STATE OF IOWA
DEPARTMENT OF COMMERCE
IOWA UTILITIES BOARD

IN RE:	DOCKET NO. TF-2019-0033
SECURUS TECHNOLOGIES, LLC	**RESISTANCE TO PPI'S MOTION FOR PARTIAL RECONSIDERATION AND REQUEST FOR CLARIFICATION**

On January 29, 2021, after extensive engagement with the Iowa Utilities Board ("Board"), in numerous related proceedings pertaining to incarcerated calling services ("ICS"), Securus filed a new Tariff. On March 2, 2021, the Board approved the new Tariff subject to the requirement of two minor modifications, and required Securus to provide an explanation as to whether Securus does or does not remit certain funds "in inmate calling accounts" to the state under Iowa Code § 556.4. On April 1, 2021, Securus filed the revised pages, and the requested explanation. On April 26, 2021, the Board approved Securus' revised tariff, and with regard to the applicability of § 556.4, the Board held:

> The Board has reviewed Securus' revised tariff sheets and the related comments. Based upon that review, the Board has determined that AOS providers will not be required to remit unused funds on prepaid calling cards to the state treasurer's office as unclaimed property. Iowa Code § 556.4(1) relates to deposits funded by a "subscriber" and unclaimed "by the person appearing on the records of the utility." The Board has determined that purchasing a prepaid calling card does not rise to the level of being a subscriber and, thus, does not require the remittance of unused funds on prepaid calling cards to the state treasurer's office.[1]

On May 10, 2021, Prison Policy Institute ("PPI") filed a Motion for Partial Reconsideration. In that Motion, PPI raises a single, narrow issue:

> [E]ven though the Board acknowledged PPI's alternative argument concerning Iowa Code § 556.9, the April 26 order does not include a ruling on the applicability of § 556.9. Accordingly, PPI files this motion for the sole purpose of requesting a Board ruling on this question. For the reasons stated in our

[1] *In re Securus Technologies, LLC*, Docket No. TF-2019-0033, Order Approving Revised Tariff Sheets (Apr. 26, 2021)("Board Order"), at 6.

comments of April 12, we encourage the Board to require Securus to remit unspent funds associated with prepaid calling cards in accordance with the provisions of Iowa Code § 556.9.[2]

The Board should deny PPI's Motion for three reasons:

- First, PPI advances a novel legal argument – that Securus, a utility, should not be governed by the utility-specific provision of the Code, but instead by a provision that applies only when no other specific provision exists (despite the existence of a specific provision that does apply to Securus) – and offers no authority in support, because none exists.

- Second, and relatedly, PPI's argument violates one of the most fundamental axioms of statutory interpretation – that the terms of a specifically applicable statutory provision control over the terms of a generally applicable statutory provision governing the same topic.

- Third, PPI's request is improper, raised as it is in a Board proceeding involving the tariff review of a single provider in a competitive industry sector with at least eight other Iowa providers (based on the Board tariff dockets).

I. PPI's Suggestion that Iowa Code § 556.9 is Applicable is Unsupported and Incorrect.

PPI's reconsideration requests the Board to find that unused funds on prepaid calling cards are subject to the state unclaimed property statute under § 556.9. PPI cites nothing in support of this argument, however, and does not even suggest which of the specific subsections of § 556.9 allegedly apply. This is perhaps because, as the Board has already noted, the state's unclaimed property statute has a section that is specifically applicable to monies held by utilities – § 556.4 – and Securus is exactly that.

Further, § 556.9 (referred to by PPI as a "catch-all") is, by its very terms, only applicable to "intangible personal property, ***not otherwise covered by this chapter***".[3] As the monies held by a utility ***are*** covered by the chapter, in their own industry-specific section, § 556.4, there is simply no basis for the Board to adopt PPI's argument.

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[2] *In re Securus Technologies, LLC*, Docket No. TF-2019-0033, Prison Policy Initiative's Motion for Partial Reconsideration May 10, 2021), at 1.

[3] Emphasis added.

Moreover, PPI's interpretation violates the interpretive maxim that the specific controls the general: where the legislature has addressed the utilities industry specifically, it is improper to assume more general provisions apply absent a specific reference.[4] In that case, a dispute between a bank and widow over foreclosure on property was potentially governed by different statutory provisions, one specific and one broader. The Court discussed the issue of statutory construction in terms closely analogous to those in the present case (including the reference to the "except as otherwise provided. . ." language):

> Finally, section 633.350 is a more general provision, applicable to both testate and intestate estates concerning title transfer and the personal representative's ability to control property; by contrast, section 633.211 ***specifically identifies the property an intestate surviving spouse "shall receive." To the extent "there is a conflict or ambiguity between specific and general statutes, the provisions of specific statutes control.***" *Goergen v. State Tax Comm'n*, 165 N.W.2d 782, 787 (Iowa 1969); *see also* Iowa Code § 4.7; *Griffin Pipe Prods. Co. v. Bd. of Review*, 789 N.W.2d 769, 775 (Iowa 2010). As Maureen points out, section 633.350 also begins with the caveat that it applies "[e]xcept as otherwise provided in this probate code." The legislature realized ***other, more specific probate provisions qualified the language of section 633.350 and clarified that section 633.350 deferred to these provisions***. Section 633.211 specifically governs an intestate surviving spouse's statutory dower share. This further demonstrates the legislature intended section 633.211, not section 633.350, to define the surviving spouse's statutory dower share. [5]

Further, PPI appears to be arguing that the legislature intended § 556.4 to apply only to the portion of a utility's unclaimed property specifically described within it, with § 556.9 applying to all of the utility's unclaimed property that is not specifically described in § 556.4. Put differently, PPI is asking the Board to find an internal cross-reference between these two sections, despite the lack of any such relationship in the language of the statute itself. This argument, too, is unsupported by any authority. More to the point, it ignores the plain truth that the legislature knows how to describe internal relationships between statutory provisions, when it

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[4] *See Freedom Financial Bank v. Estate of Boesen*, 805 N.W.2d 802, 815 (Iowa 2011).

[5] *Id*. (emphasis added).

is the goal of the legislature that such internal relationships exist. For example, § 556.2 regarding banking and financial organizations includes cross references to § 556.13; § 556.13 cross references to § 556.11; which cross references to §§ 556.3A and 556.12, which in turn cross references to § 556.2.

Critically, ***none of the industry-specific unclaimed property statutes cross reference to § 556.9***. As such, PPI's argument here is effectively this: Despite the fact that the legislature made deliberate choices on what properties held by utilities are covered by the statute, the Board should ignore that and create an internal cross-reference between § 556.4 and § 556.9, even though the legislature – given the opportunity to create those cross-references it deemed appropriate, including those specifically related to utility-held unclaimed property – declined to do so. This argument is both unsupported and, if adopted, would fail to give effect to the definitional choices made by the legislature.

> [L]egislative intent is expressed by what the legislature has said, not what it could or might have said. When a statute's language is clear, we look no further for meaning than its express terms. ***Intent may be expressed by the omission***, as well as the inclusion, of statutory terms. Put another way, ***the express mention of one thing implies the exclusion of other things not specifically mentioned***.[6]

PPI's approach to the statute cannot be supported by the plain text, or by proper statutory construction. Here, the choices the legislature made when it established a specific section applicable to utilities cannot be undone by resort to a general provision. The Board should reject PPI's request for partial reconsideration.

II. Even if PPI's Argument Had Merit, this is Not an Appropriate Time or Place to Raise the Argument.

PPI cites to no cases supporting its interpretation, because there are none. What PPI seeks is for the Board to rule in a case of first impression. The Board, however, is not the agency

[6] *Hawkeye Land Co. v. Iowa Utils. Bd.*, 847 N.W. 199, 210 (Iowa 2014) (*citing State v. Beach*, 630 N.W.2d 598, 600 (Iowa 2001))(emphasis added).

tasked with interpreting or implementing Iowa Code chapter 556 – that is the Office of the Treasurer of Iowa. *See* § 556.19 (Treasurer prescribed forms to claim deposited funds); §556.20 (Treasurer makes determinations regarding claims); § 556.23 (empowering Treasurer to review records of persons it believes should have reported funds); § 556.24 (empowers Treasurer to compel delivery of abandoned property); § 556.26 (instructing Treasurer to promulgate rules to implement chapter). Moreover, to determine uncertain rights under a statute, the proper vehicle is a request for declaratory judgment from a court. The Board should decline PPI's request in recognition of the limits of its scope and to respect the scope of other agencies and branches – and in respect of the plain language of the statute. The Board should not stretch for a new application of a law that is not assigned to the Board to interpret or implement and is not generally within the Board's unique expertise.

Even if the Board were inclined to delve into this issue, the review of a single company's tariff is not an appropriate vehicle. PPI raises a matter of the interpretation of a statute of uniform application. There is no reason why this issue – which applies not only to every ICS provider, but to every telecom company registered with the Board – should be addressed exclusively in Securus' tariff review docket to be applicable exclusively to Securus. Doing so risks unfair, discriminatory, or inconsistent piecemeal application.[7] If the Board wants to pursue

[7] This has, unfortunately, already been the case in the separate tariff dockets, particularly with regard to prepaid accounts. Global Tel*Link ("GTL"), in Docket No. TF-2019-0039, made the argument that the unclaimed property statute did not apply to AOS providers at all, because the Board did not create a set of regulations for applying it to telecom providers. The Board accepted that argument stating, "The Board does not consider the forfeiture rules in Iowa Code § 556.4 for utility accounts to be necessary." *See* In Re Global Tel*Link Corporation, TF-2019-0039, Order Requiring Revised Tariff and Denying Confidential Treatment (Dec. 11, 2020) ("GTL Order"), at pp. 5-6. The Board then decided to require Securus and Reliance Telephone of Grand Forks, Inc. ("Reliance") to separately address whether this statute was applicable to their prepaid accounts. *See In re Reliance Telephone of Grand Forks, Inc.*, Docket No. TF-2019-0026, Order Approving Tariff and Requiring Revised Tariff Sheet (Mar. 25, 2021) ("Reliance Order"), at 4. During this time, the Board approved five other tariffs without raising the question, including one (ICSolutions) that appears to allow forfeiture after a particularly short refund period, with no mention of unclaimed funds being tendered to the state. *See In re Inmate Calling Solutions, LLC*, Docket No. TF-2019-0030, Iowa Tariff No. 1 §3.4.1.B (Feb. 16, 2021). .

With the exception of ICSolutions, the refund policies for prepaid accounts are substantially identical among the ICS providers by allowing consumers to seek refunds at any time. But only a handful of ICS providers, including

this matter, it should do so through a docket in which all telecom providers are parties and not just ICS providers or Securus alone. If PPI wants to pursue this, they should be required to properly and fully brief this issue with the necessary support so the industry and the Board can better understand whether its arguments have any merit at all. Even then, the better forum would be to take the issue up with the State Treasurer or in a declaratory action in court. Absent any better evidence, however, as Securus demonstrates above, the arguments appear entirely without support.

III. The Board Should Clarify That § 556.4 Does Not Apply to Securus

Further, in recognition that the Board has already treated various providers, including Securus, in unequal ways with respect to its interpretation of § 556.4 of the unclaimed property statute, Securus requests the Board clarify that – as it decided with GTL – that § 556.4 does not apply to Securus. In its response GTL reviewed the reasoning for why § 556.4 does not apply to the prepaid accounts held by any AOS company:

> 199 IAC 19.4(8), delineating the customer relations requirements for gas utilities, directs covered entities to "maintain a record of deposit information for at least two years or until such time as the deposit, together with accrued interest, escheats to the state pursuant to Iowa Code section 556.4, at which time the record and deposit, together with accrued interest less any lawful deductions, shall be sent to the state treasurer pursuant to Iowa Code section 556.11." Other sections of the Iowa Administrative Code sets forth identical mandates for electric companies (199 IAC 20.4(8)), water companies (199 IAC 21.4(2)(g)), and sanitary sewage utilities (199 IAC 21.12(2)(g)). Conspicuously absent from this list are AOS companies, particularly given the Board's recent and comprehensive revision to 199 IAC Chapter 22.4."[8]

Securus, have been required to address the application of unclaimed property statutes and the Board has provided two different interpretations of the same statute, in GTL saying it did not apply, and in Securus (at least with regard to AdvanceConnect™ accounts) finding that it does.

[8] *In re Global Tel*Link Corporation*, TF-2019-0039, Response to Comments of Prison Policy Initiative, Inc. (Oct. 26, 2020), at 2-3.

On the basis of this argument, the Board made the decision regarding this law of uniform application that "[t]he Board does not consider the forfeiture rules in Iowa Code § 556.4 for utility accounts to be necessary."[9]

Securus made substantially identical arguments to GTL's:

> First, it is important to note that the Board has issued rules addressing the application of Iowa Code § 556.4 to various utilities in nearly identical terms,[10] but the Board has not issued similar rules applicable to telecommunication utilities generally or specifically alternative operator services ("AOS") companies. The Board recently revised its rules applicable to telecommunications utilities,[11] in which it specifically reviewed the rules applicable to AOS companies and added specific provisions applicable to ICS providers.[12] 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).[13]

The Board disagreed with Securus' additional argument that it did 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), and (despite agreeing that § 556.4 was not necessary to precisely these types of prepaid accounts) required Securus to report and remit unclaimed balances under § 556.4.[14] However, in reaching this conclusion the Board did not address the arguments made by GTL and Securus that the current structure of the Board's rules indicates that § 556.4 is not being applied at all to telecommunications companies (including AOS companies).

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9 *GTL Order*, at 5-6.

10 *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).

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

12 199 IAC 22.6(7).

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

14 *Board Order*, at 6.

The refund policies of GTL's AdvancePay® Accounts and Securus' AdvanceConnect™ Accounts are substantially identical. In both, the customer may seek a refund of their unused balance at any time upon request to the ICS provider. This appears to also be the same refund policy of all ICS providers except ICSolutions (which apparently will be allowed to forfeit and retain unclaimed balances without an option of refund after seven months from the date of purchase/sale[15]).

Iowa Code § 556.4 is a law of uniform application and should be applied consistently across all telecommunications companies (including all AOS companies) and certainly between direct competitors in the question of substantially identical policies. The progress of these ICS tariff review dockets has resulted in the same law of uniform application being interpreted in two different ways on exactly the same issue (i.e., in one docket § 556.4 apparently does not apply at all to any AOS company and in another docket the same applies to a specific AOS company). The Board required the same safeguards regarding notifying consumers of refund policies in GTL's tariff as was required for all the other ICS tariff, and if those safeguards are sufficient that § 556.4 is unnecessary in connection with GTL AdvancePay® Accounts, then those safeguards should be sufficient for reaching that same conclusion in all prepaid ICS accounts (including Securus' AdvanceConnect™ Accounts).

As it did in GTL's docket, the Board should clarify its interpretation of § 556.4 that the statute is unnecessary to ICS prepaid accounts with open-ended refund policies.[16] If the Board wants to then revisit that issue in a general rulemaking applicable to all telecommunications carriers, that would be the more appropriate vehicle to ensure fairness and consistency.

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[15] Inmate Calling Solutions, LLC Iowa Tariff No. 1, Sec. 3.4.1.B.

[16] At this point it appears that the Board has addressed this question of the application of § 556.4 to only one other ICS provider, Reliance. *Reliance Order*, at 4.

Respectfully submitted this 24th day of May, 2021.

By: */s/ Bret A. Dublinske*

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ATTORNEYS FOR SECURUS TECHNOLOGIES, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 24th day of May, 2021, he had the foregoing document electronically filed with the Iowa Utilities Board using the EFS system which will send notification of such filing (electronically) to the appropriate persons.

/s/ Bret A. Dublinske
Bret A. Dublinske