

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

Rates for Interstate Inmate Calling Services

WC Docket No. 12-375

**SECURUS TECHNOLOGIES, INC.
REPLY COMMENTS IN RESPONSE TO DA 13-1445,
*MORE DATA SOUGHT ON EXTRA FEES LEVIED ON INMATE CALLING SERVICES***

Stephanie A. Joyce
ARENT FOX LLP
1717 K Street, N.W.
Washington, D.C. 20036
202.857.6081 DD
202.857.6395 Fax
Stephanie.Joyce@arentfox.com

Counsel to Securus Technologies, Inc.

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Securus Technologies, Inc. (“Securus”), through counsel and pursuant to 47 C.F.R. § 1.415, files these Reply Comments in response to the request of the Wireline Competition Bureau for “additional comment on certain fees related to inmate calling services (ICS).”¹ This issue apparently is now under consideration along with the Notice of Proposed Rulemaking released on December 28, 2012, in this docket (“NPRM”).² Securus wishes to explain further its position that the Commission lacks jurisdiction over fees for financial transactions and to correct and/or clarify some statements made by other parties regarding Securus’s fees and services.

I. THE COMMISSION SHOULD NOT ATTEMPT TO REGULATE FINANCIAL TRANSACTIONS

In its Reply Comments, Securus asked the Commission to “decline requests to expand the scope of this proceeding to include charges applied to items other than interstate inmate calls.”³ It explained that fees for financial transactions are outside the agency’s mandate for “regulating interstate and foreign commerce in communication by wire and radio.”⁴ What is at stake here are fees for optional payment methods — and not, as the Public Notice suggests, “extra fees levied on inmate calling services”⁵ — that are wholly outside and independent of inmate “communication by wire or radio”.

“It is axiomatic that administrative agencies may issue regulations only pursuant

¹ WC Docket No. 12-375, DA 13-2445, Public Notice, *More Data Sought on Extra Fees Levied on Inmate Calling Services* (June 26, 2013) (“Public Notice”).

² WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Notice of Proposed Rulemaking, 27 FCC Rcd. 16629 (2012).

³ WC Docket No. 12-375, Reply Comments of Securus Technologies, Inc. at 17 (Apr. 22, 2013).

⁴ *Id.* at 16 (quoting 47 U.S.C. § 151).

⁵ Public Notice at 1.

to authority delegated to them by Congress.”⁶ The Commission “literally has no power to act ... unless and until Congress confers power upon it.”⁷ It is the Commission’s obligation to demonstrate its statutory authority to adopt a particular rule or take a particular action. Even where so-called “ancillary authority” is invoked pursuant to 47 U.S.C. § 154(i), the Commission must show that it satisfies both prongs of the *American Library Association* test, the first of which is that the regulation actually covers “interstate or foreign communication by wire or radio”.⁸ Courts are finding “ancillary jurisdiction” with more difficulty of late, most notably in Comcast’s appeal from the BitTorrent decision.⁹ To analogize to the decision in that appeal, the Commission’s ability to regulate the rates of interstate inmate phone calls does not entitle it to regulate “all aspects” of inmate telephone service.¹⁰

In addition, as Securus has stated previously, no party has submitted any statute, rule, or precedent authorizing the Commission to regulate fees for financial transactions.¹¹ Securus is aware of none.

The use of credit cards via the Securus website, automated telephone system, or with the assistance of a customer service representative is an optional payment method provided for the convenience of consumers. Sending payment via check or money order through the mail remains available and free of charge.

⁶ *American Library Ass’n v. FCC*, 406 F.3d 689, 691 (D.C. Cir. 2005) (vacating broadcast flag rules as outside the Commission’s authority).

⁷ *Louisiana Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986).

⁸ *American Library Ass’n*, 406 F.3d at 701.

⁹ *Comcast v. FCC*, 600 F.3d 642 (D.C. Cir. 2010).

¹⁰ *Id.* at 650.

¹¹ Securus Reply Comments at 16.

Further, when Securus makes optional payment methods available, it requires the service of a third-party financial vendor. Those vendors impose significant charges on Securus. Securus should be permitted to pass those charges through to the consumer who chooses to use an optional payment method, else that method simply could not be made available.

No party would quarrel with the assertion that the Commission cannot regulate the Visa card company, a credit card clearinghouse, or Western Union. A request that the Commission regulate the financial transactions of inmate phone providers would result in virtually the same *ultra vires* activity. As such, the rate regulation that some parties seek for ICS financial transactions should be rejected as unauthorized and outside the Commission's jurisdiction.

II. A FEW STATEMENTS REGARDING SECURUS'S SERVICES REQUIRE CLARIFICATION AND/OR CORRECTION

Securus wishes to address a few factual assertions that have been made about its transaction fees and its contracts.

A. Clarifications and Corrections Regarding Securus's Purported Fees and Related Matters

A few parties have submitted Securus tariffs as evidence of the transaction fees that Securus presently imposes on consumers. These tariffs require comment in a few respects.

As an initial matter, Securus notes that the Public Notice seeks comment on "account setup fees, account replenishment fees, account refund fees, and account inactivity fees."¹² Securus does not charge any of these fees.

In addition, Securus notes the following:

1. Pay Tel's Comments include a table listing its fees for various transactions

¹² Public Notice at 1.

compared with those of “Other Vendor Fees”.¹³ For the “Mail Check or Money Order” transaction, Pay Tel states “unknown” for “Other Vendor Fees”. Securus does not charge any type of fee when a consumer pays by check or money order.

2. PayTel’s Comments also state that “Other Vendors” charge “\$10.00 or \$5.00 + 30.5% of payment amount” for “Web Site Payments” and “Automated Phone Payment.”¹⁴ Securus charges up to \$7.95 for credit card and debit card payments.¹⁵ This fee goes to third-party financial vendors and to cover Securus’s cost of credit card fraud. The inmate telephone industry experiences a high incidence of credit card fraud. In fact, the vendor that Securus previously used for credit card processing raised its fee to \$8.95 in 2009, due to its increased losses arising from fraud. Securus terminated its contract with that vendor due to the fee increase. This fee also covers Securus’s costs in obtaining the necessary credit card security software and providing training to customer service representatives.

3. The Wright Petitioners included a chart with their July 17 Comments that purported to show transaction fees that Securus presently charges. That chart was incorrect in several respects. Attached hereto as **Attachment A** is an exact replica of that chart, with numbered footnotes added by Securus to correct inaccuracies. Two inaccuracies warrant special mention: Securus does not charge the refund processing fee nor does it charge the bill processing fee, contrary to the Petitioners’ assertions in the chart.¹⁶

4. The New Mexico Public Regulation Commission’s proceeding on inmate

¹³ WC Docket No. 12-375, Further Comments of Pay Tel Communications, Inc. at 4 (July 17, 2013).

¹⁴ *Id.*

¹⁵ WC Docket No. 12-375, Prison Policy Initiative, Ex. 43 at 3 (May 9, 2013).

¹⁶ *See Attachment A, notes 1 and 2.*

telephone service has been discussed often in this docket.¹⁷ Securus notes that the decision in that case remains under reconsideration by that Commission, as shown in **Attachments 2 and 3** hereto. It is not final.

B. The Florida DOC Documents Disprove Several Assertions in This Record

On July 18, 2013, the Martha Wright Petitioners submitted a filing comprised of documents related to or responding to a request for proposals (“RFP”) issued by the Florida Department of Corrections (“DOC”).¹⁸ They assert that “the Florida DOC contract is to run for a period of ten years.”¹⁹ That statement is false. Page 2 of the RFP shows that the contract will have an initial term of **five (5) years**, in keeping with the representations of the industry regarding contract length,²⁰ and *may be renewed* for one year, or two years, or three years, or four years, or five years. The renewal, if one occurs, very well could be less than five years. For these reasons, the forthcoming FL DOC contract cannot be characterized as simply a ten-year contract.

In addition, with regard to the FL DOC’s renewal options, Securus already has stated in this proceeding that contract renewals, new bids, and new contracts should be subject to any rate cap or rate structure that the Commission adopts in this case.²¹

¹⁷ E.g., WC Docket No. 12-375, Wireline Competition Bureau Staff filing July 16, 2013 (rules from New Mexico Pub. Reg. Comm’n).

¹⁸ The documents include a letter from the FL DOC to Embarq d/b/a CenturyLink stating that it has been chosen as the bid winner. The responses of Embarq d/b/a CenturyLink, Securus, and Global Tel*Link to the RFP follow.

¹⁹ WC Docket No. 12-375, Letter from Lee Petro to Marlene H. Dortch, FCC, at 4 (July 18, 2013).

²⁰ *Id.* (citing Comments of Securus Technologies, pg. 8).

²¹ E.g., WC Docket No. 12-375, Letter from Monica Desai to Marlene H. Dortch, FCC, at 2 (May 31, 2013) (“Securus could, however, support an approach where new rates apply on a

What is striking about the RFP papers that the Wright Petitioners submitted is the number of special security features and services that the three bidders offered to provide to the FL DOC. The Securus bid, for example, includes a “GEO Fencing” service that “can set up a perimeter around Department facilities that identifies when an inmate calls a cell phone that is located within that perimeter at the time of the call.” It also included, in response to the FL DOC’s request, “six CelleBrite UFED forensic extraction devices to be delivered to the Department’s location(s) of choice” which are “the recognized leaders in cell phone extraction.”

Securus urges the Commission to review the Wright Petitioners’ July 18 submission closely, because it fully undercuts the persistent that prison telephone service is no different than typical payphone service. Each carrier’s bid is laden with descriptions of specialized features and services designed to meet the FL DOC’s many security requirements with proprietary technology coupled with personnel support and officer training. All of those items are costs to those bidders and are a condition of service according to the FL DOC and many correctional agencies across the country.

The Wright Petitioners’ submission also demonstrates that the industry already provides a good deal of calls to inmates free of charge. The Securus bid offered the FL DOC “10,000 free calls annually at no charge to the Department for the purposes of free inmate calling.” In fact, Securus provides over 1,000,000 free calls to inmates annually.²² All of these facts should maintain a prominent place in the Commission’s review and consideration of this record.

going-forward basis to contracts that are bid, signed, or re-negotiated after the effective date of the new rates.”).

²² Securus May 31 Letter at 5 & Attachment.

CONCLUSION

For all these reasons, the Commission should not adopt caps on or otherwise regulate the level or structure of transactional fees.

By: s/Stephanie A. Joyce
Stephanie A. Joyce
ARENT FOX LLP
1717 K Street, N.W.
Washington, D.C. 20036
202.857.6081 DD
202.857.6395 Fax
Stephanie.Joyce@arentfox.com

Counsel to Securus Technologies, Inc.

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- ATTACHMENT A Martha Wright Chart (July 17, 2013) with Securus Annotations
- ATTACHMENT B Motion of Global Tel*Link to Reopen the Docket, NMPRC Case 10-00198-UT
- ATTACHMENT C Securus Technologies, Inc. Response to Motion to Reopen, NMPRC Case 10-00198-UT