

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

PROCEEDING NO. 24R-0184T

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IN THE MATTER OF THE PROPOSED AMENDMENTS TO 4 CODE OF COLORADO REGULATIONS 723-2 ADOPTING THE COMMISSION RULES REGARDING PENAL COMMUNICATIONS SERVICES PURSUANT TO § 17-42-103, C.R.S.

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**RECOMMENDED DECISION  
ADOPTING PROPOSED RULES WITH MODIFICATIONS**

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Issued Date: September 16, 2024

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**I. STATEMENT**

1. On April 30, 2024, by Decision No. C24-0272, the Colorado Public Utilities Commission (“Commission”) issued its Notice of Proposed Rulemaking (“NOPR”) and referred this matter to an Administrative Law Judge (“ALJ”) disposition. A public comment hearing was scheduled for June 24, 2024, at 11:30 a.m. To the NOPR, Staff of the Commission (“Commission Staff” or “Staff”) attached a redline/strikeout format of its proposed rules as Attachment A, and a clean format of the proposed rules, as Attachments B (the “proposed Rules”), respectively.

2. Also on April 30, 2024, the Commission gave notice of the NOPR to the Colorado Attorney General's Office and the Colorado Office of Regulatory Reform.<sup>1</sup>

3. Between May 31, 2024, and June 14, 2024, the Commission received six written public comments in this Proceeding.

4. In the Initial Comments of Securus Technologies, LLC ("Securus Technologies' Initial Comments"), filed May 31, 2024, by Securus Technologies, LLC ("Securus") stated that, except as specifically provided, the reporting requirements set forth in § 17-42-103, C.R.S. should be limited to telephone calls;<sup>2</sup> and the Commission's rules and the Federal Communications Commission's ("FCC") rules related to incarcerated communications services should be harmonized for efficiency and regulatory consistency.<sup>3</sup> More specifically, regarding Rule 2811, Securus recommended replacing the term "video calling or voice-only calling" in the definition set forth in Rule 2811(a) with "an audio IPCS<sup>4</sup> communication" for purposes of clarity and consistent with the intent under §§ 17-42-103(2) through (5), C.R.S. (the "Act") for the term "calls" to refer to "telephone calls."<sup>5</sup> With respect to proposed Rule 2811(e), Securus stated that the definition contained in this provision expands on the scope of § 17-42-103(2)(d), C.R.S. Importantly, Securus argues that the phrase "or the means to access penal communication services" is ambiguous with respect to whom it is intended to refer and in what context. Securus explains that a correctional facility is providing "the means to access" incarcerated communications services ("ICS") as the party contracting for the services, but a correctional facility is not

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<sup>1</sup> See E-Filing confirmation pages for the filing of the NOPR with the Colorado Attorney General's Office and the Colorado Office of Regulatory Reform, filed April 30, 2024.

<sup>2</sup> Securus Technologies' Initial Comments at p. 4-8.

<sup>3</sup> *Id.* at p. 8-9.

<sup>4</sup> "IPCS" is an acronym that is used in Securus Technologies' Initial Comments, and will be used herein, to mean "incarcerated people's communications services."

<sup>5</sup> Securus Technologies' Initial Comments at p. 9.

considered a communications service provider or public utility.<sup>6</sup> Securus further explains that if the intention is to capture contractor/subcontractor arrangements, then it might be useful to add an additional clarifying sentence.<sup>7</sup> With respect to proposed Rule 2812(a)(II), Securus states that this provision inappropriately expands upon the requirements of C.R.S. § 17-42-103(3)(a)(II), C.R.S. by requiring the total number of video calls.<sup>8</sup> Securus, again, reiterates that the term “calls” should be read throughout the act to mean “telephone calls” and, on that basis, recommended revising this provision to track with the statutory language of § 17-42-103(3)(a)(II), C.R.S. and limit the data to audio calls only.<sup>9</sup> With respect to proposed Rule 2812(a)(III), Securus states that this provision inappropriately expands upon the requirements of C.R.S. § 17-42-103(3)(a)(III) by requiring the total minutes of video calls. Therefore, Securus recommended revising this provision to track with the statutory language of C.R.S. § 17-42-103(3)(a)(III) and limit the data to audio calls only,<sup>10</sup> With respect to proposed Rule 2812(a)(IV), Securus states that this provision inappropriately expands the upon the requirements of § 17-42-103(3)(a)(IV), C.R.S. by requiring the revenue data for video, electronic mail, and electronic messaging services, while the Act’s reporting of “the services” is limited to telephone service.<sup>11</sup> Securus further noted that the Act provides a definition of “revenue” at § 17-42-103(2)(h), C.R.S., and contains no definition of “total gross revenue.”<sup>12</sup> With respect to proposed Rule 2812(a)(V), Securus states that this provision expands upon the requirements of C.R.S. § 17-42-103(3)(a)(V) by requiring the commission data for ‘all ICS’, but asserts that this reporting requirement should be limited to audio services-related site

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<sup>6</sup> *Id.* at p. 11.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at p. 13.

<sup>11</sup> *Id.*

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

commissions.<sup>13</sup> Therefore, Securus recommended that this requirement be limited to site commissions on audio services.<sup>14</sup> With respect to proposed Rule 2812(a)(VII), Securus states that “this provision expands on the requirements of C.R.S. § 17-42-103(3)(a)(VII), which expressly refers to ‘rates charged by the penal communications services to *persons in custody*<sup>15</sup> making telephone calls’ ... to include rates paid by either the person in custody or the correctional facility on the person’s behalf.”<sup>16</sup> Securus further notes that while this clarification is reasonable, calls may also be paid for by the person receiving the incarcerated person’s calls, and to the extent that an agency-paid model is not based on per-minute rates, the reporting elements may need to be modified.<sup>17</sup> With Respect to proposed Rule 2812(a)(VIII), Securus states that this provision tracks with the requirements of § 17-42-103(3)(a)(VIII), C.R.S., but notes that Securus does not charge ancillary service charges to incarcerated persons using its services, consistent with FCC regulations.<sup>18</sup> With respect to §§ 17-42-103(3)(a)(VIII)(B), Securus noted that “consistent with FCC regulation, Securus charges an ancillary service charge to non-incarcerated persons either funding an incarcerated person’s debit account or their own prepaid account.”<sup>19</sup> With respect to §§ 17-42-103(3)(a)(VIII)(E), Securus noted that “Securus does not charge ancillary service charges to incarcerated persons using its services and has phased out charging an FCC-authorized paper bill fee.”<sup>20</sup> With Respect to proposed Rule 2812(a)(VIII)(G), Securus states that this provisions “inappropriately expands on the requirements of C.R.S. § 17-42-103 without a statutory basis.” Securus reiterates that “[i]n particular, this provision would allow the Commission to

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

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

<sup>15</sup> Emphasis in the original.

<sup>16</sup> *Id.* at p. 14.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at p. 16.

<sup>20</sup> *Id.* at p. 16-17.

collect and publish confidential information beyond that authorized by the Act.”<sup>21</sup> Securus notes that “while the Commission may have inherent authority to seek additional information related to regulated services, it does not have authority to publish that data or disregard legitimate claims for confidential treatment of proprietary or trade secret information.”<sup>22</sup> Therefore, Securus recommends that Rule 2812(a)(VIII)(G) be removed in its entirety.<sup>23</sup> With respect to proposed Rule 2812(e), Securus states that “this provision expands on the specific requirements of C.R.S § 17-42-103(3)(d), but including the additional URL is a reasonable modification.”<sup>24</sup> With respect to proposed Rule 2812(e)(II), Securus states that this “regulation should be more flexible about where a provider may post this information, as long as it is readily accessible to consumers.”<sup>25</sup> Securus explains that “[t]he homepage of a website is a prominent but limited area for information and a provider should be allowed to efficiently manage that space.”<sup>26</sup> Therefore, Securus recommends modifying this provision to read: “The language must be posted in a readily accessible location on the ICS provider’s website, accessible with a single click from the homepage. The language must be displayed in an easy-to-read font, font size, and color.”<sup>27</sup> With respect to proposed Rule 2812(e)(III), Securus states that “[T]he addition of this provision is a useful and welcome clarification.”<sup>28</sup> Securus recommends that the Commission update the intake form to request information on its website regarding whether the complainant has attempted to resolve the matter with the provider, as “[p]roviders should have the opportunity to first attempt

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<sup>21</sup> *Id.* at p. 17.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at p. 18.

<sup>25</sup> *Id.* at p. 19.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

to resolve an issue directly with the consumer before an informal complaint is accepted by the Commission for follow-up.”<sup>29</sup>

5. In the Initial Comments of Global Tel\*Link Corporation, doing business as ViaPath Technologies (“ViaPath’s Initial Comments”), filed May 31, 2024, by Global Tel\*Link Corporation, doing business as ViaPath Technologies (“ViaPath”), ViaPath makes to primary arguments: the Commission should await the outcome of the FCC’s pending rulemaking proceeding before adopting any rules regarding incarcerated people’s communications services (“IPCS”);<sup>30</sup> and the Commission must ensure any rules adopted comport with the intent and language of the Act.<sup>31</sup> Regarding its first argument, ViaPath explained that the Martha Wright-Reed Just and Reasonable Communications Act of 2022 (“MWR Act”), which was signed into law in March 2023, requires the Federal Communications Commission (“FCC”) to ensure rates and charges for certain communications services provided in correctional facilities are just and reasonable,<sup>32</sup> and it “amends the federal Communications Act of 1934, as amended (the “Federal Act”), to extend the FCC’s jurisdiction to the provision of intrastate IPCS and certain advanced communications services provided in correctional institutions, including ‘any audio or video communication service used by inmates for the purpose of communicating with individuals outside the correctional institution where the inmate is held, regardless of technology used.’”<sup>33</sup> ViaPath further explains that the “MWR Act explicitly amends the Federal Act to give the FCC authority to address intrastate matters regarding IPCS,”<sup>34</sup> and “[§] 276(c) of the Federal Act provides that, to the extent any state requirements regarding the provision of IPCS are inconsistent

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<sup>29</sup> *Id.* at p. 19-20.

<sup>30</sup> ViaPath’s Initial Comments at p. 3-5.

<sup>31</sup> *Id.* at p. 5-7.

<sup>32</sup> *Id.* at p. 3, *citing* MWR Act § 2(a).

<sup>33</sup> *Id.* at p. 3, *quoting* MWR Act § 2(b).

<sup>34</sup> *Id.* at p. 3, *citing* MWR Act § 2(c).

with the FCC’s rules, the FCC’s regulations on such matters shall preempt state requirements.”<sup>35</sup> Therefore, Via Path recommended that “the Commission hold this proceeding in abeyance pending conclusion of the FCC’s pending rulemaking proceeding and the FCC’s determination of how, if at all, states will be permitted to exercise authority over IPCS in light of the MWR Act.”<sup>36</sup> With respect to its second argument, ViaPath stated that despite the Commission’s stating that the purpose of this rulemaking Proceeding is to codify the requirements of the [Act], ‘while also adding clarity to these requirements,’”<sup>37</sup> “[m]any of the proposed Rules... go beyond the intent and language of the Statute and the Commission’s current practices.”<sup>38</sup> As an example, ViaPath pointed out that “the NOPR finds the term ‘calls’ as used in the Statute means both voice calls and video calls[,]”<sup>39</sup> [y]et, the Statute specifically uses the term ‘video calls’ when it intends the Statute to apply to video calls.”<sup>40</sup> ViaPath further explains that “[t]here is no indication the Colorado Legislature intended the reporting, testing, disclosure, and complaint requirements in the Statute to apply to services other than voice services as contemplated by the proposed Rules.”<sup>41</sup> ViaPath further explains that the proposed Rules are inconsistent with the Commission’s current reporting or testing practices, which focus on voice services.<sup>42</sup> Therefore, “ViaPath urges the Commission to revise the proposed Rules to reflect the intent and language of the Statute to focus on voice services except where other services are explicitly referenced in the Statute.”<sup>43</sup>

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<sup>35</sup> *Id.* at pp. 3-4, *citing* 47 U.S.C. § 276(c).

<sup>36</sup> *Id.* at p. 4.

<sup>37</sup> *Id.* at p. 5, *citing* NOPR ¶ 2.

<sup>38</sup> *Id.* at p. 5.

<sup>39</sup> *Id.* at p. 6 *citing, e.g.,* NOPR ¶¶ 14, 28.

<sup>40</sup> *Id., citing, e.g.,* § 17-42-103(1), C.R.S.

<sup>41</sup> *Id.* at p. 7, *noting* that video, electronic mail, and messaging services have historically been deemed “interstate” services free from state regulation under long-standing federal law. *See, e.g., California v. FCC*, 39 F.3d 919 (9th Cir. 1994); *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990); *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 375 (1986).

<sup>42</sup> *Id., comparing* to Pre-Rulemaking Workshop Slides for Distribution, at p.5 (February 1 and 2, 2024) stating the proposed Rules were intended “to codify the practices put into effect as a result of the statute”).

<sup>43</sup> *Id.* at p. 7.

6. On June 14, 2024, the Responsive Comments of NCIC Correctional Services (“NCIC’s Public Comment”), was filed by the Network Communications International Corp., doing business as NCIC Correctional Services (“NCIC”). In the NCIC’s Public Comment, NCIC makes two primary arguments: the initial comments by Securus and ViaPath do not address potential violations of proposed Rules;<sup>44</sup> and loopholes in the proposed Rules should be eliminated prior to the adoption of final rules.<sup>45</sup> With respect to its first argument, NCIC recommended that the Commission takes steps in this proceeding that are different than those proposed by Securus and ViaPath “to eliminate loopholes in the FCC’s rules that have been exploited by IPCS providers to the detriment of incarcerated persons and their families,”<sup>46</sup> and rather than simply mirroring the FCC’s efforts, the Commission should take affirmative steps to close the loopholes in the FCC rules in this Proceeding.<sup>47</sup> With respect to its second argument, NCIC stated that “the Commission should close the single-pay call loophole created by the FCC’s rate cap rules[,]”<sup>48</sup> under which “family members receiving calls from incarcerated persons can be charged a rate that includes both a per-minute rate and a transaction-funding fee for a total of \$3.21 for a one minute call, which is well above the FCC’s rate cap of \$0.21 per minute.”<sup>49</sup> Therefore, “NCIC recommend[ed] that the Commission cap the transaction fee associated with single-pay calls to an amount that includes credit card transaction fees, labor, billing, and collection costs, but does not inflate the cost of the call well beyond the FCC’s per-minute rate cap.”<sup>50</sup> NCIC states that a \$0.25 “cap on single-pay transaction funding fees is more than enough to recover these costs.”<sup>51</sup> NCIC also recommended

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<sup>44</sup> NCIC Comment at p. 3-4.

<sup>45</sup> *Id.* at p. 4-8.

<sup>46</sup> *Id.* at p. 4.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at p. 5.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

that the Commission prohibit the current practice of certain IPCS providers who segregate each product (voice calls, video calls, text messaging, emails, and entertainment) into separate accounts in order to collect separate funding fees for each product[,]”<sup>52</sup> in a practice that has been deemed by Prison Policy Initiative, as “Fee Harvesting.”<sup>53</sup> NCIC therefore argues that “the Commission should adopt rules to implement the FCC’s rate caps, and also require providers to include all regulated services into a single account in order to allow a user to choose which service it wishes to use with the deposited funds.”<sup>54</sup> NCIC also argues that “that certain IPCS providers are limiting the amount that their customers can deposit to ‘harvest’ additional funding transaction fees.”<sup>55</sup> Therefore, “the Commission should require providers to increase their maximum deposits to \$100 with no minimum deposit (or some nominal amount to cover a single phone or video call plus taxes).”<sup>56</sup> In addition NCIC argues that the FCC’s language adopted to implement the \$3.00 funding fees for automated or web-based events, and \$5.95 live operator charges, “erroneously permitted IPCS providers to pass through ‘credit card transaction fees’ rather than just be limited to the pass-through of transaction fees charged by Western Union, MoneyGram and other money transfer services.” According to NCIC, “[t]he unintended consequence is that most IPCS providers now charge between 3% and 5.95% in credit card transaction fees for the entire deposit, in addition to the FCC-authorized funding fees, which has led to millions of dollars of unnecessary charges per month.”<sup>57</sup> Lastly, NCIC argues that “to the extent that the Commission

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<sup>52</sup> *Id.* at p. 6.

<sup>53</sup> *Id.*, citing *The Prison Phone Industry’s New Business Model: Fee Harvesting*, Prison Policy Initiative (rel. June 18, 2015) (<https://www.prisonpolicy.org/blog/2015/06/18/feeharvesting/>); and NCIC Correctional Services, FCC Informational Video, Nov. 23, 2014 (<https://www.youtube.com/watch?v=S3iB0p49oZ8>).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at p. 7.

<sup>57</sup> *Id.*, citing, e.g., how TurnKey Corrections steers consumers to the more costly credit card deposit (\$8.95 vs. \$6.95), attached as Exhibit C to NCIC’s Public Comment.

intends to include both voice and video services in the definition of ‘calls’, [*sic*] NCIC urges the Commission to require that video calling be charged on a per-minute basis.”<sup>58</sup> NCIC explained that while the FCC is contemplating capping video calling rates, the majority of the video calling service providers charge consumers a flat fee for video visitation sessions with rates as high as \$20 per session, and in doing so, ignoring “the significant cost incurred by consumers when the video call is less than the maximum time permitted by the correctional facility.”<sup>59</sup> “Therefore, NCIC recommend[ed] that the Commission adopt rules that require providers to charge video calls on a per-minute basis with no front loading of the first minute or per-call transaction fees, so that if the capped rate is \$.35 per minute, then a one-minute session cannot cost more than \$.35 plus taxes.”<sup>60</sup>

7. On June 14, 2024, the Reply Comments of Global Tel\*Link Corporation, doing business as ViaPath Technologies (“ViaPath’s Reply Comments”), was filed by ViaPath. In ViaPath’s Reply Comments, ViaPath makes three primary arguments: “the Commission should hold this case in abeyance pending conclusion of the FCC’s rulemaking proceeding and the FCC’s determination of how, if at all, states will be permitted to exercise authority over IPCS in light of the MWR Act’s delegation of authority over all IPCS to the FCC[;]”<sup>61</sup> “the Commission should revise the proposed Rules consistent with the intent and language of the Statute[;]”<sup>62</sup> so that proposed Rules do not “go beyond the Commission’s stated intent to codify the requirements of the Statute[;]”<sup>63</sup> and “the Commission should address the concerns that have been raised in the

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at p. 8.

<sup>60</sup> *Id.*

<sup>61</sup> ViaPath’s Reply Comments at p. 2, citing ViaPath’s Initial Comments at pp. 3-4.

<sup>62</sup> *Id.* at p. 3.

<sup>63</sup> *Id.* at p. 2.

record[.]”<sup>64</sup> because “[t]o the extent the Commission expands the reporting requirements, the Commission must ensure confidential information submitted by IPCS providers remains protected from public disclosure in accordance with the regarding the confidentiality of the information supplied by IPCS providers Colorado Open Records Act” “to avoid substantial risk of competitive harm.”<sup>65</sup>

8. On June 14, 2024, the Reply Comments of Securus Technologies, LLC (“Securus’ Reply Comments”) was filed by Securus. In Securus’ Reply Comments, Securus argues that because the regulation of all IPCS is now within the jurisdiction of the FCC, the Commission hold this proceeding in abeyance pending conclusion of the FCC’s current IPCS rulemaking until the FCC determines the extent to which states may regulate IPCS in the context of the MWR Act.<sup>66</sup> Securus explains that the “Commission should avoid imposing common carrier regulation over these services that may conflict with the FCC’s policy of non-regulation of these services.”<sup>67</sup> Securus further argues that “given the premise of the Act requiring certain information to be reported by providers and then published by the Commission, the scope of the ICS Rules’ reporting requirements should be limited to specific requirements of the Act.”<sup>68</sup> Securus explains that “[e]xpanding the scope of the Act’s reporting requirements through the ICS Rules necessarily means that information beyond that mandated by the Legislature will now be made publicly available through the Commission’s website.”<sup>69</sup>

9. On June 24, 2024, at 11:30 am, a public comment hearing was held as scheduled. Mr. Michael Lozich, Associate General Counsel of Regulatory affairs for Securus, appeared on

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<sup>64</sup> *Id.* at p. 3, *citing* Securus Technologies’ Initial Comments at p. 2-4.

<sup>65</sup> *Id.* at p. 3-4, *citing* 24-72-100.1 *et seq.*, C.R.S.

<sup>66</sup> Securus’ Reply Comments at p. 2.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at p. 3.

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

behalf of Securus. Mr. Lozich reiterated the need to harmonize the proposed Rules with the FCC's IPCS rules, to the extent practicable for purposes of consistency and efficiency. Mr. Lozich further noted that the FCC is currently<sup>70</sup> engaged in a rulemaking relating to IPCS, and the FCC is expected to issue a relevant order in that rulemaking proceeding this summer. Mr. Lozich noted that the FCC's order in that proceeding is expected to touch on a wide range of issues, including federal preemption of state law and the extent to which states will be able to regulate IPCS. On that basis, Mr. Lozich reiterated the need for the Commission to stay this rulemaking Proceeding, pending resolution of the FCC rulemaking proceeding. Mr. Lozich further reiterated Securus' strong reservations about the proposed Rules expanding the scope of the reporting requirements beyond that which was set forth by the Act. Mr. Lozich stated that the key issue with which Securus disagrees relates to the fact that is that while there is a the presumption under the Act that certain IPCS information, such as telephone-related information regarding rates, revenues, payments, and usage that is reported will be published, such information (which is typically treated within the telecommunication industry as confidential competitive data) should not be expanded beyond the telephone services-related requirements mandated by the Act. No other person submitted a public comment during the public comment hearing.

## **II. BACKGROUND, THE CURRENT RULES AND PROPOSED AMENDMENTS**

10. As stated in the NOPR, the purpose of this Proceeding is to codify in Commission Rules the requirements set forth in the Act, while adding clarity to these requirements. This rulemaking Proceeding is intended to complement the passage of House Bill ("HB") 21-1201 and HB 23-1133 which resulted in the enactment of § 17-42-103(2) through (5), C.R.S. HB 21-1201, among other things, required "Penal Communications Service Providers" to submit

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<sup>70</sup> *I.e.*, as of the date of the public comment hearing in this Proceeding.

quarterly reporting to the Commission on several different data elements regarding the services provided at correctional facilities in Colorado. HB 21-1201 also established a testing protocol to be conducted by Commission Staff, “to ensure accountability for potential predatory practices by penal communications service providers and to determine the quality of calls to and from correctional facilities...” HB 21-1201 also established the Commission as a point of contact for receiving informal complaints regarding these services by requiring providers to post information on their websites regarding the opportunity to file informal complaints with the Commission. Lastly, as pertinent herein, HB 21-1201 also provided for the regulation of Penal Communications Service Providers by removing the exemptions for those providers previously found at §§ 40-1-103(1)(b)(VI), C.R.S. and 40-15-107(3), C.R.S. The passage and signing of HB 23-1133 modified the statute by expanding the definition of “penal communications services” to include, without limitation, video, electronic mail, and messaging.<sup>71</sup>

11. Because the Act is newly adopted, and the proposed Rules are intended to track the requirements set forth by the Act, the current Rules Regulating Telecommunications Services and Providers of Telecommunications Services are silent on matters set for in the Act, 4 *Code of Colorado Regulation* 723-2, and the proposed Rules,<sup>72</sup> comprise the Commission’s first attempt at addressing the requirements set forth by the Act. The undersigned ALJ appreciates the Commission Staff’s attempt at drafting the proposed Rules and the thoughtful public comments regarding the proposed Rules that were submitted in this Proceeding.

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<sup>71</sup> See § 17-42-103(2)(e), C.R.S.

<sup>72</sup> See Attachments A and B to the NOPR.

**III. FINDINGS, DISCUSSION, AND CONCLUSIONS.**

12. It is noteworthy that the only public comments in this Proceeding were submitted by telecom service providers. It is also noteworthy that this recommended decision is being issued after the FCC's issuance, and the undersigned ALJ's review, of the Report and Order, Order on Reconsideration, Clarification and Waiver, and Further Notice of Proposed Rulemaking (the "FCC's recent rulemaking"), adopted on July 18, 2024, and released on July 24, 2024, in WC Docket Nos. 23-62 and 12-375.

13. With respect to the reference to the term "Incarcerated Communication Services" throughout proposed Rules, the ALJ will recommend changing this term to "Incarcerated People Communication Services" for purposes of consistency with the terminology used in the FCC's recent rulemaking.

14. With respect to the term "Call" in proposed Rule 2811, the ALJ will recommend leaving the term as originally proposed by Staff (despite Securus' recommendation to change this term to "Communications") for purposes of consistency with the Act. The Act references the term "call" on multiple occasions: in some instances, in the context of (a) "telephone call(s)," in other instances in the context of (a) "video call(s)," and yet in other instances as a standalone phrase. Pursuant to § 17-42-103(2)(e), C.R.S., the definition of "penal communications services" includes, without limitation, video, electronic mail, and messaging. The ALJ therefore finds and concludes that the term "call(s)," as set forth in the Act, is not ambiguous and/or unclear, meant to refer to both voice and video calls, and otherwise consistent with the provisions of the Act, in general, and § 17-42-103(2)(e), C.R.S., in particular. The ALJ does not find compelling Securus' argument that, except as specifically provided, the reporting requirements set forth in § 17-42-103, C.R.S. should be limited to telephone calls.

15. With respect to proposed Rule 2811(e), the ALJ agrees with Securus that, as originally set forth in the proposed Rules, incarceration facilities could themselves become subject to the requirements of the Act if the definition of IPCS is to remain as originally proposed. Therefore, the ALJ will recommend changing the definition contained within Rule 2811(e) as follows “...means a person or company that contracts with a correctional facility to provide IPCS or the means to access IPCS regardless of the technology used to provide the services...”.<sup>73</sup>

16. The ALJ will further recommend that all references in Rule 2812 to “the service” or “the services” be changed to “IPCS” for clarity and to differentiate IPCS from other services referenced in the proposed Rules, such as “video service” and “customer service.”

17. With respect to proposed Rule 2812(a)(IV), the ALJ agrees with Securus that the term “total gross revenue” is not defined in the Act and its inclusion could therefore cause confusion. Therefore, the ALJ will recommend changing the term “total gross revenue” to “total revenue,” whose definition is contained in § 17-42-103(2)(h), C.R.S.

18. With respect to proposed Rule 2812(a)(V), as mentioned above,<sup>74</sup> the ALJ disagrees with Securus that proposed Rule 2812 applies only to telephone calls. Consequently, the ALJ finds Securus’ argument that this provision inappropriately expands upon the requirements of § 17-42-103(3)(a)(V), C.R.S. unconvincing. The proviso “for all IPCS” merely clarifies that the underlying reporting requirements apply to all IPCS, as authorized by the Act.

19. With respect to proposed Rule 2812(a)(VIII), the ALJ will recommend that the phrase “telephone call” be changed to “voice call” for purposes of consistency throughout the proposed Rules.

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<sup>73</sup> See Attachment B to this Recommended Decision, Clean Version of the Recommended Adopted Rules, proposed Rule 2811(e).

<sup>74</sup> See ¶ 14 of this Recommended Decision.

20. With respect to proposed Rule 2812(a)(VIII)(G), the ALJ appreciates Securus' contention that, as originally proposed, this provision may authorize the Commission collect and publish confidential information that is beyond that authorized by the Act. However, the ALJ finds and concludes that the Act authorizes the Commission to request information relating to commission, fees, and charges for voice services by ICS providers.<sup>75</sup> Therefore, the ALJ will recommend adding the following phrase to this provision: "... regarding any other commissions, fees, and charges for the voice calls provided by ICS providers." Additionally, for structural and grammatical consistency, the ALJ will recommend renumbering subsection (a)(VIII)(G) of Rule 2812 as subsection (a)(IX), and consequently, renumbering subsection (a)(IX) as (a)(X).

21. With respect to proposed Rule 2812(b), the ALJ will recommend changing the phrase from "online form" to "form" in order to provide the Commission with flexibility with respect to the method of delivery of the applicable form.

22. With respect to proposed Rule 2812(c), the ALJ will recommend capitalizing the term "federal communication commission" for purposes of grammatical consistency. In addition, to clarify that, as the FCC mandates changes to rate caps, the rate caps in Colorado would change accordingly, the ALJ will recommend adding the phrase ", including any updated rate caps," after the phrase "... rate caps established by the Federal Communications Commission,".<sup>76</sup>

23. The ALJ will recommend leaving the remaining provisions of the proposed Rules as originally set forth in the proposed Rules.<sup>77</sup>

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<sup>75</sup> See §§ 17-42-103(2)(a), (2)(c), (5)(d), (3)(a)(V), (3)(a)(VII), and (3)(a)(VIII).

<sup>76</sup> *Id.* Rule 2812(c).

<sup>77</sup> See Attachments B to the NOPR, filed April 30, 2024.

24. The ALJ appreciates NCIC's public comments and notes that the scope of this Proceeding is to adopt rules that are authorized by, and are otherwise consistent with, the Act, as further outlined in the NOPR. The purpose of this Proceeding is not to close inadvertent loopholes created by Federal legislation and/or rulemaking. Therefore, the ALJ makes no findings regarding such alleged loopholes and does not otherwise recommend adopting NCIC's recommendations, as they relate to the alleged loophole that may allow the charging of family members receiving calls from incarcerated persons a rate that includes both a per-minute rate and a transaction-funding fee.<sup>78</sup>

25. Based on the foregoing, the ALJ recommends adopting an amended version of the proposed Rules as set forth in the redline/strikeout format, which is attached to this Recommended Decision as Attachment A, and in final format, which is attached to this Recommended Decision as Attachment B.

26. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

#### **IV. ORDER**

##### **A. It Is Ordered That:**

1. The Rules Regulating Telecommunications Services and Providers of Telecommunications Services are silent on matters set for in the Act, 4 *Code of Colorado Regulation* 723-2, contained in redline/strikeout format attached to this Recommended Decision as Attachment A, and in final format as Attachment B, are adopted and are available through the Commission's Electronic Filings (E-Filings) system at:

[https://www.dora.state.co.us/pls/efi/EFI.Show\\_Docket?p\\_session\\_id=&p\\_docket\\_id=24R-0184T](https://www.dora.state.co.us/pls/efi/EFI.Show_Docket?p_session_id=&p_docket_id=24R-0184T).

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<sup>78</sup> See NCIC Comment at p. 5.

2. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is effective as of the Issued Date.

3. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it:

- a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

4. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

AVIV SEGEV

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Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Rebecca E. White".

Rebecca E. White,  
Director