



STATE OF ALABAMA

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May 12, 2015

By Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ongoing Payment of Interstate Site Commissions in Contravention of Inmate Rate Order (FCC 13-113)

Dear Ms. Dortch:

The Alabama Public Service Commission ("APSC") hereby submits its comments in response to the May 5, 2015 letter to the Commission from Stephanie A. Joyce, Counsel to Securus Technologies, Inc. ("Securus"), apprising the Commission of what Securus describes as additional "violations" of the Inmate Rate Order, specifically, the ongoing payment of site commissions on interstate calls by ICSolutions, LLC ("ICSolutions"). Securus requests that the Commission investigate ICSolutions on this matter and, if interstate site commissions are being paid from calling rates, that the Commission enter an order "lowering interstate ICS rates" along with demanding "refunds to end users" and fines for each non-compliant interstate call.

In the Commission's Report and Order and Further Notice of Proposed Rulemaking ("FNPRM"), dated September 26, 2013, the Commission explicitly states:

We do not conclude that ICS providers and correctional facilities cannot have arrangements that include site commissions. We conclude only that, under the Act, such commission payments are not costs that can be recovered through interstate ICS rates (paragraph 56).

The Commission did nothing more than confirm that site commissions are not recoverable expenses in cost calculations used to establish interstate rates. It did not forbid ICS providers from paying such commissions.

Although Securus ceased paying interstate site commissions in early 2014, the company was not convinced, as recently as July 2014, that the Commission explicitly prohibited them:

Securus' goal is to assist the Commission in adopting clear, uniform rules that will bring finality and a level playing field to the ICS industry. To that end, Securus made a comprehensive proposal for resolving many issues presently before the Commission in the ongoing ratemaking proceeding. It reiterated that the Commission should **hold explicitly** (emphasis added) that site commissions must not be paid on interstate call revenue (page 2, paragraph 3).

Securus and other ICS providers may exercise their discretion with respect to paying or not paying interstate site commissions subject to the legally binding terms of their contract with facilities and the associated remedies available to the non-defaulting party. However, any claim by the provider that the Commission explicitly precluded such payments is false.

The APSC observes that some providers, despite the absence of an explicit Commission requirement that precludes the payment of interstate site commissions, unilaterally chose to suspend the payments. They did so without renegotiating the terms of their compensation arrangements with facilities as is frequently required in contracts between the parties. Consequently, those providers may now fear they are at risk of having defaulted on their obligations under existing ICS contracts and are using the comment submission process of this proceeding for purposes of propagating the false perception that such a requirement exists.

In addition to ICSolutions, there are other ICS providers that continue paying interstate site commissions as required under their existing contracts in Alabama and we suspect in other states as well. The APSC disputes Securus' assertion that the Commission explicitly denied arrangements that preclude interstate site commission payments. In fact, the language in paragraph 56 of the first FNPRM clearly shows otherwise. The Commission has yet to rule definitively in the matter of site commission payments. In the interim, any assertion that ICSolutions and/or any other ICS provider is violating Commission rules by honoring their contractual obligation to pay interstate site commissions is altogether baseless.

Respectfully,



Darrell A. Baker
Director, Utility Services Division

cc: Chairman Tom Wheeler
Commissioner Michael O'Reilly
Commissioner Jessica Rosenworcel
Lynne Engledow
Rhonda Lien
Commissioner Mignon Clyburn
Commissioner Ajit Pai
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