

STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

IN RE:

SECURUS TECHNOLOGIES, LLC

DOCKET NO. TF-2019-0033

**COMMENTS REGARDING REVISED
TARIFF**

Securus Technologies, LLC (“Securus”) respectfully submits these Comments in response to the Iowa Utilities Board’s (the “Board”) Order Approving Tariff and Requiring Revised Tariff Sheets and Explanations (the “Order”) of March 2, 2021.

BACKGROUND

On January 2, 2019, the Board ordered all companies in Iowa providing incarcerated calling services (“ICS”) to file tariffs with the Board for review to “ensure compliance with applicable statutes and rules while allowing the Board to consider whether rates are reasonable.”¹

On April 1, 2019, Securus filed its tariff (the “Original Tariff”) for Board review. On April 17, 2019, the Iowa Office of Consumer Advocate (“OCA”) filed Conditional Objections to the Original Tariff, and on May 1, 2019, the Board issued an Order Docketing Tariffs for Further Review, Canceling Certain Registration and Tariffs, and Granting Intervention.

On May 24, 2019, the Board issued an Order Granting Petitions to Intervene and Requiring Additional Information (“Request for Additional Information”). In response, on June 24, 2019, Securus filed its Response to Request for Additional Information, and submitted

¹ Docket No. RMU-2017-0004, *Rule Making Regarding Inmate Calling Rate Caps*, Order Terminating Rule Making (Jan. 2, 2019).

an Application for Confidential Treatment and Affidavit in Support of Application regarding certain confidential information contained in Securus' filing.

On March 18, 2020, the Board issued an Order Requiring Filing of Revised Tariff and Addressing Request for Confidential Treatment (the "March Order"), which rejected Securus' Original Tariff and directed Securus to file a revised tariff in response to specific items set forth in the March Order's Ordering Clauses. On July 16, 2020, Securus filed a revised tariff (the "First Revised Tariff") along with Comments Regarding Revised Tariff.

On August 6, 2020, the Board issued an Order Scheduling Technical Conference to review the First Revised Tariff. On September 3, 2020, the technical conference was held as scheduled. Based on the information provided at the technical conference, on November 13, 2020, the Board issued an Order Requiring Filing of Revised Tariff and Granting Confidential Treatment, in which the Board reviewed the First Revised Tariff and required additional revisions. On January 29, 2021, Securus filed a revised tariff (the "Second Revised Tariff") along with Comments Regarding Revised Tariff.

In the Order, the Board approved the Second Revised Tariff as of March 1, 2021, and required revised tariff sheets and to provide written explanations regarding certain issues within 30 days of the date of the Order.

Securus provides the following responsive comments.

RESPONSES TO ORDERING CLAUSES

A. Ordering Clause 2.a.

Correct the Utilities Board email address to customer@iub.iowa.gov on Original Sheet No. 13.

A First Revised Sheet No. 13 is attached correcting this email address.

B. Ordering Clause 2.b.

Update all refund policies to include explicit statements about when an inmate or account holder is notified of the specific policy.

A First Revised Sheet No. 15 (regarding the refund policy for Prepaid Calling Cards), a First Revised Sheet No. 16 (regarding the refund policy for Prepaid Debit Accounts), a First Revised Sheet No. 17 (regarding the refund policy for Securus Debit Accounts), and a First Revised Sheet No. 18 (regarding the refund policy for AdvanceConnect Accounts) are attached.

C. Ordering Clause 3

Within 30 days of the date of this order, Securus Technologies, LLC, shall file an explanation addressing whether it remits unused funds in inmate calling accounts to the State Treasurer of Iowa pursuant to Iowa Code § 556.4.

This issue was addressed at the September 3, 2020 technical conference. As stated during the technical conference, Securus submits reports and remits unused funds to the State Treasurer of Iowa pursuant to Iowa's unclaimed property laws; however, until this time, Securus has not had the need to remit funds received through its debit account products, prepaid calling cards, and AdvanceConnect Accounts under Iowa Code § 556.4.

Funds held by a utility and presumed abandoned include:

“[a]ny deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled to the deposit for more than one year after the termination of the services for which the deposit or advance payment was made.”²

First, it is important to note that the Board has issued rules addressing the application of Iowa Code § 556.4 to various other utilities,³ but the Board has not issued similar rules

² Iowa Code § 556.4(1).

³ See 199 IAC 19.4(8) (addressing unclaimed deposits held by gas utilities), 199 IAC 20.4(8) (addressing unclaimed deposits held by electric utilities), and 199 IAC 21.4(2)(g) (addressing unclaimed deposits held by water, sanitary sewage, and storm water drainage utilities).

applicable to telecommunications utilities generally or specifically to alternative operator services (“AOS”) companies or ICS providers. The Board recently reviewed its rules applicable to telecommunications utilities,⁴ in which it revised the rules applicable to AOS companies and added specific provisions applicable to ICS providers.⁵ During its thorough review and revision of these rules, the Board did not add a similar provision regarding the administration of deposits for telecommunications utilities, therefore the Board’s rules appear to consider the application of the forfeiture rules in Iowa Code § 556.4 to be unnecessary as to the types of payment products offered by ICS providers like Securus (e.g., prepaid accounts, debit accounts, and prepaid calling cards).⁶

With respect to its AdvanceConnect Accounts, Securus has long had an open-ended refund policy in which it honored refund requests from AdvanceConnect Account holders at any time after the closing of an account. Although Securus considered amending that policy to allow refunds to be requested within 360 days of the last call made during the course of these proceedings, Securus is instead opting to retain its longstanding open-ended refund policy with respect to its AdvanceConnect Accounts, as reflected on the attached First Revised Sheet No. 18. Pursuant to this open-ended refund policy, AdvanceConnect Account funds remain available to consumers to be refunded or applied to a reactivated account at any time. Accordingly, Securus does not regard the impermanent deactivation of an AdvanceConnect Account as a “termination of services” triggering the treatment of the account balance as abandoned under Iowa Code § 556.4(1).

⁴ Docket No. RMU-2018-0022, *Service Supplied by Telephone Utilities* [199 IAC Chapter 22].

⁵ 199 IAC 22.6(7).

⁶ *See*, Docket No. TF-2019-0039, *Global Tel*Link Corporation*, Order Requiring Filing of Revisions to Revised Tariff and Denying Confidential Treatment, 6 (Dec. 11, 2020).

To the extent that Iowa Code § 556.4 applies to ICS debit accounts, as described in Sheets 16 and 17 of Securus' tariff, a correctional facility refunds any balance in a Prepaid Debit Account and Securus Debit Account in connection with the release of the applicable incarcerated person. As a result, no deposit or advance payment remains unclaimed for more than one year after the termination of the services and subject to Iowa Code § 556.4.

With regard to prepaid calling cards, these products do not appear to be contemplated by Iowa Code § 556.4, and there appears to be no reasonable interpretation of this provision that would apply to telecommunications utilities who sell such products in bulk at prices below face value for resale to individual consumers.⁷ Iowa Code § 556.4(1) addresses the treatment of “deposits” and “sum[s] paid in advance” that remain “unclaimed by the person appearing on the records of the utility”. Under the rules of statutory construction, these terms cannot be ignored or treated in isolation from each other, but must be interpreted to give them effect.⁸

The language quoted above indicates that Iowa Code § 556.4(1) applies to accounts and similar arrangements in which a utility maintains a customer or subscriber relationship with an identifiable account for administering the customer or subscriber relationship. Securus does not treat or process a prepaid calling card as creating an account in any way. Rather, a prepaid calling card is a purchased product entitling the authorized holder of the card to a defined and limited amount of telephone call minutes based on the face value of the card and the per-minute rates applicable to the correctional facility in which it was purchased.⁹

⁷ Securus points out and joins the arguments made by Global Tel*Link in its October 26, 2020 response in docket TF-2019-0039 to PPI, at ¶¶ 3-5, analyzing references to Iowa Code chapter 556 in other rules, and comparing that to the absence of any reference with regard to AOS. Notably, the Board appears to have accepted this position in its December 11, 2020 Order in that docket, at pp. 5-6 (“The Board does not consider the forfeiture rules in Iowa Code § 556.4 for utility accounts to be necessary.”)

⁸ Iowa Code § 4.4(2).

⁹ In this respect, the cards are analogous to a disposable camera: it may come with 36 exposures, and a customer can use all 36, throw it away after using one, or anywhere in between but the price and the value doesn't change – the ‘product’ being purchased is the camera and the utility it provides by being inexpensive, easy to purchase, and

As described in Sheet 14 of Securus' tariff, correctional facilities purchase prepaid calling cards from Securus at a discount to face value, and the facilities then resell those cards to incarcerated persons. Securus does not engage in any direct monetary transactions with incarcerated persons with respect to prepaid cards, has no information about the identities of incarcerated persons who purchase prepaid cards, and does not maintain relationships with purchasers of a prepaid cards analogous to customer or subscriber accounts (e.g., it does not maintain any account information, it does not allow the replenishment of prepaid cards, etc.). Securus neither has nor maintains any record of the identities of individual purchasers of its prepaid calling cards. In short, prepaid calling cards of this type are products not contemplated by Iowa Code § 556.4, and (as a result) Securus has not remitted unused balances on such prepaid cards under that statute. Any funds Securus receives in connection with the sale of prepaid cards has no relationship to the remaining balances on the cards, and because Securus sells the cards at a discount, refunds or remittances to the state on a usage basis would potentially require Securus to disgorge more money than it actually received. Such losses would be a significant disincentive for ICS providers to provide the prepaid calling card option at all.

It is unclear to Securus what direction the Board intends to take in its review of the application of Iowa's unclaimed property laws to Securus, ICS providers, or telecommunication utilities generally. Securus' products are not dissimilar to those provided by our ICS competitors, nor are products such as prepaid calling cards dissimilar to those sold to the general public. Yet, based on a review of the orders issued in other ICS tariff dockets, the question of the application of Iowa Code § 556.4 seems to have come up in a significant way towards the

convenient to use.. The same is true of the prepaid calling card and the manner in which it is sold both by Securus to the facility, and by the facility to the individual purchaser.

end of a two-year process. Because this question has not been fully developed in these dockets, the issue is not being addressed in a consistent manner across the industry.

If the Board disagrees with Securus' interpretation and application of Iowa Code § 556.4, then it should conduct a reasoned and consistent rulemaking to interpret Iowa Code § 556.4 in a manner applicable to all utilities rather than pursue the issue in the context of a tariff docket applicable to a single ICS provider.

D. Ordering Clause 3.

Within 30 days of the date of this order, Securus Technologies, LLC, shall file an explanation providing clarification regarding the automated payment fee for one-time calls.

The AdvanceConnect Single Call call flow script that Securus provided to The Prison Policy Initiative, Inc. on January 29, 2021 reflected the general call script used by Securus at correctional facilities throughout the United States. With regard to the statement “This call will cost [X] cents per minute plus any applicable federal, state, and local taxes, plus a one-time transaction fee of [Y]”, “Y” is the automated funding fee applicable to the specific correctional facility. There are correctional agencies (particularly large county jails and state departments of correction) that negotiate or require lower caps on ancillary service charges and (including a lower automated funding fee). As a result, Securus' general call flow script uses a variable (i.e., “Y”) rather than a specific amount for the automated funding fee, which for Iowa correctional facilities is the tariffed \$3.00.

Respectfully submitted this 1st day of April, 2021.

By: /s/ Kristy Dahl Rogers

Bret A. Dublinske, AT0002232
Kristy Dahl Rogers, AT0012773
FREDRIKSON & BYRON, P.A.
505 East Grand Avenue, Suite 200
Des Moines, IA 50309
Telephone: 515.242.8900
Facsimile: 515.242.8950
Email: bdublinske@fredlaw.com
krogers@fredlaw.com

**ATTORNEYS FOR SECURUS
TECHNOLOGIES, LLC**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of April, 2021, she electronically filed the foregoing document with the Iowa Utilities Board using the EFT system, which will send electronic notification of such filing to the appropriate persons.
