

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

Rates for Interstate Inmate Calling Services

WC Docket No. 12-375

EX PARTE SUBMISSION OF SECURUS TECHNOLOGIES, INC.

Securus Technologies, Inc. (“Securus”), through counsel and pursuant to 47 C.F.R. § 1.1206(a)(1), submits this paper in further support of the positions and proposed rules that it has filed in this proceeding.¹ Securus addresses specifically the Proposed ICS [Inmate Calling Services] Rules filed by Pay Tel Communications, Inc. on July 13, 2015 (“Pay Tel Draft Rules”).

I. NEITHER PAY TEL NOR THE COMMISSION SHOULD ATTEMPT TO DICTATE THE SERVICES AND TECHNOLOGIES THAT CORRECTIONAL FACILITIES MAY USE

The Pay Tel Draft Rules are an attempt to prevent the ICS industry from innovating. Pay Tel asks the Commission to micromanage the technological evolution of ICS service and the technological choices of correctional facilities. The Commission has neither the resources nor, in most instances, the authority to engage in that activity. For this reason, Pay

¹ E.g., WC Docket No. 12-375, Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC, Attachment B (Draft Rules) (Feb. 9, 2015); Reply Comments of Securus Technologies, Inc. (Jan. 27, 2015) (“Securus January 2015 Reply Comments”); Comments of Securus Technologies, Inc. (Jan. 12, 2015) (“Securus January 2015 Comments”); Comments of Securus Technologies, Inc. on Further Notice of Proposed Rulemaking at 11-12 (Dec. 20, 2013) (“Securus December 2013 Comments”); Securus Technologies, Inc. Reply Comments in Response to DA 13-1445 (July 24, 2013) (“Securus July 2013 Reply Comments”); Reply Comments of Securus Technologies, Inc. (Apr. 22, 2013) (“Securus April 2013 Reply Comments”); Comments of Securus Technologies, Inc. (Mar. 25, 2013).

Tel's proposed rules for "Additional Products and Services" (Draft Rules 64.6000(1) and 64.6070) should be rejected.

Pay Tel's Draft Rule 64.6000(1) attempts to define "Additional Products and Services" as "products and services offered by an ICS Provider that are not required for traditional ICS[.]" Pay Tel should not purport to tell the market or correctional facilities what is "traditional ICS". As Securus has stated, "[t]he security-related choices that correctional facilities make for inmate telephone calls are inarguably at the core of their statutory mandate to operate jails and prisons."² Choosing what is and what is not "traditional ICS" invites intrusion into that mandate. The Commission should not attempt to micromanage correctional facilities in this way.

More importantly, Pay Tel should not ask the Commission, *a priori*, to impose new regulations on services that are not yet in place and most likely are not within its jurisdiction. For example, Draft Rule 64.6000(1) would include "email". The Commission has no jurisdiction over email which is quintessentially an information service and not within the ambit of the Communications Act.³

Pay Tel goes on to propose Draft Rule 64.6070, along with a proposed Attachment 1, which would require ICS Providers to "maintain a product/services list" that discloses not only the "price range" but also the "product vendor and source of funding". This proposed reporting requirement is an effort in competitive reconnaissance draped in the cloak of

² Securus January 2015 Comments at 13 (citing Securus December 2013 Comments at 11-12).

³ *E.g.*, CC Docket No. 02-33, *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 14853, 14860 ¶ 9 (2005) ("broadband Internet access service offers subscribers the ability to run a variety of applications that fit under the characteristics stated in the information service definition" which include "e-mail, and access web pages and newsgroups").

regulation. Pay Tel merely wants the ability to audit its competitors' service offerings in a manner that the market presently does not afford it. In so doing, it invites the Commission to adopt *ultra vires* regulations over non-telecommunications services and products.

Draft Rule 64.6070 would also compound the regulatory intrusion that the proposed definition of "Additional Products and Services" invites: it not only purports to establish "traditional ICS" but it also would regulate the technology choices that correctional facilities make. It would place new regulatory burdens on facilities' technological choices and on ICS Providers' innovation. The Commission's aim in this proceeding, however, is to foster innovation in order to "benefit users and thus serve our goals for ICS reform."⁴ Pay Tel's aim seems to be the opposite.

Finally, perhaps the most objectionable provision of Draft Rule 64.6070 is its prohibition on cost recovery for a host of features and functions that are part and parcel of a reliable, safe inmate communications service: "Costs associated with additional products and services are subject to separate accounting from ICS and are not recoverable in the rates charged to Consumers for ICS."

There can be no more obvious form of regulatory punishment than to prohibit a carrier from recovering its costs. And Pay Tel's goal could not be more obvious: preventing its competitors from innovating. If Pay Tel has chosen not to invest in new development, it should live with the competitive consequences of that decision.⁵ But Draft Rule 64.6070 is Pay Tel's

⁴ WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Second Further Notice of Proposed Rulemaking, 29 FCC Rcd. 13170, 13227 ¶ 145 (2014) ("Second FNPRM").

⁵ It is telling that Pay Tel would allow an additive rate of \$0.02 per minute for Voice Biometrics in its Draft Rule 64.6050. Pay Tel does offer that service. *E.g.*, *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd. 14107, 14121 ¶ 27 (2013) ("*Inmate Rate Order*") ("Pay Tel also filed financial and operational data ... including the cost of an advanced security feature

attempt to shield itself from those consequences by precluding other Providers from making those investments. Pay Tel more than asks the Commission to “pick winners and losers,”⁶ it posits a market in which there are no winners or losers – every carrier would offer the same services, with no differentiation. Consumer satisfaction and public safety would surely suffer under that Soviet-style market.

In essence, Pay Tel’s Draft Rules 64.6000(1) and 64.6070 are an attempt to punish or hamstring innovation in the ICS market by imposing new, unnecessary restrictions on services that do not even exist and are not within the Commission’s regulatory purview. The Commission should reject them in full. *See* Attachments A and B.

II. THE COMMISSION SHOULD NOT ADOPT BELOW-COST RATES FOR ICS-RELATED TRANSACTION AND ANCILLARY FEES

Securus maintains that the Commission lacks jurisdiction over financial transaction fees.⁷ It nonetheless joined, in an effort to reach compromise, the ICS Industry Proposal which, while also lodging jurisdictional objections, made a proposal for a transaction fee rate cap.⁸ In its subsequent Comments, Securus provided cost support for that rate cap.⁹ Pay

known as continuous voice biometric identification.”). All other new security features, however, are apparently unacceptable to Pay Tel.

⁶ CC Docket No. 98-147, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Fourth Report and Order, 16 FCC Rcd. 15435, 15438 ¶ 7 (2001) (“Indeed, we have previously recognized that, in adopting the 1996 Act, Congress consciously did not try to pick winners or losers, or favor one technology over another.”).

⁷ Securus January 2015 Comments at 25; Securus July 2013 Reply Comments at 1-2; Securus April 2013 Reply Comments at 14-17.

⁸ WC Docket No. 12-375, Letter from Securus, Global Tel*Link Corp., and Telmate, LLC to Chairman Wheeler and Commissioners Clyburn, Rosenworcel, Pai, and O’Rielly at 4-6 (Sept. 15, 2014) (“ICS Industry Proposal”).

⁹ Securus January 2015 Comments at 26-28; Declaration of Dennis Rose ¶¶ 3-6 (Jan. 9, 2015) (“Rose Jan. 9 Decl.”).

Tel's proposal ignores that cost proposal and would result in rate caps that would be drastically below Securus's demonstrated costs.

Pay Tel's Draft Rule 64.6050 proposes fees for and restrictions on payment transactions that are demonstrably unworkable. In Draft Rule 64.6050 "Transaction or Payment Processing Fee," Pay Tel arbitrarily choose \$3.00 for "automated payments" and \$5.95 for "live agent payment processing", neither of which will cover the costs Securus has reported. Moreover, Pay Tel wrongly assumes that "automated payments" require no human assistance or oversight – Securus has shown that setting up the system to interface with customers and the necessary third-party processing vendors takes a considerable amount of work and resources on an ongoing basis.¹⁰ Securus must be compensated for those costs.

Pay Tel also attempts to use the Ancillary Charges rule to tilt the playing field in favor of certain providers while unreasonably restricting the arrangements of other providers. In Draft Rule 64.6050(a), Pay Tel includes a provision allowing an ICS Provider to charge "5% of the transfer amount for fund transfer from the inmate's trust/commissary account to the inmate's debit phone account." In other words, the commissary gets a site commission when an inmate transfers commissary money to a phone account. This provision plainly favors one ICS Provider that has been purchased by the nation's largest inmate commissary provider. Then Pay Tel punishes other ICS Providers with this proposed provision in Draft Rule 64.6050(b):

A Provider may arrange to receive payments through a third party [sic] money transfer agent **and must select the lowest priced commercially available product from each money transfer agent used.** A provider **may not enter into a revenue sharing arrangement** with a third party [sic] money transfer agent or impose any supplemental fee for the processing of such payments.

¹⁰ See Rose Jan. 9 Decl. ¶ 3.

Pay Tel proposes a tremendous regulatory overreach here. Other than with regard to its supervision of Universal Service subsidy programs like E-Rate, the Commission does not dictate the vendors that a common carrier retains in order to provide communications services, much less financial transaction services, and the Commission has not found revenue-sharing arrangements to be *per se* unlawful – a finding that Pay Tel’s rule would codify as federal law – even when they impact common carrier rates.¹¹

The Commission also should adopt the Validation Fee that Securus included in its Draft Rules submitted on February 9, 2015. Pay Tel’s Draft Rule 64.6050 is modeled on Securus Draft Rule 64.6080, and thus states that “[o]nly the following Ancillary Charges may be charged in connected with ICS[.]” Securus’s Draft Rules are in turn based on the ICS Industry Proposal which sets forth a “compromise,”¹² notwithstanding jurisdictional objections, that permits four types of Ancillary Charges and would eliminate these 19 other charges:

- VINE
- State regulatory cost recovery fee
- Federal regulatory cost recovery fee
- Refund fees
- Account set-up fee
- Billing statement fee
- Single bill fee
- USF administration fee
- Wireless administration fee
- Location validation fee
- Voice biometrics fee¹³
- Technology fee
- Account close-out fee

¹¹ The Commission expressly refused to declare unlawful the sharing of access revenue between local exchange carriers and conference bridge providers, despite being “urged” to do so by “several parties.” WC Docket No. 10-90, *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, 17879 ¶ 672 (2011).

¹² ICS Industry Proposal at 4.

¹³ The additive, per-minute rate to recover the cost of Voice Biometrics will replace a flat fee.

Withdrawal fee
Carrier Cost Recovery fee
Collect Call Regulatory fee
Funding fee
Regulatory Assessment fee
Account Services fee

Replacing these charges would be a Validation Fee to cover the costs ICS Providers incur to “verify the inmate is permitted to call the dialed number, authenticate the called party ... and confirm the called party has provided valid consent to receive the call.”¹⁴ These security-related verifications require “dips” into various industry databases, and carriers must pay for each one.¹⁵ Pay Tel omitted the Validation Fee from its Draft Rules, but that Fee has a demonstrable cost basis and should be expressly adopted.

For all these reasons, the Commission should adopt Pay Tel’s proposed rules only if amended as follows:

Rule 64.6050 ICS Ancillary Charges

Only the following Ancillary Charges may be charged in connection with ICS:

- (a) Transaction or Payment Processing Fee. A Provider may charge up to \$6.95 for a transaction by which a Consumer uses a credit card or debit card (i) to fund a Debit account, or (ii) to pay amounts due in arrears (i) \$3.00 for automated payments via phone IVR, website or kiosk, (ii) \$5.95 for live agent payment processing, and (iii) 5% of the transfer amount for fund transfer from the inmate’s trust/commissary account to the inmate’s debit phone account.
- (b) Money Transfer Fee. A Provider may charge up to \$2.50 to administer payments processed by or generated through a third-party money-transfer entity such as Western Union and Moneygram arrange to receive payments through a third party money transfer agent and must select the lowest priced commercially available product from each money transfer agent used. A provider may not enter into a

¹⁴ ICS Industry Proposal at 5.

¹⁵ WC Docket No. 12-375, Written Ex Parte of Global Tel*Link Corporation at 14 (Apr. 3, 2015).

~~revenue sharing arrangement with a third party money transfer agent or impose any supplemental fee for the processing of such payments.~~

- (c) Voice Biometrics Fee. A provider may add ~~charge~~ up to \$0.02 to the per-minute calling rate ~~per minute~~ for voice biometrics where such technology is deployed and active.
- (d) Optional, Single Call Programs.¹⁶ Single Call programs, including “convenience” or “premium payment” options, which allow the called party to pay for a single call without establishing a prepaid collect account (e.g., billing directly to credit/debit card or billing to an existing wireless telephone account), may only be offered as follows:
 - (i) The Provider must clearly disclose to Consumers at the beginning of each call that the ability to place a Single Call is optional and must make other methods of payment ~~or establishing credit~~ available.
 - (ii) Total charges for a Single Call shall not exceed the amount that the Provider charged for that service on December 31, 2014 applicable rate cap plus any applicable Facility Administrative Support for the actual call duration plus the permissible ancillary charge for an automated payment by phone.
 - (iii) ~~Providers unable to calculate actual call duration at the time of the call may opt to charge the full duration charge and then credit the called party’s credit card for the unused minutes.~~
- (e) Validation Fee. A Provider may charge, on a per-call basis, a fee to recover the cost of call validation that is up to 8% of the total calling rate charged for the call, excluding any per-minute Facility Administrative Support charge that may be added to the calling rate. ~~ICS Providers may utilize affiliated vendors to provide payment processing, money transfer or voice biometric services provided that any arrangements for the provision of affiliated services comply with the applicable caps on Ancillary Charges.~~

III. RATE CAPS SHOULD NOT BE BUILT ON THE FALSE “JAILS vs. PRISONS” DICHOTOMY

Pay Tel continues to propose Rate Caps and Facility Support Payments that are separated strictly between “Jail” and “Prisons”, a scheme that the record overwhelmingly

¹⁶ Securus discusses the basis for its changes to this subpart in Section IV., *infra*.

rejects.¹⁷ As Securus has stated, “Not all DOCs are large. Not all jails are small.”¹⁸ Securus provided population statistics in its January 2015 Comments for several jails and state prison systems which demonstrate that the title on the front door does not determine the size of a facility, let alone the expected call volume.¹⁹ Nor is that title a determinant of the size of the investment needed to serve the facility.²⁰ Pay Tel’s own evidence shows that 23% of jails have an Average Daily Population (“ADP”) of 250 or higher, and 6% of jails have ADPs of over 1,000 inmates.²¹ The deeply flawed “jails vs. prisons” scheme is also inapt for setting the “Facility Administrative Support” fees in Pay Tel’s Draft Rule 64.6060.

Securus also explained that to impose different rates based solely on “the jurisdiction of a facility” would be unlawfully discriminatory.²² “Subjecting inmates to different rates based on whether they violated county law as opposed to state law is unjustifiable.”²³ In

¹⁷ No party agreed with or adopted the “jails vs. prisons” rate construct during the comment cycle. Securus January 2015 Reply Comments at 8. The only slightly similar proposals came from the Martha Wright commenters who combined “prisons” with jails “with more than 350 beds” for one category, and made “smaller jails with fewer than 350 beds” a separate rate category. WC Docket No. 12-375, Comments of Martha Wright, *et al.* at 14 (Jan. 12, 2015). Securus does not support that proposal for the same reasons discussed herein.

¹⁸ Securus January 2015 Reply Comments at 16.

¹⁹ “Further, as Securus has stated previously, if the Commission is resolute in adopting some sort of tiered rate structure, the appropriate determining factor is call volume.” *Id.* at 19.

²⁰ “ICS carries very large direct costs, and the provision of secure calling platforms requires ‘a certain baseline of equipment regardless of whether there are 10 inmates or 1,000.’ These direct costs are amortized through paid calling minutes.” *Id.* at 19 (quoting Declaration of Geoffrey M. Boyd, Chief Financial Officer, Securus, ¶ 8 (Dec. 9, 2014)); *see also* WC Docket No. 12-375, Reply Comments of CenturyLink Public Communications, Inc. at 32 (“Jan. 27, 2015) (“The tiered rate cap structures proposed by the Wright Petitioners and Pay Tel mistakenly presuppose that there is a clear demarcation between the cost of serving jails and the cost of serving prisons. There is not.”).

²¹ Securus January 2015 Reply Comments at 11 (citing Pay Tel Comments at 12-13 (“Jail Inmates at Midyear 2013 – Statistical Tables”)).

²² *Id.* at 23-24.

²³ *Id.* at 24.

fact, even relying on ADP as the determining factor, without more, could result in a discriminatory rate structure.²⁴ If the Commission nonetheless is sure that a tiered rate structure is appropriate, the tiers should be defined in a way that accounts not only for ADP but also differences in the investment required to serve a site. And, as Securus previously has stated, ADP must be very closely defined such that carriers cannot game the system in the way that they report those figures.²⁵

Further with regard to Pay Tel’s “jails vs. prisons” rate structure is the issue of standing: “Any calling rate limited to prisons would have absolutely no effect on Pay Tel.”²⁶ Pay Tel has no “actual or imminent” threat of injury regarding any aspect of service to state prisons, and thus a rate cap applicable only to prisons would “not place any legal burden on” Pay Tel or “determine any legal rights” of Pay Tel.²⁷ This lack of standing also infects Pay Tel’s proposed rules for the optional, premium calling methods that it has chosen not to provide. *See* Section IV., *infra*.

Finally, Pay Tel admits the folly of its pricing scheme when it proposes subparts (b) and (c) for Draft Rule 64.6040 to counteract the problem of state inmates being housed in non-DOC facilities. Pay Tel sets forth a “split rate structure” for jails that house state inmates,

²⁴ WC Docket No. 12-375, Comments of Global Tel*Link Corp. at 8 (Jan. 27, 2015) (“Indeed, it would be inconsistent with the basic tenets of the Communications Act and Commission policy to discriminate between similarly situated customers based on an ‘empty distinction’ such as inmate population counts.”).

²⁵ “Specifically, if [ADP] is the metric used to differentiate by jail size, the Commission should be very clear that the ADP for an entire correctional system, rather than just one facility or one building within the system, is the proper accounting method.” WC Docket No. 12-375, Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC, at 1-2 (July 6, 2015) (providing notice of ex parte meeting with several staffpersons in the Wireline Competition Bureau).

²⁶ Securus January 2015 Comments at 18.

²⁷ *Id.* (quoting *Doe Run Res. Corp. vs. EPA*, 528 F. App’x 1, 2-3 (D.C. Cir. 2013)), at 19 (quoting *New York Reg’l Interconnect, Inc. vs. FERC*, 634 F.3d 581, 587 (D.C. Cir. 2011)).

using another arbitrary figure of “40% or more of the total facility population,” with yet another reporting obligation for “ICS providers in Jails.” This “split rate structure” is unmoored from any rational ratemaking: why should a rate be changed simply because 40% of the inmates violated state law? Pay Tel’s proposal is no longer about jail size, it is about the nature of the inmates themselves. It has nothing to do with the cost of service. A facility is a facility, and an inmate is an inmate – any attempt to differentiate calling service based on facility type will fail.

The issue of waivers also must be addressed with the forthcoming rate caps. The Commission should adopt a streamlined, efficient waiver mechanism to enable carriers to bring new calling features to market. Pay Tel included a Voice Biometrics charge of \$0.02 per minute in its draft Ancillary Charges rule (64.6050).²⁸ For similar security-related features which, like Voice Biometrics, are a new or separate cost not reported in carriers’ Mandatory Data Collection submissions, the Commission should grant waivers of the Rate Cap(s) on an expedited basis. More specifically, the Commission should approve an additive, per-minute rate for such calling features upon a showing of need by the requesting ICS Provider. The contracting and bidding process in this industry, which requires swift action, requires that requests should be granted expeditiously, and should be deemed granted within 45 days of filing.

For all these reasons, the Commission should adopt Pay Tel’s proposed rules only if amended as follows:

²⁸ In its cost data filed July 17, 2014, Securus listed Voice Biometrics as an ancillary service and not part of its calling service, because it is not in place at all of the correctional facilities that it serves. Voice Biometrics is not a cost that is represented in Securus’s per-minute average of \$0.1776.

Rule 64.6040 Inmate Calling Services Rate Cap

- (a) No Provider may charge a rate for any inmate-initiated call from a Confinement Facility that exceeds the following rate caps (excluding any charge for Facility Administrative Support):

| <u>Facility Type</u> | <u>Size (ADP)</u> | <u>Rate Cap</u> |
|----------------------|--------------------------------|--|
| Jail | 0-349 [FCC to determine] | \$0.22/min. [FCC to determine] ²⁹ |
| | 350-999 [FCC to determine] | \$0.20/min. [FCC to determine] |
| | 1,000-2,499 [FCC to determine] | \$0.18/min. [FCC to determine] |
| | 2,500+ [FCC to determine] | \$0.16/min. [FCC to determine] |
| Prison | All | \$0.08/min. |

All charges shall be assessed on a per-minute basis for the actual call duration, measured from call acceptance to call termination rounded up to the next full minute. No per-call fee, per-call surcharge, or connection fee may be charged.

- (b) For any security-related or call-completion related feature not contained within the cost information submitted by the Provider in response to the 2014 Mandatory Data Collection, the Provider may petition for a Waiver of the Rate Caps in order to recover the cost of that feature. A Petition for Waiver (i) must set forth the cost basis for the requested new rate, and (ii) will be deemed granted within forty-five (45) calendar days of being filed. For purposes of the rate cap set in (a), Jails that are contracted to house prison inmates averaging 40% or more of the total facility population (as reported annually by the facility) shall utilize a split rate structure; prison inmates will be charged no more than the prison rate cap and jail inmates will be charged no more than the jail rate cap. ICS providers in Jails shall certify prison contracted population upon first initiating service and by annual certifications thereafter to be posted on their websites.
- (c) ~~For purposes of the rate cap set in (a), detention, work release, mental health, juvenile, and U.S. Immigration and Customs Enforcement facilities, other than those that are bid as part of a Department of Correction group, are be subject to the cap applicable to Jails. Work release, mental health, juvenile, and U.S. Immigration and Customs Enforcement facilities bid as part of a Department of Correction group are subject to the cap applicable to Prisons.~~

Rule 64.6060 Facility Administrative Support

* * *

²⁹ GTL, Securus, and Telmate proposed a unified, non-tiered rate of \$0.20 per minute for prepaid calls and \$0.24 per minute for collect calls. ICS Industry Proposal at 2.

- (c) To compensate Confinement Facilities for their costs incurred in connection with the provision of ICS, an ICS Provider may collect from Consumers charges for Facility Administrative Support, such charges to be assessed on a per minute of use basis, not to exceed the following amounts, for all completed, billed, inmate-initiated calls from an electing Confinement Facility.

| Type | Size (ADP) | Amount per Minute |
|--------|--------------------------------|---------------------------|
| Jail | 1-349 [FCC to determine] | \$0.07 [FCC to determine] |
| Jail | 350-999 [FCC to determine] | \$0.05 [FCC to determine] |
| Jail | 1,000-2,499 [FCC to determine] | \$0.05 [FCC to determine] |
| Jail | 2,500+ [FCC to determine] | \$0.03 [FCC to determine] |
| Prison | All | \$0.02 |

The entire amount of Facility Administrative Support collected by a Provider from Consumers shall be passed through to an electing Confinement Facility. ~~In the case of a Jail that is contracted to house prison inmates averaging 40% or more of the total facility population, the Facility Administrative Support payment for those prison inmates housed in jails will be based on the prison rate.~~

- (d) No pre-payment or advance payment of Facility Administrative Support shall be permitted. Costs associated with Additional Products or Services provided to the Confinement Facility shall not be deducted from the Facility Administrative Support payment.

- ~~(e) Jails and other facilities subject to Jail Rate Caps shall provide certifications, signed by a duly authorized officer of the facility, to the ICS Provider of (i) ADP, and (ii) the percentage of prison inmates in the total inmate population for the facility. The certifications shall be provided as of the commencement of service by an ICS Provider and, thereafter, annually with data as of December 31. Jails that do not provide the required certifications are ineligible for receipt of Facility Administrative Support. Any Facility Administrative Support funds collected by an ICS Provider are held for the benefit of the electing facility. Any unclaimed funds must be refunded to consumers or disposed of in accordance with applicable state law regarding unclaimed property.~~

IV. THE COMMISSION SHOULD NOT ELIMINATE OR RENDER UNECONOMIC ANY OPTIONAL, PREMIUM PAYMENT OR CALLING OPTION

Pay Tel's proposal for "Optional, Single Call Programs" in its Draft Rule

64.6050(d) also runs contrary to record evidence and is yet another instance in which Pay Tel attempts to enlist the Commission in punishing Pay Tel's competitors. Securus has provided sworn testimony of the investment it has made in order to provide optional, convenient calling

methods to persons who otherwise could not receive inmate calls.³⁰ Pay Tel has not chosen to make this investment and thus wants to prevent Securus from providing these services.

It bears repeating that the “Optional, Single Call Programs” to which Pay Tel refers are “are *optional* conveniences offered to customers. These options are not intended as permanent methods for inmates to make collect calls.”³¹ In addition, they are “valuable additions to Securus’s panoply of services that did not exist 10 years ago and have materially increased inmates’ ability to complete calls to friends and family.”³² It would be out of step with the Commission’s goals to eliminate these options or make them uneconomic to provide.³³

No party, not even Pay Tel, has attempted to argue that Securus’s investment in optional, premium calling methods should not be recovered. No carrier has credibly asserted that it is unable to develop or procure such products. One wonders why Pay Tel still has not developed these products; reaping \$0.46 per minute for interstate calls, in addition to charging intrastate long-distance rates of \$4.10 to \$10.85 per call,³⁴ would have seemed to enable Pay Tel to invest in its service portfolio. In any event, the Commission should not protect via regulation the carriers that chose not to compete via innovation. Pay Tel’s Draft Rule 64.6050(d) for “Optional, Single Call Programs” should be rejected, unless adopted in the form that Securus

³⁰ See Rose Jan. 9 Decl. ¶¶ 4-5.

³¹ WC Docket No. 12-375, Letter from Stephanie A. Joyce, Counsel to Securus, to Chmn. Tom Wheeler, *et al.* at 5 (Oct. 6, 2014) (emphasis in original).

³² Securus January 2015 Comments at 27.

³³ Second FNPRM, 29 FCC Rcd. at 13171 ¶ 2 (“making it easier for inmates to stay connected to their families and friends”); *Inmate Rate Order*, 28 FCC Rcd. at 14109 ¶ 2 (“promote the general welfare of our nation by making it easier for inmates to stay connected to their families and friends while taking full account of the security needs of correctional facilities”).

³⁴ Securus January 2015 Reply Comments at 9-10 (stating Pay Tel’s intrastate rates as reported by Don Wood).

provides herein.

V. ANNUAL, BINDING OFFICERS' CERTIFICATIONS ARE SUFFICIENT TO ENSURE COMPLIANCE WITH THE FORTHCOMING RULES

The record is uniform in supporting the requirement that every ICS Provider must provide annual certifications of compliance with all ICS Rules. Securus has proposed that the certifications be signed by three key personnel: the highest-ranking manager (*e.g.*, the CEO), attorney (*e.g.*, the General Counsel), and financial manager (*e.g.*, the CFO) of each ICS Provider.³⁵ Global Tel*Link and Telmate join in that proposal.³⁶

These certifications are necessary to ensuring that the ICS industry is a level playing field. They also are a sufficient means of ensuring that Consumers are protected. No carrier can have a reasonable objection to providing a sworn statement of compliance with federal law. Pay Tel's proposed, new "Consumer Protection and Disclosure" Draft Rule 64.6090, by contrast, would be hyper-regulatory overkill.

Commission Rule 64.710 already imposes several requirements for the protection of consumers, including disclosures that must be made available on every call:

- Instructions on "how to obtain the total cost of the call, including any surcharge or premises-imposed-fee;"
- The disclosure "shall include any per-call surcharge imposed by the correctional institution;"
- "The methods by which its rates or charges for the call will be collected;" and

³⁵ Second FNPRM, 29 FCC Rcd. at 13121 ¶ 157 ("Securus has urged the Commission to require that the CEO, CFO, and General Counsel of each ICS provider all certify to the companies' compliance with the Commission's ICS rules and regulations.") (citing WC Docket No. 12-375, Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC, Attachment (Sept. 22, 2014)).

³⁶ ICS Industry Proposal at 7.

- “The methods by which complaints concerning such rates, charges or collection practices will be resolved.”

47 C.F.R. § 64.710(a)(1)-(a)(3). In addition, ICS Providers routinely, if not universally, provide written literature to correctional facilities that provide information to inmates about the telephone system and the applicable rates. These rules and practices, coupled with a rule requiring three sworn certifications of compliance, will ensure that the forthcoming rules and rates are followed by all ICS Providers.

Pay Tel also has attempted to create a new reporting requirement that it believes should be imposed directly on correctional authorities: Rule 64.6060 includes a subpart stating that “[j]ails and other facilities subject to Jail Rate Caps shall provide certifications ... of ADP and the percentage of prison inmates in the total inmate population for the facility.” That rule would be wildly outside the Commission’s jurisdiction and completely unenforceable.

Correctional authorities do not answer to the FCC. As stated in Section III. above, Pay Tel’s creation of this reporting requirement only demonstrates that its “jails vs. prisons” construct rests on shaky ground.

As such, the Commission should adopt Pay Tel’s proposed rule only if amended as follows:

§ 64.6030 Annual Reporting and Certification Requirement

- (a) All Providers must submit a report to the Commission, ~~on~~ by April 1 of each year, stating the total amount of Facility Administrative Support payments the Provider remitted to any entity identified in the definition of Site Commissions that is adopted herein. ~~regarding their interstate and intrastate Inmate Calling Services for the prior calendar year. The report shall contain:~~
 - ~~(1) The following summary information broken out by Confinement Facility (including the name of the facility and the state it is located in); by jurisdictional nature to the extent that there are differences among interstate, intrastate, and local calls; and by the nature of the billing arrangement to the~~

~~extent that there are differences among Collect Calling, Debit Calling, Direct Billed Calling, Prepaid Collect Calling and Single Calls:~~

- ~~(i) Rates for Inmate Calling Services;~~
- ~~(ii) Facility Administrative Support, if applicable, including any per-minute recovery charged to consumers;~~
- ~~(iii) Ancillary charges, by category;~~
- ~~(iv) Total billable calls completed;~~
- ~~(v) Total minutes of use;~~
- ~~(vi) Total call revenue;~~
- ~~(vii) The average duration of calls;~~
- ~~(viii) Facility ADP;~~
- ~~(ix) Percentage of total ADP comprised of prison inmates (for Jails only);~~
- ~~(x) List of Additional Products and Services provided and source of funding (if paid by consumer, include cost per unit charged to consumer);~~

~~(2) A certification that the Provider was in compliance during the entire prior calendar year with the rates for Telecommunications Relay Service as required by § 64.6010;~~

(b) ~~An officer or director from each~~ On April 1 of each year, all Providers must file certifications of (i) the most senior person who has authority to bind the Provider, (ii) the most senior in-house attorney for the Provider, and (iii) the most senior person charged with handling the Provider's financial accounts ~~certify that the Provider has complied with all Rules adopted herein reported information and data are accurate and complete to the best of their~~ his or her knowledge, information, and belief.

Dated: July 27, 2015

By: s/Stephanie A. Joyce
Stephanie A. Joyce
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ATTACHMENT A: Blackline of Pay Tel's Proposed Rules

ATTACHMENT B: Pay Tel's Proposed Rules as Amended by Securus (Clean Version)

ATTACHMENT A – BLACKLINE OF PAY TEL PROPOSED RULES

§ 64.6000 Definitions

As used in this subpart:

~~(1) Additional Products and Services refers to products and services offered by an ICS Provider that are not required for traditional ICS and includes: (i) products and services offered to the inmate or consumer (e.g., email or video visitations services) and paid for by the inmate or consumer, the provider through excess revenues (profits), or the facility through a separately negotiated charge; and (ii) products and services offered to the facility (e.g., Jail Management Services, Automated Inquiry Systems, Cell Phone Detection, Data Inquiry Systems) and paid for by the provider through excess revenues (profits) or the facility through a separately negotiated charge.~~

(1) ADP, or Average Daily Population ~~average daily population~~, means the average monthly inmate population in a Confinement Facility ~~as certified by the applicable facility~~. Where more than one Confinement Facility is administered under one a common ~~one~~ ICS contract, ADP shall be calculated by adding together the numbers of inmates housed in ~~averaging across~~ all facilities under the contract. For purposes of the ICS Rate Cap and Facility Administrative Support, ADP shall be initially determined as of the commencement of service based on the average of the preceding calendar year and then updated once per year in January with any required rate adjustments to be made effective February 1. ~~ADP reported and certified by the applicable facility may be relied upon and presumed to be accurate by the ICS Provider.~~

(2) Ancillary charges means any charges to Consumers not included in the charges assessed for individual calls and that Consumers may be assessed for the use of Inmate Calling Services. Ancillary Charges includes, but is not limited to, fees to create, maintain, or close an account with a Provider; and fees in connection with account balances, including fees to add money to an account or transfer money between accounts; ~~and fees for obtaining refunds of outstanding funds in an account;~~

(3) Collect calling means a calling arrangement whereby a credit qualified called party agrees to pay for charges associated with an Inmate Calling Services call originating from an Inmate Telephone;

(5) Consumer means the party paying a Provider of Inmate Calling Services;

(6) Confinement Facility means city, county, regional, state and federal facilities, including jail, detention, prison, work release, mental health, juvenile, and U.S. Immigration and Customs Enforcement facilities;

(7) Debit calling means a calling arrangement that allows an inmate to pay for ICS by purchasing a prepaid card or transferring funds to a debit phone account;

(8) Direct billed calling means a calling arrangement that allows credit qualified called parties to establish an account to accept collect phone calls and be direct billed in arrears for those calls by the ICS vendor;

(9) Facility Administrative Support means a component of ICS costs, measured on a per minute basis, related to a confinement facility's administrative costs associated with the provision of ICS;

(10) Inmate means a person detained at a Confinement Facility ~~confinement facility~~, regardless of the duration of the detention;

(11) Inmate calling services, or ICS, means the offering of local, interstate, intrastate, and/or international calling capabilities from an Inmate Telephone;

(12) Inmate telephone means a telephone instrument or other device capable of initiating telephone calls set aside by authorities of a correctional institution for use by Inmates;

~~(13) Jail means a confinement facility operated by a city, county, sheriff or regional jail authority intended primarily for the short term housing and detention of individuals who have been arrested for a criminal offense and are attempting to arrange bail or are being held pending trial or other disposition of the charges. The term includes city, county or regional facilities that have contracted with a private company to manage day to day operations as well as privately owned and operated facilities primarily engaged in housing city, county or regional jail inmates;~~

(13) Prepaid collect calling means a calling arrangement that allows the called party to establish a prepaid account for acceptance and payment of future calls from inmates;

~~(14) Prison means a confinement facility operated by a state or territorial Department of Correction or the Federal Bureau of Prisons housing sentenced individuals serving an extended defined period of incarceration. The term includes private prisons that provide outsourced housing of inmates for State Departments of Correction or the Federal Bureau of Prisons and prison facilities that are managed by private companies under contract with State Departments of Correction or the Federal Bureau of Prisons;~~

(14) Provider of Inmate Calling Services, or Provider, means any telecommunications service provider that provides Inmate Calling Services, ~~regardless of the technology used.~~

(15) Site commission means any monetary payment ~~in money, in kind services or tangible or intangible goods or property, regardless of the form or the terminology used to describe the payment, excluding Facility Administrative Support,~~ from an ICS Provider to (a) the entity that operates a correctional institution, (b) the entity with which a Provider enters into an agreement to provide ICS to a Confinement Facility, (c) a governmental agency that oversees a correction institution, (d) the state, county, or city where the correctional institution is located, or (e) to an agent or other representative of the entities described in (a)-(d).

§ 64.6010 Rates for Telecommunications Relay Service (TRS) Calling

No Provider shall levy or collect any charge in addition to or in excess of the rates for Inmate Calling Services (including any applicable Facility Administrative Support) or charges for Ancillary Charges for any form of TRS call.

§ 64.6020 Billing-Related Call Blocking

No Provider shall prohibit or prevent completion of a Collect Calling call or decline to establish or otherwise degrade Collect Calling solely for the reason that it lacks a billing relationship with the called party's communications service provider unless the Provider offers Debit Calling, Direct Billed Calling, or Prepaid Collect Calling.

§ 64.6030 Annual Reporting and Certification Requirement

(a) All Providers must submit a report to the Commission, on ~~by~~ April 1 of each year, stating the total amount of Facility Administrative Support payments the Provider remitted to any entity identified in the definition of Site Commissions that is adopted herein. ~~regarding their interstate and intrastate Inmate Calling Services for the prior calendar year. The report shall contain:~~

~~(1) The following summary information broken out by Confinement Facility (including the name of the facility and the state it is located in); by jurisdictional nature to the extent that there are differences among interstate, intrastate, and local calls; and by the nature of the billing arrangement to the extent that there are differences among Collect Calling, Debit Calling, Direct Billed Calling, Prepaid Collect Calling and Single Calls:~~

- ~~(i) — Rates for Inmate Calling Services;~~
- ~~(ii) — Facility Administrative Support, if applicable, including any per-minute recovery charged to consumers;~~
- ~~(iii) — Ancillary charges, by category;~~
- ~~(iv) — Total billable calls completed;~~
- ~~(v) — Total minutes of use;~~
- ~~(vi) — Total call revenue;~~
- ~~(vii) — The average duration of calls;~~
- ~~(viii) — Facility ADP;~~
- ~~(ix) — Percentage of total ADP comprised of prison inmates (for Jails only);~~
- ~~(x) — List of Additional Products and Services provided and source of funding (if paid by consumer, include cost per unit charged to consumer);~~

~~(2) A certification that the Provider was in compliance during the entire prior calendar year with the rates for Telecommunications Relay Service as required by § 64.6010;~~

(b) An officer or director from each On April 1 of each year, all Providers must file certifications of (i) the most senior person who has authority to bind the Provider, (ii) the most senior in-house attorney for the Provider, and (iii) the most senior person charged with handling the Provider's financial accounts certify that the Provider has complied with all Rules adopted

~~herein reported information and data are accurate and complete~~ to the best of ~~their~~ his or her knowledge, information, and belief.

§ 64.6040 Inmate Calling Services Rate Cap

(a) No Provider may charge a rate for any inmate-initiated call from a Confinement Facility that exceeds the following rate caps (excluding any charge for Facility Administrative Support):

| <u>Facility Type</u> | <u>Size (ADP)</u> | <u>Rate Cap</u> |
|----------------------|--------------------------------|--------------------------------|
| Jail | 0-349 [FCC to determine] | \$0.22/min. [FCC to determine] |
| | 350-999 [FCC to determine] | \$0.20/min. [FCC to determine] |
| | 1,000-2,499 [FCC to determine] | \$0.18/min. [FCC to determine] |
| | 2,500+ [FCC to determine] | \$0.16/min. [FCC to determine] |
| Prison | All | \$0.08/min. |

All charges shall be assessed on a per-minute basis for the actual call duration, measured from call acceptance to call termination rounded up to the next full minute. No per-call fee, per-call surcharge, or connection fee may be charged.

~~(b) For any security-related or call-completion related feature not contained within the cost information submitted by the Provider in response to the 2014 Mandatory Data Collection, the Provider may seek a Waiver of the Rate Caps in order to recover the cost of that feature. A Petition for Waiver (i) must set forth the cost basis for the requested new rate, and (ii) will be deemed granted within forty-five (45) calendar days of being filed. For purposes of the rate cap set in (a), Jails that are contracted to house prison inmates averaging 40% or more of the total facility population (as reported annually by the facility) shall utilize a split rate structure; prison inmates will be charged no more than the prison rate cap and jail inmates will be charged no more than the jail rate cap. ICS providers in Jails shall certify prison contracted population upon first initiating service and by annual certifications thereafter to be posted on their websites.~~

~~(c) For purposes of the rate cap set in (a), detention, work release, mental health, juvenile, and U.S. Immigration and Customs Enforcement facilities, other than those that are bid as part of a Department of Correction group, are be subject to the cap applicable to Jails. Work release, mental health, juvenile, and U.S. Immigration and Customs Enforcement facilities bid as part of a Department of Correction group are subject to the cap applicable to Prisons.~~

§ 64.6050 ICS Ancillary Charges

Only the following Ancillary Charges may be charged in connection with ICS:

(a) Transaction or Payment Processing Fee. A Provider may charge up to \$6.95 for a transaction by which a Consumer uses a credit card or debit card (i) to fund a Debit account or (ii) to pay amounts due in arrears (i) \$3.00 for automated payments via phone IVR, website or kiosk, (ii) \$5.95 for live agent payment processing, and (iii) 5% of the transfer amount for fund transfer from the inmate's trust/commissary account to the inmate's debit phone account.

(b) Money Transfer Fee. A Provider may charge up to \$2.50 to administer payments processed by or generated through a third-party money-transfer entity such as Western Union and Moneygram ~~arrange to receive payments through a third party money transfer agent and must select the lowest priced commercially available product from each money transfer agent used. A provider may not enter into a revenue sharing arrangement with a third party money transfer agent or impose any supplemental fee for the processing of such payments.~~

(c) Voice Biometrics Fee. A provider may add ~~charge~~ up to \$0.02 to the per-minute calling rate ~~per minute~~ for voice biometrics where such technology is deployed and active.

(d) Optional, Single Call Programs. Single Call programs, including “convenience” or “premium payment” options, which allow the called party to pay for a single call without establishing a prepaid collect account (e.g., billing directly to credit/debit card or billing to an existing wireless telephone account), may only be offered as follows:

- (i) The Provider must clearly disclose to Consumers at the beginning of each call that the ability to place a Single Call is optional and must make other methods of payment ~~or establishing credit~~ available.
- (ii) Total charges for a Single Call shall not exceed the amount that the Provider charged for that service on December 31, 2014 applicable rate cap plus any applicable Facility Administrative Support for the actual call duration plus the permissible ancillary charge for an automated payment by phone.
- ~~(iii) Providers unable to calculate actual call duration at the time of the call may opt to charge the full duration charge and then credit the called party’s credit card for the unused minutes.~~

(e) Validation Fee. A Provider may charge, on a per-call basis, a fee to recover the cost of call validation that is up to 8% of the total calling rate charged for the call, excluding any per-minute Facility Administrative Support charge that may be added to the calling rate ICS ~~Providers may utilize affiliated vendors to provide payment processing, money transfer or voice biometric services provided that any arrangements for the provision of affiliated services comply with the applicable caps on Ancillary Charges.~~

§ 64.6060 Facility Administrative Support

(a) Beginning 24 months after the Effective Date of these Rules, No no Provider may pay a Site Commission or any other form of monetary compensation or in-kind products or services ~~except for the Facility Administrative Support established herein.~~

(b) A Confinement Facility can elect to receive Facility Administrative Support by requiring the collection of such support in the contract governing the provision of ICS by the Provider.

(c) To compensate Confinement Facilities for their costs incurred in connection with the provision of ICS, an ICS Provider may collect from Consumers charges for Facility

Administrative Support, such charges to be assessed on a per minute of use basis, not to exceed the following amounts, for all completed, billed, inmate-initiated calls from an electing Confinement Facility.

| Type | Size (ADP) | Amount per Minute |
|--------|--------------------------------|---------------------------|
| Jail | 1-349 [FCC to determine] | \$0.07 [FCC to determine] |
| Jail | 350-999 [FCC to determine] | \$0.05 [FCC to determine] |
| Jail | 1,000-2,499 [FCC to determine] | \$0.05 [FCC to determine] |
| Jail | 2,500+ [FCC to determine] | \$0.03 [FCC to determine] |
| Prison | All | \$0.02 |

The entire amount of Facility Administrative Support collected by a Provider from Consumers shall be passed through to an electing Confinement Facility. ~~In the case of a Jail that is contracted to house prison inmates averaging 40% or more of the total facility population, the Facility Administrative Support payment for those prison inmates housed in jails will be based on the prison rate.~~

(d) No pre-payment or advance payment of Facility Administrative Support shall be permitted. Costs associated with Additional Products or Services provided to the Confinement Facility shall not be deducted from the Facility Administrative Support payment.

~~(e) Jails and other facilities subject to Jail Rate Caps shall provide certifications, signed by a duly authorized officer of the facility, to the ICS Provider of (i) ADP, and (ii) the percentage of prison inmates in the total inmate population for the facility. The certifications shall be provided as of the commencement of service by an ICS Provider and, thereafter, annually with data as of December 31. Jails that do not provide the required certifications are ineligible for receipt of Facility Administrative Support. Any Facility Administrative Support funds collected by an ICS Provider are held for the benefit of the electing facility. Any unclaimed funds must be refunded to consumers or disposed of in accordance with applicable state law regarding unclaimed property.~~

~~§ 64.6070 Additional Products and Services~~

~~ICS Providers offering Additional Products and Services must maintain a product/services list in a form consistent with Attachment 1 accessible by the public from the provider's website that contains each product/service, price range, product vendor, and source of funding. This list must be provided with the ICS Annual Report, but is not subject to Commission approval. Costs associated with additional products and services are subject to separate accounting from ICS and are not recoverable in the rates charged to Consumers for ICS.~~

§ 64.6080 Account Balances

Account balances must be refunded to customers at any time upon Consumer request at no charge to the Consumer. Unclaimed account balances must be treated in accordance with applicable state law regarding unclaimed property.

§ 64.6090 Consumer Protection and Disclosure

~~(a) ICS Providers must provide consumers with the following information for each individual facility, readily accessible on the provider's website (directly from the main home page and without having to first establish an account), through brochures available at facilities (electronic or paper form), and through customer service IVR or live agent inquiry:~~

- ~~(i) Facility name;~~
- ~~(ii) Average Daily Population (ADP) (not applicable to brochure);~~
- ~~(iii) Account options available at the facility;~~
- ~~(iv) Per Minute Call Rate, Voice Biometric Fee if applicable, Per Minute Administration Support Fee, and total rate per minute the consumer should expect to pay before taxes;~~
- ~~(v) Method for obtaining a refund of unused funds;~~
- ~~(vi) Information on how to file a complaint with the Commission or applicable state regulatory agency.~~

~~(b) ICS Providers must provide all called party Consumers a monthly account statement available online. The statement must include an itemized listing of account activity (deposits, calls, credits, etc.), with a separate line item listing for each tax and/or mandated regulatory fee applied, and total charges. The statement must clearly indicate the rates applicable (e.g., Per Minute Rate, Voice Biometric Fee, and Facility Administrative Support).~~

~~(c) The obligations of this section are in addition to customer service requirements applicable generally to telecommunications providers.~~

* * *

Effective Date and Transition Period

Unless otherwise stated, the Rate Caps and Rules adopted in this Order ~~Restrictions on ancillary charges, single call programs, and revised interstate rates~~ become effective 90 days after publication of Order in Federal Register.

For existing contracts (contracts that have been executed and are "in service" at the time of Order adoption), intrastate rates and site commissions payable on intrastate rates are grandfathered for the earlier of _____ 24 months from the Order's adoption date or the expiration or termination of the contract. The terms of existing contracts may not be extended during the transition period, whether by exercise of an existing option or otherwise. For all contracts not "in service" on the Order adoption's date, new intrastate rate caps, Administrative

Support Fee and prohibition of site commissions are effective 90 days after publication of the Order in the Federal Register.

~~An ICS provider may opt into full compliance for particular facilities prior to the end of the transition period (including Facility Administrative Support) upon submission of a certification signed by an officer of the company stating that the provider is in compliance with the Order's intrastate and interstate rap caps and prohibition on site commissions as to the specified facilities.~~

~~Within 60 days of the Order's adoption date, providers are required to file with the Commission a list of all "grandfathered" contracts, together with contract expiration dates and a copy of each Facility Commission Statement for the month the Order is adopted.~~

Intrastate Issues

States must bring regulations into compliance by the end of transition period (24— months from Order's adoption date); inconsistent regulations are hereby preempted ~~will be subject to preemption~~. State action that is consistent with the regulations that the Commission adopts would not be subject to preemption.

Attachment 1

Additional Products & Services – Price Disclosure

ICS VENDOR: _____ **DATE:** _____

| Product or Service | Funding Source Options (check all that may apply) | Product Source Vendor, Affiliation with ICS Vendor (if any) | Price Structure (List Price to Confinement Facility for Each Product and Option) | Fee(s) Charged to Inmate or Called Party |
|--|---|--|---|---|
| Video Visitation | <input type="radio"/> Paid from excess vendor revenue <input type="radio"/> Paid by Facility <input type="radio"/> Paid by Remote Visitation Fee | | | |
| Inmate Tablets | <input type="radio"/> Paid from excess vendor revenue <input type="radio"/> Paid by Facility <input type="radio"/> Paid by Inmate Tablet Rental Fee | | | |
| Email | <i>Paid for by fee charged to Inmate/Called Party</i> | | N/A | |
| Messaging | <i>Paid for by fee charged to Inmate/Called Party</i> | | N/A | |
| Voice Verification | <i>Paid for by fee charged to Inmate/Called Party</i> | | N/A | \$.02/minute |
| Other | | | | |
| Other | | | | |
| Data Analytics | <input type="radio"/> Paid from excess vendor revenue <input type="radio"/> Paid by Facility | | | <i>Prohibited</i> |
| Tracking Wireless Phones | <input type="radio"/> Paid from excess vendor revenue <input type="radio"/> Paid by Facility | | | <i>Prohibited</i> |
| Jail Management System | <input type="radio"/> Paid from excess vendor revenue <input type="radio"/> Paid by Facility | | | <i>Prohibited</i> |
| Emergency Response System | <input type="radio"/> Paid from excess vendor revenue <input type="radio"/> Paid by Facility | | | <i>Prohibited</i> |
| Parole GPS & RF Monitoring | <input type="radio"/> Paid from excess vendor revenue <input type="radio"/> Paid by Facility | | | <i>Prohibited</i> |
| Interactive Voice Response System | <input type="radio"/> Paid from excess vendor revenue <input type="radio"/> Paid by Facility | | | <i>Prohibited</i> |

Pay Tel
 July 10, 2015 (filed July 13, 2015)
Securus Response
July 27, 2015

| | | | | |
|--|---|--|--|-------------------|
| Wireless Managed Access | <input type="radio"/> Paid from excess vendor revenue <input type="radio"/> Paid by Facility | | | <i>Prohibited</i> |
|--|---|--|--|-------------------|

| | | | | |
|-------------------------------------|---|--|--|-------------------|
| System | | | | <i>Prohibited</i> |
| Telemedicine Application | <input type="radio"/> Paid from excess vendor revenue <input type="radio"/> Paid by Facility | | | <i>Prohibited</i> |
| Wording Spotting | <input type="radio"/> Paid from excess vendor revenue <input type="radio"/> Paid by Facility | | | <i>Prohibited</i> |
| Other | <input type="radio"/> Paid from excess vendor revenue <input type="radio"/> Paid by Facility | | | <i>Prohibited</i> |
| Other | <input type="radio"/> Paid from excess vendor revenue <input type="radio"/> Paid by Facility | | | <i>Prohibited</i> |

Signature _____ Date _____
 Name _____ Title _____
 Certification of compliance by Company Officer

ATTACHMENT B – Pay Tel’s Proposed Rules as Amended by Securus (Clean Version)

§ 64.6000 Definitions

As used in this subpart:

(1) ADP, or Average Daily Population, means the average monthly inmate population in a Confinement Facility. Where more than one Confinement Facility is administered under one ICS contract, ADP shall be calculated by adding together the numbers of inmates housed in all facilities under the contract. For purposes of the ICS Rate Cap and Facility Administrative Support, ADP shall be initially determined as of the commencement of service based on the average of the preceding calendar year and then updated once per year in January with any required rate adjustments to be made effective February 1.

(2) Ancillary charges means any charges to Consumers not included in the charges assessed for individual calls and that Consumers may be assessed for the use of Inmate Calling Services. Ancillary Charges includes, but is not limited to, fees to create, maintain, or close an account with a Provider; and fees in connection with account balances, including fees to add money to an account or transfer money between accounts;

(3) Collect calling means a calling arrangement whereby a credit qualified called party agrees to pay for charges associated with an Inmate Calling Services call originating from an Inmate Telephone;

(5) Consumer means the party paying a Provider of Inmate Calling Services;

(6) Confinement Facility means city, county, regional, state and federal facilities, including jail, detention, prison, work release, mental health, juvenile, and U.S. Immigration and Customs Enforcement facilities;

(7) Debit calling means a calling arrangement that allows an inmate to pay for ICS by purchasing a prepaid card or transferring funds to a debit phone account;

(8) Direct billed calling means a calling arrangement that allows credit qualified called parties to establish an account to accept collect phone calls and be direct billed in arrears for those calls by the ICS vendor;

(9) Facility Administrative Support means a component of ICS costs, measured on a per minute basis, related to a confinement facility’s administrative costs associated with the provision of ICS;

(10) Inmate means a person detained at a Confinement Facility ~~confinement facility~~, regardless of the duration of the detention;

(11) Inmate calling services, or ICS, means the offering of local, interstate, intrastate, and/or international calling capabilities from an Inmate Telephone;

(12) Inmate telephone means a telephone instrument or other device capable of initiating telephone calls set aside by authorities of a correctional institution for use by Inmates;

(13) Prepaid collect calling means a calling arrangement that allows the called party to establish a prepaid account for acceptance and payment of future calls from inmates;

(14) Provider of Inmate Calling Services, or Provider, means any telecommunications service provider that provides Inmate Calling Services, ~~regardless of the technology used.~~

(15) Site commission means any monetary payment from an ICS Provider to (a) the entity that operates a correctional institution, (b) the entity with which a Provider enters into an agreement to provide ICS to a Confinement Facility, (c) a governmental agency that oversees a correction institution, (d) the state, county, or city where the correctional institution is located, or (e) to an agent or other representative of the entities described in (a)-(d).

§ 64.6010 Rates for Telecommunications Relay Service (TRS) Calling

No Provider shall levy or collect any charge in addition to or in excess of the rates for Inmate Calling Services (including any applicable Facility Administrative Support) or charges for Ancillary Charges for any form of TRS call.

§ 64.6020 Billing-Related Call Blocking

No Provider shall prohibit or prevent completion of a Collect Calling call or decline to establish or otherwise degrade Collect Calling solely for the reason that it lacks a billing relationship with the called party's communications service provider unless the Provider offers Debit Calling, Direct Billed Calling, or Prepaid Collect Calling.

§ 64.6030 Annual Reporting and Certification Requirement

(a) All Providers must submit a report to the Commission, on April 1 of each year, stating the total amount of Facility Administrative Support payments the Provider remitted to any entity identified in the definition of Site Commissions that is adopted herein.

(b) On April 1 of each year, all Providers must file certifications of (i) the most senior person who has authority to bind the Provider, (ii) the most senior in-house attorney for the Provider, and (iii) the most senior person charged with handling the Provider's financial accounts that the Provider has complied with all Rules adopted herein to the best of their knowledge, information, and belief.

§ 64.6040 Inmate Calling Services Rate Cap

(a) No Provider may charge a rate for any inmate-initiated call from a Confinement Facility that exceeds the following rate caps (excluding any charge for Facility Administrative Support):

| <u>Size (ADP)</u> | <u>Rate Cap</u> |
|--------------------------|--------------------------------|
| 0-349 [FCC to determine] | \$0.22/min. [FCC to determine] |

| | |
|--------------------------------|--------------------------------|
| 350-999 [FCC to determine] | \$0.20/min. [FCC to determine] |
| 1,000-2,499 [FCC to determine] | \$0.18/min. [FCC to determine] |
| 2,500+ [FCC to determine] | \$0.16/min. [FCC to determine] |

All charges shall be assessed on a per-minute basis for the actual call duration, measured from call acceptance to call termination rounded up to the next full minute. No per-call fee, per-call surcharge, or connection fee may be charged.

(b) For any security-related or call-completion related feature not contained within the cost information submitted by the Provider in response to the 2014 Mandatory Data Collection, the Provider may seek a Waiver of the Rate Caps in order to recover the cost of that feature. A Petition for Waiver (i) must set forth the cost basis for the requested new rate, and (ii) will be deemed granted within forty-five (45) calendar days of being filed.

§ 64.6050 ICS Ancillary Charges

Only the following Ancillary Charges may be charged in connection with ICS:

(a) Transaction or Payment Processing Fee. A Provider may charge up to \$6.95 for a transaction by which a Consumer uses a credit card or debit card (i) to fund a Debit account, or (ii) to pay amounts due in arrears.

(b) Money Transfer Fee. A Provider may charge up to \$2.50 to administer payments processed by or generated through a third-party money-transfer entity such as Western Union and Moneygram.

(c) Voice Biometrics Fee. A provider may add up to \$0.02 to the per-minute calling rate for voice biometrics where such technology is deployed and active.

(d) Optional, Single Call Programs. Single Call programs, including “convenience” or “premium payment” options, which allow the called party to pay for a single call without establishing a prepaid collect account (e.g., billing directly to credit/debit card or billing to an existing wireless telephone account), may only be offered as follows:

- (i) The Provider must clearly disclose to Consumers at the beginning of each call that the ability to place a Single Call is optional and must make other methods of payment available.
- (ii) Total charges for a Single Call shall not exceed the amount that the Provider charged for that service on December 31, 2014.

(e) Validation Fee. A Provider may charge, on a per-call basis, a fee to recover the cost of call validation that is up to 8% of the total calling rate charged for the call, excluding any per-minute Facility Administrative Support charge that may be added to the calling rate.

§ 64.6060 Facility Administrative Support

- (a) Beginning 24 months after the Effective Date of these Rules, no Provider may pay a Site Commission or any other form of monetary compensation except for the Facility Administrative Support established herein.
- (b) A Confinement Facility can elect to receive Facility Administrative Support by requiring the collection of such support in the contract governing the provision of ICS by the Provider.
- (c) To compensate Confinement Facilities for their costs incurred in connection with the provision of ICS, an ICS Provider may collect from Consumers charges for Facility Administrative Support, such charges to be assessed on a per minute of use basis, not to exceed the following amounts, for all completed, billed, inmate-initiated calls from an electing Confinement Facility.

| Size (ADP) | Amount per Minute |
|--------------------------------|---------------------------|
| 1-349 [FCC to determine] | \$0.07 [FCC to determine] |
| 350-999 [FCC to determine] | \$0.05 [FCC to determine] |
| 1,000-2,499 [FCC to determine] | \$0.05 [FCC to determine] |
| 2,500+ [FCC to determine] | \$0.03 [FCC to determine] |

The entire amount of Facility Administrative Support collected by a Provider from Consumers shall be passed through to an electing Confinement Facility.

- (d) No pre-payment or advance payment of Facility Administrative Support shall be permitted. Costs associated with Additional Products or Services provided to the Confinement Facility shall not be deducted from the Facility Administrative Support payment.

§ 64.6080 Account Balances

Account balances must be refunded to customers at any time upon Consumer request at no charge to the Consumer. Unclaimed account balances must be treated in accordance with applicable state law regarding unclaimed property.

Effective Date and Transition Period

Unless otherwise stated, the Rate Caps and Rules adopted in this Order become effective 90 days after publication of Order in Federal Register.

For existing contracts (contracts that have been executed and are “in service” at the time of Order adoption), intrastate rates and site commissions payable on intrastate rates are grandfathered for the earlier of 24 months from the Order’s adoption date or the expiration or termination of the contract. The terms of existing contracts may not be extended during the transition period, whether by exercise of an existing option or otherwise. For all contracts not “in

service” on the Order adoption’s date, new intrastate rate caps, Administrative Support Fee and prohibition of site commissions are effective 90 days after publication of the Order in the Federal Register.

Intrastate Issues

States must bring regulations into compliance by the end of transition period (24 months from Order’s adoption date); inconsistent regulations are hereby preempted. State action that is consistent with the regulations that the Commission adopts would not be subject to preemption.