

December 15, 2022

Jennifer Vickers
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
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Dear Ms. Vickers,

The Electronic Privacy Information Center (EPIC) submits this comment letter to applaud the Commission on enacting new safeguards to protect individuals and their loved ones from exploitative practices by providers of interstate Inmate Calling Services (ICS).¹

EPIC is a public interest research center in Washington, D.C., established in 1994 to focus on public attention on emerging civil liberties issues and to secure the fundamental right to privacy in the digital age for all people through advocacy, research, and litigation.² EPIC has filed comments in support of inmate phone privacy, petitioned the FCC for rulemaking regarding the privacy and security of phone subscriber data, and offered congressional testimony on the same subject.³

In particular, EPIC thanks the Commission for amending the definitions of “jail” and “prison” under its ICS Rules to include ICE detention facilities, juvenile detention facilities, and secure mental health facilities;⁴ for lowering the permanent caps on third-party fees for single-call services and third-party financial transactions;⁵ and for prohibiting prison phone providers from claiming unused funds without first making reasonable efforts to refund the balance;⁶ in full

¹ Federal Comm’n Comm’n, Rates for Interstate Inmate Calling Services, Notice of Proposed Rulemaking, 87 Fed. Reg. 68,416 (Nov. 15, 2022), <https://www.federalregister.gov/documents/2022/11/15/2022-24597/rates-for-interstate-inmate-calling-services> [hereinafter Proposed Rule].

² EPIC, About Us (2022), <https://epic.org/about/>.

³ See, e.g., Comments of the Electronic Privacy Information Center, Request for Comment on Securus’ Technologies, LLC’s Petition for Waiver of the Inmate Calling Services Per-Minute Rate Requirement (Jan. 7, 2022), <https://www.fcc.gov/ecfs/document/10108908616982/1>; Report and Order and Further Notice of Proposed Rulemaking, Federal Communications Commission, Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Information, FCC 07-22 (Apr. 2, 2007), <https://docs.fcc.gov/public/attachments/FCC-07-22A1.pdf> (Commission Report and Order on protecting Customer Proprietary Network Information (CPNI) initiated by EPIC petition); EPIC Letter to House Energy & Commerce Committee, Accountability and Oversight of the Federal Communications Commission (May 14, 2019), <https://epic.org/documents/accountability-and-oversight-of-the-federal-communications-commission/> (testimony regarding the FCC’s oversight of robocalls, location tracking, and unnecessary collection and retention of subscriber call records).

⁴ Federal Comm’n Comm’n, Rates for Interstate Inmate Calling Services, Final Rule, 87 Fed. Reg. 75,496 at ¶ 94 (Dec. 9, 2022), <https://www.federalregister.gov/documents/2022/12/09/2022-25192/rates-for-interstate-inmate-calling-services> [hereinafter Final Rule].

⁵ *Id.* at ¶ 86 – 93.

⁶ *Id.* at ¶ 71.

compliance with applicable laws pertaining to unclaimed property;⁷ and in no instance before 180 consecutive days of inactivity have passed.⁸

The Commission seeks comment as to whether it should expand the definitions of “jail” and “prison” to ensure that they capture the full universe of confinement facilities with residents who may access interstate and international communications services.⁹ EPIC applauds this attention to individuals and their families who might otherwise be excluded from the Commission’s protections. EPIC urges the Commission to continue expand protections for vulnerable populations subject to various forms of detention.

The Commission also lowered the caps for third-party fees for single-call services and third party financial transactions from \$6.95 to \$3.00 for automated payment systems and \$5.95 for transactions with a live agent.¹⁰ EPIC applauds the lower fee caps and urges the Commission to act further to ensure that incarcerated persons and their loved ones are not billed for any services that do not redound to their benefit. EPIC urges the Commission to adopt Worth Rises’ proposed rule that any surveillance functions beyond those required by law under the Communications Assistance for Law Enforcement Act (CALEA) are not properly considered services to incarcerated persons or their contacts.¹¹ We reiterate that such surveillance is often unnecessary, harmful, and serves to enrich prison phone providers through ancillary services sold to law enforcement when the providers act as data brokers.

The Commission also seeks comment on treating the seizure of unused funds as an unjust and unreasonable practices impacting consumers under its section 201(b) authority.¹² EPIC encourages the Commission to utilize this authority to protect individuals from predatory practices such as seizing a consumer’s unused funds.

EPIC applauds the Commission’s latest rulemaking and urges the Commission to act further to protect incarcerated persons and their loved ones. For any further questions please contact EPIC Fellow Chris Frascella at frascella@epic.org.

Sincerely,

/s/ Jake Wiener

EPIC Counsel

/s/ Chris Frascella

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⁷ *Id.* at ¶ 76.

⁸ *Id.* at 75,516, amended § 64.6130(3)(b), <https://www.federalregister.gov/d/2022-25192/p-205>.

⁹ Proposed Rule at ¶ 4.

¹⁰ Final Rule at 75,510, ¶ 86–93.

¹¹ See Worth Rises Reply Comment to Fifth FRPRM (Dec. 17, 2021), <https://www.fcc.gov/ecfs/search/search-filings/filing/1218927308676>.

¹² Proposed Rule at ¶ 23.