

**Before the
Federal Communications Commission
Washington, D.C. 20554**

Domestic Section 214 Application Filed for the
Transfer of Control of Inmate Calling Solutions, LLC
d/b/a ICSolutions to TKC Holdings, Inc.

WC Docket No. 16-188

REPLY COMMENTS

Inmate Calling Solutions, LLC d/b/a ICSolutions (“ICSolutions”), through counsel and pursuant to Section 63.03(a) of the rules of the Federal Communications Commission (“FCC” or “Commission”),¹ provides these Reply Comments in response to the Comments² filed by Securus Technologies, Inc. (“Securus”) in the above-referenced proceeding.³ Securus does not oppose ICSolutions’ application (“Application”) to transfer control of its blanket domestic Section 214 authorization to TKC Holdings, Inc. (“TKC”)⁴ and does not provide any cognizable reason that the Application should be denied by the Commission or Commission action on the Application should be delayed.⁵ Instead, Securus asks the Commission to condition any grant of the Application on a commitment by TKC to immediately stop paying interstate site

¹ 47 C.F.R. § 63.03(a).

² See Comments of Securus Technologies, Inc., Docket No. 16-188 (filed July 1, 2016) (“Comments”).

³ See *Domestic Section 214 Application Filed for the Transfer of Control of Inmate Calling Solutions, LLC d/b/a ICSolutions to TKC Holdings, Inc.*, Public Notice, WC Docket No. 16-188, DA 16-695 (WC rel. June 17, 2006).

⁴ Securus acknowledges in its Comments that it “takes no position on the merits of the [A]pplication.” Comments at 1.

⁵ The applicants demonstrated in the Application that it is subject to presumptive streamlined treatment under Section 63.03(b)(1)(ii) of the Commission’s rules. 47 C.F.R. § 63.03(b)(1)(ii). In its Comments, Securus does not challenge the Application’s qualification for streamlined treatment, and, as set forth in these Reply Comments, nothing in Securus’ Comments warrants removing the Application from streamlined processing.

commissions to its correctional facility clients. The Commission should dismiss or ignore Securus' Comments because the payment of site commissions to correctional facilities by inmate calling services ("ICS") providers is permissible under the Commission's rules. In addition, even if site commissions were not permissible, Securus' requested condition is unrelated to the transaction or to TKC's qualifications to acquire ICSolutions and therefore is outside of the appropriate scope of this proceeding under longstanding Commission precedent.

I. CONTRARY TO SECURUS' ASSERTIONS, THE COMMISSION PERMITS SITE COMMISSIONS

Securus incorrectly asserts in its Comments that the payment of interstate site commissions to correctional facilities is impermissible.⁶ Based on this misstatement of the law, Securus makes the very serious but groundless allegation that ICSolutions is committing "ongoing violations" of the Commission's rules.⁷ Securus is mistaken. The Commission has held that ICS providers may pay site commissions to correctional facilities. As a result, the condition that Securus requests the Commission to impose as part of its grant of the Application is contrary to existing Commission policy. Therefore, the Commission should disregard Securus' Comments.

In an attempt to support its invalid assertion that interstate site commissions are prohibited, Securus cherry picks language out of context from the Commission's *ICS First Report and Order*.⁸ However, the treatment of site commissions in the Commission's *First Report and Order* effectively was mooted by the Commission's actions in the *Second Report and*

⁶ Comments at 3-5.

⁷ *Id.* at 1.

⁸ *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 14107 (2013) ("*First Report and Order*").

Order, which expressly determined that site commissions are permissible.⁹ Although the *First Report and Order* may have left some room for interpretation regarding the permissibility of site commissions, the *Second Report Order* definitively resolved the issue by clearly stating that site commissions may be paid to correctional facilities.

Specifically, in the *Second Report and Order*, the Commission concluded that “we do not need to prohibit site commissions in order to ensure that interstate rates for ICS are fair, just and reasonable and that intrastate rates are fair.”¹⁰ The Commission went on to “recognize that some states have adopted reasonable rates that include a margin sufficient to allow providers to pay site commissions, thus demonstrating that it is possible to have rates that are consistent with our rate cap but still allow for the payment of site commissions.”¹¹ The Commission further added that its approach to “establish caps on rates and ancillary service charges and allow market forces to dictate any adjustments in site commission payments ... is consistent with the Commission’s general preference to rely on market forces, rather than regulatory intervention, wherever reasonably possible.”¹²

In addition, when rejecting various requests for an administrative stay of the *Second Report and Order* pending its review by the D.C. Circuit, the Commission was crystal clear that the *Second Report and Order* permits the payment of site commissions. According to the Commission:

After examining all of the options in the record, the Commission adopted simple rate caps based on its traditional ratemaking expertise to ensure that rates are fair, just, and reasonable levels, *without complicating its traditional rate-cap*

⁹ *Rates for Interstate Inmate Calling Service*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 30 FCC Rcd 12763 (2015) (“*Second Report and Order*”).

¹⁰ *Id.* ¶ 118.

¹¹ *Id.* ¶ 119.

¹² *Id.*

*framework by prohibiting site commissions. Thus, instead of acting indirectly by limiting site commissions in the hope that lower site commission payments would result in rates that are consistent with the statute, the Commission acted more directly by capping the rates at levels that ensure compliance with the requirements of the Communications Act of 1934, as amended (the Act), without seeking to limit or dictate how ICS providers spend revenue they generate within the caps. Capping rates at the tiered levels offers ICS providers and facilities the freedom to negotiate compensation that is fair to all parties, while also ensuring that ICS consumers are charged just, reasonable, and fair rates.*¹³

Securus appears to assert that the D.C. Circuit's stay of the *Second Report and Order*'s ICS rates ("2015 Rates") somehow also stayed the Commission's determination that site commissions are permissible. This argument is untenable. The 2015 Rates are substantially below the interim interstate ICS rates set forth in the *First Report and Order* ("2013 Rates"), and yet the Commission nevertheless made clear in the *Second Report and Order* that "it is possible to have rates that are consistent with our [2015 Rates] but still allow for the payment of site commissions."¹⁴ Although the 2015 Rates were stayed by the U.S. Court of Appeals for the D.C. Circuit ("D.C. Circuit"),¹⁵ the D.C. Circuit's stay did not disturb the Commission's determination that site commissions are permissible. Thus, if site commissions are compatible with the 2015 Rates, and the 2015 Rates are substantially below the interim 2013 Rates (which

¹³ *Rates for Interstate Inmate Calling Services*, Order Denying Stay Petitions, 31 FCC Rcd 261, ¶ 8 (2016) (emphasis added); see also *id.* ¶ 16 (explaining that the "Commission decided not to prohibit site commissions" in the *Second Report and Order* to "(1) ensure that facilities could receive appropriate compensation for any costs they might incur if they decide to 'in-source' any aspects of providing ICS; (2) avoid potentially impinging on state sovereignty – or the rights of correctional facilities – unnecessarily when the Commission could ensure that ICS rates are just, fair, and reasonable without doing so; and (3) foster a market-based resolution rather than act purely by regulatory fiat"); *id.* ¶ 27 ("[A]fter examining the record, including arguments that it lacked authority to regulate or prohibit site commissions and that attempts to limit site commission would be subject to gaming" the FCC determined to "leave it to the market to determine whether and how much providers will pay in site commissions.").

¹⁴ *Second Report and Order* ¶ 119.

¹⁵ See *Global Tel*Link v. FCC*, No. 15-1461 and consolidated cases, Order (Mar. 7, 2016) (imposing limited stay of *Second Report and Order* ICS rate caps and caps on single-call fees but leaving the remainder of the *Second Report and Order* in effect).

currently are in effect due to the D.C. Circuit's stay of the 2015 Rates), then under the *Second Report and Order* interstate site commissions clearly are also permitted under the much higher 2013 Rates.

Further, portions of the *Second Report and Order* were appealed to the D.C. Circuit by various petitioners, including Securus. In the Joint Brief for the ICS Carrier Petitioners filed with the D.C. Circuit by Securus and other ICS providers, the petitioners expressly stated that in the *Second Report and Order* "the FCC did not bar or limit site commissions, concluding, without elaboration that 'we do not need to prohibit site commissions in order to ensure that interstate rates for ICS are fair, just, and reasonable and that intrastate rates are fair.'"¹⁶ Thus, in its own brief filed with the D.C. Circuit, Securus expressly admits that in the *Second Report and Order* the Commission permits site commissions. Consequently, Securus itself has invalidated the fundamental assertion in its Comments.

II. SECURUS' PROPOSED CONDITION IS INCONSISTENT WITH COMMISSION POLICY BECAUSE IT IS NOT TRANSACTION-SPECIFIC

Even if Securus' assertion that interstate site commissions are impermissible was valid, which it is not, the Commission's longstanding policy is to refrain from addressing or considering in a transfer of control proceeding alleged public interest harms that are not transaction-specific. The Commission has determined that transfer of control proceedings are

¹⁶ Joint Brief for the ICS Carriers Petitioners at 10, *Global Tel*Link v. FCC*, Nos. 15-461, 15-1498, 16-1012, 16-1029, 16-1038, 16-1046, 16-1057 (D.C. Cir. June 6, 2016) (citing *Second Report and Order* ¶ 118); *id.* at 24 ("[T]he [*Second Report and Order*] declined to invoke any supposed authority to ban or restrict site commissions outright.") ("Joint Brief"). Securus and the other ICS provider acknowledged the D. C. Circuit stay of the 2015 Rates in their Joint Brief, *see* Joint Brief at 14-15, but did not suggest that the stay had any effect on the Commission's determination to permit site commissions.

not the appropriate forum for addressing policy issues of general applicability to an industry.¹⁷ The payment of site commissions by ICS providers is such an issue. This is especially true where, as here,¹⁸ the policy issues presented are “the subject of other proceedings before the Commission because the public interest would be better served by addressing the matter in the broader proceeding of general applicability.”¹⁹ Instead, an alleged harm must directly “arise from the transaction” to be considered by the Commission in a transfer of control proceeding.²⁰

ICSolutions’ current practice in connection with site commissions is not germane to the Commission’s evaluation of whether TKC is qualified to acquire control of ICSolutions.

¹⁷ See, e.g., *AT&T Inc. and BellSouth Corporation, Application for Transfer of Control*, Memorandum Opinion and Order, 22 FCC Rcd 5662, 5757-58 ¶ 194 (2007).

¹⁸ Commission Docket No. 12-375 remains an open docket because both the *First Report and Order* and the *Second Report and Order* issued in that docket are subject to pending judicial appeals before the D.C. Circuit.

¹⁹ *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation to SBC Communications, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 21292, 21306 ¶ 29 (1998); see also *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, for Authority to Transfer Control*, Memorandum Opinion and Order, 19 FCC Rcd 473, 534 ¶ 131 (2004) (“An application for a transfer of control of Commission licenses is not an opportunity to correct any and all perceived imbalances in the industry. Those issues are best left to broader industry-wide proceedings.”).

²⁰ *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18433, 18445 ¶ 19 (2005) (“*Verizon-MCI Order*”); see also, e.g., *Applications Filed by Frontier Communications Corp. and AT&T Inc. for the Assignment or Transfer of Control of the Southern New England Telephone Co. and SNET America, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9203, 9207 ¶ 11 (WCB, IB, WTB 2014); *Applications Filed by Frontier Communications Corp. and Verizon Communications Inc. for Assignment or Transfer of Control*, Memorandum Opinion and Order, 25 FCC Rcd 5972, 5978-79 ¶ 12 (2010); *IT&E Overseas, Inc., Transferor, and PTI Pacifica Inc., Transferee*, Memorandum Opinion and Order and Declaratory Ruling, 24 FCC Rcd 5466, 5474 ¶ 14 (WCB, WTB, IB 2009); *Applications for Consent to the Assignment and/or Transfer of Control of Licenses; Time Warner Inc. and its subsidiaries, Assignor/Transferor, to Time Warner Cable Inc., and its subsidiaries, Assignee/Transferee*, Memorandum Opinion and Order, 24 FCC Rcd 879, 887 ¶ 13 (MB, WTB, IB 2009); *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18303 ¶ 19 (2005).

Therefore the condition proposed by Securus is not relevant to any alleged transaction-specific harm. Because the Commission does not “impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction” under consideration,²¹ Securus’ proposed condition is unwarranted even if Securus’ understanding of the state of the law regarding site commissions was not entirely in error.

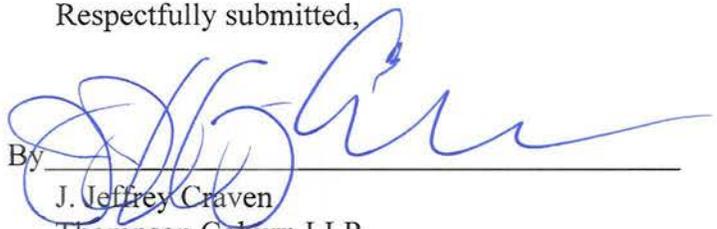
III. CONCLUSION

For the foregoing reasons, the Commission should reject Securus’ Comments and grant the Application to transfer control of ICSolutions to TKC on a streamlined basis. Securus does not oppose Commission grant of the Application, and its request for the Commission to impose a condition on any such grant is inconsistent with existing Commission policy regarding site commissions, as well as being unrelated to this transaction.

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Respectfully submitted,

By



J. Jeffrey Craven
Thompson Coburn LLP
1909 K Street, N.W.
Washington, D.C. 20006-1167
jcraven@thompsoncoburn.com
Tel. (202) 585-6958
Fax (202) 585-6969

Counsel for Inmate Calling Solutions, LLC
d/b/a ICSolutions

²¹ *Applications of SoftBank Corp., Starburst II, Inc., Sprint Nextel Corporation, and Clearwire Corporation*, Memorandum Opinion and Order, 28 FCC Rcd 9642, 9676 ¶ 85 (2013); *see also, e.g., Applications of AT&T Mobility Spectrum LLC, New Cingular Wireless PCS, LLC, Comcast Corporation, Horizon Wi-Com, LLC, NextWave Wireless, Inc., and San Diego Gas & Electric Company For Consent To Assign and Transfer Licenses*, Memorandum Opinion and Order, 27 FCC Rcd 16459, 16474 ¶ 39 (2012); *Verizon-MCI Order*, 20 FCC Rcd 18433, 18445 ¶19 (2005).

CERTIFICATE OF SERVICE

I hereby certify on this 8th day of July, 2016, that the foregoing Reply Comments of ICSolutions, LLC were served via First Class * or electronic ** mail on the following persons:

Myrva Freeman **
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
Myrva.Freeman@fcc.gov

Jim Bird **
Office of General Counsel
Federal Communications Commission
Jim.Bird@fcc.gov

Jodie May **
Competition Policy Division
Federal Communications Commission
Jodie.May@fcc.gov

David Krech **
International Bureau
Federal Communications Commission
David.Krech@fcc.gov

Sumita Mukhoty **
International Bureau
Federal Communications Commission
Sumita.Mukhoty@fcc.gov

Stephanie A. Joyce * **
Arent Fox LLP
1717 K Street N.W.
Washington, DC 20006
stephanie.joyce@arentfox.com

Howard M. Liberman * **
Wilkinson Barker Knauer LLP
1800 M Street, N.W., Suite 800N
Washington, DC 20036
HLiberman@wbklaw.com

Counsel to TKC Holdings, Inc.

By: _____


J. Jeffrey Craven