

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

Rates for Interstate Inmate Calling Services

WC Docket No. 12-375

**SECURUS TECHNOLOGIES, INC. REPLY COMMENTS  
ON PAY TEL COMMUNICATIONS, INC.'S  
PETITION FOR EXTENSION OF WAIVER**

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Dated: November 19, 2014

Securus Technologies, Inc. (“Securus”), through counsel and pursuant to 47 C.F.R. §§ 1.3, 1.415, and 1.419, and the Public Notice,<sup>1</sup> files these Reply Comments on Pay Tel Communications, Inc.’s Petition for Extension of Waiver filed October 31, 2014 (“Petition”). The relief that Pay Tel seeks – a better competitive position and guaranteed market share – is not the Commission’s responsibility to give, nor is it consumers’ responsibility to fund. Pay Tel’s late-filed purported showing of an “unsustainable deficit”, posted after Comments were due,<sup>2</sup> cannot overcome record evidence that Pay Tel’s costs are only \$0.1967 per minute and its intrastate long distance rates are so far in excess of costs that Pay Tel cannot be deemed in jeopardy “at the holding company level.”<sup>3</sup> The existing waiver should be deemed expired as of November 11, 2014,<sup>4</sup> and no further waiver should be granted.

### **DISCUSSION**

As Securus stated, the Petition contained no cost data or financial analysis.<sup>5</sup> The bulk of the Petition simply repeated stale data from the January Petition<sup>6</sup> along with conclusory statements about Pay Tel’s “untenable situation”<sup>7</sup> and that it might “substantially curtail its

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<sup>1</sup> WC Docket No. 12-375, Comment Sought on Pay Tel Communications, Inc. Petition for Extension of Waiver, DA 14-1606 (Nov. 4, 2014).

<sup>2</sup> WC Docket No. 12-375, Supplement to Waiver Request at 2 (Nov. 11, 2014) (posted Nov. 14, 2014) (“Supplement”); Letter from Marcus Trathen, Pay Tel Counsel, to Marlene H. Dortch, FCC (filed Nov. 13, 2014) (“Ex Parte”).

<sup>3</sup> WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-113, 28 FCC Rcd. 14107, 14153 ¶ 83 (2013) (“*Inmate Rate Order*”).

<sup>4</sup> WC Docket No. 12-375, Order, DA 14-187 ¶ 22 (WCB Feb. 11, 2014) (“*Waiver Order*”).

<sup>5</sup> WC Docket No. 12-375, Opposition of Securus Technologies, Inc. to Pay Tel Communications, Inc.’s Petition for Extension of Waiver at 6 (Nov. 5, 2014) (“Securus Opp.”).

<sup>6</sup> WC Docket No. 12-375, Pay Tel Communications, Inc. Petition for Waiver of Interim Interstate ICS Rates at 1 (Jan. 8, 2014) (“January Petition”).

<sup>7</sup> Petition at 13.

operations.”<sup>8</sup> Then Pay Tel recounted the Requests for Proposal that it has lost,<sup>9</sup> revealing that Pay Tel’s need for the \$0.46 rate – which is 219% of what any other ICS provider can charge and 240% of Pay Tel’s actual per-minute costs<sup>10</sup> – lies in Pay Tel’s desire to maintain competitive advantage.<sup>11</sup>

On November 14, 2014, after Comments on the Petition were due, the Commission posted Pay Tel’s Supplement containing an “Updated Shortfall Analysis”; Pay Tel also filed the Ex Parte, containing a new Financial Statement, which was posted on the same day.<sup>12</sup> Every financial and cost figure in the 13-page Financial Statement is redacted. And now Pay Tel asserts that its profit margin in 2013 was 1.3%.<sup>13</sup> It also notes that an “extraordinary expense” was incurred, for which no description of any kind was given.<sup>14</sup>

Pay Tel is simply abusing the waiver process and the Bureau’s good will. It seeks a *nunc pro tunc* extension back to November 11 but did not even submit the requisite data – after Securus remarked upon its absence – until November 11 and 13. Based on this effort, Pay Tel expects the continuation of unique regulatory treatment and Commission-sanctioned rate inflation in order that Pay Tel’s future bids will be competitive.

Moreover, Pay Tel’s dilatory conduct is evidenced not only in the Petition but

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<sup>8</sup> Petition at 3 (quoting January Petition at 2).

<sup>9</sup> Petition at 14-15.

<sup>10</sup> Securus Opp. at 2-3.

<sup>11</sup> *See id.* at 3-4.

<sup>12</sup> *See supra* n.2. Securus was not served with these materials despite having filed an Opposition on November 5, 2014.

<sup>13</sup> Pay Tel Ex Parte at 2.

<sup>14</sup> *Id.*

also, as Global Tel\*Link observed,<sup>15</sup> in its complete failure to address its purported problems without resort to inflated calling rates. Pay Tel was aware of the Interim Rate Caps on September 26, 2013, when the *Inmate Rate Order* was issued. Pay Tel also was aware on that date of the prohibition on paying site commissions on interstate rates. And Pay Tel stopped paying those site commissions.<sup>16</sup> It stretches credulity to assert that Pay Tel could so easily begin depriving its correctional facilities of site commission revenue but could not renegotiate terms which forced Pay Tel to charge “below-cost” rates.<sup>17</sup> It is passing strange that a city or county jail would refuse to permit Pay Tel to raise its local call rates when that call revenue is among the only assessable revenue left for paying site commissions.

The “below-cost” rates of which Pay Tel complains, we now know,<sup>18</sup> actually are only the local call rates: Pay Tel’s intrastate long distance rates are orders of magnitude higher than its costs of service, ranging from \$4.10 to \$10.85 for a 15-minute call.<sup>19</sup>

The new Petition lists the few meetings that Pay Tel has taken with the Staff of the North Carolina Utilities Commission and Georgia Public Service Commission regarding intrastate calling rates.<sup>20</sup> Six total contacts were made between February and April 2014, with

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<sup>15</sup> See generally WC Docket No. 12-375, Opposition of Global Tel\*Link Corporation to Pay Tel Communications, Inc.’s Petition for Extension of Waiver (Nov. 12, 2014); Opposition of Global Tel\*Link Corporation to Pay Tel Communications, Inc.’s Supplement to Its Petition for Extension of Waiver (Nov. 17, 2014).

<sup>16</sup> See, e.g., January Petition at 5, 9; *Waiver Order* ¶¶ 17, 19.

<sup>17</sup> E.g., Petition at 14.

<sup>18</sup> 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 at 1, 4 (Nov. 13, 2014).

<sup>19</sup> Securus Opp. at 2.

<sup>20</sup> Petition, Declaration of Vincent Townsend ¶ 9 (Oct. 31, 2014), Declaration of Marcus W. Trathen ¶¶ 3-4 (Oct. 31, 2014).

one meeting on October 27, 2014, just days before the new Petition was filed.<sup>21</sup> Pay Tel nonetheless presents its situation as quite dire. But it seems that the comfort of the \$0.46 waiver, and an apparent confidence that the Bureau will extend that waiver, have left Pay Tel with little motivation to work harder to save itself. That fact is no more apparent than in Pay Tel's having filed the Petition only 11 calendar days before the existing waiver expired.

Inmates and called parties from each of Pay Tel's approximately 184 facilities<sup>22</sup> should not continue to bear the price of Pay Tel's complacency. From the "shortfall analyses" it is clear that Pay Tel has allowed its allegedly "untenable" predicament<sup>23</sup> to worsen.<sup>24</sup> And it bears repeating that every ICS provider has suffered revenue shortfalls under the Interim Rate Caps, even those like Securus that no longer pay interstate site commissions. As such, the burden on Pay Tel's customers should not be prolonged.

The skewing of competition in the ICS market, which Securus predicted,<sup>25</sup> also must be brought to an end. Pay Tel admits that it has, since receiving the waiver, "made certain programming changes and introduced new calling options at some facilities that have contributed to the increased interstate revenues, in conjunction with operation of the Waiver."<sup>26</sup> It is inarguable that the additional revenue Pay Tel gained via its special rate has funded these

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<sup>21</sup> Petition, Affidavit of Newton M. Galloway ¶ 6 (Oct. 29, 2014).

<sup>22</sup> January Petition at 2 n.4.

<sup>23</sup> Petition at 13.

<sup>24</sup> Pay Tel reports an expected "net intrastate shortfall of \$1,676, 915" for 2015, Supplement at 2, compared to its reported \$1,666,412 shortfall for 2014. WC Docket No. 12-375, Letter from Marcus W. Trathen, Pay Tel Counsel, to Marlene H. Dortch, FCC, at 1 (Jan. 16, 2014).

<sup>25</sup> "It is axiomatic that permitting Pay Tel to realize almost double the interstate calling revenue of other ICS carriers will provide it with additional funds to develop new services and technology to enhance its competitive position. The other ICS carriers will not have that excess revenue." WC Docket No. 12-375, Securus Petition to Expand Pay Tel Waiver at 7 (Feb. 19, 2014) (denied by Order DA 14-786).

<sup>26</sup> Petition at 14 n.61.

enhancements. Nine months of this favorable regulatory treatment is long enough.

**CONCLUSION**

For all these reasons, the Commission should deny the Petition, and the existing waiver should be deemed to have expired on November 11, 2014.

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**CERTIFICATE OF SERVICE**

I hereby attest that on this 19th day of November 2014, a true and correct copy of the foregoing Reply Comments on 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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