

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kenneth Dade	:	
	:	
v.	:	C-2023-3043524
	:	
Securus Technologies, LLC	:	

INITIAL DECISION

Before
Alphonso Arnold III
Administrative Law Judge

INTRODUCTION

This Initial Decision grants Kenneth Dade’s Petition for Leave to Withdraw the Complaint filed against Securus Technologies, LLC, because the Petition is unopposed and is in the public interest.

HISTORY OF THE PROCEEDING

On September 26, 2023, Kenneth Dade (“Complainant”) filed with the Pennsylvania Public Utility Commission (“Commission”) a Formal Complaint (“Complaint”) against Securus Technologies, LLC (“Respondent”). Complainant averred that he was an inmate at the State Correctional Institution at Fayette (“SCI Fayette”) in Fayette County, Pennsylvania, and that Maya Bankston (“Ms. Bankston”) established a prepaid account with Respondent for Complainant’s use to make collect calls from prison. Complainant claimed that he was unable to use the prepaid account because inmates from other institutions used the account. For relief, Complainant requested that the Commission order Respondent “to fix their system that’s allowing other inmates/people easy access to Mrs. Bankston’s personal account” and “to refund

the \$178.50 back to Mrs. Bankston or credit it to Complainant's inmate prison account, due to the flaw in their system." The Complaint was served on Respondent on October 16, 2023.

On November 9, 2023, Respondent filed an Answer with New Matter to the Complaint. Respondent explained that it was an inmate telephone service provider, and that Ms. Bankston established a prepaid account with Respondent through the Respondent's mobile application. Respondent further explained that those who establish a prepaid account can add numbers to the account, and that any number listed on a prepaid account can receive calls from any facility that Respondent serves.¹ As such, Respondent asserted that a prepaid account is not limited to a one-to-one connection of calls from a single incarcerated person to a single number. In this regard, Respondent asserted that Ms. Bankston added multiple numbers to her prepaid account and Respondent's records show that calls from inmates from multiple facilities were placed to these approved numbers. Respondent claimed that the ability for approved numbers to receive calls from multiple facilities is a feature of the prepaid account and is not indicative of any flaw or breach of its system.

In its New Matter, properly endorsed with a Notice to Plead, Respondent argued that Complainant did not have standing to assert a claim on behalf of Ms. Bankston. In the alternative, Respondent argued that Ms. Bankston should be included in this proceeding as an indispensable third-party. Respondent concluded its Answer with New Matter by requesting dismissal of the Complaint.

On November 21, 2023, Complainant filed a Reply to Respondent's Answer with New Matter. Complainant repeated the averments that he made in his Complaint in his Reply but agreed that Ms. Bankston is indispensable to this proceeding.

On December 11, 2023, the Commission issued an Initial Call In Telephonic Hearing Notice scheduling this matter for a telephonic evidentiary hearing on February 12, 2024, and assigning the undersigned as Presiding Officer.

¹ SCI is one such facility that Respondent serves.

On January 17, 2024, the Commission issued a Hearing Change Notice changing the proceeding scheduled for February 12, 2024, from a telephonic evidentiary hearing to a telephonic prehearing conference. After Complainant contacted the Commission to inform the Commission that he was no longer incarcerated at SCI Fayette, the Hearing Change Notice was served a second time on January 23, 2024, by First-Class Mail to the updated address that Complainant provided to the Commission.

On February 8, 2024, Respondent filed a letter with the Commission which informed me that Respondent intended on filing a Motion for Judgment on the Pleadings, pursuant to 52 Pa. Code § 5.102, consistent with the argument Respondent raised in its New Matter concerning Complainant's lack of standing in this matter.

On February 12, 2024, the prehearing conference was held as scheduled. Respondent was present for the conference, represented by William Lesser, Esquire. Complainant was not present for the conference. Attorney Lesser stated on the record that Complainant had left him a voicemail that morning informing him that he was in the hospital and that he would be unable to attend the prehearing conference. Given this information, I informed Attorney Lesser that I would continue the prehearing conference to another date.

On February 12, 2024, following conclusion of the prehearing conference, a Prehearing Conference Notice was issued scheduling this matter for a further prehearing conference on April 9, 2024.

On March 11, 2024, a Corrected Prehearing Conference Notice was issued. Also on this date, the Commission issued my Prehearing Conference Order.

On March 26, 2024, I received a handwritten letter from Complainant. Complainant requested that his Complaint be withdrawn, stating that he believes that his Complaint is without merit due to his release from SCI Fayette. I emailed a copy of the letter,

which will be treated as a Petition for Leave to Withdraw the Complaint (“Petition”), to Respondent who did not oppose the withdrawal request.²

On March 27, 2024, the Commission issued a Cancellation Notice, cancelling the further prehearing conference scheduled for April 9, 2024.

On April 1, 2024, the Commission issued my Interim Order that closed the record in this case.

For the reasons discussed below, the Petition will be granted because it is unopposed and is in the public interest.

FINDINGS OF FACT

1. Complainant is Kenneth Dade.
2. Respondent is Securus Technologies, LLC.
3. On September 26, 2023, Complainant filed a Complaint against Respondent.
4. In his Complaint, Complainant averred that he was an inmate at SCI Fayette and that Respondent wrongly allowed other inmates to use a prepaid account that was established for his use.
5. On November 9, 2023, Respondent filed an Answer with New Matter to the Complaint, denying any wrongdoing at it relates to the prepaid account in question.

² I provided a copy of the Petition to the Commission’s Secretary Bureau, who caused the Petition to be docketed on March 27, 2024.

6. On November 21, 2023, Complainant filed a Reply to Respondent's Answer with New Matter.

7. A further prehearing conference was scheduled to be held on April 9, 2024, after Complainant failed to appear for the initial prehearing conference due to health reasons.

8. On March 26, 2024, I received a handwritten letter from Complainant requesting to withdraw his Complaint filed in this matter.

9. Respondent did not object to Complainant's request to withdraw his Complaint.

10. On March 27, 2024, the Commission cancelled the further prehearing conference scheduled for April 9, 2024.

DISCUSSION

Commission regulations address the withdrawal of pleadings in a contested proceeding as follows:

§ 5.94. Withdrawal of pleadings in a contested proceeding.

(a) Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 10 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

52 Pa. Code § 5.94(a).

A “pleading” is defined as “An application, *complaint*, petition, answer, motion, preliminary objection, protest, reply, order to show cause, new matter and reply to new matter or other similar document filed in a formal proceeding.” 52 Pa. Code § 1.8 (emphasis added). This matter became a contested proceeding once Respondent filed an Answer to the Complaint.

The Commission’s regulations also provide that the Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties. 52 Pa. Code § 1.2(a). Complainant’s handwritten letter, received by me on March 26, 2024, does not comply with the Commission’s requirements at Section 5.94(a) of the Commission’s regulations as it was not filed with the Commission nor was it served upon Respondent. I will exercise my discretion pursuant to Section 1.2(a) of the Commission’s regulations and treat Complainant’s letter as a Petition for Leave to Withdraw the Complaint. Respondent’s substantive rights are not affected because Respondent was forwarded a copy of the Petition and had the opportunity to respond.

The Complaint in this matter concerns a prepaid calling account that Complainant used to place collect calls while incarcerated at SCI Fayette. In his Petition, Complainant seeks to withdraw his Complaint because he feels that it is without merit due to him no longer being incarcerated.

Pursuant to the Commission’s regulations above, I must consider any objection to the Petition, and the public interest, when determining whether the Petition will be granted. Respondent did not object to the Petition. It would not be in the public interest to have the Parties in this matter further litigate this proceeding when it is clear that Complainant no longer wishes to pursue the Complaint. Granting the Petition will save the Parties and the Commission any additional costs in time and money they would otherwise incur in further litigating this case. Furthermore, the Complaint does not contain any novel issues or issues of public interest. Therefore, the Petition will be granted in the Ordering paragraphs below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. A party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon other parties. 52 Pa. Code § 5.94(a).

3. A petition to withdraw a pleading in a contested proceeding must set forth the reasons for the withdrawal and that a party may object to the petition within 10 days. 52 Pa. Code § 5.94(a).

4. After considering a petition to withdraw a pleading in a contested proceeding, any objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted. 52 Pa. Code § 5.94(a).

5. The Commission or presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties. 52 Pa. Code § 1.2(a).

6. It is in the public interest to allow Complainant to withdraw his Formal Complaint. 52 Pa. Code § 5.94.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition for Leave to Withdraw the Complaint, made by Kenneth Dade at Docket No. C-2023-3043524, is granted.
2. That the Formal Complaint filed in the matter of Kenneth Dade v. Securus Technologies, LLC, at Docket No. C-2023-3043524, is withdrawn.
3. That the Secretary's Bureau shall mark Docket No. C-2023-3043524 as closed.

Date: June 26, 2024

/s/
Alphonso Arnold III
Administrative Law Judge