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

Rates for Interstate Inmate Calling Services

WC Docket No. 12-375

**COMMENTS OF SECURUS TECHNOLOGIES, INC.
ON PAY TEL COMMUNICATIONS, INC.'S
PETITION FOR WAIVER OF INTERIM INTERSTATE RATE CAPS**

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Securus Technologies, Inc. (“Securus”), through counsel and pursuant to 47 C.F.R. §§ 1.415 and 1.419,¹ files these Comments in response to the Petition of Pay Tel Communications, Inc. (“Pay Tel”) for Waiver of Interim Interstate Rates filed in the docket on January 8, 2014 (“Petition”). Pay Tel subsequently has appealed all of the rates as well as the “cost-based” requirement that the Commission just adopted.²

BACKGROUND

On November 26, 2013, Pay Tel filed a Petition for Partial Stay of *Rates for Interstate Calling Services* Order, asking that neither the “interim” rate caps nor the “safe harbors” be made effective “as applied to jails pending the adoption of permanent ICS [inmate calling service] rules.”³ Characterizing its request as “narrow in scope,”⁴ Pay Tel nonetheless appeared to seek a stay as to every site it serves;⁵ Pay Tel had consistently explained that it serves “jails” – local and county facilities – as opposed to “prisons” – facilities operated by state and federal agencies.⁶ Pay Tel stated that, absent a stay, “Pay Tel will cease operations.”⁷

Pay Tel’s Petition for Stay is still pending.

Pay Tel now seeks (1) a waiver of the rate caps established in Rule 64.6030, and

¹ See also DA 14-27, *Comment Sought on Pay Tel Communications, Inc. Waiver Petition* (Jan. 9, 2014).

² *Securus v. FCC*, Case Nos. 13-1280 and consol. cases, Order (Jan. 15, 2014); Pay Tel Communications, Inc. Petition for Review (Jan. 9, 2014).

³ Pay Tel Petition for Stay at i.

⁴ *Id.* at ii.

⁵ The Petition for Waiver states that Pay Tel has 160 “clients” covering 180 facilities. Petition at 14.

⁶ *E.g.*, WC Docket No. 12-375, Letter from Marcus Trathen, Counsel to Pay Tel Communications, Inc., at 1 (July 31, 2013) (“the Commission ... should exempt jails”); Reply Comments of Pay Tel Communications, Inc. at 8 (Apr. 22, 2013); Comments of Pay Tel Communications, Inc. at 10 (Mar. 25, 2013).

⁷ Pay Tel Petition for Stay at 29.

either (2a) a “determination that the assessment by Pay Tel of its current, pre-*Order* rates for interstate ICS” will comply “with the requirements of 47 C.F.R. § 64.6010”⁸ or (2b) “a grant of waiver from the requirements of Section 6010.”⁹ Rule 64.6010 requires that “[a]ll rates for [ICS] and all Ancillary Charges must be based only on costs that are reasonably and directly related to the provision of ICS.”

Pay Tel necessarily but *sub silentio* seeks a waiver of the “safe harbors” as well. If Pay Tel cannot provide service at the rate caps of \$0.21 per-minute (debit) and \$0.25 per minute (collect), then surely it cannot provide service at the “safe harbor” levels of \$0.12 per minute (debit) and \$0.14 per minute (collect).¹⁰ Rule 64.6020 established the “safe harbor” level rates.

The day after it filed the Petition, Pay Tel appealed the *Inmate Rate Order* to the D.C. Circuit. Its appeal has been consolidated with those of the other carriers and the Mississippi and South Dakota Departments of Corrections.¹¹

On January 13, 2014, the D.C. Circuit granted a stay pending appeal of Rules 64.6010 and 64.6020.¹² The stay will remain in place until the Court’s review of the *Inmate Rate Order*¹³ is resolved. At this time there is no briefing schedule or argument date for that appeal. Thus, as a practical matter, half of the Petition has been granted and is largely moot. And Pay

⁸ Petition at 1.

⁹ *Id.*

¹⁰ The rate cap for a 15-minute call is \$3.15 (debit), \$3.75 (credit), and the “safe harbors” are \$1.80 (debit), \$2.10 (credit). Rules 64.6020, 64.6030.

¹¹ *See supra* n.2. The Arizona Department of Corrections also has joined this appeal.

¹² *Securus v. FCC*, Case 13-1280, Order (D.C. Cir. Jan. 13, 2014). The Court also stayed Rule 60.6060 which imposes annual reporting and certification requirements.

¹³ WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd. 14107 (2013).

Tel will seek reversal of all of the rates at the D.C. Circuit.

DISCUSSION

The Petition demonstrates that the *Inmate Rate Order* has established an unworkable rate regime. The Commission “relied heavily upon Pay Tel’s cost study, particularly in adopting its interstate rate caps for debit calls,”¹⁴ but then set rates that would put even Pay Tel out of business.

In addition, the Petition reifies the confusion that the *Inmate Rate Order* has caused with regard to the “waiver” process. The Commission will review petitions for waiver “at the holding company level,”¹⁵ and instructs parties that they must show “good cause”.¹⁶ It also states that “[b]ecause we will consider waiver requests on a holding company basis, waiver requests from the three largest ICS providers would cover over 90 percent of ICS provided in the country.”¹⁷ Securus cannot comment on the accuracy of that figure, but simply notes that this sentence suggests that the Commission is willing to waive the entire *Inmate Rate Order* for what it perceives to be “90 percent of ICS”. Did the Commission intend for a company to seek, and possibly obtain, a blanket waiver from all rates as to all of its sites?

Securus will not comment on whether Pay Tel deserves a waiver of the rules for any or all of its sites. It files these Comments simply to ask that the Commission resolve the Petition will all speed and provide in its decision some guidance for the industry as to how a waiver must be sought and will be granted.

¹⁴ Petition at 4 (citing *Inmate Rate Order* ¶¶ 75-77).

¹⁵ *Inmate Rate Order* ¶ 83.

¹⁶ *Id.* ¶ 82.

¹⁷ *Id.* ¶ 84.

CONCLUSION

For these reasons, the Commission should resolve the Petition with a substantive order explaining its reasoning and its view of the merits and method of Pay Tel's presentation.

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CERTIFICATE OF SERVICE

I hereby attest that on this 16th day of January 2014, a true and correct copy of the foregoing Comments on Pay Tel Communications, Inc.'s Petition for Waiver of Interim Interstate Rate Caps was served on the following persons via First Class and electronic* mail:

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