

October 18, 2013

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BY FEDERAL EXPRESS

Catrice C. Williams, Secretary
Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500

Re: Petition Of Recipients Of Collect Calls From Prisoners at Correctional Institutions In Massachusetts Seeking Relief from the Unjust And Unreasonable Cost of such Calls (“Petition”) – Docket No. 11-16

Dear Secretary Williams:

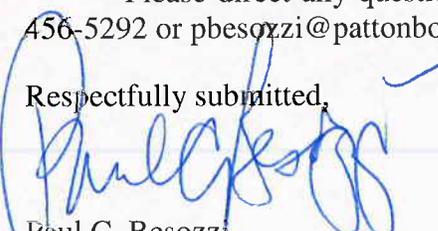
In accordance with 220 CMR Section 1.02:(5), enclosed for filing in the referenced Docket are an original and three (3) copies of Securus Technologies, Inc.’s Motion To Hold Proceeding In Abeyance.

Copies of the foregoing document are simultaneously being served on all parties listed on the official Service List issued by the Department.

An extra copy of each filing is enclosed to be stamped “received” or “filed” and returned in the enclosed envelope.

Please direct any questions concerning this filing to the undersigned at 202-456-5292 or pbesozzi@pattonboggs.com.

Respectfully submitted,


Paul C. Besozzi
Counsel for Securus Technologies, Inc.

4818-6088-9105

**THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS
AND CABLE**

**Petition Of Recipients Of Collect Calls
From Prisoners at Correctional Institutions
In Massachusetts Seeking Relief from the Unjust
And Unreasonable Cost of such Calls**

DTC Docket No. 11-16

MOTION TO HOLD PROCEEDING IN ABEYANCE

In accordance with 220 CMR 1.02:(5), Securus Technologies, Inc. (“Securus” or “Company”), acting through undersigned counsel, hereby moves the Department of Telecommunications and Cable (“DTC” or “Department”) to immediately hold in abeyance the investigation initiated by the Hearing Officer Interlocutory Ruling, dated September 23, 2013, in this docket (“Ruling”) pending the resolution of the Federal Communications Commission’s (“FCC” or “Commission”) ongoing rulemaking *In the Matter of Rates for Interstate Inmate Calling Services*.¹ The Department should stay all further actions in this Docket No. 11-16, including actions relating to the appeal of the Ruling filed by the Petitioners on October 16, 2013.²

The FCC is considering identical issues regarding intrastate inmate calling services (“ICS”) that the Ruling noted for investigation and on which the Petitioners, and their expert, have urged the FCC to act. These include the per-minute charge issue which the Ruling declined to investigate, but is the subject of the PLS Appeal.

¹*In the Matter of Rates for Interstate Inmate Calling Services, Report and Order and Further Notice of Proposed Rulemaking*, FCC 13-113, WC Docket No. 12-375 (released September 23, 2013) (“ICS Order”). The Further Notice of Proposed Rulemaking component is hereinafter referred to as the FNPRM.

²D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Petitioners’ Appeal (filed Oct.16, 2013) (“ PLS Appeal”). This would include the requirement that responses to the Appeal be filed by October 28, 2013.

Securus respectfully submits that there is ample Department precedent, some of which was cited in the Ruling itself, for granting this Motion.³ The Department should not be required to expend resources addressing the same issues being considered by the FCC, creating the prospect that the Department would have to “redo” whatever decision the Department might render.

In further support of its Motion, Securus sets forth the following grounds:

1. The Ruling

The Ruling initiated an investigation that would examine following issues:

- a. Maintaining the per-call surcharge and/or adjusting the maximum rate permitted per call.⁴
- b. Service and other fees imposed by ICS providers.⁵
- c. Quality of service issues.⁶
- d. Certain billing practices.⁷

2. The FCC’s ICS Order

On September 26, 2013 – three days after the Ruling - the FCC released its ICS Order, broadly addressing the rates and practices for interstate ICS, while opening the FNPRM to examine “reforming intrastate ICS rates and practices.”⁸

The FCC established a detailed regime for regulating rates for interstate ICS, including addressing per-call and per-minute charges, ancillary non-call-related charges/fees and site

³ See Ruling, at pp. 12-13.

⁴ Ruling, at p. 26. The Ruling bases its decision on allegedly conflicting cost changes, including with respect to those costs uniquely associated with ICS. See *id.*, at p. 25.

⁵ Ruling, at pp. 27-28.

⁶ Ruling, at p. 30.

⁷ Ruling, at p. 31.

⁸ ICS Order, ¶128. As noted by Global Tel* Link in a similar motion filed in this proceeding on October 17, 2013, the FCC’s ICS Order resulted from a lengthy record developed over a decade involving comments on rates, cost and revenue data, commission payments and rate cap proposals, and included filings by representatives of inmate families and interested groups and by the PLS’s expert, Mr. Dawson. Motion To Hold Proceeding In Abeyance, Global Tel*Link Corporation, D.T.C. 11-16, October 17, 2013, at p. 2.

commissions. The Order imposed per-minute rate caps and, within those caps, established “safe harbor” levels which are presumptively compliant with the cost-based rate requirements that the FCC approved. Those requirements also were applied to ancillary charges/fees. The FCC examined and analyzed ICS costs and directed the filing of additional cost data.

Petitioners were active participants before the FCC, asking the FCC in its rulemaking to address some of the very same issues being considered by the Department herein.⁹ For example, they urged the FCC to eliminate per-call surcharges.¹⁰ They raised service quality issues.¹¹

The FNPRM undertakes to reform both local rates and intrastate long distance rates for ICS. Specifically, the FCC asserts that it believes that “intrastate reform is necessary and that the Commission has the authority to reform intrastate ICS rates.”¹² Further, the Commission claims that “section 276 [of the Communications Act of 1934, as amended, (47 U.S.C. § 276)] affords the Commission broad discretion to regulate intrastate ICS rates and practices... and to preempt inconsistent state requirements.”¹³ Therefore, the FCC seeks comment on “reforming intrastate rates and practices.”¹⁴

The FCC relies on this statutory authority and judicial precedent to conclude that it can regulate intrastate “end-user rates.”¹⁵ It also tentatively precludes recovery of “site commissions” through intrastate rates and seeks comment on that conclusion.¹⁶ The Commission seeks comment on “per-call charges” and whether there are “any costs that are uniquely incurred” that could not be

⁹ *See, e.g.*, Comments of Prisoner’s Legal Services of Massachusetts, filed March 25 2013, Docket No. WC 12-375, including the Amended Affidavit of Douglas A. Dawson, the same such Amended Affidavit filed in this proceeding (“PLS FCC Comments”).

¹⁰ PLS FCC Comments, at pp.14-15.

¹¹ ICS Order, ¶85, n. 320, ¶158, n. 500.

¹² ICS Order, ¶129.

¹³ ICS Order, ¶135.

¹⁴ ICS Order, ¶129.

¹⁵ ICS Order, ¶137.

¹⁶ ICS Order, ¶133.

recovered through a per-minute charge alone.¹⁷ It raises the prospect of minimum quality of service standards for ICS services.¹⁸ It seeks to ensure that “ancillary charges” are just and reasonable.¹⁹ Finally, it seeks comment on per-minute rate structure (\$0.07 per minute) which would be distance insensitive and apply to both interstate and intrastate calling.²⁰

3. The PLS Appeal

The PLS Appeal only further highlights the overlap between the FCC proceeding and what the Petitioners urge the Department to add to the investigation. The Petitioners make constant reference to the ICS Order, include it as an Exhibit with their Appeal, attach materials and information submitted by their expert Mr. Dawson with the FCC in an effort to have the Department follow the FCC’s path with respect to per-minute rates and “unique costs”, including the FCC’s consideration of a distance and jurisdictionally insensitive per-minute rate of \$0.07.²¹

4. The Department Precedent Supports Grant Of The Motion Under The Circumstances.

The Ruling itself recognizes that Department proceedings should be “stayed pending the outcome of FCC proceedings” in certain cases, particularly where failure to do so would “run the risk of adopting” rules that “subsequently may be deemed inconsistent with the FCC’s rules” and “require the Department to conduct a second proceeding.”²² As the Department observed, “such

¹⁷ ICS Order, ¶¶161-162.

¹⁸ ICS Order, ¶178.

¹⁹ ICS Order, ¶168.

²⁰ ICS Order, ¶155.

²¹ PLS Appeal, at pp. 2, 3, 6-8.

²²Ruling, at p. 13, citing D.T.E. 01-20, *Investigation by the Dept of Telecomms. & Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements & Combinations of Unbundled Network Elements, & the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Mass. Resale Servs. in the Commv. of Mass.*, Interlocutory Order on PartB Motions (Apr. 4, 2001), at p. 20 (“01-20 Interlocutory Order”))

administrative inefficiency would not benefit the Department, the parties or the public interest.”²³

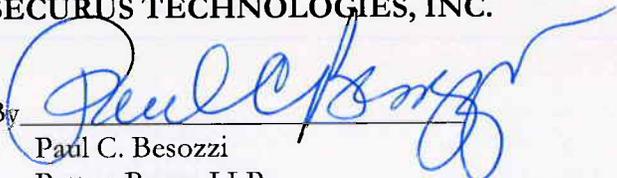
The goal of completing a proceeding does not trump such “administrative efficiency or the need to adapt schedules” under such circumstances.²⁴ Petitioners have ample opportunity to raise the issues, and have raised them, in the FCC proceeding. They can reasonably be expected to continue to do the same in response to the FNPRM. Under the circumstances granting this Motion is wholly appropriate.

WHEREFORE, for all of the foregoing reasons, Securus respectfully moves that the Department hold this proceeding in abeyance, including the requirement to respond to the PLS Appeal, pending the resolution of the FCC’s ongoing rulemaking in Docket No. WC-12-375. If the Department denies this Motion in whole or in part, Securus would request that interested Parties be given ten (10) days after such denial to respond to the PLS Appeal.

Respectfully submitted

SECURUS TECHNOLOGIES, INC.

By



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Dated: October 18, 2013

²³ 1-20 Interlocutory Order, at p.20.

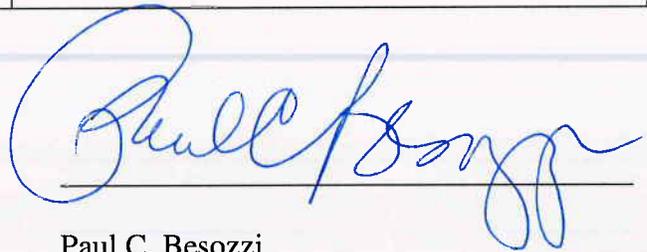
²⁴ 01-20 Interlocutory Order, at p.20; *see also* D.T.C. 11-4, *Pet. of Safari Communications, Inc. for Designation as an Eligible Telecommunications Carrier on a Wireless Basis*, Order on Dismissal without Prejudice (March 1, 2013), at pp. 2-3 (Department suspended procedural schedule in Department proceeding in December 2011 pending the issuance of FCC Order to reform the Lifeline and Linkup programs “in the interest of regulatory efficiency.”); Ruling, at p. 12.

CERTIFICATE OF SERVICE

I, Paul C. Besozzi, hereby certify that on this 18th day of October, 2013, the foregoing “Motion To Hold Proceeding In Abeyance” on the parties listed on the Service List below issued by the Department by the method listed under each such party:

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