

JUL 01 2016

Federal Communications Commission
Office of the Secretary

July 1, 2016

VIA ECFS

Stephanie A. Joyce

Partner
202.857.6081 DIRECT
stephanie.joyce@arentfox.com

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: WC Docket No. 16-188, Comments and Video File from Securus Technologies, Inc.

Dear Secretary:

Securus Technologies, Inc. ("Securus") hereby files Comments in hard copy form for the above-named proceeding. These Comments also will be filed via the Electronic Comment Filing System.

Included herein is a DVD that contains a video file that is referenced and transcribed in the Comments. It is my understanding that the FCC can accept this file for the public record under the *ex parte* rules. Because, however, video files are not supported by ECFS, Securus asks that the video portion of this filing be held exempt from the electronic filing requirement of 47 C.F.R. § 1.1206(b) – electronic filing of the video file is not "feasible".

Please date-stamp the enclosed copy of this letter and return it to the bearer.

Thank you for your consideration.

Sincerely,

s/Stephanie A. Joyce

Counsel to Securus Technologies, Inc.

Enclosures

cc: Myrva Freeman (*via electronic mail*)
Howard M. Liberman, Counsel to TKC Holdings, Inc. (*via electronic mail*)

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

Accepted / Filed
JUL - 1 2016
Federal Communications Commission
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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

COMMENTS OF SECURUS TECHNOLOGIES, INC.

Securus Technologies, Inc. (“Securus”), through counsel and pursuant to 47 C.F.R. § 63.03 and the Public Notice released in this docket,¹ now comments on the application to transfer control of ICSolutions, LLC (“ICSolutions”) to TKC Holdings, Inc. (“TKC”) in order to address the ongoing violations of Commission rules by ICSolutions in the form of the unlawful payment of site commissions on interstate Inmate Calling Services (“ICS”). Securus takes no position on the merits of the application, but should the Commission grant the application, it should include the express condition that the transferee immediately cease paying site commissions on interstate ICS unless and until new rules become effective to replace or supersede the Commission’s prohibition of the payment of interstate site commissions.

STANDARD OF REVIEW

Section 214 of the Communications Act of 1934, 47 U.S.C. § 214, requires the Commission to “determine that any proposed transfer of control of authorizations will serve the public interest before approving any such transfer.” WC Docket No. 06-64, *Cass County Tel. Co. and LEC Long Distance, Inc. d/b/a CassTel Long Distance*, Order, 21 FCC Rcd. 8015, 8015-

¹ WC Docket No. 16-188, Public Notice, *Domestic Section 214 Application Filed for the Transfer of Control of Inmate Calling Solutions, LLC d/b/a ICSolutions to TKC Holdings, Inc.*, DA 16-695 (June 17, 2016).

16 ¶ 2 (2006) (approving transfer of control with conditions). The Commission has authority to impose conditions on a transfer of control in furtherance of the public interest. *E.g., id.* It is “a threshold requirement” that the transferee “meet the requisite character qualifications to hold Commission licenses.” WC Docket No. 13-242, *Applications Granted for the Transfer of Control of STI Prepaid, LLC and STI Telecom Inc. to Angel Americas LLC*, Public Notice, 29 FCC Rcd. 7956, 7958 (2014) (approving transfer of control with conditions). To that end, “Commission precedent requires that an applicant must operate in a manner consistent with the Act and the Commission’s rules.” *Id.*

BACKGROUND

A. Commission Rules Prohibit the Payment of Site Commissions on Interstate Calls

The Commission adopted the *First Inmate Rate Order* to “mak[e] it easier for inmates to stay connected to their families and friends”² by setting new “interstate ICS rates [that] are just, reasonable, and fair as required by the Communications Act.”³ What was crucial in the Commission’s methodology for these rates is the finding that site commissions – financial and in-kind contributions demanded of ICS by correctional facilities⁴ – are “[a] significant factor” in creating call rates that “in far too many cases greatly exceed the reasonable costs of providing [ICS] service.”⁵ The interstate rate caps – which are the subject of these Comments – adopted in the *First Inmate Rate Order* remain in effect, because the permanent rate caps adopted in the

² WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, FCC 13-113, 28 FCC Rcd. 14107 ¶ 2 (2013) (“*First Inmate Rate Order*”).

³ *Id.* ¶ 12.

⁴ The Commission describes site commissions as “fees paid by ICS providers to correctional facilities or departments of corrections in order to win the exclusive right to provide inmate phone service.” *Id.* ¶ 3.

⁵ *Id.*

*Second Inmate Rate Order*⁶ were stayed in full by the U.S. Court of Appeals for the D.C. Circuit on March 7, 2016.⁷

For these reasons, the Commission ordered that “**site commission payments** and other provider expenditures that are not reasonably related to the provision of ICS **are not recoverable through ICS rates, and therefore may not be passed on to inmates and their friends and families.**”⁸ The *First Inmate Rate Order* makes clear that friends and family must not be forced to assist the ICS carrier in recouping site commission payments:

A significant factor driving these excessive rates is the widespread use of site commission payments – fees paid by ICS providers to correctional facilities or departments of corrections in order to win the exclusive right to provide inmate phone service.⁹

[W]e find that site commission payments and other provider expenditures that are not reasonably related to the provision of ICS are not recoverable through ICS rates, and therefore may not be passed on to inmates and their friends and families.¹⁰

[S]ite commission payments are not part of the cost of providing ICS and therefore not compensable in interstate ICS rates.¹¹

These site commission payments, which are often taken directly from provider revenues, have caused inmates and their friends and families to subsidize everything from inmate welfare to salaries and benefits, states’ general revenue funds, and personnel

⁶ WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 15-136 (rel. Nov. 5, 2015), published at 80 Fed. Reg. 79136 (Dec. 18, 2015).

⁷ *Global Tel*Link, et al. v. FCC*, No. 15-1461 and consolidated cases, Order (Mar. 7, 2016) (staying “47 C.F.R. § 64.6010 (setting caps on calling rates) and 64.6020(b)(2) (setting caps on fees for single-call services)”).

⁸ *First Inmate Rate Order* ¶ 7 (emphasis added).

⁹ *Id.* ¶ 3.

¹⁰ *Id.* ¶ 7.

¹¹ *Id.* ¶ 54.

training.¹²

Although these causes may contain worthy goals, we are bound by our statutory mandate to ensure that end user rates are “just and reasonable,” and “fair,” taking into account end users as well as ICS providers. The Act does not provide a mechanism for funding social welfare programs or other costs unrelated to the provision of ICS, no matter how successful or worthy.¹³

In Securus’s experience, it is inescapable that an ICS carrier will pass through the cost of site commissions in its rates, particularly under the Commission’s interim rate caps. Securus believes that under the interim rate caps, it is economically impossible to continue paying commissions while covering the cost of service and without passing through commissions to end users in the calling rates. The cost of providing ICS is, as the Commission knows, higher than the cost of providing residential or enterprise telecommunications. Further, the ability to amortize those costs is far more challenging than in the residential or enterprise setting. As such, any carrier that still can afford to pay site commissions must be drawing from call revenue to do so, and that call revenue is obtained through calling rates.

The partial stay entered by the U.S. Court of Appeals for the D.C. Circuit¹⁴ does not entitle any ICS carrier to violate the prohibition on interstate site commissions. The Court not only left the interim rate caps intact, it did not displace the Commission’s ruling that site commissions must not be recovered via calling rates.

That fact is evident in the subsequent announcement by the Wireline Competition Bureau in response to “questions [which] have arisen surrounding the ongoing payment of site

¹² *First Inmate Rate Order* ¶ 3.

¹³ *Id.* ¶ 57.

¹⁴ *Securus Techs., Inc., et al. v. FCC*, No. 13-1280 and consolidated cases, Order (Jan. 13, 2014).

commissions based on interstate ICS revenue.”¹⁵ The Bureau quoted directly from the *Inmate Rate Order*: “site commission payments ‘are not costs that are reasonably and directly related to the provision of ICS.’”¹⁶ The Bureau also noted that the partial stay entered by the U.S. Court of Appeals for the D.C. Circuit “did not disturb the Commission’s determinations regarding site commissions.”¹⁷ Commissioner Clyburn made a very similar statement in her remarks at the Inmate Calling Workshop on July 9, 2014: “although the D.C. Circuit did stay part of the reforms, the court left in place the Commission’s rate caps and critical findings on the nature of site commissions.”¹⁸

B. ICSolutions Obtained Two ICS Contracts Based on a Promise to Pay Interstate Site Commissions

In direct contravention of the Commission’s very clear statements of federal law, ICSolutions has promised to pay site commissions on interstate calls and as a direct result won the ICS contract for Calhoun County, Michigan in August 2014. In the official agenda from the Calhoun County Board meeting at which ICSolutions was awarded the contract,¹⁹ great attention was given to the payment of site commissions on *all calls*:

¹⁵ WC Docket No. 12-375, *Wireline Competition Bureau Addresses the Payment of Site Commissions for Interstate Inmate Calling Services*, DA 14-1206, at 1 (Aug. 20, 2014) (citing, *inter alia*, Letter from Stephanie A. Joyce, Counsel to Securus Technologies, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed May 15, 2014)).

¹⁶ DA 14-1206 at 1 (quoting *Inmate Rate Order* ¶ 55).

¹⁷ *Id.* at 2 (citing *Securus, et al. v. FCC*, No. 13-1280, Order (Jan. 13, 2014)).

¹⁸ FCC’s Inmate Calling Workshop, Prepared Remarks of Commissioner Mignon L. Clyburn (July 9, 2014), *available at* <http://www.fcc.gov/document/fccs-inmate-calling-workshop>.

¹⁹ Calhoun County Board of Commissioners, August 21, 2014, Agenda, Item 12(B)(6), Inmate Phone Service Agreement, *available at* http://www.calhouncountymi.gov/government/board_of_commissioners/board_agenda/ (ATTACHMENT A) (Securus has highlighted the pertinent section for ease of reference).

The ICSolutions proposal offered the County a commission rate of **66.1%** (compared to 63% previous contract) for each of the seven years available as a result of the proposed contract. ICS's offer also includes a **Minimum Annual Guarantee (MAG) where ICS will pay the County \$330,000 at the start of each contract year** and reconcile with actual commissions earned at the end of each year based on the 66.1% rate and the vendor's gross billings for **all calls originating from the inmate phone call platform. Total gross billings, for the purpose of this RFP, were defined as total calls placed on or through the Inmate Telephone System** and billed at the rates as authorized under the proposer's bid. No deductions or credit will be given for any expenses, allowances, bad debts, disconnects, or billed calls which for any reason are not collected or which otherwise do not result in revenue to the proposer. The commission payable to the County is based on the total gross billings with absolutely no deductions or credits given to vendors. The current court stayed FCC ruling or any future unfavorable federal, state or local legislation does not impact the payment of the \$330,000 MAG.²⁰

In addition, just a few weeks ago, ICSolutions was given another contract from a County jail after, Securus believes, having committed to pay full site commissions on interstate ICS calls. Caldwell County, North Carolina, which Securus presently serves pursuant to a contract awarded after public bidding, has just given ICSolutions the contract for inmate telecommunications. There was no public bidding process. Service is expected to begin in August 2016. Because ICSolutions has been very open, as shown herein, about paying unlawful interstate site commissions, Securus has every reason to believe that ICSolutions has promised to pay Caldwell County site commissions on interstate calls.

B. ICSolutions Has Admitted That It Continues to Pay Interstate Site Commissions

Securus has evidence that ICSolutions not only has promised to pay, but actually is paying, site commissions on interstate calls **to all of its correctional facility customers.**

Attached is a certified transcription of a portion of an in-person presentation that ICSolutions

²⁰ *Id.* at 3 (emphasis added).

made to San Bernardino County, California on January 21, 2015. ATTACHMENT B. Also filed herewith is a digital copy of the video of this presentation which was obtained through a public records request.

The transcript records the words of Brendan Philbin, Vice President – Business Operations for ICSolutions, who assures San Bernardino County that ICSolutions will pay site commissions on *all* calls and states that ICSolutions presently does so for *all* of its correctional facilities. Mr. Philbin states, in part:

All our calling is commissionable. A lot of confusion in the industry. A lot of suppliers are not paying commission on interstate calling. Not ICS. **We have honored every single contract, and we continue to pay commission on interstate.** And we will continue to pay interstate – we'll pay commissions on interstate.²¹

This presentation is an admission by ICSolutions that it has never ceased paying site commissions on interstate calls. It is impossible that a carrier could be remitting such funds to *any* facility, let alone *all* of its facilities, unless those funds are obtained via interstate calling rates. ICSolutions therefore must be acting in violation of the *First Inmate Rate Order*.

DISCUSSION

Foremost among the Commission's objectives when reviewing a Section 214 application is ensuring that the transferee "meet[s] the requisite character qualifications," chief among those qualifications being compliance with federal law. *STI Prepaid*, 29 FCC Rcd. at 7958.

ICSolutions has been flouting federal law for two years, and, having just obtained another contract on the promise of interstate site commissions, plainly has no intention of stopping.

The Commission has both plenary authority and clear precedent to condition the approval of the TKC Section 214 application upon TKC's compliance with federal law governing ICS,

²¹ ATTACHMENT B at 2:6-12 (emphasis added).

including the prohibition on interstate site commissions. The Commission's order that "site commission payments ... are not recoverable through ICS rates, and therefore may not be passed on to inmates and their friends and families"²² remains federal law. In order, however, to ensure, finally, that ICSolutions' end user customers have the benefit of this Commission rule and that ICSolutions no longer violates this aspect of federal law, the Commission should reiterate its prohibition as an express condition of any approval of the pending application. Though it may seem a ministerial act simply to reiterate its own 2013 ruling in the forthcoming order, that small act will provide a great deal of certainty to the ICS market and ensure that no carrier benefits from deliberate violations of Commission rules.

CONCLUSION

For the foregoing reasons, if the Commission should approve the application, it should do so on the express, written condition that the transferee TKC Holdings, Inc. pays no site commissions for interstate ICS calls.

Dated: July 1, 2016

Respectfully submitted,

By: s/Stephanie A. Joyce
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Counsel to Securus Technologies, Inc.

²² *First Inmate Rate Order* ¶ 7.

CERTIFICATE OF SERVICE

I hereby certify on this 1st day of July, 2016, that the foregoing Comments of Securus Technologies, Inc. were served via First Class * or electronic** mail on the following persons:

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Counsel to TKC Holdings, Inc.

By: s/Stephanie A. Joyce
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Accepted / Filed

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STANDARD OF REVIEW

Section 214 of the Communications Act of 1934, 47 U.S.C. § 214, requires the Commission to “determine that any proposed transfer of control of authorizations will serve the public interest before approving any such transfer.” WC Docket No. 06-64, *Cass County Tel. Co. and LEC Long Distance, Inc. d/b/a CassTel Long Distance*, Order, 21 FCC Rcd. 8015, 8015-

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BACKGROUND

A. Commission Rules Prohibit the Payment of Site Commissions on Interstate Calls

The Commission adopted the *First Inmate Rate Order* to “mak[e] it easier for inmates to stay connected to their families and friends”² by setting new “interstate ICS rates [that] are just, reasonable, and fair as required by the Communications Act.”³ What was crucial in the Commission’s methodology for these rates is the finding that site commissions – financial and in-kind contributions demanded of ICS by correctional facilities⁴ – are “[a] significant factor” in creating call rates that “in far too many cases greatly exceed the reasonable costs of providing [ICS] service.”⁵ The interstate rate caps – which are the subject of these Comments – adopted in the *First Inmate Rate Order* remain in effect, because the permanent rate caps adopted in the

² WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, FCC 13-113, 28 FCC Rcd. 14107 ¶ 2 (2013) (“*First Inmate Rate Order*”).

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⁴ The Commission describes site commissions as “fees paid by ICS providers to correctional facilities or departments of corrections in order to win the exclusive right to provide inmate phone service.” *Id.* ¶ 3.

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*Second Inmate Rate Order*⁶ were stayed in full by the U.S. Court of Appeals for the D.C. Circuit on March 7, 2016.⁷

For these reasons, the Commission ordered that “**site commission payments** and other provider expenditures that are not reasonably related to the provision of ICS **are not recoverable through ICS rates, and therefore may not be passed on to inmates and their friends and families.**”⁸ The *First Inmate Rate Order* makes clear that friends and family must not be forced to assist the ICS carrier in recouping site commission payments:

A significant factor driving these excessive rates is the widespread use of site commission payments – fees paid by ICS providers to correctional facilities or departments of corrections in order to win the exclusive right to provide inmate phone service.⁹

[W]e find that site commission payments and other provider expenditures that are not reasonably related to the provision of ICS are not recoverable through ICS rates, and therefore may not be passed on to inmates and their friends and families.¹⁰

[S]ite commission payments are not part of the cost of providing ICS and therefore not compensable in interstate ICS rates.¹¹

These site commission payments, which are often taken directly from provider revenues, have caused inmates and their friends and families to subsidize everything from inmate welfare to salaries and benefits, states’ general revenue funds, and personnel

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Although these causes may contain worthy goals, we are bound by our statutory mandate to ensure that end user rates are “just and reasonable,” and “fair,” taking into account end users as well as ICS providers. The Act does not provide a mechanism for funding social welfare programs or other costs unrelated to the provision of ICS, no matter how successful or worthy.¹³

In Securus’s experience, it is inescapable that an ICS carrier will pass through the cost of site commissions in its rates, particularly under the Commission’s interim rate caps. Securus believes that under the interim rate caps, it is economically impossible to continue paying commissions while covering the cost of service and without passing through commissions to end users in the calling rates. The cost of providing ICS is, as the Commission knows, higher than the cost of providing residential or enterprise telecommunications. Further, the ability to amortize those costs is far more challenging than in the residential or enterprise setting. As such, any carrier that still can afford to pay site commissions must be drawing from call revenue to do so, and that call revenue is obtained through calling rates.

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That fact is evident in the subsequent announcement by the Wireline Competition Bureau in response to “questions [which] have arisen surrounding the ongoing payment of site

¹² *First Inmate Rate Order* ¶ 3.

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²⁰ *Id.* at 3 (emphasis added).

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²¹ ATTACHMENT B at 2:6-12 (emphasis added).

including the prohibition on interstate site commissions. The Commission's order that "site commission payments ... are not recoverable through ICS rates, and therefore may not be passed on to inmates and their friends and families"²² remains federal law. In order, however, to ensure, finally, that ICSolutions' end user customers have the benefit of this Commission rule and that ICSolutions no longer violates this aspect of federal law, the Commission should reiterate its prohibition as an express condition of any approval of the pending application. Though it may seem a ministerial act simply to reiterate its own 2013 ruling in the forthcoming order, that small act will provide a great deal of certainty to the ICS market and ensure that no carrier benefits from deliberate violations of Commission rules.

CONCLUSION

For the foregoing reasons, if the Commission should approve the application, it should do so on the express, written condition that the transferee TKC Holdings, Inc. pays no site commissions for interstate ICS calls.

Dated: July 1, 2016

Respectfully submitted,

By: s/Stephanie A. Joyce
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Counsel to Securus Technologies, Inc.

²² *First Inmate Rate Order* ¶ 7.

CERTIFICATE OF SERVICE

I hereby certify on this 1st day of July, 2016, that the foregoing Comments of Securus Technologies, Inc. were served via First Class * or electronic** mail on the following persons:

Myrva Freeman **
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
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Counsel to TKC Holdings, Inc.

By: s/Stephanie A. Joyce
Stephanie A. Joyce

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JUL - 1 2016

Federal Communications Commission
Office of the Secretary

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

COMMENTS OF SECURUS TECHNOLOGIES, INC.

Securus Technologies, Inc. (“Securus”), through counsel and pursuant to 47 C.F.R. § 63.03 and the Public Notice released in this docket,¹ now comments on the application to transfer control of ICSolutions, LLC (“ICSolutions”) to TKC Holdings, Inc. (“TKC”) in order to address the ongoing violations of Commission rules by ICSolutions in the form of the unlawful payment of site commissions on interstate Inmate Calling Services (“ICS”). Securus takes no position on the merits of the application, but should the Commission grant the application, it should include the express condition that the transferee immediately cease paying site commissions on interstate ICS unless and until new rules become effective to replace or supersede the Commission’s prohibition of the payment of interstate site commissions.

STANDARD OF REVIEW

Section 214 of the Communications Act of 1934, 47 U.S.C. § 214, requires the Commission to “determine that any proposed transfer of control of authorizations will serve the public interest before approving any such transfer.” WC Docket No. 06-64, *Cass County Tel. Co. and LEC Long Distance, Inc. d/b/a CassTel Long Distance*, Order, 21 FCC Rcd. 8015, 8015-

¹ WC Docket No. 16-188, Public Notice, *Domestic Section 214 Application Filed for the Transfer of Control of Inmate Calling Solutions, LLC d/b/a ICSolutions to TKC Holdings, Inc.*, DA 16-695 (June 17, 2016).

16 ¶ 2 (2006) (approving transfer of control with conditions). The Commission has authority to impose conditions on a transfer of control in furtherance of the public interest. *E.g., id.* It is “a threshold requirement” that the transferee “meet the requisite character qualifications to hold Commission licenses.” WC Docket No. 13-242, *Applications Granted for the Transfer of Control of STI Prepaid, LLC and STI Telecom Inc. to Angel Americas LLC*, Public Notice, 29 FCC Rcd. 7956, 7958 (2014) (approving transfer of control with conditions). To that end, “Commission precedent requires that an applicant must operate in a manner consistent with the Act and the Commission’s rules.” *Id.*

BACKGROUND

A. **Commission Rules Prohibit the Payment of Site Commissions on Interstate Calls**

The Commission adopted the *First Inmate Rate Order* to “mak[e] it easier for inmates to stay connected to their families and friends”² by setting new “interstate ICS rates [that] are just, reasonable, and fair as required by the Communications Act.”³ What was crucial in the Commission’s methodology for these rates is the finding that site commissions – financial and in-kind contributions demanded of ICS by correctional facilities⁴ – are “[a] significant factor” in creating call rates that “in far too many cases greatly exceed the reasonable costs of providing [ICS] service.”⁵ The interstate rate caps – which are the subject of these Comments – adopted in the *First Inmate Rate Order* remain in effect, because the permanent rate caps adopted in the

² WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, Report and Order, FCC 13-113, 28 FCC Rcd. 14107 ¶ 2 (2013) (“*First Inmate Rate Order*”).

³ *Id.* ¶ 12.

⁴ The Commission describes site commissions as “fees paid by ICS providers to correctional facilities or departments of corrections in order to win the exclusive right to provide inmate phone service.” *Id.* ¶ 3.

⁵ *Id.*

*Second Inmate Rate Order*⁶ were stayed in full by the U.S. Court of Appeals for the D.C. Circuit on March 7, 2016.⁷

For these reasons, the Commission ordered that “**site commission payments and other provider expenditures that are not reasonably related to the provision of ICS are not recoverable through ICS rates, and therefore may not be passed on to inmates and their friends and families.**”⁸ The *First Inmate Rate Order* makes clear that friends and family must not be forced to assist the ICS carrier in recouping site commission payments:

A significant factor driving these excessive rates is the widespread use of site commission payments – fees paid by ICS providers to correctional facilities or departments of corrections in order to win the exclusive right to provide inmate phone service.⁹

[W]e find that site commission payments and other provider expenditures that are not reasonably related to the provision of ICS are not recoverable through ICS rates, and therefore may not be passed on to inmates and their friends and families.¹⁰

[S]ite commission payments are not part of the cost of providing ICS and therefore not compensable in interstate ICS rates.¹¹

These site commission payments, which are often taken directly from provider revenues, have caused inmates and their friends and families to subsidize everything from inmate welfare to salaries and benefits, states’ general revenue funds, and personnel

⁶ WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 15-136 (rel. Nov. 5, 2015), published at 80 Fed. Reg. 79136 (Dec. 18, 2015).

⁷ *Global Tel*Link, et al. v. FCC*, No. 15-1461 and consolidated cases, Order (Mar. 7, 2016) (staying “47 C.F.R. § 64.6010 (setting caps on calling rates) and 64.6020(b)(2) (setting caps on fees for single-call services)”).

⁸ *First Inmate Rate Order* ¶ 7 (emphasis added).

⁹ *Id.* ¶ 3.

¹⁰ *Id.* ¶ 7.

¹¹ *Id.* ¶ 54.

training.¹²

Although these causes may contain worthy goals, we are bound by our statutory mandate to ensure that end user rates are “just and reasonable,” and “fair,” taking into account end users as well as ICS providers. The Act does not provide a mechanism for funding social welfare programs or other costs unrelated to the provision of ICS, no matter how successful or worthy.¹³

In Securus’s experience, it is inescapable that an ICS carrier will pass through the cost of site commissions in its rates, particularly under the Commission’s interim rate caps. Securus believes that under the interim rate caps, it is economically impossible to continue paying commissions while covering the cost of service and without passing through commissions to end users in the calling rates. The cost of providing ICS is, as the Commission knows, higher than the cost of providing residential or enterprise telecommunications. Further, the ability to amortize those costs is far more challenging than in the residential or enterprise setting. As such, any carrier that still can afford to pay site commissions must be drawing from call revenue to do so, and that call revenue is obtained through calling rates.

The partial stay entered by the U.S. Court of Appeals for the D.C. Circuit¹⁴ does not entitle any ICS carrier to violate the prohibition on interstate site commissions. The Court not only left the interim rate caps intact, it did not displace the Commission’s ruling that site commissions must not be recovered via calling rates.

That fact is evident in the subsequent announcement by the Wireline Competition Bureau in response to “questions [which] have arisen surrounding the ongoing payment of site

¹² *First Inmate Rate Order* ¶ 3.

¹³ *Id.* ¶ 57.

¹⁴ *Securus Techs., Inc., et al. v. FCC*, No. 13-1280 and consolidated cases, Order (Jan. 13, 2014).

commissions based on interstate ICS revenue.”¹⁵ The Bureau quoted directly from the *Inmate Rate Order*: “site commission payments ‘are not costs that are reasonably and directly related to the provision of ICS.’”¹⁶ The Bureau also noted that the partial stay entered by the U.S. Court of Appeals for the D.C. Circuit “did not disturb the Commission’s determinations regarding site commissions.”¹⁷ Commissioner Clyburn made a very similar statement in her remarks at the Inmate Calling Workshop on July 9, 2014: “although the D.C. Circuit did stay part of the reforms, the court left in place the Commission’s rate caps and critical findings on the nature of site commissions.”¹⁸

B. ICSolutions Obtained Two ICS Contracts Based on a Promise to Pay Interstate Site Commissions

In direct contravention of the Commission’s very clear statements of federal law, ICSolutions has promised to pay site commissions on interstate calls and as a direct result won the ICS contract for Calhoun County, Michigan in August 2014. In the official agenda from the Calhoun County Board meeting at which ICSolutions was awarded the contract,¹⁹ great attention was given to the payment of site commissions on *all calls*:

¹⁵ WC Docket No. 12-375, *Wireline Competition Bureau Addresses the Payment of Site Commissions for Interstate Inmate Calling Services*, DA 14-1206, at 1 (Aug. 20, 2014) (citing, *inter alia*, Letter from Stephanie A. Joyce, Counsel to Securus Technologies, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, at 2 (filed May 15, 2014)).

¹⁶ DA 14-1206 at 1 (quoting *Inmate Rate Order* ¶ 55).

¹⁷ *Id.* at 2 (citing *Securus, et al. v. FCC*, No. 13-1280, Order (Jan. 13, 2014)).

¹⁸ FCC’s Inmate Calling Workshop, Prepared Remarks of Commissioner Mignon L. Clyburn (July 9, 2014), *available at* <http://www.fcc.gov/document/fccs-inmate-calling-workshop>.

¹⁹ Calhoun County Board of Commissioners, August 21, 2014, Agenda, Item 12(B)(6), Inmate Phone Service Agreement, *available at* http://www.calhouncountymi.gov/government/board_of_commissioners/board_agenda/ (ATTACHMENT A) (Securus has highlighted the pertinent section for ease of reference).

The ICSolutions proposal offered the County a commission rate of **66.1%** (compared to 63% previous contract) for each of the seven years available as a result of the proposed contract. ICS's offer also includes a **Minimum Annual Guarantee (MAG) where ICS will pay the County \$330,000 at the start of each contract year** and reconcile with actual commissions earned at the end of each year based on the 66.1% rate and the vendor's gross billings for **all calls originating from the inmate phone call platform. Total gross billings, for the purpose of this RFP, were defined as total calls placed on or through the Inmate Telephone System** and billed at the rates as authorized under the proposer's bid. No deductions or credit will be given for any expenses, allowances, bad debts, disconnects, or billed calls which for any reason are not collected or which otherwise do not result in revenue to the proposer. The commission payable to the County is based on the total gross billings with absolutely no deductions or credits given to vendors. The current court stayed FCC ruling or any future unfavorable federal, state or local legislation does not impact the payment of the \$330,000 MAG.²⁰

In addition, just a few weeks ago, ICSolutions was given another contract from a County jail after, Securus believes, having committed to pay full site commissions on interstate ICS calls. Caldwell County, North Carolina, which Securus presently serves pursuant to a contract awarded after public bidding, has just given ICSolutions the contract for inmate telecommunications. There was no public bidding process. Service is expected to begin in August 2016. Because ICSolutions has been very open, as shown herein, about paying unlawful interstate site commissions, Securus has every reason to believe that ICSolutions has promised to pay Caldwell County site commissions on interstate calls.

B. ICSolutions Has Admitted That It Continues to Pay Interstate Site Commissions

Securus has evidence that ICSolutions not only has promised to pay, but actually is paying, site commissions on interstate calls **to all of its correctional facility customers.**

Attached is a certified transcription of a portion of an in-person presentation that ICSolutions

²⁰ *Id.* at 3 (emphasis added).

made to San Bernardino County, California on January 21, 2015. ATTACHMENT B. Also filed herewith is a digital copy of the video of this presentation which was obtained through a public records request.

The transcript records the words of Brendan Philbin, Vice President – Business Operations for ICSolutions, who assures San Bernardino County that ICSolutions will pay site commissions on *all* calls and states that ICSolutions presently does so for *all* of its correctional facilities. Mr. Philbin states, in part:

All our calling is commissionable. A lot of confusion in the industry. A lot of suppliers are not paying commission on interstate calling. Not ICS. **We have honored every single contract, and we continue to pay commission on interstate.** And we will continue to pay interstate – we’ll pay commissions on interstate.²¹

This presentation is an admission by ICSolutions that it has never ceased paying site commissions on interstate calls. It is impossible that a carrier could be remitting such funds to *any* facility, let alone *all* of its facilities, unless those funds are obtained via interstate calling rates. ICSolutions therefore must be acting in violation of the *First Inmate Rate Order*.

DISCUSSION

Foremost among the Commission’s objectives when reviewing a Section 214 application is ensuring that the transferee “meet[s] the requisite character qualifications,” chief among those qualifications being compliance with federal law. *STI Prepaid*, 29 FCC Rcd. at 7958. ICSolutions has been flouting federal law for two years, and, having just obtained another contract on the promise of interstate site commissions, plainly has no intention of stopping.

The Commission has both plenary authority and clear precedent to condition the approval of the TKC Section 214 application upon TKC’s compliance with federal law governing ICS,

²¹ ATTACHMENT B at 2:6-12 (emphasis added).

including the prohibition on interstate site commissions. The Commission's order that "site commission payments ... are not recoverable through ICS rates, and therefore may not be passed on to inmates and their friends and families"²² remains federal law. In order, however, to ensure, finally, that ICSolutions' end user customers have the benefit of this Commission rule and that ICSolutions no longer violates this aspect of federal law, the Commission should reiterate its prohibition as an express condition of any approval of the pending application. Though it may seem a ministerial act simply to reiterate its own 2013 ruling in the forthcoming order, that small act will provide a great deal of certainty to the ICS market and ensure that no carrier benefits from deliberate violations of Commission rules.

CONCLUSION

For the foregoing reasons, if the Commission should approve the application, it should do so on the express, written condition that the transferee TKC Holdings, Inc. pays no site commissions for interstate ICS calls.

Dated: July 1, 2016

Respectfully submitted,

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Counsel to Securus Technologies, Inc.

²² *First Inmate Rate Order* ¶ 7.

CERTIFICATE OF SERVICE

I hereby certify on this 1st day of July, 2016, that the foregoing Comments of Securus Technologies, Inc. were served via First Class * or electronic** mail on the following persons:

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STANDARD OF REVIEW

Section 214 of the Communications Act of 1934, 47 U.S.C. § 214, requires the Commission to “determine that any proposed transfer of control of authorizations will serve the public interest before approving any such transfer.” WC Docket No. 06-64, *Cass County Tel. Co. and LEC Long Distance, Inc. d/b/a CassTel Long Distance*, Order, 21 FCC Rcd. 8015, 8015-

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BACKGROUND

A. Commission Rules Prohibit the Payment of Site Commissions on Interstate Calls

The Commission adopted the *First Inmate Rate Order* to “mak[e] it easier for inmates to stay connected to their families and friends”² by setting new “interstate ICS rates [that] are just, reasonable, and fair as required by the Communications Act.”³ What was crucial in the Commission’s methodology for these rates is the finding that site commissions – financial and in-kind contributions demanded of ICS by correctional facilities⁴ – are “[a] significant factor” in creating call rates that “in far too many cases greatly exceed the reasonable costs of providing [ICS] service.”⁵ The interstate rate caps – which are the subject of these Comments – adopted in the *First Inmate Rate Order* remain in effect, because the permanent rate caps adopted in the

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⁴ The Commission describes site commissions as “fees paid by ICS providers to correctional facilities or departments of corrections in order to win the exclusive right to provide inmate phone service.” *Id.* ¶ 3.

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*Second Inmate Rate Order*⁶ were stayed in full by the U.S. Court of Appeals for the D.C. Circuit on March 7, 2016.⁷

For these reasons, the Commission ordered that “**site commission payments** and other provider expenditures that are not reasonably related to the provision of ICS **are not recoverable through ICS rates, and therefore may not be passed on to inmates and their friends and families.**”⁸ The *First Inmate Rate Order* makes clear that friends and family must not be forced to assist the ICS carrier in recouping site commission payments:

A significant factor driving these excessive rates is the widespread use of site commission payments – fees paid by ICS providers to correctional facilities or departments of corrections in order to win the exclusive right to provide inmate phone service.⁹

[W]e find that site commission payments and other provider expenditures that are not reasonably related to the provision of ICS are not recoverable through ICS rates, and therefore may not be passed on to inmates and their friends and families.¹⁰

[S]ite commission payments are not part of the cost of providing ICS and therefore not compensable in interstate ICS rates.¹¹

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CONCLUSION

For the foregoing reasons, if the Commission should approve the application, it should do so on the express, written condition that the transferee TKC Holdings, Inc. pays no site commissions for interstate ICS calls.

Dated: July 1, 2016

Respectfully submitted,

By: s/Stephanie A. Joyce
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Counsel to Securus Technologies, Inc.

²² *First Inmate Rate Order* ¶ 7.

CERTIFICATE OF SERVICE

I hereby certify on this 1st day of July, 2016, that the foregoing Comments of Securus Technologies, Inc. were served via First Class * or electronic** mail on the following persons:

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By: s/Stephanie A. Joyce
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DOCKET NO. 16-188

Attachment A

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

- o This filing contains confidential information (Not For Public Inspection)
- o An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.
- o Microfilm, microform, certain photographs or videotape.
- o Other materials which, for one reason or another, could not be scanned into the ECFS system.

The actual document, page(s) or materials may be reviewed by contacting an Information Technician at the FCC Reference Information Center, at 445 12th Street, SW, Washington, DC, Room CY-A257. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician.

1 Video File