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VIA ECFS AND ELECTRONIC MAIL

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Re: WC Docket No. 12-375, Response to Letter from Alabama Public Service Commission

Dear Chairman and Commissioners:

Securus Technologies, Inc. (“Securus”), through counsel, responds to the letter from the Alabama Public Service Commission filed September 30, 2014 (“APSC Letter”). This letter was styled explicitly as a “Rebuttal” to the joint proposal filed by Securus, Global Tel*Link Corporation, and Telmate LLC on September 15, 2014 (“ICS Proposal”). Securus, as an author and sponsor of the ICS Proposal, wishes to address a few statements in the APSC Letter that warrant clarification in order that the record in this proceeding is accurate. In an effort to limit this response, Securus will not address each point made in the APSC Letter but will focus on a few key issues. The FCC should not interpret this approach as evidencing Securus’s concurrence with points not specifically addressed.

The APSC Letter underscores the difficulties faced by ICS providers that are caught in the middle of the jurisdictional triangle between federal regulatory policies, state regulatory policies, and the public policy decisions of correctional institutions. This problem is compounded by the fact that regulatory policy varies so widely among the states. For example, the APSC Letter

appears to advocate strongly for the payment of site commissions, whereas other states such as New Mexico have statutory and/or regulatory prohibitions against the payment of site commissions of any kind. These jurisdictional differences in rules, regulations, statutes, and policies extend beyond inmate calling rates; they include wide variations in whether and how ICS providers may make optional ancillary services available to correctional facilities, inmates, and the friends and family of inmates.

Site Commissions

The APSC Letter suggests that the ICS Proposal to limit site commissions to “admin-support payments”¹ would “penalize confinement facilities and deprive prisons and jails of revenue needed to ensure safety and security of inmates inside the facilities.”² Securus wishes to emphasize that the ICS Proposal would indeed reimburse correctional facilities for “legitimate costs incurred ... that are directly related to the provision of inmate calling services.”³ Securus is a staunch supporter of its correctional facility customers and of law enforcement generally, and is dedicated to helping maintain prison security and public safety. Securus fully realizes that correctional institutions are faced with challenging budgets and that they struggle to receive funding.

The APSC Letter states that site commissions come from ICS provider “net profits”.⁴ But as the FCC has recognized, site commissions are recovered via inmate call rates in order for the ICS provider to remain viable. Regardless of the label applied, site commission payments come out of inmate calling revenue. There should be no illusion that site commission payments are not recovered in call rates.

It seems that the APSC wants to continue the practice of using friends and families of inmates as the funding mechanism for correctional facilities’ budget shortfalls rather than state, county, or local governments. Indeed, the continued payment of commissions seems to be the cornerstone of the APSC Letter. It certainly is part of the new rules that the APSC is now considering. That position, however, is contrary to what Commissioner Clyburn⁵ and the FCC want. It contravenes

¹ *E.g.*, ICS Proposal at 3.

² APSC Letter at 3.

³ ICS Proposal at 3.

⁴ APSC Letter at 2.

⁵ 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> (“... regardless of the value or benefits that site commissions may provide to inmates, through inmate welfare programs or other services, such payments, should not be part of interstate inmate

a central finding of the *Inmate Rate Order*: “[t]he [Communications] Act does not provide a mechanism for funding social welfare programs or other costs unrelated to the provision of ICS.”⁶ Allowing unlimited commissions will always inflate calling rates and will prevent competition from operating on the merits and driving down rates.

Securus does not oppose the payment of limited site commissions. Its goal is that the forthcoming rate caps enable ICS carriers to recover those site commission payments. By placing specific limits on commission payments, the FCC will ensure that ICS providers compete on the basis of technology and service. Purely as an example to make its position clear, Securus provides these figures:

Assume that an ICS provider’s costs are \$0.20 per minute (excluding commission payments):

- If a 10% commission is to be paid, the resulting rate cap must be \$0.222 per minute.
- If a 25% commission is to be paid, the rate cap must be \$0.2666 per minute.
- If a 50% commission is to be paid, the rate cap must be \$0.40 per minute.

The core of Securus’s message is this: it is not possible to pay site commissions under rate caps that are based on the exclusion of site commission payments.⁷

The APSC Letter also argues, somewhat paradoxically, that paying site commissions out of calling rates does not cause rate inflation, but rather that the application of ancillary fees has led to excessive site commissions.⁸ It is difficult to understand why the payment of commissions on call revenue is appropriate, but the payment of commissions out of non-calling revenue – if it occurs – should be prohibited. Moreover, the argument seems out of keeping with the APSC’s

calling rates because they have no direct bearing on the cost of providing communications services.”)

⁶ WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-113 ¶ 57 (rel. Sept. 26, 2013).

⁷ See WC Docket No. 12-375, Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC, at 1 (Sept. 22, 2014) (“Accordingly, if the Commission determines that a site commission is appropriate in order to compensate correctional facilities for their costs incurred in connection with making telephones available to inmates, then the proposed \$0.20 per-minute rate likely must be increased, depending upon the amount of such commission.”).

⁸ APSC Letter at 4 (“Non-commissionable revenue sources are the ‘reservoir’ upon which excessive site commissions commitments depend.”).

general theme, quoted above, of ensuring that correctional facilities are not “deprive[d]” of “revenue needed to ensure safety and security.”⁹

That perplexity aside, Securus wishes to ensure that the record is clear with regard to the origins and trends of site commission obligations. As correctional facilities’ reliance on site commissions as an additional revenue source has grown, so has the demand on ICS providers to deliver larger percentages of inmate calling revenue as commission payments. Where in years past ICS providers were able to recover site commissions fully in call rates, when site commissions started reaching levels of 70% and 80%, that method of cost recovery no longer was sufficient. To maintain their operations, ICS providers had to find ways to recover site commission payments, as well as the costs of providing optional ancillary services, all of which are real costs of doing business in this industry.

Ancillary Fees

It is important to note that the ICS Proposal includes the elimination of nineteen (19) ancillary fees that presently are in place. The APSC Letter dismisses this fact. Instead, it discusses four specific fees, three of which are optional services offered to customers as a convenience. The fourth one is the Validation Fee which is necessary to recover costs associated with call validation – a crucial mechanism for ensuring the safety and security of inmate calls. The APSC Letter’s discussion warrants clarification on a few points.

First, the APSC Letter states that a “Transaction or Deposit Fee” will apply on “every transition or deposit.”¹⁰ This statement could be misinterpreted, because it implies that this fee applies on *all* transactions. It does not. At Securus, the “Transaction or Deposit Fee”, using the APSC’s terminology, applies only if a customer chooses to use a credit card or debit card to fund an account or pay an amount due. In addition, the APSC Letter fails to state that this is an optional service made available for the convenience of customers and account payors. A customer may fund or pay an account by the traditional methods of check, money order, or on-line banking *without the application of any fee* by Securus. The APSC Letter also fails to note that each and every time a customer chooses to pay by credit or debit card they are informed of the fee and reminded of payment options that have no fees. Finally, the APSC Letter fails to acknowledge that an ICS provider incurs real costs from third-party vendors as well as internal costs in order to offer this payment option. These costs include fees to the card processing agent, the cost of specialized security software used both on the website and by company representatives, the cost of training representatives, and, most importantly, the recovery of losses due to credit card fraud.

⁹ APSC Letter at 3.

¹⁰ *Id.* at 9.

None of these costs are included in the proposed inmate call rate or in the per-minute cost that Securus reported to the FCC in the Mandatory Data Collection.

Secondly, the APSC Letter discusses the “Payment Transfer Fee”, as the APSC calls it. This fee is charged by third-party financial agents Western Union and MoneyGram. Just as the APSC and FCC have no jurisdiction over fees charged by financial institutions, Securus believes that the APSC has no jurisdiction over these financial agents. Certainly the APSC would never claim to regulate the fees a bank may charge for a cashier’s check or wire transfer simply because a customer uses them to pay their inmate telephone service account. And, as with the “Transaction or Deposit Fee”, these third-party fees are applied only when a customer makes the decision to use one of these agents to pay or fund their account. As stated above, customers have numerous options to pay or fund their accounts that have no fees.

Last, the APSC Letter discusses an ancillary fee that it calls “Convenience or Premium Payment Options”. This title is misleading. Securus offers optional *call completion* services called “Text2Connect” and “PayNow”. These are options for completing calls: Text2Connect is offered as a way for inmates to call wireless phones collect; PayNow provides a way for an inmate to call a landline phone whose owner does not have an account with Securus – it allows immediate collect calling without the inmate having to wait for the called party to set up an account. It bears repeating that these are *optional* conveniences offered to customers. These options are not intended as permanent methods for inmates to make collect calls.

As Securus has explained multiple times to the APSC, these services are offered through a national contract with a third-party vendor. The APSC Letter states, apparently as a comparison, that other ICS providers in Alabama “direct wireless recipients of sent-collect inmate calls to their service center for the purpose of setting up a prepaid account,”¹¹ as if Securus does not do so. But, in fact, on each and every Securus Text2Connect or PayNow call, the customer is also given this very same option. The difference is that Securus customers have multiple options, including being sent to the Call Center to set up an account, or completing the call immediately via Text2Connect or PayNow. In every case, the customer is quoted the applicable rate and must positively accept the charges *before* the call is completed; they may terminate the call before completion without the application of any fees. Securus wants its customers to have all of these options available to them. Securus should not be restricted, nor should any other ICS provider, in making these services available simply because some ICS providers have chosen to not offer them.

Securus understands that the APSC wishes to preserve its authority over intrastate inmate calling rates. The proposal currently being considered at the APSC, however, goes too far, perpetuates

¹¹ APSC Letter at 11.

unlimited site commissions, and inappropriately attempts to exert jurisdiction over third-party vendors and financial agents. The FCC should not be persuaded by the APSC to adopt the same, very problematic, proposals. Instead, Securus urges the Commission to give every consideration to the ICS Proposal which provides a very fair and balanced approach for meeting the FCC's goals.

Please do not hesitate to contact me with any questions: 202.857.6081.

Sincerely,

s/Stephanie A. Joyce

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