

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE: SECURUS TECHNOLOGIES, INC.	DOCKET NO. TF-2019-0033
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COMMENTS

The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, has no objection to the proposed revised tariff filed by Securus Technologies, Inc. (Securus) on January 29, 2021. OCA suggests that the tariff be approved subject to complaint and investigation and that the following issues merit ongoing attention.

Section 2.6.1. Payment for Collect Calls.

1. Section 2.6.1 of the proposed tariff addresses payment for collect calls. In its most recent order requiring revisions, the Board observed that certain of the information included on a customer's bill is obsolete and directed that Securus review section 2.6.1(c) and specifically remove the reference to "toll service" as inconsistent with inmate calling services (ICS). Order Requiring Filing of Revisions of Revised Tariff and Granting Confidential Treatment (Order), Nov. 13, 2020, at 3.

2. Securus retains the reference to "toll service." Securus also adds references to "Local," "IntraLATA/Intrastate," "InterLATA/Intrastate," "IntraLATA/Interstate," and "InterLATA/Interstate," as if to suggest these "call types" are relevant to the charges consumers must pay. Securus states: "Securus' billing system reports to the consumer a description of the call type . . . even if the call is rated at a uniform per-minute rate." Securus Comments at 3.

3. The extraneous references are unnecessary and confusing. The billing system and the tariff should conform to the current regulatory and billing practices for ICS, including the uniform per-minute rate. It is also unclear under what circumstances Securus would send a subsequent bill for a collect call, as section 2.6.1 appears to contemplate, since collect calls are generally paid for at the time they are made. There is thus a continuing need for clarification and revision.

Section 2.6.2. Taxes and Fees.

4. The tariff should define “Federal Cost Recovery Charge.”

5. It might add clarity if ICS providers were required to supply information itemizing the amount of Taxes and Fees they pay to federal, state, and local governments and to explain how they compute the addition for Taxes and Fees to the per-minute ICS rate or how they otherwise assess consumers for the Taxes and Fees. The records in these dockets do not supply the relevant details.

Section 3.3.2. Prepaid Calling Cards.

6. Section 3.3.2 addresses prepaid calling cards used by inmates. In its most recent order requiring revisions, the Board noted tariff provisions that unused balances may be used upon release and that cards expire 180 days after first usage without a refund. The Board stated:

[I]f the 180-day limit applies to a prepaid calling card, even when the inmate has been released, the Board does not consider that to be a reasonable provision The Board considers it important that any unused balances on calling cards be refunded to the inmate. If Securus considers the expiration of the calling card necessary, Securus should provide justification for the need for the calling cards to expire. In addition, if Securus determines refunds are allowed, Securus will be required to include how refunds may be obtained and language that states when the process for requesting a refund is provided to the inmate.

Order at 6.

7. The provisions cited by the Board are materially unchanged in the current proposed tariff. Instead, Securus advances a series of arguments why the provisions should be approved without change. Securus is not, it argues, a party to the sale of the prepaid calling card. Securus has no data on which individual owns a card and no way to verify whether a person claiming a refund is the purchaser of the card. Securus should not be required to make a refund of value it never received. The expiration is necessary because of the administrative burden of keeping an unlimited number of accounts open for an unlimited amount of time. Inmates have other available purchase options. Inmates can use the cards after release or “obtain full value from the cards even after discharge.” Securus comments at 5-6.

8. The arguments are without merit. Securus is no stranger to the calling cards. It issues the cards and sells them at discount to the correctional facility for resale to the inmate. In its dealings with the correctional facility, Securus should require the correctional facility to make adequate provision for refund of unused funds, thus securing for the inmates the refunds they deserve while relieving Securus of the obligation to keep track of the cards once they leave Securus’ hands and the obligation to finance the refunds with value Securus does not but the correctional facility does receive. There is nothing remarkable in requiring the entity that sells the card to the inmate to make adequate provision for refund of unused funds to the inmate, and the Board is well within its authority to require Securus and the correctional facility to include such provision in the arrangements between them. Iowa Code § 476.91(2). The claims of administrative burden are overblown. It is not unreasonable to expect whoever is selling the

cards to the inmates to keep such records as are necessary to support the refunds.¹ The fact that other (perhaps less desirable) purchase options may be available is not a reason why unused funds should be forfeited with this option. It is not clear what use can be made of a card after release, unless a former inmate is again confined. OCA agrees that inmates should be able to obtain full value from their cards even after discharge. That is the goal the Board is seeking to achieve.

9. OCA has no objection to a small *de minimis* exception, perhaps \$2.00, with the aggregate excepted funds escheating to the state.

10. OCA has no objection to an expiration date, provided the unused funds are refunded at expiration or, at the very least, a meaningful notification is sent advising that a refund must be requested.

Section 3.3.3. Debit Accounts.

11. Section 3.3.3(b) addresses “Prepaid Debit Accounts,” which are established by the inmate with the correctional facility’s commissary. Based upon Securus’ explanation that any unused balance is given to the inmate by the commissary or correctional facility at the time of release, the Board had no objection to the refund provision at previously proposed section 3.3.3(b)(ii). Order at 6.

12. Proposed section 3.3.3(b)(ii) continues to provide that any remaining balance will be refunded upon the inmate’s release, but the current proposed tariff adds “in accordance with the Correctional Facility’s policies and procedures.” Securus should explain the reason for this

¹ See *James v. Glob. Tel*Link Corp.*, No. 13-4989, 2018 WL 3727371, at *10 (D.N.J. Aug. 6, 2018) (account number internally in databases; in many cases, setting up account also involves providing the account holder’s name, address, and other personal identifying information; information regarding all payments, fees and transactions associated with an account can be easily retrieved using the telephone number associated with the account; indeed, company must possess this information in order to respond to routine inquiries about account balances and other account services).

addition and the nature of the policies and procedures to which it is referring. The refunds should be automatic, as the previous version of the proposed tariff appeared to indicate they are.

13. Section 3.3.3(c) addresses “Securus Debit Accounts,” which are established by the inmate with Securus. Section 3.3.3(c)(ii), concerning refunds of remaining balance at release, has also been revised to reference the correctional facility’s policies and procedures. Securus should explain the reason for this change and the nature of the policies and procedures to which it is referring.

Section 3.3.4. “AdvanceConnect” Accounts.

14. Section 3.3.4 addresses “Advance Connect” accounts, which are set up with Securus by an inmate’s family members or friends. The Board’s most recent order requiring revisions directed Securus to include a statement that a customer may request a refund at any time, even after the account has expired, and a statement explaining how an account owner is notified of the requirement to affirmatively request a refund. Order at 7.

15. Section 3.3.4(c) continues to provide that the account holder may request a refund. The current proposed tariff does not, however, include either of the statements directed by the Board. Instead, provisions have been added stating that Securus will suspend the account 90 days following the last call made, will close the account 180 days following the last call made, and will refund the unused balance upon request up to 360 days following the last call made. A provision has also been added stating that Securus’ refund policy is set forth in terms and conditions appearing on Securus’ website.

16. The revised proposed tariff does not comply with the directive in the Order that the tariff include a statement that a customer may request a refund at any time, even after the account has expired, and does not comply with the directive in the Order that the tariff include a

statement explaining how an account holder is notified of the requirements to affirmatively request a refund. These provisions should appear in the tariff. Unlike the tariff, the website can be changed unilaterally.²

Section 3.3.5. “AdvanceConnect” Single Calls.

17. The Board did not address the “Advance Connect” Single Call product in its most recent order requiring revisions, and the current proposed tariff provision addressing the single call product is not materially changed from the previously proposed tariff provision for the single call product. At the technical conference held September 3, 2020, however, Prison Policy Initiative was permitted to request from Securus and comment upon the scripted prompts used by Securus in connection with the single call product. On February 8, 2021, Prison Policy Initiative filed comments, including the script, and expressed concerns.

18. OCA is appreciative of changes that have been made to the single pay product that have lessened the unjustness and unreasonableness of the charges for this product. In particular, proposed section 3.3.5 limits the non-ancillary charges for a single call to “the Prepaid Call rate applicable to calls paid for with an AdvanceConnect Account,” which does not exceed 25 cents per minute. Thus, the maximum non-ancillary charge for a 15-minute single call is

² As of February 14, 2021, when OCA checked, the website provisions for the AdvanceConnect account included the following: “Refunds of unused balances, when provided, are credited back to the credit or debit card used to fund the AdvanceConnect account. It generally takes 2-3 business days for the refund to process back to the card, after the funds have been removed from the account, but could take up to one billing cycle to be reflected on the statement. If the AdvanceConnect account holder funded the account through check, money order, Western Union or MoneyGram, a refund check will be mailed to the AdvanceConnect account holder, which could take up to four weeks for processing. 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. The balance of the refund may vary based on when calls were last received. Alaska and TDCJ customers have 365 days to request a refund. Connecticut Department of Corrections unclaimed property will be remitted to the state after 3 years. Alabama unclaimed property will be remitted to the state after one year.”

\$3.75. When an ancillary charge of \$3.00 is added, the resulting total charge is \$6.75 (before Taxes and Fees), substantially less than charges in the recent past as high as \$14.99.³

19. That is not to say that a charge of \$6.75 is just and reasonable or that customers should be steered toward this product rather than a different product that spreads the ancillary charge over multiple calls. OCA shares the concerns expressed by Prison Policy Initiative. OCA also continues to share the concerns expressed by the FCC that single pay services are a growing part of the ICS market, that they are used to inflate the rates paid by ICS customers, that they are harmful to consumers, particularly those who are newly incarcerated and vulnerable, that they cause substantial confusion, that customers are often unaware that other payment options are available, and that Securus has described the high-cost single pay option first and the low-cost or free option last. See OCA Comments, Aug. 4, 2020, at 6-7. In addition to the solutions suggested by Prison Policy Initiative, OCA asks whether Securus' high degree of sophistication would permit an option under which the recipient of a call, particularly from a newly incarcerated individual, could at one and the same time open an AdvanceConnect account and use the AdvanceConnect account to complete that call.

20. A more direct solution would be to reduce the ancillary charge for a single call. It seems unlikely that the costs incurred by the ICS provider in paying the payment card company for the use of its card on a single 15-minute call for which the non-ancillary charge does not exceed \$3.75—or a single 4-minute call for which the non-ancillary charge does not exceed \$1.00—would be anywhere near as high as \$3.00. Reducing the ancillary charge for single calls may be the most just and reasonable solution. OCA is aware of no legal reason why this change could not be implemented at the state level for intrastate single calls.

³ See *In the Matter of Rates for Interstate Inmate Calling Services*, FCC-136, 30 F.C.C. Rcd. 12763 ¶ 185 (FCC 2015).

WHEREFORE, OCA suggests that the foregoing issues merit further attention.

Respectfully submitted,

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