

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE:

SECURUS TECHNOLOGIES, INC.

DOCKET NO. TF-2019-0033

ORDER DENYING MOTION TO COMPEL DISCOVERY, DENYING MOTION FOR RECONSIDERATION, AND DENYING REQUEST FOR CLARIFICATION

BACKGROUND

On March 2, 2021, the Utilities Board (Board) issued an order approving Securus Technologies, Inc.'s (Securus) tariff, subject to revisions to specific tariff sheets and explanations. Among other things, Securus was required to explain whether it remits unused funds in inmate calling accounts to the state treasurer pursuant to Iowa Code § 556.4. On April 1, 2021, Securus filed revised tariff sheets and corresponding explanations.

The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; Global Tel*Link Corporation; and Prison Policy Initiative (PPI) are parties to this proceeding.

On April 6, 2021, OCA filed comments regarding Securus' April 1, 2021 revised tariff sheets and explanations. OCA showed that Securus had negotiated an ancillary fee lower than \$3.00 with some correctional agencies. Because of this, OCA argued that the Board should require Securus to lower its \$3.00 standard ancillary fee.

On April 12, 2021, PPI also filed comments regarding Securus' April 1, 2021 revised tariff sheets and explanations. PPI argued that Securus improperly retains its

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customers' unspent funds. PPI suggested that one year after the last activity on a customer's prepaid account, the account should be deemed terminated and the funds should be handled in accordance with Iowa Code § 556.4(1).¹ PPI further argues that unspent funds on prepaid calling cards must be remitted to the state treasurer under either Iowa Code § 556.4 or § 556.9.²

On April 26, 2021, the Board issued an order approving Securus' revised tariff sheets. At that time, the Board chose not to further investigate the reasonableness of Securus' \$3.00 ancillary fee. Regarding the remittance of unused funds, the Board determined that AOS providers would not be required to remit unused funds on prepaid calling cards to the state treasurer pursuant to Iowa Code § 556.4(1). The Board did, however, require the remittance of unused funds on a customer's AdvanceConnect Account to the state treasurer's office after the account has been closed for one year.

On May 5, 2021, OCA filed a motion to compel discovery. Through its motion to compel, OCA seeks to have Securus respond to OCA's data request No. 5, which pertains to contracts Securus has with correctional agencies that have negotiated ancillary fees lower than \$3.00.

On May 10, 2021, PPI filed a motion for partial reconsideration regarding Iowa Code § 556.9 as it applies to unspent funds on Securus customers' prepaid cards.

¹ Iowa Code § 556.4(1) provides, "[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" is presumed abandoned.

² Iowa Code § 556.9(1)(a) provides, "[a]ll intangible personal property, not otherwise covered by this chapter, including any income or increment earned on the property and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than three years after it became payable or distributable is presumed abandoned."

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On May 19, 2021, Securus filed a resistance to OCA's motion to compel and attached the affidavit of Michael S. J. Lozich, Senior Corporate Counsel and Director of Regulatory and Governmental Affairs for Securus, to attest to the burden of complying with OCA's data request.

On May 21, 2021, OCA filed a reply to Securus' resistance to its motion to compel. On May 24, 2021, Securus filed a resistance to PPI's motion for partial reconsideration. On May 27, 2021, PPI filed a reply to Securus' resistance to its motion for partial reconsideration. On June 9, 2021, Securus filed a surreply regarding OCA's motion to compel.

MOTION TO COMPEL

A. OCA's Motion to Compel and Securus' Responses

In its motion to compel, OCA sets out the data request sent to Securus on April 5, 2021. The data request is as follows:

Referencing your filing dated April 1, 2021, page 7, please identify each correctional agency that has negotiated or required a cap lower than \$3.00 on the ancillary charge for a single call.

On April 12, 2021, Securus responded:

There are no facilities or agencies in Iowa that have negotiated or required a cap lower than \$3.00. To the extent the request seeks a response regarding facilities beyond the jurisdiction of this docket, Securus objects to such a request as overbroad, irrelevant, and unduly burdensome.

On April 13, 2021, OCA responded to Securus. In its response, OCA argues that the law favors full access to relevant information. OCA further argues that relevancy does not stop at the state's borders, and the contracts Securus has with correctional agencies, which have negotiated single-call ancillary fees lower than \$3.00, are relevant in determining whether Securus' ancillary fees are just and reasonable. OCA also

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rejects Securus' assertion that its data request is overly burdensome; some burden is to be expected in the furtherance of any legitimate inquiry.

OCA states that it has complied with 199 Iowa Administrative Code (IAC) 7.15(5) by making a good faith attempt to resolve the discovery issue with Securus, which included a phone call with counsel for Securus on April 19, 2021. In support of its position, OCA also states that neither the Federal Communications Commission (FCC) nor the Board has given any inmate calling service provider approval for a \$3.00 single-call ancillary fee in perpetuity. OCA further states that the FCC has an inquiry currently outstanding regarding ancillary charges, and the Board's approval of the \$3.00 ancillary fee was made subject to complaint and further investigation.

OCA argues that because some correctional agencies have negotiated single-call ancillary fees lower than \$3.00, that suggests \$3.00 may be too high. OCA seeks to determine which correctional agencies have ancillary fees lower than \$3.00, why those agencies have lower fees, and the magnitude of variation.

On April 27, 2021, Securus responded. In its response, Securus argues that, while discovery may be liberally construed, it must also be proportional. Securus further argues that contracts with correctional agencies in different jurisdictions are not relevant, and jurisdictions have different legal regimes, different sized incarceration facilities, and different contract and market histories. Securus also argues that OCA's data request is inappropriate at this time because there is no pending contested case, as the Board has already approved Securus' tariff.

In its May 19, 2021 resistance, Securus states that its tariff revisions, including the \$3.00 single-call ancillary fee, have been approved by the Board as recently as April 12, 2021. Securus also states that discovery in Board proceedings is not unlimited

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and cites several examples of the Board denying motions to compel discovery. Securus argues that OCA's data request does not overcome the standards of proportionality as is required by the Iowa Rules of Civil Procedure 1.503(8)(c). In regard to relevancy, Securus states that the contracts in question are with correctional facilities located in other jurisdictions, and, without full context, would not be useful to the Board in determining the reasonableness of the \$3.00 single-call ancillary fee.

In the affidavit attached to Securus' May 19, 2021 resistance, Mr. Lozich asserts that complying with OCA's data request would require the dedication of Securus' limited personnel for several weeks and would be a substantial hardship on the company.

In its May 21, 2021 reply, OCA argues that Securus is a company of considerable means, and, therefore, the burden to comply with the data request is lessened. OCA suggests that complying with its data request would not overly burden Securus, and Securus' choice to employ a small number of in-house legal staff is not a basis to avoid complying with a data request.

In its June 9, 2021 surreply, Securus reiterates the guiding factors of discovery under the Iowa Rules of Civil Procedure: proportionality and relevance. Securus also reiterates that the Board has just recently approved the \$3.00 single-call ancillary fee.

B. Board Analysis

Iowa Code § 17A.14 provides that irrelevant, immaterial, or unduly repetitious evidence should be excluded, and it states an agency's findings shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Iowa Code § 476.91(2) provides that all intrastate telecommunications services provided by AOS companies to end-use customers, using

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other-than-ordinary residence or business telephones, are subject to the jurisdiction of the Board and shall be rendered pursuant to tariffs approved by the Board.

The issue before the Board is whether contracts Securus has with correctional agencies outside of Iowa, which have negotiated single-call ancillary fees lower than \$3.00, are relevant or appear to be reasonably calculated to lead to the discovery of admissible evidence in determining the justness and reasonableness of Securus' \$3.00 single-call ancillary fee for intrastate calls in Iowa. Both parties agree that the topic of \$3.00 ancillary fees is an issue that applies to all inmate calling service providers, not just Securus. OCA states that it has only issued its data request on Securus because it is the only party that disclosed some correctional agencies it serves have negotiated ancillary fees lower than \$3.00.

The Board is not convinced that the ancillary fees negotiated by Securus with correctional facilities in other states are relevant to the Board's determination regarding ancillary fees charged for inmate calling services in Iowa. The fact that the Board has very recently approved Securus' tariff with the \$3.00 ancillary fee means that the Board has found that the \$3.00 fee is just and reasonable. Showing that Securus negotiated lower fees in other states and requesting the contracts for those lower fees is beyond what the Board considers relevant to reconsider that determination. The Board set the fee based upon the ancillary fees approved by the FCC and, in a recent FCC order, the FCC approved an interim single-call ancillary fee cap of \$6.95. The Board does not consider the FCC order sufficient to reconsider the \$3.00 fee approved, unless the fee is preempted by the FCC, which is consistent with the Board's determination that ancillary fees charged in other states is not relevant to the charges approved by the Board for Securus.

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The Board finds that the motion to compel should be denied as it is not requesting information that is relevant, is over broad, and, in this instance, does not appear to be reasonably calculated to lead to the discovery of admissible evidence. By denying the motion, the Board is not accepting the argument by Securus that it would be a substantial burden for Securus to produce the contracts, if the Board considered them relevant to this docket or a future docket before the Board.

MOTION FOR PARTIAL RECONSIDERATION AND REQUEST FOR CLARIFICATION

A. PPI's Motion to Compel and Securus' Request for Clarification

In its motion for partial reconsideration, PPI asks the Board to address whether Iowa Code § 556.9 applies to unspent money on Securus customers' prepaid cards. In its resistance to partial reconsideration, Securus presents two arguments: (1) the legislature intended § 556.4 to be the exclusive section pertaining to utilities in chapter 556; and (2) interpreting Iowa Code chapter 556 is the exclusive job of the Office of the State Treasurer.

In its reply, PPI argues that §§ 556.4 and 556.9 are unambiguous. PPI states that “[b]ecause 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 [chapter 556],’ thereby implicating § 556.9.” (quoting § 556.9).

In addition to responding to the motion for partial reconsideration, Securus requests the Board clarify that § 556.4 does not apply to prepaid accounts held by any AOS company. Securus argues that it has not been treated fairly with respect to the Board's implementation of § 556.4. Securus states that Global Tel*Link has not been

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required to comply with § 556.4 and points to *In re: Global Tel*Link Corp.*, Docket No. TF-2019-0039, at 5-6 (Dec. 11, 2020), as evidence of this claim.

B. Board Analysis

The Board has reviewed each AOS tariff based upon the information and analysis of the proposed tariff in each docket. Each docket is a separate proceeding, and the Board's decisions may be different based upon the information presented in each docket. Making different decisions with regard to specific issues raised in some dockets and not others does not make the procedure and decision unfair as claimed by Securus. Just because some proceedings developed in such a way that an inmate calling service provider may have had to specifically address forfeiture of unused customer balances and others did not, does not mean any inmate calling service providers can avoid complying with the requirements of Iowa Code chapter 556.

Both PPI and Securus agree that the remittance of unspent funds from either a customer's prepaid account or prepaid calling card is a matter of general concern. Both PPI and Securus suggest that addressing these issues would be more appropriately done through a rule making, as that would ensure that all inmate calling service providers are treated equally with respect to chapter 556.

The Board does not find it necessary or within its jurisdiction to undertake a rule making that addresses how a utility complies with chapter 556. Iowa Code § 556.26 states "the state treasurer is hereby authorized to make necessary rules to carry out the provisions of this chapter." Additionally, the state treasurer has an entire chapter within its rules governing unclaimed property. See 781 IAC 9. The Board is not the agency tasked with interpreting Iowa Code chapter 556. The Board's role in the process of remitting unclaimed property is to collect the information provided by utilities and

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transmit that information to the state treasurer. To the extent the parties in this proceeding feel ambiguity remains regarding chapter 556, they are encouraged to seek a declaratory order or rule making before the state treasurer pursuant to Iowa Code chapter 17A.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The motion to compel discovery filed by the Office of Consumer Advocate, a division of the Iowa Department of Justice, on May 5, 2021, is denied.
2. The motion for partial reconsideration filed by Prison Policy Initiative on May 10, 2021, is denied.
3. The request for clarification filed by Securus Technologies, Inc., on May 24, 2021, is denied.

UTILITIES BOARD

Geri Huser Date: 2021.06.25
13:12:43 -05'00'

Richard Lozier Date: 2021.06.28
17:10:58 -05'00'

ATTEST:

Anna Hyatt Date: 2021.06.29
09:13:05 -05'00'

Joshua J Byrnes Date: 2021.06.25
13:35:04 -05'00'

Dated at Des Moines, Iowa, this 29th day of June, 2021.