

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES**  
**CHAPTER 11 TELECOMMUNICATIONS**  
**PART 28 INMATE CALLING SERVICE PROVIDERS**

**17.11.28.1 ISSUING AGENCY:** New Mexico Public Regulation Commission.  
[17.11.28.1 NMAC - Rp, 17.11.28.1 NMAC 11/7/2023]

**17.11.28.2 SCOPE:** This rule is applicable to all inmate calling service providers (“ICSPs”) certified to operate within the state of New Mexico and also to those ICSPs that apply to the commission to operate within the state of New Mexico.  
[17.11.28.2 NMAC - Rp, 17.11.28.2 NMAC 11/7/2023]

**17.11.28.3 STATUTORY AUTHORITY:** Paragraph (10) of Subsection B of Section 8-8-4 et seq., Sections 63-7-1.1 and 63-9A-5, NMSA 1978.  
[17.11.28.3 NMAC - Rp, 17.11.28.3 NMAC 11/7/2023]

**17.11.28.4 DURATION:** Permanent.  
[17.11.28.4 NMAC - Rp, 17.11.28.4 NMAC 11/7/2023]

**17.11.28.5 EFFECTIVE DATE:** November 7, 2023, unless a later date is cited at the end of a section.  
[17.11.28.5 NMAC - Rp, 17.11.28.5 NMAC 11/7/2023]

**17.11.28.6 OBJECTIVE:** The purpose of this rule is to establish statewide uniform regulations governing ICSPs so as to ensure reasonable rate regulation for ICSPs while protecting consumers against unreasonable rates and inadequate service.  
[17.11.28.6 NMAC - Rp, 17.11.28.6 NMAC 11/7/2023]

**17.11.28.7 DEFINITIONS:** As used in this rule, the following terms have the meanings provided, unless a different meaning is clearly expressed in the context in which the term is used. The commission will interpret the definitions broadly enough to ensure compliance with the purpose of this rule:

**A. Terms starting with the letter "A" are defined as follows:**

(1) **"ancillary service charge"** means any charge that is assessed on the consumer for the use of additional features of inmate calling services that is not included in the per-minute charges assessed for individual calls. The types of ancillary service charge are as follows: automated payment fees, fees for single-call and related services, live agent fees, paper bill fees, statement fees and third-party financial transaction fees.

(2) **"authorized fee"** means a government-authorized, but discretionary, fee which a provider must remit to a federal, state, or local government, and which a provider is permitted, but not required, to pass through to consumers. An authorized fee may not include a markup, unless the markup is specifically authorized by a federal, state, or local statute, rule, or regulation.

(3) **"automated payment fee"** means a credit card payment, debit card payment, or bill processing fee, including a fee for payments made by interactive voice response (IVR), web, or kiosk.

(4) **"average daily population (ADP)"** means the sum of all incarcerated persons in a facility for each day of the preceding calendar year, divided by the number of days in the year.

**B. Terms starting with the letter "B" [RESERVED]**

**C. Terms starting with the letter "C" are defined as follows:**

(1) **"collect calling"** means an arrangement whereby the called party takes affirmative action clearly indicating that it will pay the charges associated with a call originating from an institutional phone.

(2) **"commission"** means the New Mexico public regulation commission.

(3) **"complaint"** means an oral or written expression of dissatisfaction with an ICSP's rates, fees, charges, or services, including a request for repair involving service outage, made to the ICSP, correctional institution, or to the commission by or on behalf of a consumer or user of inmate calling services.

(4) **"consumer"** means the person paying an ICSP for an inmate calling service.

(5) **"correctional facility or correctional institution"** means a jail or a prison.

**D. Term starting with the letter “D”** is defined as follows: "debit calling" means a presubscription or comparable service which allows an incarcerated person, or someone acting on an incarcerated person's behalf, to fund an account set up through a provider that can be used to pay for inmate calling service calls originated by the incarcerated person.

**E. Terms starting with the letter “E” [RESERVED]**

**F. Terms starting with the letter “F”** are defined as follows:

(1) **"fees for single-call and related services"** means billing arrangements whereby and incarcerated person's collect calls are billed through a third party on a per-call basis, where the called party does not have an account with the ICSP or does not want to establish an account.

(2) **"flat rate calling"** means a calling plan under which a provider charges a single fee for an inmate calling service call, regardless of the duration of the call.

**G. Terms starting with the letter “G” [RESERVED]**

**H. Terms starting with the letter “H” [RESERVED]**

**I. Terms starting with the letter “I”** are defined as follows:

(1) **"incarcerated person"** means a person detained at a jail or prison, regardless of the duration of the detention.

(2) **"inmate calling service"** means a service, regardless of the technology used to deliver the service, initiated by an incarcerated person to place intrastate calls to individuals outside the correctional facility where the incarcerated person is being held.

(3) **"inmate calling service provider, or provider (ICSP)"** means a provider of inmate calling service.

(4) **"institutional phone"** means a telephone instrument, or other device capable of initiating calls, accessible only to incarcerated persons.

**J. Terms starting with the letter “J”** are defined as follows:

(1) **"jail"** means a facility of a local, state, or federal law enforcement, mental health, or other agency that is used primarily to hold individuals who are:

(a) awaiting adjudication of criminal charges;

(b) post-conviction or committed to confinement of one year or less; or

(c) post-conviction or awaiting transfer to another facility.

The term also includes city, county or regional facilities that have contracted with a private company to manage day-to-day operations; privately-owned and operated facilities primarily engaged in housing city, county or regional incarcerated persons; facilities operated by the Federal bureau of prisons and facilities used to detain individuals pursuant to a contract with U.S. immigration and customs enforcement; juvenile detention centers; and secure mental health facilities.

(2) **"jurisdictionally mixed charge"** means any charge consumers may be assessed for use of inmate calling services that are not included in the per-minute charges assessed for individual calls and that are assessed for, or in connection with, uses of inmate calling services to make such calls that have interstate or international components and intrastate components that are unable to be segregated at the time the charge is incurred.

**K. Terms starting with the letter “K” [RESERVED]**

**L. Term starting with the letter “L”** is defined as follows: "live agent fee" means a fee associated with the optional use of a live operator to complete inmate calling service transactions.

**M. Term starting with the letter “M”** is defined as follows: "mandatory tax or mandatory fee" means a fee that a provider is required to collect directly from consumers, and remit to federal, state, or local governments. A mandatory tax or fee that is passed through to a consumer for, or in connection with ICSP services may not include a markup, unless the markup is specifically authorized by a federal, state, or local statute, rule, or regulation.

**N. Terms starting with the letter “N” [RESERVED]**

**O. Terms starting with the letter “O” [RESERVED]**

**P. Terms starting with the letter “P”** are defined as follows:

(1) **"paper bill fee"** means a fee associated with providing customers of ICSPs an optional paper billing statement. This fee is also referred to as a statement fee.

(2) **"per-call, or per-connection charge"** means a one-time fee charged to a consumer at call initiation.

(3) **"prepaid calling"** means a presubscription or comparable service in which a consumer, other than an incarcerated person, funds an account set up through an ICSP. Funds from the account can then be

used to pay for inmate calling services, including calls that originate with an incarcerated person.

**(4) "prepaid collect calling"** means a calling arrangement that allows an incarcerated person to initiate an inmate calling services call without having a pre-established billing arrangement and also provides a means, within that call, for the called party to establish an arrangement to be billed directly by the ICSP for future calls from the same incarcerated person.

**(5) "prison"** means a facility operated by a territorial, state, or federal agency that is used primarily to confine individuals convicted of felonies or held for other reasons and sentenced or committed to terms in excess of one year. The term also includes public and private facilities that provide outsource housing to other agencies such as the department of correction and the federal bureau of prisons; and facilities that would otherwise fall under the definition of a jail but in which the majority of incarcerated persons are post-conviction or are committed to confinement for sentences of longer than one year.

**Q. Terms starting with the letter "Q" [RESERVED]**

**R. Term starting with the letter "R"** is defined as follows: "rate cap" means the maximum allowable rates, fees, and ancillary service charges for intrastate calls initiated from an institutional phone as approved by the commission.

**S. Terms starting with the letter "S" [RESERVED]**

**T. Term starting with the letter "T"** is defined as follows: "third-party financial transaction fee" means the exact fee, with no markup, that an ICSP is charged by a third party to transfer money or to process a financial transaction to facilitate a consumer's ability to make an account payment via a third party.

**U. Term starting with the letter "U"** is defined as follows: "user" means a person who makes or receives a call through an inmate calling service.

**V. Terms starting with the letter "V" [RESERVED]**

**W. Terms starting with the letter "W" [RESERVED]**

**X. Terms starting with the letter "X" [RESERVED]**

**Y. Terms starting with the letter "Y" [RESERVED]**

**Z. Terms starting with the letter "Z" [RESERVED]**

[17.11.28.7 NMAC - Rp, 17.11.28.7 NMAC 11/7/2023]

**17.11.28.8 EXEMPTIONS:** ICSPs are exempt from 17.11.15 NMAC, rule concerning payphone providers, 17.11.16.11 NMAC, consumer protection, access to service and rate information, and SCC 94-02-TC, rule concerning operator services providers.

[17.11.28.8 NMAC - Rp, 17.11.28.8 NMAC 11/7/2023]

**17.11.28.9 APPLICATION FOR CERTIFICATION OF REGISTRATION:**

**A.** Providers seeking to offer or provide any telecommunications service through an institutional phone must register with the commission in the format provided by the commission.

**(1)** To be included with the application for registration, the ICSP must file a copy of the information to be posted or supplied at every institutional phone or otherwise provided to the confined persons containing all the information as spelled out in this rule.

**(2)** Registration may be denied for failure to provide the required information or documents, or for failure to remit the required fees. Notice of denial will include a statement indicating the reason for rejection. Denial may be cured if the stated reasons for rejection are made within thirty (30) days of service of the notice.

**B.** Registration shall be renewed annually by filing an annual report on a form prescribed by the commission. The annual report shall be submitted by April 1<sup>st</sup> of each year and shall contain information regarding the prior year. At a minimum, the ICSP shall update any information contained in its original application for registration or last annual report, as appropriate.

[17.11.28.9 NMAC - Rp, 17.11.28.9 NMAC 11/7/2023]

**17.11.28.10 CONTENTS OF APPLICATION FOR REGISTRATION:** An application for a certificate of registration to provide inmate calling services must contain:

**A.** the name, address, e-mail address and telephone number of the applicant;

**B.** the name, address, e-mail address, and telephone number of the person responsible for regulatory contacts and customer dispute resolution on behalf of the applicant;

**C.** a description of the applicant's business operations and general service offerings nationally, and in New Mexico, including operating areas in any other city, county, state or federal jurisdictions;

**D.** a statement that the applicant is aware of and will comply with the commission's rules;

**E.** disclosure of any formal actions against it by any court or city, county, state or federal regulatory agency that resulted in any type of penalty or sanctions within the five years prior to the date of filing the application; if such action has occurred, the applicant shall file a report regarding such action and any remedial actions taken;

**F.** disclosure of any settlement or stipulation with any city, county, state or federal regulatory agency or jurisdiction within the three years prior to the date of filing the application that resulted in a payment to the agency with or without any admission of wrongdoing;

**G.** if the applicant is a corporation, evidence that the applicant is authorized by the corporations bureau of the office of the New Mexico secretary of state to do business in New Mexico and that it is in good corporate standing in New Mexico;

**H.** if the applicant is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners and managers, the applicant's agent for service of process in New Mexico, and the date the entity was created;

**I.** initial tariffs for regulated telecommunications services, including a narrative description of the services to be offered and the geographic area and markets to be served; initial tariffs shall not contain misleading, potentially misleading, deceptive, or fraudulent names, rates, fees, charges, terms, or conditions;

**J.** if the applicant is a regulated carrier, any other information the commission may reasonably require to accomplish the purpose of this rule; and

**K.** a list of the applicant's parent, subsidiary, and affiliated companies are to be provided, including the principal address and telephone numbers of the applicant's parent, subsidiary, and affiliated companies that are carriers in New Mexico.

[17.11.28.10 NMAC - Rp, 17.11.28.10 NMAC 11/7/2023]

#### **17.11.28.11 DISCLOSURE OF RATES, FEES AND CHARGES:**

**A.** All ICSPs must disclose their rates, fees, and charges to consumers.:

**(1)** For all intrastate calls, the ICSP shall comply with all rate disclosure requirements adopted by the federal communications commission in Title 47 C.F.R. Section 64.710 (operator services for prison inmate phones) and 64.6110 (consumer disclosure of incarcerated person calling services rates), including any amendments thereto.

**(2)** Rates, fees and charges applied pursuant to this rule shall be made available to the consumer prior to the commencement of the transaction without the consumer having to dial a separate telephone number or access a separate website. Such information shall include an equally prominent disclosure of alternative funding or refunding mechanisms that are free of ancillary service charges.

**B.** The information required by this section must be delivered to the correctional institution by the ICSP for posting on or near the institutional phone, in plain view of confined persons, provided that such signage is allowed by the correctional institution. The posted signage must clearly and simply disclose all applicable rates, fees and charges for inmate calling services set forth in this rule and provide the contact information for the ICSP for consumer and user complaints as well as the mailing address of the commission's consumer relations division for unresolved consumer or user complaints. The information required by this section, with the exception of the mailing address of the commission's consumer relations division, also must be made available via telephone free of charge to the user, including each time a funding transaction related to a prepaid account takes place.

**C.** An ICSP shall disclose all rate information, including all applicable per-call and per-minute rates, in simple and clear language.

**D.** All required information and instructions, if allowed by the correctional institution, must be provided in both English and Spanish, and an ICSP must supply each facility it serves with a display placard or other means of informing confined persons.

**E.** Consumers and incarcerated persons shall be advised of and have access to ICSP and commission contact information for consumer complaints. Consumers shall be provided with the contact information on their bills when their bills include charges for collect calling, or each time a funding transaction related to a prepaid calling account takes place. ICSPs shall also advise consumers and incarcerated persons of the mailing address of the commission's consumer relations division for consumer complaints.

[17.11.28.11 NMAC - Rp, 17.11.28.11 NMAC 11/7/2023]

**17.11.28.12 COMPLAINTS:** Complaints regarding violations of this rule shall be governed by 1.2.2.13 NMAC through 1.2.2.20 NMAC and 17.11.16.22 NMAC with the exceptions stated below. All other procedural matters shall be handled in accordance with 1.2.2 NMAC and 1.2.3 NMAC. The requirements of the commission's

rules governing complaints are modified by the following: filing fees for complaints are hereby waived for complaints related to inmate calling services. A person making an informal or formal complaint against an ICSP shall not be required to pay for notice to be published of public hearing, and may participate in mediation, arbitration or hearing via telephone. The commission's rules governing complaints shall be liberally construed to permit complaints against ICSPs to be filed, processed, and heard by the commission.  
[17.11.28.12 NMAC - Rp, 17.11.28.12 NMAC 11/7/2023]

**17.11.28.13 ENFORCEMENT:**

**A. Initiation of proceedings:** Upon receipt of a complaint alleging a violation of this rule, or on its own motion, the commission may initiate proceedings in accordance with its rules of procedure 1.2.2.13 NMAC through 1.2.2.15 NMAC.

**B. Penalties:** Following notice and hearing and upon a proper finding that a violation of this rule has occurred, the commission may, consistent with its statutory authority, assess fines or penalties or other such remedies as may be provided for by law, including revocation of authority to provide inmate calling service. The remedy imposed by the commission may be reduced or rescinded if violations or findings of non-compliance are corrected within 30 days from the date of the commission's final order.

**C. Other penalties:** The assessment of any penalty by the commission for a violation of this rule shall not preclude the assessment of a penalty by any other New Mexico agency for violation of its rules arising from the same cause.

[17.11.28.13 NMAC - Rp, 17.11.28.13 NMAC 11/7/2023]

**17.11.28.14 INMATE CALLING SERVICE RATES, FEES AND CHARGES:**

**A.** All ICSPs must file tariffs with the commission which set forth the services provided along with any rates, fees, or charges for those services and list each correctional institution to which those rates, fees, or charges apply. Tariffs shall also identify the billing and collection methods utilized by the ICSP such as collect calling, debit calling, prepaid calling or prepaid collect calling. No tariff or proposed tariff shall contain misleading, potentially misleading, deceptive, or fraudulent names, rates, fees, charges, terms or conditions.

**B.** Rate caps shall be determined periodically by the commission on its own motion following notice and a public hearing, but no more frequently than once every three years, with one exception: if the federal communications commission issues an order revising any of its rate caps applying to interstate inmate calling services, the commission may conduct a review of the rate caps adopted in this rule, following notice and a public hearing, within less than three years of its last rate caps review. In the absence of a hearing by the commission, the rate caps previously established will remain in effect.

**C.** Any changes in ICSP rates, fees or charges and any cessation or commencement of an inmate calling service at a particular correctional institution resulting from a new, renewed, or amended contract between an ICSP and the correctional institution must be reflected in a proposed tariff amendment filed no later than 90 days after the final award of the contract to the ICSP or after any agreement to change the rates, fees or charges is reflected in a renewed or amended contract.

**(1)** The ICSP shall file with the commission an original and five copies of the proposed tariff changes within the time frame provided for in this rule, or in the alternative, file the proposed tariff in accordance with any electronic filing policy adopted by the commission modifying that requirement. The ICSP shall include in its filing a sequentially numbered transmittal letter, (e.g., 2010-1, 2010-2, etc.) containing a description of the proposed tariff changes. The proposed tariff shall be served on the attorney general and all interested persons requesting service of such changes in a docket established by the commission for such filings. The proposed tariff change shall comply with all applicable commission rules. The proposed tariff changes may go into effect 15 business days after the tariff filing unless staff, attorney general or an interested person, notifies the ICSP within said 15 business days of its concerns regarding the proposed tariff changes. If staff and the ICSP are able to resolve the stated concerns within 15 business days after the tariff filing, the proposed tariff changes may go into effect and no public hearing shall be required.

**(2)** If the interested person, attorney general, staff, and the ICSP are unable to resolve the concerns, staff shall file a protest with the records management bureau of the administrative services division, and promptly send a copy to the ICSP and the proposed tariff change shall not go into effect. The records management bureau shall assign a docket number to the protest. The protest shall include a case caption and a heading that states "protest". The protest shall include as an attachment the proposed tariff changes filed by the ICSP and any additional information furnished to the interested person, attorney general, and staff by the ICSP. The applicant

shall have the burden of showing, after notice and hearing, why the proposed new service, promotion, or tariff change is in the public interest.

(3) On the same day it files the proposed tariff changes with the commission, the ICSP shall also submit an electronic copy of the transmittal letter containing the identity of the telecommunications company, a summary of the proposed new service, promotion or tariff change, and its effective date. The commission may prescribe additional form, content, manner of filing, or other requirements. The foregoing shall be served on the staff, attorney general, and all interested persons requesting service of such filings.

(4) The ICSP shall provide notice of a rate change to incarcerated persons and consumers by promptly providing signage with the new rates for the correctional institution in the manner described in Subsection B of 17.11.28.11 NMAC, and via telephone free of charge each time a funding transaction related to a prepaid account takes place.

**D.** Any other changes in ICSP rates, fees, charges, or type of service, and any addition of a new service must be reflected in a proposed tariff amendment. No such change may be effectuated by the ICSP prior to commission approval of the tariff amendment.

(1) The ICSP shall file with the commission an original and five copies of the proposed tariff changes within the time frame provided for in this rule, or in the alternative file the proposed tariff in accordance with any electronic filing policy adopted by the commission modifying that requirement. The ICSP shall include in its filing a sequentially numbered transmittal letter, (*e.g.*, 2010-1, 2010-2, etc.) containing a description of the proposed tariff changes. The proposed tariff shall be served on the attorney general and all interested persons requesting service of such changes in a docket established by the commission for such filings. The proposed tariff change shall comply with all applicable commission rules. The proposed tariff changes may go into effect 15 business days after the tariff filing unless staff, the attorney general, or an interested person notifies the ICSP within said 15 business days of its concerns regarding the proposed tariff changes. If the interested persons, the attorney general, staff, and the ICSP are able to resolve the concerns within 15 business days after the tariff filing, the proposed tariff changes may go into effect and no public hearing shall be required.

(2) If staff, the attorney general, the interested person, and the ICSP are unable to resolve the concerns, staff, the attorney general, or any interested person may file a protest with the records management bureau of the administrative services division, and promptly send a copy to the ICSP and the proposed tariff change shall not go into effect. The records management bureau shall assign a docket number to protest. The protest shall include a case caption and a heading that states "protest". The protest shall include as an attachment the proposed tariff changes filed by the ICSP and any additional information furnished to staff, the attorney general and all interested persons, by the ICSP. The applicant shall have the burden of showing, after notice and hearing, why the proposed new service, promotion, or tariff change is in the public interest.

(3) On the same day it files the proposed tariff changes with the commission, the ICSP shall also submit an electronic copy of the transmittal letter containing the identity of the telecommunications company, a summary of the proposed new service, promotion or tariff change, and its effective date. The commission may prescribe additional form, content, manner of filing, or other requirements. The foregoing shall be served on staff, attorney general, and all interested persons requesting service of such filings.

(4) The ICSP shall provide notice of a rate change to incarcerated persons and consumers by promptly providing signage with the new rates for the correctional institution in the manner described in Subsection B of 17.11.28.11 NMAC, and via telephone free of charge each time a funding transaction related to a prepaid account takes place.

**E.** Every institutional phone in New Mexico shall provide access to the services listed below without the use of coins or cards of any type, and without any charge to the consumer:

(1) any call to obtain a refund;

(2) access to automated operator services necessary to establish a call.

**F.** An ICSP may not bill any rate, fee, or ancillary service charge that is not part of its tariff.

**G.** An ICSP may not bill or charge any ancillary service charge in connection with the establishment of, funding to, or refunding from an account in the consumer's name used for the prepayment of inmate calling service that has not been previously approved for that purpose by the commission.

**H.** An ICSP may assess ancillary service charges that are included in the ICSP's filed tariffs subject to rate caps and prohibitions stated herein.

**I.** Effective dates: The rate caps and prohibitions established pursuant to this rule:

(1) apply to prisons 30 days from the effective date of this rule;

(2) apply to jails with a ADP of 150 or greater 60 days from the effective date of this rule;

and (3) apply to and jails with an ADP of 25 to 149 90 days from the effective date of this rule;

(4) apply to jails with an ADP of 0 to 25 150 days from the effective date of this rule.  
[17.11.28.14 NMAC - Rp, 17.11.28.14 NMAC 11/7/2023]

**17.11.28.15 RESPONSIBILITIES OF THE INMATE CALLING SERVICE PROVIDER:**

**A.** An ICSP shall not contract for any intrastate operator services or interexchange services with any entity that is out of compliance with the applicable certification requirements of the commission.

**B.** The ICSP shall be responsible for all public access line charges associated with the provision of inmate calling service.

**C.** The ICSP shall be responsible for paying all required regulatory fees to the commission.

**D.** Subject to compliance with any access requirements of the correctional institution, ICSPs will make available to the commission, subject to notice and coordination, any institutional phone for purposes of making test calls, free of charge, to telephone numbers of the commission's choosing.

**E.** All institutional phones and the telecommunications facilities used for the transmission of service are subject to periodic inspections to ensure compliance with commission requirements. Findings of non-compliance will be brought to the attention of the ICSP and the correctional institution by letter and the ICSP will have 30 days to restore compliance with commission requirements.

**F.** The ICSP shall be responsible for repairing, servicing and maintaining in good repair the institutional phones through which it provides service.

**G.** All institutional phones installed in New Mexico shall comply with state and local laws, commission rules, current national electrical code and national electrical safety code requirements, and the generally accepted telecommunications industry technical standards.

**H.** All calls initiated from an institutional phone will be outbound calls that are either collect calling, debit calling, prepaid calling or prepaid collect calling.

**I.** An ICSP shall provide a means for an incarcerated person who has not had an opportunity to arrange for prepaid calling services to make an outgoing collect call.

**J.** The minimum allowance for the duration of a call initiated from an institutional phone shall be determined by the correctional institution.

**K.** No more than three institutional phones will share a common voice-grade (non-broadband) access line or channel, unless otherwise specifically authorized by the commission.

**L.** Institutional phones operating in New Mexico must comply with all applicable federal, state and local laws regarding accessibility by hearing impaired or physically disabled persons.

**M.** All ICSPs must provide intrastate service at each correctional institution they serve.

**N.** Inmate calling service transmission quality shall be at least equivalent to generally accepted industry standards for wireline, voice-grade circuits, except that ICSPs will not be held responsible for calls terminating to cordless landlines, cell phones, or other non-traditional landline devices. There will be no transmission delay, feedback, excessive noise, or echo perceptible to either the incarcerated person or the called party. The commission will make the final determination as to the acceptable level of transmission service quality.  
[17.11.28.15 NMAC - Rp, 17.11.28.15 NMAC 11/7/2023]

**17.11.28.16 RESTRICTIONS ON INMATE CALLING SERVICE:** Operators of correctional institutions have the authority to limit or deny access to institutional phones at times and in circumstances deemed proper by the correctional institution. However, no ICSP may take any action to discriminate among incarcerated persons in providing access to its tariffed telecommunications services at the correctional institutions. If telephone conversations carried on ICSP facilities are recorded, the ICSP shall provide a notice, via a recorded message, disclosing that fact to persons using the facilities. Pursuant to the correctional institution's procedures, the ICSP shall provide the means by which communications between incarcerated persons and their legal counsel, or counsel's staff, may be exempted from any requirement of the correctional institution that telephone conversations be recorded if permission is provided by the correctional institution. The incarcerated person, their counsel, or counsel's staff may request from the correctional institution that such calls be exempted from recording, and, if the correctional institution grants the request, the ICSP shall accommodate the request and provide verification of the exemption from recording.  
[17.11.28.16 NMAC - Rp, 17.11.28.16 NMAC 11/7/2023]

**17.11.28.17 CALL RATE CAPS:**

A. No ICSP may charge, in the jails it serves with ADP per month of less than 1,000 per month, a per-minute rate for intrastate debit calling, prepaid calling, collect calling, or prepaid collect calling in excess of:

**RATE CAPS CHART**

**Prepaid**

Intrastate	Incarcerated Person	Prepaid Collect	Collect
Local per call	\$0.00	\$0.00	\$0.00
Per minute	\$0.15	\$0.15	\$0.15
15-min call	\$2.25	\$2.25	\$3.25

**IntraLATA**

Local per call	\$0.00	\$0.00	\$0.00
Per minute	\$0.15	\$0.15	\$0.15
15-min call	\$2.25	\$2.25	\$3.25

**InterLATA**

Local per call	\$0.00	\$0.00	\$0.00
Per min	\$0.15	\$0.15	\$0.15
15-min call	\$2.25	\$2.25	\$3.25

B. No ICSP may charge, in jails it serves with ADP per month of 1,000 or more, a per-minute rate for intrastate debit calling, prepaid calling, or prepaid collect calling in excess of:

**RATE CAPS CHART**

**Prepaid**

Intrastate	Incarcerated Person	Prepaid Collect	Collect
Local per call	\$0.00	\$0.00	\$0.00
Per minute	\$0.14	\$0.14	\$0.14
15-min call	\$2.10	\$2.10	\$3.10

**IntraLATA**

Local per call	\$0.00	\$0.00	\$0.00
Per minute	\$0.14	\$0.14	\$0.14
15-min call	\$2.10	\$2.10	\$3.10

**InterLATA**

Local per call	\$0.00	\$0.00	\$0.00
Per min	\$0.14	\$0.14	\$0.14
15-min call	\$2.10	\$2.10	\$3.10

C. No ICSP may charge, in prisons it serves, a per-minute rate for intrastate debit calling, prepaid calling, collect calling, or prepaid collect calling in excess of:

**RATE CAPS CHART**

**Prepaid**

Intrastate	Incarcerated Person	Prepaid Collect	Collect
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Local per call	\$0.00	\$0.00	\$0.00
Per minute	\$0.12	\$0.12	\$0.12
15-min call	\$1.80	\$1.80	\$2.80

**IntraLATA**

Local per call	\$0.00	\$0.00	\$0.00
Per minute	\$0.12	\$0.12	\$0.12
15-min call	\$1.80	\$1.80	\$2.80

**InterLATA**

Local per call	\$0.00	\$0.00	\$0.00
Per minute	\$0.12	\$0.12	\$0.12
15-min call	\$1.80	\$1.80	\$2.80

**D.** For purposes of this section, the initial ADP shall be calculated, for all of the correctional facilities covered by an inmate calling service contract, by summing the total number of incarcerated persons from January 1, 2015, through January 19, 2016, divided by the number of days in that time period.

**E.** In subsequent years, for all of the correctional facilities covered by an inmate calling service contract, the ADP will be the sum of the total number of incarcerated persons from January 1st through December 31st divided by the number of days in the year and will become effective on January 31st of the following year. [17.11.28.17 NMAC - Rp, 17.11.28.17 NMAC 11/7/2023]

**17.11.28.18 ANCILLARY SERVICE CHARGES**

**A.** An ICSP shall not charge an ancillary service charge that is not among the types of ancillary service charge listed in the definition of ancillary service charge at Paragraph (1) of Subsection A of 17.11.28.7 NMAC.

**B.** No ICSP may charge a rate for a permitted ancillary service charge in excess of:

- (1) for automated payment fees -- \$3.00 per use;
- (2) for single-call and related services – the exact transaction fee charged by the third-party provider, with no markup, plus the adopted, per-minute rate - \$3.00;
- (3) for live-agent fees -- \$5.95 per use;
- (4) for paper bill/statement fees -- \$2.00 per use; and
- (5) for third-party financial transaction fees – the exact fees, with no markup, that result from the transaction. - \$3.00 per transaction.

**C.** No ICSP may charge more than one type of ancillary service charge for any single payment transaction. [17.11.28.18 NMAC - N, 11/7/2023]

**17.11.28.19 RATE CAP VARIANCES:** The commission may permit an ICSP to impose rates higher than the rate caps as provided for in the rate caps chart in 17.11.28.17 NMAC as may be amended from time to time or as stated in a separate commission order for good cause shown.

**A.** An ICSP seeking a variance under this rule must file a petition for variance with the commission providing the following information:

- (1) the correctional institution at which the rate that exceeds the rate cap would be applied;
- (2) the rate to be applied and the respective existing rate cap; and
- (3) the reason for which a higher rate will be applied shall include the following information about the proposed service for the call type for which the variance is sought:
  - (a) projected monthly and yearly call volume by call type, for the next three calendar years;
  - (b) projected monthly and yearly expense and revenue by call type, for the next three calendar years;
  - (c) projected monthly and yearly average call duration by call type, for the next three calendar years;

(d) actual monthly and yearly call volume by call type, for the previous two calendar years;  
(e) actual monthly and yearly expense and revenue by call type, for the previous two calendar years; and  
(f) actual monthly and yearly average call duration by call type, for the previous two calendar years.

**B.** The petition must include a sworn statement by a knowledgeable representative of the petitioner attesting to the truth and accuracy of its contents. The petition shall be served on staff, the attorney general, and any other interested party requesting service of such filings, in a docket established by the commission for such filings.

**C.** The petition shall be accompanied by a proposed tariff change that incorporates the higher rate that the petitioner seeks to impose. All ICSP tariffs shall include a section for rate variances in which all such higher rates are to be listed.

**D.** At the request of the petitioner, the information provided pursuant to Paragraphs (1) and (3) of Subsection A herein will be treated as confidential and subject to a protective order of the commission. Confidential information shall be handled under the terms of the protective order and will not be disclosed to any person who has not executed a nondisclosure agreement under the protective order.

**E.** Staff, the attorney general and interested parties shall review the petition for variance within 45 days to determine whether it is supported by the information provided. Any interested party may file a written statement with the commission in support of or opposition to the petition within the same 45-day period. The ICSP shall have 15 days to respond to any filed statement of position.

**F.** In the absence of any commission action on the petition, the petition will be deemed granted and the proposed tariff change will be deemed approved 60 calendar days from the filing of the petition.

**G.** ICSPs are not subject to 1.2.2.40 NMAC for matters related to rate variances pursuant to this rule. [17.11.28.19 NMAC - N, 11/7/2023]

**17.11.28.20 BILLING-RELATED CALL BLOCKING:** No ICSP may prohibit or prevent completion of a collect calling call or decline to establish or otherwise degrade collect calling solely for the reason that it lacks a billing relationship with the called party's communications service provider unless the ICSP offers debit calling, prepaid calling, or prepaid collect calling. [17.11.28.20 NMAC - N, 11/7/2023]

**17.11.28.21 CONSUMER PROTECTION:**

**A.** The ICSP shall complete a call only upon a positive response from the consumer that the consumer accepts all previously disclosed charges for the call. The provider shall allow consumers the opportunity to decline and thus terminate the call at no charge to the consumer. If the ICSP does not receive a positive response within a period not exceeding 20 seconds from the last prompt, the call shall be terminated without charge. ICSPs shall not charge for any calls that are not accepted by the called party.

**B.** Where not superseded by the express language of this rule, the commission's consumer protection rule, 17.11.16 NMAC, applies, except for those provisions that by their language apply only to non-ICSPs. [17.11.28.21 NMAC - Rp, 17.11.28.18 NMAC 11/7/2023]

**17.11.28.22 REPORTING REQUIREMENTS:**

**A.** Each ICSP shall file with the commission copies of all reports submitted to the federal communications commission (FCC), pursuant to 47 CFR § 64.6060, including confidential data bearing on the ICSP's operations and services in New Mexico. For those copies filed with the commission, an ICSP may redact or exclude data pertaining to the ICSP's operations in states other than New Mexico, whether that data is public or confidential. The reports shall be filed with the commission within five business days of their filing with the FCC.

**B.** Each ICSP shall comply with the reporting requirements of an intrastate long distance provider, pursuant to 17.11.21.13 NMAC.

**C.** Upon request from the commission, ICSPs must, in a timely manner, and in accordance with confidentiality agreements between the ICSP and commission staff as necessary, submit data requested by the commission relating to its New Mexico operations, including but not limited to, revenue, expenses and facilities/usage data by an institutional facility.

**D.** ICSPs shall report to the commission not later than April 1 the complaints it received about the service provided in New Mexico during the preceding calendar year. Complaints shall be categorized by type of

complaint with a description of how each complaint was handled. The categories of complaints shall include at least the following: service, billing, rates, and other.

**E.** The New Mexico attorney general's office shall also be served the information from ICSPs detailed in Subsections A, C, and D above. Other interested parties may petition the commission for access to that information subject to the commission's rules regarding the treatment of confidential information.

**F.** Not later than March 15 of each year, commission staff will provide a letter to each correctional institution in New Mexico and to the respective ICSPs with information about the commission's jurisdiction over ICSPs.

[17.11.28.22 NMAC - Rp, 17.11.28.19 NMAC 11/7/2023]

**17.11.28.23 TAXES AND FEES:** No ICSP may charge any taxes or fees to users of inmate calling services, other than those permitted under the definition in Paragraph (A)(2) of 17.11.28.7 NMAC and Section 17.11.28.18. [17.11.28.23 NMAC - N, 11/7/2023]

**17.11.28.24 PER-CALL, OR PER-CONNECTION CHARGES:** No ICSP may impose a per-call or per-connection charge on a consumer.

[17.11.28.24 NMAC - N, 11/7/2023]

**17.11.28.25 MINIMUM AND MAXIMUM PREPAID CALLING ACCOUNT BALANCES:**

**A.** No ICSP may institute a minimum balance requirement for a consumer to use debit or prepaid calling.

**B.** No ICSP may prohibit a consumer from depositing at least \$50 per transaction to fund a debit or prepaid calling account.

[17.11.28.25 NMAC - N, 11/7/2023]

**17.11.28.26 CONSUMER PREPAID ACCOUNT BALANCES:**

**A.** No ICSP may charge any rates or fees to a prepaid account unless such rate or fee is contained in a current tariff that has been approved by the commission.

**B.** Prepaid accounts are deemed to be "utility deposits" for purposes of Section 2 of the Uniform Unclaimed Property Act, Section 7-8A-1 NMSA 1978

**C.** If a prepaid account has not been subject to any activity for six months, the ICSP shall refund the balance of the prepaid account to the account holder. If an ICSP is unable to locate the account holder or otherwise effectuate a refund within eighteen months of the most recent date of activity, the ICSP shall deliver the balance of the prepaid account to the taxation and revenue department or its agent for administration under the terms of the Uniform Unclaimed Property Act, Section 7-8A-1 NMSA 1978.

[17.11.28.26 NMAC - N, 11/7/2023]

**17.11.28.27 TRANSFER OF CERTIFICATE:** Any holder of a certificate of registration to provide inmate calling services in New Mexico seeking to transfer the certificate to another person shall first apply to the commission for approval of the transfer. The commission shall approve an application for transfer of a certificate of registration upon receipt of a completed application and a copy of the tariff proposed to take effect upon approval of the transfer. The application shall meet the requirements of 17.11.12.10 NMAC.

[17.11.28.27 NMAC - Rp, 17.11.28.20 NMAC 11/7/2023]

**17.11.28.28 NOTICE OF CHANGE IN CIRCUMSTANCE:** An ICSP shall notify the commission in writing of the following change in circumstances:

- A.** a change in the ICSP's name, address, or phone number;
- B.** a change in the name, address, or phone number of the person responsible for regulatory contacts and consumer dispute resolution;
- C.** merger of the ICSP with another provider;
- D.** acquisition of the ICSP by another provider;
- E.** acquisition by the ICSP of another provider;
- F.** transfer of the ICSP certificate;
- G.** transfer of a significant portion of the ICSP's assets to another provider; and
- H.** any other change in control of the ICSP.

[17.11.28.28 NMAC - Rp, 17.11.28.21 NMAC 11/7/2023]

**17.11.28.29 DISCONTINUANCE OF SERVICE:**

**A.** Prior to discontinuing service, an ICSP shall, no later than 30 days prior to discontinuing service, file with the commission a notice of discontinuance of service showing the number of correctional institutions affected.

**B.** This section does not apply to individual service withdrawals of an ICSP.  
[17.11.28.29 NMAC - Rp, 17.11.28.22 NMAC 11/7/2023]

**17.11.28.30 SEVERABILITY:** If any part of this rule is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[17.11.28.30 NMAC - Rp, 17.11.28.24 NMAC 11/7/2023]

**17.11.28.31 VARIANCES:**

**A.** Any IOSP may petition the commission for a variance from any requirement of this rule.

**B.** A petition for a variance shall be supported by an affidavit signed by an officer of the petitioner or a person with authority to sign for the petitioner.

**C.** Any petition for a variance must contain the information required by the commission's procedural rules under 1.2.2.40 NMAC.

**D.** The petitioning ICSP must serve a copy of the petition for a variance upon staff, the attorney general, and any interested person that has made a written request to the commission to be notified of such petitions.

[17.11.28.31 NMAC - Rp, 17.11.28.25 NMAC 11/7/2023]

**HISTORY OF 17.11.28 NMAC: [RESERVED]**

**History of Repealed Material:** 17.11.28 NMAC, Inmate calling Service Providers filed 8/1/2013 - Repealed effective 11/7/2023.

**Other:** 17.11.28 NMAC, Inmate calling Service Providers filed 8/1/2023 - Replaced 17.11.28 NMAC, Inmate Calling Service Providers, effective 11/7/2023.