



COLORADO

Department of
Regulatory Agencies

Public Utilities Commission

2023 Report on Commission Oversight of Colorado Penal Communications Services Providers

Prepared by:

The Colorado Public Utilities Commission ICS Staff

April 17, 2024

Table of Contents

Executive Summary	2
Legislative History	2
Declaratory Order 22D-0293T	5
ICS Reporting Requirements	6
Quarterly Reporting Findings	7
Further Information Concerning Non-DOC Commission Payments	9
ICS Consumer Complaints Operations	10
ICS Voice Testing Operations	12
Additional Issues Identified in Voice Testing	14
The Martha Wright-Reed Just and Reasonable Communications Act	15
Appendix A: Providers	17
Appendix B: Facilities Served	18

Executive Summary

The Commission is required to create and publish this annual report on its website each year pursuant to § 17-42-103, C.R.S. This report provides an overview of informal complaints received and call quality testing of Penal Communications Services Providers (Providers) by the Commission’s ICS Program staff.¹ Details observed on the cost and quality of calls, provider methods of charging consumers, and call quality issues are also discussed. Additionally, this report includes information on issues observed in call quality testing, but also contains information and observed trends in Provider compliance with FCC rate caps, and any outliers in terms of the categories identified for quarterly reporting by statute.

This report also includes the quarterly reports that are currently publicly available. These quarterly reports are submitted by Providers and aggregated by the ICS Section. Attached to this report are the published reporting information for all four Quarters of the year 2023.²

In 2023, the ICS Program received fifty informal complaints regarding ICS Providers. All complaints that concerned a specific Colorado ICS provider were relayed to the appropriate provider. Most of the complaints received related to a recent transition of the Colorado Department of Corrections (CDOC) inmate communications to a new ICS Provider. A significant number of complaints also involved account issues, such as funds paid by a user not being applied to an account or difficulty in receiving refunds.

The program also conducted testing of 38 facilities in 2023. There were findings related to call quality and call connection, and this report also makes note of specific instances where ICS Providers may be in violation of § 17-42-103(5)(a), C.R.S., which states that FCC rate caps for inmate communication services also apply to intrastate ICS in Colorado.

The ICS Program also highlights potential concerns regarding commission payments to facilities by ICS providers, which may artificially raise the cost of ICS for inmates and individuals attempting to communicate with inmates. The Program also suggests that the legislature should consider addressing this issue in the future.

Legislative History

The regulation of Colorado Penal Communications Services Providers (Providers) was enabled by way of Colorado House Bill 21-1201 (HB21-1201). The Providers contractually enable communications services to “any...place, where persons are or may be lawfully held in custody

¹ Throughout this report, the usage of “Penal Communications Services” (PCS) and “Inmate Communications Services” (ICS) are interchangeable. The use of “Penal Communications” or “Penal Communications Services Provider” is generally used when referring to Colorado statutory or declaratory order language, whereas “Inmate Communications Services” or “Inmate Communications Services Provider” is generally used when speaking in terms of the Public Utilities Commission (PUC) section’s interactions.

² See Appendix C.

or confined and that is operated by a city, county...state government, or private entity, including but not limited to a jail or prison.” (§17-42-103(2)(b), C.R.S.)

Effective January 1, 2022, Providers are required to submit quarterly reports to the Colorado Public Utilities Commission (Commission). The reports include several categories of data and also require the submission of a copy of any contracts between the Provider and each facility where they provide inmate communication services, and a copy of the Provider’s unclaimed funds policy. The specific requirements are detailed in the quarterly reporting section of this report.

As elaborated in HB21-1201, “Starting on January 1, 2022, rate caps established by the Federal Communication Commission apply to all in-state debit, prepaid, and collect calls to or from a correctional facility.” The existing caps were already mandated by the FCC as of October 26, 2021. The FCC established interstate and international caps that now apply to intrastate calls. These caps include:

- A rate cap of \$0.21 per minute for voice calls originating from a jail with less than 1,000 incarcerated people.
- A rate cap of \$0.16 per minute for voice calls originating from a jail with 1,000 or more incarcerated people.
- A rate cap of \$0.14 per minute for voice calls originating from prisons.

In discussing calendar year 2023, all quarterly reports provided should be in direct adherence with these FCC caps that are in place. The Inmate Communication Services Program of the Colorado Public Utilities Commission (ICS Program) observes, through Provider reporting and a lack of complaints regarding rate compliance, that Providers are generally complying with the caps that are established by the FCC.

HB21-1201 as incorporated at § 17-42-103 C.R.S., also requires the Commission to perform biannual call quality testing on a statistically significant sample of the facilities that each Provider serves.

The Commission is mandated by HB21-1201 to create and publish an annual report discussing its findings from both quarterly reporting and biannual testing on the Commission’s website in a format that is accessible to the public. The ICS Program monitors the cost and quality of calls through testing, including how the Penal Communications Services provider is charging and addressing consumer complaints regarding poor quality and dropped calls. This report, specifically the section on call quality testing, contains detailed results of this testing. The ICS Program has now performed the biannual testing four times since January 2022, meaning that it has tested every facility within its jurisdiction in the state of Colorado. Each of these four biannual tests represents 25% of the collective facility population that is within the scope of the authority provided to the Commission in the statute.

HB21-1201 also requires that all Penal Communications Services Providers display language prominently on their website directing consumers to the Colorado PUC website for the filing of informal complaints with the communications services that the ICS Section regulates. These complaints are addressed and in many cases resolved by ICS Program staff in a timely manner. These complaints are investigated, as necessary, to gather pertinent information to categorize the complaints, track trends, and facilitate resolution. Because the notice that providers are required to display on their websites pursuant to § 17-42-103(5)(d), C.R.S. refers to “informal complaints,” such complaints are handled in accordance with 4 CCR 723-1-1301, which establishes the Commission’s process for handling informal complaints.

Effective August 7, 2023, HB23-1133 establishes specific requirements for penal communications services provided at Department of Corrections (DOC) facilities. Specifically, this bill requires DOC to provide penal communications services, excluding video calls or electronic mail/messaging, free of charge to the person initiating and the person receiving the call. The bill contains a phased timeline for implementation of the free call requirements, with 100% of such costs to be covered by July 1, 2025.

Further, HB23-1133 elaborates that the DOC, in administering the penal communications services, is prohibited from receiving any revenue (commissions or fees). This portion of the act took effect 90 days after the signing of the Bill.

Finally, HB23-1133 modified the definition of “penal communications services” to include, without limitation, “telephone, video, or electronic mail or messaging services.” Previous to the enactment of HB23-1133, the definition only included telephone services.

Following the passing of HB23-1133, the Department of Corrections has transitioned its contract for Penal Communications Services from ViaPath to Securus. This has been notated on the quarterly reports and can be seen on the Quarter 3 and 4, 2023 reports. ViaPath has maintained its contracts with the DOC at the youth services level but contracts for all other DOC obligations have expired.

With this transition, as prescribed within the statutory language of HB 23-1133, there is no longer the exchange of commission payments between any Provider and the DOC. In administering the penal communications services, the DOC is prohibited from receiving any revenue, including commissions or fees. Viapath ceased making commission payments in the Quarter 3 report with a signified ending date on August 8, 2023. The end of this commission payment exchange would also cross over into Viapath’s contract with juvenile detention facilities as overseen by the department of human services.

Through HB23-1133, it is mandated that the DOC must provide voice communication service to persons in DOC custody in a correctional facility or private prison in the state. Essentially, the DOC must provide voice communication free of charge to the person initiating and the person receiving calls. This too applies to those incarcerated at juvenile detention facilities. Per statutory decree, this will occur according to a phased implementation timeline.

- Beginning September 1, 2023, through June 30, 2024, DOC shall cover 25% of the total penal communications services' costs;
- Beginning July 1, 2024, through June 30, 2025, DOC shall cover 35% of the total penal communication services cost; and
- Beginning July 1, 2025, and thereafter, DOC shall cover 100% of all penal communication services costs.

Declaratory Order 22D-0293T

The Commission, on July 19, 2022, accepted a staff Petition for Declaratory Order.³ Broadly speaking, this Petition aimed to clarify specific language within HB21-1201 concerning “Penal Communications Services” and “Penal Communications Services Provider(s).” In meetings between program staff and HomeWAV, HomeWAV stated that it did not agree that it was subject to the statutory reporting requirements due to the fact that HomeWAV is a provider of Voice over Internet Protocol (VoIP) services, and that HomeWAV believed that FCC rules preempted state oversight of such providers. The Attorney General’s office, on behalf of the staff of the Commission, argued that the language at issue establishes that VoIP providers, such as HomeWAV, are required to comply with the requirements of HB21-1201.

HomeWAV stated that the statutory language “penal communications services” was limited to telecommunications providers. HomeWAV claimed that, as their services were provided via VoIP, this rendered the commission’s authority jurisdictionally invalid. HomeWAV further posited that the company was an information provider and not a telecommunication provider.

By Decision R23-0337, Administrative Law Judge Melody Mirbaba granted the Petition and concluded that HomeWAV’s inmate communications services platform is a system for exchanging information, and further stated, “Regardless of the specific format chosen (voice or video calling, or e-messaging), based on the undisputed facts, the ALJ concludes that HomeWAV’s inmate communications platform is a system for transmitting or exchanging information. For the reasons and authorities discussed, HomeWAV provides penal communications services within the meaning of § 17-42-103(2)(e), C.R.S., to correctional facilities in Colorado for use by end users, and is therefore subject to § 17-42-103, C.R.S.”

HomeWAV filed exceptions to the Recommended Decision, maintaining that as an interconnected VoIP service provider the PUC lacked regulatory authority over the company. HomeWAV then claimed that ALJ Mirbaba mischaracterized their company as fixed instead of nomadic VoIP services which was an error that needed to be reconsidered.

By Decision C23-0545, the Commission denied HomeWAV’s exceptions and upheld the recommended decision with the following consideration: “Federal law does not preempt the limited reporting requirements required in Title 17. Reporting requirements applicable to only certain types of carriers would lead to absurd results and incomplete data. Federal regulation of

³ Proceeding No. 22D-0293T, Decision No. C22-0419-I, issued Jul 19, 2022.

internet protocol services does not conflict with mere reporting requirements, and case law supports state reporting requirements in similar situations. The ALJ’s decision provides sound legal analysis and conclusions regarding applicability of Title 17. HomeWAV’s arguments are unconvincing. As discussed below, HomeWAV’s Exceptions are denied, and the Recommended Decision is upheld.”

Following the ruling, ICS Program staff met with HomeWAV to bring the provider into compliance with the statutory requirements found in § 17-42-103, C.R.S., as upheld by the Commission’s Decision. By the end of calendar year 2023, HomeWAV had fulfilled, retroactively, all reporting requirements from January 2022 to current, and has come into reporting compliance with nearly all applicable aspects of HB21-1201. To come fully into compliance, HomeWAV needs to provide a copy of its Unclaimed Funds Policy and also may require attention to specific data points within the quarterly reporting that is noted further in this report. HomeWAV has informed Commission staff that it is currently working with its legal staff to develop the Unclaimed Funds Policy required by statute.

ICS Reporting Requirements

Providers are required to submit quarterly reports to the Commission pursuant to § 17-42-103(3)(a), C.R.S. These reports must contain a copy of the existing contracts between the Provider and the facility in which they offer communications services, an up-to-date policy for what occurs with unclaimed funds, as well as the following data points, at a minimum:

- the total number of calls made from the correctional facility using the service;
- the total minutes for calls made from the correctional facility using the service;
- the revenue collected by the Penal Communications Services Provider for providing the services;
- a summary of all commissions paid to the correctional facility or any other government entity by the Penal Communications Services Provider;
- the rates charged by the Penal Communications Services Provider to persons in custody making telephone calls to persons not in custody including any rates charged for:
 - the first minute of an in-state call,
 - minutes subsequent to the first minute of an in-state call,
 - the first minute of an out-of-state call,
 - and the minutes subsequent to the first minute of an out-of-state call; and
- all fees charged to persons in custody making telephone calls to persons not in custody, including fees charged to:
 - initiate a call,
 - deposit money into the incarcerated person’s account for communication services,
 - deposit money into the incarcerated person’s account for communications services,

- open, maintain, fund, or close an account with a Penal Communications Services Provider,
- receive a refund from a Penal Communications Services Provider,
- receive a paper bill from a Penal Communications Services Provider,
- make payments to the Penal Communications Services Provider through a Third-Party Company,
- and the total number of consumer complaints related to video quality.

For the calendar year January 1, 2023, through December 31, 2023, Commission staff has sent reminders to each Provider within the scope of the statutory reporting requirements two weeks prior to the required quarterly deadline. This reminder elaborates the statutory mandates for data collection, includes a spreadsheet for the specified data points to be collected, and offers a unique Provider-specific upload website via box.com. These Provider-specific box.com upload sites have been created to protect the confidentiality of specific personally identifiable information contained within the data that is reported. This personally identifiable information is redacted from the reports prior to being made publicly available on the PUC site.

Upon receiving the statutorily mandated data reports from each individual Provider, all data is aggregated on a quarterly basis and made available to the Public on the PUC Inmate Communications Services website.⁴

Quarterly Reporting Findings

Quarterly Data Reports have been gathered for nine quarters to date. Broadly, the Providers are diligent and adhere to the requirements. In extenuating circumstances Commission staff has allowed extensions, on a case-by-case basis, for the required reporting if the Provider was proactive in addressing a need for such an extension. Currently, the reports that have been made publicly available represent the entire list of ICS Providers.

The ICS Program can report that Ameelio, Crown Correctional, CPC, Encartele, ICSolutions, NCIC, Securus, and ViaPath are in full compliance regarding Quarterly Reporting. These providers do not require ongoing amendments and have no data points that fall outside of the FCC interim rate caps. The instances of situational reporting shortcomings, errors, or ICS intervention are listed on a Provider basis as follows.

Encartele, Inc.

In the case of Encartele, Inc., prior to the Declaratory Order's final ruling the company provided the following information, on company letterhead, elaborating their cost structure to the ICS Section as follows: "Encartele, Inc. operates on a platform that does not track traditional call volumes or the number of minutes for which telephone calls are made. The Encartele, Inc.

⁴ These reports, as well as past annual reports and other pertinent information, may be viewed on the Commission's website at <https://puc.colorado.gov/inmate-communication-services>.

platform tracks data events and bandwidth utilization per available application. Examples of the available applications are voice, video, electronic mail, and a number of other applications for education, legal, or other purposes.” In other words, Encartele stated that it could not provide certain data included in the reporting requirement, such as the price per minute for calls, because it did not charge per minute, but rather by units of data.

Throughout calendar year 2023, the ICS Program met monthly with Encartele, and their team worked cooperatively with Commission staff to discuss and find a solution to this compliance issue created by the Provider’s inability to properly report its current service application pricing model. Commission staff understood that there were variables that made it difficult to equate the cost charged per unit of data to the cost charged per minute as required by statute, but concluded that they could provide a variable range of potential per minute cost based on the Provider’s voice application stream data aggregate range. This range fell between 0.35 MB to 0.60 MB per minute of voice call time. The Provider sells units of data at a rate of \$0.30 per one megabyte. Based on this information, staff was able to conclude that this would equate to a range of \$0.105-\$0.18 per minute for voice calls, meaning that in all instances, Encartele would fall beneath the FCC rate cap.

This data was utilized both retroactively to complete previous iterations of quarterly reporting and will indeed be used moving forward for all reporting unless changes to the rate would change.

HomeWav

As noted earlier within this report, HomeWAV has come to be in compliance in most areas of reporting requirements aside from submission of an Unclaimed Funds Policy. Upon the analysis of these submitted reports, there is a charge that seems to be out of compliance with FCC rate cap regulations. HomeWAV maintains a contract with Jackson County Sheriff’s Department in which they report \$0.25 charges for both “Charge for the first minute of in-state calls” and “Per-minute charge for subsequent minutes of in-state calls.” This is in excess of the FCC cap of \$0.21 per minute for voice calls originating from a jail with less than 1,000 incarcerated people.

Telewest

In the case of Telewest, this provider has been late in submitting their required quarterly data for every quarter to date since the enactment of HB21-1201. This is troublesome as it delays the required reporting responsibilities of the Commission itself, and also hinders the goals of the statute as expressed in the title of the bill, which include increasing transparency to the provision of penal communications services.

TurnKey Corrections (TKC)

Colo. Rev. Stat. §17-42-103-(5)(a) states that “...rate caps established by the federal communications commission apply to all in-state debit, prepaid, and collect calls to or from a correctional facility.” ICS Program staff interprets this language to be inclusive of not only the

maximum rate caps set by the FCC, but also to include the per-use monetary caps that apply to ancillary fees as set by the FCC.

Our reporting for TKC TeleCom revealed that this company continues to have a varied cost structure for the data point “Charge to deposit money in an incarcerated person’s account.” There are generally three ways in which these charges are captured, and it is not uncommon for Providers to give the breakdown in cost for each method. TKC shows that it, uniquely, has four differentiated potential price points: \$0.00, \$2.00, \$6.95, and \$8.95 depending on the method of payment.

The FCC limits the maximum charges at \$3.00 per transaction when payment is through an automated payment system. It additionally sets maximum charges at \$5.95 per transaction when payment is through a live agent. Commission staff’s assessment of TKC’s price points for these services, particularly the rates of \$6.95 and \$8.95, are a violation of §17-42-103-(5)(a), C.R.S., regardless of the method of how the payment is processed.

Further Information Concerning Non-DOC Commission Payments

Specific data points within the quarterly reporting have surfaced potentially predatory practices. An identifiable problematic area within the statutorily required reporting is the area of contractual commission amounts being paid out to facilities, or entities of the facilities, from ICS Providers. These commission⁵ payments, in most cases, are the focal point of negotiation and are used to leverage and differentiate contractual benefits for a facility when deciding between one provider over another. This is challenging because the contractually negotiated commission amounts create an underlying cost to the ICS Provider. This cost is incurred by way of an agreed upon portion/percentage of the Provider’s revenue that is to be paid out to the facility that enters contract with the Provider.

Commission payments to correctional facilities by ICS Providers may lead an ICS Provider to set higher rates in order to pass commission costs on to the consumers, who have no other choice but to use the Provider’s service. This is a potentially predatory practice that may incentivize correctional facilities to contract with an ICS Provider that will charge higher rates to their users.

The Commission sees a broad need for careful consideration in the structuring of these commission payments and the way they are used to award contracts between facility and provider. Additionally, ICS Program staff has been advised by correctional facilities during regular testing that funds from commission payments are used for a variety of purposes, such as inmate wellness programs, offender services, commissary items, sheets and blankets,

⁵ These ‘commission’ payments refer to the contractually negotiated revenue sharing (commission) agreement between an ICS Provider and any particular Facility or entity of that Facility within a given time period. Commission payments are not made or associated in any way with the Colorado Public Utilities Commission.

clothing, and entertainment for inmates. In some cases, commission payments are deposited into a general fund with no apparent connection back to the wellbeing of the inmates.

Because these commission-based contracts and commission payments may be a factor in driving higher costs that are being passed along to the consumers of Inmate Communication Services, the Commission recommends that the legislature consider whether additional measures are needed to restrict the use of such commission payments or ensure that funds raised from ICS commission payments are used in an accountable manner.

ICS Consumer Complaints Operations

§ 17-42-103(5)(d), C.R.S. requires Providers to include language instructing consumers that they may file informal complaints with the Commission and provides a link to the PUC's website. This statement must be provided "prominently". Because of this statutory requirement, the handling of informal complaints is an integral part of the ICS Program at the Commission.

In 2023, several improvements were made to facilitate the receipt of ICS related consumer complaints by Commission staff. For example, a complaint form has been added to the ICS Program page of the PUC's website. This form was developed to ensure prompt delivery of all complaints to ICS Program staff and to ensure complaints include the necessary information to facilitate follow-up and resolution.

When possible, the ICS Program staff relays complaints to the appropriate contact with the Provider, then follows up to determine if the complaint was resolved. Furthermore, information about each complaint is posted publicly on the ICS Program's page of the Commission's website, along with a statistical overview of the complaints.⁶

There are several internal timelines that have been established in order to best address the complaints as they flow inbound through being addressed and labeled as complete by the ICS Section. These timelines are as follows:

- From initial receipt of a complaint, a timeline of 30 calendar days was established as the goal for closing each instance of complaint submission. This may not always mean that a complaint was resolved satisfactorily, since the Commission does not have the authority to require the company to resolve all complaints. However, all complaints should be relayed to the company for resolution, and Commission staff will follow up for 30 days.
- In the case of a complaint being received by email or online form that lacks necessary information for the provider to properly address the complaint, a reply email from ICS Program staff requesting additional information will be sent to the complainant within 5 business days of initial receipt of the complaint.
- In the case of a complaint being received by USPS that lacks necessary information for the provider to properly address the complaint, a reply via post from ICS Program staff

⁶ The Complaint Dashboard can be accessed from the ICS Program webpage at <https://puc.colorado.gov/inmate-communication-services>.

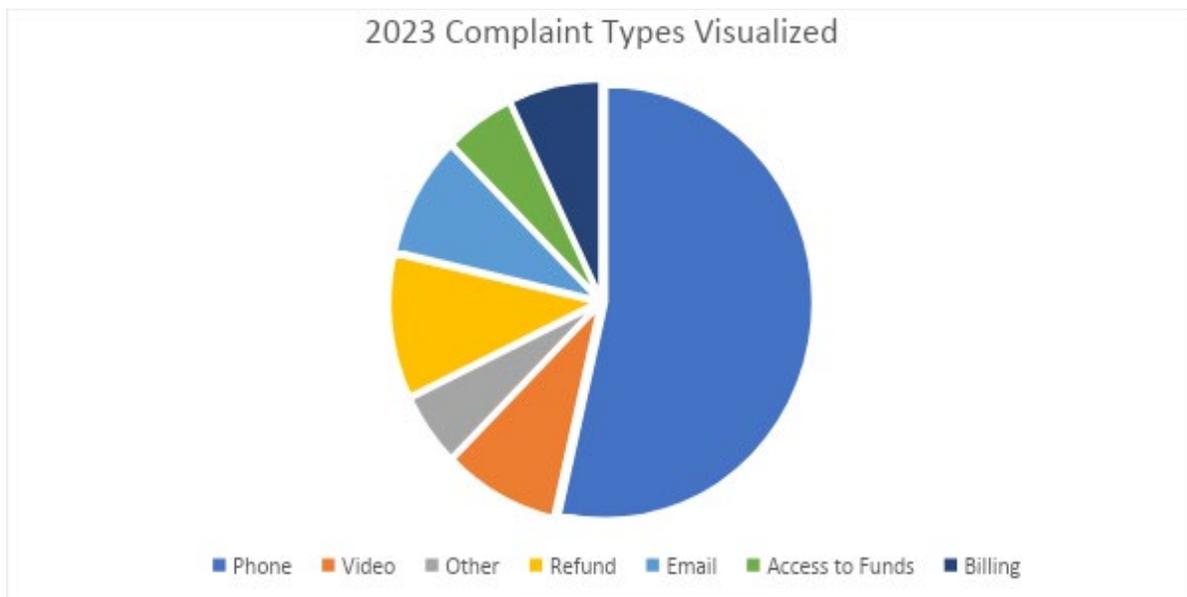
requesting additional information will be sent to the complainant within 10 business days.

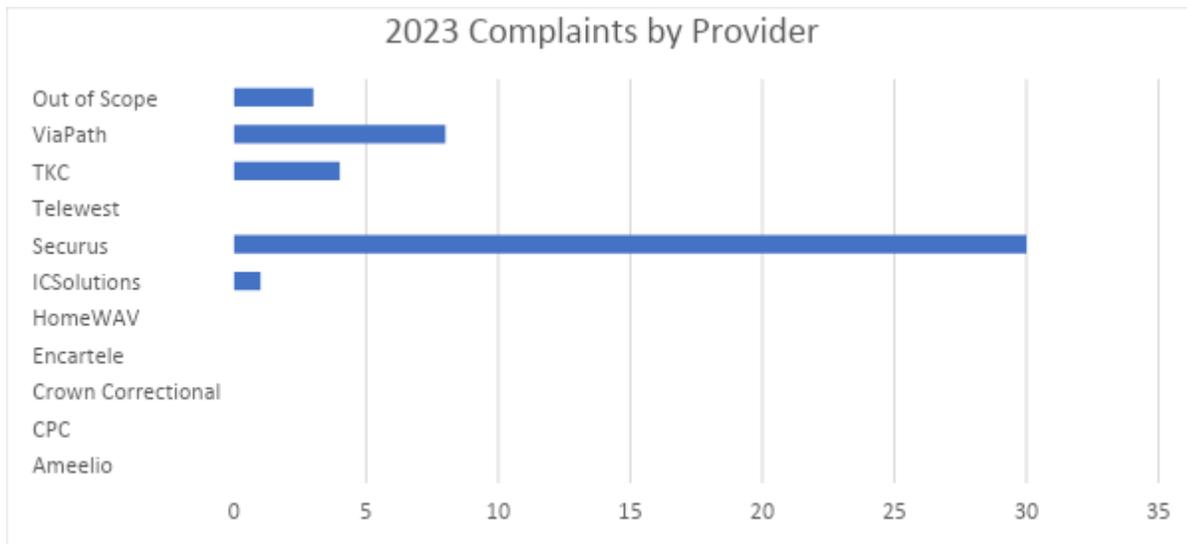
Improvements have also been made in how ICS Program staff forwards consumer complaints to the appropriate Inmate Communication Services Provider (ICSP) for their review and potential action to resolve the issue(s). The information provided for each complaint includes but is not limited to names, phone and email references and relevant account numbers. This information is only passed along to each provider if consent is given by the consumer filing the complaint. To best protect the personally identifiable information of each consenting consumer that files a complaint, initial complaint information is provided to the Provider protected by a password.

The ICS Program received a total of fifty informal complaints in calendar year 2023, which represents a sharp increase over the previous year’s total of eight. This increase is primarily due to the ICS Provider transition within the Colorado Department of Corrections following the enactment of HB 23-1133. Twenty-two CDOC facilities that were previously contracted with the provider ViaPath (formerly Global Tel Link) are now contracted to Securus Technologies beginning mid-September 2023.

Consumer complaints directly related to this transition were received through the end of the year, and many are currently still unresolved.

The following graphics depicts the types of complaints received by the ICS Program and the ICS Provider associated with each complaint for calendar year 2023:





A more detailed examination of the complaints received reveals a variety of issues, including:

- Phone calls not connecting to the intended cell phone recipient. To understand this issue, Securus elaborated that new phone numbers for each detention facility were assigned by Securus during the CDOC transition, but these new numbers were not appropriately communicated to cell phone carriers for proper system recognition. This improper system recognition often resulted in the calls being associated as a robocall by the cell phone carriers, which rendered those calls automatically suppressed by the carrier;
- Insufficient number of operational phones available for inmate use to support the facility population;
- Poor in-call quality resulting from disruptions, static and intermittent audio loss; and
- Loss of video visitation functionality for extensive periods at facilities as contracted by the Colorado Department of Corrections.

In addition to the increase due to the transition to a new provider at CDOC facilities, an increase was also observed in account related complaints (billing, access to funds, refunds, etc.) that will continue to be monitored in 2024. Of the 50 complaints, 13 of them identified such issue categories, representing 26% of total complaints.

The ICS Program will continue to explore better ways to assist consumers who file informal complaints with the program about ICS Providers within the limited scope of authority provided by statute.

ICS Voice Testing Operations

§ 17-42-103(5)(b) and (c), C.R.S. requires that the Commission “conduct trial tests on a statistically valid sample of penal communications services, document the test results and any subsequent remedial actions taken by the public utilities commission or the penal

communications service providers, and consolidate the information into an annual written report published on its website in a format that is accessible by the public.” To comply with this requirement, the Commission’s ICS Program attempts to conduct biannual testing of voice calls for every correctional facility in the state.⁷

This testing aims to monitor the cost and quality of calls, including checking for dropped calls, as required by the statute. Each test is conducted remotely. § 17-42-103(5)(c)(III), C.R.S. requires all correctional facilities to cooperate with this testing, but, unfortunately, reported staffing issues and other scheduling difficulties at the correctional facilities have made it difficult to complete testing in some cases.

For instance, ICS Program staff has scheduled testing on five separate occasions with Huerfano County Jail that had to be rescheduled due to a lack of staffing or, on more than one occasion, facility staff either not being informed or forgetting that the test date and time had been established. As a result, testing initially scheduled with Huerfano County for October of 2023 could not be completed until February 2, 2024. Testing sessions generally only take roughly 15 minutes.

The ICS Program conducts the required testing in phases, with each testing phase generally consisting of a random selection of approximately 25% of active correctional facilities in the state. In some cases, facilities may be asked to generate a “test” inmate account that can be used to initiate a call placed from the facility to ICS Program staff.

Specific data points collected during testing consist of the following, but not limited to:

- An assessment of overall call quality, including:
 - Initiation of call;
 - Call connection;
 - Call clarity; and
 - Whether or not the call drops.

Additionally, the scheduled test also provides ICS Program staff the opportunity to collect other data from the facility, including:

- Availability of communication services equipment to inmates or detainees;
- Total number of available phones within the facility;
- Number of phones currently operational within the facility;
- Estimated time frame for repair of inoperable equipment;
- Availability of disability inclusive telecommunications equipment available to inmates/detainees such as TTY/TDD and Internet Protocol Captioned Telephone;
- Availability of basic calling options such as Three-Way calling and Collect calling;

⁷ Note that the statute does not restrict the testing only to voice calls, but could include video calls, as well. At present, the ICS Program has restricted its testing to voice-only calls due to practical considerations, but may extend its testing to video calls at a future date.

- 911 and 988 crisis communication options;
- Knowledge of commission payments received and/or utilized at the facility for funding of inmate activities or programs;
- Knowledge of applicable per minute service rates; and
- Record of telecommunication services complaints by inmates/detainees and actions to resolve such complaints.

Many of the points listed above are general conversation points aimed at ensuring that communication flows without interruption throughout the entirety of the call. This is integral so that the ICS Program may appropriately gauge the overall call quality. Volume and call clarity varies by facility, ICS Provider, and other factors. One factor that may be involved is the size of the facility, with larger facilities having more difficulty with call clarity, perhaps due to bandwidth constraints. The more people incarcerated in each facility, the more difficulty in hearing the voice of the person speaking.

Largely, most of the test calls were successful. In some cases, the outbound call had an issue of being able to connect. On a case-by-case basis, funds must be added to the “test” inmate’s account by ICS Program staff to complete the necessary test. These costs are relatively minor, but are not reimbursed by the facilities or the Providers.

Additional Issues Identified in Voice Testing

- The Montezuma County Jail is in contract with the Provider Turnkey Corrections (TKC). ICS Program staff experienced several failed attempts to connect with facility staff or complete both inbound and outbound testing. In some cases, the call would connect, but would continuously replay an automated message over the call explaining that there were not enough funds on the account for the call to continue, despite funds being added to the account. One call lasted 4 minutes, while a follow up call lasted 11 minutes prior to automatically being disconnected for not having enough funds. In total, the ICS Section added \$7.00 to the account, and with a combined total of 15 minutes of call time being facilitated, the cost per minute at this facility would be \$0.18. For the duration of 15 minutes, ICS Program staff would expect that only \$2.70 (18 cents x 15 minutes = \$2.70) of the added \$7.00 would have been utilized. However, there were no remaining funds at the end of the test calls.
- The Jackson County Sheriff’s Office is in contract with HomeWav. There was a noticeable outlier in pricing that caused concern for a potential violation of the federal cap in rates applied to in-state calling as required by § 17-42-103(5)(a), C.R.S. It was reported by the facility, in the test call, that the per minute cost was \$0.25 per minute with the first minute of in-state voice calls being charged at a rate of \$0.50 per minute. In HomeWav’s retroactive quarterly reporting, the company shows on its own volition that both the first minute of in-state calling and each subsequent minute of in-state calling is set at a rate of \$0.25 per minute. Regardless of whether the rate is \$0.25 or \$0.50, it is in excess

of the federal cap of \$0.21. Additionally, this shows a potential discrepancy in the reporting of HomeWav in its per minute spectrum versus the amount reported by the facility itself.

The Martha Wright-Reed Just and Reasonable Communications Act

President Biden signed into law bipartisan legislation called the Martha Wright-Reed Just and Reasonable Communications Act in January 2023. This Act gives the FCC authority to rein in the rates and fee structures for both audio and video communications that occur between persons who are incarcerated and unincarcerated persons, including family members, attorneys, and others. Significantly, this would widen the scope of the FCC's authority to potentially regulate interstate, international, and in-state ICS rates. This Act requires the FCC to implement new rules covering this expanded range of services, including in-state communication, by January 2025. The Notice of Proposed Rulemaking and Order (FCC 23-19) adopted March 16, 2023, began the process of implementing the law.

The Commission and the ICS Program will monitor the outcome of this proceeding and the implementation of the Act to determine how the FCC's actions may impact the implementation of Colorado statute regarding ICS regulation.

Conclusion

In 2023, the Commission continued its implementation of § 17-42-103, C.R.S. through further development of its ICS Program. The scope of the Commission's authority has been further defined through the Petition for Declaratory Order proceeding, and a regular testing regimen has been established. Additionally, the Commission has further established and improved on its handling of informal complaints regarding ICS.

The ICS Program has continued to collect and analyze statutorily mandated reporting from every ICS Provider. Through this reporting, the Program has observed a generally high level of compliance with statute by the providers, while noting some specific outliers deviating from the interim rate caps established by the FCC.

Through its regular testing of ICS at each of Colorado's correctional facilities, the ICS Program has found that there are some issues with clarity and volume in some facilities, but determining the underlying cause is difficult as there may be multiple, simultaneous factors contributing to these issues at any given time. In the analysis of the quarterly reporting requirements submitted from providers, the ICS Staff finds that there is wide compliance adhering to rate caps; however in a few circumstances, providers may be charging rates that exceed the federal rate caps that apply to in-state calling. Through the compiling and tracking of complaints, the ICS staff found a variety of issues that persist largely in correlation with the undertaking from the DOC as it is still experiencing some difficulty in its transition between providers at specific locations.

Commission staff is currently preparing draft rules for a Notice of Proposed Rulemaking to be issued in the first half of 2024. This rulemaking will provide clarification to definitions established in § 17-42-103(2), C.R.S., define what the Commission considers necessary to meet the informal complaint instructions that statute requires be “prominently” displayed on each provider’s website, codify existing practice regarding the Commission’s ICS testing regimen, and establish fining authority to implement and enforce the statutory requirements.

The state and national environment surrounding the costs associated with inmate communications has and will likely continue to evolve and reform as the FCC promulgates further regulation within this jurisdictional authority. The Commission will monitor these changes and evolve the ICS Program as appropriate within its statutory authority to bring transparency to Inmate Communications Service, with the understood goal being to ensure that all such services are provided to inmates and other consumers free of predatory practices.

Appendix A: Providers

Ameelio

Combined Public Communications (CPC)

Encartele Inc

HomeWAV LLC

Inmate Calling Solutions, LLC (ICSolutions)

*NCIC Correctional Services (NCIC) and
Crown Correctional Telephone, Inc

Securus Technologies (Securus)

Telewest IV Inc

TurnKey Corrections (TKC)

ViaPath Technologies (formerly GTL)

**Note: NCIC and Crown Correctional have
been listed in association with each other
through calendar year 2023. Beginning
2024, these companies will be listed
separately per the request of the providers.*

Appendix B: Facilities Served

Adams County Sheriff's Office	CO DOC Crowley County Correctional Facility	CO DYC/DHS Grand Mesa Youth Services
Alamosa County		
Arapahoe County Jail, CO	CO DOC Delta Correctional Facility	CO DYC/DHS Lookout Mountain Youth Services
Archuleta County Jail	CO DOC Denver Reception & Diagnostic Center	CO DYC/DHS Marvin W. Foote Youth Services
Aurora Municipal Court Administration Baca County Jail	CO DOC Denver Women's Correctional Facility	CO DYC/DHS Mount View Youth Services
Bent County Sheriff's Office	CO DOC Four Mile Correctional Center	CO DYC/DHS Platte Valley Youth Services
Boulder County Jail		
Broomfield Police Department Detention Center	CO DOC Fremont Correctional Facility	CO DYC/DHS Prairie Vista Youth Services
Chaffee County Jail	CO DOC La Vista Correctional Facility	CO DYC/DHS Pueblo Youth Services
Chief Ignacio Justice Center		
Clear Creek County Jail	CO DOC Limon Correctional Facility	CO DYC/DHS Spring Creek Youth Services
CO DOC Arkansas Valley Correctional Facility	CO DOC Rifle Correctional Center	CO DYC/DHS Zebulon Park Youth Services
CO DOC Arrowhead Correctional Center	CO DOC- San Carlos Correctional Facility	Conejos County Detention
CO DOC Bent County Correctional Facility	CO DOC Skyline Correctional Center – The Beacon	Costilla County Detention
CO DOC Buena Vista Correctional Facility	CO DOC Sterling Correctional Facility	Crowley County Detention
CO DOC Centennial Correctional Facility	CO DOC Trinidad Correctional Facility	Delta County Sheriff's Office
CO DOC Colorado State Penitentiary	CO DOC Youthful Offender System	Denver County Jail
CO DOC Colorado Territorial Correctional Facility	CO DYC/DHS Gilliam Youth Services	Denver Downtown Detention Center
		Douglas County Detention Center
		Eagle County Detention Center
		El Paso County Jail

2023 Report on Commission Oversight of Colorado Penal Services Communications Providers

Elbert County Jail	Montrose County Jail
Fremont County Detention Center	Morgan County Jail
Garfield County Sheriff's Office	Park County Detention Center
Gilpin County Jail	Prowers County Jail
Grand County Jail	Pueblo County Detention Center
Gunnison County Jail	Rio Grande County Jail
Huerfano County Jail	Routt County Jail
Jackson County Sheriff's Department	San Miguel County Jail
Jefferson County Sheriff's Booking	Southern Ute Indian Tribe Summit County Jail
Jefferson County Sheriff's Detention Facility	Teller County Jail
Kit Carson County Jail	Washington County Jail
La Plata County Jail	Weld County Alternative Sentencing
Lake County Sheriff's Department	Weld County Community Corrections Center
Larimer County Community Corrections	Weld County Southwest Substation
Larimer County Jail	Weld North Jail Complex
Las Animas County Jail	Yuma County Jail
Lincoln County Sheriff's Office	
Logan County Jail	
Mesa County Criminal Justice Center	
Moffat County Sheriff's Office	
Montezuma County Jail	