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FILED

05/20/22

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PHAM

R2010002

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

Rulemaking 20-10-002

**ASSIGNED COMMISSIONER'S RULING AMENDING PHASE II SCOPE
AND SCHEDULE AND DIRECTING TESTIMONY**

Summary

This ruling amends the *Assigned Commissioner's Phase II Scoping Memo and Ruling Extending Statutory Deadline* (Phase II Scoping Memo) issued on November 29, 2021. This ruling adds items to the scope of Phase II, updates the proceeding schedule, and directs providers of incarcerated person's calling services (IPCS) to submit testimony no later than 60 days from issuance of this ruling. The updated proceeding schedule provides opportunities for intervenors to submit testimony and sets forth other procedural matters.

1. Background

The Phase II Scoping Memo set forth the schedule and scope for Phase II of this proceeding. The Phase II schedule began by providing parties an opportunity to submit opening and reply legal briefs on two questions related to the California Public Utility Commission's jurisdiction over video calling services and related services, namely:

- a. Does the Commission have authority to regulate rates, fees and/or service quality of video and related services provided to incarcerated persons in California, including remote video calling services, in-person video calling

- services, text (SMS) services, private messaging services, tablet services, photo sharing/music, video entertainment and/or internet access services (hereafter “video and related services”)?
- b. If yes, should the Commission adopt interim or permanent rate caps and/or ancillary fee regulations for video and related services?

Parties filed opening and reply briefs on January 28, 2022, and February 28, 2022, respectively. On April 14, 2022, the assigned Administrative Law Judge (ALJ) issued a *Ruling Setting Status Conference and Providing Proposed Questions for Testimony and Additional Briefing* (ALJ Ruling). The ALJ Ruling stated that after reviewing parties opening and reply briefs we have determined it appropriate to gather additional factual information and explore additional policy questions prior to addressing the jurisdictional questions. The ALJ Ruling set forth draft questions for providers to respond to in testimony for discussion during the status conference.

On April 28, 2022, the assigned ALJ convened a status conference providing parties an opportunity to comment on the draft questions for testimony. This ruling contains the final questions for providers to respond to in testimony.

2. Amended Phase II Scope

The ALJ Ruling provided two draft questions for additional briefing by parties. At the status conference, the assigned ALJ clarified that the additional questions are primarily policy oriented in nature rather than solely legal questions. This ruling amends the scope of Phase II of this proceeding by adding the following questions:

- a. Should the Commission consider requiring IPCS providers to bifurcate contracts providing voice-only calling services and video calling services to incarcerated persons such that

- contracts bundling the two services together are not permitted?
- b. Should the Commission consider requiring IPCS providers to bifurcate contracts providing voice-only calling services with any other service (texting, e-mail, entertainment, educational services) such that contracts bundling any other service with voice-only calling services are not permitted?

Parties will be provided an opportunity to file briefs addressing these questions after additional facts have been gathered through the process described below.

3. IPCS Providers

Decision (D.) 21-08-037 identifies six IPCS providers in California as of August 23, 2021, namely:

- a. Securus Technologies, LLC (Securus);
- b. Global Tel*Link (GTL) d/b/a ViaPath Technologies;
- c. Inmate Calling Solutions, LLC d/b/a IC Solutions;
- d. Legacy Inmate Communications;
- e. Network Communications International Corp. d/b/a NCIC Inmate Communications; and,
- f. Pay Tel Communications Inc.

D.21-08-037 states that Legacy Inmate Communications is in the process of exiting the IPCS market. Three other companies doing business as ViaPath Technologies are listed as parties to Rulemaking 20-10-002 as of May 16, 2022, namely:

- a. Public Communications Services, Inc. d/b/a ViaPath Technologies;
- b. Telmate, LLC d/b/a ViaPath Technologies; and,
- c. Value-Added Communications, Inc., d/b/a ViaPath Technologies.

With the exception of Legacy Inmate Communications, the providers listed above and any additional IPCS providers not specifically named here are referred to collectively as “IPCS providers” in this ruling.

4. IPCS Provider Testimony

IPCS providers are directed to file testimony responsive to the questions below no later than 60 days from issuance of this ruling. These questions update those provided in the ALJ ruling.

4.1. Questions Regarding Bundling of Video Calling and Voice-Only Communications Services in a Single Contract

1. How many and what percent of provider contracts for IPCS are bundled, meaning a single contract governs provision of voice-only calling services and video calling services? Providers shall provide a list of California contracts for communication services for incarcerated persons indicating whether the contracts are bundled or not;
2. For provider contracts identified as bundled, indicate the full list of services included;
3. If services are covered in a single bundled contract, are voice-only communication services and video calling services (remote and/or onsite) priced together on a bundled basis? Or is each service priced separately?
4. If services are covered in a single bundled contract, are terms addressing fees, and other issues (service quality, *etc.*) for voice-only communication services and video calling services (remote and/or onsite) combined in the same contract? Or are terms for each service delineated separately?
5. For provider contracts identified as bundled, describe any linkages or interrelationships between the bundled services not described in your response to question 3 and 4, addressing, at minimum, the following, as well as any

additional linkages not yet described: (a) economic or contractual incentives given to facilities for agreeing to a bundled contract; (b) hardware used to deliver multiple bundled services; (c) software to deliver multiple bundled services.

6. For all provider contracts identified as bundled, indicate if the contract includes provisions restricting or limiting the use of voice-only communication services in order to encourage incarcerated persons to utilize video calling services (either remote or onsite services); and,
7. For all provider contracts addressing video calling services (bundled and nonbundled), state whether the contract includes any (a) explicit, or (b) implicit restrictions on live in-person visits at the incarceration facility between incarcerated persons and their loved ones, attorneys, or the providers of other social services in order to encourage incarcerated persons to utilize video calling services (either remote or onsite services). As used here, implicit restrictions shall include, but not be limited to, contract terms that create discounts, payments, other terms and conditions that provide incentives for incarceration facilities to discourage in-person visits or to encourage the use of video calling services over in-person visits (e.g., bonus payments provided if incarcerated persons in a given facility exceed a given number of calls or hours of video calling services per month).

4.2. Questions Regarding Video Calling Service Rates

1. Providers shall provide rate and fee schedules for video calling services for all contracts that provide this service to incarcerated persons in California. Providers shall delineate rates and fees according to any sub-services provided (e.g., rates or fee schedules applicable only to minors, etc.);
2. For each contract providing video calling services, providers shall indicate if (a) the contract, and/or (b) the facility sets (c) a maximum or (d) a minimum monthly

- usage time of video calling services by the incarcerated. In their response, providers shall clearly indicate contracts or facilities pertaining to incarcerated minors; and,
3. For each contract or facility identified in question 2, providers shall indicate the maximum (or minimum) authorized time for an incarcerated persons' use of video calling services per month. In their response, providers shall clearly indicate contracts or facilities pertaining to incarcerated minors.

4.3. Questions Regarding Use of Video Calling Services

IPCS provider responses to each question in this section shall address incarcerated adults and minors separately. IPCS provider responses regarding minors shall address both incarcerated minors and minors with incarcerated parents or other family members. IPCS provider responses shall separately address the general incarcerated population and incarcerated persons with disabilities or those with a support person with disabilities.

1. What type of communications currently used by incarcerated persons are best served by video calling services (remote and onsite) versus voice-only communications? Response may address current (actual) uses as well as future (potential) uses;
2. To what extent are current or future uses of video calling services duplicative of or distinct from current or future uses of voice-only communication services?
3. Based on aggregated data (by facility or for all contracts, with the aggregation basis clearly stated), what is the average amount of calling time and frequency of calls made by incarcerated persons on a monthly basis for:
(a) voice-only communication services; and
(b) video calling services? And,
4. What is an essential amount of calling time and frequency of calls for incarcerated persons on a monthly basis, if any, for: (a) voice-only communication services; and

(b) video calling services? Responses to this question shall consider incarcerated persons' (c) access to social services, attorney support, educational services, telemedicine services, and/or other services necessary for reentry into society; and (d) access to communication with loved ones. Studies or expert opinion must be fully cited. Responses may address the impacts of service quality disruptions.

4.4. Network Structure of Telephone and Video Calling Services

IPCS provider responses shall include in their responses infrastructure and systems used to provide voice and video calling services to incarcerated persons with disabilities or with supporters with disabilities, clearly identifying the responses as such.

1. IPCS providers shall identify the number and percent of their (a) voice and (b) video calling service contracts that use (c) best efforts networks, and those that use (d) enhanced quality of service networks.
2. IPCS providers shall provide and explain a generic diagram of the network architecture and infrastructure generally used to provide voice-only and video calling services to incarcerated persons, including both internal and external facilities.
3. With regards to the generic diagram, IPCS providers shall identify the following:
 - a. The portion of the network it, generally, owns and operates;
 - b. The portion of the network it, generally, leases/purchases from other providers;
 - c. Typical interconnection points in the network to other carriers;
 - d. The hardware, equipment, and maintenance generally supplied by the provider or a provider subcontractor; and,

- e. The hardware, equipment, and maintenance generally supplied by the incarceration facility.
- 4. IPCS providers shall indicate the extent to which underlying services or internet bandwidth used for the provision of communication services for incarcerated persons are, generally, purchased through resale agreements, and, if so, from whom.

5. Use of Kiteworks System for Data Request Responses

Following discussion at the status conference, this ruling does not require IPCS providers to provide copies of all California IPCS contracts as exhibits to testimony as envisioned in the ALJ Ruling. Instead, this ruling directs IPCS providers to submit, on an ongoing basis, all California IPCS contracts to the Commission Staff using the CPUC's Kiteworks File Transfer Protocol (FTP) system. Intervenor that have filed a signed Protective Order as set forth in the November 29, 2021 Phase II Scoping Memo will be allowed access to the submitted contracts.

We will convene a workshop in June or July of 2022 to explain submittal and access procedures. A subsequent ruling will provide a timeline for submittal of contracts using this system.

6. Updated Procedural Schedule

EVENT	DATE
Workshop to review Kiteworks procedures	June or July 2022
Opening testimony of providers served	60 days from issuance of ruling
Opening testimony of intervenors served	60 days from service of provider testimony
Reply testimony of providers served	30 days from service

EVENT	DATE
	of intervenor testimony
Joint party statement regarding stipulated and disputed facts and the need for hearings	45 days from Reply briefs of all intervenors
Status Conference	Approximately five and a half months from issuance of this ruling
Evidentiary Hearings (if needed)	TBD
Ruling providing instructions for briefs	TBD
Opening briefs	TBD
Reply Briefs	TBD
Last day to request oral argument	TBD
Proposed decision	TBD

IT IS RULED that:

1. All IPCS providers are directed to file testimony responsive to the questions contained here no later than 60 days from issuance of this ruling.
2. The procedural schedule as set forth in this ruling is adopted.

Dated May 20, 2022, at Sacramento, California.

/s/ DARCIE L. HOUCK

Darcie L. Houck
Assigned Commissioner