

Decision No. C24-0272

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

PROCEEDING NO. 24R-0184T

---

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.

---

**NOTICE OF PROPOSED RULEMAKING**

---

Mailed Date: April 30, 2024  
Adopted Date: April 24, 2024

**I. BY THE COMMISSION**

**A. Statement**

1. The Colorado Public Utilities Commission (Commission) issues this Notice of Proposed Rulemaking (NOPR) to amend the Rules Regulating Telecommunications Services and Providers of Telecommunications Services contained in 4 *Code of Colorado Regulations* (CCR) 723-2-2011, and to adopt new Rules 2810 through 2812 (collectively, the Inmate Communication Services Rules).

2. The changes proposed are intended to codify in Commission Rules the requirements set forth in § 17-42-103(2) through (5), C.R.S., while also adding clarity to these requirements.

3. This rulemaking follows the passage of two pieces of legislation in recent years resulting in the existing statute, namely House Bill (HB) 21-1201 and HB 23-1133. HB 21-1201, among other things, required “Penal Communications Service Providers” to submit quarterly reporting to the Commission on several different data elements regarding the services provided at correctional facilities in Colorado. It 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...” § 17-42-103(5)(b), C.R.S. It 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. § 17-42-103(5)(d), C.R.S. 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.

4. 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. § 17-42-103(2)(e), C.R.S.

5. The Commission’s statutory authority to promulgate these rules derives from its general authority found at §§ 40-1-103.5 and 40-3-102(1), C.R.S. (authorizing the Commission to promulgate implementing rules). In addition, the legislature has declared that Penal Communications Service Providers are public utilities, *see* § 40-2-113(2), C.R.S., and provided in § 17-42-103(e), C.R.S. that notwithstanding any provision of that section, the Commission retains the “authority to regulate rates and charges, correct abuses, or prevent unjust discrimination” of public utilities, as enacted by HB 23-1133.

6. The Commission notes that §§ 17-42-103(1) and (1.5) apply to the Colorado Department of Corrections and, although referenced in this NOPR, are not contemplated in the rules.

7. The Commission refers this matter to an Administrative Law Judge

8. The proposed rules are attached to this Decision as Attachment A, the proposed rules in legislative format, and Attachment B, the proposed rules in clean format.

**B. Pre-Rulemaking Workshops**

9. In accordance with § 24-4-103, C.R.S., Commission staff held two separate workshops to discuss the draft proposed rules with interested stakeholders. These workshops were held virtually via Zoom on February 1 and 2, 2024. Participants were encouraged to ask questions and provide comments and were asked to provide staff with written comments by February 29, 2024. These workshops were open to any member of the public that registered, and specific invitations were sent to each of Colorado's active inmate communication services providers as well as individuals and organizations that had previously participated in the passage of HB 23-1133.

**C. Proposed Rules**

10. An overview of the changes proposed by the Commission fall into general categories described in this Decision. We invite interested stakeholders to comment on the proposed rules and provide additional suggested changes.

11. **Rule 2011: Regulated Telecommunications Utility Rule Violations, Civil Enforcement, and Civil Penalties.** The Commission proposes inserting a row into the table in this rule for the new Rule 2812, "Inmate Communication Services Provider Reporting and Testing Requirements," with a maximum penalty of \$2,000 per violation.

12. **Rule 2810: Applicability.** This new rule establishes that Rules 2810 through 2812 apply to Inmate Communication Services providers, as defined in Rule 2811.

13. **Rule 2811: Definitions.** This new rule establishes definitions for use in Rules 2810 and 2812.

14. A “call” is defined as “video calling or voice-only calling between an incarcerated individual and another person and does not include electronic mail or messaging services. Although the statute does not define what a “call” is, the term “call” is used in different paragraphs sometimes by itself and sometimes specifically referring to either video calls or telephone (voice-only) calls, indicating that the statute considers the term to be interchangeable unless otherwise specified. For example, the statute specifically refers to “video calls” in paragraph 1.5, refers to “telephone calls” in paragraphs (3)(a)(VII) and (3)(a)(VIII), and “calls,” without a modifier, in several other paragraphs. The Commission notes that the definition of “penal communications services,” includes video following the enactment of HB 23-1133. Due to this, the Commission interprets “call” to mean both video and voice-only calls, unless otherwise specified by the statute.

15. “Commissions” in the context of this rule, means “any form of monetary payment, thing of value, in-kind payment, gift, exchange of services or goods, fee other than for direct cost recovery, or technology allowance paid to a correctional facility or other government entity by an [Inmate Communication Services] ICS provider.” This definition mirrors the definition provided in statute other than to change the term “penal communications service provider” to the Commission’s preferred term of “inmate communication services provider.”

16. The definition of “inmate communication services (ICS)” or “penal communications services” mirrors the definition of “penal communications services” found in the statute, other than to provide the alternate term “inmate communication services” or “ICS”. The Commission has referred to this program as “inmate communication services” since its inception and for consistency establishes that it means the same thing as “penal communications services.”

17. “Inmate Communication Services (ICS) provider” or “penal communications services provider” means “a person or company that provides penal communications services or the means to access penal communications services, regardless of the technology used to provide the services. A person or company that provides one type of communications service but not others is also a penal communications service provider.” This definition clarifies the statutory definition for “penal communications service provider” which is simply “a person or company that provides penal communications services.” The Commission’s definition addresses what it means to “provide” the service by including companies that provide the means to access ICS.

18. The further addition of “a person or company that provides one type of communications service but not another is also a penal communications service provider” is intended to clarify that a provider does not have to provide every type of communications service listed as an example in § 17-42-103(2)(e), C.R.S. in order to fall under this definition. A provider that provides any communications services, including but not limited to the list in paragraph (2)(e), is an inmate communication services provider.

19. **Rule 2812: Inmate Communications Services Provider Reporting and Testing Requirements.** This rule codifies and clarifies paragraphs (3), (4), and (5) of § 17-42-103, C.R.S.

20. Paragraph (a) of the proposed rule states that within 14 days after the end of each quarter, each ICS provider must submit specific records to the Commission for each correctional facility to which it provides ICS. The list of required information for each quarterly report largely mirrors the list found in the statute, with the following changes.

21. Section 17-42-103(b), C.R.S., exempts the requirement to provide records or data to the Commission that are unchanged since the previous quarterly report. Rather than state this separately, the proposed rules incorporate this exemption into applicable items listed in paragraph

(a). For instance, subparagraph (I) states “a copy of the existing contract between the ICS provider and the government entity to provide ICS to persons in custody in a correctional facility, *unless this contract was provided in a previous quarterly report and is unchanged.*” [emphasis added]

22. Sections 17-42-103(3)(a)(II) and (III), C.R.S., require ICS providers to report the total number of calls and the total minutes for calls made from the correctional facility using the service. As discussed previously, the Commission interprets “calls” to mean both video and voice-only calls, within the context of the definition of “penal communications services,” except where statute specifies the type of call. However, the total number of all calls, voice and video, and the total number of minutes for both types of calls, consolidated into one number is not as useful of a statistic as to have these numbers broken out into separate data elements. The Commission proposes requiring these numbers separately.

23. Section 17-42-103(3)(a)(IV) requires providers to report “the revenue collected by the penal communications service provider for providing the services,” but does not specify whether this refers to gross revenue or net revenue. The proposed rules clarify that this refers to a report of gross revenue. It also clarifies that the revenue reported should be for all types of communications listed as examples of penal communications in § 17-42-103(2)(e), C.R.S., namely “voice calls, video calls, e-mail, and other electronic messages.” The Commission also proposes providing Commission staff with the discretion to request these revenue amounts broken out by intrastate and interstate revenue as a data point for verification of DR525 form reporting.

24. Section 17-42-103(3)(a)(VII), C.R.S. requires that the provider report “the rates charged by the penal communications service provider to persons in custody making telephone calls to persons not in custody....” The proposed rules clarify that this applies regardless of

whether the rates were paid by the person in custody or by the correctional facility on the person's behalf.

25. Section 17-42-103(a)(VIII), C.R.S., states that the quarterly report include fees charged to persons in custody making telephone calls to persons not in custody, *including*, the items listed in subparagraphs (A) through (F), but the statute does not specify that this list is exclusive. For this reason, the proposed rules state that the report must also include "other information as may be requested by Commission staff regarding the fee and rate structure of the services provide by the ICS provider."

26. Proposed Rule 2812(b) notes that Commission staff may provide an online form to facilitate the quarterly reporting required in paragraph (a).

27. Paragraph (c) reproduces the statutory language in § 17-42-103(5)(b), C.R.S. by stating that "Starting on January 1, 2022, rate caps established by the federal communications commission apply to all in-state debit, prepaid, and collect calls to or from a correctional facility."

28. Paragraph (d) codifies the testing program assigned to the Commission by § 17-42-103(5)(b) and (c), C.R.S., and requires ICS providers to cooperate with this testing, as necessary. The testing requirements imposed by statute again refers to "calls" being tested, without specifying which types of calls are being tested, so the proposed rules clarify that testing will include voice calls, at a minimum, but may also include video calls, in the context of "calls" being used interchangeably and generically in the statute.

29. Section 17-42-103(d) requires penal communications services providers to include language "prominently on their websites" informing users of the opportunity to file informal complaints with the Commission, and for this notice to include the Commission's primary website URL. Because the statute does not specify what is meant by "prominently," the proposed rules

clarify that the notice must either be listed on the provider's homepage or customer service page, and that if it is listed on the customer service page it must be accessible by users with a single click from the homepage.

30. Additionally, to facilitate ease of access for the consumer, the proposed rules would require that the provider include in this notice not only the main homepage of the Commission, but a second link that would take the user directly to the Commission's Inmate Communication Services page, where an online complaint form can be found for this purpose. The proposed rules also specify that the URLs must be hyperlinked so they can be accessed directly by clicking on them rather than requiring the user to copy and paste the links into a search bar, and that the language must be displayed in an easy-to-read font, font size, and color.

31. Finally, the draft rules direct Commission staff to handle informal complaints about ICS or ICS providers in accordance with Rule 1301, which outlines the Commission's general process for informal complaints.

32. The proposed rules in legislative (*i.e.*, ~~strikeout~~/underline) format (Attachment A) and final format (Attachment B) are available through the Commission's 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).

33. Initial written comments on the proposed rule changes are requested by May 31, 2024. Any person wishing to file comments responding to the initial comments is requested to file such comments by June 14, 2024. These deadlines are set so that the comments and responses may be considered at the public hearing, nonetheless, persons may file written comments into this Proceeding at any time.

34. The Commission prefers comments be filed using the Commission's E-Filings System at <https://www.dora.state.co.us/pls/efi/EFI.homepage> under this Proceeding No. 24R-0184T.



## II. ORDER

### A. The Commission Orders That:

1. This Notice of Proposed Rulemaking (including Attachment A and Attachment B) attached hereto, shall be filed with the Colorado Secretary of State for publication in the May 10, 2024, edition of *The Colorado Register*.

2. This matter is referred to an Administrative Law Judge for the issuance of a recommended decision.

3. A hearing on the proposed rules and related matters shall be held as follows:

DATE: June 24, 2024

TIME: 11:30 a.m. until not later than 5:00 p.m.

PLACE: By video conference: using Zoom at a link the calendar of events on the Commission's website, available at:  
<https://puc.colorado.gov/puccalendar>.

4. At the time set for hearing in this matter, interested persons may submit written comments and may present these orally unless the Administrative Law Judge deems oral comments unnecessary.

5. Interested persons may file written comments in this matter. The Commission requests that initial pre-filed comments be submitted no later than May 31, 2024, and that any pre-filed comments responsive to the initial comments be submitted no later than June 14, 2024. The Commission will consider all submissions, whether oral or written.

6. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING  
April 24, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,  
Director

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

ERIC BLANK

---

MEGAN M. GILMAN

---

TOM PLANT

---

Commissioners