily to hold individuals who are; (1) Awaiting adjudication of criminal charges; (2) Post-conviction and committed to confinement for sentences of one year or less; or (3) Post-conviction and awaiting transfer to another facility. The term also includes city, county or regional facilities that have contracted with a private company to manage day-to-day operations; privately-owned and operated facilities primarily engaged in housing city, county or regional inmates; and facilities used to detain individuals pursuant to a contract with U.S. Immigration and Customs Enforcement.

<sup>14</sup> Fifth NPRM, ¶ 3, page 3. The Fifth NPRM additionally allows providers to pass on site commission payments that are mandated by federal, state, or local law to consumers without any markup (*Ibid.*)

<sup>15</sup> For the purposes of California, Staff recommends the Commission adopt the FCC's definition of prisons and jails for all detention facilities. Staff does not explicitly or implicitly recommend exempting any facility type. Facilities include any local, state, or federal correctional or detention facility type operated in California housing adults and/or juveniles, and including but not limited to city and county jails, federal and state prisons, correctional facilities, juvenile detention facilities, holding centers, camps, psychiatric hospitals, immigration detention centers, military jails and tribal jails.

<sup>16</sup> Represents approximately 354 addresses identified in the data request by the six carriers.

## FCC RATES ARE NOT APPROPRIATE FOR LONG TERM

Staff finds the FCC rates to be unreasonable for long term intrastate rates. Traditionally, telecommunications service usage is predominantly intrastate in nature— 70-80 percent of all calls are often considered intrastate.<sup>17</sup> Therefore, due to the percentage of usage, intrastate rates have a far greater impact on ones' regular and ongoing communication.

## ANCILLARY SERVICES

The FCC generally prohibits providers from imposing any ancillary service charges in connection with ICS other than those specified in its rules, and generally prohibits providers from imposing charges greater than the FCC's applicable ancillary service fee caps. The FCC has adopted interim rate caps for the following services<sup>18</sup> or charges. Staff recommends the CPUC adopt the rate caps below, not including the single-call service fee, on an interim basis:

- Automated Payment Fees: The FCC limits these fees to a maximum of \$3.00 per use.
- Third-Party Financial Transaction Fees: The FCC limits the amount of third-party fees that an ICS provider can pass on to consumers to the exact third-party fees, with no markup.
- Live agent fee: The FCC caps single live operator interaction at \$5.95 per interaction.
- Paper bill fee: The FCC caps fees for paper bills at \$2.00 per statement.
- Mandatory Pass-Through Government Taxes and Fees: The FCC prohibits markups on either category of charges.

Staff also recommends that the CPUC prohibit carriers from charging any other service fees or ancillary service fees not specified above. Although not exhaustive, Staff has developed a list from the data requests of other services and charges being assessed in connection with ICS (see Attachment B). This list shows the extent of the various charges carriers currently provide and indicates that the "per-minute-of-use charges" are only a portion of the fees incarcerated persons are charged. For example, some ICS providers are charging a Transaction Processing Fee and a Prepaid Refund Processing Fee, both of which Staff recommends the CPUC prohibit.

## OTHER INMATE'S COMMUNICATION SERVICES

At this time, Staff does not recommend that interim relief include rates for other communications services, such as text or video communication.<sup>19</sup> Staff does not have the necessary relative pricing data to determine the reasonableness of these and other non-voice communication service rates at this time. However, Staff recommends that any adopted permanent rates and regulations include these other services.

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<sup>17</sup> FCC 2020 Order on Remand at 10.

<sup>18</sup> Fifth NPRM.

<sup>19</sup> Other inmate communication services may include but not be limited to incarcerated person's messaging, incarcerated person's video messaging, remote video visitation, in-person video visitation, voicemail, tablet use for messaging, photo sharing, music or video entertainment or internet access.

#### TIMELINE FOR IMPLEMENTATION OF INTERIM RATES

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

#### COMPLIANCE

Staff recommends that the CPUC require carriers to file a Notice of Compliance<sup>20</sup> with the Communications Division at [cddirector@cpuc.ca.gov](mailto:cddirector@cpuc.ca.gov) within 30 days of the interim rates being adopted. This Notice should include the following:

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

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<sup>20</sup> [CPUC Communication Division Compliance and Report Filing Cover Sheet](#)

**Attachment A  
Data Request Summary of Information**

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

<b><u>Inmate Calling Service Provision in California</u></b>	
Approximate number of facilities	354
Estimated incarcerated person's population	172,543 <sup>1</sup>
Facilities with rates over \$0.16 per minute	218
Population affected by interim rates	64,356
<b>Calling Service Rates</b>	
Highest per minute rate	\$1.75
Highest 1st minute rate	\$3.60
<b>Ancillary Charges</b>	
Highest single-call rate	\$3.00
Highest automated payment charge	\$3.00
Highest third-party fee	\$6.95
Highest live agent fee	\$5.95
Highest paper bill fee	\$2.49

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<sup>1</sup> In further analysis, Staff identified and rectified a calculation error (Previously 159,572).

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

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

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

**(END OF ATTACHMENTS)**

**(END OF APPENDIX A)**