

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Rates for Interstate Inmate Calling Services)	WC Docket No. 12-375
)	

**PAY TEL COMMUNICATIONS, INC.’S REPLY TO
SECURUS OPPOSITION TO PETITION FOR EXTENSION OF
WAIVER OF INTERIM INTERSTATE ICS RATES**

Pay Tel Communications, Inc. (“Pay Tel”), through its attorneys, respectfully submits these reply comments in response to the Opposition of Securus Technologies, Inc.¹ to Pay Tel’s Petition for Extension of Waiver (“Extension Petition”), which Extension Petition Pay Tel submitted on October 31, 2014.² Pay Tel’s Extension Petition seeks extension of the waiver granted by the Bureau on February 11, 2014 (“Waiver Order”).³

In the Waiver Order, the Bureau granted Pay Tel a waiver (“Waiver”) providing limited, narrow relief from the interim rate cap on interstate calls adopted in the Commission’s *ICS Order* released September 26, 2013 in this docket.⁴ As explained in its original Waiver Petition⁵ and as reiterated in the Extension Petition, Pay Tel sought the Waiver and seeks extension thereof because it cannot recover its costs on a holding company level if it is required to charge

¹ Opposition of Securus Technologies, Inc. to Pay Tel Communications, Inc.’s Petition for Extension of Waiver, WC Docket No. 12-375 (Nov. 5, 2014) (“Securus Opposition”).

² Pay Tel Communications, Inc., Petition for Extension of Waiver, WC Docket No. 12-375 (Oct. 31, 2014) (“Extension Petition”).

³ *Rates for Interstate Inmate Calling Services*, Pay Tel Communications Inc.’s Petition for Waiver of Interim Interstate ICS Rates, WC Docket No. 12-375, Order, 29 FCC Rcd 1302 (WC Bureau 2014) (“Waiver Order”).

⁴ Report and Order and Further Notice of Proposed Rulemaking, *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, FCC 13-113 (rel. Sept. 26, 2013) (“*ICS Order*”).

⁵ Pay Tel Communications, Inc., Petition for Waiver of Interim Interstate ICS Rates, WC Docket No. 12-375 (Jan. 8, 2014) (“Pay Tel Waiver Petition” or “Waiver Petition”).

the *ICS Order*'s interim interstate rates.⁶ Because the *ICS Order*'s rate cap framework does not adequately address Pay Tel's demonstrated costs of providing ICS, waiver of the interim interstate rate caps was appropriate earlier this year when the Waiver was granted and remains so today.

Reply To Securus Opposition

Securus' Opposition grossly mischaracterizes the basis for Pay Tel's Extension Petition.

The problem recognized by the Bureau in granting Pay Tel the Waiver, of course, is that Pay Tel is faced with below-average-cost rate caps on local calls in the states representing the vast majority of Pay Tel's minutes-of-use.⁷ Because local calls are the predominant form of calling in jails, by far, the application of the interstate rate caps (which approximate Pay Tel's total average costs),⁸ when working in tandem with the below-cost intrastate rate restrictions, means that Pay Tel would be unable to recover the shortfall created by the below-average-cost local call rate caps on either a facility-by-facility or holding company level.⁹

Securus has previously acknowledged this very problem,¹⁰ and, in fact, it was purportedly the basis for Securus' own waiver petition submitted in this proceeding.¹¹ Securus' Waiver

⁶ See, e.g., *id.* at 12–19; Extension Petition at 17.

⁷ See, e.g., Waiver Order at ¶ 11 (“[T]he combination of its existing below-average-cost state ICS rates and the Commission’s interim rate caps, which accurately reflect [Pay Tel’s] average total company costs constitute ‘extraordinary circumstances’ that justify temporary waiver of the Commission’s rate caps, and . . . the waiver will be in the public interest.”).

⁸ See, e.g., *id.* (explaining that the interim rate caps “accurately reflect” Pay Tel’s “average total company costs”).

⁹ See, e.g., *id.* at ¶ 21 (implementing “limited, temporary waiver to ensure that Pay Tel recovers its total costs, on a holding company basis, for providing ICS”); Extension Petition at 5.

¹⁰ See Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375 (Mar. 4, 2014) (“As Securus has stated, it too will suffer a revenue shortfall under the Interim Rate Caps. Securus is subject to the same intrastate rate caps as Pay Tel, and its costs of service are in many cases much higher than Pay Tel’s.”) (citation omitted).

Petition, however, was denied by the Bureau because, contrary to the express requirements set forth in the *ICS Order*,¹² and contrary to the submission made by Pay Tel in support of its Waiver Petition, Securus did not demonstrate that its total revenue from ICS (including fees) was insufficient to cover any deficit resulting from the application of below-cost intrastate rate caps on local calls on a facility-by-facility, state, or company level,¹³ nor did Securus provide a robust demonstration of its costs of providing ICS and related service, nor did Securus provide audited financial statements indicating its overall profitability.¹⁴ In short, while Securus is subject, in some states, to the same rate caps on local calls as Pay Tel, unlike Pay Tel, Securus was unwilling or unable to demonstrate that the effect of the operation of intrastate rate restrictions was that it was unable to recover its costs considering all its revenue. (Of course, if Securus is now willing or able to make such a showing, the company would be entitled to a waiver as well.)

Despite the abundant record evidence regarding Pay Tel's intrastate revenue shortfall, the Bureau's reliance thereon in granting the Waiver, and Securus' own prior filings which seemingly understood same, Securus in its Opposition utterly misrepresents this issue. The Securus Opposition presents a table that purports to depict the "below-average-cost intrastate rate constraints' of which Pay Tel complained"¹⁵ The table completely mischaracterizes the

¹¹ Securus Technologies, Inc.'s Petition to Expand Pay Tel Waiver, WC Docket No. 12-375, at 6–7. (Feb. 19, 2014) ("Securus Waiver Petition").

¹² *Inmate Rate Order* at ¶ 74; *id.* at ¶¶ 82–84; nn. 60 & 224.

¹³ *Rates for Interstate Inmate Calling Services*, Order, WC Docket No. 12-375, DA 14-786, at ¶ 13 (June 6, 2014) ("[T]he Petition fails to provide sufficient evidence to establish that Securus' costs of providing ICS on a total company basis are higher than the Commission's rate caps or that it operates under state rate mandates that do not allow the company to recover its costs.").

¹⁴ *Id.* at ¶ 7 ("Unlike Pay Tel's waiver request, however, Securus' Petition was not supported by a comprehensive cost study, audited financial statements, or a detailed intrastate revenue shortfall analysis. Securus also did not claim that its financial viability was at risk absent a grant of the waiver request.").

¹⁵ Securus Opposition at 1–2.

problem identified by Pay Tel and understood by the Bureau—the below-cost rate caps and restrictions on *local calls* and their impact on Pay Tel’s ability to recover its costs if required to charge the *ICS Order’s* interstate rates. The rates depicted in Securus’ table are *not* local rates—they are intrastate long distance rates. Securus’ table has nothing to do with the problem that leads to Pay Tel’s intrastate shortfall, and, in turn, has nothing to do with why the Bureau granted the Waiver and should have no impact on the Bureau’s consideration regarding extension thereof.

Contrary to Securus’ portrayal in its Opposition, the below-cost local rate caps and restrictions that result in the intrastate shortfall,¹⁶ are as follows:

State	Local Call Rate	Average % Local Calls (as of Q2 2013)	Average % Local Calls (updated as of Q3 2014)
North Carolina	\$1.71 per call	85%	85%
Georgia	\$2.70 per call	71%	79%
Virginia	\$2.10 per call (avg.)	86%	76%
South Carolina	\$2.60 per call	74%	72%
Florida	\$2.25 per call	86%	81%

Given that Pay Tel’s demonstrated costs for a 15-minute call are approximately \$3.45/call (for a 15-minute call)¹⁷ and given that, as shown above, local calls are approximately 80% of Pay Tel’s total traffic, the problem presented as a result of moving interstate rates to Pay Tel’s costs is apparent. It is true that Pay Tel, in some states, is able to charge above-cost intrastate long distance rates, just as the local rates in some states are compensatory; however, these charges

¹⁶ Pay Tel Waiver Petition, at Exhibit D. *See also id.* at Exhibit E.

¹⁷ Pay Tel’s demonstrated costs for prepaid and debit calling, including voice biometric technology costs, are \$0.23/minute. *See, e.g.*, Letter from Marcus W. Trathen, Counsel for Pay Tel Communications, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 12-375, Attach. at 2 (July 23, 2013) (Pay Tel Cost Study).

have been fully accounted for in Pay Tel's shortfall analysis and netted against the intrastate shortfall resulting from below-average-cost caps on local calls.¹⁸ Pay Tel has supplemented its Extension Petition with an updated Intrastate Shortfall Analysis using current operational data that confirms the continued existence of the intrastate shortfall at the magnitude stated in Pay Tel's Extension Petition.¹⁹

Again, the problem identified by Pay Tel which gave rise to the Waiver is unrebutted by Securus: given that the vast majority of Pay Tel's facilities are located in areas subject to non-compensatory rates on the predominant form of calling in jails (local calls), and that, therefore the vast majority of Pay Tel's revenue is derived from those non-compensatory rates, the application of the interim rate caps on interstate calls in conjunction with the below-cost rates would prevent Pay Tel from recovering its total company costs.

Securus also references the cost data supplied by Pay Tel in response to the FCC's Mandatory Data Collection as well as Pay Tel's Ethical Proposal and argues that, because the rates therein are below the Waiver Order's \$0.46/minute rate on interstate calls, Pay Tel's own data shows the Waiver rate is no longer needed.²⁰ Again, Securus' arguments mischaracterize the record.²¹ Pay Tel's costs as reflected in the Mandatory Collection are reflective of its costs of

¹⁸ See, e.g., Pay Tel Waiver Petition, at Exhibit B (intrastate shortfall analysis); see also, e.g., Letter from Marcus W. Trathen, Counsel to Pay Tel, to Marlene H. Dortch, Secretary, FCC (Jan. 16, 2014), at attachments (Revised Intrastate Shortfall Analysis and letter explaining same).

¹⁹ See Letter from Marcus W. Trathen, Counsel to Pay Tel, to Marlene H. Dortch, Secretary, FCC (Nov. 11, 2014), at Exhibit A (Updated Intrastate Shortfall Analysis).

²⁰ Securus Opposition at 2–3.

²¹ Securus also claims that the \$0.46/minute rate is “more than double” what every other ICS provider in the country is charging. Securus Opposition at 3. However, Securus' claim disregards fees and the cost of “Single Call” programs. If a consumer made just two calls under Securus' Single Call program—a situation which is likely to occur in the jail context where inmates are being held on a temporary basis and need immediate phone access to make bail arrangements and the like—Securus' total charges will exceed Pay Tel's charges, even under the waiver.

all calls—not just a particular call type. Moreover, the rate cap proposals for jails set forth in Pay Tel’s Ethical Proposal expressly state that they are “‘postalized’ per-minute rates applicable to *all intrastate and interstate calls.*”²² Indeed, just as Pay Tel is unable to recover its costs on a holding company level because of the operation of the below-cost local rates in conjunction with the at-cost interstate rates, the shortfall problem would be eliminated with the postalized rate solution that Pay Tel proposes applied to call calls. Securus’ reliance on such figures, then, further demonstrates its misunderstanding of the reason Pay Tel is unable to fully recover its costs, which full recovery is required not only by *ICS Order*,²³ but also, of course, by Section 276.²⁴

Securus further complains that Pay Tel’s acknowledgment that it has stopped serving five facilities and has failed to win any new facilities since grant of the Waiver is tantamount to a request from Pay Tel that the “Commission . . . ensure that it wins contracts.”²⁵ Pay Tel is not seeking extension of the Waiver in order to win more contracts; it is seeking an extension so that it can stay in business. Pay Tel cites to its real-world experience in its Extension Petition as evidence that Pay Tel has not gained some purported “competitive advantage over every other ICS carrier in the country,” as Securus asserts.²⁶ To the contrary, Pay Tel, even with the Waiver, has been forced in the cited instances to cease the very service the provision of which the Bureau

²² Ethical Proposal for Reform of Inmate Calling Rates and Fees Submitted by Pay Tel Communications, Inc., WC Docket No. 12-375, at 1 (Oct. 3, 2014) (emphasis added).

²³ See, e.g., *ICS Order* at ¶¶ 82–84.

²⁴ 47 U.S.C. § 276(b)(1)(A). As the Commission explained in the *Inmate Rate Order*, “section 276 directs the Commission to ‘establish a per call compensation plan to ensure that all payphone service providers’—which the statute defines to include providers of ICS—‘are fairly compensated for each and every completed intrastate and interstate call.’” *Inmate Rate Order* at ¶ 14.

²⁵ Securus Opposition at 5.

²⁶ *Id.*

previously recognized as being firmly in the public interest.²⁷ Moreover, the Waiver in some ways constrains Pay Tel in ways that have been exploited by its competitors given that other providers are apparently willing to pay site commissions on interstate rates and/or impose aggressive fees on consumers.

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Respectfully submitted,

PAY TEL COMMUNICATIONS, INC.



By:

Marcus W. Trathen
Timothy G. Nelson
BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
Suite 1600
Wells Fargo Capitol Center
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304
mtrathen@brookspierce.com
tnelson@brookspierce.com

²⁷ Waiver Order at ¶ 16.