October 7, 2015

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VIA ECFS

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

Re: Notice of Permitted *Ex Parte* Meeting, WC Docket No. 12-375

Dear Ms. Dortch:

On October 5, 2015, Securus Technologies, Inc. ("Securus"), represented by Richard Smith, Chief Executive Officer, Dennis Reinhold, Vice President and General Counsel, and the undersigned counsel, met with the following persons:

Pamela Arluk, Chief, Pricing Policy Division, Wireline Competition Bureau
Lynne Engledow, Acting Deputy Chief of the Pricing Policy Division, Wireline Competition Bureau
Rhonda Lien, Attorney, Pricing Policy Division, Wireline Competition Bureau
Bakari Middleton, Attorney, Wireline Competition Bureau
Gil Strobel, Attorney, Wireline Competition Bureau
Thom Parisi, Attorney, Wireline Competition Bureau
Christine Sandquist, Attorney, Pricing Policy Division, Wireline Competition Bureau

The purpose of the meeting was to discuss the Fact Sheet released September 30, 2015, in this docket which summarized the draft order presented to the Commissioners on that day.

Foam-backed versions of the attached document entitled "Basis of Appeal − FCC 'Fact' Sheet Order" were distributed, along with copies of the AJA Alert (dated October 2, 2015) which is also attached hereto.

Securus explained that, if adopted, the rates and rules in the Fact Sheet could be "a business-ending event" for the company. Under the rate caps listed in the Fact Sheet, there being no rules in the draft order that address site commissions, Securus may be forced to continue paying site commissions on all existing contracts, even though the draft rate caps are significantly below Securus's cost to provide service. Securus currently pays approximately $140 million of site commissions on local and intrastate ICS.

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Securus also stated its surprise that the Commission now feels constrained from addressing site commissions, having already held in the previous Report and Order (FCC 13-113) that site commissions are not legitimate costs of Inmate Calling Services ("ICS") and thus cannot be included in ICS rates.[1] In fact, the Commission went on to prohibit carriers from including the cost of site commissions in their reported average, per-minute cost figures that were required for the Mandatory Data Collection. In addition, the Chairman, Commissioner Clyburn, Commissioner Rosenworcel, and the Wireline Competition Bureau each have made several statements throughout the last two years criticizing site commissions as the cause of high ICS rates.[2] Perhaps most importantly, the Second Further Notice of Proposed Rulemaking sought comment "on prohibiting site commissions as a category" of costs for **all** inmate calls and identified site commissions as a "market failure" which requires FCC intervention.[3] For all these reasons, the Commission's apparent decision not to address site commissions, but to impose extremely low ICS rates, came as an unwelcome surprise. The new concern that the FCC lacks jurisdiction over site commissions, which the Commission sharply refuted in the pending appeal from the *Inmate Rate Order*, does not render this surprise any more reasonable or defensible.

Securus also showed that the draft rate caps are significantly below Securus's costs even without site commissions; if Securus must continue paying site commissions out of such reduced rates, that would make those draft rate caps more than 75% below Securus's costs. Setting below-cost rates violates fundamental precepts of regulatory ratemaking. Further, the tiered structure of the draft rates is arbitrary and capricious. Correctional facilities will be worse off under the draft rate caps, because providers will be unable to serve them.[4]

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[1] WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, FCC 13-113 ¶¶ 7, 54 (rel. Sept. 26, 2013).

[2] WC Docket No. 12-375, Letter from Stephanie A. Joyce, Counsel to Securus, to Marlene H. Dortch, FCC, Attachment (Mar. 23, 2015) (providing notice of *ex parte* meeting with Commr. Clyburn); *Wireline Competition Bureau Addresses the Payment of Site Commissions for Interstate Inmate Calling Services*, DA 14-1206 (Aug. 20, 2015).

[3] WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Second Further Notice of Proposed Rulemaking, FCC 14-148 ¶¶ 20-21 (rel. Oct. 22, 2014).

[4] "'NSA is concerned that that the proposed inmate calling service rates and compensation structure may not be sufficient to cover these costs, particularly with respect to small jails. NSA also is concerned that inmate calling service providers may simply stop offering to provide service in small jails.'" *Inmate Advocates Mostly Laud FCC Draft ICS Order; GTL, Sheriffs Concerned*, COMM. DAILY at 12 (Oct. 5, 2015) (quoting National Sheriffs' Association Executive Director John Thompson).

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Finally, Securus stated that the "ancillary fee" rate caps stated in the Fact Sheet are below its reported costs[5] and therefore also confiscatory, arbitrary, and capricious. Securus also noted its consistent position that the FCC has no jurisdiction over these fees.

Securus was encouraged to file a paper that expounds on each of these topics. Attendees were particularly interested in record evidence that would provide a basis for adopting a precise cost-recovery mechanism for correctional facilities. Securus will file that separate paper today.

This disclosure is made in compliance with 47 C.F.R. § 1.1206(a)(1).

Please do not hesitate to contact me with any questions: 202.857.6081.

Sincerely,

s/Stephanie A. Joyce

Counsel to Securus Technologies, Inc.

Attachments

Cc: Rebekah Goodheart, Legal Advisor to Commissioner Clyburn
Pamela Arluk, Chief, Pricing Policy Division, Wireline Competition Bureau
Lynne Engledow, Acting Deputy Chief of the Pricing Policy Division, Wireline Competition Bureau
Rhonda Lien, Attorney, Pricing Policy Division, Wireline Competition Bureau
Bakari Middleton, Attorney, Wireline Competition Bureau
Gil Strobel, Attorney, Wireline Competition Bureau
Thom Parisi, Attorney, Wireline Competition Bureau
Christine Sandquist, Attorney, Pricing Policy Division, Wireline Competition Bureau

All via electronic mail

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[5] WC Docket No. 12-375, Initial Comments of Securus Technologies, Inc. at 26-27 (Jan. 12, 2015) (quoting Declaration of Dennis Rose, Senior Director − Billing (Jan. 9, 2015)).

October 5, 2015

Basis of Appeal – FCC "Fact" Sheet Order

Issue	Description/Comments	Legal Basis of Appeal
1) Commissions	• FCC should specifically allow commissions as an adder – See NSA Proposal • Fact Sheet "strongly discourages use of commissions" = No impact, commissions still demanded • FCC recognized "commission payments are significant factor in driving excessive rates"	• Commissions must be considered a legitimate cost of service • Arbitrary and capricious – does not account for all costs • FCC not taking action is confiscatory – does not allow costs to be included
2) Setting Rates Below Cost		• Caps are confiscatory • FCC Fact Sheet rates are below costs • Arbitrary and capricious – does not account for all costs • Lacks jurisdiction
3) Fees	• Fact Sheet Fees priced below costs • Disregarded Industry Proposal to cap and eliminate fees	• Capped fees are confiscatory – does not account for all costs • Arbitrary and capricious – no rational basis for allowing some fees and rejecting others • Lacks jurisdiction

ADP	FCC	Prepaid Securus Cap	Variance
DOCs	11¢	8¢	+38%
+1000	14¢	15¢	(7%)
350 – 999	16¢	19¢	(16%)
0 – 349	22¢	32¢	(31%)
Average	16¢	19¢	(16%)

Recommended Solution(s)

- **Allow commissions at a capped rate per minute that is additive to price caps.**

SECURUS Technologies™

....AJAlert

October 2, 2015

FCC proposed tiered ICS rates for jails; commissions allowed

Yesterday, the Federal Communications Commission outlined its intent to move forward with Inmate Calling Services (ICS) reform, capping rates and limiting or banning fees on calls. The vote will take place at the Commission's October 22 Open Meeting.

Click here for a 'Fact Sheet' explaining the Commission's intended key reforms. The major proposals in front of the FCC commissioners are:

- Rate for all prisons of 11 cents a minute
- Tiered rate for jails depending on size of the jails with rates for debit or prepaid calls as follows:
    - 14 cents a minute for jails with more than 1000 inmates
    - 16 cents a minute for Jails with 350 to 999.
    - 22 cents a minute for jails with up to 349 inmates.
    - The rate for collect calls will be at 49 cents, regardless of the size of the jail.
- Rates are for Interstate and Intrastate calls
- Site commissions are "discouraged" but not restricted if such payments by ICS providers fit within the rate caps. This is a 180 degree reversal of where we began our discussions with the FCC on the ICS issue. We believe the FCC now better understands the need for facilities to recoup some costs directly related to ICS in jails.
- The transition period for the rates will be 90 days from when the order goes into effect. We had advocated for two budget cycles to allow agencies to adjust budgets accordingly. However, the FCC felt that because commissions will be allowed, the impact on budgets would not be adversely affected.
- The elimination or caps on ancillary service charges.

AJA Executive Director Robert J. Kasabian spoke with Commissioner Clyburn's chief legal counsel yesterday about how the FCC arrived at the rates that are being proposed. We were told that the proposed rates were devised as a result of cost data submitted by the ICS providers.

While the advocates have already indicated their displeasure with the rate structure, they were pushing for rates of 4 and 5 cents a minute, we feel that the FCC moved in a direction that was favorable for jails.

The person we spoke with at the FCC said that without the input of AJA on this issue, the order likely would look a lot different. For that we are grateful to all AJA members that have worked with us in getting the FCC to understand the complexity of ICS and the implications

it has on local corrections.

In our filings with the FCC, we urged the agency to consider a tiered rate structure, separating jails from prisons in rate consideration, allowing for cost recovery or commissions, and a phase in period of two years. Transition period aside, we are pleased that the FCC heard our concerns and acted accordingly.

We urge you to comment to the FCC on this proposal by October 14 for your concerns to be reflected when the commissioners vote later this month. You can comment online at http://apps.fcc.gov/ecfs/proceeding/view?name=12-375. Or, feel free to contact AJA with your comments. Email Executive Director Kasabian at robert@aja.org.

Looking ahead, the FCC is also seeking a Third Further Notice of Proposed Rulemaking. Among the points to be considered will be video visitation and other advanced inmate communications services.

We will continue to follow the ICS issue as it evolves and keep our membership informed.

Contact: **Steve Custer, Director of Communications**
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