

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

Rates for Interstate Inmate Calling Services

WC Docket No. 12-375

**REPLY COMMENTS OF SECURUS TECHNOLOGIES, INC.
ON SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

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SUMMARY

The ICS Industry Proposal remains the best and most record-based answer to the complex ratemaking and public policy issues that are inherent in Inmate Calling Services (“ICS”). Its proposed rate of \$0.20 per minute for debit calls and \$0.24 per minute for collect calls is rooted squarely in the cost data which carriers submitted in the 2014 Mandatory Data Collection, and recognizes that some level of monetary site commissions may be appropriate to reimburse correctional facilities for costs – for which the Commission now is receiving quantified data – of making telephones available for inmates. Those site commissions would require, however, an additive rate component, because site commission payments were excluded from carriers’ cost calculations pursuant to the Commission’s instructions.

Challenges that parties have made to the Proposal are ineffective. Either they rely on economic analysis that lacks credible methodology or they are born more of competitive posturing than sound policy. Indeed, those flaws also are found in the Pay Tel “jail v. prisons” proposal as well, a construct that not one other party supports. The attached FTI Consulting, Inc. Response to Second Further Notice Declaration of Coleman Bazelon and Expert Report of Don J. Wood explains in more detail the flawed economic analysis beneath our opponents’ positions.

Pleas to eliminate or slash transaction fees for optional payment methods are puzzling. As Securus has shown through sworn testimony, it incurs substantial costs – often from third-party payment processors – to enable payors to use these optional payment methods. Securus allows and will continue to allow payors to use free payment methods, like sending a check or money order, but has invested considerable resources in expanding customers’ options for obtaining ICS. These options also enable inmates to place calls immediately. Parties who urge the Commission to prohibit these options, or to price them at below-cost levels, are actually

asking to decrease inmates' ability to make telephone calls. They have no reasonable basis for seeking this unfortunate result.

The record also supports the Commission's proposed two-year transition period, particularly due to the complexity of implementing a means for reimbursing correctional facilities for their ICS-related costs. Some correctional authorities even request full grandfathering of existing contracts. Having received information about the difficulty and confusion that occurred during implementation of the *Inmate Rate Order*, the Commission now has ample reason to adopt a more measured approach now.

Finally, the proposed rule requiring officers' certification of compliance has met absolutely no opposition. Adoption of this certification requirement as a distinct, independent rule will resolve any concerns regarding the stay of Rule 64.6060 and will make it more clear that ICS providers must comply with all aspects of the forthcoming rates and rules.

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Securus Technologies, Inc. (“Securus”), through counsel and pursuant to 47 C.F.R. § 1.415, files these Reply Comments in response to the Second Further Notice of Proposed Rulemaking released October 22, 2014, in this docket (“Second FNPRM”). Review of this record shows that the ICS Industry Proposal remains the best, most sound method for achieving the Commission’s goals in this proceeding. As Securus explains herein, attempts to refute that conclusion fail, being based in unsound economic analysis or on an intent to achieve competitive advantage.

I. THE RECORD SUPPORTS ADOPTION OF A COST RECOVERY METHOD FOR NECESSARY SITE COMMISSIONS

Several correctional authorities have submitted comments and letters explaining how vital is the money they receive from monetary ICS site commissions. Securus,¹ along with Global Tel*Link and Telmate,² continues to support the adoption of a method, which presently is prohibited for interstate calls, by which facilities can be reimbursed for the direct costs they incur in order to make telephones both available and safe.³ Assertions that Securus has demanded the elimination of site commissions are false.⁴

¹ WC Docket No. 12-375, Comments of Securus Technologies, Inc. on Second Further Notice of Proposed Rulemaking at 11-13 (Jan. 12, 2015) (“Securus 2d FNPRM Comments”).

² WC Docket No. 12-375, Letter from Securus, Global Tel*Link Corporation, and Telmate, LLC to Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O’Rielly (Sept. 15, 2014) (“ICS Industry Proposal”). In sponsoring and supporting the ICS Industry Proposal as a “comprehensive framework for ICS regulation,” Securus 2d FNPRM Comments at 8, Securus does not waive any argument as to the Commission’s jurisdiction and authority. *See id.* at 25; *see also* WC Docket No. 12-375, Comments of Securus Technologies, Inc. at 2-7, 20-21 (Dec. 20, 2013).

³ ICS Industry Proposal at 3 (“The parties’ proposal supports the recovery of legitimate costs incurred by correctional facilities that are directly related to the provision of inmate calling services. ... the industry looks to the FCC to determine the appropriate amount or percentage that should be included in ICS rates for such payments to correctional facilities[.]”).

⁴ “The Joint Provider Reform Proposal recommended elimination of commissions[.]” WC Docket No. 12-375, Comments of Network Communications International Corp. at 12 (posted

Many letters have been filed that appear to have been inspired by the template letter which Securus recently received and discussed with FCC Staff in *ex parte* meetings.⁵ These letters provide a list of tasks, with some variations, that correctional facility employees regularly perform for the ongoing operation of inmate telephone systems. Securus has provided the Commission a chart identifying which of these tasks Securus itself performs and which tasks typically are done by facilities;⁶ of the 25 tasks in the draft letter, 5 of them are handled by facilities in Securus's experience. Tasks such as "maintaining phones and monitoring maintenance of phones" and "bandwidth costs for offering and administering inmate phone platform," for example, are squarely within Securus's contractual obligations.⁷

Other correctional authorities have attempted to quantify their direct costs and explain their origin, such as the labor costs involved in monitoring calls and in enrolling inmates in the telephone system.⁸ Although Securus lacks foundation to opine on those figures, it will

Jan. 12, 2015) ("NCIC Comments"). It is notable that one carrier, Consolidated Telecommunications, urges the Commission to permit payment of monetary site commissions on the ground that it competes on the basis of site commissions. WC Docket No. 12-375, Comments of Consolidated Telecom, Inc. at 3 (Dec. 22, 2014) ("CTEL Comments") ("Eliminating cite [*sic*] commissions, in connection with rate caps and an essentially symbolic reduction of some ancillary charges, will make it much more difficult for smaller ICS providers to compete."). It is this type of market skewing that Securus has criticized, and not the fact that correctional facilities simply seek reimbursement for the direct costs of making ICS available. *See* Securus 2d FNPRM Comments at 12.

⁵ As of January 27, 2015, 27 variations of this draft letter have been filed by county jails and state jail associations.

⁶ *E.g.*, WC Docket No. 12-375, Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC, Attachments 1 and 2 (Dec. 8, 2014) (providing notice of meeting with several Staffpersons in the Pricing Policy Division of the Wireline Competition Bureau). The draft letter was provided to correctional authorities across the country by another ICS provider. *Id.* at 2.

⁷ *Id.*, Attachment 1.

⁸ *E.g.*, WC Docket No. 12-375, Comments of Cook County, Illinois, Exhibit at 1 (Jan. 12, 2015); Letter from Jim McDonnell, Sheriff of Los Angeles County, to Marlene H. Dortch, FCC, at 1 (Jan. 9, 2015); Letter from John McMahon, Sheriff-Coroner of San Bernadino County, to

note that such “demonstrated internal, direct costs of enabling inmate access to telephones” are those for which the Commission should permit reimbursement via monetary site commissions.⁹ “Equally important,” however, is that “ICS providers must be allowed to recoup monetary site commissions in rates.”¹⁰

Funding for inmate welfare programs is a concern for many correctional authorities who responded to the Second FNPRM.¹¹ Securus itself has brought this issue to the fore in the course of the Commission’s review of ICS.¹² This public policy question is outside Securus’s purview. In addition, the costs imposed by the monetary site commissions which fund inmate welfare programs are outside the scope of the Securus Cost Data, as the initial Comments

Marlene H. Dortch, FCC, at 1 (Nov. 24, 2014).

⁹ Securus 2d FNPRM Comments at 12.

¹⁰ *Id.* at ii.

¹¹ WC Docket No. 12-375, Comments of Chief Probation Officers of California at 2 (Jan. 5, 2015); Comments of Kern County Sheriff’s Office at 2 (Jan. 5, 2015); Comments of Orange County Sheriffs Department at 1 (Jan. 6, 2015); Comments of Riverside County Sheriffs Department at 3 (Dec. 30, 2014); Letter from April Grady, Contracts Management Bureau Chief, Montana Department of Corrections, to FCC at 2 (Dec. 31, 2014) (“Montana DOC Letter”).

¹² WC Docket No. 12-375, Reply Comments of Securus Technologies, Inc. at 13 (Apr. 22, 2013) (quoting, *inter alia*, Comments on Proposed Rule Making by the Louisiana Department of Public Safety & Corrections at 4 (Mar. 25, 2013); Letter from Keith Royal, President, Cal. State Sheriffs’ Ass’n, to Marlene H. Dortch, FCC, at 1-2 (Mar. 22, 2013)).

explain.¹³ Praeses, the consulting company that negotiates and manages ICS contracts,¹⁴ asserts that its correctional facility clients incur “significant and variable ICS costs”¹⁵ as follows:

- \$0.18 per minute on average
- \$1.88 per call on average
- \$34.46 per inmate on average¹⁶

If the Commission wishes to ensure that facilities recoup these costs from their contracted ICS provider, the forthcoming rate caps must include an additive cost recovery component that will ensure that ICS providers recoup those payments.

The recent order from the Alabama Public Service Commission (“AL PSC”)¹⁷ merits discussion with regard to this issue. The Second FNPRM makes frequent reference to the work that the AL PSC has done with regard to ICS rates and transaction fees.¹⁸ The AL PSC recently approved a new rate regime involving a multi-year, step-down reduction; the final rates for state prisons mirror the FCC’s Interim Rate Caps.¹⁹ One party notes that, even having

¹³ Securus 2d FNPRM Comments at 13, 35-36.

¹⁴ *E.g.*, WC Docket No. 12-375, Letter from Stephanie A. Joyce, Counsel to Securus, to Julie Veach, Chief, Wireline Competition Bureau, at 4-5 (July 30, 2014); Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC, at 2 (May 15, 2014) (providing notice of ex parte meeting with Staffpersons of the Pricing Policy Division of the Wireline Competition Bureau). Praeses does not dispute that its fees are paid, at least in part, out of the site commission revenue that it extracts from ICS providers. *See* WC Docket No. 12-375, Comments of Praeses LLC at 3 n.3 (Jan. 12, 2015) (“Praeses Comments”).

¹⁵ Praeses Comments at 35.

¹⁶ *Id.* Praeses recommends that the FCC “develop a standardized, comprehensive cost survey to be completed by Facilities” in order to calculate more precisely the amount of cost recovery that the new rules should allow. *Id.* at 36.

¹⁷ Docket 15957, *Generic Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Service*, Further Order Adopting Revised Inmate Phone Service Rules (Ala. Pub. Serv. Comm’n Dec. 9, 2014) (“AL PSC Order”).

¹⁸ *E.g.*, Second FNPRM ¶¶ 18, 25, 69.

¹⁹ AL PSC Order Section 6.23.

adopted those law rates, “Alabama still permits commission payments,” and argues that this anomaly proves that carriers remain able to pay commissions out of the new, lower rates.²⁰ That argument is incorrect. Securus²¹ and Global Tel*Link²² have each appealed the AL PSC Order in part on the ground that it was unreasonable and unjust to set rates at or close to the FCC Interim Rate Caps unless the Alabama Commission will also adopt the FCC’s prohibition on assessing interstate site commissions.²³ The Alabama Supreme Court stayed the AL PSC Order on December 30, 2015, and the AL PSC then stayed its order, on its own motion, during its open meeting held January 6, 2015. That Order is both deeply flawed and is not in effect; it is not evidence of any carrier’s ability to pay site commissions out of rates that are \$0.21/\$0.24 per minute.²⁴ Securus also notes that the AL PSC record contains no cost information, nor was any

²⁰ NCIC Comments at 12. NCIC criticizes the ICS Industry Proposal on the ground that its sponsors “dominate” the ICS market with “extensive security products.” WC Docket No. 12-375, Letter from Glenn S. Richards, Counsel to NCIC, to Marlene H. Dortch, FCC (Notice of Ex Parte Communication), Attachment at 2 (Jan. 23, 2015). Securus will not opine whether any carrier in this market is “dominant”, but notes that having “extensive security products” demonstrates the breadth of a carrier’s investment and commitment in competing on the appropriate basis of quality and service.

²¹ *Securus Techs., Inc. v. Ala. Pub. Serv. Comm’n*, No. 1140266 (Ala. Sup. Ct. filed Dec. 16, 2014).

²² *E.g., Global Tel*Link Corporation v. Ala. Pub. Serv. Comm’n*, No. 1140284 (Ala. Sup. Ct. filed Dec. 22, 2014). CenturyLink filed a Motion for Reconsideration with the AL PSC on January 2, 2015.

²³ Securus raised several more grounds for appeal, including that the Order exceeds the AL PSC’s jurisdiction in its attempt to regulate patents, transaction fees and video services, is contrary to record evidence, and interferes with contracts.

²⁴ Securus does not pay site commissions on interstate calls. *E.g.*, WC Docket No. 12-375, Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC, at 1 (Apr. 24, 2014).

requested during that Alabama proceeding, and thus assertions that site commissions are not a significant factor in inflating calling rates are baseless.²⁵

The cost recovery method that the ICS Industry Proposal suggests²⁶ should be, as Securus has explained, an additive rate component adopted in addition to per-minute rate caps. As Securus has stated, the Proposal is based on the cost data submitted in the 2014 Mandatory Data Collection which does not include site commissions.²⁷ If the Commission decides to permit site commissions once again to be a component of ICS rates, the cost recovery mechanism should be an independent rate component derived from the cost figures that the FCC receives from correctional authorities.

II. THE RECORD SHOWS THAT A “JAILS v. PRISONS” RATE STRUCTURE IS UNWARRANTED, UNREASONABLE, AND DISCRIMINATORY

As Securus has explained, the forthcoming rate caps must be set higher than ICS carriers’ average costs to avoid adopting below-cost, unlawful rates.²⁸ In addition, each carrier’s average cost, as reported in the 2014 Mandatory Data Collection, must be covered by the forthcoming rate caps.²⁹ The Commission’s stated goal is to erect a regulatory “backstop”³⁰ and

²⁵ The AL PSC filed an “Ex Parte Presentation” on January 16, 2015, which appears simply to be late-filed Comments, stating that “[i]f the [FCC] means that excessive inmate calling rates are primarily the result of site commission payments, the APSC does not fully agree with the Commission’s observation.” Ala. Pub. Serv. Comm’n Ex Parte Presentation Response to Second Further Notice of Proposed Rulemaking at 2 (Jan. 16, 2015).

²⁶ ICS Industry Proposal at 2 (discussing “admin-support payment”).

²⁷ Securus 2d FNPRM Comments at 35.

²⁸ *Id.* at 16-17; *see also id.* at 11 (citing *Alabama Cable Telecomms. Ass’n, Comcast Cablevision of Dothan, Inc. v. Alabama Power Co.*, 16 FCC Rcd. 12209, 12232 ¶ 51 (2001); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd. 11754, 11757 ¶ 10 (1996)).

²⁹ *See* Securus 2d FNPRM Comments at 14.

³⁰ Second FNPRM ¶ 47.

allow competition – a “market-based solution”³¹ – to press rates down further where a site’s cost structure allows. For this reason, the Commission should be wary of relying on a simple average of ICS per-minute costs as the core basis of the forthcoming rate caps; that cap would immediately put several carriers “in a below-cost situation.”³²

The record does not support adoption of the “jails v. prisons” structure that Pay Tel continues to advance. Securus demonstrated in its Comments that “the label on the facility’s front door”³³ does not correctly identify a facility as large or small,³⁴ and thus the terms “jail” and “prison” are not reliable predictors of call volume which is, as Securus stated, “the appropriate determining factor” when setting rates that properly recover a carrier’s costs.³⁵

As an initial matter, Pay Tel’s criticism of the ICS Industry Proposal on the ground that it is “one-size-fits-all” applies equally to Pay Tel’s own proposal.³⁶ Pay Tel wants a “one-size-fits-all” rate for every DOC system in the country. Securus showed in its Comments,

³¹ Second FNPRM ¶¶ 6, 27, 47.

³² Securus 2d FNPRM Comments at 15.

³³ *Id.* at 19.

³⁴ *Id.* at 20-23 (Table).

³⁵ *Id.* at 19, 23. Securus previously has supported a tiered rate structure based on minutes and/or size of facility, but believes that such rates would be too complex and confusing, and may invite “gaming” whereby a carrier disaggregates a facility into smaller parts in order to charge higher rates. WC Docket No. 12-375, Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC, at 1 & Att. (Aug. 15, 2014) (providing notice of communication with Kalpak Gude, Chief, Pricing Policy Division); Securus May 15 *Ex Parte* (“may introduce unhelpful complexity to the market and create customer confusion”) (providing notice of *ex parte* communication with Staffpersons in the Pricing Policy Division of the Wireline Competition Bureau); Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC, at 2 (Apr. 24, 2014) (providing notice of communication with Staffpersons in the Pricing Policy Division of the Wireline Competition Bureau).

³⁶ *E.g.*, WC Docket No. 12-375, Comments of Pay Tel Communications, Inc. in Response to Second Further Notice of Proposed Rulemaking at 2 (Jan. 12, 2015) (“Pay Tel 2d FNPRM Comments”).

however, that some DOCs are much smaller than many city and county jails.³⁷ Apparently a “one-size-fits-all” approach is acceptable for carriers other than Pay Tel who does not compete for state contracts.

With regard to the merits of the proposal, no other commenting party supports the blunt, facile “jails v. prisons” that Pay Tel, which serves only jails, defends as “ethical”.³⁸ Inmate Calling Solutions, for example, finds Pay Tel’s proposal “unreasonable”³⁹ for largely the same reason that Securus opposes it, and notes that the proposal “is difficult to understand ... until you consider the fact that Pay Tel does not serve any prison facilities nor does it even compete for prison business.”⁴⁰ At most, Martha Wright and her joint commenters are willing to accept a rate structure that separates “prisons, and ... jails with more than 350 beds” from “smaller jails with fewer than 350 beds.”⁴¹ That Pay Tel’s proposal was plainly rejected by commenting parties only further demonstrates its obvious weakness: “jails v. prisons” is far too imprecise a metric on which to base a bifurcated rate cap and, as such, will result in rates that

³⁷ Securus 2d FNPRM Comments at 20-23.

³⁸ WC Docket No. 12-375, Pay Tel Communications, Inc. Ethical Proposal for Reform of Inmate Calling Rates and Fees (Oct. 3, 2014).

³⁹ WC Docket No. 12-375, Comments of Inmate Calling Solutions, LLC at 21 (Jan. 12, 2015) (“ICSolutions Comments”). “We find such a recommended variance unreasonable, especially considering that there are several prisons and even entire DOC’s that have lower inmate populations than the same jails which Pay Tel recommends rate caps as much as 175% higher.” *Id.*

⁴⁰ ICSolutions Comments at 21. Securus raised this issue in its Comments, noting that Pay Tel lacks standing to propose a rate to which it never will be subject. Securus 2d FNPRM Comments at 18-19 (quoting *Doe Run Res. Corp. v. EPA*, 528 App’x 1, 2-3 (D.C. Cir. 2013); *New York Reg’l Interconnect, Inc. v. FERC*, 634 F.3d 581, 587 (D.C. Cir. 2011)).

⁴¹ WC Docket No. 12-375, Comments of Martha Wright, *et al.* at 14 (Jan. 12, 2015).

unjustifiably treat inmates differently. The bifurcated rate cap would be unlawfully discriminatory.⁴²

What is confusing about Pay Tel’s proposed rate structure is this: Pay Tel now seeks a unified rate of \$0.22/\$0.26 per minute based on jail size, but it presently charges \$0.46 per minute for all interstate calls from all, or nearly all, of its 184 facilities,⁴³ having convinced the FCC that intrastate local and long-distance rates in its territory are below cost.⁴⁴ Indeed, Pay Tel has petitioned for an extension of that special \$0.46 rate and continues to argue that the \$0.21/\$0.24 Interim Rate Caps would force Pay Tel to “go out of business altogether.”⁴⁵ Securus has shown that Pay Tel presently charges the following intrastate long-distance rates:⁴⁶

	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

⁴² See Securus 2d FNPRM Comments at 23-24.

⁴³ 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 January Petition”).

⁴⁴ WC Docket No. 12-375, Order, DA 14-187 (WCB Feb. 11, 2014) (granting Pay Tel a waiver of the Interim Rate Caps until November 11, 2014).

⁴⁵ WC Docket No. 12-375, Pay Tel Communications, Inc.’s Petition for Extension of Waiver at 2 (Oct. 31, 2014). The alternative, Pay Tel argues, is to “substantially curtail its operations, most likely by terminating service at its smallest facilities.” *Id.* (quoting Pay Tel January Petition at 2).

⁴⁶ WC Docket No. 12-375, Opposition of Securus Technologies, Inc. to Pay Tel Communications, Inc.’s Petition for Extension of Waiver at 2 (Nov. 5, 2014) (“Securus Opp. to Pay Tel Petition for Extension”) (citing Pay Tel 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
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

Pay Tel told and continues to tell the Commission that, even with these intrastate long-distance rates,⁴⁷ the \$0.21/\$0.24 Interim Rate Caps would put it out of business. In the larger rulemaking, however, Pay Tel seeks a unified rate of \$0.22/\$0.26 per minute *for all calls*, in which case these intrastate rates would be preempted. These simultaneous positions seem almost diametrically opposed, raising the question whether either of them is credible.

That anomaly aside, Pay Tel attempts to buttress its proposal with a flurry of statistics regarding jail population that only further demonstrate how imprecise is the “jails v. prisons” construct.⁴⁸ Pay Tel relies on the study “Jail Inmates at Midyear 2013 – Statistical Tables” compiled by the Bureau of Justice Statistics in the U.S. Department of Justice (“Midyear Report”).⁴⁹ This study reports population figures that Securus has summarized in tabular form:

⁴⁷ According to the cost data that it submitted to the Commission in response to the Mandatory Data Collection, Pay Tel’s nationwide, average cost per minute in 2013 was \$0.1967, and for 2014 was projected to be \$.2011. That equates to costs of \$2.95 and \$3.02 for a 15-minute call. Securus Opp. to Pay Tel’s Petition for Extension at 2. Pay Tel’s intrastate long distance rates are approximately two to four times its costs.

⁴⁸ Pay Tel 2d FNPRM Comments at 11-13, 20-21, 38.

⁴⁹ *Id.* at 12-13.

Jurisdiction Size	Percentage Of Inmate Population Held	Percentage Of Jail Jurisdictions With This ADP
ADP of less than 50	3% ⁵⁰	38%
ADP 50 to 99	5%	20%
ADP 100 to 249	13%	20%
ADP 250 to 499	14%	17% when combined with jurisdictions with an ADP of 500 to 999 ⁵¹
ADP 500 to 999	17%	See above
ADP 1,000 or more	48%	6%

The Midyear Report thus shows that a significant number of city/county jails are “mega-jails”, to use Pay Tel’s term,⁵² and approximately double that number range from quite large jails to “mega-jails”. In fact, all of the city/county jails for which Securus could provide population statistics in its Comments are “mega-jails”.⁵³ And thus, even with all of the figures and statistics that Pay Tel packed into its comments, the most powerful conclusion Pay Tel could reach is that **“the majority”** of local jails “were and are small- and medium-sized facilities.”⁵⁴

To adopt one rate for all “jails”, including the 6% of jails that house over 1,000 inmates, would be improper. For example, to adopt a rate of \$0.22 per minute for San Diego County (4,705 ADP) but a rate of only \$0.08 per minute for the North Dakota state system

⁵⁰ Midyear Report at 3.

⁵¹ The Midyear Report does not provide individual percentages for these two sizes of facility.

⁵² *E.g.*, Pay Tel 2d FNPRM Comments at 30.

⁵³ San Diego County, Rikers Island, Harris County, Miami-Dade County, Maricopa County, Cook County, and Dallas County are orders of magnitude larger than 1000 ADP. Securus 2d FNPRM Comments at 20-23.

⁵⁴ Pay Tel 2d FNPRM Comments at 6 (emphasis added).

(1,257 ADP)⁵⁵ would be a grossly mismatched, unjust result, above and beyond the fundamental problem that the Commission would be treating inmates differently based solely on whether they violated state law or county law.

Pay Tel, through the Expert Report of Don J. Wood, also provides a purported analysis of the Report of Stephen E. Siwek⁵⁶ that Securus submitted with its March 2013 Comments.⁵⁷ Its analysis represents an obvious misreading of that Report. The Siwek Report culled only 38 “representative” sites from among “approximately 2,200 correctional facilities” that Securus served in 2012.⁵⁸ The sites were divided into tiers of DOCs (8 sites),⁵⁹ High Volume (10), Medium Volume (10), and Low Volume (10); Mr. Siwek identified the facilities by name in Exhibit B to his Report. Creating this tiered sample of Securus’s correctional facility clients was absolutely necessary for making Mr. Siwek’s analysis manageable.⁶⁰ His Report was intended to provide the Commission with illustrative data; it was never represented to be a comprehensive, exact study of Securus’s nationwide operations. Securus was the only carrier to submit cost data during that comment period.

⁵⁵ Securus 2d FNPRM Comments at 22.

⁵⁶ WC Docket No. 12-375, Expert Report of Stephen E. Siwek (Mar. 25, 2013) (appended to Securus March 2013 Comments).

⁵⁷ Pay Tel 2d FNPRM Comments at 27-31.

⁵⁸ Siwek Report Sections 1.5, 2.3, and 2.4.

⁵⁹ Mr. Siwek excluded DOC contracts that do not cover that state’s full prison system.

⁶⁰ Securus has explained that the FTI report and cost analysis submitted on July 17, 2014, is the appropriate source for discussing Securus’s costs and operations. The Siwek Report “provides only high-level, aggregated data in order not to disclose competitively sensitive information,” it “DOES NOT include cost of capital due to its small sample size,” and “is not representative of the Securus distribution of facility sizes.” WC Docket No. 12-375, Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC, Attachment (Oct. 28, 2014) (providing notice of *ex parte* meeting with several Staffpersons in the Pricing Policy Division of the Wireline Competition Bureau) (emphasis in original).

Referring to the Siwek Report, Pay Tel’s comments state that the “Inmate Average Daily Population” for each sample site according to Pay Tel’s own, uncited research,⁶¹ and then simply averages those population figures to assert one average size per tier. Pay Tel has no basis to know how many sites belong to each tier of the Siwek Report, nor the populations of each of those sites.

Securus reiterates that the forthcoming rate caps will be, as the Commission stated, a “backstop” regulatory action⁶² that will act in concert with competition to ensure low rates for inmate calls.⁶³ Competition has driven and will continue to drive actual calling rates lower than the cap; in the post-*Inmate Rate Order* environment, Securus’s average interstate rate is only \$0.17 (approximately).⁶⁴ Securus shows that in many jails and prisons, the rates have been in the single digits or low teens for years, well before the Interim Rate Caps.⁶⁵ These rates are public information.

It is therefore strange that some parties assume now that the forthcoming rate caps will be the rate for all calls from all correctional facilities. Pay Tel, for example, states that Securus will receive a “windfall” under a unified \$0.20/\$0.24 per minute rate,⁶⁶ because its cost

⁶¹ Pay Tel provides an omnibus citation to “AJA – Who’s Who in Jail Management Facility Directory and Facility Websites.” Pay Tel 2d FNPRM Comments at 29 (citing Wood, Don J., “Economic Characteristics of Prisons vs. Jails,” Exhibit B (submitted by Pay Tel December 9, 2013)).

⁶² Second FNPRM ¶ 47

⁶³ Securus 2d FNPRM Comments at 17-18.

⁶⁴ *Id.* at 18.

⁶⁵ *Id.* at 17.

⁶⁶ Pay Tel 2d FNPRM Comments at 3; WC Docket No. 12-375, Expert Report of Don J. Wood at 32-33 (Jan. 12, 2015).

of service at DOC facilities⁶⁷ is quite low. Because of competition, however, Securus’s calling rates at DOCs also are quite low. Securus has not raised all rates to the Interim Rate Caps. Competition does not make that approach successful now, nor will it do so in the future. Pay Tel may feel no competitive pressure to lower its rates,⁶⁸ but Securus certainly does, as its rates at State DOCs show:

State DOC	Securus Per-Minute Rate
Alaska DOC	\$0.21 Prepaid // \$0.25 Collect ⁶⁹
Arizona DOC	\$0.21 Prepaid // \$0.25 Collect
Connecticut DOC	\$0.21 Prepaid // \$0.25 Collect
Florida DOC	\$0.13 Prepaid // \$0.14 Collect
Illinois DOC	\$0.12 Prepaid // \$0.12 Collect
Kentucky DOC	\$0.21 Prepaid // \$0.25 Collect
Louisiana DOC	\$0.21 Prepaid // \$0.25 Collect
Missouri DOC	\$0.05 Prepaid // \$0.12 Collect
North Dakota DOC	\$0.21 Prepaid // \$0.25 Collect
New Mexico DOC	\$0.04 Prepaid // \$0.04 Collect ⁷⁰
Pennsylvania DOC	\$0.06 Prepaid // \$0.06 Collect

⁶⁷ It appears that Pay Tel instructed Mr. Wood to analyze only Securus’s costs at state prisons.

⁶⁸ Pay Tel 2d FNPRM Comments at 4 (“The notion that a rate set based on the costs of providing ICS in jails will be driven down in much lower-cost prisons by market forces is a false hope.”).

⁶⁹ Approximately **92%** of Securus’s calls in 2014 were some form of prepaid call.

⁷⁰ Rates at the New Mexico DOC are \$0.59 flat rate for a debit call and \$0.65 flat rate for a collect call. Per-minute rates calculated based on a 15-minute call.

Wisconsin DOC	\$0.18 Prepaid // \$0.18 Collect
SIMPLE AVERAGE DOC	\$0.15 Prepaid // \$0.18 Collect⁷¹

These effective rates immediately disprove Pay Tel’s and Mr. Wood’s “windfall” predictions. In addition, FTI has calculated, based on Securus’s data for 2014 Mandatory Data Collection, that Securus’s revenue per minute at state prisons decreased by **3.6%** after the *Inmate Rate Order* became effective,⁷² further demonstrating that Securus did not raise all DOC rates up to the Interim Rate Caps. No windfall there.

That error is but one of the flaws in Mr. Wood’s recent report which FTI Consulting discusses in the attached Response. Mr. Wood, who has had the full, unredated Securus cost data since August 28, 2014, chose instead to use the March 2013 Siwek Report as his source of data. That Report, however, excludes all SG&A expenses, which comprised 25.1% of Securus’s ICS costs in 2012,⁷³ and all financing costs.⁷⁴ Moreover, Mr. Wood “misinterprets” the figures that are in the Siwek Report.⁷⁵ Due to these methodological flaws, Mr. Wood’s

⁷¹ All per-minute calculations have been rounded up to the next cent.

⁷² FTI Consulting, Inc., FTI Consulting, Inc., Response to Second Further Notice Declaration of Coleman Bazelon and Expert Report of Don J. Wood at 8 (Jan. 27, 2015) (“FTI Response”). Securus is required to submit the FTI Response in Confidential and Public versions in order to comport with Mr. Bazelon’s redactions. *See id.* at 3. Securus believes that many of those redactions, which remove statements that contain only his explication of economic theory without use of any confidential cost or financial data from an ICS provider, are improper. Securus was unable to discern that fact due to the redaction method that Mr. Bazelon employed whereby entire swaths of pages are simply blank.

⁷³ When site commission payments are removed from Securus’s cost of service, SG&A is 40.7% of Securus’s 2012 costs. FTI Response at 6. Securus did not calculate or keep more complete cost data prior to creating its submissions for the 2014 Mandatory Data Collection.

⁷⁴ *Id.* at 6.

⁷⁵ *Id.* at 2.

purported per-minute cost figure for Securus “has nothing to do with Securus’s (or any provider’s) **total** cost of providing ICS services.”⁷⁶

Mr. Wood also errs in making an “apples to oranges” comparison between *weighted* average rates and *simple* average rates. His report lists the weighted average rate per minute that he calculated for the eight DOC facilities in the Siwek Report, but then compared them to the simple average per-minute calling rates.⁷⁷ This inapt comparison creates misleading results. For all these reasons, FTI concludes that Mr. Wood’s report sets forth conclusions that are “meaningless”⁷⁸ and “incorrect”.⁷⁹

In sum, Pay Tel’s “jails v. prisons” construct is based on unreasonable suppositions, generalizations, and overstatements. Not all DOCS are large. Not all jails are small. The Siwek Report cannot reasonably be employed to support Pay Tel’s agenda. And Mr. Wood’s cost-to-rate comparisons are not credible. Pay Tel thus has failed to supply the Commission with a basis on which to adopt the “jails v. prisons” rate dichotomy, and therefore it should be rejected.

The rate proposal of counsel for Martha Wright, *et al.* is similarly unsound, if not more so. It is based on economic analysis that is not credible. As FTI explains in its Response, Coleman Bazelon⁸⁰ made several fundamental errors in analyzing Securus’s cost data, including:

⁷⁶ FTI Response at 7 (emphasis in original).

⁷⁷ *Id.* (“In short, it is improper to compare simple averages with weighted averages, because they are very different statistics that tell very different stories.”).

⁷⁸ *Id.* at 9.

⁷⁹ *Id.* at 2.

⁸⁰ WC Docket No. 12-375, Second Further Notice Declaration of Coleman Bazelon (undated) (“Bazelon 2d FNPRM Dec.”).

- Making unexplained, arbitrary choices of the assets for which Securus should receive a return, resulting in Securus’s ability to receive an 11.25% return on only **10.9%** of its ICS assets.⁸¹ As such, his proposed rate could not possibly allow Securus, or any other ICS provider, “to recover their ‘cost of capital (reasonable return on investment).’”⁸²
- Miscalculating, or under-reporting, Securus’s payments on debt, and thus would render Securus unable to meet its “actual debt expense obligations,”⁸³ creating the same unlawful result as above.
- Choosing, again arbitrarily, the cost components for which Securus should be reimbursed, deciding that a **41% reduction** must be taken from the costs that Securus reported in the 2014 Mandatory Data Collection.⁸⁴ Mr. Bazelon compounds that error (giving Securus a “non-compensatory start”⁸⁵) by applying that same reduction to Global Tel*Link, a company with its own cost components and figures, in order to derive a per-minute rate for the entire ICS industry. His cost figures already are under-reported as to Securus, a carrier that Mr. Bazelon believes to be operating “at scale,”⁸⁶ and then he forces that error onto the other ICS carriers that, it appears, are not “at scale.”

The Wright Commenters’ rate proposal thus relies on an analysis that “relies on outdated and

⁸¹ FTI Response at 4.

⁸² *Id.* (quoting *Inmate Rate Order* ¶ 53).

⁸³ FTI Response at 4.

⁸⁴ *Id.* at 5.

⁸⁵ *Id.*

⁸⁶ *Id.* (quoting Bazelon 2d FNPRM Dec. ¶ 10).

incomplete information to make a series of improper (and arbitrary) adjustments[.]”⁸⁷ The analysis is “inconsistent” and does not “ensure reliability” in the final cost figures Mr. Bazelon derives.⁸⁸

The ICS Industry Proposal, by contrast, is demonstrably based in the record. It relies on the cost information submitted for the 2014 Mandatory Data Collection – data which has not been rejected by the Commission or credibly challenged by any party – and derives a rate that is, as it should be,⁸⁹ higher than carriers’ average per-minute costs. The resulting rate caps of \$0.20 prepaid/\$0.24 collect epitomize the concept of “backstop”: they would ensure each carrier could profitably provide service at a given location, and then allow carriers to compete the rate down by demonstrating, on the merits, that their efficiency and reliability can reduce rates while providing excellent service. This approach is not only “market-based”,⁹⁰ it also ensures that the forthcoming rates comport with applicable ratemaking standards.⁹¹

III. THE RECORD DOES NOT SUPPORT THE ELIMINATION OF FEES FOR OPTIONAL PAYMENT METHODS

The record shows that (1) fees for optional payment methods are necessary to recover direct costs, and (2) these voluntary, additional ways to pay for phone calls are for the benefit of inmates and those whom inmates call. In addition to the cost information that Securus was required to submit in the 2014 Mandatory Data Collection, Securus has provided sworn testimony as to the direct costs, largely from third-party vendors, that Securus incurs on every

⁸⁷ FTI Response at 5.

⁸⁸ *Id.* at 6.

⁸⁹ Securus 2d FNPRM Comments at 16.

⁹⁰ Second FNPRM ¶ 6.

⁹¹ *See supra* n.28.

use of an optional payment method.⁹² The transaction fees that Securus charges and which are included in the ICS Industry Proposal⁹³ simply are meant to recover those direct costs.

It bears repeating that the payment methods at issue are optional, additive ways in which called parties can access and pay for inmate-initiated calls. Payment by check or money order always will be available and free of charge.⁹⁴ Options that enable new types of access, however, such as collect calls to cell phones and immediate, per-call payment via credit card, have truly changed the ICS market and given inmates more access to communications than ever before. These services are not intended to supplant or substitute for traditional payment methods,⁹⁵ but they are a valuable addition to ICS service.

Having demonstrated both the value of and costs for providing optional payment methods, Securus is puzzled by the requests of some parties to abolish them or cut the associated fees to levels that would prevent cost recovery.⁹⁶ Praeses goes so far as to urge the Commission

⁹² Securus 2d FNPRM Comments at 27-28 (citing Declaration of Dennis Rose, Senior Director – Billing (Jan. 9, 2015)).

⁹³ ICS Industry Proposal at 5-6.

⁹⁴ The ICS provider shall fully inform customers of all payment methods available (including the no-charge option), the payment processing charges associated with each payment method, and the estimated time required to establish service applicable to each payment option.

Id. at 6.

⁹⁵ Securus 2d FNPRM Comments at 28 (“These products are not intended or marketed as a substitution for traditional calls.”). Securus sharply refutes allegations, which are wholly unfounded, that inmate phone calls are somehow manipulated or degraded in order to “force” customers to use optional payment methods. WC Docket No. 12-375, Comments of Combined Public Communications, Inc. at 3 (Dec. 23, 2014).

⁹⁶ The fees that Securus presently charges have been disclosed in the record. WC Docket No. 12-375, Supplemental Reply Comments of Securus Technologies, Inc. in Response to DA 13-1445 at 3-4 & Attachment A (July 24, 2013). Securus does not, for example, have a “per transaction maximum” on funding prepaid accounts “such as allowing called parties to deposit only \$25.00 at a time” in order to obtain multiple fees for one deposit or funding transaction. ICSolutions Comments at 10.

“to prevent Providers from agreeing to, and passing through to inmates, unreasonable costs charged to Providers by third parties in connection with third-party services[.]”⁹⁷ The immediate effect of such an ill-founded rule would be that the “Providers” would be forced to discontinue to these *optional* payment method(s).⁹⁸ Inmates would be unable to obtain immediate access to telephones, and their ability to reach persons who have no landline phone would be diminished severely. One struggles to find the benefit of that result.

Demands for the elimination of these types of transaction fees appear to stem more from competitive envy than sound policy. Carriers that have not invested in these new, convenient payment methods would like the Commission to abolish them as a way to tilt the playing field by regulatory fiat. The Commission should be wary of these efforts and focus instead on the value of these optional services and the significant costs that ICS carriers incur to provide them.

IV. THE RECORD OVERWHELMINGLY SUPPORTS ADOPTION OF A REASONABLE TRANSITION PERIOD

A reasonable transition period for the new rates and rules is widely supported, particularly now that it appears site commissions will be deemed an appropriate cost for which a cost recovery method will be developed.⁹⁹ Many parties, including Securus, agree with the

⁹⁷ Praeses Comments at 45. No definition or standard for determining “unreasonable costs” is provided.

⁹⁸ Praeses does propose elsewhere that “services that are offered by Providers to inmates or their friends and families as a convenience, and that therefore are not reasonably required to be incurred for an inmate to place a call, should be permitted to be subject to ancillary fees, and all such ancillary fees should be required to be cost-based.” *Id.* at 44-45.

⁹⁹ Securus 2d FNPRM Comments at 34-36; GTL 2d FNPRM Comments at 18; Comments of the National Sheriffs’ Association at 10 (Jan. 12, 2015) (“at least two years”); Comments of the Florida Sheriffs Association at 5 (Jan. 5, 2015); *see also* NCIC Comments at 7 (“If the FCC chooses not to regulate commissions, then there is no need to have a two-year transition”); Pay Tel 2d FNPPM Comments at 61 (“minimum of eighteen months”).

Commission’s proposed two-year transition period.¹⁰⁰ The Arizona DOC and Montana DOC argue that existing contracts be “exempt”¹⁰¹ or “grandfather[ed]”¹⁰² altogether.

Praeses criticizes the 90-day implementation period allotted in the *Inmate Rate Order* which “[r]ather than triggering an orderly amendment of existing ICS contracts The Commission’s [*Inmate Rate Order*] resulted in confusion among Facilities and Providers.”¹⁰³ The record contains considerable evidence of the difficulty that the industry faced in implementing the prior rules.¹⁰⁴ A longer transition for the new rules would prevent revisiting

¹⁰⁰ Second FNPRM ¶ 28.

¹⁰¹ If a provider loses a significant investment due to an FCC rulemaking, the provider could have a claim against the State to recoup money expended on capital improvements. For that reason, ADC proposes that any rulemaking exempt current contracts that were awarded prior to any FCC action, thereby allowing ADC and the winning vendor to fulfill their contractual obligations under the existing terms of the contract.

Arizona DOC Comments at 3.

¹⁰² “The MDOC appreciates a transition period as inmates will need to be prepared for the elimination of many inmate activities and re-entry assistance. ... the MDOC would like to see the FCC grandfather existing contracts, allowing for an extended transition period.” Montana DOC Letter at 2.

¹⁰³ Praeses Comments at 41. For support of this statement, Praeses cites to a recent Securus filing in opposition to the extension of time that Martha Wright and others requested for the comment period on the Second FNPRM. That citation to Securus is inaccurate. Securus did not state that “certain ICS contracts and amendments remain unsigned due to the uncertainty of the ICS industry[.]” *Id.* at 41 n.87. Securus simply stated that “ongoing uncertainty has created volatility in the ICS market. The Commission should act as swiftly as possibly to provide finality for all parties involved.” WC Docket No. 12-375, Opposition of Securus Technologies, Inc. to Prison Policy Initiative’s Motion for Extension at 2 (Dec. 12 2014). Securus has not refused to sign pending contracts on the basis of the new rules in the *Inmate Rate Order*.

¹⁰⁴ *E.g.*, WC Docket No. 12-375, Letter from Cherie R. Kiser, Counsel to Global Tel*Link Corp., to Marlene H. Dortch, FCC, at 2 (June 3, 2014) (discussing “regulatory uncertainty and competitive distortions created by the *Order and FNPRM*”) (providing notice of *ex parte* meeting with Staffpersons in the Pricing Policy Division of the Wireline Competition Bureau); Letter from Cherie R. Kiser, Counsel to Global Tel*Link Corp., to Marlene H. Dortch, FCC, at 2 (May 29, 2014) (discussing “regulatory uncertainty and competitive distortions created by the *Order and FNPRM*”) (providing notice of *ex parte* meeting with Chairman Wheeler and his

that difficult time.

V. ADDITIONAL ISSUES

Securus briefly addresses issues related to access for the hearing impaired and enforcement of the forthcoming rates and rules.

A. The Commission Should Not Mandate Particular ICS Technologies for the Hearing Impaired

Securus has explained in detail the manner in which ICS calls from or to hearing-impaired persons are commenced, carried, and billed.¹⁰⁵ For the TeleTypewriter Calls that Securus handles – TTY to TTY calls which do not require the assistance of the State Telecommunications Relay Services agency – no additional fees or charges apply other than the same calling rates that apply to Voice calls.¹⁰⁶ And because TTY to TTY calls are handled the same way as inmate Voice calls, and incur the same costs, Securus does not believe that a TTY discount is appropriate.¹⁰⁷

Advocates for the hearing impaired community now have asked the Commission to adopt a rule mandating the installation and offering of videophones upon an inmate's request.¹⁰⁸ Presently videophones are available at thousands of correctional facilities across the country: Securus itself has installed over 5,000 units in the United States. It is unclear, however, whether the FCC can order a correctional facility to install any particular technology for the

Legal Advisor, Daniel Alvarez); Securus May 15 *Ex Parte* at 1, 2; Securus April 24 *Ex Parte* at 1.

¹⁰⁵ E.g., Securus 2d FNPRM Comments at 36-40; Further Declaration of Curtis L. Hopfinger, Director – Regulatory Affairs (Dec. 10, 2014).

¹⁰⁶ Securus 2d FNPRM Comments at 40; Hopfinger December Dec. ¶ 13.

¹⁰⁷ Securus 2d FNPRM Comments a 37-38.

¹⁰⁸ Letter from Talila Lewis, Founder, Helping Educate to Advance the Rights of the Deaf, to Marlene H. Dortch, FCC, at 3 (Jan. 12, 2015).

provision of service to the hearing impaired. As one party stated in recent comments,¹⁰⁹ the FCC cannot force a jail to make even telephones available to inmates. Choice of ICS technology, particularly choices made for security reasons, is more squarely within the discretion of correctional authorities.¹¹⁰

Securus notes that the ICS Industry Proposal states that the carriers will continue to comply with all applicable law regarding access to telecommunications for the less able and “will work closely with correctional facilities ‘to ensure that deaf and hard of hearing inmates are afforded access to telecommunications that is equivalent to the access available to hearing inmates.’”¹¹¹

B. No One Opposes the Adoption of a Rule Requiring Annual Officers’ Certification of Compliance

The Second FNPRM notes Securus’s request, which also was included in the ICS Industry Proposal,¹¹² that the Commission require annual, sworn certifications by officers (including the CEO) of ICS providers stating that their company has complied with all rates and regulations adopted by the FCC.¹¹³ Securus has not found any opposition to that proposal in the record. The Commission should adopt that rule, specifically identifying any provisions and requirements governing ICS rates and monetary site commissions, in the new set of rules to be adopted in this phase of the proceeding.¹¹⁴

¹⁰⁹ “While vitally important to society, inmate calling is nonetheless a privilege and not a constitutional right.” CTEL Comments at 7.

¹¹⁰ See Securus 2d FNPRM Comments at 13 (facilities’ choices of security features are “at the core of their statutory mandate to operate jails and prisons”).

¹¹¹ ICS Industry Proposal at 7 (quoting *Inmate Rate Order* ¶ 97).

¹¹² *Id.*

¹¹³ Second FNPRM ¶ 157.

¹¹⁴ The Commission notes that 47 C.F.R. § 64.6060, the Annual Reporting Rule, includes a

CONCLUSION

For all the reasons stated herein and in Securus's Initial Comments, the Commission should:

- 1) Hold that monetary site commissions will be permitted in order to recover direct, quantifiable costs that correctional facilities incur when making telecommunications available to inmates. A cost recovery mechanism should be added to the forthcoming rate caps to ensure that ICS providers recoup the cost of monetary site commissions. The provision of security-related equipment, features, and software should be excluded from the definition of "site commissions";
- 2) Adopt, as the "backstop", the rates in the Industry Proposal of \$0.20 per minute for all debit/prepaid calls and \$0.24 per minute for all collect calls. Additive security features such as voice biometrics, which are not included in the typical suite of services but often are required by correctional facilities, warrant an additive per-minute rate;
- 3) Reject pleas to abolish or impose below-cost caps on transaction fees, and should adopt the Industry Proposal regarding "ancillary fees";
- 4) Decline to adopt intra-facility competition for ICS services;
- 5) Adopt a reasonable transition period regarding monetary site commissions and the method by which carriers can recoup them;

certification requirement and that this rule has been stayed by the U.S. Court of Appeals for the D.C. Circuit. *Id.* Securus recommends that the Commission adopt the certification requirement as a separate, independent rule in the forthcoming order, thus removing a quite uncontroversial rule from the annual reporting requirement which has been challenged by all of the ICS Provider Petitioners in that appeal.

- 6) Reject proposals for a special or discounted rate for TTY calls;
- 7) Amend the process and standard of review for waivers to enable carriers to obtain rate relief on a site-by-site showing of need; and
- 8) Adopt a rule requiring each ICS provider annually to file sworn certifications from its Chief Executive Officer, Chief Financial Officer, and General Counsel that the company has complied with all rates, obligations, and prohibitions in the forthcoming rules.

Dated: January 27, 2015

By: _____



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WC Docket No. 12-375

**Reply Comments of Securus Technologies,
Inc.**

January 27, 2015

**ATTACHMENT
(PUBLIC VERSION)**

FTI CONSULTING, INC.

**RESPONSE TO
SECOND FURTHER NOTICE DECLARATION OF COLEMAN BAZELON
AND
EXPERT REPORT OF DON J. WOOD**

**ON BEHALF OF
SECURUS TECHNOLOGIES, INC.**

January 27, 2015



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I. EXECUTIVE SUMMARY

On September 26, 2013, the Federal Communications Commission (“FCC” or “Commission”) released its *ICS Order* requiring “inmate phone providers to charge cost-based rates to inmates and their families.”¹ On June 17, 2014, the FCC released its public notice requiring cost data to be submitted in response to its *Mandatory Data Collection*.² On October 22, 2014, the FCC released its *Second Further Notice*³ “to develop a record to adopt comprehensive, permanent ICS reforms as expeditiously as possible.”⁴ On January 12, 2015, numerous parties filed comments with the FCC in response to the *Second Further Notice*.⁵ Securus Technologies, Inc. (“Securus”) requested that FTI review two reports, both of which relied on confidential information submitted by various parties in response to the *Mandatory Data Collection*. In particular, Securus requested that we review the Second Further Notice Declaration of Coleman Bazelon filed on behalf of the “Petitioners”⁶ (“Bazelon Declaration”),⁷ and the Expert Report of Don J. Wood filed on behalf of Pay Tel Communications, Inc. (“Wood Report”).⁸

FTI’s analysis herein follows on FTI’s July 17, 2014 Report Implementing the FCC Mandatory Data Collection on Behalf of Securus Technologies, Inc. (“FTI Cost Report”) and FTI’s January 12, 2015 Report on Price Elasticity of Demand for Interstate Inmate Calling Services on Behalf of Securus Technologies, Inc. (“FTI Elasticity Report”) in this same WC Docket No. 12-375.

FTI’s analysis herein concludes:

¹ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, Released: September 26, 2013 (“*ICS Order*”), at ¶ 5.

² *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Public Notice, Commission Announces Inmate Calling Services Data Due Date, June 17, 2014 (“*Mandatory Data Collection*”).

³ *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Further Notice of Proposed Rulemaking, Released: October 22, 2014 (“*Second Further Notice*”).

⁴ *Id.* at ¶ 6.

⁵ FTI assisted both Securus Technologies, Inc. (“Securus”) and Telmate, LLC in preparing responses to the *Mandatory Data Collection* in this docket. In this Response, we refer to the work FTI performed on behalf of Securus as the FTI Cost Report.

⁶ The Petitioners include Martha Wright, Dorothy Wade, Annette Wade, Ethel Peoples, Mattie Lucas, Laurie Nelson, Winston Bliss, Sheila Taylor, Gaffney & Schember, M. Elizabeth Kent, Katharine Goray, Ulandis Forte, Charles Wade, Earl Peoples, Darrell Nelson, Melvin Taylor, Jackie Lucas, Peter Bliss, David Hernandez, Lisa Hernandez, Vendella F. Oura, along with The D.C. Prisoners’ Legal Services Project, Inc., and Citizens United for Rehabilitation of Errant.

⁷ Comments of Martha Wright, *et al.*, The D.C. Prisoner’s Legal Services Project, Inc., and Citizens United for Rehabilitation of Errants, In the Matter of Rates for Interstate Inmate Calling Services, WC Docket No. 12-375, January 12, 2015, Exhibit A.

⁸ Expert Report of Don J. Wood, WC Docket No. 12-375, January 12, 2015.

- Mr. Bazelon is proposing rate-of-return regulation. However, we understand the FCC is considering moving away from rate-of-return regulation in favor a market-based solution with a rate cap “backstop.”⁹
- Mr. Bazelon makes numerous errors in his attempt to restate Securus’s costs within his proposed rate-of-return methodology, and, in doing so, would not allow Securus to recover its actual, booked debt expenses, much less a reasonable return on investment.
- Mr. Bazelon uses a variety of inconsistent data sets to establish his proposals. By doing so, Mr. Bazelon improperly applies adjustments from one set of data to unrelated and entirely different sets of data, which renders his results meaningless.
- Mr. Wood misinterprets the information presented in the Expert Report of Mr. Siwek,¹⁰ causing him to draw incorrect conclusions about Securus’s costs.
- Mr. Wood compares **simple** average costs with both **weighted** average costs and rates from different sources that do not reflect the actual costs of providing ICS services.
- Neither Mr. Bazelon nor Mr. Wood addresses the fundamental problem with setting rates **at** average costs. As addressed in the July 17, 2014 FTI Cost Report, setting price caps based on average cost will not allow ICS providers to recover their costs.

II. QUALIFICATIONS

FTI’s Network Industries Strategies group was formed to address the unique needs of infrastructure industries and, in particular, to assist clients in managing the regulatory framework often surrounding these industries. This FTI effort was led by Steven E. Turner and Brian F. Pitkin who authored the FTI Cost Report and the FTI Elasticity Report. Our qualifications, including copies of our curricula vitae are included in the FTI Cost Report.

III. RESPONSE TO THE DECLARATION OF COLEMAN BAZELON

The primary purpose of Mr. Bazelon’s Declaration is to propose rates based on adjustments to the data provided by certain ICS providers in response to the *Mandatory Data Collection*. However, Mr. Bazelon uses a rate-of-return approach to make improper (and arbitrary) reductions to Securus’s costs based on outdated and incomplete information, and then uses that improper basis to make a series of additional improper (and arbitrary) adjustments to entirely

⁹ *Second Further Notice* at ¶ 47.

¹⁰ Expert Report of Stephen E. Siwek on Behalf of Securus Technologies, Inc., WC Docket No. 12-375, March 25, 2013 (“Siwek Report”).

different sets of data. The result is that Mr. Bazelon’s analysis does not actually reflect the costs of any single carrier or set of carriers in the ICS industry.

Please note that the redacted portions of our comments related to Bazelon’s Declaration are redacted only because they were redacted in his public filing. However, Mr. Bazelon redacted entire sentences that do not, in any way, contain or allude to confidential information. For example, consider paragraph 11 of Mr. Bazelon’s Declaration. The only sentence he does not redact states “As an initial matter, this is not an economically appropriate way to calculate their actual return on equity because.” However, Mr. Bazelon redacts the entire remainder of the paragraph explaining his rationale for doing so (flawed as it is). We believe it is improper to leave broad claims in the public document and redact the basis for those claims (even though they contain no confidential information), because it effectively precludes public comment addressing the merits of those claims. However, we have been instructed by our attorneys to redact our report such that we do not quote anything from Mr. Bazelon’s confidential version of the report.

A. Mr. Bazelon’s Rate-of-Return Regulation Proposal

The thrust of Mr. Bazelon’s Declaration focuses on restating Securus’s actual costs using a traditional rate-of-return regulatory approach. First, Mr. Bazelon criticizes the methodologies used in preparing FTI’s Cost Report as “not an economically appropriate way to calculate [Securus’s] actual return on equity because [REDACTED].”¹¹ While he apparently has no concern about the 11.25% overall return (because he uses that number to develop his own proposal), he believes that it is inappropriate to use any of Securus’s actual debt payments in calculating Securus’s costs.

In the *ICS Order*, the FCC expressly stated “we are not imposing rate-of-return regulation on ICS providers.”¹² At that time, the FCC explained that “[o]ur approach does not rely on a prescribed rate of return, ex ante review, tariff filings, or compliance with cost accounting rules. Instead, our approach is tailored to provide flexibility for the ICS providers.”¹³ In the *Second Further Notice*, the FCC is exploring using “rate caps ... as a backstop to the market-based solution described above.”¹⁴

Mr. Bazelon, despite the FCC’s statements, is proposing that “[REDACTED]”

¹¹ Bazelon Declaration at ¶ 11. Redacted in Bazelon Report.

¹² *ICS Order* at ¶ 53.

¹³ *ICS Order* note 195.

¹⁴ *Second Further Notice* at ¶ 47.

“¹⁵ Specifically, he wants to regulate the ICS providers such that they are “
 “¹⁶ This is rate-of-return regulation. However, he wants to impose this regulation without the complex process that rate-of-return requires and, instead, wants to use his own definition of an “
 “¹⁷ relying on data that is five to ten years old.”¹⁸

B. Improper Return on Capital Adjustments

Mr. Bazelon implements his rate-of-return approach by taking an estimate of the equipment he feels supports ICS services from the previous decade (2005-2009) to derive an asset base that is only 10.9% of Securus’s actual investment (his “
 In short, Mr. Bazelon ignores all of Securus’s actual costs reported in response to the *Mandatory Data Collection* and, instead, calculates a return on a dollar amount that is 10.9% of Securus’s actual investment based on a broad (and unsupported) claim that some of the investments *may be* “
 “¹⁹ But the reason that these calculations are termed “return on investment” is that investors make decisions based on expected returns on their *total* investment, not just a subset of their investments, in proportion to some of the fixed assets. We doubt that Mr. Bazelon or any rational investor would make an investment with the intent of realizing only a 1.23% return on investment (11.25% return on 10.9% of the investment). But, according to Mr. Bazelon’s proposals, he is arguing that Securus should only be able to realize their 11.25% return on about 10.9% of the investments they have made.

To make matters worse, Mr. Bazelon then errs in his recalculation of the return on this substantially reduced investment amount. To be specific, he fails to reflect the fact that equity payments to investors are made with funds after taxes have been assessed on the company’s earnings. After all of this, Mr. Bazelon determines that Securus should be entitled to a 7.9 million return – a number that is less than 1/3rd of Securus’s actual, booked debt payments. Failing to allow Securus to recover its actual debt expense obligations, much less any return on equity, clearly fails any sanity test about whether Mr. Bazelon’s proposed rates allow ICS providers to recover their “cost of capital (reasonable return on investment).”²⁰

¹⁵ Bazelon Declaration at ¶ 11. Redacted in Bazelon Report.

¹⁶ *Id.* Redacted in Bazelon Report.

¹⁷ Bazelon Declaration at ¶ 14. Redacted in Bazelon Report.

¹⁸ Bazelon Declaration at ¶ 13. Redacted in Bazelon Report.

¹⁹ Bazelon Declaration at footnote 12. Redacted in Bazelon Report.

²⁰ *ICS Order* at ¶ 53.

C. Inconsistent Data Sources and Application

It may be instructive to walk through Mr. Bazelon’s analysis from the start. First, he chooses to base his rate-of-return calculations on Securus’s data, having previously flatly stated that Securus’s data “are unlikely to accurately reflect underlying cost differences.”²¹ He uses this “inaccurate” data to develop a 41% reduction to Securus’s costs, which does not even cover Securus’s actual debt payments. From this non-compensatory start, Mr. Bazelon goes on to apply this Securus-specific adjustment to GTL – without any discussion of whether he had similar concerns about how GTL calculated its return components. In other words, Mr. Bazelon did not conduct, or at least did not report on, any analysis of GTL’s reported costs.

Mr. Bazelon then proposes to use the adjusted GTL and Securus average cost as a rate cap for all carriers without any discussion of why GTL and Securus are an appropriate proxy for other carriers. This is especially worrisome since Mr. Bazelon readily opines that Securus and GTL are clearly “at scale,” indicating that other ICS providers, in his opinion, are not.

Next, despite relying exclusively on Securus data to derive his adjustments, Mr. Bazelon determines that Securus’s data is not sufficiently dependable and relies on a completely different group of carriers to determine that collect calls are 32% more expensive than debit/prepaid calls. He then uses the data from this new group of carriers to apply the collect-call mark-up back to the Securus-adjusted costs he previously developed. This operation mathematically lowered the reported cost differential between collect and prepaid/debit by the same 41% that he reduced the Securus cost per minute previously.

Finally, Mr. Bazelon uses a new and different subset of carriers (now including Securus in the group again) to determine a per-minute cost differential between small facilities (which he defines as jails having an average daily population of less than 350 inmates) and large facilities (which he defines as jails having an average daily population of greater than 350 inmates and all prisons). Unlike his approach for determining the cost differential between collect and prepaid/debit calls, in which he reduced the differential by 41%, this time Mr. Bazelon does not apply a ratio to reduce the jail size differential. We do not understand why Mr. Bazelon has chosen inconsistent methods for applying his adjustments.

In short, not only does Mr. Bazelon fail to follow the FCC’s direction to incorporate a “reasonable return on investment” (instead relying on a rate-of-return approach to calculate a return on assets that are *allowable* in his estimation), Mr. Bazelon relies on outdated and incomplete information to make a series of improper (and arbitrary) adjustments using

²¹ Bazelon Declaration at ¶ 17. It should be noted that Mr. Wood disagrees with Mr. Bazelon regarding Securus’s data, determining that Securus both “provided supporting workpapers” [Wood Report at 15] and contained “important and reliable information that should be relied upon by the Commission.” [Wood Report at 16]

inconsistent data sets by picking and choosing his sample groups for each subsequent adjustment. Simply put, Mr. Bazelon's varied approaches to calculating his adjustments are inconsistent and do not ensure reliability between the development of the adjustments and the way in which the adjustments are applied.

IV. RESPONSE TO THE EXPERT REPORT OF DON J. WOOD

The primary purpose of Mr. Wood's Report is to propose rates for ICS providers that serve state prisons (of which his client, Pay Tel, is not one). Rather than rely on the cost information actually submitted by those carriers in response to the *Mandatory Data Collection*, Mr. Wood relies on other data, which understates the cost of providing ICS service in state prisons.

A. Misunderstanding of the Siwek Data

Mr. Wood attempts to dismiss the actual cost data submitted in the FTI Cost Report and, instead, rely on costs from a March 25, 2013 report by Stephen E. Siwek. Specifically, Mr. Wood relies on interpretations of the 2012 data for the eight DOC facilities included in Mr. Siwek's report to develop a benchmark cost for the provision of ICS services in DOC facilities. However, his interpretations are incorrect and, therefore, the results he generates do not provide any insight into the cost of providing ICS services.

Mr. Siwek is clear that the costs he includes in his analysis do not include a large amount of costs that Securus actually incurs. In particular, Mr. Siwek relies on data that Securus uses internally for identifying facility-specific margins, including both direct costs and allocations of a wide variety of shared costs. Mr. Wood then reduces the costs reported by Mr. Siwek to remove average site commission payments. However, Mr. Siwek is explicit that the costs he includes from this data (after removing site commission payments), includes only "bad debt, billing and collection, telecom facilities and services, validation, field technicians, and customer services."²² In other words, the costs reported by Mr. Siwek *exclude* all SG&A expenses, which constitute a full **25.1%** of Securus's company-wide 2012 costs (**40.7%** of Securus's company-wide 2012 costs after removing site commission expenses). In addition, Mr. Siwek did not have data on any financing costs. In other words, the costs that were used by Mr. Siwek were not intended to capture all of Securus's costs or to ensure that Securus received a reasonable return on its investment.

In addition, Mr. Siwek expressly includes in his analysis only the eight contracts in which Securus serves "State DOCs." In both 2012 and 2013, Securus served another eight DOC contracts (a total of sixteen contracts) that did not cover the entire state and are therefore not part of the "State DOC" subset he relied on. In other words, Mr. Siwek only included DOC contracts

²² Siwek Report at ¶ 3.1.

where the contracts covered the entire state and excluded contracts that covered only particular facilities within a state. In short, neither the costs nor the facilities included in Mr. Siwek's analysis were intended represented total costs for all DOC facilities.

For these reasons, the \$0.044 cost per minute figure that Mr. Wood derives has nothing to do with Securus's (or any provider's) **total** cost of providing ICS services.

B. Inconsistent Statistics

Mr. Wood also reviews rates from eight DOC contracts that have no site commissions. This data, which is different from the eight DOC contracts in the Siwek Report, contain six GTL contracts and two Securus contracts. Mr. Wood uses this data to develop yet another benchmark cost for the provision of ICS services in DOC facilities. However, Mr. Wood develops a simple average rate that creates an apples-to-oranges comparison to the cost data actually submitted in response to the *Mandatory Data Collection*, as explained in more detail below.

Unfortunately, we do not have minute of use data for each of the eight DOC facilities included in Mr. Wood's analysis. However, he did provide the number of inmates. Assuming that minutes generally correlate with the number of inmates, weighting the average rate per minute by the number of inmates should yield a reasonable, although not perfect, estimate of the weighted average rate per minute across these facilities. Had Mr. Wood used this weighting approach, he would have derived results for this selected subset of DOC facilities that were 22% higher than he shows in his report.

For comparison purposes, we reviewed the contract-specific data we relied upon for the FTI Cost Report submitted in the *Mandatory Data Collection*. While this analysis resulted in a weighted average cost per minute of \$0.1776, the simple average cost per minute for these same facilities was \$0.5678 per minute. In short, it is improper to compare simple averages with weighted averages, because they are very different statistics that tell very different stories. Moreover, eight DOC facilities is not a sufficient sample size to propose rates for *all* DOCs in *all* states for carriers of all sizes providing *all* services. The \$0.067 simple average rate calculated by Mr. Wood for a select subset of DOC facilities simply does not reflect any carrier's (or, for that matter, all carriers') actual cost of providing ICS services to the combination of facilities that the carrier serves.

C. Windfall

Mr. Wood argues that setting “[r]ates at the proposed level, coupled with the proposal to eliminate the payment of site commissions, would yield an annual windfall of over \$200 million to these three providers.”²³ However, this presumes that each one of these providers will raise its

²³ Woods Report, Exhibit 2.

rates up to the rate cap for each facility for every minute. In other words, carriers would need to increase rates at all low-cost facilities to reap any windfall. For example, consider a rate cap of \$1.00 per minute. So long as carriers do not increase rates up to this cap, the rate cap is meaningless because all rates are below this threshold anyway.

Further, Mr. Wood’s “windfall” conclusion is not supported by the facts. The same data we relied upon for the FTI Elasticity Study²⁴ reveals that Securus’s revenue per minute **decreased by 3.6%** between 2013 (March through November) and 2014 (March through November). In short, record evidence strongly contradicts the notion that carriers will raise ICS rates in larger facilities to offset rate reductions in other facilities and that the competitive environment will continue to constrain prices in larger facilities.

V. RATE CAP DISCUSSION

First, both Mr. Bazelon and Mr. Wood largely ignore the actual cost data provided by the carriers’ 2014 cost submissions and, instead, rely on their own data and methodologies. Mr. Bazelon uses data that is from 2005-2009 to estimate the investment of a subset of assets (about 10.9% of them) that he unilaterally deems to be eligible for inclusion in a rate-of-return based analysis. The \$0.08 rate derived by Mr. Bazelon is entirely unrelated (and therefore irrelevant) to the actual costs incurred by ICS providers in the provision of ICS services.

Mr. Wood chooses to rely on a subset of operations cost, used by Mr. Siwek for a different purpose, to estimate a proxy rate for ICS services at DOC facilities. This rate provides no insight into the **total** cost of providing ICS services. Mr. Wood then computes the simple average rate from a subset of eight DOC facilities without site commission payments to derive another proposed rate for DOC facilities. The simple average rate he derives is, again, meaningless and provides no insight into the costs of any given carrier or into the costs of all ICS carriers combined (or, for that matter, rates for all DOC facilities across the country). The FCC required the carriers to respond to the *Mandatory Data Collection* with specific instructions to include only costs that are “directly related to the provision of ICS.” It is those costs that are relevant to the inquiry here, not costs derived from outdated, incomplete, or unrepresentative data.

Moreover, both Mr. Bazelon and Mr. Wood appear to be proposing rate caps based on these artificially low rates they create. However, it is our understanding that the FCC is interested in long-term reform using a “market-based approach to promoting competition” with “rate caps [serving] as a backstop to the market-based solution.”²⁵ As explained in the FTI Cost Report,

²⁴ The FTI Elasticity Report relied on the same data used for the FTI Cost Report, but updated to include data through November of 2014. FTI relied on data for all contracts with minutes of use in all months of the study period and was limited to the periods of March through November for each year. See, FTI Elasticity Study at 6.

²⁵ *Second Further Notice* at ¶ 53

any rate cap backstop must be set *above* average costs in order for a market-based solution to function. Otherwise, the FCC will force carriers to raise rates in facilities below the rate cap in order to cover the losses in facilities above the rate cap so that they can earn a reasonable return on investment.

By way of example, consider a carrier that is serving Jail A, an entity that requires a very high level of security features, on-site technicians, on-site operators, etc. with a cost that is higher than the cost of serving other facilities (say, \$0.20 per minute). However, if the average cost of providing services to all Jails is \$0.18 per minute and carriers are not allowed to recover any costs higher than this average cost, no carrier will serve Jail A.

Further, consider a situation in which there are three providers seeking to provide services to this same Jail A. Provider 1 is large and is “at scale,” having an average cost of \$0.16 per minute. Provider 2 is medium-size, having an average cost of \$0.18 per minute. Provider 3 is a relatively small new entrant, having an average cost of \$0.20 per minute. Setting a rate cap at the average cost of all providers would preclude the small, new entrant (Provider 3) from being able to compete for the ICS contract at Jail A. However, should the rate cap be based on the average cost of only the largest provider at \$0.16 per minute (as both Mr. Bazelon and Mr. Wood seem to propose), then only those largest and most efficient competitors will be able to compete for ICS contracts. This result, in turn, will undermine exactly the sort of differentiation that is essential to a competitive marketplace where competitors compete on price, service, and product platform.

We also believe that eliminating site commissions is likely to have a market-correcting effect. There is good reason to believe that the interests of inmates and correctional facilities would be aligned should site commission payments be eliminated. After all, the FCC’s goal of lowering ICS rates is to realize the benefits of increased family contact leading to lower recidivism, fewer crimes, with the resulting benefits to children, lowered cost to the economy, lower government spending, etc. We see no reason why, absent site commission payments, market-based competition would not keep rates in check – especially with rate caps set above average costs as a back-stop in those situations where market forces do not sufficiently constrain prices.

VI. CONCLUSION

After reviewing the Declaration of Mr. Bazelon and the Report of Mr. Wood, we have concluded that the cost analysis presented by each of them is flawed and inferior to the actual cost data provided by the ICS providers in response to the *Mandatory Data Collection*. FTI fully supports the movement to a long-term market-based approach of encouraging competition with a rate cap set sufficiently above average costs to ensure that carriers can respond to the unique security needs of different facilities and that carriers with different cost structures can compete for the same contracts, but not so high that there is effectively no constraint where market forces are not sufficient.