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

Rates for Interstate Inmate Calling Services	WC Docket No. 12-375

SECURUS TECHNOLOGIES, INC. PETITION TO HOLD
FURTHER RULEMAKING PROCEEDING IN ABEYANCE

Securus Technologies, Inc. ("Securus"), through counsel and pursuant to 47 C.F.R. § 1.43, hereby files this Petition asking that the Commission hold in abeyance the further rulemaking proceeding initiated by the Further Notice of Proposed Rulemaking included in *Rates for Interstate Inmate Calling Services*, WC Docket No. 12-375, FCC 13-113, released September 26, 2013 ("FNRPM"). At this time, taking and considering comments on the FNPRM, the great majority of which is expressly premised on the findings and conclusions in the Report and Order, would not be an appropriate use of Commission resources for the reasons described below.

Due to the time sensitivity of the relief sought, Securus respectfully requests that the Commission resolve this Petition by **November 8, 2013**.

I. BACKGROUND

The FNPRM seeks comment on several matters arising from inmate telephone rates. Initial Comments are due 30 days after Federal Register publication, and Reply Comments are due 45 days after publication.

Contemporaneous with this filing, Securus is submitting a Petition for Stay of the Report and Order in FCC 13-113 pending its forthcoming appeal of the findings, conclusions, rates, and rules contained therein. As demonstrated in that petition, Securus is likely to prevail

- Exhibit 1

on the merits of its appeal on any of several independent grounds.

II. THE FCC SHOULD HOLD THE FURTHER PROCEEDING IN ABEYANCE PENDING APPEAL FROM THE REPORT AND ORDER

The FNPRM presents questions and tentative conclusions for comment that rest expressly on the findings and conclusions of the Report and Order, many of which will be challenged before a federal court of appeals. Indeed, the very lens through which the Commission looks at this market is likely to be altered by the appeal. Whatever data and analysis that now would be responsive to the FNPRM therefore may be rendered useless. For these reasons, the Commission should hold the further proceeding in abeyance until the appeal is resolved.

A. Standard for Granting an Abeyance

The Commission holds matters in abeyance when they involve or rest on Commission rules that remain unsettled. The purpose of an abeyance is to "avoid unnecessary expenditure of time and resources by the parties and [the] Commission[.]"[1]

For example, the Commission has held a petition for preemption of state law in abeyance where the request for relief involved "certain outstanding issues regarding the operation of the new federal universal service program."[2] It also has held petitions for reconsideration of various rules in abeyance where they "may be rendered moot by the rules"

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1 *Donald J. Elardo, Esq. and Stephen C. Garavito, Esq.*, File No. E 92 88S, Letter, 9 FCC Rcd. 7912 (1994) (granting MCI's motion to hold damages phase of enforcement proceeding in abeyance pending review of MCI's Application for Review of liability findings entered against it).

2 *American Commc'ns Svcs., Inc. and MCI Telecomms. Corp.*, CC Docket No. 97-100, Memorandum Opinion and Order, 14 FCC Rcd. 21579, 21581 ¶ 3 (1999).

under consideration in a related proceeding."[3] Thus, where a proceeding begins from a predicate finding, rule, or policy that is under review, the Commission finds an abeyance appropriate.

B. The FNPRM Builds on Findings and Conclusions That Will Be Appealed, Creating the Strong Likelihood of a Waste of Resources Should Comment Be Taken At This Time

The FNPRM creates a follow-on proceeding that expressly incorporates and builds on the rules adopted in the Report and Order. Many of those rules, and indeed their entire underpinning, will be challenged on appeal and are likely to be remanded, if not vacated. To take comment on the follow-on questions in the FNPRM now would invite an "unnecessary expenditure of time and resources by the parties and this Commission[.]"[4]

Several portions of the FNPRM build directly off the "cost-based" policy adopted in the Report and Order that led to the "safe harbors" and "interim rate caps", all of which will be reviewed. They include:

- "We tentatively conclude that site commissions should not be recoverable through intrastate rates[.]" ¶ 133.
- "Will the cost based rates required by the Order create a market-based solution for driving intrastate rates to cost-based levels absent further regulatory action?" ¶ 134.
- "Given the very small number of deaf and hard of hearing inmates relative to the overall prison population, are the safe harbor rates adopted in today's Order sufficient to allow recovery of the discount?" ¶ 146.

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[3] *Rules and Policies on Foreign Participation in the U.S. Telecomms. Market*, IB Docket No. 97-142, Order and Notice of Proposed Rulemaking, 12 FCC Rcd. 7847, 7849 n.2 (1997); *see also Amendment of Parts 15 and 90 of the Commission's Rules to Provide Additional Frequencies for Cordless Telephones*, ET Docket No. 93-235, Report and Order, 10 FCC Rcd. 5622, 5627 ¶ 30 (1995) (noting that two petitions for reconsideration of the "offset channel rule" had been held in abeyance "pending our determination on providing additional cordless telephone channels in this proceeding.").

[4] *Elardo/Garavito*, 9 FCC Rcd. 7912.

- "We seek comment on maintaining the interim rate caps and safe harbor rate levels adopted in the Order and expanding that structure to encompass intrastate ICS rates." ¶ 154.

- "Should we maintain the current safe harbors and make them permanent or should they be reduced over time given that they were set at conservative levels? ¶ 154.

- "Additionally, we note that the Order adopts a historical cost methodology for the interim rules and we seek comment on what measure of cost – *e.g.*, historical, forward looking – should be adopted for the permanent rate structure." ¶ 163.

- "In the Order, we require charges for any services that are ancillary to the costs of providing ICS to be cost-based, and require ICS providers to submit cost data for these ancillary charges as part of the mandatory data request. Here we seek comment on how the Commission can ensure, going forward, that ancillary charges are just, reasonable, and cost-based." ¶ 168.

- "We seek comment on whether our conclusion resolves the issues surrounding billing-related blocking of interstate ICS calls. Additionally, we seek comment on whether we should extend our prohibition on blocking to intrastate ICS calls." ¶ 173.

These items depend absolutely upon the core of the Report and Order. They reveal, by their terms, that the policy underpinnings, as well as the factual findings and ratesetting methodologies, of the Report and Order form the very basis of the Further Notice of Proposed Rulemaking. These items will be reviewed by a court of appeals and may be vacated or reversed. As a result, the premise of the FNPRM will have been invalidated.

Taking comment now on the follow-on items in the FNPRM would be imprudent. While the appeal is pending, the Bureau will be constrained from undergoing any meaningful review of any comments or data. Thus, in order not to create an "unnecessary expenditure of time and resources"[5] on work that later could well be unhelpful, the Commission should hold the FNPRM in abeyance until the appeal from the Report and Order is resolved.

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[5] *Elardo/Garavito*, 9 FCC Rcd. 7912.

CONCLUSION

For all these reasons, the Commission should hold the further proceeding, including the call for comments in the Further Notice of Proposed Rulemaking, in abeyance while the appeals from the companion Report and Order are pending. Securus respectfully requests that the Commission resolve this petition by **November 8, 2013**.

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Dated: October 22, 2013

CERTIFICATE OF SERVICE

I hereby certify on this 22nd day of October, 2013, that the foregoing Petition to Hold Further Rulemaking in Abeyance was served via electronic mail on the following persons:

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