

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
SECURUS TECHNOLOGIES, INC. FOR A
LIMITED WAIVER OF OHIO ADM.CODE
4901:1-6-22.

CASE NO. 18-890-TP-WVR

ENTRY

Entered in the Journal on December 19, 2018

I. SUMMARY

{¶ 1} The Commission denies the motion for a limited waiver filed by Securus Technologies, Inc. in this matter.

II. DISCUSSION

{¶ 2} Pursuant to Ohio Adm.Code 4901:1-6-02(E), upon a motion filed by a party, the Commission may waive any requirement of Ohio Adm.Code Chapter 4901:1-6.

{¶ 3} Ohio Adm.Code 4901:1-6-22 addresses inmate operator services (IOS). The most recent version of Ohio Adm.Code 4901:1-6-22 became effective on May 24, 2018, following the five-year review of Ohio Adm.Code Chapter 4901:1-6 conducted in Case No. 14-1554-TP-ORD (14-1554). Ohio Adm.Code 4901:1-6-22(B) specifies that “[t]he maximum rate of any usage sensitive charge that may be applied by an IOS provider to any intrastate IOS call shall be consistent with 47 C.F.R. part 64, subpart FF.”

{¶ 4} On May 21, 2018, as amended on June 21, 2018, Securus Technologies, Inc. (Securus) filed a motion for a limited waiver of Ohio Adm.Code 4901:1-6-22 for a period of 45 days from the date that the Commission addresses the issue of what rates and ancillary charges should be applied to intrastate IOS calls in the state of Ohio.

{¶ 5} On August 1, 2018, Securus filed a request for clarification regarding what maximum rates should be applied to IOS pursuant to the enacted changes to Ohio Adm.Code 4901:1-6-22.

{¶ 6} Securus noted that 47 C.F.R. part 64, subpart FF dated October 1, 2016, includes both Section 64.6010 (Inmate Calling Services rate caps) and 64.6030 (Inmate Calling Services interim rate caps). While recognizing that the current effective maximum rates for interstate inmate services are the interim rates set forth in 47 C.F.R. 64.6030, Securus requested that the Commission allow Ohio inmate service providers to comply with Ohio Adm.Code 4901:1-6-22(B) by adhering to either 47 C.F.R. 64.6010 or 64.6030. In support of its request, Securus noted that while 47 C.F.R. 64.6030 establishes a \$0.21 per minute maximum rate for debit and prepaid interstate calls and a \$0.25 per minute maximum rate for collect interstate calls, these are interim rates that will sunset upon the effectiveness of tiered rates in 47 C.F.R. 64.6010, which provides for tiered rates in order to account for the higher costs of providing services to smaller jail populations.

{¶ 7} On May 23, 2018, as amended on July 9, 2018, Pay Tel Communications, Inc. (Pay Tel) also filed a motion for a waiver of Ohio Adm.Code 4901:1-6-22. Initially Pay Tel sought a 45-day extension in order to ensure Pay Tel's compliance with the final rule changes. It then requested an additional 30 days in order to ensure its compliance.

{¶ 8} On May 24, 2018, Global Tel*Link Corporation (GTL) filed its response to the requested waivers.

{¶ 9} Further, as part of its response, GTL stated that IOS providers should not be required to modify their existing correctional facility contracts due to its belief that the revised rule only applies on a prospective basis and, therefore, does not impact existing contracts.

{¶ 10} Pursuant to its Entry of August 22, 2018, the Commission granted all IOS providers a 45-day extension of time for the purpose of amending their IOS rates, terms, and conditions to be consistent with the Ohio Adm.Code 4901:1-6-22. In reaching this determination, the Commission clarified that, pursuant to Ohio Adm.Code 4901:1-6-22(B)

and (E), the maximum rate of any intrastate usage sensitive charges shall be consistent with the interim rate caps set forth in 47 C.F.R. 64.6030, which were effective on October 1, 2016.

{¶ 11} Although Securus requested the option of adhering to either the maximum rates set forth in 47 C.F.R. 64.6010 or 64.6030, the Commission noted that the rate caps set forth in 47 C.F.R. 64.6010 have been stayed. *See Global Tel*Link v. FCC*, 2016 U.S. App. LEXIS 4934 (D.C. Cir. 2016); 31 FCC Rcd 12336. As a result, the only applicable IOS rates set forth in the C.F.R. are the interim rates (i.e., \$.21 and \$.25/min) pursuant to 47 C.F.R. 64.6030. Therefore, the Commission stated that for the sake of administrative efficiency, it intended to mirror the existing interstate rates found in 47 C.F.R. 64.6030 effective as of October 1, 2016, for all IOS service calls. *See Case No. 18-890-TP-WVR*, Aug. 22, 2018, Entry at 6.

{¶ 12} In regard to GTL's belief that Ohio Adm.Code 4901:1-6-22 does not apply to existing contracts, the Commission stated that this assertion was incorrect. The Commission noted that allowing the exclusion of existing contracts from Ohio Adm.Code 4901:1-6-22 would result in an unspecified delay in the benefits of the mandated IOS rate reduction. According to the Commission, such a result would be discriminatory and in violation of R.C. 4927.02 by potentially favoring or providing an undue advantage to an IOS provider which is allowed to continue to operate under its existing contract rates. *See Case No. 18-890-TP-WVR*, Aug. 22, 2018, Entry at 6.

{¶ 13} On September 28, 2018, Securus filed another request for a limited waiver of Ohio Adm.Code 4901:1-6-22. Specifically, Securus now seeks a limited waiver permitting it to comply with Ohio Adm.Code 4901:1-6-22 through adherence to the tiered rates identified at 47 C.F.R. 64.6010 solely at those facilities it serves with an average daily population of 349 or lower.

{¶ 14} In support of its waiver request, Securus recognizes that the U.S. Court of Appeals for the DC Circuit stayed 47 C.F.R. 6030 relative to the FCC's application of the established rate caps to intrastate services. *See Global Tel*Link v. FCC*, 2016 U.S. App. LEXIS

15421 (D.C. Cir., Mar. 23, 2016). Additionally, Securus points out the DC Circuit stayed the FCC's application of the tiered rate caps incorporated in 47 C.F.R. 64.6010 based on a challenge that the rates for IOS calls are just and reasonable. Citing *Global Tel*Link v. FCC*, 859 F.3d 39, 51-55 (D.C. Cir, 2017) (*2017 Global Tel*Link Decision*), Securus also contends that the DC Circuit again determined that the FCC does not have the authority to cap the amount that states can charge inmates for intrastate calls. Therefore, Securus submits that the Commission is not prohibited in any way from allowing the application of the requested tiered rate structure.

{¶ 15} Additionally, Securus references the FCC's recognition that tiered rate caps are necessary in order to account for the higher costs of providing services to smaller jail populations in county jails and municipal police department facilities. (Securus' September 28, 2018 Request for a Limited Waiver at 2 citing Rates for Interstate Inmate Calling Services, Report and Order and FNPRM, rel. Sept. 26, 2013, 79 FR, 67956-67976; Rates for Interstate Inmate Calling Services, Second Report and Order and Third FNPRM rel. Nov. 5, 2015, 80 FR 79136, 79140-79141; and, Order on Reconsideration rel. Aug. 9, 2016, 81 FR 62818, 62820-62823).

{¶ 16} Securus points out that a comparison of 47 C.F.R. 64.6010 and 47 C.F.R. 64.6030 reflects that both would allow for a maximum of \$.21 per minute for debit and prepaid calls for jails with an average daily population of 350 to 999. However, for jails with an average daily population of 349 and lower, the tiered rate structure of 47 C.F.R. 6010 would allow a maximum rate of \$.31 per minute for such calls, whereas 47 C.F.R. 6030 would limit the maximum rate to \$.21 per minute. Additionally, Securus notes that the interim rates are to sunset upon the effectiveness of the permanent rates established pursuant to 47 C.F.R. 6010.

{¶ 17} On October 3, 2018, GTL filed its response to Securus' limited waiver request. GTL supports the limited request provided that the waiver is applied equally to all IOS providers serving similarly situated jail facilities. Additionally, GTL recommends that the

date for compliance and the date for any required tariff filings be set for 30 days from the date that the Commission addresses the limited waiver request.

{¶ 18} Based on a review of the arguments presented, the Commission finds that the waiver request of the intrastate per minute rate applicable for those facilities with an average daily population of 349 or lower should be denied at this time. In reaching this determination the Commission points out that the DC Circuit in its *2017 Global Tel*Link Decision* recognized that the cost to provide IOS service varies widely on the basis of regional differences such as age and condition of a given facility or the specific security features that correctional facilities demand. For this reason among others, the DC Circuit Court vacated the use of industry-wide averages in setting rate caps and remanded the matter for further proceedings.

{¶ 19} While recognizing that the Commission has the authority to consider the proposed alternative tiered IOS pricing structure, the Commission notes that other than asserting that the requested waiver is necessary for facilities with populations of 349 or lower due to concerns of economies of scale, Securus has not made a specific demonstration of its need for the requested waiver based on its own unique cost factors. Absent such a demonstration, the Commission finds that it does not have a basis for granting the requested waiver. The Commission may reconsider this determination upon the filing of the appropriate demonstration.

III. ORDER

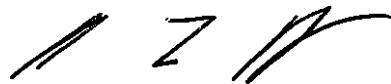
{¶ 20} It is, therefore,

{¶ 21} ORDERED, That Securus' motion for a limited waiver be denied consistent with this Entry. It is, further,

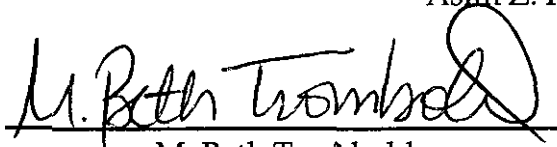
{¶ 22} ORDERED, That this Entry be sent to the Telephone Industry list-serve. It is, further,

{¶ 23} ORDERED, That a copy of this Entry be served upon Securus Technologies, Inc., Pay Tel Communications, Inc., Global Tel*Link Corporation, the office of the Ohio Consumers' Counsel, the Ohio Telecom Association, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



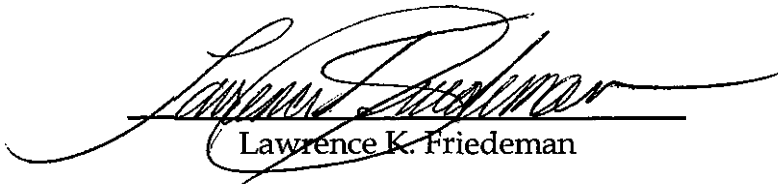
Asim Z. Haque, Chairman



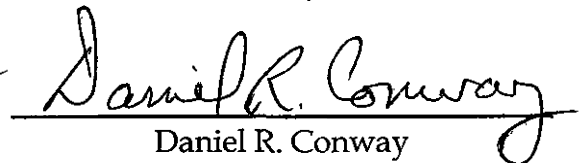
M. Beth Trombold



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Daniel R. Conway

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DEC 19 2018Barcy F. McNeal
Secretary