

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

Rates for Interstate Inmate Calling Services

WC Docket No. 12-375

**OPPOSITION OF SECURUS TECHNOLOGIES, INC.
TO PAY TEL COMMUNICATIONS, INC.'S
PETITION FOR EXTENSION OF WAIVER**

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Securus Technologies, Inc. (“Securus”), through counsel and pursuant to 47 C.F.R. §§ 1.3, 1.415, and 1.419, files this Opposition to Pay Tel Communications, Inc.’s Petition for Extension of Waiver filed October 31, 2014 (“Petition”). Record evidence proves that Pay Tel no longer can justify charging \$0.46 per minute for interstate Inmate Calling Services (“ICS”). The Petition should be denied and the existing waiver should be deemed to have expired on November 11, 2014, as the Bureau initially prescribed in the *Waiver Order*.¹

BACKGROUND

Pay Tel filed its first petition for waiver of the Interim Rate Caps adopted in the *Inmate Rate Order*² on January 8, 2014, stating that “it cannot recover its costs on a holding company level if it is required to charge the Order’s interim interstate rates.”³ Pay Tel complained that “the Order fails to preempt below-average-cost intrastate rate constraints, thereby leaving Pay Tel unable to recover its total-company costs[.]”⁴ Pay Tel then asserted that it was “in an economically unsustainable situation.”⁵

The “below-average-cost intrastate rate constraints” of which Pay Tel complained resulted from the following intrastate rates:⁶

¹ WC Docket No. 12-375, Order, DA 14-187 ¶ 22 (WCB Feb. 11, 2014).

² WC Docket No.12-375, *Rates for Interstate Inmate Calling Services*, Report and Order, 28 FCC Rcd. 14107 (2013).

³ WC Docket No. 12-375, Pay Tel Communications, Inc. Petition for Waiver of Interim Interstate Rates at 1 (Jan. 8, 2014) (“January Petition”).

⁴ *Id.* at 2.

⁵ *Id.*

⁶ January Petition Ex. B, Wood Intrastate Shortfall Analysis.

	Post-Paid Per Call	Post-Paid Per Minute	Prepaid Per Call	Prepaid Per Minute	15-Minute Call Post-Paid//Prepaid
Florida	1.85	0.60	1.85	0.60	10.85//10.85
Georgia	2.00	0.19	2.00	0.19	4.85//4.85
Kansas	3.00	0.15	---	0.35	5.25//5.25
Missouri	1.75	0.35	1.75	0.35	7.00//7.00
North Carolina	1.85	0.60	1.85	0.60	10.85//10.85
Ohio	1.85	0.15	1.85	0.15	4.10//4.10
South Carolina	1.85	0.60	1.85	0.60	10.85//10.85
Tennessee	1.85	0.60	1.85	0.60	10.85//10.85
Virginia	1.75	0.45	1.75	0.45	8.50//8.50

The cost data that Pay Tel submitted on August 18, 2014, in response to the Mandatory Data Collection reported the following per-minute cost, company-wide and for all calls:⁷

	Per-Minute Cost	Appx. Cost of 15-Minute Call
2013	0.1967	2.95
2014	0.2011	3.02

On October 3, 2014, Pay Tel submitted what it titled an “Ethical Proposal for Reform of Inmate Calling Rates and Fees” which urged the Commission to adopt these unified

⁷ WC Docket No. 12-375, Pay Tel ICS Cost Study, Executive Summary at 1-2 (Aug. 18, 2014) (Redacted Version).

rates for Jails:⁸

Average Daily Population	Per-Minute Rate	Rate for 15-Minute Call
1-349	0.26	3.90
350 +	0.22	3.30

The proposal states that no per-call charges should be permitted. Pay Tel also proposed that, to the extent that a jail incurred costs of its own in connection with ICS, a “Cost Recovery Fee” would be added to these proposed per-minute rates.⁹

DISCUSSION

Pay Tel’s own data shows that it does not need \$0.46 per minute for interstate calls. That rate is more than double the Interim Rate Cap that every other ICS provider in the country is charging. It is well more than double Pay Tel’s reported ICS costs. And it is almost double the rate that Pay Tel believes is reasonable for jails going forward.¹⁰ The Bureau therefore has no “good cause”¹¹ to extend Pay Tel’s waiver.

⁸ In Pay Tel’s usage, “jails” refers to “City, County, and Regional Jails” as opposed to “State and Federal Prisons”. Ethical Proposal at 1. Pay Tel does not serve prisons, but proposes a unified rate of \$0.08 per minute for those facilities. *Id.*

⁹ *Id.*

¹⁰ Securus continues to oppose the false “Jails versus Prisons” dichotomy that Pay Tel has constructed. The type of correctional authority that runs a facility – a state Department of Corrections versus a Sheriff – is of minimal relevance to the facility’s cost structure. Call volume, type of service, number and complexity of calling features, and facility location are the chief determinants of cost structure. *See* WC Docket No. 12-375, Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC, at 2 (Apr. 24, 2014); WC Docket No. 12-375, Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC, at 2 (Feb. 27, 2014) (“Call volume is a key factor in setting calling rates and is a better arbiter than the ‘prisons versus jails’ construct.”).

¹¹ *Inmate Rate Order* ¶ 82.

As Securus has explained previously, all ICS providers are subject to the same state ICS regulations and rates.¹² The chart provided above shows that intrastate rates in Pay Tel's territory are demonstrably higher than the Interim Rate Caps for interstate calls, and much higher than Pay Tel's cost of service in 2013 and 2014. Whatever "revenue shortfall" Pay Tel is experiencing under the Interim Rate Caps¹³ – a loss that every single ICS carrier in the country is now experiencing¹⁴ – it is virtually inconceivable that the shortfall imperils Pay Tel's very existence, as it continues to allege.¹⁵

Pay Tel states that it has ceased serving five facilities, because it "either abandoned its bid or was unable to aggressively bid to win renewal of its contracts ... even with the *Waiver Order's* \$0.46/minute interstate rate."¹⁶ In total, Pay Tel states, it "has submitted RFP responses for ten bids in 2014 for 'new' facilities (not Pay Tel's existing clients) since release of the *Waiver Order*, but it has not been successful with any of them."¹⁷ Pay Tel counts these facts as among the reasons for which "continuation of the Waiver remains justified and in the public interest."¹⁸

¹² WC Docket No. 12-375, Securus Technologies, Inc. Application for Review (DA 14-786) at 2 (July 7, 2014) (quoting Petition to Expand Pay Tel Waiver at 2 (Feb. 19, 2014)).

¹³ *E.g.*, Petition at 1.

¹⁴ Pay Tel stated in support of the January Petition that its estimated, annualized shortfall was \$1.67 Million. WC Docket No. 12-375, Letter from Marcus Trathen, Counsel to Pay Tel, to Marlene H. Dortch, FCC (Jan. 16, 2014). Securus's estimated, annualized "shortfall" in Pay Tel's territory was \$1.5 Million. WC Docket No. 12-375, Declaration of Geoffrey Boyd ¶ 3 (Mar. 4, 2014), filed via Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC (Mar. 4, 2014).

¹⁵ "Pay Tel would have to 'substantially curtail its operations, most likely by terminating service in its smallest facilities,' or would go out of business altogether if it is required to charge the interim interstate rates." Petition at 2 (quoting January Petition at 2).

¹⁶ Petition at 15 n.62.

¹⁷ *Id.* at 15.

¹⁸ *Id.*

The assertion is stunning. Pay Tel wants unique, highly favorable regulatory treatment in order to gain even more competitive advantage over every other ICS carrier in the country.¹⁹ Pay Tel wants the Commission to ensure that it wins contracts. More than that, Pay Tel wants the Commission to inflate rates artificially to a level that is more than two times Pay Tel's stated costs. Elevating a carrier's competitive position, to the detriment of consumers, is certainly is not the standard on which waivers are granted under the *Inmate Rate Order*, nor is it the Commission's job to help companies increase, or even maintain, market share. As Securus has stated, "[t]he Commission should not be 'picking winners and losers' in this manner."²⁰

To the extent that Pay Tel rightly complains that, in some instances, "the winning provider offered to pay commissions on interstate rates,"²¹ Securus gives its full sympathy. Securus also has lost contracts, both existing facilities and prospective ones, because the winning provider offered to pay interstate site commissions.²² That problem, however, is not one that can or should be solved by extending Pay Tel's waiver. Pay Tel is not asking for additional rate money in order to pay interstate commissions.²³ The question of other carriers' compliance with

¹⁹ The waiver affects every ICS provider in Pay Tel's territory as well as any ICS provider wishing to enter Pay Tel's territory.

²⁰ WC Docket No. 12-375, Securus Technologies, Inc. Petition to Expand Pay Tel Waiver at 7 (Feb. 19, 2014) (quoting CC Docket No. 98-147, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order, 16 FCC Rcd. 15435, 15438 ¶ 7 (2001) ("Indeed, we have previously recognized that, in adopting the 1996 Act, Congress consciously did not try to pick winners or losers, or favor one technology over another.")).

²¹ Petition at 15 n.62; *see also id.* n.63 ("Pay Tel lost four of those [10 recent bids] to vendors who were paying commissions on interstate calls[.]").

²² *See, e.g.*, WC Docket No. 12-375, Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC, at 1 (Sept. 26, 2014) (level of site commission, including on interstate calls, given 83.33% of scoring points in recent bid); Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC, Attachment (Aug. 15, 2014); Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC, at 1 (July 23, 2014).

²³ Pay Tel notes repeatedly that it does not and will not pay site commissions out of the \$0.46 rate. Petition at 9 (cap "reflects the elimination of interstate commissions from Pay Tel's

federal law is irrelevant to the Petition, but it is a question which can and should be addressed by the Commission in a different context.

The Petition says very little that is new. Notably, it does not include cost data or another “shortfall analysis”. Information already submitted in this docket amply disproves that Pay Tel needs the \$0.46 special rate. Pay Tel’s inability to change state regulations²⁴ that already permit rates well above Pay Tel’s reported costs and proposed caps is of no moment. Pay Tel already has, in Securus’s judgment, reaped enormous and unwarranted benefit from its special \$0.46 rate. The new Petition provides no basis on which to continue conferring that benefit.

Finally, Securus notes that the Bureau has set a comment deadline of November 12, 2014, with reply comments due November 19, 2014.²⁵ The waiver will already have expired by that time. Pay Tel thus asks for an immediate extension of the waiver “while the Petition is under consideration.”²⁶ That result would seem most unjust, because it was Pay Tel’s responsibility to file a petition with sufficient time to enable the Bureau to consider it. Pay Tel has no excuse for delaying this filing until October 31, 2014. To grant a *nunc pro tunc* extension would only reward Pay Tel for its delay and maintain a \$0.46 interstate rate that, as shown, is without justification.

interstate rates”), at 5 (“a commitment that ‘reflects the elimination of interstate commissions from Pay Tel’s interstate rates’”).

²⁴ See generally Petition, Declaration of Marcus W. Trathen ¶¶ 3-5 (Oct. 31, 2014) (discussing attempts to initiate new rate proceeding before North Carolina Utilities Commission).

²⁵ WC Docket No. 12-375, *Comment Sought on Pay Tel Communications, Inc. Petition for Extension of Waiver*, DA 14-1606 (Nov. 4, 2014).

²⁶ Petition at 1.

CONCLUSION

For these reasons, the Commission should deny the Petition, and the existing waiver should expire on November 11, 2014.

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CERTIFICATE OF SERVICE

I hereby attest that on this 5th day of November 2014, a true and correct copy of the foregoing Opposition to Pay Tel Communications, Inc.'s Petition for Extension of Waiver was served on the following persons via First Class * and electronic ** mail:

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