

-
-
-

21-12013

Public Utilities Commission of Nevada
Electronic Filing

Submitted: 5/3/2022 2:46:37 PM

Reference: eb7aedb2-c255-4b74-ad0d-150648f4ce7e

Payment Reference: 74-ad0d-150648f4ce7e

Filed For: Prison Policy Initiative

In accordance with NRS Chapter 719,
this filing has been electronically signed and filed
by: /s Stephen Raher

By electronically filing the document(s),
the filer attests to the authenticity of the electronic signature(s) contained therein.

This filing has been electronically filed and deemed to be signed by an authorized
agent or
representative of the signer(s) and
Prison Policy Initiative

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Rulemaking to Amend, Adopt, and/or Repeal
Regulations in Accordance with Senate Bill
387 (2021)

Docket No. 21-12013

**REPLY COMMENTS OF PRISON POLICY INITIATIVE
REGARDING DRAFT REGULATION**

Pursuant to the Procedural Order entered in the above-captioned proceeding on March 24, 2022 (the “Order”), Prison Policy Initiative (“PPI”) respectfully submits the following reply comments regarding the draft regulation continued in the Order. Opening comments concerning the draft regulation were filed by Commission staff and Securus Technologies, LLC (“Securus”). Staff’s comments consist of a concise statement of support for the draft regulation. PPI will focus this reply on addressing the numerous issues raised by Securus.

I. The Proposed Prepaid-Account Rule Protects Consumers and is a Valid Exercise of the Commission’s Power

Section 9 of the draft regulation contains a simple protection for inmate calling services (“ICS”) customers who maintain prepaid accounts with carriers. At PPI’s suggestion, the hearing officer included this rule in the draft regulation. The rule would require carriers to turn over unused customer prepaid funds to the state treasurer for administration under Nevada’s enactment of the Uniform Unclaimed Property Act (“UPA”).¹ Securus attempts to muddy the waters and needlessly multiply the issues in this proceeding by launching several attacks against this pro-consumer measure; but, a careful examination reveals that Securus has failed to make any arguments that justify abandoning the draft prepaid-account rule. We respond to Securus’s definitional, jurisdictional, and operational complaints in turn.

¹ Nev. Rev. Stat. § 120A.010, *et seq.*

A. The Draft Rule’s Definition of “Prepaid Account” Is Sufficiently Clear

The draft rule defines a prepaid account as “the balance of any money remitted by a customer to an inmate calling service supplier to pay for future calls originating in Nevada correctional facilities, net of deductions for any lawful charges incurred by the account holder.”² Securus complains that this language “does not define a type of account, but rather defines the term as the balance in an account.”³ Securus fails to articulate how any ICS carrier or customer would be harmed by the current drafting nor does the company propose a better definition, as required by the Order.

Most definitions of an “account” acknowledge that, ultimately, an account is simply an *amount* that is owed by or to a given party. For example, a general legal definition of account is stated as “A detailed statement of debits and credits between parties to a contract.”⁴ The definition in the draft regulation fits perfectly under this framework: a detailed statement of debits and credits sums to a net amount due to or from a contractual party, which is just what the draft definition says. Another definition can be found in article 9 of the Uniform Commercial Code, which defines an account as “a right to payment of a monetary obligation.”⁵ Once again, the draft regulation is entirely consistent with this concept: under the prepaid-account rule, a consumer would possess a right to a refund (i.e., a payment) of their unused prepaid balance. Finally, the general (non-legal) definition of account is also consistent with the draft regulation: Webster’s Third New International Dictionary defines “account” as “a record of debit and credit entries chronologically posted to a ledger page from books of original entry to cover transactions involving . . . a particular person.”⁶ Again, the draft regulation is in harmony with this general-purpose definition.

² Order, Attch. A at 1 (Draft Regulation § 5).

³ Comments of Securus at 2 (Apr. 19, 2022).

⁴ Black’s Law Dictionary at 18 (8th ed. 2004).

⁵ Nev. Rev. Stat. § 104.9102(1)(b) (Nevada’s enactment of Uniform Commercial Code § 9-102(a)(2)).

⁶ Webster’s Third New Int’l Dictionary at 12 (2002)

If Securus finds fault with these concepts of basic accounting, then it could have proposed an alternate definition in its comments, as parties were required to do under the terms of the Order.⁷ Instead of constructively engaging in this process and proposing better language, Securus claims that a pretended definitional flaw is reason to forgo this type of consumer protection entirely. This position is procedurally and substantively flawed, and the Commission should disregard the company's complaints.

B. The Draft Prepaid-Account Rule is Pro-Consumer, Solidly Within the Commission's Jurisdiction, and Consistent with the UPA

Securus attempts to manufacture unnecessary confusion about the operation of the UPA in order to make several unpersuasive attacks against the Commission's power to promulgate the prepaid-account rule. In reality, the statutory language in question is quite straightforward. The relevant provision of the UPA states as follows:

120A.500. Presumption of abandonment

1. Except as otherwise provided in [inapplicable subsections], property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

* * *

(I) A deposit or refund owed to a subscriber by a utility, 1 year after the deposit or refund becomes payable.⁸

Securus erects numerous straw-man arguments claiming that the Commission cannot possibly require ICS carriers to comply with this law. We will explain Securus's errors by breaking down this simple statute into its constituent phrases and addressing each component separately.

1. "A . . . refund owed . . . by a utility" – The Commission Has Ample Jurisdiction to Promulgate the Prepaid-Account Rule

Securus launches two meritless attacks on the Commission's jurisdiction. First, Securus claims that "the Commission does not have the authority to determine whether property is presumed abandoned for purposes of NRS Chapter 120A, nor does the Commission have the authority to determine when unclaimed property presumed abandoned is to be turned over to the

⁷ Order at 2.

⁸ Nevada Revised Statute 120A.500.

State Treasurer for administration under NRS Chapter 120A.”⁹ This argument misconstrues the nature of both the UPA and the draft prepaid-account rule. As the statutory language indicates, the UPA expressly covers amounts “owed to a subscriber *by a utility*” (emphasis added). The law defines a “utility” as, among other things, “any person who owns or operates for public use any plant, equipment, real property, franchise or license for the transmission of communications.”¹⁰ As the Commission need not be reminded, it is *the* Nevada agency charged with supervising and regulating the operation and maintenance of public utilities, including telecommunications utilities.¹¹

The draft prepaid-account rule clarifies *when* specific amounts are due and payable to utility customers. When the UPA speaks of “refunds owed by a utility,” the next logical question is: which Nevada agency is empowered to determine when a utility owes a refund to its customer? Obviously, the Commission is the proper agency to make such a determination because it is the agency responsible for overseeing utilities. Securus’s claim that “the Legislature has given the responsibility of administration of unclaimed property and the interpretation of the Uniform Unclaimed Property Act . . . to the State Treasurer and not to separate state agencies”¹² is both off-point and misleading. It is off-point because the draft prepaid-account rule does not purport to set forth rules for administration of the UPA—it clarifies when utilities subject to the Commission’s jurisdiction must refund money to customers. Once the due-date for the refund is established, the remaining UPA provisions fall into place and the Commission’s work is done. How utilities turn over money to the Treasurer and what happens after the Treasurer receives such funds are questions for the Treasurer, and the prepaid-account rule does not say otherwise. Securus’s argument is misleading because even though the UPA does delegate rulemaking authority to the Treasurer, that grant of power is not exclusive.¹³

⁹ Cmts of Securus at 10.

¹⁰ Nev. Rev. Stat. § 120A.120.

¹¹ Nev. Rev. Stat. § 703.150.

¹² Cmts of Securus at 10.

¹³ Nev. Rev. Stat. § 120A.140.

Securus seems to believe that once the phrase “unclaimed property” is uttered, every Nevada governmental agency except the Treasurer is powerless to speak. But this is not accurate as a matter of practice. Both the Attorney General and Commissioner of Financial Institutions have issued rules requiring entities subject to their power to comply with the UPA.¹⁴ The draft rule in this proceeding thus takes the same approach already used by Nevada’s top law enforcement officer and banking regulator.

Securus’s second jurisdictional attack claims that the draft prepaid-account rule “appears to exceed the Commission’s authority to adopt regulations for the procedures set forth in Senate Bill (‘SB’) 387.”¹⁵ Once again, this argument rests on a foundation of legal error. Senate Bill 387 directs the Commission to “adopt regulations . . . [l]imiting the . . . fees that providers may charge users of inmate calling services in a matter consistent with any limitations [contained in federal law].”¹⁶ Under Nevada law, “[w]hen a statute uses words which have a definite and plain meaning, the words will retain that meaning unless it clearly appears that such meaning was not so intended.”¹⁷ In the case of SB 387, the word “fee” has a well-established plain-language meaning: “a sum paid or charged for a service.”¹⁸ When ICS customers fund a prepaid account, they provide carriers with a sum of money to be used as payment for communications services in

¹⁴ See Nev. Admin. Code § 671.075(5) (“If money in a custodial or trust account of a [licensed money-transmitter] becomes presumed abandoned pursuant to NRS 120A.400, the licensee shall comply with the provisions of chapter 120A of NRS with respect to the money.”); Nev. Atty. Gen. Opinion No. 2021-01, at 2 (Jul. 27, 2021) (“If . . . money [deposited with a court in an interpleader action] is not claimed by the owner within one (1) year of [the date when the rights of the title company have been adjudicated an the answer period has elapsed], the property is presumed abandoned per NRS 120A.500(1)(j). Once property is presumed abandoned, it must be transferred to the Unclaimed Property Division [of the Treasurer’s Office].”).

¹⁵ Cmts of Securus at 8.

¹⁶ SB 387 § 5(1)(c).

¹⁷ *Nevada v. State of Nev. Employees Ass’n*, 102 Nev. 287, 289 (1986) (per curiam); see also *Dezzani v. Kern & Assocs*, 134 Nev. 61, 64 (“To determine legislative intent, we first consider and give effect to the statute’s plain meaning because that is the best indicator of the Legislature’s intent.”).

¹⁸ Merriam-Webster.com, “Fee,” available at <https://www.merriam-webster.com/dictionary/fee> (last accessed April 27, 2022); see also Am. Heritage Dict. at 313 (4th ed. 2001) (“A fixed sum charged for a privilege”); Black’s Law Dict. at 647 (8th ed. 2004) (“A charge for labor or services”); Webster’s Third New Int’l Dict. at 833 (2002) (“a charge fixed by law or by an institution . . . for certain privileges or services”).

the future. When a carrier seizes funds from an “inactive” account, it extinguishes the customer’s title to such funds and appropriates the money for the carrier’s own use. In other words, the carrier takes value (in the form of the account balance) from the customer and transfers the value to itself. This is economically indistinguishable from assessing a fee on the front end of a transaction: the only difference is one of timing. Accordingly, there is no ambiguity in the term “fee” as used in SB 387, and seizure of “inactive” funds (referred to by many as an inactivity fee) falls squarely within the common meaning of the word.¹⁹

Moreover, even if SB 387 did not specifically allow the Commission to protect customer prepaid accounts, Nevada’s general utility statutes directly and unambiguously grant such authority, and nothing in SB 387 limits that power—to the contrary, SB 387 *directs* the Commission to use its plenary powers to regulate ICS carriers’ terms and conditions of service. The legislature has provided that “[i]f customers are authorized by a specific statute to obtain a competitive, discretionary or potentially competitive utility service, [the Commission shall] take *any actions* which are consistent with the statute and which are necessary to encourage and enhance . . . a competitive market for the provision of that utility service to customers in this State.”²⁰ Telecommunications service is classified, by statute, as a competitive utility service.²¹ Senate Bill 387 grants the Commission the power to review and approve (or not approve) “the rates, *terms, and conditions* applicable to” inmate calling service.²² Accordingly, the legislature has directed the Commission to regulate terms and conditions of ICS.²³ Securus has not (and, as a practical matter, can not) shown that treatment of Nevada customers’ prepaid funds is not a

¹⁹ Even if SB 378’s usage of “fee” were ambiguous (which it is not), the Commission is empowered to craft regulatory definitions governing ambiguous terms in statutes it is directed to implement. *Dutchess Bus. Servs. v. Nev. State Bd. of Pharmacy*, 124 Nev. 701, 709 (courts will “defer to an agency’s interpretation of its governing statutes or regulations if the interpretation is within the language of the statute.”).

²⁰ Nev. Rev. Stat. § 703.025(2)(c) (emphasis added).

²¹ Nev. Rev. Stat. § 704.68861(1).

²² SB 387 § 4(1) (emphasis added).

²³ See also *Nevada Power Co. v. Eighth Judicial Dist. Court ex rel. County of Clark*, 120 Nev. 948, 957 (2004) (in addition to the power to regulate utility rates, the Nevada PUC “also has authority to regulate . . . practices of public utilities in accordance with various provisions in NRS Chapter 704.”).

“term or condition” subject to the Commission’s jurisdiction. In addition, protection of customer funds clearly constitutes an action to “encourage and enhance” competition in the ICS market. Prepaid-account seizures represent the epitome of anticompetitive behavior, since incumbents reap profits in exchange for doing nothing. This is precisely the type of activity the Commission can and should prevent through regulation.

2. “To a subscriber” – Securus Fails to Make Any Credible Argument that ICS Customers Are Not Utility Subscribers for Purposes of the UPA

The relevant portion of the UPA refers to “a deposit or refund owed to a subscriber by a utility.” PPI believes that ICS prepaid accounts could qualify as either deposits or refunds owed, but for purposes of this analysis, we will assume that they are governed by the “refund owed to a subscriber” provision of the statute. The point of the draft prepaid-account rule is to clarify *when* the refund is owed. But Securus feigns confusion because “[n]o argument has been made that a prepaid account holder falls within the category of a ‘subscriber’ under the statute.”²⁴ As previously noted, Nevada law is clear that undefined statutory terms are given their plain and ordinary meanings.²⁵ Plain and ordinary usage so conclusively treats the term “subscriber” as coextensive with the term “customer” that Securus bears the burden of showing a single reason why an ICS prepaid-account holder should *not* be considered a subscriber for purposes of the UPA’s utility-refund clause. Securus has not come close to carrying that burden. Cases from the U.S. Supreme Court down to state trial courts frequently use subscriber as a term for utility customer with such ease that no court has felt compelled to even explain the definition.²⁶

²⁴ *Id.*

²⁵ *Supra*, note 17 and accompanying text.

²⁶ *See e.g., Turner Broadcasting v. FCC*, 520 U.S. 180 (1997) (repeatedly using “subscriber” to describe cable television customers); *Ambassador v. U.S.*, 325 U.S. 317, 322 (1945) (“The Communications Act of 1934 recognizes that tariffs filed by communications companies may contain regulations binding on subscribers”); *State ex rel. Buffum Tel. Co. v. Pub. Serv. Comm.*, 199 S.W. 962 (Mo. 1917) (referring to paying customers who were not members of the mutual telephone co-op from which they obtained service as “subscribers”); *Limestone Rural Tel. Co. v. Best*, 155 P. 901 (Okla. 1916) (“The court also finds that the lines entered the exchange of the Pioneer Company at Tulsa, and for a specified charge of 50 cents every month for each subscriber they were furnished connections with all the Pioneer Company’s local subscribers”).

Numerous provisions of Nevada law also treat “subscriber” as a synonym for “customer” in various industries.²⁷

Perhaps most telling, Securus itself uses the term subscriber to refer to its own customers. Several of Securus’s tariffs either use the term “subscriber” as a defined term for customer²⁸ or describe prepaid accounts as a “presubscription service.”²⁹ Accordingly, there appears to be no serious dispute that the UPA’s reference to a utility “subscriber” encompasses any utility customer, including ICS customers.

3. “One year after the . . . refund becomes payable” – The Draft Rule is Entirely Compatible with the Period of Presumptive Abandonment under the UPA

In its final assault on the draft rule, Securus seeks to sow confusion and doubt over the chronology under the draft regulation, claiming the rule “imposes a completely different reporting and delivery schedule from that required by the [UPA].”³⁰ To address Securus’s fears, we will spell out the chronology and explain the congruity between the draft rule and the UPA in detail.

²⁷ See Nev. Rev. Stat. § 711.115 (for purposes of cable television law, “‘Subscriber’ means any person in this State who purchases video service.”); Nev. Admin. Code § 704.7521 (Public Utility Commission regulation stating “‘Subscriber’ means a customer of a telecommunication provider or a user of telecommunication service.”); Nev. Admin. Code § 695C.080 (for purposes of insurance law, “‘Subscriber’ means an employer or other person purchasing a health care plan for himself or herself or others”).

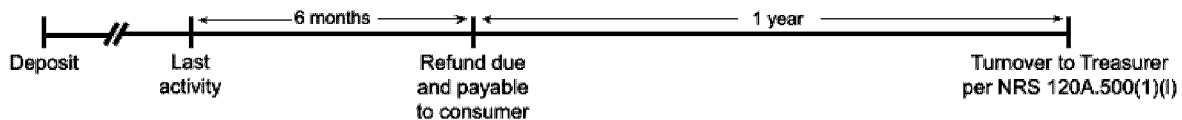
²⁸ Securus Ala. Pub. Serv. Comm. Tariff No. 1 § 1, at First Rev. Page No. 8 (Sep. 23, 2021) (“Subscriber – Used throughout this tariff to refer to Customers . . . that arrange for the Company to provide . . . telecommunication services.”), available at https://securustechnologies.tech/wp-content/uploads/2021/10/AL-Tariff-Securus-FCC_10-26-21-Current.pdf (last visited May 27, 2022).

²⁹ Securus Reg. Comm. of Alaska Interexchange Telephone Carrier Tariff Advice No. TA25-461 at First Rev. Sheet No. 7 (eff. Oct. 26, 2021) (defining “debit calling” as “A *presubscription* or comparable service which allows an Inmate, or someone acting on an Inmate’s behalf, to fund an account set up through a Provider that can be used to pay for Inmate Calling Services calls originated by the Inmate.” (emphasis added)), available at <https://securustechnologies.tech/wp-content/uploads/2022/01/AK-Securus-IXC-Tariff-Eff-1-1-22-Current.pdf> (last visited May 27, 2022); Securus Ill. Commerce Comm. Price List at 3 (Oct. 25, 2021) (substantially identical to Alaska provision), available at https://securustechnologies.tech/wp-content/uploads/2021/10/IL-Price-List-Securus-FCC_10-26-21-Current.pdf (last visited May 27, 2022); Securus Penn. Pub. Util. Comm. Tariff No. 1 § 1 at First Rev. Page No. 6.1 (Oct. 25, 2021) (substantially identical to Alaska provision), available at https://securustechnologies.tech/wp-content/uploads/2021/11/PA-Securus-Tariff-FCC_10-26-21_rev.pdf (last visited May 27, 2022).

³⁰ Cmts of Securus at 10.

As PPI has already shown, Nevada ICS carriers that seize prepaid funds (including Securus) do so after six months of account inactivity.³¹ In an attempt to accommodate industry practices, PPI used this time period as the basis for the prepaid-account rule: the inactivity period remains six months, but rather than taking customers' money after six months of inactivity, the draft rule requires that carriers issue a refund instead. The six-month mark is thus when the "refund becomes payable" for purposes of the UPA. Carriers would then have a year from that date to try and effectuate a refund. If such efforts are successful, then the customer is reunited with their money and the matter is concluded. Alternatively, if the carrier cannot complete the refund process then it must remit the funds to the unclaimed property administrator one year after the refund was first payable (not because of the prepaid-account rule, but because this is the timeline established by the UPA).

Graphically, this timeline can be represented as follows:



Thus, the timeline contained in the draft prepaid-account rule is based on—and consistent with—industry practice and the presumptive period of abandonment as set forth in the UPA.

The only way in which the draft prepaid-account rule could ever “deviate from” the UPA is if the UPA were amended in the future to impose a different period of abandonment. If it would allay Securus’s fears, PPI would support the following modified language, which under present law would yield the exact same results as the draft regulation (language added to the draft regulation is indicated by underlining, deletions are indicated by ~~striketrough~~):

Sec. 9. If a prepaid account has not been subject to any activity for six months, the competitive supplier providing inmate calling service shall refund the balance of the prepaid account to the account holder. If the competitive supplier providing inmate calling service is unable to locate the account holder or otherwise effectuate a refund within eighteen months of the most recent date of activity prior to the expiration of the presumptive period of abandonment established by NRS 120A.500(1)(l), or successor

³¹ Opening Comments of PPI at tbl. 2 (Feb. 23, 2022).

statute, the competitive supplier of inmate calling service shall deliver the balance of the prepaid account to the State Treasurer, or its agent, for administration under the terms of the Uniform Unclaimed Property Act pursuant to NRS 120A.010 et seq.

Despite Securus's claims of irreconcilable conflict, the draft prepaid-account rule is entirely harmonious with the UPA.

C. The Prepaid-Account Rule is Good for Consumers and Securus Has Failed to Raise Any Valid Objections

The Commission has plenary power to regulate ICS carriers and that power includes the ability to establish a refund policy for prepaid accounts and require compliance with the UPA when refunds cannot be completed. The prepaid-account rule takes the same approach used by the Attorney General and the Commissioner of Financial Institutions, and the Commission should not hesitate to exercise its powers in a similar fashion. None of Securus's various complaints withstand scrutiny.

II. The Per-Minute Denomination Rule is Necessary; PPI Does Not Object to Securus's Proposed Modification

Securus initially attacks the per-minute rate denomination rule (section 6(2) of the draft regulation) based on "concerns about how a rule drafted this broadly will actually be applied and enforced."³² The company then proposes modified language for the rule,³³ leading to some uncertainty about whether Securus opposes this rule or not.

PPI has no objections to Securus's proposed revision to section 6(2). We would simply add that some form of this rule is necessary to provide consumers with salient information. As previously explained, this rule is meant to address the practices of one company: Encartele.³⁴ PPI is unaware of any location where Encartele advertises its Nevada ICS rates in dollars per minute (if Securus is aware of such a rate disclosure, we welcome the introduction of that evidence into the record). In fact, Encartele recently filed its first-ever annual report of ICS rates with the Federal Communications Commission ("FCC"), in which the company listed *all* of its

³² Cmts of Securus at 3.

³³ *Id.* at 5.

³⁴ Opening Comments of PPI at 5-6 (Feb. 23, 2022).

rates as “N/A,”³⁵ indicating that the company is steadfastly committed to not denominating its rates in dollars per minute. The draft rule addresses this problem, and Securus’s proposed revisions are acceptable to PPI.

III. Securus Fails to Provide Any Compelling Reason to Reject the Anti-Double-Dipping Rule in Section 6(6) of the Draft Regulation

Section 6(6) of the draft rule prohibits the practice of “double dipping,” wherein carriers charge two duplicative fees for a single funding transaction.³⁶ Securus objects to the draft regulation and defends its current practice of charging customers an automated-payment fee of \$3 and passing through additional fees, allegedly attributable to payment-card processing costs. Securus claims that the FCC intentionally allowed this practice—a contention that is both factually unsupported and irrelevant.

Securus’s claim is unsupported based on the history of the FCC’s ICS rulemaking. When the FCC initially proposed capping the automated payment fee at \$3, Securus objected, alleging that its payment-card processing fees exceeded \$3 per transaction. The FCC rejected this argument, finding that Securus’s alleged costs were an outlier, and that other companies were able to cover their processing costs under a \$3 fee cap.³⁷ The Commission’s analysis shows that the automated payment fee authorized under 47 C.F.R. § 64.6020(b)(1) was intended to cover carriers’ card-processing costs.³⁸ While the FCC’s drafting of the final rule may have unintentionally allowed companies like Securus to exploit a loophole by charging multiple redundant fees, that does not mean the FCC intended this outcome. The very fact that the FCC recently used the present tense to ask “whether our rules *clearly prohibit* service providers from

³⁵ See Encartele, Inc., FCC Form 2301(a), Annual Reporting Form (Mar. 28, 2022), available at <https://www.fcc.gov/ecfs/search/search-filings/filing/1032748000307>.

³⁶ See Opening Cmts. of PPI at 6-7.

³⁷ *Rates for Interstate Inmate Calling Services*, WC Dkt. No. 12-375, Second Report and Order and Third Further Notice of Proposed Rulemaking ¶ 167, 30 FCC Rcd. 12763, 12848 (released Nov. 5, 2015), available at <https://docs.fcc.gov/public/attachments/FCC-15-136A1.pdf>.

³⁸ *Id.* (“The credit-card processing costs that Securus cites indicate to use that it is an outlier, especially since . . . companies that are much smaller than Securus acknowledge that they can process credit card payments at a \$3.00 rate. We find that a \$3.00 cap on automated payments is supported by the reported *costs* of providing the service as opposed to other *rates* for the service.” (emphasis in original; footnotes omitted)).

charging an automated payment fee and a third-party financial transaction fee for the same transaction in spite of some providers' apparent confusion,"³⁹ indicates that this is an unsettled question.

Moreover, even if the FCC did intend to allow Securus's double-dipping (which PPI disputes), such a policy determination by a federal agency would not bind the Nevada PUC. States are free to impose their own limits on ancillary fees, or ban them altogether.⁴⁰ While California has banned almost all ancillary ICS fees,⁴¹ PPI proposed a more moderate approach in Nevada. In fact, the double-dipping rule in the draft regulation was originally proposed to the FCC by another ICS carrier.⁴² It is both perplexing and disappointing that Securus resists this small common-sense proposal.

IV. PPI Agrees with Securus Regarding the Benefits of Consistent Terminology

Securus suggests that the "Commission should consider adding a definition for 'ICS provider' for consistency and clarity in the regulation."⁴³ PPI agrees that consistent terminology is a worthy goal. We would note, however, that the draft rule already provides a definition though section 10(b)'s adoption of the FCC's defined terms, including the term "provider of inmate calling services" that is defined in 47 C.F.R. § 64.6000(s). Accordingly, while PPI

³⁹ *Rates for Interstate Inmate Calling Services*, WC Dkt. 12-375, Third Report and Order, Order on Reconsideration & Fifth Further Notice of Proposed Rulemaking ¶ 328, 36 FCC Rcd. 9519, 9668 (released May 24, 2021) (emphasis added), available at <https://docs.fcc.gov/public/attachments/FCC-21-60A1.pdf>.

⁴⁰ *Id.* ¶ 217, 36 FCC Rcd. at 9617 ("To the extent that state law allows or requires provider to impose rates or fees lower than those in our rules, that state law or requirement is specifically not preempted by our actions here.").

⁴¹ *Order Instituting Rulemaking to Consider Regulating Telecomm'cns Servs. Used by Incarcerated People*, Calif. PUC Dkt. R 20-10-002, Decision Adopting Interim Rate Relief for Incarcerated Person's Calling Services at 116 (Aug. 23, 2021) (prohibiting "any single-call, paper bill, live agent, and automated payment fees in association with the provision of intrastate and/or jurisdictionally mixed" inmate calling services), available at <https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=401375687>.

⁴² *See Rules for Interstate Inmate Calling Services*, WC Dkt. No. 12-375, Comments of Inmate Calling Solutions, LLC (dba ICSolutions) at 5-6 (May 12, 2021) ("The FCC should expressly prohibit two or more funding fees applying to a single funding event, resulting in an [ICS] provider only being able to charge one of the following fees per funding event: (1) third-party fee, (2) automated payment fee, or (3) life agent fee."), available at <https://www.fcc.gov/ecfs/search/search-filings/filing/1051395277574>.

⁴³ Cmts of Securus at 2.

supports any revision of the draft regulation to ensure consistent deployment of this term throughout, the work of actually formulating a definition appears to be complete.

V. Conclusion

The draft regulation strikes an excellent balance between protecting consumers and minimizing ICS carriers' regulatory compliance burdens. Securus objects to several provisions of the draft regulation, but the company's complaints do not withstand scrutiny. While the draft regulation may benefit from some minor clarifying modifications, PPI encourages the Commission to preserve the substance of the regulation as currently written.

Respectfully submitted this 3rd day of May 2022.

PRISON POLICY INITIATIVE

/s Stephen Raher
by Stephen Raher, General Counsel
Oregon State Bar #095625
P.O. Box 127
Northampton, MA 01061
(413) 527-0845 ext. 316
sraher@prisonpolicy.org

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by electronic service to:

Paul E. Stuhff
Bureau of Consumer Protection
pstuhff@ag.nv.gov
bcpserv@ag.nv.gov

Christine M. Greve
Nevada Public Utilities Commission
cgreve@puc.nv.gov

Michael S.J. Lozich
Securus Technologies, LLC
mlozich@securustechnologies.com

Karen A. Peterson
Justin M. Townsend
Allison MacKenzie, Ltd.
Counsel for Securus Technologies, LLC
kpeterson@allisonmackenzie.com
jtownsend@allisonmackenzie.com

Dated at Portland, Oregon, this 3rd day of May, 2022

/s Stephen Raher
Stephen Raher, General Counsel
Prison Policy Initiative, Inc.
P.O. Box 127
Northampton, MA 01060