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BEFORE THE
ILLINOIS COMMERCE COMMISSION
BENCH SESSION
(PUBLIC UTILITY)
Chicago, Illinois
Wednesday, March 6, 2013

Met, pursuant to notice, at 11:45 a.m.
in the Main Hearing Room, 160 North LaSalle Street,
Chicago, Illinois.

PRESENT:

- MR. DOUGLAS P. SCOTT, Chairman
- MS. ERIN M. O'CONNELL-DIAZ, Commissioner
- MR. JOHN T. COLGAN, Commissioner (by phone)
- MS. ANN McCABE, Commissioner
- MR. MIGUEL del VALLE, Acting Commissioner

L.A. COURT REPORTERS by
Kari Wiedenhaupt, Reporter

CSR# 084-004725

1 CHAIRMAN SCOTT: Is everything ready in
2 Springfield?

3 JUDGE WALLACE: Yes, it is.

4 CHAIRMAN SCOTT: Good.

5 Pursuant to the provisions of the Open
6 Meetings Act, I now convene a regularly scheduled
7 Bench Session of the Illinois Commerce Commission.
8 With me in Chicago are Commissioner O'Connell-Diaz,
9 Commissioner McCabe, and Acting Commissioner del
10 Valle. I am Chairman Scott. We have a quorum.

11 I believe Commissioner Colgan was
12 standing by on the phone and is not there any longer.
13 Is that correct?

14 COMMISSIONER COLGAN: No. I'm here.

15 CHAIRMAN SCOTT: You are still here? Okay.

16 Under the Commission's rules, we'll have to vote to
17 allow Commissioner Colgan to participate by phone. I
18 move to allow his participation by phone.

19 Is there a second?

20 COMMISSIONER MCCABE: Second.

21 CHAIRMAN SCOTT: It's been moved and seconded.

22 All in favor, say aye.

1 (Chorus of ayes.)

2 CHAIRMAN SCOTT: Any opposed?

3 (No response.)

4 CHAIRMAN SCOTT: The vote is four to nothing
5 and Commissioner Colgan may participate in today's
6 meeting by phone.

7 First of all, I want to apologize to
8 everybody. I don't know if first I am apologizing
9 for the snow, but I am apologizing for getting back
10 into town -- my 3:00 flight yesterday afternoon just
11 landed about an hour ago at O'Hare.

12 So before moving into the agenda,
13 according to Section 1700.10 of Title 2 of the
14 Administrative Code, this is the time we allow
15 members of the public to address the Commission.

16 Members of the public wishing to address the
17 Commission must notify the Chief Clerk's office at
18 least 24 hours prior to Commission meetings.

19 According to the Chief Clerk's office, we have two --
20 actually we have three requests to speak at today's
21 Bench Session.

22 Just a reminder that public speakers

1 before the Commission have three minutes to make
2 their remarks. We'll begin with Mr. William Barnes
3 from the Illinois Department of Corrections, who I
4 believe is in Springfield. Mr. Barnes?

5 MR. ATCHISON: Actually, sir, Mr. Barnes is not
6 present. I am here, and my name is Michael Atchison.
7 I am with Illinois Department of Corrections. I am
8 the Deputy Chief of Operations.

9 CHAIRMAN SCOTT: Michael Atchison?

10 MR. ATCHISON: Yes, sir.

11 CHAIRMAN SCOTT: Okay. Mr. Atchison, you have
12 three minutes. Go right ahead.

13 MR. ATCHISON: Thank you very much. I
14 appreciate the opportunity to speak before the
15 Commission. Like I said, my name is Michael
16 Atchison. I am currently the Deputy Chief of
17 Operations for IDOC. I have got 27 years of
18 experience with the Department ranging from
19 correctional officer through to warden and my current
20 position.

21 Basically, 12 years of those --
22 12 years of my career was as a Deputy Commander of

1 our intelligence unit, and that's where I draw my
2 experience and my comments that are related to today.

3 It's my understanding that any finding
4 that inmate calling services constitutes operator
5 services and, of course, 770 will also trigger the
6 requirement of unblocked access to all providers of
7 operator services. IDOC currently does not allow
8 unrestricted access to all service providers.
9 Rather, we contract with specific highly specialized
10 telecommunication providers.

11 The reason for that, that we impose
12 security restrictions including an approved call list
13 and that all recording -- or all calls are recorded
14 and monitored are for the safety and security of the
15 facilities. We limit the people that the inmates can
16 call. Otherwise, they would have basically open
17 access to make a collect call to anyone in the state
18 or outside the state, for that matter.

19 The reason we record and monitor these
20 telephone calls is -- in my line of work it almost
21 seems self-evident -- that inmates will and have
22 attempted to use telephone communications to further

1 criminal activity including -- and I can list a
2 laundry list of cases that we have -- in which we
3 have intercepted and stopped from happening including
4 murder for hire, escape attempts, trafficking drugs
5 outside of the agency, you know, basically brokering
6 drug deals through outside entities and people,
7 arranging for drugs to be brought into the facility
8 and other contraband.

9 It's -- it is probably the most
10 important tool that the Department's intelligence
11 unit has to impede the criminal activity from the
12 Department from inside a facility. If the inmates'
13 family and friends are permitted access to any and
14 all providers of operator services, they will likely
15 choose a provider that does not have the ability to
16 record and monitor phone calls or even restrict the
17 numbers that are called, and that would have a
18 devastating affect on the safety and security of our
19 facilities and the people that live and work there.

20 As I said, I can't emphasize enough
21 the importance that this tool -- how important this
22 tool is to the Department, and I ask for

1 consideration, and I appreciate your -- the
2 opportunity to express my concern. Thank you.

3 CHAIRMAN SCOTT: Thank you, Mr. Atchison. The
4 next up is Mr. Jay Doherty, who I see is here.

5 Mr. Doherty, step up to any of the
6 available mikes, and you have three minutes, sir.

7 MR. DOHERTY: Thank you, Mr. Chairman. My name
8 is Jay Doherty, and I am here today on behalf of
9 Securus Technologies. I am here to address the
10 detrimental impact of granting Consolidated's
11 petition. On the agenda it's Item T-12, on providers
12 of inmate telephone service and on corrections
13 generally.

14 This is a self-serving petition filed
15 to cover for the fact that Consolidated has misread
16 the law for years. There are two problems here. No.
17 1, Consolidated has not considered and is not
18 concerned with the consequences of its request. No.
19 2, the Administrative Law Judge and the ICC Staff
20 forgot that these are prison phones with real
21 security issues for another state agency, as Mr.
22 Atchison pointed out, the Department of Corrections.

1 Those consequences are significant.

2 For Securus and other providers of
3 inmate telephone service to all of the county and
4 state correctional facilities in Illinois, they could
5 find themselves suddenly in a line of business that
6 they have never contemplated. For example, as Mr.
7 Atchison pointed out, if those private inmate
8 telephones are now subject to the same regulation as
9 the public pay phones right down here downstairs and
10 in the basement, over at the 711, over at the county
11 building, No. 1, what does that mean for the
12 Department of Corrections' ability to record inmate
13 telephone conversations; No. 2, to provide those
14 recordings to Corrections; 3, compile data on those
15 phone calls for Corrections; 4, do the providers need
16 to start filing tariffs; 5, do the providers have to
17 make 911 emergency service available; 6, how can the
18 provider allow participants on the calls to choose
19 another provider -- as Mr. Atchison pointed out --
20 when that provider is not interested or not equipped
21 to meet the Department of Corrections' security
22 needs. Those are the provider issues.

1 Now, correctional facilities issues.

2 The consequences are even far more serious. No. 1,

3 how can correctional facilities protect victims or

4 witnesses from harassing phone calls when inmates can

5 simply opt out through carefully selected and secure

6 providers for the institution? How can correctional

7 facilities prevent inmates, No. 2, from using the

8 institution's phones to evade institutional concerns,

9 security concerns, and transact unlawful business?

10 No. 3, can the Department of Corrections get access

11 to phone recordings that may be critical to

12 ongoing -- an ongoing investigation?

13 Commissioners, granting this petition

14 will hamstring the state of Illinois' Correction

15 Director Godinez's ability to carry out the mission

16 of Corrections. I can only hope that since the

17 matter was last on the agenda that the Commission has

18 used the intervening time to consult with the

19 Department of Corrections to assess that impact.

20 Otherwise, it would be like this Commission

21 authorizing water pollution for Lake Michigan without

22 ever talking to the Environmental Protection Agency.

1 Finally, to the extent the Commission
2 is concerned with pricing, the new rates by Securus
3 are on average significantly lower than those charged
4 by Consolidated and the total rates allowed under the
5 regulations at issue. The Commission should not
6 issue a ruling on this petition without seriously
7 analyzing the consequences to the Department of
8 Corrections.

9 If the Commission is not prepared to
10 deny or decline ruling on the petition at this time,
11 then at least I urge you to send us back to the
12 Administrative Law Judge for hearing to develop a
13 record.

14 Commissioners, please do not allow
15 this to proceed in the clandestine manner that
16 Consolidated and the ICC Staff have pushed for to
17 date. Thank you very much.

18 CHAIRMAN SCOTT: Thank you, Mr. Doherty. We
19 received one more fax yesterday. Unfortunately the
20 name wasn't -- so I am assuming the person who sent
21 that fax is in the audience today? One more person
22 had asked to speak in Chicago.

1 (No response.)

2 CHAIRMAN SCOTT: No? Okay.

3 That will then conclude the public
4 comment portion of today's meeting.

5 (Whereupon, the Commission
6 proceeded with the
7 Transportation Agenda, the
8 proceedings of which are
9 enclosed in a separate
10 transcript.)

11 CHAIRMAN SCOTT: Moving on to the Public
12 Utility agenda. We'll begin with the approval of
13 minutes from our February 14th Regular Open Meeting.
14 I understand amendments have been forwarded.

15 Is there a motion to amend the
16 minutes?

17 COMMISSIONER MCCABE: So moved.

18 CHAIRMAN SCOTT: Is there a second?

19 COMMISSIONER O'CONNELL-DIAZ: Second.

20 CHAIRMAN SCOTT: It's been moved and seconded.

21 All in favor, say aye.

22

1 (Chorus of ayes.)

2 CHAIRMAN SCOTT: Any oppose?

3 (No response.)

4 CHAIRMAN SCOTT: The vote is five to nothing,
5 and the amendments are adopted.

6 Is there a motion to approve the
7 minutes as amended?

8 COMMISSIONER O'CONNELL-DIAZ: So moved.

9 CHAIRMAN SCOTT: Is there a second?

10 COMMISSIONER MCCABE: Second.

11 CHAIRMAN SCOTT: It's been moved and seconded.
12 All in favor, say aye.

13 (Chorus of ayes.)

14 CHAIRMAN SCOTT: Any opposed?

15 (No response.)

16 CHAIRMAN SCOTT: The vote is five to nothing,
17 and the minutes from our February 14th Regular Open
18 Meeting as amended are approved.

19 Turning now to the electric portion of
20 today's agenda. Item E-1 concerns a filing by
21 MidAmerican to update its Electric Delivery Service
22 tariff. Staff recommends granting the company's

1 request by not suspending the filing.

2 Is there any discussion?

3 (No response.)

4 CHAIRMAN SCOTT: Is there a motion to not
5 suspend the filing?

6 COMMISSIONER MCCABE: So moved.

7 CHAIRMAN SCOTT: Is there a second?

8 COMMISSIONER O'CONNELL-DIAZ: Second.

9 CHAIRMAN SCOTT: It's been moved and seconded.

10 All in favor, say aye.

11 (Chorus of ayes.)

12 CHAIRMAN SCOTT: Any opposed?

13 (No response.)

14 CHAIRMAN SCOTT: The vote is five to nothing,
15 and the filing will not be suspended. We will use
16 this five to nothing vote for the remainder of the
17 Public Utility agenda unless otherwise noted.

18 Item E-2 is Docket No. 11-0461. This
19 is Joel Harris's complaint against ComEd, and this
20 item will be held for disposition at a future
21 Commission proceeding.

22 Item E-3 is Docket No. 11-0526. This

1 is Betty Johnson's complaint against ComEd. ALJ
2 Kimbrel recommends entry of an Order denying the
3 complaint.

4 Is there any discussion?

5 (No response.)

6 CHAIRMAN SCOTT: Any objections?

7 (No response.)

8 CHAIRMAN SCOTT: Hearing none, the Order is
9 entered.

10 Items E-4 and E-5 can be taken
11 together. These items are customer complaints
12 against ComEd and Ameren. In each case, the parties
13 have apparently settled their differences and have
14 brought a Joint Motion to Dismiss, which the ALJ
15 recommends we grant.

16 Is there any discussion?

17 (No response.)

18 CHAIRMAN SCOTT: Any objections?

19 (No response.)

20 CHAIRMAN SCOTT: Hearing none, the Joint
21 Motions to Dismiss are granted.

22 Item E-6 is Docket No. 11-0709. This

1 is a citation proceeding against Utilitech for a
2 failure to file its compliance recertification
3 report. Staff has filed a Motion to Dismiss the
4 proceeding due to the company having now filed its
5 report, and ALJ Kimbrel recommends granting
6 dismissal.

7 Is there any discussion?

8 (No response.)

9 CHAIRMAN SCOTT: Are there any objections?

10 (No response.)

11 CHAIRMAN SCOTT: Hearing none, the Motion to
12 Dismiss is granted.

13 Item E-7 is Docket No. 12-0673. This
14 is a joint petition for a customer release filed by
15 Ameren and Western Illinois Electrical Cooperative.
16 ALJ Von Qualen recommends entry of an Order granting
17 the customer release.

18 Is there any discussion?

19 (No response.)

20 CHAIRMAN SCOTT: Any objections?

21 (No response.)

22 CHAIRMAN SCOTT: Hearing none, the Order is

1 entered.

2 Item E-8 is Docket No. 13-0115. This
3 is Ameren's petition related to the construction of a
4 new transmission line in Peoria County. Staff has
5 made a motion to extend the deadline in this matter
6 by 75 days, and ALJ Von Qualen recommends granting
7 that motion.

8 Is there any discussion?

9 (No response.)

10 CHAIRMAN SCOTT: Any objections?

11 (No response.)

12 CHAIRMAN SCOTT: Hearing none, the Motion to
13 Extend the Deadline is granted.

14 Turning now to Natural Gas, Item G-1
15 is Ameren's filing for a proposed general increase in
16 its gas rates. Staff recommends that the filing be
17 suspended for investigation and set for a hearing
18 through the entry of a Suspension Order.

19 Is there any discussion?

20 (No response.)

21 CHAIRMAN SCOTT: Any objections?

22

1 (No response.)

2 CHAIRMAN SCOTT: Hearing none, the Suspension
3 Order is entered.

4 Item G-2 is Docket No. 10-0567. This
5 is Nicor's reconciliation proceeding for revenues
6 collected under its energy efficiency rider in parts
7 of 2009 and 2010. This matter was recently reopened
8 by the Commission, and ALJ Hilliard recommends entry
9 of an Amendatory Order providing for a credit to
10 customers.

11 Is there any discussion?

12 (No response.)

13 CHAIRMAN SCOTT: Any objections?

14 (No response.)

15 CHAIRMAN SCOTT: Hearing none, the Amendatory
16 Order is entered.

17 Item G-3 is Docket No. 11-0667. This
18 is Nicor's reconciliation proceeding for revenues
19 collected under its energy efficiency rider in parts
20 of 2010 and 2011. ALJ Kimbrel recommends entry of an
21 Order approving the reconciliation.

22 Is there any discussion?

1 (No response.)

2 CHAIRMAN SCOTT: Any objections?

3 (No response.)

4 CHAIRMAN SCOTT: Hearing none, the Order is
5 entered.

6 Items G-4 and G-5 can be taken
7 together. These items concern reconciliation
8 proceedings for revenues collected under coal tar
9 riders by North Shore and Peoples Gas. In each case,
10 ALJ Teague recommends entry of an Order approving the
11 reconciliation.

12 Is there any discussion?

13 (No response.)

14 CHAIRMAN SCOTT: Any objections?

15 (No response.)

16 CHAIRMAN SCOTT: Hearing none, the Orders are
17 entered.

18 Item G-6 is Docket No. 12-0536. This
19 is Ameren's petition for the approval of revised gas
20 depreciation rates. ALJ Albers recommends entry of
21 an Order approving the rates.

22 Is there any discussion?

1 (No response.)

2 CHAIRMAN SCOTT: Any objections?

3 (No response.)

4 CHAIRMAN SCOTT: Hearing none, the Order is
5 entered.

6 Item G-7 is Docket No. 13-0100. This
7 is Interstate Gas Supply's petition for the
8 confidential and/or proprietary treatment of portions
9 of its continued compliance report. ALJ Von Qualen
10 recommends entry of an Order granting the requested
11 treatment.

12 Is there any discussion?

13 (No response.)

14 CHAIRMAN SCOTT: Any objections?

15 (No response.)

16 CHAIRMAN SCOTT: Hearing none, the Order is
17 entered.

18 Items G-8 through G-10 can be taken
19 together. These items are petitions filed by North
20 Shore and Peoples Gas under Section 6-102(d) of the
21 Public Utilities Act related to debt issuances. In
22 each case, ALJ Hilliard recommends entry of an Order

1 approving the request.

2 Is there any discussion?

3 (No response.)

4 CHAIRMAN SCOTT: Any objections?

5 (No response.)

6 CHAIRMAN SCOTT: Hearing none, the Orders are
7 entered.

8 Moving on to Telecommunications.

9 Items T-1 through T-3 can be taken together. These
10 items are applications for certificates of service
11 authority under Title XIII of the Public Utilities
12 Act. In each case, the ALJ recommends entry of an
13 Order granting the requested certificates.

14 Is there any discussion?

15 (No response.)

16 CHAIRMAN SCOTT: Any objections?

17 (No response.)

18 CHAIRMAN SCOTT: Hearing none, the Orders are
19 entered.

20 Item T-4 is Docket No. 12-0676. This
21 is a joint petition for the approval of an
22 interconnection agreement and an amendment to that

1 agreement between telecommunications carriers. ALJ
2 Riley recommends entry of an Amendatory Order making
3 a minor change to the Final Order in this matter.

4 Is there any discussion?

5 (No response.)

6 CHAIRMAN SCOTT: Any objections?

7 (No response.)

8 CHAIRMAN SCOTT: Hearing none, the Amendatory
9 Order is entered.

10 Items T-5 through T-8 can be taken
11 together. These items are joint petitions for the
12 approval of amendments to interconnection agreements
13 between telecommunications carriers. In each case,
14 ALJ Baker recommends entry of an Order approving the
15 amendment.

16 Is there any discussion?

17 (No response.)

18 CHAIRMAN SCOTT: Any objections?

19 (No response.)

20 CHAIRMAN SCOTT: Hearing none, the Orders are
21 entered.

22 Item T-9 is Docket No. 12-0689. This

1 is a joint petition by telecommunications carriers
2 for the approval of an amendment to an
3 interconnection agreement. Before us today is a
4 Motion to Withdraw the petition, which ALJ Baker
5 recommends we grant.

6 Is there any discussion?

7 (No response.)

8 CHAIRMAN SCOTT: Any objections?

9 (No response.)

10 CHAIRMAN SCOTT: Hearing none, the petition was
11 withdrawn.

12 Item T-10 is Docket No. 12-0691. This
13 is also a joint petition by telecommunications
14 carriers for approval of an amendment to an
15 interconnection agreement. ALJ Baker recommends
16 entry of an Order approving the amendment.

17 Is there any discussion?

18 (No response.)

19 CHAIRMAN SCOTT: Any objections?

20 (No response.)

21 CHAIRMAN SCOTT: Hearing none, the Order is
22 entered.

1 Item T-11 is Docket Nos. 11-0210 and
2 11-0211. This is a petition filed by Geneseo
3 Telephone Company, Cambridge Telephone Company, and
4 Henry County Telephone Company to update the Illinois
5 Universal Service Fund and to implement Intrastate
6 Switched Access Charge reform. ALJ Jones recommends
7 entry of an Order granting the petitions in part.

8 Is there any discussion?

9 COMMISSIONER O'CONNELL-DIAZ: Mr. Chairman, I
10 will be voting in concert with what the ALJ has
11 recommended in this Order. However, the issue of
12 getting 21st century service to the people in the
13 state of Illinois I know is a mission that the
14 current governor jumped on when he was lieutenant
15 governor.

16 I am a person that lives in a rural
17 area. I understand what it's like not to have those
18 services. So I would suggest that the Commission as
19 we move forward open up some workshops to figure out
20 how do we -- you know, this is a cost issue obviously
21 for our companies. The USF Fund that is at issue in
22 this case or has bearing on this case, there is a lot

1 of money that's been washing around in that USF Fund,
2 and it's not clear to me that that money has been
3 deployed in the manner that would help those rural
4 areas get this type of service that is so needed.

5 So I would encourage our office to
6 open up a workshop and see really what the -- what's
7 going on on the ground. The FCC has danced around
8 this. They have not ordered that our companies
9 provide this service. They are very loquacious in
10 their Order with regard to how this is great, but
11 they do not -- they fall short in requiring it.

12 So I think it's incumbent upon us to
13 move that forward so that everyone in our state can
14 get those services at a fair and reasonable -- and
15 actually even just get them, because in some
16 communities you cannot.

17 CHAIRMAN SCOTT: Commissioner del Valle?

18 ACTING COMMISSIONER DEL VALLE: I wholeheartedly
19 -- I agree totally, and I want to go on record as
20 supporting the request. We have community colleges,
21 universities throughout the state that are offering
22 online courses. Our assessment system for our K

1 through 12 programs is going to end up being all
2 online throughout the entire state, and so in voting
3 on this measure, I think that it is important for us
4 to follow through.

5 Obviously, there is a need for
6 broadband services out there, and we are not meeting
7 that need, and I happen to agree that we need to look
8 at the universal Services Fund to see how we can
9 support and make sure that we reach the goal of
10 access for everyone in the state of Illinois that
11 wants that access.

12 CHAIRMAN SCOTT: I completely agree with both
13 those sentiments, and I think Judge Jones did a
14 really nice job of kind of walking through where the
15 state of the law is that really doesn't allow us to
16 do that right now, but I wholeheartedly agree with
17 both of your sentiments, because times have certainly
18 changed and technology changes and how people need to
19 access the world has changed. And I think something
20 like the USF needs to keep up with that as well. So
21 I agree with your sentiments.

22 Commissioner Colgan, were you trying

1 to jump in there?

2 COMMISSIONER COLGAN: Yeah. I agree with the
3 comments that the other three Commissioners have
4 made. This is an interim Order as the IITA has made
5 it clear that they are going to come back for a --
6 for a long-term Order on this very issue, and I think
7 it is a good idea that we continue to have these
8 discussions. Commissioner O'Connell-Diaz said
9 workshops. I would also be in support of that.

10 And the other comments are, you know,
11 about how important these services are. It's just
12 becoming more and more important for people to have
13 fair and equal access to these services. So -- but I
14 think that the argument for the broadband services
15 was not made. It was a pretty confusing presentation
16 that was in the record, and so I am going to support
17 the Order, but I think it's worthy of a very close
18 look to figure out how to best move this issue
19 forward.

20 COMMISSIONER O'CONNELL-DIAZ: And most
21 importantly, I want everybody in the state of
22 Illinois to be able to come to our Commerce

1 Commission website and actually use it. If you have
2 dialup, you cannot get a lot of what's featured on
3 our website.

4 And, you know, it goes for --
5 Commissioner del Valle just mentioned, you know,
6 access to governmental services. You can't go to
7 your Clerk's office in your county or your city,
8 because the landline cannot feed it properly. So
9 dialup just doesn't quite cut it, and we need to --
10 and you got to the education part, but that is a
11 whole other place that is -- we are not providing it
12 for our young people if they don't have access to
13 these services.

14 So we really need to not wait for the
15 FCC to figure this out. We need to figure out how we
16 do it in our state and how do we incent that and
17 actually pay for it, and so thank you.

18 CHAIRMAN SCOTT: Again, ALJ Jones has
19 recommended entry of an Order granting the petitions
20 in part.

21 Is there any discussions?
22

1 (No response.)

2 CHAIRMAN SCOTT: Are there any objections?

3 (No response.)

4 CHAIRMAN SCOTT: Hearing none, the Order is
5 entered.

6 Item T-12 is Docket No. 12-0413. This
7 is Consolidated Communications' petition seeking a
8 declaratory ruling concerning Section 13-901 of the
9 Public Utilities Act and Title 83, Part 770 of the
10 Administrative Code. ALJ Von Qualen recommends entry
11 of an Order providing a declaratory ruling that the
12 inmate calling services at issue are "operator
13 services" under the law.

14 COMMISSIONER O'CONNELL-DIAZ: If I might, could
15 we just have Judge Von Qualen go through her
16 conclusions in this, and I just have a couple
17 questions as to -- and I think it's appropriate to
18 hold it, because I think there is some issues that
19 are not clear to me.

20 Is Judge Von Qualen there?

21 JUDGE VON QUALEN: Yes, I am here.

22 COMMISSIONER O'CONNELL DIAZ: Could you just

1 give us a briefing with regard to your conclusions,
2 you know, and just run us through the case?

3 Additionally, is the Department of
4 Corrections a party to this matter?

5 JUDGE VON QUALEN: No, they are not.

6 Consolidated filed a Petition for a
7 Declaratory Ruling regarding just two specific
8 provisions in Part 770. They ask for a declaratory
9 ruling that Section 770.20, Standards of Service,
10 Subsection A apply and 770.40, restrictions on
11 billing and charges applying to operator services as
12 they described them in their petition and are
13 provided for inmate calling services in the
14 Department of Corrections.

15 Basically, what Consolidated stated
16 was that the services that are provided at inmate --
17 for inmate calling services include operator
18 services, because the phone calls cannot be connected
19 without the person who is being called accepting the
20 charges.

21 And I don't know. I can't recall
22 exactly technically what they do, but they have to

1 take certain actions on the telephone to accept the
2 charges and operator services are required to connect
3 the two calls. So Consolidated argued because
4 operator services are used within these calls, these
5 rules requiring the limits on prices should apply to
6 the calls.

7 Staff agreed with that. They said
8 that they are operator services as defined in the
9 Act, and that the limitation restrictions on billing
10 and charges should apply to the calls. The matter
11 came up with Consolidated because they had bid on the
12 services being provided to the Department of
13 Corrections. They did not receive the bid, and
14 another company received the bid, a company that was
15 charging higher rates than the CAF provided for under
16 the code, and would thus provide a higher commission,
17 I guess, to the Department of Central Management
18 Services.

19 Securus was the party that actually
20 received the contract or won the bid, and they did
21 intervene in the matter. They were present at the
22 prehearing conference when we set the schedule of the

1 matter and at that point the parties agreed that this
2 should be done by briefing and not by testimony. So
3 that is the way that the matter proceeded.

4 COMMISSIONER O'CONNELL-DIAZ: And Judge Von
5 Qualen, so hence that's the reason that there were no
6 hearings built into the schedule, because the
7 parties, as I read the record, was that there was an
8 off-the-record discussion. And you went back on the
9 record and suggested that everyone was in agreement
10 that there did not need to be testamentary evidence
11 introduced into the record, and that it was a legal
12 question that would be dealt with with briefs; is
13 that correct?

14 JUDGE VON QUALEN: Yes.

15 COMMISSIONER O'CONNELL-DIAZ: Okay. Thank you.

16 JUDGE VON QUALEN: So the matter was dealt with
17 in briefs. When I issued the proposed Order, then
18 Securus then decided that they would have preferred
19 to have a hearing, but as Commissioners are aware,
20 that request for a hearing and for discovery was
21 denied.

22 It's notable and it's mentioned in the

1 Order, there is really no dispute as to the facts of
2 how the service is provided and what is included
3 within inmate calling services, and the Order that I
4 drafted tries to be very careful that the Order
5 itself only applies to the facts as they are
6 presented in this case. As I note in the
7 memorandums, there has been a previous Commission
8 Order which found that inmate calling services do not
9 include operator services, but in that Order, that
10 was just something that was stated and there was no
11 factual basis for that finding, and there was no
12 discussion of the finding. In this case, the entire
13 case is about the facts regard inmate calling
14 services and the operator services that are included
15 within them.

16 COMMISSIONER O'CONNELL-DIAZ: So you are
17 satisfied that what you have recommended to us is
18 limited to this case and this case alone and has no
19 value with regard to moving forward should someone
20 try to cite it as authority; is that --

21 JUDGE VON QUALEN: Well, no. What I am
22 satisfied about is that if -- I think it would apply

1 for inmate calling services unless somebody filed
2 another petition and said, wait a minute. On the
3 facts that were in -- before the Commission in
4 12-0413 you found that there were operator services
5 included, but the facts are different now. Here are
6 different facts and we don't believe that inmate
7 calling services as we provide them include operator
8 services.

9 COMMISSIONER O'CONNELL-DIAZ: Okay.

10 JUDGE VON QUALEN: Do you understand that?

11 COMMISSIONER O'CONNELL-DIAZ: Yeah. I get what
12 you are saying there.

13 CHAIRMAN SCOTT: Commissioner McCabe?

14 COMMISSIONER MCCABE: Were the Department of
15 Corrections or CMS parties in this docket?

16 JUDGE VON QUALEN: No. Securus was the only
17 intervener. Securus participated and we had Staff
18 participate and Consolidated Communications.

19 COMMISSIONER MCCABE: And would this Order as
20 written prevent Corrections from getting taped calls?

21 JUDGE VON QUALEN: No. The only thing -- the
22 only declaratory ruling that the petitioner requested

1 was that Sections 770.20(a) and 770.40, the
2 restrictions on billing and charges, apply.

3 COMMISSIONER MCCABE: Thank you.

4 CHAIRMAN SCOTT: Further questions for the
5 Judge? Thank you, Judge.

6 And as I said, this will be held for
7 disposition at a future Commission meeting.

8 Judge Wallace, any other matters to
9 come before the Commission today?

10 COMMISSIONER O'CONNELL-DIAZ: I just have one
11 question.

12 CHAIRMAN SCOTT: Sure.

13 COMMISSIONER O'CONNELL-DIAZ: Judge Von Qualen,
14 based upon your ruling, could the party in this
15 instance that is not successful request rehearing in
16 this docket?

17 JUDGE VON QUALEN: Yes.

18 COMMISSIONER O'CONNELL-DIAZ: Is that a yes to
19 my answer -- question?

20 JUDGE VON QUALEN: Yes.

21 COMMISSIONER O'CONNELL-DIAZ: So after the
22 Commission gets done ruling then we would entertain

1 this in accordance with our rehearing provisions,
2 which would suggest that they would need to cite to
3 evidence that was new or not considered fully by our
4 determination in this matter, correct?

5 JUDGE VON QUALEN: Yes.

6 COMMISSIONER O'CONNELL-DIAZ: Okay. Thank you.

7 CHAIRMAN SCOTT: Now, Judge Wallace, were there
8 any other matters to come before the Commission
9 today?

10 JUDGE WALLACE: No. That's all today.

11 COMMISSIONER O'CONNELL-DIAZ: I just have one
12 thing.

13 CHAIRMAN SCOTT: Commissioner O'Connell-Diaz.

14 COMMISSIONER O'CONNELL-DIAZ: I'm not into
15 trying to advertise anything, but as many of you
16 know, Brandy Bush Brown, my assistant who we lost
17 very, very untimely a short while ago, her family
18 has -- you know, Brandy was very involved in her
19 community, and her family has started a school for
20 education and arts of our young folks, and they are
21 starting that up, and it is -- they are going to have
22 a gathering at the Ray Kroc Foundation on the south

1 side on March 15th at 7:00 p.m. So you can go on the
2 web and check that out. And it is -- the name of the
3 school is the Brandy Bush Brown Arts and Education
4 School. So it's just such a wonderful thing to see
5 her legacy and her -- what she stood for in her life
6 going forward. That will be a gift to many of our
7 young people in these challenging times. So I would
8 just encourage everyone to go check that out on the
9 website. It's a little free plug, but I figure she
10 is family. So I am just going to say it anyway.

11 CHAIRMAN SCOTT: Very good.

12 COMMISSIONER O'CONNELL-DIAZ: You can check it
13 out. Thank you.

14 CHAIRMAN SCOTT: If there is nothing further to
15 come before the Commission, this meeting stands
16 adjourned, and again, thank you everyone for
17 indulging us today.

18 (END OF PROCEEDINGS.)

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