

October 8, 2014

VIA ECFS AND ELECTRONIC MAIL

Chairman Tom Wheeler
Federal Communication Commission
445 12th Street, S.W.
Washington, D.C. 20554
Tom.Wheeler@fcc.gov

Commissioner Mignon Clyburn
Federal Communication Commission
445 12th Street, S.W.
Washington, D.C. 20554
Mignon.Clyburn@fcc.gov

Commissioner Ajit Pai
Federal Communication Commission
445 12th Street, S.W.
Washington, D.C. 20554
Ajit.Pai@fcc.gov

Stephanie A. Joyce

Partner
202.857.6081 DIRECT
202.857.6395 FAX
stephanie.joyce@arentfox.com

Commissioner Jessica Rosenworcel
Federal Communication Commission
445 12th Street, S.W.
Washington, D.C. 20554
Jessica.Rosenworcel@fcc.gov

Commissioner Michael O’Rielly
Federal Communication Commission
445 12th Street, S.W.
Washington, D.C. 20554
Michael.ORielly@fcc.gov

Re: WC Docket No. 12-375, Response to Pay Tel Communications, Inc. Presentation

Dear Chairman and Commissioners:

Securus Technologies, Inc. (“Securus”), through counsel, responds to the ex parte presentation of Pay Tel Communications, Inc. (“Pay Tel”) that was docketed October 3, 2014 (“Pay Tel Presentation”). The Pay Tel Presentation is a direct response to the joint proposal filed by Securus, Global Tel*Link Corporation (“GTL”), and Telmate LLC (“Telmate”) on September 15, 2014 (“ICS Proposal”). Securus, as an author and sponsor of the ICS Proposal, wishes to address a few statements in the Pay Tel Presentation that are factually inaccurate.

1. The Pay Tel Presentation begins by stating that none of the authors of the ICS Proposal provided any cost data to the Commission prior to the Mandatory Data Collection.¹ Pay Tel knows that this statement is false. Securus hired an outside economic expert, Stephen E. Siwek, to provide a cost analysis in the previous phase of this proceeding. Paradoxically, Pay Tel

¹ Pay Tel Presentation at 1.

actually cites to the Siwek Report later in its Presentation.² In fact, Pay Tel relies on the Siwek Report as evidence of “stark cost differentials based on the size of the facility being served.”³

2. Pay Tel then goes on to lambast the ICS Proposal as the signatories’ attempt “to do nothing but ensure their own corporate profits and their continued dominance of the ICS market.”⁴ It is Pay Tel that secured a company-wide waiver of the Interim Rate Caps and can charge \$0.46 per minute at almost every facility it serves.⁵ Securus, GTL, and Telmate must comply with the \$0.21 per minute (debit) and \$0.25 per minute (collect) caps. This despite the fact that the Siwek Report showed that Securus experiences costs of \$0.5008 and \$1.1706 per minute (averaged) at its Low-Volume and Medium-Volume facilities⁶ – the same size of facilities that Pay Tel apparently serves⁷ – and is subject to the same “below-average-cost intrastate rate constraints”⁸ to which Pay Tel is subject. Pay Tel is bringing in more than twice the call revenue of Securus for exactly the same types and lengths of calls. As such, the accusation that the ICS Proposal, which proposes unified rates of \$0.20 per minute (debit) and \$0.24 per minute (collect), would “unjustifiably increase the cost of [Inmate Calling Services]”⁹ rings hollow.

² Pay Tel Presentation at 3 & n.10.

³ *Id.* at 3.

⁴ *Id.* at 1.

⁵ WC Docket No. 12-375, Order, DA 14-187 ¶ 20 (WCB Feb. 11, 2014).

⁶ Siwek Report, Table 2. These figures include the cost of site commissions. Mr. Siwek also calculated the percentage of costs associated with site commissions: only 18.5% of costs at Low-Volume Facilities (averaged) are site commission costs; 67.4% of costs at Medium-Volume Facilities (averaged) are site commission costs. *Id.*, Table 5. Mr. Siwek’s methodology, due to the almost 2,000 facilities that Securus served during the reporting period, was to take 10 facilities from the Low-Volume, Medium-Volume, and High-Volume tiers, as well as the 8 State Departments of Corrections that Securus served. Siwek Report, Sections 2.3 and 2.4.

⁷ Pay Tel has stated that it serves just 184 facilities. WC Docket No. 12-375, Pay Tel Communications, Inc. Petition for Waiver of Interim Interstate Rates at 2 n.4 (Jan. 8, 2014) (“Pay Tel Petition”). Pay Tel characterizes these facilities as “jails”. Securus is unable to find in the Pay Tel Petition or other filings any specific figures regarding the size of these facilities.

⁸ Pay Tel Petition at 2. These “rate constraints”, so called, are imposed on all ICS providers by the resident State Commissions.

⁹ Pay Tel Presentation at 1.

3. As an overarching matter, Pay Tel characterizes Securus, GTL, and Telmate as “Large Companies” as if they are the same size and serve the same populations. Pay Tel knows this is not the case. In addition, the Presentation is suffused with the insupportable belief that these carriers serve nothing but large, mega-volume correctional facilities. Publicly available data renders that belief specious. Securus serves approximately 1,800 facilities.¹⁰ Of those facilities, eight (8) are State DOCs.¹¹ The remainder, necessarily, are city or county jails. Any participant in the ICS industry knows that there are not 1,792 large-volume city and county jails in the United States. Securus serves facilities that originate as few as 1,668 call minutes – 284 calls total – per month.¹²

Pay Tel itself cites to the filings of Telmate and GTL which show that they also serve low-volume, high-cost facilities.¹³ The record, as well as common sense, shows that the ICS Proposal was authored by carriers that have vast experience in serving such facilities. The notion that only Pay Tel provides service to small correctional facilities is disproved by record evidence and must be dispelled now.

4. Pay Tel criticizes the ICS Proposal on the ground that the signatories have refused to provide the confidential versions of their cost data to Pay Tel. This criticism is meaningless. First, it has always been the practice of ICS carriers, eight (8) of whom came together in 2008 to sponsor a cost study,¹⁴ not to request each other’s confidential cost data. No sponsor of the 2008 study was permitted to see another sponsor’s data. Pay Tel, one of the carriers that sponsored the 2008 study, somehow has forgotten this history, but nonetheless that was and has been the practice in this fiercely competitive industry. Secondly, all three signatories to the ICS Proposal made their per-minute costs public; Pay Tel recites those figures in its Presentation. These carriers jointly advocate a unified per-minute rate, and everyone knows what their per-minute costs are. Securus therefore cannot understand Pay Tel’s trouble in evaluating the proposal. Third, Pay Tel’s economic expert, Don Wood, who conducted all of Pay Tel’s cost studies in this

¹⁰ *E.g.*, WC Docket No. 12-375, Securus Technologies, Inc. Petition for Stay of Report and Order Pending Appeal at 25 (Oct. 22, 2013).

¹¹ *E.g.*, Siwek Report, Section 2.4.

¹² Siwek Report, Table 2.

¹³ Pay Tel Presentation at 3 n.7 (quoting several Telmate filings) and 9 (quoting GTL filings).

¹⁴ CC Docket No. 96-128, Wood, Don J., Inmate Calling Services Interstate Call Cost Study (Aug. 15, 2008). Securus GTL, Public Communications Services, Inc., ATN, Inc., Embarq, NCIC, and Pay Tel each submitted cost data to Don Wood with written agreement not to request the data of any other submitting carrier.

docket and is uniquely able to analyze detailed cost data, received all of Securus's unredacted, confidential cost data on August 28, 2014. Pay Tel thus can submit a full rebuttal of Securus's position in this docket.

5. Pay Tel also attacks the proposed \$0.20 per-minute rate cap as being “excessively high for [state] prisons.”¹⁵ It provides a table of the calling rates at several State DOCs which range from \$0.044 to \$0.12 per minute.¹⁶ That table provides tremendous support for the ICS Proposal.

Pay Tel chose State DOCs where site commissions are not paid. Not surprisingly, the resulting rates are low. That is exactly the point of the ICS Proposal which shows that constraining site commissions to “admin-support payments”¹⁷ to defray “legitimate costs incurred ... that are directly related to the provision of inmate calling services”¹⁸ will achieve merits-based ICS competition and decrease calling rates. Pay Tel thus has only further demonstrated the soundness of the ICS Proposal.

In addition, and even more damaging to Pay Tel, the State DOC rates in the table pre-dated the *Inmate Rate Order*. They pre-dated the Commission's Interim Rate Caps and other rate-reducing measures. They are the direct product of merits-based competition in the absence of any regulatory action. For Pay Tel to assert that “[t]he notion that ‘the market’ can be relied on to drive the retail rates down to cost-based levels in prisons is false”¹⁹ simply crumbles under Pay Tel's own evidence.

6. The remainder of the Pay Tel Presentation largely focuses on Ancillary Fees.²⁰ Here the facts become quite muddled, and several very unreasonable assumptions are inserted.

Pay Tel has provided a pie chart as Attachment C to the Presentation and it is misleading and unreliable. It purports that, under the ICS Proposal, any family with \$100 to spend per month will enjoy only \$49.00 of calls per month. Nonsense.

Attachment C accumulates several optional services as if they are unavoidable and will occur for every call, every month. Moreover, Pay Tel creates an illogical scenario. Pay Tel assumes that:

¹⁵ Pay Tel Presentation at 3.

¹⁶ *Id.* at 4 (“DOC Contracts Without Commissions”).

¹⁷ *E.g.*, ICS Proposal at 3.

¹⁸ ICS Proposal at 3.

¹⁹ Pay Tel Presentation at 2.

²⁰ *Id.* at 5-8 & Attachment C.

- The family will use four (4) separate funding transactions every month, \$25.00 each.
- The inmate will use a \$15.00 option call completion service every month.

A few background facts are needed here. First, the ICS Proposal includes a three-year cap on “transaction or deposit fees” of \$7.95.²¹ This amount is the prevailing rate for financial transactions in the ICS industry.²² As Securus, has explained, this fee covers many cost elements: “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.”²³ Fee-free payment options are and will remain in place.²⁴ Secondly, the optional call completion services to which Pay Tel apparently is citing are called Text2Connect and PayNow. Text2Connect is 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 – the inmate can immediately place a collect call without waiting for the called party to set up an account. ***They are not “Payment Fees” as Pay Tel calls them.*** And, as Securus stated, “[t]hese options are not intended as permanent methods for inmates to make collect calls.”²⁵ Rather, they are one of many options by which an inmate can reach their called party.

The Presentation is simply silly. To respond in turn to Pay Tel’s errors:

- Assuming that the same payor makes four funding transactions every month is unreasonable.
- A family that already has established an account, and funded it, in accordance with Attachment C, would have no need to use an optional call completion service.

Attachment C is thus revealed as irrational hyperbole. The ICS Proposal should not be viewed from Pay Tel’s funhouse-mirror perspective. Most importantly, the Commission should note that Pay Tel has refused to make most payment and call completion options available to its facilities for reasons unexplained. Other carriers, who have added these convenience options to their fee-

²¹ ICS Proposal at 5.

²² *Id.*

²³ WC Docket No. 12-375, Letter from Stephanie A. Joyce, Counsel to Securus, to Chairman Tom Wheeler, *et al.*, FCC, at 5 (Oct. 6, 2014) (“Securus October 6 Letter”).

²⁴ ICS Proposal at 6; Securus October 6 Letter at 5.

²⁵ Securus October 6 Letter at 5.

free payment options (such as paying by check or money order) should not be penalized based on Pay Tel's narrow and outdated business plan.

7. Finally, Attachment C is misleading, because it omits a crucial fact: Pay Tel presently has the right to charge \$0.46 per minute for inmate calls, and it rejects the rate in the ICS Proposal. It was improper for Pay Tel to use the ICS Proposal rate of \$0.20 in Attachment C.

Using Paytel's own data, inmates and their friends and families will receive fewer minutes of talk time and enjoy significantly fewer calls per month as they would receive from Securus under the ICS Proposal. Pay Tel's website indicates that the processing fee for most transactions is \$5.95.²⁶ Applying to Pay Tel the same assumptions it applied to Securus, a family has \$100 per month to spend on ICS.

Consumer Calling Power at Pay Tel Rates²⁷

- Transaction Fees $\$5.95 \times 4 \text{ Transactions} = \23.80
- Monthly Statement Fee $\$2.00$
- Revenue Available for Calls $\$74.20$
- Number of Calling Minutes Available $\$74.20 / (\$0.26 + \$0.02) = \mathbf{265 \text{ Minutes}}$
- Number of 15-Minute Calls $\mathbf{17\text{-}2/3 \text{ Calls (17.66)}}$

It bears mention that Pay Tel obtained its company-wide waiver on the ground that \$0.46 was necessary to avoid an "economically unsustainable situation."²⁸ Again, Pay Tel chiefly relied on "below-average-cost intrastate rate constraints"²⁹ as the cause for its predicament. Nothing has changed about intrastate rate regulation since February 2014, and most intrastate rates in Pay

²⁶ The relevant Pay Tel webpage is available here: <http://paytel.com/paymentoptions.html>.

²⁷ WC Docket No. 12-375, Pay Tel "Ethical Proposal" (posted Oct. 8, 2014). Pay Tel has just proposed a rate of \$0.26 per minute for jails (not prisons) having an Average Daily Population of 1 to 349, plus an additive \$0.02 per minute for the Voice Biometric Fee. Pay Tel also proposes a \$2.00 fee for printed monthly statements and \$5.95 for both Live Agent Phone Payments and Western Union.

²⁸ Pay Tel Petition at 2.

²⁹ *Id.*

Tel's territory are higher than the Interim Rate Caps.³⁰ It is therefore curious that Pay Tel now can support a unified rate of only \$0.26 per minute for small jails, and \$0.22 for large jails.

For the sake of exact comparison, continuing to apply Pay Tel's unreasonable assumptions to the ICS Proposal and using Securus's rates:

Consumer Calling Power at Securus Rates/Pay Tel Assumptions

- Transaction Fees (per payment) $\$7.95 \times 4 \text{ Transactions} = \31.80
- Revenue Available for Calls $\$68.20$
- Validation Fees $0.08 \times \$68.20 = \5.46
- Number of Calling Minutes Available $\$62.74 / \$0.20 = \mathbf{314 \text{ Minutes}}$
- Number of 15-Minute Calls $\mathbf{21 \text{ Calls (20.93)}}$

Applying a more reasonable set of assumptions to Securus's service and the ICS Proposal:

Consumer Calling Power at Securus Rates/Accurate Assumptions

- Transaction Fees (per payment) $\$7.95 \times 2 \text{ Transactions} = \15.90
- Revenue Available for Calls $\$84.10$
- Validation Fees $0.08 \times \$84.10 = \6.73
- Number of Calling Minutes Available $\$77.37 / \$0.20 = \mathbf{387 \text{ Minutes}}$
- Number of 15-Minute Calls $\mathbf{26 \text{ Calls (25.80)}}$

³⁰ Pay Tel reported the prevailing intrastate rates in its territory within its Petition for Waiver. Pay Tel stated that the IntraLATA rate in Florida, North Carolina, South Carolina, Tennessee, and Virginia is \$1.85 per call plus \$0.60 per minute (both credit and debit). At those rates, a 15-minute IntraLATA call is over \$10.00. In Georgia, the IntraLATA rate is \$2.00 per call plus \$0.19 per minute (debit and credit) which also is significantly higher than the Interim Rate Caps. Pay Tel Petition, Ex. B (Wood Intrastate Shortfall Analysis).

- NOTE: Approximately 15% of Securus's customers fund their accounts with a free option, such as a check, and thus do not pay any funding fees. For that set of customers, \$92.00 (\$100 less an \$8.00 Validation Fee) would be available for inmate calls. This equates to **460 minutes** (\$0.20 per minute), or **31 calls** (15 minutes each) – nearly twice the number of calls per month as those customers would receive from Pay Tel under its present rates, and many fewer calls than Pay Tel would provide at its newly proposed rates.

This comparison demonstrates that Pay Tel's rates and proposals will not bring nearly the same benefits and service to inmates that the ICS Proposal would bring.

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For all these reasons, the Pay Tel Presentation fails to discredit or rebut the ICS Proposal. Resting on unreasonable assumptions and ignoring record evidence, the Presentation is simply an attempt to advance the business objectives of one carrier to the detriment of the Commission's goals. The ICS Proposal, by contrast, is a holistic, ambitious set of compromises for a fair, workable solution which seeks to preserve the interests of correctional facilities, inmates, and the public.

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

Sincerely,

s/Stephanie A. Joyce

cc: Daniel Alvarez, Legal Advisor to Chairman Wheeler
Rebekah Goodheart, Legal Advisor to Commissioner Clyburn
Valery Galasso, Special Advisor to Commissioner Rosenworcel
Nicholas Degani, Legal Advisor to Commissioner Pai
Amy Bender, Legal Advisor to Commissioner O'Rielly
Kalpak Gude, Associate Chief, Media Bureau
Pamela Arluk, Acting Chief, Pricing Division, Wireline Competition Bureau
Lynne Engledow, Acting Deputy Chief, Pricing Division, Wireline Competition Bureau
(All Via Electronic Mail)