

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

Rates for Interstate Inmate Calling Services

WC Docket No. 12-375

SECURUS TECHNOLOGIES, INC. MOTION FOR LEAVE TO FILE REPLY

Securus Technologies, Inc. (“Securus”), through counsel and pursuant to 47 C.F.R. §§ 1.3 and 1.43, moves the Commission for leave to file a four-page reply to the Opposition to Petition for Stay filed December 29, 2015, by the Wright Petitioners (“Wright Opp.”). Securus provides a form of this Reply as an Attachment hereto.

There is good cause to permit the filing of a reply, because the Wright Petitioners make several assumptions and assertions that should be corrected. For example, they state that Securus has presented “misleading” data with its Petition for Partial Stay (Wright Opp. at 4) but do not identify the data or the discrepancy. Securus feels it must address this accusation to ensure that the record before the Commission is clear.

In addition, the Wright Petitioners misapprehend the scope of the Securus Petition and appear to misunderstand its legal basis. Securus believes these items should be addressed in order that the Commission is not confused as to the relief Securus seeks.

CONCLUSION

For these reasons, the Commission should grant this Motion and permit Securus to file a Reply to the Wright Petitioners in substantially the form attached hereto.

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Dated: January 5, 2016

CERTIFICATE OF SERVICE

I hereby certify on this 5th day of January, 2016, that the foregoing Motion for

Leave to File Reply, with its Attachment, was served via electronic mail on the following persons:

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ATTACHMENT

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

Rates for Interstate Inmate Calling Services

WC Docket No. 12-375

**SECURUS TECHNOLOGIES, INC. REPLY TO
OPPOSITION OF WRIGHT PETITIONERS TO
PETITION FOR PARTIAL STAY OF SECOND REPORT AND ORDER
PENDING APPEAL
(FCC 15-136)**

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Counsel to Securus Technologies, Inc.

Dated: January __, 2016

Securus Technologies, Inc. (“Securus”), through counsel and with leave of the Commission granted pursuant to 47 C.F.R. §§ 1.3 and 1.43, hereby files this Reply to Opposition of Wright Petitioners to the Securus Petition for Partial Stay of the order titled *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 15-136 (rel. Nov. 5, 2015), published at 80 Fed. Reg. 79136 (Dec. 18, 2015) (“*Second Inmate Rate Order*” and “*Third FNPRM*”). Securus has requested that the Commission resolve its Petition by **January 15, 2016**.

The Wright Petitioners’ Opposition, filed December 29, 2015 (“Wright Opp.”), ignores most of Securus’s arguments and all of its evidence, as well as undisputed record evidence, and instead relies on misleading *innuendo* and inflammatory rhetoric. Were the Commission to deny Securus’s Petition based in any way on the Wright Opposition, it would stand on shaky ground indeed.

ARGUMENT

The Securus Petition provided ample analysis and evidence to meet each of the four criteria set forth in *Virginia Petroleum Jobbers Ass’n v. Federal Power Comm’n*, 259 F.2d 921 (D.C. Cir. 1958). Securus will respond briefly to the assertions in the Wright Opposition in turn:

1. The Wright Petitioners assert, without a single citation, that Securus cannot prevail in an appeal regarding the new “Ancillary Charges”. Wright Opp. at 2. This assertion has little basis in the Securus Petition or the record. First, Securus is appealing only the caps on credit-card processing and “Single-Call Services,” not every “Ancillary Charge” cap. *E.g.*, Petition at 30. Secondly, Securus provided written evidence in January 2015 regarding the costs it incurs to make credit-card processing available, and the Wright Petitioners pretend it does not exist. Third, Securus provided the sworn testimony of Geoff Boyd, its Chief Financial Officer,

and the expert analysis of FTI Consulting, Inc. which both demonstrate that Securus will incur tremendous and irreparable losses if those fee caps become effective, and the Wright Petitioners ignore that evidence as well. Their *ipse dixit* assertion that Securus will lose its appeal is mere wishful thinking.

2. The Wright Petitioners also assert that the Commission has not overstepped its authority in attempting to regulate financial transactions, relying only on rote repetition of Sections 201, 205, and 276 of the Communications Act. Wright Opp. at 2. They fail even to acknowledge the lengthy analysis that Securus has provided and the considerable authority that supports Securus's position. They have no answer to cases like *Gustafson v. Alloyd Co.*, 513 U.S. 561 (1995), and *American Library Ass'n v. FCC*, 406 F.3d 689 (D.C. Cir. 2005), which hold that one must not interpret a statute in such a way that stretches its application far beyond what Congress could have intended. Petition at 6-8.

3. The Wright Petitioners' only response to the irreparable harm Securus would suffer if the "Site Commission" reporting requirement in new Rule 64.6060 became effective is that "Securus would not want to disclose the many ways ICS providers attempt to influence the decision-making process." Wright Opp. at 6. This argument is fantasy. Securus explained in its Petition that it does not know how to apply the vague, likely overbroad definition of "Site Commission" so as to comply with Rule 64.6060. Petition at 19, 26-27. Securus is concerned about penalties for "innocent noncompliance," *id.* at 27 (citing *U.S. v. Locke*, 529 U.S. 89, 116 (2000)), because it "cannot fathom how to apply" the Commission's faulty definition. Moreover, the simple reporting of "Site Commissions" as presently defined, even if Securus could do it, cannot and should not be interpreted as "influenc[ing] the decision-making process," Wright Opp. at 6, because in most instances the features, products, and services that an ICS company

provides were demanded, at the outset, by the correctional facility. Here again the Wright Petitioners fling baseless accusations instead of grappling with the analysis and evidence that Securus has placed before the Commission.

4. The Wright Petitioners assert that Securus will not in fact lose significant revenue under the new rules, because it will make up losses via wildly overstated estimates of increased call volume. Wright Opp. at 4-5 &n.14. They rely on the unsupported statement by Praeses LLC that call volumes increased 76% after the *First Inmate Rate Order*, a statement that FTI Consulting soundly refuted in its *Report on Elasticity of Demand* filed January 12, 2015. Securus experienced only a 15.5% increase in interstate call volume as a result of the \$0.25 rate cap in the First Report and Order, *id.* at 3 (Public Version), and FTI's analysis has never been disputed.

5. The Wright Petitioners' only response to Securus's powerful evidence of irreparable harm is to suggest that Securus's "EBITDA and revenue figures ... are inconsistent." Wright Opp. at 4 n.11 (citing "*Petition*, at 23"). Of course the Wright Petitioners do not actually quote any of the "inconsistent" figures. And in fact there is no inconsistency: Geoff Boyd estimated Securus's losses arising from the new credit-card processing fee caps, and FTI Consulting stated that his estimate is "conservative" – they predict a loss that is 10% higher than Mr. Boyd's.¹ Securus did not present inconsistent evidence. The Wright Petitioners' misleading suggestion otherwise is emblematic of the entire, hollow Opposition.

6. Finally, the Wright Petitioners assert that third parties and the public interest will not be served by the relief Securus seeks, but ignore Securus's well-supported statements that it

¹ Compare Affidavit of Geoff Boyd (Confidential Version) ¶ 5 (filed Dec. 22, 2015) with FTI Consulting, Inc. Report on Financial Impact of FCC Second Report and Order on Behalf of Securus Technologies, Inc. at 3 (Confidential Version) (filed Dec. 23, 2015).

cannot continue providing online credit-card transactions, Text2Connect, or PayNow under the new caps. Affidavit of Richard A. Smith, Chief Executive Officer, ¶ 9 (filed Dec. 22, 2015).

The loss of these services, particularly Text2Connect and PayNow which “can literally be the difference between life and death for some arrestees,” *id.* ¶ 10, will have a significant, negative impact on the public interest that the Wright Petitioners simply ignore.

CONCLUSION

For all these reasons, the Commission should stay these portions of the Second Report and Order until the forthcoming appeal from that order is resolved:

- Definition of “Site Commission” in Rule 64.6000;
- Fee caps on credit card processing and “Single-Call Service” in Rule 64.2020;
- Reporting requirements in Rule 64.6060 as they relate to Site Commissions and video-based services.
- Per-Call and Per-Connection Charges in Rule 64.6080;
- Flat-Rate Calling in Rule 64.6090; and
- Minimum and Maximum Account Balances in Rule 64.6100.

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Dated: January __, 2016

CERTIFICATE OF SERVICE

I hereby certify on this ____ day of January, 2016, that the foregoing Reply to Opposition of Wright Petitioners to Petition for Partial Stay of Second Report and Order Pending Appeal (FCC 15-136) was served via electronic mail on the following persons:

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