

Date of Hearing: June 29, 2022

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Sharon Quirk-Silva, Chair

SB 1008 (Becker) – As Amended June 16, 2022

SENATE VOTE: 23-6

SUBJECT: Corrections: telecommunications

SUMMARY: Requires state and local correctional facilities to provide voice communication services to incarcerated persons free of charge. This bill also designates certain communication service providers as a public utility and requires the California Public Utilities Commission (CPUC) to establish service quality standards for those communication service providers.

Specifically, **this bill:**

- 1) Declares that communication service providers rendering services to state or local correctional or detention facilities to be utilized by incarcerated persons are public utilities.
- 2) Declares that communication service providers rendering services to state or local correctional or detention facilities to be utilized by incarcerated persons are bound by the Telecommunications Customer Service Act of 1993.
- 3) Requires the CPUC to establish service quality standards to be adhered to by communication service providers rendering services to state or local correctional or detention facilities for communication services rendered to incarcerated persons.
- 4) Requires county jails, city jails, youth residential placement or detention centers, and state prisons or youth residential placement or detention centers operated by the Department of Corrections and Rehabilitation (CDCR) to provide persons in their custody with accessible and functional voice communication services free of charge to the person initiating and the person receiving the communication.
- 5) Requires county jails, city jails, youth residential placement or detention centers, and state prisons or youth residential placement or detention centers operated by CDCR, to provide incarcerated persons with a minimum of 60 minutes of with accessible and functional voice communication services per day, to the extent those services do not interfere with rehabilitative, educational, and vocational programming or regular facility operation.
- 6) Provides that a state, county or city agency shall not receive revenue from the provision of voice communication services or any other communication services to a person confined in a state or local correctional or detention facility.
- 7) States Legislative findings and declarations.

EXISTING LAW:

- 1) Defines a “telephone corporation” to include every corporation or person owning, controlling, operating, or managing any telephone line for compensation within the state. (Public Utilities Code (“PUC”) § 234)

- 2) Defines a “public utility” to include every telephone corporation where the service is performed for the public or any portion thereof. [PUC § 216 (a)]
- 3) Provides that any telephone corporation that performs a service for the public for which any compensation or payment whatsoever is received is subject to the jurisdiction, control, and regulation of the CPUC. [PUC § 216 (b)]
- 4) Authorizes the CPUC to fix rates, establish rules, examine records, issue subpoenas, administer oaths, take testimony, punish for contempt, and prescribe a uniform system of accounts for all public utilities subject to its jurisdiction. (Cal. Const. Art. XII, § 6.)
- 5) Provides that all charges demanded or received by a public utility for any service rendered shall be just and reasonable. Every unjust or unreasonable charge demanded or received is unlawful. (Pub. Util. Code, § 451.)
- 6) Defines “telecommunications service” to include voice communication provided by a telephone corporation and voice communication provided by a commercially available facilities-based provider of voice communication services utilizing Voice over Internet Protocol or any successor protocol. (PUC § 2892.1)
- 7) Establishes the Telecommunications Customer Service Act of 1993 and requires the CPUC to require telephone corporations to provide customer service to telecommunication customers that includes, among other things, reasonable statewide service quality standards. (PUC §§ 2895-2898.)
- 8) Establishes the right of an arrested person, no later than three hours after an arrest, to make at least three free local telephone calls upon being booked including a call to an attorney, a bail bond agent, and to a relative or other personal contact. These calls shall be provided at no expense if they are to telephone numbers within the local calling area or at the arrestee’s own expense if outside the local calling area. (Pen. Code, § 851.5.)
- 9) Requires 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 incarcerated persons to be deposited in the inmate welfare fund. (Pen. Code, § 4025, subd. (d).)

FISCAL EFFECT: According to the Senate Appropriations Analysis of a recent version of the bill, there would be ongoing costs in the low tens of millions for the Department of Corrections and Rehabilitation (CDCR) to provide the minimum telephone access required under the bill in CDCR facilities. Additionally, an unknown level of ongoing local reimbursements in the low tens of millions for local governments to provide the minimum allowable telephone access for incarcerated persons in local facilities.

COMMENTS:

- 1) *Purpose of the bill.* According to the author, “SB 1008 eliminates fees charged for telephone services between people held in local jails and state prisons and loved ones on the outside. Free communication services will support strong relationships between incarcerated people and their loved ones, promoting successful reentry and reducing recidivism. SB 1008 will also support reentry by making outside resources more accessible to all parties, without the

additional fees associated with basic communication. By establishing free phone calls, incarcerated people can connect with their support systems to plan for their release, including finding a job and housing. The author also notes “For years, the basic costs for phone calls in prisons and county jails varied widely among the facilities with other charges tacked on as related telecom fees.”

- 2) *Double-referral and committee jurisdiction.* This bill was first referred to the Assembly Committee on Public Safety, which has primary jurisdiction of the California Penal Code. The jurisdiction of this committee is telecommunications policy generally and related portions of the Public Utilities Code. This analysis will primarily focus on portions of the bill pertaining to the Public Utilities Code, telecommunications, and their intersection with communications services provided to incarcerated persons.
- 3) *Incarcerated persons have access to various forms of communication services.* Pursuant to Title 15 Regulations and California Department of Corrections and Rehabilitation’s (CDCR) Operations Manual, inmates are provided with the means and the opportunity to make personal calls to persons outside the institutions¹. Each facility is required to provide public telephones for the use of general population inmates to make personal calls². Although limitations are placed on the frequency of such calls as to allow equal access to telephones, there are no limitation placed on the numbers, identity, or relationship of the person called, providing the person being called agrees to accept all charges for the call. Incarcerated persons can sign up to use the telephone in periods of 15-minute increments. In addition to traditional voice calling through telephones, the providers of communications services within jails and prisons also make video conferencing, electronic messages, and other communication services available in some facilities. All of the communications services provided to incarcerated persons can simply be referred to as “incarcerated person’s calling services”, or IPCS.
- 4) *IPCS providers charge high and varying rates across California.* IPCS is a lucrative business for providers servicing jails and prisons in California, and nationwide it is a \$1.4 billion dollar industry. IPCS in California are generally provided by private communications companies under contract with the entity that oversees or owns the correctional or detention facility, such as CDCR or the county Sheriff’s office. According to the CPUC, six providers serve the IPCS market in California, providing calling services to approximately 354 incarceration or detention facilities. However, the market is dominated by two companies—Securus and GTL—which have collectively absorbed dozens of competitors since the 1990s. Within the institutions in California, each provider operates essentially as a monopoly; as such, an incarcerated person is a captive customer. This dynamic has resulted in highly unequal and in some cases exorbitant rates for IPCS across incarceration facilities and as compared to current commercial markets. According to the Prison Phone Justice campaign, the average cost of a fifteen-minute intrastate phone call placed from one of California’s jails or prisons is \$1.23, the 28th most expensive in the nation. Within California, the cost of a 15-minute phone call with a young person incarcerated in a juvenile facility varies from county to county. In some counties, these calls are free, but a 15-minute call from a youth to their

¹ (Cal. Code Regs., tit. 15, § 3282; DOM, § 52060.1.)

² . (Cal. Code Regs., tit. 15, § 3282; DOM § 52060.4.)

family can range from \$2.40 in Solano County, to \$6.00 in San Mateo County to \$13.65 in San Benito County.³

- 5) *FCC Rulemaking on Interstate IPCS*. In August 2020, the FCC unanimously adopted a notice proposing to reduce interstate rates and, for the first time, to cap international rates for prison and jail phone calls⁴. In May 2021, the FCC moved forward as proposed, lowering interstate rates and charges for the vast majority of incarcerated people, limiting international rates for the first time, and making other reforms to our rules. Specifically, the FCC lowered the interstate rate per-minute rate caps for debit and prepaid calls for prisons and jails with 1,000 or more incarcerated people to \$0.12 per minute and \$0.14 per minute for larger facilities. The FCC did so to address concerns regarding a lack of competition in the incarcerated person’s communication services market. Also, according to the FCC, “access to affordable communications services is critical for everyone in the United States, including incarcerated members of our society. Studies have long shown that incarcerated people who have regular contact with family members are more likely to succeed after release and have lower recidivism rates.”

Although the FCC has an ongoing rulemaking on the subject of rates for telephone service for people who are incarcerated, the FCC’s jurisdiction is limited to *interstate* calls, which only account for about 10% of phone calls from these facilities. As such, the FCC has called upon state telecommunications regulators, such as the CPUC, to take action to reduce intrastate rates and related fees.

- 6) *CPUC Rulemaking on IPCS*. The California Constitution and Public Utilities Code vest in the CPUC regulatory authority to ensure that all rates charged by a public utility (including telephone corporations and VoIP providers) are “just and reasonable”. On October 8, 2020, the CPUC issued an Order to Institute Rulemaking (OIR) which opened Rulemaking 20-10-002. In the OIR for this proceeding, the Commission sought comment on whether the Commission should cap rates for incarcerated person’s calling services (IPCS), including voice and video calls, to ensure that incarcerated people in California pay just and reasonable rates for telecommunications service, under just and reasonable terms and conditions. CPUC’s rulemaking builds on work by the FCC to regulate intrastate incarcerated person’s communication services.

During its rulemaking proceedings, the CPUC decided, for the first time, that their statutory and constitutional authority extends to IPCS providers, citing the Public Utilities Code provisions that define “telephone corporations”. CPUC has determined that the companies providing communications services to people incarcerated in California are telephone corporations within the meaning of the Constitution and Public Utilities Code, and thus subject to its jurisdiction.

On August 19, 2021, the CPUC adopted Decision 21-08-27 in Phase I of the rulemaking proceeding, providing interim rate relief to incarcerated persons throughout California.

³ Financial Justice Project, Young Women’s Freedom Center and Children’s Defense Fund California, “Price of Justice: Juvenile Phone Calls,” accessed August 24, 2020, available at <https://sfgov.org/financialjustice/>.

⁴ FCC, *FCC Lowers Interstate and International Prison Phone Rates* (May 24, 2021) at p. 2. <https://www.fcc.gov/document/fcc-lowers-interstate-and-international-prison-phone-rates-0> at p. 2.

CPUC's decision imposes a per-minute cap of \$0.07 for intrastate debit, prepaid calls, and collect calls for all IPCSs operating within California⁵. The interim rate relief adopted by the CPUC applies to intrastate IPCS provided to any local, state, or federal correctional or detention facility type operated in California housing adults and/or juveniles. This rate will remain in effect until the CPUC adopt a permanent IPCS intrastate rate cap in a future phase of the proceeding.

- 7) *CPUC IPCS Rulemaking Phase II Scope*. Decision 21-08-027 of the CPUC's IPCS rulemaking found that IPCS providers are subject to the CPUC's jurisdiction and imposed interim rate relief on IPCS voice services, thus concluding Phase I of the proceeding. D.21-08-037 further indicated the Commission's intent to review the CPUC's authority particularly regarding video services, which was excluded from Phase I pending further gathering of evidence. The Phase II Amended Scoping Ruling⁶, which identifies the issues to be considered, issued May 22, 2022 identifies that a "central question in this proceeding...is whether the Commission has authority to regulate rates, fees and/or service quality issues for three types of additional communications services provided to incarcerated persons in California." The additional services are: (1) video calling services, including remote video calling services and in-person video calling services; (2) written electronic communication services, including texting (SMS) services, private messaging services, and email services; and, (3) entertainment services such as photo sharing, music or video entertainment and/or internet access services." The CPUC refers to these separate services collectively as "video calling and related services".

Unlike voice communications services, which the CPUC clearly has the authority to regulate under existing statutory and constitutional authority, the CPUC's authority to regulate video calling and related services is a more complex legal issue because of the interaction with federal telecommunications law. Accordingly, the Phase II Amended Scoping Ruling called on interested parties to submit legal briefs stating their perspectives on the issue. The parties were split as to the CPUC's authority to regulate video and related services, particularly because each side had varying interpretations of federal law. On one hand, parties representing IPCS providers and other telecommunications providers assert that video and related services are legally considered "information services" under federal telecommunications law, and "information services" are preempted from regulation by states under their interpretation. On the other hand, a coalition of consumer advocates and incarcerated persons advocates submitted a joint legal brief arguing that video calling services in particular are considered "telecommunications services", and therefore within the authority of the CPUC to regulate. In summary, the parties were split as to whether video calling and related services were classified as "information services" or "telecommunications service" under federal law, which in turn affects the CPUC's authority. The CPUC plans to hold further workshops and intake more evidence on this topic in the future, but at this point a Phase II decision is still pending.

- 8) *Committee amendments*. Although regulation of video and related services by IPCS providers is a pertinent policy question, settling the matter is beyond the scope the author's stated

⁵ CPUC, *CPUC Caps Phone Rates for Those Incarcerated*. (Aug. 19, 2021) <https://www.cpuc.ca.gov/news-and-updates/all-news/cpuc-caps-phone-rates-for-those-incarcerated>

⁶ CPUC, *Assigned Commissioner's Ruling Amending Phase II Scope and Schedule and Directing Testimony (Rulemaking 20-10-002)*. <https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M478/K075/478075894.PDF>

intention for this bill, which is to provide free voice communications service to inmates and affirm the CPUC's authority over that type of service. However, as currently drafted the terms used in this bill to reference IPCS and ICPS providers are vague, which leaves the door open to broad interpretation by the CPUC. For that reason, the author may wish to make technical and clarifying amendments to their bill to align with their stated intent.

Further recent amendments to the bill hold that IPCS providers are deemed public utilities, and requires those providers to abide by the Telecommunications Customer Service Act of 1993. However, there is not a need to clarify that IPCS providers are public utilities because existing state law is clear on the matter as interpreted by the CPUC's definition of "telephone corporations". Lastly, the Telecommunications Customer Service Act of 1993 was intended to cover general consumers, and is questionable to apply the Act in its entirety to IPCS providers given that the Act does not account for the particularities of incarcerated peoples and ICPS providers. As such, the author may wish to strike the proposed subdivision of the bill deeming IPCS providers as public utilities and requiring IPCS providers to follow the Telecommunications Customer Service Act of 1993.

- 9) *Arguments in Support.* According to the *Western Center on Law and Poverty*, a co-sponsor of this bill, "The high cost of jail and prison communications services extract tens of millions of dollars from low-income people every year and disproportionately impacts Black and Brown communities in California. These exorbitant phone prices are forced upon incarcerated people by the \$1.4 billion jail and prison telecom industry and disrupt the economic stability of both incarcerated people and their support systems on the outside. By passing SB 1008, California can become a champion and leader in promoting economic security, racial equity, and community safety within communities most impacted by the criminal legal system."
- 10) *Arguments in Opposition.* According to the *California State Sheriffs' Association*, "It is unclear how jails will offer every inmate one hour of voice communication services per day without interfering with other operations."

"Under current law, financial proceeds from inmate communications contracts must go to the county's inmate welfare fund (IWF) and must be used primarily for the benefit of inmates. Many counties pay for vital rehabilitative and treatment programs out of the IWF and irrespective of one's thoughts on that policy, the reality is that there will likely not be funds available to backfill the loss of revenue that would result from the bill's requirement that a county may not receive revenue from the provision of inmate communication services".

11) Prior Legislation.

- a. SB 555 (Mitchell), of the 2019-2020 Legislative Session, would have prohibited a county jail from collecting commission fees for providing telephone services to inmates, and would have imposed other restrictions on a county's ability to contract for commissary and communication services. SB 555 was vetoed by the governor.
- b. AB 1876 (Quirk), of the 2013-2014 Legislative Session, would have prohibited commissions in telephone service contracts for juvenile facilities and for county, municipal or privately-operated jails, and would have required such contracts to

be negotiated and awarded to the lowest cost provider. AB 1876 was held in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

ACLU California Action
California Public Defenders Association
Center for Responsible Lending
Communities United for Restorative Youth Justice (CURYJ)
Community Legal Services in East Palo Alto
Ella Baker Center for Human Rights
End Poverty in California (EPIC)
Essie Justice Group
Friends Committee on Legislation of California
Glide
Grace Institute - End Child Poverty in Ca
Homerise San Francisco
Indivisible CA Statestrong
Lawyers' Committee for Civil Rights - San Francisco
League of Women Voters of California
Legal Services for Prisoners With Children
Media Alliance
Mourning Our Losses
National Association of Social Workers, California Chapter
National Consumer Law Center, INC.
Pillars of The Community
Returning Home Foundation
San Francisco Financial Justice Project
Sister Warriors Freedom Coalition
Smart Justice California
Worth Rises

Opposition

California State Sheriffs' Association
Riverside County Sheriff's Office

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