STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

IN RE: **SECURUS TECHNOLOGIES, LLC**	**DOCKET NO. TF-2019-0033**

PRISON POLICY INITIATIVE'S REPLY IN SUPPORT OF MOTION FOR PARTIAL RECONSIDERATION

Prison Policy Initiative, Inc. ("PPI") files this reply for the limited purpose of addressing misleading arguments made in Securus's Resistance to PPI's Motion for Partial Reconsideration and Request for Clarification, filed on May 24, 2021 (the "Response"). Securus's Response is constructed entirely upon an unsustainable mischaracterization of Iowa's unclaimed property law, and the Board should reject Securus's attempts to retain unspent customer funds.

As the Board is aware, PPI's motion for reconsideration relates to the treatment of prepaid customer funds held by Securus. In its Response, Securus blithely argues that Iowa Code § 556.4 is the exclusive statute governing such funds because this statute is "a section that is specifically applicable to monies held by utilities." Resp. at 2. This statement is inaccurate. Section 556.4 does not apply to all "monies" held by utilities. By its own plain text, this statute applies only to two types of funds held by utilities: (1) deposits made by subscribers, and (2) amounts that the utility has been ordered to refund to customers. Iowa Code § 556.4(1) and (2). The Board has already ruled that prepaid funds represented by tangible calling cards are not deposits made by subscribers for purposes of § 556.4(1), and subsection (2) appears to be inapplicable because there is no order requiring customer refunds.

Securus's argument that § 556.4 is the only section of the unclaimed property law that governs utilities is vitiated by the unambiguous text of the rest of the statute. There simply is nothing in the act that says utilities are exempt from every section other than § 556.4. PPI argues that § 556.9 applies to prepaid calling card funds, and our position is supported by the text enacted by the legislature. Specifically, § 556.9 applies to "[a]ll intangible personal property, not

otherwise covered by this chapter." Iowa Code § 556.9(1)(a). The chapter in question defines "property" as, among other things, a "credit balance, customer overpayment, gift certificate, security deposit, refund, [or] credit memorandum." Iowa Code § 556.1(12)(a). This language clearly states that deposits and refunds (i.e., the subject of § 556.4) are different from credit balances. What are unused funds on prepaid calling cards other than credit balances or, perhaps, deposits made by *non*-subscribers? Because credit balances or deposits made by non-subscribers are not governed by § 556.4, these types of funds are "intangible personal property not otherwise covered by this chapter," thereby implicating § 556.9.

Securus's citation to the interpretive maxim of specific versus general statutory terms (Resp. at 3) is without merit because this maxim is a cannon of statutory *interpretation*. But the exercise of statutory interpretation (including resort to maxims such as those cited by Securus) is only appropriate if the statute in question is ambiguous.[1] Here, the ambiguity has been resolved—unspent funds represented by prepaid cards could arguably be treated as deposits made by subscribers for purposes of § 556.4, but the Board ruled that such funds are not deposits made by subscribers. PPI does not seek reconsideration of that decision. Thus, the remaining question is whether such funds are credit balances or deposits made by non-subscribers. PPI asserts that unspent calling card funds are credit balances or deposits made by non-subscribers, in which case § 556.9 applies without the slightest hint of ambiguity. Securus, on the other hand, invites the Board to read limiting terms into the statute that do not exist—an exercise clearly foreclosed by Iowa law.[2] Securus's confusing arguments regarding "internal cross references" (Resp. at 4) are a red-herring—Iowa courts have long emphasized the importance of reading

[1] *Clarion Ready Mixed Concrete Co. v. Iowa State Tax Comm'n*, 252 Iowa 500, 507 (1961) ("We have continually said that when statutes are clear and unambiguous they are not subject to interpretation by the courts. The only legitimate purpose of statutory construction is to ascertain the legislative intent, and when the language is so clear, certain and free from ambiguity and obscurity that its meaning is evident from a mere reading, then there is no need for construction." (citations omitted)); *Dingman v. City of Council Bluffs*, 249 Iowa 1121, 1126 (1958) ("A statute is not to be read as though open to construction as a matter of course. Statutory construction may be properly involved only when the legislative acts contain such ambiguities or obscurities that reasonable minds may disagree or be uncertain as to their meaning.").

[2] *See e.g.*, *Mallory v. Jurgena*, 250 Iowa 16, 21 (1958) ("When the meaning of a statute is clear we will not amend it by judicial edict, nor add words creating a new meaning.").

statutes in their entirety, and none of these judicial rulings have ever required the presence of an express cross-reference.[3]

Moreover, Securus's claim that the Board lacks jurisdiction to decide this question (Resp. at 4-5) is similarly unimpressive. None of the statutes cited by Securus say that the state treasurer is *exclusively* in charge of interpreting chapter 556. The relevant statute here is Iowa Code § 476.91(2), which states that alternative operator services companies "shall be subject to *all requirements* and sanctions provided in this chapter" (emphasis added). One such provision contained in chapter 476 is the well-known requirement that any public utility's charges must be reasonable and just. Iowa Code § 476.8(1). Thus, the Board is clearly empowered to consider the reasonableness of Securus's seizure of unspent customer funds. In conducting such a review, the Board must refer to the provisions of the unclaimed property law because to disregard the statute would be to put on regulatory blinders for no reasonable purpose. None of the authorities cited by Securus require the Board to ignore relevant law when reviewing tariffs.

Finally, and for the second time, PPI states that it does not oppose Securus's position that this matter should be addressed as part of a broader rulemaking that ensures uniform treatment of all carriers. *See* PPI Cmts Re: Revised Tariff (Apr. 12, 2021) at 2.

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Respectfully submitted,

PRISON POLICY INITIATIVE, INC.

/s/ Peter Wagner

By Peter Wagner, Executive Director
MA Bar No. 662207, *admitted pro hac vice*
69 Garfield Ave., 1st Floor
Easthampton, MA 01027
(413) 527-0845
pwagner@prisonpolicy.org

[3] *See Dearinger v. Peery*, 387 N.W.2d 367, 369 (Iowa Ct. App. 1986) ("To discern [legislative] intent, it is necessary to examine the whole act of which the statutory provision in question is a part.").