STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS

CENTURYLINK PUBLIC COMMUNICATIONS, INC., d/b/a CENTURY LINK,

Petitioner,

vs.

DOAH Case No. 14-2828BID
DC Case Nos. 14-116

DEPARTMENT OF CORRECTIONS,

Respondent,

and

GLOBAL TEL*LINK CORPORATION AND SECURUS TECHNOLOGIES, INC.,

Intervenors.

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SECURUS TECHNOLOGIES, INC.,

Petitioner,

vs.

DOAH Case No. 14-2894BID
DC Case No. 14-117

DEPARTMENT OF CORRECTIONS,

Respondent,

and

GLOBAL TEL*LINK CORPORATION AND CENTURYLINK PUBLIC COMMUNICATIONS, INC., d/b/a CENTURY LINK,

Intervenors.

_____/

FINAL ORDER

This matter comes before the Florida Department of Corrections ("Department"), pursuant to Section 120.57(3), Florida Statutes, for final agency action after an administrative hearing conducted on July 17th and 18th before John D.C. Newton, II, Administrative Law Judge ("ALJ"), of the Division of Administrative Hearings ("DOAH") in response to a challenge to the Department's intended award for the Department's Request for Proposals RFP-13-031, ("RFP") for Statewide Inmate Telecommunication Services to Global Tel*Link Corporation.

The ALJ framed the issue in the case as follows: "Is Respondent, Department of Corrections' (Department) Notice of Intent to Award DC RFP-13-031 for Statewide Inmate Telecommunication Services to Intervenor, Global Tel*Link Corporation (Global), contrary to the governing statutes, rules, or policies or to the Department's Request for Proposal solicitation specifications?"

On August 14, 2014, all parties filed Proposed Recommended Orders at DOAH. A Recommended Order was entered into by the ALJ on September 4, 2014. The Petitioners/Intervenors, Centurylink Public Communications, Inc., d/b/a Century Link ("Century Link"), Securus Technologies, Inc. ("Securus"), and Respondent/Intervenor, Global Tel*Link Corporation ("GTL"), all filed exceptions to the Recommended Order with the Department on September 15, 2014. Respondent, Department of Corrections, did not file any exceptions to the Recommended Order.

After reviewing this matter and being fully advised in the premises, it is ORDERED that:

1. Pursuant to Section 120.57(1)(l), Florida Statutes, the Department is adopting the Recommended Order as its Final Order. This adoption of the Recommended Order is subject to the Department's obligation under Section 120.57(1)(k), Florida Statutes, to rule on the exceptions filed by the parties, which will be addressed below.

2. No costs or charges are being assessed against the bonds or cashier's checks submitted by Petitioners for purposes of posting a protest bond. The respective bonds or checks provided shall promptly be returned to Petitioners by the Department following entry of this Final Order.

WHEREFORE, it is ORDERED and adjudged that all proposals submitted to the Department in response to DC RFP-13-031, by Century Link, GTL, and Securus are hereby rejected.

## RULINGS ON EXCEPTIONS

Florida case law holds that parties in formal administrative proceedings must alert reviewing agencies to any perceived defects in recommended orders by filing exceptions. Florida Dept. of Corrections v. Bradley, 510 So.2d 1122, 1124 (Fla. 1st DCA 1987); *See* Henderson v. Dept. of Health, Board of Nursing, 954 So.2d 77, 81 (Fla. 5th DCA 2007). However, the agency does not have to rule on exceptions that do not: (1) clearly identify the disputed portions of the Recommended Order by page number or paragraph; (2) identify the legal basis for the exception; or (3) include appropriate and specific citations to the record. Rule 28-106.217(1), F.A.C.; *See*, §120.57(1)(k), (l), Florida Statutes.

The agency may not reject findings of fact unless the agency first determines from a review of the entire record, and states with particularity, that the findings of fact were not based upon competent, substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. §120.57(1)(l), Florida Statutes.

Additionally, rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. §120.57(1)(l), Florida Statutes. The agency may not reject or modify conclusions of law or interpretations of rules unless the agency has substantive jurisdiction over the laws or rules, states with particularity the reasons for such rejection or modification, and finds that the agency's substitution is as reasonable as that which was rejected or modified. §120.57(1)(l), Florida Statutes.

A reviewing agency may not reweigh the evidence presented at a DOAH formal hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. These evidentiary matters are within the province of the administrative law judge, as the trier of facts. *See,* Putnam Co. Environmental Council, Inc. v. DEP, Case No. 01-2442 (DOAH August 12, 2002) final order at pg. 7, citing Belleau v. Department of Environmental Protection, 695 So. 2d 1305 (Fla. 1st DCA 1997); Florida Department of Corrections v. Bradley, 510 So. 2d 1122 (Fla. 1st DCA 1987); Heifetz v. Department of Business Regulation, 475 So. 2d 1277 (Fla. 1st DCA 1985).

The scope of agency review of findings of fact in a recommended order is limited to ascertaining whether the administrative law judge's existing factual findings are supported by competent substantial evidence of record. Brogan v. Carter, 671 So. 2d 822 (Fla. 1st DCA 1996); North Port Florida v. Consolidated Minerals, 645 So. 2d at 485 (Fla. 2d DCA 1994) If the record

in this case discloses any competent substantial evidence supporting the ALJ's findings of facts in the Recommended Order, the Department is bound by the same in preparation of this Final Order. *See,* Putnam at pg. 7, citing Bradley, at 510 So. 2d 1123.

The Florida Supreme Court in Duval Utility Company v. Florida Public Service Commission, 380 So. 2d 1028, 1031 (Fla. 1980), clearly defines the phrase "competent substantial evidence" as: "such evidence as will establish a substantial basis of fact from which the fact at issue can reasonably be inferred or such relevant evidence as a reasonable mind would accept as adequate to support a conclusion." *See,* Putnam at pg. 7 n.1

In light of these requirements, and based upon the complete record submitted to the Department by DOAH, together with the Recommended Order, the Exceptions to the Recommended Order, and Responses to the Exceptions, the Department makes the following rulings on the parties' respective exceptions:

I. CENTURY LINK'S EXCEPTION

1. Century Link filed one lengthy exception to the Recommended Order of the ALJ. Century Link only takes exception to the recommendation of the ALJ. Century Link asserts that the Department should not reject all proposals as recommended by the ALJ but should rather award the contract to Century Link. The qualified exception asserts that the findings of fact are all reasonable and supported by the record. In its exception, Century Link cites paragraphs 60, 61, 62, 63, 64, 65, 66, 67, 70, 76, 140, 141, 143, of the Recommended Order, as a pertinent to the exception.

2. In its exception Century Link also suggests that section 287.057(1)(b)4, Florida Statutes, allows the Department to ignore the ALJ's recommendation and award the contract to Century Link. Section 287.057(1)(b)4, F.S., as cited by Century Link, is an instructional provision outlining the steps an agency must take when awarding a contract pursuant to a competitive solicitation. The provision cited does not provide a basis for rejecting the recommendation of an ALJ.

3. In its exception Century Link also requests that as an alternative to a contract award a Final Order should be entered accepting the ALJ's recommendation to reject all proposals.

4. A complete review of the record and the Recommended Order shows that the ALJ considered and relied on all exhibits and testimony taken at the hearing in making his recommendation. All facts relied upon by the ALJ in making his recommendation are supported by competent substantial evidence. This exception has not established a basis for a rejection or modification of any of the ALJ's findings of fact or conclusions of law. The record is devoid of any evidence to the contrary. Consistent with section 120.57(1)(l), Florida Statutes, this exception is denied.

II. GTL'S EXCEPTIONS

1. GTL filed four exceptions to the ALJ's Recommended Order addressed below.

2. GTL's Exception 1: Exceptions to Findings of Fact Regarding the FCC Issue.

GTL's first exception regarding the FCC Issue consists of twelve (12) paragraphs. GTL asserts that the findings of fact made by the ALJ were a result of a misunderstanding by the ALJ of a)

the arguments raised by the protesting parties; and b) a misunderstanding of the requirements of the RFP.

3. Within GTL's Exception 1, ¶¶ 2-3, GTL takes specific exception to the finding of fact in paragraph 60 of the Recommended Order that states in part, as cited by GTL: "[T]he Department's RFP persisted in the RFP requirement that the bidders must include the commission in the **calculation** of their blended rate for the price proposal." [Emphasis added]. GTL supports this exception by citing the hearing transcript in which the Department's Director of Procurement and Contract Management testified that the RFP did not instruct vendors what they are to assume in the terms of future costs (TR pgs. 373-374). The portion of the record cited by GTL does not specifically address calculations. The record is clear that commissions on all call types were required by the RFP (TR pgs. 96-98). GTL asserts it included all required commissions and provides its own interpretation of what the RFP required of vendors when making a calculation of proposed commission rates. Within this portion of Exception 1, GTL does not show that the ALJ's findings contained within paragraph 60 were not based on competent substantial evidence.

4. Within GTL's Exception 1, ¶¶ 4-8, GTL further argues that a "fundamental misconception" by the ALJ is included in the findings of fact contained in paragraphs 61 and 64 of the Recommended Order and objects to all findings of fact contained therein. GTL asserts that none of the facts within paragraphs 61 and 64 of the Recommended Order are supported by competent and substantial evidence. Within paragraphs 61 and 64, the ALJ found that: a)

vendors that did not calculate a commission in their blended rate would have an advantage over vendors that did not; b) that the price sheet identified a commission but that the commission is not accounted for in the blended rate; and c) that if Century Link had not included commission payments on interstate calls in its blended rates, it could have bid higher commissions, lower rates, or a combination of both. As a basis for this exception GTL presents an argument attempting to explain why these two paragraphs of the Recommended Order are factually incorrect based on its disagreement with the ALJ's findings. While GTL provides its disagreement with the ALJ's findings of fact and its own interpretation of the facts to support this portion of Exception 1, GTL does not show that the ALJ's findings of fact contained within paragraphs 61 and 64 were not based on competent substantial evidence.

5. Within GTL's Exception 1, ¶¶ 9-12, GTL takes exception to the findings of fact in paragraph 71, and 76, of the Recommended Order. In the portion of the exception addressing paragraph 71, GTL argues that it actually "established a separate, single, blended rate per minute, inclusive of all surcharges and department commission rate", as required by the RFP and included the same within its price proposal. A review of the Recommended Order shows that paragraph 71 of the Recommended Order excepted by GTL only addresses the actions of Ms. Julyn Hussey. It is apparent that GTL intended to address this exception to paragraph 70 of the ALJ's findings of fact. Within paragraph 70 the ALJ found that GTL's proposal did not "establish a separate single, blended rate per minute, inclusive of all surcharges and department commission rate." Paragraph 76 excepted by GTL states: "Not including commission payments on interstate calls in the proposed blended rate was contrary to the instructions of the RFP."

Again, GTL provides its disagreement with the ALJ's findings of fact and its own interpretation of the facts to support this portion of Exception 1. However, GTL does not show that the ALJ's findings of fact contained within paragraphs 70 and 76 were not based on competent substantial evidence.

6. Based upon a review of the entire record, the Department finds that the ALJ's findings of fact are based upon competent substantial evidence. Consistent with section 120.57(1)(l), Florida Statutes, GTL's Exception 1, is denied in its entirety. GTL's Exception 1 is based completely on GTL's disagreement with the ALJ's interpretations of the facts contained in the record. The Department is not free to reinterpret evidence ruled upon by the ALJ at hearing to reach a contrary result. *See,* Heifetz v. Department of Business Regulation, 475 So. 2d 1277 (Fla. 1st DCA 1985).

7. GTL's Exception 2: Exceptions to Conclusions of Law Regarding the FCC Issue. Within GTL's Exception 2, ¶ 13, GTL takes exception to the conclusions of law found in paragraphs 140, 141, 142, and 144, of the Recommended Order. GTL argues that the conclusions of law are based upon facts not supported by competent substantial evidence. In paragraph 140, the ALJ concludes as a matter of law that GTL and Securus submitted prices that did not include, and did not disclose to the Department: "[A] separate single, blended rate per minute, inclusive of all surcharges and department commission rate on the price sheet (attachment 5) for the inmate telephone service and the video visitation service." In paragraph 141, the ALJ concludes as a matter of law that awarding a contract to either Securus or GTL would be contrary to the RFP's solicitation standards. In paragraph 142, the ALJ concludes as a matter of law that the

proposals of Securus and GTL undermine the ability of the Department to secure the best value to the public at the lowest possible expense because Securus and GTL did not include all price elements required by the RFP. Therefore, the Department could not and did not make a meaningful price comparison between Securus, GTL, and Century Link's price proposal. In paragraph 144, the ALJ concludes as a matter of law that not including commissions in the blended rate made the competition between the three vendors unfair and unequal. Within GTL's Exception 2, ¶ 13, GTL has clearly identified the conclusions of law to which it takes exception. However, GTL fails to specifically cite any statutes, rules, or case law the ALJ erroneously relied upon as a basis for his conclusions of law that require rejection or modification by the Department consistent with section 120.57(1)(l), Florida Statutes.

8. Within GTL's Exception 2, ¶¶ 14-15, GTL takes exception to the conclusions of law found in paragraphs 143-144 of the Recommended Order. In paragraph 143 the ALJ found that GTL that failed to include interstate commissions in its proposal. The ALJ concluded that interstate commissions reflected approximately 12% of the revenue under the proposed contract and provided GTL a substantial advantage. The ALJ also found that the Department's decision, based upon rates submitted that did not include interstate commissions when required by the RFP, is contrary to competition, clearly erroneous, arbitrary and capricious. In paragraph 144 of the Recommended Order, the ALJ concluded as a matter of law that not including the commissions in the blended rate also made the competition between the three vendors unfair and unequal. Within GTL's Exception 2, ¶¶ 14-15, GTL has clearly identified multiple conclusions of law to which it takes exception. However, GTL fails to specifically cite any statutes, rules, or

case law, the ALJ erroneously relied upon as a basis for his conclusions of law that require rejection or modification by the Department consistent with section 120.57(1)(l), Florida Statutes.

9. Within GTL's Exception 2, ¶ 16, GTL takes exception to the conclusions of law found in paragraph 145 of the Recommended Order, alleging that the conclusions are erroneous and based on a misreading of the RFP's specifications. In paragraph 145, the ALJ found that the protest issue of interstate commissions raised by Century Link was not a belated specifications protest but rather a case of the RFP specifications not being followed. The ALJ further found differing interpretations of the meaning and effect of the FCC Order resulted in Century Link not being afforded an equal advantage that competitive procurement laws were enacted to provide. GTL takes exception to paragraph 145 but fails to articulate what statutes, rules, or case law, the ALJ erroneously relied upon for the his conclusions of law that would require rejection or modification by the Department consistent with section 120.57(1)(l), Florida Statutes.

10. Based upon a review of the entire record, the Department finds that the conclusions of law reached by the ALJ should not be rejected or modified. GTL's Exception 2 is based entirely upon GTL's disagreement with the ALJ's application of law to the facts of record in this case. In order for the Department to reject or modify an ALJ's conclusions of law the reviewing agency must have substantive jurisdiction over the statutes and rules interpreted and applied by the ALJ. *See*, Bagloo v. Agency for Healthcare Administration, 44 So. 3d 1218 (Fla. 1st DCA 2010) (Agency's modification of conclusions of law over which it did not have substantive jurisdiction was error); G.E.L. Corporation v. Dept. of Environmental Protection,

875 So. 2d 1257 at pgs. 2-3 (Fla. 5th DCA 2004) (In interpreting the legislative intent of section120.57(1)(l), Florida Statutes, the Court found the Legislature clearly intended to restrict agency review of legal conclusions in a recommended order to those that concern matters within the agency's field of expertise). In addition, section 120.57(1)(l), Florida Statutes, clearly states: "The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction." As stated above, GTL in its exception did not articulate what statutes, rules, or case law, the ALJ erroneously relied upon for his conclusions of law that require rejection or modification by the Department. Furthermore, GTL has not identified any relevant rules or statutes in dispute of which the Department has substantive jurisdiction to reject or modify. Consistent with section 120.57(1)(l), Florida Statutes, GTL's Exception 2, is denied in its entirety.

11. GTL's Exception 3: Exceptions to Findings of Fact Department's Evaluators Acted in an Arbitrary and Capricious Manner

12. Within GTL's Exception 3, ¶ 24, GTL takes exception to the findings of fact contained within ¶¶ 78-79, and 96, of the Recommended Order.

13. In reference to Section 3.15 of the RFP, Paragraph 78 of the Recommended Order states: "The score of zero is a factual finding by the Department that Securus' 600-plus-page proposal had no information from which evaluators could qualitatively assess the proposal by that criterion." Paragraph 79 of the Recommended Order states: "A score of zero is not a qualitative assessment, like a score of 'poor' or 'exceptional.' A score of zero reflects a finding

that the information is completely absent." Paragraph 96 of the Recommended Order states: "Since Securus did not have a labeled section 3.15 and the other proposals did, the evaluators scored Securus' proposal as "Omitted-0" for section 3.15."

14. As support for its exceptions to the findings of fact contained within paragraphs 78-79, and 96 of the Recommended Order GTL cites transcript pages 320-322, testimony of Steve Viefhaus; pgs. 125-126 testimony of Shane Philips; and pg. 374 testimony of Jodi Bailey. The citations to the record proffered by GTL within this portion of Exception 3, do not support a finding that the facts contained within paragraphs 78-79 and 96 of the Recommended Order are not based on competent substantial evidence. Within this exception, GTL explains its rationale for disagreeing with the ALJ's findings of fact and provides its own interpretation of the facts to support this portion of Exception 3. However, GTL does not show that the ALJ's findings of fact contained within paragraphs 78-79 and 96 of the Recommended Order were not based on competent substantial evidence.

15. Within GTL's Exception 3, ¶ 27, GTL takes exception to the findings of fact contained within ¶¶ 104, 106, 109, and 112 of the Recommended Order, "for the same reasons identified above."

16. In paragraphs 104, 106, 109, and 112 of the Recommended Order, the ALJ found that Securus' technical response addressing routine service, repairs, emergency repairs, and monthly payment reports all complied with the RFP requirements and could not rationally be deemed omitted.

17. In support of this exception, GTL cites transcript page 124 containing the testimony of Shane Phillips. Within this exception GTL explains its rationale for disagreeing with the ALJ's findings of fact and provides its own interpretation of the facts to support this portion of Exception 3. However, GTL does not show that the ALJ's findings of fact contained within paragraphs 104, 106, 109, and 112 of the Recommended Order were not based on competent substantial evidence.

18. Within GTL's Exception 3, ¶ 29, GTL takes exception to the findings of fact contained within ¶¶ 114, 115, 116, and 117 of the Recommended Order.

19. In paragraphs 114, 115, 116, and 117 of the Recommended Order the ALJ found: a) A determination by the Department concluding Securus entirely omitted a plan to address Section 3.15 of the RFP is irrational and clearly erroneous; b) Shane Phillips did not score section 3.15 consistently with section 3.14 of the RFP; and c) The evaluators reached an irrational conclusion in determining that Securus failed to include any information explaining how it would meet the performance standards and outcomes of section 3.15.

20. In support of this exception GTL cites transcript pages 124 and 126 containing the testimony of Shane Phillips. Within this exception GTL explains its rationale for disagreeing with the ALJ's findings of fact and provides its own interpretation of the facts to support this portion of Exception 3. However, GTL does not show that the ALJ's findings of fact contained within paragraphs 114, 115, 116, and 117 of the Recommended Order were not based on competent substantial evidence.

21. Within GTL's Exception 3, ¶¶ 31-32, GTL takes exception to the findings of fact contained within ¶ 119 of the Recommended Order.

22. In paragraph 119 of the Recommended Order, the ALJ found that the evaluators' claim that Securus never expressly agreed to be bound by the performance measures of section 3.15, does not support a finding that the information was omitted.

23. In support of this exception GTL cites transcript page 375, containing the testimony of Jodi Bailey. Within this exception GTL explains its rationale for disagreeing with the ALJ's findings of fact and provides its own interpretation of the facts to support this portion of Exception 3. However, GTL does not show that the ALJ's findings of fact contained within paragraph 119 of the Recommended Order were not based on competent substantial evidence.

24. Based upon a review of the entire record, the Department finds that the ALJ's findings of fact are based upon competent substantial evidence. Consistent with Section 120.57(1)(l), Florida Statutes, GTL's Exception 3, is denied in its entirety. GTL's Exception 3 is based completely on GTL's disagreement with the ALJ's interpretations of the facts contained in the record. The Department is not free to reinterpret evidence ruled upon by the ALJ at hearing to reach a contrary result. *See,* Heifetz v. Department of Business Regulation, 475 So. 2d 1277 (Fla. 1st DCA 1985).

25. GTL's Exception 4: Exceptions to Conclusions of Law that the Department's Evaluators Acted in an Arbitrary and Capricious Manner

26. Within GTL's Exception 4, ¶¶ 33-36, GTL takes exception to the conclusions of law contained within ¶¶ 146 and 149, of the Recommended Order. In paragraph 146 of the

Recommended Order, the ALJ concluded as a matter of law that the Securus response to the RFP did contain a narrative response to RFP section 3.15, and the failure of the Department to consider and award points for the Securus response is not rational, not supported by logic, and clearly erroneous. The ALJ additionally concluded that the effect is contrary to competition because it severely undermined the ability of the Department to award the contract to a competent possible provider. GTL argues that the ALJ applied the wrong legal standard in paragraph 146 when addressing the scores of zero awarded to Securus RFP response to section 3.15. To support this legal exception, GTL cites only persuasive authority of which the Department does not have substantive jurisdiction. In paragraph 149 of the Recommended Order the ALJ concluded as a matter of law that: a) Century Link and Securus have met the burden of proof imposed by section 120.57(3)(f), Florida Statutes; b) The Department's intended award to GTL, where price proposals of two vendors do not comply with the RFP, and Securus' response to section 3.15 was incorrectly scored, requires concluding that the preponderance of the credible persuasive evidence establish a "definite and firm conviction that a mistake has been committed." Within GTL's Exception 4, ¶¶ 33-36, GTL has clearly identified the conclusions of law to which it takes exception. In its exception to paragraph 146 of the Recommended Order, GTL challenges the legal standard applied by the ALJ but does not offer any authority to reject or modify the conclusion of law offered by the ALJ. For its exception to paragraph 149 of the Recommended Order GTL fails to articulate what statutes, rules, or case law, the ALJ erroneously relied upon for his conclusions of law that would require rejection or modification by the Department consistent with Section 120.57(1)(l), Florida Statutes.

27. Based upon a review of the entire record, the Department finds that the conclusions of law reached by the ALJ should not be rejected or modified. GTL's Exception 4 is based entirely upon GTL's disagreement with the ALJ's application of law to the facts of record in this case. In order for the Department to reject or modify an ALJ's conclusions of law the reviewing agency must have substantive jurisdiction over the statutes and rules interpreted and applied by the ALJ. *See*, Bagloo v. Agency for Healthcare Administration, 44 So. 3d 1218 (Fla. 1st DCA 2010) (Agency's modification of conclusions of law over which it did not have substantive jurisdiction was error); G.E.L. Corporation v. Dept. of Environmental Protection, 875 So. 2d 1257 at pgs. 2-3 (Fla. 5th DCA 2004) (In interpreting the legislative intent of §120.57(1)(l), F.S., the Court found the Legislature clearly intended to restrict agency review of legal conclusions in a recommended order to those that concern matters within the agency's field of expertise). In addition, Section 120.57(1)(l), Florida Statutes, clearly states: "The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction." As stated above, GTL in its exception did not articulate what statutes, rules, or case law, the ALJ erroneously relied upon for his conclusions of law that require rejection or modification by the Department. Furthermore, GTL has not identified any relevant rules or statutes in dispute of which the Department has substantive jurisdiction to reject or modify. Consistent with Section 120.57(1)(l), Florida Statutes, GTL's Exception 4, is denied in its entirety.

III. SECURUS' EXCEPTIONS

Securus filed one, six part exception, to the ALJ's Recommended Order addressed below.

1. Securus' Price Proposal Complied with the RFP Requirements; Securus takes exception to paragraph 9 of the Recommended Order, as there is no evidence to support the finding that Securus is presently charging inmates a commission.

2. This exception is denied in its entirety. This exception is denied because it does not provide a specific citation to the disputed portion of the record. Section 120.57(1)(k), Florida Statutes, provides that an agency need not rule on an exception that does not include appropriate and specific citations to the record.

3. Securus takes exception to the finding in paragraph 60 that "the Department's RFP persists in the RFP requirement that the bidders must include the commission in the calculation of their blended rate for the price proposal."

4. In support of this exception Securus cites the RFP, joint hearing Exhibit 1, in its entirety, and the FCC Order, joint hearing Exhibit 24, in its entirety. Securus argues there was no requirement that vendors include commissions as part of the blended telephone rates contained within the RFP. Securus also argues that vendors are prohibited by the FCC Order from including commissions as part of the telephone per minute rate.

5. This exception is denied in its entirety. This exception is denied because it does not provide an appropriately specific citation to the disputed portion of the record. A general citation to lengthy and detailed exhibits i.e. Exhibit 1, the Department's 94 page RFP, and Exhibit 24, the FCC's 21 page Order, are not appropriately specific citations to the record for evaluation of an exception. Nor does Securus cite any portion of relevant testimony from the record in support of this exception. Section 120.57(1)(k), Florida Statutes, provides that an

agency need not rule on an exception that does not include appropriate and specific citations to the record.

6. Securus takes exception to the finding in paragraph 61 regarding when a vendor could propose a higher or lower blended rate "because although the price sheet identified a commission, the commission is not accounted for in the blended rate."

7. In support of this exception Securus cites the RFP, joint hearing Exhibit 1, in its entirety and the FCC Order, joint hearing Exhibit 24, in its entirety. Securus argues there was no requirement that vendors include commissions as part of the blended telephone rates contained within the RFP. Securus also argues that vendors are prohibited by the FCC Order from including commissions as part of the telephone per minute rate.

8. This exception is denied in its entirety. This exception is denied because it does not provide an appropriately specific citation to the disputed portion of the record. A general citation to lengthy and detailed exhibits i.e. Exhibit 1, the Department's 94 page RFP, and Exhibit 24, the FCC's 21 page Order, are not appropriately specific citations to the record for evaluation of an exception. Nor does Securus cite any portion of relevant testimony from the record in support of this exception. Section 120.57(1)(k), Florida Statutes, provides that an agency need not rule on an exception that does not include appropriate and specific citations to the record.

9. Securus takes exception to the finding in paragraph 66 that "Securus did not include the cost of paying a commission on the interstate calls in calculating the blended rate that is submitted" to the extent the finding implies that Securus was required to do so under the RFP.

10. In support of this exception Securus cites the RFP, joint hearing Exhibit 1, in its entirety, and the FCC Order, joint hearing Exhibit 24, in its entirety. Within this exception Securus again argues that there was no requirement that vendors include commissions as part of the blended telephone rates required by the RFP. Securus also argues that vendors are prohibited by the FCC Order from including commissions as part of the telephone per minute rate and further asserts that there is no evidence in the record to support a finding that the RFP required the blended rate per minute to include commissions within the rate.

11. This exception is denied in its entirety. This exception is denied because it does not provide an appropriately specific citation to the disputed portion of the record. A general citation to lengthy and detailed exhibits i.e. Exhibit 1, the Department's 94 page RFP, and Exhibit 24, the FCC's 21 page Order, are not appropriately specific citations to the record for evaluation of an exception. Nor does Securus cite any portion of relevant testimony from the record in support of this exception. Section 120.57(1)(k), Florida Statutes, provides that an agency need not rule on an exception that does not include appropriate and specific citations to the record.

12. Securus takes exception to the finding in paragraph 76 in its entirety.

13. In support of this exception Securus cites joint hearing Exhibit 1, the Department's RFP, in its entirety. Securus argues that the blended telephone per minute rate was to be inclusive of all surcharges but there was no requirement that the vendors include commissions as part of the blended rate itself. Securus also argues that vendors are prohibited by the FCC order from including commissions as part of the telephone per minute rate.

14. This exception is denied in its entirety. This exception is denied because it does not provide an appropriately specific citation to the disputed portion of the record. A general citation to a lengthy and detailed exhibit i.e. Exhibit 1, the Department's 94 page RFP, is not an appropriately specific citation to the record for evaluation of an exception. Nor does Securus cite any portion of relevant testimony from the record in support of this exception. Section 120.57(1)(k), Florida Statutes, provides that an agency need not rule on an exception that does not include appropriate and specific citations to the record.

15. Securus takes exception to the findings and conclusions of law in paragraphs 140, 142, 143, and 144.

16. In support of this exception Securus argues that the findings of fact and conclusions of law are premised on the ALJ's fundamental misapprehension of the RFP's requirements for the blended rate per minute required by the RFP. Within this exception Securus expresses its disagreement with the ALJ's determination that vendors were to include commission rates within the blended per minute rate. In further support of this exception, citing joint hearing Exhibit 1, the Department's RFP, Securus alleges the ALJ disregarded Section 3.8.3 of the RFP as amended by Addendum 3, and RFP Attachment 5, when reaching the conclusion that vendors were to include commission rates within the blended per minute rate. In conclusion Securus offers its alternative interpretation of the facts and asserts that the ALJ's findings contained within paragraphs 140, 142, 143, and 144 are not supported by any competent substantial evidence.

17. Securus' exceptions to the ALJ's findings of fact contained within paragraphs 140, 142, 143, and 144 are denied. The exceptions to the findings of fact are denied because they do not provide an appropriately specific citation to the disputed portion of the record. As stated above, general citation to lengthy and detailed exhibit i.e. Exhibit 1, the Department's 94 page RFP, is not an appropriately specific citation to the record for evaluation of an exception. Nor does Securus cite any portion of relevant testimony from the record in support of this exception. Section 120.57(1)(k), Florida Statutes, provides that an agency need not rule on an exception that does not include appropriate and specific citations to the record.

18. Securus' exceptions to the ALJ's conclusions of law contained within paragraphs 140, 142, 143, and 144 are denied. Based upon a review of the entire record, the Department finds that the conclusions of law reached by the ALJ should not be rejected or modified. Securus' exceptions are based entirely upon Securus' disagreement with the ALJ's application of law to the facts of record in this case. In order for the Department to reject or modify an ALJ's conclusions of law the reviewing agency must have substantive jurisdiction over the statutes and rules interpreted and applied by the ALJ. *See*, Bagloo v. Agency for Healthcare Administration, 44 So. 3d 1218 (Fla. 1st DCA 2010) (Agency's modification of conclusions of law over which it did not have substantive jurisdiction was error); G.E.L. Corporation v. Dept. of Environmental Protection, 875 So. 2d 1257 at pgs. 2-3 (Fla. 5th DCA 2004) (In interpreting the legislative intent of section 120.57(1)(l), Florida Statutes, the Court found the Legislature clearly intended to restrict agency review of legal conclusions in a recommended order to those that concern matters within the agency's field of expertise). In addition, section 120.57(1)(l), Florida Statutes, clearly states: "The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has

substantive jurisdiction." Securus in this exception did not articulate what statutes, rules, or case law, the ALJ erroneously relied upon for his conclusions of law that require rejection or modification by the Department. Furthermore, Securus has not identified any relevant rules or statutes in dispute over which the Department has substantive jurisdiction to modify or reject. Consistent with section 120.57(1)(l), Florida Statutes, Securus exceptions to the conclusions of law in paragraphs 140, 142, 143, and 144 are denied their entirety.

**DONE and ORDERED** this 6th day of October, 2014, in Tallahassee, Florida.

MICHAEL D. CREWS, Secretary
Florida Department of Corrections
501 South Calhoun Street
Tallahassee, Florida 32399-2500

Notice of Right to Appeal

This Final Order constitutes final agency action. Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by filing a Notice of Appeal in accordance with Florida Rules of Appellate Procedure 9.110 and 9.190, with the Clerk of the Department of Corrections in the Office of General Counsel, 501 South Calhoun Street, Tallahassee, Florida 32399; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees either in the First District Court of Appeal or in such other appellate district as the party appealing resides. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the Clerk of the Department.

Filed in the official records of the Florida Department of Corrections on this 6th day of October, 2014.

Deputy Agency Clerk

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order has been furnished this 6th day of October, 2014, via electronic mail to:

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