

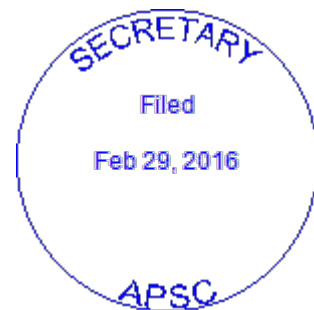


WHITE ARNOLD & DOWD P.C.

February 25, 2016

VIA HAND DELIVERY

Walter L. Thomas, Jr., Secretary
Alabama Public Service Commission
RSA Union Building
100 N. Union Street
Montgomery, Alabama 36104



Re: Securus Technologies Inc.'s Motion to Hold Proceeding In Abeyance In Re: Generic Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Service; Docket 15957

Dear Mr. Thomas:

Attached hereto for electronic filing with the Alabama Public Service Commission is Securus Technologies, Inc.'s Motion to Hold Proceeding in Abeyance in the above referenced matter.

The original and one copy of this document will be hand delivered to the Commission.

As always, thank you in advance for your courtesies in this matter. Please do not hesitate to contact me should you have any questions regarding this matter.

Sincerely,

WHITE ARNOLD & DOWD P.C.

Laura S. Gibson

Enclosure

**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

RE: GENERIC PROCEEDING)
CONSIDERING THE PROMULGATION) **DOCKET 15957**
OF TELEPHONE RULES GOVERNING)
INMATE PHONE SERVICE)

**SECURUS TECHNOLOGIES, INC.’S MOTION TO HOLD
PROCEEDING IN ABEYANCE**

Securus Technologies, Inc. (“Securus”), acting through undersigned counsel, hereby moves the Alabama Public Service Commission (the “Commission”) to hold all further actions in this proceeding in abeyance pending the resolution of the appeal of the Federal Communications Commission’s Second Order in WC Docket No. 12-375 (more fully described below). In support of this motion, Securus sets forth the following grounds and facts for the Commission’s consideration:

BACKGROUND

SECOND FCC ORDER

On November 5, 2015, the Federal Communications Commission (“FCC”) released its new order entitled WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 15-136 (“*Second FCC Order*”). In that new order, the FCC adopted several rules, including:

- Rule 64.6010 – Final Rate Caps for Calling Services (both interstate and intrastate calls)

Size and Type of Facility	Debit/Prepaid Rate Cap per MOLT"	Collect Rate Cap per MOU as of effective date	Collect Rate Cap per MOU as of July 1, 2017	Collect Rate Cap per MOU as of July 1, 2018
0-349 Jail ADP°	\$0.22	\$0.49	\$0.36	\$0.22
350-999 Jail ADP	\$0.16	\$0.49	\$0.33	\$0.16
1,000+ Jail ADP	\$0.14	\$0.49	\$0.32	\$0.14
All Prisons	\$0.11	\$0.14	\$0.13	\$0.11

- Rule 64.6020 – Caps for “Ancillary Fees”

Permitted Ancillary Service Charges and Taxes	Monetary Cap Per Use / Instruction
Applicable taxes and regulatory fees	Provider shall pass these charges through to consumers directly with no markup
Automated payment fees	\$3.00
Fees for single-call and related services, e.g., direct bill to mobile phone without setting up an account	Provider shall directly pass through third-party financial transaction fees with no markup, plus adopted, per-minute rate
Live agent fee, <i>i.e.</i> , phone payment or account set up with optional use of a live operator	\$5.95
Paper bill/statement fees (no charge permitted for electronic bills/statements)	\$2.00
Prepaid account funding minimums and maximums	Prohibit prepaid account funding minimums and prohibit prepaid account funding maximums under \$50
Third-party financial transaction fees, <i>e.g.</i> , MoneyGram, Western Union, credit card processing fees and transfers from third party commissary accounts	Provider shall pass this charge through to end user directly, with no markup

- Rule 64.6060 – Annual Reporting Requirements regarding minutes of use, calling rates changes, ancillary fees charged, rates for video visitation service, and amount of “site commissions” provided to facilities;
- Rule 64.6090 – A rule prohibiting any type of flat-rate, non-time sensitive calling rates; and
- Rule 64.6100 – A rule prohibiting a minimum account balance or maximum transaction amount.

The *Second FCC Order* has been appealed to the U.S. Court of Appeals for the D.C. Circuit in the consolidated case *Global Tel*Link, et al. v. FCC*, Nos. 15-1461. The appellants are Global Tel*Link, Securus, CenturyLink, Telmate, Pay Tel Communications, the State of Oklahoma, and the National Association of Regulatory Utility Commissioners.

Five parties – the four ICS carriers and the State of Oklahoma - individually sought a stay of the *Second FCC Order*. Securus sought a stay of the caps for credit card transactions, “Single-Call” service, and the reporting requirements for video visitation service and “site commissions.” Global Tel*Link, CenturyLink, and Telmate each sought a stay of the inmate calling rates, both interstate and intrastate. Telmate also sought a stay of the caps on Ancillary Fees. The State of Oklahoma filed a motion for stay on February 22, 2016, asking that the court of appeals stay the intrastate calling rates on both jurisdictional and substantive grounds.¹ In addition, Pay Tel stated that it would seek a stay later, because the rate caps for city and county jails are not effective until June, 2016. At this time, Securus does not know whether that motion will be accepted.

Briefing on the carriers’ motions to stay closed on February 19, 2016, and the FCC was ordered to respond to the State of Oklahoma by February 26, 2016. There is no date for the decision on the motions for stay.

The appellants’ appeal papers show that almost **every aspect** of the *Second FCC Order* is being challenged. For each new rule, at least one party has lodged a challenge, including the interstate calling rates for all facilities (Rule 64.6010), the intrastate calling rates for all facilities (Rule 64.6010), the Ancillary Fee caps and prohibitions (Rule 64.6020), and the reporting requirements (Rule 64.6060). In addition, several parties are challenging the FCC’s decision to

¹ Eight states – Washington, Nevada, Arkansas, Arizona, Louisiana, Missouri, Kansas, and Indiana – as well as the Indiana Sheriffs’ Association, Lake County Sheriffs’ Association, and the Marion County Sheriffs’ Association have joined the appeal to support Oklahoma’s appeal of the calling rates (*Second FCC Order*, Rule 65.6010).

set calling rates at or near the carriers' costs which were reported *without* including site commission payments. In the *Second FCC Order*, the FCC modified its previous prohibition on site commissions by stating "Although we do not prohibit site providers from paying site commissions, we do not consider the cost of any such payments in setting our rate caps."²

PROCEDURAL STATUS OF DOCKET 15957

On December 9, 2014, the Commission issued the Further Order ("*December 9, 2014 Order*") that it now proposes to amend.³ Securus and Global Tel*Link Corporation separately appealed the Commission's *December 9, 2014 Order* to the Alabama Supreme Court⁴ and to the Montgomery County Circuit Court.⁵ In addition to other issues, Securus appealed the rate caps and limits established in the *December 9, 2014 Order* on the basis that the rate caps and fees were not sufficient to allow Securus to earn a fair rate of return. The Commission's *Notice* proposes an amendment to the ICS Rules that modifies and **further** reduces the same rate caps and limits which are already under appellate review.

The Commission issued its *Notice of Proposed Amendment to Inmate Calling Service Rules* ("*Notice*") on February 9, 2016. In the *Notice* the Commission stated that the FCC "released a rule that extended its regulation to include intrastate inmate calling service ("ICS") in addition to

² WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 15-136, WC Docket No. 12-375, p. 59, ¶ 123.

³ *RE: Generic Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Service, Further Order*, issued in this docket December 9, 2014.

⁴ *Securus Technologies, Inc. v. Alabama Public Service Commission*, Alabama Supreme Court, Case number 1140266; *Global Tel*Link, et al. v. Alabama Public Service Commission*, Alabama Supreme Court, Case number 1140284.

⁵ *Securus Technologies, Inc. v. Alabama Public Service Commission*, Montgomery County Circuit Court, Case number CV-2014-802 ; *Global Tel*Link, et al. v. Alabama Public Service Commission*, Montgomery County Circuit Court, Case number CV-2014-902085.

interstate ICS.”⁶ The Commission based the promulgation of the *Notice* on the need to comply with the *Second FCC Order*, stating: “...However, in its new rule, the FCC set some rate caps and limits that are different from those set by this Commission. This notice describes proposed amendments to this Commission’s ICS Rules **that would establish complete consistency with the FCC Rules** and ensure that the FCC would not preempt this Commission’s regulation of intrastate ICS.”⁷

DISCUSSION

The Commission’s proposed amendment to its *December 9, 2014 Order* is premature because it is based entirely on the *Second FCC Order* which, as shown above, is currently under review at the D.C. Circuit. Almost every new rule and rate in the *Second FCC Order* – certainly the rules which the Commission wishes to implement – is the subject of a request for stay and/or reversal. Due to the breadth of that appeal, federal law as to both interstate and intrastate rates for inmate calls is not settled. If the Commission’s goal, as stated in paragraph 1.02 of its *Notice* is to establish “**complete consistency with the FCC Rules,**” the prudent course of action is to hold this proceeding in abeyance until the appeal of the *Second FCC Order* is concluded.

Securus is concerned that the issuance of a premature amendment of the *December 9, 2014 Order* will create considerable confusion for ICS providers, correctional facilities, inmates, and consumers. An abeyance in this proceeding not only would avoid confusion and delay but would also make the Commission more informed. The Commission thus would be better positioned,

⁶ RE: *Generic Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Service, Notice of Proposed Amendment to Inmate Calling Service Rules*, issued in this docket February 9, 2016. Paragraph 1.01.

⁷ RE: *Generic Proceeding Considering the Promulgation of Telephone Rules Governing Inmate Phone Service, Notice of Proposed Amendment to Inmate Calling Service Rules*, issued in this docket February 9, 2016. Paragraph 1.02. (emphasis added).

from both a factual and a procedural standpoint, to adopt rules that are in harmony with the FCC and the state law. Additionally, from a practical standpoint, an abeyance would relieve Securus and other ICS providers from the worry and drain on resources that would result from their having to modify contracts and procedures on multiple occasions. This motion is a plea to the Commission to pause – simply wait on the authority on which they rely to actually be reliable, which is to say final.

WHEREFORE, for all of the foregoing reasons, Securus moves that the Commission hold this proceeding in abeyance pending the final resolution of the appeal of the *Second FCC Order* in the U.S. Court of Appeals for the D.C. Circuit in the consolidated case *Global Tel*Link, et al. v. FCC*, Nos. 15-1461.

Respectfully submitted this 25th day of February, 2016.

SECURUS TECHNOLOGIES, INC.

/s/ J. Mark White

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CERTIFICATE OF SERVICE

I, Laura S. Gibson, certify that on this 25th day of February, 2016, I served a copy of the foregoing Motion to Hold Issuance of Amended Order in Abeyance on the following, which are parties reflected on the Service List as posted under Docket 15957 on the Commission's website via the method indicated below:

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/s/ Laura S. Gibson