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May 6, 2022

Marlene H. Dortch, Secretary

Federal Communications Commission

45 L Street, NE

Washington, DC 20554

**VIA ECFS ONLY**

Re: *Ex parte* filing: protection of consumer prepaid funds  
Rates for Interstate Inmate Calling Services, WC Dkt. No. 12-375

Dear Ms. Dortch:

Pursuant to § 1.1206(b)(1) of the Commission's rules of practice and procedure, the Prison Policy Initiative ("PPI") hereby submits this *ex parte* filing in connection with the above-captioned proceeding.

The record in this proceeding indicates that inmate calling service ("ICS") carriers commonly seize customer prepaid accounts after an arbitrary period of account "inactivity." PPI and other parties have previously urged the Commission to prevent this practice.<sup>1</sup> We have also encouraged several state utility regulators to take similar steps. One of the most consistent opponents of formal legal protections for consumer prepaid funds has been Securus Technologies, LLC ("Securus"). Securus's opposition to these measures underscores the need for timely and coordinated action by the Commission. We write today to provide the Commission with a record of Securus's opposition to pro-consumer policies and to briefly respond to the substance of the company's flawed legal argument.

**I. Account Inactivity "Policies" Are Functionally Equivalent to Inactivity Fees, Which the Commission Banned in 2015**

As we have explained in the past, ICS carriers hold substantial amounts of customer prepaid funds, which carriers are free to use as unrestricted working capital.<sup>2</sup> Not content to simply enjoy the interest-free use of these funds, many

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<sup>1</sup> PPI [Reply Comments on Fifth FNPRM](#) at 29-30 (Dec. 17, 2021); *see also* Wright Petitioners, et al. [Reply Comments on Fifth FNPRM](#) at 11-13 (Dec. 17, 2021).

<sup>2</sup> *See* PPI [Opening Comments on Third Mandatory Data Collection](#) at 15-16 (Nov. 4, 2021).

carriers impose inactivity policies under which customer funds are forfeited to the carrier after a certain period of account inactivity. A compilation of company policies is attached hereto as **Exhibit 1**.

In 2015, when the Commission prohibited ancillary fees other than those enumerated in 47 C.F.R. § 64.6020(a), it stated that this new rule would “resolve” the problem created by fees that were not “necessary to ensure that ICS providers receive fair compensation for providing service.”<sup>3</sup> Carrier seizure of funds because of an artificial inactivity deadline is functionally indistinguishable from a unauthorized inactivity fee. PPI therefore urges the Commission to take immediate action to prohibit inactive-account seizures, thereby furthering the policy rationale underlying its ancillary-fee rules.

## **II. When State Utility Regulators Consider Taking Steps to Protect Consumer Prepaid Funds, Securus Consistently Objects**

In connection with three different state regulatory proceedings, PPI has recommended that the utility commissions of Iowa, New Mexico, and Nevada require ICS carriers to remit inactive prepaid funds (held for consumers located in those states) to the agency that administers the respective state’s unclaimed property law (this is usually the state treasurer or the revenue agency). Each time PPI has made this suggestion, Securus has opposed it, arguing that any such regulation must be promulgated by the unclaimed-property administrator. True and correct copies of the filings in which Securus has made this argument are attached hereto as **Exhibits 2** through **4**, with the relevant portions highlighted. Securus persuaded the Iowa Utilities Board to not require compliance with that state’s unclaimed property law; the issue is currently under advisement in New Mexico and Nevada.<sup>4</sup>

Securus’s reasoning does not withstand scrutiny. Under the Uniform Unclaimed Property Act, if a “refund owed to a subscriber by a utility” remains unclaimed by the subscriber “one year after the . . . refund becomes payable,” then the utility must turn over the funds to the unclaimed-property administrator.<sup>5</sup> It is axiomatic that utility regulators are able to prescribe rules governing the conduct of entities within their jurisdiction, and that power includes the ability to specify when utilities owe refunds to their customers. PPI’s

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<sup>3</sup> WC Dkt. 12-375, [Second Report & Order and Third FNPRM](#) ¶ 174, 30 FCC Rcd. 12763, 12851 (released Nov. 5, 2015).

<sup>4</sup> Although the Nevada PUC has not yet voted on this matter, the staff of that agency have voiced support for the basic contours of PPI’s proposal. *See Rulemaking to Amend, Adopt, and/or Repeal Regulations in Accordance with SB 387*, Nev. Pub. Util. Comm. Dkt. No. 21-12013, Regulatory Operations Staff’s [Reply Cmts](#) at 1-2 (May 3, 2022) (“Staff believes the Commission does have the authority to adopt [prepaid-account protections] as part of the rulemaking process. The proposed regulation is connected to inmate calling services.”).

<sup>5</sup> Unif. Unclaimed Prop. Act (1995) § 2(a)(13), 8C U.L.A. 125.

various proposals to state regulators simply seek to define when prepaid-account refunds are due and payable to consumers.

We have never argued that utility regulators should interfere with how unclaimed-property programs are administered. Questions about how carriers interact with the treasurer's office, what information the carrier must submit, and how customer claims are processed are the purview of the unclaimed-property administrator, and PPI has never argued otherwise.

Our position is merely that utility regulators should ensure that the companies under their jurisdiction follow applicable state laws. As we recently explained to the Nevada Public Utilities Commission ("PUC"), the attorney general and the banking regulator in that state have both issued rules requiring entities under those agencies' respective jurisdictions to comply with the state's unclaimed property law in specific situations. Our proposal to the PUC simply seeks the same type of rule as applied to ICS customer accounts. Given Securus's opposition to this modest proposal, we encourage the FCC to step in and act so that advocates need not raise this issue in front of fifty different state utility regulators.

### **III. Seizure of Prepaid Funds Contravenes the Policy Stated in the Uniform Unclaimed Property Act**

ICS carriers' inactive-account seizures contradict the policy goals embedded in the various iterations of the unclaimed property laws promulgated by the National Conference of Commissioners on Uniform State Laws ("NCCUSL") over the past four decades. In the 1960s, several state courts held that the Uniform Disposition of Unclaimed Property Act requires property custodians to turnover unclaimed property upon the expiration of the statutorily-designated dormancy period, even if an applicable contractual provision imposes a shorter limitations period for the owner to claim the subject property.<sup>6</sup>

While there was some disagreement among courts, NCCUSL codified the aforementioned policy by expressly abrogating contractual limitations periods in the 1981 Uniform Unclaimed Property Act (enacted in 21 states plus the District of Columbia). Section 29 of that law specifies that "[t]he expiration . . . of any period of time specified by contract . . . during which a claim for money or property can be made . . . does not

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<sup>6</sup> See e.g., *People ex rel. Callahan v. Marshall Field & Co.*, 83 Ill. App.3d 811, 818 (1980) ("[W]here a private agreement between the parties is in fundamental conflict with public policy as established by the legislature, the private agreement must fall. . . . [T]he holder's theory here would result in a private escheat law whereby the holder rather than the state would enjoy the benefit of the unclaimed property. Such a result would be contrary to the obvious purpose and policy of the Act.").

prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property . . . as required by this Act.”<sup>7</sup> The provision remains substantially unchanged in section 19 of the 1995 Uniform Unclaimed Property Act, which has been adopted in sixteen states.<sup>8</sup> The 1995 language has carried over nearly verbatim to the 2016 Revised Uniform Unclaimed Property Act, which has been adopted in five states.<sup>9</sup>

The ICS industry’s attempts to exempt ICS consumers’ prepaid accounts from the scope of unclaimed property laws thus runs contrary to the informed judgments of the legislatures in at least forty-two states and the District of Columbia. As explained below, the Commission can and should protect consumers by requiring ICS carriers to refund inactive-account balances and comply with applicable unclaimed-property laws if refunds cannot be effectuated.

#### **IV. The Commission Can Take Simple Steps to Address this Significant Problem**

This filing highlights Securus’s recalcitrance on this issue because that company has been the most vocal opponent of reform measures in this area. At the same time, it is important to recall that at least six ICS carriers seize consumer funds under arbitrary inactivity policies.<sup>10</sup> This common industry practice illustrates why the Commission must act to provide clear and standardized rules.

All the Commission need do is establish a period of inactivity after which carriers must take efforts to refund prepaid accounts (PPI suggests six months, which appears to be the existing industry standard for designating accounts as inactive), and then specify that if refunds cannot be completed, inactive accounts must be handled under applicable state unclaimed-property law. Additionally, the Commission should provide rules for how a carrier should determine which state’s unclaimed-property law applies (either the state associated with the customer-account record or the state of the payment-card billing address would be a logical choice). Meanwhile, the details of collecting unclaimed

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<sup>7</sup> Unif. Unclaimed Prop. Act (1981) § 29(a), 8C U.L.A. 321.

<sup>8</sup> Unif. Unclaimed Prop. Act (1995) § 19(a), 8C U.L.A. 168 (“The expiration . . . of a period of limitation on the owner’s right to receive or recover property, whether specified by contract, state, or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or pay or deliver or transfer property to the administrator as required by this [Act].” (brackets in original)).

<sup>9</sup> Rev. Unif. Unclaimed Prop. Act (2016) § 610(a), 8C U.L.A. 2019 Supp. at 62.

<sup>10</sup> PPI is aware of some evidence suggesting that Securus does at least take good-faith steps to reunite customers with their inactive funds, despite the company’s stated policy to the contrary. The same cannot be said of all ICS carriers. See [Comments of PPI re Unclaimed Funds](#) at 4 (Jan. 12, 2015) (noting Securus’s frequent turnover of funds to unclaimed property programs).

property and processing account-holder claims can be left to the state agencies that administer unclaimed-property programs.

For the reasons stated above, PPI encourages the Commission to issue a simple rule that protects prepaid accounts from unreasonable seizure.

Should there be any questions regarding this submission, please contact the undersigned.

Sincerely,



Stephen Rahe  
General Counsel

Attachments

cc (via email): Chairwoman Jessica Rosenworcel  
Commissioner Brendan Carr  
Commissioner Geoffrey Starks  
Commissioner Nathan Simington  
Ramesh Nagarajan, Office of Chairwoman Rosenworcel  
Danielle Thumann, Office of Commissioner Carr  
Austin Bonner, Office of Commissioner Starks  
William Kehoe, Wireline Competition Bureau  
Irina Asoskov, Wireline Competition Bureau



## **Exhibit 1**

### **ICS Carrier Prepaid Fund Policies**

<b>Carrier</b>	<b>Inactivity Period</b>	<b>Policy Language</b>	<b>Source</b>
CPC	no policy found	n/a	n/a
Encartele	none	Encartele appears to treat prepayments as advance "purchases" of data. The company's terms state that "For data that is purchased and not used, Encartele allows you to sell back your data at the price then in effect. If you agree to sell back your unused data at the price then in effect, funds will be paid via check sent to you in the mail."	<a href="#">Terms of Service</a>
Global Tel*Link	180 days	Under the settlement agreement currently pending judicial approval in <i>Githieya v. GTL</i> (U.S. Dist. Ct., N.D. Ga., Case No. 15-cv-986), "GTL shall adopt a baseline policy that lengthens the period of time before the Inactivity Policy will be applied to any AdvancePay Account from 90 days to 180 days nationwide."	
HomeWAV	unclear	No inactivity policy found. Customer website states "All refunds are subject to a \$7.50 processing fee. Refunds are at the discretion of HomeWAV."	<a href="#">Refund Request form</a>
ICSolutions	6 months	"Prepaid Account phone services expire six months from the date of your last purchase (funding) to the account, unless otherwise required by state law. In other words, if you do not fund the account for a period of six months, you will forfeit any funds remaining the account."	<a href="#">Frequently Asked Question #13</a>
NCIC	unknown	NCIC's website states that "available minutes balance never expires," but it is not clear whether customers can obtain a refund of unused prepaid funds.	<a href="#">Terms and Conditions</a>
Pay Tel	6 months	In the event that Customer's Prepaid Account has been inactive for a period of not less than six (6) months, and the Customer has not requested a refund, the Company may classify the account as inactive and transfer any Prepaid Account balance with more than a de minimis balance to an Inactive Prepaid Account Phone Card" Prepaid phone cards are subject to a monthly maintenance fee of an unspecified amount	The quoted policy is attached to Pay Tel's <a href="#">Sept. 27, 2021 comments filed with the FCC</a> , but does not appear on the company's website.
Prodigy	6 months	"The Available Usage Balance expires six months from the date the last call is made on the Prepaid account. No refunds of unused balances will be issued after the expiration date."	<a href="#">Oklahoma Tariff</a> § 3.4.1
Securus	180 days	"AdvanceConnect account holders have 180 days from the date of the last call received on the AdvanceConnect account to request a refund of any unused balance."	<a href="#">AdvanceConnect Terms and Conditions</a>



## **Exhibit 2**

### **Securus's Resistance to PPI's Motion for Partial Reconsideration and Request for Clarification**

**from *In re Securus Tech., LLC*, Docket No. TF-2019-0033 (Iowa Util.  
Bd., May 24, 2021)**



STATE OF IOWA  
DEPARTMENT OF COMMERCE  
IOWA UTILITIES BOARD

IN RE:	DOCKET NO. TF-2019-0033
SECURUS TECHNOLOGIES, LLC	<b>RESISTANCE TO PPI'S MOTION FOR PARTIAL RECONSIDERATION AND REQUEST FOR CLARIFICATION</b>

On January 29, 2021, after extensive engagement with the Iowa Utilities Board (“Board”), in numerous related proceedings pertaining to incarcerated calling services (“ICS”), Securus filed a new Tariff. On March 2, 2021, the Board approved the new Tariff subject to the requirement of two minor modifications, and required Securus to provide an explanation as to whether Securus does or does not remit certain funds “in inmate calling accounts” to the state under Iowa Code § 556.4. On April 1, 2021, Securus filed the revised pages, and the requested explanation. On April 26, 2021, the Board approved Securus’ revised tariff, and with regard to the applicability of § 556.4, the Board held:

The Board has reviewed Securus’ revised tariff sheets and the related comments. Based upon that review, the Board has determined that AOS providers will not be required to remit unused funds on prepaid calling cards to the state treasurer’s office as unclaimed property. Iowa Code § 556.4(1) relates to deposits funded by a “subscriber” and unclaimed “by the person appearing on the records of the utility.” The Board has determined that purchasing a prepaid calling card does not rise to the level of being a subscriber and, thus, does not require the remittance of unused funds on prepaid calling cards to the state treasurer’s office.<sup>1</sup>

On May 10, 2021, Prison Policy Institute (“PPI”) filed a Motion for Partial Reconsideration. In that Motion, PPI raises a single, narrow issue:

[E]ven though the Board acknowledged PPI’s alternative argument concerning Iowa Code § 556.9, the April 26 order does not include a ruling on the applicability of § 556.9. Accordingly, PPI files this motion for the sole purpose of requesting a Board ruling on this question. For the reasons stated in our

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<sup>1</sup> *In re Securus Technologies, LLC*, Docket No. TF-2019-0033, Order Approving Revised Tariff Sheets (Apr. 26, 2021)(“Board Order”), at 6.

comments of April 12, we encourage the Board to require Securus to remit unspent funds associated with prepaid calling cards in accordance with the provisions of Iowa Code § 556.9.<sup>2</sup>

The Board should deny PPI's Motion for three reasons:

- First, PPI advances a novel legal argument – that Securus, a utility, should not be governed by the utility-specific provision of the Code, but instead by a provision that applies only when no other specific provision exists (despite the existence of a specific provision that does apply to Securus) – and offers no authority in support, because none exists.
- Second, and relatedly, PPI's argument violates one of the most fundamental axioms of statutory interpretation – that the terms of a specifically applicable statutory provision control over the terms of a generally applicable statutory provision governing the same topic.
- Third, PPI's request is improper, raised as it is in a Board proceeding involving the tariff review of a single provider in a competitive industry sector with at least eight other Iowa providers (based on the Board tariff dockets).

**I. PPI's Suggestion that Iowa Code § 556.9 is Applicable is Unsupported and Incorrect.**

PPI's reconsideration requests the Board to find that unused funds on prepaid calling cards are subject to the state unclaimed property statute under § 556.9. PPI cites nothing in support of this argument, however, and does not even suggest which of the specific subsections of § 556.9 allegedly apply. This is perhaps because, as the Board has already noted, the state's unclaimed property statute has a section that is specifically applicable to monies held by utilities – § 556.4 – and Securus is exactly that.

Further, § 556.9 (referred to by PPI as a “catch-all”) is, by its very terms, only applicable to “intangible personal property, *not otherwise covered by this chapter*”.<sup>3</sup> As the monies held by a utility *are* covered by the chapter, in their own industry-specific section, § 556.4, there is simply no basis for the Board to adopt PPI's argument.

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<sup>2</sup> *In re Securus Technologies, LLC*, Docket No. TF-2019-0033, Prison Policy Initiative's Motion for Partial Reconsideration May 10, 2021), at 1.

<sup>3</sup> Emphasis added.

Moreover, PPI's interpretation violates the interpretive maxim that the specific controls the general: where the legislature has addressed the utilities industry specifically, it is improper to assume more general provisions apply absent a specific reference.<sup>4</sup> In that case, a dispute between a bank and widow over foreclosure on property was potentially governed by different statutory provisions, one specific and one broader. The Court discussed the issue of statutory construction in terms closely analogous to those in the present case (including the reference to the "except as otherwise provided. . ." language):

Finally, section 633.350 is a more general provision, applicable to both testate and intestate estates concerning title transfer and the personal representative's ability to control property; by contrast, section 633.211 *specifically identifies the property an intestate surviving spouse "shall receive." To the extent "there is a conflict or ambiguity between specific and general statutes, the provisions of specific statutes control."* *Goergen v. State Tax Comm'n*, 165 N.W.2d 782, 787 (Iowa 1969); *see also* Iowa Code § 4.7; *Griffin Pipe Prods. Co. v. Bd. of Review*, 789 N.W.2d 769, 775 (Iowa 2010). As Maureen points out, section 633.350 also begins with the caveat that it applies "[e]xcept as otherwise provided in this probate code." The legislature realized *other, more specific probate provisions qualified the language of section 633.350 and clarified that section 633.350 deferred to these provisions*. Section 633.211 specifically governs an intestate surviving spouse's statutory dower share. This further demonstrates the legislature intended section 633.211, not section 633.350, to define the surviving spouse's statutory dower share.<sup>5</sup>

Further, PPI appears to be arguing that the legislature intended § 556.4 to apply only to the portion of a utility's unclaimed property specifically described within it, with § 556.9 applying to all of the utility's unclaimed property that is not specifically described in § 556.4. Put differently, PPI is asking the Board to find an internal cross-reference between these two sections, despite the lack of any such relationship in the language of the statute itself. This argument, too, is unsupported by any authority. More to the point, it ignores the plain truth that the legislature knows how to describe internal relationships between statutory provisions, when it

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<sup>4</sup> *See Freedom Financial Bank v. Estate of Boesen*, 805 N.W.2d 802, 815 (Iowa 2011).

<sup>5</sup> *Id.* (emphasis added).

is the goal of the legislature that such internal relationships exist. For example, § 556.2 regarding banking and financial organizations includes cross references to § 556.13; § 556.13 cross references to § 556.11; which cross references to §§ 556.3A and 556.12, which in turn cross references to § 556.2.

Critically, *none of the industry-specific unclaimed property statutes cross reference to § 556.9*. As such, PPI's argument here is effectively this: Despite the fact that the legislature made deliberate choices on what properties held by utilities are covered by the statute, the Board should ignore that and create an internal cross-reference between § 556.4 and § 556.9, even though the legislature – given the opportunity to create those cross-references it deemed appropriate, including those specifically related to utility-held unclaimed property – declined to do so. This argument is both unsupported and, if adopted, would fail to give effect to the definitional choices made by the legislature.

[L]egislative intent is expressed by what the legislature has said, not what it could or might have said. When a statute's language is clear, we look no further for meaning than its express terms. *Intent may be expressed by the omission*, as well as the inclusion, of statutory terms. Put another way, *the express mention of one thing implies the exclusion of other things not specifically mentioned*.<sup>6</sup>

PPI's approach to the statute cannot be supported by the plain text, or by proper statutory construction. Here, the choices the legislature made when it established a specific section applicable to utilities cannot be undone by resort to a general provision. The Board should reject PPI's request for partial reconsideration.

## **II. Even if PPI's Argument Had Merit, this is Not an Appropriate Time or Place to Raise the Argument.**

PPI cites to no cases supporting its interpretation, because there are none. What PPI seeks is for the Board to rule in a case of first impression. The Board, however, is not the agency

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<sup>6</sup> *Hawkeye Land Co. v. Iowa Utils. Bd.*, 847 N.W. 199, 210 (Iowa 2014) (citing *State v. Beach*, 630 N.W.2d 598, 600 (Iowa 2001))(emphasis added).

tasked with interpreting or implementing Iowa Code chapter 556 – that is the Office of the Treasurer of Iowa. *See* § 556.19 (Treasurer prescribed forms to claim deposited funds); §556.20 (Treasurer makes determinations regarding claims); § 556.23 (empowering Treasurer to review records of persons it believes should have reported funds); § 556.24 (empowers Treasurer to compel delivery of abandoned property); § 556.26 (instructing Treasurer to promulgate rules to implement chapter). Moreover, to determine uncertain rights under a statute, the proper vehicle is a request for declaratory judgment from a court. The Board should decline PPI’s request in recognition of the limits of its scope and to respect the scope of other agencies and branches – and in respect of the plain language of the statute. The Board should not stretch for a new application of a law that is not assigned to the Board to interpret or implement and is not generally within the Board’s unique expertise.

Even if the Board were inclined to delve into this issue, the review of a single company’s tariff is not an appropriate vehicle. PPI raises a matter of the interpretation of a statute of uniform application. There is no reason why this issue – which applies not only to every ICS provider, but to every telecom company registered with the Board – should be addressed exclusively in Securus’ tariff review docket to be applicable exclusively to Securus. Doing so risks unfair, discriminatory, or inconsistent piecemeal application.<sup>7</sup> If the Board wants to pursue

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<sup>7</sup> This has, unfortunately, already been the case in the separate tariff dockets, particularly with regard to prepaid accounts. Global Tel\*Link (“GTL”), in Docket No. TF-2019-0039, made the argument that the unclaimed property statute did not apply to AOS providers at all, because the Board did not create a set of regulations for applying it to telecom providers. The Board accepted that argument stating, “The Board does not consider the forfeiture rules in Iowa Code § 556.4 for utility accounts to be necessary.” *See In Re Global Tel\*Link Corporation*, TF-2019-0039, Order Requiring Revised Tariff and Denying Confidential Treatment (Dec. 11, 2020) (“GTL Order”), at pp. 5-6. The Board then decided to require Securus and Reliance Telephone of Grand Forks, Inc. (“Reliance”) to separately address whether this statute was applicable to their prepaid accounts. *See In re Reliance Telephone of Grand Forks, Inc.*, Docket No. TF-2019-0026, Order Approving Tariff and Requiring Revised Tariff Sheet (Mar. 25, 2021) (“Reliance Order”), at 4. During this time, the Board approved five other tariffs without raising the question, including one (ICSolutions) that appears to allow forfeiture after a particularly short refund period, with no mention of unclaimed funds being tendered to the state. *See In re Inmate Calling Solutions, LLC*, Docket No. TF-2019-0030, Iowa Tariff No. 1 §3.4.1.B (Feb. 16, 2021).

With the exception of ICSolutions, the refund policies for prepaid accounts are substantially identical among the ICS providers by allowing consumers to seek refunds at any time. But only a handful of ICS providers, including

this matter, it should do so through a docket in which all telecom providers are parties and not just ICS providers or Securus alone. If PPI wants to pursue this, they should be required to properly and fully brief this issue with the necessary support so the industry and the Board can better understand whether its arguments have any merit at all. Even then, the better forum would be to take the issue up with the State Treasurer or in a declaratory action in court. Absent any better evidence, however, as Securus demonstrates above, the arguments appear entirely without support.

### **III. The Board Should Clarify That § 556.4 Does Not Apply to Securus**

Further, in recognition that the Board has already treated various providers, including Securus, in unequal ways with respect to its interpretation of § 556.4 of the unclaimed property statute, Securus requests the Board clarify that – as it decided with GTL – that § 556.4 does not apply to Securus. In its response GTL reviewed the reasoning for why § 556.4 does not apply to the prepaid accounts held by any AOS company:

199 IAC 19.4(8), delineating the customer relations requirements for gas utilities, directs covered entities to “maintain a record of deposit information for at least two years or until such time as the deposit, together with accrued interest, escheats to the state pursuant to Iowa Code section 556.4, at which time the record and deposit, together with accrued interest less any lawful deductions, shall be sent to the state treasurer pursuant to Iowa Code section 556.11.” Other sections of the Iowa Administrative Code sets forth identical mandates for electric companies (199 IAC 20.4(8)), water companies (199 IAC 21.4(2)(g)), and sanitary sewage utilities (199 IAC 21.12(2)(g)). Conspicuously absent from this list are AOS companies, particularly given the Board’s recent and comprehensive revision to 199 IAC Chapter 22.4.”<sup>8</sup>

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Securus, have been required to address the application of unclaimed property statutes and the Board has provided two different interpretations of the same statute, in GTL saying it did not apply, and in Securus (at least with regard to AdvanceConnect™ accounts) finding that it does.

<sup>8</sup> *In re Global Tel\*Link Corporation*, TF-2019-0039, Response to Comments of Prison Policy Initiative, Inc. (Oct. 26, 2020), at 2-3.

On the basis of this argument, the Board made the decision regarding this law of uniform application that “[t]he Board does not consider the forfeiture rules in Iowa Code § 556.4 for utility accounts to be necessary.”<sup>9</sup>

Securus made substantially identical arguments to GTL’s:

First, it is important to note that the Board has issued rules addressing the application of Iowa Code § 556.4 to various utilities in nearly identical terms,<sup>10</sup> but the Board has not issued similar rules applicable to telecommunication utilities generally or specifically alternative operator services (“AOS”) companies. The Board recently revised its rules applicable to telecommunications utilities,<sup>11</sup> in which it specifically reviewed the rules applicable to AOS companies and added specific provisions applicable to ICS providers.<sup>12</sup> During its thorough review and revision of these rules, the Board did not add a similar provision regarding the administration of deposits for telecommunications utilities, therefore the Board’s rules appear to consider the application of the forfeiture rules in Iowa Code § 556.4 to be unnecessary as to the types of payment products offered by ICS providers like Securus (e.g., prepaid accounts, debit accounts, and prepaid calling cards).<sup>13</sup>

The Board disagreed with Securus’ additional argument that it did not regard the impermanent deactivation of an AdvanceConnect™ Account as a “termination of services” triggering the treatment of the account balance as abandoned under Iowa Code § 556.4(1), and (despite agreeing that § 556.4 was not necessary to precisely these types of prepaid accounts) required Securus to report and remit unclaimed balances under § 556.4.<sup>14</sup> However, in reaching this conclusion the Board did not address the arguments made by GTL and Securus that the current structure of the Board’s rules indicates that § 556.4 is not being applied at all to telecommunications companies (including AOS companies).

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<sup>9</sup> *GTL Order*, at 5-6.

<sup>10</sup> *See* 199 IAC 19.4(8) (addressing unclaimed deposits held by gas utilities), 199 IAC 20.4(8) (addressing unclaimed deposits held by electric utilities), and 199 IAC 21.4(2)(g) (addressing unclaimed deposits held by water, sanitary sewage, and storm water drainage utilities).

<sup>11</sup> Docket No. RMU-2018-0022, *Service Supplied by Telephone Utilities* [199 IAC Chapter 22].

<sup>12</sup> 199 IAC 22.6(7).

<sup>13</sup> *In re Global Tel\*Link Corporation*, Docket No. TF-2019-0039, Order Requiring Filing of Revisions to Revised Tariff and Denying Confidential Treatment, (Dec. 11, 2020), at 6.

<sup>14</sup> *Board Order*, at 6.

The refund policies of GTL's AdvancePay® Accounts and Securus' AdvanceConnect™ Accounts are substantially identical. In both, the customer may seek a refund of their unused balance at any time upon request to the ICS provider. This appears to also be the same refund policy of all ICS providers except ICSolutions (which apparently will be allowed to forfeit and retain unclaimed balances without an option of refund after seven months from the date of purchase/sale<sup>15</sup>).

Iowa Code § 556.4 is a law of uniform application and should be applied consistently across all telecommunications companies (including all AOS companies) and certainly between direct competitors in the question of substantially identical policies. The progress of these ICS tariff review dockets has resulted in the same law of uniform application being interpreted in two different ways on exactly the same issue (i.e., in one docket § 556.4 apparently does not apply at all to any AOS company and in another docket the same applies to a specific AOS company). The Board required the same safeguards regarding notifying consumers of refund policies in GTL's tariff as was required for all the other ICS tariff, and if those safeguards are sufficient that § 556.4 is unnecessary in connection with GTL AdvancePay® Accounts, then those safeguards should be sufficient for reaching that same conclusion in all prepaid ICS accounts (including Securus' AdvanceConnect™ Accounts).

As it did in GTL's docket, the Board should clarify its interpretation of § 556.4 that the statute is unnecessary to ICS prepaid accounts with open-ended refund policies.<sup>16</sup> If the Board wants to then revisit that issue in a general rulemaking applicable to all telecommunications carriers, that would be the more appropriate vehicle to ensure fairness and consistency.

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<sup>15</sup> Inmate Calling Solutions, LLC Iowa Tariff No. 1, Sec. 3.4.1.B.

<sup>16</sup> At this point it appears that the Board has addressed this question of the application of § 556.4 to only one other ICS provider, Reliance. *Reliance Order*, at 4.



Respectfully submitted this 24<sup>th</sup> day of May, 2021.

By: /s/ Bret A. Dublinske

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**ATTORNEYS FOR SECURUS  
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## **Exhibit 3**

### **Securus Reply Comments re Proposed Rules**

**from Rulemaking Docket No. 20-00170-UT (N.M. Public Regulation  
Comm., Feb. 17, 2022)**

**To:** Mike Ripperger, Telecom Bureau Chief, Utility Division, NM Public Regulation Commission  
**From:** Michael Lozich, Sr. Corporate Counsel and Director of Regulatory and Governmental Affairs, Securus Technologies, LLC  
**CC:** Working Group Distribution  
**Date:** February 17, 2022  
**Subj:** Reply Comments to Draft Amendments to NMAC 17.11.28 (Institutional Operator Service Provider Rules)

The following are Securus Technologies, LLC's ("Securus") reply comments to the comments submitted by the Prison Policy Initiative ("PPI") and the Commission Staff ("Staff") on the redlined draft amendments to the IOSP rules, and also to reply comments submitted by Pay Tel Communications, Inc. ("Pay Tel"), the New Mexico Defense Lawyers Association ("NMCDLA"), PPI, and Staff. Relevant sections are listed below. Securus looks forward to continuing to work collaboratively with the Staff and other parties to further develop a proposed set of amendments for the Commission's review and consideration.

As a preliminary point, PPI's reply comments raise an issue that should be addressed and resolved in order to properly focus the proposed rules and this rulemaking. In its response to Staff's comments regarding 17.11.28.11, PPI asserts that correctional institutions are bound to the requirements of generally applicable Public Regulation Commission ("NM PRC" or "Commission") regulations as a result of their decision to offer telecommunications services. In other words, by virtue of the fact that a correctional institution decides to offer telephone service, it is subject to the jurisdiction of the NM PRC and ceases to have control over how it operates its facility to the extent the NM PRC directs. Elsewhere in response to the issue of protecting attorney-client privilege, PPI would require the IOSP to be responsible for communicating processes and resolving issues with a correctional institution's process for attorney requests for confidential treatment of IOS calls.

PPI confuses the role of IOSPs and their ability to enforce proposed NM PRC requirements at correctional institutions. An IOSP provides contracted services to its customer correctional institutions; it does not run the facilities and only has such access as the facility allows. The IOSP is not the decisionmaker for correctional institutions' operations nor does it have any supervisory powers over the correctional institution. The current rules reflect the NM PRC's correct understanding of this relationship and appropriately recognizes the authority and discretion correctional institutions have and must retain to determine how best to manage their facilities and incarcerated populations.

Further, to the extent that these regulations are premised on correctional institutions being subject to NM PRC jurisdiction and direction by virtue of providing telephone services, then those facilities

should be notified and made parties to this rulemaking. In that context, these workshops should not advance further without providing proper notice to those indispensable parties and an opportunity for them to participate.

#### 17.11.28.7 (Definitions)

##### Definition of “ancillary service charges”:

*Staff: “It looks like ancillary charges are also levied on a per-call basis.” Staff proposes to modify the FCC definition as charges that may be assessed for ICS “that are not included in the **per-call or** per-minute charges assessed for individual calls”*

Reply: Securus does not recommend modifying the definition of “ancillary service charge” to also incorporate per-call ancillary service charges. Under the current framework, there are per-minute call rates and ancillary service charges. The current definition of an “ancillary service charge” maintains that distinction by identifying the charge as “not included in the per-minute charges assessed for individual calls.” While it is correct that there may be per-call ancillary service charges, adding this change would actually result in a circular definition of ancillary service charge that includes a reference to itself.

*Staff: Regarding the definition of “third-party financial transaction fees” – “(not to include automated fees?) Point of ambiguity?”*

Reply: Securus does not recommend changes to the definition of “third-party financial transaction fees” to limit or exclude their application. In its 2015 Order establishing and defining these ancillary service charges, the FCC relied on its own analysis of its data collection of ICS costs. The FCC’s discussion of the application of charges in connection with a payment card distinguishes between the “automated payment fee” which compensates an ICS provider for its internal costs<sup>1</sup> and those that specifically recover third-party payment card costs:

Third-party financial transaction fees as discussed herein consist of two elements. The first element is the transfer of funds from a consumer via the third-party service, i.e., Western Union or MoneyGram, to an inmate’s ICS account. The second element is the ICS provider’s *additional charge imposed on end users for processing the funds transferred via the third party provider* for the purpose of paying for ICS calls. We find that this first aspect of third-party financial transaction, e.g., the money transfers or credit card payments, does not constitute “ancillary services” within the meaning of section 276. The record suggests that ICS providers have limited control over the fees

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<sup>1</sup> See 2015 Order, ¶ 167 (“We permit up to a \$3.00 automated payment fee for credit card, debit card, and bill processing fees, including payments made by interactive voice response (IVR), web, or kiosk.”)

established by third parties, such as Western Union *or credit card companies, for payment processing functions.*<sup>2</sup>

If the FCC intended that the third-party financial transaction fee only address Western Union and MoneyGram transactions, it would not have defined the fee as having two elements. The FCC unambiguously placed charges by payment card processors as separately recoverable third-party fees.

The FCC's categorization of charges and setting caps is based on its allocation of costs and its analysis of cost data gathered in connection with its First Mandatory Data Collection. This is part of a balance to ensure reasonable charges to consumers with fair recovery of costs by ICS providers.<sup>3</sup> It would be unreasonable to adopt the FCC framework for rate and charge caps, and then arbitrarily change them without reference to the underlying data. If the Commission is going to require third-party payment card processing charges to be recovered through the automated payment fee rather than as a third-party financial transaction fee (as the FCC intended) then it should be on the basis of cost data reflecting that fact. To date, there has been no such showing, and the framework should be adopted as it was intended to operate – with payment card processing charges recovered as third-party financial transaction fees.

Definitions of "institutional operator service" and "institutional phone"

*Staff: "(can an inmate receive a IOSP call not initiated by the inmate?)" / "See note above about initiating calls by an inmate"*

Reply: No, ICS is an out-bound only calling service.

Definition of "per call or per-connection charge"

*Staff: See 17.11.28.25 Does this not happen anymore? Is it not allowed for some reason?*

Reply: As a practical matter, this does not happen anymore and there does not appear to be any framework anticipating a per-call charge that would not otherwise be treated as a governmental tax or fee (e.g., the Tennessee Training Fund assessment of \$0.10 on each completed intrastate ICS call).

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<sup>2</sup> 2015 Order, ¶ 170 (emphasis added).

<sup>3</sup> See, e.g., 2015 Order, ¶ 164 ("Based on our analysis of the ancillary service charge cost data submitted in response to the Mandatory Data Collection and the record, we conclude that the caps we adopt for ancillary service charges will allow ICS providers to recover their reported costs attributable to providing these services and earn fair compensation.").

Definition of "prepaid calling"

*Staff: "Can't an inmate presubscribe through an account that they can pay for in order to receive or make IOSP service calls?"*

Reply: Yes, that falls under the definition of "debit calling". This definition covers prepaid calling plans used by family and friends.

Deleted definition of "prepaid institutional call"

*Staff: "Why is this deleted? See question in R [prepaid calling] above. Definition looks ok to us."*

Reply: This definition basically covers debit accounts that fall under the definition of "debit calling". Apparently, it was deleted as redundant when the original drafter conformed the definitions to the FCC's rules.

Definition of "site commission"

*PPI Reply: "Securus proposes additional language for the definition of 'site commission.' The only justification given for this proposal is alleged difficulty that Securus has encountered when reporting mandatory taxes levied on IOSPs in Tennessee. Because there does not appear to be any similar tax in New Mexico, PPI believes that the additional language proposed by Securus is unnecessary. We recommend adoption of the definition contained in the staff proposal."*

Reply: Securus notes the ambiguity in the current language of the definition as it is now being applied. PPI correctly notes the ambiguity in that what appears to be something that should be categorized as a "mandatory tax" is interpreted by the FCC as a site commission, requiring different categorization and treatment under its rules. The fact that New Mexico does not currently have a tax or fee corresponding to the TN Training Fund does not mean this issue may not arise in the future given the broad application of the definition of "site commission" to include any payment by an IOSP to any "city, county, or state where a facility is located."

*Staff: How are Video calls handled and charged for by state jails and prisons? What is the jurisdictional nature of those calls, and how do the IOSPs charge for those?*

Reply: Video services are handled as information services under the framework of the Telecommunications Act of 1996.<sup>4</sup> As a result, video services are not classified the same way

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<sup>4</sup> See, e.g., *In the Matter of Framework for Broadband Internet Services*, Notice of Inquiry, 25 FCC Rcd 7866, ¶ 107 (2010) ("we do not intend to address in this proceeding the classification of *information services* such as e-mail hosting, web-based content and applications, voicemail, interactive menu services, *video conferencing*, cloud computing, or any other offering aside from broadband Internet service") (Emphasis added).

as telephone calls (i.e., interstate, intrastate, indeterminate, or international). Securus Video Connect ("SVC") is intended as a supplement to in-person visitation and requires family and friends to schedule a time for a specific session and the user is charged a set price for the session. Charges vary by customer.

*PPI Reply: [Regulation of Video Calling] "... Briefing before the California PUC has revealed a seemingly insatiable desire on the part of Securus and its competitors to twist and misrepresent federal law in an effort to scare states away from exercising their jurisdiction over intrastate correctional video calling. PPI encourages the PRC to approach this subject with methodical determination and to not be cowed by the vociferous opposition that will likely come."*

Reply: This is entirely inaccurate. In the spirit of full transparency, Securus is providing a copy of its Initial Brief in the CA PUC proceedings, which is also available here: <https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=445893824>.

It's important to note that in advance of this briefing cycle, Securus raised the issue that determining whether the CA PUC had jurisdiction over video services for incarcerated populations necessarily would include the question of its jurisdiction over providers of video services to the general public. In the current briefing cycle, additional parties did elect to submit briefs (including a coalition of small local exchange carriers<sup>5</sup>, an intervention by CTIA<sup>6</sup>, and this week an additional intervention by USTelecom<sup>7</sup>). These entities are not involved in institutional operator services, but they recognize how this decision would clearly impact their businesses and members. When considering whether to further pursue this issue, Staff should review the CA PUC briefing and take into account the need for a general rulemaking on the subject.

*Staff: Do any facilities in New Mexico allow inmates to have iPads, and can those inmates make video / voice calls with them, and how are those calls and devices paid for?*

Reply: Yes, Securus has deployed tablets at a number of New Mexico facilities. Devices generally have video and voice communication apps installed, but whether they are activated so that incarcerated persons can use the devices for video or voice communications depends on the requirements set by the facility. Any voice calls using a tablet are paid for in the same way as ICS calls from a standard telephone.

*Staff: Is there flat rated calling plans in any facilities in New Mexico at this point? We have not seen any in any tariff filings that have come to the Commission.*

Reply: Securus does not offer subscription plans at any New Mexico facilities. Securus developed a subscription plan model and conducted pilot programs at a handful of facilities

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<sup>5</sup> At <https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=445648873>

<sup>6</sup> At <https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=447264167>.

<sup>7</sup> At <https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=451411615>

in Colorado, North Dakota, Texas, Utah, Washington, and Wisconsin. The purpose of the pilot programs was to test and develop the subscription model, and telephone calls were limited to intrastate calls. With the implementation of the FCC's end-to-end jurisdictional test, Securus suspended these programs, and Securus is presently seeking a waiver from the FCC to continue to offer subscription plans.

*PPI Reply: "[S]taff asks whether § 17.11.28.26 should be retained. PPI is not opposed to subscription calling models per se, but we have opposed Securus's recent proposals in this area, based on a lack of reliable data. PPI supports retention of § 17.11.28.26 as it appears in the staff proposal, with the understanding that an IOSP that provides credible data can seek a variance (through the defined procedure in number § 17.11.28.34) if it wishes to offer subscription plans." [Footnote removed].*

Reply: PPI was the only entity to request denial (with prejudice) of Securus' waiver petition for its subscription plans. All other parties' comments (including from several other advocacy groups) identified issues, raised questions, and recommended information requirements, but otherwise did **not** oppose the development of Securus' subscription plans. Securus has always anticipated further engagement with the FCC on consideration of this waiver including additional information requirements. In the spirit of transparency, Securus responded to questions raised by other commentators with additional information about our pilot programs. If requested, Securus will provide copies of its petition and subsequent comments to the Commission.

*Staff: Are there payment methods, such as text-to-pay that are not captured in the rule?*

Reply: It's not clear what is meant by "text-to-pay", but any payment method would likely fall under one of the broad categories for automated payment fees and third-party financial transaction fees.

#### 17.11.28.11 (Disclosure of Rates, Fees and Charges)

*Staff: Regarding the posting of rate, fee, and charge information in subsection B "provided that such signage is allowed by the correctional institution" and in subsection D "if allowed by the correctional institution." "Why would the institution have a say in this matter? Strike this language?"*

Reply: Securus recommends retaining this language in order to recognize the reality of the correctional environment. The correctional institution has the final say regarding the posting or distribution of any materials to the incarcerated. IOSPs have no independent authority to introduce materials into the correctional environment or physically attach those materials to the walls or equipment without the institution's permission. IOSPs also may not be informed if the institution decides it needs to remove information previously allowed. IOSPs have the ability to provide the information required, but we have no control over how these materials are distributed or displayed. Without a carve out reflecting the institution's authority, every IOSP has the potential of being in violation of the Commission's rule without the ability to remedy the violation.



As technology advances and as more tablets are deployed at correctional institutions, the need for paper copies will also decline. If paper copies are going to be required, then alternative digital copies should be recognized as valid substitutes.

*PPI: "[W]e propose that incarcerated IOSP customers receive a paper copy of applicable rate- and fee-schedules. Obtaining a copy of applicable rates is a critical component of consumer education—a fundamental fact that is reflected in NMAC § 17.11.16.11 ("Access to Service and Rate Information"). Although NMAC § 17.11.16 generally applies to IOSP customers, given the specialized nature of institutional service, the PRC has exempted IOSPs from the disclosure requirements of § 17.11.16.11. Because incarcerated people lack internet access, the only way to provide rate information that customers can keep and consult at a time of their choosing is to distribute paper copies."*

*Specific language: In addition to the disclosures required by the foregoing paragraph, an IOSP shall provide any correctional facility with which it contracts with a sufficient number of paper copies of its rate disclosure so that each incarcerated person housed in the facility may have their own copy of the applicable calling rates and ancillary service charges.*

Reply: As noted above, the correctional institution has the authority regarding the posting or distribution of any materials to the incarcerated. IOSPs do not have an independent authority to introduce materials into the correctional environment without the institution's permission. IOSPs can certainly provide the information required, but we have no control over how these materials are distributed or displayed.

As a practical matter, the proposed change will result in excess cost and waste. The current rules provide for signage with this information in subsection B. If a facility is already permitting the posting of rate, fee, and charges information, then duplicating that information on individual flyers doesn't improve disclosure of information that is already right in front of the incarcerated person.

Regarding the additional requirement in subsection B to disclose rates and charges "each time a funding transaction related to a prepaid account takes place," Securus again recommends removing this proposed change. As noted in our comments, most funding events are automated using platforms other than telephones, and the information is redundant to disclosures otherwise available. Further, Securus' AdvanceConnect Accounts are not specific to particular locations, may be used for multiple correctional institutions, and may not identify a transaction as related to a New Mexico facility for the disclosure of the proper information. As Pay Tel notes, the volume of the information required to be provided creates substantial practical problems to implement, particularly compared to the availability of the same information online. An additional consideration is that this impacts the consumer, who may not want to listen to extensive and redundant disclosures in order to complete a transaction.

*PPI Reply Comment: "PPI agrees with Securus that § 17.11.28.11(A) should retain a cross-reference to 47 C.F.R. § 64.710, but we also believe that the staff-proposed reference to 47 C.F.R. § 64.6110 should also remain ..."*

Reply: For purposes of clarity, Securus addressed the issue of § 64.710 only because Staff proposed to remove it. Securus did not make any statements or recommendations regarding the proposed addition of § 64.6110.

#### 17.11.28.12 (Complaints)

*NMCDLA Reply: "NMCDLA disagrees with Securus's comments about the complaint rule, 17.11.28.12 NMAC. Securus at page 6. The rule should provide the same procedures as allowed for any complaint to the Commission, with the exception that the filing fee should be waived and the hearing may be conducted by telephone. NMCDLA supports Staff's proposed changes."*

*PPI Reply: "PPI strongly supports the well-reasoned amendments that staff have proposed to § 17.11.28.12. We join with NMCDLA in opposing Securus' suggestion that this rule remain unchanged. Regardless of any complaints filed (or not filed) against Securus in the last five years, the complaint process should accommodate the needs of incarcerated callers. PPI believes that the staff proposal is the best approach."*

Reply: In our comments, Securus stated that "[t]here has been no showing that there is a need for handling consumer complaints regarding IOSPs in a manner any different from consumer complaints against telecommunications providers generally." Neither NMCDLA nor PPI provide support for why these changes are necessary. As noted, the NM PRC's current administrative procedures already provide for the waiver of fees, and neither NMCDLA nor PPI addresses why these existing regulations are insufficient. Staff provided no reasoning for this change. These changes are not addressed to incarcerated callers and they are not tailored to their needs. If the NM PRC's complaint procedures are unfair to the indigent with regard to IOSPs, then they are equally unfair to the indigent with regard to any other telecommunications provider. If this is a necessary change, then it should apply equally to all telecommunications providers as it does to IOSPs.

That Securus has not received an informal complaint (a necessary first step to a formal complaint that the filing fee applies to) in five years is highly relevant. Securus has a significant presence in New Mexico and we should receive a representative share of complaints. That there have been none suggests that there are few informal complaints generally involving IOSPs and even fewer formal complaints. It is a reasonable question to ask why there needs to be a change to a complaint procedure when there are few or no complaints under the current process, which has no barriers to bringing one.

Securus recommends that we resolve this question by looking at the data involving consumer complaints. If Staff would retrieve the formal and informal complaints filed against IOSPs during the last five years (removing information about the complainant, correctional institution, and IOSP involved), the parties could determine whether there is a unique issue involving formal complaints against IOSPs and how best to tailor a solution. It

would also be useful to compare the number of IOSP-related complaints against the number of complaints against telecommunication providers generally.

17.11.28.14 (Institutional Operator Service Rates, Fees and Charges)

*NMCDLA Reply: "NMCDLA strongly supports the right of interested persons to intervene in tariff proceedings (17.11.28.14) and rate cap variance proceedings (17.11.28.19). This is the usual Commission procedure for all cases. The Commission permits broad intervention by interested parties. Contra Securus pages 7-8 & 12."*

Reply: The proposed changes do not reflect the usual Commission procedure. The Commission's rule, 1.2.2.23 NMAC, requires a motion to intervene to be filed showing "the movant's interest in the proceeding" and "the facts relied upon as grounds for intervention." The motion can be denied if the movant does not possess a "substantial interest in the subject matter," if the movant's participation is not in the public interest, and if it would present "undue prejudice to the other parties." The Commission's rule does not permit automatic intervention by anyone, which is what the proposed changes would do. No good reason has been provided for digressing from the Commission's current rule.

*PPI Reply: [Extensive and not repeated for brevity.]*

Reply: As these changes are structured, the IOSP is responsible for keeping track of any individual or organization that claims an interest in its tariff and ensuring that they receive notice of any filings. The interested party is then automatically permitted to intervene in the proceedings without complying with the Commission's rule 1.2.2.23 NMAC. The IOSP would be required, unfairly, to absorb the costs and delay caused by "intervenors" whose "interests" are not relevant and / or are frivolous.

PPI points to New Mexico law regarding providing notice and hearing, which is the responsibility of the NM PRC and not the IOSP. If it is necessary to send IOSP tariffs to dozens or hundreds of organizations and individuals, then it is appropriate for a service list to be centrally administered by the NM PRC, which is the current practice.

A party desiring to intervene should move to do so in accordance with the Commission's rules and standard procedures. There is nothing unique about an IOSP tariff or variance request, and if these changes are necessary for the public interest, then they should be made to the NM PRC's general procedures applicable to all telecommunications companies' proposed tariff revisions and variance requests.

*Pay Tel Reply: "Pay Tel's experience with jail facilities of various different ADP sizes suggests that IOSPs need at least 90 days to comply with any rule changes that will affect jails. Many rule changes require fundamental recalibrations of existing IOSP infrastructure and facility processes,*

*including, for example, IVR reprogramming and billing statement redesigns. Such recalibrations take time, particularly at smaller facilities with high turnover rates such as jails."*

Reply: Securus supports this recommendation. Engaging with correctional institutional customers and negotiating amendments to contracts is time consuming and requires compliance with counties' procurement and approval processes. Given that the NM PRC rate caps are already among the lowest in the country, it is hard to understand the urgency of a shorter time frame for implementing rate changes. Further, Pay Tel correctly notes the difficulty and complexity of any requirements that involve changes to rating, billing, or invoicing systems. These projects require cross-functional teams to identify the necessary technical requirements, assess the applicable systems, develop the necessary changes, and then have an appropriate quality assurance process.

17.11.28.15 (Responsibilities of the Institutional Operator Service Provider)

*Staff: Regarding subsection H "All calls initiated from an institutional phone ..." "So, under no circumstances can an institutional phone receive calls?"*

Reply: Securus only provides out-going calls from its correctional institution customers. Correctional institutions identify this as a specific characteristic in their RFP requirements.

PPI notes that as technology changes, it may be possible to for IOSPs to facilitate calls into the facility. That may be technologically feasible, but there would continue to be non-technical barriers to be overcome before offering those services. Among them, as noted above, the correctional institutions would still need to agree to this service, which correctional institutions currently prohibit. Also, allowing calls to terminate at a correctional institution would change the characteristic of the service provided by IOSPs (i.e., from exclusively originating calls from correctional institutions to both originating and terminating calls from those facilities), which may affect their telecommunications registrations and how they are regulated in various jurisdictions.

*Staff: Regarding subsection N "The commission will make the final determination as to the acceptable level of transmission service quality." "Quality of the video service with the audio? Interstate or information service?"*

Reply: As noted above, video services are handled as information services under the framework of the Telecommunications Act of 1996. As a result, video services are not classified the same way as telephone calls (i.e., interstate, intrastate, indeterminate, or international).

17.11.28.16 (Restrictions on Institutional Telephone Service)

*NMCDLA Reply: "NMCDLA would ask Securus to explain how attorney calls are generally handled in facilities it serves."*

Reply: As previously stated: The correctional institution makes the determination whether or not there is an attorney-client relationship. That is done in accordance with the institution's procedures and in its discretion. If there is an attorney-client relationship, then the institution can turn off the recording and monitoring using features in the calling platform. For some customers, Securus has agreed to manage the settings to the calling platform. At no facility is Securus involved with determining whether there is an attorney-client relationship and the facility is the sole decisionmaker as to whether a call is or is not recorded.

*PPI Reply: "PPI respects that IOSPs may sometimes not be in a position to designate confidential calls ..."*

Reply: Securus is *never* in a position to designate whether a call should be confidential or not. The correctional agency is solely responsible for determining whether there is an attorney-client relationship such that communications should be exempted from recording and monitoring. IOSPs can build the capability to disable recording and monitoring into its calling platform and may assist the correctional agency with enabling those settings, but we are not in a position to administer, evaluate, decide, or provide guidance regarding how an attorney should go about working with the correctional institution to establish the existence of an attorney-client relationship.

17.11.28.17 (Call Rate Caps)

*PPI: "At this point in time, PPI would support either of two approaches. First, the PRC could adopt the tiered rate caps set forth in the Staff Draft (ranging from 8¢ to 24¢ per minute, based on facility size) at the present time. Alternatively, the rate caps could remain unchanged with the understanding that the PRC would need to commit to revising the numbers no later than the first quarter of 2023 (regardless of the status of the FCC's mandatory data collection). Because New Mexico's current rate caps are within 3¢ of the lowest tier of the FCC's interim rate caps, PPI believes that changing the non-rate provisions of the New Mexico rule is a higher priority than revising the intrastate rate caps."*

Reply: Securus does not recommend using the rates incorporated in the original proposed amendments to the IOSP rules. Those appear to be based on the FCC's rate caps proposed in the 2015 Order that were challenged and never implemented. As some of these rates actually exceed the FCC's current maximum rate cap of \$0.21 per minute, it would not be a useful exercise for the Commission to adopt intrastate rate caps that would not be practical to implement given the FCC's end-to-end jurisdictional analysis.

The Commission has no need to rush a rate making proceeding by the first quarter of 2023. The FCC has issued the final instructions for the Third Mandatory Data Collection (the "3<sup>rd</sup>

MDC”), which now awaits OMB approval. It is likely the 3<sup>rd</sup> MDC will be conducted this year and that the FCC will issue final rate caps afterwards. The requirements for the 3<sup>rd</sup> MDC are comprehensive, and the Commission should consider whether the best use of Staff resources is in conducting a competing data collection under different requirements or building on the FCC’s results (or at least the New Mexico-specific components of the FCC’s data collection). Once the FCC’s final rate caps are produced, the Commission can then evaluate the FCC’s methodology and data collection and determine whether the result is satisfactory or whether it has its own adjustments.

#### 17.11.28.18 (Ancillary Service Charges)

*PPI: “PPI proposes two ancillary-fee rules that differ from comparable federal rules. The first such rule concerns third-party fees. The Staff Draft reflects the old language of 47 C.F.R. § 64.6020(b)(5), which used to allow IOSPs to pass through ‘third party financial transaction fees’ of any amount provided that they were not marked up. Current federal law caps such passthrough fees at \$6.95. PPI strongly believes that the \$6.95 cap is too high (an issue we have raised with the FCC), and we therefore suggest that New Mexico cap such fees at \$4.95.”*

*PPI Reply: “PPI previously proposed capping third-party financial transaction fees at \$4.95 and preventing IOSPs from charging New Mexico consumers more than one ancillary fee for any single payment transaction. We thus disagree with Securus’s proposal to the extent it is inconsistent with ours.”*

Reply: Securus’s third-party financial transaction fee in connection with services such as MoneyGram and Western Union is currently \$4.95 per transaction. While PPI’s proposal would not affect Securus, Securus opposes this proposal because it is also not the result of a data-driven process and it is not based on any data. The fact that Securus has a \$4.95 per transaction rate does not mean that rate is available to all IOSPs, and cherry-picking a single data point to apply to all IOSPs is unreasonable and arbitrary. As Pay Tel notes, arbitrarily setting the third-party financial transaction fee at \$4.95 may affect the ability of some IOSPs to continue offering Western Union and MoneyGram options to New Mexico consumers. The FCC’s reasoning for the \$6.95 per transaction cap was actually based on PPI’s specific recommendation, which itself was based on a comparison of fees charged at different facilities. Here, PPI offers no data to support a different cap.

*PPI: Second, we propose that the PRC address the problem of IOSPs charging more than one type of ancillary fee for a payment transaction. We believe that this practice results from an FCC drafting error, and therefore propose that the PRC adopt a provision (set forth in proposed § 17.11.28.18(C) of the attached draft) prohibiting more than one fee being imposed on any New Mexico payment transaction.*

*Specific language: No IOSP may charge a New Mexico consumer more than one type of ancillary service charge for any single payment transaction.*

Reply: Securus addresses the question of charging a third-party financial transaction fee for recovering the payment card processor’s cost in the discussion regarding “ancillary service

charges". Securus notes that the language in the FCC's 2015 Order was not "an FCC drafting error." As reflected in the block quote, the FCC specifically addressed this type of charge as one of two elements for a third-party financial transaction fee. Rather than a "drafting error", the FCC's allocation of these costs to this type of fee was unambiguous and deliberate.

#### 17.11.28.19 (Rate Cap Variances)

*Staff: With regard to subsection A and the information required for a petition for variance: "Is this for an existing contract with a facility for which rates have been already bid on and accepted in the terms of a contract, or is this for the purpose of bidding on a contract at a facility which would be too expensive to serve under the existing rate caps? Would approval of a rate change by the Commission during the term of an existing contract with a facility violate the terms of that contract?"*

Reply: There is no reason to limit the application of a variance to a particular stage in the contracting process. It could easily be the situation that the Commission requires a change in the applicable rate cap, and an existing contract would require a variance. An IOSF petitioning for a variance would generally do so in conjunction with a negotiated solution or amendment with the correctional institution. It is unlikely that an IOSF would seek a petition without notifying the correctional institution, as the institution has the final word on whether to accept the proposed calling rates.

*Staff: With regard to subsection A(3)(b) information to be included in a petition for waiver: "projected monthly and yearly expense and revenue by call type": "(why was cost information excluded in this section of the current rule?)"*

Reply: That is unclear, but presumably the reason was to characterize costs data as "expense" information.

#### 17.11.28.20 (Rates for Calls Involving a TTY Device)

*Staff: Regarding TTY rates at 25% of the applicable rate caps: "Does the 'applicable per-minute rate' apply to the rate caps in the rule? Does this mean 25% above the capped rate? Why 25%? Where does that come from? Expand TTY to cover all types of TRS service calls?"*

*Staff: Regarding TRS services at no charge: "This seems to contradict A above. Does this mean that communications for the community using TRS or TTY calling should not be billed for these calls? Section A allows for that."*

Reply: The FCC made the determination that use of TTY-to-TTY calls took four times as much time to complete than other equivalent ICS calls, and adjusted the applicable rates

accordingly.<sup>8</sup> The FCC does not permit charges on TRS-related calls as “such charges would be inconsistent with section 225 of the Act, which requires that ‘users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to point of termination.’”<sup>9</sup>

17.11.28.21 (Billing-Related Call Blocking)

*Staff: “What is the purpose of this provision. Most if not all facilities will offer debit calling, prepaid calling, or prepaid collect calling, so they cannot accept collect calling by default? Are IOSPs commonly scammed by collect calls from service providers for which they do not have an established relationship? Is this necessary?”*

Reply: First, collect calling is a dwindling percentage of an IOSP’s call volume. The FCC noted this in its 2021 Order as the basis for eliminating the separate rate cap for collect calls. Second, to the extent Securus provides collect calling, it is through its Direct Bill option in which Securus directly bills the consumer because LECs have largely exited the business of facilitating traditional collect calls.

The purpose was to ensure the completion of calls, when there were no options available other than collect calls.<sup>10</sup>

As a practical matter, there doesn’t seem to be a compelling need to duplicate this requirement specifically for intrastate calls.

17.11.28.22 (Consumer Protection)

*Staff: With regard to subsection A: “IOSPs shall not charge for any calls that are not accepted by the called party.” “Would this be affected by the current FCC NOPR and data collection on cost information? Can we get that updated federal data also from that proceeding filed under the provision of the rule?”*

Reply: It’s not clear how the current FCC rulemaking is intended to impact this requirement. This requirement for a positive response and not charging consumers that do not accept the call has been in place for at least 20 years since the adoption of 47 C.F.R. § 64.710. As for a duplicate of the cost data filing, that would be provided subject to the FCC’s protective order.

*Staff: Can a “consumer” create a prepaid account where they are not the called party to the inmate? Is a consumer account only for use in calling by that consumer to the inmate?*

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<sup>8</sup> See FCC 2015 Order, ¶¶ 231-239.

<sup>9</sup> FCC 2013 Order, ¶ 95.

<sup>10</sup> See 2013 Order, ¶ 173-174.



Reply: Securus' AdvanceConnect accounts are set up by family and friends of incarcerated persons, and calls are not limited to only the account holder. These accounts allow for calls to multiple numbers associated with the account, including to other authorized individuals.

#### 17.11.28.23 (Reporting Requirements)

*PPI Reply: "PPI supports staff's proposal to require state filing of FCC-mandated ICS annual reports. The PRC is entitled to such information as a matter of law and does not have to provide an advance justification for requiring turnover of the annual reports. Securus's suggestion to the contrary is unpersuasive."*

Reply: For purposes of clarification, Securus described the voluminous nature of the FCC Annual ICS Report, noted that it contains confidential information regarding the provision of institutional operator services in other states at a facility level, and added: "It would be useful to understand what information the commission desires from the report before making a recommendation as to this proposed amendment."

The entire purpose of these workshops and this rulemaking procedure is to vet proposed changes to the IOSP rules and that requires understanding why the parties think proposed changes are necessary. *It is the entire reason why we reduced these workshop interactions to writing.* It is a perfectly reasonable and fair question to ask why this reporting is necessary and how the information is useful to the Commission and the Staff. There is no reason to stonewall a simple inquiry.

It is important to note that the Annual ICS Report is filed in confidential and public formats. Securus' practice has been to take a light approach to claiming confidential information and limiting redactions, which the FCC reflects in its direction for these reports. The most voluminous part of the report for Securus is its international rates,<sup>11</sup> which has no apparent application to the NM PRC's regulation of IOSPs. The rate and ancillary service charge information applicable to New Mexico facilities is already reflected in our tariff filed with the NM PRC.

The vast majority of the confidential information is unrelated to New Mexico, and it is unclear how that information would be of use to Staff. Further, the confidential information in the Annual ICS Report is subject to the protective order in the FCC's ICS docket, which limits the use and disclosure of that information. The Staff's treatment of the confidential information in the Annual ICS Report would need to be consistent with the requirements of the FCC's protective order.

With an understanding of how Staff intends to use this information and for what purpose, IOSPs might be able to offer alternative reporting better tailored to Staff's needs.

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<sup>11</sup> For Securus' CY 2020 report filed on April 1, 2021, the international rates were reported in an Excel spreadsheet containing over 430,000 lines of data.

17.11.28.25 (Per-Call, or Per-Connection Charges)

*Staff: "What about the \$1.00 Local per call charge for collect calls listed in rate schedule above?"*

Reply: There's no need for it.

17.11.28.26 (Flat-Rate Calling)

*Staff: What about Securus' proposal for a flat rate per 15-minute call offered in other jurisdictions? Should these types of calls be banned and why?*

Reply: We are unclear as to what the Commission means by flat rate per 15-minute calls. Securus does not offer a flat rate for a 15-minute call. We have no calling products with that characteristic. As discussed above, Securus did offer a pilot subscription service that saved consumers over 60% in costs and increased calling time by 58% between incarcerated persons and their families at those pilot facilities. These plans offered a maximum number of telephone calls per month or week for a fixed dollar amount. This allowed consumers to be able to properly budget for telephone calls each week or month and plan for utilization of those calls for maximum benefit to their families.

New 17.11.28.28 (Consumer Prepaid Account Balances)

*PPI: [W]e propose protections for customer prepaid accounts. IOSPs not only enjoy holding substantial unrestricted cash in the form of customer prepaid accounts, but they routinely deprive customers of their own money by seizing funds after a certain period of inactivity. PPI believes that this practice is unjustified and inexcusable. We propose a new rule (numbered § 17.11.28.28 in the attached draft) that would clarify that inactive IOSP prepaid accounts must be administered as utility deposits under New Mexico's abandoned property law. Specifically, we proposed that after one year of inactivity an IOSP be required to take reasonable steps to refund the money in an account to the consumer. If the IOSP cannot effectuate such a refund within 6 months, then the funds would be turned over to the Taxation & Revenue Department for administration under the Unclaimed Property Act.*

*Staff Revised Draft: Includes new section based on PPI recommendation.*

Reply: Securus recommends that the Commission not include a new provision on the subject of unclaimed property in its rules. First, the question of unclaimed property and the interpretation of the Uniform Unclaimed Property Act is a subject for the Taxation & Revenue Department and its rules. NMSA 1978, Section 7-8A-28 specifically provides that any rules necessary to carry out the Uniform Unclaimed Property Act is the responsibility of the Taxation & Revenue Department. The administration of unclaimed property and the interpretation of the Uniform Unclaimed Property Act require consistent interpretation and application of rules, which is clearly why this responsibility was given to the Taxation & Revenue Department and not to separate state agencies.

Second, the question of whether IOSP prepaid accounts are subject to the Uniform Unclaimed Property Act at all depends on whether an account holder of a prepaid account is the equivalent of “a subscriber by a utility.”<sup>12</sup> No argument has been made that a prepaid account holder falls within the category of a “subscriber” under the statute, and that is a determination to be made by the Taxation & Revenue Department.

Renumbered 17.11.28.29 (Site Commissions)

*Staff: Regarding “No IOSP shall provide site commissions in any form including space rent or discounts on calling cards.” “Definition broad enough? Are there other forms of ‘site commissions’ that should be listed here?”*

Reply: The defined term is broad enough to capture applicable types of site commissions. If anything, perhaps the rule should be framed in reference to NMSA 1978, Section 33-14-1 and to cover site commissions “based upon amounts billed by the telecommunications provider for telephone calls made by inmates in the correctional facility or jail” and any other form of remuneration from an IOSP to a correctional institution pursuant to a contract for institutional operator services.

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<sup>12</sup> See NMSA 1978, § 7-8A-2(13) (“deposit or refund owed to a subscriber by a utility”).



## **Exhibit 4**

### **Securus Comments on Proposed Regulation**

***from Rulemaking to Amend, Adopt, and/or Repeal Regulations in  
Accordance with Senate Bill 387 (2021), Docket No. 21-12013 (Nev.  
Pub. Util. Comm., Apr. 19, 2022)***

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21-12013

Public Utilities Commission of Nevada  
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Reference:

Filed For: SECURUS TECHNOLOGIES LLC

In accordance with NRS Chapter 719,  
this filing has been electronically signed and filed  
by: /s KAREN A PETERSON

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By electronically filing the document(s),  
the filer attests to the authenticity of the electronic signature(s) contained therein.

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This filing has been electronically filed and deemed to be signed by an authorized  
agent or  
representative of the signer(s) and  
SECURUS TECHNOLOGIES LLC

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

Rulemaking to amend, adopt, and/or repeal regulations       )  
in accordance with Senate Bill 387 (2021).                       )  
\_\_\_\_\_ )                       **Docket No. 21-12013**

**COMMENTS OF SECURUS TECHNOLOGIES, LLC ON PROPOSED REGULATION**

SECURUS TECHNOLOGIES, LLC hereinafter referred to as “SECURUS”, by and through its attorneys of record below, hereby submits its comments on the proposed regulation of the Public Utilities Commission of Nevada (“Commission”) pursuant to the Procedural Order issued by the Hearing Officer dated March 24, 2022.

**A.     Introduction.**

SECURUS supports the overall framework of the Commission’s proposed regulation. The draft regulation builds upon existing regulations in the Federal Communications Commission’s (“FCC”) rules related to incarcerated calling services (“ICS”), which are the product of data-driven processes, and will promote efficiency and consistency in application.

SECURUS looks forward to continuing to work with the Commission and other stakeholders throughout this rulemaking process and at the workshop.

**B.     Definitions.**

The draft rule includes definitions in Sections 2, 3, and 5 respectively for “account holder”, “activity”, and “prepaid account” for use with Prison Policy Initiative’s (“PPI’s”) proposal regarding treating account balances as Unclaimed Property. The draft rule also adds a definition in Section 4 for “funding fee” for use with PPI’s proposal to not allow credit card processing charges to be recovered as a Third-Party Financial Transaction Fee.

**1. General Comments.**

SECURUS does not believe the additional definitions included in the proposed regulation in Sections 2 through 5 are required as the related provisions proposed involving Unclaimed Property and Third-Party Financial Transaction Fees should not be adopted as set forth below in these comments.

To the extent the additional definitions remain, the definitions need to be revised so they match their use in the proposed regulation. For example, “prepaid account” as used in the proposed regulation is intended to define a type of account. However, the definition of “prepaid account” as proposed does not define a type of account, but rather defines the term as the balance in an account. Thus when “prepaid account” is used in the proposed regulation, it is often used in the context of “the balance of the prepaid account”, which when the definition is applied, means “the balance of the balance”.

**2. Additional Definitions.**

The Commission should consider adding a definition for “ICS provider” for consistency and clarity in the regulation. Throughout the proposed regulation, an ICS provider is alternatively referenced as “an inmate calling service supplier” (Sec. 5), “a competitive supplier of inmate calling services” (Sec. 6 and Sec. 9), or just a “competitive supplier” (Sec. 8). There should be one term used to describe an ICS provider used consistently throughout the regulation.

**C. PPI Denomination Proposal.**

Section 6, subparagraph 2 of the draft regulation includes a requirement that “rates shall be denominated in dollars per minute of calling.” This provision was added as a result of PPI’s concern with Encartele’s method of offering sales of data (i.e., 76 MB of data for \$22.80 that can

be used for phone calls, video, and messages). PPI provided a single screen shot of Encartele's webpage and did not indicate whether Encartele provided alternative rate disclosures in other places on its internet website. It is not clear whether PPI's concern with Encartele's webpage is a problem in Nevada.

**1. Intended Application.**

While there are no objections to generally requiring disclosures in "dollars per minute", SECURUS has concerns about how a rule drafted this broadly will actually be applied and enforced. What is the scope of the intended application of this new provision? What types of communications is it intended to apply to? While the intent behind the requirement is reasonable, the Commission should not pursue a broad provision like this without a clear understanding of how the requirement will be applied.

One concern is falling into the trap of "gotchas" by applying a broad rule to inconsequential matters. For example, if an ICS provider issues a press release claiming that a consumer can afford X number of calls for \$Y, does that violate the regulation because it is not framed as a "dollar per minute" amount?

A second concern is allowing flexibility for alternative rate options that may not be offered on a per-minute basis. For example, in 2020 SECURUS developed a pilot subscription plan in response to consumer feedback seeking greater predictability for costs and opportunities for increased affordability. SECURUS initially launched the plans in December 2020 at six correctional agencies in Texas, Utah, North Dakota, Washington, and Colorado, and later expanded the pilot to an additional three agencies. Under SECURUS' subscription plans, subscribers paid a flat fee for a specific number of calls. Plans ranged from 25 calls per week to 100 calls per month. The subscription



plans were optional, and consumers could elect to use Securus' other prepaid calling options that are based on per-minute rates. Following the FCC's exercise of jurisdiction over jurisdictionally indeterminate calls, SECURUS suspended offering the subscription plans and is currently pursuing a Petition for Waiver with the FCC to continue developing and offering these plans.<sup>1</sup> SECURUS' analysis showed that the plans increased call times by 58% while costs decreased by 61%, and SECURUS has received numerous requests to restart the program. The proposed regulations need to take into account innovative offerings by ICS providers that are framed in terms other than dollars per minute.

The "dollars per minute" requirement is a good standard for rate information to be disclosed in the ICS provider's tariff. The FCC already requires ICS providers to provide the consumer the opportunity to obtain the total cost of the call, as well as disclosing the rate, on the ICS provider's website. If an ICS provider is complying with the FCC's requirements, that should be sufficient for this proposed regulation.

## **2. Recommended Changes.**

SECURUS recommends adding "except as otherwise permitted by the Commission" in Section 6 subparagraph 2 in order to permit the ICS competitive supplier to offer calling plans through other than per-minute charges, such as subscriptions. Any offering would be subject to tariff review and Commission approval. SECURUS' alternative proposed language for Section 6, subparagraph 2 is set forth below with proposed additional language in bold and strikethrough for proposed deleted language:

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<sup>1</sup> Securus Technologies, LLC, Petition for Waiver of the Per Minute Rate Requirement to Enable Provision of Subscription Based Calling Services, FCC WC Docket No. 12-375 (filed Aug. 30, 2021).

**Except as otherwise permitted by the Commission, the call rates set forth in an ICS provider's tariff** Rates shall be denominated in dollars per minute of calling.

SECURUS also recommends modifying proposed regulation Section 10 to include another FCC regulation to be adopted by reference regarding consumer disclosures. The proposed additional language is set forth below in bold:

**The consumer disclosure standards for incarcerated calling services rates of the Federal Communications Commission, 47 C.F.R. § 64.6110; and**

**D. Third-Party Financial Transaction Fees.**

The draft regulation includes a restriction that ICS rates include “[n]o more than one type of funding fee for any single payment transaction.” This is intended to prohibit recovering credit card processing charges as a Third-Party Financial Transaction Fee.

SECURUS reiterates its previous statements at the workshop and from its Reply Comments filed on March 9, 2022 that the FCC’s allocation of card processing costs to third-party financial transaction fees was deliberate and reflects an analysis of its collection of cost data for the 2015 Order.

If the Commission intends to adopt the FCC framework, it should not begin selectively adjusting that framework without reference to the underlying cost data and analysis. If it is the Commission’s intent to keep ancillary service charges consistent with the FCC requirements, then the Commission should allow the ICS providers to charge the same fees for Nevada ICS intrastate calls as the FCC allows for interstate and international ICS calls.

Contrary to PPI’s statement at the workshop, the inclusion of card processing was not a drafting error or an oversight by the FCC. Wherever the FCC addressed third-party financial transaction fees in its 2015 Order, it did so with reference to payment card processing as well as

third-party transfers (e.g., by Western Union and MoneyGram). For example, the 2015 Order contains two identical tables<sup>2</sup> of ancillary service charges, that describe third-party financial transaction fees as “e.g., MoneyGram, Western Union, *credit card processing fees* and transfers from third party commissary accounts.” (Emphasis added).

In its discussion of the third-party financial transaction fee, the 2015 Order specifically identifies payment card processing costs as a second and separate attribute of the fee:

Third-party financial transaction fees as discussed herein consist of two elements. The first element is the transfer of funds from a consumer via the third-party service, i.e., Western Union or MoneyGram, to an inmate’s ICS account. The second element is the ICS provider’s *additional charge imposed on end users for processing the funds transferred via the third party provider* for the purpose of paying for ICS calls. We find that this first aspect of third-party financial transaction, e.g., the money transfers or credit card payments, does not constitute “ancillary services” within the meaning of section 276. The record suggests that ICS providers have limited control over the fees established by third parties, such as Western Union or credit card companies, for payment processing functions.<sup>3</sup>

In its discussion of the first element of the third-party financial transaction fee for transfer services by Western Union and MoneyGram, the FCC added a footnote for additional clarification:

We use these two services as an example but do not foreclose the possibility that there are other third-party financial transaction services. *Credit card payment processing also falls under our discussion here.* (Emphasis added).

The FCC’s inclusion of payment card processing costs as recoverable as a third-party financial transaction fee cannot be casually dismissed as a drafting error or oversight. It was clearly a deliberate and specific decision by the FCC, and the FCC has had ample opportunity to issue alternative guidance on this question. The fact that the FCC has not issued further guidance after PPI and other parties have repeatedly requested additional restrictions does not mean the issue is “up in the air” as suggested by PPI. The FCC has never been shy about

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<sup>2</sup> 2015 Order, ¶ 9, Table Two, and ¶ 163, Table Four.

<sup>3</sup> *Id.*, ¶ 170 (emphasis added).

providing additional instruction, guidance, and clarification to ICS providers about the interpretation and application of its rules and attempts to game its requirements. The FCC's present silence should be interpreted as the FCC presently not wanting to change its previous decision.

The FCC created a framework for call rates and ancillary service charges designed to allow ICS providers to recover the costs incurred for providing calling and ancillary services and receive fair compensation for those services, while ensuring that consumers pay just, reasonable, and fair rates and charges.<sup>4</sup> The FCC did so based on its collection and analysis of cost data related to these services. If the Commission is going to adopt the FCC's framework as its own through these regulations, it should respect the entire framework and allow ICS providers to operate in Nevada in a manner consistent with that framework.

**E. Variance Requirements.**

Section 8 of the draft regulation provides that a request for a variance from rate caps include at a minimum, the (1) name of the facility, (2) identification of the existing restriction and proposed alternative, (3) supporting information explaining why the current restriction cannot be complied with and why the alternative is necessary, and (4) a comparison of the impact that the existing restriction and proposed alternative will have on projected monthly and annual call volume, revenue, and average call duration by call type.

SECURUS agrees with the proposed regulation's minimum list of information required for rate cap variance requests. This is a fair and reasonable list of requirements and should provide the Commission with the information it needs to reach a decision, while allowing the Commission the flexibility to request (and the ICS provider the flexibility to provide) additional information based on specific requirements and circumstances of the variance request.

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<sup>4</sup> *Id.*, ¶ 166.

**F. Unclaimed Property.**

The draft regulation includes a provision based on PPI's recommendation to require ICS providers to treat prepaid account balances which are unused for a certain period of time in accordance with Nevada's unclaimed property law, Chapter 120A of the Nevada Revised Statutes. The proposed regulation requires that after 6 months of no activity on a prepaid account, the ICS provider must refund the balance of any prepaid account. The draft regulation provides any non-refunded amounts shall thereafter be delivered to the State Treasurer after 18 months if the ICS provider is not able to locate the account owner or otherwise effectuate a refund.

The Commission's proposed regulation appears to exceed the Commission's authority to adopt regulations for the procedures set forth in Senate Bill ("SB") 387.<sup>5</sup> In addition, the proposed regulation appears to conflict with the unclaimed property statutes which the Commission is not charged with adopting or enforcing.

There is no authority provided in SB 387 which allows the Commission to determine when property is presumed abandoned for purposes of NRS Chapter 120A, but Section 9 of the proposed regulation does just that. Section 9 provides if a prepaid account has not been subject to any activity for 6 months, any balance in the prepaid account must be refunded by the competitive supplier. If the competitive supplier cannot locate an account holder or effectuate a refund within 18 months of the most recent date of activity, the competitive supplier *shall* deliver

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<sup>5</sup> Section 5 of SB 387 provides the Commission shall adopt regulations governing the provision of an inmate calling service, which must prescribe a procedure for: (a) Establishing rate caps for inmate calling services in an amount that does not exceed any rate caps prescribed by the Federal Communications Commission for providers of interstate or international inmate calling services; (b) Defining and limiting ancillary service charges that providers may charge users of inmate calling services in a manner consistent with any limitations on such charges prescribed by the Federal Communications Commission for providers of interstate or international inmate calling services; (c) Limiting the taxes or fees that providers may charge users of inmate calling services in a manner consistent with any limitations on the collection of any taxes or fees prescribed by the Federal Communications Commission for providers of interstate or international inmate calling services; and (d) Approving a schedule or tariff that exceeds a rate cap or fails to comply with a limitation established by the Commission in accordance with this subsection.

the balance of the prepaid account to the State Treasurer for administration pursuant to NRS 120A. This language appears to require delivery of an account balance to the State Treasurer every time a prepaid account has no activity nor a refund for 18 months.

The Legislature has enacted a statutory scheme for unclaimed property. NRS 120A.500(1) provides the time frames for a presumption of abandonment of different types of property unclaimed by the apparent owner of the property. Subsection (l) of NRS 120A.500(1) provides the time frame for a presumption of abandonment of a deposit or refund owed to a subscriber by a utility, is one year after the deposit or refund becomes payable. It is not clear whether the Commission's proposed regulation is attempting to make prepaid accounts subject to this section of the Uniform Unclaimed Property Act. No argument has been made that a prepaid account holder falls within the category of a "subscriber" under the statute. Nor does the Commission's proposed regulation track the one-year time frame provided in NRS 120A.500(1)(l) but instead imposes an 18-month period after the most recent date of activity. If deposits or refunds owned to a subscriber by a utility falls within the provisions of NRS 120A.500(1)(o), then there is a presumption of abandonment three years after an owner's right to demand the property or after the obligation to pay or distribute the property arises, whichever occurs first.

NRS 226.110(12) provides the State Treasurer "[s]hall serve as the Administrator of Unclaimed Property." As SECURUS has previously commented to the Commission, Nevada has adopted the Nevada Uniform Unclaimed Property Act. NRS Chapter 120A sets forth the statutory scheme for a holder of property presumed abandoned to make a report with the Administrator pursuant to NRS 120A.560, the information required in the report, when the report shall be made and the notice to be provided to the apparent owner prior to filing the report with

the Administrator if the value of the property is \$50 or more. Payment or delivery of property in the report described as unclaimed is governed by NRS 120A.570, which provides for payment or delivery of property to the Administrator upon the filing of the report required by NRS 120A.560. The Commission's proposed regulation deviates from these requirements and imposes a completely different reporting and delivery schedule from that required by the Nevada Uniform Unclaimed Property Act. The Commission's proposed regulation does not provide that if a competitive supplier complies with the Commission's regulation, the competitive supplier does not need to otherwise comply with NRS Chapter 120A. The Commission does not have the authority to determine whether property is presumed abandoned for purposes of NRS Chapter 120A, nor does the Commission have the authority to determine when unclaimed property presumed abandoned is to be turned over to the State Treasurer for administration under NRS Chapter 120A.

SECURUS recommends the Commission not include a new provision on the subject of unclaimed property in its rules. The Legislature has set forth the statutory scheme in NRS Chapter 120A for the submission of reports, including their content, to the State Treasurer, for notice to an apparent owner and for delivery or payment of property to the State Treasurer. Section 9 of the proposed regulation appears to mandate procedures and timeframes inconsistent with NRS Chapter 120A. Again, the Legislature has given the responsibility of administration of unclaimed property and the interpretation of the Uniform Unclaimed Property Act, which require consistent interpretation and application of rules, to the State Treasurer and not to separate state agencies.

SECURUS was unable to find any administrative agency regulations in Nevada governing unclaimed property or providing for the time frame for a presumption of abandoned property other than as provided in NAC 120A.

Further, when the Legislature has wanted to set the circumstances and time frames for property presumed abandoned outside NRS Chapter 120A, it has specifically so provided. *See e.g.*, NRS 703.375 which provides a two-year time period for customers to obtain a refund of rates unlawfully paid before the refund escheats to the State; NRS 607.170 which provides a one-year time period before property is presumed abandoned pursuant to Chapter 120A of NRS; NRS 32.020 providing three years after receivership dividends to creditors are unclaimed, balances are presumed abandoned under Chapter 120A of NRS. There is no such authorization provided in SB 387 for the Commission to determine when property is unclaimed or presumed abandoned.

PPI's statement that the State Treasurer only has authority over the administration of unclaimed property and other agencies can set their own unclaimed property requirements is simply wrong. The statute provides the State Treasurer with authority to interpret and implement unclaimed property requirements and provides no authority (implicitly or expressly) to any other agency. Also, including unclaimed property regulations in NAC 704 will create confusion and a trap for the unwary for companies trying to comply with the Nevada Uniform Unclaimed Property Act, and may result in inconsistent application of regulations.

#### **G. Miscellaneous.**

SECURUS also suggests the following modification to Section 10(2) of the proposed regulation. Additional language is in bold and proposed deleted language is in strike through:

The provisions of 47 C.F.R. §§ 64.710, ~~64.6000~~, and ~~64.6110~~ may be purchased by mail from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 979050, St. Louis Missouri 63197-9000 **(order form at**



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#### **H. Conclusion.**

SECURUS urges the Commission to maintain a consistent approach to the adoption and application of FCC requirements. Specifically, the Commission should leverage existing frameworks for consumer disclosures and clarify the intended application of new requirements. The Commission is adopting the FCC's rate and ancillary service charge caps, and it should apply those in a manner consistent with the FCC's guidance. With regard to matters involving unclaimed property, SECURUS continues to urge the Commission to recognize the existing statutory and regulatory framework established pursuant to the Nevada Uniform Unclaimed Property Act and decline to add provisions to the Public Utilities Regulations that are inconsistent with the Act and its related regulations, and which are properly within the responsibility of the Nevada State Treasurer. SECURUS looks forward to continued collaboration and constructive engagement with the Commission and stakeholders.

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Respectfully submitted this 19<sup>th</sup> day of April, 2022

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