

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

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

CASE NO. 18-917-TP-WVR

ENTRY

Entered in the Journal on August 22, 2018

I. SUMMARY

{¶ 1} The Commission grants the motions for limited waivers filed in these matters.

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. Securus points out that 47 C.F.R. part 64, subpart FF includes both Section 64.6010 (Inmate Calling Services rate caps) and Section 64.6030 (Inmate Calling Services interim rate cap).

{¶ 5} Additionally, Securus asserts that the references in Ohio Adm.Code 4901:1-6-22 to 47 C.F.R. part 64, subpart FF has created some confusion due to the fact that while 47 C.F.R. part 64, subpart FF was effective on February 11, 2014, the current Ohio Adm.Code 4901:1-6-02 provides that references to the C.F.R. shall incorporate the versions of the cited matter as effective on September 13, 2010. In making this argument, Securus acknowledges that the Commission had approved changes to reflect the effective date of October 1, 2016, for references to the C.F.R., but that a final version of Ohio Adm.Code 4901:1-6-02 incorporating this change had not been filed with the Joint Committee on Agency Rule Review.

{¶ 6} Further, Securus states that while it is a certified interexchange service carrier providing intrastate IOS to 71 facilities in the state of Ohio, it had not received notice of the proposed changes to Ohio Adm.Code Chapter 4901:1-6 and, therefore, did not file any comments with the Commission in 14-1554. Securus represents that it was first alerted by a consultant on May 17, 2018, as to the approved modifications to Ohio Adm.Code 4901:1-6-22.

{¶ 7} According to Securus, in order to comply with the modifications to Ohio Adm.Code 4901:1-6-22, it will first need to perform the following activities, which could not be completed by the May 24, 2018, effective date:

- (a) Review all Ohio correctional facility agreements for any legal obligations that may need to be modified;
- (b) Provide notice to all impacted customer facilities;
- (c) Execute actual rate changes in the company's billing and rate tables;
- (d) Potentially renegotiate service/commission rates based on reduced rates;
- (e) Update websites, posters, and flyers on existing rate information;

- (f) Update and provide training to customer care associates to field calls from consumers;
- (g) Update and provide training to field service and sales personnel; and,
- (h) Update and educate corrections and county budget personnel on the estimated impacts to their county budgets.

{¶ 8} 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. First, Securus points out that while the current Ohio Adm.Code 4901-6-02(H) provides that references to the C.F.R. are intended to incorporate the version of the code that was effective on September 13, 2010, 47 C.F.R. part 64, subpart FF, was not effective until February 11, 2014. Therefore, pursuant to the filed rate doctrine, Securus submits that its IOS rates are capped at those included in its Commission approved tariff.

{¶ 9} Additionally, Securus notes that 47 C.F.R. part 64, subpart FF dated October 1, 2016, includes both Section 64.6010 and 64.6030. 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, it believes that the Commission should allow for 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. According to Securus, 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.

{¶ 10} On May 23, 2018, as amended on July 9, 2018, Pay Tel Communications, Inc. (Pay Tel) 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. In support of its motion, Pay Tel states that it is a certified provider of competitive telecommunications services, which currently provides intrastate IOS to four detention facilities in the state of Ohio.

{¶ 11} Pay Tel represents that it did not receive notice of the Commission's entries and orders in 14-1554 and, therefore, did not participate in the proceeding. According to Pay Tel, it did not become aware of the rule changes impacting Ohio Adm.Code 4901:1-6-22 until May 17, 2018, via a communication with a consulting company.

{¶ 12} According to Pay Tel, in order to comply with the modifications to Ohio Adm.Code 4901:1-6-22, it will first need to perform the following activities, which could not be completed by the May 24, 2018, effective date:

- (a) Review the contracts with its Ohio facilities in order to determine the impacts;
- (b) Provide notice to its Ohio facilities in accordance with the applicable contract terms;
- (c) Modify its tariff to reflect the new rates;
- (d) Update voice prompts, website rate information, and printed materials;
- (e) Update customer-facing website rate information; and,
- (f) Update and train customer service personnel.

{¶ 13} On May 24, 2018, Global Tel*Link Corporation (GTL) filed its response to the requested waivers. GTL is a certified competitive telecommunications service provider and offers IOS in the state of Ohio. The company represents that it does not oppose the waiver

requests filed by Securus and Pay Tel and recommends that any waiver approvals should be applied to all IOS providers in the state of Ohio.

{¶ 14} Further, GTL recommends that the date for compliance be established for 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. Similar to the concerns expressed by Pay Tel, GTL submits that IOS providers cannot begin to revise their tariffs or update their systems without knowing with certainty as to the intended applicable rates.

{¶ 15} Finally, GTL avers that IOS providers should not be required to modify their existing correctional facility contracts inasmuch as it believes that the revised rule only applies on a prospective basis and, therefore, does not impact existing contracts.

{¶ 16} In response to the arguments raised, the Commission finds that all IOS providers should be granted a 45-day extension of time from the date of this Entry 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 clarifies 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.

{¶ 17} In reaching this determination, the Commission recognizes that current Ohio Adm.Code 4901:1-6-02 establishes September 13, 2010, as the effective date for all references to the C.F.R. In adopting the interim rates set forth in 47 C.F.R. 64.6030, the Commission relies on the fact that, consistent with proposed Ohio Adm.Code 4901:1-6-02 adopted in its November 30, 2016 Finding and Order in 14-1554, October 1, 2016, was the particular version of the C.F.R. to be utilized for the purpose of incorporation by reference. Therefore, the Commission's adoption of Ohio Adm.Code 4901:1-6-22 was premised on the incorporation of 47 C.F.R. 64.6030 which was in effect on October 1, 2016.

{¶ 18} Further, the Commission notes that although Securus requests the option of adhering to either the maximum rates set forth in 47 C.F.R. 64.6010 or 64.6030, 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 rate set forth in the C.F.R. is the interim rate pursuant to 47 C.F.R. 64.6030. For the sake administrative efficiency, it is the Commission's intent to mirror the existing interstate rate found in 47 C.F.R. 64.6030 effective as of the October 1, 2016, for all IOS service calls.

{¶ 19} In regard to GTL's belief that Ohio Adm.Code 4901:1-6-22 does not apply to existing contracts, the Commission finds that this assertion is incorrect. In reaching this determination, the Commission notes that nothing in the adopted language of the rule carves out an exception for existing contracts. Further, the Commission recognizes that most public utility contracts contain a "change in law" provision to specifically address the scenario resulting from the adoption of this rule. Finally, the Commission highlights the fact that allowing the exclusion of existing contracts from Ohio Adm.Code 4901:1-6-22 would result in an unspecified delay of the benefits of the mandated IOS rate reduction. 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.

{¶ 20} With respect to the claims of Securus and Pay Tel that they did not receive formal notice of the retail rules adopted in 14-1554, the Commission notes that the January 7, 2015 Entry requesting comments on the proposed rules in 14-1554 and the November 30, 2016 Finding and Order were served upon all regulated telephone companies, which includes Securus, Pay Tel and GTL. Additionally, all substantive entries on rehearing pertaining to Ohio Adm.Code 4901:1-6-22 were served via the Telephone Industry list-serve.

III. ORDER

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That the motions for waivers be granted consistent with this Entry. It is, further,

{¶ 23} ORDERED, That all IOS providers be granted a 45-day extension to comply with Ohio Adm.Code 4901:1-6-22. It is, further,

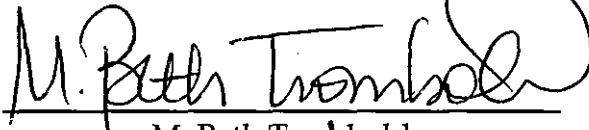
{¶ 24} ORDERED, That Ohio Adm.Code 4901:1-6-22 is clarified consistent with this Entry. It is, further,

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

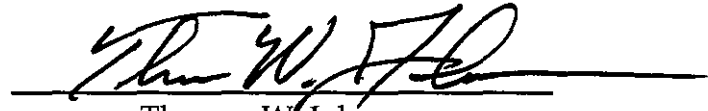
{¶ 26} ORDERED, That a copy of this Entry be served upon Securus Technologies, Inc., Pay Tel Communications, Inc., Global Tel*Link Corporation, all regulated telephone companies, the office of the Ohio Consumers' Counsel, the Ohio Telecom Association, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

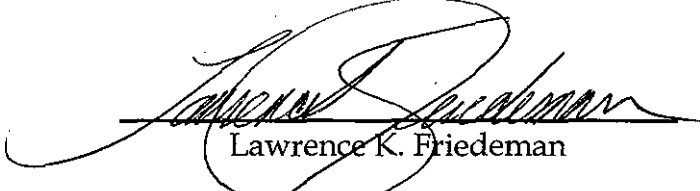
Asim Z. Haque, Chairman



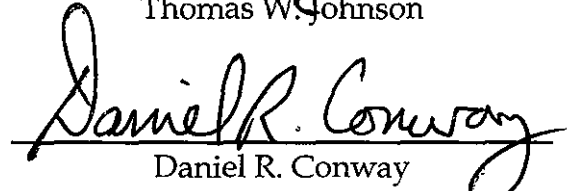
M. Beth Trombold



Thomas W. Johnson



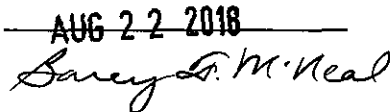
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JSA/mef/hac

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~~AUG 22 2018~~


Barcy F. McNeal

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Secretary